

ALJ/MAB/eap*

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Decision 98-10-031 October 8, 1998

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of SuperShuttle of San Francisco, Inc. (PSC-1298) and Affiliates For An Exemption From Sections 851-854 of the California Public Utilities Code.

Application 98-04-061
(Filed April 20, 1998)

OPINION

Summary

This decision grants the application of SuperShuttle of San Francisco, Inc. (PSC-1298) and its certificated affiliates (SuperShuttle) which seeks modification of certain Commission procedures by which SuperShuttle will obtain authority to transfer assets or control pursuant to Public Utilities (PU) Code §§ 851-854.

Background

SuperShuttle of San Francisco, Inc. is a California corporation with its headquarters in San Francisco, California. It is a passenger stage corporation holding PSC-1298, with its principal place of business in San Francisco. It is a wholly owned subsidiary of SuperShuttle International, a Delaware corporation, which operates a multi-airport national ground transportation system at approximately 18 airports across the country, including at least 8 airports in California. SuperShuttle of San Francisco submitted this application on its own behalf as well as that of all its affiliates.

In its application, SuperShuttle stated that the Commission has previously granted it and SuperShuttle of Los Angeles, Inc. exemptions from the PU Code §§ 816-830 (stocks and security transfers) and 851 (transfer or encumbrance of utility property, to the extent it served to secure debt) in Decision (D.) 88-06-052.

In granting those exemptions, the Commission observed that the applicants operated in "the highly competitive airport ground transportation industry." (D.88-06-052, Finding of Fact 2.) In similarly competitive markets, i.e., radiotelephone utilities and interexchange carriers, the Commission had also granted the same type of exemptions.

The Commission has gone one step further in the case of interexchange carriers and allowed them to obtain approval for asset transfers pursuant to §§ 851-854 via the Advice Letter process, rather than the more procedurally exacting application process. (See California Association of Long Distance Telephone Companies, 54 CPUC2d 520 (1994)(D. 94-05-051).)

The purpose of SuperShuttle's application is to obtain authorization to use the Advice Letter process in a manner similar to the interexchange carriers.

Discussion

In the case of the interexchange carriers, we simplified our regulatory oversight where to do so would not compromise the public interest. The facts of this application support a similar result.

SuperShuttle customers, like those of the interexchange carriers, have a choice of several airport ground transportation providers. The application process for asset transfers and mergers, even where the proposed transfer is unopposed and routine, can take up to several months. This unnecessarily adds delay and uncertainty to the transaction and consequently drives up cost, with no offsetting benefit to the public. Processing the application also requires commitment of Commission resources.

Even in a competitive environment, however, some level of Commission oversight is necessary to ensure that unscrupulous providers or practices are prevented. The Advice Letter process reserves the opportunity to review a proposed transaction to both the Commission and other providers and to seek, if

needed, further scrutiny by the Commission in the formal application process. In this way, transactions which may have unusual implications for the public can receive a higher level of review while those that are routine and noncontroversial, the vast majority, can expeditiously obtain authorization.

Unlike the interexchange carriers, SuperShuttle seeks this exemption only for it and its affiliates, not the full industry. This limited application is consistent with the Commission's earlier exemption from stock and security transactions for SuperShuttle. Unfortunately, an exemption limited to SuperShuttle creates a practical problem in that while SuperShuttle will be eligible to use the Advice Letter process for asset transfers or mergers, the carrier from which it is obtaining the assets or merging will be required to use the application process. As a result, SuperShuttle would obtain no benefit from its exemption. For this reason, SuperShuttle has requested that its exemption apply to (1) all its subsequently acquired carriers and (2) all carriers with which it merges or transfers assets.

SuperShuttle's request would have the effect of extending this exemption to all carriers involved in a SuperShuttle transaction, carriers which are not now known. This proposal contains insufficient parameters. While it is clear that the identity of the merger partner or asset transferor is unknown and that the party must be included or this exemption is pointless, the same can not be said for the SuperShuttle side of the transaction. SuperShuttle's current affiliates are listed in Ordering Paragraph 1. As new affiliates which may acquire assets from other carriers or merge are added, SuperShuttle can enlarge the list through the Advice Letter process.

The procedural rules for advice letter filings are set out in General Order (GO) 96-A, which is inapplicable to passenger stage corporations such as

SuperShuttle. For purposes of its advice letter filings, it will be subject to all portions of GO 96-A which apply to advice letters.¹

Findings of Fact

1. SuperShuttle filed its application on April 20, 1998.
2. Notice of the application appeared in the Commission's Daily Calendar on May 7, 1998.
3. No party protested the application.
4. No hearing is necessary.
5. SuperShuttle provides service in a competitive industry.
6. The Commission has the authority to change or eliminate the procedure for reviewing transfers of control or assets which are subjects of PU Code §§ 851 through 854(a).
7. SuperShuttle's proposed procedure is patterned on the procedure used by interexchange carriers for the same type of transfers.
8. SuperShuttle's proposed procedure would substantially shorten the time period between SuperShuttle's request for authority to transfer control or assets and the date the Commission grants that authority.
9. Achieving the goal of an expedited process requires that the Advice Letter process be available to the carriers with which SuperShuttle is transferring assets or control.
10. SuperShuttle's proposal would retain the Commission's discretion to initiate a formal review of any future transactions.

¹The Commission is currently considering revisions to GO 96-A which would create general rules applicable to all utilities as well as industry-specific rules. Should the Commission adopt both of these types of rules, SuperShuttle need only comply with the general rules as there will be no specific rules for passenger stage corporations.

11. No public purpose is served by a procedure which requires SuperShuttle to obtain Commission authorization for transfers of assets or control via the formal application process.

Conclusions of Law

1. The preliminary determination that this proceeding required a hearing made in ALJ Resolution 176-2992, May 7, 1998, should be changed as no hearing is needed.

2. Article 2.5 of the Commission's Rules of Practice and Procedure ceases to apply to this proceeding.

3. The Advice Letter process, and the application process where needed, sufficiently protect the public interest in transfers of assets and control among SuperShuttle and other passenger stage corporations.

4. The Commission should grant SuperShuttle's application.

O R D E R

IT IS ORDERED that:

1. SuperShuttle International, Inc., SuperShuttle of San Francisco, Inc. (PSC-1298), and SuperShuttle Franchise Corporation may use the Advice Letter process set out below to obtain Commission authorization for transactions subject to Public Utilities (PU) Code §§ 851 through 854(a). SuperShuttle may modify this list of carriers via the Advice Letter process.

2. Preferred Transportation Inc. (PSC-8937) (SuperShuttle acquisition pending in Application (A.) 98-04-030), Tamarack Transportation, Inc. (PSC-9635) (SuperShuttle acquisition pending in A.98-04-030), and Blue Van Joint Venture (PSC authorization pending in A.98-05-030) may use the Advice Letter process set out below to obtain Commission authorization for transactions subject to PU

Code §§ 851 through 854(a) provided that the Commission approves their pending applications.

3. Passenger stage corporations certificated by the Commission with which the entities listed in Ordering Paragraphs (OPs) 1 and 2 engage in transactions subject to PU Code §§ 851 to 854(a) may also use the Advice Letter process.

4. The procedural rules for advice letters found in General Order (GO) 96-A shall apply to all advice letter filings by the entities listed in OPs 1 and 2. Should the Commission adopt revised advice letter filing rules, the entities listed in OPs 1 and 2 shall comply with all generally applicable rules and need not comply with industry-specific rules.

5. The advice letter shall advise the Commission that one of the entities listed in OPs 1 and 2 proposes to engage in a transaction subject to PU Code §§ 851 through 854(a) and shall identify the Commission-certificated passenger stage corporation which is also involved in the transaction. The advice letter shall describe the terms of the transaction and shall be served on the Director of the Commission's Rail Safety and Carriers Division and those persons to whom the parties to the transaction are required to serve tariff changes under GO 96-A. The advice letter shall be accompanied by financial statements for any carrier that will continue operations after the proposed transaction and shall state any tariff modifications.

6. Notice of the advice letter filing shall appear in the Commission's Daily Calendar. Pursuant to GO 96-A, III, H, persons may file protests no later than 20 days after the date of the advice letter filing.

7. In response to a protest, or of its own accord, the Commission may suspend the advice letter and order further proceedings.

8. If not suspended by the Commission, the advice letter shall become effective 40 days after filing with the Commission.

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9. The preliminary determination that this proceeding required a hearing made in ALJ Resolution 176-2992, May 7, 1998, is changed as no hearing is needed and Article 2.5 of the Commission's Rules of Practice and Procedure ceases to apply to this proceeding.

10. This proceeding is closed.

This order is effective today.

Dated October 8, 1998, at Laguna Hills, California.

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