

Decision 89 08 040

AUG 3 1989

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of Sam Allan Shirokawa and Roberta)
J. Shirokawa d/b/a GALAXY TRANS-)
PORTATION SERVICES for authority)
to operate as a passenger stage)
corporation between Orange County)
and Los Angeles International)
Airport and John Wayne Airport.)

Application 88-03-051
(Filed March 25, 1988)

OPINIONSUMMARY

This decision grants a certificate of public convenience and necessity to Sam Allan Shirokawa and Roberta J. Shirokawa, a partnership doing business as Galaxy Transportation Services, authorizing them to provide door-to-door, on-call passenger service between points in Orange County and Los Angeles International Airport (LAX) and John Wayne Airport (SNA).

Application

Sam Allan Shirokawa and Roberta J. Shirokawa seek authority under Public Utilities (PU) Code § 1031 to operate as a passenger stage corporation, as defined in PU Code § 226. They propose to perform on-call service between points in Orange County on the one hand and LAX and SNA on the other hand. Only passengers whose trips originate or terminate at either LAX or SNA will be transported.

Applicants state that they currently operate a charter-party service under permit number TCP 4307-P, and that the purpose of this application is to allow them to provide Orange County passengers with airport service on a per-capita basis. They assert that population growth in Los Angeles and Orange Counties will make the existing traffic problem in those two counties more acute, and that the proposed service should reduce the number of

private vehicles on the road. The service will be specialized since only those passengers whose trips originate or terminate in Orange County will be transported. Although applicants are aware that another carrier is authorized to provide similar services within the proposed territory, they note that theirs is a smaller family-owned and operated company that does not pose a competitive threat to other carriers. Applicants allege that for the foregoing reasons, public convenience and necessity require the granting of this application.

As of the time the application was filed, applicants operated three 1987 VW vans. Financial statements included with the application show that the partnership had assets of \$51,808.30, liabilities of \$2,912.12, and a net worth of \$48,896.18; and that applicants had total assets of \$163,600, liabilities of \$101,000, and a net worth of \$62,600.

Procedural History

Notice of the application was provided to involved government entities, and copies of the application were provided to the involved transit operators. Notice also appeared on the Daily Transportation Calendar dated March 29, 1988. Shortly after the application was filed, the Rail/Transit Planning and Policy Branch of the Transportation Division (Branch) advised applicants of several deficiencies in the filing. This resulted in an extensive exchange of correspondence, phone calls and meetings between applicants and Branch over the course of several months.

While this exchange was going on, protests were filed by FunBus Systems, Inc. (FunBus) and the City of Los Angeles Department of Transportation (LADOT). FunBus protested on the grounds that it is already providing regular route service to the same points, and that granting of the authority requested by applicants would divert traffic from it, adversely affecting its operations. LADOT questions applicants' ability to perform the

service and alleges that authorization of additional van service at LAX will be harmful to Los Angeles' residents and visitors.

On September 6, 1988 Branch distributed a "Supplemental Advice of Participation" (AP) advising the assigned Administrative Law Judge (ALJ) that applicants had fulfilled its data requests and that applicants had forwarded copies of all the documents furnished to staff to the protestants as well. Branch recommends that both of the protests be dismissed and that the application be granted by ex parte order.

Following the issuance of Branch's AP the ALJ filed a ruling allowing parties to file responses to the AP. Only LADOT filed such a response. FunBus' representative notified the ALJ that he no longer represented the carrier and that no further participation in the proceeding by FunBus was anticipated.

Position of Branch

Branch refers to the position it has taken in our pending rulemaking proceeding to consider changes to passenger carrier regulation (R-88-03-012): the Commission should limit new entry of airport access carriers when an individual airport authority demonstrates capacity problems. Branch notes that in this case no protests were filed by the airport authorities involved, and asserts that LADOT consistently protests applications for authority to serve LAX.

Branch calls attention to our discussion of LADOT's protest in the application of American Transportation Enterprises, Inc. (Application (A.) 87-05-045). In Decision (D.) 87-10-084, by which we authorized that carrier to serve LAX, we stated:

"We are aware that City routinely protests every application for a certificate of public convenience and necessity filed by any transportation company who wishes to transport passengers to LAX. It is further noted that the congestion and number of transportation vehicles operating on the property of LAX is not the responsibility of City's Department of Transportation. That responsibility lies

solely with the Department of Airports, City of Los Angeles, which grants permits to taxicabs, buses, private for-hire vehicles, shuttle services, etc. That department has not filed any protest to this application. It appears that City, which does supervise taxicab operations, is primarily concerned with the competition that the proposed service may offer to City's franchised taxicab companies at LAX which could possibly have an impact on the revenues derived by City."

With respect to the FunBus protest, Branch maintains that we have consistently granted passenger stage applications over the protests of competitors by concluding that competition is in the public interest. Branch refers to our order in D.88-08-037 in A.88-03-057 by which we authorized Il-Sung Ko, doing business as Taeguk Airport Service, to provide service to LAX:¹

"Although the evidence indicates there are other van transportation services with authority to operate within the area, we have held that competition in the area of bus transportation services was a desirable goal because of its direct bearing on the quality of overall treatment afforded passengers, rates, scheduling, equipment condition, and operational innovation generally.

Branch concludes that in view of our grants of authority in the earlier proceedings, a public hearing would serve no useful purpose in this matter. It therefore recommends that both of the protests be dismissed, and that the application be granted by ex parte order.

Position of LADOT

LADOT states in its protest that it enforces taxicab regulations in the City of Los Angeles, including LAX. LADOT

1 Although Branch uses D.88-08-037 to illustrate its contention, there were no competitor protests in that proceeding. The only protestant was LADOT.

asserts that facts showing the proposed service is required by public convenience and necessity are not shown in the application, that the proposed service is not shown to be economically feasible, and that residents of and visitors to the City of Los Angeles are injured by the excessive number of companies providing on-call, door-to-door service at LAX because the number of passengers is spread among the numerous vans. According to the protest, "[t]he reduced load factors will result eventually in higher fares, the excess vehicles cause congestion at LAX, and the numerous companies create confusion for the public as well as enforcement difficulties." LADOT states that it would adduce evidence at a hearing that additional small vehicles at LAX would add to traffic congestion and enforcement problems at LAX, that there is no need for additional public transportation service between LAX and Orange County, and that applicants are not qualified to operate the proposed passenger stage service.

In its response to Branch's AP, LADOT takes issue with the characterization that it consistently protests every application for authority to serve LAX, noting that in the past it has supported scheduled route service for LAX, and that it has not protested applications for on-call service to outlying areas where there may be a need for the service. LADOT asserts that it only protests those applications where adequate on-call, door-to-door service is already available. LADOT also asserts that public convenience and necessity can only be shown at a public hearing, and refers to two proceedings where, after hearing, applications for authority were denied because public convenience and necessity were not demonstrated. D.88-05-023 in A.87-08-045 (Hassan M. Hosseini, doing business as Super Express), and D.88-05-035 in A.87-08-041 (Riad O. Dandan, doing business as Olympic Limo Van Service).

Discussion

We address first the protest of FunBus. Since the former consultant advised all parties that to the best of his knowledge FunBus did not intend to participate further in this proceeding, and FunBus has not in fact done so, we consider the FunBus protest to have been withdrawn. Thus, there are no protests by potential competitors of applicants, and the only remaining protest is by LADOT.

This matter is similar to others in an increasingly long series of applications which we have granted despite pleadings stating that there are congestion problems at LAX and that there are vans and taxis currently operating in the area to meet public need. For example, in D.88-11-006 in A.88-02-021 (application of American Transportation Enterprises, Inc. for expanded authority, protested by SuperShuttle and by LADOT) we granted the application after observing:

"The problems at LAX are not going to be helped or hindered by the grant of this application. SuperShuttle, with its 200 vans, and other operators can always add equipment and, to the extent competitors are kept off the airport, the remaining carriers may exercise quasi-monopoly powers over ground transportation."

We have on more than one occasion observed that LADOT, whose jurisdiction is limited to the City of Los Angeles, routinely protests applications for authority to serve LAX. Similarly, we have previously observed:

"[W]hat LADOT is really protesting is increased service to LAX. However, the congestion and number of transportation vehicles operating on the property of LAX is not the responsibility of LADOT but of the Department of Airports, which grants permits to taxicabs, buses, private for-hire vehicles, shuttle service, etc. That department has not filed any protest to this application. We are concerned that LADOT, which does supervise taxicab operations, is primarily concerned with the competition that the proposed service may offer to the City

of Los Angeles' franchised taxicab operations which could possibly have an impact on the revenues derived by the city." (D.89-04-007 in A.88-07-047; Application of Universal Transit System, Inc.)

There is nothing in LADOT's protest or in its response to Branch's AP which persuades us that a public hearing is necessary in this matter. Although we will not hesitate to set a matter for hearing solely because additional expense and delay will be imposed on the parties, neither will we schedule a hearing solely because a protest has been filed. Our Rules of Practice and Procedure (Rule 8.2) explicitly state that the content of a protest, not the mere filing, is determinative of whether a hearing will be held.

In light of the extensive history of applications for authority to serve LAX, where the protests of LADOT are routinely filed, we will carefully scrutinize the content of such protests. Here, the crux of LADOT's objection is that more vehicles will add to traffic congestion at LAX, and will reduce load factors of other van operators serving LAX. It should be clear by now that we consider the problems of congestion at LAX to be within the province of the Department of Airports. As to reduced load factors, to the extent they are a problem, the solution does not lie in restricting the entry of new, small operators when there are no limits on the fleets of large operators. As we previously observed in D.89-04-029 in A.88-05-002 (application of Alberto Semedo, protested by LADOT): "We see no reason to deny a small operator the opportunity to expand when to deny the opportunity would only allow the large, established operator to add more equipment and start new routes."

In determining whether public convenience and necessity require that a proposed service be authorized, one of our primary concerns is to see that a broad array of transportation services is provided for the consuming public. Also, in evaluating whether a need exists, we consider not just one terminus on the proposed

route, which may be well served, but the total service territory, including all points of origin and destination, some of which may be unserved or underserved. It appears that applicants will be providing a specialized service on a relatively small scale, but in doing so will improve the range of transportation options available to customers in Orange County. At the same time it appears that incremental improvements in traffic congestion will be encouraged by the removal of private vehicles from streets and highways in Orange County and parts of Los Angeles County. We conclude that applicants have shown a need for the proposed service.

Since applicants have already conducted operations as a charter-party carrier, and have demonstrated they have the financial resources needed to continue and expand operations, we conclude further that they have the necessary qualifications to operate the proposed service.

We conclude that a public hearing is not necessary in this matter, and that the proposed service should be authorized as requested.

Findings of Fact

1. No protest to the application has been received from any public transit operator serving the territory applicants propose to serve.
2. No protest to the application has been received from either of the airport authorities involved.
3. Protests were filed by FunBus and by LADOT, but the protest of FunBus was later effectively withdrawn.
4. LADOT routinely protests applications for authority to serve LAX.
5. Applicants operate a charter-party service under permit number TCP 4307-P.
6. The existing traffic problem in Los Angeles and Orange Counties will become more acute over time.

7. The proposed service is expected to reduce the number of private vehicles on the road.

8. Only those passengers whose trips originate or terminate in Orange County will be transported.

9. LAX is one of two airport terminal points proposed to be served by applicant.

10. As of the time the application was filed, applicants operated three 1987 VW vans.

11. As of the time the application was filed, the partnership had assets of \$51,808.30, liabilities of \$2,912.12, and a net worth of \$48,896.18, and applicants had total assets of \$163,600, liabilities of \$101,000, and a net worth of \$62,600.

12. Public convenience and necessity require that the proposed service be established.

13. Applicants are qualified to perform the proposed service.

14. In accordance with Rule 8.2 of the Commission's Rules of Practice and Procedure, a public hearing is not necessary.

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. The application should be granted as set forth in the order. Since there is a current need for the proposed service, the order should become effective on the date it is signed.

2. The protest of LADOT should be denied.

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. A certificate of public convenience and necessity is granted to Sam Allan Shirokawa and Roberta J. Shirokawa, authorizing them to operate as a passenger stage corporation, as defined in PU Code § 226, between the points and over the routes set forth in Appendix PSC-4307, to transport persons and baggage.

2. Applicants 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 their 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.

3. Prior to initiating service to any airport, applicants shall notify the airport authority involved. This certificate does not authorize the holders 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.

4. Applicants are authorized to begin operations on the date that the Executive Director mails a notice to applicants that they

have evidence of insurance on file with the Commission and that the California Highway Patrol has approved the use of applicants' vehicles for service.

5. The protest of the City of Los Angeles Department of Transportation is denied.

6. The application is granted as set forth above.

This order is effective today.

Dated AUG 3 1989, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

Commissioner Stanley W. Hulett,
being necessarily absent, did not
participate.

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

Victor Weiss

Victor Weiss, Executive Director

PB

T/VK/vjk

Appendix PSC-4307

Sam Allan Shirokawa &
Roberta J. Shirokawa

Original Title Page

CERTIFICATE

OF

PUBLIC CONVENIENCE AND NECESSITY

AS A PASSENGER STAGE CORPORATION

PSC-4307

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 89-08-040, dated
August 3, 1989 of the Public Utilities Commission of the
State of California in Application 88-03-051.

I N D E X

		<u>Page</u>
SECTION 1.	GENERAL AUTHORIZATIONS, RESTRICTIONS, LIMITATIONS, AND SPECIFICATIONS.....	2
SECTION 2.	SERVICE AREA DESCRIPTION.....	3
SECTION 3.	ROUTE DESCRIPTION.....	3

Issued by California Public Utilities Commission.

Decision 89-08-040, Application 88-03-051.

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

Sam Allan Shirokawa and Roberta J. Shirokawa, by the certificate of public convenience and necessity granted by the decision noted in the margin, are authorized to transport passengers and baggage on a door-to-door, on-call basis between points in Orange County and Los Angeles International (LAX) or John Wayne (SNA) Airports, over and along the route described, subject, however, to the authority of this Commission to change or modify the route at any time and subject to the following provisions:

- (a) When route descriptions are given in one direction, they apply to operations in either direction unless otherwise indicated.
- (b) The term "on-call" as used refers to service which is authorized to be rendered dependent on the demands of passengers. The tariffs and timetables shall show the conditions under which the authorized door-to-door, on-call service will be provided, and shall include the description of the boundary of each fare zone, except when a single fare is charged to all points within a single incorporated city.
- (c) No passengers shall be transported except those having a point of origin or destination at LAX or SNA.
- (d) This certificate does not authorize the holder to conduct any operation on the property of or into any airport unless such operation is authorized by both this Commission and the airport authority involved.

Issued by California Public Utilities Commission.

Decision 89-08-040, Application 88-03-051.

T/VK/vjk

Appendix PSC-4307

Sam Allan Shirokawa &
Roberta J. Shirokawa

Original Page 3

SECTION 2. SERVICE AREA DESCRIPTION.

Includes all points within the geographical limits of Orange County.

SECTION 3. ROUTE DESCRIPTION.

Commencing at any point within the authorized service area described in Section 2, then via the most convenient streets and highways to LAX or SNA.

Issued by California Public Utilities Commission.

Decision 89-08-040, Application 88-03-051.