BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 93-774-T - ORDER NO. 94-967 ✓C

SEPTEMBER 19, 1994

IN RE: Application of Willcar, Inc., 1409 East Blvd., P.O. Box 442, Charlotte, NC 28204, for a Class E Certificate of Public Convenience and Necessity.	) ORDER) GRANTING) CERTIFICATE) OF SERVICE

This matter is before the Public Service Commission of South Carolina (the Commission) on the December 23, 1993, Application of Willcar, Inc. (Willcar or the Applicant) for a Class E Certificate of Public Convenience and Necessity[1] authorizing it to transport property as follows:

> BANK COURIER COMMODITIES AND DOCUMENTS OF FINANCIAL INSTITUTIONS, EXCLUDING COMMODITIES OF UNUSUAL VALUE COMMONLY TRANSPORTED IN ARMORED MOTOR VEHICLES: Between points and places in South Carolina.

Subsequent to the initiation of this proceeding, the Executive Director of the Commission instructed the Applicant to cause to be published a prepared Notice of Filing in certain newspapers of general circulation in the State of South Carolina. The Notice of Filing indicated the nature of the Application and advised all interested parties desiring to participate in the proceeding of the manner and time in which to file the appropriate pleadings. The Notice of Filing was duly published in accordance

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1. "A class E motor carrier is a common carrier of property by motor vehicle which does not operate upon any particular route or particular schedule and which is commonly known as an irregular route common carrier." 26 S.C. Regs. 103-114 (1976).

with the instructions of the Executive Director. Petitions to Intervene were filed by Acme Delivery Services, Inc. (Acme)[2], Anderson Armored Car Service, Inc. (Anderson), and Bankair Courier, Inc. (Bankair).[3]

A hearing was held at the Offices of the Commission on August 4, 1994. The Honorable Rudolph Mitchell presided. The Applicant was represented by John F. Beach, Esquire; Anderson was represented by Richard C. Otter, Esquire; Bankair was represented by Frank R. Ellerbe, III, Esquire; and the Commission Staff was represented by Gayle B. Nichols, Staff Counsel.

After a full consideration of the evidence of record and the applicable law, the Commission makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. South Carolina Code Ann. §58-23-300 (1993 Supp.) provides as follows:

> [a]n applicant applying for a certificate . . . to operate as a motor vehicle common carrier may be approved upon showing . . . that the applicant is fit, willing, and able to perform appropriately the proposed service. If an intervenor shows or if the [C]ommission determines that the public convenience and necessity is being served already, the [C]ommission may deny the application.

2. 26 S.C. Regs. 103-134(1)(A)(1)(Supp. 1993) provides, in relevant part, that the Commission use the following criteria to determine whether an applicant is fit, willing, and able to provide the requested service:

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2. Prior to the hearing, Acme withdrew its Petition to Intervene.

3. Anderson and Bankair will be referred to collectively as the Intervenors.

(a) FIT The applicant must demonstrate or the Commission determine that the Applicant's safety rating is satisfactory. This can be obtained from U.S.D.O.T., SCDHPT, and PSC safety records. Applicants (sic) should also certify that there are no outstanding judgments pending against such applicant. The applicant should further certify that he is familiar with all statutes and regulations, including safety regulations, governing for-hire motor carrier operations in South Carolina and agrees to operate in compliance with these statutes and regulations.

(b) ABLE The applicant should demonstrate that he has either purchased, leased, or otherwise arranged for obtaining necessary equipment to provide the service for which he is applying.
The Applicant should also provide evidence in the form of insurance policies or insurance quotes, indicating that he is aware of the Commission's insurance requirements and the cost associated therewith.

(c) WILLING Having met the requirements as to 'fit and able', the submitting of the application for operating authority would be sufficient demonstration of the applicant's willingness to provide the authority sought.

3. "The doctrine of [public] convenience and necessity is a relative or elastic theory. The facts in each case must be separately considered and from those facts it must be determined whether public convenience and necessity requires a given service to be performed or dispensed with." State v. Carolina Coach Company, 260 N.C. 43, 52, 132 S.E.2d 249, 255 (1963).

4. "'Necessity' means reasonable necessary and not absolutely imperative." Id. citing State v. Southern Railway Co., 254 N.C. 73, 79, 118 S.E.2d 21, 25 (1961). ". . . It is necessary if it appears reasonable requisite, is suited to and tends to promote the accommodation of the public." Id.

5. On August 23, 1994, the Federal Aviation Administration Authorization Act of 1994 (the Act) was signed by the President.

Effective January 1, 1995, the Act, in relevant part, preempts states from regulating the price, route, or service of motor carriers who transport property.[4] 108 Stat. 1569.

6. According to the testimony of its President and majority stockholder, Phillip McLean, Willcar was incorporated in North Carolina in 1983. In 1988, Willcar began transporting bank courier commodities within North Carolina and on an interstate basis. Tr. Vol 1, p. 7, line 11 - p. 8, line 22. Mr. McLean testified that Willcar presently has twelve (12) vehicles and employs eighteen (18) people in North Carolina. Tr. Vol 1, p. 9, lines 2-7. He stated Willcar has the financial capability to provide the courier services for which it seeks this Commission's authority. Tr. p. 14, lines 2-3. Mr. McLean further testified that Willcar has had requests from Southern National Bank, Anchor Bank, and several manufacturing businesses, to provide intrastate South Carolina courier service. Tr. Vol 1, p. 33, line 21 - p. 34, line 13.

7. Pat Price, Vice-President of First Citizens Bank in Raleigh, North Carolina, testified on behalf of Willcar. Mr. Price testified he supported Willcar's Application because he believed that competition among courier services would keep prices down. Tr. Vol 1, p. 80, lines 1-5; p. 82, lines 4-11. On cross-examination, Mr. Price admitted that the currently authorized courier services do have the ability to meet his company's existing courier needs. Tr. Vol 1, p. 80, lines 13-22.

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4. In its original bill form, the Act was intended to apply only to motor carriers who were affiliated with direct air carriers. The August 3rd amended bill proposed by the joint conference committee proposed to exempt all motor carriers, except household goods carriers, from state regulation.

Bob Bundnicki, Vice President with First Union Corporation, also testified on behalf of Willcar. Mr. Bundnicki explained that he supported Willcar's Application in order to encourage competition within the courier industry. Mr. Bundnicki explained that more carriers would control costs and the quality of service. He explained that South Carolina's courier rates are lower than those of other states with which he is familiar. Tr. Vol 1, p. 84, line 3 - p. 85, line 4.

8. Andrew Rutledge testified on behalf of Bankair. Mr. Rutledge testified that, contrary to Willcar's position, the intrastate market for bank courier commodities is not expanding. Tr. Vol 1, p. 88, lines 18-21. Mr. Rutledge further testified that rates for courier services in South Carolina are lower than the rates for similar services in other states. Tr. Vol 1, p. 94, lines 19-22.

CONCLUSIONS OF LAW

1. The Commission concludes that while Willcar may have demonstrated its fitness and willingness to provide the Class E service it seeks, the Commission is not convinced that Willcar has demonstrated its ability to provide statewide courier services. As noted in its Application, Willcar has a limited amount of cash on hand. Despite Mr. McLean's assertion that Willcar is financially capable of providing the services for which it seeks authority, this Commission is concerned about whether Willcar does in fact have a sufficient financial backing to support the authority it seeks by this Application.

2. Moreover, the Commission finds that, based on the

testimony of the Intervenors and by Willcar's own shipper witnesses, the public convenience and necessity is already being served, and at a lower cost than in other states, by the current courier services. The Commission commends Bankair, Anderson, and the other courier services for providing low cost, quality courier transportation services.

3. Nonetheless, the Commission concludes that it would be an exercise in futility to deny Willcar the authority it seeks since, under the Act, effective January 1, 1995, this Commission is precluded from issuing certificates of public of public convenience and necessity.[5] As of January 1, 1995, an applicant such as Willcar will only need to file evidence of financial responsibility relating to insurance requirements and an appropriate safety rating with state regulatory authorities. For this reason, the Commission grants Willcar a certificate of service upon compliance with the following requirements:

A. Willcar shall file the proper license fees and other information required by S.C. Code Ann. §58-23-10 to -1830 (1976, as amended) and by 26 S.C. Regs. 103-100 to -272 (1976, as amended), within sixty (60) days of the date of this Order, or within such additional time as may be authorized by the Commission.

B. Upon compliance with S.C. Code Ann. §58-23-10 to -1830 (1976, as amended), and the applicable provisions of 26 S.C. Regs. 103-100 to -272 (1976, as amended), a certificate of service shall be issued to Willcar which recognizes its compliance with the cited

5. An exception for household goods motor carriers remains subject to state regulation.

statutory provisions.

C. Prior to compliance with the above-noted requirements and receipt of a certificate, the motor carrier services authorized herein may not be provided.

4. This Order shall remain in full force and effect until further Order of the Commission.

IT IS SO ORDERED.

Rudolph Mitchell
Chairman

ATTEST:

Charles W. Saltzman
Executive Director

(SEAL)