

smc

Decision No. 86272

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) Application No. 56104
operate passenger stage service between) (Filed December 4, 1975)
Salinas and Calexico.)
_____)

ORDER DENYING REHEARING

A petition for rehearing of Decision No. 85924 has been filed by Greyhound Lines, Inc. (Greyhound). The Commission has reviewed this filing and is of the opinion that good cause for rehearing has not been shown to exist. There is, however, one matter that requires discussion.

In Decision No. 85924 we indicated that, while Greyhound entered at the eleventh hour and fifty-ninth minute and announced that it would provide direct bus routing between Salinas and Calexico no tariff or timetable filing had been made as of April 19, 1976. Greyhound argues that this determination was improper in that such filing was made on April 23, 1976. Consequently, it is asserted that we erred in failing to find that Section 1032 of the Public Utilities Code precludes the granting of a certificate to the applicant herein.

As noted in the challenged decision, in The Gray Line Tours Co. (1973) 74 CPUC 669, we determined that, in applying Section 1032, we have the discretion to determine the point in time in which an existing carrier's service will be measured. That being the case, we can and did exercise our discretion and determined that Greyhound would not provide service to our satisfaction.

We hereby acknowledge that Greyhound had filed tariffs to fill the need established by applicant when Decision No. 85924 was issued. Therefore, we have decided to reevaluate all of the facts presented

to the Commission in this proceeding including that tariff filing made by Greyhound subsequent to the hearings. It is now our opinion, after this reevaluation, that the time in which to judge whether the existing carrier will provide satisfactory service, as required by Section 1032, should, in this case, be the date of the filing of the subject application, i.e. December 4, 1975.

In making this determination, we acknowledge and accept the plea made in the instant petition for rehearing that we recognize Greyhound's knowledge of the transportation industry and the fact that Greyhound's local management live and work in the area. However, it is our opinion that these facts work against, not for, Greyhound.

We cannot in good conscience allow Greyhound to sit back, permit someone else to establish that a need for service exists, and only then hold itself out to supply that service. By ruling in Greyhound's favor now that is exactly what we would be condoning.

Under Greyhound's analysis of Section 1032, an existing carrier would not be obligated to provide service to satisfy requirements that might exist in its territory unless and until someone else went to the effort and expense of establishing that need before the Commission. It is our determination that, without this "someone else" (the applicant in the present proceeding), Greyhound would not have attempted to satisfy this need. We cannot believe that, by enacting Section 1032, the Legislature intended to foster such a scheme of regulation.


The existing carrier in a territory might have a legitimate argument that notice of the Commission's dissatisfaction was required under Section 1032 in instances where it could be asserted that a "need" was not readily or reasonably discernable. However, the instant case provides a poor platform for this position, particularly when we accept Greyhound's invitation to consider its vast knowledge of the transportation industry and its local knowledge of the needs of the affected public.


The facts established in this record show, to our satisfaction, that a need for direct service between Salinas and Calexico had existed for some time prior to the filing of the instant application. Greyhound should have been aware of this need. We therefore exercise our discretion and determine that the willingness and ability of Greyhound to satisfactorily serve the affected farm workers should be judged as of December 4, 1975. No other points require discussion.


THEREFORE, it is ordered that rehearing of Decision No. 85924 is hereby denied.


The effective date of this order is the date hereof.

Dated at San Francisco, California, this 17th day of AUGUST, 1976.



President






Commissioners

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.