

Service Date: June 30, 2006

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

* * * * *

IN THE MATTER of Valet Limousine LLC,) TRANSPORTATION DIVISION
Application to Amend an Existing Montana)
Intrastate Certificate of Public Convenience) Docket No. T-05.40.PCN
and Necessity, PSC No. 7172) Order No. 6724a

FINAL ORDER

APPEARANCES

FOR THE APPLICANT:

Malin Johnson, Attorney at Law, Galington, Lohn & Robinson, 199 West Pine Street,
Missoula, MT 59807-7909.

FOR THE PROTESTANT:

Chris Nygren, Attorney at Law, Milodragovich, Dale, Steinbrenner & Binney, 620 High
Park Way, Missoula, MT 59806-4947.

COMMISSION STAFF:

Robin A. McHugh, Staff Attorney, 1701 Prospect Ave., Helena, MT 59620.

BEFORE:

Doug Mood, Commissioner and Hearing Examiner.

BACKGROUND

1. On November 25, 2005 Valet Limousine, LLC, (Valet) filed an application to amend its Montana Intrastate Certificate of Public Convenience and Necessity, PSC No. 7172, by removing the seating limitations from the following:

- SUB C Class B - Passengers and personal baggage in limousine service originating from Missoula County Airport to all points and places in Ravalli County. Limitations: Transportation is limited to that provided by luxury vehicles in limousine service only with a maximum of eight (8) passengers per limousine. Transportation in school buses and motor coaches is prohibited; operations as a taxi or cab is prohibited. Solicitation of train crews for work-related transportation is prohibited. Transportation shall be provided to passengers by reservation only.
- SUB E Class B - Persons and baggage in limousine service between all points and places in Flathead, Lincoln, Missoula, Lake and Glacier Counties. Limitations: 1) No more than eight (8) passengers may be transported in one vehicle simultaneously for service originating or terminating in Missoula County. 2) The hiring of limousine service must be for the entire vehicle and solicitation of individual passengers to constitute a load is prohibited.
- SUB G Class B - Passengers in limousine service from points in Missoula County to all points and places in Ravalli County. Limitations: 1) No more than eight (8) passengers may be transported in one vehicle simultaneously. 2) Transportation which originates at the Missoula County Airport is prohibited.
- SUB H Class B - Passengers and personal baggage in limousine service: 1) Between all points and places in the following counties: Ravalli and Cascade; and 2) From all points and places in Ravalli and Cascade Counties to all points and places in Montana and return. Limitations: 1) No more than eight (8) passengers may be transported in one vehicle simultaneously for service originating or terminating in Ravalli County. 2) Operations as a taxi or cab is prohibited. 3) Transportation shall be provided to passengers only by advance reservation of at least two (2) hours. 4) Solicitation of train crews for work-related transportation is prohibited. 5) Service originating in Cascade County may be initiated only at the Great Falls International Airport for the purpose of picking up arriving airplane passengers. 6) Any return movements from points and places outside Ravalli and Cascade are limited to those passengers originating from these counties.

2. The Commission received a written protest from R&B Limousine Service, LLC, (R&B) whose Certificate of Public Convenience and Necessity, PSC No. 9445, Class B, reads as follows: "Passengers in limousine service (1) between all points and places in Missoula County and Ravalli County, Montana, and (2) between all points and places in Missoula County and Ravalli County to all points and places in Montana and return."

3. Following issuance of proper notice, a hearing was held before Commissioner Doug Mood on March 16, 2006 at the Missoula County Courthouse Annex, Room 201, 200 West Broadway, Missoula, Montana. At the close of hearing at least one party requested, pursuant to § 2-4-621, MCA, that a proposed order be issued. The parties did not file post-hearing briefs.

4. On April 18, 2006, Commissioner Mood issued Proposed Order No. 6724. The Proposed Order denied the Valet application. It found that Valet had demonstrated a public need for limousines that can carry more than 8 persons, but also found no evidence that protestant R&B cannot meet the need. Proposed Order No. 6724, paras. 20 & 21.

5. Valet filed exceptions to the Proposed Order, and a brief in support of exceptions, on May 22, 2006. Valet's primary argument on exceptions is that the record supports a public need for limousine service for parties of 15 or greater; and, because R&B cannot meet that need, Valet's authority should be amended to allow transportation of larger parties that R&B cannot serve. Valet also contends that the record supports a public need for "wow" SUV limousines, in place of the more common sedan limousines; and Valet invites the Commission to conclude that because R&B is located in Corvallis, Montana - 43 miles from Missoula - it cannot serve the Missoula community "as well" as a Missoula based carrier.

6. R&B filed a response to the exceptions on June 6, 2006. R&B maintains that Valet's exceptions should be denied because they are an effort to change the basis of the application. R&B notes that Valet applied to remove all passenger restrictions, but on exceptions changed its application to remove the limitation on transportation of more than 14 passengers. R&B contends this change "cannot be condoned." R&B contends that it demonstrated that it would be harmed contrary to the public interest by any removal of the passenger limitation. It also asserted that there is no evidence that R&B cannot serve "as well" the Missoula community from Corvallis.

DISCUSSION, ANALYSIS AND FINDINGS

7. On exceptions the Commission is presented with a rather unusual argument. Currently Valet's motor carrier authority limits it to transportation of 8 passengers or less. In its application Valet asked that this limitation be removed completely. Following the Proposed

Order, in which Commissioner Mood found that the record does not support removing the limitation, on exceptions Valet appears to argue that it had only applied, or only intended to apply, for removal of the limitation as it applies to 15 or more passengers. A review of the administrative record and the transcript indicates that Commissioner Mood was correct that Valet applied to completely remove the limitation, and presented evidence and argument in an effort to support that application. The Commission cannot find anywhere in the administrative record that Valet argued in the alternative for a lesser grant of authority from that originally applied for.

8. Nevertheless, the Commission has long taken the position, consistent with statute, that it can grant a form of authority different from that applied for, so long as the authority granted is within the scope of the authority applied for. See § 69-12-323(3), MCA; and the Notice of Public Hearing in this docket, February 8, 2005. Removing Valet's passenger limitations to allow for 15 or more persons is within the scope of completely removing the limitation.

9. There is evidence in the record that supports a need for a limousine that can carry more than 14 passengers. Some of that evidence was described in the Proposed Order. In addition, see witness Stensrud testimony at TR 16; witness Van Ommen testimony at TR 57; witness Robbins testimony at TR 65-69; and witness Shipley testimony at TR 108-109.

10. Having established a need for a limousine that can carry 15 or more passengers, the next question is whether R&B can meet that need. It cannot. R&B's largest vehicle has a capacity of 14 passengers. Finally, the question is whether granting Valet authority to carry 15 or more passengers will harm R&B contrary to the public interest. The Commission has indicated that it will not "apply this third standard as rigorously as if it were dealing with an essential service." Proposed Order 6724, para. 18. R&B will not be harmed by a service which it cannot provide using its existing vehicles. The Commission finds R&B will not be harmed contrary to the public interest.

11. Regarding fitness, Valet is an established carrier and there is no evidence on this record that it has operated in violation of PSC rules or other Montana law.

CONCLUSIONS OF LAW

1. The Montana Public Service Commission properly exercises jurisdiction over the parties and matters in this proceeding pursuant to Title 69, Chapter 12, Montana Code Annotated.
2. The Commission has provided adequate notice and opportunity to be heard to all interested persons in this matter.
3. The applicant has demonstrated a need for limousine service for groups of more than 8 persons.
4. The applicant has not demonstrated a need for limousine service for groups of more than 8 but less than 15 persons that cannot be met as well by an existing carrier.
5. The applicant has demonstrated a need for limousine service for groups of more than 14 that cannot be met as well by an existing carrier.
6. The public convenience and necessity supports amending Valet's authority to limit transportation to groups of less than 9 and more than 14 passengers.

ORDER

Now, therefore, it is ordered that the application in this docket is granted in part and denied in part. Sub parts C, E, G and H of PSC No. 7172 are to be amended by adding language to authorize the transportation of 15 or more passengers, consistent with this order. To the extent not inconsistent with this order, the Commission adopts Order No. 6724 as its Final Order in this docket.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

GREG JERGESON, Chairman

BRAD MOLNAR, Vice Chairman

DOUG MOOD, Commissioner

ROBERT H. RANEY, Commissioner

THOMAS J. SCHNEIDER, Commissioner

ATTEST:

Connie Jones
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, No. 6724a, issued in Docket T-05.40.PCN in the matter of Valet Limousine LLC, Missoula, Montana has today been sent to all parties listed.

MAILING DATE: June 30, 2006

FOR THE COMMISSION

FIRST CLASS MAIL

Valet Limousine LLC
3414 South Avenue West
Missoula, MT 59804

Ms. Malin Johnson
Attorney at Law
PO Box 7909
Missoula, MT 59807-7909

R & B Limousine Service LLC
1332 Country Road
Victor, MT 59875

Mr. Chris Nygren
Attorney at Law
PO Box 4947
Missoula, MT 59806-4947

AS ITS INTERESTS MAY APPEAR:

Montana Consumer Counsel
616 Helena Avenue
P.O. Box 201703
Helena, MT 59620-1703