

Decision No. 85084

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
A.C. Cal Spanish Tour Service, a
partnership consisting of
Victor Meneses and Graciela Arturi,
for an amendment to its certificate
of public convenience and necessity
issued under authority of Decision
No. 79688.

Application No. 55258
(Filed October 18, 1974;
amended February 28, 1975)

- William F. Alderman, Attorney at Law, for
A.C. Cal Spanish Tour Service, applicant.
Ivan McWhinney, Attorney at Law, for Airporttransit
of California, dba Airporter, protestant.
James B. Brasil, Attorney at Law, for the City
and County of San Francisco; and Richard M. Hannon,
Attorney at Law, for The Gray Line Inc.;
interested parties.
Masaru Matsumura, for the Commission staff.

O P I N I O N

Applicants are presently providing four sightseeing tours in 10-passenger vehicles under authority of a certificate granted by Decision No. 79688 dated February 8, 1972 in Application No. 52570. The tours are titled San Francisco By Day, San Francisco By Night, Muir Woods-Sausalito, and Monterey-Carmel-Santa Cruz Cross-Country. Applicants are a husband and wife partnership organized to provide the tours for foreign speaking groups, primarily from South America. Their certificate requires that all tour narration be in a foreign language and that tour size be limited to 10-passenger vehicles.

Applicants now request that they be authorized to transport their tour groups on a regular basis between the downtown hotels and the San Francisco International Airport, charging each passenger \$3.50 as a one-way fare. The proposed service would be operated on

an on-call basis and restricted to passengers having an advance reservation on one or more of applicants' tours. The individual one-way fare will be charged where the reservation includes five or more persons. The service will be operated for fewer than five, if \$17.50 (five fares) is paid for the use of the vehicle. The vehicles (11-passenger vans) used on the sightseeing tours will also provide the proposed service.

A protest was filed by Airporttransit of California, doing business as Airporter. A public hearing was scheduled and held in San Francisco on February 6, 1975. The application was submitted on written arguments filed on March 7, 1975. The Gray Line, Inc. did not protest because applicant would be using 10-passenger vehicles. The Commission staff and the city of San Francisco appeared as interested parties. Evidence was submitted by the applicants and by Airporttransit of California.

Applicant Meneses testified that he came to the United States from Argentina 12 years ago and has since developed a tour business with his wife for foreigners who do not speak English; he speaks fluent Spanish and Portuguese and specializes in serving groups who speak these languages. He testified that he operates with a single van of the two he owns and can lease a third vehicle if necessary. He stated that his business is expanding; 1974 was a very good year, and there is a need for someone who speaks their language to meet Spanish or South American visitors at the airport. He testified that the proposed service will increase the enjoyment of those who are transported, since they will be contacted as soon as they get off the aircraft and will be a part of the tour group until they are escorted to their return flight. He advised that many of his tourists have requested the proposed service since they speak no English and have difficulty with directions, locating baggage or transportation, or getting to the proper hotel; he now has to get the group together after they arrive at their hotels. He noted that

most foreign visitors have considerable luggage which his larger vehicles can carry with ease. He testified that he did not file a balance sheet or income statement because he is merely asking to have his certificate amended.

Six public witnesses testified for the applicant. Two were hotel managers, one was a tour guide, and there was testimony from an agent for an auto-leasing firm, a limousine operator, and an importer from South America. The hotel managers testified that it is convenient to have someone who speaks the tourists' language with every group. They advised that they use applicants' service and it is very good. The car-lease agent testified that applicants have the best credit rating and are authorized to lease three additional vans on request. The limousine operator testified that his vehicle is chartered by applicants to transport tour groups between San Francisco and the San Francisco International Airport. He advised that applicants' business is increasing. The importer and tour guide each testified regarding the necessity of having linguists with the tours. The manager of Airporter testified and provided nine exhibits. Exhibit 1 is a copy of Decision No. 77121 dated April 21, 1970 in Application No. 51730 which authorizes Airporter to transport passengers, luggage, and shipments of express between the city of San Francisco and San Francisco International Airport as Route No. 1. Exhibit 5 is a schedule of the service provided by Airporter. It indicates that buses leave every 15 minutes between 6:00 a.m. and 10:00 p.m., and every 30 minutes between 10:00 p.m. and midnight from the San Francisco Downtown Airport Terminal and from the San Francisco International Airport. Buses are scheduled between midnight and 6:00 a.m. according to flight arrivals or departures. The adult one-way fare is \$1.15 and \$.60 for children age 5 through 11 years. Children under 5 years are transported free when accompanied by an adult. Exhibit 4 is an equipment list which indicates that Airporter has 20 buses, with carrying capacities from 41 to 53 passengers.

Exhibits 2 and 3 are the balance sheet and income statement which show Airporter suffered a loss of \$52,830 during 1974. Airporter buses traveled 1,081,695 miles on 72,113 schedules (Exhibit 6) while carrying 1,636,334 passengers (Exhibit 7) at 48 percent capacity (Exhibit 8) during 1974. Exhibit 9 shows that schedules in each direction averaged one every 13 minutes during 1974. The witness testified that Airporter is operating at half of its capacity and cannot afford to allow others to siphon off prospective customers. He indicated that Airporter also provides tours and narration in foreign languages when it is necessary or requested in advance. Counsel for the city of San Francisco placed a copy of Section 1183^{1/} ✓ of the San Francisco Police Code in evidence as Exhibit 10. This statute prohibits the operation of vehicles carrying eight or more passengers in downtown San Francisco by public carriers. Counsel indicated that applicants will be violating this provision of the Police Code if they operate in San Francisco. Applicants and Airporter filed written arguments. The former argued that the proposed operation is specialized and different from service provided by the protestant. Also, that it is only a necessary extension of applicants' present authority. It was further argued that applicants' vehicles are classified as sightseeing - since they carry only tour

1/ "Section 1183: Operation of Interurban Passenger Motor Buses... within Certain Area Prohibited.

"All interurban motor buses, carrying 8 or more passengers... operating as a public carrier or public carriers, or carrying 8 or more passengers for hire,...are hereby prohibited from operating in the City and County of San Francisco in the area bounded by Chestnut Street to Baker Street, to and including Marina Boulevard to Laguna Street, to Bay Street, to and including Franklin Street, to Chestnut Street."

members - under Section 1165^{2/} of the San Francisco Police Code and are therefore not subject to Section 1183 of the Code. Protestant argued that although applicants indicate they will transport only those with advance reservations, there is nothing in the record to limit the term reservation and it could be oral and on a few minutes' notice. Protestant further argued that no evidence was presented at the hearing to establish that protestant's service is inadequate, and that the tourists have a language problem not a transportation problem. Protestant noted that applicant presented no financial evidence or estimated expense or income. Protestant argued that the last sentence of Section 1032 of the Public Utilities Code requires that the application be denied since protestant is already certificated in the area and providing satisfactory service.

Discussion

Applicants claim exemption from Section 1183 of the San Francisco Police Code as a "sightseeing bus" operator under Section 1165. Section 1166^{3/} defines an "interurban bus" and Section 1167 declares that sightseeing buses and interurban buses are "declared to be common carriers and subject to the regulations hereinafter prescribed". The regulations referred to are extensive and identical for both classes of bus. They require all operators to

2/ "Section 1165: 'Sightseeing Bus' Defined.

"A 'Sightseeing Bus' is hereby defined to be any motor-propelled passenger carrying vehicle for hire (other than a street car or street railroad bus), used in the conveyance, for hire, of tourists and sightseers, over the public street, for the purpose of a sightseeing trip or tour in the visiting and viewing of places of interest."

3/ "Section 1166. 'Interurban Bus' Defined.

"An 'Interurban Bus' is hereby defined to be a self-propelled motor vehicle, other than a street car or railway car or 'Jitney Bus' as defined in Section 1086 of this Chapter, used for transporting passengers for hire over and along the public streets between certain definite points or termini, one within and the other without the limits of the City and County of San Francisco.

have permits, bonds, insurance, drivers who are identified by badges, and to observe a series of other regulations which concern the operation, condition, and appearance of all vehicles in service. If these provisions of the Police Code were strictly enforced against parties holding operating authority from this Commission, the authority issued could be curtailed or rendered ineffective. It has been determined by the Legislature and the courts that state authority must prevail where it conflicts with a municipal code or ordinance. "In any conflict between action by a municipality and a lawful order of the Public Utilities Commission, the latter prevails." (Harbor Carriers, Inc. v City of Sausalito (1975) 46 CA (3) 773, 774.) The function of this Commission to provide for the public convenience cannot be curtailed by the provisions of a municipal code.

Applicants will provide a specialized service for foreign visitors who do not speak English. It is on-call, designed for groups of 5 or more, will only take passengers who hold an advance reservation on one of applicants' tours, and provides a luxury vehicle to transport a minimum of 5 riders from or to the airport. Protestant's service costs less and is available at 15 to 30 minute intervals. Protestant transports airline passengers who are usually in a hurry and not likely to patronize applicants' more expensive and less frequent service. A denial of this application will not benefit the protestant but may inconvenience applicants' customers.

As indicated above, the service proposed by applicants differs in detail and scope from protestant's, and since there is no indication that the latter intends to start a limousine service with Spanish-speaking drivers for tour groups originating in South or Central America, the last provision of Section 1032 is not applicable to this proceeding.

Findings

1. Applicants are certificated as sightseeing tour operators.
 2. They have applied for a certificate to authorize an on-call service to transport their tour groups between downtown San Francisco and the San Francisco International Airport.
 3. Airporttransit of California has filed a protest on the basis that it is presently providing adequate service 24 hours a day, seven days a week, and no additional operators are needed.
 4. Applicants will provide an on-call limousine service to tour groups at premium rates.
 5. Protestant operates a conventional service with regular buses out of designated bus stops on a published schedule.
 6. The service proposed by applicants is different from that operated by protestant.
 7. Protestant will not provide the service offered by applicants between San Francisco and the San Francisco International Airport.
 8. Applicants' proposed operation will not violate the San Francisco Police Code. ✓
 9. Applicants possess the ability, experience, equipment, and financial resources needed to perform the aforesaid service.
 10. Public convenience and necessity require that the service proposed by applicants be established.
 11. It is reasonably certain that the project involved in this proceeding will not have a significant effect on the environment.
- The Commission concludes that:
1. In any conflict between action by a municipality and a lawful order of the Public Utilities Commission, the latter prevails.
 2. The application should be granted. ✓

Victor Meneses and Graciela Arturi 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. A certificate of public convenience and necessity is granted to Victor Meneses and Graciela Arturi, a partnership, authorizing them to operate as a passenger stage corporation, as defined in Section 226 of the Public Utilities Code, by transporting their tourist groups between the San Francisco International Airport and downtown San Francisco.
2. Appendix A of Decision No. 79688 is amended by incorporating First Revised Pages 2, 3, and 4 in revision of Original Pages 2, 3, and 4 and by adding Original Page 5.
3. 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 written acceptance of the certificate granted. Applicants are placed on notice that if they accept the

certificate they will be required, among other things, to comply with the safety rules administered by 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 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 12th day of NOVEMBER, 1975.

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President
[Handwritten signature]

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Commissioners

Commissioner Robert Batimovich, being necessarily absent, did not participate in the disposition of this proceeding.



Appendix A
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VICTOR MENESES AND GRACIELA ARTURI,
DBA
A. C. CAL SPANISH TOUR SERVICE

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Issued by California Public Utilities Commission.

*Added by Decision No. 85084, Application No. 55258.

Appendix A
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VICTOR MENESES AND GRACIELA ARTURI First Revised Page 3
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A. C. CAL SPANISH TOUR SERVICE Original Page 3

SECTION 1. General Authorizations, Restrictions,
Limitations, and Specifications.

Victor Meneses and Gracela Arturi, a partnership doing business as A. C. Cal Spanish Tour Service, is authorized to transport passengers between San Francisco, on the one hand, and the Counties of San Mateo, Alameda, Santa Cruz, Monterey, San Benito and Santa Clara, on the other hand, and *to transport passengers and their baggage between San Francisco and San Francisco International Airport over and along the routes hereinafter described, subject, however, to the authority of this Commission to change or modify said routes at any time and subject to the following provisions:

- 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. All tour service herein authorized shall be limited to the transportation of round-trip passengers only.
- *d. Applicant shall not for its tour operations pick up or discharge passengers except within the City and County of San Francisco. This restriction shall not prevent stopovers for the purpose of permitting sightseeing passengers to visit various points of interest along the route.
- e. Narration on tours shall be conducted in foreign languages only.
- f. More than 10 fare-paying passengers may not be transported in any vehicle.
- g. The carrier is not authorized to use vehicles having a seating capacity of more than 11 persons in addition to the driver.

Issued by California Public Utilities Commission.

*Added by Decision No. 85084, Application No. 55258.

Appendix A
(Dec. 79688)

VICTOR MENESES AND GRACIELA ARTURI
DBA
A. C. CAL SPANISH TOUR SERVICE

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SECTION 1 General Authorizations, Restrictions,
Limitations, and Specifications. (Continued)

- *h. Service to or from the San Francisco International Airport shall be operated on an "on-call" basis subject to a minimum of five persons. The term "on-call" as used herein refers to service which is authorized to be rendered dependent on the demands of passengers. The tariffs and timetables shall show the conditions under which each authorized "on-call" service will be rendered.
- *i. The San Francisco International Airport pickup service herein authorized shall be limited to transportation of passengers having an advance reservation for one or more of applicants' sightseeing tours.
- *j. The transportation of passengers and their baggage shall be limited to foreign speaking visitors between San Francisco International Airport and the hotels in the City and County of San Francisco only.

Issued by California Public Utilities Commission.

*Added by Decision No. 85084, Application No. 55258.

SECTION 2. Route Descriptions.

Tour
No.

- 1 San Francisco By Day: Starting at passenger's hotel, to Civic Center Mission Dolores, Twin Peaks, Golden Gate Park, Japanese Tea Garden, Cliff House, Golden Gate Bridge, Vista Point (in Marin County), Palace of Fine Arts, scenic view of Alcatraz Island, Fisherman's Wharf, Broadway Street, waterfront and scenic view of Treasure Island, return to hotel.
- 2 Giant Trees Forest Muir Woods - Sausalito: Starting at passenger's hotel, via Route 101 across the Golden Gate Bridge, to Vista Point, through Marin County into Muir Woods, back through Sausalito, return to hotel.
- 3 San Francisco By Night: Starting at passenger's hotel to Chinatown, Telegraph Hill, across Bay Bridge, return to Broadway Street (2 hours for visiting, at passenger's expense), return to hotel.
- 4 Monterey - Carmel Santa Cruz Cross Country: Starting at passenger's hotel, along coast highway, to Santa Cruz (visit natural bridges, Playland theatre of Miss California Pageant); to Monterey-Carmel (visit 17-mile drive, movie stars homes, golf courses, etc.); return to San Francisco via Highway 101; return to hotel.

*Route
No.

1. San Francisco - San Francisco International Airport

Commencing from the San Francisco International Airport thence over the most appropriate streets and freeways to the passenger's hotel in San Francisco.

Issued by California Public Utilities Commission.

*Added by Decision No. 85084, Application No. 55258.