

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) APPLICATION NO. B-1622
of Airlink Services, Inc.,)
seeking authority as a common)
carrier of passengers in taxicab)
service by sedans and vans over)
irregular routes between points)
in Dakota, Thurston, and Dixon)
Counties, including clients of) DENIED
the Department of Health and)
Human Services and)
subcontractors thereof.)
RESTRICTION: The transportation)
of railroad train crews and)
their baggage is not authorized.) ENTERED: MARCH 2, 2004

APPEARANCES:

FOR THE APPLICANT:

Bradford Kistler, Esq.
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Lincoln, NE 68501

FOR THE PROTESTANT:

Patrick Sealey, Esq.
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Sioux City, IA 51102

FOR THE COMMISSION:

Laura Demman, Esq.
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BY THE COMMISSION:

On March 21, 2003, an application was filed by Airlink Services, Inc., (Applicant or Airlink) seeking authority as a passenger carrier pursuant to Neb. Rev. Stat. Section 75-310. A protest was timely filed by Action Taxi & Limo, Inc (Protestant or Action Taxi).

A U T H O R I T Y S O U G H T

Common carrier of passengers in taxicab service by sedans and vans over irregular routes between points in Dakota, Thurston, and Dixon Counties, including clients of the Department of Health and Human Services

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and subcontractors thereof. RESTRICTION: The transportation of railroad train crews and their baggage is not authorized.

In order to process the application, a planning conference was held in this matter on May 12, 2003, at 10:00 a.m. at the Commission, 300 The Atrium, 1200 N Street, Lincoln, Nebraska and via telephone conference with the Applicant and Protestant. A hearing was held in this matter on July 23, 2003.

E V I D E N C E

Mr. Wayne Lundgren testified that he is the president and CEO of Airlink Services, the Applicant. He stated that he has been working in passenger transportation for 13 to 14 years, starting as a manager for a business charter bus company. He testified that over the past several years, he has had a significant amount of experience operating a large-scale charter transportation company, serving colleges and businesses. He formed Airlink Services in 2000, and started the business by operating an 18-wheel truck. He testified that he recognized a need to provide passenger transportation from Sioux City to Omaha, so he purchased a 15 passenger van and a 12 passenger minibus. He has provided charter casino runs and trips to the airport. He stated that he always intended to develop a taxi service in the courts of his business. He further testified that Airlink Services has interstate authority issued by the US Department of Transportation, Federal Motor Carrier Safety Administration, for authority to transport passengers on a contract basis, issued August 28, 2001 (Ex. 4). Airlink Services also has a permit from the Iowa Department of Transportation to transport passengers (Ex. 5).

Mr. Lundgren testified that since April, 2003, he has been running a taxi operation 24 hours a day, seven days a week, operating out of Sioux City, Iowa. Mr. Lundgren stated that he ceased operations when he learned of certain acts of mismanagement by an employee. Mr. Lundgren alleged that he learned of impermissible trips originating and terminating in Nebraska in early June, 2003. Mr. Lundgren maintained that he terminated employees involved in such illegal operations. As a result, he had to shut down operations. He testified that he hopes to return to 24-hour per day, seven day a week service, and would require the authority sought in this application in order to do so. He indicated that he has taken measures to prevent such a situation from occurring again.

Exhibit 7 shows four Airlink Services vehicles, which Mr. Lundgren testified are in excellent condition and well-

maintained. He further testified that he has an on-capp mechanic. He stated that he is in a financial position to purchase additional vehicles as needed.

When Mr. Lundgren hires vehicles, he requires a completion of a four-page application demonstrating previous work history, and a drug and urinalysis test, he testified. He also obtains a criminal background check.

Mr. Lundgren prepared a financial statement, Exhibit 9, which shows the financial condition of his company as of April 30, 2003.

Mr. Lundgren seeks to provide intrastate transportation between points in Dakota, Dixon and Thurston Counties. He further testified that his purpose is to serve the "Siouxland" area, which encompasses Sioux City, Iowa, as well as South Sioux City and Dakota City, Nebraska, among other communities.

Upon cross-examination by protestant Action Taxi's counsel, Mr. Lundgren stated that he operates an 18-wheel truck two or three days a week, and was not in the office all of the time. He further testified that prior to ceasing taxi operations, Airlink Services' rates were competitive with Action Taxi's rates. He stated that the manager involved in arranging the illegal intrastate Nebraska trips was Angie Shutt, who was formerly an employee of Action Taxi. Other employees of Airlink Services have been employees of Action Taxi, he stated.

Exhibit 11, submitted by protestant Action Taxi, is a letter to the editor from former Airlink employee Alvin Willis, which appeared in the Sioux City Journal. Upon questioning my Commissioner Landis, Mr. Lundgren testified that Mr. Willis was not in his employ at the time the letter was written.

Mr. William McLarty testified next on behalf of the applicant. Mr. McLarty has been the mayor of South Sioux City for twelve and one-half years. Mr. McLarty testified that the legislative committee of the South Sioux City Council voted unanimously to support the application of Airlink. Exhibit 12 is a letter submitted by the Committee, and states that the City of South Sioux City has grown 25% in the last 10 years.

Upon cross-examination, Mr. McLarty testified that he has been told by other people on less than a dozen occasions that the current taxi has been "kind of late" (Tr. 56:20 - 57:6). Mr. McLarty agreed that the city of South Sioux City is a supporter of minority-owned businesses.

Upon redirect examination, Mr. McLarty testified that the city administration of South Sioux City hopes to see Action Taxi continue.

Upon questioning by Commissioner Landis, Mr. McLarty testified that he believes the current service is adequate, but there is room for more service as the population increases. He further testified that his opinion is based on a desire for additional competition, but stated that he did not think the city could handle three or four carriers. Mr. McLarty stated that the city did not do a study to determine whether two taxicab services could survive in the community.

Ms. Teresa Frank testified next on behalf of the applicant. Ms. Frank is a special service supervisor with the Nebraska Department of Health and Human Services (NDHHS). Clients of NDHHS require transportation for medical appointments, grocery shopping, picking up medications, and appointments with work programs, as well as some trips to Omaha and to a health facility on the Winnebago Indian Reservation. Most of the individuals requiring transportation to the reservation, which is in Thurston County, live in Dakota County, she testified. She stated that most of the time, her clients are responsible for making their own transportation appointments. She described types of trips needed within Dakota County, such as transportation to daycare providers and to a job search program. Regarding volume of trips, she was unable to provide a precise number, but testified that there may be a day that passes where no vouchers for trips are given, and the next day she may give three.

Ms. Frank further testified that there are three transportation providers that she is aware of: A-1 Special Services, Prince of the Road, and Action Taxi, plus the Sioux City public transit system, which serves South Sioux City. She testified that her office uses Prince of the Road and A-1 more for over-the-road transportation, rather than local service, but acknowledged that both companies are available for over-the-road and local trips. She testified that Action Taxi is more often used locally. She testified that it would be beneficial if another provider such as Airlink was available.

Upon cross-examination, Ms. Frank testified that all NDHHS clients served by her office have access to three or four providers.

Upon questioning by Commissioner Landis, Ms. Frank testified that she has not heard complaints regarding the timeliness or responsibility of current providers.

Mr. Rick Lecy testified next on behalf of the applicant. Mr. Lecy testified that he is employed by the Marina Inn as general manager. The Marina Inn is a hotel and conference center, with a restaurant. Mr. Lecy testified that the Marina Inn has a reputation as the best hotel and restaurant in the area, serving a combination of corporate and leisure visitors. He indicated that some guests require ground transportation in Sioux City and Nebraska. His staff arranges transportation at the request of guests "almost daily" (Tr 81:11 - 82:1). His staff calls Action Taxi, and on occasion, Airlink, for transportation. He testified that he has been having problems with Action Taxi, namely difficulty obtaining transportation on busy nights. He stated that staff sometimes gets a busy signal for a long period of time when calling Action Taxi. He testified that he has had complaints from guests that the cabs are not particularly clean, but he has never personally been inside one of the cabs. He testified that in his opinion, there is a need for a service such as Airlink.

Upon cross-examination, Mr. Lecy testified that most of the business clientele at the Marina Inn require trips to Sioux City.

Ms. Cheryl Messerschmidt testified next on behalf of the applicant. Ms. Messerschmidt is employed by the Siouxland Convention Center in South Sioux City, which is a full service facility, used for trade shows, weddings, private parties, corporate meetings, and other events. The facility can hold up to 4,000 people, she testified. Guests come from all over the country, and often require taxicab service if they are unable to drive. She arranges transportation for the convention center's guests, and has called Action Taxi on occasion. She recalled that the longest period of time a guest has waited for a cab from Action Taxi to arrive is 45 minutes to one hour. She testified that she wouldn't personally ride in a cab from Action Taxi, because the cab is dirty.

Upon questioning by Commissioner Landis, Ms. Messerschmidt testified that she has not personally called Action Taxi to complain about the cleanliness of the cab. She further testified that she is a member of the Hospitality Association, which has expressed concerns to Action Taxi about the cleanliness of its cabs. She stated that the Hospitality Association expressed similar concerns to each and every taxicab service provider, not including Airlink, which was not in existence at the time. The concerns were expressed over a year ago, and she testified that she has not seen any improvement in the service provided by Action Taxi.

Next, Ms. Toni Haben testified on behalf of the applicant. Ms. Haben testified that she is a night bartender at Callahan's Corner Lounge, which is a liquor store and a bar. She stated that she works four nights a week, from 5:00 p.m. until about 1:30 a.m. She calls a taxi service every night for persons who are unable to drive due to consuming alcohol. She testified that she calls cabs for as many as 16 customers in one night. She stated that she only calls Action Taxi, which is busy on weekends. She indicated that if a person cannot get a cab, she gives them a ride home. She testified that the applicant is her uncle, but that her relationship to him would not influence her testimony.

Mr. Vincent Farrer testified first on behalf of protestant Action Taxi. Mr. Farrer owns Siouxland Taxi, which he started about 18 years ago. Siouxland Tazxi is able to serve clients in South Sioux City, he stated. He testified that he is able to serve clients in South Sioux City, as long as the trips are interstate. Mr. Farrer testified about instances where Airlink would arrive at trips that had been arranged with a Siouxland Cab dispatcher, and he believed this was made possible by a handheld monitor of some sort. He stated that in his opinion, another taxi company in the Siouxland area would not be successful.

Upon cross-examination, Mr. Farrer testified that granting authority to Airlink would not impact anything that Siouxland Taxi is able to do in the state of Nebraska, and that he did not care whether Airlink obtained authority.

Mr. Dave Watkins testified next on behalf of protestant Action Taxi. Mr. Watkins works as a dispatcher for Action Taxi, and has done so for a month and a half. Mr. Watkins testified that he receives calls and sends drivers to go pick up clients. Mr. Watkins testified that there have been times when a client calls for service, and an Airlink cab arrives to pick up that person. On voir dire, Mr. Watson testified that he has not personally observed an Airlink vehicle picking a fare at a location to which he had dispatched an Action taxi. He further testified to dishonest acts of Angie Schutt, a former dispatcher for both Action Taxi and Airlink.

Mr. Marlon Stowe testified next on behalf of Action Taxi. Mr. Stowe is a driver for Action Taxi, and stated that in two instances, he was dispatched to a location, only to find that a vehicle from Airlink was already there. Mr. Stowe testified that he would not use his air conditioning in his cab, because he must pay for half of the gas to run his car.

Upon cross-examination, Mr. Stowe testified that he temporarily left Action Taxi to work for Airlink.

Upon examination by Commissioner Landis, Mr. Stowe testified that he was not aware that he could collect a fuel surcharge from his customers.

Ms. Valorie Blanchard testified next on behalf of protestant Action Taxi. Ms. Blanchard testified that she is currently employed by Action Taxi, but has previously been employed by both Siouxland and Airlink. Ms. Blanchard testified regarding activities of Angie Schutt, whom she said intentionally made efforts to take Action Taxi out of business. She testified that she currently performs about six trips per day to and from the IBP plant and surrounding locations.

Upon questioning by Commissioner Landis, Ms. Blanchard testified that she runs the air conditioner on humid days, but not necessarily on hot days, unless the customer request it. She further testified that she was not aware that she is allowed to collect a fuel surcharge.

Finally, Mr. Luis Nuno testified on behalf of protestant Action Taxi. Mr. Nuno is the owner of Action Taxi. He purchased the company, including all the vehicles, from Don Heidzig in March of 2002. He testified that a general maintenance check, including checking brakes, oil and transmission, is performed every three or three and a half weeks. There are seven vehicles in the fleet, and all have air-conditioning, although one needs repair. Mr. Nuno testified that he does not allow his drivers to use personal scanners. He stated that Action Taxi has had trips for Callahan's 25 times in the past half-month. He further testified that Action Taxi performs drug tests. Mr. Nuno stated that when Angie Schutt and other employees left the company, Action Taxi lost three or four business accounts. Mr. Nuno further testified that it is his belief that there is not enough room for three cab companies in town.

Exhibit 17 shows the volume of traffic served by Action Taxi. Mr. Nuno testified on cross-examination that approximately 6.3% to 6.5% of Action Taxi's business is performed in Nebraska intrastate commerce.

Upon cross-examination, Mr. Nuno agreed that it is possible that some clients could "double call" the cab companies, meaning that a client would call two companies and ride in whichever cab arrived first. He admitted that his drivers were permitted to

make their own decision as to whether to run an air conditioner. Mr. Nuno further testified that he does not currently have authority to provide transportation from Dakota County to Thurston County, but stated that he was aware that Airlink's application would permit Airlink to perform such trips.

Finally, Ms. Donna Goodier made a statement as a member of the public (i.e. not on behalf of the applicant or protestant). Ms. Goodier stated that she is the Director of the South Sioux City Convention and Visitors Bureau, and vice chair of the Hospitality Association. She indicated that the quality of cab service is an important part of a visitor's experience. She stated that an additional cab service would offer healthy competition. Referring to cab service generally, she opined that it is important to continually upgrade and keep things up to date.

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

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 his character, financial fitness and fitness of his business acumen. He presented knowledge of the area, the industry, and Commission requirements. Although it appears that his staff engaged in unethical practices in the past, he has since terminated such staff and the Commission is satisfied with his resolution of the situation.

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 public convenience and necessity was set forth by the Nebraska 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. Given the record before us, we find that the applicant has failed to demonstrate that the proposed operation would serve a public demand or need which could not be served as well by existing carriers. The applicant did not present sufficient evidence to support the claim that there was a need for transportation service that was currently unmet by other carriers. The testimony centered around a general desire for more competition in the area that the applicant seeks to serve, rather than specific evidence of a need for additional service to address the volume of traffic in the proposed service area.

The Commission finds further that the protestant presented sufficient evidence that the protestant can meet the transportation needs that the applicant asserted exists. We find that the applicant's service will endanger or impair the operations of the existing carrier.

Accordingly, we must find that the applicant is fit, willing, and able, but has not met the public convenience and necessity test of Nebraska law. The Commission, therefore, finds that the application should be denied.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application B-1609 be, and is hereby, denied.

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MADE AND ENTERED at Lincoln, Nebraska, this 2nd day of March, 2004.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:



Chairman





ATTEST:



Executive Director



//s//Frank Landis

//s//Gerald L. Vap