



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

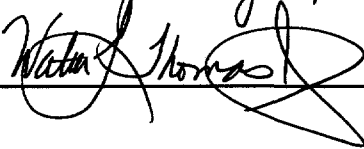
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SECRETARY

SERVED: January 19, 2012


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 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.

AMBASSADOR CAB COMPANY, LLC,¹

DOCKET 30996

Applicant

REPORT AND RECOMMENDED ORDER

I. INTRODUCTION AND BACKGROUND

By application filed on or about October 6, 2008, Ambassador Cab Company, LLC, Post Office Box 8182, Birmingham, Alabama 35218 (1401 3rd Avenue West, Suite C, Birmingham, Alabama 35208), seeks authority to extend an existing operation under Motor Carrier Certificate of Public Convenience and Necessity 3885 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 the counties of Jefferson, Shelby, St. Clair, Blount, Cullman, Walker, Tuscaloosa, and Bibb; and
- (2) From all points in (1) above to all points in Alabama.

¹ This case was originally filed by Maurice Marcus Ubom, d/b/a Ambassador Cab Company. Subsequent to the hearing in this matter Mr. Ubom transferred his authority to Ambassador Cab Company, LLC, an Alabama limited liability company of which Mr. Ubom is the manager and organizer. All of Mr. Ubom's rights and responsibilities under Motor Carrier Certificate 3885, including this application, were transferred to Ambassador Cab Company, LLC pursuant to Commission Order dated July 14, 2011.

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Pursuant to notice dated October 7, 2008, the application of Ambassador Cab Company, LLC ("Ambassador") was set for hearing on October 30, 2008. The Commission received a notice of protest in this matter from Greater Birmingham Transportation Services, LLC, d/b/a Yellow Cab ("Yellow Cab"). Yellow Cab appeared at the October 30, 2008, proceeding to further its protest.

II. SUMMARY OF THE RECORD

The first witness to testify on behalf of the Applicant was the owner, Mr. Maurice Ubom. Mr. Ubom testified that he has been in the taxi business for seven years. He worked for Yellow Cab for five years and has operated his own company for two and half years. Mr. Ubom testified that he operates seven cabs which include five sedans and two vans. Mr. Ubom testified that his vehicles are in good shape and that he maintains the required insurance coverage. Mr. Ubom further testified that a major part of his business is picking up customers from the Birmingham Airport. He testified that the Airport Authority demands all cab companies to give prompt service to the airport. He further testified that other cab companies, including Yellow Cab, also pick up customers from the airport.

Under cross-examination, Mr. Ubom testified that approximately 50 percent of his business is from the airport. He testified that his company is profitable. Mr. Ubom further testified that he does not have wheelchair vehicles.

The next witness to testify on behalf of the Applicant was Mr. Nathaniel Mason. Mr. Mason testified that he is a taxi driver for Hill Cab Company. He testified that he has been a taxi driver for ten years. Under further direct examination, Mr. Mason testified that he picks up passengers at the Birmingham Airport. He testified that Yellow Cab also picks up passengers at the airport. Mr. Mason testified that every day several Yellow Cab drivers are asleep at the airport and have to be awakened. He stated that he has observed customers bypassing Yellow Cab because the drivers were asleep and the passengers did not want to ride with them. Under further direct examination, Mr. Mason testified that the Birmingham Airport has steady customers throughout the day and that it is typically busier during the week than on weekends. Mr. Mason testified that he has had occasions when a customer wanted to travel to a destination outside his authorized area. He stated that in this situation he had to pass them to Yellow Cab

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because they were the only ones authorized. Mr. Mason testified that this has happened when there is no Yellow Cab available and that this has occurred on more than one occasion.

Under cross-examination, Mr. Mason testified that he does not have access to the written records of Yellow Cab drivers. He stated that he is testifying based on what has occurred over the course of a 12 to 14 hour day. Mr. Mason testified that Hill Cab Company is authorized to provide service in Jefferson County. When questioned about his driving record, Mr. Mason testified that he has never received a traffic citation while driving a taxi. Mr. Mason testified that he once worked for Yellow Cab for about a week. He testified that he owed them for one day when he left. When questioned about his business, Mr. Mason testified that he picks up most of his business at the airport.

Under redirect examination, Mr. Mason testified that he has had occasions within the last year when a customer wanted to go to a destination outside his authorized service area and there were no Yellow Cabs or other cabs that could transport them. Mr. Mason testified that this has happened three times within the last four weeks. Mr. Mason testified that it happens frequently that customers want to go to Montgomery or Huntsville or Mobile and that there is no one there to accomplish that task. He testified that he has observed this once in the last six weeks.

Under recross-examination, Mr. Mason admitted that the destination for these customers could have been to a location that Ambassador is authorized to serve but he is not. He testified that the one instance in the last six weeks that he cited that the customer wanted to go to Atlanta.

The next witness to testify on behalf of the Applicant was Mr. Geoffrey Anyatonwe. Mr. Anyatonwe testified that he has been a driver for Ambassador since the company was started. He testified that he drove for Yellow Cab for about six weeks in 1997. He further testified that the majority of his business is from the airport. Mr. Anyatonwe testified that it is common to see Yellow Cab drivers asleep at the airport. He stated that he has observed this on many occasions and as recently as yesterday. He testified that he has observed police waking the Yellow Cab drivers. Mr. Anyatonwe testified that he has had customers want to go outside his service area and that he has observed customers not being served because no cab company can take them where they want to go. He testified that airlines will provide a voucher for Yellow Cab and other companies will not accept them, and there may be no Yellow Cab at the airport.

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Under cross-examination, Mr. Anyatonwe testified that it is common for cab drivers to nap at the airport while waiting in line.

At this point the hearing was adjourned before the presentation of evidence could be completed. The hearing was reconvened on December 17, 2008.

At this time the Applicant recalled Mr. Mason to present further testimony. Mr. Mason testified that Hill Cab is authorized to provide service statewide. He testified that he has been a cab driver for 15 years. Mr. Mason testified that he has worked for RSC, Yellow Cab, and Hill Cab. He testified that there are times during big events such as conventions and concerts when there are not enough cabs.

Under cross-examination, Mr. Mason testified that it is likely that as many as 95 percent of these customers are traveling to destinations within Jefferson County. He further testified that most go to points within the city of Birmingham. Under further cross-examination, Mr. Mason confirmed that Hill Cab Company has statewide authority and that they can provide service to a customer to go anywhere in Alabama. Mr. Mason testified that he left Yellow Cab owing them for one day and that he never settled up.

The next witness to testify on behalf of the Applicant was Ms. Debra Branch. Ms. Branch testified that she is a finance and accounting consultant and lives in Birmingham. She testified that she travels frequently for her job and usually comes back to Birmingham every weekend or every other weekend. Ms. Branch testified that it is normal for her to arrive at late hours. Ms. Branch testified that she is currently working in New York City and that she needs a cab every time she comes to Birmingham. Ms. Branch testified that while she has relatives in Montgomery, she has not needed a cab to go to Montgomery. Ms. Branch testified that she uses the Ambassador Cab service almost exclusively and is very satisfied with their service. Ms. Branch testified that she has had at least two situations when she arrived late at the airport and there were no cabs available.

Under cross-examination, Ms. Branch clarified that she lives in Vestavia. She testified that she has not requested cab service to Montgomery.

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The next witness to appear on behalf of the Applicant was Mr. Zelalem Demissie. Mr. Demissie testified that he works for Birmingham Cab Company. He stated that he routinely picks up customers at the airport. Mr. Demissie testified that the last flight normally arrives around midnight unless there are delays. Mr. Demissie testified that he has taken passengers to areas such as Huntsville or Montgomery and that he has seen occasions when customers wanted to go to Montgomery or Huntsville and there were no cabs available. Mr. Demissie testified that he has driven a cab since 1997. When questioned about the availability of cabs during large events, Mr. Demissie testified that he has witnessed customers that needed to go outside of the Jefferson County area and that he has taken people to Clanton, Cullman, and Montgomery during such occasions. He testified that he has observed that sometimes there are not enough cabs. Mr. Demissie testified that he gets called to the airport to take a customer outside the Birmingham area three to five times a year.

Under cross-examination, Mr. Demissie testified that the owners of Birmingham Cab Company authorized him to testify on behalf of the company. He testified that he has driven for Birmingham Cab Company since 1999. Mr. Demissie testified under further cross-examination that some of the trips he testified in his direct testimony were to points outside of Jefferson, Shelby, St. Clair, Blount, Cullman, Walker, Tuscaloosa and Bibb Counties.² He testified that he has taken customers to Clanton. Mr. Demissie testified that in the past two years he has had between 15 and 25 requests to go outside of the Greater Birmingham area. He testified that he was able to provide this service some of the time.

Under redirect examination, Mr. Demissie testified that there have been occasions when there were large numbers of customers at the airport and no other cabs.

Under further recross-examination, Mr. Demissie testified that he has not checked with the Commission to see which cab companies have authority to provide service from the airport to areas outside the Greater Birmingham area. He further testified that there were times when he has picked up parties at the airport and taken them to the Birmingham area and then return to the airport and customers were still waiting for cabs to go outside the Greater Birmingham area.

² These counties to be henceforth described as the "Greater Birmingham area".

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The final witness to testify on behalf of the Applicant was Mr. Emeemadentin Khamis. Mr. Khamis testified that he lives in Birmingham and drives a cab for Award Cab Company. He testified that he is the owner of Award Cab Company. Mr. Khamis testified that Award Cab Company does not have statewide authority but is licensed for the Birmingham and Jefferson County areas. Mr. Khamis testified that he worked for American Cab Company for three years. Mr. Khamis testified that he has had occasions when customers at the airport wanted to go outside of the Greater Birmingham area. He testified that this has occurred two times within the last year but that on both occasions there were other cabs to take them to their destination.

Testifying on behalf of the Protestant was Ms. Paige Coker. Ms. Coker testified that she is the Vice President of Yellow Cab. Ms. Coker testified that Yellow Cab provides 24 hour a day, 7 days a week on demand taxi service. She stated that Yellow Cab operates vans as well as cars and has a full service facility that houses up to 26 employees. She testified that their staff includes managers, accounting, mechanics, dispatchers, and operators. She testified that Yellow Cab has a maintenance program for their fleet and that vehicles are inspected every 3,000 miles, as well as a daily point inspection by the drivers. She testified that Yellow Cab maintains a driver training program and that all drivers must be at least 25 years old, possess a valid Alabama Drivers License, pass the DOT physical, have no felony or DUI convictions within the past five years, not have more than one at fault accident within the last three years, and not more than one major moving violation.

Ms. Coker testified that there are currently 100 drivers working for Yellow Cab. Under further direct examination, she testified that the PSC authority held by Yellow Cab conflicts with the authority sought by Ambassador. She testified that 90 of the vehicles are sedans and that the remainder are vans. When questioned about the operations of Yellow Cab, Ms. Coker testified that the cabs are dispatched on demand and that each vehicle has a mobile data terminal with a GPS tracking device. She testified that incoming calls are passed to the closest available taxi. Ms. Coker testified that Yellow Cab has an ongoing safety program. She testified that Yellow Cab is the largest taxi company in Alabama and they serve a range of businesses and locations including social services, hospitals, clinics, community centers, bars, restaurants, hotels, and the Birmingham Airport. She testified that Yellow Cab provided 600,000 trips in the past year serving 800,000 passengers. She testified that her business would be subject to

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diversion if this application were granted. She testified that Yellow Cab currently provides services within Alabama beyond the areas that the Applicant currently serves. She testified that about 20 percent of Yellow Cab's business is to points outside the area served by the Applicant and that a loss of this business would impact the current drivers and that they would potentially not get these trips. Under further direct examination, Ms. Coker testified that their business is profitable. When questioned about complaints, Ms. Coker testified that Yellow Cab has a system for logging and investigating complaints. She further testified that they have only received four complaints within the past year that have been reported to the city. She testified that Yellow Cab averages about two complaints a week internally and that they have not received any complaints from the airport. Ms. Coker testified that they are not turning down any service to points outside of the Birmingham area and that they have not received any complaints about service outside of this area. Ms. Coker testified that she has not witnessed any instances of drivers sleeping and that she has not received any complaints about drivers sleeping. She testified that Yellow Cab is already meeting the need for the proposed service and that she currently has competitors for this service. She testified that the economy is tight and is impacting their business and that Yellow Cab needs all of the business that it can get.

Under cross-examination, Ms. Coker testified that she has been with Yellow Cab since 2003. She testified that she is aware that Yellow Cab drivers have been involved in accidents. She testified that she cancels the contract of any driver that is ineligible for insurance. Under further cross-examination, Ms. Coker testified that she is not aware of any of the occasions where customers could not get service. She testified that Yellow Cab is generally able to respond to any call at the airport within eight minutes. Ms. Coker testified that the company has been profitable since she has worked there and that business has increased slowly over that time.

Under redirect examination, Ms. Coker testified that Yellow Cab will acquire additional equipment to meet any increased need in the future and that any increased business would be desirable for the company. She testified that a loss of 20 percent of their business would be financially significant to the company.

Under recross-examination, Ms. Coker testified that she has been to the airport five or six times to check if drivers were sleeping.

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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. Additionally, it appears that the Applicant is generally familiar with the Commission's rules and regulations regarding passenger transportation service and will conduct his operations in accordance therewith. 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.2d 401 (1951), *Alabama Public Service Commission v. Crowe*, 247 (Ala. 120), 22 So.2d 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

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to transport all the traffic they can adequately, efficiently and economically handle without additional competition from a new operation.

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.2d 42 (Ala. 1986); *Van Express Inc. v. Beeline Express Inc.*, 347 So.2d 1353 (Ala. 1977); *Southern Haulers v. Alabama Public Service Commission*, 331 So.2d 660 (Ala. 1976).

In addition to the testimony of Mr. Ubom, the owner of Ambassador, and his employee Mr. Anyatonwe, four public witnesses presented testimony regarding the need for the proposed service. One of the witnesses, Ms. Branch, was a member of the travelling public but her testimony was limited to service which the Applicant is already certified to provide. The other three witnesses were all drivers and/or owners of competing taxi service providers. Two of these providers currently possess the authority that the Applicant seeks and both testified to observing several occasions when there were more customers at the airport wanting to go to destinations outside of the Greater Birmingham area than there were taxis available to transport them.

In response, the witness for the Protestant Yellow Cab testified that their taxis are normally able to respond to a call from the airport within eight minutes and that she is not aware of any occasion when a customer at the airport desiring to travel outside the Greater Birmingham area could not find a taxi.

In weighing this testimony the foremost concern is the public convenience and necessity. Few things are more frustrating to the travelling public than to weather the Orwellian saga of modern air travel only to arrive at your destination and find that there is no ground transportation available.

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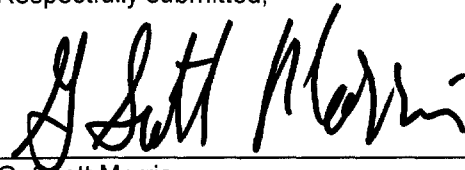
RECOMMENDATION

Based on the foregoing, it appears that the Applicant has demonstrated that the service proposed herein will provide advantages to the public and serve a useful purpose which has not been met by the Protestant. It is accordingly recommended that the application of Ambassador Cab Company, LLC be granted. In particular, it is recommended that Ambassador Cab Company, LLC be granted authority to extend an existing operation under Motor Carrier Certificate of Public Convenience and Necessity 3885 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 the counties of Jefferson, Shelby, St. Clair, Blount, Cullman, Walker, Tuscaloosa, and Bibb; and
- (2) From all points in (1) above to all points in Alabama.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "G. Scott Morris", written over a horizontal line.

G. Scott Morris
Administrative Law Judge