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Decision 88 06 051 JUN 17 1988

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Bay Area SuperShuttle, Inc., )  
 Complainant, )  
 vs. )  
 Lorrie's Travel and Tours, Inc., )  
 Defendant. )

Case 85-11-035  
(Filed November 20, 1985;  
amended March 7, 1986)

SFO Airporter, Inc., )  
 Complainant, )  
 vs. )  
 Bay Area SuperShuttle, Inc., )  
 Defendant. )

Case 86-01-021  
(Filed January 6, 1986)

Lorrie's Travel & Tours, Inc., )  
 Complainant, )  
 vs. )  
 Bay Area SuperShuttle, Inc., )  
 Defendant. )

Case 86-01-045  
(Filed January 29, 1986)

Armour, St. John, Wilcox, Goodin & Schlotz, by Thomas J. MacBride, Jr., Attorney at Law, and Leach, Biesty & McGreevy, by William C. Taylor, Attorney at Law, for Bay Area SuperShuttle, Inc., complainant in Case 85-11-035 and defendant in Cases 86-01-021 and 86-01-045.

James S. Clapp, Attorney at Law, for Lorrie's Travel & Tours, Inc., complainant in Case 86-01-045 and defendant in Case 85-11-035. Handler, Baker, Greene & Taylor, by Raymond A. Greene, Jr., Attorney at Law, for SFO

Airporter, Inc., complainant in Case  
86-01-021.

Robert Epifanio, for Airports Commission, City  
and County of San Francisco; Roni Rotholz,  
Attorney at Law, for Arik Sharabi; Alfred J.  
Arnaud, Attorney at Law, for Associated  
Limousine Operators of San Francisco, Inc.;  
and Louise H. Renne, City Attorney of the  
City and County of San Francisco, by Robert  
R. Laughead, P.E.; interested parties.  
Erik Juul, for the Transportation Division.

### OPINION

#### Procedure

These three complaints were heard on a consolidated record with, initially, seven other matters, three of which were resolved by agreement of the parties during the course of hearings. At the close of hearings on December 5, 1986, five matters remained for consideration of the Commission: Application (A.) 85-11-032, Lorrie's; A.86-02-023, Arik Sharabi; Case (C.) 85-11-035, SuperShuttle; C.86-01-021, Airporter; and C.86-11-045, Lorrie's. All parties were given the opportunity to file opening and closing briefs, leading to submission on April 15, 1987.

#### Pleadings in C.86-01-021

Airporter complains that SuperShuttle regularly, continuously, and knowingly solicits persons at SFIA and in San Francisco who otherwise would be passengers of Airporter, contrary to its certificated authority. Complainant also alleges that defendant is unlawfully discounting its authorized fare.

Airporter requests a cease and desist order and penalties against defendant.

SuperShuttle's answer denies that it engages in unlawful solicitation, practices, or unlawfully discounts its fares.

Pleadings in C.86-01-045

Lorrie's complains that SuperShuttle is knowingly and personally soliciting and diverting persons who otherwise would be passengers of Lorrie's or other licensed carriers departing from SFIA and points within San Francisco, contrary to its authority.

Lorrie's requests a cease and desist order and penalties against defendant.

SuperShuttle's answer denies that it has implemented unlawful solicitation practices.

Pleadings in C.85-11-035

SuperShuttle complains that Lorrie's operated an unauthorized scheduled service from points in San Francisco to SFIA and charges unauthorized fares for its airport service.

On March 7, 1986, SuperShuttle amended its complaint to charge that Lorrie's has violated and continues to violate the driver status provisions set forth in Part 12 of the Commission's General Order (GO) 98-A, and that Lorrie's has violated and continues to violate the Commission's GO 101-C by failing to provide for adequate protection against liability for personal injury or property damage in the levels prescribed in that GO.

SuperShuttle requests a cease and desist order and penalties against defendant.

Lorrie's answer admits that it did conduct unauthorized scheduled service from points in San Francisco to SFIA for a short period of time, and denies charging unauthorized fares, violating driver status requirements or insurance requirements.

Violations by Lorrie's

Lorrie's admits, and this Commission has expressly found, pursuant to D.86-06-029, that Lorrie's conducted operations after staff had informed it that its authority had been suspended for failure to maintain evidence of insurance on file with the Commission. Lorrie's continued operations after staff suspension

notification compelled us to issue D.86-06-029 ordering Lorrie's to cease and desist.

Lorrie's present authority permits on-call operations only from San Francisco to SFIA. Permission to conduct scheduled service was denied by this Commission in D.84-03-109. Nonetheless, the record shows, and Lorrie's admits, that it provided scheduled service complete with advertising for at least a month prior to its filing of the instant application.

Lorrie's further admits, and the record shows, that it has conducted service with other than owner-drivers or employees in violation of GO 98-A. Applicant's practice of using independent contractors as drivers may well have resulted in its underreporting of gross receipts and payment of Public Utilities Commission Transportation Reimbursement Account fees.

Staff's brief states its concern that Lorrie's is intermingling taxicabs with its passenger stage corporation vehicles in operating its authorized transportation service. It suggests that provisions similar to those in SuperShuttle's PSC-1298 certificate be placed in Lorrie's certificate, as follows:

"No taxicabs shall be used to provide service under this certificate.

"(Operator) shall not sell or refer callers for the certificated service to taxicab transportation within the service area."

#### Lorrie's - Requirements

The record in these proceedings shows that corrective action should be required of Lorrie's in addition to cease and desist orders if we are to be sure that Lorrie's operates within its authority and Commission rules.

Lorrie's operated without insurance until ordered to cease and desist by the Commission. It has filed evidence of insurance, but, as SuperShuttle points out, the underlying policy of insurance lists only one vehicle. Too, evidence was presented

that persons having automobile accident insurance claims against Lorrie's find it difficult to file and prosecute the claim because Lorrie's is more than one entity.

The public interest requires that Lorrie's augment its Motor Carrier Automobile Bodily Injury and Property Damage Liability Certificate of Insurance with an attachment listing all insured vehicles used by Lorrie's in conducting its authorized passenger stage corporation and charter-party service.

There is evidence that Lorrie's has used independent contractors as drivers of its vans in airport service and that the sums paid to these drivers may not have been reported to the Commission as gross receipts.

We shall require Lorrie's to refile its gross receipts reports with the Commission for the years 1985 and 1986. It shall recalculate its payments to the Transportation Reimbursement Account and promptly remit any deficiency, including appropriate penalties.

Lorrie's certificate of public convenience and necessity shall be revised to include provisions against taxicab usage or taxicab referrals, as recommended by staff.

#### Commissions and Discounts

Airporter seeks a declaration of the legality of the \$1 or \$2 discount or commission shown to have been paid by Lorrie's and SuperShuttle.

However, no authorities are cited by complainant to establish any illegality in fares.

Whether commissions and discounts are a reasonable and necessary operating expense is an issue which should be addressed in our airport access service proceeding.

#### Proposed Report and Comments

Several of the parties requested a proposed report pursuant to Rule 78, Rules of Practice and Procedure, now repealed. As the requests were filed while the rule was extant, we authorized

issuance of the Administrative Law Judge's Proposed Decision as a proposed report and solicited comments by the parties and by nonparties, such as hotels and taxicab operators, as well.

Comments on the proposed decision were filed by SuperShuttle, Airporter, and the Airports Commission, City and County of San Francisco. Most pertinent to our decision here, however, are staff comments recommending that the Commission refrain from adopting new policy in these cases, but, instead, allow full development of a current record of airport access issues on an industrywide basis in the major rulemaking proposal then being drafted by staff.

Since the time of filing comments in these cases, we have issued Order Instituting Rulemaking (R.) 88-03-012 (March 9, 1988), and that proceeding is well underway.

In D.88-05-076, May 25, 1988, we deferred complaints involving airport access issues without prejudice and invited the parties to participate in the rulemaking proceeding.

Accordingly, we believe it appropriate that these complaints, insofar as they deal with airport access services of Lorrie's and SuperShuttle, should likewise be deferred and the parties invited to continue to participate in R.88-03-012.

Findings of Fact

1. Lorrie's has operated transportation services without complying with the insurance requirements of the Commission.
2. Lorrie's has utilized taxicabs in its certificated transportation service.
3. Lorrie's has conducted service with other than owner drivers or employees in violation of GO 98-A, and may have underreported its gross transportation receipts for 1985 and 1986.
4. Other transgressions alleged in the complaints are in the purview of, and will be better answered in, R.88-03-012, the industrywide rulemaking proposal on airport access issues.

Conclusions of Law

1. Lorrie's should be required to augment its Motor Carrier Automobile Bodily Injury and Property Damage Liability Certificate of Insurance with an attachment listing all insured vehicles used by Lorrie's in conducting its authorized passenger stage corporation and charter-party service.

2. Lorrie's should refile its gross receipts reports with the Commission for the years 1985 and 1986, recalculate its required payments to the Transportation Reimbursement Account, and promptly remit any deficiency, including appropriate penalties.

3. Lorrie's certificate of public convenience and necessity to provide passenger stage corporation service should be amended to include provisions against taxicab usage or taxicab referrals, as recommended by staff.

4. Except as provided in the following order, C.85-11-035, C.86-01-021, and C.86-01-045 should be deferred until after our decision in R.88-03-012.

ORDER

IT IS ORDERED that:

1. The certificate of public convenience and necessity granted by the Commission to Lorrie's Travel & Tours, Inc. (Lorrie's) is amended by replacing Fourth Revised Page 3 with Fifth Revised Page 3 to Appendix PSC-1003.

2. Lorrie's shall:

- a. Augment its Motor Carrier Automobile Bodily Injury and Property Damage Liability Certificate of Insurance with an attachment listing all insured vehicles used by it in conducting its authorized passenger stage corporation and charter-party service.


- b. Refile its gross receipts reports with the Commission for the years 1985 and 1986, recalculate its required payments to the Transportation Reimbursement Account, and promptly remit any deficiency, including appropriate penalties.
3. C.85-11-035 is granted as set forth above.
4. C.85-11-035, C.86-01-021, and C.86-01-045 are deferred pending our decision in R.88-03-012.

This order becomes effective 30 days from today.

Dated JUN 17 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 Weissor, Executive Director

AS



T/EJ/ej

Appendix PSC-1003 LORRIE'S TRAVEL & TOURS  
(D.82-06-048)  
(D.82-08-108)  
(D.82-11-002)

Fifth Revised Page 3  
Cancels  
Fourth Revised Page 3

**SECTION 1. GENERAL AUTHORIZATIONS, RESTRICTIONS, LIMITATIONS, AND SPECIFICATIONS. (Continued)**

- d. All passengers transported to or from the Oakland International Airport shall have origin or destination in Territory 1.
- e. Operations from Territory 1 to San Francisco International Airport shall be conducted on a on-call basis. Operations from San Francisco International Airport shall be conducted on a scheduled basis or on-call basis or both.
- f. Operations between Territories 2 and 3 and San Francisco International Airport shall only be conducted on an on-call basis or scheduled basis or both.
- g. Operations between Territory 1 and Oakland International Airport shall only be conducted on an on-call basis.
- h. When route descriptions are given in one direction, they apply to operation in either direction unless otherwise indicated.
- \*i. No taxicabs shall be used to provide service under this certificate.
- \*j. Operator shall not sell or refer callers for the certificated service to taxicab transportation.

Issued by California Public Utilities Commission.

\* Added by Decision 88 06 051, Case 85-11-035 et al.