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Decision 91-06-007 June 5, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 Elvis Classic Limousine Service,)
 dba San Francisco Advanced Shuttle,)
 for authority to operate as a)
 passenger stage corporation between)
 points in San Francisco City and)
 County and the San Francisco)
 International Airport.)

ORIGINAL

Application 91-01-036
 (Filed January 30, 1991;
 amended February 26, 1991)

OPINION

The title block is in error. The applicant is an individual, Nasser Fraydouni, who currently holds authority as a charter carrier, under TCP 4970-P. The text of applicant's pleading, as amended, contains allegations sufficient to grant him a certificate to operate as an airport shuttle between downtown San Francisco and San Francisco Airport (SFO). However, in the appendix he sets forth two basic routes. One of those is an area-to-point service, consistent with his request to operate as an airport shuttle. Route No. 2, however, describes a route stopping at various hotels in San Francisco and in Sausalito. While the route description for Route 2 does not specifically include SFO, it can be inferred that he intends to pick up and deliver passengers along this route for transportation to SFO.

Notice of filing of the original application appeared in the Commission's Daily Transportation Calendar on February 5, 1991. The entry read as follows:

"January 30

"A.91-01-036 - Elvis Classic Limousine Service,
 (San Francisco Advanced Shuttle), c/o Nasser
 Fraydouni, 501 First Street, #207, San
 Francisco, CA 94107, Tel. No. (415) 739-2220
 and (415) 495-2955, application for passenger
 stage on-call services certificate between

points in San Francisco City and County and San
Francisco International Airport"

No protests were received after the filing. At the recommendation of Transportation Division staff, applicant amended his application, on February 26, 1991. Notice of the amendment appeared in the Calendar on March 5. On March 20, SFO Airporter, Inc. (Airporter) filed a protest and request for hearing.

If Airporter's time to file began to run with the first calendar publication, the protest would clearly have been too late. If the time started with the notice of the amendment, the protest was clearly on time.

The Administrative Law Judge by letter asked Airporter to submit a Motion to Accept a Late-filed Protest. The motion contended that the protest was not late filed by arguing:

"On or about February 26, 1991 the applicant filed an amendment to the application, not an amended application. Thus the original proposal, to the extent not controverted by the 'amendment to the application' remains the focus of this proceeding, i.e. a proposal to provide what is in fact, as described, a scheduled service between designated points in San Francisco and SFIA [i.e. SFO.]"

The motion explained that Airporter protested because it believed that applicant intended to operate a scheduled service in direct competition with Airporter's operation.

In this instance, the application was ambiguous, causing the notice published in the Calendar of February 5 to be ambiguous. The text of this first notice would not have been sufficient to place Airporter on notice that applicant sought to compete directly with Airporter's scheduled service or even that it intended to offer fixed-point service. Consequently, the time to protest did not begin to run until at least the publication of the amendment. The protest was therefore timely.

Nevertheless, it is not necessary to set this matter for hearing. Applicant's proposal to operate a shuttle between downtown San Francisco on Route 1 would not place him in direct competition with Airporter. Therefore, Airporter should not be entitled to delay commencement of service on that route by requesting a hearing.

On the other hand, proposed Routes 2 and 2 return cannot be considered at the present time, because neither calendar statement mentioned the fact that Sausalito service was contemplated. Furthermore, there are no allegations which would support a finding that a fixed-route service is needed by the public. Therefore, even if Airporter's protest were rejected, we could not grant a certificate for Routes 2 and 2 return at the present time.

We will therefore grant applicant the authority to operate the downtown shuttle on an on-call basis. The proposal for Route 2 and 2 return will be denied, without prejudice. This means that applicant can refile for any additional routes or services desired, so long as the application clearly explains the proposed service and alleges facts which show public convenience and necessity for such services.

On March 27, 1991, staff recommended that the application, as amended, be granted by ex parte order. As explained above, we have decided to accept this advice in part and reject it in part.

Applicant allegedly has the ability, equipment, and financial resources to perform the proposed service. It is further alleged that it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment

Notice of the filing of the application was served by applicant on all governmental agencies and regional transportation planning agencies within whose boundaries passengers will be loaded

and unloaded. There are no protests other than the one described above.

Findings of Fact

1. Applicant has the ability, equipment, and financial resources to perform the proposed service.
2. The public convenience and necessity require the on-call airport shuttle service described as Route 1. The facts alleged do not support a finding that public convenience and necessity require the service described as Route 2.
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. The description in the first publication in the Calendar did not adequately describe the proposed service to place Airporter on notice that applicant proposed to operate a scheduled service. Airporter's time to protest did not begin to run at least until the amendment was noticed.
5. Airporter does not operate in direct competition with van-type, on-call shuttle service.
6. A public hearing is not necessary, if applicant is granted only the on-call shuttle service described in Route 1.
7. Since there is no protest on file by an individual or corporation having standing to demand a hearing before Route 1 authority is granted, this order should be made effective immediately.

Conclusions of Law

1. Airporter has filed a timely protest.
2. Airporter does not have sufficient standing to demand a hearing before authority is granted to operate an on-call shuttle service. Because of ambiguities in the application, it is not possible to determine whether applicant intends to operate in direct competition to Airporter on Route 2.

3. To the extent that public convenience and necessity have been demonstrated, a certificate should be granted to applicant. The proposal for operations on Route 2 should be denied.

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. Applicant Nasser Fraydouni is granted a certificate of public convenience and necessity to operate as a passenger stage corporation as set forth in Appendix PSC-4970 to this decision.

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 the 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 Public Utilities Code § 403 when notified by mail to do so.

- g. Comply with Public Utilities Code § 460.7 and 1063 relating to workers' compensation laws of this state.

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.

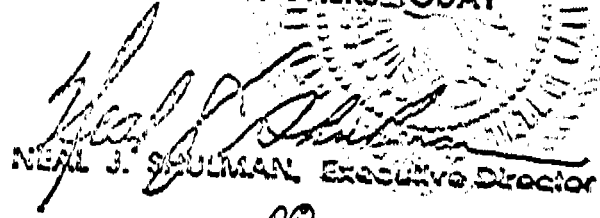
4. The application is finally granted in part and denied in part.

This order is effective today.

Dated June 5, 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. SPULMAN, Executive Director

CERTIFICATE

OF

PUBLIC CONVENIENCE AND NECESSITY

AS A PASSENGER STAGE CORPORATION

PSC-4970

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 91-06-007,
dated June 5, 1991, of the Public Utilities Commission of
the State of California in Application 91-01-036.

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

Nasser Fraydouni, an individual, 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 the points described in Section II, and San Francisco International Airport (SFO), over and along the route described in Section III, 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 91-06-007, Application 91-01-036.

SECTION II. SERVICE AREA.

San Francisco City and County

SECTION III. ROUTE DESCRIPTION.

ON -CALL SERVICE

Commencing from any point or place in the Service Area described in Section II then over the most convenient streets and highways to San Francisco International Airport.

Issued by California Public Utilities Commission.

Decision 91-06-007, Application 91-01-036.