

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) APPLICATION NO. B-1718
Leisure Limousine & Sedan, Inc.,) SUPPLEMENT 3
Lincoln, seeking to institute a)
new service in the)
transportation of passengers by)
taxicab between points in)
Lancaster County, and points)
within said county, on the one)
hand, and, on the other hand,) GRANTED AS AMENDED
points in Nebraska over)
irregular routes. RESTRICTION:)
The transportation of railroad)
train crews and their baggage is)
not authorized. HHS) ENTERED: OCTOBER 23, 2012
Designation: Yes.)

APPEARANCES

For the Commission Staff:

Mark Breiner
300 The Atrium
1200 N Street
PO Box 94927
Lincoln, Nebraska 68509

BY THE COMMISSION:

BACKGROUND

By application published on January 25, 2012, Leisure Limousine and Sedan, Inc., Lincoln, Nebraska, seeks authority from the Public Service Commission ("PSC" or "Commission") to operate as a common carrier in the transportation of passengers by taxicab between points in Lancaster County, and points within said county, on the one hand, and, on the other hand, points in Nebraska over irregular routes. RESTRICTION: The transportation of railroad train crews and their baggage is not authorized. HHS Designation: Yes. Notice of the application was published in The Daily Record, Omaha, Nebraska on January 25, 2012. Timely protests to the application were filed by Transport Plus of Lincoln; Servant Cab, Inc., by its attorney, Jack Shultz; Golden Plains Services, LLC, of McCook; and by Yellow Cab and Limo, Inc. A restrictive amendment was filed by the Applicant that restricted the Applicant to originating only in Lancaster

County, that the Applicant would be restricted against serving HHS clients, and that the Applicant would not use wheelchair equipped vans for a period of five years. Subsequent to the filing of the restrictive amendment, Transport Plus withdrew its protest.

A hearing on the application was held on September 11, 2012, with appearances as listed above. Notice of the hearing was sent to all parties of record on August 14, 2012.

APPLICANT'S EVIDENCE

Mr. Jim Joneson testified for the Applicant. Mr. Joneson is the President of the Applicant. Mr. Joneson stated that he filed the application on behalf of the Applicant when the question arose regarding the issues of taxi service in Lincoln, Nebraska. Mr. Joneson stated that the application had been protested, but that he agreed that the service would be restricted to originating in Lancaster County only, that the HHS designation would be No, and that they would not use wheelchair equipped vehicles in its service. It was his understanding that letters of withdrawal were drafted, but that some of the letters had not been received by the Commission. Mr. Joneson said that he would provide copies of the letters he had received as Late Filed Exhibit 4.

Mr. Joneson said that the Applicant currently runs a black car limousine service with its sedans. The sedans provide various limousine services. Mr. Joneson stated that he tried to research a way to use the sedans as a limousine and remain price competitive, but that under current rules, regulations and statutes, that this was not feasible.

Mr. Joneson testified that the Applicant has the vehicles already in its current fleet that would be placed into the new taxicab authority. His proposal is that two vehicles of the nine that are currently owned would initially be placed in service, with the possibility of more vehicles being placed into the service if demand warrants such a placement. The Applicant also currently operates with a 24 hour dispatch service. The Applicant is also able to place meters in the sedans and to have the sedans properly marked. The Applicant is in position to begin operations very quickly because of the resources that it currently has in place for its sedan operations.

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

APPLICATION NO. B-1718, SUPPLEMENT 3

PAGE 3

On examination by Commissioner Vap, Mr. Joneson said that he has not done any specific research into demand for taxis in the proposed service area, but that his dispatch center receives calls for this type of service "all night long." He said that the calls are usually forwarded or referred to the cab companies.

Mr. Joneson stated that the Omaha cab companies had helped the situation in Lincoln with the rush periods, but that their entrance to the market did not solve the problem. He said that there appeared to still be considerable wait times for passengers. He also said that it was his understanding that the service increase provided for was in the downtown area, and that the outskirts of the city was being neglected.

On examination by Commissioner Boyle, Mr. Joneson said that the lack of service in the outskirts of Lincoln was not due to the cab companies refusing trips, but that there was a question of the timing of the trips and the availability of cabs to serve the entire city. He also said in response to an inquiry from Commissioner Boyle, that his proposed rates would be an average of the two rates that are currently approved for Lincoln.

On examination by Commissioner Vap, Mr. Joneson said that he is still determining whether he would use independent contractors or employees in the proposed service. His current operations use contractors, and he has to keep a good number of them under contract so that he ensures that he has enough drivers to meet his commitments. He also said that the drivers will undergo a background check, undergo drug testing and licensing as drivers as required.

Kyle Fischer testified next for the Applicant. Mr. Fischer represents the Lincoln Chamber of Commerce. Mr. Fischer said that the Chamber advocates for its members and the opportunity that they can have to compete in the marketplace. He said that the better the service provided by members of the Chamber, the better the service that will be provided for the general public. The Chamber believes that if more can be done for the business or other traveler, then it should be done. The basic tenant of the Chamber is that the city of Lincoln be fully served, and that anyone who can come in and carve a niche for themselves should be able to do that.

Upon reexamination by the Commission, Mr. Joneson said that he planned to offer a twenty-four hour, seven day a week service

with two vehicles initially being placed on the service. The vehicles would need to operate on that time in order to bring in enough revenue to pay for the expenses of the operation. While the operation would begin with two vehicles currently used as limousines, it is possible that different, additional vehicles could be added in the future.

Lindsay Kroger testified next for the Applicant. Ms. Kroger testified that she is on the outskirts of Lincoln, and that there was some improvement in cab service, but that with the beginning of football season, the wait times for cabs in these areas has increased. She said that having more cabs, and having the Applicant in service, would be beneficial to the outskirt bars.

On examination by Commissioner Vap, Ms. Kroger said that she did not know whether the wait times have increased because the cabs cannot get there or just do not come out to these sections of town, but that the waits are often thirty or forty minutes long. This creates frustrated customers and long nights for the customers and the bars.

On examination by Commissioner Boyle, Ms. Kroger indicated that she did not know a precise number of people who needed cab service, these people did need the service as they would not be able to drive themselves home safely. She further said that Happy Cab did come to her location and passed out business cards, but that there is so much going on downtown that the wait times at her location can be "quite a while."

Commissioner Vap noted for the record that there were no further individuals in the hearing room to testify. The protestant Servant Cab was neither present at the hearing nor represented by counsel at the hearing.

OPINION AND FINDINGS

In this particular case, Applicant is seeking to expand its authority so that it may provide transportation for passengers in taxicab service 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. Under agreement with four of the five protesters, the authority would be restricted to originating in Lancaster County and the authority would not have the HHS designation.

Applications for common carrier authority are governed by Neb. Rev. Stat. § 75-311 (2010), 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 convenience and necessity. Otherwise the application shall be denied.

In other words, the Commission must apply a two-part test. First part of the test is that the Commission must determine if an Applicant is "fit, willing and able to perform the service proposed." The second part of the test is that the proposed service "is or will be required by the present or future public convenience and necessity."

In order to be successful, an Applicant must provide evidence that it is fit, willing and able to provide the proposed service. From the evidence presented, the Commission finds that the Applicant has sufficiently proven it is fit, willing and able to properly perform the proposed service and able to conform to Neb. Rev. Stat. § 75-301 et seq. Applicant is a current certificated carrier holding Certificate B-1718. The Applicant would appear to have knowledge of Commission rules and regulations. The Applicant appears to have the necessary business acumen to operate the business. The proposed services include two vehicles that are currently owned by the Applicant, would use the Applicant's existing dispatch system, and would incorporate the Applicant's current business offices and staff. The Applicant has Form E insurance on file for its current operations, and should be able to amend the filing to meet Commission requirements for taxicab operators. The Applicant also has the requisite experience and knowledge of the transportation field to operate the proposed service. There was nothing in the evidence presented that would cause the Commission to find that there was an issue in the Applicant's

President's background that would cause it to find that he was personally unfit to operate the business.

The Commission does have some concern regarding proposed rates and the status of its proposed drivers. Mr. Joneson said that he is planning to have a rate that is "somewhere" in-between the rates used by the current cab providers in the Lincoln area, but that it was only a proposal at this time. The Commission also notes that it has not been determined whether or not drivers would be employees or independent contractors.

However, the Commission finds that these matters can be resolved by the Applicant and that they do not impact a finding that the Applicant is fit, willing and able to operate the proposed service. 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).

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 demonstrated a sufficient level of need and necessity to support a grant of the application. Mr. Joneson testified that he is currently receiving calls for service that he cannot fill as a

limousine provider. It was these calls that prompted him to apply for taxicab authority so that he could offer a service to address these calls.

The testimony of Ms. Kroger also shows that there is a need for the proposed service. She stated that service in the outskirts of Lincoln is insufficient, especially on game days where the wait times can approach forty minutes.

The Commission finds that the above evidence shows that there is a useful purpose responsive to a public demand or need that the proposed operation can help to meet. The evidence also shows that the existing companies are not currently meeting that need.

The second part of the test is whether this purpose can or will be served as well by the existing carriers. The testimony of Mr. Joneson and Ms. Kroger indicate that the service provided by current providers is not meeting the needs as requested by the community. Ms. Kroger stated that she is experiencing waits of up to forty minutes on game nights. The current providers do not appear to be keeping up with the demand for Ms. Kroger.

Further, no Protestant presented evidence to the Commission that showed that the general public will be served as well by existing carriers. When combined with the testimony provided by the Applicant, the record shows that there is no evidence that existing providers either can or will provide the service as well as that proposed to be offered by the Applicant.

We now turn to the issue of 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. No evidence was presented by any party that the proposed operation would endanger or impair the operations of existing carriers contrary to the public interest. Therefore, the Commission finds that this part of the test is in favor of the Applicant.

The granting of this application will provide another avenue for those members of the general public to use to meet their transportation needs. The evidence presented and the application of the tests to the situation guide the Commission to the decision that the application should be granted.

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

1. The Applicant is fit willing and able properly to perform the service proposed and to conform with the provisions of Neb. Rev. Stat. § 78-301 to 75-322 and the requirements, rules and regulations of the Commission thereunder.

2. The proposed intrastate service is or will be required by the present or future Public Convenience and Necessity to the following extent:

C E R T I F I C A T E A U T H O R I Z E D

SERVICE AND TERRITORY AUTHORIZED: The transportation of passengers by taxicab between points in Lancaster County, and points within said county, on the one hand, and, on the other hand, points in Nebraska over irregular routes. RESTRICTION: Transportation is to originate in Lancaster County. The transportation of railroad train crews and their baggage is not authorized. HHS Designation: No.

3. The application should be granted.

ORDER

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application B-1718, Supplement 3, be, and it is hereby, granted; and that upon compliance with the terms and conditions as set forth in this Order, a Certificate of Public Convenience and Necessity shall be issued to Leisure Limousine and Sedan, LLC, Lincoln, Nebraska, authorizing the operations as set forth in the foregoing findings.

IT IS FURTHER ORDERED that the 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. §75-305 (fees), 75-307 (insurance), and 75-308 (rates), 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.

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

APPLICATION NO. B-1718, SUPPLEMENT 3

PAGE 9

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.

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 at Lincoln, Nebraska, this 23rd day of October, 2012.

NEBRASKA PUBLIC SERVICE COMMISSION

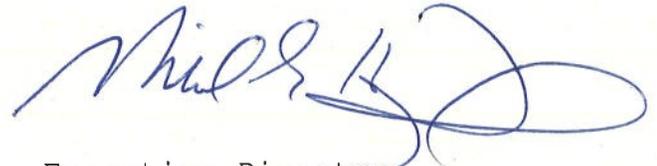
COMMISSIONERS CONCURRING:




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


Vice Chair

ATTEST:


Executive Director