

Decision No. 89690 NOV 28 1978

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application )  
of MARK IV CHARTER LINES, INC. )  
for authority to provide Passenger )  
Stage Service between Brentwood, )  
West Los Angeles area, and McDonnell )  
Douglas Plant, Huntington Beach. )

Application No. 57921  
(Filed March 10, 1978)

Frank J. Mannino, for applicant.  
Christopher Ashworth, Attorney at Law,  
for Southern California Commuter Bus  
Service, Inc.; William D. Bourne, for  
Commuter Bus Lines and California  
Sightseeing Tours; and James P. Jones,  
for California State Legislative Board,  
AFL-CIO, United Transportation Union;  
protestants.  
Thomas P. Hunt, for the Commission staff.

O P I N I O N

Mark IV Charter Lines, Inc. (Mark IV), a California corporation, requests authority to operate a round-trip passenger commuter service between certain points in the Brentwood-West Los Angeles area and the McDonnell Douglas Plant (McDonnell) in Huntington Beach. Mark IV presently operates both as a Class "A" charter-party carrier of passengers, and as a passenger stage corporation, providing commuter bus service between various locations in southern California and McDonnell. The application was protested by Southern California Commuter Bus Service, Inc. (COM-BUS), California State Legislative Board of the United Transportation Union, and Commuter Bus Lines.

After due notice a public hearing was held before Administrative Law Judge William A. Turkish in Los Angeles on July 21, 1978. Testifying in support of the application were the president of Mark IV and five employees of McDonnell who currently ride on Mark IV's "proposed" Route 4. Testifying in opposition to the application were the president of COM-BUS, the president of Commuter Bus Lines, and two employees of McDonnell who are currently riders of COM-BUS.

The president of Mark IV testified that his company began operating on its proposed Route 4 in May 1975 and has since been continuously operating on this route. He acknowledged that Mark IV has never filed an application with the Public Utilities Commission for authority to operate its proposed Route 4 and alleges that such failure is entirely due to an oversight on his part. He feels that he has been providing service on this route for three years without any complaints and that although he never filed an application for authority to operate this route, he did not have any intent to take customers away from any other commuter bus company.

As amended, applicant's proposed Route 4 will commence at Bundy Drive and San Vicente Boulevard at 6:16 a.m. then continue south on Bundy with pick-up stops at Dorothy Avenue at 6:17 a.m., Wilshire Boulevard at 6:18 a.m., Santa Monica Boulevard at 6:19 a.m., and Nebraska Street at 6:21 a.m., thence turning east on National Boulevard with a pick-up stop at Burkshire Avenue (National-Burkshire) at 6:25 a.m., thence continuing to and entering on the San Diego Freeway (I-405), southbound to the Springdale Street exit, continuing south to east Gate Road then west to the bus parking lot of McDonnell. It reverses its route on the return trip.

As of November 30, 1977 Mark IV had a net worth of \$136,412 with gross operating revenues of \$915,528 and net operating revenues of \$115,912 from its combined north and south operations. It operates 24 buses on six routes in southern California and has a total of 90 buses throughout California. Although the proposed route is unable to sustain itself on its current fare of \$11.50<sup>1/</sup> per week, round trip, Mark IV subsidizes its commuter operation by using its buses for charter work during its idle commute run hours. When it commenced its Route 4 service in 1975, Mark IV carried 38 passengers. This has increased to its current 43 passengers, although in any week it may actually carry anywhere from 30 to 39 passengers due to vacations, sick leave, or other absences. Mark IV currently picks up 11 passengers at its National-Burkshire stop which, as will be discussed later, is the target of the protestants. Some of these 11 passengers have been passengers of Mark IV since 1975 and changed to the National-Burkshire stop because of convenience; eight out of the 11 passengers live west of Barrington Avenue and walk to the bus stop. Four witnesses testifying in support of the application stated that the proposed route was of great convenience to them; that it was within walking distance of home; that the buses were comfortable; that they were happy with the congeniality of fellow passengers; and that, even if their stop was not authorized by the Commission, they would still ride with Mark IV on one of its other authorized stops. One witness testified that he would continue riding with Mark IV even if the fare was increased to \$15 per week from its current \$11.50. All four

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<sup>1/</sup> Mark IV intends to file an application with the Commission seeking to increase its fare to \$15 shortly.

witnesses stated they never saw or were aware of any other commuter bus operating west of the San Diego Freeway along National Boulevard.

COM-BUS, which also operates a commuter bus service for McDonnell employees, objects to the granting of authority to Mark IV to operate Route 4, specifically the National-Burkshire stop, on the grounds that Mark IV has been operating such service illegally since 1975 and further, that the proposed stop at National-Burkshire has a detrimental effect on the revenue and patronage of the existing COM-BUS route authorized by Decision No. 84624 dated July 8, 1975 and Resolution No. PE-320 (RRD-93 dated March 23, 1976). This authorization provided for stops along National (National) Boulevard at Centinela (Centinela) Avenue, at Barrington (Barrington) Avenue and at Sawtelle (Sawtelle) Boulevard. The president of COM-BUS stated that the proposed Mark IV stop at National-Burkshire is very close to its Barrington stop and thus directly competes for patronage on its authorized route. He further testified that the passenger load on his MDAC 1<sup>2/</sup> route, which includes the authorized National stops, has been decreasing to the low 30's and if it continues to decrease, COM-BUS will have to abandon the route. COM-BUS is able to accommodate all of Mark IV's riders on its MDAC 1 route if Mark IV's application is denied or if the National-Burkshire stop is eliminated. Upon cross-examination, the witness stated that some solicitation attempts have been made among McDonnell employees through COM-BUS's passengers. He testified that he made the stops along National in 1976 for approximately six months and then discontinued the stops west of Barrington because of lack of passengers. He further testified that he discontinued the stop at National and Sawtelle in 1976 and thereafter made no more stops west of the San Diego Freeway.

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<sup>2/</sup> Route MDAC 1 includes West Los Angeles, Culver City, and Westchester areas and Huntington Beach.

The president of Commuter Bus Lines, which has an agreement to purchase authorized home-to-work routes from California's Sightseeing Tours, Inc. (Cal-Site), testified that the routes he is buying authorizes pickups in the vicinity of Mark IV's proposed National-Burkshire stop. He stated that one Cal-Site route makes a stop at National and Barrington, only .2 mile or three blocks from Mark IV's proposed stop. He further testified that he has sufficient room on his bus for the Mark IV passengers being picked up at the National-Burkshire stop as that bus is presently carrying only a 56 percent load. Cal-Site's fare is currently \$13.75 per week, round trip, on its West Los Angeles route to McDonnell. The witness suggested that if Route 4 is approved, the National-Burkshire stop be eliminated and that Mark IV have a closed-door operation between its authorized stop at Ocean Park and Bundy Drive and Huntington Beach.

The Commission's staff representative, present on the second day of hearing only, supported the application as amended and further proposed that a fine of \$100 be levied against Mark IV for its operation without Commission authority. Because of the Commission staff representative's absence on the first day of hearing, a late-filed "Staff Statement and Position" was submitted following reconsideration of the matter.

The Commission staff continues its support of the application, as amended, primarily as a convenience to present riders unless the Commission finds that the protestant carriers would be handicapped by authorization of the National-Burkshire stop. In such event, the staff recommends that the route be authorized with the final stop designated at Ocean Park and Bundy Drive, .5 mile from the National-Burkshire stop, which is already authorized as a stop on another of Mark IV's routes. At the present time, the closest operative stop of COM-BUS is

at National and Overland, east of the San Diego Freeway and 1.2 miles from the National-Burkshire stop. The staff calls our attention to the fact that although we granted authority to COM-BUS to pick up passengers along National Boulevard at Centinela, at Barrington, and at Sawtelle (all west of the San Diego Freeway) in Resolution No. PE-320 (RRD 93) dated March 23, 1976, such authority was granted subject to the filings of tariffs and timetables "effective concurrent with the establishment of the service." Staff's records show that no tariffs or timetables have ever been filed with the Commission by COM-BUS pertaining to these stops and, consequently, authority for those stops have not been consummated by the Commission. COM-BUS is presently not serving the stops for which it seeks protection. Section 1032 of the Public Utilities Code is applicable to carriers presently serving a territory. It provides that ". . . 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." (Emphasis added.) Thus, the staff is of the opinion that we are not obligated to protect COM-BUS's alleged rights at the National-Centinela, National-Barrington, and National-Sawtelle stops since COM-BUS is not and has not provided service at the stops in conjunction with those rights since 1976.

With respect to the protests of Commuter Bus Lines, the Commission authorized transfer of certain operating rights from Cal-Site to Commuter Bus Lines by Decision No. 89267 in Application No. 57675, effective September 21, 1978. One of these routes allows pick-up service in the vicinity of Mark IV's proposed National-Burkshire stop. The streets and roads traveled along this route are depicted without specific stops along the route. Under this authority Cal-Site was thereby enabled to make various stops along its defined route and to vary the stops as traffic needs required. Cal-Site

was required to file its tariffs and timetables for the actual stops served but it did not specify stops at National and Barrington, or at National and Sawtelle, until December 1, 1977, effective December 15, 1977. Cal-Site's National-Barrington stop is .2 mile from Mark IV's proposed stop at National-Burkshire and .7 mile from Mark IV's authorized stop at Ocean Park and Bundy Drive.

#### Discussion

It appears evident from the testimony of witnesses testifying on behalf of Mark IV and COM-BUS that they are happy with the service currently being provided by both carriers and that they would remain loyal to their present bus carrier regardless of any increase in fares or change in pick-up stops. Congeniality of fellow passengers on the daily ride must certainly contribute to such loyalty. Opposition to the proposed Route 4 centers only on the National-Burkshire stop where Mark IV picks up 11 of its passengers. Some of these passengers have been riding with Mark IV since 1975 when it began serving this stop and others were passengers of Mark IV prior to 1975 on one of its other stops. Although authorization was granted to COM-BUS for stops on its alternate route along National Boulevard at Centinela, at Barrington, and at Sawtelle, it never filed tariffs or timetables pertaining to these stops effective concurrently with the establishment of such service. Thus, the authority to establish such service which was granted subject to those filings was never implemented. Although the evidence indicates some attempt by COM-BUS to service these stops along with some solicitation of McDonnell employees, it also shows that COM-BUS discontinued these stops after a short period of time in 1976.

Mark IV's stop at National-Burkshire, is .2 mile from Cal-Site's National-Barrington stop. While admittedly close to

Cal-Site's stop, Mark IV's previously authorized stop at Ocean Park and Bundy Drive is only .7 mile from Cal-Site's stop which is an insignificant amount when we consider the loyalty of those Mark IV passengers who testified that even if the National-Burkshire stop is eliminated, they would move back to Mark IV's Ocean Park and Bundy Drive stop.

When we previously authorized both Mark IV and Cal-Site to operate in close proximity in the Santa Monica-West Los Angeles area, we intended for the carriers to compete within the region rather than to protect defined markets for authorized stops. Thus, even if we were to eliminate the National-Burkshire stop from Mark IV's proposed route, the carriers would still be in close competition because of Mark IV's authorized stop at Ocean Park and Bundy Drive. We do not think it is fair to penalize present Mark IV passengers by requiring them to find alternative transportation or by requiring them to move from stops served by Mark IV for several years. Certainly, if COM-BUS or Commuter Bus Line wish to increase their passenger load in the area of Santa Monica and West Los Angeles, they will have to increase their solicitation efforts and initiate other steps necessary in a competitive market. For these reasons, we approve the application of Mark IV to operate on its proposed Route 4, as amended.

Although we see fit to approve this application, we are mindful that Mark IV has been operating this route since 1975 without passenger stage authority from this Commission. We do not condone such unlawful operations. The testimony of Mark IV's president that its lack of filing an application for authority to operate Route 4 was due to oversight is not overly convincing. Mark IV is not new to the scene and is aware of Commission regulations pertaining to passenger stage



certification. In fact, Mark IV indicated its concern for proper enforcement of rules and regulations by the Commission as evidenced by its filing of Case No. 9839, upon which we rendered Decision No. 84059 (Exhibit 2). In that case, Mark IV alleged that COM-BUS was operating in competition with its service without certification by this Commission. In that decision, among other things, we admonished Mark IV Charter Lines, Inc., that it was not to operate over routes not previously authorized by this Commission. The information developed in the record with respect to Mark IV's unauthorized operations may be presented by the staff to this Commission as a proposed order of investigation. It would be inappropriate in this application proceeding to impose a \$100 fine on Mark IV as a condition to the issuance of a certificate of public convenience and necessity as proposed by the staff.

Findings

1. Mark IV has been operating its proposed Route 4 since 1975.
2. Mark IV has operated its Route 4 since 1975 without the requisite authority of this Commission as required by Section 1031 of the Public Utilities Code.
3. Mark IV has previously been authorized to stop for passengers at Ocean Park and Bundy Drive.
4. COM-BUS was previously granted authority to stop for passengers on National Boulevard at Sawtelle, at Barrington, and at Centinela.
5. COM-Bus failed to file tariffs and timetables for its stops on National Boulevard at Sawtelle, at Barrington, and at Centinela in accordance with this Commission's order.
6. COM-BUS discontinued its stops on National at Sawtelle, at Barrington, and at Centinela within six months of its authority to make such stops in 1976.
7. Mark IV's proposed stop at National-Burkshire is within .2 mile of Cal-Site's authorized stop at National and Barrington.

8. Mark IV's authorized stop at Ocean Park and Bundy Drive is .7 mile from Cal-Site's authorized stop at National and Barrington.

9. Many passengers of Mark IV's National-Burkshire stop previously boarded the bus at Ocean Park and Bundy Drive and moved over to the National-Burkshire stop because of greater convenience.

10. No protest has been presented with respect to the proposed Route 4 stops other than the National-Burkshire stop.

11. Public convenience and necessity requires the proposed Route 4 service, as amended.

12. The proposed Route 4, as amended, will have an insignificant effect on the operations of Cal-Site or COM-BUS.

13. Mark IV was aware of the requirement of filing an application for authority to operate its passenger stage operation before it could lawfully operate.

14. 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 authorization for Mark IV to operate the proposed Route 4, as amended, should be granted by amending Mark IV's authority in the form of revised pages to the existing certificate of public convenience and necessity.

Mark IV 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. Appendix A of Decision No. 83627, as heretofore amended, is further amended by incorporating Second Revised Page 2, Second Revised Page 3, Third Revised Page 5, and Original Page 5.1, attached hereto, in revision of First Revised Page 2, First Revised Page 3, and Second Revised Page 5.

2. In providing service pursuant to the authority granted by this order, applicant shall comply with the following service regulations. Failure to do so 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 thirty days after the date hereof.

Dated at San Francisco, California, this 28<sup>th</sup> day of NOVEMBER, 1978.

Robert Bateman  
President

William Sproull

Richard D. Swale

Clair T. Washburn  
Commissioners

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

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

The certificate hereinafter noted supersedes all operative authority heretofore granted to Mark IV Charter Lines, Inc., or its predecessors.

Mark IV Charter Lines, Inc., by this certificate of public convenience and necessity, is authorized to transport passengers between certain points in Los Angeles County, on the one hand, and the McDonnell-Douglas Huntington Beach Plant, on the other hand; and between certain points in Los Angeles, San Bernardino, Orange, and Ventura Counties, on the one hand, and the Mammoth Mountain Ski Resort, on the other hand, over and along the routes hereinafter described, subject, however, to the authority of this Commission to change or modify said routes at any time and subject to the following provisions:

- (a) No passenger shall be transported over Routes 2, 3, \*4, or 6 who does not have as either point of origin or point of destination the McDonnell-Douglas Plant in Huntington Beach, and who is not an employee of McDonnell-Douglas.
- (b) No passenger shall be transported over Routes 7, 8, 9 or 10 who does not have as either point of origin or point of destination the Mammoth Mountain Ski Resort.
- (c) Service on Routes 7, 8, 9, and 10 shall be operated on a round-trip schedule leaving Fridays and returning from the Mammoth Mountain Ski Resort on Sunday evenings during the California winter ski season only.
- (d) On Routes 7, 8, 9, and 10, no passenger shall be loaded or discharged except at the indicated bus stops or at the Mammoth Mountain Ski Resort.

Issued by California Public Utilities Commission.

\*Added by Decision No. 80690; Application No. 57921.

SECTION 2. ROUTE DESCRIPTIONS

Route 2 - Palms/McDonnell-Douglas (Huntington Beach)

To the McDonnell-Douglas Plant at 5301 Bolsa Avenue,  
Huntington Beach, from the following pickup points only:

National Boulevard and Overland Avenue  
80th Street and Sepulveda Boulevard  
La Tijera and Osage

Route 3 - Culver City/McDonnell-Douglas (Huntington Beach)

To the McDonnell-Douglas Plant at 5301 Bolsa Avenue,  
Huntington Beach, from the following pickup points only:

Venice Boulevard and La Cienega Boulevard  
Venice Boulevard and Sawtelle  
Venice Boulevard and Centinela Avenue  
Venice Boulevard and Walgrove  
Venice Boulevard and Lincoln Boulevard  
Lincoln Boulevard and Fiji Way  
Centinela Avenue and Jefferson Boulevard

\*Route 4 - Brentwood, West Los Angeles/ McDonnell-Douglas  
(Huntington Beach)

To the McDonnell-Douglas Plant at 5301 Bolsa Avenue,  
Huntington Beach, from the following pickups points only:

Bundy Drive and San Vicente Boulevard  
Bundy Drive and Dorothy Avenue  
Bundy Drive and Wilshire Boulevard  
Bundy Drive and Santa Monica Boulevard  
Bundy Drive and Nebraska Street  
National Boulevard and Burkshire Avenue

SECTION 2. ROUTE DESCRIPTIONS (Continued)

\*Route 6 - Santa Monica/McDonnell-Douglas (Huntington Beach)

To the McDonnell-Douglas Plant at 5301 Bolsa Avenue,  
Huntington Beach, from the following pickup points  
only:

Sixth Street and Washington Boulevard  
Montana Avenue and Lincoln Boulevard  
Montana Avenue and Fourteenth Street  
Montana Avenue and Twentieth Street  
Montana Avenue and Twenty-sixth Street  
Wilshire Boulevard and Berkeley  
Wilshire Boulevard and Bundy Drive  
Wilshire Boulevard and Barrington Avenue  
Ocean Park Boulevard and Bundy Drive