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Decision 88-07-072 July 22, 1988

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 Pinetree Service Corporation, Inc., )  
 a California corporation doing )  
 business as Airportcoach, to transfer )  
 and sell a Certificate of Public )  
 Convenience and Necessity and Ground )  
 Systems, Inc., a California corporation )  
 to acquire, pursuant to Sections 851 )  
 et seq., of the California Public )  
 Utilities Code. )

**ORIGINAL**

Application 88-04-069  
 (Filed April 27, 1988;  
 amended July 14, 1988  
 and July 20, 1988)

INTERIM OPINION

Pinetree Service Corporation, Inc. (Pinetree), a California corporation doing business as Airportcoach, Inc., and Ground Systems, Inc. (GSI), a California corporation, have filed a joint application in which they seek authority pursuant to Section 851 et seq. of the California Public Utilities (PU) Code to transfer from Pinetree to GSI, the certificate of public convenience and necessity presently held by Pinetree as PSC-1152. A protest to the application was filed on May 16, 1988 by Funbus Systems, Inc. (Funbus).

Following notice, a public hearing was held in Los Angeles on July 6, 1988 before Administrative Law Judge (ALJ) William A. Turkish. The matter was consolidated for hearing with Case (C.) 88-05-028, a complaint matter brought against Pinetree and GSI by Funbus. During the hearing, upon stipulation made by Pinetree and GSI to cease and desist from operating in an unauthorized manner, Funbus withdrew its complaint and asked that C.88-05-028 be dismissed. Upon the request of Pinetree and GSI, the hearing on the application was continued to a date to be announced in order to permit Pinetree and GSI to file an amended application.

On July 14, 1988, Pinetree and GSI filed an amendment to the application in which they requested authority for route revisions in Pinetree's certificate and a request for emergency interim authority. On July 20, 1988, the declaration of Charles T. Allee, Chief Operating Officer of Pinetree and President of GSI, in support of the granting of immediate interim operating authority was filed.

Pinetree and GSI request that Routes 4, 10, 11, 12, 13, 14, 15, 16, and 17 contained in PSC-1152 be changed as follows:  
Route 4. SAN to LAX - to be deleted

Route 10. Laguna Hills - John Wayne Airport (SNA) -  
Los Angeles International Airport (LAX)

Commencing at the Laguna Hills Terminal, thence over and along the most convenient streets and highways to the following passenger pickup and discharge areas and points: John Wayne Airport; 1660-1700 Harbor Blvd., Anaheim or any other alternate points in the Anaheim-Buena Park Service Area; Long Beach Airport (LGB); and Los Angeles International Airport (LAX).

Route 11. Ontario International Airport (ONT) -  
John Wayne Airport (SNA)

Commencing at John Wayne Airport (SNA) then over and along the most convenient streets and highways to the following passenger pickup and discharge points and areas: 1660-17090 Harbor Blvd. or any other alternate points in the Anaheim-Buena Park Service area; AMTRAK Terminal in Anaheim; Orange County Transit District (OCTD) Terminal in Brea; and thence to Ontario International Airport (ONT).

Route 12. Anaheim-Buena Park Service Area -  
John Wayne Airport (SNA)

Commencing from various pickup points within the Anaheim-Buena Park Service Area, such area defined as constituting the corporate limits of said cities; thence directly to the John Wayne Airport (SNA) by the most convenient streets and highways available.

Alternate Route 12.

Commencing at AMTRAK Terminal in Anaheim; thence over and along the most convenient streets and highways to the John Wayne Airport (SNA) passenger terminal.

Route 13. Anaheim-Buena Park Service Area - Orange County Transit District (OCTD) Terminal

Commencing from the various pickup points within the Anaheim-Buena Park Service Area, such area defined as constituting the corporate limits of said cities; thence over and along the most convenient streets and highways to the Orange County Transit District (OCTD) Terminal on State College Boulevard in the City of Brea.

Route 14. Anaheim-Buena Park Service Area - AMTRAK Terminal

Commencing from the various pickup points within the Anaheim-Buena Park Service Area, such area defined as constituting the corporate limits of said cities; thence over and along the most convenient streets and highways to the AMTRAK Terminal adjacent to the Angel's Stadium in Anaheim.

Route 15. Anaheim-Buena Park Service Area - 1660-1700 Harbor Blvd. or any other point within the Anaheim-Buena Park Service Area

Commencing from various pickup points within the Anaheim-Buena Park Service Area, such area defined as constituting the corporate limits of said cities; then over and along the most convenient streets and highways to 1660-1700 Harbor Blvd., or any alternate point within said Service Area.

Route 16. - to be deleted

Route 17. - to be deleted

An alternate Route 10 has been requested as follows:

Alternate Route 10, 1660-1700 Harbor Blvd.,  
Anaheim/Anaheim-Buena Park Service Area - LAX

Commencing from 1660-1700 Harbor Blvd., Anaheim or any other alternate point in the Anaheim-Buena Park Service Area; thence directly to LAX by the most convenient streets and highways available.

The restrictions on Routes 12-17 that appear on First Revised Page 4 of Pinetree's certificate shall be deleted and the following provisions substituted in their place:

All transportation services on Route 12, Alternate Route 12, Route 13, Route 14, and Route 15 shall be operated on an "on-call" basis and may originate and/or terminate at one or more of the following locations:

- (1) All points within the Anaheim-Buena Park Service Area defined as constituting the corporate limits of the Cities of Anaheim and Buena Park.
- (2) Orange County Transit District Terminal (OCTD) at 2027 Brea Mall in the City of Brea.
- (3) All "on-call" passengers may transfer at 1660-1700 Harbor Blvd., Anaheim, or any other alternate points in the Anaheim-Buena Park Service Area; AMTRAK Terminal, Anaheim, and the Orange County Transit District (OCTD) Terminal at 2027 Brea Mall in Brea for destinations to or from John Wayne Airport (SNA); Ontario International Airport (ONT); Long Beach Airport (LGB) and Los Angeles International Airport (LAX)."

Pinetree and GSI allege that the change in routes as set forth above are required for the following reasons:

As originally conceived, applied for, and argued before the Commission prior to the establishment of such routes, the Alicante Princess Hotel in Garden Grove was to serve as a central "hub" from which passengers could depart or arrive from ONT, SNA,

Irvine, LGB, and LAX. This concept involved an "on-call" van service originating at any point (residence, business, commercial) within the Anaheim-Buena Park Service Area which would take passengers to the AMTRAK Terminal in Anaheim for transfer to the scheduled bus destined to SNA, to ONT, or to the Alicante Princess Hotel in Garden Grove for transfer to the scheduled buses destined for LGB and LAX. The authority, as finally granted after a number of hearings, neglected to include the "on-call" service to the Alicante Princess Hotel despite the urging from the Commission's Transportation Division staff.

The service as approved was implemented by Pinetree and operated until on or about March 25, 1988 when the service was temporarily suspended to provide time for an equipment change pending the instant application to transfer operating authority.

Upon introduction of new equipment and the reinstatement of service on May 1, 1988, Pinetree was advised by the management of the Alicante Princess Hotel that an agreement for service had been reached with Funbus and that Pinetree could no longer use the Alicante Princess Hotel as a terminal "hub". This left Pinetree without a terminal or "hub" of its system from which to dispatch passengers to LGB and LAX. Pinetree and GSI contend that Pinetree's authority, as sought to be transferred by this application, cannot be operated without the Alicante Princess Hotel or a replacement and access to same with the shuttle vans.

The terminal point replacement sought by the amended application at 1660-1700 Harbor Blvd. in Anaheim has been acquired by GSI on a 10-year lease under extremely favorable terms. It lies within the already existing and authorized Anaheim-Buena Park Service Area. Under its lease arrangement, the property is not subject to being "taken by a competing service" as was the Alicante Princess Hotel. The Alicante Princess Hotel is located within what was originally termed the "airport service-Anaheim Service Area".

The substitute terminal facility at 1660-1700 Harbor Blvd. also lies within the same "service area".

Pinetree and GSI allege that fixed terminal operators like Funbus and its predecessor, Airport Service, Incorporated, typically serve a primarily transient non-resident seasonal market. Their service to the larger well known hotels clustered around Disneyland Park serves the tourist segment of the traveling public in the main. According to Pinetree and GSI, those persons using Pinetree's service from the Alicante Princess Hotel or some replacement point in the same area such as the point sought in this application would essentially be the same persons as those departing from the Alicante Princess Hotel had it not been taken over by Funbus.

In his declaration, given under penalty of perjury, Mr. Allee states that there are nine investors in the transferee corporation who have invested better than \$500,000 in cash and have incurred liabilities in excess of \$1,000,000 for facilities and equipment thus far in their attempt to continue transportation service to the public pending the Commission's approval of the authority sought to be transferred in this application. He further states that since discontinuance of service to and from their new 1660-1700 terminal facility in response to the complaint and protest of Funbus, the company has had to furlough 51 employees. This represented a payroll of some \$27,000 per week. In the meantime, the company's fixed expenses total some \$25,000 per week and that since loss of the Alicante Princess Hotel as a hub, the company is unable to operate from the new facility or other alternate location in the general area as a central hub to its operation and that the loss of the Alicante Princess Hotel has left it with an operation that is inefficient and renders its Orange County service virtually inoperable. The Palm Springs-LAX service, which has always required subsidization by the Orange County operation and will now lose its subsidy, will also have to cease

operation. Mr. Allee further states that the investors are simply unable to continue covering all the ongoing expenses of the operation if interim authority is not granted.

Discussion

Pinetree's loss of its use of the Alicante Princess Hotel has left Pinetree without a terminal to which passengers destined for the various airports can be brought for transfer to the regular scheduled buses. Pinetree knew this as of the first of May, but it was not until early July, at hearing, that it admitted it was operating from a terminal without Commission authority. Now, unless we act to authorize Pinetree to use a substitute terminal on an emergency basis, severe financial hardship will inure to applicant's employees and service to the public will be diminished.

We note that the amendment that applicant belatedly proposed in mid-July would not only provide a new terminal but would entirely restructure its route system as well, all on less than one week's notice. We can see the need to establish a new terminal for applicant since the approved one is no longer available to it and we will do so. Minimum changes to the existing routes should be made to recognize the interim authority granted to operate out of the new terminal. However, we see no support for restructuring the route system prior to going to hearing on a matter that has been protested. We act reluctantly under a compulsion to preserve service caused by the applicant's disregard of its responsibility as a regulated carrier, and only to the very narrow extent necessary to allow applicant to operate under its existing certificate with a new terminal.

We note in passing that Pinetree's declaration threatens to cease operation of its Orange County-Palm Springs service if it is unable to conduct the remainder of its Orange County operations. We remind Pinetree that it is a public utility and that it must seek our authority before it abandons or discontinues service to any area it is authorized to serve. The fact that one area

subsidizes another does not justify unilateral abandonment of service.

This decision did not appear on the Commission's public agenda; however, under Public Utilities Code Section 306(b), there is sufficient emergency to require our action today without public notice.

Findings of Facts

1. Pinetree seeks to sell and GSI seeks to buy the certificate of public convenience and necessity owned by Pinetree.
2. Funbus has protested the application in which Pinetree seeks authority to transfer and sell its certificate to GSI.
3. Pinetree has been denied the use of its hub facility at the Alicante Princess Hotel in Garden Grove by the management who has entered into an agreement with Funbus to use the hotel facility.
4. GSI has leased a new terminal facility wherein passengers are consolidated and transferred between various modes of transportation at 1660-1700 Harbor Blvd., Anaheim, to replace the Alicante Princess Hotel.
5. Pinetree has been conducting its Orange County operation from the 1660-1700 Harbor Blvd. facility without authority from the Commission.
6. As a result of a complaint filed against Pinetree and GSI by Funbus for operating from the 1660-1700 terminal and certain of its routes without Commission authority, Pinetree has ceased operating those routes and from the 1660-1700 terminal pending Commission action on its application for route revisions.
7. The loss of the Alicante Princess Hotel as a hub and the cessation of operations from the 1660-1700 terminal has brought about a virtual shutdown of operations in Orange County by Pinetree.
8. Pinetree has had to furlough 51 employees because of the shutdown of most of its operations in Orange County.



9. The shutdown of operations in Orange County has caused a financial hardship on the 51 furloughed employees, and the shutdown of operations in Orange County as a result of the loss of the Alicante Princess Hotel is gross disservice to the public.

Conclusion of Law

Inasmuch as the shutdown of operations in Orange County has been brought about because of the applicant's loss of the use of its terminal, has caused severe financial hardship on the employees of Pinetree, and has deprived the public of transportation services, the authority for a new terminal should be granted on an interim basis pending formal hearings on the application so as to continue service to the public and relieve the applicant's employees of hardship.

INTERIM ORDER

IT IS ORDERED that:

1. The Transportation Division staff is directed to amend the certificate of Pinetree Service Corporation to reflect a new terminal at 1660-1700 Harbor Blvd., Anaheim, CA in lieu of its presently authorized terminal and to amend the presently authorized routes only insofar as necessary to recognize the new terminal. In all other respects the certificate shall continue in its present form pending further hearing.
2. This authority is granted on an interim basis until such time as further formal hearings are held on the application and the Commission has issued a final order in the matter.
3. The direction of ALJ Turkish that Pinetree cease operation from the terminal at 1660-1700 Harbor Blvd., Anaheim, CA is lifted, and applicant is authorized to operate from that terminal effective today.

4. The application is granted in part as set forth above.  
This order is effective today.  
Dated July 22, 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, Executive Director

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S. Barwell

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Decision 88 07 072 JUL 22 1988

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Route 11. Ontario International Airport (ONT) - John Wayne Airport (SNA)

Commencing at John Wayne Airport (SNA) then over and along the most convenient streets and highways to the following passenger pickup and discharge points and areas: 1660-17090 Harbor Blvd. or any other alternate points in the Anaheim-Buena Park Service area; AMTRAK Terminal in Anaheim; Orange County Transit District (OCTD) Terminal in Brea; and thence to Ontario International Airport (ONT).

Route 12. Anaheim-Buena Park Service Area - John Wayne Airport (SNA)

Commencing from various pickup points within the Anaheim-Buena Park Service Area, such area defined as constituting the corporate limits of said cities; thence directly to the John Wayne Airport (SNA) by the most convenient streets and highways available.

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The service as approved was implemented by Pinetree and operated until on or about March 25, 1988 when the service was temporarily suspended to provide time for an equipment change pending the instant application to transfer operating authority.

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departing from the Alicante Princess hotel had it not been taken over by Funbus.

In his declaration, given under penalty of perjury, Mr. Allee states that there are nine investors in the transferee corporation who have invested better than \$500,000 in cash and have incurred liabilities in excess of \$1,000,000 for facilities and equipment thus far in their attempt to continue transportation service to the public pending the Commission's approval of the authority sought to be transferred in this application. He further states that since discontinuance of service to and from their new 1660-1700 terminal facility in response to the complaint and protest of Funbus, the company has had to furlough 51 employees. This represented a payroll of some \$27,000 per week. In the meantime, the company's fixed expenses total some \$25,000 per week and that since loss of the Alicante Princess hotel as a hub, the company is unable to operate from the new facility or other alternate location in the general area as a central hub to its operation and that the loss of the Alicante Princess hotel has left it with an operation that is inefficient and renders its Orange County service virtually inoperable. The Palm Springs-LAX service, which has always required subsidization by the Orange County operation and will now lose its subsidy, will also have to cease operation. Mr. Allee further states that the investors are simply unable to continue covering all the ongoing expenses of the operation if interim authority is not granted.

#### Discussion

Pinetree's loss of its use of the Alicante Princess hotel has left Pinetree without a terminal to which passengers destined for the various airports can be brought for transfer to the regular scheduled buses. Pinetree knew this as of the first of May, but it was not until early July, at hearing, that it admitted it was operating from a terminal without Commission authority. Now, unless we act to authorize Pinetree to use a substitute terminal on an emergency basis, severe financial hardship will inure to applicant's employees and service to the public will be diminished.



We note that the amendment that applicant belatedly proposed in mid-July would not only provide a new terminal but would entirely restructure its route system as well, all on less than one week's notice. We can see the need to establish a new terminal for applicant since the approved one is no longer available to it and we will do so. Minimum changes to the existing routes should be made to recognize the interim authority granted to operate out of the new terminal. However, we see no support for restructuring the route system prior to going to hearing on a matter that has been protested. We act reluctantly under a compulsion to preserve service caused by the applicant's disregard of its responsibility as a regulated carrier, and only to the very narrow extent necessary to allow applicant to operate under its existing certificate with a new terminal.

We note in passing that Pinetree's declaration threatens to cease operation of its Orange County-Palm Springs service if it is unable to conduct the remainder of its Orange County operations. We remind Pinetree that it is a public utility and that it must seek our authority before it abandons or discontinues service to any area it is authorized to serve. That fact that one area subsidizes another does not justify unilateral abandonment of service.

#### Findings of Facts

1. Pinetree seeks to sell and GSI seeks to buy the Certificate of Public Convenience and Necessity owned by Pinetree.
2. Funbus has protested the application in which Pinetree seeks authority to transfer and sell its Certificate to GSI.
3. Pinetree has been denied the use of its hub facility at the Alicante Princess hotel in Garden Grove by the management who has entered into an agreement with Funbus to use the hotel facility.
4. GSI has leased a new terminal facility wherein GSI consolidates its passengers and enables them to transfer between various modes of transportation at 1660-1700 Harbor Blvd, Anaheim to replace the Alicante Princess Hotel.

5. Pinetree has been conducting its Orange County operation from the 1660-1700 Harbor Blvd. facility without authority from the Commission.

6. As a result of a complaint filed against Pinetree and GSI by Funbus for operating from the 1660-1700 terminal and certain of its routes without Commission authority, Pinetree has ceased operating those routes and from the 1660-1700 terminal pending Commission action on its application for route revisions.

7. The loss of the Alicante Princess hotel as a hub and the cessation of operations from the 1660-1700 terminal has brought about a virtual shutdown of operations in Orange County Pinetree.

8. Pinetree has had to furlough 51 employees because of the shutdown of most of its operations in Orange County.

9. The shutdown of operations in Orange County has caused a financial hardship on the 51 furloughed employees and the shutdown of operations in Orange County as a result of the loss of the Alicante Princess hotel is gross disservice to the public.

#### Conclusion of Law

Inasmuch as the shutdown of operations in Orange County has been brought about because of the applicant's loss of the use of its terminal, has caused severe financial hardship on the employees of Pinetree, and has deprived the public of transportation services, the authority for a new terminal should be granted on an interim basis pending formal hearings on the application so as to continue service to the public and relieve the applicant's employees of hardship.

#### ORDER

IT IS ORDERED that:

1. The Transportation Division staff is directed to amend the certificate of Pinetree Service Corporation to reflect a new terminal at 1660-1700 Harbor Blvd, Anaheim, CA in lieu of its presently authorized terminal and to amend the presently authorized routes only insofar as necessary to recognize the new terminal. In all other respects the certificate shall continue in its present form pending further hearing.

2. This authority is granted on an interim basis until such time as further formal hearings are held on the application and the Commission has issued a final order in the matter.

3. The direction of ALJ Turkish that Pinetree cease operation from the terminal at 1660-1700 Harbor Blvd, Anaheim, CA is lifted and applicant is authorized to operate from that terminal effective today.

4. The application is granted in part as set forth above.

This order is effective today.

Dated JUL 22 1968, at San Francisco, California.

STANLEY W. HULETT  
President

DONALD VIAL  
FREDERICK R. DUDA  
G. MITCHELL WILK  
JOHN B. O'HANIAN  
Commissioners