

**ORIGINAL**

Decision No. 90494 JUL 3 1979

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application)  
of 24 HOUR AIRPORT EXPRESS, )  
INCORPORATED, for charter-party )  
carrier of passengers permit, )  
Orange County. )  
(File No. TCP-325-P) )

Application No. 58573  
(Filed January 4, 1979)

Bewley, Lassleben & Miller, by  
Edward L. Miller, Attorney at Law,  
for applicant.  
James H. Lyons, Attorney at Law, for  
Airport Service, Inc., protestant.  
John Cockburn, for United Transportation  
Union, interested party.  
Thomas P. Hunt, for the Commission staff.

O P I N I O N

Applicant, 24 Hour Airport Express, Incorporated, a California corporation, holder of Charter-party Carrier of Passengers Permit No. TCP-325-P, seeks renewal of its annual permit which expired on December 31, 1978. Since that date applicant has been operating with a temporary permit issued by the Commission on February 29, 1979 (amending an earlier temporary permit issued on January 12, 1979).

By letter dated December 14, 1978, Airport Service, Incorporated, protested the renewal of applicant's charter-party carrier permit because of applicant's alleged failure to qualify under Section 5375 of the California Public Utilities Code and applicant's failure to comply with the Commission's order in Decision No. 88061 dated November 1, 1977 in

Application No. 56841. In that decision, applicant was ordered, among other things, to "promptly withdraw any promotional literature, receipts, or other documentation promoting confusion between its operations and those of protestant. Applicant [24 Hour] shall set forth its actions in compliance with this paragraph with its request for renewal." Protestant requested a hearing on the matter.

A public hearing was held on April 2, 1979 before Administrative Law Judge William A. Turkish in Los Angeles, and the matter was submitted on that date.

The following stipulations were submitted by the parties and received into the record:

- "1. The Northeastern Directory (white pages) dated January 1978 at page 13 has a listing 'Airport Service Inc.' in bold caps showing an address on Cerritos Avenue, Anaheim, with phone number 796-9108. Immediately below that there is a listing in small type 'Airport Service 24 Hour' showing an address of 14420 East Whittier Boulevard, with phone number 693-8208 and from Santa Ana 835-5871.
- "2. In December 1978 Northeastern Section Directory (white pages) of the General Telephone of California there is a listing in bold type 'Airport Service Inc.' showing an address 851 East Cerritos Avenue, Anaheim, with telephone numbers 796-9108, 714 778-3141, and directly below that is 'Airport Service 24 Hour' in regular type, 2230 East Lambert Road, LH, with telephone numbers 693-8208, 694-4813, from Santa Ana 835-5871.
- "3. The identical listings as above are set forth in the Northeastern Area Pacific Telephone Directory dated January 1979.
- "4. In the white pages directory for Huntington Beach, Midway Cities, Westminster, Cypress, Falcon Valley, Garden Grove and Stanton and other areas

in Orange County dated November 1978, there is a listing 'Airport Service Inc.' in bold type, 851 East Cerritos Avenue, Anaheim, followed by six telephone numbers, and directly below that in regular type appears 'Airport Service 24 Hour', 2230 East Lambert Road, LH, with numbers 835-5871, 683-8208 or 213 694-4813.

- "5. The Orange County Central and North Directory (white pages) dated November 1978 contains at page 16 the information set forth in Stipulation No. 4.
- "6. The white pages for Huntington Beach, Midway Cities, etc. dated November 1977 and the Orange County Central and North Directory dated November 1977 contain no reference to Airport Service 24 Hour immediately following the Airport Service, Inc. listing.
- "7. In the yellow pages for the Northeastern Section of General Telephone for the current year, in the upper righthand corner of page 27, there was a large one-quarter page size ad entitled '24 Hour Airport Express' and that at no place in that ad does the name 'Airport Service' or '24 Hour Airport Service' appear.
- "8. On the same page under the heading 'Airporter Transportation Service' there are five companies listed, the fourth of which is under the name '24 Hour Airport Express' with no reference to Airport Service or 24 Hour Airport Service.
- "9. At page 433 of the same directory, yellow pages, under the listing 'Limousine Service', there is a smaller ad under the name '24 Hour Airport Express' but no place within that ad are the words 'Airport Service' or '24 Hour Airport Service.'
- "10. In the same directory, yellow pages, below the actual ad at page 433, there is just a line listing '24 Hour Airport Express' and at no place does the name '24 Hour Airport Service' or 'Airport Service' appear.

- "11. In the Orange County Southwestern yellow pages for the current year covering Huntington Beach, Westminster, etc., at page 628 under the heading '24 Hour Airport Express' an ad appears which is merely a line listing and no place within that line listing is there any reference to Airport Service or 24 Hour Airport Service. This listing is under the name 'Limousines.'
- "12. In the same yellow pages of the same directory under the heading 'Airport Transportation Service' there are five companies listed, the fifth of which is 24 Hour Airport Express, and at no place within said listing are the words 'Airport Service' or '24 Hour Airport service.'
- "13. In the Orange County Central and North Directory yellow pages dated November 1978 under the category 'Airport Transportation Service' there appears an ad under the name '24 Hour Airport Express' and at no place within that ad are the words 'Airport Service' or '24 Hour Airport Service.'
- "14. In the same directory, under the heading 'Airport Transportation Service' there are listings for six different companies, the last of which is 24 Hour Airport Express, and at no place in that line listing do the words '24 Hour Airport Service' or 'Airport Service' appear.
- "15. At page 1149 in the same yellow pages directory there is an ad under the heading '24 Hour Airport Express.' At no place within that ad does the name 'Airport Service' or '24 Hour Airport Service' appear.
- "16. In the same directory yellow pages under the heading 'Limousine Service' there is a line listing for 24 Hour Airport Express which is one of a number of companies listed for limousine service, and at no place within that line listing do the words '24 Hour Airport Service' or 'Airport Service' appear."

It was further stipulated by the parties that the hearing would be limited to the following issues: (1) Whether or not applicant has substantially complied with Ordering Paragraph 4 in Decision No. 88061, and (2) whether or not applicant is in compliance with General Order No. 98.

Exhibit 1, consisting of a document entitled "Application for Charter Party Carrier of Passengers Permit" with cover letter dated December 19, 1978 containing attachments A through I; Exhibit 2, a letter dated January 1, 1979 bearing the letterhead of General Telephone Company of California; Exhibits 3 and 4, consisting of U.S. Post Office return receipts for certified mail addressed to various addressees; Exhibit 5, Permit to Operate as a Charter-party Carrier of Passengers (temporary), file No. TCP-325-P; Exhibit 6, promotional advertising flyer; and Exhibit 7, copy of a passenger receipt dated February 17, 1977, were offered and received into evidence.

Gerald R. Friesen, applicant's president and secretary, testified that applicant, a wholly owned subsidiary of 24 Hour Rent-A-Car, Inc., has held a charter-party permit since 1971 and that he is the sole shareholder of 24 Hour Rent-A-Car, Inc. According to applicant's president, he was not aware of the continued telephone directory listings of "24 Hour Airport Service", as indicated in the stipulation above, prior to the commencement of proceedings in connection with its application for a passenger stage certificate before this Commission on December 11, 1978. He testified that prior to that date he had informed each yellow page directory representative contacting him for renewal of applicant's yellow page advertising that he wanted all references to "24 Hour Airport

Service" deleted from the yellow page and white page telephone directories. He stated that he was assured, each time, that it would be taken care of and he assumed thereafter that it had been. The witness testified that immediately after the discovery on December 11, 1978 he contacted General Telephone Company and The Pacific Telephone and Telegraph Company by letter and asked them to delete all future listings of "24 Hour Airport Service" wherever it still existed.

Mr. Friesen also testified that immediately following a hearing in February 1977 in which it was discovered that applicant was still using a rubber stamp with the imprint "24 HOUR AIRPORT SERVICE" and a logo of a van on its advertising material showing "24 HOUR AIRPORT SERVICE" on the logo van, such material was eliminated. He testified further that applicant generally attempted to change its name from 24 Hour Airport Service to 24 Hour Airport Express in June 1975 when it incorporated so as to eliminate any problem with Airport Service, Inc., and that, at that time, all promotional material was changed to the new corporate name. According to the witness, the failure to change the rubber stamp, which is used to stamp the customer's receipt upon payment, was basically an oversight and that the stamp was destroyed following the February 1977 hearings. At no time was the stamp used in connection with promotional or advertising material, according to the witness, and that during the past two years all of applicant's yellow page advertising was listed under the name of "24 Hour Airport Express". Applicant's president stated that he also instructed his promotion representative to pick up and destroy all printed promotional materials from travel agencies and businesses which had previously been supplied with such materials, and that this was done.

The witness also testified that he has no desire to use the name "24 Hour Airport Service" in any way, nor in any context, because it would have absolutely no advantage to applicant. He stated that the services and costs between the two companies were so disparate that customers either wanted one service or the other.

In response to cross-examination by the staff representative, the witness testified that applicant maintains separate records in connection with each of its charter-party movements showing the name and address of the party arranging the charter, how the charges are computed, and that charges are either on a time or mileage basis with no surcharge for additional people. He also testified that a percentage surcharge was assessed for service after normal hours because of the additional expense in trying to get someone to work those hours. All of applicant's records are maintained in accordance with Part 13.01 of General Order No. 98, according to the witness.

Other than cross-examination, protestant did not present any evidence or testimony on the issues involved.

#### Discussion

The evidence relied upon by protestant to support its allegation that applicant fails to qualify under Section 5375 of the California Public Utilities Code and the Commission's order in Decision No. 88061 are the facts contained in the stipulation above with respect to telephone directory listings.

Protestant sought and was issued a subpoena duces tecum compelling applicant to produce various records relating to applicant's charter-party operations during the months of December 1978, January 1979, and February 1979. According to

protestant's request for the subpoena duces tecum, it was alleged that the records and documents sought to be produced were material to the issues involved in the case in that they would establish the compliance or noncompliance, by applicant, with the rules and orders of this Commission so as to determine the fitness of applicant regarding the issuance of the sought after charter-party permit. Although applicant produced the desired records at the hearing, its counsel objected to the request of protestant's counsel to examine such documents during the hearing on the grounds that the hearing was not a proper forum for discovery. The objection was properly sustained by the Administrative Law Judge as the request for the subpoena duces tecum is couched in general terms rather than being a request for specific material and appears to seek a general opportunity for examination of records more appropriate to discovery proceedings than to a hearing on the application.

Applicant and protestant herein have been involved in previous proceedings before this Commission involving renewal of applicant's annual permit and protestant's allegations of violation by applicant of Section 5401 of the California Public Utilities Code. In addition, protestant alleged name infringement by applicant in Application No. 56841. In Decision No. 88061 we ordered applicant to promptly withdraw any promotional literature, receipts, or other documentation promoting confusion between its operation and those of protestant. Although we granted applicant a stay of Decision No. 88061 until February 13, 1978, we did so primarily to give applicant sufficient time to comply with Ordering Paragraphs 2 and 3 of that decision. According to the preponderance of evidence, which consists primarily of the testimony of applicant's president, steps were taken in June of 1975 to



change the name of "24 Hour Airport Service" to "24 Hour Airport Express" because of the similarity in name with "Airport Service, Inc." Although applicant's large vehicle signs, advertising materials, stationery, etc., bore its new name, it was alleged in the proceedings of Application No. 56841 that applicant was still using a rubber stamp on its receipts which still bore the name "24 Hour Airport Service". It was also alleged in that proceeding that applicant's logo used in connection with its promotional and advertising material still contained a mini picture of one of its vans bearing the name "24 Hour Airport Service". According to the evidence the stamp was destroyed personally by applicant's president and the logo changed. Although applicant's president stipulates that the white pages of several telephone directories still showed a listing for "24 Hour Airport Service" in December 1978 and January 1979, his undisputed testimony that he was unaware of such listings until the December 11, 1978 proceedings in connection with applicant's passenger stage application must be accepted. The fact that applicant had ordered its yellow page advertising to be changed to its new name gives some credence to the president's testimony that he was misled into thinking that the white pages would also be changed.

Generally speaking, it would seem that anyone seeking a charter bus company for the first time would be more apt to use the yellow pages rather than the white pages because such party would not readily know the names of charter-party companies. If the party had previous experience with a particular charter bus company and wished to utilize such service again, the party would either have the telephone

number readily available or, if not, then perhaps seek such number in the white pages. However, the party already knows which charter company he or she wants and so a similarity of names in the white pages is not of great significance or value in obtaining new customers. Thus, we do not consider that protestant was significantly harmed by the presence of the continued listing of "24 Hour Airport Service" in the white page telephone directories as contained in the stipulated facts. We find that applicant has substantially complied with Ordering Paragraph 4 of Decision No. 88061 and that the continued white page listing of "24 Hour Airport Service" after Decision No. 88061 was issued was not deliberately continued by applicant with the intent to confuse or deceive the public. Accordingly, we find applicant possesses satisfactory fitness to continue to conduct its authorized charter-party carrier of passengers services and that its temporary permit should be made permanent.

Findings of Fact

1. Applicant, a charter-party carrier of passengers, requests annual renewal of its Charter-party Carrier of Passengers Permit No. TCP-325-P.
2. Applicant has been operating under a temporary permit issued January 12, 1979 (amended February 23, 1979) effective from December 31, 1978 but no longer than December 31, 1979 (pending further order of the Commission).
3. Protestant filed a letter dated December 14, 1978 alleging that applicant's failure to qualify under Section 5375 of the California Public Utilities Code and of applicant's failure to comply with the Commission's order in Decision No. 88061.

4. Applicant's permit was temporarily extended from December 31, 1978 to no later than December 31, 1979 pending hearing in the matter.

5. Applicant has substantially complied with Ordering Paragraph 4 of Decision No. 88061 and there is no evidence of applicant's willful failure to comply with said decision.

6. Applicant was unaware of the continued listing in the white pages of several telephone directories of "24 Hour Airport Service" in January 1978, December 1978, and January 1979 until it was brought to the attention of its president during proceedings on December 11, 1978.

7. Applicant has taken adequate steps to remove all listings of "24 Hour Airport Service" from all white page telephone directories in which previously listed.

Conclusions of Law

1. Applicant satisfies the requirements of Section 5374 and has established reasonable fitness to continue the previously authorized charter-party transportation services.

2. Applicant's permit should be renewed and its temporary permit rescinded upon the issuance of a permanent permit.

O R D E R

IT IS ORDERED that the temporary Charter-party Carrier of Passengers Permit No. TCP-325-P held by 24 Hour Airport Express, Inc., a California corporation, be rescinded and a permanent annual permit be issued by the Executive Director in lieu thereof effective from December 31, 1978 and continuing until December 31, 1979.

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

Dated at San Francisco, California, this 3rd day of JULY, 1979.

John E. Byron  
President  
Donald L. Stanger  
Robert P. Howell  
Clair J. DeLoach  
Terrence M. Quinn  
Commissioners