

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of A-1)	APPLICATION NO. B-1642
Transportation, LLC, seeking to)	
acquire, through transfer, the)	
authority granted to A-1)	GRANTED AND CERTIFICATE B-
Ambassador Limousine, Inc., dba)	1594 REVOKED
A-1 Special Services in)	
Certificate B-1594.)	ENTERED: FEBRUARY 3, 2004

APPEARANCES:

For the Applicant:
A-1 Transportation, LLC:

Mr. Jack L. Shultz
Attorney at Law
For A-1 Limousine Services
800 Lincoln Square
121 South 13th Street
Lincoln, NE 68508

For the Protestants:
R & F Hobbies, Inc. d/b/a Prince of the Road,
Born to Run, and Rick Holloway d/b/a Lexington Taxi:

Mr. John M. Boehm
Attorney at Law
For Protestant Prince of the Road
811 South 13th Street
Lincoln, NE 68508

For the Commission:

Ms. Shana L. Knutson
Attorney at Law
For Public Service Commission
300 The Atrium
1200 N Street
Lincoln, NE 68508

BY THE COMMISSION:

By application filed November 6, 2003, A-1 Transportation, LLC, Lincoln, Nebraska, hereinafter referred to as applicant, seeks approval of the acquisition of the operating rights and authority granted to A-1 Ambassador Limousine, Inc., dba A-1 Special Services in Certificate B-1594 which authorizes:

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

Notice of such request for temporary authority was published in The Daily Record, Omaha, Nebraska, on November 7, 2003, pursuant to the rules and regulations of this Commission. Protests to the application were filed by R & F Hobbies, Inc. d/b/a Prince of the Road, Born to Run and Rick Holloway d/b/a Lexington Taxi. A hearing on the application was held on January 12, 2004, in the Commission Hearing Room with appearances as shown above.

OPENING OBJECTIONS AND MOTIONS:

At the commencement of the proceeding Prince of the Road made several objections and filed a Motion to Dismiss for lack of jurisdiction. The Motion to Dismiss was filed as a written motion and served on the Commission and opposing counsel immediately prior to the hearing.

With respect to the Motion to Dismiss, the Hearing Officer took the Motion under advisement and requested post-hearing statements from counsel for both parties. Upon review of the Motion to Dismiss, the Commission is of the opinion and finds that it does not lack jurisdiction to approve the transfer between A-1 Ambassador, Inc. to A-1 Transportation, Inc.¹ In support of its

¹ Because the granting of a certificate is not automatically stayed when an appeal is perfected, A-1 Ambassador has been operating as an open class provider since the Commission's grant of authority. The Commission also approved A-1's unopposed rate application since that time.

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Motion, Prince of the Road cites to Tracy v. United Telephone Co. of the West, 218 Neb. 331, 353 N.W.2d 273, 275 (1984). The Commission finds Tracy to be distinguishable from this case. This case does not involve the same matter or identical parties. Here, the Commission considers a different legal standard than the case on appeal. The present case requires the Commission to determine under Neb. Rev. Stat. § 75-318 (Reissue 1996) whether a proposed transfer should be approved. The Commission considers the fitness of a proposed transferee and whether the proposed transfer is in the public interest. Whereas, the case on appeal dealt with the Commission's granting of a certificate to A-1 Ambassador pursuant to Neb. Rev. Stat. § 75-311 (Reissue 1996). In that case, the Commission considered the fitness of A-1 Ambassador and also whether a grant of their application was consistent with public convenience and necessity. This case also involves different parties. In Tracy, the Nebraska Supreme Court considered two simultaneous challenges, one filed with the Nebraska Supreme Court and one filed with the district court for Lancaster County, which involved an identical issue. In light of this distinction, the Commission overrules the Motion to Dismiss filed by Prince of the Road.

Prince of the Road also objected to the time frame in which the Commission has processed this application. Those objections were also overruled. As the Hearing Officer noted, the statutory time frames for processing the application were met and Prince of the Road had ample time to prepare for this hearing. The Commission further notes that it did allow one continuance to the Protestant.

Finally, the Commission sees no need to express an opinion regarding the issue raised by Prince of the Road concerning the allegation of a conflict of interest of counsel for the applicant. A record was created showing that applicant's counsel informed his clients of the potential conflict and obtained express consent of his clients to the representation of this applicant. Letters evidencing consent were marked and received into evidence. The witnesses for the Applicant and the Protestant also testified on this issue creating a record of counsel's efforts to inform the parties he believed would be affected by his representation of the applicant. Through the hearing, the Commission became aware that a grievance has been filed with the Office of the Counsel for

Prince of the Road further argues that because it involves the "revocation of B-1594" that the Commission lacks jurisdiction to transfer the authority. It would seem illogical to us to accept this argument, which would mean that the Commission could not revoke, suspend or modify the certificate granted to A-1 Ambassador should it willfully violate a Commission Rule pending the appeal on its authority.

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Discipline and as such, the Commission will not interfere with or prejudice any ongoing investigation.

SUMMARY OF THE TESTIMONY:

Two witnesses testified in support of the transfer, Mr. Dennis Wagner, Vice-President of A-1 Ambassador Inc. (transferor) and Mr. William Alford, owner of A-1 Transportation, Inc. (transferee).

Mr. Dennis Wagner first testified for the applicant. Mr. Wagner is the vice-president of A-1 Ambassador Limousine Inc. (A-1), and the general manager of A-1 Services, LLC, (corporation) holding those positions since April of 1998. He is a stockholder of A-1 Ambassador. A-1 has holds a certificate to provide limousine service. This application involves a separate certificate which allows it to provide transportation as an open class provider within the state of Nebraska subject to restrictions the certificate (B-1594). Mr. Wagner testified that the corporation had been transporting Health and Human Services (HHS) passengers for about three and a half years, actively exercising the certificate's authority to its full extent. He explained that the corporation operated between 20 and 21 vehicles all properly licensed and insured by the Commission. Mr. Wagner recalled these vehicles being stationed in Lincoln, Omaha, Kearney, Hastings, Grand Island, Chadron, Scottsbluff, Bridgeport, McCook, and Madison.

Mr. Wagner next described Exhibit 6, an abstract of the corporation's traffic for the year 2003. Mr. Wagner agreed that the record would show all the trips the corporation provided for HHS. He explained that Exhibit 6 was prepared from the corporations schedule books, present in the hearing room. He stated that the traffic study ran from January 1, 2003 to December 31, 2003.

Mr. Wagner then testified to declining transportation to passengers in Lancaster County because of lack of authority. He stated that any request from outside Lancaster County had never been declined. He admitted that the corporation had previous contracts with HHS and that HHS required that they comply with the authorized certificate.

Additionally, Mr. Wagner agreed that the corporation had provided services to the general public. He testified that the corporation had done very little promotional activities, relying on referrals from caseworkers or Magellan. He stated that those passengers that privately pay for their transportation were mostly comprised of passengers who used to be authorized for transport by

the state and now paid for themselves.

Mr. Wagner then turned to the topic of the corporation's competition. He stated that R&F Hobbies, Prince of the Road had been in competition with his corporation for the entire time they were transporting for HHS. He testified that there were also other companies competing for HHS transportation, including all of the taxicab companies, Midwest Special Services, and a couple of other private companies. Mr. Wagner gave his opinion that granting the application would not enlarge the current competition or offer a new or different service. He stated that he was responsible for the operations on the interim basis on the temporary lease and that operations had been conducted as they were prior to entering the lease.

Mr. Wagner testified that there were no intentions on behalf of the management of A-1 Transportation, Inc. to change the manner in which A-1 Special Services currently operates. He will continue in the day-to-day management of the business, including the Health and Human Services transportation.

Mr. Wagner testified that a grant of the transfer application would be in the public interest. The main reason behind the proposed transfer is the failing health of his parents and that it would be too much for him to operate alone. His parents and his wife are the other stockholders in the corporation. If the transfer application is granted, A-1 Special Services could then continue to serve the clientele, including Health and Human Services clients, it presently serves.

On cross-examination, Mr. Wagner testified that A-1 Special Services had one vehicle based in Omaha and had an additional vehicle in service there. Prior to about five months ago, A-1 Special Services did not have a vehicle in Omaha, but it has always performed point to point transportation in Omaha when requested. He is aware that the certificate granted to A-1 Special Services is on appeal. He discussed that with Mr. Alford prior to entering into the purchase agreement.

Mr. William Alford testified next in support of the transfer.

Mr. Alford is the proposed transferee and the owner of a limousine company based in Omaha. He has been in the transportation business for approximately one and one half years. He is the owner of A-1 Transportation, LLC and the owner of VIP Limousine. Neither A-1 Transportation, LLC nor VIP Limousine has been the subject of any formal complaint before the Commission. He testified that he hired Dennis Wagner to manage A-1 Transportation LLC. If the application were granted, A-1 Transportation, LLC would comply with all

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Commission rules and regulations, including those pertaining to rates and insurance. He would perform several background checks on the drivers including criminal records, drug-testing and driving records. Mr. Alford supplied a balance sheet listing Alford Oil Company's assets and liabilities. He is the sole owner of Alford Oil Company. Mr. Alford testified that in the event additional funds were required to operate A-1 Transportation, LLC, he could make those funds available from Alford Oil Company. If it were necessary to borrow additional capital, he is in the position to do so.

Mr. Alford testified that he believes a transfer of the application is in the public interest. He further stated that he was aware of the current appeal of the certificate granted in B-1594 and knows that he may end up with no authority depending on how the Court of Appeals rules on the Commission's decision. In the event that the Commission's decision is overruled, he would make arrangements so that A-1 Transportation, LLC's clients would be taken care of by a reputable certificated carrier. Mr. Alford testified that a grant of the application would not enlarge competition in any sense. It is his intention to operate essentially the same type of operation that A-1 has in the past.

Three witnesses testified for the Protestant, Mr. Ronald Hippen, owner of Yellow Cab and Limo Company, Mr. Schroll, Chief Operating Officer for Prince of the Road, and Ronald Bertsch, owner of Born to Run, Inc.

The Protestant called Ronald Hippen to testify. Mr. Hippen is the owner of Yellow Cab and Limo Company in Beatrice, Nebraska. Mr. Hippen testified that he had participated as a protestant in the grant of application B-1594 and that he appeared at that hearing represented by counsel. His counsel for that protest was the current applicant's counsel, Mr. Shultz. He testified that he had indicated to Mr. Shultz that he wanted to appeal the order granting B-1594. He stated that he was pretty sure that he had been included in the appeal of A-1's grant of authority by Mr. Shultz. He affirmed that if B-1594 was denied by the Court of Appeals that he would benefit. He stated that he had asked Mr. Shultz to represent him for a protest to the current application of A-1 Transportation, LLC. He remembered that Mr. Shultz had indicated that he was representing A-1 Transportation, LLC and that due to a conflict of interest would not represent him. Mr. Hippen testified that he had a long-term relationship with Mr. Shultz spanning five or six years. He gave his opinion that Mr. Shultz had a conflict of interest in the matter of this application because of his prior representation of Yellow Cab and Limo Company.

On cross-examination, Mr. Hippen testified that Mr. Shultz had represented Yellow Cab and Limo before the Commission in their protest against application for A-1's certificate. He stated that he was not sure whether Mr. Shultz included him in the appeal of that application. He was uncertain if he had received any bills concerning the appeal of A-1 Limo's certificate. Mr. Hippen recalled that he had visited with Mr. Shultz about the cost of appealing the Commission's order for A-1's certificate. He stated that at the time of the conversation they had decided not to go forward with the appeal.

Sean Schroll next testified for the protestant. Mr. Schroll is the Chief Operation Officer for Prince of the Road. He described Prince of the Road as a transportation service of passengers in the state of Nebraska as authorized by the Commission. He identified exhibit 7 as Prince of the Road's operating authority and stated that they fully operate according to the authority it grants. Mr. Schroll testified that one of Prince of the Road's prime competitors was A-1 and that they had been competing with A-1 for probably three and a half years. Mr. Schroll then identified exhibits 9 and 10 as the dates that he had scheduled for driver recertification for 2004. He stated that exhibit 9 scheduled a recertification for January 5th, the original date of the hearing. Mr. Schroll indicated that he had been granted a continuance because of the conflict with the recertification. He then stated that exhibit 10 represented the dates for the Omaha recertification, which included the date of the current hearing for which Mr. Schroll was not granted a continuance. He stated that he had cancelled the recertification as he was the one who conducted them. He had not yet rescheduled the recertification, but planned to do so in the future.

Mr. Schroll then stated that when A-1 Special Services applied for authority, Prince of the Road protested. He testified that Prince of the Road had appeared and presented testimony and evidence at that hearing. He recalled they were joined in their protest by Yellow Cab, Midwest Special Services, and Servant Cab. He identified exhibit 25 as the record of that hearing. He affirmed he had testified at that hearing and that the Commission had entered an order granting certificate B-1594. Mr. Schroll identified exhibit 15 as the order granting the application for authority. He recalled that Prince of the Road had filed a motion for rehearing and reconsideration with the Commission concerning the order and identified that motion as Exhibit 13. He testified that the Commission denied that motion on April 1, 2003 by order, as represented by Exhibit 12. He affirmed that the order contained a dissenting opinion by Commissioner Boyle. Mr. Schroll testified that prior to the denial of the motion, the parties had submitted

arguments on the motion and the grant of the authority. Mr. Schroll identified Exhibit 14 as a written argument in the A-1 proceeding, B-1594, that was submitted on behalf of Midwest Special Services, Yellow Cab, and Servant Cab.

Mr. Schroll then testified that after the rehearing was denied that Prince of the Road had appealed the decision to the Court of Appeals, as represented by Exhibit 11. He stated that Prince of the Road had filed briefs in that proceeding and that it was a matter still pending before the Court of Appeals. He identified Exhibits 22 and 24 as, respectively, the brief and reply brief that Prince of the Road filed for the appeal. He then identified Exhibit 23 as the brief of Appears Servant Cab Company, LLC, and Midwest for the same appeal.

Mr. Schroll stated the he recalled when the Commission entered into Rule and Regulation Proceeding 148 and that the proceeding eventually changed the Commission's regulations so that limousine service providers would not be able to carry HHS clients. He stated that the change had affected a limousine that Prince of the Road was trying to purchase at the time. He also agreed that the Commission entered more than one order requiring limousine service providers to cease and desist their transportation of HHS clients as part of that proceeding. Mr. Schroll recalled that A-1 had appealed these orders.

Mr. Schroll next testified that if the application seeking the transfer of certificate B-1594, presently on appeal in the Court of Appeals, were granted, that it would have a negative effect on the operations of Prince of the Road, by increasing competition from an unfair application. He stated that, in his opinion, A-1 had operated contrary to the rules and regulations of the Commission. He felt granting the transfer application of the authority in B-1594 would be rewarding A-1 for their prior actions outside the scope of the rules and regulations of the Commission.

Lastly, Mr. Schroll stated that he had clearly asked his representative to speak with the representatives of the other companies, including Mr. Shultz, to devise a plan how to pursue an appeal of the granted A-1 certificate in the Court of Appeals. He expressed how those desires were frustrated by Mr. Shultz's representation of A-1 in the present case.

Upon questioning by Commissioner Landis, Mr. Schroll agreed that he had been involved with several cases before the Commission, but stated that he could not recall whether on several occasions A-1 representatives had testified that the Commissions staff had advised them that what they were doing was perfectly proper. He

testified that he did understand that the reason the Commission went through the rulemaking was because they recognized that they had made a mistake in Running Horse and were trying to rectify it. Mr. Schroll commended the Commission for these efforts, but stated that the rules do no good when A-1 does not abide by them.

On cross-examination, Mr. Schroll stated his belief that Mr. Shultz had represented him in a legal capacity. He felt that Mr. Shultz indirectly represented his interest in the appeal of A-1's certificate. Specifically, he reasoned that Mr. Shultz's representation of Yellow Cab in the A-1 certificate hearing constituted a conflict of interest with the current hearing. Mr. Schroll stated that he did not have an ownership interest in Yellow Cab. After examining Exhibit 22, Mr. Schroll admitted that Mr. Shultz's name did not appear on the front of the brief for the appeal as a representative. He stated that he was unsure if Mr. Shultz had taken any part in the preparation of the brief as he had spoken with Mr. Schroll's counsel.

Next, Mr. Schroll was questioned on exhibit 23. He identified it as the brief for the appeal of A-1 certificate filed for Servant Cab and Midwest Special Services. He stated that Mr. Shultz's name appeared on the brief and that the brief was for the same appeal that Exhibit 22's brief was filed for. He stated that his counsel had not divulged information to Mr. Shultz which would be contrary to his interest in the current hearing. When asked what his conflict of interest was in the current hearing, Mr. Schroll stated that he felt he did not need address the question and that this hearing was dealing with a different matter. He expressed that he felt the appeal and the current hearing tightly correlated.

Mr. Schroll testified that Prince of the Road had been competing with A-1 for HHS clients since A-1 began their service. He agreed that A-1 was an aggressive competitor who Price of the Road had lost business to. He then examined Exhibit 9 and stated that it listed the annual recertification to be held in Ravenna, starting at 9:30. He then looked at Exhibit 10 and testified that it was the recertification for Omaha and that it did not list a particular starting time. Mr. Schroll stated that no time was listed as the recertification went all day and that he would be available to start the recertification as drivers came in.

Mr. Schroll then described the negative impact a grant of the current application would have on his operations on the competitive atmosphere. When asked how this would impact him in the future, Mr. Schroll stated that he would be in direct competition with a company that should not even be in existence in his eyes. He did agree that the Commission had granted A-1 authority and that they

were operating under that authority. He also stated that they were currently competing with A-1 and said he had no answer for what would be different if the transfer application were granted. Mr. Schroll stated that he did not contend that the fitness of the parties seeking to transfer the authority was at issue.

Mr. Schroll testified that he competed with more than five other carriers for HHS traffic. He affirmed that he had heard Mr. Alford testify that he understood what he may be buying may be what the Commission issued or something else or nothing depending on what the Court of Appeals ruled on the appeal of A-1's certificate. He admitted that he had also engaged in a similar transaction.

Mr. Bertsch testified for the Protestant next. Mr. Bertsch is the owner of New Frontier Insurance Agency located in Plattsmouth, Nebraska and Born to Run, Inc., which owns Plattsmouth Cab Company. He is an insurance agent and an operator of Plattsmouth Cab Company. He testified that his transportation company serviced HHS customers in Cass County, taking them mainly to Omaha and back.

Mr. Bertsch examined Exhibit 7, which he testified was his certificate of authority. He stated that he was not aware whether he competed with A-1 Special Services. He could not recall ever seeing an A-1 vehicle in Plattsmouth. Mr. Bertsch testified that he was presently meeting the requests for service for HHS and similar transportation in his assigned area. He stated that Plattsmouth Cab Company never turned anything down and as far as he was aware they were serving one hundred percent of the area. He agreed that if A-1 were to begin operations in the area, it would have an effect on their business. He stated that there was a limited amount of clientele and if A-1 began to service HHS in Cass County it would change the nature of his business.

Upon questioning from Commissioner Landis, Mr. Bertsch testified that about eighty-five to ninety percent of Plattsmouth Cab Company's gross revenues came from HHS transportation. The remaining fifteen percent came from occasional fares.

On cross-examination Mr. Bertsch testified that his company also transported HHS clientele within Plattsmouth including to and from the doctor or grocery store. He stated that they received \$4.75 per transport for these trips. He stated that he fully understood that if the application was granted that A-1 could not compete for that service. Mr. Bertsch observed that competition for HHS transportation takes place over long distance runs. He stated that the longer transports were the most profitable.

Mr. Bertsch denied competing with Prince of the Road for the long distance transports of HHS clientele. He stated that from what he knew, Prince of the Road did not come into Cass County. He testified that Born to Run leases three vans to Prince of the Road and that these three vans run under the authority of Prince of the Road. He testified that the three vans were located in Plattsmouth and operated extensively in Omaha. He stated that he had no concern over the lease of the three vans, but was instead concerned about the impact on Plattsmouth Cab Company.

Mr. Bertsch testified that Plattsmouth Cab Company had two vehicles, one van and one sedan. He agreed that Exhibit 6 showed several trips by A-1 to and from Plattsmouth in the ending weeks of December including December 17, 18, 22, 23, 26, 28, 29, and 31. Mr. Bertsch explained that he may not have be aware of these transports because they are arranged by Magellan. He testified that it was very likely that a good number of the clients mentioned were not clients of the Plattsmouth agency, but were assigned to a worker in Omaha or Bellevue.

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

When considering a proposed transfer, the Commission is bound by the statutory requirements in Neb. Rev. Stat. § 75-318 (Reissue 1996). To that end, the Commission must determine whether the applicant is fit, willing and able properly to perform the proposed service, whether the proposed transfer will be consistent with public interest and will not unduly restrict competition, and whether the certificate to be transferred is dormant.

From the record, the Commission has adduced that the applicant/transferee is fit, willing and able to properly perform the proposed service. The owner of A-1 Transportation LLC has demonstrated that he possesses the financial ability to operate the proposed service and that he has a record of successfully operating other business ventures, including a limousine service. The evidence also demonstrated that, at the present time, the applicant has competent knowledge of the industry as a whole and of the Commission's rules and regulations. The applicant has hired the manager of A-1 to ensure a smooth transition of A-1 Ambassador Inc.'s operation to A-1 Transportation LLC. This manager has a great amount of experience in operating the day-to-day operations of the transportation provider. The applicant has promised to perform background checks of all A-1 Transportation LLC's drivers and to conduct a safe operation. The applicant has demonstrated a willingness to continue to serve the area previously served by A-1 Ambassador Inc. in its capacity as an open class carrier. Overall,

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the Commission finds that the applicant has met the first prong of the Commission's analysis and; therefore, the Commission finds the applicant fit, willing and able to properly perform the proposed transportation service.

Moreover, we find that a grant of this transfer application would serve public interest. We do not find that the transfer of this authority would create a new or extended service. Rather, we find that there is ample evidence in the record that applicant intends to continue the same practices in place and operate in the same manner that the existing carrier does. A denial of the application would create a gap which would need to be filled by other carriers and potentially harm the public in need of this transportation provider.

Finally, there was no evidence indicating that B-1594 is dormant.

In sum, after due consideration of the evidence and being fully advised in the premises, the Commission is of the opinion and finds:

1. Applicant is fit, willing, and able properly to perform the proposed service.
2. The proposed transfer of operating rights will be consistent with the public interest and will not unduly restrict competition.
3. The certificate issued in Application B-1594 is not dormant.
4. A certificate should be issued in Application B-1642, authorizing the following operations:

SERVICE AND TERRITORY AUTHORIZED:

COMMON: Transporting passengers in open class service between all points in Nebraska over irregular routes in sedans, vans, and station wagons. RESTRICTION: The transportation of railroad train crews and their baggage is not authorized. The transportation of passengers and their baggage point-to-point in Lancaster County is not authorized. The transportation services of passengers and their baggage originating within Lancaster County is not authorized. The transportation services of passengers their baggage by sedan or station wagon originating from or point-to-point within any territory where a taxicab

company holds a certificate or permit is not authorized. RESERVATION: The Commission expressly reserves the right to further restrict the authority with respect to sedans and station wagons, on its own motion or the motion of another, in the event that a carrier which, meets all the requirements of Article 75, Chapter 3 of the Nebraska Revised Statutes and all applicable Commission rules and regulations thereunder, offers taxi services in territories unserved as of November 26, 2002.

O R D E R

IT IS, THEREFORE, ORDERED by the Nebraska Public Service Commission that the application for transfer of the motor carrier properties and the certificate sought to be acquired by A-1 Transportation, LLC, shall be, and it is hereby, granted; and that upon compliance with the terms and conditions set forth in this Order, a Certificate of Public Convenience and Necessity shall be issued to A-1 Transportation, LLC, Omaha, Nebraska, in Application B-1642 authorizing the operations set forth in the foregoing findings; and that to avoid a lapse of authority, the Certificate of Public Convenience and Necessity issued in Application B-1594, shall be revoked and cancelled simultaneously with the issuance of a Certificate of Public Convenience and Necessity in Application B-1642.

IT IS FURTHER ORDERED that 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. sections 75-305 (fees), 75-307 (insurance), and 75-308 (rates) (Reissue 1996), and with the rules and regulations of the Commission, and if upon expiration of such time applicant has not complied with such terms and conditions, this Order shall, after reasonable notice to 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 the operations authorized herein shall be subject to the terms, conditions, and limitations which have been, or may hereafter be prescribed by the Commission.

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MADE AND ENTERED at Lincoln, Nebraska, this 3rd day of
February 2004.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Frank E. Landis
Rod Johnson

//s// Frank E. Landis
//s// Rod Johnson

ATTEST:

Rod Johnson
Vice Chair

ALS Pollock
Executive Director