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Decision 90-11-065 November 21, 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Paul Stuart Bobrow,)
 dba Marin Door to Door for)
 certificate of public convenience)
 and necessity to operate as a)
 passenger stage corporation between)
 points in Marin County and the San)
 Francisco International Airport.)

ORIGINAL
 Application 90-07-066
 (Filed July 26, 1990)

OPINION

Application

On July 26, 1990 Paul Stuart Bobrow (applicant), an individual doing business as Marin Door to Door, filed an application seeking a certificate of public convenience and necessity (CPC&N) to establish a passenger stage corporation to transport passengers, with or without luggage, between residential areas and points in Marin County (Marin), on the one hand, and the San Francisco International Airport (airport), on the other hand, pursuant to Public Utilities (PU) Code § 1031.

Applicant is a tax and financial accountant by profession. He owns his own accounting firm and a janitorial service employing 14 individuals at 11 locations. Applicant seeks a CPC&N to provide transportation service that is different and distinct from any commercial van transportation system currently being offered to the public in the proposed areas. That is, applicant proposes to provide transportation service between the airport and residences or locations of passenger choice and "Park-n-Ride" lots. Although service will be provided between the hours of 6:00 a.m. and 10:00 p.m. every attempt will be made to adjust the schedule to the needs of applicant's passengers.

Fares for door-to-door service range from \$20 to \$50 for transportation service between the airport and Sausalito, and the San Anselmo, Ross, and Greenbrae area, respectively. Economy pickup fares range from \$10 to \$15 between the airport and Park-n-Ride lots in Sausalito and Novato, respectively.

Service will be provided in 1990 model 7 passenger vans that are fully air conditioned. Service and maintenance of the vehicles will be performed by applicant's own employees with the assistance of outside mechanics, as necessary. The vehicles will also be covered by liability insurance in amounts that equal or exceed the minimum required under General Order 101.

Applicant represents that his net worth of approximately \$71,000 and cash on hand of \$15,000 at June 30, 1990, provides him with sufficient financial resources to start and to operate his transportation service. Applicant expects to serve 4,320 customers on a round trip basis, or 8,640 customers on a one way basis, and accumulate a net operating profit of \$59,400 in his first year of operation, before income taxes.

Applicant also represents that a public need and demand requires the granting of its proposed service because its service is distinct from any commercial van transportation system currently being offered to the public in the proposed areas. Further, his transportation service will benefit the public through making available to the public transportation that is more personal and comfortable and draw the public away from the use of individual automobiles, thereby lessening traffic and pollution problems.

Notice of this application appeared on the Commission's Daily Calendar of August 1, 1990, and on the Commission's Daily Transportation Calendar of August 2, 1990. A protest to the application was filed on August 8, 1990 by Marin Airporter, a certificated passenger stage corporation authorized to transport passengers and baggage between the same areas that applicant proposes to serve.

Protest

Marin Airporter objects to the grant of a CPC&N to applicant, and requests that evidentiary hearings be held to permit Marin Airporter to present evidence and to develop facts and arguments that a grant of the application is not warranted. Marin Airporter opposes the grant of a CPC&N to applicant because:

- a. Marin Airporter is presently providing passenger transportation to the satisfaction of the public and the Public Utilities Commission.
- b. Marin Airporter is capable of meeting and is presently meeting the requirements of the public for passenger transportation in the areas applicant proposes to serve.
- c. Marin Airporter's continued ability to provide reliable, economical and efficient passenger transportation service to Marin would be seriously eroded.
- d. There are no public benefits to be derived from the grant of this application.
- e. The operations proposed by applicant cannot be feasibly conducted.
- f. Applicant has not established that a public convenience and necessity exists for the proposed service.
- g. Applicant has not established that he is fit, willing, and able to provide the proposed service.
- h. A grant of this application would be environmentally unsound.
- i. Applicant has not substantiated that he can meet the "statutory and regulatory standards" which are a condition precedent to a grant of the application.
- j. Approval of the application will authorize applicant to duplicate Marin Airporter's operations.

Amendment

An amendment to the application (amendment) was filed on September 10, 1990. Notice of the amendment appeared on the Commission's Daily Calendar of September 19, 1990, and on the Commission's Daily Transportation Calendar of September 20, 1990.

The amendment deletes applicant's proposal to provide service to and from Park-n-Ride lots located in Marin because the lots are already overfilled, as substantiated by a Caltrans (California Department of Transportation) March 1990 California Rideshare Facilities Report, Exhibit J to the amendment.

The January 1, 1990 San Francisco International Airport Guide attached to the amendment as Exhibit L shows that door-to-door airport service is being provided to San Francisco, San Mateo, Santa Clara, Contra Costa, and Alameda Counties only. Door-to-door airport service is not currently being provided to Marin County.

Rates were revised downward between \$2 and \$22 to reflect the median fare between bus and taxis. Service between the airport and Sausalito was revised downward from \$20 to \$18, and service between the airport and the San Anselmo, Fairfax, and Novato area from \$50 to \$28.

Applicant also clarified that he will start his transportation service with a single 7 to 8 passenger mini-van and add additional vehicles as needed. A revised proforma income statement shows that one van operating 365 days a year at 50%¹ capacity will result in a first year net operating profit of between \$31,774 and \$66,814, depending on whether the low fare of \$18 or the average fare of \$22 is used, respectively. At a 33% load factor applicant projects that his profit will range from a first year operating loss of \$20,786 to a profit of \$2,574,

1 Average passenger load factor for airport van service based on San Francisco International Airport's Airport Operations April 10, 1987 ground transportation analysis.

depending on whether the \$18 low fare or the \$22 average fare is used, respectively. Proportional results will occur with the use of a second and third van.

In response to Marin Airporter's protest, applicant represents that fixed route bus service and door-to-door service currently co-exist elsewhere in the San Francisco Bay Area and that the traveling public in Marin should not be deprived of a similar choice. To keep airport congestion down, applicant proposes to schedule airport arrivals and departures.

Request for an Interim Certificate

Subsequently, on October 12, 1990, applicant filed a request for an interim certificate pending a hearing on his application as amended. Applicant seeks authority to operate within two weeks or on November 15, 1990, whichever is later, so that the public may have the use of applicant's service in time for the Thanksgiving and year-end holiday traveling season. In turn, applicant proposes to initiate on-call service from Marin and scheduled service from the airport with three vehicles. The first vehicle will be equipped with a "Classic R30A" wheelchair lift, installed by Mobility Systems of Berkeley, to provide airport service to mobility handicapped persons.

Discussion

Applicant meets the basic criteria to obtain a CPC&N. Not only is he ready, willing, and able to provide transportation service but also wants to offer a transportation service that is not currently being provided to Marin residents. As demonstrated by applicant's financial and pro-forma financial statements, applicant has the financial ability to provide the door-to-door transportation service on a profitable basis.

However, Marin Airporter protested this application on two primary bases. The first basis raises issues concerning applicant's ability to provide service. As discussed, applicant

has demonstrated that he is able to provide service therefore, the ability issue is moot and should not be considered.

The second basis raises issues concerning Marin Airporter's service. PU Code § 1031 states in part that no passenger stage corporation shall operate or cause to be operated any passenger stage over any public highway in this State without first having obtained from the Commission a certificate declaring that public convenience and necessity require such operation.

However, PU Code § 1032 states, in part, that the Commission may, after a hearing, issue a certificate to operate in a territory already served by a certificate holder under this part only when the existing passenger stage corporation or corporations serving the territory will not provide service to the satisfaction of the commission.

A literal interpretation of PU Code § 1032 precludes us from granting applicant a CPC&N for passenger stage service because an existing operator has already received authority to render passenger service in applicant's requested service territory. This section effectively provides Marin Airporter, and all existing passenger stage carriers, a monopoly certificate.

The California Supreme Court recognized the necessity of relating anticompetitive implications to the public interest in CPC&N proceeding when it stated that it is no longer open to serious question that in reaching a decision to grant or deny a CPC&N, the Commission should consider the antitrust implications of the matter before it.² The Commission itself has stated that there can be no doubt that competition is a relevant factor in

² Northern California Power Agency v. Public Utilities Commission, (1971) 5 Cal 3d 370.)

weighing the public interest, and that antitrust considerations are also relevant to the issuance of a CPC&N.³

Subsequently, by Decision (D.) 91279, dated January 29, 1980, an application of American Buslines, Inc. for a passenger stage CPC&N, we concluded that with competitive considerations forming a cornerstone for a determination of a CPC&N, it is axiomatic that the literal interpretation of PU Code § 1032 would preclude the establishment of competitive service to the detriment of public interest. We also concluded that it is incumbent upon us to weigh the advantages and disadvantages of competitive and monopolistic service in terms of overall benefit to the general public.

In general, antitrust laws and policies are premised on the basis that competitive service generally results in a superior overall level of service to the public. Competition stimulates efforts of competitors to excel, which accrues to the benefit of the general public. Therefore, as set forth in D.91279, PU Code § 1031 and PU Code § 1032 are interpreted as being of secondary importance.⁴

As recent as October 1989 by D.89-10-028, our rulemaking investigation into the regulation of passenger carrier service, we declined to limit entry of carriers to airport service because a greater need for more transportation service has been created by the increase in air passengers since airline deregulation in 1978. This policy encourages consumers to use these transportation services and draw consumers away from their private automobiles thereby lessening traffic and pollution problems and promoting conservation.

3 M. Lee (Radio Paging Co.), (1966) 65 Cal P.U.C. 635, 640.

4 Writ Denied, Greyhound Lines, Inc. v. CPUC, SF No. 24166; California Supreme Court (July 16, 1980).

To grant Marin Airporter's protest would stifle competition, deny Marin residents a choice of transportation, and limit entry of carriers to airport service, each of which is contrary to Commission transportation policy and regulation. Therefore, pursuant to Rule 8.2 of the Commission's Rules of Practice and Procedure Marin Airporter's protest should be denied. Our denial of Marin Airporter's protest should not be construed as a judgment on the adequacy of Marin Airporter's transportation service.

Since applicant has requested authority to begin his transportation service prior to the Thanksgiving and year-end holiday traveling season, this order should be effective on the date signed.

Findings of Fact

1. Applicant seeks a CPC&N to provide door-to-door transportation service between Marin and the airport which is not presently being offered.
2. Applicant has a net worth of approximately \$71,000 and cash on hand of \$15,000 at June 30, 1990.
3. Applicant represents that a public need and demand exists because his service is distinct from any commercial van transportation system currently being offered in the proposed area and because his service will draw the public away from the use of individual automobiles, thereby lessening traffic and pollution problems.
4. Marin Airporter filed a protest to the application.
5. Applicant's amendment shows that one van operating 365 days a year at 50% capacity will result in a first year net operating profit of between \$31,774 and \$66,814.
6. Applicant believes that fixed route bus service and door-to-door service can co-exist in Marin. This co-service already exists in the San Francisco Bay Area.

7. Applicant requests an interim certificate to operate in time for the Thanksgiving and year-end holiday travel season.

8. Competitive considerations are a cornerstone for a determination of a CPC&N.

9. It is incumbent upon us to weigh the advantages and disadvantages of competitive and monopolistic service in terms of overall benefit to the general public.

10. Competition stimulates efforts of competitors to excel, which accrues to the benefit of the general public.

11. Door-to-door airport service is not currently being provided to Marin County.

12. We decline to limit entry of carriers to airport service because a greater need for more transportation service has been created by the increase in air passengers since airline deregulation in 1978.

13. Rule 8.2 does not insure that a public hearing will be held by the filing of a protest.

14. Applicant has the ability and financial resources to perform his proposed transportation service.

15. Public convenience and necessity require the proposed service.

16. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

17. The Commission has considered the effect of applicant's proposed service upon the operations of the public transit operators serving the territory applicant requests authority to serve.

Conclusions of Law

1. Marin Airporter's protest should be denied.
2. Applicant should be granted a CPC&N to provide door-to-door transportation service between Marin and the Airport.

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. Marin Airporter's protest is denied.
2. A certificate of public convenience and necessity is granted to Paul Stuart Bobrow, an individual doing business as Marin Door to Door, to operate as a passenger stage corporation, as defined in PU Code § 226, between the points and over the routes set forth in PSC and Appendix A, to transport persons and luggage. Applicant's first van shall be equipped with a wheelchair lift.
3. This certificate is applicable for door-to-door service only. Any deviation from door-to-door service shall be requested through a new application.
4. Within 30 days after this order is effective, applicant shall file a written acceptance of this certificate with the Commission's Transportation Division Director.
5. If applicant fails to file tariffs within 120 days of the effective date of this order, applicant's certificate may be suspended or revoked.
6. Applicant shall state in its tariffs and timetables when service will start, and shall allow at least 10 days' notice to the Commission; and make timetables and tariffs effective 10 or more days after this order is effective. The tariff rates shall be consistent with the rates proposed in Applicant's Amended Application as set forth in Appendix B.
7. Subsequent tariff rate charges shall continue to reflect a differential charge for door-to-door service over comparable station bus service charges.

8. Applicant shall comply with General Orders Series 101, 104, and 158, and the California Highway Patrol safety rules.

9. Applicant shall keep its books and records in accordance with the Uniform System of Accounts as prescribed by this Commission.

10. Applicant is subject to the Commission's Transportation Reimbursement Fee and shall remit said fee to the Treasurer at least quarterly, pursuant to PU Code § 403.

11. Before beginning service to the San Francisco International airport, applicant shall notify the airport's governing body and shall not operate into or on airport property unless such operations are also authorized by the airport's governing body.

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

13. The identification number assigned to Paul Stuart Bobrow is PSC-6715 which should be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

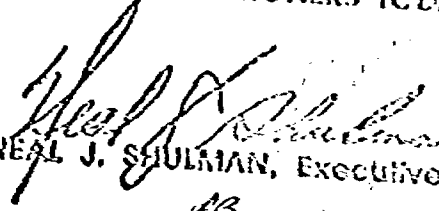
14. The certificate granted and the authority to render service under the rates, charges, and rules authorized will expire if not exercised within 12 months after the effective date of this order.

15. The application is granted as set forth above.
This order is effective today.
Dated November 21, 1990, at San Francisco, California.

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

Commissioner Frederick R. Duda,
being necessarily absent, did
not participate.

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


NEAL J. SHULMAN, Executive Director
PB

- EXHIBIT C -

MARIN
Door to Door

403 E. Blithedale Avenue
Mill Valley, Ca. 94941
(415) 381-4815

DESCRIPTION OF ROUTE

Between San Francisco International Airport and Points in
Marin County.

Travel from Airport to Highway 101 to Highway 380 to
Highway 280 North which feeds Highway 1 leading to
the Golden Gate Bridge. After crossing the Bridge will
drop off passengers at their residences or locations of
choice starting with the closest and finishing in
northern Marin.

Between Points in Marin County and the San Francisco
International Airport.

Starting in northern Marin County and heading south,
picking up passengers at their residences or locations
of choice, crossing the Golden Gate Bridge, then down
Highway 1 which leads into highway 280, taking
highway 380 to highway 101 into the Airport.

(see attached map)

- EXHIBIT A-1 -

MARIN

Door to Door

403 E. Blithedale Avenue
 Mill Valley, Ca. 94941
 (415) 381-4815

FARESDoor to Door

<u>Area Served</u>	<u>Price 1st Pass.</u>	<u>Price Ea.Add'l</u>
Sausalito	\$18.00	\$10.00
Mill Valley	\$20.00	\$10.00
Corte Madera - Larkspur	\$22.00	\$10.00
Tiburon - Belvedere	\$24.00	\$10.00
San Rafael - Greenbrae - Ross	\$26.00	\$10.00
San Anselmo - Fairfax - Novato -	\$28.00	\$10.00

Fares are based upon a median between bus fares and taxis.

There will be no special economy rates. Marin Door to Door will specialize in pickup and drop-off of passengers at their residence or location. If a passenger's location of choice is a Park-N-Ride Lot, the fare will be the same as the town the lot is located in.

Each passenger is entitled to 2 suitcases. Additional luggage is \$2.00 per piece. Skis & Golf bags are \$ 3.00 each.

(END OF APPENDIX B)

CERTIFICATE
OF
PUBLIC CONVENIENCE AND NECESSITY
AS A PASSENGER STAGE CORPORATION
PSC-6715

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 90-11-065,
dated November 21, 1990, of the Public Utilities Commission of
the State of California in Application 90-07-066.

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Issued by California Public Utilities Commission.

Decision 90-11-065, Application 90-07-066.

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

Paul Stuart Bobrow, by the certificate of public convenience and necessity granted by the decision noted in the margin, is authorized to transport passengers and their baggage on an "on-call" basis, between Marin County and San Francisco (SFO) International Airport, over and along the routes 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 operation 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 each authorized on-call service will be rendered.
- c. No passengers shall be transported except those having a point of origin or destination at SFO.
- 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 the airport authority involved.

Issued by California Public Utilities Commission.

Decision 90-11-065, Application 90-07-066.

SECTION II. SERVICE AREA.

Marin County
Passenger residence or the pickup or drop off point
selected by the passenger.

SECTION III. ROUTE DESCRIPTION.

Commencing from any point within the County of Marin as
described in Section II above and then to San Francisco
International Airport.

Issued by California Public Utilities Commission.

Decision 90-11-065, Application 90-07-066.