

THE PHILADELPHIA PARKING AUTHORITY

In Re: Proposed Rulemaking Order :
Philadelphia Taxicab and :
Limousine Regulations : Docket No. 126-2
Electronic Testimony :
:

FINAL RULEMAKING ORDER

BY THE AUTHORITY:

The Authority is required to carry out the provisions of the act of July 16, 2004, (P.L. 758, No. 94), *as amended*, 53 Pa.C.S. §§5701 *et seq.*, (the “act”) relating to the regulation of taxicab and limousine service providers in the City of Philadelphia.¹ Pursuant to this obligation, the Authority issued a proposed regulation at this docket number on February 27, 2012. The initial public comment period for this rulemaking proceeding concluded on June 18, 2012, the Independent Regulatory Review Committee submitted its comments on July 18, 2012. The Authority has completed its review of the comments and now issues the final-form regulation. This final-form regulation will be effective upon publication in the *Pennsylvania Bulletin*.

Purpose of the Final-Form Regulation

The Authority is amending its existing regulations by adding a new subsection to 52 Pa. Code Subpart A. (General Provisions), Chapter 1005 (Formal Proceedings), Subchapter B. (Hearings), at § 1005.114. This electronic testimony regulation will permit members of the public to testify at most administrative hearings before the Authority related to enforcement actions, pursuant to specific terms and conditions. This regulation will create tremendous flexibility for the traveling public who would otherwise be constrained to appear and testify in person at these taxicab and limousine administrative hearings, despite busy work schedules, and family, health or travel challenges. This heightened level of participation will result in the development of more full and complete hearing records and provide both the Authority and respondents with access to eye witness testimony that might not otherwise be available.

¹ See Sections 13 and 17 of the Act.

DISCUSSION

The Authority has reviewed the comments filed at each stage of this proceeding. Responses to those comments, explanations of the purpose of each subsection of the regulation and references to portions of the regulation that have been altered upon consideration of the comments submitted and additional review are set forth below.

Subpart A. GENERAL PROVISIONS

CHAPTER 1005. FORMAL PROCEEDINGS

Subchapter B. HEARINGS

§ 1005.114. Electronic testimony.

(a) Purpose, scope and definitions. Subsection (a) of the proposed regulation provided the intent and parameters of the regulation, specifically addressing the witnesses to whom the regulation was to apply. The title of this subsection has been amended to reflect the addition of a definition paragraph.

(1) A new paragraph (1) has been added to provide a definition for the term “electronic testimony witness”. This paragraph specifies which individuals may present electronic testimony and in what circumstance pursuant to this section. The language of proposed paragraph (1) has been reidentified as paragraph (2).

IRRC noted the lack of clarity as to the term “non-party” and questioned its application. We agree with IRRC’s comments and have provided the definition of the term “electronic testimony witness” to address those comments and the comments of the Taxi Workers Alliance of Pennsylvania (hereinafter “TWA”) and an attorney on behalf of the Taxi Workers Alliance of Pennsylvania (hereinafter “TWA Attorney”) that seem to raise this issue as well. The definition of electronic testimony witness will also address IRRC’s concern about the definition of the term “witness” as used in the proposed regulation.

This definition eliminates the use of the undefined term “non-party” in this section. In its place, the definition provides that this section applies to individuals only; narrowed further to exclude an Authority employee (which is a defined term), a regulated party or any agent or employee of a regulated party. The regulation is not intended to make remote testimony by

Authority employees and regulated parties or their agents or employees more convenient, or even possible. Instead, this section is intended to ease the burden upon members of the public whose testimony may be necessary at administrative hearings related to enforcement proceedings. That testimony may be on behalf of the TLD prosecutorial staff or the regulated party respondent.

IRRC questioned if a member of the public who files a complaint with the Authority related to taxicab or limousine service is considered to be a petitioner, triggering a need to appear in person at the administrative hearing to testify. Complaints filed by the public with the Authority are considered “informal complaints”. *See* 52 Pa. Code § 1003.42 (relating to Authority action on informal complaints). In the event that Trial Counsel or the Enforcement Department, or both, determine that the complained of incident requires regulatory enforcement, either may initiate a formal complaint as provided in 52 Pa C.S. § 1005.11 (relating to formal complaints generally). The complainant in such cases becomes the Authority’s Taxicab and Limousine Division, not the witnesses to the underlying incident. Therefore, the witness who reported the underlying alleged violation would be eligible to be an electronic testimony witness.

IRRC, TWA and TWA’s Attorney commented that respondents to enforcement proceedings may face significant monetary penalties, including the loss of the right to participate in the taxicab or limousine industry. IRRC asked the Authority to explain “how allowing a witness to testify by telephone against a driver is feasible, reasonable and in the public interest” considering the potential penalties. Preliminarily, we note that this regulation will permit both telephone and internet based two-way audio and video telecommunications. The latter will permit the witness to view the administrative hearing room and those at the hearing to view the witness.

The use of electronic testimony is feasible because of great advances made to the quality and scope of the communication media we use everyday. High quality conference call equipment can easily be used to permit everyone in attendance at an administrative hearing to simultaneously hear an electronic testimony witness, and for that witness to hear those at the hearing. Internet based audio and video telecommunications has expanded upon the capability of mere voice communication as referenced above. TWA specifically suggested that lost connections, equipment failures and such things as static on the line could hinder the use of electronic witness testimony. The telephone is a tried and true technology and internet based audio and video telecommunications are now just as common. These means of communication

are widely available at little to no cost. To the extent any hearing is interrupted by faulty utilities, including natural gas service or electricity or telephone service, hearings may simply need to be continued. Therefore, electronic testimony is exceedingly feasible. This is now common, everyday technology.

The use of electronic testimony is reasonable because it will permit live, real time testimony subject to cross examination and objections. The creditability, relevance and reliability of the testimony of a particular witness can be raised regardless of whether the witness is in the hearing room or at the other end of a telephone line or audio-visual internet communication protocol.

In several instances IRRC, TWA and TWA's Attorney questioned the viability of an electronic testimony witness in scenarios where in-person identification of an individual, including the witnesses themselves, is important to the case. We recognize and specifically provide in paragraph (2) below that in-person testimony is always preferred to electronic testimony. The Authority will always strive to have witnesses appear in person at hearings because such an appearance will eliminate arguments as to the reduced weight of electronic testimony that will inevitably be made by opposing parties at these hearings.

TWA notes that body language may contribute to the consideration of oral testimony. TWA's Attorney suggests that it will now be easy for any taxicab passenger to be an electronic testimony witness, generally. The use of an electronic testimony witness in scenarios where in-person identification is necessary or important may severely weaken the value of the testimony of an electronic testimony witness and would in such cases create an excellent argument in favor of discounting or disregarding that testimony. The value or relevance of the testimony of individuals who appear in-person at hearings is similarly argued by the parties and weighed by the presiding officer in regard to every single hearing. Creditability, reliability and relevance are common issues that are addressed at the time the witness testifies or after the testimony has been received. There is no reason that the same rules can not apply to electronic testimony witnesses. The value of the electronic witness testimony is as subject to legal argument as any other evidence and may be weighed by the presiding officer in the exercise of delegated discretion.

As the comments of TWA's Attorney suggest, the use of telephone testimony has been in use for some time by the Unemployment Compensation Board of Review. *See* 43 P.S. § 825 (relating to rules of procedure). Testimony by telephone or other electronic means is also

available in other forums. *See* 20 Pa.C.S. § 5906 (relating to taking testimony in another state; *see also* 20 Pa.C.S. §§ 4342(j), 5411, 7316(f) and 8311(g)(relating to expedited procedure; taking testimony by telephone; special rules of evidence and procedure; and special rules of evidence and procedure). While the TWA commented that some agencies or traffic courts do not permit electronic testimony, there are a growing number that do. Advancements in technology and the need to fully develop hearing records will inevitably lead to an expanded use of electronic testimony. We also see no reason to expend time and resources compiling data related to the usage of electronic testimony witnesses as suggested by TWA's Attorney because we do not see this as a pilot program, but the use of proven technology in limited circumstances.

The use of electronic testimony is in the public interest because it will close an age old loophole that has contributed to a lower standard of taxicab and limousine service in Philadelphia. For too long some taxicab and limousine service providers have operated with the knowledge that some passengers will simply not be able to pursue regulatory complaints against them. Often passengers are easily identified as "out of town" travelers who are on their way home or will only be in the Philadelphia area for a brief period. These travelers will clearly not return to Philadelphia to testify at a taxicab or limousine administrative hearing. Contrary to the suggestions of the TWA, the offer of a ride to the administrative hearing will not secure the in-person testimony of people who are unavailable because they reside in Texas or Japan or for any witness who can not appear for a non-transportation related challenges. The lack of witness testimony at those hearings is often fatal to an administrative prosecution, if such a prosecution is initiated at all. *See Sule v. Philadelphia Parking Authority*, 26 A.3d 1240 (Pa. Cmwlth 2011).

Similarly, people who live in and around Philadelphia often use taxicabs and limousines. Those people may find it challenging to leave school, work, and childcare responsibilities to attend administrative hearings. Some of those people also have mobility or healthcare issues that prohibit or greatly hinder their ability to appear at administrative hearings. The unavailability of witnesses at administrative hearings can be debilitating to the Authority's goal of providing a clean, safe, reliable, and well regulated taxicab and limousine industry..." 53 Pa.C.S. § 5701.1 (2). Unfortunately, some regulated parties will behave badly given the knowledge that the Authority will be unable to advance the prosecution of an enforcement complaint without a witness.

It is worth remembering that the use of electronic testimony witnesses is a two-way street. Respondents who believe that the testimony of a witness may be necessary to properly defend an enforcement proceeding currently have no recourse if the witness is unable to appear at the administrative hearing. This regulation will correct that problem as well. Contrary to the comment of TWA, the use of an electronic testimony witness does not insinuate that the opposing party is “already guilty.” The mere participation of a witness is not dispositive or even suggestive of the liability or non-liability of a respondent.

The public interest is clearly advanced by additional, efficient, cost effective and reliable modes of allowing a narrow, but crucial, classification of witnesses to participate in administrative hearings. TWA’s Attorney commented that the Authority should only grant electronic testimony witness status to individuals with “compelling” reasons for their unavailability. We believe the reasonable standard is more appropriate as we discuss in response to similar comments in section (b) (1). Through this regulation, bad actors will be more likely to receive appropriate penalties and wrongly accused respondents will find it easier to defend formal complaints through the introduction of exculpatory evidence by way of electronic testimony witnesses. TWA’s Attorney also suggested that lawyers should be able to appear at hearings by telephone in order to drive down defense costs. The purpose of this regulation is to ease the challenges associated with those not in the taxicab and limousine industries to participate in administrative hearings. Electronic testimony witness status as suggested by TWA’s Attorney would needlessly expand the scope of this regulation. Such an expansion would also be contrary to the balance of the comments of the TWA and the TWA’s Attorney as to the use of electronic testimony witnesses generally.

IRRC noted that the proposed regulation used the term “enforcement action” and that that term was undefined. IRRC recommended using the defined term “enforcement proceeding”. That change has been made throughout the regulation.

(2) This paragraph was identified as “(1)” in the proposed regulation and has been reidentified as paragraph (2) in order to make way for the new definition paragraph referenced above. This paragraph identifies the purpose of this section, which is to permit the reasonable use of electronic testimony witnesses at administrative hearings.

(3) This paragraph was identified as “(2)” in the proposed regulation and has been reidentified as paragraph (3) in order to make way for the new definition paragraph referenced

above. This paragraph simply provides that this section will control in the event of any conflicts with the general rules of this subpart.

(4) This paragraph was identified as “(3)” in the proposed regulation and has been reidentified as paragraph (4) in order to make way for the new definition paragraph referenced above. This paragraph clarifies that this section is intended only to allow the use of an electronic testimony witnesses at an enforcement proceeding initiated by Trial Counsel or the Enforcement Department. IRRC’s comments related to who may be a witness and the role of a citizen who raises the initial informal complaint, as well as the roll of the Authority, were answered above under paragraph (1). The language found in paragraph (4) of the proposed regulation has been eliminated in light of the more specific definition of electronic testimony witness provided in paragraph (1).

(b) *Scheduling of telephone or audio-visual testimony.* Subsection (b) provides for the manner in which the scheduling of an electronic testimony witness may occur. IRRC strongly suggested that an advanced notification process of the intent to use an electronic testimony witness be incorporated into the final-form regulations. TWA and TWA’s Attorney also questioned if electronic testimony witnesses will be used at scheduled hearings and questioned procedures for notification of the intent to use electronic testimony witnesses. We have addressed these comments in this subsection.

(1) Paragraph (1) of the proposed regulation provided for the scheduling of an electronic testimony witness by the Authority or a presiding officer *sua sponte*. We agree with IRRC’s comments about this issue and the comments of TWA and TWA’s Attorney and have deleted the proposed regulation language found in this paragraph in its entirety. This paragraph contained language related to the distance that a potential electronic testimony witness lived from the location of the administrative hearing and the ability of the Board or a presiding officer to schedule an electronic witness *sua sponte*. There are many factors that will contribute to the reasonable unavailability of a witness for in-person testimony, physical distance is merely one. Such distance may continue to be considered through this section, but will not be determinative in any event. We note the distance of party witnesses from the site of an administrative hearing may no longer be considered as a basis to grant or deny a request to provide testimony by telephone at unemployment compensation hearings. *See* 43 P.S. § 825.

We would; however, like to clarify a misconception express by all commentators as to the use of the term “Authority” in this context and as used in the balance of the regulation. Because the Authority’s regulations could conceivably result in a hearing before the Authority’s Board, powers available to presiding officers are also made available to the Authority in the event of such a Board level hearing. Because the term “Authority” has been misinterpreted as meaning any officer or department of the Authority, we have deleted this term as used in this context and will simply use the term presiding officer, a defined term which encompasses both meanings. We believe this change will address the comments made about the other portions of the regulation as well and will clarify the intent of the regulation.

IRRC questioned the ability of a party to object to the scheduling of an electronic testimony witness, as well as the process and standards that would apply to such an objection. We agree that the proposed regulation was unclear on this point and have revised subsection (b) to address that issue. Revised paragraph (1) provides the procedure that must be followed in order to employ the use of an electronic testimony witness. The process is delineated in five subparagraphs.

(i) Pursuant to subparagraph (i) a party must provide written notice of the intent to use an electronic testimony witness, but not within 20 days of the scheduled hearing. The notice must provide the name of the proposed witness, the reason electronic testimony witness status is requested and an offer of proof related to the proposed electronic testimony.

(ii) Subparagraph (ii) clarifies that a party may object to the use of an electronic testimony witness within 10 days of receiving the notice required by subparagraph (i). IRRC questioned the ability of a party to raise this objection; this subparagraph clarifies the power of a party to object to the use of an electronic testimony witness. There is no requirement that the objection meet a heightened standard of proof, such as the “compelling evidence” standard, as questioned by IRRC.

(iii) Subparagraph (iii) requires that any notice or objection related to the use of an electronic testimony witness be served on each party and the presiding officer and that a certificate of service be filed with the Clerk.

(iv) Subparagraph (iv) provides that the failure to object to the notice of intent to use an electronic testimony witness will be considered consent to such testimony.

(v) Subparagraph (v) permits the parties to mutually agree to waive the timelines for notice and objection provided in this paragraph.

TWA's Attorney suggested that respondents' and particularly unrepresented respondents be specifically advised at the time of the administrative hearing of the right to object to the use of an electronic testimony witness. Because the electronic testimony witness scheduling process now occurs in advance of the hearing, objections to such scheduling are due prior to the date of the hearing. We believe the elimination of the language in the proposed regulation permitting the immediate scheduling of electronic testimony witnesses at the time of a hearing alleviates the concern raised in this comment. The creation of this notice process also addresses the comment of TWA's Attorney regarding penalties detailed in the regulations of the Unemployment Compensation Board of Review, but absent here. An electronic testimony witness can not be used unless the notice process delineated in this regulation is followed.

(2) Paragraph (2) has been amended to address the concerns of IRRC, TWA and TWA's Attorney about the scheduling of electronic testimony witness and the process of reviewing objections to the use of such testimony. This paragraph now clarifies that the presiding office has the discretion to permit or deny the use of an electronic testimony witness upon consideration of the notice required by paragraph (1)(i) and general guideposts provided in four subparagraphs. Issues related to the propriety of the scheduling of an electronic testimony witness must be raised as provided in this subsection. IRRC questioned the ability of a party to raise an objection to the use of an electronic testimony witness at the time of a hearing, in regard to now deleted subsection (c) of the proposed regulations. TWA's Attorney questioned why the regulation does not include a specific provision prohibiting a party from "directing the testimony" of an electronic testimony witness. Once the electronic testimony witness has been scheduled as provided in this subsection, objections to the use of the witness will be limited to those applicable to any other proposed witness. No special rules are necessary to address this issue. The use of witnesses is debated and subject to objection as a matter of course in all administrative hearings, including as to leading questions.

(i) Subparagraph (i) provides that when considering the scheduling of an electronic testimony witness a presiding officer must consider the value of the witness in developing a full and complete record.

(ii) Subparagraph (ii) provides that when considering the scheduling of an electronic testimony witness a presiding officer must consider the reason the individual seeks electronic testimony witness status, directing attention of the presiding officer certain criteria, including work commitments and mobility issues.

(iii) Subparagraph (iii) provides that when considering the scheduling of an electronic testimony witness a presiding officer must consider the rebuttable presumption that a police officer is authorized to testify electronically in relation to a taxicab or limousine related impoundment matter and has been amended to include the alleged criminal conduct of a regulated party. Law enforcement officers often initiate motor vehicle stops that result in the impoundment of taxicabs and limousines because the driver has lost state-issued driving privileges or upon accusations of criminal conduct by members of the public. *See* 75 Pa.C.S. § 6309.2 (relating to immobilization, towing and storage of vehicle for driving without operating privileges or registration).

(iv) Subparagraph (iv) provides that when considering the scheduling of an electronic testimony witness a presiding officer must consider if the probative value of the proposed electronic testimony is substantially outweighed by the danger or any unfair prejudice to the opposing party. This is a reasonable standard often applicable to the review of proposed evidence at hearings and applies equally as well in this context.

(3) Paragraph (3) provides that only individuals scheduled by a presiding officer to testify by telephone or audio-visual means may do so and that other witnesses must appear in-person. The reference to a procedure in former subsection (d) in this paragraph has been deleted in consideration of the single electronic testimony witness scheduling process now provided for through subsection (b)(1).

(4) The language of paragraph (4) as it appeared in the proposed regulation has been deleted in the final-form regulation as unnecessary in light of the new and much more specific process for scheduling electronic testimony witnesses as provided this subsection. The language of paragraph (5) that appeared in the proposed regulation is now at paragraph (4).

(c) *Procedures subsequent to scheduling.* Subsection (c) as it appeared in the proposed regulation has been deleted in its entirety in light of the scheduling process that is provided in subsection (b), which identifies the process for objecting to the use of an electronic testimony witness. As noted in response to comments in subsection (a)(1), the testimony of an electronic

testimony witness is just as subject to objection at the time provided as the testimony of an in-person witness. It is the status of the individual as an electronic testimony witness that must be addressed prior to the hearing; therefore, the language of subsection (c) is unnecessary in light of revised subsection (b).

(d) *Hearing process*. Subsection (d) of the proposed regulations has been reidentified as subsection (c) due to the deletion of subsection (c) as it appeared in the proposed regulations. Subsection (c) provides relevant guidelines as to the manner in which a hearing at which an electronic testimony witness will proceed, although for the most part standard administrative hearing procedures will be used.

(1) Paragraph (1) provides requirements for the initiation of the electrical contact between the administrative hearing room and the electronic testimony witness. IRRC questioned the use of seemingly conflicting terms such as “parties” in regard to who may be an electronic testimony witness. We agree and have deleted and replaced that language with the defined term of electronic testimony witness throughout the regulation. Also, language related to the appearance of counsel or an “authorized agent” by way of telephone or audio-visual means has been deleted as inconsistent with the definition of an electronic testimony witness.

(2) Paragraph (2) permits the parties to an administrative hearing to question the electronic testimony witness in furtherance of assuring the identity of the witness. This section has been amended to clarify that it applies to electronic testimony witnesses. TWA’s Attorney questioned the failure to include language threatening prosecution and punishment for those who misidentify themselves. There is no need for an Authority regulation that makes such a threat, although section (c)(2) specifically prohibits that practice. Lying under oath is a serious offense and does not require additional threatening language in this regulation.

(3) The language of paragraph (3) of the proposed regulation has been deleted as unnecessary in light of the pre-hearing scheduling process adopted in this final-form regulation in subsection (b). IRRC, the TWA and TWA’s Attorney raised questions regarding the actual process through which an electronic testimony witness’s testimony will be presented and received at a hearing. Language has been added to this paragraph to clarify that electronic testimony witnesses are equally subject to examination, cross-examination, objections, consideration of relevance and admissibility as in-person. The weight assigned to oral testimony

presented at an administrative hearing will continue to be decided in the sole discretion of the presiding officer.

(4) Paragraph (4) requires the presiding officer to include in the oath administered to an electronic testimony witness that the witness will not testify from a document. This paragraph has been amended to clarify that it applies to electronic testimony witnesses. IRRC, the TWA and the TWA's Attorney questioned the reliability of an oath given by an electronic testimony witness that the witness will not testify from documents. Preliminarily, we anticipate that electronic testimony witnesses will increasingly testify by audio-video means, meaning all parties will be able to see and hear each other in real time. Seeing the electronic testimony witness may provide a means of assuring that they are not testifying from documents. However, at the end of the day, our entire hearing process, at all levels of government, is based on the premise that witnesses when sworn will tell the truth. Attorneys question and probe to assure the truth is being provided by witnesses. The Authority is unaware of any absolutely reliable means of assuring that a witness testifies truthfully.

(5) Paragraph (5) provides that the electronic testimony witness must be capable of being heard by the presiding officer and those in attendance at the administrative hearing. This section remains largely unchanged from the proposed regulation, except that the term electronic testimony witness has been added in place of less specific language and references to the Authority have been deleted for clarity purposes, as noted above.

Affected Parties.

The regulation is not targeted at a specific class of regulated parties; therefore, the number of individuals or entities impacted is impossible to predict. However, an unlimited number of individuals will directly benefit from the ability to testify at certain Authority administrative hearings remotely and without need to substantially interrupt business, school and family obligations. Both the Authority and respondents to most enforcement complaints will be affected by this positive change to the administrative hearing procedure.

Fiscal Impact.

Those who lodge complaints with the Authority regarding inadequate service or other taxicab or limousine related service issues will benefit from the ability to testify at administrative

hearings remotely. All parties to these administrative hearings will benefit by the ability to present certain witnesses in support of their respective positions, particularly when those witnesses might otherwise have been precluded from testifying in the administrative hearing courtroom due to mobility problems, work or family commitments or being located a long distance from the site of the hearing.

The purpose of this regulation is not to impact costs of any party, but to improve the functionality of administrative hearings and the development of full and complete records at those hearings. However, this regulation may reduce the likelihood of hearing continuances, eliminate unnecessary travel time, and will reduce the need for witnesses who are employees of small and large businesses to take time away from work to attend these hearings. While this benefit is very difficult to quantify in dollars, it is believed that it will result in reduced costs and overall efficiencies related to the administrative hearing process.

Individuals and businesses will benefit from the ability of their employees to testify at administrative hearings from work, as opposed to taking time off to appear at such hearings. The public and the business community will benefit from the improved quality of taxicab service that result from the effective prosecution of service violations. The removal or penalization of bad actors is crucial to improving taxicab and limousine service, which the General Assembly has linked to the stability and growth of our economy. 53 Pa.C.S. § 5701.1. Regulated parties will benefit from the ability to have exculpatory witnesses appear on their behalf remotely as well. There are no fees or additional costs directly associated with this regulation.

Commonwealth.

The Authority does not anticipate any increase in regulatory demands associated with this regulation. The Authority's Taxicab and Limousine Division anticipates additional filings with the Clerk associated with the electronic testimony witness notice filing and Adjudication Department Hearing Officers will be required to rule on requests to use electronic testimony witnesses. However, these departments routinely handle similar filings and the Authority does not expect cost increases as a result of this final-form rulemaking.

Political subdivisions.

This final-form rulemaking will not have direct fiscal impact on political subdivisions of this Commonwealth.

Private sector.

This final-form rulemaking will not have a fiscal impact on certificate holders or other regulated parties.

General Public.

This final-form rulemaking will not have a fiscal impact on the general public.

Paperwork Requirements.

This final-form rulemaking will not affect the paperwork generated by the Authority or the regulated communities, except for the *de minimis* notice requirement associated with identifying a potential electronic testimony witness prior to the date of a hearing.

Effective Date.

The final-form rulemaking will become effective upon publication in the *Pennsylvania Bulletin*.

Conclusion

Accordingly, under sections 13 and 17 of the Act, 53 Pa.C.S. §§ 5722 and 5742; section 5505(d) of the Parking Authorities Act, act of June 19, 2001, (P.L. 287, No. 22), *as amended*, 53 Pa. C.S. §§ 5505(d)(17), (d)(23), (d)(24); sections 201 and 202 of the Act of July 31, 1968, P.L. 769 No. 240, 45 P.S. §§ 1201-1202, and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2, and 7.5; section 204(b) of the Commonwealth Attorneys Act, 71 P.S. 732.204(b); section 745.5a of the Regulatory Review Act, 71 P.S. § 745.5a, the Authority proposes adoption of the final regulation pertaining to the regulation of taxicab and limousine service providers in the City of Philadelphia set forth in Annex A², attached hereto;

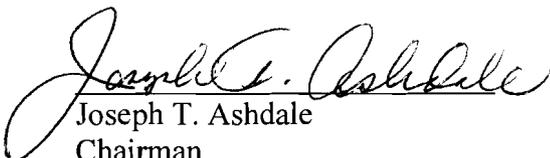
² The Authority does not receive money from the State Treasury and is; therefore, not subject to section 612 of the Administrative Code of 1929, 71 P.S. § 232.

THEREFORE,

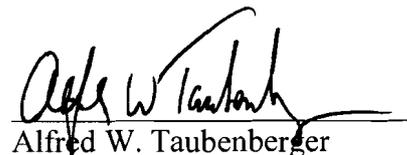
IT IS ORDERED THAT:

1. The Authority hereby adopts the final regulation in Annex A.
2. The Executive Director shall cause this order and Annex A to be submitted to the Office of Attorney General for approval as to legality.
3. The Executive Director shall cause this order and Annex A to be submitted for review by the designated standing committees of both Houses of the General Assembly, and for formal review by the Independent Regulatory Review Commission.³
4. The Executive Director shall cause this order and Annex A to be deposited with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.
5. The Executive Director shall serve copies of this order and Annex "A" upon each of the commentators.
6. The regulations embodied in Annex A shall become effective upon publication in the *Pennsylvania Bulletin*.
7. The contact person for this rulemaking is James R. Ney, Director, Taxicab and Limousine Division, (215)-683-9417.

**THE PHILADELPHIA PARKING
AUTHORITY**


Joseph T. Ashdale
Chairman
(SEAL)

Certified:


Alfred W. Taubenberg
Vice-Chairman/Secretary
(SEAL)

ORDER ADOPTED: December 17, 2012

ORDER ENTERED: December 17, 2012

³ The Governor's Budget Office has determined that rulemakings related to the Authority's Taxicab and Limousine Regulations do not require a fiscal note.

ANNEX “A”

§ 1005.114. Electronic testimony.

(a) *Purpose, [and] scope and definitions.*

(1) The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

Electronic testimony witness—An individual offered to provide testimony or other evidence at a hearing conducted pursuant to Chapter 1005, Subchapter B (relating to hearings) in an enforcement proceeding by telephone or audio-visual means. This term does not apply to an individual who is either of the following:

- (i) An Authority employee.
- (ii) A regulated party.
- (iii) Any agent or employee of a regulated party.

[(1)](2) In-person testimony is normally preferable to testimony by telephone or audio-visual means; however, there can be reasons to justify receiving testimony by telephone or audio-visual means, including the transitory nature of many of the users of taxicabs and limousines. This section is promulgated to provide the conditions under which testimony by telephone or audio-visual means will be scheduled and received, to safeguard the due process rights of the parties, and to ensure that testimony by telephone or audio-visual means is received under uniformly applied rules.

[(2)](3) When the general rules of this subpart conflict with this section, this section controls.

[(3)](4) This section applies to the [testimony] use of an electronic testimony witness[es] in enforcement [actions] proceedings initiated by Trial Counsel or the Enforcement Department, or both.

[(4) This section does not apply to proposed witnesses who are any of the following:

- (i) Authority employees.
- (ii) Parties to an enforcement action.
- (iii) Employees of parties to an enforcement action.]

(b) *Scheduling of telephone or audio-visual testimony.*

(1) [The Authority or presiding officer may schedule, on its own motion, testimony by telephone or audio-visual means of a witness when it appears from the record that the witness is located at least 25 miles from the location at which the Authority or presiding officer will conduct the hearing, without regard to State boundaries.] Scheduling of electronic testimony witnesses shall proceed as follows:

(i) The party seeking to present an electronic testimony witness must file a written notice with the Clerk. The notice must be filed more than 20 days before the scheduled hearing date. The notice must contain the name of the proposed electronic testimony witness, the reason an exemption from standard in-person testimony is requested and an offer of proof as to the proposed testimony. A form of notice of intent to use a proposed electronic testimony witness may be obtained on the Authority's web site at www.philapark.org/tld or from TLD Headquarters.

(ii) A party may file written objections to the use of an electronic testimony witness with the Clerk within 10 days of the filing of the notice required by paragraph (2)(i). The objection shall set forth the reasons in support thereof.

(iii) The notice required by this paragraph, and any objection thereto, shall be served as provided in Chapter 1001, Subchapter F. (relating to service of documents) on the same day the document is filed with the Clerk. A certificate of service shall be filed with the Clerk.

(iv) In the event a timely objection is not filed pursuant to this paragraph, all parties will be deemed to consent to the use of the electronic testimony witness.

(v) The parties may mutually agree to waive the time limitations of this paragraph.

(2) It is within the sole discretion of the [The Authority or] presiding officer [may] to permit the use of an electronic testimony witness in consideration of the notice and objection, if any, required by this section. [schedule testimony by telephone or audio-visual means of a witness, at the request of one or more parties, when one of the following applies:] The presiding officer shall also consider the following factors prior to scheduling the testimony of an electronic testimony witness:

(i) [The parties consent to the receipt of testimony by telephone or audio-visual means] The value of the proposed witness in developing a full and complete record.

(ii) [The witness is reasonably unable to testify in person due to employment, transportation, mobility, health reason, or other compelling problem] The reason the proposed witness is unable to testify. Particular consideration shall be given to reasonable conflicts or challenges associated with employment, childcare, transportation, mobility issues or health reasons.

(iii) The rebuttable presumption that a [witness is a] police officer within the definition of 234 Pa. Code Rule 103, should be permitted to testify by telephone or audio-visual means in matters related to the [offered for testimony regarding the] impoundment of a taxicab or limousine, or vehicle acting as a taxicab or limousine or the alleged criminal conduct of a regulated party.

(iv) If the probative value of the proposed electronic testimony is substantially outweighed by the danger or any unfair prejudice to the opposing party.

(3) Only a witness scheduled to testify by telephone or audio-visual means[, or identified prior to the taking of testimony in accordance with subsection (d),] may testify by telephone or audio-visual means, and the testimony of each other witness shall be received in person.

[(4) The Authority or presiding officer will promptly rule on a request that testimony be taken by telephone or audio-visual means after a reasonable attempt has been made to inform the parties of the request, the basis for the request, and the right of a party to object. The basis for the request, the position of the parties, if known, and the ruling will be documented on the record.

(5)](4) A witness scheduled to testify by telephone or audio-visual means will be permitted to testify in person.

[(c) *Procedures subsequent to scheduling.*

(1) If a party moves to withdraw consent to the receipt of testimony by telephone or audio-visual means prior to the taking of testimony, the Authority or presiding officer will allow the withdrawal if it is found that the consent was not freely and knowingly given.

(2) An objection to the receipt of testimony by telephone or audio-visual means shall set forth the reasons in support thereof and shall be promptly communicated to the Authority or presiding officer and any opposing party, but may not be asserted subsequent to the taking of testimony.

(3) The Authority or presiding officer will promptly rule on objections to testimony by telephone or audio-visual means after a reasonable attempt to obtain the position of the other party. The basis for the objection, the position of the other party, if known, and the ruling will be documented on the record.

(4) A party may pursue an objection to telephone or audio-visual testimony at the hearing and shall set forth reasons in support thereof. If the objection is sustained, the Authority or presiding officer will reschedule the hearing at a later date, either in person or by telephone or audio-visual, in accordance with this part. If the objection is not sustained, the Authority or presiding officer may proceed with the hearing in accordance with this subpart.

(d)](c) *Hearing process.*

(1) At the start of the hearing, the [Authority or] presiding officer will state on the record the time and telephone or audio-visual numbers at which the [Authority or] presiding officer initiates the contact with any [party,] electronic testimony witness[, legal counsel or authorized agent who is to testify or appear by telephone or through audio-visual means].

(2) The [Authority or] presiding officer will permit parties a reasonable opportunity to question [other parties or witnesses testifying by telephone or audio-visual means] electronic testimony witnesses for the purpose of verifying the identity of [the parties or] such witnesses.] Falsification of identity is prohibited.

(3) [A party or witness not identified to the Authority or presiding officer and all other parties before the beginning of the testimony will not be permitted to testify by telephone or audio-visual. Testimony taken or given in violation of this subsection will be excluded from consideration.] This section does not create special procedures or standards for the presentation, cross-examination, exclusion or weighing of the testimony of an electronic testimony witness or for establishing the creditability of such a witness once the witness is scheduled by the presiding officer.

(4) The oath or affirmation administered to [parties or witnesses testifying by telephone or audio-visual means] an electronic testimony witness shall indicate that the [parties or] witnesses will not testify from documents that are not in the record.

(5) The [Authority or] presiding officer, the electronic testimony witness [person testifying by telephone or audio-visual means], and all persons in the room in which the [Authority or] presiding officer is present while telephone or audio-visual testimony is presented must be able to hear and speak to one another through the telephone or audio-visual connection used to submit testimony pursuant to this section.