

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the) APPLICATION NO. B-1663
Application of Stella Counseling)
Services, Lincoln, Nebraska,)
seeking authority as a contract)
carrier in Nebraska intrastate)
commerce in the transportation)
of passengers and their baggage) GRANTED AS MODIFIED
in contract open class service for)
clients receiving services from)
Stella Counseling Services, PC,)
between points within the limits)
of the city of Lincoln.)
RESTRICTION: The transportation)
of railroad train crews and)
their baggage is not authorized.) ENTERED : JULY 25, 2006

APPEARANCES:

For the Applicant:
Stella Offordirinwa, pro se

For the Protestant:
Jack Shultz
Attorney-at-Law
P.O. Box 82028
Lincoln NE 68508

For the Commission staff:
Mark Breiner
300 The Atrium
1200 N Street
Lincoln, Nebraska 68508

BY THE COMMISSION:

By application filed May 31, 2005, Stella Counseling Services, PC, Lincoln, Nebraska ("Applicant") seeks authority as a contract carrier in Nebraska intrastate commerce between points in city of Lincoln for clients of Stella Counseling Services, PC. Notice of this application appeared in The Daily Record, Omaha, Nebraska, on May 31, 2005. Protests to the application were filed on June 13, 2005, by A-1 Transportation, and on June 20, 2005, by Servant Cab Company through its attorney, Jack Shultz. A hearing on this application was held on April 5, 2006, in the Commissioner Hearing Room.

Stella Offordirinwa appeared pro se on behalf of the applicant. She testified that she is a licensed to practice mental

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health services in the state of Nebraska, and provides mental health services to clients. Her clients are usually under court ordered treatment. They mostly suffer from varying degrees of mental disability, including not being coherent enough to function on a daily regular basis.

Ms. Offordirinwa testified that her clients have experienced numerous transportation difficulties. Her clients miss appointments, are sometimes left off and wander around with no supervision. Some clients suffer from manic conditions which makes them distrustful of most anyone and can contribute to a missed appointment due to an unwillingness to go with someone they do not know. She testified that he has talked with Servant Cabs regarding issues missed appointments due to failure to find addresses and also problems with drivers.

Ms. Offordirinwa stated that she currently has two vehicles that she can use in the service, and anticipates that she would provide around five trips per week for around twelve clients that have a mental condition that would benefit from her providing the transportation. She has checked on insurance requirements with her insurance provider, but does not know what the costs would be.

On cross-examination by Jack Shultz, Ms. Offordirinwa that there are many reasons that transportation can be a problem for her clients, and some of them are beyond the control of the cab company in Lincoln. She testified that sometimes the clients are ill or are manic and will miss the arranged transportation.

Ms. Offordirinwa also testified on cross that she may have others besides herself drive the clients. She stated that while this could offset some of the benefits to the clients who suffer from mistrust, she would do what she could to introduce the client to the driver to alleviate this discomfort.

When asked by Mr. Shultz whether anyone from the Department of Health and Human Services requested that she file this application, she stated that no one had made such a request or stated that the proposed service is necessary for their clientele.

Ms. Offordirinwa testified that she had not done a feasibility study, thought that she would pay a driver around \$7 to \$8 per hour, and thought she would charge around \$9 or \$10 for a trip. She did not know what HHS required for its carriers or would allow her to charge, and did not know if her thoughts on charges and expenses was economically feasible. She stated that she was only wanting to help her clients out more with transportation issues. On

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cross-examination by Commission counsel, the applicant stated that her service usually be set in advance, with only occasional services being provided for emergency situations. She was asked if she had attempted to discuss her issues with the local provider, but stated that they merely become defensive.

Kirby Young testified on behalf of the protestant, Servant Cabs. He is the managing member of the protestant. He testified that they have provided HHS service since their inception four years ago, and that it comprises approximately fifty percent of their business. He is not aware of any issues regarding a lack or inadequacy of service to HHS, and is not aware of any complaints from HHS regarding their services.

After a review of services, equipment and employment by the Protestant, Mr. Young then described how HHS calls were routed between HHS, Magellan and the Protestant. He stated that the Protestant works hard to ameliorate any issues such as those stated by the Applicant. He stated that the Applicant is willing to work with counselors such as the Applicant in this matter to help resolve transportation issues that may be present.

Mr. Young stated that he had not received any complaints regarding services provided from either Ms. Offordirinwa or HHS. He stated that there are many reasons that transportation may not work in a particular instance and that many of these reasons are not in the control of the Protestant. The Protestant continues to stand prepared to work with either HHS or the Applicant to resolve issues that may be present.

Mr. Young stated that usually his cabs are underutilized and that they are willing and able to take on additional business. He stated that, in his opinion, public convenience and necessity does not require the entry of a new carrier into the market.

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

The granting of a permit of public convenience and necessity is governed by Neb. Rev. Stat. § 75-311 (Reissue 1996) which states,

A permit shall be issued to any qualified applicant authorizing the whole or any part of the operations covered by the application of it is appears after notice and hearing from the application or from any hearing held on the application that (a) the applicant is fit,

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willing, and able properly to perform the service of a contract carrier by motor vehicle and to conform to the provisions of such sections and the lawful requirements, rules and regulations of the commission under such sections and (b) the proposed operation, to the extent authorized by the permit, will be consistent with the public by provided services designed to meet the distinct needs of each individual customer or a specifically designated class of customers as defined in subsection (6) of Section 75-302. Otherwise the application shall be denied. *Neb. Rev. Stat. §75-311(2) (Reissue 1996).*

In other words, the Commission must apply a two-part test. First, the Commission must determine if an applicant is "fit, willing, and able." The Commission must find that the applicant is fit, willing and able to properly perform the service. The evidence shows that the applicant appears to be financially in reasonable condition, showing \$85,000 in assets and only \$4,000 in liabilities. The applicant also has already purchased a van for use in its proposed service, so her financial condition will not be reduced by the need to purchase a vehicle.

Another factor the Commission looks at is the fitness of the applicant is whether the applicant has any background issues that would prevent him or her from being found fit. In this matter, the applicant is a licensed therapist and has been operating as a corporation for the past one and a half years. She has maintained her status as a corporation. She has also entered in a relationship with the Nebraska Department of Social Services for her therapeutic work.

The applicant is aware that she needs to have authority from the Commission before she can provide her proposed service. She is also aware that there will be specific Commission insurance requirements that must be met before she can begin operations. These factors show to the Commission that the applicant is able to know and follow the lawful requirements, rules and regulations of the Commission.

On the basis of the foregoing and the limited scope of the service to be provided by the applicant, the Commission finds that the applicant is fit, willing, and able to provide a service. The Commission must also find that the proposed operation will meet the distinct needs of a specifically designated class of customers.

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The applicant's testimony stated that some of its clients have special needs due to mental health issues. The testimony was that some clients fail to come out to a transportation provider because they do not know the provider and thereby miss counseling sessions. These clients also benefit from knowing the person that will be picking them up. The testimony also showed that there were occasions that the client would wander away from the applicants office as they were dropped off before the counseling session. This could create a dangerous situation for the client as well as the general public.

The Commission finds that the applicant has met its burden of proof regarding the designated class of individuals. The permit should be issued with a restriction that the transportation to be provided should be limited to those clients of Stella Counseling Service that exhibit mental health conditions that require the special services of the applicant. The testimony was that not all of the counseling service's clients had these conditions. Therefore, the permit should be limited to the transportation of these clients with those special conditions.

O R D E R

IT IS, THEREFORE, ORDERED by the Nebraska Public Service Commission that the application of Stella Counseling Services, PC, be granted as modified below:

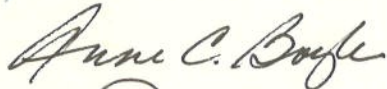
CONTRACT: Contract carrier in Nebraska intrastate commerce in open class service by van between points in the city of Lincoln for clients of Stella Counseling Services, PC. RESTRICTIONS: The transportation of railroad crews and their baggage is not authorized. Further restricted to transportation of clients of Stella Counseling Services, PC, who currently have or develop a mental health condition that requires specialized transportation.

MADE AND ENTERED at Lincoln, Nebraska, this 25th day of July, 2006.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:







//s// Lowell C. Johnson

//s// Frank E. Landis


Chairman

ATTEST:



Executive Director