

Decision

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Night School LLC for a Certificate of Public Convenience and Necessity to Operate as a Passenger Stage Corporation Providing Scheduled Service Between Points in San Francisco and Alameda County, and for Authority to Establish a Zone of Rate Freedom

Application 14-04-024
(Filed April 14, 2014)

D E C I S I O N G R A N T I N G A P P L I C A T I O N**Summary**

This decision grants the application of Night School LLC, a California Limited Liability Company, pursuant to Pub. Util. Code §§ 1031, et seq., for a Certificate of Public Convenience and Necessity to operate as a Passenger Stage Corporation, as defined in Pub. Util. Code § 226, and to establish a Zone of Rate Freedom pursuant to Pub. Util. Code § 454.2.

Discussion

Night School LLC, (Applicant) requests authority to operate as a scheduled Passenger Stage Corporation (PSC) to transport passengers between points in San Francisco City and County, on the one hand, and Alameda County, on the other hand.

This proposed service will focus on filling a gap in late-night transportation during the hours in which Bay Area Rapid Transit trains are not operating – approximately 12:00 a.m. until 5:30 a.m. The proposed regularly scheduled service will operate on an initial schedule of approximately sixteen trips (eight in each direction) at a frequency of approximately every 30 minutes during a portion of these hours on Saturday and Sunday mornings.

Applicant states the proposed service will provide a safe and low-cost alternative to driving while intoxicated. The locations of the proposed stops will be initially in the San Francisco and Oakland nightlife hotspots. The proposed schedule will not require anyone to leave a bar or party early, and will provide a safe and convenient alternative to driving after the consumption of alcohol. Applicant is proposing a service that will contribute positively to the environment by providing an alternative means of group transportation to the points along the proposed routes. A California Environmental Quality Act review is not necessary because this will not have a significant adverse effect on the environment.

The proposed one-way fare is \$10, and \$31 for an unlimited monthly pass. Applicant requests authority to establish a Zone of Rate Freedom (ZORF) of plus \$10 and minus \$8 around the proposed one-way trip base rate (\$2 to \$20), and a ZORF of plus or minus \$20 around the proposed monthly pass rate (\$11 to \$51). The minimum fare will be \$2. It states that it will be competing with single transportation charter party (TCP), taxi-cab, rental car, on-call shuttle services, and private automobiles. This competitive environment should result in Applicant pricing its service at a reasonable level.

Applicant states it will not own any vehicles initially. Applicant will instead operate exclusively through the use of subcarriers who are fully licensed Charter-Party Carriers (TCP subcarriers). Should Applicant later wish to maintain its own fleet of transportation vehicles, Applicant will use vehicles similar to those used by the TCP subcarriers. Applicant will notify the Commission and other relevant authorizing agencies, and will comply with all applicable rules and regulations if it decides to maintain its own fleet of transportation vehicles.

Concurrently with the application filing, Applicant submitted a motion to file under seal as Exhibit C its copy of template Convertible Note Purchase Agreement, as Exhibit D its “pro forma income statements,” and as Exhibit E its “projected balance sheet.” Administrative Law Judge (ALJ) Melanie M. Darling ruled on May 22, 2014 that the information in Exhibits C, D, and E is of the type that is not commonly made public and which, if made public, could subject the Applicant to an unfair business disadvantage, and granted the unopposed motion of the Applicant to file Exhibits C, D, and E under seal until May 22, 2016.

Notice of filing of the application appeared in the Commission’s Daily Calendar on April 24, 2014. Applicant served notice of the application to the involved cities, counties, and public transit operators in the service area

In Resolution ALJ 176-3335, dated May 1, 2014, the Commission preliminarily categorized this application as ratesetting and preliminarily determined that hearings were not necessary. No protest has been received. Given this status, public hearing is not necessary and it is not necessary to alter the preliminary determinations made in Resolution ALJ 176-3335.

Safety Considerations

In order to be authorized to commence operations as a PSC, the Applicant must comply with the following requirements in order to protect public safety: Proof of insurance pursuant to General Order Series 101, compliance with the controlled substance and alcohol testing program pursuant to Pub. Util. Code §1032.1 and General Order Series 158, and enrollment in the pull notice system as required by Section 1808.1 of the Vehicle Code.

Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code

and Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

Assignment of Proceeding

Denise Y. Tyrrell is the assigned Examiner in this proceeding.

Findings of Fact

1. The application requests authority to operate as a scheduled PSC to transport passengers between points in San Francisco City and County and Alameda County.
2. Public convenience and necessity requires the proposed service.
3. Applicant requests authority to establish a Zone of Rate Freedom (ZORF) of plus \$10 and minus \$8 around the proposed one-way trip base rate (\$2 to \$20), and a ZORF of plus or minus \$20 around the proposed monthly pass rate (\$11 to \$51). The minimum fare will be \$2.
4. Applicant will compete with other means of passenger transportation.
5. Applicant's motion for an order that Exhibit C, D, and E to the application be sealed and not open to public inspection was granted by ALJ Melanie M. Darling's ruling dated May 22, 2014.
6. No protest to the application has been filed.
7. A public hearing is not necessary.

Conclusions of Law

1. Public convenience and necessity has been demonstrated and the application should be granted.
2. The request for a ZORF should be granted because the ZORF is fair and reasonable.
3. Before Applicant changes any fares under the ZORF authorized below, Applicant should give this Commission at least ten days' notice. The tariff

should show the high and low ends of the ZORF and the then currently effective fare between each pair of service points.

4. Because the matter is uncontested, the decision should be effective on the date it is signed.

5. 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 these rights at any time.

6. Proposed service will reduce the number of vehicles on the public highways therefore it can be seen with certainty that there is no possibility that the activity in question may have a significant adverse effect on the environment.

O R D E R

IT IS ORDERED that:

1. A Certificate of Public Convenience and Necessity is granted to Night School LLC, a California Limited Liability Company, authorizing it to operate as a Passenger Stage Corporation (PSC), as defined in Pub. Util. Code § 226, to transport passengers between the points and over the routes set forth in Appendix PSC-33645, subject to the conditions contained in the following Ordering Paragraphs.

2. Night School, LLC, 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. File tariffs on or after the effective date of this order. They shall become effective ten days or more after the effective date of this order, provided that the Commission and the public are given not less than ten days' notice.

- d. Comply with Commission's General Orders Series 101 and 158, and the California Highway Patrol safety rules.
- e. Comply with the controlled substance and alcohol testing certification program pursuant to Pub. Util. Code § 1032.1 and General Order Series 158.
- f. Remit to the Commission the Transportation Reimbursement Fee required by Pub. Util. Code § 423 when notified by mail to do so. Failure to comply with this filing will result in suspension and/or revocation of authority.
- g. Comply with Pub. Util. Code §§ 460.7 and 1043, relating to the Workers' Compensation laws of this state.
- h. Enroll all drivers in the Pull Notice System as required by Vehicle Code § 1808.1.

3. Night School, LLC, is authorized under Pub. Util. Code § 454.2 to establish a Zone of Rate Freedom (ZORF) of plus \$10 and minus \$8 around the proposed one-way trip base rate (\$2 to \$20), and a ZORF of plus or minus \$20 around the proposed monthly pass rate (\$11 to \$51). The minimum fare will be \$2.

4. Night School, LLC, shall file a Zone of Rate Freedom (ZORF) tariff with the Commission and the public in accordance with the application at least ten days before the effective date of the tariff. The ZORF shall expire unless exercised within 120 days after the effective date of this order.

5. Night School, LLC, may make changes within the Zone of Rate Freedom by filing amended tariffs with the Commission and the public in accordance with the application at least ten days before the effective date of the tariff. The tariff shall include the authorized maximum and minimum fares and the fare to be charged between each pair of service points.

6. Night School, LLC, shall post notices explaining fare changes at all locations (online and on printed material) where their fares are posted. The notices shall be the same font type and font size as those used for the fares. Such

notices shall be posted at least ten days before the effective date of the fare changes and shall remain posted for at least 30 days.

7. Night School, LLC, is authorized to begin operations on the date that the Safety and Enforcement Division mails a notice to Night School, LLC that its evidence of insurance and other documents required by Ordering Paragraph No. 2 have been filed with the Commission and that the California Highway Patrol has approved the use of Applicant's vehicles for service.

8. The confidential information subject to Administrative Law Judge (ALJ) Melanie M. Darling's ruling dated May 22, 2014, shall remain under seal until May 22, 2016. The information shall not be made accessible or disclosed to anyone other than (a) Commissioners and Commission staff; (b) other parties to this proceeding who have executed a reasonable nondisclosure agreement with Night School, LLC; or (c) upon further order or ruling of the Commission, the assigned Commissioner, the assigned ALJ, or the ALJ then-designated as Law and Motion Judge.

9. The Certificate of Public Convenience and Necessity to operate as Passenger Stage Corporation-33645, granted herein, expires unless exercised within 120 days after the effective date of this order.

10. The Application is granted as set forth above.

11. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.

CERTIFICATE
OF
PUBLIC CONVENIENCE AND NECESSITY
AS A PASSENGER STAGE CORPORATION
PSC-33645

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.

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

Night School LLC, 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 basis over the routes described in Section II, 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 operation in either direction unless otherwise indicated.
- b. Service will be operated only at the points 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 filed with the Commission.
- c. This certificate does not authorize the holder to conduct any operation on the property of any airport unless such operation is authorized by the airport authority involved.

SED/rff

Appendix PSC-33645

Night School, LLC
(a California Limited
Liability Company)

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SECTION II. ROUTE DESCRIPTIONS.

Scheduled Service

Commencing from points in San Francisco City and County to points in Alameda County, and return.