

Decision 90 05 010 MAY 04 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
David Abadinsky and Albert Levin,)
dba AIRPORT FLYER BUS AND EXPRESS)
COMPANY, for authority to operate a)
passenger stage service as a "Door-)
to-Door" and "On-Call Service")
between Los Angeles International)
Airport, Burbank-Pasadena-Glendale)
Airport and John Wayne Airport, on)
the one hand, and areas of Los)
Angeles County, Ventura County and)
Orange County, on the other hand.)

ORIGINAL

Application 88-08-003
(Filed August 1, 1988)

Roger Jon Diamond and Howard Moss, Attorneys
at Law, for applicant.
S. E. Rowe, General Manager, by K. D. Walpert,
for the Department of Transportation, City
of Los Angeles; and Steven Crouch Kirby,
Attorney at Law, for Supershuttle,
protestants.
Yvonne Nau, Commissioner, Attorney General's
Commission on People with Disabilities,
for herself, interested party.
Kenneth Koss, for the Transportation Division.

O P I N I O N

David Abadinsky and Albert Levin (applicants), doing
business as Airport Flyer Bus and Express Company, filed this
application requesting authority under Public Utilities (PU) Code
§ 1031, et seq. to expand their passenger stage and express
authority. By Decision (D.) 87-04-023, applicants were authorized
to operate between Los Angeles International Airport (LAX) and
Glendale-Pasadena-Burbank Airport (BUR), on the one hand, three
points in Los Angeles County and one point in Ventura County, on
the other hand. This application requests authority to provide a
door-to-door, on-call service between LAX, BUR, John Wayne Airport

(SNA), Ontario International Airport (ONT), and the Los Angeles Harbor (harbor), on the one hand, and cities and communities throughout Ventura, Los Angeles, and Orange Counties, on the other hand. The Commission authorized Abadinsky and Levin to provide passenger stage service under PSC-1440 and to provide charter-party service under TCP 3978-P.

Protests to granting this application were filed for the Department of Transportation, City of Los Angeles (DOT) and by Supershuttle of Los Angeles, Inc. (Supershuttle). Supershuttle's protest was withdrawn.

Hearings were held before an administrative law judge on this matter and it was submitted on receipt of transcripts. At the hearings applicants stated that they had filed an application to sell and transfer their operating authority and other assets to Airport Flyer International, L.P. (AFILP), a limited partnership; they requested that the authority sought in this proceeding be issued to AFILP. Applicants amended their transfer application to resolve objections filed by DOT and indicated by the Transportation Division (Staff) by deleting references to certain drivers becoming limited partners of AFILP. The transfer authority was granted ex parte in D.89-12-004. Abadinsky, Levin, and their spouses own 100% of the capital and profits of AFILP and 100% of the shares of Airport Flyer International, Inc., the general partner of AFILP. Abadinsky and Levin are the initial limited partners of AFILP.

This decision grants the operating authority to AFILP, the successor in interest to applicants, as requested.

Applicants' Testimony

Applicants propose to help meet a growing demand for on-call passenger stage services. Applicants contend that demand is shown by growth projects within their proposed service area, their favorable expansion survey, growth in their operations and public witness testimony. In their application there is a compendium of newspaper articles, excerpts from LAX financial reports, and

chambers of commerce reports showing continuing airport passenger, population, and employment growth within the proposed service area.

Applicants engaged a mailing service to mail a questionnaire and local area fares to travel agencies or travel bureaus selected by the mailing service to determine the need for their proposed service. The following questions were asked:

1. Would this service benefit the public?
2. Is there a need for a van service to these areas?
3. Are the rates reasonable?
4. Do you get inquiries on this kind of service?
5. Would you be interested in this service serving your area?

Questionnaires were returned by 381 recipients of the mailer (17% of the 2,480 item mailing); 353 responses were positive to all questions in the survey, ten responded positively to two questions, ten responded positively to three questions, four replies were negative, and four did not reply to any of the questions.

Applicants expanded their van fleet from 17 to 20 vans for use in their passenger stage and charter-party operations. They may purchase a van with wheelchair lift capability in the future. They service, repair, and maintain their own vehicles at a mini-service station in Simi Valley. They are upgrading the quality of their service through use of computers in their operations.

Abadinsky testified their Simi Valley base puts applicants in a good position to serve the west San Fernando Valley, Ventura, and Simi Valley areas.

Applicants have a contract authorizing their vehicles to enter LAX. Abadinsky testified applicants pay their fees to LAX and have a good working relationship with airport authorities.

Applicants have entered into a van association designed to resolve operational problems and to control drivers of association members to insure their conformity with applicable laws. Applicants' drivers will be their employees.

Abadinsky testified applicants have credit accounts for equipment purchases; applicants pay their bills. Abadinsky has been in the transportation business for 19 years. He began as a taxicab driver. Later he and Levin owned a taxicab company.¹

An insurance broker testified that all of applicants' vehicles are covered by liability insurance in the amount of \$1,500,000 plus comprehensive and collision coverage.

Applicants' CPA helped Abadinsky prepare projections of applicants' proposed operations. He did not prepare the personal balance sheets for Abadinsky and Levin attached to the application, but based on information furnished by applicants he helped prepare operating projections and financial statements for their passenger service. The CPA was unaware of anything which would affect applicants' financial condition and prevent them from offering adequate service at reasonable rates.

Applicants sponsored two public witnesses in support of the application. One, a travel agent, obtained applicants' services for her clients; the other used applicants' service two or three times. The service they described was quite satisfactory;

¹ Abadinsky's and Levin's July 7, 1988 balance sheets each showed 50% of stock in a corporation worth \$350,000 (see Exhibit F attached to the application). That overstated value was for the Blue and Yellow Transit Corporation (BYTC) which operated Blue and Yellow Taxi. They sold BYTC for \$200,000.

however, it appears to have been for charter-party rather than for passenger stage service.

Proposed Exhibit 4, a study of applicants' operations, which was not prepared in conformity with the Commission's Uniform System of Accounts, was stricken. There were inconsistencies in estimates of revenues and expenses; neither Abadinsky nor Levin could define an accrual basis for their estimates. The estimate in Exhibit F attached to the application did not reflect the source of lease payments or depreciation accruals. The estimate did not reflect charter-party revenues.

Nau's Position

Yvonne Nau, a commissioner in the Attorney General's Commission on People with Disabilities (AGCD) made a statement on her own behalf. She asserts that AGCD is preparing a report showing that disabled people are prevented from exercising their rights of citizenship due to lack of suitable transportation and housing and to architectural barriers. She contends that the LAX Department of Airports is in violation of Government Code § 4500, Civil Code § 54.1, and Regulation 504 of the 1973 Federal Rehabilitation Act because all public transportation is not accessible to all citizens. She was critical of the lack of wheelchair lifts for airport van transportation, e.g., Supershuttle had only one vehicle with a lift.

Staff Position

At Staff's request applicants made minor corrections and clarifications to show fares to all points and to show all zip codes (Exhibit 2) in the three-county proposed service areas, and they mailed additional copies of their application to parties not noticed. Those actions did not change the scope of applicants' proposal. Staff asserts that submission of a tariff is not required in the certification application; it is called for after certification is authorized.

Staff originally participated to develop the record and to prepare a draft certificate (Exhibit 3) should the Commission grant the requested authority.

Subsequently, Staff argued that no significant proven reason was shown to dismiss the application. Staff reviewed the application and believed it to be complete. Staff concludes that applicants appear to offer good service at reasonable rates. Staff suggests that if the Commission is concerned with applicants' fitness (based on DOT's showing and cross-examination) that the order issued advise AFILP to obey all Commission rules pertaining to its operations

DOT's Position

DOT contends that airport shuttle vans operating at LAX are not filled to capacity; in fact, there are few passengers in each van. There is congestion at the airport which would be aggravated if additional vans are authorized to operate at LAX. In addition, there is congestion in ground traffic flows on approach roads to the airport; sometimes those roadways are filled to capacity. This position was presented in an offer of proof of the testimony of DOT's Western District Transportation Engineer. That individual makes recommendations for improving traffic flows in and around LAX, but he is not responsible for traffic flow within the airport. Applicants stipulated that testimony would be offered, but they challenged the relevance, materiality, and competence of that showing.

A DOT public utility inspector and the manager of a taxicab company testified that additional vans are not needed at LAX. There are too many vans operating at low capacities, solicitation, and traffic congestion from existing van traffic at LAX. Taxicab operations are controlled and limited at the airport. There is ample taxicab capacity for passenger demands.

DOT records show that neither Abadinsky nor Levin, nor their taxicab company ever held a taxicab license to operate in Los

Angeles. DOT contends that Abadinsky and Levin lack fitness for obtaining the requested certificate due to their operating a "bandit" (unlicensed) taxicab operation in Los Angeles. DOT's conclusion relies in part on a Superior Court judgment against Abadinsky in a suit filed by the parent of a taxicab company. DOT's representative was unaware that the conviction was reversed in an unpublished appellate court decision. Abadinsky and Levin sold their taxicab company during the period they began their passenger stage operations. DOT contends applicants responded to a call for taxicab service during the period they were beginning to operate as a passenger stage corporation.

DOT questioned the validity of applicants' market survey due to their lack of expertise in obtaining a valid sampling; argued that while applicants' public witnesses were pleased with the immediate response offered by applicants that service could not be provided if applicants required a four-hour advance reservation for pickup service. DOT argued that applicants submitted unsupported documents showing population and businesses within the service area, but they were only able to bring two supporting witnesses to support their proposed service throughout three counties and that showing is insufficient. Furthermore, DOT argues that applicants' operations would not be profitable as indicated but the operations would lose money because their estimates did not reflect depreciation and lease payments and understated variable mileage-related expenses. DOT concludes that the Commission should deny certification to applicants for not making an adequate showing as it had for the applications decided in D.88-05-023 and in D.88-05-035.

Discussion

D.89-10-028 in our rulemaking proceeding, R.88-03-012, concerning the regulation of passenger carrier services addresses certain policy issues on certification as follows:

"Under our present certification standards a carrier may show public need for transportation

service at the airport by presenting evidence of public support for the proposed service. We have long departed from approving only monopoly service in order to accommodate competition between scheduled and on-call service. We believe this adjustment of regulatory policy is the appropriate one and are not convinced that it should be reversed. Limiting the number of carriers to reduce airport congestion at the present time is a short-term solution which may jeopardize the adequacy of airport transportation service. Adopting short-term solutions may help the existing problems of solicitation and congestion but create new ones. We believe better and more permanent solutions will be derived from the airport authority studies on traffic management and facility use which are in progress. Therefore, we shall not limit the entry of carriers into airport transportation service pending the outcome of these studies."

* * *

"We agree that we cannot discriminate against small businesses. We also agree that financing must be adequate. Adequate financing will depend on the size and extent of proposed operations. Such a determination can only be made in an application proceeding on a case-by-case basis."

Applicants are expanding their operations using 20 vans as a passenger stage corporation and/or as a charter-party carrier. They have established a Simi Valley base, with a parking and repair facility. With the exception of allegations of applicants' witnesses mixing taxicab and passenger stage dispatching at the onset of applicants' passenger stage operations, there were no allegations of improper operations by applicants. The proceeding involving illegal taxicab operations against Abadinsky was not successfully prosecuted. We will not rely on those allegations with respect to this application.

While applicants' public witness testimony on the need for their expanded service was marginal, applicants received a

substantial and favorable response from travel agencies for their extended service.

Applicants maintain adequate insurance coverage for their vehicles. Their proposed fares gave consideration to fares of competing carriers.

Applicants' financial showing demonstrates a need to maintain books and records consistent with the Commission's Uniform System of Accounts and in filing reports consistent with the system of accounts, including use of accrual accountings. Applicants should have shown both passenger stage and charter-party revenues. Applicants assert they pay their bills, have a good credit rating. During the pendency of this proceeding, they were able to lease additional vehicles and equipment for their operations.

Applicants use the same vehicles for providing passenger stage and charter-party services, but their revenue estimates do not include charter-party revenues. Thus, applicants underestimated both their revenues. They have understated mileage-related revenues and expenses. Their CPA believes their proposed operations are viable.

In the context of a transportation system including a multiplicity of carriers being authorized to provide competing services with applicants, we will grant the proposed certificate.

There is an expanding need for airport ground transportation. Applicants' survey indicates desire for applicants' expanded service.

Initially, applicants will operate passenger stage service in a wider territory with the equipment now being utilized in its operations. The equipment utilization and revenues should increase. Their fixed expenses will not materially change without further expansion. Their net revenues should increase along with their territorial expansion. Applicants initially projected a net income of about \$44,200 exclusive of income taxes. But they did not explain the source of funds for paying \$81,600 for leased vans

or about \$19,800 for depreciation expense on purchased equipment. AFILP was initially capitalized at \$100.

Since preparing their personal balance sheets, Abadinsky and Levin each purchased a home. They received a combined total of \$200,000 for sale of their taxicab company.

AFILP is a going concern which will benefit from supplying passenger stage service in a wider territory. As of January 1990 AFILP has expanded its fleet to 24 vehicles.

Multiple passenger loading using AFILP's vehicles will reduce air pollution compared to use of private cars.

The proposed certificate is modified to incorporate service to harbor and to ONT destinations requested by applicants and inadvertently omitted in Exhibit 3.

The issue of Abadinsky's and Levin's control over taxicab drivers was in contention in this proceeding. We put applicants on notice that the rules and regulations governing their charter-party and passenger stage operations are governed by Commission's General Orders 157 and 158. Part 5.03, Driver Status, in each of these general orders states, "[e]very driver of a vehicle shall be the" [permit/certificate holder.] "or under the complete supervision, direction and control of the operating carrier..."

Applicants' failure to comply with our general orders may result in fine, suspension or revocation of their operating authorities.

Other Matters

Applicants challenged the right and methods of DOT in protesting their application. PU Code § 1701 and Rules 8 and 21 of the Rules of Practice and Procedure permit DOT to file a protest and to participate at hearings held in this application.

Applicants called Kenneth Walpert, the appearance for DOT, as an adverse witness under § 776 of the Code of Civil Procedure.

Walpert testified that several years ago the Mayor of Los Angeles appointed a taxicab task force. The task force issued many recommendations, including a recommendation that DOT participate in certificate applications. Pursuant to these recommendations, DOT generally opposes new applications for on-call passenger stage airport service. However, it does not oppose certification for service between LAX and outlying areas such as Palm Springs, Bakersfield, or Santa Barbara.

Applicants questioned why DOT protested applicants' original point-to-point certificate application under that policy. DOT appeared in that proceeding as an interested party, but applicants were unable to distinguish between that participation and that of a protestant.

Issues involved on accessibility to services by the handicapped are discussed on mimeographed pages 43-45 of D.89-10-028 and R.88-03-012. Staff is undertaking an extensive survey and it will prepare a report on issues related to such services.

Proposed Decision

A proposed ALJ decision was mailed to the parties for their comments. No comments were received. We will adopt the proposed decision.

Findings of Fact

1. Applicants owned a taxicab company. Applicants may not have had authority to provide taxicab service in Los Angeles. They sold their taxicab company about the time they initiated point-to-point passenger stage service.

2. Applicants provided passenger stage service under PSC-1440 and charter-party service under TCP 3978-P.

3. Abadinsky has over 19 years of experience in providing transportation services to the public. Levin has experience in providing transportation services to the public.

4. Applicants requested authority to provide door-to-door, on-call passenger stage certification throughout Ventura, Los Angeles, and Orange Counties and LAX, BUR, SNA, ONT, and the Los Angeles harbor areas.

5. There is a growing need for ground services to airports in the proposed service area.

6. Applicants' survey demonstrates a need for their services. Two public witnesses were satisfied with applicants' service and supported their application.

7. D.89-12-004 authorized applicants to sell their operating rights and property to AFILP.

8. Applicants' successor AFILP is providing similar service under PSC-5543 and TCP 5543-P.

9. Applicants request that the requested operating authority be granted to AFILP.

10. Applicants were able to obtain financing for three additional vehicles and they operated 20 vehicles at the time of the hearings in this proceeding. In January 1990 AFILP had authority to operate 24 vehicles. AFILP has the financial ability to render the proposed services.

Conclusions of Law

1. AFILP, the successor to applicants' operations, should be authorized to be substituted for applicants in their certification request.

2. Public convenience and necessity have been demonstrated and a certificate should be granted.

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.

O R D E R

IT IS ORDERED that:

1. Airport Flyer International, L.P. (AFILP), the successor to applicants David Abadinsky and Albert Levin, in this proceeding is authorized to be substituted for applicants in their certification request.

2. A certificate of public convenience and necessity is granted to AFILP authorizing it 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-5543, to transport persons and baggage.

3. AFILP 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 its 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 Order Series 101, 104, and 158, 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.

4. Before beginning service to any airport, AFILP shall notify the airport's governing body. AFILP shall not operate into

or on airport property unless such operations are also authorized by the airport's governing body.

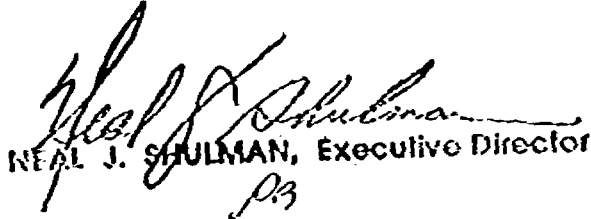
5. AFILP is authorized to begin operations on the date that the Executive Director mails a notice to AFILP that its evidence of insurance is on file with the Commission and that the California Highway Patrol has approved the use of AFILP's vehicles for service.

This order is effective today.

Dated MAY 04 1990, at San Francisco, California.

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

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


NEAL J. SHULMAN, Executive Director
PB

T/MEE/ebi

Appendix PSC-5543 Airport Flyer International, L.P.

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Issued by California Public Utilities Commission.

*Revised by Decision 90 05 010, Application 88-08-003.

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

Airport Flyer International, L.P., by the certificate of public convenience and necessity granted by the decision noted in the margin, are authorized to transport passengers, express, and baggage *on-call, door-to-door, basis between points in the Counties of Los Angeles, Orange and Ventura, described in Section 2, and Los Angeles International Airport (LAX), Burbank Airport (BUR), *Long Beach Airport (LGB), John Wayne Airport (SNA), Ontario Airport (ONT) or Los Angeles and Long Beach Harbors, over and along the routes described in Section 3, subject, however, to the authority of this Commission to change or modify the route at any time and subject to the following provisions:

- * (a) This certificate does not authorize the holder to conduct any operations on the property of or into any airport unless such operation is authorized by the airport's governing body.
- (b) When route descriptions are given in one direction, they apply to operations in either direction unless otherwise indicated.
- * (c) No passengers shall be transported except those having a point of origin or destination at LAX, BUR, *LGB, SNA, ONT or Los Angeles and Long Beach Harbors.
- (d) Regular scheduled service shall be conducted 19 hours per day, 7 days per week, 365 days a year over the routes and to the points described in Section 3.
- * (e) 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 on-call, door-to-door 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.

Issued by California Public Utilities Commission.

*Revised by Decision 90 05 010, Application 88-08-003.

SECTION 2. SERVICE AREA DESCRIPTION

*Los Angeles, Orange and Ventura Counties:

All points within the geographical limits of the counties of Los Angeles, Orange, and Ventura (South of the Los Padres National Forest).

Hotels/Motels: (scheduled stops - D.87-04-023)

Simi Valley Travelodge, 2550 Erringer Road, Simi Valley.

Topanga Inn, 9817 Topanga Canyon Boulevard, Chatsworth.

Valley Hilton, 15433 Ventura Boulevard, Sherman Oaks.

SECTION 3. ROUTE DESCRIPTION

*Route 1. On-Call, Door-to-Door Service

Commencing at any point within the authorized service area described in Section 2, then via the most convenient streets and highways to LAX, BUR, LGB, ONT, SNA or LA and Long Beach Harbors.

Route 2. Regular Scheduled Hotel/Motel Service

(A) Commencing from LAX then via the most convenient streets and highways to Simi Valley Travelodge, Topanga Inn, and Valley Hilton, described in Section 2.

(B) Commencing from BUR then via the most convenient streets and highways to Valley Hilton, described in Section 2.

Issued by California Public Utilities Commission.

*Revised by Decision 90 05 010, Application 88-08-003.