

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of Hastings)	APPLICATION NO. B-1868
Concierges, Hastings, Nebraska,)	
seeking authority as a common)	
carrier of passengers by van)	
over irregular routes between)	
points in Adams County, and)	GRANTED AS MODIFIED
between points in Adams County)	
on the one hand, and, on the)	
other hand, points in Nebraska)	
over irregular routes. The)	
transportation of railroad train)	ENTERED: JANUARY 6, 2015
crews and their baggage is not)	
authorized. HHS Designation:)	
Yes.		

APPEARANCES

For the Applicant:

Brad B. Moncrief
1239 Burlington Avenue #200
Hastings, NE 68901

For the Commission Staff:

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

For the Protestants:

Comstock Corporation dba
Action Cab:

Jack Shultz
Harding & Shultz, P.C., L.L.O.
800 Lincoln Square
P.O. Box 82028
Lincoln, NE 68501

Camelot Transportation:

Tara Paulson
Andy Pollock
Remboldt Luedtke LLC
1201 Lincoln Mall #102
Lincoln, NE 68508

BY THE COMMISSION:

BACKGROUND

By application filed on April 21, 2014, Hastings Concierges, Hastings, Nebraska, seeks authority from the Public Service Commission ("PSC" or "Commission") to operate as a common carrier in Nebraska intrastate commerce in the transportation of passengers by van over irregular routes

between points in Adams County, and between points in Adams County on the one hand, and, on the other hand, points in Nebraska over irregular routes. The transportation of railroad train crews and their baggage is not authorized. HHS Designation: Yes. Notice of the application was published in The Daily Record, Omaha, Nebraska on May 27, 2014. Timely protests to the application were filed by Comstock Company, dba Action Cab, through its attorney, Jack Shultz; and by Camelot Transportation through its attorneys Tara Paulson and Andy Pollock.

A Planning Conference was conducted by the Commission, with all parties participating, on August 13, 2014, and a Planning Conference Order was entered August 19, 2014. The Planning Conference Order scheduled the Hearing date, discovery and other deadlines.

A hearing on the application was held on October 29, 2014, with appearances as listed above. Notice of the hearing was sent to all parties of record on August 19, 2014.

EVIDENCE

Travis Phelps testified first for the Applicant. He is currently operating Hastings Concierges. It plans to operate a passenger transportation and errand service in the Hastings area. He is co-owner of the business with his wife, Megan Phelps. They are planning on being the primary operators and drivers for the company. They planned on serving primarily he disabled and elderly and to provide grocery and errand running services in addition to passenger transportation.

Mr. Phelps did acknowledge that the Applicant operated illegally for a period of time. He was contacted by a representative of the Commission, was informed to cease operations until he received authority, and subsequently did cease operations and apply for authority.

Mr. Phelps said that he has recently reviewed Commission Rules and Regulations and will abide by them. He said if he has questions regarding these rules and regulations he would contact his lawyer or the Commission to get answers to those questions.

Mr. Phelps testified that the company has purchased a van. He said that he has checked with insurance and is aware of the rates for the insurance. The Applicant is planning on

advertising in newspapers, on television, business cards, posters and word-of-mouth. The Applicant currently does not have any plans to hire employees, although it hopes to grow and need employees in the future.

Mr. Phelps stated that he has talked to a number of people regarding the proposed operation. He states that he has been receiving 10 to 15 calls per day regarding the service. He is unaware of other providers in the area other than Ryde, which offers some transportation service in Hastings, and as Action Cab.

On cross-examination by Ms. Paulson, Mr. Phelps said that the Applicant would use personal vehicles in the service if necessary. They also have a plan in place to borrow the funds necessary for a second wheelchair van is necessary. Mr. Phelps admitted that he has not discussed rates with his Ms. Phelps. He further admitted that on the illegal trips that they did provide that they charged \$10.00 per trip.

On cross-examination by Mr. Shultz, Mr. Phelps said that the wheelchair equipped van would be used for the elderly and disabled, and that the personal vehicles he cited would be used for other transportation. Mr. Phelps said that he and his wife would be the drivers, but that he hoped to have someone available on stand-by status if necessary. Mr. Phelps admitted that he did not know what he would have to pay someone to be available.

Mr. Phelps said that he has not discussed potential rates with any customers. He also has not developed a rate for any out-of-town trips that the Applicant may make.

Mr. Phelps said that the Applicant was looking at acquiring a second van for those situations when the first van may be occupied and a driver is available. He has priced a second wheelchair accessible van at about \$7,000.00. He also said that a personal vehicle could be used if necessary.

It was admitted by Mr. Phelps that he has not done a break-even analysis for the business. He further said that the assets listed for the Applicant are personal assets.

Mr. Phelps also admitted that he is not fully aware of the requirements to provide transportation for the Department of

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Health and Human Services. He has become aware of the driving restrictions that the rules impose and will follow those rules.

Mr. Phelps is not aware of the competition that is in the Hastings area regarding passenger transportation. He is aware of Ryde and Action Cab, but does not have knowledge of Camelot or any other providers similar to Camelot. He is not certain of what the potential impact these providers may have on the Applicant.

On examination by Commissioner Schram, Mr. Phelps said that the vans would be serviced by a company in Council Bluffs that specializes in the service of wheelchair vans. He said that the van would undergo at least an annual inspection by this company.

On examination by Commissioner Vap, Mr. Phelps said that he has checked with commercial insurance providers. These companies have indicated that the Applicant can expect to pay between \$400 and \$700 per month.

On redirect by Mr. Moncrief, Mr. Phelps, in an answer to an inquiry from Commissioner Boyle, that the number of inquiries regarding the proposed service has increased recently due to his word-of-mouth advertising regarding the errand service as well as inquiries regarding the passenger transportation service. Mr. Phelps also said that rates will be determined after the Commission acts on the application and that a determination of costs needs to be made.

On examination by Commissioner Boyle, Mr. Phelps stated that the errand service that the company is currently providing does not transport people but only picks the items up for the client and takes them to the client. The service also does not provide movement of household furniture.

On cross-examination by Ms. Paulson, Mr. Phelps said that he and his wife filled out the application. When asked why they only asked for vans to be used in the service, Mr. Phelps said that he did not understand the difference between van and sedan service.

Megan Phelps testified next for the Applicant. She currently works for Mary Lanning Health Care as a discharge nurse. Ms. Phelps, a co-owner of the Applicant, said that she got the idea for the proposed service from her work at Mary Lanning. She saw that there were many people that were not able

to get a ride home at all or on a timely basis upon their discharge from the facility. A timely discharge from the facility is good for the patient as well as good for the service of the facility as it increases the efficiency of the facility if the patients are able to leave on a timely basis. She believes that there is also a need for safe transportation at night for people that need to go to a hospital or a store for necessities. Ms. Phelps also states that there is a market to provide transportation for outings, parties, and safe ride home services at night.

Ms. Phelps stated that she had reviewed Commission Rules and Regulations and that the Applicant would abide by all applicable rules. Ms. Phelps further reviewed some of the general expenses that the Applicant would incur, and that the company was able to increase its fleet as demand may require. She said that Travis Phelps would be providing most of the transportation, while she would keep the books and drive on some occasions.

Ms. Phelps said that she was not aware of Camelot Transportation, she but had heard of Action Cab. She said that she believed that there was a "general feeling" that Action Cab was not serving the Hastings area's needs very well.

On examination by Commissioner Vap, Ms. Phelps said they would operate pursuant to the Commission's rules, and that they would conduct a strong background check of their drivers.

Jamey Hamburger testified next for the Applicant. He is the owner of Wine Styles and Bistro Down Below in Hastings. He has lived in the Hastings area for 15 years. He said that there is a need for a service oriented car service in Hastings. His customers want a quicker service than that offered by the current cab company, especially around closing time at night. He said that he has had a number of occasions where he had to take customers home late at night due to the long wait for cab service. His clients have experienced a number of times where they have had to wait over an hour for service from Action Cab. Mr. Hamburger said that Action Cab "is a good company" that just gets overwhelmed at times.

Mr. Hamburger said that he will use the proposed service if it is granted by the Commission.

Danelle Hayes testified next for the Applicant. She is the program manager for Goodwill Industry in the transportation of the developmentally disabled. She said that Goodwill is in need of quick options for transportation, especially in the evenings. The need for such service happens daily. She said that Goodwill tried Ryde but that it did not work very well in that instance.

Ms. Hayes said that Goodwill has used Action Cab in the past, but has had some difficulty with the service provided. She noted that there were some trips that had up to a two hour wait, and reported some problems with a bad driver.

Ms. Hayes said that she would use the service if granted, but that needs of Goodwill would usually be only within Hastings. On cross examination by Tara Paulson, Ms. Hayes said that they only have trips that terminate out of Adams County about once every three months.

On examination by Mr. Shultz, Ms. Hayes said that Goodwill needs transportation about six to seven times per day and that price would be very important.

Eric Barber testified next for the Applicant. He works for Mary Lanning and oversees its day-to-day operations. Mr. Barber said that he sees daily patients that are not able to get home or cannot get home due to a lack of transportation. He stated that Mary Lanning has used Action Cab in the past but has experienced negative feedback regarding difficulties with the service provided; primarily in the area of timeliness. He has had employees take people home in the past when necessary, but prefers not to do that as many of the transportation services needed are for people who reside in areas outside of Adams County.

He believes that there is a need for the proposed service.

On examination by Commissioner Schram, Mr. Barber said that there are one or two people per day that are not picked up by family or friends.

On cross-examination by Ms. Paulson, Mr. Barber said that Mary Lanning has reached out to Action Cab in the past to help out with their transportation needs. He said that he has not contacted Camelot, although he could not give a reason for not reaching out to them.

Ronald Meyer testified next for the Applicant. He is a customer advocate for Mary Lanning. He deals with people and their needs primarily within the facility of May Lanning but occasionally in getting people home. To his knowledge there are five to six people per week that need transportation home from Mary Lanning, but that others in the facility also make arrangements that he may be unaware of so that the number may be closer to two or three per week. He gives rider home to two to three people per week in his position at Mary Lanning. He further said that there is often not much lead time from when a person is discharged to when they need transportation.

Mr. Meyer did state that he had an experience with Action Cab for a patient. He said that when the cab came to pick up the patient that it was filthy. On a second occasion the cab was delayed in its arrival to pick up the patient, causing the patient to wait a considerable amount of time.

Mr. Meyer knows the Phelps through his employment. He believes that they will provide a very professional service to the community.

Shirley Hart Arthur testified next for the Applicant. She lives in the Goldbeck Towers in Hastings. She became aware of Hastings Concierges when she was taken home from an emergency room situation by Travis Phelps. She has since used them for groceries and other errands and says that they do a good job with her. Ms. Arthur pays the Applicant for the grocery runs but not for other transportation.

Ms. Arthur has used Ryde in the past but since her accident has not used them. She also is interested in a service that does not have an advance notice requirement. She believes that Action Cab costs \$25.00 to go from Goldbeck Towers to the Walmart, which she feels is cost-prohibitive.

Ms. Arthur believes that the Applicant will provide a needed service as there are a number of people like her that need transportation and errand services. She noted a grocery store that provided grocery delivery for 50 people had closed. These people are in need of a delivery service such as the one to be provided by the Applicant. She also states that the service will be needed by people like her as it is good to get out sometimes and away from the Towers, and that this service will provide a way for people like her to do that.

On examination by Ms. Paulson, Ms. Arthur said that none of her trips were related to the Nebraska Department of Health and Human Services. She also said that she would look at taking Camelot Transportation, but that she doesn't know anything about them now and that someone would need to recommend them to her.

On examination by Mr. Shultz, Ms. Arthur said that she had a wonderful first experience with the Applicant. She said that Ryde was a good service but that they had a lift service as opposed to a ramp service on their buses, and that due to a physical limitation she cannot at this time use the Ryde buses.

Mr. Shultz informed Ms. Arthur that the trip to Walmart from the Towers was only \$10.50, which would make a round trip \$21.00. Ms. Arthur said that she would consider using Action Cab in the future, but that she preferred to use the Applicant. She is not aware if there are any other providers of wheelchair service in Hastings. She said that she has checked in the past with her representative at the Goldbeck Towers, but that they have not made her aware of any other services of this type.

Alissa Kern testified on behalf of protestant Camelot Transportation. She is the Managing Director for Camelot, which has performed statewide passenger transportation service since 2012. The company has 40 to 4 vehicles and 48 employees. It focuses primarily on HHS transportation through two different contracts, but also does provide private pay services.

Ms. Kern testified that her company provided around 650 trips that involved Adams County and Hastings in 2013. She stated that they did turn down around 50 trips due to the unavailability of equipment. She said that they do refer passengers to other companies if they are not able to provide the service.

Ms. Kern noted that there are other providers in the Hastings area that compete for service provision, primarily for HHS traffic. These providers include Midwest Special Services, GPS Transportation and Action Cab. She stated that there is currently not point-to-point transportation provided in Hastings by Camelot as they do not currently have a driver located there. The company does desire to provide such service, however.

On examination by Commissioner Boyle, Ms. Kern said that the company currently has ads with the Nebraska Workforce Development in an effort to recruit a driver.

Ms. Kern testified that the granting of the authority would affect not only the Hastings area but also the protestant's services in Grand Island and Kearney as well. If there was a diminution of available trips it could impact the drivers' ability to make a living and therefore find other work, which would have an impact on the ability of the protestant to provide service. She expressed some concern that Mary Lanning has not called her office regarding any service issues that they may have experienced. Camelot is prepared to increase its services to Mary Lanning if called upon to do so.

On cross examination by Mr. Moncrief, Ms. Kern admitted that there are currently no drivers in Hastings and that there has not been since its inception in 2012. She reiterated that the protestant has seven vans in the Douglas/Sarpy County area, with the rest spread throughout the state.

Mr. John Bartu testified on behalf of Action Cab. He is the vice president of the company and has been in his position for 15 years. The company provides point-to-point transportation in Grand Island and Hastings and has 16 employees. They advertise in the Yellow Pages and newspapers as well as fliers to companies. His company's vehicles are all registered in Grand Island, but there are two vehicles in Hastings at all times.

Mr. Bartu said that his company provides service in the Hastings area, including the Mary Lanning facilities. His records indicate that they did 66 runs for Mary Lanning in a six month period. He does not have any information regarding any complaints that Mary Lanning may have with his service.

Mr. Bartu testified that the diversion of business that could result from the granting of this application would impact his drivers and therefore the ability of his company to provide service. On most nights there are around 20 calls for three drivers in the Hastings area. The diversion of much traffic would impact the ability of his drivers to maintain their employment with his company, and if the drivers leave the service will be impacted. Mr. Bartu noted that Hastings College started a Bronco Bus to provide transportation for its students on Friday and Saturday nights and that this had a negative impact on his business.

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Mr. Bartu also noted that there was also R & A Transportation and Kearney Cab that operated in the Hastings area as well as those cited by Ms. Kern.

Mr. Bartu does not believe that Hastings can support another transportation company. His current business is not very profitable due to the amount of competition, and that there is less business to go around due to this competition.

On examination by Commissioner Vap, Mr. Bartu said that he has one wheelchair equipped van in service. He has not received a request for a wheelchair van from Mary Lanning.

On cross-examination by Mr. Moncrief, Mr. Bartu said that his seven vehicles are registered in Hall County, but that two of them are always in Hastings. He said that there is not enough business to keep all seven of them going at all times, and that Hastings after 1:00 a.m. can get by with one taxi at nights. He stated that he could not understand why there would be a delay of two hours as was stated by some of the Applicant's witnesses.

Mr. Bartu further stated that only Action Cab is currently providing point-to-point service in Adams County at the present time.

On examination by Commissioner Schram, Mr. Bartu noted that his wheelchair van provides about three trips per month.

OPINION AND FINDINGS

In this particular case, Applicant is seeking to become a common carrier of passengers by van over irregular routes between points in Adams County, and between points in Adams County on the one hand, and, on the other hand, points in Nebraska over irregular routes. The transportation of railroad train crews and their baggage is not authorized. HHS Designation: Yes.

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 evidence 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. Applicant presented evidence that shows an adequate ability to operate the proposed service. 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 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 background that would cause it to find that the owners are personally unfit to operate the business. 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.

Based upon the evidence before us and adduced from the record in the instant case, the Commission finds that the Applicant has met the fitness test of Neb. Rev. Stat. §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 provided testimony from a member of the local business community, from Goodwill Industries, representatives from a large medical organization in Hastings, and a member of the general public, all citing the need for additional transportation services. These witnesses all set forth issues with the current level of transportation being delivered in the Hastings area, including availability and timeliness of service. The evidence was consistent that, while current providers are meeting some of the needs of the general public, there is still areas of unmet need.

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 help to 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 shows that the Protestants are not currently meeting the needs of the general public. The protestants are providing some service in the proposed service area, but the testimony shows that there are still significant needs that are not able to be addressed by them.

It therefore appears from the record that the Protestants have not shown that they either can or will fill this public purpose or need.

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. Ms. Kern and Mr. Bartu did state that the proposed operation would hurt the respective businesses and that the granting of the proposed authority would have a negative effect.

However, the Commission finds that the interest of the public outweighs the potential damage that may be caused to the Protestants, which at this point in time is speculative. The Protestants did not produce any specific evidence as to the impact on the operations of their businesses. While the Protestants stated that the granting of the authority would be damaging to their companies, they did not say to what extent the damage that may occur would curtail their operations or what changes the Protestants may make in response to the potential granting of authority. The public interest in this matter is significant. The public has an interest in having an adequate transportation service 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 serve in the proposed manner without endangering or impairing the operations of existing carriers contrary to this public interest.

One last area to be addressed is the issue of the HHS Designation. By Commission rules and regulations, the Commission must find that "the applying carrier must demonstrate that such authorization is or will be required by the present or future convenience and necessity separate and apart for the present or future convenience and necessity demonstrated on the underlying certificate of authority". In this Application, the Commission finds that no such demonstration regarding the request for HHS Designation of Yes has been made. The applying carrier in this application did not demonstrate that such authorization is or will be required by the present or future convenience and necessity. The Commission must therefore deny the designation for this Applicant in this proceeding.

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. § 78-301 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 by van over irregular routes between points in Adams County, and between points in Adams County on the one hand, and, on the other hand, points in Nebraska over irregular routes. The transportation of railroad train crews and their baggage is not authorized. HHS Designation: No.

3. The application should be granted as modified.

ORDER

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application B-1868, be, and it is hereby, granted as 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 Hastings Concierges, Hastings, 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.

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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 6th day of January, 2015.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Amy Boyle
Tim Schram
Rebecca
Gerald L. Vaz

Alan Sanders
Chairman

ATTEST:

Steve Meradith
Executive Director

