

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Appli-) Application No. B-1514
cation of All Nations Church)
of The Lord Jesus Christ)
d/b/a All Nations Specialized)
Transport & Travel Service)
seeking authority as a common)
carrier in Nebraska intrastate)
commerce in the transportation)
of passengers in special party)
and charter operations by bus)
and passenger van between)
points in Nebraska over)
irregular routes.)
RESTRICTION: The transporta-)
tion of railroad train crews)
and their baggage is not)
authorized.)

APPLICATION DENIED

Entered: April 5, 2000

BY THE COMMISSION:

By application filed November 2, 1999, All Nations Church of the Lord Jesus Christ d/b/a All Nations Specialized Transport & Travel Service, Lincoln, Nebraska, ("Applicant" or "All Nations") seeks authority as a common carrier in Nebraska intrastate commerce in the transportation of passengers in special party and charter operations by bus and passenger van between points in Nebraska over irregular routes. On November 12, 1999, a protest was filed by Prince of the Road ("Protestant") through its attorney, John Boehm, and on November 23, 1999, a protest was filed by Yellow Cab & Limousine. Yellow Cab & Limousine withdrew their protest after the Applicant filed a restrictive amendment.

A hearing was held in the Commission Hearing Room, Lincoln, Nebraska, on February 15, 2000. Notice of the hearing was sent to the parties by first-class mail on February 8, 2000. Appearing for the Applicant was Ken Winston; for the Protestant, John Boehm; and, for the Commission, Michael Loeffler.

E V I D E N C E

The Applicant presented the following four witnesses to testify in favor of the application: Reverend Ed Price, pastor of All Nations Church of the Lord Jesus Christ ("All Nations Church") and operator of All Nations Transport & Travel Service, Reverend John Carter, pastor of Liberty Gospel Fellowship Church, Reverend Dennis Banks Director of the Attention Center for Youth, and associate pastor of Angelic Temple Church of God in Christ, and Bishop Vernon Jones of Raleigh, North Carolina.

The first witness, Reverend Ed Price testified that small churches, particularly those serving primarily minority

congregations, are in need of charter transportation services. The congregation of his church travels to other Nebraska communities with churches of Christian denominations. Reverend Price and the members of his congregation are primarily African-American. There are, to his knowledge, no other minority owned transportation services except for Chief Bus Service, which he testified does not offer the type of service for which the Applicant has applied.

Reverend Price also testified that All Nations owned a twenty-three year old 47-passenger charter bus, which had been inspected by a local mechanic. That inspection report was entered in the hearing as Exhibit No. 5. He further testified that All Nations had a business plan in place and the finances available to start the proposed service. Rev. Price testified that Bishop Jones, the owner of a service similar to that of the Applicant's proposed service, would provide any other transportation equipment or financial resources if needed by the Applicant.

Reverend Carter and Reverend Banks testified that they would use the applicant's service when needed to support minority-owned and Christian-based businesses in Lincoln. They stressed the fact that the rates were important as well. Rev. Carter testified that he would use the Applicant's charter bus service for trips to New Orleans, Georgia, and Iowa. Reverend Banks testified that they take two annual trips outside of the state of Nebraska and that they would need applicant's charter service for those two trips. Inasmuch as the portions of the testimony presented by the two witnesses as they relate to interstate service is outside the Commission's jurisdiction, such evidence is not probative to All Nations' application for intrastate authority. When questioned on the issue, Reverend Carter and Reverend Banks testified that they would have a need for charter bus service on trips within the state of Nebraska as well.

Bishop Vernon Jones was the final witness called by the applicant. He testified that he owned a fleet of buses, and back-up buses to provide the Applicant with needed equipment. Bishop Jones testified that he performed DOT inspections on trucks and buses and that he provided these services to other companies. The witness further testified that he would be able to provide the Applicant with financial resources if necessary. He felt that there was no need for a contractual relationship with the Applicant since his assistance would be provided on an as-needed basis.

Sean and John Schroll, testified on behalf of the Protestant. The Protestant opposed only the part of the application requesting authority for van service. The witnesses testified that there was not a present need for an additional van service and that Protestant has enough equipment and resources to take on additional service requests. Sean Schroll further testified that Protestant was a religious organization holding Christian values. Sean Schroll

testified that their company provides transportation services to various groups of people including church groups and civic groups. The Protestant further testified that Prince of the Road provides separate types services, and that company drivers receive "TACT training" which trains drivers in interpersonal sensitivity, public relations, cultural diversity, first aid and other specialized skills.

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

Nebraska Rev. Stat. section 75-311 (1) (Reissue 1996) requires that the Commission find that (a) the applicant is fit, willing and able to properly perform the service proposed and (b) the proposed service is or will be required by the present or future public convenience and necessity.

The Commission makes separate findings with regards to the proposed bus service and the proposed van service. Upon separate consideration of these issues, we find that the Applicant in the instant case has failed to demonstrate the fitness requirement with respect to bus service and failed both statutory requirements with respect to the proposed van service. Accordingly, the application should be denied.

First, we address the issue of Applicant's proposed bus service. The burden of demonstrating that the Applicant is fit, willing, and able to perform the service proposed in compliance with state law and Commission rules rests on the applicant. See *In re Application of Greyhound Lines Inc.*, 209 Neb. 431, 308 N.W.2d 336 (1981). After considering all of the testimony and evidence presented to this Commission, we specifically find that the Applicant has failed to demonstrate fitness for the proposed bus service for the reasons discussed hereafter.

In particular, with respect to public safety and welfare, we have concerns with the safety of the transportation equipment the applicant proposes to place out into the stream of public service. The Applicant testified at the hearing that the bus in his possession had been inspected by a mechanic associated with the Applicant. The attorney for the Commission questioned Reverend Price on the inspection report entered as Exhibit 5 and asked whether or not the applicant intended to fix the items which were called into question by the contents of the report. Even though the Applicant testified at the hearing that he did intend to fix the items called into question by his initial inspection, he did not take any action to fix the defects before having the bus inspected a second time or provide the Commission with evidence demonstrating that he had repaired these items.

It was explained to the Applicant at the hearing that the Commission required All Nations to have its bus inspected by the required authority, the Carrier Enforcement Division of the Nebraska State Patrol. The Applicant followed the Commission's directive to have the bus inspected. On March 16, 2000, Carrier Division's inspection report was received by the Commission and entered as late filed Exhibit 5. In the report, the Carrier Enforcement Division declared the vehicle "out of service" and indicated that there were a number of defects making the vehicle unsafe for public transportation.

We are aware that the Applicant's bus was inspected prior to Carrier Enforcement Division's inspection, that the bus was declared to be in good working condition and fit to use in charter service, and had a North Carolina Safety Inspection sticker affixed. Because of this disparity, we have no indication whether the buses supplied to the applicant from its source in North Carolina would be safe enough for applicant to use to transport passengers. We also have concerns about the Applicant's intent to use his bus for long distance travel because of the age of his bus.

The ultimate goal of the Commission's rules with respect to Motor Carriers is to ensure that safety and industry standards are well-guarded. To that end, this Commission will err on the side of caution to ensure that inspections and repair work are performed by those qualified experts who independently discern what constitutes a safe operational vehicle in Nebraska.

The overriding concern for public safety combined with the fact that the Applicant has no bus approved by the proper authorities for use in his business requires us to find that All Nations has not met its burden of proving it is fit to provide the proposed service. Because we find the Applicant has failed to demonstrate fitness, we need not make a finding on the issue of need and necessity.

With respect to the proposed van service, the Commission finds that the Applicant did not adequately demonstrate either the requisite need and necessity or the fitness requirement as required by § 75-133(1). In efforts to demonstrate fitness, Reverend Price testified that he would like to add van service sometime in the future. Reverend Price testified that All Nations Church had vans on hand, but that All Nations, did not intend to use them right away. Reverend Price testified that he did not have a projected timetable for putting the vans into service. The Applicant presented no evidence to the Commission demonstrating the proper ownership, insurance, or safety of the vans he intended to use. Accordingly, we find the Applicant failed to adequately demonstrate fitness as it pertains to vans.

In an attempt show he complied with the statutory requirement of proving need and necessity, the Applicant speculated that All

Nations would provide van service if he saw a need for vans, but did not show evidence of a present or future need for van service. See *In re Application of Renzenberger, Inc.*, 225 Neb. 30, 402 N.W.2d 294 (1987). Applicant's witnesses testified that they had rented vans from other companies in the past and that they had access to vans for special events. There was no credible evidence showing a present or future need or a public demand for van transportation services. See *In re Application of Kilthau*, 236 Neb. 811, 464 N.W.2d 162 (1991). Accordingly, the Commission finds that the Applicant failed to demonstrate need for the proposed van service.

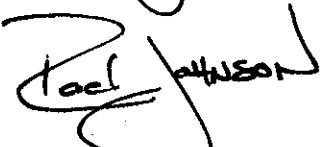
O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application B-1514 be, and it is hereby, denied.


MADE AND ENTERED in Lincoln, Nebraska on this 5th day of April, 2000.

NEBRASKA PUBLIC SERVICE COMMISSION

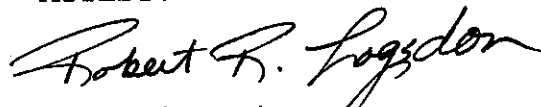
COMMISSIONERS CONCURRING:



//s//Anne C. Boyle


Vice Chairman

ATTEST:


Executive Director

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION
