

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of Transport Plus) APPLICATION NO. B-1439,
of Lincoln d/b/a Transport Plus,) SUPPLEMENT 1
Lincoln, Nebraska, seeking to)
amend the Certificate: To amend)
the certificate by the deletion)
of restrictions (2) and (3) in)
Supplement 1, so that Supplement)
1 would read as follows: Service)
and Territory Authorized:) ORDER GRANTING APPLICATION
Passengers that are ADA eligible)
between points in Lancaster)
County and from points)
originating in Lancaster County)
to points in Nebraska over)
irregular routes. RESTRICTIONS:)
(1) Restricted against taxi)
service. Other Restrictions.)
The transportation of railroad)
train crews and their baggage is)
not authorized. HHS Designation:)
Yes.) ENTERED: APRIL 21, 2015

APPEARANCES

For the Applicant:

Stephen Mossman
Mattson Rickettes
134 South 13th Street
Suite 1200
Lincoln, NE 68508

For the Protestants:

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

For the Commission Staff:

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Lincoln, Nebraska 68509

BY THE COMMISSION:

BACKGROUND

On December 22, 2014, an application was filed by Transport Plus Of Lincoln, Inc., Lincoln, Nebraska, seeking the removal of its restriction of twenty-four hour advance scheduling for all transportation other than transportation conducted under contract with the Lincoln Star Tran Brokerage Program and the restriction to a maximum fleet of four vehicles with said fleet restricted to four van-type vehicles or three vans and one compact sedan and said sedan restricted to the use in the Star Tran Brokerage Program. The transportation of railroad train crews and their baggage is not authorized and the HHS Designation is Yes. Notice of the application was published in The Daily Record, Omaha, Nebraska on January 12, 2015. Timely protests to the application were filed by Servant Cab Company through its attorney, Jack Shultz.

A Planning Conference was conducted by the Commission, with all parties participating, on February 18, 2015. The Planning Conference Order scheduled the hearing date, discovery and other deadlines.

A hearing on the application was held on March 25, 2015, with appearances as listed above. Notice of the hearing was sent to all parties of record on March 12, 2015.

APPLICANT'S EVIDENCE

Dave Brauer testified first for the Applicant. Mr. Brauer is the current president of Transport Plus ("Plus"). He was a founder of Steel Fabricators twenty-two years ago. He sold his stock with Steel at the beginning of 2015, and intends to work for Plus, which he bought in 2014. He bought Plus as his son worked there and was aware that they suspended operation in 2014. He found out what it did and wanted to keep it going for the customers and the employees of the company.

Mr. Brauer said that Plus resumed operations in November of 2014 after his purchase of the company with four vans. He said that business was enough that he added a fifth van after the first week. He has since added a sixth van to the service.

Plus applied for the amendment to its authority in response to issues with compliance raised by a broker that Plus has contracts with. The broker had questions regarding the restrictions, specifically the four vehicle limitation and the

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twenty-four hour advance notice requirement. Mr. Brauer said that he understood that the restrictions applied to a Star Tran contract. Plus had operated with as many as sixteen vehicles in the past.

The Applicant is requesting that the Commission remove these restrictions. It is not seeking a change in the restriction against taxi service as it is not providing that service and does not plan to do so. It believes that the removal would take away any questions regarding the applicability of the restriction as to the limit on vehicles.

Mr. Brauer's duties include ensuring adequate financing for the company, providing that people and equipment are in place to serve as many as they can, and to be in regulatory compliance. He does not do much of the day-to-day operations as his managers are responsible for those duties, but he does discuss issues with them and assists with problem solving.

Plus currently has eight employees, five full-time drivers and three office workers who also drive. The company provides both wheelchair and ambulatory services. The fleet consists of six vans, three that are wheelchair equipped and three that are not, and all of them are either 2012, 2013 or 2014 model year vehicles.

Mr. Brauer reviewed some of the financial statements of Plus. He said that Plus uses a cash basis of accounting. This results in the costs of the start-up being on the books but that some of the income that the company has earned has not yet been received. For example, Plus did not receive any income from HHS for the first three months of service. The result is that the statements indicate that the Applicant currently is showing a loss for its operations to date, but the financial situation does not reflect income that would offset much of these losses.

Mr. Brauer noted that the company is currently a small company but that he intended to get it back to the sixteen units and twenty-five employees that it had prior to the suspension of service in 2014.

Mr. Brauer again cited that the Applicant is seeking to remove the twenty-four hour restriction as they do receive calls from people for service that would not have the required advanced notice. The company also receives calls from a broker to pick up people who need to get home that day.

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On cross-examination by Mr. Shultz, Mr. Brauer said that Plus has performed with less than twenty-four hour notice. He said that type of service is not restricted under the base part of the certificate. The issues regarding the twenty-four hour limitation and the vehicle restriction were raised by Jamie Chambers of Intelliride.

Plus currently operates three to four vans of the six it has registered. Intelliride started out providing more trips than they could handle, but lately have reduced the rides given to Plus. Plus does not use the Intelliride tablet. Mr. Brauer said that Servant Cab was the company that picked up most of the service created when Plus suspended its operations.

Mr. Brauer believes that Plus can find additional sources of revenue in order to become profitable. While the previous owners suspended operations, Mr. Brauer believes that his company will find those sources of income.

Mr. Brauer said that specialized personal assistance meant that service is provided "above and beyond curb-to-curb transportation." Plus does offer door-to-door service for its clients, as their drivers assist the clients from the vehicle to the door and further if necessary. Mr. Brauer noted that ADA eligible indicated that the person being transported is anyone who is physically, visually or even emotionally incapable of being transported without additional service of some kind.

The base certificate is not restricted against taxi service as the supplement is, said Mr. Brauer.

Mr. Brauer said that he protested the Golden Plains Transportation Services application in another docket before the Commission on the basis of need insofar as the need of the people being transported is special. He believes that the needs of the people being transported cannot be met by a provider providing only the vehicle. Many times these individuals are fragile, either physical or emotionally, and need the additional support such as that provided by the Applicant.

Mr. Brauer did say that most of the runs that his company performs are scheduled more than twenty-four hours in advance, but that there are some trips that do not allow for the typical advance notice. Plus does provide some private pay transportation, but he believes that questions are asked of these individuals to ensure that they are eligible for their

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service. Plus does plan to apply for the Star Tran Brokerage Program service contract, with a scheduled deadline of May 1, 2015, for the Request for Qualification.

On redirect by Mr. Mossman, Mr. Brauer noted that Plus cannot be a general taxi company as the certificate still is limited to transportation of individuals with the restrictions such as ADA eligible and those listed in the base certificate. Mr. Brauer said he has no intention or desire to become a taxi provider.

On examination by Commissioner Tim Schram, Mr. Brauer said that if the fleet were to be expanded it would look similar to what it looks like now, with some wheelchair accessible vehicles and some vehicles that are not.

On recross, Mr. Brauer said that Plus competes with Servant Cab and Madonna for Intelliride service. He said he was not aware of Midwest Special Services. He further said he would not oppose a restriction against taxi service being placed in the base certificate.

Brad Cochrane testified next for the Applicant. Mr. Cochrane has been a resident of Lincoln for over seven years. His health condition now requires the transportation services of a third party. He receives Medicaid transportation through Intelliride.

Mr. Cochrane rides with Plus three times a week, primarily to dialysis. If he is not served by Plus he is sent to one of the cab companies or another service.

Mr. Cochrane said that Plus was on time, courteous, and had clean vehicles. Plus drivers always get out to assist him with the use of his walker. The other providers are not consistent with that service.

Mr. Cochrane described a day when he was told through Intelliride that he would be picked up at a doctor's appointment at 5:30 p.m. He was then told that a cab would be there to pick him up at 7:00. A Yellow Cab finally showed up at 8:30.

Jenny Cyboron testified next for the Applicant. Ms. Cyboron is the office manager for Plus, and has held the position for twelve years. Ms. Cyboron stated that the company policy for Plus was teamwork with dedicated drivers that

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understand what they are doing in the service being provided and a commitment to assist their clients.

Plus provides a specialized service that is door-to-door. They take extra steps such as ensuring that the clients get escorted and checked into appointments. Plus transportation is provided by appointment and is not a demand call service. The company does address some non-appointment calls, primarily for vulnerable, stranded individuals or a person that has been waiting for a period of time if they have the availability.

The drivers are hired by the general Manager, Dave Meter, and trained by lead driver Dave Nitzsche. The company performs background checks including criminal history and adult and child protective service checks. The company has the applicants get a DMV driver report, have a physical and undergo pre-employment drug screening. The driver is subject to quarterly post-employment random drug testing. The drivers are also trained for safe driving, city street education and sensitivity training.

The Applicant has contracts with Intelliride, Ambassador Health and Gateway Vista, according to Ms. Cyboron. All of these contracts provide transportation for individuals that are eligible for the service. All new clients are asked a series of questions to ensure that they are eligible to be transported by Plus. Intelliride currently supplies around ninety-five percent of the trips that the Applicant currently provides. There were no questions raised regarding the ability of Plus to service these trips prior to the Intelliride inquiry. The restrictions were only applied to transportation services under the Star Tran contract.

On examination by Commission Schram, Ms. Cyboron said that at least one-half of the calls that she receives are complaints about currently service and statements that the people are glad that Plus is back in operation.

On cross examination by Mr. Shultz, Ms. Cyboron said the bulk of the trips that they provide have a three day notice. She also noted that Plus can offer trips at different times when necessary as they have a twenty-four dispatch available and will provide service at off hours if a driver can be found, but that this type of service request rarely occurs.

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Ruth Firley testified next for the Applicant. Ms. Firley is a long-time Lincoln resident. She is familiar with the services of Plus since their beginning in the mid-1990s, when Medicaid began to pay for transportation of Medicaid clients.

According to Ms. Firley, Plus always provided a good service. She reported a cab incident from three years ago regarding the driver weaving in and out of traffic, running a red light and swerving to miss hitting a car.

When Plus shut down, she had to ride with Servant Cab. She reported numerous instances of the drivers speeding and hitting bumps that aggravated her bad back condition. She stated that Servant Cab was often late for pick-ups. She also reported of a trip where she had to ride in a cab for a long time due to the cab picking up other passengers before they would take her home. She said that she never had that problem with Plus. She also stated that Plus is meeting all her needs since they have been reinstated.

Ms. Firley has, since the resumption of service by Plus, been riding exclusively with them. She noted that Plus emphasizes safety, that the drivers do not speed or weave in and out of traffic, and are very courteous. She noted that the vehicles are always clean.

PROTESTANT'S EVIDENCE

Mr. Kirby Young testified for the Protestant. He is a member and General Manager of Servant Cab ("Servant"). Mr. Young detailed Servant Cab's operations as a taxi company. It provides twenty-four hour a day, three hundred sixty-five days a year service to the general public. Mr. Young noted that taxi service is different from scheduled service as taxi service can provide on demand call service where a scheduled provider cannot do so.

Mr. Young reviewed the Servant Cab equipment list which included sedans, vans and wheelchair accessible vans. The drivers are trained by the company and by Madonna for its ADA transportation. Servant performs background checks and drug testing on its drivers. To his knowledge, Servant Cab is in compliance with Commission Rules and Regulations.

Servant Cab does not operate at full capacity, according to Mr. Young. There are times that demand is larger than its

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ability to meet the needs of the public. Servant has the ability to increase its fleet for routine increases in demand.

Servant Cab has competition in Lancaster County, according to Mr. Young. He noted that Plus, Midwest Special Services, Madonna Rehabilitation Hospital, the Omaha cab companies and Leisure Taxi all operate in Lancaster County. Mr. Young said that Servant picked up additional trips through the League of Human Dignity when Plus suspended operation for a period of time. Servant did try to add vehicles and drivers to meet this issue. Servant has also tried to increase its fleet and drivers due to the ineligibility of other cab companies to operate for HHS in the past few months.

Mr. Young stated that Servant Cab also has a contract with Star Tran that is scheduled to expire in May of 2015. Star Tran has asked if Servant would extend the contract through mid-August and Servant has agreed to do so. He said that Servant does not want to leave Star Tran in a bad position while the new contract process continues. Servant also has a contract with the Lincoln Public Schools that was to end in late 2014. To date that contract continues to be extended.

On cross-examination by Mr. Mossman, Kirby Young said that his brother, Vance Young, was responsible for the day-to-day operations of Servant. Kirby Young is the General Manager and oversees the operations of the company. Servant's drug testing is done by an independent company and is done on a random basis. Servant does use the Intelliride tablets. The usage of the tablets does sometimes cause individuals to be transported to multiple locations on a single trip.

Mr. Young said that the certificate held by Servant does not have a twenty-four hour restriction on it. Servant has nine vehicles that can transport wheelchair clients out of a total of twenty-two vehicles total.

Mr. Young said that he did not protest the acquisition of Plus by Mr. Brauer. He noted that Mr. Brauer testified that the restriction against taxi service would remain in place. He does not know what percentage of Servant's revenues were from wheelchair or ambulatory transportation. Mr. Young also noted that not all HHS passengers are ADA eligible.

Mr. Mossman asked if there were times that demand exceeded supply in Lancaster County. Mr. Young responded that this was

true, and that at other times demand does not fill his capacity to provide trips.

Mr. Mossman asked Mr. Young about an application for authority in Lancaster County by Golden Plains Transportation Services in a separate docket before the Commission. Mr. Young said that there were a number of reasons that GPS applied for authority in Lancaster County. One of these reasons was that there is a need for transportation in Lancaster County.

OPINION AND FINDINGS

In this particular case, Applicant is seeking to remove its restrictions of twenty-four hour advance scheduling for all transportation other than transportation conducted under contract with the Lincoln Star Tran Brokerage Program and the restriction to a maximum fleet of four vehicles with said fleet restricted to four van-type vehicles or three vans and one compact sedan and said sedan restricted to the use in the Star Tran Brokerage Program.

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

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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 Lancaster County, Nebraska area. The Applicant appears to have sufficient finances to operate the proposed service. It appears to have sufficient business acumen to operate the proposed service. There appears to be sufficient resources to continue to expand the service. The evidence is that the Applicant began its operations after its restart with four vans and quickly raised that number to six.

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 heard from Mr. Cochran and Ms. Firley that detailed the sometime excessive wait times that they have experienced with Servant Cab. Both of the witnesses said that the Applicant offered extra services that were not offered on a regular basis by the Protestant. The Applicant is required to offer extra assistance to the passenger as a part of its certificate, and appears to do so. Both Mr. Cochran and Ms. Firley said that they were very happy with the services provided by Transport Plus, and will hopefully continue to use the service in the future.

In addition, on cross-examination by Mr. Mossman, Mr. Young stated that the need for transportation services in Lancaster County is one of the reasons that he cited in support of the Golden Plains Transportation Services application pending before the Commission in another docket. This is further evidence of the need for transportation services in Lancaster County such as that proposed to be offered by the Applicant by the removal of the restrictions.

The Commission finds that the above evidence shows that there is a useful purpose responsive to a public demand or need that the proposed operation can meet. The evidence also shows that the existing companies are not currently meeting that need.

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. The witnesses testified as to the long wait times that they have experienced in their trips in Lancaster County. The testimony of the additional services that are provided by Transport Plus also illustrates the need for the additional service that could be provided by the Applicant that is not being provided by the Protestant.

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 did not state during the hearing as to whether or not the Protestant would be hurt by the granting of the Application. The issue of

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the impact of impairment or endangerment to the operations was not addressed.

The public interest in this matter is very significant. The public has an interest in having an adequate number of vehicles available to meet its needs. This is particularly true in this Application as the Applicant primarily serves individuals who are dealing with special situations such as the elderly and those who are in wheelchairs. These individuals must have enough transportation and the services with that transportation to meet their 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.

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: SUPPLEMENT 1: Service and Territory Authorized: Passengers that are ADA eligible between points in Lancaster County and from points originating in Lancaster County to points in Nebraska over irregular routes.

RESTRICTIONS: (1) Restricted against taxi service. Other Restrictions. 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-1439, Supplement 1, 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 Transport Plus of

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Lincoln, Inc., Lincoln, Nebraska, authorizing the operations as set forth in the foregoing findings.

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 21st day of April 2015.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Tim Schram
Reel Johnson

//s//Frank E. Landis
//s//Gerald L. Vap

Gerald L. Vap
Chairman

ATTEST:

Steve Meredith
Executive Director

COMMISSIONERS DISSENTING:

Crystal Rhoades

DISSENT OF COMMISSIONER CRYSTAL RHOADES:

Commissioner Rhoades voted nay on this order because she did not receive the order prior to the Commission meeting and did not have sufficient time to review the order.