

Decision 90 05 031

MAY 4 1990

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

AIRPORT LIMOUSINE SERVICE OF  
SUNNYVALE, INC., dba Airport  
Connection - PSC 899,

Complainant,

vs.

SFO AIRPORTER, INC. - PSC 37,

Defendant.

Case 88-01-027  
(Filed January 26, 1988)

Clifford Orloff, for Airport Limousine  
Service of Sunnyvale, Inc., complainant.  
Handler, Baker, Greene & Taylor, by Ray  
Greene, Attorney at Law, for SFO  
Airporter, Inc., defendant.

O P I N I O N

Complainant Airport Limousine Service of Sunnyvale, Inc. (ALSS), doing business as Airport Connection, seeks an order of the Commission directing defendant SFO Airporter, Inc. (SFO) to file tariffs and schedules which accurately reflect its operations. ALSS also requests that the Commission revise SFO's operating authority to eliminate the routes that ALSS claims SFO has abandoned. ALSS alleges that SFO has not provided service on a number of its authorized routes for an extended period of time and has therefore abandoned those routes. The routes involved include scheduled service between points in Alameda, San Mateo, and Santa Clara Counties on the one hand and the San Jose, San Francisco, and Oakland Airports on the other hand.

In answer to the complaint, SFO alleges that it has suspended operations between points in Alameda, San Mateo, and

Santa Clara Counties on the one hand and the San Jose, San Francisco, and Oakland Airports on the other hand. SFO alleges it has appropriate tariffs and timetables on file with the Commission and denies the remaining allegations.

The Commission authorized SFO to operate as a passenger stage corporation by Decision (D.) 90107 dated March 27, 1979. The certificate of public convenience and necessity issued to SFO by that decision (Number PSC-37) specified the following six routes:

<u>Route</u>	<u>Name</u>
1	San Francisco International Airport/ San Francisco
2	San Francisco International Airport/ Oakland-Berkeley
3	San Francisco International Airport/ San Jose Municipal Airport (Local)
4	San Francisco International Airport/ San Jose Municipal Airport (Express)
5	Oakland International Airport/ San Francisco
6	Oakland International Airport/ Oakland-Berkeley-Alameda

Routes 3, 4, and 5 were subsequently revoked by order of the Commission (Resolution PE 2402 dated November 5, 1986), leaving SFO with authority to operate Routes 1, 2, and 6.<sup>1</sup>

The testimony of operating officials of SFO shows that SFO is currently operating Route 1, and that service on Routes 2 and 6 has been suspended since 1984. SFO continues to monitor the

<sup>1</sup> D.90-03-077 dated March 28, 1990 expanded SFO's authority. In doing so, it reissued SFO's certificate with a redesignation of certain route numbers. This decision refers to route descriptions and numbers in effect prior to issuance of D.90-03-077.

potential for traffic on these routes and intends to resume service when and if it determines that such service would be profitable. SFO prefers to retain the suspended authority rather than allow it to be revoked then reapply for new authority if it decides to resume operations in the future.

Discussion

ALSS presented no evidence that the tariffs and timetables filed by SFO are inconsistent with its actual operations. We will dismiss that portion of the complaint for lack of prosecution.

In order to grant a request to revoke parts of SFO's certificate, we must not only determine from the facts that a route (or routes) has been abandoned, but also that such abandonment should result in revocation. We have held that even if an operating authority is abandoned, there is no automatic requirement that it be revoked. (Application of SFO Airporter, Inc., 1 CPUC 2d 214.) ✓

ALSS produced no probative evidence on the subject of abandonment other than through the testimony of officials of SFO. There is no factual dispute that SFO is currently operating Route 1. Since Routes 3, 4, and 5 have been revoked, the only dispute to be resolved is whether SFO has abandoned Routes 2 and 6, and if so whether authority to serve those routes should be revoked. Although SFO has suspended service on Routes 2 and 6 since 1984, it maintains that it does not intend to abandon those routes. The testimony of defendant's controller establishes the fact that the carrier wants to retain the operating rights so that it can resume service if it determines that it would be profitable.

ALSS argues that five years is sufficient time to study the economic viability of these routes. This argument misses the point of SFO's showing that it is monitoring the situation to see if potential traffic levels increase sufficiently in the future to justify resumption of service. SFO does not assert that it takes

five years to make a study. Rather it asserts that at present, the traffic potential does not justify resumption of service, but that situation might change.

We recognize that five years may be a long time for an authority to be inactive, but we cannot find from this record that SFO intends to abandon the routes. We conclude that Routes 2 and 6 have not been abandoned and therefore should not be revoked. Finally, we note that aside from stating that it has authority to serve the same or similar points as SFO, ALSS did not allege or show that it would be injured by SFO's retention of operating authority.

The proposed decision of the Administrative Law Judge was filed and served on the parties pursuant to the Rules of Practice and Procedure. Parties did not file comments on the proposed decision.

Findings of Fact

1. D.90107 dated March 27, 1979 authorized SFO to operate as a passenger stage carrier on six specified routes.

2. SFO's authority to serve Routes 3, 4, and 5 was revoked by Resolution PE 2402 dated November 5, 1986, leaving SFO with authority to operate Routes 1, 2, and 6.

3. SFO is currently operating Route 1.

4. Service on Routes 2 and 6 has been suspended since 1984.

5. SFO continues to monitor the potential for traffic on Routes 2 and 6 and intends to resume service when and if it determines that such service would be profitable.

6. ALSS presented no evidence that the tariffs and timetables filed by SFO are inconsistent with its actual operations.

7. SFO does not intend to abandon Routes 2 and 6.

Conclusions of Law

1. That portion of the complaint alleging that SFO's tariffs and timetables do not accurately reflect its operations should be dismissed for lack of prosecution.
2. Routes 1, 2, and 6 have not been abandoned and therefore should not be revoked.
3. The relief sought by ALSS should be denied.

O R D E R

IT IS ORDERED that:

1. Portion of the complaint alleging that the tariffs and timetables filed by SFO Airporter, Inc. do not accurately reflect its operations is dismissed with prejudice.
2. To the extent not dismissed by Ordering Paragraph 1, the relief sought by Airport Limousine Service of Sunnyvale, Inc., doing business as Airport Connection, is denied.

This order becomes effective 30 days from today.

Dated MAY 4 1990, at San Francisco, California.

G. MITCHELL WALK

President

FREDERICK R. OUDA

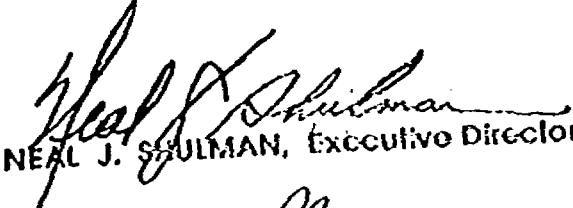
STANLEY W. HULETT

JOHN B. OHANIAN

PATRICIA M. ECKERT

Commissioners

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

  
NEAL J. SHULMAN, Executive Director