

Decision 10-03-011 March 11, 2010

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Bauer's Limousine Service, Inc. (PSC-8361) for authority to expand its current Passenger Stage Corporation authority to operate in additional counties and between fixed points within and between such counties, over specified routes in San Diego, Orange, Los Angeles, San Bernardino, Riverside, San Joaquin, Marin, Alameda, Contra Costa, Yolo, Sacramento, Placer, Nevada, Tehama, Shasta, and Siskiyou Counties in the State of California, and to Establish a Zone of Rate Freedom for its services.

Application 09-12-019
(Filed December 4, 2009)

D E C I S I O N

Summary

This decision grants the application of Bauer's Limousine Service, Inc. (Applicant), a corporation, pursuant to Pub. Util. Code § 1031 et seq., to expand its certificate of public convenience and necessity to operate as a passenger stage corporation (PSC), as defined in Pub. Util. Code § 226, and to establish a zone of rate freedom (ZORF), pursuant to Pub. Util. Code §454.2.

Discussion

Applicant is authorized by Decision (D.) 09-09-038 to operate as a scheduled PSC to transport passengers and their baggage along seven major commute corridors, six of which terminate in San Francisco. Those six services originate in Healdsburg, Napa, Gilroy, Milpitas, Sacramento, and Stockton. The

seventh service operates along the Interstate 680 corridor between San Jose and Fairfield.

The application requests authority to greatly expand the PSC service. Applicant proposes to add several new routes in Northern California. In Southern California, Applicant proposes to operate an extensive route system in the Counties of San Diego, Orange, Los Angeles, Riverside and San Bernardino. Additionally, there will be a service over Interstate Highway 5 between San Diego and Yreka near the California-Oregon border. Passengers will be picked up and dropped off at Park and Ride locations along the highways and at other convenient points within two miles of the highways. Locations in a “work city” will include convenient locations near the business centers of a city.

Similar to its existing service, Applicant intends to offer a “premium, limousine-style” transportation service for commuters utilizing full-sized luxury motor coaches. Among the amenities that will be offered are individual leatherette seating with individual tray tables, full-sized tables for four, AC outlets for passengers to charge cell phones and laptops, Direct TV service, six flat screen monitors, Wi-Fi Internet access, and a lavatory. Breakfast served by a host or hostess will be available in the morning, and snacks will be available in the afternoon hours. The service will be marketed as the “Wi-Drive” service.

According to Applicant, the proposed services are desired and needed by the public. Applicant believes that its premium type of transportation service will attract commuters who want the amenities Applicant will provide and who have not yet abandoned their use of individual passenger vehicles. Additionally, there will be environmental benefits resulting from fewer passenger vehicles using the highways.

Applicant maintains it is qualified to conduct the expanded PSC services. It states that its existing PSC and charter-party carrier services are operated in full compliance with all applicable Commission rules and regulations.

Concurrent with the filing of the application, Applicant filed a motion, pursuant to Pub. Util. Code § 583, General Order 66-C, and Rule 11.4 of the Commission's Rules of Practice and Procedure, for an order that Exhibit 5 of the application be sealed and not open to public inspection. The exhibit consists of Applicant's balance sheet as of June 30, 2009, and as of December 31, 2008; statements of income for the six months ending June 30, 2009 and 2008; and statements of cash flow for the six months ending June 30, 2009 and 2008. The motion argues that Exhibit 5 should be received under seal because the disclosure of the information contained therein will place the privately held corporation at an unfair business disadvantage, impede full and fair competition, and jeopardize the success of Applicant's proposed PSC operations. The unopposed motion was referred to the Law and Motion Administrative Law Judge (ALJ) for disposition. ALJ Hallie Yacknin's ruling dated February 9, 2010, granted Applicant's motion.¹

¹ The ruling provides that the confidential information will remain under seal for a period of two years from the date of the ruling. During this period 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 Applicant; 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. If Applicant believes that further protection of this information is needed after two years, it may file a motion stating the justification for further withholding the information from public inspection, or for such other relief as the Commission rules may then provide. The motion must be filed no later than 30 days before the expiration of the protective order.

The Commission's Consumer Protection and Safety Division staff has reviewed the financial information contained in Exhibit 5. Staff believes Applicant possesses the financial ability to conduct the proposed services.

Applicant indicates the one way fares will be generally in the range of \$8 to \$15 for shorter trips (up to 20 miles) and \$16 to \$50 for trips of a longer distance. It states these rates likely will be higher than existing commute bus services and reflect the premium type of commute transportation services proposed by Applicant.

Applicant requests authority to establish a ZORF as shown below. The proposed ZORF is the same as that authorized by D.09-09-038 for Applicant's existing PSC service.

FARE	ZORF
Up to \$8	\$4 above and below
More than \$8; not more than \$12	\$6 above and below
More than \$12; not more than \$20	\$10 above and below
More than \$20	\$15 above and below

Applicant will compete with other PSCs, vanpools, charter vehicles, public transit and private automobiles in its service areas. This competitive environment should result in Applicant pricing its services at a reasonable level. Many other PSCs have been granted ZORFs. The requested ZORF is generally consistent with the ZORFs held by other PSCs.

Applicant's original request for a PSC certificate (Application 09-04-024) raised concerns by the San Mateo County Transit District (SamTrans) and the Golden Gate Bridge, Highway and Transportation District (District) over possible conflicts at common stop points. Applicant entered into an agreement

with SamTrans and District that was set forth in a Joint Stipulation which was filed with the Commission. Applicant agreed that its service would not conflict with or otherwise interfere with the services of SamTrans or District in terms of scheduled pick-up or drop-off times, or with any other operational matter pertaining to the services of SamTrans or District. In summary, the agreement provides that Applicant will give SamTrans or District advance notice of any proposed schedule change involving a common stop, and Applicant will forego implementation of any such schedule change if SamTrans or District notifies Applicant in writing that the change will cause a conflict or otherwise interfere with the public operator's services. The parties asked the Commission to include the agreed upon scheduling process as a condition of operation in the PSC certificate. D.09-09-038 ordered Applicant to comply with the agreement with SamTrans and District, and included the terms of the agreement as a condition in the certificate.

Portions of some of the new routes proposed by Applicant are within the service territories of SamTrans and District. By letter dated January 26, 2010, Applicant's attorney advised that after informal discussions with the two public transit operators (who received copies of the letter), the three parties have agreed that the existing scheduling condition set forth in paragraph E of Section I of Applicant's PSC certificate should apply to these new routes. In D.09-09-038 we stated that the agreement at issue safeguards the interests of District and SamTrans in serving their transit customers and does not unduly restrict Applicant as a PSC service provider. This still is our belief. Therefore, we will honor Applicant's request and order that paragraph E of Section I of certificate PSC-8361 apply to the expanded service requested by Applicant.

Notice of filing of the application appeared in the Commission's Daily Calendar on December 22, 2009. Applicant served a copy of the application to

the public transit operators in the service area and sent a notice of the application to the affected cities, counties, and transportation planning agencies.

In Resolution ALJ 176-3247 dated January 21, 2010, 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 176-3247.

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Assignment of Proceeding

Richard Clark is the assigned Examiner in this proceeding.

Findings of Fact

1. Applicant is authorized by D.09-09-038 to operate as a scheduled PSC to transport passengers and their baggage along seven commute corridors in Northern California.
2. The application requests authority to expand Applicant's PSC certificate to include additional commute services in Northern California, new services in Southern California, and service between San Diego and Yreka.
3. Public convenience and necessity requires the proposed expanded services.
4. Applicant requests authority to establish the following ZORF for the expanded services: \$4 above and below fares of \$8 or less; \$6 above and below fares over \$8 and not more than \$12; \$10 above and below fares over \$12 and not more than \$20; and \$15 above and below fares over \$20.

5. Applicant will compete with other PSCs, vanpools, charter vehicles, public transit, and private automobiles in its operations. The ZORF is fair and reasonable.

6. Applicant's existing certificate includes as a condition of operations a scheduling process that was agreed to by Applicant, SamTrans, and District.

7. Applicant requests that the scheduling process included in its certificate as paragraph E of Section I apply to any new route that is within the service territory of either SamTrans or District.

8. No protest to the application has been filed.

9. A public hearing is not necessary.

10. Applicant's Motion for Leave to File Confidential Information Under Seal was granted by ALJ Hallie Yacknin's ruling dated February 9, 2010.

11. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

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.

3. Before Applicant changes any fares under the ZORF authorized below, Applicant should give this Commission at least 10 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. The scheduling process included as a condition of operations in Applicant's existing certificate should apply to any new route affecting SamTrans or District.

5. Since the matter is uncontested, the decision should be effective on the date it is signed.

O R D E R

IT IS ORDERED that:

1. The certificate of public convenience and necessity (CPCN) granted to Bauer's Limousine Service, Inc. (Applicant), a corporation, authorizing it to operate as a passenger stage corporation (PSC), as defined in Pub. Util. Code § 226, to transport passengers and their baggage between the points and over the routes set forth in Appendix PSC-8361 of Decision 09-09-038, is revised by replacing Original Pages 1, 2, 3, and 4 with First Revised Pages 1, 2, 3 and 4, and by adding Original Pages 5, 6, and 7, subject to the conditions contained in the following paragraphs.

2. Applicant shall:

- a. File a written acceptance of this certificate within 30 days after this decision is effective.
- b. Establish the authorized service and file tariffs and timetables within 120 days after this decision is effective.
- c. File tariffs and timetables for the expanded service on or after the effective date of this decision. They shall become effective ten days or more after the effective date of this decision, provided that the Commission and the public are given not less than 10 days' notice.
- d. Comply with General Orders Series 101 and 158, and the California Highway Patrol (CHP) 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.
- 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. Applicant is authorized under Pub. Util. Code § 454.2 to establish a zone of rate freedom (ZORF) for the expanded service as follows: \$4 above and below fares of \$8 or less; \$6 above and below fares over \$8 and not more than \$12; \$10 above and below fares over \$12 and not more than \$20; and \$15 above and below fares over \$20.

4. Applicant shall file a ZORF tariff in accordance with the application on not less than 10 days' notice to the Commission and to the public. The ZORF shall expire unless exercised within 120 days after the effective date of this decision.

5. Applicant may make changes within the ZORF by filing amended tariffs on not less than 10 days' notice to the Commission and to the public. The tariff shall include the authorized maximum and minimum fares and the fare to be charged between each pair of service points.

6. In addition to posting and filing tariffs, Applicant shall post notices explaining fare changes in its terminals and passenger-carrying vehicles. Such notices shall be posted at least 10 days before the effective date of the fare changes and shall remain posted for at least 30 days.

7. Applicant is authorized to begin the expanded operations on the date that the Consumer Protection and Safety Division mails a notice to Applicant that its evidence of insurance and other documents required by Ordering Paragraph 2 have been filed with the Commission and that the CHP has approved the use of Applicant's vehicles for service.

8. 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 authorized by the airport's governing body.

9. The scheduling process set forth in paragraph E of Section I of certificate PSC-8361 shall apply to any additional route authorized by this decision that is within the service territory of either the San Mateo County Transit District or the Golden Gate Bridge, Highway and Transportation District.

10. The revised CPCN to operate as PSC-8361, granted herein, expires unless exercised within 120 days after the effective date of this decision.

11. The confidential information subject to Administrative Law Judge (ALJ) Hallie Yacknin's ruling dated February 9, 2010, shall remain under seal for a period of two years from the date of that ruling. During this period, 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 Applicant; or (c) upon the further order or ruling of the Commission, the assigned Commissioner, the assigned ALJ, or the ALJ then-designated as Law and Motion Judge. If Applicant believes that further protection of this information is needed after two years, it may file a motion stating the justification for further withholding the information from public inspection, or for such other relief as the Commission rules may then provide. This motion must be filed no later than 30 days before the expiration of the protective order.

12. The Application is granted as set forth above.

13. This proceeding is closed.

This decision is effective today.

Dated March 11, 2010, at San Francisco, California.

MICHAEL R. PEEVEY
President

DIAN M. GRUENEICH
JOHN A. BOHN
TIMOTHY ALAN SIMON
NANCY E. RYAN
Commissioners

I N D E X

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

Bauer's Limousine Service, Inc., a corporation, by the revised 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 between the points described in Section II, over 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 operation in either direction unless otherwise indicated.
- B. Service is authorized at all intermediate points on Routes 1 through 7 and at the named intermediate points on all other routes.
- C. Routes may be joined at any point where they intersect.
- D. A description of all the stop points to board or discharge passengers and the arrival and departure times from such points shall be indicated in the timetables filed with the Commission.

SECTION I. GENERAL AUTHORIZATIONS, RESTRICTIONS,
LIMITATIONS, AND SPECIFICATIONS (Concluded).

- E. Timetables may be revised on 10 days' notice to the Commission and the public. In the event a stop point is also served by the San Mateo County Transit District or the Golden Gate Bridge, Highway and Transportation District, carrier shall concurrently serve a copy of its revised timetable on the affected District. In the event the District objects to the timetable change, carrier shall promptly withdraw the revision. If either District notifies carrier of a proposed schedule change involving a common stop point, carrier shall adjust its schedule by filing a revised timetable, if necessary, to avoid any conflict with or otherwise interfere operationally with the District's service.
- F. Tariffs may be revised on 10 days' notice to the Commission and the public. Tariffs shall include a description of the boundary of each fare zone, except when a single fare is charged to all points within a single incorporated city.
- G. 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.

SECTION II. SERVICE AREA.

(A) All points within two miles of Routes 1 through 7 as described in Section III.

(B) All points named in Routes 8 through 23 as described in Section III.

SECTION III. ROUTE DESCRIPTIONS.

Route 1 (Healdsburg - San Francisco)

Commencing from Healdsburg, then over Highway 101 to San Francisco.

Route 2 (Napa - San Francisco)

Commencing from Napa, then over Highway 29, Highway 37, and Highway 101 to San Francisco.

Route 3 (Gilroy - San Francisco)

Commencing from Gilroy, then over Highway 101 to San Francisco. This route may be operated in part over Highway 85 and Highway I-280.

Route 4 (Milpitas - San Francisco)

Commencing from Milpitas, then over Highway 237 and Highway 101 to San Francisco.

Route 5 (Sacramento - San Francisco)

Commencing from Sacramento, then over Highway I-80 to San Francisco.

Route 6 (Stockton - San Francisco)

Commencing from Stockton, then over Highway I-5, Highway I-205, Highway I-580, and Highway I-80 to San Francisco.

Route 7 (San Jose - Fairfield)

Commencing from San Jose, then over Highway I-680 to Fairfield. Service over this route may depart from Highway I-680 at intersecting highways to connect with another authorized route as follows: Highway I-580 East and West; Highway 24 West; Highway I-780 West; and Highway I-80 East and West.

SECTION III. ROUTE DESCRIPTIONS (Continued).

Route 8 (San Francisco - San Jose)

Commencing from San Francisco, then over Highway I-280 to San Jose. This route may be operated in part over Highway 101 and Highway I-380. Stops are authorized at the intermediate points of Daly City, San Bruno, and Mountain View.

Route 9 (Oakland - San Jose)

Commencing from Oakland, then over Highway I-880 to San Jose. Stops are authorized at the intermediate points of San Leandro, Hayward, Fremont, and Milpitas.

Route 10 (San Rafael - Tracy)

Commencing from San Rafael, then over Highway I-580 and Highway I-205 to Tracy. This route may be operated in part over Highway 238. Stops are authorized at the intermediate points of Richmond, Oakland, San Leandro, Hayward, Castro Valley and Livermore.

Route 11 (San Francisco - Truckee)

Commencing from San Francisco, then over Highway I-80 to Truckee. Stops are authorized at the intermediate points of Oakland, El Cerrito, Pinole, Davis, and Auburn.

Route 12 (San Diego - Yreka)

Commencing from San Diego, then over Highway I-5 to Yreka. Stops are authorized at the intermediate points of Santa Ana, Los Angeles, Stockton, Sacramento, Red Bluff, Anderson, and Redding.

Route 13 (Los Angeles - Arcadia)

Commencing from Los Angeles, then over Highway I-210 to Arcadia. Stops are authorized at the intermediate points of Glendale and Pasadena.

SECTION III. ROUTE DESCRIPTIONS (Continued).

Route 14 (Irvine - Los Angeles)

Commencing from Irvine, then over Highway I-405 to Los Angeles. Stops are authorized at the intermediate points of Costa Mesa, Huntington Beach, Long Beach, Torrance, Inglewood, and Santa Monica.

Route 15 (Long Beach - El Monte)

Commencing from Long Beach, then over Highway I-605 to El Monte. Stops are authorized at the intermediate points of Lakewood, Bellflower, Norwalk, Downey, and South Whittier.

Route 16 (Long Beach - East Los Angeles)

Commencing from Long Beach, then over Highway I-710 to East Los Angeles. Stops are authorized at the intermediate points of Compton, Downey, and Los Angeles.

Route 17 (Los Angeles - Downey)

Commencing from Los Angeles, then over Highway I-105 to Downey. Stops are authorized at the intermediate points of Inglewood and South Gate.

Route 18 (San Pedro - Los Angeles)

Commencing from San Pedro, then over Highway I-110 to Los Angeles. Stops are authorized at the intermediate points of Wilmington, Torrance, and Gardena.

Route 19 (Santa Monica - Blythe)

Commencing from Santa Monica, then over Highway I-10 to Blythe. Stops are authorized at the intermediate points of Los Angeles, Pomona, Ontario, San Bernardino, Beaumont, Banning, and Indio.

Route 20 (San Diego - San Ysidro)

Commencing from San Diego, then over Highway I-805 to San Ysidro. This route may be operated in part over Highway 905. Stops are authorized at the intermediate points of National City and Chula Vista.

SECTION III. ROUTE DESCRIPTIONS (Concluded).

Route 21 (San Diego - El Centro)

Commencing from San Diego, then over Highway I-8 to El Centro.

Route 22 (San Bernardino - Riverside)

Commencing from San Bernardino, then over Highway I-215 to Riverside.

Route 23 (San Diego - Barstow)

Commencing from San Diego, then over Highway I-15 to Barstow. Stops are authorized at the intermediate points of Escondido, Corona, and Victorville. This route may be operated in part over Highway 91 and Highway I-215 with stops at Riverside and San Bernardino.