

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application of DonMark, Inc., dba
 Cornhusker Cab Company, Bellevue, Nebraska, seeking
 authority as a common carrier in Nebraska intrastate
 commerce in the transportation of passengers and their
 baggage by taxi between points in Douglas and Sarpy
 counties, on the one hand, and, on the other hand,
 between points in Nebraska over irregular routes.
 Restriction: The transportation of railroad train crews
 and their baggage is not authorized.

) APPLICATION NO. B-1410
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) GRANTED
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) ENTERED: September 17, 1996

APPEARANCES: For the Applicant:
 L. Kenneth Polikov, Esq.
 1246 Golden Gate Drive
 Papillion, Nebraska 68046

For the Protestant:
 Jack L. Shultz, Esq.
 121 South 13th Street
 Lincoln, Nebraska 68501

BY THE COMMISSION:

OPINION AND FINDINGS

By application filed March 22, 1996, DonMark, Inc., dba Cornhusker Cab Company seeks authority to transport passengers and their baggage by taxi between points in Douglas and Sarpy counties and between points in Nebraska over irregular routes, but restricted against the transportation of railroad train crews and their baggage. Notice of the application was published in The Daily Record, Omaha, Nebraska, on March 25, 1996, pursuant to the rules of the Commission. Protests to the application were filed by Checker Cab Company, Yellow Cab Company, and Happy Cab, dba Happy Cab Company, being companies under one ownership. A further protest was filed by Michael Timerman, dba Plattsmouth Cab Co., which was subsequently withdrawn.

Hearing on the application was held July 11, 1996, at Omaha, Nebraska, with appearances as shown.

Applicant produced five witnesses in support of its application.

MARK WHETSTONE testified: His address is 7025 South 41st Street, Bellevue. He is the president of Cornhusker Cab Company and one of two shareholders. The other shareholder is a friend and businessman in Papillion, Don Bellino. He has lived most of his life in Sarpy County except for the time his career in the United States Air Force took him to other assignments. He is married with four children and owns his own home in Bellevue. He is presently working to finish his college degree at the University of Nebraska at Omaha. He received an Honorable Discharge from the Air Force after almost 18 years, having achieved the rank of Master Sergeant. He was awarded several decorations while in the Air Force. During his military career he was a training instructor, career advisor and Squadron First

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Sergeant. From April 1995 to February 1996, he was a driver for Happy Cab Company. He was a good driver, knew and followed all the rules of the company and the Commission, and learned a great deal about the industry. His experience as a driver lead him to conclude that there was a need for additional taxicab service in the area because of the lack of service to Sarpy County in particular. He knew the area had grown a great deal, particularly Sarpy County, and he was surprised to learn that there are significantly fewer taxicabs in service now then there were in 1971. He anticipated starting with three taxicabs, and he would drive one himself and run the day-to-day operations of the company. He would not be afraid to grow if the anticipated demand was present. He feels that some combination of employee drivers and independent contract drivers would be a good business practice to serve the Sarpy County area. He has plans for hiring and screening of drivers, maintenance plans, safety plans and an understanding of the requirements of an independent contract driver. He is familiar with the needs of disabled and impaired customers and will do everything possible to serve the needs of what he believes to be a good customer base.

GARY FRIEDENBACH testified: His business address is Highway 370 and Hillcrest Drive, Bellevue. He is part owner of the Quality Inn Crown Court in Bellevue. His facility is a full service hotel providing restaurant, lounge, banquet and convention services. He has been active in economic development and tourism in Bellevue and is quite familiar with the eastern Sarpy County community. He has no personal nor financial interest in the applicant. Poor taxicab service to his business has been a major concern of his for many years. Guests at his hotel were often military and civilian personnel having business at Offutt Air Force Base and did not have access to automobiles. They often wanted to go into Omaha to shop or sightsee. On many occasions guests at his hotel have experienced an unacceptable wait for taxicab service. Sometimes the wait is for several hours or more and sometimes the taxicab never comes. A new taxicab service based in Bellevue would add a necessary service to guests at his facility.

SHARON HAVERSTICK testified: Her business address is 1505 Galvin Road South, Bellevue. She is the owner of the Horny Toad Bar. She has no personal nor financial interest in the applicant. She often personally called for taxicab service for patrons of her bar. Her experience had been very poor and as a result, she no longer opted to call Happy Cab Company for service. For more than one year now, she has just been taking the customer home herself if she knows the customer. Several times she has had to lock a customer out of the establishment to wait for a taxicab, and she worries that the taxicab may not show up. She feels this presents a serious public safety problem for the community. Based on her personal experience, she believes that a Bellevue-based taxicab service would help to address the problem she identified and that an additional cab service would increase the service to the community.

BILL MILLER testified: His business address is 1620 Wilshire Drive, Bellevue. He is the executive director of the Bellevue Chamber of Commerce. He said that he is familiar with Bellevue and the needs of Offutt Air Force Base. It is his job to work with business growth and economic development. He has no personal nor financial interest in the applicant. Exhibit 4 shows the Sarpy County Economic Development Corporation which shows significant growth of Sarpy County over the last 20 years. He is familiar with the organization and the director, with whom he has worked. His experience is that the past and future growth of Sarpy County and the Bellevue area is very significant. Based on his own experience both at Offutt Air Force Base and in the Bellevue community, he believes

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that there is a need for a Bellevue-based taxicab company. He also believes that the needs for taxicab service at Offutt Air Force Base could be developed and revitalized by a Bellevue-based company. Local involvement and the applicant's prior military service could aid in access to Offutt Air Force Base to further develop those needs.

RANDY FADER testified: He is a resident of Omaha. He said that because he is legally blind, he does not have a driver's license. He is a regular user of taxicab service. He has no personal nor financial interest in the applicant. Until recently, he lived with his parents in Sarpy County in the City of LaVista and that he often experiences difficulty in getting reasonable taxicab service from there. One of the reasons he moved was to be closer to work because transportation services were lacking in Sarpy County. He has to rely on taxicab service for most, if not all, of his transportation needs, and he was often told by the Happy Cab dispatcher that they were too busy and that it would be a long wait for service.

Protestant produced four witnesses.

DOUGLAS ARONSON testified: He is a Happy Cab Company driver and knows Mr. Whetstone from his time when Mr. Whetstone was a driver. They had spent time together. He thought that they were friends, and they had talked about forming a taxicab company together. Mr. Whetstone wanted him to finance and maintain ten taxicabs.

ED NOEL testified: He is a Happy Cab driver and knew Mr. Whetstone when he drove for Happy Cab. Mr. Whetstone talked with him about financing 30 taxicabs. Mr. Noel has connections in New York to put together the financing.

DAVID AMBROSE testified: He was hired as a consultant by protestant to analyze Happy Cab riders. He said that he surveyed 56 individuals by telephone survey during the last ten days of June 1996. Although a significant number of riders were not available for study, he concluded that most riders were satisfied with Happy Cab's service. The addition of another taxicab service provider might result in an actual service degradation even though there would be more taxicabs available for service.

VINCE LaLOMIA testified: He is the chief operating officer of Happy Cab Company. The company has made considerable investment in equipment and computerization to provide better service to the taxicab user. Communications have been enhanced and technological additions have been made to improve service. None of the applicant's witnesses had expressed dissatisfaction of service to him, but he does not doubt their credibility. The company is interested in expanding, but he feels that Happy Cab is providing adequate service to the area.

Seven people presented testimony as public witnesses.

DOMENIC MANZELLI, DON McCONACHIE, JOHN ARTHERTON and ED MILLER are Happy Cab drivers. They said that an additional company would put more taxicabs in service competing for the same amount of business. They believe that a new taxicab service would hurt them financially.

KEVIN MILNES is presently a driver for Safeway Cab Company. Safeway did not protest the application. He said that he was very much in favor of a new authority because his experience was that an additional company would provide competition that was not only good for the rider but was good for the drivers also. It gives drivers much-needed employment options.

LORRAINE KRAL and DAN HOEVET, both of Omaha, are visually-impaired riders. They said they received good service from Happy Cab and were worried that a new company might jeopardize that service. They expressed a need for better fares for impaired and fixed-income riders. Mr. Hoevet recognized a need in Sarpy County.

Section 75-311, R.S.SUPP., 1995, provides in part:

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 to conform to the provisions of sections 73-301 to 73-322 and the requirements, rules, and regulations of the commission under such sections and (b) the proposed service, to the extent to be authorized by the certificate, whether regular or irregular, passenger or household goods, is or will be required by the present or future public convenience and necessity.

The evidence shows that the applicant is financially able. Applicant also has a suitable and sufficient business plan in place with assets ready to move into the corporation. He has carefully considered his insurance and equipment needs and has shown his commitment by investing in Yellow Page advertising pending the approval process. There is no evidence to indicate that the applicant has made any of these efforts outside of the rules and regulations of the Commission or that he has attempted to avoid or inhibit regulation. Applicant is also experienced in the taxicab business. Applicant is fit, willing and able properly to perform the services proposed and conform with the statutes and the rules of the Commission thereunder.

The applicable law regarding the issue of public convenience and necessity was set forth in the syllabus of the Supreme Court in Shanks v. Watson Brothers Van Lines, 173 Neb. 829, 115 N.W.2d 441:

The burden is on the applicant for a certificate of public convenience and necessity to show that the proposed service is required by the present or future public convenience and necessity. The purpose of the Nebraska Motor Carrier Act was regulation for the public interest. Its purpose was not to stifle legitimate competition but to foster it. Its purpose was not to create monopolies in the transportation industry, but to eliminate discrimination, undue preferences or advantages, and unfair or destructive competitive practices. Legitimate competition is a normal attribute of our free enterprise system. It must be permitted to exist and the law contemplates that it shall.

In determining public convenience and necessity, the controlling questions are whether the operation will serve some useful purpose responsive to public demand or need; whether this purpose can or will be served as well by existing carriers; and whether it can be served as well by

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applicant in a specified operation without endangering or impairing the operations of existing carriers contrary to the public interest.

At page 833 of the Shanks case, the Court said:

It is the duty of the commission to protect the public interest as well as to protect, within reasonable limits, the investment of certificate holders. It is the prerogative of the commission to determine whether or not a new carrier in the field is required by public convenience and necessity. If the granting of an application will endanger or impair the operation of an existing carrier, certainly that would be contrary to the public interest.

In the case of Hagen Truck Lines, Inc. v. Ross, 174 Neb. 646, 119 N.W.2d 76, at page 652, the Supreme Court said:

Even if existing carriers suffered some loss of revenue by the grant of the application, it is not a conclusive factor although it must be considered. Common carriers are not granted a monopoly in the area covered by their certificates. It is only where a loss of revenue to existing carriers occurs which is not in the public interest that such loss of revenue has a controlling effect. Black Hills Stage lines, Inc. v. Greyhound Corporation, 174 Neb. 425, 118 N.W.2d 498.

Applicant's witnesses produced sufficient evidence that public convenience and necessity require additional taxicab service in Sarpy County. The nature of the taxicab business is that to be fully functional, a company must be allowed to serve the greater metropolitan area of both Douglas and Sarpy County. A fare originating in Sarpy County could require subsequent pickups and destinations within Douglas County, e.g. one shopping mall to another shopping mall. Without the Douglas County authority, such fares would violate Commission rules. The protestant has expressed a fear that the applicant's true intention is to serve only Eppeley Airfield. Considering the credible testimony on the issue of public necessity by local business persons, this seems unlikely. No evidence was introduced by protestant that would lead to the conclusion that applicant had any motive but to provide full-service taxicab operations. It is logical to conclude that a Bellevue-based taxicab operation would increase and enhance the service to the Sarpy County area in particular and the greater community as a whole.

The lack of service at peak times was alluded to not only by the applicant, but was also admitted to by the protestant. The testimony describing various times when service cannot adequately be addressed is recognition of a public necessity. It is the goal of this Commission to do what it can to increase the number of available taxicabs during high demand. Certainly one way is to grant authority to suitable applicants.

The evidence shows that the protestant's business is healthy and that Happy Cab has an interest in growing to meet the public need. It is self-serving speculation that a grant of authority in this application might impair the revenues of the protestant. Likewise, it could be argued that fair competition would stimulate growth and innovation to benefit the business interests of both companies and the public.

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Additionally, protestant commissioned an expert witness who authored an ANALYSIS OF HAPPY CAB RIDERS: Priorities and Profiles of the Dispatched Rides. The study done by Dr. Ambrose was not a comprehensive study of the taxicab business locally or the industry in general. The results of his telephone survey showed a small segment of the riding public that was tolerant of existing services. It may also provide information helpful to management in defining the expectations of certain riders; however, there is no support for the conclusion that the best service solution is through existing services. Simply put, more taxicabs in the available pool must result in more service opportunity for the customer.

The testimony of the chief operating officer of Happy Cab, Mr. LaLomia, indicated that for the company he is actively pursuing new and *additional* drivers. There is regular advertising for drivers, and he admitted that additional units could be added to service very quickly. Such interest in growth admits that the public needs more service.

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

1. Applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of Sections 75-301 to 75-322, R.S.SUPP. 1995, 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:

CERTIFICATE AUTHORIZED

SERVICE AND TERRITORY AUTHORIZED:

Transportation of passengers and their baggage by taxi between points in Douglas and Sarpy counties, on the one hand, and, on the other hand, between points in Nebraska over irregular routes. Restriction: The transportation of railroad train crews and their baggage is not authorized.

3. The application should be granted.

O R D E R

IT IS, THEREFORE, ORDERED by the Nebraska Public Service Commission that Application No. B-1410 be, and it is hereby, granted; and that upon compliance with the terms and conditions set forth in this order, a Certificate of Public Convenience and Necessity shall be issued to DonMark, Inc., dba Cornhusker Cab Company, Bellevue, Nebraska, in Application No. B-1410, authorizing the operations set forth in the foregoing findings.

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

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within a reasonable time from the effective date of this order, with Sections 75-305 (fees), 75-307 (insurance), and 75-308 (rates), R.S.SUPP. 1995, and within 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 17th day of September, 1996.

NEBRASKA PUBLIC SERVICE COMMISSION

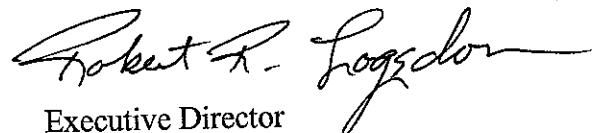
COMMISSIONERS CONCURRING:


//s//Rod Johnson
//s//Frank Landis
//s//James F. Munnelly

Chairman



ATTEST:


Executive Director

