

Decision 93207 JUN 16 1981

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of:

AIRPORT CONNECTION CORPORATION, a California corporation, for authority to purchase all the issued and outstanding stock of AIRPORT LIMOUSINE SERVICE OF SUNNYVALE, INC., a California corporation, for authority to such corporation through such purchase, all as may be required by Section 816, et seq., Section 851, et seq. and Section 3551 of the California Public Utilities Code, and for an expedited order.

Application 60383  
(Filed March 23, 1981)

O P I N I O N

Airport Connection Corporation (ACC) and Jake Sellers (Sellers), sole owner of all the issued and outstanding common stock of Airport Limousine Service of Sunnyvale, Inc. (ALSS), request authority under Sections 816 through 818, 823(b), 851 through 854, and 3551 of the Public Utilities Code for the following:

ACC

1. To purchase all of the issued and outstanding common stock of ALSS personally held by Sellers;
2. To acquire control of ALSS; and
3. To encumber the common stock of ALSS to guarantee the repayment of funds borrowed by ALSS from Sellers and/or from the escrow account.

Sellers

4. To transfer control of ALSS to ACC through the sale of ALSS' common stock.

Notice of the filing of the application appeared on the Commission's Daily Calendar of March 26, 1981. Two protests have been received by the Commission, a formal protest from Fun Connexion, Inc. (Fun Connexion) and an informal protest from Lorrie's Travel & Tours, Inc. (Lorrie's). These protests have been rejected for the reasons to be discussed.

ALSS, a California corporation, operates as a certificated passenger stage corporation (PCS-899) between San Francisco International Airport, Oakland International Airport, and San Jose Municipal Airport, on the one hand and various communities in Santa Clara, San Mateo, Alameda, and Contra Costa Counties, on the other hand. In addition, it holds authority and operates under a permit as a charter-party carrier of passengers (TCP-321P).

ACC, a newly established California corporation, holds no operating authority under the jurisdiction of this Commission; however, its president, Clifford S. Orloff (Orloff) is the president and principal stockholder of Public Service Planning and Analysis Corporation (PSPA), a utility holding a certificate to operate as a passenger stage corporation under File PCS-1009 under the jurisdiction of this Commission.

During calendar year 1980, ALSS reports in its Income Statement attached to the application as part of Appendix F that it generated total operating income of \$2,382,252 and net income of \$11,939.

ALSS' Balance Sheet as of December 31, 1980, also shown as part of Appendix F, is summarized as follows:

<u>Assets</u>		<u>Amount</u>
Net Plant and Equipment		\$410,716
Current Assets		61,554
	Total	<u>\$472,270</u>
<u>Liabilities and Equity</u>		
Common Equity		\$144,397
Long-Term Debt		183,289
Current Liabilities		144,584
	Total	<u>\$472,270</u>

ACC proposes to purchase all 60,000 shares of issued and outstanding common stock of ALSS from Sellers for a purchase price estimated to be \$250,000 and thereby proposes to control ALSS. The purchase price estimate is based upon the net book value of ALSS as of June 30, 1980. This price, however, will be adjusted at the closing date of escrow, pending an audit as set forth in the Memorandum of Understanding (Agreement) attached to the application as Appendix B.

On March 1, 1981, ACC deposited into an escrow account with Lindsay and Lauman (escrow holder) the sum of \$250,000 in accordance with the Agreement. The Agreement provides that the escrow holder may loan up to \$100,000 of these funds to ALSS up to the closing date of escrow. In addition, the Agreement indicates ALSS may have borrowed funds from its principal stockholder, Sellers. If any of these funds

have not been repaid by the closing date of escrow, ALSS plans to issue a 90-day Promissory Note (Note), similar in form to that shown in Appendix G attached to the application, for the full amount of unpaid balance. This Note would bear interest at 18% per annum.

The short-term 90-day Note to be issued by ALSS does not require Commission approval under Sections 818 or 823(b) of the Public Utilities Code. ACC by virtue of purchasing controlling interest in ALSS accepts liability to repay the full amount of the Note to discharge the obligation it assumed through the purchase of ALSS' common stock and under the terms of the Agreement as guarantor. ACC proposes to encumber the common stock to be held by the escrow holder until all repayments are made. Authorization from the Commission is required for encumbering the stock of ALSS.

Informal Protest

Lorrie's operates as a passenger stage corporation (PSC-1003), providing "on-call" passenger service between downtown San Francisco and San Francisco and Oakland International Airports. By letter dated April 1, 1981, Lorrie's asked that a public hearing be held in Application (A.) 60383. In support of this request Lorrie's states that the areas served by ALSS are currently served by a number of other passenger stage corporations including Lorrie's, and if ACC is allowed to control ALSS, the present competitive structure may be

upset. The letter further states that it is therefore appropriate that control by ACC be given careful scrutiny so that destructive competition harmful to Lorrie's and to the public may not result.

Lorrie's request for public hearing does not explain in what manner destructive competition may result if A.60383 is granted. It should be pointed out that issues of public convenience and necessity are not involved in a proceeding of this type. The issue to be determined is whether the exercise of control by ACC is in the public interest. Lorrie's filed no formal protest to the granting of the application. Its request for hearing is based on vague allegations and is not supported with any specific facts or arguments. Lorrie's request for public hearing should be denied.

Formal Protest

A formal protest to the granting of the application was filed by Fun Connexion on April 22, 1981. The protest requests denial of the application on the grounds that the merger of ALSS into ACC will create a monopolistic enterprise controlling a majority of the passenger transportation service between San Francisco, Oakland, and San Jose airports, on the one hand, and points in the Counties of Alameda, Contra Costa, San Mateo, and Santa Clara, on the other hand. Fun Connexion also objects because it was not served a copy of the application.

The Commission records show that, in addition to ALSS and Fun Connexion, the following passenger stage corporations have authority to serve Bay Area airports from and to the four-county area:

Golden State Limousine, Inc., dba Peninsula  
Limousine Service (PSC 978)  
Lorrie's Travel & Tours, Inc. (PSC 1003)  
National Executive Services, Inc. (PSC 852)  
Public Services Planning & Analysis, dba  
Airport Connection (PSC 1009)  
SFO Airporter, Inc., dba Airporter (PSC 37)

Fun Connexion's protest states that Orloff of ACC offered to provide passenger brokerage services for Fun Connexion from and to San Francisco Airport, which allegedly substantiates the monopolistic intentions of the proposed purchaser, ACC. The offer encompassed computer reservation and communication services. The offer to provide those services does not constitute a monopolistic practice. There are several passenger stage corporations that will offer competition to ACC, in addition to Fun Connexion, if the transfer is approved.

Transportation Division

The Commission's Transportation Division points out that hearings have been held on a common record on the complaint in Case (C.) 10912 - Public Service Planning & Analysis Corporation, dba Airport Connection v. Airport Limousine Service of Sunnyvale, Inc. and A.59969-Airport Limousine of Sunnyvale, Inc. to revise routes. Those matters are submitted for decision. The Division asks that the instant application not be processed until those matters are decided. Orloff,

president of PSPA, advised the administrative law judge (ALJ) assigned to C.10912 and A.59969, by letter dated April 3, 1981, as follows:

"Airport Connection Corporation, soon to be parent of Public Services Planning and Analysis Corporation (dba Airport Connection), has recently acquired Airport Limousine Service of Sunnyvale. Once the acquisition is approved by the Public Utilities Commission, the planned redesign of Airport Limousine's Airport Shuttle (van) Service will eliminate our concerns regarding interpretation of the related operating authorities, and at that time we intend to withdraw our complaint in Case No. 10912."

The assigned ALJ advised Orloff that A.59969 should also be dismissed. Orloff has indicated that approval will be sought in a separate application for merger of the passenger stage operating right in PSC 1009 into ACC.

No satisfactory basis has been presented for denial on the grounds set forth in the protest of Fun Connexion or for delaying the disposition of the application as requested by the Transportation Division. The Revenue Requirements Division advises that the application should be considered as promptly as possible as it has been informed that at the present time ALSS is in such poor financial position that it cannot survive as an independent company for more than a short period.

The application indicates that the present owner of ALSS, Sellers, wishes to retire from active participation in the activities

of that operation, and his attorney has advised the Revenue Requirements Division that Sellers is in the process of undergoing heart surgery.

Based on its analysis of the application, the Commission's Revenue Requirements Division recommends that the authority requested by ALSS and ACC be granted. ✓

Findings of Fact

1. ALSS, a California corporation, operates as a passenger stage corporation under the jurisdiction of this Commission.
2. The granting of the application will not create a monopolistic enterprise.
3. The authority requested would not be adverse to the public interest.
4. Control of ALSS by ACC would not be adverse to the public interest.
5. The issuance of a short-term Note or Notes by ALSS in the form attached to the application as Appendix G, payable in 90 days from the date of closing of the escrow fund, and designed to include the liabilities of ALSS to the escrow fund and to Sellers from which the purchase price is paid and the common stock is pledged by ACC is for a proper purpose.
6. The protests received to this application have been reviewed and have been found to be without merit.



7. In view of the desire of the parties to expedite the consummation of the proposed transaction and because further delay in granting the authority requested could be detrimental, the order should be made effective the date of signing.

Conclusions of Law

1. A public hearing is not necessary.
2. The application should be granted to the extent set forth in the order which follows.

The action taken herein is for the purpose of this proceeding only and is not to be construed as indicative of amounts to be included in proceedings for the determination of just and reasonable rates.

O R D E R

IT IS ORDERED that:

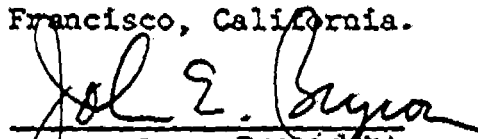
1. Airport Connection Corporation may acquire all of the issued and outstanding common stock of Airport Limousine Service of Sunnyvale, Inc. in accordance with the terms contained in the Memorandum of Understanding attached to the application as Appendix B.
2. Airport Connection Corporation may acquire and Jake Sellers may transfer control of Airport Limousine Service of Sunnyvale, Inc.
3. Airport Connection Corporation may encumber the common stock of Airport Limousine Service of Sunnyvale, Inc. (ALSS) to secure the

short-term promissory Note issued by ALSS to Jake Sellers. The Note should be similar in form to that attached to the application as Appendix G.

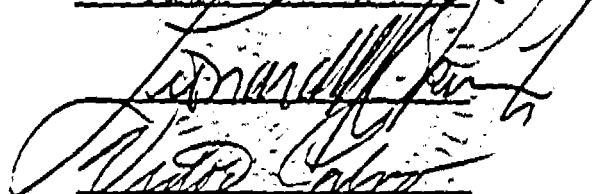
4. Within 90 days after the effective date hereof, Airport Connection Corporation shall notify the Commission in writing of the date upon which the transfer of control was consummated.

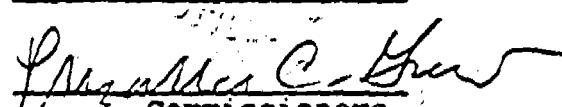
This order is effective today.

Dated JUN 16 1981, at San Francisco, California.

  
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President

  
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Commissioners