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Decision 92-08-020 August 11, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
Atlantic Pacific Enterprises, Inc.)
for Passenger Stage Services)
Certificate to Operate Between Points)
in San Diego County and San Diego)
International Airport.)

ORIGINAL

Application 91-04-016
(Filed April 4, 1991;
amended February 10, 1992)

Bobbie L. Schindler, for Atlantic Pacific Enterprises, Inc., dba Kangaroo Carrier, applicant.

David Cutler, Attorney at Law, and Lisa Vertelney, for Military Bus Express, Inc., dba West Wind Express, protestant.

Ebi Esule and Russ Hall, for the Transportation Division.

O P I N I O N

I. Summary of Decision

The Commission grants authority for Atlantic Pacific Enterprises, Inc., dba Kangaroo Carrier (applicant), to establish an on-call, door-to-door service for passengers and baggage between certain points in San Diego County, on one hand, and San Diego International Airport (SAN); downtown Santa Fe Train Depot (Amtrak Station); downtown Greyhound Bus Terminal (Greyhound Station); and "B" Street Pier, on the other.

II. Procedural History

The applicant's original application, filed April 4, 1991, requested authority to establish and operate a passenger stage corporation (PSC) for transportation of passengers between points and school, passengers and baggage between points and SAN,

and passengers between points and their place of employment. Protests were filed by the United Transportation Union (UTU), Shuttle Express International, dba SuperShuttle, and Military Bus Express dba Westwind Express.

On July 11, 1991, the Commission's Transportation Division (Transportation) informed the applicant that its proposed service to schools and places of employment did not qualify as passenger stage services under Section 226 et. seq. of the California Public Utilities Code. The applicant already has TCP (charter party) authority, and Transportation suggested that the proposed services to schools and places of employment be conducted under that existing authority. Transportation also informed the applicant that its application failed to meet certain formal filing requirements. In response, the applicant agreed to file an amendment to correct these items.

UTU, by letter dated August 12, 1991, informed the Commission that it had no objection to the granting of the application, and its protest was accordingly deemed withdrawn by the Administrative Law Judge (ALJ) at the prehearing conference. SuperShuttle failed to appear at the evidentiary hearing and did not participate further in the proceeding. Consequently, Military Bus Express was the only protestant that presented any evidence in support of its protest.

Although the applicant had attempted to file an amended application before the hearing, its initial attempt to file was ineffective, and the amendment to the application was not formally filed until February 2, 1992. As amended, the application requests a certificate of public convenience and necessity (CPCN) to establish and operate an on-call PSC with service between specific north San Diego County area communities identified in the Appendix on one hand, and SAN, the Antrak Station, Greyhound Bus Terminal, and "B" Street Pier, on the other.

III. Discussion

According to its vice president and co-owner, the applicant was incorporated in July 1990 and has been operating in San Diego County since August of that year, transporting children daily on two routes each morning and evening. It has also been furnishing airport transportation pursuant to its TCP authority.

Under its existing authority, the applicant has served various North County communities solely by performing prearranged travel. The authority it seeks in this application allows the applicant to serve the same areas with on-call or "unarranged" travel. The purpose of its request is to be permitted to bring passengers back to North County points after dropping passengers at their downtown destinations, rather than being required to return with empty vans, which it must now do because it lacks authority to pick up passengers at these locations except by prearrangement.

A going concern, the applicant presently has two vans and a staff of five part-time and full-time drivers who are properly licensed to perform its services. Applicant's testimony demonstrated that the North County area which it serves is experiencing rapid growth, as well as considerable traffic congestion. The applicant therefore believes its proposed service would be viable, and would help reduce congestion to the extent that it will displace other vehicles by picking up passengers at the downtown locations. Applicant testified that it is prepared to acquire additional vans if demand warrants.

Protestant operates scheduled service, and its corporate affiliate, 32nd Street Pier Group, recently received this Commission's approval to operate on-call service, between SAN and various North County communities. (D.92-05-024 (May 8, 1992) in A.91-07-030.) Protestant's testimony in this proceeding was directed to the alleged oversupply of operators within the County, and the traffic congestion at SAN resulting in part from the number

of airport shuttle services which serve the two terminals of that airport. Nevertheless, the protestant testified that the service proposed in the applicant would not draw a sufficient number of existing passengers to threaten the viability of its own service. (TR. 94.)

Although this Commission is concerned about the number of entrants into the field of on-call airport shuttle service, it remains the policy of the Commission to permit competition, and to leave to the discretion of the individual airport operator the decision whether to control the number of such services on its premises. Although this application was duly served upon SAN's operator, SAN neither protested nor otherwise appeared in this proceeding, and we can only infer that its position regarding this application is neutral.

To the extent that the safety of the vehicles is a concern, as suggested by the protestant, this Commission will address that concern as part of its ongoing safety enforcement program. Nothing in the record suggests that the applicant is unable or unwilling to comply with applicable safety requirements.

The record demonstrates that the applicant has the necessary experience and resources to provide the proposed service. Accordingly, its application is granted, subject to the terms and conditions set forth in the Appendix.

Findings of Fact

1. The Commission has considered the effect of applicant's proposed service upon the operations of public transit operators serving the territory applicant requests authority to serve.
2. The application was noticed by publication in the Commission's Daily Transportation Calendar and by service by mail as required by the Commission's Rules of Practice and Procedure.
3. Public convenience and necessary require the proposed service.

4. The applicant has the necessary experience and resources to provide the proposed service.

5. Applicant has waived the filing of, and comment on, the proposed decision, pursuant to Rule 77.1 of the Commission's Rules of Practice and Procedure.

6. Since the service is now needed, the decision should be effective today.

Conclusion of Law

The application, as amended, should be granted, subject to the terms and conditions contained in the order.

ORDER

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Atlantic Pacific Enterprises, Inc., dba Kangaroo Carrier, authorizing it to operate as a passenger stage corporation, as defined in Public Utilities (PU) Code § 226, between the points and over the routes set forth in Appendix PSC-6617, to transport persons and baggage.

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.

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. Applicant shall comply with PU Code §§ 460.7 and 1043, relating to the Workers' Compensation laws of this State.

This order is effective today.

Dated August 11, 1992, at San Francisco, California.

DANIEL Wm. FESSLER
President
PATRICIA M. ECKERT
NORMAN D. SHUMWAY
Commissioners

Commissioner John B. Ohanian,
being necessarily absent, did
not participate.

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


NEAL J. SULMAN, Executive Director

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Appendix PSC-6617 Atlantic Pacific Enterprises, Inc. Original Title Page

CERTIFICATE

OF

PUBLIC CONVENIENCE AND NECESSITY

AS A PASSENGER STAGE CORPORATION

PSC-6617

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 92-08-020, dated August 11, 1992,
of the Public Utilities Commission of the State of California in
Application 91-04-010.

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SECTION 1. GENERAL AUTHORIZATIONS, RESTRICTIONS, LIMITATIONS,
AND SPECIFICATIONS.

Atlantic Pacific Enterprises, Inc., 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, door-to-door basis, between points in San Diego County, described in Section 2, on the one hand, and San Diego International (SAN), downtown Santa Fe Train Depot (Amtrak Station), downtown Greyhound Bus Terminal (Greyhound Station) and the "B" Street Pier, on the other hand, over and along the routes described in Section 3, subject, however, to the authority of this Commission to change or modify the routes at any time and subject to the following provisions:

- (a) This certificate does not authorize the holder to conduct any operations on the property of or into any airport unless such operation is authorized by the airport authority involved.
- (b) When route descriptions are given in one direction, they apply to operations in either direction unless otherwise indicated.
- (c) No passengers shall be transported except those having a point of origin or destination at SAN, Amtrak Station, Greyhound Station or "B" Street Pier.
- (d) The term "on-call" as used refers to service which is authorized to be rendered dependent on the demands of passengers. The tariffs shall show the conditions under which each authorized on-call service will be provided, and shall include the description of the boundary of each fare zone, except when a single fare is charged to all points within a single incorporated city.

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SECTION 2. SERVICE AREA DESCRIPTIONS.

San Diego County

Includes all points within the geographical limits of the following cities and zip code communities:

Camp Pendleton, Carlsbad/La Costa, Cardiff-by-the-Sea, Del Mar, Encinitas, Escondido, Fairbanks Ranch, Leucadia, Oceanside, Ramona, Rancho Santa Fe, San Marcos, Solana Beach, Vista, and the City of San Diego zip code communities of:

La Jolla	92037
University City	92122
Sorrento Valley	92121
Rancho Bernardo	92127
North City West	92130

SECTION 3. ROUTE DESCRIPTIONS

On-call, door-to-door service

Commencing at SAN, Amtrak Station, Greyhound Station or "B" Street Pier, then via the most convenient streets and highways to any point within the service area described in Section 2.

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