

Decision 06-10-037 October 19, 2006

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of SuperShuttle International, Inc.,
SuperShuttle of Los Angeles, Inc. (PSC-9635),
SuperShuttle of Orange County, Inc. (PSC-8937),
SuperShuttle of San Francisco, Inc. (PSC-1298),
Sacramento Transportation Systems, Inc.
(PSC-15260), SFO Airporter, Inc. (PSC-37) and
Veolia Transportation on Demand, Inc., for
Approval of a Transfer of Control of Passenger
Stage Corporations.

Application 06-08-002
(Filed August 1, 2006)

ORDER GRANTING APPROVAL OF TRANSFER OF CONTROL

I. Summary

This decision authorizes SuperShuttle International, Inc. (SSI) to transfer control of its five California certificated Passenger Stage Corporations (PSCs) to Veolia Transportation on Demand, Inc. (VTOD). The certificated PSCs, collectively referred to as the Five PSCs, are SuperShuttle of Los Angeles, Inc. (SuperShuttle Los Angeles), SuperShuttle of Orange County, Inc. (SuperShuttle Orange County), SuperShuttle of San Francisco, Inc. (SuperShuttle San Francisco), Sacramento Transportation Systems, Inc. (SuperShuttle Sacramento), and SFO Airporter, Inc. (SFO Airporter).

II. Parties in the Transfer

SuperShuttle Los Angeles, a California corporation, is a wholly-owned subsidiary of SSI. SuperShuttle Los Angeles is authorized to operate as an

on-call, door-to-door PSC between points in Los Angeles, Orange, San Bernardino, Riverside, and Ventura counties and Los Angeles-area-airports, harbors, and train stations. This authority was granted on September 7, 1995, pursuant to Decision (D.) 95-09-048, which assigned SuperShuttle Los Angeles its corporate identification number PSC-9635. SuperShuttle Los Angeles has also received a Class A Charter Party Certificate, renewed on August 14, 2004. Its principal place of business is 531 Van Ness Avenue, Torrance, CA.

SuperShuttle Orange County, a California corporation, is a wholly-owned subsidiary of SSI. SuperShuttle Orange County is authorized to operate as an on-call PSC between Los Angeles area airports, train stations, and port terminals, and points in Los Angeles, Orange, Riverside, San Bernardino, and Ventura Counties. This authority was granted on February 3, 1994, pursuant to D.94-02-014, which assigned SuperShuttle Orange County its corporate identification number PSC-8937. SuperShuttle Orange County has also received a Class A Charter Party Certificate, renewed on September 12, 2003. Its principal place of business is 2292 Batavia, Unit A, Orange, CA.

SuperShuttle San Francisco, a California corporation, is a wholly-owned subsidiary of SSI. SuperShuttle San Francisco is authorized to operate as an on-call, door-to-door PSC between the San Francisco International Airport (SFO) and the San Jose Airport and points in San Francisco, San Mateo, and Santa Clara Counties. This authority was granted on December 19, 1988, pursuant to D.88-12-066. Its corporate identification number is PSC-1298. SuperShuttle San Francisco has also received a Class A Charter Party Certificate, renewed on September 19, 2004. Its principal place of business is 30 Adrian Court, Burlingame, CA.

SuperShuttle Sacramento, a California corporation, is a wholly-owned subsidiary of SSI. SuperShuttle Sacramento is authorized to operate as an on-call, door-to-door PSC between Sacramento International Airport and points in the Counties of Sacramento, Solano, Yolo, Placer, Sutter, Nevada, El Dorado, and San Joaquin. This authority was granted on September 5, 2002, pursuant to D.02-09-015, which assigned SuperShuttle Sacramento its corporate identification number PSC-15260. Its principal place of business is 3100 Northgate Boulevard, Sacramento, CA.

SFO Airporter, a California corporation, is a wholly-owned subsidiary of SSI. SFO Airporter is authorized to operate as an on-call, door-to-door PSC between the City of San Francisco and SFO; the Cities of Oakland and Berkeley, on the one hand, and SFO; the Cities of Oakland, Berkeley, and Alameda and the Oakland Army Base and Oakland International Airport; and certain San Mateo Peninsula Hotels and the City of San Francisco. SFO Airporter provides these services pursuant to D.90-03-077, dated March 28, 1990. Its corporate identification number is PSC-37. SFO Airporter has also received a Class A Charter Party Certificate, issued on April 9, 2005. Its principal place of business is 54 Tanforan Avenue, South San Francisco, CA.

SSI, a Delaware corporation qualified to transact business in California, is the parent company of the Five PSCs.

VTOD, a Delaware corporation, is a wholly-owned subsidiary of Veolia Transportation. VTOD has no present operations and will exist in the future for the sole purpose of holding shares and control of SSI and thereby the Five PSCs. Its principal place of business is 8757 Georgia Avenue, Suite 1300, Silver Springs, MD 209120.

Veolia Transportation is the parent company of VTOD and a subsidiary of Veolia Environmental, a large environmental services company. Veolia Transportation is a large private transportation provider in North America. It provides rail services under contract in Boston and Los Angeles. It also runs fixed route and commuter bus contracts in New Jersey, Maryland, Virginia, Washington DC, North and South Carolina, Texas, California, Colorado, Arizona, and Canada. It also operates paratransit systems under contract in Connecticut, Maryland, Washington DC, South Carolina, Texas, and California. The California operations of Veolia Transportation are either private in character or provided on a contract basis to another carrier. It does not provide direct common carrier services subject to the Commission's jurisdiction under the Public Utilities Act.

III. Rule 16(a) Waiver

Applicants seek a waiver of the requirement in Rule 16(a) of the Commission's Rules of Practice and Procedure that VTOD be qualified to transact intrastate business by the California Secretary of State.¹ Applicants seek this waiver on the basis that VTOD will conduct no business in California. It will simply hold SSI shares.

California Corporations Code § 191(a) defines the term "transact intrastate business" as entering into repeated and successive transactions of its business in this state, other than interstate or foreign commerce." Section 191(b) of that code

¹ All cites to specific rules pertain to the rules in effect at the time this application was filed.

states that a “foreign corporation shall not be considered to be transacting intrastate business merely because its subsidiary transacts business.”

We have previously exempted from the qualification requirement a foreign corporation that controls an entity transacting business in California but does not itself transact any business in California.² Granting an exemption in this circumstances is consistent with Corporations Code § 191(b). We therefore grant applicants’ waiver request.

IV. The Transaction

VTOD and SSI seek authority for VTOD to acquire SSI, which, in turn, has a 100% ownership interest in the Five PSCs. This transfer of control is to take place pursuant to an agreement, a copy of which was tendered under seal along with non-public financial information as part of an August 2, 2006 motion for a protective order.

The motion states good grounds for the requested relief.³ Thus, all information tendered under seal should remain sealed for a period of two years from the date of this order, and during that period should not be disclosed to anyone other than Commission staff except on the execution of a mutually accepted nondisclosure agreement or further order or ruling of the Commission,

² For example, see D.01-12-029 (2001), In the Matter of the Joint Application of Working Assets Funding Service, Inc. dba Working Assets Long Distance and Working Assets, Inc.

³ The motion recites that the applicants are not public entities and the information, if disclosed, could place applicants at a competitive disadvantage, in particular because the proposed transaction is subject to approval and has not yet closed. Hence, public disclosure of this material could place applicants and their existing investors in a position of significant disadvantage in the event that the proposed transaction is not consummated and negotiations for sale are undertaken with other potential purchasers.

the Assigned Commissioner, the assigned Administrative Law Judge (ALJ), or the ALJ then designated as the Law and Motion Judge.

The change of control will be effected pursuant to a reverse triangular agreement by which SSI will merge into a subsidiary of VTOD, established solely for purposes of this transaction, will stand as the surviving corporation, and will thereby become a subsidiary of VTOD.⁴ SSI shareholders will be compensated in either cash or convert their shares of SSI to stock in an entity which will hold a minority interest in VTOD, as detailed in the agreement.

The change of control is structured so that customers will not notice the change. After the proposed transfer of control is completed, the Five PSCs will continue to be wholly-owned subsidiaries of SSI and continue to provide their authorized on-call passenger stage services and Charter Party Carrier services.

No change in the current management structure of SSI is anticipated to occur as a result of this transaction. SSI management will also benefit from the experience of the management of Veolia Transportation, the parent of VTOD. A detailed description of the management experience of SSI and Veolia Transportation is set forth in Exhibit I of the application.

Applicants tendered under seal recent financial statements of SSI and its Five PSCs and Veolia Transportation to substantiate that applicants possess significant financial resources to permit the Five PSCs to continue to offer a high level of service to travelers in California.

Applicants expect that approval of the transfer of control will enable each of the Five PSCs to benefit from economies of scale that will permit them to

⁴ The merger subsidiary will be merged in to the acquired entity (SSI) with SSI standing as the surviving corporation.

operate more efficiently and thus to compete more effectively. For example, while the present management of SSI will continue to operate the system, the consolidated cost of vehicle liability insurance will be significantly reduced because of the size of the Veolia Transportation fleet of vehicles.

V. Protest

Rideshare Port Management L.L.C. (Protestant), doing business as Prime Time Shuttle, protested this application. The protest was dated August 26, 2006, but filed with the Commission on August 31, 2006. Prime Time Shuttle is a certificated passenger stage carrier (PSC-11415) providing on-call service to and from the Los Angeles, John Wayne, Ontario International, Long Beach, and Bob Hope airports. It also provides on-call service to and from the Harbors and Amtrak station in Los Angeles. Protestant is a competitor of the Applicants.

Protestant is concerned that approval of this application may adversely impact service that it and Applicants' Five PSCs provide to the Los Angeles and other airports. Protestant identified several issues that it claims should be addressed in an evidentiary hearing. The issues are whether the proposed change of control will result in a breach of a Concessionaire Agreement (Agreement) with the Los Angeles Airport's Board of Airport Commission (Los Angeles Airport); a transfer of public utility property; or dismissal of SuperShuttle drivers.⁵ Protestant is also concerned that a motion for a protective order was not properly noticed. SSI responded to the protest.

⁵ Protestant also seeks an evidentiary hearing on matters unrelated to this change of control application. One such matter is the cost of implementing precautionary measures for air travelers at the Los Angeles Airport since September 11, 2001.

A. Breach of a Concessionaire Agreement

SuperShuttle Los Angeles and SuperShuttle Orange County participate in a joint venture known as Blue Van Joint Venture (Blue Van). Blue Van enjoys rights under the Agreement which enables the SuperShuttle PSC holders to transport passengers and baggage into and out of the Los Angeles Airport in return for meeting service quality obligations described in the Agreement. Protestant enjoys similar rights under a separate agreement with the Los Angeles Airport.

Protestant alleges that Commission approval of this application would cause Applicants to breach the Agreement and thereby nullify the Agreement. This is because Section 12 of the Agreement (a copy of which was not provided) prohibits the sale, assignment or other transfer of control or ownership of the rights set forth in the Agreement without specific approval of the Los Angeles Airport.

This alleged breach of Agreement issue is doubtful because the Agreement, along with other contracts, agreements, property and operating authority of those PSCs, will remain with the PSCs, and the joint venture PSCs will continue to exist as they currently do, transporting passengers and baggage into and out of the Los Angeles Airport in return for meeting service quality obligations pursuant to the Agreement. To the extent Protestant believes that Applicants are breaching the Agreement, Protestant should bring its concern to the attention of the Los Angeles Airport.

B. Transfer of Public Utility Property

Protestant also contends that the Agreement is a public utility asset subject to Pub. Util. Code § 851⁶ because the agreement is tantamount to a franchise or permit necessary and useful in the performance of Applicants' duties to the public under Pub. Util. Code § 6001.5.

We reject this contention for two reasons. First, this application is for transfer of control; there is no proposal before us to sell or transfer any public utility assets, and no proposal to transfer any franchise or permits of the PSCs. Second, had Protestant undertaken a closer reading of Pub. Util. Code § 6001.5, it would have seen that that section applies only to a "pipeline system transmitting oil or products thereof."

C. Dismissal of SuperShuttle Drivers

Protestant asserts that many of the SuperShuttle drivers have been in communication with Protestant showing concern for their status once VTOD is authorized to acquire control of the Five PSCs. Protestant is concerned that those drivers, who have all invested \$30,000 or more for a "Unit Franchise," may be subject to dismissal and may lose their investments.

Protestant's assertion is hearsay and speculative. Irrespective, Applicants are not proposing any change to their standard franchise agreement,

⁶ This section prohibits any public utility other than a common carrier subject to Part I of the Interstate Commerce Act to sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or part off its property necessary or useful in the performance of its duties to the public, or any franchise or permit thereunder, without Commission authority.

which fixes the obligations of both drivers and SuperShuttle.⁷ Further, this application only seeks authority to transfer control of the Five PSCs through a merger agreement, pursuant to Pub. Util. Code § 854. The authority requested in this proceeding does not seek to relieve Applicants of any of their contractual obligations.

D. Notice of a Motion for a Protective Order

A copy of applicants' merger agreement and non-public financial information of VTOD, SSI, and the Five PSCs was filed under seal as part of a written motion seeking approval of a protective order and authority to maintain non-public information under seal, pursuant to General Order 66-C. The motion asserted this information is commercially sensitive.

Protestant contends that proper notice of a motion for a protective order and authority to place confidential information under seal "did not appear in the Commission's Daily Transportation Calendar and therefore, no notice was given..."⁸

There is no Commission Daily Transportation Calendar. The Commission has only one calendar, the Commission's Daily Calendar. Motions are not noticed in that calendar; Protestant did not identify any Commission rule that requires motions to be noticed in the Commission's Daily Calendar, and in fact there is none. Written motions must be filed with the Commission and served on each party whose name is on the official service list or applicable

⁷ Applicants' standard franchise agreement generally has a 10-year term, with an additional two five-year renewal terms.

⁸ Protest at page 5.

service list, as required by Rules 2.3 and 45 (recently recodified as Rules 1.9 and 11.1). Applicants' motion to place information under seal was properly filed and served on August 2, 2006.

E. Conclusion

The issues raised by Protestant are completely without merit, and none of Protestant's contentions requires an evidentiary hearing. The protest should be denied.

VI. Discussion of the Application

Applicants seek approval of the proposed transfer of control pursuant to Pub. Util. Code § 854. Section 854(a) states, in relevant part, as follows:

No person or corporation...shall merge, acquire, or control...any public utility organized and doing business in this state without first securing authorization to do so from the commission...Any merger, acquisition, or control without that prior authorization shall be void and of no effect.

The Commission has broad discretion to determine if it is in the public interest to authorize a transaction pursuant to § 854(a).⁹ The primary standard used by the Commission to determine if a transaction should be authorized under that section is whether the transaction will adversely affect the public interest.¹⁰ The Commission may also consider if the transaction will benefit the

⁹ See, for example, D.95-10-045, 1995 Cal. PUC LEXIS 901, *18-19, and D.91-05-026, 40 CPUC 2d 159, 171.

¹⁰ See, for example, D.00-06-079, p. 13; D.00-06-057, p. 7; D.00-05-047, p. 11 and Conclusion of Law 2.

public interest.¹¹ When necessary and appropriate, the Commission may attach conditions to a transaction in order to protect and promote the public interest.¹²

Neither this application nor the transaction for which approval is sought has any potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment within the meaning of California Environmental Quality Act Guideline 15378 because no external construction or change in service will result from the transfer of control. Therefore, in accordance with Rule 17.1 of the Commission's Rules of Practice and Procedure, there is no possibility that the proposed transaction may have any significant effect on the environment.

For the following reasons, we conclude that the proposed transfer of control is in the public interest and that it is reasonable to grant this § 854(a) application. First, the Five PSCs will continue to operate as they have in the past, using the same names, operating authority, and existing tariffs. Second, the Five PSCs will continue to possess the technical, managerial, and financial resources necessary to provide their authorized services. Third, the public may benefit from the transfer of control to the extent that the transaction enables the Five PSCs to achieve economies of scale. We therefore approve the transfer of control.

VII. Categorization and Need for Hearing

In Resolution ALJ 176-3177, dated August 24, 2006, the Commission preliminary categorized this proceeding as ratesetting, and preliminarily

¹¹ See, for example, D.00-06-005, 2000 Cal PUC LEXIS 281, *4; D.99-04-066, p. 5; D.99-02-036, p. 9; and, D.97-06-066, 72 CPUC 2d 851, 861.

¹² See, for example, D.95-10-045, 62 CPUC 2d 160, 167-68; D.94-01-041, 53 CPUC 2d 116, 119; and, D.90-07-030, 1990 Cal. PUC LEXIS 612 *5.

determined that hearings were not necessary. This application was noticed in the Commission's August 3, 2006 Daily Calendar. We confirm that public hearing is not necessary and that it is not necessary to alter the preliminary determinations made in Resolution ALJ 176-3177.

VIII. Approval of the Executive Director

Applicants seek approval of this application by the Executive Director on an ex parte basis. Although D.98-10-031 authorizes SuperShuttle San Francisco and its affiliates to use the Commission's advice letter procedures when seeking permission to transfer assets or control between affiliates,¹³ applicants acknowledge that the advice letter process is unavailable in this instance because VTOD and other subsidiaries of Veolia Transportation do not possess a California PSC. Hence, they seek approval by the Executive Director. However, applicants cite no authority for the Executive Director to approve this transfer of control.

The Commission has delegated authority to the Executive Director for approval of certain transfer applications. However, the declaration covers only those instances where a transfer is from a California certificated entity to another California certificated carrier.¹⁴ This transfer does not qualify for approval by the Executive Director because VTOD is not a California certificated entity.

¹³ Similar authority has been granted for non-dominant telecommunications carriers by D.94-05-051, D.98-07-094 and D.04-10-038.

¹⁴ Compare, for example, D.87-10-035, 25 CPUC 2d 459 at 462 (1987).

IX. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311(g) of the Public Utilities Code and Rule 14.2(a)¹⁵ of the Commission's Rules of Practice and Procedure. There were no filed comments.

X. Assignment of Proceeding

John A. Bohn is the Assigned Commissioner and Michael J. Galvin is the assigned ALJ in this proceeding.

Findings of Fact

1. Applicants seek a waiver of the requirement that VTOD be qualified to transact intrastate business by the California Secretary of State.
2. Rideshare Port Management L.L.C. filed a protest seeking an evidentiary hearing. The protest is wholly without merit, as discussed in the foregoing opinion, and none of the Protestant's contentions requires a hearing.
3. VTOD and SSI seek authority for VTOD to acquire SSI, which, in turn, has a 100% ownership interest in the Five PSCs.
4. Applicants tendered under seal an agreement to transfer control of the Five PSCs and related financial information because they assert, and we so find, that such information, if disclosed, could place applicants at a competitive disadvantage.
5. The change of control is structured so that customers will not notice the change.

¹⁵ Prior to September 14, 2006, the applicable rule was Rule 77.7.

6. The Five PSCs will continue to be wholly-owned subsidiaries of SSI and continue to provide their authorized on-call Passenger Stage services and Charter Party Carrier services.

7. The Five PSCs will continue to operate as they have in the past, using the same names, operating authority, and existing tariffs.

8. The Five PSCs will continue to possess the technical, managerial and financial resources necessary to provide their authorized services.

9. The transfer of control may provide economies of scale and thus enable each of the Five PSCs to operate more efficiently and compete more effectively.

10. No new construction is being proposed.

Conclusions of Law

1. This is a ratesetting proceeding and no hearings are necessary.

2. Pub. Util. Code § 6001.5 applies only to pipeline systems transmitting oil or products thereof.

3. Commercially sensitive information may be placed under seal pursuant to General Order 66-C.

4. Under California Corporation Code § 191(b), a foreign corporation does not transact intrastate business merely because its subsidiary transacts intrastate business.

5. In D.01-12-029, the Commission exempted from the qualification requirement a foreign corporation that controls an entity transacting business in California but does not itself transact any business in California.

6. The protest should be denied.

7. VTOD should be exempted from the requirement to obtain qualification to transact intrastate business.

8. The information tendered under seal should remain sealed under an appropriate protective order.

9. It can be seen with certainty that the proposed transfer of control will not have any adverse impact on the environment.

10. This application should be approved and become effective immediately because it is not adverse to the public interest and the public may benefit from economies of scale.

11. Approval of this application is not a finding of value of the rights and control being transferred.

IT IS ORDERED that:

1. The protest of Rideshare Port Management L.L.C. is denied with prejudice.

2. Veolia Transportation on Demand, Inc. (VTOD) is authorized to acquire control of five California certificated Passenger Stage Corporations (PSCs) through its acquisition of SuperShuttle International, Inc. (SSI), as more fully described in the foregoing opinion. The five PSCs are SuperShuttle of Los Angeles, Inc., SuperShuttle of Orange County, Inc., SuperShuttle of San Francisco, Inc., Sacramento Transportation Systems, Inc., and SFO Airporter, Inc.

3. Within 30 days after the change of control authorized herein has taken place, VTOD and SSI shall notify the Director of the Consumer Protection and Safety Division in writing of the transfer of control. A copy of that notice shall be placed in the formal file of Application 06-08-002.

4. The corporate identification numbers PSC-9635 assigned to SuperShuttle of Los Angeles, Inc., PSC-8937 assigned to SuperShuttle of Orange County, Inc., PSC-1298 assigned to SuperShuttle of San Francisco, Inc., PSC-15260 assigned to Sacramento Transportation Systems, Inc., and PSC-37 assigned to SFO Airporter,

Inc. shall continue to be used by the respective carriers in all original filings with the Commission and in the titles of other pleadings filed in existing proceedings.

5. All information tendered under seal shall remain sealed for a period of two years from the date of this order, and during that period shall not be disclosed to anyone other than Commission staff except on the execution of a mutually accepted nondisclosure agreement or further order or ruling of the Commission, the Assigned Commissioner, the assigned Administrative Law Judge (ALJ), or the ALJ then designated as the Law and Motion Judge.

6. The application is granted as set forth above and the authority granted shall expire if not exercised within one year of the effective date of this order.

7. Application 06-08-002 is closed.

This order is effective today.

Dated October 19, 2006, at Fresno, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
JOHN A. BOHN
RACHELLE B. CHONG
Commissioners

Commissioner Dian M. Grueneich, being necessarily absent,
did not participate.