

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of Papio Transport)	APPLICATION NO. B-1733
Services, Inc., Papillion,)	SUPPLEMENT 1
Nebraska, seeking authority as a)	
common carrier in the)	
transportation of passengers and)	
their baggage between points in)	
Douglas and Sarpy counties, and)	GRANTED AS MODIFIED
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)	ENTERED: APRIL 28, 2015
crews and their baggage is not)	
authorized. HHS Designation:)	
Yes.)	

APPEARANCES

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BY THE COMMISSION:

BACKGROUND

On July 1, 2014, an application was filed by Papio Transport Services, Inc., Papillion, Nebraska, ("Papio") seeking authority as a common carrier in the transportation of passengers and their baggage between points in Douglas and Sarpy 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 baggage is not authorized. HHS Designation: Yes. Notice of the application was published in The Daily Record, Omaha, Nebraska, on July 8, 2014. Timely protests to the application were filed by Camelot Transportation through its attorney, Andy Pollock.

Planning Conferences were conducted by the Commission, with all parties participating, on October 24, 2014, and December 16, 2014. A Motion to Continue was granted by the Hearing Officer on February 2, 2015.

A hearing on the application was held on February 27, 2015, with appearances as listed above. Notice of the hearing was sent to all parties of record on February 19, 2015.

APPLICANT'S EVIDENCE

Loren Stutheit testified first for the Applicant. Mr. Stutheit is an owner and general manager of the Applicant and has been since its founding in 2008.

Mr. Stutheit said that the Applicant is requesting to transport people on trips in the state of Nebraska that begin or end in Douglas and Sarpy counties. Mr. Stutheit stated that he has been told that many trips are currently going unfulfilled. These trips would supplement the trips that the Applicant is already performing. Many of the trips are for the Nebraska Department of Health and Human Services ("HHS") Medicaid eligible and therefore Intelliride would arrange the trips. Intelliride has informed him that the number of trips would not be large but that there is an unmet need for the proposed service.

Papio is fit to perform the service, according to Mr. Stutheit. He believes that it has enough drivers. Many of the trips would not be very profitable, if at all, but they need to be done to meet the needs of the passengers. Mr. Stutheit stated that these trips can be fit into the service currently provided by Papio. Mr. Stutheit is asking that the Commission consider allowing Papio to use SUVs and pickups in their service as well as vans. He noted that many pickups being used today are of the extended cab variety and are not the old farm type pickups.

On examination by Commissioner Frank Landis, Mr. Stutheit was asked if he considered a limitation on the area he was wanting to serve, and if it became uneconomical to operate too far from Omaha. Mr. Stutheit responded that he had not considered this, but that a previous company he was associated with often did trips from Omaha to Geneva. He said that mileage runs are closer to break-even or profitable, although they usually do not get a return trip so they do experience dead-head miles on the return trip.

Mr. Stutheit said that if he were to run out of capacity for Intelliride, the system would see and reassign the trip to another carrier. If that happened with a private pay person he would refer that person to another provider.

On cross-examination by Ms. Paulson, Mr. Stutheit said that he has been general manager since 2008. Papio uses many independent contractors who have to provide their own workers compensation insurance, although Papio does have a policy available to the drivers if they desire access to it and is paid by the driver.

Papio offers door-to-door service, but sometimes the passengers only take advantage of curb-to-curb service as they do not need door-to-door service. There are occasions where the vehicle stops with passengers on board and the driver will get out of the vehicle to help one passenger into their house while leaving other passengers in the vehicle.

Trips for Intelliride are dispatched to the driver through the Intelliride tablet. Intelliride arranges the trip schedule and sends the trips to the driver. Papio usually leaves the scheduling of the trip to Intelliride. Mr. Stutheit said he believed that Papio pays around \$150 for the tablets.

Mr. Stutheit said that Papio usually takes all the trips offered by Intelliride. The system used by Intelliride doesn't usually schedule a trip for them if they do not have the capacity to perform the trip. If a driver experiences a break down of some sort, the system will reassign the trips to someone else that is available to perform the trip.

When asked why Papio has not hired more drivers if there is more demand, Mr. Stutheit said that Papio would hire more drivers if they were available. The hiring of more drivers would depend on where the runs were taking place. Papio drivers

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can handle more runs now, especially as the demand for the trips sought to be served in this application may not be too large. Papio's drivers usually have some down time during the day as there are a number of cancelled trips every day, usually between ten and twenty percent of the trips scheduled. These cancelled trips are usually removed by Intelliride through the tablet. There are also occasions where Papio is contacted directly by Intelliride and not through the tablet if there is less than forty-eight hours notice available. He estimated that this happens up to six times per day.

The application is seeking trips between points in the state of Nebraska that begin and/or end in Douglas and Sarpy counties. If a driver were sent to Scottsbluff, that driver would be tied up for the entire day and unavailable for other service. There are often times where Papio would perform one leg of the trip and not get the return trip as the system assigns the trip to the closest provider at the time the trip is made and this is often not the same driver or even provider.

On examination by Commissioner Frank Landis, Mr. Stutheit said Papio asked for only Douglas and Sarpy counties initially as they were just starting up and they had limited capability at the time. They wanted to be responsible to perform service where they thought they had the ability to do so. He said that he is not asking for the ability to go to places such as Scottsbluff but for service close to their current area that is not being served presently.

On redirect by Mr. Dethlefsen, he noted that Mr. Stutheit said that the vehicles are almost always parked in a driveway during a time when the driver gets out of the vehicle to assist one person while others are in the vehicle, and that the vehicle was never very far away from the driver. He also said that he has additional drivers available to Papio through other transportation services that he is an owner of and that some of these other drivers would be available to Papio.

Jamie Chambers testified next for Papio. She is the compliance director for Intelliride, the statewide Medicaid non-emergency broker for HHS. Intelliride currently arranges for between 1,500 and 2,000 trips per day (excluding Sunday) for HHS.

Ms. Chambers reviewed the process that Intelliride uses to assign trips to providers. The trip is authorized by HHS either

directly or through a call center. The call center then automatically assigns the trip to a provider. The system uses a hierarchy of preferences to assign the trip, including low cost provider such as a family member or friend, then public transit organizations and then commercial transporters. The commercial providers are then ranked by another hierarchy. Tableted, compliant providers are given first preference, then compliant manual providers.

Ms. Chambers testified that the tableted providers are given first priority for a number of reasons. The tablets operate in a manner that ensures compliance with Medicaid rules for the provider and for Intelliride, and also for more accurate record keeping. A second reason is the efficiency and increase in services available due to this increased efficiency on the part of the provider. Provider performance is the third criteria. Each provider is rated by a number of performance measurements, such as on-time performance and complaints received.

Ms. Chambers did admit that the automatic assignment system can result in no assigned provider for a given trip. These trips are then manually reviewed by a dispatcher and calls are made directly to providers.

Ms. Chambers was asked if she was familiar with Papio. She said that she is and that they are a tableted provider that is in good standing with Intelliride. Papio's performance criteria are all within Intelliride's acceptable parameters for service provision.

Ms. Chambers is also aware of Camelot Transportation ("Camelot"). Camelot is authorized to operate in Omaha and most of the rest of the state of Nebraska. Camelot does not have any performance issues with Intelliride, according to Ms. Chambers.

Camelot has made several service requests in the past few months to change their service area or mileage minimums or maximums, said Ms. Chambers. They made a request at one time that any trips assigned to them be more than twenty-five miles, but recently removed that request. Camelot does not currently take trips in Sarpy County.

Ms. Chambers is aware of other providers that are available in the Douglas and Sarpy county areas. Sarpy County currently has two providers in general: Papio and GPS Transportation.

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Ms. Chambers stated that she believes that there is a need for the service proposed by the Applicant. There are trip referrals that are not being filled and go unaccepted in some areas.

An examination of Exhibit 9 showed that there were 384 trips unfilled due to no provider since May of 2014. Exhibit 10 showed that there were 354 trips in Douglas County that have not been filled during a similar time period. Ms. Chambers said that the twenty-one trips in January in Douglas County was a relatively stable number for such trips on a monthly basis.

Ms. Chambers said that Exhibit 10 illustrated a need for additional transportation. She further said that Papio is fit to provide the proposed service.

On examination by Commissioner Tim Schram, Ms. Chambers said that the greatest need for service is in a thirteen to seventeen mile radius outside of Omaha, primarily to the north. She noted Washington County and an area around Wahoo as the areas of greatest need.

On examination by Commissioner Frank Landis, Ms. Chambers said that she would prefer a greater authority than a lesser authority to be granted by the Commission. Many of the providers tend to gravitate to certain areas and can leave holes in coverage where no provider is readily available.

On cross-examination by Ms. Paulson, the records submitted by the parties through a public records request were reviewed. Ms. Paulson noted that a public records request filed by Camelot had not been answered as of the date of the hearing while requests for Papio had been answered.

Ms. Chambers said that Camelot also had a ninety-nine percent on time record, and had no outstanding performance issues. She said that she did not have any specific information regarding an alleged drop in the number of referrals to Camelot.

A review of Exhibits 12 and 13 shows that some interstate trips were included in the number of unfilled trips. This inclusion of out-of-state trips would have impacted the total number of trips that were detailed in Exhibit 9.

Ms. Chambers was asked about the number of ways a trip can be unfilled that may not be attributable to unavailable providers. There could have been inaccurate information given for the trip or the trips could have been cancelled.

Intelliride's trip assignment methodology was also reviewed. Tableted providers get first priority and then manual providers, such as Camelot, are next. Tableted providers may not get that first priority if there are performance issues with said provider. Papio would get preference in areas as they are a tableted provider if eligible.

June 25, 2014, was addressed specifically by Ms. Paulson. On that date, there were one hundred trips not filled. Ms. Chambers said part of the reason for that number is that is the date that Camelot's performance score reached a level where the system determined that it was noncompliant and did not assign them any trips. The specific reason was the rejection percentage was too large. Ms. Chambers said there was a brief time where Camelot was not operating with the automatic assignment system. They were subsequently brought back into the system.

Camelot is not the largest Medicaid provider in the state, according to Ms. Chambers. They rank in about the middle of the list. On questioning by Ms. Paulson, Ms. Chambers again said that the need for services was primarily in Washington County.

On examination by Commissioner Frank Landis, of the approximately 400 trips that were unfilled in Exhibit 9, these trips would have been offered to GPS Transportation or Camelot, but not Papio, as they were ineligible for these trips. On examination by Commissioner Tim Schram, Ms. Chambers said that the rejection rate would need to be in excess of sixty percent to be out of compliance.

On examination by Commissioner Crystal Rhoades, Ms. Chambers said that the system does not differentiate as to why a trip is rejected. The system allows for the provider to detail availability so that trips should not be offered outside of the stated availability of the provider

On further examination by Commissioner Frank Landis, Ms. Chambers said that the tablets are leased to the providers, but that it is done so at a loss to Intelliride. Costs such as the actual tablet costs and dispatch costs to provide the service

cost more than the lease amounts received, according to Ms. Chambers. Intelliride benefits through assured compliance verification and increased efficiency that offset some of those costs. HHS is pushing the tablets for its program integrity and records retention benefits.

The benefits of the tablets include being in line with the push from the federal government for record retention being electronic; help to prevent fraud, waste and abuse through the tracking of the trips; accuracy and honesty of the records, resulting in reduced audit time and expense; reduction of back-end paperwork and greatly reduced processing of the electronic records; and greater efficiency for the providers results in more trips being able to be made and a reduction in the miles driven by the provider.

On redirect by Mr. Dethlefsen, Camelot is said to have experienced a reduced referral rate due to the manual operation for trip acceptance affecting their trip rejection numbers. Camelot's rejection rate is the highest in the system, according to Ms. Chambers. There has been consultations with Camelot, and there have been changes made in their methods and availability that has helped to improve their position. They also removed the mileage minimum, which also has increased their availability.

PROTESTANT'S EVIDENCE

Brenda Noyes testified first for the Protestant. She is the hiring and safety coordinator at Camelot. Camelot has twenty-seven employees. Camelot had many more drivers in the past, but has experienced a reduction in the number of trip referrals and thus a reduction in the number of drivers as the amount of work has decreased. She has received complaints from drivers due to the decrease in the amount of work that is available.

Ms. Noyes said that Camelot maintained an office in Omaha until 2014. The office was closed when the referrals from Intelliride reduced the number of trips provided in Omaha from about 1,200 per month to under 600 per month. The company could dispatch the trips and handle other issues from Kearney. Camelot still has nine drivers in Omaha.

At of May of 2014, Camelot employed forty-five drivers in Omaha, but business was reduced to the point that they only have

nine drivers there currently. These drivers are working between thirty to forty hours per week in Omaha, and can work as low as twenty hours per week and up to fifty hours per week out-state.

On examination by Commissioner Crystal Rhoades, Ms. Noyes said that Camelot did not lease the Intelliride tablets as Camelot had already invested in an Ecolane system with essentially the same tablet as that used by Intelliride. They were familiar with the system and thought they would be in position to use their system in the contract with Intelliride. However, the system roll out had many bugs in it and errors were created. Further, the systems were different and were not able to be interfaced together. Ms. Noyes is not able to state whether these technical issues can be resolved.

Ms. Noyes is not able to testify as to whether Camelot was referred to any of the trips that have been documented to be unserved in Douglas and Sarpy counties. She does not know if those trips were made available to Camelot through its portal with Intelliride.

Under cross-examination by Mr. Dethlefsen, Ms. Noyes said that Camelot's drivers are paid by the hour. There also may be an issue regarding the accounting of wheelchair trips that may have been provided by Triumph Transportation that affect the 1,200 trips provided. The 1,200 trips may have included some wheelchair transportation that is now being provided by Triumph, but she does not know if that is the situation or not.

Ms. Noyes said that she believes that Camelot could provide additional service if they were given additional trips. They have had a driver retention issue in the past few months due to the drop in referrals from Intelliride. If they had these additional referrals, they could have retained many good drivers and continued to provide service. Ms. Noyes does not know how many of the trips that have gone unfilled were offered to Camelot.

Ms. Noyes said that the hourly differential with the drivers was due to many factors. Drivers have different levels of how much work they are looking for and may only want to be part-time. Other drivers are willing to work as much as is possible. Camelot has been able to keep the Omaha drivers busy, but the number of drivers has been cut from seventeen to nine. She is not aware if the number of referrals has become steady in

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recent months. She is hoping that there will be no further drops in the number of drivers in Omaha.

Ms. Alissa Kern testified next for the Protestant. Ms. Kern is the managing director for Camelot, and has been for two years. Camelot serves the state of Nebraska excluding Lancaster County. Camelot provides transportation for HHS under two divisions: the Medicaid division and the Child and Family Services division. The trips that Camelot provides for HHS under Medicaid accounts for about thirty percent of Camelot's business. Camelot currently employs twenty-seven drivers in Nebraska, including nine in the Omaha area.

According to Ms. Kern, prior to Intelliride's assumption of the brokerage contract for HHS, they were providing 1,200 rides per month in the program. Since May of 2014, when Intelliride took over as the broker, the number of trips declined to between 300 and 600 per month. Ms. Kern believes that there have been many factors for this decline, including lack of training of providers in the new Intelliride system and the priority given to Intelliride tableted providers. Camelot invested in tablets very like those supplied by Intelliride, and uses a dispatch system from Ecolane like that used by Intelliride. Due to several factors, the Camelot system and the Intelliride system do not communicate with each other.

Ms. Kern said that she speculated that a drop in referrals received from Intelliride by Camelot was caused, at least in part, by a programming issue that sent trips in Lancaster County to Camelot. Camelot is not authorized to perform trips in Lancaster County, and had to refuse the trips. She believes that these refusals raised Camelot's rejection rate to levels that made them ineligible for referrals statewide. Ms. Kern attempted to have a meeting with Intelliride to resolve the situation. At first they had to wait two weeks for the first meeting. At the first meeting, a mileage restriction was proposed that would result in Lancaster County trips being excluded from Camelot's portal and thereby not causing Camelot to refuse the referrals. This was done to accommodate Intelliride's computer system and its inability to exclude Lancaster County from Camelot's referral list of trips.

On examination by Commissioner Crystal Rhoades, Ms. Kern stated that there was no real warning from Intelliride regarding the problem with rejection of referrals and that it took some weeks to get to a meeting to resolve the problem. This issue

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impacted clients of HHS as the exclusion of Camelot resulted, at least in part, to the large number of trips that went unfilled on June 25, 2014.

Ms. Kern said that Camelot's system software and tablets are essentially the same but with different programming software that does not allow them to interact with the Intelliride system.

On further examination by Commissioner Crystal Rhoades, Ms. Kern said that the mileage limitation that went into effect remained so until February of 2015. Camelot then requested to remove the restriction so that they could provide more service as they had excess capacity to perform trips. The problem with Lancaster County referrals then came back, and Ms. Kern is concerned that Camelot may end up in a situation where they may have the same rejection of referrals in Lancaster County issue come back.

Ms. Kern also expressed a concern that Camelot, as a non-Intelliride tableted provider, is at a disadvantage compared to a tableted provider such as Papio. They are only given referrals after the tableted providers, and are often not informed of trips until less than twenty-four hour notice, when their schedules may already be set and adjustments are difficult to make. Ms. Kern believes that Camelot has enough spare capacity that it could perform many of the trips that are currently going unfilled.

On examination by Commissioner Frank Landis, Ms. Kern said that Camelot does not purchase the tablets because they already have invested in tablets of their own. Their system addresses not only Intelliride trips but also the other trips that they perform for private pay and other contracts. Camelot wants to maintain control of its system as it provides transportation to entities other than Intelliride. The two systems do not appear to be able to interact directly, but only after a period of time can the information be exchanged.

The HHS program related to Child and Family Services is separate from Intelliride and does not use the same system. Camelot has not experienced a decline in those referrals as they have with Intelliride.

Ms. Kern said that the difficulty with Intelliride regarding the rejection rate and the reduction in referrals

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could be reflected in the trip numbers addressed in the exhibits regarding unfilled trips. Camelot is not receiving referrals that they might otherwise have received if not for the issue with the rejection rate. The rejection rate could also be affected by Intelliride giving them less than twenty-four hour notice and not being able to take a last-minute referral, thus creating another rejection that adversely affects the rejection rate.

Ms. Kern said that she has tried a number of times to get the matter with Lancaster County resolved with Intelliride, but that these meetings appear to not have resolved the problem as they are still receiving such referrals. Camelot has excess capacity that is not being utilized, said Ms. Kern. Camelot had an office in Omaha with between seventeen and twenty drivers located there. Business in Omaha declined enough that Camelot closed the Omaha office and dispatches its trips from the Kearney office through their tablets. Camelot has lost a number of good drivers due to the reduction in referrals. Camelot currently has drivers in place throughout the state.

Ms. Kern stated that she could speculate that the granting of the authority could affect Camelot negatively as most of the referrals that they receive are from Douglas or Sarpy counties to other locations such as Hall County or Platte County. Camelot could be in position to lose these trips as they are not tableted as Papio is. Camelot does provide trips solely in Douglas County.

Camelot is in position with its current staff to provide more service, and would be able to expand its authority if demand required it. Camelot is currently looking for additional drivers all throughout eastern Nebraska. Camelot is always looking to expand its business, but it can be difficult at times as the drivers must undergo a background check in order to drive for them and it can be difficult to find enough people that are eligible to drive.

Ms. Kern said that she does not believe that there is a need for the service as proposed by the Applicant in this matter.

Ms. Kern believes that the rejection rate issue causes numerous trips to be assigned to other carriers due to the low rating that Camelot has due to this low rate. A rejected trip by another carrier gets referred to them last because of this

rejection rate. This has an impact in that they will miss many referrals they could otherwise have received and other referrals get to them very late in the process, often less than twenty-four hours before the trip is to be made. This further creates hardship for Camelot as their schedules for the day are often complicated by these late received referrals.

On cross-examination by Mr. Dethlefsen, Ms. Kern denied that the twenty-five mile limitation was put in place due to profitability issues. The Ecolane system is designed to make all the scheduled trips as efficient as possible, so that it is difficult to say whether a particular trip is or is not profitable. Camelot's routing system could find a series of routes that could make such a trip feasible to do. Ms. Kern did admit that there are occasions in Sarpy County where Camelot did reject trips due to the loss that the trip would incur. She further said that Camelot is available to serve in Douglas, Cass, Dodge and Saunders counties.

Camelot's version of Ecolane is different from that used by Intelliride. The abilities of the system are somewhat different. Papio's tablets will only show Intelliride trips, where Camelot's could show Intelliride trips as well as their other scheduled trips if the systems worked together.

Camelot must file separate documentation to Intelliride for trip information and verification of the trips provided. They also must keep their records of the trips for ten years. The Intelliride system allows the driver to send the trip information directly to Intelliride. That same information is provided separately by Camelot at a later time as their tablets are not able to send that same information to Intelliride.

Ms. Kern reiterated her position that the rejection rate was impacted adversely by Intelliride's assignment of Lancaster County trips to Intelliride. She admitted that she did not have any documentary information prepared to support that position for the hearing. She said she was unaware of that being the reason for the restriction of referrals at the time it was occurring. At the later July meeting, it was apparent that the rejection rate was the issue, and the twenty-five mile restriction was put in place to ensure that those trips were no longer referred to Camelot.

Ms. Kern is not stating that Papio is unfit or unable to provide the proposed service. She noted that they are currently

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providing service in Douglas and Sarpy counties to many clients so they would appear to be fit and able to provide the service.

The issue of the number of eligible trips was further addressed. Ms. Kern noted that of the twenty-two trips listed for January, seven of those trips were interstate trips and would be eligible to be performed by Papio or other companies without Commission authorization. She did not have reason to believe that this number was not going to be a steady number of trips going forward. She also said that there is nothing that would prevent Camelot from reimposing their twenty-five mile restriction, but that they had no plans to do so and were working with other entities to get the assignment of Lancaster County off their referral list.

On redirect, Ms. Kern said that she has not been given a reason other than the rejection rate for their reduction of referrals.

At the request of Commissioners Crystal Rhoades and Frank Landis, late filed Exhibit 20 was received by the Commission. This exhibit addresses a question raised by Commissioner Crystal Rhoades as to whether this is a recent development or one that has been on-going for a period of time. The information provided regards the number of unfilled trips that were reported during the time period that AMR was operating as the trip arrangement agent for HHS prior to Intelliride. Exhibit 20 showed that there have been unfilled trips in several counties around Omaha that date back to at least 2012. The exhibit illustrates that the current problem is not one that is caused by operational changes instituted by Intelliride, but that the deficiencies are with the market and do not appear to be the result of the changes instituted by Intelliride.

The application requested that Papio be granted the authority to use pick-up trucks in its operations. The Commission is not persuaded that these vehicles are appropriate for use in the service provided and with the individuals that are served by Papio. The Commission finds, therefore, that it should not grant the request to authorize the use of pick-up trucks in this application.

Another issue of concern for the Commission is the issue of the assignment of trips to Camelot that involve transportation in Lancaster County. The testimony provided by Ms. Kern stated

that Camelot received these referrals and would reject the referrals. Late filed Exhibit 19 indicates that over 200 referrals were made to Camelot just between February 24, 2015, and March 5, 2015. This caused, at least in part, the difficulty that Camelot experienced with Intelliride and their performance rating. The issue has adversely impacted clients of HHS as well as Camelot.

The information does not change our findings regarding the need for transportation that was otherwise established, but the Commission is concerned that this issue still has not been adequately addressed by Intelliride. The assignment of appropriate trips to carriers must be corrected so that the negative impacts of the failure of the system to do these assignments properly ceases to be an issue for HHS clientele as well as the providers of the service.

OPINION AND FINDINGS

In this particular case, Applicant is seeking to extend its authority to include the transportation of passengers and their baggage from points in Douglas and Sarpy counties to points in the state of Nebraska, with all trips either beginning or ending in the said counties.

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. The 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 whether 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 prove 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. The Applicant is a currently certificated holder of authority in Douglas and Sarpy counties. The Applicant appears to have sufficient finances to operate the proposed service. It appears to have sufficient business acumen to operate the proposed service. There appears to be sufficient resources to continue the service. It has been operating since 2009 and has grown in the number of vehicles operated and has operated in an appropriate manner.

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

The first part of the test is whether the proposed operation will serve a useful purpose responsive to a public demand or need. 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. Stutheit offered testimony that to his knowledge, there are individuals in the HHS system that are not being provided transportation. He stated that his company is willing to provide service for these trips.

In addition, Jamie Chambers from Intelliride offered testimony and documentary evidence of the need for transportation. She showed, through testimony and exhibits received into evidence, that there were a number of trips that Intelliride could have arranged for its clients but were unable to assign a provider to that trip. While the exhibit did include some trips that were interstate in nature and thus beyond the ability of the Commission to regulate, there were still a significant number of such unfilled trips that could be served by the Applicant if granted the ability to do so. The exhibits show that there are particular areas where trips are going unfilled, especially in Washington County and in Saunders County. There also is evidence of a number of trips not being filled in other counties immediately surrounding Douglas and Sarpy counties.

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 meet.

The second part of the test is whether this purpose can or will be served as well by the existing carriers. The evidence presented shows that the providers currently operating are not meeting the needs of the public, especially in the area of Medicaid eligible individuals. The Applicant would appear to be in position to offer services that would help meet at least some of these unmet needs.

Exhibit 20 is evidence that the situation with the unfilled trips is one that has been ongoing since at least 2012. The unfilled trips listed in Exhibit 20 are further proof that there is a need that is not being met and that current certificated providers have not and are not meeting that need.

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It therefore appears from the record that the needs of these particular individuals are not being met by current providers, and there has been no showing that they either can or will fill this public purpose or need.

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. Ms. Kern did testify that she would speculate that the granting of the application by the Commission could hurt Camelot Transportation. She was particularly concerned about the advantage that Papio would have as an Intelliride tableted carrier over Camelot as a manual provider. However, Ms. Kern did not present any documentary or other evidence as to the potential negative impact of the granting of this application other than her speculation that it could be injurious to Camelot. Absent evidence of an impairment or endangerment to the operations of current providers, the Commission finds that the proposed operation can serve in the proposed manner without endangering or impairing the operations of such existing providers.

The Commission does find that the evidence is such that it should modify the area sought to be served by the Applicant. An examination of the exhibits, as well as the testimony of Ms. Chambers, would indicate that the geographic area to be served is primarily in the counties surrounding Douglas and Sarpy counties. Ms. Chambers said that the service area that was currently underserved a radius of up to seventeen miles of Omaha, and was north of the Omaha area, specifically Washington County and in the area of Wahoo, Nebraska. The Commission finds that there were other counties that also were shown to have need including Dodge, Saunders, Cass and Otoe counties. The evidence of need in counties beyond these counties, however, is not sufficient for the Commission to find that the application, seeking transportation between all points in Nebraska to and from Douglas and Sarpy counties should be granted. The Commission finds that the application should be modified to read as follows: "Transportation of passengers and their baggage between points in Douglas and Sarpy counties, and between points in Douglas and Sarpy counties, on the one hand and, on the other hand, points in Washington, Dodge, Cass, Saunders and Otoe counties. HHS Designation: Yes."

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

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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: SUPPLEMENT 1: Service and Territory Authorized: Transportation of passengers and their baggage between points in Douglas and Sarpy counties, and between points in Douglas and Sarpy counties, on the one hand and, on the other hand, points in Washington, Dodge, Cass, Saunders and Otoe counties. Other Restrictions. The transportation of railroad train crews and their baggage is not authorized. HHS Designation: Yes.

3. The application should be granted as modified.

ORDER

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application B-1733, Supplement 1, be, and it is hereby, granted as modified; 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 Papio Transport Services, Papillion, Nebraska, authorizing the operations as set forth in the foregoing findings.

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.

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MADE AND ENTERED at Lincoln, Nebraska, this 28th day of April, 2015.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Tim Schram

Crystal Knudsen

Dee Johnson

//s//Frank E. Landis

//s//Gerald L. Vap

Gerald Vap

Chairman

ATTEST:

Steve Meredith

Executive Director