

ORIGINAL

Decision No. 89271 AUG 22 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of MARIN AIRPORTER INC., of )  
 Greenbrae, for a certificate to operate )  
 as a Class B charter-party carrier of )  
 passengers. (TCP-55-B) }

Application No. 57909  
 (Filed March 2, 1978)

Gerald J. Zanzinger, Attorney at Law,  
 for Marin Airporter Inc., applicant.  
Keith L. Grimm, for K & G Bus Transportation  
 Services, Inc., dba Western Charter Tours;  
Michael J. Demeter, Attorney at Law, for  
 Peninsula Charter Lines, Inc.; and Alan T.  
Smith, for Falcon Charter Service;  
 protestants.  
Thomas J. Clausen, for the Commission staff.

O P I N I O N

Marin Airporter Inc. (Airporter) seeks the issuance of a Class B certificate to operate as a charter-party carrier of passengers. One day of hearing was held on May 30, 1978, in San Francisco before Administrative Law Judge Baer, and the matter was submitted subject to the filing of late-filed exhibits. These exhibits have been received and the proceeding is ready for decision.

Three competing carriers, Falcon Charter Service (Falcon), Peninsula Charter Lines, Inc. (Peninsula), and Western Charter Tours (Western), appeared at the hearing to protest the application. However, Falcon and Peninsula withdrew their protests when Airporter stipulated that if the Commission granted a certificate such certificate would be limited to charter operations originating within Marin County.

Airporter's Evidence

Evidence for Airporter was presented by its president and principal stockholder, William G. Melbern. Melbern has operated Airporter for seven years and has also owned and operated Airport Limousine Service<sup>1/</sup> for the past 25 years. His experience includes ownership of Sausalito Yellow Cab for 20 years.

Airporter operates three buses of 38- and 39-passenger capacity, one bus of 20-passenger capacity, three vans of 12-passenger capacity, and one station wagon of 9-passenger capacity in providing passenger stage service between Greenbrae and the San Francisco International Airport pursuant to passenger stage certificate No. 990. The passenger stage service operates nine round trips per day Monday through Friday and four round trips per day on Saturday and Sunday. Two of the large buses are used in this service and the third is held in reserve. The charter service would use only the three large buses at times when they were not required for the passenger stage operations. The majority of the time only a single bus would be available to provide charter service.

Melbern testified that he has received several requests from the public for charter service that he was not authorized to provide. These requests have come from units of the Boy Scouts of America, persons involved in recreation, persons interested in wine country tours or trips to Golden Gate fields, and others. Attached to the application, which has been received into evidence as Exhibit 4, are three letters of support from: (1) the director of the Larkspur Park and Recreation Department, expressing the view that Airporter's service is "needed in this area", (2) the Corte Madera director of recreation, expressing similar sentiments, and

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<sup>1/</sup> Airport Limousine Service is a fictitious name of its proprietor, Melbern. It operates three nine-passenger vehicles, pursuant to Charter-party Permit No. TCP-10-P, and principally provides door-to-door service to the San Francisco Airport from points in Marin County, charging \$.85 per mile or \$15 per hour.

(3) Greenbrae Lanes, Inc., which supports Airporter's certification as helpful in the transportation of bowling teams to bay area tournaments. Each of the letters is addressed to the Commission, and is dated April 1977, and each letter was solicited by Melbern.

Also in evidence as a late-filed exhibit is a copy of a letter from the Marin County Board of Supervisors to the Commission indicating that on February 17, 1976, the Board voted its unanimous support for Airporter's request for a Class B charter-party certificate. The original of the letter is Exhibit 2 in Application No. 56084,<sup>2/</sup> a prior application of Airporter for a similar certificate. ✓

Also attached to the application is a 21-page petition containing approximately 711 names of persons who support the application of Airporter for a Class B certificate and who feel that the service is "much needed" and would be "very beneficial to the people of Marin County". The great majority of those signing the petition were patrons of Airporter's passenger stage operation and their signatures were solicited by the drivers. A significant number<sup>3/</sup> of those signing the petition are either out-of-state or out-of-county residents and would presumably have little knowledge of Marin County's need for charter bus service. ✓

There is no charter-party carrier now serving Marin County from a home terminal within Marin County.

#### Protestant's Evidence

Evidence for the sole protestant, Western, was presented by Keith L. Grimm, general manager. Grimm testified that Western operates out of Petaluma, pursuant to a Class A charter-party certificate. It provides service using eight buses ranging from 29- to 51-passenger capacity. In addition to its charter service, it provides

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<sup>2/</sup> Application No. 56084 was denied November 2, 1976 by Decision No. 86586 on the basis that "[a]pplicant has not established his fitness for charter-party service or that public convenience and necessity require the...proposed service..." (Decision No. 86576 at p.5.)

<sup>3/</sup> Approximately 98 or 12 percent of the signatures show out-of-state or out-of-county addresses.

club bus service under contract to the Golden Gate Transit District. This service is offered Monday through Friday during commute hours and the buses are available for charter service between 8:30 a.m. and 4:30 p.m.

Western submitted a late-filed exhibit showing its revenues from service provided to Marin County during the first five months of 1978.

<u>Month</u>	<u>Trips</u>	<u>Earnings</u>	<u>Trips between Commute Runs</u>	<u>Earnings</u>
Jan.	7	\$ 769.00	2	\$ 210.00
Feb.	9	1,906.00	1	81.00
Mar.	22	4,409.75	4	391.50
Apr.	30	4,158.00	5	702.50
May	15	2,267.30	6	597.00
Totals	83	\$13,510.05	18	\$1,982.00

The table shows that Western was able to use its buses in charter service between the commute hours in 18 of 83 trips, or 22 percent of the Marin County trips. This charter business produced 15 percent of Western's Marin County revenue. The exhibit also states that the figure \$13,510.05 represents 32 percent of Western's general charter earnings for the same period.

This evidence was intended to show the potential harm to Western of certificating another charter carrier serving Marin County. As a means of alleviating the possibility of economic harm to Western by the certification of Airporter, Western offered a stipulation that Airporter's service be restricted to business originating in the southern part of Marin County. By a late-filed exhibit Western submitted a map showing the proposed dividing line between the northern and southern parts of Marin County. The line drawn on the map proceeds from the San Francisco Bay in a westerly direction along the boundary between San Rafael (to the south) and Santa Venetia and

Los Ranchitos (to the north), thence along the northern boundary of Mt. Tamalpais Cemetery, and finally northwesterly along the boundary between San Rafael (to the northeast) and Sleepy Hollow (to the southwest).

This line would leave the greater part of San Rafael and the cities of Fairfax, San Anselmo, Ross, and more southerly areas within Airporter's service area, but would exclude the smaller part of San Rafael, the areas of Lucas Valley, Marinwood, Terra Linda, Los Ranchitos, Santa Venetia, and the more northerly areas of Marin County from service by Airporter. However, Airporter was not willing to restrict its operations to the southern part of the county.

Grimm also testified that Western's rates were lower than Airporter's proposed rates.

#### Discussion

Airporter's proposed charter operations do not pose an immediate, practical threat to Western's survival. This is indicated by the present availability to Airporter of only one bus to provide charter service, by the rates Airporter will charge, which Grimm testified are higher than Western's, and by the entities supporting the application, which are apparently not now served by Western.

Western argues that Airporter did not sponsor any public witnesses to support its application. This is not, however, a fatal defect in Airporter's case, since no statute or case law requires such testimony. Western also argues that the letters in support of the application should have been spontaneous, rather than solicited and complimentary. For the Commission to require that such indicators of public convenience and necessity be spontaneous would place an unrealistically heavy burden on potential applicants for Class B certificates. Western similarly contends that the petition is signed by captive passengers who are not

at all concerned with the need for charter service but are merely accommodating Airporter. While the weight to be accorded the petition should be discounted by the number of signers who are not residents of the county and by the place and manner of solicitation of signers, still the petition, as thus discounted, provides some evidence of public convenience and necessity which we are not prepared to entirely disregard. Finally, Western argues that the step up possibilities of a grant of a certificate to Airporter are dramatic. That is, Airporter could acquire more buses and enter vigorously into competition with Western if the Commission grants the authority sought. While there is always a possibility of a great expansion of Airporter's charter business, yet, Western also argues that the business is out there to be developed. The arguments appear mutually canceling.

It appears that the salient fact is that there is not now a charter carrier based in Marin County. In a recent decision on similar facts we held:

"As was thoroughly discussed in Decision No. 88235, the applicant here would be able to provide locally based charter service to the residents of Oroville. The record is clear that protestant in this case, a Class A charter-party carrier, does not now provide such service. It is this factor which, in our minds, makes the protestant's present service unsatisfactory and inadequate, thus fulfilling the requirement of Public Utilities Code Section 5375.1. While the residents of Oroville and its immediate environs may never wish to avail themselves of more than a few charter trips per year, we believe it is in their best interest to provide them with the opportunity to charter locally based buses for those trips." (Decision No. 88574, p. 1, dated March 7, 1978, in Application No. 57170.)<sup>4/</sup>

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<sup>4/</sup> Decision No. 88235 and Decision No. 88574, which denied rehearing of and modified Decision No. 88235, were the subjects of a petition for writ of review filed by Greyhound on April 5, 1978. The petition for writ of review was denied by the Supreme Court on August 3, 1978. (S.F. 23819, Greyhound Lines, Inc. vs Public Utilities Commission.)

It is obvious that the foregoing quotation fits the instant case exactly. The sole protestant is a Class A carrier serving Marin County from Petaluma in Sonoma County, 21 miles distant from San Rafael, whereas Airporter is locally based in Greenbrae.

Findings

1. Airporter has the ability, experience, equipment, and financial resources to perform the proposed service.
2. Public convenience and necessity require that the service proposed by Airporter be established.
3. Applicant should be authorized to perform charter service originating within the County of Marin.
4. Western serves the County of Marin, but does not provide locally based charter service. For this reason its service is not adequate for the local public nor is it satisfactory to the Commission.
5. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

The Commission concludes that the proposed authority should be issued as provided in the following order.

Marin Airporter Inc. 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. A certificate of public convenience and necessity, to be renewed each year, is granted to Marin Airporter Inc., authorizing it to operate as a Class B charter-party carrier of passengers, as defined by Section 5383 of the Public Utilities Code, from a service area limited to Marin County.

2. In providing service pursuant to the certificate herein granted, applicant shall comply with and observe the following service regulation. Failure so to do may result in cancellation of the operating authority granted by this decision.

Applicant will be required, among other things, to comply with and observe the safety rules administered by the California Highway Patrol, the rules and other regulations of the Commission's General Order No. 98-Series, and the insurance requirements of the Commission's General Order No. 115-Series.

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

Dated at San Francisco, California, this 22nd  
day of AUGUST, 1978.

Robert B. Berman  
President  
William J. Gannon  
Veronica L. Sturgeon

Commissioners

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

Commissioner Claire T. Dodrick, being necessarily absent, did not participate in the disposition of this proceeding.