

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

IN THE MATTER OF	)	APPLICATION NO. B-1733
THE APPLICATION OF	)	
PAPIO TRANSPORT SERVICE,	)	GRANTED
INC.	)	
	)	ENTERED: APRIL 21, 2009

APPEARANCES

For the Applicant:

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d/b/a Cornhusker Cab Company:

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BY THE COMMISSION:

BACKGROUND

By application filed August 28, 2008, Papio Transport Service, Inc., ("PTS") of Omaha, Nebraska, seeks authority from the Public Service Commission ("PSC" or "Commission") to operate as a common carrier of passengers and their baggage in open class service between points in Douglas and Sarpy Counties. Notice of the application was published in The Daily Record, Omaha, Nebraska on September 8, 2008. Protests to the application were filed by Happy Cab d/b/a Happy Cab Co., Yellow Cab, Checker Cab Company and DonMark, Inc., d/b/a Cornhusker Cab Company (collectively, as "Cab Company" or the "Cab Companies") on September 9, 2008; VIP Limousine, A-1 Transportation and Alfred

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Oil on September 9, 2008; and R&F Hobbies, Inc., d/b/a Prince of the Road ("POR") on September 15, 2008.

A hearing on the application was held on the days of January 22 and 23 and February 11 and 12, 2009, with appearances as listed above. Notice of the hearing was also published in The Daily Record.

#### EVIDENCE

##### Applicant's Witnesses

James Glover is the sole owner of PTS, the applicant in the above-captioned proceeding. According to Mr. Glover, PTS is seeking authority to transport passengers, including clients of the Nebraska Department of Health and Human Services ("HHS"), between points in Douglas and Sarpy counties over irregular routes. Currently, PTS is transporting students of the Papillion-La Vista School District to and from school.

PTS owns six vehicles that are used for these transportation services and would be used for those services for which authority is sought. While Mr. Glover himself has no experience in the transportation business, other than transporting schoolchildren since October 2008, he has employed Loren Stutheit, who has several years of experience in the industry. Mr. Glover also has consulted with others, including Tim Greger and John Miller, with a number of years of such experience, too.

For the proposed business, Mr. Glover has secured two lines of credit, totaling more than \$170,000.00. In addition to the lines of credit, the corporation has a net worth of over \$35,500. Mr. Glover estimates start-up costs to be in the area of \$25,000, including purchase of computers, software, office supplies and equipment, as well as additional vehicles. The applicant currently has liability and workers' compensation insurance policies in place.

Therese Henthorn, along with her mother, Clare Henthorn, is a client of HHS. They both receive transportation services paid for by HHS. Ms. Henthorn arranges for those services. Ms. Henthorn has received transportation services from POR for the past four or five years. She describes those services as bad and, within the past two years, rarely on time, either to pick her up to take her to appointments or to return her home afterwards. She estimated that return rides were late 80 percent of the time. Ms. Henthorn and her mother have had to wait for

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hours at a time. Late services continued in the days prior to the hearing. On quite a few occasions, according to Ms. Henthorn, POR did not show up at all. Due to late rides and no shows, Ms. Henthorn and her mother have had to cancel doctors' appointments.

Ms. Henthorn testified that John Miller, Tim Greger and Loren Stutheit would help her with her transportation concerns when they were with POR, but that such concerns were not resolved or addressed by others with POR. Before using POR, Ms. Henthorn tried using carriers she referred to as Choice, Goodwill and Hope Transportation. She described the services provided by those carriers as worse than POR's. She used the Cab Companies, as well, but had long waits for them, too. Ms. Henthorn believes there is a need for another transportation company in the Omaha, Sarpy County area.

Celeste Price-Polson is an assistant to a psychiatrist at Omni Behavioral Health, a mental health agency in Omaha, serving patients in Omaha and Sarpy County. Her responsibilities over the past two years have included scheduling patients for the psychiatrist, all of whom are seen on Mondays. She arranges transportation weekly for about up to five patients. Arrangements are made through Magellan. She typically requests POR.

Ms. Polson testified that rides were late or did not show about 25 to 30 percent of the time. Most of the time rides to appointments were on time. Return ride pickups, however, were routinely later than scheduled, sometimes significantly. She said that recently a return ride was an hour and 15 minutes late for a 10-year-old boy. Late rides require Mr. Polson to supervise the children while they wait, causing her to neglect her other duties. Late rides also cause scheduling difficulties. She has contacted POR when rides are late. She has used Visinet for transportation, and generally its services were timely, but often the company was too busy to take rides, so Magellan scheduled the rides with POR. Omni has used the Cab Companies, but experienced problem with pickups because the Cab Companies will not pick up the client if the client is not available for by phone half an hour before the time of pickup. Additionally, HHS does not allow the Cab Companies to transport children under the age of 16.

Recently, in an attempt to resolve late transportation problems, Ms. Polson has been calling POR on the Friday before the Monday appointment. She said this has helped, but she

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continues to have problems. Ms. Polson testified that Omni patients' transportation needs are not being met by current providers, and believes that PTS could help satisfy those needs.

Ms. Polson testified on cross-examination that she had a meeting with a representative of POR in December, but that the number of problems had not dropped off significantly. Omni patients continued to experience the same issues of late return pickups. On December 15, 2008, a return ride was an hour and 15 minutes late. On December 29, 2008, a ride to an appointment was 50 minutes late.

Kersten Borer has for the last three and a half years been a therapist for Woodhaven Counseling Associates in Omaha, providing services to patients in Douglas and Sarpy counties. She sees between 20 and 25 patients a week, including children, for substance abuse and mental health therapy. Roughly seven to ten of them require transportation services through HHS. She requests transportation through Magellan, usually with Midwest Special Services, POR, the Cab Companies or Visinet, though she recently learned that Visinet was terminating its service through HHS.

Ms. Borer described numerous difficulties with POR picking up clients late to take them to and from appointments. Often the children were left at school or locations other than home. She also described inappropriate behavior of POR drivers, as well as rudeness of POR dispatchers toward her, including harsh remarks, abrupt statements and hanging up on her. She testified that five or six times, children were stranded unsupervised at school because POR was not on time, including one 13-year-old student who waited more than an hour. Late drop-offs affect Ms. Borer's ability to treat her patients. One substance abuse patient was late nearly every week or not picked up at all. Lack of consistent treatment causes problems with recovery.

Ms. Borer testified that POR did not arrive to drop-off a child for a 7:00 p.m. appointment at the end of November 2008. After 20 minutes, she called the dispatcher, a woman in Omaha, who told her that the ride was on its way. After 20 minutes she called again, saying the driver was still not there. The dispatcher again said the ride was on its way. The dispatcher called back shortly thereafter to say the ride would be there in 10 minutes, which would not have allowed Ms. Borer sufficient time for the therapy session. The session had to be cancelled.

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Through Ms. Borer's investigations into the reason for late rides, she has determined that errors were made by POR, oftentimes the main office in Ravenna would not transmit the order to the Omaha office or would transmit it incorrectly. She said that she sometimes uses the Cab Companies, which have been more consistently on time than POR, but that she has had problems when the Cab Companies call her patients to confirm rides, but do not show up because the patient did not answer the phone. Ms. Borer testified that her patients' transportation needs are not adequately being met by current carriers and that she would consider using PTS if its application is granted.

Kris Hess has been the director of outpatient services for Omni Behavioral Health in Omaha since June 2002. Her duties include outpatient referrals, assigning cases to therapists and arranging transportation for HHS clients through Magellan, usually with POR, though sometimes with Midwest and the Cab Companies.

Ms. Hess testified that due to troubles with transportation service for its clients, Omni has decreased its use of such services and has increased the number of in-home therapy sessions it conducts. Most of the troubles were with POR, but Omni had troubles with other carriers, as well, Ms. Hess said on cross-examination. This overhauling of the structure of its program has cost Omni an estimated \$96,000.

Transportation troubles Ms. Hess experienced included clients being picked up and dropped off late and requests for special accommodations, such as female drivers for female sexual abuse victims not being followed. The transportation troubles have persisted for the last four years, and Omni has gradually moved to home-based care. Ms. Hess has complained to Magellan about the transportation troubles, even meeting with them on more than one occasion.

On cross-examination, Ms. Hess anticipates an increasing need for transportation. She testified that current transportation providers are not adequately meeting the needs of Omni and its patients and that Omni would use PTS if its application is granted.

George Spilker is the director of special services for Papillion-La Vista Public Schools. In that job, one of his responsibilities is to arrange transportation for students, including outside providers. He has known Mr. Glover for 30 years, and described him as a man of good character.

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The school district does not have a contract with PTS, but arranges services on a ride-by-ride basis. Currently, PTS provides transportation for seven students of the district and pays on a monthly basis. In the past the district had used POR, also without a contract, but discontinued use of POR because it was very dissatisfied with the service.

Mr. Spilker testified that POR's afternoon services were extremely late, sometimes up to two or three hours after school was out. On one occasion, after a student had to wait two and a half hours for a ride, Mr. Spilker called POR's Ravenna office to complain. The person who took his call was unable to help him, so he asked to speak to a person in a higher position. When told that none was available, Mr. Spilker left his name and number and asked that the person return his call. He never received a response.

Kelli Chong and her husband have two young boys in the Papillion-La Vista Public School district, who require transportation to Council Bluffs, where the Chongs have resided since August 2008 with Mr. Chong's parents. From mid-August through part of September, POR transported the Chong children. According to Ms. Chong, POR was late in bringing the children home nearly every day. School ended at 3:05, and the children usually had to wait at school until 4:00 or 4:30, sometimes as late as 6:00. On one occasion, the children were left unattended in a POR van in the Burke High School parking lot for an extended period of time. She testified that the only time that the children were delivered home on time was when Tim Greger drove them. After the 6:00 arrival, the Chongs discontinued use of POR. They are currently using PTS, and have had no problems with PTS's services.

Bill Boudreaux is an ASC-certified automobile mechanic and has been in the business for 15 years. He worked at Firestone on West Center Road in Omaha for four years until the end of 2008, when he left to start his own business. While at Firestone, he had numerous occasions to work on POR vehicles. He described numerous occasions when he found, reported and recommended repair work that needed to be done on POR vehicles, such as worn brake pads, problems with the steering system, antilock brake system pump failure, worn tires, bad front struts and leaking wheel cylinders, for safety reasons. POR, however, declined to have these numerous problems repaired. Mr. Boudreaux also testified that POR did not properly maintain its vehicles, not flushing the coolants unless they had to, not repairing leaks, not getting tune-ups unless something failed.

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Terri Kahn is an operations leader of behavioral services at Alegent Health, where her job duties for the past five years have included arranging HHS transportation for patients through Magellan with POR, the Cab Companies and until recently, Visinet. She presently lines up HHS-paid transportation for about 30 to 35 children and eight adults. She meets regularly with Magellan to address transportation problems and communicates directly with the carriers if they have patterns of problems.

Ms. Kahn testified about problems with all three carriers not picking up children on time. She said the provision of timely service fluctuated from time-to-time, presumably based on overbooking rides or driver issues. Ms. Kahn said that current carriers are not serving the needs of Alegent patients on a consistent basis, and she would consider using PTS if its application is granted.

Anthony Brown has been an alcohol and drug counselor working for NOVA Therapeutic Community in Omaha for over four years. His duties include arranging transportation of HHS patients through Magellan for intensive outpatient services. He currently arranges transportation for about 15 patients from Douglas and Sarpy counties, all of whom are under the age of 19. He usually uses Midwest and POR and occasionally the Cab Companies.

Mr. Brown testified that all carriers fail to consistently provide timely service. In several instances, NOVA staff has had to drive the children home. These problems have persisted throughout the 18 months Mr. Brown has been responsible for arranging HHS transportation.

When Mr. Brown has observed late rides, he has contacted POR's Omaha office, and is often referred to the Ravenna office on a toll-free number. He sometimes does not get an answer when he calls the Omaha office, including one time in early January, when he called at about 7:00 p.m. Mr. Brown testified that these transportation problems interfered with his ability to carry out his other responsibilities. Mr. Brown testified about NOVA's plans to increase the number of patients it serves, which will increase the number requiring transportation. According to Mr. Brown, the current carriers are not meeting the needs of NOVA patients, and he would consider using PTS if its application is granted.

Natalie Hald is a therapist and manager of the intensive outpatient office of Addiction and Behavioral Health Services ("ABH"), which provides treatment for adolescents with mental

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health and substance abuse troubles. Ms. Hald's responsibilities over the past four and a half years have included arranging HHS transportation through Magellan for almost all of the 40 patients served by ABH at its Omaha office. She typically lines up transportation with POR, but sometimes with Midwest and the Cab Companies.

Ms. Hald testified that she had not used Midwest in the past couple years because of problems with orders not being filled or late pickups and drop-offs. She ceased using the cab company for similar reasons. She has worked with POR for the past couple years and testified that the service was sometimes adequate, sometimes not. Problems with POR included late pickups and drop-offs and not filling orders, meaning not assigning a driver and then not notifying ABH until too late. If pickups are more than half an hour late, the treatment session must be cancelled. In addition to missed therapy, late pickups cause ABH to lose money because it cannot bill for services when it does not see the patient. She said that over the past four years there have been about 100 times when a patient was delivered half an hour or more late.

According to Ms. Hald, ABS anticipates an increase in its need for transportation services for its patients. Overall, she testified, current carriers are not meeting the transportation needs of ABH clients. If its application is granted, ABH would use PTS's services. On cross-examination, Ms. Hald said that she would use PTS because of her past work with Tim Greger and because its main office would be in Omaha.

Natalie Sariscansy also works for ABH, where she has been for over three years, as a licensed therapist. Part of her job entails arranging HHS transportation through Magellan for her patients. She discontinued use of A&B Shuttle and Midwest because of service problems. She uses the Cab Companies only on an emergency basis because they have not met the needs of ABH patients, primarily due to the Cab Companies' practice of calling patients prior to pickup and canceling the ride if there is no answer, which is common among the adolescent patients ABH serves. Presently, ABH most often uses POR.

Ms. Sariscansy testified that she has had numerous problems with POR, as well. She testified about a particular patient whom POR routinely failed to pick up from her designated pickup location, causing the patient to miss her scheduled appointments on a regular basis from November 2008 through January 2009. These missed appointments adversely affected the treatment



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because Ms. Sariscansy was not able to monitor her progress or sobriety. She contacted POR's Omaha office each time the patient missed an appointment, usually talking with a dispatcher named Kevin.

Just a week before the January 22 hearing, another client called Ms. Sariscansy to inform her he was at home, rather than at his designated pickup location. Ms. Sariscansy contacted POR to notify them of the change, but the order was not changed.

Over the last two years, Ms. Sariscansy has called POR's Omaha office on several occasions to report that patients had not showed up for appointments. Ms. Sariscansy said that she had spoken with a dispatcher named Charlene, who on at least four or five occasions told Ms. Sariscansy she did not know where the particular driver was. On more than 20 occasions, Charlene supplied inaccurate information or did not have any information to share, Ms. Sariscansy testified on cross-examination. To date, those problems have not been resolved, Ms. Sariscansy said. She has made it her practice to not only fax orders to Magellan, but also to both POR's Ravenna and Omaha offices.

Ms. Sariscansy also testified about concerns relating to conduct by POR drivers. One driver, Joe Dreher, whose duties were recently expanded by POR to include marketing and office work, stopped during a transport and allowed adolescent clients in substance abuse programs to get out of the vehicle to smoke cigarettes. On another occasion in December 2008 or January 2009, a driver held on to a patient's lighter during her treatment, into which she was not allowed to bring such paraphernalia. Ms. Sariscansy testified that the current carriers are not entirely meeting ABH client needs and that she would consider using PTS, if its application were granted.

Teffany Heywood is the program director for Heartland Family Service in Omaha, which provides shelter to children removed from their homes due to abuse, neglect or behavioral issues. Part of her responsibilities involves arranging HHS-funded transportation for about 12 children to get to appointments, court hearings, school and other places. She has arranged rides with Visinet, the Cab Companies and POR. Heartland ceased using the Cab Companies after one of their drivers allegedly inappropriately touched a young female passenger on October 27, 2008.

Ms. Heywood testified that POR had been late or had not shown up on a couple occasions in the past two weeks. On one occasion, POR called and notified Ms. Heywood that they had

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forgotten the passenger. Ms. Heywood complained to Joe Dreher at POR, but has not heard anything from him. On another occasion, POR did not show up at all to transport the child back to Heartland. That occurred in November 2008, Ms. Heywood testified on cross-examination. She had to send another staff person to pick up the child.

According to Ms. Heywood, Heartland plans to soon expand its program to serve 18 children, which will mean increased transportation needs. She testified that the children's current needs are not being met by existing carriers, and she would consider using PTS, if its application were granted.

Tim Greger worked for POR for more than a year and a half, driving for the company for about a year, and then serving as office manager in Omaha for about seven months. Mr. Greger interviewed more than 20 entities after PTS filed its application to determine if there was indeed a need for an additional provider of transportation services for HHS clients. He informed Loren Stutheit of his findings and conclusions.

Loren Stutheit currently transports school children for PTS. He was employed by Happy Cab from 1995 through 2001, when he began working for POR. From 2001 through October 6, 2008, he worked on and off for POR, beginning as a driver and also working as a dispatcher. Most recently, he served as a driver from September 2007 through February 2008, when he returned to being a dispatcher, serving in that position until he left the company. He worked as a dispatcher in the mornings and afternoons until 4:00 pm, when a woman named Charlene took over. Mr. Stutheit testified that Tim Nelson also handled dispatches, and was primarily responsible for preassigned runs or repeat clients, such as the Chong children. As dispatcher, Mr. Stutheit did not have authority to hire drivers for POR.

According to Mr. Stutheit, PTS has retained the services of an attorney and a certified public accountant. The company has purchased computer equipment and software, including accounting software. It has established plans for purchase of dispatching systems and equipment. PTS has obtained a million and a half dollars in liability insurance, as well as workers' compensation insurance. Mr. Stutheit testified that it is the company's intention to comply with all HHS and PSC rules and regulations, including vehicle safety standards. The company has made arrangements of mechanical repairs and automobile maintenance. It has plans for regular and routine inspections. PTS will primarily employ its drivers, but may utilize independent

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contractors, as well. It will conduct criminal background checks on both employees and independent contractors, and will require training for all drivers, including rules of the road instruction. Mr. Stutheit testified that other than government-reimbursed transportation and schoolchildren, PTS does not currently have plans to serve other classes of prospective passengers.

During his work as dispatcher for POR, Mr. Stutheit testified, there were numerous instances in which calls came in to be dispatched for which there were insufficient drivers available. He testified this occurred on a daily basis. Mr. Stutheit testified that the cause of these problems is POR's policy that it will not turn down a ride. He was informed of that policy by Alvin and Sean Schroll.

Mr. Stutheit testified that PTS will not take requests for transportation services that it cannot provide on timely basis. If PTS declines such a request, it will be returned to Magellan so they will have an opportunity to select an available carrier.

Mr. Stutheit further testified that it is PTS's belief that there is an unmet need in the market for HHS transportation. That belief is based on Mr. Stutheit's firsthand observations as a dispatcher for POR, in which he observed numerous instances when clients had to wait for extended periods of time due to overbooking. Though Mr. Greger was not allowed to testify about the conclusions from his market study, Mr. Stutheit testified that PTS is still actively pursuing its application for authority before the Commission. Mr. Stutheit testified that he has had discussions with HHS and Magellan about the transportation needs of HHS clients. He testified that Bonnie Schrade of Magellan told him she felt there was a need for another transportation provider in the Omaha and Douglas County area.

John Miller worked for POR for 11 years, beginning as a driver, then dispatching and then managing in the Omaha office. Mr. Miller testified that during his years at POR, problems such as errors in paperwork received from Ravenna and late delivery of paperwork led to untimely provision of transportation services.

Mr. Miller testified that POR's main office in Ravenna has a policy of accepting all requests for rides regardless of whether they can be fulfilled or not. Under a system Mr. Stutheit proposed and administered, these runs were not immediately assigned, but were sent to the driver about a half hour before the run. This eliminated the risk that drivers would be

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dispatched on a run that had been cancelled, as transportation requests sometimes are. According to Mr. Miller, the overbooking by POR occurred several times a week. On examination by Commissioner Landis, Mr. Miller testified that the Schrolls told him the policy of not declining any transportation requests was based on the belief that if POR took all runs, there was no need for any other transportation companies.

Mr. Miller testified that he told Ravenna on at least a dozen occasions between and 2004 or 2005 and February 2008 that Omaha lacked the resources necessary to handle requests for transportation.

#### Cab Companies' Witnesses

Jeremy Eickman is the information technology administrator for the Cab Companies. His duties include gathering and collecting information, including passenger ride information. He testified that the average time that it takes Cab Company drivers to get a vehicle loaded after dispatch is roughly 22 minutes and 30 seconds. He testified as to the process by which the Cab Companies process ride requests and dispatch orders, all of which he supervises.

Leslie Brown is the call center manager for the Cab Companies. She manages the routes, services, dispatch areas and the actual call center dispatching, including rides for HHS clients. Additionally, she helps with driver training. She testified that drivers undergo several background checks, including a criminal background check. She testified that the Cab Companies handle approximately 8,000 HHS trips per month, most of which are arranged through Magellan. Magellan has a policy that no minors under the age of 16 are permitted to ride in a sedan. The Cab Companies have about 20 to 25 minivans that are used to carry such passengers, usually on a multiple-passenger basis over a designated route. She testified that, if called upon, the Cab Companies could provide an additional 30 to 40 rides per day. She further discussed the Cab Companies' complaint handling process. Some complaints involve drivers not showing up on time for rides. Sometimes the driver does not show up at all. Ms. Brown has received reports of drivers inappropriately touching passengers. She testified that after one incident of inappropriate touching by a driver in 2008, the driver was removed from the route.

John Davis is the director of operations for the Cab Companies. His duties include the daily operation of the

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companies, relations with passengers and supervision of staff. He testified about the process of handling requests for HHS transportation. He said that Cab Company operators field faxes from Magellan, enter the information into their computers and contact Magellan if something looks incorrect. The operators also contact the passenger to confirm the orders and verify the information. He testified that there could be instances where there are not enough drivers to cover rides in a given area, but was unaware of any instances when the Cab Companies were unable to provide rides requested for HHS clients. He testified that while the system with Magellan was not foolproof, it met what he would consider community standards. He testified on direct examination that Magellan personnel could make mistakes and admitted that Cab Company employees could make mistakes, as well. He testified that the Cab Companies do presently transport minors, usually over regular routes. Children are carried for various school districts, for HHS and for some child welfare organizations. He testified that, if the Cab Companies were asked to provide another 30 to 40 rides a day, they could do so under their current capacity.

Mr. Davis testified upon examination by Commissioner Landis that he did not anticipate having to adjust the level of service the Cab Companies provide to meet competition from another carrier.

Prince of the Road's Witnesses

Sean Schroll is the chief administrative officer and marketing director for POR, positions he has held since mid-2008. Prior to that, Mr. Schroll was the chief operating officer of the company. He testified that John Miller, the manager of POR's Omaha office on several occasions brought complaints to Mr. Schroll's attention concerning lack of capacity in Omaha to handle runs being assigned. He testified that POR's policy has been, and remains, to not turn down requests for transportation. Part of the reason for that policy was the belief that if the needs of HHS for transportation were not satisfied, other companies might be allowed in to compete for such service.

To address increasing needs, he said that POR increases its number of drivers and that Mr. Miller was authorized to hire additional drivers and purchase additional vehicles. He also testified that POR had taken steps to spread the workload more equally among individual drivers. Mr. Schroll testified that Mr. Miller sometimes directed complaints about transportation to the Ravenna office, which took action to address the complaints,

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including developing a form to send to drivers when there was a mistake in the paperwork concerning the ride. Mr. Schroll testified, however, that he was unaware of the incidents about which other witnesses testified relating to problems with POR transportation. He said that sometimes the mistakes were made by Magellan, sometimes by staff in POR's Ravenna office. The form was to be filled out by the Omaha manager, dispatcher or driver and sent to Ravenna. He testified about a method of dispatch, known as "live dispatch," introduced by Mr. Stutheit, which was not consistent with POR's usual philosophy of dispatch. The company changed the method of dispatch after Mr. Stutheit left the company. Mr. Schroll testified that he believed that Mr. Miller's methods of managing the Omaha office were deliberately used to diminish the level of service POR was providing there. In a November 2008 memorandum to POR staff concerning Mr. Miller, however, Mr. Schroll described Mr. Miller as "a remarkable asset to the company." Mr. Schroll also approved Mr. Stutheit's award for being an outstanding employee of POR, presented in February 2008. Mr. Schroll testified that POR performs criminal background checks on its drivers and does random drug and alcohol testing.

Mr. Schroll testified that he believes there were enough transportation providers to meet current demands. He testified that he did not anticipate an increase in demand for HHS transportation services. He testified that if another transportation provider were allowed into the market, it would need to co-exist with existing providers and that POR is already experiencing loss, in terms of Papillion-La Vista School District transportation, from the applicants' services. Mr. Schroll testified on direct examination that granting PTS's application would not affect or cause a change in the quality or level of the service provided by POR.

James Laudenklos has been the chief operations officer of POR since June 2008, formerly serving as the transportation safety director for the company. His current duties include overseeing all operations of drivers in the field and supervising office staff and drivers. He testified that POR is taking steps to purchase more vehicles and hire more drivers for its Omaha operations. He said the company had plans to increase drivers from 27 to 36. He testified that these increases were being made to address anticipated growth in the need for transportation. He testified he had budget to hire more drivers and purchase more vehicles, but wrote in a memorandum to staff on December 23, 2008: "At an expense of [\$]4,000.00 per van this is a yearend expense that is not feasible at this time."

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Mr. Laudenklos testified that he believed POR is presently meeting requests for service in the Omaha area. He said that complaints received do not directly relate to POR's capacity to handle runs, though he said the complaints did relate to timeliness of service.

Mr. Laudenklos testified that, as chief operating officer, he empowered Mr. Stutheit's "live dispatch" methodology to allow POR to be most efficient by not assigning runs until 30 minutes before the ride to avoid drivers showing up for cancelled rides. Mr. Laudenklos, a former police dispatcher, said he backed this method "a hundred percent." He testified upon examination by Commissioner Landis that he monitored the implementation of the live dispatch method, which was done gradually. He said that he received a few complaints about the timeliness of service under the live dispatch method. After Mr. Stutheit's departure, Mr. Laudenklos reverted back to the old method of assigning all drivers to runs for the following day. He said he believed that POR is not presently receiving as many complaints.

Mr. Laudenklos testified that he rode with Tim Greger one time to transport the Chong children from Papillion-La Vista Public Schools to their grandparents' home in Council Bluffs, after hearing complaints from the Chongs about untimely delivery from school to home, although he said the Chong's file showed no drop-offs after 4:00 or 4:30 p.m. He said that on that occasion they picked up the children at 3:15 p.m. and dropped them off at home about 3:40 p.m. He testified that POR is very busy with rides in the Omaha area from 1:30 to 5:00 on weekday afternoons.

Donna Hervert is responsible for sending ride orders to Omaha from the Ravenna office of POR, where she works. She explained the process of taking orders from HHS or Magellan - usually a day or two in advance of the requested ride - then entering them into a website, from which the Omaha dispatcher picks them up and assigns them to drivers. They have been using the same system for about two years. She testified that she also is responsible for taking complaints in the Ravenna office and would relay them to Omaha, where she was always able to contact either Tim Greger, Loren Stutheit or John Miller. She said she did not often get answers back regarding the complaints. She testified that there were five or six requests for service refused in the afternoons, mostly between 1:30 and 5, by the Omaha office while Mr. Stutheit was a dispatcher there. She claimed that POR has not turned down as many rides in Omaha or received as many complaints about late rides since Mr. Stutheit left the company. She admitted, however, to receiving complaints

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regarding the timeliness of service in December 2008 and January 2009. Ms. Hervert testified that sometimes POR has difficulty filling a ride because the request is made the afternoon the ride is needed, but she acknowledged that missed and late rides occurred both as a result of requests for same-day and advanced notice service. She confirmed that is POR's policy not to turn down a request for a ride.

Ryan Stretesky is the fleet manager for POR, in which capacity he oversees the fleet of vehicles, taking responsibility for maintenance and repair of the vehicles. Mr. Stretesky testified that inspections are scheduled bi-annually and that the company has a company-issued maintenance guide, neither of which, he said, Omaha adhered to before October 2008. He testified about vehicle appearance problems and safety issues, relating to tires and loose spare parts, with some vehicles Mr. Stutheit leased to POR. Five of them needed to be pulled from the fleet, according to Mr. Stretesky. He also testified that PSC cab cards for some of the vehicles were missing or outdated. He presented a report of his inspection to Sean Schroll. Mr. Stretesky testified that Mr. Miller had authority to make repairs, as necessary, of Omaha vehicles, as did Mr. Greger, up to \$400. He did not testify as to the knowledge, experience or training of either Mr. Greger or Mr. Miller relating to vehicle repair and maintenance. He said he placed one vehicle out of service due to its airbag light remaining on, but that Mr. Miller could not locate the vehicle. He has no knowledge of the condition of those vehicles today.

Upon questioning by Commissioner Landis, Mr. Stretesky testified that he had noted a van covered with rust one year before he finally took it out of service in February 2008. In response to further questions by Commissioner Landis and, later, Commissioner Boyle, he repeatedly said it had been in service in the rusty condition for one year before being pulled. Later, during further questioning by Commissioner Boyle, however, he changed his testimony to say he had inspected the vehicle six months before he ultimately took it out of service.

Sean Schroll was recalled by POR's counsel and testified that he had directed Mr. Miller to have the Stutheit vehicles repaired, particularly the rusted-out bodies, but was not advised that they had been repaired. He admitted that he had authority, as chief operating officer, to take a vehicle out of service, but did not attempt to exercise it.



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Kevin Suing has been with POR for two and a half years, driving until August 2008, when he was promoted to chief dispatcher in the Omaha office. He testified about the "live dispatch" method that Mr. Stutheit implemented while Mr. Suing was a driver. Most of the time, Mr. Suing had at least half an hour's advance notice, but a few times less. Dispatches were made via texting under this method; and he testified that sometimes he did not get the text message. The company no longer uses the text message method. He said he doesn't get many complaints, as dispatcher, and that the number of complaints was down. If a driver is late, he has them contact the passenger. He also calls clients prior to the ride, which has helped reduce no-show clients. Mr. Suing testified that there were sometimes more requests for service than the Omaha office could meet, but that it was getting better with new drivers coming in. He admitted, however, that they continued to receive complaints about late rides in December 2008 and January 2009. Mr. Suing testified that he expects the demand for transportation services in Omaha to grow.

Darlene Swait is a POR passenger. She testified that she is satisfied with the company's service and has not been late to take her to appointments.

Joseph Dreher served as a driver on an independent contract basis for POR from January 2000 through July 2008, when he became an employee driver. He testified about the changes in dispatch methodology approved by Mr. Laudenklos and later changed, as well as complaints, which he claims have become fewer since the change back. He acknowledged stopping to allow adolescents to smoke and, on a separate occasion, holding a girl's lighter while she went into a treatment appointment. POR recently expanded Mr. Dreher's duties to include marketing and office work, in addition to continuing as a driver.

Applicant's Rebuttal Witness

Loren Stutheit testified on rebuttal that the vehicles he owned, which were leased to POR, were also titled to POR. Mr. Stutheit continues to have possession of only three of the vehicles, each of which has been repaired. In addressing questions about the live dispatching methodology, Mr. Stutheit testified that he had been in the transportation industry for 13 years, dispatching not only for POR, but also for Happy Cab. He is familiar with other companies that use live dispatching. The service problems POR had, Mr. Stutheit said, were related to lack of resources necessary to meet customer needs and not the

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dispatch methodology. Mr. Stutheit further testified that he had received no customer complaints while transporting children to and from Papillion-La Vista Public Schools.

Prince of the Road's Surrebuttal Witness

Sean Schroll testified on surrebuttal that the Stutheit vehicles were titled under POR for security reasons.

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

For a grant of authority, an applicant must prove that it is fit, able, and willing to provide the proposed service and that the proposed service "is or will be required by the present or future public convenience and necessity." Neb. Rev. Stat. § 75-311 (Reissue 1996). In the present application, the Commission finds the evidence provided through the applicant and supporting documentation provides that applicant possesses the financial ability to operate the proposed service. We further find that the applicant's testimony provided sufficient evidence regarding his managerial skills to operate the proposed business. His readiness is demonstrated by the fact that he has obtained vehicles to be used in the proposed service, has liability and workers compensation insurance in place, and has acquired or plans to acquire the necessary equipment to be used in the proposed operation.

The Commission is concerned about testimony regarding specific instances of vans owned by the Applicant and leased to POR having maintenance issues. While the Applicant assured the Commission that he would maintain the vehicles, the Commission will require that the Applicant have all vehicles inspected by a third party company that will inspect for safety and appearance issues. A report is to be submitted to the Commission that substantiates the adequate that the vehicle is safe before is will be allowed to be placed in service.

A second issue that was addressed in testimony was the use of live dispatching by POR when POR Omaha operations were managed by John Miller and Loren Stutheit and as may be implemented by the Applicant. The Commission has a concern that this dispatch method could be a distraction for the driver while he or she is driving. If the texting is done while the vehicle is in operation on the roads, it in all likelihood would create a hazardous distraction that could result in injury to the passengers in the vehicle as well as the driver and in property damage as well. The Commission orders that this dispatch method be used only when

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the vehicle is not in transit between points so as to eliminate the distraction that its use while in transit would create.

A further issue connected to fitness is the allegation of a violation of Nebraska statutes regarding the open and public manner of contract awards. There was an allegation regarding the award of a transportation contract between Papillion-LaVista High School and the Applicant that could be as a violation of Neb. Rev. Stat. §49-14,102. It is not the Commission's responsibility nor within its purview to enforce this section of statute, but the alleged failure of the Applicant and the school district to comply with would be troubling if true.

Upon review of the all the evidence adduced at the hearing, we find that the applicant has provided the requisite criteria on which to base a finding that the applicant is fit, willing and able to provide the proposed transportation service.

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 statute requires us to determine whether the proposed operation will serve a useful purpose that is responsive to the public demand or need. Neb. Rev. Stat. § 75-311 (Reissue 1996).

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Therefore, we must examine the evidence based upon what is responsive to a public need or demand.

From the evidence adduced at the hearing, we find that the applicant sufficiently demonstrated that a need for the proposed service exists. Testimony from several witnesses established that a public need exists that is not currently being satisfied. They also believe that the Applicant's proposed service will serve a useful purpose responsive to their needs. Counselors treating HHS clients described substantial difficulties obtaining timely service from existing carriers. Those difficulties affect the patient's treatment and the counselors businesses and schedules, which in turn adversely affect other patients.

The testimony was also such that the problems described have existed for a period of time longer than a few months. The problems as stated by the witnesses are not limited to just POR. Moreover, while most of the witnesses told of problems experienced and observed with POR services, those troubles were not limited to POR. There appears to be no existing carrier that is sufficiently and consistently responsive to the public need, insofar as HHS clientele is involved. Some of the witnesses testified that they tried several carriers, experiencing problems with each; and most ended up with POR. According to the testimony of these witnesses, POR seemed to have the best track record of current providers, despite its deficiencies in consistently meeting the public demand.

The problems experienced and observed by the witnesses who testified were more than occasional, isolated incidents. They are problems that create troubles for patients and their counselors alike. Transportation difficulties contribute to these problems experienced by the patients and counselors alike.

The Commission further finds that the need is not being sufficiently met by existing carriers in the area. The Commission opines that the supporting witness testimony demonstrates that the need is not being adequately met by the Protestants or others in the field. Several witnesses voiced a need for additional transportation service. Several witnesses also testified that they would use or recommend and use the applicant's proposed service if the application is granted. The Commission finds that the proposed operation will serve a useful purpose that is responsive to a public demand or need.

Finally, we turn to the issue of whether existing carriers would be endangered or impaired by the granting of this

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application. Primarily, no substantive evidence of harm or endangerment was presented by the Protestants in the hearing. No specific evidence was presented to the Commission. In this regard, Commissioner Landis asked the Cab Company's director of operations the following question:

"Would you anticipate having - if the Commission would let another provider in that field and another competitor, would you anticipate having to change to adjust to the level of service that you currently provide to meet competition from another provider?"

The Cab Company's director of operations responded:

"Honestly, no."

The attorney for POR asked the former chief operating office, Sean Schroll, the following question:

"In your capacity in - as the chief operating officer for eight years with Prince of the Road and in your current capacity as - with Prince of the Road, based on that experience, if a new carrier were granted authority in the Omaha area, would that affect or cause a change in the quality or level of the service provided by Prince of the Road?"

Mr. Schroll responded simply:

"No."

No evidence was adduced to show or even suggest that the Applicant's proposed service might endanger or impair the operations of existing carriers in any way contrary to the public interest. Accordingly, the Commission finds that a grant of this application would not endanger or impair the operations of existing carriers, including the Protestants, contrary to the public interest.

In sum, we find that the applicant has met the requirements of Neb. Rev. Stat. § 75-311, and therefore, the application should be granted as modified. From the evidence adduced and being fully informed in the premises, the Commission is of the opinion and finds:

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1. Applicant is fit, willing, and able to properly perform the service of a common carrier by motor vehicle and to conform to the provisions of Neb. Rev. Stat. §§ 75-301 to 75-322 (Reissue 1996) 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:

CERTIFICATE AUTHORIZED

SERVICE TERRITORY AUTHORIZED:

COMMON: Transportation of passengers in open class service over irregular routes between points in Douglas and Sarpy counties and between points in said counties. HHS Designation: Yes.  
Transportation of Railroad Train Crews: No

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application B-1733 be, and it is hereby, granted as amended above and that a certificate shall be issued to Papio Transport Service, Inc., Omaha, Nebraska, authorizing the services of a common carrier by motor vehicle as set forth above.

IT IS FURTHER ORDERED that applicant shall not be issued the certificate authorized by the Commission unless and until the 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), (Reissue 1996), 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 the applicant, be of no further force and effect.

IT IS FURTHER ORDERED that applicant shall not conduct operations until a Certificate is issued.

IT IS FURTHER ORDERED that the Certificate 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 21st day of April, 2009.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

*Gerald L. Up*

*Frank E. Landis*  
Chairman

*John J. Johnson*

ATTEST:

*Michelle J. H*  
Executive Director

*Anne C. Boyle*

*Tim D. Schram*

//s// Frank E. Landis