

ORIGINAL

Decision No. 87477 June 21, 1977

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Application of)
 Travelier Charter, Inc. for cer-)
 tificate of public convenience)
 and necessity to operate passenger)
 stage service between South San)
 Jose and AT&T Long Lines, San)
 Francisco on the other hand.)

Application No. 56446
 (Filed April 30, 1976)

Donald Klein, for applicant
W.L. McCracken, Attorney at Law, for
 Greyhound Lines, Inc., protestant.
R.E. Douglas, for the Commission staff.

O P I N I O N

This is an application for a certificate of public convenience and necessity to operate as a passenger stage corporation in a home-to-work service for employees of the telephone company. The application is protested by Greyhound Lines, Inc. (Greyhound). Public hearing was held before Examiner Thompson at San Francisco on August 12, 1976 and the matter was submitted.

In July 1975 the management of AT&T Long Lines Division at San Francisco established a program of "select time" for its employees' working hours. A number of employees with residences in Santa Clara County desired to work a shift from 7:30 a.m. to 3:30 p.m.; however, there were no schedules by transportation agencies which were convenient to them. Most of the employees affected had been commuting via Southern Pacific Transportation Company. Several of the employees, desiring to work on the early shift, undertook the formation of a group for the purpose of chartering a bus. The leaders set up the group as the D & L Pacesetter Club and proceeded to

negotiate with a number of passenger charter-party carriers. Travelier Charter, Inc, the applicant herein, offered what they considered to be the best arrangement, and they entered into a charter for a bus. The arrangement called for members of the club who are qualified, to drive the bus. Except during weekends when the bus is serviced by applicant, it is parked near the home of the driver. In the morning the driver commences the run in South San Jose at Blossom Hill Road and proceeds to another stop centrally located in South San Jose near the homes of the members, and thence to the last stop at Homestead Road and Saratoga-Sunnyvale Road in Sunnyvale. The bus then proceeds to the destination point near 74 New Montgomery Street, San Francisco, and is parked by the driver in a MetroPark lot nearby. The driver then goes to work at AT&T Long Lines. After the shift the members board the bus and it returns via the same route and stops.

At the time of hearing the club had 80 members and each working day about 70 to 75 members used the bus. The club had chartered two buses at that time under the same arrangement. A number of club members testified that they are very satisfied with the existing arrangement and that S.P. and Greyhound schedules and service are not convenient. Virtually all of them testified that if the service is discontinued they would arrange for car pools.

Applicant is a certificated charter-party carrier of passengers. It also holds a certificate to conduct operations as a passenger stage corporation for the transportation of commuting passengers between Lockheed Missile and Space Company, Sunnyvale, on the one hand, and San Jose, San Martin, Morgan Hill, and Gilroy, on the other hand. That operation is essentially a home-to-work commuter service for employees of Lockheed.

Applicant's president was asked why this application was filed inasmuch as all parties appeared to be satisfied with the existing arrangement. He stated that the operation has grown such that the use of three buses appears imminent and that it appeared to management, as a matter of policy, that it was time to operate the route itself as a passenger stage corporation. We take note, however, that prior to the filing of this application Greyhound had communicated with the Commission staff requesting that enforcement action be taken to stop the operations by D & L Pacesetter Club.

The evidence shows that applicant has the experience, the equipment, the insurance, and the financial ability to conduct the proposed operation which essentially is a duplication of the present service for which it provides buses under charter. The evidence also shows that the service and the schedules maintained by Greyhound are not as convenient to the telephone company employees as the service presently being provided and which will be offered by applicant. Greyhound's San Jose terminal is located downtown where there is limited parking. Its San Francisco terminal is located at Seventh and Mission Streets. Greyhound's northbound schedules include buses leaving the terminal at San Jose at 5:30 a.m. and at 6:20 a.m. arriving at the San Francisco terminal at 6:30 a.m. and 7:30 a.m., respectively. The 7:30 arrival at Seventh and Mission Streets does not permit the employees to report to work at 74 New Montgomery Street at 7:30 a.m. The present and proposed service in applicant's buses provide for departures at two stops in South San Jose, near residential and shopping center areas where there are adequate parking facilities, at about 6:05 a.m. with arrival near 74 New Montgomery Street around 7:15 a.m. The bus also makes a stop at Homestead Road and Saratoga-Sunnyvale Road in Sunnyvale at 6:25 a.m. Greyhound serves that same stop on its Los Gatos route. Its only early morning schedule leaves that stop at 6:30 a.m. and arrives at the San Francisco terminal at 7:35 a.m., too late for the employees to report to work on time.

The employees on that shift are off work at 3:30 p.m. The present and proposed service departs near Third and Howard Streets (a short distance from 74 New Montgomery) at 3:55 p.m. Greyhound's nearest departures for San Jose are at 3:45 p.m. and at 4:45 p.m., the earlier one being just too early for the employees to make. The Los Gatos route schedule calls for a departure from San Francisco at 4:45 p.m.

The evidence shows that Greyhound's service is not convenient to meet the requirements of the employees of the telephone company working the shift from 7:30 a.m. to 3:30 p.m. It also shows that passenger train service and passenger stage service is not suitable or convenient to the needs of those employees. It does not necessarily follow, however, that there is a need for the passenger stage service proposed by applicant. The employees' needs are adequately served under the present arrangement. All users of the service testified that they are very satisfied with membership in the club and the charter of buses. It would appear that their needs are being met. The only reason why public convenience and necessity would require the operation by applicant as a passenger stage corporation in this transportation is if by reason of the circumstances, the club itself is prohibited by law from doing what it has been doing.

Greyhound has raised that issue in this proceeding. It presented evidence that one morning an employee of Greyhound who was not a member of the club boarded the bus at the stop at Homestead Road and Saratoga-Sunnyvale Road and the driver accepted some money and permitted that person to be transported on the bus to the stop near 74 New Montgomery Street, San Francisco. That incident in and of itself is not conclusive that the club is engaged in passenger stage corporation operations. It may have been an isolated instance contrary to an intent of the club that transportation not be provided at an individual fare basis. In addition, the evidence does

not provide any indication of whether the driver accepted the fare as an officer of the club, which he was, as an employee of the charter-party carrier, which he was, or whether the fare stayed in his own pocket. Only in the first case would the statutory presumption set forth in Section 1035 of the Public Utilities Code apply to the club. If it was done as an employee of the carrier it would constitute a violation of the Passenger Charter-party Carriers' Act (Section 5401 of the Public Utilities Code) under which the carrier would be subject to the fines and penalties prescribed in that act. In the event the driver pocketed the fare, he would no doubt be subject to whatever sanctions that might be imposed by the club and the carrier for acting against and endangering their respective interests.

There was testimony of the practices of some officers of the club which could be construed as indicative of passenger stage corporation practices. That evidence, however, would not support findings in that regard. With that exception the evidence in this record shows that the transportation activities of the club consist only of negotiating and arranging for the charter of buses on behalf of its members, determining bus itineraries convenient to the members, and other activities ordinarily and regularly engaged in by the heads of groups chartering buses.

Where the club charters the buses it may assign its members to buses so to assure that each member has a seat; it can change the bus routings and bus stops concurrently with variations in needs and convenience of a changing membership; and if it is not satisfied with one carrier it may negotiate a charter with other charter-party carriers. The club members and its officers have more flexibility under charter to arrange for a service that best meets the particular requirements of the membership than would be the case if the members

used a passenger stage service and, in addition, in the long run chartering would be much more economical for the daily commuters.

Under a charter arrangement the applicant is assured of receiving reasonable compensation for the use of its bus regardless of the number of passengers, and it may adjust its rates without delay to offset any increasing costs so as to continue to receive adequate compensation.

Provided members of the club include only telephone company employees working the 7:30 a.m. to 3:30 p.m. shift, there is no actual or potential diversion of traffic from Greyhound because none of the passengers could or would avail themselves of its service. On the other hand, if applicant were to be certificated, under the law any passenger would be entitled to ride the bus between the points it would serve. It is possible that applicant's proposed service between points in the outlying area about San Jose to San Francisco's financial district would prove to be more convenient to some of Greyhound's passengers than the service between downtown San Jose and Seventh and Mission Streets in San Francisco.

Proceedings involving other charter-party carriers who have initiated home-to-work commuter passenger stage service have revealed experiences from which the outcome of applicant's proposed service may be predicted.^{1/} There will be an increase in traffic

^{1/} The proceedings to which we refer include Application No. 56198 of Franciscan Lines, Inc. for a fare increase on its certificated commute operations, and Application No. 56923 of Falcon Charter Service for authority to increase its commuter fares between San Francisco and Foster City - or in the alternative for authority to abandon its certificated commute service between San Francisco and Foster City. While applicant presently conducts a commute passenger stage service to Lockheed Missile and Space Company, the situation where the passengers all originate at or are destined to a private plant location not near other businesses is very different from where passengers all originate at or are destined to a point on a public street in downtown San Francisco. For that reason we believe applicant's proposed operation is more comparable to the Franciscan and Falcon operations than to its Lockheed commute service.

because the proposed service will provide a service for the part-time commuter and also because it may attract non-telephone company employees who work similar hours in the San Francisco financial district. Casual riders, particularly, may find the service satisfactory for their intermittent needs, with the result that some buses will become overcrowded and the regular commuter will be unable to obtain a seat. Applicant will provide additional buses which will be disruptive of its charter business and occasionally it will have to search for rentals of substitute buses. It will be unable to control the patronage on individual schedules so that some days a schedule will be overcrowded and other days the bus will operate almost empty. All of those circumstances have an effect of increasing the carrier's cost of operation per passenger and with increases in operating costs the fares will have to be increased. A number of regular commuters will become dissatisfied with the service because of the uncertainty of obtaining a seat and will form car pools or possibly lease minibuses resulting in a decrease in the percentage of regular riders among the passengers transported. This will further aggravate the situation and lead to further fare increases and further dissatisfaction on the part of the regular riders with further aggravation of the situation.

In many instances charter by commuters having common particular transportation needs provides one of the better solutions to the transit problem. In that connection we quote a statement, which we totally endorse, of the Federal Department of Transportation in an announcement regarding its proposed policy regarding paratransit services (Federal Register, October 20, 1976):

"Finally, paratransit, in the form of voluntary, cooperative ride-sharing arrangements, can enable people living in outlying portions of metropolitan areas with no convenient access to regular transit service to cease their dependency on the private automobile for the trip to work, and to contribute to the goal of relieving congestion and conserving energy."

We are of the opinion that the peculiar transportation needs of these employees would best be met in the form of voluntary, cooperative ride-sharing arrangements with the use of buses chartered from a passenger charter-party carrier. The employees now use and have available to them satisfactory home-to-work transportation as members of D & L Pacesetters Club through the use of buses chartered by the club from applicant. The certification of applicant will provide no greater protection to the public and would adversely affect the riders, applicant, and Greyhound. Accordingly, we find that it has not been shown that there is a need for applicant's proposed passenger stage service.

Findings

1. A number of employees of subsidiaries and affiliates of American Telephone and Telegraph Company at San Francisco had their working hours changed in July 1975 to a shift from 7:30 a.m. to 3:30 p.m. on weekdays.

2. A substantial portion of that number maintain residences in Santa Clara County, more particularly in residential areas in southern San Jose and near Sunnyvale.

3. Greyhound is a passenger stage corporation with operations, among others, between San Jose, Santa Clara, Sunnyvale, Mountain View, Cupertino, and Los Gatos, on the one hand, and San Francisco, on the other hand. The facilities and schedules of Greyhound are not convenient to meet the commuter transportation needs of those employees, and to that extent it has not and will not provide such service to the satisfaction of the Commission.

4. The aforesaid employees have associated themselves as D & L Pacesetter Club for the purpose of chartering buses to transport them to and from work. The charter service has been provided by applicant and the members of the club are fully satisfied with their transportation.

5. By this application applicant seeks a certificate of public convenience and necessity authorizing it to provide the transportation as a passenger stage corporation. The proposed operation is virtually identical to the service now received by the employees.

6. Applicant presently conducts passenger transportation under certificates granted by the Commission authorizing operations as a passenger stage corporation and as a charter-party carrier of passengers. It has the experience, the equipment, the insurance and the financial ability to institute the proposed service.

7. The present transportation arrangements, which are completely satisfactory to the employees, have not been shown to be unlawful. Need for any service not being provided under the present arrangements has not been shown.

8. Applicant has not shown that public convenience and necessity require the operation by it as a passenger stage corporation of the service it proposes.

We conclude that the application should be denied, and that in addition to the service of this order upon the parties, the Executive Director should cause a copy of this decision to be mailed to members of D & L Pacesetters Club who appeared as witnesses in this application.

We wish to emphasize that our findings in this case are based upon the particular circumstances involved, particularly that the employees have formed a voluntary, cooperative ride-sharing arrangement using buses chartered from a certificated passenger charter-party carrier. Any steps taken toward turning this operation into a profit-making venture for one or more of the members or organizers of the club, or toward making the service available to the general public, would be a significant change of circumstances which could subject the operation to regulation as a passenger stage corporation.

O R D E R

IT IS ORDERED that the above-entitled application is denied.

The Executive Director shall cause a copy of this decision to be mailed to members of D & L Pacesetters Club who appeared as witnesses in this proceeding.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 21st day of JUNE 4, 1977.

President
William Lyons Jr.
Vernon L. Sturgeon
Richard D. Howell

Commissioners

Commissioner Robert Batnovich, being necessarily absent, did not participate in the disposition of this proceeding.