

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the) APPLICATION NO. B-1549
Application of Blaine Rentals,)
Inc., d/b/a Rent-A-Wreck of)
Chadron, Chadron, seeking)
authority as a common carrier)
in Nebraska intrastate commerce) ORDER DENYING MOTION
in the transportation of) TO DISMISS;
passengers by sedan and/or) GRANTED AS AMENDED
minivan between points in)
Dawes, Sheridan and Sioux)
counties and between points in)
said counties on the one hand,)
and, on the other hand, points)
in Nebraska over irregular)
routes. RESTRICTION: The)
transportation of railroad)
train crews is not authorized.) Entered: October 16, 2001

APPEARANCES:

For the Applicant:
Morgan Muller
159 Bordeaux
Chadron, NE 69337

For the Protestant:
Jack Schultz
P.O. Box 82028
Lincoln, NE 68501

For the Commission staff:
Laura Davenport
300 The Atrium
1200 N Street
Lincoln, NE 68509

BY THE COMMISSION:

By application filed January 22, 2001, Morgan C. Muller, owner of Blaine Rentals, Inc., d/b/a Rent-A-Wreck of Chadron (Rent-A-Wreck), hereinafter referred to as applicant, seeks a Certificate of Public Convenience and Necessity to operate as a common carrier of passengers by motor vehicle as follows:

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AUTHORITY SOUGHT

Transportation of passengers by sedan and/or minivan between points in Dawes, Sioux, Sheridan, Morrill, Box Butte, Scottsbluff, and Banner Counties and between points in said counties on the one hand, and, on the other hand, points in Nebraska over irregular routes. RESTRICTION: The transportation of railroad train crews and their baggage is not authorized.

Notice of this application appeared in The Daily Record, Omaha, Nebraska, on February 6, 2001. A protest to the application was filed on February 13, 2001, by Midwest Special Services, Inc. (Midwest). A second protest was filed February 26, 2001, by Touch of Class Limousine Service, and was withdrawn on March 8, 2001.

The applicant filed a restrictive amendment on February 28, 2001. The applicant filed a second restrictive amendment on March 27, 2001, seeking authority as a common carrier in Nebraska intrastate commerce in the transportation of passengers by sedan and/or minivan between points in Dawes, Sheridan and Sioux and between points in said counties on the one hand, and, on the other hand, points in Nebraska over irregular routes, not to include luxury limousines with a capacity of 6 passengers or more. RESTRICTION: The transportation of railroad train crews and their baggage is not authorized.

A hearing on this application was held on August 16, 2001, in the Commission Library, with appearances as shown above. After the applicant rested on his case in chief, the protestant moved to dismiss the application for failure to meet the prima facie case. Protestant renewed his motion to dismiss at the close of all evidence.

E V I D E N C E

The applicant presented four witnesses to support its application who testified as follows:

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Morgan Muller, testified that he is the owner of Blaine Rentals, Inc. (d/b/a/ Rent-A-Wreck of Chadron). He testified that Blaine Rentals, Inc. is an automobile rental company, and that the business has received several requests from various agencies requesting short-distance transportation of individuals. He testified that it did not appear that the area was being served effectively, and that many people in the area are not aware of Midwest.

Upon cross-examination by protestant's counsel, Mr. Muller testified that he would use one car in his transportation business and that he investigated the cost of insurance and received an estimate. He further testified that he would drive the vehicle, or he would hire a driver, and any drivers that he might hire would be subject to background checks and drug testing. He testified that his for-hire transportation business would operate 24 hours a day, seven days a week. Mr. Muller testified that he would operate a for-hire transportation business in conjunction with his current vehicle rental business.

Upon questioning by the Commission, Mr. Muller testified that he would advertise his for-hire transportation business through personal contacts and the local newspaper business directory section. He testified as to other aspects of his business plan. Mr. Muller also indicated that he is aware of requirements imposed upon common carriers by Nebraska law and Commission Rules and Regulations.

Ms. Linn Fitzgibbon testified that she is a research developer with the Department of Health and Human Services. She testified that there is a need for transportation services in Chadron, particularly on short notice, as most transportation provider require at least one day advance notice.

On cross-examination, Ms. Fitzgibbon testified that three providers are currently available to serve her clients' needs: Midwest, A-1/Haymarket, and Prince of the Road. She testified that in the last six months to one year, she could recall one occasion on which none of the aforementioned carriers was available to serve her clients.

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Ms. Terri Haynes testified that she is the manager of the Chadron station of Great Lakes Airlines (Great Lakes). She testified that she was not aware of the other carriers serving in the area mentioned by Ms. Fitzgibbon. She testified that Great Lakes frequently experiences cancellation of flights out of Chadron, requiring the passengers to be taken to Scottsbluff to make their connection. Consequently, Great Lakes needs transportation service on short notice. She testified that within the last 60 days, Great Lakes has had about four cancellations per week. She testified that baggage sometimes needs to be transported in the event that it does not reach the airport at the same time as the passenger. She testified that Great Lakes would benefit from having a local carrier available to meet their transportation needs.

On cross-examination, Ms. Haynes testified that currently, when Great Lakes experiences cancellations, either the passengers transport themselves, an employee drives the passengers in the employee's private car, or the airline rents a vehicle and has an employee drive the passengers.

Upon questioning by Commissioner Vap, Ms. Haynes testified that Great Lakes would use the proposed transportation service on a regular basis.

Ms. Sandy Roes of Western Community Health Resources, a division of Chadron Community Hospital, testified in support of the application. She testified that her company provides in-home support for their clients, and that some clients need transportation from Chadron to Scottsbluff or Rapid City approximately three times a week. She testified that currently, staff members transport the clients, and that such arrangement is not economical for the company. She testified that prior to the hearing she was not aware of Midwest or any other carriers serving the area. She testified that her clients also needed transportation for local trips to medical providers or pharmacies within the city of Chadron. She testified that her clients needed transportation on short notice, as well as on longer notice.

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On behalf of the protestant, Mr. Lannie Roblee testified. Mr. Roblee is the president of Midwest. He testified that Midwest currently offers a van service for all types of passengers, including DHHS service, for trips originating in Dawes, Sheridan and Sioux counties. He testified that Midwest would be able to serve the needs of both Great Lakes and Chadron Community Hospital if given sufficient notice. He further testified that Midwest has 35 to 37 vans.

Upon questioning by the Commission, Mr. Roblee testified that Midwest was restricted from picking up passengers in the first six hours from the time they are notified, and therefore could not provide the service needed by Great Lakes unless Midwest was notified at least six hours prior to a scheduled transport.

Upon cross-examination, Mr. Roblee testified that Midwest advertised by personal contact with DHHS clients, by referrals, and by signs affixed to company vans.

After the conclusion of Mr. Roblee's testimony, and prior to closing statements, the Commission admitted the applicant's application into evidence.

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 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, to the extent to be authorized by the certificate, whether regular or irregular, is or will be required by present or future public convenience and necessity. Otherwise the application shall be denied.

In other words, the Commission must apply a two-part test. First, the Commission must determine if an applicant is "fit, willing and able." Upon consideration of the evidence adduced at the hearing, we find that the applicant has met the fitness test of § 75-311. The applicant presented credible evidence as to both the fitness of his character, financial fitness and fitness of his business acumen. He testified as to his business plan and insurance costs. He provided the Commission with information on his financial fitness. He presented knowledge of the area, the industry, and Commission requirements.

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 public convenience and necessity was set forth by the Nebraska 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. Based upon the evidence adduced, we find that the applicant has demonstrated that a need exists which has not been met nor can be adequately met by existing carriers. The testimony provided indicates that the needs of Great Lakes, in particular, are currently unmet and cannot be met by the protestant due to the short-notice nature of Great Lakes needs. Great Lakes needs can be served by granting the present application.

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Second, the applicant has demonstrated that this purpose cannot be served as well by existing carriers. The evidence at the hearing included testimony from parties throughout the proposed service territory that could not find adequate transportation providers. The Commission finds further that the protestant failed to present sufficient evidence that the protestant can meet the need that was demonstrated to exist by the applicant. Nor do we find that the applicant's service will endanger or impair the operations of existing carriers including the protestant. The applicant's business plan includes that the applicant will seek additional business in areas in which the existing carrier has not demonstrated an interest.

Accordingly, we must find that the applicant is fit, willing, and able and has met the public convenience and necessity test of Nebraska law. The Commission, therefore, finds that the protestant's motion to dismiss should be denied and that the application should be granted.

These opinions and findings carry no precedential value other than establishing minimum standards and criteria to apply when considering applications to provide transportation service for hire in the above-mentioned territories. All carriers seeking such a certificate must demonstrate that they meet, at a minimum, the standards and criteria set forth herein. This application preceded official changes by the Commission through its rulemaking activity with respect to carrier classifications and Nebraska Health and Human Services designation as docketed in Rule and Regulation No. 148.

CERTIFICATE AUTHORIZED

SERVICE AND TERRITORY AUTHORIZED:

Transportation of passengers in open class service by sedan and/or minivan, not to include luxury limousines with a capacity of 6 passengers or more, between points in Dawes, Sheridan and Sioux and between points in said counties on the one hand, and, on the other hand, points in Nebraska over irregular routes. RESTRICTION: The transportation

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of railroad train crews and their baggage is not authorized.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application B-1549 be, and is hereby, granted; and that upon compliance with the terms and conditions as set forth in this Order, a Certificate of Public Convenience and Necessity shall be issued to Blaine Rentals, Inc. d/b/a Rent-A-Wreck of Chadron, authorizing operations as set forth in the foregoing findings.

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 the 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 operations until a Certificate of Public Convenience and Necessity is issued.

IT IS FURTHER ORDERED that applicant shall render reasonable 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.

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MADE AND ENTERED at Lincoln, Nebraska, this 16th day of
October, 2001.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Forrest Johnson
Gerald L. Vap

Tom Furdick
Chairman

Ed Johnson

ATTEST:

Ad S. Pollack
Executive Director

//s//Frank E. Landis

