

ORIGINAL

Decision No. 89920 JAN 30 1979

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application )  
of STUART ALAN MESSNICK, dba, The )  
Co-Ordinators, for a certificate )  
of public convenience and necessity )  
to add an additional, contiguous )  
service area to an existing sight- )  
seeing tour route. Titled in the )  
Public Utilities Commission records )  
as "PSC 964". )

Application No. 57075  
(Filed February 14, 1977;  
amended June 8, 1977)

Stuart A. Messnick, dba The Co-Ordinators,  
for himself, applicant.

Knapp, Stevens, Grossman & Marsh, by Warren N.  
Grossman, Attorney at Law, for The Gray Line  
Tours Company; and Richard M. Hamman, Attorney  
at Law, for Greyhound Lines, Inc.; protestants.  
Thomas P. Hunt, for the Commission staff.

### O P I N I O N

By this application Stuart A. Messnick (Messnick), dba The Co-Ordinators, seeks authority, pursuant to Sections 1031 and 1032 of the Public Utilities Code, to add an additional service area and specific motels and hotels to his existing passenger stage operating authority granted by D.84186 in A.54963 and A.55092. The proposed service consists of a one-day round-trip sightseeing tour with pickups at specific hotels and motels in an area in Orange County adjacent to his existing service area. The added area sought is bounded on the south by MacArthur Boulevard; on the west by Pacific Coast Highway; on the north by Beach Boulevard; and on the east by the Santa Ana Freeway. The passengers picked up in this area will join with the passengers picked up in the existing service area. The tour will travel south on Interstate Highway 5 (I-5) to

the city of San Juan Capistrano for a viewing of the Mission. From there the tour proceeds south on I-5 to the city of San Clemente for a viewing of the Cypress Shores area; thence to the nuclear power station at San Onofre, continuing south on I-5 for a viewing of areas such as Flower Country, Encinitas, and a one-hour meal stop in San Diego. The tour then continues with a tour of San Diego from I-5 and continues south to the California border at San Ysidro, where the passengers debark for a tour in the city of Tijuana, Mexico, on a Mexican bus line.

The application was protested by The Gray Line Tours Company (Gray Line) and Greyhound Lines, Inc. (Greyhound). A public hearing was held in Santa Ana on December 6, 1977 before Administrative Law Judge Bernard A. Peeters. The matter was submitted on said date.

#### The Evidence

At the outset it was stipulated by the parties that this application involves the same facts and issues as were heard in Messnick's A.55965. Rather than duplicate that record here, the parties requested that the record made in A.55965 be incorporated into this record, including the briefs. It was also agreed that the only evidence to be adduced by applicant would be that which would show there was a public need for the proposed service. It was also stipulated that the only issues to be determined here are:

#### The Issues

1. Whether the proposed operation is in interstate and foreign commerce and therefore beyond the scope of this Commission's jurisdiction?
2. Whether Messnick possesses the necessary fitness for the authority sought?

Discussion

The record shows that all of the public witnesses presented by Messnick believe there is a need for the proposed tour and that Messnick's operation is preferred because his tours include a tour director who accompanies the passengers throughout the entire trip, including that portion in Tijuana, Mexico. It was also established that the passengers are interested in a tour into Tijuana rather than one just to San Ysidro. It was brought out that, although the proposed operation is the same as that proposed in A.55965, there is a difference in that now there is no charge to the passenger for the transportation on the Mexican side of the border. The record is not clear as to who pays the Mexican bus line for such transportation, other than Messnick who claims that he does not pay for it any more.

The parties requested that the record made in A.55965 be incorporated into this record and are relying upon that record in this matter. On July 11, 1978 we issued D.89069 in A.55965. We concluded therein that Messnick's operations are conducted wholly within a single state and also in foreign commerce within the provisions of the Interstate Commerce Act. We also concluded that the application should be set aside until compliance with the Interstate Commerce Act was had. Having incorporated the record made in A.55965 into this record, we are bound by that record here. The only new evidence produced here was additional testimony showing there is a potential market for the proposed tour to Tijuana, that the proposed service would be offered from a specific list of hotels and motels set forth in the amendment to the application, and that now there is no charge to the passenger for the Mexican bus service. Such change in arrangements does not alter our conclusion that the proposed service is in foreign commerce. The proposed service is an all inclusive tour from Orange County points to Tijuana, and return, involving a common arrangement with a foreign common carrier for the transportation of passengers within Mexico.

Findings of Fact

1. Applicant requests authority to operate one-day round-trip passenger stage service from points in Los Angeles County to San Ysidro, California.

2. Passengers are to be provided transportation by Mexican passenger buses into and out of Tijuana, Mexico, as part of the one-day round-trip service.

Conclusions of Law

1. Applicant's proposed operations involve the transportation of passengers in foreign commerce within the provisions of the Interstate Commerce Act.

2. Until applicant complies with the Interstate Commerce Act this Commission should not grant the authority requested.

3. Submission should be set aside and this matter should be held in abeyance until applicant has notified the Commission that he has complied with the requirements of the Interstate Commerce Act.

O R D E R

IT IS ORDERED that:

1. Submission of Application No. 57075 is set aside and that this matter be held in abeyance pending receipt of satisfactory notice from the applicant that he has complied with the Interstate Commerce Act.

2. The applicant shall have one hundred eighty days from the effective date of this order to submit satisfactory notice with the Commission that he has complied with the Interstate Commerce Act.

If the applicant fails to timely submit such notice, Application No. 57075 will stand dismissed one hundred eighty days from the effective date of this order.

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

Dated at San Francisco, California, this 30<sup>th</sup> day of JANUARY, 1979.

*Richard D. Howell*  
President

*Vernon L. Sturgeon*  
*Clair J. DeLoach*

Commissioner John F. Bryson

Present but not participating.

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Commissioners

Commissioner Leonard M. Grimes, Jr.

Present but not participating.