BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application of Happy Cab Company dba Checker Cab Company, Omaha, seeking authority as a common carrier in Nebraska intrastate commerce in the transportation of passengers by taxi in Lancaster County, and between points in Lancaster County, on the one hand, and on the other hand, points in Nebraska over irregular routes. RESTRICTION: The transportation of railroad train crews and their baggage is not authorized. HHS Designation: Yes.	APPLICATION NO. B-1121 SUPPLEMENT 6 GRANTED ENTERED: MAY 22, 2012

APPEARANCES

For the Applicant:

Andy Pollock
Rembolt Ludtke LLP
1201 Lincoln Mall, Suite 102
Lincoln, Nebraska 68508

For the Commission Staff:

Mark Breiner
300 The Atrium
1200 N Street
PO Box 94927
Lincoln, Nebraska 68509

For the Protestants:

Servant Cab, Inc. dba Yellow Cab and Capitol Cab

Jack Shultz
Harding & Shultz, P.C., L.L.O.
800 Lincoln Square
P.O. Box 82028
Lincoln, NE 68501

BY THE COMMISSION:

BACKGROUND

By application published on filed on January 2, 2012, Happy Cab Company dba Checker Cab Company of Omaha, Nebraska, seeks authority from the Public Service Commission ("PSC" or "Commission") to operate common carrier in Nebraska intrastate commerce in the transportation of passengers by taxi in Lancaster County, and between points in Lancaster County, on the one hand, and on the other hand, points in Nebraska over irregular routes. RESTRICTION: The transportation of railroad train crews and their baggage is not authorized. HHS Designation: Yes. Notice of the application was published in The Daily Record, Omaha, Nebraska on January 9, 2012. Timely protests to the application were filed by Servant Cab Company, d/b/a Yellow Cab Company and Capitol Cab Company, through its attorney, Jack Shultz; Golden Plains Services of McCook, Nebraska; and Transport Plus of Lincoln, Nebraska.

Planning Conferences were conducted by the Commission, with all parties participating, on February 17 and February 22, 2012, and a Planning Conference Order was entered February 29, 2012. The Planning Conference Order scheduled the Hearing date, discovery and other deadlines.

On March 22, 2012, Transport Plus notified the Commission that it had reached a Settlement Agreement and Stipulation with the Applicants, in which Transport Plus agreed to withdraw its Protest upon Applicants limiting their Applications to exclude transportation of railroad crews, passengers requiring vehicles specially equipped to accommodate wheelchairs, and transportation by contract of Star Tran passengers. The latter two restrictions are binding until March 1, 2017. Transport Plus withdrew its Protest on March 22, 2012.

A hearing on the application was held on April 9, 10, and 11, 2012, with appearances as listed above. Notice of the hearing was sent to all parties of record on February 29, 2012.

APPLICANT'S EVIDENCE

John Davis testified first for the Applicant. Mr. Davis is the Director of Operations the Applicant, a position he has held since 2006. Mr. Davis discussed the financial, managerial, and technical capability of the Applicant to provide the

proposed services. He testified that Happy Cab has a fleet of approximately 220 vehicles, of which about 180 to 185 are operating at any one time. Happy Cab contracts with about 185 drivers, all but eight of whom drive vehicles owned by the company. The remaining eight own their own vehicles. Happy Cab has approximately 30 non-driver employees. Their responsibilities include everything from cashiers, accounts receivable personnel, driver relations, driver coordinators, call center, dispatch, and information technology. The Applicant utilizes the staff of their sister company, I-80 Auto, for automotive maintenance, inspections, service, and repairs. Happy Cab operates a state-of-the-art dispatch system, and is in the process of an upgrade in the technology. If granted authority by the Commission in this proceeding, the Applicant plans to put approximately 5 additional cabs on the road in Lancaster County.

As part of the Application, the Applicant submitted Financial Statements. Also received into evidence was the Commission's Order of August 30, 2011, in TR-180, approving the rates presently charged by Happy Cab for their cab services in the Omaha area. Applicant proposes to charge those same rates in Lincoln, according to Mr. Davis.

Mr. Davis testified that the Applicant is currently complying with Public Service Commission rules and regulations, including insurance requirements, and will continue to do so if granted the requested expansion of their authority. Happy Cab does not operate wheelchair-accessible vans, and rarely has calls for such vans. When it does, it refers the person to MOBY or Shared Mobility, which do have wheelchair-equipped vehicles. In Lincoln and Lancaster County, it will refer such persons to Transport Plus.

Mr. Davis testified that, after hearing of troubles with cab service in Lincoln, his company began researching the issue of need and necessity by reaching out to several organizations in the Lincoln area, including members of the state Legislature, City Council, Internal Liquor Committee, and Lincoln Lodging Association. He said they learned that there is a need for a reliable and affordable taxi service.

To address this, Mr. Davis testified that Happy Cab will make two commitments to Lincoln businesses and residents, if the Applications are approved:

1) Happy Cab will send quarterly newsletters to consumer groups, especially those with a critical need for transportation services, such as the blind, the elderly, and people who are intoxicated. Happy Cab will seek their inputs about service quality and rates.

2) Happy Cab will notify consumer groups, the Lincoln Chamber of Commerce, the Mayor, and City Council of future plans to increase rates.

Further, Happy Cab will work with the Haymarket and Downtown areas in Lincoln to establish cab stands to serve the after-hours bar rush, similar to what it has done in the Old Market and Midtown Crossing areas in Omaha.

Referring to his prefiled testimony, which stated that the "biggest hit" to Happy Cab regarding rates was in the cost of fuel, Mr. Davis admitted that independent contractors pay for their own fuel, but stated that the impact fuel prices had on those contractors necessitated changes by the company. Mr. Davis stated that the last rate increase was in 2011, and prior to that had been in "2005 or 2006". He went on to say that the weekly charge to the independent contractors under their rental agreements did not change between 2005 and 2011. Mr. Davis was then referred to his prefiled statement that the rates are based on a "reasonable rate of return" and stated that a reasonable rate is between 8 and 10 percent. Mr. Shultz pointed out that bringing 20 cabs from Omaha to Lincoln amounted to diverting about 9 or 10 percent of Happy Cab's fleet from the Omaha market. Mr. Davis disagreed, stating that only cabs that are currently in the reserve inventory in Omaha would be put into service in Lincoln.

Mr. Shultz then questioned Mr. Davis about the statement contained in his prefiled testimony that Happy Cab drivers were independent contractors, much like in the trucking industry. Mr. Davis testified there are a number of trucking companies that use the model where the company owns the vehicle and classifies the driver as an independent contractor, but he could not provide any specific examples. Mr. Davis agreed to file a late-filed exhibit listing trucking companies that use this model, though he said he would probably not be able to get copies of the contracts they use. Mr. Davis then explained that Happy Cab uses two types of lease agreements: an *owner-operator agreement* (equipment lease agreement) wherein the owner of a

vehicle leases it to the carrier for $100/week and then purchases dispatch and back office services from [Happy Cab] and uses that vehicle to provide taxi service; and an *independent contractor agreement* wherein drivers contract for use of a car and again have the option to purchase dispatch and back office services. Happy Cab provides liability insurance for drivers under either contract. Mr. Davis testified that there are approximately six to eight owner-operator agreements currently in effect that were also in effect in 2011. Mr. Davis was unsure whether those documents are on file with the Commission, but thought they were.

Mr. Davis then stated that there was nothing unique about the vehicles used by Happy Cab, though they do their own service and use compressed natural gas in some vehicles. Mr. Shultz then walked through Exhibit No. 16 (excerpt of PSC Rules & Regs) with Mr. Davis. Specifically, Mr. Davis was directed to Rule 008.02 which allows Happy Cab the ability to enter into owner-operator agreements, then to Rule 008.02A, which lists the requirements for doing so. Mr. Davis interpreted 008.02A5 to provide that the company would have exclusive possession, control and use of the equipment for the entire duration of the lease and 008.02A7 to provide that the company would be responsible for carrying insurance for the vehicle. He stated that drivers were not required to carry insurance and that insurance was carried by the authority. Mr. Davis could not recall, but stated that he believed the contract had a "hold harmless" provision. Mr. Davis then stated that, pursuant to Rule 008.02A8 the leases must be approved by the Commission and that each driver carried a copy of the equipment lease in their vehicle, as required by Rule 008.02A9, and that ensuring this was part of Happy Cab's compliance checks. Mr. Davis stated that the independent contractor agreements were not carried in the vehicles. Mr. Davis then testified that, regarding Rule 008.02F, the Commission allowed Happy Cab to electronically maintain trip sheets for vehicles equipped with dispatch services and that the eight or nine drivers who do not purchase dispatch services are required to provide handwritten sheets.

Mr. Davis confirmed that the only reasons drivers could refuse a fare were the four circumstances listed in Rule 010.02E1 through E4 and that drivers may only drive 12 hours in a 24-hour period under Commission rules. He then answered Commissioner Vap's question, stating that Happy Cab does not provide any health insurance or workers' compensation insurance for its drivers. Mr. Davis then stated that he was not involved

in the process of preparing the annual revenue and expense report contemplated by Rule 010.02N and that Mr. Mitchell would be a better person to ask about that.

Mr. Davis testified that he is familiar with Rule 011.01F1, regarding the inspection and sealing requirements for taxi meters and that Happy Cab had never operated vehicles where the meter was not sealed except in circumstances where the company had tested and certified the vehicle and notified the Commission that it was going into service. In those situations, the inspection and sealing of the meter by the Commission typically followed within the week.

Mr. Davis was then questioned about Rule 011.01H, which he stated requires an identification card for drivers (referred to as a "placard") and an article of uniform to distinguish drivers. Mr. Davis explained that the placard is mounted inside the cab in full view of the passengers and contains the operator's name, photograph and the carrier's address. Mr. Davis testified that Happy Cab's drivers wear lanyards with an ID attached as their article of uniform. He said a written request was made to the Commission as to whether the lanyards were acceptable as articles of uniform and that, receiving no formal response, Happy Cab went ahead with its plan to use the lanyards.

Mr. Shultz pointed out that Happy Cab's rates had been approved as reasonable in 2011, but that Servant Cab's rates had also been approved for 2011. He then questioned Mr. Davis about "peak times." Mr. Davis testified that, during normal weekdays, demand was driven by: visiting business people in the early mornings (going from hotels to transportation terminals); broker transportation from NE and SE Omaha to medical facilities in late morning and midday (with return trips in the afternoon); transportation of school children; and bar and leisure business in the evenings toward the end of the week. Mr. Davis also stated that peak service times included special events such as the Berkshire Hathaway annual meeting and the College World Series. Mr. Davis testified that Lincoln and Omaha are different cities and the peak service times would not necessarily mirror each other. He testified that he would project airport traffic to be lower in Lincoln than in Omaha. Mr. Davis then said that Happy Cab operated pretty close to capacity during the Berkshire Hathaway meeting, bringing those cabs that are held in reserve into service for the extent of the event.

Mr. Davis then testified that Happy Cab has competition in Omaha from City Taxi, Bluffs Taxi and Casino Cab. Only City Taxi has authority in Omaha, but Mr. Davis stated that Bluffs Taxi and Casino Cab (out of Council Bluffs) are doing business in Omaha continually. He was unsure how many vehicles each of these companies operates. He testified that Happy Cab protested City Taxi's recent application for additional authority in Omaha.

Mr. Davis admitted that ultimate operational and rate regulation of cab companies in Nebraska rests with the Commission, rather than being regulated at the city level. Mr. Shultz then showed Mr. Davis two equipment lease agreements: the equipment lease agreement used by Happy Cab, and the Commission's equipment lease agreement form. Mr. Davis admitted that certain language in Happy Cab's lease agreement was not present in the Commission's form, particularly paragraph 4, which allows for the possession and control of the equipment to reside ". . . or be entirely vested in the company," and paragraph 8, which states that it is not a lease of such authority. Mr. Davis said he was unsure whether the Commission had approved Happy Cab's lease agreement, but knew that the Commission had it on file. He further stated he was unsure as to why Happy Cab used its own form rather than the Commission's, but that he suspected it was because the Commission form was for employees and not independent contractors. Mr. Davis then testified that all of the equipment leased pursuant to their equipment lease agreement are on file with the Commission.

Mr. Shultz then questioned Mr. Davis about Exhibit 17, which is a legal opinion drafted by Happy Cab's counsel, a Mr. Patrick Sullivan, in reference to the independent contractor relationship. Mr. Davis testified that he was unsure as to the date of the opinion, though it may have been February 16, 2012 (as that date appears on the top of the second page), and that the opinion was in response to LB 889. In Mr. Davis's words, the intent of LB 889 is to deregulate the cab market in primary and secondary cities in the state, including Lincoln and Omaha.

Mr. Davis testified that he did not work for Happy Cab in 1995, when the *Hemmerling* decision was handed down, and he deferred to counsel questions about the structure of the contract in *Hemmerling* compared to now and questions about the similarities between Happy Cab's model and that in *Hemmerling*.

Mr. Davis next testified that, according to Mr. Sullivan's opinion (with which he agrees), drivers set no hours and can work as many as they choose, subject only to the restriction of 12 hours per day maximum. Mr. Davis could not guarantee that if Happy Cab brought 20 cabs to Lincoln, they would all be available any given time. He did state that he could guarantee that at least one vehicle would be on the street at any given time. He admitted that drivers had the choice of when to work and if they all wanted to take Christmas Day off, then they would be allowed to do so. However, he stated that though he couldn't guarantee a certain number of vehicles in service, he would guarantee that there "will be cabs on the streets based on the service need."

With regard to taking calls, Mr. Davis testified that a driver does not have to take calls and has the option to reject a call and log out of the system if the driver does not want a call. The drivers do not have any information about the fare at that point. Drivers parked at "open cab stands" such as the pick-up line at an airport, must take a fare when approached by a customer (unless one of the four criteria in Rule 010.02E1 through E4 exists), because they are not on dispatch, but are in an open cab stand. Drivers who have worked their 12 hours and are driving home would likewise not be required to stop for a person trying to wave them down because they are not an open cab stand at that point.

Mr. Davis then testified that there are no physical tools required to be a driver, other than an able body and the appropriate credentialing. Mr. Shultz then questioned him about credit cards and customer charges. Mr. Davis explained that a corporation or individual could set up a charge account whereby fares would be charged to the account rather than to each passenger. Examples of these accounts include persons who want to arrange for regular transportation of an elderly parent, corporations arranging business transportation, and transportation contracts with the state. In most cases, these accounts are set up by the company, though some independent contractors have set up accounts on their own. Some drivers set up their own credit card processing as well, though most utilize Happy Cab's A/R department. Mr. Davis stated that the transactions processed through the company are set up through its merchant account and that the drivers get paid on credit card charges almost immediately. Mr. Davis further stated that drivers are paid immediately when charge account customers are

billed, regardless of whether those charge account customers ultimately pay.

Mr. Davis testified that drivers are sent a 1099 form at the end of each year, that the company has no knowledge of what the drivers ultimately file, and that the company has no way to track how much revenue any driver might generate. Mr. Davis stated that drivers "shouldn't" make personal use of a cab, but was unsure whether the contract prevented them from doing so. He then stated that a driver could not hire a substitute driver to operate the vehicle because the driver does not have an authority and only those contracted with [Happy Cab] would be allowed to drive by the Commission. Mr. Davis stated that none of the drivers hire others to operate their cabs during off hours or vacation time and that he believed the contract prohibited this practice.

Mr. Davis stated that someone wanting to become a driver would fill out a request to contract services. Without the document in front of him, he could not recall the specific items on that form, but said it asks for "a number of identifying information (sic)." New drivers must get a city permit, submit to a drug screen (which is set up individually to be performed by either a doctor of the drivers choice or by a vendor recommended by the company), pass a criminal background check, and undergo an orientation. Orientation consists of learning the roles and responsibilities of both the independent contractor and the company as the authority holder (this portion is conducted by company staff) and a ride-along with an experienced driver. Mr. Davis stated that all rules and obligations for the drivers are contained within the contract documents.

Mr. Davis then testified that drivers pay for their own fuel costs and the company provides maintenance on the vehicles. The company performs monthly inspections on each vehicle at its maintenance facility for independent contractors, while owner-operators may have their vehicles inspected there or inspected somewhere else. If a driver fails to show up for an inspection, the company tries to reschedule it for a more convenient time, but does not terminate an agreement due to failure to appear. Mr. Davis said that contracts with independent contractors have been terminated due to driver negligence, failing to operate a vehicle within the regulations of the state and/or the Commission, putting the general public at risk, and anything that is in breach of contract.

Mr. Davis testified that all drivers are required to charge the rates set by the Commission and that if a driver gets an opportunity, for example, for a fare from Omaha to Chicago, they can take it. He testified that in those situations, the company prefers to take a look at the vehicle before the fare, but that is not a requirement and a driver would not be in breach of contract for failing to have the vehicle inspected before taking such a fare.

Mr. Shultz then asked whether Happy Cab drivers had any special skills that employees do not have. Mr. Davis responded that independent contractors have an entrepreneurial spirit and can cultivate business while an employee cannot; he then stated that important skill sets for drivers were interpersonal skills, communication and having a sense of urgency. He was unable to speak to whether employees have those skills or not.

On redirect examination, Mr. Pollock began by asking for more explanation of skills expected of drivers. Mr. Davis said he would expect drivers to have thorough knowledge of geography and the most direct routes, to be able to use GPS, have good interpersonal and communications skills and to be "well versed" in customer relations.

Mr. Davis stated that he was not a lawyer and did not know if a document using the term "lease" is using it as a legal term or not. Further, he testified that legal counsel drafted the independent contractor agreement and the equipment lease agreement and that the company followed legal counsel's advice in choosing not to file the independent contractor agreement with the Commission. He certified that, to the best of his knowledge, equipment lease agreements are filed with the Commission, though he is unaware of what the Commission then does with those agreements.

Mr. Davis testified that he was aware of Capeace, a company that filed an application for authority in Omaha, and that he believed it is an open class service. He also testified to familiarity with Safe Knights, which was approved by the Commission, though he wasn't sure if they were classified as cab service or open class service.

Mr. Davis testified that he was unaware of the extent of state regulation of taxi service in Iowa, Wisconsin, Minnesota and Kansas or how much regulatory authority was given to the

cities. He testified that, he believed, Exhibit 17 (letter from Mr. Sullivan) was drafted in response to some "misinformation" given by Mr. Kirby Young at the legislative hearing on LB 889.

Referring back to the availability of drivers and the "Christmas Day hypothetical," Mr. Davis testified that Happy Cab uses independent contractors in Omaha and that there had never been an issue on Christmas Day because too many drivers took time off. He further stated that there had never been a situation in which all drivers took time off simultaneously and opined that it was an impossible scenario that would never happen in Lincoln. If it did ever happen, Mr. Davis stated that he would take action to address it.

Mr. Davis then affirmed that when drivers hit the "reject" button to refuse dispatch rides, they do so before receiving any information regarding the nature of the ride and know nothing about the particular passenger. He also restated that all drivers are required to comply with Commission rules, including those that limit the circumstances under which a driver may or may not reject a ride.

Mr. Davis testified that drivers keep log sheets, which show the date, time, vehicle, pick-up location, drop-off location, and the fare for each ride. The company is then able to get information about what revenues (being akin to fare) the drivers are receiving through the log sheets.

Mr. Davis testified that drivers are not required to work in a particular zone, but are free to choose the zone in which they want to work. Drivers have control over where they operate their vehicles and when they do so, subject only to the Commission requirement that they not work more than 12 hours per 24 hour period.

Mr. Davis then testified that Happy Cab services, maintains, inspects, and repairs the vehicles. The company also ensures that vehicles are in compliance with Commission safety regulations and requires each vehicle to be registered with the Commission and plated. The company also takes responsibility for ensuring the meters are sealed and operational. When fines were levied for one instance where there were problems with the sealed meters, the company, not the drivers, paid the fines. Finally, Mr. Davis reaffirmed that the company ensures the vehicles are insured.

Mr. Pollock then moved on to the *Hemmerling* case, which Mr. Davis said was "somewhat" familiar to him. Mr. Davis testified that dispatch was an option for drivers, but that drivers are not required to take calls and are not required to purchase dispatch services. Drivers are not assigned to zones and the company does not provide a self-insurance fund. Drivers are allowed to carry cell phones and they are not contractually prevented from using them while driving unless that would violate Commission regulations or state law. Mr. Davis further stated that drivers could take calls directly from clients (referred to as "personals") and that these may be with individuals or through commercial accounts, such as with ConAgra and Valmont. Some drivers handle their own accounts receivable, carry their own GPS units, and maintain their own websites. These websites are not owned, paid for, or designed by the company. The GPS units are not owned by the company.

Mr. Davis testified that he could recall only one claim before an administrative agency made by a Happy Cab driver for unemployment insurance. The claim was denied because, according to Mr. Davis, *Hemmerling* is no longer relevant and the agency determined that the driver was an independent contractor (rather than an employee). Mr. Davis testified that there had been at least three workers' compensation claims by drivers or their estates: two of which had been denied, and one of which was dismissed without prejudice. In the one that was dismissed, there was no settlement; rather Mr. Davis believes the driver's attorney decided it lacked merit. Those that were denied were based on the drivers' status as independent contractors rather than employees. Mr. Davis stated that he was unaware of any investigation of Happy Cab's use of independent contractors by the Department of Revenue, though maybe Mr. Mitchell would know something about that. Mr. Davis did state that Mr. Young had filed a complaint with the Department of Labor, which called Happy Cab and asked for documentation of the contract structure. Mr. Davis testified that the requested information was provided and that, to his knowledge, the Department of Labor had not contacted them again.

The Commissioners then questioned Mr. Davis on several matters. Mr. Davis testified that some drivers receive first aid training, which the drivers pay for themselves, and that this is a requirement for certain state contracts. He then addressed the company's approach to tracking response times. Mr. Davis testified that the company does not keep track of average times (from the time when a customer call dispatch to

when the pick-up is actually made), but the dispatcher monitors this information in real-time and adjustments are made accordingly. There are no periodic reviews on a weekly or monthly basis, rather the company monitors issues on a shift-by-shift basis. Mr. Davis gave the example of a snowstorm, where wait times may be up in a certain area or for a certain time block; those situations are handled proactively, for example, by putting out a call for more drivers to come and help. Mr. Davis then testified that of the 220 vehicle fleet in Omaha, a minimum of 210 would meet all the requirements of the Commission to be "street-ready." Mr. Davis testified that the vehicles Happy Cab would use in Lincoln would be drawn from the reserve pool and that some of them may be compressed natural gas (CNG) vehicles. Mr. Davis later stated that he expected to contract with drivers for the vehicles servicing Lincoln.

Commissioner Schram then asked Mr. Davis to talk about the types of drivers working for Happy Cab, how many hours they want to work and what situations determine the hours they work. Mr. Davis said this would be better directed toward the individual drivers, but that many of them work around school or child care schedules, while some are more focused on income, developing business and learning trends in the community. Mr. Davis then testified that one owner-operator driver was contracted with Safeway and continued to contract with Valor after it purchased Safeway and that driver is retained under the arrangement that the driver previously had with Safeway.

Commissioner Landis asked Mr. Davis about his experience in Omaha with having sufficient service in the early morning/bar closing hours. Mr. Davis testified that they are typically poised to meet that anticipated peak in service and that drivers are prepared for the business trends, whether that means working the dispatch system or going to open cab stands. Mr. Davis further testified that, in his experience, drivers made themselves available to meet the needs of business, even in the early morning hours. He further stated that having permanent cab stands in entertainment areas is very important for meeting those particular needs when people leave bars in groups at or near closing time.

Commissioner Vap asked how many drivers might "really like hauling drunks around at two-o'clock in the morning" and would target that market. Mr. Davis testified that in Omaha, 80 percent or more of the drivers are out around that time. He testified further that the "bar rush" in Omaha was generally

from 8 or 9 p.m. to 2:30 or 3 a.m. (7 hours of a 12 hour day), but that this did not negatively impact day service because the heavy bar traffic is on Friday and Saturday nights and day traffic for those days is pretty slow.

Mr. Pollock then continued with more direct examination, at which point Mr. Davis testified as to the creation of the cab stands in the Old Market area of Omaha. Mr. Davis testified that they worked with others, such as restaurants and development groups, in setting up cab stands in Omaha and that he anticipated setting up similar cab stands in Lincoln where stands and bus stops are located. Mr. Davis testified that Lincoln would have its own dispatch operations, but that it would work in concert with Omaha operations and calls could be received in either place.

Mr. Shultz then proceeded with re-cross. Mr. Davis testified that he had no idea if Safe Knights is currently operating in Omaha. He then testified that Happy Cab has a security bond in which drivers build up a balance that can help to repair damage to a vehicle caused by a driver's negligence (drivers are ultimately responsible for damages caused by their negligence). Mr. Davis then admitted that it was "possible, but unlikely" that all 20 drivers in Lincoln could decline to work on the same date because it is the driver's decision whether or not to work.

The Applicant next called Heath Macomber to the stand. Mr. Macomber has owned and operated the Hour Lounge in downtown Lincoln for the last year and a half; prior to that he worked as a bartender for 12 years, mostly in Lincoln. Mr. Macomber testified that over the years numerous people have asked him what the number for a cab is, or how to get home or back to the hotel. He testified that he has seen a lot of frustration from people trying to get cab service, especially during peak bar hours of 1 or 2 a.m., when sometimes cab companies did not even answer the phone.

Further, he stated that the biggest concern for bar patrons is long wait times. He testified that on one occasion he took a cab home on a game day and was told there were only seven cabs in service, and on another occasion he picked up some patrons from out of town because they were unable to get cab service. Mr. Macomber testified that visibility used to be the biggest problem with cab service in Lincoln, though this has improved recently, but that wait times, problems getting in touch with

cabs, past experience, and cost were all reasons why people do not take cabs in Lincoln. He said that recently he saw six or seven cabs downtown on a weekend night, but that he did not think that was adequate when his bar holds 300 people and there are 10 or 12 other bars in close proximity. He absolutely believes there is need for additional cab service or an additional option in Lincoln. He then testified that if Happy Cab were to be granted authority, he would recommend their service to his customers.

Mr. Macomber followed up his earlier comment that the Lincoln cab service had been more visible by stating that this had taken place within the last year and that he had personally met with the university and the cab company representative last summer, when they stated an intention to be more visible and do better. He stated that he would love proactive communication from cab companies trying to figure out how best to serve the bar crowds downtown, both to hear their plans and to give advice on what is needed. Mr. Macomber finally testified that his primary concern was for the safety of his patrons and ensuring that they do not drive under the influence of alcohol.

On cross examination, Mr. Macomber testified that he has not had any problems recently with regard to personal use of cab service in Lincoln. He further stated that getting customers home safely was a joint effort, in which bars could help by not overserving and things like that.

When the Commissioners asked Mr. Macomber a few questions, he testified that he did not really know how cab companies would make things work in Lincoln, but that he felt independent contractors with entrepreneurial spirits could find a solution and that he was particularly worried about being able to provide service to out of town people attracted to Lincoln by the arena. Mr. Macomber testified that he would try to find people a ride home from his bar on days when it was not busy, but that it was not possible to do so with big weekend crowds, and that he does not recommend cab service in Lincoln.

The Applicant next called Steve Hilton to the stand. Mr. Hilton is the general manager of the Embassy Suites in downtown Lincoln. He has been at the Embassy Suites for the last five years and manages 220 full and part time associates as well as 25 managers on staff. Of those 25 managers, Mr. Hilton testified that five to ten have direct contact with guests needing services or transportation and that while he is not

involved directly with the guests, he communicates with those managers about transportation issues. He testified that the consensus among his managers is that there is limited availability of cab service for their customers. He then relayed the story of one elderly man who comes to the hotel after football games to wait for a cab ride home. He said the man waited, sometimes up to two hours, for a cab while sitting in the hotel lobby. Because of the frequency of these occasions and the lack of dependable cab service, Mr. Hilton testified that the hotel now just takes the man home when he comes to the hotel rather than calling a cab for him.

Mr. Hilton testified that his front desk managers were frustrated by the lack of availability of cabs for guests who want to go out to the bars and be able to get back later, and that the availability was a problem at all times—not just on game days. He also testified to the lack of accurate times of arrival, saying that sometimes there is a long delay, but sometimes a cab service will say it will be there in 50 minutes, but then show up in 10 minutes—so the people who called the cab are not yet ready to leave and the driver cannot sit and wait for 40 minutes. Mr. Hilton said he would definitely recommend Happy Cab to his guests if they are granted authority. Mr. Hilton testified to living in Chicago, Boston, Houston and Charleston, South Carolina, the latter of which is similar in size to Lincoln, and that (specifically in Charleston) the cab service was much more effective than in Lincoln.

On cross-examination, Mr. Hilton testified that he did not know the cab business, but that adding 20 cabs in Lincoln would solve the need. He stated that he had not spoken with other hotel managers and that Embassy Suites operates a shuttle to and from the airport and to a few local offices they've negotiated a relationship with. Mr. Hilton then testified that tourism is different in Lincoln and Charleston, but they are similar because of size and tourism is still cyclical. Finally, he testified that the Charleston airport is busier than the Lincoln airport.

Answering questions from the Commissioners, Mr. Hilton stated that he had not personally contacted the local cab company to express his frustration, but that he believed his managers had called enough times to ask for service.

The Applicant next called Thomas Massey to testify. Mr. Massey is a long-time Lincoln resident and the current director

of sales and marketing for a subsidiary of NelNet. Mr. Massey testified that NelNet has need for cab service due to executives flying in for meetings at the corporate office. He stated that NelNet's current practice is generally to pick people up from the airport when they fly in to Lincoln because it is easier and quicker to do that than it is for them to rent transportation or take a cab.

On a personal level, Mr. Massey testified to frustration with the long wait times and high expense involved with taking cabs in Lincoln. He specifically relayed one instance where he went to a show at the Lied Center, called a cab to pick him up, was told it would arrive in 30 to 45 minutes, and after an hour with no cab, he got a ride home from a friend. Another time, Mr. Massey waited for a cab on a game day in October for "a while" before giving up and walking home.

Mr. Massey testified that he flies all over the country, but that he has never been anywhere where cab service is as expensive—per mile or per minute—than it is in Lincoln. Mr. Massey testified that more cabs and shorter wait times are needed to alleviate these problems. He then stated that he hadn't had to wait for cabs in Omaha, where he took rides from the Old Market, because the cabs were just available. Mr. Massey then testified that he absolutely believed additional cabs are needed in Lincoln, that he would use Happy Cab if they are granted authority and that he would recommend Happy Cab to business affiliates coming into Lincoln for travel.

Referring back to personal experiences related to business travel, Mr. Massey testified that at least two or three times in the last year, people flying in for business meetings at NelNet have asked Mr. Massey or someone else from the office to come pick them up from the airport because they did not want to wait for a cab. Finally, Mr. Massey testified that, though business travelers sometimes get stuck paying more than they want to pay, the biggest concern they have flying into Lincoln is the lack of availability of cab service.

On cross-examination, Mr. Massey testified that there was not a central person at NelNet with responsibility for arranging for cab service and that making such arrangements is not his duty. He also stated that there is some personal benefit to picking up business associates at the airport. Mr. Massey clarified that his experience with trying to get a cab from the Lied Center had happened within the last quarter and admitted

that he was unaware of how taxi rates are set in Lincoln. Finally, Mr. Massey testified that it made no difference whether one authority put 20 cabs on the street or if five authorities put a total of 20 cabs on the street.

Answering Commissioner Schram's question, Mr. Massey stated that he was unaware of any public transit buses providing service between the airport and downtown. In response to Mark Breiner, Mr. Massey testified that he did not know of any other sedan services that could take clients to the airport, other than OMALiNK, which he believes only provides service to and from the Omaha airport.

The Applicant next called Mr. Nick Goodwin to testify. Mr. Goodwin is a recent graduate of the University of Nebraska-Lincoln and currently employed as a copywriter/producer at Thought District in Lincoln, where he has been working since January 2012. Mr. Goodwin has lived in Lincoln for the last five years, except for five months last year when he was in Omaha. Thought District is a Lincoln-based advertising agency founded by Eric Dinger, a Lincolnite, within the last ten years.

Mr. Goodwin testified that most of his experience with Lincoln cab service was through the University's 475-RIDE program, but last summer he and a group of friends did call a cab and had to wait for an hour for it to arrive. He testified that this long wait time is, in his opinion, the biggest problem with taxi service in Lincoln. He testified that previous experiences with cab service in Omaha had involved wait times of less than five minutes, and that it seemed like Omaha was a little cheaper. He further testified that he no longer tried to use cab service in Lincoln, in part because of his prior experience and because he now lives downtown. He concluded by stating his belief that fewer people would drive after drinking if cab service was more readily available.

On cross-examination, Mr. Goodwin followed up on his earlier testimony by providing more details surrounding the previous bad experience he had with cab service in Lincoln. He testified that the group had been drinking and it was approximately 2:30 a.m. when they called a cab.

The applicants next called Ms. Amy Kloefkorn to testify. Ms. Kloefkorn has been a Lincoln resident for eight years and is the director of recruiting for the Lincoln office of Northwestern Mutual. Ms. Kloefkorn testified that her

experience with cab service in Lincoln has been for personal, rather than business, reasons. She has not used cab service here for the last 9 to 12 months, but said she had used it "a lot" over the last eight years. She testified to prior experiences when it had taken cabs anywhere from one to two hours to arrive, including one occasion upon which it took an hour and a half and two calls to the cab company to get a ride. She testified that on game days and holidays cabs are essentially impossible to find downtown and that she had also experienced long wait times on other (non-game day or holiday) weekends. Ms. Kloefkorn then testified that she had never waited more than 20 minutes for a cab in Omaha. She stated that competition to drive down prices and increased availability of cab service would serve to alleviate some of the problems with cab service in Lincoln. She also testified that additional cab service is necessary in Lincoln to accommodate the increased traffic that will occur incident to the West Haymarket project being completed. Finally, Ms. Kloefkorn testified that people in Lincoln do not use cab service because they perceive it negatively, but that she would use Happy Cab if they are granted authority.

On cross-examination, Ms. Kloefkorn testified that her experiences with cab service had been in trying to get a ride home from downtown after having too many drinks to safely drive home. The instance wherein it took an hour and a half to get a ride was not a game day. Ms. Kloefkorn testified that she did not know how many cab companies were needed in Lincoln or whether one company operating 20 cabs was better than five companies operating four cabs each, but that she thought more companies would help to foster competition.

The Applicant then called Mr. Mark Mitchell to testify. Mr. Mitchell is the president of Happy Cab Company and has been since May of 2000. Mr. Mitchell testified first about para-transit and handicapped transportation services. He stated that there are numerous carriers providing those services in the Omaha market, including a subsidized public transit authority program. He stated that, due to the low rates, most people would choose the public transport authority option, and that there is so much competition in Omaha that at least one carrier recently filed bankruptcy due to the low rates. Mr. Mitchell explained that Happy Cab does not currently have authority to transport people in wheelchair-accessible vans and that those vehicles are usually larger commercial vehicles. He testified that Happy Cab is not seeking to change its vehicle restrictions

in this application, but to provide the same service they currently provide in Omaha to Lancaster County. Mr. Mitchell confirmed Mr. Davis's testimony that Happy Cab made a five-year agreement with Transport Plus to restrict the use of wheelchair vans, but again stated that Happy Cab had not applied for that authority. Further, he stated that if the Commission thought it prudent and proper that Happy Cab have wheelchair-accessible vans, the company would be willing to consider it, subject to further negotiations with Transport Plus.

Mr. Mitchell then testified that the Nebraska Department of Revenue had conducted a routine examination of Happy Cab in July of 2010. He said the Department reviewed all of Happy Cab's business practices and did not raise any concerns about the independent contractor model. He then testified that Happy Cab had never been investigated by the Internal Revenue Service for its use of independent contractors as drivers.

Mr. Mitchell testified that Happy Cab would not limit its service to Husker game days, but that its drivers were interested in coming to Lincoln—even from Omaha—to work on game days, despite the added costs and drive time to get to Lincoln.

Mr. Mitchell then explained that a driver contracts with one specific authority and remains under contract with that authority for as long as they choose to contract with Happy Cab.

Mr. Mitchell testified that Happy Cab had no immediate plans to market itself in the Lincoln community and that it would wait to do so until they had established a foundation in Lincoln. He said that it sometimes took some work to help the independent contractors become successful and to build a solid team, and that Happy Cab would put in place two full-time personnel in Lincoln, as well as he, his wife, and Mr. Davis, to figure out the weekend traffic patterns in order to find ways to meet the demand.

Mr. Mitchell then testified that he attends two trade shows each year, where he is able to gain knowledge and expertise from others in the business from around the country. He also reads industry reports. Mr. Mitchell said that roughly 80 percent of cab companies nationwide use the independent contractor model, including in the nearby cities of Des Moines, Kansas City, and Denver. He stated there are several reasons for the use of this model, including a reduction in theft by drivers and the ability to pay drivers on a daily basis rather than bi-weekly as an

employee might be paid. However, Mr. Mitchell testified that the independent contractor model was not necessarily less costly to the company and that he personally would probably make more money by hiring employees. He also stated that the vast majority of his drivers like the independent contractor model and do not want to be employees.

Mr. Mitchell then testified that the business model is working well, that Happy Cab's rates are competitive with the rest of the United States and that Happy Cab has very few complaints lodged against it. Mr. Mitchell admitted that fares could be higher sometimes in Omaha than in larger cities, but credits this difference to the greater mileages traveled. Because Omaha is spread out, he said, the average cab trip is longer in Omaha than it would be in Las Vegas or Washington, D.C.

On cross-examination, Mr. Mitchell said he did not know if Lincoln had a subsidized para-transit company similar to that in Omaha. He clarified that the agreement reached with Transport Plus that prevents Happy Cab from providing para-transit service in Lincoln was made in exchange for Transport Plus withdrawing its protest to Happy Cab's application for authority. Mr. Mitchell agreed to provide the written agreement as a late-filed exhibit.

Mr. Mitchell testified that he does not believe Happy Cab has the authority to transport with handicapped-accessible, wheelchair-equipped vans, due to the Commission regulations for taxicabs, which mention sedans. Mr. Mitchell testified that they also use minivans, but states they are not commercial vehicles suitable for commercial wheelchair lifts. Mr. Mitchell stated that though Happy Cab operates minivans and sedans as taxis, it has chosen not to enter the market for handicap transport.

Mr. Mitchell then talked about the arrangements made with owner-operators. He testified that each new agreement is filed with the Commission and then renewed on a yearly basis. The renewals are not filed with the Commission, as the Commission has not requested them and Happy Cab has not provided them.

Commissioner Schram then questioned Mr. Mitchell about how the company would ensure an adequate number of drivers remained in the Omaha market on Husker game days when a number of drivers would want to come to Lincoln. Mr. Mitchell explained that the

company keeps up with special events and asks drivers to communicate their intent to provide service at those events. He further testified that if there were too many people on the list coming to Lincoln, they would share that concern with the drivers and go from there. He said they will be working on exploring and dealing with this situation and the drivers would be doing the same.

Upon redirect examination by Mr. Pollock, Mr. Mitchell testified that when he receives a plate after filing a lease agreement with the Commission, that he understands that as the Commission's approval of the agreement. Mr. Pollock then entered the Transport Plus settlement agreement into evidence. Mr. Mitchell testified that this agreement led Transport Plus to withdraw their protest to this application. In addition to the restriction with regard to wheelchair passengers, Mr. Mitchell testified to two other restrictions in the agreement: transportation of railroad crews and Star Tran passengers. Mr. Mitchell testified that the company does not have authority to transport railroad crews, but they agreed to the restriction in the settlement agreement as well. Mr. Mitchell testified that the restriction regarding Star Tran passengers was to prevent Happy Cab from entering into a contract with Star Tran to carry its passengers—not to provide a blanket restriction against carrying anyone eligible to be a Star Tran passenger. Mr. Mitchell testified that he believed the lease agreement was in reference to contracting with Star Tran at a discounted rate, but that Mr. Davis drafted it and would be better able to explain. Mr. Mitchell then stated that, should the Commission or Star Tran say that the language in the agreement (with Transport Plus) needed to be reworked to correctly address the situation, the company would be willing to do that.

On re-cross, Mr. Mitchell testified that Happy Cab had chosen not to enter the para-transit market and that his understanding is that they are not authorized to enter that market with a taxicab authority, but would instead need an open class authority. Further, he reiterated that the company's minivans were not properly equipped to move people in wheelchairs and that they could not purchase properly equipped vehicles and provide that service without an open class authority. Mr. Mitchell did point out that they provide transportation to people with other types of disabilities that are able to get into the vehicle. Mr. Mitchell restated that his understanding was that Happy Cab does not have authority to transport railroad crews and added that the company had not

transported railroad crews in the time in which he has been involved there. Also, Mr. Mitchell testified that, though a restriction was placed on transporting railroad crews in the settlement agreement with Transport Plus, Happy Cab did not ask for that authority in its original application.

With regard to the language of the settlement agreement limiting Happy Cab from providing "transportation of passengers requiring vehicles that are specially equipped to accommodate wheelchairs" for five years, Mr. Mitchell testified that his understanding was that Happy Cab would be unable to transport passengers in wheelchairs for five years. He further stated that Happy Cab does not have the authority to transport people in wheelchairs and would still need to get that authority from the Commission in five years if it chose to enter that market.

The Applicant called Ms. Jenny Martin to testify. Ms. Martin grew up in Lincoln, but moved away after high school until about five years ago. She has an MBA in Finance and came back to Nebraska as an executive with National Research Corporation in downtown Lincoln. In that role, Ms. Martin was responsible for recruiting new talent to the company. Currently, Ms. Martin is one of the leaders for Nebraska Global, a Nebraska-based software venture capital firm that invests in Nebraska entrepreneurs.

Ms. Martin testified that she has traveled frequently over the last five years and has had occasion to use cab service in Lincoln. She relayed one specific instance where she flew in to the Lincoln airport late at night expecting to be able to take a cab home; when there were no cabs at the airport, she called for one and had to wait an hour for a ride. On her next business trip, Ms. Martin said that she called the cab company before she left Chicago and tried to line one up to be at the airport, but Servant Cab said they could not do that. Ms. Martin testified to other instances where her company suffered embarrassment when planning itineraries for talent recruited to Lincoln because she had to insist that someone pick people up at the airport and admit that cab service was unreliable. She claimed that she wanted Lincoln to make a good impression on visiting recruits and that the gap in that process was the lack of cab service from the airport.

Due to these instances, Ms. Martin testified that she no longer took cabs unless she was in a "tremendous bind and had a long time to wait," but she did relay another story about her

husband's experience with a cab in Lincoln. Ms. Martin said that her husband got a cab from the airport to their home, but instead of turning from Highway 77 onto Van Dorn, the driver went all the way to Crete because he was unfamiliar with the highway. Her husband paid an $80 cab fare that was later refunded by the company, but was distressed at "the very poor service at a very exorbitant rate."

Finally, Ms. Martin testified that when she did take a cab home from the airport, she was very surprised at the price of the fare and said that the experience was so different than cab service in other cities that she at first believed she was being defrauded. Ms. Martin further stated that if Happy Cab charged 60 percent of what Servant Cab charges, she would not necessarily be confused, but would expect more value from the higher priced service. She compared this to getting a haircut, saying she did not mind paying a salon a little extra for a haircut if the service exceeds that of another salon, but if the service is the same she wants the less expensive option.

Ms. Martin restated that she had waited an hour at the airport for a cab in the first instance she mentioned and that this was the wait time the cab company told her to expect. She also clarified her meaning as to the "cab gap." Ms. Martin testified that when bringing recruits into Lincoln, she did not want to project her experience with cab companies on to the recruits because she wanted them to want to live in Lincoln. She stated that no one wants to pick people up at the airport; that instead we want people to be able to jump in a cab and have the freedom to move around the city. Because this was not possible (the "gap"), Ms. Martin and the associates at the National Research Corporation had to compensate by providing transportation to recruits.

On cross examination, Ms. Martin testified that her personal experience at the airport was four and a half years ago and the second time was three to four months after that; her husband's trip to Crete was about three years ago. In the intervening time, Ms. Martin testified that she has had reason to use cab service, but has made other arrangements because of her previous experiences.

Ms. Martin testified that, in her professional capacity, she had occasion to look at various business models, including those where people were treated as employees in one model and independent contractors in another. However, she testified that

she did not have any expertise or familiarity with taxicab models. Mr. Shultz asked whether "an entity [that] doesn't purchase workers' comp, pay state or federal unemployment or pay Social Security . . . should be able to operate at a lower cost than a competitor who does." Ms. Martin replied that her only viewpoint on that matter was that she had worked as an independent contractor in the past and stayed competitive with whatever the market could bear. Lastly, Ms. Martin testified that the passenger volume through airports in New York, Atlanta, and DC is likely higher than that in the Lincoln airport.

On redirect, Ms. Martin testified that if she owned a business and was advised by legal counsel that either an employee or independent contractor model was legal and proper, but that she would make a higher margin with the independent contractor model, she would use the model with the higher margin provided that the service was as good or better. She further stated that her opinion was from an end-user perspective and as a person who helps entrepreneurs make money.

The Applicant next called Dr. Michael Patestas to testify. Dr. Patestas has been a chiropractor in Lincoln for almost six years and has had numerous experiences with Servant Cab. Dr. Patestas testified that some of his patients arrive by taxicab and he has to call a cab to pick them up, with the normal wait time being about an hour. He also stated that many of his patients are injured or have back pain and cannot fit into a Toyota Prius; also he stated that overweight patients have trouble fitting into a smaller car. Many patients complain about the rates as well. Dr. Patestas also stated that his customers were very frustrated when they had to wait an hour for a cab to get there, have the appointment, then wait another hour for a ride home. He testified that this caused problems with customer satisfaction because when customers arrive to an appointment unhappy, they tend to leave unhappy.

With regard to personal experiences, Dr. Patestas testified that, about a year ago, his car broke down and he had to take a cab to the bowling alley from work. The taxi on that occasion took an hour to arrive and Dr. Patestas testified that it smelled like smoke.

Dr. Patestas testified that his patients' problems are ongoing, especially in the mornings and afternoons during the school year, when wait times are closer to an hour and a half. He stated that he had lived in larger cities and used a lot of

cabs in the past and that they were easier to get, either because they were hailed on the street or arrived in about twenty minutes. He thought that if more cabs were available the problems would be alleviated and that he would definitely give Happy Cab a try to see if it was better. He testified that he believed that both the prices and the wait times would be lower with more competition.

Dr. Patestas said that some customers prescheduled pick ups by calling for a cab when they arrive at his office, but that he does not know a ratio for how often that happens.

On cross examination, Dr. Patestas admitted that he sometimes runs late in his appointments but never an hour behind schedule. He then stated that he did not contact the cab company to complain after his experience getting to the bowling alley because he thought one hour wait times were the normal in Lincoln.

Dr. Patestas then testified that he treats some patients that are on disability or Medicaid and that they make their own arrangements for cab service, though Medicaid pays the fares.

He restated that it was easier to get cabs in larger cities and that he thinks having more cabs available would be of assistance in Lincoln. He did not have an opinion as to how many cabs would be needed.

Hardy Holm appeared as a witness in the public comment section of the hearing (he came early because he was unavailable for the portion of the proceeding set aside for public comment). Mr. Holm owns Holm Enterprises, a Lincoln-based business. He stated that he used cab service in his business and was often frustrated and sometimes missed deliveries when the cab told him it would arrive in 15 to 45 minutes and ended up taking an hour and a half. Due to the bus system changing its routes, Mr. Holm does not have to use cabs as often as he once did, but thinks the service has gotten better in the last year or so. Mr. Holm stated that capitalism does not work very well without competition and that all parties would receive better service if there was competition in Lincoln.

Mr. Holm also testified to difficulties in getting cabs for personal reasons, such as getting rides home from concerts or other events. He talked about one specific instance where he and his wife waited with a young lady outside of Pershing for

over an hour for a cab because they did not want her to have to be alone.

Finally, Mr. Holm talked about his experiences with cab service in Omaha. He stated that when the cab drivers tell him they will be there in 10 minutes they show up on time, that it was nice to be able to get the cell phone numbers of individual drivers and that he wished he could contact drivers directly in Lincoln. He also noted that the cab rates in Omaha were lower and the service was more dependable.

The Applicant then called Mr. Bradley Loos to testify. Mr. Loos was born in Lincoln and has lived in or around Lincoln for most of his life. He was in the Navy from 1973 to 1977, during which time he was blinded. Mr. Loos testified that he was not for or against any particular cab company, but wanted to get the best service possible. He thinks the best way to accomplish that is through competition. Mr. Loos said he has been using cab service in Lincoln for 35 years and that sometimes service is good and sometimes it is lousy, but competition is always a good thing.

Mr. Loos testified that he and his wife, who is also blind, have used public transportation in other towns, including cabs, and that the service was improved immeasurably by being able to contact drivers personally. He relayed one instance where he waited for two hours for a cab and asked the cab driver if it had been a busy day when he finally arrived, only to have the driver inform him that he had been sitting empty for two hours and had just gotten the call. He talked about another instance where he called a cab and waited for 30 to 45 minutes before calling again and being informed the cab was on its way; after another hour, he said, he called back and the company said the cab was still on its way. Mr. Loos thought these types of communication problems could be eliminated if customers were able to directly contact drivers rather than going through dispatch.

Mr. Loos testified that if Happy Cab came to Lincoln, they would develop a reputation as either a company that usually gives good service, sometimes gives good service, or rarely gives good service, and that he would call whichever company is dependable and charges reasonable rates. He then testified that it concerned him that sometimes the service was good and sometimes it was bad (with Lincoln cab service), and that, much like choosing a restaurant or going to a store, people like to

have choices. He testified that he and his wife take a bus to most places they go and walk to their destination from wherever the closest bus stop is located.

Mr. Loos said that when waiting for a cab, sometimes he has the convenience of having a warm place or the weather is nice, but other times the weather is miserable and there is no choice but to wait outside; the longer it takes, the more uncomfortable it is to wait, and so it would be good to be able to get a cab promptly. He testified that it is hard to get a cab in the mornings and evenings during the school year, when there is a home football game, and when the weather is bad, but that every now and then a cab would still show up in five minutes. He said that competition is a good thing because it inspires people to give the best service possible.

Further, Mr. Loos testified that he would love to be able to call drivers personally. He added that having a dispatcher is still good for when a person doesn't have the number of a driver, but that having the ability to call both would be best. He testified to being able to get personal phone numbers from cab drivers in Baltimore, Washington D.C. and other places, but that he gave up asking drivers for cell phone numbers years ago in Lincoln because it had never been an option and he was tired of being told "no." Mr. Loos also said that rates were higher in Lincoln than in many places he had traveled and that the last rate increase seemed to be unusually high.

Mr. Loos then testified that he is a representative of the National Federation of the Blind, Lincoln chapter. In that capacity, Mr. Loos said that he appreciated Happy Cab's commitment to communicate with the Federation on a regular basis, as he thinks it is always good to be in touch with people with which you do business. He testified that he would wait and see whether Happy Cab kept that commitment when they got to Lincoln. Mr. Loos said that now and then Servant Cab would send somebody to a Federation meeting, but that it was a surprise when Servant Cab increased its rates about a year ago. Finally, he stated that it would be good for Happy Cab to notify the Federation of any rate increases.

Mr. Loos did not speak to any more specific issues with Servant Cab's service, but said that when you do business with people over a long period of time there are good instances and bad instances: sometimes you may wait for two to four hours and people are rude, other times a cab arrives immediately and

people are friendly. He thinks this is the same with any company, but he would give Happy Cab a try if they get authority because it is nice to have choices. He concluded by testifying that there is a need for additional cab service to give consumers choices.

On cross examination, Mr. Loos stated that he arrived at the hearing after taking a bus to the State Office Building and walking the rest of the way, and that he uses the bus quite often and whenever possible because a bus is cheaper than a cab. He talked a little about the limitations of bus service: they do not run at night, on Sundays, or on holidays, and on Saturdays it takes twice as long to get somewhere. Mr. Loos then testified that the frequency of his use of cab service varies; sometimes he uses them often and sometimes he goes quite a while without using one. Mr. Loos concluded by stating that if Servant Cab drivers can give out their phone numbers that would be beneficial.

In response to Commissioners' questions, Mr. Loos testified that it had been a while since he took a cab to get downtown from his home, but that he thought the last time he did so it cost around $20. He was unable to estimate how much he and his wife spend per month on cab service, because their usage varies so much from month to month.

The Applicant next called Mr. Josh Thompson to testify. Mr. Thompson is originally from San Dimas, California, but is currently working for the Association of Students of the University of Nebraska (ASUN) where he is in charge of recording usage statistics for ASUN's 475-RIDE program. 475-RIDE is a program whereby students may get cab service at no charge (to the student) as a last resort due to intoxication or emergency. Mr. Thompson testified that he records the data and identifies those students who abuse the program by using three or more times in a month.

Mr. Thompson then testified specifically regarding Exhibit No. 7, which contains data generated by Mr. Thompson as part of his job. Mr. Thompson testified that he provided the document at Mr. Pollock's request, that it was a public records request, and that Mr. Thompson was present at the hearing on a subpoena. Mr. Thompson identified the total cost for January 2011 as $2,152.60, per Exhibit 7, but testified that this is not actually a summary for January 2011 data. He testified that Exhibit 7 contains both monthly summaries and daily reports and

that he regularly combines these into documents and maintains those documents as part of his regular job duties with ASUN. Mr. Thompson stated that this is his third semester in this job.

Regarding the summary from February 2011, Mr. Thompson testified that the total cost in the document is $8,366.10 and that ASUN gets 7.5% off as a discount. Mr. Thompson testified that the documents show the number of days in the month, number of hours per day and cost of the program per day, per hour, and per ride. He stated that the cab service is open from 7 p.m. to 7 a.m. daily. The document also shows the average wait time, which for February 2011 was 27 minutes, 10 seconds. Mr. Thompson also testified that the document lists the average distance of the rides, the total number of riders, total number of rides, and the average number of riders per ride. It also lists the number of voids, which occur when the student is not there when the cab arrives, and cancels, where the student calls the cab back to cancel the ride. The document then shows the voids per day and cancels per day.

Mr. Thompson testified that one column labeled "week vs. week" was cutoff and represented the week vs. weekend total rides. He testified that there were 87 rides during the week and 426 during the weekend, amounting to a total cost of $1,261.65 for weekday rides and $7,104.45 for weekend rides. Mr. Thompson then testified that the average waiting time per day during the week was 25.96 minutes and the average wait time during the weekend was 27.33 minutes. Further, Mr. Thompson testified that the categories of information on the February 2011 summary are the same categories on every summary.

Mr. Thompson testified that the full months during the school year (those months not shortened by summer, finals, or vacation) are September, October, February, and April. Mr. Thompson then explained the information contained in the columns on the next page. He testified to the following: "date" means date of the ride; "time received" means when the student calls for the cab; "address" means the address where the student would like to be picked up; "number of riders" is the number of students in the cab; "dispatch" means the time the students are actually picked up; "destination" means where the cab is going; "Cab number" is the number on the cab; "time picked up" means the time the students are dropped off at their final destination; "distance" is the distance of the trip; "total cost" is the non-discounted cost of the trip; "minutes" is the total time elapsed between a student making the call and getting

dropped off. With regard to the few apparent misnomers, Mr. Thompson testified that ASUN may have kept records differently at one time, but that this was how he had been taught and he had never changed any column headings.

In summary, Mr. Thompson testified that the information he inputs into the system is provided by Servant Cab on paper slips and that the numbers from February are representative of most months, though the fall is different during football season. Even though the numbers are not exactly the same, the information contained in each monthly summary is the same. In October 2011, which is another full month, Mr. Thompson testified that the total cost was $9,270 and the average wait time was 39.88 minutes. The average wait time during the week was 74.88 minutes and during the weekend was 27.52 minutes. Mr. Thompson confirmed that these numbers are accurate reflections of the data he inputted based on Servant Cab data.

On cross examination, Mr. Thompson testified that there are no charges for voids, that the cab company absorbs those costs. He admitted that weather could have an impact on average wait times, and that football game days have higher demand for cab service and longer delays. Finally, he testified that he had no knowledge of any complaint by ASUN to Servant Cab about its service, that making such complaints is not his job, and that he did not know whose job it was to do that.

Scott Hatfield is a Lincoln native and graduated from UNL. For the past five years he has owned and managed Duffy's Tavern at 14th and 'O' streets in downtown Lincoln. He works there pretty much every night. Mr. Hatfield also serves as an advisor to the Lincoln City Council Internal Liquor Committee ("ILC"), a position he was appointed to by the Mayor.

Mr. Hatfield identified the concerns the ILC has discussed about Servant Cab, including "lack of availability, lack of professionalism, lack of response time, you know, the response time is horrible and then ridiculously high rates." He criticized the company for its lack of responsiveness to these concerns.

Mr. Hatfield testified that he thought poor wait times would improve when bars were allowed to remain open until 2:00 a.m. He said crowds began dispersing over a longer period of time, leaving less of a rush when the bar closed.

Unfortunately, wait times did not improve: "It hasn't made a difference. We have people who are literally stuck downtown."

He described patrons' response to the unavailability of cabs as "dumbfounded," "panicked" for fear of having to risk driving, and "shocked" at the level of service available.

Mr. Hatfield discussed his personal experiences, as well as those of other bar owners, with Servant Cab. He said that he and other bar owners drive patrons home on a regular basis because they cannot get cab rides. They also make other arrangements for the patrons to get home safely. He said that over the past two years, he has himself given patrons rides home about 25 times because they could not find a cab.

He related one instance three weeks ago when a group from Chicago was at his bar. The group asked for a cab, and Duffy's called only to be told that it would be over an hour before one would arrive. The group expressed concern, given a morning meeting they had. Mr. Hatfield suggested they go wait by the bus stop on 14th Street, which cabs sometimes use like a cab stand. The bar closed at 2:00 a.m. At 3:15 a.m., Mr. Hatfield said there was a knock on the door; it was the group from Chicago. They had not found a cab. He called Servant Cab again and was told that it would be over 45 minutes before a cab would arrive. Mr. Hatfield drove the group to where they were staying.

Mr. Hatfield also commented on Servant Cab's refusal to use taxicab spots immediately in front of his bar on 'O' Street. He said he has been asking Servant Cab to use those spots for four years, and only recently have they started parking in them, but still not commonly. For some time, the city was towing vehicles parked in those spots to make room for cabs, but Servant Cab still did not use them.

Mr. Hatfield testified that "the cab rates in Lincoln are ridiculously high." He said he did not believe people would be confused if the Commission allowed Happy Cab to charge different, lower rates.

Mr. Hatfield also testified that Happy Cab's commitment to keep in regular contact with groups like the ILC would be helpful. He said communications with Servant Cab have been a concern to him as a business owner and member of the ILC.

Protestant Golden Plains' Witness

Marlon Dooley is the owner and operator of Golden Plains Services, LLC and High Plains Cab, both based out of McCook. He testified that he wanted to oppose the origination of taxicab trips by Happy Cab that originate west of the north-south line at Kearney in order to give his companies an opportunity to take what limited runs there may be in the western area of the state. He is not opposed to Happy Cab originating runs from the Omaha or Lincoln area.

Protestant Servant Cab's Witnesses

The Protestant, Servant Cab, opened its case with the testimony of Mr. Kirby Young. Mr. Young has been the managing member of Servant Cab Company for approximately ten years. Mr. Young testified that the other member of Servant Cab is his brother, Vance. Mr. Young submitted prefiled testimony in this proceeding (Exhibit 28) and began his testimony by summarizing that prefiled testimony.

Mr. Young testified that Servant Cab has spent hundreds of thousands of dollars expanding its cab fleet in Lincoln and that it operates five wheelchair-accessible vans, with others currently in repair. He testified that his understanding is that none of the Happy Cab companies offer wheelchair-accessible vehicles and that Servant Cab is the carrier of last resort in Lincoln, operating 24 hours a day, 7 days a week.

Mr. Young stated that there are times when demand for cab service rises, such as on Husker football game days, at bar closing time, and during inclement weather, and that during these times the availability of additional cabs would be beneficial to the public. He testified that Servant Cab is not, and has never been, opposed to competition, but that he believes the competition must be fair. It is because of perceived unfairness that Servant Cab is appearing as a protestant in this case.

Mr. Young testified to the differences between employees and independent contractors, particularly relating to the attendant costs of each model. He pointed out areas such as Medicare, Social Security, federal and state unemployment benefits, vacation pay, workers' compensation insurance, vehicle maintenance and repair, and fuel costs where employers expend substantial amounts of money and business that independent contractors do not. With these factors in mind, Mr. Young

testified that it was "little wonder" why the independent contractor model allows for lower rates to be charged than an employee model.

Mr. Young then went into the risks associated with the independent contractor model and why Servant Cab has not adopted it. Mr. Young testified that there could be "catastrophic financial implications" in the form of back taxes and related expenses should a court decide that the independent contractors are, in fact, employees. Mr. Young stated that this is not a risk Servant Cab is willing to take absent further clarification from the proper regulatory agencies (i.e., the Internal Revenue Service, the Nebraska Department of Revenue, and the Unemployment and Workers' Compensation Divisions of the Nebraska Department of Labor).

Mr. Young stated that the Commission must address several policy issues in this proceeding—namely, which business models it will allow cab services to use and whether, if both models are allowed, the Commission will allow two separate rates. Another policy issue, according to Mr. Young, is the number of competitors needed in Lincoln to provide service (noting the five applicants here and two others pending). Mr. Young finished his summary by emphasizing that Servant Cab is not opposed to increased competition in a competitively neutral market, but that the competition must be fair.

In response to questions from the Commission, Mr. Young testified that the Commission had never approved the independent contractor model, though it had approved Happy Cab as a carrier. He further acknowledged that the Commission is not the appropriate body for determining whether the business model is acceptable, but that it was necessary to note the differences in order to understand why the rates are different and why Servant Cab chooses to operate as it does. Mr. Young testified that these concerns, as well as the Supreme Court decision in *Hemmerling* throw the independent contractor model into question and relate to fitness.

Mr. Young testified that he believed that Happy Cab had been operating outside the law for years. He said that Servant Cab had submitted a challenge to the independent contractor business model to the Nebraska Department of Labor and had been informed that the matter is being considered; however, he was not sure where that process stands currently.

Mr. Young then identified Exhibit 24 as containing the same information as Exhibits 13 and 14, but with added notations in the margins recording the annual airport traffic at each of the cities on the lists. Mr. Young testified that the respective volumes of airport traffic painted a different picture than listing only the cities' populations, and showed that there was much more demand for cab service from airports in the other cities on the lists. Further, he testified that the populations listed are misleading because they only account for population within the city limits and not the metropolitan area–he pointed specifically to St. Paul, Minnesota, which is listed at a population of 285,000 even though it is a part of a metro area with over two million. He testified to similar misrepresentations in Orlando, Baton Rouge, Cincinnati, and Omaha. Mr. Young then testified that he had performed some research into the business models used in these cities and found that "every single one of them" uses the independent contractor model, and that in many of the larger metropolitan areas the cities regulate taxicab service.

In response to Commissioner Landis's question of why, if 80 percent of the market uses independent contractors, Servant Cab did not do so, Mr. Young replied that they had looked into it, but decided that the demand in Lincoln did not justify it and the risks that it is illegal are too high. Mr. Young then referred to Exhibits 25 and 26 which showed evidence of low wages and long hours among independent contractor cab drivers in Austin, Texas ($2.75/hour) and Portland, Oregon ($6.22/hour). He said the studies go on to also show drivers living in their cars, no sick leave, no vacation pay, no retirement benefits, no healthcare, no workers' compensation, and high unemployment.

Next, Mr. Young testified about Exhibit 27, an article from the Boston Globe dated March 6, 2012 about a pair of cab drivers who had filed suit against the City of Boston and the private taxi fleet claiming that they have been misclassified as independent contractors instead of employees.

Mr. Young next addressed earlier testimony from a witness wanting to request a certain type of vehicle. He testified that Servant Cab honors customer requests for a certain type of vehicle or a certain driver, but that they do not pre-arrange trips. Mr. Young explained that Servant Cab is an "on-demand" carrier, which means that when a person gets in the cab, it is theirs for as long as they are willing to pay. Because of this,

according to Mr. Young, Servant Cab cannot schedule vehicles for future rides and require the current passengers to get out.

Mr. Young next testified to Servant Cab's practice of providing transportation of wheelchair-bound passengers. Mr. Young stated that it was his understanding that Happy Cab does not operate wheelchair-accessible vehicles, and that Servant Cab chose to do so to serve those members of the community who would otherwise be unable to get taxi rides. Mr. Young testified that Servant Cab's permit does not require the company to provide wheelchair-accessible vehicles, but that Servant Cab is only allowed to refuse rides to people for the specific reasons listed in the regulations—he believes that not providing the means to transport wheelchair-bound passengers would be a violation of his authority because refusing service on this basis is not one of the exceptions in the regulations. Mr. Young testified that the issue of whether wheelchair-accessible vehicles *must* be provided is undecided, but that in his opinion they are required.

Mr. Young testified that Servant Cab has received complaints about its service from ASUN, but there has never been any threats to discontinue utilizing Servant Cab's service as a result of these complaints. He further stated that ASUN put its contract out for bid several years ago and Servant Cab won that bid. Most of the complaints arising from students, according to Mr. Young, were related to football games or inclement weather. Mr. Young stated that there is a lot of ASUN traffic at bar closing time.

Mr. Young testified that, in the time he's owned the company, there have been no formal complaints filed against Servant Cab with the Commission, but that he does receive informal complaints made to the Commission by passengers. He testified that there was less than a handful each year until right after the Avery [Senate Committee] hearing. He could not recall the specific number of complaints, but believed there were less than ten in 2011, followed by a flurry of complaints in January and February of 2012. Mr. Young stated that he was unaware of any of the informal complaints in 2012 until the beginning of this hearing. Mr. Young also testified that, in the event of a complaint, Servant Cab addresses the issue directly with the customer and gathers all the relevant information to resolve the problem. Finally, Mr. Young stated that he only vaguely remembers the incident testified to earlier where the guy was accidentally taken to Crete, but that it is

not abnormal for Servant Cab to make adjustments to customers by refunding fares or providing a coupon.

On cross-examination, Mr. Young testified that he welcomes and invites competition. He testified that OMALiNK had filed an application to serve Lincoln a few years ago, that as far as he knew they use employee drivers, and that Servant Cab protested that application.

Mr. Young stated that vacation pay is not required under any law. He then testified to what his response would be if the Commission told him that Servant Cab, currently an LLC, had to change to a different form of corporation in order to charge different rates. Mr. Young expressed doubt that such an arrangement would be legal, but assuming that it is, he said he would have a decision to make whether to keep operating in the way the Commission says he has to operate or to fold up shop. Mr. Young testified that he did not think it would be appropriate for the Commission to tell Servant Cab to change the treatment of its drivers from employees to independent contractors because he believes it would be illegal.

Mr. Young testified that he heard Mr. Davis's testimony about the *Hemmerling* decision from 1995, but that the factors Mr. Davis testified to (optional dispatch service, whether drivers are required to take calls, whether drivers were forced to work in zones, whether there is a self-insurance fund, whether drivers were allowed to carry phones, whether drivers may handle their own accounts receivable, whether drivers may supply their own GPS systems, and whether drivers could have their own websites) were not those that weighed the most in that case. Mr. Young said that the issue of control of the vehicle weighed the most in the *Hemmerling* analysis and that, subject to check, he did not think that all of those factors listed were mentioned in *Hemmerling*.

Mr. Young testified that he made calls to the Department of Labor in the past few months questioning the business practices of Happy Cab. Mr. Young testified that the Department of Labor has a certain amount of authority to determine whether an independent contractor relationship is legal or not. He stated that the Department of Labor has different authority than the Commission and that the independent contractor issue is more of a labor issue. Mr. Young stated that he was present for Mr. Davis's testimony regarding an unemployment insurance claim in the Department of Labor that was resolved in favor of Happy Cab.

Mr. Young then stated that the Commission had authority to rescind authority for a meter violation and that there are specific regulations allowing them this authority. He was unaware of any regulation of the Commission requiring a certain business model to be used in the taxicab industry. Mr. Young agreed that there are good employers and bad employers, as well as good independent contractor relationships and bad independent contractor relationships. Mr. Young stated that his knowledge of the specific independent contractor relationships in the cities he mentioned previously is limited to those reports, and that there are different ways to construct, set up, and craft independent contractor relationships.

When asked his thoughts on Happy Cab's efforts to extract a legal opinion from a licensed Nebraska attorney as to the independent contractor model it employs, Mr. Young stated that "you can get an opinion from attorneys on numbers of things." Mr. Young acknowledged that the Happy Cab opinion was entered and received into evidence at this hearing by his attorney, Mr. Shultz. His attention was then directed to Rule 010.01A (iii), which states that "Taxicab service shall consist of all of the following elements . . . On a prearranged or demand basis."

Mr. Young testified that when Lincoln is busy, it could use more cabs and admitted that Servant Cab is unable to provide service as fast as it would like on Friday and Saturday nights. Mr. Young stated that he had no reason to disagree with the veracity of the financial information submitted with Happy Cab's applications, though he did not express an opinion as to whether they are financially capable because he is not privy to all of their information. Mr. Young then testified that he had not undertaken any kind of analysis about the traffic resulting from the new arena and hotel projects. He said that Happy Cab's application, if granted, might harm his company, but he was unable to analyze exactly what that harm might be without knowing how the Commission will decide the issues of rates, timing, full-time vs. part-time, number of vehicles, etc. Mr. Young further testified that he could not quantify the impact of OMALiNK's approval in 2006.

Mr. Young stated that Servant Cab does not have a website, but that its rates are published in various other places on the internet, such as About Lincoln, though he was unable to point to a specific URL where these might be found.

Mr. Young affirmed that Servant Cab does not assess a fuel surcharge for out-of-town trips, that this practice is not specifically laid out in its rate application (TR-185), and that the Commission has neither approved nor disproved this practice. Mr. Young testified that Servant Cab had asked the Commission a long time ago when the out-of-town rate should start and what that rate should be. He said that the Commission's response was to start charging the out-of-town rate from the point of the pick up and that this is impossible to do with the company's meters because of the way they are set up. Mr. Young testified that the company has never been told to charge the fuel surcharge for out-of-town trips.

Mr. Young testified that his drivers are paid monthly and that the drivers are allowed to take direct calls that are not through dispatch. He testified that the company has allowed drivers to do so for years and years and that many of the drivers avail themselves of the opportunity. Mr. Young further testified that some of the drivers make their own business cards and hand them out. Mr. Young stated that the company also takes requests through dispatch for particular drivers.

Mr. Young testified that employees are required to report to the company and turn over all fares and trip sheets at the end of each day. He stated that there were certain mechanisms in place within the cabs or within the meters that would alert them to drivers who fail to report all of the trips. Mr. Young testified that the average pay for his drivers is over $10 per hour (gross pay), depending on the number of hours worked, how much they hustle and how well they know the city. The drivers are not all paid the same and multiple factors influence whether they make more or less than the average, including: operation of wheelchair vans, which include a higher commission; whether a driver works nights, weekends, evenings, etc.; and full-time vs. part-time status.

Mr. Young testified that if the Department of Labor says the independent contractor model is legal, he would still not be confident unless all of the relevant agencies agreed (Department of Labor, unemployment, workers' compensation, state and federal Departments of Revenue). Mr. Young stated that if he had that assurance he would switch to the independent contractor model "in a heartbeat" because it would lower the price to everybody. Mr. Young added that the model may pass on the costs to people that are not using it and would take advantage of the drivers,

so those factors would also have to be considered before making any changes.

Mr. Young reiterated that Servant Cab is a "carrier of last resort" because the company has to go pick people up who are willing to pay and is available 24/7. Mr. Breiner stated that the requirement for a company to offer 24/7 service is not part of the Commission's regulations, but that if a company is approved with 24/7 service as part of their business plan, that company is expected to continue to operate 24/7. Mr. Young testified that he believed 24/7 service was required because taxicab companies may not refuse a trip. His opinion is that by being closed on a particular day, a company is refusing trips that day in contravention of the regulations.

Mr. Young stated that he had gotten a second opinion on the legality of the independent contractor model and that it was the same as the first. He then testified that he planned to get an opinion from each of the agencies that would have authority over that determination. Mr. Young stated that he thinks whether a driver is an employee or an independent contractor is important to an individual needing a ride. He further testified that a comparable taxi service for less money would be in the public interest as long as nobody is being hurt and everything is being done legally.

On redirect, Mr. Young testified to the specifics of why the fuel surcharge is not added to out-of-town fares. Mr. Young testified that the fuel surcharge is built into the meter, but that on out-of-town trips the meter is not used, so the mileage is simply multiplied by the out-of-town rate to arrive at the total. He testified that the fuel surcharge could be added on at the end, but that to his knowledge Servant Cab had never done that.

Mr. Young testified that there were some issues with the independent contractor model that the Commission needs to understand, namely: who controls the vehicle; what constitutes a lease of authority; vehicle safety and who is responsible for it; ability of the driver to decide when they work and do not work; and whether an independent contractor can hire a substitute driver.

Following the public comment period on Wednesday, April 11, upon agreement of the parties and the Commission, Mr. Young was recalled by his legal counsel to address one matter on which a

Servant Cab driver, Mike Snell, had testified in his public comment. Mr. Snell had testified that he was not allowed to give his personal cell phone number to passengers who request it. Mr. Young disputed that testimony, saying it was not company policy to prohibit drivers from giving out their cell phone numbers. Nevertheless, on cross-examination, Mr. Young said there was no way for Servant Cab to guarantee that a customer could have a particular driver upon request.

Mark Breiner, who has served as Commission Motor Transportation Department Director since 2004, was called as a witness on behalf of Servant Cab. Mr. Breiner testified about equipment lease agreements filed with the Commission by Happy Cab. He said the Exhibit did not include any agreements filed during 2011, that it was his understanding that new agreements had been entered during that time, and the to the best of (his) knowledge agreements for that time period that new agreements were not on file with the commission. On cross-examination, Mr. Breiner admitted that such agreements might have been misplaced or misfiled at the Commission. He said that if the leases are not on file and cannot be found at the Commission that he would be willing to work with Happy Cab to make sure they were properly on file.

Mr. Breiner testified that Exhibit 36 was an Order entered by the Commission in 1988, addressing the filing of equipment lease agreements by Checker Cab, Happy Cab, and Yellow Cab. He said the Order does not address Valor or Cornhusker Cab. He testified that equipment lease agreements are filed with the Commission and approved by Commission staff routinely. On some, there is a verification of approval, according to Mr. Breiner. On cross-examination, Mr. Breiner testified that there is no Commission rule or regulation that requires that an equipment lease agreement be formally approved by the entire Commission, as was done in 1988 (Exhibit 36), nor is it the practice of the Commission to approve such agreements by order. Typically he does not take the agreements before the five Commissioners. He said he did not know why the Commission approved the agreements in the way it did in 1988, sixteen years before Mr. Breiner began working for the Commission.

Mr. Breiner testified that the Commission opened an investigative docket to review the issue of the independent contractor agreements utilized by Happy Cab, but had not completed the investigation. The investigation had nothing to do with the application now before the Commission, according to

Mr. Breiner. For a period of time, the Commission did receive and review Happy Cab's independent contractor agreements. That practice, however, was later terminated as the Commission did not have any jurisdiction over the independent contractor contracts and that the Commission had no control over those contracts

Mr. Breiner testified on cross-examination that he had been familiar with Happy Cab's utilization of independent contractor drivers at least since starting work for the Commission in 2004. He said he had no concerns about the adequacy of the service Happy Cab provides.

Mr. Breiner discussed the motor carrier complaints filed against the Applicant relating to unsealed meters and the absence of placards in some vehicles. The complaints arose from an annual inspection, mandated by Commission rules, of the Applicant's vehicles. On cross-examination, Mr. Breiner said that all fines levied in those complaint proceedings had been paid by Happy Cab and that the Commission had not alleged tampering with the meters, only that they were unsealed.

Mr. Breiner said he had not filed any formal complaints against Servant Cab during his tenure at the Commission. He also said that he believed that if the application was granted that it would be able to provide wheelchair transportation. He did not comment on the settlement agreement Happy Cab had with Transport Plus.

Mr. Breiner testified that it was his opinion that the lanyards used by Happy Cab's independent contractor drivers satisfied the Commission rule that requires each driver to have an "article of uniform," and that he had informally given Happy Cab that opinion.

Public Comment Witnesses

Hardy Holm owns and operates a vending machine business in Lincoln. For a period of time, he was a frequent customer of Servant Cab. He complained about Servant Cab's refusal to do time orders or take reservations and wait times. He said he would call Servant Cab and be told a cab would pick him up in 15 to 45 minutes, only to have it take an hour and a half. Mr. Holm has also used Happy Cab in Omaha and said their rates were lower and service more dependable. He also likes that individual drivers will give passengers their cell numbers, and recounted an instance where that was helpful in returning from

an event at the Qwest Center. Servant Cab has a policy that prohibits drivers from giving their cell numbers, he said.

Lincoln Mayor Chris Beutler told the Commission that taxicabs are literally one of the first impressions visitors get of Lincoln. "Lincoln's cab service is expensive, uncertain, and slow," giving visitors a poor impression of the city. He noted the many developments underway in Lincoln, including the Pinnacle Bank Arena, new hotels, Innovation Campus, the Antelope Valley project, and the Centennial Mall renovation. Mr. Beutler said that these projects all show that Lincoln is moving forward and growing, and that it needs to have a transportation system, including taxi operations, that will be able to meet these growing needs.

Commissioner Vap inquired of the Mayor whether there were plans for taxicab stands in and around the new arena area. While the Mayor was not able to give any specific locations for stands, he said that multimodal transportation is a big item in their planning for the arena, but that there should be stands in front of the arena on Canopy Street and Arena Drive

The Mayor pointed out that economic development is not the only issue; that safety, especially reduction of the number of drunk drivers on Lincoln's streets, is another reason why reliable cab service is needed. He pointed to numerous complaints about cab service and rates. He said that if the Commission is concerned about confusion and fraud resulting from two sets of rates, then the Commission should opt for the lower rates. The Mayor encouraged the Commission to help Lincoln to find a better balance in the system to meet the future needs of the city.

Senator Bill Avery represents Nebraska's 28th Legislative District in Lincoln, which he said is "a city on the move." He said that Servant Cab is not meeting the city's needs: "It's too expensive. And it's substandard and unreliable." He said it has been that way for a long time. Senator Avery said that cab service has improved in the past few months, but added that "we should not have to wait until there's pressure from the legislature for the cab company to provide the service we need."

Senator Avery also noted that, according to the Lincoln Police Department, about 5,000 DUIs had been recorded in the past three years, and that 86% of those occurred between the hours of 10:00 p.m. and 3:00 a.m.

City Councilman Adam Hornung, an at-large Council member for the City of Lincoln, serves on the Council's ILC. He is also an attorney with a variety of corporate clients who come to Lincoln from across the country. Many of those clients have used Servant Cab, and Councilman Hornung has used the cab system in Lincoln, as well - to get home from the bars while in college and for business purposes now to get to the airport. He said that the taxicab situation in Lincoln has a history of not meeting expectations, and that the situation is getting worse.

He said he has heard many comments about Servant Cab in his short tenure on the City Council. In the 50 or so comments that he has received, Mr. Hornung said that not one of them was positive about the service, and that the people are frustrated and dissatisfied. He said those comments come from all ages of people with diverse needs for transportation, including people with disabilities.

He also expressed concern about the safety of Lincoln's younger residents who frequent bars downtown. "People were getting out of a bar, wanting to make responsible decisions, and did not have the option to make a responsible decision."

Councilman Hornung said the ILC had spent a lot of time trying to improve the situation to no avail. He noted a pattern that he said showed an inability to change and an unwillingness to make things better. He sees this as a major problem for the city of Lincoln.

Councilman Hornung said that his clients have consistently complained about not only long waits - as long as two hours - but also the high cab rates in Lincoln. He was critical of Servant Cab's unwillingness to move away from its employee driver model, which "is costing ratepayers a tremendous amount of money in this city."

Terry Brennfoerder is the president of the Lincoln Chapter of the American Council of the Blind. He testified that on the weekends and nights when there is no bus service, "it is very hard to get a cab sometimes." He said that the Council "would appreciate a new cab service coming in."

Shane Buresh spoke as a resident of Lincoln, a father, and on behalf of the National Federation of the Blind, Lincoln Chapter. He talked about rates charged by Servant Cab. As a

member of the Catholic Church, he attended mass three consecutive days the prior week (before Easter). He lives about two miles from his church, which is in the same location as his son's school. His one-way fare was $13.75. Including a gratuity, he paid $30.00 for each of the three round-trip rides. Mr. Buresh said that while he and his wife are fortunate to have jobs, blind and visually impaired people are unemployed or underemployed at a rate of 70 percent. Cab service at the rates charged by Servant cab, Mr. Buresh said, is "almost impossible to afford."

Mr. Buresh said he liked the prospect of being able to call one of Happy Cab's independent contractors directly, saying "we have never been able to do that here." He said he understood that Mr. Young had testified that Servant Cab's policy was to allow direct calls but was skeptical: "I would really challenge that statement."

Mr. Buresh also took issue with statements made by Servant Cab's legal counsel that were reported in the newspaper, saying that there might be a need for more cab service on game day, during cold weather, or to get children to school. He was concerned that such perception leads to marginalization of disabled and blind individuals. He also expressed concern that Servant Cab of late had been trying to put on a good front with this hearing pending by appearing to be interested in supplying service to the bars as they are a problem area and are the cause of the current proceeding while not providing service to the everyday people who need it.

Tony Olivero is a consumer of cab service who recently moved to Lincoln from Baltimore. He has lived in a number of cities. In Baltimore he lived 3.5 miles from where he worked. A one-way cab ride cost $11.00. Here it would cost from $18.00 to $20.00, he said. He noted that these costs add up during a typical five-day workweek with roundtrip fares. He said that since moving all his "expenses have gone down with the exception of transportation." He also testified that he had lived in a city of 390,000 that successfully supported two cab companies. Like others, Mr. Olivero said it would be helpful to be able to call drivers directly.

Austin Peters is a full-time student at UNL, a professional DJ, and a member of the Lincoln Chamber of Commerce. He said he performed a survey about cab service the day prior on campus and got 102 signatures. Comments ranged from complaints about rates

to students saying they "don't even worry about calling a cab anymore." As a DJ, he has had clients ask him for rides to their homes, saying that cab services in Lincoln were not sufficient.

Jeff Altman is the cane travel instructor for the Nebraska Center for the Blind, a division of the Nebraska Commission for the Blind and Visually Impaired. Mr. Altman expressed concern about the high rates charged by Servant Cab. The rates present a challenge for the Center, as a state agency on a tight budget, for elderly blind individuals on fixed incomes, and for blind individuals who are often working at entry-level positions. He said this problem is exacerbated by the fact that more and more jobs available in Lincoln are in locations where public transportation does not reach or are after the operating hours of public transit. Mr. Altman believed that the current situation will result in many people not able to become contributing members of the community as they cannot afford the transportation costs that are incurred due to the nature and location of their employment.

Hobert Rupe is the Executive Director of the Nebraska Liquor Control Commission, which in recent years has been pushing those serving alcohol to professionalize the industry. The Liquor Control Commission has been implementing legislation passed a couple years ago, which allows it to establish minimum standards for training servers. One part of that training is to instruct servers to help intoxicated patrons find a ride home, either through a friend or in a cab. Mr. Rupe noted that it is a common complaint that bars are experiencing two hour waits for their patrons and that it can take multiple calls to the cab company to get them to provide the service. He said that concerns are also often expressed about the rates in Lincoln for cab service.

Mr. Rupe emphasized the importance of cab service to a community, saying that "adequate cab service, especially in a town that's now over a quarter million, is a public health, safety and welfare issue."

John Turner is a representative of the Lincoln Homeless Coalition. He said the Coalition has discussed the issue of cab expansion during its past several meetings. The coalition supports expansion in Lincoln. With an increasing number of homeless children in Lincoln Public Schools, and cabs serving as

the primary means for transporting those children to and from school, the need for adequate cab service is important.

John Spatz is a former Lincoln City Council member and served as the chairman of the ILC from 2009 through 2011. He explained that the ILC consists of three members of the City Council and partners with other city agencies, UNL, and Lincoln bar owners. Mr. Spatz commended Lincoln bar owners for their work on the ILC, noting that they are "responsible bar owners who want to do the right thing." He recounted a time when Nebraska was hosting Missouri in football, and a group of Missouri fans expressed surprise that they couldn't get a cab downtown to take them back to their motel. He testified that when people visit Lincoln, there is an expectation for a city of this size to be able to get a cab. "It is a vital public service. It's a vital public interest to have an adequate cab service in the City of Lincoln." In addition to providing transportation for people heading to downtown bars and restaurants, Mr. Spatz said it is important to provide transportation to the visually impaired, "who we want to engage in the community and our workforce and for them to be able to participate."

Kyle Fischer appeared on behalf of the Lincoln Chamber of Commerce, which supports the idea of expanded taxicab service in Lincoln. He said he has heard from a number of the Chamber's member businesses who believe Lincoln needs to grow its transportation network to match citywide growth. He said that business travelers most likely take a cab from the airport where they land, and that, according to the Chamber's members, taking a cab is not a practical option today in Lincoln.

Jeff Maul is the Executive Director of Lincoln's Convention and Visitors Bureau. He discussed the rapid growth of Lincoln with such projects in the works at the Pinnacle Bank Arena and new hotels. He expressed concern that "with the current cab availability in question" and with the increase in events and facilities, that the city may not be able to serve the needs of its visitors. Stories of bad experiences with transportation in a city circulate widely, and can shape the way travelers consider a city as a destination. He concluded cab services are a major component of a city's infrastructure, and that the need to have improved cab service with additional options available should be strongly considered.

Mark Intermill appeared on behalf of the American Association of Retired People ("AARP") and expressed concerns about the rates for cab service in Lincoln, which, he pointed out, are high relative to the rates charged in Omaha. He said it is important for elderly individuals to continue to participate in public life, and the public transportation, including cabs, is critical for those no longer able to drive. Lincoln's high rates are of particular concern for persons living on fixed incomes. For those reasons, the AARP believes that, according to Mr. Intermill, the Commission should give favorable consideration to the proposed expansion of taxi service in Lincoln by the Applicant.

Mike Snell is a driver for Servant Cab. He said he is compensated on a commission basis (a percentage of the fare minus a surcharge) and that the taxi business is "kind of feast and famine" in Lincoln. On football game Saturdays, business is excessive. Other days, even weekends that include the bar rush, are not nearly as productive. He said he is concerned about the impact on drivers' compensation if additional cabs are allowed on the streets of Lincoln.

Anna Wishart is a board member of the Lincoln Airport Authority, speaking on behalf of herself and fellow Authority board member John Wood. She said that there has been a "reoccurring theme for our constituents of a very long wait time for cabs." The delays are caused by lack of available cabs. For that reason, Ms. Wishart supports expansion of cab service.

Eric Kamler is the current president of ASUN, UNL's student government, which administers the 475-RIDE program, designed to provide safe rides to UNL students. The program is not designed for regular use by the same students, but rather as a service of last resort. It services not only students who are at downtown bars, but also international students and other students who do not have their own vehicle. The program is funded by student fees. To use the program, a student simply calls Servant Cab, with which ASUN now contracts, shows the driver their student ID, and the ride is provided, the fare assessed to the contract and paid by ASUN. Mr. Kamler testified that costs of the program have been a concern. He believes that allowing another cab company into Lincoln would help lower the rates.

Rob Morgan is a client of the Nebraska Commission for the Blind, who frequently uses Servant Cab. He expressed concerns

about high and inconsistent rates, and supports bringing in a new cab service.

Karen Anderson is a student at UNL and current president of the Nebraska Association of Blind Students. In that position, she has the opportunity to travel a fair bit. She usually flies out of Omaha because she can get there for the same cost of ground transportation - taking OMALink to the Omaha airport as opposed to taking Servant Cab to the Lincoln airport - in about the equivalent time. She said the service to Omaha is more reliable.

Ms. Anderson would like to frequent the bars, coffee shops, and music scene in downtown Lincoln but is unable to because the cost of taking a cab is prohibitive. She would also like to take night classes, but cannot because she cannot afford the $25 fare to get from class to her home three nights a week.

Recently, Ms. Anderson chose to take a cab to a job interview because she wanted to look her best when she arrived, hoping to get the job and "become a paying, contributing member of society." After calling for a ride, she waited an hour and 40 minutes before the cab arrived. She asked the driver if it was a busy morning; he replied that it was not since there were no children going to school that day.

Leonard Galvin is an independent contractor driver for Happy Cab in Omaha. He said that Happy Cab would like the opportunity to come to Lincoln to help reduce waiting times and get people home safely. Commissioner Landis asked Mr. Galvin if he was happy with being an independent contractor driver, and he replied, "Absolutely." He said that he as had no trouble getting enough business. Commissioner Schram asked Mr. Galvin to comment on building personal relationships with his customers. Mr. Galvin said he transports customers on a repeat basis. He gives out business cards and his cell phone number. He said he keeps his vehicle spotless inside and out, and explained it is important to get to know his customers on a one-on-one basis. He concluded by saying, "it's really important to make that personal contact."

Troy Falk owns Doc's Place bar in the Haymarket and serves on the ILC. Mr. Falk testified about troubles getting cab rides for his patrons to head home or to other locations. Last fall, several hours after a home football game, one of his bartenders called Servant Cab for a ride for a patron. The dispatcher said

that they will not provide service to the Haymarket on home game days. He said that he and every one of his bartenders has taken a patron - both friends and strangers - home at least once because they could not get a cab. He noticed an increase in the number of fans of football opponents flying into town, now that UNL has joined the Big Ten. He said he knew of many occasions where people just could not get taxis and that this is a problem. He has also heard business travelers complain of long waits for cabs. For travelers, he said, cabs are important because hotel shuttles do not often run late.

Asked by Commissioner Vap about the results of Servant Cab's interaction with the ILC, Mr. Falk said a lot of promises by the Protestant were made that certain things were going to happen, but that the promised changes never occurred.

Dustin Johnson is a blind individual who lived in Omaha until recently. Cabs are his primary mode of transportation. In Omaha, after school, Mr. Johnson would take a cab to his cane travel lessons, and said that Happy Cab was always there waiting for him when school got out. He is now training in Lincoln, and expressed concerns about waiting times and unfair cab rates. He is living off of savings and said he could not afford the fares.

Alexander Castillo recently moved to Lincoln from New York City. He complained about the cost of cab service and said that Lincoln needs competition.

Chris Barber is an owner-operator and independent contractor driver for Happy Cab in Omaha. He has been in the business for 20 years and was with Happy Cab when the ownership last changed. He said that the current ownership implemented dispatch systems that allow drivers to get orders in a timely manner, which has improved efficiency, and allows the drivers to make their customers happy. Mr. Barber considers himself a corporate driver and works with major corporations taking their executives and clients to and from the Omaha airport. He said that in dealing with corporate customers there is no time for error. Mr. Barber said that if Happy Cab is authorized to provide service in Lincoln, transportation for the general public will get better.

Karen Pavey said that she was testifying for Servant Cab. She said that without Servant Cab she would not be able to get around. She said she is handicapped and in a big wheelchair.

She said that some transportation providers cannot take her because of her wheelchair.

Barbara Loos is a member of the National Federation of the Blind and uses cabs frequently. She expressed concerns about long wait times and high rates for cab service in Lincoln. She said she did not know how allowing two sets of cab rates could be any more confusing than finding different prices for goods in different grocery stores. She also said that, to her knowledge, the Servant Cab drivers were not and have not been permitted to receive calls directly from the patron.

Ms. Loos concluded by saying that she hopes the Commission will take "what control you have and help make Lincoln a better place to live."

OPINION AND FINDINGS

In this particular case, Applicant is seeking to extend its current authority in intrastate commerce by the transportation of passengers by taxi in Lancaster County, and between points in Lancaster County, 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 the certificate would have HHS authority.

Applications for common carrier authority are governed by Neb. Rev. Stat. § 75-311 (2010), 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 is 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 shall be denied.

In other words, the Commission must apply a two-part test. The first part of the test is that the Commission must determine if an applicant is "fit, willing and able to perform the service proposed." The second part of the test is that the proposed

service "is or will be required by the present or future public convenience and necessity."

In order to be successful, an Applicant must prove that it is fit, willing and able to provide the proposed service. From the evidence presented, the Commission finds that the Applicant has sufficiently proven it is fit, willing and able to properly perform the proposed service and able to conform to Neb. Rev. Stat. § 75-301 et seq. The Applicant is a currently certificated holder of authority in the Omaha, Nebraska area. It has held authority for well over twenty years, with the current ownership being in place for over ten years. The Applicant has provided continuous service over this time period in its geographic area. The Applicant appears to have sufficient finances to operate the proposed service. It presented a business plan wherein it would place five vehicles immediately on the street, with the ability to place additional vehicles in Lincoln on Nebraska football game days as well as other special events. The Applicant is installing a new dispatch system that allows it to operate more efficiently as well as provide GPS information and the ability to receive and process credit card transactions.

The issue of departmental complaints was addressed in the hearing. The Commission notes that the Applicant was the subject of a Motor Carrier Complaint filed by the Motor Transportation Department, but also notes that the Applicant was fined for these incidents and has not had a filing made against them since. Inspections performed by Commission staff since the departmental complaints have not found any further incidents.

The issue of the Applicant's use of independent contractors was also addressed in the hearing. The Protestant cited the 1995 Nebraska Supreme Court case of Hemmerling v. Happy Cab (247 Neb. 919) to argue that this arrangement is illegal and cannot be used by the Applicant. It appears from the record that this case as cited was applicable to the factual circumstances as the Court found them in that contract at that time. The Applicants stated that changes in the contract have been made since that time to address the problems as identified in Hemmerling. Mr. Davis testified that the current contract has been the subject of lawsuits and review in both the Nebraska Department of Labor and in the Workers Compensation Court, and in both venues the contract was found to be legal and binding.

In any event, the use of the independent contractor model in employment circumstances is not an area that is covered by

Commission statutes and regulations. The Commission does not have the legal ability to determine the business structure of the certificated carriers. There are no provisions in the statutes the Commission enforces regarding transportation found in Chapter 75 articles 100 through 158 or Chapter 75 articles 301 through 371 that charge the Commission with any authority in this area.

A further issue was the filing of leases for owner-operators with the Commission. The evidence is that the Applicant has not had on file with the Commission current leases between itself and approximately eight owner-operators. The Applicant said that this may be an oversight and that the contracts would be brought up-to-date.

Based upon the evidence before us and adduced from the record in the instant case, the Commission finds that the Applicant has met the fitness test of Neb. Rev. Stat. §75-311.

We therefore turn to the issue of whether the proposed service is or will be required by the present or future public convenience and necessity. The traditional analysis for determining "need and necessity" was set forth by the Supreme Court in its May 8, 1998, ruling,

> 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.

In re Application of Nebraskaland Leasing & Assocs., 254 Neb. 583, 591 (1998).

The issue of whether an Applicant has met its burden of demonstrating that the proposed service is consistent with public convenience and necessity is ordinarily a factual issue. Id.

The first part of the test is whether the proposed operation will serve a useful purpose responsive to a public demand or need. Given the record before us, we find that the

Applicant has demonstrated a sufficient level of need and necessity to support a grant of the application. The Commission, over the three day hearing period, heard overwhelming testimony regarding the need for the proposed service. Twenty-three members of the general public testified before the Commission on the problems that they face with the current service. The complaints included the inability to get service on occasions that include not only the bar closing time or at other "peak times" of service such as football game days, but also on a frequent basis during the day. The testimony also made numerous references to the excessive wait times that have been said to be in excess of two hours many times. The complaints of this type of service came from bar owners, hotels and people getting to and from doctor appointments or the grocery store.

The issue of the agreement between the Applicant and Transport Plus was raised in the hearing. The Commission notes that the Applicant has not operated wheelchair equipped vans in Omaha, and under the agreement with Transport Plus is not planning to offer that type of service in Lancaster County, either. Transport Plus is a certificated carrier in Lancaster County, and has represented in the agreement that they are in the business of supplying wheelchair equipped transportation currently and are prepared to offer additional services if the need is present. With Transport Plus being in position to offer increased services to the community, the agreement with Transport Plus does not leave them without wheelchair equipped services available as needed.

The second part of the test is whether this purpose can or will be served as well by the existing carriers. The evidence presented shows that the Protestant is not currently meeting the needs of the general public. In addition to the testimony set forth above, there was further testimony from members of Lincoln city government that there have been efforts made to address the situation with the Protestant, but that these efforts have not resulted in long term solutions to the situation. Mr. Horning testified that the Internal Liquor Control Committee has met with the Protestant "two or three times", and that these meetings would sometimes have positive results for a short time, but that the problems would inevitably reoccur.

It therefore appears from the record that the Protestant has not shown that they either can or will fill this public purpose or need.

We now turn to the issue of whether the public demand or need can be served by the Applicant in a specified manner without endangering or impairing the operations of existing carriers contrary to the public interest. Mr. Young stated that the proposed operation would hurt the Protestant's cab company. He stated that diversion of business would have a negative effect on the companies he is affiliated with.

However, the Commission finds that the interest of the public outweighs the potential damage that may be caused to the Protestant, which at this point in time is speculative. The Protestant did not produce any specific evidence as to the impact on the operations of their businesses. While Mr. Young stated that the granting of the authority would be damaging to his company, he did not say to what extent the damage that may occur would curtail operations of the Protestant or what changes the Protestant may make in response to the potential granting of authority. The public interest in this matter is very significant. The public has an interest in having an adequate number of taxis available to meet its needs. Absent evidence of an impairment or endangerment to the operations of the Protestant, the Commission finds that the proposed operation can serve in the proposed manner without endangering or impairing the operations of existing carriers contrary to this overwhelming public interest.

From the evidence adduced and being fully informed in the premises, the Commission is of the opinion and finds:

1. The Applicant is fit, willing and able properly to perform the service proposed and to conform with the provisions of Neb. Rev. Stat. § 78-301 to 75-322 and the requirements, rules and regulations of the Commission thereunder.

2. The proposed intrastate service is or will be required by the present or future Public Convenience and Necessity to the following extent:

C E R T I F I C A T E A U T H O R I Z E D

SERVICE AND TERRITORY AUTHORIZED: Transportation of passengers by taxi in Lancaster County, and between points in Lancaster County, on the one hand, and on the other hand, points in Nebraska over irregular routes. RESTRICTION: The transportation of railroad train crews and their baggage is not authorized. HHS Designation: Yes.

3. The application should be granted.

ORDER

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application B-1121, be, and it is hereby, granted; and that upon compliance with the terms and conditions as set forth in this Order, a Certificate of Public Convenience and Necessity shall be issued to Happy Cab, Inc., dba Checker Cab Company, Omaha, Nebraska, authorizing the operations as set forth in the foregoing findings.

IT IS FURTHER ORDERED that the applicant shall not be issued the Certificate of Public Convenience and Necessity authorized by the Commission unless and until applicant has fully complied, within a reasonable time 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.

IT IS FURTHER ORDERED that applicant shall render reasonably continuous and adequate service to the public pursuant to the authority authorized.

IT IS FURTHER ORDERED that the Certificate of Public Convenience and Necessity authorized shall be subject to the terms, conditions, and limitations which have been, or may hereafter be, prescribed by the Commission.

MADE AND ENTERED at Lincoln, Nebraska, this 22nd day of May, 2012.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

//s// Rod Johnson
//s// Frank Landis

Deputy Director