

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,) DENIED IN PART
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: November 26, 2002

APPEARANCES:

For the Applicant:

Marshall Becker
7901 Wakeley Plaza
Omaha, Nebraska 68114

For the Protestant Abbott
Transportation Inc.:

Bradford E. Kistler
121 S. 13th Street
Suite 601
Lincoln, Nebraska 68501

For the Commission staff:

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

BY THE COMMISSION:

B A C K G R O U N D

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, 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 based on a gentleman's agreement that Applicant would not solicit further HHS transportation.

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.

E V I D E N C E

Applicant presented six witnesses in support of its application. Four witnesses testified in support of Applicant's use of sedans.

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. He is seeking authority to provide service by bus for charter services and by sedans for elderly clients. With respect to the application for sedan use, he is not seeking to take business away from anyone. He is trying to make his transportation services more economical and convenient for his passengers

Ms. Sonya Hixson testified that she uses A & B for doctor appointments about three times per month. This transportation is arranged by the Department of Aging. She arranges the transportation herself. She pays \$3.00 each way. She is presently utilizing their van service but would like it if A & B could use sedans. Both of her hips have been broken and her physical therapist told her that she should be riding in sedans.

Ms. Katherine Volmacka testified that she uses the service of A & B about one time per month. She further stated that sedans are nicer to get into. She has some difficulty getting into vans.

Ms. Lillian Chase uses Applicant to go to the doctor about twice a month. Sedans would be nicer to ride in since she has difficulties sitting up.

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

On October 29, 2002, we entered a partial grant of the application as it pertained to the request for bus authority. This order addresses Applicant's request for sedan use.

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.* Based on the evidence before us, we find that Applicant did not demonstrate a need for the use of sedans in the proposed service territory. All of Applicant's witnesses testified as to a preference for sedans versus vans, however, all were riding in Applicant's vans at the time of the hearing. Witnesses for the Applicant could also use the taxicab providers in their area. There was no evidence indicating that there was an unmet need for sedan transportation nor that the existing carriers' services were inadequate. We further find that a grant of this application would give Applicant the authority to provide a service that is virtually indistinguishable from taxi service in nature giving an unfair advantage over the taxicab providers in the area.¹ Taxicab providers have a number of state and local regulations which are inapplicable to the other classes of carriers such as the open class carriers. We find that Applicant's use of sedans would circumvent the rules and regulations governing taxicab providers and could place the public at risk.² We find this to be contrary to the interests of public convenience and necessity. Therefore, we must deny Applicant's request for sedan use in its current authority.

¹ Throughout the proceedings in Rule and Regulation No. 148, we found that it was necessary to protect taxicab service providers from other classes of carriers. Specifically, in our April 3, 2001, order, we found "The identification of an open class of services is not intended, and should not be construed, to jeopardize existing or future certificates of authority to provide taxi service." We further believe it is consistent with Neb. Rev. Stat. § 75-311 (Reissue 1996) to decide, on a case by case basis, whether the proposed service would serve public convenience and necessity or whether the service would endanger existing operations. The use of sedans in open class service in direct competition with taxicab providers, we believe, would endanger existing taxicab operations.

² Nothing prohibits Applicant filing an application for taxicab authority, consistent with section 009 of Neb. Admin. R. & Regs., tit. 291, ch. 1, if Applicant so chooses.

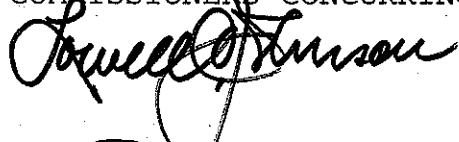
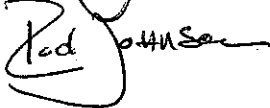
O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application B-1558, Supplement 2 with respect to the request for sedan use by MAVM Ventures, LLC, d/b/a A & B Shuttles be, and it is hereby denied.

MADE AND ENTERED at Lincoln, Nebraska, this 26th day of November, 2002.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

//s//Anne C. Boyle
//s//Frank E. Landis


Chair

ATTEST:


Executive Director

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