

Service Date: August 30, 2002

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

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IN THE MATTER of John Kelly dba Airport Shuttler,)
Missoula, Montana, Application for a Montana Intrastate) DOCKET T-01.39.PCN
Certificate of Public Convenience and Necessity.) ORDER NO. 6517a

FINAL ORDER

APPEARANCES

FOR THE APPLICANT:

Jeremy G. Thane, Worden Thane and Haines P.C., P.O. Box 4747, Missoula, MT 59806

FOR THE PROTESTANT:

Victor Pizzola, owner of Valley Taxi, PSC authority 9207, 361 Rummel Lane,
Hamilton, MT 59840

BEFORE:

Bob Rowe, Commissioner and Hearings Examiner

COMMISSION STAFF:

Wayne Budt, Administrator, Transportation Division
Lisa Swanson, Staff Attorney

BACKGROUND

1. On December 7, 2001, Applicant, John Kelly, dba Airport Shuttler, submitted an Application to the Public Service Commission (Commission) for a Class B Montana Intrastate Certificate of Public Convenience and Necessity. Applicant requested authority to transport passengers between all points and places in Missoula, Montana and a 75 (seventy-five) mile radius thereof with all transportation movements originating or terminating at Missoula International Airport and transportation limited to movements in Missoula, Lake and Ravalli County.

2. Victor Pizzola, (Protestant) dba Valley Taxi, was the sole protestant. Protestant has a Class B authority to carry passengers within the City of Hamilton, Montana and a sixty mile radius thereof as well as to and from the Missoula Airport. Transportation must originate or terminate in Ravalli County, Montana.

3. Following issuance of proper Notice, a Hearing was held on May 7, 2002 at the Missoula County Library, 301 E. Main, Missoula, Montana.

4. On May 21, 2002, Applicant filed a Brief in Support of Application and Protestant faxed a Certificate of Service stating Protestant mailed an 8 page Brief to the Commission and a copy to the Applicant.

5. On May 22, 2002, Protestant filed a Brief in Support of Motion to Dismiss Application.

6. On July 12, 2002, a Proposed Order was issued. No exceptions were received.

SUMMARY OF TESTIMONY

Applicant's Testimony

6. John Kelly (Applicant) appeared and testified in support of the application. Applicant testified he owns PSC Certificate of Public Convenience and Necessity #9384, Class B, common carrier within the City of Missoula and within a ten mile radius thereof serving Missoula Airport. Applicant stated all transportation under this certificate would originate or terminate at Missoula airport. Mr. Kelly has two (2) 2000 Dodge Caravans and stated he will get additional vans if granted additional authority. He stated he receives approximately 2-10 calls a week from individuals in the Bitterroot Valley requesting transportation which he is not able to meet due to lack of authority. He has two full-time and some part-time helpers. He stated he is willing and able to meet the Bitterroot Valley transportation needs and that he presently meets all nineteen incoming flights a day at the Missoula airport.

7. Ellen P. Jones is a pediatrician in Stevensville and lives in Victor, Montana. She states there is not a shuttle service available to her and that she would use one if available. Ms. Jones stated she has family out of state who frequently fly in and out of the Missoula Airport who would use the shuttle. She currently transports family members to and from the Missoula

airport. Ms. Jones never called Valley Taxi. She testified that she looked at Valley Taxi's ads in the phone book and that Valley Taxi did not mention transportation services to the Missoula Airport.

8. Mike Hibbison is the sales and marketing manager for Jore Corporation in Ronan, Montana. He lives in Polson. He stated Jore has out of state business people visit the plant. The visitors arrive in Missoula Airport and require transportation to and from the Missoula Airport.

9. Molly Hackett is retired and lives in Victor. She travels out of state 2-6 times a year. She stated a need for a shuttler to and from the Missoula Airport. She never tried calling Valley Taxi.

10. Janet Irene Holt manages Bitterroot Springs Ranch and lives in Stevensville. The ranch receives numerous guests. Ms. Holt stated her employer, Mr. Cebull, requested her to find transportation in quality vehicles with prompt service for transporting ranch guests to and from the Missoula Airport. Ms. Holt testified that Protestant's taxi service, Valley Taxi, is not suitable transportation for the ranch guests due to the fact Protestant would like a 24 hour notice which is difficult for ranch guests. She stated ranch guests would have to wait an hour for Valley Taxi. Ms. Holt stated she looked at Protestant's taxis and felt they would not meet the ranch's needs. Ms. Holt also testified as to her personal need for transportation for herself and her family to and from Missoula airport. Ms. Holt stated she called Valley Taxi on one occasion about a year and a half prior to the hearing on this matter. She testified she also called limousine companies and felt the cost of over \$100 to transport to the Missoula Airport would be cost prohibitive.

11. Joanne Perkins works in Hamilton and lives in Corvallis. She is the Chairman of the Ravalli County Transportation Advisory Committee (TAC). Ms. Perkins stated Ravalli County is the fastest growing county in Montana. She stated that TAC conducted a study for the Montana Department of Transportation showing 85% of the transportation needs are not met. She felt a need for additional transportation between Ravalli County and Missoula International Airport. She submitted questionnaires (Applicant's exhibits A and B) showing that the majority of the shippers who filled out the questionnaire feel their transportation needs are not being met and that they require transportation to the Missoula Airport. Ms. Perkins opined there is a need

for a shuttle service and that the need is not being met by Protestant or any other transportation service.

Protestant's Testimony

12. Victor Pizzola (Protestant) owns Valley Taxi in Hamilton, Montana, with a Class B authority within Hamilton and a 60 mile radius. Protestant is authorized to transport passengers to and from Missoula Airport. Protestant stated he would be irreparably harmed by Applicant's grant of additional authority unless Applicant was stopped at the Ravalli County Line. Protestant moved to Dismiss the Application in whole or in part stating that Applicant did not prove a public need and that Protestant would be irrevocably harmed and ultimately the general public would be harmed if Application is not denied as regarding Ravalli County.

DISCUSSION

13. In considering applications for operating authority, the Commission is governed by the provisions of 69-12-323, MCA. Paragraph (2)(a) states:

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.

14. To determine whether or not to grant the application for transportation authority, the Commission must work through the following: (1) Has Applicant demonstrated a public need? (2) If there is a need, can the existing carriers meet the need? If existing carriers can meet the need, an application for additional authority will generally be denied. (3) Will granting Applicant additional authority harm the operations of existing carriers contrary to the public interest? (4) Is Applicant fit to provide the service? The traditional analysis has been stated most

concisely in the case of Pan American Bus Lines Operation, 1 MCC 190, 203 (1936). The question Pan American focused on is whether the new service is useful and responsive to public need; whether this purpose can be served as well by existing lines of carriers; and whether it can be served by applicant without endangering or impairing the operations of existing carriers contrary to the public interest.

15. The Commission must make decisions based upon all the evidence and facts before it. *See State v. Healow*, 98 Mont. 177, 186 (1934). In making this discretionary determination, the Commission has traditionally relied on shipper witnesses to establish and substantiate public need. A shipper witness is one who can testify as to a personal need for the service as opposed to a witness who merely opines that others have a need for the proposed service.

16. The Commission believes that Applicant has demonstrated a public need regarding people at the Missoula Airport needing transportation to Ravalli County. However, the Commission does not believe Applicant has demonstrated an unmet need for transportation originating in Ravalli County. Applicant did not provide shipper testimony stating that Ravalli County Customers are denied service by Valley Taxi either by fault or design. Several shipper witnesses testified they did not call Valley Taxi even though Valley Taxi is clearly listed in the yellow pages. There is no record that Valley Taxi has chronically been late, not shown up or turned people down. The shipper testimony is not persuasive on the element of unmet need.

17. The final factor the Commission considers is whether Applicant is fit and able. In determining this, the Commission should consider Applicant's ability and dependability to meet any perceived additional public need. State ex rel. H.R. Roberts v. Public Service Commission, 790 P.2d 489, 494 (1990). Commission finds Applicant is fit, able and dependable. Applicant testified regarding his present authority. Applicant has two, 2000 vehicles and stated he would probably acquire a third if granted additional authority. Applicant specializes in transporting passengers to and from the Missoula Airport. Applicant meets all incoming flights at the Missoula Airport to transport them to their destinations. Applicant stands ready, willing and able to provide transportation service from the Missoula Airport within a 75-mile radius of Missoula in Missoula, Ravalli and Lake Counties.

CONCLUSIONS OF LAW

1. The Commission properly exercised jurisdiction over the parties and matters in this proceeding pursuant to Title 69, Chapter 12, MCA.
2. The Commission has provided adequate notice and opportunity to be heard to all interested parties in this matter.
3. Applicant has not demonstrated that existing carriers in Ravalli cannot meet the demand or need for transportation originating in Ravalli County.
4. Following hearing on the application and based upon the evidence in the record the Commission concludes: Excluding transportation originating from Ravalli County, Applicant has demonstrated a public demand from all points and places in Missoula, Montana and a 75 mile radius thereof with the following limitations: 1) All transportation movements must originate or terminate at the Missoula International Airport; 2) Transportation which originates in Ravalli County is prohibited.

ORDER

IT IS HEREBY ORDERED that the application in Docket T-01.39.PCN be accepted in part and denied in part. The Commission grants the Application for Extension of Authority with the followings limitations:

Class B-passengers between all points and places in Missoula, Montana and a seventy-five (75) mile radius thereof. LIMITATIONS: 1) All transportation movements must originate or terminate at the Missoula International Airport; 2) Transportation is limited to movement in Missoula, Lake and Ravalli Counties; and 3) Transportation which originates in Ravalli County is prohibited.

All motions made and not ruled on are hereby denied.

The Applicant must, within thirty (30) days of the mailing of the notice of the rights herein granted, comply with all Commission rules and regulations.

Herein Final Order 6517(a), the Commission adopts and incorporates, in its entirety, Proposed Order 6517.

DONE AND DATED this 27th day of August, 2002, by a vote of 5 to 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

GARY FELAND, Chairman

JAY STOVALL, Vice Chairman

BOB ANDERSON, Commissioner

MATT BRAINARD, Commissioner

BOB ROWE, Commissioner

ATTEST:

Rhonda J. Simmons
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision.
A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Final Order, Number 6517a, issued in Docket T-01.39.PCN in the matter of John Kelly dba Airport Shuttler, Missoula, Montana has today been sent to all parties listed.

MAILING DATE: August 30, 2002

FOR THE COMMISSION

FIRST CLASS MAIL

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AS ITS INTERESTS MAY APPEAR:

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