

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Appli-)	Application No. B-1439
cation of Transport Plus,)	Supplement No. 2
Inc., Lincoln, seeking to)	
amend the authority by)	APPLICATION TO REMOVE
removing the restriction in)	CERTAIN RESTRICTIONS
Certificate B-1439, Supp. 1,)	ON AUTHORITY DENIED
RESTRICTION: (3) Which reads)	
as follows: (3) restricted to)	
a maximum fleet of four)	
vehicles with said fleet)	
restricted to four van-type)	Entered: October 14, 1999
vehicles or three vans and)	
one compact sedan and said)	
sedan restricted to use in)	
the StarTran Brokerage Pro-)	
gram. Applicant requests the)	
following restriction:)	
Restricted to a maximum fleet)	
of six vehicles.)	

BY THE COMMISSION:

By application filed June 14, 1999, Transport Plus Inc., ("Applicant" or "certificate holder") Lincoln, Nebraska, seeks to amend its authority by removing the restriction in Certificate B-1439, Supplement 1 and replacing that restriction with another. The restriction which the Applicant seeks to remove restricts the certificate holder to a maximum fleet of four vehicles and for the certificate holder's fleet to include wither four van-type vehicles or three vans with one compact sedan, which sedan would be restricted to use in the StarTran brokerage program. The Applicant requests that the new restriction read: Restricted to a maximum fleet of six vehicles. In essence, the Transport Plus wishes to add two vehicles, and to remove the certificate's restrictions on the types of vehicles which could comprise the fleet of the certificate holder. Notice of the application was published in The Daily Record, Omaha, Nebraska, pursuant to Commission rules and regulations, on June 16, 1999.

On July 13, 1999, Husker Cab filed a protest which was amended by a filing on July 14, 1999. A hearing was held on September 16, 1999, in the Commission Hearing Room, Lincoln, Nebraska. Notice of the hearing was sent to all interested parties on July 27, 1999. On February 2, 1999, R&F Hobbies, Inc., d/b/a Prince of the Road ("Prince of the Road") filed a protest to the application.

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Appearing for the Protestant Husker Cab was Mark Breiner. The Applicant was represented by Sanford Pollack.

Ron Harding, Vice-President of Transport Plus, testified that Transport Plus, which has been operating for about one and one-half years, offers transportation services to the elderly, the visually impaired, and the disabled. The original restrictions on the certificate were a result of negotiations at the time of the application. At the time of the application, the Applicant thought that the demand for the service would be between 20-25 trips per day. Currently, Transport Plus is making about 48 trips per day. It is because of this increase in demand, Mr. Harding testified, that his company is seeking a removal of fleet restrictions.

The Applicant is now running three vehicles, two mini-vans and one compact car. The use of the mini-vans, especially by the elderly, has posed problems because of the step down from the vans that must be made. There is also some problem in transferring some persons with disabilities from a wheelchair to the vehicles. Mr. Harding testified that, while he was unsure of what type of vehicle he would get to replace the vans, he thought that it might be a station wagon or a fuller-sized sedan.

Mr. Harding also testified that his request for additional vehicles is based on future demand increases, but that he did not anticipate running all six vehicles, if the authority was granted to do so, at this time. Responding to questions on the increase in demand, Mr. Harding testified that his company is running 63 trips per day. There are four full-time employees.

On cross-examination, Mr. Harding testified that he has looked into several options to remedy the problem that some persons have in mobility. One consideration is to purchase a lowered-floor van offered for sale in Lincoln for approximately \$47,000. He also testified that, in transporting for the brokerage program, the persons transported are not exclusively over 16 or under 16 years of age nor do all of the persons transported in that program necessarily require specialized escort service. Mr. Harding could not predict the mix of vehicles that he would use should the authority be expanded, but indicated that he would test several alternatives to determine which vehicle type works best for the clients he transports.

Under Commission questioning, the testifier expanded on the explanation of his company's relationship with the StarTran program. Transport Plus serves as a subcontractor to transport

persons with disabilities and need special transportation. The clients arrange their transportation needs directly with StarTran.

The Applicant does not currently advertize because of concerns of being able to meet the increased demand. He also indicated that StarTran also uses the local cab companies to transport these persons with disabilities.

The Protestant called Lisa Hopwood, accounts manager for Husker Cabs, Inc. Ms. Hopwood explained an exhibit that was identified as a brokerage trip evaluation sheet comparing the period of time from January to August, 1998 to 1999. The exhibit demonstrated, according to the testimony, that there has been a drastic decline in the Protestant's brokerage operations over the relevant period of time. For example, she explained, that in the month of August the number of trips that Husker Cab made through the brokerage program declined 44.8% from the prior year. She could, upon questioning from the Commission, explain this drop in demand.

On cross-examination, Ms. Hopwood testified that Husker Cab uses four sedans in the brokerage program. Only four-door sedans are used. The orders for transportation for the brokerage come directly from StarTran.

Donna Corey, Personnel Manager for Husker Cab, also testified for the Protestant. She testified that, after "intense monitoring" of the Applicant, she saw no difference in the types of vehicles used, or the services offered, between Husker Cab and the Applicant. It was her belief that StarTran takes a request for transportation services from eligible customers, that is, persons referred by the League of Human Dignity, and offers those transportation needs which StarTran cannot fulfill themselves to either to Husker Cab or Transport Plus.

Kay Breiner, co-owner of Husker Cabs, testified that she talked with Larry Worth at StarTran who told her that there was plenty of business to go around, but that Ms. Breiner had not talked to StarTran officials about the decline in business from StarTran. On questioning, Ms. Breiner told the Commission that, at one time, they had two vans but, because of insufficient business, Husker Cab sold them. On cross-examination, Ms. Breiner testified that she had never received any complaints by customers that they had any difficulty getting in or out of the sedans used by Husker Cab. She also stated that Mr. Worth had never mentioned to her any service complaints from Mr. Worth at StarTran.

Ms. Corey was recalled to testify about service quality questions. She testified that Husker Cab had received complaints from StarTran on only two customers because Husker Cab was about 30 minutes late in picking up the clients. She also stated that they can get orders for transportation from StarTran without much prior notice. She did note that customers to StarTran must give two weeks' notice for their transportation needs although StarTran does not necessarily give advance notice to Husker Cabs for the transportation order. Some orders from StarTran arrive by fax the night before the transportation is needed while others are permanent orders for transportation and are scheduled every day. Ms. Corey also testified that the brokerage service accounts for about 20% of Husker Cab's overall business.

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

Being fully informed in the premises, the Commission finds that the application for Transport Plus to eliminate certain restrictions on the types of vehicles that may be used under the operation of their certificate, as well as the addition of additional vehicles that can be operated under this authority, be denied.

In short, the Commission finds that the Applicant has filed to demonstrate adequate need and necessity. The record that an additional type of vehicle is needed - that is, a sedan for additional mobility in and out of the vehicle - was not proven by the Applicant. Persons testifying for the Protestant have told this Commission that they have received no complaints regarding the type of vehicle they employ, especially in the brokerage service with StarTran.

Further, the Commission is concerned that a grant of the authority requested by the Applicant would blur the distinction between the service offered by Husker Cab and that proposed by the Applicant. In that case, the Applicant must demonstrate that there is a sufficient need and necessity for the proposed service that cannot be met by the existing carrier(s).

The record shows that the Protestant has experienced a decline in the services that they have provided since Transport Plus started transporting for StarTran. Although StarTran may offer transportation requests to any duly authorized and properly certificated carrier, it is clear that, by blurring the distinction in the two carriers, the Protestant will experience a further erosion into their customer base.

Pursuant to Neb. Rev. Stat. §75-311, the Applicant must show that the proposed operation covered by the application is required by present or future public convenience and necessity. Proof offered by the Protestant showed that its business declined significantly upon the entry of the Applicant. The Protestant showed that its business would be further endangered by removing even more by removing the restrictions placed on the authority of the applicant when the certificate was awarded. The courts have ruled that, in determining the issue of public convenience and necessity, one of the tests to be applied is whether the proposed service can be served by the Applicant without endangering or impairing the operations of existing carriers. See *In re Application of Nebraska Transport Co., Inc.*, 210 Neb 269, 313 N.W.2d 686.

The Commission makes clear that merely, and potentially, cutting into the existing operating base of an existing carrier is not enough to make the case that the proposed application should be denied on the basis of "need and necessity". However, where such existing service is *adequate and satisfactory*, demonstration that the existing carrier is willing and able to meet the demands for the offered services and that the operations proposed by the Applicant will endanger or impair the services offered by existing carriers can impeach the ability of the Applicant in its need to establish a *prima facie* case that it meets the "need and necessity" requirement of Nebraska law.

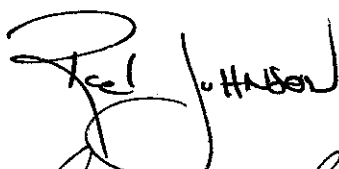
O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application B-1439, Supplement No. 2 be, it is hereby, denied.

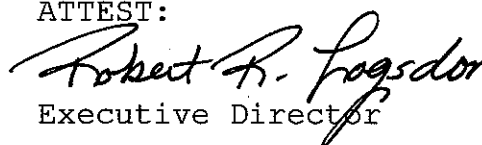
MADE AND ENTERED in Lincoln, Nebraska on this 14th day of October, 1999.

COMMISSIONERS CONCURRING:

NEBRASKA PUBLIC SERVICE COMMISSION


Chairman

ATTEST:


Executive Director

//s//Lowell C. Johnson
//s//Frank E. Landis
//s//Daniel G. Urwiller

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