

ORIGINAL

Decision No. 91993 JUL 2 1980

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of AIRBORN OF SONOMA COUNTY INCORPORATED for authority to operate as a passenger stage corporation between points in Sonoma County and San Francisco International Airport and Oakland International Airport.

Application No. 59086  
(Filed August 23, 1979;  
amended November 9, 1979)

In the Matter of the Application of RICHARD J. DAVIS and REBECCA F. DAVIS dba PETALUMA AIRPORTER for a certificate of public convenience and necessity to operate passenger/baggage and express property service, only incidental to passenger/baggage service, between Rohnert Park/Petaluma and the San Francisco International Airport, and between the San Francisco International Airport and Petaluma/Rohnert Park.

Application No. 59271  
(Filed November 14, 1979)

In the Matter of the Application of SANTA ROSA AIRPORTER, INC. to include Rohnert Park as an additional stop enroute to San Francisco International Airport.

Application No. 59279  
(Filed November 16, 1979)

- Paul S. Silver, Attorney at Law, for Airborn of Sonoma County, applicant in A.59086.
- Rebecca F. Davis, dba Petaluma Airporter, for herself, applicant in A.59271.
- Norbert C. Babin, for Santa Rosa Airporter, Inc., applicant in A.59279 and protestant in A.59086 and A.59271.
- William Curtis Howell, for All-Cal Tours, Inc., protestant.
- Masaru Matsumura, for the Commission staff.

O P I N I O N

I. Introduction

By Application No. 59086 filed August 23, 1979, Airborn of Sonoma County (Airborn) seeks authority to operate as a passenger stage corporation for the transportation of passengers and their baggage between a fixed terminal in Santa Rosa and San Francisco International Airport and Oakland International Airport, over the most appropriate routes. By amendment filed November 9, 1979, Airborn added Rohnert Park as a proposed fixed terminal for its passenger stage operations.

By Application No. 59271 filed November 14, 1979, Richard J. Davis and Rebecca F. Davis (Davis), dba Petaluma Airporter, seek authority to operate as a passenger stage corporation for the transportation of passengers and their baggage between fixed terminals in Rohnert Park and Petaluma and San Francisco International Airport.

By Application No. 59279 filed November 16, 1979, Santa Rosa Airporter, Inc. (Airporter) requests authority to serve as a passenger stage corporation for the transportation of passengers and their baggage between Rohnert Park and San Francisco International Airport. The application recites that Airporter already has authority to provide such service between Santa Rosa and Petaluma and San Francisco International Airport.

By letter dated August 23, 1979, Airporter protested Airborn's application with respect to service to and from Santa Rosa and San Francisco. By letter dated August 27, 1979, All-Cal Tours, Inc. (All-Cal) protested Airporter's application with respect to service to and from Oakland. By letter dated November 26, 1979, Airporter protested Davis' application.

Because of the related nature of these applications, staff recommended that the matters be consolidated for hearing and decision. Hearings on these matters were held on February 4, 1980 in Santa Rosa and February 5, 1980 in San Francisco before Administrative Law Judge Patrick J. Power. The matters were submitted upon oral argument.

II. Summary of the Record

Airborn proceeded initially with evidence in support of its application. It offered testimony of several travel agents in the Santa Rosa area regarding their experiences with Airporter and their desire to have another carrier providing competing service. They did not criticize Airporter service except with regard to their difficulties in arranging bookings during certain times of the year when travel is high. It also sponsored the testimony of Paul Skanchy, planning director of Rohnert Park, regarding population growth in that community and arrangements for a terminal in Rohnert Park with convenient parking and freeway access.

Airborn called Jack McIvor, president of Airporter, to testify regarding the nature of its business. He described that company's arrangements with travel agencies regarding the booking of passengers and its plans for a terminal at Rohnert Park. He discussed the effect of gasoline supply and price changes on passenger traffic and his company's expansion to meet the increased demand. He also testified regarding the extent of the advertising undertaken by his firm to promote its service and the pay and training offered to its drivers, as well as arrangements for other transportation in the event of breakdown. Finally, Airborn offered the testimony and supporting exhibits of its own president, Christian Eddleman.

Mr. Eddleman testified at some length regarding the nature of Airborn and its preparation for this undertaking. He described the origin of the company - providing hot-air balloon transportation services and its development as the largest such firm on the west coast. He discussed his extensive experience with advertising and his belief that substantial additional traffic can be developed through effective promotion. He addressed the company's plans for terminals and the arrangements for backup service in the event of an emergency or breakdown. He explained the employee compensation and training plans and the integration of employees of the hot-air balloon and passenger stage business.

Mr. Eddleman sponsored various exhibits in addition to his narrative testimony. He offered exchanges of correspondence between himself and the mayor of Santa Rosa, president of the Santa Rosa Chamber of Commerce, and city manager of Rohnert Park in which those gentlemen express their support for Airborn's application. He introduced a copy of a report entitled "Air Passenger Survey" of the San Francisco Bay area, conducted by the Metropolitan Transportation Commission, in support of his conclusion regarding the potential traffic to be shared between two carriers. He produced a letter from an insurance broker regarding proposed coverage and premiums, and a letter from the Port of Oakland expressing its willingness to consider a license agreement for Airborn's operation if this Commission grants authority.

Mr. Eddleman also offered financial information relating to the profitability of the proposed service and fitness of Airborn. He offered a proposed schedule and fare structure and developed pro forma results of operations depicting start-up costs and ongoing results. He offered a summary of earnings at proposed rates and balance sheets of Airborn in support of its ability to provide the service. The proposed rate from Santa Rosa is \$12.00 for an adult, \$6.00 for a child under 12.

Mr. McIvor testified on behalf of Airporter regarding its operations and growth. He further discussed promotional efforts. He described the company's growth from its origins to the present and its planned future expansion. He stated that the load factor is currently about 85 percent annually and expressed concern that air passenger levels may decline. He offered letters from four travel agents commending Airporter for its service.

Rebecca Davis appeared at the hearing on behalf of the applicants in Application No. 59271 and indicated that she was not prepared to proceed. She asked that the application be taken off calendar.

William Howell appeared on behalf of All-Cal and stated its opposition to Airborn's proposed Oakland service on the ground that All-Cal is presently certificated to provide such service and that passenger levels have declined to the point that there is insufficient business to support even a single carrier.

The Commission staff appeared at the proceeding and participated by way of cross-examination. No direct evidence was presented by staff.

### III. Contentions of the Parties

Airborn contends that the public convenience and necessity support the granting of its application in its entirety. It suggests that the evidence of need is shown by the support of the travel agents, the high load factors of the existing carriers, and the statistical data suggesting that there is potentially substantially greater demand. It argues that it is necessary to have integrated service - to both airports - and that its service will complement Airporter's.

Airporter contends that the Airborn application must be denied by operation of Public Utilities Code Section 1032, which it characterizes as a legislative mandate to this Commission prohibiting competition among passenger stage corporations. It contends that the burden of proof is on Airborn and that it has not met its burden. It cites the travel agents' testimony as not critical of Airporter's service and contends that occasional inability to serve is not inadequate service. It summarizes the evidence as clear that it will serve and has served. It states that it has never received any indication that this Commission or its staff is dissatisfied with its service and argues that it should be given an opportunity to cure any defects before another carrier can be certificated. It warns that a dilution of the market will reduce its load factor and lead to higher fares.

Staff characterizes the evidence as supporting the need for additional Santa Rosa service, but contends that Airborn has not met its burden of proof with respect to Public Utilities Code Section 1032. It recommends that Airborn be denied Santa Rosa authority. Staff argues that both Airborn and Airporter have failed to prove that Rohnert Park service is needed, but recommends that both be granted authority to serve Rohnert Park.

IV. Discussion

There is no issue regarding the fitness and ability of Airborn. The record indicates a carefully formulated, realistic plan with the resources and management ability to bring it to fruition. The issues then are the need for the service and the ability of the existing carrier to serve to the satisfaction of this Commission.

We are convinced that the record supports a determination that Airborn's proposed service is necessary to serve the public. The evidence indicates that there has been rapid growth in Sonoma County and that there has been a corresponding growth in demand for airport transportation, even with little or no promotion of the service. Still, the record indicates that nearly 80 percent of the air traffic originating out of Sonoma County relies on personal autos for airport transportation and that only 3.7 percent utilize "surface transit". With the escalating costs of automobile travel we agree with Airborn that there is potentially substantially additional passenger traffic if the service is promoted.

With respect to Rohnert Park we find the evidence of need similarly conclusive. Rohnert Park is growing rapidly and contributing to the demand for airport transportation. Since existing service is relatively less convenient for people in Rohnert Park, it is reasonable to conclude that even a higher percentage of air passengers traveling to and from Rohnert Park currently use private autos. The added benefit of a stop in Rohnert Park outweighs the slight detriment to Santa Rosa passengers.

We are also satisfied that the proposed integrated service responds to public convenience and necessity. A single carrier that provides service to both Oakland and San Francisco airports from Sonoma County should help to promote additional use of passenger stage service and may not detract from existing carriers.

The issue of the adequacy of service of existing carriers in this proceeding is disposed of by our interpretation of Section 1032 of the Public Utilities Code in Decision No. 91279, dated January 29, 1980 (Application No. 58457, American Bus Lines). In that case we stated as follows:

"It is therefore incumbent upon us in this proceeding to carefully weigh the advantages and disadvantages of competitive and monopolistic service in terms of overall benefit to the general public. In general, antitrust laws and policies are premised on the basis that competitive service generally results in a superior overall level of service to the public. Competition stimulates efforts of competitors to excel, which accrues to the benefit of the general public. In the instant proceeding active competition between the involved parties will have a direct bearing on the quality of overall treatment afforded passengers, rates, scheduling, equipment condition, and operational innovation generally. The overall effect of such competitive practices could very well be the provision of a publicly acceptable alternative to private automobile use which, in these times of energy shortage, will redound to the overall benefit of the general public.

"With competitive considerations forming a cornerstone for a determination of public convenience and necessity, it is axiomatic that the literal interpretation of Section 1032 in Franciscan Lines, Inc. would effectively preclude the establishment of competitive service to the determinant [sic - detriment] of public interest. Consequently, we will give precedence to the basic regulatory concept of public convenience and necessity encompassed in Section 1031 and interpret Section 1032 as being of secondary importance in the matter under consideration.

"In addition, we also note that Section 1032 leaves the Commission the task of determining whether, and under what circumstances; existing passenger stage corporations provide satisfactory service (which would preclude a new entrant into the field).

"In these times of acute and prolonged energy shortage it is essential that Californians be exposed to the greatest variety of innovative surface passenger transportation modes and operations. Passenger stage corporations will stand a better chance of rising to this challenge, and luring the public out of the private automobile, if they have a clear incentive to innovate and provide the best possible service.



". . . Monopoly service deprives the public from being served by carriers with the greatest incentive to innovate and provide the most appealing service - the incentive of competition. Competition generally heightens the desire to perform, and equated to bus service means, as public witnesses testified, potentially better service in areas such as:

- "1. Cleaner, better maintained facilities.
- "2. More courteous and accommodating personnel.
- "3. Improved ambience.

"It is important that carriers operate in an environment that encourages and rewards those with the better ideas on how to attract and serve patrons, and for better execution of such ideas. . . ."

"Finally, we wish to emphasize that we do not consider monopoly passenger stage service adequate service to the public. And we will not apply Section 1032 as a bar to deprive the public of the most innovative attractive, and agreeable bus service that may potentially exist for its benefit. Rather, we will apply Section 1032 in an enlightened manner, consistent with today's realities and requirements, which is what the Legislature intended when it granted to us the task of weighing all factors in determining whether existing passenger stage corporations provide adequate service. . . ."

In this proceeding we see the effects of single carrier monopoly status. Airporter serves the public, but grows at its own pace, apparently to maintain an 85 percent load factor. There has been no effort to promote the service, probably because the high load factors would not allow substantial additional passengers.

It may be that Airporter has grown as fast as it can, that it doesn't have the financial ability to add the capacity to serve the latent demand that we find exists in Sonoma County. If so, this is a particularly appropriate time to certificate an additional carrier. Our other alternative would be to investigate Airporter's fares and consider whether there should be a reduction to reflect the high load factors.

The fare proposed by Airborn is higher than the fare in effect for Airporter. This fact, together with Airporter's reputation and ability to provide reliable service, should operate to Airporter's competitive advantage. Airborn's ability to promote its service and attract new passengers will be crucial to its success.

With respect to Airborn's application to provide service to and from Oakland, the same policy considerations generally prevail, though the situation is exactly opposite - the existing carrier has very low load factors. We see the certification of an additional carrier as a convenience to the public, if not All-Cal, and the integrated operation as potentially successful. If Airporter succeeds, it will surely be by way of its own efforts, and not by diversion from All-Cal.

Therefore we conclude that both Application No. 59086 and Application No. 59279 should be granted.

Findings of Fact

1. Airborn is a California corporation presently engaged in the hot-air balloon business.
2. Airborn possesses the management ability and financial resources to perform the proposed service.
3. Airporter has for several years provided service over a portion of the routes requested by Airborn.
4. All-Cal has provided service over a portion of the routes requested by Airborn.
5. Airporter and All-Cal have provided satisfactory service, expressed in terms of minimum service criteria.
6. Airport transportation services from and to Sonoma County have not been significantly promoted.
7. The population of Sonoma County is growing rapidly and the relative reliance on passenger stage airport transportation is slight.

8. Increased utilization of public transportation is in the public interest.

9. There may exist substantial additional demand for service from and to Sonoma County.

10. Airporter's load factors indicate that its growth has been paced to suit its own interests.

11. An integrated carrier offers a greater opportunity to succeed as a competitor to existing carriers.

12. Competition will have a beneficial effect for the public interest, will promote good service, and will encourage innovative rate schedules and practices.

13. There is public need for Airborn's service from and to Santa Rosa.

14. There is public need for Airborn's and Airporter's services from and to Rohmert Park.

15. Public convenience and necessity require that the services proposed by Airborn and Airporter be certificated.

16. The terms and conditions of the proposed services are reasonable.

17. Davis' application has been taken off calendar.

18. It can be seen with certainty that there is no possibility that the activities in question will have a significant effect on the environment.

19. The following order should be effective the date of signature because there is a demonstrated immediate need for the proposed service.

#### Conclusions of Law

1. Anticompetitive considerations are relevant to the issues of public convenience and necessity.

2. Antitrust concepts are intimately involved in a determination of what action is in the public interest and it is incumbent upon this Commission to give consideration to such concepts in arriving at a decision in this matter.

3. The antitrust requirements for the determination of public interest and public convenience and necessity, under Section 1031 of the Public Utilities Code, are basic, primary requirements and outweigh any anticompetitive implications included in Section 1032.

4. Existing passenger stage service provided by Airporter is conducted as a monopoly, without the benefit of competition to insure the rendering of the best possible service to the public, and in view of the instant application is not service performed to the satisfaction of the Commission.

5. The Commission concludes that the applications should be granted as set forth in the ensuing order.

Applicants are 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. A certificate of public convenience and necessity is granted to Airborn of Sonoma County 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 B of this decision.

2. The existing certificate of public convenience and necessity granted to Santa Rosa Airporter, Inc. is hereby amended, as set forth in Appendix A. of this decision.

3. In providing service pursuant to the authority granted by this order, applicants shall comply with the following service regulations. Failure to do so may result in a cancellation of the authority.

- (a) Within thirty days after the effective date of this order, applicants shall file written acceptances of the certificates granted. Applicants are placed on notice that if they accept the certificates they will be required, among other things, to comply with the safety rules administered by the California Highway Patrol, the rules and other regulations of the Commission's General Order No. 98-Series, and the insurance requirements of the Commission's General Order No. 101-Series.
- (b) Within one hundred twenty days after the effective date of this order, applicants shall establish the authorized service and file tariffs and timetables, in triplicate, in the Commission's office.
- (c) 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 establishment of the authorized service.
- (d) The tariff and timetable filings made pursuant to this order shall comply 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.

- (e) Applicants shall maintain their 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 their 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 JUL 2 1980, at San Francisco, California.

John E. Bryan  
President  
William L. Thompson  
Richard D. Swalle  
Clare J. DeJure  
Samuel M. Lewis  
Commissioners

Appendix A  
(Dec. 89423)

SANTA ROSA AIRPORTER, INC.

First Revised Page 1  
Cancels  
Original Page 1

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

The certificate hereinafter noted supersedes all operative authority heretofore granted to Jack McIvor, doing business as Santa Rosa Airporter or his predecessors.

Santa Rosa Airporter, Inc., by the Certificate of Public Convenience and Necessity granted by the decision noted in the margin, as a passenger stage corporation is authorized to transport passengers and baggage between Santa Rosa, \*Rohnert Park and Petaluma on the one hand, and San Francisco International Airport, on the other hand, over and along the route hereinafter described, subject, however, to the authority of this Commission to change or modify said route at any time and subject to the following provisions:

- (a) When route descriptions are given in one direction, they apply to operation in either direction unless otherwise indicated.
- (b) All service herein authorized shall be limited to transportation of persons with origin or destination at Santa Rosa, \*Rohnert Park or Petaluma on the one hand, and San Francisco International Airport on the other hand.
- (c) No service may be rendered to intermediate points.

Issued by California Public Utilities Commission.

\*Amended by Decision No. 91993, Application No. 59279.

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Appendix A  
(Dec. 89423)

SANTA ROSA AIRPORTER, INC.

First Revised Page 2  
Cancels  
Original Page 2

SECTION 2. ROUTE DESCRIPTION.

Route 1. - Santa Rosa - Rohnert Park - Petaluma - San Francisco International Airport.

Beginning at the Coddington Shopping Center in Santa Rosa, California, by the most judicious route to U.S. 101, thence by way of U.S. 101, to Rohnert Park Expressway, Rohnert Park, return and continue on U.S. 101, to Washington Street cutoff to the Petaluma Inn, Petaluma, return and continue on U.S. 101, Park Presidio Boulevard (San Francisco), 19th Avenue, Junipero Serra Boulevard, Junipero Serra Freeway (I-280), I-280, thence via the most judicious route to the passenger terminal at San Francisco International Airport.

Issued by California Public Utilities Commission.

\*Amended by Decision No. 91993, Application No. 59279.



CERTIFICATE  
OF  
PUBLIC CONVENIENCE AND NECESSITY  
AS A PASSENGER STAGE CORPORATION  
PSC-1120

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. 91993,  
dated JUL 2 1980 of the Public Utilities Commission  
of the State of California, in Application No. 59086.

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

Airborn of Sonoma County, a California corporation, by the Certificate of Public Convenience and Necessity to operate as a passenger stage corporation granted in the decision noted in the margin, is authorized to transport passengers and their baggage between Flamingo Hotel in Santa Rosa and Rohnert Park, on the one hand, and San Francisco and Oakland International Airports, on the other hand, over and along the routes hereinafter described, subject however, to the authority of this Commission to change or modify said route at any time and subject to the following provisions:

- a. When route descriptions are given in one direction, they apply to operation in either direction unless otherwise indicated.
- b. No passengers shall be transported except those having origin or destination at either San Francisco International Airport or Oakland International Airport.
- c. No service shall be provided from San Francisco International Airport or Oakland International Airport unless provided pursuant to an advance reservation. ✓
- d. Service may also be provided on an "on-call" basis. The term "on-call" as used herein refers to service which is authorized to be rendered dependent on the demands of passengers. The tariffs and timetables shall show the conditions under which each authorized "on-call" service will be rendered. ✓

Issued by California Public Utilities Commission.

Decision No. 91993, Application No. 59086.

SECTION II. ROUTE DESCRIPTIONS.

Route No.

1. Santa Rosa - Rohnert Park - San Francisco International Airport

Commencing at the Flamingo Hotel in Santa Rosa, thence over the most convenient and appropriate streets and roads to Highway 101, Rohnert Park Expressway, Rohnert Park, return and continue on Highway 101, and over and along the streets in San Francisco and over the most appropriate highways, streets, and roads to the passenger terminal at San Francisco International Airport.

2. Santa Rosa - Rohnert Park - Oakland International Airport

Commencing at the Flamingo Hotel in Santa Rosa, thence over the most convenient and appropriate streets and roads to Highway 101, Rohnert Park Expressway, Rohnert Park, return and continue on Highways 101 and 17, Hegenberger Road, Airport Drive, in Oakland and to the passenger terminal at Oakland International Airport.

Issued by California Public Utilities Commission.

Decision No. 91993, Application No. 59086.