

ORIGINAL

Decision 83 09 092 SEP 30 1983

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of MELVIN F. SIMS, dba SIMS EXECUTIVE AIRPORT SHUTTLE for certificate of public convenience and necessity to operate a passenger stage service to extend Route 2 to include the Biltmore Hotel to Los Angeles International Airport.

Application 82-11-63
(Filed November 30, 1982)

Roger B. Sheinbein, 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 United Transportation Union; interested parties.

O P I N I O N

Summary

This decision authorizes applicant Melvin F. Sims (Sims), doing business as Sims Executive Airport Shuttle,^{1/} to provide scheduled passenger stage service under PSC-1145 to an additional stop at the Biltmore Hotel on his Route 2 to Los Angeles International Airport (LAX). The revised Route 2 includes

1/ After negotiations with protestant Airport Service, Incorporated (ASI), Sims requested that the title box and text of his original application be changed by interlineation to show a change in his fictitious name from Sims Executive Van Service to Sims Executive Airport Shuttle (see RT 1, 2).

stops at the Biltmore Hotel, the Vagabond Hotel, the University Hilton Hotel, the Holiday Inn-Convention Center, the downtown Holiday Inn, the Olympian Hotel, the Hollywood Ramada Inn, and LAX.

The fares on Route 2 are \$5.50^{2/} for adults and \$4.00 for children between ages 6 and 11. Children under six years old are carried free if they do not displace other passengers.

Background

By Decision (D.) 82-08-103 dated August 18, 1982 in A.82-03-044, Sims was authorized to provide service on Route 2. He began that service on January 17, 1983. On trips to LAX, Sims proposed to make 15 daily stops at each location on Route 2. On 14 daily return trips he proposed intermediate stops where required to discharge passengers. His revised timetable effective May 22, 1983 includes 18 trips to LAX and 15 return trips. He also put Vagabond Hotel pickups on an "on-call" basis. This revised timetable was filed by Sims doing business as Sims Limousine Service.

Sims was authorized to provide passenger stage service by D.92723 dated February 18, 1981 in A.59468. He began that service to West Los Angeles and Hollywood (Route 1) in April 1981. On February 1, 1983 Sims purchased the passenger stage operations and property of Santa Monica Flight Line (SMFL), a partnership, from William H. Martin, an individual, and Onix, Inc., a California corporation. (See D.82-12-118 dated December 30, 1982 in A.82-12-42.) He has taken over SMFL's operations between LAX and certain hotels in Santa Monica (Route 3). Since 1976 Sims has operated a limousine service under TCP-605-P.

^{2/} By Decision (D.) 83-08-030, dated August 3, 1983, in Application (A.) 83-05-59, Sims was granted authority to increase his adult fares from \$5.50 to \$6.00.

Process

TD-1

Hearings

ASI filed a timely protest to the granting of the authority sought by Sims. Hearings were held before an administrative law judge (ALJ). The matter was submitted subject to the filing of concurrent briefs and, if available,^{3/} the articles of incorporation of Sims Executive Airport Shuttle, Incorporated (late-filed Exhibit 2). Briefs were filed by Sims and ASI.

Sims wished to transfer his operations to its corporation. The ALJ ruled that Sims would have to amend his application or file a new application for authorization to transfer his operations to a corporation; that his filing would have to be in compliance with Article 8 (if applicable) and Article 9 of the Rules of Practice and Procedure; and that he would have to clarify which operations he proposed to transfer to the corporation. Since no transfer application was filed, Exhibit 2 is not relevant to this proceeding.

Sims' witnesses were Sims, Leonard Warren Hodnett, a certified public accountant, Robert Chelbda, director of sales for the University Hilton Hotel, Kenneth Lok, general manager of the Ramada Inn in Hollywood, and Vernon Lee Porter, vice president and general manager of the Biltmore Hotel.

ASI's witnesses were its president, Donald W. Boyles, Randolph Lee Fayer, an ASI ticket agent, Gary Kjenslee, director of guest services at the Bonaventure Hotel, and Monte Mallet, president and manager of the corporation operating the Mayflower Hotel.

3/ Sims did not file late-filed Exhibit 2 or advise the Commission if he received the articles of incorporation.

Applicant's Testimony

Sims testified that he trains his drivers to provide a personalized service for his passengers. His drivers assist passengers boarding and leaving vans, load and unload luggage, answer questions, and give directions to passengers. His drivers wear white shirts and ties. Sims believes the public should have the right to decide which type of transportation service they want to use. Taxicab, limousine, and ASI buses serve the public at the Biltmore. He believes his van operation provides a better quality of service than is offered by ASI buses, albeit his service is somewhat more costly than that of ASI. His limousine drivers told him that some of their passengers complained about ASI's service. He purchased two new 21-passenger Transvans to operate on Route 2. These custom-built vans are equipped with plush seats, individual reading lamps, air conditioning, a stereo system, a public address unit, carpeting, a rear luggage compartment, and interior overhead luggage racks similar to those used in airplanes. ✓

The Biltmore is located approximately three blocks from the nearest stop on Sims' existing Route 2. He estimates that inclusion of the Biltmore on his route would not add more than five minutes per trip in each direction to his existing travel times. He would not have to add any additional equipment to provide service to the Biltmore. He believes that his expenses would be increased by a nominal amount to provide the additional service; but the increase in revenues he would obtain from the additional stop would assure his ability to continue to provide service on Route 2. He employs 18 people in his existing operations including a supervisor, dispatchers, and drivers.

These employees provide passenger stage service on three routes and limousine service. At each LAX terminal he will have a listing and a courtesy push-button telephone on a transportation information board. People deplaning can see the destination of his vans and contact his dispatcher for scheduling information. In addition, he may enter into a contract with ASI^{4/} under which ASI employees working at airport kiosks would announce the arrival of his vans and provide scheduling information and timetables. The contract could provide that ASI would sell his tickets at LAX.

He believes he can operate Route 2, including the Biltmore stop, at a \$59,837 profit carrying an average of four passengers per trip at an average fare of \$4.13 (weighted to consider children's fare discounts). In January and February 1983 he carried averages of 1.53 and 1.38 passengers per trip on his existing Route 2.

Sims testified that his operations will reduce traffic and parking congestion at LAX and that the 1984 Olympic Games will increase the demand for airport shuttle service. Olympic Games officials have indicated that they would use his services.

Hodnett prepared May 31 and December 31, 1982 income statements and balance sheets for Sims' limousine and passenger stage operations. Sims obtained a loan secured by his personal residence to obtain funds for his operations. The principal and interest payments on that loan and principal and interest payments on vehicular equipment installment loans used in Sims' operations and vehicle depreciation expenses are included in those financial statements. However, those statements do not

4/ Sims and the former owners of SMFL were provided with this type service by ASI at LAX.

reflect Sims' operations or expenditures for operating Route 2 or for acquiring the SMFL operations. Between May 31 and December 31, 1982 Sims' equity dropped from \$2,365 to a negative \$25,610. Hodnett also prepared Exhibit 14 showing Sims' January 1983 Route 2 revenues, based on a ticket count for each pickup location. Ten percent of revenue commissions are paid to LAX hotels. Twenty-four percent of the tickets (to LAX^{5/}) were sold by Sims' drivers and no commissions were paid. A 12.5% of revenue commission is paid to the Los Angeles Department of Airports for trips originating at LAX. Through his long-term familiarity with Sims' finances and operations, he believes that Sims' earnings would increase and improve Sims' financial position. By way of illustration of growth in Sims' business, Hodnett noted a 65% increase in Route 2 revenues between January and February 1983. He did not realize that the January revenues reflected 15 days of operation in January. However, he still believed that Sims could continue operations on his existing Route 2 for a year.

Chlebda testified that guests at the University Hilton Hotel were pleased with Sims' service; Sims' service to his hotel also benefits people traveling from LAX to the University of Southern California campus and to the museums near that campus. He feels that Sims' employees are friendly and the quality of their work is good. His hotel still runs a shuttle to ASI's stop at the downtown Hilton Hotel and to downtown Los Angeles shopping centers, but ridership on his shuttle has decreased since Sims began serving his hotel.

5/ In February, this percentage dropped to 10%.

Lok testified that since Sims began stopping at the Ramada Inn in Hollywood, he has discontinued operating a van between the inn and ASI stops at the Hollywood Holiday Inn or at the Hollywood Roosevelt Hotel. But the inn continues to operate its van to drop people off at shopping centers. His guests are glad to avoid the shuttle to an ASI stop. Sims operates new clean vans. He increased the occupancy of the inn due to the availability of Sims' service. He advised nearby institutions, namely the Kaiser Foundation Hospital, the Hollywood Presbyterian Hospital, and the Los Angeles City College, of the availability of direct service to LAX from the inn.

Porter testified that the Biltmore Hotel wanted a stop near its main entrance at Olive Street, which is at the same level as the hotel lobby and registration area. In 1978 or 1979 ASI moved its Biltmore stop from Olive Street to a back entrance to the hotel on Grand Avenue. The back entrance is nearly a block away from the hotel lobby and registration area. It is at a different level from the lobby and registration area and is inconvenient to use. The Biltmore receives at least one complaint a week from its guests, particularly from its elderly guests, that ASI drivers do not tell them where to get off at the Biltmore stop or tell them where a house phone is located to call a bellman. Those guests do not want to carry their luggage for long distances. ASI buses stopped at different locations, sometimes 150-200 feet from where they were supposed to stop, which is near the northernmost of the hotel's two entrances on Grand Avenue. The Biltmore asked ASI to move its stop to Olive Street. But ASI replied it was not efficient to do so.

Sims' Argument

Sims argues that his public witnesses in this proceeding and in A.82-03-44 expressed satisfaction with his service. His service uses vans rather than large buses and he provides a more personalized service than ASI. Porter believes there is a need for the additional service Sims can provide. Porter is dissatisfied with ASI service to the Biltmore. There is a significant demand for service to the Biltmore. ASI carried between 3,644 and 5,958 passengers per month to the Biltmore between January/February 1980 and January/February 1983. Demand for downtown-LAX airport shuttle service will increase due to the staging of the 1984 Olympic Games in Los Angeles. Furthermore, a March 23, 1983 article in the Los Angeles Times shows that area planners expect a major expansion of LAX traffic.

In addition, the following excerpt from D.82-08-103 (mimeo. page 11) establishing his Route 2 applies to this application to extend that route:

"Existing passenger stage service provided by Airport Service to and from its downtown Los Angeles service area is conducted as a monopoly, without the benefit of competition to insure the rendering of the best possible service to the public, and in view of the instant application is not service performed to the satisfaction of the Commission."

Sims contends that he seeks to provide the downtown Los Angeles community with additional service that it desires. Additional LAX service at the Biltmore is needed by the community. Such service will provide additional financial stability to Sims' operations to enable him to continue to provide the service.

Protestant's Evidence

Boyles, ASI's president, sponsored Exhibits 4 to 12; Exhibits 4 to 11 were received over Sims' objections. Boyles believes that ASI is able to provide reasonable affordable airport transportation by providing service without reservations and by making as few stops as possible.

Exhibit 4 contains a timetable of ASI's routes between LAX and downtown Los Angeles. Exhibit 4 also contains timetables for four other routes to LAX, fares, and other tariff information. Downtown route fares are \$4.60 for adults, \$2.30 for children between ages 5 and 11, and no charge for children under age 5 accompanied by an adult.

The five routes were formerly operated by Airporttransit, which went bankrupt in 1976. Airporttransit's downtown route included a stop on the east side of Grand Avenue near the northern entrance to the Biltmore Hotel. This stop served the Biltmore Hotel, the Mayflower Hotel located on the west side of Grand Avenue, and the surrounding community. The Southern California Rapid Transit District (RTD) operated over these routes between 1976 and 1979. RTD partially modified these routes including a shift of the Biltmore Hotel stop from Grand Avenue to a location near the Biltmore's Olive Street entrance. In addition, RTD established a stop in front of the Mayflower. RTD enjoyed a tax subsidy in providing service to LAX. When ASI exercised its authority to operate on Airporttransit's routes RTD discontinued service on those routes. ASI switched its Biltmore/Mayflower stop back to the location used by Airporttransit. ASI operates 37 daily round trips per day on its downtown route. The Biltmore/Mayflower stop is on every trip.

Exhibit 5 is a list of one hundred 41- to 53-passenger buses operated by ASI in providing passenger stage service over its Los Angeles and Orange County routes and in providing charter-party service.

Exhibit 6 consists of ASI's December 31, 1982 balance sheet and 1982 income statement. The exhibit shows ASI assets of \$10,735,877, shareholder equity of \$4,045,285, and an operating profit of \$1,092,145. Exhibit 7 is a summary of the operating results of ASI's downtown route and its overall profits for 1980, 1981, and 1982. The following data is excerpted from Exhibit 7:

Year	Passengers Carried	Revenue	Total System Profit	Downtown Route Profit
(Numbers in Thousands)				
1980	563.4	\$1,660.6	\$ 536.9	\$201.1
1981	543.2	1,910.8	221.4	185.1
1982	489.1	1,935.0	1,026.5	297.6

ASI has been losing passengers on its downtown route, but its revenues on that route have increased due to rate increases.

Exhibit 8 consists of the results of a 1980 survey of ASI passengers on its downtown route to provide information for ASI's use in an expanded advertising campaign to attract more customers. On that route 9.2% of its passengers were guests of the Biltmore and 4.5% were guests at the Mayflower. Approximately 25% of the passengers using the Biltmore/Mayflower stop were not guests at those hotels.

Exhibit 9 consists of six photographs of two entrances each at the Biltmore, Bonaventure, and Hilton hotels. Boyles testified that ASI's stops at all of these hotels are at different levels than their lobby areas.

Exhibit 10 is a revised ASI driver operating bulletin dated August 7, 1981 prepared and distributed at Boyle's direction. When approaching the Biltmore Hotel, the drivers were asked to include the following information in their arrival announcements:

"Ladies and Gentlemen. If you are checking into the Biltmore Hotel and require bellman assistance with your luggage, please let me know so I can use the house phone to call for the bellman."

The bulletin also states the location of the telephones and informs the drivers that the bell desk could be reached without dialing.

Exhibit 11 is a tabulation of passengers carried by ASI to terminals in downtown Los Angeles, revenues, and average fares for the months of December, the following January and February, from 1979-1980 to 1982-1983, prepared at the direction of the ALJ. The numbers of passengers carried varied considerably from month to month. The sharpest monthly drop was from January 1983 (38,308 passengers) to February 1983 (28,819 passengers).

Exhibit 12 is an ASI operating bulletin dated January 31, 1983 produced by Sims' counsel to show that ASI was controlling bus traffic at LAX. Boyles testified the bulletin was prepared and distributed to ASI's drivers and ticket agents at his direction. The bulletin states that as of February 1, 1983, ASI will not represent SMFL and ticket agents will not

announce departures, sell tickets, give out schedule information, or handle any questions regarding SMFL. Prior to the transfer of SMFL to Sims, the manager and part owner of SMFL asked ASI to stop providing service for SMFL at ASI's airport kiosks. Sims did not agree to pay a \$325 minimum monthly charge or 10% of revenues reported to the Department of Airports on trips from LAX on that route. Earlier, ASI had discontinued its representation of Sims at ASI kiosks. This service for Sims' Route 1 was discontinued for nonpayment of a \$300 per month minimum charge. ASI is the surviving corporation of three carriers originally authorized to build and operate kiosks at LAX terminals. ASI is not permitted to put advertising signs on the kiosks. The ticket clerk at the kiosk provides general information, destinations of buses being loaded for departure, provides schedule and brochures, and sells tickets for ASI and for other bus lines willing to contract for payment of minimum charges or 10% of reportable income. Boyles notes that if Sims does want to pay for ASI's services at LAX kiosks, Sims' drivers or supervisors could announce his bus departure times at his LAX stops or he could contract with the Department of Airports.

In 1980, Boyles estimated that ASI's expenses would increase by \$532 per day if the Biltmore stop was shifted to Olive Street or by \$1,064 per day if it made that change and also stopped at the Mayflower. In response to the Biltmore's 1980 request for service at its Olive Street entrance, ASI filed a timetable alternating stops at Olive Street and at Grand Avenue, but the Biltmore objected and service was not initiated. The level of that additional expense is greater than the 1982 profit on ASI's downtown route. If ASI lost four customers per trip to Sims in 1982, its downtown route profit would drop from \$297,000 to \$103,000.

He has specified that ASI drivers and ticket clerks wear standard dark blue uniforms to give them an attractive appearance. Certain items of the uniform are optional, e.g. ties and caps. He denies ever having received the one written complaint about ASI service mentioned in Porter's testimony.

Fayer described his duties as a ticket agent working in an airport kiosk. If another company contracting with ASI provides service to the same destination as ASI he will provide schedules and inform the customer of the next departure time on a nondiscriminatory basis.

Kjenslee testified that ASI's service at the Bonaventure Hotel is very good. He wants it to continue. His guests are happy with the service. While passengers leave their bus the driver unloads their baggage from bins under the bus. The guests claim their baggage and turn it over to the hotel doorman. When large groups of people need to be transported he contacts ASI and they provide all of the additional buses needed to handle that load. The Bonaventure has doormen available to meet buses to avoid inconveniencing its guests. If guests need limousines, taxis, car rentals, or charter buses the hotel will make the necessary arrangements, but he sees no need for additional passenger stage service. He found that the airport service provided by RTD was unsatisfactory. The bus stop used by ASI is at the same level as the Bonaventure reception area.

Mallet concurs with Kjenslee's assessment that ASI provides a good quality of service. He also found the prior RTD service to be unsatisfactory. He has not noted any recent deterioration in ASI's service at the Biltmore/Mayflower stop. None of his guests complained about ASI's service. He favors

business competition, but he is concerned that adding additional passenger stage service could result in a deterioration of service.

Protestant's Argument

ASI attacks Sims' argument that differences between the attire and attitude of his drivers and ASI's drivers distinguish the two services. The only differences between the two services are based on the size of vehicles used and the fares charged. ASI drivers help passengers with their baggage, are smartly dressed, and answer passenger questions. Sims did not explain how his drivers were more helpful to or informal with passengers than ASI's drivers. Furthermore, federal regulations direct bus drivers to refrain from any unnecessary conversation or activities tending to distract the driver's attention from the operation of his vehicle.

Porter's testimony painted a misleading picture of the quality of ASI's service by his inability to distinguish ASI's service from that formerly provided by the RTD. In addition to ASI buses, the Biltmore requires all chartered vehicles to come to the Grand Avenue side of the hotel, including sightseeing group charters of three to five buses. Therefore, the Grand Avenue entrance is the entrance for bus passengers coming to the Biltmore. Porter was unfamiliar with the color of curb markings on Olive Street near the Biltmore or the distance from parking areas, formerly used by RTD, to the hotel entrance; he was unfamiliar with the location of ASI stops and the level of those stops with respect to the registration areas at the major hotels the Biltmore competes with, namely the Bonaventure, the Hyatt Regency, and the Los Angeles Hilton. Porter's

allegation that those competing hotels are served close to their registration desks is wrong. All of these hotels have ASI stops at different levels than the hotel registration desks. If ASI stopped on Olive Street patrons of the Mayflower would not be able to contact a bellhop and they would have to walk in the open for one block. That would discourage use of the Mayflower vis-a-vis the Biltmore.

Sims' cross-examination testimony that he was carrying an average of five or six persons per trip and up to 10 or 11 persons per trip in early February is untrue. Sims averaged 1.53 passengers per trip in January and 1.38 passengers per trip in February. Sims' expectations that he would pick up and drop off five passengers per trip equals 4,495 passengers per 31-day month, which is more than ASI carried to and from its Biltmore/Mayflower stop in January 1983 (4,006 passengers) operating 74 trips per day. Either Sims' estimates are absurd or his proposed service would have a disastrous effect on ASI's operations.

Sims was attempting to mislead the Commission in testifying that he would add only five minutes of running time on each trip if he served the Biltmore. He would have to cross many city streets between the Downtown Holiday Inn and the Biltmore and many other streets between the Biltmore and the Holiday Inn-Convention Center. He testified that he would have to travel three blocks to get to the Biltmore and three blocks to get to the Holiday Inn-Convention Center.

Sims' projections are completely unreal. He has not shown the necessary financial ability to carry on his operations. Sims and Hodnett presented conflicting testimony on paying 10% commissions to hotels. Hodnett's testimony on customer growth

between January and February is wrong. Hodnett did not know how Sims' new vehicles were being financed or when the earlier notes A, B, C, and D mentioned in Exhibit 13 were contracted for. Sims was technically bankrupt with a negative equity of \$25,610 even before adding the liability for two new vans on his downtown route.

Kjenslee and Mallett were satisfied with ASI's service to their hotels. Porter presented no evidence of a deterioration in service to the Biltmore on that same route.

Sims did not meet his burden of proof in establishing the need for his service. D.82-08-103 cites D.91279 (re American Buslines, Inc. (ABL)) as authority for authorizing Sims to provide service on Route 2. In that proceeding ABL produced 43 witnesses to establish that service by the existing carrier was deficient. In D.91279 the Commission found generally that it did not consider monopoly passenger stage service adequate service to the public and would not apply Public Utilities (PU) Code Section 1032 as a bar to deprive the public of the most innovative, attractive, and agreeable bus service that may potentially exist for its benefit (mimeo. page 16). Nevertheless the Commission held that "there may arise occasions when Section 1032 would be determinative in denying an application for operating authority such as, for example, when a traffic market is so obviously saturated with carriers that more competition could clearly not lead to better service. This could occur even though service is provided by one carrier."

ASI contends this is the case at the Biltmore. ASI operates 37 round trip schedules per day on its downtown route. Its buses are filled to less than 50% of capacity. There is no

need for more bus seats to LAX. In ABL, the carriers provided their own terminals. Furthermore, there is no case before the Commission where a new carrier is granted permission to institute service at a terminal when an existing carrier is serving the same location.

By stopping at the Biltmore as opposed to many other downtown hotels, with no ASI stop, "Sims is attempting...to trade upon another bus company's long-standing record of service to the Biltmore, or he is an unwitting pawn in the apparent vendetta the Biltmore holds against the Mayflower. Either way, there is no reason to grant the unnecessary authority sought in this application."

Discussion

Sims has the equipment, experience, and technical ability to provide the proposed service. At issue in this proceeding are (1) Sims' financial ability to provide the proposed service, (2) the feasibility of the proposed service, (3) applicability of PU Code Section 1032, and (4) public need for the service.

Sims' Financial Ability

The combined proprietary financial statements for Sims Limousine Service and Sims Executive Van Service show an incomplete listing of all of Sims' assets and liabilities. Hodnett admits that the May 31 to December 31, 1982 drop in Sims' net worth from \$2,365 to a negative \$25,610 makes Sims technically a bankrupt and that the 65% increase of revenues on Route 2 between January and February actually reflects a decline in average patronage. Nevertheless, Hodnett believes that Sims can continue to operate his existing Route 2 for

another year. Since the hearings in this proceeding Sims increased the number of schedules on this route, although he put the Vagabond Hotel stop on an on-call basis.^{6/}

Sims' December 31, 1982 financial statements do not reflect his Route 2 operations or his takeover of SMFL. Sims testified that he had made a \$10,000 payment to acquire the vans he is using on Route 2 under lease-purchase contracts. The vans cost \$28,000 each. Furthermore, he was obligated to pay \$22,500 in cash to take over the SMFL. The financial statements apparently are limited to Sims' transportation operations and the assets and liabilities related to these operations. He borrowed funds secured by his home to put into his transportation business. That liability is reflected on his financial statements, but the asset value of his home is not.

Since Sims will not require any additional equipment or funds for equipment to add the Biltmore to Route 2, the question of his ability to continue to provide service on Route 2 hinges on the feasibility of the proposed service.

Feasibility of the Proposed Service

The January and February patronage on Sims' Route 2 may not be indicative of the potential on this route after it becomes well-established. This level of patronage does not include Sims' operations at the Biltmore Hotel which is authorized in this decision. Furthermore, there was unusually heavy rainfall in downtown Los Angeles between the second half of January and

^{6/} Exhibits 14 and 15 break down Route 2 revenues by stops for January and February 1983. They show no revenues at the Vagabond Hotel stop.

April 1983 which may have affected patronage on Route 2.^{7/}
(As noted above, ASI's downtown passenger count dropped sharply in February 1983.)

In his application Sims estimates that an average patronage level of four passengers per trip including Biltmore service would yield a profit before taxes of \$59,837. At that patronage level Sims should be able to operate Route 2 at a profit. Sims did not allocate supervisory or dispatchers salaries or accounting expense to Route 2. He does not anticipate any increase in those expenses above those required to operate his limousine service and to operate his scheduled service on Route 1. Our adjustments to Sims' study rounded to the nearest \$100 are based on (a) adjustments to the pro forma operating results for Sims' existing Route 2 contained in Appendix A of D.82-08-103; (b) operation of 29 scheduled one-way trips per day carrying an average of four adult passengers per trip; (c) no allocation of supervisory or dispatchers salaries or accounting expenses to Route 2; and (d) testimony in this proceeding.

^{7/} We take official notice of the rainfall measurements, taken at the Los Angeles Civic Center Station, published by the National Oceanic and Atmospheric Administration. Recorded rainfall from January 17 to 31, 1983 was 6.49 inches which exceeds normal rainfall for all of January by 2.80 inches. February rainfall was 4.37 inches versus a long-term average of 2.96 inches. March rainfall was 8.37 inches versus a long-term average of 2.35 inches. April rainfall was 5.16 inches versus a long-term average of 1.17 inches.

In January and February Sims collected adult fares from all Route 2 passengers. (ASI carries very few children on its downtown route.) Increasing weighted average fares from \$4.13 to \$5.50 (this does not reflect the fare increase granted by D.83-08-030) for an average of four adult passengers per trip on 29 trips per day increases Sims' revenue estimate by \$58,000 to \$232,900.

D.82-08-103 establishes that the one-way mileage for existing Route 2 is 25 miles and deadhead mileage equal to two one-way trips per day should be included in mileage estimates. On this route the distance traveled between two Holiday Inns is approximately three-fourths mile. The distance between either of the Holiday Inns and the Biltmore is approximately one mile. We have increased Sims' mileage estimate from 211,700 miles to 297,000 miles. This adjustment in turn causes increases in repair, service, and maintenance expenses from \$3,700 to \$5,200 and increases in fuel and oil expenses from \$25,400 to \$35,700.

Drivers' wages and expenses would be increased from \$49,300 to \$55,200 based on an average trip time of one hour and five minutes and an average hourly payroll package of \$4.50 per hour. (In A.83-05-59 Sims seeks to offset payroll and other expense increases with a fare increase. These proposed increases are not reflected in these adjustments.)

Sims' \$5,500 estimate of commissions is understated. If equal numbers of passengers are transported to and from LAX and 20% of the passengers going to LAX buy tickets from drivers (for which no 10% commission to hotels or their employees is paid), commission expenses would be \$23,900. These expenses would be reduced to \$22,400 if three-fourths of the passengers

carried were carried to LAX as assumed by Sims. Under its agreement with the Department of Airports, ASI is obligated to provide information about scheduling of other bus lines using LAX (and if desired to sell their tickets) on a nondiscriminatory basis. This service is provided at kiosks, without ASI markings, at LAX which are operated by ASI. But ASI is entitled to a minimum charge of 10% of revenues reported to the Department of Airports. ASI has offered to provide such services to Sims for compensation.

In his application Sims estimated his two vans would cost \$56,000. Hodnett depreciates Sims' vans over three years. The depreciation accrual, excluding any trade-in allowance, would be \$18,700. Sims was able to obtain vehicle financing at better terms than he estimated, reducing his expenses by \$600 per year. The net effect of these adjustments could increase Sims' estimated profits of \$59,800 before taxes.

Section 1032

With respect to the existing carrier issues there are some differences between the service proposed to be extended by Sims and those provided by ASI. Sims would stop near the main entrance of the Biltmore; ASI stops near the hotel's rear entrance. The Olive Street stop is more convenient to the Biltmore registration area than the Grand Avenue entrance. ASI operates more than twice as many schedules, 37 round trips to LAX, than Sims is providing on Route 2 or the lesser number of trips he proposed to provide (15 trips to LAX and 14 return trips). Sims is operating two 22-passenger (including the driver) Transvans equipped with some amenities not available on ASI's 41- to 53-passenger buses. Sims' fares are higher than ASI's, \$5.50 versus \$4.60 per adult fare, and Sims has been granted authority to further increase this fare to \$6.00.

The two Biltmore stops are not identical as claimed by ASI. Due to cost considerations and to the impact on its Mayflower Hotel customers ASI was reluctant to shift the location of its Biltmore stop. After both the Biltmore and the Mayflower protested alternating stops on Olive Street and Grand Avenue the Commission staff stated the proposed scheduling would lead to confusion. The staff rejected the schedule filing, but advised ASI that it could pursue the matter by application. ASI did not do so.

Porter testified the Biltmore does not want to lose ASI's service. It wants to add Sims' service. He believes Sims would provide a desired service. He claimed that the hotel received about one complaint a week concerning ASI's service. Most of those complaints are handled by other hotel personnel. Porter is remiss in not setting up a procedure for relaying those complaints to ASI to correct the problem(s) or to the Commission if ASI was not responsive to the complaints. At most, he relayed one complaint to ASI since 1979. He confused RTD's service to the hotel with ASI's in his written support for Sims. Porter has not become actively involved in seeing that proper passenger stage service is provided to the Biltmore. He will not assist Sims in securing a bus parking zone next to the hotel. He does not assign hotel personnel to meet ASI buses or endeavor to keep the ASI stop clear of unauthorized traffic. Consequently, ASI buses may have to stop at other locations. ASI argues that Porter did not demonstrate that he received complaints of its unsatisfactory service. Porter did not bring complaint letters to the hearing. But ASI did not ask Porter to produce them. Porter's claims that ASI service has deteriorated is not supported

by Kjenslee or Mallet. Porter's testimony indicates that ASI drivers do not always make the required Biltmore Hotel announcement.

The testimony concerning deficiencies in ASI's service to the Biltmore is not convincing.

In D.82-08-103 we authorized Sims to stop at the Holiday Inn-Convention Center which is diagonally across the street from ASI's nearest collection point, the Figueroa Hotel. In this proceeding we will authorize a stop at the same hotel served by ASI which is on another street a block away from that stop.

We have, therefore, an applicant who would provide different service, in certain respects, than that provided by an existing operator. The service is traditional public utility common carrier transportation directly affecting the public interest.

However, when there are such material differences between the two services, PU Code Section 1032 is not a bar to granting Sims the requested authority. We find limited competition is the best means of ensuring the public is served by carriers motivated to provide attractive service. We find no persuasive evidence that competition between ASI and Sims would not be in the public interest. ASI suffered declines in patronage on its downtown route between 1980 and 1982 without competition from Sims. Boyles admitted that direct competition with Sims at the Olympian Hotel had not affected ASI's operations.

ASI did not make a convincing showing of potential adverse impacts on it from the proposed certification. ASI did not discuss a multitude of potential impacts on its business, such as economic conditions, numbers of airport flights or

airplane passengers, or an airport controllers' strike which materially affected air operations. Therefore, the exception permitting continuation of monopoly service on a route described in ABL, D.91279, writ of review denied, does not apply to the proposed certificate.

If ASI's customers are satisfied with its service they would not be motivated to change to a competing service and, therefore, it appears that ASI's concerns are overemphasized. Under these circumstances, it can be concluded that there presently exists a demand for the requested Sims service and that granting the requested authorization should not result in a substantial diversion of existing ASI passengers.

Need for Proposed Service

Sims has established that there is a need for the alternate service he provides on Route 2. The Biltmore desires to have that type of service available for the greater convenience of its out-of-town guests. In addition, there is a need to provide LAX service for people in the surrounding community.

Furthermore, granting the requested certificate will help ensure the viability of Sims' operations on his Route 2; it is consistent with the expansion of LAX, the need to reduce congestion at LAX and on the streets, current development in the downtown Los Angeles area,^{8/} and the need for LAX transportation to accommodate visitors to the 1984 Olympic games.

^{8/} Boyles testified that ASI is evaluating establishment of a stop at a downtown Sheraton Hotel scheduled to be opened in the summer of 1983.

Further Discussion

Sims' counsel objected strenuously to Boyles' testimony and to admission of all of the exhibits sponsored by Boyles because Boyles did not gather or compile all of the data used in these exhibits. He could not cross-examine all of the people who worked in gathering information used in the preparation of the exhibits or the equipment used to calculate numbers in exhibits. In large part he was put on notice of the nature of ASI's showing in its protest. He could have but did not ask to see any work papers or use discovery procedures either before the original hearing or between hearings.

Boyles sponsored exhibits prepared in the ordinary course of ASI's business, to rebut testimony for Sims, and to comply with an ALJ ruling. In his direct testimony and in extensive cross-examination Boyles demonstrated that he was responsible for preparation of Exhibits 4 to 12, exercised control over the methodology and procedures used in gathering data, and he worked with and interpreted that data. He was a percipient witness. There was no need to bring in other witnesses for further explanation of those exhibits including a review of every fuel voucher to determine if there was an overstatement of that expense. Sims was afforded a reasonable opportunity to cross-examine Boyles. His rights were preserved. Boyles' testimony is admissible.

In contrast Sims was unable to explain the basis of some of his cost estimates. Neither Sims nor Hodnett could testify in detail on Sims' vehicle lease purchase contracts. Before Hodnett testified, Sims was advised that those contracts were an issue in this proceeding. However, ASI made a late request for actual production of the contracts between hearing dates and Sims' attorney could not produce them without scheduling further hearings. As noted above, depreciation expense on Sims' new vans should be charged to Route 2 operations. The depreciation adjustment described above is consistent with Hodnett's methodology.

The financial statements prepared by Hodnett state in part:

"Mr. Sims has elected to omit the statement of changes in financial position required by generally accepted accounting principles. If the omitted disclosures were included in the financial statements, they might influence the user's conclusions about the Company's financial position, results of operations and changes in financial position. Accordingly, these financial statements are not designed for those who are not familiar with such matters."

Sims is contemplating a sale or transfer of some or all of his transportation operations to a corporation. He may seek minority participation in the ownership of the corporation. His net proprietary worth may be negative. We put Sims on notice that if he files an application to sell or transfer public utility property or operations to a corporation, the application should contain audited financial statements and a breakdown between his limousine service and each of the routes on his passenger stage service. Allocations should be made where all costs cannot be assigned to a particular operation.

As an individual, Sims should stop interchanging fictitious names with each filing he makes. In future proceedings he should provide information on his total assets and liabilities and the amount and basis for dedication of these resources to his utility operations.

Findings of Fact

1. Sims has the experience, expertise, equipment, and the technical ability to perform the proposed service. No additional capital outlays are needed to add a Biltmore Hotel stop to his existing Route 2.
2. The proposed service can be profitable.
3. There is a public need for Sims' proposed service.
4. ASI transports passengers by 41- to 53-passenger buses between seven collection points in its downtown Los Angeles service area and LAX.
5. Sims would transport passengers by 22-passenger vans, including the driver, from the Biltmore Hotel, adjacent to its main entrance on Olive Street, within ASI's Los Angeles downtown service area.
6. Sims' proposed one-way fare is \$5.50, or 90¢ higher than ASI's, and he has been granted authority to increase this fare to \$6.00. Sims' schedules are less frequent than ASI's. A Sims' objective is to provide more personalized service than competing carriers.
7. With reference to the pickup points, equipment, schedules, and fares, Sims' proposed service is materially different from ASI's.
8. To the extent the two services are similar, monopoly passenger stage service between ASI's downtown Los Angeles service area and LAX is not service to the satisfaction of the Commission.

9. Limited competition on this route will best ensure the public is served by carriers with an incentive to tailor their service and fares to attract patronage and best serve the public.

10. 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. Public convenience and necessity have been demonstrated and the request to expand service on Sims' Route 2 should be granted.

2. Sims' service is materially different from ASI's and PU Code Section 1032 does not bar our certification.

3. Existing passenger stage service provided by ASI to and from the Biltmore Hotel is conducted as a monopoly, without the benefit of competition to ensure the rendering of the best possible service to the public, and in view of the instant application is not service performed to the satisfaction of the Commission.

4. ASI has not demonstrated that an exception should be made to permit it to continue providing monopoly passenger stage service to the Biltmore Hotel.

5. The following order should be effective the date of signature because there is a demonstrated need for the proposed service.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Melvin F. Sims, authorizing him to operate as a passenger stage corporation, as defined in PU Code Section 226, between the points and over the routes set forth in Revised Appendix PSC-1145 of D.82-08-103, to transport persons and baggage.

2. Appendix PSC-1145 is further amended with the additional and revised pages attached.

3. 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 79, 98, 101, and 104, and the California Highway Patrol safety rules.
- e. Maintain accounting records in conformity with the Uniform System of Accounts.

4. 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 both this Commission and the airport authority involved.

This order is effective today.

Dated SEP 30 1983, at San Francisco, California.

LEONARD M. CRIMES, JR.
President

VICTOR CALVO

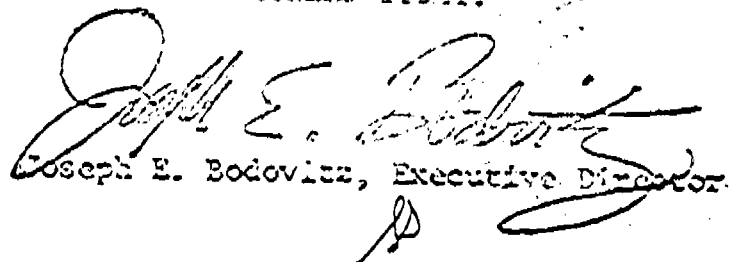
DONALD VIAL

WILLIAM T. BAGLEY

Commissioners

Commissioner Priscilla C. Grow,
being necessarily absent, did
not participate

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


Joseph E. Bodovitz, Executive Director

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

Melvin F. Sims, 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 between Los Angeles International Airport (LAX) and certain hotels in Los Angeles and Santa Monica, over and along the routes described, subject, however, to the authority of this Commission to change or modify the routes at any time and subject to the following provisions:

- (a) Motor vehicles may be turned at termini and intermediate points, in either direction, at intersections of streets or by operating around a block contiguous to such intersections, in accordance with local traffic regulations.
- (b) When route descriptions are given in one direction, they apply to operation in either direction unless otherwise indicated.
- (c) Service between LAX and Santa Monica shall be restricted to the transportation of passengers in motor vehicles having a seating capacity not exceeding 25 passengers.
- #(d) 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 both this Commission and the airport authority involved.

Issued by California Public Utilities Commission.

#Added by Decision 83 09 C92, Application 82-11-63.

T/rr/ALJ/ec

Appendix PSC-1145
(D.82-08-103)

MELVIN F. SIMS

Second Revised Page 3
Cancels
First Revised Page 3

SECTION 2. ROUTE DESCRIPTIONS.

Route 1 LAX - West Los Angeles/Hollywood

Commencing at LAX then via the most convenient streets and highways to the following hotels:

- | | | |
|---------------------------|-----------------------|-------------|
| 1. Le Parc Hotel | 733 N. Westknoll Dr. | Los Angeles |
| 2. Bel Air Sands Hotel | 11461 Sunset Blvd. | Los Angeles |
| 3. The Hyatt House | 8401 Sunset Blvd. | Los Angeles |
| 4. Brentwood Holiday Inn | 170 Church Lane | Los Angeles |
| 5. Sunset Marquis Hotel | 1200 N. Alta Loma Rd. | Los Angeles |
| 6. Westwood Marquis Hotel | 930 Hilgard Ave. | Los Angeles |

Route 2 LAX - Downtown Los Angeles/Hollywood

Commencing at LAX then via the most convenient streets and highways to the following hotels:

- | | | |
|-----------------------------|-----------------------|-------------|
| 7. Ramada Inn | 1160 N. Vermont Ave. | Los Angeles |
| 8. Olympian Hotel | 1903 W. Olympic Blvd. | Los Angeles |
| 9. Holiday Inn | 750 Garland Avenue | Los Angeles |
| 10. Holiday Inn | 1020 S. Figueroa St. | Los Angeles |
| 11. Vagabond Hotel | 3101 S. Figueroa St. | Los Angeles |
| 12. University Hilton Hotel | 3540 S. Figueroa St. | Los Angeles |
| #13. Biltmore Hotel | 515 S. Olive St. | Los Angeles |

Issued by California Public Utilities Commission.

#Added by Decision 83 09 092, Application 82-11-63.

Hearings

ASI filed a timely protest to the granting of the authority sought by Sims. Hearings were held before an administrative law judge (ALJ). The matter was submitted subject to the filing of concurrent briefs and, if available,^{3/} the articles of incorporation of Sims Executive Airport Shuttle, Incorporated (late-filed Exhibit 2). Briefs were filed by Sims and ASI.

Sims wished to transfer his operations to that *its* corporation. The ALJ ruled that Sims would have to amend his application or file a new application for authorization to transfer his operations to a corporation; that his filing would have to be in compliance with Article 8 (if applicable) and Article 9 of the Rules of Practice and Procedure; and that he would have to clarify which operations he proposed to transfer to the corporation. ~~Since no transfer application was filed, Exhibit 2 is not relevant to this proceeding.~~ *M*

Sims' witnesses were Sims, Leonard Warren Hodnett, a certified public accountant, Robert Chelbda, director of sales for the University Hilton Hotel, Kenneth Lok, general manager of the Ramada Inn in Hollywood, and Vernon Lee Porter, vice president and general manager of the Biltmore Hotel.

ASI's witnesses were its president, Donald W. Boyles, Randolph Lee Fayer, an ASI ticket agent, Gary Kjenslee, director of guest services at the Bonaventure Hotel, and Monte Mallet, president and manager of the corporation operating the Mayflower Hotel.

3/ Sims did not file late-filed Exhibit 2 or advise the Commission if he received the articles of incorporation.

Applicant's Testimony

Sims testified that he trains his drivers to provide a personalized service for his passengers. His drivers assist passengers boarding and leaving vans, load and unload luggage, answer questions, and give directions to passengers. His drivers wear white shirts and ties. Sims believes the public should have the right to decide which type of transportation service they want to use. Taxicab, limousine, and ASI buses serve the public at the Biltmore. He believes his van ^{operation} services provides a better quality of service than is offered by ASI buses, albeit his service is somewhat more costly than that of ASI. His limousine drivers told him that some of their passengers complained about ASI's service. He purchased two new 21-passenger Transvans to operate on Route 2. These custom-built vans are equipped with plush seats, individual reading lamps, air conditioning, a stereo system, a public address unit, carpeting, a rear luggage compartment, and interior overhead luggage racks similar to those used in airplanes.

The Biltmore is located approximately three blocks from the nearest stop on Sims' existing Route 2. He estimates that inclusion of the Biltmore on his route would not add more than five minutes per trip in each direction to his existing travel times. He would not have to add any additional equipment to provide service to the Biltmore. He believes that his expenses would be increased by a nominal amount to provide the additional service; but the increase in revenues he would obtain from the additional stop would assure his ability to continue to provide service on Route 2. He employs 18 people in his existing operations including a supervisor, dispatchers, and drivers.

business competition, but he is concerned that adding additional passenger stage service could result in a deterioration of service.

Protestant's Argument

ASI attacks Sims' argument that differences between the attire and attitude of his drivers and ASI's drivers distinguish the two services. The only differences between the two services are based on the size of vehicles used and the fares charged. ASI drivers help passengers with their baggage, are smartly dressed, and answer passenger questions. Sims did not explain in what way his drivers were more helpful, or ^{more} informed than ASI's drivers. Furthermore, federal regulations direct bus drivers to refrain from any unnecessary conversation or activities tending to distract the driver's attention from the operation of his vehicle.

Porter's testimony painted a misleading picture of the quality of ASI's service by his inability to distinguish ASI's service from that formerly provided by the RTD. In addition to ASI buses, the Biltmore requires all chartered vehicles to come to the Grand Avenue side of the hotel, including sightseeing group charters of three to five buses. Therefore, the Grand Avenue entrance is the entrance for bus passengers coming to the Biltmore. Porter was unfamiliar with the color of curb markings on Olive Street near the Biltmore or the distance from parking areas, formerly used by RTD, to the hotel entrance; he was unfamiliar with the location of ASI stops and the level of those stops with respect to the registration areas at the major hotels the Biltmore competes with, namely the Bonaventure, the Hyatt Regency, and the Los Angeles Hilton. Porter's

airplane passengers, or an airport controllers' strike which materially affected air operations. Therefore, the exception permitting continuation of monopoly service on a route described in ABL, D.91279, writ of review denied, does not apply to the proposed certificate.

If ASI's customers are satisfied with its service they would not be motivated to change to a ^{competing} competing service and, therefore, it appears that ASI's concerns are overemphasized. Under these circumstances, it can be concluded that there presently exists a demand for the requested Sims service and that granting the requested authorization should not result in a substantial diversion of existing ASI passengers.

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Furthermore, granting the requested certificate will help ensure the viability of Sims' operations on his Route 2; it is consistent with the expansion of LAX, the need to reduce congestion at LAX and on the streets, current development in the downtown Los Angeles area,^{8/} and the need for LAX transportation to accommodate visitors to the 1984 Olympic games.

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