

FEB 4 1998

Decision 98-02-001 February 4, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Arcadia Transit, Inc., dba SuperShuttle of San Fernando Valley, to extend its passenger stage authority (PSC-9224) to include certain portions of Ventura and Santa Barbara counties pursuant to Section 1031, et seq., of the California Public Utilities Code.

ORIGINAL

Application 96-12-048
(Filed December 24, 1996)

John M. Gantus, Attorney at Law, and MacDonald Esule, for Arcadia Transit, Inc., applicant.
England, Whitfield, Schroeder & Tredway, LLP, by
Oscar C. Gonzalez, Attorney at Law, for Airport Connection, Inc., dba Roadrunner Shuttle, protestant.
Mitch Matsumura, for the Rail Safety and Carriers Division.

O P I N I O N

Summary of Decision

The decision grants Arcadia Transit, Inc., doing business as (dba) SuperShuttle of San Fernando (Applicant), a certificate of public convenience and necessity to extend its authority to operate as a passenger stage corporation to include certain portions of Ventura and Santa Barbara Counties, pursuant to Public Utilities (PU) Code § 1031.

Background

Applicant operates as a passenger stage corporation (PSC) pursuant to a certificate of public convenience and necessity (PSC-9224) granted by the Commission. It is authorized to transport passengers and their baggage on an "on-call, door-to-door" basis between points in Los Angeles, Orange, San Bernardino, and Riverside Counties, on the one hand, and Los Angeles International Airport (LAX), Burbank Airport (BUR), Long Beach Airport (LGB), John Wayne Airport (SNA), Ontario Airport (ONT), Los Angeles Amtrak Station (Amtrak) or Los Angeles and Long Beach Harbors (Harbors), on the other hand.

Applicant also has authority to provide charter-party service under TCP-9229-P.

By this application, Applicant seeks to extend its authority to operate as a PSC to include certain portions of Ventura and Santa Barbara Counties pursuant to PU Code § 1031.

The application was protested by Airport Connections, Inc. dba Roadrunner Shuttle (Protestant). Protestant requested that the extension not be granted or in the alternative a hearing be held.

Hearing

An evidentiary hearing was held on June 11, 1997 in Los Angeles before Administrative Law Judge (ALJ) Garde. The matter was to be submitted upon receipt of reply briefs on August 11, 1997.

On August 4, 1997, Protestant filed a motion to reopen the proceeding to take additional evidence.

In its motion, Protestant stated that on June 17, 1997, the City of Los Angeles Board of Airport Commission (Board) unanimously adopted a resolution which exempts certain passengers stage corporations known as long-distance van operators from the moratorium on additional permits authorizing passenger stage corporations to serve LAX. Protestant also stated that the Board issued seven additional vehicles permits to Protestant, increasing the total number of Protestant's vehicles serving LAX from 10 to 17.

On September 12, 1997, the assigned ALJ issued a ruling which authorized Protestant to file late-filed Exhibit 15 along with a motion to accept the exhibit in evidence no later than September 22, 1997. Other parties were allowed to file their response to Protestant's motion by October 7, 1997.

In its response to Protestant's motion to accept late-filed Exhibit 15 in evidence, Applicant supported the receipt of the exhibit in evidence. Accordingly, late-filed Exhibit 15 was received in evidence.

The matter was submitted on October 7, 1997 upon the filing of response to Protestant's motion to accept late-filed Exhibit 15 in evidence.

Applicant's Position

Applicant states that this application was filed as a result of Applicant being notified by the Commission staff that Applicant did not have authority to serve the Counties of Ventura and Santa Barbara.

Applicant also states that upon being advised by the Commission that it did not have authority to serve the Counties of Ventura and Santa Barbara, Applicant ceased its operations on its own, and entered into a subcontractor agreement (Agreement) with Mini-Bus Systems, Inc., dba SuperShuttle of San Gabriel (Mini-Bus), in order for Applicant to provide excess airport shuttle service for the overflow business of Mini-Bus in the two counties. Applicant entered into the Agreement with Mini-Bus pursuant to the Commission's General Order (GO) 158, Part 3.03.

Applicant contends that its operations covers the overflow passenger volume of Mini-Bus. It is an existing operation, and as such, public convenience and necessity requires the continuation of its service in Ventura and Santa Barbara Counties.

Applicant's original subcontractor agreement with Mini-Bus was for a 90-day duration. The contract was extended through an oral agreement between the parties. Applicant is currently providing service under the oral extension of the contract. According to Applicant, pending the outcome of this proceeding, it will continue to provide service under its agreement with Mini-Bus.

Applicant contends that its operations in the Counties of Ventura and Santa Barbara serve Mini-Bus' overflow passenger volume. It is an existing operations and as such, public convenience and necessity requires the continuation of its service in Ventura and Santa Barbara Counties.

Protestant's Position

Protestant states that Applicant has failed to establish that public convenience and necessity require the extension in authority it seeks. Protestant also states that Applicant established only a private convenience and necessity as the basis for requested extension. According to Protestant, Applicant is providing the service in the area of requested extension under the Agreement and an extension of Applicant's

authority is a mere convenience for Applicant. However, it does not necessarily follow that a public need exists for the extension being requested. Furthermore, the Commission cannot make a statutory finding that public convenience and necessity require the proposed operations if no more service would be offered to the public if the application is granted than if it is denied.

Protestant contends that PU Code § 1032(b) should be determinative of Applicant's request because adding one more competitor to Ventura and Santa Barbara Counties will not lead to better service. According to Protestant, the Commission in Decision (D.) 72356 in Application (A.) 47382 has interpreted PU Code § 1032(b) as follows:

"The last sentence of Public Utilities Code Section 1032 precludes, as a matter of law, the granting of the application of Southern California Sightseeing Company, Inc. unless Tanner Motor Tours, Ltd. will not provide service to the satisfaction of the Commission." (Finding of Fact 3, D.72356 [67 CPUC 128].

Protestant believes that the question before the Commission is whether the addition of Applicant as a competitor will lead to better service for passengers in Ventura and Santa Barbara Counties. Protestant contends that granting Applicant the requested extension of authority will not lead to better service.

Protestant points out that Applicant was operating in Ventura and Santa Barbara without proper authority from the Commission. Only upon being informed by the Commission that it did not have authority to serve the two counties, Applicant entered the agreement with Mini-Bus to serve Ventura and Santa Barbara Counties. Protestant contends that because Applicant operated without proper authority, Applicant is not fit to serve in Ventura and Santa Barbara Counties.

Protestant states that there are 14 PSCs which have authority to operate in Ventura and Santa Barbara Counties. Protestant contends that it is the only PSC based in Ventura County, which operates exclusively on a pre-paid reservation system. According to Protestant, it has the lowest fare of any PSC including Applicant.

Discussion

In D.82-07-084 (9 CPUC2d 463, 464), the Commission enumerated seven factors which should be examined in determining whether public convenience and necessity indicate that a certificate may be granted; they are:

1. Public requirement for the service;
2. Adequacy of existing service;
3. Ability of the proposed service to complement existing service;
4. Technical feasibility of the proposed service;
5. Technical qualifications of applicant;
6. Financial ability of applicant; and
7. Economic feasibility of the proposed service.

While these elements may be significant and appropriate for Commission consideration in determining public convenience and necessity, not all need be considered in every proceeding. We believe that Applicant has provided adequate evidence to indicate that the requested extension of service area be granted.

Applicant currently provides excess airport shuttle service for the overflow business of Mini-Bus in Ventura and Santa Barbara Counties under the Agreement which shows that the need for the service being provided by Applicant exists.

Applicant, by serving Ventura and Santa Barbara Counties since January 16, 1997, has demonstrated its ability to serve the extended area the technical feasibility of the proposed extension of service area. Applicant has also demonstrated its financial ability to provide the service.

We disagree with Protestant's contention that provisions of PU Code § 1032(b) precludes the Commission from granting the requested extension. While the Commission has not found that Protestant's service in Ventura and Santa Barbara Counties is unsatisfactory, we believe that granting the requested extension of service area will not adversely affect Protestant's interest or the interest of the public being served. If, as contended by Protestant, Protestant charges the lowest fares in Ventura and Santa Barbara Counties, Applicant's entry into Ventura and Santa Barbara Counties will not diminish Protestant's business.

Our primary functions with respect to transportation operations is to protect the best interest of the public. The proposed extension of service area will provide passengers the ability to deal directly with Applicant's personnel rather seek service through Mini-Bus. Granting of the requested extension will be consistent with the Commission's expressed "let the market decide" policy. We will grant the requested authority.

Comments on ALJ's Proposed Decision

ALJ's proposed decision was filed and mailed to the parties on December 29, 1997. No comments were filed on the proposed decision. Accordingly, we are issuing the decision as proposed.

Findings of Fact

1. Applicant is authorized to operate as a PSC to transport passengers and their baggage between points in Los Angeles, Orange, San Bernardino, and Riverside Counties, on the one hand, and LAX, BUR, SNA, ONT, Amtrak, and Harbors, on the other hand.
2. Applicant requests authority to extend its authority to operate as a PSC to include certain portions of Ventura and Santa Barbara Counties.
3. Protestant operates as a PSC between points in Ventura and Santa Barbara Counties and LAX under the Agreement.
4. Applicant has demonstrated the need for extending its service area.
5. Applicant has the ability and financial resources to provide the proposed service in the extended area.
6. Public convenience and necessity require the issuance of certificate to perform the service.
7. It can be seen with certainty that the activity in question will not have a significant impact on the environment.

Conclusion of Law

The application should be granted.

Only the amount paid to the State for operative rights may be used in rate fixing. The State may grant any number of rights and may cancel or modify the monopoly feature of these rights at any time.

O R D E R

IT IS ORDERED that:

1. The certificate of public convenience and necessity granted to Arcadia Transit, Inc., doing business as SuperShuttle of San Fernando Valley (applicant) authorizing it to operate as a passenger stage corporation, as defined in Public Utilities (PU) Code § 226, to transport persons and their baggage between the points and over the routes set forth in Appendix PSC-9224 of Decision 94-09-006, is amended by replacing Original Pages 2 and 3 with First Revised Pages 2 and 3.

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 its tariffs and timetables when service will start; allow at least ten days' notice to the Commission; and make timetables and tariffs effective ten or more days after this order is effective.
- d. Comply with General Orders Series 101, 104, and 158, and the California Highway Patrol safety rules.
- e. Maintain accounting records in conformity with the Uniform System of Accounts.
- f. Remit to the Commission the Transportation Reimbursement Fee required by PU Code § 403 when notified by mail to do so.
- g. Enroll all of its drivers in the pull notice program as required by Section 1808.1 of the Vehicle Code.

3. Before beginning service to any airport, applicant shall notify the airport's governing body. Applicant shall not operate into or on airport property unless such operations are also authorized by the airport's governing body.

4. Applicant is authorized to begin operations on the date that the Executive Director mails a notice to applicant that his evidence of insurance is on file with the Commission and that the California Highway Patrol has approved the use of applicant's vehicles for service.

5. Applicant shall comply with PU Code §§ 4460.7 and 1043, relating to the Workers' Compensation laws of this state.

6. The application is granted as set forth above.

7. This proceeding is closed.

This order becomes effective 30 days from today.

Dated February 4, 1998, at San Francisco, California.

RICHARD A. BILAS

President

P. GREGORY CONLON

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

Commissioners

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

This certificate supersedes all passenger stage operative authority granted to Golden Star Airport Shuttle, Inc., a corporation.

Arcadia Transit, Inc., a corporation, by the certificate of public convenience and necessity granted by the *revised decision noted in the margin, is authorized to transport passengers and their baggage on an "on-call" basis, between the points described in Section IIA, on the one hand, and Section IIB, on the other hand, over and along the route described in Section III, subject, however, to the authority of this Commission to change or modify the route 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, refers to service which is authorized to be rendered dependent on the demands of passengers. The tariffs and timetables shall show the conditions under which each authorized on-call service will be rendered.
- c. No passengers shall be transported except those having either a point of origin or destination as described in Section IIB.
- d. This certificate does not authorize the holder to conduct any operation on the property of or into any airport unless such operation is authorized by the airport authority involved.

Issued by California Public Utilities Commission.

*Revised by Decision 98-02-001, Application 96-12-048.

SECTION II. SERVICE AREAS.

- A. 1. Any point or place in the Counties of Los Angeles and Orange.
2. San Bernardino County
All points within the cities of; Chino, Fontana, Redlands, Rialto, San Bernardino, Grand Terrace/Colton, Montclair, Ontario, Rancho Cucamonga, Upland, Highland; and all points located within the geographical limits as described by the following U.S. Postal Zip Codes (Zip Code); 91701, 91739, 92267, 92354, 92318, and 92316.
3. Riverside County
All points within the cities of; Riverside 92501 and 92509, Corona, Lake Elsinore, Norco, and all points located within the geographical limits as described by Zip Code of 91760.
- *4. Ventura County
All points within the geographical limits as described by the following Zip Codes: 93010, 93012, 90201, 93015, 90265, 93021, 91320, 93023, 93030, 93033, 93035, 93042, 93041, 93060, 93063, 93065, 93066, 91360, 91361, 91362, 93001, 93002, 93003, 93004, 91361, 93040, 93022, and 93043.
- *5. Santa Barbara County
All points within the geographical limits as described by the following Zip Codes: 93427, 93013, 93117, 93436, 93108, 93101, 93105, 93454, 93463, 93434, 93429, 93440, 93437, 93460, 93117, 93441, and 93067.
- B. San Pedro/Los Angeles Harbor, San Pedro, AMTRAK Union Station, Los Angeles, Burbank Glendale Pasadena Airport, John Wayne - Orange County Airport, Long Beach Municipal Airport, and Los Angeles and Ontario International Airports.

SECTION III. ROUTE DESCRIPTION.

ON -CALL 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 98-02-001, Application 96-12-048.