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December 5, 2012



Alabama Public Service Commission
P. O. Box 304260
Montgomery, AL 36130-4260

****VIA EXPRESS MAIL****

RE: Carbine Enterprises, Inc., d/b/a Quad Cites Taxi & Limousine Service.

To whom it may concern:

Please find enclosed an original and four copies of Carbine Enterprises, Inc., d/b/a Quad Cites Taxi & Limousine Service, appeal to the Administrative Law Judge's recommended order served November 19, 2012.

Should you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,

James Q. Stanphill, Jr.

JQSJR/sw



ALABAMA PUBLIC SERVICE COMMISSION
Montgomery, Alabama



IN RE:

CARBINE ENTERPRISES, INC.,
D/B/A QUAD CITIES TAXI &
LIMOUSINE SERVICE

Applicant

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DOCKET NO. 31772

**APPEAL TO THE REPORT AND RECOMMENDED ORDER OF THE
ADMINISTRATIVE LAW JUDGE**

COMES NOW, applicant CARBINE ENTERPRISES, INC., D/B/A QUAD CITIES TAXI & LIMOUSINE SERVICE, by and through its Attorney at Law, James Q. Stanphill, Jr., and does file this appeal with the Alabama Public Service Commission (APSC), to the Recommended Order of Honorable Administrative Law Judge (ALJ), Suellen Young, denying CARBINE ENTERPRISES, INC., d/b/a Quad Cities Taxi & Limousine Service's application.

Applicant bases its appeal on the following:

1. *Certification Standard.* Section 37-3-11, *Code of Alabama (1975 as amended)* state in part
(a) Subject to the provisions of Section 37-3-14 and to the provisions of subsection (b), a certificate shall be issued to any qualified applicant therefore, authorizing the whole or any part of the operations covered by the application, if it is found, after public hearing of the application, that the applicant is fit, willing, and able to properly perform the service proposed and to conform with the provisions of this chapter and requirements, rules, and regulations of the commission thereunder, and that the proposed service, to the extent to be authorized by the certificate is or will be required by the present or future public convenience and necessity; otherwise, the application shall be denied.

Nothing in the entire testimony provided in the ALJ's report, nor does the Honorable Judge Young contradict the evidence that the Applicant is "...fit, willing, and able to properly perform the service proposed and to conform with the provisions of this chapter and requirements, rules, and regulations of the commission thereunder". The Honorable Judge on Page 12 of her report acknowledges fitness and "a willingness to familiarize itself with those rules and regulations and comply with them in the future."

Furthermore, the report does not contest that the Applicant has previously met and currently meets all the requirements Section 37-3-11(b)(2) requiring the Applicant to have

“...The financial ability of the applicant to furnish adequate, continuous, and uninterrupted service the year around.”

In fact, the Applicant has been providing the applied for service and taxi services to the proposed coverage area since 1999.

2. *Public Convenience and Necessity.* On Page 13 of the ALJ opinion, the Honorable Judge in her recommendation states that:

“Based on the foregoing, it appears that the Applicant has failed to affirmatively demonstrate that the service proposed herein is required by the public convenience and necessity or is reasonably necessary therefore.”

However, such an opinion appears to contradict the evidence. On Page 6 of the ALJ’s recommended order, the Ms. Brooke Allard of El Reposo Nursing Facility in Florence, Alabama testified that:

“When she was able to use Quad Cities, she had no problems on short notice situations and changes. She has been satisfied with the equipment and the service and so forth provided by Quad Cities.”

She had previously testified that she had *“some difficulties and problems”* getting service when a challenging competitor, Wheelchair Transportation, was the only option. She also testified that she was not familiar, having never been called on or seen any advertisement from Express Medical, a company challenging the Applicant’s application.

She firmly testified that she believes that *“there is a need for an additional transportation service for passengers and baggage in non emergency medical service.”*

On Page 7 of the report, Ms. Rosa Smith Jones also testified that she required dialysis three times a week at different times and the applicant *“...had always been able to meet those changes”*.

Furthermore on Page 7, Ms. Tammy Goodrow, while full of praise for the Applicant, also stated that she had tried to use Wheelchair Transportation, that pick-up was late both to get to the appointment and when the appointment was done, even called as to start and end times. This created undue hardship on the witnesses daughter who suffers from cerebral palsy, making extended sitting uncomfortable. She stated that *“She would not use Wheelchair Transportation in the future.”* Ms. Goodrow further stated that *“The driver did not help and make sure her daughter got in the van.”* The report reveals that she continued saying *“that if Mr. Carbine is granted this authority that she will use his service and she personally believes that there is a*

need for additional transportation service with passengers and baggage in non emergency medical service."

She also was unaware that Express Medical even existed, showing a lack of coverage, advertising, or ability by the competing carrier to meet the needs of the coverage area.

Further as to the challenger Express Medical, on Page 11 of the report, Mr. Richard Peterson of Express Medical testified that his closet office was in Birmingham, Alabama, some 2 ½ hours from the Shoals Area, and that "*a good percentage of his business was with agencies or companies that have a contract with Medicare or Medicaid*". Emphasis added.

In addition to consideration of Section 37-3-11(b)(2) that the ALJ report concedes is met by the Applicant, Section 37-3-11(b)(1) restates that the commission shall consider:

"Whether existing transportation service of all kinds is adequate to meet the reasonable public needs."

Given the above testimony, it appears that the ALJ's recommendation that the Applicant does not, is contrary to the evidence.

CONCLUSION

The Alabama Supreme Court has stated that the standard of review of orders of the APSC for appellate purposes are as follows, citing a pertinent part of Section 37-1-124 Ala. Code (1975):

"The Commission's order shall be taken as prima facie just and reasonable. No new or additional evidence may be introduced in the circuit court, except as to fraud or misconduct of some person engaged in the administration of this title and affecting the order, ruling or award appealed from, but the Court shall otherwise hear the case upon the certified record and shall set aside the order if the court finds that:

"(1) The commission erred to prejudice of the appellant's substantial right in the application of the law; or

(2) The order, decision or award was procured by fraud **or was based upon a finding of fact contrary to the substantial weight of the evidence.**" Emphasis added

Quoting *BellSouth Telecommunications, Inc. v. Alabama Public Service Commission and Southern Public Communication Association (Special Term, 2007, Docket No. 1041537)*

Applicant submits that given Applicants and witness testimony, the ALJ recommendation is contrary to the substantial weight of the evidence. That it has, in fact, met the burden of showing that Applicants' service "*is or will be required by the present or future public convenience and necessity*" as required by Section 37-3-11.

The Supreme Court of Alabama has previously stated that:

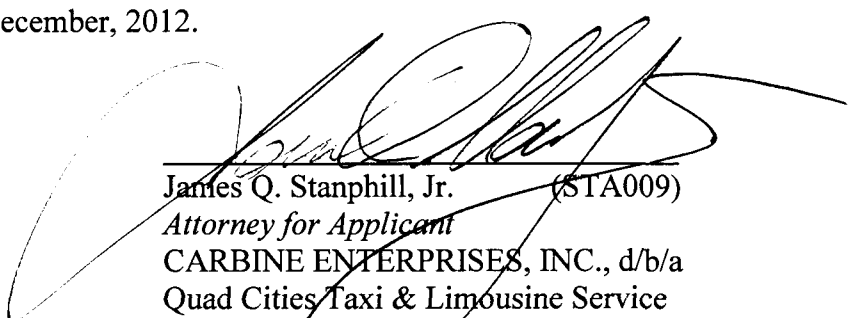
"A demonstration that the proposed service is reasonably necessary for the public good satisfies the required showing of public convenience and necessity". *Alabama Public Service Commission v. Wells Fargo Armored Services*, 495 So. 2nd 42 (Ala. 1986).

Applicant submits that he has met this "reasonableness" burden. Challenger Wheelchair Transportation's services were completely disparaged by the testimony. Challenger Express Medical so inadequately covers the area that it is basically unknown, doing a "good percentage" of contract work, and is more than 2 ½ hours away from the coverage area.

Furthermore, there was no evidence in the record that there would be any financial harm to, or their ability to provide a service by any of the Challengers, other than by assumption.

THEREFORE, applying the above stated principals of review the Applicant does request that this body make this response a part of the record of the application, and reject the Administrative Law Judge's recommended order, and grant the Applicants application.

Respectfully submitted this 5th day of December, 2012.



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