

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the ) APPLICATION NO. B-1680  
Application of The Sudanese )  
National Community of )  
Nebraska, Inc., Omaha, )  
Nebraska, seeking authority as )  
a common carrier of passengers ) DENIED  
in open class service over )  
irregular routes between )  
points in Douglas and Sarpy )  
counties by van, including the )  
transportation of Health and )  
Human Services clients. ) ENTERED: JANUARY 29, 2008

APPEARANCES:

For the Applicant:

Richard S. McMillin  
1601 Miarcle Hills Drive  
Suite 300  
Omaha, NE 68514

For the Protestants:

Marshall Becker  
3814 Dodge Street  
Omaha, NE 68131

For the Commission Staff:

Mark Breiner  
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Lincoln, NE 68509

John Boehm  
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Lincoln, NE 68508

Michael Polk  
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Suite 1  
Papillion, NE 68046

BY THE COMMISSION:

B A C K G R O U N D

By application filed January 11, 2006, The Sudanese National Community of Nebraska, Inc., of Omaha, Nebraska, seeks authority to operate as a common carrier of passengers in open class service over irregular routes between points in Douglas and Sarpy counties by vans including the transportation of Health and Human Services Clients. Notice of the application was published in The Daily Record, Omaha, Nebraska, on January 31, 2006. Timely protests to the application were filed by Shared Mobility Coach, Inc., A & B Shuttle, Prince of the Road, and by Happy Cab, Yellow Cab, Checker Cab and Cornhusker Cab.

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A hearing on the application was held on May 22, 2007 with appearances as listed above. Notice of the hearing was sent to all interested parties on May 9, 2007.

E V I D E N C E

APPLICANTS EVIDENCE

The first witness called by the Applicant was Gai Alirpou. Ms. Alirpou has used the services of Peter Biel as an interpreter in the past. She described the troubles that she has experienced with transportation and the difficulties that the language barrier causes.

The second witness called was Nyantot Mut Nyoch. Ms. Nyoch testified as to the need for translation services and the provision of transportation by the Applicant. She stated that transportation options in Omaha were somewhat restricted due to the language barrier that she experiences. The services of the applicant would help her to meet her transportation needs.

On cross-examination by Michael Polk, she did state that individuals in positions such as hers could use the phone with a translator to make transportation arrangements. On examination by Commissioner Schram, she stated that she does not use public transportation due to the difficulties created by the language barrier.

\*\*The next witness was Geng Minydet. Mr. Minydet testified that many people experience transportation problems due to language barriers. Many people cannot call cabs or busses because of these difficulties.

Biel Thich was called next by the Applicant. Mr. Thich works for the Even Start Program in Omaha. He testified regarding difficulties that his clientele have in getting to classes due to the language problems. There is a need for language translators to assist in getting people to his training classes. While his program does get some assistance from Stepping Stone in providing some transportation, he stated that this program has turned away some people due to transportation problems.

On cross-examination by Mr. Polk, Mr. Thich did state his program did also receive some help from the Early Start

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program that was also in his building. He stated that there were two vans that did provide some assistance, but that this was not enough to keep him from having to turn people away from his program. Mr. Thich has not been able to provide transportation on his own due to lack of funding and no grant money being able to be found.

Mr. Thich also stated that he has not discussed these issues with Metro Area Transit or any of the local cab companies.

On examination by Commissioner Schram, Mr. Thich stated that there are three major dialects and several minor ones among the seven thousand individuals of Somali descent in the Omaha area. Approximately ninety percent of these individuals face a language barrier according to Mr. Thich. He also admitted that it was possible that the proposed service could fail to meet the language needs of particular riders.

Koang Nyoak testified on behalf of the Applicant. Mr. Nyoak is the president of the Sudanese National Community, and has been for the past three years. He stated that the Community has seen a need for this service and has been providing it in the past as a free service. Mr. Nyoak stated that the cab companies cannot provide the services proposed due to language barriers as well as an inability to provide additional services to the passengers such as going in with them to the doctors offices to assist in translation. He also stated that the Community was primarily looking for reimbursement for gasoline expenses.

On cross-examination by Mr. Becker, Mr. Nyoak stated that the Community cannot continue to provide the service for free as more people are using the service than had previously. He did not know how much that the service would charge for gas reimbursement and that that figure would have to be determined later. He also stated that the proposed service would only charge HHS for gas money and not require payment from clients directly due to the clients lack of funds.

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On cross-examination by Mr. Boehm, Mr. Nyaok did state that the Community did receive funding from grants, and that this money went for interpreters as well as transportation charges. He also stated that the grant money was not enough to meet all of their needs. He also stated on cross that the proposed service would not serve that public at large but would only serve non-English speaking individuals.

On cross-examination by Mr. Polk, Mr. Nyaok stated that he had not personally read the Public Service Commission's Rules and Regulations, but that he would become aware of them as the process moved forward.

Peter Biel testified next. He is a native of Sudan who has been in Omaha for nine years. He testified to the difficulties of language barriers in transportation in the Omaha area. The major problem areas lie in missed appointments. There is also a lack of interpreters in that area.

The Community relies primarily on donations and grants, both local and federal. One reason for the proposed service is that they have been providing it for free, but the cost of gasoline has greatly increased and they are looking to offset these expenses. Mr. Biel testified that they were going to target Sudanese who speak Dinka, Nuer, Shilluk, Annuak and Mabany initially, but may open it up to others later. He reviewed the corporate status of the Community as a non-profit company. He also reviewed some financial statements which showed that the company had approximately \$5,277 in cash as of the end of 2005.

On cross-examination by Marshall Becker, Mr. Biel stated that he did not know what the Community would charge. He stated that he tried to work the issue out with HHS, but that they would not work with him until he received authority from the Commission.

On cross-examination by John Boehm, Mr. Biel stated that the majority of the clients of the Community were HHS clients also. He stated that he would further restate his restriction to eliminate recent immigrant status and rely on the language ability of the client. English speakers

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would be independent enough to arrange their own transportation issues and would have no need for an interpreter, and therefore would not be served by the Community.

Mr. Biel stated that the Community did rely upon donations, and the amount of donations fluctuates depending on other factors. He also stated that he would lose too much time making arrangements for using the cabs for his clients when he could be doing the transportation directly.

On cross-examination by Michael Polk, Mr. Biel admitted that he did not have a good understanding of Public Service Commission Rules and Regulations, but that he would defer to this legal counsel for these issues. He stated that the Community did use a certified mechanic. He also addressed the insurance issue, stating that he had made arrangements for the necessary insurance coverage despite the fact that the exhibit provided to the Commission was \$500,000 short of the required amount.

Mr. Biel further stated that the drivers that the Community would use would be primarily himself but that other drivers would also be used as necessary. When asked if the Community could meet a situation where a \$2,500 repair needed to be made, Mr. Biel stated that the Community could make the payment.

#### PROTESTANTS EVIDENCE

Michael Van Meter from A & B Shuttle testified. He stated that his company did provide transportation services in Douglas and Sarpy counties including contracts with HHS. After a review of equipment and passenger lists, Mr. Van Meter testified as to his contract with HHS. It allows for the transportation of another passenger such as a translator with no additional charge. It is also HHS that determines who is transported and whether or not an additional persona such as a translator is sent.

On cross examination by Mr. McMillan, Mr. Van Meter stated that he has not knowingly transported a non-English speaking Sudanese person in the last four and one-half years.

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John Miller from Prince of the Road testified next. He is the supervisor of the dispatch office in Omaha for Prince. Prince does provide transportation for HHS clients in Douglas and Sarpy counties. He testified that his company provides 1225 to 150 HHS trips per day, and that this constitutes about 90 percent of Prince's business.

He stated that it is mostly caseworkers who make the transportation arrangements for their clients. Under contract with HHS, a second person is allowed to ride along at no charge. Mr. Miller did not recall serving a non-English speaking client in his experience.

Mr. Miller testified that the granting of this authority would have a negative effect on revenues for his company. He also stated that Prince was meeting the demands made by HHS, and that its fleet could be expanded if these needs were to increase.

Upon examination by Commissioner Landis, Mr. Miller did clarify his statement regarding not having served non-English speaking individuals. He stated that his company did serve people of African descent, but that these people mostly either spoke English or enough English that they did not need translation services. He also stated that, while the current application as amended may not necessarily be a major issue, the expansion of the authority after its granting to people who did speak English was probable and that would certainly injure his company.

Mr. Miller stated in response to questioning by Commissioner Boyle that Prince does currently have surplus capacity, but that the capacity could be expanded if needed. Mr. Miller stated in response to questioning from Commissioner Schram that Prince was not currently doing anything special in the area of addressing language barrier issues.

John Davis from Happy Cab, Checker Cab, Yellow Cab and Cornhusker Cab next testified. Mr. Davis is the director of operations for the said companies. These companies place approximately 160 cabs on the streets of Omaha. They provide for around 1,100 trips per day, and also provide transportation services for HHS.

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Mr. Davis stated that the cab companies have a diverse driver pool that consists of almost 40 percent being of African descent from different regions. He stated that four to five of the drivers are Sudanese who speak various dialects. When requested, the dispatch of the cab companies can match up a driver with a customer to assist in the language barrier issue. He also stated that it is the usual situation that people call in themselves or will have a translator present with them when they call.

Mr. Davis said that the company can provide a direct number to the specified drivers to individuals so that those individuals can call the driver directly if the specific driver and help with the language issue. He also said that the companies stand ready to work with the Sudanese community in any effort to improve the language barrier issue with them.

On questioning by Commissioner Landis, Mr. Davis said that the drivers would not be expected to go into a store or a medical office with the passenger but to only provide transportation for that passenger.

Khogali Darfour testified next. He is a cab driver who hails from the Sudan. He stated that he can speak English, Arabic and the language from his home area of the Nuba mountain plains. On cross-examination by Mr. McMillan, he stated that he needs 40 to 45 trips per day to meet his lease obligations, and could not survive as a driver if he could only do three trips per day and provide additional services for his passengers.

The last witness was Frank Schumacher. He is the owner of Shared Mobility Coach. Mr. Schumacher's company provides transportation services in Douglas and Sarpy counties, including HHS transportation. He stated that the Applicant was attempting to do a good thing, but that high standards that he must meet must also be met by the Applicant involving van quality and driver screening and training. His experience is that the people who call for services that do not speak English usually have a person with them who can translate. He also stated that he has not heard any complaints from HHS caseworkers concerning the issues that were brought up at the hearing.

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Mr. Schumacher stated that he did not believe that a company could be operated on the level of service that was described by the Applicant. He stated that the revenue that would be created from the described service would not be enough to maintain a fleet, pay for expenses and create revenues for drivers or training.

## P R E L I M I N A R Y M A T T E R

On May 25, 2007, a Motion to Dismiss was filed by Happy Cab, Checker Cab, Yellow Cab and Cornhusker Cab, citing that the proposed service is discriminatory and should not be approved by the Commission. At this time, the Commission will overrule that Motion.

## 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 obtain authority so that it may provide transportation to passengers and family members whose native language is Nuer, Dinka, Shilluk, Mabany and other Sudanese languages which are recent immigrants to the areas and who have limited English language skills. This transportation would be conducted in Douglas and Sarpy counties in Nebraska in open class service by vans, and would include the transportation of clients of Nebraska Health and Human Services.

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 properly to 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



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convenience and necessity. Otherwise the application shall be denied.

In order to be successful, an applicant must provide that it is fit, willing and able to provide the proposed service and that the proposed service "is or will be required by the present or future public convenience and necessity."

The Applicant does appear to have the necessary experience and overall general business acumen to operate the business. However, there are specifics of the business plan that the Commission finds lacking. There is no determination of a rate that needs to be charged in order to meet its operating costs. The evidence also reveals that a determination of meeting the costs has not been made. The Applicant also stated that it would not necessarily charge a rate to all customers. These factors illustrate an incomplete business plan that is necessary to operate a business.

The Commission finds that the applicant still has uncertainty of the costs of operation of the business. It is impossible to know if an operation will be successful if the applicant does not have a foundation to determine what it needs to do to be successful. There also was evidence presented by the protestants regarding the ability of the applicant to operate a transportation business with the levels that were proposed by the applicant. They stated that the number of trips as set forth by the applicant would not provide enough revenue to operate the proposed service.

The Commission finds, for the above detailed reasons, that the applicant has failed to prove the ability to operate the proposed service. From the evidence on this matter, we find that Applicant has not sufficiently proven it is fit, willing and able properly to perform the proposed service and able to conform to Neb. Rev. Stat. § 75-301 et seq.

As the Commission has found that the Application should be denied on the failure to adequately show the ability to perform the service provided, it will not address any issues regarding need and necessity.

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**Territory Requested:**

Common: Transportation of passengers in Nebraska intrastate commerce as a common carrier of passengers by taxicab over irregular routes between points in Cedar, Dixon, Dakota, Wayne, Thurston, Stanton, Cuming, and Burt counties, on the one hand, and, other hand, points between said counties.

From the evidence adduced and being fully informed in the premises, the Commission is of the opinion and finds:

1. The application should be denied.

Operations in violation of this or any other order of the Commission or operations outside the scope of Applicant's certificated area will result in civil penalties of up to ten thousand dollars per day as provided in Neb. Rev. Stat. § 75-156 (Reissue 2003), or in a suspension or revocation of Applicant's certificate.

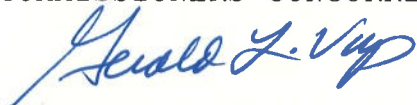
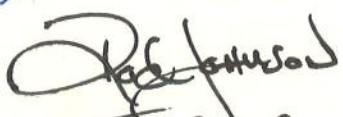

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the above-captioned application filed by CABS, Inc., should be denied as provided herein.

MADE AND ENTERED at Lincoln, Nebraska, this 29<sup>th</sup> day of January, 2008.

NEBRASKA PUBLIC SERVICE COMMISSION


COMMISSIONERS CONCURRING:

Chair



ATTEST:

  
Executive Director

//s//Anne C. Boyle  
//s//Frank E. Landis