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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of SuperShuttle of)
 Los Angeles, Inc. (PSC-1275); and)
 Bay Area SuperShuttle, Inc.)
 (PSC-1298) to be exempted from)
 certain portions of Article V and)
 VI of Chapter 4 of the California)
 Public Utilities Code.)

Application 87-12-020
(Filed December 8, 1987)

OPINION

SuperShuttle of Los Angeles, Inc. (LA SuperShuttle) and Bay Area SuperShuttle, Inc. (Bay Area SuperShuttle) are wholly owned subsidiaries of SuperShuttle International, Inc. (International), a Delaware corporation with its principal place of business in Los Angeles. LA SuperShuttle is a passenger stage corporation holding PSC-1275, pursuant to Decision (D.) 85-08-078. Its principal place of business is in Los Angeles. Bay Area SuperShuttle is a passenger stage corporation holding PSC-1298, pursuant to D.85-08-077. Its principal place of business is in San Francisco.

Pursuant to Public Utilities (PU) Code §§ 829 and 853, LA SuperShuttle and Bay Area SuperShuttle (applicants) seek an order which would (1) exempt them from the provisions of §§ 816-830 of the PU Code and (2) exempt them from the provisions of § 851 of the PU Code with respect to transfers or encumbrances made for the purpose of securing debt.

Applicants allege in support of their request that this Commission, in a series of decisions rendered in A.84-03-092 of the California Association of Long Distance Telephone Companies (CalTel), ultimately ruled that nondominant telecommunications

carriers be exempt (1) from Article V (§§ 816-830) and (2) from the requirement of obtaining Commission authority to transfer legal title to, or otherwise encumber, properties to which § 851 applies, when such transfer or encumbrance serves to secure debt. (Ordering Paragraph b of D.85-11-044.)

The exemption from Article V (§§ 816-830) was predicated on the Commission's finding that:

"In the present competitive atmosphere no public purpose is served by regulating issuance of stocks, bonds, and other forms of ownership or indebtedness by resellers [nondominant interexchange carriers]. We cannot say with certainty whether consumers would be benefitted or harmed by full regulation in this field. While it is possible that full imposition of Commission regulation could prevent a reseller from finding itself in financial difficulty, such regulation might also prevent one or more resellers from meeting competitive challenges or obtaining timely financing for expansion purposes..." (D.85-01-008, at p. 5.)

The Commission went on to conclude that:

"Since competition exists, no purpose is served by requiring regulation under PU Code §§ 816-830 of stocks and security transactions." (Finding of Fact 2, at p. 7 of D.85-01-008.)

In D.85-07-081, the Commission's next decision in the CalTel application, the Commission found that the exemption provided in D.85-01-008 should be expanded to include:

"Encumbrance of utility property when the encumbrance is necessary to obtain financing. This is frequently the case, and our already granted exemption from debt regulation has narrow application if we do not also exempt from formal application requirements the encumbrance of property and the transfer of legal title to property when the encumbrance [or]...transfer is for the purpose of securing debt." (D.85-07-081, p. 6.)

The exemptions provided to nondominant telecommunications carriers by the decisions in A.84-03-092 have been extended to resellers of cellular telephone services. While no generic proceeding was held with respect to cellular resellers, the Commission has routinely and consistently extended the benefits of D.86-08-057 (or the interim decisions leading to it) to cellular resellers. (D.86-02-011 in A.85-11-007 and D.85-06-015 in A.85-04-014.)

The Commission has further extended Article V and Article VI exemptions to the radiotelephone utility (RTU) industry. (D.87-10-035 in A.84-03-92.) The Commission held that:

"the RTU industry is highly competitive in the same sense that the nondominant interexchange telecommunications carriers and cellular resellers compete in a volatile marketplace. Alternative forms of service are readily available to customers of RTUs in this state. It is not necessary to regulate financial transactions of competing RTUs any more than it is necessary to regulate similar transactions of nondominant interexchange carriers or cellular resellers. The rationale for regulating these transactions is to ensure that a monopoly carrier or public utility does not engage in imprudent financial transactions to the point where it is unable to provide public service to its captive customer base. This rationale does not apply where customers of a given RTU may seek the same or similar service from competing companies." (D.87-10-035, at pp. 6-7.)

Summarizing the Commission's actions, the applicants allege that the Commission has thus (1) provided nondominant interexchange carriers with the exemptions set forth in D.86-08-057 and (2) extended those benefits to cellular resellers and RTUs as well. The fundamental rationale for those decisions, according to the applicants, is the fact that no public interest is served by requiring non-monopoly carriers to seek Commission authority in order to undertake financial transactions. None of the entities

involved possess monopoly power. Accordingly, the Commission recognized that nondominant telecommunications carriers, cellular resellers, and RTUs operate in highly competitive markets. Therefore, no public interest is served by regulating the prudence of their various financial transactions. Requiring entities that operate in competitive, as opposed to monopoly, markets to seek Commission authority for the transactions described in Article V and VI only results in an unnecessary expenditure of Commission staff resources and the resources of the entities involved. That the proposals eventually adopted in D.86-08-057 and D.87-10-035 were unopposed, suggests a wholesale lack of interest in these types of activities when conducted by entities that operate in competitive environments.

Applicants allege that the fundamental rationale underlying the Commission's decisions to exempt nondominant telecommunications carriers, cellular resellers, and RTUs from Article V and the encumbrance provisions of Article VI applies to applicants as well. Applicants allege that they operate in highly competitive markets, and, accordingly, the public has little interest in the prudence of their financial transactions. The highly competitive nature of the airport ground transportation industry is reflected in the Transportation Division's "Report on On-Call Airport Ground Transportation Services" issued pursuant to D.85-10-024 in A.83-04-028. The Division's Report and the formal response it generated (see "Airport Access Regulatory Comments Submitted in Response to CPUC Staff Request of July 20, 1987") indicate that the competition among ground transportation services, particularly at San Francisco International Airport (SFO) and Los Angeles International Airport (LAX), is fierce. This finding is also echoed in the Commission's recent opinion in LA SuperShuttle's application to establish a zone of rate freedom (ZORF) for its

operations. The Commission found that LA SuperShuttle "competes for passengers against other buses, taxicabs, limousines, and private passenger cars." (D.87-04-071, Finding of Fact 3.)

Applicants conclude that in light of the competition in the airport ground transportation industry, the cessation of operations of one of the scores of passenger stage corporations serving LAX and SFO would hardly result in the loss of available service to the public.

While there is no public interest in the prudence of applicants' financial transactions, the burden placed on the staff and the applicants in connection with obtaining Commission approval for the issuance of debt and the encumbrance of property is substantial, according to the allegations in the application. For example, applicants allege that their ability to expand their fleets of vehicles or to expand and upgrade their sophisticated reservations and dispatch systems, (to ensure that their growth in traffic volume does not threaten the reliability of their services), will depend on their ability to expeditiously access capital markets. Applicants state that they require the flexibility to make substantial investments in their systems on short notice. The several months needed to secure Commission approval of debt and/or equity financing hamstrings applicants' ability to respond effectively to market demands. Potential sources of long-term capital may well be reluctant to lend funds to applicants when they are unable to commit to the final terms of a financing until after the receipt of Commission authority, a process that may take months. Since applicants, like most borrowers, are at the mercy of the financial markets, this peculiar inability to close a deal expeditiously further undermines their ability to secure reasonably priced sources of funding.

Applicants allege in addition that, given the current restrictions on utilities' ability to incur long-term debt, they have had to rely upon a series of cumbersome and unsatisfactory

short-term financings and have been forced to lease vehicles purchased by their parent company. These stop-gap measures are no longer practical and represent an impediment to the health and growth of applicants' services, given applicants' need to expand rapidly to meet the fast growing demands of the marketplace.

Applicants also contend that requiring them to obtain approval for the issuance of debt or equity or to encumber property also results in an unnecessary burden on the Commission staff. They allege that the vast majority of applications made pursuant to Articles V and VI of Chapter 4 of the Public Utilities Code (and, in the case of non-monopoly utilities, all such applications) engender no opposition, and indeed, they are met by a complete lack of interest by other regulated utilities or the general public. Yet, despite this lack of interest the staff must expend time and resources to process those applications.

Applicants believe that no public interest appears to be served by continuing to impose this approval requirement on them. Therefore, they ask that the exemptions extended to other public utilities that operate in competitive markets be extended to them.

Applicants state that they are aware of no opposition to extending the benefits of D.86-08-057 and D.87-10-035 to them. Indeed, no protests to the application have been filed, although notice of the filing of the application was published in the Commission's daily calendar on or about December 10, 1987.

This application requests exemption for two specific passenger stage carriers, which we will grant. The rationale for the exemption, that there is no public purpose to be served by regulating under PU Code §§ 816-830 for stocks and security transactions or under PU Code § 851 with respect to transfers or encumbrances made by passenger stage carriers with respect to transfers or encumbrances made for the purpose of securing debt, may well extend to all passenger stage carriers. We will require service of this order on all such carriers and invite any party to

file an application for exemption covering all passenger stage carriers.

Findings of Fact

1. No protests have been filed and a public hearing is not necessary.
2. Applicants are passenger stage corporations operating in the highly competitive airport ground transportation industry.
3. The cessation of operations by one passenger stage corporation serving LAX or SFO in a highly competitive market will not result in cessation of available service to the public.
4. The public has shown no interest in the prudence of applicants' financial transactions.
5. Obtaining Commission approval for the issuance of debt and the encumbrance of property places a substantial burden on the Commission staff and the applicants.
6. The Commission has exempted nondominant telecommunications carriers, RTUs, and cellular resellers from §§ 816-830 and § 851

Conclusions of Law

1. The Commission is authorized by § 829 to exempt any public utility from the provisions of Article V (stocks and security transactions) of Chapter 4 of the Public Utilities Act if it finds that the application thereof to a public utility is not necessary in the public interest.
2. Under § 853 the Commission may exempt any public utility from the provisions of Article VI (transfer or encumbrance of utility property) of Chapter 4 of the Public Utilities Act if it finds that the application thereof to the public utility is not necessary in the public interest.

3. Since competition exists, no purpose is served by requiring regulation under §§ 816-830 for stocks and security transactions or under § 851 for encumbrances of property of passenger stage carriers.

4. The application should be granted.

5. Since there is no opposition to the application, the following order should be effective immediately.

ORDER

IT IS ORDERED that:

1. SuperShuttle of Los Angeles, Inc., and Bay Area SuperShuttle, Inc., (applicants) are exempted from the provisions of §§ 816-830 of the Public Utilities (PU) Code.

2. Applicants are exempted from the provisions of § 851 of the PU Code with respect to transfers or encumbrances made for the purpose of securing debt.

3. The Executive Director is directed to serve a copy of this order on all passenger stage carriers.

This order is effective 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 Weiss

Victor Weiss, Executive Director