

Decision No. 22933.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
W. A. SNELL, for certificate of public
convenience and necessity to operate
passenger service, as a common car-
rier, between Los Angeles and San
Francisco, California.

ORIGINAL

Application No. 22933.

William B. Acton and George H. Hauerkin,
for Applicant.

H. C. Lucas and E. D. Richards, for Pacific
Greyhound Lines, Protestant.

R. E. Wedekind and F. X. Vieira, for South-
ern Pacific Company, Protestant.

Robert Brennan and William Brooks, for The
Atchison, Topeka and Santa Fe Railway Com-
pany, Protestant.

Harry Encell, for Air Line Bus Company, Protestant.

BY THE COMMISSION:

O P I N I O N

W. A. Snell filed the above entitled application, seek-
ing a certificate of public convenience and necessity authorizing
the transportation of passengers and their baggage between San
Francisco and Oakland, on the one hand, and Los Angeles, on the
other hand.

Public hearings on this application were conducted by
Examiner Gorman at San Francisco and Los Angeles on October 18,
19 and 25, 1939, December 1 and 18, 1939, and February 7, 1940,
and the matter was duly submitted after oral argument on the
latter date, and is now ready for decision.

Applicant proposes to operate Cadillac sedans, having
a seating capacity of seven, exclusive of driver, between Los

Angeles and San Francisco-Oakland via the Valley and Coast Routes, without serving any intermediate points, at individual fares of \$4.50 one way and \$9.00 round trip. The time schedule proposed is as follows:

Coast Route

6:00 P.M.	12:00 P.M.	Lv. San Francisco	Ar. 12:00 A.M.	6:00 A.M.
6:00 A.M.	12:00 A.M.	Ar. Los Angeles	Lv. 12:00 P.M.	6:00 P.M.

Valley Route

6:00 P.M.	12:00 P.M.	Lv. San Francisco	Ar. 11:00 P.M.	5:00 A.M.
5:00 A.M.	11:00 P.M.	Ar. Los Angeles	Lv. 12:00 P.M.	6:00 P.M.

Applicant proposes to purchase twelve 1936 or 1937 model Cadillac sedans, at a cost of approximately \$850 each, with air conditioning equipment to cost approximately \$35 per car, eight of which sedans would be necessary to render the base service and four of which would be used as standby equipment for emergencies. The rear jump seats of these sedans would be reconstructed at a cost of \$20 per car, so as to provide seat space for three passengers.

In support of his application, applicant alleged that the sedan service proposed by him would not be competitive with existing rail and bus common carrier passenger operations between San Francisco and Los Angeles, but was being established primarily to compete with and to eliminate from the highways the so-called "wildcat" sedan service now being operated illegally between Los Angeles and San Francisco. The manner in which the wildcat sedan operators are surreptitiously providing motor vehicle service for the transportation of passengers is generally well-known and was fully discussed in Re Investigation into the operations of Sam Analora, et al., Decision No. 30950, dated June 8, 1938, and would serve no useful purpose by being repeated herein.

Applicant contended that the proposed operation in and by itself would not have the effect of completely ridding the highways of these surreptitious operators but that his sedan

service, together with a vigorous and continued prosecution of these operators by injunctive suits which would be brought by his attorneys, would, within a relatively short time, entirely eliminate the wildcatters from this service.

Based on eight one-way trips daily, with an average load factor of 5.5 passengers per trip, the financial results of operation, as estimated by applicant, are as follows:

<u>Revenue</u> (Annual)		\$72,270
<u>Expenses</u>		
Operating	\$48,177	
Insurance	5,262	
Taxes & Licenses	2,938	
Office & Misc. Expenses	10,170	
Depreciation	<u>3,400</u>	<u>\$69,947</u>
<u>Net Income</u>		\$2,323

The above estimate of operating expense is somewhat low, as applicant computed bridge tolls at \$.45 per car, while actually he would be required to pay \$1.00 per car; tire expense is based on an average mileage of approximately 38,000 miles per set of tires, which is somewhat high for this type of service; no allowance is made for state and federal income taxes; no allowance is made for legal expense; and drivers' wages may be too low, when the necessity for splitting runs is given consideration.

The record shows that the prevailing rate of fare by wildcat sedans from Los Angeles to San Francisco is \$3.50 per person one way and the rate from San Francisco to Los Angeles is \$4.00. The evidence is not convincing that applicant would enjoy much success in diverting passenger traffic from the wildcat service with proposed fares from \$.50 to \$1.00 higher than the fares charged by them. We are of the opinion, and this opinion is borne out by the testimony of some of the witnesses who testified, that the fare is a very important element in the determination of whether or not a prospective passenger would use the service of a wildcat operator in preference to one under regulation.

No doubt some passengers who would ordinarily patronize wildcat stages would give consideration to the factors of reliability, insurance, safety, etc., when selecting between two carriers, one regulated and the other unregulated, even though the regulated carrier's fares were somewhat higher than those of the unregulated carrier. A parity of fares between applicant and the wildcatters would undoubtedly divert to applicant a substantial portion of the traffic now transported by the wildcatters.

Although applicant has not offered to establish his fares on an equality with those now being charged by the wildcat operators, the Commission could condition the granting of this application upon the establishment of such fares. Assuming that this were done, no assurance could be had that the wildcat operator would not reduce his fares to an even lower level, in order to retain the traffic, and undoubtedly this is what would happen, as it always has in the past, when the regulated carriers reduced fares. Applicant could not hope to reduce his fares to the same low level to which a wildcat operator could reduce his fares, as applicant would be required to maintain adequate, safe and comfortable equipment and to comply with all of the other requirements to which a regulated service would be subjected, as contrasted with obsolete and fully depreciated equipment operated by the wildcatter, without insurance, and with low wages and other low operating costs which could not be enjoyed by a carrier such as applicant.

From a practical standpoint, applicant could not reduce his proposed fare to \$4.00, since such a fare, based on the estimated load factor, would reduce the estimated revenue approximately \$8,000 annually, thereby resulting in a loss of approximately \$5,700 annually, instead of an estimated profit of \$2,300.

Mr. Snell is to be commended upon his public-spirited attitude in attempting to eradicate from the highways of California

the illegal wildcat sedan operator. This Commission is not only cognizant of but fully appreciates the situation which exists in regard to the wildcat operations. A conscientious effort has been made from time to time by this Commission to reduce to the irreducible minimum the number of wildcat operators transporting passengers between San Francisco and Los Angeles. We are not unmindful, however, of the fact that this is a most difficult problem and one which requires the efforts of a number of employees, together with the expenditure of substantial sums, to effectively cope with it, as these operators resort to every possible means to make it difficult to secure proper evidence in support of proof of illegal operation. The Commission also is aware of the fact that as soon as one group of wildcatters is forced out of business, another group enters the field to take their place. We would like to concur in the view of applicant's counsel - that by the use of injunctive suits the wildcatters could be removed from the highways of California within a very short time - however, our experience does not indicate that such a result could be accomplished with such ease and within so short a period of time.

We are definitely of the opinion that applicant's proposed sedan service, at \$4.50 one way and \$9.00 round trip, in itself, would have very little effect upon the number of passengers now being transported by the wildcatters.

Assuming that applicant by himself, through the filing of injunctive suits, would be successful in eradicating the wildcat operators from the highways, we must then decide the question of whether or not this would be a proper basis for the granting of a certificate of public convenience and necessity to applicant. We believe the answer to this question is negative, as it is the duty, not only of this Commission but of every other governmental agency, as well as the existing common carriers operating in this territory,

to exert every effort within reason to accomplish this end. This Commission has exerted such effort as it reasonably could. Parenthetically, we might state at this time that the Commission intends to and will make further concerted effort to solve this perplexing problem and will use such resources as are available to bring about satisfactory settlement of this condition.

Putting aside the question of wildcatting, let us now direct our attention to the further question of whether or not public convenience and necessity require the sedan service proposed by applicant from the standpoint of a need for additional passenger transportation service between San Francisco and Los Angeles.

Eleven so-called public witnesses testified that they preferred sedan service to other forms of transportation for several reasons; namely, sedan service was more chummy; rates were lower; a better opportunity was afforded to see the territory traversed; inability to ride trains and busses on account of car sickness; and a general preference for a sedan service. All of the witnesses had used either train or bus service for transportation between San Francisco and Los Angeles and some of them indicated that, if the instant application were granted, they would transfer their patronage to the proposed service when established.

Three of the witnesses had used wildcat sedan service; two testified that they would patronize the sedan service as proposed, while the third indicated that he would continue to use the wildcat service if it operated at rates lower than those of applicant.

None of the witnesses testified that the existing transportation companies did not afford adequate transportation service

to meet their needs for travel between San Francisco and Oakland. Two witnesses, representing auto livery and auto rental concerns, testified as to the requests which they have received for auto transportation service between San Francisco and Los Angeles.

The amount of service rendered and the fares charged by the existing common carriers operating between San Francisco and Los Angeles are as follows:

<u>Company</u>	<u>No. of Schedules Daily</u>	<u>L.A. - S.F. Fare</u>
Air Line Bus Co.	4	\$5.15 O.W. - \$9.30 R.T.
Pacific Greyhound	35	\$5.15 O.W. - \$9.30 R.T.
Santa Fe	23	\$5.15 O.W. - \$9.30 R.T.
Southern Pacific	15**	*\$6.00 O.W. -\$10.20 R.T.

* Coach Fares

** Not including two "Noon Daylight" Trains

The evidence shows that during the period August, 1938, to April, 1939, inclusive, Pacific Greyhound Lines transported 32,749 passengers between metropolitan San Francisco and metropolitan Los Angeles, an average of 3,640 passengers per month, or an average of 3.5 passengers per schedule.

Pacific Greyhound Lines, prior to 1937, carried an average of thirteen passengers per schedule between San Francisco and Los Angeles on its Coast Route but, with the advent of the "Daylight Limited" train service by Southern Pacific Company during April, 1937, this average has been reduced to eight passengers per schedule. Prior to the establishment of the coordinated and integrated bus and rail service via the San Joaquin Valley by The Atchison, Topeka and Santa Fe Railway Company and The Santa Fe Transportation Company, the average number of passengers per schedule transported by Pacific Greyhound via the San Joaquin Valley was approximately six and, subsequent thereto, this average was reduced to less than three.

At a fare of \$4.50 one way, there undoubtedly would be some diversion from the existing carriers to that of applicant.

The public witnesses who testified did not indicate that additional service between San Francisco and Los Angeles was necessary to meet their transportation needs but did indicate a preference for sedan service. The mere preference for one type of service over other types of service is not a substantial factor in the determination of public convenience and necessity. The record is void of any showing that the service being rendered by the existing carriers between San Francisco and Los Angeles is not adequate to meet the needs of the traveling public between these points.

The Commission in Re Hempstead, 21 C.R.C. 370, 376, 377, stated:

* * * * Patronage of illegal auto stage operators is not the gauge by which public convenience and necessity should be measured for additional service, there being evidence that reductions in rates and active personal and employed solicitation are the basis upon which much of the traffic handled by illegal operators is secured. * * *

* * * * The commission cannot, in the absence of competent evidence, issue a certificate for the operation of an auto stage line upon the unsupported desire of applicants to meet an alleged condition based upon dissatisfaction claimed to exist on the part of a portion of the public who might desire transportation in some particular class of equipment. * * *

After carefully considering all of the evidence in this proceeding, we are of the opinion and hereby conclude that applicant has not sustained the burden of proof that public convenience and necessity warrant the granting of a certificate for the operation of sedan service for the transportation of passengers between Los Angeles and San Francisco and Oakland, and that the application should be denied.

At the outset of the hearing in this matter, Air Line Bus Company filed a petition to dismiss the application, on the ground that Air Line Bus Company offered to provide the transportation service proposed by applicant herein or to provide the service to the satisfaction of this Commission pursuant to the

provisions of Section 50 $\frac{1}{2}$ of the Public Utilities Act of the State of California. In view of our conclusions herein, it will be unnecessary to pass upon the above petition.

O R D E R

The above entitled application having been filed, public hearings having been held and the Commission being fully apprized of the facts;

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

The effective date of this Order shall be twenty (20) days from and after the date hereof.

Dated at San Francisco, California, this 3rd day of July, 1940.

Ray L. Riley
Frank P. Decker
Ralph W. Johnson
H. W. Hall
Justice J. C. Cramer
Commissioners.