

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. B-1558,
of MAVM Ventures, LLC, d/b/a A &) Supplement 2
B Shuttle, Omaha, seeking)
authority as a common carrier in)
Nebraska intrastate commerce in)
the transportation of passengers)
between points in Douglas,) GRANTED IN PART AS MODIFIED
Sarpy, and Lancaster Counties on)
the one hand, and, on the other)
hand, points in Nebraska over)
irregular routes in sedans,)
buses, and vans.) Entered: October 29, 2002

APPEARANCES:

For the Applicant:

Marshall Becker
7901 Wakeley Plaza
Omaha, Nebraska 68114

For the Protestant Abbott
Transportation Inc.:

Bradford E. Kistler
P.O. Box 85778
Lincoln, Nebraska 68508

For the Commission Staff:

Shana Knutson
300 The Atrium Building
1200 N Street
Lincoln, Nebraska 68508

BY THE COMMISSION:

By application filed April 9, 2001, MAVM Ventures, LLC, d/b/a A & B Shuttle (A & B or Applicant) of Omaha, Nebraska, seeks authority as a common carrier in Nebraska intrastate commerce in the transportation of passengers between points in Douglas, Sarpy, and Lancaster counties on the one hand, and, on the other hand, points in Nebraska over irregular routes in sedans, buses, and vans. Notice of the application was published in The Daily Record, Omaha, Nebraska, on May 28, 2002.

Protests to the application were filed by Shared Mobility Coach, Inc., on April 3, 2002, by Abbott Transportation, through its attorney Brad Kistler on April 19, 2002, by Servant Cab Company LLC, represented by Jack Shultz, and on April 24, 2002, by Happy Cab, Yellow Cab, Checker Cab, and Cornhusker Cab,

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through its attorney Patrick Sullivan. On July 25, 2002, a restrictive amendment was filed by Applicant. On July 24, 2002, Happy Cab, Yellow Cab, Checker Cab, and Cornhusker Cab Co., through its attorney Patrick Sullivan, withdrew their protest. On July 26, 2002, Servant Cab Company, through its attorney, Jack Shultz, withdrew its protest. On August 7, 2002, Shared Mobility Coach Inc., withdrew its protest.

A hearing on the application was held via video conference to Lincoln, Omaha, and McCook Nebraska on August 8, 2002 with appearances as shown above. The Hearing Officer entered into the record, notice of the hearing as Exhibit 1, the publication notice as Exhibit 2, and the application as Exhibit 3.

Applicant presented witnesses in support of its application who testified as follows:

Mr. Michael Van Meter, the owner of A & B identified his financial information from Exhibit 3 (Application) as being substantially the same on August 8, 2002 as the day in which his application was filed. He has had no financial difficulty since purchasing the business. A & B presently owns six 15-passenger vans. A & B provides airport transportation and some point-to-point transportation for the Eastern Nebraska Office on Aging and MEPC. With respect to the portion of the application requesting expansion to bus transportation, he testified that he intended to lease a double-decker bus from the Keystone Group. Applicant offered Exhibit 4, which was identified as a list of calls made to applicant for transportation service. Exhibit 4 contains a column for data entry on the number of passengers per trip request. Applicant identified occasions where potential requested transportation services for a group of 18 to 28 passengers. In those situations, applicant would accept the fare if the customer was willing to use more than one van.

On cross-examination, Mr. Van Meter testified that they intend to lease the double-decker bus as needed. He intends to provide transportation services using buses for wedding parties, bachelor and bachelorette parties, and corporate events. Applicant intends to add buses to its fleet as needed, but had no specific plans to buy any buses within the next three months. Applicant was not aware of whether any of the potential clients listed on Exhibit 4 were able to obtain bus transportation from another carrier.

Mr. Ryan Andrews, a dispatcher for A & B stated that he receives calls on a daily basis, transportation requests for more than 15 passengers. It would be more convenient if A & B could transport larger parties using one vehicle rather than two

or three. He has been asked whether A & B can transport large groups in one vehicle rather than two or three. When questioned, Mr. Andrews stated he is familiar with Abbott Transportation (Abbott). He has not considered referring larger groups to Abbott.

Mr. Larry Richling, president and owner of the Keystone Group, a collective group of real estate owners and entertainment ventures, testified that his group purchased a 1963 British Ladeckka. It is a 74-passenger bus with a closed top. The double-decker bus is completely refurbished. He does not know of any other double-decker bus available for-hire in Omaha. He met with A & B about six months prior to the hearing. If the application was granted, his group would lease the bus to A & B. Right now, it is impractical for them to use the van service of A & B because of the size of the group's hotel and the size of the riverboat it owns. The Keystone Group has used Abbott for certain trips as well as Laidlaw and Chief Bus.

Under questioning, Mr. Richling stated that he has not made any actual use of the double-decker bus for passenger transportation. Under the proposed agreement between the Keystone Group and A & B, the Keystone Group customers would be hiring the bus. The Keystone Group would act as an intermediary in some cases. A typical customer group for the events he arranges is over 50 passengers. The Keystone Group would also be a customer of A & B.

By stipulation, Mr. Kistler, the attorney for Abbott, entered into the record evidence describing Abbott's current operations in the proposed territory to be served by Applicant. Exhibit 5 is a copy of the operating authority held by Abbott Transportation. Exhibit 6 is a list of motor vehicles presently operated by Abbott in its business. Mr. Kistler stated that had Mr. Abbott been available to testify he would have stated that Abbott is ready, willing and able to provide bus transportation in the proposed service area at the present time. Abbott does not operate any double-decker buses such as the one Mr. Richling described in his testimony.

Three witnesses also testified with respect to the Applicant's proposed use of sedans.

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

In consideration of the evidence presented and the testimony offered, we believe it is appropriate to bifurcate our findings and conclusions with respect to Applicant's request for bus authority and Applicant's request for sedan authority. This

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order addresses the Applicant's request for bus authority only. We will make a determination on Applicant's request for sedan authority in a subsequent order.

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. Applicant presented a knowledge of the industry and Commission requirements.

We therefore turn to the issue of whether the proposed bus 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.* Applicant did not show a generalized need for bus transportation service that was not currently being met by other carriers such as Abbott. However, Applicant proposes to offer a mode of transportation unique to the proposed service territory and which could transport a larger group of passengers than the buses currently used by Abbott. Accordingly, upon the evidence adduced, we find that the applicant has demonstrated that a need exists for transportation by double-decker buses with a seating capacity of 60 or more passengers which has not been met nor cannot be adequately met by existing carriers. Applicant's evidence demonstrated that the double-decker bus to be used in its operation is unique transportation which is not being provided by other carriers including Abbott. Therefore, the application for bus authority should be granted as modified below.

After due consideration of the evidence and being fully advised in the premises, the Commission is of the opinion and finds:

1. Applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of Neb. Rev. Stat., Sections 75-301 to 75-322.04 (Reissue 1996), and the requirements, rules and regulations of the Commission thereunder.
2. The proposed intrastate service is or will be required by the present or future public convenience and necessity to the following extent:

CERTIFICATE AUTHORIZED

Supplement 2(a) COMMON: Transportation of passengers as a common carrier in Nebraska intrastate commerce in open class service by double-decker bus with a rated seating capacity of 60 passengers or greater between points in Douglas, Sarpy, and Lancaster counties on the one hand, and, on the other hand, points in Nebraska over irregular routes in buses. RESTRICTION: The transportation of passengers and their baggage from points originating in Lancaster County is not authorized.

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3. The application for extension should be granted as modified.

Operations in violation of this or any other order of the Commission or operations outside the scope of Applicant's certificated area will result in civil penalties of up to ten thousand dollars per day as provided in Neb. Rev. Stat. § 75-156 (2000 Supp.) or in a suspension or revocation of Applicant's certificate.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application B-1558, Supplement 2 be, and it is hereby, granted in part 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 MAVM Ventures, LLC, dba A & B Shuttle, Omaha, Nebraska, 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 at Lincoln, Nebraska, this 29th day of October, 2002.

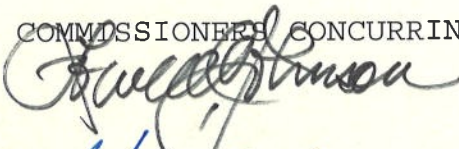

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COMMISSIONERS CONCURRING:



//s//Anne C. Boyle

Chair



ATTEST:



Executive Director