

ORIGINAL

Decision 82 01 76 JAN 19 1982

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application )  
of Jerry D. and Rita M. Lee, )  
dba J. R. Charter Lines, for a )  
Class B charter bus certificate )  
from home terminal in Garden )  
Grove, California. )

Application 60464  
(Filed April 21, 1981)

Jerry D. Lee, for applicants.  
Howard L. Everidge, Attorney at Law,  
for Greyhound Lines, Inc.,  
protestant.  
Dolores J. Kramer, for Town Tour Funbus  
Co., Inc., interested party.

O P I N I O N

Applicants Jerry D. and Rita M. Lee, dba J. R. Charter Lines, request authority to operate as a Class "B" charter-party carrier of passengers from their home terminal in Garden Grove, California. Applicants propose to provide such service with one 39-passenger bus which they presently own and rent out to organizations and travel companies. Their bank is the Garden Grove branch of Coast Bank and their insurance broker is T.V.I. Insurance Agency, Inc.

Greyhound Lines, Inc. (Greyhound), holder of a Class "A" charter-party certificate, conducts extensive charter operations from the area encompassed by this application and protested the application.

Following notice, a public hearing was held in Los Angeles on September 25, 1981 before Administrative Law Judge William A. Turkish, under Public Utilities (PU) Code Section 5375.1, and the matter was submitted upon the filing of the transcript on October 8, 1981.

Applicants testified in their own behalf. Robert O. Burlingame, Greyhound's district manager, testified on behalf of Greyhound.

Testimony of applicants, including cross-examination, was essentially as follows:

1. They purchased a 1966 MCI 39-passenger bus on an installment contract in April 1981 and since that time have been leasing the bus out to travel agencies, individuals, and social clubs for trips to Las Vegas and return.
2. Applicants have leased their bus out a total of 13 times since April 1981.
3. Applicants seek a certificate so they can provide charter service trips to various locations and events rather than merely leasing their bus to others, as they do now.
4. Applicants heard by word of mouth from other bus operators, who own their own buses, that they keep their buses very busy and that there is a need for additional charter buses in the area.
5. Applicants do not know if the individuals or organizations who lease their bus for Las Vegas trips have Interstate Commerce Commission (ICC) authority for interstate travel and applicants have never attempted to determine from the lessees whether they possessed ICC authority.

6. Applicants do not employ a driver for their buses. However, the same driver has been driving their bus when they have leased out their bus. Applicants recommend this driver to all users of their bus because applicants know him and they intend to use the same driver if this application is granted.
7. Applicants have no experience in the transportation of passengers or any related transportation experience other than the leasing of their bus to others since April 1981. They feel this is sufficient experience to operate a charter line. ✓
8. Applicants admit that the estimated annual results of operations in their application are inflated figures based on guesses and an assumption that it is possible to make the profit indicated. They further admit that the figures shown have no real relationship to what operating expenses would actually be.
9. Applicants are under the belief that they would be authorized to organize tours and charge per person for a tour. They have no idea what a tariff is.
10. Applicants believe protestant Greyhound is providing adequate service within applicants' proposed service area.

Testimony by Greyhound's witness was essentially as follows:

1. Greyhound is certificated to operate as a Class "A" charter-party carrier of passengers which authorizes Greyhound to originate and terminate any charter within the State of California, on any route.
2. Greyhound has adequate bus equipment, mechanics, garages, and service points which are readily available to service buses having trouble on the road, permitting Greyhound to operate multiple charters within the State.
3. Greyhound budgets rather extensively for advertising in connection with its charter operations.
4. During the months of February, March, and April 1981, Greyhound handled 176 charters originating within applicants' proposed origin area which generated revenues of \$181,341.97.
5. Greyhound is protesting the application because it feels applicants will divert revenues from Greyhound which are needed to help support its regular route service.
6. Greyhound believes it is well-marketed and well represented in the community of applicants' proposed service area and that the granting of a certificate to applicants would cause a duplication of service in that area. Greyhound does not believe there is a need for any additional charter operators in the area.

Discussion

The issuance of Class "B" charter-party carrier of passenger certificates is governed by PU Code Sections 5374, 5375, and 5375.1. Among those considerations weighed by the Commission when it determines whether or not to grant a certificate is a showing by an applicant that it possesses satisfactory fitness and financial responsibility to initiate and conduct the proposed service. In addition, the applicant must show that public convenience and necessity require the proposed service and that existing carriers serving the same territory are not providing services which are satisfactory to the Commission.

We have little difficulty resolving the requirement of financial responsibility. Applicants appear to have sufficient financial resources to initiate the proposed service. However, we do have strong reservations concerning the fitness of applicants to perform charter-party operations. Neither Mr. Lee nor Mrs. Lee has any experience in the charter bus business other than their experience in the rental of their bus to travel agencies, individuals, and social clubs approximately 13 times in the past six months. They presented no evidence to indicate a public need for their proposed service. They acknowledged that Greyhound provided adequate charter bus service in the area and made no attempt to differentiate their service from Greyhound's. Mr. Lee is employed fulltime as a welder and it is applicants' intention to operate their business on a parttime basis to provide added income for their retirement. Their only affirmative showing was a desire on their part to go into the charter bus

business with the belief that they could make money doing so. However, they displayed little or no knowledge about the manner in which they would conduct their charter bus business. They admitted that the figures contained in the estimated annual results of operations in their application were pure guesswork without any underlying basis and that the guesses show no relationship to reality. We must have some evidence of need for the proposed service before a certificate of public convenience and necessity can be issued. Given the state of the record before us the essential element of need simply has not been demonstrated, and we have no choice but to deny the application. They also showed a lack of understanding of the meaning of several terms in the estimated annual results of operations.

In general, they displayed considerable naivete about the charter bus business and about how they planned to conduct their proposed charter-party business. With respect to the charging of rates, they testified that they intended to charge either on an individual fare basis or a flat rate charge, and they believe that a Class "B" charter will permit them to do this. They are obviously unaware that PU Code Section 5404 prohibits them from selling their transportation service on an individual fare basis.

Applicants further testified that what they charge per individual will depend on the length of each trip and that they will contact other bus companies to find out what the other companies are charging. Their proposal, therefore, runs counter to PU Code Section 5404. Applicants are not familiar with the meaning of a tariff. From their testimony, it is evident that applicants have made no study of or sought out information concerning charter bus business. In fact, not only are they unschooled in the business of transportation services, but, by their own testimony, they admit to having been victimized by users of their bus rental service in the short time they have been renting out their bus.

PU Code Section 1035 states that an "act of transporting...any person...where the...charge, or fare for such transportation is computed, collected, or demanded on an individual fare basis, shall be presumed to be an act of operating as a passenger stage corporation..."

Since applicants intend to sell fares on an individual fare basis or on a "flat rate charge" (whatever that means), it is unclear exactly what type of authority applicants really seek. Their intention to charge on an individual fare basis has all the indicia of a passenger stage operation while their intention to possibly charge on a flat rate charge does not come within the allowable basis of charges of either a passenger stage operation or a charter bus operation. Applicants are well-advised to give more thought and consideration to the type of transportation service they desire to conduct and the appropriate operating authority they will require. They should also thoroughly familiarize themselves with conducting such type of transportation service and the applicable code sections governing such service. ✓

Inasmuch as they have failed to make a proper showing of fitness to operate a charter-party bus service as well as any public need for such service, applicants' application will be denied. At such time as applicants feel they can make a proper showing of these required elements, either for passenger stage service or charter-party bus service, they are encouraged to reapply.

Findings of Fact

1. Applicants have the equipment and financial resources to perform the proposed service.
2. Applicants propose to charge on an individual fare basis or a flat rate charge for their proposed service.
3. Applicants' fare proposal is not that of a charter-party carrier but that of a passenger stage corporation.
4. Applicants have not demonstrated adequate fitness to conduct the type of operation for which they seek authority.
5. Applicants have not demonstrated that public convenience and necessity exist for the service they propose.

Conclusions of Law

1. Applicants' proposed basis of charges under a charter-party certificate is prohibited by PU Code Section 5401.
2. Applicants have not demonstrated sufficient fitness to conduct the type of operation for which they seek authority.
3. The application should be denied.



O R D E R

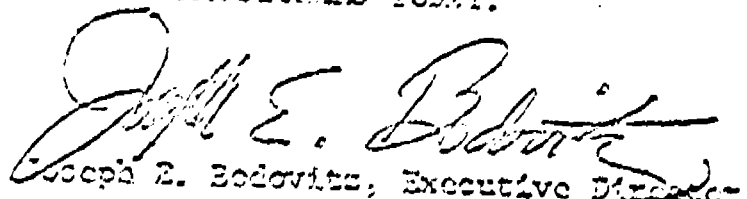
IT IS ORDERED that Application 60464 is denied.

This order becomes effective 30 days from today.

Dated JAN 19 1982, at San Francisco, California.

JOHN E. BRYSON  
President  
RICHARD D. GRAVELLE  
LEONARD M. GRIMES, JR.  
VICTOR GALVO  
PRISCILLA C. GREW  
Commissioners

I CERTIFY THAT THIS DECISION  
WAS APPROVED BY THE ABOVE  
COMMISSIONERS TODAY.

  
Joseph E. Bodovitz, Executive Director