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Decision 91-04-041 April 24, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
BayPorter Express, Inc. for authority )  
to extend on-call service between )  
Oakland International Airport and )  
the City and County of San Francisco )  
and the County of Marin. )

**ORIGINAL**  
Application 90-12-023  
(Filed December 11, 1990)

OPINION

BayPorter Express, Inc. (applicant) seeks a certificate of public convenience and necessity (CPC&N) authorizing it to provide: (1) On-call, door-to-door passenger stage service between the City of San Francisco and the Oakland International Airport (OAK); and, (2) On-call, door-to-door passenger stage service between Marin County and OAK.

Applicant, a California corporation, now provides scheduled and on-call service between points in Alameda, Contra Costa, San Mateo, and Santa Clara Counties and the San Francisco, San Jose, and Oakland International Airports under a CPC&N as a passenger stage corporation (PSC 1442) issued by the Commission. Applicant owns and operates 13 vans and will increase the size of the fleet as needed to provide the proposed service.

Applicant alleges that there are currently no on-call carriers providing door-to-door service between the City of San Francisco and OAK. It also alleges that there are currently no on-call carriers providing door-to-door (or any other service) between Marin County and OAK. Applicant seeks authority to provide a service that will fill a need it perceives.

For the proposed San Francisco service the route is from OAK via Interstate 880 or Interstate 580 to the Bay Bridge and into San Francisco. For the proposed Marin County service the route

would be via either the Bay Bridge and Golden Gate Bridge or via the Richmond-San Rafael Bridge to Marin County. The fares proposed for the first person of a party are: \$20 for San Francisco and \$25 for Marin County. Additional persons are \$10 each for both of these services.

Applicant alleges that it has been an active, registered carrier at OAK since starting its operations over three years ago. Although applicant's vehicles are departing OAK almost every hour, applicant has frequently been forced to turn down requests for service to the City of San Francisco even though the vehicle has available seating outbound from OAK. The only reason such requests for service could not be accommodated is that applicant lacks on-call authority to the City of San Francisco. If the Commission grants the authority sought, applicant could easily accommodate persons desiring service into San Francisco because the majority of applicant's current passengers from OAK are going to locations northward, i.e., downtown Oakland, north Oakland, Alameda, Emeryville, and Berkeley. Under applicant's current charter-party authority, a completely separate and exclusive van must be used for service into the City of San Francisco at a greater passenger expense due to applicant's lack of on-call authority to that area. This arrangement is inefficient in the use of the vehicle and uneconomic to the travelling public because of the higher charter fares.

Applicant also alleges that the service to Marin County is justified in a similar fashion. Persons desiring service to Marin County can be accommodated with applicant's current passenger base moving northbound from OAK. Such a service would use applicant's vehicles more efficiently and Marin County bound passengers would travel at a lower cost than any known alternative. Applicant seeks this authority based on a suggestion of OAK staff that such a service is needed to enhance efforts to market OAK services in Marin County.

Applicant seeks authority to serve door-to-door any location in the City of San Francisco. However, the service to Marin County would be limited initially to specific locations along the Highway 101 corridor. Those specific locations will be determined in cooperation with the Oakland Airport Air Traffic Development staff and the travel agents serving Marin with whom they work.

In summary, applicant believes the proposed increase in operating authority should be granted because:

1. Applicant has established operations at OAK;
2. The proposed operating authority supplements and complements applicant's already established routes;
3. There is an absence of economically competitive alternative services to the areas that applicant seeks to serve.

Protest of Airport Limousine Service of Sunnyvale, Inc.

On December 31, 1990, Airport Limousine Service of Sunnyvale, Inc. (protestant), a California corporation, filed a timely protest to the application. Protestant is a certificated passenger stage corporation with offices in South San Francisco. It currently provides on-call and scheduled airport transportation between points in Santa Clara, San Mateo, Alameda, Contra Costa, and San Francisco Counties and the San Francisco, Oakland, and San Jose Airports under PSC-899.

Protestant alleges that:

1. Contrary to applicant's statements, there do exist carriers with PSC authority issued by the PUC for services identical to those proposed by applicant, and the marketplace for those services is already well served.
2. Applicant has not been specific about the exact service locations and areas proposed to be served and without such specificity operating authority cannot be granted.

Protestant particularly requests specific information on the service that applicant proposes to and from Marin County.

3. Applicant's financial fitness to perform the proposed service is questionable. Protestant requests that a current financial statement be provided, as well as more specific data on applicant's liabilities as shown on its balance sheet. Protestant also questions the accuracy of applicant's information on value of the vans in its fleet.

Protestant requests that a public hearing be held to determine if the applicant's proposed service meets the conditions of public convenience and necessity and fitness.

#### Applicant's Motion to Strike Protest

On January 18, 1991, applicant responded to the protest by filing its motion to strike the protest. In response to the first ground of the protest, applicant states:

"In its own description of its own passenger stage service, on the first page of the protest LIMOUSINE shows that it does not provide passenger stage service to or from Marin County. Therefore, LIMOUSINE has no legitimate grounds for protest of BAYPORTER's proposed service involved in Marin County.

"Because LIMOUSINE is not authorized to, and does not provide passenger stage service to Marin County, LIMOUSINE cannot validly object to; protest; or offer evidence against an application involving Marin County under the provisions of Commission Rule 8.1(c); and, in fact, LIMOUSINE has made no such offer of evidence against this portion of the application in its protest."

In response to Item 2 of the protest, applicant asks the Commission to take official notice of the contents of protestant's Application (A.) 90-09-060 filed September 26, 1990. Applicant asserts that comparing the financial information submitted by protestant in A.90-09-060 with applicant's financial statement in

Exhibit C to the application compels the conclusion that applicant's financial fitness is many times stronger than protestant's. Applicant's financial statement shows a profit of \$37,964 for the partial calendar year ending July 31, 1990. Protestant's financial statement shows a loss of \$22,018 for the calendar year 1989. For operating vehicles, applicant shows vehicles with a book value of \$151,298, less depreciation of \$80,873, while protestant's balance sheet shows book value of vehicles \$2,790.50, less accumulated depreciation of \$558.

Given the sorry condition of protestant's financial statement, its labeling of applicant's financial fitness as "questionable" is, in applicant's terms, "the pot calling the kettle black." Applicant alleges that protestant first raised the financial fitness "humbug" against applicant's initial application. The Commission disposed of protestant's financial fitness argument in that case as follows:

"The alleged inadequacy of [applicant's] financing is, consequently, not a reason for rejecting its application." (A.86-04-043, D.87-05-087.)

In response to protestant's third ground of protest, applicant alleges that under its present authority, it may offer service between San Francisco and OAK only on a charter basis. It further alleges that it does so frequently and that better OAK-San Francisco service would be possible if applicant had a passenger stage certificate for this corridor, and the rate charged to the public could be reduced.

The protest alleges:

"...contrary to applicant's application, there do exist carriers with PSC authority issued by the PUC with services identical to those proposed by applicant, and the marketplace for those services are already well served."

Applicant asserts that this protest is vague and non-specific. It does not assert that protestant itself is providing a

competitive service upon which the hearing is requested. Nor does the protest name any other carrier or carriers who are supposedly providing the service.

Applicant attaches to its motion a copy of protestant's application, A.90-09-060, filed September 26, 1990, in which protestant sought authority to add on-call service between OAK and points in the City of San Francisco. Applicant argues that it is clear that protestant was not providing passenger stage service between OAK and San Francisco when the application was filed on September 26, 1990.

Applicant alleges that after a prehearing conference held on December 7, 1990 in A.90-09-060, it became clear that the Commission staff believed that the Commission had granted protestant authority to provide passenger stage service between OAK and San Francisco in an earlier order. This granted authority had somehow gone unnoticed by protestant. Applicant herein argues that mere possession of authority should not provide a valid basis for protest. Rather, service to the public is the only valid basis upon which a protest can be founded. Applicant points out that protestant makes no claim of actually providing passenger stage service between OAK and San Francisco; but rather it just wants to stop applicant from providing such service.

Applicant asks the Commission to grant its motion to strike the protest, to dismiss the protest, and to grant the application without a hearing.

#### Discussion

The Commission's rules pertaining to the content of a protest are quite specific. (Rules of Practice and Procedure, Article 2.5, Protests-Requests for Hearing.) Rule 8.1 provides, in part:

"A protest is a formal pleading containing: ...  
(c) an offer of the evidence which the protestant would sponsor or elicit at a public hearing."

Rule 8.4 provides, in part:

"...a protest shall state:"

"(b) The facts constituting the grounds for the protest, the effect of the application or petition upon the protestant, and why the application or petition, or a part thereof, may not be justified.

"(c) The facts the protestant would develop at a public hearing, which could result in the denial of the application... in whole or in part."

In Rule 8.2 the Commission explicitly states:

"The filing of a protest does not insure that a public hearing will be held; the content of the protest is determinative..."

It is clear from the above citations that the Commission looks to the allegations of the protest to determine if a reason to hold a public hearing has been stated.

Protestant alleges that it currently provides on-call and scheduled airport transportation between points in Santa Clara, San Mateo, Alameda, Contra Costa, and San Francisco Counties and the San Francisco, OAK, and San Jose Airports. (Protest, ¶ III.) It is particularly noteworthy that protestant does not allege that it provides any kind of transportation services in the County of Marin. Nevertheless, its protest includes objection to the service that the applicant proposes in the County of Marin. Rule 8.4 specifically requires that a protest state "the effect of the application... upon the protestant." Protestant has made no allegations concerning the effect of the proposed Marin County service upon its operations. On the face of the pleadings we can only conclude that the proposed Marin County operations of applicant would have no effect upon protestant.

Protestant's statement of its current services includes on-call service between the City and County of San Francisco and OAK. However, protestant does not include in its protest any facts about the nature or extent of its on-call service between San Francisco and OAK; nor does it state when such service commenced, the points served, if any; nor the frequency with which its customers invoke its on-call authority between the City and County of San Francisco and OAK. Finally, protestant does not state the effect the application will have upon it, beyond the very general conclusion that "new entrants usually resort to stealing customers from the market share of existing companies to survive." (Protest, ¶ V.) This statement is a mere conclusion without facts alleged to support it. Protestant also alleges that "there do exist carriers with PSC authority issued by the PUC for services identical to those proposed by applicant." (Protest, ¶ V.) Protestant does not state who these carriers are nor the nature of their alleged authority or service. It is interesting to note that protestant does not identify itself among those with identical authority to that proposed by applicant.

We take official notice of A.90-09-060 in which protestant sought authority to add on-call service between OAK and points in the City of San Francisco. Until the prehearing conference in A.90-09-060 on December 7, 1990, protestant was apparently unaware that the authority sought in that application had been granted by D.88-09-068 in A.87-09-042. Upon being informed of that fact by the Transportation Division, protestant withdrew A.90-09-060. In D.91-02-009, dated February 6, 1991, in A.90-09-060, the Commission stated:

"The same decision [D.88-09-068] removed an earlier restriction on on-call service between San Francisco and Oakland International Airport (OAK)."

We infer from the foregoing recitation that protestant was not providing on-call service between OAK and City of San



Francisco before December 7, 1990, for, until that date, it did not realize that it had authority to provide such service. Such belief is also evidenced by the filing of A.90-09-060 on September 26, 1990.

Protestant also argues that applicant has not been specific about the exact service locations and areas proposed to be served. It asserts that without such clarification, it is impossible to grant any authority. Protestant does not cite any authority for that proposition. Moreover, on-call service requires only that either the origin or destination of the service be specified. For example, in protestant's CPC&N, PSC-899, issued in D.91-02-009, Sections I.b. and c. state:

"The term 'on-call', as used, refers to service which is authorized to be rendered dependent on the demands of passengers."

"No passengers shall be transported except those having a point of origin or destination at either SFO, OAK, or SJC."

In Section III of the same certificate the Commission has described the route for on-call service as follows:

"From any point within the counties of either Alameda, Contra Costa, San Francisco, San Mateo, or Santa Clara, on the one hand, and either to SFO, OAK, or SJC, on the other hand."

Thus, it is not necessary to specify the exact service locations for on-call service, except the airports that will be served.

Finally, protestant questions the financial fitness of applicant to perform the proposed service. Protestant requests that current financial statements be provided rather than those attached to the application, reflecting data through July 31, 1990. It also seeks more specific data on applicant's liabilities, although they are set forth in detail on its balance sheet attached to the application. Finally, protestant questions the information provided by applicant on value of the vans in its fleet and states

that the accuracy of this information is in question. Protestant's assertions and arguments on this point are general, consisting merely of a listing of potential issues that might be inquired into if public hearings were convened. These assertions do not constitute either an offer of evidence (Rule 8.1(c)) or the facts that protestant would develop at a public hearing (Rule 8.4(c)).

The assertions, conclusions, and arguments set forth in the protest are insufficient to require the holding of a public hearing in this matter. Accordingly, we conclude that the protest and request for hearing filed by protestant on December 31, 1990, should be denied.

We will grant the application insofar as it seeks authority to provide on-call service between OAK and the City and County of San Francisco. We will also grant the application for authority to provide on-call service to the County of Marin, subject to the condition that, before service commences to the County of Marin, applicant shall first file a tariff showing, by either map or description, the portion of Marin County within which applicant intends to offer on-call service.<sup>1</sup>

#### Findings of Fact

1. The language of the protest is too general to require that a public hearing be held.
2. Transportation Division did not file a protest and its advice of participation memorandum did not list any of the items contained in the protest.
3. Notice of the filing of the application appeared in the Daily Calendar on December 13, 1990.

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<sup>1</sup> This condition is engendered by the statement in the application that "the service to Marin would be limited (initially) to specific locations along the Highway 101 corridor." (Application, ¶ X.)

4. Airport Limousine Service of Sunnyvale, Inc. filed a protest on December 31, 1990, but its protest is insufficient. A public hearing is neither necessary nor required.

5. No protest to the application has been received from any public transit operators serving the territory applicant proposes to serve.

6. Applicant is technically and financially able to extend on-call service from OAK to the City of San Francisco and to a portion of the County of Marin in connection with its existing scheduled service.

7. Public convenience and necessity require that applicant extend on-call service from OAK to the City and County of San Francisco and to a portion of the County of Marin.

Conclusions of Law

1. Before extending on-call service to the County of Marin, applicant should file a tariff sheet containing either a map or language describing the portion of the County of Marin to which applicant intends to extend on-call service.

2. The protest does not comply with the Rules of Practice and Procedure and should be denied.

3. The application should be granted, subject to the condition stated in Conclusion of Law 1.

ORDER

IT IS ORDERED that:

1. The certificate of public convenience and necessity granted to Bayporter Express, a corporation, authorizing it to operate as a passenger stage corporation, as defined in PU Code § 226, to transport persons and baggage, between the points and over the routes set forth in Appendix PSC-1442, is amended by First Revised Pages 2, 3, and 4 which cancels Original Pages, 2, 3, and 4.

2. Applicant 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 its 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.
  - g. Before extending on-call service to the County of Marin, file a tariff sheet containing either a map or language describing the portion of the County of Marin to be served.

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

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

5. The protest is denied.
6. The application is granted as set forth above.  
This order becomes effective 30 days from today.  
Dated April 24, 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  
PB

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

Bayporter Express, a corporation, by the certificate of public convenience and necessity granted by the \*revised decision noted in the margin, is authorized as a passenger stage corporation to transport passengers and their baggage between points described in Section III, subject, however, to the authority of this Commission to change or modify this authority 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. Daily scheduled service shall be provided on routes 1, 2, 3, and 4.
- b. "On-call" service shall be provided on routes A, B, and C. The term "on-call", as 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 either San Francisco, Oakland, or San Jose, International Airports.
- 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.

\*Revised by Decision 91-04-041, Application 90-12-023.

Appendix PSC-1442

Bayporter Express  
(a corporation)

First Revised Page 3  
cancels  
Original Page 3

SECTION II. SAN FRANCISCO BAY AREA SERVICE AREA.

Includes all points within the geographical limits of the counties of Alameda, Contra Costa, San Mateo, Santa Clara, and \*San Francisco.

\*Marin County

The boundary of the service area encompasses Marin County of Golden Gate Bridge on the south, two miles east and two miles west of Highway 101, and Lucas Valley-Smith Ranch Road exit on the north.

SECTION III. ROUTE DESCRIPTIONS.

A. Daily Scheduled Service

Routes 1, 2, 3, and 4 shall commence with a service point at the locations shown under each of the route listed below then via the most appropriate streets and highways to the passenger terminal(s) at San Francisco International Airport (SFO), and for Route 3 only, unless otherwise indicated, to the passenger terminal(s) at San Jose International Airport (SJC).

Route 1 - Concord - SFO

Sheraton Hotel, 41 John Glenn Drive, Concord  
BART Station, Walnut Creek (Flag Stop)  
BART Station, Orinda (Flag Stop)

Route 2 - San Jose Airport-SFO

San Jose Airport  
Marriott Hotel, Great American Parkway, Santa Clara  
Sheraton Hotel, 110 N. Mathilda, Sunnyvale  
Rickeys Hyatt House, 4219 El Camino Real, Palo Alto  
Holiday Inn, 625 El Camino Real, Palo Alto  
Stanford University Oval, Palo Alto

Issued by California Public Utilities Commission.

\*Revised by Decision 91-04-041, Application 90-12-023.

SECTION III. ROUTE DESCRIPTIONS (continued).

A. Daily Scheduled Service (concluded).

Route 3 - Stanford University Oval-SJC

Stanford University Oval, Palo Alto  
Holiday Inn, 625 El Camino, Palo Alto  
Rickeys Hyatt House, 4219 El Camino, Palo Alto  
Sheraton Hotel, 1100 N Mathilda, Sunnyvale  
Marriott Hotel, Great American Parkway, Santa Clara

Route 4 - Crockett-Emeryville-SFO

C&H Sugar Company, 830 Loring St., Crockett  
Alpha Beta Store, Fitzgerald & Appian Way, Pinole  
Days Hotel, Hilltop Shopping Center, Richmond  
Del Norte BART Station, El Cerrito  
Corner of San Pablo & Marin Street, Albany  
North Berkeley BART Station, Berkeley  
Days Inn, 547 Powell, Emeryville

B. "On-Call Service

Service shall commence from any point within the authorized service area described in Section II, then via the most convenient streets and highways to the final destination point shown under each of the route listed below:

Route A - San Francisco International Airport

Route B - Oakland International Airport

Route C - San Jose International Airport

Issued by California Public Utilities Commission.

\*Revised by Decision 91-04-041, Application 90-12-023.