

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application)	APPLICATION NO. B-1551
of Platinum Builders, Inc., d/b/a)	
Platinum Limousine Service, Omaha,)	
seeking authority as a common)	
carrier in Nebraska intrastate)	
commerce in the transportation)	DENIED
of passengers by luxury or)	
stretch limousine between points)	
in Cass, Dodge, Douglas, Lancaster)	
and Sarpy counties over irregular)	
routes. RESTRICTION: The trans-)	
portation of railroad train crews)	
and their baggage is not auth-)	
orized.)	ENTERED: JULY 11, 2001

APPEARANCES:

For the Applicant:

John Boehm
811 S 13th Street
Lincoln, Nebraska

For the Protestants:

Marshal Becker
7901 Wakeley Plaza
Omaha, Nebraska

For the Commission:

Michael Loeffler
300 The Atrium
1200 N Street
Lincoln, Nebraska

Patrick Sullivan
1246 Golden Gate Drive
Papillion, Nebraska

BY THE COMMISSION:

By application filed February 12, 2001, Platinum Builders, Inc., dba Platinum Limousine Service ("Platinum" or "Applicant"), Omaha, Nebraska, seeks authority as a common carrier in Nebraska intrastate commerce in the transportation of passengers by luxury or stretch limousine between points in Cass, Dodge, Douglas, Lancaster and Sarpy counties over irregular routes. Notice of this application was published in the Daily Record, Omaha, Nebraska on February 14, 2001. Protests to the application were filed on March 9, 2001, by Old Market Limousine Service and Accent Limousine

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Service through their attorney Marshall Becker. On March 16, 2001, protests were filed by Omaha Limousine, Happy Cab, Yellow Cab and Checker Cab through their attorney Patrick Sullivan. A hearing was held via video on May 2, 2001, in the Commission Library, with appearances as listed above.

E V I D E N C E

The applicant presented seven witnesses to support its application. Those witnesses testified and presented evidence to the following:

Mr. Steven Abboud testified that he was the President of Platinum. Mr. Abboud has a finance degree and has been associated with several venture capital financing projects within the last three years. Exhibit 5, which detailed Mr. Abboud's financial resources and his financial commitment to Platinum, was offered and accepted into the record without objection. Exhibit 6, a copy of Platinum's insurance declarations page from Cornhusker Casualty was also entered into the record without objection. Mr. Abboud testified that he obtained insurance coverage which exceeded the amount required by the Commission rules and regulations. At the present time, Platinum has one limousine. Additionally, Mr. Abboud testified that Platinum had handled no business prior to the hearing, however, it had promoted its services on television and passed some business cards out. Mr. Abboud testified that he would not ever be in a position where he would be driving the limousine.

He testified that on several occasions in the past, he had a need for limousine service in his personal and business dealings in Omaha. He testified that he had not used the services of existing providers recently, but he had between 1995 and 1998. He could have used some of the existing companies. He testified that back then, the problem was getting a limousine upon short notice.

Mr. Mark Schneidewind testified next on behalf of the applicant. Mr. Schneidewind testified that he is in the local entertainment business. He would be employed by Platinum if the Commission granted Platinum a certificate. Exhibit 7 was offered and accepted into the record. Exhibit 7 is advertisement Platinum placed in the Yellow Pages. Exhibit 8 is a copy of the promotional flyer that the applicant plans to distribute. The

Yellow Page advertisement indicates that the applicant has a six passenger, ten passenger and a 12 passenger limousine as well as corporate sedans. Mr. Schneidewind testified that the applicant has a 10 passenger limousine. By the year end, the applicant intends to have three to four limousines. Mr. Schneidewind testified that he did not have any experience operating a limousine business. He will be in charge of keeping the books, marketing and answering the telephones. Upon questioning of this witness, the witness agreed to supply a copy of the flyer that was handed out and mentioned on television. That flyer was marked as late-filed Exhibit 9. Late-filed Exhibit 9 was received by the Commission on May 10, 2001. The flyer indicated that Mr. Condoluci and Mr. Schneidewind were running a "prom special."

Mr. Matt Condoluci, an officer and shareholder of Platinum testified next. He will be in charge of the maintenance, driving the vehicles, and training other drivers. Basically, he testified, he will be in charge of the day to day operations of Platinum. He has had prior experience in the limousine business in California and in Washington. Upon cross-examination, Mr. Condoluci testified that he had no personal knowledge of the necessity or the need for a limousine service in the Omaha area.

Mr. Eric Everroad testified that he has business contacts which often travel to Omaha. He further testified that his company frequently has a need for limousine service. He needs to schedule limousine service on very short notice which varies from a couple of days to a week's notice. He testified that there have been occasions where, upon short notice, he could not find a limousine available. As evidence of this, Mr. Everroad provided a signed statement indicating that he attempted, on March 14, 2000, to find a limousine for March 16 and 17. He contacted two limousine companies, Omaha Limousine and Accent Limousine. His main problem obtaining limousine service has been due to the fact that he gave very short notice to the limousine companies. Mr. Everroad did not have problems obtaining limousine service when he provided notice well in advance of the date he needed the service. He testified that he would use Platinum's service if the Commission granted the application.

Upon cross-examination, Mr. Everroad testified that he only called two companies. He did not call Old Market because his secretary provided him with the telephone numbers for only Accent

and Omaha Limousine. He originally heard about Platinum's application through Steve Abboud, who has been a good friend of his for years.

Ms. Christina Dunman, Vice President of Executive Operations at Allender & Associates, testified next on behalf of the applicant. A portion of her responsibilities with Allender & Associates is to entertain clients and consultants, which includes making arrangements for limousine service. As far as notice is concerned, she can only give the limousine companies about one to three hours advance notice.

She testified that there was a general problem with availability of limousines on short notice. She testified that last summer, she called an acquaintance of hers who told her not to use Omaha Limousine. Thus, she has never contacted Omaha Limousine. She testified that a couple of the limousine companies have been rude to clients. Neither Embassy Limo nor A Classic Affairs has operational telephone lines. Ms. Duncan estimated that since January 1, 2001, she was unable to obtain limousine service approximately 20 to 30 times. She contacts limousine companies approximately three times per week. Ms. Duncan books the service under the clients' names and not under Allender and Associates. She stated that some of the employees of Platinum are in the same building in which she works. Most of her clients that request limousine service live in the Omaha area. They just happen to give short notice.

Upon cross-examination, Ms. Duncan discovered that Omaha Limousine has been in business for only six months. She further testified that Allender & Associates did own one limousine which it used occasionally for clients.

Mr. Daniel Neckline Jr., Vice President of Information Services at Pomade, testified for the applicant next. He testified that he does have an occasion to use limousine services, but it is not always related to the company. He further testified that he was unable at times to obtain a limousine upon short notice. A couple of times in the last few months he tried to obtain a limousine a few hours before he needed it. His assistant made the telephone calls to the limousine carriers. He testified that he did not know specifically whether he would use the services of the applicant. He would be looking for availability. He offered an

affidavit however, which provided that he would use the service if Platinum was available.

Upon cross-examination, Mr. Neckline testified that he would look at all carriers available to meet his need for limousine service. He further testified that he had no specific need to use Platinum or any other service. Mr. Neckline admitted that one occasion where limousine service was unavailable it was an impromptu request. He was unable to testify as to the actual limousine companies his secretary contacted for service. He further testified that Allender & Associates provides him contract programming services. Allender & Associates contacted him about Platinum's application. He did not know about Platinum prior to the day he testified.

Mr. Gene Abboud, owner of Masai Financial Services, testified next. He was a second cousin to Steve Abboud. He became familiar with Platinum's application through Steve Abboud. He entered into a contingent agreement to use Platinum's services if the Commission granted it a certificate. The agreement which was marked as Exhibit 15, provided that Gene Abboud would use Platinum's services for up to approximately five hours per week. Both Protestants raised objections to Exhibit 15.

Mr. Abboud has had problems with availability of limousine service in cases of short notice as well. He had not sought out a contingent agreement with any other limousine company. Likewise, he had not researched issue of whether other limousine companies would make vehicles available for him on a regular basis. The occasions he referred to in his testimony where he could not obtain a limousine upon short notice occurred last summer.

The Protestants offered the testimony of four witnesses. Mr. Tom Schreckenberger, president of Accent Limousine, testified first. Mr. Schreckenberger testified that his company holds authority to provide limousine service point to point in Douglas, Sarpy, Washington, and Cass Counties. He presently operates four limousines. When he knows that he will need an additional vehicle, he contacts the competition to see if they have vehicles available. Mr. Schreckenberger provided the Commission with a comparison, in Exhibit 16, of Accent's demand for particular types of vehicles. Testifying from Exhibit 16, he stated that over the last six years, Accent has experienced an increased demand for sedans and a

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decreased demand for the stretch limousines.

It was possible that Accent could not provide a limousine on a particular occasion, particularly if it was prom season. He does not consider two to three hour notice to be reasonable. Generally, customers contact Accent a week or two prior to the date in which they need a limousine. Accent has several corporate accounts. Including the corporate accounts, ninety-nine percent of the time, his clients are able to give more than two to three hours of notice. None of the witnesses who testified spoke with him about arranging a short notice service on any kind of regular basis. He would like to sit down with them and work out an arrangement to provide limousine service to the persons who testified on behalf of Platinum.

Upon cross-examination, Mr. Schreckenberger testified that Accent has contacted a competitor approximately four or five times within the last six months to provide the service Accent was unable to provide. On every occasion, a competitor was able to provide a vehicle. He does not try to contact a competitor when a customer states that he or she has already called the competition. He cannot say how many requests for service he has turned down because many times, the potential clients simply call and ask for information.

Accent gets very few requests for limousines on an immediate basis. The majority of calls are for service well in advance. Mr. Schreckenberger testified that the addition of one limousine would not solve the witness' problems with the availability of limousines on short notice. Upon further cross-examination, Mr. Schreckenberger testified that problems with availability stem not from a shortage of vehicles, but rather from the unavailability of drivers.

Ms. Jodie Jones testified next on behalf of Old Market Limousine Service (Old Market). She is the Vice President and General Manager. Old Market has eighteen vehicles. She testified that generally, two to three hours notice is difficult due to the fact that Old Market doesn't always have chauffeured standing by. However, there are many occasions where Old Market would have a vehicle and a driver available on short notice. She further testified that she would like to provide service to any of the people who testified in support of the applicant.

Mr. Mark Mitchell, President of Omaha Limousine Company, testified that he purchased Total Transportation and the Commission granted the transfer of authority in April of this year. Omaha Limousine received temporary authority in February. Omaha Limousine was not in existence last summer or fall. He is operating four limousines right now. Additionally, Omaha Limousine had vehicles available on March 16 and 17. Omaha Limousine has never been contacted by Allender & Associates. He further testified that Omaha Limousine can meet the needs of the witnesses for the applicant and would like the opportunity to do so.

Mr. Gayle Townsend, operator machine's manager for Omaha Limousine testified last. He is in charge of booking limousine service for Omaha Limousine. He testified that Omaha Limousine did have vehicles available on March 16 and 17. The only requests that Omaha Limousine could not fulfill fell on prom weekends. He testified that Omaha Limousine can fulfill requests for service even when given short notice. He has never turned down a booking because he did not have a driver. He further testified that Mr. Everroad did not contact him for limousine service, and that he would have had a vehicle available.

No other parties testified or introduced any additional evidence.

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

For a grant of authority, an Applicant must prove that it is fit, able, and willing to provide the proposed service and that the proposed service "is or will be required by the present or future public convenience and necessity." Neb. Rev. Stat. §75-311 (Reissue 1996). In the present application, Platinum has demonstrated that it is financially fit and able to provide the proposed limousine services in the defined territory. We believe the evidence provided through Mr. Steve Abboud's testimony and through Exhibit 5, demonstrated adequate financial fitness. We further find that with the assistance of Mr. Condoluci, the applicant would possess the managerial skills necessary to carry out its proposed business plan. Platinum has already obtained a vehicle to put into use, has acquired insurance on the vehicle and is prepared to meet the Commission's rules and regulations with

respect to its insurance coverage. Upon review of the all the evidence adduced at hearing, we find that the applicant has provided the requisite criteria as well as a meaningful business plan with which to base a finding that the applicant is fit, willing and able to provide the proposed limousine service between points in Cass, Dodge, Douglas, Lancaster and Sarpy counties.

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 "need and necessity" was set forth by the 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.* The testimony presented at the hearing focused mainly on the issue of availability of limousine service upon short notice. Typically, we do not view limousine service as transportation service provided on a demand-type basis. Generally, limousine service is prearranged well in advance and reserved for special occasions. We think that the service some of applicant's witnesses needed was more akin to a taxi service. We further believe that it would impose unrealistic expectations upon a limousine company to expect and require that company to have vehicles and drivers available upon a moment's notice. Moreover, we feel that it would be extremely unfair to set standards upon the limousine carriers so high that they are forced to transform their business into a taxi-like

service. However, the statute requires us to determine whether the proposed operation will serve a useful purpose that is responsive to the public demand or need. Neb. Rev. Stat. § 75-311 (Reissue 1996). Therefore, we must examine the evidence based upon what is responsive to the public need and demand.

Several of the Protestants testified that they rarely receive calls requesting limousine service upon short notice. Witnesses for the applicant on the other hand, testified that, on occasion, they need a limousine service on short notice. Of the witnesses who testified apart from the applicant, four witnesses testified that upon short notice, generally ranging from two to three hours, they experienced problems obtaining a limousine. One witness testified that he called only two limousine services. Another witness could not testify as to who his secretary contacted for service. A third witness testified that she did not make an attempt to contact some companies in the area based upon what she heard about them. This evidence was contradicted by the Protestants. Finally, a fourth witness found it difficult to obtain a limousine on short notice sometime last summer, but didn't testify as to which companies he contacted.

Moreover, the applicant and the witnesses in support place a great deal of weight on the issue of short notice, yet the applicant failed to demonstrate that the approval of another limousine application would solve the problems verbalized by these witnesses. There was no indication that the applicant would be able to provide limousine service upon one to two hours of advance notice. We find, based upon the testimony presented, that the applicant did not sufficiently demonstrate that the proposed operation will serve a useful purpose that is responsive to the public demand or need.

Based upon the evidence before us, we find that the needs of the public can be met and served as well by existing carriers. Several of limousine companies testified that they meet the existing need and can handle additional requests for limousine service. The witness for Omaha Limousine testified that Omaha Limousine is prepared to provide service on short notice if that is what the public needs. It further had cars and drivers sitting idle during the specific time that the witnesses testified they could not find a limousine carrier.

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In closing arguments, the Protestant requested the Commission to take into account that a number of the witnesses for the applicant were close friends or relatives of the applicant and thus determine that the testimony presented by the applicant is self-serving. Typically, in applications such as the present one, we hear the testimony of close friends and relatives of the applicant. We also hear from the Protestants who have a financial interest in having the application denied. However, from the testimony elicited, our role is to determine the appropriate weight to give to the testimony of each witness while looking to the relevant evidence about the demand and the existence, if any, of adequate and satisfactory service.

In sum, we find that the applicant failed to demonstrate that the proposed service will be required by the present or future public convenience and necessity pursuant to Neb. Rev. Stat. § 75-311 (Reissue 1996). Accordingly, the application should be denied.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application B-1551 be, and it is hereby, denied.

MADE AND ENTERED in Lincoln, Nebraska on this 11th day of July, 2001.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Lawrence J. Johnson
Sam C. Boyle

Paul J. Johnson

//s//Frank E. Landis

Mark Sand
 Chairman

ATTEST:

And S. Pollack

Executive Director