

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application)	Application No. B-2123
of ZOGAR Wheels, LLC, Omaha,)	
seeking authority as a contract)	
carrier in Nebraska intrastate)	
commerce in the transportation)	
of passengers in Open Class)	
service by van between all)	
points in Nebraska over)	ORDER GRANTING APPLICATION
irregular routes, pursuant to a)	
contract with the Nebraska)	
Department of Health and Human)	
Services, a medicaid-managed)	
care organization under contract)	
with NDHHS, or another agent)	
working on behalf of NDHHS. HHS)	
Designation: Yes.)	Entered: October 16, 2024

BY THE COMMISSION:

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

On June 25, 2024, ZOGAR Wheels, LLC, ("Applicant"), Omaha, Nebraska, filed an application seeking authority as a contract carrier in Nebraska intrastate commerce in the transportation of passengers in Open Class service by van between all points in Nebraska over irregular routes, pursuant to a contract with the Nebraska Department of Health and Human Services, a medicaid-managed care organization under contract with NDHHS, or another agent working on behalf of NDHHS. HHS Designation is requested.

Notice of the application was published in The Daily Record, Omaha, Nebraska, on June 28, 2024. No protests were filed; therefore, the application was processed pursuant to the Commission's Rule of Modified Procedure.¹

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

The statutory standard governing the approval of applications for contract carrier authority is governed by Neb. Rev. Stat. § 75-311(2) and the standard for Medicaid nonemergency medical transportation services is governed by Neb. Rev. Stat. § 75-311(3), which provide that:

¹ 291 Neb. Admin. Code Ch. 1 § 002.10B.

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(2) A permit shall be issued to any qualified applicant therefor authorizing in whole or in part the operations covered by the application if it appears after notice and hearing from the application or from any hearing held on the application that (a) the applicant is fit, willing, and able properly to perform the service of a contract carrier by motor vehicle and to conform to the provisions of such sections and the lawful requirements, rules, and regulations of the commission under such sections and (b) the proposed operation, to the extent authorized by the permit, will be consistent with the public interest by providing services designed to meet the distinct needs of each individual customer or a specifically designated class of customers as defined in subdivision (7) of section 75-302. Otherwise, the application shall be denied.

(3) A designation of authority shall be issued to any regulated motor carrier holding a certificate under subsection (1) of this section or a permit under subsection (2) of this section authorizing such carrier to provide medicaid nonemergency medical transportation services pursuant to a contract with (i) the Department of Health and Human Services, (ii) a medicaid-managed care organization under contract with the department, or (iii) another agent working on the department's behalf as provided under section 75-303.01, if it is found after notice and hearing from the application or from any hearing held on the application that the authorization is or will be required by the present or future convenience and necessity to serve the distinct needs of medicaid clients. In determining whether the authorization is or will be required by the present or future convenience and necessity to serve the distinct needs of medicaid clients, the commission shall consult with the Director of Medicaid and Long-Term Care of the Division of Medicaid and Long-Term Care of the department or his or her designee.

The Nebraska Supreme Court has explained the analysis required for determining whether the operation of a proposed contract carrier will be consistent with the public interest:

"In considering an application for a permit to operate as a contract carrier, the burden is upon the applicant to show that the proposed service is specialized and fits the need of

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the proposed contracting shippers, that the applicant is fit, willing, and able to perform the service, and that the proposed operation will be consistent with the public interest."²

The Nebraska Supreme Court has explained the analysis required for determining public convenience and necessity:

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.³

The Nebraska Supreme Court has also found that a lack protests and no one intervening in a proceeding is a clear indication that existing motor carriers do not expect to suffer any material detriment from the grant of authority sought. No protests were filed to this application, thus no showing has been made that the services proposed by Applicant can or will be served as well by existing carriers nor would existing carriers be endangered or impaired by granting the application.

ZOGAR Wheels' application stated that the Applicant's owner had driven for Lyft for three years and had worked for another transportation company for ten years. The Application also stated that "My service will meet the distinct needs of individuals in that I will provide a wheelchair accessible van as transportation for both disabled and regular clients for a more comfortable ride to meet their medical appointments in a comfortable and timely manner."

Pursuant to the Commission's Rule of Modified Procedure, the Applicant has provided an Affidavit of Applicant and an Affidavit of Supporting Shipper. In the Affidavit of Applicant, Applicant indicates it will utilize a 2016 Toyota Sienna Van in its operations. Applicant affirms its vehicle will be properly maintained and repaired to ensure it meets safety requirements.

² *Wells Fargo Armored Service Corp. v. Bankers Dispatch Corp.*, 188 Neb. 584, 198 N.W.2d 195 (1972) (Internal citations omitted).

³ *In re Application of Nebraskaland Leasing & Assocs.*, 254 Neb. 583, 591 (1998).

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Applicant further provided an Affidavit of Supporting Shipper stating that the Applicant has an excellent reputation. The Affidavit further indicates that transportation services of other carriers is inadequate because of a lack of specialization, limited accessibility, inconsistency of service, and poor communication. The affidavit states that Applicant's services would be satisfactory because of the customer-centric approach; reliability and punctuality; the trained and professional staff; and flexible service options.

The Commission also received a letter dated October 4, 2024, from the Nebraska Department of Health and Human Services' Medicaid and Long-Term Care Division that Applicant's services are or will be required by the present or future convenience and necessity to serve the distinct needs of Medicaid clients within their requested territories.

After due consideration of the evidence and being fully advised in the premises, the Commission is of the opinion and finds:

1. Applicant is fit, willing, and able to perform the proposed service, and to conform to the provisions of Neb. Rev. Stat. §§ 75-301 to 75-322 and the requirements, rules and regulations of the Commission thereunder.
2. The service that Applicant wishes to provide will be consistent with the public interest.
3. The proposed service is or will be required by the present or future public convenience and necessity.
4. Upon compliance with Neb. Rev. Stat. §§ 75-305 (fees), 75-307 (insurance), and 75-308 (rates), and with the rules and regulations of the Commission, a Permit of Authority should be issued as follows:

PERMIT AUTHORIZED

SERVICE AND TERRITORY AUTHORIZED:

Contract: Transportation of passengers in Open Class service by van between all points in Nebraska over irregular routes, pursuant to a contract with

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the Nebraska Department of Health and Human Services, a medicaid-managed care organization under contract with NDHHS, or another agent working on behalf of NDHHS.

HHS Designation: Yes.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. B-2123 be, and it is hereby, granted; and that upon compliance with the terms and conditions set forth in this Order, a Permit of Authority shall be issued to ZOGAR Wheels, LLC, Omaha, in Application B-2123, authorizing the operations set forth in the foregoing findings.

IT IS FURTHER ORDERED that Applicant shall not be issued the Permit 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.

IT IS FURTHER ORDERED that Applicant shall not conduct operations until a Permit of Authority is issued.

IT IS FINALLY ORDERED that the operations authorized herein shall be subject to the terms, conditions, and limitations which have been, or may hereafter be prescribed by the Commission.

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ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 16th day of October 2024.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Eric M. Hamler

[Signature]

Tim Schram

Kevin Stocker

[Signature]

Chair

ATTEST:

Thomas W. Golden
Executive Director