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ORIGINAL

Decision No. 89676 NOV 28 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Daniel Francis
McCarthy (Ace Mini Bus Co.),
for a Class B certificate to
operate as a charter-party
carrier of passengers, San
Francisco. (File-TCP-58-B).

Application No. 58003
(Filed April 14, 1978)

James S. Klapp, Attorney at Law, for Daniel
Francis McCarthy, dba Ace Mini Bus Co.,
applicant.
Marc E. Gottlieb, P.E., for the Commission staff.

O P I N I O N

Daniel Francis McCarthy, an individual, dba Ace Mini Bus Co. (Ace), seeks a Class B charter-party carrier of passengers certificate authorizing operations from all points and places within a radius of 40 air miles from his home terminal located at 770 Post Street, San Francisco, California 94109. The application was protested by Greyhound Lines, Inc., Falcon Charter Service, and Eastshore Lines. Public hearing was held before Administrative Law Judge Bernard A. Peeters at San Francisco on September 7, 1978, on which date the matter was submitted. No protestants appeared at the hearing. Applicant's attorney advised that after consulting with the protestants and agreeing to amend the application to include a restriction that vehicles, not exceeding 21 passengers in capacity would be utilized, all the protestants withdrew their protests.

Applicant presented Tony Ruis, president and general manager of Lorrie's Travel & Tours, Inc. (Lorrie's) and general manager of Ace. His testimony shows that Lorrie's is a travel and tour broker; is owned by Joanne Donahue, a niece of Ruis; and that

Ace is a sole proprietorship owned by McCarthy, Ruis' stepson. Lorrie's possesses authority as a passenger stage carrier to transport passengers from San Francisco hotels to San Francisco International Airport and also in the reverse direction; Ace has a charter-party carrier of passengers permit limited to the transportation of passengers in vehicles of 15-passenger capacity or less. Two new additional pieces of equipment have recently been acquired by Ace, which are 21-passenger capacity. All equipment is owned by Ace and on lease to Lorrie's. One of the new pieces of equipment is shown in Exhibit 2 as Fortibus Commuter XB and is equipped with a hydraulic lift to handle wheelchair passengers.

Lorrie's acts as a travel broker as well as a passenger stage corporation. It receives requests for charters from other travel agents throughout the country and arranges with various charter-party passenger carriers in the San Francisco area to handle these requests. The majority of Ace's business obviously comes from Lorrie's. Lorrie's pays Ace 85 percent of the revenue received and retains 15 percent for itself. Experience has shown that the size of the charter parties is generally a little bit more than one 15-passenger van can handle but not quite enough for two vans. Therefore, under present operations it has been uneconomical for the chartering groups to have to pay for two vans when the capacity of one van has been exceeded by only one or two people. For this and other reasons, Ace is seeking a Class B certificate which would allow him to use larger equipment thus being more responsive to the needs of the touring public. The general manager also stated that if the Commission should grant the sought authority consideration will be given to the merging of Lorrie's and Ace. The general manager also agreed that if the sought authority is granted it can be limited to vehicles with a capacity of not more than 21 passengers. It was specifically understood that, as a charter-party operator, Ace cannot charge individual fares as is the situation with Lorrie's under its passenger stage certificate.

Findings of Fact

1. Applicant has the ability, experience, and financial resources to perform the proposed service.

2. Public convenience and necessity require larger equipment than Ace presently utilizes.

3. Applicant should be authorized to pick up passengers within a radius of 40 air miles from its home terminal at 770 Post Street, San Francisco, California 94109.

4. It is reasonable to include the following restrictions in the Class B charter-party carrier of passengers certificate to be issued to applicant:

a. Applicant shall operate only vehicles having a seating capacity of 21 or fewer passengers in addition to the driver.

b. Applicant shall not conduct any operation on the property of or to any airport unless it has a prearranged order for such service.

5. No charter-party carrier of passengers appears to be providing service with the vehicles having only 21-passenger or less seating capacity in the San Francisco Bay Area.

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

Conclusion

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

Applicant is 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. 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, to be renewed each year, shall be granted to Daniel Francis McCarthy, dba Ace Mini Bus Co., 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 40 air miles from applicant's home terminal at 770 Post Street, San Francisco, California 94109, subject to the following restrictions:

- a. Applicant shall operate only vehicles having a seating capacity of 21 or fewer passengers in addition to the driver.
- b. Applicant shall not conduct any operation on the property of or into any airport unless it has a prearranged order for such service.

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 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 thirty days after the date hereof.

Dated at San Francisco, California, this 28th day of NOVEMBER, 1978.

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.

Robert Bateman
President
William Gordon J.
Robert D. Gentry
Clare J. DeLoach
Commissioner