

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

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BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application)  
of Platinum Limousine Services, )  
LLC, Norfolk, seeking to extend )  
the authority for the )  
transportation of passengers and)  
their baggage in limousine )  
service between points in Platte)  
Colfax, Boone, Antelope and Knox)  
Counties, on the one hand, and, )  
On the other hand, points in )  
Nebraska over irregular routes. )  
RESTRICTION: The transportation)  
Railroad train crews and their )  
Baggage is not authorized. HHS )  
Designation: No.

APPLICATION NO. B-1717  
SUPPLEMENT 1

DENIED

ENTERED: DECEMBER 15, 2009

For the Applicant:

Doug Stratton  
Attorney at Law  
200 West Benjamin  
Norfolk, NE 68701

For the Protestant:

James McNally  
Attorney at Law  
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For the Commission Staff:

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Lincoln, NE 68509

BY THE COMMISSION:

B A C K G R O U N D

By application filed January 26, 2009, Platinum Limousine Service, Norfolk, Nebraska seeks to extend its authority as a common carrier of passengers in Nebraska intrastate commerce by proposing to provide limousine services in Platte, Colfax, Cuming, Boone, Antelope and Knox counties in Nebraska in Supplement 1 to its current

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authority. Notice of the application was published in The Daily Record, Omaha, Nebraska, on February 17, 2009. Protests to the application were filed by Dwaine and Deborah Trease d/b/a Special Moments Limousine, Trease Enterprises, Inc. on March 16, 2009.

A hearing on the application was held on November 5, 2009, with appearances listed above. Notice of the hearing was sent to all interested parties on October 6, 2009.

#### APPLICANT'S EVIDENCE

Kevin Signor was called to testify for the applicant. Mr. Signor is the owner of Platinum Limousine Services in Norfolk. The applicant has held authority since September of 2008. It is seeking to extend its authority into Platte, Colfax, Cuming, Boone, Antelope and Knox counties.

Currently the applicant owns two vehicles but only uses one of them. There are up to four individuals who drive for the company. The vehicle that the applicant currently uses is a 1995 white Lincoln. The vehicle is properly licensed and insured. It has been maintained in good working condition.

Mr. Signor stated that he wants to extend the authority held by the applicant due to the volume of calls that the applicant receives for service, especially in Platte County. In particular, the applicant receives calls from Humprey, which is located in Platte County. He stated that his company is located much closer to Columbus than the protestants are located, and that therefore he can provide service cheaper than they can.

Mr. Signor said that his company received calls for service for weddings and proms. He has told them that he cannot provide service in Platte County as he does not have authority to operate in that county. The majority of the calls that the applicant receives for service are from Platte County. Mr. Signor estimated that he received between three to five inquiries per month over the past year. During prom season, that number is higher. Most of

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the callers stated to Mr. Signor that it was too expensive to hire another company.

While the majority of the calls that the applicant receives are from Platte County, it also receives calls from the other requested counties as well. Mr. Signor estimated that the applicant receives a couple of calls per month from these counties.

On cross-examination by Mr. McNally, Mr. Signor said that he personally does not have a record of the phone calls received, although another witness may have some written records. Mr. Signor did admit that the numbers were only estimates.

Mr. Signor answered on questioning that he had not done a market survey of any kind. He also stated that two limousines would not be enough to meet the needs for prom service, although the applicant did stand prepared to purchase an additional two or three limousines if necessary. Mr. Signor did not know if the people calling the applicant had attempted to contract with Special Moments and whether their needs had been met by the protestants. He said that he did not know if the callers were able to be served or not, but that many of the calls did mention that Special Moments was too expensive.

Stacy Ertzner testified next for the applicant. She is the bookkeeper for Platinum Limousine and is the sister of Kevin Signor. Part of her duties include answering the phone for the applicant. Ms. Ertzner did not take down a list of the people who called, although she said that she had a list of six from a bridal fair held in Norfolk in February or 2009.

Ms. Ertzner stated that she estimated that the applicant received three to five inquiries per month. This number would increase with inquiries during prom season. The vast majority of the calls came from Platte County.

On cross-examination by Mr. McNally, Ms. Ertzen said she believed that most of the individuals from the bridal fair would be interested in hiring the applicant because they are cheaper than Special Moments. On re-direct by Mr.

Stratton, Ms. Ertzen did say that there were some individuals that called because Special moments was full, but did not give a good estimate as she did not for sure why they were interested in the applicant.

PROTESTANT'S EVIDENCE

Mr. Dwaine Trease was called by the protestants. Mr. Trease is one of the owners of the protestants. The protestants have been in business for sixteen years. The protestants currently operate in the counties that are being applied for by the applicant. The protestants operate six vehicles, including a thirty-passenger bus, and employ twenty-one drivers.

Mr. Trease stated that handled twenty-two calls in Platte County in 2008, and sixteen calls in 2009. He believes that the economy has contributed to the decline in services provided in Platte County in 2009.

Mr. Trease believes that between his operations and those of VIP Limousine, which also holds authority in the areas involved in this application, that the needs of the public are being met.

Mr. Trease detailed that not all incoming calls result in bookings. He estimated from his own situation that only ten to twenty percent of calls received by his companies result in bookings. The majority are inquiry calls regarding rates or possible availability for a given date.

Mr. Trease also testified that his operations would be hurt if another authority was granted in his area. He estimated that his companies could lose between \$20,000 to \$25,000. A loss of this magnitude could result in liquidation of some of the vehicles due to excessive down time and the resultant decrease in revenues, as well as lay offs of drivers if the business were to decline.

Mr. Trease did acknowledge that there is a problem supplying vehicles for all the demand around prom time, but that this time period was short and the rest of the time he had adequate availability. Mr. Trease, however, said the problems with vehicles around prom time were in other counties than those sought by the applicant. He also

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estimated that less than one percent turned away from his services due to cost considerations.

On questioning by Mr. Stratton, Mr. Trease said that approximately twenty percent of his business is within the counties sought by the applicant. He acknowledged that his was estimate and not based upon any study or survey. On questioning by Commissioner Boyle, Mr. Trease noted that there are currently no booked trips for December of 2009. He also noted that he could notice the decline in business in the fall of 2008, and that the decline has continued into 2009.

Deborah Trease was called to testify for the protestants. She is the bookkeeper for the protestants and is the wife of Dwain Trease. She reviewed the books kept by the protestants and was unable to find any requests for service trips they turned down in the five counties in issue in this matter for 2008-2009. This amount included only persons that requested to book a trip, and not all calls as some calls are for informational purposes only. She did acknowledge that some people told her that the trips were too expensive, while others were merely inquiring regarding size and color of vehicles and other general information.

Mrs. Trease further acknowledged that there are times that demand is excessive, such as around prom time and sometimes in the wedding season in June.

On cross-examination by Mr. Stratton, Mrs. Trease admitted that there are some times in some areas of their geographic area that they cannot meet all of the demand. However, she stated that she was referring to other parts of the area than those sought by the applicant such as in and around Grand Island or Hastings. This is due to the larger population and thus demand for services in Grand Island or Hastings as opposed to the population in the counties sought by the applicant.

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

Applications for common carrier authority are governed by Neb. Rev. Stat. § 75-311 (2008), 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 this matter, the applicant is a current certificated motor carrier who is in compliance with insurance, plate and other Commission rules and regulations. The Commission has found that the applicant is fit, willing, and able to perform the services proposed. 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 not presented sufficient evidence of need and necessity to support a grant of the application.

The first part of the test is whether the operation will serve a useful purpose responsive to a public demand or need. Mr. Signor and Ms. Ertzner present verbal testimony regarding phone inquiries that the applicant received pertaining to the applicant's provision of services in the sought counties, especially Platte County. There was also further emphasis on an alleged lack of availability of limousines during the prom season.

The evidence, however, in this matter rested almost exclusively on these phone calls. There was no documentation provided for the calls other than the testimony from the witnesses. There was no evidence from a witness that claimed they were not able to secure service from the current providers. There was not enough evidence put forward to the Commission that would allow a finding that the applicant passed the first part of the test. The Commission therefore finds that the application has failed the first part of the test.

The second part of the test is whether the purpose can or will be served as well by existing carriers. There was no direct evidence placed in the record that would show that the existing carriers are providing inadequate service in the territory sought by the applicant. In this matter there was an inadequate showing that service is unavailable or inadequate. Therefore, the Commission finds that the Application fails part two of the test.

The third part of the test is whether the public demand or need can be served by the applicant in a specified manner without endangering or impairing the operations of existing carriers contrary to the public interest. While the Commission declines to enter a finding on this part of the test as it has found that the application failed the first two parts of the test and thus should be denied, the Commission does note the testimony of Mr. Trease regarding

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the negative impact that the granting of this applicant could cause to his company and the general negative impact the current economic downturn has also had on his operations. He presented testimony that his companies are currently suffering from a decline in bookings, and that the further diversion of services would create an additional strain on them.

From the evidence adduced and being fully informed in the premises, the Commission is of the opinion and finds that the application should be denied.

O R D E R


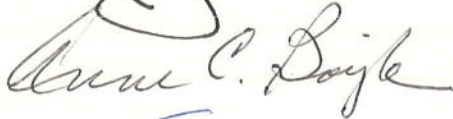
IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application B-1717, Supplement 1, be, and it is hereby, denied.

MADE AND ENTERED at Lincoln, Nebraska, this 15<sup>th</sup> day of December, 2009.

NEBRASKA PUBLIC SERVICE COMMISSION

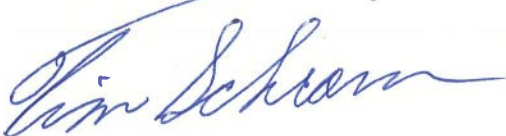
COMMISSIONERS CONCURRING:

  
Vice Chairman

ATTEST:

  
Executive Director



//s// Gerald L. Vap