

Decision No. 84186

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application  
of STUART ALAN MESSNICK, dba  
THE CO-ORDINATORS, for a certificate  
of public convenience and necessity  
to operate a sightseeing tour ser-  
vice between Buena Park, California  
and San Ysidro, California.

Application No. 54963  
(Filed June 13, 1974)

In the Matter of the Application  
of STUART ALAN MESSNICK, dba  
THE CO-ORDINATORS, for a certificate  
of public convenience and necessity  
to operate a sightseeing tour  
service between Anaheim, California  
and Magic Mountain in Valencia,  
California.

Application No. 55092  
(Filed August 5, 1974)

GREYHOUND LINES, INC.  
(WESTERN DIVISION), a corporation,  
  
Complainant,

vs.

STUART ALAN MESSNICK, d/b/a/  
THE CO-ORDINATORS,

Defendant.

Case No. 9781  
(Filed August 21, 1974)

Stuart Alan Messnick, for himself, and Ronald J. Hoffman, for applicant and defendant.  
Richard M. Hannon, Attorney at Law, for  
Greyhound Lines, Inc., complainant and  
protestant, and Warren N. Grossman, Attorney  
at Law, for the Gray Line Tours Company,  
protestant.  
James H. Lyons, Attorney at Law, for Airport  
Service, Inc., and Orange Coast Sightseeing  
Company, interested parties.  
John deBrauwere, for the Commission staff.

O P I N I O N

These three matters were consolidated for hearing since they involve the same or similar problems.

Application No. 54963 requests the Commission to issue a certificate of public convenience and necessity for a passenger stage service between Buena Park and San Ysidro. Application No. 55092 requests a passenger stage certificate from various points in Anaheim to Magic Mountain in the city of Valencia.

Case No. 9781 is a complaint by Greyhound Lines, Inc., Western Division (Greyhound), seeking a cease and desist order, alleging that Stuart Alan Messnick (Messnick), dba The Co-Ordinators, is already engaged in operating a passenger stage operation over the routes sought in Application No. 54963. Messnick has a charter-party permit.

The Commission, based upon the allegations of the complaint and the verified statements attached to it, issued ex parte Decision No. 83409 dated September 4, 1974 which ordered Messnick to cease and desist from operating such a route without a certificate from this Commission.

Hearing on all three matters was held before Examiner Meaney on October 21 and 22, 1974 in Los Angeles. At that time, Messnick indicated he did not wish to proceed on Application No. 55092 at this time. It will be placed off calendar and severed from the other proceedings. Messnick will be ordered to notify the Commission and the parties hereto prior to March 28, 1975 whether he wishes to proceed with it; otherwise it will be dismissed.

The Complaint Case

At the hearing, Greyhound presented evidence which essentially substantiated the verified statements attached to the complaint. The exhibits and the testimony leave little doubt that Messnick was in fact operating an unlawful passenger stage operation

in connection with a Tijuana tour package offered by Messnick. The details of this route will be discussed in the section of this opinion dealing with the application.

Messnick ceased operating on an individual fare basis in compliance with the Commission order. He pointed out that his service had started out as a group operation and had gradually evolved into an individual fare service. He stated that he had been contacted by the Commission staff about this prior to the cease and desist order, and was preparing an application for the route prior to the Commission's order. (Application No. 54963 was filed on June 13, 1974; the Commission's cease and desist order in Case No. 9781 was dated September 4, 1974.)

Application No. 54963

The purpose of the application is to establish a passenger stage route which will essentially be used for a sight-seeing "package" to Tijuana.

The proposed route would include scheduled pickups at the LeBaron Hotel and the Holiday Inn in Buena Park, the Sheraton Motor Hotel, Disneyland Hotel, Quality Inn Hotel, and the Hyatt House Hotel, and his own terminal, The Boxoffice, all in Anaheim. Buses would then pick up at the Howard Johnson's Hotel in Anaheim and the Saddleback Inn in Santa Ana.

From these locations buses would proceed south on Highway 5 to San Juan Capistrano, from there on Highway 5 to San Clemente for a view of the former Western White House, and then again on Route 5 to the nuclear power generating station at San Onofre. Certain sights are pointed out in San Diego, without the bus leaving the freeway. Then the buses would proceed to San Ysidro adjacent to the border where the passengers would debark and walk across the border in order to tour Tijuana.

The return route, unlike the route to San Ysidro, does not leave the freeway for the purposes of viewing any sights, but goes directly to the various pickup points in Orange County. Messnick had planned a dinner stop on the return route but found this to be unpopular.

Messnick explained in his testimony that the passengers do not alight from the bus to tour the city of San Juan Capistrano or the mission property there, or to view the Western White House. Passengers briefly get off from the buses at San Onofre for the purpose of photography.

There are no pickup points anywhere else along the route. The fares and the scheduling are designed to attract tour business, and not casual passenger traffic, from the Buena Park area to San Ysidro. It is proposed that for adult passengers the fare for the round trip would be \$17 and for children under 12 years of age, \$15. There are no one-way fares. Messnick stated that the cost of carrying an adult and child (provided that the child occupies a seat) is the same, and that the reduced fare for children is essentially a marketing device.

#### History of the Company

In 1970 Messnick began running group tours to various locations under his charter-party carrier permit. His first client was the Buena Park Senior Citizens Association. Now he serves many employee and other kinds of associations with group operations under his charter-party permit. He has about 150 or 200 regular clients, and a few hundred nonregulars.

In 1970 he founded "The Boxoffice" in the same building from which he runs his charter-party operation. This is an office which handles sight-seeing tours for Greyhound and Orange Coast Sightseeing Company, and also serves as a Kodak distributorship.

He presently owns, free of encumbrances, two 14-passenger Dodge minibuses in connection with his charter-party operation.

During the last year or more, due to increasing gas prices and fuel shortages, there was a significant increase in bus tours to Tijuana. He began chartering buses (the charter company furnishing the drivers) and running tours to Tijuana for other than his regular group customers. Messnick stated that because he sold a package deal which included certain sight-seeing expenses in Tijuana he thought these tours would be considered a group package and be part of his charter-party operation. Until the last year there was only occasional use of a bus larger than the 14-passenger vehicles which he owned. Recently, use of larger buses, especially during the spring, summer, and fall months has been heavy. If he had 15 people he would charter a larger bus. In response to a question from Greyhound, he produced invoices which showed that between March and September of 1974, he chartered 30 buses for trips to Tijuana.

The driver served as the tour guide in his own vehicles. When he chartered a larger bus, he would furnish a tour guide since the driver of the bus from another company would not be familiar with the tour he was offering.

#### Method of Operating the Tours

The purpose of The Co-Ordinators, generally, is to develop, plan, and implement travel programs. Messnick stated that if awarded a certificate, he intends to purchase for cash a 22-passenger minibus costing approximately \$22,000, and that additionally he would lease a 53-passenger bus. He would furnish the drivers as well as the tour guides for these vehicles and would determine which vehicle to use depending upon reservations.

The minibuses he currently owns are inspected on a weekly basis by a nearby garage and are less than a year old. The drivers are given a check-off sheet and are expected, before the start of each run, to check various items of safety and comfort and if necessary have them fixed before the run begins.

Messnick introduced pictures of his terminal which is located at 1650 Harbor Boulevard, Anaheim. He stated that the waiting room is air-conditioned and that there is a color TV set inside. Outside there is a patio for good weather, with seating available.

The Dodge maxi-wagons include radios for easy communication and are air-conditioned. Drivers are properly licensed, and tour guides are required to have Red Cross first aid training.

Although what he advertises is a package tour to Tijuana, he actually intends operating his passenger stage authority entirely within the State of California. In response to cross-examination he indicated that he sought no authority from the Interstate Commerce Commission to operate any vehicles across the border. He does possess authority from the State of Baja California to run a shopping tour in Tijuana provided that he uses the tour guides from the School of Tourism in Tijuana, and provided he observes certain other conditions. This authority has been extended through 1975.

Messnick introduced an unaudited financial statement indicating total assets of over \$165,000, and no current liabilities. Messnick runs his business primarily on a cash basis, although he does have a \$9,000 line of credit available from a local bank.

Demand for the Service

Prior to the cease and desist order, the tour carried the following number of people in 1974:

<u>Month</u>	<u>No. of Tours</u>	<u>No. of People</u>
March	3	155
April	6	187
May	12	168
June	15	263
July	23	467
August	29	682
September	6	129
	<u>94</u>	<u>2,051</u>

Two witnesses testified in support of the application.

Michael Parrish, the bell captain of Sheraton Anaheim Hotel, stated he served as a director of the tours leaving from the hotel. These include Gray Line, Orange Coast, and The Co-Ordinators tours. In an average year he places about 3,000 people on tours.

He stated that the Gray Line and Orange Coast companies do not have a tour from that area to Tijuana. He stated he was placing an average of 15 people a week on a nongroup tour on The Co-Ordinators and had received no complaints from them. He was paid \$2 per person as a commission, which he split with the remainder of the bellmen.

He stated that Greyhound had, to his knowledge, never solicited for their "fun bus" tour to Tijuana.

Leonard Mezoff, manager of the Sandman Motel in Anaheim stated he called Orange Coast and Gray Line and was told there were no tours directly to the border. He sells The Co-Ordinators tours to keep the occupancy up and has received no complaints. He believes there is a need for this and other similar tours. He stated he was not familiar with any Greyhound service from the area to the Mexican border. Greyhound, he stated, had never contacted him about any.

such tour arrangement. He was also paid a \$2 commission on each ticket he sold for The Co-Ordinators.

Messnick's only other tour operation which was not conducted on a group fare basis was to the Rose Bowl game. He stated he would not continue this practice if it were in violation of law.

Projected Revenues and Expenses

Messnick offered an estimate of his 1975 revenues and expenses, which was un rebutted.

Messnick assumed, based on 1974 passenger loads, that he would have a four-month peak season consisting of June, July, August, part of September, and the Christmas holiday season. He further assumed, based on 1974 passengers that roughly half of the trips would be made with the 53-passenger bus, and the other half would be equally divided between the 23-passenger and the 14-passenger vehicles.

For his leased 53-passenger bus, he estimated 30 tours a month during the peak season with an average of 52 passengers, and for the rest of the year, 12 tours a month with a 40-passenger average, amounting to an annual total of 10,080 passengers. For estimating purposes he calculated fares at \$15 although the adult fare would be \$17. This produces an estimated revenue for this bus alone of \$120,476. Operating costs for this bus were estimated as follows:

Insurance	\$ 1,764
Lease payments	4,620
Maintenance	3,000
Cleaning	1,200
License fees (est.)	400
Driver salary	7,344
Tour guide salary	7,344
General and admin.	3,240
Sales commissions	700
Fuel	3,456
Contingency reserve	5,000
	<u>\$38,068</u>



Thus, the net profit for this bus before taxes is estimated at \$82,408 for 1975.

Messnick made a similar development for the 23-passenger bus, the major difference being that the driver acts as tour guide. He estimated an average capacity of 19 passengers per tour, and 103 tours per year, for a passenger total of 1,957 passengers. Based again on tickets at \$15, this would generate \$29,355 per year in revenue. Operating expenses were estimated as follows:

Insurance	\$ 1,560
Depreciation	3,600
Maintenance	1,500
Cleaning	1,000
License fee	300
Driver	3,502
General and admin.	515
Commissions	130
Fuel	358
Contingency	1,000
	<u>\$13,465</u>

This bus would thus produce a net before-tax profit of \$15,890.

Messnick's estimate for his 14-passenger bus (per trip) appears in Exhibit F to the application. It assumes an average of ten adult passengers, and contains a per trip estimate of expenses (developed in the same detail as for the other two vehicles except for the exclusion of any contingency fund) of \$143 per trip. If a fare of \$17 is assumed for each passenger, the profit before taxes would be \$27. Assuming this bus makes the same amount of trips as the 23-passenger bus (103), the yearly profit before taxes would be \$2,781.

The general and administrative expenses include a \$35,000 salary for Messnick.

From all three buses, the above figures indicate an expected profit before taxes of \$101,079.

Greyhound's Protest

Greyhound protested the application on the basis of its existing route structure and because of alleged traffic diversion.

Exhibit 18 includes pertinent portions of Greyhound's certificate, and schematic maps illustrating routes between Los Angeles, Orange County, San Diego, and San Ysidro.

M. G. Gragg, Director of Traffic for Greyhound Lines-West testified in opposition to the application and explained Exhibit 18. Anaheim is located on Greyhound route 17-1, and there are several routes from Los Angeles through Orange County to San Diego.<sup>1/</sup> He presented timetables and certain publicity material intended to show that a "Tijuana Joyride" package is offered from the Anaheim area.

This service was first announced on April 26, approximately a month after Messnick's expanded service. From the Anaheim area, an independent operator, Town Tour Company, operates a "Fun Bus" service which is used to shuttle passengers from fifteen hotels and motels in the vicinity of Greyhound's Anaheim terminal, including four which were served by the applicant (Disneyland Hotel, Sheraton Motor Hotel, Hyatt House, and Howard Johnson's).

Passengers board Greyhound's regular service to San Diego. These buses make intermediate stops at Santa Ana, El Toro, San Juan Capistrano, San Clemente, and Oceanside. At Greyhound's depot in San Diego the tour passengers change to the special "Tijuana Joyride" buses operating between San Diego and San Ysidro. The Greyhound San Ysidro station is near the border. There is no attempt to segregate tour from regular passenger traffic in the buses from Anaheim to San Diego.

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<sup>1/</sup> The witness indicated that none of Greyhound's currently pending applications for route modifications would affect the routes used on Greyhound's tour to Tijuana.

Exhibit 20 lists the buses running directly from Anaheim (with the abovementioned stops) to San Diego and San Ysidro; however, if a passenger is to make use of the Tijuana Joyride buses from San Diego to San Ysidro (and returning), only a few of these are of any practical use.

Southbound, the Tijuana Joyride buses depart from San Diego at 9:30 a.m., 12:30 p.m., 3:30 p.m., and 5:30 p.m. The 9:30 a.m. departure is too early for Anaheim passengers without an overnight stay in San Diego the preceding night. For the 12:30 p.m. departure, the schedule on its face indicates this bus departs five minutes prior to the arrival of the bus departing Anaheim at 9:40 a.m., but Mr. Gragg stated (Tr. 183) that a connection between these two buses was made.

Theoretically, a tour passenger could take the 11:40 a.m. bus from Anaheim, arrive in San Diego at 2:40 p.m., wait for the 3:30 p.m. tour, return on the 9:30 p.m. tour bus, and then take the 10:10 p.m. bus to Anaheim, arriving at 1:00 a.m. (Alternately, using the regular San Ysidro-San Diego return service, the regular 7:20 p.m. bus could be used, then the 7:55 p.m. bus from San Diego which would return the passenger to Anaheim at 11:15 p.m.).

Thus, in summary, the only practical Tijuana Joyride schedule is as indicated on the advertisement (Exhibit 27). Departures on the Fun Bus shuttle begin at 8:51 a.m. The 9:40 a.m. bus carries the passengers to San Diego in time for the 12:35 p.m. departure to the border. Departure from Tijuana is at 5:40 p.m., and after transferring in San Diego, passengers arrive in Anaheim at 9:20 p.m.

There is of course, the regular Greyhound (non-tour) schedule from Anaheim to San Ysidro (Exh. 20) which is not publicized as a tour. Persons going to the Anaheim depot could simply take the regular bus to San Ysidro, a three-hour run, and return the same way.

Exhibit 20 shows eight southbound buses and eight northbound. Not all of these are suitable for a one day tour schedule.

Mr. Gragg recommended that tourist passengers buy the tour package from Fun Bus rather than taking the regular round-trip service since it included the package amenities (described in Exh. 24) of shopping discounts, a souvenir gift, and other items.<sup>2/</sup>

He explained that although a guide does not accompany the bus, the package includes a guided tour of Tijuana by non-Greyhound personnel.

Mr. Gragg also sponsored Exhibits 25 and 26, which show certain traffic counts. Exhibit 25 shows a total of 258 one-way and 56 round-trip regular fares sold. Ninety-four Tijuana Joyride packages were sold during the same period. Exhibit 26 shows a daily count for Tijuana Joyride passengers. Total pickups from all locations are indicated as 1,691; a column headed "other pickups" includes those from Anaheim and shows a total of 122.

The witness felt that Greyhound's salespersons had adequately promoted the tour and that there was adequate equipment to serve any demand for such service from the Anaheim area.

#### Discussion

The outstanding fact presented to the Commission in these proceedings is the strong public demand for the service proposed by the applicant. As will be discussed, a preponderance of the evidence indicates that Messnick's operation primarily generates new business, and is not simply a successful effort to divert traffic from the existing carriers. Therefore, while we are aware of our responsibilities imposed by the fact that Messnick gradually developed an unlawful passenger stage operation, we believe the

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<sup>2/</sup> Exhibit 24, a large Tijuana Joyride brochure, lists a shopping tour, a shopping and lunch tour, and a shopping and dinner tour. It does not contain departure times. Presumably the 5:30 p.m. departure listed in Exhibit 23 is the dinner tour, which is not available on any convenient schedule from Anaheim. Exhibit 24 is presumably distributed only in San Diego, while the smaller card (Exh. 27) is used in Santa Ana.

record establishes a strong enough demand for the service that the application should be granted, with certain conditions imposed.

Preliminarily, and because Greyhound seeks to have us impose a fine and other sanctions against Messnick,<sup>3/</sup> we should consider his good faith or the lack of it in running his individual-fare service to the border. While the evidence is not crystal clear on this point, we believe good faith existed. Messnick's operation grew with the available passengers. He began chartering buses, under the belief that he was operating within the framework of his tourist agency business.

Finally, by May of 1974, there were so many requests he ran the tour twelve times. After a discussion with an associate regarding whether operating authority from the Commission would be necessary, he called the Commission's Los Angeles office and was informed that he should apply for a certificate. He did so on June 13. The evidence does not indicate that in this conversation he was told he could not operate until the Commission took action. Messnick complied immediately with the cease and desist order, and there have been no violations of it.

Under the circumstances, even if we were not to grant Messnick the requested authority, we would believe that a fine and other sanctions (other than forbidding future unlawful operations) are here inappropriate. Messnick is hereby warned, however, that we will take a different view of any future conduct violative of or exceeding the scope of his authority. He is now, after this proceeding, reasonably familiar with our procedures and with applicable sections of the Public Utilities Code.

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<sup>3/</sup> Including the revocation of his charter-party permit No. TCP-456, which was not prayed for in the complaint.

We also recognize our duties under Public Utilities Code Section 1032 regarding the entry of new certificated carriers into a territory served by an existing carrier (cf. William E. Lee (Franciscan Lines) (1972) 73 CPUC 166), but, to the extent that there are service deficiencies in the existing carrier's operations, Section 1032 does allow the entry of a new carrier into the territory (Orange Coast Sightseeing Company (1969) 70 CPUC 479). Additionally, the Commission is under a duty to weigh all factors bearing on the issue of public need, including anti-competitive considerations, when passing on an application (Northern California Power Agency v PUC (1971) 5 Cal. 3d 370; 96 Cal. Rptr 18) and no single principle may be announced which, under all conditions and circumstances, and under every possible set of facts, may measure the rights of every applicant for a passenger stage certificate (Southern Pacific Motor Transportation Co. (1928) 32 CRC 331).

Before discussing the Greyhound service, we should briefly comment on existing service and the protest by Gray Line, Inc. We agree with the staff that Gray Line's service is not comparable. Its shopping tour is available from San Diego only, as is its "Bullfight Package" and "Tijuana Nite Life Tour."

There is also a Gray Lines tour twice a week from Los Angeles to San Diego, thence to the border, which is authorized to pick up passengers enroute at the Anaheim-Buena Park pickup territory and to originate tours therefrom.<sup>4/</sup> Exhibit 13, Gray Line's current brochure, does not mention such pickups, and in the index on page 2 of Exhibit 13, all the Tijuana tours are indicated as "From San Diego Only."

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<sup>4/</sup> Applications Nos. 49177, 49980, and 50434, Decision No. 81036 dated December 10, 1971, Attachment B, p. 14 of 31, Original Page 13, Tour No. 6.

Messnick's proposed route is not competitive with any tour now offered by Gray Line and will not divert any of Gray Line's current business.

We turn now to Messnick's proposed service versus Greyhound's existing routes.

Without an expensive promotional effort, Messnick carried 2,051 passengers in 1974 on an individual fare basis prior to the suspension in September. This much business, as against Greyhound's much smaller loads<sup>5/</sup> cannot be traced, as was suggested in Greyhound's brief, to a mere 50 cent difference in the amount of commissions paid to certain hotel personnel, especially with Fun Bus making pickups for Greyhound at a greater number of hotels than covered by Messnick.

The evidence is clear: A sizeable demand exists for a nonstop operation to the Mexican border at San Ysidro from the Buena Park-Anaheim-Santa Ana area, which lends itself readily to a tour-type schedule and a guided tour in Tijuana. A much smaller demand exists for a connection from the Anaheim area on a regularly scheduled non-tour bus, making several intermediate stops and connecting with a tour from San Diego (or, in the alternative, for a regular round-trip ticket from Anaheim to San Ysidro and back).

An orthodox traffic diversion study could not be offered by Greyhound since Messnick's operation started shortly before Greyhound's Tijuana Joyride package, but the very fact that the services commenced at about the same time offers the Commission a laboratory test as to which service is superior. Both services, starting at roughly the same time, although not from exactly the same locations, competed. Messnick's carried far more passengers.

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5/ The periods in the exhibits of the applicant and protestant are not identical but details are available for both parties for the peak-season month of August. Messnick carried 682 passengers, Greyhound's Anaheim pickups (Exh. 26) were not in excess of 122.

The only inference is that Messnick's service basically built its own volumes from a previously untapped market, and did not simply siphon Greyhound's business.

Additionally, although the routes have almost the same termination point at San Ysidro, they are not identical. Messnick's route takes in certain sights on the way to the border, making the route more scenic. Greyhound's route, in making intermediate stops at various terminals, and in picking up casual passenger traffic, detracts from the "tour" atmosphere.

Greyhound argues that Messnick's publicity does not accurately describe the limitations of the visits to the intermediate points of interest. Greyhound refers to the first paragraph of the advertising card (Exh. 17) which says:

"Package includes: a complete tour including San Juan Capistrano, San Clemente, beautiful Pacific Coast Highway, the nuclear power station at San Onofre, Camp Pendleton Marine Base, San Diego, and a very complete visit to Tijuana, Mexico. The entire tour is narrated by a professional tour guide."

We agree that this statement is misleading. One is entitled to assume that a "tour" means more than the opportunity to view certain places briefly without alighting from the bus, or, as in the case of the San Onofre generator, briefly debarking from the bus to take pictures of the plant from a distance. While the record does not establish that there have been any complaints, with such a statement as against what actually is offered, it seems only a matter of time before complaints would be registered.<sup>6/</sup> Messnick will be ordered to revise his advertising prior to commencing operations authorized

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<sup>6/</sup> The publicity for Greyhound's tours from the Anaheim area is also not free of such problems. Exhibit 27 is technically accurate, but it does not candidly state that a regular bus is used to San Diego, and a reading of the schedule on the inside would lead one to believe that the tour buses depart from the Anaheim depot.



herein, to clearly and properly reflect the limited nature of the visits to the intermediate points of interest, including the indication of whether the passengers debark from the bus.

While on the subject of publicity, Messnick seeks authority which will allow him not to run his route when there are less than eight passengers. This is a reasonable limitation but should be included in the advertising.

The elements of ability have been more than adequately demonstrated. A 23-passenger bus will be purchased for cash, and Messnick has adequate capital to lease a 53-passenger bus. This affords adequate equipment along with Messnick's smaller vehicles. Drivers and tour guides are properly licensed and adequately trained. Vehicles are inspected daily by the drivers and at least weekly by a nearby garage. Deficiencies are properly remedied. Comfort and convenience of the passengers are adequately looked after.

Messnick's 1975 estimates fail to reflect accurately current inflationary trends, particularly for fuel and wages. They are otherwise reasonable and show that even if his expenses are increased based on known inflationary considerations, the operation will be profitable at the proposed fares.

We are aware that we have the option of denying Messnick his requested authority and, instead, ordering Greyhound to commence an Anaheim-San Ysidro nonstop (or one stop via San Diego) service to better accommodate tourists (cf. Greyhound Lines, Inc. v PUC (1968) 68 C 2d 406, 67 Cal Rptr 97, and Franciscan Lines (1972) 73 CPUC 65; modified 73 CPUC 166), but we are convinced, based upon this record, that it would be poor judgment to choose that alternative. Greyhound has long held a certificate which would allow it more tour or express service from Anaheim to San Ysidro, yet during the course of this proceeding it introduced no plans to start such service and, indeed, initiated no upgrading even after Messnick's

suspension. The record firmly establishes that Greyhound basically has sought add-on business to its San Diego-Tijuana package tour. Messnick's public witnesses had not been solicited by Greyhound and were unfamiliar with its operations. In spite of the attestations of Greyhound's witnesses, the evidence shows that Greyhound's publicity efforts have not produced significant results in the Anaheim vicinity, even though Fun Bus makes pickups for Greyhound at 15 hotels, while Messnick only picks up at eight.

Greyhound has adequate personnel versed in transportation economics capable of investigating new markets, and adequate equipment to test them. The fact that many people from all points of the compass visit Disneyland, and might wish direct transportation to San Ysidro enabling them to tour Tijuana, invites a test of such a market. Greyhound's steps in this direction, in spite of its experience, have been shown to be inadequate.

Under such circumstances, the Commission should not have to make the public wait for better service while it consumes the time and effort involved in opening an investigation and issuing the necessary orders against a carrier to force it to provide better service, when another potential carrier is ready, willing, and able to offer the service, and present public demand has been shown.

The application will be granted, subject to the conditions and restrictions in the order.

#### Findings

1. Messnick possesses no present certificated passenger stage authority. He does have a charter-party permit.

2. From March 1973 to on or about September 4, 1974, Messnick operated an unlawful passenger stage route from the Buena Park-Anaheim area to the vicinity of the Mexican border at San Ysidro.

3. Messnick obeyed the order suspending his San Ysidro route (Decision No. 83409 dated September 4, 1974).

4. No fine or other sanctions should be imposed against Messnick.

5. There is an increasing demand for direct service, suitable for one-day Tijuana tours, from the Buena Park-Anaheim-Santa Ana area to the Mexican border at San Ysidro, particularly during the summer months and the Christmas season.

6. Messnick's proposed route has been shown as meeting this demand and as primarily generating new business from a previously untapped market, rather than as a service which relies substantially on diversion of traffic from Greyhound or any other existing carrier.

7. Messnick's proposed route is not competitive with any service currently offered by Gray Line and will not divert any of Gray Line's existing business.

8. Greyhound's present service from the Anaheim area to the Mexican border at San Ysidro, insofar as it meets the demand for one day round-trip service convenient for touring Tijuana, is inadequate.

9. Greyhound introduced no plans to improve or upgrade such service to serve this market.

10. Greyhound's existing regular passenger traffic from the Buena Park-Anaheim area to San Ysidro, and to and from intermediate points, can be protected by restricting Messnick to round-trip, same-day fares, and by prohibiting Messnick from accepting passengers from any intermediate points (i.e., points other than his own "The Boxoffice" location and the particular hotels listed in the appendix hereto).

11. Greyhound's San Diego-San Ysidro regular and "Tijuana Joyride" service from San Diego can be protected by prohibiting Messnick from accepting or debarking passengers in San Diego.

12. Messnick will possess, with the purchase of a 23-passenger bus and the lease of a 53-passenger bus, adequate equipment for the proposed route. Messnick should furnish his own drivers at all times.

13. Messnick has demonstrated financial ability to operate the proposed route.

14. Messnick's personnel training procedures and vehicle inspection and maintenance programs are adequate.

15. Messnick possesses the ability, experience, and financial resources to perform the proposed service.

16. Messnick's 1975 estimates of revenues and expenses are reasonable except for failure to make adequate allowance for inflationary trends, especially regarding wages and fuel costs, but based upon known inflationary considerations, the operation should still be reasonably profitable at the proposed fares.

17. Messnick's publicity is misleading about the scope of the tour of intermediate points (San Juan Capistrano, San Clemente, nuclear power station at San Onofre, Camp Pendleton, and San Diego). Such publicity should be revised before commencement of the authority granted.

18. It is reasonable to allow Messnick to cancel his scheduled service when there are less than eight passengers, but such restriction should be explained in his advertising.

19. Messnick should be ordered to refrain from unlawful practices.

20. We find with reasonable certainty that the project involved in this proceeding will not have a significant effect on the environment.

Conclusion

Public convenience and necessity require that the service proposed by the applicant in Application No. 54963 be established, subject to the conditions in the order.

Applicant is 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 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. The relief requested in Case No. 9781 is denied.
2. Application No. 55092 is placed off calendar and is severed from Case No. 9781 and Application No. 54963. Messnick shall notify the Commission prior to March 28, 1975, whether he wishes to proceed with Application No. 55092; otherwise it will be dismissed.
3. A certificate of public convenience and necessity is granted to Stuart Alan Messnick, an individual, doing business as The Co-Ordinators, authorizing him to operate as a passenger stage corporation, as defined in Section 226 of the Public Utilities Code, between the points and over the routes set forth in Appendix A of this decision.
4. In providing service pursuant to the authority granted by this order, applicant shall comply with the following service regulations. Failure so to do may result in a cancellation of the authority.

- (a) Within thirty days after the effective date of this order, applicant shall file a written acceptance of the certificate granted. Applicant is placed on notice that if he accepts the certificate he will be required, among other things, to comply with the safety rules administered by the California Highway Patrol, the rules and other regulations of the Commission's General Order No. 98-Series, and the insurance requirements of the Commission's General Order No. 101-Series.
- (b) Within one hundred twenty days after the effective date of this order, applicant shall establish the authorized service 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 authorized service.
- (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) Applicant shall maintain his 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 his operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

5. Applicant shall at all times employ his own drivers in the exercise of the rights under this certificate.

6. Round-trip single-day fares only, from the points listed in Appendix A in the Buena Park, Anaheim, and Santa Ana area to and from San Ysidro, shall be offered.

7. Passengers shall not be picked up or off-loaded at any point not specified in Appendix A.

8. Applicant shall revise his publicity and advertising, both oral and written, so that it fairly describes the limited nature of the visits or stops at various intermediate locations, as more fully set forth in the discussion section of this opinion. Such revisions shall be completed and any advertising material not in compliance with this order shall be discarded prior to the commencement of operations authorized by this decision.

9. Applicant's advertising shall indicate that scheduled service authorized hereunder is subject to cancellation if there are less than eight passengers.

10. Schedules shall be based upon the current maximum allowable highway speeds.

11. Applicant shall obey all laws, rules, and regulations relating to any operating authority he possesses from this Commission, and shall not institute any new routes or services, or otherwise deviate from his authority, without obtaining an order to do so from this Commission.

12. The cease and desist order heretofore entered is dissolved.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 11<sup>th</sup>  
day of MARCH, 1975.

Vernon L. Stinson  
President  
William J. Jones Jr.  
Donald Ross  
Commissioners



CERTIFICATE  
OF  
PUBLIC CONVENIENCE AND NECESSITY

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Showing passenger stage operative rights, restrictions, limitations, exceptions, and privileges applicable thereto.

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All changes and amendments as authorized by the Public Utilities Commission of the State of California will be made as revised pages or added original pages.

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SECTION 1. GENERAL AUTHORIZATIONS, RESTRICTIONS, LIMITATIONS,  
AND SPECIFICATIONS.

Stuart Alan Messnick, doing business as The Co-Ordinators, by the certificate of public convenience and necessity granted by the decision noted in the margin, is authorized to transport passengers between certain points named herein in Buena Park, Anaheim, and Santa Ana, on the one hand, and San Ysidro, California, on the other hand, and intermediate points for tour stops only over and along the routes described herein, subject, however, to the authority of this Commission to change or modify this authority at any time and subject to the following provisions:

- (a) Motor vehicles may be turned at termini and intermediate points, in either direction, at intersections of streets or by operating around a block contiguous to such intersections, in accordance with local traffic regulations.
- (b) When route descriptions are given in one direction, they apply to operation in either direction unless otherwise indicated.
- (c) All service herein authorized shall be limited to the transportation of a single-day round-trip passengers only.
- (d) Service shall be performed subject to a minimum of eight (8) passengers.
- (e) No passengers shall be transported except those having point of origin at one of the following points:
  - (1) LeBaron Hotel and Holiday Inn, Buena Park.
  - (2) Sheraton Motor Hotel, Disneyland Hotel, Quality Inn Hotel, Hyatt House Hotel, The Boxoffice, and Howard Johnson's Hotel, Anaheim.
  - (3) Saddleback Inn, Santa Ana.

Issued by California Public Utilities Commission.

Decision No. 84186, Application No. 54963.

SECTION 1. GENERAL AUTHORIZATIONS, RESTRICTIONS, LIMITATIONS,  
AND SPECIFICATIONS. (Continued)

- (f) Applicant shall not pick up or discharge passengers except within the limits of the specified service areas as hereinafter set forth. This restriction shall not prevent stopovers for the purpose of permitting sight-seeing passengers to visit various points of interest along the routes as noted herein.
- (g) Carrier shall make stopovers at San Juan Capistrano, San Clemente, and San Onofre as points of interest.
- (h) Carrier is permitted to make a stopover at San Diego for rest and meals only.
- (i) Carrier shall not transport any baggage except hand-carried items of the passengers.

Issued by California Public Utilities Commission.

Decision No. 84186, Application No. 54963.

## SECTION 2. ROUTE DESCRIPTIONS.

Commencing at Crescent Avenue, LeBaron Hotel, Buena Park, over the most appropriate and convenient streets and freeways to pick up passengers at Holiday Inn, Buena Park, Sheraton Motor Hotel, Disneyland Hotel, Quality Inn Hotel, Hyatt House Hotel, The Boxoffice, and Howard Johnson's Hotel, Anaheim and Saddleback Inn, Santa Ana, continue over the most appropriate streets and freeways to San Juan Capistrano, San Clemente, San Onofre, San Diego, and to San Ysidro.

Issued by California Public Utilities Commission.

Decision No. 84186, Application No. 54963.