

ORIGINAL

Decision No. 90107 | MAR 27 1979

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 SFO AIRPORTER, INC., for authority )  
 to acquire a certificate of public )  
 convenience and necessity to operate )  
 as a passenger stage corporation )  
 from ROBERT N. MATEER, Receiver for )  
 AIRPORTTRANSIT, INC., Bankrupt. )

Application No. 58233  
 (Filed July 14, 1978)

Raymond A. Greene, Jr., and Daniel W. Baker,  
 Attorneys at Law, for SFO Airporter, Inc.,  
 applicant.  
James S. Clapp, Attorney at Law, for Lorrie's  
 Travel & Tours, Inc.; and John E. Nolan,  
 Attorney at Law, for Port of Oakland;  
 interested parties.  
Marc E. Gottlieb, P.E., for the Commission  
 staff.

## O P I N I O N

Applicant is a passenger stage corporation with authority to transport passengers, baggage, and express between the San Francisco International Airport, San Jose Municipal Airport, and the cities of San Francisco, Oakland, Berkeley, and intermediate points. It also operates as a Class A charter-party carrier of passengers under a certificate issued to it by this Commission in File No. TCP-104-A.

Applicant is requesting authority to acquire from the Trustee in Bankruptcy the northern portion of the authority issued to Airporttransit, Inc. (Airporttransit), Bankrupt, which would authorize operations as a passenger stage corporation between the Oakland International Airport and points in downtown San Francisco, as well as between the Oakland International Airport and points in Oakland, Berkeley, Alameda, and the Oakland Army Base. This authority is

described in Appendix B to Decision No. 78126 dated December 22, 1970 in Application No. 52195.

A hearing was held on January 8, 1979 before Administrative Law Judge Fraser after Lorrie's Travel & Tours, Inc. (Lorrie) filed a protest, and the matter was submitted on briefs received on January 31, 1979. Applicant received a 30-day temporary operating authority by Decision No. 89904, dated January 24, 1979, due to the partial suspension of service by the Bay Area Rapid Transit District.

The hearing developed the following facts: The operating authority was transferred to Airportransit by Decision No. 78126 dated December 22, 1970 in Application No. 52195. It was initially issued by the Commission in Decision No. 71840 dated January 17, 1967 in Application No. 52195. Airportransit started operations after the December 1970 grant of authority and continued until December of 1974, when the routes between downtown San Francisco and the Oakland International Airport were discontinued (due to a discontinuance of the subsidy from the Port of Oakland and low passenger volume, according to the applicant). Applicant emphasized that Airportransit planned to reinstate this service if a subsidy was provided or sufficient riders could be obtained. On December 1, 1976 Airportransit ceased operating between the Oakland International Airport and downtown Oakland and Berkeley. This service had been provided continuously since 1970. Operations were suspended on the latter date due to the bankruptcy of Yellow Cab Company, which owned and held all of the stock of Airportransit. Applicant herein applied to the Bankruptcy Court for authority to purchase the northern portion of Airportransit's operating authority, and the sale was authorized, subject to this Commission's approval, on May 9, 1978.

Lorrie filed a protest dated September 19, 1978. Lorrie identified itself as a passenger stage corporation offering service between points in San Francisco and the San Francisco International Airport using mini-buses on an on-call basis.

Lorrie filed Application No. 57965 in April of 1978 to expand its operating service area within San Francisco and to provide passenger service between Oakland International Airport and the expanded San Francisco territory. Large buses will be used on an on-call basis. A hearing was held in August on Lorrie's application, and it was submitted on briefs filed on November 24, 1978.

Lorrie argues that the Airporttransit authority was abandoned due to operations being discontinued without Commission authority to suspend. It further argues that where operations cease the operative right becomes so impaired that it may not be transferred. Thus the December 1974 partial suspension of service would impair the remainder of the authority.

Applicant argues that Lorrie has no authority or standing to protest this application since it does not serve Oakland International Airport or the East Bay and presently uses only mini-buses in an on-call type of service.

#### Discussion

Lorrie's has standing to object, although it is technically an interested party - not a protestant - due to its not yet operating in the area applicant seeks to serve. Lorrie has applied to provide a service with full-size buses between several of the points to be served by applicant. Lorrie therefore has sufficient interest to oppose the grant of authority sought by applicant.

Was the operating authority of Airporttransit abandoned? Past Commission decisions indicate what constitutes abandonment of operating authority. A suspension of operations due to a labor dispute is not an abandonment (Loyd B. Turner (1961) 58 CPUC 691, 692); unauthorized transfer of an operating right does not constitute an abandonment where service has been continued (M. Lee (Radio Paging Co.) (1966) 65 CPUC 635). The Lee decision also provides that even if an operating authority is abandoned, there is no automatic requirement

that it be revoked. Termination of service to part of the area included in a highway common carrier certificate due to a lack of profit and labor dispute does not constitute an abandonment and this portion of the certificate can be transferred (Ringsbv-Pacific, Ltd. (1971) 72 CPUC 205, 208). If bus service has been promoted and not operated due to lack of patronage it is not abandoned (The Gray Line Tours (1973) 74 CPUC 669, 676). Lorrie quoted Kadletz (Goodtime Tours) v Gray Line Tours, Decision No. 89804 dated December 19, 1978 in Case No. 10601, in support of its position. Kadletz promoted, advertised, and started sightseeing tours between the Los Angeles area and Palm Springs after getting the necessary authority in 1977. Gray Line published a proposed 1979 schedule including a Los Angeles-Palm Springs tour, which Gray Line had not provided since 1965. Kadletz filed a complaint versus Gray Line to request that the Commission find that Gray Line's Los Angeles-Palm Springs authority had been abandoned. The Gray Line authority to provide the tours was revoked. The present case is distinguishable from Kadletz since in that case Gray Line did not move to provide service until another operator was providing an identical service after the expenditure of considerable capital to advertise, obtain buses, and enlist the cooperation of some 60 hotels and motels. Also Airporttransit's operations were suspended because of the bankruptcy of its parent and not because of an intent to abandon the operative rights. No one is providing the Airporttransit service, and testimony of an official from the Oakland International Airport indicates that it is needed. The Airporttransit authority has not been abandoned and can be transferred. ✓

Transfers are favored which are in the public interest. (See Lee, supra, page 635.) The Director of Aviation for the Oakland International Airport testified that the airport is in dire need of

a passenger bus service conducted in vehicles large enough to accommodate individuals along with all of their baggage. Applicant herein proposes to provide this service, and the airport favors grant of the application. Applicant has the experience and financial ability to provide the proposed service.

Findings

1. The evidence fails to establish an intent on the part of Airporttransit to abandon the operating authority herein considered.
2. Applicant has the requisite financial fitness and the necessary equipment to perform the service which is within the scope of the operating authority it is seeking to acquire.
3. The proposed transfer of operating authority would not be adverse to the public interest.
4. 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

1. The Commission concludes that the application should be granted.
2. This order should be made effective on the date of signature to permit applicant to perform service as soon as possible under the present order because its 30-day temporary authority has terminated.  
The order which follows will provide for, in the event the transfer is completed, the revocation of the certificate presently held by Airporttransit and the issuance of a certificate in appendix form to SFO Airporter, Inc. This certificate will be restated as an in lieu certificate, but such restatement will not change or broaden the authority transferred and previously granted to applicant.

Applicant 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 July 1, 1979, Robert N. Mateer, Receiver for Airporttransit, Inc., Bankrupt, may sell and transfer the operating right referred to in the application to SFO Airporter, Inc.
2. Within thirty days after the transfer the purchaser 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. Purchaser 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 it has adopted or established, as its own, the rates and rules. The tariff and timetable filings shall be made effective not earlier than ten days after the effective date of this order on not less than ten days' notice to the Commission and the public, and the effective date of the tariff and timetable filings shall be concurrent with the transfer. 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. On or before the end of the third month after the transfer, the purchaser shall cause to be filed with the Commission, in such form as the Commission may prescribe, an annual report, or reports, related to the operations of the seller for the period commencing with the first day of the current year to and including the effective date of the transfer.

5. 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 SFO Airporter, Inc., a corporation, authorizing it 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 of this decision.

6. The certificate of public convenience and necessity granted in paragraph 5 of this order shall supersede the certificate of public convenience and necessity granted by Decision No. 87881 which certificate is revoked effective concurrently with the effective date of the tariff filings required by paragraph 3.

7. The operating authority described in Appendix B to Decision No. 78126 is revoked concurrently with the effective date of the tariff filings required by paragraph 3.

8. Purchaser shall comply with the safety rules administered by the California Highway Patrol, the rules and regulations of the Commission's General Order No. 98-Series, and the insurance requirements of the Commission's General Order No. 101-Series.

9. Purchaser shall maintain its 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 its operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

The effective date of this order is the date hereof.

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

John E. Bryon  
President

Richard D. Gravelle  
Vernon L. Sturgeon  
Commissioners

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.

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



CERTIFICATE  
OF  
PUBLIC CONVENIENCE AND NECESSITY  
TO OPERATE AS A  
PASSENGER STAGE CORPORATION

PSC-37

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

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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.

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Issued under authority of Decision No. 90107,  
dated MAR 27 1979, of the Public Utilities  
Commission of the State of California, in Application No. 58233.

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

The authority granted herein supersedes all authority heretofore granted to SFO AIRPORTER, INC. to operate as a passenger stage corporation.

SFO AIRPORTER, INC., by the certificate of Public Convenience and Necessity granted in the decision noted in the margin, is authorized to operate as a passenger stage corporation and transport passengers, baggage and express over the routes and between the points as listed hereinafter, subject, however, to the authority of this Commission to change or modify said routes and points at any time and subject to the following provisions:

Conditions and Restrictions applying to Routes 1, 2, 3, and 4:

- (1) No passengers shall be transported except those who have prior or subsequent transportation by air to or from the San Francisco International Airport or San Jose Municipal Airport and any person accompanying such passengers.
- (2) Express service shall be restricted to packages or exceeding one hundred pounds which either originate at or are destined to the San Francisco International Airport or the San Jose Municipal Airport.
- (3) Service to Berkeley shall be "on-call" for twenty or more passengers upon twenty-four hours' notice to the carrier except that regularly scheduled service shall be provided during the holiday periods of Easter, Thanksgiving and Christmas and during semester and quarter breaks at the University of California.
- (4) Service to Sunnyvale and Santa Clara shall be "on-call" upon two hours' notice to the carrier.

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Conditions and Restrictions applicable to Routes 5 and 6:

- (5) Authority to operate Routes 5 and 6 is limited to the transportation of passengers and their baggage only.
- (6) No passengers shall be transported except those having point of origin or destination at the Oakland International Airport.
- (7) Passengers shall be picked up and discharged only at points and places to be named in carrier's tariffs and timetables filed with the Commission.
- (8) When service is rendered on an "on-call" basis, tariffs and timetables of SFO Airporter, Inc., shall show the conditions under which such "on-call" service will be rendered.

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## SECTION 2. ROUTE DESCRIPTIONS.

Route 1. San Francisco International Airport/San Francisco

Between San Francisco International Airport and the City of San Francisco, via U. S. Highway 101.

Route 2. San Francisco International Airport/Oakland-Berkeley

Between San Francisco International Airport, on the one hand, and the Cities of Oakland and Berkeley on the other hand, via U. S. Highway 101 and San Francisco-Oakland Bay Bridge and Interstate 80.

Route 3. San Francisco International Airport/San Jose Municipal Airport (local)

Between San Francisco International Airport and San Jose Municipal Airport, on the one hand, and the Cities of Burlingame, San Mateo, Belmont, San Carlos, Redwood City, Menlo Park, Palo Alto, Mountain View, Sunnyvale, Santa Clara and San Jose, on the other hand, via U. S. Highway 101 and State Highway 82.

Route 4. San Francisco International Airport/San Jose Municipal Airport (express)

Between San Francisco International Airport, on the one hand, and San Jose Municipal Airport, on the other hand, via U. S. Highway 101.

Route 5. Oakland International Airport/San Francisco

Between the Oakland International Airport, in Alameda County, thence via Airport Drive, Hegenberger Road, State Highway 17 (Nimitz Freeway), Oakland-San Francisco Bay Bridge to San Francisco; thence via most appropriate city streets to the Downtown Airline Terminal at Taylor and O'Farrell Streets in San Francisco and to downtown San Francisco hotels on request.

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Route 6. Oakland International Airport/Oakland-Berkeley-Alameda

Between the Oakland International Airport, thence over and along the most direct and appropriate city streets and public highways to Oakland, Berkeley, Alameda and Oakland Army Base, subject, however, to local traffic regulations.

(END OF APPENDIX A)

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