

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of A-1 Ambassador) Application No. B-1594
Limousine, Inc., dba A-1 Special)
Services, Lincoln, seeking)
authority as a common carrier of)
passengers in open class service) GRANTED AS MODIFIED
between all points in Nebraska)
over irregular routes in sedans,)
buses, vans, and station wagons.)
RESTRICTION: The transportation)
of railroad train crews and)
their baggage is not authorized.) Entered: November 26, 2002

APPEARANCES:

For the Applicant:

Elaine Waggoner
825 M Street
Suite 209
Lincoln, Nebraska 68508

For the Protestants:

Yellow Cab and Limo, Midwest
Special Services, and Servant
Cab, Inc.:
Jack Shultz
P.O. Box 82028
Lincoln, Nebraska 68501

R & F Hobbies, Inc., dba
Prince of the Road:
John Boehm
811 S. 13th Street
Lincoln, Nebraska 68508

For the Commission Staff:

Shana Knutson
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1200 N Street
Lincoln, Nebraska

BY THE COMMISSION:

B A C K G R O U N D

By Application filed July 19, 2002, A-1 Ambassador
Limousine, Inc., dba A-1 Special Services (Applicant) of

Lincoln, Nebraska seeks authority as a common carrier of passengers in open class service between all points in Nebraska over irregular routes in sedans, buses, vans, and station wagons. RESTRICTION: The transportation of railroad train crews and their baggage is not authorized. Notice of the application was published in the Daily Record, Omaha, Nebraska, on July 25, 2002. Notice of hearing was mailed to all interested parties on August 28, 2002. The hearing notice was entered into the record as Commission Exhibit 1. The Daily Record publication was entered into the record as Commission Exhibit 2. The application was entered into the record as Commission Exhibit 3.

Protests to the application were filed on July 24, 2002, by R & F Hobbies, d/b/a Prince of the Road (Prince of the Road or Prince) through its attorney, John Boehm; on July 29, 2002, by Servant Cab Company LLC d/b/a Yellow Cab Company, Capital Cab Company (Servant Cab), and Midwest Special Services, Inc. (Midwest), through its attorney Jack Shultz; on August 7, 2002 by Yellow Cab & Limo, Inc. (Yellow Cab & Limo); on August 16, 2002, by Abbott Transportation, Inc., by its attorney Brad Kistler; and on August 20, 2002 by Transport Plus, Inc. (Transport Plus). A hearing on the application was held on September 25 and 26, 2002 with appearances listed above.

A restrictive amendment was entered into the record by Applicant requesting that the term "buses" be stricken from the application. That amendment was accepted and Abbott Transportation Inc., withdrew its protest to the application.

Applicant filed two motions prior to the hearing. One motion requested that the Commission stay the enforcement of the policy declared in Rule and Regulation No. 148. The second motion requested a declaratory ruling seeking to be grandfathered into the Open Class category so that it can provide transportation services to HHS without continuing on its application. The Commission reserved on Applicant's motion to stay enforcement. Applicant's request for a Declaratory Ruling was denied.

E V I D E N C E

APPLICANT'S EVIDENCE

Applicant produced twelve witnesses in support of its application. The testimony and evidence provided the following:

Janet Wagner is a shareholder and treasurer of A-1 Ambassador Limousine Inc. (A-1). A-1 also holds certificates

under the names Haymarket Limousine and JLRD which operates as Lincoln Limousine. A-1 is a family-owned corporation consisting of four shareholders. The business was purchased four and one half years ago. Ms. Wagner oversees the finances of the corporation. The financial information contained in Exhibit 3 (Application) was correct at the time of filing the application. Exhibit 5 is a summary balance sheet as of June 30, 2002. It lists the total assets and the total liabilities of A-1 Limo. Exhibit 6 contains a list of vehicles owned by Applicant and a list of towns or cities. Exhibit 7 is a breakdown of HHS transportation disbursements over the last five years.

Mr. Marlan Dooley is in charge of hiring Applicant's drivers and oversees the dispatching of drivers except for in the Lincoln area. He supervises most of Applicant's vehicles. HHS transportation consists of roughly 50 percent of the gross income of Applicant. Most of Applicant's 32 drivers are part time employees. Applicant has 16 vehicles dedicated to HHS transportation. Approximately one half of those vehicles are vans. Applicant has two handicapped accessible vehicles. Applicant advertises its HHS transportation service by word of mouth.

Ms. Wagner further testified that if the application is not granted, Applicant would have to lay-off a number of its drivers. It would also have a detrimental impact in the communities Applicant currently serves. Most of A-1's trips are not point-to-point within small towns, rather the majority is distance transportation. A-1 serves a few passengers in Lincoln point-to-point only because certain passengers have specifically requested it due in part to unpleasant experiences with the taxi carrier. However, Applicant's intent is not to operate a taxi service. It does not intend to compete with the taxi providers.

Upon cross-examination, Ms. Wagner stated that they will provide private pay transportation services upon request. In Lincoln at least, private pay clients would be charged the sedan rate listed in A-1's tariff. Mr. Dooley also operates High Plains Cab in the McCook area. HHS may request the services of High Plains Cab or Applicant. The HHS request determines whether his cab company takes a particular trip or whether A-1's services is utilized.

Ms. Wagner would not agree to a limitation against point-to-point transportation in Lincoln. Ms. Wagner stated she did not know what would distinguish A-1's service from the traditional taxicab service that Servant Cab provides. If this application were granted, Applicant would replace the existing contract Haymarket has with HHS. The JLRD contract will not be

renewed. Ms. Wagner admitted knowing that Applicant's filed rate structure was different from that provided in its contract with HHS.

With respect to Exhibit 6, Ms. Wagner testified that most trips did not move within the particular cities listed. She prepared Exhibit 6 from the ride sheets. The underlying documents she used were not brought to the hearing. She could not tell by looking at Exhibit 6 whether or not trips originated, terminated or moved within the listed cities.

Ms. Theresa Reutzell, a social worker in the North Platte HHS office testified that Applicant's service is a better service than that provided by other carriers. North Platte has a taxi service which provides transportation within the city limits. Most of the time, the families she serves do not have needs outside North Platte. Other service providers are either not available or difficult to reach. However, when she needs to use Applicant, Applicant's services have always been available.

Upon cross-examination, Ms. Reutzell testified that she has been in North Platte since 2001. At the time of the hearing, she arranged transportation for three clients. Depending on her client's needs, she arranges transportation about one time per week. She would not use A-1 for point-to-point transportation in North Platte. For transportation within North Platte she would use the taxi provider or public transit services. Ms. Reutzell admitted that Midwest Special Services has provided satisfactory service. She has not used Prince of the Road's services since she has been in North Platte.

Ms. Anne Farrin, a protection and safety worker in the Crete area testified that she is familiar with all the transportation providers in the area. She has used the services of Prince of the Road, Midwest Special Services (Midwest) and Applicant. She prefers to use Applicant's services. She has experienced problems with both Prince of the Road and Midwest. For example, she set up transportation for a child ward over Christmas vacation. Midwest failed to pick up the ward. As a result, the ward missed Christmas with her parents. She then switched to Prince of the Road and then went back to A-1. She has discussed the problems she experienced with Prince of the Road and Midwest. Ms. Farrin usually does not need transportation services for point-to-point trips in Crete. She arranges transportation about twenty times per week. She has not utilized the services of local cab companies.

Under cross-examination, Ms. Farrin testified that with respect to Midwest's failure to pick up her ward, she faxed the

request over to Midwest's office. She did not call to get a confirmation. She called Midwest the next day to complain. Midwest did not offer her an explanation. There are two occasions she can recall where Prince of the Road could not meet her requests for transportation.

Mr. Bart Bowman, a protection and safety worker in the Nebraska City office of HHS, testified next on behalf of Applicant. Mr. Bowman arranges transportation on average four to five times per week. He is generally familiar with the certificated carriers. He has used Midwest, Prince of the Road, and Applicant's services. He usually uses Applicant's services. He has experienced difficulties with other providers. All requests are made by telephone. It is easier for him to use Applicant's services because he does not have to fill out any forms. Applicant has made it more convenient for him to do his job.

Upon cross-examination, Mr. Bowman testified that he mainly needs transportation services in southeastern Nebraska. He was not familiar with Yellow Cab & Limo. Prince of the Road has been late on certain occasions and Midwest has refused to provide service in the past stating that no driver was available. He has had problems with Prince of the Road particular to same day requests. He was told Prince of the Road did not have a driver for the time slot requested. Mr. Bowman believes there is a need for same day service which is not presently being met. Mr. Bowman admitted that he did not use the cab company in Nebraska City because he did not know whether the contract was still in effect.

Ms. Karen Roland of McCook, Nebraska, testified that she negotiates contracts with HHS. She does not arrange transportation very much any longer. When Ms. Roland does arrange transportation, she prefers to use Applicant because she likes to work with Mr. Dooley. Upon questioning, Ms. Roland stated that she has not been satisfied with Prince of the Road because it transported a person it was not authorized to transport and because it kept billing her for that service. Ms. Roland stated that she arranges transportation about three times per month. Applicant makes it easier and faster for her.

Mr. Marlan Dooley, District Manager for Applicant, manages the services for Applicant everywhere except in Lincoln. There have been occasions in which he has transported clients point to point in North Platte through Options. However, it was limited to a few occasions. Mr. Dooley testified that there was a need for all of the companies that are out running. He hires the drivers for Applicant. He performs background checks on all

drivers. He also checks their driving records. He looks for drivers with people skills, who are personable and who are clean. He recommends to clients that they not use Applicant for point-to-point transportation within a town because it can be cost prohibitive.

Upon cross-examination, he testified that Applicant's vehicles have not been marked because Applicant holds a limousine authority. However, if the Commission required it, Applicant would comply with the signage rule. Mr. Dooley testified that he has a regular phone line and two cellular phones. Someone is available to answer the phone 24 hours seven days per week. Applicant does not have any formal driving program. Applicant has one handicapped accessible vehicle.

Mr. Dennis Wagner, Vice President of Applicant, is also the office manager. Mr. Wagner runs the day-to-day operations of Applicant. He testified that Haymarket does some specialized work point to point in Lincoln, however, Applicant has no intention of expanding its operations point to point in small communities. A-1 will occasionally refer trips point to point in communities to other carriers. He is generally familiar with Yellow Cab & Limo's operations.

Applicant is set up in Lincoln for dispatch. Applicant can take calls from three incoming telephone lines. A live person fields the incoming calls during the day; and, in the evening, calls are forwarded to Mr. Wagner. Applicant will not transport clients that are violent or that pose a flight risk. He will refer those types of clients to Midwest or Prince of the Road. Applicant does perform background checks on all drivers. Driving histories are performed by Applicant's insurance agent. Applicant will generally be able to meet the needs of the protection and safety workers and Applicant is able to take calls in the middle of the night.

Upon cross-examination, Mr. Wagner testified that A-1 has performed movements for three persons point to point in Lincoln on a continual basis. This equates to about seven trips per month as a whole. Exhibits 6 and 7 would demonstrate that A-1 is competing with local cab companies.

On recall, Mr. Wagner testified that A-1 still has Mr. Jackson, the witness for the Prince of the Road, listed as an employee. He stated that Mr. Jackson stopped answering his phone calls, hence the reason for not scheduling him on any more trips. The employment application A-1 uses gives the authorization for A-1 to conduct a background check of the potential employee.

Mr. Wagner further stated that he believes that Mr. Hippen's decrease in business also has to do with Midwest and Prince of the Road who have a presence in the territory of Yellow Cab & Limo as well. A-1's presence in that area has been limited. Another reason for Midwest's decline in trip numbers in the McCook area is the presence of High Plains Cab.

Upon further questioning, Mr. Wagner testified that Applicant's focus would be on the distance transportation for HHS and not local fares. He would like to provide that service in the future should it become necessary, however. He believes that there may be some special needs clients who Applicant would be better equipped to transport.

Mr. Steve Mason, Account Executive for Forsythe Insurance Agency, testified that he wrote the insurance policy for A-1. A-1 has a two million dollar liability coverage. His company performs driving record checks on A-1's drivers.

Ms. Melodee Drenkow, a Norfolk HHS worker, testified that she arranges local transportation on a daily basis. She has been employed with HHS for 15 years. Generally, Checker Cab provides the service point-to-point in Norfolk. Town to town movements are provided by A-1. She is familiar with the services of Prince of the Road and Midwest Special Services. She prefers to use A-1 because of the ease in making arrangements with A-1. Arranging transportation with Prince of the Road involved a three-step process at the time she used them. She only used Prince of the Road one time, however, she received a complaint with Prince of the Road from her client, which was never resolved to her satisfaction. She has not experienced the difficulties with A-1 that she experienced using other carriers such as Prince of the Road. Ms. Drenkow stated that if Applicant were not able to provide the proposed services she would see a decrease in the quality of services available to her clients.

Upon cross-examination, Ms. Drenkow testified that she had no reason for not using Midwest. The last time she used Prince of the Road was two years ago. She stated that she is familiar with the current procedures for Prince of the Road, however, and does not like to use the required form. She did not know she could call Prince of the Road to set up transportation. She has experienced timeliness issues from the local cab company as well.

Mr. Scott Reuter testified that he was unhappy with the service provided by Prince of the Road and Midwest Special

Services. He preferred to use Applicant's services. Prince of the Road drivers were rude to him on past occasions. Prince of the Road also made him late for doctor's appointments.

Mr. Tim Kolb of Franklin, Nebraska was also a consumer of commercial transportation services. He testified that public transportation services were needed throughout the state. Mr. Kolb testified that the ticket to work program would increase the demand for transportation services. The program's success depends in part on whether there is an adequate level of transportation providers. Upon questioning, Mr. Kolb testified that he has not had discussions with the Commission about the availability of carriers.

Ms. Cheri Anderson, a social worker in the Holdrege HHS office, arranges transportation services with A-1, Kearney Cab, Prince of the Road and Citizen's Bus. Holdrege does not have a taxi company. Generally, she prefers to use A-1 for her transportation needs. She has not had any difficulties arranging transportation services with A-1.

Upon questioning, Ms. Anderson testified that she arranges transportation approximately seven times per month. She is familiar with Midwest and has been satisfied with them. She was aware that there are two other carriers which could provide transportation services for her as well. She has used Prince of the Road within the last year. The rates have no bearing on her decision between carriers.

Ms. Marcia Alber testified as to the rate structure for taxi providers contracting with HHS. She testified that it was not cost effective for distance providers for point-to-point transportation within communities because HHS only pays for the time that the client is in the vehicle. HHS does not pay for unloaded miles.

PROTESTANT'S EVIDENCE

The protestants collectively produced eight witnesses in opposition to the application.

Mr. Ron Hippen, owner of Yellow Cab & Limo testified that the proposed authority conflicts with the authority he currently holds. Yellow Cab & Limo is authorized to operate in seven counties. Eighty-five percent of Yellow Cab & Limo's revenues are derived from transporting clients for HHS. He has two vehicles licensed for the taxi operation. As a result of A-1's entry into the HHS business, his taxi revenues have declined

significantly. From 1999 to 2001, his HHS revenue has been cut to almost half. There have been no complaints against Yellow Cab & Limo filed. He is unable to compete with the Applicant which is a larger company providing close to statewide transportation services. If the application is granted, he will not be able to continue his operations. Beatrice and the surrounding area will have no cab service. He has recently purchased a van which he is leasing to another authorized carrier to transport HHS traffic which is outside of his authorized territory. He has begun this operation in an attempt to shore up the revenue for the traffic which has been lost to A-1.

Upon cross-examination, Mr. Hippen testified that his written statement was drafted within the prior two months time. However, his statement was originally drafted for a prior hearing and then updated for this proceeding. He believes that his decline in revenues is due to A-1 operating in the area he serves. Mr. Hippen cannot say with certainty that his decline in revenue was not caused by the presence of Midwest or Prince of the Road. However, he has seen an increase since A-1 has stopped doing business in the Beatrice area.

Mr. Hippen stated that he does provide transportation for private pay individuals from town to town, however, it is not economically feasible for him to provide transportation point to point within certain communities.

Mr. Laney Robley, co-owner of Midwest testified that through certificate number B-1351, Midwest is authorized to provide statewide transportation services. Mr. Robley testified that he has heard the testimony of the HHS witnesses and he would like to and has the capability to transport clients for them. He is able to take on additional traffic. Midwest performs criminal histories, driving record checks and abuse records of each of its drivers. The company operates twenty-four hours a day seven days per week. From 8:00 a.m. to 12:00 midnight he has office staff answering calls. After those hours, calls are directed to him. He requests that HHS workers fax in the authorization form. He likes for them to fill out Midwest's form, but it is not required. He likes to have everything in writing for billing purposes. Exhibit 13 is the equipment list of Midwest. Midwest has 40 vehicles and it is in a position to add more vehicles if the need is there.

Seventy percent of the revenue Midwest generates is derived from HHS transportation. Most of his clients are juveniles who are difficult to deal with. Mr. Robley did not recall the situation Mr. Farrins testified about regarding a Midwest no

show. It could have been that the facsimile message was not received in his office. In response to Mr. Bowman's testimony, Mr. Robley stated that late pick-ups are possible when events do not go as planned. It is also possible that Midwest may not be in a position to provide transportation service the same day as the request is faxed. According to Midwest's records, they have not provided transportation services to Mr. Reuter. If the application were granted, Midwest would have to think about eliminating some vehicles or point to point in town traffic. In the past, Midwest has suffered diversion, particularly in the McCook area.

Upon cross-examination, Mr. Robley conceded that Midwest's business has been successful even though A-1 has been operating. Mr. Robley stated that he has worked cooperatively with A-1. If A-1 were to add more vehicles however, or grow, it would further harm Midwest's business.

Ms. Vicki Harding, president of Transport Plus, is concerned about the Lincoln area where Transport Plus currently holds authority. Transport Plus operates minivans and handicapped accessible vehicles by appointment. Transport Plus is not operating at capacity.

Ms. Donna Corey, part owner of Servant Cab testified that Servant Cab purchased Husker Cab last spring. Servant Cab operates taxi service in Lincoln and vicinity in accordance with certificate number B-1581. Ms. Corey described the dispatch process and testified that Servant Cab had live dispatchers answering incoming calls twenty-four hours a day. Servant Cab employs 65 drivers. Servant Cab has received one complaint from the Commission regarding the driving of one of its cabs. That complaint was resolved. If the application were granted Servant Cab's traffic would be subject to diversion. If traffic was diverted, Servant Cab would decrease the number of taxis in its operation, which could make them less available to the public. Diverted traffic would also force them to request rate increases. Neither Servant Cab nor its predecessor Husker Cab has operated at a profit within the last three years. Servant Cab has suffered a reduction in ridership since around the time A-1 began providing HHS transportation.

Upon cross-examination, Ms. Corey testified that she cannot say with certainty that Servant's reduction in ridership was caused solely by A-1. Servant Cab's total number of trips has declined, not just those provided for HHS. Roughly forty percent of Servant Cab's revenue is generated from transportation under contract with HHS. The number of trips

provided to HHS has increased and Servant Cab's revenues have increased.

Mr. James Jackson testified on behalf of Prince of the Road. He was a driver for A-1 between May 15, 2001 and August 2, 2001. He was never required to have a physical or submit to a background check. A-1 never even requested his driver's license. A-1 provided him with a vehicle which he kept at his house. A-1 stopped giving him fares and when he questioned this, A-1 told him that business had slowed. Three months later he decided to work for Prince of the Road. Prince of the Road required him to go through an 8-hour orientation and driver education training. Prince of the Road required him to submit to a physical examination and a background check. He has undergone additional training with Prince of the Road since that time as well.

Under cross-examination, Mr. Jackson testified that he began working for Prince of the Road in October 2001. He sees copies of the authorization forms from Prince of the Road.

Mr. Sean Schroll, Chief Operating Officer, for Prince of the Road is in charge of billing and marketing for the company. He also drives on occasion. Prince of the Road operates statewide with the exception of a few named restrictions in certificate B-1441. Prince of the Road currently leases over sixty vehicles to provide transportation services. It is continually in the process of hiring new drivers. Their dispatchers are in the office answering calls from 7:30 a.m. to 4:30 p.m., and take turns with the pager in the evenings. Prince of the Road performs driver training, background checks, and physicals for drivers over 70 years of age. Prince of the Road's target market is HHS and various other governmental entities. Prince of the Road recently simplified its rate structure. The company has a form that they would like caseworkers to use, but it is not required. Prince of the Road does not have a twenty-four hour notice requirement.

With respect to the testimony of the witness from McCook, Nebraska, Mr. Schroll admitted that it is possible that Prince of the Road provided transportation for a client of HHS without authorization. He probably billed HHS for that trip as well.

Mr. Schroll stated that Prince of the Road has experienced scheduling problems. However, he stated, it is a rare occurrence when Prince of the Road cannot meet a request. Generally, they have problems with the short notice requests only.

Mr. Schroll also admitted that they have received complaints. Usually the dispatcher sorts out any problems. Prince of the Road drivers are also late or delayed from time to time. Ninety-nine percent of the time, however, it has to do with the person being transported. Prince of the Road does not have any transportation records regarding anyone with the last name Reuter.

Since A-1 has been providing HHS transportation, Prince of the Road has lost business in the Southwest portion of Nebraska. Some drivers have discontinued leases with Prince of the Road because there was not sufficient business. If Applicant were to continue to provide this service, traffic would be subject to diversion. Prince of the Road would not be able to give its drivers enough business and may eventually lose contracts with them.

Upon cross-examination, Mr. Schroll admitted that the number of trips for Prince of the Road during the past two years have increased. Drivers are disappearing in some areas but being added in others. Prince of the Road has two to three vehicles stationed in southeast Nebraska. Mr. Hippen has been driving for Prince of the Road for about one year. Sixty to seventy percent of Prince of the Road's revenue is derived from HHS transportation. Prince of the Road's percentage of revenue has increased significantly during the past few years. Mr. Schroll stated that it is quite possible that Prince of the Road's business would continue to grow with or without the presence of Applicant. Prince of the Road does use luxury vans in its operations.

Ms. Diana Williams, a dispatcher for Prince of the Road, testified that the Prince of the Road authorization form is not required to be submitted by caseworkers. Further, she did not believe it was a burden for caseworkers to fill out Prince of the Road's authorization form and send it in. Ms. Williams also admitted that they have on occasion been unable to fulfill a short notice request. She usually offers to pick the client up at a later or different time. Exhibit 16 is the Prince of the Road authorization form.

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

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 of 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, is to the extent to be authorized by the certificate, whether regular or irregular, passenger or household goods, is or will be required by the present or future public convenience and necessity. Otherwise the application shall be denied.

Neb. Rev. Stat. §75-311(1) (Reissue 1996).

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 character, financial fitness and fitness of business acumen. Applicant has a sufficient business plan demonstrating it is willing and able to provide the proposed service. Applicant also presented a general working knowledge of the industry and Commission requirements.

Attorneys for Prince of the Road, Midwest Special Services, Yellow Cab & Limo and Servant Cab argued in their written closing statements that Applicant was unfit. To support those arguments, these Protestants argued that the Commission should consider Applicant's continued rate violation, lack of vehicle marking, driver training and equipment availability. While we agree that Applicant should have immediately cured its rate violation following the Commission's order fining Applicant for said rate violation, during the last year, their ability to offer service for HHS has been in question. Moreover, Applicant testified that upon the granting of a certificate it would immediately bring its rates into compliance. We further believe Applicant's testimony that it will appropriately mark its vehicles if required by the Commission or if the present application is granted. The extent of Applicant's policy of driver background checks and driver training was a contested issue at the hearing. Although the Commission does not have any formal rules as of the date of this order requiring criminal background checks of drivers, it is strongly recommended by this Commission and has been made a part of the Commission's proposed transportation rules and regulations. Applicant's insurance agent testified that his company performs a driving history on all Applicant's drivers. We would like Applicant to invest more

in driver history checks and driver training, however, we find there is insufficient evidence to conclude that Applicant is unfit based upon its current driver hiring procedure. Finally, we find that Applicant has demonstrated that it has adequate means to place equipment available to provide the proposed service throughout its service territory. Based upon the evidence presented we do not believe that Applicant's coordination with High Plains Cab demonstrates that it does not have the ability to meet the needs of the public.

We note that Applicant made a last minute argument that this certificate should be granted because it has been acting under "color of authority." This argument was first raised in Applicant's closing statement filed on November 19, 2002. With respect to that argument, and based on the facts in this particular case, we find that Applicant has not made out a prima facie case for a grant premised on its "color of authority" argument.

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 "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. Based upon the evidence provided in this proceeding, we find that Applicant has demonstrated a sufficient level of need and necessity to support a grant in part of the application. Several of the HHS caseworkers testified that Applicant's services were needed transportation services. In addition, some of the testimony supports the position of the Applicant that the transportation needs of the caseworkers cannot be served as well

by existing carriers. In particular, Ms. Farrin, Mr. Bowman, Ms. Roland, Ms. Drenkow and Mr. Reuter testified that the transportation services offered by Midwest and Prince of the Road, are in their opinion, inadequate and unsatisfactory. Finally, we find that the Protestants, with the exception of Servant Cab, did not produce sufficient evidence that their operations would be endangered or harmed by the grant of this Application. We find, as a result that A-1 has met its burden of demonstrating need with respect to part of its application.

We do not find that sufficient evidence was produced by Applicant to support a grant of the application in competition with Servant Cab. Ms. and Mr. Wagner's testimony indicates that the point-to-point transportation currently provided in Lincoln averages to about seven trips per month. No witness brought forth testimony, other than the owners of A-1, indicating that Servant Cab was providing inadequate or unsatisfactory service. Servant Cab on the other hand demonstrated that it can dedicate a driver to particular clients if requested, that they are willing and able to take on additional business and that they would be specifically harmed by the diversion of HHS clientele in Lincoln and Lancaster County.

Moreover, no evidence was presented on need for A-1's services originating within Lancaster County and terminating outside Lancaster County. We assume that the majority of the service requests A-1 fulfills terminate in Lancaster County from points outside Lancaster County. Therefore, we further conclude that no unmet demand currently exists for this traffic. Until further evidence is presented particular to a need for A-1's service originating within Lancaster County to points outside said County in a subsequent application we find that the authority should be restricted so that Applicant is not able to provide transportation services originating in Lancaster County.

We further find that A-1 did not provide sufficient evidence to support the use of sedans or station wagons in this proceeding in competition with taxi providers. After acceptance of the restricted amendment, A-1 requested authority to use sedans, vans and station wagons. A-1 admittedly did not wish to provide taxi service or even transportation service in competition with taxi providers. A-1 did not indicate that it was holding itself out to the public for private pay sedan transportation services by advertising in the yellow pages or through other media of general availability. Rather, A-1's marketing was done by word-of-mouth and targeted to government subsidized programs and HHS transportation. Further, the testimony indicated that it would be cost prohibitive for A-1 to provide point-to-point transportation services in many

communities. The A-1 witness testified as to Exhibit 6 that she could not tell whether A-1 provided point-to-point transportation services within the towns listed with the exception of Lincoln. We find that it would be contrary to public convenience and necessity to permit A-1 to compete with taxicab providers by using sedans in areas currently served by taxicab carriers. Although A-1 indicates that it is not the intent of the company to directly compete with or effectively operate as a taxicab, a full grant of the authority requested would make it possible for them to do so on an unfair basis.

This Commission has held on previous occasions a distinction is necessary between taxi service and open class to prevent unintended harm to the availability of taxicabs all Nebraska communities.¹ Accordingly, we find Applicant may use sedans and station wagons in its operations in areas where no taxicab provider is authorized, otherwise the authority should be restricted to the use of vans. We also place a reservation in Applicant's authority as the Commission reserves the right to further restrict Applicant's use of sedans in the event that a taxi carrier satisfies all the requirements under Neb. Rev. Stat. § 75-311 in a community presently unserved by a taxicab carrier.²

Territory Requested:

¹ Throughout the proceedings in Rule and Regulation No. 148, we found that it was necessary to protect taxicab service providers from other classes of carriers. Specifically, in our April 3, 2001, order, we found "The identification of an open class of services is not intended, and should not be construed, to jeopardize existing or future certificates of authority to provide taxi service." We further believe it is consistent with Neb. Rev. Stat. § 75-311 (Reissue 1996) to decide, on a case by case basis, whether the proposed service would serve public convenience and necessity or whether the service would endanger existing operations. The use of sedans in direct competition with taxicab providers, we believe, would endanger existing taxicab operations. (A-1 appealed the Commission's final order in Rule and Regulation No. 148 which has not been resolved as of the date of this order. However, the legality of the Commission's interim policy, where the Commission made these initial policy findings, has been affirmed by the Nebraska Supreme Court.)

² See, e.g., United States v. Rock Island Motor Transit Co., 340 U.S. 419 (1951) where the Interstate Commerce Commission's (ICC's) authorized certificate of convenience and necessity contained a reservation that the ICC may impose such further restrictions as may be necessary to insure the service at issue remained auxiliary or supplemental to the train service of the railroad. The U.S. Supreme Court further held that this reservation did not offend the provision in section 212 of the federal rules which required a willful failure to comply with the act, orders or rules of the ICC be demonstrated prior to certificate modification, suspension or revocation. Id.

Common: Transportation of passengers in open class service between all points in Nebraska over irregular routes in sedans, buses, vans, and station wagons. RESTRICTION: The transportation of railroad train crews and their baggage is not authorized.

From the evidence adduced and being fully informed in the premises, the Commission is of the opinion and finds:

1. The applicant is fit willing and able properly to perform the service proposed and to conform with the provisions of Neb. Rev. Stat. § 78-301 to 75-322 and the requirements, rules and regulations of the Commission thereunder.

2. The proposed intrastate service is or will be required by the present or future Public Convenience and Necessity to the following extent:

C E R T I F I C A T E A U T H O R I Z E D

SERVICE AND TERRITORY AUTHORIZED: Common: Transportation of passengers in open class service between all points in Nebraska over irregular routes in sedans, vans, and station wagons. RESTRICTION: The transportation of railroad train crews and their baggage is not authorized. The transportation of passengers and their baggage point-to-point in Lancaster County is not authorized. The transportation services of passengers and their baggage originating within Lancaster County is not authorized. The transportation services of passengers and their baggage by sedan or station wagon originating from or point-to-point within any territory where a taxicab company holds a certificate or permit is not authorized. RESERVATION: The Commission expressly reserves the right to further restrict this authority with respect to sedans and station wagons, on its own motion or the motion of another, in the event that a carrier, which, meets all the requirements of Article 75, Chapter 3 of the Nebraska Revised Statutes and all applicable Commission rules and regulations thereunder, offers taxi services in territories unserved as of November 26, 2002.

3. The application should be granted as modified. In all other respects, the application should be denied.

Finally, we believe the findings in this order address the Applicant's Motion for Stay of Enforcement and the Cease and

Desist Order currently in place. Applicant may not provide transportation services for HHS or any other governmentally subsidized agency under its limousine authority and it is further prohibited from providing transportation services outside the scope of the certificate of public convenience and necessity granted in this proceeding. The Commission will therefore enforce its interim policy against Applicant in all other respects.

The Applicant should be aware that operations in violation of this or any other order of the Commission or operations outside the scope of Applicant's certificated 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 certificate.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application B-1594 be, and it is hereby, granted in part as modified; and that upon compliance with the terms and conditions as set forth in this Order, a Certificate of Public Convenience and Necessity shall be issued to A-1 Limousine, Inc. d/b/a A-1 Special Services, of Lincoln, Nebraska, authorizing the operations as set forth in the foregoing findings.

IT IS FURTHER ORDERED that the applicant shall not be issued the Certificate of Public Convenience and Necessity authorized by the Commission unless and until applicant has fully complied, within a reasonable time from the effective date of this Order, with Neb. Rev. Stat. §75-305 (fees), 75-307 (insurance), and 75-308 (rates), and with the rules and regulations of the Commission; and if upon expiration of such time applicant has not complied with such 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 until a Certificate of Public Convenience and Necessity is issued.

IT IS FURTHER ORDERED that any rate violations be remedied prior to the issuance of a Certificate of Public Convenience and Necessity.

IT IS FURTHER ORDERED that applicant shall render reasonably continuous and adequate service to the public pursuant to the authority authorized.

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

Application No. B-1594

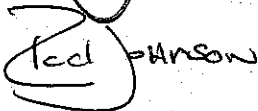
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IT IS FURTHER ORDERED that the Certificate of Public Convenience and Necessity authorized shall be subject to the terms, conditions, and limitations which have been, or may hereafter be, prescribed by the Commission.

MADE AND ENTERED at Lincoln, Nebraska, this 26th day of November, 2002.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:



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


Chair

ATTEST:



Executive Director

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION
