

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
WAKEBOARD SCHOOL HAWAII, LTD.)
For Extension of Motor Carrier)
Certificate.)
_____)

DOCKET NO. 04-0149

DECISION AND ORDER NO. 21477

DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

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Filed November 29, 2004
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Brooke K. Kane
for Chief Clerk of the Commission

ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

Brooke K. Kane

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DECISION AND ORDER

I.

Application to Extend Common Carrier Authority

WAKEBOARD SCHOOL HAWAII, LTD. ("Applicant") is a common carrier of passengers by motor vehicle over irregular routes on the island of Oahu in the 8-to-25 passenger classification.¹ On June 16, 2004, Applicant filed an application seeking commission approval to extend its authority under certificate of public convenience and necessity number 1653-C ("Certificate No. 1653-C") to include the over-25 passenger classification, limited to providing transportation services between Waikiki hotels, including Ala Moana Hotel, and Sea Life Park, making stops at the Koko Marina Shopping Center, Hanauma Bay, and Hawaii Kai area, on the island of Oahu. Applicant represents that if its authority is extended as requested, it can meet customer demand for motor vehicles with a seating capacity of over 25 passengers.

¹See Decision and Order No. 17594, filed on March 8, 2000, in Docket No. 99-0397.

Applicant served copies of the application on the Hawaii Transportation Association and the Hawaii State Certified Common Carriers Association, Inc., which consist of carriers that may be affected by Applicant's proposed service, and on the Division of Consumer Advocacy, Department of Commerce and Consumer Affairs ("Consumer Advocate"). The Consumer Advocate did not participate in this proceeding.

On July 20, 2004, Robert's Tours & Transportation, Inc. ("Robert's") and PHT, Inc., dba Polynesian Hospitality ("PHT") (collectively, "Movants"), each filed a Motion to Intervene ("Motions to Intervene").

On August 26, 2004, Applicant filed a motion to amend its application ("Motion to Amend").

On August 30, 2004, Robert's and PHT each requested that their Motions to Intervene be withdrawn, citing Applicant's Motion to Amend, to be discussed below.

II.

Motion To Amend

Applicant filed its August 26, 2004 Motion to Amend in light of its purported stipulation with Robert's and PHT. Applicant's proposed amendment of its application includes the following changes to its restrictions in the over-25 passenger classification: (1) its area of operation is restricted to the east side of the island of Oahu in an area between Waikiki hotels and Sea Life Park (deviations from the above area of operation will be allowed if passage to the Sea Life Park area is blocked, and

then only during the period of the blockage); and (2) its vehicle inventory is restricted to two (2) motor vehicles in the over-25 passenger classification whose age is not less than 15 years old.

Applicant's purported stipulation with Robert's and PHT notwithstanding, i.e., that Movants will withdraw their Motion to Intervene upon Applicant's amending its application to Movants' satisfaction, the commission finds that a grant of operating authority cannot include a limitation on the number of over-25 passenger vehicles that Applicant can operate or the age of those vehicles. Hawaii Revised Statutes ("HRS") § 271-12(d) prohibits the commission from restricting a carrier's right to add equipment to its fleet.² As such, we do not view these provisions as binding on the commission. Accordingly, we conclude that Applicant's Motion to Amend should be granted, in so far as it restricts the area of operation in which Applicant may operate its vehicles in the over-25 passenger classification, and denied wherein it seeks to restrict the number and type of vehicle that Applicant may utilize in its motor carrier operations.

²HRS § 271-12(d) reads, in relevant part, that the commission may, at the time of the issuance of a certificate of public convenience and necessity, and from time to time thereafter, attach such reasonable terms, conditions, and limitations to the exercise of the privileges granted by the certificate as the public convenience and necessity may from time to time require, "provided that the terms, conditions, or limitations shall not restrict the right of the carrier to add to his or its equipment and facilities . . . as the development of business and the demands of the public shall require."

See also Decision and Order No. 15123, filed on October 28, 1996, in Docket No. 96-0028, and Decision and Order No. 16557, filed on September 10, 1998, in Docket No. 98-0067 (confirming that the commission views restrictions within the prohibition of HRS § 271-12(d) to be between parties and not binding upon the commission).

III.

Findings and Conclusions

Based upon our review of the record, we find that Applicant is fit, willing, and able to properly perform the proposed service, and to conform to Hawaii Revised Statutes chapter 271 and the requirements and rules of the commission. We also find that the proposed service is required by the present and future public convenience and necessity. Accordingly, we conclude that Applicant's request for an extension of its authority should be granted, consistent with the terms, conditions and limitations set forth in this decision and order.

IV.

Orders

THE COMMISSION ORDERS:

1. Applicant's Motion to Amend, filed on August 26, 2004 is granted, in part, and denied, in part, consistent with the terms, conditions and limitations of this decision and order.

2. Robert's request to withdraw its Motion to Intervene is granted.

3. PHT's request to withdraw its Motion to Intervene is granted.

4. Applicant is authorized to operate as a common carrier of passengers by motor vehicle over irregular routes on the island of Oahu in the (1) 8-to-25 passenger classification, and

(2) over-25 passenger classification, limited to providing transportation services on the east side of Oahu in an area between Waikiki hotels and Sea Life Park (deviations from the above area of operation will be allowed if passage to the Sea Life Park area is blocked, and then only during the period of the blockage).

5. Applicant shall surrender Certificate No. 1653-C, and an amended certificate reflecting the operating authority granted by this decision and order shall be issued.

6. Applicant shall comply with all of the commission's requirements for common carriers by motor vehicle including, but not limited to, filing a lawful tariff and filing the appropriate insurance documents.


7. Applicant shall comply with the foregoing requirements within one hundred and twenty (120) days after service of this decision and order. Failure to comply within the time specified constitutes cause for this commission to void this decision and order.

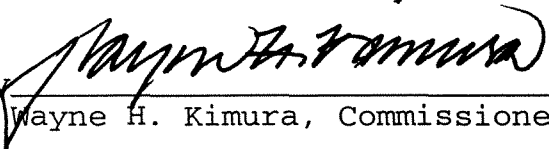
8. Applicant shall not commence operations in the over-25 passenger classification until it has received written confirmation from the commission that all requirements have been met.

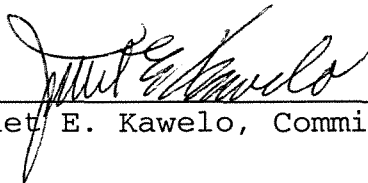
DONE at Honolulu, Hawaii

NOV 29 2004


PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Benedyne S. Stone
Commission Counsel

04-0149.rpr

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 21477 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.


DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
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ATTN: GEORGE KAHANU, JR.
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Honolulu, HI 96817

PHT, INC., dba
POLYNESIAN HOSPITALITY
ATTN: LAWSON TESHIMA, SECRETARY-TREASURER
650 Iwilei Road, Suite 415
Honolulu, HI 96817

DATED: NOV 29 2004



for Karen Higashi