

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. B-1597
of Caring Network Inc., Omaha,)
seeking authority as a common)
carrier in Nebraska intrastate)
commerce in open class service)
between points in Douglas,)
Sarpy, Washington, Cass, and) GRANTED AS MODIFIED
Dodge counties over irregular)
routes. To include the)
transportation of clients of the)
Nebraska Department of Health)
and Human Services.)
RESTRICTION: The transportation)
of railroad train crews and)
their baggage is not authorized.)
Entered: March 25, 2003

APPEARANCES:

For the Applicant:
Mr. John Ekeh
1904 Farnam Street
Suite 626
Omaha, Nebraska 68102

For the Protestant:
Mr. John Boehm
811 South 13th Street
Lincoln, Nebraska 68508

For the Commission staff:

Shana Knutson
300 The Atrium
1200 N Street
Lincoln, Nebraska 68508

BY THE COMMISSION:

By application filed August 12, 2002, Caring Network Inc.,
(Caring Network) of Omaha, Nebraska seeks the following
authority:

Common: transportation of passengers in Nebraska
intrastate commerce in open class service by van
between points in Douglas, Sarpy, Washington,

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Cass, and Dodge counties over irregular routes. To include the transportation of clients of the Nebraska Department of Health and Human Services. 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 August 15, 2002. A hearing on the application was held via videoconference to Omaha, Lincoln, McCook and Hastings on November 20, 2002. Appearances at the hearing were as shown above.

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

Mr. Shehu Isah, who holds degrees in Chemistry and Business Management, has been working in the health care industry since 1998. Caring Network was incorporated in 2002 and had been in operation for about five months. Caring Network was primarily a home health care business. It assisted people with special needs in their homes. Caring Network employed about 17 people.

Mr. Isah's business proposal included providing transportation for Omaha area citizens to take them to and from medical appointments, and, to and from physical therapy sessions. Exhibit 4 was marked and identified as a bank statement of Caring Network to demonstrate that the company was financially fit to operate the proposed transportation service. Exhibit 5 was marked and identified as a list of vehicles currently owned by Caring Network to be used in the proposed business. Caring Network planned to use three vans, two of which were 16 passenger vehicles and one was a wheelchair accessible van.

Mr. Isah stated that Caring Network's proposed transportation service is unique in that Caring Network's personnel offers specific medical expertise. He further testified that working in the home health care industry has given him personal knowledge of the problems in the current transportation industry. He testified that some of the commercial providers such as the Prince of the Road request two to three days advance notice. He has also encountered problems with his patients not being able to obtain return transportation. In one specific instance, Midland Services was unable to provide transportation services for a client. Mr.

Isah testified that when patients must go outside their insurance network, higher costs are applied. Caring Network worked with a number of health care insurance companies such as Blue Cross. Mr. Isah also testified that he did not believe that the proposed transportation services he would provide would endanger the operations of existing carriers.

Mr. Isah testified that Caring Network has had four patients who have missed appointments because of the failure of transportation providers to show up and because of availability. He stated he had trouble with Midwest Services and Shared Mobility. Mr. Isah testified that he has personally contacted transportation providers for service. Primary caregivers in the home also arrange transportation. He stated that in his experience, HHS provided the service authorization but the home health care worker followed up and arranged the transportation. Mr. Isah testified that he was familiar with an occurrence in Mid-September where Protestant was contacted for transportation services and Protestant did not call back until four days later. On that occasion, however, Mr. Isah did not personally make that call to Protestant.

Upon further questioning, Mr. Isah stated that Caring Network had clients in Dodge, Sarpy and Douglas counties at the time of the hearing. Caring Network did not yet have clients in Cass or Washington counties at the time of the hearing.

Mr. Alasa Braimah testified next on behalf of Applicant. He was a transportation provider for Midland Services Link, in Omaha. Midland Services had been in the business for four years and primarily serves five counties most of which were in the Omaha area. He testified that he believed there was a need for Applicant's proposed service. He experienced occasions where Midland Services was unable to pick up passengers, particularly those without much advance notice. In his opinion, he stated, the transportation gap needed to be filled. He did not think that the addition of applicant's proposed service would endanger or impair Midland Services' operations.

Upon cross-examination, Mr. Braimah testified that Midland Services operates five vehicles in four to five counties, including Douglas, Sarpy and Lancaster. However, Midland Services can only satisfy the demand it receives in Douglas and Sarpy counties.

Ms. Pat Davis testified next on behalf of Applicant. Ms. Davis was a nurse by trade who stopped nursing so that she could take care of her disabled seven-year-old grandson. At the time of the hearing and for the preceding three years, she worked at the Parent Training and Information Center (PTI). She was employed at PTI as an information coordinator. Ms. Davis testified that her grandson had many medical needs and frequently was required to schedule appointments with doctors, for physical therapy and occupational therapy. Occasionally, because of work and other commitments she had not been able to take her grandson to his medical appointments. She testified that transportation became a problem, particularly when his appointments were added at the last minute and when his appointment schedule changed from week to week. If her grandson was not on a particular appointment schedule, which could be anticipated well in advance, arranging transportation was problematic. Ms. Davis stated that many times she was not able to give 24 hour and 48 hour notices.

Ms. Davis testified further that she had contacted Prince of the Road for transportation. She stated that she was placed on a machine, that she left her name and no one called her back. Because of that, Ms. Davis transported her grandson, leaving work and missing other appointments.

Upon cross-examination, Ms. Davis testified that her grandson was under an HHS program. He was covered, however, Ms. Davis still arranged the transportation. When she scheduled transportation services, she received an authorization from HHS. However, most of his appointments were not prescheduled. She testified that either she or her provider made the calls requesting transportation services and that HHS did not make the call to arrange transportation for her grandson. Ms. Davis further testified that she tried to use Protestant's service on about three occasions. She received an answering machine each time she tried to contact them. She testified that last week she tried to contact Prince of the Road on a Wednesday around lunchtime. She called their 308 number. She received a machine that told her to leave her name and number and that someone would get back to her. No one ever returned her call. She also contacted other providers but could not find available transportation service.

Ms. Dorothy Jacobs testified next on behalf of Applicant. Ms. Jacobs was employed as a social service worker for HHS. She

had been with HHS for 25 years. She recently experienced a problem finding a commercial transportation provider for her mother who was discharged from Creighton University Hospital. Ms. Jacobs had to leave work to take her mother home from the hospital because she was told that no other provider contacted was available. Midlands Services was unable to provide transportation for her mother.

Upon cross-examination, Ms. Jacobs testified that on a separate occasion she contacted Shared Mobility and Midlands Services who were unable to provide transportation services on short notice. She also contacted Prince of the Road, but it was also unable to accommodate her. On another occasion, she spoke to someone from Prince of the Road who referred her to a different number in Omaha. On that occasion, she also needed an immediate pick-up for a client. She was unable to acquire transportation services for that client. Ms. Jacobs further testified that she did not like to use Prince of the Road because of the several steps she had to take in setting up transportation.

Dr. Sanford Watkins testified next on behalf of Applicant. Dr. Watkins was a physician in the Omaha area. He testified that he was generally familiar with the transportation needs in the area. Dr. Watkins stated that was a need for transportation in two situations. One area was patient discharge. The second area of needs concerned non-emergent care for homebound patients requiring wheelchair equipped vehicles. According to Dr. Watkins, once the patient was admitted, the hospital personnel started to plan the discharge. If a patient was to be discharged a day early or late, the lack of transportation service, in many cases delayed the discharge. Arranging transportation was generally performed by the case managers; however, the case managers informed the physicians when transportation could not be arranged and discharge was to be delayed. This problem, Dr. Watkins stated, burdened the health care system and the patient's families. In the area of non-emergent care for wheelchair bound patients, Dr. Watkins stated that he was familiar of instances where patients were forced to call an ambulance service because they were otherwise unable to find adequate transportation services. Dr. Watkins stated that in his opinion, the Applicant's proposed service would be responsive to a real demand that was in the area.

Upon questioning, Dr. Watkins testified that he was employed at the Charles Drew Clinic. He has worked at Creighton University Med Center as well. In specific terms, Dr. Watkins did not know which transportation providers were contacted each time, however, as the team leader he was informed when transportation could not be arranged. Dr. Watkins did not know whether it was a policy of the Omaha hospitals to only use two Omaha ambulance companies to fulfill transportation needs.

The Protestant presented two witnesses in opposition to the application who testified as follows:

Mr. Sean Schroll, Chief Operating Officer for Prince of the Road, testified that he oversees the dispatching, the accounting and the billings. He was also in charge of the day-to-day operations of the business. Prince of the Road has been in business for over five years. Exhibit 9 was marked and identified as a list of the Protestant's fleet, drivers and vehicles. Prince of the Road has 65 vehicles in operation statewide. Among the counties in which it operates, Prince of the Road operates in Douglas, Sarpy, Washington, Dodge, and Cass counties. Prince of the Road has approximately 17 vehicles and drivers stationed in those counties.

Primarily, according to Mr. Schroll, Prince of the Road transports clients of HHS, Magellan, Goodwill Industries, elderly, and juvenile clients. The Protestant also transports for private insurance providers. Appointments and authorizations are taken through the home office, which is in Ravenna, Nebraska. Prince of the Road has nine incoming telephone lines. Mr. Schroll testified that Prince of the Road does not have an answering machine, but it does have a pager. Mr. Schroll stated that many times, they will get a call on their pager, which is a numerical pager, with only half the number or they leave out the area code. That would be a reason for Prince of the Road not getting back to clients. Mr. Schroll testified that Prince of the Road tries to reach clients back within 15 minutes. Mr. Schroll testified that he has never seen Exhibit 7. He stated that Exhibit 7 was probably not prepared by Prince of the Road.

Mr. Schroll testified that with the addition of another provider there was a potential for decreased business. If the amount of business declined, Prince of the Road would be forced to lay off drivers. Prince of the Road has had to lay off

drivers as a direct result of competition. In response to the Applicant's supporting witness' testimony, Mr. Schroll stated that the Omaha telephone number of Prince of the Road has been given out to clients for return rides and it is on some business cards.

Upon cross-examination, Mr. Schroll testified that Prince of the Road did not provide medically trained escort services. Mr. Schroll testified that he did not have any objections to the applicant's proposed business so long as Caring Network limited its services to its home health care clients. Mr. Schroll was asked why other carriers in the Omaha area did not protest the application. Prince of the Road owned seven to nine of its vehicles on Exhibit No. 9 and leased the remainder of the vehicles it uses in its operations. On a daily basis, Prince of the Road provided unscheduled transportation about 10 to 15 times. Prince of the Road has been unable to transport one or two unscheduled trips per week. Mr. Schroll testified that some of the applicant's witnesses were mistaken in their testimony where it pertained to the pager, since Prince of the Road's pager requires callers to key in numbers and is not voice-activated. Mr. Schroll testified that Prince of the Road was expanding in the Omaha area. Mr. Schroll admitted that his original testimony with regard to laying off employees was false as it pertained to the Omaha area.

Mr. John Miller testified next on behalf of Prince of the Road. He was in charge of dispatching in the Omaha area. He was a subcontractor for Prince of the Road. He received calls from Prince of the Road headquarters in Ravenna for transportation service and dispatched his drivers accordingly. He stated that if he receives calls directly from clients, he forwards those calls to the Ravenna office. Mr. Miller carries a cellular telephone. To his knowledge, that number is not given out by the dispatchers in Ravenna. He stated that Prince of the Road provides roughly 80 scheduled transports in the Omaha area daily. He further stated that Prince of the Road's business in Omaha has been slowly expanding. He has hired two backup drivers to assist Prince of the Road in peak hours; however, the drivers are not yet fully engaged on a day-to-day basis. According to Mr. Miller, additional competition would potentially siphon off Prince of the Road's business.

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

For a grant of authority, an applicant must prove that it is fit, able, and willing to provide the proposed service and that the proposed service "is or will be required by the present or future public convenience and necessity." Neb. Rev. Stat. § 75-311 (Reissue 1996). In the present application, the Commission finds the evidence provided through the applicant and supporting documentation provides that applicant possesses the financial ability to operate the proposed service. We further find that the applicant's testimony provided sufficient evidence regarding his managerial skills to operate the proposed business. The applicant has had significant experience in working in an industry, which caters to the public need and demand. His readiness is demonstrated by the fact that he has obtained vehicles to be used in the proposed service and has taken steps necessary to ensure that the public is safeguarded by confirming with the Commission that the vehicle will be properly maintained and insured. Upon review of the all the evidence adduced at the hearing, we find that the applicant has provided the requisite criteria as well as a meaningful business plan with which to base a finding that the applicant is fit, willing and able to provide the proposed transportation service.

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

From the evidence adduced at the hearing, we find that the applicant sufficiently demonstrated that a need for the proposed service existed in a portion of the territory requested. Several witnesses voiced a need for additional transportation service. Several witnesses also testified that they would use or recommend and use the applicant's proposed service if the application is granted. However, the Commission finds that based on the evidence in the record and the testimony given that the territory should be limited to Douglas, Sarpy and Dodge counties. If the applicant has evidence related to need in the other counties originally requested, the applicant can bring a subsequent application for an extension of authority. Until then, the Commission finds that the proposed operation will serve a useful purpose that is responsive to the public demand or need in the territory as modified.

The Commission further finds that the purpose cannot be sufficiently met by existing carriers in the area. The Commission gives little weight to the testimony by the Protestant that he could at all times meet all demand in the Omaha area. The Commission further opines that the supporting witness testimony demonstrates that the need cannot be adequately met by the Protestant. Although the Protestant brought forth some evidence rebutting the witness' testimony with respect to its pager, the Commission finds the testimony of the applicant's supporting witnesses to be credible to the extent that they attempted to contact the Protestant to arrange transportation to no avail. The Commission further finds the testimony of Ms. Jacobs to be credible in that she spoke with an employee of the Protestant and attempted to arrange transportation service which the Protestant was unable to fulfill.

We note that to the extent that applicant's proposed services qualify as escort services under Neb. Rev. Stat. § 75-

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303 and as defined in Neb. Rev. Stat. § 75-302, those services are exempt from the entry regulations of the Commission. Therefore, no certificate or permit is required in order to provide escort services under contract with the Department of Health and Human Services or with any agency organized under the Nebraska Community Aging Services Act as provided in section 75-303(11).

Finally, we turn to the issue of whether existing carriers would be endangered or impaired by the granting of this application. Primarily, no substantive evidence of harm or endangerment was presented by the Protestants in the hearing. Both witnesses for Protestant testified that with added competition their business would potentially be affected. However, no specific evidence other than general fear of potential diversion was presented to the Commission. Accordingly, Commission finds that a grant of this application would not endanger or impair the operations of existing carriers including the Protestant.

In sum, we find that the applicant has met the requirements of Neb. Rev. Stat. § 75-311, and therefore, the application should be granted as modified. From the evidence adduced and being fully informed in the premises, the Commission is of the opinion and finds:

1. Applicant is fit, willing, and able to properly perform the service of a common carrier by motor vehicle and to conform to the provisions of Neb. Rev. Stat. §§ 75-301 to 75-322 (Reissue 1996) 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:

CERTIFICATE AUTHORIZED

SERVICE TERRITORY AUTHORIZED:

COMMON: Transportation of passengers in Nebraska intrastate commerce to provide open class service by van between points in

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Douglas, Sarpy and Dodge counties over irregular routes. To include the transportation of clients of the Nebraska Department of Health and Human Services. RESTRICTIONS: The transportation of railroad train crews and their baggage is not authorized.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application B-1597 be, and it is hereby, granted as amended above and that a certificate shall be issued to Caring Network, Inc., Omaha, Nebraska authorizing the services of a common carrier by motor vehicle as set forth above.

IT IS FURTHER ORDERED that applicant shall not be issued the certificate authorized by the Commission unless and until the 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), (Reissue 1996), 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 the applicant, be of no further force and effect.

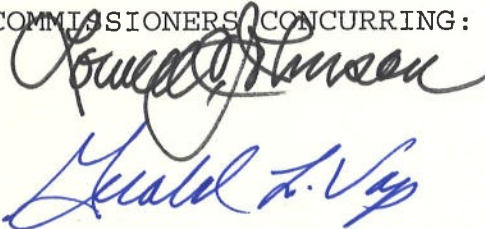
IT IS FURTHER ORDERED that applicant shall not conduct operations until a Certificate is issued.

IT IS FURTHER ORDERED that the Certificate 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 25th day of March 2003.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:



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


Chair

ATTEST:


Executive Director