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March 2, 2012

**RECEIVED**

MAR 2 2012

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Re: Canterbury International, Inc. t/a  
Two Men and a Truck  
Docket No. A-2011-2251336  
Our File 1773P-209

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

**MAILED WITH U.S. POSTAL SERVICE**  
**CERTIFICATE OF MAILING FORM 3817**

Dear Ms. Chiavetta:

We enclose for filing with the Commission the signed original and nine (9) copies of the Main Brief of Protestants in connection with the above-captioned proceeding.

A copy of the Main Brief has been served on Administrative Law Judge Katrina L. Dunderdale and two (2) copies have been served on the attorney for the applicant. We are also sending to the Administrative Law Judge and to the attorney for the applicant a copy of the Main Brief by email in Word format pursuant to Judge Dunderdale's Briefing Order dated January 20, 2012. We are also enclosing a copy of the Main Brief on disk, as required by the Briefing Order dated January 20, 2012.

Please acknowledge receipt and filing of the enclosed on the duplicate copy of this letter of transmittal and return it to the undersigned in the self-addressed, stamped envelope provided.

Very truly yours,

VUONO & GRAY, LLC

William A. Gray

as/106032

Enclosure

cc: Honorable Katrina L. Dunderdale  
Kenneth A. Olsen, Esq.

ORIGINAL

Before the  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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DOCKET NO. A-2011-2251336

CANTERBURY INTERNATIONAL, INC. t/a  
TWO MEN AND A TRUCK

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MAIN BRIEF OF PROTESTANTS

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MAR 2 2012

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

WILLIAM A. GRAY, ESQ.

Attorney for

SOUTH HILLS MOVERS, INC.

VESELY BROS. MOVING & STORAGE, INC.

MCKEAN & BURT, INC., t/b/a

ALLWAYS MOVING & STORAGE

ALL WAYS WORLD WIDE MOVING, INC.

WELESKI TRANSFER, INC.

LYTLE'S TRANSFER & STORAGE, INC.

HOY TRANSFER, INC.

Protestants

VUONO & GRAY, LLC  
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Due Date: March 2, 2012

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Before the  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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DOCKET NO. A-2011-2251336

CANTERBURY INTERNATIONAL, INC. t/a  
TWO MEN AND A TRUCK

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MAIN BRIEF OF PROTESTANTS

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I. STATEMENT OF THE CASE

By this application, ("the applicant") seeks the following authority:

Household goods in use, from points in the Counties of  
Beaver, Butler, Westmoreland, Fayette and Washington, to  
points in Pennsylvania, and vice versa.

Hearings were held in this case in Pittsburgh on January 5, 2012 and January 11, 2012, before Administrative Law Judge Katrina L. Dunderdale. Subsequent to the conclusion of the hearing, the Administrative Law Judge issued a Briefing Order, which directed the parties to file Main Briefs on or before February 17, 2012. This Main Brief is being filed on behalf of protestants South Hills Movers, Inc., Vesely Bros. Moving & Storage, Inc., McKean & Burt, Inc., t/d/b/a All Ways Moving & Storage, All Ways World Wide Moving, Inc., Weleski Transfer, Inc., Lytle's Transfer & Storage, Inc. and Hoy Transfer, Inc. (hereinafter jointly referred to as "the protestants").

## II. STATEMENT OF THE QUESTIONS INVOLVED

The questions involved are whether the applicant has demonstrated that the granting of the authority sought will serve a useful public purpose, responsive to a public demand or need (52 Pa. Code §41.14(a)) and whether the record demonstrates that the applicant lacks a propensity to operate safely and legally (52 Pa. Code §41.14 (b)).

### III. PROPOSED FINDINGS OF FACT

1. Raymond J. Coll is the Vice President of the applicant. (Tr. 11)<sup>1</sup>
2. The applicant's stock is owned by Mr. Coll and his wife. (Tr. 17-18)
3. The applicant presently holds operating authority from the PUC at A-00121505. The applicant's initial grant, which was secured in 2005, authorizes it to provide service between points in Allegheny County. (Appl. Ex. 2)
4. The applicant amended its PUC authority in 2007 to include authority to provide service from points in Allegheny County to points in Pennsylvania, and vice versa. (Tr. 13)
5. The applicant also has authority from the Federal Motor Carrier Safety Administration at MC-509618 which it secured in 2005. (Appl. Ex. 2)
6. The applicant has two facilities, one at 355 Valley Drive, Pittsburgh, PA 15234, which is in Bethel Park, and the other at 12 South Avenue, Sewickley, PA 15143. Both are rented facilities. (Appl. Ex. 4; Tr. 16, 215)
7. The applicant employs eight office personnel, two dispatchers, 20 drivers, 40 movers and a Safety Supervisor. (Appl. Ex. 4; Tr. 16)
8. The applicant suffered a net loss in 2010 of \$28,875.79. It had a profit for the first 11 months of 2011 of \$56,569.48. (Appl. Ex. 6)

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<sup>1</sup> Number in parenthesis preceded by Tr. is the page number from the Transcript of Testimony. Number in parenthesis preceded by Ex. is the exhibit number from the hearing.



9. The applicant had intrastate revenues of \$1,226,988 from transporting household goods in 2008; \$1,188,184 from transporting household goods in 2009; and \$1,581,096 from transporting household goods in 2010. (Appl. Ex. 6)

10. The applicant's revenues grew by about 5% in 2011. (Tr. 156)

11. The applicant expects to probably need three more trucks if this application is granted. (Tr. 157)

12. The applicant is a franchisee of a larger company named Two Men and a Truck International, located in Lansing, MI. (Tr. 180)

13. The applicant anticipates that the increased authority sought by this application will give it approximately \$300,000 in additional annual revenues. (Tr. 186-187)

14. The applicant anticipates that if this application is granted it will require an additional four drivers and ten to 15 movers. (Tr. 187)

15. The applicant terminated approximately 20 drivers or movers for cause in 2011 and approximately the same number in 2009 and also in 2010. (Tr. 189)

16. The applicant operates 16 straight trucks to move household goods. (Tr. 189) The applicant does not operate any tractors or trailers. (Appl. Ex. 3; Tr. 218)

17. The applicant has been cited for fatigued driving violations and driver fitness violations in 2010 and 2011 by the United States Department of Transportation. (Tr. 193-194)

18. The applicant received a complaint from the Public Utility Commission in 2010 involving providing transportation in Washington County and paid a fine. (Tr. 194)

19. The applicant also admitted being admonished in a telephone call by a PUC enforcement officer that the applicant was not allowed to provide service in Washington County. (Tr. 220)

20. The applicant also admitted handling a shipment on May 25, 2010 consisting of dining room furniture, living room furniture and bedroom furniture from an apartment in the Stone Creek Apartments in Washington, PA to another apartment in the same Stone Creek Apartments. The applicant admittedly charged its tariff rates for this movement. (Tr. 224)

21. The applicant prepared a list of service requests from slips prepared by the applicant's customer service representatives who handwrote information on the slips and gave them to Mr. Coll who then prepared the list of service requests. (Appl. Ex. 12; Tr. 195)

22. The slips used to prepare Exhibit 12 were prepared based on customer service representatives returning calls to people who made a hit on the applicant's website and the franchisor's website. (Tr. 195-197)

23. The underlying documents from which Exhibit 12 was prepared were thrown away. (Tr. 196)

24. The information on the applicant's website and the franchisor's website does not indicate how many other companies' websites these individuals may also have clicked into and sent their information to. Mr. Coll admitted that they may have sent this information to numerous other moving companies' websites. (Tr. 199, 232)

25. The reason that the applicant's service representative would have called the person who made the hit on the website even though it was clear that the person was outside of Allegheny County was that the applicant felt the people would be expecting a call back from them. (Tr. 200)

26. The applicant did not refer any of the moves on Exhibit 12 to any other motor carriers. (Tr. 202)

27. Mr. Coll admitted that he was not aware of whether any of the persons shown on his list of service requests were actually moved by a household goods mover. None of these persons were witnesses supporting this application. (Tr. 202-203)

28. Joshua Mastascusa is employed by the applicant at its Sewickley facility. He is the son of Kimberly Aukerman and the grandson of Patsy Mooney, who were both public witnesses supporting the application, and he is also married to Mr. Coll's daughter. (Tr. 212-213)

29. The applicant's current tariff became effective January 7, 2008. (Debo George Ex. 1; Tr. 214)

30. For moves under 40 miles, the applicant sometimes does not even go to the customer's house to view the customer's goods. (Tr. 225) The applicant only goes and views the shipment where it involves more than two bedrooms. (Tr. 226)

31. The applicant does a written inventory when it goes to the residence and gets a verbal inventory when it does not go to the residence. (Tr. 226)

32. For shipments involving two bedrooms or less, the applicant does not go to the site to do a viewing and to do an inventory but rather just does it over the phone. (Tr. 227)

33. There are also some situations involving shipments over 40 miles where the applicant does not go out and view the shipment and do a written inventory. (Tr. 229)

34. The applicant never weighs shipments before they are moved, regardless of whether they are more than 40 miles or less than 40 miles. (Tr. 231)

35. The applicant admitted that one of its public witnesses, Penny Rodgers, was actually one of the employees who took calls resulting in Exhibit 12. (Tr. 233-234)

36. Some of the movements on Exhibit 12 were actually movements that had neither an origin nor a destination in the application territory (for example, a movement from Grove City to Grove City). (Tr. 236)

37. There are many area codes on Exhibit 12 outside of the 412 and 724 area codes. (Tr. 241)

38. There are many entries on Exhibit 12 that indicate "Westmoreland County" rather than a point in Westmoreland County. (Tr. 242)

39. The applicant's website is a form of advertising and yet did not have any notation indicating that PUC service could only be provided if the origin or destination was in Allegheny County. (Tr. 244)

40. The website of the franchisor also does not indicate that the applicant's service area is limited to Allegheny County. (Tr. 246-247)

41. Mr. Coll admitted that a person located in Greensburg, for example, could look at the applicant's website and think that the applicant can provide intrastate service from Greensburg, which is in Westmoreland County. (Tr. 249)

42. The royalty fees set forth on applicant's financial statements are fees paid to the franchisor, which equates to 6% of its gross revenues. (252-253)

43. The applicant also is required to pay the franchisor 1% of its gross revenues for advertising fees and 1% for technology fees. (Tr. 253-254)

44. The applicant's brochure that it distributes to potential customers indicates its charges are based on one-quarter hour increments and its tariff indicates that the rates are based on one-half hour increments. (Debo George Ex. 1; Tr. 254)

45. The applicant has a travel charge in its tariff. Therefore, if someone wants the applicant to pick up a shipment that is some distance away, they have to pay for travel charges from either Sewickley or Bethel Park to their location. (Debo George Ex. 1; Tr. 256-257)

46. The applicant's tariff provides that if a customer is located 26 miles away, they must be charged three hours of travel time at \$58 per hour. (Debo George Ex. 1; Tr. 257-258)

47. The applicant's tariff also has a minimum charge. (Debo George Ex. 1; Tr. 258)

48. Anthony Pantoni resides in Cranberry Township and indicated that he expects to move to Lancaster Township, Butler County, within the next year. (Tr. 23)

49. Mr. Pantoni used the applicant's moving service within the past year and a half to move from Sharpsburg, Allegheny County, to Midland, Beaver County. (Tr. 24)

50. The movement where Mr. Pantoni used the applicant's service involved moving household goods from his aunt's house to his mother's house. (Tr. 27)

51. Mr. Pantoni is involved in commercial real estate and is employed by Collier's International of Pittsburgh. (Tr. 24-25)

52. Mr. Pantoni assisted the applicant as a commercial realtor in getting its office in Sewickley. (Tr. 26)

53. Mr. Pantoni has maintained a relationship with Mr. and Mrs. Coll since the time that he helped them establish their office in Sewickley. (Tr. 26)

54. Mr. Pantoni has not yet purchased a place in Lancaster Township, Butler County nor has he submitted any offer on any place. (Tr. 27, 29-30)

55. Mr. Pantoni admitted that he may never find a suitable house in Lancaster Township, Butler County, or anywhere else and he may not move from his house in Cranberry Township. (Tr. 30)

56. Mr. Pantoni admitted that the reason he chose the applicant for the movement involving his aunt's house is because of his business relationship with the applicant. (Tr. 31)

57. Mr. Pantoni admitted that he has an ongoing business relationship with the applicant. (Tr. 31)

58. Gillian Yahnite resides in Monongahela, Washington County and anticipates a possible need for service in the future to Cranberry Township as a result of a

possible job transfer involving her husband. (Tr. 35-36) Ms. Yahnite's husband is an engineer with Westinghouse. (Tr. 38)

59. Ms. Yahnite stated that she was not positive when the move would occur but thought it would be within the next year or so, although her husband had not yet been informed of any job transfer at this time. (Tr. 37)

60. Ms. Yahnite is a business acquaintance of Mr. and Mrs. Coll through networking. (Tr. 37)

61. The last time that Ms. Yahnite used a mover was nine years ago. (Tr. 39-40)

62. The Westinghouse facility in Cranberry Township is located just across the Allegheny County-Butler County line. Ms. Yahnite admitted that it is entirely possible that she and her husband could move to a point in Allegheny County. (Tr. 42-43)

63. Ms. Yahnite admitted that the move from their existing residence is entirely dependent upon whether her husband gets a promotion. (Tr. 43)

64. Emerald Van Buskirk resides in Peters Township, Washington County. (Tr. 45)

65. Ms. Van Buskirk and her husband are considering downsizing within the next two years. (Tr. 44-45)

66. Ms. Van Buskirk and her husband have not chosen a location to which they will move and have not looked. (Tr. 45)

67. Ms. Van Buskirk indicated that she could not say where they would relocate to but that it would be within a 50 mile radius of Pittsburgh. (Tr. 46)

68. Ms. Van Buskirk has a business relationship with Dottie Coll. Ms. Van Buskirk is the Director of the Southwest Community Chamber of Commerce and the applicant is a member of the Chamber. (Tr. 47-48)

69. Ms. Van Buskirk has lived at her current address for seven years. (Tr. 49)

70. Ms. Van Buskirk has never used the applicant's services before. (Tr. 49)

71. Janet Bouma has two houses, including a log home in Fayette County and a home in Allegheny County that she considers to be her main residence. (Tr. 54)

72. Ms. Bouma has her log home in Fayette County listed for sale and expects to sell it within eight months to a year. (Tr. 52)

73. Ms. Bouma has used the applicant's service five times in the past. These moves have all been from and to points in Allegheny County. (Tr. 52-53)

74. Ms. Bouma purchased the log home in Fayette County approximately seven years ago. (Tr. 54)

75. Ms. Bouma has not found another place in Fayette County to move to. (Tr. 56)

76. Ms. Bouma knows Mrs. Coll through various networking functions. (Tr. 57)

77. Suzanne Froelich presently resides in a rented home in Zelienople, Butler County. (Tr. 62)

78. Ms. Froelich and her husband have plans to relocate to either Butler or Beaver County. (Tr. 63-64)



79. Ms. Froelich corrected herself to indicate that she and her husband are going to start looking to move in the spring. (Tr. 65)

80. Ms. Froelich has known Dottie Coll for about ten years and they have known each other on a friendship basis and a business basis. (Tr. 66-67)

81. Ms. Froelich moved three years ago from Wexford, Allegheny County, to Zelienople, Butler County, and the applicant was used for that move. (Tr. 68-69)

82. Ms. Froelich admitted that she doesn't have any move scheduled at the present time. (Tr. 69)

83. Timothy Edris resides in Beaver Falls. He stated that he and his family are planning on moving back to the central Pennsylvania area where he grew up in the next year or year and a half. (Tr. 70-71)

84. Mr. Edris admitted that things could get in the way of their plans. (Tr. 71)

85. Mr. Edris has not used the applicant in the past. (Tr. 73)

86. Mr. Edris knows Mr. and Mrs. Coll through business connections. (Tr. 73)

87. Mr. Edris has never used a mover before. (Tr. 75)

88. Mr. Edris admitted that he has not bought a house and has not sold his house and it is always a possibility that he will change his mind and not move. (Tr. 79-80)

89. Julie Ann Sullivan resides in Peters Township, Washington County and intends to relocate to the Mt. Lebanon-Dormont area in Allegheny County. (Tr. 82)

90. Ms. Sullivan has never utilized the applicant in the past but is familiar with the applicant through her association with Dottie Coll. (Tr. 83)

91. Robert Flock resides in Belle Vernon, Westmoreland County. (Tr. 86)
92. Mr. Flock is considering downsizing but is not sure whether he wants to move to Huntingdon, WV, St. Louis, MO, Greensburg, PA or Allentown, PA. He may even stay where he is. (Tr. 87-88)
93. Mr. Flock indicated that he has not narrowed down at all where he wants to move to. (Tr. 88)
94. Mr. Flock has known Mr. Coll professionally for 50 years, having both worked at The Dick Corporation. (Tr. 90)
95. Mr. Flock has never used the services of the applicant.
96. Mr. Flock has been retired since 1999 and stops by the applicant's office from time to time to say hello to Mr. and Mrs. Coll. (Tr. 91)
97. Mr. Flock has resided in his present house since 1960. (Tr. 91)
98. Mr. Flock's wife is from Huntingdon, WV and it is possible that they will relocate to a home that she owns there. (Tr. 92)
99. Edward Sickmund resides in McMurray, Washington County. (Tr. 95)
100. Mr. Sickmund may require transportation for his daughter from his residence in McMurray to the Squirrel Hill, Allegheny County, area. (Tr. 94)
101. Mr. Sickmund admitted that his daughter's brothers may actually move her with a rented truck. (Tr. 101)
102. Mr. Sickmund also has twin boys that are attending college, one of whom attends Mercyhurst in Erie. He is a freshman and may move off campus after his freshman year. (Tr. 94-95)

103. The movement for Mr. Sickmund's son would just be furniture in his bedroom in McMurray to off campus housing in Erie. Mr. Sickmund has no idea what the cost would be for that small move. (Tr. 102)

104. Mr. Sickmund is not even sure whether his son will move to an on-campus apartment or an off-campus apartment and if he moves to an on-campus apartment it could admittedly be furnished. (Tr. 103)

105. Mr. Sickmund has a relationship with Mr. and Mrs. Coll through the Southwest Community Chamber of Commerce. (Tr. 98)

106. Mr. Sickmund has never used the applicant's service. (Tr. 99)

107. Mr. Sickmund has not used any household goods moving service since 1986. (Tr. 102)

108. John Sherry resides in McMurray, Washington County. (Tr. 106)

109. Mr. Sherry moved from Mt. Lebanon to McMurry six years ago and has not used a mover since then. (Tr. 110-111)

110. Mr. Sherry's wife found a house a number of years ago that she was interested in if the people moved and they have now found that the people are going to retire to Florida and want to list their house in the spring. The house is four miles from where Mr. and Mrs. Sherry now live. (Tr. 105-106)

111. Concerning the possible purchase of the house four miles from where he lives, Mr. Sherry testified: "I mean, the plans are somewhat tentative because they want to find a place to buy down in Florida first." (Tr. 106)

112. Mr. Sherry also indicated that five years ago he sold his place in Hidden Valley in Somerset County and may want to buy it again and would need to move furniture from their residence to that location if he buys it. (Tr. 106)

113. Mr. Sherry did not use a mover when he sold his house in Somerset County. (Tr. 112)

114. Mr. Sherry has been Mr. Coll's attorney for 41 years. (Tr. 110)

115. Mr. Sherry and Mr. Coll have been friends since first grade. (Tr. 110)

116. Mr. Sherry and his wife are social friends with Mr. and Mrs. Coll. (Tr. 110)

117. Mr. Sherry previously testified in support of an earlier application of the applicant. (Tr. 111)

118. Since Mr. Sherry testified in the prior proceeding, he hasn't had any moves. (Tr. 111)

119. Mr. Sherry submitted a verified statement in support of this application on June 27, 2011 at the time the application was filed and indicated in that statement that he might move from McMurray to Hidden Valley but there was no mention of buying a house in Washington County. (Tr. 113-114)

120. Kimberly Aukerman resides in Greensburg, Westmoreland County, and has a two car garage full of household items that she is distributing to members in her community. She testified that she would like to have the applicant provide the transportation for the individuals securing the furniture. (Tr. 116-118)

121. Ms. Aukerman testified that she would pay for the transportation of the household items from her garage to the people in her community securing the furniture. (Tr. 118-119)

122. Ms. Aukerman became aware of this application through Josh Mastascusa, who works for the applicant and who is her son. Mr. Mastascusa is a Business Manager for the applicant. (Tr. 119-120)

123. Ms. Aukerman has lived in Greensburg for seven years and has never used a mover before. (Tr. 120)

124. Ms. Aukerman did not know what the applicant's minimum charge for transportation service was. (Tr. 122)

125. It is approximately 38 miles from the applicant's closest facility to Ms. Aukerman's Greensburg residence. (Tr. 126)

126. Patsy Mooney presently resides in Beaver County and stated that she is interested in moving to a smaller facility "towards Ligonier". (Tr. 127)

127. Ms. Mooney testified that she would use the applicant "Because my grandson works for them." (Tr. 129)

128. Ms. Mooney is the mother of Kimberly Aukerman, another public witness supporting this application. (Tr. 129-130)

129. Ms. Mooney has been retired for two and one-half years and her husband has been retired for five years and they've lived in the same house for the past 12 years. (Tr. 130)

130. Ms. Mooney has never used a mover for any transportation. (Tr. 131)

131. Neither Ms. Mooney nor her husband have as of yet contacted a realtor in the Ligonier area to find a place. (Tr. 131)

132. Ms. Mooney admitted that she submitted a verified statement in support of the application when the application was filed and made no reference in that statement concerning any desire to move to Ligonier. (Tr. 132-133) She indicated in that statement that she wanted to move from Hopewell to Aliquippa. (Tr. 135)

133. Penny Ann Rodgers resides in Ardara with her mother. (Tr. 138)

134. Ms. Rodgers moved to Ardara from Georgia. (Tr. 138)

135. Ms. Rodgers previously utilized another franchisee of the franchise company named Two Men and a Truck in Georgia. (Tr. 140)

136. Ms. Rodgers' use of the franchisor occurred approximately six years ago and she did not use the franchisor to move her furniture from Georgia to Pennsylvania but rather her brother rented a truck and drove the furniture up from Georgia. (Tr. 144)

137. Ms. Rodgers and her mother live in a 16 room house which is too large for them. They want to move to the Greensburg area. (Tr. 139)

138. Ms. Rodgers indicated that she and her mother, who is 76 years old, are arguing about what's best for her mother. (Tr. 139)

139. Ms. Rodgers indicated that she would like to move within the next six months. (Tr. 139-140)

140. Concerning when she would move, Ms. Rodgers stated: "It's just whenever I can convince my mom that this is the right thing to do." (Tr. 141)

141. John Lettrich resides in Westmoreland County and testified that he was going to be moving within the next eight or nine months to Westmoreland or Armstrong County because his place is too big. (Tr. 151)

142. Mr. Lettrich stated concerning whether he had visited the area where he was planning to relocate: “Nothing is set in stone yet.” (Tr. 152)

143. Mr. Lettrich is an employee of the applicant and has been employed by the applicant since 2008. (Tr. 153)

144. Mr. Lettrich is a dispatcher for the applicant at the Bethel Park office. (Tr. 154)

145. Mr. Lettrich submitted a verified statement with the application and stated in that statement that he wanted to move from Lower Burrell to Irwin, which is in Westmoreland County. (Tr. 155) His testimony at the hearing was that he wants to move from Lower Burrell to a place in Armstrong or Butler County. (Tr. 154)

146. Protestant South Hills Movers is located in Bethel Park, Allegheny County. (Tr. 270)

147. South Hills Movers holds authority from the Commission at A-00109506. (Prot. South Hills Ex. 1)

148. South Hills Movers has authority in conflict with this application in all five of the counties sought by the application. (Prot. South Hills Ex. 1; Tr. 272-275)

149. South Hills Movers earns approximately \$2.2 million in Pennsylvania intrastate revenues, a significant portion of which is earned from providing service in the application territory. (Tr. 276)

150. South Hills Movers' facility in Bethel Park has general offices, warehouse facilities with 50,000 square feet of space and a truck maintenance garage. (Tr. 276)

151. South Hills Movers uses its warehouse to provide storage for its customers, which is requested by customers on a temporary or long term basis. (Tr. 276-277)

152. South Hills Movers operates approximately 45 tractor-trailer combinations and 35 straight trucks. (Tr. 278)

153. Tractor-trailers are used by South Hills Movers to accommodate customers that have shipments that require more truck capacity than is available in a straight truck. (Tr. 278)

154. South Hills Movers has approximately 200 employees, including approximately 60 drivers and 100 helpers. (Tr. 279)

155. South Hills Movers advertises its service to the public in all of the five counties involved in this application. (Tr. 280)

156. South Hills Movers has lots of competitors for intrastate business in the counties involved in this application and believes that there is not a need for another competitor. (Tr. 281-282)

157. Protestant Vesely Bros. Moving & Storage has a facility in Belle Vernon, Westmoreland County. Its facility is actually located near the Westmoreland-Fayette County line. (Tr. 290)

158. Vesely Bros. has authority in conflict with the authority sought by this application at A-00102958. (Prot. Vesely Bros. Ex. 1)



159. Vesely Bros. secured its initial grant of authority in 1981 but its predecessor company has been in business since the early 1920's. (Tr. 293)

160. Vesely Bros. has authority in conflict with this application in Washington, Westmoreland and Fayette Counties. (Prot. Vesely Bros. Ex. 1; Tr. 294-295)

161. Vesely Bros. operates nine tractors, 15 trailers and seven straight vans. (Tr. 295)

162. Vesely Bros. uses its tractors and trailers for short moves of less than 50 miles as well as longer moves. (Tr. 295-296)

163. Vesely Bros. earns PUC revenues of approximately \$400,000, 50% of which are from providing service in the application territory and the other 50% from providing service in Allegheny County. (Tr. 296)

164. Vesely Bros.' facilities consist of 40,000 square feet of office and warehouse space. (Tr. 297)

165. Vesely Bros. employs approximately 30 helpers and drivers, including 18 qualified drivers. (Tr. 298)

166. Vesely Bros. has been affiliated with United Van Lines since 1947. It provides interstate service through its affiliation with the van line. (Tr. 300)

167. Vesely Bros. advertises its services in Fayette, Washington and Westmoreland Counties in the Yellow Pages, on the internet and through associations with organizations. (Tr. 301)

168. Vesely Bros.' equipment is not being utilized to full capacity at the present time. (Tr. 301)

169. Vesely Bros. has substantial competition for intrastate business in Fayette, Washington and Westmoreland Counties and believes that there is no need for additional motor carrier service in those counties. (Tr. 301-302)

170. Timothy Moore is the owner and President of All Ways World Wide Moving, Inc. and McKean & Burt, Inc. t/d/b/a Allways Moving & Storage, both located in Washington, PA. (Tr. 306-307)

171. The predecessor of McKean & Burt started with two individuals operating a truck in 1913. (Tr. 308)

172. McKean & Burt was previously operated by Mr. Moore's mother from 1975 to 1996 and Mr. Moore purchased the company in 1996. (Tr. 309)

173. McKean & Burt has authority in conflict with this application at A-00091652 authorizing it to provide household goods service in Washington County. It also has authority to provide service in Allegheny County. (Prot. McKean & Burt Ex. 1)

174. McKean & Burt owns three tractors, four trailers, 11 straight trucks and a pack truck. (Tr. 317-318)

175. McKean & Burt's equipment is not being operated to full capacity at the present time and it has plenty of capacity in the event there would be additional service required in Washington County. (Tr. 319-320)

176. McKean & Burt has a vaulted storage procedure where it takes the vault right to the residence and loads the furniture right into the vault and then puts the vault in the warehouse and when the customer wants the shipment, it just takes the vault out and unloads it at the customer's residence. (Tr. 321)

177. McKean & Burt has 12 full time CDL drivers and 16 helpers. These drivers and helpers are subcontracted to All Ways World Wide when necessary. (Tr. 321-322)

178. All Ways World Wide was actually previously Mr. Moore's grandfather's company and Mr. Moore purchased the authority of that company in 1996 to provide service for the Department of Defense. (Tr. 309)

179. All Ways World Wide has authority in conflict with this application at A-00113305 involving Washington County. (Prot. All Ways Ex. 1)

180. All Ways World Wide is an agent for Wheaton Van Lines but McKean & Burt is not an agent for that company and does not have any van line affiliation. (Tr. 314-315)

181. McKean & Burt and All Ways World Wide have separate authorities, separate insurance filings, separate tariffs, file separate assessment reports and are separate operating entities. (Tr. 315-316)

182. McKean & Burt and All Ways World Wide are located in separate buildings. (Tr. 316)

183. All Ways World Wide does not own any of its own vehicles but leases vehicles from McKean & Burt. (Tr. 317)

184. Mr. Moore testified that the advantage to using tractors and trailers rather than just straight trucks, which the applicant does, is that it can save the customer money if the customer's shipment is more than 12,000 pounds. (Tr. 318-319)

185. Mr. Moore's companies are very concerned with maintaining their revenues in Washington County, which represents 70% of their business. (Tr. 322-323)

186. Mr. Moore's companies have not turned down any service requests in Washington County in at least the last three years. (Tr. 323)

187. Mr. Moore's companies advertise their service in Washington County by print advertising, Yellow Pages, phone books, flyers, meetings, conventions, Chamber of Commerce and internet. (Tr. 324)

188. Mr. Moore's companies have 12 competitors in Washington County already and he believes that there is no need for the applicant's service. (Tr. 324-325)

189. Mr. Moore has complained to the PUC about the applicant providing unlawful service in Washington County. The PUC investigator told him that she talked to Mr. Coll and that he said he had done some moves in Washington County but didn't know they weren't allowed to do them. (Tr. 325-326)

190. Mr. Moore also complained to the PUC about the movement in Washington County that was the subject of the complaint where the applicant paid a fine. (Tr. 326-327)

191. Mr. Moore also complained to the PUC about the applicant handling the movement of the apartment for the manager at Stone Creek Apartments who admitted that the applicant had moved her apartment. (Tr. 328-329)

192. Weleski Transfer is located in Tarentum, which is in Allegheny County across the river from Westmoreland County. (Tr. 347)

193. Weleski holds authority from the Commission at in conflict with this application at A-96505. (Prot. Weleski Ex. 1)

194. Weleski has been in business for approximately 40 years. (Tr. 348-349)

195. Weleski has authority in conflict with this application in all of the five counties sought by this application. (Prot. Weleski Ex. 1; Tr. 349-352)

196. Weleski earned approximately \$1.7 million in PUC revenues in 2010, of which amount approximately 70% were revenues earned from providing service within the application territory and which would be subject to diversion if this application is granted. (Tr. 352)

197. Weleski has four separate warehouses totaling 400,000 square feet and also has a two story office building at its Tarentum location. (Tr. 353)

198. Weleski believes that it's essential to have warehouse space in the household goods moving business. (Tr. 354)

199. Weleski operates approximately 50 tractor trailer units, 30 over-the-road straight trucks and 20 local straight trucks. (Tr. 354)

200. Weleski has tractor trailer units because it makes economic sense often times to handle a move with a tractor trailer as opposed to a straight truck and results in the customer saving money. (Tr. 355)

201. Weleski has 37 employee drivers. It also has 18 owner-operator drivers. (Tr. 357)

202. Weleski's equipment is not being operated to full capacity at the present time and it needs all of the shipments that it can possibly get under its PUC authority. (Tr. 352)

203. The witness for Weleski stated that the household goods moving business has been very difficult because the housing business has really affected household goods carriers. (Tr. 353)

204. Weleski has lots of competition at the present time in the application territory. (Tr. 353)

205. Weleski is affiliated with Atlas Van Lines but that relationship is in connection with interstate shipments. (Tr. 358)

206. Weleski advertises the availability of its household goods service in the application territory via Yellow Pages, internet, direct mail and business groups. (Tr. 359-360)

207. Lytle's Transfer & Storage, Inc. has authority from the Commission at A-94302. (Prot. Lytle's Ex. 1)

208. Lytle's has authority in conflict with this application involving service from the five counties sought by this application to points in the city of Altoona and within an airline distance of twenty-five (25) statutes miles of the limits of said city, and vice versa; and also from the five counties sought by this application to points in the city of Allentown and within fifteen (15) miles by the usually traveled highways of the limits of said city, and vice versa. (Prot. Lytle's Ex. 1)

209. Hoy Transfer, Inc. has authority from the Commission at A-00085095.

(Prot. Hoy Ex. 1)

210. Hoy has authority in conflict with this application involving transportation from the five counties sought by this application to points in Centre County, and vice versa. (Prot. Hoy Ex. 1)

#### IV. SUMMARY OF ARGUMENT

This application seeks authority to transport household goods in use, from points in the Counties of Beaver, Butler, Westmoreland, Fayette and Washington to points in Pennsylvania, and vice versa.

The applicant bears the burden of proof under 52 Pa. Code §41.14(a) to prove that approval of the application will serve a useful public purpose, responsive to a public demand or need. The applicant in this case has failed to demonstrate that approval of the application will serve a useful public purpose, responsive to a public demand or need.

An application must be denied pursuant to 52 Pa. Code §41.14(b) if the record demonstrates that the applicant lacks a propensity to operate safely and legally. The record in this case demonstrates that the applicant lacks a propensity to operate safely and legally.



## V. ARGUMENT

### A. THE APPLICANT HAS FAILED TO DEMONSTRATE THAT THERE IS A PUBLIC DEMAND OR NEED FOR THE PROPOSED SERVICE.

52 Pa. Code §41.14(a) provides as follows:

An applicant seeking motor common carrier authority has the burden of demonstrating that approval of the application will serve a useful public purpose, responsive to a public demand or need.

It is well established in Pennsylvania law that an applicant for a Certificate of Public Convenience has the burden of establishing a public demand or need for the proposed service. Follmer Trucking Company v. Pennsylvania Public Utility Commission, 189 Pa. Super. 204, 215, 150 A.2d 163 (1959); Motor Freight Express v. Pennsylvania Public Utility Commission, 188 Pa. Super. 80, 85, 146 A.2d 323 (1958). While recognizing that it is not necessary for an applicant to present proof of need relating to every point in the territory requested, the Commission is still duty bound to withhold issuing a favorable order “without a basis in evidence having rational probative force.” Consolidated Edison Co. v. National Labor Relations Board, 305 U.S. 197 (1938), cited in Leaman Transportation Corporation v. Pennsylvania Public Utility Commission, 153 Pa. Super. 303, 308, 33 A.2d 721 (1943). Therefore, before a Certificate of Public Convenience may be issued by the Commission, the applicant must present substantial evidence that a need for the proposed service exists in the application territory. Dutchland Tours, Inc. v. Pennsylvania Public Utility Commission, 19 Pa. Commw. 1, 7, 337 A.2d 922 (1975).

The Commission revised and clarified its entry standards involving the need criteria enumerated in 52 Pa. Code §41.14(a) in Application of Blue Bird Coach Lines, Inc., 72 Pa. P.U.C. 262 (1990). The Commission in Blue Bird, *supra*, promulgated the following simplified interpretation of the burden now required by 52 Pa. Code §41.14(a), stating:

When, through relevant, probative, competent and credible evidence of record, a motor common carrier applicant has shown that the applicant's proposed service will satisfy the supporting witness' asserted transportation demand/need, the applicant has sustained its burden of proof under subsection 41.14(a) by establishing that "approval of the application will serve a useful public purpose, responsive to a public demand or need." (at p. 274)

In discussing the type of evidence required to establish need for the proposed service in Blue Bird, *supra*, the Commission made the following pertinent statements:

The witnesses supporting a motor common carrier application must be legally competent and credible, *e.g.*, D.F. Bast, Inc.; Merz White Way Tours v. Pennsylvania Public Utility Commission, 204 Pa. Superior Ct. 43, 201 A.2d 446 (1964), and their testimony must be probative and relevant to the application proceeding. *e.g.*, Purolator Courier Corp. I; Dutchland Tours, Inc.; Morgan Drive Away, Inc. II; 66 Pa. C.S. §332(b). The supporting witnesses must articulate a demand/need for the type of service embodied in the application. *e.g.*, Purolator Courier Corp. I; Re Lenzner Coach Lines, Inc.; Re Mobilfone of Northeastern Pennsylvania, Inc.; Re James A. Means, 53 Pa. P.U.C. 216 (1979); Re Hesser Bros., Inc., 52 Pa. P.U.C. 69 (1978). Moreover, the supporting witnesses must identify Pennsylvania origin and destination points between which they require transportation, and these points must correspond with the scope of the operating territory specified in the application. *E.g.*, Re Nothstein Bros., Inc., 64 Pa. P.U.C. 411 (1987); Re Purolator Courier Corp., 50 Pa. P.U.C. 308 (1976). (at p. 274).

In applying the standards set forth in Blue Bird to this case, it is clear that the applicant has failed to demonstrate a public demand or need for the requested service.

This case is factually similar to the Commission decision in Application of Primo Limousine Co., Inc., Docket No. A-00111548, F. 1, Am-A (Initial Decision dated May 1, 1998; Opinion and Order adopted May 4, 1999). In the Primo Limousine case, Administrative Law Judge Larry Gesoff denied the application for failure of the applicant to demonstrate need for service. The Administrative Law Judge determined that the testimony of witnesses who had a personal reason to testify unrelated to his/her alleged need should not be given any weight. In that regard, the Administrative Law Judge stated:

Finally, each witness had a personal reason to testify unrelated to their alleged need. One witness dates the sister of the owner of Applicant. Another testified because the man who dates the sister requested him to do so. The third was asked to testify by a friend of the owner of Applicant. This personal interest and bias reduces the credibility of testimony which already is not probative. Applicant has not met its burden under Section 41.14(a) of the Commission's regulations. As a result, Applicant has not established that approval of this Application will serve a useful public purpose, responsive to a public demand or need. (I.D. 3)

The Commission agreed with the Administrative Law Judge and denied the application.

In this case, many of the public witnesses had a personal reason to testify unrelated to their alleged need, just as was the case in Primo, supra. For example, Anthony Pantoni, who is a commercial realtor for Collier's International of Pittsburgh, assisted the applicant in securing its office in Sewickley. (Tr. 24-26) He has maintained a business relationship with Mr. and Mrs. Coll since the time that he helped them establish their business location in Sewickley. (Tr. 26) John Sherry has been Mr. Coll's attorney for 41 years and he and Mr. Coll have been friends since first grade. (Tr. 110)

Mr. Sherry and his wife are social friends with Mr. and Mrs. Coll. (Tr. 110). Mr. Sherry testified in support of an application of the applicant five or more years ago and never moved after he testified at that time. (Tr. 111) Kimberly Aukerman became aware of this application through Josh Mastascusa, who works for the applicant and who is her son. Mr. Mastascusa is a Business Manager for the applicant. (Tr. 119-120) Patsy Mooney is the mother of Kimberly Aukerman. (Tr. 129-130) Ms. Mooney testified that she would use the applicant “because my grandson works for them.” (Tr. 129) Penny Rodgers is an employee of the applicant and is one of the persons who took the calls that are set forth on Applicant’s Exhibit 12. (Tr. 233-234) John Lettrich is also an employee of the applicant where he has been employed since 2008. (Tr. 153) Mr. Lettrich is a dispatcher for the applicant at the Bethel Park office. (Tr. 154) The testimony of these six witnesses should not be given any weight based upon the fact that they had a personal reason to testify unrelated to an alleged need.

This case is also factually similar to the Commission decision in Application of Armstrong Millien, A-2009-2099553 (Opinion and Order adopted May 6, 2010), where the Commission denied an application for failure to demonstrate that approval of the application would serve a useful public purpose, responsive to a public demand or need. The basis for the decision was that the testimony did not establish that someone would actually use the applicant’s service. In denying Exceptions filed by the applicant, the Commission relied upon the Commonwealth Court’s decision in Ace Motor & Storage, Inc. v. Pa. P.U.C., 935 A.2d 75 (2007), stating:

In reversing the Commission's decision in Ace, the court specifically found that the decisions in Blue Bird and Yellow Cab make clear that the Commission and the courts of Pennsylvania have required the testimony of actual potential users of the proposed service. (at p.5)

The public witnesses in this case who did not have a personal reason to testify unrelated to an alleged need did not testify concerning any future service needs for which arrangements had been made and, as such, failed to demonstrate that they would actually use the applicant's service. Gillian Yahnite testified that she might possibly need service in the future from Monongahela, Washington County, to Cranberry Township as a result of a possible job transfer involving her husband. (Tr. 35-36) Ms. Yahnite admitted that the move from their existing residence is entirely dependent upon whether her husband, who works for Westinghouse, gets a promotion, which has not yet occurred. (Tr. 43) Ms. Yahnite also testified that the Westinghouse facility in Cranberry Township is located just across the Allegheny County-Butler County line and she admitted that it is entirely possible that they could move to a point in Allegheny County where the applicant can already provide service. (Tr. 42-43) Emerald Van Buskirk resides in Peters Township, Washington County. (Tr. 45) Ms. Van Buskirk testified that she and her husband are considering downsizing within the next two years. (Tr. 44-45) However, Ms. Van Buskirk and her husband have not chosen a location to which they will move and have not even looked. (Tr. 45) Ms. Van Buskirk indicated that she could not say where they would relocate but that it would be within a 50 mile radius of Pittsburgh. (Tr. 46) They too may relocate to a point in the applicant's existing service territory, assuming that they do relocate. Janet Bouma resides in Champion, Fayette County. (Tr.

51-52) She testified that she expects to move from one house in Fayette County to another house in Fayette County within eight months to a year but has not yet found another place in Fayette County to move to. (Tr. 52, 56) Suzanne Froelich testified that she and her husband plan to relocate from a rented home in Zelienople, Butler County to either Butler or Beaver County but admitted that she doesn't have any move scheduled. (Tr. 63-64, 69) Timothy Edris testified that he and his family are planning on moving from Beaver Falls back to the central Pennsylvania area where he grew up in the next year or year and a half. (Tr. 70-71) Mr. Edris admitted that things could get in the way of their plans. (Tr. 71) Mr. Edris admitted that he has not bought a house and has not sold his house and it is always a possibility that he will change his mind and not move. (Tr. 79-80) Julie Ann Sullivan, who resides in Peters Township, Washington County, testified that she is going to relocate to the Mt. Lebanon-Dormont area in Allegheny County. (Tr. 82) The applicant can already handle this movement under its existing authority and the testimony of this witness is therefore irrelevant. Robert Flock resides in Belle Vernon, Westmoreland County. (Tr. 86) He testified that he and his wife are considering downsizing but are not sure whether they want to move to Huntingdon, WV, St. Louis, MO, Greensburg, PA or Allentown, PA, or even stay where they are. (Tr. 87-88) Mr. Flock's wife is from Huntingdon, WV and it is possible that they will relocate to a home that she owns there. (Tr. 92) Mr. Flock indicated that he has not narrowed down at all where he wants to move to. (Tr. 88) Concerning his plans, Mr. Flock testified:

JUDGE DUNDERALE: So you don't know whether you might move to another state and you might move in Pennsylvania?

THE WITNESS: That's correct

Edward Sickmund, who resides in McMurray, Washington County, testified that he may require household goods transportation for his daughter from his residence in McMurray to the Squirrel Hill, Allegheny County, area. (Tr. 94) The applicant can already provide this service under its existing authority and this testimony is irrelevant to this application. Mr. Sickmund also mentioned that he may require service for a possible move for his son, who attends college in Erie, if he moves off campus after his freshman year. Mr. Sickmund is not even sure whether his son will move to an on-campus apartment or an off-campus apartment and if he moves to an on-campus apartment it could admittedly be furnished. (Tr. 103)

Although the testimony of witnesses Anthony Pantoni, John Sherry, Kimberly Aukerman, Patsy Mooney, Penny Rodgers and John Lettrich should not be given any weight based upon the fact that they had a personal reason to testify unrelated to an alleged need, as discussed above, even if their testimony is considered, they also failed to testify concerning any future service needs for which arrangements have been made and, as such, have failed to demonstrate that they would actually use the applicant's service.

Anthony Pantoni, who is the applicant's realtor and has maintained a business relationship with the applicant's owners, testified that he expects to move from Cranberry Township, Butler County, to Lancaster Township, Butler County, within the next year but has not yet located a place to purchase and admitted that he may never find a suitable house in Lancaster Township, Butler County, or anywhere else and he may not move from his house in Cranberry Township. (Tr. 27, 29-30) John Sherry, who has been Mr.

Coll's attorney for 41 years and friends with him since first grade, testified that he and his wife may submit a bid on a house four miles from where they live but testified concerning the people that own this house: "I mean, the plans are somewhat tentative because they want to find a place to buy down in Florida first." (Tr. 105-106) He also testified about possibly repurchasing a house that he sold in Somerset County five years ago but admitted that this purchase has not materialized. (Tr. 106) Kimberly Aukerman, who is the mother of the applicant's Business Manager, testified that she has a two car garage full of household items in Greensburg that she is distributing to members in her community. She testified that she would like to have the applicant provide the transportation for the individuals securing the furniture. (Tr. 116-118) Ms. Aukerman did not know what the applicant's minimum charge for transportation service was and admitted that it is approximately 38 miles from the applicant's closest facility to Ms. Aukerman's Greensburg residence. (Tr. 122, 126) Patsy Mooney, who is the grandmother of the applicant's Business Manager, testified that she presently resides in Beaver County and is interested in moving to a smaller facility "toward Ligonier". (Tr. 127) Neither Ms. Mooney nor her husband have as of yet contacted a realtor in the Ligonier area to try to find a place. (Tr. 131) Penny Rodgers, who is an employee of the applicant, testified that she and her mother would like to move within the next six months. (Tr. 139-140) Concerning when she would move, Ms. Rodgers stated: "It's just whenever I can convince my mom that this is the right thing to do." (Tr. 141) John Lettrich, who is also an employee of the applicant, testified that he was going to be moving within the next eight or nine months to Westmorland or Armstrong County



because his place is too big. (Tr. 151) Mr. Lettrich stated concerning whether he had visited the area where he was planning to relocate: “Nothing is set in stone yet.” (Tr. 152)

The witnesses for the applicant also did not indicate that they had made any inquiry concerning the presently available household goods service in the application territory. As a result, these witnesses have no knowledge regarding the sufficiency of present service. In that regard, the factual situation in this case is similar to the factual situation in Willow Grove Yellow Cab Company v. Pennsylvania Public Utility Commission, Pa. Commw. Ct. 424, C.D. 1988 (decided March 20, 1989, Opinion not reported), a case in which the Commonwealth Court reversed the Commission’s grant of authority on the basis that the testimony of the supporting witnesses demonstrated that they had no knowledge regarding need for the proposed service because these witnesses had not availed themselves of existing service. Willow Grove, Slip Opinion, p.6. A copy of the Willow Grove case is attached to this Main Brief as Appendix A. The testimony of the public witnesses in this case, like in the Willow Grove case, demonstrates that they have no knowledge regarding need for the proposed service because these witnesses have not availed themselves of existing service.

The applicant in this case also attempted to demonstrate public demand or need for service through the use of Applicant’s Exhibit 12, which the witness for the applicant stated is a list of service requests but in reality is nothing more than a list of inquiries made by persons who visited the applicant’s website and/or the franchisor’s website. Applicant’s Exhibit 12 should be given no weight by the Commission. The testimony in

this case is that Exhibit 12 was prepared by Mr. Coll from slips prepared by the applicant's customer service representatives who handwrote information on the slips and gave them to Mr. Coll who then prepared Exhibit 12. (Tr. 195) The slips used to prepare Exhibit 12 were prepared based on a customer service representative returning a call to someone who made a hit on the applicant's website or the franchisor's website. (Tr. 195-197) The underlying documents from which the list of service requests was prepared were thrown away. (Tr. 196) The information on the applicant's website and the franchisor's website did not indicate how many other companies' websites these individuals may also have clicked into and sent their information to. Mr. Coll admitted that they may have sent this information to numerous other moving companies' websites. (Tr. 199, 232) He also admitted that he was not aware of whether any of the persons shown on Exhibit 12 were even moved by a household goods mover. None of these persons were witnesses supporting this application. (Tr. 202-203)

Applicant's Exhibit 12 is inherently unreliable and should be given no weight since the applicant failed to produce the witnesses who allegedly took the calls and prepared the slips from which Exhibit 12 was prepared. Not only did the applicant fail to produce the call takers who actually took the calls but also failed to produce the slips, which were destroyed. The protestants were not able to test the credibility of the call takers and were not able to determine the validity of the exhibit without the underlying documentation.

In addition to the flaws in Exhibit 12 mentioned above, it should also be noted that this document is highly questionable since many of the movements on Exhibit 12 were

actually movements that had neither an origin nor a destination in the application territory (for example, a movement from Grove City to Grove City on April 25, 2011). (Tr. 236)

Grove city is located in Mercer County, which is not in the application territory. Some examples of other movements on Exhibit 12 which do not have an origin point or destination point in the application area include from Kingston (Luzerne County) to Mechanicsburg (Cumberland County) on March 23, 2011; from Venus (Venango County) to Johnstown (Cambria County) on May 4, 2011; from Waynesburg (Greene County) to Centerville (Crawford County) on May 11, 2011; and from East Brady (Clarion County) to Grove City (Mercer County) on July 12, 2011. Also, there were many area codes on the applicant's list of service requests outside of the western Pennsylvania area codes, which are the 412, 724 and 814 area codes. (Tr. 241) In fact, there were 36 different area codes on Exhibit 12 other than the 412, 724 and 814 area codes (specifically, 313, 321, 847, 337, 317, 919, 606, 937, 414, 570, 985, 856, 909, 585, 903, 815, 304, 617, 772, 850, 215, 317, 248, 567, 817, 863, 973, 202, 352, 859, 717, 601, 924, 765, 524, 484, and 931). It is simply incomprehensible that service requests for service originating in five western Pennsylvania counties could include movements with neither an origin nor destination in the application territory and could include calls received from 36 different area codes outside of western Pennsylvania. Furthermore, many of the entries on Exhibit 12 indicate "Westmoreland County" as an origin or destination rather than a specific point in Westmoreland County. (Tr. 242) There are actually 81 instances where "Westmoreland County" rather than a point in Westmoreland County is listed on Exhibit 12 as an origin or destination. The witness for the applicant

could not explain these obvious flaws in Exhibit 12. These questionable entries in Exhibit 12 clearly call into question its reliability and it should therefore be accorded no weight.

The applicant in this case has failed to demonstrate that there is a public demand or need for the proposed service.

B. THE RECORD DEMONSTRATES THAT THE APPLICANT LACKS A PROPENSITY TO OPERATE SAFELY AND LEGALLY.

52 Pa. Code §41.14(b) provides as follows:

(b) An applicant seeking motor common carrier authority has the burden of demonstrating that it possesses the technical and financial ability to provide the proposed service, and, in addition, authority may be withheld if the record demonstrates that the applicant lacks a propensity to operate safely and legally. (emphasis added)

Evidence that an applicant engaged in regulated activities without Commission authorization is sufficient to establish a lack of propensity to operate legally, unless the applicant proves, by clear and convincing evidence, that such unauthorized operation was conducted in good faith, under a bona fide misunderstanding of the law or the carrier's rights. Bunting Bristol Transfer, Inc. v. P.U.C., 210 A.2d 281 (Pa. 1965); In Re: N.E. Delta, Inc., A-00108272, 70 Pa. P.U.C. 183 (1989); In Re: Constance Maglio, A-00107736, 69 Pa. P.U.C. 450 (1989); Application of Penny Saver Direct, Inc. t/d/b/a Two Guys & A Truck, A-00116710 (2001).

The applicant here has provided unlawful service at least in Washington County. The applicant received a complaint from the Public Utility Commission in 2010

involving providing transportation in Washington County and paid a fine. (Tr. 194) The applicant also admitted being admonished in a telephone call by a PUC enforcement officer that the applicant was not allowed to provide service in Washington County. (Tr. 220) The applicant also admitted handling a shipment on May 25, 2010 consisting of dining room furniture, living room furniture and bedroom furniture from an apartment in the Stone Creek Apartments in Washington, PA to another apartment in the same Stone Creek Apartments. The applicant admittedly charged its tariff rates for this movement. (Tr. 224) The applicant did not prove, by clear and convincing evidence, that such unauthorized operations were conducted under a bona fide misunderstanding of the law or the applicant's rights.

The applicant has also provided unlawful service by advertising its intrastate service outside of its existing intrastate service area, which involves only Allegheny County. The witness for the applicant admitted that the applicant's website is a form of advertising and yet did not have any notation indicating that PUC service could only be provided if the origin or destination was in Allegheny County. (Tr. 244) This advertising outside of Allegheny County obviously resulted in the inquiries set forth on Exhibit 12.

The applicant has also failed to comply with the Commission's regulations in providing household goods service under its existing authority. 52 Pa. Code §31.125 provides that every shipment of household goods of 40 miles or more must be weighed by a public weighmaster. The witness for the applicant admitted that the applicant never weighs shipments before they are moved, regardless of whether they are more than 40

miles or less than 40 miles. (Tr. 231) 52 Pa. Code §31.21 provides that a carrier must complete a detailed inventory listing all items to be moved and their condition and this requirement cannot be waived for moves of 40 miles or more. The witness for the applicant admitted that the applicant does not always go out and view the shipment and do a written inventory involving shipments over 40 miles. (Tr. 229) Also, the witness for the applicant admitted that for shipments involving two bedrooms or less, the applicant does not go to the site to do a viewing and to do an inventory but rather just does it over the phone. (Tr. 227) The applicant does not comply with the Commission's regulations under its existing authority and should not be granted additional authority under these circumstances.

The applicant has also been cited by the United States Department of Transportation for fatigued driving violations and driver fitness violations in 2010 and 2011. (Tr. 193-194) This clearly calls into question whether the applicant is a safe operator.

The record on this case demonstrates that the applicant lacks a propensity to operate safely and legally.

## VI. PROPOSED CONCLUSIONS OF LAW

Protestants request that the Administrative Law Judge make the following conclusions of law:

1. This Commission has jurisdiction over the subject matter and the parties in this proceeding.
2. The application is properly before the Commission.
3. The application must be denied since the applicant has failed to demonstrate that approval of the application will serve a useful public purpose, responsive to a public demand or need.
4. The application must be denied since the record demonstrates that the applicant lacks a propensity to operate safely and legally.

VII. PROPOSED ORDERING PARAGRAPHS

IT IS ORDERED:

That the application of Canterbury International, Inc. t/a Two Men and a Truck at Docket No. A-2011-2251336 for a certificate of public convenience for the right to begin to transport household goods in use, from points in the Counties of Beaver, Butler, Westmoreland, Fayette and Washington, to points in Pennsylvania, is denied for the failure to satisfy the burden of proof.

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Katrina L. Dunderdale  
Administrative Law Judge

Date: \_\_\_\_\_, 2012



### VIII. CONCLUSION

For all of the foregoing reasons, protestants respectfully request that the application of Canterbury International, Inc. t/a Two Men and a Truck be denied.

Respectfully submitted,

VUONO & GRAY, LLC

By: 

William A. Gray, Esq.

Attorney for

SOUTH HILLS MOVERS, INC.

VESELY BROS. MOVING & STORAGE, INC.

MCKEAN & BURT, INC., t/b/a

ALLWAYS MOVING & STORAGE

ALL WAYS WORLD WIDE MOVING, INC.

WELESKI TRANSFER, INC.

LYTLE'S TRANSFER & STORAGE, INC.

HOY TRANSFER, INC.

Protestants

VUONO & GRAY, LLC  
310 Grant Street, Suite 2310  
Pittsburgh, PA 15219  
(412) 471-1800

Due Date: March 2, 2012

/105641

WILLOW GROVE YELLOW CAB : IN THE COMMONWEALTH COURT  
COMPANY, : OF PENNSYLVANIA  
Petitioner :  
v. :  
PENNSYLVANIA PUBLIC UTILITY :  
COMMISSION, :  
Respondent : No. 424 C.D. 1988

BEFORE: HONORABLE DAVID W. CRAIG, Judge  
HONORABLE FRANCIS A. BARRY, Judge  
HONORABLE BERNARD L. MCGINLEY, Judge

ARGUED: September 13, 1988

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY JUDGE MCGINLEY

FILED: March 20, 1989

Willow Grove Yellow Cab Co., Inc., t/d/b/a Bux-Mont Yellow Cab Company (Willow Grove) appeals from a decision of the Pennsylvania Public Utility Commission (Commission) granting the application of Christopher D. Gerhardt (Gerhardt) to do business as Warminster Cab Company.

Gerhardt applied to the Commission to do business as Warminster Cab Company transporting persons upon call or demand in the townships of Warminster, Upper Southampton, Lower Southampton, Northampton and the Borough of Ivyland in Bucks County and the Borough of Hatboro and a portion of the townships of Upper Moreland and Lower Moreland in Montgomery County. The application was protested by Willow Grove and Russell F. Maxwell, Jr., t/d/b/a Lower Bucks Taxicab Company (Lower Bucks),<sup>1</sup> each of which holds a Certificate of Convenience to provide taxi service to geographic areas which include the area which Gerhardt proposed to serve. After hearing, the Administrative Law Judge entered an Initial Decision in which he granted Gerhardt's application. On November 25, 1987, Willow Grove filed Exceptions to the Initial Decision. On December 9, 1987, Gerhardt (by counsel) filed his Reply (captioned Answer) to Willow Grove's Exceptions. On December 14, 1987, the Secretary of the Commission received a

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<sup>1</sup> Lower Bucks is not a party to this appeal.

request from Willow Grove that Gerhardt's Reply Exceptions be rejected, dismissed or returned due to what Willow Grove contended was an untimely filing. On the same date the Secretary received a letter from Gerhardt which asserted that his Reply was timely filed, and which requested, in the alternative, that his Reply be accepted nunc pro tunc.<sup>2</sup>

The Commission entered an order denying Willow Grove's Exceptions, adopting the ALJ's initial decision, and granting Gerhardt's application in full. Willow Grove timely filed a petition for review with this Court.<sup>3</sup> Gerhardt is an intervenor in this appeal.

Willow Grove raises three issues for our consideration:

1) Whether the Commission's finding that Gerhardt satisfied his burden of proof that "a public need exists for the proposed service" pursuant to 52 Pa. Code §41.14(a)<sup>4</sup> was supported by

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<sup>2</sup> Gerhardt suggests that service of the Exceptions did not occur until November 30, 1987, even if they had been delivered earlier by the U.S. Postal Service, because his counsel was not in his office to receive Willow Grove's Exceptions until that day, due to the fact that his law office was closed during the Thanksgiving holiday.

<sup>3</sup> Willow Grove initially filed an administrative appeal from the Commission's order. The Commission did not consider the administrative appeal, due to the fact that its rules do not provide for such an appeal.

<sup>4</sup> 52 Pa. Code §41.14(a) provides:

An applicant seeking motor common carrier authority has a burden of demonstrating that approval of the

Continued on Next Page

substantial evidence;<sup>5</sup> 2) Whether the Commission erred by failing to make any findings of fact with respect to 52 Pa. Code §41.14(c); and 3) Whether the Commission erred in finding that Gerhardt's answer to Willow Grove's exceptions was timely filed.

When an order involving a certificate of public convenience is granted, this court may not disturb that order except for an error of law, lack of evidence to support the finding, determination or order of the Commission, or a violation of constitutional rights. De Gregorio v. Pennsylvania Public Utility Commission, 85 Pa. Commonwealth Ct. 354, 481 A.2d 1241 (1984).

We address first Willow Grove's contention that the Commission's finding that Gerhardt proved that "a public need exists for the proposed service" was not supported by substantial evidence. Although all parties refer to that statement as a finding, we believe that the statement is more accurately

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application will serve a useful public purpose,  
responsive to a public demand or need.

<sup>5</sup> Willow Grove characterizes this issue three ways: 1) The Commission erred in finding that granting the application of Gerhardt for a certificate of public convenience will serve a useful public purpose, responsive to a public demand or need; 2) The Commission abused its discretion in granting a certificate of convenience to Gerhardt; and 3) The Commission failed to base its findings on substantial evidence. Although the phrasing might indicate three different issues, a review of Willow Grove's brief indicates that the three arguments actually raise the same issue.

described as a conclusion of law. Thus, the issue which Willow Grove actually is raising is whether that conclusion was supported by findings, and whether the findings which support the conclusion were, in turn, supported by substantial evidence.

The findings which support the conclusion are set forth in the discussion portion of the ALJ's initial decision. The ALJ found that:

[the] collective testimony [of the witnesses] disclose[d] an unreasonable length of response time from call to actual service. The situation was so unacceptable that one witness testified that even though he had occasion for need of taxi service, he did not bother to call based on past experience of a protracted wait for service. . . . Moreover, certain witnesses were unaware that protestant cab companies even existed. No cabs are ever observed in the area.

. . . . .

The need in the entire proposed service area, however, warrants comment. The ALJ is aware that all of the applicant's witnesses reside in Bucks County, and that he produced no witnesses who reside in the Borough of Hatboro, and that portion of the townships of Upper Moreland and Lower Moreland on and northeast of Byberry Road, Montgomery County, which also form part of the proposed service area.

The ALJ is also aware that the points in Montgomery County are geographically close and/or abut the Bucks County points.<sup>6</sup>

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<sup>6</sup> ALJ's Initial Decision at 18-19, Oct. 28, 1987.

Based on this evidence the ALJ concluded that "Applicant has demonstrated that a public need exists for the proposed service."<sup>7</sup>

The Commission adopted this conclusion, stating:

We agree with the Applicant on this issue. Although the ALJ did state his Findings of Fact in a somewhat conclusory form, he had discussed the issues of ability to provide the service, public need, and the convenience and accommodation of the public at greater length in the body of his Initial Decision. We therefore find no basis in Protestants' Exception No. 1 for reversal of the Initial Decision."<sup>8</sup>

Willow Grove argues that the evidence presented does not support the findings because the number of witnesses who gave testimony on Gerhard's behalf, i.e., seven, was insufficient; because no testimony was presented concerning the need for service in the areas in Montgomery County which Gerhard proposed to serve, or in Northampton Township and the Borough of Ivyland; and because the testimony of the witnesses failed to establish a "clear and persuasive demand" for additional service.

We disagree with Willow Grove's assertion that as a matter of law the testimony of seven witnesses is per se

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<sup>7</sup> Finding of Fact No. 2., ALJ's Initial Decision at 23.

<sup>8</sup> Commission's Opinion at 4.

numerically insufficient to establish need. In Purolator Courier v. Pennsylvania Public Utility Commission, 51 Pa. Commonwealth Ct. 377, 414 A.2d 450 (1980), we found that the testimony of nine supporting witnesses was sufficient to establish a need for the proposed service.

We agree, however, with Willow Grove's contention that the evidence which Gerhardt presented was not sufficient to establish a public need. 52 Pa. Code §41.14. The distinguishing factor between Purolator Courier and the matter sub judice is not the number of supporting witness, but rather the lack of evidence demonstrating public need. One might expect Gerhardt to present the testimony of witnesses who had a need for service which was not being met by the current providers. To the contrary, as the following synopsis demonstrates, the witnesses who testified on Gerhardt's behalf had no knowledge concerning the sufficiency of present taxi service or the need for the proposed service because they had not availed themselves of taxi service for several years.

Mr. Alan Peters of Warminster Township testified on direct examination that, in the fifteen years he has resided there, there had been "many times" when his car had been unavailable and he needed a cab ride to and from Southeastern Pennsylvania Transportation Authority's Warminster Train Station from which he catches a train each weekday to get to work in Philadelphia. He also stated that there had been occasions when



his car was unavailable and he needed transportation to get to and from the garage or to the store. Despite having needed such service, however, Mr. Peters had, to his recollection, only called for a cab on two occasions. In 1978, he called the petitioner to get a ride to his home from the train station and was told that there would be a thirty-five to forty minute wait before he was picked up. Later, he called the Hathboro Cab Company on an unspecified date in order to get a ride to the train station, only to learn that its cabs only made trips to the airport. Apparently, because he had never seen its cabs, he was unaware that Lower Bucks Taxicab Company existed. On cross-examination, Mr. Peters acknowledged that, during the previous six months, there had only been two occasions where his car was not available and he had needed a ride to the train station.

Ms. Rita Cicchetti of Warminster Township stated on direct examination that, in the nine years she lived there, there had been "several times" when her twenty-one year old daughter, who lived with her, needed a cab in order to get either to or from the Warminster Train Station, from which she would catch a train to or from Philadelphia, where she would visit friends,<sup>9</sup> or, when her car broke down, to the Naval Development in Warminster where she worked. There had also been situations when she herself

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<sup>9</sup> Ms. Cicchetti stated that her daughter did not want to drive her car to the train station and leave it there because a car had been stolen there.

needed a cab. Despite having needed such service, however, she had never called for a cab. She stated that, until week before the hearing in this matter, she had not been aware that Lower Bucks Taxicab Company existed, apparently because she had never seen its cabs. On cross-examination, however, she acknowledged that, until a week before the hearing in this matter, neither she nor her daughter had checked the telephone book to determine whether there was a cab company that served her area. When she did so, she discovered that there were several cab companies that provided service in her area.

Ms. Sarah Babaian of Upper Southampton Township, testified on direct examination that, in the ten years she had lived there, there had been occasions when she had needed a cab but that she had never called for one because she believed that no cab company provided service in her area. She apparently believed this because she had never seen Lower Bucks' or petitioner's cabs. She stated that she would need cab service approximately two to three times a month when all of the cars in her household were being used. On cross-examination she explained that she visits her elderly father three times a week and needs an alternate form of transportation on those occasions when all of the cars in her household were being used.<sup>10</sup> She also admitted that, in the last

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<sup>10</sup> She also stated on re-direct examination that she would appreciate having cab service available on those occasions when a car would break down and one of her children would need alternate transportation to get to a college exam and that she would have

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four years, she had never even checked the white or yellow pages of the Lower Bucks County telephone directory to determine if there was any cab service available in her area and that she had never made any inquiries to determine if any cab company provided service in her area.

Mr. Jack Smith, of Upper Southampton Township, testified that, in the nine years he had lived there, neither he nor anyone in his immediate household had ever needed to call for a cab. He merely stated that, on one occasion, he called petitioner for a cab to pick up his aunt from Florida, who was visiting him, and that his aunt had to wait forty-five to fifty minutes at the airport before being picked up.

Mr. Thomas Magill, of Lower Southampton Township, testified that, in the ten years he had lived there and in Warminster Township, there had been occasions in 1980 or 1981 when he needed alternate transportation to get to and from work in Southampton or to and from a train station, from which he would catch a train to Philadelphia, because he was having severe car problems and was living by himself. He also had needed a cab on occasions in approximately November of 1986 and March of 1987 but did not call for one because, due to past experiences with local

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Continued from Previous Page  
taken a cab to get to her dentist's office instead of walking there.

cab operations, he found there was too much time to wait. Mr. Magill also stated that there had been occasions where he would have liked to have taken a cab to the train station but didn't. He indicated that he had never heard of the Lower Bucks Taxicab Company. On cross-examination, Mr. Magill admitted that, since June of 1983, he had never taken a cab and had only called for a cab once. In November of 1985, he called Langhorne Cab Company to get a ride from his apartment to the Trevose Train Station, where he was to catch a train to the airport, only to learn that they could not guarantee that they would be able to get him to the train station on time to meet his train.

Ms. Eleanor Stevenson, of Lower Southampton Township, testified that, in the thirty-three years she had lived there, she had not had an occasion to call for a cab for twenty-eight years. Nevertheless, she went on to state that, if cab service was available in her area, she would use a cab to get to the Somerton Train Station, from which, about once a month unless bad weather prevents her from doing so, she catches a train into Philadelphia to go shopping and pay her bills or to get to her doctor's office. She had never been to a doctor since her husband had died, which was twenty months prior to the hearing. Presently, Ms. Stevenson walks to the train station, which is a little more than a mile away or gets her neighbor to drive her there. She was not aware that petitioner or Lower Bucks Taxicab Company existed.

Mr. Warren Straub of Upper Southampton Township, testified that, in the period of twenty-nine years he had lived there, there was only one occasion that he called for a cab; that being in September of 1985. At that time, he called the Langhorne Cab Company to drive him from the George Washington Motor Lodge to his home and had to wait approximately forty-five minutes before being picked up. He also testified that there had been occasions where he had to take his car to a repair shop in Langhorne and wait until it was fixed and that, if there had been cab service available, he would have had a cab take him home and then bring him back to the shop after the car was fixed. He also was not aware that petitioner or Lower Bucks Taxicab Company existed because he had never seen their cabs.

Having determined that the Commission's findings and conclusion were not supported by substantial evidence, we reverse the decision of the Commission.<sup>11</sup>

  
BERNARD L. MCGINLEY, Judge

Judge MacPhail did not participate in the decision in this case.

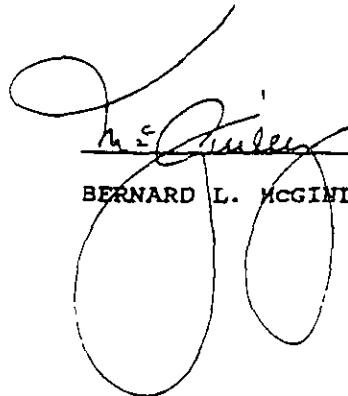
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<sup>11</sup> We do not address the remaining issues which Willow Grove raises.

WILLOW GROVE YELLOW CAB : IN THE COMMONWEALTH COURT  
COMPANY, : OF PENNSYLVANIA  
Petitioner :  
v. :  
PENNSYLVANIA PUBLIC UTILITY :  
COMMISSION, :  
Respondent : No. 424 C.D. 1988

O R D E R

AND NOW, this 20th day of March, 1989, the  
order of the Pennsylvania Public Utility Commission in the above-  
captioned matter is reversed.

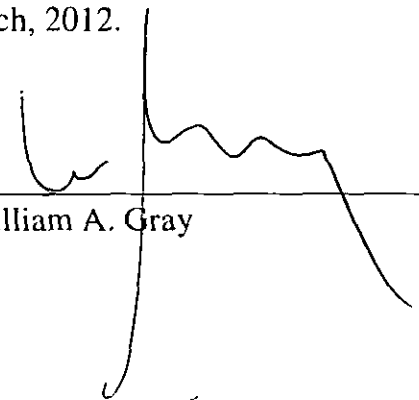
  
BERNARD L. MCGINLEY, Judge

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served two (2) copies of the Main Brief of Protestants on the following attorney for the applicant by email and by first class mail, postage prepaid as follows:

Kenneth A. Olsen, Esq.  
33 Philhower Road  
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Dated at Pittsburgh, PA this 2nd day of March, 2012.

  
William A. Gray



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Canterbury Int'l A-2011-2051336  
Protestants' Brief

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