

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of City Taxi, Inc.,) APPLICATION NO. B-1801
Carter Lake, Iowa, seeking)
authority as a common carrier in)
Nebraska intrastate commerce in the)
transportation of passengers by) GRANTED AS AMENDED AND
taxi in Douglas, Sarpy, Washington,) MODIFIED
Cass and Dodge counties and between)
points within said counties, on the)
one hand, and, on the other hand,)
points in Nebraska over irregular)
routes.) ENTERED: FEBRUARY 22, 2012

APPEARANCES

For the Applicant:

Michael Weinberg
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Omaha, NE 68178

For the Commission Staff:

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For the Protestants

Happy Cab d/b/a Happy Cab Co.,
Yellow Cab, Checker Cab Company
and DonMark, Inc., d/b/a
Cornhusker Cab Company:

Andy Pollock
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Adams and Sullivan
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BY THE COMMISSION:

BACKGROUND

On July 8, 2011, an application was filed by City Taxi, Inc., Omaha, Nebraska, seeking authority for the transportation of passengers by taxi in Douglas, Sarpy, Washington, Cass and Dodge counties and between points in said counties, on the one hand, and, on the other hand, points in Nebraska over irregular routes. The transportation of railroad train crews is not authorized, and the HHS designation is No. Protests were timely filed by Checker Cab Company, DonMark, Inc., d/b/a Cornhusker Cab Company, Happy Cab Company, and Yellow Cab Company by their attorney, Andy S. Pollock, and by Valor Transportation Company d/b/a Safeway Cab by its attorney, Pat Sullivan.

On October 31, 2011, the Applicant filed an amendment to its application. The amendment was for the Applicant to provide service in the following zip codes: 68110, 68102, 68108, 68111, 68131, 68105, 68104, 68132, and 68106. This represents a restriction of the geographic area initially sought by the Applicants.

The Protestants requested that the formal rules of evidence be applied in this hearing. After some argument regarding the appropriateness of the request, the Hearing Officer ordered that the formal rules of evidence will be applied in this hearing.

Opening statements were made by attorneys for the parties. After the opening statements, the Applicant began its case-in-chief.

APPLICANT'S EVIDENCE

Karen Gooding was called first to testify for the Applicant. Ms. Gooding is the owner of City Taxi, which has been in operation in Carter Lake, Iowa, since May of 2011. On examination by Mr. Weinberg, Ms. Gooding noted an illegal trip that one of the drivers of City Taxi engaged in in 2011. She said that she counseled with Mr. Terry Fowler, the driver, and advised him that no illegal trips were to be taken in Nebraska until such time as the company had received authority to operate from the Commission. She is not aware of any other problems with drivers or the Commission since that time. She also said that her company has filed a restrictive amendment to the original application.

Ms. Gooding is currently the production manager for Goldenrod Printing in Lincoln, Nebraska. She also spends two nights per week and the weekends in Carter Lake operating City Taxi. She spends approximately 30 to 35 hours per week in these operations in Carter Lake, as well as another 15 hours per week in Lincoln. These hours are in addition to the 40 hour work week that she has with Goldenrod Printing. Ms. Gooding stated that she is able to put these combined hours in per week without extending herself unduly.

Ms. Gooding's duties at Goldenrod Printing include maintenance of production schedules of products and employees, inventory control and maintenance, profit and loss reports, customer service, sales reports, payroll and taxes. She has worked for Goldenrod Printing since 1999.

Ms. Gooding's education includes a business degree from Southeast Community College as well as a five year course in micro-computing technology. Ms. Gooding also finished an accelerated management program in one year at Bellevue Community College in Lincoln.

Ms. Gooding then reviewed the business plan that she has developed. At the end of the first year, the Applicant plans to operate six cabs. In the second year, the plan calls for twelve cabs, and in year three the Applicant plans to have twenty cabs operating.

After analyzing expenses such as maintenance, rent, and operating expenses such as phone, and estimating revenues, Ms. Gooding said that the Applicant should produce a net profit of \$10,429 in the first year, \$70,669 in the second year, and \$89,134 in the third year.

Ms. Gooding next discussed operating capital available to the Applicant. She said that she has arranged for a loan in the amount of \$49,000 from Freedom Lending. She also noted that she is in the process of selling the property at 1935 South 50th Street, Omaha, for \$70,000. Therefore, the total amount of funds available to the Applicant for operations would be \$119,000 less some incidental costs related to the sale of the property.

Ms. Gooding testified about a service she has developed called Taxi Tour. It is a tour of different areas around Omaha that features some famous landmarks such as Warren Buffet's home. To her knowledge, this is the only tour of its type in the Omaha area. She also stated that there will be two car seats available in each cab. Car seats are not required by state law in cabs, and most companies do not offer these seats.

The proposal for the Applicant to operate in zip codes is designed so that a driver can be assigned to each code. The customers would become familiar with the driver in their zone, which would create a comfort level for the passenger as they are likely to see the same driver more often.

Ms. Gooding described some of the destinations that the service would work with in the proposed operating area. These destinations include the Old Market, downtown, CenturyLink Center, museums, and the Henry Doorly Zoo.

Ms. Gooding stated that she has read Commission rules and regulations and will abide by them. She said that she would be willing to work closely with Commission staff to ensure that the Applicant was in compliance with the rules.

On cross-examination by Mr. Sullivan, Ms. Gooding said that she did not have any experience running a taxi company other than City Taxi. City Taxi has two corporate officers, herself and Dale Hurt, and one dispatcher, Ron Hug. The Applicant has had up to three independent contract drivers, but currently only has Mr. Hug in that capacity. Mr. Hug has a subcontract with Mr. Fowler at this time, but Ms. Gooding is not aware of the terms and conditions as she views that contract as between Mr. Hug and Mr. Fowler.

Ms. Gooding said that the company had also employed Tom Duffy, Terry Fowler, and Ali Ali for a period of two days. Mr. Ali was released from his independent contract when it was revealed that he

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had too many tickets for the Applicant's insurance company, National Casualty, to insure. Mr. Duffy worked for the Applicant for a period of time, but left for other employment when he determined that he was not making enough money.

The premium for insurance for the car currently used in the Applicant's operations is \$4,368 per year with no deductible. Ms. Gooding did not know the amount of the coverage that this policy provided.

Ms. Gooding was asked about training that is provided by the Applicant. She did not have any specific training program other than knowledge of some rules and regulations and that they are trained regarding knowledge of streets in Council Bluffs and Omaha. The vehicles are maintained with oil changes every three months and with regular maintenance done on the vehicles for brakes and other such items every three weeks. Other than these inspections, there is no other program in place.

Ms. Gooding stated that she had not done a formal study or feasibility test to determine the level of business that may be available in the Omaha area. She also said that she did not have a business plan to present to the Commission at this time, but was working on developing one.

On cross-examination by Mr. Pollock, the drivers of the Applicant were reviewed. Mr. Terry Fowler was an independent contractor of the Applicant, but that contract was terminated after the illegal trip that was provided by Mr. Fowler. He has subsequently been retained as a subcontractor of a contractor of the Applicant.

Mr. Pollock also reviewed the ownership of the corporation. The Applicant has two officers but no directors on the board.

The Applicant plans to drug test its drivers through Medical Enterprises and to develop a written training manual once it receives authority.

Ms. Gooding stated that the Applicant is an Iowa corporation. It has not secured any authorization to conduct business in Nebraska as of the date of the hearing and she was not aware of any such requirement. A letter from the Iowa Secretary of State's Office was produced by the Protestants that stated that a diligent search of their records for incorporations did not reveal that articles of incorporation, a certificate of authority, or any document relating to the Applicant were on file.

On redirect by Mr. Weinberg, Ms. Gooding said that she would do whatever was necessary to operate as a foreign corporation and that Ron Hug had taken the documents to the Iowa Secretary of State's Office and that they had been filed.

On questioning from Mr. Sullivan, Ms. Gooding reviewed a budget she had prepared. She had figures for rent of an office at \$150 per month, revenues based upon rental amounts received and estimated car usage, costs for maintenance and costs for advertising and office supplies. Ms. Gooding admitted that the budget did not have any amounts for training, and that drug testing costs would be borne by the driver.

On further questioning by Commissioner Schram, Ms. Gooding stated that the loan application for \$49,000 should have had the address of her Lincoln home. It erroneously has the Omaha property address on it. The Omaha property is subject to a sale agreement with Sam Murante.

Ms. Gooding stated upon further questioning by Mr. Sullivan that the Applicant currently owned two vehicles and had \$5,000 in the bank. Ms. Gooding said that she intends to put the money from the loan on her Lincoln property, as well as the net proceeds from the sale of the Omaha property, into the company as well.

Mr. Scott Makinster was called by the Applicant. He is managing partner of the Comfort Inn at 7007 Grover Street in Omaha. He is responsible for the general operations of the Comfort Inn.

Mr. Makinster testified that the Comfort Inn has used Mr. Ray Testerman exclusively for its transportation needs since September of 2011. When the front desk is asked to call for transportation, the desk calls Mr. Testerman. He said that he has seen City Taxi cabs at the Inn, but has no knowledge regarding their service.

On cross-examination by Mr. Sullivan, Mr. Makinster said that he did not know where City Taxi was operating to or from, and that he did not have information as to how often City Taxi was utilized at the Comfort Inn. On cross-examination by Mr. Pollock, Mr. Makinster said that it is important that the Comfort Inn would use only certificated carriers in its operations. He also stated that he was not familiar with all certificated carriers in the area and that the Comfort Inn does not keep records as to who is used and when any transportation is provided. He has not filed any complaints with the Commission and has not talked with anyone from the cab companies regarding transportation issues.

On redirect by Mr. Weinberg, Mr. Makinster said that he intends to continue using Ray Testerman and that he is satisfied with the service provided.

Mr. Robert Synowiecki was next called by the Applicant. He owns Dinkers Bar in Omaha. He said that there are times that his patrons have had too much to drink and that alternate transportation needs to be made.

Over the past year, Mr. Synowiecki said there have been a "handful of times," approximately two to five times per year, that people complain about the taxi service in Omaha. He further said that he has experienced problems with the taxi companies in Omaha when calling for his customers. He said that timeliness was an issue, with the companies taking upwards of 40 minutes to get a cab on site. He considers this time frame to be an excessive time to wait for a cab. He also has had patrons leave the bar as a result of the time it took the taxi companies to respond to the calls.

On cross-examination by Mr. Pollock, Mr. Synowiecki could not recall the last time he had called the cab companies for a ride. His establishment does not keep records of calls that are made for transportation. He further has not filed a complaint with the Commission regarding transportation issues. On examination by Mr. Sullivan, he stated that he also has not contacted the taxi companies in an effort to correct the situation. He further doesn't know if City Taxi will help resolve the transportation problems that he sees. He is also not aware of the ability to use open class providers such as Prince of the Road, Midwest Special Services or Papio Transportation.

Mr. Weinberg offered the deposition of Michael Kelley, who is currently in Phoenix, Arizona and unavailable. The Protestants' attorneys both objected to the introduction of the deposition. According to the Protestants' attorneys, the depositions were taken as discovery depositions and not with the intent to be used as testimony. Upon being duly advised in the premises, the Hearing Officer finds that this deposition should be excluded from the record.

Mr. Aaron Jones was called next by the Applicant. He is the general manager of Candlewood Suites in Omaha. He related problems with the taxi companies that he has experienced in his position as general manager. He said that timeliness is a major concern as it often takes up to 45 minutes for a cab to arrive. He also referenced an altercation between a guest and a driver. Mr. Jones said that he informed the company of the altercation and was told that the matter would be taken care of. He did not receive any information as to the resolution of the incident.

Mr. Jones has used City Taxi for seven months. He said that he did not have any problems with City Taxi, but had experienced problems with the Omaha cab companies. He said that five or six years ago, he was without a vehicle and that a number of times the Omaha cab

companies got him to work late because they could not get his address correct. Mr. Jones finished by saying that he would use City Taxi if they were granted an authority by the Commission.

On cross-examination by Mr. Pollock, Mr. Jones said that the hotel guests were sent across the street in order to be in Iowa for the pickup by City Taxi. The street is a dead end street with no cover provided for the passengers while they wait to be picked up. Mr. Jones also said that he knew of five times that guests had to wait what Mr. Jones thought was a long time.

On cross-examination by Mr. Sullivan, Mr. Jones said at the hearing that his guests had used City Taxi 50 to 70 times; however, in his deposition he stated 75 times, and in most instances, the guests waited in the hotel until City Taxi came, when they would then go across the street to be picked up. Mr. Jones further said that he knew of one instance of an altercation with a driver from the Protestants, and that he reported that altercation to the Protestants. He is not aware of any corrective steps that the Protestants may have taken in the matter. Mr. Jones has not contacted the company or the Commission regarding other service issues. He did not know of the number of drivers that the Protestants employ.

Mr. Jones said that the trips the Applicant performed for him would have been to locations in Omaha or Council Bluffs, but none to Eppley Airfield, as they have a courtesy shuttle that takes guests there.

On examination by Commission staff, Mr. Jones said that he was aware that his guests had to be on the Iowa side of the street to be picked up by a provider other than a Nebraska carrier. City Taxi informed him of this circumstance and that they needed to send their guests across the street to be picked up. Mr. Jones further stated that it was Ron Hug who supplied that information.

Mr. Charbell Younes testified next. Mr. Younes is the manager of the Holiday Inn Express in Carter Lake, Iowa. He testified that he has used City Taxi and that the quality of the service provided, as far as he knew, was very good. He said they are timely, courteous, and friendly, and that their cabs were clean. Mr. Younes said that the hotel would call City Taxi for the guests, while the guests would also call the Omaha cab companies.

Mr. Younes said that he has experienced problems with the Omaha cab companies. He related an incident in April of 2011 wherein an attorney requested a cab at 7:30 a.m. and, despite being told on four occasions that a cab was on the way, was taken to a deposition at 9:00 by Mr. Younes so that the attorney would not be late.

Another incident that occurred in July of 2011 was detailed by Mr. Younes. He called City Taxi to see if they were available for a 6:30 a.m. time call, but was told they were not available. The Omaha cab companies were called, and assured him that a cab would be there at that time. A cab had still not arrived by 7:00 a.m. and when City Taxi returned at that time, they ended up taking the guest to their location.

A third incident in June, 2011 was also detailed. A Creighton University graduate school candidate had an interview at 1:00 on or about June 8th. The Omaha cab companies were called at 12:15 to pick up at 12:30. When a cab did not arrive by 12:30, Mr. Younes took the guest to the interview in the hotel van.

Mr. Younes said that the majority of the Eppley Airfield transportation was provided by Budget Airport Parking pursuant to a contract.

Mr. Younes said that he has had some personal problems with cab service as provided by the Omaha cab companies, but only in terms of generalities and not any specific instances. On four or five occasions in the past eight months, he has called for a cab to take him home from the Old Market, but has been informed to check the taxi stands or find a cab driving in the area. He said that it is rare to see a cab in a stand or driving around at night, and has had to make other arrangements to get himself home.

On cross-examination by Mr. Sullivan, Mr. Younes said that he has not documented any issues pertaining to cab service, and that he has used City Taxi almost exclusively since the end of May. Although City Taxi did ultimately end up providing the service for the 6:30 a.m. pickup time detailed previously, initially City Taxi informed him that they were not available as they were fully occupied at that time. When Mr. Younes calls City Taxi, he usually talks with Ron Hug, who also usually provides that transportation as well.

Mr. Younes has not had any discussion with the Omaha cab companies as to how the service could be improved. He also was not aware that complaints could have been made with the Commission.

On cross-examination by Mr. Pollock, Mr. Younes said that his hotel uses a shuttle service to the airport only and not to other locations. He has not used Prince of the Road or Papio Transport, and has seen A & B Shuttle on occasions doing some airport shuttle work. He stated that he personally had problems with the Omaha cab companies on four occasions, although he did not remember any specific dates.

Mr. Younes answered, on questioning by Mr. Pollock, that City Taxi was initially not able to provide for the trip in July, and also on the June trip set forth in previous testimony. On both occasions,

Mr. Younes was told that City Taxi was already on a run and would not be able to provide transportation.

Ms. Bertha Leyva Gonzalez testified next. Ms. Leyva testified about a trip in May of 2011. She had called an 800 number for a trip to be taken by her and her daughter for an appointment at the Women's Center for Advancement. She had called two days prior to the trip for it to be arranged. On the day of the appointment, the cab did not arrive until 12:45 for a 1:00 appointment and they missed the appointment. She complained to Coventry, the payer of the trip. She has subsequently used Prince of the Road and Wings of Love, who are currently meeting all of her needs.

Ms. Leyva also told of another incident in which she and her daughter needed to pick up medication for the sick daughter. The trip took a very long time, and they got back home about two hours later than they had planned.

On cross-examination by Mr. Sullivan, Ms. Leyva reiterated that all of her needs were being met by Prince of the Road. She also said that her boyfriend is Terry Fowler, who is a subcontractor for the Applicant.

On cross-examination by Mr. Pollock, Ms. Leyva said that Happy Cab told her that they did not receive a fax that instructed them to pick her and her daughter up for the appointment in May. She had called Coventry for the trip, not Happy Cab. She acknowledged that Happy Cab would have needed to receive a fax from Coventry to provide the trip. Ms. Leyva also said that she has used Happy Cab at least two times since the incidents she related to the Commission, and that both times the trips were made on time. She once again stated that her transportation needs were being met by Prince of the Road and Wings of Love.

PROTESTANTS' EVIDENCE

Mr. John Davis testified first for the Protestants. Mr. Davis is the Director of Operations for the taxi companies in Omaha. He is responsible for the day-to-day operations of the companies. The companies provide 8,200 trips per week through their dispatch system. The companies typically have around 180 drivers under contract. Mr. Davis reviewed the dispatch system and the process of handling calls.

The companies provide training for the drivers that include safe driving, customer service, obligations under the Commission's rules, and other obligations under their contract with the companies.

Mr. Davis did detail some times that he called "high traffic events" where the demand is great for service. He identified these times as bar rush on Friday and Saturday nights from 8:00 p.m. to bar

close, and events such as the College World Series or the Berkshire Hathaway event. During these times, the companies have open cab stands that tend to draw drivers as they can pick up fares more easily and faster. They also send driver coordinators to the sites where there is high traffic in an effort to make the traffic smoother and to meet the demands of the public on a timely basis.

The companies do weekly analysis of information such as demand peaks and call volume, completed trips as well as cancellations, to determine if more cabs are needed on the streets. They also compare statistics from previous years in order to try to determine peak times and to develop a response to these times. The companies can experience a problem with keeping good drivers if they put too many cabs on the street as well as problems with the general public if they put too few cabs out.

Mr. Davis said that the companies provide cab service by the hour. They have provided a service similar to that of the tour of historical sites in the area proposed by the Applicant, but that he does not believe there is enough business in that area to be productive.

Mr. Davis detailed some of the cab stands around Omaha, and also discussed the services provided to Omaha area hotels. Mr. Davis noted that none of the hotel operators called by the Applicant to testify had contacted the companies in an effort to inform the companies about their issues or to assist in improving services. He also said that the Comfort Inn in Omaha uses Ray Testerman to provide their service. Mr. Testerman is an independent contractor with Checker Cab.

On examination by Mr. Pollock, Mr. Davis set forth that the independent contractors are encouraged to develop personal clientele, but that they do not have the right to dispatch personal calls to other drivers. These calls are required to go through the regular dispatch system. Mr. Davis also set forth steps that the companies took to address the bar rush issue. The companies set up cab stands in the Old Market and at 114th and Dodge to encourage drivers to operate in these areas. His information is that there appears to be adequate cabs available on most occasions.

On voir dire regarding Exhibit 7, Mr. Weinberg reviewed the ownership structure of the Omaha cab companies. Happy Cab, Checker Cab, and Yellow Cab are owned by a common ownership, and Valor Transportation and Cornhusker Cabs are operated by Happy Cab, Checker Cab and Yellow Cab under a contract between the various companies. There is one dispatch system for all the companies. All the drivers of the companies are independent contractors.

Mr. Davis was asked about the complaint handling process of the companies as well as the number of complaints that the companies receive. He estimated that the companies receive about six complaints per month, although it is just an estimate and is not based upon any record. He further said that the companies have not been subject to a formal complaint filed against it by the Commission in the last year.

A request for judicial notice by the Applicant of complaints received by the Commission in the past year showed seven complaints were filed regarding the companies' operations. Three citations were issued and the rest were resolved through action of the companies. None of the complaints resulted in a formal complaint being filed by the Commission.

On further questioning by Mr. Weinberg, Mr. Davis said that over 90% of the drivers of the companies leased the vehicles from the companies. Only a few of the drivers are owner-operators. Of the 180 contractors that the companies have, only about ten do not purchase dispatch services. Mr. Davis was not able to estimate how many drivers have personal customers, or what percentage of the drivers daily trips are related to a personal type of relationship.

Mr. Davis noted that the drivers are free to operate when and where they desire. The companies have established 30 zones of operation throughout Omaha. If a taxi is not currently in the zone, they send out a note to all drivers that a passenger is waiting. They also notify drivers of situations where there is a spike in calls in an effort to get more drivers into that zone to take advantage of the need for service. While it is possible that many drivers would be on personal trips and not available for the general public, Mr. Davis said that this situation is very unlikely.

Mr. Davis said that the companies do not currently offer a taxi tour. He said that such a service is not called for by the general public and that they therefore have not offered it. He also said that the companies do not offer child seats as they are not required to do so either by Nebraska statute or Commission rules.

The trip involving Ms. Leyva was discussed. Mr. Davis said that the companies do often call the third party payer to confirm travel arrangements if there is a question regarding the eligibility for the trip, but that it was primarily the passenger's responsibility to confirm the trip. In Ms. Leyva's case, Mr. Davis did not know the particulars as to why the trip was late but surmised there was an issue with a fax confirmation.

Mr. Weinberg inquired about the dispatch system used by the companies. Mr. Davis responded that it was a text dispatch service on the Nextel network. If the network goes down, the companies use a voice dispatch system that is still available.

Mr. Davis said upon questioning by Mr. Weinberg that he has not talked to Mr. Makinster or Mr. Younes as he did not want to be seen as interfering with a witness in a contested matter. In general, Mr. Davis said that he does talk with people and businesses in an effort to resolve problems and provide better service.

Mr. Davis said that even one cab would be detrimental to the companies. This could create a diversion of resources away from the companies when they are trying to provide the best service possible to the community through such efforts as the dispatch system, proper maintenance of vehicles, or other such types of efforts.

On redirect by Mr. Pollock, Mr. Davis said that it is not probable that a zone would not be occupied. On most days all the zones are occupied. Drivers are checking zones often and someone is usually available or in a nearby zone. The dispatchers are very proactive if an order is sent out without being picked up immediately. They will send out a specific message regarding the trip to the drivers in order to get the passenger picked up.

Mr. Davis said that the companies would not reject an order unless the proposed trip was illegal in some specific manner. He said that the purpose of the companies was to provide transportation and that refusal does not fulfill this purpose.

Mr. Davis said that there are many other competitors for transportation in the Omaha area. He cited Prince of the Road, Midwest Special Services, and Papio Transportation. He also noted that party buses have become more commonplace in the past few years. These buses have hurt business, especially around bar closing time, as many people are riding on the buses rather than going out on their own.

Mr. Davis said he believed that a new taxi authority would need to have many cabs in order to succeed and a significant financial base upon which to rely when beginning operations. There are numerous, significant expenses such as overhead, staffing, insurance, maintenance, dispatch system, and other expenses that must be accounted for by a start-up company.

The child seat issue was addressed again. Mr. Davis noted that one size does not fit all. The seat should be specific to the child's size and weight. An additional issue regarding securing the seat can also create a liability issue.

On redirect by Mr. Sullivan, Mr. Davis said that he would follow up with the hotels after the hearing. He also said that the companies will continue to do random visits to hotels and other customers to gather information to provide for improved service in the future.

On further questioning by Mr. Sullivan, Mr. Davis noted that the companies receive an estimated six complaints per month. The companies provide 30,000 trips per month.

On cross-examination by Mr. Weinberg, Mr. Davis discussed the difference between open class and taxi authority. Taxis are an on-demand basis with some prearrangement of service while open class providers are primarily prearranged. Taxis are by the most direct route and metered while open class transports are usually on a per trip fare. All of the carriers that were noted by Mr. Davis are open class providers.

On examination by Commissioner Schram, Mr. Davis said that the companies have not been contacted by any authorities regarding compliance issues by either a city or county agency.

Mr. Robert Harrison was called first by the Protestants. Mr. Harrison is an investigator with the Commission, and has been employed for 22 years. His duties include the enforcement of motor carrier laws, calibration of meters, checking for illegal operations and rate charges, and other investigatory duties. He is a State Deputy Sheriff and has received training in law enforcement. He also has a BSBA from the University of Nebraska.

Mr. Harrison, following information received of a disturbance in the cab line near the CenturyLink Center in Omaha, went to the stand to investigate. While he did see Terry Fowler and a City Taxi cab in the stand, he did not see any problems there that evening.

Earlier, Mr. Harrison had seen numerous taxis operating in downtown Omaha during the College World Series, including City Taxi. Alan Elston, a co-worker of Mr. Harrison's who assists him with transportation matters, contacted City Taxi, who took him to Bellevue. The driver of the cab, Mr. Fowler, was cited for the illegal trip. The citation included no operating authority, no PSC plate, no insurance on file, and a rate violation. Mr. Harrison said that to his knowledge, Mr. Fowler paid a fine for this trip in Sarpy County Court.

Mr. Harrison said that he is still receiving reports of point-to-point transportation in Omaha being provided by City Taxi. Mr. Harrison also noted that the cab stand at the bus depot can create some confusion for the public as City Taxi would have to turn down some trips from that location if it required point-to-point transportation within Nebraska.

Mr. Harrison has received reports within the last couple of years regarding late night bar rush issues in Omaha. He met with the owners of the companies who agreed to put an emphasis on attracting more drivers to the high traffic areas by the use of cab stands and making it known to the drivers that there are passengers who need

transportation at these locations. He stated that he has not received any complaints regarding these areas lately.

Once per month, Mr. Harrison goes down to the Old Market to check on service levels and to see if there are any illegal operators. Mr. Harrison reported that he has not seen any illegal operators, but does see certificated cabs driving through the area.

On cross-examination by Mr. Weinberg, Mr. Harrison said that he did not have documentation as to the result of the ticket issued to Mr. Fowler. He also said that it is not illegal to have a cab stand as long as the trip that is performed is legal.

Mr. Harrison answered on questioning that there are no ongoing investigations of the companies in Omaha at this time. Ron Hug sent a picture of a cab that was improperly disposed of in Omaha. The company was not able to recall the vehicle and remove the signage from the vehicle. The companies were consulted about this and notified that the signage must be removed by the companies prior to disposal. No filing was made by the Commission on this incident.

On redirect by Mr. Sullivan, Mr. Harrison reviewed an Offense Information report on Terry Fowler. This report indicated that Mr. Fowler pled guilty to the illegal rate charge and no PSC plate charge, but that the no authority charge and no proof of insurance charges were dismissed.

On further questioning by Mr. Weinberg, Mr. Harrison said that Terry Fowler drove a City Taxi marked van with City Taxi insurance being presented as the appropriate insurance in force. The citation was given to Mr. Fowler as he was the driver of the vehicle for City Taxi.

On examination by Commission staff, Mr. Harrison said that he has written three citations to drivers of the companies within the past year. These citations were for rate violations. He did not believe that these matters were at the level of an investigation as an investigation requires more work than a situation that results in a citation.

On questioning by Mr. Weinberg, Mr. Harrison said it was his understanding that the drivers in these three situations paid the fines that arose from the citations.

Mr. Alan Elston was called next by the Protestants. Mr. Elston is an inspector for the Commission in the MP&E Program. He has been in that capacity for over six years. In addition to his duties as an MP&E Inspector, he assists the Transportation Department of the Commission with motor carrier investigations, usually by riding in the cab and helping to check rates.

Mr. Elston described activity that occurred on June 21, 2011, involving City Taxi. Information was received that City Taxi was operating in the area of the College World Series. Mr. Elston flagged down a vehicle with City Taxi signage and asked for a ride to the Settle Inn in Bellevue. The driver asked him to wait while he finished a trip he had already agreed to do, and then came back and picked up Mr. Elston. When he returned, the driver asked Mr. Elston to ride with him to an Abbott Plaza hotel for a pickup and then he would be taken to the Settle Inn. The driver picked up the second fare, took that fare to TD Ameritrade Park, dropped him off, and proceeded to take Mr. Elston to the Settle Inn. The driver had offered a discount rate, and when asked for the amount of the fare for the trip said \$11.00. Mr. Elston gave him \$15.00, which included a \$4.00 tip. After that, Mr. Elston left the cab and the driver was contacted by Mr. Harrison.

On cross-examination by Mr. Weinberg, Mr. Elston did not ask if the driver was an employee or an independent contractor. He also said that he has not participated in any other investigation of City Taxi.

On questioning by Mr. Pollock, Mr. Elston reported that the vehicle he rode had signage that identified the vehicle as City Taxi.

Judicial notice was taken that the Abbott Plaza hotel referred to by Mr. Elston was the Holiday Inn at 2510 Abbott Plaza, which is located in Iowa.

Mr. Joe Thompson testified next for the Protestants. Mr. Thompson is an independent contractor driver for Cornhusker Cab, and has driven for them for over three years. He took a photograph of Ron Hug and a City Taxi vehicle at the Walmart at 77nd and Pine Street in Omaha on October 27, 2011. He identified the car as signed to City Taxi and the person with the car as Ron Hug. Mr. Thompson knew Mr. Hug through past attempted unionizing activities at the companies. He testified that he had seen Mr. Hug in a City Taxi vehicle on four or five occasions in the last couple of weeks. He further testified that he had seen a person being dropped off by Mr. Hug at the Walmart on the day the picture was taken.

Mr. Thompson also reviewed the bus depot cab stand signs. Pictures submitted to the Commission accurately reflect the cab stand situation at the bus depot. City Taxi has a reserved stand at the front of the line of stands, with the companies each having its own stand in line behind the first one. Mr. Thompson said he sees a City Taxi vehicle at that stand three times a week.

Mr. Thompson also told of an incident in the cab line at the CenturyLink Arena where Ron Hug and City Taxi pulled into the second stall in the stand. This disrupted the line by making other drivers parallel park to get to the first spot in the stand.

Mr. Thompson also said that parents often bring their own child seats when they are traveling with their children. The parent usually secures the seat. They have the knowledge as to how to set up and install the child seat in the rear seat of the cab.

PUBLIC COMMENTS

The first public commenter was Mr. Terry Fowler. The Protestants objected to this testimony. The Hearing Officer has sustained the Motion, and the testimony of Mr. Fowler will be excluded from the record.

Mr. Pat Stoysich testified as a member of the general public. He had heard information regarding the application and the hearing and wanted to testify. He said that he has had good experience with cabs and believes that the cab drivers are good ambassadors for the city of Omaha. He said that they are in general very hardworking and just trying to make a living.

Mr. Stoysich did reference an incident on a Sunday night at about 10:00 p.m. when he tried to get a cab to pick him up but was told it would be a one and one-half hour wait. He called a second number to a second company, but received the same dispatcher with the same wait time. He subsequently walked home, a distance of about 60 blocks.

Mr. Stoysich said that there is no other choice for the public, and that the Commission needs to consider allowing other companies to enter the market.

Mr. Russ Kramer also testified. Mr. Kramer is a sheet metal worker and also is the Mayor of Carter Lake, Iowa. He said that Karen Gooding and City Taxi receive good comments from the people of Carter Lake. He said that he has not received comments from people like this before. He also stated that the hotels like the service that City Taxi provides. He believes that City Taxi could help with the need to have another operation in the cab business in Omaha and the surrounding area.

OPINION AND FINDINGS

In this particular case, Applicant is seeking to obtain authority so that it may provide transportation for passengers in taxi service in certain zip codes in the Omaha area. These zip codes are located in Douglas County, and all are within the Omaha City limits.

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

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

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

In order to be successful, an applicant must provide that it is fit, willing, and able to provide the proposed service. From the evidence presented, the Commission finds that the Applicant has sufficiently proven it is fit, willing, and able to properly perform the proposed service and able to conform to Neb. Rev. Stat. § 75-301 et seq. The Applicant is a taxicab company that has been licensed and operating in Carter Lake, Iowa, since May of 2011. The Applicant presented a business plan that was detailed and shows an adequate ability to operate and generate sufficient funds to enable continued operations. The Applicant appears to have the necessary business acumen and dedication to operate the business. The Applicant stated that it had arranged for sufficient funding so that it will be able to start operations upon the granting of the authority. There was nothing presented by the Protestants that would cause the Commission to find that there was an issue in the Applicant's President's background that would cause it to find that she was personally unfit to operate the business.

The Commission does note that an independent contractor of the Applicant, Terry Fowler, did perform an illegal trip while contracted with City Taxi. The Applicant did discipline the driver, but after a period of time renewed the contract with said driver. The Applicant did state that it is aware of Commission rules and Nebraska statutes, and will comply with them. The Applicant must run its operations in conformance with these statutes and rules. Activity of the kind that Mr. Fowler performed must not occur again.

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Based on the evidence before us and adduced from the record in the instant case, we find that the applicant has met the fitness test of Neb. Rev. Stat. Section 75-311.

We therefore turn to the issue of whether the proposed service is or will be required by the present or future public convenience and necessity. The traditional analysis for determining "need and necessity" was set forth by the Supreme Court in its May 8, 1998, ruling,

In determining public convenience and necessity, the deciding factors are (1) whether the operation will serve a useful purpose responsive to a public demand or need, (2) whether this purpose can or will be served as well by existing carriers, and (3) whether it can be served by the applicant in a specified manner without endangering or impairing the operations of existing carriers contrary to the public interest.

In re Application of Nebraskaland Leasing & Assocs., 254 Neb. 583, 591 (1998).

The issue of whether an applicant has met its burden of demonstrating that the proposed service is consistent with public convenience and necessity is ordinarily a factual issue. Id.

Given the record before us, we find that the Applicant has demonstrated a sufficient level of need and necessity to support a grant of the application. The Applicant produced four witnesses in support of its application, and two additional members of the public testified in support. Mr. Scott Makinster testified that, while he was satisfied with the services that are provided by Mr. Ray Testerman, he would use City Taxi at his hotel. Mr. Robert Synowicki testified that he has received a number of complaints regarding taxi service in his establishment and problems with the service provided. He saw times where it took longer than 45 minutes for a cab to arrive at his establishment to pick up customers. He has even had patrons leave his place because the wait became too long. He also stated that he would use City Taxi if it were granted authority.

Mr. Aaron Jones also related problems with the Omaha taxi companies, and currently uses City Taxi. He said that he would use City Taxi if it were granted authority.

Mr. Charbell Younes cited three specific instances where the Protestants failed to provide service to clients of his hotel, including instances where City Taxi ended up providing the service or he took the customer himself in the hotel van. Mr. Younes said that he also would use City Taxi if granted an authority.

Mr. Pat Stoysich related an incident where he called for a cab to be taken home on a Sunday night at 10:00 p.m. He waited for over 45 minutes and then walked home.

Mr. Russ Kramer, the Mayor of Carter Lake, Iowa, said that City Taxi provides a good service. He further stated that the Applicant could assist in meeting the transportation needs in the Omaha area.

The Commission finds that the above evidence shows that there is a useful purpose responsive to a public demand or need that the proposed operation can meet. The evidence also shows that the existing companies are not currently meeting that need.

The second part of the test is whether this purpose can or will be served as well by the existing carriers. The evidence presented to the Commission shows that the Protestants are not currently meeting the needs of the witnesses that testified in this proceeding. The testimony of the witnesses presented shows that the existing carriers are not meeting the public purpose found above. The witnesses testified as to various times that they had passengers that needed rides and were not provided rides by the existing taxi carriers. They all said that they would use City Taxi as a provider if the Commission were to grant it authority. The Commission therefore finds from the record that the Applicant has passed the second part of the test.

We now turn to the issue of whether the public demand or need can be served by the Applicant in a specified manner without endangering or impairing the operations of existing carriers contrary to the public interest. Mr. Davis stated that the proposed operation would hurt the Protestant cab companies. He stated that diversion of business would have a negative effect on the companies he is affiliated with.

However, the Commission finds that the damage that may be caused to the Protestants is speculative. The Protestants did not produce any specific evidence as to the impact on the operations of their businesses. While Mr. Davis stated that the granting of the authority would be damaging to the authorities, he did not say to what extent the damage that may occur would curtail operations of the Protestants or what changes the Protestants make in response to the potential granting of authority. There was no evidence presented that the granting of this application would endanger or impair the operations of the Protestants contrary to the public interest. The public has an interest in having an adequate number of taxis available to meet its needs. Absent evidence of an 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.

On October 31, 2011, the Applicant filed an amendment to its application. The amendment was for the Applicant to provide service in the following zip codes: 68110, 68102, 68108, 68111, 68131, 68105, 68104, 68132, and 68106. This represents a restriction of the geographic area initially sought by the Applicants. After an examination of the amendment to the application, the Commission finds that the proposed operating territory is too difficult to monitor as there are no geographic limitations that are identifiable and the zip codes are subject to change. The Commission, pursuant to its authority under §75-311 (1) to authorize "the whole or any part of the operations covered by the application" finds that the geographic area of the authority granted should be as follows: In Douglas County: Interstate 80 on the south except for service to the Henry Doorly Zoo, 72nd Street on the west, Sorenson Parkway to the Storz Parkway to 16th Street to the Missouri River on the north and the Missouri River on the east. This area essentially encompasses the areas sought in the application while creating a geographic area that is identifiable.

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

1. The applicant is fit, willing, and able properly to 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

SERVICE AND TERRITORY AUTHORIZED: Transportation of passengers as a common carrier in Nebraska intrastate commerce in the transportation of passengers by taxi between points in the area of Douglas in the following area: from Interstate 80 on the south except for service to the Henry Doorly Zoo, to 72nd Street on the west, Sorenson Parkway to the Storz Parkway to 16th Street to the Missouri River on the north, and to the Missouri River on the east, over irregular routes. RESTRICTION: The transportation of railroad train crews and their baggage is not authorized. HHS Designation: No.

3. The application should be granted as amended and modified.

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

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ORDER

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application B-1801, be, and it is hereby, granted as amended and modified; and that upon compliance with the terms and conditions as set forth in this Order, a Certificate of Public Convenience and Necessity shall be issued to City Taxi, Inc., Omaha, Nebraska, authorizing the operations as set forth in the foregoing findings.

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

IT IS FURTHER ORDERED that applicant shall not conduct operations until a Certificate of Public Convenience and Necessity is issued.

IT IS FURTHER ORDERED that applicant shall render reasonably continuous and adequate service to the public pursuant to the authority authorized.

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

MADE AND ENTERED at Lincoln, Nebraska, this 22nd day of February, 2012.

COMMISSIONERS CONCURRING:

NEBRASKA PUBLIC SERVICE COMMISSION

Tim Schram

Gerald L. Vop

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

Chairman

ATTEST:

Shirley J. [Signature]
Executive Director

