

Service Date: December 21, 1992

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

\* \* \* \* \*

IN THE MATTER of the Application	)	TRANSPORTATION DIVISION
of Beach Transportation Company,	)	
Missoula, Montana for a Class B	)	DOCKET NO. T-9900
Montana Intrastate Certificate of	)	
Public Convenience and Necessity.	)	ORDER NO. 6141

FINAL ORDER

APPEARANCES

FOR THE APPLICANT:

Bradley J. Luck, Attorney at Law, Garlington, Lohn & Robinson, 199 West Pine, Missoula, Montana 59802

FOR THE PROTESTANTS:

Thomas W. Frizzell, Attorney at Law, Tipp, Frizzel & Buley, 2200 Brooks, Missoula, Montana 59801

FOR THE COMMISSION:

Robin A. McHugh, Staff Attorney, J. David Burchett, Supervisor of Motor Carriers, 1701 Prospect Avenue, Helena, Montana 59620

BEFORE:

TED C. MACY, Commissioner & Hearing Examiner

## BACKGROUND

1. On June 23, 1992 the Commission received an application from Beach Transportation Company (Beach or Applicant) for a Certificate of Public Convenience and Necessity, Class B, authorizing the transportation of passengers in charter service between all points and places in Montana, with the limitation that transportation must originate or terminate in the counties of Beaverhead, Blaine, Granite, Hill, Liberty, Mineral, Powell, Ravalli, Sanders, Teton and Toole. Protests to the application were received from Hall Transit, Shelby Taxi Service, Camelot Limousine Service and L & B Busing. Hall Transit later withdrew its protest. Shelby Taxi withdrew its protest after Beach agreed to delete Toole County from its application and to limit its service to charter bus transportation, not to include taxi or limousine service. Camelot Limousine Service withdrew its protest after Beach agreed to exclude limousines and to limit equipment used to vans, school buses and motor coaches with seating capacity of 15 or more. In addition, in response to a potential protest Beach agreed to amend its application to prohibit solicitation of Burlington Northern and Montana Rail Link crews.

2. Following issuance of proper notice, a hearing was held on August 28, 1992, in the City Council Chambers, City Hall, 435 Ryman, Missoula, Montana. At the hearing it was determined that the Commission would issue a proposed order pursuant to ARM 38.2.4802(1). Subsequent to the hearing the parties stipulated by letter to the issuance of a final order.

## SUMMARY OF TESTIMONY

Testimony of Applicant:

3. Greg Beach, vice-president of marketing and finance for Beach Transportation, appeared and testified in support of the application. Mr. Beach described the Beach charter bus operation and indicated that Beach seeks additional authority to compliment its current authority to originate or terminate in Missoula County. He opined that there is a need for additional charter service in Ravalli County. He explained that Beach currently has deluxe vans and a 14 passenger air conditioned Ford bus, but acknowledged that these do not qualify as motor coaches. He said that Beach anticipates purchasing a mid-size motor coach with either a 24 or 36 person capacity.

Testimony of Shipper Witnesses:

4. Beverly S. Steiner, a travel agent in Hamilton, appeared and testified in support of the application. Ms. Steiner escorts bus tours for Best Way Travel and said there is a current need for another charter bus service in Ravalli County.

5. Tammy Hurst, a travel agent in Hamilton, appeared and testified in support of the application. Ms. Hurst said that Beach could provide good service because of its new equipment and large fleet. Ms. Hurst did not complain about L & B's service but said there is an intrastate need for smaller buses. She said that there are times when tours do not require a 47 seat bus. She said that she has not sponsored an intrastate tour in the past year, but has arranged trips through a Missoula agency. She said that if Beach had authority in Ravalli County she could take advantage of smaller Beach buses, could reach out to customers she cannot presently serve, and would consider sponsoring tours directly.

6. Willard Wiley, director of the senior citizen center in Missoula, appeared and testified in support of the application. Mr. Wiley said he has used Beach extensively and the service and equipment has been excellent.

7. Linda Phachey, a travel agent in Missoula, appeared and testified in support of the application. Ms. Phachey said she has used Beach and praised the quality of its equipment and service. She said there is a need for Beach to have the authority applied for because it would be convenient to pick people up in those counties on trips that originate in

Missoula County. She said she would use a charter service that could pick up in outlying counties and believes she could market such a service.

8. Jim Van Camper, a tour operator for senior citizens, appeared and testified in support of the application. Mr. Van Camper said that, based on his experience Beach provides excellent service. He said there is a need to pick up in outlying counties. He said he has had no experience with L & B Busing.

9. The exhibits described below were introduced by the Applicant and admitted by the Commission:

1. Fleet
2. Company Maintenance Program
3. Driver Training Program
4. Company Drug Policy
5. Safety Certification
6. Financial Status Report
7. Community Relations
8. Customer Satisfaction Comments
9. Awards and Recognition
10. National Publication Recognition
11. Additional Shipper Support
12. Objection to L & B Busing
13. Beach Transportation Pamphlets
14. "Second to None: The Story of Beach Transportation Company and its Buses"
15. Article in June 21, 1992 Missoulian titled "Bitterroot Valley starts to plan for the Future"

16. Partial transcript of the hearing in Docket T-9865, In the Matter of the Application of L & B Busing, Inc., Florence, Montana for a Class B Montana Intrastate Certificate of Public Convenience and Necessity, cross-examination of Bob Krout

Testimony of Protestant:

10. Robert Krout, an owner of L & B Busing, appeared and testified in opposition to the application. L & B has authority for charter service that must originate and terminate in Ravalli County. Mr. Krout said that there is not a need for another charter bus service that originates in Ravalli County. He said that he has not refused any request for service. He agreed that there may be a need to pick up passengers in outlying counties. L & B introduced and the Commission admitted the following exhibits:

Protestant Exhibit No. 1 - Transcript of hearing in Docket No. T-9865.

Protestant Exhibit No. 2 - Statements of L & B's Montana Consumer Counsel tax for years 1989, 1990 and 1992.

DISCUSSION, ANALYSIS AND FINDINGS

11. 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 a transportation service which are essential and indispensable to the communities to be affected by such proposed transportation service or that might be affected thereby.

12. 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.

13. 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 (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. at 203.

14. The first question to be addressed is whether the Applicant has demonstrated a public need for the proposed charter bus service. Though the evidence is not overwhelming, the Commission determines that there is substantial evidence to support a finding of public need for a different character of charter bus service in Ravalli County. Several witnesses testified to a need for charter bus service, either originating or continuing in Ravalli County.

15. The second question is whether existing carriers can meet the need. L&B Busing was the only protestant in Ravalli County and Robert Krout an owner of L&B, testified that L&B is willing and able to meet the need expressed. The Commission finds that this case presents a "Character of service" question. Beach has a modern, well-equipped and comfortable fleet of buses, whereas L&B has an older fleet that does not provide the same level of comfort. It is probably true that, with respect to volume, L&B has an older fleet that does not provide the same level of comfort. It is probably true that, with respect to volume, L&B can handle the charter bus business originating in Ravalli County. The testimony demonstrates, however, that there is a market in Ravalli County for the high quality kind of bus service that Beach offers. In addition, Beach indicated that it does have deluxe vans and at least on smaller bus, equipment desired by smaller groups and which is not available from L&B. For these reasons the Commission concludes that L&B cannot meet the need expressed by the shipper witnesses.

16. The third question is whether granting the application will harm existing carriers contrary to the public interest. Existing carriers have the burden of demonstrating such harm, and L&B did not meet that burden. Because Beach and L&B have a different character of service it is not likely that any business Beach does in Ravalli County would otherwise go to L&B.

17. Finally, Beach is a fit carrier. No evidence supports a contrary conclusion.

18. In addition to Ravalli County, Beach applied for authority in Beaverhead, Blaine, Granite, Hill, Liberty, Mineral and Powell Counties. Sufficient evidence of need was demonstrated for Ravalli County only. Beach's application was protested seriously only in Ravalli County. The Commission is currently analyzing the presumption of need in unprotested applications, or portions of applications. Therefore, the Commission reserves decision on L&B's application for authority in Beaverhead, Blaine, Granite, Hill, Liberty, Mineral and Powell counties for 45 days pending a resolution of the analysis.

19. As noted, *supra*, as paragraph 1, Camelot Limousine Service withdrew its protest after Beach agreed to exclude limousines and limit equipment used to vehicles with seating capacity of 15 or more. The record in this case indicates a need for a 15 or more. The record in this case indicates a need for smaller buses and Beach has deluxe vans a 14 passenger bus. The Commission will not hold Beach to its agreement with Camelot (whose standing to protest this application was questionable) and limit its use of smaller vehicles. Camelot currently has limousine authority limited to not more than eight passengers per vehicle. Therefore, Camelot will not be injured by authorizing Beach to use equipment with capacity of nine or more and a limitation against limousine service.

#### 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, MCA.

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

3. The Application does propose an operation that will serve a useful public purpose responsive to a public demand.

4. The foregoing public demand cannot satisfactorily be met by existing carriers and authorities.

5. The authority granted in this order will not endanger or impair the operation of existing carriers contrary to the public interest.

6. After hearing upon the application and after giving reasonable consideration to the effect of the proposed operation upon other transportation agencies, the Commission concludes from the evidence that public convenience and necessity require the authorization of the proposed service as described below. Section 69-12-323 (2), MCA.

#### ORDER

NOW THEREFORE IT IS ORDERED that the application in Docket No. T-9900 is granted. Applicant is granted a Certificate of Public Convenience and Necessity, Class B, authorizing the transportation of persons in charter bus service between all points and places in Montana, with the limitations that 1) transportation must originate and terminate in Ravalli County, 2) limousine service is prohibited and equipment is limited to vans, school buses and motor coaches with seating capacity of nine or more, and 3) solicitation of Burlington Northern and Montana Rail Link crews is prohibited.

Done and Dated is 21st day of December, 1992 by a vote of 3-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

---

DANNY OBERG, Chairman

---

BOB ANDERSON, Commissioner

---

TED C. MACY, Commissioner

ATTEST:

Kathlene M. Anderson  
Commission Secretary

(SEAL)

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