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October 31, 2017

**Via Electronic Filing**

Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
PO Box 3265  
Harrisburg, PA 17105-3265

Re: Application of Eagle Ride Taxi Cab, LLC  
Docket No. A-2017-2621976

Dear Secretary Chiavetta:

Enclosed for electronic filing please find Eagle Ridge Taxi Cab LLC's Motion to Dismiss Joint Protest of EZ Taxi LLC, Express Taxi LLC, Reading City Cab, LLC and Amigo Cab, LLC along with a Notice to Plead with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,



Karen O. Moury

KOM/lww  
Enclosure

cc: Certificate of Service w/enc.  
Paul Diskin, Director TUS w/enc.

**CERTIFICATE OF SERVICE**

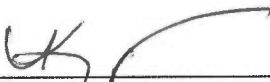
I hereby certify that this day I served a copy of Eagle Ride Taxi Cab LLC's Motion to Dismiss Joint Protest of EZ Taxi LLC, Express Taxi LLC, Reading City Cab, LLC and Amigo Cab, LLC upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

**Via Email and First Class Mail**

Thomas T. Niesen, Esq.  
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Dated: October 31, 2017

  
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Karen O. Moury, Esq.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Eagle Ride Taxi Cab LLC : Docket No. A-2017-2621976

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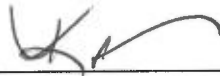
**NOTICE TO PLEAD**

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To: Anthony J. DelGrosso, Esq.  
Law Office of Anthony J. DelGrosso  
P.O. Box 62405  
Harrisburg, PA 17106-2405

You are hereby notified that pursuant to 52 Pa. Code 5.102, a written response to the enclosed Motion to Dismiss filed by Eagle Ride Taxi Cab LLC is due within twenty (20) days from service hereof or a judgment may be entered against you.

Respectfully submitted,



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Karen O. Moury  
PA Attorney I.D. # 36879  
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Dated: October 31, 2017

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Eagle Ride Taxi Cab LLC : Docket No. A-2017-2621976

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**MOTION TO DISMISS JOINT PROTEST OF  
EZ TAXI LLC, EXPRESS TAXI LLC,  
READING CITY CAB, LLC AND AMIGO CAB, LLC**

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TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to Section 3.381(c)(1)(C) of the Commission's regulations, 52 Pa. Code § 3.381(c)(1)(C), Eagle Ride Taxi Cab LLC ("Eagle Ride" or "Applicant") files this Motion to Dismiss ("Motion") the Joint Protest filed by EZ Taxi LLC, Express Taxi LLC, Reading City Cab, LLC, and Amigo Cab, LLC ("Joint Protestants") to Eagle Ride's Application seeking authority to provide call or demand service in the City of Lancaster, Pennsylvania and within an airline distance of 15 statute miles of the limits of the City of Lancaster. Through this Motion, Eagle Ride contends that the specious Joint Protest is improperly driven by a desire to prevent a competitor from entering the market and is directly contrary to the Commission's new standards promoting competition in the transportation industry and easing the entry of call or demand carriers into the market in Pennsylvania. In connection herewith, Eagle Ride avers as follows:

**I. BACKGROUND AND INTRODUCTION**

1. Eagle Ride filed its Application seeking authority to provide call or demand service in the City of Lancaster, Pennsylvania and within an airline distance of 15 statute miles of the

limits of the City of Lancaster on August 30, 2017. No Verified Statement was supplied by Eagle Ride, who was not represented by legal counsel, at that time.<sup>1</sup>

2. The Application was published in the *Pennsylvania Bulletin* on September 30, 2017 at 47 Pa.B. 6155, with Protests due by October 16, 2017.

3. The Joint Protestants filed a Joint Protest on October 12, 2017.

4. On October 31, 2017, Eagle Ride supplemented its Application by filing a Verified Statement, which was served on the Joint Protestants.

5. The gist of the Joint Protest is to avoid competition. Although the Joint Protest refers to the absence of financial and technical information submitted with the Application, and purports to oppose the Application on that basis,<sup>2</sup> it is clear that the Joint Protestants simply desire to preclude the entry of another call or demand carrier in the City of Lancaster. Notably, the Joint Protest contains no specific averments regarding any claims that Eagle Ride lacks technical or financial fitness. Rather, the Joint Protest alleges the Applicant has not shown that approval of the application is necessary for service to the public and further that the entry of a new carrier would endanger or impair the operations of the Joint Protestants.

6. Consistent with the Commission's commitment to eliminating artificial entry barriers and encouraging increased competition in the transportation industry, the specious joint Protest should be dismissed so that the Application and Verified Statement may be reviewed by the Commission's technical staff who are highly experienced in evaluating the technical and

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<sup>1</sup> It is Eagle Ride's belief that since the Application was filed shortly the Commission's new regulations governing the entry of call or demand carriers in Pennsylvania went into effect on June 3, 2017, the Application was not rejected due to the omission of the Verified Statement.

<sup>2</sup> Joint Protest, ¶¶ 8-9.

financial fitness of applicants for call or demand service, with a recommendation being submitted for review by the Commission at an upcoming Public Meeting.

## II. ARGUMENT

### A. Applicable Legal Standards.

7. As of June 3, 2017, the Commission's regulations governing transportation applications were revised to eliminate artificial entry barriers.<sup>3</sup> Specifically, under the Commission's new regulations, the requirement for applicants to establish "public need" for the proposed service was eliminated to "best serve the public."<sup>4</sup> Noting that increased competition spurred by the transportation network company industry "has enhanced customer choice and service," the Commission emphasized its commitment to increase competition, which it described as being "in the public interest for the transportation industry."<sup>5</sup>

8. Through easing its entry standards, the Commission recognized that over the last fifty years, existing carriers have used the public need requirement to "quash competition to protect market share." The Commission unequivocally stated that it does "not believe it is beneficial to exclude qualified new businesses from the market."<sup>6</sup> Further, the Commission found that insulating the transportation industry from competition is not in the public interest.<sup>7</sup>

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<sup>3</sup> *Final Rulemaking Amending 52 Pa. Code Chapters 1, 3, 5, 23 and 29 To Reduce Barriers to Entry for Passenger Motor Carriers*, Docket No. L-2015-2507592 (Final Rulemaking Order entered October 27, 2016, at 18) ("*Order Eliminating Artificial Entry Barriers*"); 52 Pa. Code § 3.381.

<sup>4</sup> *Id.* at 11.

<sup>5</sup> *Id.*

<sup>6</sup> *Order Eliminating Artificial Entry Barriers* at 12.

<sup>7</sup> *Id.* at 15.

9. In eliminating artificial entry barriers that were designed to protect incumbent carriers from competition, the Commission revised Section 3.381(c)(1)(A) of its regulations to limit protests to transportation applications “to challenging the fitness of the applicant, including whether the applicant possesses the technical and financial ability to provide the proposed service and whether the applicant lacks a propensity to operate safely and legally.”<sup>8</sup> The Commission stressed that it would “discourage existing carriers from filing specious protests based on fitness.”<sup>9</sup>

10. In an effort to avoid the filing of specious protests based on fitness, the Commission’s regulations were also revised to require the applicant to file its verified statement along with the initial application.<sup>10</sup>

11. Under Section 3.381(c)(1)(C) of the Commission’s regulations, motions to dismiss may be filed within 20 days after the closing date for the filing of protests.<sup>11</sup> Therefore, this Motion is due by November 6, 2017 and is timely filed on today’s date.

**B. The Joint Protest Is Anti-Competitive and Should Be Dismissed.**

12. A review of the Joint Protest demonstrates that the Joint Protestants simply desire to preclude the entry of another call or demand carrier in the City of Lancaster and insulate the Joint Protestants from competition. Allowing the Joint Protestants to further delay a review and disposition of Eagle Ride’s Application would be contrary to the public interest by depriving the traveling public in the City of Lancaster with the benefit of access to another transportation option.

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<sup>8</sup> 52 Pa. Code § 3.381(c)(1)(A).

<sup>9</sup> *Order Eliminating Artificial Entry Barriers* at 18.

<sup>10</sup> *Order Eliminating Artificial Entry Barriers* at 14; 52 Pa. Code § 3.381(a)(3).

<sup>11</sup> 52 Pa. Code § 3.381(c)(1)(C).

13. The entire gist of the Joint Protest is to avoid competition, which is clear from the Joint Protestants' averment that "entry of an additional, new carrier would endanger or impair the operations of existing carriers, including those of Joint Protestants, to an extent that, on balance, the granting of authority would be contrary to the public interest."<sup>12</sup>

14. Also, despite the Commission's actions to ease the entry process, the Joint Protestants cling to the notion that Applicant was required to submit evidence showing that it can meet the criteria in the Commission's Policy Statement at 52 Pa. Code § 41.14 regarding need for the proposed service. The Commission's *Order Eliminating Artificial Entry Barriers* left no doubt that the evidentiary criteria in the policy statement are outdated and will no longer be utilized.<sup>13</sup>

15. The Commission has made it clear that in eliminating the "public need" requirement for passenger transportation applications and limiting protests to challenging financial and technical fitness, it will "discourage existing carriers from filing specious protests based on fitness and...will address all pleadings in accordance with [its] regulations and due process provisions."<sup>14</sup>

16. The Joint Protestants make allegations concerning fitness in an attempt to delay the processing of Eagle Ride's Application and protect their respective market shares. Without any basis for their claim, the Joint Protestants aver that they believe that "Applicant does not possess the requisite financial fitness to provide the proposed service" or "the requisite technical fitness to

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<sup>12</sup> Protest, ¶ 11. The language used in the Protest about endangering the operations of exist carriers comes from the Commission's Policy Statement at 52 Pa. Code § 41.14(c), which is no longer the standard employed by the Commission in reviewing passenger applications. *See Order Eliminating Artificial Entry Barriers*; 52 Pa. Code § 3.381. Further, these allegations ignore the recent growth of the population and businesses in Lancaster.

<sup>13</sup> *Order Eliminating Artificial Entry Barriers* at 11-19.

<sup>14</sup> *Order Eliminating Artificial Entry Barriers* at 18.

provide the proposed service.”<sup>15</sup> The Joint Protestants do not specify any particular concern, such as an alleged substandard operations of the Applicant or any alleged prior financial difficulties of the Applicant in connection with a transportation or other business. Rather, the Joint Protestants rely solely only on the lack of information of financial or technical fitness with the Application, which has traditionally been submitted after the filing of the application and the expiration of the protest period.<sup>16</sup>

17. The Commission has extensive experience managing market entry into the motor carrier industry and has recognized its continuing obligation to review whether applicants have “the technical expertise and financial wherewithal to provide service” – a determination that the Commission makes in every transportation application.<sup>17</sup> This Application proceeding is no exception. Since Applicant has now filed its Verified Statement setting forth its financial and technical fitness, and in view of the lack of any specific averments by the Joint Protestants regarding Eagle Ride’s fitness, it is not necessary to hold a hearing that will merely allow the Joint Protestants to delay the entry of Eagle into the market. The Commission and its staff are capable of reviewing this information and determining whether to grant the Application.

18. Given the Commission’s commitment to encouraging competition in the transportation industry, it should not condone the filing of specious protests that merely allege a lack of technical and financial fitness without any specific averments or grounds. Rather, the Commission should dismiss the Joint Protest and utilize its own experience and expertise to review the Verified Statement filed by Eagle Ride.

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<sup>15</sup> Protest, ¶¶ 8-9.

<sup>16</sup> *Order Eliminating Artificial Entry Barriers*, Annex A at 3-4.

<sup>17</sup> *Order Eliminating Artificial Entry Barriers* at 15.

19. Eagle Ride respectfully submits that its Verified Statement demonstrates that it has the necessary technical and financial fitness to operate a call or demand service in the City of Lancaster and therefore requests that the Commission grant the Application as soon as possible since its proposed operations have already been delayed by the filing of the specious Joint Protest.

### III. CONCLUSION

WHEREFORE, based upon the foregoing, Eagle Ride Taxi Cab LLC (“Eagle Ride”) respectfully requests that the Commission grant this Motion to Dismiss, dismiss the Joint Protest filed by EZ Taxi LLC, Express Taxi LLC, Reading City Cab, LLC, and Amigo Cab, LLC, and refer the Application to the Bureau of Technical Utility Services for a review of the Verified Statement and preparation of a Commission Order for an upcoming Public Meeting.

Respectfully submitted,



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Dated: October 31, 2017

Counsel for Eagle Ride Taxi Cab LLC