

ORIGINAL

Decision 82 03 030 MAR 2 - 1982

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Tiffany Tour and Travel Service, )  
 )  
 Complainant, )  
 )  
 vs. )  
 )  
 The Gray Line Tours Company, )  
 )  
 Defendant. )

Case 10992  
(Filed June 1, 1981)

Jerry H. Green, Attorney at Law, for  
complainant.  
Knapp, Grossman & Marsh, by Warren N.  
Grossman, Attorney at Law, for  
defendant.  
James H. Lyons, Attorney at Law, for  
Orange Coast Sightseeing Company,  
intervenor.

O P I N I O N

Tiffany Tour and Travel Service (Tiffany) alleges that The Gray Line Tours Company (Gray Line) is violating its operating authority by publishing and distributing material which advertises direct tour service from various hotels and motels in the area surrounding the Los Angeles International Airport (LAX) area, picking up passengers at these hotels and motels, and transporting them directly to various tour attractions without first taking them to Gray Line's downtown Los Angeles terminal. Although acknowledging that Gray Line is authorized direct service to tour

attractions from the LAX area, Tiffany charges Gray Line can only do so, for operating convenience only, when it has a sufficient number of passengers to warrant such service. Tiffany alleges that since Gray Line is unable to determine in advance that it will have a sufficient number of passengers, it should be prohibited from advertising and publishing schedules which indicate direct service or from selling tickets on this basis. Tiffany seeks an order that Gray Line cease and desist this unauthorized practice.

Gray Line admits in its answer that during certain seasons of the year it performs the activity complained of by Tiffany, but denies that this activity is violative of its certificated authority. Gray Line contends Item 15 of its local passenger Tariff 24<sup>1/</sup> permits direct operations from the LAX area to tour attractions if it deems it has picked up a sufficient number of passengers and that a determination of what is sufficient is solely within Gray Line's discretion.

Following notice, this matter was consolidated for hearing with Application (A.) 60650 and was heard in Los Angeles before Administrative Law Judge William A. Turkish on October 13 and 16, 1981. Case 10992 was submitted upon the filing of briefs on November 20, 1981; A.60650 will be resolved in a separate decision.

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<sup>1/</sup> The pertinent portion of Item 15 contained in Section I on Original Page 8 of Appendix A, as authorized by the Commission in Decision (D.) 84749 dated August 5, 1975, reads as follows:

"Direct Operations: For operating convenience and not as an enlargement of any authority granted herein, The Gray Line Tours Company may, if it deems that it has picked up a sufficient number of passengers in one of the pickup areas provided in Section II herein for one of the tours authorized in Section III herein, proceed directly to the tour from the pickup area without going to its terminal."

Testifying for Tiffany was its president, Jamshid Anvaripour. Testifying for Gray Line was its Los Angeles regional manager, Robert Collegeman.

Inasmuch as Gray Line admits the activity complained of, there is no need to recite the testimony of Tiffany's witness which is mainly repetitive and corroborative of the allegations contained in the complaint.

Following is a summary of the testimony presented by Gray Line's witness:

1. Gray Line has been conducting the complained of service from April 1981 to the date of hearing.
2. The tourist industry on the west coast has approximately five or six seasons. July and August are in the No. 1 or high season; April, May, and June are considered to be in the No. 2 season; September and December are in the No. 3 season; November, January, and February are in the No. 4 season; and the remaining months are in the No. 5 or low season.
3. Gray Line advertises in its current brochures that it has a 9 o'clock departure from its airport terminal on five tours. Although Gray Line previously published a schedule listing direct service from LAX area hotels and motels to certain sightseeing attractions, it was discontinued in June 1981. Gray Line's new brochure, effective July 1, 1981, does not mention direct service from the LAX area hotels/motels although Gray Line continues to operate direct service from the LAX area hotels/motels.

4. Gray Line believes its new tour brochure, which lists departure times for its several tours from its airport terminal, coupled with information added by the selling agents at the hotels/motels, is adequate to inform the public of its direct service.
5. Although business has gone down this year as compared to a similar period the previous year, Gray Line states its direct tour operation from the LAX area is a convenience to the company and is a profitable operation.
6. A "sufficient number of passengers" is considered any number above the break-even point on any tour. However, if a particular bus was needed somewhere else at a particular time, a half busload would constitute an operating convenience. From Gray Line's historical data, it is able to estimate the average number of passengers per day for the month. Break-even on a Disneyland tour from the LAX area is eight passengers. Gray Line has a call-in system so it generally knows the number of passengers it will be carrying the evening before the day of the tour.
7. At the time direct tours were started in April 1981 from the LAX area, three buses were used to pick up passengers at the various hotels/motels and transport them to a central validation point in the LAX area. The passengers then boarded the proper bus leaving for their tour destinations. Since April, some direct tours from the LAX area were discontinued for lack of patronage.

8. The operating advantages flowing to Gray Line by running direct service from the LAX area to Disneyland are that after passengers are unloaded, the bus can be immediately placed into service in the Anaheim region. Another operating convenience results from avoiding having to bring buses and passengers from the LAX area to the very congested downtown Los Angeles terminal before going to the tour attraction.
9. An analysis of direct tour service from the LAX area (Exhibit 3) shows that for the period from April 13, 1981 through the end of August 1981 Gray Line's Tours 2, 5, and 25,<sup>2/</sup> departing at 9 a.m. for Hollywood/Beverly Hills and Hollywood/Beverly Hills and Universal Studios, respectively, show a combined bus patronage average load of 40.6 passengers. The analysis further shows that the load factor on the three 9 a.m. tours from the LAX area to Disneyland<sup>3/</sup> average 27.1 passengers. The 1 p.m. Tour 2 to Hollywood/Beverly Hills and the 11 a.m. Tour 5 to Universal Studios were discontinued in June 1981 because of an unprofitable average load factor of 10.6 and 12.0 passengers, respectively. Gray Line deems that the average load factors for Tours 2 and 25 are sufficient to operate direct service profitably on a daily basis.

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<sup>2/</sup> Tours 2, 5, and 25 passengers are combined on one bus. The half-day Hollywood/Beverly Hills tour passengers are dropped off at Farmer's Market for lunch while those going on to Universal Studios continue on to their destination. After lunch the passengers at Farmer's Market are returned to their origination point.

<sup>3/</sup> Tours 15, 17, and 18 passengers for Disneyland likewise are combined on one bus.

10. An empty or near empty bus seen heading south on the San Diego Freeway is not necessarily going to Disneyland since it could well be a bus deadheading back to the Orange County area that had originated an airport transfer to LAX. The company also operates tours from the Anaheim area to the Los Angeles area, and so there is a need at times for additional buses to be in the Anaheim area.
11. When there is a need for additional equipment in the Anaheim area, it is less expensive to transport as few as five or six passengers than deadheading a bus from the downtown Los Angeles terminal. Gray Line does not have a large enough fleet of buses to permanently base in Anaheim. Therefore, a big part of Gray Line's operation is use by the two regions of the same equipment and drivers. Prior to April and the direct service to Disneyland from LAX hotels/motels, it was necessary to deadhead buses from Los Angeles to Anaheim.

Discussion

Since Gray Line admits direct service from the LAX area to various tour attractions, the question we are asked to resolve is whether Gray Line's LAX area direct service operation to various tour attractions is in violation of its operating authority.

The language contained in the present certificate of Gray Line originally appeared in D.81036 dated February 14, 1973 and was again restated generally with minor changes in D.84749 dated August 5, 1975.

Section I of Appendix A of D.84749 contains general authorizations granted to Gray Line. Item 15 of Section I reads in part as follows:

"Item  
No. SECTION I, General Authorizations--Contd.  
15 Direct Operations: For operating convenience and not as an enlargement of any authority granted herein, The Gray Line Tours Company may, if it deems that it has picked up a sufficient number of passengers in one of the pickup areas provided in Section II of this certificate for one of the tours authorized in Section III herein, proceed directly to the tour from the pickup area without going to its terminal. . . ."

\* \* \*

"c. Items Nos. 430, 440, 445, and 450 (Tours 22, 23, 24, and 25) for passengers originating at Los Angeles International Airport to Disneyland and/or Knott's Berry Farm."

Item 300 in Section III of Appendix A of D.84749 reads as follows:

"Item 300 Except as provided in Item 15, the specific tour authorizations, as designated herein, shall be operated from The Gray Line Tours Company Los Angeles Terminal for passengers picked up in the Nonexclusive Pickup Territories as set forth in Section II of this certificate."

Tiffany, in its brief, contends that it does not object to Gray Line's proceeding directly to tour attractions from pickup areas in the LAX area without going to the downtown Los Angeles terminal first. Tiffany does object, however, to Gray Line's deciding to proceed directly in advance of pickup, selling tickets on this basis, and telling its sales agent that the tour will be a direct tour. Tiffany points out that the language in Item 15 is stated in the past tense; that is, direct service is permitted only after Gray Line deems that it has picked up a sufficient

number of passengers and not before. Tiffany then contends that the "operating convenience" referred to in Item 15, together with the term "sufficient number of passengers" in that same paragraph means that the downtown terminal can be bypassed only when Gray Line has picked up a full busload of passengers at the pickup points, since obviously there would be no purpose in going downtown as the bus could not pick up anymore passengers.

Intervenor Orange Coast Sightseeing Company (Orange Coast) characterizes the testimony of Gray Line's witness as advancing the position that Item 15 of its certificate gives Gray Line absolute discretion to determine that if it needs to relocate a bus from Point A in its pickup territory to Point B, any passenger at all that it may carry (even one) would be a "sufficient number of passengers" within the meaning of Item 15. Orange Coast contends this is not what the Commission intended when it authorized Item 15 in D.81036. Orange Coast relies specifically on Finding of Fact 2<sup>4/</sup> of that decision in support of its contention that the economic justification referred to in Finding of Fact 2 depends entirely upon "a sufficient number of customers" as the basis for justifying direct service and not upon the movement of equipment or anything else.

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4/ Finding of Fact 2 of D.81036 reads as follows:

"2. Many sightseeing operators hold authority for and conduct more than one tour. The customers who utilize the pickup service may desire to take different tours. The customers who are collected in the pickup service are taken to a terminal or staging area where they are placed on the vehicle which takes them on the tour for which they have purchased a ticket. If there are a sufficient number of customers at one or more pickup points to economically justify a direct operation, the tour operator may, on occasion, begin a tour at the pickup point rather than take the customers to its terminal or other staging area. Narration is provided on the sightseeing tour but not during the pickup service."



Orange Coast also claims that Gray Line's institution of regularly scheduled direct service from the LAX area to Disneyland and Universal Studios is in direct conflict with Conclusion of Law 19<sup>5/</sup> contained in D.81036, since Tiffany has operating authority which permits it to conduct direct service from the LAX area to Disneyland and Universal Studios. Finally, Orange Coast contends that Gray Line's direct service from the LAX area is an enlargement of its operating authority and that Item 15 expressly prohibits this enlargement.

The language in Item 15, "if it deems that it has picked up a sufficient number of passengers in one of the pickup areas..." would seem to contemplate a determination which can only be made after the passengers have been picked up. However, we did not intend the language to be construed so literally. Gray Line has conducted sightseeing tours in the Los Angeles area for many years and is in a position to have data at its disposal to project load factors from the LAX area to the various tour attractions. This fact coupled with Gray Line's equipment use requirements and the geographical relationship between Gray Line's downtown terminal, the pickup area, and the tour attraction are all factors which should be considered when determining "operating convenience" and should also permit Gray Line to determine, in advance, what constitutes a "sufficient number of passengers". Thus, while Tiffany is correct in one context, we do not view it from the same context; nor do we agree with Tiffany's interpretation of

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5/ Conclusion of Law 19 of D.81036 reads as follows:

"19. Gray Line should be authorized additional nonexclusive pickup authority in the Los Angeles area; provided, however, that no direct operating authority should be authorized from that area in a territory of an existing passenger stage corporation."

the language in Item 15 to the effect that Gray Line may conduct direct service from the LAX area only when it has completely filled its buses. This was not our intention when we authorized Item 15 and it is not our interpretation of Item 15 now.

The evidence shows that the special tour schedule published and distributed by Gray Line, which advertised tours directly from the LAX area hotels/motels to five tour attractions, was discontinued by Gray Line in the latter part of June 1981 and is no longer distributed. Effective July 1, 1981 Gray Line published a new brochure (Exhibit 2) describing all of its tours operated from the Los Angeles area. Although this brochure does not emphasize direct tours from the LAX area hotels/motels, it does show departure from Gray Line's airport terminal for 6 of the 24 tours described in the brochure. All 24 tours show departure from the downtown Los Angeles terminal as well. Three of the six tours from the airport terminal are to Disneyland, while the other three tours are to Hollywood/Beverly Hills, Universal Studios, and combination Hollywood/Universal Studios. The "Gray Line airport terminal" appears to be the location where Gray Line has been validating the passenger tickets of those passengers being shuttled from the various hotels/motels to the validation point and there embarking on the bus to their selected tour.

When we authorized Item 15, it was our intention to give Gray Line considerable flexibility in its tour operations so long as it did not enlarge any of its granted authority. For this reason, we granted Gray Line the discretion to determine when there is sufficient patronage to justify, in terms of operating convenience, a direct tour from any of its authorized nonexclusive pickup territories.

In granting this discretionary power to Gray Line, we were mindful of the convenience to passengers in not having to be transported first to the downtown terminal before continuing on to their tour destination as well as to the operating convenience of Gray Line. Operating convenience, as we mean that term, can include consideration of the optimum use of Gray Line's equipment, congestion at the downtown terminal, the number of passengers for the various tours gathered in the nonexclusive pickup areas, and the geographical relationship of the pickup area to the downtown terminal and the tour destination.

If Gray Line proceeds from a nonexclusive pickup area directly to the designated tour attraction authorized in its certificate, without having to bring the passengers to the downtown Los Angeles terminal first, it is not an enlargement of its granted authority as contended by Orange Coast, since Item 15 expressly grants Gray Line the discretion of determining when it has a sufficient number of passengers to proceed directly. The words "not as an enlargement of any authority granted herein, ..." relate to the addition of a tour attraction along the direct service route between the pickup areas and the authorized tour destination. The addition of such a nonauthorized tour attraction would constitute an enlargement of authority. There was no evidence that this has occurred.

The determination of what constitutes "a sufficient number of passengers" is not measured by any objective criteria. It is measured by the various considerations which go into determining if the direct tour will be an "operating convenience" for Gray Line. We recognize that by granting Gray Line this flexibility, it poses the danger of indirectly permitting predatory practices by Gray Line in operating a direct tour with passengers so few in number that it never reaches the break-even point.

However, the fact that Gray Line discontinued three direct tours from the LAX area after approximately 70 days of operation because the load factors on these tours were too low and it was unprofitable to operate dispels any indication of predatory tactics by Gray Line. In addition, the evidence (Exhibit 3) shows an average load factor of 40.6 passengers on the three tours (combined on one bus) going directly to Hollywood/Beverly Hills and Universal Studios between April 13, 1981, when direct service was begun by Gray Line from the LAX pickup area, through August 31, 1981. The three tours which Gray Line has been operating from the LAX area to Disneyland (combined on one bus) show an average daily load of 27.1 passengers. According to Gray Line these tours are profitable.

Since the current tours operated by Gray Line direct from the LAX area are deemed by Gray Line to be convenient for both passengers and Gray Line, it makes no sense to prohibit Gray Line from advertising direct service from the LAX area while at the same time permitting the practice.

Answering the argument of Orange Coast with respect to Gray Line's direct tour service from the LAX area being violative of Finding of Fact 2 and Conclusion of Law 19 in D.81036, we point out that findings of fact, in our decisions, stem from the evidence adduced during a hearing with respect to the specific issues raised in the case being tried. They do not constitute orders of the Commission. Furthermore, it has come to be established in the rules of construction of statutes

that general terms do not control special terms and that special words derogate or take away from the meaning of general ones. By analogy, the same holds true here. Finding of Fact 2 was a general finding from the evidence regarding the practice of many sightseeing bus operators, while Finding of Fact 24<sup>6/</sup> finds specifically that authority should be granted to Gray Line to proceed on authorized tours directly from the pickup areas. This finding is the basis for Item 15 contained in the appendix of D.81036.

Conclusion of Law 19 of D.81036 cited by Orange Coast as a prohibition against direct tour services by Gray Line from the LAX area resulted from Gray Line's seeking and being authorized expanded pickup authority in the Los Angeles area. This limitation was imposed because of Public Utilities (PU) Code Section 1032 problems and problems concerning the impact this authority would have on other passenger stage corporations, namely, Airport Coach Service, a protestant which had passenger stage authority to serve between LAX and the Anaheim-Buena Park areas. At the time it was feared that Gray Line, if given the authority it sought, would be competing with Airport Coach Service and some division of traffic would occur causing an adverse impact on Airport Coach Service, which provided needed regular transportation service. We did not want to eliminate what little competition existed at the time.

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6/ Finding of Fact 24 in D.81036 provides as follows:

"24. Unless the public interest requires otherwise or a restriction required, necessary or desirable for the protection of other passenger stage corporations, Gray Line should be granted authority to proceed on authorized tours directly from pickup areas when it determines there are a sufficient number of persons on a vehicle to operate the tour directly without proceeding to its terminal."

In the years since D.81036, our views concerning sightseeing operations and competition within that field have changed. For instance, in D.90154 and D.90155 issued on April 10, 1979 in A.56580 and A.57763, respectively, we discussed the threshold issue in any passenger stage or sightseeing bus application, namely, whether or not the public convenience and necessity require the service sought to be authorized by the particular application (see PU Code Section 1031). If public convenience and necessity were demonstrated, a certificate could be issued provided that in those instances where certificated passenger stage corporations were already serving the territory, the certificate could be issued if existing certificate holders were not providing service to the satisfaction of the Commission (see PU Code Section 1032). Although this case is a complaint matter dealing with the direct tour service operated by Gray Line from its nonexclusive authorized Los Angeles pickup area rather than an application for a certificate, as were A.56580 and A.57763, our views, as expressed in D.90154 and D.90155, are relevant in disposing of the limitation contained in Conclusion of Law 19 in D.81036.

Prior to D.90154 and D.90155, the traditional satisfactory service test of PU Code Section 1032, as applied to existing carriers, had been based on the relatively narrow analysis of such factors as route patterns, frequency of service, adequacy of equipment, and the fitness of the applicant. We had never previously addressed the ultimate question of whether monopoly service is of itself unsatisfactory service to the public which we now believe is a factor of considerable significance. In both D.90154 and D.90155 we held that sightseeing is essentially a luxury service, recreationally oriented

and essentially different from the conventional point-to-point public transportation service, and less imbued with that essentiality to the public welfare which is inherent in the underlying concept of public convenience and necessity. Accordingly, we held that it is a service less entitled to the strict territorial protectionism from competition and competitive factors which is necessarily accorded the "natural" utility monopolies such as electric, gas, or telephone utilities. In D.90155 we stated:

"This nation's antitrust laws and policies are premised on the understanding that competitive service generally results in a superior overall level of service to the public. Competition tends to bring out the highest degree of effort and imagination in a business endeavor to the benefit of the public. In the area of sightseeing bus operations, competition will have a direct bearing on the quality of overall treatment afforded passengers, rates, scheduling, equipment condition, and operational innovation generally. California needs an influx of vigorous, innovative thinking and application if publicly acceptable alternatives to private auto-use are to fully develop. We state now that competition in the area of sightseeing bus operations is a most desirable goal."

Again in both D.90154 and D.90155 we stated:

"In the sightseeing field a policy of fostering limited competition under regulation would have a beneficial effect for the public interest in that it would tend to lead to development of a territory and improved methods, forms or routes of transportation, and would best meet special requirements of segments of the general public. Furthermore, it would tend to promote good service and to hold down fares. We believe that the competition of ideas and results is healthy, and accordingly we will look to the circumstances of each application in the sightseeing field to

determine whether or not the public interest requires certification of that application. The granting or withholding of a certificate of public convenience and necessity is a legislative act which rests in the discretion of this Commission. The Commission may grant a number of certificates covering the same route or routes."

More recently in D.93726 dated November 13, 1981 we found that sightseeing-tour operation is not passenger stage service and that "the test of determining routes and schedules before service is authorized, and approval of rate levels are activities we should no longer engage in with respect to tour or sightseeing service."

In view of our present policy, but primarily since we granted Gray Line, in its certificate, the discretion of determining when, for operating convenience, it had a sufficient number of passengers to warrant direct tour service from the LAX area pickup points, Gray Line should be permitted to continue doing what its certificate permits it to do and the complaint should be denied.

Findings of Fact

1. Tiffany holds a certificate of public convenience and necessity to conduct direct sightseeing bus tour operations from pickup points in the LAX area to various tour attractions.
2. Gray Line holds a certificate of public convenience and necessity to conduct sightseeing bus tour operations with authority to make passenger pickups in the nonexclusive LAX area.



3. Item 15 of Gray Line's certificate permits Gray Line, for operating convenience, to proceed directly to tour attractions from its nonexclusive pickup areas in the LAX area when it has determined it has picked up a sufficient number of passengers.

4. Factors which go into determining "operating convenience" include passenger convenience, economic use of equipment, geographical relationship between the pickup area, the downtown Los Angeles terminal, and the tour attraction, and the passenger load factor/compensatory revenue relationship.

5. Gray Line has been conducting direct tour service from the LAX area since April 1981.

6. Gray Line's average daily passenger load factor on its Tours 15, 17, and 18 to Disneyland between April 13, 1981 and August 31, 1981 has been 27.1 passengers and these tours are profitable for Gray Line. Its average daily passenger load factor on its Hollywood/Beverly Hills and Universal Studios tour for the same period has been 40.6 passengers.

7. Gray Line discontinued two direct tours to Hollywood/Beverly Hills and Universal Studios from the LAX area because the load factors were not profitable.

8. Gray Line's direct tour service from the LAX area pickup points to tour attractions does not constitute an enlargement of its operating authority.

Conclusions of Law

1. Gray Line is not operating in violation of the authority contained in its certificate.

2. The complaint should be denied.

O R D E R

IT IS ORDERED that the complaint is denied.

This order becomes effective 30 days from today.

Dated MAR 2 1982, at San Francisco, California.

JOHN E. BRYSON

President

RICHARD D. GRAVELLE

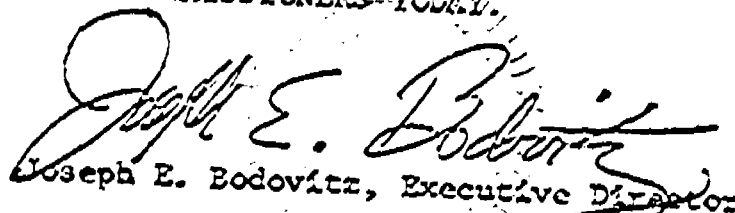
LEONARD M. GRIMES, JR.

VICTOR CALVO

PRISCILLA C. GREW

Commissioners

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

  
Joseph E. Bodovitz, Executive Director