

APPEARANCE SHEET

ALJ HEARING REPORT

DOCKET NO. A-00108299
CASE NAME J.E.T. Enterprises, Inc.,
t/d/b a Londonderry Limousine,
Ltd.
HEARING LOCATION Harrisburg, PA.
HEARING DATE June 2, 1989
ALJ Cocheres

CHECK THOSE BLOCKS WHICH APPLY:

Hearing held YES NO
Testimony taken YES NO
Hearing concluded YES NO
Further hearing needed YES NO

Estimated add'l days _____

RECORD CLOSED YES 7/31/89 NO
Date

Briefs to be filed YES NO
Date

BENCH DECISION YES NO

REMARKS: Main Briefs due July 20, 1989

Reply Brief due July 31, 1989

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Public Utility Commission

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July 18, 1989

File: 1012.51

RE: J.E.T. ENTERPRISES, INC., t/d/b/a LONDONDERRY LIMOUSINES, LTD.,
A. 108299 -
Protest of Aero Corporation

Jerry Rich, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, Pennsylvania 17120



Dear Mr. Rich:

Pursuant to Brief schedule in the above matter we enclose herewith the original and 9 copies of "Brief on Behalf of Aero Corporation, Protestant."

As stated on the Certificate of Service we are mailing 3 copies to Judge Cocheres, to Mr. Campbell who represents the applicant and to Craig Doll who entered an appearance in this case and subsequently withdrew. We are also forwarding a copy to our client.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Christian V. Graf".
Christian V. Graf

CVG:tcr
Enclosures

cc: Louis Cocheres, Administrative Law Judge
Pennsylvania Public Utility Commission
P.O. Box 3265
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James D. Campbell, Esquire
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY
COMMISSION

In re: J.E.T. ENTERPRISES, INC.,
t/d/b/a LONDONDERRY LIMOUSINE, INC.
A. 00108299

BRIEF ON BEHALF OF AERO CORPORATION,
Protestant

DOCUMENT
FOLDER

DOCKETED
JUL 20 1989

GRAF, ANDREWS & RADCLIFF, P.C.
Christian V. Graf, Esquire
David H. Radcliff, Esquire
407 North Front Street
Harrisburg, Pennsylvania 17101

DUE DATE: July 20, 1989

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY
COMMISSION

In Re: J.E.T. ENTERPRISES, INC.,
t/d/b/a LONDONDERRY LIMOUSINE, INC.,
A. 00108299

BRIEF ON BEHALF OF AERO CORPORATION,
Protestant

1.

STATEMENT OF THE CASE

As originally filed the application sought limousine service between points in the counties of Dauphin, Lancaster and Lebanon and from points in said counties to points in Pennsylvania and return.

Two amendments limited the scope of this application. The first excluded transportation to or from Lancaster Airport in Manheim Township, Lancaster County, (Exhibit A-1) and the final (Exhibit A-3) set forth the full scope of the application as it now reads:

"To transport, as a Common Carrier, by motor vehicle, persons, in limousine service, between points in the Counties of Dauphin, Lancaster and Lebanon, and from points in said Counties to points in Pennsylvania, and return:

subject to the following conditions:

1. That no right, power, or privilege is granted to render transportation to or from the Lancaster Airport located in the Township of Manheim, Lancaster County.

2. That no right, power, or privilege is granted to render transportation from points in the City of Harrisburg, Dauphin County, to the Harrisburg International Airport located in the Township of Lower Swatara, Dauphin County, and vice versa."

As a result of these amendments the only protest remaining was that of Aero Corporation which actively pursued its protest to these hearings.

Hearings were held, all at Harrisburg, and all before Administrative Law Judge Louis Cocheres on March 29 and 30; May 3 and June 2, 1989.

At the conclusion of the hearings briefing schedule was set with main briefs due July 20 and reply briefs July 31, 1989. In this connection cases not reported in the official report and utilized in the Argument were to be attached as appendices to the brief.

11.

ABSTRACT OF TESTIMONY

Applicant's Evidence

Eric Shank, President and Treasurer of the applicant (N.T. 6, 7) graduated from Millersville University; studied in England and worked for Dun & Bradstreet for one year and later in retail management (N.T. 7). The applicant is not affiliated with any other carrier and holds no authority from this Commission (N.T. 7, 8). He reached the conclusion that there was not adequate service in the area which led him to apply (N.T. 8).

His office will be at his home, which has telephone lines and garage facilities (N.T. 8) and he proposes to operate stretch limousines, Lincolns and town cars and possibly vans, which he will purchase (N.T. 9). He presented as his Exhibit 2 a pro forma balance sheet, but admitted that as at time of his testimony the company had no funds (N.T. 10, 11).

The stockholders of applicant are Mr. Shank and his mother, he having subscribed 52 shares and she 48 (N.T. 11). Both will be directors. The liability side shows balance due on vehicles to be acquired (N.T. 12) and recourse to Exhibit 2 will reveal \$47,000 listed as motor vehicles.

The corporation will acquire insurance (N.T. 12) and the vehicles will be maintained at either Palmyra Ford-Lincoln-Mercury or Bordner's Auto Repair (N.T. 13). From the drivers standpoint, he has had applicants apply (N.T. 13).

The corporation intends to start with one stretch limousine and one sedan, most likely a Lincoln town car (N.T. 13), with mobile facsimile machines in the vehicles (N.T. 14).

On cross-examination he admitted to the following:

His residence is zoned residential (N.T. 22) and he has not checked to see whether that zoning designation would permit limousine operations (N.T. 22); he has no vehicles now and none are on order (N.T. 22); what he proposes as a stretch is a Lincoln town car extended, equipped with T-V, bar and facsimile and the other Lincoln sedan would have basically the same features (N.T. 23); he estimates one quarterly premium of \$1500 to cover the insurance (N.T. 24); the \$47,000 indicates the book value of the limousines he proposes to operate with the stretch limousine new and the town car to be no more than 2 years old (N.T. 24, 25); he has secured no loan as yet (N.T. 25); he intends to advertise his service using direct mail and flyers, coupons, and would use yellow page ads (N.T. 27, 28); including bridal shows (N.T. 29); his opinion as to inadequate

service is based merely on what he has heard from others (N.T. 29); he has no experience in either the taxicab or limousine business (N.T. 30); and his operation of vans, if it takes place, would require one person to hire the whole vehicle rather than a per-ticket, per-person charge (N.T. 32).

David E. Riehl of Blue Ball, Lancaster County, appeared individually (N.T. 15) and testified that he had tried to arrange in January for a white stretch limousine for a wedding scheduled for June 17, having called Lancaster Limousine and Landis Enterprises, and was only able to come up with either a burgundy or a french-vanilla colored stretch (N.T. 16); he did locate another stretch but at a price he considered excessive because it was too large (N.T. 17); he is seeking transportation to airports, possibly to go to Palm Springs, but this is only hypothetical (N.T. 17). He would use the applicant's service and did have one experience 4 years ago when he requested service to Philadelphia Airport but it required him to go to the Treadway Inn for service (N.T. 18) rather than being picked up at his home (N.T. 18). He considered approval to be a benefit (N.T. 18, 19).

On cross-examination he indicated that he would fly out of Philadelphia Airport and a request for service three and one-half years ago led him to believe service was not available (N.T. 19). His Philadelphia trip was in a van with 12 seats and that is the type of service that he was talking about and the type of service he would use (N.T. 20). The wedding use he discussed was within Lancaster County (N.T. 21).

Judy E. Colton, a partner in Lancaster Travel at Lititz, which company is a full-service travel agency, testified that she deals directly with customers (N.T. 25). She said she has had occasion when customers need transportation to the airports at Philadelphia and Harrisburg (N.T. 36) from Lancaster County. On cross-examination she testified that her company did not hold a broker's license from this Commission (N.T. 43, 44) and, accordingly, a Motion was made to strike her testimony. On redirect, she testified that she was willing to enter into an agency agreement with the applicant where she would make a charge on a commission basis for the sale of services.

In our Argument we will give reasons why her testimony cannot be considered on the question of need and the reasons why her agency agreement is not within the scope of the contended exemption.

Carole Colestock, the owner of Elegant Weddings by Carole, located in Hummelstown (N.T. 56, 57), stated her business consists of being a bridal consultant and making all arrangements for weddings such as design of dresses, flowers and invitations and hiring services for the bride which her company does not provide. In the past limousine services for brides have been provided by the brides and she had not been asked by anybody to provide such, but it is something they would do (N.T. 57). Despite this testimony, she stated that on Saturday evening she did a small wedding and a limousine never showed up, with the wedding being in Jonestown, Lebanon County (N.T. 58). If the service were available she would like to have available a white stretch limousine (N.T. 59). On cross-examination it developed that she had nothing to do with making the limousine arrangements last Saturday; she didn't know the name of the limousine company or how long the limousine had been booked prior to the wedding or whether an appropriate deposit was paid for the service (N.T. 59, 60). She was aware that Aero service

was available in Harrisburg, Lebanon and Hershey areas (N.T. 60). Despite this she was of the opinion that anybody ought to be able to open a business if they feel they can serve a purpose (N.T. 60, 61).

Brenda Miller of Lebanon appeared as an individual attempting to arrange a wedding for her daughter, stating that she began a search for services in November of 1988 and thought she would be able to arrange something by May, but without success (N.T. 62). She called Classic in Elizabethtown which had Rolls Royces which she didn't want. She wanted a stretch. Lancaster Limousine had such a unit but it was booked. She had an appointment with Landis to view a limousine but the sales representative didn't show up (N.T. 63). She called somebody in Harrisburg but couldn't remember who. She made a second attempt to get hold of Landis and they did show her photos and, accordingly, she thinks as a Lebanon resident there is a need (N.T. 64).

On cross-examination she had not made any arrangements for a limousine for May and was not sure what she would use as transportation for the bridal party and is still looking. She would have no objection to Aero Corporation communicating with her to describe the services available for that date (N.T. 65).

Robert Allen Poulton, the owner of Quinn's Pub in the city of Lancaster, Lancaster County (N.T. 66) wants limousine service for when his relatives come over from England. They sometimes fly in to Kennedy, but most recently they flew in to Philadelphia. He would like to ride in a limousine to meet them rather than drive his car and he was referring to Philadelphia or Newark (not here pertinent). In January he started searching for a limousine for March 23 and called Landis which had a vehicle but the cost was too high for him. He called Lancaster Limousine which had nothing available that day, but did not call Aero because he had never heard of them (N.T. 67, 68). Accordingly, he believes there is a need.

On cross-examination he indicated that he used a mini-van to pick up his relatives in Philadelphia, having rented same from National Car Rental in Lancaster. As to Newark and JFK, both out of state, he hasn't used a limousine. He called Landis and rented a limousine from them which he drove: (N.T. 69). The white stretch which was available was at a cost of \$500, which he thought was too expensive (N.T. 70). Along this line he had no idea what the applicant's cost would be (N.T. 70), but in any event the next trip is scheduled to come in to Newark, not here involved. He was unfamiliar with Aero Corporation, though he had been solicited by Mrs. Hirsch, but didn't talk to her because he was busy so she dropped brochures off which he didn't even look at (N.T. 72).

Blanca Kristich of Palmyra, PA, testified about a need for limousine service two years ago on May 23d, at which time she was unable to get service due to proms and graduations, though she called several months in advance. She was looking for a stretch limo (N.T. 73). Though she was unable to get service her father knew someone and he did provide service (N.T. 73). She recalled calling Aero in 1986 but she didn't know who, though she has had no need for limousine service ever since her wedding which was in 1987 (N.T. 76).

Bruce Alexander Steiger, employed by a construction company, appeared as an individual (N.T. 80). He testified that he wanted to do something special to take his wife to dinner because she was an extremely busy accountant and he made three calls for a limo for May 6 (N.T. 80). Lancaster Limousine had none available that day and he then tried Landis and Crystal and received an answering service and it would be convenient to have such a service available (N.T. 81).

On cross-examination he was reminded that May 6 was still five or six weeks away (since he testified in March 1989) and he admitted that he had made no arrangements for a limousine but decided to take his wife to Florida instead (N.T. 83). The dinner which did not take place was for a pickup at Lititz (N.T. 84). He now knows that Aero is available, having been solicited but he never called them for service (N.T. 84, 85). His dinner which did not take place was to be in Phoenixville.

Monique Ullom, Director of Marketing for First Call Travel of Harrisburg, (N.T. 93) primarily a corporate travel agency, gets its clientele from the greater Harrisburg area (N.T. 93, 94). It was stipulated that First Call Travel was not a licensed broker (N.T. 95). Her testimony, therefore, is not admissible even though she testified she wanted service to Harrisburg and Philadelphia Airports and indicated she had requests for limousine service and found it impossible to find a stretch (N.T. 96). We will discuss the travel agent broker situation in the Argument portion of our Brief.

James Musheno, a tour broker in Annville, Lebanon County, holds a broker's license from this Commission (N.T. 102, 103) at Docket A. 104006, limited to between points in Lebanon County and from points in Lebanon County to points in Pennsylvania (N.T. 105). He has had inquiries concerning limousine service for weddings but he stated "...we don't indulge in that kind of transportation" (N.T. 104). This witness also is not qualified to testify on the question of need pursuant to Commission Orders.

Ram L. Upadhyaya of Hummelstown is an international self-employed consultant who travels by air (N.T. 106, 107) and also has clients coming in from overseas to airports in Harrisburg, Philadelphia, Baltimore, New York and

Washington and he has had difficulty providing transportation for them (N.T. 107). He testified that when he arrives at Harrisburg it is difficult to get transportation and he sometimes has to call his wife to come and get him (N.T. 108). He was solicited by Mrs. Hirsch from Aero (N.T. 108).

On cross-examination he contended that when he arrives at Harrisburg there is no service there and he has to call his wife to pick him up. When he arrives at Philadelphia he can rent a car, which he has done. He has flown in to Harrisburg in 1989 four or five times and has not used public transportation from Harrisburg, but his wife has always picked him up. He has used Lancaster Limousine from New York (N.T. 111). His wife always picked him up when he comes in to Harrisburg and he hasn't used public transportation from Harrisburg for the past three years because a couple of times, apparently prior thereto, he has had difficulty. He prefers to have people come in to Kennedy or Washington rather than Harrisburg (N.T. 113). Most damaging was his admission that 2 or 3 years ago when he had difficulties he stopped looking in the yellow pages (N.T. 150).

Deborah McRedmond, Branch Sales Manager of Liberty Travel at the Harrisburg East Mall in Harrisburg, which was stipulated not to be a licensed travel broker, deals with customers in Lancaster, Dauphin, Cumberland, Perry and Lebanon Counties (N.T. 118). She is not supporting for airport transportation (N.T. 119), but for personal use of clients. She is now aware of Aero's services because Joan Hirsch has solicited (N.T. 120). Once again we challenge this witness as not bearing on the question of need.

Nancy Donovan of East Mall Travel Services, Harrisburg East Mall, is the owner and operator of the business (N.T. 124). The company is a full-service travel agency with its marketing area in Pennsylvania and she deals personally with her customers (N.T. 126). The testimony was again objected to on the basis that the witness is an unlicensed travel broker, which was stipulated as correct (N.T. 126). Unlike other witnesses she is compensated by the vendor limousine company that is utilized and would expect the applicant also to pay it (N.T. 128).

Franco Joseph Frittelli operates a hair and cosmetic salon at Hershey (N.T. 135). What he proposes is a package in which certain of his customers would be picked up by limousine, brought to his salon and have a full day there, after which they would be taken to lunch and finally back to their homes (N.T. 136, 137). Nobody has proposed this type of service to him except the applicant (N.T. 137). He would like to have service available when he travels by air out of Harrisburg. He would also like it from Philadelphia (N.T. 138, 139).

On cross-examination he admitted that he has flown 4 times out of Philadelphia Airport and has been driven there by family members or others who dropped him off and then picked him up on return (N.T. 139, 140). The only exception was once when he drove to the airport himself. In 1987 he had not gone to the airport except on a shuttle to Newark but had no trips out of Philadelphia (N.T. 140). He didn't know how he got to the airport in 1987 (N.T. 140). Up to the present his plan for customers of his salon has not taken place (N.T. 141). Moreover, he had no idea how many limousine services were available to him and he did not check the phone directory to see how many might be available (N.T. 141). He has not been quoted any price for the service he earlier discussed, but did admit that whatever the limousine charge was it would be added to his other charges (N.T. 141, 142). In addition, he had not figured out what the total

price package would be to his people and he had made no concrete survey to see how this would be received (N.T. 142). He has not arranged for or used limousine transportation for any purpose either for himself or his customers from Pennsylvania in the past (N.T. 142, 143).

Protestant's Evidence

Stanford E. Cramer, President and principal stockholder of Aero Corporation, testified that at the company's location on the Harrisburg Pike in Middletown, he has an automobile dealership, a body shop, a service facility, car rental service and parking (N.T. 144). Aero Corporation has been certificated as a carrier prior to 1980 and its present authority at A. 103274, Folder 4, Am-A authorizes limousine service between points in the counties of Dauphin, Lebanon, Cumberland, York, Perry, Lancaster, Schuylkill and Adams to points in Pennsylvania and return; and service is provided thereunder (N.T. 144, 145; Ex. P-1). This authority includes the right to use luxury vans with a seating capacity of 10 passengers or less, excluding the driver (Ex. P-1).

In providing service the company uses Lincoln stretches, London Sterling and Lincoln town cars, some of which are owned and some of which are leased. The company owns 32 units (N.T. 146). The service is advertised by personal calls, by use of the telephone directory, newspaper ads, T-V and radio and the use of coupons, flyers and direct mail (N.T. 146). The yellow page directory ad found on pages 409 and 410 of the Harrisburg phone directory (Ex. P-2) lists this ad and also lists competitors' services available in the Harrisburg area (N.T. 147). The company is financially sound and able to furnish additional equipment to meet the public need (N.T. 147, 148). With respect to the

witness requiring service for a wedding on May 23rd, 1987, Aero would not have been able to serve that party unless they were going to the airport because at that time the authority was limited to and from the airport in limousine service (N.T. 145, 148). At present limousine service for weddings in Lebanon, Dauphin, or Lancaster Counties can be provided and under existing authority proms, weddings, etc. have been served and the company is also ready, willing and able to serve Harrisburg International Airport (N.T. 148, 149). Aero is not under safety investigation or suspension; has insurance and tariffs on file covering the limousine service; has Lincoln town cars in service and, as a dealer Mr. Cramer also sells Lincoln town cars and is, therefore, familiar with the cost of limousines (N.T. 149). A Lincoln town car will cost between \$22,000 and \$26,000, depending on the equipment to be employed (N.T. 150). To equip the limousine with television, bar and telephone would require a stretch and if the Lincoln town car is not a stretch, were purchased used, it would run from \$18,000 to \$21,000 and if the car were 2 years old approximately \$2,000 less (N.T. 150). A 60-inch stretch with the amenities the applicant mentioned, including a fax machine, telephone and bar, would cost between \$50,000 and \$60,000. The variance in price is caused by the people who perform the stretching of the standard unit (N.T. 151).

The majority of calls for the airport are for airport transfer service in vans which are standard vans carrying 10 to 12 people and equipped with bench seats (N.T. 151, 152), for which Aero Corporation has separate airport transfer authority (N.T. 152). Very few calls are received for service in limousine to and from the airport (N.T. 152). This company's facilities in Middletown is several hundred yards from the airport, but at the airport an office and counter is maintained and that is open all hours in which the airport is open. Anyone can, therefore, walk up from getting off the flight to the baggage area and acquire service (N.T. 153).

On cross-examination Mr. Cramer admitted that while the annual report for 1988 shows 9 vehicles owned by Aero used in airport transfer service, Aero Corporation owns a total of 160 vehicles (N.T. 154). He also admitted that the total operating revenues were over a half-million dollars, of which \$41,000 was derived from intrastate limousine service (N.T. 155). While the annual report does not list the London Sterling, Mr. Cramer did say that the company still has it available (N.T. 156). A sample of the Sterling may be found on Applicant's Exhibit 5. Mr. Cramer also stated that while Aero does not own a stretch it has 2 available which it leases from Mr. Salinger, an operator of Unique Limousine Service. When Mr. Salinger requires Lincoln town cars or the London Sterling he secures them from Aero (N.T. 158). From the driver standpoint, Aero employs between 30 and 35 drivers with Class 2 license authorizing it to transport persons for hire (N.T. 163), which drivers may be used interchangeably in airport transfer service or in limousine service or in rental to people who wish to rent a vehicle and separately rent a driver (N.T. 163).

In discussing Applicant's Exhibit 5, Mr. Cramer explained that Aero Corporation owns Budget Rent-a-Car (N.T. 164).

111.

STATEMENT OF QUESTIONS INVOLVED

We submit the following questions are involved in this proceeding:

- A. Is the applicant's operating proposal such as qualifies him as able to operate the proposed service?
- B. May broker testimony be used as evidence of need?
- C. Excluding the broker witnesses, has the applicant made out a case for necessity?
- D. Is Aero able to fill any need that is required?

The first three questions should be answered in the negative and the fourth in the affirmative.

IV.

FINDINGS OF FACT

1. Eric Shank, President and Treasurer of applicant and the owner of 52 shares of its stock (N.T. 6, 7, 11), his mother owning the remaining 48 shares (N.T. 11) is, as is his mother, director of the corporation (N.T. 11, 12).

2. Mr. Shank graduated from Millersville University, studied in England, and worked for Dun & Bradstreet for one year and later in retail management (N.T. 7). He has no experience in either the taxicab or limousine business (N.T. 30).

3. Applicant is not affiliated with any other carrier and holds no authority at present (N.T. 7, 8).

4. The office of the corporation will be at his home which has telephone lines and garage facilities (N.T. 8), but the residence is zoned residential (N.T. 22) and Mr. Shank has not checked to see whether that designation would permit limousine operations (N.T. 22).

5. Applicant presently owns no equipment but intends to acquire stretch limousine, Lincolns and town cars and possibly vans which he will purchase (N.T. 9).

6. The company currently has no funds and the pro forma balance sheet (Exhibit A-2) reflects a value of \$47,000 for the motor vehicles which are to be equipped with T-V, bar and facsimile machines, both as to the stretch and

the Lincoln town car (N.T. 23). No such vehicles are presently on order (N.T. 22).

7. With respect to the operation of vans, the operation would require one person to hire the vehicle rather than on a per-ticket, per-person charge (N.T. 32).

8. The vehicles to be acquired are a new stretch limousine and a Lincoln town car to be used, not over two years old (N.T. 24, 25).

9. Not only does the company have no funds, at present it has secured no loan (N.T. 25).

10. Applicant intends to advertise, using direct mail, flyers, coupons and yellow pages plus attendance at bridal shows (N.T. 27-29).

11. Mr. Shank reached the conclusion that service in the area was not adequate (N.T. 8) and, accordingly, filed this application, but his opinion as to inadequate service is based merely on what he has heard from others (N.T. 29).

12. David E. Riehl of Blue Ball, Lancaster County, testified as an individual (N.T. 15) and stated he tried to arrange in January for a white stretch limousine for a wedding scheduled for June 17, having called Lancaster Limousine and Landis Enterprises but was able to come up with only a burgundy or a french-vanilla covered stretch (N.T. 16). Another stretch was available but at a price he considered excessive (N.T. 17).

13. His experience four years ago when he requested service to Philadelphia Airport, required him to go to the Treadway Inn for service rather than being picked up at his home (N.T. 18, 19). This trip was in a van with 12 seats and is the type of service that he would use (N.T. 20). He indicated that a request for service 3½ years ago led him to believe that service was not available (N.T. 19).

14. Judy Colton, a partner in Lancaster Travel, a full-service travel agency, does not hold a broker's license from this Commission (N.T. 25, 43, 44). She did testify that she would be willing to enter into an agency agreement with applicant where she would make a charge on a commission basis for the sale of service (N.T. 45).

15. Carole Colestock, the operator of Elegant Weddings by Carole in Hummelstown, Dauphin County (N.T. 56, 57), is a bridal consultant and testified that past use of limousine service in connection with brides she has served has been provided by the brides and she has not been asked by anyone to provide such service, though it is something she would do (N.T. 57).

16. On a Saturday evening small wedding in Jonestown, Lebanon County, the limousine did not show up (N.T. 58), though she had nothing whatever to do with making of the limousine arrangements for that wedding; did not know the name of the company or how long it had been booked prior to the wedding; or whether a deposit was paid for the service (N.T. 59, 60). She would like to have a white stretch limousine available (N.T. 59); is familiar with the Aero service (N.T. 60) and was of the opinion that anyone ought to be able to open a business if they feel they can serve a purpose (N.T. 60, 61).

17. Brnda Miller of Lebanon attempted to arrange a wedding for her daughter and searched for services in November of 1988 for a May wedding but without success (N.T. 62). She called Classic in Elizabethtown which had Rolls Royces but she did not want a Rolls but rather a stretch limousine. Lancaster Limousine had a stretch, but it was booked. She had an appointment with Landis but the sales representative did not appear (N.T. 63). While she called someone in Harrisburg, she could not remember who it was and made a second attempt to get hold of Landis which showed her photographs of their limousines and, accordingly, she thinks as a Lebanon resident there is a need (N.T. 64).

18. This witness has made no arrangements for the May wedding as to limousine service and isn't sure what she would use and is still looking for. She would have no objection, however, to Aero Corporation describing its services available for that date to her (N.T. 65).

19. Robert Allen Poulton, the owner of Quinn's Pub in Lancaster (N.T. 66) wants limousine service for his relatives when they come from England sometimes flying in to Kennedy; other times into Philadelphia or Newark. He would like a limousine and he started his search in January for a March 23 trip, calling Landis which had a vehicle available, but the cost was too high. He called Lancaster Limousine which had nothing available, but did not call Aero because he had never heard of them (N.T. 67, 68).

20. On cross-examination he indicated that he used a mini-van to pick up his relatives in Philadelphia, having rented that van from National Car Rental in Lancaster. On his Newark and New York matters he has not used limousine service but has rented a limousine, which he drove, from Landis (N.T. 69).

A white stretch was available to him but it cost \$500 which he thought was too expensive (N.T. 70). He had no idea what applicant's costs would be (N.T. 70). He has been solicited by Aero, but didn't talk to the solicitor because he was busy, so she dropped off brochures which he has not looked at (N.T. 72).

21. Blanca Kristich of Palmyra, PA (Lebanon County), testified she had need for limousine service two years ago on May 23 and was unable to get service even though she called several months in advance for a stretch limo (N.T. 73). Her father, however, knew someone and that someone did provide service (N.T. 73). She has had no need for limousine service since her wedding in 1987 (N.T. 76).

22. Bruce Alexander Steiger appeared as an individual and testified that he wanted to take his wife for dinner as a special occasion because she is a busy accountant. He made three calls for a limo on May 6 (N.T. 80). Lancaster Limousine had none available that day and he tried Landis and Crystal and received an answering service (N.T. 81). He believes it would be convenient to have service available (N.T. 81).

23. On cross-examination, however, he was reminded that May 6 was still 5 or 6 weeks away and admitted that he had made no arrangements for a limousine but decided to take his wife to Florida instead (N.T. 83). He knows that Aero is available, having been solicited but he never called them for service (N.T. 84, 85).

24. Monique Ullam, a non-licensed travel agent broker (N.T. 93-94) wanted service to Harrisburg and Philadelphia airports and said it was impossible to find a stretch (N.T. 96).

25. James Musheno, a tour broker having a license from this Commission at A. 104006 (N.T. 102, 103) is limited to between points in Lebanon County and from points in that county to points in Pennsylvania (N.T. 105). He has had inquiries concerning limousine services for weddings, but stated "We don't indulge in that kind of transportation" (N.T. 104).

26. Graham L. Upadhyaya of Hummelstown who travels by air and who has clients arriving from overseas at airports in Harrisburg and Philadelphia (N.T. 106, 107), has had difficulty in providing service for them and testified that when he arrives at Harrisburg it is difficult to get service and calls his wife to pick him up (N.T. 108). He was solicited by Aero (N.T. 108). On the four or five times this year that he has flown in to Harrisburg he has not used public transportation but his wife has always picked him up (N.T. 111). He has not used public transportation from Harrisburg for three years because apparently prior thereto he contended he had difficulty (N.T. 113).

27. Deborah McRedmond, Branch Manager of Liberty Travel, a non-licensed travel broker (N.T. 118) was not supporting for airport transportation (N.T. 119), but for the personal use of clients. She is aware of Aero's services, having been solicited (N.T. 120).

28. Nancy Donovan of East Mall Travel Services of Harrisburg East Mall is a travel agent which holds no license as a broker from this Commission (N.T. 124-126).

29. Franco Joseph Frittelli, the operator of hair and cosmetic salon at Hershey, proposes a package which involves picking up a customer at home; bringing the customer to his salon at which the customer would spend a full day; have lunch and finally be taken back to their homes by limo (N.T. 135-137).

Nobody has proposed this service to him except applicant (N.T. 137). He also would like service from Philadelphia or to Harrisburg Airport (N.T. 138, 139). On his four flights out of Philadelphia he has been driven there by family members or others who picked him up on return, or on one occasion he has driven there himself (N.T. 139, 140). In 1987 there were no airport trips except from Newark (N.T. 140).

30. The witness had no idea how many limousine services were now available to him and did not check the phone directory to see (N.T. 141). He has been quoted no price for the service but admitted it would have to be added to his other charges (N.T. 141, 142), but had no idea what the total price package would be and had made no survey to see how such a service would be received (N.T. 142). He has not arranged for or used limousine transportation for any purpose, either for himself or his customers, in the past (N.T. 142, 143).

31. Stanford Cramer, President and principal stockholder of Aero Corporation, testified that he also runs an automobile dealership, a body shop, a service facility, car rental service and parking services (N.T. 144).

32. Aero Corporation has been certificated for over 9 years and its present authority at A. 103274, Folder 4, Am-A, authorizes limousine service between points in all of the counties here involved and from those points to points in Pennsylvania and return and Aero provides service thereunder (Exhibit P-1; N.T. 144, 145). The authority includes the right to use luxury vans with a seating capacity of 10 passengers or less, excluding the driver (Exhibit P-1).

33. The company uses Lincoln stretches, London Sterling and Lincoln Town Cars, some of which are owned and some of which are leased. The company owns 32 units and advertises its service by personal calls, telephone directory, newspaper ads, T-V and radio, direct mail flyers and coupons (N.T. 146). Its yellow page ad is shown in the Harrisburg phone directory (Exhibit P-2), which also lists competitor service available in the Harrisburg area (N.T. 147).

34. Aero is financially sound and able to furnish additional equipment to meet the public need (N.T. 147, 148).

35. When Witness Kristich testified for need for limousine service on May 23rd, Aero could not have provided that service because at that time the service was limited to and from Harrisburg International Airport (N.T. 145, 148), though such service now can be provided as can service to Harrisburg International Airport (N.T. 148, 149).

36. Aero was not under safety investigation or suspension; has insurance and tariffs on file; has Lincoln town cars in service; and, as a dealer, Mr. Cramer also sells Lincoln town cars and is familiar with the cost of limousines (N.T. 149). A 60-inch stretch with the amenities the applicant mentioned would cost between \$50,000 and \$60,000 and a Lincoln town car between \$22,000 and \$26,000 new and, if used, from \$18,000 to \$21,000 and if two years old from \$16,000 to \$19,000 (N.T. 150, 151).

37. The majority of calls to Aero for service to the airport are for airport transfer service which is furnished in standard vans carrying 10 to 12 people and equipped with bench seats, for which separate authority is held by Aero Corporation (N.T. 151, 152). The airport transfer service maintains an office and counter at the airport and is open all hours in which the airport is

open and anyone getting off a flight can walk to that counter and get service (N.T. 153).

38. While Aero does not own a stretch limousine, it has same available from Mr. Salinger, the operator of Unique Limousine Service. That company and Aero make available between them by lease equipment as needed (N.T. 158).

39. From the driver standpoint, Aero has between 30 and 35 drivers with Class 2 licenses authorizing the transportation of persons for hire, which drivers may be used interchangeably in airport transfer service, in limousine service or in rental to people who wish to rent a vehicle and separately rent a driver (N.T. 163). Aero Croperation owns Budget Rent-a-Car (N.T. 164) and also Sears Rent-a-Car (See Exhibit A-5), and still has the London Sterling as shown on that exhibit.

V.

ARGUMENT

A. .APPLICANT'S OPERATING PROPOSAL IS SUFFICIENTLY INCOMPLETE AS TO WARRANT A CONCLUSION OF UNFITNESS.

Initially it may safely be stated that the applicant's corporation is a shell. It has no funds; it has no equipment; its owner has no experience in the limousine or taxi service whatever (N.T. 10, 11, 22, 30). It proposes to acquire a stretch limousine and a two-year old Lincoln town car which its projected giving-effect balance sheet values at \$47,000 (Exhibit A-2). Mr. Cramer, who runs an auto dealership, indicated the cost of the stretch would be between \$50,000 and \$60,000 and a used Lincoln town car two years old would cost between \$16,000 and \$19,000 equipped with the amenities which the applicant has described (N.T. 150).

The proposal is to operate this service out of Mr. Shank's home. However, that home is zoned residential and the applicant was unaware of whether that zoning designation would permit limousine operations (N.T. 8, 22).

The difficulty with this position is that the applicant has not indicated through its President that even he has sufficient funds to acquire the equipment which is necessary to this operation. No personal balance sheet was submitted; no letter of credit was submitted; and all that is available is a giving-effect balance sheet which grossly underestimates the cost of the equipment to be acquired. The financial fitness has simply not been established.

From personal experience standpoint, applicant's President has none in the field of either taxicabs or limousines (N.T. 30). While he has applications from drivers there are none aboard.

Even as to his conclusion that there is inadequate service available, he frankly admitted that that appraisal was predicated on what he heard from others (N.T. 29).

What we have here is a corporate shell, an absence of facilities, an absence of funding, an absence of experience, an underestimated valuation of the equipment which is necessary and, in short, nothing but a desire. No concrete financial backing has been presented and no sound operating proposal has been advanced.

The conclusion is inescapable that the applicant has not established its ability to provide the service.

B. THE BROKER TESTIMONY OF WITNESSES COLTON, ULLAM, MUSHENO, McREDMOND AND DONOVAN ARE NOT RECEIVABLE AS EVIDENCE OF NEED.

Four of them were unlicensed and only Witness Musheno holds a broker's license applicable only from Lebanon County. Witness Colson would be willing to be an agent for the applicant.

The first case of which we are aware dealing with the question of a broker's ability to support an application is that of Cressona Trucking Company. While this involved a property application and involved support by a licensed property broker, the Commission denied the application. See Application of Cressona Trucking Company, A.00095309,,Folder 1, Am-G. Copy of this Order is attached as Appendix A. A similar case involving a licensed broker is that of Lizrick Tours, Inc., t/d/b/a Royal Star Limousine Service, A. 00107419, Folder 4. In that case the sole support for group and party service was a licensed broker and once again the Commission found that such is not receivable on the question of necessity. This Order in its entirety is attached as Appendix B.

A more recent case is that of Klein's Bus Service, Inc., A.00106803, Folder 1, Am-B, which reached the same result; namely, that a carrier should not be allowed to hold authority to transport for a broker. A copy of this Decision in its entirety is attached as Appendix C.

If a licensed broker is not authorized to support an application, then obviously an unlicensed broker falls into the same category and the testimony of these five witnesses is not receivable on the question of necessity. The reason for this is obvious. The broker has no need. The need is that of someone other than the broker.

In an attempt to circumvent these more recent rulings, the applicant contends that a broker nevertheless may be an agent of the carrier. This, we believe, misconstrues the situation. The portion relied upon as an exception is worded in the definition of a broker as a "bona fide employee or agent of any such carrier." The bona fides of such an arrangement are what concern us and which should also concern the Commission. As stated in the Cressona Trucking Decision, supra, the broker's traditional role is to go into the market place and find the best facilities to meet the shipper or client's needs. Accordingly, the broker owes a duty to seek out the best carrier service available for its clientele. How, then, can the broker, in meeting that test, also be an agent for one of the carriers who may be involved in the selection process. It poses a very definite and irreconcilable conflict of interest, for a servant may not serve two masters, his client and a transportation company. The tendency would be to favor his principal, the carrier, rather than his client who needs the service. This inconsistency renders Witness Colton's desire to be an agent unworkable due to conflict of interest.

C. THE REMAINING WITNESSES DO NOT SUPPORT
APPLICANT'S CONTENTION OF NEED.

Witness Riehl's testimony concerning a search for a limousine for a wedding reveals that that use was within Lancaster County. His testimony as to Philadelphia Airport clearly was support for airport transfer service for he revealed that the trip on which he did secure service was in a van with 12 seats and that that was the type of service he would use (N.T. 20). As to limousine service itself, he found the service but he considered the price excessive (N.T. 17), which amplifies our contention that his testimony was

directed to airport transfer rather than limousine service.

Witness Colestock of Hummelstown, who operated the bridal consulting service, frankly admitted that she had not been asked by anybody to provide a limousine service, even though she stated she would do so (N.T. 57). The only wedding that she discussed with certainty was a wedding in Lebanon County, and the order for service was by someone else (N.T.58). She did not know the name of the company; how long it had been booked prior to the wedding; or whether an appropriate deposit was paid for the service (N.T. 59, 60). The real crux of her testimony is that she thinks that anyone who wants to go into business should be allowed to do so (N.T. 60, 61).

Witness Miller of Lebanon, though shopping for a limousine service which she contended was not available, frankly admitted that she had not made any arrangements for the limousine for the May wedding of her daughter and was not sure what she would use as transportation for the bridal party. She would not object to Aero Corporation communicating with her to describe the services available for that date (N.T. 65).

Robert Allen Poulton, the Quinn's Pub, wants limousine service to pick up his relatives coming from England who fly in to Kennedy, Newark or Philadelphia (N.T. 66, 67). As to Philadelphia he used a mini-van which he rented from National Car Rentals in Lancaster. He has not used a limousine from Newark or Kennedy, but rented a limousine from Landis which he drove himself (N.T. 69) because a stretch limousine was too expensive (N.T. 70). He has no idea what applicant's cost would be but his next trip would be out of Newark (N.T. 70-72). In January he started looking for a limousine and called Landis which had one but the cost didn't suit him (N.T. 67, 68). This witness is from Lancaster in Lancaster County.

Blanca Kristich of Palmyra, Lebanon County, wanted a limousine two years ago for a wedding on May 23d, but couldn't get service though she called in advance. She was looking for a stretch limousine (N.T. 73). Her father did secure service for her (N.T. 73). She called Aero in 1986 but had had no need for limousine service since her wedding in 1987 (N.T. 76). At that time Aero's service was limited to service to and from the airport (N.T. 145, 148).

Robert Steiger who wanted to do something special for his accountant wife for May 6 (N.T. 80) was unable to get service from Lancaster Limousine (N.T. 81). When he testified he still had five or six weeks to go to locate service, but admitted he had made no arrangements since he had decided to take his wife to Florida instead (N.T. 83).

Witness Upadhyaya of Hummelstown wants service to and from Harrisburg and Philadelphia International Airports, but it turns out that when he arrives at Harrisburg he always calls his wife to pick him up and has not used public transportation from Harrisburg for the past 3 years (N.T. 112, 113). He has not looked for service for two or three years (N.T. 150). So far as Philadelphia is concerned, he rents a car (N.T. 110, 111).

Witness Frittelli who desired limousine service to pick up clientele of his beauty salon at their home, bring them to his salon and after a full day there take them back home (N.T. 136, 137) has admitted that he had no idea how many limousine services were available to him; did not check the phone directory to see what is available (N.T. 141); had not been quoted any price by the applicant; had not figured out what the total price package would be to his clients and has made no concrete survey to see whether this would be favorably received (N.T. 141, 142). He has had no past use for himself or his beauty

service for anywhere in Pennsylvania in the past (N.T. 142, 143).

Such evidence does not really justify approval of this application which witnesses desiring to go to the airport have either not used the service for two or three years at all, or used any service in that interval (Witness Upadhyaya), or had friends drive them to the airport; or rented vehicles to drive themselves. The witness who desired service for her wedding in 1987 has not used limousine service since and Witness Riehl as to his airport testimony used a van (N.T. 20); thereby confusing airport transfer service with limousine service. The same witness with respect to his testimony as to a Lancaster wedding (N.T. 21), found the stretch but considered the price to be too expensive (N.T. 70).

Witness Steiger who wanted to take his wife to dinner in a limousine on May 6th, 1989, admitted that though it was still five or six weeks away that he had changed his plans and would take his wife to Florida instead (N.T. 83, 84).

Further concerning these witnesses, Witness Riehl was from Lancaster County, Witness Colestock from Dauphin; Witness Miller from Lebanon; Witness Poulton from Lancaster; Witness Kristich from Lancaster; Witness Steiger from Lancaster County; Witness Upadhyaya from Dauphin County and Witness Frittelli from Dauphin County. Territorially this is very narrow in scope and the testimony is weak indeed and does not establish a prima facie case for necessity consistent with Carl R. Bieber, Inc. v. Pa PUC, 36 CmwltH Ct 236, 281 A.2d 351 (1971). This is particularly true when the testimony relating to airports indicates that it either had never been used at all or that it is misconstrued as testimony in support of airport transfer service, an entirely different type of operation.

D. AERO CORPORATION CAN FULFILL ALL THE NEEDS
OF THE WITNESSES.

Aero Corporation possesses the entire authority which applicant here seeks (Exhibit P-1). It has available by lease Lincoln stretches (N.T. 158); London Sterling and Lincoln town cars (N.T. 146). It advertises its service by personal calls, in telephone directories, by newspaper, radio and T-V ads, by fliers and direct mail (N.T. 146) and also by solicitation which was admitted by the public witnesses who appeared (See N.T. 60, 72, 108; Exhibit P-2). The company is financially sound; owns 32 suitable units (N.T. 146) and can acquire additional equipment (N.T. 147, 148).

Aero Corporation also provides airport transfer service in standard vans carrying 10 to 12 people (N.T. 151, 152), which should satisfy the interest of Witness Riehl (N.T. 19, 20).

In short, this protestant can provide all of the service requested by all or any of the witnesses.

Those who want service have it readily available and none of the witnesses have made any call on this existing service.

E. CONCLUSION.

From the standpoint of fitness, the applicant comes up short. It is merely a corporate shell; it has no cash; no limousines on hand or on order; proposes a terminal in a residential zone without knowledge as to whether that is acceptable; has badly underestimated the cost of the limousines it says it will acquire; and, most importantly, lacks any experience in the limousine business.

It also failed to produce a balance sheet from its principals to show availability of funds or to indicate with certainty where the funds would come from.

It relies principally on unlicensed brokers and one licensed broker. In this particular the Commission has, on three occasions which we have cited, indicated that a broker may not supply evidence of need since the broker does not have a need. One broker averred she would be willing to be an agent for the applicant. This poses a conflict of interest in that the broker owes a duty to seek out the best service and the agent owes a duty to foster the well-being of its principal. This conflict of interest renders that individual unable to serve both its customer and its principal.

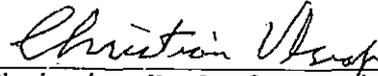
The remaining witnesses as to airport service either have not used it ever or have confused it with airport transfer service. One witness had a need in 1987 and none since. Another witness complained about unavailability of transportation when, as a matter of fact, the transportation was supplied. Still another changed his plans which originally called for use of a limousine and decided to go to Florida instead. Another has made no survey of his proposal and has no need, personally or for his business, for limousine service.

Such evidence does not meet the test of establishing a need for the service which is here proposed.

Aero Corporation has the authority and the facilities to provide service for all of the witnesses to all points in Pennsylvania. It advertises its service and has solicited some of the witnesses who appeared. Its service has neither been requested nor used.

The application should be dismissed.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Christian V. Graf".

Christian V. Graf, Esquire

Attorney for Protestant

CERTIFICATE OF SERVICE

I hereby certify that I have this date served three (3) copies of the foregoing "Brief on Behalf of Aero Corporation, Protestant" upon all counsel of record, by U.S. First Class Mail, postage prepaid, at the addresses shown below.

Dated at Harrisburg, Pennsylvania, this 18th day of July, 1989.



Christian V. Graf, Esquire

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Louis Cocheres,
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PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Public Meeting held April 7, 1988

Commissioners Present:

Bill Shane, Chairman
William H. Smith, Vice-Chairman
Linda C. Taliaferro
Frank Fischl

Application of Cressona Trucking
Company; Petition for Reconsider-
ation.

Docket No.
A-00095309
F. 1, Am-G

O R D E R

BY THE COMMISSION:

This matter comes before the Commission on a Petition for Reconsideration filed by Cressona Trucking Company (Cressona or applicant) which seeks reconsideration of the Commission's order entered October 27, 1987 at A-00095309, F. 1, Am-G. That order denied Cressona's application for authority as against the public interest.

Cressona filed an application seeking common carrier authority which was eventually corrected to read as follows:

To transport, as a Class D carrier, property, in bulk, in dump vehicles, for R & M Brokerage, between points in Pennsylvania; provided that no right, power or privilege is granted to transport to, from or between points within fifty (50) statute miles of the limits of the borough of Homestead, Allegheny County, except to, from or between the facilities of M. Glosser & Sons, Inc. and WIMCO.

Four protests were filed which were later withdrawn without any restrictive amendments being filed to the application. The case was heard by Administrative Law Judge Edward R. Casey and the unprotested application was certified to this Commission for our decision.

By order entered October 27, 1987, we denied Cressona's application as being not in the public interest. The application was supported by one entity only: R & M Brokerage, a broker of property transportation. The order found that as a transportation broker, R & M Brokerage (R & M) would not assume custody of the goods. The order also indicated that a grant of authority limited to a transportation broker would not further the public interest because of the testimony of R & M Brokerage that if the application were approved, all of its traffic would be tendered to the applicant. This was perceived as being inconsistent with the broker's traditional role of going into the market place and finding the best transportation facilities to meet the shipper client's needs.

In its petition, Cressona urges the Commission to reconsider its order. The petition argues that reconsideration is warranted because the order contains errors of fact and law. With regard to the error of fact asserted, Cressona notes that our order states that the witness for R & M Brokerage testified that if the application were granted, he would tender all of his traffic to the applicant. Cressona argues that the testimony was not quite that limited. It is argued that the statement of the witness was predicated on his testimony that due to his unsuccessful attempts to deal with existing carriers, he would tender his intrastate business to the applicant. Cressona also asserts that the order did not consider certain evidence which indicates that the broker, although supporting the application, was functioning in the proper manner. The broker testified to the commodities involved, the shippers, origins and destination. This testimony is averred to adequately support a need for the service.

The error of law asserted by the petition is the statement in our order that the grant of the application was not in the interest of the broker or the public. Applicant states that the broker is a shipper. The broker's experience with unsatisfactory service by existing carriers is said to be a proper basis for the broker's support of the application and to demonstrate the public interest in having Cressona authorized to provide the requested service. It is further asserted that the broker is a competent witness and, if broker testimony can support a grant of authority, there is no impediment to a grant of authority to serve a broker. Finally, it is asserted that the Commission has granted authority based upon broker testimony in the past. To now decline to grant authority to serve a broker is argued to be an implementation of policy requiring all steps usual to that type of proceeding.

Section 703(g) of the Public Utility Code, 66 Pa. C.S. §703(g), provides for reconsideration of prior Commission orders. In Duick v. Pennsylvania Gas and Water Co., 56 Pa. P.U.C. 553, 51 P.U.R. 4th 284 (1982), we stated that petitions for reconsideration will be accepted only when they raise new and novel arguments not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission. In the present case, Cressona argues that our prior order contained errors of fact and law. Under these circumstances, the petition is properly before us.

An applicant's burden in seeking a certificate of public convenience is set forth in 52 Pa. Code §41.14(a-b). As is pertinent to the applicant's arguments here, the applicant must show that the proposed service will fulfill a useful public purpose, responsive to a public need or demand. Purolator Courier Corp. v. Pennsylvania Public Utility Commission, 51 Pa. Commonwealth Ct. 377, 414 A.2d 450 (1980); Re Richard L. Kinard, Inc., 58 Pa. P.U.C. 548 (1984). A grant of motor carrier authority must always be premised on credible, competent, prima facie evidence of record which satisfies that burden. See e.g., Application of PCM Trucking, Inc., A-000906163, F. 2, Am-F (order entered February 25, 1987). A grant of operating authority cannot be premised upon conjecture. Highway Express Lines, Inc. v. Pennsylvania Public Utility Commission, 195 Pa. Superior Ct. 92, 169 A.2d 798 (1961).

First, Cressona argues that the broker in this case did not testify only that it would tender all of its traffic to the applicant. That testimony is predicated on the testimony that the broker had unsuccessfully tried to use existing carriers. Accordingly, it is said that the broker is fulfilling its duty to seek the best transportation alternatives for its client even though all of the traffic would be tendered to one carrier. The applicant is correct in its assertion that the proposed use of applicant stated by R & M was based upon its testimony that it had unsuccessfully tried to use other carriers. This point was not the basis for denial of the authority however.

Cressona also argues that the broker testimony was adequate in its specific treatment of commodities, shippers, origins and destinations of service. It is true that the testimony did give specific information on the broker's customers' shipments. But the issue of specificity does not go to the basic reason for denial of the application. Finally, in its factual arguments, Cressona asserts that the testimony of the broker witness adequately lays a foundation for its support of the application by indicating its lack of success in dealing with other carriers and its resulting need for applicant. The testimony in this regard was not so specific as Cressona suggests. Further, for the reasons discussed below, this is not an argument that goes to the heart of the problem in this case.

R & M is a broker. As Cressona recognized, a "broker" is defined by the Pennsylvania Public Utility Code, 66 Pa. C.S. §2501(b) as follows:

Any person or corporation not included in the term 'motor carrier' and not a bona fide employee or agent of any such carrier, or group of such carriers, who or which, as principal or agent, sells or offers for sale any transportation by a motor carrier, or the furnishing, providing, or procuring of facilities therefore, or negotiates for, or holds out by solicitation, advertisement, or otherwise, as one who sells, provides, furnishes, contracts, or arranges for such transportation, or the furnishing, providing, or procuring of facilities therefor, other than as a motor carrier directly or jointly, or by arrangement with another motor carrier, and who does not assume custody as a carrier.

From the foregoing, and contrary to Cressona's assertion, a broker is, by definition, not a shipper. It does not produce freight, it does not take possession of the goods to be shipped. The broker, in and of itself, has no "need" to ship goods other than at the direction of its customers. As Cressona states at page 5 of its Petition: "There can be no doubt that the broker does not assume custody of the goods but arranges with the shipper for the transportation for which the broker is retained by the owner of the goods." Indeed. The broker is a conduit for transportation. It is not a shipper.

The unique function of the broker in the transportation field renders the support of brokers for common carrier authority inconsistent with that function. The broker owns no freight, produces no commodities, and does not, itself, "ship" goods. It arranges for transportation in accordance with the needs and dictates of others. A broker cannot be said to "support" authority for a carrier when the broker neither has the need nor the freight itself. The broker's customers do have freight and the need to transport it. It is that support which this Commission looks to in determining need in applications for motor carrier authority.

Since a broker does not have a "need" for transportation other than the need of its customers, a broker, by itself, cannot provide the evidence of need for carrier applications. A grant of authority based upon the testimony of a broker alone is a grant of authority based upon no evidence of need. In some cases, it may well occur that the testimony of a broker would be helpful in conjunction with testimony from entities which produce freight. But standing alone, broker testimony is not evidence of actual need.

In the instant case, the applicant has requested authority to transport for R & M, a broker. Section 1103 of the Public Utility Code, 66 Pa. C.S. §1103, provides in pertinent part:

(a) General Rule. - . . . A certificate of public convenience shall be granted by order of the commission, only if the commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.

In the past, we have used a standard of need in determining whether a grant of common carrier authority is appropriate. Here, R & M does not produce freight. It has no need for the transportation requested. At best, R & M can only speculate about the needs of its prospective customers. A grant of authority cannot be based upon conjecture. Highway Express Lines, Inc. Approval of this application would authorize the applicant to provide transportation services across a broad section of the Commonwealth so long as that transportation was arranged by R & M. Ordinarily, a grant of such authority would require the production of several witnesses which possess freight and have the need to transport it. That evidence has not been produced in this case. To grant the application as sought by Cressona would be to grant a broad scope of authority on the basis of mere speculation by R & M. If there is need for such transportation on the part of R & M customers, the applicant may request the appropriate authority.

Cressona makes three additional arguments which should be addressed here. First, it is stated that the Interstate Commerce Commission has long recognized broker testimony as competent to support a grant of common carrier authority where the broker has the authority to act for a principal. Second, Cressona points to a case where the Interstate Commerce Commission has granted a passenger carrier rights to serve a passenger broker under contract. Finally, Cressona cites the Application of

Starr Transit Company Inc., A-00099608, F. 2, Am-A (1979) as an example where this Commission has permitted broker testimony in support of an application for common carrier authority.

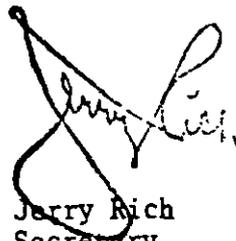
It is axiomatic that this Commission is not bound by the decisions of the Interstate Commerce Commission. Thus, the actions of the ICC in these areas are somewhat instructive, but not conclusive. Further, the case cited by Cressona in which the ICC granted authority to a carrier to provide service under contract to a passenger broker is not necessarily relevant to this proceeding which involves property authority. For various reasons (such as availability of witnesses, nature of the service, and seasonal nature of business) broker testimony in passenger applications may be more probative than such testimony in property applications. Title 52 Pennsylvania Code also treats passenger and property transportation differently. We decline to follow the ICC here.

Cressona's reliance on the Application of Starr Transit is not compelling. Starr was a passenger carrier application. The application was supported by ten public witnesses which represented a cross section of the public which applicant expected to serve. There was testimony by two licensed brokers. That testimony however was included with the public witnesses. In addition, the broker testimony was mentioned in conjunction with the Commission's discussion of inadequacy of existing service, then an element in an applicant's case in chief. Certainly, Starr does not stand for the proposition that broker testimony alone may support a grant of authority, nor does that case support an applicant's request for authority to serve a broker.

Cressona has not presented any argument which has convinced us that our order adopted October 22, 1987 (entered October 27, 1987) contains a material error; THEREFORE,

IT IS ORDERED: That the petition for reconsideration filed by Cressona Trucking Company at A-00095309F. 1, Am-G is hereby denied.

BY THE COMMISSION,



Jerry Rich
Secretary

ORDER ADOPTED: April 7, 1988

ORDER ENTERED: April 13, 1988

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Public Meeting held March 30, 1989

Commissioners Present:

Bill Shane, Chairman
William H. Smith, Vice Chairman
Joseph Rhodes, Jr.
Frank Fischl

Application of LizRick Tours, Inc.,
t/d/b/a Royal Star Limousine Service.
For the additional right to transport,
by motor vehicle, persons, in group
and party service, between points in
the city of Hazleton, Luzerne County,
and within an airline distance of ten
(10) statute miles of the limits
thereof, and from points in said
territory, to points in Pennsylvania.

A-00107419, F004

OPINION AND ORDER

BY THE COMMISSION:

Before us for consideration are the Exceptions of the LizRick Tours, Inc., t/d/b/a Royal Star Limousine Service, to the Initial Decision of Administrative Law Judge ("ALJ") George M. Kashi: issued on January 12, 1989.^{1/} Exceptions were, therefore, due to be filed on or before January 27, 1989. Replies thereto were due to be filed on or before January 6, 1989. A Joint Reply to Exceptions was filed by Protestants, Motor Transportation Company and Central Florida Coach Lines, Inc., on January 25, 1989.

^{1/} Pursuant to §332(g) of the Public Utility Code, 66 Pa. C.S. §332(g), ALJ Kashi requested and was granted an extension of time within which to file his Initial Decision in this matter.

BRIEF HISTORY OF THE PROCEEDING

LizRick Tours, Inc., t/d/b/a Royal Star Limousine Service (hereinafter "Applicant"), per its Application filed on January 19, 1988 and docketed at A-00107149, F-004, sought a modification to its existing authority for the additional right:

To transport, as a Class D common carrier, persons in group and party service between points in the city of Hazleton, Luzerne County, and points within ten (10) miles of the limits of said city and from points in said territory to points in other parts of Pennsylvania and return.

Timely protests to the instant Application were filed by Motor Transportation Company Inc., Central Florida Coach Lines, Inc., and Jacobs Limousine, Inc. The matter was assigned to ALJ Kashi, and a hearing was held before him in Scranton, PA. on July 7, 1988. The record consists of 128 pages of testimony and 22 exhibits. No Briefs were filed by the parties to the proceeding. The record was closed on July 7, 1988.

DISCUSSION

ALJ Kashi subsequently issued his Initial Decision on January 12, 1988, wherein he made the following Findings of Fact:

1. Applicant is a Pennsylvania corporation domiciled at 510 East Fourteenth Street, Hazleton, PA.
2. Applicant is primarily engaged in the tour and travel business, holding PUC and ICC authority.
3. Applicant is fit financially and technically to provide the proposed service.
4. Applicant has received 30 requests over a 7-month period for service in the application area.

need in a satisfactory fashion.^{2/}

The criteria which we now utilize in deciding a motor carrier's application, as codified at 52 Pa. Code §41.14, are as follows:

- (a) An applicant seeking motor common carrier authority has a burden of demonstrating that approval of the application will serve a useful public purpose, responsive to a public demand or need.
- (b) An applicant seeking motor common carrier authority has the burden of demonstrating that it possesses the technical and financial ability to provide the proposed service, and in addition, authority may be withheld if the record demonstrates that the applicant lacks a propensity to operate safely and legally.
- (c) The Commission will grant motor common carrier authority commensurate with the demonstrated public need unless it is established that the entry of a new carrier into the field would endanger or impair the operations of existing common carriers to such an extent that, on balance, the granting of authority would be contrary to the public interest.

It is well settled in the law that an applicant submitting a motor carrier application has the burden of proof.^{3/}

^{2/} Chemical Leaman Truck Lines, Inc. v. Pennsylvania Public Utility Commission, 210 Pa. Super. Ct. 196, 191 A.2d 876 (1963).

^{3/} Mobilfone of Northeastern Pennsylvania, Inc. v. Pennsylvania Public Utility Commission, 40 Pa. Commonwealth Ct. 181, 397 A.2d 35 (1979).

5. Anthony Attardo, a licensed PUC broker testified on behalf of Applicant.

6. Attardo's testimony does not support the grant of authority.

7. At present there are a number of competitors within the ten-mile scope of the application: Motor Transportation Company, Luzerne & Carbon, Central Florida Coach Lines, Auto-Bus, Susquehanna, Martz and Jim Thorpe Tours.

8. The proposed service does not fulfill a useful public service, responsive to a public need or demand.

I.D., pp. 7-8. Based upon his Findings of Fact, the ALJ reached the following Conclusions of Law:

1. The Commission has jurisdiction over the subject matter and the parties.

2. The matter is properly before the Commission.

3. Applicant has failed to show that the proposed service will fulfill a useful public purpose, responsive to a public need or demand.

I.D. pp. 15-16.

Historically, an applicant requesting the issuance of a certificate of public convenience to operate as a common carrier was required to establish:

1. A public need for the proposed service,
2. The inadequacy of existing service, and
3. The financial and technical capacity to meet the

In the landmark decision of Re: Richard L. Kinard, Inc.^{4/} we adopted a definitive interpretation of the new "Transportation Regulatory Policy". We observed that "subsections (b) and (c) of §41.14 are consistent with the traditional standards, except for the subsection (c) emphasis on competition, although the balancing approach is not new." In the Kinard case we recognized that the burden of demonstrating that approval of an application will serve a useful public purpose, responsive to a public demand, rested upon the applicant (§41.14(a) supra). However, we noted the difficulty of satisfying said burden and, therefore, we turned to "alternatives" to inadequacy as the criteria for establishing the §41.149(a) burden.

The alternatives to inadequacy as stated in the Kinard case are as follows:

- (1) different service
- (2) efficiency
- (3) lower rates
- (4) future need
- (5) backup service
- (6) shipper competition
- (7) ICC authority
- (8) certification of authority
- (9) benefit to applicant

We shall address seriatim the Exceptions of the Applicant filed in the instant proceeding. We note that the Applicant's Exceptions are not lengthy and, therefore, we shall quote them verbatim and in their entirety.

^{4/} Re: Richard L. Kinard, Inc., 58 PUC 548 Docket No. A-00095829, F. 1, Am-D, October 19, 1984.

APPLICANT'S EXCEPTIONS

(1) Applicant does except to the following Conclusion of Law No. 3 which reads as follows:

"Applicant has failed to show that the proposed service will fulfill a useful public purpose, responsive to a public need or demand."

The Applicant has, by substantive evidence, shown that there is a need for the service as requested in the application.

The Administrative Law Judge has erroneously relied on the Commission's decision in the application proceedings of Cressona Trucking Company at A-00095309, F.1, Am-G, entered April 13, 1988, in rejecting the testimony of the supporting witness of Applicant who as a broker, duly licensed by the Commission, namely a one Anthony Attardo, who owns and operates All Season Travel Agency located at 34 North River Street, Plains, Luzerne County, Pennsylvania.

The application in the Cressona Trucking proceeding was for property rights which has no relation to the present application pertaining to the transportation of persons. Further, the broker in this proceeding is qualified to testify concerning the need for service in the Applicant's area by reason of his personal experience in rendering same to the public by virtue of his license and authority as issued and granted to him by this Commission.

(2) The Initial Decision does not contain any Findings of Fact on which the Initial Decision is made or on which the Conclusion of Law No. 3 was made in dismissing the application.

There was no Finding of Fact as to why the Administrative Law Judge embraced the Cressona Trucking decision, a property application, in an application proceeding involving the transportation of persons and rejecting the testimony of broker duly licensed by the Commission who is experienced as to transportation needs of the public, and dismissing the application.

In Exception No. 1 supra, the Applicant contends that ALJ Kashi erred in placing reliance on the Cressona Trucking Company Case, Docket No. A-00095309, F.1, Am-G (1988). The

Applicant further argues that the ALJ erred in rejecting the testimony of its supporting witness who is a broker duly licensed by the Commission. We deem it instructive at this juncture, to point out that a "broker" is defined in Section 2501(b) of the Pennsylvania Public Utility Code, 66 Pa. S.C. §2501(b) as follows:

"Broker." Any person or corporation not included in the term "motor carrier" and not a bona fide employee or agent of any such carrier, or group of such carriers who or which, as principal or agent, sells or offers for sale any transportation by a motor carrier or the furnishing, providing, or procuring of facilities therefor, or negotiates for, or holds out by solicitation, advertisement, or otherwise, as one who sells, provides, furnishes, contracts, or arranges for such transportation, or the furnishing providing, or procuring of facilities therefor, other than a motor carrier directly or jointly, or by arrangement with another motor carrier, and who does not assume custody as a carrier.
(Emphasis Added)

It is clear from the aforesaid provision of the Code, that a broker is, by definition, not a shipper or a motor carrier. A broker can be characterized as a conduit for transportation: Therefore, since a broker per se, does not have a "need" for transportation other than the need of its customers, a broker by itself cannot furnish the requisite evidence of need necessary to support the grant of a carrier application.

The Protestants in their Joint Reply Brief, point out that a broker is not a motor carrier but rather, is involved with arranging for transportation in accordance with the needs and dictates of others. Under the circumstances, the Protestants emphasized that a broker can only speculate about the needs of customers and, therefore, its testimony is in the main conjectural.

We also note that the broker was unable, during his testimony, to provide even hearsay testimony which demonstrated a public need.

We find the Cressona Case, cited supra, to be analogous to the instant Application: Therefore, we do not regard the ALJ's reliance on Cressona as constituting reversible error. Accordingly, we shall deny this Exception.

In its Exception No. 2, the Applicant contends that there is no Finding of Fact on which the Conclusion of Law dismissing the Application was based. The Applicant proffers that ALJ Kashi erred in failing to set forth in his Initial Decision reasons for his decision to dismiss the instant Application.

As stated supra, the criteria which must be satisfied by an Applicant seeking motor carrier authority are expressly stated at 52 Pa. Code §41.14.^{5/} The burden of proof is on the Applicant. In Finding of Fact Nos. 5 and 6, ALJ Kashi stated categorically:

5. Anthony Attardo, a licensed PUC broker testified in behalf of the Applicant.

6. Attardo's testimony does not support the grant of authority.

We recognize that the record as developed is devoid of any credible evidence indicative of the criterion that the Applicant's proposed service will fulfill a useful public purpose, responsive to a public need or demand. Purolator Carrier Corp. v. Pennsylvania Public Utility Commission, 51 Pa. Commonwealth Ct. 377, 414 A.2d 450 (1980). We further note that a

^{5/} Section 3.382 of the Pennsylvania Code, 52 Pa. Code §3.382 sets forth the evidentiary guidelines considered by the Commission in evaluating transportation applications.

grant of operating authority cannot be premised on mere conjecture or speculation. Highway Express Lines, Inc. v. Pennsylvania Public Utility Commission, 195 Pa. Superior Ct. 92, 169 A.2d 798 (1961).

We are persuaded by the record, that the Applicant herein, has failed to meet the requisite burden of proof so as to warrant the grant of the instant Application. Therefore, we shall deny this Exception.

CONCLUSION

Having carefully reviewed the ALJ's Initial Decision and the record in detail, together with the Applicant's Exceptions, we conclude that the ALJ's Initial Decision is well founded and amply supported by substantial evidence in the record. We further conclude that the Exceptions of LizRick Tours, Inc., t/d/b/a Royal Star Limousine Service are without merit and, therefore, we shall deny them; THEREFORE,

IT IS ORDERED:

1. That the Exceptions of LizRick Tours, Inc., t/d/b/a Royal Star Limousine Service be, and hereby are, denied.
2. That the Initial Decision of Administrative Law Judge George M. Kashi, issued in this proceeding on January 12, 1989, be, and is hereby, adopted.

3. That the Application of LizRick Tours, Inc.,
t/d/b/a Royal Star Limousine Service, docketed at A-00107419,
F004, be, and hereby is, denied.

BY THE COMMISSION,



Jerry Rich
Secretary

(SEAL)

ORDER ADOPTED: March 30, 1989

ORDER ENTERED: APR 04 1989

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Public Meeting held July 6, 1989

Commissioners Present:

Bill Shane, Chairman
William H. Smith, Vice-Chairman
Joseph Rhodes, Jr.
Frank Fischl

Application of Kleins' Bus Service, Inc., a corporation of the Commonwealth of Pennsylvania, for amendment to its common carrier certificate, which grants the right, to transport, by motor vehicle, groups and parties of persons between points in the townships of Douglass, Union, Amity, Colebrookdale, Earl, Oley, Alsace, Muhlenberg, Bern, Lower Heidelberg, South Heidelberg, Spring, Brecknock, Cumru, Lower Alsace, Robeson, Caernarvon and Exeter, the boroughs of Sinking Springs, Wyomissing, Adamstown, Mohnton, Shillington, Kenhorst, West Reading, Wyomissing Hills, Laureldale, Temple, St. Lawrence, Mt. Penn, Wernersville, Leesport, Birdsboro and West Lawn in the city of Reading, Berks County, the boroughs of Elverson, and the townships of North Coventry and Warwick, Chester County, the borough of Pottstown, and the townships of Lower Pottsgrove, Upper Pottsgrove and West Pottsgrove, Montgomery County, the townships of Caernarvon, Brecknock, East Cocalico and West Cocalico, the boroughs of Denver and Adamstown, Lancaster County, and from points in said territory, to points in Pennsylvania, and return: SO AS TO PERMIT the transportation of persons, in group and party service between the facilities owned or utilized by Boscov's Department Stores, located in West Lebanon Township, Lebanon County, Norwegian Township, Schuylkill County, Monroe Township, Snyder County, city of Wilkes-Barre and township of Hazle, Luzerne County, Hampden Township, Cumberland County, Lower Paxton Township, Dauphin County, city of

A-00106803
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Lancaster, Lancaster County, city of York, York County and the borough of Norristown, Montgomery County; and from facilities, to points in Pennsylvania.

Rhoads & Sinon by J. Bruce Walter for the applicant.
Graf, Andrews & Radcliff, P.C. by Christian V. Graf for the protestants,
R & J Transportation, Inc., H. E. Rohrer, Inc., t/d/b/a Rohrer Bus
and BKW Coach Lines, Inc.
Shearer, Mette, Evans & Woodside by Lloyd R. Persun for the protestant,
Wolf's Bus Lines, Inc.
McNees, Wallack & Nurick by S. Berne Smith for the protestants, Penn
Highway Transit Company, Conestoga Tours, Inc., Capitol Bus
Company, Overland Coach Service, Inc., Capitol International
Tours, Inc. and Frank Martz Coach Company.
Siegrist, Koller, Brightbill & Long by David J. Brightbill for the
protestant, Donald B. and Effie G. Fisher.
Rubin, Quinn, Moss & Heaney, by James W. Patterson for the protestant,
Catawese Coach Lines, Inc.

O R D E R

BY THE COMMISSION:

This matter comes before the Commission on an application filed November 19, 1987. Public notice of the application was given in the Pennsylvania Bulletin of January 30, 1988. Additional public notice was given in the Times Herald, Montgomery County; the Intelligencer Journal, Lancaster County; the Wilkes-Barre Times Leader, Luzerne County; the Patriot & Evening News, Dauphin County; the York Dispatch, York County; and the Daily News, Lebanon County. Protests to the application were filed by 11 certificated carriers.

The protests were withdrawn when the applicant restrictively amended the application so that the applicant now seeks the following authority:

To transport, as a common carrier, by motor vehicle, groups and parties of persons on a non-exclusive basis for special excursions and tours or sight-seeing trips, for Travelcenter, Inc. between the facilities owned or utilized by Boscov's Department Stores, located in West Lebanon Township, Lebanon County, Norweigian Township, Schuylkill County, Monroe Township, Snyder County, city of Wilkes-Barre and township of Hazle, Luzerne County, Hampden Township, Cumberland County, Lower Paxton

Township, Dauphin County, city of Lancaster, Lancaster County, and from said facilities to points in Pennsylvania, and return, provided however:

That service is limited to excursions, tours and trips for which Travelcenter, Inc. has sold individual tickets.

The application is now unprotested and the record is certified to the Commission for its decision without an oral hearing. The record consists of verified statements submitted by the applicant and one supporting shipper.

DISCUSSION AND FINDINGS

Kleins' Bus Service, Inc. (Kleins' or applicant) sought by the instant application to expand its current group and party operations to include the transportation of groups and parties of persons, between the facilities owned or utilized by Boscov's Department Stores located in West Lebanon Township, Lebanon County, Norwegian Township, Schuylkill County, Monroe Township, Snyder County, the city of Wilkes-Barre and township of Hazle, Luzerne County, Hampden Township, Cumberland County, Lower Paxton Township, Dauphin County, the city of Lancaster, Lancaster County, the city of York, York County and the borough of Norristown, Montgomery County, and from said facilities, to points in Pennsylvania.

In responding to protests, the applicant has restrictively amended the application. First, the applicant has limited transportation to groups and parties of persons on a non-exclusive basis for special excursions and tours or sight-seeing trips for Travelcenter, Inc. Secondly, the applicant has excluded from the application the city of York, York County and the borough of Norristown, Montgomery County, as origin points. Finally, the applicant limited the proposed service to excursions, tours and trips for which Travelcenter, Inc. has sold individual tickets.

Kleins' operates from facilities located in Douglassville, Berks County. To provide transportation, the applicant has available 28 coach buses and 20 school buses. Employed by Kleins' are nine full-time coach drivers and 13 part-time coach drivers.

As a certificated group and party carrier in both intrastate and interstate commerce, the applicant provides tours, special excursions and sight-seeing type services. Currently, services include transportation, the arranging of room accommodations, entrance fees to attractions and the arranging of meals.

The applicant is currently authorized to render group and party service between points in portions of Berks County, Chester County, Montgomery County and Lancaster County, and from specifically named points in the four counties to points in Pennsylvania, and return. The applicant is now seeking to expand the number of municipalities in the four counties it

can currently serve. The additional authority being sought will permit the applicant to better coordinate its interstate service with Travelcenter, Inc.

Ike Matza, president of Travelcenter, Inc., states in support of the pending application that Travelcenter, Inc. is a travel agency/broker. The broker's license was issued December 12, 1975, and as amended, currently authorizes the broker to arrange transportation of persons and their baggage from points in the counties of Berks, Schuylkill, Lebanon, Lancaster, Cumberland, Dauphin, Luzerne and Snyder, to points in Pennsylvania, and vice versa.

Travelcenter, Inc. utilizes transportation services of the applicant on an interstate basis. These tours originate at stores owned or utilized by Boscov's Department Stores, of which Travelcenter, Inc. is affiliated. Boscov's Stores are located in West Lebanon Township, Lebanon County; Norwegian Township, Schuylkill County; Monroe Township, Snyder County; the city of Wilkes-Barre and the township of Hazle, Luzerne County; Hampden Township, Cumberland County; Lower Paxton Township, Dauphin County; and the city of Lancaster, Lancaster County. Destinations would be any point in Pennsylvania.

As originally filed, Kleins' was proposing to render group and party service from specific facilities owned or operated by Boscov's Department Stores. However, the applicant has limited the proposed service to the transportation of groups and parties of persons on a non-exclusive basis, for Travelcenter, Inc., a licensed passenger broker.

Issuance of the amended authority sought by this applicant, would abrogate the customary role of a broker, be it a passenger broker or a property broker, to search out the appropriate carrier, be it for rates, schedules, type of motor carrier or which for other reasons, best meets the needs of the shipper/passenger. "We do not, therefore, believe that it is in the broker's interest or the public interest to allow a carrier to hold authority to transport for a broker." Re Cressona Trucking Company, 65 Pa. P.U.C. 265, 267 (1987); Application of Avery Transportation, Inc., A-00097769, F. 2, Am-C, order adopted June 22, 1989. Approval of the amended application would not be in the public interest to grant the applicant authority to serve a broker.

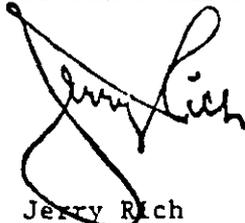
We find:

1. That the applicant has restrictively amended its application so that all of the proposed group and party service is to be provided for Travel Center, Inc., a passenger broker.

2. That it is not in the public interest to grant a carrier authority to transport for a broker; THEREFORE,

IT IS ORDERED: That the application, as amended, be and is hereby denied for not being in the public interest.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Jerry Rich", written over a large, stylized, circular scribble or flourish.

Jerry Rich
Secretary

(SEAL)

ORDER ADOPTED: July 6, 1989

ORDER ENTERED: JUL 10 1989

ORIGINAL

CALDWELL & KEARNS

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

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KEVIN R. DERR
MATTHEW R. GOVER

July 20, 1989

Jerry Rich, Secretary
Pennsylvania Public Utility Commission
Commonwealth of Pennsylvania
P. O. Box 3265
Harrisburg, PA 17120

RECEIVED
JUL 20 1989

re: Application of J.E.T. Enterprises, Inc.,
t/d/b/a Londonderry Limousines, Ltd.
Docket No. A-00108299

Dear Secretary Rich:

I enclose herewith for filing with the Commission the original and nine copies of the Main Brief on behalf of Applicant, J.E.T. Enterprises, Inc.

Copies have been provided to the presiding Administrative Law Judge and all parties of record as indicated below.

Very truly yours,



Kevin R. Derr
CALDWELL & KEARNS

KRD:lf
Encls.

cc: Honorable Louis G. Cocheres
David H. Radcliff, Esquire

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JUL 20 1989
SECRETARYS OFFICE
Public Utility Commission

ORIGINAL

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN RE: APPLICATION OF J. E. T. ENTERPRISES, INC.
t/d/b/a LONDONDERRY LIMOUSINES, LTD.

DOCKET NO. A-00108299

MAIN BRIEF ON BEHALF OF APPLICANT
J.E.T. ENTERPRISES, INC.

DOCKETED
JUL 20 1989

James D. Campbell, Jr., Esquire
Kevin R. Derr, Esquire
CALDWELL & KEARNS
3631 North Front Street
Harrisburg, PA 17110
(717) 232-7661

RECEIVED

JUL 20 1989

SECRETARYS OFFICE
Public Utility Commission

I. STATEMENT OF THE CASE

By this application, J.E.T. Enterprises, Inc. ("Applicant" or "J.E.T.") seeks operating authority for the right to transport, as a common carrier, by motor vehicle, persons, in limousine service, between points in the counties of Dauphin, Lancaster and Lebanon, and from points in said counties to points in Pennsylvania and return; subject to the following conditions:

1. That no right, power or privilege is granted to render transportation to or from the Lancaster Airport located in the Township of Manheim, Lancaster County.
2. That no right, power or privilege is granted to render transportation from points in the City of Harrisburg, Dauphin County, to the Harrisburg International Airport located in the Township of Lower Swatara, Dauphin County and vice versa.

Numerous protests having been filed, hearings were held before Administrative Law Judge Louis G. Cocheres on March 29 and 30, May 3, and June 2, 1989. Main Briefs have been ordered filed by July 20, 1989. Aero Corporation is the only remaining Protestant in this case.

II. REVIEW OF TESTIMONY

A. APPLICANT'S OPERATING TESTIMONY

Eric Shank of Palmyra, Pennsylvania, testified as President/Treasurer of the newly-formed corporation, J.E.T. Enterprises, Inc. (R.6,11) Mr. Shank holds a Bachelors Degree in Business Administration from Millersville University, and has engaged in independent studies at the Hull University in England. (R.7) He has been employed as a Business Analyst for Dunn & Bradstreet Corporation, and in retail management in Eatontown, New Jersey. (R.7) Mr. Shank's experience and exposure to the limousine service industry in New Jersey led to his decision to become involved in this field. (R.8) He indicated that his personal experience and "word of mouth" led to his opinion that there is inadequate limousine service in the Tri-County area, including inadequate efforts to market limousine services and general unawareness of the public regarding these services. (R.8) During September, 1988, Mr. Shank called every limousine service in the three counties to get an idea what limousine service was available within the coming months; he discovered the companies offering service were booked many weeks in advance, with many dispatchers suggesting that wedding service in particular be booked from six months to a year in advance. (R.32)

Mr. Shank sponsored Applicant's Exhibits 1 through 5. The Applicant proposes to offer service in two to three vehicles, including one new stretch limousine and one luxury sedan, which will probably be a Lincoln Towne Car no more than two years old. (R.13,24-5) Service may also be offered in one van. (R.9) The Applicant will operate from offices located at 980 East Fern Street in Palmyra, which includes garage facilities and a business phone line which is already installed. (R.8) The vehicles would be maintained at Palmyra Ford-Lincoln-Mercury or Bordner's Auto Repair. (R.13) The vehicles will be inspected daily for cleanliness and operating conditions. (R.30) There will also be regular maintenance checks to reduce insurance premiums. (R. 31) Mr. Shank has already accepted applications for drivers, and has contacted the National Executive Chauffeur Training School in Philadelphia regarding training seminars. (R.13) He has also made arrangements for alternate sources to garage the vehicles, if necessary. (R.22) Mr. Shank intends to offer a mobile facsimile machine in the vehicles for corporate use, in addition to various other appointments such as a bar, television, radio, and customized rear windows. (R.14,23) He feels his service will be different from others offered in the area due to the following: mobile facsimile machines, greater promotional efforts to raise public awareness, better customer

service response, and greater availability of luxury limousine service for weddings and similar functions. (R.14) J.E.T. Enterprises is ready, willing and able to begin servicing the public immediately upon approval of this application. (R.14) The company also intends to offer services in interstate commerce, and application is being made to the ICC. (R.33)

Applicant's Exhibit 2 is a proforma balance sheet for the newly formed corporation, as prepared by David T. Hibshman, C.P.A. Family savings will be committed to the corporation as stockholder paid in capital or officer loans. (R.10,11) The sole shareholders will be Eric Shank and his mother, Thelma Jean Shank, who will serve as Directors. (R.11) Mr. Shank has explored financing for the corporation with Meridian Bank, Northwest Savings Bank, and Lebanon Valley National Bank (R.12) He is aware that the company must maintain liability insurance for the public protection, and has also contacted various insurance companies in this regard. (R.12) He has been advised that insurance companies will conduct investigations of proposed drivers. (R. 27). He is aware that regulations regarding luxury vehicle service require hiring out the entire vehicle rather than charging passengers on an individual basis. (R.32). With regard to advertising, the company would utilize direct mailings, the yellow pages, and possibly radio, newspaper, bridal shows, and

coupons within PUC guidelines. (R.27-8) Mr. Shank believes there is presently ineffective promotion of existing limousine services. (R.28)

B. APPLICANT'S SUPPORTING PUBLIC WITNESSES

David E. Riehl, of Blue Ball, Lancaster County, testified individually on behalf of the applicant. Mr. Riehl is employed as a loan officer with the ICA Mortgage Corporation. (R.15) Mr. Riehl testified that he has had occasion to make arrangements for limousine service. (R.16) For example, in January, 1989, he began making phone calls in an attempt to book a white stretch limousine for a June 17 wedding. He contacted Lancaster Limousine and Landis Enterprises, but was unable to book a limousine in the size and color desired. (R.16,17) He indicated that he has also in the past required limousine service for transportation from Lancaster County to various airports, and would probably require such service again in the future. (R.17) Mr. Riehl used limousine service some three to four years ago from Lancaster to the Philadelphia airport; however, he was not able to book transport on that trip from his home, and would appreciate the convenience of booking limousine service departing

from his home. (R.18) He testified that service originating in Lancaster County and destined for Pennsylvania airports would be a convenience to him. (R.18) He stated, "...I think it's because it's become quite a popular form of travel if you are going to plan an evening out or something like that..." (R.18) The Applicant's proposed service would "definitely" be a convenience to him if approved, and he would "most certainly" use it. (R.18)

Judy E. Colton, a partner in Lancaster Travel, testified on behalf of that business in support of the Applicant. Lancaster Travel is a full-service travel agency serving customers primarily from Lancaster and Dauphin Counties. Ms. Colton deals directly with the customers, and is aware of the authority which has been applied for. (R.35-6) She testified that her company has need for the type of service proposed by the Applicant. (R.36) Ms. Colton indicated that she has had occasion in the past to put both individual and group customers in contact with a limousine service for transportation to various airports, such as Philadelphia, Harrisburg and New York. (R.36,50) The service required on those occasions was unavailable. (R.37) She added that she sees luxury limousine service as a kind of service people like to have available on a discretionary basis, with

price less important than availability in light of the type of customer being serviced. (R.51) She particularly sees a need for stretch limousine service for group trips. (R.37) She believes approval of the subject application would be beneficial to her company and its clients. (R.38) It would "absolutely" be a convenience and a service to her company to be able to put a corporate account in touch with such a carrier. (R.50) Ms. Colton is familiar with the carrier Aero, but stated, "...We had occasion for service that they couldn't offer and also I think a little healthy competition wouldn't hurt anyone in Lancaster." (R.38) The witness testified that her company is willing to enter into an agency agreement with the Applicant under which they would charge on a commission basis for sales of the Applicant's services. (R.45) The company would more likely be interested in having the service available to recommend to customers as a courtesy, rather than actually booking transportation for compensation. (R.45,50)

Carole Colestock, of Hummelstown, appeared in support of the application on behalf of her business, Elegant Weddings by Carole. (R.57) The business provides consulting services and various arrangements for weddings. (R.57) Her customers are drawn primarily from Harrisburg, Lebanon and Hershey. (R.58)

Ms. Colestock indicated that the business could also be called upon to provide limousine service, which would likely involve transportation to and from churches in the above mentioned areas. (R.58) Ms. Colestock testified regarding a recent wedding she had arranged in Lebanon, in which a limousine which had been booked by the bridal party never arrived. (R.58) The witness was aware of the scope of this application, and would use the service and recommend it to her clientele. (R.58-9) She sees a need for the proposed service, stating, "...I think Eric has a very good service that he can provide...There are plenty of brides and weddings going on that another limousine service would well be warranted, especially with the need for white limos." (R.59,61)

Brenda Miller of Lebanon, testified individually in support of the application. (R.62) Ms. Miller related her unsuccessful attempt to book limousine service for her daughter's wedding scheduled for May 20, 1989. Although she began making calls as early as November, 1988, she stated that she was "...quite disappointed with the availability of something suitable for a wedding. I realized that the wedding is not until the end of May, and I felt that should be sufficient time to locate something." (R.62) Although Ms. Miller contacted a number of

carriers in Lancaster, Elizabethtown, Lebanon, Ephrata and Harrisburg, she was unable to arrange the limousine service she desired. (R.62-3) She indicated that, other than the companies she contacted, she is unaware of any other limousine companies actively promoting their services in the Lebanon Area. (R.64) When asked about the proposed service, she responded, "I think as a Lebanon resident I see a great need. I see a great need for it, yes." (R.64)

Robert Allen Poulton, of Lancaster, testified individually in support of the application. (R.66) Mr. Poulton has relatives from England who visit three to four times per year, and has need for limousine service to transport them from the airport. (R.67) Mr. Poulton also travels to England about four times a year, and would like the convenience of limousine service to transport him to the Philadelphia and Newark airports. (R.67) Mr. Poulton testified that he was advised in January, 1989, that relatives were visiting in March. He began searching for limousine service in the yellow pages, but was unsuccessful in an attempt to book the desired transportation. (R.67) He found one company's phone number disconnected; Lancaster Limousine did not have a vehicle available; Landis had one vehicle which was extremely costly to book. (R.67-8) Mr. Poulton indicated that he had never heard of

Aero Corporation, and did not see them in the Lancaster Yellow Pages. (R.68) Mr. Poulton is familiar with the subject application, and "definitely" sees a need for the proposed service from Lancaster County to points in Pennsylvania, and vice-versa. (R.68) He stated, "After sitting on the telephone for 20 minutes, all competition and all added services would be a great help."

Blanca Kristich, of Palmyra, testified in support of the application. (R.73) She indicated that she required limousine service for a wedding May 23, 1987. She contacted several limousine services, but was unable to book the necessary transportation due to graduations and proms that were scheduled around that time. (R.73) She began making calls several months in advance, and did not anticipate problems considering the number of limousine services available. (R.73) Ms. Kristich desired a stretch limousine in any color. (R.73) She testified that she called limousine companies in Harrisburg, Lancaster, Lebanon, Ephrata, and Reading. (R.73) "I tried everywhere." (R.73) She stated that she contacted every company listed in the Harrisburg phone directory, and recalls speaking with someone at Aero Corporation. (R.75) Ms. Kristich is aware of the proposed

service, and sees a need for it in the Palmyra area. (R.74) She believes the proposed service, if approved, would be a convenience for weddings. (R.74)

Bruce A. Stiger, of Lititz, testified that he has occasions to make limousine arrangements. He related that he recently attempted to book limousine service to take his wife to dinner and for a ride on a special occasion. (R.80) He began making calls the first week of March 1989, for a May 6 engagement. (R.80-81) He contacted Lancaster Limousine, Landis, and Crystal, but was unsuccessful. (R.80-1) He stated that Aero Corporation was not listed in the Lancaster Yellow Pages, which he had consulted. (R.86) His first contact with Aero involved a visit from a representative of that company subsequent to his agreeing to be a witness in this proceeding. (R.86) He stated, "I didn't know they existed up to that time." (R.85) The witness was aware of the scope of the subject application, and stated it would be convenient if available for trips such as that described above. (R.81) He sees a need for the proposed service in the area where he resides, and he would use the service. (R.82)

Monique Ullom, Director of Marketing and Sales, testified on behalf of First World Travel of Harrisburg, a travel agency

involved primarily in corporate travel and group outings.

(R.93-4) First World draws its customers from an area ranging from Annville to Carlisle, including the Greater Harrisburg area.

(R.94) Ms. Ullom works directly with the customers. (R.95) She is aware of the scope of the proposed application, and believes it would be a benefit to her company. (R.95) She stated that many of her clients now wish to fly out of Philadelphia airport, due to increased air fares at the Harrisburg Airport. She indicated, "...There has become a need that has not been able to be completely supplied by other limousine services." (R.95) She added, "We have a great deal of requests for limousine service, but it is almost impossible to find a stretch limousine available, especially during the summer months around the prime time, which is, I guess, the beginning of May to the end of May."

(R.96) Ms. Ullom is aware that the Applicant proposes to provide stretch limousine service. (R.96) She is also interested in the possibility of the Applicant arranging transportation for sporting events. (R.96) She believes the proposed service would be used, and would benefit her customers and her company. (R.96) She would recommend the service to her customers. (R.95) Ms. Ullom explained that First World does not charge its customers to arrange limousine service, but offers this as a complimentary service. (R.96,98) She stated that she used to use Aero

Corporation, but that this has become more difficult in the past year due to their curtailment in service. (R.100) To her knowledge, Aero does not presently offer stretch limousine service. (R.101) A representative of Aero Corporation contacted the witness the week prior to the hearing to discuss the possibility that Aero might be able to provide stretch limousine service in the future. (R.101)

James Musheno, of Annville, Lebanon County, is the owner and operator of a bus tour operation. (R.102) Mr. Musheno is a licensed tour broker, holding a broker's license from the Pennsylvania PUC. (R.103) He arranges and sells bus tours, drawing customers primarily from the Lebanon area. (R. 103) Mr. Musheno deals directly with the customers. (R.103) He is aware of the scope of the application. (R.103) He testified that he has had inquiries regarding limousine service from Lebanon County to Pennsylvania points, and in fact fielded one such question the day prior to testifying at the hearing. (R.104) He believes the proposed service would be a benefit, and he would refer customers to that service and make arrangements for them as needed. (R.104)

Ram L. Upadhyaya, of Hummelstown, Pennsylvania, testified in support of the application. (R.106) Mr. Upadhyaya is a self-employed international consultant, who frequently travels by air. (R.106-7) He personally requires limousine service to various airports, and also requires service to chauffeur customers who fly into the United States for consultations. (R.107) He has had difficulty securing limousine service for both of these purposes. (R.107) He has particularly had difficulties securing transportation when arriving at Harrisburg International Airport, and has often resorted to contacting his wife, 17 miles away, to pick him up. (R.108) He and his clients often make alternate travel arrangements due to inadequacy of public transportation from Harrisburg Airport. (R.113) Mr. Upadhyaya is aware of the scope of the application, and sees a "definite" need for the service. (R.108) He would "definitely" use the service, stating, "When I came to know about this service, I was very pleased that we have something else where maybe we can go." (R.107-8) The witness indicated on cross-examination that he has flown into Harrisburg International Airport four to five times during the first four months of 1989. (R. 110-11) However he has ceased using public transportation from that airport during the past several years due to problems he has experienced in the past. (R.112) He stated that limousine service in particular is

unavailable. (R.109) He requires both standard and stretch limousine service. (R.113) He stressed, "I definitely feel there is a need of service." (R.113) He believes the proposed service would be "ideal", and he would make more arrangements at the Harrisburg International Airport due to the convenience. (R.109,116)

Debra McRedmond, Branch Sales Manager, testified on behalf of Liberty Travel, located in the Harrisburg East Mall, a travel agency booking primarily leisure and business arrangements. (R.117-18) The company draws its customers from six counties including Lancaster, Dauphin, Cumberland, Perry and Lebanon, along with the Pittsburgh and Ohio region. (R.118) Ms. McRedmond deals directly with the company's customers. (R.118) She is aware of the scope of the application, and believes there is a need for the proposed service. (R.119) She sees a need for stretch limousine service to handle weddings, honeymoons, bachelor parties, and similar events. (R.120) She also believes the service would be used for corporate bookings. (R.120) She has been contacted in the past by AMP, Inc. regarding limousine service. (R.120) In addition, she personally uses limousine service two to three times per year. (R.120) She sees the proposed service as a benefit to her company and customers if

available, and she believes it would be used. (R.121) She was unaware of the service provided by Aero Corporation until she was contacted by a representative of that company a week before the hearing. (R.120) The representative indicated that, although Aero itself does not have a stretch limousine available, he could make one available by securing it upon request from an individual Aero works with. (R.120-1)

Nancy Donovan testified as owner and acting manager of East Mall Travel Service, Inc., located in the Harrisburg East Mall, a full service travel agency. (R.124-5) The company handles all facets of the travel industry, drawing customers from central Pennsylvania. (R.125) Ms. Donovan deals directly with the company's customers, and is aware of the scope of the proposed application. (R.125) She stated, "I feel the service is needed in the area." (R.126) Her major use would be for weddings, honeymoons, package deals, and on a personal basis. (R.126) She is also occasionally contacted to book limousine service for an evening of fun. (R.126) She believes the proposed service would be a benefit to her company and its customers. (R.126)

Franco J. Frittelli, of Palmyra, Pennsylvania, operates a hair and cosmetic salon in Hershey. (R.135) Mr. Frittelli is

aware of the scope of the proposed application. (R.136) He operates what he calls an "up-scale" hair salon, explaining that he charges and offers the customers good service for it. (R.136) Most of his customers are drawn from Derry Township, with the rest from Harrisburg and Palmyra. (R.137) He is interested in providing a full service day in the salon for certain "up-scale clientele," which would involve a limousine transporting them from their residence to the salon and back. (R.136) This could also involve transportation from the salon to and from dinner. (R.137-8) Mr. Frittelli has heard of other salons in Philadelphia and Lancaster offering such service. (R.137) Mr. Frittelli has proposed this service to some of his clients, and has received a favorable response. (R.137-8, 142) Mr. Frittelli also travels frequently by air on business, and stated that it is beneficial to have limousine service available to and from the airport. For example, he will be attending a hair styling show in Chicago in August. (R. 138). He "absolutely" sees a need for the proposed service, and believes it would be a convenience if approved. (R.139)

C. PROTESTANT'S TESTIMONY

Aero Corporation ("Aero") is the only remaining Protestant in this proceeding. Stanford Cramer, President and principal stockholder, testified on behalf of the Protestant. (R.143-4) The Protestant operates from offices in Middletown located about 100 yards from Harrisburg International Airport; from that location Protestant also operates an auto dealership, body shop, service facility, car rental service, and airport transfer and parking service. (R.144) The Protestant has been certificated by this Commission since prior to 1980, and is authorized to transport in limousine service from points in Dauphin, Lebanon, Cumberland, York, Perry, Lancaster, Schuylkill, and Adams Counties to Pennsylvania points, and vice versa. (R.145) The company advertises in the telephone directory, newspapers, and by electronic media, coupons, flyers and direct mailings; in addition, the company has two individuals who call on businesses regarding the services Aero offers. (R.146) The witness testified that the company is financially sound, (R.147), with total operating revenues for 1988 of over 1/2 million dollars. (R.147,155) The company has a high volume of service calls to and from the airport, with most involving airport transfer service in vans. (R.151)

The witness indicated that the company operates Lincoln stretch limousines, London Sterlings, and Lincoln Towne Cars; he indicated that the company owns 30 to 35 vehicles. (R.153) However, the company's 1988 annual report indicates that only nine vehicles are owned by Aero Corporation, and the witness was unable to explain the discrepancy. (R.154-5) Further, the witness testified that the company operates one London Sterling; however, the annual report reflects that this vehicle was retired from service in 1988. (R.156) The witness later testified that Aero actually does not own any stretch limousines, but secures them for use when necessary from a J.J. Salinger of Unique Limousine Services. (R.153,157-8) Only about \$41,000.00 of Aero's 1988 operating revenues resulted from intrastate limousine service. (R. 155) Aero's total operating revenues for 1988 exceeded one half million dollars. (Applicant's Exhibit 5). The witness testified that Aero advertises in the Harrisburg phone directory; however, the company does not advertise in the Lancaster or Lebanon directories, and possibly does not advertise in the Hershey directory. (R.162)

III. FINDINGS OF FACT

1. The Applicant has filed an appropriate application for operating authority with the Public Utility Commission.

2. Applicant possesses the technical and financial competence and fitness to provide the service in question.

3. In support of its application, which involves only the limited origin territory of Lebanon, Dauphin and Lancaster Counties, the Applicant presented 13 supporting public witnesses who fairly represent the subject territory.

4. The supporting witnesses have experienced difficulties in securing adequate transportation service from existing carriers.

IV. DISCUSSION

Under the Commission's Transportation Regulatory Policy, as set forth at 52 Pa. Code Section 41.14, an applicant has the burden of establishing that the proposed service will serve a useful public purpose responsive to a public demand or need; and that it possesses the technical and financial ability to provide the proposed service and to operate safely and legally. If applicant carries that burden, the protestant(s) must then

establish that the entry of applicant into the transportation field would endanger their operations to the extent that granting the application would be contrary to the public interest.

J.E.T. Enterprises, Inc., t/d/b/a Londonderry Limousines, Ltd., has clearly established its technical and financial ability to provide the proposed service. Applicant intends to begin with only two to three vehicles, to insure that the newly-formed business will not over-extend itself. The Applicant's President has a sound background in business, and has taken the appropriate steps to commence operations soundly and efficiently. For example, an accountant has been consulted, and a proforma balance sheet prepared; contacts have already been made regarding financing and insurance; and steps have been taken to install a program which will provide adequate safety, maintenance and driver training.

With respect to establishing that the proposed service will meet a public demand or need, the evidence is overwhelming that a useful public purpose will be served by approval of the application. Applicant produced 13 witnesses who demonstrated need for service throughout the application territory. Witnesses testified in support of the application both individually and on behalf of a variety of organizations. The testimony clearly establishes that the witnesses are not satisfied with the service

presently available, and are in fact largely unaware of those services. Many of the witnesses, particularly from Lancaster and Lebanon Counties, were completely unaware of the Protestant Aero Corporation, although some were contacted once they had agreed to appear as a witness. It is well established that an applicant in proceedings such as these need not prove necessity for every square mile for which it seeks operating authority. A proof of need within the general territory involved is sufficient.

Application of Lyons Transportation, Inc., 42 Pa. PUC 605, 606 (1966); Reeder v. Pa. PUC 192 Pa. Superior Ct. 298, 302 (1980); Application of Veneziale, 44 Pa. PUC 170, 181 (1969). Evidence of need which has been presented in this proceeding is sufficient to warrant a grant of the entire application.

Further, although Applicant is no longer required to prove inadequacy of existing service under the Commission's Regulatory Policy, it is clear that the existing service in the subject counties is completely inadequate. Witness after witness testified that the proposed service is needed, that they would use it, and that it would benefit them and/or the organizations they represented. The testimony further established that the existing service does not meet customer needs. Many witnesses related complaints they have with the presently certificated carriers, and some specifically cited their inability to secure

service from the Protestant, including limousine service to and from the Harrisburg International Airport: Witnesses Colton, R. 38; Poulton, R. 68; Stiger, R .86; Kristich, R .75; Ullom, R. 100-101; and Upadhyaya, 109, 113.

Further, the evidence presented by the Protestant falls short in meeting its burden of proof. It should be borne in mind that it is the interest of the public that is paramount, and not the particular interests of a single carrier. It is clear that the entry of J.E.T. Enterprises, Inc. into this market would not impair the operations of existing common carriers to such an extent that, on balance, the granting of authority would be contrary to the public interest. It was clearly established that Protestant Aero is very financially sound, and has in fact experienced financial growth in the recent past, despite the continual increase of certificated carriers in the transportation field. It is very unlikely that the operation proposed by the Applicant, limited as it will be initially, will seriously affect the operation of Protestant, which grossed over 1/2 million dollars in operating revenues for 1988. The record demonstrates that the Protestant does not even market its services in the Lancaster and Lebanon County areas. In short, Protestant presented no tangible evidence whatsoever indicating that approval of this application would result in any diversion of its

revenues. As stated by ALJ Christianson in Application of Richard L. Kinard, Inc., 58 Pa. PUC 548 (1984), a Protestant's burden of coming forward with evidence under 52 Pa. Code 41.14(c) is quite heavy and is not to be based upon the mere potential for diversion of traffic.

It should also be noted that the clientele which seeks limousine service is generally most concerned about luxury accommodations, and less concerned about rates. Several of the supporting public witnesses testified to this effect. We are dealing here with discretionary, not necessary, transportation. As a consequence, it has historically been the approach of this Commission that regulation in this area be geared primarily to applicable rates, rather than to limiting the number of carriers in the market place.

Based upon all of the evidence of record, it is clear that Applicant has carried its burden of proof and Protestant has failed to carry its burden. Approval of the subject application will serve a useful public purpose, responsive to a public need which Applicant possesses the technical and financial ability to service.

V. CONCLUSIONS OF LAW

1. Applicant has carried its burden of proving by substantial evidence that a need exists for the service proposed in its application.

2. Applicant has carried its burden of demonstrating that approval of the application will serve a useful public purpose, responsive to a public demand or need.

3. Applicant has carried its burden of proving that it has the technical and financial ability to provide the proposed service, and that it will operate safely and legally.

4. The witnesses presented by Applicant are sufficient in number and geographical representation to warrant approval of the application in its entirety.

5. Protestant has failed to carry its burden of demonstrating that the application would endanger the operations of existing carriers to such an extent that, on balance, the granting of authority would be contrary to the public interest.

THEREFORE, IT IS ORDERED:

That the application of J.E.T. Enterprises, Inc. t/d/b/a Londonderry Limousines, Ltd., is granted.

VI. CONCLUSION

J.E.T. Enterprises, Inc., t/d/b/a Londonderry Limousines, Ltd., has established by substantial evidence that its application should be approved in its entirety.

Respectfully submitted,

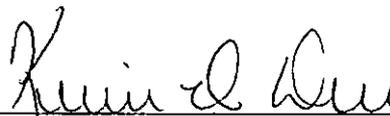
CALDWELL & KEARNS

By Kevin R. Derr
James D. Campbell, Jr.
Kevin R. Derr

Date: 7-20-89

CERTIFICATE OF SERVICE

I hereby certify that I have this day served three true copies of the foregoing document upon the Protestant in this proceeding, as well as the presiding officer and other parties of record, in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by participant), dated July 20, 1989.



Kevin R. Derr, Esquire
Counsel for Applicant
J.E.T. Enterprises, Inc., t/d/b/a
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ORIGINAL

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July 24, 1989
File: 1012.51

RE: J.E.T. ENTERPRISES, INC., t/d/b/a LONDONDERRY LIMOUSINES, LTD., A. 108299 -
Protest of Aero Corporation

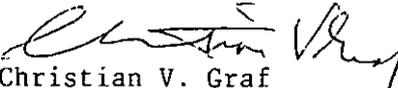
Jerry Rich, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, Pennsylvania 17120

Dear Mr. Rich:

Pursuant to Brief schedule in the above matter, we enclose herewith the original and 9 copies of "Reply Brief on Behalf of Aero Corporation, Protestant."

As stated on the Certificate of Service we are mailing 3 copies to Judge Cocheres, to Mr. Campbell who represents the applicant and to Craig Doll who entered an appearance in this case and subsequently withdrew. We are also forwarding a copy to our client.

Very truly yours,


Christian V. Graf

CVG:tcr
Enclosures

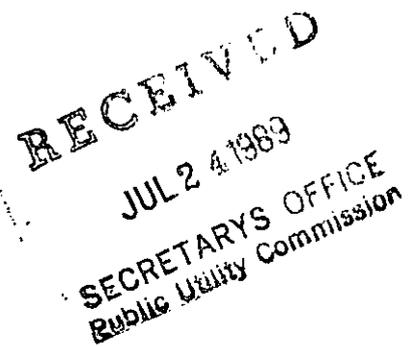
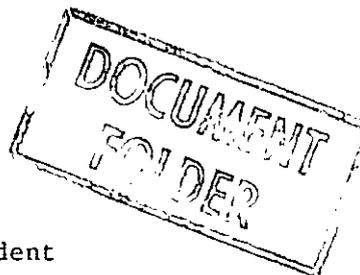
cc: Louis Cocheres, Administrative Law Judge
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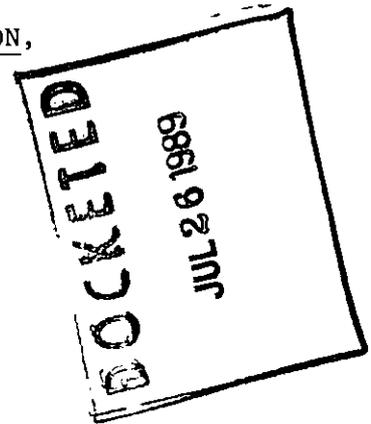


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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY
COMMISSION

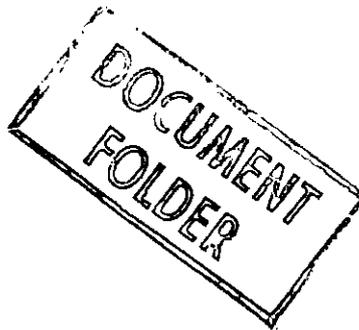
In Re: J.E.T. ENTERPRISES, INC.,
t/d/b/a LONDONDERRY LIMOUSINE, INC.
A. 00108299

REPLY BRIEF ON BEHALF OF AERO CORPORATION,
Protestant



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DUE DATE: July 31, 1989



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Public Utility Commission

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY
COMMISSION

In Re: J.E.T. ENTERPRISES, INC.,
t/d/b/a LONDONDERRY LIMOUSINE, INC.,
A. 00108299

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I.

PRELIMINARY STATEMENT

The statement of the case, the questions involved, the abstract of testimony, the recommended findings of fact and the argument on behalf of protestant were all set forth in our initial Brief.

In Applicant's initial Brief it appears to stress the fitness of the applicant and has ignored the question of the inadmissability of the broker-witness testimony. It has apparently proceeded on the basis that sheer numbers suffice and replace the consideration of substantive evidence.

In this Reply we will more closely examine the fitness of the applicant and point out that there is precedent for a finding that the applicant has not met the burden of proof of fitness.

We will also point out certain similarities in this case as they relate to another limousine case as to the public witnesses and why they do not make out a case for necessity.

II.

ARGUMENT

A. THERE IS PRECEDENT FOR DENYING THIS APPLICATION ON THE BASIS OF FITNESS.

A case bearing striking similarity to this one is that of Admiral Executive Limousine Service Company, A. 00107523. The initial Decision and the Commission's adoption thereof on September 22, 1988 are attached hereto as Appendix D. In both cases there was a corporate shell.

Other items of similarity are as follows: neither this applicant nor the applicant in the Admiral case hold any current authority (N.T. 7, 8; Admiral Order, p.2). In this case no equipment is on hand and, in fact, none here is on order (N.T. 22; Admiral Order, p.20). In each case there is a proposal to secure equipment (N.T. 9; Admiral Order, p.20). In this case the office is proposed to be at the President's home which is zoned residential (N.T. 8, 22). However, the applicant here did not ascertain whether the zoning designation of residential would permit limousine operations (N.T. 22). In the Admiral case, there was a handshake agreement for terminal facilities (Admiral Order, p.21).

In neither case did the officers present any financial statements, but in this case a pro forma balance sheet was submitted (Exhibit 2; N.T. 12). However, this pro forma balance sheet reveals \$47,000 listed as the cost of the limousines to be acquired (Exhibit 2). However, the testimony of Aero's witness, who is in the automobile business, has indicated that a stretch limousine such as the applicant proposes would cost between \$50,000 and \$60,000 and a used Lincoln town car two years old would cost between \$16,000 and \$19,000 equipped with the amenities which applicant proposes (N.T. 150).

In neither case is there a letter of credit submitted and in this proceeding no loan has yet been arranged (N.T. 25; Admiral Order, p.21).

In the Admiral Order at p. 29, Judge Cohen had this to say:

"Financial fitness is an essential ingredient in the determination of overall fitness to operate the proposed service, Armour Transportation v. Pa. P.U.C., 154 Pa. Sup. Ct. 21, 23; 34 A.2d 821, emphasizes this point. (See also Application of J. Paul McCracken and Joseph R. Golden, t/d/b/a Villa Transportation, A. 00105984 (1986). Thus, in Application of International Travel, Inc. at Docket No. A-00105856, Folder 2, the late Administrative Law Judge Joseph J. Klovekorn, in his Initial Decision of March 3, 1987, made final by Commission Order entered April 21, 1987 concluded with respect to Applicant, who was then operating a travel business and wanted to expand into the limousine business:

'Under Section 41.14(b), the applicant must show that he is financially able to provide the proposed service. Here a vehicle list was produced, however, no financial statement was introduced. Financial fitness has not been shown.'" (Pages 29, 30).

and, again:

"The Commission has set standards and the Applicant has failed to meet them. It is not our function to assist Applicant in meeting its burden of proof, by making certain factual assumptions not appearing in the record itself." (Page 30).

The same conclusion is justified here.

B. THE WITNESSES WHO WERE NOT BROKERS
DO NOT SUSTAIN APPLICANT'S BURDEN OF PROOF OF NECESSITY

Since we have covered the inadmissability of the broker-witnesses in our main Brief, we will not comment further on this aspect. We do feel, however, that there are some similarities between the instant case and that of Admiral, supra. While Witness Riehl testified that he wanted a limousine for

a wedding in Lancaster County, he found a service but considered the price excessive (N.T. 17). Nowhere in this record is there evidence of what rate the applicant would charge. This witness also wanted service to Philadelphia International Airport but his support really was for airport transfer service as is evident from the fact that on the trip in which he did use service it was in a van with 12 seats and that was the type of service he would use (N.T. 20).

Witness Colestock admitted she had not been asked by anyone to provide limousine service (N.T. 52). Though she discussed a wedding in Lebanon County and a need for limousines the order for service was made by someone other than this witness (N.T. 58). Concerning that service she did not know the name of the company; when it had been booked or whether an appropriate deposit was paid for the service (N.T. 59, 60).

Witness Miller of Lebanon, though searching for a limousine service, had made no arrangements for that wedding and was unsure of what she would use as transportation, though she would not object to Protestant Aero communicating with her to describe the service available for the date (N.T. 65). Aero Corporation has full authority to provide such a service since it possesses the entire authority applicant seeks (Exhibit P-1); has available by lease Lincoln stretches (N.T. 158) and Lincoln town cars (N.T. 146).

Witness Poulton who wants limousine service to Philadelphia (N.T. 66, 67) for relatives arriving from England has used a min-van which he rented in Lancaster and has not used a limousine from Newark or Kennedy, but rented one from Landis which he drove himself (N.T. 69) because a stretch limousine was

too expensive (N.T. 70). He had no idea of applicant's cost for limousine service (N.T. 70-72), but reiterated that Landis, which had limousines available, was unsatisfactory because the cost didn't suit him (N.T. 67, 68). This witness also had no idea of the applicant's cost because there was no evidence of rate to be charged put forth.

Witness Kristich wanted a limousine for a wedding two years ago and called Aero for that service (N.T. 73,76). At the time Aero could have served her only to or from Harrisburg International Airport (N.T. 145, 148). It now can serve her anywhere (Exhibit P-1) in stretch limousines (N.T. 158) which are available by lease and by Lincoln town car (N.T. 146).

Though Witness Steiger wanted service for May 6 to take his wife to dinner (N.T. 80) and was unable to get service from Lancaster Limousine, he admitted that at the time of his testimony he still had five or six weeks to find service but admitted that he had made no arrangements because he had decided to take his wife to Florida instead (N.T. 83). He knew that Aero was available, having been solicited, but never called them for service (N.T. 84, 85).

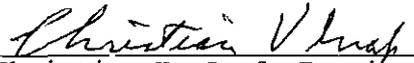
Witness Upadhyaya wanted service to and from Harrisburg and Philadelphia International Airports, but he has not used public transportation from Harrisburg International Airport for three years (N.T. 112, 113) because his wife always picks him up (N.T. 113, 114). As to Philadelphia Airport, he always rents a car (N.T. 110, 111).

Witness Frittelli had no idea what service was available; did not check the telephone directory to see what was available (N.T. 141); had not been quoted any price by the applicant; did not know what the price would be to his clients and made no survey as to whether his proposal would be favorably received by his clients (N.T. 141, 142). He has had no past use for himself or his beauty salon for service anywhere in Pennsylvania in the past (N.T. 142, 143).

In the Admiral case we note an absence to pick up a telephone directory to see whether service was available (Admiral Order, p. 33); failure to call for service and an absence of knowledge as to the cost of limousine service; a failure to use service for three years (Admiral Order, p. 34). Here there is also an admission of the availability of service, but a refusal to use it because of cost.

Predicated upon this evidence and on the Admiral case, supra, need has simply not been shown. The application should be dismissed.

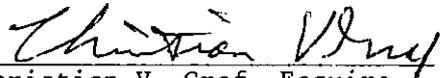
Respectfully submitted,


Christian V. Graf, Esquire
Attorney for Protestant

CERTIFICATE OF SERVICE

I hereby certify that I have this date served three (3) copies of the foregoing "Reply Brief on Behalf of Aero Corporation, Protestant" upon all counsel of record, by U.S. First Class Mail, postage prepaid, at the addresses shown below.

Dated at Harrisburg, Pennsylvania, this 24 day of July, 1989.


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Aero Corporation
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Louis Cocheres,
Administrative Law Judge
Pennsylvania Public Utility Commission
P.O. Box 3265
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Admiral Executive :
Limousine Service Company. :
Right to begin to transport, by :
motor vehicle, persons, in :
limousine service, between points : A-00107523
in the Counties of Dauphin, :
Cumberland, and York, and from :
points in said counties, to points :
in Pennsylvania, and return. :

INITIAL DECISION

Before
Herbert S. Cohen
Administrative Law Judge

History of the Proceedings

On or about May 27, 1987, Applicant, Admiral Executive Limousine Service Company, a Pennsylvania corporation with a registered office at 410 North Third Street, Harrisburg, Pennsylvania filed an Application at Docket No. A-00107523 for the right

to begin to transport, as a common carrier, by motor vehicle, persons, in limousine service, between points in the counties of Dauphin, Cumberland and York, and from points in said counties to points in Pennsylvania, and return.

Protests to the Application were to be filed on or before July 13, 1987. Thereafter, timely protests to the Application were filed by Comfort Cab, Inc., t/d/b/a White Rose Limousine ("White Rose"), Lancaster Limousine Service, Ltd.

("Lancaster Limo"), and Aero Corporation ("Aero"). The protest of Aero was subsequently withdrawn.

By written Notice dated September 16, 1987, the parties were advised that an initial hearing in the captioned matter would be held in Harrisburg on November 19, 1987, before former Administrative Law Judge Edward Casey.

The initial hearing of November 19, 1987, was held at the scheduled time and place before Judge Casey. Appearances at said hearing were entered by J. Bruce Walter, Esquire for the Applicant; Herbert R. Nurick, Esquire for Protestant, Comfort Cab, Inc., t/d/b/a/ White Rose Limousine and; Christian V. Graf, Esquire for Protestants Aero Corporation and Lancaster Limousine Service, Ltd. At said hearing Applicant sponsored five (5) public witnesses in addition to Applicant's President and sole shareholder, Robert H. Long, Jr. Subsequent hearings were held on January 19, February 29 and March 16, 1988. Applicant sponsored the verified statement of Mr. Long and Protestants sponsored and introduced into the record numerous (i.e., 18) exhibits. The record consists of transcripts containing a total of 192 pages. All the parties have filed both Main and Reply Briefs.

Following the submission of Briefs, the presiding officer, Edward Casey, resigned from his position as an Administrative Law Judge with this Commission. Thereafter on or

about June 9, 1988, the undersigned was designated successor presiding officer responsible for issuing the Initial Decision in subject matter.

Summary of the Testimony

All the parties have summarized the pertinent testimony in this proceeding in a concise and accurate fashion. Accordingly, we will in some instances incorporate herein the aforementioned testimony as our own summary of same.

Robert H. Long, Jr., Esquire, Applicant herein, is a member and managing partner of the Harrisburg law firm of Rhoads & Sinon, 410 North Third Street, Harrisburg, Pennsylvania. Mr. Long is President, Treasurer and sole shareholder of Admiral executive Limousine Service Company (Applicant's Ex. 1). This corporation was formed on February 4, 1987. At this time Applicant holds no authority from this Commission. Mr. Long gave the following outline of the type of service Applicant proposed to offer upon grant of authority:

We hope to offer a complete service to the traveling public, including local, non-scheduled common carrier service for passengers rendered in luxury-type vehicles on an exclusive basis which is arranged for in advance. Our service will concentrate on providing business people with a service tailored to their needs and to facilitate their business requirements. Our concentration will not be in the area of funerals or weddings and the like, but we will provide that kind of service when requested.

(Id., pp. 3, 4).

Mr. Long testified that his decision to institute a limousine service was initiated by his perception of "the lack of available service and quality service for the executive or professional level person, both locally and for inter-city travel" (N.T. 11). With respect to the type of automotive equipment he planned to utilize in the proposed venture he stated:

. . . We plan to acquire, on grant of authority, limousines or luxury-type vehicles, all of which will be equipped with telephones. We anticipate initial usage of Oldsmobiles, Buicks or similar vehicles. We have discussed leasing vehicles over a longer term with Titus Cadillac.

(Applicant's Ex. 1, p. 2).

Mr. Long gave the following explanation as to why Applicant owned no limousines and/or other property necessary for the operation of the proposed service:

- A. I don't think it is prudent to enter into those contractual obligations and incur those costs and expenses until we know the rights are going to be granted.

But I have had preliminary discussions and negotiations for all of these items and believe they are available at reasonable prices, including automobiles, limousines, insurance and all of these things.

We have had preliminary discussions with the providers of these types of facilities and services in our planning, but we don't care to enter into any contracts at this point in time because it may be lost money if these rights are not granted.

(N.T. 27, 28).

With respect to the Applicant's financial situation Mr. Long indicated no balance sheet was available nor did he present any other written material with respect to same. However, he did testify that he had a line of credit at the Dauphin Deposit Bank and Trust Company in Harrisburg (N.T. 21, 28).

The facilities to be employed by Applicant are located at 3705 Hartsdale Drive, Lower Allen Township, Cumberland County (Ex. A-1, N.T. 17), at which point office facilities are available together with mechanics and a shop through an arrangement with Brady Contracting Company with whom Mr. Long has a handshake agreement but no written lease (N.T. 17).

Mr. Long testified that he had used Lancaster Limousine Service in the past and found their cars did not have telephones in them. On one occasion he had mechanical difficulty with one of their limousines and received a type of equipment which he felt was inappropriate (N.T. 12). He also contended that Lancaster Limousine drivers had some difficulty finding their way around the city and the suburbs of Harrisburg (N.T. 12).

Applicant will employ a Mr. Larry Perva, who has driven for West Shore Taxi Company and Yellow Cab. Mr. Perva will become a Vice President of the corporation in charge of operations and probably also operate equipment (N.T. 25, 26). Mr. Long believes Mr. Perva has a lot of experience in operating equipment and understands the local market and the need for

transportation service. Mr. Long opined that he himself has adequate business experience to insure that the enterprise will be run on a sound business basis using as an example the fact that they have not entered into contracts until authority is granted and that he is one of three managing partners of Rhoads & Sinon (N.T. 29).

Shirley A. Ryland, is employed by Osterlund, Incorporated, 711 Gibson Boulevard, Harrisburg, Pennsylvania. Osterlund manufactures and/or assembles trucks under the trade name "Giant" formerly known as "Diamond-Reo" (N.T. 38). It has 60 dealers in the United States. She admitted her firm does not avail itself of limo services now, but nonetheless feels it would be a useful service for its customers and dealer coming to its plant on business. Since the majority fly into either Capital City Airport or Harrisburg International, Applicant's proposed service could take them to and from Osterlund's facilities. When asked to estimate the frequency of the Company's use of the proposed limo service, she replied, ". . . maybe twice a month. . . it could be more frequently" (N.T. 34). In the past the dealers and/or customers have either been picked up by someone from Osterlund's office or they would take a cab.

Miss Ryland indicated that sometimes Osterlund pays for the cab and sometimes the customer pays, but she had no idea what a limousine service would cost and had been promised no specific

fare. She has never called to see whether there was an airport transfer service available, nor did she ever call to see whether a luxury limousine service was available (N.T. 36).

Miss Ryland knew her company was represented by Mr. Long's law firm (N.T. 41).

David E. Stauffer, is General Manager of Sheraton Harrisburg East. He gave the following explanation of his firm's contemplated use of the proposed service:

Limousine service would be available for people staying at the Sheraton to visit businesses that they might be in the area to make calls on. Also, it might be used to go to tourist attractions in the area. It might be used by the Sheraton to bring potential customers in to show them the tourist attractions or various attractions in the area that they might utilize.

* * *

It would be primarily travel agents or tour operators that might be interested in bringing groups of people into the area.

(N.T. 46, 47).

For business guests, the Sheraton would arrange for service and would allow the hotel guests to apply the charge to their bill and Sheraton would then pay for the service, which would originate at the Sheraton. The Sheraton has utilized limousine service to New York in the past (N.T. 49), but feels that Pennsylvania service has not been made known to them (N.T. 50).

When asked if the Sheraton had ever utilized the services of Protestants, he stated, "The Sheraton is a pickup point for Lancaster Limousine Service for service to La Guardia Airport. The airport limousine service frequently brings people from the airport to the hotel" (N.T. 50).

On cross-examination Mr. Stauffer admitted that during his 5 1/2-year tenure at Harrisburg Sheraton East, the hotel did not arrange for any summer visitations for travel agents or tour operators so far as transportation was concerned by any mode of transportation whatever. During that same 5 1/2-year period, he had no knowledge of how many times, if any, Sheraton Harrisburg East called for a limousine for a guest; for a trip from the hotel to a business; but he has not personally arranged any such (N.T. 52); nor has he, in the 5 1/2 years, arranged for transportation from Sheraton East to tourist attractions (N.T. 52, 53), but the front desk may have called cabs.

With respect to the use of Lancaster Limousine to New York as mentioned on his direct examination, the witness had no complaints about the service and appeared unaware that Lancaster Limo could provide a luxury limousine service from Sheraton Harrisburg East to anywhere in Pennsylvania and return because he had not been advised to that effect (N.T. 53).

Though he felt there might be times when the hotel would pay for limousine service, he could not estimate how many

times it might occur in the future. He also was unaware of any calls at the instance of Sheraton Harrisburg East for a guest for limousine service to any point in Pennsylvania (N.T. 55).

Mr. Stauffer said he knew that the Sheraton East was represented by Mr .Long's law firm.

Lawrence W. Bitner, is Senior Vice-President of Fred S. James and Company, Inc., Camp Hill, Pennsylvania. His use of Applicant's proposed service contemplated the following:

We would perceive using it for transportation of clients arriving from out of town from the airport to their hotel, to our office in the evenings, transportation of our senior executives from our other offices in New York, Chicago, Boston, coming into the airport and I think more importantly for transportation to Philadelphia and the airport for our own people to overcome the problems of parking at the airport in Harrisburg and leaving one's car there.

(N.T. 60).

Mr. Bitner also testified individually as to the use of limousine service (N.T. 61). Although he has been driving himself, it is inconvenient, especially in going to downtown Philadelphia (N.T. 62). He would prefer to utilize a luxury limousine for this purpose. It would be a benefit and a help to witness to have the use of a cellular telephone during his trips since he utilizes phones in his own cars (Id.). Mr. Bitner admitted he has not attempted to find limousine service in the recent past. He estimates he, personally, would utilize the proposed service six times a year and the Fred S. James Company

in the Camp Hill office from 30-40 times a year (N.T. 63). He indicated he has not utilized the services of any Protestant (N.T. 64). Mr. Bitner testified the reason Fred S. James Company has not focused on the use of the limousine service before was that one was never brought to them before (N.T. 69).

R. Harry Bittle, is an Attorney and CEO of a newly-formed business entity, namely, The Pennsylvania Environmental Remedial Contracting Service, Inc., with office and warehouse space in the Borough of Lemoyne and Camp Hill, Cumberland County, Pennsylvania. For the previous four years he served as Deputy Secretary, Pennsylvania Department of Environmental Resources.

Most of the corporation's services at the present time are being performed for political subdivisions. They include such activities as clean-up work with regard to petroleum product storage tanks, radon remediation, and asbestos abatement, removal and encapsulation (N.T. 76).

Mr. Bittle described the nature of his firm's usage of the proposed service as follows:

. . . We have clients from areas such as Chicago, South Carolina, dealings with people in the industry along with us that we have worked with, who would not necessarily be clients, from Indiana, from Chicago, who we fly to see and who fly to see us.

Our most recent utilization of the service would be for those people as opposed to for myself in flying, but on occasion, the use would arise

for myself, also, mainly from the two most local airports, Harrisburg International Airport and Capital City Airport. On occasion, it would be Lancaster Airport, Allentown Airport and sometimes Philadelphia Airport.

* * *

The individual normally would be staying at some hotel in the area. We go from the airport to there. We go from the airport to dinner, which would most likely, depending on where a job site would be, a restaurant would most likely be in the Harrisburg area initially.

From there, it would on occasion be to the job sites the next day or sometimes the same day, depending on the distance involved. Very seldom would these people be traveling to see me by their own vehicle, by car.

(N.T. 79, 80).

On past occasions Mr. Bittle has used his own car and cabs and thinks the availability of a limousine would make it easier to conduct business, particularly if it was equipped with a phone (N.T. 80). He has not used limousines since entering into his new business in May 1987 and he hasn't utilized the service of Protestants because he wasn't aware of their existence (N.T. 81). Past use to the airports mentioned have been by his own car (N.T. 82, 83).

Since he became interested in limousine service, he did look in the yellow pages and found some services listed, including an ad for Admiral Executive Limousine Service, this Applicant, but he did not call the phone number listed nor did he call Lancaster Limousine which he says he didn't see (N.T. 85).

However, when shown page 386 of the current Harrisburg phone directory, he acknowledged that Lancaster Limousine Service was listed and had an 800 number (N.T. 85, 86). With respect to Admiral Executive Limousine Service, a phone number was listed as well as an address and the witness stated that the ad would give the impression that they already had service available (Ex. P-1). Despite having looked at this phone directory, he has not used any service since May. If Lancaster Limousine can accommodate him in luxury limousines equipped with phones, he would have no objection to using its service (N.T. 87, 88)

Joseph G. Catalano, is part owner of Catalano's Incorporated, a restaurant situated in Wormleysburg, Cumberland County, Pennsylvania. Mr. Catalano has never contacted a limousine service personally, but his business has used limousines to Atlantic City (N.T. 93). The restaurant would use the proposed service if a client at the restaurant had too much to drink and if it were close enough, a limousine would be used. On past similar circumstances, the witness has driven these clients in his own car (N.T. 93). Limousine service has been used in the past to York several times per year and prospective use might be as much as 12 times a year (N.T. 94). The trips to York were via Villa Limousine Service (N.T. 95). Mr. Catalano was aware of the existence of Lancaster Limousine, but assumed they were based in Lancaster. He has not called them though he

knew they had luxury limousines (N.T. 95, 96). His company owns an old stretch Cadillac limousine which it has used in the past (N.T. 96).

Any luxury limousine which was a stretch unit and had a telephone would meet his needs (N.T. 96). Mr. Catalano stated he would recommend Applicant's service to his customers because it is based in Harrisburg (N.T. 101).

James Karagiannis, is owner of The Sierra Madre Saloon Restaurant in Camp Hill, Pennsylvania. His limo experience has mainly been related to his utilization of a limousine to take his son to Duquesne University in Pittsburgh, to sports events in Philadelphia and on one occasion for prom night for his son (N.T. 113). The anticipated usage of the proposed service is once a month and the trips would originate in Cumberland County (N.T. 113). Mr. Karagiannis was unaware of the service of Comfort Cab, d/b/a, White Rose Limousine or Lancaster Limousine Service (N.T. 115). He has used Villa Limousine Service 8-10 times (N.T. 117). Recently he has received no direct answer when calling Villa Limousine Service. An answering service indicated someone would call back (N.T. 120).

Mr. Karagiannis is particularly interested in a limo service that can provide him with service on short notice, namely, two or three hours, which he contends cannot be done by Villa Limo (N.T. 114).

Ronald Stough, is Vice-President of Lancaster Limousine Service, Ltd., with offices in Mount Joy, Pennsylvania. He identified Protestant's Exhibit P-2, his firm's limousine authority at A-99235, F.5, which reads in pertinent part as follows:

To transport, as a common carrier, in limousine service, persons and their baggage, between points in the counties of Cumberland, Dauphin, Lancaster, Lebanon and York, and from points in said county to points in Pennsylvania, and vice versa;

Thus, aforesaid authority embraces all of the authority sought by this Applicant (N.T. 133).

At the Mount Joy office, Lancaster Limousine has its reservation and bookkeeping sections, and a garage operated by a full-time mechanic from which it does its own inspections. The terminal also includes WATS lines, telephones, a part-time mechanic, a full-time car washer, four part-time car washers, a full-time bookkeeper and an assistant, an office manager, two assistants, three reservation clerks, 15 full-time drivers and 20 part-time drivers (N.T. 133, 134). The terminal also has fuel facilities. He also described the Company's insurance and safety programs with respect to available operating equipment. Exhibit P-3 reveals 10 limousines, all equipped with VCR's, stereos, beverage bar, front and rear control heat and air conditioning and five units are also equipped with privacy shields. Two of these units are 52" stretches, which are a 1988 Lincoln and a

1987 Cadillac. The balance are standard limousines. The 52" stretch was depicted on the second page of Exhibit P-3, and is a white Lincoln. The third page of this Exhibit depicts the Cadillac stretch which is the car that was sent to Mr. Long who referred to it as a funeral car (N.T. 136). The fourth page of Exhibit P-3 reflects the interior of the Cadillac stretch and the final Exhibit is a standard 40" stretch limousine which was the 1984, six-door stretch (N.T. 137). In discussing Mr. Long's contention that the '87 Cadillac was a funeral car, Mr. Stough indicated in his opinion it was not. Lancaster Limousine also provides airport transfer service, which is usually a van-type service used to and from airports, whereas limousine service is a luxury-type service where advance reservations are the norm (N.T. 138). Further, airport transfer service is available on an individual ticket basis and the unit would be shared by other passengers, normally up to 11 people. Moreover, this service is designed to meet each flight at the airport (N.T. 138).

Mr. Stough explained Mr. Long's references to alleged prior inadequate service he received from Protestant with respect to a breakdown of a limo in his driveway and the inability of Protestant's drivers to find their way around the Harrisburg area (N.T. 142, 143). Lancaster extensively advertises its services in the T.V., radio and print media as well as at various trade shows (Ex. P-5, P-6, P-7, P-8; N.T. 145-149). In addition to

advertising its services as noted above Protestant also makes charitable donations and community service contributions in the area of its operations (N.T. 151).

Lancaster Limousine Service has provided limousine service in Dauphin County during 1987. Exhibit P-11 lists those trips, namely, 35 trips producing revenues of \$6,594.38. It has similarly provided service as to Cumberland County (N.T. 153) where its 1987 grand total of revenues was \$25,975.36 and which represented 168 separate trips (Ex. P-12). As to York County, service has also been provided in that county representing revenues of \$17,218.13 from a total of 125 separate trips (Ex. P-13).

During 1985 the company operated at a loss of approximately \$85,000 and a profit in 1986 of approximately \$7,500. While the 1987 figures are not completed, it is anticipated that there will be a small profit (N.T. 154). Mr. Stough notes that this Protestant is in a position to handle service for any of the witnesses who appeared from any of the origins mentioned to any destination (N.T. 155). With respect to Witness Karangianis, Mr. Stough claims his request for service within a period of one to three hours is unrealistic because the experience in the limousine business is that people generally know their plans well in advance, however, he notes this service

has been provided for emergency corporate travel executives (N.T. 155, 156).

Mr. Stough admitted on cross-examination that cellular phone service is provided at an extra cost and the customer may use the phone subject to those costs, but there is no charge if they do not use the phones (N.T. 159).

Tammie Kelly, is Manager of Comfort Cab, Inc., d/b/a White Rose Limousine ("White Rose"), with offices in Mount Wolfe, York County, Pennsylvania.

By Commission Order entered April 28, 1986 at Docket No.A-106126, F.2, White Rose was authorized:

To transport as a common carrier, persons, in limousine service, between points in the County of York, and from points in said County, to points in Pennsylvania, and return (Ex. P-14).

Its facilities at Mount Wolfe consist of a large garage containing an office and room to house six or seven limousines (N.T. 170). There is also limousine washing facilities at this location and telephone communications for persons who want to make reservations (N.T. 170, 171). The equipment is maintained at Beasely Ford in York (N.T. 171).

White Rose has three stretch Lincoln luxury limousines--one 1984, one 1985, and one 1986 (N.T. 171). The 1984 has a seating capacity of six plus the driver and the 1985 has a capacity of seven passengers plus the driver as apparently does the 1986 limousine from looking at the picture of that vehicle

(N.T. 171, 172, Ex. P-15). Exhibits P-15 and P-16 show and describe the 1986 and 1985 limousines respectively (N.T. 172, 173). These exhibits demonstrate that the vehicles have a telephone, color television, VCR, stereo and beverage bar. The 1984 limousine has the same accessories except for the phone (N.T. 173).

The Company has six drivers and three office employees (N.T. 171, 187, 190). While none of the drivers are full time, three have no employment but for White Rose including Ms. Kelley herself (N.T. 188). Exhibit P-18 lists the directors and officers of the Company.

White Rose has a safety program and carries insurance in the minimum amount required by the P.U.C. (N.T. 174).

White Rose has a solicitation program including advertising in the yellow pages of the York and nearby communities phone book (Ex. P-17; N.T. 174, 175), advertising over the radio and in newspapers in York County, and personal solicitation including having representatives at shows and displays in York County (N.T. 175, 176). White Rose tailors its service to meet the needs of its customers (N.T. 176).

None of the witnesses or their companies have called on White Rose for service (N.T. 176). With regard to the only origin point testified about in York County, the Capital City Airport in Fairview Township, White Rose is ready, willing and

able to provide service from that airport to the witnesses or their companies (N.T. 176, 177). Over the last year, White Rose has had only three requests for service from that airport to another point in Pennsylvania and White Rose supplied the service requested (N.T. 177).

From February 1987 through January 1988, White Rose conducted 371 trips from points in York County to other points in Pennsylvania and these trips originated all over the county (N.T. 177, 183). The revenue derived from these trips was \$45,000 (N.T. 177).

White Rose received its certificate from this Commission in July, 1986 (N.T. 177). It operated at a loss in 1986 and during its first year of operation, 1987, it had a loss of \$26,000 (N.T. 177, 178). Ms. Kelley testified that the 371 trips originating in York County and going to points in Pennsylvania are very important to White Rose (N.T. 178). She asserts that since White Rose is a new service and if business is diverted from it, this will not only result in taking a car off the road, but also White Rose will not be able to give the public the quality or quantity of efficient service White Rose currently provides (N.T. 178).

Findings of Fact

1. Applicant, Admiral Executive Limousine Service Company, is a Pennsylvania corporation with its registered office at 410 North Third Street, Harrisburg, Pennsylvania (App. Ex. 1). Said corporation was formed on February 4, 1987 (N.T. 23).

2. By this application Applicant seeks to begin to transport, as a common carrier, by motor vehicle, persons, in limousine service between points in the counties of Dauphin, Cumberland and York, and from points in said counties, to points in Pennsylvania and return (App. Ex. 1).

3. At this time Applicant holds no authority from this Commission (App. Ex. 1). Mr. Long intends to hire Mr. Larry Perva, a former operator for the West Shore Taxi Company and Yellow Cab, who will become Vice-President for operations. Mr. Perva will also operate Applicant's limousines (N. T. 25, 26). Mr. Perva did not testify at the instant proceeding and is currently employed as a dockworker for an over-the-road carrier. Mr. Long has chosen not to acquire equipment and incur related costs until such time as operating authority from this Commission is granted. However, negotiations with regard to the leasing of vehicles, insurance, etc. have been undertaken (N.T. 27).

4. At this time Applicant owns no limousines with which to conduct his proposed operations (Id.).

Joy, Pennsylvania, all equipped with VCR's stereos, beverage bar, front and rear control heat and air conditioning (Ex. P-3).

10. Lancaster Limousine also provides airport transfer service, which is usually a van-type service used to and from airports, whereas limousine service is a luxury-type service where advance reservations are the norm (N.T. 138). Further, airport transfer service is available on an individual ticket basis and the unit would be shared by other passengers, normally up to 11 people. Moreover, this service is designed to meet each flight at the airport (N.T. 138).

11. Lancaster Limousine extensively advertises its services via radio, TV, newsprint, Yellow Pages, and media as well as at various trade shows in the area.

12. This application is also being protested by Comfort Cab, Inc., d/b/a White Rose Limousine, Mount Wolf, York County, Pennsylvania which holds authority at docket No. A-00106126, F.2 authorizing it to transport, as a common carrier, persons, in limousine service between points in the County of York, and from points in said county, to points in Pennsylvania, and return (Ex. P-14).

13. White Rose received its certificate from this Commission in July, 1986 (N.T. 177).

14. White Rose's facilities at Mount Wolf consist of a large garage containing an office and room to house six or seven

limousines (N.T. 170). It employs six part-time drivers and three office employees (N.T. 171, 187, 190).

15. White Rose advertises its limousine service in the Yellow Pages of nearby communities, newspapers and by personal solicitation (N.T. 175, 176).

16. With regard to the Capital City Airport in Fairview Township, York County, White Rose is ready, willing, and able to provide service from that airport to the witnesses or their companies (N.T. 176, 177). Over the last year, White Rose has had only three requests for service from that airport to another point in Pennsylvania and White Rose supplied the service requested (N.T. 177).

17. Applicant's public witnesses advanced the following reasons for supporting the instant application:

- (a) A desire to utilize a limousine equipped with a telephone;
- (b) The "ready" availability of the proposed service (i.e., same day or within two to three hours);
- (c) Their personal relationship with Applicant's CEO, Mr. Long.
- (d) The availability of a "local" limousine service.

(e) To provide limousine transportation from various airports to the witnesses' offices and vice versa.

18. Lancaster Limousine has 10 limousines equipped with cellular telephones (Ex. P-3). It also serves business persons (Exs. P-11-13).

19. During 1987, Lancaster Limousine has handled 35 trips producing revenues of \$6,594.38 from Dauphin County (Ex. P-11); 168 trips deriving revenues of \$25,975.36 from Cumberland County; and an additional 125 trips from York County which produced revenues of \$17,218.13 (Ex. P-13).

20. Between February, 1987 and January, 1988, White Rose Limousine handled 371 limousine trips from York County to points in Pennsylvania, which produced approximately \$45,000 in revenues (N.T. 177).

21. Applicant, holding no authority from this Commission, currently advertises in the Harrisburg Yellow Pages Directory (page 390) wherein it states, inter alia, that it offers "24-hour service" and is "specializing in corporate and executive transportation".

22. None of Applicant's public witnesses attempted to avail themselves of the Yellow Pages to ascertain what limousine services are available in the area.

23. Many of the public witnesses desire limousine service to or from the Harrisburg International Airport.

24. Several of the public witnesses saw Applicant's Yellow Pages advertisement, but made no attempt to contact it.

25. None of the public witnesses have been advised by Applicant what its tariff would be, if the application is approved.

26. Applicant produced no testimony indicating it would be ready, willing and able to provide limousine service on 2 to 3 hours notice.

27. Applicant has not met its burden of proof respecting the fitness and/or need standards set forth at 52 Pa. Code §41.14.

Discussion

By this application Admiral Executive Limousine Service Company ("Admiral") seeks the grant of a certificate of authority permitting it:

to begin to transport, as a common carrier, by motor vehicle, persons in limousine service, between points in the counties of Dauphin, Cumberland and York, and from points in said counties, to points in Pennsylvania, and return.

Protests to the instant application have been filed and are being actively pursued by Lancaster Limousine Service, Inc.

("Lancaster Limousine") and Comfort Cab, Inc., t/d/b/a White Rose Limousine ("White Rose").

Protestant Lancaster Limousine Service, Inc. has operating authority, in limousine service for persons and baggage from Cumberland, Dauphin, Lancaster, Lebanon and York Counties to Pennsylvania points, and vice versa. The other Protestant, White Rose, has authority:

to transport as a common carrier, persons in limousine service, between points in the County of York, and from points in said County to points in Pennsylvania, and return.

On November 19, 1982, this Commission adopted the policy statement at 52 Pa. Code §41.14, effective for all applications filed after January 1, 1983, eliminating an applicant's previous burden of showing the inadequacy of existing service and placing the burden on protestants of establishing that the entry of a new carrier would impair the operations of existing common carriers, contrary to the public interest.

Under the Commission's new policy statement, as further interpreted in Application of Richard L. Kinard, Inc., Docket No. A-00095829, F.1, Am-D, Order entered October 22, 1984, a successful applicant must now show (1) that there is a need or demand for the proposed service, (2) that approval of the application will service a useful public purpose, and (3) that applicant has the financial resources and technical expertise to conduct the proposed operation. Past unsafe or illegal

operations will have a bearing on the question of the applicant's fitness.

Under Section 41.14(a), an applicant can show that the proposed operation would serve a useful public purpose by establishing that certain factors exist. These factors are alternatives to proving inadequacy of existing service in the application territory and include the following: (1) different service; (2) efficiency; (3) lower rates; (4) future need; (5) backup service; (6) shipper competition; (7) ICC authority; (8) rectification of authority; and (9) benefit to applicant.

Lastly, this Commission stated that the policy statement emphasized the advantage of healthy competition. Once an applicant has proved that the service would provide a useful public purpose, responsive to a public need or demand under Section 41.14(a), and that it is financially and operationally fit under Section 41.14(b), the protestant has the burden under section 41.14(c) of proving that the service would substantially harm the operations of existing carriers and that, on balance, the disadvantages would exceed the advantages so as to be contrary to the public interest.

Fitness

As previously noted, supra, a successful Applicant must show that it has the financial resources and technical expertise to conduct the proposed operation.

What then, does this record disclose regarding the corporate Applicant's financial situation? Applicant's verified statement, (Applicant's Exhibit #1) states in pertinent part:

13. Financial Data

At this point in time, our balance sheet and income statement would be only a proforma statement. Our financial status is backed by our principal owner through his existing lines of credit with local banks.

On cross-examination, Mr. Robert H. Long, Jr. gave the following responses to questions concerning Applicant's financial situation:-

Q. Have you brought with you any letters of credit, which you mention in your statement?

A. No.

MR. WALTER: Your Honor, I don't think the statement refers to letters of credit. I think it refers to the availability of lines of credit, which is a different thing.

BY MR. GRAF:

Q. Do you have anything in writing with you today on any lines of credit?

A. No.

Q. I think you did say in your statement that you have no balance sheet available today, even a pro forma; is that correct?

A. That is correct.

(N.T. 21).

The only other "financial" information concerning Applicant is the following re-direct and re-cross testimony of Mr. Long:

Q. As another follow-up question, there was some discussion by Mr. Graf and questions by Mr. Graf with regard to the lines of credit.

Would you identify the bank or banks involved?

A. I have a line of credit at the Dauphin Deposit Bank and Trust Company in Harrisburg.

Q. Have you had an occasion to use or confirm the availability of that line of credit?

A. I use it and have reaffirmed it recently. I have used it for my own personal use in other matters. I use it on a regular basis and retire it.

* * *

We have the resources to begin and run a sound business if we are granted these rights.

(N.T. 28, 29).

Financial fitness is an essential ingredient in the determination of overall fitness to operate the proposed service. Armour Transportation v. Pa. P.U.C., 154 Pa. Sup. Ct. 21, 23; 34 A.2d 821, emphasizes this point. (See also Application of J. Paul McCracken and Joseph R. Golden, t/d/b/a Villa Transportation, A. 00105984 (1986)). Thus, in Application of International Travel, Inc. at Docket No. A-00105856, Folder 2, the late Administrative Law Judge Joseph J. Klovekorn, in his Initial Decision of March 3, 1987, made final by Commission Order

entered April 21, 1987 concluded with respect to Applicant, who was then operating a travel business and wanted to expand into the limousine business:

Under Section 41.14(b), the applicant must show that he is financially able to provide the proposed service. Here a vehicle list was produced, however, no financial statement was introduced. Financial fitness has not been shown (Initial decision, p. 7).

While we do not dispute nor otherwise doubt Mr. Long's testimony concerning his line of credit with Dauphin Deposit, this assertion, standing alone, falls far short of meeting the standards set by this Commission at 52 Pa. Code §41.14(b). For instance, the standards require the Applicant, in this case the corporation, not Mr. Long, to meet the burden of proof respecting financial fitness. From the instant record, we do not know the amount of Mr. Long's personal line of credit and whether he can utilize the funds for the benefit of a separate legal entity, namely Admiral Executive Limousine Service Company. The foregoing shortcoming could easily have been remedied by at least producing a "letter of intent" or similar document from the bank substantiating the amounts of funds which would be made available to the corporate Applicant. The Commission has set standards and the Applicant has failed to meet them. It is not our function to assist Applicant in meeting its burden of proof, by making certain factual assumptions not appearing in the record itself.

Another "fitness" aspect that troubles us is the appearance of Applicant's advertisement in the Yellow Pages section of the current Harrisburg Bell Telephone Directory. Again, Applicant placed nothing in the record to explain the presence of the instant advertisement in the Yellow Pages when in fact, it has no operating authority from this or any other Commission. However, in its Reply Brief, Applicant offers the following arguments:

The Commission may take administrative notice of the fact that Yellow Pages are printed once a year and in order to be included, one must meet the Yellow Pages time table. There can be no realistic question that the Applicant is actually holding itself out to provide illegal service. The Applicant has directly stated that it will not acquire equipment nor fully staff its offices until such time as the authority is granted. Applicant has stated it is neither good business judgement nor economical to acquire such obligations prior to the granting of the authority sought.

It is clear the word "offer" within the meaning of 66 Pa. C.S.A. §1101, is a contractual offer which, by definition, is a proposal to make a contract or to actually provide the illegal service. An offer cannot be made by one who not only has no intention of performing but, until the grant of a certificate, does not have the capability of performing.

(Applicant's Reply Brief, pp. 2, 3).

Section 1101 of the Public Utility Code states in pertinent part:

Upon the application of any proposed public utility and the approval of such application by the Commission evidenced by its certificate of

public convenience first had and obtained, it shall be lawful for any such proposed public utility to begin to offer, render, furnish, or supply service within this Commonwealth. (Emphasis supplied).

Under Applicant's interpretation, the above language should be construed to read "offer" and "render" service. We are especially concerned with the appearance of this advertisement for the following reason, namely, Mr. Long, is associated with a law firm that represents many motor carrier clients before this Commission, and therefore should be familiar with Commission rules and regulations. Accordingly, greater care should have been exercised in placing the advertisement. If Mr. Long felt he was acting in a prudent fashion in not purchasing limousines before the grant of authority, likewise, it was also prudent not to place the instant advertisement before a grant of authority. If in fact, Mr. Perva, the putative Operations Manager placed the ad, then Mr. Long was negligent in instructing him not to do so. We recognize, that this transgression, by itself does not act as a bar to the grant of authority.

However, when coupled with the failure to present concrete evidence of its financial ability, it is a further indication of Applicant's failure to meet Commission-mandated standards.

amply demonstrates that Applicant has not met its additional burden of proof respecting the need for the proposed service:

The witness for Osterlund, Inc. has not used limousine service in the past; has never called to see whether it was available (N.T. 36, 37) and had no idea what a limousine service would cost (N.T. 36).

The witness for Sheraton Harrisburg East supported the application for its business guests to visit businesses and tourist attractions in the area and for itself to bring in travel agents or tour operators (N.T. 46, 47). However, in the 5 1/2 years that this witness has been with Sheraton Harrisburg East, it did not arrange for any summer visitations by travel agents or tour operators so far as transportation was concerned by any mode whatever; nor did he have any knowledge of how many times, if any, the hotel had called for a guest for a trip to a business or tourist attraction in the area; nor did he arrange for any such travel (N.T. 52, 53). Though he felt the hotel would pay for service on some occasions, he was unable to estimate how many times it might occur; though he stated the hotel would permit a guest to charge limousine service on the hotel bill, he was unaware of any time when this was actually done (N.T. 54); and he was unaware of any calls made by his Inn for a guest for limousine service to any point in Pennsylvania (N.T. 55). The witness for Fred S. James Company formerly used a limousine service to Philadelphia and Baltimore, which has been out of business for over 3 years, but in that 3-year period has not sought the availability of luxury limousine service individually or for his firm and was unaware of the services available to Philadelphia (N.T. 64, 65). He was similarly unaware that there is such a service from Camp Hill to anywhere in Pennsylvania and return (N.T. 66), but hadn't really focused on the use of limousine service (N.T. 69).

Witness Bittle felt there was a need for limousine service sometime between 16 years ago and 4 years ago, but since opening his own

business in May of 1987 he has not utilized any such service to or from the airports he mentioned which included Harrisburg (beyond the scope of the application), Capital City, Lancaster, Allentown and Philadelphia, but instead used his own car (N.T. 81, 82, 83). This witness, when shown the Yellow Pages, admitted that there were limousine services available but he didn't call them, but did state that the ad of the Applicant would give the impression that they already had the service available (N.T. 85, 86, 87). If he can be accommodated in luxury limousines equipped with cellular phones, he would have no objection to using the service which would then fill his need (N.T. 87, 88). The witness for Catalano's, Inc. has used limousine service to Atlantic City (N.T. 93) and to York (N.T. 95) via Villa Limousine Service. While he proposed a use for clients who may have had too much to drink, in the past these clients were driven home in his own car (N.T. 93). Any luxury limousine which was a stretch unit and had a telephone would meet his needs (N.T. 96). Witness Karagiannis testified that he has used limousines to take his son to Pittsburgh to school; for trips with friends to Philadelphia; and for prom night for his son (N.T. 113), but admitted that his son has not been taken to a prom for over 2 years (N.T. 118). He also admitted that he had used Clarke Aviation to Philadelphia as well as Villa Limo (N.T. 114). What he wants is a limousine on short notice of two to three hours (N.T. 114). It is significant here that the Applicant, through Exhibit 1, proposes an advance reservation service. Though he complained about not being able to get a limousine from Villa Limo to take his son to Pittsburgh as Greyhound was overbooked, he didn't call any other limousine service after his 15 to 20-minute wait (N.T. 120, 122).

(Lancaster Limousine, M. B., pp. 27, 28, 29).

In paragraph 16 of our Findings of Fact, supra, we noted many of the reasons why the public witnesses support this

application. Following, is our perception how these needs are being met by protestants:

- (a) A desire to utilize limousines equipped with a telephone.

Lancaster Limousine has ten (10) limousines which are and/or can be equipped with cellular phones, if requested (Ex. P-3).

- (b) The "ready" availability of the proposed service (i.e., same day or within 2 to 3 hours). The record is devoid of any evidence indicating Applicant's ability or intention to provide this type service.

- (c) The availability of a "local" limousine service with drivers familiar with the area.

During 1987, Lancaster Limousine handled 35 trips producing revenues of \$6,594.38 from Dauphin County and 168 trips from Cumberland County producing revenues of \$25,975.36.

- (d) To provide limousine transportation from various airports to the witnesses' offices and vice versa.

The most frequently mentioned airport transfer point by the witness is the Harrisburg International Airport. Counsel for Lancaster Limousine represents that "reference to Harrisburg International Airport cannot be considered since it has been withdrawn from the scope of the application." (Lancaster Limousine M. B., p. 29).¹

Finally, as Protestant Lancaster Limousine hereafter demonstrates, Applicant has not met any of the alternative need

¹ Our search of the instant record indicates nothing appearing therein to substantiate this allegation, which in fact, may be correct. However, no Restrictive Amendment in this regard appears therein.

criteria under the rule of Kinard, (Docket No. A-00095829, F.1, Am-D, Order entered October 22, 1984).

1. Taking these Kinard points in order, we note that:

(a) As to different service, Applicant contends its service as proposed is different since it is aimed at business persons and the use of cellular telephones. Exhibit P-3 reveals that Lancaster Limousine has 10 limousines equipped with cellular telephones. It also serves business persons (See, for example, The Bon Ton (Exhibit P-13); Crown American, McCrory's; York Bank (Exhibit P-13); Dav-Elny of York; Sterling Drug Company; York Bank (Exhibit P-12); Capital Records and Villa Leo (Exhibit P-11). Nothing different here!.

2. Efficient service.

Since Applicant is not yet in business, its service cannot be classed at this stage as efficient, but based on the traffic handled by Lancaster Limousine as reflected in Exhibits P-11, 12 and 13, the scales tip in its favor on this point.

3. Future need and growth.

As we have pointed out earlier, future need does not, standing alone, provide a basis for approval (See on this point Highway Express Lines, Inc., supra).

4. ICC authority.

The extent of Admiral's ICC authority was not even introduced into the record so that we would know what it is, if it is.

5. Backup service.

Here Applicant contends current carriers are not meeting the service needs of the

witnesses. How could they? The witnesses have never used them or even attempted to.

6. Shipper competition is not applicable in passenger cases.
7. Lower rates will not issue since the rates have not been placed of record, at least as to what Applicant intends to charge if, indeed, it has made up its mind.
8. Certification of authority does not appear pertinent here since the Applicant has none.

(Lancaster Limousine Reply Brief, pp. 6-8).

We agree with protestants view that at best, the testimony of the public witnesses express a preference not based upon any past use or experience with service rendered by Applicant. The prospective use of Applicant's proposed service was speculative at best and as such, provided no basis for the approval of their application.

Having determined Applicant has not demonstrated either its financial fitness or a need for the proposed service, we need not consider the remaining issue in an application proceeding, namely, whether Applicant's proposed service will endanger or impair the operations of existing carriers in the application area to such an extent, that in balance, the granting of authority would be contrary to the public interest.

Conclusions of Law

1. The Commission has jurisdiction over the subject matter and the parties.

2. Applicant has not met the required burden of proof necessary to establish its financial fitness to provide the proposed service. (Chapman Johnson, Sr., t/a Johnson's Trucking Company, 50 Pa. PUC 696).

3. The burden of proof of necessity rests upon each applicant. (Carl R. Beiber, Inc. v. Pennsylvania Public Utility Commission, 3 Pa. Cmwlth, 236, 281 A.2d 351 (1971); Morgan Drive Away, Inc. v. Pa. P.U.C., et al, 328 A.2d 194; Zurcher v. Pennsylvania Public Utility Commission, 173 Pa. Superior Ct. 343).

4. Evidence of future need when unaccompanied by proof of present need does not provide a basis for approval of the proposed service. (See Highway Express Lines, Inc. v. Pennsylvania Public Utility Commission, 195 Pa. Superior Ct. 92, 169 A.2d 798, 803).

5. Applicant has failed to demonstrate by substantial, credible evidence that approval of the instant application will serve a useful public purpose, responsive to a public demand or need.

6. Applicant does not propose a service different in scope from that being offered by the instant protestants so as to bring this case within the rule of Gettysburg Tours, Inc. v. PA PUC, 42 Pa. Cmwlth Ct. 399; 400 A.2d 945 (1979).

Order

THEREFORE,

IT IS HEREBY ORDERED:

1. That the application of Admiral Executive Limousine Service Company at Docket No. A-00107523 for the right to begin to transport, by motor vehicle, persons, in limousine service, between points in the Counties of Dauphin, Cumberland and York, and from points in said counties, to points in Pennsylvania, and return, is hereby denied without prejudice.



HERBERT S. COHEN
Administrative Law Judge

Date:

August 18, 1988

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Application of Admiral Executive
Limousine Service Company.
Right to begin to transport, by
motor vehicle, persons, in
limousine service, between points
in the Counties of Dauphin,
Cumberland, and York, and from
points in said counties, to points
in Pennsylvania, and return.

A-00107523

O R D E R

In accordance with the provisions of Act 294 of 1978 (66 Pa. C.S. §332(h)), the decision of Administrative Law Judge Herbert S. Cohen dated August 18, 1988 has become final without further Commission action;
THEREFORE,

IT IS ORDERED:

1. That the application of Admiral Executive Limousine Service Company at Docket No. A-00107523 for the right to begin to transport, by motor vehicle, persons, in limousine service, between points in the Counties of Dauphin, Cumberland and York, and from points in said counties, to points in Pennsylvania, and return, and is hereby denied without prejudice.

BY THE COMMISSION,



Jerry Rich
Secretary

(SEAL)

ORDER ENTERED: September 22, 1988

ORIGINAL

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JAMES G. NEALON, III
KEVIN R. DERR
MATTHEW R. GOVER

July 31, 1989



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JUL 31 1989

SECRETARY'S OFFICE
Public Utility Commission

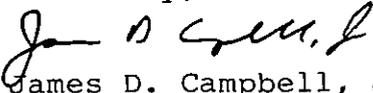
Jerry Rich, Secretary
Pennsylvania Public Utility Commission
Commonwealth of Pennsylvania
P.O. Box 3265
Harrisburg, Pa. 17120

Re: Application of J.E.T. Enterprises, Inc.,
t/d/b/a Londonderry Limousines, Ltd.
Docket No. A-00108299

Dear Secretary Rich:

I enclose herewith for filing with the Commission the original and nine copies of the Reply Brief on behalf of Applicant, J.E.T. Enterprises, Inc.

Copies have been provided to the presiding Administrative Law Judge and all parties of record as indicated below.

Sincerely,

James D. Campbell, Jr.
CALDWELL & KEARNS

JDC:slc
Encls.

cc: Honorable Louis G. Cocheres
David H. Radcliff, Esquire

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

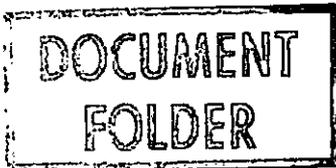
IN RE: APPLICATION OF J.E.T. ENTERPRISES, INC.
t/d/b/a LONDONDERRY LIMOUSINES, LTD.

DOCKET NO.: A-00108299

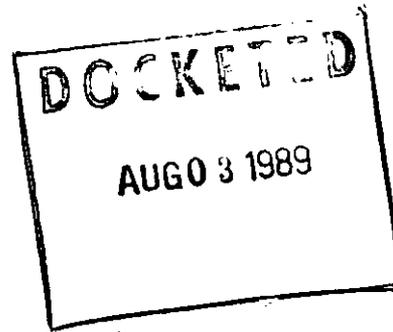
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SECRETARY'S OFFICE
Public Utility Commission



REPLY BRIEF ON BEHALF OF APPLICANT
J.E.T. ENTERPRISES, INC.



James D. Campbell, Jr., Esquire
Kevin R. Derr, Esquire
CALDWELL & KEARNS
3631 North Front Street
Harrisburg, PA 17110
(717) 232-7661

Several points raised in Protestant Aero Corporation's Main Brief require response:

I. THE FALSE ISSUE OF FITNESS.

Protestant laboriously assails Applicant's proposed plan of operation, seeking to cast doubt on its technical and financial fitness. Applicant is characterized as a "corporate shell", lacking in funds, knowledge and experience. This attack is not only unwarranted, but is also at variance with common logic and the evidence of record.

All corporations start out as "shells". No sensible person would place funds in a corporation which requires regulatory approval before it can commence operations; nor would any sensible bank lend it money. There is nothing bizarre, unusual, or unfit about securing necessary governmental approvals before commencing corporate activities. The Commission has many times approved applications in similar circumstances. Application of Redi-Van Tours, Inc., 63 Pa. P.U.C. 137 (1987); Application of Gold Cross Limousine of Pennsylvania, Inc., 65 Pa. P.U.C. 96 (1987); Application of D & F Trucking Corp., A-00107966, (Order entered December 1, 1988); Application of Commonwealth Limousine, Inc., A-00108467 (Order entered May 22, 1989). (Unreported cases attached as Exhibit A)

The evidence of record which really pertains to technical and financial fitness establishes that Applicant's President, Eric Shank, has a degree in Business Administration; has been employed as a business analyst and in retail management; has

studied the market area; has studied the cost of equipment and insurance, has retained an accountant; and has some new ideas for providing service which Protestant doesn't even offer. Further, the sworn testimony of record indicates that Eric and his mother (J.E.T.'s other shareholder) have family savings available to provide Applicant's necessary funding; that Applicant has made contacts with area banks in order to arrange any necessary financing; and that arrangements have been made to secure necessary maintenance service and drivers.

It is obvious that Applicant has met its burden of establishing fitness.

To adopt Aero's arguments on this issue would effectively prevent any newly formed corporation from obtaining operating authority from this Commission. Such a practice has not been followed in the past by the Commission, and seems fundamentally inconsistent with the Commission's desire to foster innovation and increased motor carrier competition, as evidenced by its Transportation Regulatory Policy, 52. Pa. Code §41.14.

II. THE FAILURE TO ADDRESS THE EVIDENTIARY CRITERIA USED TO DECIDE MOTOR COMMON CARRIER CASES UNDER 52 PA. CODE §41.14.

The Applicant's burden, in a case such as this, is to demonstrate "that approval of the application will serve a useful public purpose, responsive to a public demand or need." 52 Pa. Code §41.14(a). That burden is not severe, and has been applied in a manner favoring entry of new applicants into the

marketplace, particularly in cases involving discretionary, rather than necessary, transportation. Group and party bus travel has been analyzed in this context; as Administrative Law Judge Cocheres stated in Application of Trans-Bridge Lines, Inc.:

Before reviewing the record in light of the foregoing standards, one initial observation is required with respect to the concept of public demand or need. That concept is an imperative one in the context of common carriage of property. To illustrate, a manufacturer truly needs to receive raw materials and to ship finished products. Such an entity simply cannot exist without dependable transportation. However, a passenger wishing to utilize group and party bus service is most often dealing with discretionary spending - it is not an essential that he travel on a given carrier (or even any carrier) to a particular place on a set date. In such a context, the Commission equates wishes and preferences with the legal standard of demand or need. (Initial Decision, pp. 52-53) (Exhibit B)

Such a rationale is particularly appropriate in the case of limousine transportation, which is about as discretionary as transportation can get.

Applicant respectfully submits that it has met its burden; from the limited geographical territory here involved, eleven supporting witnesses were drawn, representing a cross-section of the area. Without repeating the review of testimony contained in Applicant's Main Brief, it should be noted that each of these witnesses testified that he or she wished that the application would be approved, that the proposed service was needed, and that it would be used. Many of the supporting witnesses were employed in the travel industry. Their particular knowledge, experience and expertise increases the weight which is attributable to their testimony.

III. MUCH ADO ABOUT BROKERS.

A year ago, when Aero obtained an 8 county expansion of its limited limousine authority, it presented the testimony of thirteen public witnesses, 8 of whom were characterized by Administrative Law Judge Cohen as,

travel agents and/or otherwise employed in the 'leisure travel' industry *****. All of the travel industry witnesses indicated that approval of the instant application would provide their clients with a greater choice of available limousine services and would be an additional useful tool which they could use and promote. The thirteen (13) public witnesses' transportation needs involved all subject counties set forth in the application and many additional points throughout the Commonwealth: All public witnesses said they would use the proposed service if the application is approved. (Initial Decision, pp .29-30) (Exhibit C)

Now, in its Main Brief, Aero argues to exclude the testimony of five of Applicant's witnesses because one is a broker, and four are not, but are travel agents - and, therefore, in the view of Aero, "unlicensed brokers."

Aero's analysis of the testimony of these witnesses is incorrect, and its reliance upon legal authorities is misplaced. The Cressona case, cited by Applicant, involved a property broker. The issues involved in the brokerage of property really bear little resemblance to the circumstances described by Applicant's witnesses, but in any event Cressona simply said that freight brokers are not shippers and the testimony of a freight broker "standing alone" is not evidence of actual need. (Order, p. 4) The Commission noted the difference between property and passenger cases and noted that broker testimony was a proper

ingredient, along with public witness testimony, in a group and party case. (Order, p. 5)

In the LizRick case cited by Protestant, the broker's testimony was similarly unaccompanied by any public witness testimony; and the broker was unable to provide even hearsay testimony which demonstrated a public need.

Kleins' Bus Service, the final case cited by Protestant, holds that authority will not be granted to provide tour service limited to transportation for a single broker. That certainly has nothing to do with the present application, which seeks the right to provide limousine service to the general public within the described territory.

The testimony which Aero so vigorously attacks is relevant, admissible, and clearly establishes need for the proposed service. Each of these five witnesses was presented as an expert in the travel industry, knowledgeable concerning existing services, as well as the needs of their customers.

Mr. Musheno testified that he receives inquiries from persons seeking limousine service from points in Lebanon County to points in Pennsylvania, and that it would be a benefit to him if he could refer them to the Applicant, or make arrangements for such service, as needed. Since he is already a licensed broker, he could provide this service to the public for compensation.

(R. 103-104)

Ms. Colton needs the availability of limousine service for her customers in Lancaster and Dauphin Counties, and has had

problems with Aero. (R. 35-36, 38) Ms. Ullom has a "great deal of requests" for limousine service, draws her customers from the greater Harrisburg area and environs, finds it "almost impossible" to locate a stretch limousine, and has had difficulties arranging service with Aero (which owns no stretch limousines) due to their curtailment in service. (R. 94-96, 100-101)

Ms. McRedmond draws her customers from all of the counties Applicant is seeking and has a personal need for limousine service in addition to the needs of her customers. Aero never made any effort to solicit her business - located right in the Harrisburg East Mall - until Aero was notified that she intended to be a witness in this case. (R. 118-120)

Ms. Donovan, also in Harrisburg, draws her customers from central Pennsylvania, and stated that "I feel the service [of Applicant] is needed in the area." (R. 125-126)

At the trial of this case, Aero objected to the testimony of the foregoing travel agents who were not licensed brokers, and gave as its reason that they were unlicensed brokers, incompetent to testify because they were presently acting unlawfully. There is authority for such a proposition, based upon the rule that evidence of illegal operation will not be admitted as evidence of need - if there is intentional unlawful defiance of the Commission's authority to regulate. See, for example, D.F. Bast, Inc. v. Pennsylvania Public Utility Commission, 397 Pa. 246, 154 A.2d 505 (1959).

In its Brief, Aero has apparently abandoned this contention, since the evidence of record in no way supports the existence of any unlawful conduct. The travel agents generally arranged limousine service as a courtesy to customers, or referred them directly to a limousine carrier, with uneven success. Several indicated they would be willing to enter into an agency agreement with Applicant in order to market J.E.T.'s services.¹

Instead of pursuing its illegality contention, Protestant puts the rabbit in the hat and argues: "If a licensed broker is not authorized to support an application, then obviously an unlicensed broker falls into the same category and the testimony of these five witnesses is not receivable on the question of necessity." (Aero Main Brief p. 24)

As our previous analysis demonstrates, this argument is specious, unsupported by the cases Aero cites, and fails altogether to deal with the fact that Applicant's witnesses are experts in the travel industry whose testimony is entitled to great weight, consistent with ALJ Cohen's Opinion in the last Aero case.

¹ The statutory definition of broker excludes bona fide agents of a common carrier. 66 Pa. Code §2501(b). The Judge and Commission can take notice that many sight-seeing tour operators use hotels and motels to market their tours; and scheduled route passenger carriers have used gas stations, hotels, and other agents to sell their tickets.

IV. THE ALLEGED SUFFICIENCY OF PROTESTANT'S SERVICE.

Aero makes the obligatory argument that it can fulfill all the needs of all the witnesses. Although perhaps the least important of its arguments, since the Commission will not foster the interest of one carrier as against the interest of the public, and since Aero did not even address its failure to present any evidence in support of its burden of proof under 52 Pa. Code §41.14(c), it is also Aero's most difficult argument under the facts of record. How Applicant's two or three vehicles could harm Aero's one-half million dollars in revenues seems hard to understand.

More importantly, however, witness after witness had either been unable to arrange service with Aero, couldn't find them in the phone book, couldn't get the equipment they wanted, or never heard of them until Aero came calling after receiving the list of witnesses provided under Section 333(c) of the Public Utility Code.

The record is replete with evidence of inadequacy of existing service, including Aero's, even though Applicant no longer has to carry that burden:

1. Witness Reihl couldn't book a limousine in the size and color desired. (R. 16-17)

2. Witness Colton needed service Aero couldn't provide. (R. 38)

3. Witness Colestock arranged a wedding and the limousine never arrived. (R. 58)

4. Witness Miller couldn't get a limousine in May even though she began calling last November. (R. 62)

5. Witness Poulton couldn't find a suitable limousine, never heard of Aero, and couldn't find them in the Lancaster phone book. (R. 67-68)

6. Witness Kristich couldn't get a stretch limousine for a wedding, although she called Aero. (R. 73, 75) Aero owns no stretch limousines. (R. 153)

7. Witness Steiger didn't know Aero existed until he was visited after being disclosed as a witness. (R. 85, 86) He was unsuccessful in trying to arrange limousine service in May of 1989, although he began calling in March. Aero was not listed in the Lancaster yellow pages. (R. 80-81, 86)

8. Witness Ullom has had trouble in arranging Aero's service since its curtailment of operations. Aero doesn't offer the stretch limousines she needs. (R. 100-101).

9. Witness Upadhyaya has had such problems trying to find "unavailable" limousine transportation from Harrisburg International Airport that he has quit trying. (R. 109, 112)

10. Witness McRedmond was unaware of Aero's service until she was called upon after being disclosed as a witness. (R. 120)

11. Aero doesn't even own any stretch limousine equipment, although many of the supporting witnesses desired that specific type of limousine. It has to try to rent such equipment from another certificated carrier. Obviously that carrier will

provide for the needs of its customers before making anything available to Aero. (R. 153,157-158)

V. CONCLUSION.

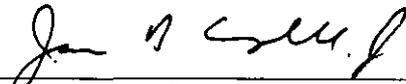
Protestant's desperate efforts to stifle potential competition from a small, new company should be rejected by the Judge and the Commission.

The evidence establishes that the application should be approved.

Respectfully submitted,

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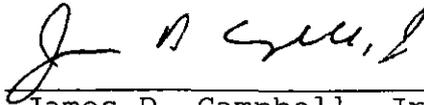
Dated: July 31, 1989

By: 
James D. Campbell, Jr., Esquire
Kevin R. Derr, Esquire
Counsel for Applicant

CERTIFICATE OF SERVICE

I hereby certify that I have this day served three true copies of the foregoing document upon the Protestant in this proceeding, as well as two copies upon the presiding officer, in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by participant).

Dated: July 31, 1989



James D. Campbell, Jr., Esquire
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J.E.T. Enterprises, Inc.
Londonderry Limousines, Ltd.

FILE

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