

Decision 90 05 044 MAY 4 1990

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
Lounge Car Tours Charter Company,)
Inc. for immediate emergency)
temporary authority to extend its)
existing passenger stage certificate)
(PSC-1464) to include scheduled)
service over regular routes between)
Buena Park/Anaheim and John Wayne)
Airport.)

Application 89-05-059
(Filed May 26, 1989)

Messrs. Russell & Hancock, by John C. Russell,
and Christopher Ashworth, Attorneys at Law,
for Lounge Car Tours Charter Co., Inc.,
applicant.

John E. deBrauwere, Attorney at Law, for Ground
Systems, Inc., protestant.

James P. Jones, for United Transportation Union,
interested party.

James S. Rood, Attorney at Law, and Ebi Esule,
for Transportation Division.

O P I N I O N

Lounge Car Tours Charter Company (LCT) seeks a certificate of public convenience and necessity (CPC&N) to operate as a passenger stage corporation between points within the city limits of Anaheim and Buena Park, on the one hand, and John Wayne Airport (JWA) in Orange County, on the other hand. LCT proposes to conduct operations with full-size buses (47-passenger) on a scheduled basis. LCT currently provides a similar service under its certificate authority PSC-1464 between Anaheim, Buena Park, and Los Angeles International Airport (LAX). The application was protested by Ground Systems, Inc., dba Airport Coach (AC), which currently serves the Anaheim, Buena Park, JWA route under certificate authority PSC-5219 on regularly scheduled service using

full-sized buses.¹ AC also serves LAX from Anaheim and Buena Park in direct competition with LCT.

Public hearing was held October 2 and 3, 1989 before Administrative Law Judge Robert Barnett.

LCT Evidence

The general manager of LCT testified that she is also the president of Airport Cruiser, Inc.; that Airport Cruiser is the management company of LCT; that Airport Cruiser is in the process of purchasing LCT's passenger stage certificate PSC-1464 (see Decision (D.) 89-09-016 in Application 89-04-038); and that should a certificate be granted in this application it would be transferred to Airport Cruiser. For the purpose of this application she considers Airport Cruiser and LCT one and the same.

She said that LCT has been in business since 1979 and has operated under both Interstate Commerce Commission authority and Public Utilities Commission authority. Airport Cruiser has been in business since March 1989. LCT has adequate financial resources to begin service to JWA, having a net worth of over \$300,000. It currently operates nine 47-passenger buses and expects to use three of those buses in its JWA service. LCT has a preventive maintenance program, a safety program, and adequate insurance.

LCT proposes to schedule 15 round-trips per day to JWA starting at 6 a.m. from the Buena Park Hotel, stopping at specific locations in Anaheim, including the Disneyland Hotel, thence to JWA. On the return from JWA it would stop at any hotel or motel in the Disneyland area the passenger desired that was on the route. LCT proposes a \$5 adult one-way fare, \$8 round-trip; children 5 to 11 would be \$3 one-way, \$5 round-trip.

¹ Immediate temporary authority was requested because at the time of filing this application it was thought that AC's certificate might be suspended. That did not occur and this request for a CPC&N is being considered under normal procedures.

She testified that JWA awarded two contracts for bus service to JWA and that AC was awarded one contract and LCT was awarded the other. (We understand that as of November 1989 the LCT contract was terminated.) The airport has constructed a bus stop opposite its baggage facility which has space for two buses.

In regard to public need the witness testified that she has the contract from JWA, that various hotel management people requested additional service, that tour operators requested LCT's service, that the airport was expanding, and that the Commission should recognize the growth of Orange County. By stipulation late-filed Exhibit 30 was admitted which shows past and current passenger statistics at JWA and JWA's projections of future passengers. The exhibit shows that currently JWA permits 55 takeoffs a day with a maximum number of passengers allowed (enplaning and deplaning) of 4.75 million per year. A new terminal is to open in 1990 at which time flights will increase, reaching a maximum of 73 takeoffs a day, with a maximum of 8.4 million passengers by 1994. In other words, the airport authorities expect the passenger count at JWA to almost double in the next five years. Exhibit 27 shows there are only 3,151 existing parking spaces at JWA and 4.6% of airline passengers use airport limousines or buses. Exhibit 30 shows that the expanded airport will have only 8,400 parking spaces. Commercial airline operations at JWA begin at 7 a.m. (8 a.m. on Sundays) and continue until 11 p.m. Departures are scheduled no later than 9:30 p.m. daily.

She testified that for two months in 1989, February and March, LCT operated a scheduled bus service to JWA from Anaheim and Buena Park under her Interstate Commerce Commission (ICC) authority. She said LCT terminated operations at JWA because AC's employees were harassing LCT's drivers, blocking the bus stop zones, preventing passengers from getting on LCT's vehicles, and because AC was operating unsafe equipment. AC was picking up passengers with LCT's tickets and vouchers. In addition, she was

concerned that the California Public Utilities Commission (CPUC) does not recognize her ICC authority at JWA.

The witness testified that AC has, in the recent past, operated illegally, operated unsafely, operated unethically by soliciting LCT's passengers, and harassed LCT's drivers. She testified to several incidents where she claims AC operated unsafely and she referred to the California Highway Patrol's (CHP) unsatisfactory safety rating of AC. She asserted that AC had operated unethically by sending its vans out to LCT stops just prior to LCT's arrival so that the vans would pick up passengers and deliver them to AC's buses for trips to LAX, including passengers preticketed on LCT. To prevent this LCT began operating a bus ten minutes prior to the scheduled bus to tell the waiting passengers that the scheduled bus was on its way. Sometimes the early bus would pick up the passengers; sometimes not. On cross-examination she admitted that on occasion her drivers would pick up passengers preticketed on AC.

She distinguished LCT's service from that of AC. She said that LCT picks up passengers at hotels and motels in the same bus that transports them to the airport while the majority of AC's passengers are picked up in vans and transported to the Disneyland Hotel for transfer to the bus which will take them to the airport. She said that LCT serves 11 hotels and motels in the Anaheim-Buena Park Area with direct bus service, while AC only serves three hotels with direct service and the balance with vans.

Evidence of Ground Systems, Inc.

The president of protestant Ground Systems, Inc., dba Airport Coach (AC), testified that the company was founded in 1988 and purchased the authorities of AC and Pine Tree bus lines. AC provides scheduled 47-passenger bus service to LAX and JWA from the Anaheim-Buena Park area. The Disneyland Hotel is AC's principal terminal, with shuttle vans picking up and delivering passengers between the Disneyland Hotel and other hotels and motels in the

area. AC operates 19 buses and 8 vans. From the Disneyland Hotel AC operates 22 round-trips a day on 45-minute headways to JWA. He testified that LCT's proposed service will duplicate AC's service, except that LCT's service will pick up and deliver in the same airport bus while AC's service uses a scheduled shuttle pickup with vans which pick up and transfer at the Disneyland Hotel for service to JWA, and the reverse from JWA. He said that LCT serves only three hotels that AC does not serve. He added, however, the comment that scheduled pickup points are frequently changed. He said that AC uses on-call van service to pick up at hotels and motels not on the scheduled van route when a reservation is made. There is no charge for the van service. The bus fare is \$4.50 adult one-way, \$2.50 child 3 through 12 one-way.

He testified that on the LAX service which competes directly with LCT's service, LCT operates an unscheduled "sweep" bus which runs about 10 minutes ahead of LCT's regularly scheduled bus which then transfers passengers picked up on the sweep to LCT's regularly scheduled LAX bus. He said he does not operate his vans ahead of schedule. He said that many hotels operate their own shuttle vans to his Disneyland Hotel terminal for transfer to or from JWA.

He testified that when LCT operated into JWA for two months in February and March 1989, LCT defaced an AC sign at JWA; that at LAX, LCT took passengers which had tickets on AC. When LCT tried to redeem the tickets from AC, AC refused to honor them. He said that when LCT ceased operations at JWA at the end of March AC's passenger count doubled. In July 1989, AC increased its schedules to 30-minute headways and saw no increase in passengers; it then resumed 45-minute headways. In his opinion a second service into JWA from the Anaheim-Buena Park area will not serve an unmet need but will merely dilute the present service.

He said that LCT's proposed schedule provides a 30-minute wait at JWA which would violate JWA's bus regulations and would

increase the probability that LCT would solicit AC's passengers. He stated that on LCT's LAX service it does not drop off passengers at their hotel or motel in every case, but often drops them at regular stops so that the passengers must carry their baggage to their hotel.

The witness testified to an accident between LCT's bus and AC's bus at the Anaheim Hilton Hotel which he claimed was caused by the AC driver. On cross-examination he admitted that in 1989 AC had been cited by the CHP for unsatisfactory operations. This led to a brief suspension of its certificate by the CPUC. He said that his buses are safe; he has excellent equipment; and he has seven full-time mechanics in his maintenance department. The CHP unsatisfactory citation was not for poor equipment but for poor paperwork.

AC called as a witness one of its drivers who previously had worked for LCT. She has been a bus driver for eight years. She testified that LCT had no driver training program when she worked there (July 1987 through May 1988) and the coach she was assigned to drive was unsafe. She had been instructed, on occasion, to get ahead of schedule at LAX to pick up passengers that might be waiting for other carriers. She was told by LCT's general manager to take any passenger regardless of the bus ticket the passenger had even though the ticket would not be redeemed, just to hurt the competitor. Now that she works for AC she still sees LCT buses at LAX operating ahead of schedule. She believes that maintenance on AC's buses is much better than the maintenance on LCT's buses. On cross-examination she testified that she had been fired from LCT.

A ticket agent for AC testified that in March 1989 she worked at JWA. At that time LCT was serving JWA. She said that an LCT bus would occupy the bus loading zone for 10 or 15 minutes, would leave, and another LCT bus would immediately take its place. Many deplaning passengers had bus vouchers good for either LCT or

AC. With an LCT bus always at the JWA bus stop, LCT got most of that business. Eventually, the sheriff stopped LCT from continually occupying the bus zone. She said at one time at JWA an LCT driver approached her in a belligerent manner and tried to solicit a passenger that was talking to her to use LCT's service. LCT's drivers solicited at the baggage area in violation of airport rules. They also complained to the deputy sheriff at JWA that the AC ticket facilities were not authorized; AC actually was authorized.

Discussion

Applicant has not shown that public convenience and necessity require its service. Nor has applicant shown that it is fit to operate a competitive--hubcap-to-hubcap--scheduled bus route between the Buena Park/Disneyland area and JWA.

LCT and AC operate competitively between the same points in the Buena Park/Disneyland area to LAX and they operated competitively between those same Buena Park/Disneyland points and JWA for two months in 1989. Out of that competition each party accuses the other of:

1. Operating unsafe equipment;
2. Operating unscheduled service to capture its competitor's passengers;
3. Harassing each other's drivers and other employees;
4. Soliciting each other's passengers;
5. Transporting passengers who are ticketed on the competitor, knowing that the transporting company will not get paid for the transportation; and
6. Blocking bus stop zones, including staying too long in the zone in violation of airport rules.

LCT presented only one witness, its general manager, to support its entire showing, including its showing on public need. It argues that a parade of public witness, traffic agents, and hotel operators is not necessary because "we all know that Orange County is growing and expanding", because the airport wants two carriers, and because the airport is expanding. While we have not emphasized the need for public witnesses in recent bus and van certificate matters, and we have stated that it is our policy to promote competition in airport transportation service

(Investigation of Marin Airporter and Santa Rosa Airporter, D.89-08-045, at p. 13), still, the evidence presented in this application raises serious questions about whether applicant LCT's service would be supported by the hotels and travel agents. Hotels and travel agents want happy guests on their Happy Hop to Disneyland packages. They may not support a carrier who has been accused of soliciting and perhaps harassing passengers. Conduct of this nature is being constantly brought to our attention.

(Investigation of Marin Airporter, supra; Airport Limo of Sunnyvale v Bay Area Shuttle, D.88-02-047 in Case 86-12-003; Rulemaking Re Passenger Carrier Services, D.89-10-028 in Order Instituting Rulemaking 88-03-012.) It is no defense for LCT to say that the improper conduct was caused in response to improper conduct by AC. It is LCT which must meet the standards for certification. If AC is violating its tariffs then a complaint should be filed as in Airport Limo v Bay Area Shuttle, supra. Without supporting testimony from independent, public witnesses we cannot find that public convenience and necessity require the service of applicant.

LCT has been accused of monopolizing loading zones, and we are persuaded that the accusation is accurate. In our Rulemaking Re Passenger Carrier Service, supra, we said "...it is not in the public interest for the Commission to allow...carriers creating unsafe traffic conditions to operate on airport property.... Given the airport congested conditions, we cannot

ignore carriers operating on airport property who persist in violating airport authority regulations established to address congestion, such as stop restrictions, loading and unloading zones, and parking regulations. Such carriers do not serve the public interest by adding to passenger service delays and creating unsafe traffic conditions at the airports. We consider this area one in which we should aid the enforcement of airport regulations." (D.89-10-028 at p. 20.)

By denying this application we are not, by implication, condoning the activities of AC. We expect all certificated carriers to operate in accordance with their operating authority and within the law. We believe that carrying a passenger who is ticketed on a competitor, knowing that the ticket will not be redeemed, and carrying that passenger just to prevent the competitor from earning a fare is not only unethical, but it may be a violation of law in that the carrier is providing free transportation prohibited by Public Utilities Code § 532. From the carrier's point of view the passenger is riding free.

Findings of Fact

1. There is no public witness testimony that LCT's service is needed between the Buena Park/Disneyland area and JWA.
2. On occasion LCT employees have harassed AC employees.
3. LCT has intentionally operated outside of its filed tariff schedules.
4. LCT has deliberately exceeded its time limits at the bus loading zone at JWA.
5. LCT has actively solicited passengers ticketed on its competitor, knowing that the tickets would not be redeemed, in order to deprive its competitor of the fare.
6. LCT has not shown that public convenience and necessity require its service.

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Conclusion of Law

The Commission concludes that the application should be denied.

ORDER

IT IS ORDERED that:

1. The application is denied.
2. Lounge Car Tours Charter Company may file a new application for Buena Park/Disneyland to John Wayne Airport service not earlier than 6 months from the effective date of this order and, if so, shall present public witnesses, including hotel and motel operators, in support of its application.

This order is effective today.

Dated May 4, 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. Schulman
 NEAL J. SCHULMAN, Executive Director

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