

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) APPLICATION NO. B-1576
of Lupercio Lopez DeLeon dba)
Taxi Latino, seeking a)
certificate of public)
convenience and necessity as a)
common carrier of passengers and) DENIED
their baggage by taxicab)
including clients of the)
Department of Health and Human)
Services over irregular routes)
between points in Hall County,)
on the one hand, and, on the)
other hand, points in Nebraska.) Entered: September 11, 2002

APPEARANCES

For the Applicant:

Lisa Anderson, Esq.
P.O. Box 452
Grand Island, Nebraska

For the Protestants:

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

Brad Kistler, Esq.
P.O. Box 85778
Lincoln, Nebraska

For the Commission:

Laura Davenport, Esq.
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BY THE COMMISSION:

By application filed January 16, 2002, Lupercio Lopez DeLeon, dba Taxi Latino seeks a authority as a common carrier of passengers and their baggage by taxicab including clients of the Department of Health and Human Services over irregular routes between points in Hall County on the one hand, and on the other hand, between points in Nebraska over irregular routes.

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Notice of the application was published in The Daily Record, Omaha, Nebraska, on January 18, 2002. Notice of hearing was sent to all interested parties on May 8, 2002. Protests were timely filed by Comstock Corporation dba Action Cab (Action Cab) and R&F Hobbies, Inc., dba Prince of the Road (Prince of the Road).

E V I D E N C E

In support of the application, Applicant presented eight witnesses who testified on his behalf.

The Applicant, Mr. Lupercio Lopez DeLeon, testified as follows: He has not had any traffic tickets since he received his driver's license. His net worth is approximately \$35,000. He owns a 1993 Lincoln Continental that he plans to use as a taxicab. He and another driver will operate the car. He primarily speaks Spanish, but also speaks a little English. He will have a bilingual operator answer the phone. The business will be headquartered from his home in Grand Island.

Upon cross-examination, he testified that he plans to obtain liability insurance for his taxi company.

Ms. Paula Rodriguez testified on behalf of the Applicant as follows: She is a legal secretary, and as part of her job, she acts as an interpreter for Spanish-speaking clients. She called Action Cab on June 5, 2002, and in Spanish, told them she needed a ride to her place of employment. The person answering the phone said "no comprendo" and hung up. She testified that "no comprendo" means "I don't understand."

Upon cross-examination, Ms. Rodriguez testified that she did not actually need a cab ride that evening.

Ms. Carol Sprague testified on behalf of the Applicant as follows: She is employed as supervisor for special services at the Department of Health and Human Services (DHHS). She implements contracts for taxi service for DHHS. In the last year and a half, the amount of money that goes toward cab fares for individuals getting help from DHHS has increased. She testified that DHHS is very happy with service that is currently being provided, and that they like to see choices and options for their clients, possibly in the form of additional cab services.

Upon cross-examination, Ms. Sprague testified that she makes transportation requests to the providers herself, and that she is not aware of any requests for transportation services

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from Grand Island to points outside of Grand Island that have not been met by existing carriers.

Mr. Anibal Gomez testified on behalf of the Applicant as follows: He believes there is a need for additional cab services in the Hispanic population.

Mrs. Alma Ibarra testified on behalf of the Applicant as follows: She is employed as a translator for Spanish-speaking people in Grand Island, and she has called taxicabs for clientele. She does not know of any problems that her clients have experienced with the current taxicab service in Grand Island. She believes that the Applicant is a hard worker and would provide good service to people who do not speak English.

Upon cross-examination, Mrs. Ibarra testified that she calls Action Cab in Grand Island to arrange taxicab rides for her clients, and that she always makes a request for service in English. As far as she knows, the people at Action Cab do not speak Spanish, only English. Her belief is based upon the fact that none of the people who answer the phone have an accent. She testified that she cannot be 100% sure that that no one at Action Cab speaks Spanish.

Mr. Filmoan Sanchez testified on behalf of the Applicant as follows: He lives in Grand Island and works at a restaurant in a local market. He has used Action Cab in the past when his car is unavailable, and he occasionally calls cabs for customers at the market. The only problem he has experienced with Action Cab is lengthy waiting times. The last time he called for a cab, he was told he would have to wait one hour. A few times in the last couple of months, he was told he would have to wait a half an hour. He believes that Grand Island needs another cab service because the Hispanic community is growing. He testified that Spanish-speaking people are intimidated when they call a business and the other person answers in English.

Mr. Tomas Krishe testified on behalf of the Applicant as follows: He has used the taxicab service in Grand Island to transport his children to school and the doctor, and to go shopping. He and his children have arrived late at their destinations due to lengthy wait times. His children used the cab service once in April and once in May to get to school, and they were late. He also has used the cab on other occasions to get his children to school. The cab company was "always late by 30 minutes maybe." (Tr. 63:25-64:1.) He called a cab for his wife so she could attend a court date, and she waited 20 minutes for the taxicab, then decided to walk. She had to walk twenty-

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five minutes in the snow to the courthouse due to the long waiting time.

Upon cross-examination, Mr. Krishe testified that when he called a taxicab to take his children to school, he usually called the same morning that the cab was needed. In May, he and his wife were late to a doctor's appointment due to late arrival of the taxicab that had been arranged for them by DHHS. They were told by DHHS that the taxicab would pick them up at 9:30 am for a 10:00 am appointment, but the taxicab did not arrive until 10:00 a.m.

Mr. Honermo Martinez testified on behalf of the Applicant as follows: He has used the taxi service once in Grand Island. He called for a cab at 4:45 a.m. to take him to work in Hastings by 6:00 a.m. He was told the cab would arrive in twenty minutes, but it did not arrive until 5:40 a.m. He was late for work, and was fired, as he was also late to work one other time.

Upon cross-examination, he testified that on the one occasion when he called a cab, it was snowing. He needed a ride to work because the car of the coworker who usually drove him would not start.

Mr. Sean Schroll testified on behalf of protestant Prince of the Road, as follows: He is the chief operating officer of Prince of the Road, which holds authority from the Public Service Commission to transport passengers throughout the state of Nebraska, with restrictions for Lancaster County. A majority of Prince of the Road's business is for the Department of Health and Human Services and its subcontractors. Mr. Schroll does not object to the Applicant operating a taxi service within the city of Grand Island. Prince of the Road has not refused any requests for service in the Grand Island area, and drivers serving the area request more transports than the company is able to supply to them. Another carrier transporting DHHS clients to and from Hall County would be detrimental to Prince of the Road's operations.

On redirect, Mr. Schroll testified that Prince of the Road could handle more business at the present time.

Mr. John Bartu testified on behalf of protestant Action Cab as follows: He runs Action Cab, which has authority to provide taxicab service in Grand Island and surrounding territories. Under its authority, Action Cab is currently providing service in Hastings as well. Action Cab also provides services for the Department of Health and Human Services within Grand Island and from Grand Island to points outside the city. Vehicles are

stationed in both Grand Island and Hastings. Action Cab is not operating at capacity at the present time, and could use additional business if it were made available. Action Cab has an average response time of 10.06 minutes, as determined by records collected over the two weeks just prior to the hearing. "Time calls", which are trips that have been arranged where the passenger is to be picked up at a certain time, are not included in the calculation of average response time.

Mr. Bartu further testified that Action Cab has business cards printed in Spanish, which are given to passengers and to businesses in the Latino community. Both of Action Cab's dispatchers, the manager, the assistant manager, and two other drivers are bilingual.

Mr. Bartu also testified that loss of business in the city of Grand Island, including loss of business in the Hispanic community, would be detrimental to Action Cab.

Upon cross-examination, Mr. Bartu testified that his company has a need for more drivers. Mr. Bartu and the Applicant have been in contact about the Applicant possibly being a driver for Action Cab.

Ms. Lori Farrar testified on behalf of protestant Action Cab as follows: She is the night manager for Action Cab and a lead driver. She works six days a week, from 7:00 p.m. to 7:00 a.m. Most calls that come in during her shift would be answered by her, unless she is on the phone, in which case the call would roll-over to another driver. She testified that she speaks Spanish fluently.

Upon cross-examination, Ms. Farrar testified that she is typically alone on the night shift after 11:00 p.m.

Upon redirect, Ms. Farrar testified that if she needs additional help on the night shift, she is able to call in other drivers who have not worked on that given day.

Mr. Jerry Englehaupt testified on behalf of protestant Action Cab as follows: He is the manager of Action Cab, and generally works from 7:00 a.m. to 7:00 p.m., five or six days per week. Calls are dialed to a land-line phone number, and automatically forwarded to the lead driver. He was the shift manager/lead driver on duty the day before the hearing, and would have received all incoming calls from 5:00 p.m. to 5:30 p.m. He stated that he did not receive a call at about 5:15 p.m. the prior day from someone speaking Spanish, as testified by Paula Rodriguez. If the call had been forwarded to someone

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else, it would have gone to Jerry Thorn, a new driver who is "a little bit" bilingual. (Tr. 126:11-18.)

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.

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. Sprague, who works for DHHS, testified that DHHS's needs are being adequately met by existing carriers. Although some of the Applicant's witnesses testified that they have experienced long wait times, it appears that for the most part, this was due to inclement weather or other factors that caused reasonable delay. The testimony of the Protestants indicated that carriers currently operating in Grand Island 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

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application. The Protestants submitted testimony that Prince of the Road 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 Action Cab to the effect that any additional carriers in that area would be detrimental to existing business. 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 for the proposed service. This finding alone requires the Commission to deny the application, therefore, we will not further consider the fitness of the Applicant.




O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application B-1576 be, and it is hereby, denied and no certificate shall be issued to Taxi Latino, Grand Island, Nebraska.

MADE AND ENTERED at Lincoln, Nebraska, this 11th day of September, 2002.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

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


Chair

ATTEST:


Executive Director