

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of OMALINK, INC.,) APPLICATION NO. B-1628
Lincoln, Nebraska, seeking) SUPPLEMENTS 1 and 2
authority (Supplement 1) to)
transport passengers by)
limousine as a common carrier)
between points in Lancaster)
County on the one hand, and on)
the other hand, points in) GRANTED IN PART
Nebraska over irregular routes,) DENIED IN PART
and (Supplement 2) authority to)
transport passengers and their)
baggage in open class service in)
Lancaster County, and between)
points in Lancaster County on)
the one hand, and on the other)
hand, points in Douglas County.) ENTERED: AUGUST 8, 2006

APPEARANCES:

For the Applicant:

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For the Protestants Servant
Cab LLC and Midwest Special
Services, Inc.:

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For the Commission Staff:

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For the Protestant R&F
Hobbies, Inc., dba Prince of
The Road:

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For the Protestants VIP
Limousine, Omaha Limousine,
A-1 Transportation:

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BY THE COMMISSION:

B A C K G R O U N D

By application filed November 17, 2005 OMALiNK, Inc. (OMALiNK) of Lincoln, Nebraska seeks to extend its authority as a common carrier of passengers in Nebraska intrastate commerce by proposing transportation of passengers and their baggage in limousine service between points in Lancaster County, on the one hand, and on the other hand, points in Nebraska over irregular routes (Supplement 1), as well as the transportation of passengers and their baggage in open class service between points in Lancaster County, on the one hand, and, on the other hand, points in Douglas County (Supplement 2). Nebraska Department of Health and Human Services designation is sought with respect to the Supplement 2 application. Notice of the application was published in The Daily Record, Omaha, Nebraska, on December 5, 2005. Protests to the application were filed by VIP Limousine, Omaha Limousine, and A-1 Transportation on December 19, 2005; Prince of the Road on December 28, 2005; and Midwest Special Services and Yellow Cab and Capital Cab dba Servant Cab on January 3, 2006.

A hearing on the application was held on May 24, 2006, and May 25, 2006 with appearances listed above.

E V I D E N C E

Public Testimony

Thirteen members of the public testified regarding the application. These witnesses testified as follows:

Mr. Tom Francisco attended the hearing on behalf of the citizens of Lincoln and Lancaster County.

He stated that there is a need for more services to foster competition. He is concerned with the growth of Lincoln and believes there will be a need for more specialized services.

Mr. Francisco testified that VIP Limousine is the only place in town to offer specialized service, and they are not technically in town. Also, according to Mr. Francisco, taxis are not clean and there is a need for cleaner taxis and more formalized rates on taxi service. In regards to limos, Mr. Francisco stated that he has seen a few limos broken down due to improper maintenance and that there may be a problem with safety regulations. Also limos must be more readily available, and there needs to be a variety of vehicles to choose from.

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Upon cross-examination Mr. Francisco testified that he supports the entire application, but also stated he doesn't know the needs of Health and Human Services. Francisco stated that he works for ALLTEL and would utilize the bus services and limousine services. Furthermore, he has used limousine service three or four times in the past year for clients of ALLTEL. Francisco also stated that he understands the applicant is not seeking a taxi certificate in this application, but would support such an application at some time in the future. Francisco testified that he did not know what the applicant's rates would be. He is aware that complaints can be voiced to the Nebraska Public Service Commission regarding many of the issues mentioned above.

Next Ms. Julia Dixon testified as a client of the Nebraska Commission for the Blind and Visually Impaired.

She stated that she uses the bus for travel because the cabs are too expensive. Ms. Dixon claimed that a cab can take 10 minutes to an hour and a half to arrive after a call has been placed, and half the time it takes two hours. She testified that she couldn't afford the current costs of OMALiNK, which is \$60 dollars. Also Ms. Dixon stated she needs reliable service because she is blind, old, or doesn't know the city very well.

Upon cross-examination Ms. Dixon testified that she does not know the rates that OMALiNK would charge, or how many vehicles OMALiNK is proposing to operate. Also she hasn't made use of limousine service because it is too expensive. She testified further that her need for service would be taxicab in nature. She claims to have called and complained to the taxi company about service, cleanliness, and pricing, but has never spoken to management.

Upon further cross-examination Ms. Dixon testified that she has paid \$60 round trip to go to and from her doctor in Lincoln. She pays this expense out of her own pocket.

Next, Mr. John Hoppe, Jr. testified. (Note: Hoppe was to be called as a witness for the applicant, but instead spoke during public testimony) Hoppe is on the Lincoln Airport Authority Board ("Board") and testifying on his own behalf not representing the airport.

Mr. Hoppe stated that the Board did not take a position in this application, but as a citizen he feels that it would be a good thing to have additional services for the airport and their

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customers. Hoppe testified that as an individual he is in support of the application.

Upon cross-examination, Mr. Hoppe testified that the Airport Authority oversees the operations of the airport, and that he was the past chairman of the board. Hoppe stated that in his eight years on the Airport Authority he has observed the ground transportation available to and from the airport. He did not have an opinion on the condition of the taxicabs at the airport because he has never used them.

Upon cross-examination Hoppe testified that he supports the portion of the application that would apply to any transportation that might be available to the airport. Mr. Hoppe stated that airport passengers make their own arrangements for transportation.

Next, Roy Hobley, who is a blind man, testified in favor of the applicant.

Mr. Hobley's testimony was concerned with cab service. Mr. Hobley testified that his only means of transportation is a taxicab. He stated that it took on average one to two hours to get a cab, and he has never had a positive experience with the cab company. Mr. Hobley testified that he has spoken to managers who are very arrogant. Also he has taken many trips to the Commission for the Blind and Visually Impaired, and on one particular instance the driver got lost. Mr. Hobley claimed that on six occasions he has called and asked for a cab only to have the cab come and leave- the drivers claimed that the lobby telephone, which Mr. Hobley asks the cabs to ring when they arrive, did not work. Mr. Hobley testified that his lobby telephone works fine. Finally, Mr. Hobley stated that he has had cab drivers tell him that the company's concept of customer service is awful and non-existent.

Upon cross-examination Mr. Hobley testified that he personally pays for all of his transportation. Hobley stated that he was not there to support the limousine service, and that he did not realize the application did not propose a taxi service.

Upon further cross examination Mr. Hobley stated that somebody could use a vehicle other than a taxicab and meet his needs of getting to appointments on time.

Next, Christine Sexton testified as to the service of the taxis in Lincoln.

She stated that the taxicabs are filthy and that she obtained 30 signatures of neighbors who have all waited two hours and twenty minutes or more for a cab. Ms. Sexton recalled an encounter with the cab company on May 11, 2005. She had called the night before a scheduled doctor's appointment to get a cab at 1:00 PM for a 2:00 PM appointment. The cab was late and the driver said it wasn't his problem. Ms. Sexton further testified that she called for a cab to get a ride home from the doctor's office. The dispatcher said there would be a 5 to 35 minute wait. The cab came two hours and forty-five minutes later. She admitted that the newspaper article regarding the application might have been misleading, as she believed the application was to provide more taxi service.

Upon cross-examination, Ms. Sexton stated that the concern is getting transportation that is reliable, clean, courteous, affordable, and timely. According to Sexton that transportation does not have to be taxicab service.

Upon further cross-examination Sexton testified that she understands that all taxicabs are now smoke-free and under different ownership. She also stated that if one additional sedan were available the transportation problem would not be solved. Also, Ms. Sexton testified that she would likely not make use of limousine services in Lincoln. Furthermore, Ms. Sexton stated that when she complains to Health and Human Services about cab service, they refer her to the cab company. She claims to have spoken to the cab company about her problems, and they tell her they are doing the best they can. Ms. Sexton testified that she doesn't have any idea what the applicant would charge for services.

Next, Jon Camp testified. Mr. Camp is a member of the Lincoln City Council and he appeared as a citizen of Lincoln, not in his official capacity as a city councilman. (Note: Camp was to be called as a witness for the applicant, but instead spoke during public testimony).

Mr. Camp stated that he has owned property in the Haymarket for 24 years and has known the applicant for a number of years. He testified that he supports the application and is in favor of more transportation services in Lincoln, or as he called it, "seamless" transportation. He also supports a competitive environment, and said that it does help all vendors, all competitors, to provide a better service.

Upon cross-examination Mr. Camp acknowledged that there has been general growth in the Lincoln's population, normally around one to one and a half percent increase occur from year to year.

He testified that the city must focus on quality of transportation.

Upon further cross-examination by Mr. Camp stated that he did not appear to support any personal need for transportation. He testified that he is not aware of any communication between the Lincoln City Council and the Nebraska Public Service Commission, and he is not aware of how many vehicles the applicant proposes to provide. Mr. Camp also testified that as a councilman he has heard complaints about cab service, bus service, and van service in Lincoln.

Jeff Maul testified next. He represented the Lincoln Convention and Visitors Bureau, specifically the tourism entity for the city of Lincoln.

Mr. Maul praised the applicant for the operation of a very successful shuttle service between Lincoln and Omaha. He testified that as major tourism event occur in Lincoln there is a great need for front line workers in the transportation industry that are clean and friendly. He stated that OMALiNK currently provides those types of people for their shuttle service, and that they have received numerous compliments regarding the shuttle service. Maul approves of what OMALiNK is looking to do in its application.

Upon cross-examination Mr. Maul stated that he is not testifying about his personal need for transportation, and he is not aware of whether OMALiNK has been an economically viable operation. Mr. Maul testified that the OMALiNK, which normally runs from Lincoln to the Omaha airport, could encourage people to fly out of Omaha instead of Lincoln, but it may be due to the fact that a flight is cheaper out of Omaha versus Lincoln. Mr. Maul stated that he is not aware of how many vehicles the applicant intends to operate, and he is not testifying in support of the Health and Human Services portion of the application. He is, however, in support of both the limousine and open class portions of this application.

Upon interrogation by Mr. Breiner, Maul testified that he was testifying for the Lincoln Convention and Visitors Bureau and that the position stated above is the position of the Bureau in regards to the application at hand.

Upon further cross-examination by Mr. Maul testified that it is part of his job to sell Lincoln to potential visitors and make them aware of what options they have available to get around the city. It is then up to the visitor to decide if they want to use the suggested options. Mr. Maul then stated that it

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is beneficial to have more options and that competition is always welcome.

Rose Dominy testified next and summarized several bad experiences that she has had with the cab service in Lincoln.

On cross-examination, Ms. Dominy understood that a call could be placed to the cab company if there was any type of complaint, but admitted that she doesn't call after every bad cab ride. She also testified that once her coupons for cab service run out, she has to pay for the cab rides herself. Ms. Dominy also admits that she would be interested in other transportation options that could be made available.

Vicki Harding the owner of Transport Plus in Lincoln, which has been in business since 1997, testified next. Transport Plus has nine vans, five of which are wheelchair accessible. According to Ms. Harding, Transport Plus plays a key role in Lincoln transportation. Ms. Harding feels that there are enough companies in town already that are able to serve the public, and adding another would only hurt those existing ones. Ms. Harding opposes the application, but believes that OMALiNK should be able to go to the Lincoln Airport.

Upon cross-examination Ms. Harding admitted that there are many competitors in Lincoln, but at the same time she has had success in growing her business since the time of its inception. Harding also testified that she did not file a protest to the application.

Upon further cross-examination Ms. Harding testified that if the need arises Transport Plus would add to its fleet to accommodate that need. Also, Harding stated that she refers many potential customers to OMALiNK for services between Lincoln and Omaha.

Laura Benda next testified regarding cab service in Lincoln. Ms. Benda testified that the wait for a cab is not reasonable. Being a mother, she often travels with her child and does not let her child to touch anything in the cab because of the odor or the lack of cleanliness. She stated that she lived in Kearney, Nebraska and never waited more than 15-20 minutes for a cab. She realizes that Lincoln is a bigger city, but the cab company should be able to respond to demand and be on time more.

On cross-examination Ms. Benda stated that she arranges for her own transportation and that she pays for everything out of her own pocket. In a normal week she takes three cab rides. Benda testified that she would not make use of the limousine or

Health and Human Services portion of the application. Furthermore. She did not know how much the applicant would charge for his service. She also admitted to not knowing of any other transportation services available in Lincoln, since she is new to the city. Also she stated that one sedan and one limousine would not solve any of her problems, but it would be a start. Ms. Benda agreed that as demand grows the proposed service of the applicant would also grow.

Mike Schafer testified on behalf of the League of Human Dignity (LHD), which is an organization that serves people with disabilities in 54 counties in Nebraska.

He claimed to in a neutral position, but wanted to raise concerns regarding the history of OMALiNK not providing wheelchair accessible service between Omaha and Lincoln. The LHD is of the position that OMALiNK has a legal obligation under the Americans with Disabilities Act (ADA) to provide wheelchair accessible service or contract with someone to provide that service. On the other hand, Servant Cab and Transport Plus do provide wheelchair accessible transportation, which, according to Schafer, has been used considerably and has been appreciated by those who use it. Mr. Schafer further testified that several board members at the LHD use wheelchairs and he often waits with them after meetings until a cab comes. He said that he has never waited an inordinate amount of time.

On interrogation by Commissioner Landis, Mr. Schafer testified that wheelchair accessible transportation continues to grow as the need for that type of transportation grows. He stated that he and Mr. Stokes (owner of OMALiNK) have discussed this issue and Stokes claimed that he couldn't afford to provide wheelchair access at this time.

Lea Kinnison testified on her own behalf regarding limousine service in the city of Lincoln.

Kinnison recited a story about trying to book limousine service for her daughter's wedding. She called VIP several times and left messages, but did not receive a call back for several days. By that time her daughter had booked Molly the Trolley from Kincaid Motor Coach and sent in deposit money. However, Kincaid later informed her daughter that the trolley would be retired at the end of 2005 and could not be used for the wedding; the deposit money was not returned until they spoke with the corporate office in Kansas City. She then called VIP back, and she stated that she received the same poor customer service once again. They finally received the service they needed from Luxury Limousine and were very pleased.

Upon cross-examination Ms. Kinnison admitted that her limousine needs were met by Luxury and will continue to use Luxury in the future. Ms. Kinnison said she would look at other competitive options if OMALiNK were granted limousine authority.

Applicant's Evidence:

Applicant called 14 witnesses in support of its application. These witnesses testified as follows:

Doug Wassung, the owner/operator of the Ramada Limited South located on 1511 Center Park Road in Lincoln, testified on direct examination that the Ramada is an 80-unit property with convention space.

Mr. Wassung stated that he is involved in day-to-day operations, and that his clientele use ground transportation in Lincoln from time to time. The options available to the hotel patrons are van service to and from the hotel, and taxicab service. Mr. Wassung testified that since the hotel van service is not a 24-hour a day service, taxis are used, usually around 5 times per week. Mr. Wassung also stated that he has observed taxicabs and their conditions as they arrive at the hotel. According to Mr. Wassung, the taxis are generally older used vehicles and could probably be cleaner and in better shape.

Furthermore, Mr. Wassung testified that he assists his clientele in making cab reservations and has observed how long it takes the cab to arrive after it has been called. He said that it varies, but the cab company will usually say about 10 minutes to an hour for a wait. Mr. Wassung also stated that he is familiar with the Lincoln Lodging Association (LLA). The LLA involves most of the hotels in Lincoln and meets monthly to discuss various topics regarding standards in the hotel/motel business and allows people to voice opinions about the industry. Mr. Wassung is the immediate past president of the LLA. Mr. Wassung also testified that toward the end of his term as president there were concerns regarding Lincoln taxicab services. After discussion during several LLA monthly meetings Mr. Wassung offered to put together a letter of concern which was sent to the cab company, the Public Service Commission, the Lincoln Chamber of Commerce, and the Mayor of Lincoln. According to Mr. Wassung, the letter addressed the timeliness of cab service in Lincoln.

On interrogation by Commissioner Landis, Mr. Wassung was asked if the taxicab service generally arrived within the

promised time frame. Wassung stated that since the letter has been sent out, the cabs generally arrive within the promised time frame.

Upon cross-examination by Mr. Wassung stated that he is testifying on behalf of his customers and on behalf of his personal transportation needs. He also admitted that he is aware of other transportation services in Lincoln other than the taxi service, but has never made use of them. According to Mr. Wassung, the normal route of the Ramada vans is from the hotel to the Lincoln Airport and back. Beyond that, there has to be another transportation service involved. Once again, Mr. Wassung testified that Servant Cab has been responsive to the issues raised by the LLA letter.

On interrogation by Mr. Breiner, Wassung clarified that he has not been in attendance at the meetings between the LLA, the Public Service Commission, and Servant Cab. He has heard some feedback regarding the general points/arguments made at those meetings.

William D. Scott, is the principal/owner of a commercial real estate development company, WRK Corporation, located in the Haymarket in Lincoln.

He testified that he has many customers that come into town at least once a month. He stated that they normally fly into the Lincoln Airport from a major metropolitan area. Mr. Scott said that he normally picks these customers up from the airport in his personal vehicle. Mr. Scott testified that when there are multiple customers coming in it would be of great value if there were for hire ground transportation available at the airport. He would prefer the vehicle to be a newer, comfortable vehicle so that the clients have a favorable first impression of Lincoln. Scott also testified that he would not normally need limousine service

Upon cross-examination Mr. Scott testified that he would be supporting the limousine part of the application, although he would not utilize that service very often, and he is not supporting the Health and Human Services portion of the application. Scott stated that most customers do not stay in Lincoln for an extended period of time, and that only a few of them would rent cars. Scott testified to a situation a few years ago when one of his customers got a cab and was not happy with the service, which put him in a bad mood by the time Scott met up with him. Consequently, Scott has tried to avoid the cab service for his customers. Scott admitted that he has not discussed the applicant's rate structure for the services, or

the number of vehicles that the applicant tends to operate. Scott further testifies that he could make use of the one sedan the applicant proposes and believes if demand increases then there would be more sedans available.

Carrie Marquis is the sales and marketing director for four hotels in Lincoln- Howard Johnson, Days Inn (airport location), Ramada Inn (airport location), and Days Inn and Suites.

Ms. Marquis testified that when there is a customer problem or complaint it is brought to her attention. Ms. Marquis also stated that ground transportation is a big part of customer service. According to Ms. Marquis, the two hotels located at the airport have shuttle services and customers that come from the Omaha airport frequently use OMALiNK shuttle service to get from Omaha to Lincoln. Ms. Marquis testified that in Lincoln, besides the hotel shuttle services, a customer might need cab service and/or limousine service. Furthermore, she has had difficulty with the cab service, which has been documented by management and by surveys, which customers fill out and send to corporate headquarters. Ms. Marquis stated that she has had conversations with Kirby Young at Servant Cab about guests being disgruntled due to cab service. She said she has met with the Public Service Commission and Mr. Young regarding some of these situations and complaints. Ms. Marquis also testified that she frequently visits the aforementioned properties and has observed the taxicabs. She claims that typically they are a little aged and could use some help as far as appearance and cleanliness.

Ms. Marquis then discussed the Lincoln Lodging Association (LLA), which contains around 35 hotels and bed and breakfasts in town. She has been a member of the LLA for the whole year and a half she has been working in her current position. Marquis testified that the LLA discussed difficulties that certain members of the Association were having with the cab service, specifically problems with late pickups, no shows, and the rudeness of dispatchers.

Accordingly, Ms. Marquis stated that she and her staff did 'tracking' at the Days Inn airport location. Over a month the hotel logged the date and time of each cab call and ride. The log indicated that cabs were running late (sometimes an hour and a half to two hours late), dispatchers were rude, etc. According to Ms. Marquis there were 10 days in the month of December 2005 in which there was a problem with the cab service. These results were consistent with the complaints that were made to the Lincoln Lodging Association meetings. As a result, the aforementioned meeting between the LLA, Nebraska Public Service Commission, and Kirby and Vance Young (owners of Servant Cab)

took place. According to Marquis, issues and solutions to some problems were discussed at this meeting.

Ms. Marquis testified that the LLA is in support of OMALiNK's application. She also stated that her business customers would benefit from a town car operation like the one proposed by OMALiNK, but she did admit that one town car and one limousine would not solve any of the problems. Marquis goes on to state that Lincoln is a growing community and the demand for more quality transportation is likely to increase

Upon cross-examination by Ms. Marquis testified that at times she personally makes arrangements for transportation of the guests, and that she is aware of other services available besides cab service, such as limousine service and some shuttle services. She admitted that the LLA has not done any lengthy investigation or contacted the Commission to see what other services are available in Lincoln. She testified that she has spoken a little bit to the applicant about pricing, but does not know what the exact charges would be. Ms. Marquis stated that she does support the limousine portion of the applicant, but she is not sure about the Health and Human Services portion of it. Ms. Marquis was questioned regarding the log that was completed at the Days Inn at the airport, and she admitted to not having any personal knowledge of some of the calls and problems that were logged. Ms. Marquis then testified that the service of Servant Company improved after the series of meetings that were held between the LLA, the Public Service Commission, and Servant Cab.

On interrogation by Commissioner Landis, Ms. Marquis testified that cleanliness and timeliness are still issues that need to be dealt with. Attitude of dispatch has improved, however.

Wil Leicy testified next. He is employed as the Director of Rooms at the Cornhusker Marriot hotel in downtown Lincoln. He has been employed at the hotel for 16 years, six of which have been in his current position.

In his position his responsibilities include overseeing front office operations, which includes customer satisfaction. Included in customer satisfaction would be the transportation of customers. According to Mr. Leicy, the Cornhusker has its own shuttle service, which mainly runs from the hotel to the Lincoln airport. Mr. Leicy stated that hotel guests do need ground transportation to other places besides the Lincoln airport, and normally a cab will be called to fill this need. He testified that he personally observes the cab service that is provided to

the hotel. Mr. Leicy said that when he has called there are times when nobody answers, and when there is an answer he is put on hold. Also there is always an estimated time and no guests can ever get a cab right away. According to Mr. Leicy, the cabs generally arrive within the estimated time. Mr. Leicy testified that he is familiar with OMALiNK because the hotel uses that service to transport guests to the Omaha airport. Furthermore, he stated that the sedan service proposed by OMALiNK would be very useful to his customers. Finally, Mr. Leicy testified that more options for transportation would lead to better customer service for his hotel guests.

Upon cross-examination by Mr. Leicy confirmed that he is in support of the open class and limousine portions of the application. He understands the open class portion of the application as being competitive with taxicab service. Mr. Leicy stated that he does not know what the applicant would charge for its services. Furthermore he said that even if the applicant had three or more sedans, it would only be of use to his customers if they were available at the time of need. In regards to the service of the cab company, Mr. Leicy testified that he has spoken to Kirby Young, who called Mr. Leicy to see if the Cornhusker was having any problems with cab service. Prior to that, Leicy stated that he has taken up complaints with the dispatchers, who essentially tell him that he must deal with it and there are no other options. Leicy testified that he knows of a couple other services besides the cab company, but hasn't called the Nebraska Public Service Commission to see what other services are available.

Upon redirect examination by Mr. Kistler, Mr. Leicy testified that no other carrier has approached him regarding transportation service at the hotel. Also, he said that a service, which required a minimum payment for a certain time, might be of use to his customers if they want a nicer service, but it must be a reasonable price.

Next to testify was Wally Barnett. Mr. Barnett works at the Lincoln airport as a redcoat, and has for 9-1/2 years. He stated that he is testifying on his own behalf and he is not representing the airport.

According to Mr. Barnett, his responsibilities as a redcoat are to take care of customer luggage, arrange transportation, and generally help people when they get on and off an airplane. The redcoats have a customer service desk in the main entrance, and occasionally check boarding passes and ID's. Barnett stated that redcoats are in charge of arranging ground transportation for airport customers, which often involved calling the cab

company. On occasion, Mr. Barnett admits that he has been able to observe the cab service after calling and arranging for a pick-up. He stated that the timeliness of the cabs is very mixed and could be improved a great deal. Especially in times of high demand, it is hard to get a cab out at the airport.

Upon interrogation by Commissioner Landis, Mr. Barnett stated that usually at least one person from every flight will need cab service. Barnett explained that two or three years ago the cab company started stationing cabs at the airport, but after a while the cabs stopped waiting at the airport.

Upon further direct-examination, Mr. Barnett testified that he would like to see more competition and neater/nicer cabs and drivers. He stated that last night (the night before his testimony) the cab company sent a cab that was wrecked on the front end and that in his time working there he has had one or two people that wouldn't get in a cab because of the appearance of either the driver, the cab, or both. Regarding the appearance of the current cabs, Burnett stated that he probably wouldn't drive any of them as his personal vehicle.

Upon cross-examination Mr. Barnett admitted that he wasn't brought to testify regarding the limousine service. He also stated that at times the redcoats make reservations for people who are blind and handicapped. Burnett testified that he was unaware of the applicant offering wheelchair accessible services, or what the applicant intends to charge for the services. According to Burnett, cost would be a determining factor in which service he would recommend to the airport customers. Burnett stated that he has made efforts to discover new means of transportation at the airport.

Next to testify was Eric Evans, the Deputy Executive Director of the Nebraska Advocacy Services, the Center for Disability, Rights, Law, and Advocacy ("Organization"). He has been in that capacity for nineteen years.

The organization is a federally funded, private public interest law firm specializing in disability rights issues. Mr. Evans stated that in his capacity he has, on occasion, monitored services that are available to the community. In 2005 the Developmental Disabilities Planning Council was in the process of developing their state plan, and as a result several public forums and meetings were held. One major issue that came up was the transportation problems in the city of Lincoln and rural communities. As a result the Monroe Meyer Institute developed a survey. According to Mr. Evans theses surveys were mailed out and it was also posted on their website. In total 113 consumers

responded as well as 19 provider organizations. The largest amount of responses came from the western portion of the state, but there were respondents from Omaha and Lincoln. Mr. Evans testified that throughout the survey respondents were concerned about availability, operation, accessible vehicles and costs.

Upon cross-examination Mr. Evans testified that the survey idea was given to Senator Byars, who agreed to approach the Transportation Committee in the Legislature regarding ways to make it easier for people with disabilities to get to the kinds of Medicaid services that they need to. Senator Byars eventually introduced a bill that was passed by the Legislature. The bill allowed those who were identified as Health and Human Services Medicaid eligible to receive transportation, and be reimbursed by the State. The purpose of that bill would hopefully increase for hire transportation. Mr. Evans agreed that it is important that wheelchair accessible vehicles are available as part of the services of OMALiNK. Mr. Evans testified that his appearance was not to support the application, but just to testify that from the perspective of people with disabilities, there are some issues that they are dealing with on a daily basis, and to bring this in front to the Commission.

On further cross-examination Mr. Evans testified that Health and Human Services transportation is primarily used for medical appointments and visits and not for recreational activities. Furthermore, Mr. Evans testified that the individuals who completed the survey are not going to be able to afford a private transportation service due to their low variable income. Accordingly, Mr. Evans stated that those who completed the survey might not be asking for another private transportation vendor to provide service, they are simply asking for more subsidization on the existing services.

Next to testify was David Mock. He is employed as a redcoat at the Lincoln airport, but is not testifying on behalf of the airport or the Airport Authority.

Mr. Mock testified that his duties were essentially the same as those identified by Mr. Barnett in his testimony. He stated that he has been able to observe the cab service at the airport. He said that when he calls for a cab, that 50% of the time the dispatcher sounds abrupt, hurried, busy, and not professional. Mr. Mock testified that the cabs are usually dirty on both the inside and outside, and the cab drivers look like "street people."

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Upon interrogation by Commissioner Landis Mr. Mock stated that by "street people" he meant they look unkempt, dirty, shabby, similar to a bum on the street

On cross-examination Mr. Mock testified that he has not made any investigations regarding alternative transportation services. Mr. Mock stated that he was not in support of the limousine service, and was not sure about the Health and Human Services portion of the application.

Coby Mach, who is employed with the Lincoln Independent Business Association ("LIBA"), as well as KLIN Radio, then testified.

LIBA brings business concerns to the City Council and to the Mayor's office. Mr. Mach is the executive director of LIBA. Mr. Mach testified on behalf of LIBA and stated that as an organization they believe in free enterprise and OMALiNK deserves the same opportunities that are offered to other businesses within a free enterprise system. Mr. Mach stated that Lincoln is spending a lot of money to recruit events and visitors to the city, and visitors should have the opportunity to choose from all of the transportation opportunities that are offered to any community.

Robert Doulas, the program and transportation coordinator for the American Council of the Blind of Nebraska ("ACBN"), testified next

According to Mr. Doulas, ACBN has put together subsidized transportation to assist people with visual impairments to gain greater access to transportation especially in the evenings. Furthermore, Mr. Doulas testified that he was appointed by the Governor of Nebraska to the Governor's Transportation Task Force because of the line of work he is in and because of a survey that had been done while he worked for ACBN. This statewide survey included questions about what issues the visually impaired community was facing in the state. Overall, 300 surveys were returned to ACBN. According to Mr. Doulas, who is almost totally blind, the survey results showed problems in rural areas of the state. However, in Lancaster County there were 47 participants who responded to this survey. Of those responses Mr. Doulas stated that there were 19 satisfied persons, 21 dissatisfied, and 7 varied. Of the dissatisfied persons, many complained of the cab service as being too expensive and not dependable, specifically for medical appointments. Mr. Doulas stated that he has personally filed complaints with the cab company. He also claimed that he has

called before to complain and the cab company says time calls are a service, and we don't have to provide it.

Upon cross-examination Mr. Doulas stated that his complaint had been given to the cab company before it was sold in 2003, therefore the new owners would not have known about this complaint, or any others for that matter, that were made prior to the sale. He did say that he has spoken to the cab company after the sale as well. At this time, Mr. Doulas claims they are still trying to resolve issues with the new owners. Mr. Doulas testified that he has spoken to Mr. Stokes about how he plans to start small and also incorporate his vans that are currently in use into this authority, if granted. Also ballpark figures for rates were discussed between the parties. Mr. Doulas testified that he has looked into what other services are available, and said there were 62 transit providers. Also he stated that he has not used Midwest Special Services, but has used Transport Plus and said they provide excellent service. Furthermore, he testified that they have been trying to work something out with the bus service, but the city has been cutting back on services and the number or routes.

On further cross-examination Mr. Doulas stated that even though a person is blind it does not necessarily mean he/she is a client of the Nebraska Department of Health and Human Services. Also the subsidized grant program through the American Council of the Blind was not funded by the Nebraska Department of Health and Human Services. Furthermore, he stated the questions in the survey that was distributed did not attempt to clarify whether the respondent was a Health and Human Services Client.

Chris Stokes, the President and original founder of OMALiNK, which was started in December 2003, testified next testified on behalf of his application.

Mr. Stokes stated that he does have some experience in the transportation industry, as he is a pilot for United Airlines. In a nutshell, OMALiNK provides shuttle service back and forth from Lincoln and Omaha all day long. The first van will leave Lincoln at 5:00 a.m. and the last one will return at 11:00 p.m. Mr. Stokes testified that he has been authorized by the Nebraska Public Service Commission to provide service between Lincoln and Omaha in a van. Since OMALiNK began Mr. Stokes stated that they have had 18,000 to 19,000 passengers use the service. According to Mr. Stokes, OMALiNK has three 11-passenger vans, which are stationed at 13th and "M" Streets in downtown Lincoln. Mr. Stokes stated that the vans are in good condition, and that they are regularly maintained. The staff at OMALiNK operates from

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8:00 a.m. to 5:00 p.m., with 16 employees, but extended hours occur when the general manager takes the company phone home to answer calls. Mr. Stokes testified that the office and drivers communicate via NEXTEL phones, which contain a function similar to a walkie-talkie. OMALiNK advertises in the Yellow Pages, and Mr. Stokes stated that start up costs, specifically advertising, were large. According to Mr. Stokes, there is no hiring criterion for his employees, however for a driver the driving record must be clean, and there is a 25 minimum age requirement for insurance. Also there is a period of training that must be completed, along with a dress code that is enforced. Mr. Stokes testified that safety is one of his top issues, and in order to ensure the safety of his employees and customers he provides a training manual, enforces a speed limit, and talks a lot with his employees about those safety concerns.

Mr. Stokes further testified about his financial statements. He stated that his manager runs the in-house portion, using the QuickBooks accounting program. Also he has an outside accounting firm that does taxes, checks the books, and helps out in certain situations. This firm prepares the formal financial statements for OMALiNK. Mr. Stokes stated that if the authority sought in the application were granted, he would need to buy additional vehicles. Consequently, Stokes said he has obtained a financial commitment from First National Bank in the amount of \$150,000.

Mr. Stokes also testified regarding the proposed application. The proposed services would be limousine service between points in Lancaster County, on the one hand, and, on the other had, all points in Nebraska, open class service between Lancaster County and point to point in Lancaster County and additional service between Lancaster County, on the one hand, and Douglas County on the other. Also the application includes service for Health and Human Services. Mr. Stokes stated that expansion is necessary because there is a need for these types of services and his business needs to grow to support his current operations. Mr. Stokes admitted that he would start small and increase his fleet as demand grows and also acknowledged that his proposed plan is not the answer to the transportation problem in Lincoln. He testified that he wants to start out by purchasing one Town Car type of vehicle and a black limousine. Mr. Stokes stated that he would use a zone pricing system similar to one used in Omaha by A & B Shuttle for his vans and Town Car. As for limousine pricing, Mr. Stokes testified that he took a good look at Luxury Limousine's rates, which were just recently passed.

In regards to the Health and Human Services portion of the application Mr. Stokes testified that right now he doesn't have any wheelchair accessible vans, but it would be a priority if his application were granted. Currently when a wheelchair-bound client from Health and Human Services calls for a ride, OMALiNK will transfer them to Transport Plus, who has the capabilities of transporting those persons.

Upon cross-examination Mr. Stokes testified that his three vans have between 200,00-300,00 miles on them currently and they do not operate every day because one will be left as a back up. They vans are rotated so the mileage stays similar. Furthermore he said that it would take almost three (2.3) vehicles to continue to operate on the OMALiNK schedule. Mr. Stokes stated that he would keep the three vans he currently has, and use one for Health and Human Services clients who do not need a wheelchair lift, and he would also purchase a minivan type vehicle with a wheelchair lift along with the Town Car and limousine.

According to a prior interrogatory question and answer, Mr. Stokes admitted that transportation services had been given to passengers at rates other than those identified in the tariff. He stated in his interrogatory that this has happened on occasion, in special circumstances or mistakes made by applicant's personnel. Mr. Stokes testified that he is not sure how a passenger would be charged a different rate since the dispatchers know the posted rates, also at times comp rides and discounts have been given to OMALiNK business customers and large groups. Also Mr. Stokes admitted in an interrogatory that on one occasion OMALiNK has delivered passengers to a point not on its authorized route.

Mr. Stokes testified in regards to OMALiNK's financial situation and said that they are breaking even at this point. According to Mr. Stokes, the \$196,000 loss in retained earnings was due start up costs, specifically advertising and not having that many customers at the very beginning. Even though there is a loss, Mr. Stokes stated that if OMALiNK were to continue with its present operations, he would expect to recoup the loss within 3 years. Mr. Stokes said he was aware that he could go to the Commission to adjust his rates when gas prices increase.

Mr. Stokes testified that he hasn't reviewed any contracts that Health and Human Services has with other transportation providers, so he is not aware of prices or other requirements for drivers. Currently OMALiNK does not drug test its drivers, but he testified that they would do so if he were granted this authority and if required to do so by Health and Human Services.

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He also stated that he would do background checks if he were required to do so.

Mr. Stokes testified that he did not know how much more insurance he would need if he added additional vehicles. He has spoken to his insurance representative, but they have not come up with any solid numbers yet. According to Mr. Stokes the accounts receivable numbers on the financial statement generally have to do with baggage delivery. The airlines, according to Stokes, are not good about paying for baggage delivery service, and that is what the accounts receivable numbers refer to. Also there is an entry for Reimbursement Passengers, which deals with passengers who booked a ride and then cancelled- OMALiNK is responsible for refunding a portion, or all of the money to the customer depending on when the cancellation is made.

According to Mr. Stokes the difference between open class service and taxi service is that a cab service has a meter rate system, possibly no uniformed driver, while open class transportation would include executive transportation, zone rate system, and a uniformed driver.

Upon further cross-examination Mr. Stokes admitted that his rates may not meet the needs of Health and Human Services clients, but also stated that he would be providing them with a ride they didn't have to wait for. Mr. Stokes admitted there are carriers that already exist who offer similar services to the ones proposed by the OMALiNK.

On interrogation by Mr. Breiner, Breiner stated that on the first application in 2003 OMALiNK stated total assets of \$60,070, total liabilities and equity of \$60,070, with \$23,070 of that being the equity portion. On it's current application OMALiNK lists total assets of \$80,000, total liabilities of \$95,000, with equity being a negative \$15,000. When asked by Breiner if his net worth had gone down, Mr. Stokes stated that the difference in numbers relates to the start-up costs of the business. Mr. Breiner also stated that in the last couple of years the Commission has tried to differentiate between taxi and open class by limiting open class providers to transportation just in vans. Mr. Stokes responded, stating that this would have a large impact on his application and proposed business plan. Mr. Stokes also testified that he has not completed a formal survey regarding the need of a sedan service in Lincoln. He stated that he gets calls all the time, but hasn't tracked these calls.

Next, Jeffrey Eells testified. Eells owns Ten Dot corporate travel, which deals with corporate event planning.

Mr. Eells stated that his company provides arrangements such as hotel, transportation, food/beverage requirements, off-site arrangements, and meeting space. Mr. Eells testified that he does not do much business in Lincoln. He said that he is involved in the logistics of getting people from the airport to the meeting site in Lincoln. Mr. Eells testified that he, or his business partner, would go pick them up personally. He stated the cab service is not as reliable as he would like. Furthermore, Mr. Eells said that the service in which Stokes/OMALiNK is proposing would be something that would be of use for his business. Mr. Eells supports the limousine and open class portion of the application.

Upon cross-examination, Mr. Eells testified that in a good year, he would have three events in Lincoln because most of his business takes place outside of Lincoln. Mr. Eells also stated that he has investigated other services available in Lincoln that provide Town Car and/or limousine service. He said that the only services he is aware of only offer a 3-hour minimum. Mr. Eells has not discussed rates or charges with the applicant.

Matthew Bergmeyer, a loan officer with a First National Bank branch in Lincoln, testified next.

Mr. Bergmeyer stated that OMALiNK is a customer of his and has received a commitment letter from First National Bank in the amount of \$150,000. The letter says the money must be used for vehicles, equipment, and capital necessary for point-to-point shuttle operations.

Upon cross-examination Mr. Bergmeyer testified that he has reviewed financial statements of OMALiNK, the last one being the 2005 tax return. According to Mr. Bergmeyer, since the initial arrangement between OMALiNK and First National Bank, there has been incremental financial improvement by OMALiNK. He also stated that there have been losses from OMALiNK's operations. Mr. Bergmeyer testified that Stokes had given him an oral business plan, and that the two parties discussed several scenarios that could take place.

On interrogation by Commissioner Landis, Mr. Bergmeyer stated it is encouraged that a start-up business make a profit in the first year, but it doesn't always happen.

Angela Vrtiska testified on behalf of the applicant, she is a certified public accountant for Dana F. Cole and Company.

Dana Cole has been the accountant for OMALiNK since its inception in 2002. She stated that Dana Cole provides bi-weekly payroll, tax return, and periodic check up services for OMALiNK.

According to Ms. Vrtiska, Stokes asked Dana Cole to prepare a compilation report in preparation for the hearing. Ms. Vrtiska testified that the reports are prepared in accordance with Generally Accepted Accounting Principles. The compilation accurately represented OMALiNK's financials as of April 30th, 2006, according to Ms. Vrtiska.

Upon cross-examination by Ms. Vrtiska testified that through year-end 2005 OMALiNK had a loss of approximately \$188,000, as shown on the compilation report. Also from January 1, 2006 through April 30, 2006, Ms. Vrtiska agreed that there had been an additional \$8,000 in loans secured by OMALiNK.

Mark Breiner testified next. Mr. Breiner is the Transportation Director for the Nebraska Public Service Commission.

Mr. Breiner testified regarding Commission Rule and Regulation 010.02(A). Also Mr. Breiner made reference to two recent cases in which the Commission has ruled on. From these cases, the Commission could restrict an open class carrier to the use of vans as opposed to a sedan. However, he acknowledged that Commission decisions are decided on a case-by-case basis.

On interrogation by Commissioner Landis, Breiner stated that there are two companies in Omaha that provide a sedan service under their limousine authority, which would be similar to what the applicant in this case is proposing to do with the open class portion of the application.

Upon further direct examination Mr. Breiner testified that it is not his duty to observe transportation trends in other states, but other states do serve as good resources when certain issues must be resolved. Furthermore Breiner stated that airport transportation differs by city. Some have zone rates, flat fees, fancy cabs, and buses- depending on the marketplace.

Protestant's Evidence

The protestant's called four witnesses in opposition of this application. Their testimony is as follows:

Alvin Schroll testified that he is the CEO of Prince of the Road.

Prince of the Road has statewide authority for vans, excluding Lancaster County. Mr. Schroll stated that transporting Health and Human Services clients makes up the majority of their business. According to Mr. Schroll, Prince of

the Road currently has 103 vans & is protesting the open class authority as it related to Health and Human Services. Mr. Schroll testified that he applied for the authority to transfer persons between Douglas and Lancaster County, but was denied by the Commission. Mr. Schroll said that if there were additional demand for his transportation he could add additional drivers and vehicles.

On cross-examination Mr. Schroll clarified that he does not oppose the limousine portion of the application, but does oppose the Health and Human Services portion of the application to the extent it would authorize service from Douglas County to Lancaster County. He also reiterated that he does not have authority within Lancaster County.

On interrogation by Commissioner Landis, Mr. Schroll testified that he uses the revenue he generates in the eastern portion of the state to support the service in rural areas such as Chadron or Imperial.

On interrogation by Commissioner Boyle, Mr. Schroll stated that Health and Human services pays per mile that there is a client aboard. Currently there is no pay for down time or the increases in gasoline costs.

On further interrogation by Commissioner Landis, Mr. Schroll testified that he hires people for vehicle maintenance and cleanliness. Also drivers are trained on company policy, procedures, and how to treat clients.

Lannie Roblee testified next. He and his wife are owners of Midwest Special Services ("Midwest") in Curtis, Nebraska.

He stated that he has been in the transportation industry since 1991. His application authorizes him to transport passengers between Douglas and Lancaster counties as well as from point to point within Lancaster County. He has 57 vehicles and 60 drivers. All drivers are subject to a background check as well as a basic training program. Currently, Midwest has vehicles across the state of Nebraska, and has the ability to supplement the fleet with additional equipment if the demand requires. Mr. Roblee testified that Midwest has a contract with Health and Human Services to transport clients throughout Nebraska. Midwest's authority also authorizes them to provide transportation to the general public.

Mr. Roblee stated that about twenty times a day there is a scheduled pickup, but the client is not there to be picked up. On these occasions, Health and Human Services does not pay Midwest, but Roblee considers this a cost of doing business. He

stated that he is only paid for loaded miles, or miles where there is a passenger present. MR. Roblee testified that he desires more business from either Health and Human Services or from the general public. In regards to the recently passed bill (LB 1069), Mr. Roblee believes that it has a potential to reduce the demand for his services. Currently Midwest competes with other carriers in Lincoln and Omaha, and the diversion of any traffic would reduce Midwest's ability to remain profitable.

On interrogation by Commissioner Landis, Mr. Roblee stated that his advertising consists of word of mouth and his vehicle signs. Midwest is in the Lincoln phone book, but has not placed an ad with the phone book.

On interrogation by Commissioner Vap, Mr. Roblee said there are many reasons why the clients are not available, up to 20 times a day. One example is when Midwest is ordered to take kids to school and the kid will not get out of bed, or just doesn't want to go to school. In these instances, Roblee reports this to Health and Human Services.

Upon cross-examination Mr. Roblee stated that supplement 2 under his certificate allows service in Lancaster County, Douglas County, and between those two counties. Mr. Roblee stated that under this authority he likes to have arrangements made at least 6 hours in advance. Mr. Roblee also testified that he is not afraid of competition, and if OMALiNK were allowed to operate one or two vehicles would not hurt his business.

Kirby Young is the managing member of Servant Cab Company ("Servant").

According to Mr. Young, 50% of his business comes from transportation services to the Nebraska Department of Health and Human Services, with whom Servant has a contract. Servant also provides transportation to the general public. Mr. Young testified that Servant services Lincoln and a 25-mile radius surrounding Lincoln. He said that currently Servant has 36 vehicles. He stated that the entire application of OMALiNK is in conflict with the area in which Servant Cab operates. Over the four years in which Mr. Young has been the managing partner, Servant has added a substantial amount of vehicles, as well as upgraded many of the existing vehicles that came along with the purchase of the company.

In regards to policies or procedures for vehicle cleanliness, Mr. Young testified that each driver, at the beginning of their shift, is responsible for cleaning, vacuuming, and sanitizing the vehicle. Young did admit that

during a shift many people get in and out of the cabs, which could lead to the cab getting dirty, or not smelling good.

Mr. Young testified that people do have to wait at times, and several factors play into that wait. For example, weather, how long the customer wants the cab (could make the wait for the next customer shorter or longer), time of day or year, etc... Mr. Young stated that if more cabs were in demand he would purchase additional vehicles.

Mr. Young testified as to driver requirements, and said there is a thorough background check through the city and the state. There are mandatory drug screenings. Also there is an in-house training for the drivers after they are hired.

Mr. Young also stated that only remembers talking to one of the above-mentioned witnesses about problems or complaints, which was the Lincoln Lodging Association. Mr. Young testified that Servant Cab has never received a complaint from Health and Human Services, never turned down service from HHS, and has never been subject to a formal complaint before the Commission. Furthermore, Mr. Young said that Servant currently has additional capacity, is desirous of handling additional passengers, and is not afraid of competition although it does take business away.

Mr. Young testified that from Servant's perspective, taxicabs are more heavily regulated than open class providers, but allowing open class service allows competition between taxicabs and open class.

Upon cross-examination Mr. Young admitted that people do call and complain to Servant from time to time, but he hasn't personally fielded every call.

On interrogation by Commissioner Boyle, Young stated that he is paid a metered rate in town for transporting Health and Human Services customers, and a per mile rate out of Lincoln.

On interrogation by Commissioner Landis, Mr. Young was asked about the attitudes of the drivers and dispatchers of Servant. Mr. Young responded that it is his policy to look at every problem that somebody calls in with and to address that problem. Furthermore, Young stated that he has let people go because of attitudes with the clients.

On further cross-examination Mr. Young admitted that OMALiNK would have an advantage over Servant because there are no meters in an open class service. He also admitted that the

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other competitors have the same advantage as well, yet he continues to "hold his own" against competition.

William Alford, appearing pro se, testified that he is the president and owner of VIP Limousine, A-1 Transportation, and A-1 Limousine, collectively known as VIP Limousine.

He stated that he does have a sedan service, similar to what the applicant is proposing in his application. Since 2003 his companies have had 400% growth, and his rates are reasonable according to the Commission. VIP charges \$60 for a sedan pickup at the airport.

On cross-examination Mr. Alford stated he has been in the limousine business for four years. He first purchased Embassy Limousine and changed its name to VIP. Since then VIP has purchased A-1 Limousine, Omaha Limousine, Beatrice Limousine, and Greater Omaha Tours. He purchased these companies because they were failing and began to consolidate his fleet. Alford further testified about rates that he charges for limousine service and sedan service. Alford also acknowledged that in a previous order given by the Commission (a limousine authority application that was protested by VIP), the Commission was not persuaded that VIP were capable of meeting the public need and necessity within Lincoln.

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

In this particular case, Applicant is seeking to extend its authority so that it may transport passengers by limousine as a common carrier between points in Lancaster County and points in Nebraska over irregular routes. The Applicant is also seeking authority to transport passengers and their baggage in open class service in Lancaster County, and between points in Lancaster County on the one hand, and on the other hand, points in Douglas County. Nebraska Department of Health and Human Services designation is sought with respect to the open class portion of the application. Applicant is currently limited to the use of vans between Lincoln and Omaha Eppley Airport.

Applications for common carrier authority are governed by Neb. Rev. Stat. § 75-311 (2000), which provides,

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 to properly 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 should 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." In a supplemental application, such as the one that is being applied for in the instant case, the applicant has already been granted a certificate based on an earlier meeting of the fitness standard. In this matter, the testimony is that the Applicant has experienced a loss of \$188,000 through the end of 2005 (due primarily, according to the evidence, to start-up costs) and incurred an additional loss of \$8,000 through April of 2006. The testimony of Matthew Bergmeyer, however, is that the Applicant has experienced incremental financial improvement and that First National Bank has entered into a commitment letter with the Applicant in the amount of \$150,000. While the Commission is concerned about the current financial statement of the Applicant, the fact that the Applicant continues to operate as well as the commitment letter from First National Bank allows the Commission to find the Applicant fit. Based on the evidence before us and adduced from the record in the instant case, we find that the applicant has met the fitness test of Neb. Rev. Stat. Section 75-311.

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).

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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 demonstrated a sufficient level of need and necessity to support a grant in part of the application. The Applicant failed in Supplement 2 to demonstrate that the expansion of the applicant's operating authority would serve a useful purpose responsive to a public demand of need which could not be served as well by existing carriers. With respect to Supplement 2, most of the evidence set forth by the Applicant referred to the expense of cab rides and the resulting difficulty of cab use for many individuals. However, the Applicant stated that its rate, which would be determined at a later time, would in all probability be higher than that currently charged by Servant Cab in Lancaster County. This contradicts much of the evidence set forth by Applicant for the granting of Supplement 2, and the Commission on this basis finds that the proposed operation fails to pass part one of the Nebraskaland Leasing test and should therefore be denied.

Supplement 1 involves the transportation of passengers and their baggage by limousine between points in Lancaster County on the one hand, and, on the other hand, points in Nebraska over irregular routes. There is testimony in support of this supplement. Tom Francisco testified that limousine service needed to "more readily available." Carrier Marquis testified that her hotels have experienced problems with late pickups and no shows. Wil Leicy testified that regarding this supplement that none of his guests get a cab right away and that a sedan service would be useful to his customers. Wally Barnett testified that there was an issue with the "timeliness" of cab service.

The Commission finds that the above testimony shows that there is a useful purpose responsive to a public demand or need that the proposed operation in Supplement 1 can meet. The testimony also shows that the existing companies are not currently meeting that need as set forth by the testimony. The Commission also finds that the operation can serve the need shown without endangering or impairing the operations of the existing carriers contrary to the public interest.

The granting of Supplement 1 will allow for the Applicant to operate the sedan service that was most prominent in the testimony. This service will not compete with the cab company as it would be a limousine service and thus subject to the premium rate charge rule and regulation.

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The Commission has also found recently that VIP Limousine was not capable of meeting the needs in Lincoln (Luxury Limousine). There was no evidence placed before the Commission to show that VIP has changed its operations to meet the needs that were found in Lancaster County in the Luxury case. The Commission does find that the proposed operations can be operated in a manner that will not endanger or impair VIP's operations contrary to the public interest.

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: SUPP. 1, Common: Transportation of passengers, and their baggage in limousine service between points in Lancaster County, on the one hand, and, on the other hand, points in Nebraska over irregular routes. RESTRICTION: The transportation of railroad train crews and their baggage is not authorized.

3. The application should be granted in part. In all other respects, the application should be denied.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application B-1628, Supplements 1 and 2, be, and it is hereby, granted in part; 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 OMALink, Inc., 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

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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.

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 8th day of August, 2006.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

David L. Vay
Ann C. Boyle

Lowell C. Johnson

//s// Lowell C. Johnson

Lowell C. Johnson
Chairman

ATTEST:

A. D. Pillemer
Executive Director