

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. B-1557,
of Hope Transportation, Inc.,) Supplement No. 1
Omaha, Nebraska seeking to)
authority as a common carrier of)
passengers in open class service)
by van between points in Cass,)
Otoe, Lancaster counties and)
between points in said counties,)
on the one hand, and, on the)
other hand, points in Nebraska) GRANTED IN PART,
over irregular routes, to) DENIED IN PART
include the transportation of)
Health and Human Services)
clients and their subcontractors)
thereof. RESTRICTION: The)
transportation of railroad train)
crews and their baggage is not)
authorized.) ENTERED: September 21, 2004

BY THE COMMISSION:

By Application filed September 4, 2003, Hope
Transportation, Inc. (Hope or Applicant) of Omaha, Nebraska
seeks the following authority:

COMMON: Transportation of passengers and their
baggage in open class service by van between points in
Cass, Otoe, Lancaster counties and between points in
said counties, on the one hand, and, on the other
hand, points in Nebraska over irregular routes, to
include the transportation of Health and Human
Services clients and their subcontractors thereof.
RESTRICTION: The transportation of railroad train
crews and their baggage is not authorized.

Notice of the application was published in The Daily
Record, Omaha, on September 12, 2003. Protests to the
application were duly filed by Servant Cab Company, LLC d/b/a
Yellow Cab Company & Capital Cab Company (Servant), R & F
Hobbies d/b/a Prince of the Road (Prince of the Road), and A-1
Ambassador Limousine, Inc., Haymarket Limousine, A-1 Special
Services (A-1). By facsimiles received on January 14, 2004
Prince of the Road and A-1 withdrew their protests. A public
hearing on the application was held on January 14, 2004, and a
continuation of the public hearing was held on May 11, 2004.
Appearances were entered by Robert Kirby for the Applicant, by
Jack Shultz on behalf of Servant and by Shana Knutson on behalf
of the Commission staff.

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EVIDENCE

Applicant's Evidence:

The Applicant called six witnesses in support of its application. These witnesses testified as follows:

Mr. Robin Richardson, CPA, CFP, CVA of Richardson & Associates, P.C., testified that he is an advisor and accountant for the Applicant. In this capacity he prepared the S-Corporation income tax returns for the Applicant and discussed financial matters pertaining to the growth of the Applicant. He testified that he knew of the Applicant maintaining a relationship with an attorney and a transportation consultant.

Mr. Richardson testified, in his professional opinion, that the Applicant is financially fit to provide the services as proposed in this application because the revenue of the Applicant grew from \$97,981 in 2002 to, \$269,097 in 2003 and at December 31, 2003 had \$70,589 of working capital. Mr. Richardson prepared an updated Commission financial statement form, based on Applicant's information as of December 31, 2003. This form was received into evidence, over Protestant's objection, as Exhibit 8.

Upon cross-examination, Mr. Richardson testified that he did not accumulate any expense information from the Applicant and could not testify to the extent of profitability of the Applicant. Further, he acknowledged that Exhibit 8 did not contain any accruals, but estimated them to be around \$2,000. Additionally, he stated that he did not perform any studies related to traffic volume or costs to provide services as proposed in this Application, but noted that his opinion was based on the ability of the Applicant to operate profitably in Omaha, Nebraska.

Upon further questioning, Mr. Richardson stated that he believed that the financial information in Exhibit 3, which was prepared by Ms. Violet Iluebbey, contained errors. He testified that the Account's Receivable amount was likely a guess, but, in effect, it was probably an understatement. He also admitted to some differences in accounts between Exhibits 3 and 8, and Exhibit 3 likely contained the same omission of accruals as in Exhibit 8.

On Re-direct, Mr. Richardson testified that Exhibit 8 was a tentative accurate statement created to the best of his ability

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on January 13, 2004. Lastly, he stated that the Applicant grew to what it is today starting from \$2,500.

The Applicant next called Ms. Becky Shedeed, RN, the clinic coordinator for Peoples Health Center, Lincoln, Nebraska (the Center). Ms. Shedeed testified that the Center came about from a federal grant to serve the under-served, under-insured population including people covered by Medicaid. The Center services both medical and non-medical needs of its patients, including helping patients arrange for transportation to and from the Center. In addition, she testified that cultural and linguistic barriers exist for immigrant and refugee clients of the Center.

She further testified that while employed as a nurse at Charles Drew Health Center in Omaha, Nebraska that the Applicant's services were used quite often and were performed competently, without complaints. Additionally, she stated that she thinks the Applicant's drivers assist their passengers seek services to get their needs which is due to the driver's background and training. She believes that the abilities of Applicant help break down existent transportation, linguistic and cultural barriers.

Ms. Shedeed testified that an alternative to existent carriers would help serve populations that are coming into the community. She also expressed that the under-served, under-privileged and Medicare clients do not receive the service they need because of an undue preference against them because they cannot access the service because of their lack of ability to communicate or to know the services exist.

On cross-examination, Ms. Shedeed stated that she, about three times a week, helps patients arrange for transportation, typically by calling a number from a card given to them by a carrier but the Center does not pay for any of the costs, the patient is responsible, either personally or through insurance. Further, she testified that she either calls the Protestant or Medicaid to arrange travel and the only complaint she has is some of the wait times are too long. She also stated she is unaware of any other carriers providing service to and from the Center.

Upon further cross-examination, Ms. Shedeed testified that she did not know of anybody in Otoe or Cass Counties that have linguistic or cultural barriers to obtaining transportation and stated the number people in Lancaster County she knew of with

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such barriers was under 10. However, she stated that more needs to be done to meet the needs of the communities.

The Applicant next called Ms. Aman Alier who was interpreted by Ms. Annan Abednego. Ms Alier testified that she is a Sudanese refugee and can not read English nor speak it very well. She stated that there is unjust discrimination against her by the existing carriers because of the linguistic and cultural barriers. She testified that she has trouble obtaining a taxi because the company she calls doesn't understand her, and if she gets a cab the taxi drivers get fed up with her because they don't understand her.

Ms. Alier further testified that a public demand and need exists for services provided by the Applicant in Lancaster County because the existent carriers are not serving her or her communities' needs.

On cross-examination, Ms. Alier testified that she could go to several different people for assistance with acquiring transportation. She stated she received assistance from a State or City employee, friends and neighbors, her church, and the African community. However, the use of these resources is generally limited to specific instances during specified hours, such as for welfare or medical appointments, or for emergencies.

The Applicant next called Dr. Mary Willis, an Assistant Professor of Anthropology at the University of Nebraska. Dr. Willis, who specializes in Sudanese refugees, testified that refugees from Sudan are the fastest growing refugee population in the state of Nebraska because Lincoln is a federal resettlement site. Further, she stated that based on the responses from a two-year survey, which covered all Sudanese refugees in Lancaster County, one need that currently remains unmet is the need for transportation. Specifically, she continued, 79% of the 264 respondents listed transport as either critical or very critical to their health status because there are no programs or grant funds to address this issue.

Dr. Willis continued by stating there is a particular issue with the Sudanese refugees accessing services. Because they don't speak English, and translating services cost money, they have trouble communicating effectively, which leads to delays, costs, and they may not receive what they are trying to obtain. She volunteers to transport Sudanese refugees because they have trouble obtaining transportation services.

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She further testified that the proposed service by the Applicant, if granted authority, would help break down the communication barriers and would allow the Sudanese refugee population better access to transportation services.

On cross-examination, Dr. Willis testified that accessing service is the need at issue. She admitted she did not have knowledge of the quality of service currently being provided; however, she did testify to knowledge of some instances when a carrier, unknown to her at this time, failed to arrive when called for. Further, she stated that trouble with accessing transportation is ultimately a public health issue because the Sudanese refugees are not getting their health care needs met, and as a result, some are suffering.

Upon further cross-examination, Dr. Willis testified she does not know of the number of Sudanese refugees located in Otoe or Cass County, but when on to state that the refugees may move around within the state to find work. However, she believes the largest populations are in the Omaha and Lincoln areas.

She stated that restricting the Applicant to solely African refugees would meet the needs she identified previously, however, she expressed that future refugees may not be from Africa therefore restricting the Applicant does not seem appropriate.

The Applicant next called Ms. Jeri Goodman of Goodman and Associates, P.C. Ms. Goodman testified that she practices psychotherapy and is a certified professional counselor and licensed mental health practitioner. She has offices in Union and Omaha, Nebraska.

Ms. Goodman testified that she works primarily with children and families and about 60% of her clientele are Medicaid or low-income individuals. Because of this and the nature of her service, she noted, many individuals have trouble reaching her health services. However, Medicaid does provide transportation for mental health services through their managed care company, Magellan Behavioral Health.

Ms. Goodman stated that she works with the Applicant in Omaha and believes them to be a reliable, consistent and very personable service. Further, Ms. Goodman stated the transportation provided to her Union Office, which serves Otoe and Cass Counties, has shown to be difficult. She expressed that Prince of the Road is inconsistent in providing its service in those counties. She claims that inconsistent service is

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detrimental to her ability to help her clientele. In addition, it is helpful if her clientele can have the same drivers, particularly when children are involved.

Ms. Goodman testified that an alternative carrier is in the public interest in Cass and Otoe Counties because the existing carrier is not serving the public demand adequately. Further, granting authority to the Applicant would, based on prior involvement, be a benefit to her and her clientele.

On cross-examination, Ms. Goodman stated that although Magellan Behavioral Health determines eligibility, they typically do not arrange for transportation, it is up to the individual to call and make arrangements. She expressed dissatisfaction with the carrier in Otoe and Cass Counties following through with pre-determined arrangements. In a few instances, she has made arrangements for transportation for her clients, but usually does not worry about it.

Upon further cross-examination, she stated she contacted Health and Human Services (HHS) about the troubles she has with the current carrier and has not seen any change, yet understands it may not be all their fault. In addition, Magellan Behavioral Health told Ms. Goodman that Prince of the Road is the only available carrier in Otoe and Cass Counties.

Ms. Goodman stated that she sees about 15 clients a week at her Union office, most of which require transportation be paid by some social service department. Further, these clients come from Otoe, Cass, and Douglas County. She currently does not see patients from Lancaster County. She testified that she may in the future and would be willing to look into the use of Protestant's service.

Lastly, she said that at present she does not see any Sudanese refugees as patients. However her office does offer the service to that population, but likely would only come about by a referral, such as through the HHS.

The Applicant called Ms. Violet Illuebey, the sole shareholder of the Applicant. Ms. Illuebey testified to having a Bachelor's degree in Business Administration and two Master's degrees, one in political science and one in social work. Ms. Illuebey stated that since coming to the United States from Nigeria in 1987, she worked odd jobs, became a certified nursing assistant and worked in various social care positions. The Applicant offered and the Commission received her resume as Exhibit 9.

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Based on her prior experiences, Ms. Illuebey testified that immigrants and refugees face special problems in accessing transportation services because they don't speak or read English. Specifically, she noted, those coming from Africa, not just the Sudanese, are new cultures to Nebraska and because of the lack of an established population to help, they may not know what is available to them. As a result, Ms. Illuebey stated she tries to incorporate every minority as much as possible in the Applicant's services and act as an advocate on behalf of their culture with other service providers. Further, the Applicant offered and the Commission received the advertisement flyer as Exhibit 10. The flyers, Ms. Illuebey stated, are in English, Nuer, French, Spanish, Filipino, and Arabic.

Ms. Illuebey testified that Omaha and Lincoln have large populations of Sudanese because they are federal resettlement zones. She estimated the number of Sudanese in Omaha and Lincoln to be about 5,000 and 3,000, respectively. However, she stated the Sudanese are a nomadic people so numbers are hard to determine and could change rather quickly. Because of the need she saw in Omaha, one of giving choice to those that need transportation and to include minorities that probably would be excluded as a result of language barriers, Ms. Illuebey formed the Applicant. She testified that she sees the same need in Lincoln.

Ms. Illuebey testified that the Applicant, under its current Certificate, reduced linguistic, cultural, and transportational barriers. She continued, by stating the group of people she serves in Douglas County is exactly the same group of people in Lancaster County; therefore because she reduced the barriers in Douglas County, the Applicant's service will reduce barriers in Lancaster County. She knows this, in part, because people in Lancaster County contacted her to provide services.

Ms. Illuebey further stated that Douglas and Sarpy Counties will be receiving more newcomers, referring to African immigrants and refugees. The Applicant provides a specially tailored transportation service to the newcomers, which, she claims, as to Douglas, Cass, and Otoe Counties, no other carrier provides. Therefore, because she provides a specialized service and is a small business, she feels that her service will compliment existing carriers service and will not infringe upon the operation of the existing carriers.

Ms. Illuebey testified that the goal of the Applicant is to have an office with about four vehicles in Lincoln, Nebraska and

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a local manager. She believes she has sufficient financial resources to make the expansion. At present, the Applicant maintains four full-time drivers and one part-time driver, some of which are multi-lingual. Further, she stated the drivers are being converted from independent contractors to employees. Additionally, she stated that at present she has four vans in service, none of which are handicap accessible; however, she noted she does not presently consider it a need, but if it became a need, she feels she has sufficient resources to purchase what is needed to accommodate those needs.

On cross-examination, Ms. Illuebey stated that the linguistic, cultural, and transportation barriers are not the fault of current carriers; the problem lies with a lack of a support system to assist immigrants and refugees in accessing the current carriers. She also stated that other than the transportation needs of immigrants and refugees, the only other public need in Lancaster County is one of choice, which would likely reduce wait times.

On further cross-examination, Ms. Illuebey stated she estimates at least 3,000 Sudanese plus an unknown number of other African immigrants and refugees reside in Lancaster County. She did not know whether any reside in Cass or Otoe Counties.

Ms. Illuebey stated the Applicant's service under current authority generally operates from 7:00 a.m. to 7:00 p.m. with exception for late pickups if pre-arranged; however, the Applicant does maintain a 24-hour phone service. She testified that the Applicant specifically does not provide any emergency services. She could not say the average number of trips the drivers make each day nor could she state the number of average drivers on duty at any given time.

Ms. Illuebey stated that the Applicant, under its current authority, generates approximately 20% of its revenue from the refugee minority community, specifically the Sudanese, Liberians, and Togolese. The other 80% comes from Health and Human Services, Eastern Nebraska Office on Aging.

Protestant's Evidence:

The Protestant called two witnesses in opposition to the Application.

The Protestant first called Ms. Donna Corey, one of the Members of the Protestant. Ms. Corey testified to maintaining

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positions as a driver, a telephone operator, a dispatcher, and a manager under the Protestant's Certificate since 1995. She further stated that the Certificate authorizes transportation between points within a 25 mile radius of Lincoln, on the one hand, and, on the other hand, points in the state of Nebraska, which includes all of Lancaster County. Further, the Certificate provides for round trip movements that might have originated somewhere outside that 25 mile radius, which encompasses some points in Cass and Otoe Counties. Ms. Corey stated the Protestant currently provides service to points in Cass and Otoe Counties and those wishing to obtain service from Lincoln to such points can make a toll free call.

Ms. Corey testified that as of December 29, 2003, the Protestant has nine vans in service, six of which are handicap accessible. She stated the Commission granted authorization to use Mini-vans and alternative vehicles, namely vans and handicap accessible vans. Further, she testified that upgrading the fleet of vehicles is a general concern and the Protestant is in a financial condition to purchase new assets and did so last year.

Upon review of the December 1 to December 7, 2003 summary of the Protestant's "trip cards," Ms. Corey testified that all of the movements for that week are within the scope of this Application, therefore, if granted, the Applicant would be able to make all the same movements. The "trip cards" show all of the movements within a 24-hour period and may encompass multiple shifts.

Ms. Corey demonstrated that the Protestant advertises via the yellow pages and via flyer. The Protestant transports numerous people daily including private pay and those for the Department of Health and Human Services. She also testified that the Protestant transports passengers who don't speak English. She stated clients typically call through an interpreter or HHS calls on their behalf. Ms. Corey further testified that from time to time a language barrier can exist, and that the Protestant tries very hard in effort to get around such a barrier. Protestant currently employs two multi-lingual drivers, one who speaks Spanish, the other who speaks Arabic.

Ms. Corey stated that if the Protestant's van traffic were to be diverted, the result could be downsizing the fleet and employees. She testified that she did not know of any denial of a request for van service and at present does compete with other carriers including Madonna, Midwest Special Services, Transport Plus and Visinet for HHS traffic in Lincoln.

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Ms. Corey testified that, based on professional experience and private knowledge of the Protestant's idle time, there is not a need for an additional carrier in Lancaster County; therefore, an additional Certificate would not be in the public interest.

On cross-examination, Ms. Corey testified that the Protestant owns all of their vehicles. Further, she stated that not all of their revenue comes from the transport of people; some of the revenue comes from transporting packages and letters. She could not state what percentage, but believed it to be quite small.

On further cross-examination, Ms. Corey stated that the Protestant would have difficulty handling a call from someone who does not speak English. The Protestant does not advertise in multiple languages.

The Protestant's final witness was Mr. Kirby Young, a Managing Member of the Protestant. Mr. Young testified that the Protestant employs between 60 and 70 people.

Mr. Young testified that the Protestant acquired the assets of Husker Cab on March 23, 2002 at which time Husker Cab was not a profitable business. Since that date, he continued, the Protestant upgraded the business practices by acquiring new vehicles, retiring old vehicles, and ensuring vehicles are manned throughout the course of the day and the evening.

The Protestant offered, and the Commission received into evidence Exhibits 19, 20, and 21, the 2003 W-2 forms for Ms. Donna Corey, Mr. Kirby Young, and Mr. Vance Young, respectively, the three Members of the Protestant; Exhibits 22 and 23, the Profit and Loss Statements for the approximate nine month period ended December 31, 2002 and twelve month period ended December 31, 2003, respectively; Exhibits 24 and 25, the Balance Sheets for the approximate nine month period ending December 31, 2002 and twelve month period ended December 31, 2003, respectively.

Mr. Young stated that the Protestant's income tax returns showed, an approximate gain of \$17,000 for 2002 and an approximate loss of \$1,000 for 2003.

Mr. Young testified that an additional carrier, which diverts traffic from the Protestant, would be detrimental to the operations of the Protestant. He stated that an extreme financial burden was placed on the Protestant when there were

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more carriers in Lancaster County transporting HHS traffic. The reduction of carriers allowed finances to be better. He stated another carrier who would divert traffic would cause the Protestant to scale back the number of employees and potentially change hours of operation. As a result, he claimed, the community would be harmed.

Mr. Young stated that the Protestant does not generally operate at full capacity. There is frequent idle time on part of the cabs; however, there are times around big events that a multitude of companies could not satisfy the demand.

On cross-examination, Mr. Young stated the gross revenue of the Protestant for the approximate nine-month period ended December 31, 2002 and for the twelve-month period ended December 31, 2003 was \$1.45 million and \$2.11 million, respectively. Of these amounts, Mr. Young could not determine the percentage attributable to van service, but did say that physical vans comprised approximately 25% to 30% of the fleet. He further stated that the Protestant did not use vans prior to March 23, 2002, the acquisition of assets from Husker Cab.

Upon further cross-examination, Mr. Young testified that the Protestant's two main competitors for Health and Human Services traffic, namely Midwest Special Services and Transport Plus, along with smaller specialized and/or restricted carriers. He continued by stating that these other competitors have not put the Protestant out of business. Further, at time the Protestant acquired the assets of Husker Cabs there was an additional competitor in Lancaster County and the Protestant acquired the assets with full knowledge of the then present competition.

Mr. Young stated that the Protestant does not provide any insurance benefits to its Members and distributions made were a return of Capital investment. He also testified that the Protestant leases its land and building from another entity wholly owned by the Members of the Protestant.

On re-direct, Mr. Young testified that since the Protestant's authority allows sedan or van use, it makes no difference whether a passenger is transported by either.

Mr. Young continued on re-direct to state the lease payments received from the Protestant service the mortgage on the building and land

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Applicant's Rebuttal

The Applicant recalled Mr. Robin Richardson to testify as a rebuttal witness. At the end of his testimony the Applicant offered, and the Commission received into evidence Exhibits 26 and 27, a summary of profit and loss statements and net available for capital expenditures and debt service, respectively; Mr. Robin Richardson prepared both statements and both pertain to the Protestant.

Mr. Richardson testified, upon review of the financial history, that he converted the Protestant's financial information from the cash method of accounting to the accrual method of accounting. He stated a growing company is more profitable on an accrual basis than on a cash basis because they are building equity in assets, building accounts receivable and paying down accounts payable. From this, he testified that the Protestant is in good financial position.

Mr. Richardson stated that in determining the net available for capital expenditures and debt service, non-cash expenses are added back into net income. He stated the Protestant had net cash generated, before capital expenditures, before debt service and before any distributions of \$210,000 and \$203,000 for the approximate nine months ended December 31, 2002 and twelve months ended December 31, 2003. Mr. Richardson estimates the Protestant is generating a 5% to 10% return.

Mr. Richardson testified that more competition would foster more buyers thereby creating a larger pie for all sellers because of the awareness increase. On cross-examination Mr. Richardson stated that he did not know whether the Lincoln market would have potential for growth and demand based on more competition.

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

The statute granting a certificate of public convenience and necessity states: is governed by, 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

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present or future public convenience and necessity.
Otherwise the application shall be denied.¹

In other words, in the Commission must apply a two-part test, the first part looks at the capabilities of the Applicant and the second part looks to public need in which the Applicant wishes to serve. Further, the Commission may be required to grant authority only in part, if the facts so dictate. Lastly, the burden of proof rests with the applicant to show that all requirements of § 75-311 are met.²

In part one of the two-part test under § 75-311, the Commission reviews whether the Applicant is "fit, willing, and able properly to perform the service proposed." The Applicant presented credible evidence as to the fitness of her character, financial fitness and fitness of her business acumen. Further, the Clinic Coordinator for the Peoples Health Center of Lincoln indicated she was familiar with and expressed approval for the Applicant's operations when she worked at the Charles Drew Health Center in Omaha.

While the Applicant presented knowledge of the industry and Commission requirements, no evidence was presented regarding the Applicant's knowledge of the area sought. However, the Applicant is currently a certificated carrier in Douglas, Sarpy, and Washington counties seeking expansion of authority and the Commission believes that lack of immediate knowledge of the area under this Application is not determinative as the Applicant, who demonstrates skill in business operations, would likely ensure knowledgeable drivers are used. Accordingly, we find the Applicant fit, willing and able to provide the proposed service.

We therefore turn to part two, by which the Commission must determine 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, which stated:

[i]n 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

¹ Neb. Rev. Stat. § 75-311 (Reissue 1996).

² In re Application of Greyhound Lines, Inc., 209 Neb. 430, N.W.2d 336, 339 (1981).

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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.³

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.⁴ Authority to serve three counties is sought in this Application; the analysis of Lancaster county is different for several reasons and is evaluated separately.

Cass and Otoe Counties

The Applicant presented testimony of a psychotherapist and counselor who serves citizens of Cass, Otoe, and Douglas counties. She stated current carriers underserve the counties of Cass and Otoe and an alternative carrier is needed to help with the demand. The Commission finds her testimony persuasive and turns to the remaining question of whether granting a certificate for open class common service would endanger or impair the operations of existing carriers contrary to the public interest.

Parts of Cass and Otoe counties are not within the range of the Protestant's authority and were not contested at the hearing. Therefore, as to parts of the two counties, there is uncontested persuasive evidence favoring the grant of the Application.

As to the portions under protest, the Commission finds the Protestant did not provide sufficient evidence to rebut the Applicant's evidence. The Protestant's evidence does not suggest that its operations in these two counties would be harmed significantly and the Commission feels it is inappropriate and against public interest to slice up counties via an arbitrary line between two carriers, particularly when that line is subject to change based on Lincoln's city limits.

Therefore, because the Applicant sustained its burden of proof, the Application for a certificate of public convenience and necessity for Cass and Otoe counties should be granted.

Lancaster County

³ In re Application of Nebraskaland Leasing & Assocs., 254 Neb. 583, 591, 578 N.W.2d 28 (1998).

⁴ Id.

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The Applicant presented evidence that linguistic, cultural, and transportation barriers exist for certain Sudanese refugees, who, by the direction of the federal government were placed in Lincoln, and contends that its service is in the public interest because it works toward breaking down these barriers. The Applicant's testimony stated that its service is specialized because of training and background of the employees and their ability to provide a refugee social service along with transportation.

While the Commission commends Applicant for her willingness to provide the service, whether the Applicant can provide social services needed by the immigrant and refugee communities is not a factor for determination of public convenience and necessity in providing open class transportation service and the Commission is not the proper body to evaluate the adequacy of the Department of Health and Human Services (DHHS) oversight of immigrants and refugees and the related skills and qualifications necessary to properly assist them.⁵ No evidence was offered on behalf of DHHS regarding this Application and the Commission shall not infer an opinion therein.

The factors for the Commission's analysis were laid out previously.⁶ In looking at the first and second factors together, the Applicant seeks authority in open class and must show that a Certificate of this broad nature serves a useful purpose and is responsive to public demand which is not met by another carrier in Lancaster County. The Commission believes the Applicant failed to meet its burden of proof as to these factors. Applicant provided only a single witness, Aman Alier, who would actually be a passenger transported by the proposed service. Further, this witness did not provide any evidence that the service being provided by Servant Cab was inadequate other than to state she did not speak English.

The remaining witnesses, likewise did not demonstrate a need for the proposed service. Ms. Shedeed, indicated that she was familiar with Applicant. Most of the patients Ms. Shedeed see do not pay for their own transportation service, but are clients of HHS. Again, no one from HHS appeared in support of this application. Ms. Shedeed experienced no problems and had satisfactory service when she arranged for the transportation. Dr. Willis testified about a study she performed in which 264 respondents indicated transportation was a problem. However,

⁵ See In the Matter of the Application of Judy Mohler dba Cruising with "Care" Application No. B-1609 (Feb. 18, 2004).

⁶ In re Application of Nebraskaland Leasing & Assocs., supra.

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the study was not offered in evidence. She referenced, without any specificity, that there are occasions in which Sudanese refugees had waited 30 minutes for transportation, but she did not know who the carrier was. There was no evidence that she would pay for the transportation or that she would use the transportation service of Applicant.

In sum, the Commission finds that Applicant has failed to demonstrate a need for the proposed service. Only one witness testified that she would use the service. Others testifying did not have any specific instances of substandard performance by existing carriers. Several of the witnesses indicated they made no investigation of the available services and had no objection to using Servant Cab. The existence of an adequate and satisfactory service by motor carriers already in the area is a complete negation of public need and demand for added service by another carrier.⁷

Furthermore, Servant provided testimony regarding its current operations. It is undisputed that any traffic which the Applicant garners is traffic currently being handled by existing carriers. The testimony provided that diversion of any of Servant's traffic would be detrimental to its operations. We find that the applicant's service will endanger or impair the operations of existing carriers including the Protestants.

Therefore, because the Applicant did not provide sufficient evidence that another open class certificate served a useful purpose responsive to a public need which is not met by another carrier in Lancaster County nor did it show that its operations could be provided in a specified manner without endangering or impairing the operations of existing carriers contrary to the public interest the Application, as to Lancaster County, should be denied.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. B-1557, Supplement No. 1, be, and it is hereby granted in part; a Certificate of Public Convenience and Necessity shall be issued for Cass and Otoe Counties.

IT IS FURTHER ORDERED by the Nebraska Public Service Commission that Application No. B-1557, Supplement No. 1, be, and it is hereby denied in part; a Certificate of Public

⁷ See In re Application of Kilthau, 236 Neb. 811, 464 N.W.2d 162 (1991).

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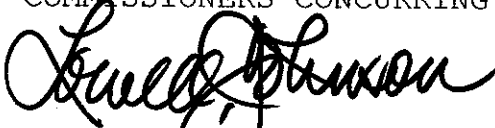
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Convenience and Necessity shall not be issued for Lancaster County.

MADE AND ENTERED at Lincoln, Nebraska, this 21st day of September 2004.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:



Chairman



ATTEST:



//s// Frank E. Landis

Executive Director

//s// Gerald L. Vap

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION
