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January 24, 2020

Via Electronic Filing

Rosemary Chiavetta, Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Application of Senior Care Centers of Pennsylvania, Inc. for Authority to Transport
Persons in Paratransit Service Between Points in the Counties of Bucks, Chester,
Delaware and Montgomery, and the City and County of Philadelphia
Docket No. A-2019-3014494

Dear Secretary Chiavetta:

Earlier today I electronically filed Senior Care Centers of Pennsylvania, Inc.'s Motion to Dismiss Protest and Amendment and Supplement to Protest of Rover Community Transportation, Inc., with regard to the above-referenced matter. I inadvertently forgot to attach a Notice to Plead to the filing. Enclosed please find a Motion to Dismiss Protest with a Notice to Plead attached thereto. Copies to be served in accordance with the attached Certificate of Service.

If you have any questions please do not hesitate to contact me.

Sincerely,


Karen O. Moury

KOM/lww
Enclosure

cc: Hon. Darlene Heep w/enc.
Cert. of Service w/enc.

CERTIFICATE OF SERVICE

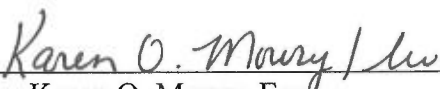
I hereby certify that this day I served a copy of Senior Care Centers' Motion to Dismiss Protest and Amendment and Supplement to Protest of Rover Community Transportation upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Via First Class Mail and/or Email

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Dated: January 24, 2020



Karen O. Moury, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Senior Care Centers of :
Pennsylvania, Inc. for Authority to Transport :
Persons in Paratransit Service Between Points : Docket No. A-2019-3014494
In the Counties of Bucks, Chester, Delaware :
and Montgomery, and the City and County of :
Philadelphia :

NOTICE TO PLEAD

TO:

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*Attorneys for Rover Community Transportation,
Inc.*

You are hereby notified that an Answer to the enclosed **Motion to Dismiss** of Senior Care Centers of Pennsylvania, Inc. must be filed within 20 days of the date of service. All pleadings, such as an Answer, must be filed with the Secretary of the Pennsylvania Public Utility Commission with a copy served to counsel for the Authority and the Office of Administrative Law Judge.

File with:

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

With a copy to:

Karen O. Moury
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Karen O. Moury, Esquire
Attorney for Senior Care Centers of Pennsylvania, Inc.

Date: January 24, 2020

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Senior Care Centers of	:	
Pennsylvania, Inc. for Authority to Transport	:	
Persons in Paratransit Service Between Points	:	Docket No. A-2019-3014494
In the Counties of Bucks, Chester, Delaware	:	
and Montgomery, and the City and County of	:	
Philadelphia	:	

**SENIOR CARE CENTERS OF PENNSYLVANIA, INC.’S MOTION TO DISMISS
PROTEST AND AMENDMENT AND SUPPLEMENT TO PROTEST OF ROVER
COMMUNITY TRANSPORTATION, INC.**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE DARLENE HEEP:

Pursuant to Section 3.381(c)(1)(C) of the Commission’s regulations, 52 Pa. Code § 3.381(c)(1)(C), Senior Care Centers of Pennsylvania, Inc. (“SCCP” or “Applicant”) files this Motion to Dismiss (“Motion”) the Protest, and Amendment and Supplement to Protest (“Protest”), filed by Rover Community Transportation, Inc. (“Protestant” or “Rover”) to SCCP’s Application seeking authority to provide paratransit service between points in the Counties of Bucks, Chester, Delaware, and Montgomery, and the City and County of Philadelphia. Through this Motion, SCCP contends that the specious Protest is nothing more than an attempt to prevent a competitor from entering the market. Indeed, Rover’s January 16, 2020 Amendment and Supplement to its Protest demonstrates the anti-competitive nature of its Protest. By offering to withdraw its Protest if SCCP removes Chester County, which is Rover’s only service area overlapping with the proposed area sought by SCCP’s Application, Rover is making it clear that its only concern is not fitness but rather about avoiding the entry of a new paratransit company into the Chester County market. As such, Rover’s Protest is directly contrary to the Commission’s standards promoting

competition in the transportation industry and easing the entry of common carriers into the market.¹

In connection herewith, SCCP further avers as follows:

I. BACKGROUND AND INTRODUCTION

1. SCCP is a subsidiary of Active Day, Inc. (“Active Day”), which operates 115 adult day health centers across 13 states. Active Day has operated in Pennsylvania for over 20 years and manages care for approximately 725 members each day and approximately 9,000 members in total across its family of centers. SCCP operates 12 adult day health centers in Pennsylvania for elderly persons and individuals with special needs.

2. Many families across the United States depend upon Active Day to coordinate and manage the care needs of their loved ones. Active Day provides door-to-door service in 11 of the states in which it is currently operating, providing approximately 8,000 trips per day with its fleet of approximately 535 vehicles. Due to changes in Pennsylvania’s managed care program and problems that have resulted from relying on third parties to provide transportation for its members, SCCP now seeks to provide this door-to-door service for its members attending five of its facilities located in Bucks, Delaware, Montgomery and Philadelphia Counties.

3. On November 21, 2019, SCCP filed an Application seeking authority to provide paratransit service between points in the Counties of Bucks, Chester, Delaware and Montgomery,

¹ Under the normal response times provided by the Commission’s regulations, an Answer is due to this Motion by February 13, 2020. The hearing on SCCP’s application has been scheduled for February 19, 2020. Therefore, SCCP respectfully requests that the Administrative Law Judge shorten the response period to facilitate a ruling prior to that date. In the alternative, SCCP proposes that the ALJ hold the hearing as scheduled so as not to further delay a decision on SCCP’s application and rule on this Motion after the hearing. SCCP is ready to proceed.

and the City and County of Philadelphia.² Consistent with the Commission's regulations,³ the Application was accompanied by a Verified Statement. Through the Verified Statement, the Applicant provided a business plan and details about the proposed transportation service, including information relating to facilities, drivers, vehicles, vehicle safety program, insurance, criminal background, and financial position.

4. The Application was published in the *Pennsylvania Bulletin* on December 21, 2019 at 49 Pa.B. 7550 with Protests due by January 6, 2020.

5. The Protestant filed a Protest on December 31, 2019.

6. 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.⁴ Therefore, as this Motion is due by January 27, 2020, it is timely filed on this date.

7. The sole purpose of the Protest is for Rover to avoid competition. Although the Protest purports to challenge the financial and technical expertise of the Applicant,⁵ it is clear that the Protestant simply desires to preclude the entry of another carrier into Chester County's paratransit services market. Notably, the Protest contains no specific averments challenging

² Rover filed an Amendment and Supplement to Protest on January 16, 2020. The Commission's regulations do not authorize protestants to amend or supplement protests following the deadline for protests, which was January 6, 2020 in this proceeding. Moreover, the point raised by the Amendment and Supplement to Protest has no validity. As evidenced by SCCP's original application and its response to the Commission's data request, it is seeking authority to originate service in Chester County. Also, Chester County was included in the notice published in the *Pennsylvania Bulletin*. The Verified Statement referenced adult day care facilities in the other four counties, but Applicant would be picking up individuals in Chester County. In any event, the Commission's regulations governing verified statements have no requirements for the provision of details about the proposed service for each county being requested. The only value added by the Amendment and Supplement to Protest is that Rover has more clearly than before revealed that its only interest in this proceeding is its desire to avoid the entry of a new paratransit company into the Chester County market.

³ 52 Pa. Code § 3.381(a)(3).

⁴ 52 Pa. Code § 3.381(c)(1)(C).

⁵ Protest, ¶ 5.

SCCP's technical or financial fitness. Indeed, Rover's Amendment and Supplement to Protest demonstrates that its only concern is to protect its own market share in Chester County.

8. To entertain the anti-competitive Protest and require SCCP to bear the expense of litigation, while also unnecessarily delaying SCCP's entry into the paratransit services market in Chester County, would be wholly contrary to the Commission's commitment to eliminating artificial entry barriers and encouraging increased competition in the transportation industry.

9. The Protest should be dismissed so that the Application and Verified Statement may be reviewed by the Commission's staff in the Bureau of Technical Utility Services ("TUS") who are highly experienced in evaluating the technical and financial fitness of applicants for paratransit service, so that it can be promptly adjudicated.

II. ARGUMENT

A. Applicable Legal Standards Support Dismissal of Protest.

10. As of June 3, 2017, the Commission's regulations governing transportation applications were revised to eliminate artificial entry barriers.⁶ Under the Commission's modified regulations, the requirement for applicants to establish "public need" for the proposed service was eliminated to "best serve the public."⁷ 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."⁸

11. 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

⁶ *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.

⁷ *Id.* at 11.

⁸ *Id.*

market share.” The Commission unequivocally stated that it does “not believe it is beneficial to exclude qualified new businesses from the market.”⁹ Further, the Commission found that insulating the transportation industry from competition is not in the public interest.¹⁰

12. 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.”¹¹ **The Commission stressed that it would “discourage existing carriers from filing specious protests based on fitness.”**¹²

13. 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.¹³ As the Commission stated, this information “would enable existing carriers to make an informed decision regarding whether to protest the application on fitness grounds.”¹⁴ Clearly, the Commission envisioned protestants making specific allegations concerning an applicant’s fitness.

B. Rover Has Made No Specific Allegations Regarding SCCP’s Fitness.

14. Rover has raised no specific challenges to SCCP’s fitness or made any factual averments to support further inquiry through an evidentiary hearing. Without any basis for its claim, the Protestant baldly avers that it “does not believe that Applicant possesses the technical

⁹ *Order Eliminating Artificial Entry Barriers* at 12.

¹⁰ *Id.* at 15.

¹¹ 52 Pa. Code § 3.381(c)(1)(A).

¹² *Order Eliminating Artificial Entry Barriers* at 18 (emphasis added).

¹³ *Order Eliminating Artificial Entry Barriers* at 14; 52 Pa. Code § 3.381(a)(3).

¹⁴ *Order Eliminating Artificial Entry Barriers* at 14 (emphasis added).

and financial ability to provide the proposed additional service in a safe, reliable and legal manner.”¹⁵ The Protestant has pointed to no particular concerns or set forth any factual averments about the safety, reliability or legality of SCCP’s existing operations or its financial condition. Rover has also failed to identify any potential shortcomings with the information that SCCP has presented in the Verified Statement.

15. Rather, Rover has relied on the analysis in a prehearing order issued by an Administrative Law Judge (“ALJ”) in another proceeding,¹⁶ which was never reviewed by the Commission due to Rover’s subsequent withdrawal of its protest (after delaying its competitor’s entry into the market for several months). The analysis in the ALJ’s Prehearing Order in *Application of First Student, Inc.*,¹⁷ should not be relied upon here to once again permit Rover to delay the entry of a competitor into the market under the guise of challenging the applicant’s fitness to operate as a common carrier. Allowing an existing carrier to use the protest process in this way is contrary to the Commission’s efforts to enhance competition in the transportation industry.

16. In *First Student*, Rover and several other existing carriers had protested the application seeking authority to provide paratransit service between points in Pennsylvania. In its protest in that proceeding, Rover freely acknowledged the competitive nature of its protest, indicating that it would agree to withdraw its protest if applicant would remove its authorized service territory from the proposed service territory, so as not to adversely impact Rover’s operations.¹⁸ When the applicant sought to dismiss Rover’s protest, the ALJ denied the motion on the basis that the applicant had not yet provided “record evidence” to support its technical and

¹⁵ Protest, ¶5.

¹⁶ Protest, ¶5.

¹⁷ *Application of First Student, Inc.*, Docket No. A-2017-2615624 (Prehearing Order No. 4 dated November 21, 2017).

¹⁸ <http://www.puc.pa.gov/pcdocs/1531854.pdf>

financial ability to provide the proposed service. Prehearing Order No. 4 at 8. Less than a week before the hearing scheduled for December 20, 2017, Rover requested a continuance and the hearing was rescheduled to February 16, 2018. Rover withdrew its protest on February 6, 2018 and less than a week later, the Commission issued a Secretarial Letter granting the application on February 12, 2018.¹⁹

17. The Commission routinely relies on the applicant's verified statement to make a finding of fitness.²⁰ In the absence of a specific allegation about SCCP's financial and technical fitness, such as a poor track record in another state or sub-par operations of its principals on behalf of another entity, Rover should not be permitted to further delay the entry of a competitor into the paratransit services market in southeastern Pennsylvania.

18. Moreover, the Commission's regulations expressly provide for the filing of a verified statement, including a business plan, along with an application.²¹ While that requirement is intended, in part, to expedite the disposition of the application if no protests are filed or all protests are withdrawn,²² the filing of a verified statement with the application also enables potential protestants to identify specific concerns about the applicant's technical or financial fitness.²³

19. The filing of the verified statement further gives the Commission an opportunity to dismiss protests that raise no legitimate concerns about an applicant's fitness and adjudicate the application on the basis of the filing, without the need for the time and expense of litigation.²⁴

¹⁹

See the consolidated case view at: http://www.puc.pa.gov/about_puc/consolidated_case_view.aspx?Docket=A-2017-2615624.

²⁰ See, e.g., *Application of Mercy Ambulance & EMS, Inc. t/a Mercy Ambulance, t/a Mercy Fleet, t/a Mercy Group*, Docket No. A-2019-3011344 (Secretarial Letter issued October 22, 2019)..

²¹ 52 Pa. Code § 3.381(a)(3).

²² 52 Pa. Code § 3.381(c)(1)(A)(iii).

²³ *Order Eliminating Artificial Entry Barriers* at 14.

²⁴ *Order Eliminating Artificial Entry Barriers* at 18.

Clearly, in revising the regulations governing entry, the Commission envisioned the dismissal of specious protests and reliance on verified statements to promptly adjudicate passenger carrier applications.²⁵

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

20. A review of the Protest demonstrates that the Rover simply desires to preclude the entry of another paratransit service provider in Chester County so as to insulate it from competition. Using language carried over from the days when the Commission required applicants to establish public need for the proposed service, the Protest alleges that approval of the Application “is not necessary or proper for the service...of the public.”²⁶ In eliminating the “public need” requirement for passenger transportation applications and limiting protests to challenging financial and technical fitness, the Commission made it clear that 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.”²⁷

21. Rover’s intent in filing its Protest to SCCP’s Application is clear from its Amendment and Supplement to Protest on January 16, 2020. In that filing, Rover states: “The removal of Chester County as an area of service origination would resolve Protestant’s Protest.”²⁸ This statement illustrates that Rover is merely seeking to avoid competition, which the Commission has recognized as benefitting the riding public.

22. Rover has repeatedly used the protest process to delay competitors from entering the Chester County paratransit market, besides the example noted above regarding the *First*

²⁵ *Order Eliminating Artificial Entry Barriers* at 18.

²⁶ Protest, ¶ 6.

²⁷ *Order Eliminating Artificial Entry Barriers* at 18.

²⁸ Amendment and Supplement to Protest ¶ 10.

Student application. For example, in *Application of AAA Medical Transport, Inc. t/a AAA Fleet*,²⁹ Rover filed a protest on October 5, 2018, challenging the fitness of the applicant. Thereafter, the applicant amended the application to remove Rover's service territory from the proposed service of area, resulting in Rover withdrawing the protest on October 19, 2018. The Commission promptly approved the application on October 26, 2018 and issued certificate of public convenience on November 19, 2018. Also, in *Application of Mercy Ambulance & EMS, Inc., t/a Mercy Ambulance, t/a Mercy Fleet, t/a Mercy Group*,³⁰ Rover filed a protest on March 22, 2019, challenging the fitness of applicant. After the applicant amended the *Mercy I* application to remove Rover's service territory from the proposed area of service, Rover withdrew its protest on April 8, 2019. The Commission promptly approved the *Mercy I* application on May 1, 2019. Shortly thereafter, on July 5, 2019, the applicant in the *Mercy I* proceeding filed a new application seeking approval to operate in Chester County in *Application of Mercy Ambulance & EMS, Inc., t/a Mercy Ambulance, t/a Mercy Fleet, t/a Mercy Group*.³¹ Again, Rover filed a protest challenging the applicant's fitness in the *Mercy II* proceeding – an applicant who had received paratransit authority for Bucks, Delaware, Montgomery and Philadelphia Counties from the Commission only a few months earlier. The applicant in *Mercy II* timely filed a motion to dismiss and the day before an answer was due, Rover withdrew its protest. The application was transferred to TUS by Order issued by the Administrative Law Judge on October 17, 2019. The Commission promptly approved the application on October 22, 2019. These examples show that Rover's only concern

²⁹ *Application of AAA Medical Transport, Inc. t/a AAA Fleet*, Docket No. A-2018-3004485 (Secretarial Letter issued October 26, 2018).

³⁰ *Application of Mercy Ambulance & EMS, Inc., t/a Mercy Ambulance, t/a Mercy Fleet, t/a Mercy Group*, Docket No. A-2019-3007940 (Secretarial Letter issued May 1, 2019) ("*Mercy I*").

³¹ *Application of Mercy Ambulance & EMS, Inc., t/a Mercy Ambulance, t/a Mercy Fleet, t/a Mercy Group*, Docket No. A-2019-3011344 (Secretarial Letter issued October 22, 2019) ("*Mercy II*").

through the filing of protests is to delay as long as possible the processing of paratransit applications in Chester County.

23. Rover's bald allegations concerning technical and financial fitness are nothing more than an attempt to delay the processing of SCCP's Application and protect its market share. Allowing the Protestant to further delay a review and disposition of SCCP's Application would be contrary to the public interest by depriving the traveling public of the benefits of competition and access to another transportation option.

24. 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 SCCP.

25. The Commission 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.³² This Application proceeding is no exception.

26. Since Applicant has 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 SCCP's fitness, it is not necessary to hold a hearing that will merely allow the Protestant to delay the entry of SCCP into the market for paratransit service. SCCP notes that its Verified Statement is similar to others where the Commission has granted applications.³³ To the extent the Commission believes that some aspect of the Application is not sufficiently developed, it is free

³² *Order Eliminating Artificial Entry Barriers* at 15.

³³ *See, e.g., Mercy I and Mercy II.*

to impose conditions with which SCCP must comply before a certificate of public convenience is issued.³⁴

27. SCCP respectfully submits that its Verified Statement demonstrates that it has the necessary technical and financial fitness to operate paratransit service in its proposed service area 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, Senior Care Centers of Pennsylvania, Inc. respectfully requests that the Commission grant this Motion to Dismiss, dismiss the Protest filed by Rover Community Transportation, Inc., and refer the Application to the Bureau of Technical Utility Services for a review of the Verified Statement and disposition of the Application.

Respectfully submitted,



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Dated: January 24, 2020

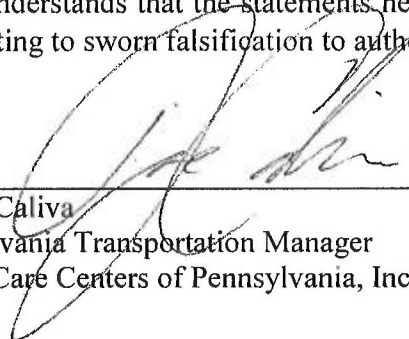
Counsel for Senior Care Centers of
Pennsylvania, Inc.

³⁴ See, e.g., *Application of Rasier-PA, LLC, for Right to Transport, by Motor Vehicle, Persons in Experimental Service of Shared-Ride Network*, Docket No. A-2014-2424608 (Order entered December 5, 2014).

Verification

The undersigned states that he is authorized to and does make this verification that the facts set forth in the foregoing **Motion to Dismiss** are true and correct to the best of my knowledge, information and belief and that I expect the Authority to be able to prove the same at a hearing held in this matter. The undersigned understands that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to sworn falsification to authorities).

January 24, 2020



Joseph Caliva
Pennsylvania Transportation Manager
Senior Care Centers of Pennsylvania, Inc.