

ORIGINAL

Decision 82-07-057

JUL 7 - 1982

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 MARK S. NESS and THOMAS D. HAMILTON,)
 doing business as SAN DIEGO EXPRESS,)
 for certificate of public convenience)
 and necessity to operate passenger,)
 baggage and express service between)
 El Centro, Ca. and Lindberg [sic])
 Field, and continued service between)
 Lindberg Field and the San Diego)
 area.)

Application 82-01-52
 (January 26, 1982)

INTERIM OPINION

Mark S. Ness and Thomas D. Hamilton, doing business as San Diego Express, seek the issuance of a certificate of public convenience and necessity (Public Utilities (PU) Code §§ 1031 and 1032) as a passenger stage. They propose to transport passengers and baggage between El Centro and Lindbergh Field (SAN) in San Diego and also to undetermined points in the City of San Diego. They own a 20-passenger van. They propose to offer a "scheduled on-call" service on a seven-day a week basis. The original application proposed a schedule with two westbound and two eastbound trips a day, six days per week. Saturday service was to be on call only.

The basic fare was to be \$20 per passenger to SAN with an extra \$5 charge for downtown service. Charges were proposed for excess baggage, and parcel express service was to be offered. Applicants' predicted results of operations, assuming a 50% load factor and approximately 150,000 revenue miles including charter would provide enough revenue for salaries of \$48,000 and operating income of \$56,000 per year.

The principal asset of both partners is \$128,000 worth of stock in a gold and silver mining corporation. Their claimed net assets are approximately \$170,000 including \$17,000 in cash. These financial statements do not include the single bus they plan to operate.

Greyhound Lines, Inc. protested, claiming that it operates schedules "between El Centro, CA and the San Diego, CA area, serving various intermediate points." It argued that "the territory being sought by Applicant [sic] is being adequately served by the existing carrier(s) and should be denied."

The parties have made an agreement; applicants will restrict their proposed service in exchange for which Greyhound has withdrawn its protest. Specifically, applicants will not provide any service to or from downtown San Diego; also, they will not pick up or deliver passengers in any community other than El Centro. Moreover, applicants will operate only a single 20-passenger bus.

Discussion

This application is primarily one for a ground connection service between El Centro and the nearest major metropolitan air terminal, SAN. Applicants by agreeing not to serve between downtown San Diego and either El Centro or SAN have eliminated any direct competition between their proposed operation and the established carrier's routes.

There is clearly a public need for the service. We question, however, whether there is any justification, public or private, for the stipulated limitation on the number and size of vehicles.

Unless there is evidence that the traffic will never support more frequent¹ operations than a single vehicle can provide or of some other public need for such a limitation, the agreement should be found to be adverse to the public interest, and not recognized. Furthermore, unless there is evidence that Greyhound carries significant numbers of persons having a prior or subsequent

¹ The round trip, El Centro to SAN, is estimated to take approximately four hours, even after or before rush hour.

air connection or that it plans to start its own airport connections service, it is questionable whether it has any private standing to question the size or numbers of vehicles used in airport service. Both applicants and Greyhound have been requested to supply additional information bearing on this question, among others. Applicants have furnished only part of the information requested. Greyhound has furnished none.

The traveling public should not have to wait for a more complete record. We can, without unacceptable risk to any public interest, authorize applicants on an interim basis to commence a one-bus service. We also note that the exact details of the agreement between the parties are not in the record, and the information supplied by them is ambiguous. We will, therefore, direct the parties to reduce their agreement to writing and to submit it so that the Commission can decide whether or not it is in the public interest.

Findings of Fact

1. Public convenience and necessity require that scheduled or on-call bus service be instituted without further delay between El Centro and SAN.
2. There has been no showing that Greyhound has a legitimate private interest in the number or size of vehicles operating to provide airport ground connections between El Centro and SAN.
3. There has been no showing that a certificate limitation on number or size of buses employed to provide airport ground connections between El Centro and SAN is required in the public interest.
4. Greyhound provides regular scheduled bus service between downtown San Diego and El Centro. There is no express service on this route and none of the buses discharge or pick up passengers at SAN. The record will not support a finding that Greyhound's service is satisfactory to the Commission or that it serves the territory applicant proposes to serve.

Conclusions of Law

1. Applicants should be authorized to provide direct El Centro-SAN service limited to a single 20-passenger bus.
2. The Commission should on its own motion determine whether it should condition applicant's certificate with respect to size or number of buses operated.

INTERIM ORDER

IT IS ORDERED that:

1. Until further order of the Commission, Mark S. Ness and Thomas D. Hamilton are authorized, using a single bus of carrying capacity of no more than 20 passengers, to operate as a passenger stage as defined in PU Code § 226 between El Centro and Lindbergh Field in San Diego as set forth in Appendix A to transport persons, baggage, and express.
2. Applicants and Greyhound shall reduce any stipulation or agreement between them to writing and submit it to the Commission, for approval or disapproval, within 30 days after the effective date of this order.
3. Applicants shall:
 - a. File tariffs and timetables within 10 days after the effective date of this order.
 - b. Commence scheduled service within 10 days after such filing with 5 days' notice to the Commission.
 - c. Comply with General Orders Series 79, 98, 101, and 104, and the California Highway Patrol safety rules.

- d. Maintain accounting records in conformity with the Uniform System of Accounts.

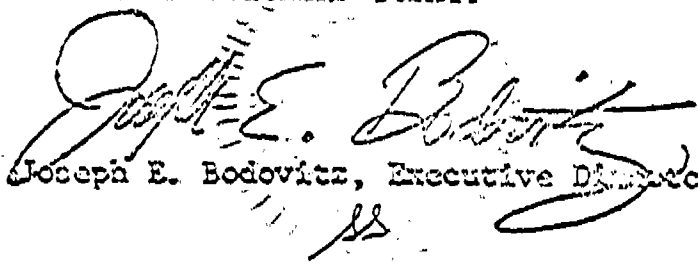
This order is effective today.

Dated JUL 7 1982, at San Francisco, California.

RICHARD D. GRAVELLE
LEONARD M. GRIMES, JR.
VICTOR CALVO
PRISCILLA C. GREW
Commissioners

Commissioner John E. Bryson,
being necessarily absent, did
not participate.

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


Joseph E. Bodovitz, Executive Director

T/ri/iy

Appendix PSC-1213

MARK S. NESS AND
THOMAS D. HAMILTON

Original Title Page

CERTIFICATE
OF
PUBLIC CONVENIENCE AND NECESSITY
AS A PASSENGER STAGE CORPORATION
PSC-1213

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

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 82 07 057, dated JUL 7 - 1982,
of the Public Utilities Commission of the State of California, in
Application 82-01-52.

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

Mark S. Ness and Thomas D. Hamilton (applicants) doing business as San Diego Express by the certificate of public convenience and necessity granted by the decision noted in the margin, are authorized as a passenger stage corporation to transport express (including newspapers) weighing 100 pounds or less, on passenger-carrying vehicles, between all points and places as stated, passengers and their baggage on an "on-call" and scheduled basis between the City of El Centro and the San Diego International Airport-Lindbergh Field (SAN) in San Diego over and along the most appropriate route, subject, however, to the authority of this Commission to change or modify the route at any time and subject to the following provisions:

- (a) The term "on-call" as used refers to service which is authorized to be rendered dependent on the demands of passengers. The tariffs and timetables shall show the conditions under which each authorized on-call service will be rendered.
- (b) Motor vehicles may be turned at termini and intermediate points, in either direction, at the intersection of roads or by operating around an area contiguous to such intersections, in accordance with local traffic regulations.
- (c) When route descriptions are given in one direction, they apply to operation in either direction unless otherwise indicated.
- (d) No passenger shall be transported except those having point of origin or destination at SAN or the personnel employed at that airport.
- (e) Applicants shall be limited to the operation of one bus carrying no more than 20 passengers.

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Appendix PSC-1213

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SECTION II. ROUTE DESCRIPTIONS.

Route

Between San Diego International Airport-Lindbergh Field, on the one hand, and El Centro, on the other hand.

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