

Decision 82 08 051 AUG 4 - 1982

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of HARRY S. HENDERSON, dba BLUE)
STAR TRANSPORTATION, for authority)
to operate as a passenger stage)
corporation between points in Los)
Angeles and Orange Counties and)
the Los Angeles International)
Airport.)

Application 61118
(Filed December 8, 1981;
amended January 8, 1982)

James E. Bransfield, Attorney at Law,
for applicant.

James H. Lyons, Attorney at Law, for
Airport Service, Inc., protestant.

K. D. Walpert, for the Department of
Transportation, City of Los Angeles;
and James P. Jones, for the United
Transportation Union; interested
parties.

William Austin, for the Commission
staff.

O P I N I O N

Applicant Harry S. Henderson, dba Blue Star Transportation Company, seeks a certificate of public convenience and necessity to operate as a passenger stage corporation to transport passengers and their baggage between points in Los Angeles and Orange Counties, on the one hand, and the Los Angeles International Airport (LAX), on the other hand. Applicant seeks the requested authority under Public Utilities (PU) Code Section 1031, et seq. Applicant intends to perform his proposed service on a seven-day per week on-call basis. Only passengers embarking at or destined to LAX

will be carried. The application was protested by Airport Service, Inc. and by the Department of Transportation, City of Los Angeles, which later withdrew its protest but continued to participate in the proceeding as an interested party.

The amended application alleges that the rapid growth and population of Orange and Los Angeles Counties and the increased usage of LAX have placed severe strains on the freeways and surface streets near the airport and also upon the parking facilities at the airport. Because of this, an ever-increasing need for personal limousine service between the airport and various points in Los Angeles and Orange Counties has developed. The application also alleges that the present overcrowding at John Wayne Airport in Orange County and attempts by various groups to reduce the number of commercial flights to and from John Wayne Airport further increase the demand for personal limousine service from Orange County to LAX. Applicant proposes to operate between the hours of 4 a.m. and 11:30 p.m. on a seven-day per week basis with stops as required.

Following notice, a public hearing was held in Los Angeles on May 21, 1982 before Administrative Law Judge William A. Turkish under PU Code Section 1031, and the matter was submitted upon the filing of concurrent briefs 14 days following the date of filing of the transcript. The briefs have been received and the matter is submitted as of June 23, 1982.

Applicant testified on behalf of the application and Donald W. Boyles, president of Protestant Airport Service, Inc., testified against the application.

The testimony of applicant was essentially as follows:

1. He currently conducts passenger service with a Chevrolet Impala station wagon under a Section 5384(b) charter-party permit.
2. He has the financial resources necessary to carry on the proposed operation and intends to purchase a new 12-passenger van sometime in the future for the proposed service.
3. He intends to meet with travel agents, motel and hotel operators, and will also advertise his service in the telephone yellow pages to solicit business.
4. He has over four years' experience in the transportation business - two years as a driver for Luxe Livery Service and two years operating his own charter-party business.
5. The fares applicant will charge were determined from the amounts other companies charge for the same type of service.
6. He believes there is an unmet public need for his service based on data he obtained from planners at LAX and John Wayne Airport.
7. The financial statements of applicant show total assets of \$21,680 and liabilities of \$714. His profit and loss statement for the period January 1-December 31, 1981 shows income of \$13,139 and expenses of \$9,918 for a net profit of \$3,221 before depreciation.

The following testimony was elicited on cross-examination:

1. No pro forma projection of revenues or costs involved in his proposed operation was undertaken by applicant.
2. He would do all the driving as required between the hours of 4 a.m. and 11:30 p.m. and if he is unable to do it for some reason, he will refer passengers to another carrier in Orange County.
3. He had not made any arrangements for authority to use the holding area at the airport if this application is granted.

The president of protestant Airport Service, Inc. testified essentially as follows:

1. Airport Service, Inc. operates 34 round trips daily between Disneyland and LAX and 16 round trips daily between Long Beach and LAX. Airport Service, Inc. also operates between Orange County Airport and LAX. Protestant uses over 100 vehicles in its airport service using intercity coaches with reclining seats, individual lights, air-conditioning, overhead luggage racks, and underseat luggage compartments. Protestant has a program of replacing eight coaches per year with new bus coaches. Protestant has considerable investment and facilities in Anaheim where it maintains its headquarters and at LAX which includes parking, office buildings, and ticket offices with 27 ticket agents.

2. Protestant has conducted various surveys and has found that 75% of the passengers picked up at its various pickup points reside in areas other than the pickup areas.
3. Protestant opposes the application because the need for transportation to and from the airport from applicant's proposed pickup areas is already adequately met. Protestant also feels that any diversion of traffic from its regularly scheduled airport service can mean a difference between profit and loss for the company.
4. Protestant does not protest the proposed service from areas it does not serve.

Discussion

Although applicant indicates four years of experience, two years of which are in operation of his own charter-party service, his testimony reveals a lack of general knowledge concerning the operation of the proposed service. The service area proposed by applicant is considerable in terms of area and in terms of driving time to LAX. Applicant's failure to conduct any cost and revenue studies for the proposed operation after having been advised to do so in instructions from the Commission staff leads us to the conclusion that the proposed operation has not been thoroughly thought out. We fail to see how one driver will be able to provide the proposed service seven days per week, 19½ hours daily. The result could be an inherently unsafe operation resulting from prolonged driver fatigue.

Applicant failed to present any witnesses in support of his belief that a public need exists for his service. Although he attempted to submit into evidence a petition signed by approximately 30 managers or agents of various hotels and motels in Orange County, such evidence was rejected upon the objection of protestant that the petitions were solicited by applicant and protestant had no opportunity to cross-examine the petitioners.

In granting a certificate of public convenience and necessity, the Commission considers several factors, the greatest of which is evidence that public convenience and necessity exist for such service. The burden of proof is upon the applicant to make a showing of public convenience and necessity. Applicant has failed to demonstrate any public demand for his proposed service and absent such showing, we must conclude that applicant has not met his burden of proof which is essential to the granting of the certificate applicant seeks.

If applicant can demonstrate at a later time direct evidence showing that a public need exists, that there is a reasonable expectation of sufficient passengers to justify and support his proposed service, and that he can realistically provide the service with his resources, applicant may file a new application. ✓

Findings of Fact

1. Applicant demonstrated financial ability to conduct his proposed service but demonstrated a lack of sufficient business background or ability to carry out the proposed operation.
2. Applicant has not demonstrated that public convenience and necessity exist for the proposed service.

Conclusion of Law

The application for a certificate of public convenience and necessity to operate as a passenger stage corporation should be denied.

O R D E R

IT IS ORDERED that Harry S. Henderson's request for a certificate of public convenience and necessity to operate as a passenger stage corporation between points in Los Angeles and Orange Counties, on the one hand, and Los Angeles International Airport, on the other hand, is denied.

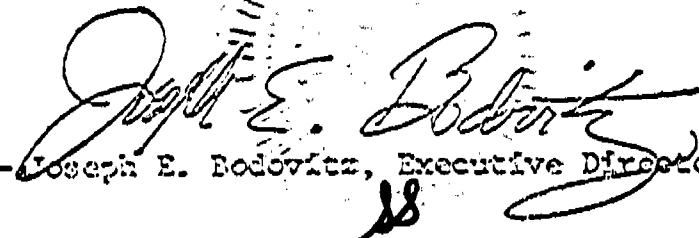
This order becomes effective 30 days from today.

Dated AUG 4 1982, at San Francisco, California.

JOHN E. BRYSON
President
LEONARD M. GRIMES, JR.
VICTOR CALVO
PRISCILLA C. CREW
COMMISSIONERS

Commissioner Richard D. Gravelle, being necessarily absent, did not participate in the disposition of this proceeding.

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


-7- Joseph E. Bodovitz, Executive Director

The following testimony was elicited on cross-examination:

1. He does not understand the expression or meaning of "public convenience and necessity".
2. No pro forma projection of revenues or costs involved in his proposed operation was undertaken by applicant.
3. He would do all the driving as required between the hours of 4 a.m. and 11:30 p.m. and if he is unable to do it for some reason, he will refer passengers to another carrier in Orange County.
4. He had not made any arrangements for authority to use the holding area at the airport if this application is granted.

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In granting a certificate of public convenience and necessity, the Commission considers several factors, the greatest of which is evidence that public convenience and necessity exist for such service. The burden of proof is upon the applicant to make a showing of public convenience and necessity. ~~We have long held that mere desire of an operator to enter the passenger stage business is by itself insufficient to warrant granting a certificate. Public convenience and necessity must be established by direct~~ evidence. Applicant has failed to demonstrate any public demand for his proposed service and absent such showing, we must conclude that applicant has not met his burden of proof which is essential to the granting of the certificate applicant seeks. Ra

If applicant can demonstrate at a later time direct evidence showing that a public need exists, that there is a reasonable expectation of sufficient passengers to justify and support his proposed service, and that he can realistically provide the service with his resources, applicant may file a new application.