

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 of passengers ) DENIED  
by luxury or stretch limousine )  
between points in Cass, Dodge, )  
Douglas, Lancaster, and Sarpy )  
Counties over irregular routes. )  
RESTRICTION: The transportation )  
of railroad train crews and )  
their baggage is not authorized. ) Entered: July 23, 2002

BY THE COMMISSION:

By application filed February 12, 2001, Platinum Builders, Inc., d/b/a Platinum Limousine Service ("Platinum" or "Applicant"), Omaha, 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, or February 14, 2001. Protests to the application were filed on March 9, 2001, by Old Market Limousine Service and Accent Limousine 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. By Order entered July 21, 2001, application was denied. Following applicant's filing of a Motion for Reconsideration (Rehearing), oral argument was held in the Commission Library on August, 28, 2001. A rehearing was ordered, and a video hearing was held on March 6, 2002.

E V I D E N C E

At the first hearing, the Applicant presented seven witnesses to support its application. Those witnesses testified and presented evidence, and the summary of evidence presented was recited in the Commission's original Order in this application, and is hereby incorporated by reference.

At the second hearing, Applicant presented four witnesses.

Mr. Brad Ashford testified for the applicant as follows: He is an attorney, and is also a member of the Metropolitan Entertainment Convention Authority, known as MECA. Its responsibility is to operate the Convention Center Arena Complex of buildings that are being constructed. This group studied the type of events that would occur at these facilities and the impact upon the general economic condition of the community, including transportation. He has a very favorable impression of limousine service in Omaha. The events that would have the most impact on transportation would be the concerts that would be held at the Arena. The other type of even would be conventions. He testified that "eventually" there will be a need for limousine service. His understanding is that there would be need for five to seven limousines per concert event.

On cross-examination, Mr. Ashford stated that he could not tell whether the existing limousine services are meeting the needs of the public; however, he stated that "the service that is provided is good. It is fine service. People are happy with the service." He did not know whether, even if there was an increased need for limousine service, the existing services could simply add some equipment to their fleets to address the need. The Convention Center will be open in the fall of 2003. He did not know how many limousines are presently operating in the Omaha area. He is generally familiar with two or three limousine companies, but he is sure there are more. He does not know why any of the existing companies could not expand to meet future needs.

Mr. Dan Morrissey is President of Meeting and Event Design, an Omaha meeting, convention and special event company. It takes care of planning everything needed to put on a convention, and its largest client is First Data Resources. It also serves as event coordinator for the College World Series as well as the Offutt Air Base show. Certain companies utilize limousines or a regular basis for their top level executives. There are also certain occasions where it would utilize limousines as a special event or a "perk" for the attendees. It would include airport transportation, tours, and all other aspects of ground transportation. Clients desire luxury limousines as well as luxury sedans. His company is a user of limousine services in Omaha and, in fact, is utilizing Old Market Limousine this May. He is not familiar with the exact number of limousines that are available to the public in Omaha. His company's needs are currently adequately served by the existing limousine service with some exceptions. Those would be events such as during prom, graduation, and wedding season. During the Berkshire Hathaway Convention, his company had to utilize a luxury minibus because it was difficult to get limousines on Fridays and

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Saturdays. April, May, and June are the primary months for utilization of limousines. There are times when they cannot obtain limousine service on a large scale. He thinks there will be a need for additional limousine service in Omaha.

On cross examination, Mr. Morrissey stated that at the present time, he is satisfied with the service, but there are times and occasions when he has had more of a problem getting service. This would be a relatively small percentage of the time, namely, April, May, June, and Christmas. He has had a very satisfactory relationship with Old Market. Requests for limousine service on three-days notice or less is, compared to the whole, relatively small. He has not made any study to determine the number of limousine companies or the amount of equipment they operate. He believes there are two or three companies in addition to Omaha Limousine. He has not, to his knowledge, utilized Omaha Limousine. To his knowledge, even when he has trouble getting limousines, he only contacts two or three companies. He has no reason to believe that existing carriers cannot step up to a need for additional service.

Mr. Joe Higgins is a manager of Embassy Limousine. He is presently leasing a 10-passenger limousine from Platinum Limousine. Embassy Limousine operates an additional nine vehicles. The luxury market utilizes luxury stretch vehicles while the corporate market generally utilizes luxury sedans. It is leasing Platinum's 10-passenger black limousine for corporate purposes. Embassy Limousine does not have an adequate number of corporate-style vehicles to meet the requests for service that it gets. He receives approximately four to five calls a day for service from Lincoln. This Saturday, all of his vehicles are booked. On April 13<sup>th</sup>, he had a number of requests for service that he could not meet. He had 13 requests for service on April 20<sup>th</sup> that he could not meet. He had 17 requests on April 27<sup>th</sup> that he could not meet. He did not have enough cars on June 1 and June 15. Corporate requests are generally made a week or less in advance. Generally, Mondays through Thursdays there is no problem providing sufficient equipment. In general, the number of limousines in the area is increasing.

On cross examination, Mr. Higgins states that he presently has a business relationship with the Applicant. He stated that aside from leasing a vehicle from Platinum, he had no other business relationship with the company. He then stated that he leases space from Empire Partnership, which consists of various family members of the Applicant. He does not know the specific number of corporate limousines that Omaha Limousine has.

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Mr. Steve Abboud is President and controlling shareholder of Platinum Limousine. He presently operates one 10-passenger black limousine and is looking at other sedans to provide corporate service. His is a strong believer in free enterprise, and he thinks it would behoove the Commission to approve an additional limousine company.

On cross examination, Mr. Abboud stated that Matt Condoluci is no longer with the company.

Protestants Old Market and Accent Limousine rely upon the testimony given by the witnesses at the first hearing on this matter, recited in the Commission's original Order and hereby incorporated by reference.

Gayle Townsend testified on behalf of Omaha Limousine. He is the Operation Manager. He answers the phone 99% of the time. He heard the testimony of Mr. Higgins that he cannot obtain an SUV for June 15<sup>th</sup>, and he has a six, ten and 14-passenger vehicle that is completely un-booked for that date. He also had equipment available for April 6, 13, and 20. In regard to Mr. Morrissey's testimony, he still has a couple of vehicles available for May 4<sup>th</sup>. He currently operates seven limousines and two sedans. He has never been contacted by Media and Event Design regarding the Berkshire Hathaway event.

On cross-examination, the witness states that most of his vehicles are white. There are certain times during the year when he did not have equipment available. Thus far he has been able to meet every demand for service during the month of June. If the witness felt that there was a demand for black vehicles, he would obtain one. If a prospective customer calls and wants a black vehicle, he will be referred to Old Market or Accent.

Mark Mitchell testified next. He is the owner of Happy, Yellow, and Checker Cab Companies and Omaha Limousine. In the event that the Convention Center brings additional demand for service, his company is willing to increase its equipment. As a matter of fact, within the last 6 months, it spent over \$200,000.00 updating vehicles and increasing the amount of vehicles available. He has not had enough demand to warrant a black vehicle. If he needed one, he would get one tomorrow. His company also owns Happy, Yellow, and Checker Cabs, and has over 100 professional drivers available to drive limousines. The drivers change into a suit or tuxedo when driving luxury vehicles.

OPINION AND FINDINGS

For the Commission to grant 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 our initial Order entered July 11, 2001, we found that the Applicant was financially fit and able and that with the assistance of Mr. Condoluci, the Applicant would possess the managerial skills necessary to carry out its proposed business plan. It was revealed at the second hearing that Mr. Condoluci is not longer with the company. The Commission need not further evaluate whether the Applicant is fit, because, as discussed below, the Commission does not find that the proposed service is or will be required by the present or future public convenience and necessity.

We 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 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.

The evidence does not show that the existing carriers are not meeting the present needs of the public. Witnesses failed to show that they called all of the existing carriers to receive service and, in fact, Protestants showed that they had equipment available on these dates.

Witnesses primarily addressed the potential need for service when the Omaha Convention Center opens in the fall of 2003, over one year from now. This need is speculative, and

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cannot be the basis for a finding of public convenience and necessity. The applicant must show a present actual need or a need which will likely occur within the reasonable immediate and foreseeable future. *In re Application of Renzenberger*, 225 Neb. 30 (1987). It is uncertain how much, if any, additional limousine traffic will be generated when the convention center opens next year. The convention center board member who testified for the Applicant stated that the center would gradually reach full operations and would not be fully booked upon its opening.

Furthermore, the Commission does not at this time have any evidence that such a future need cannot or will not be served as well by existing carriers. Finally, the evidence does not demonstrate that such future need 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 conclusion, we find that the Applicant failed to demonstrate that the proposed service is or 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.

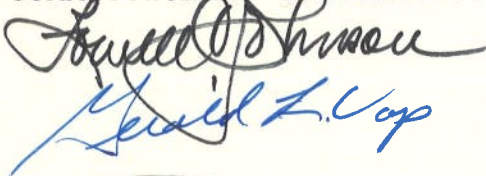
O R D E R

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

MADE AND ENTERED at Lincoln, Nebraska, this 23rd day of July, 2002.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:



//s//Anne C. Boyle



Chair

ATTEST:



Executive Director