

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application of) APPLICATION NO. B-1473
Murvel L. Fentress dba Fairbury Taxi,)
Fairbury, Nebraska, who seeks authority)
as a common carrier in Nebraska intra-)
state commerce in the transportation)
of passengers and their baggage by) DENIED
taxicab between points in Jefferson and)
Thayer Counties, on the one hand, and,)
on the other hand, points in Gage,)
Lancaster, Douglas, and Sarpy Counties)
over irregular routes.) ENTERED: AUGUST 25, 1998

APPEARANCES: For the Applicant:

Hal Hasselbalch
7900 Portsche Lane
Lincoln, NE

For the Protestant:
Yellow Cab & Limo, Inc.
Jack Shultz
P.O. Box 82028
Lincoln, NE

For the staff:
John Doyle
300 The Atrium, 1200 N Street
Lincoln, NE 68509-4927

BY THE COMMISSION:

By application filed May 15, 1998, Murvel L. Fentress d/b/a Fairbury Taxi, seeks authority to transport passengers and their baggage by taxicab between points in Jefferson and Thayer Counties, on the one hand, and, on the other hand, points in Gage, Lancaster, Douglas and Sarpy Counties over irregular routes. Notice of the application was published in the Omaha Daily Record on May 18, 1998, pursuant to the rules of the Commission. Protests to the application were filed on May 19, 1998, by Brown's Crew Car of Wyoming, Inc., d/b/a Armadillo Express, on May 20, 1998, by Ron D. Hippen d/b/a Yellow Cab Co., and on June 4, 1998 Happy Cab Company. Applicant filed an amendment to its application on May 20, 1998, restricting the transportation of railroad train crews. The protest by Brown's Crew Car of Wyoming, Inc., was subsequently withdrawn. Applicant filed an additional amendment on June 9, 1998, restricting the applicant to transportation originating in Jefferson or Thayer counties. The protest by Happy Cab Company was subsequently withdrawn. A hearing on the application was held on July 16, 1998 at the Jefferson County Courthouse, with appearances as shown above.

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E V I D E N C E

Applicant produced five witnesses, who testified as follows:

Murvel L. Fentress testified: He is the applicant in this matter. He is a resident of Fairbury. He believes there is a need for cab service because there are people who are unable to use the handi-bus. He is aware that there is a cab company now operating in Fairbury. Mr. Fentress has bought a 1989 Ford Taurus and a 1989 Dodge to use in the business. The cost to start the business may approach \$12,000. Exhibit 1 is Mr. Fentress' financial statement and was introduced to demonstrate the applicant's financial fitness. He will be a driver and will hire a driver, but doesn't have anyone lined up at this point. Late Filed Exhibit 2 shows an abstract of his driving record. He has obtained insurance quotes on the two vehicles he intends to use in his business. Late Filed Exhibit 3 shows these insurance quotes. He has entered into a contract with the Department of Social Services (DSS) and have provided transportation services for them. Exhibit 4 shows the contract he entered into with DSS. He plans to advertise the service. He will put in a new phone, obtain a cellular phone, and intends to operate on holidays and weekends. Exhibit 5 shows his previous testimony in Order B-1419 entered October 29, 1996.

Nancy Bettin testified: She is the Social Services Supervisor for Health and Human Services in the Fairbury and Hebron offices. She has hired Mr. Fentress to provide transportation for Health and Human Services. In the past, Yellow Cab did not provide local transportation. Currently, Yellow Cab does provide local transportation. Exhibit 6 shows two letters sent to Mr. Fentress from Social Services. The first letter stated that Yellow Cab had not agreed to provide local transportation. The second letter stated that Social Services could no longer pay Mr. Fentress because Yellow Cab had agreed to provide local transportation. She would agree to enter in to a contract, to provide transportation services, with Mr. Fentress if he is granted authority. Yellow Cab is currently meeting the Department's need for long distance service. However, there is a need for local service.

Robert Flanagan testified: He is a resident of Fairbury. He called Yellow Cab to take his wife to the clinic in Fairbury. Yellow Cab told him that he would have to pay for mileage from Beatrice to Fairbury and then back to Beatrice totaling about \$70. That is the only experience he has had with Yellow Cab. He would be willing to pay the charges proposed by Mr. Fentress.

Joe Casson testified: He is the attorney for the city of Fairbury and is a consultant for the local Economic Development Corporation. He supports Mr. Fentress' application for taxi service in Fairbury. He feels that there is a need in the community for a local taxi service.

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Christa Haynes testified: She has lived in Fairbury since October 1, 1996. She called Yellow Cab to get to a 8:00 a.m. doctor's appointment. Yellow Cab was unable to get to her until later that day. She does not have her own car and uses Yellow Cab at least three times a week.

The protestant produced one witness, who testified as follows:

Ronald D. Hippen testified: He lives in Beatrice. He is the owner and operator of Yellow Cab Company of Beatrice. He has no other source of income. He was issued a Certificate of Public Convenience and Necessity on May 12, 1997, to offer service in Fairbury. Exhibit 7 shows the Certificate of Public Convenience and Necessity issued to Yellow Cab. He has authority in Gage, Jefferson, Thayer, and Saline Counties. Exhibit 8 is a advertisement placed in the Yellow Pages of the Beatrice/Fairbury telephone book. The telephone number for taxi service carries a 239 prefix which is a cellular number and is a local phone call for anyone that calls it. Exhibit 9 is an inventory list that shows the four cars used for taxi service. Exhibit 10 is pictures of the cars he uses for taxi service in the Beatrice and Fairbury vicinity. He said if the demand was there, he would purchase more cars and station one in Fairbury at all times. Exhibit 11 shows the revenue generated by one car stationed in Fairbury over a three month period. The revenue generated amounted to less than \$150. Exhibit 12 is a financial statement for the quarter ending March 31, 1997. This financial statement indicates a loss for the quarter. Exhibit 13 is a financial statement for the next nine months ending December 31, 1997. He said after the company incorporated, it showed a small net profit. Exhibit 14 is a financial statement ending June 30, 1998. He said the company showed an increased profit for that period due in part to the addition of a limo service. He said DSS accounts for 70% of the company's revenues. Exhibit 15 shows the advertisements in the form of flyers and newspaper ads used by Yellow Cab.

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

Neb. Rev. Stat., Section 75-311 (1996), 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 to conform to the provisions of Sections 75-301 to 75-322 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. Otherwise the application shall be denied. ***

The evidence shows that applicant has made arrangements to obtain equipment and insurance with which to provide the proposed service. Upon review of Exhibit 1, it is questionable whether applicant has the resources that would be required to fund the proposed service. However, even if the Commission were to find applicant fit, willing, and able to perform the service proposed, the evidence does not indicate that the public convenience and necessity requires a second taxi service in Fairbury. Applicant testified that the handi-bus does not meet the needs of some residents, but did not produce any evidence to support this claim. Therefore, the record is clear that the transportation needs for Fairbury and the surrounding communities are primarily satisfied by a government subsidized handi-bus. The evidence further shows that without the income provided by DSS, any taxi service would not be economical in Fairbury and the surrounding area.

Neb. Rev. Stat. 75-301 (1996) states:

(2) It is the policy of the Legislature to (a) regulate transportation by motor carriers of passengers and household goods 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 such motor carriers and reasonable charges therefore 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 Commission shall stringently enforce all provisions of Section 75-126 and Chapter 75, Article 3, so as to promote, encourage, and ensure a safe, dependable, responsive and adequate transportation system for the public as a whole.

This application would fragment the limited market for transportation between two carriers. The community will not be able to support both taxi services. By granting this application, there is a threat that both taxi services would be forced out of business, which is not in the public interest. By denying this application, this Commission is carrying out its legislative mandate by attempting to integrate the small market for public transportation in Fairbury with the other small markets in the surrounding communities so that perhaps one carrier will emerge strong enough to provide a higher level of service than could otherwise exist. The public interest is better served by consolidating the service requirements for a number of communities as the protestant is attempting to do.

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From the evidence adduced and being fully informed in the premises, the Commission is of the opinion and finds that public convenience and necessity does not require the service applicant proposes to provide.



O R D E R

IT IS, THEREFORE, ORDERED by the Nebraska Public Service Commission that Application B-1473 be, and it is hereby, denied.

MADE AND ENTERED at Lincoln, Nebraska, this 25th day of August, 1998.

NEBRASKA PUBLIC SERVICE COMMISSION

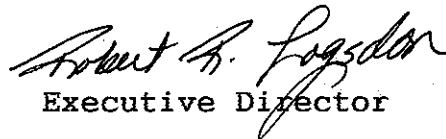
COMMISSIONERS CONCURRING:

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


Chairman

ATTEST:


Executive Director

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION
