

Decision No. 29551

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
MILES MORTON GILBERT for certificate  
of public convenience and necessity  
to operate automobile stage service,  
as a common carrier, between Banning  
and Twenty-nine Palms, California.

Application No. 20947

ORIGINAL

Cecil L. Lacey, for Applicant.

BY THE COMMISSION.

OPINION

Applicant herein seeks to establish motor bus operation for the transportation of passengers only between Banning, Palm Springs, Garnet and Whitewater, on one hand, and points north of Indio State Highway to and including the community of Twenty-nine Palms, on the other.

A public hearing hereon was conducted by Examiner W. R. Williams, at Twenty-nine Palms. The matter was duly submitted and is now ready for decision.

As proposed, the service affects no other existing carrier except Pacific Greyhound Lines, which, in writing, has waived opposition under certain terms of restriction. Miles Morton Gilbert, who proposes the service, is engaged in the real estate business at Palm Springs and Twenty-nine Palms. Mr. Gilbert proposes to begin by the use of a five-passenger or seven passenger sedan and to operate three days each week. The point of origin, as proposed, is Twenty-nine Palms. Contact may be had with rail and bus carriers at Whitewater and Palm Springs. The service then proceeds to Palm Springs, diverting from the Indio Highway at Whitewater, thence returning by way of Garnet to the Indio Highway at Whitewater, thence

over the County Highway to Twenty-nine Palms. The entire operation is over paved highways except for nine miles in Moronga Valley. The distance traversed by each schedule is approximately seventy-eight miles. As proposed, applicant will receive passengers at Banning and Palm Springs, and at Garnet and Whitewater only when their destination is north of the Indio Highway. The return movement reverses this operation, except that returning schedules need not go via Palm Springs, Whitewater or Garnet, unless passengers are destined there.

Applicant gave satisfactory evidence that he is financially able to establish and maintain the operation and to provide additional or different equipment should public necessity so require. The proposed operation is essentially pioneering, and applicant stated that he expects to sustain losses in the early operation.

Twenty-nine Palms is an unincorporated community in the desert area of San Bernardino County and has an estimated population in excess of 1,000. The name was acquired from an oasis which, when first discovered, was marked by twenty-nine palm trees geographically isolated from their natural habitat, the trees all surrounding the water hole and springs appearing at the point of their growth. Originally a landmark for prospectors who used it to renew their water supplies, it attracted attention subsequent to the Government establishing a large homestead area of several thousand acres northeast of Moronga Valley for the purpose of rehabilitating ex-service men under special privileges. There are approximately 200 such persons so located on such federal homestead grants. The climatic conditions have provided such physical restoration on the part of the men, that the region about the oasis has attracted general attention.

In addition, at the instance of California organizations, Congress has now created, adjacent to the Twenty-nine Palms district, the Joshua Tree National Monument, an area approximately

70 miles in length and 30 miles in width and containing over 800,000 acres. This monument will perpetuate immense forests of Joshua trees of great antiquity and also preserve many curious canyons and rock deposits.

The route to be traversed by the applicant in his operations parallels the west side of this monument for a distance of some 25 miles, and the planned gateways to the monument are through Twenty-nine Palms and twelve miles south thereof, entering through Devil's Lake Canyon. As the Government does not intend at present to contract for interior housing facilities, it is expected that Twenty-nine Palms will become the immediate depository of visitors seeking entrance to the monument, and already provisions are being made for ample housing.

The community of Twenty-nine Palms may be approached from several directions—from Victorville, Amboy, Whitewater—over traversable roads. It is now undergoing intensive developments by real estate men. Buildings have been erected at a central point known as Four Corners. The domestic habitations, however, are largely scattered over a very wide area, most of them on large acreages.

Applicant was supported by the testimony of M. A. Whitcomb, Wesley W. Evans and Katherine M. Kauth, all of Palm Springs and all interested in real estate. They testified to numerous inquiries at Palm Springs for transportation to Twenty-nine Palms. Mr. Evans testified that on the Sunday preceding the hearing, fourteen inquiries were made at his office alone. Testimony also was given by E. H. Nicholes, real estate operator; Leonard P. Wikoff, installing a public utility electric system for the community, and J. B. Carris, service station, all of Twenty-nine Palms. Their testimony was directed to the need of bus service, in order that the community might do its shopping at Palm Springs and Banning and also have access to rail and bus lines at Banning and Whitewater. In this connection, applicant

stated that he intended to co-ordinate his service in such a way that long distance traffic may be brought to the Twenty-nine Palms terminus.

The testimony presented by applicant in support of his application indicates that some sort of transportation service is required by a large number of residents and visitors from Banning, Palm Springs and Twenty-nine Palms. Applicant intends to assume the duty of furnishing this service as a pioneering adventure without assuming that it would be profitable from the start. The rates proposed are in line with usual stage operations. However, applicant believes in beginning on a small basis and without great expense, and the equipment he offers appears to be adequate for the volume of traffic apparently available. Doubtless future development will require larger equipment and different schedules. The application will be granted.

Miles Morton Gilbert is hereby placed upon notice that "operative rights" do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the state which is not in any respect limited to the number of rights which may be given.

#### O R D E R

Miles Morton Gilbert having made application for a certificate of public convenience and necessity, as above entitled, a public hearing having been held, the matter having been duly submitted and now being ready for decision,

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the establishment of an automotive service for the transportation of persons and their baggage as such is defined in Section 2 $\frac{1}{2}$  of the Public Utilities Act, between

Banning and Twenty-nine Palms and certain intermediate points over and along the following route:

Via U. S. Highway No. 99 between Banning and Garnet, with diversion over County Roads between Palm Station and Garnet and Palm Springs, and between Whitewater and Twenty-nine Palms; and

IT IS HEREBY ORDERED that a certificate of public convenience and necessity therefor be, and the same hereby is, granted to Miles Morton Gilbert, subject to the following conditions:

- (1) No passengers, baggage or express shall be carried locally between Banning, Palm Springs, Garnet and Whitewater and intermediate points; but the authority granted applicant shall be confined to the transportation of passengers and baggage from Banning and intermediate points between Banning and Whitewater, on applicant's proposed route, to and from points between Whitewater and Twenty-nine Palms, not including Whitewater, and to the transportation of passengers and baggage locally between Whitewater and Twenty-nine Palms and between intermediate points between Whitewater and Twenty-nine Palms.
- (2) Applicant shall file a written acceptance of the certificate herein granted, within a period of not to exceed fifteen (15) days from date hereof.
- (3) Applicant shall commence the service herein authorized within a period of not to exceed thirty (30) days from the effective date hereof, and shall file in triplicate and concurrently make effective, on not less than ten (10) days' notice to the Railroad Commission and the public, a tariff or tariffs constructed in accordance with the requirements of the Commission's General Orders and containing rates and rules which in volume and effect, shall be identical with the rates and rules shown in the amended exhibit attached to the application, in so far as they conform to the certificate herein granted, or rates and rules satisfactory to the Railroad Commission.
- (4) Applicant shall file, in duplicate, and make effective within a period of not to exceed thirty (30) days after the effective date of this order, on not less than five days' notice to the Railroad Commission and the public, time schedules covering the service herein authorized in a form satisfactory to the Railroad Commission.
- (5) The rights and privileges herein authorized may not be discontinued, sold, leased, transferred nor assigned, unless the written consent of the Railroad Commission to such discontinuance, sale, lease, transfer or assignment has first been obtained.

(6) No vehicle may be operated by applicant herein unless such vehicle is owned by said applicant or is leased by applicant under a contract or agreement on a basis satisfactory to the Railroad Commission.

For all other purposes, the effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 19<sup>th</sup> day of February, 1937.

William H. ...  
Leon ...  
...  
Ray ...  
COMMISSIONERS.