

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application ) Application No. B-1581  
of Servant Cab Company, LLC, dba )  
Yellow Cab Company & Capital Cab )  
Company, Lincoln, seeking an ) GRANTED IN PART  
interpretation of carrier )  
authority. ) Entered: January 7, 2003

APPEARANCES:

For the Applicant:  
Jack L. Shultz, Esq.  
121 S. 13<sup>th</sup> Street  
Lincoln, Nebraska 68501

For the Protestant:  
John M. Boehm, Esq.  
811 S. 13<sup>th</sup> Street  
Lincoln, Nebraska 68508

For the Commission:  
Laura Davenport, Esq.  
300 The Atrium  
1200 N Street  
Lincoln, Nebraska 68508

BY THE COMMISSION:

By application filed June 22, 2002, Servant Cab Company, LLC, dba Yellow Cab Company & Capital Cab Company, Lincoln, (Servant Cab, Applicant), seeks an interpretation of its authority as a common carrier issued in Application No. B-1581, which is as follows:

SERVICE AND TERRITORY AUTHORIZED:

Transportation of passengers by taxicab between points in Lincoln and vicinity over irregular routes.

In its applicant, Servant Cab seeks to have its authority interpreted as follows:

Transportation of passengers and their baggage between points in Lincoln and a thirty (30) mile radius thereof and between points in said area on the one hand and on the other hand points in Nebraska over irregular routes.

Notice of this application was published in The Daily Record, Omaha, Nebraska, on June 25, 2002. Protests were timely filed by Brown's Crew Car of Wyoming dba Armadillo Express (Armadillo Express) and R&F Hobbies, Inc., dba Prince of the Road (Prince of the Road, Protestant). Armadillo Express subsequently withdrew its protest.

## EVIDENCE

Mr. Jerry Burkinshaw testified first on behalf of the applicant. Mr. Burkinshaw is employed as a cab driver with Servant Cab, and was employed by the previous owners of the same company. He has worked for both companies for a total of approximately 30 years. Mr. Burkinshaw testified that the original owner of the cab company had a specific car assigned for out-of-town trips. He testified that he has taken passengers to Omaha seven or eight times, and that he has also made trips to Council Bluffs and Crete, and that he has taken clients of the Department of Health and Human Services to Omaha on two occasions.

Mr. Marlin Rose testified next on behalf of the applicant. Mr. Rose is currently a dispatcher for Servant Cab Company, and has been working in the cab business in Lincoln off and on since 1961. Mr. Rose testified that Servant Cab's policy regarding requests for service from Lincoln to other points in Nebraska has been to fulfill any request provided the passenger is able to pay the fare. Regarding requests for service from outside of Lincoln, Mr. Rose testified that it has been Servant Cab's policy to send the requesting party to a police station or a place of business to verify that the passenger has the required fare. Mr. Rose testified that this policy was the same prior to Servant Cab purchasing the Lincoln cab company.

Ms. Barbara Villaneuva testified next on behalf of the applicant. Ms. Villaneuva operates the phones for Servant Cab, taking orders from customers calling for a cab. She also dispatches part-time as needed. She started working in the cab business in 1978. Ms. Villaneuva testified that from the time she started working for the cab company, she was instructed to transport passengers who requested to be taken to points outside of Lincoln, provided they paid prior to the trip. She testified that for calls originating outside of Lancaster County, she was instructed to send the caller to a police station or other location to verify that the caller had sufficient cash for the trip. Ms. Villaneuva said that the policies regarding out of town trips have remained the same through the series of owners of the company.

Ms. Donna Corey testified next on behalf of the applicant. Ms. Corey is part-owner and manager of Servant Cab. She testified that she filed the application in this matter to ensure that Servant Cab could continue to provide the service that the Lincoln cab company has always provided, specifically, to clear up the meaning of the term "vicinity" in the certificate.

Ms. Corey worked for Husker Cab from 1995, until Servant Cab purchased the business in March of 2002. Ms. Corey testified that she served as a driver, telephone operator, part-time dispatcher, and manager of Husker Cab. She further testified that the policy of Husker Cab was to accept requests for services from Lincoln to any point in Nebraska. Ms. Corey indicated that she prepared Exhibit 5, a document providing the date, origination and destination of Husker Cab's trips from January 1, 2002, until March 23, 2002. She testified that she compiled this information by reviewing Husker Cab's trip sheets, which are records that describe each trip taken. Ms. Corey further testified that Exhibit 6 is a document providing the date, origination and destination of Servant Cab's trips from March 24, 2002, to September 6, 2002, similar to Exhibit 5.

Upon cross-examination by Protestant's counsel, Ms. Corey testified regarding trips recorded in Exhibit 6. She indicated that she did not record whether each trip was for the Nebraska Department of Health and Human Services (NDHHS), but that she knew that trips to and from Firth and Minden were for NDHHS.

Upon questioning by Commissioner Landis, Ms. Corey testified that she was pretty sure that the Lincoln to Crete trips were for NDHHS. She testified that she did not think that the term "vicinity" should include trips originating in Omaha.

Mr. Bob Harrison testified next on behalf of the applicant. Mr. Harrison is the motor transportation investigator for the Commission. Mr. Harrison testified that he was advised by Commission legal counsel that any cab company in town was able to transport people to out-of-town destination as long as the trip began or ended in the area the in which the company was domiciled. He further testified that he understood that Servant Cab, and its predecessor Husker Cab, could not pick people up from out-of-town locations and bring them into Lincoln without an addition to their authority. Mr. Harrison also testified that to his knowledge, the Commission has never issued a definition of "vicinity."

Upon cross-examination by Protestant's counsel, Mr. Harrison testified that to his knowledge, the Commission has never issued a written policy, regulation, or procedure that authorizes cab companies with the word "vicinity" in their authority to take people from a company's point of origin to out-of-town destinations in Nebraska.

Mr. Sean Schroll testified on behalf of the Protestant. Mr. Schroll is the chief operations officer for Prince of the Road. Mr. Schroll testified that he oversees dispatch, billings, drivers, and vehicles. He indicated that Prince of Road is restricted from trips originating in Lincoln and from providing point-to-point transportation in Lincoln. Prince of the Road primarily serves NDHHS and subcontractors thereof, according to Mr. Schroll. Mr. Schroll testified that Prince of the Road has made application for authority to pick up passengers in Lincoln and transport them to other locations, and that there is a demand for that service. He further testified that the applicant in this proceeding seeks the same authority that Prince of the Road requested in its application.

Upon questioning by Commissioner Boyle, Mr. Schroll testified that Prince of the Road is doing well financially and continuing to grow.

Upon cross-examination by applicant's counsel, Mr. Schroll testified that at the present time, Prince of the Road could not originate a trip arranged by NDHHS or by a member of the general public from Lincoln to any point in Nebraska. Mr. Schroll further testified that a very minimal amount of Prince of the Road's traffic is non-NDHHS trips.

#### F I N D I N G S   A N D   C O N C L U S I O N S

This application is a request for interpretation pursuant to Neb. Rev. Stat. § 75-118.01 (Reissue 1996), which provides in part:

Except as otherwise provided in the Administrative Procedure Act, the commission shall have original exclusive jurisdiction to determine ... the validity, scope, or meaning of a certificate.... Upon petition or complaint by any common carrier or other interested person to determine the validity, scope, or meaning of a certificate,...the commission shall cause notice thereof to be given according to its rules and shall proceed to hear evidence and argument on the petition or complaint. After notice and hearing, the commission shall by order render its decision.

Thus, the Commission is given broad discretion to interpret the certificates that it issues. In its petition for interpretation, Servant Cab requested that the language "Lincoln and vicinity" be interpreted to allow transportation of passengers and their baggage between points in Lincoln and a thirty (30) mile radius thereof, and between points in said area on the one hand and on the other hand points in Nebraska over irregular routes.

The term "vicinity" as it is used in transportation certificates is a term of art that this Commission, the regulating agency, is best equipped to define. This term has apparently been used since the Commission began issuing certificates of public convenience and necessity in 1938. Furthermore, the use of "vicinity" in transportation certificates must be interpreted on a case-by-case basis by this Commission, rather than issuing a definition that would apply to all carriers. A practical definition of "vicinity" for one certificate, such as a thirty (30) mile radius from the city in which the carrier is domiciled, may not apply to the use of "vicinity" in another certificate. The vicinity of a major city, such as Lincoln, may be very different from the vicinity of a location in western Nebraska, such as Cherry County.

Although "vicinity" is a term of art as used by this Commission, it is helpful to consider how that term is defined by other sources. Black's Law Dictionary<sup>1</sup> defines "vicinity" as follows:

Quality or state of being near, or not remote; nearness; propinquity; proximity; a region about, near or adjacent; adjoining space or country. (Citation omitted.) Neighborhood; etymologically, by common understanding, it admits of a wider latitude than proximity or contiguity, and may embrace a more extended space than that lying contiguous to the place in question; and, as applied to towns and other territorial divisions, may embrace those not adjacent.

(Emphasis added.) (Exhibit 7).

Thus, Black's definition would allow the term "vicinity" to include towns not immediately adjacent to Lincoln.

<sup>1</sup> Black's Law Dictionary 1567 (6<sup>th</sup> Ed. 1990).

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

B-1581

PAGE 6

Servant Cab purchased Authority No. B-1273 from Husker Cab Inc., and transfer of the authority was approved by the Commission on April 2, 2002. The Commission finds that evidence regarding the use of the certificate prior to Servant Cab's purchase of the authority is relevant; however, evidence regarding use of the certificate since the time that Servant Cab purchased it is not only relevant but also particularly persuasive in interpreting the certificate as it has been used by the Applicant.

Exhibit 6, which is Ms. Corey's compilation of the origination and termination of trips between March 24, 2002, and September 6, 2002, indicates the following:

<u>ORIGINATING CITIES:</u>	<u>FREQUENCY</u>
1. Lincoln (See note)	156 trips
2. Firth	12
3. Milford	4
4. Crete	3
5. Omaha	3
6. Seward	3
7. Hallam	3
8. Greenwood	2
9. Beaver Crossing	1
10. Bellevue	1
11. Beatrice	1
12. Garland	1
13. Ashland	1
14. Wahoo	1
15. Wilbur	1
Total	<u>193 trips</u>

Note: Includes three (3) round trips between Omaha and Lincoln

<u>DESTINATION CITIES</u>	<u>FREQUENCY</u>
1. Omaha (See note)	92 trips
2. Lincoln	35
3. Firth	11
4. Crete	9
5. Hallam	5
6. Seward	4
7. Minden	4
8. Beatrice	4
9. Garland	3
10. York	3
11. Fremont	2

12.	Hastings	2
13.	Ashland	2
14.	Beaver Crossing	2
15.	Nebraska City	1
16.	Greenwood	1
17.	Bellevue	1
18.	Henderson	1
19.	Panama	1
20.	801 Mile Marker	1
21.	Wahoo	1
22.	Sterling	1
23.	Wilber	1
24.	Gretna	1
25.	Lexington	1
26.	Kearney	1
27.	Fairbury	1
28.	Milford	1
29.	Weeping Water	1
	Total	<u>193 trips</u>

Note: Includes three (3) round trips between Omaha and Lincoln

The evidence supports interpretation of the term "vicinity" to include points in Lincoln and a twenty-five (25) mile radius thereof, which would include, but is not limited to, the communities of Crete, Firth, Garland, Greenwood, Hallam, Milford, Panama, Seward, and Wahoo. It must be noted that radial miles are not the same as highway miles. Servant Cab may originate a trip at any point within a twenty-five (25) mile radius of Lincoln. The Commission does not expect Servant Cab to engage in measuring miles each time it arranges a trip to a location that may be near the edge of a twenty-five (25) mile radius of Lincoln. Given that towns on the edge of the twenty-five (25) mile radius could expand beyond the prescribed radius, the Commission finds that Servant Cab should be able to serve all potential passengers in that town.

The Commission also expects that Servant Cab will transport passengers from Lincoln to other points in the state as needed. The Commission recognizes that there will be occasions when a person, for whatever reason, may need to go a great distance on short notice, and is willing to pay the rate. Historically, the Commission allowed, and even expected, regulated motor carriers to transport passengers who are willing to pay the appropriate fare to their desired destination. This expectation is particularly appropriate in Lincoln, where there is only one taxi service. Furthermore, Prince of the Road is not allowed to

originate in Lincoln under its authority as it existed at the time of the hearing on this matter. Prince of the Road was not granted further authority to originate in Lincoln in its own application, B-1441, Supplement 2, except for continuation of a trip that originates outside of Lancaster County. Thus, Servant Cab will not be impairing the business of Prince of the Road by serving traffic originating in Lincoln.

The Commission finds it appropriate to issue a new certificate to Servant Cab in this interpretation proceeding. An individual reviewing Servant Cab's current certificate would have no way of knowing that an order interpreting the certificate exists. Thus, Servant Cab should be issued a certificate as follows:

CERTIFICATE AUTHORIZED:

Transportation of passengers and their baggage by taxicab between points in Lincoln and a twenty-five (25) mile radius thereof, including, but not limited to, the communities of Crete, Firth, Garland, Greenwood, Hallam, Milford, Panama, Seward, and Wahoo, and between points in said area on the one hand and on the other hand, points in Nebraska over irregular routes. The transportation of passengers and their baggage originating outside of Lincoln and a twenty-five (25) mile radius thereof is not authorized, except for a continuation of a trip originating in Lincoln and a twenty-five (25) mile radius thereof, and returning to a destination in Lincoln and a twenty-five (25) mile radius thereof and shown on the same billing document as a continuation of the originating trip.



O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Servant Cab's certificate of authority granted in Application No. B-1581 should be interpreted consistent with the findings in this order.

IT IS FURTHER ORDERED that a new certificate should be issued to Servant Cab as authorized above.

MADE AND ENTERED at Lincoln, Nebraska, this 7th day of January, 2003.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

*Francis J. Anderson*  
*Frank E. Landis*

*Rochelle Johnson*

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

*Anne Boyle*  
Chair

ATTEST:

*And S. Pollack*  
Executive Director