

Decision 98-12-011 December 3, 1998

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of Airport Cruiser, Inc., a California corporation, for authority to sell and transfer and Buslink Corp., a California corporation, to acquire the Passenger Stage Certificate PSC-5877 of Airport Cruiser, Inc. pursuant to §§ 854 and 1036 of the Public Utilities Code and for finding of revocation of PSC-5877 error.

Application 97-05-049  
(Filed May 28, 1997)

**ORIGINAL**

(See Appendix A for Appearance List.)

**OPINION**

**Summary**

The application of Airport Cruiser, Inc. (transferor) for authority to sell and transfer, and Buslink Corporation (transferee) to acquire passenger stage certificate PSC-5877 is approved. The authority granted in this decision is subject to the condition that the transferor pay a reinstatement fee to this Commission in the amount of \$125.00 to reinstate its operating authority before the transfer may become effective.

**Background and Procedural History**

The applicants filed this application on May 28, 1997, to secure our approval for the sale and transfer of the transferor's operating authority to the transferee. The stated reason for the transaction is the desire of the transferor's owner to exit the passenger stage carrier business by selling the operating rights and certain assets to the transferee.

According to the Declaration of Pierre Alain Grossenbacher (Declaration) and other documents filed as part of the record, the applicants originally intended that this transaction take place in 1994. However, a dispute arose concerning performance of the Purchase and Sale Agreement, resulting in litigation in Orange County Superior Court. That litigation was finally settled in November 1996. Throughout the dispute and transition the transferor's operations were conducted by a certificated third party, Ground Systems, Inc. (GSI), under the terms of a management agreement.

In November 1995, the transferor's operating authority was administratively revoked by the Commission's staff for failure to comply with Commission insurance requirements. The transferor claims that it was unaware of the revocation, and disclaims receiving notification of noncompliance with the insurance requirements.

A timely protest was filed in response to the application by Mickey's Space Ship Shuttle, a competitor in the local airport shuttle business, asking us to deny the application on the grounds that the relationships between the parties, and with GSI, were misrepresented, and that transfer of the operating authority was premature by reason of the revocation. The protestant asked for an evidentiary hearing and the right to cross-examine the applicants' witnesses (Protest, Para. XI). Commission staff did not file a formal protest, but raised the issue of the revocation informally.

On May 28, 1998, the assigned administrative law judge (ALJ) held a prehearing conference (PHC) in Santa Ana. Assigned Commissioner Richard Bilas attended and participated. The protestant did not attend. At the conclusion of the PHC, the ALJ ruled that the applicants should file additional evidence and supporting authority to clarify the record, and provided an opportunity for other

parties to file responsive authority. The parties were specifically directed to serve the protestant.

The applicants timely filed the Declaration and supporting exhibits in compliance with the ALJ's ruling. The protestant filed a timely response. The response consisted of further argument and an attached copy of its protest, but no evidence.

On August 6, 1998, Commissioner Bilas issued a Scoping Memo pursuant to Rules of Practice and Procedure 6 and 6.3. The memo and accompanying ruling stated that there was a need for an evidentiary hearing in this proceeding, and set forth a procedural schedule which included dates for filing prepared testimony. By letter from its attorney dated August 20, the transferee advised the ALJ that it would rely upon the verified application and the Declaration as its direct testimony for purposes of compliance with the Scoping Memo. No other evidentiary submission was made by any party.

The ALJ convened the evidentiary hearing on September 10 as specified in the Scoping Memo, but at the parties' request continued it to trail behind other proceedings which were simultaneously scheduled for hearing. The reason for the continuance was to allow Commission Staff and the applicants to discuss informally the circumstances surrounding the administrative revocation of transferor's operating authority. The protestant did not appear at the time of the hearing.

The hearing resumed on the following day. Staff announced that it had explored with the applicants the reason for revocation of transferor's operating authority, was satisfied that the circumstance which caused Staff to take such action was solely administrative error rather than noncompliance, and was willing to reinstate the operating authority if the transferee pays a reinstatement fee of \$125 as a condition of approval of the application. The applicants

submitted the application on the basis of the verified application and the Declaration and attachments, which had been filed before the hearing commenced. No evidence was offered at the hearing by any party. Accordingly, the ALJ ruled that the proceeding would be treated as an ex parte matter.

### **Discussion**

Based upon the record before us, we conclude that the proposed sale and transfer should be approved. It is clear that the transferor is not desirous of remaining in the transportation business, and even arranged for a contract operator to perform its services pending consummation of the transaction under review here. The transferee, an established operator, is managed by the former board chairman of Gray Lines Tours Co., a nationally recognized sightseeing tour company. As the applicants observe, he is no stranger to the transportation business. On the basis of these facts we find that the transferee is fit to provide the services which are the subject of the sale and transfer.

Although the protest raised issues which might have affected the result if proven, no such proof was ever offered. The protestant appeared at neither the prehearing conference nor the hearing, and its response to the Declaration contains nothing of probative value. We cannot alter our findings on the basis of the protestant's unsubstantiated accusations concerning the fitness of the other parties.

We will approve the application, subject to the condition that the transferee first pay the reinstatement fee requested by Staff to remedy the administrative revocation of its operating authority.

### **Findings of Fact**

1. Applicant Airport Cruiser, Inc. (transferor) holds operating authority under passenger stage certificate PSC-5877. Transferor's operating authority was

administratively revoked by Commission staff, on February 3, 1996, pursuant to Res. PE-498.

2. Applicant Buslink Corporation (transferee) is a California corporation which seeks to acquire transferor's operating authority.

3. The applicants have entered into an agreement under which transferor will sell and transfer its operating authority to transferee contingent upon approval by this Commission.

4. Transferee is financially and operationally fit to operate the service now operated under transferor's operating authority.

5. Sale and transfer of the transferor's operating authority to transferee is in the public interest.

#### **Conclusion of Law**

The application should be granted, subject to prior administrative reinstatement of transferor's operating authority.

### **O R D E R**

#### **IT IS ORDERED that:**

1. Airport Cruiser, Inc. (seller) may sell and transfer the operative rights and property specified in the application to Buslink Corporation (purchaser), subject to the condition that the seller pay to this Commission a reinstatement fee of \$125.00 before this authority becomes effective. The authority granted under this paragraph must be exercised within 90 days from the effective date of this order.

2. Purchaser shall:

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

b. Amend or reissue sellers' tariffs and timetables, within 120 days after this order is effective.

- c. State in the 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 Series 101, 104, and 158, and the California Highway Patrol (CHP) safety rules.
- e. Comply with the controlled substance and alcohol testing certification program pursuant to Public Utilities (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 PU Code §§ 460.7 and 1043, relating to Workers' Compensation laws of this state.
- i. Enroll all drivers in the pull notice system as required by Section 1801.1 of the Vehicle Code.

3. If the transfer is completed, on the effective date of the tariffs a certificate of public convenience and necessity is granted to Buslink Corp., a California corporation, authorizing it to operate as a passenger stage corporation, as defined in PU Code § 226, between the points and over the routes set forth in Appendix A, to transport as (persons, baggage, and/or express).

4. The certificate of public convenience and necessity granted by Decision 89-09-014 is revoked on the effective date of the tariffs.

5. Application 97-05-049 is closed.

This order is effective today.

Dated December 3, 1998, at San Francisco, California.

RICHARD A. BILAS

President

P. GREGORY CONLON

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

Commissioners

APPENDIX A

\*\*\*\*\* SERVICE LIST \*\*\*\*\*

Last updated on 14-JUL-1998 by: LIL  
A9705049 LIST

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\*\*\*\*\* INFORMATION ONLY \*\*\*\*\*

(END OF APPENDIX A)



A.97-05-019 ALJ/VDR/avs

Appendix PSC-12211

Buslink Corp.  
(a corporation)

Original Title

CERTIFICATE  
OF  
PUBLIC CONVENIENCE AND NECESSITY  
AS A PASSENGER STAGE CORPORATION  
PSC-12211

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

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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.

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Supersedes the authority heretofore granted to  
Airport Cruiser, Inc., by D. 89-09-016, as amended.

Issued under authority of Decision 98-12-011, dated December 3, 1998, of the  
Public Utilities Commission of the State of California in Application 97-05-049.

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

This certificate supersedes all passenger stage operative authorities granted to Airport Cruiser, Inc., a California corporation.

Buslink Corp., a California corporation, by the certificate of public convenience and necessity granted by the decision noted in the foot of the margin, is authorized to transport passengers and their baggage on a scheduled service, between points and places, over and along the routes described in Section III, subject, however, to the authority of this Commission to change or modify this authority at any time and subject to the following provisions:

- a. When a route description is given in one direction, it applies to operations in either direction unless otherwise indicated.
- b. Scheduled service will be operated only at the designated service area as described in Section II. A description of all the stop points and the arrival and departure times from such points shall be indicated in the timetable.
- c. No passengers shall be transported except those having 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.

Decision 98-12-011, Application 97-05-049.

**SECTION II. SERVICE AREA.**

**A. Cities:**

1. Anaheim.
2. Buena Park.
3. Garden Grove.
4. Orange.
5. Newport Beach.
6. Irvine.
7. Costa Mesa.

**B. Airports:**

1. Los Angeles International Airport (LAX).
2. John Wayne Airport (SNA).

**SECTION III. ROUTE DESCRIPTIONS.**

**Route 1     LAX/ Anaheim -Buena Park**

Commencing from Stockton, then over the most convenient streets, expressways, and highways to Anaheim and to Buena Park.

**Route 2 - LAX/ Newport Beach - Irvine - Costa Mesa**

Commencing from LAX, then over the most convenient streets, expressways, and highways to Newport Beach, Irvine and to Costa Mesa.

**Route 3 - SNA Garden Grove-Orange**

Commencing from SNA, then over the most convenient streets, expressways, and highways to Garden Grove and to Orange.

Issued by California Public Utilities Commission.  
Decision 98-12-011, Application 97-05-049.