

ORIGINAL

Decision No. 77112

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of RICHARD H. THOMPSON and RODNEY N. CATES, DBA WHIPPET CHARTER SERVICE, for authority to operate passenger stage service between the Cities of Newark, Fremont, Union City and Hayward, on the one hand, and United Air Lines Maintenance Base at San Francisco International Airport, on the other hand.

Application No. 51581  
(Filed December 29, 1969)

In the Matter of the Application of JOSEPH E. BROWN for certificate of public convenience and necessity to operate passenger stage service between the cities of Fremont, Newark, Union City and Hayward, on the one hand, and the United Air Lines Maintenance Base located at the International Airport, San Francisco, on the other hand.

Application No. 51691  
(Filed February 5, 1970)

Wayne I. Alsop, for Richard H. Thompson and  
Rodney N. Cates, applicants.  
Joseph Edward Brown, in propria persona, applicant.  
John V. Trump, for Buford L. Smith and Paul H.  
Schneider, protestants.  
Donald R. Chew, for the Commission staff.

O P I N I O N

By their respective applications, Richard H. Thompson and Rodney N. Cates, doing business as Whippet Charter Service, and Joseph E. Brown, doing business as Commute Service, request authority to operate passenger stage services between Newark, Fremont, Union City and Hayward, on the one hand, and the United Air Lines Maintenance Base at the San Francisco International Airport (hereinafter referred to as United), on the other hand. In each instance service would be limited to the transportation of passengers to or from United.

The applications were consolidated for public hearing, which was held before Examiner Daly on March 10, 1970, at San Francisco.

Application No. 51581 - Thompson and Cates

During November, 1969, applicants Thompson and Cates purchased an uncertificated operation that was engaged in transporting employees of United to and from East Bay points. The service, as presently conducted and as herein proposed, is designed to accommodate employees of United working on the day, swing and graveyard shifts.

Applicants own and operate two 1955 43-passenger Beck Super Service Cruisers, which are repaired and maintained by applicant Cates who owns and operates a truck repair shop. The proposed weekly commute fare from Fremont and Newark is \$5.50 and from Union City and Hayward \$5.25 and \$5.00, respectively. Service is provided by 12 drivers who are also employees of United.

Applicants are presently providing service for 171 passengers, 133 of whom signed a petition requesting favorable consideration of the application. As of December 30, 1969, applicants indicated a net worth in the amount of \$24,250.

Application No. 51691 - Brown

Applicant Brown commenced operating a commute club service on November 16, 1969. For several years prior thereto he was a driver for the predecessor of applicants Thompson and Cates. He is also an employee of United.

Applicant owns and operates a 1948 41-passenger GMC bus. The commute club presently has 31 members. The proposed weekly commute fare from Fremont and Newark is \$5.50, from Union City \$5.00 and from Hayward \$4.50. Service would be limited to the swing shift only. As of December 1, 1969, applicant Brown indicated a net worth in the amount of \$11,800.

According to this applicant his proposed service would reduce the use of private automobiles and thereby help alleviate traffic congestion both on the highways and at the maintenance base.

Protestant Schneider

Paul Herman Schneider, doing business as Commute Service, was authorized by Decision No. 76489 dated December 2, 1969, in Application No. 51417 to operate a passenger stage service between Milpitas, North San Jose, Fremont, Newark and Hayward, on the one hand, and United, on the other hand. For three years prior thereto he conducted an uncertificated operation between said points.

This protestant provides service for the day shift only. He owns and operates five buses and transports 200 passengers daily. He does not believe that there is a present need for service on the swing or graveyard shift, but is willing to provide such service if a future need is demonstrated.

Protestant Smith

Buford Smith, doing business as Smith's Charter Bus Service, commenced an uncertificated operation for employees of United three years ago. By Decision No. 76683 dated January 20, 1970, in Application No. 51450, he was authorized to operate a passenger stage service between Newark, Fremont, Union City and Hayward, on the one hand, and United, on the other hand. He owns and operates 32 buses, 16 of which are used in charter operations.

This protestant provides service for three shifts and in addition thereto provides a service designed to meet the needs and requirements of the office employees. Ten buses serve the day shift and have a load factor of 35 passengers; three buses serve the swing and graveyard shifts with a load factor of 22 passengers and five buses serve the office employees with a capacity load factor of 41 passengers.

Protestant Smith employs 45 drivers, 20 of whom are employees of United Air Lines; the other are full-time charter drivers.

Discussion

The record demonstrates that because of a lack of public transportation, private cars and commute clubs have been a necessary means of transporting employees of United between the proposed points. For the past several years protestants as well as applicants have been engaged in operations designed to meet this transportation need. Recently all of the parties involved herein have come before the Commission requesting certification. The applications of the protestants have been heretofore granted on an ex parte basis.

The protesting carriers appear to be operating at, or close to capacity on the day shift. Protestant Smith testified that he would have to rearrange the use of his equipment, including that used in charter operations, to accommodate the passengers now being transported by applicants Thompson and Cates.

With respect to the swing and graveyard shift, which protestant Schneider does not serve, there is no assurance that those individuals who are now using the services of applicants would not use private cars in the event applicants were required to discontinue operations.

After consideration the Commission finds that:

1. Applicants as well as protestants have been engaged in the transportation of passengers between the proposed points for several years.

2. Within the past several months applicants and protestants have filed applications requesting certification of their operations. The applications of protestants were granted on an ex parte basis.

3. Because applicants and protestants are operating at capacity, or near capacity, any diversion of traffic that might exist upon the certification of applicants would have little, if any, effect upon the operations of protestants.

4. Applicants possess the necessary experience and financial ability to conduct the services as proposed.

5. The existing certificated services are not sufficient to meet the present needs and public convenience and necessity require the proposed services.

The Commission therefore concludes that the applications should be granted.

Richard H. Thompson and Rodney N. Cates, and Joseph E. Brown are hereby placed on notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. Aside from their purely permissive aspects, such rights extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be modified or canceled at any time by the State, which is not in any respect limited as to the number of rights which may be given.

Because protestant Schneider was the first to conduct operations under the business name, "Commute Service", applicant Brown is directed to change his name of doing business so that confusion may be avoided.

O R D E R

IT IS ORDERED that:

1. Certificates of public convenience and necessity are granted to Richard H. Thompson and Rodney N. Cates, doing business as Whippet Charter Service, and Joseph E. Brown, as an individual, authorizing them to operate as passenger stage corporations, as defined in Section 226 of the Public Utilities Code, between the points and over the routes particularly set forth in Appendices A and B attached hereto and made a part hereof.

2. In providing service pursuant to the certificates herein granted, applicants shall comply with and observe the following service regulations. Failure so to do may result in a cancellation of the operating authorities granted by this decision.

- (a) Within thirty days after the effective date hereof, applicants shall file written acceptances of the certificates herein granted. Applicants are placed on notice that, if they accept the certificates of public convenience and necessity herein granted, they will be required, among other things, to comply with and observe the safety rules of the California Highway Patrol, the rules and other regulations of the Commission's General Order No. 98-A and insurance requirements of the Commission's General Order No. 101-C.
- (b) Within one hundred twenty days after the effective date hereof, applicants shall establish the services herein authorized, and file tariffs and timetables, in triplicate, in the Commission's office.
- (c) The tariff and timetable filings shall be made effective not earlier than ten days after the effective date of this order on not less than ten days' notice to the Commission and the public, and the effective date of the tariff and timetable filings shall be concurrent with the establishment of the services herein authorized.

- (d) The tariff and timetable filings made pursuant to this order shall comply with the regulations governing the construction and filing of tariffs and timetables set forth in the Commission's General Orders Nos. 79 and 98-A.
- (e) Applicants shall maintain their accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Charts of Accounts as prescribed or adopted by this Commission and shall file with the Commission, on or before March 31 of each year, an annual report of their operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 21st day of APRIL, 1970.

Augusta  
President

William Symons, Jr.

Alfred J. Stinger

Vernon L. Stinger  
Commissioners

Commissioner William Symons, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

APPENDIX A    RICHARD H. THOMPSON AND RODNEY N. CATES    Original Page 1  
                    dba WHIPPET CHARTER SERVICE

CERTIFICATE  
OF  
PUBLIC CONVENIENCE AND NECESSITY

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Showing passenger stage operative rights, restrictions, limitations,  
exceptions, and privileges applicable thereto.

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All changes and amendments as authorized by the Public Utilities  
Commission of the State of California will be made as revised pages  
or added original pages.

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77112  
Issued under authority of Decision No. \_\_\_\_\_, dated  
APR 21, 1970, of the Public Utilities Commission  
of the State of California, on Application No. 51581.



## SECTION 1. GENERAL AUTHORIZATIONS, RESTRICTIONS, LIMITATIONS AND SPECIFICATIONS

Richard H. Thompson and Rodney N. Cates, doing business as Whippet Charter Service, by the certificate of public convenience and necessity granted by the decision noted in the margin, are authorized to transport passengers and their baggage on passenger-carrying vehicles as described in attached Sections 2 and 3, subject to the following restrictions:

- (a) Passengers shall be transported only between the service areas set forth herein, on the one hand, and the United Air Lines Maintenance Base, on the other hand.
- (b) Service shall be operated only at times necessary to meet employee shift changes.
- (c) In the event of a strike, shutdown or other closing of said airlines maintenance base, the service shall not be operated.

## SECTION 2. DESCRIPTION OF SERVICE AREAS

1. Hayward Service Area

The City of Hayward and the area within a radius of three air miles of its corporate city limits.

2. Union City Service Area

The City of Union City and the area within a radius of three air miles of its corporate city limits.

3. Newark Service Area

The City of Newark and the area within a radius of three air miles of its corporate city limits.

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4. Fremont Service Area

The City of Fremont and the area within a radius of three air miles of its corporate city limits, excluding any portion in Santa Clara County.

SECTION 3. ROUTE DESCRIPTION

Commencing at any point within the Union City service area, thence to the Fremont service area, thence to the Newark service area, thence via Union City service area to the Hayward service area, thence to the United Air Lines Maintenance Base at or near the San Francisco International Airport, via any and all appropriate routes, and return via the same routing.

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APPENDIX B

JOSEPH E. BROWN

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CERTIFICATE  
OF  
PUBLIC CONVENIENCE AND NECESSITY

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Showing passenger stage operative rights, restrictions, limitations, exceptions, and privileges applicable thereto.

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All changes and amendments as authorized by the Public Utilities Commission of the State of California will be made as revised pages or added original pages.

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Issued under authority of Decision No. 77112, dated April 21, 1970, of the Public Utilities Commission of the State of California, on Application No. 51691.

## SECTION 1. GENERAL AUTHORIZATIONS, RESTRICTIONS, LIMITATIONS AND SPECIFICATIONS

Joseph E. Brown, by the certificate of public convenience and necessity granted by the decision noted in the margin, is authorized to transport passengers and their baggage on passenger-carrying vehicles as described in attached Sections 2 and 3, subject to the following restrictions:

- (a) Passengers shall be transported only between the service areas set forth herein, on the one hand, and the United Air Lines Maintenance Base, on the other hand.
- (b) All passengers transported shall be employees of United Air Lines or persons seeking employment at such airlines.
- (c) Service shall be operated only at times necessary to meet employee shift changes.
- (d) In the event of a strike, shutdown or other closing of said airlines maintenance base, the service shall not be operated.

## SECTION 2. DESCRIPTION OF SERVICE AREAS

1. Hayward Service Area

The City of Hayward and the area within a radius of three air miles of its corporate city limits.

2. Union City Service Area

The City of Union City and the area within a radius of three air miles of its corporate city limits.

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Decision No. 77112, Application No. 51691.

3. Newark Service Area

The City of Newark and the area within a radius of three air miles of its corporate city limits.

4. Fremont Service Area

The City of Fremont and the area within a radius of three air miles of its corporate city limits, excluding any portion in Santa Clara County.

## SECTION 3. ROUTE DESCRIPTION

Commencing at any point within the Newark service area, thence to the Fremont service area, thence to the Union City service area, thence to the Hayward service area, thence to the United Air Lines Maintenance Base at or near the San Francisco International Airport, via any and all appropriate routes, and return via the same routing.

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