

ORIGINAL

Decision No. 81684

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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)

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)

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

Applications Nos. 52849 and 52862 are ones in which John R. Zavaleta, doing business as Tri-Terminal Limousine Service (Tri-Terminal), and Airport Limousine Service of Sunnyvale (Airport) seek certificates of public convenience and necessity to operate as passenger stage corporations, on an on-call basis, between the San Francisco International Airport, Oakland Airport, San Jose Airport, and points in the counties of Alameda, San Mateo, Santa Clara, and Contra Costa.^{1/}

Because of interrelated subject matter Applications Nos. 52849 and 52862 were consolidated for hearing with Applications Nos. 52829 and 52844. Application No. 52844 has been dismissed. The issues raised in Applications Nos. 52849 and 52862 are substantially different than those raised in Application No. 52829 and, therefore, separate decisional treatment is warranted.

^{1/} Airport requests authority to and from Contra Costa County but Tri-Terminal does not.

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

The Commission observes that until the Legislature acts in this area, on-call limousine service to and from airports will continue to cause regulatory problems and the Commission will not have the tools for the most effective regulation. Problems in the industry are aggravated by the coalescence of economic factors and inadequate regulatory statutes.

A passenger stage corporation serves between fixed termini or over a regular route. (Sec. 226.)^{2/} It generally charges individual fares for its service. (Secs. 451 et seq.) In order to operate as a passenger stage corporation it is necessary to secure a certificate of public convenience and necessity from the Commission. (Sec. 1031.) A charter-party carrier of passengers may operate between fixed termini or over a regular route, but it may not charge patrons on an individual fare basis. (Sec. 5401.) The Commission is required by law to issue, upon the payment of the requisite fee,^{3/} a charter-party carrier permit where the carrier is using only vehicles under 15-passenger seating capacity and under 7,000-pounds gross weight. (Sec. 5384(b).) No determination of public convenience and necessity is required. Most limousines are in this

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

^{3/} Section 5372.

category.^{4/} Thus, there is a group of permit holders who are authorized to render service on a charter-party basis to and from airports.^{5/} If permitted by local authorities to operate to and from an airport the permit holders possess indicia of Commission operating authority. The unsophisticated traveler is not usually aware of the types of operating authority granted by the Commission and the mode of charges thereunder.

Many limousine drivers, whether operating under passenger stage or charter-party carrier authority, are compensated solely on the basis of a percentage of the fares from the transportation they perform, plus tips.^{6/} Deadhead mileage situations are common. When a limousine driver transports a passenger or passengers to an airport and is confronted with a situation where he has received no reservations for the return trip, there is a strong temptation to solicit passengers for the return trip.^{7/} Such solicitation may be contrary to local airport regulations and not consonant with the operating authority of the limousine operator.

Staggered arrivals also contribute to the problem. For example, Limousine Operator A may have reservations from two customers arriving on a 9:15 a.m. flight at San Francisco International Airport

^{4/} Motor vehicles with a seating capacity of less than 5 persons, excluding the driver, are excluded from the Charter-Party Carrier of Passengers Act. (Secs. 5359, 5385.)

^{5/} This authorization only relates to authority required by the Public Utilities Code. A municipal airport owned and operated by a city in a proprietary capacity can regulate the access and conduct of limousine operators at the airport regardless of what Commission authority they hold. (City of Oakland v Burns, 46 Cal 2d 401; United States v Gray Line Tours of Charleston (4th Cir 1962) 311 F 2d 779.)

^{6/} The income of an owner-operator is also totally dependent on the fares generated plus tips.

^{7/} This temptation may also apply to salaried drivers. The record indicates that some drivers compensated solely on a percentage basis are permitted to keep all revenue not generated from company dispatched business.

destined for San Jose and two other customers arriving on a 10:00 a.m. flight with a similar destination. It is approximately 50 miles from the San Francisco International Airport to San Jose. It would require the use of two separate vehicles to give expeditious service to each group of customers. This is uneconomical for the operator and the driver if the passengers are to be transported on an individual fare basis.^{8/} When faced with this situation, Company A will sometimes contact one or more of its competitors to see if it faces a similar situation with respect to the two arrival times. If the two companies have similar situations the companies may swap customers so that Company A will pick up its customers and those of its competitors who arrive at 9:15 a.m. and the competitor will pick up both companies' customers who arrive at 10:00 a.m. However, if a swap is not arranged, Company A will usually send one limousine. The driver will meet the 9:15 a.m. customers, put their luggage in the trunk, and wait for the 10:00 a.m. customers. During this interval the temptation and opportunity are present to solicit other passengers.

Limousine operators also compete to a degree with taxicab operators. Taxicab operators are generally not subject to regulation by the Commission and are regulated by local authorities. (Secs. 226, 5353(g); but see Mammoth Stage Lines, Inc. v William Bouch (1971) 72 CPUC 471.) Limousine operators usually use unmarked, luxury type vehicles. One facet of their marketing operation is to emphasize the alleged prestige image in using such equipment. However, the record herein indicates that in portions of the San Francisco Peninsula and in the San Jose area limousine service is used as a

^{8/} It would be more economical to the operator and driver if both groups were transported on a charter basis. If one group were transported on a charter basis and the other on an individual fare basis an intermediate situation would be presented.

substitute for taxi service.^{9/} In some instances, the fares charged are the same. The record also indicates that Protestant Golden Sedan uses a San Jose taxicab operator to augment its service during peak periods.

Another factor in the complex situation is that while the protestants oppose the granting of passenger stage authority to the applicants, they desire, on occasion, to have some of applicants' limousines available to help in their overflow charter business.

There has developed at the San Francisco International Airport a going per capita rate to or from the airport and various points.^{10/} Knowledgeable travelers are aware of the rate. Charter-party carriers often use the rate. Protestant Golden Sedan uses such rate even though it is lower than its authorized passenger stage tariff rate.

Limousine service is not substantially competitive with regularly scheduled airport bus passenger stage service, which operates between or among fixed terminals. The competition in the limousine field occurs among operators holding various types of authority from this Commission, taxicabs, and so-called gypsies or pirates who do not operate under the color of any regulation.^{11/}

^{9/} It may be inferred from the record that there is inadequate taxi service from various areas to the San Francisco International and San Jose Airports. Some of the inadequacy may stem from the reluctance of local taxicab operators to go to an airport during peak hours because of deadhead mileage. They can make more revenue hauling local passengers during peak hours. A similar situation may obtain with respect to traffic to certain destinations originating at the airport.

^{10/} Airport suggests that on occasion charter rates have been divided among passengers. There is, of course, a difference between persons chartering a vehicle dividing up the cost among themselves (Cf., Clarence Crary (1966) 65 CPUC 545) and a charter-party carrier charging individual fares.

^{11/} The situation was commented on in the Proposed Report of Examiner Gilman in Case No. 9162. The Proposed Report has not been adopted by the Commission. (See Decision No. 80448, Interim Order, in Case No. 9162.)

Persons using limousine service look upon it either as a prestige luxury service or as a substitute taxi service.

With the foregoing background in mind we consider the two applications at bench.

Airport had a charter-party permit at the time of the hearings. Airport had fourteen regular drivers and two part-time ones. Airport owned four vehicles. Other vehicles used in its operation were owned by the drivers thereof. Airport had a master insurance policy which covered all vehicles used in its operations. Airport served approximately 130 corporations and businesses and 30 travel agencies. In 1970 it transported 10,106 passengers and in 1971 it transported 12,796 passengers.^{12/} Most of Airport's customers are in the south San Francisco Peninsula area. Airport would continue to operate in a manner substantially similar to its present operations if the requested authority is granted.

Tri-Terminal has a charter-party permit. Its operator owns five vehicles. Tri-Terminal uses owner-operators to supplement this equipment. It has a master insurance policy which covers all of its vehicles and drivers who drive for it. Most of its customers are in San Mateo County. It had at one time prior to the hearing a contract to transport airline crews to and from San Francisco International and Oakland Airports. Tri-Terminal has entered into agreements with various owner-operators for their participation in its operations if the requested authority is granted. If such authority is granted, Tri-Terminal would conduct operations substantially similar to those presently conducted.

^{12/} These figures include passengers not transported to or from airports. Also, the figures do not include passengers without reservations who are picked up by drivers. These passengers are not accounted for, which is a practice which should not be continued.

Protestants contend that the applications should be denied because a passenger stage certificate may not be granted which contemplates operations conducted by owner-operators, because Airport and Tri-Terminal do not have the requisite fitness for such certificate, and because public convenience and necessity do not require the granting of certificates to Airport and Tri-Terminal.

The material issues presented in these consolidated applications are: 1. May or should a certificate of public convenience and necessity to operate as a passenger stage corporation be granted to an applicant who plans to conduct a substantial portion of its operations under the certificate with owner-operator vehicles? 2. Do Airport and Tri-Terminal have the requisite fitness for the operating authority they seek herein? 3. Do public convenience and necessity require that Airport and Tri-Terminal or either of them be granted the requested operating authority?

There appears to be no constitutional or statutory prohibition against using owner-operators in connection with passenger stage operations. After enactment of the Auto Stage and Truck Transportation Act,^{13/} the Commission held as a matter of policy that the practice of passenger stage corporations of leasing cars and drivers on a percentage basis was not desirable from the standpoint of the public interest and did not result in the automobile transportation business being conducted on a stable basis. (In re Practices and Methods of Transportation Companies (1918) 15 CRC 587, 594.) The Commission also held that the leasing of equipment should not include the services of a driver or operator and drivers should have an employee relationship to the passenger stage corporation. (15 CRC at p. 595.) The Practices case and others decided about that time^{14/}

^{13/} Stats. 1917, Ch. 213.

^{14/} Application of Plaza Stages (1919) 16 CRC 766; Investigation of Gray (1922) 22 CRC 210, 211.

dealt with establishing orderly regulation for the benefit of the public, primarily with common carriers operating on fixed schedules. However, even in that early period there were deviations from the announced policy because of the exigencies of a situation. (In re Liberty Bus Line (1922) 22 CRC 358, 359.)

Much has happened in the passenger transportation industry since 1917.

"Precedents drawn from the days of travel by stage coach do not fit the conditions of travel today. The principle...does not change, but the things subject to the principle do change. They are whatever the needs of life in a developing civilization require them to be." (Cardozo, J., MacPherson v Buick Motor Co., 217 N.Y. 382, 391.)

General Order No. 98-A, which deals with passenger stage corporations and passenger charter-party carriers no longer contains the doctrine of the Practices case. It provides in part that:

"PART 12-LEASED EQUIPMENT

12.00. Drivers of Leased Equipment.

12.01. DRIVER TO BE UNDER CONTROL OF LESSEE.

Passenger stage corporations and passenger charter-party carriers shall not operate any passenger stage the possession and use of which has been acquired by virtue of a lease arrangement unless the driver thereof is under the complete supervision, direction and control of such lessee passenger stage corporation or passenger charter-party carrier."

On occasion, the Commission has permitted a passenger stage corporation to conduct operations with driver-owners. (Northgate Transit Co., Inc. (1967) 67 CPUC 340.) It is clear, however, that where a passenger stage corporation conducts operations using owner-operators, the certificate holder is responsible for the operations which must be in accordance with applicable statutes and General Orders. None of the responsibility can be shifted to the owner-operators. (Northgate Transit Co., Inc., supra; Transport Clearings Bay Area v Simmonds (1964) 226 CA 2d 405.)

With the foregoing in mind, we do not perceive why under the record herein the fact that Airport and Tri-Terminal proposed to conduct substantial portions of their operations with owner-operators in and of itself should preclude granting the requested authority. We are not here dealing with regularly scheduled intercity transportation upon which a great mass of people must depend. We are here dealing with a luxury type service, which in some instances is equivalent to substitute taxicab service. The record indicates that limousine services are not sustained by passenger stage operations to airports alone. It appears that a combination of such passenger stage and other charter-party business is necessary for the financial well being of the operator. If Airport and Tri-Terminal are otherwise qualified and public convenience and necessity so require, the fact that they propose to conduct a substantial part of their operations with owner-operators should not preclude granting of the applications.

We also note that the owner-operator controversy herein stems in part from a controversy among some of the parties. Airport and Tri-Terminal propose to compensate the owner-operators solely by paying them a percentage of the fares collected for the transportation they perform. Generally, the percentage is 50 percent. Protestant Golden Sedan attempts to operate with its own vehicles. It compensates its drivers solely on a percentage of revenues basis, which is 24 percent. Protestant National Executive Service (NES) operates its passenger stage service and most of its charter service with its own vehicles. It compensates its drivers on an hourly salary basis. It compensates owner-operators which it uses in charter-party service on a percentage basis, which is 90 percent. The present management of Golden Sedan took over the company shortly before the hearings. Golden Sedan previously utilized owner-operators in its operations. The new management instituted a policy of using its own limousines. This meant a decrease in income for owner-operators, who would not be using their

own limousines if they continued to work for Golden Sedan. Most of them went elsewhere. Many of the owner-operators are presently working for Airport or Tri-Terminal. It is not the function of the Commission to intervene in such an intra-industry dispute unless it involves matters which involve the public interest.

We turn now to the question of whether Airport and Tri-Terminal possess the requisite fitness for the operating authority which they seek. Protestants do not contend that Airport and Tri-Terminal do not have the ability to conduct the proposed operations. They do contend that Airport and Tri-Terminal are not fit to be granted such authority because they have illegally operated as passenger stage corporations without requisite authority. This charge is based upon the collection of individual fares by Airport and Tri-Terminal, which have only charter-party permits.

Airport and Tri-Terminal concede that they have charged individual fares for some transportation to and from airports. They contend it was necessary for them to do this because of the situation prevailing at the San Francisco International and San Jose Airports. They argue that they desire to conduct their operations in a legal manner and that is why they filed the applications here under consideration.

In considering the record in the light of the contentions of the parties we note that no party, applicant, or protestant called as a witness or produced evidence from a disinterested member of the general travelling public. The evidence adduced by the parties indicates that the competition among limousine operators and others for business to and from the San Francisco International and San Jose Airports is cutthroat. As indicated, a going rate known to knowledgeable travelers has developed between the airports and various points. Individual fares or charter rates may be collected depending on the situation. Some passenger stage corporations

and charter-party carriers do not act in accordance with their operating authority because of the cutthroat competition. Golden Sedan charges individual fares which are less than its authorized passenger stage tariff ones. Golden Sedan has a passenger charter-party permit. It charges, on occasion, charter rates for service to airports. Upon examination during the course of the hearing the managing officer of Golden Sedan was unable to explain how its charter rates were established on a vehicle mileage or time of use basis as required by Section 5401. Charter-party carriers, on occasion, charge individual fares. The record also indicates that NES is presently charging rates higher than its authorized ones and giving discounts not authorized by law.^{15/}

If the airport limousine industry in the San Francisco Bay Area were a well ordered one, the Commission might be more inclined to give more weight to the issue of the conduct of Airport and Tri-Terminal in charging, on occasion, individual fares for service rendered under their charter-party permit. However, with the chaotic state of the industry heretofore noted, we think the public interest would best be served by attempting to bring some order out of the chaos which exists and not focusing on transgressions brought about by the situation. While the Commission does not condone the acts of charging individual fares under charter-party authority, we find that these acts, under the circumstances, do not render Airport or Tri-Terminal unfit to hold passenger stage operating authority. In this situation it is more important to bring those who wish to operate lawfully under the umbrella of full regulation than it is to perpetuate an undesirable situation.

We turn now to the question of whether public convenience and necessity require that the requested operating authority be granted to Airport and Tri-Terminal or either of them.

^{15/} Compare Decision No. 76147 in Application No. 50494 with R.T. p. 243 and Ex. 6, App. D.

NES conducts its operations from Burlingame, which is approximately 5 miles from the San Francisco International Airport. It is approximately 40 miles from the San Jose Airport. NES is an affiliate of The Carey Corporation, which by itself and through affiliates and franchise operators provides chauffeur-driven limousine service in various places in the United States. It operated 10 vehicles on January 13, 1972. NES has operating authority to and from the airports here under consideration and the city and county of San Francisco. Airport and Tri-Terminal do not seek authority to serve San Francisco. In January of 1971 NES increased its rates so that it appears to be in a disadvantageous competitive position, with respect to Golden Sedan and various charter-party carriers. As indicated, Golden Sedan has needed to augment its equipment by using a local taxicab operator, on occasion, in order to conduct passenger stage operations.

It is clear that if the applications are denied the protestants are not in a position to serve the area involved without augmenting their equipment and personnel. It seems unlikely that they are in a position to do this to any substantial degree. Even if Airport and Tri-Terminal were denied the passenger stage operating authority they seek and, in an appropriate proceeding, were restrained from charging individual fares, they would still compete with protestants for passenger charter-party limousine business, including airport business. The reservoir of charter-party limousine operators in the area serves as deterrent to a passenger stage limousine operator from substantially adding to its operating equipment because there is an interrelationship between passenger stage and charter operations to the financial success of a limousine business. Denial of the requested operating authority will not improve the situation.

The Commission is confronted with a situation in which none of the parties is blameless. The Legislature has refused to act. The general rule is that common carrier operating authority will not

be granted on a showing which rests upon unlawful operations. (20th Century Delivery Service (1948) 48 CPUC 78, 84.) However, exceptions have been carved out of the rule when the public interest so requires. Fleetlines, Inc. (1952) 52 CPUC 286, 294; Inglewood City Lines (1943) 44 CRC 704, 707-08; T. W. Gilboy (1942) 44 CRC 457, 459; Circle Freight Lines (1950) 49 CRC 377, 384; N. A. Gotelli (1941) 43 CRC 491, 494; E. C. Coats (1923) 23 CRC 30; cf., Holiday Airlines (1966) 66 CPUC 537, 542-43; The Gray Line Tours Company (1973) Decision No. 81036, Attachment A, p. 37 fn. 14.) In the situation herein presented the Commission finds that the public interest would best be served if the applications were granted so that a substantial portion of the industry will be subject to regulation under the Public Utilities Act.

As conditions for granting passenger stage operating authority (Sec. 1032), the Commission will require Airport and Tri-Terminal (1) to have available, in the possession of each driver, a schedule of authorized rates which shall be adhered to and produced upon the request of any member of the public, (2) to have in each vehicle used in their operations, whether owned or leased, evidence of insurance as required by General Order No. 101-C, (3) to require drivers at all times to wear an appropriate tag or insignia indicating the name of the company for which they are performing service, and (4) other than as provided by law (Secs. 521-530) to provide no free or discounted transportation.

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

Findings of Fact

1. Passenger stage corporations generally charge individual fares. Passenger charter-party carriers are not authorized to charge individual fares. If permitted by local authorities, passenger stage corporations and passenger charter-party carriers may serve to and from airports if such service is within the scope of their operating authority granted by this Commission. Both types of carriers possess indicia of operating authority from the Commission. The unsophisticated traveler is not aware of the types of operating authority granted by the Commission and the mode of charges thereunder.

2. Many limousine drivers, whether operating under passenger stage or charter-party carrier authority, are compensated solely on the basis of a percentage of the fares from the transportation they perform, plus tips. Deadhead mileage situations are common. When a limousine driver transports a passenger or passengers to an airport and is confronted with a situation where he has received no reservations for the return trip, there is a strong temptation to solicit passengers for the return trip. Such solicitation may be contrary to local airport regulations and not consonant with the operating authority or filed tariff of the limousine operators.

3. Limousine operators also compete to a degree with taxicab operators. Taxicab operators are generally not subject to regulation by the Commission and are regulated by local authorities. Limousine operators usually use unmarked, luxury type vehicles. One facet of their marketing operation is to emphasize the alleged prestige image in using such equipment. In portions of the San Francisco Peninsula and in the San Jose area limousine service sometimes is used as a substitute for taxi service. In some instances, the fares charged are the same. Protestant Golden Sedan uses a San Jose taxicab operator to augment its passenger stage service during peak periods.

4. There has developed at the San Francisco International Airport a going per capita rate to or from the airport and various points. Knowledgeable travelers are aware of the rate. Charter-party carriers often use the rate. Protestant Golden Sedan uses such rate even though it is lower than its authorized passenger stage tariff rate.

5. Protestant NES charges rates higher than its authorized rates to various points and gives unauthorized discounts.

6. Limousine service is not substantially competitive with regularly scheduled airport bus passenger stage service, which operates between or among fixed terminals. The competition in the limousine field occurs among operators holding various types of authority from this Commission, taxicabs, and so called gypsies or pirates who do not operate under the color of any regulation. Persons using limousine service look upon it either as a prestige luxury service or as a substitute taxi service.

7. Airport has a charter-party permit. At the time of the hearings Airport had fourteen regular drivers and two part-time ones. Airport owned four vehicles. Other vehicles used in its operations were owned by the drivers thereof. Airport had a master insurance policy which covered all vehicles used in its operations. Airport served approximately 130 corporations and businesses and 30 travel agencies. In 1970 it transported 10,106 passengers and in 1971 it transported 12,796 passengers. Most of Airport's customers are in the South San Francisco Peninsula area. Airport would continue to operate in a manner substantially similar to its present operations if the requested authority is granted.

8. Tri-Terminal has a charter-party permit. Its operator owns five vehicles. Tri-Terminal uses owner-operators to supplement this equipment. It has a master insurance policy which covers all of its vehicles and drivers. Most of its customers are in San Mateo County. It had at one time prior to the hearing a contract to transport airline crews to and from San Francisco International and Oakland Airports. Tri-Terminal

has entered into agreements with various owner-operators for their participation in its operations if the requested authority is granted. If such authority is granted, Tri-Terminal would conduct operations substantially similar to those presently conducted.

9. The competition among limousine operators and others for business to and from the San Francisco International and San Jose Airports is cutthroat.

10. Because of the conditions prevailing in the airport limousine industry at the San Francisco International and San Jose Airports and the conduct of various protestants herein, the charging on occasion, of individual fares by Airport and Tri-Terminal for service under their charter-party permits is not sufficient to disqualify them, on the grounds of fitness, for the operating authority which they seek.

11. NES conducts its operations from Burlingame, which is approximately five miles from the San Francisco International Airport. It is approximately 40 miles from the San Jose Airport. NES is an affiliate of The Carey Corporation, which by itself and through affiliates and franchise operators provides chauffeur-driven limousine service in various places in the United States. It operated ten vehicles on January 13, 1972. NES has operating authority to and from the airports here under consideration and the City and County of San Francisco. Airport and Tri-Terminal do not seek authority to serve San Francisco. In January of 1971 NES increased its rates so that it is in a disadvantageous competitive position with respect to Golden Sedan and various charter-party carriers.

12. Golden Sedan has needed to augment its equipment by using a local taxicab operator on occasion in order to conduct passenger stage operations.

13. If the applications are denied the protestants are not in a position to serve the area involved without augmenting their equipment and personnel. It is unlikely that they are in a position

to do this to any substantial degree. Even if Airport and Tri-Terminal were denied the passenger stage operating authority they seek and, in an appropriate proceeding, were restrained from charging individual fares, they would still compete with protestants for passenger charter-party limousine business, including airport business. The reservoir of charter-party limousine operators in the area serves as deterrent to a passenger stage limousine operator from substantially adding to its operating equipment because there is an interrelationship between passenger stage and charter operations to the financial success of a limousine business.

14. The public interest would best be served if the applications of Airport and Tri-Terminal were granted so that a substantial portion of the airport limousine industry in the San Francisco Bay Area will be subject to regulation under the Public Utilities Act.

15. Airport and Tri-Terminal have the ability, including financial ability, to conduct the operations for which authority is sought herein.

16. Existing passenger stage corporations operating airport limousine service to the airports and in the areas here under consideration are not providing service to the satisfaction of the Commission.

17. Public convenience and necessity require that Airport and Tri-Terminal be granted certificates of public convenience and necessity to operate as passenger stage corporations as hereinafter provided.

18. We find with reasonable certainty that the project involved in this proceeding will not have a significant effect on the environment.

Conclusions of Law

1. There is no constitutional or statutory prohibition against the use of owner-operators in conducting passenger stage operations. Whether a passenger stage operation contemplating the use of owner-operators should be authorized is within the discretion of the Commission.

2. Airport and Tri-Terminal should be granted certificates of public convenience and necessity to operate as passenger stage corporations as herein provided.

John R. Zavaleta and Airport Limousine Service of Sunnyvale are 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. Certificates of public convenience and necessity are granted to John R. Zavaleta and Airport Limousine Service of Sunnyvale, a corporation, 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 set forth in Appendices A and B, attached hereto and made a part hereof.

2. In providing service pursuant to the authority granted by this order, applicants 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, applicants shall file a written acceptance of the certificates granted. Applicants are placed on notice that if they accept the certificates they 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, applicants 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) Applicants shall maintain their 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.

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.

William Lyons President
[Signature]
[Signature] Commissioners

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Appendix A

JOHN R. ZAVALA
Doing Business As

Original Page 1

TRI-TERMINAL LIMOUSINE SERVICE

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. 81684
dated JUL 31 1973, of the Public Utilities
Commission of the State of California, on Application
No. 52849.

TRI-TERMINAL LIMOUSINE SERVICE

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

John R. Zavaleta, by the certificate of public convenience and necessity granted by the decision noted in the margin, is authorized to transport passengers and their baggage between points in the Counties of Alameda, San Mateo, and Santa Clara, on the one hand, and the San Francisco International Airport, Oakland International Airport, and San Jose Municipal Airport, on the other hand, over the most appropriate routes subject to the following provisions:

- (a) No passengers shall be transported except those having point of origin or destination at one of the following places:
 - 1. San Francisco International Airport.
 - 2. Oakland International Airport.
 - 3. San Jose Municipal Airport.
- (b) 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 shall be operated.
- (c) Service shall be provided with vehicles seating no more than 9 passengers.

Issued by California Public Utilities Commission.

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Appendix B AIRPORT LIMOUSINE SERVICE OF SUNNYVALE 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. S1684
dated JUL 31 1973, of the Public Utilities
Commission of the State of California, on Application
No. 52862.

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Appendix B AIRPORT LIMOUSINE SERVICE OF SUNNYVALE Original Page 2

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

The certificate hereinafter noted supersedes all operative authority heretofore granted to Airport Limousine Service of Sunnyvale.

By the certificate of public convenience and necessity granted by the decision noted in the margin, Airport Limousine Service of Sunnyvale is authorized to transport passengers and baggage between points in the Counties of Santa Clara, San Mateo, Alameda, and Contra Costa, on the one hand, and the San Francisco International Airport, Oakland International Airport, and the San Jose Municipal Airport, on the other hand, over the most appropriate routes and subject to the following provisions:

- (a) No passengers shall be transported except those having point of origin or destination at one of the above specified airports.
- (b) 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.
- (c) Service shall be provided with vehicles seating no more than nine passengers, including the driver.

Issued by California Public Utilities Commission.

Decision No. 81684, Application No. 52862.