



**STATE OF ALABAMA**  
ALABAMA PUBLIC SERVICE COMMISSION  
P.O. BOX 304260  
MONTGOMERY, ALABAMA 36130-4260

LUCY BAXLEY, PRESIDENT  
TWINKLE ANDRESS CAVANAUGH, ASSOCIATE COMMISSIONER  
TERRY L. DUNN, ASSOCIATE COMMISSIONER

WALTER L. THOMAS, JR.  
SECRETARY

SERVED: January 7, 2011  
Walter L. Thomas, Jr.

Exceptions, if any, must be filed with the Secretary, Alabama Public Service Commission, P. O. Box 304260, Montgomery, Alabama 36130, and served on all other parties of interest within 20 days from the date of service shown above, or within such further period as may be authorized for the filing of Exceptions. Replies to Exceptions may be filed within 20 days from the date of service of the Exceptions. At the expiration of the period for the filing of Exceptions, the within Report and Recommended Order will become the Report and Order of the Commission unless Exceptions are filed seasonably or the time for filing Exceptions is extended by the Commission, or the Commission, within such period stays or postpones the Order. An original and four copies of any Exceptions and Replies should be filed.

JAMES R. CARROLL, d/b/a XPRESS CAB COMPANY,

DOCKET 31258

Applicant

**REPORT AND RECOMMENDED ORDER**

**I. INTRODUCTION AND BACKGROUND**

By application filed on or about October 6, 2009, James R. Carroll, d/b/a Xpress Cab Company, 83 Kitts Road, Ashford, Alabama 36312, seeks authority to institute a new operation as a common carrier in the intrastate transportation of:

Passengers and their baggage in special or charter taxi operations over irregular routes as follows:

- (1) Between points in Houston County.
- (2) From points in (1) above to points in Coffee, Dale, Henry, and Geneva Counties; and
- (3) From points in Coffee, Dale, Henry, and Geneva Counties to points in (1) above.

REPORT AND RECOMMENDED ORDER  
DOCKET 31258 - #2

Pursuant to Commission notice dated October 7, 2009, the application of James R. Carroll, d/b/a Xpress Cab Company ("Xpress") was set for hearing on October 28, 2009. The Commission received notices of protest in this matter from Fresh Air Accessible of Alabama, LLC ("Fresh Air"); Call-A-Cab, Inc. d/b/a AAA Cab Company ("AAA"); and Jesto Enterprises, Inc., d/b/a Dothan Cab Company ("Dothan Cab").

**II. SUMMARY OF THE RECORD**

At the beginning of the proceeding on October 28, 2009, Protestant Fresh Air agreed to withdraw its protest if the Applicant would be willing to accept a restrictive amendment precluding Xpress from providing non-emergency medical transportation services. Xpress agreed to the restrictive amendment and Fresh Air was excused from the proceeding. The remaining Protestants, AAA and Dothan Cab appeared to further their protest.

The first witness to appear on behalf of the Applicant was Mr. James R. Carroll. Mr. Carroll testified that he is the owner of Xpress Cab. He testified that Xpress operates within the Dothan, Daleville, Fort Rucker, and Enterprise area. Mr. Carroll further testified that he has been operating for two years and has kept up a successful business in the Dothan and Fort Rucker area. He testified that he has grown the number of employees and vehicles in his business. Mr. Carroll testified that he has a mechanic on retainer that handles monthly maintenance of his vehicles. He further testified that all vehicles are inspected by the Dothan City Police. Mr. Carroll testified that he would like to expand the scope of his service to other counties.

Under cross-examination Mr. Carroll testified that the inspection of his vehicles by the Dothan Police is part of the license process through the City of Dothan. He testified that he is also licensed in the City of Daleville. He further testified that he is not licensed in Ozark or Enterprise. Under further cross-examination Mr. Carroll testified that he has taken soldiers from Fort Rucker to those cities. Mr. Carroll testified that he has commercial insurance as required by the state. Under further cross-examination Mr. Carroll testified that his vehicles each hold five and seven passengers respectively. Mr. Carroll testified that he has received two seatbelt tickets and a ticket from the Alabama Public Service Commission for operating without authority. Mr. Carroll testified that he has previously operated outside the scope of his city licenses. Under further cross-examination Mr. Carroll testified that he dispatches using a cell phone and that he operates twenty-four hours a day, seven days a week. Under further cross-examination Mr. Carroll testified that he has never had an accident while driving a taxi. He testified that he has had an accident while test driving a vehicle for the cab company. Mr. Carroll testified that he has transported passengers

REPORT AND RECOMMENDED ORDER  
DOCKET 31258 - #3

from the Dothan airport to Fort Rucker and from Fort Rucker to Dothan. He further testified that he did not have PSC authority when performing that transportation. Under further cross-examination Mr. Carroll testified that to his knowledge there are three cab companies that are licensed to operate in the area covered by his application. Mr. Carroll testified that he previously worked for AAA Cab for approximately five years. Under further cross-examination Mr. Carroll testified that he currently employs one other driver. Mr. Carroll testified that he anticipates that his tariff will be a \$1.50 per mile and that this will be sufficient to maintain insurance, pay for maintenance, gasoline and other expenses. Under further cross-examination Mr. Carroll testified that he does not know how many cabs are ready to service the area but that his phone stays busy everyday with calls for service. He further testified that he advertises through business cards and word of mouth.

Under questioning from the bench Mr. Carroll testified that he submitted his application to the Commission within days of receiving a citation for operating without authority. He further testified that he did not seek authority after a visit from a PSC Enforcement Officer in 2008 because at that time his business was limited to the Dothan area. Mr. Carroll stated that if granted authority it is his intention to abide by all rules and regulations of the Public Service Commission.

The next witness to appear on behalf of the Applicant was Mr. Ronald Bedford. Under direct examination Mr. Bedford testified that the Applicant has been providing service to his club for two years. Mr. Bedford testified that he has called many cab companies and waited an hour or more for cab service to come. Mr. Bedford further testified that he considers the Applicant's service acceptable and that he meets a need at his club.

Under cross-examination Mr. Bedford testified that he owns Cowboys Club on Highway 231 South. He testified that it is frequented by soldiers from Fort Rucker. He further testified that he has 30-40 people a night asking for the Applicant's telephone number. Under further cross-examination Mr. Bedford testified that all of the local cab companies come to his club. He testified that there are not enough cab companies in Dothan to service his club. He testified that the club has a 600 seat capacity and over 90,000 members. He testified that he has regular concerts every month. Mr. Bedford testified that there is a need for more cab service in Dothan. He further testified that there is a cab at his front door continuously.

The next witness to testify on behalf of the Applicant was Mr. David Frisky. Mr. Frisky testified that he owns a car lot in Dothan. Mr. Frisky testified that he has done business with the Applicant. Under further direct

REPORT AND RECOMMENDED ORDER  
DOCKET 31258 - #4

examination Mr. Frisky testified that he has been refused service by other cab companies or had to wait a large amount of time.

Under cross-examination Mr. Frisky testified that he owns Dealers Choice Auto Sales in Dothan. He testified that he has done business with Dothan Cab Company and has not done business with AAA. Mr. Frisky testified that he has called AAA for cab service but has never sold them vehicles. He testified that he has provided maintenance for Xpress in the past but does not currently.

The final witness to testify on behalf of the Applicant was Mr. Douglas Woodham. Mr. Woodham testified that he has been an employee of Xpress. Mr. Woodham further testified that he has used Xpress on several occasions as well as other cab companies. He testified that he has had to wait for a period of time with other cab companies. Mr. Woodham testified that he has not used Dothan Cab but that he has used AAA Cab. Mr. Woodham further testified that he would prefer to use Xpress primarily because their rates are cheaper and this is important because he is on a fixed income. He further testified that he does not have to wait as long for Xpress.

Under cross-examination Mr. Woodham testified that he has not required a cab outside the city of Dothan in a long time. He testified that only every once in a while does he need a cab outside the Dothan area. Mr. Woodham testified that he could find another cab company to go outside of Dothan but would have to pay a higher rate. He testified that he has not used AAA to go outside of Dothan but has used them in Dothan.

The first witness to appear on behalf of the Protestants was Mr. Mark Albert Noll. Mr. Noll testified that he owns Call-A-Cab, Inc. d/b/a AAA Cab Company. Mr. Noll testified that AAA has been in business since 1993 and has had APSC authority since 1993. Mr. Noll testified that his business utilizes 14 cabs. He testified that at one time all cabs stayed busy but that now there are idle times. Mr. Noll further testified that business has dropped 25% in the past year due to the economy. Mr. Noll testified that he operates at Cowboys and that they usually require service on Wednesday, Friday, and Saturday nights. He further testified that there are short windows of opportunity to pick up a large number of people at closing time. He testified that at that time everybody is busy. Mr. Noll further testified that this window of opportunity is about two hours in length. Mr. Noll testified that he does not set aside cabs for that service but waits for calls. He further testified that it takes fifteen minutes to get to Cowboys when dispatched immediately. He further testified that it is about 45 minutes from Cowboys to Fort Rucker. Mr. Noll further testified that there are other bars in Dothan that require service at closing. He testified that several close at different times

REPORT AND RECOMMENDED ORDER  
DOCKET 31258 - #5

and that this staggered closing schedule can keep his cabs busy all night or on an off night can leave drivers idle. Mr. Noll testified that he has reduced his fleet from 20 vehicles because of the cost of insurance and lack of business. He further testified that he has reduced drivers from 30 to approximately 17. Mr. Noll testified that he employs a full time mechanic with a fully stocked auto shop. Mr. Noll testified that there is not enough business for another taxi cab service. He further testified that Xpress has been operating without PSC authority for two years and has taken business from AAA.

Under cross-examination Mr. Noll testified that he has known the Applicant for approximately seven years. He further testified that he has not personally seen the Applicant violate the law.

The final witness to appear on behalf of the Protestants was Mr. Lance Story. Mr. Story testified that he is the owner of Dothan Cab Company. Mr. Story testified that Dothan Cab operates seven cabs in the territory covered by the Application. Mr. Story testified that he goes to Cowboys on occasion but does not get a lot of calls from Cowboys. Mr. Story testified that he has 15 drivers and a dispatcher. Mr. Story testified that Dothan Cab has been in business for five years and that he has owned the company for three years. He further testified that business is down over the last year and that he has laid off his night drivers. Mr. Story further testified that he might lose more employees if another service is approved. Mr. Story testified that he operates at Fort Rucker. Mr. Story testified under further direct examination that he sees no need for another cab company. He testified that his cab service is available 24 hours a day.

Under cross-examination Mr. Story testified that Dothan Cab has been in business for five years. Under further cross-examination he testified that Dothan Cab acquired its APSC certificate within the past year. He further testified that he has operated outside the city of Dothan in those five years. Mr. Story testified that he started with two cabs. Under further cross-examination he testified that his seven current cabs operate 90% of the time. He further testified that he had been operating from Fort Rucker without authority when he was operating for another company.

Under redirect examination Mr. Story testified that after he bought Dothan Cab he only operated in the areas where he had a city license.

REPORT AND RECOMMENDED ORDER  
DOCKET 31258 - #6

**III. DISCUSSION AND CONCLUSIONS**

An applicant seeking a certificate to operate as a common carrier must establish through evidence presented at the hearing that it is fit, willing and able to promptly perform the service proposed in conformity with the provisions of the Alabama Motor Carrier Act and the Commission's Motor Carrier Rules, and that the proposed service is required by the public convenience and necessity. The adequacy of existing service in meeting the public need, the Applicant's financial ability to furnish adequate, continuous, and uninterrupted service and the advantages to the public of the proposed service are, among other things, factors which must be considered. Proof of public convenience and necessity requires an affirmative showing that the proposed service will be superior to the service of presently authorized carriers, or the proposed operations will serve a useful purpose which cannot or will not be met by existing carriers.

In accordance with the foregoing, the first issue to be addressed in the case at bar is whether the Applicant is fit, willing and able to provide the common carrier service proposed. It appears from a review of the record compiled herein that the Applicant is indeed qualified in all respects to conduct the operations proposed. In particular, the Applicant appears to have the necessary experience, equipment and financial resources to provide the services proposed. While the Applicant admitted to operating without PSC authority, he did submit an application within days of receiving a citation for doing so. The Applicant further committed to operating within the rules and regulations of the Commission. The Applicant is accordingly found to be fit, willing and able.

The next issue to be addressed is whether the public conveniences and necessity requires the services as proposed by the Applicant. It is incumbent upon the Commission, when considering the question of public need, to consider whether the territory for which authority is sought is served by other carriers and the adequacy of such service to meet the public need. *Alabama Public Service Commission v. Higginbotham*, 256 Ala. 621, 56 So. 2<sup>nd</sup> 401 (1951), *Alabama Public Service Commission v. Crowe*, 247 Ala. 120, 22 So. 2<sup>nd</sup> 721 (1945). The maintenance of sound economic conditions in the transportation industry would be jeopardized by allowing a new operator to compete with existing carriers who are providing reasonably adequate service. Motor Carriers serving an area should be afforded an opportunity to transport all the traffic they can adequately, efficiently and economically handle without additional competition from a new operation.

REPORT AND RECOMMENDED ORDER  
DOCKET 31258 - #7

Proof of public convenience and necessity requires an affirmative showing that the proposed operations are superior to those of presently authorized carriers, or that the proposed operations would serve a useful purpose which cannot or will not be met by existing carriers. There must be an affirmative demonstration not only that a common carrier service is required in the convenience of the public proposed to be served, but also that it is a necessity on the part of such public.

A proposed service does not, however, have to be absolutely indispensable in order to serve the public convenience and necessity. A demonstration that the proposed service is reasonably necessary for the public good satisfies the required showing of public convenience and necessity. *Alabama Public Service Commission v. Wells Fargo Armored Services*, 495 So. 2<sup>nd</sup> 42 (Ala. 1986); *Van Express Inc. v. Beeline Express Inc.*, 347 So. 2<sup>nd</sup> 1353 (Ala. 1977); *Southern Haulers v. Alabama Public Service Commission*, 331 So. 2<sup>nd</sup> 660 (Ala. 1976).

In the case at hand, the Applicant presented testimony regarding the need for transportation in the area covered by the application. The testimony indicated that while there are currently other providers in the area, this service is insufficient to meet the needs in the area. The testimony of Mr. Bedford was particularly persuasive. While the Protestants argued that there is no need for additional service, Mr. Noll admitted that he takes no steps to meet the need at Cowboy's or other bars, even though his testimony indicated that he is aware that this is a regularly occurring need. Further, Mr. Story testified that he does not get many calls from Cowboy's and that he laid off his night drivers.

In assessing applications for authority to transport passengers, the services which existing, certificated carriers of passengers offer the traveling public cannot be evaluated purely on the fact that they are "available" to that public. The consideration of existing services must go further and include an assessment of how well the existing carriers have actually made the traveling public aware of the services they seek to protect from diversion to applicants seeking authority to compete with them.

In the present case, AAA and Dothan Cab seek to protect their taxi service in the proposed service area. Both maintain that they seek additional business. The record does not indicate, however, that either AAA or Dothan Cab actively seek the business at establishments such as Cowboy's, which the record indicates have an extensive need for transportation service to safely transport one of our nation's most precious assets, its fighting men and women of our armed services, back to their base at Fort Rucker after a night of well deserved entertainment.

REPORT AND RECOMMENDED ORDER  
DOCKET 31258 - #8

The Applicant, on the other hand, has aggressively sought this business and in fact appears to have filled a publicly perceived void with regard to taxi service in the area. The record therefore conclusively demonstrates that a grant of Xpress's application will provide advantages to the public and serve a useful purpose that AAA and Dothan Cab have failed to adequately meet.

It additionally appears unlikely that a grant of the authority sought by Xpress will be extremely detrimental to AAA or Dothan Cab since Xpress has already established a loyal customer base that is using its service to the apparent exclusion of the services offered by AAA and Dothan Cab.

**IV. RECOMMENDATION**

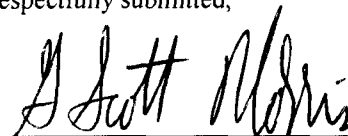
Based on the foregoing, it appears that the Applicant has demonstrated that the services proposed in this application will provide advantages to the public and serve a useful purpose which has not been met by the Protestants. It is accordingly recommended that the application of James R. Carroll, d/b/a Xpress Cab Company be granted. In particular, it is recommended that James R. Carroll, d/b/a Xpress Cab Company be granted authority to institute a new operation as a common carrier in the intrastate transportation of:

Passengers and their baggage in special or charter taxi operations over irregular routes as follows:

- (1) Between points in Houston County.
- (2) From points in (1) above to points in Coffee, Dale, Henry, and Geneva Counties; and
- (3) From points in Coffee, Dale, Henry, and Geneva Counties to points in (1) above.

Restrictions: 1. Restricted against the provision of non-emergency medical service

Respectfully submitted,



---

G. Scott Morris  
Administrative Law Judge