

SERVICE DATE

MAY 16 1984

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In re Application D-2444 of)	ORDER M. V. C. NO. 1443
)	
RICHARD E. & HELEN N. ASCHE,)	
BREMERTON-KITSAP AIRPORTER, INC.,)	HEARING NO. D-2444
d/b/a BREMERTON-KITSAP AIRPORTER,)	
KITSAP-SEATAC AIRPORTER, INC.,)	
THE SOUND CONNECTION,)	COMMISSION DECISION AND
)	ORDER GRANTING EXCEPTIONS,
for extension of Certificate of)	IN PART; MODIFYING
Public Convenience and Necessity)	PROPOSED ORDER;
No. 903 to operate motor)	GRANTING APPLICATION
vehicles in furnishing passenger)	IN PART
and express service between)	
points hereinafter listed.)	
.....)	

NATURE OF PROCEEDING: This is an application for extension of authority to transport passengers and express between Poulsbo and other Olympic Peninsula communities; and between those communities, Tacoma, Fort Lewis, McChord Air Force Base, and the Seattle-Tacoma International Airport via specified routes. It also seeks removal of a limitation of service to 15 or fewer passenger vehicles and authorization of alternate routes.

PROPOSED ORDER: Administrative Law Judge Thomas C. Stacer issued an order on September 19, 1983, which proposed that the application be denied in its entirety.

EXCEPTIONS: The applicant filed exceptions to the proposed order, contending that it was affected with errors of law and that it failed properly to consider relevant evidence. Protestants Koco, Inc., et al., replied to the exceptions.

COMMISSION: The Commission grants the exceptions, in part, authorizing an increase in seating capacity; the addition of Poulsbo to points that applicant may serve under its airporter authority; authority; authorizing airporter service between two Pierce County military facilities and the Seattle-Tacoma Airport; and affirming the denial of open door or local service and affirming denial of additional points of service to its existing airport authority.

APPEARANCES: Applicant was represented by James Sells, Attorney at Law, Bremerton; protestants Koco, Inc., et al., were represented by Robert E. Lundgaard, Attorney at Law, Olympia.

Parties appearing at the hearing but not participating in post-hearing procedures included protestant Pacific Northwest Transportation Services, Inc., by James N. Fricke, president, Olympia; Kitsap Transit, by Richard Hayes and Richard Stocking, Attorneys at Law, Port Orchard; intervenor Department of Defense, by Captain Theodore D. Silva, Fort Lewis; and the Washington Utilities and Transportation Commission by Robert E. Simpson, Assistant Attorney General, Olympia.

MEMORANDUM

The applicant is an auto transportation company which presently provides passenger and express service under Certificate No. 903 between Bangor Submarine Base and Seattle-Tacoma International Airport via SR 3, SR 16, and Interstate 5. Service under the permit is limited so that no passengers may be picked up or discharged between the intersection of 6th Avenue with Bantz Boulevard in Tacoma and the Seattle-Tacoma Airport; no local service is authorized; and service is limited to the use of vehicles seating 15 or fewer passengers.

The applicant seeks the authority to provide local service along its route; to add service to various points not presently touching its authorized route; to travel by alternate routes using ferries to cross Puget Sound, for the convenience of the carrier; and to establish a new service between Fort Lewis and McChord Air Force Base on the one hand and Seattle-Tacoma International Airport on the other hand. The proposed order would deny the application entirely.

Applicant has filed several exceptions to the proposed order. First, it challenges findings of the order relating to the number and age of its equipment and a characterization of part of its proposed service as "open door". Both of these exceptions are technically correct, but have no bearing on the outcome of the proceeding. The Commission will express its findings in a way which will meet the expressed concerns.

The remaining exceptions challenge the proposed order's refusal to grant any portions of the requested authority. The Commission agrees in part and disagrees in part with applicant's exceptions. It will treat separately each of the major authority groupings within the application.

I. SEATING CAPACITY

There is presently a restriction within the applicant's permit which limits its service to the use of vehicles seating 15 or fewer passengers. The applicant has presented unchallenged evidence that frequently during busy seasons it must either leave

passengers or run as many as three sections of its present service. No protesting carrier would be adversely affected by a grant of this request. The frequency and magnitude of the demonstrated need satisfy the Commission that removal of the restriction is consistent with the public interest. The Commission will order removal of the limitation on seating capacity.

II. ALTERNATE ROUTES

The applicant seeks the authority to provide its existing service by the use of the Washington State Ferries crossing Puget Sound, rather than sending its vehicle to or from the airport via the Tacoma Narrows Bridge, when weather conditions or other circumstances have closed the bridge or when the cross-sound routes would be more economical to operate than would the Narrows route and no passengers with reservations would be denied service.

There is no showing that any of the protestants would be adversely affected by a grant of this request; applicant's service and operating efficiencies would be enhanced. The request should be granted.

No evidence was presented which would demonstrate that the public convenience and necessity require an additional carrier providing service along the alternate routes. Therefore, the Commission will specify that this grant does not confer authority to make pickups or deliveries of passengers or express along the alternate routes, except to the extent presently authorized.

III. EXPANSION OF TERRITORY

A. Open Door Service. The applicant seeks authority to provide local service between points which it serves west of the Tacoma Narrows. No evidence from potential users has been presented that such a service is needed. The proposed order was correct in its denial of this request.

B. Peninsula and Tacoma Locations. The applicant seeks authority to provide service at a number of locations which are off its existing route. In support of this portion of the application, applicant presented witness Geraldine Brown, an employee of First Class Travel, Poulsbo. Her testimony demonstrates that 15 to 20 persons per month seek airporter service from Poulsbo to or from the Seattle-Tacoma International Airport and that the nearest airporter service point is some 15 miles distant.

The Commission believes that the testimony of this witness demonstrates a need for service between Poulsbo and the airport and should be granted. No other carrier presently provides the service.

As to other requested peninsula off-route locations, applicant's principal testified on its behalf that he believed the service was required; no other evidence was presented. The Commission will not accept the self-serving statements of applicant in such circumstances and will require that an application be supported by independent witnesses knowledgeable about the traffic. Denial of requests to serve other off-route locations is fully proper and should be affirmed.

C. Fort Lewis and McChord Air Force Base. The applicant seeks authority to establish a new service to carry passengers and express between Fort Lewis and McChord Air Force Base on the one hand and the Seattle-Tacoma International Airport on the other hand. It proposes a direct, single bus service with only the two stops, to be provided at least eight times a day. It would purchase new vehicles and would dedicate vehicles to the service in order to insure that customer needs were met.

The proposed order found that RCW 81.68.040 operated to remove the Commission's jurisdiction to grant the application and that the proposed service would not be economical. The Commission disagrees.

RCW 81.68.040 reads in part as follows:

No auto transportation company shall operate for the transportation of persons, and baggage, mail and express . . . without . . . a certificate . . . The commission shall have power, after hearing, when the applicant requests a certificate to operate in a territory already served by a certificate-holder under this chapter, only when the existing auto transportation company or companies serving such territory will not provide the same to the satisfaction of the [commission], . . . and may attach to the exercise of the rights granted by said certificate to such terms and conditions as, in its judgment, the public convenience and necessity may require.

The Commission agrees with applicant that its evidence permits the Commission to find that the existing carrier "will not provide [service] to the satisfaction of" the Commission.

The statute requires a finding in an application proceeding^{1/} that the existing carrier will not provide service which is reasonably required by the travelling public. Here, such a finding requires an analysis of the existing carrier's authority and the patterns of service it provides.

Koco, Inc., the existing carrier, possesses four separate authorities under which it may provide two distinct types of service.

One type is "airporter" service - in the language of Koco's permit, limited to:

The transportation of airline passengers and flight crews . . . at rates substantially higher than the fares of regular common carriers.

Under its certificate, Koco may provide airporter service only between named airport or airports on the one hand and, on the other, the communities of Fife and Federal Way, the community of DuPont (and intermediate points south of Tacoma on highways I-5 or SR 99, plus the off-route point of McChord Air Force Base), and hotels and airline ticket offices in the City of Tacoma.

Koco therefore has authority to provide airporter service, the sort of service here requested, only to McChord Air Force Base, one of the two service points here requested.

The second type of service the carrier provides is regular bus authority, i.e., provision of regular route service at specified times, touching each of its service points to provide transportation to any passenger which may seek it. This service is not the expedited service which airport passengers require.

Koco, Inc., possesses two of these bus authorities - service between DuPont and East Olympia over specified routes, and service between "Tacoma and Fort Lewis and DuPont . . . ; DuPont and North Fort Lewis . . . ; [and] Tacoma and McChord Field . . .".

^{1/}

To require a separate proceeding would thwart the intent of the law - no competing application would be filed, no matter how poor the service, if a separate proceeding was required; therefore, there would be little motivation to provide satisfactory service. The statute does not grant a total monopoly, but authorizes certain protections conditioned upon the provision of satisfactory service.

Under these authorities it may provide service between East Olympia and DuPont, there connecting with bus service between DuPont and North Fort Lewis or Fort Lewis and Tacoma. It may also provide bus service between McChord Air Force Base and points in Tacoma.

The carrier's authority is complicated by its authorization to combine all operations in one vehicle for the operational convenience of the carrier. It may not, however, provide different services from those it is authorized, or combine the services in an impermissible manner.

Specifically, on the facts of this case, Koco, Inc.:

-- May provide connecting service, bus with airporter, between Fort Lewis, North Fort Lewis and McChord Air Force Base on the one hand and, on the other, Sea-Tac airport or Boeing Field. Connection is mandatory, not optional; the vehicle must complete its run per its schedule and connection may only be made at a point authorized in both authorities, i.e., a hotel or an airport ticket office in Tacoma.

-- May provide direct airporter service between McChord Air Force Base and Sea-Tac airport; it customarily provides only connecting service.

Where does all this leave the carrier? A connecting service is a different character of service from that which is proposed by the applicant. Protestant Koco, Inc., is required by its certificate to provide connecting service at Tacoma for its Fort Lewis airport passengers and it customarily provides connecting rather than direct service for its McChord Air Force Base passengers for the carrier's own economic reasons.

In the Commission's judgment, the connecting service which is offered is a different service from the direct, single-vehicle airporter service which the applicant proposes. See Application D-2408 of The Tacoma Suburban Lines, Inc., Order M. V. Ch. No. 1422 on rehearing (1984). To the extent protestant is authorized to provide airporter service from McChord Air Force Base, yet provides a connecting service, it is not providing its authorized service to the reasonable satisfaction of the Department of Defense, its largest customer, nor to the reasonable satisfaction of the Commission. It is therefore appropriate to authorize airporter service between the Sea-Tac airport, Fort Lewis, which is presently authorized to protestant for connecting service only; and McChord Air Force Base, which protestant is authorized to serve by airporter service, but which it serves by connectng schedules, not satisfactory as airporter service.

2. Economics. The proposed order cites economics as one basis for denial of the application. The Commission disagrees.

The record contains no financial information which would demonstrate that the applicant would be unable to sustain its operations under this proposed service. Applicant's witness testified, without contradiction, that the service could be profitable if it were used by as few as two persons, on the average, per run. The Department of Defense evidence demonstrates that some 120,000 to 130,000 persons per year travel between the two military institutions and the airport. Applicant therefore needs to secure only a fraction of the transportation business available in order to operate profitably. Although witnesses testified about competitive services, there is no demonstration that the applicant will be unlikely to secure the requisite number of customers or that existing regulated services would be adversely affected by the certification of a direct, rather than a connecting, service.

3. Selection of Applicant. Two competing applications seek similar certifications. In this proceeding Bremerton-Kitsap seeks to provide airporter service to Fort Lewis and McChord Air Force Base. In Application D-2445, Pacific Northwest Transportation Services, Inc. (PNTSI), d/b/a Capital Aeroporter, seeks to provide airporter service to Fort Lewis and McChord Air Force Base. The Commission considers the relevant record in both proceedings to make a comparison between them. The protestant, Koco, Inc., Bremerton-Kitsap, and PNTSI are all parties to each of the proceedings.

Each of the applications has positive aspects and each has negative.

Bremerton-Kitsap seeks to provide a non-stop service between McChord Air Force Base and Sea-Tac and will serve only the two military installations. Its service will thus be faster, although less frequent. Because of its experience serving the Bangor submarine base, working with base transportation officials and with military personnel in emergency settings, Bremerton-Kitsap appears better equipped to serve the largely military clientele. Adding the two stops to PNTSI's existing schedules would tend to slow its service to its existing customers south of Fort Lewis. Its authorized service north of McChord Air Force Base could result in slower service to its military-installation customers, although integration with its present routes could yield more frequent service.

Taken together, the Commission believes that the advantages of Bremerton-Kitsap's proposal and the negative aspects of PNTSI's service outweigh the opposing factors, and this application will be granted.

In summary, the Commission rules that this proposed service is of a different character from that authorized to or provided by Koco, Inc., that granting this portion of the application would not provide duplicating services; that this applicant's proposal for service is superior to that of competing applicant Pacific Northwest Transportation Services, Inc., and that this portion of this application should be granted.

Based upon the entire record and the file in this proceeding, the Commission hereby makes and enters the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. On January 18, 1983, Richard E. and Helen N. Asche and Bremerton-Kitsap Airporter, Inc., d/b/a The Sound Connection and Kitsap-Sea-Tac Airporter, Inc., applied for extension of authority under Certificate of Public Convenience and Necessity No. 903 to operate motor vehicles in furnishing passenger and express service between the following points:

Between Poulsbo, Keyport, Bangor, Silverdale, Bremerton, Gorst, Port Orchard, Purdy, Gig Harbor, Tacoma, Fort Lewis, McChord Air Force Base, and Sea-Tac International Airport via SR-305, SR-3, SR-303, SR-304, SR-16, SR-308, SR-160, SR-99, and I-5, or as an alternate route any combination of SR-305, SR-303, SR-304, SR-3, SR-16, SR-160, SR-99, the Washington State Ferry Terminals at Winslow, Bremerton, Southworth, Seattle, and Fauntleroy, SR-509, SR-516, SR-518, and I-5, including all connecting local streets and roads.

Applicant further requests that the limitations contained in Certificate No. 903 be removed, to eliminate the fifteen (15) passenger seating capacity limitation on vehicles and to eliminate the restriction against providing local service.

2. At the hearing, the application was clarified as follows:

The application is intended to be limited as follows: Service east of the Tacoma Narrows Bridge is limited to the off-route points of Denny's Restaurant on 6th Avenue, Safeway at 19th and Mildred and the University of Puget Sound (main campus), and restricted to closed-door operations between said off-route points and Sea-Tac airport.

3. Applicants' Certificate No. 903 presently authorizes the following:

PASSENGER AND EXPRESS SERVICE

Between: Bangor Submarine Base and Seattle-Tacoma International Airport, via SR-3, SR-16, and Interstate 5.

Limitations:

1. Service is limited to use of vehicles having a fifteen (15) passenger seating capacity or less.
2. No local service is authorized.
3. Service between the corner of Bantz Boulevard and Sixth Avenue in Tacoma and the Seattle-Tacoma International Airport is restricted to closed-door operations.
4. Richard E. Asche, president and stockholder of the applicant, testified. The carrier has sufficient financial ability to conduct the proposed service, including financial credit for expanding its service if necessary. Applicant has experience as an auto transportation company under the provisions of RCW chapter 81.68, and its personnel are familiar with the laws and rules of this state governing carrier operations.
5. Applicant possesses or can acquire sufficient, suitable equipment to conduct the proposed operations.
6. The following witnesses testified on behalf of the application and the proposed service:

- (a) Geraldine Brown, salesperson, First Class Travel, Poulsbo, Washington. The witness has been with the business for one year, and has knowledge of persons seeking bus transportation from the Poulsbo area to Sea-Tac airport, especially senior citizens from the Hostmark Senior Center. Some 15 to 20 persons per month seek such transportation. Presently, such persons travel 15 miles to make connections with bus service; the proposed service of applicants would make bus connections more convenient. Poulsbo, Washington is

one of 27 points listed for the proposed service.

- (b) Richard Gene Denniston, manager and owner of Mile Hill Automotive, Port Orchard. He does business with the applicants; applicant's motor equipment has been duly maintained and kept in good repair.
- (c) William Wallace, manager of American Marine Bank, Port Orchard Branch, testified that the bank has had financial transactions with the applicants. Its financial condition is good; it has a loan commitment of \$28,000 from the bank related to the proposed service.

7. Racine Heacox, traffic manager, United States Government, Department of the Army, assigned to Headquarters, I Corps, Fort Lewis, Washington, testified on behalf of the Department of Defense, intervenor. The witness supported the proposed service of applicants. Some 80,000 official military travelers and 46,000 unofficial travelers such as dependents of military personnel traveled between the military bases and the airport during the prior year. The Department of Defense finds that the current passenger transportation service provided to Fort Lewis and McChord Air Force Base by KOCO's All-Over Bus Service is inadequate to meet the needs of the two installations and their personnel. Transit time for the current service is as long as two hours for a one-way trip of 28.4 miles. Frequently, passengers must change vehicles at Tacoma. Connecting service is unsatisfactory for airport traffic.

7. Gerald L. Dawson, general manager for KOCO, Inc., d/b/a Tacoma Airporter, Oliver Taxi, and All-Over Bus Company, testified. This firm operates bus transportation under Certificate No. 770 between Fort Lewis and McChord Air Force Base and Sea-Tac airport, but usually with transfer at Tacoma. Present bus transportation between the military points and the airport also includes numerous stops which may be made en route. Time between the points could vary, depending on stops and transfer; the usual time is about two hours. Protestant has suitable equipment to provide bus service and has the ability to expand the service.

Koco, Inc., has authority to provide direct service only between McChord Air Force Base and the airport. It may serve Fort Lewis via connecting service. It is unwilling to provide direct, nonstop service between McChord Air Force Base and Sea-Tac without assurance of high vehicle-occupancy factors.

8. Paul Harmon, president-manager, Bremerton-Tacoma Stages, Inc., testified. The carrier operates under Certificate No. 345, under the name of Cascade Trailways. This protestant opposes the proposed service of applicants. It is a creditor of Koco, Inc. The applicant seeks to provide local service in territory in which protestant is presently providing passenger and express service. Bremerton-Tacoma is operating under an interim agreement with Kitsap Transit Authority, and an agreement is pending with the Pierce County Transit Authority. Under Certificate No. 345, this carrier is providing passenger and express service between:

Tacoma and Bremerton
Olympia and Shelton
Lake Ballinger and Poulsbo
Silverdale and Brownsville
Silverdale and Bangor
Bremerton and Hood Canal Bridge
Hood Canal Bridge and Port Angeles
Hood Canal Bridge and Kingston
Lynnwood and Poulsbo
Bremerton and Shelton
Bremerton and Port Angeles
Bremerton and Seattle
Bremerton and Keyport
Seattle and Olympia
Tacoma and Seattle

9. Richard Hayes, interim executive director of Kitsap Transit, testified for that intervenor. Kitsap Transit is a Municipal Corporation of the State of Washington organized as a Public Transportation Benefit Area Authority under provisions of RCW chapter 36.57A. The agency opposes a grant of the proposed local service unless such is done with its approval. Intervenor has authority to enter into agreements with carriers for providing service within the benefit area; applicants have not sought such an arrangement.

10. James Fricke represented protestant Pacific Northwest Transportation Services, Inc.; he is an owner and stockholder of the corporate carrier which operates under Certificate No. 862. It is authorized, inter alia, to provide passenger and express service between:

Chehalis, Centralia, Tumwater, Olympia, Lacey
and Sea-Tac airport via designated routes.

Evergreen State College and Sea-Tac airport.

Kent and Tukwila and Sea-Tac airport

Sea-Tac airport and Boeing Field on one hand, and Shelton, Auburn, Algona, Pacific, Sumner, Puyallup, Parkland, Lakewood, Steilacoom, Pacific Lutheran University, Nendel's Motel (S. Tacoma) and Denny's Restaurant on 38th Street (Tacoma) on the other hand.

Tumwater, Olympia and Lacey and a radius of 3 miles beyond the city limits of each city and Sea-Tac airport.

Hoodsport, Union, Alderbrook Inn and Sea-Tac airport by designated routes, or alternates.

This protestant is pursuing its Application No. D-2445, wherein additional authority is sought from the Commission to provide service between Fort Lewis, McChord Air Force Base, and the Seattle-Tacoma International Airport. Protestant presently has stops near the military bases; Mr. Fricke has had conversations with witness Heacox about providing direct service from the military bases to Sea-Tac airport. Protestant believes that granting the application would infringe on his business.

11. Applicant's proposed airporter service is superior to that of Application D-2445 ("the other" herein). It would provide service exclusively between Fort Lewis and McChord Air Force Base military installations and the airport; the other would be on-call to serve other locations. Applicant's proposal would not change its existing airporter service; the other would add intermediate stops to its existing service. Applicant has substantial experience working with military travelers and base management regarding military travellers, of a sort and a depth not possessed by the competing service.

CONCLUSIONS OF LAW

1. The Washington Utilities and Transportation Commission has jurisdiction over the persons and subject matter herein.
2. Intervention by Department of Defense and Kitsap Transit is proper.
3. Applicants are fit, willing and able to conduct the proposed service.
4. It is in the public interest and is required by the public convenience and necessity that applicant be granted

an extension of its authority and that Certificate of Public Convenience and Necessity No. 903 should be revised and reissued as shown in Appendix A, attached hereto.

5. Bus service is the authority to serve in the transportation of passengers between any points in a stated territory or along a stated route. Service may be accomplished by direct or by connecting schedules. Bus service does not authorize direct, point-to-point, expedited airporter-type service.

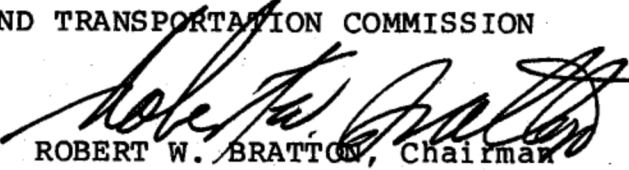
6. Airporter-type service constitutes a direct, that is, not a connecting, schedule, often limited to passengers and crew. It is inherently radial service, to or from the airport or station served by air or rail transportation; it is a premium service which customarily involves the handling of luggage. Although stops may be made en route, they are limited to picking up or discharging passengers, luggage and/or express bound to or from the airport or depot being served. Connecting service is inconsistent with airporter service as the Commission defines it.

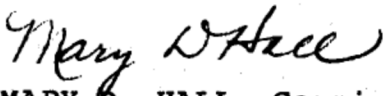
O R D E R

WHEREFORE, IT IS HEREBY ORDERED That Application No. D-2444, shall be, and the same is hereby, granted, in part.

DATED at Olympia, Washington, and effective this *11th* day of May, 1984.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION


ROBERT W. BRATTON, Chairman


MARY D. HALL, Commissioner


A. J. "BUD" PARDINI, Commissioner

APPENDIX A

PASSENGER AND EXPRESS SERVICE

BETWEEN:

Bangor Submarine Base or Poulsbo and Seattle-Tacoma International Airport, via SR 305, SR 3, SR 16 and I-5; or as alternate routes for convenience of the carrier, any combination of SR 305, SR 3, SR 304, SR 160, SR 16, Washington State Ferry Docks at Winslow, Bremerton, Southworth, Seattle or Fauntleroy, SR 99, I-5, SR 509, SR 513 and SR 518, including connecting streets and roads.

LIMITATIONS:

1. No local service is authorized.
2. Service between the corner of Bantz Blvd. and Sixth Ave. in Tacoma and the Seattle-Tacoma International Airport is restricted to closed-door operations.
3. Service when utilizing alternate routes is restricted to closed-door operations unless otherwise authorized in this certificate.

BETWEEN:

Fort Lewis or McChord Air Force Base and the Seattle-Tacoma International Airport via I-5 and SR 99, including connecting streets and roads.

LIMITATIONS:

1. No local service is authorized.
2. Service between Fort Lewis or McChord Air Force Base and the Seattle-Tacoma International Airport is restricted to closed-door operations.

M. V. C. No. 1443