

Decision No. 85468

ORIGINAL

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
 Airport Traveler Service, Inc., a  
 California Corporation, for Certifi-  
 cate of Public Convenience and  
 Necessity to Operate a Passenger  
 Stage Corporation and Express  
 Baggage Service Between the City of  
 Napa and the City of Vallejo, on the  
 One Hand, and the San Francisco  
 International Airport in the County  
 of San Mateo, on the Other Hand.

GREYHOUND LINES, INC. (Western  
 Division), a corporation,  
 Complainant,

vs.

R. C. FRENSLEY, doing business as  
 Airport Transportation Service,  
 Defendant.

In the Matter of the Application of  
 EVANS AIRPORT SERVICE, INC., a  
 corporation,  
 for certificate of public convenience  
 and necessity to operate a passenger  
 stage corporation and express baggage  
 service between the City of Napa,  
 on the one hand, and the San Francisco  
 International Airport, in the County  
 of San Mateo, on the other hand.

Application No. 54863  
 (Filed May 9, 1974;  
 amended June 19, 1975)

Case No. 9771  
 (Filed July 22, 1974)

Application No. 55749  
 (Filed June 20, 1975;  
 amended June 26, 1975)

Brian R. Silver, Attorney at Law, for Airport Traveler Service, Inc., applicant in A.54863 and defendant in C.9771, and Sergius M. Boikan, Attorney at Law, for applicant in amended A.54863.

Richard M. Hannon, Attorney at Law, for Greyhound Lines, Inc. (Western Division), protestant in A.54863, complainant in C.9771, and interested party in A.55749.

James V. Jones, Attorney at Law, and Jones, Gaw & Van Male, by David B. Gaw, Attorney at Law, for Evans Airport Service, Inc., applicant in A.55749 and protestant in A.54863.

James B. Brasil, Attorney at Law, for the City and County of San Francisco, interested party in A.54863.

James T. Quinn, Attorney at Law, and O. A. Phillips, for the Commission staff.

#### O P I N I O N

A.54863 and C.9771 were heard on a consolidated record, after duly published notice, in Napa on July 31, August 1, October 31, and November 1, 1974 before Examiner Peeters. The matters were submitted subject to the filing of briefs due January 21, 1975. Before a decision was issued, certain changes in facts and circumstances came to the attention of the Commission which caused the examiner to reopen the proceedings for the receipt of further evidence.

A.54863 was amended on June 19, 1975 substituting Airport Traveler Service, Inc. (ATS) for R. C. Frensley (Frensley), doing business as Airport Transportation Service, as applicant.

On June 20, 1975, Evans Airport Service, Inc. (Evans) filed A.55749, which seeks authority similar to that sought in A.54863. On short notice this matter was consolidated with A.54863 and C.9771 for hearings which had been scheduled, and were heard on June 24-27, 1975 in Napa.

### The Pleadings

Frensley's application seeks a certificate of public convenience and necessity to operate a passenger stage, as defined in Section 216 of the Public Utilities Code between the cities of Napa and Vallejo, on the one hand, and San Francisco International Airport (SFO), on the other hand. Frensley had been granted a Charter-party Carrier Permit No. TCP448. He also held a temporary permit from San Francisco to operate on SFO properties.

Greyhound Lines, Inc., Western Division (Greyhound), protested the application on May 16, 1974. Greyhound filed C.9771 on July 22, 1974, which sought a temporary restraining order against Frensley. The restraining order was issued in D.83192 dated July 23, 1974.

Amended A.54863 and A.55749 were filed as a result of the changed facts and circumstances which required the reopening of the proceedings. Both applications seek authority to provide approximately identical service. No protest to A.55749 was filed.

### The Evidence

Appended to the original A.54863 was a petition containing 360 signatures of citizens in and around Napa supporting Frensley's application. At the initial set of hearings, approximately 250 members of the public were in the hearing room. Frensley put on ten public witnesses in support of his application and offered 50 letters of support. Among the witnesses presented, were the mayor of Napa, the manager of a travel agency in Vallejo, the director of hotel operations at the Silverado Country Club, and a sales representative to military establishments in the western states.

In summary, the public witnesses testimony shows an overwhelming support, demand, and use of the proposed service. Under a mistaken belief that his charter-party permit authorized the type of service being offered, Frensley had built up a sizeable amount

of traffic through arrangements with local travel agencies. The substance of the public witness' testimony is that the only public transportation available to SFO is Greyhound, which is deemed unsatisfactory. Greyhound's service requires a transfer at Vallejo, with a considerable time delay between connections; a transfer at San Francisco to a commuter bus with no baggage facilities; inconvenient terminal facilities at San Francisco and only one point of discharge and pickup on the lower level at SFO which requires considerable walking and carrying of baggage to and from the various airline terminals. Frensley's service is a direct, personalized service with delivery and pickup at the individual airline terminals on both levels at SFO. Generally, the public would take their own automobile, or have a friend transport them to the airport, rather than use Greyhound.

During the pendency of the cease and desist order, the city of Napa (City) engaged Frensley and his equipment to continue the service for the benefit of its citizens who had advance reservations to be fulfilled and until such time as Frensley could file for and obtain a certificate of public convenience and necessity.

The balance of Frensley's evidence has become moot due to subsequent events, except for the fact that it was stipulated between Frensley and San Francisco that if a certificate should be granted, it should be conditioned to the effect that all necessary authorizations be obtained from local governmental agencies for parking buses, and/or limousines and other passenger automobiles to load and discharge passengers at SFO.

Greyhound's testimony and evidence at the initial hearing was adduced through its director of traffic and its local station manager. In summary, Greyhound produced evidence showing its certificated authority in the area and that the proposed operation

parallels it; that there has been a diminution in traffic from Napa since the institution of Frensley's service; that the Napa zone is barely breaking even financially, but with package express it does better; that any diversion of traffic has an adverse financial impact on revenues; Greyhound has a large investment in buses and therefore needs protection from diversion of traffic; it is recognized that if the Commission finds its service unsatisfactory, another carrier can be certificated; that where economical, Greyhound will and does change its schedules to provide better service; and that consideration will be given to changing the Travis Air Force Base - SFO direct schedule to accommodate the public at Vallejo.

The additional evidence received at the reopened proceedings shows that Frensley had abandoned the service he was providing for City sometime in the early part of 1975; that Brian Silver, Frensley's attorney, attempted to carry on the operation, that on April 10, 1975 the United States Internal Revenue Service (IRS) impounded Frensley's vans and other assets. City met the emergency with borrowed vehicles for a short time. It advertised for a person who would manage and operate the system. Silver and Evans were two of five applicants, with Evans being the successful applicant. City entered into a contract with Evans to provide the same service that Frensley had provided. Evans purchased two new Plymouth vans and kept the service operating.

In the meantime, Silver formed Airport Traveler Service, Inc., placed \$10,000 in a bank account for the corporation and on June 19, 1975 filed an amendment to A.54863 substituting ATS as the applicant in place of Frensley. Attached to the amended application was a Request for Assignment of Application from R. C. Frensley to Airport Traveler Service, Inc. Shortly after this, June 20, 1975, Evans filed his application to provide service between Napa and SFO only. He chose not to apply for Vallejo in order to avoid a protest from Greyhound.

Silver testified in support of ATS's application. He pointed out that \$10,000 is irrevocably committed to the corporation to purchase the stock, depending upon the outcome of this proceeding. That if the corporation needs more money he is willing to commit at least \$15,000 more, and that with his line of credit he can sustain a reasonable period of time operating at a loss. Equipment would have to be purchased if his request is granted, and he estimates it would take between 10 to 30 days before he could inaugurate service. Silver contends that his experience with Frensley's operations qualifies him as a competent operator of a passenger stage line. His proposal is to provide the same schedule as Frensley had, viz., four daily schedules departing Napa at 6:15 a.m., 11:45 a.m., 4:00 p.m., and 7:30 p.m. with stops at Vallejo. At SFO passengers would be discharged at each airline terminal on the departure level and returning passengers would be picked up at each airline terminal on the lower level. Advance reservations would be required; however, passengers would be accepted without a reservation if space is available. The right to cancel a schedule is requested where there are neither outbound nor inbound reservations. It is proposed to purchase two 15 passenger Dodge maxi-vans converted to 11 passengers with baggage space.

A projected first year summary of operations is set forth below:

Round trips scheduled	1,460	
Round trips run	1,314	
No. of passengers	7,300	
Revenue		\$52,414
Operating Expenses	\$46,955	
Interest	1,200	
Income tax	1,391	<u>49,546</u>
Net Income		\$ 2,868

The transportation coordinator for the city of Vallejo appeared in support of ATS. He presented a resolution from the Vallejo City Council which requests the Commission to issue a certificate for the proposed service which will include a stop at Vallejo. The co-owner of the Royal Inn Motel Hotel in Vallejo also testified in support of ATS. This witness pointed out that the people staying at the hotel are employees of contractors with the Navy at Mare Island, such as Westinghouse and General Electric who come and go and need the kind of service being sought by ATS.

The evidence with respect to Evans' application was produced through Evans and several witnesses. Evans has had considerable experience in managing school and charter bus operations. He has progressed from the transportation department of the Napa Valley Unified School District (NVUSD) to his present position as superintendent of transportation for the district. As such he is responsible for the operation of the fourth largest school bus operation in California. He is responsible for 272 vehicles and drivers including 14, 35-passenger, diesel buses, transporting over 10,000 students daily. It was because of this experience that City awarded the contract (Exhibit 21) to him for the Napa/Vallejo-SFO operation.

Shortly after being awarded the contract Evans formed a corporation known as Evans Airport Service, Inc., for the purpose of carrying out the contract. Under the contract, Evans as an individual, is employed as an independent contractor. It is a two year contract commencing June 16, 1975, terminable on 30 days' notice if Evans obtains the certificate he seeks. As manager for City, Evans is responsible for the payment of all costs, salaries, taxes and other related expenditures, including insurance. Evans' compensation is \$38 per round trip, to a maximum of four round trips per day. Any

excess of these payments over costs is to be retained by Evans. The contract also provides that City shall bear any loss incurred in the operation provided that such payment shall not exceed 25 percent of the total cost of operation in the month during which a loss occurs.

It is Evans' proposal to devote only part of his time to the supervision of the operation. He will continue to perform his regular duties as full time superintendent of transportation for NVUSD. Four round trips daily are proposed at approximately the same times as ATS's schedule; however, Vallejo will not be served. A one-way fare of \$7.50 is proposed. Advance reservations are required and the right to cancel a trip where there are no reservations is requested. Two 1975 Plymouth Voyager 11-passenger vans will be used in the service. Evans proposes to provide a second section vehicle where a trip is fully booked provided at least six hours advance reservation is made.

The projected first year summary of operations is set forth below:

Round trips scheduled	1,460	
Round trips run	1,460	
Passengers	9,125	
Revenues		\$66,394
Less Commission expense		<u>2,656</u>
		\$63,738
Operating Expenses	\$60,942	
Interest	1,148	
Income Tax	<u>1,334</u>	<u>63,424</u>
Net Income		\$ 314

The balance sheet of Evans Airport Service, Inc., as of June 15, 1975, shows total assets of \$20,018, of which \$13,198 is represented by pledged buses, total liabilities of \$20,518, and a stockholders' equity of \$500 (5 shares pledged). The personal financial statement of Donald and Mary Evans shows a net worth as of May 1, 1975 of \$43,210 of which \$2,721 is cash and the balance is estimated values of their home and personal property. Total liabilities amount to \$23,268.



Several witnesses testified on behalf of Evans. The city manager of Napa testified with respect to the contract. He stated that if Evans is not successful in obtaining a certificate from the Commission, that insofar as City is concerned, Evans would be held to the contract. On the other hand, Evans stated that if he obtains a certificate, he would terminate the contract on thirty days' notice according to its terms. However, if he should not be certificated, he would expect City to reimburse him for the cost of the vans he purchased. At the close of the hearings Evans sought to further amend the application to include Vallejo. This request was denied since Greyhound was not present at the time.

Greyhound produced evidence at the further hearing through its local manager. Schedules were introduced showing that Greyhound had arranged for the Travis Air Force Base - SFO direct service to now stop at Vallejo. There are three schedules which will serve Vallejo departing at 7:35 a.m., 11:35 a.m., and 5:05 p.m. Returning, there are four schedules which provide for discharge of passengers at Vallejo. Service from Napa to Vallejo to connect with the direct service to SFO involves a one-half hour wait in Vallejo on the morning schedules, a two hour wait for the afternoon schedule; there is no connection for the 8:15 p.m. service from SFO to Vallejo. The fare to or from Vallejo to SFO on the express schedule is \$3.40. During the month of May, 1975, 84 tickets were sold for Vallejo-SFO service.

Exhibit 8, introduced by the staff at the earlier set of hearings, was amended by Exhibit 23 due to the changed circumstances. The staff also introduced Exhibit 24 at the further hearings. The staff's evidence shows that the proposed operations will be marginal at best.

The staff has no objection to the granting of a certificate in these matters. It pointed out that Evans has the better experience

of the two applicants, but that ATS should be granted the certificate since it will serve Vallejo whereas Evans will not. The staff expressed concern over the contract between City and Evans. At the examiner's request, this issue was briefed by the parties.

#### The Issues

1. Does public convenience and necessity require the certification of a passenger stage operation providing direct, nonstop, service between Napa/Vallejo and SFO?
2. Does Greyhound provide a satisfactory service between Napa/Vallejo and SFO?
3. If Greyhound does not provide a satisfactory service between Napa/Vallejo and SFO, which of the two applicants should be certificated?
4. Does the contract between Evans and City come within the purview of Article XI, Section 9<sup>1/</sup> of the California Constitution so as to exempt Evans' operation under contract with City from this Commission's jurisdiction?

#### Discussion

The record clearly shows that there is a large demand for the specialized service which has been provided by Frenslley; that the public will not use Greyhound to SFO because of the type of equipment, lack of assistance with baggage, inconvenient schedules, transfers at Vallejo and San Francisco, and the inconvenience at SFO.

Since the initial hearings, Greyhound has scheduled its Travis Air Force Base - SFO express service to stop at Vallejo. While

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<sup>1/</sup>"SEC 9. (a) A municipal corporation may establish, purchase, and operate public works to furnish its inhabitants with light, water, power, heat, transportation, or means of communication. It may furnish those services outside its boundaries, except within another municipal corporation which furnishes the same service and does not consent." (Underscoring added.)

this service is not directly comparable to the type of service proposed, it is a better service from Vallejo to SFO than previously offered and shows Greyhound's willingness to improve its service where it is economically feasible to do so.

Although it has been demonstrated that there is a considerable demand for the proposed service, it is apparent that there may not be enough traffic to support two operations, much less three. The projections of the operations by either applicant indicates that they will be only marginally successful during the first year. While Greyhound presented no statistics on its operations at the initial set of hearings, it did present some statistics on the Travis-SFO express service since a stop was installed at Vallejo. These indicated a reasonable amount of patronage during the first month of operation.

As the staff shows, Evans' experience in bus operations is superior to that of Silver's. Furthermore, Evans was selected by City, in competition with four other applicants, to operate the service under contract, thus he has an operation in being, whereas Silver does not. A comparison of the financial ability of the two corporate applicants shows that Evans' corporation is thinly capitalized, whereas Silver's is in a better financial position. However, Silver would have to purchase vans before he could commence operations, which would put the two corporations on an approximately equal financial basis. Evans relies upon his personal financial condition and his full-time job with NVUSD in order to sustain the operation through a possible loss period. On the other hand, Silver claims he can commit an immediate additional \$15,000 to the corporation if need be. Another consideration is that Evans has a two-year contract with City, which City states it will require Evans to carry out even if he does not obtain a certificate. Because there

is not sufficient traffic to support two operations, along with Greyhound's service, it would be contrary to the public interest for us to certificate Silver's corporation and at the same time have City performing a duplicate service under the contract. Furthermore, we have to concern ourselves with the public safety. Evans has shown his ability to train drivers, maintain a high safety record in the school bus operation, and establish and maintain a sound preventative maintenance program. These are highly desirable attributes in a passenger stage operator which will aid in making the proposed operation a success. We therefore conclude, that of the two applicants, Evans should be granted the certificate he seeks. In view of this result we need not reach the issue of the validity of the contract between City and Evans.

#### Findings of Fact

1. City entered into a contract on June 3, 1975 with Evans to continue passenger stage service to SFO after Frensley ceased service.
2. Evans formed Evans Airport Service, Inc., after entering into the contract with City and filed its application for a certificate of public convenience and necessity as a passenger stage corporation.
3. Silver formed Airport Traveler Service, Inc., April 3, 1975.
4. Frensley assigned A.54863 to Airport Traveler Service, Inc. on April 16, 1975. Frensley abandoned the operation he was performing under contract with City, and has departed from the area. He has abandoned his permit.
5. Public convenience and necessity require certification of a passenger stage operation between Napa and SFO.
6. Greyhound's service between Napa and SFO is unsatisfactory. Its service between Vallejo and SFO is satisfactory.

7. Airport Traveler Service, Inc. does not have the equipment nor experience to conduct a viable passenger stage service between Napa/Vallejo and SFO.

8. Evans Airport Service, Inc.'s owner has had a long and wide range of experience in the operation, management, budgeting, safety and driver education of school and charter bus operations.

9. Evans is ready, willing, and able to perform the sought for service immediately.

10. A certificate of public convenience and necessity to operate a passenger stage between Napa and SFO should be granted to Evans Airport, Service, Inc.

11. As a condition precedent to the certificate, grantee should be required to obtain the requisite permits from local agencies to operate at SFO.

12. It can be seen with reasonable certainty that this project will not have a significant impact on the environment.

Conclusions of Law

1. Public convenience and necessity require that a certificate of public convenience and necessity be granted to Evans Airport Service, Inc.

2. C.9771 should be dismissed as moot.

3. The application of Airport Traveler Service, Inc. should be denied.

4. Frensley's Charter-party Carrier Permit No. TCP448 should be revoked.

Evans Airport Service, Inc. 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. A certificate of public convenience and necessity is granted to Evans Airport Service, Inc., a corporation, authorizing it 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.

2. 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 it accepts the certificate it 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 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.

3. The temporary restraining order in Decision No. 83192 is dissolved.

4. Case No. 9771 is dismissed.

5. Charter-party Carrier Permit No. TCP448 is revoked.

6. The certificate of public convenience and necessity granted in Ordering Paragraph 1 above is granted upon the following conditions:


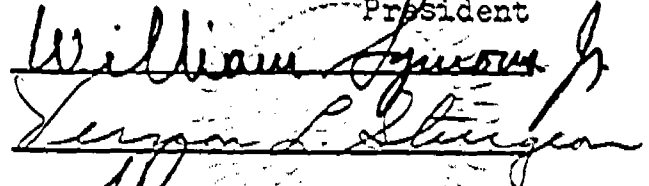

- (a) That applicant Evans Airport Service, Inc., use vans, limousines, and other passenger automobiles in its service having a seating capacity for no more than eleven passengers and a driver, or a total of twelve persons, and
- (b) That said applicant obtain from the appropriate local governmental agencies permission for parking its vans, limousines, and other passenger automobiles to load and discharge passengers at San Francisco International Airport.

- (c) Said permission shall be obtained within 120 days of the effective date of this order. Notification of receipt of such permission shall be filed in this proceeding. Failure to obtain said permission within the time specified shall cause the authority granted in paragraph 1 above to lapse without further order of the Commission.

7. Application No. 54863, as amended, is denied.

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

Dated at San Francisco, California, this 18<sup>th</sup>  
day of FEBRUARY, 1976.

  
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President  
  
\_\_\_\_\_  
Hon.  
  
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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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Issued under authority of Decision No. **85468**  
dated **FEB 18 1976**, of the Public Utilities Commission  
of the State of California, in Application No. 55749.

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

By the certificate of public convenience and necessity granted by the decision noted in the margin, Evans Airport Service, Inc., is authorized to transport passengers and their baggage in either direction between a terminal in the City of Napa (Napa) and the passenger terminals at the San Francisco International Airport (SFO) over the most appropriate route, subject to the following provisions:

- (a) The vehicles used in its service shall be vans, limousines, or other passenger automobiles having a seating capacity for no more than eleven passengers and a driver, or a total of twelve persons.
- (b) The carrier shall have the appropriate local governmental agencies' permission for parking its vans, limousines and other passenger automobiles to load and discharge passengers at SFO.
- (c) Only passengers whose trips are between Napa and SFO shall be transported. Passengers to or from points intermediate to Napa and SFO shall not be transported.

Issued by the California Public Utilities Commission.

Decision No. 85468, Application No. 55749.