

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) APPLICATION NO. B-1757
of Night Life Limousine, LLC,) SUPPLEMENT 2
Beatrice, seeking authority as a)
Common carrier in Nebraska)
Intrastate commerce in the)
Transportation of passengers and)
Their baggage in limousine)
Service by luxury limousines and) DENIED
Between points in Polk, Hamilton,)
Franklin, Butler, Platte and)
Lancaster counties, on the one)
Hand, and, on the other hand,)
Points in Nebraska over irregular)
Routes. HHS Designation: No.)
RESTRICTION: The transportation of)
Railroad train crews and their)
Baggage is not authorized.) ENTERED: APRIL 12, 2011

APPEARANCES

For the Applicant:

Night Life Limousine, LLC:

Jeffery Davis
114 North 6th Street
Beatrice, Nebraska 68310

For the Commission Staff:

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

For the Protestants:

OmaLink, Inc.:

Bradford Kistler
121 South 13th Street
Suite 601
Lincoln, NE 68501

BY THE COMMISSION:

BACKGROUND

By application filed June 7, 2010, Night Life Limousine, LLC, Beatrice, Nebraska, seeks from the Public Service Commission ("PSC" or "Commission") the authority to extend its authority in the transportation of passengers by

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luxury limousine and van between points in Polk, Hamilton, Franklin, Butler, Platte and Lancaster counties, on the one hand, and, on the other hand, points in Nebraska over irregular routes. Notice of the application was published in The Daily Record, Omaha, Nebraska on June 25, 2010. Timely protests to the application were filed by OmaLink through its attorney, Bradford Kistler; Leisure Limousine and Sedan Service; and by VIP Limousine, A-1 Limousine, and Alford Oil c/o Bill Alford. On July 22, 2010, a restrictive amendment as filed by the Applicant. The amendment removed all counties except Lancaster from the geographic area being sought.

A hearing on the application was held on the days of October 14, 2010 with appearances as listed above. Notice of the hearing was published in The Daily Record on September 14, 2010.

EVIDENCE

Mr. Joe Armstrong was called to testify for the Applicant. Mr. Armstrong is an owner and managing member of the Applicant. Night Life Limousine provides luxury transportation in limousine service in southeast Nebraska. The applicant is currently seeking to expand its authorized geographic area to include Lancaster and Franklin counties.

The Applicant has identified Lancaster County as the primary area for it to expand its business. Mr. Armstrong stated that he has received several requests from individuals in Lancaster County to provide service in the Lincoln area in the past. He estimated that they turn down between five and seven requests per week. The people that contact him have told him that they were not able to procure limousine service as all the providers "were full." Mr. Armstrong stated that most of the requests were for wedding parties to be taken from the church to the reception.

On cross-examination by Mr. Kistler, Mr. Armstrong stated that he referred the inquiries to Leisure Limousine, Luxury Limousine and VIP Limousine. He was not aware that OmaLink provided limousine service in the Lincoln area. Mr. Armstrong also stated that that not everyone that inquired about his service stated that the other companies were full, but that many of them did. He was not able to

give any information nor did he refer anyone to OmaLink as he was unaware of their existence.

Mr. Randy Monnier was called by the protestant OmaLink. Mr. Monnier is an employee of OmaLink. He was the executive manager of OmaLink before he took his current position as a driver for the shuttle, town car and limousine service. The position of executive manager was eliminated due to the lack of revenue to support the position.

OmaLink transports customers and clients to and from Lincoln and Omaha in an open class operation, and also has limousines and black cars in a luxury service. It has authority to operate between points in Lancaster County and also points in the state of Nebraska if the trip either begins or ends in Lancaster County.

OmaLink uses many different media to promote its business. They advertise in the Yellow Pages, maintain a website, and pass out business cards to prospective clients. OmaLink currently operates three vehicles in its limousine operations. It employs seventeen drivers between all its different operations.

Mr. Monnier stated that OmaLink has the capability to handle more business than it currently does. He stated that OmaLink has not run into a situation where it has had more business than it can handle.

Mr. Monnier next reviewed the competitive situation in Lancaster County. He stated that OmaLink does compete in Lancaster County with Leisure Limousine and with VIP Limousine, who both operate in Lancaster County. Based on OmaLink's current capacity and the competition that it faces from other companies currently operating in Lancaster County, Mr. Monnier stated he believed that there was not a need for an additional limousine certificate in Lancaster County.

On examination by Commissioner Boyle, Mr. Monnier stated that the limousine business was about ten to fifteen percent of OmaLink's overall revenue. He also stated that the three vehicles that are used by OmaLink are still being financed and are not paid for.

On cross-examination by Mr. Davis, Mr. Monnier clarified that the ten to fifteen percent figure that he had mentioned was just for the limousine portion of the business, and did not include the black car service that OmaLink provides.

Chris Stokes was called next by OmaLink. Mr. Stokes is the president and founder of the company. He considers the limousine portion of his operation to be a failure. He thought that it would be a logical extension of his core, open class van service. However, the business has not been what he had anticipated. The business is very seasonal, with prom and wedding seasons being very good, but the winter months suffering a slow down in trips booked. The clientele in Lincoln uses the limousines for special occasions and not as much for regular transportation. He stated that there has not been enough business in Lancaster County for him to grow that portion of the business as he had anticipated.

Mr. Stokes said that he believed that the current general economic situation probably had a negative effect on his business. He also said that is in not looking to sell his authority or to otherwise close down the limousine operation, but hoped that the economy would rebound and that business would then pick up.

Mr. Stokes testified that he believed that the Commission should not grant the application as another competitive certificated carrier would be absolutely detrimental to his business. OmaLink has some economies of scale that allow him to continue to operate, but that a further reduction in revenue would make it difficult to continue.

On examination by Commissioner Schram, Mr. Stokes said that plans for Lincoln may offer some additional opportunities, but that any such opportunities are three years down the road at best. He also said that he has given some thought to terminating the limousine portion of his business, but that he has not decided to do so at this time.

On examination by Commissioner Schram, Mr. Stokes testified that the \$4,000 per month figure that was quoted as the cost of operation for the Ford Expedition is only the cost of finance, insurance and maintenance, and does

not include such costs as gasoline and employees who drive for the clients.

On examination by Commissioner Boyle, Mr. Stokes stated that the limousine portion of his operation did not support itself. The other portions of the business are, to an unknown level, subsidizing the operation of the limousines. The accounting is set up for the company as a whole and it is difficult to exactly determine costs for each portion of the business.

James Joneson testified next for the Protestant Leisure Limousine and Sedan Service. Leisure has been providing services in the Lincoln area for six years. Mr. Joneson noted that in January of 2010, there were two limousine companies that had their main office in Lincoln. These two were supplemented by some other companies that operated in the Lancaster county area under state-wide limousine authority. As of the date of the hearing, two additional companies that once operated primarily from Syracuse, Nebraska, and Omaha have relocated to Lincoln. This has resulted in a decrease of Leisure's business in of twenty-six percent.

Bill Alford of VIP Limousine and A-1 Limousine testified next. He is the president of the protestants VIP Limousine and A-1 Limousine. He stated that his business has been hurt dramatically by two events. The first is the granting of additional authorities in the Lincoln market. There is now VIP, A-1, Leisure Limousine, Luxury Limousine, Leisure Limousine and OmaLink. Coupled with the downturn in the economy, this as resulted in a downturn in his business. Mr. Alford stated that many companies were already hurting, and that he has already cut back on his fleet in response to these conditions. The granting of an additional authority in Lincoln would increase the chances of current business failing, Mr. Alford said.

On examination by Commissioner Schram, Mr. Alford stated that his business was down 35 percent overall, and that the traditional stretch limousine business was down 50 percent. Mr. Alford cited that party busses also have emerged as competition for the limousine industry.

On examination by Commissioner Boyle, Mr. Alford stated that he has a computer system that tracks and can be used to deploy his fleet in a manner that reflects market

conditions in the areas that his companies operate. He has moved some of his fleet to Omaha rather than Lincoln as a response to the information provided to him. He stated this was due primarily to the increase in competition in the Lincoln market.

On cross-examination by Mr. Davis, Mr. Alford did say that the decrease in business of 50 percent was company wide and that he did not have specific information as to Lincoln. On cross-examination by Mr. Kistler, Mr. Alford stated that he would place additional vehicles in Lincoln if demand and market conditions warranted such a move.

On further examination by Commissioner Schram, Mr. Alford did state that there are some isolated times where his company was fully booked, such as the recent Texas-Nebraska football game. He further stated that these were very rare instances.

OPINION AND FINDINGS

Applications for common carrier authority are governed by Neb. Rev. Stat. § 75-311 (2000), which provides,

A certificate shall be issued to any qualified applicant authorizing the whole or any part of the operations covered by the application if it is found after notice and hearing that (a) the applicant is fit, willing and able to properly perform the service proposed. . . and (b) the proposed service is to the extent to be authorized by the certificate, whether regular, or irregular, passenger or household goods, is or will be required by the present or future public convenience and necessity. Otherwise the application should be denied.

In other words, the Commission must apply a two-part test. First, the Commission must determine if an applicant is "fit, willing and able." In this matter, the applicant has been found by this Commission to be fit, willing and able to provide the service. It is a current certificated carrier and has in place insurance as required and has met requirements for operations. Based on the certificated status of the applicant, we find that the applicant has met the fitness test of Neb. Rev. Stat. Section 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 not presented sufficient evidence of need and necessity to support a grant of the application.

The first part of the test is whether the operation will serve a useful purpose responsive to a public demand or need. Mr. Joe Armstrong presented testimony regarding shortages of vehicles in Lancaster County. He stated that his company routinely fielded 5 to 7 calls per week requesting that they provide service in Lancaster County. Mr. Armstrong further stated that these callers all told him that the current providers "were full."

This evidence is not sufficient to enable the Commission to find that the first part of the test has been met. No specific instance was cited, and no other witnesses were called to support the statements made by Mr. Armstrong. The evidence presented does not show that there is a public demand or need that the proposed operation will meet.

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The second part of the test is whether the purpose can or will be served as well by existing carriers. In this matter, the Commission will not enter a finding as it has found that the applicant failed part one of the test. There was not enough evidence submitted to the Commission by the Applicant for the Commission find that there is inadequate service. The protestants testified that their business was down and gave some statements regarding their availability, but this information is also insufficient to make a finding regarding this part.

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. While the Commission declines to enter a finding on this part of the test as it has found that the application failed the first part of the test and thus should be denied, the Commission does note the testimony of the protestants regarding the decline in their revenues and the impact that the economy has had on their operations.

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

ORDER

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application B-1757, Supplement 2, be, and it is hereby, denied.

MADE AND ENTERED at Lincoln, Nebraska, this 12th day of April, 2011.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

D. Johnson
Aune Boyle
Gerald L. Upp

Tim Schram
Chairman

ATTEST: *Michael J. [Signature]*
Executive Director

//s// Frank E. Landis
//s// Tim Schram