

Decision 82 12 019 DEC 1 1982

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of PEGGY LEE ROBINSON, d.b.a.)
Great American Stage for a)
Class B certificate to operate)
as a charter-party carrier of)
passengers, Orangevale.)

Application 82-05-09
(Filed May 5, 1982)

Peggy Lee Robinson, for herself, applicant.
Robert D. Rierson, Attorney at Law (Illinois),
for Greyhound Lines, Inc., protestant.

O P I N I O N

This application, for Class B charter-party authority from a service area centered in Orangevale (a Sacramento suburb), was protested by Greyhound Lines, Inc. (Greyhound). Mrs. Robinson has also filed a companion application for passenger stage authority to provide airport service. That application was not opposed, and was granted ex party (PSC-1243 by Decision (D.) 92-08-087 in Application (A.) 82-04-62.)

Hearing on this application was held in San Francisco on August 5, 1982 before Administrative Law Judge (ALJ) Gilman and the matter was submitted on that date. At the hearing Mrs. Robinson's husband testified on her behalf; an executive of Greyhound testified in opposition.

Mr. Robinson testified that his wife would operate the passenger stage and charter business. However, he would support the project wholeheartedly, even to the extent of quitting his job and becoming a full-time manager employee, should that be necessary for the enterprise's success. He would also advance money from his personal estate and from his half of the community property to purchase a larger bus, when and if the passenger stage traffic requires additional capacity.

Mr. Robinson has many years' experience in the passenger stage business. He now holds a responsible executive position with another bus line.

Applicant now owns a 21-passenger Dodge vehicle powered by a gasoline engine. It has been extensively renovated for use in revenue service, and has been certified by the Highway Patrol as acceptable under California's School Public Activity Program.

The economic backbone of applicant's proposed operation will be the service between Folsom^{1/} and the Sacramento Metropolitan Airport authorized by D.82-08-087 (supra). Applicant estimates that initially this operation will generate only enough traffic to support one early morning inbound schedule and one evening outbound schedule. Between these runs she plans to use the bus for either sightseeing or for charter work. (She also has authority from the City of Sacramento which authorizes her to conduct tours wholly within the city limits (Public Utilities (PU) Code § 226. At the time of the hearing applicant had not exercised her intracity authority.)

If passenger stage traffic requires extra capacity, applicant plans to acquire a larger over-the-road bus, comparable to Greyhound's older vehicles. When there is too much airport traffic for a single round trip by a full-size bus, a second round trip will be scheduled using the same vehicle.

Mr. Robinson produced letters from travel agents, claiming that there was a need for additional charter service.

1/ There will be intermediate stops in Fair Oaks, Citrus Heights, and Rancho Cordova.

Greyhound's testimony and exhibits demonstrated that it actively solicits charter business and has a substantial amount of excess capacity in the Stockton/Sacramento area. It also pointed out that there are other carriers in the greater Sacramento area with charter authority, including two who have received their certificates so recently that their impact on the market cannot be ascertained.

Greyhound argued that its dedicated operations as a passenger stage require it to maintain substantial excess capacity and that charter revenues are essential to help defray the substantial fixed costs of that capacity. It also points out that the revenue from charter service helps it to continue to run at least a few scheduled buses to parts of California that would otherwise have no transportation except the private automobile.

Discussion

1. Evidence and Place of Hearing

Greyhound claimed that the Commission cannot base a finding of public convenience and necessity wholly on letters or other hearsay evidence. It argued that to do so would eliminate the requirement for proof of public convenience and necessity for all practical purposes.

We do not base our finding of public convenience and necessity solely upon the contents of letters furnished by applicant. Testimony presented on applicant's behalf establishes a prima facie need for the service which is confirmed by the support letters.

We have the discretion to admit and to consider hearsay evidence (PU Code § 1709). Our experience indicates that cross-examination of public witnesses rarely produces evidence of greater probative value. We should, therefore, be able to base a finding

on public need established on a prima facie basis by applicant and confirmed in letters from public witnesses, especially where the hearing is not held near the community where service is to be rendered.

Greyhound also argued that there should be a special requirement to hold hearings in Sacramento, so that residents of the state capitol could present their evidence in person.

We cannot agree; by statute (PU Code § 306a), the Commission's office is in San Francisco. Our budget does not contain funds to station ALJs and reporters in Sacramento or to provide for cost of travel to that community.

2. Public Convenience and Necessity

Like Greyhound, applicant will have a need for charter revenue to help defray some of the fixed costs of scheduled service. Support of her scheduled service is as much in the public interest as is support for Greyhound's scheduled services. If we do not permit applicant to supplement her bus income with charter revenue, her scheduled passengers either may pay higher than necessary fares, or may have to accept less satisfactory service.

The record also indicates that applicant does not intend to make substantial inroads on Greyhound's charter business. Since its bus will be primarily dedicated to scheduled service, it will be available only for a limited number of charters of short duration. When airport traffic justifies a second round trip, applicant's ability to compete for charters will be even more circumscribed.

Since the proposed charter service is ancillary to a necessary scheduled service and since there are no plans to purchase buses wholly or primarily for charter service, only minimal demand is required to support our finding that public convenience and necessity require the proposed service.

Findings of Fact

1. Applicant possesses satisfactory fitness and financial responsibility to conduct the proposed transportation service.
2. The charter service will be ancillary to applicant's scheduled services.
3. Applicant has no plans to acquire buses primarily for charter operations.
4. Applicant's charter operations will have only a limited effect on Greyhound's charter revenues. The effect will be inversely proportional to the demand for applicant's scheduled passenger stage service.
5. Public convenience and necessity require the service proposed by applicant.
6. Applicant should be authorized to pick up passengers within a radius of 40 air miles from applicant's home terminal.
7. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.
8. Since applicant is presently authorized to conduct passenger stage operations, her authority to conduct ancillary charter operations should become effective without delay.

Conclusions of Law

1. The Commission may accept and consider a public convenience and necessity showing which consists solely of letters.
2. The Commission has no special responsibility to conduct hearings in Sacramento.
3. The application should be granted 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 Peggy L. Robinson authorizing her

to operate as a Class B charter-party carrier of passengers, as defined in PU Code § 5383, from a service area with a radius of 40 air miles from applicant's home terminal at 8800 Nimbus Way, Orangevale, California.

2. Applicant shall:

- a. Obtain California Highway Patrol (CHP) clearance for each vehicle to be used in this Class B charter-party operation.
- b. Notify the Commission and CHP of any addition or deletion of vehicle(s) used in the service prior to use.
- c. Establish the authorized service within 60 days after this order is effective.

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

4. In providing service under the certificate, applicant shall comply with General Orders Series 98 and 115 and the CHP safety rules.

This order is effective today.

Dated DEC 1 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 THESE ABOVE
COMMISSIONERS TODAY.


Joseph E. Bodovitz, Executive Director