

No. 21-0233



IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

SRC HOLDINGS, LLC (f/k/a WILLIAMS HOLDINGS, LLC),
d/b/a WILLIAMS TRANSPORT,
Petitioner and Plaintiff below,

v.

PUBLIC SERVICE COMMISSION OF WEST VIRGINIA,
DONALD R. ABNER, dba AMBASSADOR LIMOUSINE AND TAXI SERVICE,
and CLASSIC LIMOUSINE SERVICE, INC.
Respondent and Defendant below.

RESPONDENTS' BRIEF



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STATEMENT OF THE CASE

This appeal arises pursuant to a decision made by the Public Service Commission (“PSC”) allowing the transfer of PSC M.C. Certificate No. 7508 (“Certificate 7508”) from Classic Limousine Service, Inc. (“Classic”) to Donald R. Abner, D/B/A Ambassador Limousine and Taxi Service (“Ambassador”) on February 17, 2021. *See* Appendix at 7. The Petitioner alleges that Certificate 7508 has become both geographically and operationally dormant, and that the transfer from Classic to Ambassador would effectively create a new service in the certificated territory. *Id.* at 13-14.

On January 13, 2020, Ambassador filed an application for the transfer of Certificate 7508 from Donna and Brian Williams, dba Classic. *Id.* at 7. Included in the proposed transfer were (1) 2002 Lincoln Town Car; (2) 2006 Ford F-550; (3) 2006 Lincoln Town Car; and (4) 2001 Lincoln Town Car. Additionally, as contemplated in the Asset Purchase Agreement, Classic agreed to transfer P.S.C. M.C. Certificate No. 7508 to Ambassador which authorizes its owner to provide limousine service in Logan, Boone, Fayette, McDowell, Mercer, Nicholas, Raleigh, Summers and Wyoming Counties. In response, the PSC referred this case to the Administrative Law Judge (“ALJ”) Division for entry of a decision on or before August 10, 2020. *Id.*

On April 10, 2020, Staff filed its Final Joint Staff Memorandum recommending the applicant publish notice of the proposed certificate transfer in qualified newspapers and provide proof of those publications to the PSC. *Id.* The Staff also recommended granting consent and approval of the transfer pursuant to *W. Va. Code § 24A-2-5(c)* without a hearing and without specifically approving the terms and conditions if there was protest to the application. *Id.* Four days later, the ALJ directed Ambassador to make proper publication of its application by publishing in newspapers that circulated the following counties: Boone, Fayette, McDowell,

Monroe, Nicholas, Raleigh, Summers, and Wyoming. *Id.*

On May 8, 2020, Williams Holdings, LLC, dba Williams Transport (“Williams Transport”) filed a letter of protest and three days later filed a motion to intervene and request for a hearing. *Id.* at 8. Williams Transport argued it had a legal interest in Ambassador’s application because it holds common carrier authority for Boone and Raleigh Counties. *Id.* Williams Transport contended that certain parts of Classic’s certificate were dormant and further requested a hearing on the matter. *Id.* The ALJ granted Williams Transport’s motion to intervene and scheduled a hearing on the matter for June 25, 2020. *Id.* However, Williams Transport filed a motion to continue that was granted by the ALJ and pushed the hearing back to August 3, 2020. *Id.*

At the August 3, 2020 hearing, Donna and Brian Williams testified based upon their knowledge of the business specifications of Classic Limousine and its operation under P.S.C. M.C. Certificate No. 7508. The Williams began operating Classic Limousine in either 2014 or 2015. *See* Hearing Transcript at 45-46. Under its operating certificate, Classic Limousine conducted business in the nine counties and with the four vehicles identified previously. *Id.* at 48. From the time it began operating until the time of the sale, Classic Limousine averaged gross sales of approximately \$20,000-\$30,000 per year. *Id.* at 33. A majority of Classic Limousine’s business came from Raleigh County, while the rest of the business came from an equal spread across the remaining eight counties as testified to by Brian Williams. *Id.* at 49-50.

Mr. Abner also testified at the hearing in support of the transfer. In pertinent part, Mr. Abner owns three motor-vehicle carrier transportation companies: Ambassador Limousine, Ambassador Taxi, and New River Taxi. *Id.* at 60-61. Each of the companies hold separate P.S.C. motor carrier certificates. *Id.* at 61. Between all of his businesses, Mr. Abner owns

approximately fifty vehicles for use and sale. *Id.* at 62. Mr. Abner was present for Mr. and Ms. Williams' testimony and heard information regarding Classic Limousine's business operations, and believed if the transfer of P.S.C. M.C. Certificate No. 7508 was approved, he would be able to maintain, if not exceed, Classic Limousine's current level of business operation in its geographical areas of operation. *Id.* at 66.

On September 24, 2020, the ALJ issued a Recommended Decision authorizing the transfer of the certificate only in Raleigh County for failure to publish proper notice in the remaining counties. *See* Appendix at 8. Four days later on September 28, Ambassador and Classic filed exceptions to the Recommended Decision objecting to the denial of the transfer on procedural grounds and requested the PSC to allow transfer in all counties. *Id.* Williams Transport filed their exceptions to the Recommended Decision on October 8, 2020. *Id.* at 9.

In their filed exceptions, Williams Transport agreed that Certificate 7508 covers nine counties, but argued Classic's operations were minimal in all of those counties except Raleigh. *Id.* Further, Williams Transport asserted that Classic did not transport railroad workers for railroad-related work and did not own vehicles for this purpose. *Id.* Finally, Williams Transport asserted that Classic's primary purpose was to transport customers to and from its owners' restaurants in Beckley. *Id.* Williams argued to the ALJ that Certificate 7508 was geographically dormant in all counties except Raleigh, operationally dormant as to the transportation of railroad workers, and that the proposed change in ownership would result in such different service from the current operations that it would effectively create a new service without the showing of a public need. *Id.* Williams Transport noted the ALJ ruled Certificate 7508 was not operationally dormant for railroad workers in Raleigh County, but did not address the rest of Williams Transport's arguments because of a failure to publish notice by Ambassador. *Id.* Williams

Transport acknowledged that Ambassador id properly publish notice in each of the subject counties. *Id.*

On February 17, 2021, the PSC issued the Commission Final Order granting exceptions filed by Donald Abner, denying the exceptions filed by Williams Holdings, LLC, and amending the Recommended Decision to allow the transfer and assignment of P.S.C. M.C. Certificate No. 7508 from Donna and Brian Williams, dba Classic Limousine Service, Inc. to Donald R. Abner, dba Ambassador Limousine and Taxi Service in all the certificated counties. *Id* at 14; *see also* Exhibit A, Commission Order entered 04/06/2021.

On March 18, 2021, SRC Holdings, LLC, fka Williams Holdings, LLC, dba Williams Transport, by counsel, timely perfected an appeal from the Final Order by the PSC on February, 17, 2021. *See* Scheduling Order at 1. A hearing on the appeal in accordance with *West Virginia Code* 24-5-1 and Rule 19, *Rules of Appellate Procedure* was set for September 15, 2021 in the City of Charleston. *Id* at 1-2.

STANDARD OF REVIEW

This Court applies the following Standard of Review in regard to appeals of PSC decisions allowing for the transfer of common carrier certificates.

In a proceeding for a certificate to operate as a common carrier an order of the Public Service Commission will not be disturbed on appeal unless its findings are contrary to the evidence, are without evidence to support them, are arbitrary or result from a misapplication of legal principles.

Syl. Pt. 1, *Solid Waste Servs. Of W. Virginia v. Pub. Serv. Comm'n*, 188 W. Va. 117, 422, S.E.2d 839 (1992).

In reviewing a Public Service Commission order, we will first determine whether the Commission's order, viewed in light of the relevant facts and of the Commission's broad regulatory duties, abused or exceeded its authority. *Bebe Enters. v. PSC*, 201 W. Va. 19, 23-24,

491 S.E.2d 19, 23-24 (1997).

SUMMARY OF ARGUMENT

Certificate 7508 authorizes the holder to operate as a common carrier by motor vehicle in the transportation of passengers in limousine service between points and places in Boone, Fayette, McDowell, Mercer, Monroe, Nicholas, Raleigh, Summers, and Wyoming Counties. The language of Certificate 7508 is general in nature and as such would permit the holder of the certificate to transport any class of passenger via limousine service as a common carrier by motor vehicle.

A "common carrier by motor vehicle" is *any person who undertakes, whether directly or by lease or any other arrangement, to transport passengers or property, or any class or classes of property, for the general public over the highways of this state by motor vehicles for hire, whether over regular or irregular routes, including such motor vehicle operations of carriers by rail, water or air and of express or forwarding agencies, and leased or rented motor vehicles, with or without drivers[.]*

W. Va. Code, 24A-1-2.

The Public Service Commission did not err in granting the transfer of Certificate 7508 from Classic to Donald Abner, dba Ambassador. The Public Service Commission and the West Virginia Supreme Court of Appeals have consistently held that that criteria for the transfer of a motor carrier permit or certificate is (1) that the proposed transferee is a fit and proper person to hold the certificate to serve the public as a common carrier; (2) that the proposed transferee has the financial ability to provide the service; and (3) that the certificate is not dormant -- that the holder thereof (transferor) has actively engaged in operation under the certificate sought to be transferred. *Solid Waste Servs. v. Public Serv. Comm'n*, 188 W. Va. 117, 120 (1992).

In a public service commission proceeding to transfer a motor carrier permit, a carrier is "fit and proper" when it has the experience, equipment, insurance and financial ability to carry

on the business that is being transferred. *Id.* at 120.

As will be discussed, Mr. Abner will have no issues meeting the current level of service provided by Classic Limousine in Boone County, and all other counties of operation. Mr. Abner already currently owns three motor carrier companies and there is no evidence to show that those companies are not successful or on the verge of bankruptcy. *See* Appendix at 410. Abner has recently grossed over \$100,000 in profits from Ambassador itself. *Id.* at 407. Mr. Abner has the vehicles necessary to perform and facilitate the transportation services in not only Raleigh County, but additionally, the other eight counties covered by Certificate 7508. Therefore, there is no evidence that Mr. Abner would not be able to meet the service formerly provided by Classic, nor is there any evidence that Mr. Abner is not financially capable of taking over and running Classic.

The concept of "dormancy" relates to the failure of a certificate holder to operate for a period of time under the certificate. This can give rise to several adverse consequences to the certificate holder such as a cancellation of the certificate or, in the event of a transfer, a finding that it is not transferable because of nonuse. *Chabut v. Pub. Serv. Comm'n*, 179 W. Va. 111, 114, 365 S.E.2d 391, 394 (1987). *See Also; Wright Trucking, Inc. v. United States*, 403 F. Supp. 119 (D. Mass. 1975); *Herman Bros., Inc. v. Spector Indus., Inc.*, 209 Neb. 513, 308 N.W.2d 720 (1981).

Classic Limousine was authorized to provide *limousine* services in nine counties, including Boone County where Williams Transport conducts a vast majority of its business. *See* Petitioner's Brief at 2-3. First, as to the irregular operations claim, Brian Williams testified on behalf of Classic Limousine stating that it performed operations in Boone County approximately four times per year for each year Classic Limousine was in operation (2014 or 2015-2020). *See*

Appendix at 74. If Classic Limousine conducted operations approximately four times per year for each year of operation, this would not be irregular operation; instead, it would mean Classic Limousine regularly operated in Boone County approximately four times per year.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Pursuant to Rule of the *West Virginia Rules of Appellate Procedure*;

Cases suitable for Rule 19 argument include, but are not limited to: (1) cases involving assignments of error in the application of settled law; (2) cases claiming an unsustainable exercise of discretion where the law governing that discretion is settled; (3) cases claiming insufficient evidence or a result against the weight of the evidence; (4) cases involving a narrow issue of law; and (5) cases in which a hearing is required by law.

West Virginia Rules of Appellate Procedure Rule 19(a). Therefore, Respondents respectfully request a Rule 19 oral argument on this matter as the same is required pursuant to *W. Va. Rules of Appellate Procedure Rule 14(k)*.

ARGUMENT

I. THE PSC DID NOT ERR IN RULING THAT CERTIFICATE 7508 IS NOT GEOGRAPHICALLY OR OPERATIONALLY DORMANT BECAUSE BOTH CLASSIC AND ABNER HAVE MET THEIR BURDEN OF PROOF IN A TRANSFER PROCEEDING.

The Court determined in *Bebe*, that transfer cases only require evidence of the transferee's fitness, while application cases require evidence of public convenience and necessity; and the burden of proof in a transfer case is lower than the burden of proof in an application matter. *Bebe Enters.* at 11. The rule governing the examination of applications for approval of transfer by the Public Service Commission of West Virginia is well-established.

Upon an application for approval of the transfer and assignment of a certificate or permit, the certificate or permit holder, i.e., transferor, and the transferee, i.e., the person seeking to acquire said certificate, shall appear at the hearing. The transferor should be prepared to testify as to the nature and extent of his operation under the certificate sought to be transferred that he has actively been operating

under the certificate and that the certificate is not otherwise dormant. The transferee should be prepared to show that he is financially able to provide the service, that he has the experience and the necessary equipment to provide the proposed service, that he is able to secure proper liability insurance on all motor vehicles to be operated, and should give a general description of his proposed operation.

10 C.S.R. § 150-1-26IV(b)(1) at 21. *See Also; Bebe Enters.* at 12.

Dormancy is an important consideration in a transfer proceeding and must be evaluated in light of all surrounding circumstances [. . .] While dormancy can be geographical or operational in nature, the standard applied by the Commission is whether substantial operations have been performed under the certificate. The Commission does not place strict reliance on the period of time in which operations were not conducted to establish operational dormancy. The Commission also refuses to rely completely on the current makeup of a motor carrier's customers or that a motor carrier does not advertise its services to decide dormancy issues.

James Eugene Fletcher, dba Jim's Rubbish Removal, Case No. 10-1799-MC-TC, *Final Order* (April 20, 2012); *See also Jacob F. Jochum, JR*, Case No. 17-0806-MC-TC and 17-0808-MC-TC, (January 10, 2018); *Jacob Frederick Jochum, dba Jack Jochum Truck Service*, Case No. 17-0809-MC-TC, (January 10, 2018) at 8.

The Commission, in finding that the Transferor had been adequately serving its customers and had not refused any request for service, commercial or otherwise, denied the intervenors' exceptions and upheld the ALJ decision which granted the transfer of the certificate. *Id.* Therefore, because Classic Limousine consistently and regularly provided transportation services in each county which P.S.C. M.C. Certificate No. 7508 authorized it to operate, from the time of Williams' acquisition of the business to its sale, there is no operational or geographical dormancy with P.S.C. M.C. Certificate No. 7508. *See Appendix* at 13.

A. THE PSC DID NOT ERR IN RULING THAT CERTIFICATE 7508 IS NOT GEOGRAPHICALLY DORMANT IN COUNTIES OTHER THAN RALEIGH BECAUSE CLASSIC'S OPERATIONS IN THESE COUNTIES WERE SUBSTANTIAL.

Williams Transport argues that Certificate 7508 is geographically dormant as to the eight counties other than Raleigh because Williams believes that Classic's operations were minimal and irregular. However, the PSC held that Classic conducted substantial lawful operations in the authorized counties under the certificate prior to transfer. *See* Appendix at 11. The PSC reasoned that "substantial operations" in an urban area are certainly different from those in a rural area and are different for a garbage hauler compared to a taxi/limo service provider and as such, found that Classic conducted substantial operations under its certificate. *Id.*

The concept of dormancy was similarly challenged in *Fletcher* where the Recommended Decision of the Public Service Commission held that substantial operations had been performed under the certificate.

The question pertaining to dormancy is whether substantial operations were being performed under the certificate to be transferred. In this case, from the overall evidence presented by the transferor and Petitioner, it appears to the Administrative Law Judge that, except for a very short piece of road near Hagans, Mr. Fletcher has been clearly serving his customers. It appears in some areas where commercial service would have been provided to businesses and schools, the businesses and schools have closed. If customers are not available, it is impossible to provide service. All that is required is to hold oneself out to serve any such customers. There was no indication or evidence that Mr. Fletcher refused service to any viable customer.

James Eugene Fletcher, dba Jim's Rubbish Removal, Case No. 10-1799-MC-TC, Recommended Decision (July 29, 2011).

Further, in its Final Order, the Public Service Commission ruled that:

Although the Commission expects certificated motor carriers to fulfill their obligations to provide the public with the service their certificates allow, the Commission does not require motor carriers to *create* customers. Similarly, the Commission does not require motor carriers to devote resources to advertising their service. The Commission can, however, rescind the right to provide certificated services if a motor carrier demonstrates an unwillingness or inability to provide them. To "hold oneself out," therefor, does not entail promoting or providing every service all the time. It is instead being prepared to serve the public if called upon by

a customer to do so. The ALJ correctly observed that there was no evidence presented that JRR refused service to prospective customers.

James Eugene Fletcher, Final Order (04/20/2012) at 6.

Williams Transport further argues in seeking the denial of transfer of P.S.C. M.C. Certificate No. 7508 from Classic Limousine to Mr. Abner by raising the argument that the certificate is geographically dormant. *See Appendix* at 9. Although Classic, through Mr. and Mrs. Williams, was unable to produce documentation regarding specific business operations in each of the counties in which it operated, Mr. Williams testified that Classic Limousine did business in each of the eight counties outside of Raleigh, including Boone County, for each year from the time the Williams Transport began operating Classic Limousine until the sale of the business to Mr. Abner. *See Hearing Transcript* at 72-75. Boone County is an extremely rural county in southern West Virginia, one which does not have high demand for limousine transportation services. There is no case law which gives a minimum number that must be reached in a specific geographical area for a motor carrier certificate not to be considered dormant. Presumably, any operation in an authorized county would be enough for a certificate not to go dormant. Classic Limousine and Mr. Abner should not be penalized due to the low market demand for limousine services in Boone County. The operations were substantial based on the demand for such services, therefore P.S.C. M.C. Certificate No. 7508 is not geographically dormant. *See Appendix* at 11.

B. THE PSC DID NOT ERR IN RULING THAT CERTIFICATE 7508 IS NOT OPERATIONALLY DORMANT FOR THE PURPOSE OF TRANSPORTING RAILROAD WORKERS BECAUSE THE CERTIFICATE IS GENERAL IN NATURE ALLOWING FOR THE TRANSPORT OF ANY CUSTOMER BY WAY OF LIMOSUINE.

In *Geraldine Mullins, dba Mullins Garbage Co. v. Bebe Enterprize, Inc.*, Case No. 06-1778-MC-FC (August 26, 2008), it was decided that a certificate may be determined to be

operationally dormant in nature. Operational dormancy is the *failure* to provide all or a portion of the type of service which a certificate holder is authorized to render. *William P. Hopson, M.C.* Case No. 16280, (April 17, 1978) (emphasis added). Rules 5.1 and 6.2.g of the Commission's *Rules of Practice and Procedure* require the Complainant to bear the burden of proving all facts alleged to constitute a violation of law or, in this case, that the certificate being transferred is operationally dormant. *See Appendix at 409.*

Williams Transport argues that Classic's certificate is operationally dormant because Classic never transported railroad workers and never held itself out to transport such workers. *Id.* at 410. However, Classic's certificate is general in nature which allows for the holder, Classic, to transport any class of passengers by way of limousine regardless if they be railroad workers, partiers, or a high school football team. *Id.* The Commission ruled that so long as it is shown that Classic was transporting passengers by limousine to and from places in the certificated counties it cannot be said that the certificate is operationally dormant as defined in *Geraldine*. *Id.*

The PSC further concurred with the findings of the ALJ with respect to this issue stating:

The ALJ held that the certificate to be transferred is general in nature as it allows the transport of any class of customer by limousine. The ALJ determined that because Classic Limousine has been transporting customers by limousine, its certificate is not dormant. The Commission agrees. Classic Limousine operated as a common carrier providing limousine service. There is no evidence in the record that Classic Limousine refused to provide limousine service to railroad workers or to any other class of customer. Classic Limousine provided service to customers that requested service. If the new operator of the certificate receives a call to transport railroad workers, the Commission expects it to respond to that call.

See Appendix at 11. Donald Abner testified that regardless of who needs limousine service under Certificate 7508, he would oblige. *Id.* at 99.

Additionally, Williams Transport owns four P.S.C M.C. certificates and its certificates are also general in nature and contain essentially the same exact language that is included in

Certificate 7508. Neither Williams Transports' certificates nor Classic's certificate provide for transportation of niche services. For Williams Transport to argue that Certificate 7508 is operationally dormant as to the transportation of railroad workers for railroad-related-work is simply a misnomer. Classic's certificate is general in nature and allows it to transport all types of passengers.

II. THE PSC DID NOT ERR IN APPROVING THE TRANSFER OF CERTIFICATE 7508 FROM CLASSIC LIMOUSINE SERVICE TO DONALD R. ABNER, DBA AMBASSADOR LIMOUSINE AND TAXI SERVICE BECAUSE ABNER HAS THE ABILITY TO CARRY ON THE BUSINESS.

The transfer of an existing certificate does not depend upon a showing that the public convenience and necessity will be served, the chief inquiry at a transfer hearing is the ability of the new certificate holder to carry on the business. *Chabut* at 114; *See also Solid Waste Servs.* at 119. Further, in a public service commission proceeding to transfer a motor carrier permit, a carrier is "fit and proper" when it has the experience, equipment, insurance and financial ability to carry on the business that is being transferred. *Id.* at 120.

It is without question that Mr. Abner has the experience to carry on Classic Limousine's business, as he has been in the motor vehicle transportation business for twenty years. *See Hearing Transcript* at 66. Further, Mr. Abner has the necessary equipment to carry on Classic Limousine's business operations. He is a bona-fide purchaser for value and has clean title to all of Classic Limousine's vehicles, in addition to the dozens of vehicles he owns through his other transportation businesses. *Id.* at 64. Next, although Mr. Abner did not have insurance on the vehicles that he purchased from Classic at the time of the hearing, due to the transfer of P.S.C. M.C. Certificate No. 7508 being incomplete, Mr. Abner testified he will have no problem whatsoever obtaining liability insurance for the vehicles when the transfer of the certificate is approved. *Id.* at 64-65. Most importantly, Mr. Abner has the financial ability to carry on Classic

Limousine's business. He has over \$200,000 he can dedicate to the operation, if necessary, under P.S.C. M.C. Certificate No. 7508 if the transfer is approved. *Id.* at 64. Thus, Mr. Abner meets and exceeds all the requirements of the chief inquiry of the transfer of a certificate.

Finally, the West Virginia Supreme Court of Appeals held in *Solid Waste Services* that "at the PSC hearing, the transferor is to describe what he does, and the transferee is supposed to describe how he can properly provide the existing level of service. This provision was designed to allow permits to be freely transferred so long as the entity acquiring the permits is capable of continuing the existing level of service. *Unless the PSC finds that the acquiring party cannot meet the current level of service, the PSC has no grounds to deny the permit transfer.*" *Solid Waste Servs.* at 119 (emphasis added).

As such, there are no reasonable grounds for which Williams Transport can block the transfer of P.S.C. M.C. Certificate 7508 from Classic to Donald Abner, dba Ambassador.

III. THE TRANSFER FROM CLASSIC TO AMBASSADOR DOES NOT CONSTITUTE A NEW SERVICE.

Williams Transport argues that even if Certificate 7508 is not dormant, a concept related to dormancy is that the transfer of a certificate of authority should be denied where the service the transferee proposes would differ radically in scope or type from the service previously provided by the transferor. *See* Petitioner's Brief at 27. Further, Williams Transport argues that this service by Ambassador will be so drastically different from the service provided by Classic that it creates a new service. *Id.*

Donald Abner testified that if the transfer is approved, he will be able to maintain the same operation that had been run previously by Classic in all of the certificated counties. *See* Appendix at 98. Mr. Abner further testified that he would use Certificate 7508 to transfer

railroad workers for railroad-work-related purposes if it is needed. *Id* at 99. Mr. Abner intends to use Certificate 7508 exactly like Donna and Brian Williams did, meaning if airplane pilots, bus drivers, janitors, lawyers, or anyone else needs a ride under the certificate, he will offer the service. *Id*.

Williams Transport alleges that because Ambassador has a multitude of vehicles it could transfer to Certificate 7508, it may greatly expand upon the service provided under the Certificate. *See* Appendix at 12. The Public Service Commission held that Williams Transport's argument was nothing more than speculation at best. *Id*. While Ambassador is a larger operation than Classic Limousine, there is no guarantee that it will generate more business under the certificate than Classic Limousine. *Id*.

Taking Williams Transport's argument to its logical conclusion, a certificate transfer from a small carrier to a larger carrier will always result in the creation of a new service. The Commission does not accept this premise and, instead, finds the transfer of this certificate does not create a new service.

Id at 13.

Therefore, Respondents maintain that the transfer of Certificate 7508 does not constitute a new service and that the PSC did not err in its ruling.

CONCLUSION AND PRAYER FOR RELIEF

Based upon the foregoing reasons, Respondents Classic Limousine Service, Inc. and Donald R. Abner, dba Ambassador Limousine and Taxi Service respectfully request that this Court **DENY** the Petitioner's Assignments of Error and **AFFIRM** the Public Service Commission's decision in granting the transfer of Certificate 7508 from Classic Limousine Service to Ambassador Limousine and Taxi Service.

Respectfully submitted,

**DONALD R. ABNER, dba AMBASSADOR
LIMOUSINE AND TAXI SERVICE, and
CLASSIC LIMOUSINE SERVICE, INC.**

Respondents and Appellees below,

By Counsel,



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CERTIFICATE OF SERVICE

The undersigned, counsel of record for Respondent, does hereby certify on this 3rd day of May, 2021, that a true copy of the foregoing "**RESPONDENTS' BRIEF**" was served upon opposing counsel by depositing same to them in the U.S. Mail, postage prepaid, sealed in an envelope, and addressed as follows:

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EXHIBIT A

**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 6th day of April 2021.

CASE NO. 20-0020-MC-TC

DONALD R. ABNER, dba
AMBASSADOR LIMOUSINE AND TAXI SERVICE
Application for the transfer of P.S.C. M.C. Certificate No.
7508 to Donald R. Abner, dba Ambassador Limousine and
Taxi Service.

COMMISSION ORDER

The Commission issues a corrective order.

BACKGROUND

On January 13, 2020, Donald R. Abner, dba Ambassador Limousine and Taxi Service (Ambassador), filed an application for the transfer of P.S.C. M.C. Certificate No. 7508 from Donna and Brian Williams, dba Classic Limousine Service (Classic Limousine).

On January 13, 2020, the Commission referred this case to the Administrative Law Judges (ALJ) Division for entry of a decision on or before August 10, 2020.

On September 24, 2020, the ALJ issued a Recommended Decision authorizing the transfer of the certificate, but only in Raleigh County due to failure to publish notice in the remaining counties.

On September 28, 2020, Ambassador and Classic Limousine filed exceptions to the Recommended Decision.

On October 8, 2020, Williams Transport filed exceptions to the Recommended Decision.

On February 17, 2021, the Commission issued an order that granted the exceptions filed by Ambassador and Classic Limousine and allowed the transfer and assignment of

P.S.C. M.C. Certificate No. 7508 from Classic Limousine to Ambassador in all the certificated counties. The Order denied the exceptions filed by Williams Transport.

On March 18, 2021, Williams Transport appealed the Commission's decision to the West Virginia Supreme Court of Appeals.

On April 2, 2021, Ambassador filed a Request for a Corrective Order. Ambassador noted the ordering paragraphs allowed the transfer of the certificate from Donna and Brian Williams, dba Classic Limousine Service, Inc. to Donald R. Abner, dba Classic Limousine Service. It should have stated the certificate is to be transferred to Donald R. Abner, dba Ambassador Limousine and Taxi Service.

DISCUSSION

The Commission's Order of February 17, 2021 contained an error in the second ordering paragraph that needs corrected.

CONCLUSION OF LAW

It is necessary to issue a Corrective Order to correct a clerical error.

ORDER

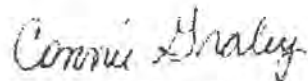
IT IS THEREFORE ORDERED that the second ordering paragraph of the February 17, 2021 Commission Order is replaced by the following ordering paragraph:

IT IS FURTHER ORDERED the exceptions filed by Williams Holdings, LLC, dba Williams Transport are denied and the Recommended Decision is modified to allow the transfer and assignment of P.S.C. M.C. Certificate No. 7508 from Donna and Brian Williams, dba Classic Limousine Service, Inc. to Donald R. Abner, dba Ambassador Limousine and Taxi Service in all the certificated counties.

IT IS FURTHER ORDERED that as modified, the February 17, 2021 Order remains the Final Order of the Commission in this matter..

IT IS FURTHER ORDERED that the Executive Secretary of the Commission serve a copy of this Order by electronic service on all parties of record who have filed an e-service agreement, and by United States First Class Mail on all parties of record who have not filed an e-service agreement, and on Commission Staff by hand delivery.

A True Copy, Teste,

A handwritten signature in cursive script, appearing to read "Connie Graley".

Connie Graley, Executive Secretary

JRA/s
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