



**STATE OF ALABAMA**  
ALABAMA PUBLIC SERVICE COMMISSION  
P.O. BOX 304260  
MONTGOMERY, ALABAMA 36130-4260

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SECRETARY

SERVED: June 14, 2011

Walter L. Thomas, Jr.

Exceptions, if any, must be filed with the Secretary, Alabama Public Service Commission, P. O. Box 304260, Montgomery, Alabama 36130, and served on all other parties of interest within 20 days from the date of service shown above, or within such further period as may be authorized for the filing of Exceptions. Replies to Exceptions may be filed within 20 days from the date of service of the Exceptions. At the expiration of the period for filing of Exceptions, the within Report and Recommended Order will become the Report and Order of the Commission unless Exceptions are filed seasonably or the time for filing Exceptions is extended by the Commission, or the Commission, within such period stays or postpones the Order. An original and four copies of any Exceptions and Replies should be filed.

DONALD GOMIEN,  
d/b/a MODERN LIMOSINE,  
Applicant

DOCKET 31457

**REPORT AND RECOMMENDED ORDER**

**I. INTRODUCTION AND BACKGROUND**

By application filed with the Commission on or about May 8, 2010, Donald Gomien, an individual, d/b/a Modern Limousine ("Modern Limo"), 1110 Leroy Stevens Road, Mobile, Alabama 36695, seeks to extend an existing operation under Motor Carrier Certificate of Public Convenience and Necessity 3847 as a common carrier by motor vehicle in intrastate commerce over irregular routes in the transportation of:

Passengers and their baggage in luxury limousines with a seating capacity of 14 or less between all points within the state of Alabama.

Motor Carrier Certificate 3847 as currently held by the Applicant authorizes the transportation of passengers and their baggage in luxury limousines with a seating capacity of 14 or less (1) Between all points in Mobile County (2)(A) From #1 to all points in Alabama and (2)(B) From all points in Alabama to #1. Pursuant to Commission notice dated August 9, 2010, the application of Modern Limo was set for hearing and heard on

REPORT AND RECOMMENDED ORDER  
DOCKET 31457 - #2

September 2, 2010. The Commission received notices of protest to the Application of Modern Limo from Harold Linville, d/b/a Professional Limousine Service ("Professional Limo"); Terry D. Surovich, Sr., d/b/a Any Occasion Limousine Service ("Any Occasion"); Fresh Air Accessible of Alabama, LLC, d/b/a EMT of Alabama ("EMT of Alabama"); Luxury Limo, LLC ("Luxury Limo"); and Mobile Bay Transportation Company, Inc ("Mobile Bay"). With the exception of the Protestant Any Occasion, all of the aforementioned Protestants appeared at the September 2, 2010, hearing to further their protests. EMT of Alabama did, however, withdraw its protest at the outset of the hearing after reaching an agreement on a restrictive amendment with the Applicant which restricted the authority sought against the provision of non-emergency medical transportation services.

**II. SUMMARY OF THE RECORD**

The first witness to testify in the proceeding on behalf of the Applicant Modern Limo was the owner of Modern Limo, Mr. Donald Gomien. Mr. Gomien testified on direct that he currently operated four limousines which included a stretch H-2 Hummer, a Ford Excursion, a Lincoln Navigator and a stretch Lincoln Town car. Mr. Gomien represented that he had approximately nine drivers under contract. Mr. Gomien noted that his limousine service was operated out of his office at 1110 Leroy Stevens Road in Mobile.

On cross-examination by the attorney for the Protestants Professional Limousine, Luxury Limo and Mobile Bay (collectively the "Protestants"), Mr. Gomien conceded that he had not provided any financial information with his application. Mr. Gomien also indicated that he was not positive about the model years of the four limousines he operated. He nonetheless represented that to the best of his knowledge, his H-2 Hummer was a 2003 model; his Ford Excursion was a 2005 model; his Lincoln Navigator a 2001 model and his Lincoln Town car a 2000 model. Mr. Gomien represented that his Lincoln Town car had a capacity of 10 passengers, but effectively transported only 6-8 passengers from a comfort and safety stand point. He indicated that he normally recommended no more than 8 people for that vehicle as a result. Mr. Gomien represented that his Hummer, his Excursion and his Navigator were all 14 passenger vehicles even though they were advertised as 16 passenger vehicles in his telephone book advertisements. He indicated that he would only utilize those vehicles to transport more than 14 passengers within the city of Mobile. He represented that it would be rare that customers would want as many as 16 passengers transported in a single vehicle except on occasions such as Mardi Gras and proms.

REPORT AND RECOMMENDED ORDER  
DOCKET 31457 - #3

Mr. Gomien testified on further cross examination that he understood his existing APSC authority was limited to the transport of 14 passengers or less. He pointed out that he only transported more than 14 passengers on exempt movements within the city of Mobile. Mr. Gomien indicated that he actually used his vehicles to transport up to 16 passengers inside the city of Mobile during Mardi Gras. He did, however, indicate that he utilized his vehicles outside the city of Mobile as authorized under his authority and would use the same vehicles for the expanded operations for which he sought authority in the present application to the fullest extent allowed.

Mr. Gomien admitted on further cross examination, that he had received at least 2 citations from the APSC for violations of his existing operating authority. Mr. Gomien conceded that one of those citations was issued as a result of him picking up passengers within Baldwin County and taking them to Orange Beach. Similarly, Mr. Gomien testified that the other citation in question resulted from the pick up of passengers in Bay Minette for delivery to Orange Beach. Mr. Gomien represented that he had received no other citations from the Commission.

On further cross-examination, Mr. Gomien testified that his company held a license with the city of Mobile albeit under the name of Don Gomien, d/b/a Modern Tans and Limousines. Mr. Gomien conceded that his license with the city of Mobile reflected that he operated a tanning business in the city of Mobile. He also indicated that he operated a security business on the side. He thus agreed that he operated 3 businesses including his limousine service. Mr. Gomien, nonetheless, indicated that he was devoted full time to his limousine operations even though he was operating 2 other businesses in conjunction with his limousine service.

On further cross examination by the attorney for the Protestants, Mr. Gomien testified that his facility at Leroy Stevens Road consisted of a small metal frame strip mall facility which he had purchased. Mr. Gomien represented that his limousines were locked behind an 8 foot barbwire fence at that location. Mr. Gomien also indicated that he operated his other businesses out of that same facility at Leroy Stevens Road.

On further cross examination Mr. Gomien represented that his 2005 Ford Excursion was the newest vehicle in his fleet. He noted that he had recently sold 3 limousines with the notion of replacing them with upgraded equipment. Mr. Gomien conceded that he had not yet replaced those 3 vehicles, however.

Mr. Gomien testified on further cross examination that he was currently purchasing a second home in Baldwin County and was considering locating equipment in Baldwin County if granted the authority sought. He indicated, however, that his ultimate decision in that regard depended on how much business in Baldwin County

REPORT AND RECOMMENDED ORDER  
DOCKET 31457 - #4

actually came to fruition. He indicated that his second home in Baldwin County would be a condominium and that he currently did not have any plans to station a vehicle in Baldwin County.

Mr. Gomien represented on further cross-examination that he had a full time job as a deputy sheriff in Mobile County. Mr. Gomien testified, however, that his mother worked full time for his limousine service and was a paid employee of the limousine operation. He indicated that everyone else with his limousine operation was part-time.

Mr. Gomien represented that in 2008, the revenues generated from his limousine operations were \$118,000. For 2009, Mr. Gomien represented that he generated gross revenues of \$171,000. Through July of 2010, Mr. Gomien represented that he had generated approximately \$190,000 in revenues from his limousine business on a stand alone basis. Mr. Gomien noted that his limousine business was his largest revenue producing business.

On further cross-examination, Mr. Gomien testified that he also operated van equipment. He indicated that he had a contract with British Petroleum ("BP") for 3 vans, all 2010 models that had been leased. Mr. Gomien noted that his van operations were conducted in the city of Mobile. He represented that the passenger capacity of the Econo Vans he utilized was 8.

Mr. Gomien indicated on further cross examination that he operated his vans through a contractor who had an agreement with BP to handle transports related to the oil spill. Mr. Gomien indicated that even though he would like to operate those vans as a shuttle service at some point, they would not be operated under his current authority or the expanded authority sought given the fact that they were not luxury limousines.

The next witness to testify in the proceeding was Mr. Randy Matson, a fifteen year resident of Gulf Shores who is involved as a partner in a real estate company and a maintenance company in Gulf Shores. Mr. Matson testified that he had utilized Mr. Gomien's limousine service in Mobile and was very satisfied with the service provided. Mr. Matson also indicated that he and Mr. Gomien had engaged in discussions regarding business opportunities in Gulf Shores. Mr. Matson indeed represented that he sometimes had clients that he liked to entertain and indicated that such entertainment might from time to time involve limousine service. Mr. Matson expressed a desire to use Mr. Gomien's services in Orange Beach and/or Gulf Shores to transport those business clients.

On cross-examination by counsel for the Protestants, Mr. Matson testified that he had not utilized a limousine service in Baldwin County, but indicated that there might be a time in the future when he would. He

REPORT AND RECOMMENDED ORDER  
DOCKET 31457 - #5

testified that the limousine service he would likely need in Baldwin County would be local in nature and involve movements to restaurants and bars in and around Gulf Shores, Orange Beach and elsewhere along the coast. Mr. Matson indicated that he envisioned a limousine picking up one of his guest or clients at a hotel or condominium along the coast and taking them to a restaurant or lounge in the coastal area. Mr. Matson testified that he had never contacted any of the existing limousine carriers to determine what limousine services were already available to him.

On redirect examination by the Applicant, Mr. Matson testified that he had not contacted any of the limousine service providers in the past because he had utilized the services of the Applicant and found them clean, nice and therefore acceptable. Mr. Matson indicated that if he had a need in the Orange Beach and Gulf Shores area, he would utilize the services of Mr. Gomien.

On re-cross examination by counsel for the Protestants, Mr. Matson testified that he was unaware as to whether he could presently utilize the services of Mr. Gomien in Gulf Shores or Orange Beach without Mr. Gomien having APSC authority. Mr. Matson indicated that he had not called on Mr. Gomien for such services.

The next witness to testify in the proceeding was Mrs. Shannon Linville, the wife of the owner of the Protestant Professional Limo, Mr. Harold Linville. Mrs. Linville indicated that Professional Limo's operations were based out of Daphne, Alabama. She indicated that Professional Limo currently operated 3 vehicles under authority from the Alabama Public Service Commission in the form of Motor Carrier Certificate 3752. Mrs. Linville testified that Professional Limo primarily handled weddings, anniversaries, nights out on the town, proms and Mardi Gras transports.

On further direct examination, Mrs. Linville testified that she had been present for the testimony of Mr. Matson. She indicated that she had heard nothing in Mr. Matson's testimony regarding service that Professional Limo could not provide. Mrs. Linville indicated that such business would indeed be desirable for Professional Limo.

On further direct examination, Mrs. Linville testified that Professional Limo had competition in both Mobile and Baldwin counties. She indicated that there were approximately 10 competitors who did business in the area and that the competition from those competitors had been "ugly." She represented that the BP oil spill during the spring and summer of 2010 had further complicated the competitive environment. She indicated that there were very few people to transport to the beach area for dinner and fewer out of town movements because there were fewer people coming down to the beach as the result of the oil spill. She also noted that the Wharf, an entertainment/resort

REPORT AND RECOMMENDED ORDER  
DOCKET 31457 - #6

facility in Orange Beach that held concerts and had restaurants, shops, auditoriums, a theater and condominiums, was rumored to be in foreclosure. She indicated that the closure of the Wharf would further hurt Professional Limo's business. Mrs. Linville also indicated that there were several restaurants in the Foley area that had closed their doors due to the oil spill thus impacting Professional Limo's business because there were less restaurants and lounges to transport people to.

On further direct examination Mrs. Linville testified that Professional Limo operated two Cadillac limousines, one a 2000 model and the other a 1999 model. She indicated that both of the Cadillacs had five doors. She explained that one vehicle's capacity was seven passengers while the other's was eight. She also indicated that Professional Limo operated a Lincoln Nighthawk that would carry up to ten people even though Professional Limo normally did not put 10 people in it. She represented that Professional Limo normally transported 8 or 9 passengers in the Lincoln Nighthawk due to comfort issues.

Mrs. Linville testified that her company typically had equipment available to provide limousine service. She in fact represented that on the night of the Foley High School prom earlier in 2010, Professional Limo had three vehicles sitting idle while other unauthorized vehicles were providing service to the Foley High School prom.

Mrs. Linville testified that based on her husband's estimates that he had shared with her, Professional Limo's business was off 70 percent over the past year or so. Mrs. Linville thus maintained on further direct examination that Professional Limo could not afford the entry of another provider of limousine service in their market with Professional Limo barely hanging on.

On cross examination by the Applicant, Mrs. Linville testified that Professional Limo operated its business out of the Linville family home in Daphne. Mrs. Linville testified on further cross examination that Professional Limo's two Cadillac's were known as 8-packs because they held 6 to 8 passengers. She indicated that the Lincoln Nighthawk was called a 10-pack although the preference was not to put 10 passengers in that vehicle.

Mrs. Linville testified on further cross examination that Professional Limo did not operate a Hummer H-2 limousine and did not need one other than at prom time. Mrs. Linville would not say that there was not a need for a stretch limousine/truck type vehicle in the area she served, but she stressed that with all the illegal operators coming in and knocking her company out of business, Professional Limo could not afford to buy an H-2 Hummer. She emphasized that there had not been much of a need for H-2 Hummer limos up until the past 2 to 3 years.

REPORT AND RECOMMENDED ORDER  
DOCKET 31457 - #7

Mrs. Linville also testified on further cross examination that her company did not operate a Ford Excursion stretch limousine or a Lincoln Navigator stretch limousine.

On further cross examination, Mrs. Linville testified that she was familiar with Mr. Gomien's operation because Professional Limo had worked with Modern Limo on one occasion in the past. On that one occasion, Mrs. Linville testified that Professional Limo called upon Modern Limo for service for one of Mr. Linville's friends. According to Mrs. Linville, Mr. Linville's friend informed the Linville's that the driver provided by Modern Limo on that one occasion was a female who had difficulty handling the vehicle due to its size and was unfamiliar with the necessary directions.

Mrs. Linville testified on further cross-examination that there were 7 high schools in Baldwin County, including Bayside Academy. Mrs. Linville was unaware of how many public schools in total were located in Baldwin County. Mrs. Linville conceded that students from the high schools in the county would be graduating, going to prom and going to homecoming dances. Mrs. Linville was uncertain however, as to how many students would be graduating and going to proms, dances and the like.

On redirect examination, Mrs. Linville testified that if given the appropriate advanced notice about the need for limousine service, existing limousine carriers such as Professional Limo could get equipment from out of town to handle the needs of high school students in Baldwin County. She indicated that her company usually tried to be aware of when high schools schedule their proms so that adequate equipment can be made available. Mrs. Linville further testified that if sufficient demand existed, her company would buy a stretch Hummer in which to provide service. She in fact indicated that her company would buy whatever vehicle that was in demand if that demand would justify such a purchase. She again stated that the only time her company ever received calls for Hummers was during prom season.

Mrs. Linville testified on further redirect examination that prom season represented only a peak in her company's business. She indicated that she and other limousine companies had to hold themselves out to provide service 365 days a year which entailed the carrying of insurance coverage, paying drivers and all the other expenses associated with operating a limousine service. Mrs. Linville testified that her company solicited business in order to keep their equipment busy by distributing fliers and brochures that might generate further business.

REPORT AND RECOMMENDED ORDER  
DOCKET 31457 - #8

The next witness to testify in the proceeding was Ms. Pam Kleinatland, the owner of Luxury Limo, LLC ("Luxury Limo"). Ms. Kleinatland testified on direct examination that Luxury Limo operated out of Orange Beach, Alabama. She indicated that Luxury Limo provided service for dinners, birthdays, proms, weddings and other occasions where luxury limousine service was desired.

Ms. Kleinatland stated on further direct examination that Luxury Limo operated a 2001 Lincoln Town car, a 2007 stretch limo and a Ford Excursion, all of which were white in color. Ms. Kleinatland testified that she had a safety program in effect that covered her vehicles and drivers. She noted that her company had a maintenance program as well.

On further direct examination, Ms. Kleinatland testified that Luxury Limo advertised locally in Baldwin County and Mobile County through television commercials, radio spots, business cards and the internet. Ms. Kleinatland testified that she was a member of the Chamber of Commerce and was trying to increase the company's business.

Ms. Kleinatland testified on further direct examination that she had last added a vehicle to her fleet in 2008. She indicated that the addition of that vehicle had not really helped her business, however. She emphasized that her business had been hurt by the BP oil spill because people weren't renting limousines and there weren't as many tourists in the area to rent them.

On further direct examination, Ms. Kleinatland testified that her company had both legal and illegal competitors in Baldwin County. She estimated that there were some five limousine carriers in the Baldwin County area who are authorized by the APSC to provide service. She indicated that some of her competitors came out of the Mobile area.

Ms. Kleinatland testified that she held herself out to provide service 365 days per year and had equipment stationed in Baldwin County year round that she was maintaining and paying insurance on. Ms. Kleinatland testified that she mostly utilized her fourteen passenger vehicle to transport people who wanted to go from bar to bar or to dinner locally in Orange Beach and the Gulf Shores area.

On further direct examination, Ms. Kleinatland testified that the prom season was generally at the end of March or April of each year and consisted of three to four days. Ms. Kleinatland maintained that even during prom season, there was at least one occasion when she had equipment available while illegal operators were providing



REPORT AND RECOMMENDED ORDER  
DOCKET 31457 - #9

service. She indicated that she was opposing the application of Modern Limo because she did not feel that there was a need for an additional limousine carrier in Baldwin County at present. She indicated that if there were an additional need for limousine equipment in the Baldwin County area, Luxury Limo would attempt to meet that need by acquiring additional equipment if necessary.

On cross examination by the Applicant, Mrs. Kleinatland testified that she operated an SUV limousine although she did not operate a Navigator stretch limousine or an H-2 Hummer. Mrs. Kleinatland testified that Luxury Limo rarely was booked up to the point that other carriers had to be called in to meet demand. Mrs. Kleinatland stated that she believed there were enough limousines in Baldwin County to take care of the need of every student from the county's seven high schools that wanted to attend their prom in a limousine or utilize a limousine for their graduation. On further cross examination, Mrs. Kleinatland testified that she seldom got calls to provide service to Mobile's Mardi Gras festivities due to the distance from her location in Gulf Shores/Orange Beach area over to Mobile.

On further cross examination, Mrs. Kleinatland testified that she had been in the limousine business for four and a half to five years. She indicated that limousine customers likely shopped for everything regarding limousine service including price. Mrs. Kleinatland conceded that if she were going to Mobile to perform a movement, she would have to charge extra money for travel time and/or fuel cost in order to handle such a move. She conceded that if Mr. Gomien came over to Baldwin County from Mobile County to handle a movement, he would have to do the same.

On further cross examination, Mrs. Kleinatland estimated that she was booked up only twice a year. Mrs. Kleinatland also testified that she was licensed in Mobile but hardly ever did business there.

On redirect examination, Mrs. Kleinatland testified that she did hear the Applicant's testimony that he came over to Baldwin County in the spring of 2010 to provide service to a prom when he did not have the authority to perform the movement in question. Mrs. Kleinatland represented that she had one or more limos that were available for service on that occasion.

The next witness to testify in the proceeding was Ms. Julie Margaret, "Margie", Wilcox, the owner of the Protestant Mobile Bay. Ms. Wilcox testified on direct examination that her company operated out of facilities at

REPORT AND RECOMMENDED ORDER  
DOCKET 31457 - #10

8341 Airport Boulevard in Mobile, 82 Mack Street in Mobile, and 3100 McCormick Street in Pensacola Florida. She indicated that she was the president and chief stock holder of Mobile Bay.

Ms. Wilcox testified on further direct examination that among its other authorities, Mobile Bay held a certificate from the APSC to perform luxury limousine services in Mobile and Baldwin Counties. Ms. Wilcox represented that luxury limousine's equipment consisted of a Ford Expedition and a Lincoln Town car. She indicated that she had recently sold a Cadillac limousine and had one specialty vehicle that she could provide service in, an antique checkered cab. She noted that she had recently sold the Cadillac limousine due to a diminished demand for the vehicle.

On further direct examination, Ms. Wilcox testified that she had chauffeurs licensed with the city of Mobile to drive her vehicles and had a maintenance program in effect for her equipment. She in fact indicated that her company had three full-time maintenance personnel. She represented that her company provided driver training and had a safety program in effect with a safety manager. Ms. Wilcox testified that she likely had over a million dollars invested in her transportation operations. She indicated that she operated approximately 30 taxis as well as 15 passenger vans, sedans and wheel chair vehicles. She indicated that Mobile Bay currently had approximately 50 employees and 44 independent contractors.

On further direct examination, Ms. Wilcox testified that luxury limousine service was a desirable business for her company and that her company would like to do more business in luxury vehicles. She indicated that she currently competed with carriers such as Southern Comfort, Modern Limo, Luxury Limo, Professional Limo, Any Occasion and others. Ms. Wilcox testified however, that the economy had taken a toll on her business resulting in a diminished demand for luxury vehicles as well as a diminished demand for taxi service. She represented that the luxury limousine business was down due to the difficult economy and less disposable income being available for nights out on the town and luxuries such as limousines.

Ms. Wilcox also testified on further direct examination that she had seen a decrease in the number of tourists along the coast during 2010 due to the economy and the BP oil spill. She in fact represented that tourism in Baldwin County had been almost nonexistent given the fact that vacationers and tourists are the ones that typically spend disposable income on pleasure. Even though the absence of tourists had hurt her company's business, Ms. Wilcox nonetheless indicated that her company held it self out to provide service 365 days a year in Baldwin

REPORT AND RECOMMENDED ORDER  
DOCKET 31457 - #11

County. She indicated that if her company had a sufficient demand to add a Hummer or a Lincoln Navigator limousine, her company would do so and had the means of doing so. She indicated that additional equipment had been added by her company to provide wheel chair transportation, but not luxury limousines as she had seen a decrease in demand for that service.

On further direct examination, Ms. Wilcox testified that she was protesting the application of Modern Limo because a grant of the authority sought would divert business that she might otherwise be able to enjoy. She indicated that she had idle equipment available to provide the type service for which Modern Limousine sought authority and had at one time opened offices in Baldwin County only to have them closed down due to a lack of business.

On cross examination by the Applicant, Ms. Wilcox testified that she did not have any luxury stretch limousines in her fleet at present. She indicated however, that she tried to convince customers who called her for luxury limousines to utilize the sedans she had available instead. She indicated that she would refer such customers to other carriers if they insisted on utilizing equipment she did not have.

Ms. Wilcox testified on further cross-examination that there were perhaps as many as four Hummer limousines available in the Mobile and Baldwin County area including the Hummer operated by Modern Limo. Ms. Wilcox conceded that she had in the past referred customers seeking Hummer limousines to Modern Limo.

Ms. Wilcox maintained on further cross examination that there had not been a time when she was booked up and had no equipment available. She did, however, indicate that her company sometimes referred customers as she had previously testified.

On further cross examination, Ms. Wilcox testified that she held authority to provide limousine service in Baldwin County and would be interested in providing such service if a need arose in luxury limousines. Ms. Wilcox testified that people in Baldwin County likely utilize limousine services for special occasions and holidays such as Christmas, Valentines Day and Mardi Gras.

**III. DISCUSSION AND CONCLUSIONS**

An applicant seeking a certificate to operate as a common carrier must establish through evidence presented at the hearing that it is fit, willing and able to properly perform the service proposed in conformity with the provisions of the Alabama Motor Carrier Act and the Commission's Motor Carrier Rules, and that the proposed service is required by the public convenience and necessity. The adequacy of existing service in meeting the public

REPORT AND RECOMMENDED ORDER  
DOCKET 31457 - #12

need, the Applicant's financial ability to furnish adequate, continuous, and uninterrupted service and the advantages to the public of the proposed service are, among other things, factors which must be considered. Proof of public convenience and necessity requires an affirmative showing that the proposed service will be superior to the service of presently authorized carriers, or the proposed operations will serve a useful purpose which cannot or will not be met by existing carriers.

In accordance with the foregoing, the first issue to be addressed in the case at bar is whether the Applicant is fit, willing and able to provide the common carrier service proposed. It appears from a review of the record compiled herein that the Applicant is indeed qualified in all respects to conduct the operations proposed. In particular, the Applicant appears to have the necessary experience, equipment and financial resources to provide the services proposed. Even though the Applicant received at least two citations for operating outside the scope of its existing authority, it appears that the Applicant is generally familiar with the Commission's rules and regulations regarding passenger transportation service and will conduct its operations in accordance therewith in the future. The Applicant is accordingly found to be fit, willing and able to provide the extended service proposed in the present application.

The next issue to be addressed is whether the public convenience and necessity requires the services as proposed by the Applicant. It is incumbent upon the Commission, when considering the question of public need, to consider whether the territory for which authority is sought is served by other carriers and the adequacy of such service to meet the public need. *Alabama Public Service Commission v. Higginbotham*, 256 Ala. 621, 56 So. 2<sup>nd</sup> 401 (1951), *Alabama Public Service Commission v. Crowe*, 247 Ala. 120, 22 So. 2<sup>nd</sup> 721 (1945). The maintenance of sound economic conditions in the transportation industry would be jeopardized by allowing a new operator to compete with existing carriers who are providing reasonably adequate service. Motor Carriers serving an area should be afforded an opportunity to transport all the traffic they can adequately, efficiently and economically handle without additional competition from a new operation.

Proof of public convenience and necessity requires an affirmative showing that the proposed operations are superior to those of presently authorized carriers, or that the proposed operations would serve a useful purpose which cannot or will not be met by existing carriers. There must be an affirmative demonstration not only that a common

REPORT AND RECOMMENDED ORDER  
DOCKET 31457 - #13

carrier service is required in the convenience of the public proposed to be served, but also that it is a necessity on the part of such public.

A proposed service does not, however, have to be absolutely indispensable in order to serve the public convenience and necessity. A demonstration that the proposed service is reasonably necessary for the public good satisfies the required showing of public convenience and necessity. *Alabama Public Service Commission v. Wells Fargo Armored Services*, 495 So. 2<sup>nd</sup> 42 (Ala. 1986); *Van Express Inc. v. Beeline Express Inc.*, 347 So. 2<sup>nd</sup> 1353 (Ala. 1977); *Southern Haulers v. Alabama Public Service Commission*, 331 So. 2<sup>nd</sup> 660 (Ala. 1976).

In the case at hand, Mr. Gomien of the Applicant Modern Limo testified that he operated four limousines: a Lincoln Town Car, an H-2 Hummer, a Ford Excursion and a Lincoln Navigator. Mr. Gomien further testified that with the exception of his Lincoln Town Car, the remaining three SUV type limousines he operated seated 14 passengers comfortably even though the technical capacity rating of such vehicles is a range of 14 to 16 passengers. In light of Mr. Gomien's testimony that his SUV-type vehicles should optimally be utilized to transport no more than 14 passengers, it appears that such vehicles may be utilized by the Applicant in a manner consistent with the authority sought herein.

The testimony of record reflects that none of the protesting carriers operate a limousine which can accommodate more than ten passengers in regulated movements. In particular, Mrs. Linville of the Protestant Professional Limo testified that even though her company had one vehicle that was rated for up to ten passengers, Protestant Limo did not put that many people in that vehicle most of the time because it made the vehicle too crowded. The Protestant Luxury Limo operates a Ford Excursion limousine that seats fourteen passengers, but it is precluded from utilizing that vehicle on regulated movements due to a restriction in the company's operating authority limiting Luxury Limo to the utilization of vehicles with a seating capacity of ten passengers or less. The Protestant Mobile Bay does not even operate a luxury limousine at present, much less one that seats ten or more passengers.

The testimony of Mrs. Linville of the Protestant Professional Limo indicates that over the past two to three years, there has been an established need for larger SUV type limousines such as the Applicant's H-2 Hummer. Mrs. Linville indeed stated in response to questions by the Applicant on cross examination that she would not say that there was not a need for SUV type limousines in the Baldwin County area. She instead indicated that with all the

REPORT AND RECOMMENDED ORDER  
DOCKET 31457 - #14

illegal operators who were allegedly coming in and knocking her company out of business, Professional Limo could not afford to buy an H-2 Hummer limousine. She later indicated in her redirect testimony that the demand she had experienced for SUV type limousines arose during prom season and asserted that such equipment was not often used outside of prom season. Mr. Linville asserted that the testimony of the other Protestants would bear out her claim that larger SUV-type vehicles are not utilized outside of prom season. The testimony of the other Protestants did not conclusively do so, however.

In light of the record compiled in this case, it appears that the Applicant Modern Limo has demonstrated that the larger SUV type limousines he operates which seat in excess of 10 passengers are not available from the protesting carriers in the Baldwin County area. It also appears that Modern Limo has demonstrated at least a baseline need for larger SUV type limousines that is not, and in some cases, can not be met by the protesting carriers in Baldwin County. The expanded service proposed in the present application is thus reasonably necessary for the good of the public in Baldwin County. Given the fact that virtually all of the testimony of record related to Baldwin County, however, it does not appear that the Applicant has demonstrated a need for the expanded service proposed outside of Baldwin County.

**RECOMMENDATION**

It appears that the Applicant Modern Limo has demonstrated that the service proposed herein is reasonably necessary for the public good in Baldwin County and has thus partially satisfied the required showing of public convenience and necessity. Further, the Applicant has demonstrated that its proposed service will serve a useful purpose in Baldwin County which cannot or will not be met by the existing carriers in that area. It is accordingly recommended that Motor Carrier Certificate of Public Convenience and Necessity 3847 currently standing in the name of Donald Gomien, an individual, d/b/a Modern Limousine ("Modern Limousine"), 1110 Leroy Stevens Road, Mobile, Alabama 36695 and authorizing operations as a common carrier by motor vehicle, in intrastate commerce over irregular routes be extended as noted below to authorize the transportation of:

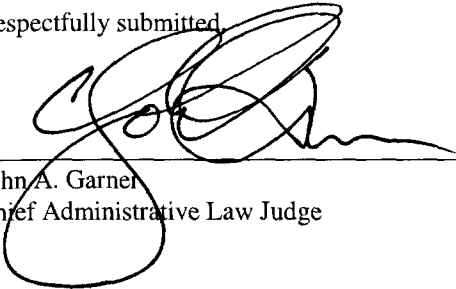
Passengers and their baggage in luxury limousines with a seating capacity of 14  
or less

- (1) Between all points in Mobile and Baldwin Counties.
- (2) (A) From #1 to all points in Alabama; and
- (B) From all points in Alabama to #1

REPORT AND RECOMMENDED ORDER  
DOCKET 31457 - #15

In all other respects, the application of Donald Gomien, an individual, d/b/a Modern Limousine is hereby denied.

Respectfully submitted,



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John A. Garner  
Chief Administrative Law Judge