

APR 10 1991

Decision 91-04-004 April 10, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the scheduling, routing and operations of Marin Airporter, Inc. and Santa Rosa Airporter, Inc. with respect to common carrier service between SFO on the one hand, and points in Marin County on the other hand.

ORIGINAL

I.88-06-020
(Filed June 17, 1988)

OPINION

Summary

On August 3, 1989, we issued Interim Decision (D.) 89-08-045 in this proceeding. In that opinion, we resolved the question of competition between respondents, ordered our Transportation Division (TD) to monitor the required changes in respondent's operations, and ordered respondents to negotiate certain stop locations and provide monthly ridership reports. We requested TD to provide a report on wheelchair access in Marin County. TD provided that report on December 15, 1989. In this final opinion, we address the issues unresolved by the interim decision and conclude that this proceeding should be closed.

Revised SFO Timetable

Ordering Paragraph 4 of D.89-08-045 required that Santa Rosa Airporter (SRA) submit a revised timetable providing San Francisco International Airport (SFO) arrivals and departures which meet the approval of SFO. During the period August 1989 through May 1990, SRA and SFO attempted to resolve the matter of SRA's revised airport schedule. TD intervened on numerous occasions to aid the negotiations. Ultimately, these three parties wrote letters to Administrative Law Judge (ALJ) Patricia Bennett indicating a stalemate in agreeing to the SFO schedule. The

ridership decreased slightly due to the entry of SRA, SRA's market share is declining and MA's operating profits are rising. Since the significant increase in ridership occurred simultaneously with our certification of a second airport carrier in Marin County, TD cannot conclusively determine what impact, if any, the presence of SRA in the market has had on the earnings of MA. TD concludes that there is a demand for SRA's service at the Travelodge in Novato.

Since TD's report on ridership shows no harmful effects to MA and shows a demand for SRA's service, we conclude that no further action to equalize competition between the two carriers is needed. No further monitoring of respondent's operations is necessary.

Report on Wheelchair Access

On January 16, 1991 a prehearing conference was held on the issue of wheelchair access to address TD's report on this subject which was submitted in response to Ordering Paragraph 10 of D.89-08-045. At the prehearing conference the parties explained their positions on this issue.

TD withdrew paragraphs 10.7 and 10.8 of its report. These paragraphs recommended that the Commission require MA to provide wheelchair accessible service on an on-call basis and report monthly ridership to the Commission. SRA would not be required to provide such service for at least one year. TD withdrew these recommendations pursuant to the change in its role in this proceeding from advocacy to advisory.

TD recommends that this proceeding be closed and that the matter of wheelchair access to airport transportation be resolved for respondents and all airport carriers in the pending OIR 88-03-012. Should this recommendation be rejected and parties desire to question TD's report, TD requests that the data request procedure be used.

MA joins in the request to close this proceeding and transfer the issue of airport service with wheelchair access to the

stumbling block appeared to be whether SRA's new schedule violated the interim order.

A noticed settlement conference was held on June 14, 1990 to discuss this issue. Although the issue was discussed and the interim order clarified, no agreeable schedule was reached at that time. The parties were encouraged to continue to pursue an agreement on the revised schedule.

On June 28, 1990, SRA indicated in a letter to ALJ Bennett that the scheduling issue had been satisfactorily resolved. SFO, subsequently, submitted its written approval of the revised SRA schedule. Therefore, SRA has met our requirement to submit an SFO schedule which meets SFO's approval.

Negotiation of Stop Locations

Respondents were ordered to reach an agreement, within 90 days of the effective date of D.89-08-045, regarding disputed stop locations at Denny's and the Travelodge in Novato. Should an agreement not be reached, respondents were ordered to notify ALJ Bennett. (Ordering Paragraph 5, p. 25.)

On November 21, 1989, Marin Airporter, Inc. (MA) notified ALJ Bennett that an agreement could not be reached. However, subsequently, SRA adjusted its schedule voluntarily to eliminate its stop at Denny's in Novato. Thus, SRA would serve the Travelodge and MA would serve Denny's making moot the dispute over these two-stop locations.

Report on Ridership

On October 11, 1990, in compliance with Ordering Paragraph 6, TD submitted a monitoring report on ridership trends for the 12-month period following D.89-08-045.

This report shows that airport ridership from Marin County has grown steadily over the past six years to a 1990 level which is twice that of 1984. MA holds the vast majority of market share of airport service and ensuing revenues. SRA's market share has varied from 8% in 1988 to 3% in 1990. Although Marin's

rulemaking proceeding. However, MA alleges TD's report contains outdated facts and legal error. Therefore, should its recommendations be rejected and TD's report offered into evidence, MA requests the opportunity to cross-examine TD witnesses on its report. MA points out that there are two new carriers in Marin County offering wheelchair accessible airport passenger stage service and that there is new funding for such transportation. Skaff, appearing for the Marin Paratransit Coordination Council and representing passengers in wheelchairs, questions this information.

In addition, MA argues that the federal legislation, Americans with Disabilities Act, 42 USCA 12101(b) et seq., either expressly or implied preempts state regulation of wheelchair access to passenger stage service. MA points out that OIR 88-03-012 addresses the same issue on a statewide basis and any decision in that proceeding will apply to MA.

Skaff is concerned that if this proceeding is closed without the issue of wheelchair access being decided, the service in Marin will be minimized in the statewide proceeding. Skaff requests that a decision be made in this proceeding requiring some level of wheelchair accessibility to airport passenger stage service.

Skaff contends that Civil Code § 54.1 and Public Utilities Code § 453 require that airport passenger stage service be accessible to wheelchair passengers and prohibits discrimination against such passengers.

Vernon Cox (Cox), representing the Marin Center for Independent Living, supports Skaff's position.

Discussion

It is true that the issue of wheelchair access is addressed both in this proceeding and in the pending statewide rulemaking for airport carriers, OIR 88-03-012. This overlap of issues occurred because the issue was first raised in this proceeding and later in the rulemaking.

We do not believe it is wise or reasonable to decide the same issue piecemeal and in two separate proceedings. To do so may allow contradictory requirements for respondents in this proceeding who are also subject to any order rendered in the rulemaking proceeding. Nor do we believe interim levels of service are reasonable, since any such level of service may involve the expense of retrofitting vehicles, training employees, advertising wheelchair accessible service and schedules, and possibly increasing rates. These expenses may be incurred only to be modified by the statewide rulemaking which is in progress.

In order to derive any level of wheelchair accessible service, MA requests a hearing to review TD's report. Therefore, a hearing in this proceeding is possible. Rather than address the same issue in two separate proceedings, we believe it is a more efficient use of time to close this proceeding and resolve this issue in our pending rulemaking proceeding.

Accordingly, we conclude that this issue should be addressed in the rulemaking proceeding. We also point out that TD's report in OIR 88-03-012 makes specific reference to conditions of service in Marin County. Therefore, conditions in Marin County are being given the same importance in the OIR as in this proceeding.

Findings of Fact

1. Santa Rosa Airporter, Inc. has complied with our order to provide an SFO schedule which is approved by SFO.

2. Santa Rosa Airporter, Inc. now serves the Travelodge in Novato and Marin Airporter now serves Denny's in Novato. Therefore, there is no longer a dispute over which carrier will serve these stops.

3. TD monitored ridership in Marin County for 12 months after the interim decision in this proceeding. Respondent's ridership statistics show a significant increase during the period 1984-1990. SRA's market share declined during the same period from

8% to 3%. SRA's operations show no marked impact upon MA's earnings during the period covered by TD's report.

4. TD issued its report on wheelchair access on December 15, 1989.

5. TD withdraws its recommendations for a specific level of wheelchair accessible service in Marin County. TD recommends that the issue of wheelchair access in Marin County be decided in OIR 88-03-012.

6. Marin Airporthex recommends that the issue of wheelchair access in Marin County be decided in OIR 88-03-012, yet reserves the right to cross-examine TD's report should it be offered as evidence in this proceeding.

7. Skaff and Cox recommend that a decision requiring some level of wheelchair accessible airport service be rendered in this proceeding.

8. Skaff contends that the issue of wheelchair accessible service is addressed in this proceeding and in the pending proceeding, OIR 88-03-012. Any order in OIR 88-03-012 regarding wheelchair access will be applicable to respondents in this proceeding. TD's report in OIR 88-03-012 refers to conditions of wheelchair accessible airport service in Marin County.

9. It is unreasonable to address the same issue of wheelchair access in two separate proceedings.

Conclusions of Law

1. Respondents have complied with our order in D.89-08-045.
2. This investigation should be closed.

ORDER

IT IS ORDERED that this proceeding is closed.
This order is effective today.
Dated April 10, 1991, at San Francisco, California.

PATRICIA M. ECKERT
President
G. MITCHELL WILK
JOHN B. OHANIAN
DANIEL Wm. FESSLER
NORMAN D. SHUMWAY
Commissioners

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


NEAL J. SHULMAN, Executive Director
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