

Decision 84 11 071

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**ORIGINAL**

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
 TTMC, Inc. for certificate of public  
 convenience and necessity to operate  
 as a passenger stage corporation  
 between points in the Counties of  
 Santa Clara, Alameda, Contra Costa  
 and San Mateo and the San Francisco  
 International Airport using on-call  
 radio dispatched 10-14 passenger  
 minibuses.

Application 83-05-63  
 (Filed May 26, 1983)

In the Matter of the Application  
 of P.S.P.A. Corporation (dba  
 Airport Connection) and Airport  
 Limousine Service of Sunnyvale,  
 Inc., for authority to temporarily  
 suspend certain overlapping operating  
 authorities of PSC 1009 and PSC 899.

Application 83-07-08  
 (Filed July 6, 1983)

Clifford S. Orloff, for TTMC, Inc., P.S.P.A.  
 Corporation, and Airport Limousine Service  
 of Sunnyvale, Inc., applicants.

Clapp & Custer, by James S. Clapp, Attorney  
 at Law, Golden State Limousine, Inc.,  
 protestant.

Handler, Baker, Greene & Taylor, by Ara  
Shirinian, Attorney at Law, for SFO  
Airporter, Inc., interested party.

R. E. Douglas, and George Zaback, Jr., for  
 the Commission staff.

O P I N I O N

In Application (A.) 83-05-63, TTMC, Inc. (TTMC), a  
 California corporation, requests a certificate of public convenience  
 and necessity to establish, manage, and operate on-call (by  
 reservation only) airport transportation services between points in

the Counties of Alameda, Santa Clara, San Mateo, and Contra Costa on the one hand, and San Francisco International Airport (SFO) on the other hand, using radio dispatched 10-14 passenger minibuses.

A.83-05-63 was initially heard on August 8, 1983 in San Francisco before Administrative Law Judge (ALJ) Fraser. At that hearing A.83-07-83 was consolidated for hearing with A.83-05-63. The ALJ also incorporated the record in Case (C.) 82-11-03 (Golden State Limousine, Inc. vs Airport Corporation/Airport Limousine Service of Sunnyvale Inc.).<sup>1</sup> Further hearing in the consolidated proceedings was held on December 12, 1983 and the matters were submitted on briefs.

Procedural Background

Clifford Orloff (Orloff) is president of TTMC. The shares of TTMC are held by the following:

Clifford Orloff	36%
Frank Todaro	20%
Benjamin and Annette Orloff)	44%
Adam and Serena Orloff )	

Orloff is also president and principal shareholder of two corporations holding passenger stage certificates to operate airport service between SFO and the Counties of Santa Clara, Contra Costa, Alameda, and San Mateo, the same points proposed to be served by TTMC. These carriers are P.S.P.A. Corporation doing business as Airport Connection (PSPA) and Airport Limousine Service of Sunnyvale (ALSS). ALSS is the wholly owned subsidiary of Airport Connection Corporation (ACC). Orloff is the owner and president of ACC. In February 1982, Orloff, as president, filed for bankruptcy of ALSS, and on July 7, 1982 Orloff filed to include ACC in the ALSS bankruptcy proceeding. ✓

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<sup>1</sup> We take official notice of Decision (D.) 84-04-087 dated April 18, 1984 in C.82-11-03 and rely upon the findings in that decision for some of the background of Orloff's operations.

A.83-07-08, verified by Orloff, alleges the following:

"In 1981, Airport Connection Corporation (hereinafter 'ACC') was organized to market a full range of airport transportation services from VIP private limousine to shared-ride door-door service to scheduled minicoach shuttle services. It purchased PSPA and ALSS to achieve this goal. While the controlling interest of PSPA did not change, the change in control of ALSS to ACC was approved by the PUC in June, 1981. On July 1, 1981, PSPA's van service and ALSS's van service were merged into a single operation. While ACC intended to merge the ALSS and PSPA operating authorities into PSC 899, subject to PUC approval, several factors delayed this action. First, Jake Sellers, former owner of ALSS, disputed the sale of ALSS to ACC and breached the sale contract. Second, because of large losses and inflated assets on the ALSS balance sheet, as well as considerable litigation involving ALSS, ACC put ALSS under protection of Chapter 11 of the Federal Bankruptcy Act in February, 1982. After turning ALSS around to a positive cash flow, a reorganization plan for ALSS was submitted in late 1982 pending the resolution of current litigation, which is yet unsettled to date. Because of these difficulties with the acquisition of ALSS by ACC, ACC was also put into Chapter 11 in May, 1982."

\* \* \*

"All PSPA and ALSS services are currently performed according to the tariffs and timetables on file for ALSS. Unfortunately, the ALSS tariffs, timetables, and operating authorities are not exactly identical to those for PSPA. Because PSC 1009 of PSPA is essentially a subset of PSC 899 of ALSS, all current PSPA services can be performed under PSC 899 of ALSS, while certain door-door services of ALSS under PSC 899 cannot be done by PSPA under PSC 1009. Therefore, Applicants respectfully request that the Commission temporarily suspend PSC 1009 of PSPA and to permit those suspended PSPA services to be provided by ALSS under PSC 899.

"If the current reorganization plan that was submitted by ALSS to the Bankruptcy Court is approved, then PSPA will amend this application herein to request a permanent suspension of PSC 1009 in favor of continued van and limousine services under PSC 899 of ALSS."

A.83-07-08 asks that the ALSS operative right (PSC-1009) be suspended pending completion of the ALSS reorganization in bankruptcy, with all current PSPA and ALSS services to be continued by ALSS under PSC 899. It should be noted here that no authority was secured under Public Utilities (PU) Code § 851 to transfer the PSPA operative right to ACC, nor was any authority granted to merge PSPA's van service and ALSS's van service into a single operation. ✓

TMCC had applied for a charter-party permit which had not been issued at the time of hearing. That application (TCP-2272-P) was not granted as no evidence of the requisite public liability and property damage insurance was filed with the Commission.

Two protests were filed to A.83-05-63 (TMCC). One protestant withdrew on the first day of hearing after a stipulation was filed. The second protestant withdrew on the second day of hearing.

The evidence

Orloff and Jerry Freeze, the owner of 24-Hour Airport Express of Los Angeles (PSC-1043) (24-Hour), testified in support of the TTMC application.

Orloff testified that the operation of TTMC would be patterned after the operation of 24-Hour, which provides airport service to and from Los Angeles Metropolitan Airport (LAX). 24-Hour uses vans to perform its airport services. 24-Hour provides a door-to-door service on an on-call basis. It maintains a different type fare structure under which the charge for additional passengers in a group are assessed a lower fare than the first passenger. 24-Hour's service differs from the service of PSPA and ALSS in that PSPA and

ALSS operate primarily over fixed routes, and utilize individual fares.

Orloff further testified that TTMC will be affiliated with 24-Hour so that TTMC may use 24-Hour's computer reservation and scheduling service, so that passengers traveling between SFO and LAX may reserve ground transportation service at destination points before leaving the origin airport.

Orloff stated that the service to be offered by TTMC will differ from that offered by PSPA and ALSS in that TTMC will charge group fares rather than individual fares and TTMC will operate larger-sized equipment than PSPA and ALSS.

The TTMC application contains, as Exhibit D, a balance sheet as of December 31, 1983. That balance sheet shows assets of \$206,090, including \$56,600 cash, and \$117,000 in notes receivable from officers. The statement shows stockholder's equity of \$200,000. Orloff testified that TTMC has \$100,000 reserved for initial expenses and has six vans on hand to initiate service. Orloff was examined concerning the sources of the assets claimed by TTMC, and why those assets could not, or should not, be applied to Orloff's existing operations. The reference to "notes receivable from officers" in the amount of \$117,000 in the balance sheet appears questionable in light of testimony that Orloff is the principal owner of TTMC.

Orloff claimed that ALSS has certain assets but did not describe the type or amount of those assets. Orloff stated that a reorganization plan for ALSS has been submitted to the bankruptcy court which would not require liquidation of the assets of ALSS and ACC. At this time the reorganization plan has not been approved by the Court. Orloff stated that under the reorganization plan, ALSS would issue additional stock to pay off creditors. Orloff testified that he had "personally agreed to purchase anything that the rest of my shareholders don't want to take...my fiduciary responsibility

requires me to offer the shareholders of Airport Connection the opportunity to take a bigger piece of the airport limousine equity in order to get it out of bankruptcy. But I'm willing to do it myself." (Reporter's Transcript (RT) Volume II, page 83.) Orloff stated that he now owns 70% of that company.

At another place in the transcript (Vol. I, page 41), Orloff was asked whether the situation would be confused by his obtaining a new authority which overlaps his two existing authorities. He responded:

"No. We feel that the two existing companies are diseased companies, that it is not clear if they are going to be viable or not viable in the long run, not because of its business practices, but because of numerous lawsuits that have been raised against those companies due to its acquisition of Airport Limousine authorized by the Commission in 1981.

"And what we are attempting to do is to establish a different concept than Airport Connection and Airport Limousine were trying to do.

"It is a different service, a different entity, and to get a fresh start to accomplish what we think is a basic transportation service that is still in the public interest."

At Transcript Volume II, pages 88 and 89, Orloff testified with respect to the continued operations of ALSS as follows:

"TTMC feels that its unclear if and when Airport Limousine is going to emerge, and when it emerges, it is unclear if its going to be financially able to start to operate a new service.

"Now, we have already made a fairly large investment in TTMC, and we are reluctant to make that same investment in Airport Limousine Service because the viability of the corporation is so much in question right now. Especially, as you know, or as you may or may not know, the Airport is considering and has already notified the Commission of its intention to eliminate the limousine booth of Airport Limousine and the other limousine operators at the Airport in an

exchange for a single exclusive operator, and that--if that happens, that would essentially eliminate Airport Limousine from--as a viable operation.

"We would have to pick up the pieces and start in a new entity. Much better capitalized.

"Our purpose in making a separate application under a separate--us--because we could have made this application that TTMC made under the Airport Limousine name--our purpose of making it under TTMC was to have a clean, well-capitalized, fresh corporation to start the kind of service we feel there's public demand for."

Orloff acknowledged (TR Vol. II, page 86) that he now operates PSPA and ALSS as one entity. Therefore, references to ALSS in the quoted testimony apparently includes PSPA as well.

The owner-operator of 24-Hour testified in support of the TTMC application. He stated that 160,000 passengers were transported by his organization last year between five major airports and points in Los Angeles County. If TTMC receives the authority proposed, it will use 24-Hour's computerized reservation service for reservations for Los Angeles area air passengers arriving at San Francisco Bay Area airports. Computers would direct both the Bay Area and Los Angeles operation to ensure maximum efficiency.

No public witness testimony was offered in support of the TTMC application.

No testimony was presented by the Commission staff (staff), but it pointed out in brief and argument the difficulties it experiences with a carrier holding overlapping or dual operative authorities because it is not possible to determine which operative authority is being used to provide the authorized service. It is the staff's recommendation that the authority requested by TTMC be denied, and a single certificate be issued consolidating the authorities of PSPA and ALSS and issued in the name of Airport Limousine Service of Sunnyvale, Inc. It is also recommended that

revised tariffs and timetables be issued covering the combined operations. Also, ALSS should be permitted for convenience to mix scheduled and on-call operations providing the schedules are adhered to. ALSS should be authorized to deviate from the long-haul, short-haul provisions of the PU Code to avoid conflict with these provisions when mixing passengers.

Discussion

There are inherent conflicts in Orloff's testimony with respect to the future operations of ALSS and PSPA. In Orloff's own statements TTMC's proposed operations could be conducted by ALSS and/or PSPA, should further authority be granted to those entities, if the "existing companies were not diseased companies." Yet Orloff is apparently committed under the bankruptcy reorganization plan for ALSS and ACC to purchase sufficient additional capital stock in ALSS and/or ACC to pay off existing creditors and remove ALSS from bankruptcy. The record does not disclose the sources of funds Orloff would use for that purpose, nor the sources of funds to finance his share of TTMC.

It appears from Orloff's testimony that, while he may be committed in the bankruptcy proceeding to resurrect ALSS, his intention in A.83-05-63 is to start an entirely new operation (TTMC) and to abandon the ALSS and PSPA operations.

No evidence was presented to show that public convenience and necessity requires a third airport bus service under Orloff's control should PSPA and ALSS continue operations, inasmuch as Orloff indicated that PSPA and/or ALSS could perform the type of service proposed by TTMC if further authority was sought and granted to either PSPA or ALSS.

The evidence produced in support of A.83-05-63 clearly does not establish that public convenience and necessity required the proposed TTMC operations and the application should be denied. ✓



The record discloses that Orloff has consolidated the PSPA and ALSS operations and has applied the ALSS fare structure to PSPA operations without our authority.<sup>2</sup> Similarly, no authority was obtained by Orloff to transfer control of the PSPA operation to ACC, a bankrupt company. We should not grant the relief sought in A.83-07-08 until we are certain that shareholders of PSPA are protected, as assets of PSPA may have been illegally transferred to ACC, and thus may have become encumbered in the bankruptcy proceeding.

The staff recommendations that a single certificate be issued consolidating the PSPA and ALSS operations, cannot be lawfully accomplished in these proceedings, and should not be accomplished until the bankruptcy proceedings are concluded. Until then, we will direct PSPA and ALSS to operate within the lawful confines of their separate certificates or full revocation of operating authority.

Findings of Fact

1. Orloff controls PSPA and ALSS, both of which hold operative rights as a passenger stage corporation to serve SFO from and to points in Alameda, Contra Costa, San Mateo, and Santa Clara Counties under PSC-1009 and PSC-899.

2. ALSS and its parent ACC have filed for reorganization under Chapter 11 of the U.S. Bankruptcy Code.

3. Under the bankruptcy court order, limited operations are conducted by ALSS.

4. Orloff has consolidated the operations of ALSS and PSPA and has suspended PSPA's operation without authority of this Commission.

5. Orloff has transferred control of PSPA to ACC without Commission authority.

6. The proceedings in bankruptcy require the operative rights of PSPA and ALSS be kept intact for benefit of creditors.

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<sup>2</sup> The bankruptcy court has ordered the operative rights of PSPA and ALSS be kept separate.

7. Orloff has requested, inter alia, that PSPA's operative authority be transferred to ALSS and that PSPA's operative authority be suspended until ALSS's reorganization proceedings are terminated.

8. Consolidation of PSPA's authority with that of ALSS would remove the dual operative right problem raised by the staff.

9. Such consolidation at this time would not be in the public interest as ALSS's and PSPA's operative rights must be kept intact under the reorganization proceeding.

10. In A.83-05-63, TTMC seeks authority to provide a passenger stage service between SFO and counties now served by ALSS and PSPA.

11. Orloff controls TTMC.

12. Public convenience and necessity have not been shown with respect to the passenger operations proposed by TTMC. ✓

13. The granting of A.83-05-63 would create a new set of dual operative rights controlled by Orloff, which would not be in the public interest.

#### Conclusions of Law

1. Public convenience and necessity have not been shown with respect to the proposed operations of TTMC, and A.83-05-63 should be denied.

2. It would not be in the public interest at this time to consolidate the ALSS and PSPA operations or to temporarily suspend the PSPA operations. A.83-07-08 should be denied.

3. Orloff controls ALSS, PSPA, and ACC.

4. Orloff has consolidated the operative rights of PSPA and ALSS without authority under PU Code § 851. Such consolidation is void.

5. Control of PSPA was acquired by ACC without authority under PU Code § 854. Such control is void and of no effect. |

O R D E R

IT IS ORDERED that:

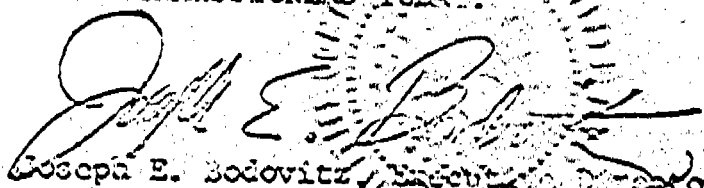
1. Application (A.) 83-05-63 is denied.
2. A.83-07-08 is denied.

This order becomes effective 30 days from today.

Dated NOV 7 1984, at San Francisco, California.

VICTOR CALVO  
PRISCILLA C. GREW  
DONALD VIAL  
WILLIAM T. BAGLEY  
Commissioners

I CERTIFY THAT THIS DECISION  
WAS APPROVED BY THE ABOVE  
COMMISSIONERS TODAY.

  
Joseph E. Bodovitz, Executive Director