

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of Premier) Application No. B-1922
Limousine, LLC, Broken Bow,)
seeking authority as a common)
carrier in Nebraska intrastate)
commerce in the transportation)
of passengers by bus and)
limousine originating in points)
in Custer, Dawson, Sherman,) APPLICATION DENIED
Valley, Garfield, Blaine,)
Thomas and Logan Counties, on)
the one 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: No.) Entered: March 15, 2016

APPEARANCES:

For Applicant:	Christopher P. Wickham
	Sennett, Duncan, Jenkins & Wickham
	425 South 7 th Ave.
	PO Box 326
	Broken Bow, NE 68822

For Protestant:	Andrew S. Pollock
	Rembolt Ludtke LLP
	3 Landmark Centre
	1128 Lincoln Mall, Ste 300
	Lincoln, NE 68508

For the Commission:	Mark J. Breiner, Director
	Jamie L. Reyes, Staff Attorney
	1200 N St., Ste 300
	Lincoln, NE 68508

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BY THE COMMISSION:

B A C K G R O U N D

On November 2, 2015, Premier Limousine, LLC (Applicant), Broken Bow, filed an application seeking a Certificate of Public Convenience and Necessity to operate as a common carrier of passengers by bus and limousine between all points in Nebraska. Notice of the Application was published in The Daily Record, Omaha, Nebraska, on November 5, 2015. Timely protests were filed on November 23, 2015, by Destinations d/b/a Chauffeured Services, LLC ("Destinations" or "Protestant"), and on December 1, 2015, by Night Life Limousine, LLC.

On December 6, 2015, Applicant amended its application to restrict its geographic area to points originating in Custer, Dawson, Sherman, Valley, Blaine, Thomas and Logan Counties, on the one hand, and, on the other hand, points in Nebraska over irregular routes. On January 11, 2016, Night Life Limousine withdrew their protest to the Application.

A hearing on the Application was held on February 10, 2016. Mr. Christopher Wickham appeared on behalf of Applicant, Mr. Andy Pollock appeared on behalf of Protestant, and Ms. Jamie Reyes appeared on behalf of Commission Staff.

E V I D E N C E

Mr. Curtis Cole testified on behalf of Premier Limousine. Mr. Cole is a member of Premier Limousine, LLC, with Mr. Christopher Myers. Both Mr. Cole and Mr. Myers are construction contractors. Mr. Cole testified that he decided around September 3, 2015, to start a limousine company. According to Mr. Cole, they conducted some studies and spoke to local businessmen prior to purchasing a 22 passenger Ford Excursion in late October 2015. Mr. Cole testified that he and Mr. Myers were unaware that another limousine company, Destinations, was operating in Custer County. Mr. Cole stated that they have received approximately six inquiries into the company's availability to provide transportation with their limousine. Mr. Cole testified that the company would provide transportation sporadically and not non-stop.

Two letters of support were filed as Exhibits 8 and 9 and received into evidence. No other witnesses appeared on Applicant's behalf.

On cross examination, Mr. Cole testified that Premier Limousine has no employees but would use existing office space, storage, and three employees of Mr. Myers in their business will serve as drivers and a bookkeeper for the company.

Mr. Cole was asked about whether he or Mr. Myers knew about Destinations prior to submitting their application with the Commission. Mr. Cole stated that he did not know about Destinations prior to the filing of Destinations' protest. However, Mr. Cole testified on cross examination that Mr. Myers stores the limousine owned and operated by Destinations in his storage business, Premier Storage.

Ms. Tammy Jett testified on behalf of Destinations. She is a co-owner of Destinations with Mr. James Barnhart and handles the administrative and marketing operations of the company. Ms. Jett testified that she and Mr. Barnhart, who is originally from Custer County, moved to the Broken Bow area in April 2015. Destinations applied for its authority with the Commission about late August 2015 and was granted its certificate on November 17, 2015. Ms. Jett stated that Destinations operates one vehicle, a 10 passenger stretch limousine. Ms. Jett testified that she signed a contract with Premier Storage in October 2015, and that she heard a radio advertisement for Premier Limousine the next day. Ms. Jett stated that she did not know about Premier Limousine prior to the radio advertisement.

Mr. Barnhart also testified on behalf of Destinations. Mr. Barnhart is co-owner of Destinations with Ms. Jett, serves as the only driver for Destinations, and is involved with the day to day decisions with Ms. Jett. Mr. Barnhart stated that he and Ms. Jett spoke with the Chamber of Commerce about their limousine business in July 2015, and also spoke with a member of REAP, a rural economic development program, in August 2015, to create a business outline. Mr. Barnhart also stated that he and Ms. Jett completed a business development course in September 2015. Mr. Barnhart testified that Destinations is their only source of income, and plan to purchase another larger vehicle once they raise enough capital.

Finally, Ms. Jett was recalled by Mr. Pollock. Ms. Jett testified that she worked with the Nebraska Development Center in Kearney to run a report regarding market research of the local competition for their business.

Both Ms. Jett and Mr. Barnhart stated that Destinations decided to protest because they feel that their business may not

survive with two limousine companies in the same market. Two letters of support were entered into the record as Exhibits 19 and 20.

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 properly to perform the service proposed...and (b) the proposed service, to the extent to be authorized by the certificate, whether regular or irregular, passenger or household goods, is or will be required by the present or future public convenience and necessity. Otherwise, the application should be denied."

In order to be granted authority to operate as a common carrier, an Applicant must provide that it is fit, willing and able to provide the proposed service and that the proposed service "is or will be required by the present or future public convenience and necessity." No evidence was provided regarding Applicant's fitness; therefore the Commission declines to make a finding on Applicant's fitness to provide service.

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."¹

¹ *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 required with public convenience and necessity is ordinarily a factual issue.²

In the present case, the record does not present sufficient evidence of need and necessity to support a grant of the application. Applicant produced one witness in support of its application, along with two letters of support of the application. However, there was virtually no evidence presented regarding need. During the hearing, Mr. Cole testified that he and Mr. Myers spoke to businessmen in the area and conducted studies prior to submitting their application with the Commission, but no evidence was entered into the record showing the results of these studies. The Commission has little information from which to determine whether Applicant will serve a need in the areas that it is seeking authority.

The second part of the test is whether the purpose can or will be served as well by existing carriers. No evidence was put into the record by Applicant to show that the other provider in the area is providing inadequate service in the territories where the two providers would overlap.

The third part of the test is 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. Jett and Mr. Barnhart testified that the granting of the authority to Premier Limousine would be damaging to their business, and offered evidence of market reports and studies to illustrate their belief that the local market would not be able to support multiple limousine companies. Protestant's testimony and evidence are persuasive. The Commission finds that the public demand or need will not be served by Applicant without endangering or impairing the operations of existing carriers.

From the evidence adduced and being fully informed in the premises, the Commission is of the opinion and finds that the proposed application of Premier Limousine, LLC, should be denied.

² *Id.*

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O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. B-1922 be, and is hereby, denied.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 15th day of March, 2016.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Gerald L. Vap

Crystal Knowles

Frank E. Landis

//s//Frank E. Landis

//s//Tim Schram

Tim Schram

Chairman

ATTEST:

John L. Puley

Executive Director