

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of OMALiNK, ) APPLICATION NO. B-1628  
INC., Lincoln, Nebraska, ) SUPPLEMENTS 1 and 2  
seeking authority (Supplement )  
1) to transport passengers by )  
limousine as a common carrier )  
between points in Lancaster ) MOTIONS FOR RECONSIDERATION  
County on the one hand, and ) GRANTED;  
on the other hand, points in )  
Nebraska over irregular ) REVERSED IN PART AND  
routes, and (Supplement 2) ) AFFIRMED IN PART  
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 ) ENTERED: SEPTEMBER 19, 2006  
other hand, points in Douglas  
County.

For the Applicant:

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For the Commission Staff:

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

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

John Boehm  
811 S. 13<sup>th</sup> Street  
Lincoln, NE 68508

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

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On August 8, 2006, the Commission entered an order in this matter that granted Supplement 1 of the applicant's proposed service and denied Supplement 2. Motions for reconsideration were filed by the applicant and also the protestant VIP Limousine. The applicant moved the Commission to reconsider its order in this matter that denied them Supplement 2, 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 over irregular routes. VIP Limousine requested that the Commission reverse its order granting the applicant Supplement 2, limousine authority between points in Lancaster County and between points in Lancaster County, on the one hand, and, on the other hand, points in Nebraska over irregular routes.

The Commission granted the Motions for Reconsideration filed by the applicant and the protestant VIP Limousine. Oral argument was held before the Commission on August 24, 2006, in the Commission Hearing Room. Notice of the hearing was sent to all interested parties on August 22, 2006.

The applicant filed a letter with the Commission on August 22, 2006, in which it requested that the portion of the application related to the provision of Nebraska Department of Health and Human Services transportation in Supplement 1 be formally withdrawn for consideration before the Commission.

FINDINGS AND OPINION

Upon review and examination, the Commission finds that the record does support a grant of authority in Supplement 1 as to the provision of open class services, excluding HHS service pursuant to the request of the applicant. There is sufficient testimony to support a finding of public convenience and necessity being met by this application.

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The Commission finds that testimony given by four witnesses as to the need for the open class operation by the applicant proves public convenience and necessity. The Commission finds that the evidence presented, combined with pricing issues that are present with a limousine authority, compel it to find for the granting of the open class supplement.

The Commission has held in the past that "a distinction is necessary between taxi service and open class to prevent unintended harm to the availability of taxicabs in all Nebraska communities." Open class authorities have not been permitted to use sedans in their operations in areas where there are existing taxi authorities operating. This position is in large part due to the special nature and requirements that taxi operations experience such as the expectation that the taxi providers in the areas cited in this application will provide twenty-four hour per day, seven days per week (including holidays such as Christmas Eve) service to people in the community. The services that are provided by the taxi companies is one that in many instances is the only means of transportation for many people. This service is vitally necessary to the community and deserves and requires special attention. Many open class providers do not provide service at these levels.

In the instant case, the proposed areas of operation of the applicant are in areas where taxi authorities exist. The sedan service that was proposed by the applicant can be operated under the limousine authority granted in this application. There are rates on file in other limousine authorities that have been approved for services similar to that proposed by the applicant that are lower than a standard limousine rate. Since the applicant can already provide the service he proposes at rates lower than a standard limousine rate, there is no reason for the Commission to overturn its prior holdings on sedan use. The Commission therefore finds that the open class authority granted to the applicant in this matter will be restricted against the use of sedans.

Upon review and examination, the Commission finds that there is sufficient evidence to sustain its granting of Supplement 1, that it did not act arbitrarily or

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capriciously, and that, therefore, the decision should be affirmed.

In sum, we find that the order entered an August 8, 2006, should be reversed as to Supplement 2 and granted on a modified basis without an HHS designation (and to be limited to the use of vans). The certificate authorized should be as follows:

SUPPLEMENT TWO: Transportation of 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. RESTRICTIONS: The transportation of railroad crews and their baggage is not authorized. Restricted against the use of sedans. HHS DESIGNATION: No.

The Commission finds that the decision with respect to Supplement 1 should be affirmed.

O R D E R

IT IS, THEREFORE, ORDERED by the Nebraska Public Service Commission that Application B-1628, Supplement 2, is hereby granted as modified as provided herein and that Supplement 1 is hereby affirmed.

IT IS FURTHER ORDERED that a Certificate of Public Convenience and Necessity shall not be issued unless and until the applicant has complied, within a reasonable time frame from the effective date of this order, with Neb. Rev. Stat. Sections 75-305 (fees), 75-307 (insurance), and 75-308 (rates) and with the rules and regulations of the Commission, and if upon the expiration of such time applicant has not complied with the terms and conditions, this order, shall after reasonable notice to the applicant, be of no further force and effect.

IT IS FURTHER ORDERED that applicant shall not conduct operations until a Certificate of Public Convenience and Necessity is issued.

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

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

MADE AND ENTERED in Lincoln, Nebraska, on this 19<sup>th</sup> day of September, 2006.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

*Lowell C. Johnson*

*Ann C. Boyle*

*Frank E. Landis*

//s//Lowell C. Johnson  
//s//Frank E. Landis

ATTEST:

*Lowell C. Johnson*  
Chairman

*And S. Pollok*  
Executive Director