

ORIGINAL

Decision No. 81068

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
Paul Arthur Kadletz and Michael)
Anthony Kadletz for certificate of)
public convenience and necessity to)
operate a passenger service, to be)
known as The Pink Bus Lines between)
two points in Orange County.)

Application No. 53328
(Filed May 12, 1972)

Michael A. Kadletz and Paul A. Kadletz, for them-
selves, applicants.
Kennard R. Smart, Jr., Deputy County Counsel, for
Orange County Transit District, and C. J. Holzer,
for Southern California Rapid Transit District,
protestants.
William P. Hopkins, Attorney at Law, for the City
of Anaheim, interested party.
Edward C. Crawford and Daniel R. Paize, for the
Commission staff.

INTERIM OPINION

This is an application by Paul Arthur Kadletz and Michael Anthony Kadletz, doing business as The Pink Bus Lines (Pink Bus), seeking a certificate of public convenience and necessity to operate as a passenger stage corporation between points in Orange County.

A duly noticed public hearing was held in this matter before Examiner Donald B. Jarvis in Anaheim on November 15, 1972. The proceeding was submitted subject to the filing of a late-filed exhibit which was received on December 4, 1972.

Pink Bus presently operates as a passenger stage corporation, pursuant to authority granted by this Commission, on Beach Boulevard between the cities of La Habra and Huntington Beach. It seeks herein authority to conduct a similar operation along Harbor Boulevard between the cities of Brea and Newport Beach.

Pink Bus operates during the summer months and Easter vacation. Its busses are painted pink and are fitted with stereo equipment. Most of its customers are young children and teen-agers. It hires drivers who attempt to relate to them. Pink Bus' equipment is not air-conditioned. It permits surfboards on its busses. Pink Bus contends that there is a need for the proposed service by youngsters who do not otherwise have readily available transportation to get to the beach and who often resort to hitchhiking. Pink Bus proposes a one-way fare of \$1.00 from Brea to Newport Beach.

Protestant Southern California Rapid Transit District indicated that, if the application were amended or clarified to provide that Pink Bus would not provide local service along Harbor Boulevard between the city of Brea and Talbert Avenue in Santa Ana, the Southern California Rapid Transit District would withdraw its protest. The application was amended at the hearing by interlineation to reflect that Pink Bus was not seeking authority for such local service.

Protestant Orange County Transit District (District) opposes granting the application at this time for the reasons which follow. District was authorized in 1965. (Stats. 1965, C. 1899.) The District was ratified by the voters in November of 1970 and was established as an entity on July 1, 1971. District acquired and took over the operation of certain passenger stage corporations within its area. In the latter part of 1971, District arranged for a survey of the transportation needs within its territory. The report was submitted on June 30, 1972. The report recommended that the highest priority be given to establishing service along Harbor Boulevard from La Habra Boulevard to Newport Beach. The proposed route is substantially similar to that sought by Pink Bus. The routes are identical from Newport Beach to Fullerton. The District route would proceed from Fullerton north along Harbor Boulevard to La Habra. The Pink Bus route would proceed from Fullerton northeast on Brea Boulevard to Brea.

The District directors took action to implement the report. District ordered 16 air-conditioned busses which are scheduled for delivery on March 5, 1973. It intends to commence service on Harbor Boulevard ten days after the busses are delivered. It will use three of the busses on the Harbor Boulevard route. District will institute all-year, daily service from 7 a.m. to 7 p.m. Its one-way fare will be 25 cents for any length of ride. Children 12 years of age or younger may ride free if accompanied by an adult. At the time of hearing District was in the process of negotiating a transfer agreement with the Southern California Rapid Transit District, whose local fare in the area is presently 30 cents. If the agreement is executed, it will provide for transfers between the lines of the two districts at a maximum fare of 35 cents.

District does not oppose Pink Bus' proposed operation, as such. It takes the position that because of Pink Bus' equipment, proposed fare, and mode of operation the diversion of traffic would be minimal. It contends that the Commission should not grant any authority to Pink Bus before the District commences operations because of Public Utilities Code Sections 40222 and 40222.5, which provide as follows:

"§ 40222.

Notwithstanding any other provision of this part, before the district may establish any transit service or system which may at any time divert, lessen, or compete for the patronage of revenues of any existing system, the district shall give a written notice to the public utility which is operating the existing system. The written notice shall describe the transit service or system which the district proposes to establish and shall state the time within which the district proposes to establish such service or system."

"§ 40222.5

The district shall not establish the proposed service or system, or maintain and operate the service or system until it has completed the purchase of the existing system or any part thereof."

District contends that if the Commission grants Pink Bus the requested operating authority before District commences operations on Harbor Boulevard, District would be required to acquire the Pink Bus operation before it could commence operations. District argues that this would delay its instituting needed service on Harbor Boulevard. District bases its position on its interpretation that granting the requested operating authority would make Pink Bus an "existing system" within the meaning of Sections 40222 and 40222.5 or, in the alternative, require District to seek a judicial determination that Pink Bus would not be an existing system.

Pink Bus and the Commission staff (staff) contend that Pink Bus would not be considered an existing system until it actually conducted operations under any authority which might be granted herein. Pink Bus also contends that the Commission should grant the requested authority regardless of the consequences under Sections 40222 and 40222.5. Pink Bus argues that even if litigation ensues between it and District, it would be able to furnish service along Harbor Boulevard during the pendency of the action.

The Commission is of the opinion that Pink Bus should not be granted the requested operating authority at this time. It is not necessary to determine herein whether or not Pink Bus would be an existing system if the requested authority were granted. If such authority were granted at this time, District would delay instituting service on Harbor Boulevard pending litigation. While there appears to be some need for the special type of service proposed by Pink Bus, there is a greater public need for the year-round service proposed by District. The effect of deferring a decision at this time may be to preclude Pink Bus from operating during the 1973 Easter vacation. This detriment is far outweighed by the benefits to the public - young and old - by permitting District to commence all-year operations on Harbor Boulevard at the fare indicated.

Since District indicates that it contemplates commencing operations on Harbor Boulevard during March of 1973, a further hearing will be set in this matter in April 1973. If at that time District has commenced operations on Harbor Boulevard and the need for the requested special service by Pink Bus still obtains, a certificate can be granted so that Pink Bus could commence operations by the summer of 1973.

It appears that Pink Bus erroneously paid a filing fee of \$75 in connection with this application. Since Pink Bus presently operates on Beach Boulevard, which is in the immediate vicinity of Harbor Boulevard, no fee was required. (Public Utilities Code, Section 1036.) The order herein will provide for the refund of the fee. No other points require discussion. The Commission makes the following findings and conclusions.

Findings of Fact

1. Pink Bus presently operates as a passenger stage corporation, pursuant to authority granted by this Commission, in Orange County on Beach Boulevard between the cities of La Habra and Huntington Beach. This operation is in the immediate vicinity of the route for which authority is herein requested.
2. Pink Bus operates during the summer months and Easter vacation. Its busses are painted pink and fitted with stereo equipment. Most of its customers are young children or teen-agers. Pink Bus hires drivers who attempt to relate to its patrons. Its busses are not air-conditioned. Pink Bus permits surfboards on its busses.
3. If the authority requested herein is granted, Pink Bus proposes a one-way fare of \$1.00 from Brea to Newport Beach.
4. District was authorized in 1965. It was ratified by the voters in November of 1970 and was established as an entity on July 1, 1971.

5. Public Utilities Code Section 40010, which established the District, provides in part that:

"It is necessary that a transit district be established in Orange County in order to provide an interim solution to the transit problem of this area pending inclusion, if at all, of Orange County into the Southern California Rapid Transit District. The problem is unique in that presently there are several existing transportation facilities serving various parts of the area but independently operated, without interchange of transportation services, and without possibility of merger. The geographic location of the area requiring transportation services makes it necessary to develop a single transit system to protect the public interest."

6. District proposes to establish service along Harbor Boulevard from La Habra Boulevard to Newport Beach. The service will commence within 10 days after delivery is taken on 16 busses ordered by District. Delivery is scheduled for March 5, 1973.

7. District intends to institute all-year, daily service from 7 a.m. to 7 p.m. on Harbor Boulevard. It will commence operations with three air-conditioned busses on the route. The one-way fare will be 25 cents for any length of ride. Children 12 years of age or younger may ride free if accompanied by an adult. District permits surfboards up to five feet in length on its busses.

8. District is in the process of negotiating a transfer agreement with the Southern California Transit District, whose local fare in the area presently is 30 cents. If the agreement is executed, it will provide for transfers between the lines of the two districts at a maximum fare of 35 cents.

9. Sections 40222 and 40222.5 of the Public Utilities Code provide as follows:

"§ 40222.

Notwithstanding any other provision of this part, before the district may establish any transit service or system which may at any time divert, lessen, or compete for the patronage or revenues of any existing system, the district shall give a written notice to the public utility which is operating the existing system. The written notice shall describe the transit service or system which the district proposes to establish and shall state the time within which the district proposes to establish such service or system."

"§ 40222.5

The district shall not establish the proposed service or system, or maintain and operate the service or system until it has completed the purchase of the existing system or any part thereof."

10. If Pink Bus is granted the operating authority requested herein before District commences operations on Harbor Boulevard, District will either be compelled to acquire the rights from Pink Bus or seek a judicial determination of the applicability of Public Utilities Code Sections 40222 and 40222.5 to the situation. In either event, the instituting of service on Harbor Boulevard by District would be delayed.

11. The public need for District's all-year service, catering to the public generally, on Harbor Boulevard outweighs any need for the service proposed by Pink Bus. The Commission should take no action which would delay the institution of service by District at the earliest possible time.

12. A further hearing should be held in this matter to consider the final disposition thereof.

13. Pink Bus paid a filing fee of \$75.00 herein.

Conclusions of Law

1. The Commission should not at this time grant the operating authority requested herein.
2. A further hearing should be held in this matter.
3. The Commission should refund the filing fee of \$75.00 paid by Pink Bus.

INTERIM ORDER

IT IS ORDERED that:

1. Refund shall be made to applicant of the \$75.00 fee paid upon the filing of this application.
2. A further hearing shall be held in this matter on April 19, 1973 at 10 a.m. at the Commission Courtroom in Los Angeles, State Office Building, 107 South Broadway, Los Angeles, California.

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

Dated at San Francisco, California, this 21st day of FEBRUARY, 1973.

James L. Sturgeon
President

William L. Givens
Commissioners

I dissent, I would grant the application of these enterprising operators.

-8- *William L. Givens, Chairman*