

**ORIGINAL**Decision No. 74559

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of  
 RANDOLPH J. TWYLCROSS, LAWRENCE R. TWYLCROSS,  
 VAL DODD and DONALD M. WAITE, a partnership,  
 doing business as SAFECO TRANSPORTATION, of  
 Whittier, California, for a Class "B"  
 certificate to operate as a charter-party  
 carrier of passengers, (File No. TCP 5-B). }

Application No. 50151  
 (Filed March 14, 1968)

Lawrence R. Twycross and Randolph J. Twycross, for  
 applicant.  
W. L. McCracken, for Western Greyhound Lines; John L.  
Hughes, for Gray Line Tours Company; Russell &  
Schureman by Carl H. Fritze, for Transcontinental  
 Bus System, Inc., and American Bus Lines, Inc.;  
Leslie W. Davis, for Douglas Bus Lines, Inc.; James  
H. Lyons, for Charter Bus Association of California,  
 Community Charter Bus Association, M & M Charter  
 Lines, California Sightseeing Lines, Roesch Trans-  
 portation and Associated Charter Bus Company, Pacific  
 Scenic Lines and Douglas Bus Lines, Inc., Harvey Bus,  
 Inc., and Harvey School Bus, Inc., and Harvey School  
 Bus & Charter Service; protestants.  
John de Brauer, for the Commission staff.

O P I N I O N

By this application, Randolph J. Twycross, Lawrence R.  
 Twycross, Val Dodd and Donald M. Waite, a partnership, doing business  
 as Safeco Transportation, seek a Class "B" passenger charter-party  
 carrier certificate. Applicants are located in the City of Whittier.

A Class "B" certificate is defined in Sections 5383 and  
 5371.2 of the Public Utilities Code. Section 5383 states that the  
 holder of a Class "B" certificate may provide passenger charter-  
 party service "from any point within the territory of origin  
 specified in the certificate to any points in the state, or territory  
 of origin". Section 5371.2 limits the service area or territory of  
 origin within which the Class "B" operator may originate charters to

an area to be determined by the Commission, which shall in no case encompass more than a radius of 40 air miles from the home terminal designated by applicant.

Public hearing was held before Examiner Mooney in Los Angeles on May 23, 1968. The matter was submitted on said date.

Two of the partners testified in support of the application. No other witnesses or evidence was presented on behalf of applicants. The two witnesses testified as follows: All of the four partners are experienced in the field of bus operations; one of the partners, who is a school teacher and a general building contractor, will manage the business; another partner, who is in charge of transportation for the Whittier Union High School District, will supervise the servicing and maintenance of the equipment; the other two partners are college students who also drive school buses; each partner will contribute \$5,000 to the partnership if the application is granted and will contribute additional funds if required; the proposed operation would not interfere with other employment or endeavors of the partners; all income from the partnership would be retained in the business for the first few years to build up assets; initially a 79-passenger school bus, a 54-passenger conventional bus and a 43-passenger bus with reclining chairs will be purchased; several locations are being considered for garaging and maintaining the equipment; a mechanic would be hired by the hour; several service stations have agreed to furnish fuel for the equipment at volume discount prices; the drivers of the equipment would all be certified school bus drivers; applicants would provide school bus service for parochial schools in addition to charter service; one bus would be used for school service, another would be used for charter service, and the third would be in reserve; many telephone calls and requests

have been received from colleges, schools, churches, youth organizations, and other groups requesting the proposed service; several of the organizations have complained about the service they have received from certain other charter operators; most of the other charter operators are located a distance from Whittier, and there is a problem of deadhead miles when they are used, which is undoubtedly reflected in the amount said carriers charge for charter service; applicants are interested primarily in one-day charters of 120 miles or less; it is anticipated that most of the charter work would be on weekends; additional equipment would be leased if required; arrangements have been made to obtain the necessary insurance coverage required by General Order No. 115; it is applicants' intent to provide good, safe, adequate charter bus service for the Whittier area; there is a public need for the proposed service.

Testimony and evidence protesting the granting of the application was presented by representatives of Western Greyhound Lines, Community Charter Bus System, Transcontinental Bus System, Inc., American Bus Lines, Inc., Roesch Transportation, Southern Division of the Charter Bus Association of California, Douglas Bus Lines, Inc., Associated Charter Bus Company, and Gray Line Tours Company. Each of said protestants holds a Class "A" certificate which authorizes passenger charter bus operations from anywhere in the state to anywhere in or out of the state.<sup>1/</sup> All conduct charter operations within the area proposed to be served by applicants. There are a total of 56 companies with Class "A" certificates which have a base of operations within 40 air miles of Whittier (Exhibit 2).

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<sup>1/</sup> Class "A" certificates were issued only to charter-party carriers of passengers holding a valid operating permit issued by the Commission prior to July 1, 1967, provided an application was filed with the Commission not later than March 7, 1968. Sec. 5371.1, Public Utilities Code.

The protestants operate large fleets of bus equipment of various size, type and model. Most perform certificated passenger stage service, school bus service, or other specialized bus operations in addition to charter service. All advertise and actively solicit charter service in the Whittier area.

The witnesses for the various protestants testified that there are sufficient passenger charter-party carriers in the Whittier 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 charter carriers in said area; that all are dependent on the revenue they receive from charter work; and that the entry of another carrier in the field would dilute the amount of charter work available to those now operating in the area and would adversely affect their overall revenue.

#### Discussion

The Legislature has set out in Sections 5375 and 5375.1 of the Public Utilities Code specific facts that must be established by an applicant for a Class "B" certificate. Section 5375 requires that an applicant establish and the Commission find that public convenience and necessity require the proposed transportation service; that applicant possesses satisfactory fitness and financial responsibility to initiate and conduct the proposed service; and that applicant will faithfully comply with the rules and regulations of the Commission relating thereto. If an applicant desires to operate in an area already served by the holder of a certificate, Section 5375.1 further requires that applicant establish and the Commission find that the existing carrier is not providing services which are satisfactory and adequate for the public. Additionally, Section 5375.1 directs the Commission to refrain from issuing more certificates than public convenience and necessity require.

Applicants have failed to meet the burden imposed on them by Section 5375.1 to establish that existing carriers are not providing satisfactory service and meeting the needs of the public. The record shows that there are in excess of 50 certificated passenger charter-party carriers whose services are available in the Whittier area; that many of the existing carriers are vigorously soliciting business in the area and are actively serving it with large fleets of modern equipment; and that there is substantial competition between said carriers throughout the area. Although applicants asserted that they have received requests from certain groups for service, protestants have presented evidence which shows that they are ready, willing and able to provide service to any and all groups in that area. Furthermore, the complaints referred to by applicants regarding service by several carriers were few in number. Said complaints appear to be isolated instances and certainly do not establish that the existing carriers are regularly failing to provide satisfactory service. It has not been demonstrated herein that public convenience and necessity require the proposed service.

It is obvious from the record that applicants possess satisfactory fitness and financial responsibility and would faithfully comply with the Commission's rules and regulations. Nonetheless, having determined that applicants have failed to meet the burden imposed on them by Section 5375.1, we are precluded by legislative mandate from granting the sought certificate.

In addition to the proposed passenger charter-party service for the public, applicants also indicated that they would perform school bus service for parochial schools. In this connection, Section 5384 of the Code provides in part that the Commission shall issue permits to persons, otherwise qualified, who only provide

service under contract for private schools. If applicants so desire, they may file an application with the Commission to provide transportation for parochial schools. Also, as a matter of information, Section 5353 of the Code provides in part that a charter-party carrier certificate is not required in connection with transportation services for the general public rendered wholly within the corporate limits of a single city.

Findings and Conclusions

Upon consideration of the evidence, the Commission finds that:

1. Applicants are a partnership, doing business as Safeco Transportation. All partners have had experience in the field of passenger transportation by bus and have demonstrated satisfactory fitness, financial responsibility and willingness to abide by the Commission rules and regulations.
2. There are in excess of 50 certificated passenger charter-party carriers within the Whittier area which applicants propose to serve as a Class "B" passenger charter-party carrier.
3. Many of the existing charter-party carriers in the Whittier area solicit business in said area and serve it with large fleets of modern equipment.
4. There is intense competition among existing passenger charter-party carriers within the Whittier area.
5. The existing carriers are ready, willing and able to provide service to any and all groups in the Whittier area.
6. It has not been demonstrated on this record that the existing carriers operating in the Whittier area are regularly failing to provide satisfactory service and meet the needs of the public for charter service. ✓

7. Applicants have failed to establish on this record that public convenience and necessity require that applicants render the service proposed herein or any part thereof as a Class "B" passenger charter-party carrier.

The Commission concludes that the application should be denied.

O R D E R

IT IS ORDERED that Application No. 50151 is denied.

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

Dated at San Francisco, California, this 20th  
day of AUGUST, 1968.

William J. ...  
President  
Stallman ...  
Rogers  
Commissioners

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