

L. G. Merkel, for California Parlor Car Tours Company.
 J. B. Held, for Peerless Stages, Inc., Protestant.
 Richard T. Eddy, for Gray Line, Inc., and the Yosemite
 Gray Line Limousines, Inc.
 Orla St. Clair, for Callaway Stage Line; Sacramento
 & Fair Oaks Stage Line; California Parlor Car Company,
 Inc.; Belden-Chester Stage Line; San Benito & Tres
 Pinos Stage Line; Central Transit Company; Coastside
 Transportation Company; Livermore Valley Stages;
 Humboldt Motor Stages; Lone Pine Stage Company;
 Amador Stage Lines; Inglewood-Westwood Transit;
 Blairsden & Johnsville Stage Line; Eastside Transit
 Company, Ltd.; Pierce Arrow Stages; Belvedere Bus;
 Wilmington Bus Company; Smith Auto & Stage Lines;
 Mt. Lassen Transit Company; American Stage Company;
 Palmer Springs Stage & Express; Sunset Stages;
 Prairie Ave. Transit Line; Pennoyer's Descanso &
 Alpine Stage Line; Motor Coach Company; Interstate
 Transit Lines; Blairsden Stage Company; Redding-
 Weaverville Stage Company; Darwin-Olancho Stage
 Company; Belvedere Gardens Bus Line; Madera-Wawona
 Stage Line; Red Bluff & Jelly Auto Line; River Auto
 Stages.
 Mc Cutchen, Olney, Mannon & Greene, by Carl I. Wheat,
 for Grey Line Motor Express Company.
 F. H. Asbury, for Original Stage Lines, Inc. and
 Pasadena-Ocean Park Stage Lines, Protestant in
 Application No. 18973.
 R. E. Wedekind, for Los Angeles Motor Coach Company,
 Motor Transit Co., and Pacific Electric Railway.
 Leo E. Sievert, for The Atchison, Topeka & Santa Fe
 Railway.
 Gwyn H. Baker, for Pierce Arrow Stages, Protestant.
 H. L. Wheeler, for San Joaquin & Eastern Railroad
 Company, Protestant.
 Gibson, Dunn & Crutcher and Woodward M. Taylor, Attorneys,
 and H. G. Weeks, Assistant General Manager, for
 Los Angeles Railway Corporation as Protestants to
 Application No. 18973, and for Applicant in
 Application No. 19078.
 E. E. Bennett and E. C. Renwick, for Union Pacific
 Stages of California, Protestant, and Los Angeles
 and Salt Lake Railroad Company, Protestant in
 Application No. 18973.
 B. F. Woodard, for San Joaquin & Eastern Railroad
 Company, Protestant in Application No. 18973.
 A. S. Groocox, for the Board of Public Utilities and
 Transportation of the City of Los Angeles, interested
 party.
 Hal Remington, for San Francisco Chamber of Commerce.

CARR, Commissioner -

O P I N I O N

The several applications and cases listed in the title
 were consolidated for hearing and were heard during September,
 seven days having been devoted to public hearings. Briefs
 have since been filed and the issues involved in these various

proceedings are ready for determination.

The basic application is that of the California Charter Car Company for certification as a "passenger stage corporation." The cases involving rates for charter car service tendered by existing passenger stage corporations (Cases Nos. 3652 and 3672) and the various other applications are essentially defensive in nature and represent to a large extent, at least, an effort by existing passenger stage corporations to take advantage of the proviso in Section 50½ of the Public Utilities Act, added to this Section by the 1931 Legislature, and providing "that the railroad commission shall have power, after hearing, to issue said certificate when an applicant requests a certificate to operate in a territory already served by a certificate holder under this act only when the existing passenger stage corporation or corporations serving such territory will not provide the same to the satisfaction of the railroad commission."

The status, position and desires of the various parties here before the Commission, whether as applicants, respondents or protestants, may be summarized as follows:

California Charter Car Company:

This is a California corporation, of which Mr. Earl A. Bagby is President and apparently the moving party. Bagby has had a wide experience in passenger stage operations besides being an attorney at law and unusually well informed respecting the class of operations involved. The Company proposes to perform for the public a general charter or rent car service covering the entire State; to maintain stations at San Francisco, Oakland, Sacramento, Stockton, Fresno, Los Angeles, San Diego and at such other points as its business may justify, and to acquire suitable equipment consisting of small four passenger cars, seven passenger limousines, and buses carrying from eleven to thirty passengers, and over. While the service proposed

is to be an "on call" service, extending to whatsoever point the charterer of the car or bus desires, it is alleged that in the ordinary course of business the operations will occur over certain main routes of travel to an extent that they will involve such a regularity of movement as to require certification. Tariffs are tendered specifying various point to points rates, as well as rates based upon mileage operated, with provisions for additional charges for excess standing charge. It is proposed to operate the enterprise fully and in all respects under the provisions of the Public Utilities Act respecting passenger stage corporations, and under the general supervision of the Railroad Commission. The evidence indicates that the operations proposed by this applicant do not differ particularly from charter and rent car service now being extended by various of the parties hereto, except (a) that the applicant proposes to develop some business in the form of agent organized parties, and (b) one way movements with charges based thereon are contemplated to an extent not usual in existing operations. The evidence indicates that Bagby has secured financial backing for the corporations so that if his application should be granted, the necessary financing could be done.

Pacific Greyhound Lines, Inc.

The Pacific Greyhound possesses certificates and operative rights as a passenger stage corporation covering a large part of the State and paralleling most of the routes as to which California Charter Car Company expects to accomplish a regularity of service. On July 28, 1933, soon after the filing of the main application, it filed with the Commission its Local and Joint Tariff No. 342 establishing rates for charter or rent car service, not only along its certificated routes but to other

points. This tariff was suspended by order of the Commission on August 8, 1933, and is involved in Case No.3652. On September 5, 1933, Pacific Greyhound filed its application (Application No.19081), alleging that it has been performing a charter or rent car service not only between points on its certificated routes but also to points off its certificated routes, and that such service had covered "practically every route within the State of California where passenger transportation by motor vehicle is practicable." It alleges that it had been advised by counsel that certification was not necessary for such service, but that such service meets a public need and that if the Commission concludes such service requires certification, an enlargement of its existing rights or the granting of a new certificate is requested. The suspended tariff heretofore referred to is the tariff proposed to be followed if certification is granted, but the applicant offers to file such additional or modified tariffs as the Commission may direct. The revenue derived from the charter car service has been reported to the Railroad Commission in monthly and annual reports by this Company and has all been reported to the State Board of Equalization as a base for the computation of its tax under Section 15 of Article XIII of the Constitution.

In performing this service the Company utilizes the equipment not needed for its regular service. It has no difficulty in meeting all public demands for this service. Indeed, this Company, like others to which reference has been made, complains that there is insufficient patronage for the equipment available.

Peerless Stages, Inc.

This Company operates as a passenger stage corporation under certificates and operative rights between San Jose and Santa Cruz, San Jose and Los Gatos, San Jose and Oakland, and Palo Alto and Oakland. Like Pacific Greyhound, it has filed a tariff covering charter car operations, which was suspended by the Commission.

(Case No.3672). On September 5th it filed an application (Application No.19080) with the Commission very similar to that filed by Pacific Greyhound and containing similar allegations. It asks for such enlargement of its present operative rights or such additional certificates as will enable it to continue performing a general charter or rent car service. This Company has used its spare equipment for its charter and rent car business, its revenue from such business representing approximately 5% of its gross operating revenue.

Mr. Held, President of the Company, was before the Commission in Re Dunbar, et al., 22 C.R.C. 696 in respect to certain rent car operations by the Peerless Stage Association, which were there indicated to be unobjectionable and non-violative of law.

Los Angeles Railway Corporation.

This corporation's main business is the operation of a street railway system in Los Angeles. In connection with this it operates passenger stages in Los Angeles and vicinity, for which operations it possesses the requisite certificates. Incidental to this latter business it performs some charter car service, using its spare equipment for the purpose. On September 2nd, it filed its application (Application No.19073), for certification of its charter car business, the application being similar in effect to those of the Pacific Greyhound and Peerless Stages. The territory it seeks to serve, however, is that within a 100 mile radius of the City of Los Angeles. It claims to have as surplus equipment some 24 buses available for this service.

Pacific Electric Railway Company

This company operates an extensive street and interurban railway business in Southern California, in connection with which it operates under appropriate certificates a substantial number of passenger stages. Incidental to this latter business, it conducts charter car operations. By Application No.19082, filed on September 5th, it seeks certification of such charter car business if certification is deemed necessary. Certification is sought for the whole state. For this service it uses spare equipment. It claims to have more than enough available to meet all demands.

Motor Transit Company

This Company, now controlled by Pacific Electric Railway Company, operates an extensive passenger stage business in Southern California. Like the other applicants mentioned, it utilizes its spare equipment for conducting a charter car service. It differs from the others in that it has on file a tariff for such service when over its certificated routes. When it cannot get its tariff rate for a trip between points on a certificated route, its car takes a route other than that covered by the certificate. On September 5th it filed Application No.19083, seeking certification for its charter car business, if such certification be deemed necessary. It has a surplus of available equipment.

Los Angeles Motor Coach Company

Pacific Electric Railway Company and Los Angeles Railway Corporation conduct certain joint passenger stage operations under this name, and these two corporations, by Application No.19084, filed on September 5th, seek certification, if that is necessary, for a continuation of the charter car business they are now rendering and for which they claim to have a surplus of equipment.

East Bay Motor Coach Lines, Ltd.

This Company operates a street railway system in Oakland and surrounding territory. It also operates passenger stages under certificates. Like the other applicants, it renders a charter car service, using therefor its spare equipment; and like others it applies for certification of its charter car business. (Application No.19085).

Tanner Organization

This organization comprises Tanner Motor Tours, Ltd., Tanner Motor Livery and Gray Line Motor Tours. Tanner Motor Livery owns about 200 limousines and with these operates a rent or charter car business out of Pasadena, Hollywood, Los Angeles, Santa Barbara, Santa Monica, Riverside, Palm Springs, San Diego, Phoenix, Tucson and Colorado Springs. It also owns and operates eleven buses out of Los Angeles and Hollywood. Tanner Motor Tours, Ltd. conducts a certificated sightseeing business and a passenger stage business between Los Angeles and the Harbor. Gray Line Motor Tours also operates a certificated sightseeing business. Formerly the last two companies conducted a charter car business, but for some time all of the charter or rent car business of the Tanner Organization has been carried on by Tanner Motor Livery. This Company is unable to keep its available equipment occupied. It has not applied for certification of this business but would be glad to do so and to operate under regulation.

Gray Lines

Two corporations are generally understood as embraced within this designation, namely, Gray Lines, Inc., conducting a certificated sightseeing business out of San Francisco and incidentally a charter car business, and Yosemite Gray Lines, Ltd., conducting a limousine rental business in and out of

San Francisco. The former Company owns 23 parlor cars and 5 or 6 limousines and the latter about 40 limousines. Like other operators, these complain of lack of business to occupy their equipment. They have not applied for certification of their charter or rent car business but indicate a willingness to do so.

Motor Carrier Association.

This Association has some 67 members, all operating under certificates as passenger stage corporations. All furnish charter or rent car service as incidental to their regular operations.

In addition to the foregoing operators, it was testified that in the State there were many thousands of cars and automobiles for hire. As one witness of rather wide experience said "I have never been in a city in California, even in the woods, where there was not a car for rent or a taxicab service."

The important question presented by these various matters is whether the Commission should now assume jurisdiction over that class of motor stage operations conducted by many of the existing public carriers, and as proposed to be conducted by the California Charter Car Company, over irregular routes, and by the charter or rent of the entire car to the persons transported. It is conceded by all that since the Commission in 1917 was first given jurisdiction over common carriers by motor vehicles, it has been assumed that its authority does not extend to the regulation of those engaged in renting the use of the vehicle and the services of a driver on a "for hire" basis. It has long been the assumption also, as the regulatory statutes provide, that the Commission's authority extends only to those common carrier operations between fixed termini or over regular routes. The Commission's reported opinions and orders are replete with determinations respecting

the extent and application of its regulatory power, and in none has the authority which it is here solicited to assume been exercised.

It is obvious that the occasion prompting the filing of rates and applications for certificates by the existing public carriers in respect to this class of service was the desire of the California Charter Car Company to establish a like operation. If such service is one which hereafter is to be certificated, the existing carriers each claim a right in the field to the exclusion of a newcomer. But none has advanced any compelling reason why the Commission should so completely reverse its policy and attempt to extend its jurisdiction over the extensive charter car operations engaged in by a multitude of operators, nor have they demonstrated how the Commission may practically certificate a service, assuming that it is a common carrier service, which by its very nature is not to be conducted over regular routes or between any fixed points.

The question here presented is not whether one may evade the regulatory statute by indulging in the subterfuge of chartering a vehicle by special contract when his actual offer is to serve each individual member of the public, or to what extent a radial or "on call" operation may be carried on without becoming actually a regular service between fixed termini. These questions the Commission may determine, as it has in the past, when they arise.

It is true that the California Charter Car Company has asked for a certificate authorizing a part of its operations between fixed termini or over regular routes. However, the application viewed in its entirety is essentially a request to certificate a service which by its inherent characteristics cannot be rendered entirely between known or fixed termini or over regular and prede-

terminated routes. While it is clear from this record that public convenience and necessity requires a radial or "on call" charter car service, applicant has failed to show public convenience and necessity for service between fixed termini or over regular routes.

It is concluded therefore that the application of California Charter Car Company in so far as it requests certification between fixed termini or over regular routes be dismissed for lack of sufficient proof of public convenience and necessity, and that the other applications here under consideration and the application of the California Charter Car Company in so far as it requests a certificate of public convenience and necessity not between fixed termini or over regular routes be dismissed for lack of jurisdiction.

In view of the conclusions which have been reached above, it appears that the tariffs filed by applicants other than California Charter Car Company should be cancelled. The operations reflected in said tariffs are not within the rights granted in the certificates heretofore issued to said operators and are not within the certificating jurisdiction of this Commission. Nor has it been shown on this record that these rates are proper for the service performed.

I recommend the following form of order:

O R D E R

Hearings having been had on the above entitled applications and cases, and each of the matters having been submitted,

IT IS HEREBY ORDERED that the application of California Charter Car Company be dismissed for lack of sufficient proof that public convenience and necessity demands the operation of a charter

car service between fixed termini or over regular routes, and that the other applications here under consideration and the application of the California Charter Car Company in so far as it requests a certificate of public convenience and necessity not between fixed termini or over regular routes be dismissed for lack of jurisdiction.

IT IS HEREBY FURTHER ORDERED that the Peerless Stages, Inc., be and it is hereby ordered, within fifteen (15) days from date hereof, to cancel its Local and Inter-Division Tariff C.R.C. No. 200 heretofore suspended by the Commission.

IT IS HEREBY FURTHER ORDERED that Pacific Greyhound Lines, Inc., be and it is hereby ordered, within fifteen (15) days from the date hereof, to cancel its Local and Joint Tariff No. 342, C. R.C. No. 314, heretofore suspended by the Commission.

The effective date of this order shall be twenty (20) days from date hereof.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 6th day of November, 1933.

C. C. Dewey

James C. Kelly

W. J. Kim

W. B. Lanning

W. H. Lawrence

Commissioners.