Service Date: May 9, 1990

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER of the Application of Jones Brothers Trucking, Inc. DBA Executive Limousine Service, for a Class B Montana Intrastate Certificate of Public Convenience and Necessity.	))))))	TRANSPORTATION DIVISION DOCKET NO. T-9469 ORDER NO. 5987

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PROPOSED ORDER

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APPEARANCES

FOR THE APPLICANT:

Samuel M. Warren, Worden, Thane and Haines, P.C., P.O. Box 4747, Missoula, Montana 59806

FOR THE:

Richard Courtney, Courtney's Limousine Service, 2004 Cannon Street, Helena, Montana 59601, appearing protestants

Debbie Kindsfather, Limo-scene, Limousine Service, 1509 Rosebud Lane, Billings, Montana 59101, appearing protestants

Leona Knutson, Bell-A-Limo, Limousine Service, 1520 Ashley Lake Road, Kalispell, Montana, appearing protestants

Barbara Morrow, Butterfield Stage Limousine, Box 951, Bonner, Montana 59823, appearing protestants

Shellie Berry, A-Limo Limousine Service, P.O. Box 50550, Billings, Montana 59105, appearing protestants

FOR THE COMMISSION:

Robin A. McHugh, Staff Attorney, Dave Burchett, Supervisor of Motor Carriers, 2701 Prospect Avenue, Helena, Montana 59620

BEFORE:

HOWARD L. ELLIS, Commissioner and Hearing Examiner

BACKGROUND

On October 23, 1989 the Commission received an application from Jones Brothers Trucking, Inc., dba Executive Limousine Service (Applicant) for a Certificate of Public Convenience and Necessity, Class B, authorizing the transportation of passengers by limousine service from points in Missoula County to all points and places in the State of Montana and from all points and places in the State of Montana to Missoula County, Montana. By letter dated January 25, 1990 the Applicant limited the authority requested to limousine service from points in Missoula County to all points and places in the State of Montana. The amended request would not allow transportation from points outside Missoula County to points inside Missoula County, unless the transportation movement were a round trip originating in Missoula County. The application is limited to transportation of six passengers or less and to limousine transportation only. Transportation as a jitney or a taxi is prohibited.

The Commission received written protests from the following carriers: Lonnie and Leona Knutson, PSC No. 7172; Ron and Debbie Kindsfather, PSC No. 8949; Beach Transportation

Compa ny, PSC No. 4884; DAKETOKACATE, PSC No. 9044; Shellie D. Berry, dba "A"--LIMO Limousine Service, PSC No. 8943; Richard and Barbara Courtney, dba Courtney's Limousine Service, PSC No. 9020; Mike and Debra Dailey, dba Benton Stage Line, PSC No. 8991; and David L. Morrow, dba Butterfield Stage Limousine, PSC No. 9031.

Following issuance of proper notice, a hearing was held on January 31, 1990 in the City Council Chambers, City Hall, 201 West Spruce, Missoula, Montana. At the conclusion of the hearing the Applicant requested that the Commission issue a proposed order.

SUMMARY OF TESTIMONY

Testimony of Applicant

William Paul Jones Jr., President of Jones Brothers Trucking, appearing and testified in support of the application. Mr. Jones testified that Jones Brothers is an interstate carrier regulated by the Interstate Commerce Commission and the Department of Transportation. Mr. Jones stated that approximately one year ago Jones Brothers looked to expand its operation and perceived a need for a professional limousine service in the Missoula area. The company did some market studies and the results of those studies convinced the company to purchase a vehicle and to begin a limousine business. The company obtained a business license from the City of Missoula but was not aware that a limousine service requires a certificate of public convenience and necessity from the Montana Public Service Commission. Mr. Jones testified that there was no intention on the part of the company to evade the laws of the State of Montana. The company, since becoming informed of the need for a certificate, has not operated. Mr. Jones testified that the proposed limousine service would like to serve the entire state from Missoula. He also testified that Executive Limousine

Service would be a wholly-owned subsidiary of Jones Brothers, Inc. Mr. Jones testified that, in his opinion, existing limousine services in the Missoula area are not marketing their product adequately and therefore there exists a need for an additional limousine service.

Robert L. DeMarois, General Manager of DeMarois Oldsmobile GMC and the manager of Budget Rent-a-Car in Missoula, appeared and testified in support of the application. Mr. DeMarois indicated that Budget Rent-a-Car receives requests for limousine service. He said Budget Rent-a-Car receives between one and two dozen requests for limousine service each year and that until recently he did not know where to refer persons making the requests. Mr. DeMarois testified that he did not look in the Yellow Pages to see if there were other limousine services listed there. He further indicated that he does not have a personal need for a limousine service.

Karen Lynn Rausch, Manager of Thrifty Travel, appeared and testified in support of the application. Ms. Rausch testified that Thrifty Travel receives between 30 and 40 calls per year from persons seeking limousine service. She also testified that she is not aware if there is an existing service in the Yellow Pages.

Linda Simpson, a bookkeeper at Jones Brothers Trucking, appeared and testified in support of the application. She described generally how Executive Limousine Service was created and indicated that in her opinion another limousine service is needed in the Missoula area.

Three exhibits were offered into evidence and admitted by the Hearings Examiner in support of the application. Exhibit A is a City Business License granted to Executive Limousine Service. Exhibit B is a Certificate of Registration from the Secretary of State of the State of Montana for the name Executive Limousine Service. Exhibit C is a promotional brochure for Executive Limousine Service.

Testimony of Protestants

As noted, several existing carriers protested the application. The Commission determines, however, that only two Protestants have standing given the limitations on the present application, as amended:

Leona and Lonnie Knutson (Leona Knutson testified) have Class B authority for persons and baggage in limousine service between all points and places in Flathead, Lincoln, Missoula, Lake and Glacier Counties.

David L. Morrow, dba Butterfield Stage Limousine (Barbara Morrow testified), has Class B authority for passengers by chauffeured limousine between all points and places in Missoula, Lake, Flathead and Ravalli Counties.

The other Protestants, identified as making an appearance, have Montana authority that does not overlap or conflict with the authority sought by the Applicant. Of the two Protestants with standing, the Commission is most concerned with the protest of Butterfield Stage. Butterfield Stage has been operating in the Missoula area since October of 1989. Ms. Morrow indicated that Butterfield Stage has advertised in the Yellow Pages, but that business for the limousine service has been slow. Butterfield Stage has 24 hour phone service.

DISCUSSION, ANALYSIS AND FINDINGS

In considering applications for operating authority, the Commission is governed by the provisions of 69-12-323, MCA. Paragraph (2)(a) of that section provides as follows:

> (2)(a) If after hearing upon application for a certificate, the commission finds from the evidence that public convenience and necessity require the authorization of the service proposed or any part thereof, as the commission shall determine, a certificate therefore shall be issued. In determining whether a certificate should be issued, the commission shall give reasonable consideration to the transportation service being furnished or that will be furnished by any railroad or other existing transportation agency and shall give due consideration to the likelihood of the proposed service being permanent and continuous throughout 12 months of the year and the effect which the proposed transportation service may have upon other forms of transportation service which are essential and indispensable to the communities to be affected by such proposed transportation service or that might be affected thereby.

Applying this language to the facts presented by any application for additional transportation authority, the Commission has traditionally undertaken the following analysis: First, it asks whether the applicant has demonstrated that there is a public need for the proposed service. If the applicant has not demonstrated public need then the application is denied and there is no further inquiry. Second, if the applicant has demonstrated a public need for the proposed service, then the Commission asks whether existing carriers can and will meet that need. If demonstrated public need can be met as well by existing carriers as by an applicant, then, as a general rule, an application for additional authority will be denied. Third, once it is clear that there is public need that cannot be met as well by existing carriers, the Commission asks whether a grant of additional authority will harm the operations of existing carriers contrary to the public interest. If the answer is yes, then the application for new authority will be denied. If the answer is no, then the application will be granted, assuming the Commission determines the applicant fit to provide the proposed service.

The traditional analysis described above has perhaps been stated most concisely in the case of Pan American Bus Lines Operation, 1 M.C.C. 190, 203 (1936):

> The question, in substance, is whether the new operation or service will serve a useful public purpose, responsive to a public demand or need; whether this purpose can and will be served as well by existing lines of carriers; and whether it can be served by applicant with the new operation or service proposed without endangering or impairing the operations of existing carriers contrary to the public interest.

The first question to be addressed therefore, is whether the Applicant has demonstrated a public need for the proposed limousine service. The Commission finds that it has not. No witness presented could testify from personal experience that he or she has had a need for limousine service. Two of the witnesses presented are employed by Jones Brothers Trucking, the owner of Executive Limousine Service. One of the witnesses manages a car rental company that has received requests for limousine service and another witness works at a travel agency that has received requests for limousine service. It is axiomatic that in order to demonstrate need to support a certificate of public convenience and necessity an applicant must present shipper witnesses who can testify from their personal experience that a need exists for the proposed service. No such witnesses were presented by the Applicant in this case. Therefore the Commission finds that the Applicant has failed to meet its threshold burden as described above in paragraphs 12 and 13.

The Commission does not doubt that the Applicant would provide a quality limousine service. However, nothing in this record supports the conclusion that existing carriers are not already providing quality service. Because this record contains no evidence of need, and no evidence that existing carriers cannot meet that need, the application must be denied.

CONCLUSIONS OF LAW

The Montana Public Service Commission properly exercises jurisdiction over the parties and matters in this proceeding pursuant to Title 69, Chapter 12, MCA.

The Commission has provided adequate notice and opportunity to be heard to all interested parties in this matter.

Applicant has not demonstrated a public demand or need for the proposed service.

Assuming public demand or need, Applicant has not demonstrated that existing carriers cannot meet that demand or need.

Following hearing on the application and based upon the evidence in the record, the Commission concludes that public convenience and necessity do not require the granting of the application herein.

ORDER

NOW THEREFORE IT IS ORDERED that the application in Docket No. T-9469 be denied.

IT IS FURTHER ORDERED that all motions made and not ruled on are hereby denied.

IT IS FURTHER ORDERED, pursuant to Section 2-4-621, MCA, that this is a proposed order only. Any party has the opportunity to file exceptions to this initial decision, present briefs, and

make oral arguments before the full Commission. Exceptions and supporting briefs must be filed with the Commission within twenty (20) days from the date of service of this proposed order.

Done and Dated this 9th day of May, 1990.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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HOWARD L. ELLIS, Vice Chairman
& Hearing Examiner

ATTEST:

Ann Peck
Commission Secretary

(SEAL)