

Decision No. 90383 JUN 5 1979

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of ROBERT N. MATEER,)
Receiver for Airporttransit, Inc.,)
a California corporation, and)
AIRPORT SERVICE, INCORPORATED, a)
corporation, for authority to)
transfer a certificate of public)
convenience and necessity.)

Application No. 58082
(Filed May 16, 1978;
amended July 14, 1978)

James H. Ivons, Attorney at Law, for
Airport Service, Inc. and Airporttransit,
Inc., applicants.

Richard T. Powers, Attorney at Law, for
Southern California Rapid Transit
District; and J. P. Jones and John
Cockburn, for United Transportation
Union; protestants.

Knapp, Stevens, Grossman & Marsh, by
Warren N. Grossman, Attorney at Law,
for The Gray Line Tours Company; and
Robert T. Russell, by Kenneth E. Cude,
for City of Los Angeles, Department of
Public Utilities and Transportation;
interested parties.

Thomas P. Hunt, William Austin, and
Frederick W. Foley, for the Commission
staff.

O P I N I O N

By this application, as amended, the receiver in bank-
ruptcy for Airporttransit, Inc., (APT), seller, and Airport Service,
Incorporated (ASI), buyer, seek to transfer to ASI the Southern
Region passenger stage certificate formerly granted to APT by
D.78126 (1970). The APT certificate authorized airport bus

service between Los Angeles International Airport (LAX) and hotels and other bus stops in downtown Los Angeles, Hollywood, West Los Angeles, San Fernando Valley, Inglewood/Hawthorne, Commerce, and other locations in Los Angeles, Riverside, and San Bernardino counties.

ASI is a passenger stage corporation providing scheduled airport bus service pursuant to D.83743 (1974), as amended, between LAX and other major airports in Los Angeles, Orange, and San Bernardino counties, on the one hand, and hotels and other bus stops in Orange County and in the Long Beach and Pasadena areas of Los Angeles County, on the other hand.

A public hearing was held before Administrative Law Judge Norman B. Haley at Los Angeles on October 30, 1978. The matter was submitted on December 6, 1978, the due date for concurrent briefs.

Background

On December 1, 1976 APT, then a going corporation,^{1/} suspended its operations for lack of funds to pay its liability insurance premiums. At the request of the city of Los Angeles, the Southern California Rapid Transit District (SCRTD) instituted airport express service on December 2, 1976 over a number of the

^{1/} For about 50 years, beginning in 1927, APT, a wholly owned subsidiary of Yellow Cab Company of California (since 1947) provided regularly scheduled service from various parts of Los Angeles, Ventura, and San Bernardino counties to the passenger terminals at LAX. Early in May 1976, the authority to serve the Ventura County area was sold to Great American Stage Line, Inc. for \$3,000 (D.85784). In addition to its regularly scheduled bus service, the company was engaged in the charter field, holding Class A Certificate No. TCP-74-A. Under that certificate, APT was able to provide the various airlines with standby ground transportation for flights diverted to other airports because of adverse weather conditions such as fog.

lines formerly operated by APT. On December 3, 1976 Gray Line Tours Company (Gray Line) filed A.56916 seeking a certificate to perform transportation between LAX and all of the areas and points in APT's Southern Region certificate.

APT filed a petition for relief under Chapter XI of the National Bankruptcy Act on or about December 21, 1976. On December 31, 1976 ASI filed A.56980 seeking a certificate to extend service between LAX and downtown Los Angeles, Hollywood, West Los Angeles, Beverly Hills, and the San Fernando Valley. These were major traffic areas in the APT certificate. Gray Line's A.56916 and ASI's A.56980 were consolidated for hearing before Administrative Law Judge Norman B. Haley on January 19, 20, and 21, 1977.

On January 20, 1977 APT filed Complaint No. 4 in Bankruptcy Chapter XI Proceedings, Cases 76-3054 and 76-3065 (HK). On the same day, the United States District Court, Southern District of California (District Court) entered an order restraining the Commission, as well as the two applicants, from proceeding with the applications beyond January 21, 1977, pursuant to Bankruptcy Rule 11-44, and also stayed all proceedings by the Commission with respect to the issuance of new certificates

concerning routes of APT or any hearings on revocation of its certificates.^{2/} This was to preserve the certificate of APT as an asset of the bankrupt's estate. On January 21, 1977 A.56916 and A.56980 were taken off calendar.

^{2/} The ordering paragraphs of the restraining order issued by Herbert Katz, Bankruptcy Judge, on January 20, 1977, read as follows:

"ORDERED, ADJUDGED, AND DECREED:

- "1. Rule 11-44 of the Rules of Bankruptcy Procedure applies to hearings regarding issuance of Certificates of Public Necessity and Convenience over routes between points included in Plaintiff's Certificate of Public Convenience and Necessity.
- "2. Rule 11-44 stays all proceedings by the Public Utilities Commission with respect to the issuance of new Certificates concerning said routes, and with respect to hearings on revocation of Plaintiff's Certificates.
- "3. Rule 11-44 is modified to allow the PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA to take evidence on January 21, 1977, provided, however, that at the conclusion of the taking of testimony on January 21, 1977, the PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA shall take no further steps with respect to the Applications of THE GRAY LINE TOURS COMPANY and AIRPORT SERVICES INC., concerning routes and between points included in the Certificate of Public Convenience and Necessity issued to AIRPORTTRANSIT, INC."

On February 23, 1977 Robert N. Mateer was duly appointed and qualified as receiver in bankruptcy for APT. On or about June 25, 1977 the District Court authorized the receiver to employ the Milton J. Wershow Company (auctioneers) to offer certain of the APT assets for sale, including its Southern Region certificate. The successful bidder for the certificate was Starline Sightseeing Tours, Inc. (Starline). Thereafter, Starline concluded that the rates which it would have to charge to provide service profitably over lines formerly operated by APT might well be so high the Commission would not look favorably upon an application to transfer. ASI offered to substitute for Starline as the buyer. ASI prepared a written proposal to the District Court as to portions of the APT certificate it intended to operate and the fares it intended to charge. By order dated March 7, 1978 the District Court authorized the receiver for APT to substitute ASI as the buyer. The purchase price was specified at \$16,000. On May 16, 1978 the receiver for APT, along with ASI, filed A.58082 to transfer.

Protests to A.58082 were filed with the Commission by Gray Line, SCRTD, and United Transportation Union (UTU).^{3/} On August 7, 1978 Gray Line withdrew its protest to the application. A prehearing conference was held on September 8, 1978

^{3/} UTU represents SCRTD drivers. ASI drivers are members of the Teamsters Union.

at which time Gray Line entered its appearance as an interested party, as did the city of Los Angeles. Gray Line and ASI now desire that A.56916 and A.56980, seeking original certificates, be held in abeyance pending the outcome of A.58082.

It was stipulated between counsel for the applicants and counsel for SCRTD that the only issues to be tried in A.58082 were (1) whether or not the routes (certificate) of APT are viable and capable of being transferred, and (2) if the certificate is viable, would the transfer to ASI be adverse to the public interest. There is no issue of public convenience and necessity in this proceeding.^{4/}

Presentation of Applicants

Evidence on behalf of applicants was presented by Robert N. Mateer, receiver in bankruptcy for APT; Donald W. Boyles, president of ASI; D. F. Auld, vice president and general manager of ASI; and Hugh C. Ashby, board member of Chromalloy American, Inc. (Chromalloy), the parent corporation of ASI.

The receiver explained that in Chapter 11 bankruptcy proceedings the debtor is given the opportunity to reorganize itself and to continue in business rather than being required to liquidate outright. At no time did the receiver consider the APT Southern Region certificate abandoned. He urged that it be transferred to ASI as sought. He said the purchase contract and the obligation of the buyer to go forward with the transaction does not require ASI to adopt the fares formerly charged by APT.

^{4/} Questions relating to public convenience and necessity are not relevant to a transfer proceeding because they were determined in the proceeding in which the certificate was granted.

M. Lee (1966) 65 CPUC 635, 637; Frank Nolan Dravage Co. (1963) 61 CPUC 160; C. J. Morrissey (1963) 61 CPUC 567.

It is ASI's position that all of APT's operating rights are in effect at the present time and that none of them have been terminated or revoked. However, ASI does not desire to operate all of the various routes that APT had. Those were routes ASI asserts APT had not been operating prior to cessation of service. ASI is asking the Commission to determine at this time that since APT had not been operating some of its routes prior to cessation of service, those particular routes have been abandoned.

ASI's request is for the Commission to authorize the transfer (1) minus the assertedly abandoned routes, (2) with certain enlargements of APT territories which ASI believes are necessary to permit better service to areas proposed to be served, and (3) with authority for ASI to suspend service under certain portions of the transferred certificate. ASI's president testified that it would make no difference whether the transfer was authorized minus the assertedly abandoned routes or whether they are included in the transfer with a provision allowing ASI to suspend service over them.

ASI is a California corporation. The president testified that ASI is a financially secure, wholly owned subsidiary of Chromalloy, a conglomerate worth more than \$277 million based in St. Louis, Missouri. Chromalloy is listed on the New York Stock Exchange. Two members of ASI's board of directors are members of the board of directors of Chromalloy. ASI's operating data are prepared and forwarded to Chromalloy in St. Louis, Missouri, and printouts are returned to ASI. American Transit is the major subsidiary of Chromalloy for land and water transportation. American Transit provides services to ASI and other subsidiaries such as accounting, legal, health and welfare, pension assistance, and the compilation of monthly statutory reports to governmental

agencies, including taxes and related matters. Recently Chromalloy, through American Transit, advanced \$300,000 to ASI to cover operating expenses while ASI awaited approval from the Commission of a fare increase. Assertedly, this advance demonstrates the ready backing of ASI's parent corporation.

ASI's general office facility is at 851 East Cerritos Avenue in Anaheim. That facility encompasses some four acres of land which is paved and improved for parking. At that location there are major and minor bus service maintenance facilities, including nine bus bays equipped with hydraulic lifts. Also at the Anaheim location is a two-story headquarters office building for the general administration of the company and for accounting.

ASI rents from the Department of Airports, City of Los Angeles, an approximate one-half-acre lot at the site of LAX ticketing Building No. 1 on World Way. At that location there is an office for the dispatching of equipment, a drivers' room, space for parking of coaches while on turnaround or waiting to serve the airport, a communication center, and space for supervisory employees and facilities for the Joint Airline Ground Transportation Association (JAGTA). JAGTA operates ticket booths located on the sidewalk opposite each baggage claim area at six different locations surrounding the airport. JAGTA was set up to provide information and ticket sales for bus companies operating into LAX on an impartial basis. JAGTA employees also announce the bus schedules as buses come around the airport.

JAGTA is a joint venture originally set up by APT, ASI, and a former affiliate of ASI. A management committee of these companies selected the vice president and general manager of ASI to manage JAGTA. The employees are on the JAGTA payroll and expenses are shared among the owning companies. JAGTA receives a commission from the sale of tickets for bus operators, other than the owning companies. Bus operators paying JAGTA a commission for selling its tickets are SCRTD, Great American Stage Lines, Antelope Valley Bus Company, and others. SCRTD pays JAGTA commissions of about \$60,000 a year. JAGTA does not make a profit and there is no income to ASI from JAGTA operations. Commissions are reduced by the total expenses of the operation, and the remaining expenses over and above the commissions are paid monthly by the owning companies. It is the position of ASI that APT's interest in JAGTA is still outstanding.

Under the sought certificate transfer ASI would transport passengers initially between LAX and 12 hotels in downtown Los Angeles, Hollywood, West Los Angeles/Beverly Hills, and the San Fernando Valley. Service also would be provided to and from the Greyhound depot in downtown Los Angeles. The adult fare from and to these areas would be \$2.50 except from and to two hotels in the San Fernando Valley where it would be \$3. Children, ages five through 11, would be half-fare. The proposed \$2.50 adult fare compares with APT's former fare of \$1.70 and the current SCRTD fare of \$3.50. ASI also would provide scheduled service between LAX and Alhambra, El Monte, Covina/West Covina, Pomona, Montclair, and Ontario International Airport at fares varying with length of haul. On-call service is proposed between Palmdale Airport and territories in downtown Los Angeles and Hollywood.

According to the president of ASI, airport transportation consists of providing express service for the most expeditious movement of many passengers between two points, one being an airport and the other being a terminal centrally located in a particular city. Most of the terminals are hotels in cities or communities surrounding an airport. Transportation is performed without reservation according to need. He said that in New York City there are two terminals, only one of which currently is being utilized as a downtown terminal. San Francisco and Washington, D.C., each have one terminal. In contrast, ASI has a number of terminals in each of the areas which it serves for the added convenience of the public.

ASI has an agreement with the various hotels for the use of their facilities by the passengers. Many airport passengers have baggage. Among exceptions are people who work at or near the airport. Before loading, baggage is identified by color-coded ties to identify the specific terminal for which the airline departure is planned. Drivers load and unload the baggage. Baggage is and, under the proposed transfer, would be accommodated free of charge for fare-paying passengers carried on the bus.

The president of ASI explained that under the proposed transfer, bus stop locations were carefully selected so as to provide the most expeditious service at the lowest cost to the greatest number of riders picked up or delivered in a specific area. ASI has found that most airport passengers arrive from or are destined to points in cities or communities surrounding ASI's hotel terminals. They use other transportation to get to and from the terminal hotel locations. In Orange County between 60 and 70 percent of ASI's passengers do not stay at the terminal hotels. In Pasadena the figure is about 90 percent.

The president of ASI said there are a few hotels which APT served which ASI does not intend to serve. These are hotels that are located in the immediate vicinity of other major hotels where passengers can be served more economically with greater expediency to and from the airport by designating single, well-known, landmark locations as opposed to numerous stops which create delays in schedules and cause additional cost to perform the service. As an example he cited deletion of the Chancellor Hotel and the Hyatt House in the Wilshire district which are near the Ambassador Hotel, a point which ASI proposes to serve. The Chancellor Hotel is located across the street from the Ambassador Hotel, and the Wilshire Hyatt House is located approximately one-half mile away.

Exhibit 5 consists of schedules and fares covering ASI's present airport bus operations (Pasadena, Orange County, and Long Beach divisions). Exhibit 6 shows routes and portions of routes ASI asserts APT abandoned prior to cessation of service and which ASI requests the Commission to determine have been abandoned. It was the opinion of the ASI president that there is no need at this time for service to be rendered on the particular routes in question. He said they are not currently being operated by SCRTD. The witness said it would make no difference to ASI whether or not these particular routes or portions of them are abandoned or suspended. Exhibit 7 is a description of routes operated by APT during the last four months of operation ending with November 1976. Exhibit 7 also shows routes proposed to be operated by ASI.

Exhibit 8 consists of eight pages of proposed initial scheduling for the proposed ASI routes developed by bus runs. The witness said Exhibit 8 was prepared according to the operating times of a bus over the most direct and appropriate routes to serve the facilities named in the proposed timetable along with specific known data for the number of persons to be transported over the routes. He said these data were obtained during negotiations where ASI attempted to purchase APT and its certificate prior to cessation of service. He stated he reviewed the books and records of APT relative to the number of passengers transported between points in 1974, 1975, and 1976. He also used these data in the preparation of Exhibit 8.

Exhibit 9 is ASI's list of equipment showing that the company now operates 73 buses, each capable of carrying from 41 to 53 passengers. The same type of coaches will be used for present and proposed service. They are inter-city coaches with full underfloor baggage space, reclining seats, public address systems, and air conditioning. Exhibit 10 is an agreement whereby ASI agrees to purchase three additional buses from Motor Coach Industries, Inc. The president stated that 16 coaches would be necessary to operate the proposed service. ASI will have nine buses available, including the three on order. Chromalloy has the additional coaches available.

Exhibit 11 is ASI's balance sheet as of March 31, 1978, and statement of income for the period January 1 through March 31, 1978. The balance sheet shows total assets of \$3,817,843 and total shareholders' equity of \$1,878,116. Operating revenues were \$918,633. After allowance for other income, operating expenses, other charges, and income taxes, there was a net loss of \$17,868.

Subsequent to the first quarter of 1978 ASI had a fare increase. The three-month period involved covered winter months when fewer airline passengers travel. Peak travel periods, such as in the summer, make year-around operations profitable, as disclosed by Exhibit 13.

Exhibit 12 introduced by the Commission staff representative assertedly is the last public schedule (April 12, 1976) of terminal points, arrival and departure times, and fares of APT.

Exhibit 13 is a detailed projected statement of ASI earnings for 12 months ended June 30, 1979. Projections are made for (1) present routes at projected fares, (2) proposed additional routes at proposed fares, and (3) the combination of present and additional routes. The vice president and general manager of ASI gave detailed explanations of the source and development of the projected revenue and expense figures used. Projected operating results are shown below:

	<u>Present ASI Routes</u>	<u>Proposed Additional Routes</u>	<u>Present and Proposed Routes</u>
Net Earnings	\$ 263,941	\$ 171,270	\$ 435,211
Operating Ratio After Taxes	93.51%	87.66%	91.59%
Rate Base	\$2,482,600	\$1,621,831	\$4,104,431
Rate of Return	12.78%	18.13%	14.90%

On brief, applicants argue that neither the receiver nor the District Court considered the APT certificate abandoned. Applicants contend that APT made it clear that it did not abandon the certificate and had no intention of abandoning it. Statements made by APT's counsel, Mr. Lakusta, on January 19, 1977 in A.56916 and A.56980 were cited in support of this contention as follows:

"In this case, it is perfectly plain that under Chapter 11, the hope of Airporttransit, Inc., is either to rearrange financing so that it can commence operation again or to find a purchaser who can take over the operation, an operation pursuant to the certificate.

"The certificate of public convenience and necessity has not been abandoned. I can refer your Honor to cases by this Commission over the past years in which we ourselves participated on the other side in which the Commission has declared the cessation of service under the certificate because of natural difficulty does not result in abandonment in the meaning within the Public Utilities Code, and for that reason the certificate remains a viable asset." (Transcript, page 3.)

"The very fact that I appear before you this morning is evidence that the company has not abandoned, has no intention of abandoning, and is trying to put its house in order." (Transcript, page 10.)

With respect to whether the proposed transfer would be adverse to the public interest, applicants contend that they do not have to affirmatively prove that the transfer would be in the public interest, but that the protestants must prove that it would be adverse to the public interest. Assertedly, SCRTD has not done this and UTU offered no evidence at all. Applicants contend that ASI has the experience, equipment, facilities, and

financial capability to operate the routes of APT, and could do so within a month. Applicants state that ASI had been negotiating with APT to purchase its certificate prior to December 1, 1976, had received much data from APT, and was familiar with its operation. Applicants would have no objection, should the Commission find that it would be in the best interests of the public, for the Commission to transfer to ASI all authority to APT contained in D.78126, provided the Commission recognizes that certain of the authority is actually dormant. Applicants furnished citations in support of their contention that the APT certificate has not been abandoned.

Applicants admit that ASI proposes operations to fewer hotels and motels than does SCRTD. They assert, however, that while the deletion of some of these hotels or motels presently being served by SCRTD might have an adverse effect on the hotel interests, the public would be far better served because they would be charged lower rates and have an expedited airport express service designed to take care of the majority of the public. They point out that the Los Angeles Yellow Pages telephone directory lists myriads of hotels and motels in Los Angeles. They contend that an expedited airport bus service can only be effective with service to a few landmark locations, the selection of which must be based upon the expertise of management of that service. They contend that SCRTD serves too many hotels and motels for efficient operation, some being next door to each other or across the street from each other, particularly on its Convention Center loop.

Applicants point out that in connection with SCRTD Exhibit 14 the total number of trips shown are not the total number of trips, but the total number of trips multiplied by the total number of stops on each trip. They point out that the exhibit is in error in that it omits the proposed schedule of ASI to the San Gabriel Valley. They explain that ASI does not intend to provide service to the Sheraton Town House because of its proximity to the Ambassador Hotel. They contend that SCRTD Exhibits 14 and 15 show that although 16 schedules are operated from the Sheraton Town House, only one person per trip was picked up or delivered by SCRTD at that point. Assertedly, SCRTD has no knowledge as to whether the persons actually came from the Sheraton Town House or simply used it as a convenient spot for boarding the bus. Applicants contend that SCRTD, in addition to abandoning the APT service to Santa Monica, reduced its schedules to the Hyatt Regency from 53 in December 1976 to 14 in July 1978. They point out that SCRTD produced no evidence of traffic counts except at three stops. They also point out that SCRTD abandoned service from LAX to the Valley Hilton Hotel and Sportsman's Lodge in the San Fernando Valley. Applicants submit that the testimony of SCRTD not only fails to indicate at all that the proposed transfer would be adverse to the public interest, but supports the fact that it would be in the public interest to authorize the transfer. They contend that the public would get expedited service in modern equipment specifically designed for airport service and that persons could travel to and from downtown Los Angeles and other points in nearby areas by ASI at a rate of only \$2.50, as compared to \$3.50 by SCRTD, with corresponding savings to other points. They state the evidence shows that ASI has the financial ability, the experience,

the personnel, and the equipment, plus facilities already established at LAX for supervision, baggage handling, bus storage, personnel, and ticket sales.

Presentation of SCRTD

Evidence on behalf of SCRTD was presented by Joe Lyle, associate transportation planner, and Stephen Parry, principal planner. The associate transportation planner was involved with others in the institution of emergency airport express service and in the development of routes, schedules, and rates between points generally served by APT prior to its cessation of service.

Points presently provided SCRTD airport express service, along with schedules and fares, are set forth in Exhibits 14, 15, and 16. Service is provided between LAX and downtown Los Angeles/Wilshire District, Hollywood/Universal City, Beverly Hills/Westwood/Century City, and San Gabriel Valley/Inland Empire. The latter service extends to Alhambra, San Bernardino, and Redlands. The fare is \$3.50 one way, except on the San Gabriel Valley/Inland Empire route where it ranges from \$4 to \$8. Airport express service also is provided between Ontario International Airport and points on the San Gabriel Valley/Inland Empire route. Those fares range from \$1 to \$6. A discount of 50 percent from all fares is available through purchase of a 20-ride commuter ticket card good for one month from date of sale. Children under five are transported free. Transfers from regular SCRTD lines are accepted as partial payment toward cash fares paid on airport express buses. Airport express drivers at LAX will issue transfers at no extra charge which are good on all regular service lines with exception of minibus and subscription services. SCRTD has facilities and personnel at LAX. Inside the airport there are from two to four

uniformed traffic men who assist in the sales of tickets, provide information, and assist drivers in loading and unloading baggage. Immediately outside of the airport in the vicinity of Sepulveda Boulevard and Will Rogers Way is a staging area where there is a supervisor on duty at all times. Extra-board drivers and regular operators are available as fill-ins when needed at the airport.

Exhibit 14 also shows comparison of scheduled daily bus trips passing named hotels and other points. In general, Exhibit 14 shows that SCRTD provides more trips to more points than formerly provided by APT or would be provided by ASI. However, the exhibit shows there are some points where ASI would have more trips. Total trips shown are: APT 318, SCRTD (December 1976) 563, SCRTD (July 1978) 648, and projected ASI 326.

The principal planner testified that in March 1976, before APT ceased operating, SCRTD commenced airport express service (Line 607) between downtown Los Angeles and LAX, via the Santa Monica Freeway. Since December 1976, when the remainder of the airport express service was inaugurated, more stops have been added and service frequency on routes has increased. Part of the service expansion has been attributable to increased air travel at LAX. In the last year SCRTD patronage has increased 15 percent.

The principal planner said that the original SCRTD airport express fare (December 1976) between LAX, Los Angeles, and nearby market areas was \$2. That fare compares to the former APT fare of \$1.70. In July 1977 SCRTD increased the fare to \$2.50. In July 1978 it was raised to \$3.50, as part of a general fare increase. The witness said the SCRTD board of directors was of the opinion that because of the expedited nature of the service a premium fare should be established that would

cover direct expenses and not require a public subsidy. He explained that the direct expenses (variable or out-of-pocket expenses) include wages, maintenance, depreciation, mileage expenses attributable to fuel and insurance, bus stop information signs, timetables, advertising, JAGTA expenses, ticket sales, and traffic men. He said that, in short, the direct expenses include all expenses that would not exist if the service were not performed. He did not disclose whether the airport express fares make any contribution to fixed or overhead expenses.

On brief, SCRTD cites cases to support its contention that the APT authority was abandoned and therefore not subject to transfer. SCRTD contends that from about 1969 until its discontinuance of service in 1976 APT's level of service declined, along with its revenues until June 30, 1976 when pre-tax income for that year was an approximate loss of \$69,000, with a corresponding decline in the total number of passengers carried systemwide of over 15 percent compared to the previous year. Assertedly, during October 1976 Yellow Cab of Los Angeles attempted to sell APT in its entirety to Gray Line and Starline, to no avail.

It is stated by SCRTD that from 1969 until December 1976 the level of service rendered by APT had declined to the point where 10 of its 16 routes had either been sold or discontinued entirely. It points out that these 10 routes are considered by ASI to have been abandoned by APT, and the Commission is being requested to make such a determination. SCRTD contends that whether the overall deterioration and the level of service performed by APT can be attributed to an actual decrease in patronage or simply declining resources of the carrier and its parent companies is moot. It states that APT was attempting to

perform 318 trips per day with a total of 13 buses averaging 8 to 10 years of age, some being older. Only one back-up vehicle was assertedly used. Under these circumstances SCRTD argues that it would have been extremely difficult for APT to maintain schedules consistent with its timetables, and that its level of service had deteriorated to such an extent that it fell short of being in the interest of the public. SCRTD does point out, however, that when APT ceased operations on December 1, 1976 a definite void in airport transportation was immediately created which would have had a severe impact on the traveling public and on the business community, particularly because of the nearing Christmas holidays.

SCRTD points out that APT failed to serve notice on the Commission or the public that it intended to terminate service, which notice is required by General Order No. 98-A; that the Commission gave no authorization for the discontinuance of service; and that APT projected a cavalier attitude toward Commission requirements and the public whom APT was authorized to serve. It is contended that this failure, coupled with APT's former efforts to sell its assets, including its certificate, demonstrates that APT was not attempting to reorganize itself and to continue in business. SCRTD contends that ASI's request that certain of APT's routes be transferred to it and that others be considered abandoned simply amounts to a request that routes which show promise of being compensatory be transferred and those that do not show promise be judged as abandoned.

Currently SCRTD operates 13 buses to the downtown Los Angeles area, 4 to the Hollywood area, 2 to the Beverly Hills-West Los Angeles area, and 1 to the San Bernardino area, including Norton Air Force Base. It contends that ASI's proposed service, while actually contemplating eight more one-way bus

trips than APT rendered, actually would serve nine less locations than did APT. Assertedly, the service provided by SCRTD is more than double that which the private carriers did and would provide.

SCRTD contends that the proposed transfer is not in the public interest. It asserts that the sought transfer, coupled with ASI's existing authority, could result in such a monopoly as to restrain competition. It is the position of SCRTD that with the acquisition of APT's operating rights Chromalloy American through its subsidiary, ASI, would control all airport bus transportation between LAX and Orange County Airport, Long Beach Airport, Ontario International Airport, and points in Los Angeles, Orange, and San Bernardino counties, thereby becoming the only supplier to an area consisting of nearly 10 million people. SCRTD argues that any future carrier wishing to render specialized service to the airports from these counties would have to face a protracted protest by ASI to the institution of such service. SCRTD is concerned further that by virtue of Section 30637 of the Public Utilities Code^{5/} it may be precluded from rendering any service between LAX and points in Los Angeles, Orange, and San Bernardino counties.

5/ The second paragraph of Section 30637 reads as follows:

"The district shall not establish, construct, complete, acquire, operate, extend, or reroute (all of the foregoing being hereinafter referred to by the word 'establish' in all forms thereof), directly or indirectly, either itself or by lease or contract with any other person or otherwise, any rapid transit service or system in such manner or form as will or may, either then or at any time in the future, divert, lessen, or compete for the patronage or revenues of the existing system of a publicly or privately owned public utility without the consent of the public utility, if the existing system has been in operation since at least August 1, 1974."

SCRTD contends that federal courts have consistently summarized and applied cases that reiterate the principle that regulatory commissions must look at the entire competitive consequences or effects in approving applications for merger or control, and have addressed themselves to the question of determining whether the project will advance the public interest.

SCRTD is of the opinion that if the sought transfer is authorized, SCRTD would be prohibited by Section 30637 of the Public Utilities Code from using a proposed 40-foot transit lane for buses on the proposed Century Freeway and on the Harbor Freeway. It states that ASI would be the indirect recipient of special roadway facilities paid for by state, federal, and local funding, the latter coming from the Los Angeles County Transportation Commission and SCRTD. It explains that SCRTD would be bound by financial agreement to supply some funding for this project but would be unable to utilize it, while ASI would operate on an exclusive basis over the same project.

SCRTD asserts that ASI realizes that APT is a defunct operation and is using the pretense of revitalizing it as a means of circumventing normal Commission procedure, which would be for ASI to raise the issue of public convenience and necessity and apply for a new certificate accordingly. SCRTD believes that ASI realizes that such a course of action would fail because of the existing level of service currently being provided by SCRTD.

Staff Position

The Transportation Division staff supports the proposed transfer as being in the public interest. It believes that the public will benefit in the long run from operations conducted by the private sector. It sees benefit in promoting several transportation enterprises in the greater Los Angeles area to ensure a reliable transportation network.

Staff contends that SCRTD initially assumed the obligation to provide emergency service on a temporary basis pending further action by the Commission relative to the APT certificate; that shortly after discontinuance of service by APT the Commission began to entertain A.56916, A.56980, and A.57004, each seeking authority along former APT routes; that it is likely one of the sought authorities would have been granted were it not for the restraining order from the District Court; that this restraining order held up the Commission two years from granting authority to the private sector in this arena; and that under the circumstances, the time hiatus between service discontinuance and the present should not be thrown in the face of the Commission or the private sector as reason to now revoke APT's certificate. Staff contends that the APT certificate has not been abandoned and cites cases in support of that position.

Staff asserts that recognition of the validity of passenger stage certificates, in spite of extended shutdowns beyond the carrier's control, has long been recognized. It states that American Buslines, Inc. was inoperative from July 1, 1958 until August 15, 1959, due to a labor strike, and that Transcontinental Bus System, Inc. (now known as Trailways, Inc.) was similarly shut down because of labor disputes from July 1, 1958 until February 15, 1960. Staff points out that no action was taken by the Commission to revoke the passenger stage certificates of these carriers in face of the carriers' intent to eventually resume operations.

Staff does not presume that SCRTD abandons its intent to serve the public when it experiences shutdowns resulting from labor strikes. It states that in 1974 SCRTD was inoperative for 69 days and that in 1976 SCRTD was inoperative for 35 days. Staff points out that in the midst of such strikes, private carriers have not been authorized by the Commission to obtain or amend certificates and then compete with SCRTD after the district's strikes are settled. Staff believes it is wrong for any transportation agency, public or private, to seize a profitable market of a carrier (1) which has temporarily discontinued operations in spite of good-faith attempts to sustain them, and (2) which intends to resume its operations once immediate problems have been resolved.

With respect to the APT certificate, staff contends there has not been an intent to abandon the authority, and even though there have been no operations by APT in over two years, the certificate is still viable and transferable. Staff states that even though SCRTD appears to have been providing good service on its airport express routes, it recommends that the Commission authorize the sought certificate transfer.

Staff believes that the private sector should be encouraged to assume and sustain bus operations whenever possible, and if the public sector and the private sector are equally willing to provide an identical transportation service, the nod should be given to the private operator. Besides providing transportation to benefit the public, staff observes that the private operator pays taxes to support various government programs. Even if SCRTD wishes to continue its airport express service notwithstanding the Commission's authorization of the transfer, staff sees benefit in a private carrier operating the APT routes.

Staff points out that since SCRTD assumed this market in December 1976, fares have increased from \$1.70 to \$3.50 in the main service areas. Should the Commission grant the sought authority to ASI, competition between ASI and SCRTD, assertedly, should lead to a reasonable level of fares by both carriers. Staff points out that should SCRTD leave the airport express market, the Commission regulates ASI fares and determines proper levels of increases in the public interest. Staff argues that additional jobs will be created in the private sector and such employment opportunities should offset any driver furloughs by SCRTD.^{6/}

Staff asserts that it is reasonable to produce a transit network with a variety of carriers to protect the public from temporary shutdowns by a single operator. In this connection, it contends the availability of a second bus carrier from LAX would protect the traveling public from the condition of transit paralysis that otherwise attends temporary shutdowns by SCRTD. The option of a second available bus service in the region, assertedly, is especially important to the transit dependent who has no automobile and cannot afford expensive taxi trips all the way to and from LAX. Though not a direct alternative to SCRTD local schedules, it is pointed out that ASI also would give some mobility to such persons during periods of SCRTD shutdowns.

Staff believes that should SCRTD suspend the airport express phase of its operations, it is likely to continue serving LAX via its minibus shuttle (Line 206) and the multitude of local lines that make connections at the SCRTD off-airport site near LAX where on-airport shuttle bus service is provided at no extra charge.

^{6/} No evidence was presented by UTU representing SCRTD drivers.

Discussion

Since December 1976, ASI and Gray Line have sought to acquire authority to operate between points served by APT (A.56916, A.56980, A.57004, and A.58082). Certificate requests in A.56916, A.56980, and A.57004 have not been acted upon because of the District Court restraining order.

With respect to the question of whether the APT certificate has been abandoned we heretofore have held in similar situations that circumstances surrounding unauthorized suspension of service do not warrant revocation of operative rights (Western Consolidated Exoress (1944) 45 CRC 219); that cessation of service is not tantamount to abandonment unless there has been an intent to abandon (Radio Pacing Co. (1966) 65 CPUC 636); that discontinuance of service as the result of involuntary bankruptcy does not per se justify revocation of a carrier's certificate (Cal Motor Transport Co., et al. v Frederick Trustee for Reilley Truck Line and American Transfer Co. (1964) 62 CPUC 577; and that mere non-use is not necessarily an abandonment (Ringsby-Pacific, Ltd. (1971) 72 CPUC 204, and cases cited at pages 207 and 208). At no time did APT, ASI, the District Court, or the receiver in bankruptcy for APT consider the APT certificate abandoned. It is clear from the record that the APT certificate was not abandoned; that it is viable; and that it is capable of being transferred to ASI. ✓

The remaining issue is whether the proposed transfer would be adverse to the public interest. The public would benefit from the proposed transfer for several important reasons. The first is that the public would experience substantially reduced fares. Where the SCRTD fare is now \$3.50, the ASI fare would be \$2.50.^{7/} The proposed ASI fare of \$2.50 can be related to its currently published fare of \$3.40 to Pasadena, a point about 11 miles beyond downtown Los Angeles. The ASI fares could not be increased without the company making a showing and the Commission making a finding that the proposed increase is justified.

We do not regulate SCRTD and can neither require it to continue operating airport express buses nor to cease operating them. If the sought authority were granted and ASI were to institute the additional service with 16 buses, SCRTD initially might have to cut back some airport express service. However, SCRTD points out that LAX and the terminal points involved in this application are located in a metropolitan area with a population of millions of people. Passenger traffic at LAX increases annually. SCRTD experienced a recent annual increase

^{7/} From Exhibits 8, 12, and 15 it appears that loop operations, where delivery and pickup are both performed at most points before the bus moves on (as generally performed by APT and as would be performed by ASI), would tend to be more efficient and cost-effective than SCRTD operations which conclude at a terminal in each direction and serve each point twice, once for delivery and again for pickup.

in traffic of 15 percent. There should be ample room in the future for both carriers in the areas involved in this proceeding. Additional airport bus transportation would eliminate the need for many automobiles and other small vehicles traveling all the way from and to LAX, thus reducing consumption of high cost fuel which may be in short supply. Vehicular traffic and air pollution would be reduced. The public would have greater assurance of airport bus service being available during any labor dispute involving one of the carriers. If the sought transfer is authorized and SCRTD continues to operate its airport express service, there would be a strong tendency for SCRTD to keep its fares in line with those of ASI. The advantages of having both ASI and SCRTD operating airport express buses between LAX and the areas here involved would outweigh any disadvantages.

It should be pointed out that no real monopoly now exists or would exist if the sought transfer were authorized because there is other available airport ground transportation in the areas here involved.^{8/} This would be true even if SCRTD ceased operating airport express buses.

^{8/} We recently certificated 24-Hour Airport Express, Inc. and Luxe Livery Service, Inc. to provide on-call (nonscheduled) service from and to LAX with vehicles having a carrying capacity not to exceed 15 passengers. (D.89074 and D.89565 (1978), Pet. for Writ of Review denied.) Fares of these carriers vary with the number of passengers per reservation. Those certificates are subject to certain restrictions; however, the certificate of 24-Hour Airport Express, Inc., for example, does not exclude the service areas and airport bus terminal points of APT, ASI, and SCRTD. Other examples of competition experienced by ASI and SCRTD, with respect to airport bus transportation to and from LAX, is provided by city of Los Angeles Flyaway service, Culver City Municipal Bus Lines, Norwalk Transit District, permitted and certificated charter-party carriers (operating limousines, vans, and buses), private automobiles and vans (including service vehicles of hotels, motels, and businesses providing employee transportation), rental automobiles, and taxicabs. In addition to airport express service, SCRTD operates a number of regular transit routes from and to LAX.

In Los Angeles Metropolitan Transit Authority v Public Utilities Commission (1959) 52 Cal 2d 655, the California Supreme Court discussed the question of whether the Commission should certificate new privately operated transit services which the public authority was willing to provide. The court was of the opinion that new operations which would impede the growth of the public authority's system should not be authorized. That dictum has no direct bearing on the present application to transfer a preexisting certificate. However, the dictum is clearly contradictory to the staff position of favoring privately owned over publicly owned transit whenever both are equally willing to provide a given service.

It is the duty of the Commission to examine many separate factors which, in combination, comprise the public interest. All factors must be considered to determine where the public interest lies in any given situation. The existence of public transit is a factor which must be considered in any proceeding to grant new authority to a private firm to operate within the boundaries of an existing public transit system.

The willingness of the public to form and support with taxes a public system must be given great weight. In every proceeding which may affect the public transit systems, careful consideration must be given to the interaction of public and private operations.

The instant proceeding is not a grant of new authority, but rather a transfer of an existing authority. Authorizing the transfer will roughly maintain the balance between public and private transit which existed prior to the bankruptcy of APT. In view of this and our previous discussion of other factors, we conclude that the transfer is not adverse to the public interest.

Findings

1. By A.58082 applicants seek to transfer to ASI the Southern Region passenger stage certificate formerly granted to APT in Appendix A of D.78126 (1970). The Northern Region certificate of APT (Appendix B of D.78126) was transferred to SFO Airporter, Inc. by D.90107 (1979).

2. The Southern Region certificate of APT was issued by the Commission for airport bus service between LAX and hotels and other terminal points in downtown Los Angeles, Hollywood, West Los Angeles, San Fernando Valley, Inglewood/Hawthorne, Commerce, and other locations in Los Angeles, Riverside, and San Bernardino counties.

3. ASI is a passenger stage corporation providing scheduled airport bus service pursuant to D.83743 (1974), as amended, between LAX and other major airports in Los Angeles, Orange, and San Bernardino counties, on the one hand, and hotels and other bus stops in Orange County and in the Long Beach and Pasadena areas of Los Angeles County, on the other hand.

4. APT ceased operations on or about December 1, 1976 because of its inability to pay premiums for liability insurance.

5. On or about December 2, 1976, at the request of the Los Angeles City Council, SCRTD instituted emergency airport bus service between LAX and a number of the points in the APT Southern Region certificate. SCRTD is not subject to the jurisdiction of the Commission.

6. On December 3, 1976 Gray Line filed A.56916 seeking a certificate to perform transportation between LAX and all areas and points in APT's Southern Region certificate.

7. On or about December 21, 1976 APT filed a petition for relief under Chapter XI of the National Bankruptcy Act.

8. On December 31, 1976 ASI filed A.56980 seeking a certificate to extend service between LAX and downtown Los Angeles, Hollywood, West Los Angeles, Beverly Hills, and the San Fernando Valley (certain of the points in the APT Southern Region certificate).

9. On January 20, 1977 APT filed Complaint No. 4 in Bankruptcy Chapter XI Proceedings, Cases 76-3054 and 76-3065 (HK). On the same day the District Court entered an order restraining the Commission, as well as ASI and Gray Line, from proceeding with A.56916 and A.56980 beyond January 21, 1977, pursuant to Bankruptcy Rule 11-44, and also stayed all proceedings with respect to the issuance of new certificates concerning routes of APT or any hearings on revocation of its certificates.

10. By order dated March 7, 1978, the District Court authorized Robert N. Mateer, receiver in bankruptcy for APT, to substitute ASI as buyer of the Southern Region certificate in place of Starline which had been the successful bidder at auction, but which later decided not to complete the transaction.

11. Applicants' main proposal in A.58082 is that the sought certificate transfer be made (1) minus certain routes ASI asserts APT abandoned prior to cessation of service, (2) with certain minor enlargements of APT service territory, and (3) with authority for ASI to suspend certain portions of the transferred certificate.

12. ASI's alternative proposal is that the APT certificate be transferred to it without change, but with authority to suspend certain portions.

13. No portion of the APT certificate has been revoked, terminated, or suspended by the Commission.

14. The record shows that neither the District Court, the receiver in bankruptcy, APT, nor ASI considered the APT certificate abandoned.

15. The record does not show that any portion of the APT certificate has been abandoned. It is viable and capable of being transferred.

16. SCRTD is a publicly operated transit district. It is not a taxpaying organization. It earns some of its revenues from bus operations and obtains the remainder from public funds.

17. SCRTD airport express fares, including the fare of \$3.50 between LAX and downtown Los Angeles, cover direct operating expenses (variable or out-of-pocket expenses).

18. ASI is a taxpaying California corporation. It earns substantially all of its revenues from passenger stage airport bus operations and from charter-party operations.

19. Exhibit 13 and the testimony of the ASI vice president shows that the ASI fares to points proposed to be served under the sought transfer would cover all of the fixed and variable costs.

20. The ASI proposed fare of \$2.50 between LAX and downtown Los Angeles can be compared with ASI's regulated fare of \$3.40 recently authorized between LAX and Pasadena (D.88958 (1978)). Pasadena is about 11 miles more distant from LAX than downtown Los Angeles. The proposed fares are reasonable. ✓

21. LAX and the service areas of airport bus operators involved in this proceeding are located in a very large metropolitan area with a population of several million people. Population in the metropolitan area and air traffic at LAX are increasing.

22. SCRTD provides airport express service with 20 buses. ASI would add 16 buses to its existing service if the sought transfer is authorized.

23. SCRTD serves more terminal points directly than did APT or would ASI under the proposed transfer.

24. It has been ASI's experience that a high percentage of its patrons originate from or are destined to points in the metropolitan area other than its terminal point hotels, and that they utilize automobiles, taxicabs, and other local transportation to travel from and to those terminal points.

25. The public can best be provided expedited service at the lowest fares by making a limited number of stops at landmark locations in the urban areas involved where there are myriads of hotels and motels and millions of private residences. ✓

26. The public would benefit in the future from the proposed transfer primarily because of lower regulated fares, a greater guarantee of continuous airport bus service in the event of extended disruption of all SCRTD operations during labor negotiations, reduced fuel consumption, reduced vehicular congestion, and reduced air pollution.

27. The sought transfer of the APT certificate to ASI would draw business from SCRTD's airport express service and from other agencies performing public and private transportation, as well as from private and rental automobiles.

28. SCRTD would continue to operate its regular transit lines from and to LAX if the sought transfer is authorized. The record does not show whether SCRTD would continue to operate the present 20 buses in airport express service if the sought transfer is authorized.

29. The evidence does not show that the sought transfer of the APT certificate to ASI would impair the ability of SCRTD, 24-Hour Airport Express, or any other agency of transportation to continue to provide service.

30. For the reasons set forth in footnote 8 above, authorization of the sought APT certificate transfer would not create a monopoly in airport ground transportation between LAX and points in Los Angeles, Riverside, and San Bernardino counties.

31. ASI has the experience, personnel, equipment, facilities, insurance, and financial capability to operate the routes of APT.

32. The proposed certificate transfer would not be adverse to the public interest and should be authorized.

33. The record does not justify applicants' main proposal, as described in Finding 11, because it has not been shown that any part of the APT certificate has been abandoned.

34. The record supports applicants' alternative proposal to transfer the APT Southern Region certificate to ASI without change, subject to the condition that ASI may suspend service on routes or portions of routes shown on the upper portion of Exhibit 6 (routes other than those shown on page 1 of Exhibit 7).

35. 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 proposed transfer of the APT certificate, as specified in Finding 34, should be authorized.

2. ASI should be directed to seek revocation, within two years of the effective date of this order, of any routes acquired as the result of this proceeding which it has not operated.

ASI 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. Airport Service, Inc. (ASI) is hereby authorized to operate under the Southern Region passenger stage certificate held by Airporttransit, Inc., as delineated in Appendix A to Decision No. 78126 dated December 22, 1970.

2. ASI is authorized to suspend service on the following routes:

Route 2. That portion of Route 2 which refers to the Inglewood-Hawthorne territory and Culver City.

Route 4. That portion of Route 4 which refers to the cities of Burbank and Glendale.

Routes 5, 7, 8, 10, 11, and 14 in their entirety.

Route 9. That portion of Route 9 between Ontario International Airport and Redlands.

Route 13. This route was sold by Airporttransit to Air Crew Transit, Inc. by Decision No. 85784 in Application No. 56319 dated May 4, 1976.

3. ASI may initiate service on one day's notice concurrent with the filing of tariffs and timetables.

4. ASI is directed to seek revocation within two years of the effective date of this order of any routes acquired as the result of this proceeding which it has not used.

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

Dated at San Francisco, California, this 5th day of JUNE, 1979.

John E. Guyon
President
Dennis L. Stinson
Robert V. Lovell
Walter J. DeFries
Samuel J. Smith
Commissioners