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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 Protest of Autocab, Inc. 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 Protest of Autocab, Inc. 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.
Thomas, Niesen & Thomas
212 Locust Street, Suite 600
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Dated: October 31, 2017



Karen O. Moury, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

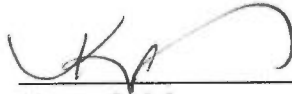
Application of Eagle Ride Taxi Cab LLC : Docket No. A-2017-2621976

NOTICE TO PLEAD

To: Thomas T. Niesen, Esq.
Thomas, Niesen & Thomas
212 Locust Street, Suite 600
Harrisburg, PA 17101

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,



Karen O. Moury
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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

MOTION TO DISMISS PROTEST OF AUTOCAB, INC.

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 Protest filed by Autocab, Inc. ("Protestant") 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 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.¹

¹ 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.

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 Protestant filed a Protest on October 10, 2017.

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

5. The gist of the Protest is to avoid competition. Although the Protest refers to the absence of financial and technical information submitted with the Application, and purports to oppose the Application on that basis,² it is clear that the Protestant simply desires to preclude the entry of another call or demand carrier in the City of Lancaster. Notably, the Protest contains no specific averments regarding any claims that Eagle Ride lacks technical or financial fitness. Rather, the Protest alleges that the Lancaster County call or demand service market is saturated and that its operations would be endangered by the entry of Eagle Ride.

6. Consistent with the Commission's commitment to eliminating artificial entry barriers and encouraging increased competition in the transportation industry, the specious 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 financial fitness of applicants for call or demand service, with a recommendation being submitted for review by the Commission at an upcoming Public Meeting.

² Protest, ¶ 5.

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.³ 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."⁴ 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."⁵

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."⁶ Further, the Commission found that insulating the transportation industry from competition is not in the public interest.⁷

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

³ *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.

⁴ *Id.* at 11.

⁵ *Id.*

⁶ *Order Eliminating Artificial Entry Barriers* at 12.

⁷ *Id.* at 15.

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.”⁸ The Commission stressed that it would “discourage existing carriers from filing specious protests based on fitness.”⁹

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.¹⁰

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.¹¹ Therefore, this Motion is due by November 6, 2017 and is timely filed on today’s date.

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

12. A review of the Protest demonstrates that the Protestant simply desires to preclude the entry of another call or demand carrier in the City of Lancaster and insulate the Protestant from competition. Allowing the Protestant 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.

13. The entire gist of the Protest is to avoid competition, which is clear from the Protestant’s averment that “the market for call or demand service in Lancaster County is saturated and that the entry of an additional, new carrier would endanger or impair the operations of existing

⁸ 52 Pa. Code 52 Pa. Code § 3.381(c)(1)(A).

⁹ *Order Eliminating Artificial Entry Barriers* at 18.

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

¹¹ 52 Pa. Code § 3.381(c)(1)(C).

carriers to an extent that, on balance, the granting of authority would be contrary to the public interest.”¹² The Protest also refers to the “overlap in service territory.”¹³

14. 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.”¹⁴

15. The Protestant makes allegations concerning fitness in an attempt to delay the processing of Eagle Ride’s Application and protect its market share. Without any basis for its claim, the Protestant avers that it “does not believe that Applicant is fit to provide the proposed service as described in the Application.”¹⁵ The Protestant does 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 Protestant relies 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.¹⁶

¹² Protest, ¶ 6.

¹³ Protest, ¶ 7. 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.

¹⁴ *Order Eliminating Artificial Entry Barriers* at 18.

¹⁵ Protest, ¶ 5.

¹⁶ *Order Eliminating Artificial Entry Barriers*, Annex A at 3-4.

16. 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.¹⁷ 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 Protestant regarding Eagle Ride’s fitness, it is not necessary to hold a hearing that will merely allow the Protestant 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.

17. 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 Protest and utilize its own experience and expertise to review the Verified Statement filed by Eagle Ride.

18. 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 Protest.

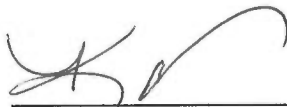
III. CONCLUSION

WHEREFORE, based upon the foregoing, Eagle Ride Taxi Cab LLC (“Eagle Ride”) respectfully requests that the Commission grant this Motion to Dismiss, dismiss the Protest filed

¹⁷ *Order Eliminating Artificial Entry Barriers* at 15.

by Autocab, Inc., 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