

dcp/fc

Decision No. 90012, FEB 27 1979

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Lorrie's Travel & Tours, Inc.,
a corporation,

Complainant,

v.

SFO Airporter, Inc.,
a corporation,

Defendant.

Case No. 10494
(Filed January 26, 1978)

In the Matter of the Application of
SFO AIRPORTER, INC., a corporation,
for authority to acquire a certificate
of public convenience and necessity
and assets, and of LEASECO, a partner-
ship, for authority to acquire assets,
and of AIRPORTTRANSIT OF CALIFORNIA, a
corporation, doing business as
AIRPORTER, to transfer a certificate
and to transfer assets pursuant to
Sections 1031 and 851-854 of the
Public Utilities Code, respectively.

Application No. 57482
(Filed July 29, 1977)

Handler, Baker, & Greene, by Walter H. Walker III,
Attorney at Law, for SFO Airporter, Inc.;
and Graham & James, by Boris H. Lakusta, Attorney
at Law, for Airporttransit of California; applicants.
Silver, Rosen, Fischer & Stecher, by James S. Glass,
Attorney at Law, for Lorrie's Travel & Tours, Inc.;
Complainant and petitioner.
William Lazar, for Luxor, DeSoto, Yellow, and Veterans'
Cab Companies, and Local 265; and Victor Meneses,
for A.C. Cal-Spanish Tour Service; protestants.
Peter Fairchild, Attorney at Law, and M. Matsumura,
for the Commission staff.

O P I N I O N

The certificate which is the subject of Application No. 57482 authorizes the operation of buses between the city of San Francisco and San Francisco International Airport (SFO). Lorrie's Travel & Tours, Inc. (petitioner) also holds a certificate of public convenience and necessity under which it operates van-type vehicles between Nob Hill hotels and SFO.

In Decision No. 87881 issued ex parte in Application No. 57482, SFO Airporter, Inc. (purchaser) was authorized to purchase and operate a passenger stage under the certificate previously held by Airporttransit of California. This decision was issued on September 20, 1977.

Immediately after the transfer was consummated purchaser commenced operations under this certificate by continuing service between the downtown airport terminal and SFO. Subsequently, however, purchaser instituted an additional new service between Nob Hill hotels, on the one hand, and SFO, on the other hand. It claimed that the certificate was broad enough to cover the new operation and that therefore no new authority was needed.

Petitioner's complaint was filed just prior to the institution of the competitive service; it sought to enjoin the additional service until there could be consideration of public convenience and necessity issues and the question of whether the purchaser's rates would be unfairly low. The companion Petition to Reopen in Application No. 57482 emphasized the failure of the purchaser and/or seller to notify competitive carriers when Application No. 57482 was filed; it claimed that this failure to notify prevented petitioner from timely seeking a reformulation of the certificate to cover only the operations actually performed by Airporttransit of California.

The Commission did not grant petitioner's claim for interim relief. SFO Airporter, Inc. moved to dismiss the complaint and to deny the Petition for Reopening. A prehearing conference was held on June 30, 1978 in San Francisco before Commissioner Symons, with ALJ Gilman in attendance. At that time it was stipulated that SFO Airporter, Inc. had terminated the Nob Hill-SFO operation. Petitioner was therefore willing to have the complaint dismissed without prejudice. Petitioner indicated, however, that it would continue to demand hearing and a decision on the merits as to the issues raised in its petition to reopen Application No. 57482. The motion was taken under submission based on oral argument and on a reply filed by petitioner on July 14, 1978.

Discussion

The motion to deny the petition is well taken. SFO Airporter, Inc. has correctly relied upon a long-standing Commission policy forbidding relitigation of public convenience and necessity issues in connection with a proposed transfer of a certificate. The Commission recognizes that such contests are likely to be profoundly anticompetitive, lead to long delay, and rarely present a good balanced record on the merits of increased or decreased competition in any particular market. (Todd Freight Lines, Inc. (1964) 63 CPUC 723, Henry Stovall (1962) 59 CPUC 373.) The Commission has a sua sponte responsibility to insure that its proceedings are not abused by regulated companies as a means to destroy or harass competitors. (Northern California Power Agency v PUC (1971) 5 Cal 3d 370.) (Cf. California Motor Transport v Trucking Unlimited (1972) 30 L ed 2d 642.) Thus even if notified of Application No. 57482, petitioner's protest on public convenience and necessity grounds would have been ineffective.

Petitioner contends that it has a right to an immediate decision on the question of whether the predecessor had partially abandoned its authority by serving only one terminus in downtown

San Francisco. We, however, see no urgency in trying this issue. We note, however, that the certificate of SFO Airporter, Inc., and its predecessor did not specify points within San Francisco; and so long as at least one point is served within San Francisco, abandonment appears very unlikely.

We conclude that the petitioner's issue of public convenience and necessity is improperly raised in a transfer proceeding, that the issue of abandonment is prematurely raised, and that failure to give appropriate notice did not deprive petitioner of opportunity to be heard on a material issue.

O R D E R

IT IS ORDERED that:

1. The petition to reopen Application No. 57482 is denied.
2. Case No. 10494 is hereby dismissed.

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

Dated at San Francisco, California, this 27th
day of FEBRUARY, 1979.

John E. Burton
President
Gregory L. Stevenson
Richard P. Cavell
Clara A. Redfish
Edward H. Smith
Commissioners