

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of Tailored Dreams ) APPLICATION NO. B-1799  
Limousine and Sedan Service, )  
Lincoln, seeking authority as a )  
common carrier in Nebraska )  
intrastate commerce in the )  
transportation of passengers in )  
limousine service by luxury or )  
stretch limousine, sedans, and )  
SUVs within a 150 mile radius of ) GRANTED  
Lincoln, Nebraska, between )  
points within such radius, on )  
the one hand, and, on the other )  
hand, points in Nebraska over )  
irregular routes. RESTRICTION: )  
The transportation of railroad )  
train crews and their baggage is ) ENTERED: MARCH 6, 2012  
not authorized. HHS Designation: )  
No. )

APPEARANCES

For the Applicant:

Russell Westerhold  
500 Energy Plaza  
409 South 17<sup>th</sup> Street  
Omaha, NE 68102

For the Protestants:

Bradford Kistler  
121 South 13<sup>th</sup> Street, #601  
Lincoln, Nebraska 68501

For the Commission Staff:

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

BY THE COMMISSION:

BACKGROUND

By application filed on May 31, 2011, Tailored Dreams Limousine and Sedan Service, Lincoln, Nebraska, seeks authority from the Public Service Commission ("PSC" or "Commission") to

operate as a common carrier of passengers and their baggage in limousine service by luxury or stretch limousine, sedans, and SUVs within a 150 mile radius of Lincoln, Nebraska, between points within such radius, on the one hand, and, on the other hand, points in Nebraska over irregular routes. Restriction: The transportation of railroad train crews and their baggage is not authorized. HHS Designation: No. Notice of the application was published in The Daily Record, Omaha, Nebraska, on June 8, 2011. Timely protests to the application were filed by OmaLink, Inc., through its attorney, Bradford Kistler, and by VIP Limousine, A-1 Limousine, and Omaha Limousine by Bill Alford.

A hearing on the application was held on November 9, 2011, with appearances as listed above. Notice of the hearing was sent to all parties of record on August 30, 2011.

#### APPLICANT'S EVIDENCE

Mr. Tyler Loomis testified first for the Applicant. Mr. Loomis is one of the owners of Tailored Dreams Limousine and Sedan Service, along with his wife Paula Loomis. He is employed by the railroad as a machinist, and is also a driver for Leisure Limousine, Luxury Limousine, and Down the Hatch Bar and Grill. He does mechanical work for the railroad as well as the companies he drives for.

Mr. Loomis reviewed his business plan. He plans to have the Applicant provide limousine services in niche exotic vehicles. The vehicles that his plan foresees are the use of vehicles such as Jaguar limousines, Mercedes limousines and PT Cruisers made into a limo. He stated that his experience shows that people really like the different vehicles that he plans to offer. He noted that a Harley Davidson limousine and a 1957 Chevy limousine were very popular and that he had received lots of feedback from customers about these types of vehicles.

Mr. Loomis said that the day-to-day operations of the company would be done by himself and his wife. They would split the phone and office duties. He will do the mechanical work necessary on the vehicles while he and his wife would do the detailing and cleaning of the limos.

The Applicant currently owns a 2003 Chevy Suburban that it plans to use in its sedan service if the application is granted by the Commission. He anticipates that he will buy more vehicles within about 30 to 45 days of approval.

Mr. Loomis referred to the application for its financial information. The application's balance sheet set out that the Applicant has \$4,000 in cash, \$7,000 in other assets and \$42,000 worth of vehicles. There is a secured note amount of \$26,450, leaving a net worth of the applicant of \$26,550.

Mr. Loomis stated that the Applicant has not determined what rates that it would charge if it is granted authority. The main reason that the rates have not been set is that he has not determined what vehicles will ultimately be purchased. He has searched Commission rate orders and intends to set his rates in competition with similar rates for the vehicle that will be used.

The Applicant requested a geographic area that encompasses a 150 mile radius of Lincoln. Mr. Loomis stated that he knew of several authorities that he felt were restricted and that he wanted more flexibility to spread out his service. He molded the request after that held by Limousine Services, LLC, which is a 250 mile radius from South Sioux City.

Mr. Loomis stated upon questioning from Mr. Westerhold that he believed that granting of the application would be consistent with public need and necessity. He believes that his plan for niche vehicle service as well as his ability to provide customer service will separate his service from current providers. He said that he knew that current providers have had to turn down requests for service. This is especially true, according to Mr. Loomis, in the time period between April and August, where there are more weddings and winery tours than during the rest of the year.

On examination by Commissioner Schram, Mr. Loomis said that he planned to hire additional staff as business warranted. He would be looking to hire more drivers and detailing help if the business grows.

On examination by Commissioner Landis, Mr. Loomis said that he does not know any information regarding adequacy of current limousine service from any of the companies' records. He said that he had heard the office staff of another company turn away potential clients. He is not able to say whether this same situation is true for other carriers.

On cross-examination by Brad Kistler, Mr. Loomis said that he has seen companies refer turned-away clients to other companies. He does not know if the referred clients were able to find another provider to perform the service.

Mr. Loomis stated that he has not performed any study or research into how much business is available in the requested geographic area. On further questioning by Mr. Kistler, Mr. Loomis said that he felt the market could sustain three to four of the exotic-type limousines in the proposed area.

Further cross-examination reviewed different types of exotic vehicles. Mr. Loomis knew of a 1957 Chevy that was converted into a limousine that was very popular at one time. He also knows of a white Ford F250 truck that has been converted into a limousine. An Excalibur had been kit-modified to make it look like a vintage 1930s vehicle, and a Harley-Davidson pick-up has also been modified into a limousine. Mr. Loomis said again that he did not know exactly what they would purchase, and that they would not purchase any vehicle before the Commission were to grant authority other than the 2003 Suburban that is already owned by the applicant. The sedan service would be different from the limousine service. The sedan service would transport business people and other smaller parties to specific locations such as the airport or to meetings. The sedan service would not be used by the larger parties such as weddings or tours.

Mr. Loomis said that the initial focus of the Applicant would be on exotic vehicles, but that they did plan on running a general service that would not be focused on exotic vehicles in the future.

On examination by Commissioner Boyle, Mr. Loomis said that the 150 mile radius would include Omaha, Lincoln, Grand Island and Columbus. The area would not include Kearney, and he did not know if Norfolk would be within this area.

On examination by Commissioner Schram, Mr. Loomis reviewed the safety qualifications of a 1957 model year car. Mr. Loomis said that many parts of the vehicle would not be original. It would usually have a new engine, transmission, and other such components. It would also have the brake system upgraded to newer braking systems.

On examination by Commissioner Landis, Mr. Loomis said that the current business trends show a steady usage of limousine



service over the past couple of years. While the economy has experienced ups and downs, Mr. Loomis said that business has increased a little over the past two years for the companies he has worked for.

Paula Loomis was called next by the Applicant. She is the co-owner of the Applicant. She has worked as a chauffeur, detailer, office worker and scheduler for different companies over the past few years.

She testified that there were times that Leisure Limousine, the company she has primarily worked for, was not able to meet the requests for service they received. The major issues were the lack of a specific vehicle that the customer was looking for, and the company being fully booked for that particular date. She stated that she has referred their customers to other providers.

On examination by Commissioner Landis, Ms. Loomis said that she became interested in exotic vehicles when she had a PT Cruiser that had been converted into a limousine and thought that she would like to have vehicles like that to operate. She said they talked with various clients that they drove and did a Facebook poll on what that person may be interested in renting. She did concede that it would be difficult if not impossible to have enough exotic vehicles to satisfy every client's needs.

On examination by Commissioner Schram, Ms. Loomis said that the rate structure would be based upon similar vehicles that were currently in operation. These rates would be very similar to non-exotic vehicles even though the vehicles would be different in some instances.

Mellissa Austin was called next by the Applicant. She works for DC Title Agency in Lincoln and uses limousines frequently. She has used limousines eight times in the past year, mostly for birthday parties, anniversaries or out-on-the-town outings.

Ms. Austin stated that she has experienced difficulty in getting the specific vehicle that she is looking for. She had contacted Leisure Limousine regarding a Suburban, and ended up with the Harley-Davidson. She said it was better than the Suburban she initially was looking for. In her opinion, the area needs another limousine service. She said that many times she is looking for a vehicle that is not available and would

prefer exotic vehicles over "plain" limousines. She further stated that she would wait to retain the service of an exotic vehicle rather than book a "plain" vehicle.

Ms. Austin further noted that she knew of Mr. Loomis. She stated that he provided good and safe service, and has gone to great lengths in the past to make the service special.

Ms. Austin admitted that she was not aware of OmaLink's limousine service. She had not seen any ads for the limousine service, and just presumed that it was a van company only.

On examination by Commissioner Landis, Ms. Austin said that she would not call OmaLink as she has a good relationship with Leisure Limousine and with Mr. Loomis, and would wait to schedule any service that she needed from them.

On cross-examination by Mr. Kistler, Ms. Austin said that she was satisfied with the service that she receives from Leisure Limousine and Mr. Loomis. She said she has also used VIP Limousine in the past, but she does not do so now as they are too expensive.

Jayne White testified next on behalf of the Applicant. She is employed by National Research Group and also by Sound Impression, a DJ company. She has also performed work as a wedding planner for four weddings. Ms. White said that it can be difficult to find a particular vehicle for some of her clients.

Ms. White knows Mr. Loomis through his work as a bus driver for Down the Hatch Bar and Grill. She highly recommends Mr. Loomis as a good driver who goes the great lengths to satisfy his clients.

Ms. White is not aware of the services provided by OmaLink. She did not know that they have a limousine service.

On examination by Commissioner Landis, Ms. White said that Down the Hatch was easy to schedule. Her needs are met with the Down the Hatch bus service. She did reaffirm that the difficulty that she experiences is with matching her wedding clients to a particular vehicle.

On examination by Commissioner Schram, Ms. White said that about half of her clients are looking for exotic vehicles for weddings.

On cross-examination by Mr. Kistler, Ms. White said she had always met Mr. Loomis through Down the Hatch and not through the limousine services he works for. She said she has used Leisure Limousine, Extreme Limousine, VIP Limousine and Luxury Limousine. She also admitted that she has not done research in an effort to find all companies that provide limousine service in the area.

#### PROTESTANT'S EVIDENCE

Alisha Stokes testified for the protestant OmaLink. Ms. Stokes is the president of OmaLink, and is actively involved in the operations of the company. The company provides service in vans, town cars and limousines in Lancaster County as well as between Lancaster and Douglas County. The company has ten to twelve drivers for its limousine service as well as an operator to receive calls from 7 a.m. to 11 p.m. and an on-line registration system. They provide training in safety issues, maintenance and protocols for pick-ups at various locations. The company also provides uniforms for its drivers.

The company holds itself open to provide service in its authorized area. It has one 14 passenger stretch limousine, two Lincoln Town Cars and a Mercury Grand Marquis in its fleet available for limousine service. Ms. Stokes states that the vehicles are in excellent condition and well maintained. The Expedition is used primarily for wedding parties, special occasions or events, and other party type settings. The other vehicles are used in smaller party limousine services or for executive type travel.

Ms. Stokes said that the limousine business is good but minimal for the company. The service is not currently operating at capacity and additional business could be used. The company does do promotion on the radio, and advertises in telephone directories such as Yellow Book, Dex and Windstream, in newspapers and on-line.

Ms. Stokes noted that there are several companies providing competitive service in the area, citing specifically Luxury Limousine and VIP Limousine. In her opinion, the current providers are meeting the needs of the general public.

Ms. Stokes noted that her company has not received any requests for specialty vehicles. She also stated that she has not turned down any trips for this reason or other reasons. She said that she did not see how a specialty vehicle could be economically operated.

Demand for services has remained steady but is not expected to increase in the immediate future, according to Ms. Stokes. She expects that there may even be a slight decrease in demand if the economy continues to perform poorly.

On examination by Commissioner Landis, Ms. Stokes stated that overall business was good, but that this was due primarily to the shuttle service and not the limousine service. She said that people using luxury services such as limousines decrease as the economy does not improve. She did not speculate on how a specialty vehicle would affect her limousine service, but did again note that the general level of business for limousines was down and not expected to improve much in the immediate future.

On examination by Commissioner Boyle, Ms. Stokes said that the Town Cars would not be used by bigger parties but only for executive type transportation. On examination by Commissioner Schram, she said that her company had not received a request for a specific or exotic type vehicle.

On further questioning by Mr. Kistler, Ms. Stokes noted that the authority requested was not limited to specialty vehicles but was open-ended. Ms. Stokes said that an open-ended service would have a detrimental effect on the operations of OmaLink. On examination by Commissioner Schram, Ms. Stokes did say that there are times when the fleet is booked. At those times she refers the customer to other services.

On cross-examination by Mr. Westerhold, Ms. Stokes was asked about the Expedition being for sale on Craigslist. She said she did not know that it was there for sale, but, in any event, the company would remain in the limousine business through the use of the other vehicles.

Bill Alford was to testify next. Mr. Westerhold requested that Mr. Alford not be allowed to testify. Mr. Alford was not originally represented by counsel, and no counsel made an entry of appearance until the day of the hearing. Mr. Westerhold served discovery on Mr. Alford at his last known address, and

the discovery was not returned by the post office nor answered by Mr. Alford. Mr. Westerhold noted that the protest filed with the Commission and mailed to him did not have a return address, and that he used the latest address form from the Secretary of State's office. Mr. Kistler noted that Mr. Alford had moved and that the mail with the interrogatories probably did not get to Mr. Alford. Commissioner Boyle noted that most first class mail gets forwarded.

Under the circumstances of this matter, the Commission finds that the testimony of Mr. Alford should not be received. The protest filed by Mr. Alford did not have an address, and Mr. Alford did not notify the Applicant's attorney of his change of address. The Applicant will have been denied his due process rights to discovery by the receipt of Mr. Alford's testimony when Mr. Alford could have alleviated the situation by informing Mr. Westerhold of his change of address. Mr. Kistler did not enter an appearance on Mr. Alford's behalf until the day of the hearing.

#### OPINION AND FINDINGS

In this particular case, Applicant is seeking to obtain authority so that it may provide transportation for passengers in limousine service by luxury or stretch limousines, sedans and SUVs within a 150 mile radius of Lincoln, Nebraska, and between points within such radius, on the one hand, and, on the other hand, points in Nebraska over irregular routes. The proposed service would not transport railroad train crews or clients of the Nebraska Department of Health and Human Services.

Applications for common carrier authority are governed by Neb. Rev. Stat. § 75-311 (2010), which provides,

A certificate shall be issued to any qualified applicant authorizing the whole or any part of the operations covered by the application if it is found after notice and hearing that (a) the applicant is fit, willing, and able properly to perform the service proposed . . . and (b) the proposed service is to the extent to be authorized by the certificate, whether regular, or irregular, passenger or household goods, is or will be required by the present or future

public convenience and necessity. Otherwise the application shall be denied.

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

In the present application, the Commission finds the evidence provided through the applicant and supporting documentation shows that the applicant possesses the financial ability to operate the proposed service. We further find that the applicant's testimony provided sufficient evidence regarding its managerial skills to operate the proposed business. The proposed managers of the Applicant have experience in the field. The Applicant also showed readiness to begin operations immediately. This readiness is demonstrated by the fact that it has a vehicle that it plans to use in its proposed operations already purchased and ready to operate if granted authority by the Commission. 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. Given the record before us, we find that the Applicant has presented sufficient evidence of need and necessity to support a grant of the application.

An examination of the evidence shows that the proof of the useful purpose of the service responding to a public demand or need is sufficient. Mr. Loomis testified as to the popularity of exotic vehicles such as a 1957 Chevy and other such types of limousines. Mr. Loomis did state that he knew that his current employer Leisure Limousine had turned some customers down, and that he knew that some people had been referred to other providers. Paula Loomis stated that Leisure Limousine did have turn-downs, partly because of unavailability of a particular vehicle and partly due to being fully booked.

Melissa Austin said that she wanted another company as she is unhappy with the choices of vehicles that are currently offered by providers. Jayme White echoed this testimony in regards to wanting particular vehicles.

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.

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.

The third part of the test is whether existing carriers would be endangered or impaired by the granting of this application contrary to the public interest. On examination by Mr. Kistler, Ms. Stokes said that the granting of the authority would be detrimental to the protestant. She also noted that the limousine business was minimal in the overall operations of the Protestant, and that there were times that her limousine service



was fully booked. The Commission further notes that the limousine service only has one vehicle currently in use by the Protestant. There were no other protests filed against the application. 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:

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 limousine service by luxury or stretch limousine, sedans, and SUVs within 150 mile radius of Lincoln, Nebraska, between points within such radius on the one hand, and, on the other hand, points in Nebraska over irregular routes. RESTRICTION: The transportation of railroad train crews and their baggage is not authorized. HHS Designation: No.

#### ORDER

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application B-1799 be, and it is hereby, granted as amended above and that a certificate shall be issued to Tailored Dreams, Lincoln, Nebraska, authorizing the services of a common carrier by motor vehicle as set forth above.

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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.

MADE AND ENTERED at Lincoln, Nebraska, this 6<sup>th</sup> day of March, 2012.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

*Anne Boyle*  
*Guadalupe V. Lopez*  
*Tom Schram*

//s// Rod Johnson

Chairman *Rod Johnson*

ATTEST:

*Mark P. ...*  
Executive Director

