

MAY 11 1988

5/11/88
Mailed

Decision 88 05 023 MAY 11 1988

ORIGINAL MAY 11 1988

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
HASSAN M. HOSSEINI, dba SUPER)
EXPRESS, for an extension of service)
by adding additional territory in)
Los Angeles to an existing one.)

Application 87-08-045
(Filed August 26, 1987)

Hassan Hosseini, for himself, applicant.
K. D. Walpert, for City of Los Angeles
Department of Transportation,
protestant.
Steve Kirby, Attorney at Law, for
SuperShuttle, interested party.
Vijay Khawani, for the Transportation
Division.

O P I N I O N

Applicant Hassan M. Hosseini, dba Super Express, seeks a certificate of public convenience and necessity (CPC&N) under Public Utilities (PU) Code Section 1031, et seq. to expand the service area in Los Angeles under his existing passenger stage carrier (PSC) authority (PSC 1388).

Applicant was granted a CPC&N by Decision (D.) 85-07-073 in Application 84-10-026 on July 10, 1985 to transport passengers and their baggage between the Southbay area of Los Angeles, on the one hand, and the Los Angeles International Airport (LAX), on the other hand. Applicant presently provides service within an area bounded as follows:

On the north by LAX.

On the northeast by the San Diego Freeway (I-405).

On the east by the Harbor Freeway (I-110).

On the south by the Pacific Ocean.

On the west by the Pacific Ocean.

Applicant now desires to include the following boundaries:

1. On the north by Sunset Boulevard.
2. On the northeast by the Hollywood Freeway (I-101) and the Santa Ana Freeway (I-5).
3. On the east by the San Gabriel River.
4. On the south by the Pacific Ocean.
5. On the west by the Pacific Ocean.

The proposed extended service area encompasses an area approximately three times applicant's present service area. Notice of filing of the application appeared in the Commission's Daily Calendar dated August 28, 1987. Protest to the application was filed by the City of Los Angeles Department of Transportation (City).

Following notice, a public hearing was held before Administrative Law Judge William A. Turkish on December 21, 1987, and the matter was submitted upon receipt of concurrent briefs to be submitted 15 days after the filing of the transcript in the hearing. The transcript was filed on January 25, 1988 and concurrent briefs were received on February 9, 1988. The matter is thus deemed submitted as of the latter date.

Testimony in support of the application was received from applicant. Testimony on behalf of City was presented by David Hallstrand, director of public relations and field supervisor for United Independent Taxi Service; Kristin Dickey, a taxicab operator and member of the board of directors of Independent Cab Company; and Edward DePriest and Dan Brasher, employees of SuperShuttle of Los Angeles.

In his testimony, applicant stated he began his present service in early 1986 with one van; in the past two years, he has added seven vans. Applicant, a holder of charter-party carrier (TCP) authority (TCP-3924-P) from the Commission, has received many requests for PSC service to LAX from his TCP customers who reside

in areas outside his PSC service area. From these requests, applicant has determined that there is a large demand for service from the proposed service area to LAX. The TCP customers would prefer the lower fare charged by applicant for the PSC service rather than the higher fare charged for his TCP service. Thus applicant believes that his TCP customers can be better served if he can also provide PSC service in the areas where they reside. Members of the public have indicated that they were not satisfied with the existing shuttle services because of long waiting times at the airport. In addition, other shuttle services usually try to carry three or four parties at the same time. Applicant has a policy of carrying no more than two passengers. Practically every passenger transported by applicant has complained about other shuttle van services that they have used before.

Applicant also testified that, within 60 days, he will be adding two vans to his current fleet of eight vans. If the requested authority is granted, more vans will be added as demand dictates.

Applicant's headquarters is located in Inglewood, California. There are facilities for changing oil and filters and for standard routine-type maintenance at that location. Major maintenance is done by outside contract vendors.

Other companies presently serving the proposed service area are Celebrity, SuperShuttle, and Coast Shuttle. Applicant believes Green Flag also serves at least part of the area. He is familiar with AM/PM Airporter Service, but, as far as he knows, it is only operating in Orange County. He believes that passengers within the proposed service area will be diverted from those companies to him. ✓

In his projected annual income statement accompanying his application, applicant used the LAX-downtown Los Angeles fare of \$10 per person as a basis for arriving at the indicated figures.

Under cross-examination, applicant acknowledged that the projected income statement submitted with the application contained a number of discrepancies and offered to replace it with a more accurate projected income statement as a late-filed exhibit. Applicant subsequently submitted this late-filed exhibit.

In response to further questioning, applicant stated that he served the City of Inglewood on his TCP certificate and not under his PSC. Questioned as to the need for his service in the proposed service area, applicant stated that he based his opinion on the fact that there is a public need in the proposed service area because approximately 40 to 45% of his income comes from charter-party service from areas outside of his present PSC service. He could offer no witnesses or studies to show a public need for his proposed service.

When questioned as to whether he took into account other means of transportation available to the public at the airport aside from passenger stage carriers, applicant stated he is aware of cab service and various types of public transportation services, but, in his opinion, the quality of the alternatives is not as good as the service he provides.

When questioned with respect to the training given his drivers, applicant stated that when drivers are hired, they are told exactly what the authorized territories are, and are told not to go beyond them. The drivers are controlled by the company's dispatcher. He acknowledged that during the period from November 3 to November 6, 1987, he had been in continuous operation and that he did not know he was under suspension by the Commission for lack of proof of insurance during those four days. He testified that, had he known, he would have suspended operations.

Upon questioning by counsel for SuperShuttle, applicant acknowledged that he did not provide prior notice to any

competitors who would be affected by his rate reduction.¹ Applicant indicated that after having a telephone conversation with a Commission staff member, he was left with the impression that it was permissible for him to reduce his rates. He further acknowledged that there have been instances where people have boarded his vans and then submitted SuperShuttle vouchers at the end of their trip. When questioned as to his ability to pay approximately \$25,000 in accrued premium payments for workers' compensation insurance, applicant indicated that although he has only \$8,000 in the bank, he has a line of credit with his bank as well as sources from which he can secure sufficient credit.

David Hallstrand, called as a witness by City, testified that although he was employed as director of public relations and field supervisor for United Independent Taxi Drivers, Inc., he was testifying as an individual. He testified that there is a holding lot at LAX for taxicabs awaiting passenger pickup at the various terminals, and that there are normally approximately 100 to 200 cabs in the holding lot. He has observed a high degree of traffic congestion at LAX and has seen vehicles double and triple park at the various terminals. He observed many passengers walking into the roadway and around vehicles to get into buses and shuttle vans because there was no curb space to accommodate all the passenger vans. Congestion is a normal occurrence at the LAX bus stops. He also believes there is sufficient van service at LAX to meet the needs of the public.

To his knowledge, drivers for United Independent Taxi have suffered a decrease in income since the expansion of PSC certificates granted by the Commission. Similarly, City has also suffered reduced revenue from taxes because United's revenues have been reduced. He does not believe that there is a need for

¹ Applicant charged a \$14.00 fare to Torrance, in lieu of the \$15.00 charge provided in his tariffs.

additional van services throughout the County of Los Angeles for transportation to and from LAX.

Kristen Dickey, a taxicab owner-operator and a member of the board of directors of Independent Cab Company, called as a witness by City, testified as to the congestion at LAX resulting from the sheer number of passenger stage vans who often times have to double and triple park while waiting for passengers. She has observed van drivers double park their vans and leave the vans to go into the terminal in search of passengers. As a taxicab driver, she is against this sort of conduct because taxicab drivers are not allowed to leave their cabs to search for passengers. In her opinion, there are a sufficient number of taxicabs to meet the demand for transportation services at LAX. She also feels there are more than enough vans providing service at LAX. In her opinion, expanding the authority sought by applicant will add to the congestion at the bus stops at LAX.

Edward DePriest, an employee of SuperShuttle of Los Angeles, called as a witness by City, testified that he is employed by SuperShuttle as a loss prevention observer and is responsible for seeing that SuperShuttle drivers are reporting their revenue, driving in a safe manner, and following company policies. As part of his duties, and at the request of his company, he has made an investigation regarding applicant's service. On October 14, 1987, he stood at the bus curb at LAX waiting for one of applicant's vans. He boarded the van and asked to be taken to the Queen Mary located in Long Beach. There was one other passenger aboard the van who was dropped off first in the City of Lomita. After arriving in Long Beach, he paid \$15 for the ride and was given a receipt, which was submitted into evidence. In his opinion, he was receiving PSC service rather than TCP service because there was another passenger on board whose destination was different from his. It is his understanding that in a charter-party operation, there can be only one destination for all passengers.

On October 20, 1987, he had occasion to ride another van operated by applicant. He boarded applicant's van and observed one other male passenger on board. This passenger was taken to a destination in the City of Torrance. The witness was then transported from that point to the Hyatt Regency Hotel in Long Beach, where he was charged a fee of \$25. He was given a receipt for that service which was submitted into evidence. On October 21, 1987, the witness rode on one of applicant's vans on two occasions. On the first occasion, he was picked up at a location in Hawthorne, taken to LAX, and charged \$15 for the trip. He was the only passenger on that trip. He was issued a receipt for the fare which was submitted into evidence. On the second trip, he was picked up at Terminal 7 at LAX by one of applicant's vans. There was a woman passenger on board when he boarded and she was taken to a destination in Manhattan Beach. The driver then drove him to his destination in Hawthorne. He was issued a receipt for the \$8.00 fare, which was submitted into evidence.

On November 9, 1987, while conducting a surveillance of applicant's vans, he followed one of applicant's vans with three passengers on board. He observed the van dropping two passengers off at a shopping center in Torrance, then observed the van proceed on the Harbor Freeway to the 405 Freeway and onto the Long Beach Freeway. The van got off the freeway at Pacific Coast Highway in Long Beach, heading eastbound. Apparently the driver noticed he was being followed because he stopped his vehicle, leaving the passengers on board, and approached DePriest, demanding to know what he wanted of him. DePriest then departed the scene.

Dan Brasher, a loss prevention employee of SuperShuttle, called as a witness by City, testified that on October 20, 1987, he was picked up by one of applicant's vans at the Catalina terminal in San Pedro and transported to LAX. He paid \$14 for the trip for which he received a receipt, which was submitted into evidence. In his opinion, this terminal is not within applicant's authorized

service area. On October 21, the witness was picked up by one of applicant's vans at a restaurant in the City of Hawthorne and transported to LAX. He paid a fare of \$14 and received a receipt, which was submitted into evidence. To the best of the witness's knowledge, the location where he was picked up is outside applicant's certificated area. Brasher accompanied witness DePriest on November 9, 1987 on his surveillance of one of applicant's vans; he corroborated DePriest's testimony.

Discussion

Two major issues present themselves for discussion in this application. The first issue is whether public convenience and necessity have been sufficiently demonstrated to warrant the granting of the requested authority. The second major issue relates to the fitness of applicant to receive additional operating authority.

In granting a CPC&N, the Commission considers several factors, the greatest of which is evidence that public convenience and necessity exist for such service. Written instructions from the Commission staff to all applicants for passenger stage certificates state that a showing must be made of the public need for the proposed service. Applicants are instructed that this showing should be more than simply the applicant's idea that there might be or that there must be such need. The showing must be based on either a market survey or a study which has been made of demand for the particular service proposed by the applicants. To demonstrate such need for service, applicants should present such surveys in evidence along with potential customers as witnesses. A mere desire of an operator to enter the passenger stage business, or extend his existing passenger stage authority, is by itself insufficient to warrant the granting of a certificate. Applicant had the burden to present some evidence in the hearing room of the need for his proposed service other than his opinion that there is a need for such service in the proposed service area. In this

instance, applicant has failed to demonstrate any public demand for his proposed service and, absent such showing, we must conclude that applicant has not met his burden of proof which is essential to the granting of the certificate he seeks. We will thus deny the application.

With respect to the issue of fitness, the evidence leads us to conclude that applicant has been providing passenger stage service to areas outside of his existing service area. While applicant testified that this is not a policy of his company, his attempt to lay the blame on a few drivers, whom he claims disregarded company policy, is not convincing. The Commission cannot permit violations of this nature to continue. To do so would be an encouragement to all passenger stage corporations to violate the terms of their certificates. In D.85-10-025, a decision involving a complaint, the Commission found violations of its certificate by Wilmington Cab Company of California, Inc., dba The SuperShuttle. In that decision, we stated that the range of sanctions available to us to address violations extends from no sanctions at all to revocation of authority. We stated that we did not have present authority to impose a fine on Wilmington Cab for its past violations. However, we stated the PU Code authorizes us to seek the imposition of civil penalties in the Superior Court. Section 2107 of the PU Code allows us to seek from \$500 to \$2,000 per offense in civil penalties and Section 2104 authorizes the Commission to send its attorney to Superior Court to seek the imposition of the above penalties.

Since the evidence of illegal operation by applicant was brought to light in an application rather than in a complaint action, we will not impose any monetary sanctions against applicant at this time. However, applicant is put on notice that we will not hesitate to initiate appropriate proceedings to impose monetary sanctions if he continues the practice of operating in areas outside of his certificated areas.

If applicant can demonstrate at a later time by a showing of evidence that public need exists for his services in any proposed new service area, he may file an application for consideration.

Comments to the proposed decision were received from applicant. We have reviewed the comments, but they do not persuade us to change this decision in any way.

Findings of Fact

- 1. Applicant has not demonstrated public convenience and necessity for the proposed service.
- 2. Applicant has violated his operating authority by providing service to points outside his certificated service area.

Conclusion of Law

A.87-08-045 should be denied inasmuch as there has been no showing of public need and necessity. ✓

ORDER

IT IS ORDERED that Application 87-08-045 is denied.

This order becomes effective 30 days from today.

Dated MAY 11 1988, at San Francisco, California.

STANLEY W. HULETT
President

DONALD VIAL
FREDERICK R. DUDA
C. MITCHELL WILK
JOHN B. OHEANIAN
Commissioners

I CERTIFY THAT THIS DECISION
WAS MADE BY THE ABOVE
COMMISSIONERS

Victor Weisner
Victor Weisner, Executive Director

ALJ/WAT/ck/ra

Decision _____

(Mailed 3/31/88)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
HASSAN M. HOSSEINI, dba SUPER)
EXPRESS, for an extension of service)
by adding additional territory in)
Los Angeles to an existing one.)

Application 87-08-045
(Filed August 26, 1987)

Hassan Hosseini, for himself, applicant.
K. D. Walpert, for City of Los Angeles
Department of Transportation,
protestant.
Steve Kirby, Attorney at Law, for
SuperShuttle, interested party.
Vitay Khawani, for the Transportation
Division.

O P I N I O N

Applicant Hassan M. Hosseini, dba Super Express, seeks a certificate of public convenience and necessity (CPC&N) under Public Utilities (PU) Code Section 1031, et seq. to expand the service area in Los Angeles under his existing passenger stage carrier (PSC) authority (PSC 1388).

Applicant was granted a CPC&N by Decision (D.) 85-07-073 in Application 84-10-026 on July 10, 1985 to transport passengers, their baggage, and express between the Southbay area of Los Angeles, on the one hand, and the Los Angeles International Airport (LAX), on the other hand. Applicant presently provides service within an area bounded as follows:

- On the north by LAX.
- On the northeast by the San Diego Freeway (I-405).
- On the east by the Harbor Freeway (I-110).
- On the south by the Pacific Ocean.
- On the west by the Pacific Ocean.

in areas outside his PSC service area. From these requests, applicant has determined that there is a large demand for service from the proposed service area to LAX. The TCP customers would prefer the lower fare charged by applicant for the PSC service rather than the higher fare charged for his TCP service. Thus applicant believes that his TCP customers can be better served if he can also provide PSC service in the areas where they reside. Members of the public have indicated that they were not satisfied with the existing shuttle services because of long waiting times at the airport. In addition, other shuttle services usually try to carry three or four parties at the same time. Applicant has a policy of carrying no more than two passengers. Practically every passenger transported by applicant has complained about other shuttle van services that they have used before.

Applicant also testified that, within 60 days, he will be adding two vans to his current fleet of eight vans. If the requested authority is granted, more vans will be added as demand dictates.

Applicant's headquarters is located in Inglewood, California. There are facilities for changing oil and filters and for standard routine-type maintenance at that location. Major maintenance is done by outside contract vendors.

Other companies presently serving the proposed service area are Celebrity, SuperShuttle, and Coast Shuttle. Applicant believes Green Flat also serves at least part of the area. He is familiar with AM/PM Airporter Service, but, as far as he knows, it is only operating in Orange County. He believes that passengers within the proposed service area will be diverted from those companies to him.

In his projected annual income statement accompanying his application, applicant used the LAX-downtown Los Angeles fare of \$10 per person as a basis for arriving at the indicated figures.

On October 20, 1987, he had occasion to ride another van operated by applicant. He boarded applicant's van and observed one other male passenger on board. This passenger was taken to a destination in the City of Torrance. The witness was then transported from that point to the Hyatt Regency Hotel in Long Beach, where he was charged a fee of \$25. He was given a receipt for that service which was submitted into evidence. On October 21, 1987, the witness rode on one of applicant's vans on two occasions. On the first occasion, he was picked up at a location in Hawthorne, taken to LAX, and charged \$15 for the trip. He was the only passenger on that trip. He was issued a receipt for the fare which was submitted into evidence. On the second trip, he was picked up at Terminal 7 at LAX by one of applicant's vans. There was a woman passenger on board when he boarded and she was taken to a destination in Manhattan Beach. The driver then drove him to his destination in Hawthorne. He was issued a receipt for the \$8.00 fare, which was submitted it into evidence.

On November 9, 1987, while conducting a surveillance of applicant's vans, he followed one of applicant's vans with three passengers on board. He observed the van dropping two passengers off at a shopping center in Torrance, then observed the van proceed on the Harbor Freeway to the 405 Freeway and onto the Long Beach Freeway. The van got off the freeway at Pacific Coast Highway in Long Beach, heading eastbound. Apparently the driver noticed he was being followed because he stopped his vehicle, leaving the passengers on board, and approached DePriest, demanding to know what he wanted of him. DePriest then departed the scene.

Dan Brasher, a loss prevention employee of SuperShuttle, called as a witness by City, testified that on October 20, 1987, he was picked up by one of applicant's vans at the Catalina terminal in San Pedro and transported to LAX. He paid \$14 for the trip for which he received a receipt, which was submitted into evidence. In his opinion, this terminal is not within applicant's authorized

If applicant can demonstrate at a later time by a showing of evidence that public need exists for his services in any proposed new service area, he may file an application for consideration.

Findings of Fact

1. Applicant has not demonstrated public convenience and necessity for the proposed service.
2. Applicant has violated his operating authority by providing service to points outside his certificated service area.

Conclusion of Law

A.87-08-095 should be denied inasmuch as there has been no showing of public need and necessity.

ORDER

IT IS ORDERED that Application 87-08-045 is denied.

This order becomes effective 30 days from today.

Dated _____, at San Francisco, California.