

Decision No. 76398

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 AMERICAN BUSLINES, INC., a corpora-)
 tion, for an extended and restated)
 certificate of public convenience)
 and necessity as a passenger stage)
 corporation, in lieu of all other)
 certificates of public convenience)
 and necessity, between various)
 points and over various routes in)
 the State of California, pursuant)
 to Sections 1031-1036 of the Cali-)
 fornia Public Utilities Code.)

Application No. 50677
 (Filed November 6, 1968)

Russell & Schureman, by R. Y. Schureman,
 for American Buslines, Inc., applicant.
W. L. McCracken, for Western Greyhound
 Lines (Division of Greyhound Lines,
 Inc.), protestant.
Lloyd Young, for the Commission staff.

O P I N I O N

By Decision No. 75192, dated January 14, 1969, in the instant application, American Buslines, Inc. (American) was granted a certificate of public convenience and necessity authorizing operations as a passenger stage corporation as defined in Section 226 of the Public Utilities Code. Said certificate was an extension and re-statement of the certificate of public convenience and necessity granted by Decision No. 65274, in Application No. 45061, as amended by Decision No. 72390, in Application No. 49172, and Decision No. 74066, in Application No. 50170. The latter certificate was revoked concurrently with the effective date of tariff filings required by paragraph 2(b) of the Order in Decision No. 75192. Said tariff filings were to become effective on June 1, 1969. Pursuant to a petition filed by Greyhound Lines, Inc. (Greyhound) seeking a

reopening of this proceeding and a rejection of certain time schedules and tariff filings, the Commission issued Decision No. 75724 which ordered reopening of the proceeding for further hearing, suspension of certain timetables and tariff filings pertaining to service to American's San Diego South Terminal located at 698 East San Ysidro Boulevard and prohibition of operations between American's Central Terminal and South Terminal in San Diego pending further order of the Commission.

Public hearing was held before Examiner O'Leary at San Francisco on July 1, 1969 and was submitted subject to the filing of concurrent briefs which were filed on July 24, 1969.

The evidence discloses that American's South Terminal in San Diego is located in that portion of the City of San Diego immediately adjoining the Republic of Mexico, which is commonly known as San Ysidro. It was stipulated that American has never provided service to its San Diego Southern Terminal. The evidence also shows that the area commonly known as San Ysidro where American proposes to establish its Southern Terminal is located within the boundaries of the City of San Diego by reason of certain annexations in 1954, 1955 and 1957. The evidence also shows that said territory is approximately 17 miles south of downtown San Diego and is reached via Interstate Highway 5 passing through National City and Chula Vista. The evidence further shows that Greyhound provides service between San Diego and San Ysidro.

American contends that since it acquired the Los Angeles to San Diego portion of the operating rights of Transcontinental Bus System, Inc. on July 18, 1961 (Decision No. 62288 in Application No. 43258) it has held authority to provide service to any and all

points in the City of San Diego, including San Ysidro and that said authority was reaffirmed by this Commission when it granted American an in lieu certificate by Decision No. 65274, dated April 23, 1963, in Application No. 45061. American further contends said authority is even more explicit under the restated certificate granted by Decision No. 75192 in the instant application in that said decision authorizes service over various routes from Los Angeles and points as far south as Doheney Park, at which point service to San Diego is authorized over Interstate 5. Original Page 5 of the restated and extended certificate included the following with respect to Special Conditions, Rights and Restrictions.

"6. American Buslines, Inc. is authorized to operate to and from the company stations on points of passenger pickup and discharge within each city, town, or community into or through which an authorized highway route passes or reaches any portion thereof unless otherwise specifically restricted or limited, and may utilize all available freeways, city streets and county roads as access roads to or from such company stations or points of passenger pickup or discharge."

Greyhound contends (1) prior to the issuance of Decision No. 75192 American did not have authority to provide service to San Ysidro, (2) if American has held operative authority to San Ysidro since 1961 said authority has been extinguished because of non-use and (3) if Decision No. 75192 is interpreted to include the right to provide passenger stage service between San Diego and San Ysidro there was a failure on the part of American to provide adequate notice to existing carriers.

That portion of American's certificate which authorizes operations between Los Angeles and San Diego was originally granted to Santa Fe Transportation Company by Decision No. 30790, dated

April 18, 1938 (41 CRC 239). Said authority was transferred to Transcontinental Bus System, Inc. (Transcontinental) by Decision No. 49871, dated March 30, 1954, in Application No. 34650. By Decision No. 55018, dated May 21, 1957, in Application No. 38350, Transcontinental's certificate was restated and all previous certificates were revoked. The certificate was amended by Decisions Nos. 55217 and 59261. By Decision No. 62288, dated July 18, 1961, in Application No. 43258, the authority was transferred to American. The authority was restated in Decision No. 65274, dated April 23, 1963. The authority was amended by Decisions Nos. 72390 and 74066, in Applications Nos. 49172 and 50170, respectively. A review of the above decisions discloses that none of them granted American or its predecessors authority to provide service to San Ysidro. Decision No. 75192 is a restatement and extension of the certificate granted by Decision No. 65274, as amended, with extensions limited to minor route changes.

Section 1031 of the Public Utilities Code provides:

"No passenger stage corporation shall operate or cause to be operated any passenger stage over any public highway in this State without first having obtained from the commission a certificate declaring that public convenience and necessity require such operation, but no such certificate shall be required of any passenger stage corporation as to the fixed termini between which, or the route over which, it was actually operating in good faith on July 29, 1927, in compliance with the provisions of Chapter 213, Statutes of 1917, nor shall any such certificate be required of any person or corporation who on January 1, 1927, was operating, or during the calendar year 1926 had operated a seasonal service of not less than three consecutive months' duration, sight-seeing buses on a continuous sight-seeing trip with one terminus only. Any right, privilege, franchise, or permit held, owned, or obtained by any passenger stage corporation may be sold, assigned, leased, mortgaged, transferred, inherited, or otherwise encumbered as other property, only upon authorization by the commission."

In 1938 when the authority to serve San Diego was originally granted, San Ysidro was not a part of San Diego. This Commission has never declared that public convenience and necessity require operations by applicant to San Ysidro. To now say that applicant has authority to serve that portion of San Diego commonly referred to as San Ysidro because of the various annexations in 1954, 1955 and 1957 would in effect be allowing passenger stage corporations to extend their certificates of public convenience and necessity within cities without the declaration of public convenience and necessity required by Section 1031.

After consideration the Commission finds that:

1. The authority to serve San Diego was originally granted to Santa Fe Transportation Company in 1938 pursuant to Decision No. 30790.
2. Said authority was transferred to Transcontinental Bus System, Inc. by Decision No. 49871, dated March 30, 1954.
3. Said authority was acquired by American Buslines, Inc. pursuant to Decision No. 62288, dated July 18, 1961.
4. Said authority was restated in Decision No. 65274, dated April 23, 1963.
5. The authority granted by Decision No. 65274 was amended by Decisions Nos. 72390 and 74066.

6. In 1938 when the authority to serve San Diego was originally granted, San Ysidro was not a part of San Diego.

7. Since obtaining the authority in 1961 American has not operated to San Ysidro.

8. The instant application did not request authority to serve San Ysidro.

9. Decision No. 75192 did not grant authority to serve San Ysidro as it was a restatement of authority allowing American to make only minor route changes.

Based upon the above findings the Commission concludes that:

1. American Buslines, Inc. is not authorized to provide service to or from its proposed San Diego South Terminal located at San Ysidro.

2. The timetable and tariff filings suspended by Decision No. 75724, dated May 28, 1969, should be rejected.

3. Appendix A of Decision No. 75192 should be amended to provide that no service shall be conducted to or from that portion of San Diego commonly known as San Ysidro.

O R D E R

IT IS ORDERED that:

1. American Buslines, Inc., 37th Revised Section D of Timetable No. 1, issued May 21, 1969, effective June 1, 1969, insofar as it pertains to service to San Diego (South Terminal, at 698 East San Ysidro Boulevard) is rejected.

2. American Buslines, Inc., Tariff No. 75-D5-E, Cal.P.U.C. No. 31, Page 10, Section B, effective June 1, 1969, insofar as it

pertains to service to San Diego (South Terminal, at 698 East San Ysidro Boulevard) is rejected.

3. American Buslines, Inc. shall not perform any operations to or from that portion of San Diego commonly known as San Ysidro until it obtains a certificate of public convenience and necessity authorizing such operations.

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

Dated at San Francisco, California, this 12th day of NOVEMBER, 1969.

William J. Brown
President
Augustine
William J. Brown
Thomas L. Stinson
Commissioners

4. Service between Del Mar and Del Mar Race Track and the Fair Grounds (Route 2.04) shall be rendered only during racing meets and other events at said race track and fair grounds.

5. Routes designated as "alternate routes" in this appendix are defined as routes which are in addition to the regular routes between the named termini, and are authorized for operating convenience, to be operated at the option of the company, provided, however, no service may be rendered to or from any intermediate point or points thereon.

6. American Buslines, Inc. is authorized to operate to and from the company stations or points of passenger pickup and discharge within each city, town or community into or through which an authorized highway route passes or reaches any portion thereof, unless otherwise specifically restricted or limited, and may utilize all available freeways, city streets and county roads as access roads to or from such company stations or points of passenger pickup or discharge.

7. No service shall be rendered to or from that portion of San Diego commonly known as San Ysidro.

Issued by California Public Utilities Commission.

Decision No. 76398. Application No. 50677.