

Decision No. 81682

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
ANGLO-CALIFORNIA SERVICES, INC.,
a California corporation, For a
Certificate of Public Convenience
and Necessity To Operate a Passenger
Stage and Incidental Express Service
Between Oakland Airport and San Jose,
California, and Intermediate Points.

Application No. 52829
(Filed August 2, 1971)

In the Matter of the Application of
Ralph R. Renna and Doris A. Renna,
dba CHARTER SEDAN SERVICE, a division
of SAN JOSE LIMOUSINE SERVICE, for
a certificate of public convenience
and necessity to operate a passenger-
stage (including "express" baggage)
between points in San Mateo, Santa
Clara, Santa Cruz, Alameda, Monterey,
Sacramento, and San Joaquin Counties,
and respective airports at Oakland,
San Francisco, San Jose, Sacramento,
Stockton, and Monterey.

Application No. 52844
(Filed September 3, 1971)

In the Matter of the Application of
TRI - TERMINAL LIMOUSINE SERVICE, a
sole proprietorship of John R. ("Cisco")
Zavaleta, for certificate of public con-
venience and necessity to operate a
passenger stage between the City of
San Jose, County of Santa Clara, on one
hand; the northernmost geographical
boundary line of San Mateo County and
the Oakland International Airport,
Alameda County, on the other hand,
including points intermediate thereto;
and excluding the City and County of
San Francisco.

Application No. 52849
(Filed September 7, 1971)

Application of AIRPORT LIMOUSINE SERVICE
OF SUNNYVALE, a California corporation
for a Certificate of Public Convenience
and Necessity.

Application No. 52862
(Filed September 14, 1971)

Haskell Goodman, Attorney at Law, for Anglo-California Services, Inc., applicant in Application No. 52829.

Maurice K. Hamilton, Attorney at Law, for Tri-Terminal Limousine Service, applicant in Application No. 52849.

Richard N. Salle, Attorney at Law, for Airport Limousine Service of Sunnyvale, applicant in Application No. 52862.

Handler, Baker & Greene, by Donald W. Baker, Attorney at Law, for National Executive Services, Inc., protestant in Application No. 52829.

Alan L. Nobler, Attorney at Law, for Golden Sedan Service, Inc., protestant in Applications Nos. 52829, 52849, and 52862.

Chickering & Gregory, by David R. Pigott and Walter M. Frank, Attorneys at Law, for Airporter of California, Inc., dba Airporter, protestant.

William Bricca, Attorney at Law, and Sean Mahon, for the Commission staff.

O P I N I O N

Application No. 52829 is one in which Anglo-California Services, Inc. (Anglo-Cal) seeks a certificate of public convenience and necessity to operate as a passenger stage corporation to transport passengers for certain charter flights, on an on-call basis, between various points and the Oakland Airport. Because of interrelated subject matters, Application No. 52829 was consolidated for hearing with Applications Nos. 52844, 52849, and 52862. Anglo-Cal's request materially differs from those in Applications Nos. 52849 and 52862.^{1/} The issues raised are substantially different than those in the other applications. Therefore, separate decisional treatment is warranted.

A duly noticed public hearing was held before Examiner Donald B. Jarvis in the aforesaid matters on January 6, 7, 19, 20, and 21, 1972 and they were submitted on March 7, 1972. Decisions in these matters were held in abeyance because of prospective

^{1/} Application No. 52844 has been dismissed.

legislation as recommended to the legislature in Decisions Nos. 80448 and 81161 in Case No. 9162. However, enactment of such legislation appears doubtful at this time and further delay would not be appropriate.

Anglo-Cal is a corporation formed by the principals of a travel agency known as Anglo-California Travel, Inc. (Travel). Travel acts as an agent on behalf of the British-American Club, a social affinity group, for the chartering of aircraft for group flights. The British-American Club has approximately 31,000 members. In 1972, the British-American Club planned to operate 78 charter flights to and from the Oakland Airport. The destination for most of the flights was London. Other destinations included Tokyo, Munich, Honolulu, and Sydney. Most of the charter flights arrive or depart late in the night or in the early morning hours. Persons travelling on the charter flights have experienced difficulty in obtaining transportation in connection with them. Some persons are reluctant to leave their cars at the Oakland Airport during the time they are away on a charter trip because of vandalism.

Anglo-Cal proposes to operate, on an on-call basis, over a fixed route with designated pickup and discharge points. The pickup and discharge points would be located in San Jose, Sunnyvale, Palo Alto, Menlo Park, Redwood City, Belmont, San Mateo, Burlingame, Milbrae, San Bruno, and San Francisco. Anglo-Cal proposes to initially conduct the service with an 11-passenger Ford Chateau Wagon.

Anglo-Cal contends that there is a need for the proposed service and that if a certificate of public convenience and necessity is required it should be granted one. Protestants contend that the proposed service is private carriage for which no certificate is necessary, but that if a certificate is required for such service Anglo-Cal has failed to establish that one should be granted.

The material issues presented in this proceeding are:

1. Is a certificate of public convenience and necessity to operate as a passenger stage corporation required for the proposed service?
2. If a certificate is necessary for such service, has Anglo-Cal established that public convenience and necessity require that it be granted one?

Public Utilities Code Section 1031^{2/} provides in part that:

"No passenger stage corporation shall operate or cause to be operated any passenger stage over any public highway in this State without first having obtained from the commission a certificate declaring that public convenience and necessity require such operation..."

Section 225 defines passenger stage and Section 226 defines passenger stage corporation. Section 211(c) includes passenger stage corporation within the definition of common carrier. Section 216(a) provides that:

"(a) 'Public utility' includes every common carrier, toll bridge corporation, pipeline corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, wharfinger, warehouseman, and heat corporation, where the service is performed for or the commodity delivered to the public or any portion thereof."

If the service proposed by Anglo-Cal is to be performed for the public or any portion thereof within the contemplation of Section 216(a), a certificate would be required by Section 1031. "The test to determine whether facilities or service have been dedicated to public utility use is whether there has been a holding out of the facility or service to the public or portion thereof. (Yucaipa Water Co. No. 1 v. Public Util. Comm., 54 Cal. 2d 823, 827; Coml. Communications v. Public Util. Comm., 50 Cal. 2d 512, 523; California Water & Telepoone Co. v. Public Util. Comm., 51 Cal. 2d 478, 494;

^{2/} All code section references are to the Public Utilities Code unless otherwise stated.

S. Edwards Associates v. Railroad Comm. 196 Cal. 62, 70; Camp Rincon Resort Co. v. Eshleman, 172 Cal. 561, 563.) Dedication may be found to exist by implication. (Yucaipa Water Co. No. 1 v. Public Util. Comm., supra; S. Edwards Associates v. Railroad Comm., supra.)" (City of Mountain View et al v Southern Pacific Co. (1967) 67 CPUC 291, 310.)

The cases cited by protestants are distinguishable on their facts or not in point. For example, in Forsyth v San Joaquin L&P Co. (1929) 208 C 396, the California Supreme Court reversed a money judgment for the plaintiff passenger stage corporation against the defendant for loss of profits caused by the alleged illegal passenger stage operations of defendant. The Commission had previously denied the defendant a passenger stage certificate. The California Supreme Court held that previous Commission orders holding defendant to be a transportation company were not res judicata because subsequent to the entry of these orders the United States Supreme Court held portions of the Auto Stage and Truck Transportation Act to be unconstitutional. (Frost v Railroad Commission (1926) 271 US 583.) The United States Supreme Court held in Frost that states could not regulate private transportation and the California Supreme Court held that it could not be determined from the previous Commission orders whether the defendant in Forsyth had been found to be a common or private carrier. The California Supreme Court held that the defendant was not a common carrier because it transported only its employees and those having business with it.

In the intervening years since 1926, Frost has lost much of its vitality and, except for general statements of law contained therein, is no longer controlling. (See discussion and cases collected by Frank, J., in Fordham Bus Corporation v United States (1941) 41 F Supp 712, 715; California State Auto, etc. Bureau v Downey (1950) 96 CA 2d 876, 891, affd, 341 US 105.) To the extent Forsyth relies on Frost there is great doubt about their pertinence today. However, even if they retained their original

vigor, they would be of no help to protestants. In Forsyth the California Supreme Court found no common carriage because the defendant was transporting its own employees and those doing business with it, where the business of the defendant was one unrelated to the transportation of persons. In the case at bench, Anglo-Cal intends to transport customers in connection with other transportation activities. Other cited cases are similarly distinguishable or not in point.

As indicated, the British-American Club has approximately 31,000 members and planned to sponsor 78 charter flights in 1972. The Commission finds that the furnishing of transportation under such circumstances would be the furnishing of service to a portion of the public within the purview of Section 216(a). (C.F. Stahl (1965) 64 CPUC 405; W. R. Tomson (1965) 64 CPUC 312.)

The contention by protestants that there is no need for the proposed service has no merit. The record indicates that the British-American Club's charter flights generally originate or terminate late at night or early in the morning. Many persons have difficulty securing transportation to the Oakland Airport for their departure. Upon their return, many persons have had to wait several hours at the Oakland Airport before they could secure any kind of public transportation.

The principal shareholder and operator of Golden Sedan Service testified that if called upon by the British-American Club he would provide passenger stage limousine service for the charter flights. The record indicates that Golden Sedan's drivers are compensated solely on the basis of a 24 percent commission on the revenues generated by the persons they transport. The distance from San Jose to the Oakland Airport is approximately 50 miles. The Commission takes official notice that Golden Sedan's tariff provides for a one-way fare of \$10 from San Jose to the Oakland Airport or vice-versa. Thus, if one passenger requested service for a 3 a.m. arriving flight, the driver's total compensation for the

100 mile round trip at that hour would be \$2.40. Even if there were more passengers, the economics of the situation indicate that there is little likelihood of dependable service in this situation. Anglo-Cal would be in a position to provide dependable service because its driver will be an employee with other duties in connection with the charter flight. Furthermore, Anglo-Cal, in addition to the fare collected, has the additional economic incentive of insuring business for Travel, its related corporation.

No other points require discussion. The Commission makes the following findings and conclusions.

Findings of Fact

1. The British-American Club has approximately 31,000 members. It is a social affinity group which charters aircraft for group flights. In 1972, the British-American Club planned to operate 78 charter flights to and from the Oakland Airport. The destination for most of the flights was London. Other destinations included Tokyo, Munich, Honolulu, and Sydney.
2. Travel acts as the agent for the British-American Club in arranging the charter flights.
3. Anglo-Cal is a corporation formed by the principals of Travel.
4. Most of the British-American Club charter flights arrive or depart from the Oakland Airport late in the night or in the early morning. Persons travelling on the charter flights have experienced difficulty in obtaining public transportation in connection with them. Passengers on charter flights which have landed at Oakland Airport in the early morning have had to wait several hours before they could secure any kind of public transportation. Some persons are reluctant to use their own cars and leave them at the Oakland Airport during the period of a charter flight because of vandalism.
5. Anglo-Cal has the ability, including financial ability, to conduct the proposed passenger stage service.

6. Existing passenger stage corporations which have authority to serve the Oakland Airport are not providing service to the satisfaction of the Commission which would meet the needs of the members of the British-American Club utilizing charter flights to and from the Oakland Airport.

7. The Commission finds with reasonable certainty that the project involved in the proceeding will not have a significant effect on the environment.

8. Public convenience and necessity require that Anglo-Cal be granted passenger stage operating authority as hereinafter set forth.

Conclusions of Law

1. The service proposed by Anglo-Cal is one for which passenger stage operating authority is required.

2. Anglo-Cal should be granted a certificate of public convenience and necessity to operate as a passenger stage corporation as hereinafter set forth.

Anglo-California Services, Inc. is 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 aspect, such rights extend to the holder a full or partial monopoly of a class of business. 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.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Anglo-California Services, Inc., a corporation, authorizing it to operate as a passenger stage corporation, as defined in Section 226

of the Public Utilities Code, between the points and over the routes set forth in Appendix A, attached hereto and made a part hereof.

2. In providing service pursuant to the authority granted by this order, applicant shall comply with the following service regulations. Failure so to do may result in a cancellation of the authority.

- (a) Within thirty days after the effective date of this order, applicant shall file a written acceptance of the certificate granted. Applicant is placed on notice that if it accepts the certificate it will be required, among other things, to comply with the safety rules of the California Highway Patrol, the rules and other regulations of the Commission's General Order No. 98-Series, and the insurance requirements of the Commission's General Order No. 101-Series.
- (b) Within one hundred twenty days after the effective date of this order, applicant shall establish the authorized service 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 authorized service.
- (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-Series and 98-Series.
- (e) Applicant shall maintain its accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart 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 its 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 31st day of JULY, 1973.

William Symon Jr. President

[Signature]
[Signature]
Commissioners

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

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Appendix A

ANGLO-CALIFORNIA SERVICES, INC.

Original Page 1

CERTIFICATE
OF
PUBLIC CONVENIENCE AND NECESSITY

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

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.

Issued under authority of Decision No. 81582
dated JUL 31 1973, of the Public Utilities Commission
of the State of California, on Application No. 52829.

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

Anglo-California Services, Inc., a California corporation, by the certificate of public convenience and necessity granted by the decision noted in the margin, is authorized to transport passengers and baggage, incidental to the transportation of passengers, between 4250 Williams Road, San Jose and Oakland Airport over the most appropriate routes subject to the following conditions:

- (a) Motor vehicles may be turned at termini and intermediate points, in either direction, at intersections of streets or by operating around a block contiguous to such intersections, in accordance with local traffic regulations.
- (b) When route descriptions are given in one direction they apply to operation in either direction unless otherwise indicated.
- (c) No passengers shall be transported except those having point of origin or destination at the Oakland International Airport.
- (d) When service is rendered, it shall be on an "on-call" basis. Tariffs and timetables shall show the conditions under which such "on-call" service will be operated.
- (e) The transportation to be provided is solely for passengers on charter flights arranged by the Anglo-California Travel Services, Inc. for various groups.

SECTION 2. ROUTE DESCRIPTION

Route 1:

From San Jose to Oakland International Airport via peninsula points and San Francisco, more specifically stated as follows:

- San Jose: Commencing at 4250 Williams Road, San Jose, California, via Saratoga Avenue to the Junipero Serra Freeway (Route 280) to the Lawrence Station Expressway to El Camino Real (Route 82) to the Copper Penny Restaurant, El Camino Real and Hollanbeck in Sunnyvale.
- Sunnyvale: From the Copper Penny Restaurant via Mathilda Ave. to the Bayshore Freeway (Route 101) to Charleston Avenue to Ricky's Hyatt House at Charleston Avenue and El Camino Real, Palo Alto, California.
- Palo Alto: From Ricky's Hyatt House via Charleston Avenue to Bayshore Freeway to University Avenue to El Camino Real to A&W Drive-In, El Camino Real and Oakgrove, Menlo Park.
- Menlo Park: From A&W Drive-In via El Camino Real to Charter Street to Kibby's Drive-In, El Camino Real and Charter Street, Redwood City.
- Redwood City: From Kibby's Drive-In via Route 84 to Bayshore Freeway to El Camino Real to Ralston Avenue to Whistlestop Restaurant, El Camino Real and Ralston Avenue, Belmont.
- Belmont: From Whistlestop Restaurant via Ralston Avenue to Bayshore Freeway to 19th Avenue to Lyons Coffee Shop, El Camino Real and 19th Avenue, San Mateo.
- San Mateo: From Lyons Coffee Shop via 19th Avenue to Bayshore Freeway to Peninsula Avenue to Peninsula Avenue School Junction, El Camino Real and Peninsula Avenue, Burlingame.
- Burlingame: From Peninsula Avenue School on Peninsula Avenue to Bayshore Freeway to Millbrae Avenue to King's Bowl, Millbrae Avenue and El Camino Real, Millbrae.

SECTION 2. ROUTE DESCRIPTION (Continued)

Route 1:

CITY:

- Millbrae: From King's Bowl via Millbrae Avenue to Bayshore Freeway to San Bruno Avenue to Lyon's Coffee Shop, El Camino Real and San Bruno Avenue, San Bruno.
- San Bruno: From Lyon's Coffee Shop via San Bruno Avenue to Bayshore Freeway to Market Street to Fox Century Plaza between Polk and Larkin Streets, San Francisco.
- San Francisco: From Fox Century Plaza via Market Street and South Van Ness Avenue to U.S. 80 over the San Francisco-Oakland Bay Bridge to Oakland and the intersection of U.S. 80 with Highway 17; thence, via Highway 17 (Nimitz Freeway) southward to Hegenberger Road and to Doolittle Drive and the Metropolitan Oakland International Airport Terminal.