Decision No. 31066

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of TOM MORGAN , doing business as the Pickwick Bus Company, for a certificate to operate busses for the transportation of passengers and baggage between San Francisco and Los Angeles .	))))))	Application No. 20281

Chas. H. Woods; Robert Brennan; Jonathon C. Gibson; Gerald E. Duffy; Wm. F. Brooks; Chas. D. Swanner; W. B. Beazley; J. Ogden Reavis; Samuel F. Hollins; Sydney J. W. Sharp; Frank M. Ostrander; Warren H. Atherton; Frederick J. Heid, Jr.; Mc Cutchen-Olney, Mannon and Greene, by Allan P. Matthew; Stearns, Luce, Forward and Swing, by Edgar A. Luce and Fred Kunzel; Ezra W. Decoto, Heartley Peart, Chickering and Gregory, by Donald M. Gregory and Geo. W. Lupton, Jr.; for Santa Fe Transportation Company.

H. C. Lucas and Earl A. Bagby for Pacific Greyhound Lines, Inc.
E. J. Foulds and H. W. Hobbs for Southern Pacific Company.
Frank Karr, R. E. Wedekind, and Edward Bissinger for Pacific Electric Railway Company and Motor Transit Company,
Woodward M. Taylor for Los Angeles Railway Corp.
Douglas Brookman and Warren Libby for Tom Morgan, doing business as Pickwick Bus Company.
Herbert W. Kidd for Motor Coach Company, Lang Transportation Company, Mayer's Stages, Westside Stage Company, Bass Lake and Norfork Stages, Cook Stages, Orange Belt Stages, Kern County Transit Company, Arvin Stage Line, Inland Stages, Peerless Stages, and Motor Carriers Association.

Mc Carthy, Richards and Carlson, by T. K. Mc Carthy for East Bay Street Railways and Key System.
Louttit, Marceau and Louttit, by Thomas H. Louttit and Daniel V. Marceau for Stockton Chamber of Commerce and Wm. C. Colberg and Henry J. Colberg, doing business under the name and style of Central Transit Company.

Harry See, E. A. Mc Millan and Preston W. Davis, for the Brotherhood of Railroad Trainmen, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, System Federation No.114 of the Railway Employees Department of the American Federation of Labor, etc.

Rex Sawyer and R. E. Crandall, for the Associated Jobbers and Manufacturers of Los Angeles.
Ray L. Chesebro, City Attorney and Carl S. Wheat, Public Utilities Counsel, for City of Los Angeles.
Joseph Miller, by Norman H. Robatham, Amos Meininger, for Pacific Greyhound Drivers Association.
Morris, Jaffa & Sumski, by Leon E. Morris, for Civic League of Improvement Clubs and Associations.

Gilbert Ferrell, District Attorney for County of San Mateo.
D. W. Ault, City Attorney, C. F. Renolds, Traffic Manager of Harbor Department and H. D. Daniels, for the City of San Diego.
Edwin G. Wilcox, for San Francisco Chamber of Commerce.
T. G. Differding, for Oakland Chamber of Commerce,
John J. O'Toole, City Attorney and Dion R. Holm, Assistant City Attorney for City and County of San Francisco.
C. F. Reynolds, for San Diego Chamber of Commerce and San Diego County Board of Supervisors.
Frederick W. Welsh, for Bakersfield Chamber of Commerce.
J. B. Wolf, for the Bay District Property Owners Association.

BY THE COMMISSION -

O P I N I O N

In this proceeding Tom Morgan, doing business under the fictitious name of Pickwick Bus Company, requests a certificate of public convenience and necessity authorizing the transportation of passengers and baggage between San Francisco and Oakland on the one hand, and Los Angeles (including Hollywood) on the other.

The application, as amended on October 17, 1936, proposes what applicant terms "a common carrier limited transportation service." The specific limitations proposed by applicant are:

1. Two schedules each day between the termini;

2. A maximum of six busses to be used, four to maintain the two schedules, and the other two used as stand-by equipment at San Francisco and Los Angeles;

3. The operation of a type of equipment, costing approximately $3000.00 each, with stationary, unadjustable, reclining seats, which equipment, it is claimed, will be lighter, smaller, slower and less comfortable than the 36-passenger cruiser bus used by the Pacific Greyhound in California.

4. No service from or to points intermediate to the termini.

The fare proposed is $5.00 one way, and $9.50 round trip.

This application was consolidated for hearing with the applications of the Santa Fe Transportation Company, Nos. 20170, 20171, 20172 and 20173, and with the application of the Pacific Greyhound No. 20237, all of which were de - cided by this Commission by Decision No.30790 of April 18, 1938.

The granting of the application was protested by the Pacific Greyhound, Southern Pacific Company and others. The Santa Fe Transportation Company and The Atchison, Topeka & Santa Fe Railway did not protest.

Prior to the taking of testimony in this proceeding, motions to dismiss and abate were filed by Pacific Greyhound on February 24, 1936, and concurred in by certain other protestants herein on the grounds the Commission was without jurisdiction, under the provision of Section 50½ of the Public Utilities Act, to grant the certificate sought. These motions were denied by the Commission on March 16, 1936. At the conclusion of the hearings on June 25, 1937, Pacific Greyhound made a final motion to dismiss. This motion was taken under advisement by the Commission. In view of our conclusions herein, it will be unnecessary to pass upon the motion.

Applicant contends his dedication of service is solely to that part of the public which demands and requires a service inferior and cheaper than that now rendered by any common carrier. His whole case rests upon the theory that because there is a substantial amount of travel by the so-called wild-cat sedan carriers (hereafter referred to as

sedans), operating illegally, (See In Re Investigation into the operations of Sam Analora, et al., Decision No.30950, of June 6, 1938), he will be able to obtain, through the medium of a $5.00 fare, at least 75% of this business without diverting traffic from the certificated bus and rail carriers.

Approximately forty of the sedans operate on an average of two round trips per week, carrying an average of 5½ persons each way per trip. Despite the efforts of local and state agencies charged with the enforcement of the various acts which are being violated, this business has flourished.

Transportation is surreptitiously furnished through the medium of so-called travel bureaus, usually located at some second or third class hotel, working in conjunction with operators of second-hand sedans. The travel bureaus are operated by persons known as "bookers," who obtain passen - gers by advertising the sedan service in the daily newspapers, in the classified section of the telephone directory, by outdoor advertising displayed at the travel bureaus, and by distributing business cards. The passengers are ordinarily gathered together, pending a trip, at hotels where the travel bureaus are located.

The methods pursued by the travel bureaus and sedans, the unsafe equipment used and the abuses which the public suffer are fully described in the Commission's Decision No.30950, supra, wherein we ordered thirty five (35) of these illegal operators to cease and desist their operations.

At the time this application was filed, the prevailing fare of the sedans was $5.00. Since then it has been re - duced to $4.00 and, in some cases, to $3.50. Applicant's proposed fares of $5.00 one way and $9.50 round trip will attract at best only an insignificant part of the sedan traf- fic. If applicant, at his proposed fares, is able to

obtain sufficient patronage to make his operations profitable, the major part of the traffic would be diverted from the Greyhound. While it is true that the type of equipment he proposes to operate is smaller and lighter than the equipment ordinarily operated by the Greyhound, the equipment as de - scribed on Exhibits 9 and 10 is attractively designed to pro - vide most of the comforts afforded by the larger busses. It cannot be said that it would be distasteful to the traveler who, because of financial necessity or an unwillingness to pay more, desired to avail himself of the lower fares offered by applicant. Applicant is a financially responsible, exper - ienced bus operator who would undoubtedly take fair advantage of his opportunity and popularize his service by correctly advertising it as a dependable service rendered in modern equipment, operated under the jurisdiction of the Railroad Com- mission, with adequate insurance protection to the passengers. The service could not fail to be attractive.

Although applicant has made no offer to establish a fare comparable with that of sedans, namely $4.00 each way, the Commission could grant this certificate conditioned upon appli- cant maintaining a fare not in excess of that amount. At an equality of fares, the bulk of the sedan business undoubtedly would go to applicant. But there is no assurance, nor could there be any, that if applicant established a $4.00 fare, the sedan operators would not reduce their fares. Indeed, past history has shown that whenever there has been a reduction in the fares of the certificated carrier, there has been a re - duction in the sedan fares. The last reduction of the Greyhound from $8.00 to $6.25 was followed by a reduction in the sedan fare from $5.00 to $4.00. Eventually there will be a nadir below which the sedan fares cannot go, but this nadir will not be reached as long as obsolete and fully depreciated equipment may

be obtained and the irresponsible wild-cat operator able to obtain something over and above his actual cost of gasoline and oil.

At any fares lower than proposed, applicant's competition with the Greyhound will be intensified. Applicant could operate at a profit at less than his proposed fares as he has dedicated his service to the "cream of the traffic" - the long haul business between two populous centers with no dedi - cation to handle the less desirable short haul traffic between the termini. At a $4.00 fare, the traffic which would be attracted to applicant's service would undoubtedly exceed the capacity of his equipment. Although applicant has offered to restrict his service as to the equipment, number of schedules, and time in transit,(1) he has not done so willingly, but as a compromise measure after his original application was filed, to lessen the force of the protests against the granting of the application. An attractive certificated service, such as applicant could offer to the public at low fares, would eventually lead to a public demand for an augmentation of the service. Unless all the public who offered themselves for transportation to this carrier, willing and financially able to provide the service, were accorded the same benefits of a low fare, the Commission would be compelled to permit the enlargement of applicant's certificate, or be placed in the anomalous position of requiring a common carrier to withhold from a portion of the public the benefits accorded to others similarly situated.

(1) Via the Coast route, the proposed running time is 14 hours, 30 minutes, and via the Valley route 14 hours. Some of the Pacific Greyhound's schedules are faster, while some are substantially the same, or slower.

Applicant characterizes his service as second class. A service so designated at low fares is not unusual nor new in principle. Indeed, the Greyhound, through subsidiaries, has long maintained such a designated service between Portland and San Francisco and other interstate points. The rail carriers also maintain lower fares for travel in coach and tourist Pullman cars than concurrently applicable in standard Pullman cars.

Service, designated as second class, insofar as it involves the accommodations offered, and the comfort to land passengers, is largely fiction. The Southern Pacific Company operates such a fictional service between San Francisco and Los Angeles with the commodious streamlined Daylight Limited. Not only is this train designed to provide the utmost in comfort to the passenger but it maintains a faster schedule than the trains carrying the so-called first class passengers.

In the final analysis, the reason for the so-called second class service at the lower fares is simply to provide the means to obtain what the traffic will bear. In the true sense, the service is not always materially inferior. Indeed it may be a superior service. The lower fares are designed to stimulate, attract or retain traffic which is unable financially, or unwilling, to pay the higher fares.

In deciding this matter we should strip this application of all its fiction and determine if public convenience and necessity warrant the establishment of lower fares between San Francisco and Los Angeles.

At the time the application was filed, the one-way fare

of the Greyhound was $8.00 and the round trip fare - $13.35. The coach fare of the Southern Pacific Company was $9.47 one way and $14.00 round trip. Since then the Greyhound fares have been reduced to $6.25 and $11.25 respectively. No change has yet been made in the fares of the Southern Pacific Company. In our Decision No.30790, supra, we authorized the Santa Fe Transportation Company to establish a coordinated and integrated rail and stage service in conjunction with The Atchison, Topeka & Santa Fe Railway for the transportation of passengers and their baggage between various points in California, including a service between San Francisco and Los Angeles. The basic fares required by the Commission were 1½ cents per mile for one way fares and for round trip fares 180% of the one way fare, such fares to be computed upon the shortest available mileage. The fare between San Francisco and Los Angeles will be $6.00 one way and $10.80 round trip. This is admittedly a low basis of fares. We said in the Santa Fe decision:

> "The inauguration of the proposed coordinated and integrated rail-bus service by Santa Fe, upon the basis of these reduced fares, will likely afford the competitive force which will bring the fares of existing common carriers to the same relatively low basis of parity. Such a result affords a commanding reason, in the public interest, to warrant the granting of the certificates sought herein.
>
> The future operation of these competing carriers will demonstrate the full measure of the success and wisdom of the proposed fare structure. If this operation results in higher net revenues to the carriers, then great public benefits will be realized through the money saved in the cost of transportation. If this operation demonstrates results that are adverse to the carriers, the trial of the same will have accomplished permanent and far-reaching benefits to both the public and the carriers, because the competing carriers, spurred by salutary competition, thereafter will conduct their services in harmony with the pattern of the proposed offer, to wit, furnishing the cheapest possible transportation consistent with the highest obtainable net revenue. These beneficent results will be accomplished irrespective of any future tendency in operative costs and economic conditions. The 1½ cents per mile fare may not endure.

"Nevertheless its trial will redound to public interest. If it is found remunerative and successful, it will endure to the enhancement of public interest. If it is found insufficient and unsuccessful, its competitive influence should endure to safeguard the public against excessive rates, which will also work to the enhancement of public interest."

The competitive fares of the Santa Fe Transportation Company and The Atchison, Topeka & Santa Fe Railway will be met by both the Greyhound and Southern Pacific Company. Thus, we will have in California lower fares than ever existed heretofore. To place in the field another competitor between San Francisco and Los Angeles, who has dedicated his service to only the most desirable traffic, would result in either a serious diversion of traffic from the carriers who also provide service for the less desirable traffic or it will, through force of competition, break down an already low and untried fare structure.

The Greyhound has stated it will meet the competition of applicant. It probably would not if the competition were immaterial. But if it were material, as we believe it would be, the Greyhound would be forced to do so. The Santa Fe and Southern Pacific would be compelled to follow the same course. And the reduction of fares would be not only between the termini but at intermediate points as well to avoid departures from the long and short haul provisions of the constitution and the Public Utilities Act. Whether the present or prospective carriers in the field would be enabled to perform an adequate service for the entire traveling public under a lower fare structure is unlikely under present conditions. These essential services should not be jeopardized.

Upon consideration of all the facts of record, we are of the opinion and so find that public convenience and necessity

do not require applicant's proposed service. The application will be denied.

O R D E R

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity do not require the establishment and operation by Tom Morgan, doing business under the fictitious name of Pickwick Bus Company, of an automotive passenger stage service, as that term is defined in Section 2¼ of the Public Utilities Act, for the transportation of passengers and their baggage between San Francisco and Oakland on the one hand, and Los Angeles (including Hollywood), on the other, therefore

IT IS HEREBY ORDERED that the above entitled application be and it is hereby denied.

Dated at San Francisco, California, this 30th day of June, 1938.

Leon O. Whitsell
Frank R. Devlin
Ray L. Riley
COMMISSIONERS.

I dissent from the foregoing Opinion and Order. Having heard the evidence in the within application, and having reviewed the same together with all of the briefs filed in this proceeding and the several associated proceedings, I wrote and recommended for adoption by the Commission, the Opinion and Order which I believe this record justifies. With the slight modifications that are necessary to express my language as emanating from myself individually, I leave this document with the Commission in its entirety as my dissenting opinion.

Applicant Tom Morgan, doing business under the fictitious name and style of Pickwick Bus Company, has come before this Commission and requested by Application No. 20281 a certificate of public convenience and necessity for the transportation of passengers and baggage between San Francisco and Los Angeles, by means of equipment, fares, and schedules which were designed to distinguish his service as second and inferior in class to that which is now being rendered by common carriers occupying the field. On October 17, 1936, said applicant filed his Amended Application.

This application was consolidated for hearing with the applications of Santa Fe Transportation Company, Nos. 20170, 20171, 20172, and 20173, which included in their comprehension, a proposed competitive service with Pacific Greyhound Lines (hereinafter in this decision referred to as Greyhound) between San Francisco and Los Angeles; and said application was likewise consolidated for hearing with Greyhound's Application No. 20237, which was filed as a defensive measure to the said four Santa Fe applications. All of these five applications last numbered, were decided by this Commission in Decision No. 30790, dated April 18, 1938.

Before any testimony was taken, motions to dismiss and abate were filed by Greyhound on February 24, 1936, and were concurred in by certain other protestants herein; after two days (March 3, and 4, 1936) of oral argument thereon, said motions were denied by the Commission, March 16, 1936. A final motion to dismiss was filed by Greyhound at the conclusion of the hearings on June 25, 1937, and was taken under advisement by the Commission. Hearings upon the within proceeding were concluded upon the latter date, were thereupon submitted on briefs, all of which have been filed in behalf of applicant and protestants, and the matter is now ready for final determination.

Applicant proposed, subject to the approval of this Commission, to limit his service to the maximum carrying capacity of six buses, each with a seating capacity of 25 passengers, no jump seats and no standees were to be permitted. Four of said buses were to be responsive to the regular schedules with one of the other two available at each terminal as stand-by equipment for an overflow of passengers. Each bus was to cost $3,000 and was designedly lighter, smaller, slower, and less comfortable than the 36 passenger cruiser bus used throughout California in connection with the intrastate service of Greyhound. The seats in applicant's proposed equipment were to be of a stationary, unadjustable, reclining type. Applicant contended that the buses he proposed to operate in this service were specially designed to permit an operative cost lower than that commonly experienced in the operation of larger buses used by Greyhound. The proposed service was to be financed, owned, managed, and operated by Mr. Morgan, an experienced bus operator.

The service proposed was to consist of two schedules daily in each direction between San Francisco and Los Angeles, one via the

Coast Route over U. S. Highway No. 101, and the other via the Valley Route over U. S. Highway No. 99, the former to be a day schedule and the latter a night schedule as follows:

Coast Route - U. S. 101
Distance 444 miles

Departure		Arrival	
San Francisco	8:30 A.M.	Los Angeles	11:00 P.M.
Los Angeles	8:30 A.M.	San Francisco	11:00 P.M.

Total travel time 14 hours,30 minutes

Valley Route - U. S. 99
Distance 402 miles

Departure		Arrival	
San Francisco	6:00 P.M.	Los Angeles	8:00 A.M.
Los Angeles	6:00 P.M.	San Francisco	8:00 A.M.

Total travel time 14 hours, 0 minutes

The feature of schedules and traveling time presented another inferiority to the existing Greyhound service which is afforded via the Coast Route in 12 hours, and via the Valley Route in 12 hours and 20 minutes.

Applicant proposed to limit his dedication to a through service between San Francisco (including Oakland) on the one hand and Los Angeles (including Hollywood) on the other hand. Two tickets were proposed. First, a one-way fare between termini, costing $5, secondly, a round-trip fare from either terminus to the other and return for $9. Children between the ages of 5 and 12 years were to be carried at one-half of full fare. Applicant proposed to accept no passengers or baggage at points intermediate to above termini, and by stipulation applicant agreed that no passengers would be hauled locally between points served by Pacific Electric Railway Company and Motor Transit Company.

As I shall develop hereinafter in this decision more fully, there exists in California a portion of the public who demand and utilize a passenger transportation service which is second and inferior to the service heretofore and now rendered by rail and Greyhound between San Francisco and Los Angeles. Approximately 140 persons are moved daily between these points by carriers who unlawfully, are operating inferior, automotive equipment, and charging fares substantially below those maintained by rail and Greyhound. The single purpose of applicant was to furnish a lawful and certificated service addressed solely to the appeal and requirements of this volume of traffic. This record affords proof that these travelers have habitually eschewed the lawful services of rail and the certificated accommodations of Greyhound, and have therefore comprised a considerable portion of the traveling public which has found a means of transportation so far removed and different from said rail and Greyhound services as to belong to a category that is non-competitive therewith.

Transportation of passengers and their baggage between points within the State of California by wildcat bus and sedan operators has developed into a flourishing business. Such illegal transportation by non-certificated carriers has persisted for many years despite the endeavor of State and City authorities, as well as private motor bus organizations, to stamp it out by prosecution of the offenders. Eradication of these unlawful operators is at best a tenuous and difficult process when pursued by the usual means of criminal prosecution. Passengers apprehended while availing themselves of such illicit service, refuse to testify against the operator. Subterfuges are resorted to for the purpose of concealing the identity of the bus operator and its owner. Cease and desist orders, issued by this Commission, are accomplished only

by unavoidable and long durations of time, and contempt proceedings predicated upon the violation of such orders are difficult of attainment, and by their very nature their realization is long deferred. The unlawful operators themselves are characteristically contemptuous of the power of regulation, and the evidence herein discloses that even when they are apprehended, convicted, and conclude actual imprisonment, they often return to the active engagement in wildcat operation.

Testimony as to the impracticability of eliminating wildcat sedan operators from the field in California was submitted by Mr. H. F. Bassett, now inspector for this Commission, who for eight and a half years prior to his present employment was an insepctor engaged by the Board of Public Utilities and Transportation of the City of Los Angeles. While so employed by said City, Mr. Bassett had occasion to investigate wildcat sedan operations and bring about prosecutions where such were possible. He testified that he had arrested approximtely 150 violators and obtained 80 per cent convictions but that upon release, after having paid their penalties, those operators immediately returned to their unlawful sedan operation.

The evidence in this record indicates that enforcement of law in connection with these violations is a practical impossibility by utilization of the personnel and facilities reasonably available to the law-enforcing bodies at the present time, and that augmentation of those facilities to the extent of making such enforcement possible would entail huge and unreasonable costs. This Commission has been active in the past and is now active in an effort to bring these law-breakers and wildcat operators to justice and terminate their operations. On June 6, 1938, this Commission issued its

Decision No. 30950 in Cases 4273, 4287, and 4295, wherein it ordered some 35 persons to cease and desist from engaging in this wildcat practice. Combined with this salutary influence I believe it to be timely that the applicant be certificated in order to furnish the patrons of this large number of wildcatters a lawful means of transportation at fares comparable to those which such patrons have been habitually paying to these wildcatters. Thereby the regulatory force of this Commission would be reinforced effectively by a new instrumentality in the field of transportation, to-wit, one which would be specifically designed to supply a second-class passenger bus service, and incidentally a more dependable service than has been furnished by these wildcatters, at comparable fares. Such a revolutionary combination of events would result in the extinction of the majority of these unlawful operators who have just been routed by this Commission.(1)

It is in the public interest to be rid of these wildcat sedans. They operate without certainty of schedule; their owners and operators assume no responsibility to their passengers in the event of any failure incidental to this transportation service; accidents and breakdowns are frequent occurrences enroute, resulting in long delays, inconveniences, hardships, and disappointments to the passengers. The equipment is typically a completely depreciated sedan automobile, especially equipped with a jump seat designed for three passengers, and when the equipment is loaded to capacity there are nine persons aboard, including the driver, the air is stuffy and impure, and riding conditions are most uncomfortable.

(1) The witness Bassett expressed the belief that possibly 75 per cent of this present wildcat sedan operation would be eliminated by certificating the proposed service, and that this elimination would be practically permanent.

Misleading advertisement, in the nature of newspaper articles and business cards, is promiscuously distributed to the unsuspecting public; the business cards are distributed openly on the streets of San Francisco and Los Angeles, and are composed and worded in such manner as to lead the prospective traveler to believe that he is availing himself of legal transportation. In most instances the cards indicate that the service is licensed, while some go further and state that the operation is conducted by sedans licensed by the Board of Equalization. Such statements in themselves are not untrue but the public is not informed of the fact that the operation is not complying with the law as set forth by the Public Utilities Act, which requires that no operator shall transport passengers as a common carrier without a certificate of public convenience and necessity issued by the Railroad Commission of the State of California.

Transportation is sold through brokers who charge 20 per cent commission. No tickets are used in this service, and great care is exercised in collecting fares at points enroute where such transfer of money is not likely to be detected by investigators. Collection of passengers commonly involves the use of several vehicles deviously routed through back streets and alleys, transferring passengers from one to another for the purpose of throwing spotters off the trail during the process of loading passengers at rear entrances of inferior hotels and establishments of questionable character.

San Francisco and Los Angeles are the termini between which such wildcat travel is practiced with little intermediate business. Those two cities afford a supply of passengers sufficient in volume to maintain in operation about 40 sedans, each on an

average schedule of two round trips weekly, and each with a maximum seating capacity of approximately 8 persons and an average passenger load of 5½ persons.

Exhibit No. 11 disclosed an estimate of the total operating cost that Mr. Morgan expected to incur in connection with his proposed service in the sum of $.1249 per bus mile. That estimate anticipated the cost of operating buses of 22 passenger capacity a total distance of 56,500 miles per month and reflected Mr. Morgan's experience in the operation of buses during his supervision of the Santa Fe Bus Company through the year 1935.

An analysis of the actual cost of operating 96,978 bus miles on the Santa Fe Bus Company system over a period of three months in 1935 was shown by Exhibit No. 12 to be $.1002 per bus mile, or $.0247 less than the estimated cost per mile as shown by Exhibit No. 11. Mr. Morgan estimated a 54½ per cent load factor would be attainable by using equipment of 22 passenger capacity thereby producing, at the rates proposed, a revenue per bus mile of $.1344 as shown by Exhibit No. 13. No amended estimate was made to show what effect, if any, the use of 25 passenger equipment in place of the 22 passenger equipment would have had upon the earnings per mile.

Considering the estimates of cost and revenue as set forth by Exhibits Nos. 11 and 13 respectively, there would have been available a net revenue per bus mile of $.0095 which, when applied to the total estimated number of miles of this proposed operation, would have resulted in an annual profit of $6,441.00. The margin of profit anticipated by applicant was not sufficient to allow any very great deviation upward of the operating cost or downward of the estimated revenues. It appeared, however, that the estimates made as to revenue and cost, based on 1935 operations, were sufficiently

conservative to result in a profit in spite of increased operating costs subsequent to those prevailing during 1935 upon which Exhibit No. 11 was based.

At the time this application was filed, the fare charged by the wildcat operators between San Francisco and Los Angeles was $5.00 and by Greyhound $8.00. On July 1, 1936, Greyhound reduced its fare to $6.25. In order to maintain the necessary differential, the wildcat fare was reduced accordingly, and the last evidence received in this record established the fact that the most current proven fare commonly charged by the wildcatters was $4.00 per trip one-way, and in rare instances $3.50.

These facts seemed to me as sufficient justification for a modification in the fare proposal by the applicant, and impelled the conclusion that the certificate which I recommended should be granted unto the applicant should be expressly conditioned upon the maintenance by said applicant of a fare which would be sufficiently low to meet and exterminate the existing objectionable wildcatter from the field. I believe that a $4.00 fare, charged by applicant (half fare applicable for children between 5 and 12 years), with no reduced round-trip fare, would best meet these requirements. The greater security, safety, comfort, efficiency and economy of operation in favor of the proposed certificated service over that of the wildcatter warranted the conclusion that the latter service could not permanently and profitably survive the competition of the former. I believe the Commission should certificate the inauguration of the proposed service as herein modified, and should thereafter watch said service with an eye to the determination of whether this fare would prove sufficiently low to eradicate wildcat operation. Thereafter adjustments should be required of and made by the operator

Morgan until finally a fare would be afforded that would be sufficiently low to accomplish the extermination of these hitherto flourishing and irresponsible wildcatters.

The record convinced me that the protestants believed the applicant would have experienced a much higher load factor than 54½ per cent. When I measured his proposed service as modified, which would have operated on schedule, and which would have afforded those patronizing the same the conveniences, certainties, and protections of a well-maintained, safely equipped, and lawfully conducted service, against the uncomfortable, undependable, unsatisfactory, and irresponsible wildcat service, the conclusion appeared to me as inescapable that applicant would have experienced a load factor which would not have been less than 60 per cent. It is not difficult to subscribe to and encourage the concept that people generally will choose an honest, law-abiding course to one in violation of law, especially where the lawful way is clothed with greater advantages, comforts, assurances,and conveniences.

By the process of readjusting the applicant's cost of operation, which has been heretofore discussed, with his revised revenues that would have ensued from an operation that involved a load factor of 60 per cent, related to 25 passenger equipment, and computed upon a $4.00 fare, his operations still would have resulted in substantial profits.

Applicant's investment and operating expenses should have been kept at the minimum in order to make possible a profitable operation at fares prescribed by this Commission. The service therefore would have been made to fit the fare, rather than the establishment of a fare to fit the service. This would have assured the existing lawful carriers in the field that the operator of this second-class transportation would not slide his service up the scale to

match the first-class in order to elevate the fares so as to meet such service. Rather the operator would have maintained a fare that would match, eliminate, and keep exterminated most of the wildcat variety of competition, and he would have afforded unto that fare all the service which a remunerative operation would permit. To achieve this purpose, applicant pledged his willingness to have his service circumscribed with all necessary conditions and restrictions. I reiterate that this circumscription would have been best accomplished by the reduction of the carrier's fares to the irreducible minimum, a minimum at which a wildcatter could not successfully operate in competition with the proposed lawful, certificated service. Thereby, the carrier would expect with confidence to eliminate a majority of these uncertificated, unlawful, and unreliable wildcat competitors by means of fares, equipment, schedules, and dependability, afforded by his service that would be inherently more attractive to the patron and economic and compensatory to the operator.

In order to confine the scope of the proposed second-class service to the patronage which the wildcat operators now enjoy, applicant limited his public proposal in definite respects. His public dedication was restricted to (1) through service only; (2) a standard of service designed to fit the rate of wildcat operators; (3) a service limited to the use of six buses only and of the type already described. A public utility, including a common carrier in subordination to the public interest and with the approval of the regulatory power, may limit the dedication of its service to the public. In respect to his latter limitation, applicant did so in strict subordination to the approval and requirements which I recommended to this Commission. This limited dedication, particularly as it related to the kind and quantity of equipment, seemed to afford the most desirable way to commence this second-class service. After

its operation, the Commission would have known whether this service later should be enlarged by the addition of equipment into a service which in fact and practice could be made adequate and available for all who might in the future apply for its use. Therefore, I recommended that the Commission should have imposed upon the rendition of the same all of the limitations last enumerated, with the reservation that the Commission might hereafter require the said operator to enlarge the scope of his dedication by the inauguration of sufficient additional equipment to render a service sufficient for the requirements of all who might apply hereafter for the same.

Other carriers serving the territory proposed to be served by applicant herein are Southern Pacific Railway, Greyhound, and The Atchison, Topeka and Santa Fe Railway Company. By its Decision No. 30790 of April 18, 1938, in re Application No. 20170, this Commission granted unto Santa Fe Transportation Company,(2) a wholly owned subsidiary of said last named Railway, a certificate to operate a bus service via the Valley Route between San Francisco and Los Angeles, in coordination and integration with said parent railway. The inauguration of this service has been stayed pending Court appeal. In addition to the rail and highway transportation last enumerated, there are also services provided by air and to a very limited extent by water.

Another protestant herein, Southern Pacific Railway, provides service by two routes commonly known as the Coast Route and the Valley Route. Greyhound also provides service by highway over routes paralleling very closely those of the Southern Pacific Company. Applicant proposed to operate his service over substantially the same routes as those of Greyhound, between San Francisco and Los Angeles.

(2) Neither The Atchison, Topeka and Santa Fe Railway Company nor Santa Fe Transportation Company protested the Tom Morgan Application No. 20281.

Said applicant contended that the service he proposed to provide would not cause any material diversion of patronage from any one of the existing carriers. He very definitely dedicated the proposed service to the traffic now moving over the unlawfully operated wildcat sedan routes. Greyhound, the principal protestant in the matter of this application, contended that inasmuch as the service was offered for the use of the public generally, there would be created a diversion of traffic from the existing bus carriers and that in the event that this application were granted, the existing carriers would forthwith put into effect similar second-class service and fares, thereby rendering operation of Pickwick Bus Company unprofitable. Greyhound further threatened the initiation of a rate war. There did not appear of record any evidence that would indicate the probability of any great diversion of patronage from existing carriers to that proposed by applicant.

Greyhound contended that institution of such a second-class bus operation at lower fares than is charged for the more commodious and expensive existing bus accommodations would be contrary to the public interest. Mr. W. E. Travis, President of Greyhound, testified herein: "I believe that the Railroad Commission, on behalf of the general traveling public of California and in their interest, should discourage every attempt to establish second-class service."

In contradistinction, however, to such contention the record disclosed that Greyhound has operated in the past in its own interest both first and second-class bus transportation services between various terminals. Golden Eagle Lines, Lincoln Stage Lines, United Stages System, and Dollar Stage Lines, Inc., are four such second-class operations, the services of which Greyhound has sponsored in the past, the latter one of which is still in operation as a

second-class service paralleling existing first-class Greyhound Lines in interstate service.

Provision of second-class service in the interest of those persons financially unable or unwilling to avail themselves of the more costly transportation is not new in principle. Rail carriers operating between San Francisco and Los Angeles provide several classes of transportation, with a differential in fare. Southern Pacific Railway operates the ordinary chair coach fare for the use of those persons whose financial status does not justify the purchase of sleeping accommodations for night travel. The existence of various class fares in steamship operation is of common knowledge.

Institution of the low fares and the service under this application, as modified and recommended in this dissenting opinion, would have resulted in a stimulation of existing traffic and in the creation of new traffic which otherwise would not move by common carrier. This is a rule that experience has rendered more or less axiomatic.

There remains for final determination protestants' motion to dismiss this proceeding predicated upon Section 50¼ of the Public Utilities Act. The Commission hitherto fully considered and determined this motion in its Decision No. 30790 in re Applications Nos. 20170, 20171, 20172, and 20173, decided April 18, 1938. In the decision which I recommended to the Commission, I made special reference to the Commission's determination of said motion as set forth in said decision, and recommended the reaffirmation of all that was said therein.

Greyhound has never successfully met the situation which applicant proposed to solve. Greyhound has never done a complete job in rendering passenger stage service between San Francisco and Los Angeles, for it has left a void in which wildcat operators, hereinabove discussed and described, have been permitted to develop. To

the extent that Greyhound has failed to accommodate and provide a second-class transportation for that portion of the public who require the same, Greyhound service has been inadequate and unsatisfactory. Throughout the years during which this unlawful traffic has grown and thrived, Greyhound has done nothing to fill the gap which made this wildcat service possible. Finally Greyhound has resisted, throughout the arduous progress of this involved hearing, the inauguration of the proposed second-class service.

The defensive offer of Greyhound to perform the proposed second-class service, made ancillary to its said motion to dismiss, appeared purely perfunctory when viewed in the light of the many pages of testimony in this record which disclosed Greyhound's opposition to the proposed service. Greyhound's futile attempt to establish the fact that this proposed service would have proven neither profitable nor in the public interest, rendered me powerless to believe that Greyhound could or would render this proposed service to the satisfaction of this Commission. Obviously the performance of a service which appeared to be so repugnant to Greyhound would at best be attempted by Greyhound in a half-hearted manner and would inevitably result in failure and abandonment.

Insofar as protestants' said motion to dismiss related specifically to the within Application No. 20281, I recommended the finding as a fact that the proposed service herein was within the classification of the same kind of service which Greyhound theoretically could render. I could not recognize that all, or any part, of the services proposed by Tom Morgan herein, belonged within the category of "new and different service from that presently rendered or which the existing operator or operators are entitled to render."(3)

(3) Quoted from Fialer's case, 38 C.R.C. 895.

I, therefore, recommended that the Commission should have found that in the event that all, or any part of the services proposed by the applicant Tom Morgan, were ever defined, classified, and construed, after the rendition by the Commission of my said recommended decision, as belonging to said class of "new and different service", that the Commission's intent, in such event, was to deny all of the protestants' motions for dismissals, predicated upon Section 50¼, and I further recommended that such denial should have been based upon the reasoning outlined In Re Fialer's case, and upon the evidence in this record which clearly established the following facts, all of which facts, I recommended that the Commission should have categorically found:

> (1) None of the protestants herein rendered on December 2, 1935 (the date of the filing of the application herein), at no time prior to December 2, 1935, did any or all of said protestants render, and at no time since December 2, 1935, has any or all of said protestants rendered the service proposed to be rendered by the applicant Tom Morgan.
>
> (2) During all of the times referred to in the last preceding paragraph, the protestant Greyhound has been opposed to rendering the service proposed by the applicant Tom Morgan.
>
> (3) Public convenience and necessity require the performance by the applicant Tom Morgan of the service which he proposed to render herein, subject to the restrictions and limitations outlined herein, throughout the territory and in the manner set forth in his said application and amended application.
>
> (4) Greyhound will not render all or any part of the service proposed by the applicant Tom Morgan, subject to the restrictions and limitations outlined herein, to the satisfaction of this Commission.

The service which I recommended as subserving public convenience and necessity should have been instituted for the sole purpose of affording a second-class passenger service between San Francisco and Los Angeles to those who will continue to require the same, and who either can not or will not utilize any of the first-class services. Public interest should have been protected in the

future to the extent of prohibiting the use of the franchise which I believe should have been granted, for the purpose of personal gain by the recipient thereof through sale to any other transportation agency which thereafter might have been interested in its destruction to the extent of purchasing the same at a nuisance value. By the granting of this certificate, in the manner which I recommended, the public interest would have been subserved twofold; first, by making available this satisfactory, safe, dependable, most economical and lawful second-class service; and secondly by removing a hazardous transportation racket from the highways of this State which has existed for many years in flagrant violation of the law.

Dated at San Francisco, California, this 30th day of June, 1938.

Wallace Ware.