

ORIGINAL

Decision No. 76527

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application  
of Orange Coast Sightseeing Com-  
pany, a corporation, for a cer-  
tificate of public convenience  
and necessity to extend its sight-  
seeing services originating at  
points of interest in Orange  
County to points of interest in  
Burbank and Universal City, Cal-  
ifornia. )

Application No. 49730  
(Filed October 11, 1967)

James H. Lyons, for Orange Coast  
Sightseeing Company, applicant  
Bruce R. Geernaert, for Gray Line  
Tours Company, protestant.  
William R. Kendall, for the Commis-  
sion staff.

O P I N I O N

Applicant, Orange Coast Sightseeing Company (Orange Coast), is engaged in the business of operating common carrier sightseeing services as a passenger stage corporation from areas in the vicinity of Disneyland (Anaheim) and Knott's Berry Farm (Buena Park) to Marineland (near San Pedro) and to San Juan Capistrano and return. By this application it seeks authority to extend its services by establishing a sightseeing tour from the Disneyland and Knott's Berry Farm areas to Universal City Studios, Universal City, and the studios of the National Broadcasting Company, Burbank, and return. It also seeks an enlargement of its authorized pickup area in the vicinity of Disneyland.

Applicant alleges that the proposed service is needed by the many tourists and visitors who come to the Disneyland/ Knott's Berry Farm areas and who, in the course of their stay at said areas, want to visit a motion picture studio and a television broadcasting studio. Applicant also alleges that there is no existing service like that which is proposed.

Protestant, Gray Line Tours Company (Gray Line), is also engaged in the business of operating common carrier sightseeing services between numerous points in southern California. Amongst the tours which it operates are tours from the Disneyland/ Knott's Berry Farm areas to Universal City Studios (Universal) and other places of interest in and/or about the City of Los Angeles. It opposes the granting of the authority which applicant seeks on the grounds that its own services adequately meet the public's need for a motion picture sightseeing tour from the Disneyland/Knotts areas; that there is insufficient need to justify extension of a tour to include the National Broadcasting Company's Television Studios; that the establishment of the tour proposed by Orange Coast would be severely detrimental to the tours which Gray Line is providing to Universal from the Disneyland/Knotts areas, and that applicant is neither financially able nor fit to operate the proposed tour.

Public hearings on the application were held before Examiner Abernathy in Los Angeles and Anaheim over a period of 15 days in January and April, 1968. The application was taken under submission subject to the filing of briefs on August 26, 1968. Subsequently, upon direction by the Commission, a

proposed report of the examiner was prepared and filed on March 14, 1969. Exceptions thereto were filed by Gray Line on April 4, 1969, and replies to the exceptions were filed by applicant on April 29, 1969.<sup>1/</sup> The matters involved are ready for decision.

The examiner's report sets forth an extensive recitation and discussion of the record which was adduced in this proceeding. The examiner recommends that the Commission find that:

- a. Public convenience and necessity require the establishment of the tour proposed by Orange Coast.
- b. Orange Coast has the ability and resources to operate said tour.

The examiner also recommends that Orange Coast be authorized to operate the proposed tour subject to specified conditions.

In arriving at the foregoing recommendations, the examiner concluded that the operation of the sightseeing tour which is proposed by applicant is warranted by the following circumstances:

- a. The operation of a similar tour by Gray Line (formerly Tanner Motor Tours Ltd.) was found by the Commission to be required by public convenience and necessity more than ten years ago (Decision No. 55475, Tour No. 1005);
- b. Gray Line has not operated said tour for more than a year;

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<sup>1/</sup> With its exceptions Gray Line filed a motion for reopening of the record for the limited purpose of receiving into evidence a map depicting the route followed by Gray Line in the operation of one of its tours from the Disneyland/Knotts areas to Universal. The granting of this motion was resisted by applicant in a reply thereto which was filed on May 6, 1969. The motion will be denied.

- c. The sightseeing tours which Gray Line is operating from the Disneyland/Knotts areas to Universal are different tours than that which was authorized by Decision No. 55475 as Tour No. 1005;
- d. The sightseeing tours which Gray Line is operating from the Disneyland/Knotts areas to Universal do not meet the needs of public convenience and necessity for which Tour No. 1005 was authorized;
- e. The need for a direct sightseeing tour from the Disneyland/Knotts areas to Universal and return is as great or greater now than it was ten years ago when Tour No. 1005 was authorized.

Vigorous exceptions were taken by Gray Line to the examiner's conclusions -- particularly to his conclusion that Gray Line has not operated Tour No. 1005 for more than a year. Gray Line asserts that such conclusion is not only not supported by the evidence, but that it is contradicted by almost all of the evidence. Gray Line asserts that the record shows that the tour is being operated; that it is extensively advertised, and that Gray Line has received numerous compliments from the public for the tour and the manner in which it is being conducted.

The question of whether Tour No. 1005 has been and is being operated regularly by Gray Line is one that is crucial to the disposition of the principal issue in this matter, namely, whether public convenience and necessity require the establishment of the sightseeing service which Orange Coast is here seeking to provide. If the tour is not being operated, it follows that Gray Line is not meeting the needs of public convenience and necessity which the Commission in its Decision No. 55475 found requires the operation of the tour. Hence, the unsatisfied need would constitute justification toward the

establishment of the tour proposed by Orange Coast. On the other hand, if the tour is being operated, the establishment of a further or substantially similar tour should not be authorized unless Gray Line will not provide the service to the satisfaction of the Commission.<sup>2/</sup> In the circumstances, before considering other issues in this matter, we shall direct ourselves initially to a careful review and analysis of the record to determine whether Gray Line is, in fact, operating the tour which was authorized by Decision No. 55475 as Tour No. 1005.

The evidence which Gray Line presented concerning its sightseeing tours between the Disneyland/Knotts areas and Universal centers about two tours, an all-day tour which is identified in Gray Line's advertising (Exhibit No. 25) as Tour No. 2-S, and a half-day tour which is identified as Tour No. 5. In its exceptions Gray Line contends only that its Tour No. 5 is the same as Tour No. 1005. Subsequently herein we shall give some consideration to Tour No. 2-S. For the most part, however, we shall direct our attention to Tour No. 5.

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<sup>2/</sup> Section 1032 of the Public Utilities Code states in part that: "the commission may .... issue a certificate to operate in a territory already served by a certificate holder.... only when the existing passenger stage corporation.... serving such territory will not provide such service to the satisfaction of the commission."

Tour No. 5

Tour No. 5 is described in Gray Line's advertising as follows:

"We tour through Hollywood. We spend two hours inside a movie studio. We go through the grounds visiting movie and television scenes, streets and sets. You are welcome to use your cameras."

According to Gray Line's vice-president of traffic, who was represented as being well versed in the operating authority under which the company's tours are conducted, Tour No. 5 is operated from the Disneyland/Knotts areas under the authority which was granted by Decision No. 55475 to operate Tour No. 1005. The vice-president of traffic also testified that Tour No. 5 was founded on authority granted by another decision, Decision No. 25610 (Exhibit No. 49). The tour which said decision authorizes is described as one which would leave Tanner Motor Tours Ltd.'s (now Gray Line's) Los Angeles terminal daily at 9:00 A.M. and return at 5:00 P.M., visiting a number of motion picture studios and other sightseeing points. The decision declares that public convenience and necessity require the operation of the tour on the following route:

"Leaving Los Angeles, via West Adams to Culver City, thence to Beverly Hills, thence via Santa Monica Boulevard and Melrose Avenue to Laurel Canyon, thence via Mulholland Skyline Drive to Cahuenga Boulevard, thence on Victory Boulevard and via Griffith Park to Forest Lawn Cemetary, and return to Los Angeles."

Gray Line's vice-president of traffic further identified Tour No. 5 as being the same tour as that which is shown as Tour No. 5-A in Gray Line's local passenger tariff, Cal. P.U.C. No. 22. Said tariff describes Tour No. 5-A as being a half-day version of the above described motion picture studios tour, and states that sightseeing will be curtailed in the morning tour and the visit to Forest Lawn Cemetery will be curtailed in the afternoon tour. The tariff also states that the fare for both the all-day and the half-day versions of the movie studio tours include admission to the studios visited on these tours.<sup>3/</sup>

Other principal evidence which is pertinent to whether Tour No. 5 is the same as Tour No. 1005 was presented by Gray Line's vice-president of operations and a representative of Orange Coast. Gray Line's vice-president of operations testified that during the summer of 1967 and thereafter to February 1, 1968, the movie studios which were visited on Tour No. 5 were Universal or Twentieth Century-Fox (and Metro Goldwyn Mayer, in some instances); that commencing with February 1, 1968, all tours went to Universal; that the tour time within Universal for Tour No. 5 is two hours;<sup>4/</sup> that except during the summer

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<sup>3/</sup> On February 1, 1968, Gray Line amended its tariff to cancel its provision that admission to the motion picture studios visited in the movie studio tours is included in the tour fare.

<sup>4/</sup> Gray Line's vice-president of operations stated that persons wishing to spend longer than two hours within the Universal studios are advised to take Gray Line's Tour No. 2-S, which includes a tour time of about three hours and fifteen minutes within Universal. According to testimony of a representative of MCA, Inc., the parent company of Universal, more than 90 percent of the people touring the Universal studios spend from three to three and one-half hours within the studio in making the tour.

months, when peak loads are obtained, passengers taking the tours which originate in the Disneyland/Knotts areas are taken to Gray Line's terminal in Los Angeles, where they are transferred to other buses that are dispatched on the specific tour involved. <sup>5/</sup>

The representative of Orange Coast testified that on January 15, 1968, he had purchased a ticket at a motel in Fullerton for Tour No. 5 for the following day; that the tour had been confirmed by telephone to Gray Line; that after he had been picked up by the Gray Line bus the following morning the bus proceeded to make other pickups of passengers in the Disneyland/Knotts areas; that the bus thereafter proceeded to Gray Line's terminal in Los Angeles, stopping enroute at the Holiday Inn in Montebello to make a further passenger pickup; that there was no narration of the tour enroute to the terminal; that upon arriving at the terminal, he was directed to transfer to another bus; that at this time he learned that the tour would visit the Twentieth Century-Fox Motion Picture Studios instead of Universal; that approximately twenty minutes elapsed between his arrival at the terminal until departure therefrom for Twentieth Century-Fox; that upon the return trip to Gray Line's terminal, stops were made at the Twentieth Century Plaza Hotel, the Biltmore

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<sup>5/</sup> With respect to Tour No. 5, Gray Line's vice-president of operations could not cite any instances where said tour was operated directly between the Disneyland/Knotts areas and Universal during 1967 or 1968.



Hotel, the Hayward Hotel, the Statler Hotel and the Greyhound Bus Depot for the discharge of passengers at those points; that at the Gray Line's terminal he was directed to transfer to another bus for the return trip to his motel, and that about twenty minutes elapsed until the commencement of the return trip.

It appears from the foregoing that the salient features of Tour No. 5, as said tour is being operated, are as follows:

- a. Tour No. 5 essentially is a tour which originates and ends at Gray Line's terminal in Los Angeles. Passengers for the tour are brought from outlying areas and/or points (including the Disneyland/ Knotts areas) to the terminal where they are grouped to make bus loads. Upon the return trips passengers destined to locations in the vicinity of the terminal are first discharged at said locations. The remaining passengers are brought to the terminal from whence they are dispatched to their respective points of origin.
- b. Points of interest visited are Universal and North Hollywood.
- c. Narration of the tour does not commence until departure of the tour bus from the Los Angeles terminal.
- d. Tour time within the Universal studios is two hours.

On the other hand, it appears from a review of Decision No. 55475 that the principal features of Tour No. 1005 include the following:

- a. The tour shall originate and end in the Disneyland/ Knotts areas. With the exception of the points of interest visited, passengers shall be picked up or discharged only in said areas.
- b. The points of interest visited shall be Universal, Griffith Park, North Hollywood and Hollywood Bowl.
- c. Enroute, the tour bus driver will lecture on the points of interest along the way.

- d. The route to be traversed is as follows:

Beginning at Disneyland territory and/or Knott's Berry Farm territory; thence north-westerly via the Santa Ana Freeway to Los Angeles territory; thence via Glendale Boulevard and Riverside Drive, visiting Griffith Park, North Hollywood and Universal City; thence to the Hollywood Bowl via the Hollywood Freeway; thence easterly and south-easterly via the Hollywood and Santa Ana Freeway to point of beginning.6/

- e. The tour shall commence and terminate at popular hours of the day to the end that the public's sightseeing interest will be adequately met.

It is evident from comparison of the foregoing features of Tours No. 5 and 1005 that the two tours are dissimilar in substantial respects. Patrons of Tour No. 5 are routed via Gray Line's Los Angeles terminal both in going to and coming from Universal. They are subjected to bus transfers at the terminal, to delays at the terminal, and to delays due to the discharge of passengers at locations in the central Los Angeles area on the return trips to the terminal from Universal. They are not provided with any narration of the tour until the tour bus has left the terminal. Their visit to Universal is limited to two hours.

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6/ The routing which is set forth in Decision No. 55475 for Tour No. 1005 is the same as that which was proposed in the underlying application, Application No. 39120. Said routing was supplemented in the application by a map "to geographically illustrate the territorial scope of the.... application as it pertains to each tour." The map of Tour No. 1005 is reproduced in Appendix B, attached hereto and by this reference made a part hereof. In view of the stated purposes for which the map was submitted as part of the application, the map shall be deemed interpretive of any uncertainties stemming from the verbal description of the route of Tour No. 1005.

In contrast, Tour No. 1005 provides for direct service between the Disneyland/Knotts areas and the points of interest visited. There is no pickup and discharge of passengers at intermediate points. Narration of the tour is provided enroute from departure from the Disneyland/Knotts areas. The tour includes visits to Griffith Park and Hollywood Bowl.<sup>7/</sup> The tour time is such that the public's sightseeing interest will be adequately met.<sup>8/</sup>

Gray Line, in its exceptions to the examiner's report, undertook to reconcile certain of the differences between Tour No. 5, as operated, and Tour No. 1005 by stating, in effect, that the differences are within the scope of its operating authority. Its arguments in this respect are directed mainly to (a) differences between the route followed by Tour No. 5 and the route prescribed by Decision No. 55475 for Tour No. 1005 and (b) to differences between the points visited on Tour No. 5 and the points visited on Tour No. 1005.

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7/ Griffith Park is not visited on Tour No. 5; Hollywood Bowl, also, apparently is not visited on Tour No. 5.

8/ Although the tour time for Tour No. 1005 (and other tours authorized by Decision No. 55475) is specified only in the general terms "that the public's sightseeing interest will be adequately met", it appears that insofar as the tour time within the Universal studios is concerned a measure of what constitutes an adequate time for sightseeing within the studios is provided through the testimony of the representative of MCA, Inc. (Universal) that more than 90 percent of the visitors to Universal spend from three to three and one-half hours within the studios.

On the matter of routing the main question is whether the routing of Gray Line's buses into its Los Angeles terminal constitutes an unauthorized departure from the route prescribed by Decision No. 55475. Gray Line's contentions that no unauthorized departure is involved rest on two premises: (1) that the route prescribed by Decision No. 55475 permits the routing of the buses into the terminal, and (2) that Gray Line is not required to follow prescribed routes within cities. With respect to the first premise, a strict analysis of the verbal description of the route prescribed by Decision No. 55475 and of the delineation thereof in the underlying Application No. 39120 shows that the routing makes no provision for the routing of Gray Line's buses into the terminal on trips from the Disneyland/Knotts areas to Universal and on the return trips from Universal to the Disneyland/Knotts areas. This conclusion is supported by the fact that the authority which was granted by Decision No. 55475 is limited to the transportation of persons between the Disneyland/Knotts areas and points and places named in the tour description, and that the pickup and discharge of passengers is also limited to said areas.

Gray Line's assertion that it is not required to follow prescribed routes within cities rests on its interpretation of the Commission's Decision No. 22644, dated July 9, 1930, (35 C.R.C. 22, 23) on Application No. 16541 of Tanner Motor Livery, a predecessor to Gray Line, wherein the Commission stated that:

"Mr. Wheat further pointed out that in operations within the limits of cities governed by certificate the exact route should not be laid down, thus making

it possible for a sightseeing bus operator to transport passengers to points within such cities that may be of interest to travelers and which could not be visited should a definite, fixed route be prescribed. We are inclined to take this view of the matter as being reasonable and within the provisions of the law."

Gray Line also relies on the following which it states has been a governing provision in its tariffs continuously for about 40 years:

"Rule 9 - Routes: This company reserves the right to alter, amend or vary its routes within municipalities without notice, in such manner as will provide the most efficient, economical and satisfactory service."

Gray Line asserts that the aforesaid rule has been accepted in all the years it has been in effect and that the rule should continue to be accepted as a controlling, valid provision.

It is evident from any careful reading of the above quoted provisions of Decision No. 22644 that said provisions do no more than express a view that exact routes within cities should not be prescribed for sightseeing bus operations. By no reasonable construction can they be deemed as relieving a sightseeing bus operator from the necessity of adhering to specified routes when specified routes have been prescribed by lawful orders of the Commission. As to Gray Line's claim that it can vary its routes within municipalities by reason of the quoted rule No. 9 from its tariff, said claim is without merit. Gray Line cannot arrogate to itself by tariff publication powers which are contrary to the Commission's orders or which it does not have under the law. Gray Line's argument that it is not required to follow prescribed routes within cities should be rejected.

Gray Line also relies on the above quoted provision of Decision No. 22644 as justification for its position that it can add points of interest or change points of interest visited on the portions of its tours within the City of Los Angeles without prior Commission authorization or without notice. On the question of whether Gray Line is required specifically to visit Griffith Park, the company's vice-president of traffic stated that:

"I don't feel that Gray Line has an obligation to visit Griffith Park, if in the opinion of Gray Line, Griffith Park has lost the appeal to the touring public. Then we have the right to substitute something else for it or to take it off the tour."

(Reporter's Transcript, page 1757)

The viewpoint thus advocated obviously is incompatible with the Commission's findings in Decision No. 55475. In said findings the Commission found that as a part of sightseeing Tour No. 1005, a visit to Griffith Park is required by public convenience and necessity. This finding has never been annulled or modified by subsequent Commission action. The quoted provisions of Decision No. 22644 cannot be reasonably deemed as superseding said findings. Until said findings have been annulled or modified by the Commission, the opinions of Gray Line as to whether Griffith Park should be visited are to no avail.

In arguing that it has the right to discontinue service to tour points without notice, Gray Line ignores the fact that under the provisions of the Public Utilities Act it is required to list in its tariff all practices which in any way affect the

value of its services to its patrons, and that it may not make any changes in its tariff provisions except on 30 days' notice to the Commission and to the public unless the Commission orders otherwise.<sup>9/</sup> In view of said provisions of the Public Utilities Code, Gray Line's attempt to reserve the right to change its routes without notice (insofar as any such change would affect the value of its service to its patrons) is without force. Gray Line cannot raise itself by a rule in its tariff above the necessity of complying with the provisions of the Public Utilities Code which apply to its operations.

Returning to the question posed at the outset of this discussion of Tours No. 5 and No. 1005, namely, whether the tour which Gray Line is operating as Tour No. 5 is the same as the tour which was authorized by Decision No. 55475 as Tour No. 1005, we are of the opinion that the evidence compels a finding that the tours are not the same. The limited duration of

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<sup>9/</sup> Section 487 of the Public Utilities Code states in part that:

"The schedules shall plainly state the places between which property and persons will be carried.... and shall state.... all privileges or facilities granted or allowed, and all rules which may in any wise change, affect, or determine any part, or the aggregate of such rates, fares, charges, and classifications, or the value of the service rendered to the passenger.... "

Section 491 of the Public Utilities Code states in part that:

"Unless the commission otherwise orders, no change shall be made by any public utility in any rate or classification, or in any rule or contract relating to or affecting any rate, classification, or service, or in any privilege or facility, except after 30 days' notice to the commission and to the public."

Tour No. 5, the fact that said tour does not include visits to all points of interest specified in Tour No. 1005, the limited narration of the tour, the consolidation of passenger loads at Gray Line's Los Angeles terminal, the discharge of passengers at various locations in the central Los Angeles area, and the delays to passengers from the Disneyland/Knotts areas resulting from the consolidation of passenger loads in Los Angeles and the discharge of passengers in Los Angeles are all differences of substance which distinguish Tour No. 5 from the tour which was authorized as Tour No. 1005. We find as a fact that Tour No. 5 is a different tour than Tour No. 1005; that Tour No. 5, as it is being operated, is not the same tour as that which Tanner Motor Tours, Ltd., (now Gray Line Tours Company) sought to have authorized by Application No. 39120 as Tour No. 1005, and that the finding of the Commission in Decision No. 55475 that public convenience and necessity require the operation of the tour described as Tour No. 1005 does not apply to Tour No. 5. Inasmuch as Gray Line did not undertake to show that it is operating Tour No. 1005 except as Tour No. 5, we further find as a fact that Gray Line is not operating and has not been operating for a year or more the tour which was authorized by Decision No. 55475 as Tour No. 1005.

Tour No. 2-S

As indicated previously herein, the evidence which Gray Line presented relative to its tours between the Disneyland/Knotts areas and Universal deals with its Tour No. 2-S as well



as Tour No. 5. Tour No. 2-S is an all-day tour which is described in Gray Line's advertising (Exhibit No. 25) as follows:

"About 2½ hours in a studio of T.V. and Magic Movieland. A view of the movie scenes and sets.... We tour Beverly Hills and pass the homes of many movie stars and other celebrities. We pass through Santa Monica along the Pacific Ocean. Along Wilshire Boulevard, passing the famous Brown Derby, the glamorous shopping center and the Los Angeles County Art Museum. We stop and visit the Farmer's Market and Will Roger's Park...."

Although Gray Line does not contend that said tour is the same as Tour No. 1005, the tour should be considered in this matter for such bearing as it may have on the issues which are involved.

According to Gray Line's vice president of traffic, Tour No. 2-S consists of a combination of (1) a tour of the Hollywood-West Los Angeles-Santa Monica areas from the Disneyland/Knotts areas which was authorized by Decision No. 55475 as Tour No. 1002 and (2) a half-day version of a tour which was authorized by Decision No. 25610 as a "Motion Picture Studios Tour" in Los Angeles and vicinity. The vice-president of traffic also submitted an exhibit (Exhibit No. 53) in which the tour was identified as a combination of two half-day tours which are listed in Gray Line's tariff as tours from Los Angeles to various points and return and which are otherwise shown as Tour No. 5-A -- Motion Picture Studios Tour and Tour No. 6 -- Los Angeles, Hollywood, Beverly Hills and Beaches.

In his proposed report the examiner considered whether Tour No. 2-S could be deemed to be an acceptable substitute for Tour No. 1005. He concluded that the tour could not be so

considered, for the reasons that it is being operated without requisite authority; that the tour does not follow prescribed routes, and that the charges which are being assessed therefor are unlawful. Exceptions to each of these conclusions were taken by Gray Line.

Gray Line alleges that there is no prohibition against its combining Tour No. 1002 with the half day version of the Motion Picture Studio Tour to produce Tour No. 2-S. It asserts that it is free to transport persons on Tour No. 1002, and after completion of the tour to return them to its Los Angeles terminal where they may take another tour before being ultimately returned to the Disneyland/Knotts area. Hence, Gray Line reasons that it may properly effect a direct combination of tours to result in Tour No. 2-S.

Gray Line's argument that it may combine tours professes, in effect, that Tour No. 1002 is being actually operated. However, the record shows that such is not a fact. The route which is followed by Tour No. 2-S is almost wholly different from that which was prescribed by Decision No. 55475 for Tour No. 1002. Moreover, the operation of Tour No. 1002 is conditioned upon the transportation of passengers on a round-trip basis originating in the Disneyland/Knotts areas, and on the pickup and discharge of passengers only in the Disneyland/Knotts areas. In Tour No. 2-S, passengers are not only picked up in Disneyland/Knotts areas, but passenger loads are consolidated at Gray Line's Los Angeles terminal, and on return trips, passengers

are discharged at hotels in the central Los Angeles area, and at Gray Line's Los Angeles terminal as well as in the Disneyland/Knotts areas. No narration of Tour No. 2-S is provided until the tour bus leaves the Los Angeles terminal, whereas in Tour No. 1002 the narration is to commence upon departure of the bus from the Disneyland/Knotts areas.

Gray Line undertook to justify the differences in routing on the same grounds it undertook to justify the differences in routing between Tour No. 5 and Tour No. 1005. Gray Line's arguments in this respect should be rejected for the same reasons that the similar arguments were rejected hereinbefore in connection with Tour No. 5.

Regarding the matter of the lawfulness of the fares which Gray Line is assessing for its Tour No. 2-S, the pertinent considerations are that said tour was formulated by combining a half-day motion picture studio tour (Tour No. 5-A) with another half-day tour; that when provision for Tour No. 2-S was first included in Gray Line's tariff on June 11, 1967, the fare which Gray Line published in its tariff for Tour No. 5-A included admission to the motion picture studio visited; that in the combining of Tour No. 5-A with another half-day tour Gray Line did not combine the corresponding fare provisions; that the fare which Gray Line published for Tour No. 2-S did not include admission to the motion picture studio visited; that a person taking Tour No. 2-S was required to pay more for the tour and admission to the motion picture studio visited than

the total of the fares which Gray Line concurrently assessed for Tour No. 5-A and the other half-day tour component of Tour 2-S; that through its publication of the Tour 2-S fare exclusive of studio admission, Gray Line accomplished an increase in its charges for its transportation services in the tour, and that said increase was accomplished without Commission authorization as required by Section 454 of the Public Utilities Code and by Article XII, Section 20, of the State Constitution.<sup>10/</sup>

In its exceptions Gray Line argues that its tariff provisions which state that admission to the motion picture studios is included in the fares mean only that an allowance of 50 cents toward admission to the studios is included in the fares. The 50 cents allegedly is the admission which was charged by the motion picture studios when the motion picture studio tour was first established pursuant to authority granted by Decision No. 25610. This argument cannot be sustained inasmuch as the tariff provisions state without qualification that the studios tour fare includes admission to the studios visited. Hence, the formulation of the fare for Tour No. 2-S on the basis that the tariff fare for Tour No. 5-A provided for studio admissions to the extent of 50 cents only is uncontradictably contrary to the plain provisions of the tariff.

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<sup>10/</sup> Gray Line's cancellation, on February 1, 1968, of its tariff provisions that admission to the motion picture studios visited is included in the tour fares was also accomplished without Commission authorization, notwithstanding the fact that the studio admissions were a privilege granted by Gray Line which affected the value of the tour to the tour patrons. Said cancellation, in effect, resulted in a shift to the tour patrons of charges which Gray Line, by its tariff provisions, had held itself to bear. By the shift Gray Line accomplished an increase in its own transportation charges for the tours involved.

Gray Line also argues that the publication of the tariff provisions (Supplement No. 3 to its tariff) covering Tour No. 2-S was accomplished on 30 days' notice to the Commission and to the public; that the supplement was accepted by the Commission and allowed to go into effect, and that after the supplement became effective, the fares therein became the only fares which Gray Line could legally assess for Tour No. 2-S.

This argument ignores the fact that a fare which has been increased without Commission authority is an excessive and unlawful rate even though the increased rate may be a published tariff rate.<sup>11/</sup> The unlawful nature of the rate (Section 454) is not changed by the fact that the tariff publication containing the rate has been filed with the Commission and has not been rejected.

Upon consideration of the manner in which Tour No. 2-S is being operated -- that in the area where it assertedly is the same as Tour No. 1002, it is being operated over a substantially different route than that prescribed for Tour No. 1002; that passengers are picked up and/or discharged at points outside of the Disneyland/Knotts areas, notwithstanding provisions to the contrary in Decision No. 55475; that narration of the tour is not provided until the tour bus leaves the Los Angeles terminal of Gray Line; that the fares for said tour include an unlawful increase in fares -- we find as a fact that neither Tour No. 2-S nor the portion thereof which assertedly corresponds to Tour No. 1002 comes within the purview of authority which was granted

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<sup>11/</sup> Compare Carnation Company vs. Southern Pacific Company, 50 Cal P.U.C. 345.

by Decision No. 55475. We further find and conclude that Tour No. 2-S is not an acceptable substitute for Tour No. 1005, nor a lawful tour between the Disneyland/Knotts areas and Universal.

The remaining question to be considered in connection with Gray Line's tours from the Disneyland/Knotts areas is whether the provisions of Section 1032 of the Public Utilities Code which limit the authorization of a new passenger stage service to instances "when the existing passenger stage corporation.... serving (a) territory will not provide.... service to the satisfaction of the commission" require the denial of Orange Coast's application in this matter, notwithstanding any showing of public convenience and necessity which Orange Coast may have made in support of its proposed tour. This question is considered by the examiner on pages 44 through 47 of his report. The examiner concludes that the limitations of Section 1032 are not applicable for the reasons that Gray Line is not operating Tour No. 1005; that Tours Nos. 5 and 2-S are not being operated within the scope of the operating authority which was granted to Gray Line by Decision No. 55475, and that Gray Line is therefore not providing service as a certificate holder within the meaning of Section 1032.

Notwithstanding the assertions of Gray Line to the contrary, we are of the opinion that the evidence fully supports the examiner's conclusions. We find and conclude that in the operation of Tours Nos. 5 and 2-S from the Disneyland/Knotts areas, Gray Line is not serving the Disneyland/Knotts areas

as a certificate holder within the meaning of Section 1032. In view of these findings and conclusions, further discussion of said tours in relation to the provisions of Section 1032 of the Public Utilities Code is not necessary.

Gray Line also argues that even if its operations of Tours Nos. 5 and 2-S are not those of a certificate holder, it is nevertheless serving the Disneyland/Knotts areas as a certificate holder pursuant to Decision No. 55475 by tours between said areas and the Pasadena, Hollywood, Beverly Hills, Santa Monica and Santa Barbara areas, among others. During the hearings no evidence was presented by Gray Line which would show whether or to what extent said other tours are being operated. Nevertheless, it appears from the description of the method of operation of Gray Line's buses from the Disneyland/Knotts areas that if said other tours are being operated, they are being operated in the same manner as Tour No. 5, namely, as a Los Angeles based tour with the consolidation of passenger loads at Gray Line's Los Angeles terminal and with the deferral of tour narration until after departure of the tour bus from the terminal.<sup>12/</sup> As with

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<sup>12/</sup> Compare Decision No. 75573, dated April 15, 1969, in Application No. 49603, In re Increased Fares, the Gray Line Tours Company, wherein the Commission authorized a single fare structure for tours of Gray Line conducted out of said carrier's Los Angeles terminal. The single fare structure was authorized on findings that all regular tours of Gray Line within Los Angeles and Orange Counties "with one possible exception, originate and terminate at Gray Line's terminal in Los Angeles." These findings were reached on evidence that "prior to the departure times, standard type buses, so-called stretch-outs and limousines pick up passengers at the principal hotels and certain other places and bring them to the terminal. The passengers then are boarded on the appropriate tour bus. When the tour is finished the tour bus returns to the terminal and the passengers are directed to the standard buses, limousines, etc., that are going to return them to the origin points."

(Proposed Report of Examiner J. E. Thompson)

Tour No. 5, it would seem that such other tours are not the same tours as those which were authorized by Decision No. 55475 as direct tours from the Disneyland/Knotts areas, and hence do not qualify Gray Line as serving the Disneyland/Knotts areas as a certificate holder. Even though the situation were otherwise, however, we do not deem that Gray Line's operation of a sight-seeing service directly between the Disneyland/Knotts area and Pasadena or Santa Monica, for example, would preclude the certification of a direct tour by another carrier between the Disneyland/Knotts areas, on the one hand, and Universal and the studios of the National Broadcasting Company in Burbank, on the other hand.

The other exceptions of Gray Line are directed mainly against the examiner's conclusions that public convenience and necessity require the operation of Orange Coast's proposed tour, and that Orange Coast has the ability and resources to operate said tour. Gray Line's exceptions concerning the public's need for Orange Coast's proposed tour are based largely on its assertions that its own Tours Nos. 5 and 2-S are meeting said need. We are of the opinion, nevertheless, that the record substantiates the examiner's conclusions of need for the tour of Orange Coast. As we have found previously, Gray Line is not operating Tour No. 1005 which Decision No. 55475 found to be required by public convenience and necessity; also, Gray Line's operation of Tours Nos. 5 and 2-S does not meet said requirements. It does not appear that since the issuance of Decision No. 55475 the requirements of public convenience and necessity which prompted the authorization of Tour No. 1005 have been modified in any respect.



On the other hand, it appears that the tour which is proposed by Orange Coast is substantially similar to Tour No. 1005; that Orange Coast's showing of public need for its proposed tour, when considered in conjunction with the unsatisfied need for Tour No. 1005, establishes clearly and unequivocally that the operation of the proposed tour is, in fact, required by public convenience and necessity. We so find.

Gray Line's exceptions concerning Orange Coast's ability and resources to operate the proposed tour challenge that portion of Orange Coast's showing that it can initiate and establish the proposed tour on funds advanced by its parent company, Airport Coach Service, Inc., utilizing equipment leased from Airport Coach Service, Inc. It appears that the differences between Gray Line and Orange Coast regarding the probability of the successful establishment and operation of the proposed tour stem from differences between the two companies' evaluation of the amount of patronage which is required to sustain the tour and the length of time required to generate said patronage. Even though the estimates of Orange Coast might be viewed as optimistic and in excess of the results that will be actually realized, we believe that the record nevertheless reasonably supports a conclusion that the potential traffic is sufficient to enable Orange Coast to launch and successfully establish the

proposed tour within the limits of its financing.<sup>13/</sup> In its exceptions Gray Line assails Orange Coast's financing (which relies upon an advance of \$20,000 by Airport Coast Service, Inc.) as being too nebulous to be accorded weight. However, it is noted that in his proposed report the examiner recommended that in connection with the proposed tour, Orange Coast set apart from any other of its funds an amount of \$20,000 to be used exclusively for the establishment and operation of the tour. Orange Coast has urged the adoption of the examiner's recommendations in this and other respects. In view of the acquiescence of Orange Coast to the examiner's recommendation regarding the financing of the tour, there appears to be no uncertainty about whether the fund of \$20,000 will be advanced to Orange Coast for the tour purposes. We find as a fact that Orange Coast has shown that it has the financial capability to initiate and establish the proposed tour.

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<sup>13/</sup> Gray Line particularly challenged Orange Coast's estimates that sufficient traffic would be available during the off-season (other-than-summer) months to launch and sustain the tour. In this respect Gray Line cited experience of its own in 1966 and 1967 as indicating that the available number of passengers would be substantially less than the number which Orange Coast deems necessary to its operating at a "break-even" point. However, Gray Line's assertions in this regard are at odds with plans which it (Gray Line) has to expand its services from the Disneyland/Knotts areas during the off-season months.

The fact that Orange Coast would operate the proposed tour by the use of buses leased from Airport Coach Service, Inc., is not sufficient basis for a holding that Orange Coast does not have the capability to operate the tour. The Commission has heretofore approved the operation of Orange Coast's sightseeing tours to Marineland and San Juan Capistrano by buses leased from Airport Coach Service, Inc. A further lease of said buses for the Marineland and San Juan Capistrano tours has been recently approved by the Commission (Decision No. 76330, dated October 28, 1969). The record shows that Airport Coach Service, Inc., has surplus buses which it is willing to rent to Orange Coast; that the proposed bus rental terms are deemed by Airport Coach Service, Inc., to be adequately compensatory; and that the rental charges are the same as those which apply under the recently-approved lease arrangements. We are mainly concerned with whether, by the means of leased buses, Orange Coast can meet the public utility obligations which it is undertaking to assume. We are persuaded that it can do so. Subject to a proviso that the lease agreement for the buses for the proposed tour be approved by the Commission, we find that Orange Coast has shown that it has available the necessary buses for said tour.

Gray Line's other exceptions deal with the conclusions of the examiner that (a) the establishment of the tour proposed by Orange Coast would not be unduly detrimental to the operation of Gray Line's Tours Nos. 5 and 2-S, and (b) that Gray Line has no prior right to any authority that may be granted in this matter.

Although the examiner gave certain consideration to the impact of the establishment of the proposed tour upon Gray Line's Tours Nos. 5 and 2-S, the real gist of his conclusions are that:

" . . . were a substantial diversion of traffic from Gray Line to applicant to result from the establishment of the proposed tour, that fact should not bar the authorization of said tour. The needs of public convenience and necessity should not be denied in order to protect the continuation of tours for which findings of public convenience and necessity have not been made and for which unauthorized fares are being assessed."

(Emphasis supplied.)

We agree with the examiner. In view of our findings and conclusions hereinbefore that Gray Line's Tours Nos. 5 and 2-S are not being operated lawfully, we see no obligation to protect said tours by a denial of the needs of public convenience and necessity here shown for the establishment of the tour proposed by Orange Coast. We also reject Gray Line's claim that it has prior right to any authority that may be granted in this matter. Gray Line's claim was made on the basis that an application which Gray Line filed on April 28, 1967 (prior to the filing of the instant application) includes a request to operate a sightseeing service like that proposed by Orange Coast. Insofar as Gray Line's request purports to be for like authority to that sought by Orange Coast, the request is not sufficiently specific to be accorded priority over Orange Coast's application.

Other matters to be considered in connection with this application of Orange Coast are a request for enlargement of Orange Coast's service area at Disneyland and the manner in which Orange Coast will advertise and publish its charges for its proposed tour. The sought enlargement in service area would enable Orange Coast to serve the same area on all of its tours as a matter of efficient operations. We find the proposed extensions to be justified and required by public convenience and necessity. They will be authorized.

The record is not clear as to whether the patrons of applicant's proposed tour must purchase tickets of admission to the tour attractions included in the tour in order to avail themselves of applicant's services. The examiner recommended that if the purchase of tickets to tour attractions is a requisite to the utilization of Orange Coast's transportation services, Orange Coast should be required to publish in its tariff the total charges (including those for the tour attractions) which are assessed. On the other hand, if the patrons are allowed a choice as to whether they do or do not purchase tickets of admission to the tour attractions, applicant need only to publish in its tariff the charges for its own transportation services. Orange Coast's holding out in its brochures and advertising should reflect that in its tariff provisions. Orange Coast has agreed to the examiner's recommendations in these respects. They will be adopted.

Findings

Based on the record herein, the Commission finds that:

1. By Decision No. 55475, dated August 27, 1957, the Commission found that public convenience and necessity required the establishment and operation of a sightseeing tour (designated as Tour No. 1005) by passenger stage between the Disneyland/Knott's Berry Farm areas on the one hand and Universal Motion Picture Studios, North Hollywood, Griffith Park and the Hollywood Bowl on the other hand.
2. Decision No. 55475 contemplates or provides that Tour No. 1005 would be operated in the following manner:
  - a. All persons would be transported on a round-trip or circular tour basis originating in the Disneyland and/or Knott's Berry Farm areas.
  - b. Passengers would be picked up and discharged only at Disneyland and Knott's Berry Farm and at principal hotels and motels within the Disneyland/Knott's Berry Farm areas.
  - c. The tour would be operated over a specified route.
  - d. The tour would commence and terminate at popular hours of the day to the end that the public's sightseeing interest would be adequately met.
  - e. En route the drivers of the buses would lecture on points of interest along the way.
3. The authority to operate Tour No. 1005 was granted to Tanner Motor Tours, Ltd. (now Gray Line Tours Company).
4. The finding in Decision No. 55475 that public convenience and necessity require the establishment and operation of the sightseeing tour designated as Tour No. 1005 has not been modified since the issuance of said decision.

5. The Disneyland/Knott's Berry Farm areas have developed substantially as a tourist and convention center during the past ten years.
6. The public need for a sightseeing tour (such as Tour No. 1005) from the Disneyland/Knott's Berry Farm areas is as great or greater now than it was in 1957 when Tour No. 1005 was authorized.
7. Gray Line Tours Company is operating a tour which is identified as Tour No. 5 and which purportedly is the same as Tour No. 1005. However, Tour No. 5 is a different tour than Tour No. 1005.
8. Gray Line Tours Company is operating a tour which is designated as Tour No. 2-S. Tour No. 2-S assertedly is a tour comprised in part of a tour from the Disneyland/Knott's Berry Farm areas, which tour was authorized by Decision No. 55475 as Tour No. 1002. However, the portion of Tour No. 2-S which assertedly corresponds to Tour No. 1002 is a different tour than Tour No. 1002.
9. Tour No. 5 and Tour No. 2-S of Gray Line Tours Company are essentially tours which originate and end at Gray Line's terminal in Los Angeles. Except when traffic is sufficient to permit full bus loadings at outlying points, passengers are picked up at said outlying points (such as the Disneyland and Knott's Berry Farm areas), brought to Gray Line's Los Angeles terminal, transferred to the tour bus involved, taken on the tour, returned to the terminal, transferred to another bus, and returned to origin point. Narration of the tour is not provided until the tour bus leaves Gray Line's Los Angeles terminal.
10. The Commission's findings in Decision No. 55475 that public convenience and necessity require the establishment and operation of the tours designated as Tours Nos. 1005 and 1002 do not apply to Gray Line's Tours Nos. 5 and 2-S.

11. The tour which Orange Coast Sightseeing Company seeks to have authorized in this matter would provide a direct, narrated sightseeing tour between the Disneyland/Knott's Berry Farm areas on the one hand and the Universal Motion Picture Studios and the Burbank studios of the National Broadcasting Company on the other hand.
12. The tour which is proposed by Orange Coast Sightseeing Company would provide sufficient time in the studios of Universal to meet adequately the public's sightseeing interest therein. Also, it is designed to provide sufficient time for the studio tour offered by the National Broadcasting Company.
13. Public convenience and necessity require the operation of the sightseeing tour which Orange Coast Sightseeing Company proposes to establish and operate pursuant to its application in this matter.
14. Orange Coast Sightseeing Company has shown that it has the financial resources to establish and operate the proposed tour.
15. Orange Coast Sightseeing Company has shown that it has the experience and the availability of equipment to establish and operate the proposed tour.

#### Conclusions

1. Gray Line Tours Company is not providing service between the Disneyland/Knott's Berry Farm areas, on the one hand, and Universal Motion Picture Studios, on the other hand, as a certificate holder within the meaning of Section 1032 of the Public Utilities Code.
2. Orange Coast Sightseeing Company should be authorized to establish and operate the sightseeing tour described and proposed in its Application No. 49730. The authorization of said tour should be subject to the terms and conditions which are set forth in the following Order.



3. The enlargement which Orange Coast sightseeing Company seeks in its service area in the Disneyland area should be authorized.

Orange Coast Sightseeing Company is hereby placed on notice that operative rights, as such, do not constitute a class of property which may be capitalized or 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 grant of such rights. Aside from their purely permissive aspect, such rights extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be modified or canceled at any time by the State, which is not in any respect limited as to the number of rights which may be given.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Orange Coast Sightseeing Company, a corporation, authorizing it to operate as a passenger stage corporation, as defined in Section 226 of the Public Utilities Code, for the transportation of persons in a roundtrip sightseeing service to the National Broadcasting Company Studios in the City of Burbank and to the Universal City Studios in the County of Los Angeles from, and returning to, the Service Areas described in Section 2 in the attachment hereto identified as Appendix A, First Revised Page 3.

2. In providing service pursuant to the authority herein granted, Orange Coast Sightseeing Company shall operate over the route described in Section 3 (Tour No. 3) in the attachment hereto identified as Appendix A, Original Page 5. Said service shall be operated in accordance with the provisions of paragraph (f) of Section 1, Appendix A (First Revised Page 3).

3. The certificate of public convenience and necessity under which applicant conducts passenger stage operations pursuant to authority heretofore granted (Appendix A to Decision No. 69671, as amended) is hereby further amended by incorporating therein the revised pages attached hereto and incorporated herein by this reference, which pages are identified as First Revised Page 3 and Original Page 5.

4. In the establishment and operation of said service Orange Coast Sightseeing Company shall comply with the following provisions:

- a. The fares for said service shall be established and published at the level and in the manner set forth in Exhibit No. 9 in this proceeding. If tour patrons are required to purchase admissions to tour attractions in order to avail themselves of the transportation services which are herein authorized, the fares shall be increased to include said admissions and shall be so published in the applicable tariff of Orange Coast Sightseeing Company.
- b. A fund of \$20,000 shall be set apart from any other funds of Orange Coast Sightseeing Company, and shall be used exclusively for the establishment and operation of the sightseeing tour herein authorized.

- c. Orange Coast Sightseeing Company shall revise its accounting procedures, including those which apply to joint expenses incurred with Airport Coach Service, Inc., to the end that all costs (direct, indirect, or joint) which may be ascribed or charged, in accordance with recognized cost accounting procedures, to the tour herein authorized are so ascribed or charged.
- d. Buses for the operation of said tour shall be leased by Orange Coast Sightseeing Company from Airport Coach Service, Inc., pursuant to a current lease agreement which has been approved by the Commission.

5. 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.

- (a) Within thirty days after the effective date hereof, applicant shall file a written acceptance of the certificate herein granted. Applicant is placed on notice that, if it accepts the certificate of public convenience and necessity herein granted, it 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. 101-C.
- (b) Within one hundred twenty days after the effective date hereof, applicant shall establish the service herein authorized and file tariffs and timetables, in triplicate, in the Commission's office.
- (c) The tariff and timetable filings shall be made effective not earlier than ten days after the effective date of this order on not less than ten days' notice to the Commission and the public, and the effective date of the tariff and timetable filings shall be concurrent with the establishment of the service herein authorized.

- (d) The tariff and timetable filings made pursuant to this order shall comply with the regulations governing the construction and filing of tariffs and timetables set forth in the Commission's General Orders Nos. 79 and 98-A.
- (e) Applicant shall maintain its accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission and shall file with the Commission, on or before March 31 of each year, an annual report of its operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

6. The motion of Gray Line Tours Company for reopening of the record for the receipt of a map depicting the route followed by Gray Line on its Tour No. 5 is denied.

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

Dated at San Francisco, California,  
this 9th day of DECEMBER, 1969.

W. Symons, Jr.  
President

J. P. Williams  
Commissioner

W. L. Symons  
Commissioners

Commissioner William Symons, Jr., being necessarily absent, did not participate in the disposition of this proceeding.

Appendix A  
(Dec. 69671)

ORANGE COAST SIGHTSEEING COMPANY  
(a corporation)

First Revised Page 3  
Cancels  
Original Page 3

SECTION 1. (Continued)

\*f. Tour No. 3

Service will be rendered on a year-round basis Monday through Saturday of each week. No service will be rendered on Sundays, Thanksgiving Day, Christmas Day and New Year's Day.

SECTION 2. SERVICE AREAS

Passengers may be picked up and discharged at any point within the following described areas, subject to local traffic regulations:

1. Buena Park

- (a) Beach Boulevard and Grand Avenue between Azalea Drive and Crescent Avenue.
- (b) Crescent Avenue between Grand Avenue and Beach Boulevard (Highway 39).

2. Anaheim

- (a) Katella Avenue between Walnut Street and Haster Street.
- \* (b) Harbor Boulevard between Chapman Avenue and Santa Ana Freeway.
- \* (c) West Street between Orangewood Avenue and Ball Road.
- (d) Ball Road between West Street and Santa Ana Freeway.

Issued by California Public Utilities Commission.

\*Changed by Decision No. 76527, Application No. 49730.

## SECTION 3.    ROUTE DESCRIPTIONS.

Tour No. 3

Commencing in the Buena Park-Anaheim Service Areas via city streets to the Santa Ana, Golden State and Ventura Freeways to Buena Vista Street, Alameda Avenue, to NBC Television Studio, 3000 West Alameda Avenue, Burbank, thence via Alameda Avenue, Riverside Drive, Moorpark Way, Moorpark Street, Cahuenga Boulevard and Lankershim Boulevard to Universal City Studios, thence returning to the service areas (points of beginning) via Lankershim Boulevard, Hollywood and Santa Ana Freeways.

Issued by California Public Utilities Commission.

Decision No. 76527, Application No. 49730.

APPENDIX "B"

TOUR 1005

