

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the) APPLICATION NO. B-1966
Application of Mojo Mobility,)
LLC, Omaha, seeking authority)
as a common carrier in Nebraska)
intrastate commerce in the)
transportation of passengers by)
van in open class between)
points in Thurston, Dakota,)
Cuming, Burt, Dodge,)
Washington, Douglas, Sarpy,) DENIED
Saunders, Cass, Otoe, Butler,)
Colfax, Lancaster and Seward)
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: Yes.) Entered: March 5, 2019

For Applicant:

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For DHHS:

Kevin Griess
Nebraska Department of
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For Protestants:

Camelot Transportation; Triumph
Transportation; Action Cab; and
WHC NE, LLC, d/b/a Z Trip:

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Golden Plains Services, Inc.
d/b/a GPS Transportation:

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For Commission Staff:

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BY THE COMMISSION:

B A C K G R O U N D

On February 14, 2018, Mojo Mobility, LLC. ("Mojo" or "Applicant"), Omaha, filed an application seeking authority as a common carrier to provide transportation of passengers by van in open class between points in Thurston, Dakota, Cuming, Burt, Dodge, Washington, Douglas, Sarpy, Saunders, Cass, Otoe, Butler, Colfax, Seward, and Lancaster counties on the one hand, and on the other hand, points in Nebraska over irregular routes. The transportation of railroad train crews and their luggage is not authorized, and Applicant applied for HHS Designation. Timely protests were filed by Golden Plains Services, Inc. d/b/a GPS Transportation ("GPS"), Comstock Corporation d/b/a Action Cab ("Action Cab"), Camelot Transportation ("Camelot"), Triumph Transportation ("Triumph"), and WHC NE, LLC, d/b/a Z-Trip ("Z-Trip") (together, "Protestants") and were granted on April 10, 2018.

On April 18, 2018, a planning conference was held to set the procedural schedule. A hearing on the application was held pursuant to the procedural schedule on July 24, 2018, in the Commission Hearing Room with appearances as shown above.

EVIDENCE

Witness Testimony

In support of its application, Applicant produced three witnesses: Tara Neeman on behalf of the Nebraska Department of Health and Human Services ("HHS"), Robert McVey on behalf of Intelliride, and Marin Phelps on behalf of Mojo.

The first witness was Ms. Tara Neeman. Ms. Neeman works HHS in the Medicaid and Long Term Care Division as a program specialist for the Non-Emergency Medical Transportation ("NEMT") Contract.¹ Ms. Neeman explained that this service provides transportation for Medicaid clients to non-emergency medical appointments.² Ms. Neeman manages the contracts with the broker service, Intelliride.³

Ms. Neeman stated she is familiar with the need for NEMT in Nebraska and has regular contacts with Intelliride and the transportation providers.⁴ She further explained the role of Intelliride in the provision of transportation. Intelliride serves as the broker, maintaining contracts with individual transportation providers. When a client needs service, the client contacts Intelliride, who then reaches out to providers to fulfill the request.⁵ Ms. Neeman testified that on average, there are approximately 38,000 trips per month across the state.⁶

Mr. Guenzel inquired whether the current providers were able to meet the need and fulfill that number of trips specifically in Eastern Nebraska. Mr. Pollock objected because the providers would be better positioned to answer the question. Commissioner Rhoades overruled the objection and directed the witness to answer.⁷ Ms. Neeman testified there is always a need

¹ Hrg. Transcr. 5:5-11 (July 24, 2018).

² Id. at 5:13-24.

³ Id. at 6:1-4.

⁴ Id. at 6:10-19.

⁵ Id. at 6:24-7:11.

⁶ Id. at 7:23-25.

⁷ Id. at 8:9-17.

for providers, especially in rural areas. She noted that 5-6 clients per day on average are unable to receive service because of providers who have cancelled trips.⁸ Ms. Neeman did acknowledge this is an approximate number and she would need to review specific data to confirm the numbers.⁹ She further clarified that when referring to rural areas where these cancellations happen, she talking about extreme western Nebraska and areas where no providers are available. Mr. Guenzel inquired about the specific counties requested by the applicant. Ms. Neeman stated she is more familiar with western Nebraska.¹⁰

Ms. Neeman noted HHS becomes aware of clients lacking transportation when either the client or the doctor's office notifies HHS that the client has been unable to receive the necessary transportation. Ms. Neeman indicated the transportation is offered but not guaranteed. There are often incidents in rural western Nebraska where the clients are unable to get transport because they are too far from the transportation providers.¹¹ Mr. Guenzel inquired whether this was an issue across all parts of rural Nebraska. Ms. Neeman confirmed this was true and there are not enough providers across rural Nebraska generally.¹² She further clarified the only cancelled rides she becomes aware of are those that are reported by call, email, or other report. If the client or provider did not report the issue, she would not be aware of it.¹³

Commissioner Rhoades requested Ms. Neeman run the necessary report to corroborate her belief that there are 5-6 trips per day that go unfulfilled. Commissioner Rhoades further requested that the report be limited to the counties identified in the application.¹⁴ Commissioner Rhoades further requested Ms. Neeman

⁸ *Id.* at 8:22-9:3; and 9:9-17.

⁹ *Id.* at 9:20-22.

¹⁰ *Id.* at 10:5-17.

¹¹ *Id.* at 10:23-11:20 (Ms. Neeman offered a long explanation of this issue including specific examples of incidents in Western Nebraska where clients are too far from providers. She further acknowledged the business decisions made by providers to not provide those services.)

¹² *Id.* 12:4-10.

¹³ *Id.* at 16:21-17:3.

¹⁴ *Id.* at 19:3-11

provide data on when a carrier would have had a vehicle available but for whatever reason did not provide service.¹⁵

On cross-examination, Mr. Shultz inquired whether these rejected trips could be related to the rate structure. Ms. Neeman said she did not believe so, but elaborated that carriers do make business decisions.¹⁶ Ms. Neeman provided an example, stating that if a provider had to travel 150 miles to pick up a client, drive 75 miles to take the client to the appointment, another 75 miles back, and 150 miles to return to the provider's point of origin, the provider would not be compensated for 300 miles of travel and may decline the trip.¹⁷ Mr. Shultz further inquired as to other reasons providers may cancel a trip. He cited incidents where an incorrect address is given or the client refuses to leave his or her home. Ms. Neeman agreed those were possibilities.¹⁸ Mr. Shultz questioned whether there was a need in more urban settings like Lincoln and Omaha. Ms. Neeman stated there is always a need for transportation, including wheelchair providers.¹⁹

Mr. Pollock further questioned Ms. Neeman regarding changes planned for Medicaid Transportation. Ms. Neeman stated that transportation would be carved into the new Managed Care system, meaning the managed care companies will be responsible for enrollment and contractual obligations associated with transportation.²⁰ It is unclear what impact this would have booking transportation and/or the Intelliride system.

The next witness called by Applicant was Mr. Robert McVey, the Network Coordinator for Intelliride. His primary role is to coordinate providers and drivers and to grow the network of providers and drivers.²¹ Mr. McVey explained the process by which clients may request transportation. Specifically, he noted the clients request transport, providing the time of the appointment

¹⁵ *Id.* at 20:2-9

¹⁶ *Hrg. Transcr.* 21:22-22:9.

¹⁷ *Id.* at 48:6-16.

¹⁸ *Id.* at 23:21-24:3

¹⁹ *Id.* at 25:7-16.

²⁰ *Id.* at 29:21-30:5

²¹ *Id.* at 33:7-13

and the time it is to be completed. Mr. McVey further noted Intelliride utilizes an algorithm for trip assignments based on availability, cost, and on time performance.²² Several Commissioners questioned Mr. McVey regarding trip assignments. He indicated whether a provider has a tablet or not does not make a difference for trip assignments. Mr. McVey also stated that IntelliRide schedules trips based entirely on the algorithm described above. Commissioner Ridder asked whether that policy has changed within the last year but Mr. McVey did not know the answer.²³ Commissioner Rhoades inquired how Intelliride gathers the data related to on time performance for non-tableted providers. Mr. McVey simply stated that on time data is gathered daily. Whether a provider has a tablet or not, Intelliride knows where they are at any given time. He offered no further explanation.²⁴ Commissioner Ridder requested Intelliride provide the algorithm for how each factor is weighted. Mr. McVey stated he could provide that information.

Mr. McVey indicated that the issue that most commonly results in an incomplete trip is when there is not a provider available. In that instance, reservation agents are to attempt to call three providers and if none of the contacted providers is available, the trip request is referred to Mr. McVey's team.²⁵ Mr. McVey agreed with Ms. Neeman's testimony that there are approximately five trips per day that no provider is found that is available to complete the trip.²⁶

²² *Id.* at 34:12-22.

²³ *Id.* at 48:25-49:2; 49:20-50:11; 50:16-51:21 (Commissioner Schram first asked about the consideration of the tablet. Mr. McVey stated it was given no weight. Commissioner Johnson noted the Commission has heard testimony repeatedly that the tableted providers receive priority. Mr. McVey stated he completed the reservation training and there was no mention of the tablets if it was a reservation made for 2-3 days out. Commissioner Ridder asked Mr. McVey to summarize the algorithm again. Then asked how trip assignments are handled. Mr. McVey provided the summary and stated they call providers who do not have tablets.)

²⁴ *Id.* at 53:18-54:4

²⁵ *Id.* at 36:3-16

²⁶ *Id.* at 37:2-14 (In this section, Mr. McVey also offered testimony supporting Ms. Neeman's assessment of business decisions made by providers when the distance is too great.)

Mr. Guenzel questioned whether there were enough providers in Dakota and Thurston Counties. Mr. McVey indicated he does not believe there are a sufficient number in that area. He indicated there are a few providers in the area, but, especially around South Sioux City, it can be difficult to find transportation if those providers are booked.²⁷ Mr. McVey further explained it is relatively easy to get transportation for a South Sioux City to Omaha trip because of the distance, but approximately twenty-five to thirty percent of the time a point-to-point trip within South Sioux City would go unfulfilled.²⁸ Mr. Guenzel questioned whether a need for additional providers exists in Eastern Nebraska. Mr. McVey stated that a need exists, especially outside of Lincoln and Omaha.²⁹ Mr. McVey clarified that there is an overall need for transportation because every day there are rides that go unfulfilled.³⁰

Commissioner Landis noted several companies have testified in the past that available drivers are not utilized, and that if Intelliride makes several telephone calls until trips are filled, this information does not seem to match. Mr. McVey explained that they typically fill ninety-five percent of the trips but they tell providers not to fill trips back to back so that there is room for error and delay. There are providers whose tablets are not full all of the time.³¹ Mr. McVey went on to explain that there is not a great need in Omaha and Lincoln but there are still times where there are not enough vehicles on the road.³²

On cross examination, Mr. Shultz highlighted that given the monthly total of 38,000 trips, with 5-6 per day going unfulfilled, that means about one third of one percent of trips go unfulfilled. Mr. McVey agreed this was probably accurate and a good percentage for the company. However, Mr. McVey pointed out it is not good for the clients who need that transport and

²⁷ *Id.* at 38:1-4.

²⁸ *Id.* at 38:24-39:12.

²⁹ *Id.* at 40:13-21.

³⁰ *Id.* at 42:6-15.

³¹ *Id.* at 57:4-9 and 15-24.

³² *Id.* at 59:17-23.

have been denied.³³ Mr. Shultz further inquired about the economic decisions at play in taking particular trips. Specifically, if a provider is located in Fremont and a point-to-point trip in South Sioux City amounting to 5 miles and a fare of approximately \$15 arises, Mr. McVey admits this may not be economically viable for the carrier.³⁴ Mr. Shultz noted granting this application would not change the economics of those types of trips and Mr. McVey agreed.³⁵ Commissioner Schram asked whether Intelliride makes any reports to HHS when providers are turning down rides based on the rate structure. Mr. McVey said he was unaware of any such reports.³⁶

Mr. Pollock next questioned Mr. McVey. Mr. Pollock noted Mr. McVey's opinion that there is always a need. He inquired whether Intelliride considers the impact on the business of existing carriers when new carriers enter the market. Mr. McVey stated Intelliride does not consider that impact but acknowledged that additional carriers could mean fewer trips for existing carriers.³⁷ Mr. Pollock further questioned what conversations Mr. McVey has had with carriers about the need Intelliride perceives. Mr. McVey indicated he has suggested to most carriers that they expand their hours and their service areas, especially into Bellevue and Plattsmouth.³⁸

On Redirect, Mr. Guenzel asked whether Intelliride would utilize Mojo's service if the application were granted. Mr. McVey indicated they would.³⁹ Additionally, Mr. McVey testified that though the services provided by Mojo would not meet all the needs discussed, they would fill important needs.⁴⁰

Finally, Ms. Marin Phelps testified on behalf of Applicant in her role as the manager of Mojo Mobility.⁴¹ Ms. Phelps has

³³ *Id.* at 61:12-62:2.

³⁴ *Id.* at 62:9-63:2.

³⁵ *Id.* at 63:21-24.

³⁶ *Id.* at 80:10-16.

³⁷ *Id.* at 70:6-20.

³⁸ *Id.* at 73:16-74:9.

³⁹ *Id.* at 77:25-78:3.

⁴⁰ *Id.* at 79:19-25.

⁴¹ *Id.* at 83:5-8.

been in charge of the application process, research, and is the liaison for the owner who was not in state at the time of hearing.⁴² Ms. Phelps has a Bachelor's degree in governmental affairs and a Master's degree in Human Rights.⁴³ Ms. Phelps identified the owner of the company as Anna Stadelman.⁴⁴

Mr. Guenzel questioned why Ms. Phelps and Ms. Stadelman have endeavored to start this particular business. Ms. Phelps noted they both have researched gaps in service in their academic pursuits and lived through the experience of family members with disabilities being unable to get the services they need.⁴⁵ Ms. Phelps asserted the Business Plan and addendum in Exhibits 10 and 11 were assembled based upon her research. She created the projections after discussions with HHS and Intelliride as well as reviewing the rates of other carriers. The rates selected by Mojo are based off those approved for Lift Medical Transport.⁴⁶ Ms. Phelps further testified Mojo has two vehicles, both equipped with electronic lifts for wheelchairs, rated at 800 pounds. This would be sufficient to serve the bariatric patients discussed by Ms. Neeman and Mr. McVey.⁴⁷

Mr. Guenzel questioned Ms. Phelps regarding the readiness of Mojo to operate. Ms. Phelps indicated Mojo has already arranged for two drivers, they have a line of credit established, and they currently have at least two to three months of working capital.⁴⁸ Ms. Phelps further testified Mojo intends to consult with Intelliride to determine what the biggest needs are and set their schedule accordingly. They will be available early in the morning, late evening, and weekends.⁴⁹ Additionally, Ms. Phelps noted the counties Mojo will serve were

⁴² *Id.* at 83:16-20.

⁴³ *Id.* at 83:23-25.

⁴⁴ *Id.* at 85:9-17.

⁴⁵ *Id.* at 86:10-18.

⁴⁶ *Id.* at 89:8-90:19; see also Exhibits 10 and 11. (This section is a series of questions by Mr. Guenzel asking what the process was for determining need and for deciding on the rate process. Exhibit 10 is the business plan of Mojo drafted by Ms. Phelps and Exhibit 11 is the addendum that more clearly addresses budget and rate projections).

⁴⁷ *Id.* at 92:5-23.

⁴⁸ *Id.* at 94:4-95:1. (Mr. Guenzel completes a series of questions about financial fitness.)

⁴⁹ *Id.* at 95:4-17 and 20-24.

selected based on a desire to serve the rural areas surrounding the major metropolitan areas but still recognizing the business aspect of this endeavor.⁵⁰

On cross-examination, Mr. Shultz questioned whether Mojo would complete a point-to-point trip in South Sioux City if the closest driver were in Fremont or Omaha. Ms. Phelps indicated they likely would not take that trip, but she also stated they would consider stationing a driver in South Sioux City based upon the recommendations of Intelliride.⁵¹ In response to further questioning by Mr. Shultz, Ms. Phelps agreed that the projections set forth by Mojo were based entirely on wheelchair trips, taking ambulatory trips "if necessary." Ms. Phelps also admitted she was unaware what percentage of Non-Emergency Medical Transportation trips are wheelchair trips.⁵² Ms. Phelps testified the drivers they hired would be employees, and therefore Mojo would pay overtime wages to these drivers if they exceeded forty hours, and no one has begun working on taxes for Mojo yet. Mr. Shultz pointed out neither overtime pay nor payroll taxes were presented in the projections created for Mojo's business plan.⁵³

Mr. Shultz asked Ms. Phelps whether Mojo would provide transportation to the general public. Ms. Phelps indicated that was not their intention.⁵⁴ The business plan in Exhibit 13 has a projected revenue of more than \$230,000 in 2020. Mr. Shultz inquired whether there was that much traffic not currently being served. Ms. Phelps indicated HHS and Intelliride told her that Mojo would be constantly busy and the needs were not being met.⁵⁵

Mr. Pollock next questioned Ms. Phelps. He asked about the decision to operate in Eastern Nebraska, as it is the most lucrative area. Ms. Phelps noted Applicant chose the area because it is the area with which she is most familiar and it is the most cost effective.⁵⁶ Ms. Phelps acknowledged she was

⁵⁰ *Id.* at 96:17-25.

⁵¹ *Id.* at 101:9-24.

⁵² *Id.* at 110:4-15.

⁵³ *Id.* at 116:1-8; 116:12-19; 116:22-117:6.

⁵⁴ *Id.* at 117:7-9.

⁵⁵ *Id.* at 117:15-118:3; see also Exhibit 13.

⁵⁶ *Id.* at 130:9-22.

unfamiliar with the roles and service territories of other carriers, including Camelot and Triumph, with statewide authority as open class carriers, and Z Trip as a taxi service serving eastern Nebraska.⁵⁷

Mr. Pollock followed up on the question asked by Mr. Shultz about whether Ms. Phelps intended to serve the general public. Ms. Phelps indicated Applicant intended to serve the area of greatest need and did not wish to be a taxi service. There is sufficient need within HHS service and Mojo does not feel the need to pursue general service.⁵⁸ Ms. Phelps further stated they are not interested in becoming a general service to the public because the owner only wished to serve Medicaid patients.⁵⁹ On questioning from Commission Staff, Ms. Phelps indicated she would not provide service to the general public, and if a member of the public called for a ride, Mojo would decline the trip.⁶⁰

Mr. Pollock called the next witness, Ms. Terri Barry with Camelot and Triumph as a rebuttal to Mr. McVey's testimony. Ms. Barry is the office manager for Camelot and Triumph, and has worked there for five years. Ms. Barry explained that both companies have statewide authority, Camelot provides ambulatory service and Triumph provides wheelchair service.⁶¹ Ms. Barry explained there are 50 passenger vehicles and 3 wheelchair vehicles in their fleet, totaling 53 vehicles. The two companies have 50 drivers with only one operating a wheelchair vehicle because they do not have sufficient business to warrant use of the other two wheelchair vehicles.⁶² Ms. Barry further indicated the companies have drivers stationed throughout the state, but they do not have a driver stationed in South Sioux City.⁶³ Additionally, she noted that while the companies are busy, they have room to expand their business and they are not constantly booked with HHS transports.⁶⁴ Ms. Barry stated she has

⁵⁷ *Id.* at 129:16-130:4; 130:25-131:2.

⁵⁸ *Id.* at 131:3-10.

⁵⁹ *Id.* at 131:16-132:4.

⁶⁰ *Id.* at 137:5-13.

⁶¹ *Id.* at 140:5-10; 141:5-15.

⁶² *Id.* at 141:16-142:5.

⁶³ *Id.* at 142:7-21.

⁶⁴ *Id.* at 143:8-14

had conversations with Mr. McVey about her drivers' workloads and locations. She indicated they have drivers sitting idle. She asserts there has been no increase in workload based upon those conversations with Mr. McVey.⁶⁵

Ms. Barry acknowledged that they would make determinations on whether to take a trip based on availability and location of drivers. Specifically, Ms. Barry noted they would decline a point-to-point trip in South Sioux City if the closest driver were located in Omaha or Norfolk.⁶⁶ Camelot and Triumph do not subscribe to the tablet system Intelliride uses. Ms. Barry noted that her understanding of the system was different from that noted by Mr. McVey. Specifically, Ms. Barry said they were under the impression that tableted providers were contacted first, and then other providers would receive the trips that were left.⁶⁷ Contrary to Ms. Neeman's testimony, Ms. Barry stated that there is no meaningful way for Intelliride to track non-tableted providers' on-time performance.⁶⁸ Commissioner Rhoades requested Ms. Barry provide Camelot's own on-time performance records related to Medicaid trips and the vacancies/availability of their vehicles.⁶⁹

On cross-examination, Ms. Barry testified there are 20-40 trips per day that Camelot and/or Triumph cannot complete.⁷⁰ Commissioner Landis inquired about the two wheelchair vehicles currently unused in the company's fleet. Ms. Barry noted Triumph has attempted to move locations of those vehicles, and the company has been unable to hire drivers for those vehicles because no trips have been assigned to them.⁷¹

The next witness was Ms. Alissa Kern on behalf of Camelot Transportation ("Camelot") and Triumph Transportation ("Triumph"). Ms. Kern is the Managing director for Camelot and

⁶⁵ *Id.* at 150:23-151:12

⁶⁶ *Id.* at 144:22-145:6

⁶⁷ *Id.* at 146:18-147:1

⁶⁸ *Id.* at 147:2-9

⁶⁹ *Id.* at 153:7-19; 153:23-154:6

⁷⁰ *Hrg. Transcr.* at 155:10-24

⁷¹ *Id.* at 157:7-21

Triumph.⁷² Ms. Kern indicated that Camelot and Triumph currently provide transportation statewide for HHS. Triumph primarily handles wheelchair service.⁷³ Ms. Kern stated the service provided for HHS is a fluctuating part of their business. Camelot and Triumph have not been able to identify a consistent means for getting additional trips. She testified they have the capacity to fulfill twice the trips without hiring additional staff.⁷⁴ Of the approximately fifty drivers employed by Camelot and Triumph, only three are full time and the rest are consistently asking for additional trips.⁷⁵ Ms. Kern confirmed earlier testimony from Ms. Barry, who stated that Intelliride has no meaningful way to track non-tableted providers' on-time performance. Ms. Kern indicated the only information Intelliride receives from Camelot, a non-tableted provider, comes from Camelot when they reconcile their trips two to three days later.⁷⁶

On cross-examination, Ms. Kern stated she believes that Camelot and Triumph actually have the lowest wheelchair rates. She further noted she disagrees with the statement that lowest cost provider will receive trips.⁷⁷ Ms. Kern did acknowledge that her ambulatory rates are above the Medicaid maximum.⁷⁸ Ms. Kern testified that after Intelliride entered the market, Camelot increased their rates because they were receiving so few trips from Intelliride that they were unable to cover their costs.⁷⁹ She further noted they reduced Triumph's wheelchair rates on advice from Jamie Chambers with Intelliride, but did not see much purpose to reducing Camelot's rates after they had just raised them due to lack of business.⁸⁰

Mr. John Davis testified next on behalf of Z-Trip. Mr. Davis is the Director of Operations for Z-Trip, handling day-to-

⁷² *Id.* at 159:5-16.

⁷³ *Id.* at 160:4-11.

⁷⁴ *Id.* at 160:17-161:10.

⁷⁵ *Id.* at 162:12-17.

⁷⁶ *Id.* at 172:5-14.

⁷⁷ *Id.* at 164:10-16; 165:4-12.

⁷⁸ *Id.* at 166:7-12.

⁷⁹ *Id.* at 169:5-14.

⁸⁰ *Id.* at 169:13-170:4.

day operations.⁸¹ Mr. Davis stated Z-Trip serves Lancaster, Douglas, Sarpy, Cass, and Washington counties generally with 122 vehicles currently in operation including sixteen wheelchair vehicles.⁸² Mr. Davis did note that despite the addition of more wheelchair vehicles, he is unaware of any additional wheelchair trips received from Intelliride.⁸³ He further stated out of 122 drivers, only 11 participate in the Intelliride program to provide service for Medicaid clients, but one year ago, there were 28 drivers in that program. When asked why so many drivers stopped providing Medicaid transport, Mr. Davis indicated they were not receiving enough business to make it profitable and the drivers left the program.⁸⁴ Mr. Davis further noted the company received no reports of issues from Intelliride despite multiple meetings with Intelliride during this timeframe.⁸⁵ Mr. Davis stated they did not lease tablets when Intelliride first came into the market and they received thirty to fifty trips per day. After a few months, they approached drivers to see if the drivers were interested in renting tablets. Some of the drivers opted into this program and began receiving substantially more trips.⁸⁶

Mr. Davis explained that business has been declining over the past several years, stating that taxis have lost business as party buses, TNC's, and additional carriers enter the market. He noted in 2014, Z-Trip (then Happy Cab) had 170 drivers on the road versus 122 drivers now.⁸⁷ Mr. Davis stated the addition of Mojo to the market would likely affect his drivers directly. Even though Mojo only has two vehicles, Mr. Davis believes that addition may cause him to lose a driver.⁸⁸

Next, Mr. John Bartu testified on behalf of Comstock Corporation, d/b/a Action Cab. Mr. Bartu is the vice president

⁸¹ *Id.* at 177:15-18.

⁸² *Id.* at 180:5-16

⁸³ *Id.* at 192:16-24

⁸⁴ *Id.* at 182:3-11

⁸⁵ *Id.* at 182:16-24

⁸⁶ *Id.* at 183:24-184:9; 184:14-185:3; 185:10-13

⁸⁷ *Id.* at 186:20-187:8

⁸⁸ *Id.* at 190:18-191:2

and manages the fleet.⁸⁹ Action Cab provides service across the state so long as it begins or ends in Columbus, Grand Island, or Hastings. Mr. Bartu explained that Action Cab is authorized in Adams and Hall Counties for beginning and/or ending points.⁹⁰ Action Cab employs 20-25 drivers with 10 vehicles and has approximately three who are full time.⁹¹ Mr. Bartu noted the counties have their own rural transit programs. The buses are all ADA certified. He believes "Medicaid" (Intelliride/HHS) sends approximately 70% of their trips to these buses because the rate is so low.⁹² Mr. Bartu testified that Action Cab completes approximately 500 trips per week for Intelliride, mostly within Grand Island or Hastings. In June of 2018, he estimated they completed three long distance runs for Intelliride where the person needed a ride to an appointment more than 30 miles away. This is a decrease of approximately 20-30% from two years ago.⁹³

The final witness was Mr. Kirby Young on behalf of Golden Plains Services d/b/a GPS Transportation. Mr. Young is the owner of GPS.⁹⁴ Mr. Young testified his company provides service to the full extent of his Certificate, including service to the general public and HHS clients.⁹⁵ He estimates GPS has approximately 60 vehicles in operation including 15-18 wheelchair vehicles.⁹⁶ Mr. Young did note his wheelchair vehicles are all stationed in Lincoln and Omaha. If a wheelchair trip is requested in a rural area, the vehicle is dispatched from Lincoln or Omaha.⁹⁷ Commissioner Landis followed up, noting GPS will provide rural transport if the trips are compensatory. Mr. Young stated they will accept the trip if it will make a profit, if they will break even, or if they come close to breaking even and can find an additional short trip on the route.⁹⁸ Mr. Young responded to questions about dispatch, explaining that GPS

⁸⁹ *Id.* at 198:6-10

⁹⁰ *Id.* at 199:11-14

⁹¹ *Id.* at 200:3-11

⁹² *Id.* at 201:4-18.

⁹³ *Id.* at 204:8-9; 205:11-17

⁹⁴ *Id.* at 212:5-8.

⁹⁵ *Id.* at 212:12-17; 213:3-5.

⁹⁶ *Id.* at 213:22-214:3

⁹⁷ *Id.* at 223:20-224:2.

⁹⁸ *Id.* at 224:25-225:6.

dispatches vehicles by phone or text as well as through the Intelliride tablet system.⁹⁹ He asserts that much like Camelot, he has drivers who currently sit idle, and GPS could certainly expand if the need increased.¹⁰⁰

Mr. Shultz inquired how often GPS receives long trips for their wheelchair vehicles as outlined in the Applicant's business plan. Mr. Young stated trips like that come through once every couple of weeks.¹⁰¹ Mr. Young denied turning down business because GPS was too busy.¹⁰² He believes the entry of an additional carrier into the market would harm GPS' business, citing the entry of Lift Medical Transport. Mr. Young did not provide specific details or data to support this harm.¹⁰³

On cross-examination, Mr. Guenzel inquired whether GPS would lower its rates to get more trips. Mr. Young stated they would not because they need to cover their costs of operation and a race to the bottom would be harmful to the overall quality of service.¹⁰⁴ Commissioner Rhoades requested Mr. Young provide documentation or data about the vacancy and/or availability rates of GPS vehicles from the date of Application to the date of hearing. Mr. Young stated he did not know how to provide that and Intelliride should have it.¹⁰⁵

Late-Filed Exhibits

In total, the Commission requested and received seven late filed exhibits.

HHS filed late-filed exhibit 7, a list of Protestants' cancelled trips and trips where no provider was available to fulfill the trip; and late-filed exhibit 8, a list of Protestants' rejected trips. Late-filed exhibit 7 revealed a significant number of Protestants' trips that were cancelled and

⁹⁹ *Id.* at 214:5-7.

¹⁰⁰ *Id.* at 214:8-12

¹⁰¹ *Id.* at 216:12-14.

¹⁰² *Id.* at 216:20-22

¹⁰³ *Id.* at 217:1-17

¹⁰⁴ *Id.* at 221:23-222:4

¹⁰⁵ *Id.* at 223:1-5.

no other provider was available to complete the trip within the counties that make up Mojo's proposed service territory. From late February 2018 to July 2018, GPS cancelled approximately 74 trips, Camelot and Triumph cancelled approximately 28 trips, Z-Trip affiliated companies cancelled 23 trips, and Action Cab cancelled two trips where no provider was available.¹⁰⁶ During this same timeframe, Camelot and Triumph rejected 296 trips, GPS rejected 2,077 trips, Z-Trip affiliated companies rejected 55 trips, and Action Cab did not have any rejected trips in the counties where Mojo is seeking to provide service.¹⁰⁷

The first report showed 130 cancellations by Protestants due to "no provider available" in the identified counties between February 14, 2018, and July 24, 2018.¹⁰⁸ Additionally, HHS provided a list of 2,429 trips rejected by a Protestant during the same timeframe, limited to the counties requested in the Application.¹⁰⁹ It is important to note this data did not provide information as to how many of the rejected trips were fulfilled by another provider.

Commissioners requested Late-Filed Exhibit 27 to explain the algorithm used to assign trips to carriers in the Intelliride system. However, Late-Filed Exhibit 27 contained only Intelliride's trip assignment policy, which states tableted providers are given priority for trip assignments.¹¹⁰

Camelot filed Late-Filed Exhibit 28, which shows an on-time performance of 95% for trips and 100% for stops for Camelot. Exhibit 29, Camelot's vehicle and driver availability data, indicates Camelot and Triumph have 17 out of 46 drivers registered with Intelliride and, on average, 5-10 Intelliride drivers are utilized per day.¹¹¹

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¹⁰⁶ Exhibit 7.

¹⁰⁷ Exhibit 8.

¹⁰⁸ Hearing Exhibit 7.

¹⁰⁹ Hearing Exhibit 8.

¹¹⁰ *Id.* at 80:22-81:19. See also Exhibit 27.

¹¹¹ *Hrg. Exhibits* 28 and 29.

In the present case, Applicant is seeking authority to provide transportation of passengers as a common carrier by van in open class service between points in Thurston, Dakota, Cuming, Burt, Dodge, Washington, Douglas, Sarpy, Saunders, Cass, Otoe, Butler, Colfax, Lancaster and Seward Counties on the one hand, and on the other, points in Nebraska over irregular routes. Applicant is also seeking HHS Designation to provide transportation to passengers pursuant to a provider agreement with the Nebraska Department of Health and Human Services ("HHS").

Applications for common carrier authority are governed by NEB. REV. STAT. § 75-311(1) (Cum. Supp. 2016), 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.

The Commission must apply this two-part test in order to grant an application for common carrier authority.

For the first part of the test, an applicant must prove that it is fit, willing and able to provide the proposed service. Ms. Phelps provided substantial evidence indicating Mojo is fit to enter the market as a passenger carrier. Ms. Phelps has a background in governmental affairs and human rights. She has conducted research on business ideas to improve gaps in governmental services.¹¹² Additionally, Ms. Phelps has navigated the systems in place for those with disabilities in both her personal and professional life.¹¹³ The owner, Anna Stadelman, has been conducting research for her PhD in public health on ways to improve access to medical care from rural to urban areas.¹¹⁴ Ms. Phelps clearly showed Mojo is willing to enter the market. They have already purchased vehicles as

¹¹² Hrg. Transcr. at 82:23-84:5.

¹¹³ Id. at 86:11-24.

¹¹⁴ Id. at 85:12-17.

outlined in Ms. Phelps' testimony cited above regarding the finances of Mojo Mobility. As noted, they currently have a line of credit and have the ability to operate for two to three months without turning a profit. No evidence was presented to counter Mojo's fitness to enter the market as a passenger carrier. There were some concerns raised about the projections put forth by Mojo about the number of trips they would fulfill. However, this speaks more to need than to fitness.

Based upon the evidence presented, the Commission finds that Applicant has met the fitness test of Neb. Rev. Stat. § 75-311(1).

For the second part of the test, an applicant must prove that the service that it wishes to provide is 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.¹¹⁵

The issue of whether an applicant has met its burden of demonstrating that the proposed service is required by public convenience and necessity is ordinarily a factual issue.¹¹⁶ In addition to the test provided under the traditional analysis, Neb. Rev. Stat. § 75-311(3) requires that applicants wishing to receive authorization to provide Medicaid nonemergency medical transportation services pursuant to a contract with the Nebraska Department of Health and Human Services must demonstrate that receiving such authorization is or will be required by the present or future convenience and necessity to serve the distinct needs of Medicaid clients. The Commission must consult with HHS as part of this determination.

¹¹⁵ *In re Application of Nebraskaland Leasing & Assocs.*, 254 Neb. 583, 591 (1998).

¹¹⁶ *Id.*

The record before us presents sufficient evidence that Applicant's proposed operations will serve the distinct needs of Medicaid clients. Mojo provided witnesses from both HHS and Intelliride who asserted there were unmet needs for Medicaid transportation in the state. Neither Mr. McVey nor Ms. Neeman provided data at the hearing, but Applicant's late-filed exhibits supported these conclusions.

Protestants provided testimony that they have suffered loss of business with each additional carrier entering the market, but are prepared to serve the needs of the community. Additionally, Protestants each testified to having vehicles sitting idle; however, the data received from HHS and Intelliride shows numerous incidents where protestant carriers either cancelled trips because they had no one available to serve the client, or where the provider rejected a trip altogether. Protestants' data was not sufficient to explain how this could be the case while simultaneously having multiple vehicles sitting idle. Data submitted to the Commission was limited to the timeframe from the date of application to the date of hearing, the counties requested by Mojo, and the protest carriers.¹¹⁷

Each carrier acknowledged during testimony that business decisions are made to determine whether to take trips based on the distance of that trip from their available drivers. For example, neither GPS nor Camelot and Triumph had a driver stationed in the South Sioux City area. They acknowledged they would not take a point-to-point trip in South Sioux City to serve the needs of a client there because their nearest driver would be in Omaha, Fremont, or Norfolk. The trip would cost them more than they would be able to make on that trip. Ms. Phelps similarly acknowledged that if her closest driver were in Fremont, Mojo would make that business decision as well. However, she further stated that Mojo would consider placing a driver in the Sioux City area because of the needs described by Intelliride.

Protestants each presented testimony that the approval of an additional carrier would damage their business, and testified to the reduction in business they have seen over the past several years. Mr. Davis specifically noted in his testimony that other service classifications have affected business, including party buses and TNCs. Additionally, he discussed the

¹¹⁷ Hrg. Ex. 8, 9, 30-32 (July 24, 2018).

reduction in business for Z-Trip drivers who serve the HHS contract. However, Mr. Davis stated that when the company had 28 drivers serving the contract, they were receiving 1100 trips per week, or an average of seven trips per day per driver through Intelliride. Mr. Davis stated that during the last year they have seen a drop to 700 trips and 11 drivers serving that contract, which would calculate to an average 12 trips day based on those numbers. We would note, however, that the Commission has only admitted one carrier serving HHS in the area during the last year. Mr. Davis presented no evidence on the loss of availability, which may have affected the number of trips received. He did not provide data showing when the drop in trips occurred, specifically whether that drop occurred and caused drivers to leave the platform or whether drivers left the platform and Z-Trip received fewer trips as a result. Mr. Davis did acknowledge that the drivers were no longer driving for Z-Trip. During testimony, Ms. Kern cited a driver in the Falls City/Beatrice area who left the company because she saw a significant reduction in trips. Ms. Kern stated she has been unable to identify the reason for the reduction in Medicaid trips. While that testimony may highlight a problem, it is irrelevant to this case as that is not a service area sought by Applicant. Mr. Young did not present any evidence of specific damage to GPS, and the data from HHS and Intelliride showed the most significant number of rejections and cancellations were from GPS.

Mojo relied on the testimony of Ms. Neeman and Mr. McVey to show that a need exists even with the carriers already in the market. Their testimony focused more on areas not requested by Mojo. However, the subsequent data provided supports the conclusion that the need is not currently being served by the existing carriers. If there were a need not being met, it would follow that some trips are not being served and the existing carriers would not be harmed by the entry of a small carrier like Mojo.

Despite the fact that evidence suggests that Applicant would fulfill an unmet need, a problem still exists. All of the data presented by Applicant regarding need exclusively addressed service of Medicaid clients. No data was presented regarding service to the general public and the need that may exist in the counties in question. In fact, Ms. Phelps testified that Mojo would not provide transportation services to the general public and that Mojo would exclusively serve Medicaid clients.

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Applicant's Closing Statement argued that the "public" served by Mojo is Medicaid clientele, and they have successfully met their burden.¹¹⁸

A common carrier has a broader statutory duty to serve the public. Neb. Rev. Stat. §75-302(6) defines a common carrier as "any person who or which undertakes to transport passengers or household goods for the general public in intrastate commerce by motor vehicle for hire, whether over regular or irregular routes upon highways of this state." This definition does not permit carriers to deny transportation services to the general public and discriminate based upon payer source. Carriers applying for common carrier authority must present evidence to demonstrate that its proposed service will meet the public need and necessity as required by § 75-311(1).

As previously stated, the Commission must use a three-part test to determine whether a carrier's proposed service is or will be required by the present or future public convenience and necessity. The first part of the test is whether the proposed service would serve a useful purpose responsive to a public demand or need. No evidence was presented regarding public demand or need, and any evidence on need focused exclusively on Medicaid clients. As no evidence was presented, Applicant fails the first part of the test.

The second part of the test is whether the purpose could or would be served as well by existing carriers. No evidence was presented showing that existing carriers are providing inadequate service to the general public in the territory at issue in this case. The Commission is concerned that the record indicates existing carriers are not fulfilling a need for Medicaid clients in these counties. If existing carriers are making business decisions to not accept and complete Medicaid trips in certain distant areas as discussed during the hearing, the Commission questions whether these carriers are meeting the transportation needs of non-Medicaid passengers in these same areas. However, no evidence was put forth that the service to

¹¹⁸ Applicant's Closing Statement p. 2.

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the general public was inadequate or unavailable. Therefore, the Commission finds that Applicant fails part two of the test.

Finally, the third part of the test is whether the applicant can serve the public demand or need in a specified manner without endangering or impairing the operations of existing carriers contrary to the public interest. The Commission declines to enter a finding on this part of the test since Applicant has failed the other two prongs of the test. Nothing in the record supports a finding that Applicant has met its burden as it relates to its application for a common carrier certificate of authority.

Mojo specifically applied for authority as a common carrier. As such, Mojo would have the duty to provide transportation services to all, whether or not the passenger is a Medicaid recipient. A designation of authority to provide Medicaid non-emergency medical transportation cannot be granted without granting the underlying common or contract carrier authority. Without evidence regarding the common carrier authority, the Commission has no choice but to deny the application.

If Mojo wishes to limit the trips it serves to a specific class of clients, contract certification would need to be pursued. Contract carriers, as defined in §75-307(7), are "any motor carrier which transports passengers or household goods for hire other than as a common carrier to meet the distinct needs of each individual customer or a specifically designated class of customers without any limitation as to the number of customers it can serve within the class." The requirement of § 75-311(3) to prove that the proposed service would meet the present and future convenience and necessity would still apply.

Based on the above, the Commission finds that Application No. B-1966 should be denied.

O R D E R

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IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. B-1966 be, and is hereby, denied.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 5th day of March, 2019.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Don Waterman

Tim Schram

Pat [unclear]

Mary Rubin

Chair

ATTEST:

Phil S. HSP

Executive Director

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Commissioner Rhoades Dissenting:

I respectfully dissent from the majority opinion.

When questioned about whether Mojo would provide transportation to the public, I believe that the Applicant was clear that their intent was not to offer taxi service to the general public, but would instead serve other members of the public. The Applicant's answers on cross-examination did not lead me to believe that the carrier truly did not intend to serve a member of the public that would call for services.

The Applicant should also not need to prove additional need and necessity beyond that proven by the record before us. The exhibits submitted by HHS show 2,559 rejected trips in a six-month period. Such a high number of rejected trips by the Protestant carriers clearly shows a public need for services. This Applicant is fit, willing, and able to provide services for those Medicaid clients left with limited transportation options due to the "business decisions" that other carriers choose to make. I see no reason that this application should not be approved and this carrier granted operating authority.

Accordingly, I dissent.


Commissioner Crystal Rhoades