

ORIGINAL

90275

MAY 8 1979

Decision No. _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Eugene D. Stich, an individual, dba Challenger Coach Leasing, for authority to operate as a passenger stage corporation in a home-to-work service between points in Ventura County and the Downtown Los Angeles Area.

Application No. 58388
(Filed September 28, 1978)

Virant & deBrauwere, by John E. deBrauwere, Attorney at Law, for applicant.
William D. Bourne, for Commuter Bus Lines, Inc., protestant.
John Cockburn, for United Transportation Union; and
K. D. Walpert, for R. W. Russell, Chief Engineer and General Manager, Department of Public Utilities and Transportation, City of Los Angeles; interested parties.
Thomas P. Hunt, for the Commission staff.

O P I N I O N

Eugene D. Stich (Stich), dba Challenger Coach Leasing, seeks to operate as a passenger stage corporation providing home-to-work service between certain points in the city of Thousand Oaks in southern Ventura County and downtown Los Angeles, a distance of about 45 miles.

Public hearing was held at Los Angeles January 15, 1979 before Administrative Law Judge Norman Haley, and the matter was submitted.

Applicant's Presentation

Evidence was presented by Stich and five of his riders. Applicant also called the Commission staff representative and the president of Commuter Bus Lines, Inc. (CBL).

Stich proposes to perform a scheduled home-to-work service, mornings and evenings, Monday through Friday each week. The round trip weekly commuter fare would be \$17. Stich is currently employed as a circuit technician at The Pacific Telephone Company in downtown Los Angeles and proposes to drive the route himself. He currently possesses the driver's license required to operate the equipment proposed to be used.

Stich currently owns a 1966 Model MCI-5A bus (Serial No. 6518) with a seating capacity of 38 passengers. As a backup vehicle he has access to a 1965 Model MCI-5A, with the same seating capacity. His vehicle is garaged, serviced, and maintained in the city of Thousand Oaks. Servicing and maintenance would be performed by Stich with the assistance of a maintenance supervisor currently employed by Airport Service, Inc. and the Chevron station where the vehicle is garaged.

Exhibit A to the application is Stich's proposed route description. Exhibit B consists of two maps showing the proposed route and bus stop locations. Stich currently picks up at two points in the city of Thousand Oaks. These are The Oaks and Dupars Restaurant. The witness said he also proposes to pick up at a third point in Thousand Oaks which is at 325 Hampshire Road, the location of a K-Mart store. The morning schedule would terminate at the Arco Plaza in Los Angeles. The evening schedule would commence nearby at the California Club. Exhibit C shows the proposed fare and time schedule. Exhibit D is Stich's financial statement showing that assets, including a residence, automobiles, bus, tools, mobile telephone, and household

furniture, are \$114,500. Liabilities, consisting of a first trust deed, are \$26,015. Net worth is \$86,085. Exhibit E shows that the application was served by mail upon the cities of Los Angeles, Thousand Oaks, and Ventura, and upon the Southern California Rapid Transit District and CBL.

Assertedly, no existing passenger stage operator offers transportation between the points in question, and the only alternative method of commuting is by personal automobile.^{1/} Stich contends that the granting of the sought authority would not have significant adverse effect upon the environment of the areas to be served and, on the contrary, the availability of the service in question would be a benefit to the environment and to the public by reduction of private vehicles on the roads.

Stich testified that when he was transferred to his present job location with Pacific Telephone Company in late 1974 or early 1975, he was a passenger on California Sightseeing Tours, Inc. (Cal Site), also known as Associated Charter Bus Company. After a year, Cal Site assertedly wanted to discontinue service on the route because it was not making sufficient revenue. Subsequently, Stich was employed by Cal Site to drive the bus on a home-to-work basis. He was paid \$8 a day and that included free transportation. He also drove charter trips for Cal Site. Stich stated that someone at Cal Site suggested he should get his own bus. Subsequently, this was done and Stich took over the operation

^{1/} Applicant was referring to home-to-work service on morning and evening schedules. Greyhound operates five schedules each way between Thousand Oaks and the Greyhound Depot in Los Angeles. Those schedules basically are not morning and evening nonstop commuter schedules. The Greyhound Depot is between one and two miles from the Arco Plaza and the California Club in Los Angeles where applicant proposes to deliver and pick up passengers.

of the route in question. He kept the revenue from the passengers and operated the service as his own, although the route was never transferred to him. The witness stated that Cal Site never reasserted its rights over the route and he did not hear anything further from that company.

Exhibit 1 is a certificate of insurance with respect to bus 6518 covering bodily injury, property damage, and damage to the bus itself. The named insured is John J. Mooney, dba Your VIP Lines, who uses the bus for weekend charters. Stich is named as additionally insured. He said that if the sought certificate is granted, he will obtain a policy of his own with liability insurance in the amounts required by the Commission's General Order No. 101-C.

Exhibit 2 shows that Stich leases bus 6518 to John J. Mooney with option for leaseback. Exhibit 3 is a letter from CBL to Stich dated December 14, 1978 stating that CBL holds a similar authority recently acquired from Cal Site (D.89267 dated August 22, 1978). The letter offers to lease that route to Stich. This was the only written communication received by Stich from CBL, and he said he refused to answer it.

Exhibit 4 is a projected annual operating statement. Annual bus miles would be 25,000. Common carrier passenger revenue would be \$12,480, and charter revenue is projected at \$15,000. Total expenses are shown as \$15,875, with operating income at \$11,605. Net income, after income taxes, would be \$10,305. Exhibit 5 is a petition signed by 20 of Stich's riders supporting the application. The petition states that the riders are satisfied with the service and prefer not to be required to ride someone else's bus.

The staff representative, called by Stich, testified that he first became aware that Cal Site had ceased rendering service when it came to his attention that Stich was operating. He said Cal Site did not file any notice or application with the Commission for discontinuance of service on the route involved. He said that under General Order No. 98-A a passenger stage corporation is required to give ten days' notice to the Commission and the public prior to discontinuing service in order to protect the public which depends upon the carrier so that alternative transportation can be found. The ten days' notice also gives the public a chance to protest to the proposed discontinuance of service. He said that the Commission will often require the carrier to make a formal application to seek revocation of its operating authority on the route involved.

The five riders who testified on behalf of Stich were highly complimentary of the service he has been performing. Some of the witnesses have been riding on the route since July of 1974. Prior to Stich's operation they had ridden with Cal Site, CBL, and Southern California Rapid Transit District. The latter operates from nearby points in Los Angeles County to downtown Los Angeles. Stich and a Mr. Baker drove the bus for Cal Site. Assertedly, Stich's bus is always in excellent running condition, always clean, always on time in both directions, has a clean restroom, is air-conditioned in the summer, and is heated in the winter. There have been no breakdowns or other delays. Each of the witnesses expressed his desire to continue riding Stich's bus.

The president of CBL testified that he had been in the transportation business since 1950, mostly in the management end. Part of his time was managing transportation of businesses subject to the Commission's jurisdiction. He said

that CBL has acquired both home-to-work and racetrack routes from Cal Site; however, that company retained some of its passenger stage authority. He reviewed the overall revenues from operations acquired from Cal Site. He said he did not expect to find any revenue from the route between Thousand Oaks and Los Angeles because he was aware it was not being operated. He said CBL planned to start operating that route shortly after the Commission authorized the transfer from Cal Site on August 22, 1978. He said that within a few days after the Commission authorized the transfer, CBL discovered that Stich was operating over the route. He said he telephoned Stich and asked if he was interested in discontinuing the business and what his intentions were. The president of CBL said he followed up that conversation with the letter received as Exhibit 3. He said Cal Site had not advised CBL there was some other person operating the Thousand Oaks-to-Los Angeles route. The witness stated he was approaching the point of determining what patronage could be obtained on the route. However, when Stich filed the instant application, he decided to await the outcome of the hearing. He said that if the Commission does not grant the authority sought by Stich, CBL would commence operating the route in question.

On closing, Stich argued that the operating right CBL is attempting to assert is nonexistent because Cal Site ceased to operate the route prior to the time it transferred the routes to CBL by D.89267 on August 22, 1978. Stich contends that suspension or cessation of operations without authorization from the Commission constitutes abandonment of operating rights and that operations cannot be resumed until a new certificate is secured from the Commission. He cited cases in support of that contention. Stich asserts that when Cal Site found that revenues

from its Route C-21, which is the route in question, were insufficient, it simply divested itself of the responsibility of operating it and in so doing, neglected its duty as a common carrier to the public and the Commission. Stich asserts that in transferring the operating rights to CBL, the Commission was not aware that the route had not been operated by Cal Site for some time.

Presentation of CBL

The president of CBL testified on behalf of his company. He said that Route C-21 in Appendix G of D.89267 authorizes CBL to pick up passengers at Dupars Restaurant and at the Westlake Plaza Shopping Mall in Agoura and take them into downtown Los Angeles and distribute them at certain named intersections. He said that this route acquired from Cal Site appears to be the same route that Stich seeks authority to operate. He said the purpose of acquiring Cal Site's routes was to broaden the CBL base of operations because it suffered a 31 percent loss of revenue due to cancellation of the B-1 Bomber program. He said CBL determined it was necessary to maintain dependability of service to many hundreds of customers, and that the route between Thousand Oaks and Los Angeles appeared to be a key route in stabilizing its system and protecting all passengers from CBL's going downhill. He explained that CBL made no attempt to commence operating between the points in question because with two companies in competition, harm would have resulted to both. He said at one point CBL suggested purchasing Stich's equipment and continuing to employ him as driver in recognition of the high quality of service that he was rendering and the very loyal following he had developed along the route. He said the offer he made Stich in Exhibit 3 would have permitted Stich to continue the status quo as the operator of the route and utilize the

authority held by CBL under an arrangement similar to the one the Commission has allowed CBL and the numerous carriers that operate the routes for CBL to use, but that arrangement was not satisfactory to Stich.

The president of CBL said his company would be willing to have the Commission authorize Stich to operate as he has been doing, which is to allow him to operate a single bus on a single schedule each way between Thousand Oaks and Los Angeles. He said CBL would not be willing to have the Commission authorize Stich to operate over other routes.

The president of CBL also called the Commission staff representative to testify. This witness said the staff initially supported CBL in this matter because it felt the certificate transferred to it in good faith by the Commission should be protected. He said the staff believes that if the Commission transfers authority to an entity it should protect the business pursuant to Section 1032 of the Public Utilities Code and should give that entity the opportunity to develop its own traffic. He said neither the staff nor the Commission were informed that the route had been discontinued by Cal Site prior to its transfer to CBL. Under the circumstances the route in question was not eliminated and the certificate was transferred intact. The staff does not believe that CBL should be penalized as the result of the errors of Cal Site and that it would not be appropriate to eliminate the route from CBL's certificate. The witness from the staff stated, however, that he has noted the enthusiasm of Stich's riders; that Stich is providing good service; and that it may be best if the Commission grants a certificate to him to sustain that service. Should the Commission grant a certificate to Stich,

the staff recommends (as did CBL) that it be limited to the one bus over the route involved and that if further authority is desired, Stich should be required to file another application.

In closing argument the president of CBL stated that it is his company's position that it holds the operating rights between the points involved and that the Commission should deny the application because CBL would like to have Stich's 15 or 20 passengers to start off CBL's first bus on that route. CBL recognizes, however, that although Stich has been operating in violation of the Commission's rules, in the process he has developed a very loyal patronage. He said CBL does not necessarily desire to force Stich to stop operating, but to make sure that if he continues to operate, he does so without taking away from the value of CBL's operating rights, and without precluding CBL from giving service on that route at some point in time when it can develop additional patronage. It is CBL's desire that if the application is granted, Stich's authority should be restricted to his existing activity and that he not be allowed to become a competitor with other passenger stage operators.

Findings

1. Stich has been providing scheduled home-to-work transportation at individual fares with a 38-passenger bus he owns from points in the city of Thousand Oaks, Ventura County, to the Arco Plaza in downtown Los Angeles. In the opposite direction his route starts from a nearby point, the California Club.

2. Stich is employed by The Pacific Telephone Company in downtown Los Angeles and he drives the bus himself. Service is provided once a day each way, five days a week.

3. Stich currently has about 20 riders.

4. Stich seeks a certificate of public convenience and necessity to operate as a passenger stage corporation over the route involved.

5. Stich formerly drove a bus over the same route as an employee of Cal Site.

6. Cal Site ceased operating over the route in question about April 1977. Thereafter, Stich operated over the route with his own bus. Cal Site did not reassert its authority to operate between Thousand Oaks and downtown Los Angeles.

7. By D.89267 dated August 22, 1978, Cal Site was authorized to transfer a number of its routes to CBL, including the route from Thousand Oaks to Los Angeles.

8. Prior to the time of the certificate transfer identified in Finding 7, the Commission had not been notified that Cal Site was not operating the route from Thousand Oaks to Los Angeles.

9. Following the certificate transfer identified in Finding 7, CBL and the staff discovered that Stich was operating the route from Thousand Oaks to Los Angeles.

10. Following discovery of Stich's operation, CBL made no attempt to commence service between the points in question because it felt that with two companies in competition harm would result to both.

11. CBL does not necessarily desire to force Stich to stop operating.

12. This proceeding is not a proper vehicle to consider revisions in any portion of CBL's certificate.

13. The record shows that Stich has been providing a necessary home-to-work service to the public between Thousand Oaks and downtown Los Angeles.

14. With respect to Section 1032 of the Public Utilities Code, neither Cal Site nor CBL have provided service to the satisfaction of the Commission between points in the city of Thousand Oaks and downtown Los Angeles.

15. Stich has the ability, financial resources, insurance, and experience necessary to perform the proposed service.

16. Public convenience and necessity require that Stich be authorized to continue as a passenger stage corporation the home-to-work service he has been performing between Thousand Oaks and Los Angeles.

17. 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 proposed operation will reduce air pollution, vehicular congestion, and fuel consumption to the extent it replaces private automobiles and other small vehicles.

Conclusion

The Commission concludes that the application should be granted to the extent provided in the order which follows. As continuance of the service provided by applicant without interruption is required by the public interest, the effective date of the order should be the date of signature.

Eugene D. Stich, dba Challenger Coach Leasing, 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 is granted to Eugene D. Stich, dba Challenger Coach Leasing, authorizing him to operate as a passenger stage corporation, as defined in Section 226 of the Public Utilities Code, for one trip per day each way between points within the city of Thousand Oaks, on the one hand, and downtown Los Angeles, on the other hand, as set forth in Appendix A of this decision.

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 written acceptance of the certificate granted. Applicant is placed on notice that if he accepts the certificate he 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 five days after the effective date of this order on not less than five 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 his 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, annual reports of his operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

3. In all other respects Application No. 58388 is denied.
 The effective date of this order is the date hereof.

Dated at San Francisco, California, this 8th
 day of MAY, 1979.

John E. Guyer
 President
Vernon L. Peterson

Commissioner Richard D. Gravelle, being necessarily absent, did not participate in the disposition of this proceeding.

Alvin J. Delajich
William H. Jones
 Commissioners

/NB

Appendix A

EUGENE D. STICH
doing business as
CHALLENGER COACH LEASING

Original Title Page

CERTIFICATE
OF
PUBLIC CONVENIENCE AND NECESSITY

Showing passenger stage operative rights, restrictions, limitations, exceptions, and privileges applicable thereto.

PSC - 1068

All changes and amendments as authorized by the Public Utilities Commission of the State of California will be made as revised pages or added original pages.

Issued under authority of Decision No. 90275
dated MAY 8 1979, 1979, of the Public Utilities
Commission of the State of California, in Application No. 58388.

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

Eugene D. Stich, an individual doing business as Challenger Coach Leasing, by the certificate of public convenience and necessity granted by the decision noted in the margin is authorized to transport passengers for one trip per day each way between points in the City of Thousand Oaks in southern Ventura County and downtown Los Angeles, over the most convenient and direct routes. This certificate is subject to authority by this Commission to change or modify said routes at any time and subject to the following conditions:

- (a) Passengers shall be loaded and unloaded only at points specified in Section 2.
- (b) Availability of seating will depend upon advance purchase of weekly tickets by passengers.

Issued by California Public Utilities Commission.

Decision No. 90275, Application No. 58388.

SECTION 2. ROUTE DESCRIPTION

<u>SERVICE:</u>	<u>POINT:</u>	<u>CITY:</u>
Pickup and Discharge	Vicinity of The Oaks Mall (222 W. Hillcrest Drive)	Thousand Oaks
Pickup and Discharge	Vicinity of Dupars Restaurant (Thousand Oaks Boulevard and Conejo Boulevard)	Thousand Oaks
Pickup and Discharge	Vicinity of K-Mart Store (325 Hampshire Road)	Thousand Oaks
Discharge only	Vicinity of World Trade Center (333 S. Flower)	Los Angeles
Discharge only	Vicinity of Arco Plaza (515 S. Flower Street)	Los Angeles
Discharge only	Intersection of Sixth Street and Grand Avenue	Los Angeles
Pickup only	Vicinity of California Club (538 S. Flower Street)	Los Angeles

(END OF APPENDIX A)