

Decision 82 09 052 SEP 8 1982

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Application of)  
Multi-Transit, Inc., for a )  
certificate to operate a passenger )  
bus service on a home to work )  
basis between Fairfield, Vacaville, )  
and Dixon and Mare Island Naval )  
Shipyard in Solano County. )

Application 82-02-30  
(Filed February 16, 1982)

James B. Booher and Harriet L. Booher, for  
Multi-Transit, Inc., applicant.  
Dennis Clemente, for Dennis Charter Service,  
protestant.

#### O P I N I O N

Multi-Transit, Inc. (Multi) requests authority to operate as a passenger stage corporation, as defined in Public Utilities (PU) Code § 226, in home-to-work service between Fairfield and Vacaville, on the one hand, and Mare Island Naval Shipyard (Mare Island), on the other hand. The application was protested by two passenger stage corporations; accordingly, a duly noticed public hearing was held in San Francisco on June 25, 1982, before Administrative Law Judge (ALJ) Lemke. Only one protestant attended the hearing.

James B. Booher, president of Multi, testified. He stated essentially as follows:

1. Multi presently operates as a charter party carrier for airline companies between Fairfield, Sacramento, San Francisco, San Francisco Airport, and Oakland (TCP-879P).

2. Multi requests a certificate of public convenience and necessity authorizing three home-to-work schedules between Fairfield and Mare Island. It is presently performing this service with several 11-passenger vans, using drivers who are employed at Mare Island.
3. Multi also requests authority to operate one daily home-to-work schedule between Vacaville and Mare Island. This service is currently being performed with a 24-passenger Dodge Microbus, backed up by a 17-passenger Ford Microbus.
4. Multi earned about \$231,000 from its charter operations between July 1981 and June 1982. It has held authority from this Commission to operate as a charter-party carrier since 1976.
5. Multi is assessing and would continue to assess monthly individual fares of \$46 between Fairfield and Mare Island, and \$55 between Vacaville and Mare Island.

A financial statement contained in Multi's application indicates assets of \$88,000 and a net worth of about \$10,000 as of February 8, 1982.

Dennis Clemente (Clemente) doing business as Dennis Charter Service, protested the application and attended the hearing. By Decision (D.) 93386 dated August 4, 1981 in Application (A.) 60532 Clemente was authorized to operate as a passenger stage corporation in home-to-work service between various points and Mare Island, including twice daily schedules originating in Vacaville.

Clemente performs his Vacaville service with 45-passenger G.M.C. motor coaches. His fare is \$20 for ten round-trip tickets. Clemente declined to testify, but in a closing statement referred to his formal protest where he mentioned the fact that Multi is and has been operating to Mare Island without authority.

In reply to Clemente's allegation that Multi has been operating to Mare Island without authority, Booher stated his belief that PU Code § 5353, paragraphs (a) and (h), afford Multi exemption from Commission jurisdiction over its entire operations. PU Code § 5353 exempts certain transportation from Commission regulation.<sup>1</sup> However, it is inapplicable to passenger stage operations, as discussed below. It is difficult to comprehend how a regulated charter-party carrier with several years experience could believe that a passenger stage operation could qualify for exemption under the Passenger Charter-party Carriers' Act. However, we will give Booher the benefit of any doubt concerning his understanding or misunderstanding of somewhat sophisticated legislative requirements. Rather than take any punitive action at this time, we will place Multi on notice that any future unlawful transportation will not be tolerated. Any such operations will be severely dealt with. ✓

#### Discussion

In his search for the provisions of the PU Code applicable to his particular operations, Booher found the right pew but the wrong church. Since Multi is assessing charges on an individual fare basis, under the provisions of PU Code § 1035 its operations would clearly be those of a passenger stage corporation. That section states, in part: ✓

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<sup>1</sup> "(a) Transportation service rendered wholly within the corporate limits of a single city or city and county." \* \* \* "(h) Passenger vehicles having a seating capacity of 15 passengers or less in a single daily round trip carrying at least three persons from place of residence to place of employment, if the driver himself is on the way to or from his place of employment."

" . . . Any act of transporting...any person where the...fare...is...collected...on an individual fare basis, shall be presumed to be an act of operating as a passenger stage corporation within the meaning of this part."

However, PU Code Section 226, which defines "passenger stage corporation" contains the following exception:

"'Passenger stage corporation' does not include the transportation of persons in a passenger vehicle having a seating capacity of 15 passengers or less from place of residence to place of employment, if the driver himself is on the way to or from his place of employment."

Thus, since Multi is assessing charges on an individual fare basis its Fairfield schedules are exempt from our jurisdiction because of the exception in PU Code § 226 so long as (and only so long as) such transportation is provided by Multi in vehicles with seating capacity of 15 passengers or less. But, Multi's single Vacaville schedule, while a home-to-work service performed with a driver who also works at Mare Island, cannot qualify for the above exemption because it is being performed with 24- and 17-passenger vehicles.

Having disposed of the question of exemptions, we may turn our attention to the question of public convenience and necessity.

Multi proposes to perform its Vacaville-Mare Island service starting at the intersection of Marshall Road and Peabody Road, then over the most appropriate route subject to driver's discretion based on work schedules and traffic conditions. Multi's service would be by reservation, with a minimum of 14 passengers. Its Vacaville schedule will operate for the Mare Island day shift only, departing Vacaville at 6:20 a.m. and arriving Mare Island 7:00 a.m.; departing Mare Island at 4:00 in the afternoon and arriving Vacaville at 4:40 p.m.

The two Vacaville schedules authorized Clemente by D.93386 originate at Mason Street and Interstate Highway 80 in the City of Vacaville, then proceed by two different routes to Mare Island. These schedules depart Mason Street at 6:15 a.m. and 6:35 a.m. and

both arrive at Mare Island at 7:15 a.m. Although Clemente's first schedule picks up at the intersection of Marshall and Peabody Roads, it does not leave Marshall Road until 6:35 a.m., whereas the Multi schedule will depart 15 minutes earlier.

Since Clemente chose not to testify, no information was provided for the record concerning his rider count for these two schedules. Had we been provided information by Clemente or any other competing carrier concerning ridership, we would address the issue of route saturation. The evidence shows that Multi's proposed services are somewhat different and significantly more expensive than Clemente's.

We have stated on a number of occasions our policy with respect to home-to-work commuter buses: their important role in providing increased public transportation, helping to relieve energy shortages and congestion, and getting people out of single-occupancy automobiles. ✓

In his formal protest, Clemente alleges he is operating to Mare Island in competition with Multi and various unregulated van pools. We are aware of no other active passenger stage home-to-work operations between Vacaville and Mare Island. One other operator had protested Multi's application, but did not attend the hearing.

PU Code § 1032 provides, in pertinent part:

" . . . The commission may, after hearing, issue a certificate to operate in a territory already served by a certificate holder under this part only when the existing passenger stage corporation or corporations serving such territory will not provide such service to the satisfaction of the commission."

We will authorize the requested Vacaville to Mare Island single schedule over which we have jurisdiction. This is justified based upon the information contained in Multi's application; the testimony of its president, James Booher; the differences in precise origin points, schedule times, and fares between the Clemente and Multi services; and the failure of Clemente or any other party to furnish record evidence concerning route saturation.

Findings of Fact

1. Multi has the ability and financial resources to perform its proposed service between Vacaville and Mare Island.
2. Multi's proposed fare of \$55 per month is reasonable.
3. Multi's home-to-work service between Fairfield and Mare Island is performed with 11-passenger vehicles in which the drivers are also employees at Mare Island.
4. 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. A certificate of public convenience and necessity should be issued to Multi authorizing operations as a passenger stage corporation in home-to-work service between Vacaville and Mare Island Naval Shipyard.
2. Multi's service between Fairfield and Mare Island Naval Shipyard is exempt from regulation by this Commission under the provisions of PU § 226 because it is performed from place of residence in 11-passenger vehicles with drivers who are employees of Mare Island Naval Shipyard.
3. There is a demonstrated public need for the proposed service and the following order should be effective today.

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 these rights at any time.

**O R D E R**

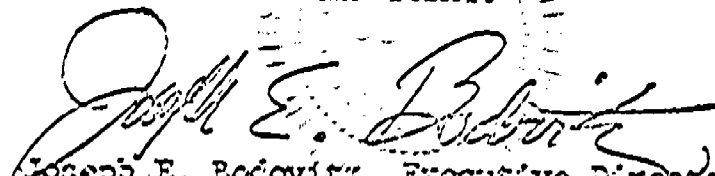
IT IS ORDERED that a certificate of public convenience and necessity is granted to Multi-Transit, Inc., authorizing it to operate in home-to-work service as a passenger stage corporation, as defined in PU Code § 226, between Vacaville and Mare Island Naval Shipyard over the route set forth in Appendix PSC-1244.

This order is effective today.

Dated SEP 8 1982, at San Francisco, California.

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

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

  
Joseph E. Boedovitz, Executive Director

T/ri

Appendix PSC-1244

MULTI-TRANSIT, INC.

Original Title Page

CERTIFICATE  
OF  
PUBLIC CONVENIENCE AND NECESSITY  
AS A PASSENGER STAGE CORPORATION  
PSC-1244

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

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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.

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Issued by Decision 82 09 052, dated SEP 8 1982,  
of the Public Utilities Commission of the State of California,  
Application 82-02-30.



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

Multi-Transit, Inc. by the certificate of public convenience and necessity granted by the decision noted in the margin, is authorized to operate as a passenger stage corporation to transport home-to-work passengers and their baggage between Vacaville, on the one hand, and Mare Island Naval Shipyard, on the other hand, subject, however, to the authority of this Commission to change or modify this authority at any time and subject to the following provisions:

- a. All transportation of passengers shall originate at and shall be destined to the service points specified in Section 2.
- b. When route descriptions are given in one direction, they apply to operation in either direction unless otherwise indicated.

Issued by California Public Utilities Commission.

Decision 82 09 052, Application 82-02-30.

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Appendix PSC-1244

MULTI-TRANSIT, INC.

Original Page 2

SECTION 2. ROUTE DESCRIPTIONS.

Via the most appropriate streets and highways, service point at the following location:

Marshall Road and Peabody Road, Vacaville

Then via the most appropriate streets and highways, to service point at the following location:

Mare Island Naval Shipyard

Issued by California Public Utilities Commission.

Decision 82 09 052, Application 82-02-30.

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EXHIBIT A

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Findings of Fact

1. Multi has the ability and financial resources to perform its proposed service between Vacaville and Mare Island.
2. Multi's proposed fare of \$55 per month is reasonable.
3. Multi's home-to-work service between Fairfield and Mare Island is performed with 11-passenger vehicles in which the drivers are also employees at Mare Island.
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Conclusions of Law

1. A certificate of public convenience and necessity should be issued to Multi authorizing operations as a passenger stage corporation in home-to-work service between Vacaville and Mare Island Naval Shipyard.
2. Multi's service between Fairfield and Mare Island Naval Shipyard is exempt from regulation by this Commission under the provisions of PU § 226 because it is performed from place of residence in 11-passenger vehicles with drivers who are employees of Mare Island Naval Shipyard.
3. There is a demonstrated public need for the proposed service and the following order should be effective today.