



STATE OF ALABAMA
ALABAMA PUBLIC SERVICE COMMISSION
P.O. BOX 304260
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SECRETARY

SERVED: Walter L. Thomas, Jr.

January 13, 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.

RELIABLE TRANSPORT, LLC,

DOCKET 31364

Applicant

REPORT AND RECOMMENDED ORDER

I. INTRODUCTION AND BACKGROUND

By application filed on or about April 15, 2010, Reliable Transport, LLC ("Reliable"), an Alabama limited liability company, 6838 Scooter Drive, Trussville, Alabama 35173, seeks authority to extend an existing operation as a common carrier by motor vehicle in intrastate commerce over irregular routes, in the transportation of:

Ambulatory and non-ambulatory passengers and their baggage, including passengers requiring wheelchair assistance:

- (1) Between points in Jefferson, Perry, Shelby, St. Clair, and Talladega Counties.

Pursuant to notice dated April 8, 2010, the application of Reliable Transport, LLC was set for hearing on April 29, 2010. A request for continuance was received from the Applicant on April 27, 2010.

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Pursuant to notice dated May 7, 2010, this matter came on for hearing on May 25, 2010. The Commission received notices of protest in this matter from Fresh Air Accessible of Alabama, LLC, d/b/a EMT of Alabama ("EMT"), Billy J. Humphrey, d/b/a BC Taxi ("BC Taxi"), West Alabama Public Transportation operated by WAHS ("WAHS"), Capitol Coach LLC ("Capitol"), and Touch of Class Limousine and Transport, Inc. ("Touch of Class"). Pursuant to letter dated May 19, 2010, WAHS withdrew their protest. The remaining Protestants appeared at the May 25, 2010 proceeding to further their protests.

II. SUMMARY OF THE RECORD

The first witness to appear on behalf of the Applicant was Ms. Charlene Thomas Pugh, the owner of Reliable. Ms. Pugh testified that she has an Associate's Degree from Birmingham Southern College and that she has been in the transportation business for 17 years. She testified that she also has ownership interest in Serenity Transportation. She further testified that her husband, Jerome Pugh, is a co-owner of Reliable. She testified that she has 8 employees, including her husband who drives for the company. She testified that one of her drivers possesses a commercial driver's license. Ms. Pugh testified that she wants to extend her current services to dialysis centers and nursing facilities in the surrounding community and that she wants to expand her operations further into this community. Ms. Pugh testified that she wants to expand to Perry County because it is a low population area in need of service. She testified that she is on the steering committee of the Transportation Coalition Association and is working with them to pull companies into a pool to go into the Perry County area and provide services. She testified that she is working to build a network of providers. Ms. Pugh further testified that Reliable is a Certified Disadvantaged Business Enterprise through the Alabama Department of Transportation and that this allows Reliable to bid on federal grants. She testified that Reliable currently provides service for United Way and ClasTran under Reliable's non-profit certificate. Ms. Pugh testified that Reliable also has a contract with Shelby Ridge, a rehabilitation nursing facility in Shelby County. She further testified that Reliable also has contracts with LogistiCare, Access2Care, and Shelby County. Ms. Pugh testified that Reliable also provides service to DHR and Medicaid. Under further direct examination, Ms. Pugh testified that Shelby Ridge has a sister company in Talladega that has requested services in that area. When questioned about the level of her business, Ms. Pugh testified that Reliable performs approximately 160 trips per month for LogistiCare, 60 trips per month for Access2Care, 45 to 50 trips per

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month for Medicaid, 20 trips per month for DHR, 5 to 10 trips per month for Shelby County, and 20 trips per month for Shelby Ridge. Ms. Pugh testified that Reliable currently operates 7 vans of which 2 are wheelchair accessible. When questioned about the maintenance of her vehicles, Ms. Pugh testified that Faulkner Automotive handles routine maintenance along with the local Ford dealership. Ms. Pugh testified that the wheelchair vans are operational and have been used for ClasTran in Shelby County. Ms. Pugh further testified that her drivers are CPR trained. When questioned about her expansion plans, Ms. Pugh testified that she plans on acquiring additional equipment to serve the expanded area and that she has the financial means to acquire this equipment. Ms. Pugh testified that she has a line of credit with a financial institution. Ms. Pugh testified that she has investigated expanding services to the Hispanic community. She indicated that she has spoken with the Shelby County Health Department, the Jefferson County Health Department and the Hispanic Interest Coalition of Alabama ("HICA"). Ms. Pugh testified that she determined that there was a need in that area as only one company had an interpreter. Ms. Pugh testified that she has received transportation requests from the Hispanic community and that she is in the process of hiring an interpreter. She further testified that she is implementing a program to teach drivers basic Spanish. When questioned about her safety program, Ms. Pugh testified that Reliable has monthly staff meetings with drivers to cover safety and other issues. Upon further direct examination, Ms. Pugh testified that she had tried to get service from EMT for a client that needed a 5:00 A.M. pickup but was unable to obtain service. She testified that she will operate on a 24-hour notice and that Reliable maintains a working 800 number. Ms. Pugh further testified that Reliable provides charitable services for an organization that deals with battered and homeless women and for local churches. Ms. Pugh testified that Reliable will abide by the requirements of the PSC.

Under cross-examination, Ms. Pugh testified that all of the vehicles are owned by Reliable and that one vehicle is paid for and that the remainder have liens. She testified that all of her employees are currently full time but that some were part time in 2009. Under further cross-examination, Ms. Pugh testified that she does not have 13 buses and that that entry on the financial statement in her application is inaccurate. She further testified that she would need to contact her accountant for clarification of the figures on the financial statement. She further testified that other entries on the financial statement appear to be inaccurate as well. Ms. Pugh testified that Reliable is charging Access2Care the tariff rate and not the rate in her contract. She testified that she does not provide wheelchair service to

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Access2Care. Ms. Pugh testified that Reliable rents its business office space and that 2 employees work there in addition to herself. When questioned about her operating hours, Ms. Pugh testified that Reliable tries to exclusively transport passengers within their business hours. She testified that Reliable is not currently doing work for ClasTran. Under further cross-examination, Ms. Pugh testified that Reliable has an understanding with Access2Care that they will revise the current contract to include wheelchair and non-ambulatory customers if her expanded authority is approved. Ms. Pugh testified that Reliable did provide non-ambulatory transportation services for ClasTran in the past under its non-profit permit. When questioned about transportation services provided outside Reliable's authorized area, Ms. Pugh testified that the dispatcher was reprimanded for scheduling trips outside the authorized territory. Ms. Pugh testified that Reliable has received requests for wheelchair transport from the County Health Department as well as HICA. Ms. Pugh further testified that the service center in Shelby County inspects their vehicles.

Under further redirect examination, Ms. Pugh testified that all of her employees are now aware of the limits of Reliable's operating authority. She testified that Reliable is available to provide services prior to normal 8:00 A.M. – 5:00 P.M. business hours. She further testified that Reliable has available funding on its existing line of credit.

On recross-examination, Ms. Pugh testified that she is not testifying on behalf of the Transportation Coalition.

Appearing on behalf of Protestant's Capitol and Touch of Class was Mr. Doug Isaacson. Mr. Isaacson testified that he had reports from his drivers that a vehicle from Reliable was operating outside their service area.

Under cross-examination, Mr. Isaacson testified that he is the owner of both Capitol Coach and Touch of Class. Mr. Isaacson testified that his business is currently providing services for LogistiCare.

Appearing on behalf of Protestant EMT was Ms. Gale Hughes. Ms. Hughes testified that she has been with the company for 13 years and is the Alabama Operations Manager and that in that capacity she oversees all operations in the state. Ms. Hughes testified that EMT holds statewide authority in Alabama. She testified that EMT provides service for Perry and Talladega Counties but there are more calls from Talladega County than from Perry County. Ms. Hughes testified that EMT will provide transport in those areas when called. When questioned about the equipment, Ms. Hughes testified that EMT operates both

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minivans and wheelchair vans and that they provide service to and from all manner of medical facilities. Ms. Hughes further testified that EMT provides 160-190 trips daily. She further testified that wheelchair trips are 20 to 25 percent of their business and that these trips are the greatest source of revenue for the company. Ms. Hughes further testified that EMT provides both common carrier service and non-jurisdictional service under contract. She further testified that EMT has a contract with Access2Care that provides about 50 percent of their call volume. She testified that EMT provides door-to-door service 24 hours a day, 7 days a week. Ms. Hughes testified that EMT is an approved Medicaid vendor. Ms. Hughes further testified that EMT's rates are competitive with other carriers. She testified that EMT has the resources to grow the business and that the new owners have invested almost half a million dollars in equity to revitalize the company. She testified that Jefferson County area is the largest operation and that they have recently grown from 13 to 30 vehicles in the Jefferson County area. She testified that EMT utilizes 15 minivans and 12 wheelchair vans and that they employ approximately 45 to 47 people. She further testified that drivers go through an extensive screening and training process. She testified that EMT is able to shift vehicles around the state as needed. Ms. Hughes testified that the company is currently revising its website to improve its visibility. Ms. Hughes testified that EMT can handle the traffic that Reliable proposes to handle.

Under cross-examination, Ms. Hughes testified that EMT still maintains a contract with United Health Care and that it does not have a contract with LogistiCare. When questioned about EMT's rates, Ms. Hughes testified that her ambulatory rates are \$7.50 plus \$2.50 per mile and that wheelchair rates are \$29.50 plus \$3.50 per mile. She testified that EMT provides transportation for the Complication Clinic at UAB. Under further cross-examination, Ms. Hughes testified that EMT does not have bilingual drivers but that drivers do have cheat cards provided by the EMS Division of the Alabama Department of Public Health. She further testified that EMT does have bilingual call takers. Ms. Hughes testified that over 50 percent of EMT's call volume comes from Access2Care. She testified that the owners would make additional capital infusions if needed.

Under further cross-examination, Ms. Hughes testified that EMT would provide service in Perry County if called.

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At this time the hearing was adjourned with the understanding that it would be reconvened in order to take the testimony of a witness for BC Taxi who was unable to appear at the hearing because of health reasons.

On June 2, 2010, the hearing was reconvened in Birmingham, Alabama in order to take the testimony of the witness appearing on behalf of BC Taxi. Ms. Connie Humphrey testified that she is employed at BC Taxi and runs the daily operations. She testified that she is the wife of the owner. Ms. Humphrey testified that BC Taxi is located in Talladega, Alabama and that it has been in business for 23 years. She testified that BC Taxi is certified by the PSC. Ms. Humphrey testified that BC Taxi operates 4 vehicles in a taxi cab service. She further testified that they employ 4 full time and 2 part time drivers. She testified that their normal business hours are 5:30 A.M. to 9:00 P.M. and that they have an afterhour's number as well. Ms. Humphrey testified that they have a training and safety program for their drivers. When questioned about their business, Ms. Humphrey testified that 75 to 80 percent of their traffic is medical related and that BC Taxi holds service agreements with Access2Care, LogistiCare, J & J, and Optimal Care. She testified that these agreements are very important to their business. When questioned about competition, Ms. Humphrey testified that BC Taxi has numerous competitors in the area and that local business has dropped due to the economy. Ms. Humphrey testified that BC Taxi needs more business and would acquire additional equipment if there was a need. Under further direct examination, Ms. Humphrey testified that BC Taxi does not have a vehicle with wheelchair lifts. She testified that business is down close to 50 percent from 2 years ago and that more competitors would further drop their business. She testified that they cannot afford to lose more business. Ms. Humphrey testified that BC Taxi can provide transportation of wheelchair patients but the wheelchair has to be stored in the trunk and the patient lifted into and out of the vehicle. She testified that BC Taxi provides contract services for Alabama Institute for the Deaf and Blind ("AIDB").

Under cross-examination, Ms. Humphrey testified that she has never been asked about a wheelchair lift. Ms. Humphrey testified that the majority of her business for AIDB is regular taxi business.

Under redirect examination, Ms. Humphrey testified that she has never had a customer request a wheelchair lift.

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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 has demonstrated that it has 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 has conducted its 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 convenience 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 to transport all the traffic they can adequately, efficiently and economically handle without additional competition from a new operation.

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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).

While it is not an absolute requirement that individual members of the public testify as to public convenience and necessity, there must be some sort of showing that such service is required by the present or future public convenience and necessity. *Alabama Public Service Commission v. B & B Transportation and Limousine Service*, 397 So.2d 120 (Ala. 1981). It has long been Commission precedent that the testimony of the Applicant, employees of the Applicant, or relatives of the Applicant, without other evidence, is insufficient to establish public convenience and necessity when weighed against the credible testimony of Protestants that existing carriers are providing reasonably adequate service. In the present case both Ms. Hughes and Ms. Humphrey presented testimony that Protestants EMT and BC Taxi were providing reasonably adequate service. The Applicant presented no testimony other than that of the owner, Ms. Pugh.


It accordingly appears that the Applicant failed to affirmatively demonstrate a need for its service or that the service it proposes is reasonably necessary for the public good. To the contrary, there is nothing to indicate that the services provided by the existing certificated providers of similar transportation services in the proposed service area is anything less than reasonably adequate.

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RECOMMENDATION

Based on the foregoing, it appears that the Applicant failed to affirmatively demonstrate that the service proposed herein is required by the public convenience and necessity or is reasonably necessary therefore. Further, the Applicant did not affirmatively demonstrate that the service available from existing carriers is anything less than reasonably adequate or that its service is in any way superior to that of existing carriers. It is accordingly recommended that the application of Reliable Transport, LLC be denied.

Respectfully submitted,

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

G. Scott Morris
Administrative Law Judge