

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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DEC 08 1999

APPLICATION OF MAIN LINE TRANSIT  
SERVICE, INC.

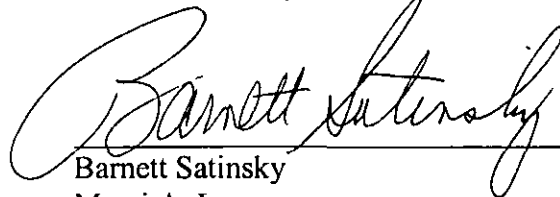
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PA PUBLIC UTILITY COMMISSION  
DOCKET NO.  
SECRETARY'S BUREAU  
A-00116172

NOTICE OF APPEARANCE

Please enter our appearance in the above-designated matter as co-counsel on behalf of the Applicant. We are authorized to accept service on behalf of said participant in this matter. On the basis of this notice, we request a copy of each document hereafter issued by the Commission in this matter.

DOCUMENT  
FOLDER



Barnett Satinsky  
Marci A. Love  
Fox, Rothschild, O'Brien & Frankel, LLP  
2000 Market Street, 10<sup>th</sup> Floor  
Philadelphia, PA 19103  
(215) 299-2088

Attorneys for Applicant  
Main Line Transit Service, Inc.

Date: December 8, 1999

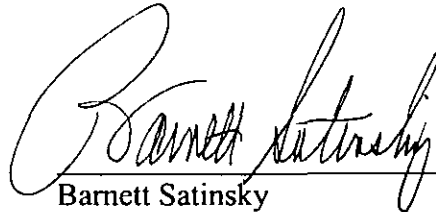
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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served by first class mail, postage prepaid, a true copy of the Notice of Appearance on behalf of Applicant, upon the participant, listed below, in accordance with the requirements of 52 Pa. Code § 1.54.

Larisa Tenberg, Esq.  
Law Offices of John J. Gallagher, P.C.  
Suite 1100  
1760 Market Street  
Philadelphia, PA 19103  
Attorney for Protestant  
Norristown Transportation Company

Dated this 8<sup>th</sup> day of December, 1999



---

Barnett Satinsky  
Fox, Rothschild, O'Brien & Frankel, LLP  
2000 Market Street, 10<sup>th</sup> Floor  
Philadelphia, PA 19103  
Attorney for Applicant

FOX • ROTHSCHILD  
O'BRIEN & FRANKEL LLP  
ATTORNEYS AT LAW

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Barnett Satinsky  
Direct Dial: (215) 299-2088  
Internet Address: bsatinsky@frof.com

December 8, 1999

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James J. McNulty  
Secretary  
Pennsylvania Public Utility Commission  
Room B-20, North Office Building  
North Street & Commonwealth Avenue  
Harrisburg, PA 17120

DEC 08 1999

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**Re: Application of Main Line Transit Service, Inc.**  
**Docket No. A-00116172**

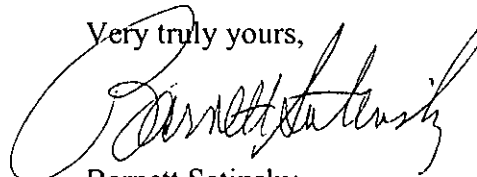
Dear Secretary McNulty:

Enclosed for filing are an original and three copies of Applicant Main Line Transit Service, Inc.'s Motion to Dismiss the Protest of Norristown Transportation Company or, in the Alternative, Motion in Limine. Please file the original and date-stamp and return to me in the enclosed self-addressed stamped envelope one of the copies.

Also enclosed at this time is an original and three copies of our Entry of Appearance as co-counsel on behalf of the Applicant. Would you also date-stamp and return to me one copy of that filing.

Thank you for your cooperation.

Very truly yours,



Barnett Satinsky

BS/mo  
Enclosures

cc: Larisa Tenberg, Esq. (w/encl.)  
Mr. Clifford Kingsley (w/encl.)  
Thomas M. Keenan, Esq. (w/encl.)

EEF

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

APPLICATION OF MAIN LINE  
TRANSIT SERVICE, INC.

DOCKET NO.: A-00116172

RECEIVED

DEC 08 1999

**APPLICANT MAIN LINE TRANSIT SERVICE,  
INC.'S MOTION TO DISMISS THE PROTEST OF  
NORRISTOWN TRANSPORTATION COMPANY  
OR, IN THE ALTERNATIVE, MOTION IN LIMINE**

PENNSYLVANIA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Applicant, Main Line Transit Service, Inc. ("Main Line"), by and through its undersigned counsel, hereby moves the Pennsylvania Public Utility Commission (the "Commission") to dismiss the protest of Norristown Transportation Company ("Norristown") on the grounds that the protest is insufficient as to substance under 52 Pa. Code § 5107(a)(3). In support thereof, Main Line avers the following:

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On or about July 27, 1999, Main Line filed with the Commission an Application for Approval of Transfer and Exercise of Common Carrier or Contract Rights (the "Transfer Application"). A true and correct copy of the Transfer Application, sans exhibits, is attached as Exhibit "A" hereto.

2. The Transfer Application requests that the Commission approve Main Line's purchase of certain assets currently owned by Bennett Taxi Service, Inc. ("Bennett"), including the PUC certificates owned by Bennett and operated under the fictitious names of Main Line Paratransit and The Connector. Bennett is a certificated carrier authorized, inter alia, to transport persons in paratransit service between points in the townships of Upper Merion, Lower

Merion and the borough of Narberth, Montgomery County, and the townships of Radnor, Haverford, Marple and Newtown, Delaware County.

3. On or about October 14, 1999, Norristown filed with the Commission a protest (the "Protest") to the Transfer Application. A true and correct copy of the Protest is attached as Exhibit "B" hereto. The Protest requests that the Commission deny the Transfer Application on the sole basis that approval "will have an adverse impact on Norristown in that Norristown and [Main Line] will be in direct competition with one another for the transportation of passengers." Id. at ¶ 5. The Protest also avers that "Norristown is able to meet any need which exists for this type of service." Id.

4. Section 1102(a)(3) of the Public Utility Code authorizes a public utility to acquire, or to transfer, the title to any tangible or intangible property used or useful in the public service. 66 Pa.C.S.A. § 1102(a)(3).

5. Pennsylvania courts and the Commission have recognized two bases upon which a transfer application can be denied: (1) lack of fitness; and (2) abandonment. See 52 Pa. Code § 41.14(b); In re: L. Joseph Williams t/d/b/a Executive Limousine Serv., 78 Pa. P.U.C. 41 (1993); In re: Erie Transp. Servs., 72 Pa. P.U.C. 113 (1990).

6. Norristown's Protest does not aver that Main Line lacks the technical and/or financial fitness to acquire Bennett's existing paratransit operating authority, or that Bennett has abandoned that operating authority; rather, the Protest merely avers that approval of the Transfer Application will have an adverse impact on Norristown's business.

7. Although 52 Pa. Code § 41.14(a) provides that an applicant seeking motor common carrier authority must show a public demand or need for the service, it is presumed that the demand or need, once found, continues to exist at the time that the applicant seeks to transfer that authority to a new carrier. 52 Pa. Code § 41.14(a); South Hills Movers, Inc. v. Pennsylvania Public Utility Comm'n, 601 A.2d 1308, 1309 (Pa. Commw. Ct. 1992); In re: Eric Transp. Servs., Inc., 72 Pa. P.U.C. 113 (1990).

8. The presumption of continuing necessity is rebuttable; however, neither the Commission nor the Pennsylvania courts consider a protestant to have met its burden to rebut the presumption where, as here, the sole basis of the protest is merely that approval of the transfer application will adversely impact the protestant's business.

9. In fact, the Commission has stated that "competition [is] irrelevant in a transfer proceeding . . . [and that] adverse economic impact resulting from increased competition is not a sufficient basis to deny a transfer application." In re: L. Joseph Williams t/d/b/a Executive Limousine Serv., 78 Pa. P.U.C. 41 (1993).

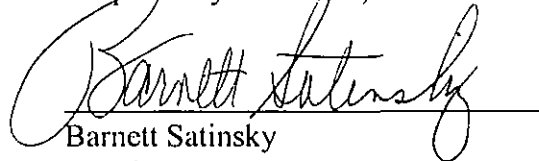
10. Moreover, Pennsylvania cases that have considered what evidence might successfully rebut the presumption of continuing necessity have rejected the argument that the lack of public need can be established by proof that the transferor is not currently providing the service. See, e.g., In re: Byerly, 270 A.2d 186, 189 (Pa. 1970) ("[t]he fact that a carrier has not transported the certificated product and the fact that he has not been requested to do so does not rebut the presumption of continuing necessity"); In re: L. Joseph Williams t/d/b/a Executive Limousine Serv., 78 Pa. P.U.C. 41 (1993) ("mere evidence that the transferring carrier has not provided the service under the rights to be transferred may not be sufficient [to rebut the presumption]").

11. Evidence of adverse impact, standing alone, does not constitute a legally cognizable basis upon which to protest a transfer application.

12. Therefore, insofar as the Protest avers merely that approval of the Transfer Application will have an adverse impact on Norristown's business, the Protest is insufficient as to substance and should be dismissed.

13. In the alternative, because evidence of adverse impact is irrelevant in the context of a transfer proceeding, Norristown should be precluded from introducing evidence of adverse impact in support of its Protest to the Transfer Application.

Respectfully submitted,



Barnett Satinsky

Marci A. Love

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Thomas M. Keenan

Keenan, Ciccitto & Brant

376 East Main Street

P.O. Box 19426

Collegeville, PA 19426

(610) 489-6170

Attorneys for Applicant

Date: December 8, 1999

APPLICATION FOR APPROVAL OF TRANSFER  
AND EXERCISE OF COMMON CARRIER OR CONTRACT RIGHTS

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of MAIN LINE TRANSIT SERVICE, INC.  
(Applicant/Transferee-Buyer)

for the approval of the transfer and to exercise the right

as a Common carrier, described at Docket  
(common-contract)

No. A-00089018, Folder No. 2, Am-D, issued to

BENNETT TAXI SERVICE, INC.  
(Transferor - Seller)

for transportation of Persons in paratransit service  
(persons-household goods)

SEE INSTRUCTIONS BEFORE COMPLETING APPLICATION

1. MAIN LINE TRANSIT SERVICE, INC.  
(full and correct name of applicant/transferee)

2. MAIN LINE TRANSIT SERVICE, INC.  
(Trade name, if any)

The trade name HAS been registered with the Secretary of the Commonwealth  
(has or has not)

on June 14, 1996 (attach copy of stamped registration form).  
(date)

3. 303 East Church Rd. (P.O. Box, if any)  
(Business street address)

King of Prussia, Pennsylvania  
(City) (County) (State) 19406 610 277 9636  
(zip) (Telephone)

4. Applicant's attorney (for this application) is:  
376 East Main Street  
Thomas M. Keenan, Esc., P.O. Box 26460, Colleceville, PA 19426 - (610) 489-  
(Name) (Address) (Telephone) 6170

5. Any documents should be mailed to:

Transferee: Clifford Kingsley 303 E. Church Rd. King of Prussia, Penna. 19406  
(Name) (Address)

Transferor: Bennett Taxi Service Inc. P.O. Box 342 Bryn Mawr, Penna. 19010  
(Name) (Address)

6. Applicant does not hold Pa. P.U.C. authority under Docket Number  
(does or does not)

A- \_\_\_\_\_ and operates as a \_\_\_\_\_ carrier.  
(common or contract)

7. Applicant does not hold Interstate Commerce Commission authority at Docket No. \_\_\_\_\_  
(does or does not)

8. Applicant is (check one):

Individual.

Partnership. Must attach a copy of the partnership agreement (unless a copy is presently on file with PUC), and list names and addresses of partners below (use additional sheet if necessary).

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address)

Corporation. Organized under the laws of the state of Pennsylvania

and qualified to do business in Pennsylvania by registering with the Secretary of the Commonwealth

on June 14, 1999 (Attach copy of Certificate of Incorporation or Authority and statement of

charter purpose). Include as an attachment a list of corporate officers and their titles and the names, addresses and number of shares held by each stockholder.

9. If applicant, its stockholder or partnership members are in control of or affiliated with any other carrier, state name of carrier(s), Docket Number(s) and nature of control or affiliation.

10. Applicant proposes to acquire part of the operating rights now held by transferor. Attach sheet  
(all or part)

describing rights to be transferred to applicant and rights to be retained by transferor, if any. If any rights are to be omitted give reasons.

11. The reason for the transfer is Asset Acquisition

COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN RE:

APPLICATION OF

A 00116172

MAIN LINE TRANSIT SERVICE, INC.

Application to transport persons in paratransit service between points in the counties of Montgomery and Delaware and from points in said county to points in Pennsylvania, and return.

PROTEST OF NORRISTOWN TRANSPORTATION COMPANY  
TO THE APPLICATION OF  
MAIN LINE TRANSIT SERVICE, INC.

1. Norristown Transportation Company (Norristown) protests the Application of Main Line Transit Service, Inc. (Applicant).

2. Norristown is a certified public utility authorized to transport persons in paratransit service between points in the county of Pennsylvania with certain restriction. A description of Norristown's certified area is contained in its tariff which is attached hereto and marked Exhibit "A". Norristown's address is 41 Burnside Avenue, Norristown, PA 19403.

3. Norristown's attorney is Larisa Tenberg, Esquire, 1760 Market Street, Suite 1100, Philadelphia, PA 19103

4. Applicant is seeking the right to transport persons in paratransit service between points in counties of Delaware and Montgomery, and from points in said county to points in Pennsylvania, and return

LAW OFFICES  
SUITE 1100 • 1760 MARKET STREET • PHILADELPHIA, PA 19103

**EXHIBIT "B"**


5. If the Commission grants this application, it will have an adverse impact on Norristown in that Norristown and applicant will be in direct competition with one another for the transportation of passengers. Norristown is able to meet any need which exists for this type of service.

6. Protes: to this application are due on or before October 18, 1999. This is a timely protest and therefore Norristown is entitled to participate in this proceeding as a party intervenor pursuant to 52 PA. Code 3.381.

7 Pursuant to 333(c) of the Pennsylvania Public Utility Code, demand is made upon applicant to furnish protestant's counsel with a list of the names and addresses of witnesses he intends to call and a brief summary of the proposed testimony; in particular, complaints, if any, against the services of the protestant.

WHEREFORE, Norristown, respectfully requests this Commission to deny the Application of Man Line Transit Service, Inc.

Respectfully submitted,



LARISA TENBERG, ESQUIRE  
Attorney for Protestant

COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN RE:

APPLICATION OF

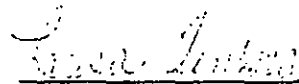
A.00116172

MAIN LINE TRANSIT SERVICE, INC.

CERTIFICATE OF SERVICE

I, hereby certify that on this 14th day of October, 1999, I mailed by first class mail, postage prepaid, a copy of the foregoing Protest of Norristown Transportation Company the Application of Main Line Transit Service, Inc.

Main Line Transit Service, Inc.  
503 East Church Road  
King of Prussia, PA 19406



LARISA TENBERG, ESQUIRE

VERIFICATION

LARIS TENBERG, ESQUIRE verifies that hershe is acquainted with the facts and information set forth in the foregoing pleadings are true and correct to his/her knowledge, information and belief; and that the foregoing Verification is made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.

Larisa Tenberg  
LARISA TENBERG, ESQUIRE

DATE: 10/14/03

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

APPLICATION OF MAIN LINE : DOCKET NO.: A-00116172  
: :  
TRANSIT SERVICE, INC. :

**BRIEF OF APPLICANT MAIN LINE TRANSIT SERVICE, INC.  
IN SUPPORT OF ITS MOTION TO DISMISS THE PROTEST  
OF NORRISTOWN TRANSPORTATION COMPANY**

Applicant, Main Line Transit Service, Inc. (“Main Line”), by and through its undersigned counsel, hereby submits the following brief in support of its motion to dismiss the protest of Norristown Transportation Company (“Norristown”) (the “Motion”) on the grounds that the protest is insufficient as to substance under 52 Pa. Code § 5.101(a)(3).

**I. BACKGROUND**

On or about July 27, 1999, Main Line filed with the Pennsylvania Public Utility Commission (the “Commission”) an Application for Approval of Transfer and Exercise of Common Carrier or Contract Rights (the “Transfer Application”). A true and correct copy of the Transfer Application, sans exhibits, is attached as Exhibit “A” to the Motion. The Transfer Application requests that the Commission approve Main Line’s purchase of certain assets currently owned by Bennett Taxi Service, Inc. (“Bennett”), including the PUC certificates owned by Bennett and operated under the fictitious names of Main Line Paratransit and The Connector. Bennett is a certificated carrier authorized, inter alia, to transport persons in paratransit service between points in the townships of Upper Merion, Lower Merion and the borough of Narberth,

Montgomery County, and the townships of Radnor, Haverford, Marple and Newtown, Delaware County.

On or about October 14, 1999, Norristown filed with the Commission a protest (the "Protest") to the Transfer Application. A true and correct copy of the Protest is attached as Exhibit "B" to the Motion. The Protest requests that the Commission deny the Transfer Application on the sole basis that approval "will have an adverse impact on Norristown in that Norristown and [Main Line] will be in direct competition with one another for the transportation of passengers." Id. at ¶ 5. The Protest also avers that "Norristown is able to meet any need which exists for this type of service." Id.

The Commission should dismiss Norristown's Protest with prejudice because it is insufficient as to substance under 52 Pa. Code § 5.101(a)(3).<sup>1</sup> Specifically, the Commission has found that where the presumption of continuing necessity applies, evidence of adverse impact is not a sufficient basis upon which to deny a transfer application. Insofar as adverse impact represents the sole basis of Norristown's Protest, the Protest is deficient and should be dismissed. In the alternative, because evidence of adverse impact is irrelevant in the context of a transfer proceeding, Norristown should be barred from introducing any evidence of adverse impact at a hearing with respect to the Protest.

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<sup>1</sup> Section 5.101(a)(3) of the Pennsylvania Code provides in relevant part, "A preliminary motion is available to participants . . . and shall be limited to . . . [a] motion to dismiss a pleading that is insufficient as to substance." 52 Pa. Code § 5.101(a)(3).

## II. ARGUMENT

### A. Evidence Of Adverse Impact Is Not A Sufficient Basis Upon Which To Deny A Transfer Application.

Section 1102(a)(3) of the Public Utility Code authorizes a public utility to acquire, or to transfer, the title to any tangible or intangible property used or useful in the public service. 66 Pa.C.S.A. § 1102(a)(3). In a transfer proceeding, the applicant bears the burden to demonstrate that it possesses the technical and financial fitness to perform the proposed service. See 52 Pa. Code § 41.14(b); In re: Erie Transp. Servs., Inc., 72 Pa. P.U.C. 113 (1990).

The Commission and Pennsylvania courts recognize two bases upon which a transfer application can be denied. First, the Commission can deny a transfer application where it finds that the applicant does not possess the technical and financial ability to provide the proposed service. 52 Pa. Code § 41.14(b); In re: L. Joseph Williams t/d/b/a Executive Limousine Serv., 78 Pa. P.U.C. 41 (1993). Alternatively, the Commission can deny a transfer application where the protestant establishes that the authority sought to be transferred has been abandoned by the transferring carrier. In re: Erie Transp. Servs., Inc., 72 Pa. P.U.C. 113 (1990).

Here, the Protest does not aver that Main Line lacks the technical and/or financial fitness to acquire Bennett's existing paratransit authority,<sup>2</sup> or that Bennett has abandoned that authority.<sup>3</sup>

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<sup>2</sup> Although not placed in issue by Protestant, Mail Line's fitness can hardly be challenged, as it will be owned and operated by Clifford and Barbara Kingsley, who have successfully owned and operated another certificated paratransit company, Tri County Transit Service, Inc. for many years. This fact is well known to Norristown's owners, who are related to Mrs. Kingsley. Furthermore, Norristown, Tri County and Bennett all are members of Suburban Transit Network, Inc. t/d/b/a Transnet, which is designated by the Pennsylvania Department of Transportation as the Senior Citizen Shared Ride Coordinator for Montgomery County, Pennsylvania, and is responsible for providing a system of coordinated paratransit services to Montgomery County residents.

<sup>3</sup> Even if the Protest did aver that Bennett had abandoned the proposed service, such an averment would not withstand scrutiny. Abandonment requires proof that the carrier intended to abandon the service "together with

Rather, the Protest avers merely that approval of the Transfer Application will have an adverse impact on Norristown's business. As demonstrated below, such evidence, standing alone, is insufficient to justify denial of a transfer application.

Section 41.14(a) of the Public Utility Code provides that an applicant seeking motor common carrier authority must show a public demand or need for the service. 52 Pa. Code § 41.14(a). In reality, this subsection addresses the standards applicable to a request for new operating authority. In a transfer proceeding, it has long been held that the applicant does not need to prove that there exists a public demand or need for the underlying service to be transferred; rather, it is presumed that the demand or need, having previously been found, continues to exist at the time of the transfer. South Hills Movers, Inc. v. Pennsylvania Public Utility Comm'n, 601 A.2d 1308, 1309 (Pa. Commw. Ct. 1992); In re: Erie Transp. Servs., Inc., 72 Pa. P.U.C. 113 (1990). This presumption is called the "presumption of continuing necessity," and it applies where the acquiring carrier proposes to provide a service that does not differ from the service that had been provided by the transferring carrier. In re: L. Joseph Williams t/d/b/a Executive Limousine Serv., 78 Pa. P.U.C. 41 (1993).<sup>4</sup>

In theory, the presumption of continuing necessity can be rebutted by a protestant to a transfer application. However, neither the Commission nor the Pennsylvania courts consider that a protestant has met its burden to rebut the presumption where, as here, the sole basis of the

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external acts by which that intent [was] carried into effect." In re: Erie Transp. Servs., Inc., 72 Pa. P.U.C. 113 (1990). Here, the record will show without a shadow of a doubt that pursuant to its paratransit authority, Bennett has provided, and continues to provide, in excess of 2,500 paratransit trips each month to senior citizens and other eligible riders. Once again, the suggestion that Bennett's rights have been abandoned and therefore cannot be transferred is ludicrous.

protest is merely that approval of the transfer application will adversely impact the protestant's business. In fact, the Commission has stated precisely the opposite; namely, that "competition [is] irrelevant in a transfer proceeding . . . [and that] adverse economic impact resulting from increased competition is not a sufficient basis to deny a transfer application." In re: L. Joseph Williams t/d/b/a Executive Limousine Serv., 78 Pa. P.U.C. 41 (1993).

Moreover, Pennsylvania courts that have considered what evidence might successfully rebut the presumption of continuing necessity have rejected the argument that the lack of public need can be established by proof that the carrier is not currently providing the service. For example, in In re: Byerly, the protestant argued that there was no public demand or need for the proposed service because the transferor had never "transported any building supplies, building materials [sic], sand or gravel and that since 1965 he received no requests to nor did he in fact transport any coal." In re: Byerly, 270 A.2d 186, 189 (Pa. 1970). Rejecting this argument, the Pennsylvania Supreme Court stated that "[t]he fact that a carrier has not transported the certificated product and that fact that he has not been requested to do so does not rebut the presumption of continuing necessity." Id. The Commission reached the similar conclusion several years later in In re: L. Joseph Williams t/d/b/a Executive Limousine Serv., 78 Pa. P.U.C. 41 (1993). Here, after reaffirming that the presumption of continuing necessity applies in transfer proceedings, the Commission concluded that "mere evidence that the transferring carrier has not provided the service under the rights to be transferred may not be sufficient [to rebut the presumption]." Id.

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<sup>4</sup> Main Line seeks to provide services identical to those provided by Bennett.

The Commission's finding that adverse impact is not a sufficient basis upon which to deny a transfer application, coupled with the Pennsylvania Supreme Court's conclusion that the frequency of services provided does not accurately reflect the "public need" for the service, reflects that evidence of adverse impact, standing alone, does not constitute a legally cognizable basis upon which to protest a transfer application. Therefore, insofar as the Protest avers merely that approval of the Transfer Application will have an adverse impact on Norristown's business, the Protest is insufficient as to substance and should be dismissed.

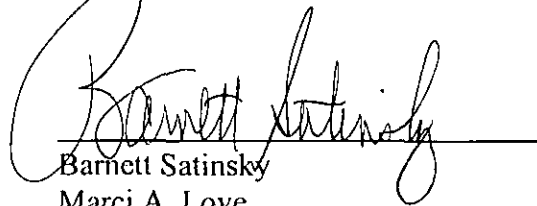
**B. In The Alternative, Norristown Should Be Precluded From Introducing Evidence Of Adverse Impact In Support Of The Protest.**

As discussed in Section II(A) above, the Commission has found that where the presumption of continuing necessity is applicable, evidence of adverse impact, i.e. that Norristown's business will suffer if the Transfer Application is approved, is irrelevant in the context of a transfer proceeding. Accordingly, if the Motion to Dismiss is not granted at this time, Norristown nevertheless should be barred from introducing evidence of adverse impact in support of its Protest to the Transfer Application.

III. CONCLUSION

For all of the foregoing reasons, Main Line respectfully requests that the Commission dismiss Norristown's Protest with prejudice or, in the alternative, preclude Norristown from introducing evidence of adverse impact at a hearing with respect to the Protest.

Respectfully submitted,



Barnett Satinsky

Marci A. Love

Fox, Rothschild, O'Brien & Frankel, LLP

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(610) 489-6170

Attorneys for Applicant

Date: December 8, 1999

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

APPLICATION OF MAIN LINE : DOCKET NO.: A-00116172  
: :  
TRANSIT SERVICE, INC. :

**ORDER**

AND NOW, upon consideration of Applicant Main Line Transit Service, Inc.'s Motion to Dismiss the Protest of Norristown Transportation Company or, in the Alternative, Motion in Limine, and any response thereto, it is hereby ORDERED that the Motion is GRANTED. It is further ORDERED that the Protest is DISMISSED with prejudice.

\_\_\_\_\_  
, J.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

APPLICATION OF MAIN LINE : DOCKET NO.: A-00116172  
: :  
TRANSIT SERVICE, INC. :

**ORDER**

AND NOW, upon consideration of Applicant Main Line Transit Service, Inc.'s Motion to Dismiss the Protest of Norristown Transportation Company or, in the Alternative, Motion in Limine, and any response thereto, it is hereby ORDERED that the Motion is GRANTED in part and DENIED in part. It is further ORDERED that Norristown is precluded from introducing any evidence of adverse impact in support of its Protest to the Transfer Application.

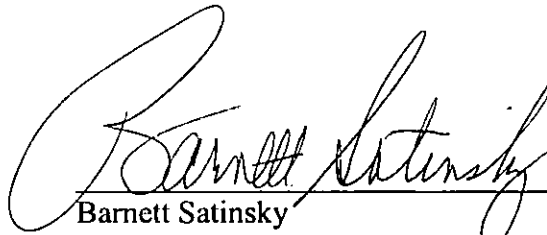
\_\_\_\_\_  
, J.

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served by first class mail, postage prepaid, true copies of Applicant Main Line Transit Service, Inc.'s Motion to Dismiss the Protest of Norristown Transportation Company, or in the Alternative, Motion in Limine, together with Brief and proposed forms of Order in connection therewith, upon the participant, listed below, in accordance with the requirements of 52 Pa. Code § 1.54.

Larisa Tenberg  
Law Offices of John J. Gallagher, P.C.  
Suite 1100  
1760 Market Street  
Philadelphia, PA 19103  
Attorney for Protestant  
Norristown Transportation Company

Dated this 8<sup>th</sup> day of December, 1999



---

Barnett Satinsky  
Fox, Rothschild, O'Brien & Frankel, LLP  
2000 Market Street, 10<sup>th</sup> Floor  
Philadelphia, PA 19103  
Attorney for Applicant

LAW OFFICES  
JOHN J. GALLAGHER, P.C.

JOHN J. GALLAGHER  
MICHAEL S. HENRY \*  
LAURA C. MULDOWNNEY \*  
JOSEPH H. MELTZER \*  
LARISA TENBERG \*

\* ALSO MEMBER NI BAR

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1760 MARKET STREET  
PHILADELPHIA, PA. 19103

(215) 963-1555  
FAX (215) 963-9104  
E-MAIL: jjg1@ix.netcom.com

December 20, 1999

Commonwealth of Pennsylvania  
Pennsylvania Public Utility Commission  
Mr. James McNulty, Secretary  
P.O. Box 3265  
Harrisburg, PA 17120

DOCUMENT  
FOLDER

RECEIVED

DEC 20 1999

RE: Application of Main Line Transit Service, Inc. <sup>DA</sup> PUBLIC UTILITY COMMISSION  
A-00116172 SECRETARY'S BUREAU

Dear Mr. McNulty:

Enclosed for filing are an original and one copy of Protestant Norristown Transportation Company's Reply to Applicant's Motion to Dismiss The Protest of Norristown Transportation Company Or, In The Alternative, Motion In Limine.

Thank you for your attention to this matter.

Very truly yours,

*Larisa Tenberg*

LARISA TENBERG

Enclosure

cc: Barnett Satinsky, Esq. (w/encl.)  
Thomas M. Keenan, Esq. (w/encl.)

SRB

138

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

APPLICATION OF MAIN LINE : DOCKET NO.: A-00116172  
TRANSIT SERVICE, INC. :

**ORIGINAL**

**PROPOSED ORDER**

AND NOW, this            day of            , 1999, upon consideration of  
Applicant's Motion to Dismiss The Protest Of Norristown Transportation Company Or,  
In The Alternative, Motion In Limine and Protestant's Response thereto, it is hereby  
ORDERED that said Motion is DENIED.

BY THE COURT:

\_\_\_\_\_

J.

RECEIVED

DEC 20 1999

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S OFFICE

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

APPLICATION OF MAIN LINE : DOCKET NO.: A-00116172  
TRANSIT SERVICE, INC. :

**PROTESTANT NORRISTOWN TRANSPORTATION  
COMPANY'S REPLY TO APPLICANT MAIN LINE TRANSIT SERVICE  
INC.'S MOTION TO DISMISS THE PROTEST OF NORRISTOWN  
TRANSPORTATION COMPANY OR, IN THE ALTERNATIVE, MOTION IN  
LIMINE**

Protestant, Norristown Transportation Company ("Protestant"), by and through its undersigned counsel, hereby submits the Reply to the Applicant Main Line Transit Service, Inc.'s ("Applicant") Motion to Dismiss the Protest Of Norristown Transportation Company Or, In The Alternative, Motion In Limine. In support thereof, Protestant avers the following:

1. Admitted.
2. Admitted.
3. Denied. The Protest is in writing and therefore speaks for itself.
4. Denied. The allegations contained herein constitute conclusions of law to which no affirmative response is required. By way of further answer, the statute is in writing and therefore speaks for itself.
5. Denied. The allegations contained herein constitute conclusions of law to which no affirmative response is required. By way of further answer, the statute is in writing and therefore speaks for itself.
6. Denied. The issues of lack of fitness and abandonment are always relevant in a transfer proceeding regardless of whether a protestant raised them in its

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DOCKETED  
DEC 28 1999

protest or not. By way of further answer, Protestant intends to present evidence of lack of fitness and abandonment.

7. Denied. The allegations contained herein constitute conclusions of law to which no affirmative response is required. By way of further answer, the statute is in writing and therefore speaks for itself. Furthermore, the presumption of continuing necessity is rebuttable.

8. Denied. The allegations contained herein constitute conclusions of law to which no affirmative response is required. By way of further answer, Protestant intends to present evidence of abandonment.

9. Denied. The allegations contained herein constitute conclusions of law to which no affirmative response is required. By way of further answer, Protestant intends to present evidence of abandonment.

10. Denied. The allegations contained herein constitute conclusions of law to which no affirmative response is required.

11. Denied. The allegations contained herein constitute conclusions of law to which no affirmative response is required. By way of further answer, Protestant intends to present evidence of abandonment.

12. Denied. The protest is in writing and therefore speaks for itself. The allegations contained herein constitute conclusions of law to which no affirmative response is required. By way of further answer, the issues of lack of fitness and abandonment are always relevant in a transfer proceeding regardless of whether a protestant raised them in its protest or not. Furthermore, Protestant intends to present evidence of lack of fitness and abandonment.

13. Denied. The allegations contained herein constitute conclusions of law to which no affirmative response is required. By way of further answer, Protestant intends to present evidence of lack of fitness and abandonment.

WHEREFORE, Applicant's Motion to Dismiss The Protest Of Norristown Transportation Company Or, In The Alternative, Motion In Limine should be denied.

Respectfully submitted,

A handwritten signature in cursive script that reads "Larisa Tenberg". The signature is written in black ink and is positioned above a horizontal line.

BY: LARISA TENBERG, ESQUIRE  
Attorney for the Protestant

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

APPLICATION OF MAIN LINE : DOCKET NO.: A-00116172  
TRANSIT SERVICE, INC. :

**BRIEF OF PROTESTANT NORRISTOWN TRANSPORTATION COMPANY  
IN SUPPORT OF ITS REPLY TO MAIN LINE TRANSIT SERVICE, INC.'S  
MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION IN LIMINE**

Protestant, by and through its undersigned counsel, hereby submits the following brief in support of its Reply to Applicant's Motion to Dismiss the Protest of Norristown Transportation Company Or, In The Alternative, Motion In Limine.

BACKGROUND

By notice published in the Pennsylvania Bulletin on September 25, 1999, Applicant sought the approval of transfer and exercise of common carrier or contract rights under the transfer of the paratransit rights under the certificate issued at A-00089018, F.4. A true and correct copy of the Service of Notice of Motor Carrier Applications from the Pennsylvania Bulletin, Vol. 29, No. 39, September 25, 1999, is attached hereto as Exhibit "A".

On or about October 14, 1999, Protestant filed a protest to the Transfer Application. A true and correct copy of the protest is attached hereto as Exhibit "B".

On or about November 8, 1999, the applicant filed a Motion to Dismiss The Protest Of Norristown Transportation Company Or, In The Alternative, Motion In Limine. A true and correct copy of the Applicant's Motion to Dismiss The Protest of Norristown

Transportation Company Or, In The Alternative, Motion In Limine is attached as Exhibit "C" hereto.

ARGUMENT

**I. Applicant's Motion to Dismiss The Protest Of Norristown Transportation Company Or, In The Alternative, Motion In Limine should be denied because the motion was untimely filed.**

Pennsylvania Public Utility Commission treats a protest as a pleading. As such, the applicant may file a motion to dismiss within 20 days after the closing date for the filing of protests. 52 Pa. Code § 3.381(c)(3).

Protestant filed its protest on October 14, 1999. A true and correct copy of the protest is attached hereto as Exhibit "B". The closing date for the filing of protests was October 18, 1999. A true and correct copy of the Service of Notice of Motor Carrier Applications from the Pennsylvania Bulletin, Vol. 29, No. 39, September 25, 1999, is attached hereto as Exhibit "A". As such, the deadline for filing a motion to dismiss was November 8, 1999. Applicant's Motion to Dismiss The Protest Of Norristown Transportation Company Or, In The Alternative, Motion In Limine was filed on or about December 8, 1999, i.e., one month after the deadline. A true and correct copy of the Applicant's Motion is attached hereto as Exhibit "C".

WHEREFORE, Applicant's Motion to Dismiss The Protest Of Norristown Transportation Company Or, In The Alternative, Motion In Limine should be denied as untimely filed.

**II. Applicant's Motion to Dismiss The Protest Of Norristown Transportation Company Or, In The Alternative, Motion In Limine should be denied because**

**Protestant Has Standing To Protest The Application Of Main Line Transit Service  
Based On Applicants Lack Of Fitness.**

Public Utility Code authorizes a public utility to acquire, or to transfer, the title to any tangible or intangible property used or useful in the public service. 66 Pa.C.S.A. § 1102(a)(3). However, the applicant bears the burden to demonstrate that it possesses fitness to perform the proposed service. See 52 Pa. Code § 41.14(b). Fitness encompasses three concepts: the applicant must possess the technical and financial ability to provide the proposed service, and authority may be withheld if the record demonstrates that the applicant lacks a propensity to operate safely and legally. RE O'Connor, 54 Pa.P.U.C. 547 (1980). The Commission can deny a transfer application where it finds that the applicant did not meet the above requirements. 52 Pa. Code § 41.14(b); In re: L. Joseph Williams t/d/b/a Executive Limousine Serv., 78 Pa.P.U.C. 41(1993). Also, the Commission can deny a transfer application where the protestant establishes that the authority sought to be transferred has been abandoned by the transferring carrier. In re: Erie Transp. Servs., Inc., 72 Pa. P.U.C. 113 (1990).

Based on the above, even though Main Line filed an Application for Approval of Transfer, Applicant still bears the burden to demonstrate that it possesses fitness, whether or not the issue of fitness was raised in the protest. Protestant's investigation revealed that applicant's principle is operating illegally under the authority granted. Moreover, the investigation revealed that part of the authority has been abandoned.

WHEREFORE, Applicant's Motion to Dismiss Or, In The Alternative, Motion In Limine shall be denied.

**III. In The Alternative, Norristown Should Not Be Precluded From Introducing Evidence Of Adverse Impact In Support Of The Protest.**

In cases involving applications for transfer of motor carrier rights under a certificate of public convenience, the applicant need not prove necessity, but rather there is a presumption of continuing public need for the service authorized by the certificate. Byerly v. Pa. Public Utility Commission, 440. Pa. 521, 270 A.2d 186 (1970). However, this presumption is rebuttable. Where there is a proof of abandonment of the certificate of public convenience, the applicant is still required to prove necessity. Id. When the proof of continuing necessity becomes applicable, the evidence of adverse impact becomes relevant. 52 Pa. Code § 41.14 (c).

Based on Protestant's investigation, Applicant abandoned at least part of its authority. As such, evidence of adverse impact becomes relevant in the context of a transfer proceeding.

WHEREFORE, Protestant should not be barred from introducing evidence of adverse impact in support of its Protest to the Transfer Application.

Respectfully submitted,



BY: LARISA TENBERG, ESQUIRE  
Attorney for the Protestant

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

APPLICATION OF MAIN LINE : DOCKET NO.: A-00116172  
TRANSIT SERVICE, INC. :

CERTIFICATE OF SERVICE

I, hereby certify that on this 20th day of December, 1999, I mailed by first class mail, postage prepaid, a copy of the Reply to the Applicant's Motion to Dismiss The Protest of Norristown Transportation Company Or, In The Alternative, Motion In Limine to:

Commonwealth of Pennsylvania  
Pennsylvania Public Utility commission  
Mr. James McNulty, Secretary  
P.O. Box 3265  
Harrisburg, PA 17120

Barnett Satinsky, Esquire  
Fox, Rothchild, O'Brien & Frankel, LLP  
2000 Market Street, 10<sup>th</sup> Floor  
Philadelphia, PA 19103

Thomas M. Keenan  
Keenan, Ciccitto & Brant  
376 East Main Street  
P.O. Box 19426  
Collegeville, PA 19426

  
LARISA TENBERG, ESQUIRE

An initial hearing on this matter will be held Thursday, October 25, 1999 at 10 a.m. in an available hearing room, Ground Floor, North Office Building, North Street and Commonwealth Avenue, Harrisburg, PA, when and where all persons in interest may appear and be heard, if they so desire.

JAMES J. MCNUITY,  
Secretary

Pa.B. Doc. No. 20-1649 Filed for public inspection September 24, 1999, 9:00 a.m.

### Service of Notice of Motor Carrier Applications

The following temporary authority and/or permanent authority applications for the right to render service as a common carrier or contract carrier in this Commonwealth have been filed with the Pennsylvania Public Utility Commission. Publication of this notice shall be considered as sufficient notice to all carriers holding authority from this Commission. Applications will be considered without hearing in the absence of protests to the application. Protests to the applications published herein are due on or before October 18, 1999, as set forth at 52 Pa. Code § 3.381 (relating to applications for transportation of property and persons). The protests shall also indicate whether it applies to the temporary authority application or the permanent application or both.

Applications of the following for approval of the beginning of the exercise of the right and privilege of operating as common carriers for transportation of persons as described under each application.

A-00116178. East Coast Van Service, Inc. (8321 Mansfield Avenue, Suite 300, Philadelphia, PA 19150), a corporation of the Commonwealth of Pennsylvania—persons, in paratransit service between points in the city and county of Philadelphia, and the counties of Chester, Bucks, Delaware and Montgomery.

Applications of the following for approval of the beginning of the exercise of the right and privilege of operating motor vehicles as common carriers for the transportation of persons by transfer of rights as described under each application.

A-00116172. Main Line Transit Service, Inc. (303 East Church Road, King of Prussia, Montgomery County, PA 19406), a corporation of the Commonwealth of Pennsylvania—persons in paratransit service, (1) for Morgan's Run Corporation, from the Radnor Train Station and the Radnor P & W Train Station, in the township of Radnor, Delaware County, to the Radnor Corporate Center in said township, and vice versa; subject to the following conditions: That all service shall be provided in vehicles having a seating capacity of not less than 13 persons, excluding the driver; and that transportation shall be for the account of one party for which the charge is based upon the transportation of a group and not upon the number of persons transported and for which payment is made by a group, organization or company and not by the passengers as individuals; and (2) between points in the townships of Upper Merion, Lower Merion and the borough of Narberth, Montgomery County, and the townships of Radnor, Haverford, Marple and Newtown, Delaware County; subject to the following conditions: That service shall be provided in vehicles without the use of taxi meters or dome lights; that service is limited to the

transportation in a vehicle not limited to individual use, for which reservations are made not later than the previous calendar day; and that service may be performed in vehicles having a seating capacity of 25 passengers or less, excluding the driver; which is to be a transfer of the paratransit rights authorized Bennett Taxi Service, Inc., under the certificate issued at A-00089016, F. 4, subject to the same limitations and conditions.

Applications of the following for approval of the additional right and privilege of operating motor vehicles as common carriers for transportation of persons by transfer of rights as described under each application.

A-00116130, F. 2. Pittsburgh Transportation Company, Inc. (5931 Elsworth Avenue, Pittsburgh, Allegheny County, PA 152065), a corporation of the Commonwealth of Pennsylvania—additional right—persons upon call or demand, (1) in the borough of Brentwood, and the townships of Bethel, Upper St. Clair and Snowden, Allegheny County; (2) in the township of Baldwin, the borough of Whitehall, and that portion of the township of Jefferson, all in Allegheny County; bounded and described as follows: Beginning at a point common to Jefferson Township, Snowden Township and Baldwin Township, thence from said point of beginning along the line dividing Snowden Township from Jefferson Township to Highway Route 02085; thence along Highway Route 02085 in a northeasterly direction to the Mowery, Gill Hall and Cochran's Mill Road; thence along said road to Highway Route 072; thence along Highway Route 072 and the Coal Valley Road to Highway Route 51; thence in a northwesterly direction along Highway Route 51 to Highway Route 02113, thence along Highway Route 02113 to the line dividing Jefferson Township for West Mifflin Borough; thence along said township line to a point common to Jefferson Township, Baldwin Township and West Mifflin Borough; thence along the Jefferson Township-Baldwin Township line to the place of beginning; including the borough of Pleasant Hills; (3) in that portion of the borough of West Mifflin, Allegheny County; bounded and described as follows: Beginning at a point at the southwesterly corner of West Mifflin Borough, at a point common to Jefferson Borough and Baldwin Borough; thence along a line dividing West Mifflin and Baldwin Borough, to a point on a line dividing property now or formerly of Terminal Coal Company and property of Charles Davis; thence along said dividing line and along a line dividing property now or formerly of Willock Land Company from property of Carnegie Illinois Steel Corporation, in a southeasterly direction to State Highway Route 383 and Monongahela, Southern Railroad, also known as the Union Railroad; thence in a northeasterly direction along the line of the Union Railroad and along the northerly line of the Municipal Airport property; to Buttermilk Hollow Road; thence along Buttermilk Hollow Road in a southerly direction to Lebanon Church Road; thence in a southwesterly direction along Lebanon Church Road to the Jefferson Borough line, thence along the Jefferson Borough line in a northerly direction to the point at place of beginning; (4) in the borough of Castle Shannon; (5) in the borough of Finleyville, Washington County, and within a radius of 5 miles thereof; and (6) in the city of Pittsburgh, Allegheny County; which is to be a transfer of the call or demand rights of Mayflower Contract Services, Inc., authorized under the certificate issued at A-00103836, F. 1, subject to the same limitations and conditions. Attorney: Ray F. Middleman.

COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN RE:

APPLICATION OF

A.00116172

MAIN LINE TRANSIT SERVICE, INC.

Application to transport persons in paratransit service between points in the counties of Montgomery and Delaware and from points in said county to points in Pennsylvania, and return.

PROTEST OF NORRISTOWN TRANSPORTATION COMPANY  
TO THE APPLICATION OF  
MAIN LINE TRANSIT SERVICE, INC.

1. Norristown Transportation Company (Norristown) protests the Application of Main Line Transit Service, Inc. (Applicant).
2. Norristown is a certified public utility authorized to transport persons in paratransit service between points in the county of Pennsylvania with certain restriction. A description of Norristown's certified area is contained in its tariff which is attached hereto and marked Exhibit "A". Norristown's address is 41 Burnside Avenue, Norristown, PA 19403.
3. Norristown's attorney is Larisa Tenberg, Esquire, 1760 Market Street, Suite 1100, Philadelphia, PA 19103.
4. Applicant is seeking the right to transport persons in paratransit service between points in, counties of Delaware and Montgomery, and from points in said county to points in Pennsylvania, and return.

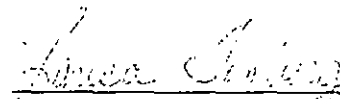
5. If the Commission grants this application, it will have an adverse impact on Norristown in that Norristown and applicant will be in direct competition with one another for the transportation of passengers. Norristown is able to meet any need which exists for this type of service.

6. Protest to this application are due on or before October 18, 1999. This is a timely protest and therefore Norristown is entitled to participate in this proceeding as a party intervenor pursuant to 52 PA. Code 3.381.

7. Pursuant to 333(c) of the Pennsylvania Public Utility Code, demand is made upon applicant to furnish protestant's counsel with a list of the names and addresses of witnesses he intends to call and a brief summary of the proposed testimony; in particular, complaints, if any, against the services of the protestant.

WHEREFORE, Norristown, respectfully requests this Commission to deny the Application of Main Line Transit Service, Inc.

Respectfully submitted,



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LARISA TENBERG, ESQUIRE  
Attorney for Protestant

COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN RE:

APPLICATION OF

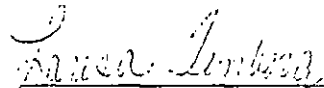
A.00116172

MAIN LINE TRANSIT SERVICE, INC.

CERTIFICATE OF SERVICE

I, hereby certify that on this 14th day of October, 1999, I mailed by first class mail, postage prepaid, a copy of the foregoing Protest of Norristown Transportation Company the Application of Main Line Transit Service, Inc.

Main Line Transit Service, Inc.  
303 East Church Road  
King of Prussia, PA 19406



LARISA TENBERG, ESQUIRE

VERIFICATION

LARIS TENBERG, ESQUIRE *verifies that he/she is acquainted with the facts and information set forth in the foregoing pleadings are true and correct to his/her knowledge, information and belief; and that the foregoing Verification is made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.*

*Larisa Tenberg*  
\_\_\_\_\_  
LARISA TENBERG, ESQUIRE

DATE: 10/14/99

Certificate No. 1000000000  
FOLDER 0

Paradise - Pa. F.D.C. No. 0  
Lancaster  
Paradise - Pa. F.D.C. No. 0

NORRISTOWN YELLOW CAB CO., INC.

FATES AND RULES  
GOVERNING THE  
TRANSFORMATION OF  
PERSONS

(as designated herein)

ISSUED: August 21, 1995

EFFECTIVE: September 21, 1995

ISSUED BY: Francis J. Smith, President  
41 Burnside Ave.  
Norristown, PA 19381  
Phone: 277-1234

LIST OF CHANGES MADE BY THIS TARIFF

Rules and Regulations Rule 2 - Days and Hours of Operation is changed from 7:00 A.M. to 10:00 P.M. TO READ 6:00 A.M. TO 6:00 P.M.

OPERATING AUTHORITY

To transport, as a common carrier, persons in paratransit service between points in the borough of Norristown, Montgomery County, and within an airline distance of five (5) statute miles of the limits of said borough, excluding the boroughs of Conshohocken and West Conshohocken, and the township of Whitemarsh, all in Montgomery County.

Subject to the following conditions:

- a. That the service herein authorized is limited to transportation in vehicles having a seating capacity not to exceed fifteen (15) persons including the driver.
- b. That the service herein authorized is limited to transportation in a vehicle not reserved for individual use, for which advanced reservations are made not later than the previous calendar day.
- c. That no right, power or privilege is granted to provide scheduled route service as defined in 52 Pa Code §29.14.
- d. That no right, power or privilege is granted to transport persons in group and party service as defined in 52 Pa Code §29.16.
- e. That no right, power or privilege is granted to operate vehicles equipped with taximeters or dome lights.

SHARED RIDE RATES (PER PERSON)

1. Zone Rates:

Six zones are established and are color coded. (See Map) Rates range from \$3.50 to \$17.00 depending on the number of zones travelled (See Page 5 for rates within each zone and between zones).

2. Days and Hours of Operation: (C)

Service is available every day, holidays included, from 6:00 A.M. to 6:00 P.M.

3. Advance Notice:

Advance reservations must be made no later than the previous day of when service is to be rendered.

4. Waiting Time:

First five (5) minutes - no charge.  
After five (5) minutes - \$1.00 for each (5) minutes or fraction thereof.

5. Senior Citizen Rates:

The rates for senior citizens, showing proper identification, will be 15% of the shared ride rate (rounded upward to the nearest \$.05); provided that this carrier is under contract with the Pennsylvania Department of Transportation to participate under the provisions of Section 704, of Act 36 of 1991 (the Lottery Fund Preservation Act)>

6. Contract Services:

Contract services provided will be for a term of not less than 30 days for prequalified persons under a federal, state, county or municipal governmental agency contract. Rates for the services will be specified in the respective contracts, copies of which, including any amendments thereto, are to be filed with the Commission as executed, to become effective on one day's notice.

(C) Indicates change or addition



COMMONWEALTH OF PENNSYLVANIA  
 PENNSYLVANIA PUBLIC UTILITY COMMISSION  
 P.O. BOX 3265, HARRISBURG, PA 17105-3265

REPLY BY COURIER

JANUARY 16, 1997

A-01106639, P. 4

RAYMOND A. LITTLE JR. ESQUIRE  
 SUITE 3  
 126 FITZWATERSTOWN ROAD  
 WILLOW BROOK PA 19090-1921

APPLICATION OF NORRISTOWN TRANSPORTATION  
 A CORPORATION OF THE COMMONWEALTH OF PENNSYLVANIA

Enclosed is the compliance order issued by the Commission in this proceeding.

The Certificate of Public Convenience evidencing the Commission's approval of the right to operate will not be issued until the applicant has prepared and filed a tariff, instructions for which are enclosed.

No motor carrier shall operate or engage in any transportation until compliance with the above requirements and a certificate of public convenience has been issued authorizing actual operations. Motor carriers operating without complying with the above requirements will be subject to the penalty provisions of the Public Utility Code.

Commission regulations require compliance with the above requirements within sixty (60) days of the date of this letter. Failure to comply within sixty (60) day period will cause the Commission to rescind the action of January 16, 1997, and dismiss the application without further proceeding.

Very truly yours,

Tom B. Alfano, Secretary

smk  
 encs.  
 cert.mail  
 receipt requested:  
 Tariff Contact: 717-717-1948  
 NORRISTOWN TRANSPORTATION CO  
 41 BURNSIE AVENUE  
 NORRISTOWN PA 19403

PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265

Public Meeting held January 16, 1997

Commissioners Present:

John M. Quain, Chairman  
Lisa Crutchfield, Vice-Chairman  
John Hanger  
David W. Rolka  
Robert K. Bloom

Application of Norristown Transportation Company, a corporation of the Commonwealth of Pennsylvania, for the additional right, to transport as a common carrier by motor vehicle, persons in paratransit service, between points in the borough of Norristown, and within an airline distance of five (5) statute miles of the limits of said borough and the township of Whitemarsh, all in Montgomery County.

A-00106639  
F. 4

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Raymond A. Thistle, Jr. for the applicant.  
Thomas, Thomas, Armstrong & Niesen by Patricia Armstrong  
for protestant, Krapf's Coaches, Inc.

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O R D E R

BY THE COMMISSION:

This matter comes before the Commission on an application filed March 22, 1996. Public notice of the application was given in the Pennsylvania Bulletin of April 27, 1996. A single protest was received by the above-mentioned carrier. The now unopposed application is certified to the Commission for its decision without oral hearing. The record consists of verified statements entered by the applicant and six supporting parties.

Nicholas Chermela, general manager of Norristown Transportation Company (applicant or Norristown Trans) is authorized to make this statement on behalf of the applicant. Chermela has been employed by applicant for twenty (20) years and is familiar with all phases of applicant's operations. The sole shareholder of applicant is Frank Smith. Frank Smith owns 100% of the common capital stock of applicant and also owns 100% of the common capital stock of Norristown Yellow Cab Co., Inc. at

Danielle Eberhardt, assistant manager of Manor Care Health Services (supporting shipper or Manor Care) is authorized by Rhonda Nelson, activities director, to make this statement on behalf of the supporting witness. The supporting party is a health care provider and nursing home seeking paratransit transportation to meet its needs to serve its residents, some of whom are handicapped. It is anticipated that the supporting party will use the applicant's service on a basis of at least once every two weeks with the number of persons each trip averaging four to five. The origin point for the transportation is Manor Care located at 600 West Valley Forge Road, Upper Merion Township, Montgomery County. The destination points are the Country Buffet located in East Norristown Township and Valley Forge Park located in Upper Merion Township, Montgomery County, and return.

Sally Schmidt is a registered nurse and the primary nurse for the care of Judge Frederick B. Smillie residing at 1630 Sandyhill Road, Norristown, Montgomery County. Nurse Schmidt is in charge of arranging for the cuttings of the judge and, by reason of her duties and authority, is authorized to make this statement in support of the application. The judge requires transportation at least once every week and has used paratransit service for the past five years. The origin would be his residence as noted above and destination points of these trips are to the doctors at Montgomery County Hospital, Norristown, Plymouth Meeting Mall, Plymouth Township and King of Prussia Plaza, Upper Merion Township, all in Montgomery County, and return.

Patricia Moir, executive director of Suburban Transit Network, Inc. (supporting party or Trans Net) located at 930 Harvest Drive, Suite 100, Whitpain Township, Montgomery County, is authorized to present this verified statement in support of the application. The primary function of Trans Net is a health care provider of transportation services; however, it does coordinate corporate transportation service as well. Trans Net is the PennDOT coordinator for Montgomery County and is also a Pa. P.U.C.-licensed passenger broker that also coordinates the transportation of persons in paratransit service in Montgomery County. It is Trans Net's intent to utilize applicant's paratransit service within the scope of the territory sought as amended, for approximately twenty-one thousand (21,000) trips with return transportation required, per month, each month of the year. The supporting party has an existing and continuous need for paratransit service.

The following is a list of origin points, almost every trip is on a return basis, destination points, the type of facility, medical or corporate or individual involved. The listing is a sampling of past, present and future paratransit needs of Trans Net. Support is for transportation between points

## DISCUSSION AND FINDINGS

Norristown Transportation Company is a common carrier currently certificated by this Commission to transport persons upon call or demand, parcels and packages, blood and blood products and medicine in taxicabs. Norristown seeks the additional right to transport persons in paratransit service between points in the borough of Norristown, and within an airline distance of five (5) statute miles of the limits of said borough, and the township of Whittemarsh, all in Montgomery County. The application was opposed by a single carrier which withdrew upon restrictive amendment excluding the right to provide transportation to, from or between points in Chester County.

The territory encompassed within an airline distance of five (5) statute miles of the borough of Norristown includes the following boroughs and townships within Montgomery County: the boroughs of West Conshohocken, Conshohocken and Bridgeport and the townships of Whittemarsh, Norriton, Plymouth, Worcester, Lower Providence, West Norriton, Upper Merion, Whitpain and Lower Merion.

Falling within five statute miles of the limits of Norristown are fringe areas of other townships in Montgomery County. Also included within five statute miles of the borough of Norristown is a small portion of Chester County. The application has been amended to exclude transportation to, from and between points in Chester County.

The area of application as amended has been supported by four (4) individuals, one (1) nursing care facility and one (1) Montgomery County coordinator that proposes to tender applicant approximately twenty-one (21,000) paratransit trips on a return basis. We find that the application has been amply supported by the parties.

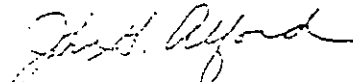
We find that:

1. Applicant currently operates pursuant to common carrier certificates issued by this Commission in 1986.
2. The application was opposed and the protest was withdrawn upon restrictive amendment.
3. Six supporting parties have demonstrated a need for the service as amended.
4. The applicant has the necessary equipment, experience and fitness necessary to render the amended service.

IT IS FURTHER ORDERED: That in the event said applicant has not, on or before sixty (60) days from the date of the service of this order, complied with the requirements hereinbefore set forth, the application shall be dismissed without further proceedings.

IT IS FURTHER ORDERED: That upon compliance with the requirements hereinbefore set forth, a certificate shall issue evidencing the Commission's approval of the right to operate as above-determined.

BY THE COMMISSION,

  
John G. Alford  
Secretary

(SEAL)

ORDER ADOPTED: January 16, 1997

ORDER ENTERED: JAN 20 1997

Certificate No. A.00100317  
Folder 2

Paratransit - Pa. P.U.C. No. 4  
Cancels  
Paratransit - Pa. P.U.C. No. 3

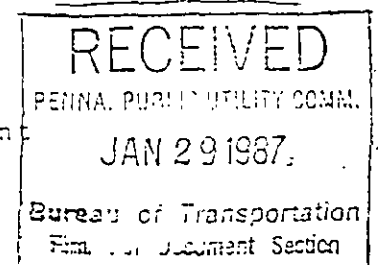
CONSHOHOCKEN YELLOW CAB CO.

RATES AND RULES  
GOVERNING THE  
TRANSPORTATION OF  
(As Designated Herein)

ISSUED: January 29, 1987

EFFECTIVE: February 28, 1987

ISSUED BY: Francis J. Smith, President  
41 Burnside Ave.  
Norristown, Pa. 19401  
Phone: (215) 277-1234



OFFICIALLY FILED TARIFF

LIST OF CHANGES MADE BY THIS TARIFF.

Shared ride grid rates are discontinued and zone rates are established.

OPERATING AUTHORITY - A. 100317, F. 2

To transport, as a common carrier, persons in paratransit service, between points in the boroughs of Conshohocken and West Conshohocken and the township of Whitmarsh, Montgomery County.

Subject to the following conditions:

1. That the service herein authorized is limited to transportation in vehicles having a seating capacity of not more than fifteen (15) persons, including the driver, without the use of dome lights and taximeters.
2. That the service herein authorized is limited to transportation in vehicles not reserved for individual use for which advance reservations are made not less than the previous calendar day.
3. That no right, power or privilege is granted to transport persons in group and party service, as defined in the Pennsylvania Code, Title 52, Chapter 29.16.
4. That no right, power or privilege is granted to provide scheduled route service as defined in the Pennsylvania Code, Title 52, Chapter 29.14.
5. That the applicant shall post in all vehicles, which the applicant operates under the authority held at A-00100317, F.1, notice of the availability of the herein authorized and the tariff for said service. Notice shall be posted in a conspicuous place in the interior of the vehicle.

WAY RATES

On calls up to and including eight (8) miles in any direction from the nearest garage or office and return:

14-passenger vans, per hour, per vehicle	\$ 23.00
9 to 11 passenger vans, per hour, per vehicle	20.00
Wheelchair vans, per hour, per vehicle	24.00

On calls beyond eight (8) miles in any direction from the nearest garage or office, and return:

14-passenger vans, per mile, per vehicle	\$ 1.15
9 to 11 passenger vans, per mile, per vehicle	1.00
Wheelchair vans, per mile, per vehicle	1.50

NOTES:

1. Mileage is calculated by the odometer of the vehicle used.
2. At least 24 hours advance notice must be given.
3. Rates are applicable seven (7) days a week, holidays included, between the hours of 7:00 A.M. and 10:00 P.M.
4. When hourly rates are charged there will be a one-hour minimum. Partial hours, after the first hour, will be calculated in quarter-hour intervals.
5. Contract services for a term not less than 30 days to provide the transportation requirements of pre-qualified persons under a federal, state, county, or local government funding or social service agency, at rates specified in the contract, copies of which are filed with the Commission as executed, said rates to become effective on one day's notice.
6. The total charges under this section are divisible by the number of persons carried per trip and are payable on a per person basis only.

SHARED RIDE RATES (PER PERSON)

1. Zone Rates: (C)

Six zones are established and are color coded. (See Map) Rates range from \$4.00 to \$16.00 depending on the number of zones travelled (See Page for rates within each zone and between zones).

2. Days and Hours of Operation:

Service is available every day, holidays included, from 7:00 A.M. to 10:00 P.M.

3. Advance Notice:

Advance reservations must be made no later than the previous calendar day.

4. Waiting Time:

First five (5) minutes - no charge.

After five (5) minutes - \$1.00 for each (5) minutes or fraction thereof.

5. Senior Citizen Rates:

The rates for senior citizens, showing proper identification, will be \$.25 or 10% of the shared ride rate (rounded to the nearest \$.0 or \$.05), whichever is greater; provided that this carrier is under contract with the Pennsylvania Department of Transportation to participate in the senior citizen program under Section 203, Act 101 (1980), as amended by Act 49 (1984).amended by Act 49 (1984).

6. Contract Services: (C)

Contract services for a term of not less than 30 days, to provide the transportation requirements of prequalified persons under a federal, state, county, or local government funding or social service agency, at rates specified in the contract, copies of which are filed with the Commission as executed, said rates to become effective on one day's notice.

(C) Indicates change or addition

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

APPLICATION OF MAIN LINE : DOCKET NO.: A-00116172  
: :  
TRANSIT SERVICE, INC. :

**APPLICANT MAIN LINE TRANSIT SERVICE,  
INC.'S MOTION TO DISMISS THE PROTEST OF  
NORRISTOWN TRANSPORTATION COMPANY  
OR, IN THE ALTERNATIVE, MOTION IN LIMINE**

Applicant, Main Line Transit Service, Inc. ("Main Line"), by and through its undersigned counsel, hereby moves the Pennsylvania Public Utility Commission (the "Commission") to dismiss the protest of Norristown Transportation Company ("Norristown") on the grounds that the protest is insufficient as to substance under 52 Pa. Code § 5.101(a)(3). In support thereof, Main Line avers the following:

1. On or about July 27, 1999, Main Line filed with the Commission an Application for Approval of Transfer and Exercise of Common Carrier or Contract Rights (the "Transfer Application"). A true and correct copy of the Transfer Application, sans exhibits, is attached as Exhibit "A" hereto.
  
2. *The Transfer Application requests that the Commission approve Main Line's purchase of certain assets currently owned by Bennett Taxi Service, Inc. ("Bennett"), including the PUC certificates owned by Bennett and operated under the fictitious names of Main Line Paratransit and The Connector. Bennett is a certificated carrier authorized, inter alia, to transport persons in paratransit service between points in the townships of Upper Merion, Lower*

Merion and the borough of Narberth, Montgomery County, and the townships of Radnor, Haverford, Marple and Newtown, Delaware County.

3. On or about October 14, 1999, Norristown filed with the Commission a protest (the "Protest") to the Transfer Application. A true and correct copy of the Protest is attached as Exhibit "B" hereto. The Protest requests that the Commission deny the Transfer Application on the sole basis that approval "will have an adverse impact on Norristown in that Norristown and [Main Line] will be in direct competition with one another for the transportation of passengers." Id. at ¶ 5. The Protest also avers that "Norristown is able to meet any need which exists for this type of service." Id.

4. Section 1102(a)(3) of the Public Utility Code authorizes a public utility to acquire, or to transfer, the title to any tangible or intangible property used or useful in the public service. 66 Pa.C.S.A. § 1102(a)(3).

5. Pennsylvania courts and the Commission have recognized two bases upon which a transfer application can be denied: (1) lack of fitness; and (2) abandonment. See 52 Pa. Code § 41.14(b); In re: L. Joseph Williams t/d/b/a Executive Limousine Serv., 78 Pa. P.U.C. 41 (1993); In re: Erie Transp. Servs., 72 Pa. P.U.C. 113 (1990).

6. Norristown's Protest does not aver that Main Line lacks the technical and/or financial fitness to acquire Bennett's existing paratransit operating authority, or that Bennett has abandoned that operating authority; rather, the Protest merely avers that approval of the Transfer Application will have an adverse impact on Norristown's business.

7. Although 52 Pa. Code § 41.14(a) provides that an applicant seeking motor common carrier authority must show a public demand or need for the service, it is presumed that the demand or need, once found, continues to exist at the time that the applicant seeks to transfer that authority to a new carrier. 52 Pa. Code § 41.14(a); South Hills Movers, Inc. v. Pennsylvania Public Utility Comm'n, 601 A.2d 1308, 1309 (Pa. Commw. Ct. 1992); In re: Erie Transp. Servs., Inc., 72 Pa. P.U.C. 113 (1990).

8. The presumption of continuing necessity is rebuttable; however, neither the Commission nor the Pennsylvania courts consider a protestant to have met its burden to rebut the presumption where, as here, the sole basis of the protest is merely that approval of the transfer application will adversely impact the protestant's business.

9. In fact, the Commission has stated that "competition [is] irrelevant in a transfer proceeding . . . [and that] adverse economic impact resulting from increased competition is not a sufficient basis to deny a transfer application." In re: L. Joseph Williams t/d/b/a Executive Limousine Serv., 78 Pa. P.U.C. 41 (1993).

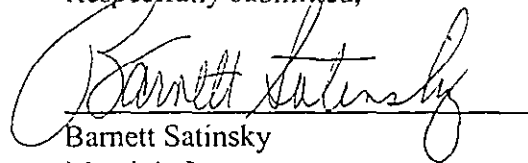
10. Moreover, Pennsylvania cases that have considered what evidence might successfully rebut the presumption of continuing necessity have rejected the argument that the lack of public need can be established by proof that the transferor is not currently providing the service. See, e.g., In re: Byerly, 270 A.2d 186, 189 (Pa. 1970) ("[t]he fact that a carrier has not transported the certificated product and the fact that he has not been requested to do so does not rebut the presumption of continuing necessity"); In re: L. Joseph Williams t/d/b/a Executive Limousine Serv., 78 Pa. P.U.C. 41 (1993) ("mere evidence that the transferring carrier has not provided the service under the rights to be transferred may not be sufficient [to rebut the presumption]").

11. Evidence of adverse impact, standing alone, does not constitute a legally cognizable basis upon which to protest a transfer application.

12. Therefore, insofar as the Protest avers merely that approval of the Transfer Application will have an adverse impact on Norristown's business, the Protest is insufficient as to substance and should be dismissed.

13. In the alternative, because evidence of adverse impact is irrelevant in the context of a transfer proceeding, Norristown should be precluded from introducing evidence of adverse impact in support of its Protest to the Transfer Application.

Respectfully submitted,



Barnett Satinsky

Marci A. Love

Fox, Rothschild, O'Brien & Frankel, LLP

2000 Market Street

Tenth Floor

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(215) 299-2088

Thomas M. Keenan

Keenan, Ciccitto & Brant

376 East Main Street

P.O. Box 19426

Collegeville, PA 19426

(610) 489-6170

Attorneys for Applicant

Date: December 8, 1999

APPLICATION FOR APPROVAL OF TRANSFER  
AND EXERCISE OF COMMON CARRIER OR CONTRACT RIGHTS

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of MAIN LINE TRANSIT SERVICE, INC.  
(Applicant/Transferee-Buyer)

for the approval of the transfer and to exercise the right

as a Common carrier, described at Docket  
(common-contract)

No. A-00089018, Folder No. 2, Am-D, issued to

BENNETT TAXI SERVICE, INC.  
(Transferor - Seller)

for transportation of Persons in paratransit service  
(persons-household goods)

SEE INSTRUCTIONS BEFORE COMPLETING APPLICATION

1. MAIN LINE TRANSIT SERVICE, INC.  
(full and correct name of applicant/transferee)

2. MAIN LINE TRANSIT SERVICE, INC.  
(Trade name, if any)

The trade name HAS been registered with the Secretary of the Commonwealth  
(has or has not)

on June 14, 199 (attach copy of stamped registration form).  
(date)

3. 303 East Church Rd.  
(Business street address) (P.O. Box, if any)

King of Prussia, Pennsylvania  
(City) (County) (State) 19406 610 277 8636  
(zip) (Telephone)

4. Applicant's attorney (for this application) is:  
376 East Main Street  
Thomas M. Keenan, Esc., P.O. Box 26460, Colleceville, PA 19426 - (610) 489  
(Name) (Address) (Telephone) 617

5. Any documents should be mailed to:

Transferee: Clifford Kingsley 303 E. Church Rd. King of Prussia, Penna. 19406  
(Name) (Address)

Transferor: Bennett Taxi Service Inc. P.O. Box 342 Bryn Mawr, Penna. 19010  
(Name) (Address)

6. Applicant does not hold Pa. P.U.C. authority under Docket Number  
(does or does not)

A- \_\_\_\_\_ and operates as a \_\_\_\_\_ carrier.  
(common or contract)

7. Applicant does not hold Interstate Commerce Commission authority at Docket No. \_\_\_\_\_  
(does or does not)

8. Applicant is (check one):

Individual.

Partnership. Must attach a copy of the partnership agreement (unless a copy is presently on file with PUC), and list names and addresses of partners below (use additional sheet if necessary).

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address)

Corporation. Organized under the laws of the state of Pennsylvania  
and qualified to do business in Pennsylvania by registering with the Secretary of the Commonwealth  
on June 14, 1988 (Attach copy of Certificate of Incorporation or Authority and statement of  
charter purpose). Include as an attachment a list of corporate officers and their titles and the names, addresses  
and number of shares held by each stockholder.

9. If applicant, its stockholder or partnership members are in control of or affiliated with any other carrier, state  
name of carrier(s), Docket Number(s) and nature of control or affiliation.

10. Applicant proposes to acquire part of the operating rights now held by transferor. Attach sheet  
(all or part)  
describing rights to be transferred to applicant and rights to be retained by transferor, if any. If any rights are to  
be omitted give reasons.

11. The reason for the transfer is Asset Acquisition

COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN RE:

APPLICATION OF

A 00116172

MAIN LINE TRANSIT SERVICE, INC.

Application to transport persons in paratransit service between points in the counties of Montgomery and Delaware and from points in said county to points in Pennsylvania, and return.

PROTEST OF NORRISTOWN TRANSPORTATION COMPANY  
TO THE APPLICATION OF  
MAIN LINE TRANSIT SERVICE, INC.

1. Norristown Transportation Company (Norristown) protests the Application of Main Line Transit Service, Inc. (Applicant).

2. Norristown is a certified public utility authorized to transport persons in paratransit service between points in the county of Pennsylvania with certain restriction. A description of Norristown's certified area is contained in its tariff which is attached hereto and marked Exhibit "A". Norristown's address is 41 Burnside Avenue, Norristown, PA 19403.

3. Norristown's attorney is Larisa Tenberg, Esquire, 1760 Market Street, Suite 1100, Philadelphia, PA 19103

4. Applicant is seeking the right to transport persons in paratransit service between points in counties of Delaware and Montgomery, and from points in said county to points in Pennsylvania, and return

LAW OFFICES  
SUITE 1100 • 1760 MARKET STREET • PHILADELPHIA, PA 19103

EXHIBIT "B"


5 If the Commission grants this application, it will have an adverse impact on Norristown in that Norristown and applicant will be in direct competition with one another for the transportation of passengers. Norristown is able to meet any need which exists for this type of service.

6. Protest to this application are due on or before October 18, 1999. This is a timely protest and therefore Norristown is entitled to participate in this proceeding as a party intervenor pursuant to 52 PA. Code 3.381.

7 Pursuant to 333(c) of the Pennsylvania Public Utility Code, demand is made upon applicant to furnish protestant's counsel with a list of the names and addresses of witnesses he intends to call and a brief summary of the proposed testimony, in particular, complaints, if any, against the services of the protestant.

WHEREFORE, Norristown, respectfully requests this Commission to deny the Application of Man Line Transit Service, Inc.

Respectfully submitted,



LARISA TENBERG, ESQUIRE  
Attorney for Protestant

COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN RE:

APPLICATION OF

A.00116172

MAIN LINE TRANSIT SERVICE, INC.

CERTIFICATE OF SERVICE

I, hereby certify that on this 14th day of October, 1999, I mailed by first class mail, postage prepaid, a copy of the foregoing Protest of Norristown Transportation Company the Application of Main Line Transit Service, Inc.

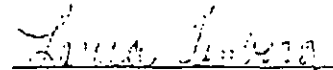
Main Line Transit Service, Inc.  
303 East Church Road  
King of Prussia, PA 19406

*Larisa Tenberg*

\_\_\_\_\_  
LARISA TENBERG, ESQUIRE

VERIFICATION

LARIS TENBERG, ESQUIRE verifies that he/she is acquainted with the facts and information set forth in the foregoing pleadings are true and correct to his/her knowledge, information and belief; and that the foregoing Verification is made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.

  
\_\_\_\_\_  
LARISA TENBERG, ESQUIRE

DATE: 10/14/11

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

APPLICATION OF MAIN LINE : DOCKET NO.: A-00116172  
: :  
TRANSIT SERVICE, INC. :

**BRIEF OF APPLICANT MAIN LINE TRANSIT SERVICE, INC.  
IN SUPPORT OF ITS MOTION TO DISMISS THE PROTEST  
OF NORRISTOWN TRANSPORTATION COMPANY**

Applicant, Main Line Transit Service, Inc. ("Main Line"), by and through its undersigned counsel, hereby submits the following brief in support of its motion to dismiss the protest of Norristown Transportation Company ("Norristown") (the "Motion") on the grounds that the protest is insufficient as to substance under 52 Pa. Code § 5.101(a)(3).

**I. BACKGROUND**

On or about July 27, 1999, Main Line filed with the Pennsylvania Public Utility Commission (the "Commission") an Application for Approval of Transfer and Exercise of Common Carrier or Contract Rights (the "Transfer Application"). A true and correct copy of the Transfer Application, sans exhibits, is attached as Exhibit "A" to the Motion. The Transfer Application requests that the Commission approve Main Line's purchase of certain assets currently owned by Bennett Taxi Service, Inc. ("Bennett"), including the PUC certificates owned by Bennett and operated under the fictitious names of Main Line Paratransit and The Connector. Bennett is a certificated carrier authorized, inter alia, to transport persons in paratransit service between points in the townships of Upper Merion, Lower Merion and the borough of Narberth,

Montgomery County, and the townships of Radnor, Haverford, Marple and Newtown, Delaware County.

On or about October 14, 1999, Norristown filed with the Commission a protest (the "Protest") to the Transfer Application. A true and correct copy of the Protest is attached as Exhibit "B" to the Motion. The Protest requests that the Commission deny the Transfer Application on the sole basis that approval "will have an adverse impact on Norristown in that Norristown and [Main Line] will be in direct competition with one another for the transportation of passengers." Id. at ¶ 5. The Protest also avers that "Norristown is able to meet any need which exists for this type of service." Id.

The Commission should dismiss Norristown's Protest with prejudice because it is insufficient as to substance under 52 Pa. Code § 5.101(a)(3).<sup>1</sup> Specifically, the Commission has found that where the presumption of continuing necessity applies, evidence of adverse impact is not a sufficient basis upon which to deny a transfer application. Insofar as adverse impact represents the sole basis of Norristown's Protest, the Protest is deficient and should be dismissed. In the alternative, because evidence of adverse impact is irrelevant in the context of a transfer proceeding, Norristown should be barred from introducing any evidence of adverse impact at a hearing with respect to the Protest.

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<sup>1</sup> Section 5.101(a)(3) of the Pennsylvania Code provides in relevant part, "A preliminary motion is available to participants . . . and shall be limited to . . . [a] motion to dismiss a pleading that is insufficient as to substance." 52 Pa. Code § 5.101(a)(3).

## II. ARGUMENT

### A. Evidence Of Adverse Impact Is Not A Sufficient Basis Upon Which To Deny A Transfer Application.

Section 1102(a)(3) of the Public Utility Code authorizes a public utility to acquire, or to transfer, the title to any tangible or intangible property used or useful in the public service. 66 Pa.C.S.A. § 1102(a)(3). In a transfer proceeding, the applicant bears the burden to demonstrate that it possesses the technical and financial fitness to perform the proposed service. *See* 52 Pa. Code § 41.14(b); *In re: Erie Transp. Servs., Inc.*, 72 Pa. P.U.C. 113 (1990).

The Commission and Pennsylvania courts recognize two bases upon which a transfer application can be denied. First, the Commission can deny a transfer application where it finds that the applicant does not possess the technical and financial ability to provide the proposed service. 52 Pa. Code § 41.14(b); *In re: L. Joseph Williams t/d/b/a Executive Limousine Serv.*, 78 Pa. P.U.C. 41 (1993). Alternatively, the Commission can deny a transfer application where the protestant establishes that the authority sought to be transferred has been abandoned by the transferring carrier. *In re: Erie Transp. Servs., Inc.*, 72 Pa. P.U.C. 113 (1990).

Here, the Protest does not aver that Main Line lacks the technical and/or financial fitness to acquire Bennett's existing paratransit authority,<sup>2</sup> or that Bennett has abandoned that authority.<sup>3</sup>

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<sup>2</sup> Although not placed in issue by Protestant, Mail Line's fitness can hardly be challenged, as it will be owned and operated by Clifford and Barbara Kingsley, who have successfully owned and operated another certificated paratransit company, Tri County Transit Service, Inc. for many years. This fact is well known to Norristown's owners, who are related to Mrs. Kingsley. Furthermore, Norristown, Tri County and Bennett all are members of Suburban Transit Network, Inc. t/d/b/a Transnet, which is designated by the Pennsylvania Department of Transportation as the Senior Citizen Shared Ride Coordinator for Montgomery County, Pennsylvania, and is responsible for providing a system of coordinated paratransit services to Montgomery County residents.

<sup>3</sup> Even if the Protest did aver that Bennett had abandoned the proposed service, such an averment would not withstand scrutiny. Abandonment requires proof that the carrier intended to abandon the service "together with

Rather, the Protest avers merely that approval of the Transfer Application will have an adverse impact on Norristown's business. As demonstrated below, such evidence, standing alone, is insufficient to justify denial of a transfer application.

Section 41.14(a) of the Public Utility Code provides that an applicant seeking motor common carrier authority must show a public demand or need for the service. 52 Pa. Code § 41.14(a). In reality, this subsection addresses the standards applicable to a request for new operating authority. In a transfer proceeding, it has long been held that the applicant does not need to prove that there exists a public demand or need for the underlying service to be transferred; rather, it is presumed that the demand or need, having previously been found, continues to exist at the time of the transfer. South Hills Movers, Inc. v. Pennsylvania Public Utility Comm'n, 601 A.2d 1308, 1309 (Pa. Commw. Ct. 1992); In re: Erie Transp. Servs., Inc., 72 Pa. P.U.C. 113 (1990). This presumption is called the "presumption of continuing necessity," and it applies where the acquiring carrier proposes to provide a service that does not differ from the service that had been provided by the transferring carrier. In re: L. Joseph Williams t/d/b/a Executive Limousine Serv., 78 Pa. P.U.C. 41 (1993).<sup>4</sup>

In theory, the presumption of continuing necessity can be rebutted by a protestant to a transfer application. However, neither the Commission nor the Pennsylvania courts consider that a protestant has met its burden to rebut the presumption where, as here, the sole basis of the

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external acts by which that intent [was] carried into effect." In re: Erie Transp. Servs., Inc., 72 Pa. P.U.C. 113 (1990). Here, the record will show without a shadow of a doubt that pursuant to its paratransit authority, Bennett has provided, and continues to provide, in excess of 2,500 paratransit trips each month to senior citizens and other eligible riders. Once again, the suggestion that Bennett's rights have been abandoned and therefore cannot be transferred is ludicrous.

protest is merely that approval of the transfer application will adversely impact the protestant's business. In fact, the Commission has stated precisely the opposite; namely, that "competition [is] irrelevant in a transfer proceeding . . . [and that] adverse economic impact resulting from increased competition is not a sufficient basis to deny a transfer application." In re: L. Joseph Williams t/d/b/a Executive Limousine Serv., 78 Pa. P.U.C. 41 (1993).

Moreover, Pennsylvania courts that have considered what evidence might successfully rebut the presumption of continuing necessity have rejected the argument that the lack of public need can be established by proof that the carrier is not currently providing the service. For example, in In re: Byerly, the protestant argued that there was no public demand or need for the proposed service because the transferor had never "transported any building supplies, building materials [sic], sand or gravel and that since 1965 he received no requests to nor did he in fact transport any coal." In re: Byerly, 270 A.2d 186, 189 (Pa. 1970). Rejecting this argument, the Pennsylvania Supreme Court stated that "[t]he fact that a carrier has not transported the certificated product and that fact that he has not been requested to do so does not rebut the presumption of continuing necessity." Id. The Commission reached the similar conclusion several years later in In re: L. Joseph Williams t/d/b/a Executive Limousine Serv., 78 Pa. P.U.C. 41 (1993). Here, after reaffirming that the presumption of continuing necessity applies in transfer proceedings, the Commission concluded that "mere evidence that the transferring carrier has not provided the service under the rights to be transferred may not be sufficient [to rebut the presumption]." Id.

---

<sup>4</sup> Main Line seeks to provide services identical to those provided by Bennett.

The Commission's finding that adverse impact is not a sufficient basis upon which to deny a transfer application, coupled with the Pennsylvania Supreme Court's conclusion that the frequency of services provided does not accurately reflect the "public need" for the service, reflects that evidence of adverse impact, standing alone, does not constitute a legally cognizable basis upon which to protest a transfer application. Therefore, insofar as the Protest avers merely that approval of the Transfer Application will have an adverse impact on Norristown's business, the Protest is insufficient as to substance and should be dismissed.

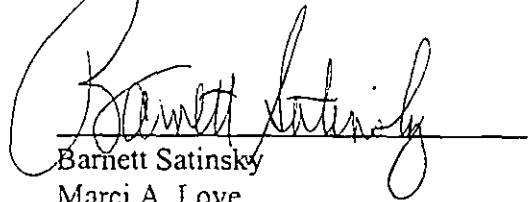
**B. In The Alternative, Norristown Should Be Precluded From Introducing Evidence Of Adverse Impact In Support Of The Protest.**

As discussed in Section II(A) above, the Commission has found that where the presumption of continuing necessity is applicable, evidence of adverse impact, i.e. that Norristown's business will suffer if the Transfer Application is approved, is irrelevant in the context of a transfer proceeding. Accordingly, if the Motion to Dismiss is not granted at this time, Norristown nevertheless should be barred from introducing evidence of adverse impact in support of its Protest to the Transfer Application.

III. CONCLUSION

For all of the foregoing reasons, Main Line respectfully requests that the Commission dismiss Norristown's Protest with prejudice or, in the alternative, preclude Norristown from introducing evidence of adverse impact at a hearing with respect to the Protest.

Respectfully submitted,



Barnett Satinsky

Marci A. Love

Fox, Rothschild, O'Brien & Frankel, LLP

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Thomas M. Keenan

Keenan, Ciccitto & Brant

376 East Main Street

P.O. Box 19426

Collegeville, PA 19426

(610) 489-6170

Attorneys for Applicant

Date: December 8, 1999

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

APPLICATION OF MAIN LINE : DOCKET NO.: A-00116172  
: :  
TRANSIT SERVICE, INC. :

**ORDER**

AND NOW, upon consideration of Applicant Main Line Transit Service, Inc.'s Motion to Dismiss the Protest of Norristown Transportation Company or, in the Alternative, Motion in Limine, and any response thereto, it is hereby ORDERED that the Motion is GRANTED. It is further ORDERED that the Protest is DISMISSED with prejudice.

\_\_\_\_\_  
, J.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

APPLICATION OF MAIN LINE : DOCKET NO.: A-00116172  
: :  
TRANSIT SERVICE, INC. :

**ORDER**

AND NOW, upon consideration of Applicant Main Line Transit Service, Inc.'s Motion to Dismiss the Protest of Norristown Transportation Company or, in the Alternative, Motion in Limine, and any response thereto, it is hereby ORDERED that the Motion is GRANTED in part and DENIED in part. It is further ORDERED that Norristown is precluded from introducing any evidence of adverse impact in support of its Protest to the Transfer Application.

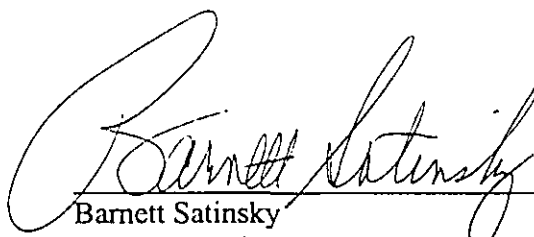
\_\_\_\_\_  
, J.

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served by first class mail, postage prepaid, true copies of Applicant Main Line Transit Service, Inc.'s Motion to Dismiss the Protest of Norristown Transportation Company, or in the Alternative, Motion in Limine, together with Brief and proposed forms of Order in connection therewith, upon the participant, listed below, in accordance with the requirements of 52 Pa. Code § 1.54.

Larisa Tenberg  
Law Offices of John J. Gallagher, P.C.  
Suite 1100  
1760 Market Street  
Philadelphia, PA 19103  
Attorney for Protestant  
Norristown Transportation Company

Dated this 8<sup>th</sup> day of December, 1999

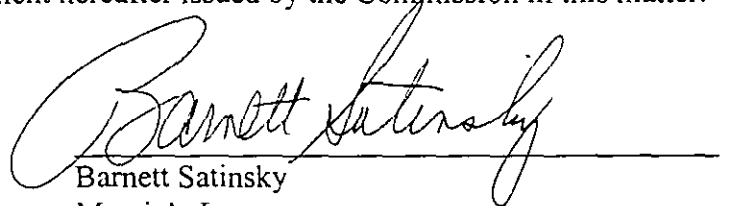
  
Barnett Satinsky  
Fox, Rothschild, O'Brien & Frankel, LLP  
2000 Market Street, 10<sup>th</sup> Floor  
Philadelphia, PA 19103  
Attorney for Applicant

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

APPLICATION OF MAIN LINE TRANSIT : DOCKET NO.  
SERVICE, INC. :  
: A-00116172

NOTICE OF APPEARANCE

Please enter our appearance in the above-designated matter as co-counsel on behalf of the Applicant. We are authorized to accept service on behalf of said participant in this matter. On the basis of this notice, we request a copy of each document hereafter issued by the Commission in this matter.



Barnett Satinsky  
Marci A. Love  
Fox, Rothschild, O'Brien & Frankel, LLP  
2000 Market Street, 10<sup>th</sup> Floor  
Philadelphia, PA 19103  
(215) 299-2088

Attorneys for Applicant  
Main Line Transit Service, Inc.

Date: December 8, 1999



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
PO BOX 3265, HARRISBURG, PA 17105-3265

December 28, 1999

IN REPLY PLEASE  
REFER TO OUR FILE

A-00116172

LARISA TENBERG, ESQUIRE  
LAW OFFICES SUITE 1100  
1760 MARKET STREET  
PHILADELPHIA PA 19103

Re: Application of Main Line Transit Service, Inc.

Dear Ms. Tenberg:

Please note that a Preliminary Motion has been filed by counsel for Main Line Transit Service, Inc. in the above-docketed proceeding. This motion has been assigned to Administrative Law Judge (ALJ) Wayne L. Weismandel for ruling. The Commission rule of practice at 52 Pa. Code §5.101 specifies ten (10) days for you to file an answer to this motion, measured from when the motion was served on you. If you file any pleading(s) or document(s) relating to this motion with the Secretary of the Commission, please provide a copy to Judge Weismandel as well.

If you have any questions or comments, please contact ALJ Weismandel at (717) 787-9708.

Very truly yours,

  
Robert A. Christianson  
Chief Administrative Law Judge

DOCUMENT  
FOLDER

RAC:gp

pc: Barnett Satinsky, Esquire  
Marci Love, Esquire  
ALJ Wayne L. Weismandel  
Herbert R. Nurick, Mediation Coordinator  
PUC New Filing Bureau  
Stephen Springer, OALJ Scheduling Unit

EEF

**DOCKETED**  
DEC 29 1999