

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the application ) Application No. B-1585  
of Easy Car Rental Co., Inc., )  
d/b/a Budget Car and Truck )  
Rental, Omaha, Nebraska seeking )  
authority as a contract carrier )  
in Nebraska intrastate commerce )  
in the transportation of ) GRANTED AS MODIFIED  
passengers between Sleep Inn and )  
Eppley Airfield and between )  
Sleep Inn and Old Market over )  
irregular routes. RESTRICTION: )  
The transportation of railroad )  
train crews and their baggage is )  
not authorized. ) Entered: November 5, 2002

APPEARANCES:

For the Applicant:

Jack L. Shultz  
P.O. Box 82028  
Lincoln, NE 68501-2028

For the Protestant Abbott  
Transportation, Inc.:

Bradford E. Kistler  
P.O. Box 85778  
Lincoln, NE 68501

For the Protestant Happy Cab  
Yellow Cab, Checker Cab and  
Cornhusker Cab:

Patrick J. Sullivan  
1246 Golden Gate Dr.  
Papillion, NE 68046-2843

For the Commission:

Shana Knutson  
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P.O. Box 94927  
Lincoln, NE 68509

BY THE COMMISSION:

By application filed April 9, 2002, Easy Car Rental Co., Inc., d/b/a Budget Car and Truck Rental (hereinafter referred to as "Budget" or "Applicant"), Omaha, Nebraska, seeks authority as a contract carrier in Nebraska intrastate commerce in the transportation of passengers between Sleep Inn and Eppley Airfield and between Sleep Inn and the Old Market in Omaha, Nebraska over irregular routes. RESTRICTION: The transportation of railroad train crews and their baggage is not authorized. The transportation of clients of Health and Human Services is not authorized. Notice of this application was published in The Daily Record, Omaha, Nebraska on April 11, 2002. Protests to the application were filed on April 17, 2002 by Abbott Transportation, Inc., ("Abbott"), and on May 7, 2002, by Happy Cab, Yellow Cab, Checker Cab and Cornhusker Cab (collectively "cab companies").

A hearing on the application was held on July 15 and 18, 2002, in Omaha, Nebraska with appearances as shown above. At the commencement of the hearing the Hearing Officer, Commissioner Anne Boyle entered in evidence notice of the hearing as Exhibit 1, the publication notice from The Daily Record as Exhibit 2 and a copy of the application as Exhibit 3. The parties stipulated to Applicant's financial fitness.

## E V I D E N C E

## APPLICANT'S EVIDENCE

Mr. Michael Gottwals, Vice President and General Manager of Applicant's Nebraska operation testified as follows: He has been employed as Vice President and General Manager of the Nebraska operation for eleven and a half years. Budget operates a parking lot and approached the Sleep Inn regarding the parking business of their guests. During the course of those discussions, Sleep Inn inquired whether the Applicant would be interested in providing shuttle service to and from the Airport, and to and from Sleep Inn to the Old Market. The terms of the arrangement were reduced to writing. This agreement was introduced and admitted into the record as Exhibit 7. He claims that he was originally informed that no authority was needed from the Commission. That information was verified by the Commission staff. Applicant's service commenced on April 1, 2002. Subsequently, an investigator with the Commission visited Applicant and Applicant was advised by the Commission staff that Applicant needed authority to provide the proposed service from the Commission. Mr. Gottwals stated that Budget provided the service then on a no fee basis and filed an application with the Commission. He further stated that there was no arrangement in place which would allow Applicant to recover for the services it has provided if the application is subsequently granted. Budget has been in the parking business at Eppley for over 30 years and has significant experience transporting customers every day. The shuttle vehicles which Applicant currently owns and operates are identified in Exhibit 4. The vehicles will be driven by Budget employees whose driving records are checked every six months. Background checks are performed on all new hires.

Applicant intends to assign a driver to the Sleep Inn and provide scheduled service at appointed times each day. The driver would be dedicated to the Sleep Inn and he would have a backup driver at his disposal if needed. Exhibit 5 was identified as a Certificate of Insurance which describes the insurance coverage in place on Applicant's vehicles. Applicant conferred with its insurance agent and was advised that it could provide for-hire transportation services under its coverage.

Applicant's insurance policy was submitted as Late-filed Exhibit 11. Budget is willing to comply with whatever insurance requirements the Commission may have. Applicant has two full-time service personnel who are responsible for maintaining the vehicles and any major repairs will be performed at a dealership.

Budget proposes to provide a regularly scheduled half-hour shuttle service between 4:00 a.m. until noon between Sleep Inn and the Airport. Budget also proposes to provide on demand service and a nightly shuttle service from the Hotel to a designed drop point in the Old Market with a return trip approximately two hours later.

Mr. Gottwals believes the application would meet the distinct needs of the Sleep Inn. He stated that if a call for service was received from Sleep Inn, service could be provided in a matter of several minutes. Approximately three or four times a week, Sleep Inn has guests who require transportation to the Old Market.

Upon questioning, Mr. Gottwals stated that if Sleep Inn had refused to cooperate and support the application then he would not have proceeded with the application nor would he be providing service to the Sleep Inn. Under the terms of the original agreement admitted as Exhibit 7, Budget would receive \$1,850.00 a month for providing the proposed service. Sleep Inn agreed to promote Budget's parking lot in exchange for the relationship identified on Exhibit 7. The Sleep Inn had previously provided promotion of Budget's parking. If Sleep Inn's demand for service exceeded the capability of a single vehicle, a second van would be provided. Applicant has provided Airport parking service for Sleep Inn guests for many years. He is committed to providing the service for a period of one year or until the application is either granted or denied. Service to the Old Market would be restricted to a drop point at 10th Street and Howard, and two hours later, a pickup would occur at the same point. Applicant would be willing to amend its application to some acceptable radius of 10th Street and Howard. If a customer was dissatisfied, they could contact the Applicant, Sleep Inn or the Commission.

Len Friedenbach, General Manager of Sleep Inn in Omaha, Nebraska testified: He has been the General Manager for seven years. His guests frequently require transportation between the hotel and the Airport. His guests have a need for scheduled service between 4:00 a.m. and noon, and his guests move as both individuals and in groups of passengers. The Old Market trips leave the Sleep Inn at 6:30 p.m. and guests are dropped off at a

point in the Old Market until about 8:30 p.m. His company previously contracted with Abbott but the parties did not have a written contract. He discontinued using Abbott because of the service problems he experienced and because of a potential rate increase. When service was late to the Airport, he stated, guests became irate and blamed the Sleep Inn. There were occasions where the service was either late or not provided at all according to the agreed upon schedule. Service began with Abbott at the rate of \$600 per month, then increased to \$2,000 a month. Ultimately, Abbott wanted a fee on a per-person basis rather than the flat monthly fee. In his estimation, a per-person charge would double or triple the cost to between \$4,000 and \$6,000 a month which was not acceptable to him. On at least one occasion, a guest was left at the Old Market by Abbott. A cab had to be called which was paid for by Sleep Inn. Hotel employees were also required to transport guests to the Airport when Abbott was late. He spoke with Mr. Abbott on two or three occasions and to Mr. Abbott's wife on at least one occasion about their dissatisfaction with Abbott's service. Service would improve for a short time and then deteriorate again. The specialized needs of the Sleep Inn requires that transportation service to the Airport be on time. Dedication of a driver to the Sleep Inn would be beneficial because he would not be picking up other passengers from other hotels. Since Budget began providing service on April 1, 2002, it has not been late. There are occasions where guests require cab service and that would not change if the application were granted. The proposed service would be better than taxi service because Budget could transport eleven passengers at once. Sleep Inn has not compensated Budget in any manner for providing the transportation service to its guests since April 1, 2002. When the Sleep Inn guests were left stranded in the Old Market he spoke with Mr. Abbott's wife about it since Mr. Abbott was out of town. Some time during the summer of 2001, he asked his employees to keep a log of the Abbott service. Exhibit 10 demonstrates service in January, February and March of 2002. When Abbott was providing service, guests were asked at check-in if they needed shuttle service to the Airport and if so, at what time. That information was conveyed to Abbott by telephone the night before. Currently, the schedules of the next day's guest sign-up is faxed to Budget at 11:00 p.m. Exhibit 10 does not identify the time at which a guest would have request pickup. Exhibit 12 is a letter from Sleep Inn to Abbott dated March 12, 2002, terminating the oral agreement. The letter was a way to smooth over the transition from one service source to another. In December of 2001, Abbott proposed that a \$2.50 fee per hotel guest be charged. This was unacceptable to Sleep Inn. Sleep Inn had coupons for other parking services as well as Budget, and those are offered to Sleep Inn guests as well. If customers

ask which parking lot to use, the Sleep Inn personnel recommend Budget. Approximately 46 to 60 hotel guests per day move between the Airport and Sleep Inn. He did not know whether other carriers could provide the service, but he knows that taxicabs cannot transport ten or eleven people at one time. On numerous occasions, taxicabs have shown up 35 minutes after they were called for service. Whenever Abbott was late, Sleep Inn representatives called and spoke with whomever answered the phone at the dispatch office. Exhibit 10 was kept on a daily basis in the routine course of business and not in anticipation of this hearing.

Vickie Cloye, a front desk representative at the Sleep Inn, testified: Her responsibilities include making sure that guest transportation needs are met and that guest are satisfied. Her normal working hours are 7:00 a.m. to 3:00 p.m. She spoke with representatives of Abbott when their service was late. She has personally transported guests of the Sleep Inn to the Airport because Abbott's shuttle service was late. She was instructed by Mr. Friedenbach to keep a log of Abbott's delayed pick-ups. The notations she made on Exhibit 10 included the 8:05 pick-up on page 1. She stated that Abbott did not show up and a Sleep Inn employee took the guest to the Airport. She also noted delays on January 22, 2002, January 28, 2002, February 12, 2002, February 28, 2002, March 20, 2002 and March 27, 2002 all of which appeared in Exhibit 10.

Upon cross-examination Ms. Cloye testified: On January 3, 2002, when Abbott did not arrive, she was told by an employee with Abbott that the reason the shuttle did not show up was because the driver was refueling the shuttle. She spoke with this employee on more than one occasion. For the incident on January 22, 2002, Ms. Cloye did not know when the customer first requested the shuttle service for 8:05 a.m. She did not record the delays that occurred on account of inclement weather. On at least two occasions during a three month period, Sleep Inn employees were required to transport a passenger to the Airport. For taxicab service, there was generally a ten minute to 30 minute wait for on-demand service. There was nothing which would prohibit her from calling two or three taxicabs for a large group.

#### PROTESTANT'S EVIDENCE

Mr. Don Bellino, owner and general manager of DonMark d/b/a Cornhusker Cab testified: Cornhusker Cab has decreased its overall fleet this year due to a decrease in demand. There are probably a combination of reasons for the decrease, but one of the reasons is shuttle service. The shuttle services have

negatively impacted Cornhusker Cab's business. Travel has also decreased because of the events which took place on September 11, 2002. They charge a per cab rate rather than a per person rate for passengers. Shuttle services are acting like cab companies and competing directly with cab companies. The highest density of cabs are on Abbott Drive in Omaha and his drivers are seeking additional business there.

Upon cross-examination, Mr. Bellino testified: Abbott Transportation has been in business for about a year and has been competing with the Protestant for the same business. Cornhusker Cab could not contract with the Sleep Inn for service as far as a flat rate contract. They would have to extend their authority to run a shuttle van to provide the same level of transportation service that applicant is proposing. The rate from the Sleep Inn hotel to the airport is around \$5.00 or \$6.00.

Mr. Vince Lalomia, president of Happy Cab, Yellow Cab and Checker Cab testified: They have approximately 90 taxicabs in service. There are a large number of cabs in and around the airport. The Sleep Inn is in close proximity to the airport. They could provide service from Sleep Inn to the Old Market for about \$8.00 to \$10.00. Exhibit 13 was identified as a listing of pick-ups from Sleep Inn going to different destinations in Omaha. Exhibit 13 showed when the taxicab was dispatched and when the passenger was picked up. The entries on Exhibit 13 begin in 1999 and continue through 2002. Based on this exhibit, his company provides responses in under 15 minutes. Exhibit 13 also includes time calls where the calls for service were logged in well before the scheduled service would be needed. In some of those instances, Exhibit 13 would show a negative wait time for a pick-up. His company would station vehicles at Sleep Inn if requested.

Upon cross-examination, Mr. Lalomia testified: There were about 145 taxicabs in service in the Omaha area. That is true even though shuttle service at the Sleep Inn is being provided by someone other than a cab company. He does not know whether the taxicabs in line at the airport would be willing to leave that line to pick-up a \$5.00 fare. He testified that Exhibit 13 also demonstrates taxicab drivers engaged in back-logging, which is when he logged into a zone while he still had a customer in the car. The company discourages back-logging. His company transported a passenger or passengers on eight occasions in the last three year period. He did not know what impact it would have on his company to lose the revenue generated the eight trips from the Sleep Inn. His company operates minivans which could be used to transport large groups of hotel guests.

Mr. Ray Testerman, a Happy Cab driver testified: He has been involved in the cab business since 1989. He would bid on a trip from the Sleep Inn hotel to the airport. When orders come through the dispatch, he does not know whether it is going to be a \$40.00 order or a \$3.00 order. On cross-examination, Mr. Testerman testified if drivers cannot respond within 20 minutes, drivers are discouraged from bidding on that order. A shuttle service was operating at the Sleep Inn either under Abbott or under Budget and he did not participate in the movements that were given to the shuttle drivers.

Mr. Paul Edwards, a driver for Checker Cab, who is an owner-operator, testified: He takes calls for dispatch through Checker Cab. When he drops fares off at the airport, he accepts the next dispatch order. Because he is an independent contractor, he may accept or reject any given dispatch, but once accepted, he must perform the service.

Mr. Thomas Tomoser, an owner-operator leased to Cornhusker Cab of Papillion, testified: He has been in the cab industry since 1969. Ninety-eight percent of his revenue comes from the airport. He has never refused an order. He has noticed cabs in the vicinity of Sleep Inn. Since 1969, he has seen the number of cabs decrease. He believes the decrease in cab usage has been brought by hotel shuttles. He transported a woman from the airport to the Sleep Inn and then made numerous trips for her from the Sleep Inn to other Omaha destinations in February or March. Cornhusker has only been in business since 1996, and it constitutes an additional competitive factor.

Mr. Mike Abbott, President of Abbott, testified: His company has been in business for two years. Abbott is authorized to provide transportation services between hotels and the airport, between its parking facility and the airport, and Abbott also provides a touring service. Ex. 14 is a copy of Abbott's Certificate of Public Convenience under B-1505. It is a common carrier certificate. The certificate authorizes service between Sleep Inn Hotel and Eppley Airfield, as well as between Sleep Inn and the Old Market.

Abbott operates shuttle buses with 15 or more passengers, as well as buses with more passenger capacity. The vehicles are between 1999 and 2000 models. Eight shuttle buses and four buses are in his fleet. The shuttle buses which previously served Sleep Inn are 14 passenger, with luggage capability in the rear. Regular maintenance of the vehicles is performed by his employees, and major problems are handled by the dealership.

Abbott employs 35 drivers on whom they perform background checks, driver's license checks and drug testing. His company

has never had an accident. His company served Sleep Inn from late 1999 through March 31, 2002. Abbott provided scheduled pickups seven days a week for Sleep Inn from 4:00 a.m. to 8:00 a.m. He had additional buses available for Sleep Inn and the Country Inn in the early morning because of the demand for service. There were additional passenger requests that were not given to Abbott the night before from Sleep Inn on a daily basis. When they had vans available they would make on demand pickups as well. The vehicles and dispatch were located just up the street from the Sleep Inn, approximately a quarter of a mile away. His company charged Sleep Inn \$2,000 per month for service during all of 2001 and 2002. Sleep Inn discontinued using the services of Abbott on March 31, 2002. Abbott has not laid off any employees since losing the Sleep Inn business. Abbott made a proposal to increase the rate to the Sleep Inn to \$2.50 per passenger rather than the monthly flat rate. The proposal was made on December 18, 2001. Based on his analysis, a \$2.50 per person rate would result in a revenue of \$7,500 to \$12,000 a month. The \$2.50 rate was the published rate filed with the Commission for the service. He could not recall any specific complaints about service from Len Friedenbach, but he could have been contacted. Abbott also serves the Marriott, the Country Inn and other hotels in Omaha. The rates differ from hotel to hotel. The rate which he used for Sleep Inn was not a published rate and was different than what he charged other hotels. There was no written agreement to cover the service between Sleep Inn and Abbott. The service was not offered on the same basis to any other hotel. His company serves every hotel in Omaha. His buses are used to transport passengers for his parking business on a daily basis. Parking passengers and hotel passengers are not transported in the same vehicles. He did not know whether the same vehicles were assigned to the Sleep Inn. He never saw any of the information contained on Exhibit 10 during the time frame service was being provided. The \$2,000 a month rate figure was proposed by Mr. Friedenbach. No contract covering the arrangement was filed with the Commission, and this was the only flat rate for monthly hotel service which he provided. He knows he could not normally make special arrangements with some customers as a common carrier, but he felt that Sleep Inn was special. He does not know if complaints were made to Abbott dispatchers, because he is not located at the parking lot. He would not be willing to provide the service to the Sleep Inn on the same flat fee basis as before. He would submit a written contract if required by the Commission. If legally possible, he might have offered flat rate service on a monthly basis to other hotels.

On recall, Mr. Abbott testified: Exhibit 17 is a list of the vehicles operated by Abbott. After testifying earlier, he



then made a search of Abbott's records, including Exhibit 16, which was prepared by the night dispatcher. Exhibit 16 demonstrated, on a daily basis, the number of guests scheduled for pickup at the Sleep Inn at certain times. His records show that no one called for pickup service at 8:05 at the Sleep Inn on January 3, 2002. Exhibit 18 demonstrated a discrepancy between the number of passengers called to Abbott by Sleep Inn the night before and the number of passengers actually picked up. Exhibit 10 shows a pickup at 10:35, which he did not believe was a late pickup. He does not believe an 8:35 pickup on February 13, 2002 was missed by Abbott. Abbott made a 124 trips in the 13 days identified on Exhibit 10. Assuming all alleged service failures were valid, there were 14 during the three-month period identified on Exhibit 10, which represented about 1.5% of the trips. Managers made no reports to him about any problem. While he testified he had no idea how many passengers were being transported, the records were available to him on a daily basis. He did not look at the numbers on a daily basis to determine how many Sleep Inn passengers were being transported. Nowhere on Exhibit 16 would it indicate whether the pickup actually occurred. It is impossible to determine from Exhibit 16 whether the pickup occurred on time or was late. He does not know how the dispatchers kept track of the pickups as recorded on Exhibit 16. It is possible that dispatchers could have made recording errors. As an example, when recordation was made of a date of October 1, 2002, on the second page of Exhibit 16, the date had not yet arrived in 2002 and was an error. He could not tell from Exhibit 16 whether modifications to pickup schedules were called in hours in advance or minutes in advance. He has no knowledge of what the desk clerk practices were at the Sleep Inn with regard to recording untimely pickups. He cannot ascertain from Exhibit 16 whether a pickup actually occurred. On the last page of Exhibit 16, either the day of the week or the date was recorded in error. He agrees any guest who indicated he would not return to the Sleep Inn because of late shuttle service is very significant. He now testifies that he was never contacted by Mr. Friedenbach to complain about service, and his first knowledge of any problem was when he was advised that the oral agreement was being cancelled. In 1999, he would pickup parking customers at Sleep Inn, and they were providing a service for him of encouraging everyone to park at Abbott Parking. He has no knowledge of whether his company transported passengers to the airport which were not Abbott Parking customers, before he obtained authority. He later obtained authority because he did not like to do illegal things.

Mr. Robert J. Brown, an employee of Allied Insurance who lives in Council Bluffs, Iowa, testified as follows: Mr. and

Mrs. Abbott live down the street from his sister-in-law and her husband. He was approached by Mr. Abbott to see what shuttle service the Sleep Inn was using in April of 2002. Exhibit 15 is a summary of his experience with his visitation and transportation at the Sleep Inn. It was pointed out to him that other parking lot facilities were available other than Budget. He deceived the Hotel personnel with inquiries about parking lots and also the shuttle driver whom he led to believe that he was departing from the Airport. When using the shuttle service, it was on time. The shuttle driver did not tell him she had seen or knew the terms of any contract, nor did he.

Ms. Maxine Carda, an employee of Abbott, testified as follows: She is the Transportation Manager. She started March 16, 1998, and worked for Abbott for two years, then left and has worked off and on for Abbott since. She is a cashier for the parking and transportation business. She takes phone calls for both Abbott Parking and Abbott Transportation and coordinates drivers for both. She works the south lot, which receives all calls for service from the Sleep Inn. Sleep Inn would advise Abbott by telephone how many guests required transportation and at what times. Sometimes Sleep Inn called in a supplement passenger list, either at night or the following morning. If called for a non-scheduled pickup, Abbott would go. Many times Abbott went to Sleep Inn to make a scheduled pickup and no passenger was available for pickup. Sometimes, people were not ready to be picked up at their scheduled time. A few times, passengers were not picked up from the Old Market. Sleep Inn called them on one occasion at 8:50 and wanted a passenger picked up in the Old Market who had been stranded there. This created a problem for Abbott because they had parking passengers in their lot. Anytime a guest was left at the Old Market it was because they did not show up at the correct pickup time. As the Transportation Manager, she had no knowledge of the arrangement between the parties for compensation. Sleep Inn gave her numbers each day of guests to be transported which she wrote down, but she never shared that information with Mr. Abbott. Parking lot passengers received priority over unscheduled passengers. It was her testimony that Abbott was never late.

Mr. Anthony Evans, an employee of Abbott Airport Parking, who lives in Omaha, was Abbott's final witness. He began working for the company in 1989. He is a shuttle bus driver for Abbott Transportation. He works the 8:00 a.m. to 4:00 p.m. shift. He was the one mostly involved in picking up Sleep Inn passengers. He worked Monday through Friday. The bus was equipped with a clipboard which would show which hotels had pickups scheduled and the times. Sometimes there were more people than the shuttle bus could accommodate, and he would call for another shuttle bus. He does not believe he was ever late

when picking up passengers at the Sleep Inn. He never heard of any complaints about late pickups. He stated at times he would leave the lot at 8:07 or 8:08 for the 8:05 pickup which was the first of his shift. There was at least one incident where he left from the Sleep Inn and there was a guest waiting to depart who was left behind.

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

Applications for contract carrier authority are governed by NEB. REV. STAT. § 75-311(2), which provides:

(2) A permit shall be issued to any qualified applicant therefore authorizing in whole or in part the operations covered by the application if it appears after notice and hearing from the application or from any hearing held on the application that (a) the applicant is fit, willing and able properly to perform the service of a contract carrier by motor vehicle and to conform to the provisions of such sections and the lawful requirements, rules and regulations of the commission under such section and (b) the proposed operation, to the extent authorized by the permit, will be consistent with the public interest by providing service designed to meet the distinct needs of each individual customer or a specifically designated class of customers as defined in subdivision (6) of section 75-302. Otherwise the application shall be denied.

At the commencement of the hearing, the parties stipulated that the Applicant was financially fit to provide the proposed service. Applicant's financial statement demonstrates a net worth in excess of two million dollars, which is ample to verify the Applicant's financial fitness. We also find the Applicant is fit, willing and able to provide the proposed service. Applicant has indicated it is willing to file a contract inclusive of rates with the Commission and that its insurance will be in compliance with the Commission's required liability minimums. We also find Applicant is operationally fit. Although initially, believing it could provide the proposed service without authority, upon finding that authority is required, Applicant made application to this Commission. Applicant has many years of experience in the transportation of parking lot passengers over essentially the same routes contemplated by this application.

The proposed operation, to the extent authorized, will be consistent with the public interest. Applicant's entire operations are designed to meet the distinct needs of the Sleep

Inn. Applicant will dedicate a driver to the exclusive use of the Sleep Inn. Applicant will provide scheduled pickup and delivery services every half hour between 4:00 a.m. and 12:00 p.m. Applicant will respond to occasional call-and-demand transportation between the Sleep Inn and the Airport. Applicant will also offer a scheduled service upon demand between the Sleep Inn facilities and the Old Market between designated hours. Applicant will not serve any other hotels under its authority. Applicant proposes to provide the service for a fixed monthly amount, regardless of the number of passengers which it transports. Protestants to this application are common carriers.

To determine what is consistent with the public interest, we look to existing legal precedent. The Nebraska Supreme Court in *Samaradik of Grand Island-Hastings, Inc. v. BDC Corp.*, 183 Neb. 228, 159 N.W.2d 310 (1968), previously examined this issue. In *Samaradik*, the Court stated:

The term "consistent with the public interest" is quite different in its meaning than the term "public convenience and necessity." The former means only that the proposed contract carrier service does not conflict with the legislative policy of this state in dealing with transportation by motor carriers while the latter requires a consideration of the present service being rendered in the territory, the need of additional service and the facilities which the applicant can provide. Consistent with the public interest simply means it is not contrary to the public policy of the state as expressed in the Motor Carrier Act. *Hagen Truck Lines, Inc. v. Ross*, 174 Neb. 646, 119 N.W.2d 76 (1963). *Id.*, 183 Neb. 261 at 237, 159 N.W.2d 310 (1968).

The Court also examined this issue in the case of *In re Application of Northland Transportation*, 239 Neb. 918, 479 N.W.2d 764 (1992), when it held:

The fact that existing common carriers will lose revenue if the permit is granted is not necessarily dispositive. The proposed service may still be consistent with the public interest if it is needed and the applicant can meet the shipper's distinct needs better than can the protesting common carriers. *Id.* at 929.

None of the cab companies protesting this application indicated they would be harmed by any lost revenue. Protestant Abbott has not reduced its fleet or laid off any employees since its service was terminated. None of the Protestants hold

contract carrier authority to serve Sleep Inn. The grant of this application is not contrary to public policy.

The evidence demonstrates that Sleep Inn experienced significant service deficiencies when it was served by Abbott Transportation. Sleep Inn desk personnel recorded incidents of late pickups, or missed pickups, long before this application was even an issue. We believe there was no motivation at that time for Sleep Inn personnel to fabricate or exaggerate the service deficiencies which they were experiencing. Representatives of the Sleep Inn testified that they complained about service issues to Mr. Abbott, Mrs. Abbott and dispatcher personnel. Mr. Abbott was unclear in his recollection of whether service deficiencies had been discussed. He first could not recall any such discussions, then indicated they could have taken place, and finally testified no such discussions occurred. Mrs. Abbott did not testify, and the dispatcher with whom service deficiencies were allegedly discussed did not testify. We therefore find that Sleep Inn experienced service deficiencies with Abbott. The testimony revealed the Applicant has not been late on a single occasion in the three and one-half months it has provided service on a no fee basis. During a comparable period, Sleep Inn recorded 14 occasions of late pickups or missed pickups by Abbott. The Applicant can better meet the shipper's distinct need for on-time service than can the protesting common carriers. The Applicant, serving only one hotel, can dedicate equipment to the Sleep Inn for more efficient shuttle service at a cheaper rate.

The purpose of the Nebraska Motor Carrier Act was not to stifle legitimate competition, but to permit it for public convenience and necessity, or, as in this case, consistency with the public interest. *Petroleum Transport Service, Inc. v. Wheeler Transport Service, Inc.*, 188 Neb. 400, 197 N.W.2d 8 (1972). We find the purpose of NEB. REV. STAT. § 75-301 will best be met by a grant of this application.

After due consideration of the evidence and being fully advised in the premises, the Commission is of the opinion and finds:

1. Applicant is fit, willing and able to properly perform the requested service and to conform to the provisions of NEB. REV. STAT. §§ 75-301 to 75-322.04 (Reissue 1996), as amended, and the requirements, rules and regulations of the Commission thereunder.

2. The proposed intrastate permit is consistent with the public interest by providing services designed to meet the distinct needs of the individual customer or a specifically designated class of customers.

3. The permit for authority should be granted as modified.

## PERMIT TO AUTHORIZE

Passengers and their baggage as a contract carrier in open class service over irregular routes via van between Sleep Inn and Eppley Airfield, and between Sleep Inn and Old Market in Omaha (with a pick-up and drop off area limited to 10th Street and Harney south to Leavenworth, from Leavenworth west to 13th Street, from 13th Street north to Harney, and from Harney east to 10th Street and points within). RESTRICTIONS: The transportation of railroad train crews and their baggage is not authorized. The transportation of clients of Health and Human Services is not authorized.

In the application, Budget requested authority to provide transportation from the Sleep Inn to the Old Market in Omaha. Although when asked, Mr. Gottwals indicated that he would not argue with a restriction placed on the authority limiting Budget to a point certain in the Old Market, we find that a limited radius would decrease the possibility of traffic congestion in the Old Market and best serve the interests of the Sleep Inn guests. Therefore, for the purpose of this application we consider the Old Market to be consistent with the limitations set forth above.

Operations in violation of this or any other order of the Commission or operations outside the scope of Applicant's permitted area will result in civil penalties of up to ten thousand dollars per day as provided in Neb. Rev. Stat. § 75-156 (2000 Supp.) or in a suspension or revocation of Applicant's permit.

## O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application B-1585 be, and is hereby granted as modified herein; and upon compliance with the terms and conditions set forth in this order, a permit shall be issued to Easy Car Rental Co., Inc., dba Budget Car and Truck Rental, Omaha, Nebraska, in Application B-1585, authorizing the operations of the contract carrier as set forth in the foregoing findings.

IT IS FURTHER ORDERED that Applicant shall not be issued the permit authorized by the Commission unless and until Applicant has fully complied with, within a reasonable time from the effective date of this order, with NEB. REV. STAT. §§ 75-305

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(fees); 75-307 (insurance); and 75-308 (rates) (Reissue 1996), with the Rules and Regulations of the Commission; upon expiration of such time Applicant has not complied with the terms and conditions, this order shall, after reasonable notice to Applicant, be of no further force and effect.

IT IS FURTHER ORDERED that Applicant shall not conduct operations on a for-hire basis until a permit is issued.

IT IS FURTHER ORDERED that Applicant shall render continuously an adequate service pursuant to the authority authorized.

IT IS FINALLY ORDERED that the permit for contract carrier authority shall be subject to the terms, conditions and limitations which have been or may hereafter be prescribed by the Commission.

MADE AND ENTERED at Lincoln, Nebraska, this 5th day of November, 2002.

Nebraska Public Service Commission

Commissioners Concurring:

*Forrest Hanson*  
*Gerald F. Vap*  
*Bob Johnson*

//s//Anne C. Boyle

*Anne Boyle*  
Chair

Attest:

*Andrew Pollock*  
Executive Director

# SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

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