

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application of ) APPLICATION NO. B-1421  
Omaha Economic Development Corporation, )  
Omaha, seeking authority as a common )  
carrier in Nebraska intrastate commerce )  
for the Boys Club of Omaha, Eastern )  
Nebraska Office on Aging and OPC )  
Services in the transportation of ) GRANTED IN PART  
passengers and their baggage by )  
passenger van between points between )  
points in Douglas and Sarpy Counties )  
over irregular routes under continuing )  
contracts with the Boys Club of Omaha, )  
Eastern Nebraska Office on Aging and )  
OPC Services. ) ENTERED: March 4, 1997

APPEARANCE FOR THE APPLICANT:

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APPEARANCE FOR THE PROTESTANTS:

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BY THE COMMISSION:

OPINION AND FINDINGS

By application filed October 30, 1996, Omaha Economic Development Corporation (OEDC), dba Omaha Community Transportation Company (OCTC) seeks authority as a contract carrier in Nebraska intrastate commerce for the Boys Club of Omaha, Eastern Nebraska Office on Aging, and OPC Services in transportation of passengers and their baggage by passenger van between points in Douglas and Sarpy Counties over irregular routes under continuing contracts with the Boys Club of Omaha, Eastern Nebraska Office on Aging and OPC Services. Notice of the application was published in the Omaha Daily Record on October 31, 1996. Protests were filed by Metro Medical Transportation on November 6, 1996, by Shared Mobility Coach, Inc., and by Browns Transport on November 25, 1996. Happy Cab, Yellow Cab, and Checker Cab companies filed protests on November 27, 1996. Brown Transport withdrew its protest. Hearing on the application was held January 29, 1997 in Omaha with appearances as shown. Metro Medical Transportation did not appear.

The applicant produced seven witnesses.

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Alvin Goodwin testified: He is president of OEDC. It was established in 1977 as a community-based group, non-profit organization. It serves the Omaha area from Pacific Street on the south, from 16th Street on the east to 52nd Street on the west and Fort Street on the north. It works to enhance and improve conditions of people who are economically or socially disadvantaged. OEDC entered the transportation business in April of 1995. It has a building that contains 10,000 square feet of garage area, as well as office space. Applicant has 15-passenger vans and communications equipment to control them. Exhibits 1 and 2 show applicant's present authority. Applicant operates six vans. Applicant operates on a 24-hour basis. Applicant presently serves Labor Consultants, J. C. Wade Villa, YMCA, and the Boys Club on a contract basis. It is presently operating outside its authorized area. Applicant seeks approval of its contact with Eastern Nebraska Office on Aging (ENOA). It picks up passengers at ENOA's direction and transports them generally for medically related trips. Applicant does not provide handicapped-equipped vehicles. Applicant seeks approval of the contract with OPC to transport passengers to and from Offut Air Force Base. Applicant has provided service to Labor Ready, Inc., an employment service. Applicant seeks to expand its authority into Sarpy county to serve the Boys Club. Applicant employs six drivers. Applicant has a driver training program. It periodically screens its drivers for chemical dependency. Applicant has provided transportation outside its authority for Labor World on two occasions. He does not know who the existing carriers are. He cannot talk in terms of how applicant can better serve any of the contracts as opposed to existing carriers.

Lonnie McIntosh testified: He is interim director of the Boys and Girls Clubs of Omaha at the south unit. OCTC has been supplying the clubs with van service on a contract basis. OCTC was the only entity that offered service within the agency's budget. If the authority requested is denied, young people from the south Omaha area and part of Sarpy County would be denied an opportunity to come to the club. It would severely impact the south Omaha unit. He is almost certain that the same kind of impact would be felt at the north Omaha unit. The contract with Mr. Goodwin specifies that three vans be available. Sometimes the third van may not be needed. Most of the time the third van is needed. The Boys Club does not use cabs because the rates are too high.

Stony Hayes testified: He is the unit director for the Boys and Girls Clubs of Omaha at the north unit. The needs of the north unit are basically the same as those of the south unit to which Mr. McIntosh testified. The north Omaha unit has been using OCTC for transportation exclusively. If those services were to disappear, transportation would be nonexistent. Chief Transportation Company, formerly served the north unit. The children who attend the clubs are picked up at school. A major portion of the children that the club serves come from the lower economic group. Taxi cabs have not solicited the transportation business for the clubs.

William Parsons testified: He is the program coordinator for the Golden Carriage Program for the Eastern Nebraska Office on Aging. The program provides senior citizens who are not wheelchair confined, transportation to medical appointments. ENOA functions in the entire Omaha metropolitan area. It has contracts with all three taxi services. It has contracts with two van services and 30 to 40 volunteer drivers. ENOA has 185 clients on its register and it provides 15 to 20 rides per day in the metropolitan area. It contracts with OCTC for services. Only in emergencies, does ENOA contract with taxis. It requires 24-hour advance notice from his clients so that van services can be routed. It would be a definite benefit to have a van service that could cover for the elderly throughout the city. Presently, ENOA does not have that ability. When ENOA had to rely on taxi service, it was running approximately \$500 over budget per month. Even with the reduced rates for seniors offered by the taxi companies, the cost is more than when he sends people with OCTC service.

Rick Stansbury testified: He is the branch manager of Labor Consultants. It is a temporary employment service. It has been using the service of OCTC. OCTC picks up workers at St. Francis House between 5:00 and 5:45 every morning and brings them to the office. OCTC then delivers the workers to their jobs. Most of the time OCTC picks up the workers and brings them back to the office. OCTC then offers workers rides back to St. Francis House. St. Francis House provides a place to live for persons who do not have any other place to live or regular employment. The job locations are scattered all through the city and into Sarpy county. If OCTC cannot operate into the area applied for, his office would have to use personal cars or shut down the office while people are delivered to work. OCTC services are fantastic, very flexible. He contacted taxi services originally. He did not find anybody that was real willing to work with his organization. OCTC picks up the men at St. Francis House who want to work and have them at the office before he opens it. The cab companies have never solicited its business.

Lourenza Busch testified: He is the branch manager of Labor Ready, Inc., a temporary labor provider. It is located right down the street from Labor Consultants. He has utilized the service of applicant on two occasions. On one occasion he had to send 30 people to two job sites, and, in another case, it was 10 to 15 people to one job site. OCTC picked the workers in front of his door. OCTC can help him get large amounts of people to his customers when the workers are wanted. He has attempted to use cab companies to provide the transportation he needs. In an emergency he hired a taxi to take a worker from 108th and Maple. The ride cost him \$22. On another occasion it cost him approximately the same money to have a person taken across town. Mr. Goodwin has furnished a fast and reasonable shuttle service on the two occasions OCTC was used.

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Larry Patterson testified: He is the contract manager for OPC Services at Offut Air Force Base. It administers a food service contract at Offut providing jobs for people with disabilities under a NISH (National Institute for the Severely Handicapped) contract. OPC uses Shared Mobility to provide transportation. OPC wants to use the services of OCTC. OPC has seen a price increase in October of 37% from Shared Mobility. The cost of the transportation makes it very difficult to get people to work for the organization. Cost of the transportation is deducted pro rata from the client's paycheck. Shared Mobility's service could be a lot better. His organization sought out OCTC. If a contract could be entered into with OCTC, individual workers supplied by his organization would save approximately \$4 per day. If the application is denied, he will seek other providers that will provide the service for less than Shared Mobility. He has had no proposals from the taxi companies. OCTC's equipment and manpower is sufficient to take care of an OPC contract.

Protestant Shared Mobility produced one witness, Frank Schumacher, who testified: Shared Mobility is in the business of promoting dignity for its clients through independence and through mobility. It operates a fleet of 11 vehicles, 10 of which are on the road continuously. Three of the vehicles currently meet 2010 ADA requirements. The other vehicles are 15 passenger vans with adaptations for physically challenged people. Its authority is a 60-mile radius of Omaha, limited to transportation of persons that have ADA needs or special driver assisted needs. Drivers receive special training. He and his wife are the two officers of the company. They employ 19. Because of its overhead, Shared Mobility needs to make \$48.50 an hour to break even. It has revenues of \$2,000 per week. It cannot compete with applicant's proposed charge of \$28.50 per hour. Shared Mobility would not serve Boys Club members unless they were confined to a wheelchair or had adaptive equipment. They would not be serving the labor companies.

Protestants Happy, Yellow, and Checker Cab Companies produced one witness, Vince Lalomia, who testified: He is the president and chief operating officer of Happy, Yellow, and Checker Cab Companies. The combined companies operate 102 vehicles. They have 99 drivers. Five of their 102 vehicles are vans. They have statewide authority but operate principally within Douglas and Sarpy counties. The companies recently invested \$200,000 in a computer dispatching system which makes it possible for the companies to dispatch cabs to the requested address within 15 minutes. It has a contract with the Eastern Nebraska Office on Aging and the Omaha Economic Development Corporation. Service is provided on a daily basis under those contracts. A current monthly statement to ENOA shows that the companies provided 15 trips for a total of \$66.40 making an average trip \$4.40. The companies do not transport members for the Boys Club of Omaha, although it has the authority and capacity to provide the service. The companies are likewise able to serve OPC, Labor Ready, and Labor Consultants. The drivers for the companies are independent contractors.

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Thirteen members of the public appeared and made statements on the record.

Robert C. Gehrman testified: He has a son that works at OPC and has ridden the Shared Mobility Coach. Its rates are now \$10 a day, roughly 31% of his son's gross income. He understands that OPC would be able to negotiate a favorable contract with Mr. Goodwin's company.

Karen L. Staack testified: She has a 31-year-old son that is employed with OPC. The Shared Mobility rates are a hardship on her son.

Susan Flinn testified: She has a son employed at OPC for seven months. His transportation costs are 29% of his gross pay. The four deaf clients who currently use Shared Mobility also pose an additional problem of communication access.

Rev. Dr. Wilkinson M. Harper testified: He is a member of the Omaha Economic Development Corporation Board. The services that are contemplated for Offut Air Force Base is a needed service.

Kathy Hoell testified: Applicant is not equipped to deal with people with impaired mobility under the Americans with Disability Act which went into effect in 1992.

Dorothy Willis testified: MOBY had more than 2,000 turndowns last year. Some days they say we simply can't take you. She questions applicant's ability to contract for a person with a wheelchair.

Bertha Carpenter testified: She is not against granting applicant expansion in to South Omaha, but she asked for criteria to be attached to the authority. Mr. Goodwin should have lift equipped vans for wheelchair persons.

Roy Smith testified: The price of his transportation was \$6.40, then the price went up to \$10 which is more than he can afford. If the price gets too high, he will have to find another job and he does not want to do that.

James Werle testified: He would hate to see the loss of Shared Mobility, however, the costs have got to give.

Irving Tillman testified: He is not satisfied with the promptness of Shared Mobility. The price increase was ridiculous.

Charlotte Shropshire testified: The community needs good secure transportation without limits. She is a member of the OEDC Board.

Neb. Rev. Stat. §75-311 (Reissue 1996) In pertinent part provides:

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(2) A permit shall be issued to any qualified applicant therefor authorizing in whole or in part the operations covered by the application if it appears after notice and hearing from the application or from any hearing held on the application that (a) the applicant is fit, willing, and able properly to perform the service of a contract carrier by motor vehicle and to conform to the provisions of such sections and the lawful requirements, rules, and regulations of the commission under such sections and (b) the proposed operation, to the extent authorized by the permit, will be consistent with the public interest by providing services designed to meet the distinct needs of each individual customer or a specifically designated class of customers as defined in subdivision (6) of § 75-302. Otherwise the application shall be denied.

Subsection (6) of § 75-302 provides:

Contract carrier means any motor carrier which transports passengers or household goods for hire other than as a common carrier designed to meet the distinct needs of each individual customer or a specifically designated class of customers without any limitation as to the number of customers it can serve within the class;

Neb. Rev. Stat. 75-301 (1996) In pertinent part provides:

(2) It is the policy of the Legislature to (a) regulate transportation by motor carriers of passengers ... in intrastate commerce upon the public highways of Nebraska in such manner as to recognize and preserve the inherent advantages of and foster sound economic conditions in such transportation and among such carriers, in the public interest, (b) promote adequate economical and efficient service by motor carriers and reasonable charges therefor without unjust discrimination, undue preferences or advantages, and unfair or destructive competitive practices, (c) improve the relations between and coordinate transportation by and regulation of such motor carriers and other carriers, (d) develop and preserve a highway transportation system properly adapted to the needs of the commerce of Nebraska \*\*\*

The case In re Application of Northland Transportation, Inc. 239 Neb. 918, 479 N.W.2d 764 (1992) contains a thorough analysis of contract carriage in Nebraska. Beginning at page 924 the court said:

A contract carrier is defined as one, other than a common carrier, which furnishes transportation service to meet the special needs of an individual shipper or shippers... To qualify for a contract carrier permit, an applicant must show (1) that it is fit, willing, and able to properly perform the service of a contract carrier and to conform to the applicable statutes and lawful requirements, rules, and regulations of the commission and (2) that the proposed operations will be consistent with the public interest by providing services designed to meet the distinct needs of each customer or class of customers. Neb. Rev. Stat § 75-311 (Reissue 1986).

In Hagen Truck Lines, Inc. v. Ross, 174 Neb. 646, 119 N.W.2d 76 (1963), this court discussed the relationship between contract and common carriers. In that case Hagen Truck Lines applied for authority as a contract carrier to haul meat and dairy products for various packing plants in Nebraska. The packing plants desired the service because the applicant could provide refrigerated equipment and truck-to-store service not offered by common carriers. Several common carriers protested, asserting that they could provide the desired service and that granting the application would reduce their profits, in derogation of the public interest. The commission granted the application, and the protestants appealed to this court.

In affirming the commission's decision, the court held that the potential loss of revenue by common carriers resulting from issuance of a contract carrier permit does not necessarily render the permit inconsistent with the public interest. Though that is a relevant factor, the court indicated that if the desirability of satisfying the shipper's distinct needs outweighs the detrimental effect on existing carriers, granting the authority sought is consistent with the public interest.

Thus, the commission, in determining whether to issue a permit for contract carrier authority, must weigh the distinct needs of the shipper or shippers against the effect on and adequacy of existing common carrier service (citations omitted). Though evidence that common carriers can satisfy the distinct needs of a shipper as well as a contract carrier renders issuance of a permit inconsistent with the public interest, mere proof that the services of common carriers are adequate to fulfill the shipper's needs is not conclusive when the applicant's service is better designed to fit the shipper's special requirements. Wells Fargo II, supra. Moreover, the "consistent with the public interest" standard for obtaining a contract carrier permit is much less exacting than the "public convenience and necessity" standard for issuance of a common carrier certificate. The former means only that the proposed service does not conflict with the legislative policy of the state regarding transportation by motor vehicles. (citations omitted)

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The fact that existing common carriers will lose revenue if the permit is granted is not necessarily dispositive. The proposed service may still be consistent with the public interest if it is needed and the applicant can meet the shipper's distinct needs better than can the protesting common carriers. We conclude that the commission's implicit suggestion that it is always inconsistent with the public interest to grant a contract carrier permit when existing common carriers can adequately serve the shipper improperly tipped the scales against Northland in this case.

The Commission finds that applicant has considerable experience in the transportation of passengers in Omaha and vicinity. It has adequate equipment to provide the services proposed and adequate capital to make the investments required to perform the proposed service. Although the Commission takes a dim view of carriers who provide transportation without authority of the Commission, it is apparent here that the applicant, once made aware of the necessity for it to obtain the Commission's authority, applied for the requisite authority forthwith. It does not appear to serve any statutory standard nor the public interest to deny this application on the grounds that the applicant commenced operations before it obtained proper authority from this Commission.

The evidence shows that applicant is indeed well qualified to provide transportation that serves the distinct needs of its supporting clients.

The authority granted to Shared Mobility in B-1339 requires that it provide "vans specially modified according to the Americans with Disabilities Act" and transport passengers "who require driver assistance to board and exit the vans." The nature of its authority requires it to operate more expensive equipment than that offered by the applicant. Its rate would necessarily be higher than the rate which would have to be charged by applicant in order to operate without a loss. Applicant's equipment and organization is much better suited to the needs of OPC services than any of the protestants'.

Happy, Yellow, and Checker Cab are certificated and protected by the Motor Carrier Act to perform an entirely different service than that which the applicant seeks to provide. The backbone of the taxi industry is clearly operation of sedans that cater to individual riders or at most, small parties. The Commission does not see that a grant of authority for applicant to serve the Boys and Girls Clubs and OPC Services would impair the opportunity of the taxi companies to prosper.

The evidence shows that the taxi companies have been able to serve the needs of ENOA clients who live outside the area presently served by applicant so the Commission sees no reasonable basis on which to alter the present system of supplying the transportation needs of ENOA clients. The statutory exemptions of applicant should not be extended as far as service to ENOA is concerned.



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It is clear from a plain reading of §75-301(2) that the Legislature intends that the Commission use its power and judgment to provide the travelling public with a variety of transportation alternatives which will provide the various segments of the travelling public with the most economical and efficient means of transportation that providers can devise. The territorial limits set out in the application should be approved so as to permit the applicant to provide service to Boys and Girls Clubs of Omaha and OPC Services.

The applicant should not be allowed to provide van service to Labor Consultants and Labor Ready, Inc. It is apparent that the cab companies can provide the service they require. If, after a good faith, reasonable effort to solve their transportation needs with the cab companies, their transportation needs cannot be satisfied, Labor Consultants and Labor Ready, Inc., can seek out the applicant for service, and applicant may file an additional application.

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

1. Applicant is fit, willing, and able to properly perform the services purposed and to conform with the statutes and rules of the Commission thereunder.
2. It is in the public interest to grant applicant a permit to operate in Nebraska intrastate commerce as follows:

Transportation of passengers in vans rated at 15 passengers or more, between points within Douglas and Sarpy counties under contracts with OPS Services and the Boys and Girls Clubs of Omaha.

3. The application should be granted in part according to the foregoing findings.

#### O R D E R

IT IS, THEREFORE, ORDERED by the Nebraska Public Service Commission that Application B-1421 be, and it is hereby, granted in part as set forth in the foregoing findings; and that upon compliance with the terms and conditions set forth in this Order, a permit shall be issued to Omaha Economic Development Corporation dba Omaha Community Transportation Company, Omaha, Nebraska, in Application B-1421, authorizing the operations set forth in the foregoing findings.

IT IS FURTHER ORDERED that applicant shall not be issued the permit authorized by the Commission unless and until applicant has fully complied, within a reasonable time from the effective date of this Order, with Sections 75-305 (fees) and 75-307 (insurance), R.S.SUPP. 1996, and filing of its contracts pursuant to 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.

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IT IS FURTHER ORDERED that applicant shall not conduct operations until a permit is issued.

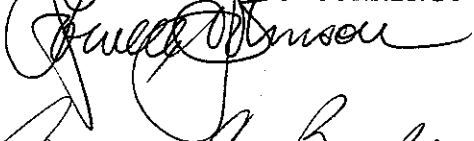

IT IS FURTHER ORDERED that applicant shall render reasonably continuous and adequate service to the public pursuant to the authority authorized.

IT IS FURTHER ORDERED that the permit 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 4th day of March, 1997.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

//s//Rod Johnson  
//s//Frank E. Landis

Chairman

ATTEST:

  
Executive Director

COMMISSIONERS DISSENTING:

//s//Daniel G. Urwiller