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SEP 11 1995

Decision 95-09-053 September 7, 1995

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Dunwreath-Delacour Industries, Inc., a California Corporation, DBA KidAround Town for certificate of public convenience and necessity to operate as a passenger stage corporation within the Counties of San Francisco, San Mateo, Santa Clara and Marin.

Application 95-03-045 (Filed March 15, 1995)

ORIGINAL

INTERIM OPINION

Dunwreath-Delacour Industries, Inc., a California corporation, doing business as KidAround Town (applicant), requests authority pursuant to Public Utilities (PU) Code's 1031, et seq., to establish and operate as a passenger stage corporation (PSC) a scheduled and an on-call service to transport children between points and places in the counties of Marin, San Francisco, San Mateo, and Santa Clara. These points and places are the daycare facilities, residences, private or public schools, parents' work places, after school activities and field trips such as music and dance lessons, sports, libraries, museums, medical or dental appointments, and other points and places requested by the passengers.

Applicant proposes to provide on-call, door-to-door service six days a week. The applicant indicates that "The routes will not be fixed but will be determined by prescheduled requests of the passengers. At times the passengers will request a change or cancellation at the scheduled pickup time. The applicant will face schedule changes from week to week or in some instances on a daily basis. The service is available only to member children. Drivers of the applicant will be given a daily schedule manifest from which they are not allowed to deviate unless the parents or legal guardians of the passengers have requested such a

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change and confirmation has been granted by the applicant's central dispatcher. Applicant proposes to begin operations with 4

vehicles. Two of these vehicles have a maximum passenger seating capacity of seven and the other two, twelve. The unaudited balance sheet as of July 31, 1995 indicates total assets of \$453,977, total liabilities of \$102,771 and net equity of \$351,206. The proposed tariff containing the rules and fares is shown in Exhibit "D", to

attached to its application. The proposed fares are reasonable. In this application, the parent, guardian, or adult supervisor of the child passenger will dictate the points of service. The service, however, is between fixed termini where the charges are assessed on an individual-fare basis and the use of the vehicle is shared by possibly all children passengers.

A large number of the families within these cities have few, if any, alternative choices for transporting their children. Applicant will provide an alternative transportation system which will be available when other systems are not convenient, time saving, economical, viable, or safe.

Discussion

Applicant's proposed operations fall within the definition of a PSC as defined in PU Code § 226.1. A PSC is defined as

[E]very corporation or person engaged as a common carrier, for compensation, in the ownership, control, operation, or management of any passenger stage over any public highway in this state between fixed termini or over a regular route except those 98 percent or more of whose operations as measured by total route mileage operated, which are exclusively within the limits of a single city or whose operations consist solely in the transportation of bona fide pupils attending an institution of

children. Drivers of the applicant will be given a daily schedule. By Decision 95-08-055, the Commission recently granted interim authority to Taxi for Tots and Teens to operate a similar specialized transportation service for children as a PSC.

learning between their homes and that institution. (PU Code § 226(a).) PSCs are not permitted to operate without first having obtained a certificate of public convenience and necessity from the Commission authorizing the proposed operation. (PU Code § 1031.) The proposed youth transportation service can be categorized as a PSC because the applicant proposes to operate as a common carrier, engaged in transportation for compensation over the public highways of this state, between fixed termini, as well as the transportation of bona fide pupils between their homes and their schools on an individual fare basis. The applicant contemplates transporting children of unspecified age not only between their homes and schools but additionally to a variety of different locations that may result in the transportation of infants and children to and from locations that are neither their homes nor schools. The Vehicle Code has provisions concerning certain specified forms of transportation of school children. For example, a youth bus is any bus other than a school bus designed for and when actually carrying not more than 16 persons and the driver, used to transport children at or below the 12th-grade level from a public or private school to a nonschool-related youth activity within 25 miles of the school. (Veh. Code § 680.) The application now before us contemplates the use of four vans which generally accommodate between seven to twelve passengers and a driver. The applicant also contemplates not only the transportation of children at or below the 12th-grade level from a school to a nonschool-related youth activity within 25 miles of the school, but additionally the transportation of children to locations where a parent or adult designated by the parent is present to accept the pupil or place the pupil on the bus. Transportation of any pupils to and from a public or private school, or to and from activities of a public or private school where the fare charged for the transportation is not computed, collected or demanded on an individual fare basis is not subject to a PSC designation. (Id. § 226(b).)

and from destinations that have no relation to school and which may exceed a 25-mile radius. Therefore, it appears that the applicant's proposed services exceed those of a school bus, a school pupil activity bus, or a youth bus, and do not meet the definition of a school bus. The Vehicle Code contains provisions concerning the safe operations and licensing requirements for school bus, school pupil activity bus, and youth bus operations.³ For example, no persons under the age of 18 years may drive pupils in a school bus. (Veh. Code § 12516.) Vehicle Code § 12517 concerns the licensing and qualifications for school bus and pupil activity bus drivers and Vehicle Code § 12523 concerns the licensing requirements for youth bus operators, including successful completion of a driver training course consisting of 10 hours of classroom instruction and a minimum of 10 hours of behind-the-wheel training in a vehicle used as a youth bus, as well as refresher courses every 12 months, and a driver certificate issued only to qualified applicants who have successfully completed examinations administered by the Department of California Highway Patrol (CHP) and the Department of Motor Vehicles (DMV). Every person who operates a school bus is a driver of a motor vehicle and the driver of a motor vehicle used to transport children or youth below the 12th-grade level from a public or private school to a non-school-related youth activity within 25 miles of the school.

³ A school bus is defined in Vehicle Code § 545, generally as "... any motor vehicle designed, used, or maintained for the transportation of any school pupil at or below the 12th-grade level to or from a public or private school or to or from public or private school activities." A school pupil activity bus is defined as "any motor vehicle operated by a common carrier or by a charter-party carrier, used under a contractual agreement between a school and carrier to transport school pupils at or below the 12th-grade level to or from a public or private school activity, or used to transport pupils to or from residential schools, when pupils are received and discharged at off-highway locations where a parent or adult designated by the parent is present to accept the pupil or place the pupil on the bus." (Veh. Code § 546.) A youth bus is "any bus, other than a school bus, designed for and when actually carrying not more than 16 persons and the driver, used to transport children at or below the 12th grade level from a public or private school to a non-school-related youth activity within 25 miles of the school." (Id., § 680.)

additionally, required to successfully complete an examination on first aid practices. (Veh. Code § 12522) The Education Code contains certain provisions that duplicate the Vehicle Code with respect to the schoolbus, school pupil activity bus, and youth bus designations. (See e.g., Ed. Code §§ 39830, 39830.5) The Education Code provides various safety requirements for schoolbus operations, including that the CHP shall adopt regulations relating to the safe operations of schoolbuses which shall include requiring school district governing boards to include in their schoolbus driver training programs the proper actions to be taken in the event that a schoolbus is hijacked. (Ed. Code § 39831; see also, Ed. Code §§ 39823, 39833, 39834, 39838) The Education Code also provides for the instruction in emergency procedures for all elementary and secondary level pupils who are transported in a schoolbus. (Ed. Code § 39831.5) The youth transportation service proposed by this applicant is within the PSC designation. The applicant does not intend to enter into a contract with schools; rather, the applicant contemplates a contract for transportation with the parent or adult guardian of the youth and payment of the fare on an individual-fare basis. Thus, neither the schoolbus nor school pupil activity bus designations appear relevant to the proposed service. As noted above, some but not all of the activities contemplated by this applicant fit within the youth bus definition. A variety of this applicant's proposed services are not statutorily defined, e.g., transportation concerning infants and transportation that is not between a child's school and a nonschool-related activity within a 25-mile radius exceeds the youth bus designation. As illustrated above, the Legislature has enacted numerous provisions for the safety of minors being transported to and from their homes, to schools, and/or to nonschool-related activities. Further, the Legislature has authorized us to ensure the safe operations of PSCs. The Legislature has also enacted

numerous other provisions to assist the public in finding safe and healthful childcare arrangements. (See e.g., Health & Safety Code § 15961 et seq.; Ed. Code § 8171 et seq.) In order to ensure the safety and general welfare of the public and the cultivation of this fledgling industry, we have recently instituted a rulemaking so that this applicant and other interested parties have a forum to discuss what safety measures should ultimately be adopted with respect to this unique new form of PSO. The applicant is directed to provide a copy of the letter from the Director of the Judicial Commission's Safety and Enforcement Division about this ruling, attached heretofore as Appendix A, to each parent or guardian with whom the applicant contracts for the transportation of a child. Applicant is also directed to provide a copy of Appendix A to each school and/or childcare facility to and from which a child or infant passenger is transported.

Further, we believe it is clear that this unique service is aimed at a particular class of people, minors. It is reasonable to ensure that the children are transported safely by people knowledgeable of the special requirements and needs of children. It is also reasonable that parents and adult care providers designated by parents be permitted to accompany their children and that adults who are not accompanying child passengers and who are not designated by the parents to care for their children be excluded from this transportation service. The PU Code prohibits the granting of any unreasonable preference or advantage, or of prejudice or disadvantage. (PU Code § 453.) For all of the reasons discussed throughout this decision, it does not appear that the service offered here, nor the rates to be charged for this service, are unreasonable. Consistent with affording protection to children, it is reasonable to require the applicant to require each of its drivers and/or employees engaging in the transportation of children passengers to have successfully completed a cardiac and pulmonary respiration course for infants and children and to successfully complete annual refresher courses.

There appears to be an increasing public need for reliable and safe transportation of unaccompanied children. Accordingly, we shall grant this operator interim authority for a period of up to two years and subject to a later decision by the Commission in Rulemaking 95-08-002 on the proper rules and regulations for this new type of service. However, the authority granted today shall be limited to the transportation of children in the kindergarten through the 12th grade level of schools. In order for us to consider extending this authority to the operator to transport infants and children below the kindergarten-grade level, the operator must demonstrate to our satisfaction that it, and each and every of its drivers who will transport such young children or each of its employees accompanying such driver, is a duly licensed day care provider in good standing with the Department of Social Services of the State of California or has successfully completed a minimum of 10 hours of a child care health and education course. In addition to the usual PSC compliance requirements, we shall also require this operator to establish several programs to ensure the safety of its children passengers. We take official notice of Vehicle Code § 12523(b) which requires driver training for youth bus drivers. Although the applicant does not propose youth bus operation, we believe that requirements similar to Vehicle Code § 12523(b) would better ensure the safety of the children passengers. We shall also require this applicant to perform a diligent search of each and every one of its drivers' records; the search shall include, but not be limited to, a background review administered by the Department of Justice through its Trust Line Unit to ensure that the drivers are morally fit. Applicant must additionally establish a preventative maintenance program which shall include, but not be limited to, inspection of the brake systems, components, and leaks, brake adjustments, fuel lines, lights, steering and suspension systems, tires and wheels, and devices for all vehicles used in this service. Applicant shall maintain records of these programs in its office, subject to

inspection by Commission staff pursuant to Part 6 of General Order (GO) 158.

Pursuant to the Commission's Rules of Practice and Procedure, rule 21(k), the applicant has mailed a notice of the filing of this application to all city and county governmental entities and regional transportation planning agencies within whose boundaries passengers will be loaded or unloaded. A Notice of filing of the application appeared in the Commission's Daily Calendar on April 7, 1995. There have been no protests. Applicant appears to possess the financial responsibility necessary to provide the proposed service. The application should be granted for the interim period.

Findings of Fact:

1. Applicant proposes to perform an on-call service to transport children between points and places in the counties of Marin, San Francisco, San Mateo, and Santa Clara.

2. Applicant proposes to transport only persons under the age of 18.

3. The primary passengers the applicant proposes to transport are children.

4. Infants and children are a specific class of people, generally designated as minors.

5. Minors do not have the same availability to transportation alternatives that are available to adults.

6. The State of California requires that children four years of age or younger and/or under 40 pounds in weight use appropriate car seats to ensure their safe transportation by vehicle.

7. The State of California requires people operating child care facilities as defined in the Health and Safety Code § 1596 to hold a valid license issued by the California Department of Social Services.

8. In the case of child care providers, the State of California requires the maintenance of an adult to child ratio no greater than 1:4 for the care of children under age two years.

for the care of children between the ages of 2 to 6 years, and no greater than 15 for children between the years of 6 to 14 years.

9. Minors are a particularly vulnerable group of people.

10. Children in secondary school are generally minors; however, some students in secondary school are 18 years of age or older.

11. Minors are a class of people.

12. It is not unreasonable to provide a specialized transportation service for minors.

13. It is not unreasonable to permit parents or adults designated by parents to care for their children to escort children being transported by a PSC.

14. It is not unreasonable for PSCs authorized to perform this unique child-oriented transportation service to deny or to transportation to adults not accompanying children.

15. It is not unreasonable for the applicant to charge a special fare to adults accompanying children being transported by this specialized service.

16. Applicant's proposed operations fall within the definition of PSC as defined in PU Code §226.

17. Applicant proposes to transport children not only to or from school to nonschool-related activities within a 25-mile radius, but also to and from a variety of other places and activities.

18. The Vehicle and Education Codes provide for specific age, educational, and driving requirements for youth bus drivers. The Vehicle Code further provides for criminal background checks for youth bus drivers.

19. Applicant's proposed operations exceed those contemplated by the Vehicle Code and specifically are not school bus, school pupil activity bus, or youth bus operations.

20. The people of the State of California have an interest in the safe transportation and general welfare of children being transported by PSCs.

21. The service being offered is a unique type of transportation of children in that it contemplates children as the primary passengers and it is not an arrangement made between the operator and a school district.

22. During the time that unaccompanied children are under the care of applicant's drivers, those drivers will be providing care for those children.

23. The California Department of Justice through its Trust Line Unit, conducts background reviews of childcare providers and/or babysitters.

24. Because the State of California has recognized the particularly vulnerable state of children age 4 or younger by the use of special vehicle restraint systems for their transportation, by requiring providers in the business of caring for young children to meet certain age and health requirements, and by requiring a certain adult to child ratio, we shall not authorize transportation of such infants and children without a further showing by the applicant that it and all of its employees who would transport or assist the driver in the transportation of such unaccompanied infants and young children, satisfy the requirements established by the State of California Department of Social Services for child care providers and have successfully completed a minimum of 10 hours of infant and child health and education courses.

25. It is reasonable to require the applicant to require each of its drivers and/or employees engaging in the transportation of children passengers to have successfully completed a cardio-pulmonary respiration course for infants and children and to successfully complete annual refresher courses.

26. It is reasonable to require the applicant to require each of its drivers to have successfully completed an infant and child first aid course and to successfully complete annual refresher courses.

27. Applicant possesses the financial responsibility necessary to provide the proposed service.

28. Pursuant to the Commission's Rules, of Practice and Procedure, Rule 21(k) Applicant has mailed a notice that the application has been filed with the Commission to all city and county governmental entities and regional transportation planning agencies within whose boundaries passengers will be loaded or unloaded.

29. There have been no protests to the application.

Conclusions of Law

1. Applicant's operations fall within the definition of passenger stage corporation as defined in PU Code § 226.

2. Applicant must comply with all of the Commission's requirements of a passenger stage corporation, including, but not limited to, the insurance requirements of GO 101, compliance with the CHP safety rules, enrollment in the "Pull Notice Program" of the DMV, compliance with Workers' Compensation laws, and the passenger stage corporation rules and regulations contained in GO 158.

3. Applicant's proposed operations are not schoolbus, school pupil activity bus or youth bus operations.

4. Authorizing a specialized transportation service for infants and children as a class is lawful and non-discriminatory because of the particularly vulnerable nature of being a minor person, the lack of transportation alternatives available to minors and the overriding interest of society in ensuring the protection and safety of minors.

5. In order to avoid discrimination of students attending secondary schools, it is reasonable for applicant to offer the proposed service to all students and children at or below the 12th-grade level.

6. It is lawful for an adult parent or guardian to accompany a passenger at or below the 12th-grade level being transported by this operator.

7. It is lawful for this operator to refuse transportation to adults who are not accompanying infant and child passengers.

9. It is lawful for applicant to charge a reasonable fee to the adult accompanying the infant or child being transported.

10. Applicant should be granted interim authority, subject to the conditions specified herein and subject to a later Commission decision on rules and regulations for this type of new service.

11. The People of the State of California have an interest in protecting and ensuring the safety of infants and children and it is reasonable to require applicant and applicant's employees to satisfy requirements similar to those imposed by the Vehicle and Education Codes for youth bus operators.

12. Because there is a need for the proposed service, this decision should be effective today.

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Dunwreath-Delacour Industries, Inc., a California corporation (applicant) authorizing it to operate for up to two years from the date this decision is issued as a passenger stage corporation as defined in Public Utilities (PU) Code § 226 between the points and over the routes set forth in Appendix PSC-9709 to transport persons and their baggage. However, the authority granted today is limited to the transportation of unaccompanied children in the kindergarten through the 12-grade level of school and children of any age accompanied by their parent or guardians.

2. Applicant shall:

- a. File a written acceptance of this certificate within 30 days after this order is effective.

Establish the authorized service and file tariffs and timetables within 120 days after this order is effective.

to adults who are not accompanying infant and child passengers.

- c. State in its tariffs and timetables when service will start; allow at least 10 days notice to the Commission, and make timetables and tariffs effective 10 or more days after this order is effective.
- d. Comply with General Orders (GO) Series 101, 104 and 158, and the Department of the California Highway Patrol (CHP) safety rules.
- e. Maintain accounting records in conformity with the Uniform System of Accounts.
- f. Remit to the Commission the Transportation Reimbursement Fees required by PU Code § 403 when notified by mail to do so.
- g. Comply with Vehicle Code and Education Code sections applicable to the transportation of children.
- h. Comply with PU Code §§ 460.7 and 1043, relating to the Workers' Compensation laws of this state.

3. Applicant shall not transport any adult not accompanying a passenger at or below the 12 grade.

4. Applicant shall establish within 60 days, the following programs to ensure the safety of its children passengers.

Applicant shall maintain records of these programs in its office, subject to inspection by Commission staff pursuant to Part 6 of GO 158. Applicant shall:

- a. Establish a driver training, safety, and education program before commencing operations. Each of applicant's drivers shall successfully complete a driver training course administered by the direction of applicant consisting of a minimum of 10 hours of classroom instruction covering applicable laws and regulations, defensive driving practices, and stress commuter

driving and a minimum of 10 hours of behind-the-wheel training in a vehicle similar to those to be used in applicant's operations. Each of applicant's drivers shall receive two hours of refresher training during each 12 months of employment. In addition, the applicant must ensure that each driver successfully completes a minimum of 10 hours of training in first aid, cardio-pulmonary respiration, healthcare, and education courses within 30 days of employment.

b. Prior to employment, perform a diligent search of each of its drivers' records, which shall include a search of each driver and employee who will have contact with the children passengers through the Trust Line Unit of the California Department of Justice and the California Child Care Resource and Referral Network as set forth in the Education Code Section 8171 et seq., as well as a search of each driver through the Department of Motor Vehicles's Automatic Name Index.

c. Establish a preventive maintenance program which shall include, but not be limited to, steering, tires, brakes, emergency systems, and fuel lines.

5. Applicant shall correctly complete all of the blanks and serve a copy of the letter attached hereto as Appendix A on all parents and guardians. Applicant shall also provide the service authorized herein. Applicant shall also provide a copy of this letter on all schools and childcare facilities to which the applicant transports children.

6. Applicant is authorized to begin operations on the date that the Executive Director mails a notice to applicant that its