

ORIGINAL

Decision 82 07 103 JUL 21 1982

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application )  
of THE BUS THAT GOES IN CIRCLES, )  
INCORPORATED, for a certificate )  
to operate as a Class "B" charter- )  
party carrier of passengers, )  
Escondido. )

Application 61105  
(Filed December 4, 1981)

Thomas W. Evans, for applicant.  
Howard L. Everidge, Attorney at Law,  
for Greyhound Lines, Inc., protestant.  
Melville J. Douglas, for Vista Charter  
Service, Inc., interested party.

O P I N I O N

Applicant The Bus That Goes In Circles, Incorporated seeks authority to operate as a Class B charter-party carrier of passengers from its headquarters in Escondido, California. Applicant proposes to provide the charter service with two leased 1966 GMC 39-passenger buses, two applicant-owned 1965 GMC 45-passenger buses, one 1966 applicant-owned GMC 41-passenger bus, and one 1966 leased GMC 41-passenger bus. The application lists the following financial institutions familiar with applicant's financial position: First State Bank of Southern California, Paramount, California, and San Diego Trust & Savings Bank, San Diego, California.

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

Following notice, a public hearing was held in Los Angeles on March 5, 1982 before Administrative Law Judge William A. Turkish under Public Utilities (PU) Code Section 5375.1, and the matter was submitted upon the filing of concurrent briefs due on or before April 2, 1982. A brief was filed by applicant dated March 31, 1982. No briefs were received from protestant and the matter is submitted.

Lissa Laptalainen, a wholesale tour operator employed by VN Tours, and Stephen R. Weathers, vice president of applicant, testified on behalf of applicant. Robert O. Burlingame, district manager for Greyhound in Los Angeles, testified on behalf of protestant.

The testimony of witness Laptalainen is essentially as follows:

1. VN Tours puts together various tour packages which include rail transportation to San Diego, hotels, and various attractions in and around San Diego. Its work is done through retail travel agents and Amtrak rather than directly with the public. VN Tours has had a business relationship with applicant for approximately four and one-half years and has used the services of applicant within the City of San Diego frequently within that period of time. VN Tours has had a very satisfactory relationship with applicant during that time.

2. In August 1981 VN Tours called applicant to see if it could take a charter group to the Wild Animal Park from Oceanside but because applicant did not have charter-party authority by this Commission, VN Tours was referred to another bus line. VN Tours was not satisfied with the bus line it used because of the fact that the bus company has only school buses available for use. VN Tours expects to repeat that particular tour in March 1982 and since it has been happy with the services of applicant in the past, VN Tours wants to use applicant again on such tours if possible. VN Tours expects additional charter service during 1982, especially during the summer months.
3. Under cross-examination the witness testified that she has been in the travel business only since July 1981 and prior to that had no experience in the tour business. She also testified that she did not have any knowledge of Greyhound's charter service nor did she investigate the availability of any other bus service for the August 1981 trip, for which she called applicant. In 1981 the witness estimated that her firm arranged approximately 300 to 400 tours, the majority of which (97%) were within the City of San Diego.
4. The witness admitted that she did not know very much about Greyhound charter services other than that it has such service.

The testimony of Stephen Weather, vice president of applicant, is essentially as follows:

1. Applicant holds a certificate of public convenience and necessity as a passenger stage corporation and began operations under that certificate on January 1, 1982. Applicant has been in the bus business for five years providing continuous regular route service within the City of San Diego. In addition, applicant, at one time, held an auto-for-hire permit issued by the City of San Diego which allowed it to operate sightseeing transportation service within the city, as well as charter service within the city limits of the City of San Diego. As part of its charter business, applicant provided charter service to the San Diego Convention and Business Bureau by conducting special tours for people employed within the travel industry on so-called familiarization tours.
2. As a result of a limitation restricting its charter business within the city limits of the City of San Diego, applicant missed several familiarization tours because of its inability to visit Rancho La Costa in north San Diego County, from visiting the Wild Animal Park, the Hotel Del Coronado in the City of Coronado, and Tijuana on the Mexican border. Furthermore, as a result of being granted a passenger stage certificate by the Commission, the auto-for-hire permit issued by the City of San Diego became invalid when applicant became a certificated carrier. As a result, it put applicant out of the familiarization tour business with the exception of familiarization tours limited to sightseeing transportation between major attractions in San Diego, Los Angeles, and Anaheim.

3. Applicant has the San Diego franchise for American Sightseeing International which is an international organization that represents 50 of the world's largest cities and provides applicant with a named brand identification enabling it to compete more effectively with other nationally known transportation sightseeing organizations. The franchise provides applicant with telex services in New York City, business referrals, publication of an international tariff, and business referrals from other American Sightseeing members. As a result of this affiliation, it is very likely that applicant will receive inquiries and orders for charters through the American Sightseeing organization. Since travel wholesalers and travel retailers prefer to do business with one company, applicant would be at a disadvantage in accepting some business but turning down charter business because of its lack of operating authority. Applicant proposes to have the home terminal of its requested charter service in the City of Escondido on a daily basis. Applicant also intends to domicile bus equipment in the Cities of San Diego and Oceanside. In so doing, applicant will not have to deadhead vehicles in the event of charter originations in those locations. Applicant carries \$10 million in liability insurance.
4. In the past five years applicant has received approximately 400 calls from different sources for charter service.
5. Within the proposed service area of Escondido, there are approximately 13 or 14 privately operated charter bus companies. Several of these charter companies are brand new, continuing to add buses every month, and they continue to keep them running and filled. Based on this, it is felt that there is need for additional charter service in the area.

The testimony of Robert Burlingame, district manager for Greyhound, is essentially as follows:

1. Greyhound is a common carrier serving passengers on a regular route authority and, in addition, provides charter service and package express. Under Greyhound's Class A certificate, it is authorized to pick up and discharge passengers at any point in California.
2. The total number of Greyhound intercity buses licensed in California is 1,834. Of this amount, San Diego is an established equipment point for 20 buses without authority from car control to adjust. On weekends that number is 15 because Greyhound uses a larger number of its buses to handle its regular route business. The standard features of Greyhound's coach class over-the-road buses are the convenience of a restroom, reclining seats, public address systems, and large picture windows.
3. Among Greyhound's advertising is a brochure describing Greyhound's charter service (Exhibit 14). It is available to potential charter groups and is an item that is handed out for solicitation of charter groups as well as a mailing piece. Greyhound makes other periodic direct mailings to senior citizen groups, church and school groups, national TV, radio, newspaper advertising, and yellow page advertising to advertise its charter service.
4. Greyhound conducted 16 charter bus operations in the month of October 1981 from applicant's proposed origination area. Two charter trips originated in Escondido, one in Mission Bay, one in National City, and the remainder originated in San Diego. Greyhound believes that there would be a diversion of sales if applicant is granted the authority it seeks. Charter revenue is essential to

Greyhound to help support the regular route authority that it operates because certain of its regular routes are operated at a loss. Greyhound does not believe there is a need for additional charter companies in that area.

Upon cross-examination Greyhound's witness testified that on occasion Greyhound does turn down charters for reasons of capacity.

Discussion

Based upon its past experience as a passenger stage corporation, applicant has demonstrated operational and financial fitness to adequately conduct the proposed service.

In the past we have given consideration to relatively few factors in determining whether the service of existing carriers was satisfactory in charter bus certificate applications. We considered only the adequacy of the service, adequacy of the equipment, and the reasonableness of the rates. This had the effect of supporting monopolistic service in the field of passenger bus service.

Beginning in 1979 we closely examined the question of whether monopoly service is of itself unsatisfactory service to the public, and we observed that this nation's antitrust laws and policies are premised on the understanding that competitive service generally results in a superior level of service to the public. In Decision (D.) 90154 issued April 10, 1979 we pointed out that competition tends to bring out the highest degree of effort and imagination in a business endeavor to the benefit of the public. Public convenience and necessity, broadly speaking, are synonymous with the public interest. After weighing the advantages and disadvantages of competitive and monopolistic service in terms of overall benefit to the public, we have

concluded that competition stimulates efforts of competitors to excel and that this accrues to the benefit of the general public. For those reasons we adopted a policy which gives precedence to the basic regulatory concept of public convenience and necessity encompassed in PU Code Section 1031 and concluded that we would interpret PU Code Section 1032 as being of secondary importance in certificate matters. Although PU Code Sections 1031 and 1032 govern passenger stage corporation certificate applications, our discussion is equally applicable to corresponding PU Code Sections 5375 and 5375.1 which apply to charter-party carrier of passengers certificate applications.

In D.91206 issued January 8, 1980 we stated that competition in the area of charter-party bus operations is a desirable goal and that a policy of limited competition under regulation would have a beneficial effect for the public interest. We also stated that we would look to the circumstances of each application to determine whether public interest requires granting the requested authorization since the granting or withholding of charter-party permits was a legislative act resting within our jurisdiction.

In this proceeding applicant is already operating under a certificate of public convenience and necessity issued under PU Code Section 1031. It operates one round-trip passenger stage bus between Coronado and Los Angeles daily. It has approximately six buses which are idle for various periods of time, and it would be unreasonable to deny applicant the opportunity to use its existing equipment to the maximum possible during those idle periods to offer service which has been requested of



applicant by potential customers, according to the testimony of applicant's witnesses. On occasion, Greyhound has turned down requests for charter service due to inability to meet demand. Consequently, we find that Greyhound's service is not satisfactory or adequate within the meaning of PU Code Section 5371.5.

Findings of Fact

1. Applicant holds authority from this Commission to operate as a passenger stage corporation between the Cities of Coronado, San Diego, La Jolla, Anaheim, and Los Angeles.

2. Applicant proposes to provide service as a charter-party carrier of passengers from its terminal in Escondido, California.

3. Applicant has the ability, experience, and financial resources to perform the proposed service.

4. Public convenience and necessity require that the service proposed by applicant be established.

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

6. Competition between applicant and other certificated charter-party carriers, to the extent that it will exist, will have a beneficial effect for the public interest in that it will lead to better service and promote lower fares.

7. On some occasions Greyhound turns down requests for charter service because it cannot serve all requests with its equipment; its service is not satisfactory or adequate. ✓

Conclusion of Law

Public convenience and necessity have been demonstrated and a certificate should be granted; given the public need for the proposed service the following order should be effective today.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity, to be renewed each year, is granted to The Bus That Goes In Circles authorizing it to operate as a Class B charter-party carrier of passengers, as defined in PU Code Section 5383, from a service area with a radius of 40 air miles from applicant's home terminal in Escondido, California.

2. The Passenger Operations Branch will issue the annual renewable certificate on Form PE-695, as authorized by Resolution PE-303, when it receives California Highway Patrol clearances and evidence of liability protection in compliance with General Order Series 115.

3. In providing service under the certificate, applicant shall comply with General Orders Series 98 and 115 and the California Highway Patrol safety rules.

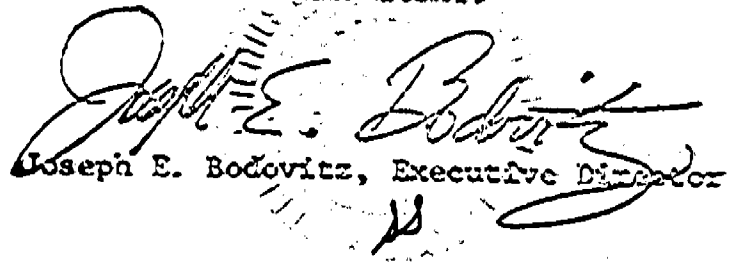
This order is effective today.

Dated JUL 21 1982, at San Francisco, California.

JOHN E. BRYSON  
President  
RICHARD D. GRAVELLE  
VICTOR CALVO  
PRISCILLA C. CREW  
Commissioners

Commissioner Leonard M. Grimes, Jr.,  
being necessarily absent, did not  
participate.

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

  
Joseph E. Bođovitz, Executive Director