

Decision No. 83238

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
My Chauffeur, Inc., DBA My Chauffeur,
My Chauffeur Limousine Service, for
certificate of public convenience and
necessity to operate passenger, baggage
and property (Passenger Stage) service
between (I) Hollywood-Burbank Airport
and the following hotels (motels):
Holiday Inn, Woodland Hills, The Valley
Hilton, The Sheraton Universal, Beverly
Garland's Howard Johnson. (II) Los
Angeles International Airport and the
Ramada Inn, Beverly Hills and the
Beverly Hillcrest Hotel.

Application No. 54691
(Filed February 25, 1974;
amended March 19, 1974)

B. J. Rosa, Jr., for My Chauffeur, Inc., applicant.
Ivan McWhinney, Attorney at Law, for Airporttransit;
James H. Lyons, Attorney at Law, for Airport
Services, Inc.; and Stephen T. Parry, for The
Southern California Rapid Transit District;
protestants.
R. W. Russell, Department of Public Utilities and
Transportation, City of Los Angeles, interested
party.

O P I N I O N

This application requests a certificate of public convenience and necessity for the transportation of passengers and baggage between certain points in the Los Angeles area and either the Hollywood-Burbank Airport or Los Angeles International Airport. The routes were described in the application as follows:

Route I: Holiday Inn, Woodland Hills on Ventura Boulevard eastward to Desoto Street, then north to eastbound U.S. 101 to southbound U.S. 405 to Ventura Boulevard, west to the Valley Hilton. East to eastbound U.S. 101 to Vineland Boulevard, south to Beverly Garland's Howard Johnson, north to southbound U.S. 101 to Lankershim Boulevard to Sheraton Universal Hotel. North to Cahuenga, north to Burbank Boulevard, east to Hollywood Way, north to Hollywood-Burbank Airport.

Route II: Ramada Inn, Beverly Hills south on Beverly Drive to Pico Boulevard, west to the Beverly Hillcrest Hotel, west to Overland Boulevard, south to westbound U.S. 10 to southbound U.S. 405 to Sepulveda, south to 96th Street to World Way to Los Angeles International Airport.

The application was protested by two certificated carriers, Airporttransit and Airport Services, Inc., on the ground that the proposed operations were competitive with existing certificated routes.

A hearing was held in Los Angeles before Examiner Meaney on April 29 and 30, 1974.

At the hearing applicant moved to amend its application to add a third route which would have begun in the Montebello vicinity and would have extended west through Los Angeles and Culver City to the Palms area, and south from there on Interstate 405 and Sepulveda Boulevard to Los Angeles International Airport. This motion was denied on the ground that such a route, being a substantial departure from the routes for which notice was given in this application, was not the proper subject of an amendment.

Bernard J. Rosa, the sole owner of the applicant, testified in support of the application. He stated that his company owned four Checker limousines with an 11-passenger capacity and one with an 8-passenger capacity. These vehicles, he stated, are air-conditioned. The drivers receive special training before they are permitted to drive them with passengers aboard, and they must take and pass a Class II Department of Motor Vehicles test. The vehicles range in age from four to ten years.

The applicant holds Charter-Party Carrier Permit No. 460 which, according to Commission records, was effective March 19, 1974. By the applicant's own testimony, some of its operations actually began in December of 1973.

Mr. Rosa testified that the first routes were (1) from the Carriage Inn in Van Nuys to the Valley Hilton in Sherman Oaks, then to the Holiday Inn in Brentwood, and then to the Los Angeles International Airport, and (2) from the Ambassador and Wilshire Hyatt Hotels in Los Angeles to the Los Angeles International Airport. These, he stated, ran on a regular schedule but he maintained that although this was the case the operation was covered by its permit because the passengers were billed so that each passenger shared the total cost; thus, according to Mr. Rosa, the fares were not collected on an individual basis.

The operations gradually evolved to their present status. On about March 1 it started the Hollywood-Burbank route, which served the Holiday Inn in Woodland Hills, the Carriage Inn and the Valley Hilton in Sherman Oaks, the Sheraton Hotel at Universal City, and the Hollywood-Burbank Airport.

Thus, in addition to the routes applied for, it appears that the applicant maintained more or less regular service from the Valley Hilton in Sherman Oaks over Interstate 405 (through Sepulveda Canyon) to Los Angeles International. The stops on this particular route, for which no authority is sought, included the Bel Air Sands and the Holiday Inn in the Brentwood (West Los Angeles) area.

The applicant attached to the application a proposed schedule. Actually, this proposed schedule was part of a complete timetable already in use, which was introduced into evidence as Exhibit 1. This timetable shows a complete schedule of departures and arrivals from Los Angeles International and Hollywood-Burbank from various hotels (effective 2-17-74). The schedules need not be repeated here in full, but both of the routes show that morning, afternoon, and some evening service is available both Monday through Friday and on weekends. A summary of the various destinations is contained on the front page of the timetable, which reads in part as follows:

"MY CHAUFFEUR

"PROVIDING SCHEDULED LIMOUSINE SERVICE TO AND FROM
LOS ANGELES INTERNATIONAL AIRPORT AND HOLLYWOOD-
BURBANK AIRPORT SERVING THE FOLLOWING HOTELS

"LOS ANGELES INTERNATIONAL AIRPORT:

Mid-Wilshire:

The Ambassador Hotel and Health Spa
The Wilshire Hyatt House Hotel

Beverly Hills:

The Ramada Inn

Brentwood:

The Holiday Inn

West Los Angeles:

The Holiday Inn (Westwood)

San Fernando Valley:

The Valley Hilton
The Carriage Inn
The Holiday Inn (Woodland Hills)

"HOLLYWOOD-BURBANK AIRPORT:

San Fernando Valley:

The Holiday Inn (Woodland Hills)
The Valley Hilton
Beverly Garland's Howard Johnsons
The Sheraton Universal

"FOR RESERVATIONS
Call 344-7147"

The protestants pointed out that My Chauffeur, Inc. has no license from Los Angeles International Airport to make use of any of the bus stops. Mr. Rosa testified that applicant's LAX operation was "on call" and invited attention to the statement on the timetable regarding Los Angeles International Airport which reads "Please call the operator and ask for ZEnith 2-5728 so that MY CHAUFFEUR will know what terminal to pick you up at." However, it is noted that in this connection (1) specific departure times are listed from LAX on the timetable itself and (2) the testimony of witnesses (covered hereinafter in more detail) indicates that pickups were made from the airport without calling in advance.

Mr. Rosa stated that none of the runs were operating at a profit as of the date of the hearing and had never done so. He stated

that revenues are increasing; however, he did not furnish the Commission with any financial data or any traffic projections.

He stated regarding the proposed route to Los Angeles International that applicant wished to combine, over the one route, passenger stage passengers and charter-party passengers. Regarding this particular point, it would appear that what applicant really proposes is that some of the pickup and departure points be "flag stops". A charter-party operation, by its very nature, assumes that there is no regular route involved. The fact that a stop is "on call" rather than on a regular basis does not mean that the passengers at such a stop qualify as charter-party rather than passenger stage passengers.

Regarding the proposed fare structure, Mr. Rosa stated that it was developed on the basis of 22 cents per mile. He stated he gave the drivers verbal instructions to collect the entire fare from one passenger who in turn would collect certain amounts from the other passengers, so that the group of passengers would be paying one total for the trip.

The applicant presented two public witnesses in support of the application. Both apparently felt that the service was satisfactory.

A private investigator and a Commission staff investigator both testified as to the method of collecting fares. They both testified that on all occasions they paid the driver directly for the fare from a certain point and that the driver did not give them any information that the fares were to be paid on a charter-party basis. The private investigator testified that from Los Angeles International he did not have to make a call for the service but simply flagged down a cruising My Chauffeur vehicle and was accepted as a passenger. Both investigators stated that the drivers were courteous and the service was satisfactory. The private investigator asked the driver why My Chauffeur should charge \$4.00 for the same distance that Airporttransit charges \$2.75. The driver said that this was because of "personalized service". There was no detailed explanation of this.

Malcolm B. Dickerman, Airporttransit's general manager, testified for this protestant. He stated that for approximately 27 years Airporttransit had operated as a certificated carrier over a route similar to and serving some of the points that are proposed by the applicant in its Route II. He stated that the equipment, which consists of 45- or 33-passenger buses, is not fully loaded and that additional passengers can be handled.

He introduced an income statement showing that the operation was at a loss for 1973, although it was clear from cross-examination that out of the 27 years 1973 was the first operational loss. This, he said, was due to more hotels in the immediate perimeter of the airport. The witness was also of the opinion that he lost some passengers due to the applicant's operations, particularly in the

Wilshire area and the Ambassador Hotel. On cross-examination the witness admitted that within the last two months the company had had about 10 or 15 breakdowns; however, he maintained that 98 percent of the schedule was run on time. As to these breakdowns, the witness stated that these did not result in failure to maintain the service and the average delay was 20 minutes.

This witness was further asked why he protested the proposed Route I (the San Fernando Valley route to Hollywood-Burbank Airport) and he stated that, first, he believed there was no public need and, second, that the Hollywood-Burbank Airport serves as an "alternate field" when LAX is fogged in. He stated his company supplied 50 to 150 buses to handle such passengers when this occurs.

Donald W. Boyles, president of Airport Services, Inc., also testified in opposition to granting the application. He pointed out that a company such as his has invested in a considerable amount of fixed plant facilities such as those used for maintenance, and had contributed through The Joint Airline Ground Transportation Association to the construction and maintenance of the facilities for passenger stage corporations at Los Angeles International Airport (the ticket booths, etc.). He felt that granting a certificate to a carrier operating in the method of the applicant would be to fail to recognize the substantial investment of the existing certificated carriers in transporting a volume of passengers out of LAX to various points in the Los Angeles area, including fixed terminals where the volume of traffic justifies such terminals.

The applicant, in rebuttal, introduced Mr. Lawrence Salazar of Lockheed Air Terminal, Inc., who testified that the passengers handled there in March of 1974 had increased 15 percent over the same month for 1973, and that the year to date showed traffic that was 8 percent heavier than in 1973.

Discussion

The Commission believes that the applicant has failed to establish a public need for the proposed service.

As mentioned above, none of the routes operate at a profit, no passenger or revenue projections were offered, and the applicant's financial status is generally uncertain. While Mr. Rosa is apparently seeking government-guaranteed loans to tide his company over the period during which he will try to build up enough traffic to break even, no particular detail of this was furnished the Commission.

Since this application must be denied on the ground of a lack of showing of public need, it is not necessary to discuss in great detail the unlawfulness of the applicant's operations, but it is quite clear that the applicant, since the inception of its operations, has been running an unlawful passenger stage service and not a charter-party service. Exhibit 1, the applicant's timetable, is sufficient evidence in itself to make it abundantly clear that the applicant's vehicles were operating between fixed termini and over regular routes.

The parties strongly contested the implications of the method of collecting fares. The applicant maintained that the fares were collected on a per vehicle basis and that the total cost of the trip was calculated and then divided among the passengers. This assertion by the applicant was neither borne out by the fare schedule on Exhibit 1 nor by the testimony of the investigating witnesses. However, we would invite the applicant's attention to the fact that the method of collecting fares is only a test. That is, that if its operation is clearly between fixed termini and over regular routes, passenger stage service is established notwithstanding the fact that fares might be collected on some group basis. Failure to collect individual fares does not preclude a finding that an operation is of the passenger stage type. (Van Loben Sels v Smith (1958) 49 CPUC 290.)

The Commission is therefore of the opinion that public policy requires it to order the applicant to cease and desist from its unlawful passenger stage operations. The Commission wishes, however, to admonish the protestants herein (who requested such an order) and those in a similar position in the future that the Commission will not consider this case as a precedent establishing a standard practice of ordering applicants, in passenger stage application proceedings, to cease and desist from unlawful practices. The Commission is willing to proceed in this manner in this case only because of the obvious nature of the unlawful operations, and because the issue of unlawfulness was fully litigated at the hearing, the applicant being aware from the beginning of the hearing, if not earlier, that this issue was present.

For this reason, although the Commission believes that,

~~considering the facts in this case,~~ the protests herein may be regarded as constituting complaints within the meaning of Public Utilities Code Section 1034 (which provides that the Commission may order illegal passenger stage operations to cease, with or without notice), the Commission will look with disfavor upon requests for cease and desist orders in application proceedings such as this, and will normally require the filing of formal complaints (unless, of course, the Commission has issued its own order instituting an investigation of the practices in question). This has been the Commission's policy in the past, and the Commission sees no reason to depart from it at this time.

In regard to Route I, since there is no present carrier to Hollywood-Burbank Airport over this route, the Commission's order will be without prejudice to applicant reapplying for Route I or a similar route to the Hollywood-Burbank Airport, but this is not to be construed as meaning that the Commission will necessarily take favorable action upon such application.

Findings

1. Applicant possesses no authority from this Commission to operate any passenger stage routes.
2. Since approximately December of 1973 applicant has operated passenger stage routes as described in the foregoing opinion.
3. That route described as "Route II" affords substantial competition to an existing passenger stage company.
4. Applicant's passenger stage operations have operated at a loss.
5. Applicant has failed to establish that it possesses the necessary financial qualifications to establish any passenger stage routes at this time.
6. Applicant has failed to establish public need for either of the proposed routes.

Conclusions

1. The application should be denied.
2. Applicant should be ordered to cease and desist from operating unlawful passenger stage routes.

O R D E R

IT IS ORDERED that:

1. The application is denied.
2. Within five days after the effective date of this order, the applicant shall cease all operations between fixed termini and over regular routes, including those operations mentioned in the above opinion.

3. Applicant shall not commence or reinstitute any passenger stage routes without first obtaining authority to do so from this Commission.

4. The denial of this application is without prejudice to the applicant to renew its application for its proposed Route I or a similar route to the Hollywood-Burbank Airport.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 6th
day of AUGUST, 1974.

Vernon L. Stinson
President
William J. Jones
[Signature]
[Signature]
Commissioners

Commissioner D. W. Holmes, being necessarily absent, did not participate in the disposition of this proceeding.