

**LAW OFFICE OF TESSIE P. CLEMENTS**

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November 22, 2010

Attn: Secretary  
Alabama Public Service Commission  
P O Box 304620  
Montgomery, Alabama 36130



**RE: GRACE 4U TRANSPORTATION SERVICES, LLC  
EXCEPTIONS**

Dear Sir/Madam

Please see the enclosed Exceptions to Order Denying Grace 4U Transportation Services, LLC's Request for Authority to Institute New Operations As A Common Carrier by Motor Vehicle in Intrastate Commerce re-consideration of the Alabama Public Service Commission. I have enclosed the original and four copies for review. Thank you for your assistance in this matter.

Sincerely,

Handwritten signature of Tessie P. Clements.

Tessie P. Clements  
Attorney at Law

**STATE OF ALABAMA**  
**ALABAMA PUBLIC SERVICE COMMISSION**

P.O. Box 304260  
Montgomery, AL 36130

CLAIMANT:  
GRACE 4U TRANSPORTATION, L.L.C.

DOCKET:  
31149

**EXCEPTIONS TO ORDER DENYING GRACE 4U TRANSPORTATION SERVICES,  
L.L.C.'S REQUEST FOR AUTHORITY TO INSTITUTE NEW OPERATION AS A  
COMMON CARRIER BY MOTOR VEHICLE IN INTRASTATE COMMERCE**

Comes now, Grace 4U Transportation Services, L.L.C. and hereby files its exceptions to the denial of its application for authority to institute a new operation as a common carrier by motor vehicle in intrastate commerce over irregular routes in the transportation of passengers and their baggage in non-emergency medical services between all points and places in the counties of Hale, Greene, Marengo, Tuscaloosa, Perry, Sumpter and Jefferson and for its cause states as follows:

The Petitioner seeks exceptions to the denial of its application based upon the Court's ruling regarding the coverage areas. As stated in its opinion, Fresh Air services Hale County; however, its closest terminal is in Birmingham, Alabama. The distance a Fresh Air driver would have to drive in order to service the Hale County area is, at a minimum, 71 miles one-way. Fresh Air did not provide testimony that it can regularly provide services to Perry, Marengo and Sumter Counties. The other remonstrator, West Alabama Health Services, under cross examination, testified that it regularly services the Tuscaloosa and Birmingham areas. West Alabama did not testify that it provided regular transportation services to Hale, Marengo, Perry and Sumter counties.

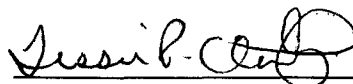
The controlling law on the issue of granting a permit to a common carrier is whether public convenience and necessity requires the services as proposed by the Applicant. When considering the question of public need, it is incumbent upon the Commission to consider whether the territory for which authority is sought is served by other carriers and the adequacy of such service to meet the public need. Alabama Public Service Commission v. Higginbotham, 256 Ala. 621, 56 So.2d 401 (1951), Alabama Public Service Commission v. Crowe, 247 Ala. 120, 22 So.2d 721 (1945). The court, in its opinion, failed to consider the issue of public convenience with respect to the fact the Grace 4U Transportation Services has its principal office in Hale County and is able to serve the public need based upon its proximity to Hale, Marengo, Green, Perry and Sumter counties.

Fresh Air stated in its testimony that their driver would have to travel at least 71 miles (the travel distance between Birmingham and the Hale County line) just to provide coverage into the Hale County area. Public necessity and convenience was demonstrated due to the close proximity of Grace 4U's service to dialysis patients to requested service areas of Hale, Greene, Perry, Marengo and Sumpter counties as opposed to Fresh Air's Birmingham terminal. Moreover, the testimony provided by West Alabama Health Services and Fresh Air clearly demonstrated that they did not regularly provide service to the coverage areas of Sumter, Perry and Marengo Counties.

It is also important to note to the Commission that West Alabama Health Services, Inc. has been in serious financial trouble due to its Chapter 11 filing in the U.S. Bankruptcy Court, in the Northern District of Alabama, Western Division. The case number for this case is 03-70337-CMS-11. The nature of its Chapter 11 bankruptcy was that it was unable to financially manage its operation expenses, despite receiving grants and other funding. There were several disputes regarding its failure to pay its employees (both hourly and salary), to which counsel has personal knowledge. To the best of counsel's knowledge, West Alabama Health Services' financial affairs are still under the guidance of the U.S. Bankruptcy Court. Thus, the financial issues of this company put in doubt its ability to provide services in an adequate manner to persons in need of dialysis treatment. Therefore, the necessity for Grace 4 U Transportation Services in these counties was clearly demonstrated based upon the testimony presented at the evidentiary hearing held by the Administrative Law Judge on May 7, 2009. Even when considering the testimony provided to the court, Grace 4U would qualify for a permit to operate in the Sumpter, Marengo and Perry County areas.

WHEREFORE, Grace 4U respectfully requests that it be granted a permit for authority to service all points between Hale, Greene, Marengo, Tuscaloosa, Perry, Sumpter and Jefferson counties or in the alternative, that it be granted to permission to operate in Sumpter, Marengo, Perry and Hale counties.

Respectfully submitted,



Tessie P. Clements (CLE035)

Attorney for Grace 4U Transportation Services

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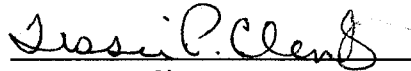
Tuscaloosa, AL 35403

(205) 758-3500

(866) 929-6323 Facsimile

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing to Fresh Air Accessible of Alabama, L.L.C. and West Alabama Health Services, Inc. or their attorneys, by placing a copy of the same in the U.S. first-class mail, postage pre-paid on this the 22<sup>nd</sup> day of November, 2010.



Tessie P. Clements  
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