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Decision No. 91437 MAR 18 1980

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Bay Area Limousine Service, Inc., a California corporation, to amend its certificate of public convenience and necessity, PSC-935, by deletion of vehicle seating limitation; and to add operating permission for scheduled fixed route between/and Berkeley, Oakland and Oakland Airport; and the right to perform a fixed route shuttle service between/and the BART Coliseum Station Oakland and the Oakland Airport.

Application No. 57817
(Order granting Rehearing
of Decision No. 90011
dated April 24, 1979)

James M. Anderson and Donald S. Tahl, for Bay Area Limousine Service, applicant.
Handler, Baker, Greene & Taylor, by Walter H. Walker III, Attorney at Law, for SFO Airporter, Inc.; and Judith C. Schulz, for PSPA Corporation; protestants.
James E. Nolan, Attorney at Law, for Port of Oakland, interested party.
Marc E. Gottlieb, for the Commission staff.

OPINION ON REHEARING

James M. Anderson, doing business as Bay Area Limousine Service (BAL), holds a certificate of public convenience and necessity (PSC-935) to operate an on-call passenger stage service with 9-passenger vehicles between points in Alameda and Contra Costa Counties, on the one hand, and San Francisco (SFO) and Oakland (OAK) International Airports, on the other hand. BAL also operates as a charter-party carrier.

In Application No. 57817, BAL sought authority (a) to operate a shuttle service between the Coliseum Station of Bay Area Rapid Transit District (BART) and OAK under contract with the Port of Oakland, and (b) to operate 14-passenger vehicles in lieu of 9-passenger vehicles in its on-call certificated operations. The latter request would enable BAL to operate with the use of vans as well as limousines.

Application No. 57817 was consolidated for hearing with Application No. 56928 of Public Services Planning and Analysis Corp. (PSPA). Both applications were protested by SFO Airporter, Inc. (Airporter). Decision No. 90011 dated February 27, 1979 granted both applications. That decision stated that as a result of stipulations entered into among BAL, PSPA, and Airporter, both BAL and PSPA agreed that they would not oppose Airporter's application to purchase and operate the certificate of public convenience and necessity previously held by Airporter (Application No. 58233); and, in exchange, Airporter undertook not to protest the applications of BAL and PSPA. Decision No. 90011 found that BAL's proposed BART shuttle operation was for all intents and purposes a municipal operation which did not require a certificate from this Commission.

Decision No. 90254 dated April 24, 1979 granted the petition for rehearing of Decision No. 90011 filed by Airporter. The order directed that Application No. 57817 be reheard in its entirety, even though the findings and conclusion in Decision No. 90011 concerning the BART shuttle operation were not challenged by Airporter. ✓

The rehearing ordered in Decision No. 90254 was held before Administrative Law Judge Mallory in San Francisco on July 12, 1979 and October 9, 1979. At the July 12, 1979 hearing the Port of Oakland requested and other parties agreed to deletion of the BART shuttle service operations from the rehearing, with the proviso that the findings and conclusion with respect to that service set forth in Decision No. 90011 would be affirmed. The matter was continued at the request of BAL to the October date.

At the October hearing, evidence was presented by BAL in support of the request to operate 14-passenger vehicles. Evidence in opposition to that request was presented by Airporter.

The evidence of BAL was presented through two witnesses, Mr. James M. Anderson, the owner, and Mr. Donald S. Tahl, a consultant employed by BAL. Mr. Tahl testified substantially as follows: BAL has both a charter-party permit and a passenger stage certificate. At the time the operating authorities were issued, BAL operated vehicles having a seating capacity of seven seats, generally referred to as the limousine type. BAL's business has gradually changed to where it now primarily serves airlines, the Southern Pacific Railway Company (SP), and related transportation companies. BAL shuttles aircraft crews between the transportation company offices and the aircraft, and it shuttles crews between their residences and the aircraft they operate. For SP, BAL shuttles crews between SP's operational offices and various train locations. The aforementioned services are performed under BAL's charter-party permit. Occasional operations are performed by BAL involving the transportation of groups of people between the airports and hotels or stadiums located anywhere in the San Francisco Bay Area. Charges for this service are sometimes assessed on an individual fare basis because the airlines, for whom the service is performed as an accommodation, do not wish to be responsible for the collection of the fares. Assertedly BAL's tariff fares are applied for this service.^{1/}

Mr. Tahl testified that BAL has only infrequent requests to provide service on an individual fare basis, and that requests for such service "do not occur with any regularity whatsoever".

^{1/} BAL's filed tariff provides fares only between Contra Costa County and Alameda County points and the airports. BAL has no authority to provide service on an individual fare basis between the airports and other Bay Area points.

Mr. Tahl testified that initially BAL's business was picking up passengers at their homes and transporting them to the airport on a per seat basis. Mr. Tahl stated that BAL is no longer engaged in that business, nor does it "intend to reengage in that business". He further testified that BAL is concentrating entirely on the shuttling of crews and for the providing of service for the carriers as requested, and it is not its intention to do any transportation other than what it is presently engaged in. BAL no longer operates any 7-passenger vehicles; all of its vehicles are 14-passenger vans. Therefore, it no longer engages in the operations for which it was certificated.

The testimony of Mr. Anderson generally confirmed that given by Mr. Tahl. Mr. Anderson testified that he wished to retain the certificate and to amend it to provide for the use of 14-passenger vehicles in order to provide occasional transportation services performed on an individual fare basis. Mr. Anderson confirmed that the majority of the limited transportation services requested to be performed on an individual fare basis are between points not covered by his certificate.

No supporting testimony from the airline customers of BAL or from public witnesses was offered by BAL.

The testimony of Airporter was directed to the possible effect on Airporter of competition from BAL.

The Commission staff presented no testimony, but supported the application.

Discussion

We are called upon for the first time to evaluate the public convenience and necessity aspects of BAL's request to operate 14-passenger vehicles because no evidence was received on that issue in the initial phase of this proceeding.

The evidence clearly shows two things: (1) BAL cannot operate its present certificated authority as it no longer has

the type of vehicle (9-passenger sedans) that the certificate calls for, and (2) BAL limits its operations almost exclusively to charter-party services and has completely discontinued the type of service originally operated by it under its certificate (service between residences and airports on an individual fare basis). The evidence clearly demonstrates that BAL has no intention of providing the on-call service described in its certificate on a regular basis.

This Commission believes that competition between passenger stage corporations stimulates the competitors to provide better service at lower fares than would be offered under a monopoly service; therefore, it has attempted to foster effective competition. Inasmuch as BAL has withdrawn its on-call airport service on an individual fare basis, it is neither willing nor able to offer an effective competitive service to Airporter's existing service. The crew-positioning service BAL provides for airlines and for SP is an entirely different service which is not competitive with Airporter.

If BAL intended to operate under its present certificate, that certificate should be amended to reflect the capacity of the vehicles operated by BAL; but as BAL offers no regular service under that certificate, amendment of the certificate as requested would be an idle act. No more service would be offered to the public under the certificate if the application is granted than if it is denied. In the circumstances, we cannot make the statutory finding that public convenience and necessity require the proposed operations. Therefore, the application should be denied.

Findings of Fact

1. Decision No. 90011, inter alia, granted the application of BAL to operate 14-passenger vehicles in lieu of 9-passenger vehicles in connection with the certificate granted to BAL by Decision No. 82597 dated March 19, 1974 in Application No. 54348.

Decision No. 82597 authorized BAL to transport passengers and baggage between points in the counties of Alameda and Contra Costa, on the one hand, and the SFO and OAK, on the other hand, over the most appropriate routes and subject to the following provisions:

- (a) No passengers shall be transported except those having point of origin or destination at one of the above specified airports.
- (b) When service is rendered, it shall be on an on-call basis. Tariffs and timetables shall show the conditions under which such on-call service will be operated.
- (c) Service shall be provided with vehicles seating no more than nine passengers, including the driver.
- (d) No service shall be provided to Treasure Island, the Oakland Army Base, the Alameda Coast Guard Station, Buchanan Field, or the Hayward Airport.

2. No evidence on the issue of operation of 14-passenger buses was received in the initial proceeding leading to the issuance of Decision No. 90011.

3. Decision No. 90254 dated April 24, 1979 granted the petition of Airporter for rehearing of Decision No. 90011. The rehearing ordered in Decision No. 90254 was held and the matter resubmitted.

4. BAL no longer performs the transportation of passengers between their residences and SFO/OAK on an individual-fare basis and BAL has no intention of resuming that operation.

5. BAL primarily confines its operations to the performance of charter-party operations involving the transportation of airline crews between their residences and/or company offices and aircraft operated by the airlines, and the transportation of railroad crews for SP.

6. The occasional transportation service performed by BAL on an individual fare basis is to accommodate the airline customers of BAL and is not offered to the public generally. Such service is performed between SFO/OAK and any point in the San Francisco Bay Area, and is not confined to the points covered by BAL's certificate described in Finding 1.

7. BAL no longer operates any 9-passenger vehicles, and all of its operations are conducted with 14-passenger vehicles.

8. BAL has effectively abandoned the service for which it was granted a certificate in Decision No. 82597.

9. Public convenience and necessity do not require that BAL's certificate granted in Decision No. 82597 be amended as requested in Application No. 57817 to provide service thereunder with 14-passenger vehicles in lieu of 9-passenger vehicles, as no regular service is now being rendered or will be rendered by BAL under that certificate.

Conclusions of Law

1. The portion of Application No. 57817 seeking amendment of the certificate granted in Decision No. 82597 to permit operation of 14-passenger vehicles should be denied based on the above findings.


2. The findings and conclusions expressed in Decision No. 90011 with respect to the BART shuttle operation conducted by BAL for Port of Oakland should be reaffirmed, and the request for a certificate for such operations should be denied as unnecessary.


ORDER ON REHEARING

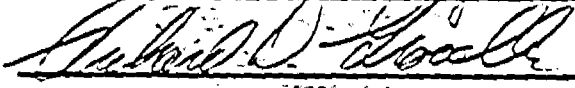
IT IS ORDERED that Application No. 57817 of James M. Anderson, doing business as Bay Area Limousine Service, is denied and the revised certificate granted by Decision No. 90011 is rescinded.

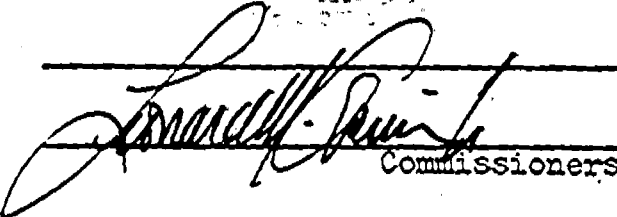
The effective date of this order shall be thirty days after the date hereof.

Dated MAR 18 1980, at San Francisco, California.



President






Commissioners

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