



STATE OF ALABAMA
ALABAMA PUBLIC SERVICE COMMISSION
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SECRETARY

SERVED: October 20, 2010

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.

MANJU BALA,
d/b/a BBB CAB,

DOCKET 31365

Applicant

REPORT AND RECOMMENDED ORDER

I. INTRODUCTION AND BACKGROUND

By application filed with the Commission on or about April 5, 2010, Manju Bala, an individual, d/b/a BBB Cab ("BBB Cab" or the "Applicant"), 208 Triana Blvd, N.W., Huntsville, Alabama 35805, seeks 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 all points in Madison County, Alabama; and
- (2) From points in Madison County to all points in Alabama; and
- (3) From all points in Alabama to points in Madison County.

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Pursuant to Commission notice dated April 8, 2010, the application of BBB Cab was set for hearing and heard on April 28, 2010. The Commission received a notice of protest to the application of BBB Cab from A Plus Cab, LLC (“A Plus Cab” or “A Plus”) which appeared at the April 28, 2010 hearing to further its protest.

II. SUMMARY OF THE RECORD

The first witness to testify in the proceeding was Mr. Raj Kumar, the husband of the Applicant Manju Bala, who was also in attendance. Mr. Kumar indicated in his direct testimony that he was the owner of AAAA Cab Company (“AAAA Cab”) and had been in the taxi business since 1997. Mr. Kumar represented that he wanted his wife to get her own taxi business operational in the Huntsville area.

Mr. Kumar represented on further direct that he operated two Crown Victoria’s, two 1999 GM vans and one 1999 Ford Windstar van under his AAAA Cab authority. Mr. Kumar maintained that all of his equipment was in good operating condition and was regularly maintained by a mechanic. Mr. Kumar asserted that at present, the five vehicles he operated were adequate for his authority under AAAA Cab. He further asserted that the equipment in question would be sufficient for the operating authority sought by BBB Cab.

On direct examination from the bench, Mr. Kumar testified that BBB Cab was licensed by the city of Huntsville. Mr. Kumar further explained, however, that he intended to turn over his business under AAAA Cab to BBB Cab and operate under that name if the authority sought by BBB Cab were granted. Mr. Kumar further explained that in actuality, BBB Cab was attempting to obtain operating authority which he would subsequently take over. Mr. Kumar stated that he was really only changing the name of his current operation because his insurance costs were so high. He indicated that he wanted a new business through which he could obtain more reasonable insurance rates.

On further direct examination from the bench, Mr. Kumar testified that his insurance rates for AAAA Cab were high because his cabs had been involved in accidents. Mr. Kumar represented that there had been three accidents in total, one with a minor injury and two others that involved only minor property damage. Mr. Kumar further represented to the bench that there had been no fatalities involved with his company’s accidents and no lawsuits had resulted. Mr. Kumar also testified that AAAA Cab had not received any citations from the Alabama Public Service Commission, the Department of Public Safety or the City of Huntsville.

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Mr. Kumar represented on further direct examination from the bench that BBB Cab would have four drivers plus himself initially. He indicated that all of those drivers were qualified and held certification from the City of Huntsville. Mr. Kumar testified that drivers' files would be maintained on each driver. Mr. Kumar further explained, however, that the drivers in question operated under independent leases and none had medical cards.

On cross examination by the owner of the Protestant A Plus Cab, Mr. Junior Jordan, Mr. Kumar again testified that he had been in the taxi business since 1997 when he began driving with Jet Port Taxi out of Huntsville. Mr. Kumar testified that he also had three years experience as the owner of a taxi business.

On further cross examination by Mr. Jordan, Mr. Kumar conceded that his insurance had been cancelled because of an accident. Mr. Kumar could not recall the date on which the cancellation became effective, however. Mr. Kumar nonetheless represented that his insurance was current at the time of the hearing and emphasized that he was not operating without proper insurance. On further cross examination by Mr. Jordan, Mr. Kumar conceded that the taxi's that would operate under the authority sought by BBB Cab would be the same cabs that presently operated under the authority of AAAA Cab.

The next witness to testify in the proceeding was Mr. Anthony Long, a citizen of Hazel Green, Alabama, who was also seeking authority from the Commission to operate a taxi company in the Huntsville area. Mr. Long represented that Huntsville was one of the fastest growing cities in the nation and maintained that the Huntsville area had recently been targeted for the services of a new airline. Mr. Long also represented that Huntsville was anticipating 8-10,000 more troops and associated personnel to be stationed in the Huntsville area. Mr. Long further maintained that the United States government had just awarded the Marshall Space Flight Center with billions of dollars to build a new space program. Mr. Long thus concluded that there was a need for a new cab company with APSC certification.

In response to questions from the bench, Mr. Long represented that he had been in Madison County since 1980 and was a native of Alabama. On cross examination by Mr. Jordan, Mr. Long testified that there were nine cab companies in the Huntsville area, all of which were licensed by the City of Huntsville and the APSC. Mr. Long testified that he did not however, know how many cabs those licensed companies operated in the Huntsville area.

On further cross examination from Mr. Jordan, Mr. Long testified that he was aware that Mr. Jordan's company worked the Huntsville Airport everyday and made anywhere from five to twelve trips a day during a twelve

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hour shift. Mr. Long testified that he did not know on how many occasions Mr. Jordan's company went outside the city limits of Huntsville, maintaining that, based on his experience as a taxi driver in the Huntsville area, such movements varied from day to day.

Mr. Kumar next submitted documents which were collectively marked for identification as "Applicant's Exhibit 1". Mr. Kumar purported that the documents in question were invoices from the airlines that served the Huntsville Airport which he had accounts with. Mr. Kumar represented that the airlines utilized his services all the time for movements from Huntsville to areas outside of the city limits. Mr. Kumar asserted that such movements demonstrated a need for the authority sought by BBB Cab. The documents introduced by Mr. Kumar and collectively identified as applicants Exhibit 1 were not objected to by the Protestant A Plus Cab and were thus admitted into evidence.

Mr. Kumar summarized in closing that if BBB were granted authority, there should be little effect on the Protestant, A Plus because BBB would be taking the place of AAAA. Mr. Kumar pointed out that the City of Huntsville had already approved BBB Cab for business, but noted that the APSC authority sought was needed for BBB Cab to operate outside the City of Huntsville.

The next witness to appear in the proceeding was the owner of the Protestant A Plus Cab, Mr. Junior Jordan. Mr. Jordan represented that he was protesting the Application of BBB Cab because his company had seen a big decline in its business in the last year and a half. Mr. Jordan testified that he had gone from operating 10 cabs to operating 8 cabs because of the decrease in his business.

Mr. Jordan pointed out on further direct testimony that the airport at Huntsville had seven or eight spaces available for cabs. Mr. Jordan thus maintained that there were plenty of taxis available to provide service on out of town trips originating in Huntsville, particularly at the airport.

In response to a question from the bench, Mr. Jordan testified that he performed anywhere from five to ten trips per day that were regulated in nature. He also indicated that his taxi at the airport averaged five to twelve trips per day to areas outside of Huntsville such as Decatur. Mr. Jordan explained that he only had one vehicle dedicated to providing service at the Huntsville Airport although all of his vehicles were authorized to provide service there.

Mr. Jordan testified on further direct examination from the bench that he regularly screened his drivers and received monthly deductions in his insurance premiums because of his efforts. Mr. Jordan indicated that he would

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occasionally have a bad driver slip in on him, but maintained that he normally terminated such drivers within a week or two. Mr. Jordan asserted that if taxi operators kept on top of their operations, kept good drivers with clean records and did not receive tickets, they would not encounter trouble with their insurers.

On cross-examination by the Applicant, Mr. Jordan testified that he had closed one taxi operation and commenced his current one. He maintained that the cab company that had been closed was Space Checker Taxi which was actually his mother-in-law's operation which she operated under lease from him. Mr. Jordan asserted that his mother-in-law's operations as Space Checker Taxi failed due to bad management.

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 properly 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 forgoing, 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 Manju Bala, d/b/a BBB Cab failed to demonstrate that she was fit to be granted the authority sought. Manju Bala did not testify in the proceeding and did not present any evidence indicating her financial wherewithal or her familiarity with transportation operations and the rules or regulations governing such operations. Indeed, the only testimony in the proceeding regarding the fitness of the Applicant came from Mr. Kumar, the applicant's husband. Mr. Kumar testified in no certain terms that BBB Cab was seeking authority that his current operation, AAAA Cab could operate under in order to obtain better insurance rates. The concern with Mr. Kumar's plan is that Mr. Kumar's problems with insurance rates are directly attributable to accidents that his AAAA Cab drivers have been involved in. Given that fact, the Alabama Public Service Commission would be doing a

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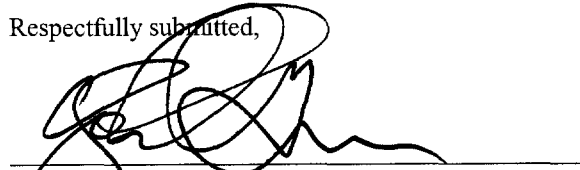
disservice to the public by finding that the applicant in this case has met its burden of demonstrating fitness based on the circumstances presented on the record in this matter. The Commission simply can not authorize the subterfuge proposed by Mr. Kumar in order that he may sidestep the direct consequences of AAAA Cab's failure to perform its operations in a manner that results in reasonable insurance rates. To the contrary, the Commission must conclude that Mr. Kumar's operations that have resulted in high insurance rates due to accidents are unacceptable and preclude a grant of additional authority such as that sought under the name of BBB Cab. It is accordingly concluded that the applicant has failed to demonstrate its fitness, willingness and ability to conduct the operations proposed in a manner consistent with Alabama law and the rules and regulations of the Commission.

Having determined that the applicant has not demonstrated its fitness, willingness and/or ability to conduct the operations proposed as required by the controlling statutes, rules and regulations, it is unnecessary to render a determination regarding the issues of whether the authority sought has been demonstrated to be required by the public interest, convenience and necessity. The adverse determination regarding the applicant's fitness renders such a determination moot.

IV. RECOMMENDATION

Based on the foregoing, it is recommended that the application of Manju Bala, d/b/a BBB Cab be denied.

Respectfully submitted,



John A. Garner
Chief Administrative Law Judge