

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application ) Application No. B-1985  
of Platinum Limos, LLC, Omaha, )  
seeking authority as a common )  
carrier in Nebraska intrastate )  
commerce in the transportation )  
of passengers by luxury or )  
stretch limousine between points ) DENIED  
in Sarpy, Saunders, Douglas and )  
Lancaster Counties, and points )  
between said counties, over )  
irregular routes. RESTRICTIONS: )  
The transportation of railroad )  
train crews and their baggage is )  
not authorized. HHS Designation: )  
No. ) Entered: December 3, 2019

FOR APPLICANT:

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FOR PROTESTANT:

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BY THE COMMISSION:

B A C K G R O U N D

On September 26, 2018, Platinum Limos, LLC ("Applicant"), Omaha, filed an application seeking authority as a common carrier in Nebraska intrastate commerce to transport passengers in limousine service by luxury or stretch limousine between points in Douglas, Lancaster, Sarpy, and Saunders Counties and points between said counties over irregular routes. Applicant is neither seeking the ability to transport railroad train crews

and their baggage nor HHS Designation. Notice of the application was published in The Daily Record, Omaha, Nebraska, on October 16, 2018. Timely protest was filed by VIP Limousine, LLC ("Protestant").

On February 7, 2019, a planning conference was held in the above-captioned docket. On February 19, 2019, the Hearing Officer entered an order adopting a procedural schedule and setting the matter for hearing on April 10, 2019.

#### E V I D E N C E

On April 10, 2019, a hearing was held before the Commission in Lincoln, Nebraska with the appearances listed above.

#### *Applicant Witness Testimony*

In support of its application, Applicant first called Troy Benes to testify. Mr. Benes is the owner of Platinum Limos, LLC,<sup>1</sup> Mr. Benes testified he has requested authority from the Nebraska Public Service Commission to operate a high-end limousine service.<sup>2</sup>

When questioned about his financial ability to run the proposed business, Mr. Benes testified that he currently oversees a real estate team in Nebraska and manages approximately thirty-two realtors. Mr. Benes further testified he is a partial owner of an insurance company and a title company with twelve full-time employees. Mr. Benes stated his companies are very successful and would be willing to show the Commissioners his financials if needed.<sup>3</sup> In regards to business acumen, Mr. Benes testified that his real estate team has been successful so his ability to manage a limousine company should speak for itself.<sup>4</sup>

Mr. Benes testified that he decided to apply for authority based on his own experiences attempting to rent a limousine for various events.<sup>5</sup> Mr. Benes testified those efforts were met with various problems including the unavailability of limousines, mechanical problems, or the failure of the driver to show up on time. Mr. Benes explained that he believed Nebraska needed an

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<sup>1</sup> Hrg. Transcr. 5:5-8 (April 10, 2019).

<sup>2</sup> *Id.* at 5:9-13.

<sup>3</sup> *Id.* at 6:6-22.

<sup>4</sup> *Id.* at 7:18 - 8:2.

<sup>5</sup> *Id.* at 6:23 - 7:2.

additional high-end limousine business because of his bad experiences with multiple companies.<sup>6</sup> Furthermore, Mr. Benes stated other prominent businesspersons have communicated their need for high-end limousine services to him on multiple occasions.<sup>7</sup>

When questioned about vehicles, Mr. Benes testified he purchased two limousines - a 2016 22-passenger Escalade and a 2013 10-passenger Chrysler - based on the belief there is a need for a high-end limousine service in the Omaha and Lincoln areas.<sup>8</sup> Mr. Benes stated that Platinum Limos is not looking to expand its fleet beyond two or three limousines.<sup>9</sup> Mr. Benes testified Platinum Limos does intend to expand at some point but explained he does not intend to operate a party bus. Mr. Benes added the largest operations size he can foresee is four limousines.

Mr. Benes testified Platinum Limos services would be for high-end clients. Mr. Benes stated Platinum Limos would offer the proposed limousine service to Mr. Benes' real estate clients as a way to advertise all three of Mr. Benes' businesses together.<sup>10</sup>

Mr. Benes also testified to his awareness of allegations made by Protestant concerning his lack of technical knowledge required to conduct this type of business. Mr. Benes stated his wife, who currently runs the real estate team he oversees and is the company's manager, is very tech savvy. He further explained Platinum Limos has a marketing manager who has set up a website.<sup>11</sup> Mr. Benes testified the Platinum Limos uses a company called "Limos Anywhere" so clients can book reservations online, making it very easy for potential clients to book limousines. Mr. Benes stated he also uses Quickbooks, which enables clients to pay with credit cards. Mr. Benes testified he possesses all the technological tools needed to run his business successfully and all that is needed to commence operations is the grant of authority from the Commission.<sup>12</sup>

Mr. Benes stated that based on his experience selling real estate, he believes Omaha and Lincoln are growing. Furthermore,

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<sup>6</sup> *Id.* at 7:2-11.

<sup>7</sup> *Id.* at 7:10-14.

<sup>8</sup> *Id.* at 7:14-17 and 5:14-21.

<sup>9</sup> *Id.* at 8:3-6.

<sup>10</sup> *Id.* at 9:2-15.

<sup>11</sup> *Id.* at 10:14-23.

<sup>12</sup> *Id.* at 9:16 - 10:13.

Mr. Benes testified he has only heard of two or three limousine companies that operate in these areas, and does not believe that there are many limousine businesses in the area with good limousines. Mr. Benes testified to the multitude of times where people have reached out and communicated their bad experiences with other limousine companies. Mr. Benes stated he feels there is definitely a need for a high-end limousine service with the growing communities and no new businesses developing.<sup>13</sup> Responding to an earlier question from Ms. Waggoner, Mr. Benes testified that Platinum Limos has turned down potential clientele every day because they cannot operate. Mr. Benes stated the rejection of these rides, coupled with the inability to advertise or run his business, is evidence there is a need for the type of business he seeks to provide.<sup>14</sup>

In regards to rates, Mr. Benes testified Platinum Limos intends to charge \$300 an hour for rental of the Escalade and \$200 an hour for rental of the Chrysler, and a discounted rate will be provided if the rental is for longer than four hours. Mr. Benes testified this is a fair price in relation to the other limousine businesses; however, he believes his limousines are more high-end.<sup>15</sup>

Mr. Benes testified he anticipates having seven employees - five drivers, his wife, and himself. Mr. Benes stated he has had conversations with others interested in employment with Platinum Limos.<sup>16</sup> Mr. Benes testified he is asking for Platinum Limos' authority to be approved as soon as practicable because the business is currently spending money on insurance and storage for the limousines. Mr. Benes stated he believes he is throwing money away since he cannot advertise or operate the business.<sup>17</sup>

On cross-examination, Ms. Pence inquired whether Mr. Benes has any post-high school education. Mr. Benes testified he attended the University of Nebraska at Lincoln and graduated with a Bachelor's Degree in Business Administration, Management, and Communications.<sup>18</sup> Mr. Benes testified he did not own any businesses prior to those already mentioned, but reiterated his has experience in real estate, titles, and insurance.<sup>19</sup> Mr. Benes

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<sup>13</sup> *Id.* at 11:7-22.

<sup>14</sup> *Id.* at 8:7-17.

<sup>15</sup> *Id.* at 11:23 - 12:9.

<sup>16</sup> *Id.* at 10:24 - 11:6.

<sup>17</sup> *Id.* at 12:10-19.

<sup>18</sup> *Id.* at 13:11-17.

<sup>19</sup> *Id.* at 14:2-11.



explained that he has a lot of management experience with his other businesses and he believed a transportation business would be co-inherent with those businesses. He further testified how he had no experience with insurance or title prior to starting those businesses, and does not believe that his lack of transportation experience would be an issue.<sup>20</sup> Mr. Benes further explained that he has not been a driver for a transportation company but drives daily for his real estate business and knows very good drivers. Mr. Benes does not plan to drive for Platinum Limos.<sup>21</sup>

Mr. Benes stated Mr. Ryan Hines and Mr. Eric Soderholm were present at the hearing to testify on Applicant's behalf.<sup>22</sup> Mr. Benes testified he was introduced to Mr. Hines through mutual friends and that Mr. Hines joined his real estate team two and half years ago. Mr. Benes also explained he brought Mr. Hines on as a consultant because of Mr. Hines' previous experience in owning a party bus service.<sup>23</sup> Mr. Benes testified he does socialize with Mr. Hines but has not provided transportation services for him.<sup>24</sup> In regards to Mr. Soderholm, Mr. Benes testified he has known Mr. Soderholm, a mortgage lender, for 18 years through business dealings. Mr. Benes testified their wives are friends and he will therefore socialize with Mr. Soderholm every once and a while. Mr. Benes stated he had never provided transportation services to Mr. Soderholm.

Ms. Pence inquired whether Platinum Limos took Mr. Soderholm and some of his friends to the Nebraska Spring Football game. Mr. Benes stated that if Platinum Limos provided the transportation, it was for personal use and Mr. Soderholm did not rent it. Further, Mr. Benes stated transportation of this type would not have been something he would have paid for.<sup>25</sup> Responding to additional questions about the same incident, Mr. Benes explained that at the time he thought Platinum Limos was authorized to provide service but then found out in October they were not. Mr. Benes stated the Commission sent communications to him, but were mailed to his new storage facility in Gretna. He did not know mail was there for him because the mail was not yet set up.<sup>26</sup>

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<sup>20</sup> *Id.* at 14:12-23.

<sup>21</sup> *Id.* at 14:24 - 15:2; 15:7-13.

<sup>22</sup> *Id.* at 15:14-20.

<sup>23</sup> *Id.* at 15:21 - 16:3.

<sup>24</sup> *Id.* at 16:4-8.

<sup>25</sup> *Id.* at 16:9 - 17:6.

<sup>26</sup> *Id.* at 17:21 - 18:14.

Ms. Pence questioned Mr. Benes as to whether Platinum Limos is currently offering its services to the public for free. Mr. Benes testified that those currently using Platinum Limos pay for the driver and nothing else. Mr. Benes explained that a State Patrol Inspector told him he could use limousines for personal use and that friends and family using the limousines would have to pay for the driver.<sup>27</sup> Ms. Pence later asked Mr. Benes whether he discussed this with the Commission, Mr. Benes testified that is what he was told by a Commission investigator.<sup>28</sup>

Following Mr. Benes' testimony, Ryan Hines testified on behalf of Applicant. Mr. Hines stated that he previously owned a company called Teenie Weenie Buses, LLC from 2012 through 2016, which held Commission authority for party bus service. Mr. Hines has worked for Mr. Benes' real estate team since June 2016.<sup>29</sup> Mr. Hines testified that he has acted as an advisor to Mr. Benes regarding the authority requirements.

Mr. Hines testified that he felt Mr. Benes' management skills were solid based on his observations of Mr. Benes managing a large number of agents and real estate transactions.<sup>30</sup> Mr. Hines later testified that Mr. Benes partners with those that may have a different knowledge base for his businesses and does not act as though he has all the answers.<sup>31</sup>

Additionally, Mr. Hines testified to the need for high end limousine service, stating that he could see scenarios in which real estate clients may be taken to events and that the market is not saturated with the vehicle types that Mr. Benes proposes to use. Mr. Hines also stated the growing housing market shows an increased population that will increase the demand for services.<sup>32</sup> Finally, when asked whether there are any concerns about Mr. Benes's ability to manage companies, Mr. Hines testified that he has no concerns and that Mr. Benes seeks out partners with expertise for assistance.<sup>33</sup>

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<sup>27</sup> *Id.* at 17:7-20.

<sup>28</sup> *Id.* at 18:24 - 19:16.

<sup>29</sup> *Id.* at 53:7 - 56:17.

<sup>30</sup> *Id.* at 60:4-19.

<sup>31</sup> *Id.* at 66:22 - 67:22.

<sup>32</sup> *Id.* at 60:20 - 63:19.

<sup>33</sup> *Id.* at 66:22 - 67:22.

On cross-examination, Mr. Hines was asked about his previous experience with his company Teenie Weenie Buses. Mr. Hines testified that the company operated in Douglas, Sarpy and Lancaster counties for University of Nebraska football games and other events. Mr. Hines testified that the company had performed "okay" but was disbanded in 2016 for personal reasons. Mr. Hines further testified that he provided the financial backing and handled day-to-day operations for that company such as payroll, finances, and coordinating maintenance.<sup>34</sup>

Mr. Hines also testified that he assisted Mr. Benes in determining the expenses and budget for the proposed business. Mr. Hines stated that he advised Mr. Benes of the difficulty with estimating revenue and expenses when unsure of the hours, and that they determined preliminary numbers.<sup>35</sup> Mr. Hines also stated that maintenance was not included in the preliminary budget because any maintenance costs are personal expenses until the business gains approval and is up and running.<sup>36</sup>

Mr. Hines stated that he will be assisting Mr. Benes in an advisory capacity.<sup>37</sup> Mr. Hines testified that will also assist Mr. Benes as an advisor of Commission and Federal Motor Carrier Safety Act regulations.<sup>38</sup> Mr. Hines stated that he had in the past advised Mr. Benes regarding Public Service Commission authority regarding party buses, beginning in approximately April of 2018.<sup>39</sup>

Following Mr. Hines' testimony, Applicant called William Alford to testify. Mr. Alford testified that he is the owner of VIP Limousine, and that he holds five authorities with the Commission.<sup>40</sup> Mr. Alford testified that "almost all" of those authorities include limousine authority.<sup>41</sup> Mr. Alford testified that of the twenty-three limousines he owns, he would consider all of them to be luxury limousines.<sup>42</sup>

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<sup>34</sup> *Id.* at 70:11 - 72:9.

<sup>35</sup> *Id.* at 72:10 - 73:2.

<sup>36</sup> *Id.* at 73:8 - 74:18.

<sup>37</sup> *Id.* at 74:19-22.

<sup>38</sup> *Id.* at 76:9-15.

<sup>39</sup> *Id.* at 81:1-16.

<sup>40</sup> *Id.* at 83:5-11.

<sup>41</sup> *Id.* at 83:16-22. As a note, Mr. Alford is the owner of the following authorities: B-1640 VIP Limousine, LLC; B-1641 VIP Limobus, LLC; B-1642 A-1 Transportation, LLC; B-1643 A-1 Limousine, LLC; and B-1660 Alford Oil Company d/b/a Omaha Limousine.

<sup>42</sup> *Id.* at 85:14-16.

Mr. Alford testified that within his own business, for transport to a concert, a typical rate for the vehicles owned by Applicant would range from \$149 for a stretch limousine to \$225 for a stretch Hummer.<sup>43</sup> Mr. Alford stated that he would consider four vehicles in his fleet to be stretch vehicles, but that they are not frequently used and are therefore not cost effective.<sup>44</sup> Mr. Alford further testified that in terms of the number of runs, the majority of his business is airport business, but that weddings and special events provide a large amount of revenue.<sup>45</sup>

Mr. Alford testified that he is concerned that Applicant is operating in areas where it does not have DOT authority, and that he therefore has concerns regarding the safety of the vehicles being used.<sup>46</sup> Mr. Alford testified to the training that his companies require of his own drivers to meet DOT and insurance requirements, such as obtaining a CDL license, drug testing, and background checks. Mr. Alford also stated that his drivers are required to have at least two years' experience as a driver to drive for his companies.<sup>47</sup>

#### *Protestant Witness Testimony*

Mr. Alford was then dismissed on behalf of the Applicant, and called on behalf of the Protestant. Mr. Alford testified that he became involved in the transportation industry by purchasing an existing limousine business.<sup>48</sup> Mr. Alford testified that he holds authorities for five entities, collectively referred to as VIP Limousine.<sup>49</sup> He further stated that his businesses are not at capacity and that they could handle additional rides in Sarpy, Saunders, Douglas, and Lancaster counties on a daily basis.<sup>50</sup> Mr. Alford testified that he employs 35 drivers, two of which work full time, but that many of them frequently request more hours.<sup>51</sup>

Mr. Alford testified that his fleet of vehicles are maintained by hired mechanics, and that they work with shops in the Omaha area as well when necessary.<sup>52</sup> Mr. Alford testified

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<sup>43</sup> *Id.* at 86:18-24.

<sup>44</sup> *Id.* at 87:2-16.

<sup>45</sup> *Id.* at 88:15-23.

<sup>46</sup> *Id.* at 93:3-9, 94:16-25.

<sup>47</sup> *Id.* at 97:17 - 99:11.

<sup>48</sup> *Id.* at 111:14 - 112:3.

<sup>49</sup> *Id.* at 113 - 114.

<sup>50</sup> *Id.* at 116:9-13.

<sup>51</sup> *Id.* at 117:4 - 118:16.

<sup>52</sup> *Id.* at 118:18-24.

that his businesses will refund money to clients if there is a mechanical issue, or attempt to sub out a vehicle if the issue is known in advance.<sup>53</sup> Mr. Alford testified that drivers who work for his businesses receive safety training, including safety checks of vehicles before and after each run.<sup>54</sup>

Mr. Alford described the luxury transportation market in Sarpy, Saunders, Douglas, and Lancaster counties as "extremely soft and slow," and that "[i]t is a tough business to be in."<sup>55</sup> Mr. Alford further stated that he would consider the market to be over-saturated.<sup>56</sup> Mr. Alford stated that while he currently has four stretch vehicles in his fleet, demand for those vehicles has decreased over the past couple of years.<sup>57</sup>

Mr. Alford stated that he was concerned regarding this application because the Applicant had operated without Commission authority for some time.<sup>58</sup> He stated that familiarity with Commission regulations, as well as familiarity with DOT rules and regulations, are "critical."<sup>59</sup> Mr. Alford stressed the importance of knowledge of Federal Motor Carrier Safety Act regulations and of background checks for drivers.<sup>60</sup>

Mr. Alford further testified that the entrance of other transportation companies into the market has caused him to downsize the number of people he employs.<sup>61</sup> He stated that if there were an increase in business, he would be able to provide additional trips per day in Sarpy, Saunders, Douglas, and Lancaster Counties, without purchasing additional vehicles or hiring additional drivers.<sup>62</sup> Mr. Alford also stated that although the limousine business is not an extremely profitable type of business, he feels that it is important for his businesses to have those types of vehicles available.<sup>63</sup>

Following Mr. Alford's testimony, Protestant called Alissa Neu to testify. Ms. Neu testified that she is the general manager of all five VIP Limousine entities and oversees all of

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<sup>53</sup> *Id.* at 120:6-22.

<sup>54</sup> *Id.* at 121:11 - 122:6.

<sup>55</sup> *Id.* at 122:7-11.

<sup>56</sup> *Id.* at 123:15-16.

<sup>57</sup> *Id.* at 123:22 - 124:4.

<sup>58</sup> *Id.* at 125:7-10.

<sup>59</sup> *Id.* at 125:18 - 126:2.

<sup>60</sup> *Id.* at 126:3-21.

<sup>61</sup> *Id.* at 130:2-6.

<sup>62</sup> *Id.* at 131:21 - 132:18.

<sup>63</sup> *Id.* at 136.

their operations.<sup>64</sup> Ms. Neu described the role of the mechanical team for the five entities, which include quarterly and annual inspections, and daily driver inspections.<sup>65</sup> Ms. Neu stated that drivers are trained on a day to day basis and also attend quarterly safety meetings.<sup>66</sup> She further stated that the businesses perform background checks on an annual basis, as well as an organization that performs random drug testing, and that the dispatch team follows DOT regulations regarding hours worked.<sup>67</sup>

Ms. Neu stated that there has been a downturn in business for limousine vehicles.<sup>68</sup> She stated that she believes this downturn is due to the operation of other competing carriers.<sup>69</sup> Ms. Neu also testified that she uses her background in hospitality and non-profit to engage the community in the company's marketing efforts.<sup>70</sup> Finally, Ms. Neu testified that as general manager, she tracks capacity and historical data so that the company is ready for larger events such as the Berkshire Hathaway annual meeting. Ms. Neu stated that if they could not meet a request, she would not recommend another carrier but would inform that person that other options are available in the Omaha area.<sup>71</sup>

### *Exhibits*

Commission Exhibits 1 through 10 were received and entered into the record, including the Application for Authority. Protestant's Exhibit 11, the Certificate of Authority for B-1640 VIP Limousine, LLC, Exhibit 12, Applicant's Responses to Protestant's Interrogatories, and previously discussed Exhibit 13 were also received and entered into the record. At the conclusion of the hearing, parties agreed to file post-hearing briefs, which were received from both parties on July 10, 2019.

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

In the present case, Applicant is seeking authority to provide transportation of passengers in limousine service by luxury or stretch limousine between points in Douglas,

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<sup>64</sup> *Id.* at 140.

<sup>65</sup> *Id.* at 141:5-18.

<sup>66</sup> *Id.* at 141:19 - 142:11.

<sup>67</sup> *Id.* at 142:21 - 143:16.

<sup>68</sup> *Id.* at 144:4-16.

<sup>69</sup> *Id.* at 145:5-8.

<sup>70</sup> *Id.* at 145:19 - 146:12.

<sup>71</sup> *Id.* at 146:25 - 148:23.



Lancaster, Sarpy, and Saunders Counties and points between said counties over irregular routes.

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.

The first part of the test requires an applicant to prove that it is fit, willing and able to provide the proposed service. When determining fitness, the Commission examines Applicant's financial capabilities, considers any prior issues such as complaints or infractions, assesses Applicant's vehicles, and makes a determination of Applicant's managerial fitness.<sup>72</sup> Upon review of the evidence presented, the Commission finds that Applicant did not meet its burden of proof regarding its fitness.

Regarding financial fitness, evidence is lacking. Mr. Benes testified to the success of his other business ventures, but did not provide evidence as to how the financial success of these businesses have any bearing on the proposed limousine service. Despite the request for budget information in Protestant's Interrogatories, Applicant did not provide any information outside of anticipated expenses and gross sales. If Applicant intended that finances of other businesses or any personal

<sup>72</sup> See Application No. B-1535, Supp. 1 *In the Matter of the Application of Guard-Rite Security Services, LLC, Norfolk, seeking to extend its authority as a common carrier of passengers in open class service by sedans and vans between points in Nebraska over irregular routes. To include the transportation of Health and Human Services clientele and their subcontractors thereof. RESTRICTION: The transportation of railroad train crews and their baggage is not authorized.* Order Denying Application, Entered August 3, 2004.



finances would be considered part of Platinum Limo's overall financial picture, Applicant should have filed said information. Without a full picture of the financial status, the Commission cannot make a determination that Applicant is financially fit.

The Commission also has concerns regarding Applicant's overall managerial fitness. Mr. Benes may have experience in the real estate industry, but testimony was not convincing that this acumen would translate to the operation of a limousine company. Mr. Benes testified to allowing persons to drive passengers without having done background checks because he knew the driver personally. Additionally, Mr. Hines testified that he advised Mr. Benes of the requirement for Commission authority at least six months prior to when Mr. Benes testified that he first learned of the requirement. Mr. Benes brought Mr. Hines on board with Platinum Limos as an advisor, and then ignored that advice and operated without Commission authority prior to submitting the application. Although this is not in and of itself disqualifying, the totality of the evidence before us cannot be ignored and begs the question as to whether Applicant would comply with all state and federal rules and regulations if granted an authority.

For the second part of the test, an applicant must prove that the proposed service is or will be 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>73</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>74</sup> The Commission finds that the record before us does not present

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<sup>73</sup> *In re Application of Nebraskaland Leasing & Assocs.*, 254 Neb. 583, 591 (1998).

<sup>74</sup> *Id.*

sufficient evidence of need and necessity to support granting the application.

First, Applicant did not show that the proposed service would serve a useful purpose responsive to a public demand or need. In fact, no evidence was presented to show that a need existed that Applicant would meet with its services. Applicant testified to his intention to serve those who were looking for "high-end" limousine services, specifically those who may be in a financial position to be a client in his main real estate business. However, Applicant did not present any evidence or witness testimony to illustrate that a need existed for such a service or that he would make his services available to those that are not in a higher financial income bracket.

The second factor is whether the purpose can or will be served as well by existing carriers. Satisfactory service by motor carriers already in the area is complete negation of a public need and demand for service by another carrier.<sup>75</sup> Although Applicant testified to the difficulties that he personally experienced in finding limousine service in the past, no evidence was presented that would lead the Commission to believe that the carriers currently serving the proposed counties are not providing adequate and satisfactory service.

The third factor is whether the public demand or need can be served by Applicant in a specified manner without endangering or impairing the operations of existing carriers contrary to the public interest. The Commission declines to enter a finding on this factor as it has found that Applicant failed the first and second parts of the test.

Based on the evidence presented, the Commission is of the opinion and finds that Application B-1985 should be denied.

#### O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application B-1985 be, and is hereby, denied.

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<sup>75</sup> *In re Application of Amsberry, Inc.*, 220 Neb. 353 at 357-358 (1985).

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

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ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 3<sup>rd</sup>  
day of December, 2019.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

*Mary Riddis*  
Chair:

Attest:

*Pat Johnson*  
*Scott W. Peterson*  
*Tim Schraw*

*Miss S. H. H.*  
Executive Director

## Concurring opinion:

While I agree with my colleague's final determination that the applicant should be denied, it is for different reasons than those laid out in the majority opinion.

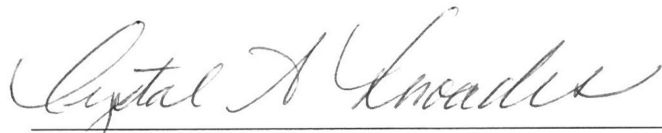
I believe the applicant did show satisfactory evidence of financial fitness. The applicant provided information related to available assets, cash on hand, and a significant unsecured line of credit. Given that banks do not provide unsecured lines of credit in the amount of \$75,000 to anyone without substantial positive credit history, I am satisfied on the basis of that information that he has adequate resources to provide luxury transportation services.

As to the applicant's managerial fitness, I disagree he is unfit on the basis that he can't prove his previous experience as a business owner is relevant and would translate to luxury transportation services. If the Commission were only to approve applicants that had previously run a transportation company, we could no longer approve any applicants because it would create a catch twenty-two eliminating all carriers from consideration because they could never meet the requirement. Every carrier certificated in Nebraska has to have a first transportation company. I see no reason to deny this applicant on the basis this is his first transportation company. Further, the applicant has relevant educational experience and has hired and retained staff with experience in the industry.

However, I find he is managerially unfit for the following reasons. He has ignored the counsel of his experienced staff. He has operated without proper insurance. He failed to conduct background checks on the drivers known to him and unknown to him. He has created and maintained a marketing website for his business even though he does not have authority to operate in Nebraska. He failed to make a timely application to the Commission for certification of his business. He has continued to allow use of his vehicles and created exposure for his insurance company and drivers. He has continued to collect payment for the wages for drivers of his vehicles. He gave testimony at hearing that directly contradicted information about airport transport publicly available on his website. These facts demonstrate he has not been diligent in determining applicable laws, rules and regulations for carriers in Nebraska

and that even upon learning he has overlooked something he is unwilling to comply with those rules.

I further disagree on the matter of need and necessity. In the case of luxury limousine services, the standard for need and necessity is exceptionally low. There is a very limited client base for these services; however, given that the applicant testified he had problems obtaining the service for himself and his real estate clients, I believe that satisfies the first requirement that his services would serve a demand or need. The second test for meeting needs and necessity is whether or not other carriers could meet the demand for the services. While the applicant did testify that he has not been marketing the service of the existing carriers providing those services, it would be unreasonable for the Commission to expect any would be competitor to make such a referral. That said, the applicant did not prove that his entrance into the market would not harm the existing carriers and therefore he has not met the burden of proof on third component of need and necessity.

  
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Commissioner Rhoades