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VIA ELECTRONIC FILING

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

**RE: Proposed Rulemaking Amending 52 Pa. Code Chapters 1, 3, 5, 23 and 29
to Reduce Barriers to Entry for Passenger Motor Carriers
Docket L-2015-2507592**

Dear Secretary Chiavetta,

Included with this letter for electronic filing please find Comments of Bellefonte Emergency Medical Services and Lock Haven Emergency Medical Services to the above-referenced proposed rulemaking regarding Docket No. L-2015-2507592.

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

Very truly yours,

Michelle L. Pergosky
Paralegal

Enclosure

cc: Bellefonte Emergency Medical Services (via email w enc. ssrhoat@bems.net)
Lock Haven Emergency Medical Services (via email w/enc. st22@lockhavenems.com)

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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In re: Proposed Rulemaking Amending 52 Pa.
Code Chapters 1, 3, 5, 23 and 29 to Reduce
Barriers to Entry for Passenger Motor Carriers

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: Docket L-2015-2507592
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: FILED ELECTRONICALLY

**COMMENTS OF BELLEFONTE EMERGENCY MEDICAL SERVICES AND LOCK HAVEN
EMERGENCY MEDICAL SERVICES TO THE PROPOSED RULEMAKING**

I. Introduction

By Order adopted November 5, 2015, the Pennsylvania Public Utility Commission (“**Commission**”) adopted a proposed rulemaking order (“**Order**”) outlining proposed changes to regulations to reduce the current barriers to entry for qualified passenger motor carrier applicants by eliminating the requirement that an applicant for passenger motor carrier authority establish that approval of the application will serve a useful public purpose, responsive to a public demand or need. Bellefonte Emergency Medical Services (“**Bellefonte**”) and Lock Haven Emergency Medical Services (“**Lock Haven**”) hold certificates of public convenience from the Commission as common carriers, providing paratransit transportation services. Both Bellefonte and Lock Haven operate ambulances and provide transportation services falling within the ill or injured exemption to the Commission’s regulatory jurisdiction. Bellefonte and Lock Haven wish to provide comment to the proposed rulemaking, specifically addressing the Commission’s proposed elimination that an applicant for passenger motor carrier authority to establish that approval will serve the useful public purpose, responsive to a public demand or need.

II. Comments

While both Bellefonte and Lock Haven applaud the Commission’s intention in streamline the application process and reduce administrative burdens, doing so as suggested by the Order is

both unlawful and harmful to existing carriers. Effectively, the proposed regulations seek to deregulate the passenger motor carrier industry without proper legislative authority to do so, in circumvention of the Commission's obligations under the Public Utility Code. Further, the proposed regulations are harmful to existing carriers that have spent significant sums of money to both obtain authority and operate in compliance with the Commission's existing regulations. Details concerning each of these matters are addressed below.

A. The Commission's proposed changes are inconsistent with the Public Utility Code.

The Public Utility Code requires that “[A] certificate of public convenience shall be granted by order of the commission, only if the commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.” Necessary and proper service contemplates that need be demonstrated. The Commission's historical acknowledgment of this fact is found within its regulations at 52 Pa. Code §§ 3.381 and 41.14. Where the General Assembly has elected to deregulation certain aspects of the transportation industry, it has done so by appropriate legislative action. Tellingly, the General Assembly has not expressly eliminated the concept of “need” in a broad manner.

The Commission's Order notes that the benefits of increased competition and advances in technology justify reduction of the barriers to entry by elimination of the requirement that public demand must be demonstrated. This statement is curious given the Commission's continued position that it will to remain involved in tariff review and certain aspects of enforcement (which are addressed below). The Commission's Order both touts the benefits of the free market while reserving to itself continued review and enforcement powers. Bellefonte and Lock Haven submit that the Commission should remain involved in both review and enforcement matters, as doing

so is a significant element of the Commission's statutory duty. However, elimination of the "need" requirement is beyond the scope of the Commission's authority.

In addition, the proposed rulemaking will eliminate the process for temporary and emergency temporary authority. Such authority is expressly contemplated by the Public Utility Code. Eliminating the concepts of temporary and emergency temporary authority is reserved to the General Assembly and must be accomplished by legislative act as opposed to the Commission's rulemaking. Regulations which are inconsistent with the applicable enabling statute are unlawful. If the General Assembly sought to deregulate the paratransit industry as suggested by the Commission, an amendment to the Public Utility Code would be required to do so. Absent a statutory adjustment, the Commission is without the necessary authority to adopt the proposed rules outlined by the Order.

B. Reliance on Free Market.

In a number of instances, the Order makes mention of reliance on market forces in justifying reduction of barriers to entry and elimination of the need to show a public demand or need. Notwithstanding these statements, the Commission nevertheless states that it will retain jurisdiction for review of tariffs and enforcement-related issues. If the Commission is convinced that increased marketplace competition will result in self-regulation of price, quality and reliability factors, the Commission's review of tariffs for reasonableness and similar rate making would not be necessary. Admittedly, the Public Utility Code does require that rates be fair and reasonable. However, the free market relied upon by the Commission in justifying the elimination of the "need" element will dictate pricing for carriers. Carriers with unreasonably high or unfair prices would quickly be eliminated from the market. Market rates can be filed with the Commission for its information and annual assessments, but review would be

unwarranted if the free market is truly in place to govern rates. Instead, the Commission's position is that it will deregulate some aspects of the transportation industry (without statutory authority) while continuing to regulate other aspects of the transportation industry (by relying on the same statutory authority).

The Commission notes that the application process will still involve review of technical and financial fitness while providing that the marketplace will self-regulate quality and reliability. This is yet another contradictory statement by the Commission. If the marketplace is truly to govern, the Commission may rely on the marketplace to weed out providers which are not providing quality, reliable and safe transportation services. Providers with negative track records and unreliable service will naturally be eliminated from the marketplace.

The Commission will continue to perform enforcement functions against carriers that fail to provide proper levels of insurance, operate unsafely or unlawfully, or otherwise fail to provide safe, reasonable and adequate service. If the marketplace will generally regulate carriers, why is enforcement for all such items required by the Commission? The market will eliminate carriers which are unsafe or inadequately providing service. Admittedly, the general public will not be familiar with levels of insurance and some oversight by the Commission may be required in this regard. However, a carrier that is not providing acceptable service to the general public will not remain in business.

In addition, the Commission's enforcement staff is already strained given the number of carriers and territory for each enforcement office to cover. Reducing barriers to entry will negatively impact enforcement activity. Most likely, enforcement will become more difficult. The number of providers will increase, potentially dramatically, lowering the ratio of enforcement officers per carrier. The Commission is statutorily required to granting certificates

that are necessary and proper for the service, accommodation, convenience or safety to the public. Reducing the barriers to entry under the auspices of increased competition does not fulfil the Commission's statutory mandate, as it is possible that safety issues will not be addressed in a timely fashion. Similarly, enforcement officers are assigned to particular jurisdictions. If territorial restrictions are removed from carriers, carriers will more likely to cross jurisdictional lines. In this instance, how will enforcement be handled? Increased need for internal coordination for enforcement will put additional administrative burden on Commission staff while the existing carriers and general public bear the weight of the Commission's deregulation.

C. Harm to existing providers.

Many providers of paratransit services are nonprofit entities. Bellefonte and Lock Haven are two such examples. Many of the nonprofit providers also provide ambulance services for local communities throughout the Commonwealth. Paratransit services provide a unique opportunity for these ambulance services to supplement their revenue in support of the ambulance business. Removing protected territories will cause significant harm for current providers which rely on Commission-regulated business. The reduction of barriers will open the way to for-profit entities which do not necessarily have any ties to a particular community. Without any commitment to a particular area, other than profit motive of the provider, communities will be harmed. Further, certificated providers will see overall revenues fall, possibly resulting in elimination of ambulance services in any given community as a direct effect of the Commission's proposed rulemaking.

Current carriers have expended resources in reliance on the existing statutorily required, regulatory system, including territory restrictions. In many instances, a current carrier will protest an application which seeks to introduce additional providers into its territory. The

proposed adjustments to the rules will allow carriers to continue protesting applications, although limiting the scope of the protest challenges to financial and technical fitness. Under the proposed regulations, a protest may not be based on geographic scope; the protesting party must identify its “interest” in the application. With cursory information required of the applicant at the time of filing, it is difficult if not impossible for an existing carrier to identify its “interest” beyond the competition proposed. The proposed rulemaking is lacking in detail concerning the proposed modification to the protest process, which will increase the cost and time for applicants and current carriers to navigate the process, contrary to the Commission’s desire to make the process more streamlined.

Further, the Order references a “complex, costly and time consuming administrative process” in determining whether public need exists. Over recent years, many applicants for authority have simply sought a Commonwealth-wide geographical territory. Existing carriers from across the state protest these applications to protect their interests. Then, upon discussion with the applicant, it becomes apparent that territory is not sought on a Commonwealth-wide basis, but is instead sought on the limited, local territory, resulting in many restrictive amendments or withdraw of the original application with a new, limited submission following. In these instances, the complexity, cost and time consuming nature of the process is not a product of the existing system; instead, it is the product of an applicant misunderstanding the process. By additional upfront planning, an applicant would submit an application with a focused territory in mind, greatly reducing the number of protests (and cost to existing providers) which would, in turn provide for a more streamlined approval process.

It appears as if the proposed rulemaking is not designed for the Commission to increase competition or to provide for better service for the traveling public. Instead, increasing the

number of carriers increases the number of trips, jurisdictional reach and revenue of the Commission. Additional carriers directly translate to additional revenue through additional annual assessments. If the Commission was truly interested in allowing the market to govern, the Commission would not be retaining authority over all aspects of the paratransit transportation process to the sole exclusion of requiring a new applicant to show a public demand or need. The Commission would instead be further reducing its role in the application process and oversight.

III. Conclusion

Bellefonte and Lock Haven respectfully request that the Commission consider these comments and reconsider the proposed rulemaking in its entirety based on the matters raised herein.

Respectfully submitted,
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