

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the	)	APPLICATION NO. B-1761
Application of Limousine	)	
Services, LLC, Lincoln,	)	
seeking authority as a common	)	
carrier in Nebraska intrastate	)	
commerce in the transportation	)	
of passengers by luxury	)	
limousine between points	)	
within a 250-mile radius of	)	
Dakota City over irregular	)	GRANTED
routes. RESTRICTION: The	)	
transportation of railroad	)	
train crews and their baggage	)	
is not authorized. The	)	
certificate holder shall	)	
maintain a listing of its	)	
services in the yellow pages	)	
of the telephone directory	)	
serving Dakota City. Extend	)	
the authority by the addition	)	
of sedans to vehicles used.	)	ENTERED: APRIL 17, 2012

For the Applicant:

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For the Protestants:

VIP Limousine, A-1  
Transportation, and Alford Oil  
Company, dba Omaha Limousine

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## BACKGROUND

By application filed July 27, 2011, Limousines Services, LLC ("Limo Services" or "Applicant") of Lincoln, Nebraska, seeks authority from the Nebraska Public Service Commission ("Commission") to expand its current authority to allow limousine service by sedans within its current service territory, which encompasses a 250-mile radius of Dakota City. Notice of the application was published in The Daily Record, Omaha, Nebraska on September 7, 2011. Protests to the application were filed on October 11, 2011, by VIP Limousine, A-1 Transportation, and Alford Oil Company, dba Omaha Limousine ("Protestants" or "VIP").

By application filed November 17, 2011, Applicant sought authority from the Commission to transfer stock ownership from Mike Roth to Jim Campin and Tom Schmidt. Notice of the application was published in The Daily Record on November 28, 2011. VIP filed protests to the application on December 13, 2011. On December 13, 2011, the Commission granted Applicant temporary operating authority. On January 20, 2012, VIP withdrew its Protests to the November 17, 2011, application. On March 6, 2012, the Commission granted the application filed November 17, 2011.

A hearing on the July 27, 2011, application was held on January 25, 2012, with appearances as listed above. Notice of the hearing was published in The Daily Record and sent to all interested parties on January 4, 2012.

## EVIDENCE

Applicant's Witnesses

Michael T. Roth is an owner and president of Limo Services. Limo Services presently holds authority from the Commission to provide luxury limousine service between points within a 250-mile radius of Dakota City over irregular routes. Said authority was transferred by the Commission on May 12, 2010. Under the application now before the Commission, Limo Services is seeking authority to allow use of sedans for the provision of services.

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Limo Services presently operates three vehicles, all of which are stretch or luxury limousines. The business lost about \$17,000 the first year, but based on his experience as a businessman, Mr. Roth said he believes he would turn a profit in future years. He cited the areas as being a great market opportunity as a primary reason for his expectations.

For personal reasons, Mr. Roth began attempting to sell Limo Services in summer of 2011. He contacted a concierge company called My Counterparts, which asked whether the Applicant operated sedans. Following those discussions, Mr. Roth began to think about whether he should add sedan authority. Later, Jim Campin and Tom Schmidt, owners of Emerald Limousine, Inc. ("Emerald"), which holds a Certificate of Authority from the Commission (No. B-1769) approached Mr. Roth about purchasing his authority. The owners of Emerald also asked whether Mr. Roth had sedan authority. After the two inquiries about sedans, Mr. Roth decided to seek such authority and on July 27, 2011, filed the application that is the subject of this proceeding.

Mr. Roth continued to attempt to sell his authority and ultimately reached an agreement with Mr. Campin and Mr. Schmidt by which they acquired the authority. On November 17, 2011, Applicant sought approval of the transfer, including temporary operating authority. On December 13, Protestants filed a protest of the transfer application, but did not contest the request for temporary operating authority. On December 13, 2011, the Commission granted Applicant's request for temporary operating authority. Thereafter, Mr. Campin and Mr. Schmidt took over management and operation of Limo Services, as well as prosecution of the two applications.

On examination by Commissioner Schram, Mr. Roth testified that the loss experienced during the first year of operation was due to capital expenditures and not due to lack of demand or business. He said that with advertising, business would have increased. He also said that the benefit to customers of adding sedans would be the reduced cost of service.

On cross-examination by Mr. Shultz, Mr. Roth testified that Limo Services' drivers were classified and treated as employees.

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On redirect examination by Mr. Pollock, Mr. Roth stated that he did not hear commercials for any limousine company on the radio.

James G. Campin, together with Tom Schmidt, owns and operates Emerald. The company has operated since receiving authority from the Commission in August 2010. Under that authority, they operate a limousine trolley within a 250-mile radius of Omaha. Since obtaining temporary authority for the transfer of Limo Services, Mr. Campin and Mr. Schmidt have handled the day-to-day operations of the company and prosecution of the application to allow use of sedans.

Mr. Campin testified that he has undertaken extensive studies of sedan services authorized, offered, and provided in the Lincoln and Omaha markets. He testified that, according to the Commission authority book (of which administrative notice was taken), eight or nine companies currently hold sedan authority in those markets. About half serve Omaha and the other half serves Lincoln. A couple of those companies have sedan and limousine authority, but do not use the sedan authority. Under those authorities, the carriers operated about fifteen sedans in the Omaha area and seven in the Lincoln area. Based on populations of those communities, Mr. Campin determined that there is one sedan for every 66,000 people in Omaha and one for every 32,000 in Lincoln.

Since the Commission's December 13 grant of temporary operating authority, Mr. Campin and Mr. Schmidt, in addition to operating their trolley, have operated three stretch limousines, utilizing about six independent contractors to drive them. Upon advice of corporate legal counsel, they elected to treat the drivers as independent contractors during the period of temporary operating authority to most efficiently operate the company until permanent authority is granted. Once permanent authority is granted, they will begin treating the drivers as employees.

Upon Commission approval of sedan authority, Emerald plans to add two or three sedans to their existing fleet. During an *in camera* session, Mr. Campin discussed the finances and financial projections of his company. Mr. Campin stated he understands, and will comply with, the Commission's safety and insurance regulations. No complaints have been lodged against



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Emerald, and the Commission has undertaken no investigation of Emerald. Mr. Campin discussed plans to have all vehicles inspected weekly. They also have an agreement for annual inspections, as well as maintenance and repairs.

Mr. Campin discussed the markets Emerald intends to serve when the sedan authority is granted. They plan to use the sedans as "get-away" cars for the bride and groom following weddings. The sedan service would be provided as a package deal with the stretch limousine service in such events. They also plan to use sedans to serve business travelers coming into Lincoln and Omaha who do not want to rent a car or use a taxi or stretch limousine. Some of the service for business travelers will be provided through partnerships with "affiliates," or transportation providers in other towns who refer clientele to Emerald and vice versa. Mr. Campin described affiliate work as a big part of the sedan business. Received into evidence at the hearing was the 2011-12 directory of the National Limousine Association, which includes more than 2,000 prospective affiliates with which Emerald would attempt to partner.

In response to examination by Commissioner Vap, Mr. Campin testified that they will attempt to assist in providing after hours transportation for bar patrons in Lincoln if it makes good business sense to do so.

Upon further examination by Mr. Pollock, Mr. Campin said Emerald will also provide transportation services for big events, such as the College World Series, the Special Olympics, and the annual Berkshire Hathaway shareholder meeting. He described the latter as "monstrous," with people coming in from all over the world, and said there are never "even close to enough sedans" to provide needed service for people participating in the meeting and surrounding events. The construction of a new arena in Lincoln might lead to more business opportunities.

Emerald plans to continue to promote and market its services through various means, including magazine and newspaper advertising, bridal fair exhibitions, promotional events, radio commercials, word-of-mouth, Yellow Pages, its website, blogs, and social media. Emerald has also joined the Lincoln and Omaha chambers of commerce. Based on the number of calls the company

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has been receiving during the period of temporary authority, according to Mr. Campin, such promotion has been successful.

Mr. Campin testified that he used to work as a driver for the Protestants. He said that his company would not attempt to go after any of VIP's business, would not call or solicit any of VIP's clients, or affirmatively take the initiative to contact them in any way. In fact, Mr. Campin has made referrals to VIP and will continue to make referrals to VIP in the future in the event his company cannot take a ride.

Upon cross-examination by Mr. Shultz, Mr. Campin testified there may be 19 sedans available under Commission authority in Omaha and reaffirmed that there were seven actually operating under Commission authority in the Lincoln market.

Mr. Campin further explained the company's finances and financial projections during *in camera* cross-examination by Mr. Shultz.

On re-direct examination by Mr. Pollock, and while the hearing was still being conducted *in camera*, Mr. Campin clarified the company's finances and financial projections.

Mr. Campin also testified that Limo Services had provided about 65 rides in stretch limousines since temporary authority had been granted by the Commission. About 15 of those rides were for groups of four or fewer.

Lynda Turnquist, who is presently the billing manager for Midwest Respiratory Care, worked eight years for VIP as a reservation manager. Her last day was October 30, 2010. Ms. Turnquist testified that VIP's fleet size dropped almost in half during her time with the company and advertising dwindled down to about nothing by the time she left. VIP, which had previously put on exhibitions at bridal fairs, ceased participating in such events.

Ms. Turnquist testified favorably about Mr. Campin and Mr. Schmidt. She worked with both men while at VIP. She talked about specific steps they had taken while at VIP to grow the business. She testified that she is familiar with their current trolley and stretch limousine business. Based on her eight years of work with VIP, Ms. Turnquist testified that she

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believed there was a "very high" need for combined use of stretch limousines and sedans for weddings, using the sedans as "get-away vehicles" for the bride and groom. While VIP also provides get-away vehicles, Ms. Turnquist testified that further need exists for such service:

I believe there is enough business in Omaha and surrounding areas to keep both companies busy and successful without stepping on each other's toes. I think if they work together, side by side, that would - it would be a plus for the economy.

Ms. Turnquist testified about the need of corporate and business travels for sedans, noting they want something in between a taxicab and a stretch limousine. She testified about large events, such as the Special Olympics, College World Series, and Berkshire Hathaway annual shareholders' meeting, where VIP did not have enough sedans - even though it rented supplemental sedans - to service the needs of passengers.

Ms. Turnquist said that she had talked with Bill Alford, the owner of VIP about two weeks before the hearing. He expressed concerns about the application filed by Limo Services, feeling it would put him out of business. Ms. Turnquist did not believe that to be true:

Q Do you believe that to be the case?

A No.

Q Why not?

A Because I know that there is enough places to go to, to get new business, then [sic: read, "than"] to be taking Bill's accounts from him.

Q What do you base that comment on?

A I just got a phone call yesterday from a friend of mine that runs an advertisement. He was asking me if I was still connected because he wants to bring some clients in. I would give him Jim's (Campin) name.

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Q Is your comment also based on your several years of experience working with VIP?

A Yes.

Ms. Turnquist further testified that VIP worked with approximately five affiliates.

On cross examination by Mr. Shultz, Ms. Turnquist said that VIP's vehicles were used at capacity on Saturdays, but not other days of the week. She said other than the Berkshire Hathaway events, she couldn't think of other times that a sedan service request was refused.

On re-direct examination by Mr. Pollock, Ms. Turnquist testified that VIP's business peaked while she was there, then declined. Vehicle conditions deteriorated too. She said VIP refrained from using vehicles during the week because of the poor conditions and to prevent breakdowns.

Lesley Brandt is a co-founder and co-owner of PlanitOmaha, an event-planning business. Those event-planning services include arranging transportation for participants in events in the Omaha and Lincoln areas. For PlanitOmaha's typical clientele, the transportation they arrange is mostly in sedans and motor coach buses, the latter of which are used for transferring large groups between event sites. For smaller groups and individuals, they use sedans as opposed to taxis or stretch limousines.

Ms. Brandt testified about her experience with VIP, which began in 2000 and ended in 2010 when she had a "less than pleasurable experience with a large, multi-vehicle, large group from October 26 to October 28," during which sedans were used to transport passengers to and from the airport. Approximately 325 were in Omaha for the event. There were problems with the availability of drivers. During that time, VIP had vehicles being impounded, according to what Ms. Turnquist told Ms. Brandt. Due to problems with VIP, Ms. Brandt said she and other staff spent three to four more time handling transportation issues with this event than is usually needed. There were also problems with the billing for the event. Instead of billing for actual usage, as is the industry custom, VIP billed based on the originally contracted time. Mr. Alford's position was that

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PlanitOmaha should pay for all contracted time; Ms. Brandt's position was that she should not pay for time after which VIP vehicles had been released and were not used. After conversations between the two, Ms. Brandt testified that she and Mr. Alford mutually agreed no longer to do business with one another. She said she would not do any further business with VIP.

Ms. Brandt testified that she has worked with other limousine companies, such as Old Market Limousine ("Old Market") but that Old Market told her that they could not handle airport business with sedans.

Ms. Brandt has worked with Limo Services since the temporary authority was granted by the Commission. She described their service as being, "[g]reat, timely, clean." The drivers traveled routes the night before to make sure they knew where they were going. She said that Mr. Campin and Mr. Schmidt were "absolutely" professional and that if their Certificate is ultimately granted, she would use their business, including sedans.

On cross examination by Mr. Shultz, Ms. Brandt testified that her current need for transportation was higher than it was in November 2010.

On redirect examination by Mr. Pollock, Ms. Brandt testified that Old Market and Accent Limousine ("Accent"), with a total combined 13 sedans, would not be sufficient to satisfy her need for some events.

Shawn Distefano worked for VIP, handling reservations on a daily basis, for a few months in 2009. He said that most of the sedan work VIP did was during weekdays. He said that on average, out of seven to nine calls each day, once or twice each day they did not have a sedan available when needed for a ride, either because it was booked or broken down.

On cross-examination by Mr. Shultz, Mr. Distefano testified that he handled about 10 calls per hour.

Marc Sicner was a driver for VIP from 2006 to 2011, and he drove a sedan three to four times per month. About once a month he was late for a ride because rides were scheduled too closely,

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sometimes leaving the customer upset. He said that there were occasions when he had to use a stretch limousine in place of a sedan for a bride-groom get-away car because a sedan was not available. Mr. Sicner, who holds a degree in auto body management and is a certified instructor on vehicle safety, testified that he had concerns about the condition of VIP sedans while working there:

I guess I could safety [sic: read, "safely"] say that there - I could probably count on one hand the number of times I could get into any of the vehicles and not have some type of warning or indicator light on the dash.

He continued, saying that some of the problems were "very serious" concerns:

AVS warning lights, traction control, air bag lights, low fluid lights, check engine lights. Sometimes, they look like a Christmas tree.

Mr. Sicner testified that since leaving VIP about a year ago, he had received two telephone calls from Mr. Alford - one the morning of the January 25, 2012, hearing before the Commission; and the other the day before the hearing. Mr. Alford left messages both times. Mr. Sicner described the message left the morning of the hearing:

The second one this morning said, he understood that I was being subpoenaed to testify, and he wanted to know what was going on. He didn't want any surprises.

Mr. Sicner said he had recently received a call from a friend looking for a carrier to provide sedan transportation to the airport. Mr. Sicner said he did not refer the friend to VIP:

Q Why didn't you refer them to VIP?

A I just didn't feel comfortable doing that.

Q Why not?

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A I just - I guess I had lost confidence with the company.

Q Why is that?

A It has been downsized and awful lot in the last couple of years from where - when I started with it, they had over 30 vehicles. I think now they just have a handful from what I am told.

Q Was vehicle safety an issue in that at all?

A Well, I think that is certainly a safety issue to me. Quite frankly, that is one of the reasons that I decided not to -

[Exchange between parties' legal counsel.]

Q Is that what you are talking about, sedan?

A Yes. That is one reason I guess I decided to move on.

Mr. Sicner testified that he had heard that VIP was down to two or three sedans, having had at least nine when he worked there. He said that during the week all nine of the sedans were being used, making airport runs continuously. He said it was seldom, other than a little bit on weekends, that any of the sedans were not in use. He concluded that the sedans were "out all day all the time."

Based on his experience in the marketplace, Mr. Sicner said he thinks there is a "definite need" for additional sedan service in Omaha.

On cross examination by Mr. Shultz, Mr. Sicner said he was rarely a consumer of sedan service.

Craig Peterson (who was called during a break in Mr. Alford's testimony) was a past customer of VIP, having taken a total of 10 or 11 rides. He has also been a customer of Emerald, having used its trolley in June 2011. He said the service was timely and professional, and the price fair. If they had sedan service, he said he would feel comfortable riding in one of their sedans.



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Protestants' Witness

Bill Alford is the owner and president of the Protestants, all of which operate under the VIP trade name. He testified that he believes the present application "conflicts" with VIP's certificates. VIP presently has about 35 employees, all but about four or five are drivers.

Mr. Alford testified about sedan service VIP provided during November and December 2011. He said that demand for sedan service is highest Monday through Friday, early mornings, mid-afternoons, and late evenings, coinciding with flights at Eppley Airfield. He said there is not a lot of demand Saturday and Sunday. He described his sedans being at very low capacity. When demand is higher, he utilizes rental cars.

Mr. Alford testified that he had not received complaints regarding sedan service or turned down sedan trips, other than during Berkshire Hathaway events. He remains interested in obtaining sedan business and competes with Accent, Old Market, Extreme Limousine, and Royal Limousine in Omaha. In Lincoln, he also competes with Luxury Limousine ("Luxury"), Leisure Limousine ("Leisure"), and OMALiNK, which, he said, were newly granted authorities in 2008. Mr. Alford testified that Old Market and Accent provide Lincoln to Omaha rides and vice versa.

Mr. Alford testified that he believed that loss of traffic to the Applicant would impact his operations, but did not give evidence about how it would impact his business. Instead, he testified about the "economic situation of the last years" affecting his business in Lincoln, where they had to shut down a shop.

Mr. Alford testified that on weekdays, his sedans operated two to three hours per day. He said his operations have not generally been profitable. He talked about the reductions in VIP's fleet, which Mr. Alford attributed to the economy and new authorities being granted in the Lincoln market. In addition, Mr. Alford said that his fleet has had lots of maintenance issues in the past three to four years. He said, however, that the economy did not affect his sedan business as much, with 2011 being VIP's best year ever for sedan service.

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Upon examination by Commissioner Vap, Mr. Alford said VIP was presently using four sedans. At one time, he had nine sedans. He said that some were in accidents. Four sedans were never used in the last two months, being sold or no longer with the company.

Upon examination by Commissioner Schram, seeking explanation as to conflicting testimony from Ms. Brandt, who said business had increased in the past two years, and Mr. Alford, who said it was decreasing, Mr. Alford again stated his sedan business was growing while the stretch limousine business was contracted. He said he did not think Ms. Brandt uses many stretch limousines.

Mr. Alford, describing Ms. Brandt as a "very aggressive individual," disputed her testimony that she had released vehicles, saying they were held, and that, because VIP was "in a very critical time period with cash flow," he challenged her claim that she should not have to pay for time vehicles were not actually used.

Mr. Alford dismissed Mr. Distefano's testimony. Mr. Alford dismissed the numbers of sedan rides turned down, which Mr. Distefano testified about. He agreed with testimony that said the company had eight or nine sedans, but incorrectly said that Mr. Distefano said the company ("we") had five to seven sedan runs a day and the company ("we") turned down one or two runs a day. Instead, Mr. Distefano said that he reserved five to seven sedans a day, and that he (not the company) turned down one or two runs a day because there were no sedans available. As Mr. Distefano testified, he was one of four or five reservationists. Mr. Alford said he felt Ms. Turnquist's testimony was more credible on the issue of sedan rides and turned down rides.

Mr. Alford also disputed the testimony of Mr. Sicner, claiming that Mr. Sicner was speaking predominantly about stretch limousines, as opposed to sedans, when he expressed safety concerns. Mr. Sicner's testimony makes it clear that he was speaking specifically about safety concerns with sedans. Mr. Alford claimed that VIP keeps its sedans maintained better than other vehicles.

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Upon cross examination by Mr. Pollock, Mr. Alford reaffirmed that VIP today operates only four sedans. In 2010 they had six sedans. He said that at most VIP had seven. He disputed the testimony of Mr. Campin, Ms. Turnquist, Mr. Distefano, Mr. Sicner, and himself, saying VIP did not have eight or nine sedans at any time.

Q There has been testimony from a number of witnesses that at some point, you had eight or nine. Does that sound correct? Eight or nine sedans.

A I don't believe that would be accurate.

Q What would be accurate?

A. I would say the most - the sedans, if you took the absolute peak where we added the new ones and hadn't yet sold the old ones, we might have had six or seven.

Mr. Alford testified that he did not handle reservations during office hours on a regular basis. He admitted that Ms. Turnquist had other responsibilities in addition to handling reservations, which is why he hired people like Mr. Sicner.

Mr. Alford acknowledged that Accent does not have authority to provide services between Lincoln and Omaha, as he had earlier testified. He admitted that he did not know if either Accent or Old Market actively marketed in Lincoln. He said either Leisure or Luxury had begun service by acquiring another authority.

Mr. Alford testified that VIP's advertising expenses were less than they were in 2007, acknowledging that advertising helps business and stating he had no reason to disagree with Ms. Turnquist's assertion that she did not see as much advertising from VIP as she did in the past.

Applicant's Rebuttal Witness

Mr. Campin testified further about his research of the Commission's Authority Book and the authorities of companies like Luxury and Leisure.

## OPINION AND FINDINGS

In the case before the Commission, the Applicant is seeking to extend authority so that it may provide passenger transportation using sedans within a 250-mile radius of Dakota City. Applications for common carrier authority are governed by NEB. REV. STAT. § 75-311(1), 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 to conform to the provisions of sections 75-301 to 75-322 and the requirements, rules, and regulations of the commission under such sections and (b) the proposed service, 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.

In short, in order to be successful, an applicant must prove that it is "fit, willing and able" to provide the proposed service and that the proposed service "is or will be required by the present or future public convenience and necessity."

Fitness of the Applicant

The Applicant put forth extensive evidence that it is fit, willing, and able to provide the proposed service. Mr. Campin testified that he and Mr. Schmidt have been in the limousine business for a number of years, first as drivers for VIP and eventually beginning their own company, Emerald, which was authorized by the Commission in 2010. During in camera sessions, Mr. Campin explained their finances and financial projections. The company has plans for insurance, as well as vehicle inspection, maintenance and repair, and will comply with all Commission rules and regulations. Neither Limo Services nor Emerald has been the subject of any formal complaint lodged with the Commission.

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Further, witnesses, including two customers of the Applicant since temporary authority was granted, said their experience with the Applicant was very good. They described Applicant's services as professional, timely and clean, and the prices fair. Ms. Brandt said she appreciated Applicant's drivers driving the routes the night before the transport so they knew where they were going.

Based on these findings, it is the Commission's opinion that the Applicant meets the statutory requirement of being fit, willing, and able to provide the services it proposes.

Public Convenience and Necessity

The traditional and long-standing analysis for determining "need and necessity" has been set forth by the Nebraska Supreme Court as follows:

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 & Assoc.*, 254 Neb. 583, 591 (1998) (affirming denial of application). See also *In re Application of Greyhound Lines, Inc.*, 209 Neb. 430, 433-34 (1981) (affirming grant of application).

From the evidence adduced at the hearing, we find that the Applicant has sufficiently demonstrated an existing need for the proposed services, by which Applicant would provide sedan services.

Useful Purpose Responsive to Public Demand or Need

First, Applicant successfully demonstrated that its proposed operation will serve a useful purpose responsive to the

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public demand and need. Testimony from several witnesses established that a public need exists that is not being satisfied.

Mr. Campin performed a market study based on Commission records. According to Mr. Campin between 15 and 19 sedans are actively marketed and used in the Omaha area. Based on his calculations, that means that one sedan serves a market of roughly 66,000 people. He stated that seven sedans serve the Lincoln market; meaning one sedan serves roughly 32,000 people. Mr. Campin did not even account for business travelers coming into the two cities.

Mr. Campin discussed the primary services and markets Applicant intends to provide: 1) bride and groom get-away cars; 2) general business travelers; 3) affiliates, who will also be referring business travelers; and 4) big events, such as the Berkshire Hathaway annual shareholders' meeting and the College World Series.

Ms. Turnquist, who worked for VIP for eight years, said there was a "very high" need for additional sedans to serve as get-away cars for weddings.

Ms. Turnquist also testified about the need for sedans for corporate and business travelers, who want something more professional than a taxi, but less lavish than a stretch limousine. Ms. Brandt reiterated this need, and said that current carriers in Omaha did not have adequate number of sedans to serve the need. Mr. Campin testified that of the 65 rides that the Applicant has provided since the Commission granted temporary authority, about 15 (almost one-quarter) were for groups of four or fewer passengers. Those rides could have been handled in a sedan.

Further, it appears that there remains significant demand for sedan services during weekdays. Although Ms. Turnquist said on cross examination that VIP's vehicles were at capacity only on Saturdays, Mr. Alford admitted that she had several responsibilities other than handling reservations. Both Mr. Distefano, who actually handled reservations on a day-to-day basis, and the Protestant, Mr. Alford himself, said that weekdays were the highest traffic days for sedans. Mr. Distefano and Mr. Sicner both testified that sedans were very

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busy during weekdays, and that VIP's fleet was inadequate to meet demand. Daily, out of the seven to nine calls Mr. Distefano received for sedans, he had to turn down one or two because cars were not available.

Additionally, upon questioning by the Commission, Mr. Campin testified that Applicant could help satisfy a need for additional service in the Lincoln area during the time of bar closings.

Testimony from Ms. Turnquist demonstrated that VIP works with only five affiliates. That leaves at least 1,995, according to Mr. Campin's count from a directory that is in evidence, that don't have referral partners in Omaha. Mr. Campin testified at some length about Applicant's plans to aggressively target affiliate business. This presents an opportunity not only for the Applicant but also for Omaha to hold itself out as a city that is open for, and welcomes, business.

Both Ms. Turnquist and Ms. Brandt said there were not enough sedans for big events, such as the Berkshire Hathaway meeting.

Ms. Turnquist's testimony, based on her eight years working for the Protestants, regarding the general need for sedans is compelling:

I believe there is enough business in Omaha and surrounding areas to keep both companies busy and successful without stepping on each other's toes. I think if they work together, side by side, that would - it would be a plus for the economy.

#### Service by Existing Providers

As stated in the section above, VIP has had difficulty keeping up with demand for sedans, especially during weekdays, when business and airport traffic is the heaviest. VIP has had trouble in other areas too. Ms. Brandt testified about a "less than pleasurable experience" her event-planning company had with VIP in 2010 in arranging transportation for a conference that included 325 people who had travelled to Omaha. Her concerns



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were not being informed in advance what vehicles and drivers would be available for the event, problems with shuttle service during the event, and a billing dispute afterwards. Ms. Brandt's business continues to grow. She said she would not work with VIP again.

Mr. Alford attempted to claim that his business has been down because of the economy, but upon questioning by the Commission, Ms. Brandt's testimony was directly to the contrary. Business travel into Omaha is higher today than it was in 2010, when she experienced problems with VIP.

The service offered by VIP does not appear to have grown over the past several years. The fleet that it puts on the street has shrunk from a high of nine to the current four or five. The testimony is that the mechanical reliability of the vehicles has had an effect on vehicle availability. The advertising budget for VIP has been smaller over the past few years than it had been. While Mr. Alford claimed that a weakening of the market is the cause for the reduction of the fleet, testimony he provided noted that the economy has not effected his sedan business very much (as opposed to his limousine business), and other testimony offered by the Applicant says that the market is growing.

In contrast, Applicant has presented evidence of specific plans to advertise and promote its business. It included a significant line item in its budget for advertising. Its plans include magazine and newspaper advertising, bridal fair exhibitions, promotional events, radio commercials, word-of-mouth promotion, Yellow Pages, its website, blogs, and social media. Emerald has also joined the Lincoln and Omaha chambers of commerce. Based on the number of calls the company has been receiving during the period of temporary authority, according to Mr. Campin, such promotion has been successful.

Additionally, Mr. Campin testified that Applicant has plans to have all of its vehicles inspected weekly. Applicant has an agreement with a local mechanic for annual inspections, as well as maintenance and repairs.

It appears that VIP is not providing the sedan services it once provided. The Commission cannot order VIP to put additional sedans on the streets. That is a matter left to the business

judgment of the certificated carrier. The Commission, however, has a statutory duty to recognize when a demand that may have once been satisfied by a particular carrier is no longer being satisfied. In that event, a public need exists. The Commission finds that public demand and need is not being adequately served by existing carriers.

Impact on Existing Carriers

Based on many of the findings just discussed, the Commission finds that granting the Applicant the authority it seeks will not endanger or impair the operations of existing carriers contrary to the public interest. On the contrary, because the Protestants and other certificated carriers are not meeting current public need for sedan service, the public interest will be served by granting the Applicant authority.

Mr. Alford testified that loss of traffic to Applicant would negatively impact his business. Again, VIP's case appears largely centered around the decline of his business and sedan fleet size in recent years. We have already determined, however, that the business decline is not due to reduced demand for sedan services. Mr. Alford himself testified that his sedan business was better last year than it has ever been.

Moreover, Mr. Campin stated that his company will not attempt to go after any of VIP's business, would not call or solicit any of VIP's clients, or affirmatively take the initiative to contact them in any way. Mr. Campin has made referrals to VIP. He said he will continue to make referrals to VIP in the future in the event his company cannot provide requested service.

The Commission finds that an alleged future negative impact, about which Mr. Alford is concerned, is speculative. The Protestants did not produce any specific evidence as to any negative impact that granting the application herein may have on the operations of their businesses. While Mr. Alford claimed that granting the authority would impact his business, he did not say to what extent the damage that may occur would curtail Protestants' operations or what changes he might make in response to the potential granting of authority. There was no evidence presented that the granting of this application would

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endanger or impair the operations of the Protestants contrary to the public interest.

The public has an interest in having an adequate number of sedans available to meet its needs. Absent evidence of impairment or endangerment to the operations of the Protestants, the Commission finds that the proposed operation can be served in the proposed manner without endangering or impairing the operations of existing carriers contrary to the public interest.

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

1. The applicant is fit, willing, and able to properly perform the service proposed and to conform with the provisions of NEB. REV. STAT. §§ 75-301 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**

Common: Transportation of passengers by limousine, including stretch and luxury limousines and sedans, between points within a 250-mile radius of Dakota City over irregular routes. RESTRICTIONS: 1) The transportation of railroad crews is not authorized; and 2) The certificate holder shall maintain a listing of its services in the Yellow Pages of the telephone directory serving Dakota City.

3. The application should be granted.

**ORDER**

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. B-1761 be, and is hereby, granted in its entirety, as provided herein; and that upon compliance with the terms and conditions as set forth in this

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Order, a Certificate of Public Convenience and Necessity shall be issued to Limousine Services, LLC, authorizing operations as set forth in the foregoing opinion and findings.

IT IS FURTHER ORDERED that applicant shall not be issued the Certificate of Public Convenience and Necessity authorized by the Commission unless and until the applicant has fully complied within a reasonable time with NEB. REV. STAT. §§ 75-305 (fees), 75-307 (insurance), and 75-308 (rates), and with the rules and regulations of the Commission; and if upon expiration of such time applicant has not complied with such terms and conditions, this Order shall, after reasonable notice to the applicant, be of no further force and effect.

IT IS FURTHER ORDERED that applicant shall not conduct the operations authorized herein until a certificate has been issued.

IT IS FURTHER ORDERED that the Certificate of Public Convenience and Necessity authorized shall be subject to the terms, conditions, and limitations that have been, or may hereafter be, prescribed by the Commission.

MADE AND ENTERED at Lincoln, Nebraska, this 17<sup>th</sup> day of April, 2012.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

*Tim Schram*  
*Anne Boyle*  
*Gerald L. Up*

//s// Rod Johnson  
//s// Frank Landis

Chairman

ATTEST:

*Shelley D. Johnson*  
Executive Director