

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application)	APPLICATION NO. B-1568
of Eastern Horizon)	
Transportation, Inc., Omaha,)	
seeking authority as a common)	
carrier in Nebraska intrastate)	
commerce to provide van service)	
in open class including clients)	
of the Nebraska Department of)	DENIED
Health and Human Services or)	
subcontractors thereof between)	
points in Douglas, Sarpy, Cass)	
and Washington counties and)	
between points in said counties)	
on the one hand, and, on the)	
other hand, points in Nebraska)	
over irregular routes.)	ENTERED: June 18, 2002

APPEARANCES:

For the Applicant:

Thomas F. Hoarty, Esq.
8990 West Dodge Road, Suite 317
Omaha, Nebraska 68114

For the Protestants:

Marshall Becker, Esq.
7902 Wakeley Plaza
Omaha, Nebraska 68114

John Boehm, Esq.
811 S. 13th Street
Lincoln, Nebraska 68508

For the Commission:

Laura Davenport, Esq.
300 The Atrium
1200 N Street
Lincoln, NE 68508

BY THE COMMISSION:

By application filed August 13, 2001, Eastern Horizon Transportation, Omaha, Nebraska, seeks authority as follows:

Transportation of passengers as a common carrier in Nebraska intrastate commerce to provide van service in open class including clients of the Nebraska Department of Health and Human Services

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or subcontractors thereof between points in Douglas, Sarpy, Cass and Washington counties and between points in said counties on the one hand and on the other hand points in Nebraska over irregular routes.

Notice of the application was published in The Daily Record, Omaha, Nebraska, on August 16, 2001. Timely protests were filed by R&F Hobbies, d/b/a Prince of the Road, by and through its attorney, John Boehm; by MAVM Ventures, LLC, d/b/a A&B Shuttle, by and through its attorney, Marshall Becker; and by Armadillo Express, by and through its attorney, Brad Kistler.

A restrictive amendment was filed on August 21, 2001, as follows:

RESTRICTION: The transportation of railroad crews and their baggage is not authorized.

Subsequently, Armadillo Express withdrew its protest.

A hearing on this matter was held April 5, 2002, in the Commission Library, with videoconferencing links at Nebraska State Office Building in Omaha, at the Public Library in Hastings, and at the Von Riesen Library in McCook, with appearances shown above. The rules of evidence applicable in District Court were invoked.

E V I D E N C E

Dr. Christopher Aja testified first on behalf of the applicant, Eastern Horizon Transportation. Dr. Aja is the owner of Eastern Horizon Transportation and is a clinical psychologist. Dr. Aja testified that he has his own private counseling practice, and that he provides counseling services to his patients in their homes. He testified that he would like to have a transportation service that picks up his patients at their homes and drops them off at his office for appointments. He testified that on an ongoing basis since 1997, some of his patients have had difficulty obtaining transportation and have been late for appointments due to their transportation arriving late. He testified that he did not know what rates he would charge, but that he would charge rates in accordance with the Rules and Regulations of the Commission. He testified that he wanted to charge passengers based upon their ability to pay, but later in his testimony he testified that he understood that he must charge all passengers the same rates.

Upon cross-examination, he testified that he has \$3,033.00 in the bank account of Eastern Horizon Transportation, and that he does not yet have a van that he would use to provide transportation.

Ms. Ruth Matlock testified next on behalf of the applicant. Ms. Matlock is senior service coordinator for Greater Omaha Community Action (GOCA). Ms. Matlock testified that GOCA has a van to transport senior citizens, but it is not sufficient to cover all transportation needs of seniors. She has observed situations where individuals have been unable to maintain appointments because of a lack of transportation.

On redirect, Ms. Matlock testified that she has never heard of Prince of the Road or A&B Shuttle.

Ms. Troy Colliers testified next on behalf of the applicant. Ms. Colliers works for GOCA as a certified alcohol and drug abuse counselor. Exhibit 7, which is a letter prepared by Ms. Colliers, is an endorsement for Dr. Aja in his venture to provide transportation. Ms. Colliers testified that her mother uses MAT MOBY for trips to the doctor, and that on more than one occasion, Ms. Colliers has had to pick up her mother after work because MAT MOBY had not returned to the hospital to take her mother home. She testified that she has never heard of Prince of the Road or A&B Shuttle. She testified that she would contact Dr. Aja for his services.

Mr. Melvin Beckman testified last for the applicant. Mr. Beckman is president of the Orchard Hill Neighborhood Association. He testified that he is called upon from time to time to give rides to people in his neighborhood for trips to the grocery store, pharmacy, or medical appointments. On cross-examination, Mr. Beckman testified that he is not familiar with A&B Shuttle.

On behalf of protestant A&B Shuttle, Mr. Michael Van Meter testified. Mr. Van Meter testified that A&B Shuttle possesses five 15-passenger vans and one seven-passenger van. Mr. Van Meter testified that transportation to and from the airport, hotels and motels is an important part of his business. He testified that he would be in a position to provide transportation needed by GOCA and other individuals discussed at the hearing. On cross-examination, Mr. Van Meter testified that he does not currently serve the areas that Dr. Aja is interested in serving.

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On behalf of protestant Prince of the Road, Mr. Sean Schroll testified. Mr. Schroll is chief operations officer for Prince of the Road. Prince of the Road is a statewide passenger transportation provider with restrictions within Lancaster County. Mr. Schroll testified that his business caters to Nebraska Department of Health and Human Services, including Options and entities subcontracted with the Department of Health and Human Services, and that 85 to 90% of his business is for disadvantaged people. He testified that Prince of the Road provides minimal private transportation, and that the bulk of the business is paid for by the state of Nebraska. He testified that Prince of the Road presently has seventy-one vehicles available for service, and that nineteen of those vehicles are minivans stationed in the Omaha area. He testified that he is currently meeting all requests for service outside and inside the Omaha area.

Upon questioning by Commissioner Boyle, Mr. Schroll testified that Prince of the Road does not have a phone number in the Omaha directory.

Upon cross-examination, Mr. Schroll testified that Prince of the Road would charge \$16 one way for a trip to the grocery store for someone who is not a client of the Department of Health and Human Services.

OPINION AND FINDINGS

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

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 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 public convenience 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. Id. Given the record before us, we find that the applicant has failed to demonstrate that the proposed operation would serve a public demand or need which could not be served as well by existing carriers. The applicant did not present sufficient evidence to support the claim that there was a need for service that was currently unmet by other carriers. Much of the testimony centered around a general desire for more transportation on the part of other individuals. However, the applicant failed to produce credible evidence that these needs could not be met by another carrier.

The Commission finds further that the protestants presented sufficient evidence that the protestants can meet the need that the applicant asserted exists. We find that the applicant's service will endanger or impair the operations of existing carriers including the protestants.

Although this application does not meet the required test for public convenience and necessity, it appears that Eastern Horizon Transportation desires to serve a segment of Omaha that perhaps might not presently utilize the services of existing authority holders, namely, the protestants. The Commission recognizes that there are at least two providers, A&B Shuttle

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and Prince of the Road, that are licensed to provide service in Omaha. Both protestants stated that they are willing to serve the customers that Eastern Horizon Transportation proposes to serve. However, Prince of the Road does not have a phone number listed in the Omaha phone directory, and three of the four witnesses in support of this application testified that they were not familiar with the protestants. Furthermore, based upon Prince of the Road's testimony that a one-way trip to the grocery store might cost \$16, the Commission is troubled that the rates of existing authority-holders might be cost-prohibitive for the population that Eastern Horizon proposes to serve. The Commission does not have any evidence of Eastern Horizon's proposed rates in the record. While Commissioners would like to see a business like that proposed by Dr. Aja succeed, in the present proceeding, public convenience and necessity was not demonstrated. If Eastern Horizon Transportation were to make another application for authority, and if sufficient evidence regarding need was presented, the Commission would be interested in whether and how Eastern Horizon could feasibly provide low-cost service.

Accordingly, we must find that the applicant is fit, willing, and able, but has not met the public convenience and necessity test of Nebraska law. The Commission, therefore, finds that the application should be denied.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application B-1568 be, and is hereby, denied.

MADE AND ENTERED at Lincoln, Nebraska, this 18th day of June, 2002.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:


Chair

//s// Anne C. Boyle
//s// Lowell C. Johnson
//s// Rod Johnson
//s// Frank E. Landis
//s// Gerald L. Vap

ATTEST:


Executive Director