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In Support of the Historically Accepted Independent Contractor Business Model:

Providing Timely, Efficient and Affordable Same-Day Delivery for the American Economy

Prepared by the Messenger Courier Association of America (MCAA)

According to the Bureau of Labor Statistics, more than 10 million individuals were classified as independent contractors in 2005. Independent contractors are individuals who work as independent business owner-operators and consultants. These individuals work in a variety of fields and represent a vast number of occupations including couriers, US Postal Service rural route and Express Mail delivery drivers, real estate agents and architects. They contract themselves as they wish to organizations and businesses that need their services. Independent owner-operator contractors' contributions to the U.S. economy and the industries they service are significant and these individuals are essential for many industries to remain competitive in today's economy.

Use of independent owner-operator contractors is under fire in a number of states as companies that use these independent workers have been historically exempt from unemployment and workers' compensation tax requirements for these workers. Some state agencies inaccurately portray the use of independent owner-operators by courier companies as mechanism intended to avoid employment taxes. The reality is that courier companies pay contracted owner-operator businesses a negotiated lump sum rate, and the owner-operator business reports that revenue and pays taxes in the same manner as any other business. Unfortunately, most of the pending legislation on independent contractor reform dismantles the current and historical system in ways that have the potential to cripple a number of industries, including the courier industry and ultimately the tens of thousands of businesses that rely on these courier firms.

The current independent contractor system is not perfect and there are ways it could be improved to address the concerns of state governments while preserving the industries that depend on independent owner-operator talent and services. The industry is currently experiencing upheavals as a result of state agencies who are not providing clear and consistent regulatory guidance. This will ultimately have a severe negative impact on the local, regional and national economy. One example of the widespread negative impact to our economy is to simply imagine the percentage cost increase of a first-class stamp if the U.S. Postal Service was forced to replace an estimated 17,000-plus independent contractors with dedicated vehicles and employee drivers.

The Courier Industry

While the courier industry also uses dedicated employee drivers to accomplish the critical services it provides to the economy, there is also no doubt that it is dependent on the efficient utilization of independent contractors, or independent owner-operators as part of its business model. The nature of the industry with its on-demand, and often unscheduled expedited delivery services requires a varying number of couriers on any given day to complete a set service.

To meet their customers' critical demands, courier services must contract competent, ambitious, and responsible individuals on an as needed basis to provide and meet the special service needs of their community each day. Couriers pick up and deliver letters, important business documents and packages that need to be sent or received quickly within a local area. Couriers and messengers also deliver items that the customer is unwilling to entrust to other means of delivery, such as medical supplies, small electronics, auto parts, machine parts and even organs for transplant. Because these items are transported according to a customer-specific timetable and often times they are shipments that are critically time sensitive, the independent owner-operator business model allows courier companies to adjust required resources efficiently depending upon each day's volume and special requirements to satisfy the businesses they serve.

There are days that courier companies are called upon for 2 or 3 times the volume of deliveries made on an "average" day and days where there is far less demand. These deliveries can occur at virtually any time of the day or night. This lack of consistency makes it impractical to hire as many full-time, around-the-clock employee couriers as busy days require. Setting a rigid staffing schedule would create either a deficit or surplus of drivers. A surplus of drivers would dramatically increase costs for courier firms and the commercial businesses that rely on them, as they are primarily small businesses. A deficit of drivers would cause backlogs and delays in delivery, which would impact the economy and the businesses that depend on expedited delivery services.

Dismantling the independent owner-operator business model has the potential to cripple the courier industry and severely impact the many thousands of companies the industry serves each day, as well as the independent owner-operators and their families, and the employees of courier companies alike who depend upon the flexibility, the service and the independence the current model provides.

The courier industry is critical to the flow of commerce.

Couriers provide irreplaceable service nationwide, delivering goods both large and small, as well as critical parts, medical and critical documents. The independent owner-operator business model provides the necessary structure and tools to enable tens of thousands of businesses around the country to offer safe and fast delivery of goods. Businesses, such as law firms, medical labs and banks rely heavily on couriers every day because they are the **only** providers of less than 24 hour delivery service.

Preservation of independent contractor status ensures good incomes for independent people.

Millions of Americans file tax returns as independent owner-operators every year. This is a choice and preference for these Americans. Working in an office for the standard 9 am – 5 pm time frame does not always appeal to individuals and, more importantly, does not always fit into a person's priorities. Working families trying to juggle school hour schedules, retirees trying to make additional money to subsidize their retirement, or individuals who have just no desire to be limited in their employment options, all enjoy the flexibilities allowed by the owner-operator business model. Professional owner-operator contractors do not believe that they are employees nor are they fooled or tricked into accepting the independent contractor classification. These

independent owner-operators make an excellent salary while retaining their freedom as a business owner.

The use of independent owner-operators increases accountability in the supply chain.

Owner-operator drivers are responsible for their deliveries being made in a timely, secure and safe manner. Drivers are required to have a valid operators license, which in most states requires additional safety training to receive. Additionally, they must be a fully insured driver with a good driving record in order to obtain a contract, because courier firms are low-margin businesses who must keep their insurance costs down.

Using independent owner-operator drivers increases accountability in several ways. First, since independent owner-operator drivers are operating their own vehicles, they have an additional incentive to operate the vehicle in a safe and responsible manner. Second, because owner-operator drivers compete on a daily basis and own their own business, they can create repeat business (thereby, establishing a usual “client list”) and improve profits by being safe and efficient. Third, the owner-operator model motivates drivers to work more efficiently, harder and smarter because the more deliveries a courier completes, the more money a good, dependable driver can make.

The use of independent owner-operators encourages high professional standards.

Couriers are experienced professionals who specialize in providing same-day and expedited delivery services for other businesses. Courier businesses are often regional small businesses and have a long history of positive influence in their local communities. Couriers take pride in the work they do, understanding that the job is much more than simply driving a truck or reading a map. The contribution courier firms make to their clients and communities is invaluable because only these courier firms can provide this expedited delivery service.

The marketplace has demanded experienced, technology-savvy vendors for their delivery services, and couriers have kept pace with these increased demands. GPS systems, bar codes, electronic billing and advanced communication tools are just a few of the ways the industry has grown increasingly specialized and professional in the last decade.

These advancements have also ensured that courier firms maintain their status as a safe, secure link of the supply chain. Competition for deliveries among owner operator drivers creates an incentive to be more conscientious and efficient. Drivers that do not display high levels of professionalism will simply not be retained.

The Road Ahead: Protecting and Improving the Owner-Operator Driver Model

For all the benefits it provides, the current independent owner-operator system is not a perfect one. State and Federal guidelines on independent contractor classifications can be confusing to any business that uses independent owner-operators and to the owner-operators themselves. Clarification of state guidelines on independent contractors is absolutely necessary.

Often times, there is not a standard “test” to use for independent contractor classification, making it impossible for a business owner to know if he or she has violated the “test” until a state auditors office appears, asks a few questions and then assesses the business for back taxes. In some states, there are multiple tests that are used by different agencies, thereby causing more confusion as to which test to follow in order to avoid violating the law.

Undoubtedly, there are misclassifications that occur within every system. Courier companies typically use the federal IRS standards for classification. This test (usually referred to as the ‘20 Question Test’) is much less specific than the state audits being applied to courier companies. In this environment, it is difficult to fault operators with ‘misclassification’ when there is no clear statewide standard to employ such as the guidelines adopted by the Department of Labor in New York.

Audits without guidelines, or confusing and burdensome tests, for use as a basis for assessment of employee status vs. independent contractor status will inevitably cause the demise of the courier industry. These companies are small businesses without the finances to weather multiple and different classification tests in their state and will be forced to raise the price of their services. This will almost certainly make it impossible for couriers to compete in the delivery market, thereby shutting down their business. The repercussions of this event would negatively impact the families supported by the company and the business owner, as well as the flow of commerce nationwide. As the courier industry is the only transportation sector that provides less than 24 hours expedited deliveries, there would be an immediate, negative ripple effect on businesses that routinely utilize courier services, such as hospitals, airlines and financial institutions. Goods, such as organs, critical parts, electronics, financial documents and medical specimens are urgently needed and cannot wait a full day to be transported.

The MCAA and their coalition partners have worked with states to implement what both parties feel are fair standards for tax classification and worker’s compensation purposes. In New York, this collaboration produced guidelines that lend themselves to an independent owner-operator business model and reflect a clear understanding of the industry and the nature of the deliveries. These guidelines were the result of detailed analysis, question and answer discussions and industry-wide surveys conducted by the state of New York in conjunction with all courier industry stakeholders. These are clear standards and factors that the state established to determine status, which makes correct classification and compliance uniform and precise.

Additionally, these guidelines were specifically crafted for the courier industry, as each industry using the independent contractor classification will have a different set of indicators for classification. It also outlines what actions would cause an individual to be declared an employee, which is important to protect businesses against retroactive audits, reclassification and financial penalties.

The MCAA would like to continue this successful dialogue with other states to better ensure good relationships between state agencies and the companies they regulate. Both parties benefit from clear, coherent guidelines that delineate independent contractor status from employee status. We look forward to working together in these endeavors.