

Decision No. 52081

July 29, 1980

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of application of )  
 Cosmo Sales and Leasing d.b.a. )  
 Checker Airport Transport for )  
 certificate of public convenience )  
 and necessity to operate a )  
 passenger and baggage shuttle )  
 service from the Los Angeles )  
 International Airport to: )  
 certain hotels in Culver City, )  
 the Marina, Santa Monica, and )  
 Malibu and return. )

Application No. 59284  
(filed November 19, 1979)

Jack Roach, for applicant.  
James H. Lyons, Attorney at Law, for  
 Airport Service, Incorporated; and  
William H. Martin, for Santa Monica  
 Carousel Corp.; protestants.  
James P. Jones, for United Transporta-  
 tion Union; and K. D. Walpert, for  
 City of Los Angeles, Department of  
 Transportation; interested parties.  
William O. Austin, for the Commission  
 staff.

O P I N I O N

Applicant, Cosmo Sales and Leasing Co., Inc. (Cosmo),  
 d.b.a. Checker Airport Transport, seeks a certificate of public  
 convenience and necessity, pursuant to Section 1031 et seq., of  
 the California Public Utilities Code, to operate two passenger  
 and baggage shuttle service routes: one route between Los  
 Angeles International Airport (LAX) and eight hotels in the  
 downtown Los Angeles area and another route  
 between LAX and five hotels in the Fox Hills, Santa Monica,  
 Marina del Rey, and Malibu areas.

Applicant proposes to charge a one-way fare of \$3.50 between LAX and the eight downtown Los Angeles hotels. One-way fares between LAX and the five hotels on its other proposed route will be \$3.50, \$4.50, or \$5.50, depending on the specific hotel where drop-off or pickup is desired. Total one-way distance on the LA-LAX run is 18 miles, with buses scheduled to operate from 5:15 a.m. until 11:54 p.m. at approximately 50-minute intervals. The LAX-Malibu route is approximately 22 miles one way, with buses scheduled to operate from 5:45 a.m. until 9:00 p.m. at approximately 1 hour and 20-minute intervals. The application was protested by Airport Service, Inc., which has authority from this Commission to render service between LAX and four of the eight downtown hotels included in applicant's proposed route, and by Santa Monica Carousel Corp., which has authority to operate between LAX and various Santa Monica hotels, including at least one of the hotel stops in Cosmo's proposed service.

After due notice, a public hearing was held before Administrative Law Judge William A. Turkish in Los Angeles on March 10, 1980. Testifying in support of the application was the manager of Checker Cab Co., a subsidiary of Cosmo, which operates in Santa Monica, Culver City, Marina del Rey, and Beverly Hills. Although Santa Monica Flight Line (Flight Line), a division of Santa Monica Carousel Corp., filed a protest to the application, it presented no witnesses inasmuch as it had an application pending before the Commission to transfer its authority to Onyx, Inc. and William H. Martin, a partnership. A statement concerning Flight Line's protest was made on the record by an officer of Onyx, Inc. ✓

At the outset of the hearing, Cosmo made a motion to amend its application so as to delete paragraph 2(a) and Exhibits B and C-(a) therein. This would have the effect of withdrawing the LAX-downtown route from the application. The motion was granted, at which time Airport Service, Inc. expressed no further interest in the application, as amended, and withdrew from the proceeding. ✓

Mr. Jack Roach, manager of Checker Cab Co., testified that he has 20 years' experience in the transportation business and 12 years' experience as a manager. He stated that Flight Line, the remaining protestant, has service to Santa Monica only, and that there was no transportation company providing service from the Malibu area to LAX. He offered the opinion that competition is the greatest thing in the world and that he hoped the requested certificate would be granted. It was also his opinion that fewer people would be driving their cars to LAX if a certificate was granted. He further testified that he was not aware of any Santa Monica to LAX transportation service at the time Cosmo's application was filed but that the application would still have been filed even if it had knowledge of Flight Line's service because Flight Line charged \$6 one way between the Miramar Hotel in Santa Monica and LAX. He believed Cosmo would get that business because of its lower fare schedule. When questioned concerning the basis for its fare schedule, he stated that he was not in on the analysis of the fare schedule but that he was of the opinion that if more than 10 people utilized each 12- to 15-passenger bus at the \$4.50 proposed fare schedule between the Santa Monica hotels and LAX, it would pay. He testified that he believed the service proposed by Cosmo was discussed with hotel owners in Santa Monica, but he admitted he never checked with the Miramar Hotel and does not know if the president of

Cosmo did. He stated that the financial statement submitted with the application reflects only the taxicab service of the company. The financial statement of Cosmo shows assets of \$289,276, liabilities of \$76,089, and a net worth of \$213,187. He also stated that Checker Airport Transport Service possesses five [charter-party] permits issued by the Commission with restrictions against any pickups at LAX. The witness stated that there are five major hotels in Santa Monica with a total of 900-1,000 rooms and that the Miramar Hotel is the largest with approximately 240-250 rooms.

Mr. Stan Pearlman, an officer of Onyx, Inc., which is an equal partner, along with William H. Martin in Flight Line, made a statement in lieu of formal testimony. He stated that Flight Line had a \$60,000 investment in its operations and that after two months of operation it has not reached the break-even point yet and that there is no need in Santa Monica for additional transport services. He stated that Flight Line had no objection to Cosmo's providing its services between Malibu and LAX. He also stated that several hotels in Marina del Rey run their own shuttle buses to and from LAX for their guests and he was of the opinion that there was not sufficient room for even two additional trips, let alone 35 more from the Miramar Hotel. He stated that Flight Line has the cooperation of the hotels' bell captains and managers and that it advertises in every hotel room. In its letter of protest, Flight Line asserts that the Marina del Rey and Marina International hotels and the Pacifica Hotel, all of which are stops on Cosmo's proposed route, have their own vehicles to shuttle guests between their hotels and LAX.

#### Discussion

In granting a certificate of public convenience, the Commission considers several factors. The most important is evidence on whether public convenience and necessity exist for the

service. We have long held that mere desire of an operator to enter the passenger stage business is by itself insufficient to warrant granting a certificate. Applicant is experienced in the taxi business and possesses five charter-party permits issued by this Commission. There is no doubt that applicant possesses sufficient experience as well as the financial ability to carry out its proposed service.

However, applicant had the burden to present some evidence in the hearing room on the need for its proposed service other than the mere conjecture that it thinks people would use the proposed service. Applicant could not even indicate who, if anyone, in its organization polled Santa Monica hotel owners. It is as if applicant disregarded preparation before the hearing to demonstrate the prima facie elements of public convenience and necessity. Given these circumstances we cannot grant this application. In Decision No. 90990 dated November 6, 1979, we granted a certificate of public convenience and necessity to Flight Line, the protestant, to operate a passenger and baggage shuttle service between various hotels in the city of Santa Monica and LAX. Cosmo's proposed service would be in direct competition with Flight Line to the city of Santa Monica. According to the facts, Flight Line has been operating in Santa Monica for approximately two months under its certificate, with a sizable investment in the operation, and has yet to reach the break-even point, even at a fare structure which is slightly higher than that proposed by Cosmo. In Decision No. 91279 dated January 29, 1980 in Application No. 58457, we stated that we do not consider monopoly passenger stage service adequate service to the public and that we would not apply Public Utilities Code Section 1032 to deprive the public of the most innovative, attractive, and agreeable bus service that may potentially exist for its benefit. We also stated that we would apply Public Utilities Code Section 1032 in an enlightened manner, considering present day realities. This is consistent with the legislative intent in granting us the task of weighing all factors when considering the adequacy of service of existing passenger stage corporations. We also pointed out that there may be occasions when the provisions of Section 1032 would be determinative in denying an application for operating authority; for example,

when a traffic market is so obviously saturated with carriers that more competition could clearly not lead to better service, and would undermine the viability of existing carriers as well as the carrier desiring entry into the market. From the evidence, we are not able to make a finding that the proposed service is needed, would be compensatory, or would sustain itself with 35 scheduled deliveries per day. Particularly when it is clear that protestant, which has a monopoly on the passenger and baggage shuttle service between the various major hotels in Santa Monica and LAX, other than taxicabs, and which is providing 16 scheduled deliveries per day, is not yet breaking even on its service. Further applicant has failed to demonstrate any public demand for its proposed service, and absent such showing, given that existing service is not sustaining itself, we find that applicant has not demonstrated that public convenience and necessity exist for the operation it proposes.

Since we do not find the requisite elements of public convenience and necessity, we need not address Section 1032 of the Public Utilities Code.

If applicant can show at a later time that conditions have changed and can demonstrate a reasonable expectation of sufficient passengers to justify and support its proposed service, we will consider such conditions.

Findings

1. Applicant has demonstrated that it possesses the financial ability and experience necessary to conduct its proposed service.
2. Applicant has not demonstrated by evidence that public convenience and necessity exist for the service it proposes.

Conclusion

The application of Cosmo Sales and Leasing Co., Inc., d.b.a. Checker Airport Transport, should be denied.

O R D E R

IT IS ORDERED that applicant's request for a certificate of public convenience and necessity as a passenger stage corporation between Los Angeles International Airport and certain hotels in Culver City, the Marina, Santa Monica, and Malibu is denied.

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

Dated JUL 29 1980, at San Francisco, California.

John E. Burns  
President  
William L. Stinson  
Richard D. Howell  
Donald W. Smith  
Clare T. DeWitt  
Commissioners