

ORIGINAL

Decision No. 87858 SEP 13 1977

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of MEXICOACH, INC., a California corporation, for certificate of public convenience and necessity to operate passengers and their baggage between San Diego, California, and Calexico, California, and return.

Application No. 56663
(Filed August 2, 1976)

Ronald B. Frankum, Attorney at Law, for Mexicoach, Inc., applicant.
W. L. McCracken, Attorney at Law, for Greyhound Lines, Inc., protestant.
Thomas P. Hunt, for the Commission staff.

O P I N I O N

Mexicoach, Inc. (Mexicoach), a California corporation, seeks a certificate of public convenience and necessity pursuant to Section 1031, et seq., of the Public Utilities Code to operate as a passenger stage carrier to transport passengers and their baggage between the cities of San Diego, California, and Calexico, California.

Public hearing was held before Examiner Johnson at San Diego on February 4 and March 11, 1977 and the matter was submitted on March 29, 1977 upon receipt of transcript. Testimony was presented on behalf of Mexicoach by its president, by one of its sales employees, by a principal of a planning and economic consulting firm, by two transportation consultants, by a financial consultant, by a former travel agent, by a tour operator, and by a marketing consultant; and on behalf of Greyhound Lines, Inc., by its senior director of traffic, by its Calexico agent, and by its area general manager. Other parties to the proceeding participated through cross-examination of the various witnesses.

Mexicoach presently operates as a passenger stage corporation transporting passengers and their baggage between San Diego and Tijuana under an exemption of Section 203(b)(8) of the Interstate Commerce Act; between San Diego, California, and Tecate, Baja California, Mexico, under Interstate Commerce Commission (ICC) certificate docket No. MC-139343; and between San Diego, California, and all points in Arizona and Nevada, as a charter-party carrier in accordance with a certificate issued by the ICC on January 24, 1977. Mexicoach also holds a charter-party carrier of passengers permit, TCP-652-P, granted pursuant to Section 5384(b) of the California Public Utilities Code.

Mexicoach is seeking authority to operate as a passenger stage carrier to transport passengers and their baggage between the AMTRAK/Mexicoach Station, 1050 Kettner Boulevard, San Diego, California, and the Hotel Rey, 244 Imperial Avenue, Calexico, California. Mexicoach proposes two round trips daily as follows:

<u>Leave</u>		<u>Arrive</u>	
San Diego	8:15 a.m.	- Calexico	10:30 a.m.
San Diego	11:30 a.m.	- Calexico	1:45 p.m.
Calexico	2:00 p.m.	- San Diego	4:15 p.m.
Calexico	5:00 p.m.	- San Diego	7:45 p.m.

The proposed adult fares are \$7.50 one way \$13.50 round trip, and the proposed fare for children under 11 years of age is one-half the adult fare. Children under two years of age can ride free if carried on the lap of a paying passenger.

Mexicoach's Position

Testimony and/or exhibits presented on behalf of Mexicoach indicate that:

- (1) Bus travelers desiring to travel between Calexico and San Diego presently have to travel over a route approximately 132 miles long with stopover delays at El Centro ranging from 15 minutes up to one hour and ten minutes.

- (2) Granting the requested certificate of public convenience and necessity will provide direct convenient service along a route approximately 119 miles long.
- (3) The scheduled travel time for Mexicocoach will be two hours and 15 minutes as contrasted to Greyhound's scheduled time ranging from three hours and five minutes up to four hours and 40 minutes.
- (4) Mexicocoach regularly operates over the international border and is, therefore, experienced in dealing with travelers to and from Mexico. Also Mexicocoach's employees are bilingual.
- (5) Mexicocoach's experience in the transportation of passengers and the quality of service rendered attest to its fitness, willingness, and ability to perform the requested service.
- (6) The proximity of Mexicocoach's terminal in San Diego to AMTRAK's facilities provide easy access to Mexicocoach for AMTRAK's discharging passengers.
- (7) Arrangements have been made with the Calexico Transit System to transport passengers from Mexicocoach's Calexico terminal to the train station in Mexicali.
- (8) The proposed operation would permit passengers to leave San Diego at 8:15 a.m. and catch a train at Mexicali leaving for the interior of Mexico at 11:30 a.m. which is not possible utilizing Greyhound buses.
- (9) The economic character of San Diego and Calexico is highly interdependent and improved bus service would improve the opportunity to interact for businessmen and residents of both cities.
- (10) The proposed service would principally divert travelers from the automobile and will thereby help to conserve fuel and benefit the environment by reducing the amount of atmospheric contamination.

- (11) Many prospective users of the proposed service would identify with the name of the company because of their Spanish or Mexican ancestry.
- (12) The proposed service will be attractive to businessmen because of the speed and convenience, to students because of the economy, and to sightseers because of the direct routing.
- (13) It is contemplated commencing operations, if authorized, with minibuses and changing to full-size modern buses as soon as the amount of traffic will support their use.

Greyhound's Position

Testimony and/or exhibits presented on behalf of Greyhound indicated that:

- (1) Greyhound operates over freeways with 12-foot lanes as contrasted to a portion of Mexicoach's proposed route which has narrower lanes and is lacking in substantial shoulder areas.
- (2) Greyhound has bus terminals in San Diego, El Centro, and Calexico and maintenance facilities and bus pools in San Diego and El Centro.
- (3) Greyhound provides flag stop service to such intermediate points as Jacamba, Ocotillo, Alpine, and Seeley and such service is not contemplated in Mexicoach's proposed operations.
- (4) Greyhound provides three through and one connection run daily from San Diego to Calexico and five through and one connection run daily from Calexico to San Diego.
- (5) Greyhound has instituted various specialized services in order to attract people who wish to go to Mexico.
- (6) Greyhound has plans to move its shop and driver extraboards from El Centro to Calexico because a substantial amount of traffic is generated at Calexico.
- (7) Greyhound's service on the United States side of the border has competition with Mexican bus lines on the Mexican side of the border because of the high frequency of scheduled runs between Mexicali and Tijuana and the relatively lower fares.

- (8) Greyhound's interstate traffic comprises a very important part of passengers moving between El Centro and San Diego and such service is in competition with Continental Trailways buses.
- (9) Greyhound's intrastate El Centro to San Diego passenger service is in competition with Imperial Air Lines.
- (10) Greyhound's chief competition is the family car.
- (11) Bus departures are announced in Spanish as well as English in both San Diego and Calexico.
- (12) Greyhound operates 43-passenger buses with air conditioning, reclining seats, lavatories, public address systems, and tinted glass.
- (13) There is a continuing availability of empty seats to accommodate additional passengers.
- (14) Greyhound is willing to provide nonstop service between Calexico and San Diego should the Commission deem there is a public need for such service but feels it is better to operate over the interstate freeways whenever possible as such routes are felt to be safer.
- (15) Greyhound's witness would expect to receive correspondence relating to informal complaints filed with the Commission and has received no such correspondence relating to the quality of service rendered by Greyhound between San Diego and Calexico.
- (16) Greyhound is prohibited by federal law from requiring its drivers to be bilingual.
- (17) Greyhound's area general manager and the city sales supervisor from San Diego requested one of Greyhound's professional drivers to drive a 43-passenger bus from San Diego to Calexico over the route proposed by Mexicoach and return via El Centro over the route presently used by Greyhound. The driver did not exceed the speed limits and traveled the San Diego to Calexico route in two hours and twenty-nine minutes. He stated that twice he had to slow

to less than 15 miles per hour to permit opposing traffic to pass because of high winds blowing sand across the road and that without such forced slowing the travel time could have been reduced as much as 15 minutes. The travel time nonstop from El Centro to San Diego was two hours and 15 minutes and the travel time from Calexico to El Centro was between 18 and 20 minutes.

- (18) It is not economically feasible for an agent to staff an agency 24 hours a day for a very limited amount of business.

Discussion

In determining whether or not to grant a certificate the Commission considers such factors as: (1) public requirements for the service; (2) adequacy of existing service; (3) adequacy of proposed service; (4) quality of proposed service; (5) revenue requirements and rates; (6) technical feasibility; (7) technical competence and financial integrity of the operator; (8) economic feasibility of the proposed operations; and (9) present operations. (Silver Beehive Tel. Co. (1970) 71 CPUC 304.)

The record fully supports the need for a bus leaving San Diego at approximately 8 a.m. and arriving in Calexico sufficiently early to permit discharging passengers to arrange transportation to the Mexicali train station to catch the morning train for the interior of Mexico or to complete business transactions in Calexico and return to San Diego the same day. In addition, the second daily bus proposed at the initial day of hearing, scheduled for departure at 11:30 a.m., would permit AMTRAK passengers arriving in San Diego at 11:05 a.m. to make timely connections for Calexico. Greyhound provides three through buses and one connecting bus each day from San Diego to Calexico with a stopover or transfer at El Centro and five through buses and one connecting bus each day from Calexico to San Diego with stopover or transfer at El Centro. A major portion of the patronage on these scheduled runs reflects

travel between El Centro and San Diego related to interstate travel not subject to this Commission's jurisdiction. Modification of Greyhound's routes to provide direct service between Calexico and San Diego would disrupt this relationship. Furthermore, according to the testimony of Greyhound's witness, the exclusion of El Centro from the route between Calexico and San Diego would result in an uneconomical operation for Greyhound.

Greyhound is protesting the granting of the requested application on the primary basis that such an operation would result in dilution of Greyhound's revenues. According to the record, however, Greyhound's competition consists of the family automobile, interstate competition between El Centro and San Diego by Continental Trailways, intrastate competition between El Centro and San Diego by Imperial Airlines, and between the Calexico-Mexicali area and the Tijuana-San Diego area by Mexican bus lines. By proposing direct relatively fast service between Calexico and San Diego, utilizing bilingual employees, and arranging for transportation by another agency between Calexico and the Mexicali train station, Mexicocoach hopes to attract its patrons primarily from businessmen presently traveling between Calexico and San Diego by private automobile and travelers between San Diego and Mexicali or the Mexican interior. In either case the effect on Greyhound's operations would be very minor. Needless to say, Mexicocoach's proposed operation would have no effect on Greyhound's competitive situations relating to interstate bus travel or intrastate air travel.

It should be noted that Greyhound's present operations utilizing 43-passenger buses with its economic dependence on related interstate operations, its dependence on the procurement of passengers from El Centro, and the intermediate stops is distinctly different from the direct service between Calexico and San Diego,

utilizing buses whose size will be dependent on the amount of traffic proposed by Mexicoach. Consequently, granting the requested certificate will not conflict with Section 1032 of the Public Utilities Code which states:

"1032. . . . 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."

According to the record, the number of annual passengers on Mexicoach's Tijuana run has increased from 6,599 to 104,975 during the period August 1972 to the end of December 1976. Such growth would appear to indicate that Mexicoach is capable of providing adequate service and maintaining its financial integrity. It is axiomatic that poor service would result in declining patronage with accompanying financial insolvency.

Greyhound's senior director of traffic testified that Greyhound has instituted various specialized services in order to attract people who wish to go to Mexico and mentioned providing service from Fresno and Salinas to Calexico, from Los Angeles to El Paso and Juarez, and from San Diego to Tijuana. Such operations would be unaffected by Mexicoach's proposed San Diego to Calexico schedules.

From the record it is clear that although wide freeway lanes might be Greyhound's preferred routing, large 43-passenger buses are being regularly used on roads and highways which are not superior to the roads proposed to be utilized by Mexicoach.

Findings

1. Mexicoach presently operates as a passenger stage corporation transporting passengers and their baggage between San Diego and Tijuana under an exemption of Section 203(b)(8) of the

ICC Act, between San Diego, California, and Tecate, Baja California, Mexico, under ICC certificate docket No. MC-139343, and between San Diego, California, and all points in Arizona and Nevada, as a charter-party carrier in accordance with a certificate issued by the ICC on January 24, 1977.

2. Mexicoach proposes to provide two scheduled round trips for passengers and their baggage between San Diego, California, and Calexico, California.

3. Public convenience and necessity require the service between the AMTRAK terminal in San Diego, California, and the terminal of the Calexico Transit Company in Calexico as proposed by Mexicoach in the proceeding.

4. The service provided by Greyhound with its economic dependence on related interstate operations and the procurement of passengers at El Centro and its intermediate stops is distinctly different than the service proposed by Mexicoach. Therefore, the granting of the requested certificate does not conflict with Section 1032 of the Public Utilities Code.

5. Mexicoach possesses the ability and experience and has the financial resources available to perform the proposed service.

6. It is reasonable to assume that most of the passengers that will utilize Mexicoach's service are presently either using private automobiles or Mexican buses so that the revenue effect of these certificated operations on Greyhound will be minor in nature and will not jeopardize its continued service.

7. The route proposed by Mexicoach generally over Interstate Highway 8 and State Highway 98 is reasonable.

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

The Commission concludes that the application should be granted as set forth in the ensuing order.

Mexicoach is hereby placed on notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. Aside from their purely permissive aspect, such rights extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be modified or canceled at any time by the State, which is not in any respect limited as to the number of rights which may be given.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Mexicoach, Inc. (Mexicoach), authorizing it to operate as a passenger stage corporation, as defined in Section 226 of the Public Utilities Code, between the points and subject to the conditions particularly set forth in Appendix A of this decision.

2. In providing service pursuant to the authority granted by this order, applicant shall comply with the following service regulations. Failure so to do may result in a cancellation of the authority.

- (a) Within thirty days after the effective date of this order, applicant shall file a written acceptance of the certificate granted. Applicant is placed on notice that if it accepts the certificate it will be required, among other things, to comply with the safety rules administered by the California Highway Patrol, the rules and other regulations of the Commission's General Order No. 98-Series and the insurance requirements of the Commission's General Order No. 101-Series.

- (b) Within one hundred twenty days after the effective date of this order, applicant shall establish the authorized service and file tariffs and timetables, in triplicate, in the Commission's office.
- (c) The tariff and timetable filings shall be made effective not earlier than ten days after the effective date of this order on not less than ten days' notice to the Commission and the public, and the effective date of the tariff and timetable filings shall be concurrent with the establishment of the authorized service.
- (d) The tariff and timetable filings made pursuant to this order shall comply with the regulations governing the construction and filing of tariffs and timetables set forth in the Commission's General Orders Nos. 79-Series and 98-Series.

- (e) Applicant shall maintain its accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission and shall file with the Commission, on or before March 31 of each year, an annual report of its operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

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

Dated at San Francisco, California, this 13th day of SEPTEMBER, 1977.

Robert Balfanz
President
William S. Lyons Jr.
Vernon L. Strickman
Richard D. Howell
Clair T. Schick
Commissioners

CERTIFICATE
OF
PUBLIC CONVENIENCE AND NECESSITY
PSC No. _____

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

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.

87853

Issued under authority of Decision No. _____
dated SEP 13 1977 of the Public Utilities Commission
of the State of California, in Application No. 56663.

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

Mexicoach, Inc. is authorized to transport passengers and their baggage between San Diego and Calexico over and along the route hereinafter described, subject, however to the authority of this Commission to change or modify said route at any time and subject to the following provisions:

(a) No passengers or baggage shall be picked up or discharged en route but only at designated terminals at origin and destination.

(b) Motor vehicles may be turned at termini and intermediate points, in either direction, at intersections of streets or by operating around a block contiguous to such intersections, in accordance with local traffic regulations.

(c) When route descriptions are given in one direction, they apply to operation in either direction unless otherwise indicated.

Section 2. ROUTE DESCRIPTIONS.

Commencing from AMTRAK/Mexicoach Station, 1050 Kettner Boulevard, San Diego, thence over the most appropriate streets, to over and along Interstate Highway 8, State Highway 98 and traversing over the most appropriate streets to 244 Imperial Avenue, Hotel Rey, terminal of Calexico Transit System.

Issued by California Public Utilities Commission.

Decision No. 87853, Application No. 56663.