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Decision No. SE235 DEC 13 1977

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of BARNEY J. GABRIEL,  
dba OROVILLE BUS LINES for a Class  
"B" certificate to operate as a  
charter-party carrier of passengers,  
Oroville.

Application No. 57170  
(Filed March 24, 1977;  
amended October 5, 1977)

Kelly Albrecht, Attorney at Law, for Barney J. Gabriel, applicant.

E. R. Stent, Attorney at Law (Arizona, Illinois),  
for Greyhound Lines, Inc., protestant.  
Autar S. Chhina, for the Commission staff.

O P I N I O N

Barney J. Gabriel, dba Oroville Bus Lines (Gabriel), requests a Class "B" certificate to operate as a charter-party carrier of passengers from his terminal at Oroville and points within forty miles of that terminal, on the one hand, and, on the other hand, to all points in the State. The application was protested by Greyhound Lines, Inc. (Greyhound), which holds a Class "A" certificate to operate as a charter-party carrier of passengers throughout the State. A hearing was held on the matter at Oroville on October 5, 1977 before Administrative Law Judge Pilling.

Gabriel's principal business is the operation of school buses under contract with the superintendent of schools of Butte County. He also operates a taxicab company at Oroville. His home terminal is located at 1825 Montgomery Street, Oroville, Butte County. As of March 3, 1977 he had a net worth of \$288,993.

In the proposed operation he intends to operate four 44-passenger buses and one 15-passenger bus, each of which is operated in his school bus service and each of which is owned by Gabriel. The buses are not equipped with reclining seats or other special appointments. Gabriel, who advertises in the yellow pages of the telephone directory in the section headed "Bus Lines", testified that he receives calls daily requesting his company to perform charter-party service. He stated he has performed emergency bus service in transporting fire fighters to and from the scenes of forest and grass fires. Gabriel testified that he has 30 years' experience in the transportation business. Gabriel presented no public witness attesting to the need for his service. Further, applicant presented no evidence, such as rates and charges, which would distinguish his proposed service from the existing charter-party service being provided by protestant. Applicant presented no evidence on the inadequacy of the operations of the existing charter-party carrier, as required by Public Utilities Code Section 5375.1.

Greyhound owns approximately 1,701 intercity buses licensed in California which are fully equipped with a convenient restroom, air conditioning, reclining seats, tinted picture windows, reading lights, public address system, air suspension ride, compartments overhead for personal items and carry-on baggage, and baggage compartments under the passenger area to accommodate checked baggage of passengers. It operates several local and long-distance passenger stage routes through Oroville and other major points within a 40-mile radius of Oroville. It has agents at Chico, Grass Valley, Orland, Paradise, Willows, Gridley, and Marysville, all of which are within 40 miles of Oroville, and at Oroville. The Greyhound witness testified that 1/6 of Greyhound's California revenues are derived from

charter operations. During 1976 Greyhound (Exhibit 8) operated 66 buses transporting 2,291 passengers in charter operations originating from a 40-mile radius of Oroville, including two moves from Oroville, and in 1977 through May operated 44 buses transporting 1,581 persons in charter-party operations from that area, including two buses from Oroville. Total revenue from the aforementioned moves was \$52,188. All of Greyhound's agents in the involved origin area are connected with a central dispatch office by a WATTS line. Greyhound terminates no buses at Oroville, but services the charter business in the area with extra buses which may happen to be in the area at the time a charter has been contracted for, and if there are no extra buses in the area then it will dispatch a bus from Sacramento, with Chico used as a base point for assessing deadhead mileage charges. Exhibit 8 shows that Greyhound in 1976 performed four charter operations between points entirely within a 40-mile radius of Oroville, and during the first five months of 1977 performed no charter operations between points within a 40-mile radius of Oroville.

Discussion

The facts summarized above clearly indicate the existence of a public need for applicant's proposed service originating from Oroville. While Greyhound does serve points within a 40-mile radius of Oroville with some frequency, Greyhound's exhibits disclose that service to and from Oroville is marginal and infrequent. Furthermore, the service provided to the area surrounding Oroville is based on the availability of either extra buses in the area, or on dispatching extra buses from Sacramento. Thus, Greyhound's present service within the area subject to this application is merely an adjunct to Greyhound's regular service to nearby locations. Under these circumstances, this application should be granted.

Protestant has argued that applicant's failure to provide testimony concerning the quality of Greyhound's service in the Oroville area constitutes a bar to granting this application under Section 5375.1 of the Public Utilities Code.<sup>1/</sup> Under the circumstances present in this case, protestant's argument is without merit.

First, the facts of this case closely resemble those discussed in D.74858 (October 22, 1968) which granted a Class B certificate to H & J Brighton Bus Company for service in the Santa Maria area notwithstanding both Greyhound's operations within the 40-mile radius service area encompassed by the application, and Greyhound's permanent terminal facilities located 30 miles from applicant's base of operations (see 69 CPUC 10, 14). In granting the application, the Commission reasoned as follows:

"Although both Greyhound and Melni hold themselves out to perform passenger charter service within Santa Maria and the immediate vicinity thereof and have performed such service therein, neither has passenger equipment based in said area. The majority of Greyhound's charter activity in this section of the state is centered around San Luis Obispo, and the majority of Melni's charter activity is outside the Santa Maria area. According to the record, applicant's equipment is the only charter equipment based in the immediate Santa Maria area. Furthermore, the fact that there are only two protestants certainly does not evidence an overabundance of available charter service for the general public within the Santa Maria area." (Id. at 15.)

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<sup>1/</sup> "Notwithstanding the provisions of Section 5375, if the applicant desires to operate in a territory already served by the holder of a certificate, the commission shall hold a hearing before granting the certificate. The commission shall not grant a certificate to such an applicant unless it can be shown that the existing charter-party carrier of passengers serving the territory is not providing services which are satisfactory to the commission and adequate for the public. In no event shall the commission issue more certificates than public convenience and necessity require and the commission shall place any restrictions upon such certificates as may reasonably be necessary to protect any existing charter-party carrier of passengers."

Similarly, here, Greyhound routes its local operations, some of which pass through the Oroville area, through Chico, which is roughly 25 miles from Oroville. Further, while the record in this case is unclear as to the number of Oroville charter carriers currently in operation, the appearance of only one protestant in these proceedings, again, "does not evidence an overabundance of available charter service for the general public within the (Oroville) area."

Secondly, the Commission recently stated in Application of Melvin Combs (D.88196, December 6, 1977) that:

"...(N)o 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 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."

One aspect of this problem is illustrated by this case. Because Greyhound has de jure rights to operate anywhere in California, it is always possible for Greyhound to move its buses into an area which is infrequently or irregularly served and thereby establish some service which must be proved inadequate by the applicant. Thus, virtually every potential Class B applicant could, in theory, be forestalled from receiving operating authority by the fortuity (and probability) that Greyhound has, at some time, run a charter bus through the applicant's proposed service area. This is hardly a satisfactory situation. Under circumstances such as those disclosed herein, viz., where protestant's operations within the area subject to the application are irregular and infrequent, and where protestant's permanent equipment is located at a significant distance from applicant's base of operations, it is the Commission's opinion that the requirements of proof of Section 5375.1 are satisfied. ✓

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 1825 Montgomery Street, Oroville, California.

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.

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 Barney J. Gabriel, dba Oroville Bus Lines, 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 1825 Montgomery Street, Oroville, 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-Series, and the insurance requirements of the Commission's General Order No. 115-Series.

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

Dated at San Francisco, California, this 13<sup>th</sup> day of DECEMBER, 1972.

I dissent.  
William S. Quous Jr.

Robert Bateman  
President

William L. Sturgeon  
George R. Gable  
Paul T. Deane  
Commissioners