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Decision 91-06-021 June 5, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application for Approval of Sale )  
and Transfer of PSC 1320 from: )

BAY AREA LIMOUSINE AND BUS )  
SERVICE, INC., DOING BUSINESS )  
AS BAY AREA BUS SERVICE, )

to )

BAYPORTER EXPRESS, )

pursuant to the provisions of )  
§ 851 et seq. of the Public )  
Utilities Code. )

**ORIGINAL**

Application 91-03-025  
(Filed March 6, 1991)

OPINION

Bay Area Limousine and Bus Service, Inc., (Bay Area or seller) and BayPorter Express (BayPorter or buyer) seek authority to transfer Bay Area's Passenger Stage Certificate 1320 (PSC 1320) to BayPorter. Bay Area is a California corporation doing business as Bay Area Bus Service. BayPorter is a California corporation holding PSC 1442.

Bay Area is now authorized to provide scheduled service between the Oakland International Airport (OAK) and the San Francisco International Airport (SFO). It is now performing the services authorized under PSC 1320.

The applicants propose to transfer the operating rights contained in PSC 1320 from Bay Area to BayPorter. No other assets are involved. A copy of the Agreement for Purchase of Operating Rights is attached to the application as Exhibit 2. If the Commission approves the proposed transfer of PSC 1320, BayPorter will adopt Bay Area's present tariff and timetable. Within a short time thereafter, BayPorter will incorporate Bay Area's tariff into BayPorter's tariff.

BayPorter now holds TCP 1442-P (authorizing statewide charter service) and PSC 1442. PSC 1442 authorizes on-call service between OAK, SFO, and the San Jose International Airport, on the one hand, and points within the counties of Alameda, Contra Costa, San Mateo, and Santa Clara, on the other hand. Pursuant to those operating authorities, BayPorter performs extensive service to and from both OAK and SFO. Taking over Bay Area's airport-to-airport service will present no operational problems, although BayPorter expects to add two additional vehicles to its fleet to handle the airport-to-airport runs involved in PSC 1320.

Applicants expect no opposition to the application from the airports involved. In anticipation of this application BayPorter contacted both OAK and SFO to secure their approval of this change in operating authorities; and both OAK and SFO have orally indicated to BayPorter that this transfer will not be opposed by either airport.

The reason for this proposed transfer is that by itself, the airport-to-airport service provided by Bay Area pursuant to PSC 1320 is at best only marginally feasible, both on an economic and operational basis. However, melded into BayPorter's broader existing services to and from OAK and SFO, PSC 1320 is both economically and operationally feasible, and attractive from a carrier's point of view. BayPorter's broader existing services will also enable improvement of this service to the public in the OAK and SFO corridor.

The purchase price for the proposed transfer of authority is \$22,000, payable at the rate of \$1 per passenger carried under this service during a 12-month period, with the provision that if this rate of compensation does not equal \$22,000 during the 12 months of operations, the purchase price will be adjusted downward. This style of payment is to protect BayPorter from a sharp drop in net revenue, while still being beneficial to Bay Area.

Since the application involves only a transfer of operating authority from one carrier to another, it can be seen with reasonable certainty that the transaction will have no adverse environmental impact. Furthermore, since only a transfer of operating authority is involved, the granting of this application will have no adverse competitive effect on any other carrier. Accordingly, the applicants allege that there are no factual issues related to the proposed transaction that would require a public hearing. Therefore, the applicants request ex parte handling of this matter.

In addition to ex parte handling, the applicants request that approval of the application be expedited in light of certain insurance issues described in detail in the application. Bay Area's current public liability insurance, which supports PSC 1320, expired on March 13, 1991. BayPorter's insurance carrier will not extend its coverage to encompass the service operated by Bay Area under PSC 1320 until the Commission approves a transfer of the operating authority. Under these circumstances, applicants allege that it would not be in the public interest to allow the service rendered under PSC 1320 to be terminated. Even a temporary interruption of the service would be extremely inconvenient to the traveling public that relies upon this long-established pattern of service between the airports.

Recognizing this potential gap in authority and service during the pendency of this transfer application, the applicants have entered into a Charter Service Agreement, a copy of which is attached to the application as Exhibit 5. Under this agreement BayPorter can continue the service to the public, which will be fully authorized and covered by public liability insurance.

In order to avoid an unnecessary interruption of service to the public under PSC 1320, the applicants request that the Commission allow BayPorter's public liability insurance to support PSC 1320 during the pendency of this transfer application.

Accordingly, the applicants seek, on an emergency basis, ex parte approval for substitution of BayPorter's public liability insurance to support PSC 1320 pending Commission approval of this application.

In view of the expedited approval of this application as a whole, we will not issue an interim, emergency order granting the interim relief sought by the applicants.

Protest

On April 3, 1991, Airport Limousine Service of Sunnyvale, Inc. (ALSS) filed a protest and request for hearing. ALSS provides on-call and scheduled airport transportation between points in Santa Clara, San Mateo, Alameda, Contra Costa, and San Francisco counties and SFO, OAK, and San Jose International Airport under PSC 899.

ALSS calls to the Commission's attention statements in the application indicating that BayPorter intends to mix both scheduled and on-call passengers on the same vehicle. ALSS points out that the distinction is important because SFO segregates on-call and scheduled services. ALSS alleges that SFO has warned BayPorter to discontinue operating its scheduled service to on-call locations. ALSS is concerned that BayPorter is purchasing the operating authority described in the application in an attempt to gain SFO lower level operating rights for its combined operations. ALSS also alleges that BayPorter's contractual operation of PSC 1320 service raises fitness issues. BayPorter did not respond to the protest.

The administrative law judge referred the ALSS protest to the Transportation Division for its recommendation. The Transportation Division responded that a hearing would be likely to result in a restriction of BayPorter's operations that would limit its vehicles to providing either on-call or scheduled service. It proposed that the following language be added to the certificate of public convenience and necessity to impose such a restriction:

SECTION III. ROUTE DESCRIPTIONS.

A. Daily Scheduled Service

\*Any vehicle that operates under this section shall be exclusively dedicated to daily scheduled service only.

B. "On-Call" Service

\*Any vehicle that operates under this section shall be exclusively dedicated to "on-call" service only.

These restrictions will satisfy the principal objection of ALSS to the granting of the application. We will grant the application, restricting the resulting certificate of public convenience and necessity as indicated above.

Findings of Fact

1. BayPorter caused copies of the application to be served by mail on SFO, OAK, Clerk of the City and County of San Francisco, Clerk of the City of Oakland, Clerk of Alameda County, Clerk of San Mateo County, and the Metropolitan Transportation Commission. In addition, notice of the filing of the application appeared in the Daily Calendar on March 15, 1991.

2. PSC 1320 involves scheduled passenger stage transportation between OAK and SFO.

3. BayPorter desires to buy and Bay Area desires to sell the operating rights contained in PSC 1320.

4. BayPorter is technically and financially able to continue the service now offered by Bay Area under PSC 1320.

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

Conclusions of Law

1. The proposed transfer is in the public interest and should be authorized.
2. BayPorter's new certificate, combining both its current authority (PSC 1442) and the authority to be acquired from Bay Area (PSC 1320), should be restricted to prohibit using the same vehicle to provide both scheduled and on-call service.
3. A public hearing is not necessary.
4. To avoid a hiatus in either operations or insurance coverage, the following order should be effective immediately.

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. By December 31, 1991, Bay Area Limousine and Bus Service, Inc., doing business as Bay Area Bus Service, may sell and transfer the operative rights specified in the application to BayPorter Express (purchaser).
2. Purchaser shall:
  - a. File with the Transportation Division written acceptance of the certificate and a copy of the bill of sale or other transfer document within 30 days after transfer.
  - b. Amend or reissue seller's tariffs and timetables, state in them when the service will start, make them effective 10 or more days after this order is effective, and allow at least 10 days' notice to the Commission.
  - c. Comply with General Orders Series 101, 104, and 158, and the California Highway Patrol (CHP) safety rules.

- d. File an annual report of seller's operations for the period from the first day of the current year to the date of transfer.
- 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 (PU) Code § 403 when notified by mail to do so.

3. If the transfer is completed, on the effective date of the tariffs a certificate of public convenience and necessity is granted to BayPorter Express, a corporation, authorizing it 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-1442, to transport persons and baggage.

4. The certificate of public convenience and necessity granted to Bay Area Limousine and Bus Service, Inc., by Decision 83-11-107, dated November 30, 1983, in Application 83-09-73 is revoked on the effective date of the tariffs.

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.

  
Neil J. Spurrman, Executive Director

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, 4, and \*5.
- 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 91-06-021, Application 91-03-025.



Appendix PSC-1442

Bayporter Express  
(a corporation)

Second Revised Page 3  
cancels  
First Revised 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

\*Any vehicle that operates under this section shall be exclusively dedicated to daily schedule service only. Routes 1, 2, 3, 4, and \*5 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  
Rickey's 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 91-06-021, Application 91-03-025.

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  
Rickey's 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

\*Route 5 - Oakland International Airport-SFO  
Oakland International Airport

B. "On-Call" Service

\*Any vehicle that operates under this section shall be exclusively dedicated to on-call service only. 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 91-06-021, Application 91-03-025.