

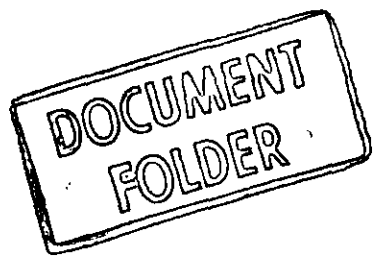
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PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held June 19, 1992

Commissioners Present:

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



Adobe International, Inc.; Docket No.
Letter/Petition for Modification A-00101049

William A. Gray, Esq.
for Petitioner

O R D E R

BY THE COMMISSION:

This matter comes before the Commission on a Letter/Petition for Modification filed by William A. Gray, Esq., as counsel for Adobe International, Inc. (hereinafter, "Adobe" or "Petitioner") on February 27, 1992. Adobe requests a one (1) year suspension of its operating authority and modification of our order entered at A-00101049 which directed Adobe to seek cancellation of its operating authority. Before reviewing the petition for consideration, a history of the underlying proceeding is in order.

The Commission recently granted authority to twenty-two (22) motor carrier applicants based upon the support of six (6) shippers affiliated with Adobe, five (5) of whom Petitioner is authorized to serve by its authority. Below is a list of the motor carrier applicants:

- | | |
|-----------------------|-----------------------|
| Paul E. Pierce | A-00103102, F.1, Am-C |
| Marcella Miller | A-00109848 |
| Loyal R. Weaver, Inc. | A-00109849 |
| John H. McDowell | A-00107925, F.1, Am-A |
| W.E. Wike | A-00100484, F.1, Am-B |
| John H. Brown | A-00082158, F.1, Am-O |
| J. Wade Hinderliter | A-00100632, F.1, Am-A |
| R. Michael McIntyre | A-00109857 |

Ralph E. Williamson	A-00089133
James T. Adams	A-00100844, F.1, Am-C
Edward G. Dilick	A-00109846
McCleary-Christie Trucking, Inc.	A-00108713, F.1, Am-A
Stanley D. Moore	A-00100160, F.1, Am-A
David J. Kellogg	A-00098692, F.1, Am-B
Raymond E. Pierce	A-00080639
Dennis W. Keefer, t/d/b/a	A-00107684, F.1, Am-A
Dennis Keefer Trucking	
Floyd C. Matthews, t/d/b/a	A-00109798
F.C. Matthews Trucking	
Clifford H. Kuhn	A-00109284, F.1, Am-A
Dewayne R. George	A-00103200, F.1, Am-A
*Richard D. Christie, t/d/b/a	A-00106591, F.1, Am-B
R.D. Christie Trucking	
*Gaylord L. Matthews, t/d/b/a	A-00109841
Gaylord L. Matthews Trucking	

All above Orders were adopted January 20, 1992 and entered February 6, 1992 except the asterisk (*) applicants whose Orders were adopted February 6, 1992 and entered February 18, 1992. Each Order granted authority to the applicants subject to specified conditions. Petitioner was never a represented party in any of these application proceedings. However, the Orders granting authority to the motor carrier applicants required Adobe to file an Application for Discontinuance of Service and Cancellation of its certificate of public convenience within sixty (60) days of entry of each Order granting the applications.

The Public Utility Code grants the Commission broad discretionary powers concerning the reconsideration, amendment, rescission, or modification of its orders; such discretion is limited only by the due process considerations of providing notice and an opportunity to be heard by the parties. Pennsylvania Public Utility Commission v. Yellow Cab Co., 51 Pa. P.U.C. 149 (1977). Specifically, the Commission has the power to grant reconsideration of a previous order in light of newly discovered evidence, a change in circumstances justifying modification, or if persuaded that its previous decision was in error. Application of Commonwealth Telephone Co., 24 Pa. Commonwealth Ct. 243, 355 A.2d 611 (1976); Brinks Inc. v. Pa. P.U.C., 16 Pa. Commonwealth Ct. 300, 328 A.2d 582 (1974); Pennsylvania Public Utility Commission v. Philadelphia Electric Co., 58 Pa. P.U.C. 407 (1984); Cannuni v. Duquesne Light Co., 57 Pa. P.U.C. 92 (1983); Pennsylvania Public Utility Commission v. Bell Telephone Co. of Pa., 54 Pa. P.U.C. 473 (1980).

Adobe asserts that it did not intend to cancel its certificate of public convenience upon the grant of authority to the applicants aforementioned but intended to request a suspension of its operating authority for a one (1) year period. During this time period it would review the quality of service

given by the applicants to its affiliates and would request its own suspension to be lifted if its affiliates' transportation needs were not met by the aforementioned applicants. Petitioner also intended to sell the balance of its rights not involving its affiliates during this one year time period.

Adobe asserts and Commission records confirm that Petitioner was not represented in any of the application proceedings. Since notice and an opportunity to be heard should have been given to Petitioner before acting to affect its operating rights, our prior order should be modified. To proceed otherwise would raise serious fundamental due process issues revolving around notice, opportunity to be heard, and deprivation of rights.

Coincidentally, in this action for modification, counsel for the Petitioner is also counsel for the aforementioned applicants. Thus, applicants, through their counsel, are aware of a pending modification to the orders which granted their respective applications. Consequently, notice and service on the applicants has occurred through counsel, William A. Gray, Esquire.

Of greater concern is Petitioner's request for a voluntary suspension. Once a carrier is granted authority, it has an affirmative obligation to render service as defined by its certificate of public convenience. If an authorized carrier voluntarily chooses to stop rendering the service defined by its certificate of authority, the recognized public need which was evident to obtain the service is in jeopardy of not being met. Consequently, as authorized by the Public Utility Code at 66 Pa. C.S. § 501, an order to show cause may issue requesting the carrier to demonstrate how its actions are fulfilling its obligations under the certificate of public convenience to render service to the public.

Adobe was not granted authority to enable it to sit on the sidelines in a "wait and see" attitude. Its authority was granted to enable it to render a public utility service. The justification advanced for its requested voluntary suspension in no way advances the public interest. Rather, it is quite obviously using a certificate to provide service to the public as a threat to existing carriers.

I Adobe has service or rate problems with carriers, its remedies are provided in the Public Utility Code. It is not appropriate to grant a suspension under these circumstances. Adobe either wishes to provide service to the public or it does not. Thus, we must deny Petitioner's request for suspension and may in the future issue an order to show cause to allow Petitioner an opportunity to address the Commission's concerns regarding satisfaction of public need; THEREFORE,

IT IS ORDERED:

1. That the Letter/Petition for Modification filed by Adobe International, Inc., on February 27, 1992 is hereby granted in part.

2. That the listing of the Orders below which granted authority to the indicated parties are hereby modified to rescind the directive to have Adobe International, Inc. petition for discontinuance of service and cancellation of its certificate of public convenience at Docket No. A-00101049.

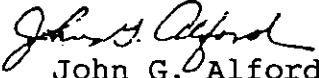
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3. That the request by Adobe International, Inc. for a one (1) year suspension of its operating authority is hereby denied.

4. That copies of this Order shall be placed in the record folders for each of the cases enumerated herein.

BY THE COMMISSION,


John G. Alford
Secretary

(SEAL)

ORDER ADOPTED: June 19, 1992

ORDER ENTERED: JUN 30 1992