

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application of)	APPLICATION NO. B-1535
Guard-Rite Security Services, LLC,)	SUPP. 1
Norfolk, seeking to extend its)	
authority as a common carrier of)	DENIED
passengers in open class service by)	
sedans and vans between points in)	
Nebraska over irregular routes. To)	ENTERED: AUGUST 3, 2004
include the transportation of)	
Health and Human Services clientele)	
and their subcontractors thereof.)	
RESTRICTION: The transportation of)	
railroad train crews and their)	
baggage is not authorized.)	

BY THE COMMISSION:

By application filed August 15, 2003, Guard-Rite Security Services, LLC, Norfolk, hereafter referred to as applicant, seeks to extend its Certificate of Public Convenience and Necessity to operate as a common carrier of passengers by motor vehicles as follows:

AUTHORITY SOUGHT

Transportation of passengers in open class service by sedans and vans between points in Nebraska over irregular routes. To include the transportation of Health and Human Services clientele and their subcontractors thereof. RESTRICTION: The transportation of railroad train crews and their baggage is not authorized.

Timely protests to the granting of this application were filed on August 20, 2003, by MAVM Ventures dba A & B Shuttle, through its attorney, Marshall Becker, Esq.; on August 21, 2003, by Shared Mobility Coach, Inc., Omaha; on August 22, 2003, by Prince of the Road, through its attorney, John Boehm; on August 26, 2003, by Happy Cab Yellow Cab, Checker Cab, and Cornhusker Cab, through their attorney, Jerry Sena; on August 28, 2003, by Midwest Special Services, Servant Cab Company dba Yellow Cab Company and Capital Cab Company, through their attorney, Jack Shultz; and on September 15, 2003, by Yellow Cab & Limo. A restrictive amendment was filed on February 20, 2004. On February 17, 2004, Shared Mobility withdrew its protest; on February 24, 2004, Yellow Cab & Limo, Inc., withdrew its protest; on February 27, 2004, MACM Ventures, LLC dba A & B Shuttle withdrew its protest through its attorney, Marshall Becker; and on March 19, 2004, Happy Cab, Yellow Cab, Checker Cab, and Cornhusker Cab, withdrew their protest through their attorney Jerry Sena.

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

APPLICATION NO. B-1535, SUPPLEMENT 1

PAGE TWO

SUMMARY OF THE TESTIMONY

Seven witnesses testified for Guard-Rite's application for statewide Nebraska Health and Human Services System (HSS) transportation authority.

Douglas Risinger testified that he has been the president and owner of Guard-Rite Security for over 20 years and a transportation carrier for 20 years. He has provided prison transport for three years, and he owns six vehicles for this purpose. Five of the vehicles are stationed in Madison County with one other in Columbus.

Mr. Risinger reviewed the vehicles that he would use in his proposed service. He testified that all of his vehicles were equipped with cages between the front and back seats for the safety of the passenger. The photographs in Exhibit 4 showed four sedans and one van. These are the vehicles that the Applicant would use in its proposed service. The company decal with the insignia "Guard-Rite Security Service" adorns the outside of all of the vehicles. The four sedans in the photographs all possess roof lights.

He testified that most of his current services originate in northeast Nebraska, including Dakota County, Stanton County, some Pierce County, some Nance County, some Buffalo County, some Brown County, some Scotts Bluff County, Franklin County, and a few stops in Lancaster. He stated that he would not be willing to limit his HHS application to the northeast Nebraska area or to only HHS clients requiring secured transport because such limitations would restrict his customer base. He estimates that he may provide 50 transports a year between facilities via the proposed application.

He also testified that he has recently requested to raise his tariff rate from 75 cents per mile to 90 cents per mile to compensate for increased business costs, such as higher gas prices, doubled insurance coverage, and increased premiums. He testified that he currently charges for waiting time, but that he would still be willing to service HHS without receiving compensation for waiting time. He also testified that he would be willing to send an empty vehicle, without charging for unloaded time, to the panhandle of Nebraska in order to pick-up a person for delivery, as he already has done on previous occasions for prisoner transport.

He stated that although his application stated a negative net worth of \$136,505.72, he had been able to reduce that amount by \$50,000 to \$60,000 since the filing of the application. He stated that he completed over \$1,000,000 per year in sales. He also possesses a \$3,000,000 insurance policy.

Dan Mauk, Executive Director of the Norfolk Area Chamber of Commerce, testified in favor of the application. He testified that

APPLICATION NO. B-1535, SUPPLEMENT 1

PAGE THREE

he had generally observed Guard-Rite perform well as a company, that Mr. Risinger possessed a good reputation, and that Guard-Rite's assumption of service would economically benefit the region. He stated that he did not testify about specific need for transportation services on behalf of the Chamber.

Terry Ewing, special services security manager for the Department of Corrections in Lincoln, testified that Guard-Rite transported prisoners on behalf of counties around the state. He explained that he was not aware of any problems associated with Guard-Rite. He also stated, however, that Corrections did not contract with any private transport firms. He added that this application would not alter the Department's decision not to contract with private firms.

William Mizner, police chief of the Norfolk Police Division, testified that currently Norfolk provides its own transportation for mental health patients requiring secured transport. However, he noted that the possible closure of the Norfolk Regional Center and more community based health plans would distribute patients throughout the region rather than concentrating facilities within the city of Norfolk. These changes might require the police to consider a private carrier. He stated that he would consider Guard-Rite for these services, but he acknowledged that he had not investigated other carriers. He also testified that he had always been able to obtain transportation services when necessary in the past.

Marcia Alber, program coordinator for transportation and respite services with the Nebraska Department of Health and Human Services, testified that the addition of another service provider would enable Health and Human Services to negotiate lower rates. However, she also added that existing carriers could provide the needed secure services. She acknowledged that there were already 34 providers for alternative transportation services and that she has not received notification from the workers in the field of a need for additional carriers for HHS clients. She testified that HHS has not experienced service problems with Servant Cab or Midwest Special Services. She further added that HHS does not provide reimbursement for waiting time.

Ms. Alber estimated that only between five and ten percent of clients would require secure transportation because some juvenile justice clients require secure transport. She explained that HHS clients are often transported to the grocery store, to school, and to any number of places. She testified that she would not want many of her clients to be transferred to one of these places in a vehicle with lights on top, a security insignia and driven by a uniformed driver like the Guard-Rite vehicle. She acknowledged that some

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

APPLICATION NO. B-1535, SUPPLEMENT 1

PAGE FOUR

mentally ill clients might suffer adverse reactions to riding in cars that resemble police vehicles.

Tony Mitcel, program manager for Region 4 of Health and Human Services Integrated Care Coordination Unit, favored, as a means to increase service selection, Guard-Rite's application. He testified that he previously experienced difficulties with tardy drivers from his current two providers. He testified that he had dealt with Guard-Rite in the past, and that he had no problems with them. However, he did not know how many other carriers were authorized to serve the Norfolk area. He described escapes, one each, from Midwest Special Services and Prince of the Road. Mr. Mitcel reported an incident involving Midwest in which the client escaped in Omaha on a route between Madison and Kearney. He also described a juvenile escapee from Prince who had not been restrained and stole the transport vehicle after the driver stopped at McDonald's and left the juvenile unattended. He stated that he would not object to transporting clients in cages in order to guarantee security.

Mike Applegate, facility administrator of Northeast Nebraska Juvenile Services in Madison, Nebraska, testified that his 34-bed facility, including 16 secured, relies daily on transportation services provided through the Department of Health and Human Services. He explained that his office would benefit from the ability to hire Guard-Rite for HHS services because Applegate generally uses Guard-Rite for other facility business. He explained that it might be helpful to HHS if his company could arrange for services through Guard-Rite rather than requiring HHS to find its own carrier. He asserted that the additional service would be beneficial because, first, he could provide HHS with a lower rate carrier and, second, it would ease the burden on HHS caseworkers. During cross-examination, he acknowledged that all of his transportation needs would terminate in Madison County. He testified that he had not conducted a full investigation of all the possible carriers available to him. Although he knew of at least two other carriers, he testified that he had never used these carriers for secure transport.

Three witnesses testified in opposition to the application.

Lannie Roblee, president of Midwest Special Services, Inc., testified that he has stationed at least three vehicles in Norfolk and that those vehicles are available to service HHS clients, which his company transports daily. He also stated that he would and could supplement the fleet if demand increased. He estimated that 60-75 percent of his company income derives from Health and Human Services traffic. He testified that he had received no formal complaints before the Public Service Commission. He testified that a diversion of traffic from additional competition for HHS clients might require his business to reduce services to rural areas.

APPLICATION NO. B-1535, SUPPLEMENT 1

PAGE FIVE

Donna Corey, vice president of Servant Cab Company, LLC, testified that HHS clientele constitute 40 percent of Servant's weekly traffic. However, Corey acknowledged that Servant does not provide restrained passenger transportation. She testified that the company had never declined service or received formal complaints from HHS and that Servant Cabs would be willing to expand its business. She testified that a decline in HHS service would lower the number of transport vehicles available for the remaining clientele, but she acknowledged that the service to HHS had, to the best of her knowledge, remained at 40 percent of her business despite an increase in the number of HHS carriers. Servant Cabs possesses a waiver authorizing it to provide handicapped accessible vehicles.

Sean Schroll, chief operating officer of Prince of the Road, testified that 45-60 percent of his business serves HHS clients, that he actively promotes service to HHS, and that he charges \$1.05 per mile. Prince operates an 82 vehicle fleet with six vehicles in Norfolk, two in Madison, and two in O'Neill. His company transports individuals with restraints and he has six wheelchair accessible vehicles. With regard to Northeast Nebraska Juvenile Services, he testified that company officials had expressed concern that check-in procedures taking as long as five hours unnecessarily detained drivers, especially since HHS does not reimburse waiting time. He disputed the alleged escape that Mr. Mitcel attributed to Prince in which a supposedly secure juvenile had not been restrained and stole the transport vehicle while left unattended during a stop at McDonald's. He did, however, acknowledge two incidents in which restrained passengers escaped the custody of Prince.

OPINIONS AND FINDINGS

The granting of a certificate of public convenience and necessity is governed by NEB. REV. STAT. § 75-311 (Reissue 2003). It states:

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 (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).

The Commission must apply a two-part test to determine public convenience and necessity. First, the Commission must determine if

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

APPLICATION NO. B-1535, SUPPLEMENT 1

PAGE SIX

an applicant is fit, willing, and able properly to perform the service proposed. In that process, the Commission examines the financial abilities of the applicant, considers any prior issues such as infractions or complaints, assesses the fitness of the vehicles proposed to be used by the applicant, and makes a determination regarding the overall managerial fitness of the applicant.

The Commission has concerns regarding the fitness of the vehicles to be used in the proposed service. The applicant's vehicles resemble law enforcement vehicles and are equipped with roof lights and cages on the inside to separate the passenger from the driver. Ms. Alber of the Nebraska Department of Health and Human Services testified that she would not want most of her clientele (up to 95%) riding in vehicles looking and equipped like those proposed to be used by the applicant. Her testimony further stated that for certain clients with chronic mental illnesses, transportation in a marked vehicle with cages and uniformed drivers could create "an adverse reaction" for those individuals. We find that these vehicles are unfit for the service proposed.

The Commission also has several concerns regarding the fitness of the applicant in relation to this application. The testimony showed that, although the applicant has been in business for over twenty years, at this time, the business has a negative net worth. It is further troublesome that two-year old unpaid payroll taxes constitute a substantial portion of the negative net worth. Although the testimony is that this negative net worth is shrinking and that the business appears to be making enough profit to continue to run a day-to-day operations while reducing their negative net worth, the circumstance is still a concern. Because we find that the vehicles are unfit for the purpose and that the Applicant has failed to prove need and necessity, we do not need to reach a conclusion regarding the Applicant's financial fitness.

The second part of the test for public convenience and necessity has been set forth by the Nebraska Supreme Court in *In re Application of Nebraskaland Leasing and Associates.*, 254 Neb. 583, 591, stating:

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 without endangering or impairing the operations of existing carriers contrary to the public interest.

APPLICATION NO. B-1535, SUPPLEMENT 1

PAGE SEVEN

Id. 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 a demonstrate that the service proposed would serve a useful purpose responsive to a public demand or need which could not be served as well by existing carriers.

Guard-Rite failed to establish a public demand or need. No evidence was offered that any witnesses were not able to obtain services from current providers already available. Norfolk Police Chief William Mizner did testify regarding the possible closing of the Norfolk Regional Center and speculated that the closing may create some transportation issues. However, it has been established that a certificate cannot be granted on the basis of future needs which are speculative or improbable. *In re Application of Rezenberger, Inc.*, 225 Neb. 30, 36-37.

Guard-Rite also failed to show that the proposed service could not be served as well by existing carriers. Satisfactory service by existing motor carrier authorities constitutes a complete negation of public need and demand for added service by another carrier. *Id.* The testimony showed that the protestants hold current Health and Human Services authority, have the ability to provide transportation that includes secure transportation, and possess the desire and ability to increase their fleets to provide additional services if required. There was no showing of an inability to find available service. The applicant did not provide any evidence that the protestants were failing to adequately provide the services that it proposes to perform in this application.

Lastly, evidence provided by the protestants showed that the loss of income from the diversion of Health and Human Services traffic would be detrimental to the protestants. The protestants testified that Health and Human Services traffic accounted for between forty and seventy percent of their business. The applicant did elicit evidence that the protestants have maintained a consistent percentage of Health and Human Services business despite increased in competition in the past. Although this may be somewhat probative regarding impairment of the operations of current certificate holders, we do not find it sufficient to overcome the testimony from the protestants that the diversion of their current Health and Human Services traffic would be detrimental to their overall ability to continue to offer services.

On the basis of the evidence presented, we find that the application should be denied.

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

APPLICATION NO. B-1535, SUPPLEMENT 1

PAGE EIGHT

O R D E R

IT IS, THEREFORE, ORDERED by the Nebraska Public Service Commission that Application No. B-1535, Supplement 1, be, and it is hereby denied.

MADE AND ENTERED at Lincoln, Nebraska, this 3rd day of August, 2004.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Lowell Johnson

Anne C. Boyle

Rod Johnson

Chairman

Gerald L. Vap

ATTEST:

And S Pollack
Executive Director

//s// Frank E. Landis

//s// Gerald L. Vap