

ORIGINAL

Decision No. 88159 NOV 29 1977

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
 of Curt N. Bosworth, an individual,
 dba Stardust Charters, to sell and
 William Hunt, an individual, for
 authority to purchase a portion of
 the Certificate of Public Convenience
 and Necessity described as Routes
 One (1) and Two (2).

Application No. 57059
 (Filed February 4, 1977)

Virant & deBrauwere, by John E. deBrauwere, Attorney
 at Law, for Curt N. Bosworth, applicant.
Ronald J. Hoffman, for Southern California Commuter
 Bus Service, Inc., protestant.
Thomas P. Hunt, for the Commission staff.

O P I N I O N

By this application Curt N. Bosworth (seller), an individual doing business as Stardust Charters, seeks authority, pursuant to Section 851, et seq. of the Public Utilities Code, to transfer a portion of his passenger stage certificate of public convenience and necessity to William Hunt (buyer). Specifically, authority is sought to sell Routes 1 and 2 of seller's passenger stage certificate granted by D.82675 dated April 2, 1974 in A.54363. The routes are from Orange County to El Segundo in Los Angeles County. Seller and buyer have entered into an agreement of sale dated January 19, 1977 whereby buyer undertakes to accept the rights sought to be transferred and the attendant goodwill, and to pay \$10,000 upon the signing of the agreement. It is further agreed that the transfer and sale is contingent upon approval by the Commission, and that if approval is not given the \$10,000 payment given will become immediately due and payable to buyer.

The application was protested by Southern California Commuter Bus Service, Inc. (Com-Bus).

After duly published notices, hearings were held on July 8 and August 15 and 16, 1977 before Administrative Law Judge Bernard A. Peeters in Los Angeles. The matter was submitted on the latter date subject to the filing of briefs on or before September 16, 1977.

The Issues

1. Whether buyer is reasonably fit and has the financial responsibility to conduct the operation sought to be transferred.
2. Whether the transfer of Routes 1 and 2 of seller's certificate, as one combined route, is adverse to the public interest.
3. Whether seller should be ordered to refund \$1.00 per passenger charged in excess of the tariff rate from December 1976 to July 25, 1977.

The Evidence

Applicant's evidence was presented through four witnesses—the seller, the buyer, a Stardust commuter, and a rebuttal witness. Thirteen exhibits were introduced. Com-Bus presented testimony through its president.

The record shows that seller desires to relieve himself of the responsibility of providing commuter service because of ill health. He has already disposed of Route 3 pursuant to D.87146 dated March 29, 1977 in A.56906. Thus, the transfer of Routes 1 and 2 would relieve seller of his passenger stage obligations.

It appears that sometime prior to the filing of this application, (February 4, 1977) seller combined the routes sought to be transferred into one route because of lack of patronage. Instead of using two buses, only one bus of 47-passenger capacity is now required. This bus is leased from buyer. The lease was not reduced to writing until after the July 8 hearing (Ex. 5). The combining of the two routes resulted in the elimination of two stops,

one on each route, and was done without prior authority from the Commission and the filing of revised timetables. It also appears that seller commenced charging \$12 per week per passenger commencing in December 1976 rather than the \$11 fare set forth in the tariff without prior authorization from the Commission. Seller states that these actions were taken by his general manager upon whom he relied to have obtained the proper authorizations from the Commission. Seller further testified that he is willing to refund the overcharge to the commuters for the period involved, and has initiated steps to obtain the names of the commuters concerned. As of July 25, 1977 the fare was brought down to the tariff level of \$11.

Buyer testified that he has been in the trucking business for 25 years; that he is employed by Dewitt Transfer & Storage as its general and operational manager; that he owns six diesel tractors, five of which are leased to DeWitt and one leased to Ted Peters Trucking of Gustine. He discussed the purchase of the routes with seller on December 15, 1976 and subsequent dates, and on January 19, 1977 he entered into an agreement to purchase the routes which are the subject of this application. Buyer personally observed the route being operated and was under the impression that he was purchasing the route, as operated, and not two separate routes which are being sought to be transferred; that he has no intention of operating two separate routes with two separate buses. In reliance upon the purchase agreement and subject to authorization by this Commission of the transfer, buyer purchased a coach, refurbished it and put it on the route being operated on February 7, 1977 under an oral lease arrangement, with 42 passengers being transported. Monthly payments for this bus, a 1964 Flexible, are \$399.36 per month. Buyer states that he made himself familiar with the requirements of operating as a passenger stage corporation with

the attendant obligations, the routes, and schedules of seller. However, he was told by seller that the route being operated was a consolidated route and was not given any further information about the consolidation. Buyer owns outright a 1967 Hi Level Flexible coach which is used for backup purposes. Buyer orally amended his portion of the application to state that he is seeking authority to operate the consolidated route, not the two routes sought to be transferred, and that he adopts the \$11 fare as published in seller's tariff. Buyer also stated that from February 7, 1977 the commuters paid their fares to him, rather than to Stardust Charters and that these payments constituted the payments on the lease of the bus from buyer to seller. Buyer does not hold any operating authority from the Commission. It is not his intention to operate the consolidated route if it is not profitable, and would seek authority to either abandon the route or have it transferred to another carrier such as Com-Bus or Mark IV.

At the adjourned hearing buyer updated his financial statement (Exh. 2) to show that his net worth increased from \$57,842.68 to \$82,247.88 (RT 110-115). A pro forma operating statement for the combined commuter routes was presented (Exh. 8) which shows an annual net income of \$9,459.00. Exhibit 9 is a profit and loss statement of buyer's trucking business for the period January 1, 1977 to June 30, 1977. This shows a net income, before taxes, of \$24,070.88. A financial statement as of August 5, 1977 (Exh. 9) shows buyer's net worth of his trucking business to be \$95,485.00. A personal financial statement shows buyer's net worth to be \$64,036.00.

Thirty-two commuters signed a petition on August 15, 1977 attesting to the good quality of service rendered since buyer has been operating the route.

Protestant Com-Bus' testimony shows that it was granted authority to operate from Orange County areas to the Hughes facilities in El Segundo by D.83467 dated December 17, 1974, the same general area involved in this proceeding. It operates 33 commuter routes daily in Southern California using 38- to 47-passenger buses which are leased. It also operated three routes with mini buses of 14- to 17-passenger capacity. It was pointed out that it currently operates routes from Southern Orange County to the Los Angeles International Airport area with stops at some of the points involved here. Com-Bus contends that the application is not for the transfer of Routes 1 and 2, but rather for the granting of a new certificate over the combined route and that no evidence has been adduced to show that Com-Bus cannot or will not provide the service to the Hughes facilities. It further contends that with only 37 or 38 passengers on the route and the recent defections of commuters because of these hearings it believes that the route will soon become financially unsound and would be abandoned, or authority would be sought to expand the route. Such action would have an impact on Com-Bus operations and therefore it opposes the application. Com-Bus' witness stated that although it has authority to serve the Hughes facilities from Orange County, it does not provide service to these facilities, but it does provide service to other companies in the area. Thus, if buyer finds his route unprofitable and he seeks its enlargement to serve other companies in the area there would be an adverse effect on Com-Bus' operations.

A rebuttal witness was presented by applicants to show that Com-Bus' service was unsatisfactory, he used Com-Bus for three years and started using Commuter Transportation Services, Inc. (Commuter Computer) since March 1977. It was pointed out through this witness that Com-Bus also was charging fares from San Fernando Valley points in excess of its authorized tariff fares. It was developed that the

increased fares were the result of the commuters voluntarily agreeing to pay the increased fare in an effort to offset the increased cost of insurance to Com-Bus in order to save their transportation and in realization that to obtain Commission approval of the increase would probably take longer than Com-Bus could afford to wait before dropping the route because of unprofitability. Exhibit 14 was introduced to show the unauthorized increase in fares. It was also developed that some of the fares shown on Exhibit 14 were for passengers originating in Simi Valley, an area beyond San Fernando Valley and not authorized to be served by Com-Bus.

In its brief buyer requests us to condition this transfer on the condition that the purchase price be reduced to \$7,500 since the original purchase price was predicated upon the unlawful \$12 fare.

Findings of Fact

1. Buyer has the requisite financial ability to continue the operation of the combined route sought to be transferred.
2. It is not adverse to the public interest to issue a certificate to buyer for the combined route and to cancel Routes 1 and 2 in seller's certificate.
3. Buyer agreed to publish a tariff containing a rate of \$11 per week and to publish timetables.
4. Seller volunteered to refund the overcharges to his passengers for the period during which such overcharges were in effect.
5. Seller charged his passengers \$1 more than his authorized tariff fare from December 1976 until July 25, 1977.
6. Seller should be ordered to refund to his passengers the \$1 overcharge per week from December 1976 to July 25, 1977.
7. Buyer stated that he made himself familiar with the operations, duties, and obligations of seller, prior to entering into the agreement which would include tariffs and their contents;

therefore, buyer cannot now claim that his agreement to purchase was predicated upon a lawful fare of \$12. The agreement of sale should not be conditioned as requested, but the parties may renegotiate the agreement.

8. Protestant was granted authority to serve the Hughes facilities subsequent to seller having obtained such authority. Protestant has not implemented service to these facilities because of an agreement with seller not to protest seller's original application to serve the Hughes' facilities.

9. Buyer has stated that he will not continue operation of the combined route if it should become unprofitable. To prevent trafficking in certificates and to provide an incentive to buyer to generate traffic for this route, the certificate granted to buyer should provide for its automatic revocation in the event service is discontinued.

The order which follows will provide for, in the event the transfer is completed, the revocation of the certificate presently held by Curt N. Bosworth, doing business as Stardust Charters, which consists of Routes 1 and 2, and the issuance of a certificate in appendix form to William Hunt.

Buyer is placed on notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate fixing for any amount of money

in excess of that originally paid to the state as the consideration for the grant of such rights. Aside from their purely permissive aspect, such rights extend to the holder a full or partial monopoly of a class of business. This monopoly feature may be modified or canceled at any time by the state, which is not in any respect limited as to the number of rights which may be given.

O R D E R

IT IS ORDERED that:

1. On or before January 1, 1978, Curt N. Bosworth (seller), doing business as Stardust Charters, may sell and transfer the combined operative rights referred to in the application to William Hunt (buyer).
2. Within thirty days after the transfer, the buyer shall file with the Commission written acceptance of the certificate and a true copy of the bill of sale or other instrument of transfer.
3. Buyer shall amend or reissue the tariffs and timetables on file with the Commission, naming rates and rules governing the common carrier operations transferred to show that he has adopted or established, as his own, the rates and rules. The tariff and timetable filings shall be made effective not earlier than five days after the effective date of this order on not less than five days' notice to the Commission and the public, and the effective date of the tariff and timetable filings made pursuant to this order shall comply in all respects with the regulations governing the construction and filing of tariffs and timetables set forth in the Commission's General Orders Nos. 79-Series and 98-Series. Failure

to comply with the provisions of General Orders Nos. 79-Series and 98-Series may result in a cancellation of the operating authority granted by this decision.

4. In the event the transfer authorized in paragraph 1 is completed, effective concurrently with the effective date of the tariff filings required by paragraph 3, a certificate of public convenience and necessity is granted to William Hunt authorizing him to operate as a passenger stage corporation, as defined in Section 226 of the Public Utilities Code, between the points and over the routes set forth in Appendix A, attached hereto and made a part hereof. Said certificate shall provide for its automatic revocation in the event service is discontinued.

5. Effective concurrently with the effective date of the tariff filings required by paragraph 3, the authority presently held by seller pursuant to D.82675 dated April 2, 1974, as amended by D.87146 dated March 29, 1977, is canceled.

6. Buyer shall comply with the safety rules of the California Highway Patrol and the rules and regulations of the Commission's General Order No. 101-Series.

7. Buyer shall maintain his accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission and shall file with the Commission, on or before March 31 of each year, an annual report of his operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

8. The seller shall refund the overcharges to those passengers who were overcharged \$1.00 per week from December 1976 to July 25, 1977.

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

Dated at San Francisco, California, this 29th day of NOVEMBER, 1977.

Robert Batminal
President
William Sproun Jr.
Vernon L. Lutz
Joseph P. Howell
Walter T. Smith
Commissioners

/fc

Appendix A

WILLIAM HUNT

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CERTIFICATE
of
PUBLIC CONVENIENCE AND NECESSITY

PSC No. 1029

Showing passenger stage operative rights, restrictions, limitations, exceptions, and privileges applicable thereto.

All changes and amendments as authorized by the Public Utilities Commission of the State of California will be made as revised pages or added original pages.

Issued under authority of Decision No. 88159,
dated NOV 29 1977, of the Public Utilities
Commission of the State of California, in Application No. 57059.

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Appendix A

WILLIAM HUNT

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Issued by California Public Utilities Commission.

Decision No. 88159, Application No. 57059.

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

William Hunt, by the certificate of public convenience and necessity granted by the decision noted in the margin, is authorized to transport passengers between certain designated areas in Orange County and Los Angeles International Airport Area and certain territories intermediate and adjacent thereto, over and along the routes hereinafter described, subject, however, to the authority of this Commission to change or modify said 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) All transportation of passengers shall originate at the points hereinafter specified in Orange County, on the one hand, and shall be destined to the various buildings and installations of the Hughes Aircraft Company in the Los Angeles International Airport Service Area, on the other hand, and shall be limited to employees of or persons seeking employment at the Hughes facilities.
- (d) Passenger stage service shall be operated only at times necessary to meet employee shift changes at the industry served and at other times when necessary to transport persons seeking employment at said industry.
- (e) This authority shall automatically expire and be subject to automatic revocation in the event service is discontinued.

Issued by California Public Utilities Commission.

Decision No. 88159, Application No. 57059.

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Appendix A

WILLIAM HUNT

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SECTION 2. DESCRIPTION OF AREAS AND LOCATIONS.

Los Angeles International Airport Service Area

That area bounded on the south by El Segundo Boulevard, on the east by the San Diego Freeway (State Route 405), on the north by Century Boulevard extended, and on the west by the Pacific Ocean.

Locations to be served within this area shall be as set forth in Section 3.

Issued by California Public Utilities Commission.

Decision No. 88159, Application No. 57059.

SECTION 3. ROUTE DESCRIPTION.

Beginning at the intersection of MacArthur Boulevard and Business Center Drive in the City of Irvine; thence northerly along MacArthur Boulevard to the San Diego Freeway (State Route 405); thence northerly along said Freeway to pickup points at the intersection of Magnolia and Warner Avenues in the City of Fountain Valley; thence continuing northerly along the San Diego Freeway (State Route 405) to pickup passengers at the intersection of Valley View Street and Cerulean Avenue in the City of Garden Grove; thence continuing northerly along the San Diego Freeway (State Route 405) to Century Boulevard, Sepulveda Boulevard to Hughes Aircraft Company buildings 110, 125, 359, 366 and 373 in the Los Angeles International Airport area and return via the reverse of the going route.

(END OF APPENDIX A)

Issued by California Public Utilities Commission.

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