

Decision 82 08 021 AUG 4 - 1982

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application )  
of J. Mark Lavelle, dba Dolphin )  
Tours, to modify Decisions 89731 )  
and 90270, pertaining to the )  
restriction of language on the )  
decisions in granting the )  
certificate, San Francisco, et )  
al. )

Application 60582  
(Filed May 20, 1981)

J. Mark Lavelle, for himself, applicant.  
Malcolm Gissen, Attorney at Law, for The  
Gray Line, Inc; Richard Kline, for  
Express Tours; Howard L. Everidge,  
Attorney at Law, for California Parlor  
Car Tours; and Daniel J. Custer,  
Attorney at Law, for O'Connor Limousine;  
protestants.

FINAL OPINION

In this application J. Mark Lavelle, doing business as Dolphin Tours, seeks to amend his certificate of public convenience and necessity authorizing operations as a passenger stage corporation in providing sightseeing service between points in northern California as set forth in Appendix A to Decision (D.) 89731, as amended by D.90270. Applicant requests elimination of the restriction that "all tours shall be conducted in the Japanese language only." In D.93471 dated August 18, 1981, as amended by D.93770, the Commission granted applicant interim authorization to conduct operations without having to abide by the subject restriction. The application was protested by The Gray Line, Inc.

(Gray Line), Express Tours, California Parlor Car Tours (Parlor Car), and O'Connor Limousine (O'Connor). A hearing was held on the application before Administrative Law Judge Pilling on September 23 and November 3, 4, and 5, 1981.

Applicant's sightseeing tour operation, which comprises 17 different tour routes, was set up primarily to accommodate tourists from Japan coming to the San Francisco Bay Area. However, applicant has had difficulty in penetrating, to any great extent, the Japanese tourist market, estimated to be 300,000 persons yearly. The witness for applicant explained that most Japanese tour groups are tightly controlled by the Japanese tour agency which arranged the tour. Many of these foreign tour agencies operate their own sightseeing and tour buses in the San Francisco Bay Area even though they do not possess a passenger stage certificate from the Commission. The foreign tour agencies attempt to steer their clients into taking their agencies' buses and have thwarted, in the main, applicant's attempts to reach the individuals in these tour groups to promote applicant's service. Consequently, applicant has not been able to generate a sufficient number of Japanese-speaking passengers to make his operation profitable. Between March 1979 and February 1980, applicant ran 783 tours which handled a total of 3,785 passengers, an average of 4.8 passengers per trip. During the next 12 months applicant operated 279 tours which handled 2,114 passengers, an average of 7.6 passengers per tour. For the first three calendar months applicant had interim authority to conduct tours in any language and handled 4,498 persons.

Applicant complains that because of the Japanese language restriction in his certificate, his guides experience extreme difficulty in explaining why they cannot freely narrate in English and/or other languages as well as in Japanese along the route when

the buses are moving but can narrate in English when the people are off the bus. Some people who speak only the English language take the tours not knowing that the tour will be conducted only in the Japanese language and are quite miffed in having to sit through the tour without understanding a word said by the narrators.

In order to stimulate business, applicant, who speaks Japanese fluently, has promoted and organized Japanese student study tours, featuring English language instruction, home stay experiences with American families, and bilingual sightseeing bus tours where young Japanese students may practice their English comprehension while simultaneously learning about California's history, customs, and way of life. This program requires bilingual narration. Applicant has also initiated a program which basically caters to Japanese gay persons who have allegedly largely been ignored by other bus companies. This program is designed to allow local gay persons to mix with Japanese gay persons. These tours will also require bilingual narrators. Applicant alleges that since no passenger stage corporation now offers anything like his student study tour program or his service for Japanese gays, there will be no adverse economic impact on existing carriers by applicant's performing these operations. In addition, applicant contends his service is superior to that of the protestants, as he furnishes both a narrator and a driver on each of his tours while protestants furnish only a narrator-driver on their tours. Applicant's narrator is thus able to move up and down the aisle of the bus and answer questions from and carry on a conversation with the tourists, while protestants' driver-narrators are not permitted to answer questions or carry on conversations with the tourists while the bus is moving because it would divert the attention of the driver from his driving duties.

For the year 1980 applicant had a gross income of approximately \$100,000 and a net loss of \$164,000 from his passenger stage operations. Since applicant started operations in 1979 he has lost over \$300,000. Applicant attributes the poor financial showing of his operations to the alleged unlawful competition in the San Francisco Bay Area by the uncertificated bus operations of many Japanese tour operators. Applicant has attempted to stop such unlawful competition by bringing a complaint against them before the Commission. Due to applicant's operating losses, he has had trouble paying his bills and meeting his payroll. He owes the Commission a total of \$3,100.10 on invoices for 16 transcripts of records of cases before the Commission in which he was involved. Some of the invoices are over 24 months old. The payments of all the invoices are overdue. Regarding this outstanding debt to the Commission, Noriko Abe, who is applicant's wife and general manager of the operation, testified in this case on November 3, 1980 as follows:

"Q Could you explain to the Court how Dolphin Tours intends to deal with this matter?

"A Dolphin Tours -- the transcript fee to the PUC because we had to deal with the PUC for a few years, we couldn't afford to pay because we are just surviving.

"But as soon as we started our bilingual tour, we started to have a decent income, so we are now starting to be able to make a plan of payment little by little to the various people, to the various places we owe money.

"This is one of the things we are right now preparing payment plan. I am preparing with my accountant to make a payment plan and send the first payment this week after checking all the figures.

"Q Do we have to check with attorneys to find out whether the attorneys paid for some of those or not?

"A Yes. We have to check with the PUC attorney.

"Q But it is Dolphin's intent this week to submit a check and payment plan to the PUC?

"A Yes. I don't think we can pay at one time, but on a regular basis if we can have decent income, I think we can do it." (Transcript pages 34 and 35.)

To date the Commission has received no communication from applicant or anyone else regarding this outstanding debt of \$3,100.10 nor has it received any money to apply against this debt.

Protestant O'Connor operates over four tour routes out of the San Francisco Bay Area. Three of those tour routes are the same as three of applicant's tour routes. Since O'Connor started to operate the four tour routes in 1979 it has lost approximately \$190,000 in its operations. O'Connor expects to turn its operation into a profit in 1982 but will be hard-pressed to do it if applicant is given authority to compete with it in giving English-speaking tours. The witness for O'Connor testified that when it charters large buses for its tours, it furnishes a separate tour narrator to conduct the tour, but when it uses a 13- to 20-passenger van the driver acts as tour narrator. O'Connor at times conducts bilingual (Spanish/English) tours but is thinking of cutting them out because many of the tourists who speak only English get upset with the tour being conducted in any other language than the English language.

Protestant Parlor Car has authority to operate a one-day tour from San Francisco to Yosemite National Park and return. Applicant possesses the same authority. Between February and July 1981 Parlor Car operated 25 tours which carried a total of 150

passengers. Parlor Car originally scheduled three or four of these tours a week but because of the dearth of passengers it ran them on an on-call basis. It found that it cost \$300 per trip to subsidize the operation and after losing a total of \$7,500 on the operation it discontinued its Yosemite operation. Parlor Car believes that because of the spate of bus companies, many operating without a certificate, performing sightseeing tours between San Francisco and Yosemite, applicant, like Parlor Car, will be unable to conduct a profitable Yosemite operation. Parlor Car has had experience conducting bilingual tours and from that experience has learned that they are unpopular with tourists.

Protestant Gray Line operates the majority of the same tours that applicant operates. Gray Line does not operate to Yosemite but has an application on file to serve it. A witness for Gray Line testified that in 1980 Gray Line suffered a loss of from \$250,000 to \$300,000 and at the time of this hearing in 1982 its operations were in a similar loss position. Gray Line offers bilingual tours, if requested, but does not encourage them as they result in passenger dissatisfaction with the tour. It also offers, upon request, foreign language tours in many foreign languages including Japanese. It welcomes and provides services to passengers from all over the world and absolutely no discrimination as to age, race, nationality, or sexual discrimination is permitted or practiced. Gray Line's driver-narrators are permitted to answer questions from and hold conversations with its tourist-passengers while the bus is moving. Gray Line owns or leases on a regular basis 50 large buses and has a large investment in this equipment. Applicant, on the other hand, has no investment in equipment. Gray Line is attempting to recover from extensive losses and the granting of this application, Gray Line contends, will result in diversion of potential Gray Line traffic to its financial detriment.

Discussion

Applicant's proposed service is materially different from the protestants' service. It is designed to cater to Japanese student tour patrons with bilingual narration. The need for the proposed service has been demonstrated, and applicant is fit and financially able to conduct the service. Since the proposed service materially differs from that offered by the protestants, PU Code § 1032 is not applicable. The application will be granted.

This is a final order because a full hearing on all issues has been completed. Western Travel Service (D.93726 dated November 13, 1981 in A.59818, et al.) and subsequent round-trip sightseeing applications were interim so that further review could be given the applications should D.93726 be rescinded.

Findings of Fact

1. Applicant requests the restriction in his certificate that "all tours shall be conducted in the Japanese language only" be eliminated.
2. The restriction has impeded applicant's ability to effectively compete for passengers with foreign tour agencies.
3. Applicant proposes to provide Japanese student study and gay-oriented tours featuring English language instruction.
4. The student study tour package will include home stay experiences with American families and instruction about California's history, customs, and way of life.
5. Presently no sightseeing company offers English language to Japanese student study tours or tours oriented to the Japanese gay population.
6. Removal of the restriction will permit applicant to compete with foreign tour agencies on a more equal footing.
7. The restriction prevents applicant from giving English language instruction to its student study groups or Japanese gay groups while on tour.
8. Removal of the restriction will permit applicant to render a complete student study tour service.

9. The tour business in the San Francisco Bay Area is not saturated with tour operators to the extent that applicant's additional competition will have an unreasonable adverse effect on present certificated tour operators. ✓

10. Applicant is fit, willing, and able to conduct sightseeing tours without the certificate restriction. ✓

11. Public convenience and necessity require the elimination of the restriction. ✓

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

Conclusions of Law

1. Public convenience and necessity has been demonstrated and the application should be granted.

2. Applicant's proposed service is materially different from that provided by protestants, and PU Code § 1032 is not applicable.

3. The temporary authority granted by D.93471 authorizing the removal of the requirement in applicant's certificate that all its tours be narrated in the Japanese language should be made permanent.

Only the amount paid to the State for operative rights may be used in rate fixing. The State may grant any number of rights and may cancel or modify the monopoly feature of these rights at any time.

FINAL ORDER

IT IS ORDERED that:

1. The temporary authority granted by D.93471 authorizing the removal of the requirement in J. Mark Lavelle's certificate that all its tours be narrated in the Japanese language is made permanent by incorporating Second Revised Page 1 (attached) in Revision of First Revised Page 1 of Appendix A of D.89731.



2. Applicant shall:

- a. File a written acceptance of this certificate within 30 days after this order is effective.
- b. Establish the authorized service and file tariffs and timetables within 120 days after this order is effective.
- c. State in his tariffs and timetables when service will start; allow at least 10 days' notice to the Commission; and make timetables and tariffs effective 10 or more days after this order is effective.
- d. Comply with General Orders Series 79, 98, 101, and 104, and the California Highway Patrol safety rules.
- e. Maintain accounting records in conformity with the Uniform System of Accounts.

3. The amended certificate issued in this proceeding shall lapse and terminate 90 days after the effective date of this order unless \$3,100.10 that is past due to this Commission on invoices for 16 transcripts of records of cases which applicant requested is paid to the Commission.

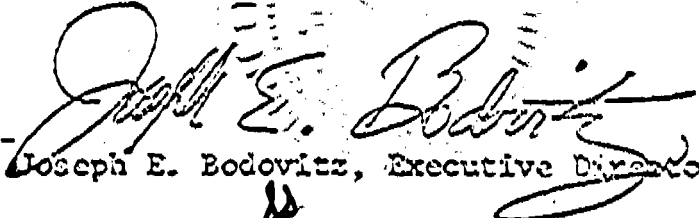
This order becomes effective 30 days from today.

Dated     AUG 4 1982    , at San Francisco, California.

JOHN E. BRYSON  
President  
LEONARD M. GRIMES, JR.  
VICTOR CALVO  
PRISCILLA C. GREW  
COMMISSIONERS

Commissioner Richard D. Gravello, being necessarily absent, did not participate in the disposition of this proceeding.

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

  
Joseph E. Bodovitz, Executive Director

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

J. Mark Lavelle, an individual doing business as Dolphin Tours, by the certificate of public convenience and necessity to operate as a passenger stage corporation granted by the decision noted in the margin, is authorized to transport passengers for sightseeing and pleasure trips between the City and County of San Francisco, or the University of California campus at Berkeley, on the one hand, and certain points as named, on the other hand, over and along the routes described, subject, however, to the authority of this Commission to change or modify these routes at any time and subject to the following provisions:

- a. All service authorized shall be limited to the transportation of round-trip passengers only.
- b. Service may be provided on a scheduled basis as reflected on the timetable filed with the Commission.

(END OF APPENDIX A)

Issued by California Public Utilities Commission.

\*Deleted by Decision 82 08 021, Application 60582.