

92290

OCT 8 1980

ORIGINAL

Decision No. _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of William Carroll for certificate)
of public convenience and necessity)
to operate scheduled, and on-call,)
passenger and express service)
between San Marcos and San Diego)
International Airport; and charter)
service from San Marcos, California)
as required.)

Application No. 59245
(Filed October 29, 1979)

O P I N I O N

By this application William Carroll, an individual, requests a certificate of public convenience and necessity to establish and operate an automotive service for the transportation of passengers with their baggage and express, between San Marcos and the San Diego International Airport pursuant to Section 1031 of the Public Utilities Code (Code).

Applicant proposes to operate over the following routes:

"From San Marcos to Escondido over Highway 76, to Penasquitos via Interstate 15, to Poway via State 5, to I-15 via S-4, to Interstate 8 via I-15, to San Diego International Airport via I-5 and local streets, and return over the same route.

"And/or:

"From San Marcos to Vista by Highway 76 to Carlsbad/Oceanside via Highway 76, to Palomar Airport via El Camino Real, to I-5 via Palomar Airport Road, to San Diego International Airport via I-5 and local streets, and return over the same route.

"And/or:

"From San Marcos to San Diego International Airport via Escondido and I-15 and return via I-5 and Carlsbad/Oceanside.

"And/or:

"From San Marcos to San Diego International Airport via Oceanside/Carlsbad and I-5 and return via Escondido to I-15. With on-call service to Fallbrook through Escondido via Highway 76, thence to Fallbrook via I-15 and State 15, thence to Vista via State 13, or in a reverse direction as traffic requires.

"Plus charter service from San Marcos to specified points within California and return to San Marcos."

The proposed rates for the service are as follows:

SCHEDULED SERVICE RATES

A.59245 ALJ/KS

Between And	San Marcos	Escondido	Rancho Bernardo	Penasquitos	Poway	Vista	Carlsbad/ Oceanside	Palomar Airport	La Costa	Encinitas*	Del Mar*
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San Diego Intl. Airport Via I-15 & I-8	\$ 8	\$ 8	\$ 7	\$ 7	\$ 6	\$	\$	\$	\$	\$	\$
San Diego Intl. Airport Via I-5	\$ 8					\$ 8	\$ 7	\$ 7	\$ 7	\$ 6	\$ 6
Fallbrook**	\$ 8	\$ 8				\$ 8					

*Flag Stop.

**Minimum charge per run equal to charge for 4 passengers.

On-call Service Rates

Between 7:00 a.m. and 10:00 p.m.

Scheduled service rates apply for six or more passengers. Minimum charge equal to charge for six passengers.

Between 10:00 p.m. and 7:00 a.m.

Scheduled service rates apply for eight or more passengers. Minimum charge equal to charge for eight passengers.

Charter Services

By negotiation.

Express

First pound - 91¢

Each additional pound - 7¢

Limited to parcels not exceeding 108 inches combined length and girth and 50 pounds.

It is proposed to operate two round trips per day on a scheduled basis, using 12-passenger van-type vehicles and station wagons in the service. Vehicles are presently on order but not yet purchased. Applicant does have one vehicle on hand at the present time.

Applicant's balance sheet as of July 30, 1979 shows a net worth of \$526,878. In addition to a \$15,000 cash balance the balance sheet shows that accounts receivable amount to \$27,810 and that the accounts payable average \$10,000 per month.

The following conditions are relied upon as justification for granting the certificate of public convenience and necessity:

Northern San Diego County, one of the most rapidly growing affluent areas of California, has no low-cost scheduled passenger service directly to San Diego International Airport. Passenger transport to the airport, at the present time, is limited to private automobile, public buses unloading in center city San Diego from which a taxi must be used to reach the airport, limousine service, and taxicabs dispatched from their offices in numerous communities of North County.

It is known that one local travel agency accounts for over 4,000 passengers each month departing through San Diego Airport with a like number returning and in need of transportation to their homes in North County.

San Marcos is central to the entire northern San Diego County which provides two important advantages: (1) a short mileage cost to the first pickup which results in conservation of dead-heading fuel consumption; (2) a rapid response time in meeting on-call requests.

Within less than 20 minutes of San Marcos there is a population of over 350,000 persons; nearby LaCosta, one of the state's wealthiest communities, is only six miles distant; Rancho Santa Fe is nine miles; Rancho Bernardo is en route to Poway. All are wealthy retirement communities demonstrating a high level of air-travel mobility. By providing scheduled service for this 350,000 population low-cost

airport transportation can be provided. A reduction in wasteful fuel consumption of two-passenger automobile travel and a reduction in the cost and space impact of airport parking can be accomplished.

It is alleged that numerous travel agencies which seek reliable and low-cost scheduled transport for their clients have promised their enthusiastic support in cooperation to the proposed venture. Two business firms have indicated they would utilize the proposed service to transport their employees to and from the airport at least once a month.

By letter dated August 26, 1980 applicant provided documentary evidence of the issuance of Permit No. 1051 to operate at the San Diego International Airport issued by the San Diego Unified Port District, Ground Transportation Services, for a fee of \$100.

Fleetwood Limousine Service of Escondido (Fleetwood) protested the application by letter dated January 22, 1980. Fleetwood alleges that it provides regular passenger stage service between San Marcos and 17 other cities and San Diego International Airport under authority of Decisions Nos. 86120, 88355, and 89741; and that to authorize another service to operate the same routes would dilute the revenue to such a degree that Fleetwood would suffer irreparable harm.

A prehearing conference was held in San Diego on April 18, 1980. Fleetwood would not cooperate in any respect to simplify or reduce the issues or to stipulate as to any facts nor would it accommodate applicant's witnesses by joining in a request that the hearing be held in San Diego in order to reduce travel time and expense to Los Angeles for applicant's witnesses.

Hearing procedures were established at the prehearing conference by the Administrative Law Judge (ALJ) and dates for the exchange of prepared testimony were set and agreed upon by all parties, as well as discovery procedures. It was agreed that applicant would mail its prepared testimony and exhibits to Fleetwood by June 5; that on July 10

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Fleetwood would mail its prepared testimony and exhibits to applicant and hearing dates were set for July 23 and 24 in Los Angeles. All discovery was to be completed prior to June 5.

Applicant moved for the dismissal of Fleetwood's protest on the grounds that it was frivolous and constituted harassment. The motion was taken under submission.

By letters dated May 10 and May 28 applicant advised the ALJ that his requests for discovery had not been honored by protestant. Applicant also requested that he be granted an extension of time to June 15 to provide his written testimony to the protestant and that no delay be permitted in the hearing scheduled in July. By letter dated May 27, the protestant requested a continuation of the hearing date for at least two weeks due to the unavailability of his attorney.

By letter dated June 10 addressed to both the applicant and the protestant the ALJ advised the parties with respect to the discovery requests and directed protestant to comply therewith. The request for continuance was granted and the protestant was advised that if compliance with the ALJ's orders was not had within the time set, the matter would be submitted for an ex parte decision granting the application as sought in applicant's motion. Said letter was sent by certified mail, return receipt requested, to the protestant. On July 11, 1980, said letter was returned unclaimed, from Escondido, California.

The ALJ phoned Daniel F. Stuart, the owner of Fleetwood, to determine why the certified letter was not claimed after two notices had been given by the Postal Service. Upon reaching Stuart, the ALJ advised him the letter had been returned unclaimed, read him the contents of the letter, and inquired if the letter had been misdirected or if there was a reason why it was not claimed.

Stuart replied that he does not have to claim a letter if he does not wish to.

In view of the agreed upon procedure for discovery at the prehearing conference, that any dispute between the parties with

respect to discovery would be resolved by the ALJ upon written request from the complaining party and an opportunity for the nonresponsive party to reply, it is apparent that Stuart deliberately chose not to claim a letter from the Public Utilities Commission.

Failure to comply with discovery orders warrants the sanction of dismissal. (G-K Properties v Redevelopment Agency of City of San Jose (1976) 409 F Supp. 955.)

Findings of Fact

1. Protestant has been uncooperative and dilatory in this proceeding.

2. Protestant has failed to comply with orders of the ALJ.

3. The certificate granted to Fleetwood contains a notice that the monopoly feature of the certificate 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.

4. The Commission's policy is to certificate qualified passenger stage corporations in competition with existing carriers. (American Bus Lines, Decision No. 91279 in Application No. 58457.)

5. Applicant has the ability, experience, equipment, and financial resources to perform the proposed service.

6. Applicant has been authorized by the San Diego Unified Port District to conduct his bus operations at the San Diego International Airport.

7. Public convenience and necessity require that the service proposed by applicant be established.

8. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect upon the environment.

Conclusions of Law

1. The sanction of dismissal of its protest should be imposed against the protestant for an uncooperative attitude and failure to comply with orders of the ALJ.

2. A certificate of public convenience and necessity should be issued to William Carroll.

Applicant 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 in 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. The protest of Daniel F. Stuart, dba Fleetwood Limousine Service, is dismissed with prejudice.

2. A certificate of public convenience and necessity is granted to William Carroll, an individual, authorizing him 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 A of this decision.


3. In providing service pursuant to the authority granted by this order, applicant 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, applicant shall file a written acceptance of the certificate granted. Applicant is placed on notice that if he accepts the certificate he 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, applicant 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) Applicant shall maintain his 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 his operations in such form, content and number of copies as the Commission, from time to time, shall prescribe.

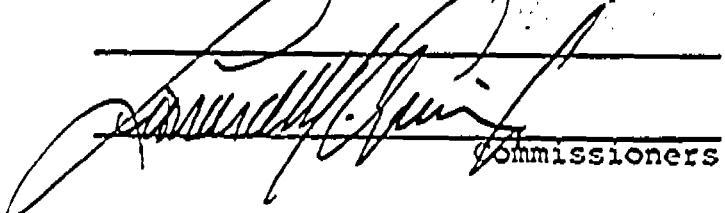
The effective date of this order shall be thirty days after the date hereof.

Dated OCT 8 1980, at San Francisco, California.



President






Commissioners

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

T/AM

Appendix A

WILLIAM CARROLL

Original Title Page

CERTIFICATE
OF
PUBLIC CONVENIENCE AND NECESSITY
PSC - 1135

Showing passenger stage operative rights, restrictions, limitations
exceptions and privileges applicable thereto.

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.

Issued under authority of Decision No. **92290**
dated OCT 8 1980, of the Public Utilities Commission
of the State of California in Application No. 59245.

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

William Carroll, an individual, by the certificate of public convenience and necessity granted by the decision noted in the margin, is authorized to operate as a passenger stage corporation to transport passengers and their baggage and express between San Diego International Airport-Lindbergh Field, in San Diego, on the one hand, and the Palomar Airport located in San Diego County, that certain area commonly known as Rancho Bernardo Territory located within the city limits of San Diego and the communities of Escondido, Vista, Fallbrook, San Marcos, Penasquitos, Poway, Carlsbad, and Encinitas, on the other hand, over and along the routes hereinafter described, subject, however, to the authority of this Commission to change or modify said routes at any time and subject to the following provisions:

- (a) Where route descriptions are given in one direction they apply to operation in either direction unless otherwise directed.
- (b) For operating convenience only, motor vehicles may be turned at termini and intermediate points, in either direction, at intersections of streets, or by operating around a block contiguous to such intersections, in accordance with local traffic regulations.
- (c) All services herein authorized shall be limited to passengers destined to or originating at San Diego International Airport-Lindbergh Field.
- (d) Transportation services on Route 3 may be performed 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 applicant's tariffs and timetables shall show the conditions under which such authorized "on call" service will be rendered.

SECTION 1. GENERAL AUTHORIZATIONS, RESTRICTIONS, LIMITATIONS
AND SPECIFICATIONS. (Continued)

- (e) Passengers shall be picked up and discharged only at points and places to be named in applicant's tariffs and only at those points and places situated within the territories and cities hereinafter named.
- (f) The transportation of baggage and express shall be incidental to the transportation of passengers, and shall be limited to a weight of one hundred (100) pounds per shipment.

SECTION 2. ROUTE DESCRIPTIONS

Route 1 San Marcos - San Diego International Airport -
Lindbergh Field

Beginning at 1523 Grand Avenue in the City of San Marcos, east on Grand Avenue to State Highway 78. Continue in an easterly direction to Center City Parkway in the City of Escondido, southeast on Center City Parkway to 9th Street, thence, east on 9th Street to the southwest corner of the intersection of 9th Street and Orange Street where passengers shall be picked up or discharged. Return southwest on 9th Street to Center City Parkway, south on Center City Parkway to Interstate Highway 15 (I-15), continue in a southerly direction on I-15 to Pomerado Road, thence, west on Pomerado Road to the southwest corner of the intersection of Pomerado Road and Rancho Bernardo Road where passengers shall be picked up or discharged. Continue west on Rancho Bernardo Road to Interstate Highway 15 (I-15), south on I-15 to Carmel Mountain Road to the Rancho Penasquitos Community Center located at 10756 (B) Carmel Mountain Road, where passengers shall be picked up or discharged. Return northeast on Carmel Mountain Road to I-15, south on I-15 to Poway Road, east on Poway Road, to the southwest corner of the intersection of Poway Road, and Pomerado Road where passengers shall be picked up or discharged. Return west on Poway Road to I-15, south on I-15 to Interstate Highway 8 (I-8), west on I-8 to Interstate Highway 5 (I-5), south on I-5 to the Kettner Boulevard off ramp in the City of San Diego and continue in a southerly direction to Laurel Street, west on Laurel Street to Harbor Drive. Continue in a westerly direction on Harbor Drive to the San Diego International Airport-Lindbergh Field where passengers shall be picked up or discharged. Return to the exact point of beginning via the reverse route.

SECTION 2 ROUTE DESCRIPTIONS (Continued)

Route 2 San Marcos - San Diego International Airport -
Lindbergh Field (Alternate to Route 1)

Beginning at 1523 Grand Avenue in the City of San Marcos, west on Grand Avenue to Rancho Santa Fe Road, north on Rancho Santa Fe Road to State Highway 78, thence, northwest on State Highway 78 to Sunset Drive located in the City of Vista. Continue north on Sunset Drive to Santa Fe Road, northwest on Santa Fe Road to the northeast corner of the intersection of Santa Fe Road and Broadway Avenue where passengers shall be picked up or discharged. Continue northeast on Broadway Avenue to State Highway 78, due west on State Highway 78 to the El Camino Real Highway, thence south on the El Camino Real Highway to the southwest corner of the intersection of the El Camino Real Highway and Haymar Drive where passengers shall be picked up or discharged. Continue in a southerly direction on El Camino Real Highway to Palomar Airport Road, west on Palomar Airport Road to the Palomar Airport located on Palomar Airport Road in the County of San Diego where passengers shall be picked up or discharged. Return east on Palomar Airport Road to the El Camino Real Highway, south on the El Camino Real Highway to the La Costa Hotel and Spa located at the intersection of the El Camino Real Highway and Costa Del Mar Road in the City of Carlsbad, where passengers shall be picked up or discharged. Continue south on the El Camino Real Highway to the intersection of the El Camino Real Highway and the northeast corner of Encinitas Boulevard where passengers shall be picked up or discharged. Continue in a southerly direction on the El Camino Real Highway to Manchester Avenue, southwest on Manchester Avenue to Interstate Highway 5 (I-5), south on I-5 to Lomas Santa Fe Drive, thence, east on Loma Santa Fe Drive to the southeast corner of the inter-

SECTION 2 ROUTE DESCRIPTIONS (Continued)

Route 2 San Marcos - San Diego International Airport -
Lindbergh Field (Alternate to Route 1) (Continued).

section of Lomas Santa Fe Drive and Marine View Avenue where passengers are to be picked up or discharged. Return west on Lomas Santa Fe Drive to I-5, south on I-5 to Del Mar Heights Road, west on Del Mar Heights Road to the northwest corner of the intersection of Del Mar Heights Road and Portofino Drive where passenger shall be picked up or discharged. Return east on Del Mar Heights Road to I-5, south on I-5 to the Kettner Boulevard off ramp in the City of San Diego and continue in a southerly direction to Laurel Street, west on Laurel Street to Harbor Drive. Continue in a westerly direction on Harbor Drive to the San Diego International Airport - Lindbergh Field where passengers shall be picked up or discharged. Return to the exact point of beginning via the reverse route.

SECTION 2. ROUTE DESCRIPTIONS (Continued)

Route 3 San Marcos - Vista - Fallbrook

Beginning at 1523 Grand Avenue in the City of San Marcos, west on Grand Avenue to Rancho Santa Fe Road, north on Rancho Santa Fe Road to State Highway 78, thence, west on State Highway 78 to Sunset Drive located in the City of Vista, north on Sunset Drive to Santa Fe Avenue, northwest on Santa Fe Avenue to the northeast corner of the intersection of Santa Fe Avenue and Broadway Avenue where passengers shall be picked up or discharged. Continue in a northwesterly direction on Santa Fe Avenue to Vista Way, due north on Vista Way to Mission Road, thence, continue in a northerly direction on Mission Road to the southeast corner of the intersection of Mission Road and Pepper Tree Lane located in the City of Fallbrook where passengers shall be picked up or discharged. Return to the exact point of beginning via the reverse route.

(END OF APPENDIX A)