



FILED

12-30-10
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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

In the Matter of the Application of SF
Navigatour, Inc., a California corporation,
doing business as SUPER SIGHTSEEING
TOURS, for authority to operate as a
scheduled passenger stage corporation
and provide transportation, on a fixed
route, scheduled service between the City
of San Francisco, in the State of California,
on the one hand, and the City of Sausalito,
and Counties of Marin and Alameda, in the
State of California, on the other hand, and
to establish a Zone of Rate Freedom.
_____)

A. 10-09-005

Assigned Commissioner: Timothy Alan Simon
Assigned ALJ:
Victor D. Ryerson

Hearing Date: TBD

**MOTION TO CONSOLIDATE
APPLICATION NO. A. 10-09-005 WITH APPLICATIONS FILED BY SAN FRANCISCO
DELUXE SIGHTSEEING, LLC. (No. A. 10-08-025) AND CITYSIGHTSEEING
CORPORATION (No. A. 10-10-008) OR, ALTERNATIVELY,
NOTICE OF RELATED PROCEEDINGS**

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thereby efficiently managing, while, at the same time, avoiding substantial duplication of critical and scarce administrative resources. To date, and as here pertinent, the parties subject to this Motion are aligned by a common set of facts and pursuant to applicable law relevant to each. In this regard, the current record in each proceeding shows, as follows:

A. APPLICATION No. A. 10-09-005 - SFNI

1. Application of Super Sightseeing for: (a) Passenger Stage Authority under Pub. Util. Code Section 1031, et seq. to transport passengers and their baggage on a regularly scheduled basis between various points in the City and County of San Francisco, and various points in the Counties of Marin and Alameda; and, (b) to establish a Zone of Rate Freedom under Pub. Util. Code Section 454.2 et seq., dated September 1, 2010;
 2. Protest by Open Top to Super Sightseeing's Application, filed October 14, 2010;
 3. Response of SFMTA to Super Sightseeing's Application, filed on October 14, 2010;
 4. Reply of Super Sightseeing to SFMTA's Response to Application, dated October 25, 2010;
 5. Reply of Super Sightseeing to Open Top's Protest to Application, dated October 25, 2010;
 6. First Amendment to Reply of Super Sightseeing to Open Top's Protest of Application, dated October 26, 2010;
 7. Amendment to Response of SFMTA, dated October 27, 2010;
- and,
8. Notice of Reassignment from CPUC, filed on December 27, 2010.

B. APPLICATION No. A. 10-08-025 - Deluxe

1. Application of Deluxe for: (a) Passenger Stage Authority under Pub. Util. Code Section 1031, et seq., to transport passengers and their baggage on a regularly

scheduled basis between various points in the City and County of San Francisco, and various points in the County of Marin; and, (b) to establish a Zone of Rate Freedom under Pub. Util. Code Section 454.2 et seq., filed on August 30, 2010;

2. Protest by Open Top to Deluxe's Application, filed on October 4, 2010;

3. Notice of Reassignment from California Public Utilities Commission ("PUC", "Commission" or "CPUC"), filed October 19, 2010;

4. Response of City and County of San Francisco on behalf of the San Francisco Metropolitan Traffic Agency ("SFMTA") to Deluxe's Application, filed on October 26, 2010; and,

5. Reply of Deluxe to Open Top's Protest to Application, dated November 1, 2010.

C. APPLICATION No. A. 10-10-008 - CitySightseeing Corporation

1. Application of CitySightseeing for: (a) Passenger Stage Authority under Pub. Util. Code Section 1031, et seq., to transport passengers and their baggage on a regularly scheduled basis between various points in the City and County of San Francisco; and, (b) various points in the County of Marin; and to establish a Zone of Rate Freedom under Pub. Util. Code Section 454.2, et seq., filed on October 12, 2010;

2. Response by SFMTA to CitySightseeing's Application, filed on October 14, 2010; and,

3. Protest of Open Top to CitySightseeing's Application, filed on November 15, 2010.

In each instance, the respective Applications were assigned to Commissioner Timothy Alan Simon. Likewise, in each case, the assigned Administrative Law Judge is Victor D. Ryerson. Accordingly, the Applications are further aligned by these assignments.

2. COMMON ISSUES OF FACT AND LAW.

By each Application referred to herein, the three respective Applicants thereto each seek a certificate of public convenience and necessity to provide passenger stage operations, among other areas, between San Francisco and Marin counties. In each instance, the Applicants desire to overcome a significant and blatant regulatory impediment to their own present services in that these carriers are operating beyond the parameters of permitted and sanctioned sightseeing services under the Charter Party Certificates issued to each, respectively. When Open Top challenged in writing the unlawful nature of the non-loop, "Hop On/Hop Off" operations currently performed by each carrier, they proceeded in turn, to file for the PSC authority now before this Commission in order to legitimize past and ongoing, by their own admission, illegal operations. Accordingly, the Applicants, individually and collectively, are subject to the administrative consequences mandated by PUC Code Section 5387.

Given the common facts and law inherent in each Application, administrative economy and the reservation resources compel that the PUC develop a unified record to determine and resolve the related issues inherent in each Proceeding. In summary, similar questions which arise from and must be resolved as to each Application, on a consolidated basis, include:

a. Each Applicant passenger carrier currently advertizes and operates a "Hop On/Hop Off" type of service by which a customer may board or debark from the vehicle at any point along a designated tour route, without remaining on the bus for the entire length of the tour (commonly referred to as a "loop"). In other words, the services of each Applicant exceeds the legal and permissible scope of loop sightseeing under a Charter Party authority, thereby conducting, instead, in regulated transportation, between fixed points, for which a Certificate of Public Convenience and Necessity under PUC Code Section 1031 was and is required;

b. Assuming that each applicant did, in fact, engage in illegal

services beyond their own respective Charter Party authority, the PUC must properly and diligently inquire as to these common questions:

(1) What was and is the extent of such unlawful services in terms of the number of passengers and the amount of revenues earned therefrom?

(2) Should the current authority of each Applicant be revoked in accordance with PUC Code Section 5387? and,

(3) Contemporaneously, should each Application be denied and dismissed forthwith under PUC Code Section 5387?

c. While acknowledging that they do not possess the request of PSC authority, each applicant contends that their own unlawful services were made under and justified pursuant to advice given by unknown PUC staff members. The PUC must test the credibility of such a defense in a collective forum to protect its jurisdiction, while assuming a consistent outcome in the face of this "blame the agency" excuse.

d. Even assuming that PUC Code Section 5387 does not preclude dismissal of each Application under its terms, the Commission must consider the applications within the context of an overarching public interest where three carriers seek authority at the same time to serve the same passenger market. Accordingly, it is important that the PUC must analyze in detail (and not as a "rubber stamp" as one applicant suggests) this common evidentiary predicate to authority, including such matters as:

(1) Does each Application satisfy the foundational conditions of PUC Code Section 1032?

(2) Is each Applicant operationally and/or financially fit to receive the PSC either one seeks from the Commission?

(3) Does the public convenience and necessity require the service proposed by any one or all of the Applicants? and,

(4) What conditions should be imposed on any authority

granted by the Commission to any one or all of the Applicants?

3. NOTICE OF RELATED PROCEEDINGS.

In addition to the relief requested herein, this Motion shall also serve as Notice of Related Proceedings relative to each docket and, accordingly, should be formally coordinated consistent with Rule 3.300 of the California Rules of Court.

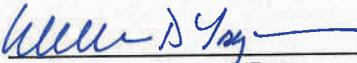
4. CONCLUSION.

For the reasons set forth herein, Open Top respectfully submits and requests that this Motion to Consolidate Application be immediately approved and granted as to all future proceedings related to the Application. Alternatively, the Commission should declare each Application as related cases, assigning same for disposition on a consolidated record.

Dated: December 30, 2010

Respectfully submitted,

HANSON BRIDGETT LLP

By: 

William D. Taylor, Esq.
Attorneys for Protestant
Open Top Sightseeing San Francisco, LLC

PROOF OF SERVICE

I, Vimi Sharma, declare that I am a resident of the State of California. I am over the age of 18 years and not a party to this matter; that my business address is 500 Capitol Mall, Suite 1500, Sacramento, CA 95814. On December 30, 2010, I served a true and accurate copy of the document(s) entitled:

MOTION TO CONSOLIDATE APPLICATION NO. A. 10-09-005 WITH APPLICATIONS FILED BY SAN FRANCISCO DELUXE SIGHTSEEING, INC. (No. A. 10-08-025) AND CITIESIGHTSEEING CORPORATION (No. A. 10-10-008) OR, ALTERNATIVELY, NOTICE OF RELATED PROCEEDINGS

on the party(ies) in this action by placing said copy(ies) in a sealed envelope, each addressed to the last address(es) given by the party(ies) as follows:

KAREN CLOPTON

Chief Administrative Law Judge
Calif. Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102-3214

COMMISSIONER TIMOTHY

ALAN SIMON
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ADMINISTRATIVE LAW JUDGE

VICTOR D. RYERSON
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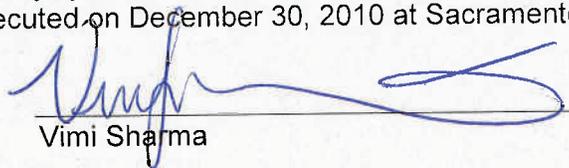
DAVID A. GREENBURG

Office of the City Attorney
City and County of San Francisco
1390 Market Street, 7th Floor
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[FOR CITY AND COUNTY OF SAN
FRANCISCO]



(By First Class Mail pursuant to Code of Civil Procedure section 1013.) I am readily familiar with Hanson Bridgett's practices for collecting and processing documents for mailing with the United States Postal Service. Following these ordinary business practices, I placed the above referenced sealed envelope(s) for collection and mailing with the United States Postal Service on the date listed herein at 500 Capitol Mall, Suite 1500, Sacramento, California 95814. The above referenced sealed envelope(s) will be deposited with the United States Postal Service on the date listed herein in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and was executed on December 30, 2010 at Sacramento, California.


Vimi Sharma