

Decision No. 51027

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Shoreview Community Association,
a corporation,

Complainant,

vs.

Pacific Greyhound Lines,
a corporation,

Defendant.

Case No. 5512

Sam Whiting and Louis Francis, for complainant.
Douglas Brookman and Earl Bagby, for defendant.
Warren P. Marsden, attorney, for Division of
Highways, Department of Public Works, intervenor.
John E. McKirahan, for Contra Costa County Commuters
Association, intervenor.
James K. Gibson, for the Commission staff.

O P I N I O N

This is a complaint proceeding brought by Shoreview
Community Association, a corporation, against Pacific Greyhound Lines. (1) ✓

The crux of the complaint is that:

On or about the 15th day of October,
1953, defendant commenced discontinuing
the service (theretofore rendered by
regular and scheduled stops in the City
of San Mateo, California, along By-Pass
U. S. Highway 101 between Peninsular
Avenue and 9th Avenue) and that since
the 15th day of October, 1953, defendant
has completely discontinued the service
described.

The verified answer of the defendant sets forth, and the
record shows, that on or about the dates of the discontinuance

(1) A public hearing was held on this matter before Examiner Leo C.
Paul at San Mateo, April 5, 1954, and the matter was submitted
subject to the filing of briefs since received. ✓

complained of, By-Pass U. S. Highway 101 (hereinafter called the freeway) was shut off from the contiguous residential area by fences so that access to the buses at points along the freeway where stops had been made previously was no longer possible, and further that no turnouts for the picking up and discharging of bus passengers were provided along that section of the freeway. The answer of defendant further sets forth that to have continued making stops on the paved portion of the freeway would have been in violation of Section 582 et seq of the Vehicle Code and of General Order No. 98, Rules 12.36 and 12.37 of this Commission regarding safe and lawful operation of vehicles.

The complaint aspects of the case can readily be resolved in favor of the defendant on the above grounds. They are so resolved. However, the complaint contained an alternative prayer for an order "authorizing and directing defendant to supply a service which is comparable" to the service on the freeway which has been discontinued. To determine the propriety of giving relief under this alternative prayer, the Commission staff conducted an exhaustive investigation, such as would have been made had the proceeding been in the nature of an investigation on the Commission's own motion as to the adequacy of the service rendered by the defendant. Not only members of the staff, but the Commissioners themselves, carefully studied and considered the area involved by means of maps and aerial surveys, and by on-the-spot inspection after submission of this matter.

The Commission entertains no doubt as to its authority to order the defendant to depart from its presently authorized routes along the freeway, and to route its buses over service roads adjoining the freeway for the purpose of picking up and discharging

passengers in the Shoreview area. Three alternative plans for rerouting were suggested by the staff. None of the three plans, however, was considered entirely satisfactory by the staff experts. None would be of any substantial benefit to that part of the Shoreview area which is rapidly developing in a southerly direction. None-the-less, the Commission is convinced that it has authority to require the defendant to change its routes in order to provide service under any of the three suggested plans.

The record supports a finding, which we hereby make, that the residents of the Shoreview area are in need of adequate bus transportation to and from the San Francisco downtown area. Such transportation is now available to them only through the services of the defendant. And they can board and leave defendant's buses only at stops located to the west of the freeway, over an overpass, and at considerable distance from the Shoreview area. It may therefore be conceded, for purposes of this decision, that they are not now receiving service "comparable" to that which they received before the fencing of the freeway. Whether or not to order defendant to supply such "comparable" service is a question for decision by the Commission on the basis of the exercise of its sound discretion in view of all the factors involved.

Were the problem here involved an isolated one, the Commission might be disposed to afford a makeshift solution by an order requiring the defendant to depart from the freeway and serve the Shoreview area along the adjoining service roads. It is true that these roads are narrow, and the only available road on the east side of the freeway is winding and circuitous in part; so that the service could not, at best, be expeditious. It is also true that the routing of through buses over the service roads would slow down

schedules and result in delay and inconvenience for through passengers. The Commission might, none-the-less, be disposed to issue such an order if it provided the best available solution to the problem here before us, and at the same time had no further and additional implications.

We are impressed, however, with the fact that the people of the State of California are engaged in a vast and long-range program under which great sums of money are being devoted to the construction of freeways in all parts of the State. We are firmly of the opinion that these freeways should be utilized to the fullest possible degree for the purpose of providing rapid transportation facilities not only for the drivers of private automobiles, but for the large numbers of people who rely on public means of transportation. We believe that the serious and growing problem of congestion on the streets in urban centers, caused by the extensive use of private automobiles, can best be solved by the provision of speedy, comfortable, and convenient public transportation; and that bus service along the freeways is, at least for the foreseeable future, an indispensable part of such public transportation system.

Rapid mass transportation by bus to and from urban centers can be developed only if proper turnouts for buses are provided at convenient locations along the freeways. Except for a few express runs, rapid bus service limited to non-stop operation between remote terminals is uneconomical and does not meet the needs of the bus-using public. On typical runs the buses must start with few passengers and depend on those who board along the route to provide a pay load sufficient to cover costs. They must depend on and serve also many customers who wish to disembark before reaching the end of the line. From the standpoint of both the operating company and

the rate payers, it is just as important that speedy service be rendered between way points as between terminals.

Orders by this Commission requiring bus operators to depart from the freeways and follow devious routes in built-up areas for the purpose of picking up and discharging passengers, would delay the adoption of a sound program for the provision of such needed bus turnouts. Such orders would therefore work to the long-run detriment of the traveling public and the urban centers, by retarding the development of the needed rapid mass transportation facilities. The Commission does not believe that it would be a proper exercise of its discretion to accommodate the residents of Shoreview by the adoption of a policy that would work to the ultimate detriment of the traveling public and of urban centers throughout the State.

The City of San Mateo failed to get from the State Department of Public Works an agreement to build turnouts or other appropriate facilities for bus service along this freeway when said city entered into the contract with the State concerning the construction of the freeway. Municipalities should exert every effort to secure such an agreement when they enter into contracts for the construction of freeways.

Incidentally, it appears that, with relatively minor engineering changes, safe and adequate provision for bus stops could be made for both north bound and south bound buses in the vicinity of the Third Street overpass. We commend this possibility to the consideration of the City of San Mateo and the Department of Public Works for cooperative action.

There should be no legal obstacle to prevent the Department of Public Works, in its engineering plans for the freeways, from making adequate provision for bus turnouts. If the law needs clarification, or if the solution of this statewide problem would be expedited by a clear statement of legislative policy and intent, that is a matter for legislative action; and, in our opinion, it is a matter of such import that the Legislature could well devote attention to it at the current session.

For purposes of this decision, at any rate, it is the opinion of this Commission that to grant the alternative relief prayed for in the complaint would be a step in the wrong direction. It would imply that this Commission will require bus companies to operate uneconomically and inefficiently, at the expense of their rate payers and to the inconvenience of their through passengers, to compensate for the failure of public bodies to make those provisions in the planning of freeways which seem clearly to be indicated as necessary for the general public welfare in the development of mass rapid transit. Such an order would provide a makeshift and unsatisfactory remedy for a specific situation, at the expense of sound long-range and statewide planning for an effective and efficient solution to a serious problem. Despite the possibility that such an order might be of a current benefit to the residents of Shoreview, we believe that it would not be consistent with our responsibility to consider and promote the over-all welfare of all areas of the State.

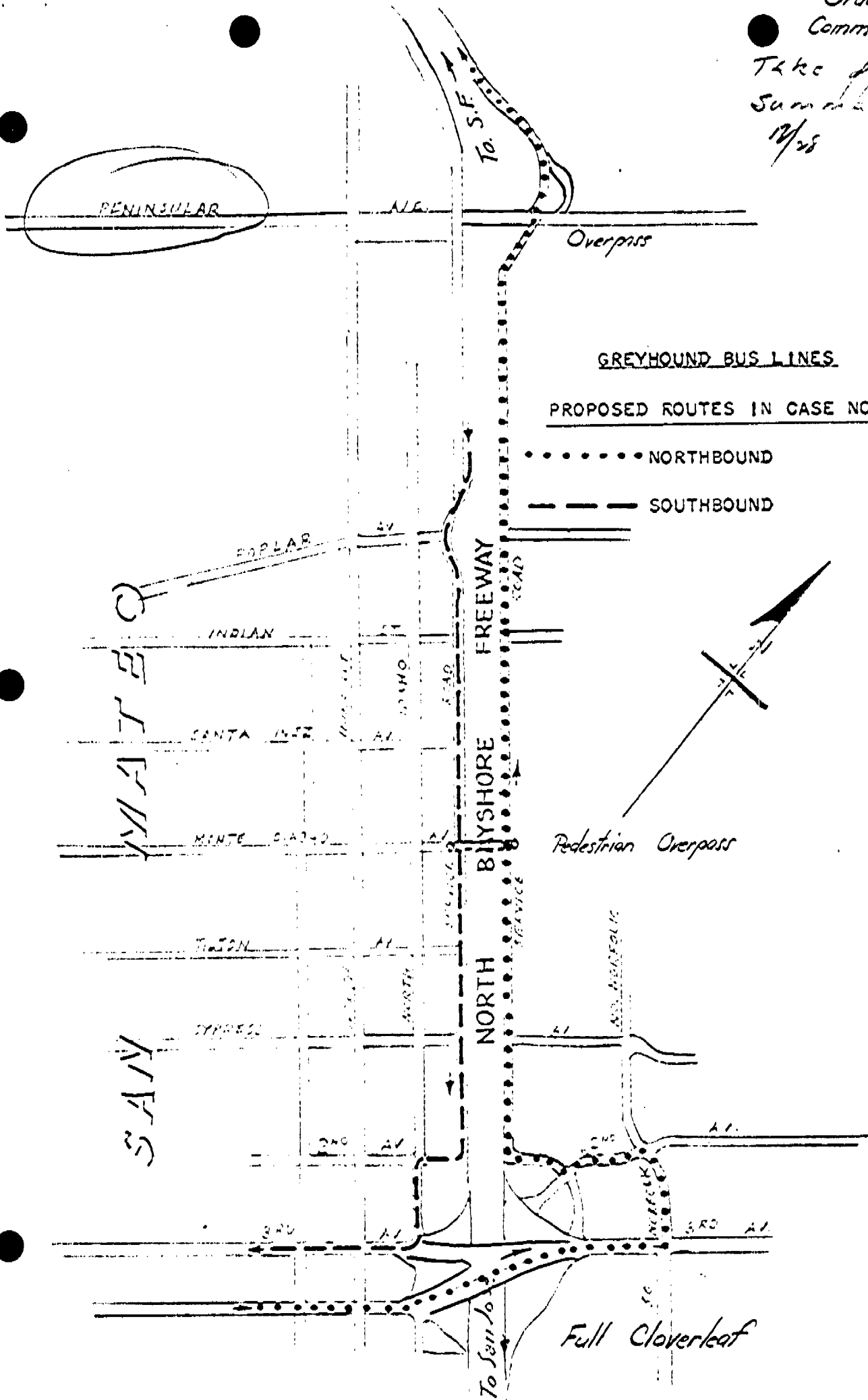
Therefore, and good cause appearing,
IT IS ORDERED that the relief sought by complainant in
Case No. 5512 be and it is hereby denied.

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

Dated at Los Angeles, California, this 21st day
of JANUARY, 1955.

John E. Mitchell
President
Matthew J. ...
...
...
Commissioners

Order # 7
Comm. Mitchell
Take off
Summary of
12/28



GREYHOUND BUS LINES

PROPOSED ROUTES IN CASE NO. 5512

..... NORTHBOUND

----- SOUTHBOUND

Pedestrian Overpass

Full Cloverleaf

Re: Case No. 5512 - Shoreview Community Association vs. Pacific Greyhound Lines

TO THE COMMISSION:

Digest of Briefs Filed

Complainant's Brief

Purpose of the Proceeding

Complainant's brief says the matter is a complaint action seeking an order of the Commission directing defendant to restore a passenger stage service which in the past it had offered but which is now discontinued.

The Facts

Complainant describes its organization, membership and the geographical situation of Shoreview in San Mateo. Defendant's operative authority is described. In detail complainant discusses the service formerly performed by defendant, the discontinuance of that service, its effects upon its former users, the inconvenience and hardships imposed upon some and the refusal of defendant to take any steps to reoffer the service it once had given. Therefore, the complaint was filed.

The Issues

Complainant argues that defendant's answer is "extremely confusing", in some matters "frivolous" and "fails to raise the true issue at hand". Complainant says the "basic issue" is whether the Commission has the power to order defendant to stop its buses in the vicinity of By-Pass U. S. Highway 101 in order to serve the residents of Shoreview.

Argument

Complainant asks for a restoration of service existing in the Shoreview area prior to October 15, 1953.

It argues that defendant appears to take the position (1) that it is impossible for it to restore the service over By-Pass U.S. Highway 101, and (2) that the Commission is without power to order defendant to make a slight deviation of route to restore the service.

2. The Essential Facts

Defendant holds a certificate (Decision No. 47907) over a route passing through San Mateo (Route No. 14.02) along By-Pass U.S. Highway 101. In 1941 this highway was declared to be a freeway. Construction as such was completed and the segment through San Mateo completely fenced on both sides by the Department of Public Works, Division of Highways, by about October 15, 1953.

The Shoreview residential tract has been developed along the east side of the highway in the last few years. As the tract developed Pacific Greyhound Lines stopped certain schedules at six points, relevant herein, along this highway for commuters to and from San Francisco.

In fencing the highway no provision was made by the Department of Public Works for bus turn-outs nor was sufficient space left between the paved portion of traffic lanes and fences for buses to stop in safety without occupying a portion of the traffic lane. As the fencing progressed, barring pedestrians therefrom at one after another of the bus stops, defendant ceased stopping at such points. When the highway was completely fenced all automotive traffic between San Mateo and Shoreview as well as to and from the highway was compelled to use the East Third Avenue separation structure.

Because of these circumstances, since about October 15, 1953, the nearest Greyhound stop has been at East Third Avenue and Grant Street about three blocks west of the former stop on the highway.

Shoreview commuters not using private cars were then compelled to either walk or use a local bus line to reach Greyhound service.

This change had been anticipated by all concerned over a period of years and the subject of many conferences but no bus turn-outs were provided.

3. The Unusual Importance of the Issues Presented

Issues presented are of far greater importance than those directly affecting complainant.

Since inception of regulation of passenger stage corporations (1917) the law has been consistently applied so:

(a) That it has been considered to be unlawful to render passenger stage service without a prior finding on a proper application that public convenience and necessity required such service.

(b) That no option rested with the carrier with respect to routes.

(c) That there was no implied privilege to serve over uncertificated routes.

CORRECTION

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THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

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Argument

Complainant asks for a restoration of service existing in the Shoreview area prior to October 15, 1953.

It argues that defendant appears to take the position (1) that it is impossible for it to restore the service over By-Pass U.S. Highway 101, and (2) that the Commission is without power to order defendant to make a slight deviation of route to restore the service.

Complainant disagrees that it is impossible to restore the service but instead of arguing that point it recommends a study of the transcript of the record.

Complainant discusses at some length the Commission's authority and power to compel defendant to restore the service. It says that defendant claims the Commission has no jurisdiction to make an order requiring it to supply the same service over a slightly different route as such action would constitute forcing a new certificate on defendant without its application therefor or consent. Complainant urges that such position apparently stems from an erroneous and unreasonably limited construction of Sections 1031 and 1032 of the Public Utilities Code. Thus, according to complainant, defendant by saying a new certificate would be forced upon it if it were ordered to use a different route without an application therefor, assumes the Commission lacks jurisdiction.

Complainant argues such a construction is not justified as those sections of the Code contain no language indicating that a prior application is a condition precedent to the Commission's power to modify, alter or amend a certificate.

Complainant argues defendant is not complying with its certificate and appears to take the position that the public cannot complain in such a situation. Complainant cites various sections of the Public Utilities Code (Sections 1034, 451, 701, 761, 762) and the Constitution of the State of California, and concludes the Commission has jurisdiction in the matter for two reasons: (1) failure of defendant to continue service is a violation of defendant's certificate, and (2) such asserted failure is a breach of defendant's duty. Complainant says the only remaining question is whether the Commission has the power to order defendant to use a route different from that prescribed in the certificate without a prior application by defendant.

The provisions of the State Constitution and of the Public Utilities Code above cited are again referred to by complainant, which states nothing is contained therein which would prevent the Commission from making the order sought without a prior application by defendant. Complainant emphasizes no request is being made by it for an order directing that a new service be installed or new points served but asks that service be re-established over whatever route is available.

Defendant's Brief(1)

B

I Introductory Statement

1. Form of Presentation

There is no substantial conflict in the evidence. All that remains is the proper application of the facts to the issues presented by the complaint.

(1) Defendant's brief consists of 40 pages. The division and sub-division headings are practically reproduced but the context has been very considerably condensed.

2. The Essential Facts

Defendant holds a certificate (Decision No. 47907) over a route passing through San Mateo (Route No. 14.02) along By-Pass U.S. Highway 101. In 1941 this highway was declared to be a freeway. Construction as such was completed and the segment through San Mateo completely fenced on both sides by the Department of Public Works, Division of Highways, by about October 15, 1953.

The Shoreview residential tract has been developed along the east side of the highway in the last few years. As the tract developed Pacific Greyhound Lines stopped certain schedules at six points, relevant herein, along this highway for commuters to and from San Francisco.

In fencing the highway no provision was made by the Department of Public Works for bus turn-outs nor was sufficient space left between the paved portion of traffic lanes and fences for buses to stop in safety without occupying a portion of the traffic lane. As the fencing progressed, barring pedestrians therefrom at one after another of the bus stops, defendant ceased stopping at such points. When the highway was completely fenced all automotive traffic between San Mateo and Shoreview as well as to and from the highway was compelled to use the East Third Avenue separation structure.

Because of these circumstances, since about October 15, 1953, the nearest Greyhound stop has been at East Third Avenue and Grant Street about three blocks west of the former stop on the highway.

Shoreview commuters not using private cars were then compelled to either walk or use a local bus line to reach Greyhound service.

This change had been anticipated by all concerned over a period of years and the subject of many conferences but no bus turn-outs were provided.

3. The Unusual Importance of the Issues Presented

Issues presented are of far greater importance than those directly affecting complainant.

Since inception of regulation of passenger stage corporations (1917) the law has been consistently applied so:

(a) That it has been considered to be unlawful to render passenger stage service without a prior finding on a proper application that public convenience and necessity required such service.

(b) That no option rested with the carrier with respect to routes.

(c) That there was no implied privilege to serve over uncertificated routes.

(d) That there was no statutory privilege to serve "areas" over routes selected by the carrier.

(e) That no change of route could be made without Commission authority.

Therefore, it is readily apparent that consideration of precedents established and followed since 1917 cannot now be disregarded.

II The Pleadings and Issues Raised

1. Nature of the Proceeding

This proceeding is not an investigation by the Commission nor an application by defendant but one upon complaint and subject to very explicit rules. Defendant then discusses in detail (pages 6 to 11 inclusive) the rules it asserts are applicable.

2. Rules Prescribed by Commission re Complaints

(a) Rule 9. Essential prerequisite of a complaint is to charge a violation of law or a rule of the Commission. Complainant prays that the Commission order defendant to resume making stops on By-Pass U.S. Highway 101. However, it is apparent no such order is actually sought as the entire relief sought is an order "directing defendant to supply a service comparable thereto".

The complaint is entirely silent with respect to any facts upon which such an order can be made.

(b) Rule 10. Requires that complaints set forth fully and clearly the specific act complained of and so drawn as to advise the parties completely of facts constituting the grounds of the complaint and relief desired.

The complaint does set forth that buses failed to stop on the highway adjacent to Shoreview after October 15, 1953, but does not state that the highway had been fenced. Had pertinent facts been stated completely, it would have disclosed that defendant instead of operating in violation of law, or of any order or rule of the Commission, could have been operating lawfully only by not complying with the demands of complainant that bus stops be made on the fenced freeway.

Had defendant resumed such stops, it argues, it would then have been in violation to Rules 12.36 and 12.37 of the Commission's General Order No. 98 (Operation of Vehicles in a Safe Manner).

Instead of resumption of those stops to satisfy the complaint defendant elected to file its answer thereto.

Defendant states that all of the complaint and the principal prayer was directed to complainant's request that the Commission order defendant to comply with the certificate created by Decision No. 47907 by restoring service existing prior to October 15, 1953. Defendant says no effort was made to sustain this request which was totally ignored and the entire case was based on the alternative prayer (an order directing defendant to establish a service "comparable thereto").

The effect of the absence of proper allegations in the complaint produced results which Rule 10 sought to avoid, viz:

(1) Complainant fails to state the routes which should be used.

(2) Complainant does not allege that authorized routes are not being operated, or are available for a "comparable" service.

(3) It is not alleged that providing a comparable service is possible; that highways are available therefor; or that such routes are authorized to be used.

(4) The word "comparable" has no particular meaning.

(5) Had defendant in response to an order of the Commission instituted such "comparable" service as was possible it would have been over unauthorized routes.

It was complainant's responsibility under Rule No. 10 to advise defendant and the Commission with respect to the routes which defendant did not operate, thereby violating the law and the rules of the Commission.

(c) Rule 12. Provides that the Commission shall mail a copy of the complaint to defendant which shall be allowed five days to point out defects which may require amendment. It also provides that if defects called to the Commission's attention are vital, amendment may be required.

Defendant states that it was given no opportunity to point out defects in the complaint but received from the Commission its "Order to Satisfy or Answer" to which was attached a letter signed by the Secretary of the Commission stating among other things that " . . . so-called preliminary service is being omitted and formal service of the complaint is being made herewith."

Defendant asserts it was unfortunate that Rule 12 was so disregarded that the issues as to the sufficiency of the complaint could not have been presented prior to the answer thereto and the hearing thereon. "If, . . . the complaint does not state a cause of action, or the principal or the alternative prayer should have been stricken therefrom, a ruling thereon would have either terminated the case or, . . . have compelled complainant to state precisely

wherein defendant may be accused of violation of any law or of any order or rule of the Commission . . . and how satisfaction could have been made.

(d) Rule 13. Defendant has answered the complaint as required and at the hearing made a motion that it be dismissed which defendant renews in its brief.

III Stopping Buses on Freeway

1. In General

The complaint is devoted to statements that buses have ceased stopping on the freeway but the reasons are unmentioned. According to the complaint the service asked to be restored is to stop the same buses at the same stops as heretofore. Defendant then repeats matters theretofore covered.

2. Defendant refers to its operative authority. Complainant insists that defendant's operative authority creates a duty to serve on the freeway.

3. Implied Limitations on Defendant's Operative Authority

Defendant states there are two pertinent limitations on its operative authority which are of general application to all bus lines, the observance of which cannot be construed as a violation of law or of orders of the Commission. They are Rules 12.36 and 12.37 of the Commission's General Order No. 98 referred to above in paragraph 2(b) of Part II.

Reference is also made to Section 562 of the Vehicle Code in regard to stopping vehicles ". . . upon the main traveled portion of the highway . . ." Complainant actually seeks an order of the Commission compelling defendant to violate the law.

IV Absurdity of Complainant's Request that Defendant Resume Making Bus Stops in Freeway

The Commission's Rules of Procedure as well as the rules of common sense presuppose the action sought would accomplish some useful purpose. The involved route is now completely fenced and no witness insisted that stopping of buses thereon is desirable. The idea that such stopping would serve any transportation need was not suggested. Yet the principal relief sought is that such stops be made. It should be disregarded as frivolous.

V Establishment of New Routes Under Alternate Prayer

1. In General

Defendant reiterates that it was not informed as to the routes of "comparable" service.

Defendant states that complainant and intervenor both hold that defendant need not strictly adhere to its certificated routes as long as that is consistent with the public interest and does not substantially change the "general area" of service contemplated by defendant's certificate.

2. The Issue Presented Should be That Which is Subject to Consideration in this Complaint Proceeding

Defendant again states the nature of the proceeding and raises the question of its " . . . right to operate over city streets or other highways which are not defined in its certificate, or must it first apply for and receive a certificate therefor."

3. Pertinent Statutory Provisions

Defendant refers to Sections 226, and 1032, of the Public Utilities Code, and discusses their applicability to this proceeding, the nature of a certificate and the obligations imposed thereby. It emphasizes the requirement to file an application for a certificate before a certificate may be granted and rediscusses points previously covered in its brief.

VI The Authority Granted by Defendant's Certificate of Public Convenience and Necessity

In General

Defendant refers to its Application No. 31883 and the ensuing order of the Commission in Decision No. 47907-dated November 3, 1952, granting to it a new certificate which superseded all of its operative rights theretofore held which were canceled by this decision. Portions of this decision are quoted and discussed, particularly those parts affecting San Mateo and the Orinda area. It argues that no other routes than those expressly authorized could be operated (Pages 17-20 inclusive).

VII The Recuest for "Comparable" Service

1. The Service Prior to Fencing of the Freeway

(a) Schedules Operated

The alternative prayer seeks an order requiring defendant to provide a service "comparable" to that existing prior

to fencing the freeway. That service, the schedules, their use and the various stops are discussed.

(b) Bus Stops

Six stops existed from 10th Avenue to Poplar Avenue a distance of about 6,800 feet. Average distance between stops would be about 1,200 feet.

2. Possibility of Rendering "Comparable" service from Commuter's Point of View

~~The present service is not and cannot be made "comparable" unless former stops are resumed. No witness of complainant offered any plan.~~

Defendant describes Shoreview area and states that the commuters of South Shoreview had no plan for securing a "comparable" service except that if a proper bus turn-out had been constructed under the Third Avenue overpass that stop would have been preferable to the one established three blocks west thereof by defendant. Other commuters would prefer to have bus stops established on service roads east and west of the freeway.

3. The Possibility of Rendering "Comparable" Service From Point of View of Commission's Staff

Reference is made to Exhibit No. 11 introduced by the Commission's staff in which three plans of operation were suggested by the staff witness. Defendant calls attention to the fact that none of these routes are presently authorized. Defendant says the staff recommended none of the suggested routes. Instead it pointed out that all are discouraging and had certain disadvantages even though defendant might apply for authority to operate over any of them.

Defendant argues the Commission's staff report (Exhibit No. 11) was introduced on the assumption that this proceeding is an investigation on the Commission's own motion under Rule 14 of the Rules of Procedure. It contains no suggestion that defendant is in violation of any law or of any order or rule of the Commission (Pages 20-27).

VIII Summarization From Various Points of View

1. Department of Public Works, Division of Highways

Defendant discusses in general the conversion of highways to freeways and the applicable law. It refers in particular to Sections 147 and 151 of the Streets and Highways Code under which the Department of Public Works may enter into contracts for the financing and construction of mass transportation facilities for

loading and unloading passengers. No such facilities were considered in the San Mateo area. The freeway was completely fenced and no provisions were made for bus turn-outs. The Department of Public Works has indicated that under Section 151 of the Streets and Highway's Code the establishment of bus stops on the freeway or its approaches would not be in the best interests of public safety. Defendant understands the Department is opposed to expending the latter's funds to create loading and unloading facilities for bus passengers using the freeway.

The Department of Public Works has long recognized the situation involved herein and has had several conferences and communications with representatives of San Mateo, the Public Utilities Commission and defendant in that regard over several years. Exhibit No. 13 sets forth the Department's position.

2. The City of San Mateo

Defendant states the City of San Mateo through its Mayor produced a resolution (Exhibit No. 8) requesting this Commission to investigate the problem involved unmindful of the year or two of investigations already made. "Thus the City of San Mateo blithely places upon defendant and/or the Public Utilities Commission the responsibilities it should have long since assumed." The City Manager appeared to place the entire responsibility on the Commission and plainly indicated the problem was one in which the city had no concern except that it was hoped the Commission would see that defendant would render the service demanded by Shoreview (Exhibits 3, 4, 5, 6, 7, and 9).

The City of San Mateo entered into an agreement relating to this freeway through the city as of September 4, 1941 which was amended by supplemental agreements dated January 15, 1951 and July 20, 1952. Defendant comments that no information was offered as to the lack of any attempt by the City ". . . to provide or to see that there was provided the required facilities for bus stops instead of . . . placing the blame on the defendant or on the Commission. . . ."

3. The Public Utilities Commission

Defendant suggests the complaint was filed by Shoreview Community Association to relieve the City of San Mateo of certain responsibilities. It does not lie with this Commission to solve the problem involved nor to compel the Department of Public Works to build bus passenger facilities along the freeway nor to compel the City of San Mateo to meet its financial responsibilities for such construction. Defendant then discusses in detail certain correspondence between officials of the City of San Mateo, the Department of Public Works and the Public Utilities Commission and numerous meetings of representatives thereof in regard to turn-out facilities, proposed reroutings and other aspects of the problems raised by fencing the freeway (Exhibits 5, 6, and 7).

Defendant says the Commission's staff devoted a great deal of time investigating the problems involved and possible remedies and advised the City of San Mateo of its conclusions. The entire cause of the difficulties arose from fencing the freeway, closing of abutting streets with the consent of the City of San Mateo and failure to provide facilities for loading and unloading passengers. Defendant states ". . . the Department of Public Works probably could have, under the law, provided such facilities if it had found that there was a sufficient need therefor and they could be established with due regard to safety."

4. The Shoreview Commuters

Defendant discourses on the ". . . predicament in which they (the commuters) now find themselves." They find the City of San Mateo has consented to a complete separation of their area from the main business and residential area of the city. No provisions were made for them to be received or discharged in bus transportation conducted over By-Pass U.S. Highway 101.

5. The Pacific Greyhound Lines

Defendant's position is sufficiently stated in a letter of its president to this Commission of January 14, 1952 (Exhibit No. 12). It discusses the effect of freeways on defendant and its patrons in general. Attention had been given to the Shoreview situation. "After exploring all suggestions offered, we find no possible method by which our Company can afford direct service into the Shoreview area."

Defendant states that as to the material and relevant issues herein the complete answer is found in its certificate. Exhibit 14 shows its regular routes as authorized do not permit rendering the "comparable" service prayed for.

With respect to what defendant asserts is actually irrelevant in this proceeding but which appears to be an investigation by the Commission on its own motion it suggests that:

(a) Such an investigation has been conducted for two years and a report made (Exhibit No. 11).

(b) Evidence offered shows that no satisfactory solution has been offered.

(c) The evidence indicates the commuters are no longer interested in any possible reroutings of buses but believe the situation would be alleviated if proper bus facilities were incorporated in the Third Avenue freeway structure.

II Conclusions

Defendant insists the complaint should be dismissed for the many reasons considered in detail above, the more important being:

1. Insufficient facts to state a cause of action.
2. Does not comply with Rules of Procedure.
3. Ex parte declaration by Commission that defendant should answer complaint without privilege of objection to its sufficiency was materially prejudicial.
4. The conversion of this proceeding from one on complaint to one of the nature of an Investigation on the Commission's Own Motion is irregular and has not produced enough evidence to base a finding of any unlawful act.
5. Investigations confirm former conclusions of Commission's staff that:
 - (a) Defendant is not responsible for fencing freeway.
 - (b) The Department of Public Works is vested with authority to determine whether it should finance and construct bus passenger facilities and has determined that a need exists.
 - (c) This Commission has no appellate or other jurisdiction to reverse findings of the Department of Public Works.
 - (d) The public need for defendant to reroute schedules over new routes cannot be considered in this proceeding but only on an application duly made by defendant.
 - (e) The problems arising from the construction of freeways where pedestrians are denied access to buses operated thereover is a legislative matter. Defendant may not properly be charged with violation of the law or of orders or rules of the Commission because of legislative inaction.

Respectfully submitted,


Leo C. Paul
Examiner