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Decision No. 32001

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of RAY WITTEERS)
and ANDREW BYRD, a co-partnership, doing business)
under the firm name and style of SAN MATEO)
TRANSIT, for a certificate of public convenience)
and necessity to operate a motor bus service as)
a common carrier of passengers between the Cities)
of Burlingame and San Mateo, California, along)
California - San Mateo Drive, as an extension of)
the existing interurban bus service now rendered)
by applicant in and between said Cities.)

Application
No. 22209

DOUGLAS BROCKMAN and KIRKBRIDE & WILSON, by
W. J. Locke, for Applicant.

IVORES R. DAINS, for Market Street Railway,
Protestant.

H. C. LUCAS, by J. D. Maata, for Pacific Grey-
hound Lines, Interested Party.

ALLAN J. WARD, Mayor of Burlingame, in support
of Applicant.

FRANK E. SIMMENS, Mayor of San Mateo, in
support of Applicant.

MRS. L. L. BEST, for East San Mateo District,
in support of Applicant.

MRS. SPANN, President of Mothers Club, in
support of Applicant.

ROBERT HIGGINS, for Broadway Development Asso-
ciation, in support of Applicant.

GRANVILLE BROWNING, for Burlingame Chamber of
Commerce, in support of Applicant.

GEORGE McQUEEN, for Burlingame Chamber of
Commerce, in support of Applicant.

J. D. HOBBS, North Burlingame Women's Club,
in support of Applicant.

MIKE BOEPPLE, for East Side Improvement Club,
in support of Applicant.

CHARLES GRISSE, for Lawrence Teachers Associa-
tion, in support of Applicant.

J. F. HAIGHT, for Burlingame High School Parent
Teachers Association, in support of Applicant.

BY THE COMMISSION:

O P I N I O N

This proceeding deals with the local transportation situation in the Burlingame-San Mateo area, San Mateo County. Applicants now operate the local bus transportation system in this area, part as intracity and the remainder as an intercity operation. The intracity operations are confined to the cities of Burlingame and San Mateo, respectively, under city permits from those municipalities. The intercity operation is conducted pursuant to authority granted by the Commission's Decision No. 29854, dated June 14, 1937, on Application No. 20970.

In this proceeding a certificate of public convenience and necessity is sought to place the entire motor bus operations under one certificate, which in effect constitutes an extension and enlargement of applicants' present certificated operative right.

Under said Decision No. 29854 applicants were granted a certificate which authorized the transportation of passengers between San Mateo and Burlingame over the route therein described. ⁽¹⁾

(1) "Commencing at the intersection of Hobart Avenue and Edinburgh Street, San Mateo, thence northwesterly along Edinburgh Street to West Third and Third Avenues, thence northeasterly along Third Avenue to Main Street and S.P. Depot; thence northwesterly along Main Street to Second Avenue; thence southwest along Second Avenue to 'B' Street; thence northwesterly along 'B' Street to Baldwin Avenue; thence southwesterly along Baldwin Avenue to El Camino Real (U. S. Highway 101); thence northwesterly along El Camino Real to Park Road; thence northwesterly along Park Road to Burlingame Avenue; thence southwesterly along Burlingame Avenue to Occidental Avenue; thence southerly along Occidental Avenue to its intersection with Clark Drive; with a loop from Park Road at Howard Avenue, thence along Howard Avenue to Highland Avenue, to Burlingame Avenue to Park Road."

In Application No. 20970, supra, authority was sought to operate over approximately the same routes as those applied for in the present application. In order to meet the protest of Market Street Railway Company, applicants amended said Application No. 20970, requesting authority to operate over the route for which a certificate was granted by said Decision No. 29854.

A public hearing was conducted in the instant proceeding before Examiner Paul at Burlingame on February 28 and March 1, 1939, and at San Francisco on March 3, 1939, at the termination of which the matter was submitted on concurrent briefs to be filed on or before April 1, 1939. Briefs have been duly filed and the matter is now ready for decision.

The main route of the proposed operations extends from the intersection of Hillside Drive and Alvarado Street in North Burlingame to the San Mateo Community Hospital near the intersection of Thirty-ninth Avenue and Edison Street, San Mateo, via Hillside Drive, El Camino Real, Broadway, California and San Mateo Drives, Baldwin Avenue, North "B" Street, Second Avenue, Main Street, Third Avenue (Southern Pacific Depot, San Mateo), Third Avenue, South "B" Street, Twelfth Avenue, El Camino Real (U. S. Highway 101), Twenty-third Avenue, Florin Avenue, Twenty-fifth Avenue, El Camino Real and Thirty-ninth Avenue.

Two cross-town lateral extensions are proposed. One begins at the intersection of California Drive and Howard Avenue, thence along Howard Avenue, Dwight Road, Peninsular Avenue, Bayshore Highway, Bayswater Avenue and North Idaho Street, terminating at its intersection with Peninsular Avenue. The other cross-town lateral extension begins at the intersection of Third Avenue and

Main Street (Southern Pacific Depot, San Mateo), thence along Third Avenue and South Humboldt Street to the intersection of Tenth Avenue.

The route between the intersection of Broadway and California Drive, in Burlingame, and Third Avenue and Main Street, in San Mateo, contiguously parallels the rails of the Market Street Railway Company for a distance of 2.8 miles.

Under the permit of the city of Burlingame, applicants are conducting a local operation between the intersection of Hillside Drive and Alvarado Street, and the intersection of California and Peninsular Avenue, the southerly city boundary of the city of Burlingame, via Hillside Drive, El Camino Real, Broadway and California Drive.

Under the permit of the city of San Mateo, applicants are conducting a local service between the intersection of San Mateo Drive and Peninsular Avenue and the San Mateo Community Hospital near the intersection of Thirty-ninth Avenue and Edison Street, via San Mateo Drive, Baldwin Avenue, North "B" Street, Second Avenue, Main Street, Third Avenue (Southern Pacific Depot, San Mateo), Third Avenue, South "B" Street, Twelfth Avenue, El Camino Real (U. S. Highway 101), Twenty-third Avenue, Florin Avenue, Twenty-fifth Avenue, El Camino Real, and Thirty-ninth Avenue.

By virtue of the two local city permits, applicants are providing an interrupted service between Burlingame and San Mateo. One of the termini of the route of each permit is Peninsular Avenue at its intersection with San Mateo and California Drives, at which point applicants' stages halt and passengers destined to points beyond alight and cross the city boundary boarding other stages of applicants to continue their journey. No transfers are issued between these separate local operations. The local fares charged

are 5 cents in each zone.

The proposed routes, together with the present certificated route are to be operated as four separate routes with transfer privileges. These four routes are designated A, B, C and D.

Over the proposed route "A" between the intersection of Third Avenue and Main Street, San Mateo, and the intersection of Hillside Drive and Alvarado Street, Burlingame, applicants propose a daily service. The first schedule is to leave Third Avenue and Main Street at 6:30 A.M., the last at 10:55 P.M. From 6:30 A.M. to 7:10 P.M. applicants will operate forty-nine round-trip schedules, forty of which will operate on a 15-minute headway, with the remainder on headways varying from 10 to 45 minutes at different times of the day. From 7:30 P.M. to 10:55 P.M. eight schedules will be provided, 5 of which operate on a 30-minute headway, 2 on a 20-minute headway and the remaining schedule on a 35-minute headway.

Over the proposed route "B" between the intersection of Burlingame Avenue and California Drive and the intersection of Hobart and Edinburgh Avenues, via the intersection of Third Avenue and Main Street, San Mateo, applicants propose to provide twenty-three round-trip schedules daily, except Sundays and holidays, the headway of sixteen of which is 30 minutes and the headways of the remainder varying from 10 minutes to 60 minutes. The first schedule leaves Third and Main Street, San Mateo, at 7:30 A.M. and the last at 6:06 P.M.

Over the proposed route "C" between the intersection of Occidental Avenue and Clark Drive and the intersection of Peninsular Avenue and Bayshore Highway, via Burlingame Avenue and California Drive, applicants propose to operate nineteen round-trip schedules daily, except Sundays and holidays, fifteen of which are on a 30-minute headway, the remainder varying from 25 minutes to 60 minutes. The first schedule is to leave at 7:55 A.M. and the last at 6:30 P.M.

Over the proposed route "D" between San Mateo Community Hospital, at Thirty-ninth Avenue and Edison Street, and the intersection of Tenth Avenue and Humboldt Street, via Third Avenue and Main Street, San Mateo, applicants propose to provide fifteen round-trip schedules on a 60-minute headway between termini and a 30-minute headway between Community Hospital and the intermediate point at Third Avenue and Main Street, San Mateo. The first schedule is to leave Humboldt Street and Tenth Avenue at 7:30 A.M. and the last schedule to leave at 5:00 P.M. Service between the Community Hospital and Third Avenue and Main Street will be continued until 8:20 P.M., four additional round-trip schedules being provided on a 30-minute headway.

The applicants propose a 5 cent zone fare structure with charges ranging from 5 to 15 cents, depending upon the number of zones involved, as set forth in the tariff marked Exhibit "B," attached to the application herein as amended; school children will be carried at one-half the adult fare provided tickets are purchased in lots of twenty rides.

Applicants operate a total of eight pieces of equipment, three of which are under contract for the transportation of school children between their homes and the schools which they attend. It does not appear that the equipment used for the transportation of school children will be available for use in the operations proposed herein. The remaining five pieces of equipment ⁽²⁾ will be available for the service proposed herein.

Letters were received from Southern Pacific Company (Exhibit No. 2) and Pacific Greyhound Lines (Exhibit No. 1), in which it was stated in each case that no objections would be made to the granting of the certificate applied for.

Market Street Railway Company protested the granting of a certificate for through operation along California and San Mateo Drives between Broadway, Burlingame, and Third Avenue and Main Street, San Mateo. It offered no protest, however, to the remainder of applicants' proposal.

(2) Exhibit No. 8.

1	1932 Chevrolet	16	passenger
1	1935 Ford V8	21	"
1	1937 " "	18	"

Stand-by Equipment

1	1932 Ford model B	16	passenger
1	1929 " "	A 10	"

Among those testifying for applicants in support of the proposed consolidated and extended service were the Mayors of San Mateo and Burlingame, representatives of the Chambers of Commerce of San Mateo and Burlingame, the County Executive Officer of San Mateo County, the Supervisors of the 2nd and 5th Supervisorial Districts of San Mateo County, and representatives of a number of local Civic Improvement Clubs, Women's Clubs and Parent Teachers Associations.

Mayor Ward of Burlingame testified in substance that the residents of Burlingame are in need of the proposed service; that North Burlingame, herein proposed to be given through service to San Mateo in addition to the local service now provided, is now the most heavily populated portion of the city; that said portion of the city is now without adequate or any through transportation service to and from San Mateo; and that the service now provided requires the transfer at Peninsular Avenue which is to the great inconvenience and disadvantage of such residents or other users thereof.

Mayor Ward further testified that service will be needed in the immediate future to and from the new San Mateo Junior College upon its completion. The new Junior College is now under construction in the area bounded on the north by Peninsular Avenue and on the south by Poplar Avenue, on the east by North Humboldt Street, and on the west by North Delaware Street, and will be served by the proposed lateral extension described as route "C."

Mayor Simmons of San Mateo testified that the City of Council of San Mateo officially endorsed the application by Resolution No. 201, dated February 20, 1939; that he is familiar with the general development of the communities involved which are

generally considered as an integral unit; that California and San Mateo Drives constitute the only feasible direct route to meet the needs of passengers desiring to reach the business centers of either city; and that there is a definite need for service to and from the outlying districts, to provide transportation service for cross-town travel as well as to the business centers of the two cities.

Mr. Frederick Peterson, County Executive of San Mateo County, testified in effect that the Burlingame-San Mateo community is the second fastest growing community in the state and has a total combined population of approximately 50,000; that the residents thereof have a particular need for a cross-town service as proposed by applicants; and that at the present time service is being provided in a northerly and southerly direction by three different transportation companies along the same route, whereas there is no service now being given to meet the cross-town needs of the communities as herein proposed.

Similar testimony, purporting to show the public need for a through service along California and San Mateo Drives, was given by Mrs. A. B. Hobbs, representing the North Burlingame Women's Club, Mrs. J. F. Haight, Burlingame High School Parent Teachers Association, and others.

Numerous individuals testified as to their personal needs for a through service between Burlingame and San Mateo.

Representatives of the Burlingame Chamber of Commerce and the San Mateo Chamber of Commerce testified that there is a need for a through transportation service between Burlingame and San Mateo.

The Market Street Railway Company opposed the granting

of this application only as to that part along California and San Mateo Drives contiguously paralleling its rails.

Mr. L. V. Newton, Vice-President of Market Street Railway in charge of operations, testified that said railway is now operating an interurban line, known as No. 40, between San Francisco and Third Avenue and Main Street, San Mateo. Local service between Burlingame and San Mateo is provided by this line. During the week a car leaves San Mateo beginning at 6:00 A.M., thence every 20 minutes until 7:00 A.M., thence every 15 minutes until 8:00 A.M., thence every 20 minutes until 3:00 P.M. and every 15 minutes until 5:45 P.M. and on a 30-minute headway until 10:45 P.M. Southbound service is provided on a comparable headway leaving San Francisco, Fifth and Market Streets, at 6:15 A.M. and the last schedule leaving San Francisco at 12 midnight. A comparable service is given on Saturdays, Sundays and holidays. The local fare charged between San Mateo and Burlingame is 7 cents. A fare of 3½ cents is provided for school children.

It was the opinion of Mr. Newton that if the proposed operation were authorized at a 5 cent fare between points now served by his company, more than 1/3 of the local traffic of his company would be lost; that if such loss occurred and continued indefinitely, Market Street Railway would be confronted with the problem of either a drastic curtailment in service on this line or the abandonment thereof.

Market Street Railway offered the testimony of numerous local users who testified as to the sufficiency of the service for their needs.

A review of this record leads to the conclusion that the San Mateo-Burlingame area is reasonably entitled to a unified local transportation system, which is not provided by the local transportation facilities now available. While it is recognized that applicants, under their proposed plan of operation, would be placed in a somewhat more favorable position with respect to competing with the Market Street Railway, nevertheless, we must look at this entire problem from the standpoint of the general public, with due consideration to the existing carriers now in this field as reflected by this record.

Obviously, the local service now offered by the Market Street Railway is limited to its line along California and San Mateo Drives which does not provide a reasonable local service for the large and growing residential district beyond that section which might be considered as within a reasonable walking distance of the rail line. In previous orders the Commission has stated that, in a residential district, one-quarter of a mile is a reasonable walking distance to and from a local transportation line. Furthermore, for applicants to provide an adequate local service on a remunerative basis, they must enjoy the privilege of doing business along the routes of the entire system. If a restriction were placed upon applicants' operation along California and San Mateo Drives, it would have the effect of denying that portion of the public along this route the added local transportation service proposed herein, as well as throwing the entire burden of the cost of operation upon the revenues derived from the other routes.

After due consideration of this entire record, it is concluded that applicants should be permitted to conduct an inter-city operation under a certificate issued by this Commission. This

conclusion, however, is based upon the assumption that applicants will present to the Commission for its approval a fare structure and rules and regulations, which are free from the discriminatory features which appear under applicants' proposed fare zone system. For example, applicants now propose to charge a fare of 5 cents for transportation in a zone extending for a distance of 1.4 miles (between the intersection of Hillside Drive and Alvarado Street and the intersection of Broadway and California Drive, Burlingame), which is a section not served by the Market Street Railway, as compared to a fare of 5 cents for a distance of 3.2 miles (between the intersection of El Camino Real and Broadway, Burlingame, and the intersection of Third Avenue and Main Street, Southern Pacific Depot, San Mateo), which is competitive with, and contiguously parallels, the Market Street Railway for a distance of 2.8 miles.

As another example which appears to be inconsistent with respect to fares, applicants propose to charge 10 cents for a 2.2 mile ride between the intersection of Sixteenth Avenue and El Camino Real and the intersection of Tenth Avenue and Humboldt Street, San Mateo. This section likewise is not served by Market Street Railway.

There are also other cases which appear to be inconsistent in applicants' proposed fare structure. The fare structure to be presented for the Commission's approval should be based upon as reasonable and equitable a standard as can be justified under prevailing conditions.

It appears from the record that most of applicants' equipment does not comply with the Commission's General Order No. 93, particularly with respect to head room. Applicant Withers testified that practically all vehicles have a head room of 68 inches, which is 6 inches less than the minimum requirements of the Commission's

General Order No. 93, where it is proposed to transport standees in urban traffic. This witness also testified that if the certificate requested is granted, applicants are financially able to immediately acquire two additional pieces of equipment, which will enable them to provide adequate service over the proposed operations.

Ray Withers and Andrew Byrd are 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

A public hearing having been held in the above entitled proceeding, evidence having been received, the matter having been duly submitted and the Commission now being fully advised;

THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA HEREBY DECLARES that public convenience and necessity require the establishment and operation by Ray K. Withers and Andrew C. Byrd, as a passenger stage corporation as defined in section 2 $\frac{1}{2}$ of the Public Utilities Act, of an automotive passenger stage service for the transportation of passengers between Burlingame and San Mateo and intermediate points, not as a separate operative right, but as an extension and enlargement of the operative right heretofore created by the Commission's Decision No. 29854, dated June 14, 1937, on

Application No. 20970, over and along the following routes:

Commencing at the intersection of Hillside Drive and Alvarado Street in North Burlingame, thence along Hillside Drive, El Camino Real, Broadway, California and San Mateo Drives, Baldwin Avenue, North "B" Street, Second Avenue, Main Street, to Third Avenue (Southern Pacific Depot, San Mateo), thence along Third Avenue, South "B" Street, Twelfth Avenue, El Camino Real (U. S. Highway 101), Twenty-third Avenue, Florin Avenue, Twenty-fifth Avenue, El Camino Real, Thirty-ninth Avenue, terminating at the San Mateo Community Hospital near the intersection of Thirty-ninth Avenue and Edison Street.

Commencing at the intersection of California Drive and Howard Avenue, in the city of Burlingame, thence along Howard Avenue, Dwight Road, Peninsular Avenue, Bayshore Highway, Bayswater Avenue and North Idaho Street, terminating at its intersection with Peninsular Avenue.

Commencing at the intersection of Third Avenue and Main Street (Southern Pacific Depot, San Mateo), thence along Third Avenue to South Humboldt Street to its intersection with Tenth Avenue.

IT IS ORDERED that a certificate of public convenience and necessity therefor is hereby granted to Ray K. Withers and Andrew C. Byrd, subject to the following conditions:

- (1) The authority herein granted shall lapse and be void if applicants shall not have complied with all of the conditions within the periods of time fixed herein unless, for good cause shown, the time shall be extended by further order of the Commission.
- (2) Applicants shall, within a period not to exceed sixty (60) days from the date hereof, submit to the Commission, for its approval, three copies of a proposed tariff, constructed in accordance with the requirements of the Commission's General Orders and containing fares, rules and regulations free from the discriminatory features appearing in Exhibit "B," attached to the application herein and made a part thereof. This order shall not become effective until twenty (20) days after such tariff is approved by supplemental order of the Commission.
- (3) Applicants shall file a written acceptance of the certificate herein granted within a period of not to exceed fifteen (15) days from the date hereof.

- (4) Applicants shall file in duplicate, and make effective concurrently with the tariffs to be hereafter approved by supplemental order of the Commission as provided for in condition No. 2 herein, on not less than five days' notice to the Railroad Commission and the public, a time schedule or 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 or 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 applicants herein unless such vehicle is owned by said applicants or is leased by applicants under a contract or agreement on a basis satisfactory to the Railroad Commission.
- (7) Applicants are authorized to turn their motor vehicles at termini, either in the intersection of the street or by operating around the blocks contiguous to such intersection in either direction, and to carry passengers as traffic regulations of the municipality may require.

Except as otherwise provided herein, the effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California, this 16th day of May, 1939.

Raymond W. Brown
Frank R. Brown
Adolf W. Cieny
H. Ball
Justin J. Cooney
COMMISSIONERS