

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of Happy Cab	)	Application No. FC-1362
Company dba Checker Cab Co.,	)	
Happy Cab Co., and Yellow Cab	)	
Co., Valor Transportation dba	)	
Safeway Cab, and DonMark, Inc.,	)	
dba Cornhusker Cab Company,	)	
	)	
Complainants,	)	ORDER CLOSING DOCKET
	)	
vs.	)	
	)	
Servant Cab Company, LLC, dba	)	
Yellow Cab Company and Capital	)	
Cab Company,	)	
	)	
Defendants.	)	Entered: December 15, 2015

BY THE COMMISSION:

On July 30, 2014, a Formal Complaint was filed by Happy Cab Company d/b/a Checker Cab Co., Happy Cab Co., and Yellow Cab Co., Valor Transportation d/b/a Safeway Cab, and DonMark, Inc., d/b/a Cornhusker Cab Company (collectively "Complainants") against Servant Cab company, LLC, d/b/a Yellow Cab Company and Capital Cab Company (collectively "Defendants"). On August 15, 2015, Defendants filed its Answer.

On December 4, 2014, Defendants filed a Motion to Continue the hearing scheduled for December 22, 2014, to a date to be later determined. On December 5, 2014, the Hearing Officer entered an order granting the Motion.

A planning conference was held on March 6, 2015. Mr. Andy Pollock represented Complainants, Mr. Jack Shultz represented Defendants, and Mr. Mark Breiner represented Commission staff. During the planning conference, the attendees agreed to a procedural schedule and a hearing date. On March 30, 2015, the Hearing Officer issued an order memorializing the agreements and rescheduling the hearing for April 17, 2015.

A hearing on this matter was held on April 17, 2015. Ms. Tara Tesmer Paulson and Mr. Andrew Pollock appeared for Complainants, Mr. Jack Shultz appeared for Defendants, and Mr. Mark Breiner appeared for Commission staff.

## E V I D E N C E

Testimony was received from Ms. Courtney Miller, Deputy Director for Medicaid and Long-Term Care with the Nebraska Department of Health and Human Services (HHS). The Nebraska Medicaid program pays transportation carriers to provide nonemergency transportation (NET) services for HHS clients. Ms. Miller indicated that Medicaid is charged for NET services based either upon the maximum allowable fees listed under the NET fee schedule or the carrier's tariffed rate, whichever is lower. HHS makes no distinction between types of carriers in its fee system.

Ms. Miller stated that HHS contracts with a broker company called IntelliRide to arrange rides for HHS clients. IntelliRide then determines the applicable rate for each ride, and invoices HHS for the ride. The provider indicates that the payment is correct when it clears the trip. The Medicaid and Long-Term Care program pays IntelliRide and the participating carrier for the ride based upon the rates calculated by IntelliRide.

Ms. Miller testified that HHS utilizes multi-loading whenever possible in order to serve more clients in a day who require access to medical care. Ms. Miller stated that, should taxis not be allowed to utilize multi-loading for these trips, HHS would need to look at the potential of offsetting referrals from taxis to other common carriers if no other public transportation were available in order to utilize the most cost-effective provider first.

Finally, Ms. Miller testified to billing and reimbursement issues with the initial implementation stage within IntelliRide. Ms. Miller stated that there were problems with the system which left providers with only the option of submitting paper documents to clear trips in the system, and providers being reimbursed at a higher rate than what was appropriate. At the time of the hearing, HHS was in the process of correcting the issues and facilitating an electronic process with IntelliRide to clear trips.

During the hearing, Ms. Jamie Chambers of IntelliRide explained how multi-loading is used for those receiving transportation services through HHS. IntelliRide directs carriers that contract with the company to multi-load passengers who may be within a short distance of each other and dropping the passengers off at the same destination, or picking multiple

passengers from the same destination to drop off at multiple locations. Ms. Chambers testified that multi-loading is used in order to reduce wait times and to ensure that those in rural areas where vehicles are limited have access to rides. According to Ms. Chambers, if multi-loading were not allowed for taxi rides arranged by IntelliRide, demand would be higher than the capability of the providers in certain areas. Ms. Chambers also testified that the ride referral system does not differentiate between the classes of service offered by a participating provider. Those clients who cannot or should not ride with other passengers have the option of obtaining documentation of medical necessity to travel alone.

Testimony was also received by Mr. Kirby Young of Servant Cab Company ("Servant Cab"). During examination, Mr. Young explained that Servant Cab will multi-load passengers at the request of whoever is paying for the ride, whether that be the first person that enters the taxi cab or the company that Servant Cab contracts with for the ride. Mr. Young explained that Servant Cab is paid on a per-passenger basis when it multi-loads HHS passengers through IntelliRide. Mr. Young also testified that there had been billing issues with IntelliRide for several months, resulting in underpayment or overpayment for rides provided by carriers for HHS clients. As of the hearing, Mr. Young believed that IntelliRide had corrected any payments that had been at issue.

Finally, Mr. John Davis testified on behalf of Happy Cab companies. Mr. Davis testified that Happy Cab filed its complaint because Servant Cab was operating outside its certificated authority from the Commission. Mr. Davis explained that Happy Cab also multi-loads passengers in its contracts with Omaha area school districts and a vocational rehabilitation company transporting developmentally disabled adults. Mr. Davis testified that Happy Cab will turn on the meter when the first passenger is picked up and turn off the meter when the last passenger is dropped off. Happy Cab then charges the entity the metered rate from the trip and not on a per-passenger basis. Mr. Davis further testified that Happy Cab does not multi-load for IntelliRide because the company believes that the way IntelliRide authorizes the charges for multi-load rides as described by Servant Cab is outside the scope of Happy Cab's certificated authority. According to Mr. Davis, Happy Cab also has had issues with underpayment and overpayment to the company for trips provided through IntelliRide.

Exhibits 1 through 16 were offered and received. The Commission also took administrative notice of Title 291, Chapter 3 of the Nebraska Administrative Code, Motor Carrier rules. Post-hearing briefs were received on or around May 6, 2015 and the case deemed submitted.

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

Complainants allege in their Complaint that Defendants have violated Title 291, Chapter 3 of the Nebraska Administrative Code by multi-loading passengers without express consent of the fare-paying passenger in violation of § 011.01A; failing to operate each vehicle over the most direct route in violation of § 011.01B; charging fares on a non-metered basis in violation of §§ 010.01A and 011.01F; charging fares that are not authorized by Defendants' tariff as approved by the Commission in violation of § 002.01; and, charging discriminatory fares in violation of Neb. Rev. Stat. § 75-126(1).

Throughout this proceeding, the parties presented differing interpretations of each Commission rule in question. Complainants chose to file a formal complaint to address the alleged wrongdoing. However, either party at any point prior to the filing could have sought official Commission interpretation of the rules, which would have been the preferable course of action given the broad implications of our actions in this complaint.

In recognizing that this Order shall affect more than just the parties to this proceeding, the Commission hereby finds that a Rulemaking should be opened to examine the multi-loading and rate issues in their entirety. All taxicab carriers should have the opportunity to provide comment and input throughout the rulemaking process.

Additionally, the Commission declines to make a finding as to whether Defendants have violated the Commission's Rules in providing services to HHS clients and receiving reimbursements in the manner described. The Commission believes, however, that Defendants' actions do not conform with our interpretation of the Rules. The Commission will therefore interpret our Rules regarding taxicab multi-loading, fares and rates to serve as guidance to all taxicab carriers from this point forward while the Commission conducts the rulemaking process.

First, we will address Rule 011.01A regarding multi-loading in taxicabs. "Multi-loading" refers to more than one passenger occupying a vehicle at the same time. Rule 011.01A states that a taxi cab driver shall not allow additional passengers into the taxi without the express consent of the fare-paying passenger. The rule goes on to require that vehicles post a form which provides for the rights of refusal for the "first passenger." Based on the reading of the rule in conjunction with the form, the fare-paying passenger and the "first passenger" are considered one in the same. The first passenger would either grant or deny permission to the driver to multi-load the taxi during the trip, and would make arrangements with the additional passengers regarding payment of the fare.

In the present case, the "fare-payer" and the "passenger" are not the same person, and the fare is being paid by a third-party payee that is not a passenger in the taxicab. The Commission interprets Rule 011.01A to mean that when the fare is paid by another party, the first passenger under Rule 011.01A does not lose their right of refusal to share a taxicab ride. The driver should always ensure that express consent is received from the first passenger before allowing other passengers into the taxicab, as Rule 011.01A intended, no matter who is paying the fare.

Next, the Commission will address Rule 011.01B. Rule 011.01B requires taxicabs to operate over the most direct and reasonable route from point of pickup to point of destination. The Commission understands that passengers in a multi-loaded trip will not necessarily take the most direct route from their own point of pickup to their destination. However, the Commission believes that it is the responsibility of the driver to ensure that a multi-loaded trip is conducted over the most direct route from the pickup of the first passenger to the drop off of the last passenger.

Finally, the Commission will address our rules regarding rates and fares. Commission Rule 10.01A defines taxi service in relevant part as "the business of carrying passengers for hire by a vehicle...at a metered, mileage based or per trip fare according to the provisions of 011.01F..." Commission Rule 011.01F requires taxicabs operating in a municipality with a population of 15,000 or more to be equipped with taximeters which must conform to specifications required under the rule. NEB. REV. STAT. § 75-126(1)(a) prohibits a common carrier from charging or receiving greater or lesser compensation for any services

rendered than it charges or receives from any other person for doing a like or contemporaneous service unless provided by statute. Additionally, § 75-126(2)(a) allows a common carrier to provide services for free or at reduced rates for the State of Nebraska, which would include HHS, without penalty.

HHS has set forth in its Rules and transportation service provider contracts how payments would be calculated. According to testimony, HHS will pay carriers either the annual rate determined by HHS or the carrier's tariffed rate, whichever is less. IntelliRide calculates the rates and then determines which rate applies to the assigned trip, and provides that information to both HHS and the carrier. The carrier does not choose which rate will be charged for the rides that it is assigned, but reviews each trip to ensure that the information received from IntelliRide and HHS is correct. According to Ms. Miller, HHS will also perform post-payment review audits to ensure that provider payments through IntelliRide are correct. Once the carrier receives the reports from IntelliRide and HHS, the carrier has the responsibility to ensure that the final rates charged per trip are correct. Evidence showed that there have been overpayments and underpayments for trips, which Defendants and HHS were working with IntelliRide to remedy.

Taxicab carriers must receive reimbursements based upon either the metered rate or the annual rate determined by HHS for their contracted trips for HHS. HHS is aware of a provider's metered rate per the provider's tariff filed with the Commission. The tariffed rate is then used by IntelliRide to determine which rate should apply based upon how much a particular trip would cost at each rate. Reimbursement should occur at either the metered rate or the HHS rate whether the driver has the meter actually running in the taxicab or not.

When accepting reimbursement for multi-loaded trips, a taxicab carrier may not receive reimbursements on a per-passenger basis. The rates calculated by HHS and verified by a carrier may be correct, but accepting payment on a per-passenger basis results in a carrier accepting more for the trip as a whole than they would if the multi-loaded trip were not a trip for HHS. During the hearing, it was explained that for non-HHS multi-loaded trips, the fare-paying passenger would make the arrangements with the other passengers as to how the fare for the trip would be divided among them, and the taxicab driver would have the meter running to determine how much the fare for the entire trip would be. Although a taxicab driver may not be

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running the meter while on a HHS multi-loaded trip, reimbursement for the trip should be received on the same basis as if the meter were running. Otherwise, the provider is receiving more compensation for its HHS multi-loaded trip than it would for other multi-loaded trips.

This Order is intended to provide clarification of our rules, and the Commission therefore finds that this Order represents the Commission's interpretation of specific Rules regarding taxicab multi-loading, fares and rates. The interpretations presented in this Order shall be applicable to all carriers that provide transportation service by taxi, and providers should immediately cease any actions which would be inconsistent with this Order. No action will be taken against Defendants at this time.

Based on the above, the Commission finds that this docket should be closed.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that this Order shall serve as the official interpretation of the Commission rules in question and is applicable to all carriers which provide transportation service by taxicab.

IT IS FURTHER ORDERED that all carriers which provide transportation service by taxicab must cease any and all activities that are not consistent with this Order.

IT IS FINALLY ORDERED that Application No. FC-1362 be, and is hereby, closed.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 15<sup>th</sup> day of December, 2015.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

*Tim Schram*  
*Crystal Linder*  
*Red Johnson*

Chairman

*Gerald L. Vap*

ATTEST:

*Judy L. Pate*

Executive Director

//s//Frank E. Landis  
//s//Gerald L. Vap