

ALJ/BWM/sid

Decision 97_01_037

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
ROSEVILLE LONG DISTANCE COMPANY,)
a California corporation, for a)
Certificate of Public Convenience)
and Necessity to Provide InterLATA)
and IntraLATA Telecommunications)
Services Within the State of)
California.)

Application 97-01-037
(Filed January 28, 1997)

ORIGINAL

ORDER WAIVING SERVICE REQUIREMENTS

Applicant has requested waiver of the provision of Rule 18(b) of the Commission's Rules of Practice and Procedure that requires service of this application on "the cities or counties within which service will be rendered in the exercise of the requested certificate." In the circumstances of this application, service on the cities and counties would be burdensome and would serve no purpose. Under Resolution ALJ-162, the requested waiver is granted, effective today.

Dated MAR 12 1997, at San Francisco, California.

Wesley M. Franklin
WESLEY M. FRANKLIN
Executive Director

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Decision 97-01-037 January 23, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 "Wee Haul" Shuttle Service for)
 authority to operate under Sections)
 1031; 1032 and 1036 and RPP Rule)
 45b(1) as a passenger stage)
 corporation with a certificate of)
 public convenience and necessity)
 within the boundaries of San Diego)
 County.)

ORIGINAL

Application 96-02-042
(Filed February 23, 1996;
amended August 19, 1996)

INTERIM OPINION

The applicant, Ana Elvia Sanchez, an individual, requests authority pursuant to Public Utilities (PU) Code, § 1031, et seq., to establish and operate as a passenger stage corporation (PSC) an on-call service to transport children at or below the 12th-grade level, between points and places within San Diego County. Applicant proposes to transport children to a variety of places including day care facilities, residences, private or public schools, after-school activities, field trips, and to other locations, such as music, dancing, sports, medical or dental appointments, and other points and places requested by the passengers.

Applicant proposes to provide on-call, door-to-door service seven days a week with an eight-passenger van. The unaudited balance sheet indicates total assets of \$102,000 and no liabilities. The proposed tariff containing the rules and fares are shown in Exhibit "B" attached to the application. The proposed

fares are comparable to current fares charged for similar services and are reasonable.

The applicant proposes that the destinations will be set primarily by the parent, guardian, or adult supervisor of the child passenger. The rates or charges to be assessed are entirely based on the collection of individual fares and the service is between fixed termini.

The applicant alleges that 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

¹ The Commission has previously granted interim authority to similarly specialized transportation services for children to operate as PSC carriers. (See e.g., D.95-08-055.)

learning between their homes and that institution. (PU Code § 226(a).)²

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, et seq.) The proposed youth transportation service must 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 on an individual fare basis.

The Vehicle Code contains provisions concerning certain specified forms of transportation of school children. Vehicle Code section 233 defines "bus" as a vehicle designed, used, or maintained for carrying more than 10 persons, including the driver. 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 directly from a public or private school to an organized nonschool-related youth activity within 25 miles of the school or directly from a location which provides the organized nonschool-related activity to a public or private school within 25 miles of that location." (Veh. Code, § 680.) A schoolbus is defined in Vehicle Code section 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

² 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).)

private school or to or from public or private school activities. Passenger vehicles designed for and carrying, not more than 10 people (including the driver), are exempted from Vehicle Code section 545. "A 'school pupil activity bus' is any motor vehicle, other than a school bus, operated by a common carrier, or by and under the exclusive jurisdiction of a publicly owned transit system, or by a passenger 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 the 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.)

The application contemplates the use of a van which generally accommodates seven passengers and a driver and is therefore, exempt from the "bus" designation. There is no contractual arrangement proposed between the applicant and a school. 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 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 schoolbus, a school pupil activity bus, or a youth bus.

Legislative requirements pertaining to "traditional" forms of for-hire transportation of children.

The Vehicle Code contains provisions concerning the safe operations and licensing requirements for school bus, school pupil activity bus, and youth bus operations. For example, no person under the age of 18 years may drive pupils in a schoolbus. (Veh. Code, § 12516.) Vehicle Code section 12517 concerns the licensing qualifications for schoolbus and pupil activity bus drivers. Vehicle Code section 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 each 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 schoolbus is 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, 39830.1.) 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, id., §§ 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. (Id., § 39831.5.) As discussed above, the Legislature has enacted numerous provisions for the safety of pupils being transported to and from their homes to schools and/or to or from school nonschool-related activities or vice-versa. 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 § 1596 et seq.; Ed. Code § 8171 et seq.)

The proposed service is a non-traditional form of For-hire transportation of children.

The youth transportation service proposed by this applicant is within the PSC designation. The applicant proposes to use vehicles that can accommodate 10 or less people. 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, the proposed activities contemplated by this applicant exceed the youth bus definition. A variety of this applicant's proposed services are not statutorily defined, e.g., transportation concerning infants and other non pupils, and transportation that is not based on a school oriented classification (e.g., transportation to or from school, or

transportation of pupils to nonschool related or afterschool activities).

In order to ensure the safety and general welfare of the public and the cultivation of this fledgling industry, we have issued an Order to Institute Rulemaking (R.) 95-08-002, so that this applicant and other interested parties have a forum to discuss and develop the safety measures that should ultimately be adopted with respect to this unique new form of PSC.

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 infants and 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 Public Utilities Code prohibits the granting of any unreasonable preference or advantage, or prejudice or disadvantage. (Pub. Util. 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.

There appears to be an increasing public need for reliable and safe transportation of unaccompanied children. We also note an environmental advantage of transporting many people in one vehicle which diminishes the need for multiple vehicles to transport the same people. Accordingly, we shall grant this operator interim authority for a period of no longer than two years. This interim authority shall expire when the Commission

issues a final decision in R.95-08-002. However, the authority granted today shall be limited to the transportation of unaccompanied children in the kindergarten through the 12th-grade level of school. Applicant is authorized to transport children under the kindergarten-grade level when such children are accompanied by a parent, legal guardian, or parent authorized adult. 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, in a different proceeding which could be through a petition to modify this decision, 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.

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 section 12523(b) which requires driver training for youth bus drivers. Although the applicant does not propose youth bus operation, we believe that in the interim, pending a final decision in R.95-08-002, requirements similar to Vehicle Code section 12523(b) would better ensure the safety of the children passengers. We shall also require a diligent search of the applicant's and every one of its drivers' records and drivers' assistants' 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 neither applicant nor any of its drivers; or drivers' assistants have criminal histories or unsafe driving or childcare records. 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) 158A.

Pursuant to the Commission's Rules of Practice and Procedure, rule 21(k), the 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. Notice of filing of the application appeared in the Commission's Daily Calendar on February 26, 1996. Applicant published a notice of their proposed service in the La Jolla Light. No protest were filed. Applicant appears to possess the financial responsibility necessary to provide the proposed service based on the financial data submitted in their application. It appears that the proposed service will provide a convenience to the public and that there is a public necessity for this type of operation in the location applicant proposes to serve. The application should be granted for the interim period.

Findings of Fact

1. Applicant proposes to perform an on call, door-to-door service between points and places in San Diego County with one (1) seven-passenger van.

2. Applicant proposes to transport only persons at or below the twelfth-grade level.

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. Federal motor vehicle safety regulations requires various safety restraint systems based on the age and weight of an infant or child passenger.

7. The State of California requires people operating childcare facilities as defined in the Health and Safety Code section 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, 1:12 for the care of children between the ages of 2 to 6 years, and no greater than 1:15 for children between the years of 6 to 14 years.

9. Minors are a particularly vulnerable group of people.

10. Children in primary and secondary schools 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 reasonable to provide a specialized transportation service for minors.

13. It is reasonable that specialized transportation service for minors are available to all students at or below the 12th-grade level.

14. It is reasonable to permit parents, legal guardians, or adults designated by parents or guardians to care for their children, to accompany children being transported by a PSC.

15. It is reasonable for PSCs authorized to perform this unique child oriented transportation service to deny transportation to adults not accompanying children.

16. It is reasonable for the applicant to charge a special fare to adults accompanying children being transported by this specialized service.

17. Applicant's proposed operations fall within the definition of passenger stage corporation as defined in Public Utilities Code section 226.

18. Applicant proposes to use a vehicle that is designed to seat not more than 7 persons, including the driver.

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

20. The Vehicle and Education Codes provide for specific age, educational, and driving requirements for school bus, school pupil activity bus and youth bus drivers. The Vehicle Code further provides for criminal background checks for these drivers.

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

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

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

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

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

26. Because the State of California has recognized the particular vulnerability of children age 4 or younger by the use of special vehicle restraint systems for their transportation, by requiring providers in business for the care of young children to meet certain age and health requirements, and by requiring a certain adult to child ratio in childcare settings, we shall not authorize the unaccompanied 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. We shall however, permit the transportation of children under the kindergarten-grade level when such children are accompanied by parents, guardians, or non-carrier affiliated childcare providers designated by a parent or guardian to care for that parent's or guardian's child(ren).

27. 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 cardiopulmonary respiration course for infants and children and to successfully complete annual refresher courses.

28. 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 course.

29. Applicant possesses the financial responsibility and equipment necessary to provide the proposed service.

30. 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. Applicant published a notice of their proposed service in the La Jolla Light.

31. No protest has been filed in this application.

32. Applicant demonstrated that there is a public convenience and necessity for the proposed service and require the issuance of a certificate.

33. Applicant's proposed service should result in the reduction of automobiles, traffic, fuel, pollutants, and noise which would be an environmental benefit.

Conclusions of Law

1. Applicant's operations fall within the definition of a passenger stage corporation as defined by Public Utilities Code section 226.

2. Applicant must comply with all of the Commission's requirements of a PSC, including, but not limited to, the insurance requirements of General Order Series 101, compliance with the CHP safety rules, enrollment in the "Pull Notice Program" of the DMV, compliance with workers' compensation laws, and the PSC rules and regulations contained in GO 158A.

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 for 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 a adult parent, guardian, or adult supervisor of a child passenger 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.

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

9. Applicant should be granted interim authority, subject to the conditions specified herein. Such authority shall expire no later than two years or upon issuance of a final decision

R.95-08-002, whichever event occurs first, unless otherwise ordered.

10. 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 school bus and youth bus operators.

11. A motion to file a late protest was filed and was withdrawn. A public hearing is not necessary.

12. No protest was filed and there is a public need and convenience to be served by this proposed service. This decision should be effective today.

INTERIM ORDER

IT IS ORDERED that:

1. An interim certificate of public convenience and necessity is granted to Ana Elvia Sanchez (applicant) an individual, authorizing her to operate for no longer than two years from the date this decision is issued, or until a final decision is issued by the Commission in Rulemaking 95-08-002 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-1035 to transport unaccompanied children at or below the twelfth-grade level to the kindergarten-grade level. However, the authority is limited to the transportation of unaccompanied children in the kindergarten through the twelfth-grade level of school and children of any age accompanied by their parent,

guardian, or non-carrier affiliated adult supervisor designated by the parent or guardian.

2. Applicant shall:

- a. File a written acceptance of this certificate within 30 days after this order is effective.
- b. Establish the authorized service and file tariffs and timetables within 120 days after this order is effective.
- c. State in her tariffs and timetables when service will start; allow at least 10 days of 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. Comply with the controlled substance and alcohol testing certification program pursuant to PU Code § 1032.1 and General Order Series 158.
- f. Maintain accounting records in conformity with the Uniform System of Accounts.
- g. Remit to the Commission the Transportation Reimbursement Fee required by PU Code § 403 when notified by mail to do so.
- h. Comply with, but not limited to, Vehicle Code sections 12516, 12517, 12523, 12522, and 1808.1, Education Code sections 39830, 39831 and 39831.5 applicable to school bus and youth bus operators.
- i. 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 child passenger at or below the twelfth-grade level.

4. Applicant shall establish, prior to the commencement of operations, the following programs to ensure the safety of her passengers. The records of these programs shall be maintained in her office, subject to inspection by Commission staff pursuant to Part 6 of GO 158A. 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 or at 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 training in first aid, cardio-pulmonary respiration, healthcare, and education courses within 30 days of employment.
- b. Prior to employment, perform a diligent search 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 of each of her drivers' records, which shall include a search of each employee and agent who will have contact with children passengers. Applicant's own records must also be researched and presented to the Commission staff for review.

- c. Establish a preventative maintenance program which shall include, but not be limited to, steering, tires, brakes, emergency systems, and fuel lines of each and every vehicle used in the performance of this PSC service.

6. Applicant is authorized to begin operations only after all of the following provisions are fully complied with: (a) the Executive Director mails a notice to applicant that their evidence of insurance is on file with the Commission, (b) the CHP has approved the use of applicant's vehicles for service and all of the requirements in each of the ordering paragraphs are fulfilled.

7. The application is granted on an interim basis only, as stated in ordering paragraph No. 1.

This order is effective today.

Dated January 23, 1997, at San Francisco, California.

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
Commissioners

CERTIFICATE
OF
PUBLIC CONVENIENCE AND NECESSITY
AS A PASSENGER STAGE CORPORATION
PSC-10335

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

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 97-01-037, dated January 23, 1997,
of the Public Utilities Commission of the State of California in
Application 96-02-042.

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Issued by California Public Utilities Commission.

Decision 97-01-037, Application 96-02-042.

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

Ana Elvia Sanchez, by the certificate of public convenience and necessity granted by the decision noted at the foot of the page, is authorized to transport children who are at or below the 12th grade level to the kindergarten level unaccompanied by parents, guardians, and designated adult supervisors; and children below the kindergarten-grade level who are accompanied by a parent, guardian, or non-carrier affiliated adult supervisor designated by a parent or guardian; on an "on-call" door-to-door basis between the points described in Section IIA on the one hand; and Section IIB on the other hand; over and along the routes described in Section III subject, however, to the authority of this Commission to change or modify the routes 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. The term "on-call," as used here, refers to service which is authorized to be rendered on the demands of a passenger's parents, guardian or non-carrier-affiliated adult supervisor designated by the parent or guardian arranging for a child passenger's transportation and for the transportation of an adult, if any, accompanying a child passenger. The tariffs shall show the conditions under which each authorized on-call service will be provided, and shall include the description of the boundary of each fare zone.

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- c. No passengers shall be transported except those having either a point of origin or destination as described in Section IIB.

SECTION II. SERVICE AREAS (within San Diego County)

- A. Any point within zipcode 92122.
- B. Any point within zipcodes 92122, 92037, 92121, 92117, 92014, and 92130.

SECTION III. ROUTE DESCRIPTION.

ON-CALL SERVICE DOOR-TO-DOOR SERVICE

Commencing from any point or place, as described in Section IIA, then over the most convenient streets and highways to any point, as described in Section IIB.

Issued by California Public Utilities Commission.

Decision 97-01-037, Application 96-02-042.