

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Appli-) Application No. B-1505
cation of Abbott Transport-) Supplement 1
ation, Inc. seeking authority)
as a common carrier in)
Nebraska intrastate commerce)
in the transportation) GRANTED
of passengers and their)
baggage by bus designed to)
transport 16 or more)
passengers, including the)
driver, between points in)
Nebraska over irregular) Entered: June 20, 2000
routes.)
RESTRICTION: The transporta-)
tion of railroad train crews)
and their baggage is not.)
authorized.)

APPEARANCES:

For the Applicant:

Bradford E. Kistler
P.O. Box 85778
Lincoln, NE 68501

For the Protestant:

Patrick J. Sullivan
Richard N. Berkshire
8805 Indian Hills Drive #200
Omaha, NE 68114

For the Commission:

Michael T. Loeffler
1200 N Street
Lincoln, NE 68509

BY THE COMMISSION:

By application filed February 3, 2000, Abbott Transportation, Inc., ("Abbott" or "Applicant") Council, Bluffs, Iowa, seeks authority as a common carrier in Nebraska intrastate commerce in the transportation of passengers and their baggage by bus designed to transport 16 or more persons, including the driver, between

points in Nebraska over irregular routes.

Notice of the application was published in The Daily Record, Omaha, Nebraska, on February 4, 2000, pursuant to Commission rules. A protest was filed to the application on February 22, 2000, by Prince of the Road through its attorney, John Boehm, and on March 6, 2000, by Checker Cab Company, Happy Cab Company ("Happy Cab"), Yellow Cab Company, DonMark, Inc, d/b/a Cornhusker Cab Company, and A&B Shuttle, through their attorney, Patrick J. Sullivan. On April 21, 2000 and April 26, 2000, restrictive amendments were filed by the Applicant. On May 3, 2000, the protest by Prince of the Road was withdrawn.

A hearing was held in the Commission Hearing Room, Lincoln, Nebraska on May 19, 2000. Notice of the hearing was mailed to interested parties on April 26, 2000. The Applicant produced one witness, Michael J. Schmid, who testified as follows:

Mr. Schmid, president of Abbott Transportation, testified that this application requested additional authority to that which was granted to his company in November, 1999, under B-1505. The application in the instant case would allow the applicant to provide charter service throughout much of Nebraska. He testified that he organized a company named "Greater Omaha Tours" which would provide tour service for passengers. Greater Omaha Tours would use buses owned by the Applicant and by other persons to give tour bus service in the state.

Mr. Schmid also incorporated into his testimony written testimony which the Commission accepted, without objection, as Exhibit 5. The prepared testimony indicates that Abbott Transportation was formed with several purposes in mind including an airport shuttle service, special party transportation, and charter transportation for groups. Abbott Transportation owned eleven buses at the time this Commission granted the original authority. Those buses had rated capacities of 15 passengers. Since that time, Abbott Transportation has purchased five new buses with a rated capacity of 19 persons, one bus with a rated capacity of 15 persons, and another bus with a rated capacity of 27 passengers. (Note: All rated capacities include the driver.)

Mr. Schmid noted that he employs a screening process for his drivers, and continues safety training after each drivers' hire. He currently holds and maintains the required insurance policies. The application under consideration adds authority to that originally granted in that the authority would allow the Applicant to use buses designed to transport sixteen or more passengers. The

Application also provides that any authority will lapse if the original authority granted in B-1505 is revoked as a consequence of an appeal of that authority, currently pending in the courts. It is Mr. Schmid's belief that the authority granting the use of larger buses would allow him greater flexibility and the ability to accommodate larger groups. Finally, the Application also requests authority to use a charter service as already noted.

In response to questioning by counsel for the Protestants, Mr. Schmid stated that he has discontinued service between the airport and hotels because of vandalism to his vehicles and safety concerns.

Under cross-examination by the Commission, Mr. Schmid related that one of his dispatchers had been cited by the Commission for giving out an improper rate. He also told the Commission that he had ordered the larger buses prior to obtaining authority from this Commission to operate those buses because he anticipated making a request to operate the larger buses. He further stated that there was little price difference between the larger buses and for buses that seated fifteen or fewer passengers.

Kelly Hamilton, President of A&B Shuttle, testified in opposition to the application. Ms. Hamilton stated that A&B Shuttle currently has the same authority as the Applicant because they both have authority from the Commission to operate a shuttle service between the airports and hotels. She stated that her business experienced a reduction in business after the time that the Applicant placed his shuttle in operation after the granting of authority by the Commission. She further testified that she did not believe that there was sufficient demand to support the services provided both by A&B Shuttle and Abbott Transportation.

Ms. Hamilton testified that her business also conducts charter operations. She stated that she thought that the granting of the additional authority to A&B Shuttle would harm their charter service.

Under cross-examination, Ms. Hamilton testified that her average run with passengers to and from the airport to local hotels was from four to five passengers. She operates 15-passenger vans which she testified are rarely full. The company generally provides shuttle transportation service on an appointment basis meaning that most persons who take advantage of their service do so

¹ Note: This citation was dismissed prior to the court date.

by pre-arranging a pick-up time.

Vince Lalomia, president and chief operating officer of Happy, Checker, and Yellow Cab Cos., testified in opposition to the application. Mr. Lalomia testified that the number of passengers that he transported from the Marriott and Regency Hotels dropped from 273 trips in March 2000 to 128 trips in April 2000. He further testified that there is general consistency between months in the number of trips that his company services. He further testified that his average customer wait time had decreased from 7.9 to 5.8 minutes.

FINDINGS AND OPINIONS

In examining the appropriateness in granting the requested authority, we note that the focus is not on whether Abbott Transportation, as it is in business now, is affecting the business of the existing carriers, but rather on whether the pending application, which would authorize the use of larger buses and the operation of a charter service, meets the statutory tests for the granting of authority.

Initially, we find, from the evidence adduced, including the information gleaned from the Applicant's prior application for authority, that the Applicant meets the fitness test of Neb. Rev. Stat. §75-311. We note our concern that the Applicant, at times, appears to be indifferent to the mandates of this Commission. First, we note the citation mentioned above. Second, we are concerned that the Applicant purchased larger buses in advance of application for authority. We will continue to monitor the operations of the Applicant for compliance with Commission rules and regulations. Aside from those concerns, we must conclude that the Applicant meets the financial and managerial fitness test which we feel is envisioned by the statute.

The second test of the statute regards need and necessity. Our focus must be on whether the inclusion of larger vans meets the test of law. We conclude and find that the Applicant has met the public need and necessity test. First, no credible evidence was heard which would indicate that existing carriers would be harmed by the operation of the larger buses by the Applicant. Most, if not all, of the evidence produced by the Protestants concerned the overall operation of the Applicant and did not specifically address the expanded authority sought in this application. Further, the Applicant has stated that the larger buses would enable him to provide more adequate charter and special party services. Because

provide more adequate charter and special party services. Because the larger buses will aid those persons who wish to use Abbott's service, we find that the public convenience is enhanced through the use of the larger vehicles. Accordingly, we find that the application should be granted.

CERTIFICATE AUTHORIZED

COMMON: Transportation of passengers and their baggage by bus designed to transport sixteen or more passengers, including the driver, (a) between Eppley Airfield and hotels and motels in Douglas and Sarpy Counties over irregular routes; (b) in special party operations between points in Douglas and Sarpy County over irregular routes; (c) in charter operations between points in Nebraska (except points in Douglas and Sarpy Counties) over irregular routes; and, (d) in charter operations between points in Douglas and Sarpy Counties on the one hand, and, on the other hand, points in Nebraska (except points in Douglas and Sarpy Counties) over irregular routes. RESTRICTIONS: (1) The transportation of railroad train crews and their baggage is not authorized. (2) Governmentally financed transportation of clients of the Nebraska Department of Health and Human Services and/or of private contractors of the Nebraska Department of Health and Human Services such as, but not limited to, FHC Options, Curtis & Associates and Partners, and/or persons in the custody of the Department of Corrections, in their capacity as such clients and/or persons in custody, is not authorized; and (3) Service under Parts (a) and (b) is authorized only if and for so long as Certificate B-1505 remains in effect.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the application for authority in Application B-1505, Supplement 1, be, and it is hereby, granted.

IT IS FURTHER ORDERED that the applicant shall not be issued the Certificate of Public Convenience and Necessity authorized by the Commission unless and until applicant has fully complied, within a reasonable time from the effective date of this Order, with Neb. Rev. Stat. §75-305 (fees), 75-307 (insurance), and 75-308 (rates), and with 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.

IT IS FURTHER ORDERED that applicant shall not conduct

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

Application No. B-1505, Supp. 1

PAGE 6

operations until a Certificate of Public Convenience and Necessity 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 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 in Lincoln, Nebraska on this 20th day of June, 2000.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Paul J. Whelan

Anne C. Boyle

Paul J. Whelan

//s//Frank E. Landis

Paul J. Whelan
Chairman

ATTEST:

Robert R. Logsdon

Executive Director