

KJR

P. 6-

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265
September 25, 1992

In Re: A-00109244, F001, Am-A

(See letter dated 8/24/92)

Application of Tad's Delivery Service, Inc.

For amendment so as to permit the transportation of household goods and office furniture, in use, and new furniture uncrated, from points in the city and county of Philadelphia....which is to be a transfer of the rights at A-00086551 to Domenic Christinzio, Inc., subject to the same Limitations and conditions.

NOTICE

This is to inform you that at the request of counsel for the applicant, the initial hearing now scheduled to be held on Wednesday, October 7, 1992, at 10:00 a.m. in the subject proceeding has been postponed to Wednesday, November 4, 1992, at 10:00 a.m. in Room 1306, Philadelphia State Office Building, Broad and Spring Garden Streets, Philadelphia, Pennsylvania.

cc: Judge Chestnut
Mr. Frazier - PIO
Mrs. Lewis
Scheduling Sec.
Mrs. Plantz
Docket Room

DOCKETED
SEP 30 1993

**DOCUMENT
FOLDER**



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

October 8, 1992

IN REPLY PLEASE
REFER TO OUR FILE

Michael J. Burns, Esquire
Margolis, Edelstein, Schlerlis
and Kraemer
The Curtis Center, Fourth Floor
Independence Square West
Philadelphia, PA 19106-3304

DOCKETED
OCT 26 1992

Re: Application of Tad's Delivery Service, Inc.
A-00109244, F0001, Am-A

Dear Mr. Burns:

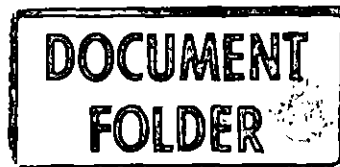
Please be advised that your request to change the date of the November 4, 1992 hearing is hereby denied. Unfortunately, Administrative Law Judge Chestnut's hearing schedule precludes advancing the hearing to an earlier date. A continuance will not be granted because it appears this Application is rather straight forward (one continuance was already granted), and a further postponement could delay this case for several additional months. It also appears that your firm should be able to provide alternative counsel if Mr. Davis is unavailable on November 4, 1992.

Very truly yours,

Eric A. Rohrbaugh, Supervisor
OALJ Legal Division

EAR:elp

cc: Honorable Marlane R. Chestnut
Scott Petri, Esquire
Scheduling Staff
✓File



A-00109244, F0001, Am-A - Parties of Record

Michael J. Burns, Esquire
Margolis, Edelstein, Schlerlis
and Kraemer
The Curtis Center, Fourth Floor
Independence Square West
Philadelphia, PA 19106-3304

Scott A. Petri, Esquire
Liederbach, Hahn, Foy & Petri, P.C.
892 Second Street Pike
Richboro, PA 18954

cc: Chief ALJ Turner/Lewis/Scheduler
Honorable Marlane R. Chestnut
✓New Filing

APPEARANCE SHEET

ALJ HEARING REPORT

6/11/92

DOCKET NO. A-00109244, FOOL, Am-A
 CASE NAME Application of Tad's Delivery Service, Inc.
 HEARING LOCATION Philadelphia
 HEARING DATE November 4, 1992
 ALJ Chestnut

CHECK THOSE BLOCKS WHICH APPLY:

Hearing held YES NO
 Testimony taken YES NO
 Hearing concluded YES NO
 Further hearing needed YES NO
 Estimated add'l days _____
 RECORD CLOSED YES _____ NO _____
 Briefs to be filed YES _____ NO _____
 BENCH DECISION YES _____ NO _____

REMARKS: Members 1/2, RB 1/26
Record to remain open until
Get the RB

RECEIVED

NOV 09 1992

Office of A. L. J.
 Public Utility Commission

DOCUMENT FOLDER

DOCKETE

NAMES, ADDRESSES AND TELEPHONE NUMBERS OF PARTIES OR COUNSEL OF RECORD
 PLEASE PRINT CLEARLY

NOV INCOMPLETE INFORMATION MAY RESULT IN DELAY OF PROCESS

NAME and TELEPHONE NUMBER	ADDRESS			APPEARING FOR
H. Marc Tepper, Esq. FOR: T & N Van Suvica Tad's Delivery Service Margolis, Edlstein & Schuler Telephone No. (215) 931-5890	City Phila	State Pa	Zip 19106	T & N Van Suvica Ha Tad's Delivery Service
Scott H. Petri, Esq. Telephone No. (215) 322-8300	City Richboro	State PA	Zip 18954	J. C. Sevides, Inc. Ha J. C. Van Lines
Telephone No. ()	City	State	Zip	

CHECK THIS BOX IF ADDITIONAL PARTIES OR COUNSEL OF RECORD APPEAR ON BACK.

Amy S. Inturrisi
 Reporter
Halbert



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
PHILADELPHIA STATE OFFICE BUILDING
1400 WEST SPRING GARDEN STREET
PHILADELPHIA, PENNSYLVANIA 19130
(215) 560-2105
November 10, 1992

11/13/92

IN REPLY PLEASE
REFER TO OUR FILE

DOCKETED

DEC 01 1992

See Attached Service List

Re: Application of Tad's Delivery Service, Inc.
Docket No. A-00109244, F001, Am-A

To All Counsel:

The record in this case indicates that briefs are to be filed. The briefing schedule is as follows: Main briefs shall be filed no later than January 12, 1993 and reply briefs, if any, shall be filed no later than January 26, 1993. If briefs are not received by the due date, they shall not be accepted for filing, except by special permission of the presiding officer.

An original and nine (9) copies of each main and reply brief must be filed with the Secretary of the Commission; a copy must be served on the presiding Administrative Law Judge; and one copy on each party of record. Parties who wish to do so may supply me with copies of their briefs on 5-1/4" floppy disks, using WordPerfect 4.2 or 5.0, for an IBM-compatible computer.

Please note that all briefs must comply with the Commission's Rules and Regulations promulgated at 52 Pa. Code §§5.501 and 5.502. In addition, each brief should contain a history of the case; a summary of testimony and evidence adduced at the hearing with appropriate record references; an argument citing applicable law, and judicial and Commission decisions; proposed findings of fact with references to transcript pages and exhibits; proposed conclusions of law; proposed ordering paragraphs; and a conclusion.

Very truly yours,

Marlane R. Chestnut

MARLANE R. CHESTNUT
Administrative Law Judge



SERVICE LIST

Donald M. Davis, Esquire
Curtis Center, Fourth Floor
Independent Square West
Philadelphia, PA 19106-3304

Tad's Delivery Service, Inc.
835 Industrial Highway
Unit #4
Cinnaminson, NJ 08077

Scott A. Petri, Esquire
Liederbach, Hahn, Foy & Petri, P.C.
892 Second Street Pike
Richboro, PA 18954

cc: New Filing
Chief Administrative Law Judge/Scheduler
Beth Plantz

LAW OFFICES
LIEDERBACH, HAHN, FOY & PETRI
A PROFESSIONAL CORPORATION
892 SECOND STREET PIKE
RICHBORO, PA. 18954

EDWARD D. FOY, JR.
CARL G. HAHN
SCOTT A. PETRI
DENNIS P. DENARD
HARRY J. LIEDERBACH
1916-1982

ORIGINAL

RICHBORO LINE
322-8300
PHILADELPHIA LINE
677-0919
DOYLESTOWN LINE
343-9310
FAX 215-322-7646

January 11, 1993

Commonwealth of Pennsylvania
Pennsylvania Public Utility Commission
Attn: Secretary Jerry Rich
North Office Building, Room G-18
North Street and Commonwealth Avenue
Harrisburg, PA 17120

RECEIVED

JAN 11 1993

SEC
Public Utility Commission

RE: Application of Tad's Delivery
Service, Inc.
No. A-00109244, F 001-Am-A

Dear Secretary Rich:

Enclosed please find an original and nine (9) copies of the Brief of Protestant.
J.C. Services, Inc. to the above-captioned application.

Sincerely yours,

LIEDERBACH, HAHN, FOY & PETRI

Scott A. Petri

By: Scott A. Petri

SAP/ccm

Enclosures

cc: Administrative Law Judge Marlane R. Chestnut
Donald M. Davis, Esquire
J.C. Services, Inc.

DOCUMENT
FOLDER

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED
JAN 11 1993
SECRETARY
Public Utility Commission

APPLICATION OF : DOCKET NUMBER A-00109244
: F001-Am.A.
TAD'S DELIVERY SERVICE, INC. :

DOCUMENT
FOLDER

BRIEF
OF
J.C. SERVICES, INC.
PROTESTANT

DOCKETED
JAN 13 1993

SCOTT ANDREW PETRI, ESQUIRE
LIEDERBACH, HAHN, FOY & PETRI, P.C.
892 Second Street Pike
Richboro, PA 18954
(215) 322-8300
Counsel to Protestant

TABLE OF CONTENTS

- I. HISTORY OF THE PROCEEDING
- II. SUMMARY OF TESTIMONY
 - A. Applicant's Case
 - B. Protestant's Case
- III. MOTION TO HOLD PROCEEDINGS OPEN PENDING RESOLUTION OF COMPLAINT
- IV. PROPOSED FINDINGS OF FACT
- V. DISCUSSION
- VI. CONCLUSION

I. HISTORY OF THE PROCEEDING

By Application published in the Pennsylvania Bulletin on June 27, 1992, TAD'S DELIVERY SERVICE, INC., t/d/b/a T & N VAN SERVICE, sought a transfer of rights authorized under Certificate issued to DOMENIC CRISTINZIO, INC., at No. A-00086551, Folder 2 to transport, by motor vehicle, household goods and office furniture in use, and new furniture uncrated, from points in the city and county of Philadelphia to points within an airline distance of 100 statutes miles of Philadelphia City Hall, and vice versa: so as to permit the transportation of (1) tabulating and office machines for the International Business Machine Corporation between points in the city of Philadelphia, Philadelphia County, and from points in the said city to points within an airline distance of 25 miles of the City Hall in the said city, and vice versa; (2) cases for the International Business Machine Corporation from points within an airline distance of 25 miles of the City Hall in the city of Philadelphia, Philadelphia County, to points in the said city, and vice versa; (3) office machines and electronic or mechanical equipment, including but not limited to, copiers, computers, x-ray machines, and inserting machines, from the warehouse of Domenic Cristinzio, Inc. at 3328 Amber Street, in the city and county of Philadelphia, to points within 35 miles thereof, and vice versa; (4) office machines and electronic or mechanical equipment including, but not limited to, copiers, computers, x-ray machines and inserting machines, from the warehouse of

Domenic Cristinzio, Inc. at 2073 Bennett Road in the city and county of Philadelphia, to points within 35 miles thereof, and vice versa; (5) uncrated office machines and electronic or mechanical equipment, including, but not limited to, copiers, computers, x-ray machines and inserting machines, between points in the counties of Bucks, Chester, Delaware, Montgomery, Philadelphia and from said counties to points in Pennsylvania, and vice versa; (6) business and office machines, electronic manufacturing systems, parts and supplies thereof, that are manufactured, sold leased, distributed or dealt in by International Business Machines Corporation for International Business Machines Corporation between points in the counties of Adams, Barks, Bucks, Carbon, Centre, Chester, Cumberland, Dauphin, Delaware, Franklin, Fulton, Huntingdon, Juniata, Lancaster, Lebanon, Lehigh, Mifflin, Montgomery, Montour, Northampton, Northumberland, Perry, Philadelphia, Schuylkill, Snyder, Union and York; and (7) business and office machines and electronic or mechanical equipment, including, but not limited to, copiers, computers, x-ray machines, and inserting machines, and new office furniture, between points in the counties of Luzerne, Lackawanna, Monroe, Carbon, Northampton, Lehigh, Berks, Schuylkill, Columbia and Montour, and from points in said counties, to points in Pennsylvania and vice versa; which is to be a transfer of the rights authorized under the certificate issued at A-00086551, Folder 2, to Domenic Cristinzio, Inc., a corporation of the Commonwealth of Pennsylvania, subject to the same limitations and conditions.

A protest was duly filed to the Application by J.C. Services, Inc.

A hearing was held on Wednesday, November 4, 1992 before Administrative Law Judge Marlane Chestnut. The Applicant presented five (5) exhibits, being Applicant 1, the Application for transfer of authority, Applicant 2, an addendum to agreement of sale, Applicant 3, a Certificate of Public Convenience issued to Domenic F. Taddei at Docket No. A-00109244, F.1, Applicant 4, a letter dated July 31, 1992 from the National Labor Relations Board to John P. Morris, Secretary-Treasurer, Teamsters Union Local No. 115, pertaining to unfair labor practice charges and a claim that D. Cristinzio and the Applicant are alter egos in a labor sense, Applicant 5, a letter dated March 4, 1992 to Domenic Cristinzio, Inc. placing folders 2 and 3 into suspension. The Protestant presented four (4) exhibits, one being a copy of Protestant's PUC authority and the other three (3) exhibits being documents which Protestant asserts provide evidence that the Applicant has provided service in intrastate commerce without the appropriate certificate of authority and without regard for the necessity of authority.

II. SUMMARY OF TESTIMONY

The Applicant presented its testimony attempting to show that it is a fit carrier, able to provide the service sought in this transfer application. However, the Applicant provided no competent evidence of its financial position or its financial ability to provide the contemplated services.

The Applicant had only two witnesses testify on its behalf, that being David Nelson, Applicant's President and the other being Russell Taddei, owner of D. Cristinzio, Inc. (R.4) David Nelson is related to the owner of the transferor and to the other officers of Applicant by marriage. (R.11 & 15 & Applicant 4). His prior work experience is with the transferor as Vice-president of Marketing. (R.4). The Applicant failed to introduce any testimony at hearing from a qualified financial officer or representative of the Applicant.

Moreover, the Applicant did not introduce any evidence pertaining to current sales figures or current expenses. The Applicant's evidence consisted only of projected figures. (See Applicant 1).

The Applicant failed to introduce any evidence substantiating these projections. The Applicant did not present testimony of potential customers or supporting shippers who intended to utilize the Applicant, said witnesses being necessary to give credence to the Applicant's projections.

The Applicant failed to provide any competent evidence that the Applicant had paid or was able to pay the purchase price for the authority sought. The list of equipment attached to Applicant 1 does not indicate whether the equipment is leased or owned and there was no evidence in this regard. The Applicant failed to introduce evidence relating to the numbers of employees it maintains, either office staff or drivers, helpers, warehousemen or management. The Applicant offered no testimony regarding its facility other than its location in Cinnaminson,

New Jersey, its safety procedures, its method of protecting warehoused merchandise, insurance coverages, its drug testing policy, its method of communication with its customers, the nature of its equipment and any matters pertaining to its method of providing service where items require specialized handling.

The Projected Cash Flow attached as part of Applicant 1 projects \$9500.00 in entertainment expenses for a twelve month period. The Applicant does not believe that that sum represents a significant expenditure for entertainment and that this expenditure is for "Flyers tickets, Phillies tickets, things of that nature". (R.70). In fact, the Applicant testified that such expenditures were "standard in the industry". (R.70). The Protestant testified that such expenditures were not customary and that his company maintains policies against entertaining customers. (R.126-129). The Protestant testified that its entertainment budget consisted of lunches with customers representatives only when the customer representative did not otherwise have time to meet. (R.126-127). Further testimony was provided that other companies such as Xerox, DuPont, CoreStates and Pitney Bowes have policies against entertaining. (R.128).

Two (2) witnesses testified on behalf of the Protestant. Carole McGary, Secretary of Protestant, testified that the Protestant had suffered a significant loss of revenue in intrastate transportation from one of its customers, Pitney Bowes, to the Applicant. (R.98-99). She testified that gross revenues were down \$5,000.00 - 7,000.00 per month from Pitney Bowes of which approximately \$3,000.00 per month was attributable

to intrastate shipments. (R.99-100). Furthermore, she testified that Pitney Bowes required same day service contrary to the Protestant's testimony that service could be made by Applicant to Pitney Bowes at the shipper's convenience. (R.92-94).

Carole McGary testified that the Protestant had solicited Konica and CoreStates for work without success. (R.96-97). Steve McGary, President of Protestant, also testified that sales calls to Konica have been unsuccessful and that when he met with representatives of Konica he was informed that 80% of their work was in the nature of PUC regulated shipments involving copiers. (R.120-121). He was also informed that Konica's budget for transportation is \$120,000.00 per year. (R.121).

Mr. McGary testified that he felt that the appropriate market value of the authority which the Applicant seeks in these proceedings, excluding the portions of the application which pertains to work for IBM, is \$75,000.00. (R.125-126).

Mr. McGary testified regarding Protestant's exhibits and testified that Protestant 2 and 3 demonstrated that the Applicant had performed illegal shipments for Pitney Bowes in intrastate transportation. (R.110-117). He further testified that his company filed a "protest" with the PUC pertaining to these shipments and that, at that time, the PUC was investigating his complaint. (R.118). Mr. McGary stated that he felt that his company's losses pertaining to intrastate transportation for Pitney Bowes was \$5,000.00, and not \$3,000.00 as Carole McGary had testified. (R.119).

The following testimony was developed at hearing from

the Applicant pertaining to its present operation and the services currently provided by the Applicant. In the Discussion section to follow, the Protestant will argue that this testimony establishes that the Applicant has operated without proper authority and with knowledge that its operation is without proper authority and with a disregard for obtaining proper authority.

Q: Under what authority do you transport intrastate in the electronic area?

A: My present PUC authority which states that if I originate out of Philadelphia, I can transport those goods within 100 miles of Philadelphia. So, for example, if I want to move from one building to another in Philadelphia electronics goods which in most cases are part of a commercial move, my authority allows me to do that.

Q: Do you have that existing authority with you?

A: No, I don't.

Q: Okay.

JUDGE CHESTNUT: Excuse me, is that the authority that was granted by the terms of Applicant's Exhibit 3?

THE WITNESS: Yes.

BY MR. PETRI:

Q: Now, with regard to these shipments that we've just been testifying -- that you've been testifying about, are these intrastate PUC shipments part of commercial moves or are they solely electronic moves?

A: They can be both.

Q: So you freely admit that you have as T&N made shipments which were not connected to commercial moves which were in the nature of electronic goods?

MR. TEPPER: Objection just to the characterization of this question. I don't think that was his testimony but --

JUDGE CHESTNUT: Well, if it isn't he can answer it.

THE WITNESS: We have moved equipment solely from one location to another location.

[N.T. p.18-19]
[emphasis added]

Q: ...classified as electronic goods? For instance, haven't you moved mail equipment?

A: Yes, we have.

Q: And haven't you moved computers?

A: Correct.

Q: Tabulating machines?

A: Yes.

Q: You've also moved copying equipment?

A: Yes.

Q: And those movements have all been intrastate?

A: Not all.

Q: But there have been some?

A: Correct.

[N.T. p.20]
[emphasis added]

Q: Well, do you have any knowledge as to the amount of monthly gross revenues that are generated from customers in the nature of these movements that we've been discussing?

A: It could be somewhere in the neighborhood of 5 to \$7,000.00 a month.

[N.T. p.21]
[emphasis added]

Q: I've marked a document which I just handed to you as Protestant Exhibit Number 1 and ask you if that is a copy of part of your tariff filed with the PUC as pertains to your current authority?

A: Yes.

Q: And this is the only PUC certificate that your company now holds, correct?

A: Correct.

Q: Can you please point to the provision in this certificate of authority which allows you to make the movements that you've just been testifying with regard to?

A: It's not stated.

Q: So then you do not have authority to make the movements that you have testified that you have been making since you started operations in March of this year?

MR. TEPPER: If you know?

THE WITNESS: I guess -- according to this, I guess I don't.

[N.T. p. 22-23]
[emphasis added]

Q: Were you concerned about whether you were within your existing PUC certificated rights?

A: I was in my existing PUC authority.

Q: And what led you to believe that?

A: To be honest with you, I thought I could carry within 100 miles of Philadelphia.

Q: You're looking at paragraph four of Exhibit Protestant 1?

A: Um-hum.

Q: So you assumed that because it says to transport as a Class C carrier -- no, I'm sorry, were you looking at paragraph four or were you looking at paragraph three?

A: Paragraph four really has nothing to do with it.

Q: It would be paragraph three?

A: Yes.

Q: So you assumed because it says you have the right to transport as a Class D carrier household goods and office furniture, in use and new furniture uncrated from points in the City and County of Philadelphia to points within an airline distance of 100 statutory miles of Philadelphia City Hall and vice versa that gave you authority to make intrastate PUC movements?

A: It was my understanding that I could handle that type of equipment within the 100 miles.

Q: Then why would your company pay \$7,500.00 for the rights that it's seeking today?

A: To expand that authority.

[N.T. p.27-28]
[emphasis added]

Q: No, under number one, under Applicant's Exhibit 2 it talks about tabulating office machines for IBM.

A: Um-hum.

Q: Do you currently do work for IBM?

A: We do some work for IBM.

Q: And is that intrastate work?

A: It's a combination of both.

Q: And does that equipment involve tabulating machines and office machines?

A: Yes.

[N.T. p. 32]
[emphasis added]

Q: Now knowing that you do not carry authority to make the movements that we've been describing today, the electronic movements which are intrastate

for various customers which are unconnected to commercial moves, will you now cease immediately?

A: You're claiming that I don't have the authority.

Q: No. You told me today that you see that you don't have the authority unless I totally misunderstood the last half hour.

A: I don't see it mentioned here but it was my belief that we had the authority to move equipment.

Q: Do you still believe that?

A: Yeah, I do believe it, yes.

Q: And what portion of Protestant 1 gives you that authority?

[N.T. p. 39-40]
[emphasis added]

THE WITNESS: I basically know the question. It was my belief that we had the authority to do electronic moves within the mileage as listed here and I've been doing so based on my belief.

MR. PETRI: And now what is your opinion having re-examined Protestant 1, do you still believe that you have that authority?...

...THE WITNESS: I would like to sit down with my consultant to find out if I have been operating legally or not legally. I don't know if I can make that judgment at this time.

BY MR. PETRI:

Q: Is there something in particular about paragraph 3 of Protestant 1 that is confusing to you?

A: No.

[N.T. p. 41-42]
[emphasis added]

Q: Do you know whether your [sic] part of the Pennsylvania Moving and Storage Association?

A: Yes, we are.

Q: And do they send out publications periodically that describe certificates of authority and operating authority what's allowed and what's not?

A: Um-hum.

Q: And do you read that information

A: From time to time I do read it.

[N.T. p. 50-51]
[emphasis added]

III. MOTION TO HOLD PROCEEDINGS OPEN PENDING
RESOLUTION OF COMPLAINT

The Protestant hereby moves that these proceedings remain open pending disposition of a Complaint which has been filed with the Public Utility Commission at Docket No. 109244V-18, Session dated 1-7-93. The Protestant believes that the findings of the Complaint bare significant relevance to these proceedings since the above mentioned docket is believed to involve eleven (11) separate investigated violations of the Applicant's authority, all of which are in addition to the evidence pertaining to violations presented to this tribunal. Protestant seeks the right to supplement this record with the findings and decision with respect to this complaint and a second complaint which the Protestant believes will be filed against the Applicant by the PA PUC on its own initiative for falsification of tariff.

IV. PROPOSED FINDINGS OF FACT

1. The Applicant failed to establish that it is a fit carrier.

2. Applicant engaged in intrastate transportation without regard to its authority and prior to obtaining proper authority.

3. Protestant has been financially harmed to a significant degree as a result of Applicant's non-certificated transportation.

4. Granting this application will cause significant public harm and will not serve a useful public purpose.

5. The Applicant engages in conduct in the form of entertainment which is not reasonable and is not in the public interest.

6. The Applicant introduced no credible evidence or no evidence of its financial status, its operation, its ability to perform the service, its equipment, the number of its employees, its safety program or its drug testing policy.

7. The projected financial statement presented by Applicant is insufficient evidence of its financial capability to perform the service.

V. DISCUSSION

Where an applicant has been found to have rendered prior unauthorized service, it has been held that, absent a convincing showing that prior illegal conduct was rendered in

good faith or was rendered under a bona fide misunderstanding of the law or the carrier's rights, the Commission is justified in denying an Application on the basis of unfitness. Application of North Penn Transfer, Inc., 54 Pa. P.U.C. 585 (1981), A-0061078, F.2, Am-B, January 18, 1981; Application of Robert Gray's Sons, Inc., A-97768, F.1, Am-B, 1977; Application of Perfect Courier Ltd., A-104117 (1983).

Applicable appellate decisions are in accord with the Commission's rulings in this regard. Armored Motor Service Corp. v. Pa. PUC, 411 A.2d 900 (1980); Manganell v. Pa. PUC, 18 Pa. Cmwlth. 373, 335 A.2d 900 (1980); Bunting Bristol Transfer, Inc. v. Pa. PUC, 418 Pa. 286, 210 A.2d 281 (1965). In the case of Lancaster Transportation Co. v. Pa. PUC, 181 Pa. Super. 129, 124 A.2d 380, 385, the Court stated:

The mere fact of prior operation without Commission approval is not per se equivalent to an offense which will prohibit absolutely the acquisition of proper authority when application is subsequently made. The distinction between those violations which are prohibitive and those which will be accepted as competent evidence is, to a large degree, dependent upon the existence of a good faith. If the violation is the result of a bona fide misunderstanding of the service authorized by the Commission, there is no substantial basis, either legally or morally, to object to its use in a certification proceeding. (Citations omitted). On the other hand, where the violation is one resulting from a deliberate disregard of the certificate limitations or the law, then, of course, the wrongdoer should not profit from his own deliberate wrong.

Thus, this "good faith" rule requires that testimony as to need and fitness which is based upon prior unauthorized

service not made in good faith, be disregarded. Nevertheless, where unauthorized prior service has been rendered in "bad faith", it has been held in Brinks v. Pa. P.U.C. and Brooks, 456 A.2d 1342, 1344, that although

...Our case law is clear that, although a favorable finding of fitness may not be based upon evidence of the quality of service conducted in a willful violation of a court order or the Commission's authority, the mere fact of prior operation in violation of a court order or the Commission's authority does not preclude a carrier from obtaining lawful authority in a subsequent proceeding before the Commission. See Bunting Bristol Transfer, Inc. v. Pa. P.U.C., 418 Pa. 286, 210 A.2d 281 (1965); D.F. Bast, Inc. v. Pa. P.U.C., 397 Pa. 245, 154 A.2d 505 (1959). See also Gettysburg Tours, Inc. v. Pa. P.U.C., 42 Pa. Cmwlt. 399, 400 A.2d 945 (1959); Johnstown-Pittsburgh Express v. Pa. P.U.C., 5 Pa. Cmwlt. 521, 291 A.2d 545 (1972); Lancaster Transportation Co. v. Pa. P.U.C., 181 Pa. Super. 129, 124 A.2d 380 (1956). Thus, while WFB's continuing to haul money in deliberate disregard of the Commonwealth Court's order gave rise to a negative inference concerning Brooks' fitness, the Commission could still have granted the requested contract carrier authority without abusing its discretion, so long as the Commission had before it positive evidence of Brooks' fitness independent of the evidence relating to the period of unlawful operation.

Applicant has provided unauthorized service to certain shippers; such service was rendered in bad faith; and therefore this application must be dismissed.

Applicant has come before the Commission having admittedly performed services which it understood to be unlawful and apparently intends to continue to perform this unauthorized service. Stated above are numerous record references to support this position and there are additional statements in the record

too numerous to recount here in full.

In Bunting Bristol Transfer, Inc. v. Pa. P.U.C., 418

Pa. 286, 210 A.2d 201 (1965) it was stated

The first point has to do with the problem of burden of proof. The burden of proving good faith is on the applicant. He can acquit the burden only through the submission of proper evidence which is both clear and convincing. The protesting carriers do not have the burden of proving the applicant's lack of good faith although they have the right to present evidence on the point, It will be presumed that if the applicant violated his certificate his violation was in bad faith. The presumption can be overcome only by the applicant's submission of proper evidence which clearly and convincingly demonstrates his good faith.

In this regard paragraph 11 of the Application states:

11. Applicant is now engaged in any intrastate transportation of property for compensation in Pennsylvania (except as authorized by the certificates of public convenience or permits specified in Paragraph 6) and will not engage in the transportation for which approval is herein sought unless and until authorization for such transportation shall be received.

The Applicant does not attempt to explain its actions as the result of mistake or confusion, or, in the alternative does so in an inadequate manner. Applicant did not state at hearing, after having actual knowledge that it did not have the certificated right to do so, that it would immediately cease and desist from performing such transportation. This clearly negates any "good faith" argument which Applicant might assert. Applicant's conduct amounts to intentional, wilful and "bad faith" conduct.

Applicants conduct involves significant traffic. As is indicated in the above summary of the testimony of the Applicant and Protestant, the Applicant is engaging in unauthorized service in the nature of \$5,000.00 per month for one single customer, Pitney Bowes. Dismissal of Applicant's application is an appropriate remedy to rectify Applicant's conduct and the resulting harm. The Commission customarily allows a violating carrier to pay a fine for each violation charged in its process of resolving complaints. The Protestant asserts that a fine alone is an insufficient remedy as a fine represents a fraction of the revenues derived by the carrier, particularly where the charged violations, Eleven (11), in this case are a fraction of the shipments that the Applicant candidly admitted that it performed.

The Applicant continually flaunts the Public Utility Code. Such a course of conduct should not be encouraged by casually overlooking it otherwise the signal is given to industry that the rules and regulations mean nothing and that shippers can accept shipments without authority, risking only fines, when, and if, they are caught.

Applicant has not met the fitness standard in this regard. Nor has Applicant met the fitness standard in the presentation of its evidence. As has been indicated above, the Applicant has not presented sufficient evidence to find that the Applicant is fit. The summary of the evidence above sufficiently details the deficiencies in the Applicant's testimony so that these deficiencies need not be repeated.

VI. CONCLUSION

For the foregoing reasons, the Protestant, J.C. Services, Inc. requests that the application for transfer be dismissed.

LIEDERBACH, HAHN, FOY & PETRI

Date: 1-11-93

By: Scott Andrew Petri
SCOTT ANDREW PETRI, ESQUIRE
Attorney for Protestant


CERTIFICATE OF SERVICE

I, SCOTT ANDREW PETRI, ESQUIRE, certify that on the 11th day of January, 1993, I did serve a true and correct copy of the Brief of Protestant, J.C. Services, Inc. to Application of Tad's Delivery Service, Inc. upon the following persons in the manner indicated:

VIA FEDERAL EXPRESS:

MARLANE R. CHESTNUT
Administrative Law Judge
Commonwealth of Pennsylvania
Pennsylvania Public Utility Commission
Philadelphia State Office Building
1400 West Spring Garden Street
Philadelphia, PA 19130

DONALD M. DAVIS, ESQUIRE
Attorney for Applicant
4th Floor, Curtis Center
Independence Square West
Philadelphia, PA 19106-3304


SCOTT ANDREW PETRI, ESQUIRE
Attorney for Protestant

Dated: 1-11-93

VIA FEDERAL EXPRESS

81955-1

January 11, 1993

New Filing Section - Room 18B
Secretary
Pennsylvania Public Utility Commission
North and Commonwealth Avenues
North Office Building
Harrisburg, Pa. 17120

DOCUMENT
FOLDER

Re: A-00109244, F001-Am-A Application of
Tad's Delivery Service, Inc. t/a T&N
Van Service for amendment so as to permit...
transfer of rights at A-00086551 to Domenic
Cristinzio, Inc., subject to same limitations
and conditions

Dear Sir/Madam:

Enclosed please find an original and nine copies of the Brief of Applicant Tad's Delivery Service, Inc. t/a T&N Van Service for filing in the above-captioned matter.

Also, enclosed is a tenth copy of the Brief which we would appreciate your time-stamping and returning in the self-addressed, stamped envelope enclosed.

If you require any further information to complete this filing, please contact me immediately. Thank you for your attention to this matter.

Very truly yours,

Donald M. Davis
DONALD M. DAVIS

DMD/as

Enclosure

RECEIVED

JAN 11 1993

SECRETARY'S OFFICE
Public Utility Commission

BEFORE THE PUBLIC UTILITY COMMISSION
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE:

A-00109244, F001-Am-A APPLICATION
of TAD'S DELIVERY SERVICE, INC. t/a
T&N VAN SERVICE for amendment so as
to permit . . . transfer of rights
at A-00086551 to Domenic Cristinzio,
Inc., subject to same limitations
and conditions.

DOCUMENT
FOLDER

BRIEF OF APPLICANT
TAD'S DELIVERY SERVICE, INC., t/a T&N VAN SERVICE

DOCKETED
JAN 15 1993

Donald M. Davis, Esquire
Margolis, Edelstein, & Scherlis
Counsel for Applicant

Curtis Center - 4th Floor
Independence Square West
Philadelphia, PA 19106-3304
Phone: (215) 922-1100

RECEIVED
JAN 11 1993
SECRETARY'S OFFICE
Public Utility Commission

TABLE OF CONTENTS

TABLE OF CITATIONS
I. HISTORY AND STATEMENT OF THE CASE 2
II. SUMMARY OF TESTIMONY AND EVIDENCE 4
III. PROPOSED FINDINGS OF FACT 6
IV. ARGUMENT 16
 A. SUMMARY OF ARGUMENT 16
 B. SINCE THE PROPOSED TRANSFER INVOLVES EXISTING
 AUTHORITY, IT IS CONCLUSIVELY ESTABLISHED THAT
 THERE IS A USEFUL PUBLIC PURPOSE SERVED AND A
 PUBLIC NEED FOR CONTINUATION OF THE SERVICES ... 17
 C. T&N POSSESSES THE TECHNICAL AND FINANCIAL
 ABILITIES TO PROVIDE THE PROPOSED SERVICES SET
 FORTH IN THE SUBJECT RIGHTS, HAS SIGNIFICANT
 EXPERIENCE IN THE TRANSPORTATION INDUSTRY, AND
 CURRENTLY OPERATES AS AN EXISTING, PUC CERTIFICATED
 COMMON CARRIER. T&N IS PRESENTLY FIT TO CONDUCT
 OPERATIONS UNDER AND PURSUANT TO THE RIGHTS AT
 ISSUE IN THIS TRANSFER APPLICATION..... 19
 D. AS THE PROPOSED TRANSFER INVOLVES EXISTING
 AUTHORITY, IT IS CLEAR THAT THERE IS NO BASIS TO
 ASSERT, LET ALONE ESTABLISH, THAT T&N'S ASSUMPTION
 OF THE RIGHTS IS UNNECESSARY AND DESTRUCTIVELY
 COMPETITIVE. THERE IS NO DOCUMENTED EVIDENCE WHICH
 SHOWS THAT THE APPROVAL OF THE SUBJECT RIGHTS
 TRANSFER WOULD ENDANGER OR IMPAIR THE PROTESTANT'S
 BUSINESS TO THE EXTENT THAT THE PUBLIC INTEREST
 WOULD BE HARMED 25
V. PROPOSED CONCLUSIONS OF LAW 28
VI. CONCLUSION 29
VII. ORDER

TABLE OF CITATIONS

A. STATUTORY AUTHORITY

52 Pa. Code Section 41.14

B. DECISIONAL AUTHORITY

B.B. Motor Carriers v. Com., Pub. Util. Com'n., 36 Pa.Cmwlth. 26, 389 A.2d 210 (1978).

Brinks, Inc. v. Pa. Public Utility Com'n., 500 Pa. 387, 456 A.2d 1342 (1983).

Gettysburg Tours v. Pa. Public Utility Com'n., 42 Pa. Cmwlth. 399, 400 A.2d. 945 (1979).

Hercik v. Public Utility Commission, 137 Pa.Cmwlth. 377 , 586 A.2d 492 (1991).

In Re Byerly, 440 Pa. 521, 270 A.2d 186 (1970).

Mobilfone of Northeastern Pennsylvania v. Pennsylvania Public Utility Commission, 67 Pa.Cmwlth. 219, 446 A.2d 1001 (1982).

National Retail Transportation, Inc. v, Pennsylvania Public Utility Com'n., 109 Pa.Cmwlth. 72, 530 A.2d 987 (1987).

W.C. McQuaide, Inc. v. PUC, 137 Pa.Cmwlth. 282, 585 A.2d 1151 (1991),

I. HISTORY AND STATEMENT OF THE CASE

Tad's Delivery Service, Inc. trading as T&N Van Service (T&N) is a common carrier certificated to transport certain goods under Pennsylvania, New Jersey, and Interstate Commerce Commission authority. T&N with its current management has been actively engaged in operation in Pennsylvania since March, 1992 under and pursuant to it's PUC Certificate No. A-00109244.

T&N, in an effort to expand the scope of its operating authority, negotiated with D. Cristinzio, Inc. (Cristinzio) to purchase certain existing authority in order to expand T&N's existing operations, and primarily, T&N's geographic area of transportation authority to allow transportation between numerous additional Pennsylvania counties. Cristinzio Inc. ceased PUC transportations under Certificate No. A-00086551 about March, 1992 and their authority was placed in voluntary suspension by the PUC on March 4, 1992 for potential sale. See Applicant's Exhibit 5.

Initially, the Scope of Authority to be transferred was as stated in Exhibit "H" to T&N's Application for Transfer of Common Carrier Rights from Cristinzio. Ultimately, T&N negotiated with Cristinzio to purchase the balance of rights available under Folder 2 of Cristinzio's authority. T&N seeks to purchase the full rights under Folder 2, although a portion of these rights held by Cristinzio duplicated authority held by T&N, in order to meet the PUC requirements of avoiding any duplication of authority between

the transferror and transferee. As a result, T&N's Application was amended to include the entire Folder 2 of Certificate No. A-00086551. See Applicant's Addendum to its application marked as Exhibit 2 to the hearing transcript.

On May 15, 1992 T&N submitted to the PUC its Application for the Approval of the Transfer of the stated Common Carrier Rights of Cristinzio at Docket No. A-00086551, F.2. On July 22, 1992 J.C. Services, Inc. (J.C.) filed the only protest to the Application, broadly alleging that the Application was not necessary for the public and would be destructively competitive to J.C.'s business.

T&N, as the Applicant, its supporting documentation and Hearing testimony proves, has the required experience, technical knowledge, and financial ability to operate as a common carrier, as it has done successfully, safely, and legally for the last year, and to expand its transportation services in the Commonwealth of Pennsylvania.

As the rights sought to be transferred are existing rights, as a matter of law, it is presumed that the rights serve a useful public service, responsive to public demand. Further, as the rights are existing, there is no valid basis to assert, let alone establish, that the approval would endanger, or impair, or be destructively competitive with J.C.'s operations to the extent that the public interest would be affected.

T&N having met its burden of demonstrating its fitness as a common carrier and that there is a continuing public necessity for

service under said rights, this application should be granted.

II. SUMMARY OF TESTIMONY AND EVIDENCE

T&N is a stock corporation engaged in transportation services as a certificated carrier under the Pennsylvania PUC, the State of New Jersey, and the ICC. (See Application, N.T. 5) T&N's principals have over thirty (30) years experience in the transportation industry. (See Application, N.T. 38, 66)

T&N Van Service, initially, negotiated to purchase certain existing authority held by D. Cristinzio, Inc. at Certificate No. A-00086551. (See Application) T&N's wishes to purchase these rights in order to expand its operations to the numerous additional counties covered in these PUC rights and thus, extend its operations beyond their current limited radius of 100 miles from Philadelphia and to obtain authority to conduct transportation services between and within these additional counties. (N.T. 29-32, 43)

Pursuant to the PUC requirement that the Folder at issue not be split leaving certain rights with the transferor, T&N negotiated with Cristinzio to purchase all rights held under Folder 2 even though some of the rights to be transferred were duplicative of rights already held by T&N.

As T&N's Application and the evidence presented shows T&N possesses the requisite technical and operational experience and abilities to assume the rights subject to this transfer. There is no doubt that T&N, also, has the necessary financial resources to

conduct these operations as exhibited by the financial statements set forth in its Application. (See Application)

T&N's proposed Entertainment expenses budget is reasonable, proper, and commensurate with other carrier's engaged in transportation services. (N.T. 70, 127)

T&N has performed transportation services under and pursuant to its existing Pennsylvania, New Jersey, and ICC authority for Core States, Pitney Bowes, and Konica. T&N has not willfully, knowingly, or intentionally conducted operations outside the scope of its authority. (N.T. 65)

Protestant has not set forth any documentation to establish, let alone, substantiate their allegation that the approval of this transfer would impair or endanger their own operations to the extent that the public would be harmed. In fact approving the transfer, as the rights are existing, would maintain the competitive status quo which is clearly within the public interest.

Protestant only offered self-serving testimonials about the alleged current, not prospective, impact on their business with shippers Pitney Bowes, and inferentially Konica, and Core States. Interestingly, Protestant testified that he does not even conduct business for Konica or CoreStates, (N.T. 96, 104, 107). Further, the Protestant acknowledged that an alleged exclusive contract with Pitney Bowes was recently ended at the same time his operations for Pitney Bowes allegedly began to decrease. (N.T. 102-3, 116-7) Protestant has provided no evidence that Pitney Bowes corporate

policy change regarding the non-exclusive contract with Protestant had anything to do with T&N.

Protestant cannot show that it has lost sales, business, and revenue due to any actions on the part of T&N. Rather, Protestant's claimed losses resulted from competitive and economic pressures.

III. PROPOSED FINDINGS OF FACT

1. Tad's Delivery Service, Inc. trading as T&N Van Service (T&N) is a certificated carrier, registered and licensed with the Pennsylvania Public Utility Commission. (See Application of Tad's Delivery Service, Inc. t/a T&N Van Service for the Approval of the Transfer of Common Carrier Rights from Domenic Cristinzio, Inc. (Application marked as Applicant's Exhibit 1.)

2. T&N's present PUC operating authority is set forth in Certificate No. A-00109244. Folder 1, Am.-A. (See Application)

3. T&N is a certificated Interstate Commerce Commission carrier at Docket No. MC-214617 Sub.3. (See Application)

4. T&N is a certificated carrier in and pursuant to the applicable laws of the State of New Jersey under Docket No. PC00651. (See Application)

5. Tad's Delivery Service, Inc. trading as T&N Van Service is a stock corporation formed and existing under the laws of the State of Delaware. (See Application Exhibits A,B, and E, N.T. 6)

6. The Officers and Shareholders of T&N are David Nelson, Don Taddei, Russell Taddei, and Kenneth Taddei. (See Application

Exhibit E, N.T. 5 and 15)

7. T&N was purchased by David Nelson, Don Taddei, Russell Taddei, and Kenneth Taddei from Domenic Taddei. (9-11)

8. On November 29, 1990 by Order of the PUC, Certificate No. A-00109244 was changed to stand in the name of Tad's Delivery Service, Inc from Domenic F. Taddei. (See Application Exhibit M, N.T. 10-11)

9. Domenic Taddei has no ownership or other commercial interest in T&N (N.T. 10-12) In fact, Domenic Taddei passed away on November 10, 1992, as per the statement from his grandson attached as Exhibit "A" to the Appendix to this Brief.

10. T&N is a separate and distinct corporation from D. Cristinzio, Inc. and, additionally, has no commercial affiliation or otherwise with D. Cristinzio, Inc. (N.T. 10-12)

11. T&N operates a moving and storage business, which includes commercial office moving, electronic moving, automatic teller machine installation and rigging, and household moves. (N.T. 5)

12. T&N is located in and has a principle place of business in Cinnaminson, New Jersey at 835 Industrial Highway, Unit #4. (See Application and N.T. 5)

13. David Nelson is the President of T&N and was employed at D. Cristinzio, Inc., having left that employment in February of 1992 before joining T&N. (N.T. 4, 13, and 14)

14. David Nelson has had over twelve years of experience in transportation/trucking industry. (N.T. 36)

15. The Officers of T&N have over thirty years of combined experience in the trucking, moving, and storage industry. (See Application and N.T. 38, 66)

16. D. Cristinzio, Inc. ceased its operations as a PUC carrier in March 1992 but did not close the company down or abandon their PUC rights. (See Applicant's Exhibit 5, N.T 81-82)

17. Upon petition to the PUC, D. Cristinzio, Inc.'s rights were placed by Order of the PUC in voluntary suspension following their cessation of PUC activities in March 1992, pending sale of the rights. (See Applicant's Exhibit 5, N.T 81-82)

18. T&N Van Service seeks to purchase Folder 2 of the existing authority of D. Cristinzio, Inc., at issue herein, to expand its operations between the numerous additional counties covered in these PUC rights and thus, extend its operations beyond their current limited radius of 100 miles from Philadelphia. (N.T. 29-32, 43)

19. T&N's original Application for the transfer of authority was for only the following common carrier rights held by D. Cristinzio, Inc.:

Docket No. A-00086551, F.2 : To transport, by motor vehicle, uncrated office machines and electronic or mechanical equipment, including but not limited to, copiers, computers, x-ray machines, between points in the counties of Bucks, Chester, Delaware, Montgomery, Philadelphia, and from said

counties to points in Pennsylvania, and vice versa. AND to transport, as a Class D carrier, business and office machines and electronic or mechanical equipment, including, but not limited to copiers, computers, x-ray machines, and inserting machines, and new office furniture, between points in the counties of Luzerne, Lackawanna, Monroe, Carbon, Northampton, Lehigh, Berks, Schuylkill, Columbia, and Montour, and from points in said counties, to points in Pennsylvania, and vice versa.

(See Application Exhibit H, N.T. 33-34)

20. Subsequent to the original Application, T&N negotiated with Cristinzio to purchase the balance of rights available under Folder 2 of its authority although a portion of the rights were duplicated authority held by T&N to meet the PUC requirements of avoiding any duplication of authority between transferee and transferor. (See Addendum to T&N's Application marked as Applicant's Exhibit 2 (Addendum), N.T. 7, 33-34)

21. T&N amended its Application for approval of the transfer of rights, pursuant to the PUC's directive that Folder 2 not be split to include all rights, even those duplicative of T&N's existing authority, held by D. Cristinzio, Inc. under Docket No. 00086651, Folder 2. (See Addendum)

22. T&N under its present authority has performed commercial moves interstate and intra-state, originating from Philadelphia,

and has, as part of those commercial moves, transported electronic office goods. (N.T. 18-19)

23. T&N has, pursuant to its existing authority, on an ad hoc and infrequent basis performed electronic goods transportation intrastate for Konica. (N.T. 23)

24. T&N in good faith believes that their existing Pennsylvania PUC operating authority provided them with the ability to conduct intrastate moves of electronic office goods for Konica. (N.T. 22-23)

25. If, assuming arguendo, T&N's existing authority can be interpreted to preclude them from single intrastate electronic moves for Konica, any actions in this regard by T&N Van Service were undertaken due to and based on their mistaken belief as to the scope of their operating authority. (N.T. 22-23)

26. Any movement of electronic goods for Pitney Bowes were performed under and pursuant to T&N's ICC authority. (N.T. 23-24)

27. Any movement of electronic goods by T&N for Pitney Bowes are, after being picked up from the customer location transported and consolidated at T&N's warehouse in Cinnaminson, New Jersey for later single delivery to Pitney Bowes in Philadelphia, within the week. (N.T. 24-7)

28. T&N has no regular, weekly scheduled pick ups, deliveries, or other type of movement of electronic equipment for Pitney Bowes. (N.T. 26)

29. Upon returning the electronic goods to Pitney Bowes from

their warehouse consolidation, T&N Van Service has on only two or three occasions picked up new electronic equipment, but the delivery from that second pick up was only to either Atlantic City, New Jersey or in Delaware. (N.T. 27)

30. Pitney Bowes does not as a condition for transportation services or as a practice require T&N to immediately return all items, returned from clients, to Pitney Bowes. (N.T. 47-48)

31. Protestant testified that Pitney Bowes maintains a policy for additional day holding of equipment if within the "lane of traffic." (N.T. 111)

32. According to the protestant, Pitney Bowes shipments from customers into its Philadelphia facility can be held overnight at the shipper's facility. (N.T. 95, 112-3)

33. According to the protestant, Pitney Bowes corporate policy allows for pick-ups issued to a carrier to be completed in three days. (N.T. 113)

34. According to the Protestant "typically" Pitney Bowes allows a shipper to bring the equipment into their dock because of "economies of scale", offload the equipment, and reload it the following morning for delivery to the branch. (N.T. 113)

35. According to the Protestant there are "minimal" shipments Pitney Bowes wants back the same day. (N.T. 113)

36. Protestant Exhibit 3 allegedly referencing an Atlantic City to Pitney Bowes shipment, would be a movement which is consolidated in T&N's Cinnaminson warehouse and is a movement

within the scope of T&N's existing ICC authority.

37. T&N Van Service performs commercial office moves for Core States. (N.T. 43)

38. T&N Van Service receives automatic teller machines in its Cinnaminson, New Jersey warehouse, holds them in storage, and then delivers and installs the machines in primarily points in New Jersey and to a limited extent in Pennsylvania for Core States. (N.T. 45)

39. T&N Van Service has performed automatic teller machine transportation and installation for Core States under and pursuant to its existing authority in the State of New Jersey and with the ICC. (N.T. 44-46)

40. T&N Van Service believes in good faith that any of its operations with regard to the movement of electronic office equipment were within and performed under its existing operating authority to carry goods within a 100 mile airline radius of Philadelphia City Hall. (N.T. 27, 40)

41. T&N in good faith seeks approval of its purchase of all the rights as set forth in the pending application to expand its operations which includes the transportation of electronic equipment in Philadelphia to authorize such transportation between additional counties including Philadelphia. (N.T. 28-30)

42. T&N has conducted their transportation business within the scope of their existing authority with the PUC under Docket No. 00109244 and their existing New Jersey and ICC rights. (N.T. 65)

43. T&N has acted in good faith in providing transportation services under and pursuant to its existing authority under Docket No. 00109244 and their existing New Jersey and ICC Rights. (N.T. 65-66)

44. T&N did not knowingly, willfully, or intentionally perform any services in contravention of its existing authority. (N.T. 65)

45. T&N's 1992 four quarter projected Meals, Lodging, and Entertainment Expense Budget is not solely used for customer relations but, also, includes bonuses and incentive to its own employees for their outstanding work. (N.T. 70)

46. Protestant admits that T&N's Entertainment Expense Budget Projection is "typically" the same as what the industry does. (N.T. 127)

47. T&N's 1992 four quarter projected Meals, Lodging, and Entertainment Expense Budget is reasonable, proper, and commensurate with such expenditures incurred by other entities involved in the moving and storage industry and represents only a small percentage of its operating budget.

48. T&N is financially stable and has sufficient financial resources to conduct its operations including additional operations pursuant to approval of the transfer Application. (See Application Exhibit I)

49. T&N has no Liabilities and sufficient capital resources for conducting operations. (See Application Exhibit I)

50. T&N possesses the necessary financial resources for

expanded operations if the transfer Application is approved. (See Application Exhibit I)

51. T&N possesses the necessary experience and technical skills required of a PUC certificated carrier.

52. Protestant's Exhibits 2-4 are not original documents.

53. Protestant never performed transportation services for Konica. (N.T. 96, 104)

54. Protestant has been unsuccessful in soliciting transportation business from Konica. (N.T. 96)

55. Protestant can show no lost revenues, sales, or business from shipper Konica as the Protestant never conducted business with Konica.

56. Protestant's sales have allegedly diminished only during the last three months before the hearing. (N.T. 99)

57. Protestant's only decline in sales is from the Pitney Bowes' account. (N.T. 99)

58. Protestant's alleged exclusive contract with Pitney Bowes ended several months ago because of a change in corporate policy by Pitney Bowes which required the naming of a back-up carrier. (N.T. 10-3, 116-117)

59. Protestant infers that the Pitney Bowes corporate policy change regarding maintaining was due to T&N but has provided no evidence to substantiate same. (N.T. 116)

60. T&N had nothing to do with Pitney Bowes corporate policy change with respect to its transportation shipments.

61. If protestant has lost revenue as a result of Pitney Bowes corporate policy change such was in no way directly or indirectly due to T&N.

62. There is no evidence that the Protestant lost sales, revenue, and business from Pitney Bowes due to any improper activity by T&N.

63. Protestant does not perform any operations for Core States. (N.T. 107)

64. Protestant offered no documentation to support its present or potential claim of lost sales, business, and revenue with any shipper due to any improper activity by T&N. (N.T. 106)

65. Protestant claims it is not concerned with T&N's Application but rather is upset when someone comes in and interferes with their business, especially if done "illegally." (N.T. 118)

66. There is no proof that T&N interfered in any way with Protestant's operations or business.

67. Protestant's claimed losses, if any, resulted from general competitive and economic pressures rather than any action of T&N.

68. Protestant has an interest in obtaining rights similar to those at issue and readily admits that it would consider purchasing these rights if T&N's Application is denied. (N.T. 132)

69. Shippers Pitney Bowes, Core States, and Konica are satisfied with the work T&N does for them under T&N's existing authority and would be more satisfied with having further work

performed by T&N Van Services than by Protestant. (N.T. 134)

70. T&N Van Service, if the authority at issue is granted, has identified customers who will seek T&N's transportation services. (N.T. 43)

71. Transferor Cristinzio has negotiated a fair and reasonable value for the purchase and sale of its existing rights if the PUC approves the transfer.

IV. ARGUMENT

A. SUMMARY OF ARGUMENT

As the Application for transfer is based on existing rights held by Cristinzio, it is conclusively established that the rights serve a useful public purpose and convenience, and that there is a public need for the continuation of the services.

T&N possesses the necessary technical and financial skills and resources to conduct operations under and pursuant to the rights at issue in this transfer. T&N is a certificated carrier under the Pennsylvania PUC and has operated under its PUC authority for the last year successfully, safely, and legally. T&N also is authorized as a common carrier by the ICC and the State of New Jersey. T&N's principals have had significant experience in operating a transportation business. T&N is presently fit to perform the services under and pursuant to the subject rights as a common carrier.

T&N has conducted its operation pursuant to and in accordance with their existing Pennsylvania, New Jersey, and ICC authority.

There is no evidence that T&N conducted operations in deliberate disregard of their existing authority or in bad faith. Further, even given any mistaken understanding by T&N of its operating authority, there is sufficient independent evidence on the record of T&N's fitness to operate under the subject rights.

As the proposed transfer involves existing authority, there is no basis to assert, let alone establish, that the transfer of these rights to T&N is unnecessary and destructively competitive. Protestant has produced no documentation to support their testimonial, self-serving allegation that T&N presently or in the future will endanger their operations to the extent that the public interest would be harmed.

B. SINCE THE PROPOSED TRANSFER INVOLVES EXISTING AUTHORITY, IT IS CONCLUSIVELY ESTABLISHED THAT THERE IS A USEFUL PUBLIC PURPOSE SERVED AND A PUBLIC NEED FOR CONTINUATION OF THE SERVICES

One of the evidentiary criteria for approval of authority requires a showing that the authority serves "a useful public purpose, responsive to a public demand or need." 52 Pa.Code Section 41.14(a).

In transfer of authority cases this burden can be satisfied by a presumption that public convenience continues unless evidence to the contrary is presented. In Re Byerly, 440 Pa. 521, 270 A.2d 186 (1970). (Citations omitted). In Re Byerely, Id., A.2d at 188, the court stated:

"In transfer of certificate cases the principle has evolved that it is not necessary for the transferor or

transferee to show that the certificate under review is necessary for the public convenience. It is presumed that the convenience once found continues until the contrary is shown."

See also, Mobilfone of Northeastern Pennsylvania v. Pennsylvania Public Utility Commission, 67 Pa.Cmwlth. 219, 446 A.2d 1001 (1982).

The proposed Certificate for transfer Docket No. A-00086551, Folder 2 is existing authority held by Cristinzio. Cristinzio has conducted transportation services under this authority since 1965.

Cristinzio's principals, however, are nearing the age of retirement and are consolidating their business interests. Pursuant to this, Cristinzio decided to cease its PUC transportation under the authority at issue in or about March, 1992.

Cristinzio placed its operating authority under Certificate No. A-00086551 in voluntary suspension pending sale which procedure was approved by the PUC on March 4, 1992. See Applicant's Hearing Exhibit 5. According to the PUC's correspondence approving the voluntary suspension, the suspension would expire March 31, 1993.

While the rights at issue in this transfer is in suspension, the rights are existing and effective as proven by the directive of the PUC.

Further, there is no evidence that Cristinzio in any way abandoned or otherwise seceded these rights. In fact, it is quite to the contrary as the indisputable proof shows that Cristinzio acted affirmatively to protect these Rights effectiveness for its

. eventual sale.

Accordingly, there is a presumption that the existing authority subject to this transfer serves a useful public purpose and is necessary for public convenience. No evidence having been presented by the Protestant to rebut or contradict this presumption, T&N has met its burden of proof in this respect for the approval of this transfer Application.

C. T&N POSSESSES THE TECHNICAL AND FINANCIAL ABILITIES TO PROVIDE THE PROPOSED SERVICES SET FORTH IN THE SUBJECT RIGHTS, HAS SIGNIFICANT EXPERIENCE IN THE TRANSPORTATION INDUSTRY, AND CURRENTLY OPERATES AS AN EXISTING, PUC CERTIFICATED COMMON CARRIER. T&N IS PRESENTLY FIT TO CONDUCT OPERATIONS UNDER AND PURSUANT TO THE RIGHTS AT ISSUE IN THIS TRANSFER APPLICATION

T&N has already been approved as a fit carrier by the Pennsylvania Public Utilities Commission, the Interstate Commerce Commission, and the State of New Jersey. T&N is eminently fit to operate a transportation services company and, under its present principals, has done so successfully, safely, and legally. T&N possesses the skills and resources necessary to increase its operations and services to better serve the public.

The public need and convenience having been established, the "only requirement" that T&N must also prove is its "ability or fitness to meet the public need." Mobilfone, supra, A.2d at 1002-

3. 52 Pa. Code Section 41.14(b) list the criterion as follows:

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 legally and safely.

Besides its current status as a certificated PUC carrier which establishes a presumption of fitness and competence, T&N principals have over thirty (30) years combined experience in the transportation industry. T&N's President David Nelson alone has worked over 12 years in this field. Such experience and T&N's current status as an existing, PUC certificated carrier proves that T&N possesses the requisite technical abilities to render the proposed service.

T&N's financial position has not been challenged. As T&N's Statement of Financial Position attached as Exhibit "I" to its Application proves T&N has sufficient financial resources to assume and operate under the subject rights. Most prominent is the fact that T&N has no liabilities. Further, T&N's proposed Cash Flow, also Exhibit "I" to its Application, shows that T&N is financially solid and liquid to meet the proposed operations.

At the Hearing, the Honorable Marlane R. Chestnut raised a question as to the amount for Meals, Lodging, and Entertainment Expenses budgeted on T&N's Projected Cash Flow Exhibit. T&N's projected expenses for this Entertainment, which in addition to client development included T&N's bonuses and rewards to its employees, was set at \$9,500.00 for the entire year. This amount is less than one percent (1%) of T&N's entire proposed disbursement Budget.

T&N submits that this Entertainment expense is reasonable, proper, and consistent with the standard industry practice in this

regard. In fact, Protestant Steven McGary in direct response to a question from the Honorable Marlane R. Chestnut testified:

Your Honor, I can tell you that my experience is through conversation with other people that the industry typically does what T&N does. (N.T. 127) (Emphasis added.)

The sole issue raised by the Protestant as a basis to deny T&N the authority on this criteria is its allegation that T&N conducted business operations outside the scope of its current operating authority. Contrary to Protestant's allegations, T&N conducted the operations set forth by the Protestant at the Hearing under and pursuant to its existing Interstate Commerce, New Jersey, and Pennsylvania operating authorities. Further, any operation T&N conducted was performed under a good faith belief that their existing authority included these operations, in particular the transportation of electronic goods.

Even assuming arguendo that T&N is found to have conducted any operations under a mistaken understanding as to the scope of its operating authority, it is well settled under Pennsylvania law, that evidence of "incidents of past unlawful operations are not conclusive on the questions of (Applicant's) present fitness and do not preclude (Applicant) from obtaining authority." Hercik v. Public Utility Commission, 137 Pa.Cmwlth. 282, 586 A.2d 492, 494-5 (1991), citing, Brinks, Inc. v. Pa. Public Utility Com'n., 500 Pa. 387, 456 A.2d 1342 (1983). See, W.C. McQuaide, Inc. v. PUC, Pa.Cmwlth. , 585 A.2d 1151 (1991), National Retail Transportation, Inc. v. Pennsylvania Public Utility Com'n., 109 Pa.Cmwlth. 72,

530 A.2d 987 (1987), Gettysburg Tours v. Pa. Public Utility Com'n., 42 Pa. Cmwlth. 399, 400 A.2d. 945 (1979), and B.B. Motor Carriers v. Com., Pub. Util. Com'n., 36 Pa.Cmwlth. 26, 389 A.2d 210 (1978). In fact, consideration of alleged activities beyond authority is only one minor factor to be considered by the PUC in determining fitness for operation and, even a finding that activities were conducted beyond authority can be outweighed by "independent positive evidence" of the carrier's fitness. Hercik Id., A.2d at 586; quoting Brinks, Inc., Id. at 391-2, 456 A.2d at 1344.

The Protestant at the Hearing sought by testimony to show that T&N conducted operations outside of their authority for shippers Konica, Core States, and Pitney Bowes. The Protestant, also, produced as Exhibits three documents which purportedly showed that T&N's operations were outside its authority. See Protestant Exhibits.

Regarding these Exhibits, as Judge Chestnut indicated in admitting them, the documents are not entitled to any probative weight. The documents submitted by the Protestant are not relevant as they do not in any way show or prove that T&N conducted these operations in violation of their existing authority. Just as significantly, there is a question as to the relevancy and authenticity of the copies, non-originals, submitted.

On this point, Protestant Exhibit 4, if authenticated, indicates transportation from Flagship Resorts in Atlantic City, New Jersey which operation would be conducted under and pursuant to

their existing ICC authority. Thus, this Exhibit on an evidentiary as well as merit basis is irrelevant.

As to the allegations of illegal operations for Pitney Bowes, the evidence on the records shows that any and all movements of electronic goods for Pitney Bowes were picked up by T&N from the customer and consolidated at T&N's warehouse in Cinnaminson, New Jersey for a later single delivery to Pitney Bowes. In fact, the Protestant admitted that "typically" Pitney Bowes allows a shipper to transport deliveries to its dock because of the "economies of scale", offload the equipment, and reload it the next day for delivery, or within a three day window. T&N has no regular, weekly scheduled routes for Pitney Bowes. As such, these movements were performed under and pursuant to T&N's existing authority.

With respect to Core States, T&N performs commercial office moves for them and, also, Automatic Teller Installations (ATM). T&N receives the ATM's from Core States and performs the transportation and installation of them under and pursuant to its New Jersey authority.

T&N's David Nelson admitted that on an ad hoc basis it has performed electronic equipment moves intrastate for Konica which operations were primarily parts of commercial moves. T&N conducted these electronic good movements on the good faith assumption that these activities were within the scope of their existing operating authority. As Nelson testified, T&N believed that electronic good movement for Konica or Pitney Bowes, as defined by the ICC, was

within their existing authority.

There is no evidence that T&N knowingly, willingly or intentionally conducted operations outside the scope of their existing authority. The fact of the matter is that, even if any operation performed by T&N was not authorized under its present authority that operation was conducted pursuant to a good faith, mistaken belief that their existing authority covered these type of movements. T&N did not act in deliberate disregard or bad faith in the conduct of operations with respect to electronic good movements.

Further, even given any mistaken understanding by T&N of its operating authority, there is extensive positive, independent evidence on the record that shows T&N's fitness to operate as a certified carrier. T&N has already been certified as a common carrier, T&N's principals have extensive experience in the moving and transportation industries. T&N possesses the requisite financial and technical capabilities. And, T&N has operated safely and legally under its existing authority.

Essentially, the record does not support Protestant's contention that T&N had conducted any operations outside the scope of their authority, let alone that T&N acted in deliberate disregard of the law, and in any way had a "propensity" to operate illegally. In fact, T&N has not been cited for any violations by the PUC enforcement division despite apparent complaints made by protestant or others.

The overwhelming weight of the evidence indicates clearly that T&N possesses the requisite skills, character, and abilities to perform the services for which the additional authority set forth in the transfer application is sought.

D. AS THE PROPOSED TRANSFER INVOLVES EXISTING AUTHORITY, IT IS CLEAR THAT THERE IS NO BASIS TO ASSERT, LET ALONE ESTABLISH, THAT T&N'S ASSUMPTION OF THE RIGHTS IS UNNECESSARY AND DESTRUCTIVELY COMPETITIVE. THERE IS NO DOCUMENTED EVIDENCE WHICH SHOWS THAT THE APPROVAL OF THE SUBJECT RIGHTS TRANSFER WOULD ENDANGER OR IMPAIR THE PROTESTANT'S BUSINESS TO THE EXTENT THAT THE PUBLIC INTEREST WOULD BE HARMED.

Protestant asserts that T&N's Application, if granted, would authorize a service which would be unnecessary and destructively competitive with Protestant's operating authority. See Statement of Protest.

The final evidentiary criteria for the Commission's review of an Application under 52 Pa. Code Section 41.14(c) provides that the authority potentially can be denied if:

... it is established that the entry of a new carrier into the field would endanger or impair existing common carriers to the extent that, on balance, the granting of the authority would be contrary to the public interest.

First of all, the rights subject to transfer are existing rights under which Cristinzio conducted operations for numerous years in competition with Protestant. Moreover, these rights as existing are, as stated in Section B, presumed to be necessary to satisfy continuing public necessity and convenience.

As with the establishment of public convenience and need, it is presumed that the continuation of these rights by transfer would

maintain the competitive status quo which is without doubt within the public interest. The transfer of these rights would not in any way be destructively competitive with the Protestant's authority or present operations as the transfer merely maintains the current state of operations and competition in this area.

Interestingly, the Protestant makes no secret of the fact that it would like to purchase these rights if the transfer is denied to T&N.

The only other issue in this regard is Protestant's allegation that its operations will be impaired or endangered. Yet the Protestant's professed concern is not that the eventual owner of these rights would compete with his business or T&N's Application, but instead, that an alleged illegal operator, T&N, allegedly is currently impairing his operations.

The Protestant merely introduced self-serving testimonial evidence, not documents or otherwise, to support his averment that his present operations are being affected by T&N. There was no evidence of any potential future loss of sales, business, or revenue attributable to approval of the transfer of this existing authority.

Protestant appears to allege that they have lost sales and revenue from Konica but then, admits that J.C. has never provided service to that shipper despite numerous sales calls over the last years. The only other evidence of alleged business loss was with respect to J.C.'s services to Pitney Bowes. J.C. admits that a

change in policy by Pitney Bowes regarding the handling of its account was put in place approximately three months ago which, apparently, had the effect of withdrawing J.C. as the exclusive carrier. J.C. admits that this has affected their operations income from the Pitney Bowes account as one would expect such would given the change to a non-exclusive agreement. J.C. responds, however, by placing the blame for their current, and conceivably future, revenue loss on T&N and goes so far as to infer that the Pitney Bowes policy change was due to T&N. Outside of unsupported testimony, there are no facts which minimally indicate that any current or potential revenue loss by J.C. on the Pitney Bowe's account was due to T&N or that T&N precipitated any corporate policy change by Pitney Bowes.

The record outside of the broad, unsupported assertions by the Protestants does not disclose any direct evidence that any alleged loss of revenue, business, and income, was attributable to T&N or T&N's alleged illegal operations. As in W.C. McQuaide, Inc. v. PUC, 137 Pa.Cmwlth. 282, 585 A.2d 1151 (1991), this issue raised by J.C. appears only to be an attempt to avoid competition, to obtain the rights for themselves, or to make sure that the rights expire, which motive is not a basis for insulation from competition by denial of this transfer.

The record herein clearly supports approval of this transfer of rights application.

V. PROPOSED CONCLUSIONS OF LAW

1. PUC finds that a continuation of the rights set forth in Certificate No. A-00086551 F2 is necessary and proper for the service, accommodation, convenience or safety of public.

2. As the rights under Certificate No. A-00086551 F2 are existing and in effect by directive of the PUC, the PUC conclusively finds that the rights serve a useful public service, responsive to the public's need and convenience.

3. T&N by and through its Officers possesses the requisite skill, experience, and knowledge and is fit to conduct business as a certified motor carrier.

4. T&N is financially stable and has sufficient financial resources to conduct additional operations such as would be authorized under the rights subject to transfer.

5. The evidence presented by the Protestant does not establish or prove that T&N conducted any operations outside the scope of its existing authorities under Certificate No. A-00109244, the ICC or NJ DOT.

6. T&N has conducted its operations as a certificated carrier under Pennsylvania PUC, Interstate Commerce Commission, and the State of New Jersey pursuant to its existing authority and under the law.

7. Even if T&N conducted operations outside the scope of all their existing authority, such operations were conducted due to and based on a good faith misunderstanding of the scope of their

existing authority.

8. T&N did not willfully, intentionally, or knowingly conduct any operations outside the scope of their existing authority.

9. T&N is a fit carrier with the resources and skills necessary to perform operations under its existing authority and the authority subject to transfer.

10. T&N's Budgeted Entertainment Expenses are reasonable, proper, and consistent with standard industry practice.

11. The PUC finds that no proof has been offered by the Protestant which proves that the Protestant's operations will be impaired, endangered, or subject to destructive competition if the transfer of the existing rights is approved.

12. The proposed purchase price of \$7,500.00 is a fair and reasonable market value for the authority being purchased.

VI. CONCLUSION

T&N possesses the necessary financial, technical, and operational skills and resources and is fit to conduct business as a certified motor carrier.

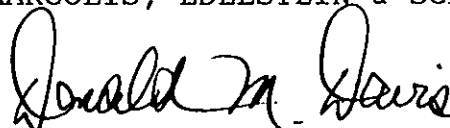
The PUC must find that transfer of the rights described in Certificate No. A-00086551 F2 is necessary and proper for the service, accommodation, convenience or safety of public and T&N is fit to assume the transfer of the subject authority for servicing this public need.

It is therefore respectfully requested that the transfer application of T&N be approved and the protest be dismissed.

Respectfully submitted,

MARGOLIS, EDELSTEIN & SCHERLIS

By:



DONALD M. DAVIS, ESQUIRE
The Curtis Center, 4th Floor
Independence Square West
Philadelphia, Pa. 19106-3304
(215) 922-1100
Attorney for Applicant Tad's
Delivery Service, Inc., t/a
T&N Van Service

BEFORE THE PUBLIC UTILITY COMMISSION
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE:

A-00109244, F001-Am-A APPLICATION
of TAD'S DELIVERY SERVICE, INC. t/a
T&N VAN SERVICE for amendment so as
to permit . . . transfer of rights
at A-00086551 to Domenic Cristinzio,
Inc., subject to same limitations
and conditions.

APPENDIX OF EXHIBITS TO
TAD'S DELIVERY SERVICE, INC. t/a T&N VAN SERVICE
BRIEF FOR APPROVAL OF THE TRANSFER APPLICATION

4th Floor Curtis Center
Independence Square West
Philadelphia, PA 19106-3304
(215) 922-1100

Donald M. Davis, Esquire
Margolis, Edelstein, &
Scherlis

Counsel for Applicant

RECEIVED
JAN 11 1993
SECRETARY'S OFFICE
Public Utility Commission

December 29, 1992

To Whom It May Concern,

Please be advised that on November 10, 1992, Mr. Domenic F. Taddei expired due to an aneurism. May he rest in peace.

*His Grandson,
Russell G. Taddei, Jr.*



COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

IN RE:

A-00109244, F001-Am-A APPLICATION
of TAD'S DELIVERY SERVICE, INC. t/a
T&N VAN SERVICE for amendment so as
to permit . . . transfer of rights
at A-00086551 to Domenic Cristinzio,
Inc., subject to same limitations
and conditions.

O R D E R

The Commonwealth of Pennsylvania Public Utilities Commission upon consideration of the above-captioned Application and all protests thereto hereby finds that:

1. The continuation of the rights set forth in Certificate No. A-00086551 Folder 2 is necessary and proper for the service, accommodation, convenience, or safety of the public.

2. The Applicant Tad's Delivery Service, In. t/a T&N Van Service possesses the experience, technical skills and knowledge, and financial resources necessary to assume and operate under the rights in Certificate No. A-00086551 Folder 2.

3. The Applicant Tad's Delivery Service, In. t/a T&N Van Service is presently fit to serve the public as a certificated common carrier under and pursuant to the rights in Certificate No. A-00086551 Folder 2.

4. The Applicant Tad's Delivery Service, In. t/a T&N Van Service operations as a certificated common carrier under and pursuant to the rights in Certificate No. A-00086551 Folder 2 will not impair, endanger, or be destructively competitive to the Protestant's business.

It is hereby **ORDERED AND DECREED**, by the Public Utility Commission that the granting of said Application is necessary and proper for the service, accommodation, convenience, and safety of the public, and a Certificate shall be issued evidencing its approval of said Application.

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

IN RE:

A-00109244, F001-Am-A APPLICATION
of TAD'S DELIVERY SERVICE, INC. t/a
T&N VAN SERVICE for amendment so as
to permit . . . transfer of rights
at A-00086551 to Domenic Cristinzio,
Inc., subject to same limitations
and conditions.

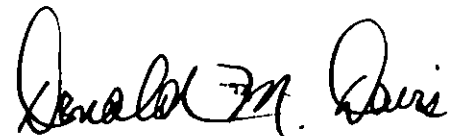
CERTIFICATE OF SERVICE

I, DONALD M. DAVIS, ESQUIRE, do hereby certify that the
Brief of Applicant Tad's Delivery Service, In., t/a T&N Van Service
in the above-captioned matter was served by First Class Mail, on
January 11, 1993 to the following individual:

Scott A. Petri, Esquire
Liederbach, Hahn, Foy & Petri, P.C.
892 Second Street Pike
Richboro, Pa. 18954

In addition, this Brief was hand delivered to the
following individual on January 12, 1993:

The Honorable Marlane R. Chestnut
Administrative Law Judge
Commonwealth of Pennsylvania
Pennsylvania Public Utility Commission
Philadelphia State Office Building
1400 West Spring Garden Street
Phila., Pa. 19130



DONALD M. DAVIS, ESQUIRE

KJR

BEFORE THE PUBLIC UTILITY COMMISSION
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE:

A-00109244, F001-Am-A APPLICATION
of TAD'S DELIVERY SERVICE, INC. t/a
T&N VAN SERVICE for amendment so as
to permit . . . transfer of rights
at A-00086551 to Domenic Cristinzio,
Inc., subject to same limitations
and conditions.

DOCUMENT
FOLDER

APPENDIX OF EXHIBITS TO
TAD'S DELIVERY SERVICE, INC. t/a T&N VAN SERVICE
BRIEF FOR APPROVAL OF THE TRANSFER APPLICATION

4th Floor Curtis Center
Independence Square West
Philadelphia, PA 19106-3304
(215) 922-1100

Donald M. Davis, Esquire
Margolis, Edelstein, &
Scherlis

Counsel for Applicant

RECEIVED

JAN 11 1992

SECRETARY'S OFFICE
Public Utility Commission

December 29, 1992

DOCUMENT
FOLDER

To Whom It May Concern,

Please be advised that on November 10, 1992, Mr. Domenic F. Taddei expired due to an aneurism. May he rest in peace.

His Grandson,
Russell G. Taddei, Jr.

DOCKETED
MAR 16 1993

EXHIBIT
A

ORIGINAL

LAW OFFICES

LIEDERBACH, HAHN, FOY & PETRI

A PROFESSIONAL CORPORATION

892 SECOND STREET PIKE

RICHBORO, PA. 18954

KJR

EDWARD D. FOY, JR.
CARL G. HAHN
SCOTT A. PETRI
DENNIS R. DENARD
HARRY J. LIEDERBACH
1916-1982

RICHBORO LINE
322-8300
PHILADELPHIA LINE
677-0919
DOYLESTOWN LINE
343-9310
FAX 215-322-7646

DOCUMENT
FOLDER

January 22, 1993

Commonwealth of Pennsylvania
Pennsylvania Public Utility Commission
Attn: Secretary Jerry Rich
North Office Building, Room G-18
North Street and Commonwealth Avenue
Harrisburg, PA 17120

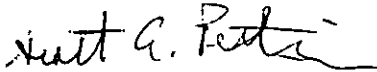
RE: Application of Tad's Delivery
Service, Inc.
No. A-00109244, F. 001-Am-A

Dear Secretary Rich:

Enclosed please find an original and nine (9) copies of the Reply Brief of Protestant, J.C. Services, Inc. to the above-captioned application.

Sincerely yours,

LIEDERBACH, HAHN, FOY & PETRI



By: Scott A. Petri

SAP/ccm

Enclosures

cc: Administrative Law Judge Marlane R. Chestnut
Donald M. Davis, Esquire
J.C. Services, Inc.

RECEIVED

JAN 23 1993

SECRETARY'S OFFICE
Public Utility Commission

VIA FEDERAL EXPRESS

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

APPLICATION OF : DOCKET NUMBER A-00109244
: F001-Am.A.
TAD'S DELIVERY SERVICE, INC. :

FEB 12 1993

REPLY BRIEF
OF
PROTESTANT
J.C. SERVICES, INC.

RECEIVED

JAN 22 1993

SECRETARY'S OFFICE
Public Utility Commission

DOCUMENT
FOLDER

SCOTT ANDREW PETRI, ESQUIRE
LIEDERBACH, HAHN, FOY & PETRI, P.C.
892 Second Street Pike
Richboro, PA 18954
(215) 322-8300
Counsel to Protestant

I. FINANCIAL, TECHNICAL & OPERATIONAL BACKGROUND OF APPLICANT

In the Applicant's Summary of Testimony and Evidence, the Applicant states, without citing any portion of the record other than the Applicant and the Applicant's "financial statements", that the applicant has the requisite technical and operational experience and the necessary financial resources to conduct its operation. As argued in the Protestant's Brief, the Applicant has the burden of establishing that it possesses the requisite technical, operational and financial ability to perform the services. The Applicant correctly states that under §41.14(b) and Mobilfone of Northeastern Pa. v. PA PUC, 67 Pa. Cmwlth. 219,446 A.2d 1001 (1982), it is not the Protestant's burden to establish that the Applicant is deficient in these areas.

Summary conclusionary statements do not constitute evidence and there is no presumption that the Applicant is technically fit to perform new or additional work or that Applicant is competent to perform a new type of work. The Applicant provided little to no testimony regarding its operation. The Applicant seeks rights for service which require specialized handling of sensitive electronic equipment. The Applicant offered no evidence of its ability or equipment enabling it to perform such work. The financial information was in the form of projections and was not bolstered by either a Financial Officer of the Applicant or a Certified Public Accountant. Furthermore, the Applicant failed to identify how these projections were formulated.

The PA PUC defines "household goods" differently than does the Interstate Commerce Commission. It is submitted that the

PA PUC views "electronic goods" as being substantially different than in nature and requiring different skills for its transportation than household goods or office relocations. See Pa. Moving & Storage Association, Petition for Declaratory Order, Docket No. P-850090; J.C. Services, Inc. v. Centurion Transport, Complaint Docket No. A-00100196C821. [The *J.C. Services* case is especially instructive to this Application in that Centurion Transport unsuccessfully attempted to utilize the ICC provisions and its New Jersey terminal as a subterfuge to avoid PA PUC authority.]

II. HARM TO PROTESTANT

The Applicant has the burden of establishing that it possesses the technical and financial ability to perform the proposed service. The Applicant argues in its Brief that the Protestant cannot show lost sales due to the activities of Applicant and that Protestant's losses are the result of competitive and economic pressures.

David Nelson, Vice-president of Marketing, testified that interstate PUC shipments totalled approximately \$5,000.00 to \$7,000.00 in gross revenues. (R.20-21). Steven McGary, President of Protestant, testified his company's loss of revenues from one customer alone, Pitney Bowes, a customer which Mr. Nelson freely admitted the Applicant was servicing in intrastate transportation was \$5,000.00 alone. (R.23 and 119).

This testimony establishes significant economic harm to the Protestant. Competition is to be fostered where it is based in fairness and where each shipper possesses the requisite authority

to perform the shipments.

Given the pending investigations by the PA PUC into the shipments by the Applicant, the Protestant is confident that evidence of significant and frequent violations of Applicant's authority will be forthcoming.

III. PROPENSITY TO OPERATE LEGALLY/GOOD FAITH CONFUSION

The Applicant argues that there is no evidence that Applicant "knowingly, willingly and intentionally conducted operations outside" of its existing authority. The Protestant will not restate herein all of the admissions by David Nelson made during his testimony wherein he stated numerous times that his company performed illegal shipments.

Next, the Applicant argues, in the alternative, that the Applicant conducted itself with good faith and under a mistaken belief that its existing authority provided authority for the transportations made. However, the Applicant did not provide any evidence which supports a confusion or good faith argument.

Finally, the Applicant argues, in the alternative, that consideration of the illegal shipments is only one factor of fitness to be considered and that if the Applicant performed illegal shipments, this fact is outweighed by other "positive evidence" of the carrier's fitness. Such evidence, Applicant argues, is found in the fact that the Applicant is already a "certified" common carrier. If this were the applicable test, then any carrier with existing authority could transport any commodity intrastate without proper authority.

Protestant's Brief details the case law pertaining to

illegal shipments and mistaken belief. Rather than reiterate those matters covered in Protestant's Brief, Protestant urges that the Applicant's application be dismissed. A message must be sent to this Applicant and to other carriers who would seek to ignore or to obfuscate the authority of the PA PUC that such conduct will not be tolerated. Elsewise, no carrier will respect the authority of the Commission and transportations will be made with a blatant disregard for the issuance of proper authority before engaging in transportations.

Respectfully submitted,

LIEDERBACH, HAHN, FOY & PETRI

By: Scott Andrew Petri
SCOTT A. PETRI, ESQUIRE
Attorney for Protestant
J.C. Services, Inc.


CERTIFICATE OF SERVICE

I, SCOTT ANDREW PETRI, ESQUIRE, certify that on the 22nd day of January, 1993, I did serve a true and correct copy of the Reply Brief of Protestant, J.C. Services, Inc. to Application of Tad's Delivery Service, Inc. upon the following persons in the manner indicated:

VIA FEDERAL EXPRESS:

MARLANE R. CHESTNUT
Administrative Law Judge
Commonwealth of Pennsylvania
Pennsylvania Public Utility Commission
Philadelphia State Office Building
1400 West Spring Garden Street
Philadelphia, PA 19130

DONALD M. DAVIS, ESQUIRE
Attorney for Applicant
4th Floor, Curtis Center
Independence Square West
Philadelphia, PA 19106-3304


SCOTT ANDREW PETRI, ESQUIRE
Attorney for Protestant

Dated: 1-21-93

RECEIVED
JAN 22 1993
SECRETARY'S OFFICE
Public Utility Commission

LAW OFFICES

PETRI

RECEIVED LIEDERBACH, HAHN, FOY & PETRI

A PROFESSIONAL CORPORATION

93 JAN 27 AM 9:12

892 SECOND STREET PIKE

RICHBORO, PA. 18954

EDWARD D. FOY, JR.
CARL G. HAHN
SCOTT A. PETRI

DENNIS R. DENARD
HARRY J. LIEDERBACH
1916-1982

PA PUC
BUREAU OF
TRANSPORTATION

RICHBORO LINE
322-8300
PHILADELPHIA LINE
677-0919
DOYLESTOWN LINE
343-9310
FAX 215-322-7646

JAN 25 1993

S. Penn. Utility Commission

January 25, 1993

Secretary Jerry Rich
Pennsylvania Public Utility Commission
North Office Building, Room G-18
North Street and Commonwealth Avenue
Harrisburg, PA 17120

RE: Application of Tad's Delivery
Service, Inc.
No. A-00109244, F.001-Am-A.

Dear Secretary Rich:

Enclosed please find an original and two (2) copies of a Motion for Leave to Supplement Record relative to the above-captioned applicant for filing with the Commission.

Sincerely yours,

LIEDERBACH, HAHN, FOY & PETRI

Scott A. Petri

By: Scott A. Petri

SAP/ccm

Enclosures

cc: Administrative Law Judge Marlane R. Chestnut (w/enclosure)
Donald M. Davis, Esquire (w/enclosure)
J.C. Services, Inc. (w/enclosure)

VIA FEDERAL EXPRESS

DOCUMENT
FOLDER

~~DOCKETED~~
FEB 10 1993

RECEIVED

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

93 JAN 27 AM 9:12

PA PUC
BUREAU OF
TRANSPORTATION

IN RE:	:	DOCKET NO.
APPLICATION OF	:	A00109244
TAD'S DELIVERY SERVICES, INC., t/d/b/a	:	F001-Am.A
T & N VAN SERVICE	:	
	:	

JAN 25 1993
SECRET
Public Utility

ORDER

AND NOW, this ____ day of _____, 1993,
upon consideration of the within Motion, it is hereby ORDERED
that the document submitted by Protestant as Exhibit "A" be
admitted as Protestant Exhibit 5.

SO ORDERED:

J.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCUMENT
FOLDER

IN RE:

: DOCKET NO.

APPLICATION OF

: A00109244

TAD'S DELIVERY SERVICES, INC., t/d/b/a

: F001-Am.A

T & N VAN SERVICE

:

:

DOCKETED

FEB 10 1993

MOTION FOR LEAVE TO SUPPLEMENT RECORD

AND NOW, comes J.C. Services, Inc., a Protestant in the above-captioned proceeding, and hereby moves to Supplement the Record with additional information which Protestant believes to be relevant to these proceedings, and in support of its Motion, avers the following:

1. An initial hearing was held before the Honorable Marlane R. Chestnut, Administrative Law Judge, on November 4, 1992.
2. The record was closed at the conclusion of that days proceedings.
3. Since the closing of the evidence, Protestant has received a copy of a Complaint Upon Commission's Motion Against the Applicant at Docket No. A00109244C9301. A true and correct copy of said Complaint is attached hereto as Exhibit "A".
4. Protestant believes and avers that the document attached as Exhibit "A" is material and relevant to a fair adjudication of these proceedings.
5. Protestant respectfully requests that Exhibit "A" be admitted into evidence in these proceedings as Protestant

Exhibit 5.

6. Protestant's counsel has contacted counsel for Applicant and Applicant does not agree to allow Protestant to Supplement the Record.

7. The document attached as Exhibit "A" is after discovered evidence in that said information just came into the possession of Protestant.

WHEREFORE, Protestant respectfully requests that the document attached hereto as Exhibit "A" be admitted as Protestant Exhibit 5.

LIEDERBACH, HAHN, FOY & PETRI, P.C.

By: Scott Andrew Petri
SCOTT A. PETRI, ESQUIRE
Attorney for Protestant

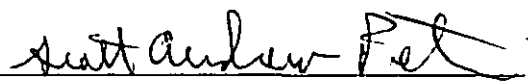
CERTIFICATE OF SERVICE

I, SCOTT A. PETRI, ESQUIRE, certify that on the 25th day of January, 1993, I did serve a true and correct copy of the Motion for Leave to Supplement Record upon the following persons in the manner indicated:

VIA FACSIMILE AND FEDERAL EXPRESS:

MARLANE R. CHESTNUT
Administrative Law Judge
Commonwealth of Pennsylvania
Pennsylvania Public Utility Commission
Philadelphia State Office Building
1400 West Spring Garden Street
Philadelphia, PA 19130

DONALD M. DAVIS, ESQUIRE
Attorney for Applicant
4th Floor, Curtis Center
Independence Square West
Philadelphia, PA 19106-3304


SCOTT A. PETRI, ESQUIRE
Attorney for Protestant

Dated: January 25, 1993

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held January 7, 1993

Commissioners Present:

David W. Rolka, Chairman
Joseph Rhodes, Jr., Vice-Chairman
Wendell F. Holland, Commissioner

Pennsylvania Public Utility Commission

A-00109244C9301

v.

Tad's Delivery Service, Inc., t/d/b/a
T & N Van Service

COMPLAINT UPON COMMISSION MOTION

BY THE COMMISSION:

This Commission, upon its own motion, as the duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate motor carriers within the Commonwealth, institutes a complaint against Tad's Delivery Service, Inc., t/d/b/a T & N Van Service, and represents as follows:

1. That Tad's Delivery Service, Inc., t/d/b/a T & N Van Service, respondent, maintains its principal place of business at 835 Industrial Highway, Unit No. 4, Cinnaminson, New Jersey 08077.

2. That respondent was issued a certificate of public convenience by this Commission on July 6, 1990 at Application Docket No. A-00109244.

3. That respondent does not hold a contract carrier permit issued by this Commission pursuant to the Public Utility Code, 66 Pa. C.S. §2503.

4. That respondent, on July 22, 1992, transported a copier for compensation from Konica Business Machines U.S.A., Inc., Malvern, Chester County, Pennsylvania to PECO, Norristown, Montgomery County, Pennsylvania, Bill of Lading No. 1326.

5. That respondent, on July 22, 1992, transported a copier for compensation from Konica Business Machines U.S.A., Inc., Malvern, Chester County, Pennsylvania to PECO, Morton, Delaware County, Pennsylvania, Bill of Lading No. 1329.

6. That respondent, on July 22, 1992, transported a copier for compensation from Konica Business Machines U.S.A., Inc., Malvern, Chester County, Pennsylvania to PECO, Berwyn, Chester County, Pennsylvania, Bill of Lading No. 1331.

7. That respondent, on July 24, 1992, transported a copier for compensation from Konica Business Machines U.S.A., Inc., Malvern, Chester County, Pennsylvania to Merrill Lynch Company, Bala Cynwyd, Montgomery County, Pennsylvania, Bill of Lading No. 1368.

8. That respondent, on August 17, 1992, transported a copier for compensation from Konica Business Machines U.S.A., Inc., Malvern, Chester County, Pennsylvania to Vare Middle School, Philadelphia, Philadelphia County, Pennsylvania, Bill of Lading No. 1719.

9. That respondent, on September 14, 1992, transported a copier for compensation from Konica Business Machines U.S.A., Inc., Malvern, Chester County, Pennsylvania to Lockheed, Warminster, Bucks County, Pennsylvania, Bill of Lading No. 2018A.

10. That respondent, on September 15, 1992, transported a copier for compensation from Konica Business Machines U.S.A., Inc., Malvern, Chester County, Pennsylvania to PECO, Philadelphia, Philadelphia County, Pennsylvania, Bill of Lading No. 2043A.

11. That respondent, on October 13, 1992, transported a copier for compensation from Konica Business Machines U.S.A., Inc., Malvern, Chester County, Pennsylvania to Sandy Hill Terrace, Norristown, Montgomery County, Pennsylvania, Bill of Lading No. 2398A.

12. That respondent, on October 14, 1992, transported a copier for compensation from Konica Business Machines U.S.A., Inc., Malvern, Chester County, Pennsylvania to Corestates Financial Corporation, Ardmore, Montgomery and Delaware Counties, Pennsylvania, Bill of Lading No. 2431A.

13. That respondent, on October 14, 1992, transported a copier for compensation from Konica Business Machines U.S.A., Inc., Malvern, Chester County, Pennsylvania to Monumental Life, Pottstown, Montgomery County, Pennsylvania, Bill of Lading No. 2432A.

14. That respondent, on October 14, 1992, transported a copier for compensation from Konica Business Machines U.S.A., Inc., Malvern, Chester County, Pennsylvania to Caldor Store, Wyncote, Montgomery County, Pennsylvania, Bill of Lading No. 2433A.

15. That respondent, on October 15, 1992, transported a copier for compensation from Konica Business Machines U.S.A., Inc., Malvern, Chester County, Pennsylvania to Philadelphia Navy Yard, Philadelphia, Philadelphia County, Pennsylvania, Bill of Lading No. 2454A.

16. That respondent, in performing the acts described in Paragraphs 4 thru 15, violated the Public Utility Code, 66 Pa. C.S. §1102(a)(1)(i), by rendering service within the Commonwealth of Pennsylvania from a different territory than that authorized by its certificate of public convenience.

THEREFORE, IT IS ORDERED:

1. That respondent has twenty (20) days from the date on which this complaint is served to file with the Secretary of the Pennsylvania Public Utility Commission, P.O. Box 3265, Harrisburg, PA 17105-3265, an answer (original and two copies), in writing, under oath, which, as required by the Rules of Administrative Practice and Procedure, 52 Pa. Code §5.61, either affirms or specifically denies the allegations in this complaint.

2. That, if respondent fails to file an answer or other responsive pleading within twenty (20) days, respondent will be deemed to have admitted all the allegations in this complaint in accordance with the Rules of Administrative Practice and Procedure, 52 Pa. Code §5.61. In that event, this Commission may, without hearing, enter an order which either revokes or suspends any certificate or permit held by the respondent, or which imposes a fine or any other appropriate penalty or remedy authorized by the Public Utility Code, 66 Pa. C.S. §§101, et seq.

3. That respondent may elect not to contest this complaint, without filing a formal answer, by paying, within twenty (20) days from the date on which this complaint is served, a fine of three thousand dollars (\$3,000.00), by certified check or money order, payable to the Pennsylvania Public Utility Commission at P.O. Box 3265, Harrisburg, PA 17105-3265, as provided the Public Utility Code, 66 Pa. C.S. §§3301 and 3315. Payment by the respondent of this fine shall be deemed an admission by the respondent that the respondent committed the violations alleged in this complaint, as well as a waiver of any procedural rights to which the respondent may be entitled. By paying this fine, respondent also agrees to cease and desist from rendering further unauthorized transportation. Upon payment of this fine, the record in this proceeding shall be closed.

4. That, if respondent files an answer which admits the allegations in this complaint or which fails to specifically deny the allegations in this complaint, this Commission will, without hearing, enter an order which either revokes or suspends any certificate or permit held by respondent, or which imposes a fine or any other appropriate penalty or remedy authorized by the Public Utility Code, 66 Pa. C.S. §§101, et seq.

5. That, if respondent files a timely answer which specifically denies the allegations in this complaint or which raises material questions of law or fact, this matter shall be referred to an Administrative Law Judge for hearing and decision. If, after hearing on the issues raised by that answer, the respondent is found to have committed any of the violations alleged in this complaint, the Administrative Law Judge may render a decision which either revokes or suspends any certificate or permit held by the respondent, or which imposes a fine or any other appropriate penalty or remedy authorized by the Public Utility Code, 66 Pa. C.S. §§101, et seq. In the imposition of a penalty after hearing, the Administrative Law Judge is not bound by the

optional fine set forth in this complaint. The penalty imposed by the Administrative Law Judge may be more or less stringent than the fine specified in this complaint.

BY THE COMMISSION,



John G. Alford
Secretary

(SEAL)

ORDER ADOPTED: January 7, 1993

ORDER ENTERED: **JAN 15 1993**

**Margolis
Edelstein
& Scherlis**
ATTORNEYS AT LAW

DONALD M. DAVIS
DIRECT DIAL: 215-931-5813

ORIGINAL

DOCUMENT
FOLDER

OUR FILE 81955-1

January 25, 1993

VIA FEDERAL EXPRESS

RECEIVED

JAN 25 1993

New Filing Section - Room #18B
Secretary
PENNSYLVANIA PUBLIC UTILITY COMMISSION
North and Commonwealth Avenues
North Office Building
Harrisburg, PA 17120

SECRETARY'S OFFICE
Public Utility Commission

RLS

RE: A-00109244, F001-Am-A Application of
Tad's Delivery Service, Inc., t/a T&N Van Service
for amendment so as to permit . . .
transfer of rights at A-00086551 to Domenic
Cristinzio, Inc., subject to same limitations and
conditions

Dear Sir/Madam:

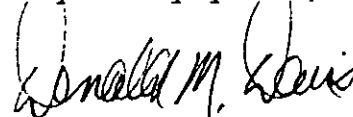
Enclosed please find an original and nine copies of the Reply Brief of Applicant Tad's Delivery Service, Inc., t/a T&N Van Service for filing in the above-captioned matter.

Also, enclosed is a tenth copy of the Reply Brief which we would appreciate your time-stamping and returning in the self-addressed, stamped envelope enclosed.

If you require any further information to complete this filing, please contact me immediately.

Thank you for your attention to this matter.

Very truly yours,



DONALD M. DAVIS

DMD/fae
Enclosure

DOCUMENT FOLDER

BEFORE THE PUBLIC UTILITY COMMISSION
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE:

A-00109244, F001-Am-A APPLICATION
of TAD'S DELIVERY SERVICE, INC. t/a
T&N VAN SERVICE for amendment so as
to permit . . . transfer of rights
at A-00086551 to Domenic Cristinzio,
Inc., subject to same limitations
and conditions.

RECEIVED

JAN 25 1993

SECRETARY'S OFFICE
Public Utility Commission

REPLY BRIEF OF APPLICANT
TAD'S DELIVERY SERVICE, INC. t/a T&N VAN SERVICE

DOCUMENT
FEB 12 1993

Donald M. Davis, Esquire
MARGOLIS, EDELSTEIN &
SCHERLIS
Counsel for Applicant

The Curtis Center - 4th Floor
Independence Square West
Philadelphia, Pa 19106-3304
Phone: (215) 922-1100

I. REPLY TO ARGUMENT

The pending action seeks approval by the PUC of the transfer of certain existing operating rights held by D. Cristinzio to another certificated carrier T&N which wishes to purchase said rights from Cristinzio to expand its operations and better serve the public.

The sole protestant to the transfer application's approval seeks to argue by innuendo that the approval should be withheld and thereby gain a competitive advantage it did not have when the rights were actively utilized by the proposed transferor.

There is sufficient competent, positive evidence on the record to find that Tad's Delivery Service t/a T&N Van Service (T&N), an existing certificated PUC carrier, is fit to conduct operations under the rights at issue in this transfer.

The Protestant recites a litany of evidence not of record but fails to address the evidence set forth in the Application and elicited at the Hearing which shows that T&N possesses the technical and operational skills and financial resources to conduct, as it has done for the last year, a transportation business. T&N's David Nelson testified that T&N's current sales are \$125,000 per month. (N.T. 21) The Protestant ignores T&N's Statement of Financial Position and the Statement of Liabilities to the Application which shows that T&N is financially fit.

Just as significantly on this matter, the Protestant produced no documentation, financial or otherwise, to show its alleged

business loss was due to T&N. Instead, as noted in T&N's Brief, the Protestant solely relied on self-serving testimony related to one account to attempt to show its diminishing sales and revenue. Of course, the purported loss occurred in the one account where Protestant recently lost its exclusive transportation agreement.

As the Protestant knows, as an existing certificated carrier, it is presumed that T&N possesses the requisite abilities. Further as an existing carrier, the PUC is fully cognizant of T&N's insurance retention, facilities, equipment, and methods of operation.

Protestant's Brief contradicts its own testimony with regard to the issue of reasonable entertainment expenses raised by the Honorable Marlane R. Chestnut. Steven McGarry stated that "the industry typically does what T&N does." (N.T. 127)

The Protestant even resorts to attempting to infer the Applicant's non-fitness by noting that the Applicant's witness, and President, is related to the transferor and other officers by marriage. Yet, his own client, the Protestant, purchased their business through family ties. (N.T. 89)

On a procedural matter, T&N notes that the Protestant, despite Judge Chestnut's specific instructions, fails to include Conclusions of Law in its Brief.

It is patently clear that the Protestant's single issue in attempting to dismiss T&N as a competitor is its allegations that T&N conducted business outside the scope of its existing operating authority. On January 20, 1993 T&N was served with a Complaint by the PUC which T&N will address accordingly. It is interesting to

note that the protestant was apparently aware of the Complaint, even before it was served on the applicant. Applicant will respond to the Complaint in accordance with the Rules of the PUC. A review of the Complaint shows that same relates to service to one shipper, Konica, which applicant readily admitted it provided service to at the time of the hearing pending approval of its application to service a former customer for transferor.

T&N continues to assert as stated by David Nelson "as far as I know" T&N was acting in good faith with respect to operations within the scope of their existing authority. (N.T. 65)

Further, as the decision of the Pennsylvania Supreme Court in Brinks, Inc. v. Pa. Public Utility Com'n., 500 Pa. 387, 456 A.2d 1342 (1983), and the decisions of the PUC and the Pennsylvania Commonwealth Court have well established, "the case law is clear" (Brinks, Inc., Id., A.2d at 1344) that a prior violation does not preclude a subsequent obtaining of additional authority.

The question presented by the case law is whether there is sufficient independent evidence to find a public need for the service or an Applicant's present fitness to operate. See, Brinks, Inc., Id. We again note that the need for public convenience and service is conclusively established by law as the subject transfer application seeks approval of the transfer of existing authority for which public necessity has already been shown.

The case law provides that an applicant cannot rely on evidence related to shipments done in violation of its existing authority to prove the element of necessity as a key element in an application for new or expanded authority.

In the case at hand, the applicant, as a holder of existing authority, is not seeking to rely on proof of any service which may be deemed to have been violative of its existing rights to prove that element. As set forth in applicant's Brief, absent proof offered to the contrary, there is a presumption of continuing necessity. Protestant offered no evidence in this regard.

The Protestant cites three PUC decisions to support its argument. Due to the lack of proper citation, the Applicant was only able to locate the Re Robert Gray's Sons, Inc., Pa. P.U.C. 246 (1947) and Re Northern Penn Transfer, Inc., 54 Pa. P.U.C. 585 (1981) cases. These cases are easily distinguished from the present Application. First, these cases involved applications for new authority, not the transfer of existing authority, and thus, significant questions of whether the public need would be served to warrant the approval of new authority.

In Re Robert Gray's Sons, Inc., Pa. P.U.C. 246, 259, the Commission based its decision on the fact that the only testimony presented for the proposed service need was based on the illegal operations. As these operations were deemed in bad faith, the testimony was excluded and in the absence of other proof to show that the "service is necessary for the accommodation and convenience of the public," the application was denied. Id.

Further, these cases dealt with extensive and flagrant violations over a number of years. In Re Robert Gray's Sons, Inc. the illegal operations had been conducted over twenty (20) years. Id. at 158. In Re North Penn Transfer, Inc., the evidence found that in one case there was 242 violative shipments handled by the

applicant in a one week period. North Penn, at 592.

Finally, T&N takes issue with the Protestant's allegation that T&N is operating under a fraudulent tariff and, after checking with its consultant on such matters, to the best of its knowledge, assures this court that Protestant's claim is unfounded. T&N also suggests that this allegation is indicative of the true motive behind this protest. This protest is not founded on the public interest but instead is based on the Protestant's personal animosity towards the Applicant and Protestant's own effort to defeat any existing competitive economic forces.

II. REPLY TO MOTION TO OPEN PENDING RESOLUTION OF COMPLAINT

As Applicant has argued, there is sufficient competent, positive evidence on the record to find that Tad's Delivery Service t/a T&N Van Service (T&N), an existing certificated PUC carrier, is fit to conduct operations under the rights at issue in this transfer. Accordingly, the recently served action by the PUC is an extraneous matter to this proceeding and will be responded to by T&N in an appropriate manner. That action apparently initiated following complaints by Protestant to the PUC enforcement division should not serve as a basis to deny approval of a transfer of existing authority to an otherwise fit carrier.

Applicant strongly objects to Protestant's request for any delay in the resolution of this matter. Applicant believes that this request is a dilatory tactic to continue to try to prevent the approval of the transfer of this authority, which as the record

notes, could potentially expire on March 31, 1993. (N.T. 85)

Respectfully submitted,

MARGOLIS, EDELSTEIN & SCHERLIS

By: 

Donald M. Davis
The Curtis Center - 4th Floor
Philadelphia, PA 19106-3304
Phone: (215) 922-1100

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

IN RE:

A-00109244, F001-Am-A APPLICATION
of TAD'S DELIVERY SERVICE, INC. t/a
T&N VAN SERVICE for amendment so as
to permit . . . transfer of rights
at A-00086551 to Domenic Cristinzio,
Inc., subject to same limitations
and conditions.

CERTIFICATE OF SERVICE

I, DONALD M. DAVIS, ESQUIRE, do hereby certify that the
Reply Brief of Applicant Tad's Delivery Service, Inc., t/a T&N Van
Service's Brief in the above-captioned matter was served by First
Class Mail, on January 26, 1993, to the following individual:

Scott A. Petri, Esquire
Liederbach, Hahn, Foy & Petri, P.C.
892 Second Street Pike
Richboro, PA 18954.

In addition, this Brief was hand delivered to the
following individual on January 26, 1993:

The Honorable Marlane R. Chestnut
Administrative Law Judge
Commonwealth of Pennsylvania
Pennsylvania Public Utility Commission
Philadelphia State Office Building
1400 West Spring Garden Street
Philadelphia, PA 19130.



DONALD M. DAVIS, ESQUIRE

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Uniform Cover and Calendar Sheet

1. <u>REPORT DATE:</u> April 7, 1993	:	2. <u>BUREAU AGENDA NO.</u> APR-93-ALJ-53
3. <u>BUREAU:</u> ALJ	:	
4. <u>SECTION(S):</u>	:	5. <u>PUBLIC MEETING DATE:</u> April 15, 1993
6. <u>APPROVED BY:</u> Chief ALJ: Allison K. Turner Director: Ext. 7-6108 Supervisor:	:	
7. <u>MONITOR:</u>	:	
8. <u>PERSON IN CHARGE:</u> See below	:	
9. <u>DOCKET NO:</u> See below	:	

DOCKETED
AUG 26 1993

10. (a) CAPTION (abbreviate if more than 4 lines)
 (b) Short summary of history & facts, documents & briefs
 (c) Recommendation
- (a) Administrative Law Judge Paist
 C-924187 - Shirley L. Bowser v. United Telephone Company
 C-924370 - Paul T. and Sherylanne Bratton v. Philadelphia Electric Company
 F-160816 - Peter Nowlan v. Bell Telephone Company
 F-161209 - Mary Cooper v. Philadelphia Electric Company
 F-162050 - Ernest Kidd v. Bell Telephone Company

DOCUMENT FOLDER

Administrative Law Judge Solomon
A-102793C9102 - PUC v. Lewis & Lewis Cab Company

Administrative Law Judge Chestnut
A-109244 F0001 Am-A - E & N Van Service t/a Tad's Delivery
I-900005 - Investigation into Demand Side Management by Electric Utilities

- (b) In accordance with provisions of Act 1978-294, 66 Pa. C.S.A., §332(g) as summarized by Administrative Circular SEC-51, the ALJ must issue a decision within 90 days after the record is closed unless the Commission orders an extension for a period not to exceed an additional 90 days.
- (c) The presiding Judge has requested an additional 90 days within which to issue a decision in the above case after the record has been closed.

11. MOTION BY: Commissioner	Chm. Rolka	Commissioner	Quain - Yes
SECONDED: Commissioner	Rhodes	Commissioner	Hanger - yes

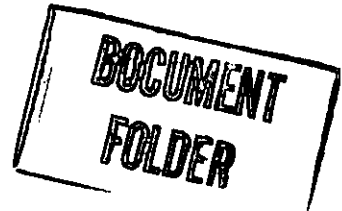
CONTENT OF MOTION: The ALJs' request for an additional 30 days be granted.

DOCKET #	CASE NAME	DECISION BIE DATE	REASON FOR REQUEST
C-00924187	Shirley L. Bowser v. United Telephone Company	4-26-93	ALJ Paist-priority of other cases
C-00924370	Paul T. and Sherylanne Bratton v. Philadelphia Electric Company	4-19-93	ALJ Paist-priority of other cases
F-00160816	Peter Nowlan v. Bell Telephone Company	4-19-93	ALJ Paist-priority of other cases
F-00161209	Mary Cooper v. Philadelphia Electric Company	4-19-93	ALJ Paist-priority of other cases
F-00162050	Ernest Kidd v. Bell Telephone Company	4-25-93	ALJ Paist-priority of other cases
A-00102793C9102	PUC v. Lewis & Lewis Cab Company	4-25-93	ALJ Solomon-priority of other cases
A-00109244F0001AMA	T & N Van Service t/a Tad's Delivery	4-26-93	ALJ Chestnut-priority of other cases
I-00900005	Inv-Demand Side Mgt. by Electric Utilities	2-28-93	ALJ Chestnut-priority of other cases

TAD'S DELIVERY SERVICE

T/A T & N VAN SERVICE
9004 Pennsauken Highway
Pennsauken, NJ 08110

1(800) 851-6080
Tel.(609) 486-0080
Fax.(609) 486-0037



May 24, 1993

Commonwealth of PA
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
Attention: John Alford, Secretary

A00109244

RECEIVED

MAY 26 1993

SECRETARY'S OFFICE
Public Utility Commission

Dear Sir,

Please note that T & N Van Service is relocating to a new facility. We will be able to better serve the needs of our customers from this new location. On April 5, 1993, we will be operating from our new address, which is as follows:

T & N Van Service
9004 Pennsauken Highway
Pennsauken, NJ 08110

1-609-486-0080 local
1-609-486-0037 fax
1-800-851-6080 toll free (unchanged)

Please direct all mail and/or shipments for us to our new address and update your records.

We greatly appreciate the business and support you have favored us with in the past year. We look forward to serving you from our Pennsauken facility. If we can be of further assistance to you in any manner, please do not hesitate to contact me.

Sincerely,

Russell G. Taddei, Jr.
Russell G. Taddei, Jr.
General Manager

ADDRESS CHANGE
DATE 6-1-93
BY AW
Pa. Public Utility Comm.
Bureau of Transportation



Local & Long Distance Moving/Office and Industrial Moving
Specializing in Computer Equipment Relocations/ATM & Bank Equipment Installation