

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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IN THE MATTER OF:  
APPLICATION OF  
LA MEXICANA EXPRESS SERVICE, LLC  
NUMBER A-2017-2590784

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MAIN BRIEF

OF

APPLICANT

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Dated: September 15, 2017

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Comes now, La Mexicana Express Service, LLC, a Pennsylvania domestic limited liability company, with address at 500 South 15<sup>th</sup> Street, Reading, PA 19602 (hereinafter referred to as Applicant), by its Attorney, Kenneth A. Olsen, and in accordance with the Rules of Practice of the Pennsylvania Public Utility Commission (“Commission”) and pursuant to the July 14, 2017 Briefing Schedule, Order #2, of the Hon. Angela T. Jones, ALJ, files this, its Main Brief, in the above entitled proceeding.\*

I  
HISTORY OF THE PROCEEDING-STATEMENT OF THE CASE

Applicant, on or about February 6, 2016, filed its application for the additional right to begin to transport, as a common carrier, by motor vehicle, persons upon call or demand, between points in Berks County. This application was published in the Pennsylvania Bulletin of March 18, 2017, Vol. 47, No. 11, at Page 1717. Subsequently, protests to this application were filed by Express Taxi, LLC, Reading City Cab, LLC, and Amigo Cab, LLC (hereinafter referred to as Joint

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\*References to the record in this proceeding will be governed by the following abbreviations:  
Tr. = Transcript of oral hearing and page number; Ex. = Exhibits received into evidence

Protestants).

By notice dated May 31, 2017, an Initial In-Person Hearing was scheduled for July 13, 2017 before the Hon. Angela T. Jones, ALJ, in Philadelphia, PA. A Prehearing Order was issued and signed June 6, 2017 by the Hon. Angela T. Jones, ALJ, scheduling the time and manner for prehearing exchange of witness and other hearing information, and setting forth the time and manner for presenting hearing exhibits and witnesses of Applicant and Joint Protestants. The Initial In-Person Hearing was held on July 13, 2017, at which time testimony was taken from five (5) witnesses, evidentiary exhibits (Applicant's Exhibits 1-12) were submitted and admitted into evidence on behalf of Applicant by and through Applicant's two (2) operating witness and three (3) public witnesses.

At the close of the evidentiary record and the July 13, 2017 Initial In-Person Hearing, the Hon. Angela T. Jones, ALJ ordered the submission of briefs by all parties and issued a Briefing Schedule, Order #2, on July 14, 2017 containing instructions for contents of the briefs, service of the briefs, and dates for the simultaneous submission of Main Briefs, on or before September 15, 2017, and Reply Briefs on or before October 6, 2017. On the July 28, 2017, the Hon. Angela T. Jones, ALJ issued Order #3 in which Her Honor recited the June 3, 2017 publication and effective date of the Commission's final rulemaking in Docket No. L-2015-2507592; stated that this rulemaking was highly relevant to the course of this proceeding (since the June 3, 2017 effective date of the final rulemaking preceding the July 13, 2107 hearing date herein); and ordered the parties to jointly inform Her Honor by August 14, 2017 of their intention to continue with the litigated proceeding or consider the administrative process through the Commission's Bureau of Technical Utility Services (ie. withdrawal of protests). By letter dated August 3, 2017, counsel

for Applicant and Joint Protestants informed the Hon. Angela T. Jones, ALJ of their desire to continue the litigated proceeding since Joint Protestants would not be withdrawing their Protests.

## II PERTINENT TESTIMONY AND EVIDENCE OF APPLICANT

Daniel Caisaguano. (Tr. 31-61). Daniel Caisaguano is the sole owner of Applicant and is familiar with Applicant's operations, finances, equipment, employees, drivers, sales, safety, maintenance, dispatching, communications, and the instant application. (Tr. 31, 32-62). He checks work schedules, reviews driver applications and qualifications with his daughter, oversees Applicant's operations and finances with the assistance of his daughter. (Tr. 40-41, 48).

As set forth in Exhibit Nos. 1 and 2, and as authorized by this Commission, Applicant has operated as a certificated motor common carrier of persons in paratransit service for the past three (3) years and in past two (2) years in limousine service, all in Berks County. (Tr. 31-35; Applicant's Ex. 1 and 2). Applicant has filed Annual Assessment Reports with the Commission showing Applicant's gross operating revenues of its paratransit and limousine operations for the years 2014, 2015, and 2016. (Tr. 35-39; Applicant's Ex. 3, 4, and 5). Applicant's revenues and expenses for the period of January 1, 2017 through March 31, 2017 depicts a net income of \$15,947.00 for this period. (Tr. 41-42; Applicant's Ex. 6). Applicant has approximately \$40,000.00 in its business account for cash on hand, and is aware of additional costs will be incurred for the proposed taxi operation. (Tr. 54-55).

Applicant presently utilizes the equipment listed on Applicant's Ex. 7 for its existing operations. (Tr. 43-44; Applicant's Ex. 7). These vehicles are maintained pursuant to the rules and regulations of the Pennsylvania Public Utility Commission; undergo a mechanical check every 2,000 miles; are checked by the driver before and after every trip, and have periodic maintenance performed by a mechanic. (Tr. 49; Applicant's 11). Applicant proposes to operate

or lease the vehicles described on Exhibit 8 as taxi vehicles if the authority sought in this application is granted by the Commission. (Tr. 44, 54; Applicant's Ex. 8).

Presently, Applicant utilizes the services of the drivers, dispatchers, and his daughter for Applicant's operations as set forth on Exhibit 9. (Tr. 45; Applicant's Ex. 9). The drivers utilized by Applicant possess current and valid licenses in compliance with applicable Commission regulations, are at least twenty-one (21) years old, comply with Applicant's specific testing and training qualifications, are subject to applicable motor vehicle/driver history and criminal background searches, are subject to alcohol and drug testing, and are familiar with transporting persons in Berks County. (Tr. 46-48; Applicant's Ex. 10). The drivers Applicant will use for the proposed taxi service will be contractor drivers, paying Applicant for the use of the vehicle for specified period of time. (Tr. 58)

Applicant's existing facilities are located at 500 South 15<sup>th</sup> Street, Reading, PA 1962; at 1044 Union Street, Reading, PA 19604; and a rented garage at 900 Nichols Street, Reading, PA. At the South 15<sup>th</sup> Street and at the 1044 Union Street addresses, Applicant has facilities for offices, dispatching, and parking equipment. (Tr. 51, 53; Applicant's Ex. 12). Dispatching and communications with the public are performed through a network consisting of telephones, cell phones, internet connections, e-mail, and facsimile machines. (Tr. 51; Applicant's Ex. 12). Currently, Applicant operates five (5) days a week, from 7:00 AM to 5:00 PM, but proposes to operate twenty-four hours (24) a day, seven (7) days a week, hire additional staff, if the authority sought is granted and as needed. (Tr.53-54)

Mr. Caisaguano believes there is a need for the taxi service in Berks County proposed by Applicant, is not aware of the Commission filing any complaints against Applicant, and affirmed

that Applicant will comply with the Commission's rules and regulations applicable to taxi service. (Tr. 52).

Erendira Caisaguano. (Tr. 63-77). Erendira Caisaguano assists her father, Daniel Caisaguano, as a manager and dispatcher in running the business of Applicant. (Tr. 65-66). She is familiar with Applicant's operations, finances, equipment, and operating authority. (Tr. 66). Applicant complies with all applicable Commission rules and regulations, and no complaints have been filed against Applicant by the Commission regarding Applicant's fitness or safety to her knowledge. (Tr. 66-67). Ms. Caisaguano was present in the hearing room throughout the direct and cross-examination Daniel Caisaguano, the presentation of Applicant's exhibits, and she agreed with her father's testimony and adopted it verbatim. (Tr. 67-68). Ms. Caisaguano is also a third year college student majoring in administrating accounting, is involved with Applicant's finances by doing its accounting. (Tr. 68-69, 70).

Ms. Caisaguano prepared Applicant's Ex. 6 and stated the gas expense item on that exhibit should stated \$3,000.00, not \$1,000.00, resulting in a \$2,000.00 decrease for the three (3) month net income figure shown on Applicant's Ex. 6. (Tr. 68-69). Operating revenue of Applicant has increased for subsequent months in 2017, and expenses have stayed relatively the same. (Tr. 70). Ms. Caisaguano also corrected a typographical error on Applicant's Ex. 7 and 8. (Tr. 72, 75).

The vehicles listed on Applicant's Ex. 7, consists of between twenty (20) to thirty (30) limousine vehicles, operated by appointment, and Applicant has at least five (5) but not more than ten (10) paratransit vehicles, operated by appointment only and each traveling approximately 25 to 35 miles daily. (Tr. 73-74). The corrected \$3,000.00 gas expense item on Applicant's Ex. 6 is a figure obtained after adding up gas receipts turned into Applicant and then rounding the amount off to arrive at the \$3,000.00 figure. (Tr. 76-77).

III  
PERTINENT TESTIMONY OF SUPPORTING PUBLIC WITNESSES

Fausto Antonio Rodriguez. (Tr. 10-18). Mr. Rodriguez appeared at the July 13, 2017 hearing individually in support of the authority sought by Applicant in the instant proceeding of taxi (upon call or demand) service between points in Berks County. (Tr. 12). Mr. Rodriguez does and will have a need for taxi service between his residence in Reading, PA and West Reading, Leesport, Exeter, Sinking Spring, and Wyomissing, PA, and other points. (Tr. 12-13). He requires taxi services from and to these points for hospital and medical appointments, and to go to restaurants. (Tr. 13-14). He requires this taxi service between these points sometimes three to six times a week, and he pays for the taxi service. (Tr. 14). Although he currently owns a car and has a driver's license, he requires taxi services when his wife or son is using the car. (Tr. 18). If the instant application was granted to Applicant, he would utilize Applicant's proposed taxi service. (Tr. 14). Mr. Rodriguez knows of Applicant, has utilized Applicant's paratransit services for the past seven months, found them to be satisfactory, without problems, and economical, but is required to call in advance for paratransit reservations whereas it would be better for him to use a taxi service without advance reservations. (Tr. 14-15, 17). He has used Metro Taxi and found their service unsatisfactory, untimely. (Tr. 17).

Jose Rafael Gonzalez. (Tr. 19-25). Mr. Gonzalez appeared at the July 13, 2017 hearing individually in support of the authority sought by Applicant in the instant proceeding of taxi (upon call or demand) service between points in Berks County. (Tr. 12). Mr. Gonzalez does and will have a need for taxi service to transport his eight year old special needs daughter between his residence in Reading, PA and St. Joseph Hospital in Reading, PA, Reading Hospital in West Reading, PA, and Berkshire Mall in Shillington, PA. (Tr. 21, 24). He requires this taxi service between these points sometimes four times a week, on weekdays and weekends, depending upon

the hospital appointment, and he pays for the service. (Tr. 22). Although he currently owns a car and has a driver's license, he requires taxi service for his special needs child. (Tr. 21, 25). If the instant application was granted to Applicant, he would utilize Applicant's proposed taxi service. (Tr. 22, 23). Mr. Gonzalez knows of Applicant, has utilized Applicant's paratransit services, found them to be satisfactory, timely (arriving within 5 to 7 minutes of the appointment time), having clean good smelling vehicles, and economical, but is required to call in advance for paratransit reservations whereas it would be better for him to just pick up the telephone and call for a taxi without advance reservations. (Tr. 22-23, 17). He has used Metro Taxi and Taxi Express, and found their services unsatisfactory, arriving late sometimes thirty minutes to an hour, drivers not driving well, and having vehicles smelling of cigarettes (which is unacceptable for his young special needs daughter (Tr. 24-25).

Luis Manuel Jose Batista (Tr. 26-30). Mr. Batista appeared at the July 13, 2017 hearing individually in support of the authority sought by Applicant in the instant proceeding of taxi (upon call or demand) service between points in Berks County. (Tr. 27). Mr. Batista does and will have a need for taxi service to transport his himself between his residence in Reading, PA and St. Joseph Hospital in Reading, PA due to recent surgery; to transport his two year old daughter between his Reading, PA residence and the dentist in West Reading, PA, and to and from Berkshire Mall in Shillington, PA. (Tr. 27-28). He requires taxi services from and to these points for hospital and dental appointments, and to go to the mall three to four times a week, and he pays for the this service. (Tr. 27-28). Although he currently owns a car and has a driver's license, he would utilized Applicant's proposed taxi service if it was granted to Applicant. (Tr. 29). Mr. Batista knows of Applicant, has utilized Applicant's paratransit services, has found them to be excellent, and has never had a problem paying Applicant's paratransit charges, but is

required to call a day in advance for paratransit reservations whereas it would be better for him to use a taxi service without advance reservations. (Tr. 28-29). He has not used any other companies besides Applicant for transportation in Berks County. (Tr. 30).

#### IV

#### PERTINENT TESTIMONY AND EVIDENCE OF JOINT PROTESTANTS

The Joint Protestants did not present any witnesses or the testimony of any witnesses in opposition to the instant Application at the July 13, 2017 hearing. (Tr. 77, lines 24-25).

#### V

#### STATEMENT OF QUESTIONS INVOLVED

Applicant states that the questions involved in this proceeding are as follows: (1) Does the approval of the instant application serve a useful public purpose, responsive to a public demand or need?; (2) Does Applicant possess the technical and financial ability to provide the proposed service and comply with Commission regulations?; and (3) Would the approval of this application endanger or impair the operations of Protestants contrary to the public interest? For the reasons argued below, Applicant submits the answers to the first two questions are affirmative and the answer to the last question is the negative.

#### VI

#### SUMMARY OF ARGUMENT

It is Applicant's position that it has satisfied the Commission's criteria set forth in 52 Pa. Code § 41.14. First, Applicant's has demonstrated that approval of the instant application will serve a useful public purpose responsive to a public demand and need. Secondly, Applicant has demonstrated it possesses the technical and financial ability to provide the proposed service in a continuous and lawful manner. The Joint Protestants did not present any testimony or documentary evidence that Applicant lacks a propensity, or lacks the financial or technical ability,

to operate safely and legally, thereby removing any such basis on which to withhold a grant of authority. Thirdly, there has been no showing or documentation that Joint Protestants' operations would be endangered or impaired contrary to the public interest by a grant of the instant application.

VII  
ARGUMENT

A. Applicant possesses the technical and financial ability to provide the proposed service.

Applicant has submitted ample evidence of its technical and financial ability to provide the proposed service in the form of amount and types of vehicles it utilizes in its authorized intrastate operations; the type and amount of vehicles is presently has available for use in the proposed operation if this application is granted; a description of its equipment maintenance and safety program; a description of its facilities and communications network; a description of its drivers, office, dispatching, and equipment maintenance personnel; a description of its driver qualifications and training program; and a description of its financial condition showing sufficient assets and income to conduct present and the proposed operations. Since Applicant is already an authorized motor common carrier of persons in Berks County, it obviously has the appropriate type and amount of insurance it presently has in effect and on file with the Commission for the protection of the public. The credibility of the foregoing testimonial and documentary evidence adduced by Applicant, regarding its technical and financial ability and propensity to provide the proposed service in a safe and lawfully manner, was sufficiently established during the hearing and was not successfully attacked by the Joint Protestants.

Moreover, no showing has been made of any propensity by Applicant to operate in other than a lawful and safe manner. There has been no evidence of unlawful activities, no evidence of

any complaints filed against Applicant by the Commission, and no evidence that Applicant lacks the propensity to operate safely and lawfully.

It is well settled that in order for the Commission to conclude that an Applicant lacks a propensity to operate legally, the evidence of record, taken as a whole, must demonstrate that an Applicant has a persistent disregard for, flouting, or defiant attitude toward the Public Utility Code, or the orders and regulations of the Commission. Application of Central Transport, Inc., Docket No. A-00108155 (Order entered June 26, 1992). The Joint Protestants, as the parties challenging the application, bear “burden of rebutting the presumption that Applicant is technically and financially fit to provide service in the expanded service area,” but they did not present any evidence contradicting Applicant’s presumed technical and financial fitness. An existing certificate holder is entitled to a “continuing presumption regarding its fitness to operate,” which includes a presumption that the carrier has a propensity to operate legally. Lehigh Valley Transp. Servs. Inc. v. Pa. Pub. Util. Comm’n, 56 A.3d 49, 58 (Pa.Cmwlt. 2012); South Hills Movers, Inc. v. Pa. Pub. Util. Comm’n, 601 A.2d 1308, 1310 (Pa.Cmwlt. 1992). The phrase “lacks a propensity to operate safely and legally means a persistent disregard for, flouting, or defiant attitude toward the Code, or the orders and regulations of the PUC.” “An applicant’s inadvertent or isolated violation of the Code or its certificate does not demonstrate that it is naturally inclined or had an innate tendency to operate unsafely or illegally.” Lehigh Valley Transp. Servs. Inc. v. Pa. Pub. Util. Comm’n, supra.

On the contrary, the facts that Applicant has operated since October 8, 2014 as a certificated motor common carrier of persons by this Commission without complaint; will disqualify drivers that do not comply with the law; and commenced and continued with the instant application proceeding clearly demonstrates Applicant’s propensity to operate lawfully and safely.

B. The instant application will serve a useful public purpose responsive to a public demand or need.

If the instant application were to be also governed by the criteria of establishing public demand or need in the proposed service territory, an applicant can establish that approval of its application will serve a useful public purpose, responsive to a public demand or need, and meets its burden under 52 Pa. Code § 41.14(a), through presentation of relevant, probative, competent, and credible evidence of record. Application of Blue Bird Coach Lines, Inc., 72 Pa. PUC 262 (1990) (Bluebird). Applicant herein has done such with the presentation of relevant, probative, competent, and credible testimony of three (3) supporting public witnesses.

An applicant for Commission authority may prove a need or demand for its proposed transportation service through witnesses comprising a representative sampling of the public that will use the proposed service within the application territory. In re Application of J & J Leasing & Rentals, Inc. d/b/a Anytime-Airport- Taxi by J & J Transportation, A corporation of the Commonwealth of Pennsylvania, Docket No. A-2010-2164865, (Order entered December 15, 2011) citing Bluebird, supra. It is not necessary that an applicant for a certificate of public convenience show that a proposed service be absolutely indispensable or establish a demand for service in every square mile of territory sought, as proof of necessity within an area generally is sufficient to support a grant of authority. Purolator Courier Corp. v. Pa. Pub. Util. Comm'n, 414 A.2d 450 (Pa. Cmwlt. 1980); Modern Transfer Co. v. Pennsylvania Public Utility Commission, 179 Pa. Super. 46, 115 A.2d 887 (1955); Reeder v. Pennsylvania Public Utility Commission, 192 Pa. Super. 298, 162 A.2d 231 (1960); Zurher v. Pennsylvania Public Utility Commission, 173 Pa. Super. 343, 98 A.2d 218 (1953); and B. B. Motor Carriers, Inc. v. Com., Public Utility Commission, 36 Pa. Cmwlt. 26, 389 A.2d 210 (1978). While evidence of present need can be presented, the Commission may act upon indicated future need if circumstances require such, and

a witness's future need is sufficient to satisfy an Applicant's burden. Highway Exp. Lines, Inc. v. Pennsylvania Public Utility Commission, 195 Pa. Super. 92, 169 A.2d 798 (1961). Application of Santos A Melendez t/a Union Cab, Docket No. A-00121472 (Order entered November 13, 2006). Where the scope of the operating authority is narrow or limited, as it is in this case, fewer witnesses are required to prove public need. In re Application of Saferide Transportation Services, LLC, Docket No. A-2010-2159585 (Order entered July 7, 2011) citing Bluebird). Similarly, the Commission determined that the testimony of one witness was sufficient to support a grant of authority from all points in one county, because the testimony represented a reasonable cross section of the public's need for the proposed service. Application of Primo Limousine Company, Inc., Docket No. A-00111548 (Order entered November 29, 1995). In the instance application, Applicant presented the testimony of three (3) public witnesses for need between several points in Berks County.

An applicant's burden is met by showing the proposed service is reasonably necessary for the public's accommodation or convenience, as an absolute or indispensable necessity need not be proven. Highway Exp. Line v. Pennsylvania Public Utility Commission, 164 Pa. Super. 145, 63 A.2d 461 (1949); Pennsylvania R. Co. v. Pennsylvania Public Utility Commission, 181 Pa. Super. 343, 124 A.2d 685 (1956); D. F. Bast, Inc. v. Pennsylvania Public Utility Commission, 185 Pa. Super. 487, 138 A.2d 270 (1958); and Dutchland Tours, Inc. v. Pennsylvania Public Utility Commission, 19 Pa. Cmwlt. 1, 337 A.2d 922 (1975).

The evidentiary record in this proceeding establishes that Applicant's proposed service is reasonably necessary for the public's existing or future accommodation or convenience in the general area sought by Applicant. The three public witnesses' testified as to present and future need for call or demand service between several points in Berks County.

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

C. Joint Protestants have not demonstrated Applicant's lack of fitness or that a grant of the instant application would endanger or impair their operations contrary to the public interest.

It has been conclusively determined that the legislature, in enacting the Public Utility Law, did not intend to benefit established carriers by erecting artificial barriers to the entry of new competitors. Merz White Way Tours v. Pennsylvania Public Utility Commission, 204 Pa. Super. 43, 201 A.2d 446 (1964); New Kingsington City Lines, Inc. v. Pennsylvania Public Utility Commission, 200 Pa. Super. 490, 190 A.2d 179 (1963). Moreover, the primary object of the public service laws is not to establish a monopoly or to guarantee the security of investment in public service corporations, but first, and at all times, to serve the interests of the public. D. F. Bast, Inc. v. Pennsylvania Public Utility Commission, 185 Pa. Super. 487, 138 A.2d 270 (1958). The law does not guarantee any carrier freedom from competition, and the public convenience and interest may require a proposed service (ie. such as Applicant's herein) even though it results in diversion of business from existing carriers. Railway Exp. Agency, Inc. v. Pennsylvania Public Utility Commission, 195 Pa. Super. 394, 171 A.2d 860 (1961). The courts and the Commission have historically recognized that no existing carrier has an absolute right to be free from competition. Noerr Motor Freight, Inc. v. Pennsylvania Public Utility Commission, 181 Pa. Super. 332, 338, 124 A.2d 393 (1956). The Commission has stated that it promulgated the transportation

regulatory policy statement at 52 Pa. Code § 41.14 “to eliminate monopolistic protection of existing motor carriers and to promote health competition among motor carriers for the purpose of assuring the availability of transportation service commensurate with the demonstrated public demand/need.” Bluebird, supra, at 274. Furthermore, the Commission, in Application of Eazor Express, Inc., 53 Pa. PUC 374 (1979), stated more emphasis would be placed on economic analysis and commission discretion over the level of competition which appears to best serve the public interest, with less emphasis on protecting existing carriers from additional competition.

Not one of the Joint Protestants herein submitted any evidence of the extent to which the grant of the instant application would endanger or impair their respective operations to the point of being contrary to the public interest. As a matter of fact, the Joint Protestants did not present any witnesses, exhibits, or the testimony of any witnesses in opposition to the instant Application at the July 13, 2017 hearing. (Tr. 77, lines 24-25).

Merely stating in a protest an applicant lacks financial or technical fitness to operate a proposed service or that a protestant business has competition implying that revenues may decrease, or that equipment has or will not been fully utilize in the face of more competition, does not establish any adverse public interest endangerment or impairment connection to a grant of the instant application, and does not rebut to presumption of Applicant’s financial and technical fitness. Also, Joint Protestants herein appear to have lost sight of the fact that a certificate of public convenience issued by the Commission merely confers the right to do business as a regulated public utility, but it does not provide any guarantee that such business will be protected from competition, be successful, or always be available to the certificate holder.

Accordingly, while Applicant submits the evidentiary record in this proceeding establishes its technical and financial ability to provide the proposed service in a safe and lawful manner, and

establishes that the approval of the instant application is in the public interest responsive to public demand and need, the evidentiary record is void of how a grant of the instant application will endanger or impair Joint Protestants' operations contrary to the public interest.

VIII  
CONCLUSION AND PRAYER FOR RELIEF

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

1. Applicant is fit, willing, and able to provide the services proposed herein, in that it possesses the requisite technical and financial ability to provide the proposed service and comply with Commission regulations;
2. Applicant, through its operating and public witnesses, together with its submitted evidentiary record, has shown a need for the proposed operations in that approval of this application will serve a useful public purpose, responsive to a public need;
3. Joint Protestants' operations, or that of other carriers, will not be endangered or impaired by the grant of this application;
4. A grant of the authority sought herein is in the public interest; and
5. The record in its entirety supports a finding the application be granted in its entirety.

Dated: September 15, 2017

Respectfully submitted,

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APPENDIX A  
PROPOSED FINDINGS OF FACT

Applicant respectfully submits that its digest of testimony and evidence contained in the foregoing Section II – Pertinent Testimony And Evidence Of Applicant, Section III – Pertinent Testimony Of Supporting Public Witnesses, and Section IV – Pertinent Testimony And Evidence Of Protestants, was done for the convenience of the Honorable Administrative Law Judge, and could also be utilized as Applicant’s Proposed Findings Of Fact. Nevertheless, Applicant submits the following also as its Proposed Findings Of Fact.

1. Applicant presently holds authority as a certificated common carrier, by motor vehicle, to transport persons, in paratransit and in limousine service, between points in Berks County. (Tr. 31-35; Applicant’s Ex. 1 and 2).

2. Applicant presently has the necessary equipment, personnel, facilities, insurance, technical and financial ability to perform the proposed service in a lawful and safe manner. (Tr. 31-61, 63-77; Applicant’s Ex. 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12).

3. Daniel Caisaguano is the sole owner of Applicant and is familiar with Applicant’s operations, finances, equipment, employees, drivers, sales, safety, maintenance, dispatching, communications, and the instant application. (Tr. 31, 32-62).

4. Mr. Caisaguano checks work schedules, reviews driver applications and qualifications with his daughter, oversees Applicant’s operations and finances with the assistance of his daughter. (Tr. 40-41, 48).

5. Applicant has operates as a certificated motor common carrier of persons in paratransit service for the past three (3) years and in past two (2) years in limousine service, all in Berks County. (Tr. 31-35; Applicant’s Ex. 1 and 2) .

6. Applicant has filed Annual Assessment Reports with the Commission showing Applicant’s gross operating revenues of its paratransit and limousine operations for the years 2014, 2015, and 2016. (Tr. 35-39; Applicant’s Ex. 3, 4, and 5).

7. Applicant's revenues and expenses for the period of January 1, 2017 through March 31, 2017 depicts a net income of \$15,947.00 for this period. (Tr. 41-42; Applicant's Ex. 6).

8. Applicant has approximately \$40,000.00 in its business account for cash on hand, and is aware of additional costs will be incurred for the proposed taxi operation. (Tr. 54-55).

9. Applicant presently utilizes the equipment listed on Applicant's Ex. 7 for its existing operations. (Tr. 43-44; Applicant's Ex. 7).

10. These vehicles are maintained pursuant to the rules and regulations of the Pennsylvania Public Utility Commission; undergo a mechanical check every 2,000 miles; are checked by the driver before and after every trip, and have periodic maintenance performed by a mechanic. (Tr. 49; Applicant's 11).

11. Applicant proposes to operate or lease the vehicles described on Exhibit 8 as taxi vehicles if the authority sought in this application is granted by the Commission. (Tr. 44, 54; Applicant's Ex. 8).

12. Applicant utilizes the services of the drivers, dispatchers, and Erendira Caisaguano for its operations as set forth on Exhibit 9. (Tr. 45; Applicant's Ex. 9).

13. The drivers utilized by Applicant possess current and valid licenses in compliance with applicable Commission regulations, are at least twenty-one (21) years old, comply with Applicant's specific testing and training qualifications, are subject to applicable motor vehicle/driver history and criminal background searches, are subject to alcohol and drug testing, and are familiar with transporting persons in Berks County. (Tr. 46-48; Applicant's Ex. 10).

14. Applicant's existing facilities are located at 500 South 15<sup>th</sup> Street, Reading, PA 1962; at 1044 Union Street, Reading, PA 19604; and a rented garage at 900 Nichols Street, Reading, PA. At the South 15<sup>th</sup> Street and at the 1044 Union Street addresses, Applicant has facilities for offices dispatching, and parking equipment. (Tr. 51, 53; Applicant's Ex. 12).

15. Dispatching and communications with the public are performed through a network consisting of telephones, cell phones, internet connections, e-mail, and facsimile machines. (Tr. 51; Applicant's Ex. 12).

16. Currently, Applicant operates five (5) days a week, from 7:00 AM to 5:00 PM, but proposes to operate twenty-four hours (24) a day, seven (7) days a week, hire additional staff, if the authority sought is granted and as needed. (Tr.53-54).

17. Mr. Caisaguano believes there is a need for the taxi service in Berks County proposed by Applicant, is not aware of the Commission filing any complaints against Applicant, and affirmed that Applicant will comply with the Commission's rules and regulations applicable to taxi service. (Tr. 52).

18. Erendira Caisaguano assists her father, Daniel Caisaguano, as a manager and dispatcher in running the business of Applicant, and she is familiar with Applicant's operations, finances, equipment, and operating authority. (Tr. 66-67).

19. Applicant complies with all applicable Commission rules and regulations, and no complaints have been filed against Applicant by the Commission regarding Applicant's fitness or safety to her knowledge. (Tr. 66-67).

20. Ms. Caisaguano is also a third year college student majoring in administrating accounting, is involved with Applicant's finances by doing its accounting. (Tr. 68-69, 70).

21. Ms. Caisaguano prepared Applicant's Ex. 6 and stated the gas expense item on that exhibit should stated \$3,000.00, not \$1,000.00, resulting in a \$2,000.00 decrease for the three (3) month net income figure shown on Applicant's Ex. 6. (Tr. 68-69).

22. Ms. Caisaguano stated operating revenue of Applicant has increased for subsequent months in 2017, and expenses have stayed relatively the same. (Tr. 70).

23. The vehicles listed on Applicant's Ex. 7, consists of between twenty (20) to thirty (30) limousine vehicles, operated by appointment, and Applicant has at least five (5) but not more than

ten (10) paratransit vehicles, operated by appointment only and each traveling approximately 25 to 35 miles daily. (Tr. 73-74).

24. The corrected \$3,000.00 gas expense item on Applicant's Ex. 6 is a figure obtained after adding up gas receipts turned into Applicant and then rounding the amount off to arrive at the \$3,000.00 figure.

25. Fausto Antonio Rodriguez appeared at the July 13, 2017 hearing individually in support of the authority sought by Applicant in the instant proceeding of taxi (upon call or demand) service between points in Berks County. (Tr. 12).

26. Mr. Rodriguez does and will have a need for taxi service between his residence in Reading, PA and West Reading, Leesport, Exeter, Sinking Spring, and Wyomissing, PA, and other points. (Tr. 12-13).

27. Mr. Rodriguez requires taxi services from and to these points for hospital and medical appointments, and to go to restaurants sometimes three to six times a week, and he pays for the taxi service. (Tr. 13-14).

28. Although Mr. Rodriguez currently owns a car and has a driver's license, he requires taxi services when his wife or son is using the car. (Tr. 18).

29. If the instant application was granted to Applicant, Mr. Rodriguez would utilize Applicant's proposed taxi service. (Tr. 14).

30. Mr. Rodriguez knows of Applicant, has utilized Applicant's paratransit services for the past seven months, found them to be satisfactory, without problems, and economical, but is required to call in advance for paratransit reservations whereas it would be better for him to use a taxi service without advance reservations. (Tr. 14-15, 17).

31. Mr. Rodriguez has used Metro Taxi and found their service unsatisfactory, and untimely. (Tr. 17).

32. Jose Rafael Gonzalez appeared at the July 13, 2017 hearing individually in support of the authority sought by Applicant in the instant proceeding of taxi (upon call or demand) service between points in Berks County. (Tr. 12).

33. Mr. Gonzalez does and will have a need for taxi service to transport his eight year old special needs daughter between his residence in Reading, PA and St. Joseph Hospital in Reading, PA, Reading Hospital in West Reading, PA, and Berkshire Mall in Shillington, PA sometimes four times a week, on weekdays and weekends, depending upon the hospital appointment, and he pays for the service. (Tr. 21, 22, 24).

34. Although Mr. Gonzalez currently owns a car and has a driver's license, he requires taxi service for his special needs child. (Tr. 21, 25).

35. If the instant application was granted to Applicant, Mr. Gonzalez would utilize Applicant's proposed taxi service. (Tr. 22, 23).

36. Mr. Gonzalez knows of Applicant, has utilized Applicant's paratransit services, found them to be satisfactory, timely (arriving within 5 to 7 minutes of the appointment time), having clean good smelling vehicles, and economical, but is required to call in advance for paratransit reservations whereas it would be better for him to just pick up the telephone and call for a taxi without advance reservations. (Tr. 22-23, 17).

37. Mr. Gonzalez has used Metro Taxi and Taxi Express, and found their services unsatisfactory, arriving late sometimes thirty minutes to an hour, drivers not driving well, and having vehicles smelling of cigarettes (which is unacceptable for his young special needs daughter (Tr. 24-25).

38. Luis Manuel Jose Batista appeared at the July 13, 2017 hearing individually in support of the authority sought by Applicant in the instant proceeding of taxi (upon call or demand) service between points in Berks County. (Tr. 27).

39. Mr. Batista does and will have a need for taxi service to transport his himself between his residence in Reading, PA and St. Joseph Hospital in Reading, PA due to recent surgery; to

transport his two year old daughter between his Reading, PA residence and the dentist in West Reading, PA, and to and from Berkshire Mall in Shillington, PA, three to four times a week, and he pays for the this service. (Tr. 27-28).

40. Although Mr. Barista currently owns a car and has a driver's license, he would utilized Applicant's proposed taxi service if it was granted to Applicant. (Tr. 29).

41. Mr. Batista knows of Applicant, has utilized Applicant's paratransit services, has found them to be excellent, and has never had a problem paying Applicant's paratransit charges, but is required to call a day in advance for paratransit reservations whereas it would be better for him to use a taxi service without advance reservations. (Tr. 28-29).

42. Mr. Batista has not used any other companies besides Applicant for transportation in Berks County. (Tr. 30).

43. Protestants did not present any witnesses or the testimony of any witnesses in opposition to the instant Application at the July 13, 2017 hearing. (Tr. 77, lines 24-25).

44. Applicant tpossesses the technical and financial ability to provide the proposed service in a lawful and safe manner in compliance with Commission regulations. (Tr. 31-77; Applicant's Ex. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12).

45. The instant application will serve a useful public purpose responsive to a present and future public demand and need. (Tr.10-30, 52).

46. A grant of the instant application will not endanger or impair Protestants' contrary to the public interests. (Tr. 24-25, 77).

APPENDIX B  
PROPOSED CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter in this case.
2. Pursuant to 66 Pa.C.S.A. § 332(a), the burden of proof in this proceeding is upon Applicant.
3. An application for a certificate of public convenience should be granted only if the Commission finds that “the granting of such certificate is necessary or proper for the service, accommodation, convenience or safety of the public.” 66 Pa.C.S.A. § 1103(a).
4. An applicant seeking motor common carrier authority has a burden of demonstrating that approval of the application will serve a useful public purpose, responsive to a public demand or need. 52 Pa. Code § 41.14(a).
5. In permitting a motor carrier to enter a competitive field, the Public Utility Commission need not find the proposed service to be rendered by Applicant is absolutely indispensable, but it is sufficient that service is reasonably necessary for accommodation or convenience of the public. Pittsburgh & L. E. R. Co. v. Pa. P.U.C., 170 Pa. Super. 411 (1952).
6. In order to establish need, it is not necessary to prove an absolute necessity or present demand for the service in every part of the territory involved. Pa. P.U.C. v. Purolator Courier, 24 Pa. Cmwlt. Ct. 301 (1976).
7. An applicant seeking motor common carrier authority has the burden of demonstrating that it possesses the technical and financial ability to provide the proposed service; and, in addition, authority may be withheld if the record demonstrates that the applicant lacks a propensity to operate safely and legally. 52 Pa. Code § 41.14(b).
8. The Commission will grant motor carrier passenger authority upon establishment of technical and financial ability to provide the proposed service safely, reliably, and legally. Pennsylvania Public Utility Commission Doc. No. L-2015-2507592, 47 Pa.B. 3099.

9. The amount of competition which will best serve the public interest and convenience is a matter within the discretion of the Public Utility Commission. Merz White Way Tours v. Pa. P.U.C., 204 Pa. Super. 490, 201 A.2d 446 (1964).

10. Applicant La Mexicana Express Service, LLC sustained the burden of establishing by substantial evidence that its Application for a certificate of public convenience should be granted, as necessary or proper for the service, accommodation, convenience or safety of the public.

11. Applicant La Mexicana Express Service, LLC sustained the burden of establishing by substantial evidence that the proposed service will serve a useful public purpose, responsive to a public demand or need.

12. Applicant La Mexicana Express Service, LLC sustained its burden of establishing by substantial evidence that it possesses the technical and financial ability to provide the proposed service.

13. The Joint Protestants, as the parties challenging the application, bear “burden of rebutting the presumption that Applicant is technically and financially fit to provide service in the expanded service area,” but they did not present any evidence contradicting Applicant’s presumed technical and financial fitness. An existing certificate holder is entitled to a “continuing presumption regarding its fitness to operate,” which includes a presumption that the carrier has a propensity to operate legally. Lehigh Valley Transp. Servs. Inc. v. Pa. Pub. Util. Comm’n, 56 A.3d 49, 58 (Pa.Comwlth. 2012); South Hills Movers, Inc. v. Pa. Pub. Util. Comm’n, 601 A.2d 1308, 1310 (Pa.Cmwlth. 1992).

14. The phrase “lacks a propensity to operate safely and legally means a persistent disregard for, flouting, or defiant attitude toward the Code, or the orders and regulations of the PUC.” “An applicant’s inadvertent or isolated violation of the Code or its certificate does not demonstrate that it is naturally inclined or had an innate tendency to operate unsafely or illegally.” Lehigh Valley Transp. Servs. Inc. v. Pa. Pub. Util. Comm’n, supra.

15. Joint Protestants did not sustain their burden that the entry of a new carrier into the field would endanger or impair the operations of existing carriers to such an extent that, on balance, the granting of the authority would be contrary to the public interest. 52 Pa. Code § 41.14(c).

16. The approval of the instant application will not endanger or impair the operations of the Joint Protestants contrary to the public interest.

17. The Application filed by La Mexicana Express Service, LLC at Docket No. A-2017-2590784 should be and is hereby approved.

APPENDIX C  
PROPOSED ORDER

THEREFORE, IT IS ORDERED, this                    day of                    , 2017, upon consideration of the complete record of formal testimony and evidence submitted and obtained in this proceeding:

1. The protests of all of the Joint Protestants are denied;
2. The application of La Mexicana Express Service, LLC, docketed at Number A-2017-2590784, be and it is hereby approved in its entirety;
3. That upon compliance with the requirements herein, the certificate of public convenience issued to Applicant La Mexicana Express Service, LLC be issued to include the right to “transport as a common carrier, by motor vehicle, persons upon call or demand, between points in Berks County;”
4. That Applicant La Mexicana Express Service, LLC shall not engage in any transportation authorized herein until it shall have complied with the requirements of the Pennsylvania Public Utility Code and the Regulations of the Pennsylvania Public Utility Commission relating to the filing and acceptance of and appropriate tariff and insurance.
6. That if La Mexicana Express Service, LLC has not, on or before sixty (60) days from the service of a final order in this proceeding, complied with the requirements hereinbefore set forth, the Application shall be dismissed without further proceedings;
7. That the record at Docket No. Number A-2017-2590784 be and is marked closed.

Dated:

\_\_\_\_\_  
Angela T. Jones, Administrative Law Judge

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served the original and true copies of the foregoing document, Main Brief of Applicant upon the persons listed below, electronically and via first class mail, postage prepaid, in accordance with the requirements of 52 Pa. Code § 1.54, 52 Pa. Code § 1.59, 52 Pa. Code § 5.502, and Order #2 Briefing Schedule of the Hon. Angela T. Jones, ALJ:

Anthony Joseph DelGrosso, Esq., Law Office of Anthony J. DelGrosso, P. O. Box 1726, Lancaster, PA 17602 electronically; the Hon. Angela T. Jones, ALJ, Pennsylvania Public Utility Commission, Suite 4063., 801 Market St., Philadelphia, PA 19107 electronically; and Rosemary Chiavetta, Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265 electronically eFiling the original.

Dated this 15th day of September, 2017.

s/ Kenneth A. Olsen  
KENNETH A. OLSEN  
Attorney for Applicant