

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of Somali Bantu ) Application NO. B-1849  
Association of Nebraska, Omaha, )  
seeking authority as a common )  
carrier in Nebraska intrastate )  
commerce in the transportation )  
of passengers by van over )  
irregular routes in Douglas and )  
Sarpy counties, on the one ) ORDER DENYING APPLICATION  
hand, and on the other hand, )  
points in Nebraska over )  
irregular routes. )  
RESTRICTIONS: The )  
transportation of railroad )  
train crews and their baggage )  
is not authorized. )  
HHS Designation: Yes. ) Entered: December 8, 2015

BY THE COMMISSION:

B A C K G R O U N D

On June 26, 2013, the Somali Bantu Association of Nebraska, Omaha, ("Association" or "Applicant") filed an application seeking authority as a common carrier of passengers by van over irregular routes in Douglas and Sarpy counties, on the one hand, and on the other hand, points in Nebraska over irregular routes. The authority sought would be restricted in that the transportation of railroad train crews and their baggage would not be authorized, and the HHS designation would be yes.

On September 25, 2013, a protest was filed by Happy Cab Company d/b/a Checker Cab Company, Yellow Cab Company, and Happy Cab Company; DonMark, Inc. d/b/a Cornhusker Cab Company; Valor Transportation Company d/b/a Safeway Cab Companies (collectively, "Omaha Cab Companies"), and a protest was filed on October 9, 2013, by Camelot Transportation Inc. ("Camelot," together with Omaha Cab Companies, "Protestants").

This matter was set for hearing and rescheduled on four occasions between February 2014 and November 2014. On June 18, 2015, Protestants filed a Motion to Dismiss for want of prosecution. A hearing was held on August 25, 2015, and the Commission overruled Protestants' motion in an order entered September 1, 2015. A hearing on the Application was held October 21, 2015. Mr. Mark Breiner and Ms. Jamie Reyes represented the Commission, Mr. Paul Muia represented Applicant, and Ms. Tara Paulson represented the Omaha Cab Companies. Commission Exhibits

1 through 4, Applicant's Exhibit 5, and Protestants' Exhibit 6 were offered and received. Post-hearing briefs were filed with the Commission on November 24, 2015, and the case was deemed submitted.

## EVIDENCE

Mr. Sheikh Mire testified on behalf of the Association. Mr. Mire currently serves as the Association's president. Mr. Mire stated that the Association consists of about 10,000 families of the Somali Bantu, a group of people from Somalia that have relocated to Omaha. The Association has been providing transportation services for their people since 2006 free of charge, and transport about 250 to 300 individuals per month. Mr. Mire testified that the Association does not plan to charge the Somali Bantu people for its services, but has plans to seek reimbursement from Nebraska Health and Human Services ("HHS"). Mr. Mire testified that the Association currently has two vans with insurance, and the Association pays its two drivers. Mr. Mire stated that the only source of income for the Association is the provision of translation services for a local health center.

When asked on direct examination whether there is a public need for transporting Somali Bantus, Mr. Mire responded that there is a need because the people do not always speak English and require translator services along with the transportation. According to Mr. Mire, the Somali Bantu people will not take transportation from any person or entity other than the Association drivers due to their negative experiences in Somalia. When asked whether the Association plans to transport others besides the Somali Bantu people, Mr. Mire responded that the Association seeks to only transport the Somali Bantu people and that the Association will not provide transportation to anyone else.

On cross examination, Mr. Mire explained that the Association encourages people to call taxi providers in the area, but the people will not accept the ride once the taxi arrives. Mr. Mire testified that this led to 177 individuals missing appointments in the month of September.

Mr. Issa Issa testified on behalf of Applicant. Mr. Issa is employed by the Association as a driver. Mr. Issa testified that he transports on average between five to ten people daily. Mr. Issa also testified that members of the Somali Bantu community

would not accept rides from any driver except from the Association. On cross examination, Mr. Issa testified that members of the community would not accept rides from taxi drivers that were from the community and spoke Mai Mai, their language dialect, because the Association provides additional services beyond transportation and the Association does not charge for these services. However, Mr. Issa also testified that he did not know if members of the community have actually take rides from taxi cabs or open class carriers in Omaha.

Applicant's final witness was Mr. Khamis Khamis, a driver and translator for the Association. Mr. Khamis testified that he has been employed by the Association since 2007, and may transport around five to ten people on average a day. Mr. Khamis also testified that he works as an open driver, and that the Somali Bantu community would only call him for a ride when he was driving for the Association. On cross examination, Mr. Khamis stated that the Association will not charge its members for services.

Ms. Jamie Chambers, Program Compliance Manager for IntelliRide, testified as witness for Protestants. IntelliRide provides non-emergency transportation brokerage services for Nebraska Medicaid clients. According to Ms. Chambers, HHS rules state that a Nebraska Medicaid provider cannot charge HHS more than what is charged to the general public. Ms. Chambers explained that if the Association charges zero dollars for its trips, then the charge to HHS would also be zero dollars.

Ms. Chambers further testified that Medicaid clients who need transportation call IntelliRide or go to an online portal to authorize transportation services. The request is referred to a provider using the Trip Auto Assignment Policy, and a vehicle is chosen to provide the transportation. The Trip Auto Assignment Policy was entered into the record as Exhibit 6. In regards to the assignment of trips, Ms. Chambers testified that IntelliRide would not be able to direct a trip requested by a member of the Somali Bantu community to a driver for the Association without an exception. Exceptions to the Trip Auto Assignment Policy require documentation of medical necessity from the client's physician stating that the client must ride with a particular provider for medical reasons. Ms. Chambers also testified that the client's physician would also need to provide documentation of medical necessity to approve a translator escort for the client.

Commissioner Landis asked whether additional avenues or funding sources were available for groups such as the Association. Ms. Chambers stated that grant programs may be available in the Omaha area which the Association could inquire. Upon additional questioning from Commissioner Schram regarding the trip assignment protocol and the HHS friends and family exception, Ms. Chambers explained the protocol would still apply because the individual transportation provider would be the first option in the assignment protocol so long as that individual is identified by the client as the authorized provider.

Ms. Alissa Kern, managing Director for Camelot Transportation, testified for Protestants. Camelot is an open class passenger provider that provides transportation anywhere within the State of Nebraska other than Lancaster County. Camelot employs around 42 people, with approximately 37 plated vehicles. Ms. Kern testified that, in her opinion, Camelot already provides the service that the Association is seeking to provide, and that approval of a certificate for the Association would affect the service that Camelot currently provides.

According to Ms. Kern, Camelot is willing and able to provide transportation services to members of the Association and would not need to increase its fleet in order to provide services. Ms. Kern testified that Camelot conducts driver training related to passenger interaction and its non-discrimination policy. Ms. Kern also testified that Camelot provides services to Medicaid clients through the IntelliRide system, and that any trips that could potentially be assigned to the Association through IntelliRide would take away from trips that could go to Camelot.

Finally, Mr. John Davis testified for Protestants. Mr. Davis is the Director of Operations for the Omaha Cab Companies. The Omaha Cab Companies have five taxi authorities with common carrier authority, employ about 50 support employees, and contract with about 202 drivers as independent contractors. The Omaha Cab Companies have approximately 230 plated vehicles. Mr. Davis testified that, in his opinion, the Omaha Cab Companies can provide the service proposed by the Association. Mr. Davis stated that the Omaha Cab Companies currently contract with Somali Bantu drivers who speak Mai Mai that provide transportation services. Mr. Davis explained that, as independent contractors, drivers are free to build their own book of business by purchasing dispatch services from the

company or taking referrals from outside the dispatch service. Mr. Davis testified that he believed that the company's drivers had provided transportation for some members of the Association in the past, but that the company does not screen for such information. Mr. Davis stated that the company offers sensitivity training, investigate any driver complaints, and try to match drivers with special language skills with those passengers who request a driver that speaks a certain dialect.

Mr. Davis also testified that approving the Association's application would affect the Omaha Cab Company's business. Mr. Davis explained that the company has seen a twelve to fifteen percent decrease on average in completed trips in each four-week period in the last twelve months due to the addition of party buses and transportation network companies such as Uber and Lyft. According to Mr. Davis, the loss of approximately 10,000 Somali Bantu families as potential customers adds to the negative affect that granting the Applicant's certificate request could have on the Omaha Cab Companies.

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

Applications for common carrier authority are governed by Neb. Rev. Stat. § 75-311(1) (Supp. 2015), 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 to properly 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 should be denied.

Under the statute, the Commission must determine whether the Applicant is "fit, willing, and able" to provide the proposed services and whether the proposed services are required by "public convenience and necessity."

The Nebraska Supreme Court set forth the analysis for determining "public convenience and necessity," stating:

"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."<sup>1</sup>

The issue of whether an applicant has met its burden of demonstrating that the proposed service is required with public convenience and necessity is ordinarily a factual issue.<sup>2</sup> The record does not present evidence of need and necessity to support a grant of the application.

Under the first part of the test, the proposed service must serve a useful purpose responsive to a public demand or need. Although the Applicant provided testimony regarding the specific need for transportation services for the Somali Bantu community, the testimony of Mr. Mire was very clear in showing that the Association will only serve the Somali Bantu community and not the general public. The statute requires public demand or need, which must include the general public outside of the Somali Bantu community. Because the Association is not seeking to serve the general public, the Commission finds that there is no public need for the proposed service. This finding alone requires a denial of the Application; therefore, the Commission does not need to further consider the application.

The Somali Bantu Association has other ways that it could achieve its goal of serving the people in their community. For instance, the Association could continue to provide the services as it does currently without seeking a common carrier certificate or Medicaid reimbursement. As another option, the Association's drivers could individually contract with Health and Human Services to provide transportation under a friends and family exemption. The Commission finds that Applicant has not met the requirements to receive a common carrier certificate from the Commission, and the Commission is left with no alternative but to deny the application.

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<sup>1</sup> *In re Application of Nebraskaland Leasing & Assocs.*, 254 Neb. 583, 591 (1998).

<sup>2</sup> *Id.*

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Based upon the evidence presented and being fully advised, the Commission finds that the Application should be denied.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. B-1849 be, and is hereby, denied.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 8<sup>th</sup> day of December, 2015.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

*Tim Schram*  
*Crystal Knoder*  
*Dee Johnson*

Chairman

*Gerald F. Vay*

ATTEST:

*Jeffrey L. Puley*

Executive Director



