

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the)	Application No. B-1499
Application of Murvel LeRoy)	Supplement 2
Fentress, a partnership, dba)	
Fairbury Taxi, Fairbury,)	
Nebraska, seeking authority as)	
a common carrier in Nebraska)	
intrastate commerce in the)	
transportation of passengers)	
by taxicab between points in)	
Jefferson and Thayer counties and)	DENIED
between points within said counties))	
on the one hand, and, on the other)	
hand, points in Nebraska over ir-)	
regular routes. RESTRICTION: The)	
transportation of railroad train)	
crews and their baggage is not)	
authorized.)	Entered: September 5, 2001

APPEARANCES:

For the Applicant:
Hal Hasselbalch
7900 Portsche Lane
Lincoln, Nebraska 68516

For the Protestant:
Ron Hippen, pro se
P.O. Box 7
Beatrice, Nebraska 68310

For the Commission staff:
Shanicee Knutson
300 The Atrium
1200 N Street
Lincoln, Nebraska 68508

BY THE COMMISSION:

By application filed February 12, 2001, Murvel LeRoy Fentress and Spencer M. Fentress, a partnership d/b/a Fairbury Taxi, Fairbury, Nebraska ("Applicant" or "Fairbury Taxi") seeks authority as a common carrier in Nebraska intrastate commerce between points in Jefferson and Thayer counties and between points within said counties on the one hand, and, on the other hand, points in Nebraska over irregular routes. Notice of this application appeared in The Daily Record, Omaha, Nebraska, on February 14, 2001. A protest to the application was filed on March 12, 2001, by Yellow Cab and Limo. A hearing on this application was held on June 4, 2001, in the City Council Chambers in Fairbury, Nebraska, with appearances as shown above.

Spencer Fentress, co-operator of Fairbury Taxi Service, and son of Murvel LeRoy Fentress, the other co-operator, testified in favor of the application. His application for extended authority was made because of his belief that other transportation needs were not being met.

Mr. Fentress first described for the Commission how the applicant's taxicab business is operated. His wife and his father and partner, Murvel Fentress, drive the taxicabs. The business is operated from his father's home. The applicant demonstrated that it has made arrangements to obtain additional equipment to meet the needs of the community in which it serves. Fairbury Taxi recently made arrangements to purchase another vehicle which was identified in Exhibits 8 through 11. The applicant also compiled financial statements to demonstrate its financial fitness to offer the proposed service. Exhibit 4, which depicts Fairbury Taxi's assets and liabilities was offered and received into the record.

The applicant further offered a self-prepared statistical analysis to demonstrate that it had lost business to the protestant in the calendar year 2000 because of the restrictions on its authority. This analysis was entered into the record as Exhibit 5.

The applicant proposes to station a vehicle inside of Hebron which is the county seat for Thayer County. He testified that he believes there would be enough traffic in Hebron because it is the county seat. Mr. Fentress testified that currently, there is no taxi service available locally in Hebron for Thayer County. The backbone of his business in Thayer would be the business of the Health and Human Services clients.

Upon questioning by Commissioner Boyle, Mr. Fentress testified that he did purchase the additional vehicle because of increasing business in Jefferson County. If this application was granted, Fairbury Taxi would purchase another car and will place it in Thayer County stationing it at Hebron. The applicant will advertise to find a local driver. Mr. Fentress did have any knowledge of the actual revenues of the Protestant. Thus, the loss to Yellow Cab described in Exhibit 5 is based upon calls that the applicant has taken that would have gone to Yellow Cab because of the 5 mile radius restriction. Upon questioning by Commissioner Johnson, Mr. Fentress testified that he did know the population of Hebron.

Mr. Michael Baumfalk, testified that he was a resource developer for Jefferson and Thayer counties with the Nebraska Department of Health and Human Services (NDHHS). His job is to

contract with providers of various services, transportation being one of those services. They have a contract with Fairbury Taxi as well as Yellow Cab, Midwest Special Services, Prince of the Road and JLRD. They contract with several private providers. He testified that NDHHS used private transportation services only reluctantly because of the insurance liability involved. Mr. Baumfalk could not testify as to the total need for transportation for NDHHS clients in Thayer County.

Upon questioning by the Commission, Mr. Baumfalk testified that they have to seek out a private provider for short trips occasionally. In his estimation, NDHHS contracted with private providers for approximately four clients, or in other words, maybe one or two trips per month.

Ms. Pamela Griffin, a resident of Reynolds testified next on behalf of the applicant. She testified that she received unsatisfactory service from the Protestant. She testified that the driver was speeding with her mother in the car. She testified that her mother was an NDHHS client. Ms. Griffin testified that she does not work through a case worker to arrange transportation for her mother, rather, she arranges the transportation herself and is reimbursed by NDHHS.

Upon questioning, Ms. Griffin testified that Reynolds is in Jefferson County. Her mother would use the applicant, however, for trips to Omaha and not to Thayer County. She has not asked NDHHS to give her the names of any of the other available carriers. It has been over a year since she used Fairbury Taxi or Yellow Cab.

Ms. Jodi Eisenbarth testified next on behalf of the applicant. She is an employment consultant for Curtis & Associates. They contract with NDHHS. She testified that she has one active client from Thayer County. She has never had any problems with the Protestant, Yellow Cab. Yellow Cab has not turned down any of the requested transportation. She testified that Fairbury Taxi has been unable to make one run in two and one half years. She testified that should would like to have an additional resource, however, she has never experienced a lack of services. Additionally, Ms. Eisenbarth testified that JLRD had a van stationed in Hebron.

Mr. Murvel Fentress testified next on behalf of the applicant. He stated that he was the day to day operator of Fairbury Taxi. He dispatches the calls and does the majority of the driving. He testified that he had someone call him who wanted to go to Omaha, but he could not provide that service because of the restriction on his authority.

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Finally, Mr. Michael Fitzgerald testified on behalf of the applicant. He testified that he was out on his motorcycle one night when he had an accident. He contacted Yellow Cab, however, he was told that they did not operate after 5:00 p.m. Mr. Fitzgerald testified that this incident occurred on the weekend. He did not know of any other transportation providers available.

Mr. Ron Hippen, the Protestant made a statement to the Commission. Mr. Hippen is the operator of Yellow Cab which operates from Beatrice. He testified that he still services the Fairbury area. He testified that 85 percent of his revenue is derived from NDHHS clients. He testified that as of late, he has experienced a large reduction in taxi revenue due to A-1 Limousine or JLRD which has been competing with him for NDHHS clients in the area. As a result of the loss in revenue, he was forced to increase his taxi rates. If the application is granted to the applicant, he will lose the remaining business in Jefferson County to the applicant. He testified that he would be forced to cease operations if the requested authority is granted. He testified that this would result in a loss of taxi service to the seven counties that he currently serves.

With respect to Ms. Griffin's complaint, Mr. Hippen testified that she never complained to him about the service and has always told him that the service was fine. He stated that he was informed that the reason Ms. Griffin was not using Yellow Cab any longer was because of its rate increase.

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

The granting of a certificate of public convenience and necessity is governed by Neb. Rev. Stat. § 75-311 (Reissue 1996) which states,

A certificate shall be issued to any qualified applicant authorizing the whole or any part of the operations covered by the application of 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. Neb. Rev. Stat. §75-311(1) (Reissue 1996).

In other words, the Commission must apply a two-part test.

First, the Commission must determine if an applicant is "fit, willing, and able." In a supplemental application, such as the one that is applied for in the instant case, the applicant has already been granted a certificate based on an earlier meeting of the fitness standard. In that process, the Commission examines the financial abilities of the applicant, looks for any prior problems such as infractions or complaints, looks at the fitness of the vehicles proposed to be used by the applicant, and makes a determination on the overall managerial fitness of the applicant. Based on the evidence before us and adduced from the record in the instant case, we find 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.* Given the record before us, we find that the applicant has failed to demonstrate that the expansion of the applicant's operating authority would serve a useful purpose responsive to a public demand or need which could not be served as well by existing carriers. With respect to Thayer County, the applicant did not present sufficient evidence to support the claim that there was a need for taxicab service that was currently unmet by other carriers. Much of the testimony centered around telephone calls to the applicant for business the applicant could not take due to the current scope of its authority. However, the applicant failed to produce credible evidence that these needs could not be met by another carrier.

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Mr. Baumfalk testified on behalf of NDHHS that there is not a total unmet need in Thayer County. His concern centered on the short distance transportation, specifically point to point in town. In a couple of instances, he used private carriers for his clients instead of commercial carriers. However, when requested to provide evidence with the number of trips that were turned down by the Protestant within the last year, there was evidence of only one instance. Evidence was provided that the applicant was also unable to provide service on one occasion.

The protestant presented evidence that he was adequately providing transportation services in the applicant's proposed service territory. The applicant failed to demonstrate that the current services were inadequate and unsatisfactory within points in Thayer County and from Jefferson and Thayer counties to other destinations in Nebraska. Rather, the testimony centered on Jefferson County where both the applicant and the Protestant have the ability to provide taxi service. Although the applicant testified that he receives calls from customers for transportation he must turn down because of the limitation of authority, he did not provide evidence that the Protestant was failing to adequately provide that service. Accordingly, we find that the application should be denied.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application B-1499, Supplement 2 be, and is hereby denied.

MADE AND ENTERED at Lincoln, Nebraska on this 5th day of September, 2001.

COMMISSIONERS CONCURRING:

Lowell Johnson

L. L. Vay

Anne C. Boyle

Red Johnson

NEBRASKA PUBLIC SERVICE COMMISSION

Paul Sander
Chairman

ATTEST:

Ad S. Pollok
Executive Director