

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) APPLICATION NO. B-1555
of Prime Consultants, Inc., dba)
Goodwill Medical Transportation,)
Omaha, seeking authority as a) GRANTED AS MODIFIED
common carrier in Nebraska intra-)
state commerce in the transporta-)
tion of passengers by van between)
points in Cass, Douglas,)
Sarpy, and Washington counties)
over irregular routes.)
RESTRICTION: The transportation)
of railroad train crews and their)
baggage is not authorized.) Entered: September 5, 2001

APPEARANCES:

For the Applicant:
Anthony Ike
Jackie Barfield
7701 Pacific Street
Omaha, Nebraska

For the Intervenor:
John Boehm
811 S. 13th Street
Lincoln, Nebraska

For the Commission staff:
Shanicee Knutson
300 The Atrium
1200 N Street
Lincoln, Nebraska 68508

BY THE COMMISSION:

B A C K G R O U N D

By its application filed March 8, 2001, Prime Consultants, Inc. dba Goodwill Medical Transportation, Inc., (Goodwill or Applicant) of Omaha, Nebraska seeks authority as a common carrier in Nebraska intrastate commerce in the transportation of passengers by van between points in Cass, Douglas, Sarpy, and Washington counties over irregular routes. RESTRICTION: The transportation of railroad train crews and their baggage is not authorized. Notice of the application was published in The Daily Record, Omaha, Nebraska, on March 12, 2001, pursuant to Commission rules. On March 21, 2001, R & F Hobbies, Inc., dba Prince of the Road (Prince of the Road) filed a protest to the application. A hearing was held by video conference on June 1, 2001 with appearances shown above.

E V I D E N C E

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

Mr. Peter Ngantar, testified that he was the chief executive officer of Prime Consultants which he started in 1999. He has been a consultant in the health care industry since that time. Prior to that he worked as a certified nursing assistant in a number of nursing homes throughout Omaha. Mr. Ngantar provided evidence as to his experience with marketing, administration and his financial qualifications to operate the proposed service in the requested service territory. Prime Consultants owns one van and plans to add another once business grew. Additionally, he had investigated insurance costs and received insurance estimates for the proposed service.

Mr. Ngantar testified that as a former health care provider and current health care consultant, he possesses general knowledge of transportation needs in the industry. He has worked closely with nursing homes throughout the Omaha metropolitan area. Additionally, Mr. Ngantar testified that he has heard a number of complaints about the inadequacy of transportation service to meet the needs of the medical industry.

Upon questioning by Commissioner Boyle, Mr. Ngantar testified that he had never heard of Prince of the Road. He did not know whether they operated locally in Omaha.

Upon cross-examination by Mr. Boehm, Ngantar testified that the primary business of Prime Consultants is providing nursing staff for nursing homes in the Omaha area. He had worked in several nursing homes throughout the area as a direct care provider. He was a full time direct care provider in Maple-Crest and the Hayes Center. He was in charge of preparing the patients for dialysis. Mr. Ngantar testified that although he did not directly contact the transportation companies, he did possess general knowledge about the availability of transportation service because he was in charge of getting the patients ready. He testified that as recent as February and March, he observed instances where a patient was awoken and was made ready for departure only to find there was no transportation available. He testified that took place at Huntington Park and Papillion Manor.

Initially, Mr. Ngantar would be driving the vehicle. He has been providing free transportation to some of the nurses employed in the nursing homes. He proposes to provide transportation for medical and non-medical facilities. He has not entered into any contractual arrangements nor has he contacted potential clients about his service. He was planning on waiting for a certificate of authority prior to marketing the applicant's services.

Upon redirect, Mr. Ngantar testified that he possessed a doctorate in economics. Additionally, he testified that he has adequate business experience and was familiar with starting up and staffing businesses. He testified further that he has extensive marketing experience. He was familiar with other transportation providers in the area. However, he restated that he had never heard of Prince of the Road. There is no listing for Prince of the Road in the Yellow Pages.

When an appointment was missed because of a lack of transportation, normally, the patient had to wait approximately one to two weeks to get into the doctor again. This was a serious and potentially harmful problem for the patient.

Upon re-cross, Mr. Ngantar testified that while nursing homes sometimes have their own vehicles, the number of vehicles is frequently insufficient. According to his experience, the demand for transportation exceeds the current resources. Mr. Ngantar promised that he would make his vans handicapped accessible upon certification.

Ms. Melissa Harris testified that she was a registered nurse. She worked as the unit coordinator of a 30 bed Medicare unit in a long term care facility in Omaha. Prior to her current position, she was employed at two separate nursing homes in Omaha. As a unit coordinator, she was responsible for arranging transportation to and from scheduled appointments. She testified that she has experienced problems due to the lack of transportation providers available in the area. Ms. Harris further testified that there was a great need for the transportation service the applicant proposes to provide.

The facility where she was employed, Immanuel, had one van. However, that one vehicle was not adequate to fulfill the transportation needs of the entire unit. She testified that she has never heard of Prince of the Road. Delays due to the lack of providers is commonplace, she stated.

She further testified as to the seriousness of the appointments. She stated that patients can become gravely ill when appointments are missed. This can sometimes lead to hospitali-

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zation of the patients.

Upon cross-examination, Ms. Harris testified that the parties responsible for payment ranges from the patient's families to Medicare. In the facility in which she is employed only thirty of the patients out of one hundred and eighty-eight are on Medicare. Ms. Harris does not contact the taxicab services because it is against policy.

Ms. Diana Vassos, a licensed practical nurse and admissions coordinator for Alegent Health Care testified that she possessed personal knowledge on the need for transportation service providers in the applicant's proposed territory. She testified that she encounters numerous problems with the current carriers meeting her transportation needs. She testified that she was part of a collaborative effort to arrange transportation for patients. She testified that it is not standard practice to contact the taxicab companies. She did not know how many of her patients had transportation services paid for by the Department of Health and Human Services.

Dr. Christopher Aja, a clinical psychologist testified that he was familiar with the transportation needs of the community. He stated that because of the lack of transportation providers he was forced to start making house calls. He is reimbursed by the Department of Health and Human Services and its contractors for transportation to and from his patients' homes. Additionally, he testified that there was a need for transportation providers. He testified that almost all of his patients are clients of FHC Options. Upon cross examination, Dr. Aja testified that he would make a recommendation to Nebraska Department of Health and Human Services to permit him to use the applicant's transportation service.

Mr. Sean Schroll testified first for the Protestant. He is the Chief Operating Officer of Prince of the Road. He testified that Prince of the Road operates in Douglas, Sarpy, Washington and Cass counties. He testified that Prince of the Road has thirteen vehicles in Omaha. He testified that roughly forty percent of his clients are options clients and approximately sixty percent are clients of the Nebraska Department of Health and Human Services. Additionally, Mr. Schroll testified that a large number of his clients in Omaha are transported to or from medical treatment facilities. He testified that physicians and health care providers do not contact Prince of the Road personally.

Mr. Schroll also testified that Prince of the Road has turned down a few clients, however, he stated that was mainly due to a misunderstanding by one of his drivers. He testified that Prince

of the Road can handle additional business as they have a couple of drivers that are interested in going to work for Prince of the Road. Mr. Schroll testified that these drivers must first meet a screening process and then if there is enough business, Prince of the Road may hire them. Mr. Schroll stated that a few of his drivers are trained in basic first aid. Prince of the Road does not have any handicapped-equipped vehicles stationed in Omaha. When asked whether the addition of another carrier into the Omaha area would cause Prince of the Road financial harm, Mr. Schroll testified that it could. Additionally, Mr. Schroll testified that his marketing person in Omaha had checked into providing transportation to and from nursing homes, but had decided that it would not be worth doing.

Upon cross-examination, Mr. Schroll testified that Prince of the Road's business was based out of Ravenna. Prince of the Road receives calls in and dispatches transportation services from its offices in Ravenna. Mr. Schroll testified that he does not work with any nursing homes in Omaha. Mr. Schroll testified that many times, Prince of the Road has had the wrong address on its paperwork which resulted in drivers being late or going to the wrong place.

Mr. Schroll further confirmed that Prince of the Road does not advertise its services in the Yellow Pages or the newspaper. He stated that most of its marketing was accomplished by word of mouth. Mr. Schroll testified that approximately twenty percent of the transportation services it provides is not paid for by ValueOptions (FHC Options) or the Department of Health and Human Services. He could not say what part of North Omaha Prince of the Road provided transportation services in.

Mr. John Miller testified next on behalf of the Protestant. He performs the dispatching service for the Omaha area. Calls are sent to him from the Ravenna office and then he dispatches Prince of the Road's Omaha based drivers. He also drives for Prince of the Road. He testified that some nursing homes have vans that can transport nursing home residents to the dialysis center and back to the nursing home. He testified that roughly sixty percent of the Omaha area clients are transported to or from North Omaha. Although, admittedly he described North Omaha as a much larger area than the applicant.

Mr. Miller testified that in his opinion, there is not a need for additional transportation services in Omaha. He further testified that if Prince of the Road did add new drivers, it would be because the market is expanding.

Upon cross-examination, Mr. Miller confirmed that he was

looking for more drivers. He then testified that the market was increasing. Mr. Miller is also a realtor and when he is not working for Prince of the Road, the Ravenna office serves as his backup.

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 of 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) (Reissue 1996).

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 presented a 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 "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.* Upon the evidence adduced, we find that the applicant has demonstrated that a need that exists which has not been met nor cannot be adequately met by existing carriers. The testimony provided indicates that health care providers frequently need to reschedule their patients' medical appointments because of a lack in providers willing to make their services available. A number of the applicant's witnesses testified on the frequency of missed appointments by the limited number of carriers in the area. There was also testimony as to the complete unavailability of carriers. No party testifying on behalf of the applicant had heard of the Protestant. Further, the Protestant testified that it did not have a handicapped-equipped van in the Omaha area. Overall, from the evidence adduced at the hearing, we believe that there was sufficient evidence to indicate that the Protestant could not adequately meet the need that was demonstrated to exist by the applicant.

Additionally, there was no specific evidence that the Applicant's service would endanger or impair the operations of existing carriers including the Protestant. Rather, the Applicant testified that it intends to seek out its business in areas in which the Protestant has not even demonstrated an interest. Accordingly, we find that the Applicant is fit, willing, and able and has met the need and necessity test of Nebraska statutes. The Commission, therefore, finds 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 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 AUTHORIZED: The transportation of passengers in open class service by passenger van between points in Cass, Douglas,

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Sarpy, and Washington counties over irregular routes. RESTRICTION: The transportation 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-1555 be, and it is hereby, granted as modified; 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 Prime Consultants, Inc. dba Goodwill Medical Transportation, Inc., authorizing the 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 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 reasonably 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.

MADE AND ENTERED in Lincoln, Nebraska on this 5th day of September, 2001.

COMMISSIONERS CONCURRING: NEBRASKA PUBLIC SERVICE COMMISSION

Paul Johnson

David Flap

Ann C. Boyle

Pat Johnson

//s/ Frank E. Landis

Mark Lunde
Chairman

ATTEST:

Ad S. Pollak
Executive Director