

Decision 88 03 006 MAR 09 1988

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

BAY AREA SUPERSHUTTLE, INC.)
(PSC-1298),)

Complainant,)

vs.)

EDWARD CHUNN, CLIVE ANDREW DE PAULE,)
dba GOOD NEIGHBORS AIR BUS)
(PSC-1370),)

Defendant.)

Case 86-11-020
(Filed November 14, 1986)

In the Matter of the Application of)
Clive Andrew De Paule, dba GOOD)
NEIGHBORS AIR BUS, to amend and)
extend its operations as a)
passenger stage corporation under)
its certificate of Public)
Convenience and Necessity pursuant)
to the provisions of Section 1031,)
et seq. of the California Public)
Utilities Code, between points in)
the counties of San Francisco)
and San Mateo and the San Francisco)
International Airport.)

Application 86-12-011
(Filed December 4, 1986)

In the Matter of the Application of)
Clive Andrew De Paule and Edward)
Chunn, dba GOOD NEIGHBORS AIR BUS,)
(PSC-1370) for authority under)
Chapter 4, Articles V and VI of the)
Public Utilities Act to transfer all)
assets and operating authority to)
Mr. Clive Andrew De Paule dba GOOD)
NEIGHBORS AIR BUS, changing GOOD)
NEIGHBORS AIR BUS from a partnership)
to a sole owner.)

Application 87-02-010
(Filed February 4, 1987)

Arthur M. Mooney and Michael A. Mooney,
Attorneys at Law, for Clive Andrew De Paule,
applicant and defendant.
Armour, St. John, Wilcox, Goodin & Schlotz, by
Thomas J. MacBride, Jr., Attorney at Law,
for Bay Area SuperShuttle, Inc., complainant
and protestant.
Handler, Baker, Greene & Taylor, by Raymond A.
Greene, Jr., Attorney at Law, for SFO
Airporter, Inc., protestant.
Alok Kumar, for the Transportation Division.

O P I N I O N

Bay Area SuperShuttle, Inc. (SuperShuttle), complains that Edward Chunn and Clive Andrew De Paule, a partnership doing business as Good Neighbors Airport Shuttle (Good Neighbors), are exceeding their certificated passenger stage authority which allows them to transport passengers between the western area of San Francisco and the San Francisco International Airport (SFO) by unlawfully transporting passengers from SFO to hotels in downtown San Francisco, disguising the unlawful activity as being charter service. Complainant seeks a cease and desist order, penalties, and other relief. (Case (C.) 86-11-020.)

Good Neighbors seeks to extend its passenger stage corporation authority from the western districts of San Francisco (1) to the entire City and County of San Francisco and (2) to the following cities: Daly City, Colma, Pacifica, Brisbane, South San Francisco, San Bruno, Millbrae, Burlingame, Hillsborough, San Mateo, Belmont, Foster City, San Carlos, Redwood City, Atherton, Menlo Park and Palo Alto. (Application (A.) 86-12-011.)

Clive Andrew De Paul (De Paule) and Edward Chunn (Chunn) seek Commission approval of the transfer of all assets and operating authority of Good Neighbors from Chunn to De Paule, changing ownership of PSC-1370 from a partnership to a sole proprietorship. (A.87-02-010.)

Good Neighbors denies the allegations in SuperShuttle's complaint. SuperShuttle and SFO Airporter, Inc. (Airporter) protest any extension of Good Neighbors' operating authority. There is no opposition to the requested ownership change of Good Neighbors.

All three matters were heard on a consolidated record before Administrative Law Judge Orville I. Wright in San Francisco on June 15 and 16, 1987, and on August 11, 1987. The proceedings were submitted for decision upon the filing of concurrent briefs on October 19, 1987.

SuperShuttle v. Good Neighbors

SuperShuttle's evidence is that a private investigator in its employ went to SFO and sought transportation to hotels in downtown San Francisco, outside of defendant's authorized service area, from Good Neighbors' vans. On five of six occasions, the investigator succeeded in gaining passage to the unauthorized on-call points, paying an apparent per capita fare of \$7.50.

Defendant's response is that it follows the allegedly common practice of filling its vans with passengers at SFO on the authority of its charter party certificate, explaining:

"A charter is a group of people who want to go to a specific destination or destinations for a flat charter rate. Good Neighbors' charter fare for its 7-passenger vans between San Francisco and SFO is \$30.00, irrespective of number of passengers transported, and allows several stops. Hotels charge a \$6.00 commission for charters. If a charter is not from a hotel, this amount might be given as a discount to the charter group. Good Neighbors now has about 15 charter passengers north from SFO per day.

"A charter can be initiated at the airport by unrelated people at one stop. All shuttle carriers do this, including SuperShuttle when the witness was with it."

Several generic questions pertinent to airport access service arise:

1. May a unrelated group of people desiring transportation from SFO to San Francisco simply board a passing van and instantaneously become a charter party?
2. May a vehicle be chartered to transport passengers to different, individually desired destinations?
3. May an on-call carrier to SFO operate as a charter party carrier from SFO simply by dividing its charter party rate among a group of unrelated passengers?

Transportation Division staff has informed us that it expects to forward a major rulemaking proposal on airport access issues to the Commission at an early date. The generic questions posed by SuperShuttle's complaint and Good Neighbors' response are relevant to this proposal.

Accordingly, we will dismiss this complaint without prejudice and invite all parties to participate in the on-coming major rulemaking proceeding.

Expansion of Service Territory

Good Neighbors was granted on-call passenger stage authority by Decision (D.) 84-11-072, November 7, 1984, in A.84-05-025 to transport passengers and their baggage between SFO, on the one hand, and the western area of the City of San Francisco, on the other hand. Pursuant to this authority, applicant provides on-call, door-to-door, airport shuttle van service.

It also holds Charter Permit TCP-2644-P which was originally effective from May 21, 1984, to May 21, 1985, and has been renewed each year.

Good Neighbors seeks to extend its passenger stage corporation authority to (1) the entire City and County of San Francisco, and (2) an extensive area of San Mateo and Santa Clara counties, both north and south of SFO.

Good Neighbors' Evidence

Applicant points out that a SFO study shows that there are about 27,000,000 persons per year traveling through the airport. Of this number, approximately 40% are going to or from San Francisco and 20% are traveling to or from cities in San Mateo and Santa Clara counties. According to the study, 28% of the San Francisco and 60% of the San Mateo and Santa Clara counties traveling public to and from SFO are using private transportation. Applicant asserts that this represents in excess of 5,000,000 potential passengers per year from these areas and shows a public need for applicant's proposed service.

A Good Neighbors' dispatcher testified that he receives eight to 12 calls per shift day from potential customers outside of western San Francisco. Of these calls for airport service, at least one call every other day is from the Daly City area, and a number of calls are received from points near SFO. Applicant's other dispatchers report similar demands for service, according to the record.

Good Neighbors' owner testified that he commenced business in 1984 with one van and now operates with seven vans.

The record shows that applicant carried 9,729 passengers in 1985, 27,945 passengers in 1986, and an estimated 59,898 passengers in 1987.

Applicant presented two public witnesses who had used Good Neighbors' service several times. Each witness testified that applicant's shuttle was good, reliable and on time. They supported the application for extended service.

Good Neighbors notes that SuperShuttle is authorized to provide SFO on-call service from within the entire San Francisco boundaries and Arik Sharabi has recently been allowed to expand his service territory to include virtually all of San Francisco (D.87-08-034, August 26, 1987). Applicant argues that both

fairness and beneficial competition will result if it is allowed an equivalent extension of its service area.

Applicant's annual report for 1986 shows passenger revenues of \$155,383 and net income of \$16,635 for that year. The comparative balance sheet in this report shows net worth of \$10,273 and assets of \$16,300.

Protest of Airporter

Airporter conducts scheduled service from a number of San Francisco hotels to and from SFO. The nature of this service makes it apparent that Airporter cannot provide the door-to-door on-call service which Good Neighbors presently conducts and proposes to expand. As applicant's service is demand responsive, it also seems clear that it will compete incidentally, if at all, with Airporter's scheduled hotel pickups.

Staff Position

Staff's brief in this proceeding recommends that the Commission grant Good Neighbors' application to extend its service area to include all of the City and County of San Francisco, but deny, at this time, its request to serve SFO from points in San Mateo and Santa Clara counties.

Staff's review of the record persuades it that Good Neighbors is performing a good service at present and should be allowed to implement its plan to serve all of San Francisco. However, staff opposes extending applicant's service area to include points outside of San Francisco.

If peninsula service is authorized, reasons staff, applicant will either be using fewer vans to serve its authorized territory or it will be serving peninsula cities on a "when the van is available" basis. In either case, public convenience and necessity would not be served, staff concludes.

Protest of SuperShuttle

SuperShuttle contends that applicant should be denied any extension of its operating authority on the ground that it is unfit

as it already is unlawfully serving the entire City of San Francisco.

Protestant relies upon the evidence it presented in its complaint proceeding to support its position in the application proceeding.

We have found that the major complaint evidence raises questions best answered in the upcoming airport access case and have decided to dismiss the complaint without prejudice.

While there is at least one proven incident of Good Neighbors' carrying a single passenger from SFO to a point in San Francisco outside of its authorized service area, there is also substantial evidence that Good Neighbors does not intentionally provide unauthorized on-call service.

We think that the record in this case does not justify a finding that applicant is unfit to perform additional on-call service.

Further, we find that there is insufficient evidence in the record to determine whether or not SuperShuttle is meeting the transportation demands of the additional San Francisco areas sought to be served by Good Neighbors.

Discussion

Applicant's consistent record of increasing patronage within the past three years, as shown by its evidence in this proceeding, adequately demonstrates its ability to provide additional on-call service. Its financial position, showing no unpaid bills at the close of 1986 with assets of \$16,300, appears adequate, as well, in the light of its consistently increasing revenues.

The need for Good Neighbors' service to and from the extended areas is supported by general SFO statistics as to the number of potential passengers indicated by the number of private cars entering and departing SFO.

For San Francisco, need is shown by testimony and exhibits showing that Good Neighbors' receives, on average, from 10 to 20 requests per day for airport service from persons in the city but not within applicant's limited authorized western zone. This need is supported by a designed plan of service implementation which takes into account both passenger demand and supply capacity.

For points outside of San Francisco, the evidence is that only one or two requests per day are received, and these are from persons residing close by SFO. Further, applicant submits no service plan other than to make a van available to peninsula residents if and when required. We adopt staff's critique of applicant's peninsula proposal that such expansion, at this time, would not be in the public interest.

Transfer of Assets

De Paule and Chunn seek Commission approval of the transfer of all assets and operating authority of Good Neighbors from Chunn and De Paule, a partnership, to De Paule, an individual proprietorship (A.87-02-010).

There is no opposition to this application and staff recommends that it be approved.

Comments

Pursuant to the Commission's Rules of Practice and Procedure, the proposed decision of the assigned administrative law judge for this proceeding was filed with the Commission and distributed to the parties on February 4, 1988. Comments were filed by Bay Area SuperShuttle, Inc. on February 24, 1988, and Good Neighbors filed a timely response.

Our review of the filed comments and response does not persuade us that any change in the proposed decision is appropriate.

Findings of Fact

1. SuperShuttle complains that Good Neighbors is unlawfully transporting passengers from SFO to hotels in downtown San Francisco, disguising the unlawful activity as being charter service.

2. The questions raised by the complaint are in the purview of, and will be better answered in, the major industry-wide rulemaking proposal on airport access issues being forwarded to the Commission by Transportation Division staff at an early date.

3. Applicant's requested extension of its on-call service area to include all of the City and County of San Francisco is not adverse to the public interest.

4. Applicant's requested extension of its on-call service area to include cities in San Mateo and Santa Clara counties has not been shown to meet the requirements of public convenience and necessity.

5. Good Neighbors has the ability and financial resources to provide on-call service between all of San Francisco and SFO.

6. The record shows that Airporter and SuperShuttle will not provide on-call service, as proposed by applicant, to the satisfaction of the Commission.

7. De Paule and Chunn seek Commission approval of the transfer of all assets and operating authority of Good Neighbors from De Paule and Chunn, a partnership, to De Paule, an individual proprietorship. There is no opposition to this application.

8. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

Conclusions of Law

1. C.86-11-020 should be dismissed without prejudice.

2. The parties in C.86-11-020 are invited to participate in the on-coming rulemaking proceeding.

3. A.87-02-010 and A.86-12-011 are granted as set forth in the following order.

Only the amount paid to the State for operative rights may be used in rate fixing. The State may grant any number of rights and may cancel or modify the monopoly feature of these rights at any time.

ORDER

IT IS ORDERED that:

1. C.86-11-020 is dismissed without prejudice.
2. The certificate of public convenience and necessity issued by the Commission in D.84-11-072 is amended as set forth in the attached Appendix PSC-1370.
3. Applicant shall:
 - a. File a written acceptance of this certificate within 30 days after this order is effective.
 - b. Establish the authorized service and file tariffs and timetables within 120 days after this order is effective.
 - c. State in his tariffs and timetables when service will start; allow at least 10 days' notice to the Commission; and make timetables and tariffs effective 10 or more days after this order is effective.
 - d. Comply with General Orders Series 79, 98, 101, and 104, and the California Highway Patrol safety rules.
 - e. Maintain accounting records in conformity with the Uniform System of Accounts.
 - f. Remit to the Commission the Transportation Reimbursement Fee required by PU Code § 403 when notified by mail to do so.

4. Prior to initiating service to any airport, applicant shall notify the airport authority involved. This certificate does not authorize the holder to conduct any operations on the property of or into any airport unless such operation is authorized by both this Commission and the airport authority involved.

5. Applicant is authorized to begin operations on the date that the Executive Director mails a notice to applicant that he has evidence of insurance on file with the Commission and that the California Highway Patrol has approved the use of applicant's vehicles for service.

6. The application is granted as set forth above.
This order becomes effective 30 days from today.

Dated MAR 09 1988, at San Francisco, California.

STANLEY W. HULETT
President

DONALD VIAL
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

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

Victor Weisser
Victor Weisser, Executive Director

CERTIFICATE
OF
PUBLIC CONVENIENCE AND NECESSITY
AS A PASSENGER STAGE CORPORATION

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

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 88 03 006, dated MAR 09 1988,
of the Public Utilities Commission of the State of California in
Application 86-12-011.

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Issued by California Public Utilities Commission.

Decision 88 03 006, Application 86-12-011.

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

Clive Andrew De Paule, by the certificate of public convenience and necessity granted by the decision noted in the margin, is authorized to transport passengers and baggage between points in the City and County of San Francisco, on the one hand, and San Francisco International Airport (SFO) on the other hand, over and along the routes described, subject, however, to the authority of this Commission to change or modify the 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. No passengers shall be transported except those having point of origin or destination at SFO.
- d. This certificate does not authorize the holder to conduct any operations on the property of or into any airport unless such operation is authorized by both this Commission and the airport authority involved.
- e. Service shall be provided on a seven-day per week on-call basis.

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SECTION 2. ROUTE DESCRIPTIONS.

Route 1 - San Francisco to SFO

Commencing at any point anywhere within the City and County of San Francisco then via the most appropriate streets and highways to SFO.

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Attorneys at Law, for Clive Andrew De Paule,
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This order becomes effective 30 days from today.

Dated _____, at San Francisco, California.