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

Filed November 29, 2004
At 11 o' clock A.M.

Chief Clerk of the Commission

ATTEST: A True Copy
KAREN HIGASHI
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

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. 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.

\[\text{See Decision and Order No. 17594, filed on March 8, 2000, in Docket No. 99-0397.}\]
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On August 30, 2004, Robert's and PHT each requested that their Motions to Intervene be withdrawn, citing Applicant's Motion to Amend, to be discussed below.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.

2 HRS § 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

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
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
P. O. Box 541
Honolulu, HI 96809

WAKEBOARD SCHOOL HAWAII, LTD.
c/o KEVIN K. KEKONA
232 Hanakoa Place
Honolulu, HI 96825

ROBERT'S TOURS & TRANSPORTATION, INC.
ATTN: GEORGE KA'HANU, JR.
680 Iwilei Road, Suite 700
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

[Signature]
Karen Higashi