

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of Leisure ) Application No. B-1718,  
Limousine & Sedan, Inc., ) Supplement 4  
Lincoln, seeking to extend its )  
authority as a common carrier in )  
Nebraska intrastate commerce in )  
the transportation of passengers )  
by van and SUV in open class in )  
Douglas, Sarpy, Lancaster, )  
Washington, Saunders, Seward, ) GRANTED  
Cass, Saline, Gage, Otoe, York, )  
Hamilton, and Hall Counties, and )  
between points in said counties, )  
on the one hand, and, on the )  
other hand, points in Nebraska )  
over irregular routes. )  
RESTRICTION: The transportation )  
of railroad crews and their )  
baggage is not authorized. HHS )  
Designation: No. ) Entered: March 28, 2017

APPEARANCES:

For Applicant: Andrew S. Pollock  
Rembolt Ludtke LLP  
3 Landmark Centre  
1128 Lincoln Mall, Ste. 300  
Lincoln, NE 68508

For Protestant: Christopher W. Peterson  
Wolfe, Snowden, Hurd, Leurs, & Ahl  
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1248 O Street  
Lincoln, NE 68508

For the Commission: Jamie L. Reyes  
1200 N Street, Ste. 300  
Lincoln, NE 68508

BY THE COMMISSION:

On October 7, 2016, Leisure Limousine & Sedan, Inc. ("Applicant") filed an application seeking to extend its authority as a common carrier in Nebraska intrastate commerce in the transportation of passengers by van and SUV in open class in Douglas, Sarpy, Lancaster, Washington, Saunders, Seward, Cass, Saline, Gage, Otoe, York, Hamilton, and Hall Counties, and between points in said counties, on the one hand, and, on the other hand, points in Nebraska over irregular routes. The

transportation of railroad train crews and their luggage is not authorized, and the HHS Designation is no.

Notice of the application was published in The Daily Record, Omaha, Nebraska on October 11, 2016. Timely protests were received from Transport Plus of Lincoln, Inc. ("Transport Plus"); Golden Plains Services Inc. d/b/a GPS Transportation ("GPS"); and Big A Holdings d/b/a OMALiNK ("OMALiNK"). Transport Plus withdrew their protest on November 14, 2016. A Hearing Officer's order was entered November 21, 2016 granting the protests of GPS and OMALiNK. GPS withdrew their protest on December 19, 2016.

On December 21, 2016, a telephonic planning conference was held to discuss a procedural schedule and hearing dates. Jamie Reyes represented the Commission, and the following persons participated via telephone: Andy Pollock on behalf of Applicant, and Christopher W. Peterson on behalf of OMALiNK. On December 28, 2016, the Hearing Officer entered an order setting the matter for hearing to be held February 1, 2017.

A hearing on the Application was held on February 1, 2017. Mr. Andy Pollock appeared on behalf of Applicant; Mr. Chris Peterson appeared on behalf of Protestant; and Ms. Jamie Reyes appeared on behalf of Commission staff.

#### E V I D E N C E

Ms. Lori Hiebner testified on behalf of Applicant Leisure Limousine. Ms. Hiebner is the President and operator of Leisure Limousine and Sedan Inc., along with her husband Mr. Lyndon Hiebner. Ms. Hiebner has owned Leisure Limousine since 2015, when she purchased the authority from Mr. Jim Joneson. In her capacity as operator, Ms. Hiebner stated that she takes phone calls, hires and assigns drivers, washes cars, arranges service, resolves billing issues, interacts with customers, and other day-to-day activities. Ms. Hiebner testified that she decided in 2015 that she wanted to start an airport shuttle service, and eventually purchased her current business from Mr. Joneson.

Ms. Hiebner testified to the financial status of Leisure Limousine, stating that the business has approximately \$43,000 cash on hand and owns six vehicles with approximate value of \$70,000. Ms. Hiebner also testified that Leisure Limousine has about \$24,000 in liabilities and about \$107,000 in total equity.

In regards to employees, Ms. Hiebner testified that, in addition to Ms. Hiebner and her husband driving for the company, Leisure Limousine employs eight drivers and a detailer. Leisure Limousine also has a mechanic, but Ms. Hiebner explained that

the mechanic is an independent contractor. Ms. Hiebner stated that she will contract with ASC-certified mechanic shops for additional vehicle service work. Ms. Hiebner stated that she conducts background checks on all employees prior to and throughout the course of employment. Ms. Hiebner stated that employees are also subject to random drug and alcohol testing.

Ms. Hiebner testified regarding her familiarity with the Commission's rules and regulations regarding vehicle insurance requirements, and stated that Leisure Limousine holds \$5 million in coverage on all vehicles.

Ms. Hiebner testified regarding Leisure Limousine's growth plan. Ms. Hiebner stated that she has received approximately 140 requests for shuttle or van service since November 22, 2016 to the date of the hearing. Ms. Hiebner also testified that she goes on sales calls and meetings with local businesses and universities to promote her business, as well as advertises in wedding magazines and Strictly Business magazine. Ms. Hiebner is also a member of the Lincoln Chamber of Commerce, Business Networking Inc., Nebraska Wedding Day, and Nebraska Wedding Vendors. Finally, Ms. Hiebner testified that Leisure Limousine has had no complaints filed against them with the Commission.

On cross-examination, Ms. Hiebner was questioned by Mr. Peterson about an email conversation with a potential customer inquiring about Leisure Limousine's SUV transportation services and the rates. Mr. Peterson offered a copy of the email conversation as an exhibit, which was objected to by Mr. Pollock on the grounds that it was filed with the Commission the day before the hearing. Ms. Reyes stated that the deadline to submit all exhibits were the week prior. Ms. Reyes also stated that she and Mr. Peterson spoke about the exhibit, and she advised him to file an amended exhibit list for consideration. Mr. Peterson stated that the email did not come to his attention until January 28, which was past the deadline to file exhibit lists. Commissioner Schram reserved ruling on the exhibit, which he noted would be Exhibit 10. Later in the proceeding, Commissioner Schram determined that he would not receive the exhibit into evidence.

Mr. Peterson continued his cross-examination of Ms. Hiebner and the SUV rates and whether she considered the SUV as a sedan. Mr. Pollock objected to the questioning, stating that Ms. Hiebner is not a lawyer and should not testify in the correct interpretation of Commission rules regarding vehicle categories. After Commissioner Schram sustained the objection, Mr. Peterson asked if Ms. Hiebner had any position or ownership in Leisure Taxi, to which Ms. Hiebner answered that she did not. Mr. Peterson then asked what Leisure Limousine's proposed rates

would be for the airport shuttle service that the company is seeking. Ms. Hiebner stated that she is planning to use a rate of \$70 per person, \$35 per additional passenger from the same address, and the rates do not include driver gratuity. Ms. Hiebner also stated that the rates were calculated based on driver pay, gasoline costs, vehicles and insurance.

Mr. Peterson then asked whether Ms. Hiebner knew that any of Leisure Limousine's social media outlets had stated that OmaLink was out of business and that her business could offer transportation to the Lincoln and Omaha airports. Ms. Hiebner testified that she believed that the company's Twitter page may have mentioned that. Finally, Mr. Peterson asked why Leisure Limousine would need to apply for the shuttle and van service if it felt that it could already provide the services. Ms. Hiebner stated that she wanted to offer a shared ride service that would accommodate more passengers.

Upon examination by Commissioner Schram, Ms. Hiebner described how her business has been growing. Ms. Hiebner testified that she believed that they have seen the most growth in the 35-50 year old demographic, and that word of mouth and having great drivers are contributing factors.

On redirect, Mr. Pollock asked Ms. Hiebner questions regarding her understanding of limousine service. Ms. Hiebner testified that she was told by Commission staff that she could use any vehicle under her limousine authority so long as she charged the luxury limousine rate. Upon further questioning, Ms. Hiebner stated that the limousine rates that she uses are the same rates that the previous owner of Leisure Limousine used.

On recross, Mr. Peterson asked Ms. Hiebner about her interpretation of which vehicles could be used under her limousine authority. The line of questioning was stopped by Commissioner Schram, stating that Mr. Pollock had already followed the same line of questioning with Ms. Hiebner. After additional discussion, Commissioner Rhoades asked Ms. Reyes whether other limousine carriers use SUVs in their service, to which Ms. Reyes answered yes. Commissioner Rhoades then asked whether the Commission used generic descriptions for vehicles for practical purposes. Ms. Reyes answered yes, and further stated that limousine service is considered a luxury service that would have a different rate than other services.

Mr. Kyle Fischer testified next for Applicant. Mr. Fischer is the Public Policy Specialist for the Lincoln Chamber of Commerce. Mr. Fischer testified that Ms. Hiebner approached him about her desire to offer shuttle van service. After their conversation, Mr. Fischer reached out to area businesses and

determined that this was an area of need due to increases in visitors, the number of hotel rooms, and attractions in Lincoln. Mr. Fischer testified that his members would like more options for such transportation service.

Upon questioning by Mr. Pollock, Mr. Fischer described scenarios of transportation types that are missing in Lincoln. Mr. Fischer stated that shuttle service to and from large events for a large party staying at a Lincoln hotel such as a wedding, conference, or State basketball tournament.

On cross-examination, Mr. Peterson asked whether Mr. Fischer was familiar with OmaLink. Mr. Fischer testified that he was familiar with the previous owners, but had yet to meet the new owners of OmaLink. Mr. Peterson asked whether Mr. Fischer knew if any of the business had mentioned OmaLink, and Mr. Fischer testified that he heard OmaLink discussed after it had briefly gone out of business and that it may be a marketing issue as to why businesses may not know that OmaLink is operating under new ownership. Finally, Mr. Fischer testified that he had not personally visited OmaLink's Facebook, website, nor attempted to reserve service.

Ms. Kate Paloucek testified next for Applicant. Ms. Paloucek is the Human Resources Manager for Nebraska Book Company, and had previously worked at Talent Plus, which required her to travel for work. Mr. Pollock asked whether Ms. Paloucek had used OmaLink, and she stated that she had last used OmaLink in the spring of 2015. Ms. Paloucek testified that she had not reserved OmaLink once because she would have had to wait for a pickup, and that on another occasion she had to wait about 90 minutes to two hours to be taken home from the airport. She no longer travels for work and will now travel with friends and does not use OmaLink. Ms. Paloucek testified that the CEO, CFO, and sales team at Nebraska Book live outside of Nebraska and travel back and forth to Nebraska. According to Ms. Paloucek, they do not use OmaLink and rent cars instead. When asked if there was a reason that she does not use OmaLink, Ms. Paloucek stated that she did not want to have another poor experience. After being asked whether she was familiar with Leisure Limousine, Ms. Paloucek testified that she worked with Ms. Hiebner at Talent Plus and that she trusted Ms. Hiebner to provide quality service. Finally, Ms. Paloucek testified that if Leisure Limousine offered more affordable service to and from the airport, she would likely use the service and recommend that others do the same.

On cross-examination, Mr. Peterson asked Ms. Paloucek about her negative experiences with OmaLink in spring 2015 and Thanksgiving 2014. Mr. Peterson asked Ms. Paloucek how she tried

to set up her reservation for the 2014 trip, and she stated that she attempted to reserve through the website and called but could not get a time that would work for her schedule. Finally, Ms. Paloucek stated that she did not know that OmaLink was still in business until the hearing.

Ms. Karen Kearby testified next for Applicant. Ms. Kearby is currently a freshman student at the University of Nebraska-Lincoln and is originally from Fort Worth, Texas. Ms. Kearby testified that she has used OmaLink twice during a trip home at Thanksgiving 2016. Ms. Kearby testified that OmaLink was about 30 minutes late picking her up to take her to the Omaha airport and about an hour to an hour and a half late picking her up from the Omaha airport to bring her back to Lincoln. Ms. Kearby also testified that she attempted to use OmaLink to travel home for Christmas break, but the company cancelled her pickup due to the road conditions. Ms. Kearby stated that she was able to make her flight in Omaha because her mother called Leisure Limousine, who picked Ms. Kearby up and dropped her off at the Omaha airport. Ms. Kearby further testified that she used OmaLink when she returned to Omaha, and that OmaLink was about 30 minutes late picking her up from the Omaha airport to take her back to Lincoln. When asked by Mr. Pollock whether she would try Leisure Limousine if the company were granted authority to provide van service from UNL to the Omaha airport, Ms. Kearby stated that she would.

On cross-examination, Mr. Peterson asked whether Ms. Kearby had made her reservations with OmaLink and Leisure Limousine herself. Ms. Kearby testified that her mother made all of the reservations. Ms. Kearby also testified that she did not know that OmaLink was under new ownership nor was familiar with Leisure Limousine's rates.

Ms. Rennae Anderson testified for Applicant. Ms. Anderson is a residential rental property manager in Lincoln. Ms. Anderson stated that she has two college students- one at the University of Nebraska-Lincoln, and the other at the University of Nashville. Mr. Pollock asked Ms. Anderson if she was familiar with the UNL Parent Association Facebook page, and she answered yes. Ms. Anderson stated that the Facebook page is a place for parents to ask each other questions and make recommendations. Ms. Anderson stated that she offers rides to students at the parents' request when she reads that a parent is having a hard time securing transportation for their student to get to or from the airport.

When asked by Mr. Pollock whether she had any experience with OmaLink, Ms. Anderson stated that she had no personal experience with the company. Ms. Anderson further testified that

she knew Ms. Hiebner through little league football, and that she would use and recommend Ms. Hiebner's services.

On cross-examination, Mr. Peterson asked Ms. Anderson about her understanding of OmaLink and its services. Ms. Anderson testified that she knows that a van travels between the Lincoln and Omaha airports and has seen comments from parents on the parent association Facebook page, but has not used OmaLink herself. When asked whether she had asked OmaLink about any of the things she had read on the Facebook page, Ms. Anderson testified that she had not.

On redirect, Ms. Anderson was asked whether anyone else from the Facebook group inquired of OmaLink, which was objected to by Mr. Peterson. Ms. Anderson stated that she had screenshots of the Facebook discussion, which Commissioner Rhoades asked to be filed as a late-filed exhibit. Mr. Peterson asked Ms. Anderson on recross about the date and number of comments in the screenshot, to which Ms. Anderson testified that there were 88 comments from January 8, 2017.

Finally, Ms. Ellen Hoepfner testified for Applicant. Ms. Hoepfner works in new business development for Talent Plus, where she met Ms. Hiebner. Ms. Hoepfner also worked for Leisure Limousine for about three or four months while on a leave of absence from Talent Plus. Ms. Hoepfner testified that when Ms. Hiebner first acquired Leisure Limousine, Ms. Hoepfner helped Ms. Hiebner do some marketing and set up meetings with businesses that she and Ms. Hiebner believed would want to do business with Leisure Limousine. When asked by Mr. Pollock whether she would recommend Ms. Hiebner for transportation services, Ms. Hoepfner testified that she would because she felt that Leisure Limousine's drivers were safe and dependable. On cross-examination, Mr. Peterson asked Ms. Hoepfner whether she had any experience with OmaLink. Ms. Hoepfner testified that she did not, and had never heard of OmaLink as a transportation service. Applicant rested its case.

Mr. Ryan Reinke testified first for Protestant. Mr. Reinke is an owner of Big A Holdings doing business as OmaLink. Mr. Reinke testified that OmaLink was purchased from Groome Transportation around September 27, 2016. OmaLink received its temporary authority on October 25, 2016, and its permanent authority was granted January 10, 2017. Mr. Peterson asked Mr. Reinke about its vehicles, and Mr. Reinke stated that Big A Holdings purchased four vans and two Town Cars for limousine service. Mr. Reinke stated that their vans operate as ten passenger vans when the backseat is removed for luggage. According to Mr. Reinke, OmaLink employs nine drivers and a business manager, most of whom worked for Groome.

In regards to the start of the new ownership, Mr. Peterson asked Mr. Reinke how many requests for service he has had to turn down. Mr. Reinke stated that he had to turn away maybe four to five requests per month at the beginning, but believed that it was now down to about three to four. Mr. Reinke also testified that since taking over OmaLink, work has been done to clean up the reputation of the business, ranging from refund requests and dealing with Facebook and complaints. Mr. Reinke stated that the company has initiated an online answering service to monitor the reservation telephone number 24/7. OmaLink has also implemented an online reservation system that takes reservations up to 24 hours in advance. When asked about cancellations made by the company, Mr. Reinke testified that he has had to cancel twice due to weather conditions. Mr. Reinke also stated that his drivers have an app used to track flight delays, cancellations, and changes so that trips can be adjusted. Also, Mr. Reinke testified that the company is starting a marketing push with the LIBA and other Lincoln businesses. Finally, Mr. Reinke testified that he takes all customer complaints seriously and is doing what he can to turn the reputation around, and had come up with new ideas that morning to address issues that he heard during the hearing.

When asked whether OmaLink had the ability to take on additional capacity, Mr. Reinke testified that they had the ability to do so with both the current fleet and the resources to purchase additional vehicles if necessary. Mr. Peterson then asked whether OmaLink had any debts, and Mr. Reinke testified that OmaLink was debt free. When asked how the granting of Leisure Limousine's application would affect OmaLink, Mr. Reinke testified that such a grant could be fatal to OmaLink, or OmaLink would need to scale down its operations. Mr. Reinke stated that OmaLink is too new and has not had a chance to get things off of the ground. On cross-examination, Mr. Pollock asked Mr. Reinke if he had contact with a witness named Brandon Gries, to which Mr. Reinke answered no.

Next, Mr. William Schneider testified for Protestant. Mr. Schneider is the operations manager for OmaLink, overseeing day to day operations. Mr. Schneider was originally hired by Groome Transportation, but took a position with the new ownership of OmaLink. Upon questioning, Mr. Schneider testified that he has not had to turn away any service except those that have come within 24 hours of when the trip was requested to occur. Mr. Peterson asked Mr. Schneider about complaints. Mr. Schneider testified that some people do not know the scheduling difference between airport shuttle service and other transportation such as taxi service, and that the company tries to make pickups and drop offs as close to the time as reasonably possible. Mr.

Schneider also stated that circumstances beyond the company's control, such as weather and flight times, will affect the schedule and that the company does what it can to accommodate all schedules. Upon questioning by Commissioner Landis as to whether OmaLink educates its customers on potential delays, Mr. Schneider stated that OmaLink will let customers know that there is a potential for weather delays or chance for cancellation. Commissioner Ridder then asked whether customers are given a pick up or drop off time window when making a reservation. Mr. Schneider testified that OmaLink will call its customers a day prior to their reservation time to give an approximate pick up time.

On cross-examination, Mr. Pollock asked Mr. Schneider whether any OmaLink complaints have been due to circumstances within OmaLink's control and not always because of weather or other unforeseen circumstances. Mr. Schneider testified that there probably have been, but his testimony was to address specific instances brought forward by Ms. Kearby earlier in the hearing. Mr. Pollock also asked Mr. Schneider whether he had any contact with Brandon Gries, and Mr. Schneider stated that he had not but one of the owners had. On redirect, Mr. Peterson asked Mr. Schneider whether drivers have a way to contact customers in the event of delay. Mr. Schneider testified that drivers have a passenger manifest with contact and flight information, which the drivers use to contact customers if there is a delay.

Finally, Mr. Cory Althouse testified on behalf of Protestant. Mr. Althouse is an owner of Big A Holdings doing business as OmaLink, and will occasionally work dispatch or drive customers. Mr. Althouse previously worked as an owner/operator of his own taxicab for Happy Cab Company. Mr. Peterson asked Mr. Althouse why he left Happy Cab, and Mr. Althouse stated that competition from Uber and Lyft created a drop in business of 40 to 50 percent and that he could see a similar effect on OmaLink when comparing the current numbers to previous years. Mr. Peterson asked Mr. Althouse whether OmaLink is able to meet the market demand, and Mr. Althouse answered yes and explained that the company is using tools such as Facebook to market the business. When asked what the possible implications to OmaLink could be if Leisure Limousine's application were granted, Mr. Althouse testified that OmaLink could go out of business because their numbers are down about 40 to 50 percent in comparison to Groome Transportation's numbers from the previous year.

Upon cross-examination, Mr. Pollock asked Mr. Althouse about his background with Mr. Reinke. Mr. Althouse testified that he and Mr. Reinke met through their businesses- Mr. Althouse owns a carpet cleaning business, and Mr. Reinke owns

residential property and operates a snow removal and lawn care business. Additionally, Mr. Pollock asked Mr. Althouse whether he recognized the name Brandon Gries, which was a name on Applicant's witness list. Mr. Althouse testified that he recognized Mr. Gries's name on the witness list and contacted Mr. Gries regarding the hearing. Mr. Althouse went on to state that he asked Mr. Gries in an email whether Mr. Gries knew that the application would have a financial impact on OmaLink, and also asked Mr. Gries not to testify at the hearing.

At the conclusion of the hearing, Commissioner Schram reversed his decision regarding the late-filed exhibit requested by Commissioner Rhoades, reasoning that it was in the interest of due process and fairness in light of his earlier ruling to not accept Protestant's exhibit. Commission Exhibits one through eight and Applicant's Exhibit 9, Applicant's Certificate of Authority, make the entirety of the evidence entered into the record.

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

Applicant is seeking to extend its authority to offer service by van and SUV in open class between points in Douglas, Sarpy, Lancaster, Washington, Saunders, Seward, Cass, Saline, Gage, Otoe, York, Hamilton, and Hall counties, and between said counties, on the one hand, and, on the other hand, points in Nebraska over irregular routes. Applicant's Certificate of Authority currently allows the following provision of service:

Supplement 1: Transportation of passengers and their baggage in limousine service by luxury and stretch limousine and sedan between points in Douglas, Sarpy, Lancaster, Washington, Saunders, Seward and Cass Counties, and between points in said counties, 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.

Supplement 2: Transportation of passengers and their baggage in limousine service by luxury and stretch limousine and sedan and van between points in York, Dodge, and Gage counties, and between points in said counties, 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.

Its most current Certificate of Authority was issued on October 26, 2012. Applicant's original Certificate was issued February 17, 2009.

Applications for common carrier authority are governed by Neb. Rev. Stat. § 75-311(1) (Cum. Supp. 2016), 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 order to be successful, an applicant must prove that it is fit, willing and able to provide the proposed service. From the evidence presented, the Commission finds that 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 has provided continuous service in its geographic areas since 2009, and with the current ownership since 2015. Applicant appears to have sufficient finances to operate the proposed service and to add additional vehicles if necessary. It has adequate vehicle availability and the ability to service the vehicles.

Based upon the evidence before us and adduced from the record in the instant case, the Commission finds that Applicant has met the fitness test of Neb. Rev. Stat. §75-311(1).

The Nebraska Supreme Court set forth the analysis for determining "public need and necessity," stating:

"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."<sup>1</sup>

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<sup>1</sup> *In re Application of Nebraskaland Leasing & Assocs.*, 254 Neb. 583, 591 (Neb. 1998).

The issue of whether an applicant has met its burden of demonstrating that the proposed service is required with public convenience and necessity is ordinarily a factual issue.<sup>2</sup>

In the present case, Applicant presented sufficient evidence of need and necessity to support a grant of the application. First, the operations proposed by Applicant would serve a useful purpose responsive to a public demand or need. Supporting testimony was received by several witnesses who stated that they would use Leisure Limousine if the application were granted. Mr. Fischer of the Lincoln Chamber of Commerce testified regarding the growth that Lincoln is experiencing as well as feedback that he received from local businesses and hoteliers that they would like to see additional shuttle service offerings for events and to the airport. Applicant also testified to the number of requests that she had received for shuttle services since November 2016. There seems to be a need for the type of service that Applicant seeks to provide, and the evidence supports the proposition that Applicant's proposed service will be responsive to that need.

The second part of the test is whether the operation's purpose can or will be served as well by existing carriers. Again, Mr. Fischer's testimony suggests that there is an increasing need for shuttle services in the Lincoln area and that Protestant may not be meeting that need. Protestant OmaLink provides the type of service that Applicant Leisure Limousine seeks to provide- shuttle service from various points to the Lincoln and to the Lincoln and Omaha airports. However, the testimony set forth above indicates that there may be many in the area who do not know that OmaLink is providing service. Additionally, testimony was received regarding timeliness issues with OmaLink, some of which occurred during the timeframe of the new ownership. Although Protestant testimony stated that the complaints were being addressed through additional technology, Protestant also laid the blame of the complaints on other factors outside of the company.

The third part of the test is whether the public demand or need can be served by Applicant in a specified manner without endangering or impairing the operations of existing carriers contrary to the public interest. Mr. Althouse and Mr. Reinke testified that granting the application would be damaging to their business but did not offer any evidence to support this testimony and illustrate the impact. Without any evidence of potential impact, the Commission has no basis to find that the granting of this application would have the impact upon Protestant as the testimony was presented.

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<sup>2</sup> Id.

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

1. Leisure Limousine and Sedan, Inc. is fit, willing, and able to conform with the provisions of Neb. Rev. Stat. §§ 75-301 to 75-322 (Cum. Supp. 2016), and the requirements and rules and regulations of the Commission thereunder;
2. The proposed application of Leisure Limousine and Sedan, Inc. is or will be required by the present or future Public Convenience and Necessity to the following extent:

Certificate Authorized

Transportation of passengers by van and SUV in open class in Douglas, Sarpy, Lancaster, Washington, Saunders, Seward, Cass, Saline, Gage, Otoe, York, Hamilton, and Hall Counties, and between points in said counties, on the one hand, and, on the other hand, points in Nebraska over irregular routes. RESTRICTION: The transportation of railroad crews and their baggage is not authorized. HHS Designation: No.

3. The Application should be granted.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application B-1718, Supplement 4 be, and is hereby, granted; and 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, Inc., Lincoln, Nebraska, authorizing the operations as set forth in the foregoing findings.

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. §§ 75-305 (fees), 75-307 (insurance), and 75-308 (rates) (Cum. Supp. 2016), 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.

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IT IS FINALLY 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.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 28<sup>th</sup> day of March, 2017.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

*Mary Kiddle*  
*Crystal Knoder*  
*Dee Johnson*

*Tim Schram*  
Chairman

ATTEST:

*Jeffrey J. Puley*  
Executive Director

//s//Frank E. Landis

//s//Tim Schram