

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application of) APPLICATION NO. B-1517
Comstock Corporation d/b/a Action)
Cab, Grand Island, Nebraska, seeking)
authority as a common carrier)
in Nebraska intrastate commerce in)
the transportation of passengers by) GRANTED AS MODIFIED
taxicab between points within Hall)
County on the one hand, and, on the)
other hand, points within a 150-mile)
radius of Hall County over irregular)
routes. RESTRICTION: The transport-)
ation of train crews and their)
baggage is not authorized.) Entered: May 10, 2000

BY THE COMMISSION:

By application filed with the Commission on December 15, 1999, Comstock Corporation d/b/a Action Cab ("Action Cab or Applicant") of Grand Island, Nebraska, seeks authority as a common carrier in Nebraska intrastate commerce in the transportation of passengers by taxicab services between points in Hall County, and between points within a 150-mile radius of Hall County over irregular routes. Notice of the application was published in The Daily Record, Omaha, Nebraska on December 17, 1999, pursuant to Commission rules. Protests to the application were timely filed by R & F Hobbies, Inc. d/b/a Prince of the Road ("Prince of the Road"), Hastings Taxi & Transportation Services ("Hastings Taxi"), and City Cab & Transit Co. ("City Cab") (collectively referred to as the "Protestants").

On March 30, 2000, a hearing was held in the City Council Chambers, City Hall, Grand Island, Nebraska. Appearing on behalf of the Applicant was Bradford E. Kistler, of Lincoln, Nebraska. Dorothy Benton, of Grand Island, Nebraska appeared on behalf of Hastings Taxi and City Cab, and John Boehm, of Lincoln, Nebraska appeared on behalf of Prince of the Road. Shanicee Knutson appeared as a staff attorney on behalf of the Commission.

E V I D E N C E

The Applicant produced twelve witnesses in support of its application.

John Bartu, vice president of Comstock Corporation d/b/a Action Cab, testified that he and his wife formed the corporation for the purpose of starting a taxicab business. He testified that there was a need for the service he proposes in Grand Island. That need, he stated, was demonstrated by the fact that some of his

clients were forced to wait twenty to thirty minutes after his business hours for a taxicab to pick them up. He further testified that he had spoken with several business associates in the city who informed him that there was a need for adequate taxi service in Grand Island.

Mr. Bartu then presented evidence that he had taken preliminary steps and formed a business plan for the operation of the proposed service. He testified that he solicited bids on all the necessary equipment and has received insurance estimates from his agent. He also testified that he would start with three vehicles and is prepared to add more if the demand is there. He further stated that he has contacted a garage that is willing to perform all the repair and maintenance work for his cars. Mr. Bartu stated that he already has a number of safety measures and policies in place, including drug screens and thorough background checks for potential drivers. He then presented evidence reflecting his financial ability to operate the proposed service.

Mr. Bartu testified that Action Cab would primarily be transporting passengers within Grand Island. He stated during further examination, that he could only testify as to the local need and could not estimate the need outside the city of Grand Island and that Action Cab would need to transport clients out of town only on a rare occasion.

The remaining witnesses for the applicant presented testimony, in large part, pertaining to the adequacy of City Cab, the existing taxi service in Grand Island. These witnesses all testified that they use taxi services from time to time, however each used taxi service in varying frequencies. The eleven Grand Island residents testified to the following:

Ruby Olsen testified that she thought the existing service in Grand Island was not dependable. She testified that she was left for two hours at the store. If the applicant's proposed service was dependable, she stated, she would use it.

Margaret Hanna testified that she has had to wait two hours for cab service. She further testified that the taxicabs she had been in were not very clean inside and that some drivers would smoke while carrying passengers.

Sevilla Peters testified that the last six months she had not used taxicab service at all because of the wait. She testified that she has had to wait one to two hours most of the time.

Jon Moss and Bob Peterson both presented testimony concerning the long wait for taxi service. Both testified that they had to wait from one to two hours for a cab to arrive for the return trips to their homes.

Steve and Sharon Lane testified that they would put in a time-call in the morning requesting cab service for the late afternoon. Despite the advance notice, they stated that the cab would sometimes be late. Steve Lane testified that the driver had smoked cigarettes in the cab while transporting clients.

Charles Kaczor testified that he would put in a time-call where he would notify City Cab of his need for a taxi at least two hours in advance most of the time, and he still experienced problems waiting for cabs. He testified that City Cab was sometimes an hour to two hours late which caused problems for him getting to appointments on time. He further testified that the doctors would complain about his tardiness. Mr. Kaczor testified that he had experienced problems with a couple of the drivers for City Cab in the past and that a couple of the drivers refused to put out their cigarettes when requested to do so. He finally testified that he complained about City Cab, in writing, to the Commission.

Darren and Deb Dockhorn both testified that there was a need for better cab service in Grand Island. They both testified that they usually waited thirty minutes to an hour to be picked up by City Cab and had waited one to three hours for a return trip. Mr. Dockhorn testified that the cars used by City Cab looked like they were in poor mechanical condition. Mr. Dockhorn further testified that the cabs were dirty and that the drivers were reckless. Mrs. Dockhorn testified that the dispatchers used by City Cab had been rude to her when she asked about the wait.

Abe Jessup also testified that the City Cab taxis were in poor condition and were often dirty. He testified that the cab drivers drove a car with a headlight out, the windows in some cabs would not roll down, and the door would not open in another cab. Mr. Jessup also testified that although he would put in a time-call, the cabs would frequently be late. He stated that this has caused him to be late and because of this he has been reprimanded by his boss. He finally testified that if the applicant's cabs were cleaner than City Cab's cars, he would probably use them.

Next, City Cab and Hastings Taxi presented testimony and evidence in opposition to the application. The testimony was presented as follows:

Leo Lindahl, the former owner of City Cab, was the first witness to testify on behalf of City Cab. He stated that he entered into a purchase agreement with Chuck Gowin on March 2, 2000. Mr. Gowin took over his business on March 21, 2000. Mr. Lindahl testified that he was hardly making a profit before he sold the business and that in his opinion, there was not enough room for two cabs to operate within the city of Grand Island. He testified that there were more expenses to running a taxicab service than the applicant probably realized. When questioned on the matter, Mr.

Lindhahl testified that he had no policy on drivers smoking in the vehicles, but added that under Mr. Gowin's new policy, no smoking would be permitted in any cars.

Judy Hesman, the owner of Midwest Communications, testified that they run the dispatch service for City Cab. They have been providing dispatch services for approximately twenty years. She testified that Mr. Gowin has been working with her dispatching service for about three weeks. She testified that she has seen some improvement regarding delays and complaints in the last two weeks. She testified that some of City Cab's clients have been rude to her dispatchers as well.

Upon cross-examination, Ms. Hesman testified that she had two or three dispatchers on duty at one time during the day and one dispatcher on duty at night. She testified that Mr. Gowin has issued new driver's trip sheets to help in tracking and so that any maintenance problems can be detected and remedied early. She stated that someone did have to wait two hours because the weather conditions were bad. She testified that, generally, the wait for a cab was approximately half an hour.

Charles Gowin, the owner of a taxicab company in Hastings, Nebraska, testified on behalf of Hastings Taxi. Mr. Gowin testified that he has owned the cab company in Hastings since September of 1998. Mr. Gowin stated that he filed the protest because the Applicant requested a 150-mile radius and he did not believe the city of Hastings could withstand any more competition. He also testified that he did not believe Grand Island could support two cab companies.

He stated that in his Hastings operation, he has a policy against smoking and he places two of the Commission stickers in each car for passengers to call the Commission regarding any complaints they may have. He testified further that he has the drivers check the cleanliness and maintenance of their vehicles daily. He testified that he has suspended drivers for violating some of his company rules. Mr. Gowin stated that despite the transaction pending in Grand Island, that he would continue to drive cabs in Hastings.

Mr. Ron Schroll testified on behalf of Prince of the Road. He testified that Prince of the Road was protesting the part of the application which requested authority for transportation from points within Hall County within 150-mile radius of Hall County. Prince of the Road did not protest the applicant's authority to transport passengers solely within the city of Grand Island.

Mr. Schroll also testified that protestant had approximately 47 vehicles and 80 drivers. He testified that Prince of the Road had vehicles and drivers operating in Grand Island and counties.

adjacent to Hall County. He further testified that they had never had to turn down any requests in the above referenced area, and could support more business in the area. Mr. Schroll finally testified that Prince of the Road markets its services extensively in the area through the white pages directory, direct contact with business leaders and organizations, and through brochures.

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

Neb. Rev. Stat. Section 75-311 (Reissue 1996), reads in pertinent part:

A certificate shall be issued to any qualified applicant authorizing the whole or any part of the operations covered by the applicant 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. ***

To demonstrate fitness, the applicant has procured bids and insurance estimates for the vehicles he wishes to use. The applicant further demonstrated that he is financially able to operate a taxi service and has a business plan in place. The Commission is of the opinion that the applicant produced the requisite testimony demonstrating that it is fit, willing and able properly to perform the service proposed.

In general, where a service of its kind already exists in the area, the analysis of the need and necessity requirement hinges on the determination of whether the existing service in the area is adequate and satisfactory to meet the needs of the public. See *In re Application of Kilthau*, 236 Neb. 811, 464 N.W.2d 162 (1991). In light of the evidence presented by the numerous witnesses, the Commission finds that it is not. Thus, although Grand Island currently has taxicab service rendered by City Cab, the evidence presented by the applicant demonstrates that the service provided by City Cab does not meet the needs of the general public and is thereby inadequate. Numerous witnesses testified to the amount of time necessary to procure service to and from their homes. Some testified that they have stopped using the taxi service altogether due to the lengthy waits, conditions of the cabs, and actions of the drivers employed by City Cab.

Furthermore, the consideration of Mr. Gowin's recent acquisition of City Cab must be limited. During Mr. Gowin's

testimony, the applicant objected to any testimony offered by this protestant relating to the improvement of City Cab's timeliness and service resulting from his recent purchase of the company from Mr. Lindahl. The applicant's objection was based on the fact that Mr. Gowin's filed protest pertained to the effect of the applicant's proposed service on this Protestant's business in Hastings only. The Commission finds that this was a timely and valid objection. Accordingly, the Commission gives no weight to the testimony of Mr. Gowin as it relates to his interest in City Cab in Grand Island.

Through a showing that the current taxicab service is inadequate and unsatisfactory, and by providing affirmative evidence that the service would be used by the general public, Action Cab has demonstrated that a need and necessity exists with respect to those requiring adequate taxi service within the city of Grand Island. However, the Commission is of the opinion that the applicant failed to demonstrate need and necessity as it relates to the request for a 150-mile radius from points within and from Hall County. The stream of witnesses the applicant produced on it's behalf testified only as to the need to travel to places within the city of Grand Island. The applicant, however, produced no substantive evidence supporting its request for a 150-mile radius from points within and from Hall County. Furthermore, the Protestants produced testimony supporting the finding that adequate and satisfactory transportation is available for those wishing to procure long distance transportation in the area. Therefore the Commission grants the applicant's request for authority as modified herein.

From the evidence adduced and being fully informed in the premises, the Commission is of the opinion and finds:

1. Applicant is fit, willing, and able to properly perform the service of a common carrier by motor vehicle and to conform to the provisions of Neb. Rev. Stat. Sections 75-301 to 75-322 (Reissue 1996) and the requirements, rules and regulations of the Commission thereunder.
2. The proposed intrastate service is or will be required by the present or future Public Convenience and Necessity to the following extent:

AUTHORITY SOUGHT

Transportation of passengers by taxicab between points in Hall County, and between points within Hall County on the one hand, and, on the other hand, points within a 150-mile radius of Hall County over irregular routes.

CERTIFICATE AUTHORIZED

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

Application No. B-1517

Page 7

SERVICE AND TERRITORY AUTHORIZED:

Transportation of passengers and their baggage by taxicab between points in and within a 5-mile radius of the city limits of Grand Island over irregular routes. RESTRICTION: The transportation of railroad train crews and their baggage is not authorized.

3. The application should be granted as modified.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application B-1517 be, and it is hereby, granted as modified above and that a certificate shall be issued to Comstock Corporation d/b/a Action Cab, Grand Island, Nebraska, authorizing the services of a common carrier by motor vehicle as set forth above.

IT IS FURTHER ORDERED that applicant shall not be issued the certificate authorizing 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. Sections 75-305 (fees), 75-307 (insurance), and 75-308 (rates), (Reissue 1996), 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 operations until a Certificate is issued.

IT IS FURTHER ORDERED that the Certificate authorized shall be subject to the terms, conditions, and limitations which have been, or may hereafter be, prescribed by the Commission.

MADE AND ENTERED at Lincoln, Nebraska, this 10th day of May, 2000.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:



//s//Frank E. Landis
//s//Daniel G. Urwiller


Chairman

ATTEST


Executive Director

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION
