

Service Date: May 21, 1997

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

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IN THE MATTER of Don and Jo Ellen	)	TRANSPORTATION DIVISION
Ziegler d/b/a/ First Class Limousine Service,	)	
Kila, Montana, Application for a	)	DOCKET NO. T-96.116.PCN
Montana Intrastate Certificate of	)	
Public Convenience and Necessity.	)	ORDER NO. 6428a

**FINAL ORDER**

**APPEARANCES**

*FOR THE APPLICANTS:*

Debra D. Parker, Crowley, Haughey, Hanson, Toole & Dietrich, P.L.L.P., 431-1st Avenue West, P.O. Box 759, Kalispell, Montana 59901

*FOR THE PROTESTANT:*

Paul Neal Cooley, Skelton and Cooley, 412 West Alder, Missoula, Montana 59802, representing Leroy and Jacque Christofferson d/b/a Valet Limousine, Inc.

*FOR THE COMMISSION:*

Denise Peterson, Staff Attorney, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601

*BEFORE:*

BOB ROWE, Commissioner and Hearing Examiner.

Pursuant to 2-4-621, MCA, a proposed order authorizing a partial grant of the authority requested was issued in this matter on April 4, 1997. Applicants filed a brief in support of the Proposed Decision, with an additional request that the Final Order be a full grant and not a partial

grant of the authority requested. Protestant's brief objected to the decision. This order will address the briefs as an addendum to the discussion, explaining that there were no exceptions sufficient for the Commission to modify the proposed decision. Therefore, the Commission adopts the proposed order as its final order in this matter.

### BACKGROUND

1. On October 23, 1996, Don and Jo Ellen Ziegler, d/b/a First Class Limousine Service (Applicants), Kila, Montana, filed an application with the Montana Public Service Commission (Commission) for a Class B certificate of public convenience and necessity to transport passengers in limousine service between all points and places within Flathead, Glacier, Lake, and Lincoln Counties.

2. The Commission received a protest from Valet Limousine, Inc., Missoula, Montana (PSC No. 7172).

3. The Commission noticed the hearing for December 20, 1996 in Kalispell. On November 27, 1996 the Commission vacated the hearing date and rescheduled and published the notice for the hearing date of January 16, 1997.

4. Hearing Examiner Bob Rowe, Commissioner for District 5, conducted the hearing beginning at 1:00 p.m. on Thursday, January 16, 1997 in Conference Room #2, Courthouse East 723 - 5th Avenue East, Kalispell, Montana.

### SUMMARY OF TESTIMONY

#### Applicants' Witnesses

5. Kelly Siblingud, Somers, Montana, is employed by the Daily InterLake in sales and advertising. For the newspaper she puts out a booklet and promotes an annual Bridal Fair. She contacts people who work in wedding businesses to buy space at the Fair. She tabulated that there were 140 brides at the Fair last year. She did not tabulate the need for limousine service or know how many would use one. Although contacted, Valet Limousine never does a booth or advertises at the Fair or in the booklet. She testified that she personally tried to reserve a

limousine from Valet last summer when she got married. Valet's limousine located locally was booked, so Valet offered to bring one up from Missoula for an additional \$75. She testified that there was no local service available.

6. On cross-examination, Ms. Siblingud admitted that she does not expect a future personal need for limousine service. She stated that she had contacted Valet two months in advance, although she started planning six months in advance of her August 31st wedding. Because of conflicts scheduling the church and the pastor, they rescheduled the time, but not the day, of the wedding. She admitted that marriage in the summer months creates more scheduling conflicts. She did not attempt other limousine dates. Weddings are expensive, and \$75 would not have been a major expense.

7. Donald Ziegler, Kila, Montana (Co-Applicant) testified that he will be the owner, operator, telephone answerer and driver as needed for the limousine service. He has had no moving violations since he was 17 years old, and he is now 38. He has experience as a taxi driver in Bellevue, Washington. The back-up driver will be his wife, and they have two possible employees, one a bus driver. Mr. Ziegler is employed as the manager and operator at Flathead Janitorial, and will continue this employment if they are granted the authority. His employer knows his plans and will be flexible. The limousine service will be the first priority to the Zieglers.

8. Applicants have purchased a 1987 Lincoln 60 inch stretch limousine for \$8,700. The photographs taken by the prior owner show the good condition of the limousine, although it is now cleaned up, Mr. Ziegler said. The mechanical diagnostic before purchase show the engine and transmission in A-1 condition, with tires at 80 percent of original. The Zieglers plan to maintain an inspection and maintenance schedule, and have a safety inspection performed at the local Lincoln dealer every six months or 3,000 miles, whichever comes first. They have purchased a \$1,000,000 policy in liability insurance, paying about \$500 to \$600. Only his wife is insured at this time; he has to provide his license to be covered under the policy for no extra cost. He did not have a copy of the application, but had seen a copy of the check. The limousine will be garaged in Kalispell in a rented storage unit.

9. Mr. Ziegler's enthusiasm for a limousine business dates back to the junior year of high school prom. He has always loved cars. He had not imagined that his goal of owning a limousine service would be obtainable. He has always been in service employment and loves to serve. He conducted a feasibility study on this project, visiting with people in the wedding industry, such as bridal shops, resorts, hotels, the Chamber of Commerce, and "shippers." He rented a booth at the Bridal Fair and obtained a list of signatures of people planning to marry. He concluded that they were potential customers and that there is a need for a limousine service that was not being met.

10. Mr. Ziegler submitted his own analysis of a breakdown, county by county, of the phone books and the advertising for limousine service. Missoula County, with a population of 87,130 has three limousine services in the yellow pages, while Flathead, Lake, Lincoln and Glacier Counties have only one advertised for the combined population of 125,346. He also submitted a business plan. He has a personal operating line of credit of \$15,000 arranged privately with a relative. He proposed advertising in the newspaper, putting out brochures and cards, and networking through the Chamber of Commerce, where he is a member. He said that if he could not meet a request, he would recommend that customers call Valet. Mr. Ziegler discussed a prospectus on an offer to sell from Valet, in which Valet proposed that its gross revenues could be improved to \$51,000 from the historical, annual gross income of \$19,000 to 25,000 by an aggressive operator. (Valet offered to sell its authority for the five counties.) Mr. Ziegler believed that there is a great unmet need not being tapped due to lack of advertising. He proposed to create the new need, without impairing any service already provided by Valet. Many weddings occur on the same day, and Valet cannot meet all the need.

11. In rebuttal, Mr. Ziegler testified that in the short term, he would keep working at the janitorial service. Money is available to increase the initial \$15,000 operating line. His income averages \$25,000 from the janitorial service, which supports their four children. He is aware of the failure rate for small business, but it is not 99 percent. He has been successfully self-employed, six years in one janitorial business in Oregon. His business employed others and had major contracts with manufacturers and government. They moved because of a daughter's

health. He is prepared to deal with any major mechanical breakdowns. They plan to hire any employees through Personnel Leasing, which would cover the employee's insurance as the employer of record.

12. Morgan Gutowski owns Your Host to Northwest Montana. She is a vacation, convention and wedding coordinator. She arranges goods, services, and components of weddings, including limousine service. Limousines are not always available when she needs them, she said. She tried unsuccessfully to contact Valet three or four times in her three years of business, and now she will not promote Valet's service. On cross-examination, she testified that she arranges the services and either she or the client pays for the services. When she calls, it is on behalf of the clients. She said that limousine rates range from \$35 per hour, depending on duration. A typical need in a wedding is several hours. At an average of \$100 per limousine use for the three or four weddings the past two years would amount to about \$400 in gross revenue to a limousine service. It is her belief that the level of need would increase if limousines were more available.

13. Laura Woodward, Kalispell, executive director for the Flathead Music Festival, a three week concert series, makes arrangements for musicians and crews for the summer concerts. She would use limousines on a recurring basis, but the past two years has been unable to obtain the service for the artists. She was last told in 1996 that Valet was not available because it served Missoula. Under cross-examination, she stated that she had not told Valet that its service was too expensive. She said that she had called one month in advance one time each year. She has to take the budget request for a limousine to the board for approval. The last time they hired limousine service was three or four years before. She does not remember the amount, but thinks it was a trade for tickets, plus a fee for mileage. In the past four years the board has never approved a straight hourly charge. The board would routinely approve the limousine service if she recommended it.

14. Elaine Graber, Kalispell, owns Scott Publishing, which publishes annual travel guides, wedding guides, and drug awareness brochures, among other publications. She sponsored two exhibits, Brides Time 1996-97 and 1997-98, the only wedding guide in the

Flathead area. In soliciting advertising from the wedding industry, she contacted Valet's sales representative, who declined to advertise. Before the present ownership, Valet regularly advertised in the booklets. Ms. Graber said that in the summer of 1995 for her daughter's wedding they wanted a personal limousine but service was not available. They had a special need for an older Cadillac, but her daughter would have taken anything. Lateness in contacting Valet and other providers was a factor, but she believed that little availability of limousines in the area was the major factor. She would have been willing to pay a \$75 surcharge, but could not even get service from Missoula from Valet.

15. Nancy Kjelsrud, Kalispell, owns Family Wedding Center, which does bridal business, retail and rental. She also does proms and similar occasions where customers are likely to want limousine service. Personally she has not tried to book a limousine, but has had discussions with clients. She rents 25 to 30 tuxedos for the senior ball, 60 for each prom. She estimated from these discussions that 10 to 15 groups of 6 children were unable to get a limousine on the two nights of the year. She said that price is no problem for these kids when it comes to the prom.

16. Jo Ellen Ziegler, co-Applicant, plans to be actively involved as the secretary, answering the phone, scheduling appointments, and driving as needed. She has a clean driving record, though she has not driven professionally. She does have experience driving a large 1963 Cadillac, only one foot shorter than the limousine. She has driven since age 18, and is now 32. The business plans to hire an accountant to do the financial records. The insurance agent filled out the forms for insurance for the vehicle, and she signed a check for the insurance. On the personal investment so far, she said that they bought the car for \$5,000 - 6,000, and transportation to Montana cost about \$1,600. She is not currently employed. Her husband will be the primary mover. She will contribute mostly leg work.

#### Protestant's Witnesses

17. Dawn Salcido, Missoula, Montana, works for Valet Limousine. For the past year and a half, she has acted as a receptionist, arranged the drivers, and done the scheduling and credit billing. Booking a limousine is not usually a problem, if done in advance. During the

summer wedding season, booking should be done at least three to four months in advance, even in Missoula where there are four vehicles available. It is rare not to be able to provide service with the four vehicles. If more than two cars are needed at the same time, Valet has a contract with someone in Darby and exchanges service with a limousine in Helena. If a customer wants a specific color, Valet can contact another certificate holder in Missoula. She has used a personal vehicle in the Flathead area and has rented a vehicle in response to specific customer requests. The low season is October to May. They have provided service for 19 couples in one night for the prom. Valet has never had a request for a blue car, but frequently has requests for white cars. Sometimes Valet has subcontracted to Camelot Limousine service or a local funeral home for a black vehicle, if requested.

18. Ms. Salcido testified that advertising in the yellow pages of the telephone book is effective. Valet has a nation wide toll-free number which receives 10-15 calls per day. Of course, there are many more calls than bookings.

19. Based on last year's experience, Ms. Salcido said that the list from the Bridal Fair does not reflect those who would actually use the limousine. There is a difference between those who plan weddings and those who actually use limousine service. She disagreed with the one witness, saying that price is an issue, even for the prom unless they share a car. Valet has advertised in the Kalispell paper and in the high school papers. Valet has sent letters to all the engaged couples in the Missoulian and Daily InterLake. Limousine service is the first item deleted from a wedding budget, despite initial scheduling. Five customers canceled last summer. People ask for white or black vehicles; she doubted anyone would want a blue limousine. Executive Limousine owns one brown Olds Cierra with a four person capacity, not a traditional limousine. When she tells people it is available, they decline. Valet has three drivers in the Flathead and four in Missoula who will travel.

20. Ms. Salcido estimated that \$3,000 is the maximum gross revenue another provider could make. Calculating gas, wages and overhead (taxes, workers' compensation, etc.), she said that the \$75 surcharge to take a vehicle from Missoula to Flathead County covers the expenses and nothing more. (For multiple bookings, such as a prom, there is no surcharge.) The cost

would be the same to take a limousine from Kalispell to Lake County. Ms. Salcido is instructed that whatever it takes to provide service, she will do, including splitting the cost with the customer to make it more attractive, since the price is deregulated. The goal is to have a happy clientele. Valet has had to reschedule limousine service as church times change. Conflicts in wedding season are not unusual. The high need in the Kalispell area is limited to the wedding season and proms. She has seen little unmet need, but if what the witnesses said is true, she proposed leasing the Ziegler vehicle when Valet's is not available. She admitted that the logical conclusion, based on the witnesses' testimony, is that there was unmet need. She testified that if Applicants received the authority in the four counties and took away half the business, that would put Valet out of business and then there would still be unmet need.

21. Ms. Salcido testified that the gross revenue of \$19,000 to \$25,000 per year covers all Valet's counties. The Kalispell area generates about \$5,000 in gross revenues, she estimated. She is actually employed by Crisco, Inc., not Valet, to do payroll, working for Christofferson Logliners and Valet. She is only paid by Valet if she is doing actual runs (paid by Crisco, reimbursed by Valet). As the bookkeeper, she agrees that Ms. Christofferson takes nothing out of Valet, which is supported by her other businesses.

22. Jacque Christofferson, 50 percent shareholder in Valet Limousine, has owned Valet about five years. With the same enthusiasm as the Applicants have, she began by sitting in the front seat with the limousine driver to study the limousine business. In her experience there are people who enjoy and appreciate the service and other people who expect it and it will never be right. On cross-examination she said that there had been complaints, and that there was a learning curve. She had not had complaints recently about the limousine service.

23. Ms. Christofferson no longer advertised in the bridal book because it had not been cost-effective. She did not think that the Applicant could adequately sustain the limousine in the four counties based on her four years of experience in the business. She said that there was not enough income from the shippers testifying at the hearing to sustain another authority, nor was a \$15,000 credit line adequate to support a new business as described. The maintenance on a \$6,000 vehicle would exceed the revenue, she testified, especially an older vehicle. She said that

she would agree to contract out to Ziegler whenever she could not serve, if the customer would accept it and the interior of the vehicle, clothing and greeting of the driver were acceptable.

24. Ms. Christofferson supports the limousine business from other funds. She tells her crews to provide any service so that she does not lose her authority. She is concerned about intrusion on the service she provides. She is concerned that if the Applicants receive the authority, her certificate will become less valuable. If the Applicants receive the authority, they could sell to someone who could compete more, which would damage her present ability to provide service. She denied being "burned out" on the limousine business. She would review whether to stay in the business if Applicants got the authority. She would be willing to sell a portion of the business.

#### FURTHER FINDINGS AND DISCUSSION

25. Pursuant to Title 69, Chapter 12, Montana Code Annotated (MCA), the Commission supervises and regulates intrastate motor carrier passenger service. § 69-12-201, MCA. To obtain motor carrier operating authority, a motor carrier must file an application with the Commission, which will give notice of the filing and schedule a hearing upon filing of a protest or a request for a hearing. § 69-12-321, MCA.

26. Pursuant to § 69-12-323, MCA, the Commission is required to find and determine from the evidence whether public convenience and necessity require authorizing the proposed service. The Commission considers existing transportation service; the likelihood of the proposed service being permanent and continuous 12 months of the year; and the effect of the proposed service on other essential transportation service in the affected communities.

27. The Commission interprets § 69-12-323, MCA, as requiring it to address these issues before granting an application for authority:

- a. Is the applicant fit and able to perform the proposed service?
- b. Does the public convenience and necessity require the authorization of the proposed service?
- c. Can and will existing carriers meet the public need for the proposed service?

d. Would the proposed service have an adverse impact on existing transportation contrary to the public interest?

28. The Commission makes a threshold determination of whether the applicant is fit, willing and able to provide the service, considering these factors: (1) the financial condition of the applicant; (2) the intention of the applicant to perform the service sought; (3) the adequacy of the equipment the applicant has to perform the service; (4) the experience of the applicant in conducting the service sought; and (5) the nature of previous operations, if there are allegations of illegal operations.

29. Applicants have testified that they have the financial wherewithal to begin a limousine service, with a sufficient line of credit to continue the business. They have already acquired a respectable limousine. They have had success with other self-employment enterprises. They intend to perform the service 12 months of the year, although they recognize the somewhat seasonal and occasional need for limousine service. There were no allegations of illegal conduct. The Commission finds that Applicants meet the threshold requirement of fitness to provide limousine service.

30. In determining public convenience and necessity, the Commission has traditionally followed the analysis of Pan-American Bus Lines Operation, 1 M.C.C. 190 (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. 1 M.C.C. 203.

31. The legislature has declared limousine passenger service a public purpose for which there is a public demand or need, subject to the Commission's regulation. Public need must be shown by shipper testimony. In a request for authority to transport passengers by limousine in an area served by carriers with existing limousine authority, the record must demonstrate a need for additional limousine service in the area. The evidence and testimony established a limited need for additional local limousine service in the Flathead County area. No

witnesses attested to any need beyond Flathead County. Local witnesses knowledgeable about the wedding and prom industry testified that there was a very localized need not being met. The fact that Valet can bring limousines from Missoula for a \$75 surcharge does not mean that the limousines are available in Flathead County. The Commission finds that Applicant has established a sufficient additional need for limousine service for Flathead County only.

32. Valet Limousine's witnesses maintained that another limousine certificate in even part of its territory would harm Valet by making its certificate less valuable for resale. The Commission's duty is to determine whether a grant of authority would harm existing carriers contrary to the public interest. The Commission does not protect an existing certificate for purposes of resale, but rather for purposes of providing public service. Valet's revenues or provision of service will not be harmed by another provider fulfilling the additional need it was not meeting. The Commission finds that there is no credible evidence that Valet will be harmed by a limited grant of authority to the Applicants to meet this need.

#### ADDENDUM -- POST-HEARING REQUESTS FOR MODIFICATIONS

33. In its post-hearing request, Protestant does not cite to the specific portions of the proposed decision to which an exception is taken. Rather, Protestant generally criticizes the proposed order and argues the issue of harm to the existing carrier. The harm attested to at the hearing was related to the devaluation of the certificate for sale, rather than Valet's ability to provide service. The summary of testimony shows that the limousines were not available in the area as needed. Those wanting service from Valet were asked to spend an additional \$75 to bring a vehicle from Missoula. (§ 20.) The owner of Valet supports the limousine business from other funds now. (§§ 21 and 24.) A grant of authority for Flathead County only will not change the operations of Valet significantly to its detriment.

34. Applicants filed a brief in support of the Commission's proposed decision for limousine authority in Flathead County, but believe that the authority should extend to the remaining counties absent any protest to Glacier, Lake or Lincoln Counties. An applicant, however, has the burden of proving the need for the service. There was no showing of need

outside Flathead County. One District Court has upheld the Commission's requirement that an applicant make out a *prima facie* case to establish public convenience and necessity by producing shipper testimony for the county or area requested. (In the Matter of Montana Recycling, Inc., Missoula, Montana, Application for a Class C Montana Intrastate Certificate of Public Convenience and Necessity, Cause No. 77692, Fourth Judicial district Court, Missoula County, December 13, 1993, affirming PSC Order No. 6171, Docket No. T-9925, issued March 12, 1993.) It is not the protestant's obligation to rebut a need for service which has not been supported on the record. The Commission affirms the partial grant of authority for Flathead County and will not expand the grant of authority.

#### 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 parties in this matter pursuant to the Montana Administrative Procedures Act (MAPA) requirements for contested case procedures. §§ 2-4-601, et seq., MCA.
3. An applicant for a certificate of Class B operating authority must show that the public convenience and necessity require the proposed service. § 69-12-323, MCA.
4. Applicant has only demonstrated a public demand or need for a partial grant of the proposed service, that is to serve Flathead County.
5. A grant of this application would not harm Protestants contrary to the public interest.

ORDER

NOW THEREFORE IT IS ORDERED that the application of Don and Jo Ellen Ziegler, d/b/a/ First Class Limousine Service, Kila, Montana, for a Class B Certificate of Public Convenience and Necessity is **granted in part** as follows:

Class B - Passengers in limousine service between all points and places within Flathead County.

The Commission **denies** the remainder of the application to provide limousine service to or within Glacier, Lake and Lincoln Counties.

Done and Dated this 20th day of May, 1997 by a vote of 5 - 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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DAVE FISHER, Chairman

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NANCY MCCAFFREE, Vice Chair

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BOB ANDERSON, Commissioner

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DANNY OBERG, Commissioner

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BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson  
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 ARM 38.2.4806.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Final Order issued in Docket T-96.116.PCN in the matter of Don and Jo Ellen Ziegler, d/b/a First Class Limousine Service, Kila, Montana has today been sent to all parties listed.

MAILING DATE: May 21, 1997

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FOR THE COMMISSION

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