

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

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BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the	) APPLICATION NO. B-1976
Application of The Beautiful	)
Life Family Home Care d/b/a	)
Beautiful Life Medical	)
Transport, LLC, Omaha, seeking	)
authority as a common carrier	)
in Nebraska intrastate commerce	)
in the transportation of	)
passengers by van in open class	)
service between points in Cass,	) ORDER GRANTING APPLICATION
Dodge, Douglas, Sarpy, and	)
Washington counties, on the one	)
hand, and, on the other hand,	)
points in Nebraska over	)
irregular routes. RESTRICTIONS:	)
The transportation of railroad	)
train crews and their baggage	)
is not authorized. HHS	)
Designation: Yes.	) Entered: November 13, 2019

For Applicant:

Steve Ranum  
Crocker, Huck, Kasher DeWitt  
2120 S. 72<sup>nd</sup> St., Ste. 1200  
Omaha, Nebraska 68124

For Protestants:

Camelot Transportation  
Triumph Transportation  
Action Cab  
ZTrip Companies

Andy Pollock  
Rembolt Ludtke, LLP  
3 Landmark Centre  
1128 Lincoln Mall, Ste. 300  
Lincoln, Nebraska 68508

Golden Plains Services, Inc.  
d/b/a GPS Transportation

Jack Shultz  
O'Neill Heinrich Damkroger  
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For Commission Staff:

Jamie Reyes  
Ellie Rohr  
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BY THE COMMISSION:

B A C K G R O U N D

On April 23, 2018, Beautiful Life Family Home Care, d/b/a Beautiful Life Medical Transport, LLC ("Beautiful Life" or "Applicant"), Omaha, filed an application seeking authority as a common carrier to provide transportation of passengers by van in open class between points in Cass, Dodge, Douglas, Sarpy, and Washington counties on the one hand, and on the other hand, points in Nebraska over irregular routes. The transportation of railroad train crews and their baggage is not authorized, and Applicant applied for HHS Designation. Timely protests were filed by Golden Plains Services, Inc. d/b/a GPS Transportation ("GPS"), Comstock Corporation d/b/a Action Cab ("Action Cab"), Camelot Transportation ("Camelot"), Triumph Transportation ("Triumph"), and WHC NE, LLC, d/b/a Z-Trip ("Z-Trip") (together, "Protestants") and were granted on July 9, 2018.

The Hearing Officer entered an order setting the procedural schedule and scheduling hearing on August 10, 2018. On October 4, 2018, a hearing was held in the Commission Hearing Room with appearances as shown above.

E V I D E N C E

*Witness Testimony*

In support of its application, Applicant produced four witnesses: Paul Kini on behalf of Beautiful Life, Celeste Akers in her role as a service provider at the University of Nebraska Medical Center, Tisha Jenkins in her role as a service provider at Brookstone Meadows, and Robert McVey on behalf of Intelliride.

Mr. Paul Kini testified first on behalf of Applicant. Mr. Kini owns and manages Beautiful Life, a home healthcare business serving approximately ten clients.<sup>1</sup> Mr. Kini has a Bachelor's degree in accounting and a Master's degree in Business Administration from Bellevue University.<sup>2</sup> Mr. Kini started Beautiful Life in 2014 after having worked as a Certified Nursing Assistant while he was in school.<sup>3</sup>

Mr. Kini explained he began this company because of the clients he serves in his home healthcare business. Specifically, he described the struggle he experienced obtaining transportation service for an elderly client in a wheelchair. Mr. Kini contacted two transportation companies and was told he should call four to five days in advance if he wanted that kind of service.<sup>4</sup> After receiving this response, Mr. Kini began to search for alternatives. He stated he was only able to find three companies for Non-Emergency Medical Transportation, the two he had called plus a third that did not have a wheelchair van.<sup>5</sup>

Mr. Kini attempted to find available services again after he filed his application. He performed a series of searches in Google, SuperPages, and the Yellow Pages website to find the types of transportation services his clients need. Mr. Kini noted he was unable to find information about these services in Omaha. He also noted he was not able to find much information on the Protestants or the services they provide through the course of his search.<sup>6</sup> On cross-examination, Mr. Pollock questioned whether it cost money for companies to appear on these pages. Mr. Kini confirmed there is a cost.<sup>7</sup> Mr. Pollock also questioned whether Mr. Kini had reached out to the City of

<sup>1</sup> Hrg. Transcr. 7:9-22, October 4, 2018.

<sup>2</sup> Id. at 9:2-7.

<sup>3</sup> Id. at 9:13-18.

<sup>4</sup> Id. at 10:11-11:15.

<sup>5</sup> Id. at 11:21-12:7.

<sup>6</sup> See Hrg. Transcr. 12:17-24:3 (In this long section, Mr. Ranum questions Mr. Kini on each of the individual Internet searches he conducted. Mr. Kini identified issues in finding information about transportation services). See also Exhibits 6-16.

<sup>7</sup> Id. at 36:10-25.

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Omaha or the Public Service Commission to find alternative transportation. Mr. Kini stated he had not.<sup>8</sup>

Mr. Kini further testified there are times of the day it is difficult to obtain a ride. He identified two incidents where he had to change the appointment times for his clients. The service he had been using for transportation could not accommodate him despite the fact he had called four days in advance for an appointment scheduled for 9:00 a.m. Mr. Kini was told that the company had to transport schoolchildren and did not take anything before 10:30 a.m. during the school year. He then tried for a 4:00 p.m. appointment, and was told they did not transport after 3:00 p.m. because of their obligations to the schoolchildren.<sup>9</sup> Mr. Kini testified that he perceives a huge need for transportation in the areas where he is seeking to provide service based upon his experiences in the Home Healthcare Industry.<sup>10</sup> Mr. Kini stated on cross-examination that all three passengers that he was unable to find transportation were private pay passengers, not HHS clients.<sup>11</sup>

Mr. Kini testified he intends to operate from 5:00 a.m. until appointments are completed for the day, usually 7:00-8:00 p.m.<sup>12</sup> He further testified he intends to advertise his services. He also wants his service to be able to fill in the gaps where clients are currently waiting 45 minutes to two hours for a return trip. Mr. Kini testified that he plans to have some standby availability based upon the way they accept rides and structure their services.<sup>13</sup> Mr. Kini plans to operate two vehicles, one van for ambulatory passengers and one van for wheelchair bound passengers.<sup>14</sup> He will employ a dispatcher and two drivers.<sup>15</sup> He further noted he intends to serve HHS contracts and will utilize a tablet through Intelliride.<sup>16</sup> Mr. Kini

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<sup>8</sup> *Id.* at 37:6-20.

<sup>9</sup> *Id.* at 24:9-23, 25:1-7.

<sup>10</sup> *Id.* at 25:8-21.

<sup>11</sup> *Id.* at 48:3-5.

<sup>12</sup> *Id.* at 26:1-10.

<sup>13</sup> *Id.* at 26:13-17, 26:21-27:15.

<sup>14</sup> *Id.* at 27:22-28:1

<sup>15</sup> *Id.* at 28:14-22.

<sup>16</sup> *Id.* at 30:12-23

testified he is seeking to enter this market because he wishes to serve the most vulnerable populations who lack the ability to get service in the same way as others. He wants to make sure there is always service available.<sup>17</sup>

On cross-examination, Mr. Kini testified that he is critical of the transportation companies for prioritizing HHS transportation and neglecting the broader senior population because he believes they have failed to market their services meaningfully.<sup>18</sup> Mr. Shultz questioned why Mr. Kini did not call the Public Service Commission to find out what services were available. Mr. Kini stated he did not need to because he felt he understood the problem at that point and that his research showed these services were not marketing in the same manner he would.<sup>19</sup> Mr. Shultz noted Mr. Kini had stated he was able to get transportation quickly via Uber and inquired why his clients could not do the same. Mr. Kini stated it is almost impossible for a client who is wheelchair bound to use a service like Uber because they do not have specialized vehicles.<sup>20</sup>

Mr. Shultz questioned Mr. Kini on his financial assets. Mr. Kini testified that the information on his application was still accurate. Beautiful Life still has \$35,000 in cash on hand, \$20,000 in accounts receivable, \$65,000 in vehicles, and \$180,000 in real estate. He further noted that he personally has some investments that would be available to back the company.<sup>21</sup> Mr. Kini testified he would operate between 5:00 a.m. to 7:00 p.m. Monday through Friday and as needed on the weekends.<sup>22</sup> Mr. Kini plans to have two drivers in addition to himself. The two drivers would operate 12 hours a day, five days per week.<sup>23</sup> Mr. Shultz questioned Mr. Kini's budget. Specifically, he inquired into the pay for the drivers. Mr. Kini projects \$40,320 a year for each driver. Mr. Shultz asked

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<sup>17</sup> *Id.* at 31:2-16.

<sup>18</sup> *Id.* at 40:18-41:6

<sup>19</sup> *Id.* at 49:15-25

<sup>20</sup> *Id.* at 45:12-21.

<sup>21</sup> *Id.* at 51:25-53:13, *see also* Exhibit 1.

<sup>22</sup> *Id.* at 53:14-54:9.

<sup>23</sup> *Id.* at 54:12-21.

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whether he had factored in payroll and income taxes, and overtime pay. Mr. Kini indicated his projection is an all-inclusive estimate. Mr. Kini also noted he anticipates paying his drivers approximately \$12 per hour.<sup>24</sup> Mr. Shultz also ran through the projections for fuel cost and maintenance. Mr. Kini pointed out that while there would be some costs, the fuel cost fluctuates and maintenance costs on new vans would be low.<sup>25</sup>

Mr. Shultz further questioned Mr. Kini's projections for trips that Beautiful Life would fulfill. Mr. Kini projected 2400 wheelchair trips per day and 3600 non-wheelchair trips per day. These trips would be a combination of HHS and private pay clients. Mr. Shultz pointed out that would be an average of nine non-wheelchair trips and seven wheelchair trips per day.<sup>26</sup> Mr. Kini testified that he based these estimates on conversations with Midwest Medical Transport drivers about the number of trips they provide in a day. He believes the projected trips are trips not currently taken.<sup>27</sup> Mr. Shultz asked whether Mr. Kini was aware of the low rates for non-wheelchair transport with HHS. Specifically, he inquired whether Mr. Kini would take a fare in Sarpy County for \$8.62 if he called. Mr. Kini stated he would.<sup>28</sup>

Next, Applicant called Ms. Celeste Akers, a service coordinator for University of Nebraska Medical Center in the Outpatient Psychiatry Department. Ms. Akers primarily assists with arranging social services for clients, assists with Medicaid Applications, and assists with community supports.<sup>29</sup> Mr. Ranum questioned whether, in her experience, there was an issue obtaining transportation for patients. Ms. Akers indicated transportation was difficult for many of the clients at her clinic. If clients do not have Medicaid, client do not have transportation provided to appointments. Ms. Akers testified that even those that do have Medicaid have issues obtaining

<sup>24</sup> *Id.* at 55:10-14, 55:23-56:11; see also Exhibit 17.

<sup>25</sup> *Id.* 56:17-57:8.

<sup>26</sup> *Id.* at 57:11-58:6.

<sup>27</sup> *Id.* at 58:7-23.

<sup>28</sup> *Id.* at 59:9-22.

<sup>29</sup> *Id.* at 63:6-23.

timely transportation. Clients are often waiting before or after appointments.<sup>30</sup> Ms. Akers indicated approximately 20-25% of the patients across divisions at her clinic are Medicaid eligible.<sup>31</sup> The clients who are not Medicaid eligible must get transportation on their own, from family members, taxis, bus, or Uber/Lyft.<sup>32</sup>

Ms. Akers testified she often assists with scheduling rides through Intelliride because a number of their clients cannot arrange these services for themselves. She further testified that the Intelliride service could be more reliable. She noted patients often have trouble with timely pickups for their appointments and then waiting an hour to an hour and a half after their appointments.<sup>33</sup> Ms. Akers further testified that if patients are late for appointments and notify the clinic that their ride is late, the clinic will try to accommodate the client. However, if the clinic is busy, the client has to reschedule. If the client does not contact the clinic, the client only has a ten-minute window to arrive late. Four or more late arrivals or no shows will result in the client terminated from services.<sup>34</sup> Ms. Akers noted that clients have been terminated from services for missing appointments. She also noted they have clients who do not use Intelliride because they cannot get reliable service to their appointments. These clients do not have other options for transportation and will terminate their services with the clinic.<sup>35</sup> Ms. Akers stated the hospital at large has been working on improving Access to Care, including transportation access. She noted clients without Medicaid often struggle to find affordable transportation and those with Medicaid may not have reliable transportation even with Intelliride.<sup>36</sup>

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<sup>30</sup> *Id.* at 65:9-20.

<sup>31</sup> *Id.* at 65:23-66:3.

<sup>32</sup> *Id.* at 66:6-11.

<sup>33</sup> *Id.* at 66:16-20, 67:9-18.

<sup>34</sup> *Id.* at 67:21-68:8.

<sup>35</sup> *Id.* at 68:9-25.

<sup>36</sup> *Id.* at 69:6-21.

Ms. Akers described a situation where a client's ride did not show up, and while she was waiting on the line with Intelliride, her second ride came and she missed it. Ms. Akers had to give the client a ride home because no one would transport her.<sup>37</sup> Ms. Akers further noted it is particularly difficult to get transportation late in the day. She was unsure if this was because appointments may be running behind schedule at that point but people seem to struggle the most after 4:00 p.m.<sup>38</sup> Ms. Akers stated that the reliability of Intelliride and the providers varied. She said if the person is able to schedule three days out, it is better. However, rescheduling is harder. If the drivers do not arrive in the window, they are still only obligated to wait a certain amount of time, so the person can miss the ride if they are not ready to leave because the ride was early or if they go inside to call Intelliride because the ride was late.<sup>39</sup> Ms. Akers stated based on what her clients experience, she believes it would be preferable to have more transportation carriers to reduce the wait times and number of people multi-loaded on each trip.<sup>40</sup>

Mr. Pollock questioned whether Ms. Akers had reported her transportation concerns to the Commission. She indicated she had talked to the Commission years ago but had not done so recently.<sup>41</sup> He further inquired whether she had spoken with HHS or Intelliride about her concerns. Ms. Akers reported she often encourages clients to contact HHS directly, but she does frequently talk to Intelliride.<sup>42</sup> Mr. Shultz inquired what the process is when she arranges transport for clients who do not have Medicaid. Ms. Akers explained that she calls MOBY, which provides service for individuals with disabilities. However, MOBY must be arranged at least a day in advance and will only drop clients off three blocks away.<sup>43</sup> Ms. Akers stated the clinic do not often call private carriers because their clients cannot

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<sup>37</sup> *Id.* at 69:24-70:13.

<sup>38</sup> *Id.* at 70:19-71:2.

<sup>39</sup> *Id.* at 71:6-72:10.

<sup>40</sup> *Id.* at 73:25-74:15.

<sup>41</sup> *Id.* at 76:8-12.

<sup>42</sup> *Id.* at 77:15-78:6.

<sup>43</sup> *Id.* at 84:3-18.

afford them.<sup>44</sup> Mr. Shultz also raised the possibility that the issues surrounding Intelliride transportation could be related to the carriers, the service providers, the patients, or Intelliride themselves. Ms. Akers agreed.<sup>45</sup> However, Ms. Akers also testified that while there are multiple factors, the clinic receives calls from their clients saying they cannot get to the clinic because their transportation did not show up.<sup>46</sup>

Ms. Akers testified that, on average, the clinic has five patients per week that cancel appointments because their rides did not show up or were very late.<sup>47</sup> Commissioner Rhoades questioned what impact it has on clients when they need to arrange transport three days out. Ms. Akers stated it is difficult for clients in transition who would need to make use of their walk-in clinic on Fridays or their Bridge Clinic on Tuesdays. Clients who face transportation barriers can often not utilize these services.<sup>48</sup>

Applicant next called Ms. Tisha Jenkins. Ms. Jenkins is a registered nurse at Brookstone Meadows, a rehab and long-term care facility in Omaha.<sup>49</sup> Ms. Jenkins testified that the facility transports their own clients for the most part. However, where a client needs additional transportation, they set it up for the clients.<sup>50</sup> Ms. Jenkins testified that the facility's clients are not on Medicaid. When a Brookstone patient needs transportation, it is booked first through the company's own travel, but then sent to outside sources when their transportation is already booked, which happens on a daily basis.<sup>51</sup> She further stated that it is very difficult to find transportation for her clients when they need same-day transportation. Often the company's transportation is booked and the companies the facility uses regularly cannot often

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<sup>44</sup> *Id.* at 85:12-16.

<sup>45</sup> *Id.* at 86:5-16.

<sup>46</sup> *Id.* at 86:17-25.

<sup>47</sup> *Id.* at 90:2-11.

<sup>48</sup> *Id.* at 91:4-21.

<sup>49</sup> *Id.* at 93:7-13.

<sup>50</sup> *Id.* at 93:23-94:3.

<sup>51</sup> *Id.* at 94:8-22.

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accommodate same day trips. She was unfamiliar with the services of GPS and the cab companies.<sup>52</sup>

Ms. Jenkins also testified that even when outside services are utilized, they are often late to pick up the client or leave them waiting after appointments. Her company has asked that employees avoid using outside services whenever possible because of these issues.<sup>53</sup> Ms. Jenkins indicated there are both reliability and availability problems in arranging transportation for her clients.<sup>54</sup> On cross-examination, Ms. Jenkins indicated she would not call a cab company for her clients because they often require wheelchairs. Mr. Pollock asked if she would call if they had wheelchair accessible vehicles. Ms. Jenkins indicated she would if her company approved it.<sup>55</sup> Mr. Shultz questioned whether it would be helpful for her company to have a list of all approved carriers with wheelchair service for them to call. Ms. Jenkins indicated that since they use outside services daily, that would probably be helpful.<sup>56</sup> Commissioner Landis asked Ms. Jenkins whether she thinks carriers have an obligation to advertise their services. Ms. Jenkins indicated they should because if people are unaware of the services, they will not use them.<sup>57</sup>

Finally, Mr. Robert McVey testified on behalf of Applicant in his role as the Network Coordinator for Intelliride.<sup>58</sup> Mr. McVey testified to the process of matching clients to carriers. According to Mr. McVey, Intelliride prioritizes lowest cost transportation of the providers available at the requested time.<sup>59</sup> Intelliride begins with scheduling trips with tableted providers who can accept or reject a trip. Then, if a provider rejects a trip, they begin to call the non-tableted providers.<sup>60</sup> Mr. McVey testified that the majority of the time, the demands

<sup>52</sup> *Id.* at 95:15-96:7.

<sup>53</sup> *Id.* at 96:10-17, *see also* Exhibit 18.

<sup>54</sup> *Id.* at 99:1-6.

<sup>55</sup> *Id.* at 100:6-21.

<sup>56</sup> *Id.* at 103:10-104:2.

<sup>57</sup> *Id.* at 105:1-9.

<sup>58</sup> *Id.* at 109:7.

<sup>59</sup> *Id.* at 110:15-21.

<sup>60</sup> *Id.* at 110:24-116:5.

for transportation in the requested area are met by existing providers. However, he also stated there are times when clients requesting rides are unable to get the transportation they need. He indicated this is related to the time of day and geographic location. Most of the time, clients in Douglas and Lancaster would get a ride, but Cass and Sarpy it can be more difficult because there are not as many providers in those counties.<sup>61</sup>

Mr. McVey further testified that same day rides present unique challenges. If a client calls in for same day service between 8:00 a.m. and 11:00 a.m., they have about an 80% chance of getting a ride. However, if they call in later, it gets more difficult to accommodate. He also stated that sometimes there are fewer available vehicles, which can make getting rides more difficult.<sup>62</sup> He stated that on a typical day, there are rides going unfulfilled. Specifically he said there are gaps in the 11:30 a.m. to 1:00 p.m. timeframe as well as after 4:30 p.m.<sup>63</sup> Mr. Ranum asked if Mr. McVey believed, based on his experience, clients would benefit from additional providers. Mr. McVey stated he believes there is always a need for more drivers and more vehicles.<sup>64</sup> Commissioner Rhoades requested a late filed exhibit showing the number of rides cancelled or rejected by the Protestant companies in the counties sought.<sup>65</sup> Mr. Pollock inquired whether the late filed exhibit could reflect whether the client or the carrier cancelled a trip. Mr. McVey state it could reflect that.<sup>66</sup>

On cross-examination, Mr. Shultz inquired whether a trip may be rejected in a metropolitan area because of the rates paid by HHS and Intelliride. Mr. McVey did not believe that to be the case but agreed it was possible.<sup>67</sup> Commissioner Ridder questioned the rate issue. She inquired whether more drivers would address the issue of low rates as set by HHS. Mr. McVey

<sup>61</sup> *Id.* at 112:5-25.

<sup>62</sup> *Id.* at 113:8-24.

<sup>63</sup> *Id.* at 114:2-8, 114:12-24.

<sup>64</sup> *Id.* at 115:6-10.

<sup>65</sup> *Id.* at 117:23-118:6.

<sup>66</sup> *Id.* at 124:9-18.

<sup>67</sup> *Id.* at 118:24-119:12.

indicated it would if the drivers were more localized. If a driver wanted to operate solely in Otoe County, he would probably make money. However if that driver were to have to come to Omaha to do a point to point trip for \$8.62, he would likely not make money because he would spend more time and gas going to and from the trip than he would make on the trip.<sup>68</sup> Mr. Shultz further inquired whether the data requested by Commissioner Rhoades would reflect why a carrier has declined a trip. Mr. McVey said it would not. It is possible that there could be reasons outside the availability of drivers that a company would say they could not transport.<sup>69</sup> Commissioner Landis questioned whether it mattered, for a need analysis, what the reason was. He noted that there would be clients with bed bugs or some serious health issues who still needed transport. Mr. Shultz argued it would present a risk to later passengers.<sup>70</sup>

Mr. McVey further testified that wheelchair accessible trips account for less than five percent of total trips for Intelliride. He could not answer how many wheelchair trips are turned down on a daily basis.<sup>71</sup> On further questioning by the Commissioners, Mr. McVey testified that on average, Intelliride processes eight to ten thousand trips per week and that number is increasing steadily.<sup>72</sup> If a carrier rejects a trip, Intelliride is required to call five carriers before telling a client the trip cannot be fulfilled, but they prefer to keep calling.<sup>73</sup>

Finally, Mr. McVey testified to the considerations that go into trip scheduling, such as cost, availability, on-time percentage, and complaints. Mr. McVey stated that HHS sets the reimbursement rate and that agency would need to deal with the issue of the rate not being high enough to compensate for certain trips.<sup>74</sup> He further stated that he believed that both

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<sup>68</sup> *Id.* at 128:24-129:15.

<sup>69</sup> *Id.* at 119:17-120:14.

<sup>70</sup> *Id.* at 120:18-121:7.

<sup>71</sup> *Id.* at 122:1-9.

<sup>72</sup> *Id.* at 125:9-25.

<sup>73</sup> *Id.* at 126:7-18.

<sup>74</sup> *Id.* at 127:1-7, 128:9-129:19.

increasing the reimbursement rate and adding more localized drivers could be solutions.<sup>75</sup>

Next, Protestants offered witnesses. First, Mr. Kirby Young testified on behalf of GPS. Mr. Young is the President and owner of GPS.<sup>76</sup> Mr. Young stated GPS currently provides transportation services statewide. They currently operate in the five counties in which Applicant is seeking to operate.<sup>77</sup> He also testified that GPS operates approximately 50 vehicles including 15-18 wheelchair vehicles. Mr. Young indicated he could add additional vehicles and drivers if the need should arise.<sup>78</sup> He indicated they are available for transport 24/7.<sup>79</sup> Mr. Young did admit that there have been rare times where a request has come in last minute and GPS has been too busy to accommodate the trip. Typically, they can get to people, but they may have to wait.<sup>80</sup> Mr. Young further testified that GPS is interested in taking more trips and that more competition in the market would have a direct negative impact on his business.<sup>81</sup>

Mr. Shultz questioned whether Mr. Young believed there were 6000 trips not currently taken in the communities Applicant wishes to serve. Mr. Young stated there are not. If there were, he believes, services would be working to fill them and there would be more applications coming through the Commission.<sup>82</sup> Additionally, Mr. Young discussed the ebb and flow in his workforce. They add and subtract vehicles and drivers based upon the needs that they see and the number of trips they are receiving.<sup>83</sup> Commissioner Schram asked what the number one reason GPS would have to turn down a trip. Mr. Young state it would be the rate of pay. He stated they reject trips on which they would lose money.<sup>84</sup> Commissioner Landis inquired whether Mr.

<sup>75</sup> *Id.* at 128:24-131:18.

<sup>76</sup> *Id.* at 134:5-10.

<sup>77</sup> *Id.* at 135:2-11.

<sup>78</sup> *Id.* at 135:21-23, 136:19-21, 137:1-12.

<sup>79</sup> *Id.* at 137:20-21.

<sup>80</sup> *Id.* at 139:9-20.

<sup>81</sup> *Id.* at 140:21-141:17.

<sup>82</sup> *Id.* at 142:8-14.

<sup>83</sup> *Id.* at 144:8-14.

<sup>84</sup> *Id.* at 146:18-24.

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Young has communicated these cost concerns to state and federal legislators. Mr. Young stated he and the other providers present have had numerous conversations with their representatives to raise these concerns.<sup>85</sup>

Mr. John Davis testified next on behalf of Z-Trip. Mr. Davis is the Director of Operations for Z-Trip, handling day-to-day operations.<sup>86</sup> Mr. Davis stated Z-Trip serves Lancaster, Douglas, Sarpy, Cass, and Washington counties, but they do not serve Dodge County.<sup>87</sup> He further noted that including reserve vehicles, they have 160 vehicles available to serve private pay and HHS clients.<sup>88</sup> He further reported that they currently have approximately 30 of those vehicles unoccupied and are receiving which is about 20-25 fewer drivers than they had two years ago due to reduced traffic.<sup>89</sup> Mr. Davis asserts he has lost drivers to other occupations due to over-saturation in the marketplace. Specifically, he cites the increase in party buses, the introduction of TNCs, and additional carriers entering the market.<sup>90</sup> However, Mr. Davis later testified that the company had eight new vehicles delivered recently and will have eight more delivered soon in anticipation of ramping up their business.<sup>91</sup>

Mr. Davis further testified that the share of HHS transport has gone down due to the addition of more drivers. Seven to eight years ago, Medicaid transport would have been 40% of their business, but now it makes up less than 10%. Only 12 of his drivers serve HHS clients, and only five of those vehicles are wheelchair vehicles.<sup>92</sup> He reports that they have 16 wheelchair vans but cannot get additional trips for those vans. Conversations with Intelliride have not provided sufficient guidance as to why they are not getting more trips.<sup>93</sup> Mr. Davis

<sup>85</sup> *Id.* at 147:17-148:3

<sup>86</sup> *Id.* at 151:8-18.

<sup>87</sup> *Id.* at 153:11-20.

<sup>88</sup> *Id.* at 153:21-154:4.

<sup>89</sup> *Id.* at 154:6-22.

<sup>90</sup> *Id.* at 155:5-8; 156:18-157:3.

<sup>91</sup> *Id.* at 163:3-10.

<sup>92</sup> *Id.* at 157:12-25.

<sup>93</sup> *Id.* at 158:5-25.; 167:17-168:9.

testified that he has frequently contacted Intelliride about getting additional trips.<sup>94</sup> Based upon Mr. Davis' testimony, Commissioner Rhoades asked for an additional late filed exhibit. She requested that the carriers and Intelliride provide information about the number of vehicles each of these carriers had on the road in the requested counties and how many were dispatched versus how many were available.<sup>95</sup> Commissioner Rhoades also requested the algorithm utilized by Intelliride.<sup>96</sup>

Mr. Davis also testified about the Marketing zTrip engages in. Specifically, zTrip utilizes billboards, radio ads, social media, on site presentations, special events, and cab stands.<sup>97</sup> He also explained that the cab companies face a unique duty to be available 24/7, which other boutique services are not required to do.<sup>98</sup> Additionally, Mr. Davis discussed the fact that the increased competition has made being a carrier of last resort more difficult. The higher paying jobs are consumed by other entities, especially the TNCs.<sup>99</sup> Mr. Davis also testified that they have on-demand service for clients who require wheelchair service.<sup>100</sup> Mr. Davis stated that granting this application would be harmful to zTrip because they continue to bleed money. Even though Applicant would only be a small number of vehicles, it is still damaging to their business.<sup>101</sup>

The final witness was Ms. Alissa Kern on behalf of Camelot Transportation ("Camelot") and Triumph Transportation ("Triumph"). Ms. Kern is the Managing director for Camelot and Triumph.<sup>102</sup> Ms. Kern indicated that Camelot and Triumph currently provide transportation service statewide. Triumph primarily handles wheelchair service.<sup>103</sup> Ms. Kern stated the service provided for HHS is a fluctuating part of their business.

<sup>94</sup> Id. at 180:20-181:4.

<sup>95</sup> Id. at 160:21-161:10.

<sup>96</sup> Id. at 161:20-24.

<sup>97</sup> Id. at 170:6-25.

<sup>98</sup> Id. at 171:13-21; 172:3-11.

<sup>99</sup> Id. at 172:15-23.

<sup>100</sup> Id. at 174:8-23.

<sup>101</sup> Id. at 175:21-176:1

<sup>102</sup> Id. at 191:5-7.

<sup>103</sup> Id. at 192:1-4.

Camelot and Triumph have not been able to identify a consistent means for getting additional trips. She testified they have the capacity to fulfill more trips.<sup>104</sup> Ms. Kern further testified that Camelot and Triumph do not use Intelliride's tablets because they have previously tried them and did not receive any additional trips. Specifically, Ms. Kern noted they have 10 different "runs" assigned to Medicaid and consistently, five of those "runs" do not have any trips assigned to them.<sup>105</sup> Ms. Kern testified that Intelliride trips are approximately 30% of her business, but one year ago it was close to 50%. Because of this decrease, Camelot has had to market more to the general public and work to get more contracts with other companies.<sup>106</sup>

Mr. Pollock inquired how many trips per day Camelot rejects. Ms. Kern stated it was maybe one per day.<sup>107</sup> She further explained that the reasons for rejecting these trips are two-fold. First, her drivers are not assigned round-trips as they once were. This makes it more difficult to plan for trips. Secondly, they make judgments about clients who have had no shows or locations that would not be cost effective.<sup>108</sup> Ms. Kern indicated the 6,000 trips per year Applicant anticipates is not realistic. She stated that if there are that many trips per year going unfulfilled, the problem would lie with Intelliride.<sup>109</sup> Ms. Kern testified that allowing another carrier into the market may not have an immediate negative impact, but long term it creates risk for her company. Specifically she has concerns that the State, meaning Medicaid/Intelliride, may prioritize a new provider over existing providers and then her drivers do not get trips. She could put more vehicles on the road but that would not mean they would consistently be busy.<sup>110</sup>

On cross-examination, Mr. Ranum asked Ms. Kern about Camelot's finances. He stated Ms. Kern had provided testimony

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<sup>104</sup> *Id.* at 195:9-25.

<sup>105</sup> *Id.* at 196:1-14.; 199:10-21.

<sup>106</sup> *Id.* at 197:6-24.

<sup>107</sup> *Id.* at 203:9-15.

<sup>108</sup> *Id.* at 203:19-204:9; 204:14-24.

<sup>109</sup> *Id.* at 205:16-206:2.

<sup>110</sup> *Id.* at 206:19-207:6.

as to the harm Camelot would suffer financially, but asked whether she had brought in financial statements to support this. Ms. Kern indicated she did not need to provide financial information to the Commission because Camelot already has a certificate. She went on to state that the company had recently added 10 brand new vehicles to its fleet.<sup>111</sup> Mr. Ranum also pointed out that the number of vehicles operated by Applicant is quite small compared to Protestants. On redirect, Mr. Pollock questioned Ms. Kern about any vehicle restrictions in the Application. Ms. Kern pointed out the Application does not limit the number of vehicles. It also would be possible for a larger company to buy the certificate and increase the fleet, like GPS has done over the last 5 years.<sup>112</sup> Ms. Kern also testified that the number one reason Camelot would reject a trip is last minute notice.<sup>113</sup>

#### *Post-Hearing Filings*

Subsequent to the hearing, Applicant filed requested late-filed Exhibits 19, 31 and 32, while Protestants filed Exhibits 33, 34, and 35. All Exhibits were received and entered into the record. The Commission also received post-hearing briefs from all parties.

#### O P I N I O N   A N D   F I N D I N G S

Applicant is seeking authority to provide transportation of passengers by van in open class between points in Cass, Dodge, Douglas, Sarpy and Washington counties on the one hand, and, on the other hand, points in Nebraska over irregular routes. Applicant is also seeking HHS Designation to provide transportation to passengers pursuant to a provider agreement with the Nebraska Department of Health and Human Services ("HHS").

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<sup>111</sup> *Id.* at 209:12-210:6.

<sup>112</sup> *Id.* at 212:16-24; 214:11-215:10.

<sup>113</sup> *Id.* at 216:9-18.

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Applications for common carrier authority are governed by NEB. REV. STAT. § 75-311(1) (Cum. Supp. 2016), which provides:

"A certificate shall be issued to any qualified Applicant authorizing the whole or any part of the operations covered by the application if it is found after notice and hearing that (a) the Applicant is fit, willing, and able properly to perform the service proposed...and (b) the proposed service, to the extent to be authorized by the certificate, whether regular or irregular, passenger or household goods, is or will be required by the present or future public convenience and necessity. Otherwise, the application should be denied."

The Commission must apply this two-part test in order to grant an application for common carrier authority.

First, an applicant must prove that it is fit, willing and able to provide the proposed service. Applicant has proven this portion of the test. Mr. Kini is currently a business owner and possesses business acumen that will be beneficial to operating the transportation services. Mr. Kini also exhibited awareness of the market and the needs of the clientele for whom he wishes to provide services. Finally, Mr. Kini possesses the financial fitness to operate this business. Based upon the evidence presented, the Commission finds that Applicant has met the fitness test of § 75-311(1).

For the second part of the test, an applicant must prove that the service that it wishes to provide is required by the present and future public convenience and necessity. The Nebraska Supreme Court set forth the analysis for determining "public convenience and necessity," stating:

"In determining public convenience and necessity, the deciding factors are (1) whether the operation will serve a useful purpose responsive to a public demand or need, (2) whether this purpose can or will be served as well by existing carriers, and (3) whether it can be served by the Applicant in a specified

manner without endangering or impairing the operations of existing carriers contrary to the public interest."<sup>114</sup>

The issue of whether an applicant has met its burden of demonstrating that the proposed service is required by public convenience and necessity is ordinarily a factual issue.<sup>115</sup>

Applicant presented evidence and testimony illustrating the issues with attempting to arrange transportation services for Beautiful Life's clients, especially for certain times of the day or within a timeframe of an appointment. Applicant expressed his desire to ensure reliable transportation services for all clients regardless of payment method. Applicant also provided witness testimony from two service providers that corroborated the transportation challenges that Mr. Kini testified to. We believe that the proposed service would serve a useful purpose and be responsive to a public demand or need.

Additionally, we do not believe that Applicant's proposed service would endanger or impair existing carrier operations. To the contrary, Protestants testified to the purchase of new vehicles and presented nothing concrete to show the Commission the potential harm that Applicant's proposed service would cause to Protestants' operations. Although Protestants do not have the burden of proof, statements without factual support have, and will continue to have, minimal bearing on Commission decisions, regardless of which party makes such statements. The Commission therefore finds that Applicant has made the requisite showing that the proposed service will meet the present and future public need and necessity.

In addition to the test provided under the traditional analysis, Neb. Rev. Stat. § 75-311(3) requires that applicants wishing to receive authorization to provide Medicaid nonemergency medical transportation services pursuant to a contract with the Nebraska Department of Health and Human

<sup>114</sup> *In re Application of Nebraskaland Leasing & Assocs.*, 254 Neb. 583, 591 (1998).

<sup>115</sup> *Id.*

Services must demonstrate that receiving such authorization is or will be required by the present or future convenience and necessity to serve the distinct needs of Medicaid clients.

Applicant offered two exhibits, 20 and 21, which are Health and Human Services reports. The first shows an increase in overall Medicaid clients over the last two years. Exhibit 21 reports on the aging population within the state. Specifically, between 1995 and 2010, the population over age 85 increased by 56%. That population is expected to increase substantially over the next 30 years as the Baby Boom generation reaches age 85. The report further found the disability rate for individuals aged sixty-five and over is more than 3 times that of the general population. Almost 20% of the 65 and over population lives at or below the threshold for Medicaid funding. Additionally, the report found that Nebraska is consistently losing younger populations due to relocation. Only eight counties saw net increases in population in migration to the counties. As the population ages, they will continue to need more social services, including transportation.<sup>116</sup>

Applicant also filed Exhibits 19 and 31, showing data collected by HHS regarding cancelled, rejected, accepted and completed trips for each Protestant between April 23, 2018 through October 1, 2018 in the counties that Applicant proposes to serve. The exhibits show a total of 108,729 trips available for assignment during this timeframe; of these trips, Protestants completed 31,650 trips.<sup>117</sup> Exhibit 19 showed that Camelot rejected 439 trips, GPS rejected 3,207 trips, and zTrip rejected six trips during the allotted time period.<sup>118</sup> The data does not necessarily give an accurate representation of the reasons for rejection, only that the trip was rejected and then either completed by another carrier, cancelled by the client, or no other provider was available to complete the trip. The data suggests that Applicant would be able to pick up those trips that the Protestants would be unable to take for whatever the

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<sup>116</sup> Exhibit 20 at p. 42, Exhibit 21 at pp. 56-68.

<sup>117</sup> See Exhibit 31 parts I and II.

<sup>118</sup> See Exhibit 19 Part I and II.

reason, but the number of available NEMT trips may not be as high as Applicant estimates.

However, we do not believe that Applicant's overestimation of the number of trips is not outweigh the need that we believe exists in the proposed service territory. Applicant's experience serving both private pay and Medicaid-eligible clientele, including the growing senior population, will enable it to meet both the needs of the general public as well as the distinct needs of Medicaid clients.

The Commission notes that two Protestants testified that they each make business decisions regarding which trips the carrier accepts or declines. The Commission is troubled to hear that there may be passengers without transportation options due to a carrier's decision that the much-needed trip to a medical appointment is not in the carrier's best interest financially. Although non-emergency medical transportation trips provided by these common carriers are pursuant to contracts, a common carrier should provide transportation consistent with the public interest and service those within the scope of that contract with few exceptions. These carriers would be wise to carefully consider their decisions and ensure that they are meeting the obligations of a common carrier as well as expectations of their contracts.

After due consideration of the evidence and being fully advised in the premises, the Commission is of the opinion and finds:

1. Applicant is able properly to conform to applicable provisions of Neb. Rev. Stat. §§ 75-301 to 75-322 and the requirements, rules and regulations of the Commission thereunder.
2. Upon compliance with Neb. Rev. Stat. §§ 75-305 (fees), 75-307 (insurance), and 75-308 (rates), and with the rules and regulations of the Commission, a Certificate of Public Convenience and Necessity should be issued as follows:

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CERTIFICATE AUTHORIZED

SERVICE AND TERRITORY AUTHORIZED:

COMMON: Transportation of passengers by van in open class service between points in Cass, Dodge, Douglas, Sarpy, and Washington counties, on the one hand, and, on the other hand, points in Nebraska over irregular routes. RESTRICTIONS: The transportation of railroad train crews and their baggage is not authorized. HHS Designation: Yes.

3. The application for authority should be granted.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. B-1976 be, and is hereby, granted; and that upon compliance with the terms and conditions set forth in this Order, a Certificate of Public Convenience and Necessity shall be issued to The Beautiful Life Family Home Care d/b/a Beautiful Life Medical Transport, LLC, Omaha, Nebraska, in Application No. B-1976, authorizing the operations set forth in the foregoing findings.

IT IS FURTHER ORDERED that Applicant shall not be issued the Certificate of Public Convenience and Necessity authorized by the Commission unless and until Applicant has fully complied, within forty-five (45) days from the effective date of this Order, with Neb. Rev. Stat. §§ 75-305 (fees), 75-307 (insurance), and 75-308 (rates), and with the rules and regulations of the Commission, and if upon expiration of such time Applicant has not complied with such terms and conditions, this Order shall, after reasonable notice to Applicant, be of no further force and effect.

IT IS FURTHER ORDERED that Applicant shall not conduct operations until a Certificate of Public Convenience and Necessity is issued.

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IT IS FINALLY ORDERED that the operations authorized herein shall be subject to the terms, conditions, and limitations which have been, or may hereafter be prescribed by the Commission.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 13<sup>th</sup> day of November, 2019.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

*Crystal Knodes*

*Paul H. H. H.*

*Donna H. H.*

*Tim Schram*

*Mary Ridd*  
Chair

ATTEST:

*Phil S. H. H.*  
Executive Director