

Decision 90 06 042 JUN 20 1990

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of George N. Fahmi, dba Hidey)
Transportation, for certificate of)
public convenience and necessity)
to operate a passenger and baggage)
service between Los Angeles)
International Airport and hotels)
and residences of Los Angeles)
County, Orange County, and the)
City of Riverside.)

Application 89-05-053
(Filed May 22, 1989;
amended November 13, 1989)

Albert E. Martin, for George N. Fahmi and Ahlam L. Fahmi, applicants.
S. E. Rowe, by K. D. Walpert, for the Department of Transportation, City of Los Angeles, and Sheryl L. Meshack, Attorney at Law, for the Department of Airports, City of Los Angeles, protestants.
Victor G. Baffoni, for United Transportation Union, interested party.
MacDonald Ebi Esule, for the Transportation Division.

O P I N I O N

George N. Fahmi and Ahlam L. Fahmi, husband and wife, doing business as Hidey Transportation, request authority under Public Utilities (PU) Code § 1031, et seq., to establish and operate an on-call passenger stage corporation service for the transportation of passengers and their baggage between points in the Counties of Los Angeles, Orange, Riverside, and San Bernardino, on the one hand, and Los Angeles International Airport (LAX), Long Beach Airport, Burbank Airport, Ontario Airport, John Wayne Airport, Los Angeles Amtrak and Greyhound Stations, and Los Angeles and Long Beach Harbors, on the other hand.

Protests having been filed by the Los Angeles Department of Transportation (LADOT) and the Los Angeles Department of

Airports (LADOA), a duly noticed public hearing was held before Administrative Law Judge Orville I. Wright in Los Angeles on January 30, 1990, and the matter was submitted for decision upon the filing of the transcript on February 20, 1990.

Applicants' Evidence

Applicants currently provide charter-party transportation service in the Los Angeles area (TCP-5001-P) with two vans. They propose to operate with 15 vehicles if their application is granted.

An unaudited balance sheet submitted with the application shows total assets of \$84,200, of which \$32,000 is cash in bank, and liabilities of \$7,600 as of September 30, 1989. An unaudited income statement shows charter-party revenue for the year ended October 31, 1989 of \$89,388, operating expenses of \$34,855, and net income before taxes of \$54,533.

One of applicants' regular shuttle customers attended the hearing to testify to the good charter-party service she had received from applicants and to support their petition for passenger stage corporation credentials.

With respect to public convenience and necessity, applicants rely upon statistics in public documents, including exhibits sponsored by LADOA in this proceeding, showing, for example, that the total number of passengers arriving and departing LAX in 1988 was 44,398,611 and in 1979 was 34,923,205.

LADOA's Evidence

LADOA passed Resolution 16832 on September 13, 1989 imposing a moratorium on new or additional shuttle van service to LAX and requiring the Los Angeles City Attorney to file opposition with the Commission opposing all new passenger stage corporation applications, except for applications for scheduled bus services, for the duration of the moratorium period.

Resolution 16832 states reasons for the moratorium as follows:

"WHEREAS, the airport and its roadways, curbsides, and other operational areas are being subjected to extreme congestion, double parking, illegal soliciting, unfair and harmful competition practices, and other problems created by the numerous PSC vehicles and their methods of operation; and

"WHEREAS, these problems continue to grow worse and it is imperative that the issues of permitting more vehicles to service the airport and regulating the methods by which they serve the public must be studied and analyzed to determine what future actions should be taken by management and the Board of Airport Commissioners; and

"WHEREAS, the Landside Operations Bureau will study this matter and recommend appropriate solutions to the Board;..."

The resolution includes authorization to formally request the Commission to place a blanket moratorium on authorizing new passenger stage corporations to provide service to and from LAX during LADOA's moratorium period.

Evidence submitted in support of the LADOA resolution is that there are about 630 on-call vans operated by about 30 companies serving LAX at the present time. Pictures were introduced depicting double-parked vans at LAX passenger boarding zones, and testimony was presented detailing LADOA's continuing problems with congested traffic flow.

Van drivers, according to the testimony, frequently crowd the curb, double-park, solicit passengers, and circle the airport in efforts to load their vehicles with passengers. An average number of passengers per van of two to three was reported by the LADOA witness.

An exhibit was introduced showing that LADOA issues approximately 1,300 citations per month to shuttle van operators for violations of airport rules.

Airport statistics with respect to passenger volume at LAX shows a continuing growth from 34,923,205 in 1979 to 44,873,113 in 1987, with a reduction to 44,398,611 in 1988. The period January through August 1989 shows only a 0.6% increase in total domestic and international passenger traffic over the comparable period for 1988.

LADOA and LADOT request that the application be denied in harmony with the terms of Resolution 16832.

Discussion

Applicants present themselves as successful operators of a charter-party service between LAX and selected points in the Los Angeles area for some 18 months. They have operated with two vans and have made a profit; they seek to expand their service to encompass 15 vans in on-call service.

They have adequate financial resources for the acquisition of several new vans, although perhaps not the full 15 visualized by them as their goal.

Applicants' spokesman-driver, displaying some difficulty with the English language, erroneously testified that the vans would be operated by independent contractors rather than by employees as required by Commission general orders. However, he later testified that applicants would abide by all Commission rules and regulations and that they would consult with Transportation Division staff for guidance.

Need for applicants' service has been demonstrated in this proceeding by evidence that there has been a tremendous growth in airline travel and related ground transportation since airline deregulation in 1978, as found by the Commission in Decision (D.) 89-10-028.

Airport Congestion

LADOA makes an impressive factual showing of the traffic congestion problems it is experiencing at LAX which led to the adoption of the moratorium resolution by the Board of Airport

Commissioners. These problems, however, will be unaffected by whatever decision we make in this case.

The Commission has consistently acknowledged that our granting a certificate of public convenience and necessity does not convey airport access rights. No carrier shall conduct any operations on the property of or into any airport unless such operations are authorized by both this Commission and the airport authority involved. LADOA reserves authority to continue to enforce its moratorium resolution by denying applicants here an operating permit at LAX.

Questions of airport congestion policy were before us in the Order Instituting Rulemaking (R.) concerning the regulation of passenger carrier services (R.88-03-012). We declined to adopt policies which tended to duplicate and interfere with airport jurisdiction and future airport regulation established to resolve congestion problems and facilities constraints. At page 3 of D.89-10-028 we said:

"We decline to limit entry of carriers to airport service because a greater need for more transportation service is created by the increase in air passengers since airline deregulation in 1978. We believe such action to be premature until airport traffic and facilities studies presently in progress are complete."

Findings of fact in that decision included the following:

- "2. Tremendous growth in airline travel and related ground transportation have occurred since airline deregulation in 1978. Competition due to this passenger growth has resulted in an increase in applications for new carrier authority, requests for service changes, and competitor complaints.
- "3. Overlapping problems of solicitation, illegal operations, and carriers operating outside authority are occurring at the state's major airports. In addition, traffic congestion is continually

increasing at major airports due to the increase in the number of carriers serving air passengers.

- "4. The increase in passenger stage and charter-party carriers at airports is a natural and proper response to the increase in air passengers needing transportation to and from airports."

* * *

- "13. The cause of airport traffic congestion is the significant increase in the numbers of airline passengers.
- "14. Limiting the number of carriers to reduce traffic congestion may cause insufficient transportation services at a time when increased service is needed the most."

We continue to adhere to the views expressed in D.89-10-028.

Waiver of Proposed Decision

It is common in the case of airport shuttle service applications for applicants to move to waive the filing of and comment on the proposed decision (Rule 77.1, Rules of Practice and Procedure), which motion has been uniformly granted.

While applicants in this instance have not requested waiver of the comment procedure, we will make and grant such action on our own motion as the evidence essentially shows the expansion of an existing service.

Findings of Fact

1. Applicants have the ability, equipment, and financial resources to perform the proposed service.
2. Public convenience and necessity require the proposed service.
3. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

4. As the evidence in this case essentially shows the expansion of an existing service, the order should be effective on the date of signing.

Conclusion of Law

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.

ORDER

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to George N. Fahmi and Ahlam L. Fahmi, husband and wife, 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-5001, to transport persons, baggage, and/or express.

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 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.

3. Before beginning service to any airport, applicants shall notify the airport's governing body. Applicants shall not operate into or on airport property unless such operations are also authorized by the airport's governing body.

4. Applicants are authorized to begin operations on the date that the Executive Director mails a notice to applicants that their evidence of insurance is on file with the Commission and that the California Highway Patrol has approved the use of applicants' vehicles for service.

- 5. The application is granted as set forth above.

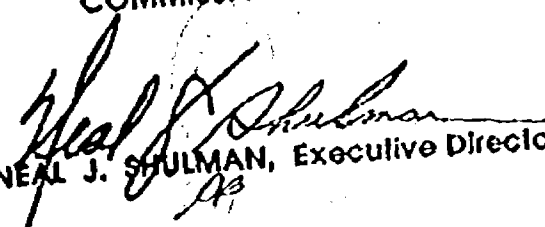
This order is effective today.

Dated JUN 20 1990, at San Francisco, California.

FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

President G. Mitchell Wilk,
being necessarily absent, did
not participate.

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


NEAL J. SHULMAN, Executive Director

T/MEE/ebi

Appendix PSC-5001

George N. Fahmi
and
Ahlam L. Fahmi

Original Title Page

CERTIFICATE

OF

PUBLIC CONVENIENCE AND NECESSITY

PSC-5001

TO OPERATE AS

PASSENGER STAGE CORPORATION

Showing passenger stage operative rights, restrictions, limitations,
exceptions, and privileges applicable thereto.

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 90 06 042, dated

JUN 20 1990 of the Public Utilities Commission of the
State of California in Application 89-05-053

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Appendix PSC-5001

George N. Fahmi
and
Ahlam L. Fahmi

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Decision 90 06 042, Application 89-05-053.

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

George N. Fahmi and Ahlam L. Fahmi, by the certificate of public convenience and necessity granted by the decision noted in the margin, are authorized as a passenger stage corporation to provide on-call services to transport passengers and baggage between certain points in the counties of Los Angeles (LA), Orange, Riverside and San Bernardino, described in Section 2, and LA International Airport (LAX), Long Beach Airport (LGB), Burbank Airport (BUR), Ontario Airport (ONT), John Wayne Airport (SNA), LA Amtrak and Greyhound Stations, or LA and Long Beach Harbors (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 authority involved.
- (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, LGB, BUR, ONT, SNA, LA Amtrak and Greyhound Stations, or Harbors.
- (d) The term "on-call" as used refers to service which is authorized to be rendered dependent on the demands of passengers. The tariffs shall show the conditions under which each authorized 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.

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SECTION 2. SERVICE AREA DESCRIPTIONS

Los Angeles County

Includes all points within the geographical limits of Los Angeles County.

Orange County

Includes all points within the geographical limits of Orange County.

Riverside County

Includes all points within the geographical limits of the cities of Riverside, Corona, Mira Loma, Norco, Lake Elsinore.

San Bernardino County

Includes all points within the geographical limits of the cities of Alta Loma, Chino, Rancho Cucamonga, Etiwanda, Ontario, Montclair, Upland, Bloomington, Grand Terrace/Colton, Fontana, Highland, Loma Linda, Redlands, Rialto, San Bernardino, and the communities of Pioneertown and Parker Dam.

SECTION 3. ROUTE DESCRIPTIONS

On-Call, Door-to-Door Service

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

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