

Decision No. 36289

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Millard Foster for certificate of public convenience and necessity to operate bus service as a common carrier, between Santa Ana, California, and (El Toro Marine Base) Trabuco Road.)
Application No. 25477)

In the Matter of the Application of RICHARD C. WINCHELL and JOSEPH B. MORALICE, co-partners, doing business as the M & W BUS LINE, for certificate of public convenience and necessity to operate an automotive stage service for the transportation of passengers and their baggage between the intersection of 101 Highway and South "D" Street in Tustin, and the U. S. Marine Bomber Base on Trabuca Avenue near Irvine, as an extension and enlargement, and to be consolidated with applicants' present operative rights.)
Application No. 25494)

GORDON X. RICHMOND, for applicant M & W Bus Lines, and protestant in Application No. 25477.

G. MILLARD FOSTER, in propria persona, and protestant in Application No. 25494.

CRAEMER, Commissioner:

O P I N I O N

In these proceedings, Millard Foster requests a certificate of public convenience and necessity authorizing a service as a passenger stage corporation for the transportation of passengers and their baggage between Santa Ana and the United States Marine Base near El Toro, in Orange County, California.
(1)

On February 1, 1943, Richard C. Winchell and Joseph B. Moralice, co-partners, doing business as the M & W Bus Line, filed an application for a certificate of public convenience and necessity to extend their present operative rights granted by Decision No. 35941, dated November 5, 1942, on Application No. 25215, from Tustin to the U. S. Marine Base at El Toro;

(1) Application filed January 21, 1943.

said service to be coordinated with their present service between Santa Ana, Tustin and the U. S. Naval Air Station, located approximately two miles southeasterly of Tustin.

Both applicants seek to provide a transportation service for passengers between Santa Ana and the U. S. Marine Base near El Toro, and each protested the granting of the other's application.

Applicant Millard Foster is presently engaged in transporting school children, pursuant to a three-year contract with the Tustin Board of Education, which terminates in June, 1943. In addition to this, he transports workers to and from packing houses for two citrus growers' associations. This latter service is performed under an oral agreement which may be terminated at any time.

In the performance of the transportation services above outlined, three buses are used, only one of which complies with the Commission's General Order No. 93-A concerning "aisle head room." All of said applicant's equipment is old and has been completely depreciated, the latest type bus being a 1936 35-passenger Reo. It appears that applicant Foster's contract requirements might very seriously conflict with the service proposed herein.

On or about November 8, 1942, applicant Foster contacted certain officers then stationed at the Naval Air Base near Tustin, in reference to providing a passenger transportation service for the Naval Air Base. Later contacts were made with officers at the U. S. Marine Base near El Toro. On November 25, 1942, the Railroad Commission communicated with applicant Foster, stating in effect that passengers could not be regularly transported without a certificate of public convenience and necessity authorizing such a service.

Applicant Foster made several attempts to secure contracts for the transportation of Navy and Marine personnel but was finally informed that no contracts could be authorized. Subsequently, and without authority from the Commission, on January 15, 1943, a service was inaugurated by applicant Foster between Santa Ana and the U. S. Marine Base near El Toro. From February 1st to and including February 15th, 1943, 2,643 passengers were transported by applicant Foster in ninety (90) round trips on a per capita fare basis. This latter mentioned service appears to be in violation of the Public Utilities Act.

The record discloses that applicant M & W Bus Line filed an application for a passenger stage service between Santa Ana and the Naval Air Base near Tustin on August 21, 1942, and that said application was filed after Richard C. Winchell, one of the co-partners, had discussed the matter on several occasions with the naval authorities. The naval authorities suggested that a service be inaugurated also to the Marine Base near El Toro. However, at that time the Base was not constructed to a point where a transportation service was needed and the first application of M & W Bus Line was therefore designed to provide a service between Santa Ana and the Naval Air Base near Tustin, with the plan of extending said service to the Marine Base near El Toro at the proper time.

It appears that a transportation service to the Marine Base is now needed and M & W Bus Line filed this application to extend the service heretofore authorized by the Commission in Decision No. 35941, dated November 5, 1942.

Immediately following the issuance of said above decision, steps were taken to acquire equipment. After conferences with the naval authorities, the Office of Defense Transportation recommended to Washington that two (2) 1942 33-passenger Dodge buses be released for this purpose. Considerable difficulty was encountered, and said buses had not been released at the time of the hearing in this matter. However, two buses were secured, one of

which was placed in service on trial runs between Santa Ana and the Naval Air Base at Tustin a day or two before the hearing. Arrangements have been made with the Office of Defense Transportation for gasoline and tires. Applicant M & W Bus Line is now in a position to immediately commence this said service as an extension of and coordinated with the service to the Naval Air Base.

Upon a full consideration of the record it appears that the probable traffic to be transported will not support more than one certificated operation on an enduring financial basis, and it is hereby found as a fact that public convenience and necessity require the granting of the application of Richard C. Winchell and Joseph B. Moralice, co-partners, doing business as M & W Bus Line.

It is further found that the application of Millard Foster should be denied.

The following form of order is suggested.

O R D E R

A public hearing having been held herein, the matter having been duly submitted, the Commission now being fully advised, and it having been found that public convenience and necessity so require,

IT IS ORDERED that a certificate of public convenience and necessity is hereby granted to Richard C. Winchell and Joseph B. Moralice, doing business as M & W Bus Line, authorizing the establishment and operation of service as a passenger stage corporation, as defined by Section 2½ of the Public Utilities Act, for the transportation of passengers and their baggage between Tustin and the U. S. Marine Base near El Toro, as an extension and enlargement of the operative rights heretofore granted to said applicants by Decision No. 35941, dated November 5, 1942, on Application No.

35215, subject to the following conditions:

1. Richard C. Winchell and Joseph B. Moralice, doing business as M & W Bus Line, their successors or assigns, may never claim before this Commission, or any court or other public body, a value for any purpose for the certificate herein granted in excess of the actual cost incurred by them in securing said operative authority.
2. The authority herein granted shall expire one hundred and eighty (180) days after the termination of the present war shall have been officially proclaimed, or until such earlier time as the Commission by further order may designate.

IT IS FURTHER ORDERED that in the operation of passenger stage service pursuant to the foregoing certificate, the following service regulations shall be observed:

1. Applicants shall file a written acceptance of the certificate herein granted within a period of not to exceed thirty (30) days from the effective date hereof.
2. Applicants shall comply with the rules of the Commission's General Order No. 79 and Part IV of General Order No. 93-A by filing, in triplicate, and concurrently making effective tariffs and time schedules satisfactory to the Commission within sixty (60) days from the effective date hereof and on not less than five (5) days' notice to the Commission and the public.
3. Subject to the authority of this Commission to change or modify them at any time by further order, applicants shall conduct said passenger stage operations over and along the following routes:
 - a. Commencing at the intersection of Highway No. 101 and South "D" Street in Tustin; thence easterly and southerly on Highway No. 101 to Central Avenue (Munger Road) in Irvine; thence northerly on Central Avenue to Trabuca Avenue; thence easterly on Trabuca Avenue to the entrance of the U. S. Marine Base; and returning via the reverse of said route.
 - b. ALTERNATE ROUTE to be used on through service to and from the Marine Base:

Between the intersection of U. S. Highway No. 101 and Trabuca Avenue (Culver's Corner) and the intersection of Trabuca Avenue and Central Avenue, via Trabuca Avenue.

IT IS FURTHER ORDERED that the application of Millard Foster,
No. 25477, be and it is hereby denied.

The effective date of this order shall be the date hereof.

Dated at ~~San Francisco~~^{Sacramento}, California, this 13th day of
April, 1943.

Francis R. Hoover
J. P. M.
Justus J. Calver
Richard G. Baker
Wm. W. Quinn
COMMISSIONERS