

ORIGINAL

Decision No. 88061 NOV 1 1977

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of 24-Hour Airport Express for a charter-party carrier of passengers permit, between various points and places in Los Angeles and Orange Counties and Los Angeles International and Orange County Airports. (TCP 325-P)

Application No. 56841
(Filed November 3, 1976)

Edward L. Miller, Attorney at Law, for applicant.

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

R. W. Russell, by K. D. Walpert, for the City of Los Angeles, interested party.

Thomas P. Hunt, for the Commission staff.

O P I N I O N

24-Hour Airport Express, Inc., a California corporation, (applicant) holds Charter-party Carrier of Passengers Permit No. TCP-325-P and by this application seeks renewal of its annual permit which was to expire in November 1976. The Commission extended the permit temporarily until this application is resolved but not later than November 21, 1977.

Airport Service, Inc., a California corporation, (protestant) requested, by letter dated October 26, 1976, a hearing on the matter of the renewal of applicant's permit. Protestant contends that applicant's charges are from point-to-point, on a per capita basis, and are misleading and unlawful.

A public hearing was held on February 25, 1977 before Examiner Jerry Levander, and the matter submitted on briefs, which have been filed. Applicant's predecessor, 24-Hour Rent-a-Car, Inc.,

originally filed for a charter-party permit in November 1971. At that time one seven-passenger vehicle was used in the operation. Applicant presently operates eight seven-passenger vehicles and seven eleven-passenger vehicles. Applicant's current renewal form states, in part: "We are operating out of the corporate office at 14420 E. Whittier Blvd., Whittier. We serve a 50-mile radius at airports, sporting events and entertainment facilities. Our charges are based on \$16.00 per hour or \$32 per mile with a 50-mile minimum."

24-Hour Rent-A-Car, Inc., the parent corporation of applicant previously held the permit in question and operated under the name 24-Hour Airport Service. Protestant objected to the use of the name 24-Hour Airport Service as a name infringement. In response to this objection applicant was incorporated in 1976. Protestant objects to applicant's failure to reflect the name change on photographs of its vehicles which are used in currently distributed promotional literature (Exhibits 1, 2, and 8) and on its receipts (Exhibits 9, 10, and 11).

Testimony of Applicant's President

Most of applicant's operations consist of providing a door-to-door transportation service to and from airports on a reservation basis (usually by a telephone reservation). Applicant's airport business is primarily to and from Los Angeles International Airport (International) and secondarily to Orange County Airport (Orange). A great deal of applicant's business is booked by travel agencies. Applicant prepared rate sheets (Exhibits 1 and 2) for the use of travel agents based upon time and distance traveled and the occupancy level of the vehicle. The rate sheets contain one-way

fares from various cities and certain hotels in Los Angeles and Orange Counties to International and Orange. The rate sheets include the following:

"GENERAL NOTES:

- * Base price includes up to three persons, picked up at the time, at the same address; each additional person @ \$2.00 each.
- * \$2.00 Sur-charge for pick up at airport (waived on prepaid round trips).
- * \$5.00 Sur-charge for service between 11:00 PM and 5:00 AM.
- * \$5.00 Sur-charge for meeting charter flights and overseas flights subject to customs inspections. (Optional: Charge may be waived if pickup is made 1 hour after flight arrival.)
- * Fares for locations not listed will be quoted promptly by telephone as well as group and special fares."

The \$2 charge per person above the base price applies to additional people in a charter-party. Applicant also makes additional stops for either picking up or discharging passengers in a charter-party at a charge of \$2 per additional stop. Applicant transports more than one charter group in the same vehicle when it is convenient to do so and charges the entire applicable charter rate to each charter-party carried in the same vehicle. The 11:00 p.m. to 5:00 a.m. surcharge is not related to time or distance. The surcharge provides additional compensation to applicant's drivers.

Applicant's president stated that an International official informed him that no permit or authority is necessary for applicant to operate as a charter-party carrier at International; that the permit provision requiring operational approval by airport authorities does not apply to applicant's operations; that applicant's vehicles would be treated like those of the general

public, and would be subject to traffic tickets; that applicant could not solicit business; that applicant could pick up passengers on an advance reservation basis; and that he in turn informed applicant's drivers to tell any party without a reservation who requested transportation to call the company office and make a reservation and the company radio dispatcher would then direct that driver or another driver to pick up the party requesting the ride.

Protestant's Evidence

Protestant, a passenger stage corporation, operates large, deluxe air-conditioned, reclining seat motor coaches between various terminals in Los Angeles and Orange Counties on a scheduled basis which connect with International, Orange, Long Beach Airport, Lockheed Air Terminal (on-call), and Ontario International Airport (on-call). Protestant charges on per capita basis. Protestant's president supplied schedules and fares for its Orange County, Long Beach, and Pasadena divisions (Exhibits 5, 6, and 7) and supplied certain mileage and related fare information for transportation between certain points. He testified that 24-Hour Airport Service had picked up passengers at protestant's terminals in advance of protestant's scheduled pickup times.

Protestant's Pasadena division buses make 18 round trips per day between International and the Pasadena Hilton Hotel and the Huntington Sheraton Hotel. On these runs the buses make either one or six daily round trips to other locations.

Protestant's Orange County division buses make 29 round trips per day between the Disneyland Hotel and the Grand Hotel in Anaheim and International, and 13 round trips between these hotels and Orange. On these runs the buses make either ten, four, three, or one round trip to other locations.

Protestant's Long Beach division buses daily schedules provide for ten arrivals and 12 departures from International and either seven, three, or one round trip to other locations.

Another employee of protestant testified that he made reservations with applicant for a party of four on February 17, 1977. Three members of the party were employees of protestant. The fourth was an employee of the Yellow Cab Company of North Orange County. Three people were to be picked up at one hotel and the witness was to be subsequently picked up about a mile away at another hotel in Anaheim. The \$20 total charge quoted for transportation to International was the \$16 base price, plus \$2 for each passenger above three, and plus \$2 for the extra pickup. He testified that he asked the driver the amount of the fare; and that the driver said \$5 and provided him with a receipt for \$5 at his request.

The three passengers initially picked up all testified. Their testimony confirmed the \$20 charge and their verification that another passenger would be picked up. Their testimony differs concerning whether the driver or one of the passengers first suggested payment of \$5 apiece. The passengers said they were businessmen and would need individual receipts for their expense accounts. The driver made out individual receipts for them (Exhibits 9 and 10).

Another employee of protestant testified that on February 16, 1977 one of applicant's vans pulled up to a terminal building at International and stopped for three to five minutes; that the driver made no motion until he approached him and asked how much the fare would be to go to the Disneyland Hotel; that the driver said \$18; that when he requested a lower fare the driver called his dispatcher by two-way radio and the dispatcher said the fare was \$18; that he paid the \$18 requested and received a receipt from 24-Hour Airport Service (Exhibit 11); that even though he stated that he had to get to the Disneyland Hotel very rapidly the driver circled the airport between the center island and the curb

of each of the airport terminals, stopped in front of the PSA building and said "I'm sorry that I have to hold you up but I'm looking for somebody else"; and that after a further three to five minute wait, the driver asked for and received his permission to circle again but he did not do so because the dispatcher told the driver to go directly to Disneyland. He testified that he had no advance reservation and the driver did not request him to call the dispatcher before agreeing to pick him up.

Applicant's Rebuttal Testimony

Applicant's president testified that he had recently reissued a memo stating company policy did not permit picking up people contacting drivers at the airport but he did not bring a copy of any such policy memos to the hearing; that it was necessary for the customer to call the company office; that he believed the driver involved to be a part-time employee; that when a reservation was made for a group of people who request individual receipts to account for their expenses that individual receipts are given out; that normally one person in a group pays and the others get receipts; that a police lieutenant had assisted him regarding issuance of parking citation incurred while getting baggage; and that applicant had received no citations for soliciting airport business.

Argument

Applicant contends that its operations are those of a charter-party carrier and its permit should be renewed; that protestant was trying to set up the illusion that it charged on a per capita basis rather than on a reservation basis; that it did not operate between fixed termini or over regular routes; and that protestant did not give notice of specific charges and applicant did not have an opportunity for any discovery or a meaningful opportunity to cross-examine or rebut protestant's testimony.

Protestant cites Interstate Commerce Commission orders^{1/} defining charter operations contracting for the exclusive use of a vehicle. Protestant argues that the chartering party or parties do not control applicant's vehicles but the driver or dispatcher determines the most feasible and quickest way to get to the airport; that the evidence shows that applicant's basic charges are not based upon time of use (e.g., a trip from Beverly Hills to International by applicant takes 30-35 minutes and possibly an hour and costs \$13; a trip from Whittier to International by applicant takes 45 minutes to one and one-half hours and costs \$14) or distance criteria^{2/} (e.g., a calculation using applicant's charges and the distances traveled show the following costs per mile: Anaheim to International \$0.444 per mile; Anaheim to Orange \$0.923 per mile; Long Beach to International \$0.666 per mile; Beverly Hills to International \$1.083 per mile; and West Los Angeles to International over \$1.50 per mile); that there is no relationship between time and use and applicant's \$5 surcharge between 11:00 p.m. and 5:00 a.m.; and that there is a contradiction between the lowest rates charged by applicant of \$12 and the renewal application which states that applicant's basic charge is \$16 per hour with a mileage charge of \$.32 per mile with a 50-mile minimum (i.e., a \$16 minimum).

Protestant directed our attention to Section 5401 of the Public Utilities Code as follows:

"5401. Charges for the transportation to be offered or afforded by a charter-party carrier of passengers shall be computed and assessed on

1/ Peerless Stages, Inc., Investigation (1961) 86 MCC 109; Browns Bus Service, Inc., Extension (1960) 83 MCC 251, 264; and AB&W Transit Co. v DC Transit System, Inc. (1960) 83 MCC 547, 551.

2/ Protestant requests the Commission take judicial notice of the localities of the cities involved herein.

a vehicle mileage or time of use basis, or on a combination thereof, which charges may vary in accordance with the passenger capacity of the vehicle, or the size of the group to be transported,"

Protestant argues that:

- (a) Before the charges may vary, they must first be computed and assessed on a vehicle mileage or time of use basis, or on a combination thereof;
- (b) The reason for the language that "charges may vary in accordance with the passenger capacity of the vehicle" was because coaches normally used in charter operations may vary from 25-passenger to 53-passenger capacity. The charge for the larger capacity coach is greater than for a smaller coach;
- (c) The reason for the language "or the size of the group to be transported" is simply to permit a carrier who has made a charter contract to carry 43 passengers and has only a 47-passenger coach available at the time, as a matter of operating convenience, to use the 47-passenger coach and simply charge for a 43-passenger coach. The carrier can justify the reduced charge made for the larger coach by reducing his basic charge (per mile or per hour) because of the number of passengers transported;
- (d) The language in Section 5401 was never meant to permit a carrier to charge so much for each additional passenger;
- (e) Applicant is a passenger stage corporation because establishing service between International and various cities is equivalent to establishment of service between fixed termini within the meaning of Section 226 of the California Public Utilities Code. To be defined as a passenger stage corporation one merely has to operate a passenger stage over a public highway between

fixed termini or over a regular route. Seventy-five percent of applicant's business is to International. The use of charter-party carrier certificates or permits for the establishment of services between fixed termini is unlawful and will not be tolerated. (California Sightseeing Tours, Inc. (1971) 71 CPUC 802.);

- (f) The furnishing of transportation to and from an airport on an on-call basis over a fixed route with designated pickup and discharge points is passenger stage service furnished to a portion of the public within the purview of Section 226 of the California Public Utilities Code and a certificate is thus required. (Anglo-California Servs., Inc. (1973) 75 CPUC 354.) Whether it is a fixed route or between fixed termini, the operation is still that of a passenger stage corporation;
- (g) Applicant is offering the public individual and group rates characteristic of a passenger stage corporation. Whether it is called a charter operation or a taxi operation does not change the nature of the service. (R. R. Young (1921) 19 CRC 877.);
- (h) The use of two-way radios by applicant's drivers rather than requiring a call to the dispatcher disprove applicant's contention that airport pickups are by reservation only. The procedure of making a phone call from International to applicant's office for reservations would be a ridiculous one to follow; and
- (i) Applicant's disregard of the rules and regulations governing charter-party carriers and passenger stage corporations and its practices lead to the conclusion that applicant is not fit for the renewal of its charter-party permit and protestant therefore requests denial of the application.

The Commission staff also recommends against renewal of the permit. The staff argues that:

- (a) Applicant's practice of chartering space aboard a vehicle rather than chartering an extra vehicle amounts to selling seats or assessing individual fares;
- (b) The \$2 charge per passenger above three is an individual fare;
- (c) The group size should govern the size of vehicles required;
- (d) Applicant's specialization in point-to-point operations, its publication of one-way fares between International or Orange and various regional points, and the language on the sides of its passenger vans "To and From All Major Airports and Major Attractions in L.A. and Orange County" represent service to and from fixed termini which is not within the limited operating scope of a charter-party permit holder;
- (e) The names 24-Hour Airport Service and 24-Hour Airport Express do not depict a charter service but connote the point-to-point service actually provided; and
- (f) The Commission has held that a limousine service designed primarily to meet the business needs of companies in transporting their personnel traveling on company business between their homes or places of business and the airports qualifies as a passenger stage corporation notwithstanding language of this section requiring such a carrier to operate between fixed termini or over a regular route, and the Commission will grant area-type certificates where it is shown that the public convenience and necessity would be better served. (See Charter Sedan Service v National Executive Services, Inc. (1969) 70 CPUC 158.)

Applicant's reply brief quoted another portion of the Charter Sedan decision as follows:

"With the ever-increasing growth and development of air travel there is developing a corresponding need for expeditious public transportation to and from our airports. The service herein offered is primarily designed to meet the business needs and requirements of companies in transporting their personnel traveling on company business between their homes or places of business and the airports; however, the service as proposed would also be available to anyone who wishes to make use of it.

"[17] The service proposed has some of the characteristics of a taxi operation or limousine service and it would appear that a charter-party permit would be adequate authority. However, more than one person or group would be carried at the same time by the same vehicle and individual fares will be charged. Charter-party carriers are prohibited from charging individual fares (Section 5401 of the Public Utilities Code) and so a passenger stage certificate appears necessary. (Emphasis added.)"

Applicant contends that it, unlike Charter Sedan Service, does not charge individual fares; that it is permitted to use a combination of mileage, time of use, passenger capacity, and number of persons to be transported; that it has been charging, with full disclosure to the Commission staff over a number of years, on a group rate basis with adjustments based on the size of the group; and that often charter-party carriers follow its practices but that it was not able to make a record on this point.

Discussion

The practices of other charter-party carriers are not at issue in this proceeding. We are dealing with issues of whether applicant's operations, rates, and charges conform with the legislative mandate for charter-party carriers in connection with applicant's request for renewal of its permit. Applicant also

alleged surprise at issues raised and questioned its ability to rebut protestant's witnesses. Applicant was advised that, if necessary, the hearing could be adjourned to another date (RT, page 7) but it did not elect to do so.

The language of Public Utilities Code Section 5401, supra, is ambiguous enough to encompass a multitude of interpretations. Statewide regulation of charter-party carriers is of marginal utility at best. The present operations of applicant go beyond the broad permissible limits of its permit in the following respects:

- (a) Only one party may charter a vehicle on a particular trip.
- (b) Applicant's charges are inconsistent. A reasonable relationship should exist between charges for various trips based upon time of use or vehicle mileage or a combination thereof.
- (c) A \$2 per passenger differential for more than three passengers is not permissible. If a larger vehicle for a charter is required a price differential is appropriate. However, if a larger vehicle than required for a given number of passengers is used for the convenience of the operator, the charge for the smaller vehicle is appropriate.
- (d) A fixed charge for a night differential is not permissible. A night differential may be appropriate but it should vary with time of use or mileage or a combination thereof.
- (e) Both applicant's driver and its dispatcher permitted a charter to be obtained without advance booking through the office. Such solicitation without a permit is not permitted by International or Orange.

A charge for an extra stop(s) to pick up or discharge passengers in a single charter is permissible.

Protestant's operations provide frequent service to and from airports from several hotels and a moderate or infrequent level of service from other locations. Protestant did not indicate the extent to which applicant's operations were affecting its business. Applicant's present charter costs are far in excess of protestant's individual fares. A large party coming from a city in the periphery of applicant's pickup area could obtain service at a lower total cost from applicant than from protestant (e.g., a party of six could be transported from Laguna to International for \$28 by applicant and for \$30 by protestant).

Applicant and its predecessors have expanded from a one-vehicle to a 15-vehicle operation.

The Charter Sedan decision points out a public need for an on-call charter service operating under Public Utilities Code Section 5401. As described above, applicant's operations go beyond the limitations of permissible charter-party operations. We have considered suspending applicant's permit as a sanction for operating in violation of Section 5401. Under the circumstances, however, we will not impose a suspension but will extend applicant's permit for 60 days from the effective date of this order, at which time the permit will expire unless prior to the date of expiration applicant files with the Commission new operating procedures, rates, and charges meeting the criteria of Section 5401. The filing should set forth in detail the basis upon which new rates and charges would be established. If the filing is sufficient, the Executive Director shall renew the permit. This filing should provide that applicant will not park its vehicles at any loading zone absent a prearranged charter; that applicant's vehicles will not cruise around public passenger loading zones; and that no charter pickup will be made at a given passenger loading area after discharging passengers unless the charter is reflected on the driver's log and the dispatcher's log for ten minutes before the pickup is made.

Applicant should promptly withdraw any promotional literature, receipts, or other documentation promoting confusion between its operations and those of protestant.

Findings

1. Applicant, a charter-party carrier, requests annual renewal of its Charter-party Carrier of Passengers Permit No. TCP-325-P.

2. Protestant filed a letter dated October 26, 1976 alleging that applicant was making charges for point-to-point transportation on a per capita basis; that these charges are misleading and unlawful; and that applicant was using a name similar to its own on its vehicles.

3. The permit was extended pending the outcome of this proceeding after receipt of protestant's allegations.

4. Certain aspects of applicant's operations enumerated on page 12 herein are not permissible under Section 5401 of the Public Utilities Code.

5. Applicant should conform its operations to meet the requirements of Section 5401 and should not be granted a renewal of its permit until it does so.

6. There is a public need for charter-party service in the areas served by applicant.

7. Applicant's charter-party permit should be renewed if it files with the Commission proposed new operating procedures, rates, and charges meeting the criteria of Public Utilities Code Section 5401.

8. The Commission staff should review this filing. If the filing meets the criteria of Section 5401 of the Public Utilities Code, the Executive Director of this Commission should renew the permit.

9. Applicant should promptly withdraw any promotional literature, receipts, or other documentation promoting confusion

between its operations and those of other utilities. Applicants should see Form 100 in compliance with Public Utilities Code Section 5401 and request for renewal.

Conclusions:

1. Applicant's operations have exceeded the permissible limits for a charter-party permit set forth in Public Utilities Code Section 5401.
2. Applicant's permit should not be renewed unless it corrects past violations of Section 5401.
3. There is a public need for charter-party service in the area served by applicant.
4. Applicant's permit should be renewed if it amends proposed changes in its operations, rates, and charges to correct the impermissible aspects of its operations described on page 12 herein.

RECOMMENDATION:

IT IS ORDERED that:

1. Charter-party Carrier of Passenger by Permit No. 70P-325-P issued by Public Utilities Code, Inc. (PUC), a California corporation, is continued in effect for sixty days after the effective date of this order, at which time it shall expire.
2. Prior to sixty days after the effective date of this order, applicant is authorized to file proposed law of operating procedures, rates, and charges meeting the criteria of Public Utilities Code Section 5401 and to request renewal of charter-party permit of Passenger Permit No. 70P-325-P.

3. The Commission staff shall review this filing. If the filing meets the criteria of Section 5401 of the Public Utilities Code, the Executive Director of this Commission shall renew the permit.

4. Applicant shall promptly withdraw any promotional literature, receipts, or other documentation promoting confusion between its operations and those of protestant. Applicant shall set forth its actions in compliance with this paragraph with its request for renewal.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 1st day of NOVEMBER, 1977.

Robert Robinson
President

William Lyman Jr.

Terrence L. Sturgeon

Richard W. Givelle

Clare T. DeBriak
Commissioners