

Decision No. 85924

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of WILLIAM PATRICK O'BRIEN for
certificate of public convenience
and necessity to operate passenger
stage service between Salinas and
Calexico.

Application No. 56104
(Filed December 4, 1975)

Frank H. James, Attorney at Law, for applicant.
Richard Hannon, Attorney at Law, for Greyhound
Lines, Inc., protestant.
R. E. Douglas, for the Commission staff.

O P I N I O N

Public hearing was held March 29, 1976 before Examiner Thompson at Salinas and the matter was submitted.

William Patrick O'Brien seeks a certificate of public convenience and necessity authorizing him to conduct passenger stage operations between Salinas and Calexico. He proposes to pick up passengers on Friday nights at Chualar or Soledad in the Salinas Valley, transport them to Calexico to arrive Saturday morning, and pick up passengers at Calexico on Sunday evening so as to arrive back in the Salinas Valley before 6:00 a.m. on Monday. He proposes to provide this weekly service with a 38-passenger bus.

Each year between March and September a large number of Sonorans, some of whom are Mexican citizens and others of whom are California citizens, engage in farm labor in the Salinas Valley. Most of them maintain homes in the Calexico-Mexicali area. In the Salinas Valley their normal work week is from 6:00 a.m. Monday to 3:00 p.m. Friday. Many of the workers desire to be with their families on weekends. Applicant's proposed service is designed to accommodate that traffic.

Findings

1. Growers and packers in the Salinas Valley between King City and Salinas regularly employ as farm workers between March and September of each year numerous Spanish-speaking persons who live in and about the Calexico-Mexicali area.

2. Those farm workers desire passenger stage service leaving the Salinas Valley early Friday evening and going direct to Calexico so as to arrive early Saturday morning, with a return schedule leaving Calexico Sunday evening so as to arrive in the Salinas Valley prior to 6:00 a.m. Monday morning.

3. Greyhound Lines, Inc. provides passenger stage service daily between points in the Salinas Valley and Calexico; all of its schedules involve connections and layovers at Los Angeles.

4. During the week March 15, 1976 through March 21, 1976 Greyhound sold a total of 50 round-trip and one-way tickets from Salinas Valley points to Calexico of which 39 were from Salinas, 2 from Gonzales, 5 from Soledad, and 4 from King City. Ten of those tickets were for passage from Salinas on Friday, March 19th.

5. The schedules maintained by Greyhound which more nearly accommodate the farm workers' needs are:

Southbound:

<u>No. 1751 Friday</u>	<u>Leave</u>	<u>Arrive</u>
Salinas	6:15 p.m.	
Chualar	6:35 p.m.	
Gonzales	6:45 p.m.	
Soledad	6:57 p.m.	
Greenfield	7:09 p.m.	
King City	7:30 p.m.	
Los Angeles		2:40 a.m.
<u>No. 3594 Saturday</u>		
Los Angeles	4:40 a.m.	
Calexico		11:50 a.m.

Northbound:

<u>No. 3597 Sunday</u>	<u>Leave</u>	<u>Arrive</u>
Calexico	11:40 a.m.	
Los Angeles		6:05 p.m.
<u>*No. 1736</u>		
Los Angeles	7:30 p.m.	
King City		2:55 a.m.
Salinas		3:50 a.m.

*No stops at Greenfield, Soledad, Gonzales, or Chualar. For return to those points departure from Calexico on Sunday at 7:20 a.m. is required.

6. Current practice of the farm workers is to use a private automobile on a share-the-ride basis in obtaining transportation on weekends from Salinas Valley to Calexico and return. The trip via direct route requires between nine and ten hours each way, and they have almost two full days with their families.

7. Applicant proposes to operate a 38-passenger bus between a point or points located between Salinas and King City convenient to the farm workers, on the one hand, and the headquarters of the U.S. Immigration and Naturalization Office at 200 E. First Street, Calexico, on the other hand, departing from the Salinas Valley on Fridays between 3:00 p.m. and 6:00 p.m. to arrive at Calexico early Saturday morning, and departing Calexico at 8:00 p.m. Sunday to arrive in the Salinas Valley by 5:00 a.m. Monday. Proposed round-trip fare is \$35.

8. Applicant is ready, willing, and able to provide the proposed service.

9. At the hearing held Monday, March 29, 1976, the district manager of Greyhound testified that it intends scheduling a bus to leave Salinas at 5:00 p.m. Fridays to arrive at Calexico at 4:30 a.m. Saturdays; and scheduling a bus to depart Calexico at 6:00 p.m. Sundays to arrive at Salinas at 5:00 a.m. Mondays. The fares for that route would be \$23 one way and \$44 round trip.

Discussion

There is no question that public convenience and necessity require the weekend service for farm workers proposed by applicant, the only contested issue is whether that service should be performed by applicant. Section 1032 of the Public Utilities Code provides in part,

"The commission may, after hearing, issue a certificate to operate in a territory already served by a certificate holder under this part only when the existing passenger stage corporation serving such territory will not provide such service to the satisfaction of the commission."

A comprehensive analysis of that provision of the statute is set forth in The Gray Line Tours Co. (1973) 74 CPUC 669 at 672-675. It was held (p. 675):

"Regardless, it must be recognized that the ultimate question to be resolved is whether the existing carrier will perform to the Commission's satisfaction in the future. It is the resolution of this question that the Commission must have discretion. Depending upon the facts involved the Commission may feel that it is able to make the determination 'as of the day the newcomer knocks on the door' or it may feel that it can only make the necessary judgment after an existing operator has been given an opportunity to correct service deficiencies."

In the instant case the newcomer (applicant) knocked on the door December 12, 1975 by the filing of this application. Thereafter a representative of Greyhound interviewed growers and packers to ascertain the transportation needs of the farm workers. At the eleventh hour and fifty-ninth minute - the business day preceding the hearing - Greyhound decided that it would offer a schedule with a direct bus routing between Salinas and Calexico. Until the announcement made at the hearing no one had any information that Greyhound could or would provide a satisfactory service to meet the needs of the farm workers.

We must also give consideration of whether that announcement was merely a self-serving declaration or whether Greyhound fully intends to provide that service. We are informed by our staff that as of April 19, 1976 Greyhound has not made the tariff or timetable filing it asserted that it intended. It may be that at some future time Greyhound may establish the service; however, we believe it important that the needs of the traffic occur during the months of March through September, and the existing carrier has not acted immediately to satisfy those needs.

We also take into consideration that applicant has worked for growers in the Salinas Valley for several years and has knowledge of when and where the farm workers will be working at the various ranches and locations in the valley. He and his relief driver know the foremen and supervisors on the ranches and are able to converse with the workers. For those reasons he is more capable of satisfying the particular transportation needs of the farm workers.

After taking all of the above into consideration it is our opinion that service by Greyhound has not met and will not meet the needs of the Spanish-speaking farm workers for transportation between the Salinas Valley and Calexico on weekends. We emphasize, however, that there is no evidence in the record which would justify a finding that Greyhound is not serving other traffic between Salinas Valley points and Calexico to the satisfaction of the Commission.

The application seeks a certificate authorizing passenger stage operations over a specified route between Salinas and Calexico. The broad authority sought has not been justified by the showing made by applicant, and operations conducted under such broad authority could encompass the same service that has been provided by Greyhound to the satisfaction of the Commission. The authority granted to applicant should provide only for the weekend service described above. We see no valid reason to restrict applicant's service to specifically described persons such as "farm workers", "Spanish-speaking persons",

or some other characterization. That could be discriminatory. The essential nature of the service is that it is transportation of passengers on weekends from points in the Salinas Valley between Salinas and King City, on the one hand, and Calexico and return, on the other hand. The weekend service was described generally as departing the Salinas Valley on Friday evenings and returning early Monday mornings. We take notice that during the months of March through September there are holidays resulting in "long weekends". The authority granted should provide for those situations.

During the hearing Greyhound questioned applicant's intent to comply with the speed laws and safety orders of the Commission. Findings on such matters are unnecessary here. Failure by a passenger stage corporation to comply with state laws, orders of the Commission, or safety rules administered by the California Highway Patrol may result in the cancellation of its certificated authority.

Additional Findings

10. Greyhound has not and will not provide service to the satisfaction of the Commission in the transportation between Salinas Valley points and Calexico of those passengers who require departure from points on and along U.S. Highway 101 between Salinas and King City, inclusive, on Friday evenings and a return to said points prior to 6:00 a.m. Monday mornings.

11. Public convenience and necessity require the operation by applicant as a passenger stage corporation as described in the ensuing order herein.

12. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

Conclusion

We conclude that the application should be granted as provided for in the order that follows and in all other respects it should be denied.

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. A certificate of public convenience and necessity is granted to William Patrick O'Brien, an individual, 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.

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 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.

3. In all other respects Application No. 56104 is denied.

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

Dated at San Francisco, California, this 8th day of JUNE, 1976.

*I concur in part and
dissent in part. I believe
the application should
have been granted in full
Leonard Ron*

[Signature] President
William J. Gussner Jr.
Leonard Ron
Robert Bakum
Commissioners

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Appendix A

WILLIAM PATRICK O'BRIEN

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CERTIFICATE
OF
PUBLIC CONVENIENCE AND NECESSITY

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

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.

Issued under authority of Decision No. 85924, dated
JUN 8 - 1976, of the Public Utilities Commission of the
State of California, in Application No. 56104.

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

William Patrick O'Brien is authorized to transport passengers and their hand baggage by motor vehicles between points hereinafter specified in the Salinas Valley, on the one hand, and Calexico, on the other hand, over and along the routes described in Section 2, and subject to the following conditions:

1. Bus Stops

- a. A bus stop shall be designated at or near the U.S. Immigration and Naturalization Office at Calexico.
- b. One or more bus stops shall be designated in the Salinas Valley along U.S. Highway 101 between Salinas and King City within one mile laterally of said highway.
- c. The designated bus stops shall be described in the carrier's tariff and timetable.
- d. No passenger shall be picked up or discharged except at a designated bus stop described in carrier's tariff and timetable.

2. Seasonal Operation

Service shall be a seasonal service between the approximate dates of March 1 and September 30 of each year when seasonal workers are engaged by growers to work in fields in the Salinas Valley area.

3. Weekend Service

Operations shall be conducted only to provide transportation of passengers from bus stops in the Salinas Valley on Fridays and from the bus stop at Calexico on Sundays, provided, however, that whenever Friday or Monday occurs on an established holiday for seasonal farm workers service may be provided on Thursday or Monday, respectively.

Issued by the California Public Utilities Commission.

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Appendix A

WILLIAM PATRICK O'BRIEN

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SECTION 2. ROUTE DESCRIPTION.

Between designated bus stops in the Salinas Valley via U.S. Highway 101 and streets and roads within one mile laterally of U.S. Highway 101; thence south over U.S. Highway 101 to State Highway 46; thence easterly over State Highway 46 to Interstate Highway 5; thence southerly along Interstate Highway 5 to Interstate Highway 10; thence easterly along Interstate Highway 10 to State Highway 86; thence southerly along State Highway 86 to Calexico and via city streets to the designated bus stop at Calexico.

Issued by California Public Utilities Commission.

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