

ORIGINAL

DECISION NO. 14880

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of JULIUS DORMAN,
WILLIAM C. DORMAN and WARREN
L. FINKS, to operate bus ser-
vice in the City of Concord,
California, between the areas
adjacent to said City; to
establish fares.

Application No. 31570

Application of MARTINEZ BUS LINES, INC.)
to operate bus service within the city)
of Concord, California, and the immed-)
iate adjacent vicinity; and to establish)
fares)

Application No. 31703

Edmund S. Barnett for Julius Dorman,
William C. Dorman and Warren L. Finks,
applicants in Application No. 31570,
protestants in Application No. 31703,
and for Community Transit Lines, pro-
testant in Application No. 31703
A. R. Linn and H. Hendrick, for Martinez
Bus Lines, Inc., applicants in Applica-
tion No. 31703 and protestants in Appli-
cation No. 31570
Douglas Brookman for Pacific Greyhound
Lines, protestants in Application No.
31703 and Application No. 31570

O P I N I O N

Julius Dorman, William C. Dorman and Warren L. Finks, by their application filed July 10, 1950, request a certificate of public convenience and necessity authorizing the transportation of passengers between Concord and Berkshire Village; Concord and El Monte Shopping Center; Concord and Eniwetok Village; Concord and Meadow Homes Tract; Concord and Concord Vista and Concord Gardens; Concord and Monte Gardens, including points intermediate thereto.

Martinez Bus Lines, Inc. by its application filed August 28, 1950, requests a certificate authorizing it to transport passengers

between Concord and Concord Gardens; Concord and Crawford Village; Concord and Berkshire Village; Concord and Meadow Homes Tract; including intermediate points.

A public hearing was held at Concord on September 15, 1950 before Examiner Silverhart on a record consolidating the applications and the matters submitted for decision.

Application No. 31570, by stipulation, was amended to provide that no service would be rendered at the point known as Four Corners formed by the junction of Meadow Lane, Monument Boulevard and Oak Grove Road, whereupon Pacific Greyhound Lines withdrew its protest to such application.

Application No. 31703, by stipulation, was amended to provide that no passengers would be picked up or discharged along Monument Boulevard between Four Corners and Memorial Monument, both points inclusive, except that passengers may be picked up or discharged at Memorial Monument when being transferred to or from another passenger stage operator, whereupon Pacific Greyhound Lines withdrew its protest to such application.

APPLICATION NO. 31570

Applicants propose a single fare of ten cents for the first mile and a total fare of 15 cents to all points beyond one mile from the point of beginning. Children up to ten years of age occupying a seat will be transported at one-half fare. Contemplated schedules may be summarized as follows:

Concord to:	Number of Daily Round Trips	Between	(Hours) Headway
Berkshire Village	8	7:30 a.m. - 6:05 p.m.	1-1/2
Eniwetok Village	8	8:15 a.m. - 7:05 p.m.	1-1/2
Meadow Homes Tract	8	7:00 a.m. - 6:20 p.m.	1-1/2
El Monte Shopping Center	8	8:00 a.m. - 7:05 p.m.	1-1/2
Concord Vista & Concord Gardens	8	7:40 a.m. - 6:40 p.m.	1-1/2
Monte Gardens	8	7:00 a.m. - 6:10 p.m.	1-1/2

One new 27-passenger G.M.C. transit type bus and one new 24- or 29-passenger Chevrolet bus would be utilized. ⁽¹⁾ The record indicates that applicants possess sufficient skill and financial resources to institute and maintain the proposed service.

Several public witnesses testified upon behalf of applicants. A real estate broker stated that the Real Estate Board of Concord (consisting of 24 brokers) favored applicants proposal; that it wanted a bus service and desired local residents to own such service. The manager of the State Farm Insurance Company asserted that the community needed the service offered by applicants. Martinez Bus Lines did not testify nor offer any evidence in its behalf relying upon cross-examination of applicants and their witnesses.

Application No. 31703

Martinez Bus Lines, Inc., conducting a passenger stage service between Martinez and Concord and intermediate points since 1946, ⁽²⁾

(1) It appears that such equipment could be obtained from 30 to 60 days after placing orders therefor, subject to such delay as may be caused by Governmental action.

(2) The operative rights were acquired pursuant to the Provisions of Decision No. 39065, dated June 11, 1946 in Application No. 27515.

now seeks authority to serve the areas described in its application as an extension of such operative rights.

Applicant proposes a single trip fare of 15 cents between any two points served; children under eight years of age will be transported for eight cents; a child under five years of age when accompanied by an adult and not occupying a seat to the exclusion of another passenger, will be carried free. An eight cent single trip fare will be charged for transportation of children eight years of age and older between a school and any point served. The planned schedules are illustrated by the following extract therefrom:

<u>Concord to:</u>	[*] <u>Number of Round Trips</u>	<u>Between</u>	<u>(Hours) Headway</u>
Concord Gardens	8	5:40 a.m. - 6:05 p.m.	2 (n)
Eniwetok Village & Crawford Village	8	6:05 a.m. - 6:20 p.m.	2 (n)
Monte Gardens, El Monte Shopping Center, Berkshire Village	8	6:20 a.m. - 6:40 p.m.	2 (n)
Meadow Homes Tract	3	9:05 a.m. - 4:40 p.m.	5 and 2

(n) One hour headway between first two trips in the morning and last two trips in the evening.

(*) Daily service except on Sundays and seven stated holidays.

Applicant owns and has presently available one new inter-continental 33-passenger bus and one 1940 Crown 40-passenger bus, both of which would be used. The evidence indicates that applicant possesses the experience, facilities, personnel and financial ability to inaugurate and operate the service it proposes.

Applicants' secretary and general manager testified that it had conducted a survey within the areas here involved, for six months last past, so as to determine the service calculated to meet

the needs of the majority of people therein. He stated that requests were received from office workers, merchants and housewives to extend applicants' service to the territory encompassed within the scope of the application. His testimony disclosed that there are approximately 15,000 persons in such area and that no passenger stage service is now available therein.

Public witnesses who reside in the area under consideration, testified that there was no transportation to Concord therefrom; that considerable distance must be travelled on a busy highway in order to obtain a bus; that it was difficult to reach the shopping section situated in Concord and that there is a need for the service as proposed by applicant.

Protestants Julius Dorman, William C. Dorman and Warren L. Finks did not testify nor offer any evidence in their own behalf. Protestant Community Transit Lines called two public witnesses whose testimony disclosed only a desire to obtain passenger stage service from the Gregory Gardens section to Walnut Creek. As there is no application before the Commission concerning service between these points, disposition of such matter is unnecessary to arrive at a decision herein.

Findings and Conclusions:

The evidence demonstrates that there is a public need for passenger stage service in the areas with which we are here concerned. Application No. 31570 contemplates service to the same general territory in and around Concord as does Application No. 31703, except the latter includes a section west of State Highway 21. It was established that operation of services by more than one passenger stage corporation would be economically unsound. There is then presented

the question "To which applicant shall a certificate issue?"

Section 50-1/4 of the Public Utilities Act, which deals with the issuance of certificates to passenger stage corporations, provides in part as follows:

"....that the Railroad Commission shall have power, after hearing, to issue said certificate when an applicant requests a certificate to operate in a territory already served by a certificate holder under this act only when the existing passenger stage corporation or corporations serving such territory will not provide the same to the satisfaction of the Commission."

The Commission has construed such provision in the Matter of the Application of Fialer's, Incorporated, 38 P.U.C. 880, wherein at page 885 we said,

"It is proper that when public convenience and necessity require the inauguration of a new stage service, any existing operator within the territory should be first in right to undertake such a service. The applicant first in time should not necessarily be first in right. An applicant for a certificate frequently proposes to undertake a service in a territory already served but which differs from that presently rendered, and of a kind which the existing certificate holder has no authority to render without himself applying for and obtaining an enlargement or extension of his operative right. In such a case the existing operator in a territory should be, and is under this proviso, permitted to undertake the same service as that proposed by the new applicant if public convenience and necessity require that the new service be established. If no operator already serving in the territory affected desires thus to become in effect an applicant for the right to render such a service, or is found unable to render the service satisfactorily, then only, if public convenience and necessity require, may the first application be granted."

The record discloses that applicants Julius Dorman, William C. Dorman and Warren L. Finks, while first in time, have not rendered service anywhere within the territory involved herein and propose to

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conduct a service therein different from that presently performed. Applicant Martinez Bus Lines, Inc., presently operates a passenger stage service in the territory sought to be served, viz: between Martinez and Concord; it has filed an application seeking authority to undertake a service similar to that proposed by applicants first above named, as an extension of its operative rights and the evidence fails to indicate that it would not or could not render the service satisfactorily. Application of the rule stated in the Fialor case, supra, to the instant applications compels the selection of Martinez Bus Lines, Inc. as the applicant to which a certificate will be granted.

Upon consideration of the evidence, we conclude and hereby find that public convenience and necessity require the establishment and operation of service as a passenger stage corporation by Martinez Bus Lines, Inc., to the extent set forth in the ensuing order. Application No. 31570 will be denied.

Martinez Bus Lines, Inc. is hereby placed upon notice that operative rights, as such, do not constitute a class of property which may be used as an element of value in rate-fixing, for any amount of money in excess of that originally paid to the state as the consideration for the granting of such rights. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business. 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 had in the above entitled proceeding, and the Commission, based upon the evidence received, having found that public convenience and necessity so require,

IT IS ORDERED:

1) That a certificate of public convenience and necessity is granted to Martinez Bus Lines, Inc. authorizing the establishment and operation of service as a passenger stage corporation, as defined in Section 2 1/4 of the Public Utilities Act for the transportation of passengers between Concord and Concord Gardens; Concord and Crawford Village; Concord and Berkshire Village; Concord and Meadow Homes Tract, as an extension and enlargement of and consolidated with the operative rights heretofore granted it by this Commission, subject to the following restrictions:

(a) No passengers may be transported whose point of origin is that portion of route 4 (hereinafter described) situate west of State Highway 21 and whose point of destination is Walnut Creek.

(b) No passengers may be picked up or discharged along Monument Boulevard, between Four Corners and Memorial Monument, both points inclusive, except that passengers may be picked up or discharged at Memorial Monument when being transferred to or from

another passenger stage operator.

2) That in providing service pursuant to the certificate herein granted, Martinez Bus Lines, Inc. shall comply with and observe the following service regulations:

(a) It 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.

(b) Within sixty (60) days after the effective date hereof, and on not less than five (5) days' notice to the Commission and the public, it shall establish the service herein authorized and comply with the provisions of General Order No. 79 and Part IV of General Order No. 93-A, by filing in triplicate, and concurrently making effective, appropriate tariffs and time tables.

(c) Subject to the authority of this Commission to change or modify them by further order, Martinez Bus Lines, Inc. shall conduct operations pursuant to the certificate herein granted over and along the following routes:

ROUTE NO. 1

Beginning at Grant Street and Concord Boulevard, in the City of Concord thence via Grant Street, Gill Drive, Crescent Drive, Solano Way, Aven Avenue, Overhill Road, Foskett Avenue, Hilltop Road, Crescent Drive, Fairfield

Avenue, Birch Avenue, Ponderosa Drive, Acacia Drive, Garden Avenue, High School Avenue, East Street, Concord Boulevard, thence to Grant Street, the point of commencement.

ROUTE NO. 2

Beginning at Concord Boulevard and Grant Street, in the City of Concord thence via East Street, Willow Pass Road, Beach Street, Bonifacio Street, Parkside Avenue, Salvio Street, Esperanza Street, Willow Pass Road, Parkside Avenue, The Alameda, Fifth Street, Clayton Road, San Jose Avenue, Prospect Street, San Carlos Avenue, Crawford Street, Almar Court, Cowell Road, Mesa Street, Mt. Diablo Street, Concord Boulevard, thence to Grant Street, the point of commencement.

ROUTE NO. 3

Beginning at Grant Street and Concord Boulevard in the City of Concord, thence via Grant Street, Willow Pass Road, Las Vincente Drive, Las Flores, Granzotto Drive, Granada Drive, Village Way, Clayton Way, Wren Avenue, Farm Bureau Road, Clayton Road, La Vista Avenue, Joan Avenue, Babel Road, Clayton Road, Roslyn Drive, Grove Way, Clayton Road, Colfax Street, Concord Boulevard, thence to Grant Street, the point of commencement.

ROUTE NO. 4

Beginning at Grant Street and Concord Boulevard, in the City of Concord, thence via Galindo Street, Concord

Avenue, State Highway No. 21, Doris Drive, Elinora Drive, Maureen Drive, Maybelle Drive, Gladys Lane, Elinora Drive, Grayson Road, Kahrs Avenue, Boyd Road, Putnam Boulevard, Hawthorne Court, Eccleston Avenue, Oak Park Boulevard, Pleasant Valley Drive, Astrid Drive, State Highway No. 21, Monument Boulevard, Meadow Lane, Leland Way, Blackfield Drive, Lexington Road, Waltham Road, Belmont Road, Market Street, Sutter Street, California Street, Broadway, Salvio Street, Mt. Diablo Street, Concord Boulevard, thence to Grant Street, the place of commencement.

ROUTE NO. 5

Beginning at Grant Street and Concord Boulevard in the City of Concord, thence via Galindo Street, Concord Avenue, State Highway No. 21, Monument Boulevard, Galindo Street, Salvio Street, Mt. Diablo Street, Concord Boulevard, thence to Grant Street, the point of commencement.

3) That Application No. 31570 is denied.

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

Dated at San Francisco, California, this 10th day of October, 1950.

R. B. Zimmerman
Justice F. Garrison
Justice H. S. Powell
Harold S. Kuler
Penelope Pottel