

Decision No. 81608

ORIGINAL

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. Paige, for the
Commission staff.

O P I N I O N

Applicants presently provide bus service on Beach Boule-
vard in Orange County transporting persons and surfboards to and from
the seashore. Applicants seek to extend their operations to provide
similar service on Harbor Boulevard in Orange County. The Commission
in an Interim Opinion in Decision No. 81068, filed on February 21,
1973, concluded that no action should be taken on applicants' (Pink
Bus') request for additional operating authority at that time and
ordered a further hearing in the matter. The reason for deferring
action was to preclude the possibility that the instituting of ser-
vice by the Orange County Transit District (District) on Harbor
Boulevard might be delayed because of possible action taken by the
Commission.

Further hearing was held in this matter before Examiner
Donald B. Jarvis in Los Angeles on April 19, 1973, and the matter
was submitted on that date.

The record indicates that District commenced operations along Harbor Boulevard on April 13, 1973. Therefore, the question of the applicability of Public Utilities Code Sections 40222 and 40222.5 (which require District to purchase existing systems before establishing a service which may lessen or divert passengers or revenue) is no longer present.

The record also discloses that District proposes to eventually operate on Beach Boulevard, where Pink Bus presently operates. District has entered into negotiations for the acquisition of Pink Bus, but the negotiations are presently at an impasse. At the time of hearing, Pink Bus was threatening, but had not actually filed a lawsuit seeking to have District's Harbor Boulevard operations enjoined on the ground that they lessened or diverted passengers and revenues from Pink Bus' Beach Boulevard operations.

At the original hearing District opposed granting the application at that time because of the potential problems under Public Utilities Code Sections 40222 and 40222.5, which might have delayed District's commencing all-year operations on Harbor Boulevard. At that time District took the position that if Pink Bus were granted the requested operating authority the impact on District would be minimal. At the time of the subsequent hearing, District had shifted its grounds for opposition. It now contends that since it will eventually purchase Pink Bus' operations, the Commission should not complicate matters by granting Pink Bus any additional operating authority. District now also contends that public convenience and necessity do not require that the application be granted.

Pink Bus' proposed operation encompasses more than providing basic transportation. It is designed to attract young children and teenagers. To the extent it succeeds it will eliminate some hitchhiking and some use of private vehicles in the area. Furthermore, if Pink Bus is successful in obtaining an injunction against District's operating on Harbor Boulevard, granting of the authority requested herein would afford members of the public service until such time as Pink Bus was acquired by District.

The Commission makes the following findings and conclusion in addition to those made in Decision No. 81068.

Additional Findings of Fact

1. District commenced operations on Harbor Boulevard on April 13, 1973.
2. District proposes to eventually operate on Beach Boulevard. Pink Bus presently operates on Beach Boulevard. In order for District to operate on Beach Boulevard it will be necessary for District to purchase Pink Bus' Beach Boulevard system.
3. Pink Bus has threatened to seek injunctive relief against District operating on Harbor Boulevard on the ground that District's Harbor Boulevard operations are diverting, lessening, or competing for patronage and revenues with Pink Bus' Beach Boulevard operations. If injunctive relief were to be granted there would be no service on Harbor Boulevard.
4. If the authority requested herein were granted there would be a minimal effect on District's Harbor Boulevard operations.
5. Pink Bus has the ability, including financial ability, to conduct the proposed operations.
6. Public convenience and necessity require that Pink Bus be granted authority to conduct passenger stage operations on Harbor Boulevard as hereinafter provided.
7. Granting of the passenger stage operating authority requested herein will not have any substantial impact on the environment.

Additional Conclusion of Law

The application should be granted.

Applicants are 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. This monopoly feature may be modified or cancelled 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 Paul Arthur Kadletz and Michael Anthony Kadletz, authorizing them to operate as a passenger stage corporation, as defined in Section 226 of the Public Utilities Code, between the points and over the routes particularly set forth in First Revised Pages 2 and 3 of Appendix B attached hereto and made a part hereof.

2. In providing service pursuant to the certificate herein granted, applicants 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, applicants shall file a written acceptance of the certificate herein granted. Applicants are placed on notice that, if they accept the certificate of public convenience and necessity herein granted, they 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-Series and insurance requirements of the Commission's General Order No. 101-Series.
- (b) Within one hundred twenty days after the effective date hereof, applicants 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-Series and 98-Series.
- (e) Applicants shall maintain their 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 their operations in such form content, and number of copies as the Commission, from time to time, shall prescribe.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 17th
day of JULY, 1973.

I dissent:

~~William Symons, Jr.~~ Commissioner

The Commission should
issue
certificates only on
the basis of clear proof of
public convenience and necessity.

This order offers no such proof.

Vernon L. Stigman
President
William Symons, Jr.
William Symons, Jr.
Commissioners

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

JR

Appendix B
(Dec. 78748)

PAUL A. KADLETZ AND
MICHAEL A. KADLETZ
dba PINK BUS LINES

First Revised Page 2
Cancels
Original Page 2

SECTION 1. General Authorizations, Restrictions,
Limitations and Specifications.

Paul A. Kadletz and Michael A. Kadletz, by the certificate of public convenience and necessity granted by the decision noted in the margin, are authorized to transport passengers over the routes hereinafter described, subject to the following conditions and restrictions:

- (a) Motor vehicles may be turned at termini or at intermediate points, in either direction.
- (b) When route descriptions are given in one direction, they apply to operation in either direction unless otherwise indicated.
- (c) Service on all routes shall be operated on a regular scheduled basis during summer vacation of public schools from approximately June 10 to September 15 of each year, as well as during week preceding Easter of each year. *In addition, service shall be operated on the Harbor Boulevard Route, on a regularly scheduled basis, during weekends from the week preceding Easter until the beginning of the public school's summer vacation.
- (d) No passenger shall be transported whose origin and destination are both between the intersection of Manchester Avenue and Beach Boulevard (State Highway 39), Buena Park, and the intersection of Bolsa Avenue and Beach Boulevard (State Highway 39), Midway City, both points inclusive. This restriction shall not prohibit the transportation of a passenger between a point within the restricted area and a point outside of the restricted area.

Issued by California Public Utilities Commission.

*Added by Decision No. 81608, Application No. 53328.

JR

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First Revised Page 3
Cancels
Original Page 3

SECTION 2. Route Description.

1. Beach Boulevard Route

Commencing at Beach Boulevard (State Highway 39) and Whittier Boulevard, La Habra, thence via Beach Boulevard to Pacific Coast Highway (State Highway 1), Huntington Beach.

*2. Harbor Boulevard Route

Commencing at Brea Boulevard and Central Avenue in Brea, thence in a southerly direction via Brea Boulevard to Harbor Boulevard, thence via Harbor Boulevard to Newport Boulevard (State Highway 55), thence via Newport Boulevard to McFadden Drive, terminating at West Ocean Front (Newport Pier). The return route will be in a northerly direction via 23rd Street to Balboa Boulevard, thence via Balboa Boulevard to 32nd Street, thence via 32nd Street to Newport Boulevard, thence via Newport Boulevard to Harbor Boulevard, thence via Harbor Boulevard to Brea Boulevard, thence via Brea Boulevard to point of beginning at intersection of Brea Boulevard and Central Avenue in Brea.

Issued by California Public Utilities Commission.

*Added by Decision No. 81608, Application No. 53328.