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July 12, 2012

Re: Canterbury International 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 US 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 Protestants' Reply to Exceptions in connection with the above-captioned proceeding.

We are serving a copy of the Reply to Exceptions on the Office of Special Assistants and the attorney for the applicant by email and by hard copy pursuant to your letter dated June 13, 2012. We are also providing the Office of Special Assistants with a copy of the Exceptions on a disk in Word format.

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

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JUL 12 2012

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

pz/112239

Enclosure

cc: PUC Office of Special Assistants (w/enc.)
Kenneth A. Olsen, Esq. (w/enc.)

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCKET NO. A-2011-2251336

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

PROTESTANTS'REPLY TO EXCEPTIONS

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WILLIAM A. GRAY, ESQ.

Attorney for
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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

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Pittsburgh, PA 15219
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Due Date: July 13, 2012

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCKET NO. A-2011-2251336

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

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PROTESTANTS' REPLY TO EXCEPTIONS

I. STATEMENT OF THE CASE

By this application, Canterbury International, Inc. t/a Two Men and a Truck ("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. Main Briefs and Reply Briefs were filed by the applicant and the protestants filing this Reply to Exceptions ("the protestants").

By Initial Decision dated May 31, 2012, the ALJ recommended that the application be granted in part and denied in part. Specifically, the ALJ recommended that the applicant be authorized to provide service from points in the Counties of Beaver,

Butler, Westmoreland, and Fayette, but recommended that the application be denied involving service from points in Washington County.

The applicant filed Exceptions to the Initial Decision of the ALJ. The protestants hereby file this Reply to Exceptions.

II. THE APPLICANT'S EXCEPTIONS

The applicant specifically set forth the following Exceptions:

1. Applicant excepts to Finding of Fact No.20 (ID. 7) to the extent that it does not include the witness's testimony of record as to destination points in Washington County.
2. Applicant excepts to Finding of Fact No. 27 (ID. 9) to the extent that it does not include the witness's testimony of record as to a destination point in Washington County.
3. Applicant excepts to Finding of Fact No. 38 (ID 12). This finding of fact is not supported by the testimony or evidence of record.
4. Applicant excepts to Finding of Fact No. 39 (ID. 13) only insofar as it states Protestants did not waive negative impact upon their operations as a reason for their protests.
5. Applicant excepts to the Public Interest Discussion on page 23 of the Initial Decision only insofar as it speaks of there being 35 service providers in Allegheny County.

6. Applicant excepts to Conclusion of Law No. 7 (ID. 25). This conclusion of law is neither based upon the evidence of record nor applicable law or regulation.

7. Applicant excepts to Conclusion of Law No. 9 (ID. 25). This conclusion of law is neither based upon the evidence of record nor applicable law or regulation.

8. Applicant excepts to Conclusion of Law No. 12 (ID. 25). This conclusion of law is neither based upon the evidence of record nor applicable law or regulation.

9. Applicant excepts to Conclusion of Law No. 14 (ID. 26). This conclusion of law is neither based upon the evidence of record nor applicable law or regulation.

III. ARGUMENT

1. Applicant's Exception No. 1: Applicant excepts to Finding of Fact No. 20 (ID. 7) to the extent that it does not include the witness's testimony of record as to destination points in Washington County.

This Exception relates solely to the testimony of Emerald Van Buskirk. This witness, who resides in Peters Township, Washington County, 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) She admitted that if they do relocate, it may be to a point in the applicant's existing service territory and, if that occurred, the applicant could already provide the service. Ms. Van Buskirk's testimony, because of its uncertainty, does not establish need for service.

2. Applicant excepts to Finding of Fact No. 27 (ID. 9) to the extent that it does not include the witness's testimony of record as to a destination point in Washington County.

This Exception relates solely to the testimony of John S. Sherry. This witness, who resides in Washington County, 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) Mr. Sherry admitted that he submitted a verified statement in support of this application at the time the application was filed and made no mention of buying a house in Washington County in that verified statement. (Tr. 113-114) He also testified about possibly repurchasing a house that he previously sold in Somerset County five years ago but admitted that this purchase has not materialized. (Tr. 106) Mr. Sherry admitted that he has been the attorney for the owner of the applicant for 41 years and friends with him since first grade. Mr. Sherry also admitted that he testified in support of a prior application of the applicant that he required household goods moving service but then never moved. (Tr. 111) The Commission has previously determined that the testimony of witnesses with a personal reason to testify unrelated to their alleged need should not be given any weight. 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) Mr. Sherry's testimony does not establish need for service.

3. Applicant excepts to Finding of Fact No. 38 (ID. 12). This finding of fact is not supported by the testimony or evidence of record.

This Exception relates solely to the ALJ's Finding of Fact that granting the application will endanger or impair protestants with authority in Washington County, contrary to the public interest. The applicant attempts to minimize the testimony of Timothy Moore, President and sole owner of protestants All Ways Worldwide Moving, Inc. and McKean & Burt, Inc. In fact, Mr. Moore provided substantial testimony concerning the adverse impact that would result to his companies if this application is approved in Washington County. In that regard, the ALJ made the following pertinent Finding of Fact, to which the applicant did not file an Exception:

In 2010 and 2011, All Ways did not turn down any request for a move in Washington County. The two corporations (All Ways and McKean & Burt) are debt-free but currently there is insufficient business to keep the employees busy and to operate corporate equipment at full capacity. Seventy percent of these corporations' Commission business is in Washington County, which currently has a population of 200,000 people, and where there are twelve competitors. Both corporations advertise in Washington County and in Allegheny County. There are thirty-five competitors in Allegheny County, which currently has a population of 1.2 million people. In 2008, the witness tried to file an informal complaint with the Commission out of concern that Applicant conducted moves outside its territory, did not charge for valuation insurance, and gave away boxes to customers buying more than one hundred boxes. (Finding of Fact No. 34)

The applicant also attempted to minimize the testimony of the witness for Vesely Brothers. In fact, the witness for this company testified that it has substantial competition in Washington County and its equipment is not being used to full capacity at the present time. (Tr. 301)

The ALJ correctly concluded at page 23 of her Initial Decision:

The evidence presented through All Ways, McKean & Burt, Vesely and Century III convincingly showed the entrance of Applicant into the Washington County market will not provide a public benefit or fill a public need, and will endanger or impair those corporations in that county. These companies already operate within or around Allegheny County and Washington County but there are more service providers in Washington County relative to the population than there are in Allegheny County. Washington County only has 200,000 people while Allegheny County has 1.2 million. Therefore, with twelve competitors in Washington County, there is already one service provider for every 16,600 people, while in Allegheny County, which has 35 service providers, there is one service provider for every 37,000 people. In addition, All Ways and McKean & Burt did not turn down any request for moving services in the last two years but still cannot keep their employees busy on a full-time basis.

The ALJ carefully balanced the harm that would result to the protestants serving Washington County with the limited testimony relating to alleged need for service in Washington County and determined that the granting of the application in Washington County would be contrary to the public interest. The well-reasoned and thoughtful decision of the ALJ involving this issue should be adopted by the Commission.

4. Applicant excepts to Finding of Fact No. 39 (ID. 13) only insofar as it states Protestants did not waive negative impact upon their operations as a reason for their protests.

The ALJ's Finding of Fact No. 39 states that the protestants did not waive the negative impact argument.

This Exception relates solely to whether the protestants have somehow waived their right to argue negative impact on their operations. The applicant does not reference

anywhere in the record where the protestants waived this argument, which is not surprising since the protestants did not waive this argument and, in fact, as indicated above, presented testimony concerning the negative impact that would result if this application was granted.

5. Applicant excepts to the Public Interest Discussion on page 23 of the Initial Decision only insofar as it speaks of there being 35 service providers in Allegheny County.

The applicant argues, without any support in the record, that there are 44 service providers in Allegheny County, not 35 service providers as found by the ALJ.

The applicant's argument that there are 44 service providers in Allegheny County, as opposed to the 35 service providers referred to by the ALJ at page 23 of her Initial Decision and in Finding of Fact No. 34, to which the applicant did not file an Exception, is beyond the scope of the record in this proceeding and should not be considered in these Exceptions.

6. Applicant excepts to Conclusion of Law No. 7 (ID. 25). This conclusion of law is neither based upon the evidence of record nor applicable law or regulation.

This Exception relates to the ALJ's Conclusion of Law No. 7, which states:

The evidence of record failed to establish the proposed service in the county of Washington will serve a useful public purpose as required under 52 Pa. Code §41.14.

The policy statement at 52 Pa. Code §41.14(a) provides:

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

The applicant argues in this Exception that the ALJ was incorrect in concluding that the evidence of record failed to establish the proposed service in Washington County will serve a useful public purpose. The applicant makes the same argument in connection with this Exception that it made in Exception Nos. 1 and 2 relating to the testimony of Emerald Van Buskirk and John Sherry. The protestants have discussed the testimony of those witnesses in responding to Exception Nos. 1 and 2 and will not repeat those arguments in response to this Exception. The applicant's reference to the testimony of "nine (9) other public witnesses" is misleading since that testimony relates to the other counties which are not in dispute in these Exceptions. The applicant also refers to its Exhibit 12 involving requests for transportation from points in Washington County. Exhibit 12 is nothing more than a list of inquiries made by persons who visited the applicant's website and/or the franchisor's website. 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, 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. Significantly, the ALJ obviously took into consideration the service requests relating to Washington County and still determined that "(T)he evidence of record failed to establish the proposed service in the county of Washington will serve a

useful public purpose as required under 52 Pa. Code §41.14.” The decision of the ALJ involving this issue should be adopted by the Commission.

7. Applicant excepts to Conclusion of Law No. 9 (ID. 25). This conclusion of law is neither based upon the evidence of record nor applicable law or regulation.

This Exception relates solely to Conclusion of law No. 9 which provides:

The evidence of record failed to establish the proposed service in the county of Washington is responsive to a public need, as required under 52 Pa. Code §41.14. (Conclusion of Law No. 9)

The applicant refers to its argument in support of Exception No. 6. The protestants therefore hereby refer to their response to the argument to Exception No. 6

8. Applicant excepts to Conclusion of Law No. 12 (ID. 25). This conclusion of law is neither based upon the evidence or record nor applicable law or regulation.

This Exception relates solely to Conclusion of Law No. 12 which provides:

A grant of authority to Canterbury International, Inc. t/a Two Men and a Truck, will endanger or impair Protestants’ operations in the county of Washington to such an extent that the public interest would be affected.

The applicant argues at page 10 of its Exceptions that Commission cases do not “guarantee any carrier freedom from competition” and that “no existing carrier has an absolute right to be free from competition.” The applicant would have the Commission ignore, however, the following provision at 52 Pa. Code §41.14(c):

(c) The Commission will grant motor common carrier authority commensurate with the demonstrated public need unless it is established that the entry of a new carrier into the field would endanger or impair the operations of existing common carriers to an

extent that, on balance, the granting of authority would be contrary to the public interest.

The attempt by the applicant to minimize the harm to the protestants if this application is granted in Washington County is misplaced. The ALJ in this case has determined, based upon her careful review and analysis of the evidence involving Washington County, that granting authority in Washington County would endanger or impair the operations of the carriers serving Washington County to an extent that, on balance, the granting of authority would be contrary to the public interest. The ALJ's well-reasoned decision involving this issue should be adopted by the Commission.

9. Applicant excepts to Conclusion of Law No. 14 (ID. 26). This conclusion of law is neither based upon the evidence of record nor applicable law or regulation.

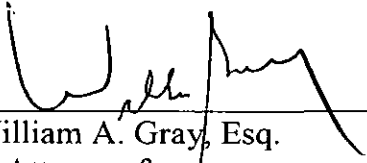
This Exception relates to the ALJ's conclusion that the application should be denied as it relates to Washington County. The applicant incorporates its prior arguments and the protestants also hereby incorporate their prior responses to those arguments. The ALJ very carefully considered the limited evidence of public demand or need involving Washington County and also the potential harm that would result to the protestants in Washington County, particularly to All Ways, McKean & Burt and Vesely and correctly determined that, on balance, authority should not be granted in Washington County because the grant of authority would be contrary to the public interest. The ALJ's well-reasoned decision involving this issue should be adopted by the Commission.

IV. CONCLUSION

For the reasons discussed herein, protestants respectfully request that the Exceptions filed by the applicant 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

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Due Date: July 13, 2012

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SECRETARY'S BUREAU**

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of Protestants' Reply to Exceptions to Initial Decision 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
Lebanon, NJ 08833
kolsen53@earthlink.net

I also hereby certify that I have this day served a copy of the Reply to Exceptions on the Office of Special Assistants by email and by first class mail, postage prepaid, as follows:

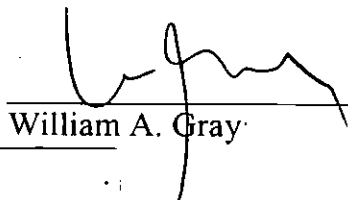
Office of Special Assistants
Pennsylvania Public Utility Commission
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400 North Street
Harrisburg, PA 17120
jnase@pa.gov

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Dated at Pittsburgh, PA this 12th day of July, 2012.


William A. Gray



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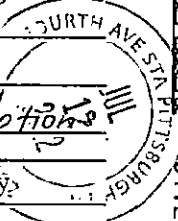
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From: Vuono & Gray, LLC

310 Grant Street, Suite 2310
Pittsburgh, PA 15219

A-2011-2251336 Reply to Exceptions

To: Rosemary Chiavetta, Secretary
PA Public Utility Commission
P.O. Box 3265
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