

**ORIGINAL**Decision No. 74553

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 ANDRE GUITON, an individual, doing )  
 business as GUITON CHARTER BUS )  
 SERVICE, of Oakland, California, )  
 for a Class "B" certificate to )  
 operate as a charter-party carrier )  
 of passengers, (File No. TCP 6-B).

Application No. 50155  
 (Filed April 1, 1968)

Craig Z. Randall, for applicant.  
W. L. McCracken, for Western Greyhound Lines  
 and The Gray Line, Inc.; Alex J. Gaeta,  
 for Peerless Stages, Inc.; D. A. Mannino,  
 for M & M Charter Lines, Inc., and California  
 Sightseeing Tours, Inc.; Robert A. Burrowes,  
 for Vaca Valley Bus Lines; Clarence J.  
Kearney, for Continental Pacific Lines,  
 Continental Western Lines and American Buslines,  
 Inc.; Handler, Baker and Greene, by Ray Greene,  
 for California Charter Bus Operators Associa-  
 tion and Keith Grim, dba North Bay Charter  
 Service; Charles Palmer, for Tiger Charter  
 Lines; protestants.  
Hilton H. Nichols, for the Commission staff.

O P I N I O N

By this application, Andre Guiton, an individual, doing business as Guiton Charter Bus Service, seeks a Class B passenger charter-party carrier certificate. Applicant's home terminal is located at 1210 Seventh Street, Berkeley.

Public hearing was held before Examiner Mooney in San Francisco on May 14, 1968 and June 11, 12 and 13, 1968. The matter was submitted upon the filing of concurrent briefs by applicant and protestants on July 3, 1968.

Before proceeding with our consideration of the record in this proceeding, we will briefly review the various operating

authorities set out in the "Passenger Charter-party Carriers' Act" (Sec. 5351 et seq., Public Utilities Code). Said act was passed by the Legislature in 1961. Prior thereto, no authority from the Commission was required to operate as a passenger charter-party carrier in California. With the passage of the act in 1961, all carriers performing such services and all new operators were required to obtain a permit from the Commission. The permit authorized all types of passenger charter-party services for a one-year period from and to anywhere in the State, subject to any restrictions the Commission might attach thereto. It was renewable annually. To obtain such a permit or an annual renewal thereof, an applicant was required to establish satisfactory fitness and financial responsibility and that he would faithfully comply with the Commission rules and regulations.

The Legislature in 1967 substantially revised the "Passenger Charter-party Carriers' Act". The revisions became effective November 8, 1967. Among other changes, three types of annual operating authorities, renewable each year, were created to replace the single all-inclusive permit. Following is a brief description of the three types:

1. Class A certificate which authorizes passenger charter-party services "from any point or points within the state to other points in or out of this state" (Sec. 5383, P.U.C.). Class A certificates were issued only to passenger charter-party carriers holding a valid operating permit issued by the Commission prior to July 1, 1967, provided an application therefor was filed with the Commission not later than March 7, 1968.

2. Class B certificate which authorizes passenger charter-party services "from any point within the territory of origin

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specified in the certificate to any points in the state, or territory of origin" (Sec. 5383, P.U.C.). The service area or territory of origin is to be determined by the Commission and shall in no case encompass more than a radius of 40 air miles from the home terminal designated by applicant (Sec. 5371.2, P.U.C.). The applicant is required to establish and the Commission must find that applicant possesses satisfactory fitness and financial ability to initiate and conduct the proposed transportation service (Secs. 5374 and 5375, P.U.C.). Additionally, the Commission must find that public convenience and necessity require the proposed transportation service and that applicant will faithfully comply with the rules and regulations of the Commission governing Class B operators (Sec. 5375, P.U.C.). If the applicant desires to operate in an area already served by the holder of a certificate, a public hearing must be held, and it must be shown that the existing carrier is not providing services which are satisfactory and adequate for the public, and in addition thereto, the Commission is directed to refrain from issuing more certificates than public convenience and necessity require and to place any restrictions upon the certificate which reasonably may be necessary to protect the existing carrier (Sec. 5375.1, P.U.C.).

3. Permit which is issued to persons, otherwise qualified, who only provide specialized services under contract for private businesses, governmental agencies, private schools and the like within a 50-mile radius of their home terminal and do not hold themselves out to serve the general public; or who use only vehicles under 15-passenger seating capacity and under 7,000 pounds gross weight (Sec. 5384, P.U.C.).

The record herein shows that applicant has been operating as a passenger charter-party carrier in the San Francisco Bay area for approximately nine years; that he held a permit issued prior to the aforementioned revision of the "Passenger Charter-party Carriers' Act"; that said permit expired July 26, 1968;<sup>1/</sup> that applicant has a total of 38 buses varying from 1948 to 1966 models and with capacities ranging from 37 to 46 passengers, several two and one-half ton baggage trucks, a tow truck, maintenance and repair facilities and fuel tanks at his terminal in Berkeley and an additional parking lot in Oakland; that all but five of the buses have reclining seats and six are equipped with lavatories; that applicant owns all of his equipment outright with the exception of his three newest buses; that he is buying the property on which the Berkeley terminal is located; that he employs approximately 40 drivers and ten office and yard personnel; and that he has never been admonished or cited for failure to comply with applicable rules or regulations of the Commission or the safety rules of the California Highway Patrol. Applicant has insurance on file with the Commission in conformity with General Order 115-A.

Applicant testified that he did not understand the implications of the 1967 revisions to the "Passenger Charter-party Carriers' Act" relating to operating authority. He admitted receiving correspondence from the Commission informing him of his right to file for a Class A certificate within the "grandfather" period. However, he asserted that he did not realize he would need this authority and did not bring this matter to the attention of his

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<sup>1/</sup> Applicant was issued a permit on July 23, 1968, which authorized him to continue contract charter service. His permit as a charter-party carrier of passengers which expired July 26, 1968, did so after these hearings and the submission of this matter, so that he was an existing lawful carrier within the Code.

attorney. Applicant explained that a Class A certificate authorizes charter operations from anywhere in the State; whereas, his charter operations have generally been from points within 40 air miles of his terminal, and he did not intend to expand his service area beyond said 40-mile radius. He asserted that because of his understanding that a Class A certificate was required only if he wished to expand his operations, he did not file for it.

Applicant and his wife testified as follows regarding applicant's operations: Applicant performs passenger charter-party services for the general public, including church, senior citizen, civic, school, youth and various other organizations; in 1963, applicant successfully bid on a contract with the government for the transportation of military personnel between Travis Air Force Base and various other military bases in the San Francisco Bay area; except for the year 1967, applicant has been the successful bidder each succeeding year; applicant also does contract work for the local blood bank; the estimated gross income from his government contract work in 1968 is \$420,000; applicant's current gross monthly income from his public charter operations is between \$3,000 and \$4,000; generally, each day 19 to 22 buses are required and several are held in reserve for the government contract work, some equipment is required in connection with the blood bank contract and approximately ten units, at least, are available for charter work for the general public; applicant satisfies the government's needs before equipment is made available to the general public; during May 1968, which was an average month, applicant handled 47 separate charters for the general public requiring 64 buses, and was unable to handle 19 additional requests for service and five or six referrals from

other carriers because of unavailability of equipment; most of applicant's charter work for the general public involves one-day trips, although some are for a longer duration; applicant has referred business to other charter carriers when he has not had sufficient equipment available to handle all requests for public charter service, and likewise, certain other charter carriers have referred business to him; in 1967, the year applicant did not have the government contract, 95 percent of his work was for the general public and his gross income was approximately \$70,000; all equipment is well-maintained; there is a need for the continuance of applicant's charter service for the general public.

A certified public accountant testified that he was retained by applicant in October 1967 to review his books; that he has set up a double entry bookkeeping system for applicant; and that he now supervises applicant's bookkeeper. The application shows that applicant is financially solvent.

Four public witnesses testified in support of the application. It was their testimony that the various groups and organizations they represented had used applicant's service and were satisfied with it. Most of said organizations and groups also used other charter carriers.

A representative of the Licensing Section of the Commission's Transportation Division was called as a witness by the attorney for several of the protestants. The representative testified that he had sent a letter to all 299 holders of permits, including applicant, on November 8, 1967, informing them of their right to file for a Class A certificate within the "grandfather" period; that approximately 133 filed for Class A certificates; that

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applicant telephoned him in early March 1968 regarding the aforementioned letter stating he had mislaid it; that he informed applicant the "grandfather" period expired on February 6, 1968, and he would have to file for a Class B certificate if he wished to continue to operate after the expiration of his current charter-party authority. Subsequent to the aforementioned conversation a bill was introduced in the Legislature (AB 938) to extend the "grandfather" period an additional 30 days to March 7, 1968. Said bill was passed June 8, 1968.

Testimony and evidence protesting the application were presented by representatives of The Gray Line, Inc.; North Bay Charter Service; Vaca Valley Bus Lines; Sierra Lines; Western Greyhound Lines; Tiger Charter Lines; Adams Charter Lines; Adams Charter Coaches; American Buslines, Inc., Continental Pacific Lines and Continental Western Lines; M & M Charter Lines, Inc. and California Sightseeing Tours, Inc.; Peerless Stages, Inc.; and the Northern Division of the California Charter-Party Bus Operators Association; and by a commission agent for Western Greyhound Lines.

Each of said protestant carriers holds a Class A certificate which authorizes charter bus operations from anywhere in the State. All have charter operations within the area proposed to be served by applicant as a Class B operator. There are 43 Class A charter-party carriers of passengers that maintain a base of operations within said area (Exhibit 19). Many of the protestants operate large fleets of buses of various size, type and model. Some perform certificated passenger stage service, school bus service or other specialized bus operations in addition to charter service for the public. All advertise and actively solicit public charter service in the San Francisco Bay area.

The witnesses for the various protestants testified that there are sufficient certificated passenger charter-party carriers in the San Francisco Bay area with more than adequate equipment to satisfy present and foreseeable future demands by the public for charter service; that there is substantial competition among existing certificated carriers in said area; that all are dependent on the revenue they receive from charter work; that the entry of another certificated carrier in the field would have an adverse effect on the amount of charter work available to those now operating in the area; and that strict enforcement of the new legislation is essential to the economic stability of the charter industry.

#### Discussion

We have before us a unique set of circumstances. Applicant was eligible to file for a Class A certificate but due to misunderstanding and oversight failed to do so within the "grandfather" period set out in Section 5371.1(a) of the Code. He thus was precluded from filing for a Class A certificate and has filed the instant application for a Class B certificate. Said application was filed on April 1, 1968. Subsequent to the filing thereof, the Legislature amended the aforementioned code section and thereby extended the "grandfather" period an additional 30 days from February 6, 1968 to March 7, 1968. It is apparent from the record herein that applicant was not aware at the time of his filing that the Legislature would extend the "grandfather" period. While it is obviously unfortunate for applicant that he did not make a timely filing for a Class A certificate, this is not necessarily a controlling factor to be taken into account in our consideration of applicant's request for a Class B certificate.



The primary issue for our determination is whether the record supports the granting of the sought Class B certificate. We are of the opinion that it does.

The record supports findings of applicant's "satisfactory fitness and financial responsibility to initiate and conduct the proposed transportation services" as required by Sections 5374 and 5375 of the Code. The record shows that he has never been admonished for failure to abide by applicable rules and regulations.

The record further supports findings by the Commission "That public convenience and necessity require the proposed transportation service" and that applicant "will faithfully comply with the rules and regulations adopted by the commission with respect thereto" as required by Section 5375 of the Code. As to the issue of public convenience and necessity, it is well-settled that no single rule or formula has yet been devised for determining public convenience and necessity. This is a question of fact to be determined from a review of all the evidence. The record demonstrates that applicant has been performing charter service for the general public for approximately nine years; that there has been a public demand for his service; and that such public demand will continue. The fact that he is in the charter business and has been serving the general public is certainly some evidence of a public need for his service. It is recognized that the public witnesses who appeared on behalf of applicant were few in number, their testimony was limited and the organizations they represent also use other charter carriers. Nonetheless, a representative showing has been made on this record to establish public convenience and necessity. It is noted that had applicant seasonably filed for a

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Class A certificate he would not have been required to establish public convenience and necessity and that he is seeking a lesser authority herein. With respect to the issue of compliance, it can reasonably be concluded, based on applicant's past record, that he will faithfully comply with applicable rules and regulations.

Protestants in their brief pointed out that most of applicant's equipment is required to fill his contractual obligations to the government and that because of this he has been unable to accept each and every request for charter service from his customers and has referred those he could not handle to certain other charter carriers. They contend that this evidences a lack of dedication to the public by applicant. We do not agree with this rationale. Many of the protestants themselves do not limit their business to public charter service and assign equipment to other passenger operations. As hereinabove stated, many also perform certificated passenger stage service, school bus service or other specialized bus operations. Furthermore, applicant testified that not only does he refer overflow public charter work he cannot handle to other charter carriers when all his available equipment is in use but certain other charter carriers likewise refer work to him when they experience the same situation. The record shows that applicant generally has ten units of equipment available for public charter and that he regularly serves the public. Additionally, there are no statutory provisions that prohibit a passenger charter-party carrier from performing any type of passenger service other than public charter service.

Applicant desires to operate in a territory already served by numerous certificated passenger charter-party carriers. In this connection, Section 5375.1 of the Code provides that when

the sought territory is already served by certificated charter carriers, the requested authority shall not be granted unless it can be shown that the existing carriers are not providing service in said territory which is satisfactory to the Commission and adequate for the public and that in no event shall more certificates be granted than public convenience and necessity require. Applicant falls within the category of an existing carrier. He has been continually providing charter service for the public for approximately nine years. He is not a new carrier. It is patently clear that the purpose of said section is to prevent the oversaturation of a territory by the entrance of more new carriers in the field than are reasonably necessary to satisfy the demands of the public and thereby protect the economic stability of existing carriers. Protestants would have us consider applicant as a new carrier who had not heretofore provided service for the public. This is not the case. The Legislature certainly did not intend to eliminate any existing carriers by the revisions to the "Passenger Charter-party Carriers' Act". There is no evidence herein which would indicate that applicant's existing service has been unsatisfactory. As pointed out by applicant in his brief, if Section 5375.1 is to be interpreted literally, it would place a burden on applicant to show that his own existing service has not been satisfactory to the Commission and to the public. The record shows that there has been and will continue to be a demand for applicant's service. The Commission concludes that Section 5375.1 is not applicable to applicant. ✓

Protestants also argued in their brief that a Section 5324 permit would protect substantially all of applicant's revenue.

While it is true that applicant presently receives most of his revenue from his contract service for the government, the evidence shows that he receives between \$3,000 and \$4,000 per month from his public charter service. This certainly is not an inconsequential amount. As with many other carriers, the availability of public charter work is important to applicant in order that he may achieve maximum utilization of all of his equipment. Furthermore, the government contracts are open to competitive bidding each year. Applicant has no assurance that he will be the successful bidder next year. He was not in 1967, and practically all of the income from his passenger business during 1967 was derived from public charter service. This would be the situation again next year and in any succeeding year if he were not awarded said contracts or did not bid on them. A certificate is essential to applicant not only to round out his present operation but also to assure continuation of his passenger business.

Having determined that applicant is entitled to a Class B certificate, there remains for our discussion the extent of the service area to be authorized. In this regard, Section 5371.2 of the Code provides that said area may not "encompass more than 40 air miles from the home terminal". Applicant asserted that it would seriously limit his public charter business if his service area were restricted to anything less than the 40 air-mile radius. While the record shows that most of applicant's public charter service originates in the Oakland-Berkeley area, it also shows that he does provide service for the public from other points within the 40 air-mile radius, including Alameda, San Francisco, Vallejo, Fairfield, Menlo Park, Concord and Hayward. We will authorize a service area

encompassing all points and places within a radius of 40 air miles from his home terminal at 1210 Seventh Street, Berkeley.

Findings and Conclusions

Upon consideration of the evidence, the Commission finds that:

1. Applicant had a passenger charter-party carrier permit issued prior to the 1967 revisions of the "Passenger Charter-party Carriers' Act". Said permit was unrestricted and authorized any and all types of passenger charter-party carrier services from and to any and all places in California. It expired on July 26, 1968, after the submission of this case.
2. Applicant was eligible to file for a Class A passenger charter-party certificate but due to misunderstanding and oversight failed to do so within the "grandfather" period which expired March 7, 1968.
3. The sought Class B certificate with a service area encompassing a radius of 40 air miles from applicant's terminal in Berkeley is a lesser authority than a Class A certificate which authorizes passenger charter-party service from anywhere in the State.
4. Applicant has been operating as a passenger charter-party carrier for approximately nine years. He has a total of 38 buses varying from 1948 to 1966 models and ranging from 37- to 46-passenger capacity, several baggage trucks and a tow truck. He owns all of his equipment except his three newest buses and is buying the property on which his terminal at 1210 Seventh Street, Berkeley is located.
5. Applicant receives most of his revenue from contract service for the Federal government. He receives between \$3,000

and \$4,000 per month from his charter service for the general public.

6. Most of applicant's passenger charter-party carrier service for the general public originates in the Berkeley-Oakland area. He also originates charters for the general public at various locations within a radius of 40 air miles from his Berkeley terminal, including Alameda, San Francisco, Vallejo, Fairfield, Menlo Park, Concord and Hayward.

7. Applicant possesses satisfactory fitness and financial responsibility.

8. Applicant has not heretofore been admonished for failure to comply with Commission rules and regulations and has demonstrated by his past record that he will continue to faithfully comply with applicable rules and regulations of the Commission.

9. Public convenience and necessity require that the proposed service be authorized.

10. Applicant has the experience, equipment, personnel and resources to maintain the proposed service.

11. Applicant desires to continue operating in a territory already served by holders of passenger charter-party carrier certificates. He is an existing carrier in said territory and has been operating therein for approximately nine years. The fact that he has been providing passenger charter-party carrier service for the general public in said territory evidences a public need for his service. Since he is already operating in said territory, the granting of the sought Class B certificate would not result in the addition of a new carrier in the territory or additional competition for other existing carriers operating in said territory.

12. It has not been shown on this record that applicant's passenger charter-party carrier service in the sought area has been unsatisfactory or inadequate.

13. The legislative intent of the 1967 revisions to the "Passenger Charter-party Carriers' Act" was to establish economic stability in the field by preventing the oversaturation of a territory by having more new carriers than are reasonably necessary to satisfy the demands of the public. The provisions of Section 5375.1 of the Public Utilities Code are not applicable to this application.

14. All of the protestants solicit business and operate in the sought service area. Many have large fleets of equipment. It has not been shown that any of the protestants will be seriously affected by the continuation of applicant's passenger charter-party carrier service in said area.

15. Applicant has insurance on file with the Commission in conformity with General Order 115-A.

The Commission concludes that applicant should be granted a Class B passenger charter-party carrier certificate with a service area encompassing the territory within a radius of 40 air miles from applicant's home terminal at 1210 Seventh Street, Berkeley.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Andre Guiton, an individual, doing business as Guiton Charter Bus Service, authorizing him to operate as a Class B charter-party carrier of passengers, as defined in Section 5383 of

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the Public Utilities Code, from a service area encompassing a radius of 40 air miles from applicant's home terminal at 1210 Seventh Street, Berkeley, California.

2. In providing service pursuant to the certificate herein granted, applicant shall comply with and observe the following service regulations. Failure so to do may result in a cancellation of the operating authority granted by this decision.

Applicant will be required, among other things, to comply with and observe the safety rules of the California Highway Patrol, the rules and other regulations of the Commission's General Order No. 98-A and insurance requirements of the Commission's General Order No. 115-A.

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

Dated at San Francisco, California, this 20<sup>th</sup> day of AUGUST, 1968.

*I concur  
in the ~~order~~  
G. E. P. Mitchell*

*William J. ...*  
President  
*Stallman W. ...*  
*Augata*  
Commissioners

Commissioner Fred P. Morrissey, being necessarily absent, did not participate in the disposition of this proceeding.