

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

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BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application	)	APPLICATION NO. B-1573
of K & B Coach, Inc., Kearney,	)	
seeking authority as a common	)	
carrier in Nebraska intrastate	)	
commerce for the transportation	)	
of passengers in vans in open	)	DENIED
class service including clients	)	
of Nebraska Department of Health	)	
and Human Services between	)	
points in Nebraska over	)	
irregular routes.	)	ENTERED: July 23, 2002

APPEARANCES:

For the Protestant:

John Boehm  
811 S. 13<sup>th</sup> Street  
Lincoln, NE 68508

For the Commission Staff:

Laura Davenport  
300 The Atrium  
1200 N Street  
Lincoln, Nebraska 68508

BY THE COMMISSION:

By the application filed November 29, 2001, K & B Coach, Inc., of Kearney, seeks authority as a common carrier in Nebraska intrastate commerce for the transportation of passengers in vans in open class service including clients of the Nebraska Department of Health and Human Services between points in Nebraska over irregular routes.

Notice of this application was published in the Daily Record, Omaha, Nebraska, on November 30. Notice of hearing was sent to all interested parties on March 26, 2002. Protests were timely filed by Armadillo Express, Yellow Cab & Limo, Inc., Prince of the Road, High Plains Cab Service, McCook, Kearney Cab Company, and Husker Cabs, Inc. On December 10, 2001, a restrictive amendment was filed, and with the filing of that restriction, Armadillo Express subsequently withdrew its

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protest. A second restrictive amendment was filed April 24, 2002.

E V I D E N C E

In support of the application, Applicant presented four witnesses who testified as follows:

Mr. Tony Calvo testified as follows: The proposed service would be useful in the whole state of Nebraska. He had owned a cab company in McCook, was employed by a limousine service around Grand Island for six or seven years, and worked for Prince of the Road for 19 months. The target customers for K&B Coach will be "people in trouble" such as children, foster homes, doctor's offices, and hospitals, and further that K & B Coach could transport with restraints if needed. The service is to be operational 365 days a year. He believes that the rates are reasonable.

On questioning from Commissioner Landis, Mr. Calvo testified: That he is not currently transporting people for Ms. Carlson or HHS and is working for Mid-Nebraska out of Grand Island.

Upon cross-examination by protestant's attorney, Mr. Boehm, Mr. Calvo testified as follows: He would probably go to work for K & B Coach if they receive a license.

Ms. Nicole Peterson, a juvenile service officer, testified as follows: She does not directly arrange transportation contracts. In general, having a variety of services of available for the agency to utilize would be beneficial. Further, transportation to different services is a necessity for the children with whom they work.

On questioning by Commissioner Boyle, Ms. Peterson testified: She never has difficulty in getting transportation for her clients.

Mr. Billy C. Carlson testified as follows: K & B is set and able to perform services as a contract carrier, and that there is and "will always be" a need for this type of service. Further, that the proposed rates are reasonable. Weekends,

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holidays, and after hours are some areas where there is need and they can fill that need.

Upon questioning by Commissioner Landis, Mr. Carlson testified: There is no transportation offered at this time, and the specified rates are only proposed. The rates are 95 cents a mile and an extra \$15 before 7:00 a.m. or after 6:00 p.m.

Upon questioning by Commissioner Boyle, Mr. Carlson testified: He would be a second driver for the company on a part-time basis. The rough draft of K&B Coach's business plan proposal is no longer totally accurate because it makes no mention of a second driver.

Upon questioning by Commissioner Vap, Mr. Carlson testified: K & B intends to begin operation with one vehicle. Mr. Carlson will be the dispatcher, driver, and bill payer.

Finally, the applicant, Ms. Keta Carlson made the following statement: She felt that they would offer more reasonable rates, better service and honesty. The service would extend out further in the state. She knows that confidentiality plays a large part in all parties concerned.

The Protestant presented two witnesses, who testified as follows:

Mr. Sean Schroll, chief operating officer for Prince of the Road, testified as follows: His duties include all aspects of the operation. To contest public need, a copy of Prince of the Road's Motor Carrier Authority was offered and entered into the record as Exhibit No. 5. Prince of the Road is authorized to transport statewide with van and minivan with restrictions in Lancaster County. A list of drivers and vehicles contracted with Prince of the Road was offered and entered as Exhibit No. 6. They operate seventy-one vehicles statewide. In a 40-mile radius of Kearney 18 vehicles are operated, of which, two are based in Kearney. Prince of the Road transports clients for HHS and juvenile services. He was not aware of ever having turned down clients in the Kearney area, and they "can always handle more." Some of the drivers haven't had any transports. The drivers call and ask, but there have not been enough transports to give them. An advertisement in the Kearney Hub for K & B Coach was found by Prince of the Road, and an explanatory letter

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to Mr. Pollock was dated November 20, 2001. These documents were offered and entered as Exhibit No. 7.

Mr. Marlan Dooley, owner and operator of High Plains Cab Service, McCook, Nebraska, made the following statement: There are four carriers that provide service in the counties where he has authority. There isn't a need for any additional statewide carriers in that territory. In his estimate the six carriers in the Kearney area are serving the area well. There is a lack of written support for the Applicant by HHS for hauling passengers with restraints or for medical transport. The rates proposed by the Applicant are lower than most others, but this may compromise quality of service. The Applicant may have to raise their prices in a year when they realize the costs are higher than estimated.

Upon cross-examination by Ms. Carlson, Mr. Dooley testified: The need for transportation terminating in Mr. Dooley's territory is being met. He would prefer that no one else, besides the carriers already approved, be allowed to transport in that area.

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

For a grant of authority, an applicant must prove that it is fit, able, and willing to provide the proposed service and that the proposed service "is or will be required by the present or future public convenience and necessity." Neb. Rev. Stat. § 75-311 (Reissue 1996). 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.

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*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. The statute requires us to determine whether the proposed operation will serve a useful purpose that is responsive to the public demand or need. Neb. Rev. Stat. § 75-311 (Reissue 1996). Therefore, we must examine the evidence based upon what is responsive to the public need and demand.

From the evidence adduced at the hearing, we find that the applicant has not sufficiently demonstrated an existing need for the proposed service. The applicant produced insufficient evidence of need. Ms. Nicole Peterson, Health and Human Services juvenile service officer, testified that having a variety of services available to contract with would be beneficial, however, HHS does not have difficulty arranging transportation for clients with existing carriers. The testimony of the Protestants indicated that carriers currently operating in Kearney and McCook are meeting the need of clients. Therefore, the Commission finds that there is no public demand or need for the proposed service.

Second, we turn to the issue of whether existing carriers would be endangered or impaired by the granting of this application. The Protestants submitted testimony that Prince of the Road, Kearney, Nebraska, encounters situations where there is a shortage of clients for their drivers and another carrier in the area would aggravate the problem. Testimony was also submitted by High Plains Cab Services, McCook, Nebraska, to the effect that any additional carriers in that area would be a financial hardship to the four existing carriers. Existing carriers in these areas are presently meeting public demand and need, and additional carriers could endanger or impair the business of existing companies.

The Commission finds that the Applicant has not demonstrated adequate public demand or need of the proposed service. This alone requires the Commission to deny the application, therefore, we will not further consider the fitness of the Applicant.

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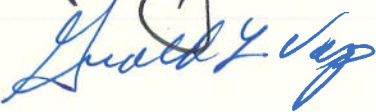
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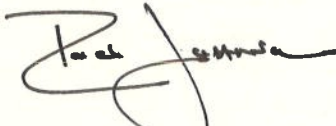
IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application B-1573 be, and it is hereby, denied and no certificate shall be issued to K & B Coach, Inc., Kearney, Nebraska.

MADE AND ENTERED at Lincoln, Nebraska, this 23rd day of July, 2002.

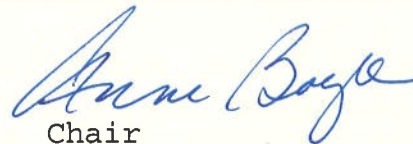
NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:



//s//Anne C. Boyle

  
Chair

ATTEST:

  
Executive Director