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ORIGINAL

Decision No. 88195 DEC 6 1977

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of MELVIN COMBS dba
MELVIN'S CHARTER for a Class "B"
certificate to operate as a charter-
party carrier of passengers, Fresno.
(TCP-50-B)

Application No. 57182
(Filed March 30, 1977)

Michael E. Moss, Attorney at Law,
for applicant.
William L. McCracken, Attorney at Law,
for Greyhound Lines, Inc.; John
Paul Fischer, Attorney at Law,
for Charter Lines, Inc.; R. Y.
Schureman, Attorney at Law, for
American Buslines and Continental
Trailways; Michael H. Haworth,
for Orange Belt Stages, Inc.; and
Jack L. Saul, for Abbey Transportation
System, Fresno; protestants.
Barbara Weiss, for the Commission staff.

O P I N I O N

By this application Melvin Frank Combs, an individual doing business as Melvin's Charter, seeks a Class "B" charter-party carrier of passenger certificate. Applicant's home terminal is located at 17 East Florence Avenue, Fresno.

Public hearing was held before Administrative Law Judge Fraser in Fresno on August 30, 1977. The matter was submitted after the presentation of evidence by applicant and the protestants.

Applicant is a bus mechanic who owns his own garage. He drove a city bus (Fresno) for seven years and resigned in 1963. He has subsequently been employed for twelve years as the

driver for the Fresno Giants baseball team during the annual six-month playing season. Applicant maintains and stores the 38-passenger, 1959 GMC air-conditioned bus owned by the team. The team manager has agreed to lease the bus to him for six months every year, when the vehicle is not used by the team. Applicant presented four letters for the Commission's correspondence file, a recommendation from the Fresno Giants and three letters from local churches in support of his application. One of the letters was written by a pastor who has been acquainted with applicant for more than 25 years. Applicant testified that he will be a charter operator six months of the year, operating a single bus. He will drive for the Fresno Giants the rest of the year. He will hire no employees and purchase no more vehicles. Applicant stated he is seeking a means of earning income during his off season. His experience as a driver and mechanic prompted him to apply for charter authority. He expressed surprise that his one-bus, one-man proposal was protested.

Five protestants testified and 15 exhibits were placed in evidence. Exhibit 2, placed in evidence by Greyhound Lines, reveals that a 40-mile radius from Fresno (the normal pickup zone of a Class "B" certificate) includes Chowchilla to Tulare in the south, easterly to Coalinga and west to the Sierra foothills. Exhibit 3 shows Greyhound Lines, Inc. (Greyhound) transported 63 charters out of the Fresno area during January, February, and March of 1977, earning a total revenue of \$33,932.65. Forty-six of these charters were transported in a single bus. A Greyhound witness testified that charter revenue makes up the loss suffered on local scheduled service. It was noted that 49 drivers are based in Fresno and 1,714 modern buses are licensed to operate in California. A Continental Trailways (Trailways) representative testified that four buses are

stationed in Fresno, to be used exclusively on charters. Seventy Trailways charters (Exhibit 12) originated in the Fresno area during the first six months of 1977, bringing in a total revenue of \$48,876.07. Only 17 of these charters required more than one bus. Allstate Charter Lines, Inc. placed an exhibit in evidence which listed all 58 charters transported by the company during May 1977. The average load was less than 44 passengers. Protestants all utilize special luxury buses which cost in excess of \$104,000, per unit. Vehicles used in charter service have carpets, restrooms, bars, food service pantries, stereo, C.B. radios, interior speaker systems, tables, and frequently individual seats which turn or recline. Protestants all testified that charter revenue is essential to insure a profitable operation.

Discussion

Applicant seeks a Class B charter-passenger certificate to operate a leased vehicle during his off-season. Considerations governing applications of this kind are set out in the "Passenger Charter-Party Carriers' Act", Public Utilities Code Sections 5351, et seq. Specifically, Section 5375 of the Code authorizes the Commission to issue a certificate upon a showing that the proposed service is required by public convenience and necessity; that the applicant possesses satisfactory fitness and financial responsibility to conduct the proposed service; and that the applicant will comply with Commission rules and regulations.

The applicant herein has satisfied the requirements of this section. While not proposing a large operation, the applicant has presented evidence of public interest in and an intention to use his services upon approval of this application. This same evidence indicates that the applicant's supporters would prefer to use the proposed service due both to the very real possibility of rates which

would be lower than those of the protestants, and out of concern for safety and conservation. More importantly, however, the applicant's evidence would allow the inference that members of the public supporting this application would use no charter service, including that of the protestants, upon a denial of this application. It strains credibility, therefore, to give credence to protestants' position that a grant of this application would disrupt not only the competitive balance in the Fresno area, but also the balance between charter service and passenger fare revenues within protestants' operations. On these facts, this application should be granted.

Section 5375.1 of the Code, however, ostensibly requires an applicant for a Class B certificate to prove that existing service within the area covered by the proposed operation, with which the applicant will compete, "is not providing services which are satisfactory to the commission and adequate to the public." Protestants assert that the applicant has failed to carry this burden of proof by choosing to adduce supporting testimony in the form of letters as opposed to presenting public witness testimony concerning protestants' service deficiencies. Protestants argue, therefore, that this application should be denied.

With this line of argument, we disagree. The test, in this case, for application of Section 5375.1 should lie with the true competitive relationships between the applicant and existing charter-carriers, which would result from a grant of this application. First, as stated above, it appears from applicant's supporters that they would not avail themselves of the services of the protestants even if this application were denied. This attitude may arise from the hope of lower rates charged by the applicant, personal friendship with the applicant, or the like. Certainly, applicant's business may expand in the future, resulting in some diversion of business from

protestants. However, any attempted showing of applicant's growth-potential at this time would constitute nothing more than speculation. On the contrary, applicant here proposed a modest operation, interposed between his current occupations. Under these circumstances, no significant competitive relationship would arise from a grant of this application such that the requirement of Section 5375.1 should become operative.

Secondly, no present holder of a Class B certificate protested in this proceeding. Rather, all protestants herein are holders of Class A certificates, granting them statewide operating rights. Because holders of Class A certificates have such operating rights and possess de jure right to operate within the area covered by any Class B certificate, it is in principle impossible for any Class B applicant to prove the nonexistence or inadequacy of a Class A holder's operations in the area subject to his application. This is particularly aggravated in this case, in which the absence of protest by holders of Class B certificates would suggest an absence of concern over disruption of the competitive climate in the Fresno area. Again, under these circumstances, it is the Commission's opinion that no significant competitive description would follow from a grant of this application such that the requirements of Section 5375.1 would become operative.

The Commission concludes, therefore, that the grant of this Class B charter service is not adverse to the public interest.

Findings

1. Applicant has the ability, experience, equipment, and financial resources to perform the proposed service.
2. Public convenience and necessity require that the service proposed by the applicant be established.
3. Applicant should be authorized to pick up passengers within a radius of not more than forty (40) air miles from his home terminal at 17 East Florence Avenue, Fresno, California.

4. The services proposed by applicant will have insignificant competitive effect on protestants' operations.

5. We find with reasonable certainty that the project involved in this proceeding will not have a significant effect on the environment.

The Commission concludes that the proposed authority should be issued as provided in the following order.

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 Melvin F. Combs, authorizing him to operate as a Class B charter-party carrier of passengers, as defined in Section 5383 of the Public Utilities Code, from a service area encompassing a radius of forty (40) air miles from applicant's home terminal at 17 East Florence Avenue, Fresno, California.

2. In providing service pursuant to the certificate herein granted, applicant shall comply with and observe the following service regulation. Failure so to do may result in a cancellation of the operating authority granted by this decision.

Applicant will be required, among other things, to comply with and observe the safety rules administered by the California Highway Patrol, the rules and other regulations of the Commission's General Order No. 98-A, and the insurance requirements of the Commission's General Order No. 115-A.

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

Dated at San Francisco, California, this 6th day of DECEMBER, 197 .

I dissent.
William Sproule, Jr.

Robert B. ...
President

Reginald L. ...
Charles D. ...
Clarence L. ...
Commissioners