BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

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IN THE MATTER OF:

APPLICATON OF

CANTERBURY INTERNATIONAL, INC. d/b/a

TWO MEN AND A TRUCK

NUMBER A-2011-2251336

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REPLY BRIEF

OF

APPLICANT

\_\_\_\_\_\_\_\_\_\_\_\_

Dated: March 15, 2012 Filed By:

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BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

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IN THE MATTER OF:

APPLICATION OF

CANTERBURY INTERNATIONAL, INC. d/b/a

TWO MEN AND A TRUCK

NUMBER A-2011-2251336

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REPLY BRIEF

OF

APPLICANT

\_\_\_\_\_\_\_\_\_\_\_\_

Comes now, Canterbury International, Inc. d/b/a Two Men And A Truck, a corporation of the Commonwealth of Pennsylvania, with address at 3555 Valley Drive, Pittsburgh, PA 15234 (hereinafter referred to as Applicant), by its Attorney, Kenneth A. Olsen, and in accordance with the Rules of Practice of the Pennsylvania Public Utility Commission (“Commission”) and pursuant to the February 16, 2012 Amended Briefing Order of the Hon. Katrina L. Dunderdale, ALJ, files this, its Reply Brief, in the above entitled proceeding.\*

I

### REPLY TO STATEMENT OF THE CASE

In many respects, Protestants’ Statement of the Case is correct regarding the procedural history of the instant proceeding, but differs from Applicant’s Main Brief in its respective treatment of the of the detail of the history of this proceeding. Therefore, Applicant submits that the correct and more accurate Statement Of The Case - History Of The Proceeding is that set forth

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\*References to the record in this proceeding will be governed by the following abbreviations:

Tr. = Transcript of oral hearing and page number; Ex. = Exhibits received into evidence

on pages 3 through 5 of Applicant’s Main Brief dated March 1, 2012.

II

REPLY TO STATEMENT OF QUESTIONS INVOLVED

While Protestants Statement Of Questions Involved sets forth the issues presented in generic terms, the wording of their presented questions differs from Applicant’s Statement Of Questions Involved and the answers Protestants provided to their presented questions contradicts the entire record and evidence adduced in this proceeding. Accordingly, Applicant submits that the proper Statement Of Questions Involved, to be adopted herein by the Honorable Administrative Law Judge, is that set forth on page 21 and 22 of Applicant’s Main Brief dated March 1, 2012.

III

REPLY TO PROPOSED FINDINGS OF FACT

While Applicant agrees with Protestants’ Proposed Findings of Fact Nos. 1-16, it disagrees with the remainder of Protestants’ Proposed Findings of Fact, since such are without factual support or foundation in the evidentiary record of this proceeding, or they recite information not relevant to the issues involved in this application proceeding, such as Protestants’ individual carrier operations.

For, example Applicant’s operating witness, Raymond Coll, testified to Applicant’s pre- employment and post-employment driver and mover training programs (Tr. 158-159; Applicant’s Ex. 7, 8, 9, 10, and 11); Applicant’s complaint and damage claim resolution policies (Tr.164-166, 167-168, 188); and Applicant’s intention to utilize the same policies in the expanded territory. (Tr. 176). Mr. Coll also testified to Applicant’s financial status and growth establishing that Applicant has the financial resources to conduct existing and proposed operations (Applicant’s Ex. 6); Applicant has experienced double digit growth in revenues each year since it began operations in May, 2005 with a five (5%) percent growth this past year (Tr. 156); and Applicant has sufficient financial resources, through an existing $100,000.00 PNC Bank line of credit and personal wealth of its stockholders that can be tapped into, to replace equipment, purchase or lease additional equipment, and hire additional personnel as needed if the instant application is granted. (Tr. 157, 176).

After re-direct of Applicant’s Mr. Coll and cross-examination of Protestant’s witness, it was learned that all federal equipment safety violations were immediately corrected upon the equipment’s return to Applicant; all federal driver violations were remedied by terminating employment of the drivers involved (Tr. 261, 263-264); the tariff (Debo George Ex. 1) proffered by Protestants as Applicant’s current tariff could not be identified by Applicant’s operating witness (Tr. 255-259; Applicant’s operating witness testified that Applicant’s current tariff contains recent amendments conforming to Commission regulations (Tr. 215, 223, 254-259); Protestant’s several hearsay telephone complaints to the Commission against Applicant were not documented and did not result in any Commission complaint; and Applicant’s internet advertisements were generic advertisements created on the franchisor’s website to direct public inquiries regarding Allegheny County, PA area household goods movements to Applicant, which responded that it did not have intrastate household goods in use authority outside of Allegheny County. (Tr. 245, 260-262). Protestants cannot use undocumented complaint allegations or alleged tariff violations as any evidence of unlawful operations by Applicant.

With respect to public need, Applicant presented fourteen (14) public witnesses’ testimony as to present and future need for household goods in use transportation to and from definite and stated points in Beaver, Butler, Fayette, Washington, and Westmoreland Counties. These witnesses testified that their need was as certain and definite as they could comprehend and testify to at the time of the hearing. The points testified to were: (1) Cranberry Township to Lancaster Township in Butler County for Anthony Pantoni (Tr. 22-34); (2) Monogahela, Washington County to Cranberry Township, Butler County for Gillian Yahnite (Tr. 35-43); (3) McMurray, Washington County to points within a 50 mile radius for Emerald Van Buskirk (Tr. 43-50); (4) Champion, Fayette County to another point in Fayette County for Janet Bouma (Tr. 50-61); (5) Zelienople, Butler County to point in Butler or Beaver County for Suzanne Froelich (Tr. 61-69; (6) Beaver Falls, Butler County to Polymer/Hershey, Dauphin County for Timothy Edris (Tr. 70-80); (7) McMurray, Washington County to Mount Lebanon, Allegheny County for Julie Ann Sullivan (Tr. 80-86); (8) Belle Vernon, Westmoreland County to Greensburg, Westmoreland County or to Allentown, Lehigh County for Robert M. Flock (Tr. 86-93); (9) McMurray, Washington County to Erie, PA and to another point in the application territory for Edward Sickmund (Tr. 93-104); (10) McMurray, Washington County to Hidden Valley, Somerset County and to another point in Washington County for John Sherry (Tr. 104-114); (11) Greensburg, Westmoreland County to other points in Greensburg, Westmoreland County for Kimberly Aukerman (Tr. 115-126); (12) Alliquippa, Beaver County to Ligonier, Westmoreland County for Patsy Gene Mooney (Tr. 126-137); (13) Ardara, Westmoreland County to Greensburg, Westmoreland County for Penny Ann Rodgers (Tr. 137-150); and (14) Lower Burrell, Westmoreland County to another point in Westmoreland County or to a point in Armstrong County for John Edward Lettrich (Tr. 150-155). Additionally, the public witnesses stated their desire to utilize Applicant.

In further support of its application, Applicant also presented evidence of a list of 394 service requests for household goods in use service in the proposed territory, which Applicant received from the public via telephone and email from February 21, 2011 to December 15, 2011. (Applicant’s Ex. 12; Tr. 171-172). Mr. Coll supervised the creation of the list of service requests, personally created the Excel spreadsheet that is Applicant’s Ex. 12 from handwritten notes of Applicant’s customer service representatives, supervises Applicant’s ongoing policy to document all inquiries for household goods service received via email or telephone, and described the process by which Applicant receives inquiries from the public via email or telephone for household goods service in and around or from and to Allegheny County, PA. (Tr. 171-175, 195-200). No referrals were made to other carriers when the callers were informed by Applicant it could not perform the requested move. (Tr. 200-201). Mr. Coll made a special effort to check that all these service requests were within the application territory, and perhaps only five listed requests may have been outside of the application territory. (Tr. 236-240). Mr. Coll also stated that telephone number area codes are not indicative of a caller’s residence location due people using cell phones as primary contact numbers and keeping their original cell phone numbers despite subsequent relocations (Tr. 241).

As to Protestants, none of the Protestants submitted quantitative evidence of the extent to which the grant of the instant application would endanger or impair their respective operations to the point of being contrary to the public interest. As a matter of fact, Protestants individually and collectively do not possess the entire operating authority sought in the instant proceeding, but only portions of the territory sought herein by Applicant.

Therefore, in view of the foregoing, Applicant submits that the correct and more accurate Proposed Findings Of Fact are those set forth on pages 32-33, and on pages 5 through 21 (under headings of Pertinent Testimony of Applicant, Supporting Public Witnesses, and Protestants) of Applicant’s Main Brief dated March 1, 2012, and requests that same be adopted by the Honorable Administrative Law Judge.

IV

REPLY TO SUMMARY OF ARGUMENT

Applicant disagrees with Protestants’ Summary of Argument. Protestants’ Summary of Argument only accurately summarizes Protestants’ Argument regarding the issues of Applicant’s fitness and public need. However, it is Applicant’s position that it has satisfied the Commission’s criteria set forth in 52 Pa. Code § 41.14. First, Applicant has demonstrated that approval of the instant application will serve a useful public purpose responsive to a public demand and need. Secondly, Applicant has demonstrated it possesses the technical and financial ability to provide the proposed service in a continuous and lawful manner. Inasmuch as the one shipment documented by a Commission complaint to have been performed by Applicant without authority has been adequately explained by Applicant as a misunderstanding and was resolved with the Commission, and the other undocumented allegations of Protestants were unsubstantiated hearsay of some telephone complaints which the Commission did not pursue with any proceedings, such cannot be a preclusion to a subsequent grant of authority and there has been no showing that Applicant lacks a propensity to operate safely and legally, thereby removing any such basis on which to withhold a grant of authority. Thirdly, there has been no showing or documentation that Protestants operations would be endangered or impaired contrary to the public interest by a grant of the instant application.

## V

### REPLY TO ARGUMENT

A. Applicant possesses the technical and financial abililty to provide the proposed service. Applicant has submitted ample evidence of its technical and financial ability to provide the proposed service in the form of amount and types of vehicles it utilizes in its authorized intrastate and interstate operations; the type and amount of vehicles it presently has available for use in the proposed operation if this application is granted; a description of its equipment maintenance and safety program; a description of its facilities and communications network; a description of its drivers, office, dispatching, and equipment maintenance personnel; a description of its driver qualifications and training program; a description of its present intrastate and interstate operations, a description of the type and amount of insurance it presently has in effect for the protection of the public; and a description of its financial condition showing sufficient assets and income to conduct present and the proposed operations. The credibility of the foregoing testimonial and documentary evidence adduced by Applicant regarding its technical and financial ability to provide the proposed service was sufficiently established during the hearings and not successfully attacked by Protestants.

Moreover, no showing has been made of any propensity by Applicant to operate in other than a lawful and safe manner. Through cross-examination of Applicant and direct examination of its own witnesses, Protestants attempted to show Applicant conducted unlawful operations on occasions, was advertising beyond the scope of authorized operations on the internet, and was not charging its filed tariff rates for existing operations. However, after re-direct of Applicant’s operating witness and cross-examination of Protestant’s witness, it was learned that all federal equipment safety violations were immediately corrected upon the equipment’s return to Applicant, all federal driver violations were remedied by terminating employment of the drivers involved (Tr. 261, 263-264); the tariff (Debo George Ex. 1) proffered by Protestants as Applicant’s current tariff could not be identified by Applicant’s operating witness (Tr. 255-259); Applicant’s operating witness testified that Applicant’s current tariff contains recent amendments conforming to Commission regulations (Tr. 215, 223, 254-259); Protestant’s several hearsay telephone complaints to the Commission against Applicant were not documented and did not result in any Commission complaints against Applicant; and the one complaint filed by the Commission against Applicant was adequately explained to and resolved with the Commission (Tr. 223, 325-330). Therefore, Protestants cannot use these undocumented and non-filed complaint allegations as any evidence of unlawful operations by Applicant.

With respect to Applicant’s internet advertisements, Applicant’s Mr. Coll explained that such were generic advertisements created on the franchisor’s website to direct public inquiries regarding Allegheny County, PA area household goods movements to Applicant, who responded that it did not have intrastate household goods in use authority outside of Allegheny County. (Tr. 245, 260-262).

The one documented trip by Applicant without appropriate operating authority was explained as a misunderstanding generated by a Zip Code destination within Applicant’s present authority, occurred without prior knowledge or authorization of Applicant’s management, and was stated by Applicant’s vice president that it was resolved with the Commission and steps taken for such misunderstanding to not occur again. Other unlawful activities, as to charging unfiled tariff rates, advertisements, and operations in Washington County, alleged by Protestants to have been performed by Applicant were not either not documented or substantiated by Protestants during the hearings. Upon re-direct of Applicant’s Mr. Coll and cross-examination of Protestant’s witness, it was learned that: (a) Mr. Coll could not identify the tariff (Debo George Ex. 1) proffered by Protestants as Applicant’s current tariff could not be identified by Applicant’s operating witness (Tr. 255-259); (b) Applicant’s current tariff filed by the Tristate Household Goods Conference contains recent amendments conforming to Commission regulations (Tr. 215, 223, 254-259); (c) the alleged Stonecreek Apartment move was probably an internal transfer of property belonging to management within the apartment complex and not a movement of household goods in use from or to a residence, but could not be recalled by Mr. Coll (Tr. 223-225); and (d) Applicant charges hourly rates for moves under 40 miles based upon exclusive use of the vehicle or expedited service and customers sign inventory waivers. (Tr. 225-231, 254-259). Importantly, and contrary to Protestants’ argument, this Commission’s regulations at 52 Pa. Code § 31.133(f) permit a shipper to waive the inventory requirement in writing, 52 Pa. Code § 31.125 requires weighing of shipments of household goods in use for shipments over 40 miles, and Applicant’s tariff filed with and approved by this Commission provides for charging of rates based upon exclusive vehicle use or expedited service thereby negating any inventory or weighing requirements over 40 miles.

Measured against the standards and principles espoused in Application of Friedman’s Express, Inc., Docket No. A-00024369, Folder 9, Am-B, Folder 10, Am-I, and in Loma, Inc. v. Pennsylvania Public Utility Commission, 682 A.2d 424 (Pa. Comwlth. 1996), the one documented trip outside of Applicant’s authority, and the other unlawful actions or tariff violations alleged, but not documented or substantiated, by Protestants do not support any conclusion that Applicant lacks the propensity to operate safely and lawfully.

It is well settled that in order for the Commission to conclude that an Applicant lacks a propensity to operate legally, the evidence of record, taken as a whole, must demonstrate that an Applicant has a persistent disregard for, flouting, or defiant attitude toward the Public Utility Code, or the orders and regulations of the Commission. Application of Central Transport, Inc., Docket No. A-00108155 (Order entered June 26, 1992). First, applicable case law has established the principle that a motor carrier authority applicant’s prior unlawful operations do not preclude the Commission from granting authority in a subsequent proceeding. Loma, Inc. v. Pennsylvania Public Utility Commission, 682 A.2d 424 (Pa. Cmwlth. 1996). The Commission can accept evidence presented by a motor carrier applicant, in a proceeding subsequent to any unauthorized operations, as credible to determine that the company is likely to comply with the Commission’s regulations in the future. Loma, Inc.v. Pennsylvania Public Utility Commission, supra. Consequently, the occurrence of isolated prior unlawful operation, and Protestants’ undocumented and substantiated allegations regarding tariff or authority violations, should not and does not form a basis upon which to deny Applicant’s instant application. Only one explained unintentional prior shipment outside the scope of Applicant’s authority and Protestants’ undocumented allegations certainly do not form a basis under the Application of Friedman’s Express, Inc., Docket No. A-00024369, Folder 9, Am-B, Folder 10, Am-I (Order entered August 17, 1989) to create a standard of a propensity to operate unsafely and illegally.

On the contrary, the facts that Applicant has operated since 2005 as a certificated motor carrier of household goods in use and property by this Commission, has operated since 2005 as a licensed interstate motor carrier of household goods in interstate commerce, has responded to and resolved one complaint from the Commission, has communicated with Commission personnel for advice as to proper and lawful intrastate operations, will discipline and terminate drivers that do not comply with the law, and commenced and continued with the instant application proceeding clearly demonstrates Applicant’s propensity to operate lawfully and safely. Incidently, it has been held the Commission considered the applicant’s unauthorized service as proof of public need where the service was based on a good faith misunderstanding of the scope of its certificate and the revenues generated thereby may be considered in determining applicant’s financial fitness. W. C. McQuaide, Inc. v. Pennsylvania Public Utility Commission, 1156 (Pa. Cmwlth. 1991), 585 A.2d 1151 (l991).

B.The instant application will serve a useful public purpose responsive to a public demand or need. An applicant can establish that approval of its application will serve a useful public purpose, responsive to a public demand or need, and meets its burden under 52 Pa. Code § 41.14(a), through presentation of relevant, probative, competent, and credible evidence of record. Application of Blue Bird Coach Lines, Inc., 72 Pa. PUC 262 (1990) (Bluebird). Applicant herein has done such with the presentation of relevant, probative, competent, and credible evidence of fourteen (14) supporting public witnesses and Applicant Ex. 12, plus supportive testimony.

An applicant for Commission authority may prove a need or demand for its proposed transportation service through witnesses comprising a representative sampling of the public that will use the proposed service within the application territory. In re Application of J & J Leasing & Rentals, Inc. d/b/a Anytime-Airport- Taxi by J & J Transportation, A corporation of the Commonwealth of Pennsylvania, Docket No. A-2010-2164865, (Order entered December 15, 2011) citing Bluebird, supra. It is not necessary that an applicant for a certificate of public convenience show that a proposed service be absolutely indispensible or establish a demand for service in every square mile of territory sought, as proof of necessity within an area generally is sufficient to support a grant of authority. Modern Transfer Co. v. Pennsylvania Public Utility Commission, 179 Pa. Super. 46, 115 A.2d 887 (1955); Reeder v. Pennsylvania Public Utility Commission, 192 Pa. Super. 298, 162 A.2d 231 (1960); Zurcher v. Pennsylvania Public Utility Commission, 173 Pa. Super. 343, 98 A.2d 218 (1953); and B. B. Motor Carriers, Inc. v. Com., Public Utility Commission, 36 Pa. Cmwlth. 26, 389 A.2d 210 (1978). While evidence of present need can be presented, the Commission may act upon indicated future need if circumstances require such, and a witness’s future need is sufficient to satisfy an Applicant’s burden. Highway Exp. Lines, Inc. v. Pennsylvania Public Utility Commission, 195 Pa. Super. 92, 169 A.2d 798 (1961). Application of Santos A Melendez t/a Union Cab, Docket No. A-00121472 (Order entered November 13, 2006). Where the scope of the operating authority is narrow or limited, as it is in this case, fewer witnesses are required to prove public need. In re Application of Saferide Transportation Services, LLC, Docket No. A-2010-2159585 (Order entered July 7, 2011) citing Bluebird). Similarly, the Commission determined that the testimony of one witness was sufficient to support a grant of authority from all points in one county, because the testimony represented a reasonable cross section of the public’s need for the proposed service. Application of Primo Limousine Company, Inc., Docket No. A-00111548 (Order entered November 29, 1995) An applicant’s burden is met by showing the proposed service is reasonably necessary for the public’s accommodation or convenience, as an absolute or indispensible necessity need not be proven. Highway Exp. Line v. Pennsylvania Public Utility Commission, 164 Pa. Super. 145, 63 A.2d 461 (1949); Pennsylvania R. Co. v. Pennsylvania Public Utility Commission, 181 Pa. Super. 343, 124 A.2d 685 (1956); D. F. Bast, Inc. v. Pennsylvania Public Utility Commission, 185 Pa. Super. 487, 138 A.2d 270 (1958); and Dutchland Tours, Inc. v. Pennsylvania Public Utility Commission, 19 Pa. Cmwlth. 1, 337 A.2d 922 (1975).

The evidentiary record in this proceeding establishes that Applicant’s proposed service is reasonably necessary for the public’s existing or future accommodation or convenience in the general area sought by Applicant, and that Protestants cannot lawfully serve all the points testified to by the public witnesses. The fourteen public witnesses’ testimony as to present and future need for household goods in use transportation stated points to and from Beaver, Butler, Fayette, Washington, and Westmoreland Counties, such as (1) Cranberry Township to Lancaster Township in Butler County; (2) Monogahela, Washington County to Cranberry Township, Butler County; (3) McMurray, Washington County to points within a 50 mile radius; (4) Champion, Fayette County to another point in Fayette County; (5) Zelienople, Butler County to point in Butler or Beaver County; (6) Beaver Falls, Butler County to Polymer/Hershey, Dauphin County; (7) McMurray, Washington County to Mount Lebanon, Allegheny County; (8) Belle Vernon, Westmoreland County to Greensburg, Westmoreland County or to Allentown, Lehigh County; (9) McMurray, Washington County to Erie, PA and to another point in the application territory; (10) McMurray, Washington County to Hidden Valley, Somerset County and to another point in Washington County; (11) Greensburg, Westmoreland County to other points in Greensburg, Westmoreland County; (12) Alliquippa, Beaver County to Ligonier, Westmoreland County; (13) Ardara, Westmoreland County to Greensburg, Westmoreland County; and (14) Lower Burrell, Westmoreland County to another point in Westmoreland County or to a point in Armstrong County. Additionally, the public witness stated their desire to utilize Applicant.

With respect to public need, Applicant presented fourteen (14) public witnesses’ testimony as to present and future need for household goods in use transportation to and from definite and stated points in Beaver, Butler, Fayette, Washington, and Westmoreland Counties. Despite Protestants’ argument regarding two witnesses being employed by Applicant, two witnesses being related to an employee of Applicant, and two witnesses have business or social relationships with Applicant, such does not detract from their respective testimony of present and future need for transportation of their household goods for downsizing, community church service needs, or relocating their residence or student family members. These needs, as well as the transportation needs of the other eight public witnesses, were as certain and definite as they could comprehend and testify to at the time of the hearing. Some public witnesses testified to a present need occurring in the spring or summer of this year to relocate or transport family members’ household goods from their residence, while others spoke of their need to relocate in the near future for household downsizing purposes, to be near family, or for new employment. Simply not have a house or apartment under contract for purchase or lease, does not negate a stated future need. Protestants did not successfully attack such at hearing, and they cannot do so now. It is somewhat disconcerting to now read Protestants attacking the veracity or credibility of witnesses’ need testimony just because they are related to Applicant’s employee, or are Applicant’s employee, or have conducted business with Applicant, especially one who is an attorney licensed by the Supreme Court of Pennsylvania.

The foregoing demonstrates Applicant’s proposed service is reasonably necessary for the public’s convenience or accommodation. There can be little doubt these public witnesses will utilize Applicant in the future for their call and demand needs because each witness specifically identified their respective need and testified as to their reasons they desired to use Applicant and their satisfactory experience with Applicant when utilizing Applicant for past intrastate household goods transportation.

Applicant’s Ex. 12 also demonstrates current and future evidence of a of public need by listing service requests for call and demand service in the proposed territory, which Applicant received from the public via telephone and email from February 21, 2011 to December 15, 2011. (Applicant’s Ex. 12; Tr. 171-175; Tr. 195-201). Mr. Coll of Applicant supervised the creation of the list of service requests, sometimes referred the callers to other household goods moving companies, (without naming them), explained the callers inquired about household goods in uses moving services to and from points in the application territory, and explained that Applicant tried to secure as much information as possible from the callers during the process. (Tr. 195-201). In supervising the creation of the list of service requests, Mr. Coll testified he personally created the Excel spreadsheet that is Applicant’s Ex. 12 from handwritten notes of Applicant’s customer service representatives, supervises Applicant’s ongoing policy to document all inquiries for household goods service received via email or telephone, and described the process by which Applicant receives inquiries from the public via email or telephone for household goods service in and around or from and to Allegheny County, PA. (Tr. 171-175, 195-200). No referrals were made to other carriers when the callers were informed by Applicant it could not perform the requested move. (Tr. 200-201). Mr. Coll made a special effort to check that all these service requests were within the application territory, and perhaps only five listed requests may have been outside of the application territory. (Tr. 236-240). Mr. Coll also stated that telephone number area codes are not indicative of a caller’s residence location due people using cell phones as primary contact numbers and keeping their original cell phone numbers despite subsequent relocations (Tr. 241).

In view of the foregoing, Applicant submits that its Exhibit 12 complies with 52 Pa. Code § 3.382(a) because while each specific listing may not strictly comply with the requirements for service request testimony contained in 52 Pa. Code § 3.382(a), the exhibit listing as a whole is sufficiently relevant and of sufficient probative value as to provide corroboration of the specific need testimony proffered by the public witnesses. In re Application of J & J Leasing & Rentals, Inc. d/b/a Anytime-Airport- Taxi by J & J Transportation, A corporation of the Commonwealth of Pennsylvania, Docket No. A-2010-2164865, Initial Decision of ALJ Chestnut at page 24.

C. Protestants have not demonstrated that a grant of the instant application would significantly endanger or impair their respective operations contrary to the public interest.

It has been conclusively determined that the legislature, in enacting the Public Utility Law, did not intend to benefit established carriers by erecting artificial barriers to the entry of new competitors. Merz White Way Tours v. Pennsylvania Public Utility Commission, 204 Pa. Super. 43, 201 A.2d 446 (1964); New Kingsington City Lines, Inc. v. Pennsylvania Public Utility Commission, 200 Pa. Super. 490, 190 A.2d 179 (1963). Moreover, the primary object of the public service laws is not to establish a monopoly or to guarantee the security of investment in public service corporations, but first, and at all times, to serve the interests of the public. D. F. Bast, Inc. v. Pennsylvania Public Utility Commission, 185 Pa. Super. 487, 138 A.2d 270 (1958). The law does not guarantee any carrier freedom from competition, and the public convenience and interest may require a proposed service (ie. such as Applicant’s herein) even though it results in diversion of business from existing carriers. Railway Exp. Agency, Inc. v. Pennsylvania Public Utility Commission, 195 Pa. Super. 394, 171 A.2d 860 (1961). The courts and the Commission have historically recognized that no existing carrier has an absolute right to be free from competition. Noerr Motor Freight, Inc. v. Pennsylvania Public Utility Commission, 181 Pa. Super. 332, 338, 124 A.2d 393 (1956). The Commission has stated that it promulgated the transportation regulatory policy statement at 52 Pa. Code § 41.14 “to eliminate monopolistic protection of existing motor carriers and to promote health competition among motor carriers for the prupose of assuring the availability of transportation service commensurate with the demonstrated public demand/need.” Bluebird, supra, at 274. Furthermore, the Commission, in Application of Eazor Express, Inc., 53 Pa. PUC 374 (1979), stated more emphasis would be placed on economic analysis and commission discretion over the level of competition which appears to best serve the public interest, with less emphasis on protecting existing carriers from additional competition.

Not one of the Protestants herein submitted any quantitative evidence of the extent to which the grant of the instant application would endanger or impair their respective operations to the point of being contrary to the public interest. As a matter of fact, Protestant South Hill Movers testified that its company only being able to serve a portion of the territory sought in the instant application, the company received $2,200,000.00 in Pennsylvania intrastate household goods revenue in 2010 with competition, the company having large facilities with approximately 200 employees and 80 pieces of equipment, and it was not arguing any adverse effect from a grant of the instant application; Protestant Vesely Bros. Moving testified its company only being able to serve a portion (various points in three counties) of the territory sought in the instant application, the company received $400,000.00 in Pennsylvania intrastate household goods revenue in 2010 and in 2011 with competition, the company has equipment that is mostly as new as ten (10) years old; Protestant McKean and Burt testified its company, and its affiliated company, only being able to serve a portion (only Washington County) of the territory sought in the instant application, the average age of company equipment being Year 2010 with new equipment being purchased in 2011, all while the company had competition, and all company facilities and equipment were owned debt-free; and Protestant Weleski Transfer testified its company only being able to serve a portion (only some points in Butler and Westmoreland County – but nothing in Beaver, Fayette, or Washington Counties) of the territory sought in the instant application, the company received $1,700,000.00 in Pennsylvania intrastate household goods revenue in 2010 when it had competition since 2005 from Applicant, the average age of company equipment being five (5) years old; and the company successfully diversified within the last ten (10) years and is a Atlas Van Lines Agent.

Merely stating that business has competition implying that revenues may decrease, or that equipment has or will not been fully utilize in the face of more competition, does not establish any adverse public interest endangerment or impairment connection to a grant of the instant application. Also, Protestants herein appear to have lost sight of the fact that a certificate of public convenience issued by the Commission merely confers the right to do business as a regulated public utility, but it does not provide any iron-clad guarantee that such business will be protected from competition, be successful, or always be available to the certificate holder.

Accordingly, while Applicant submits the evidentiary record in this proceeding establishes its technical and financial ability to provide the proposed service in a safe and lawful manner, and establishes that the approval of the instant application is in the public interest responsive to public demand and need, the evidentiary record is void of how a grant of the instant application will endanger or impair Protestants’ operations contrary to the public interest.

VI

REPLY TO PROPOSED CONCLUSIONS OF LAW

While Applicant agrees with Protestants’ Proposed Conclusions of Law Nos. 1 and 2, it disagrees with the remainder of Protestants’ Proposed Conclusions of Law because such are without factual support or foundation in the evidentiary record of this proceeding. If Protestants’ Proposed Conclusions of Law had stated Applicant possesses the technical and financial ability to provide the proposed service lawfully and safely, sufficient evidence was been presented to show a public need and demand for Applicant’s proposed in the entire application territory, the application if granted will serve a useful public purpose, and approval of the instant application will not endanger or impair the operations of the Protestants contrary to the public interest, such would have been acceptable to Applicant. However, in view of the foregoing, Applicant submits that the correct and more accurate Proposed Conclusions of Law are those set forth on pages 33 to 35 of its Main Brief dated March 2, 2012.

VII

REPLY TO PROPOSED ORDER AND PROPOSED ORDERING PARAGRAPHS

Applicant disagrees the Protestants’ Proposed Ordering Paragraphs and Proposed Order as such directly contradicts the entire record and evidence adduced in this proceeding, and such is without foundation in fact and law. Applicant submits that the proper Proposed Order or Ordering Paragraphs to be adopted herein by the Honorable Administrative Law Judge is that set forth on pages 36-36 of its Main Brief dated March 1, 2012.

VIII

REPLY TO PROTESTANTS’ CONCLUSION

Wherefore, the above premises being considered, Applicant seeks the relief set forth in this Commission’s rules and regulations, and respectfully prays the Honorable Administrative Law Judge find as follows:

1. That Applicant is fit, willing, and able to provide the services proposed herein, in that it possesses the requisite technical and financial ability to provide the proposed service and comply with Commission regulations;

2. That Applicant, through its operating and public witnesses, together with its submitted evidentiary record, has shown a need for the proposed operations in that approval of this application will serve a useful public purpose, responsive to a public need;

3. That Protestants operations, or that of other carriers, will not be endangered or impaired by the grant of this application;

4. That the grant of the authority sought herein is not contrary to the public interest; and

5. That the record in its entirety supports a finding that the application be granted in its entirety.

Dated: March 15, 2012 Respectfully submitted,

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Attorney for Applicant

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the original and true copies of the foregoing document, Reply Brief of Applicant, upon the persons listed below, via Federal Express, prepaid, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant):

William A. Gray, Esq., Vuono & Gray LLC, Grant Building Suite 2310, 310 Grant St., Pittsburgh, PA 15219-2383 as to a true copy and an electronic copy; the Hon. Katrina L. Dunderdale, ALJ, Pennsylvania Public Utility Commission, 801 Market St. Piatt Building, Pittsburgh, PA 19107 as to a true copies and one (1) electronic copy; and the Rosemary Chiavetta, Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265 as to an original and nine copies, plus disk.

Dated this 15th day of March, 2012

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KENNETH A. OLSEN

Attorney for Applicant