

ORIGINAL

JUL 3 1979

Decision No. 90517

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of)	
ROBERT MOSQUEDO dba FRESNO CHARTER)	
SERVICE, for a Class "B" certificate)	
to operate as a charter-party carrier)	Application No. 58360
of passengers, Fresno.)	(Filed September 14, 1978)
(File No. TCP-65-B))	

Douglas A. Hancock, Attorney at Law, for Robert Mosquedo, applicant.
Anthony P. Carr, Attorney at Law (Ohio), for Greyhound Lines, Inc.; Terry D. Fortier, Attorney at Law, for Fortier Stages Limited and All State Charter; Ron McKercher, for Sierra Highlands Bus Co., Inc.; Thoburn S. Haworth, for Orange Belt Stages; and Jack L. Sawl, for Abbey Transportation System; protestants.
Thomas J. Clausen, for the Commission staff.

O P I N I O N

Statement of Facts

Robert Mosquedo (Mosquedo) is a young Fresno man of 23 employed full time Monday through Friday as a bus driver for Fresno Transit. Of Mexican-American descent, Mosquedo is a member of the Mount Carmel Catholic Church and previously has had five years' experience driving school buses. Mosquedo has accumulated \$14,000 in savings from his employment and from customizing work he does on vans and, by this application, doing business as Fresno Charter Service, he seeks a Class B charter-party carrier of passengers certificate from this Commission. His application was initially protested by Greyhound Lines, Inc.

A duly noticed public hearing was held in Fresno on January 9, 1979, at the conclusion of which the matter was submitted.

Mosquedo, using his \$14,000 savings, a \$10,000 advance in his inheritance from his father, and a Small Business Administration loan of \$20,000, proposes to purchase a bus and to enter the charter-party business. He has looked at GMC 4106 and 4107 buses, as well as MC-5A's, with purchase prices ranging from \$18,000 to \$28,000. He would himself drive charters weekends on his days off and would use the services of his twin brother (who also drives for Fresno Transit with two weekdays off) and others as needed on weekdays. He has arranged to park the bus on the grounds of the San Joaquin Memorial Church (a private Catholic high school) and would do business using a bilingual answering service working out of a home terminal to be at 1406 North Fresno Street. Mosquedo would perform minor maintenance (oil changes, lubes) himself and probably use GMC Connell Trucks for the big heavy equipment maintenance. He plans "firm rates" of \$1.15 per live mile, or \$175 for the first five hours, and \$16.95 per hour after five, with a deadhead charge of 35 cents per mile.

In support of his application, Mosquedo presented testimony from his parish priest (the pastor of Mount Carmel Catholic Church) and from a fellow parishioner, as well as supporting letters from The Mexican Civic Committee, El Concilio de Fresno, The Sociedad Guadalupeana de Monte Carmelo, The Ex-Offenders Community Resource Council of Fresno, the Visalia Guadalupe Society, the Federacion Mariana de Guadalupe, the pastor of St. Lucy's Church in Fowler, and two fellow parishioners from Mount Carmel Church.

Opposition to the application at the hearing was presented by six Class A carriers. Participating in the opposition with evidence, testimony, and cross-examination were representatives from Greyhound Lines, Inc., (Greyhound), Fortier Stages Limited (Fortier), All State Charter (All State), Sierra Highlands Bus Co., Inc., (Sierra), Orange Belt Stages (Orange), and Abbey Transportation System (Abbey).

The supporting testimony of the parish priest, appearing for Mosquedo, was that Mount Carmel Church^{1/} charters an average of one bus a month for its church-related senior citizens or other tours to Sonora, Monterey, the Hearst Castle, Three Rivers, etc., attracting about 40 people each month. The church is in a low-income area and necessarily chooses carriers on economic grounds according to the priest. The priest further testified that for "social reasons" he favors giving a chance to people from his area to operate charter service and that he is supporting Mosquedo because he knows and trusts him and hopes that he will give the church a special consideration. The witness also stated his preference for a bilingual driver but admitted that he never had requested one.

The parishioner who testified for Mosquedo told of her 16 years of service through the Mount Carmel Church in arranging annual three-day retreats in May at Three Rivers, 72 miles away, for Spanish-speaking elderly ladies of the parish. Each year she personally makes all the bus charter arrangements for the retreat. While she would prefer a Spanish-speaking driver, she has never requested one. She too supports Mosquedo's quest for certification and stated that she would use him if given a reasonable rate.

The thrust of the supporting letters submitted by Mosquedo was to the point that the organizations or individuals represented felt that the Spanish-speaking people of the area need bilingual service and believed that Mosquedo would offer them lower rates than those offered by the established operators.

The opposition testimony and evidence presented at the hearing were directed to the points that (1) This very competitive charter market is being adequately served by the existing certificated carriers; (2) Public convenience and necessity do not require the service; (3) The rates of existing carriers are competitive for the service rendered and, in some instances, even lower than what Mosquedo proposes to charge;

^{1/} Mount Carmel Church, with 500 families regularly in attendance and another 500 families occasionally in attendance, is 90 percent Mexican-American, 7 percent black, and 3 percent Caucasian.

(4) Some of the existing carriers have bilingual drivers available; and (5) Additional bilingual elements would not necessarily increase the volume of charter business.

Greyhound's witness testified that it locally has 12 buses available weekdays and 10 on weekends for charter, although local charter demand does not utilize such capacity.^{2/} On cross-examination, the witness stated that the company had never been caught short and unable to provide charter buses in the Fresno area. Taking two months in 1978 which he claimed were representative, one slow month (March), and one good month (August), he testified that Greyhound needed only 55 buses over the two months to carry 1,857 charter passengers, producing \$25,373 in revenue.^{3/} He testified further that charter revenue is extremely vital in that its profit has the effect of cross-subsidization of its regular route service and is needed so that the company's operations in toto are profitable. Greyhound feels that there is already very extreme competition for the available charter activities in the Fresno area and that all the existing business is being adequately handled. Greyhound's rate is \$1.34 per live mile.

Fortier's manager testified that while it has two MC-5 buses (39 passengers each) available for charter, despite radio and

^{2/} Greyhound has an operations control center which switches buses from locality to locality as demand fluctuates. In the Fresno area, it has a terminal in the downtown area, as well as commissioned agencies located in surrounding communities such as Chowchilla, Madera, Selma, Visalia, Hanford, and Goshen Junction (all within the 40-air mile radius of Fresno). In addition, all travel agencies with an air commission can serve or sell charters. The company also distributes charter sales brochures.

^{3/} All of this charter business originated within a 40-mile radius of Fresno, with 38 of the 47 charters involved actually starting in Fresno itself.

newspaper advertising,^{4/} it had been able, in the period between its May 1, 1978, start-up and January 9, 1979, to book only 82 charters and that, as of the date of hearing, it had added only 24 future charters. He stated that 99 percent of its charters were short-haul within a 40-mile radius. His live-mile rate is \$1.15 per mile, with a five-hour rate of \$150 and additional hours at \$17 per hour. Deadhead charge is 90 cents per mile. The witness estimated that just to meet insurance and fixed costs each MC-5 must be run over 7,000 - 8,000 miles a month, but that so far his volume was way below that. He asserted that Fresno is very competitive with more charter carriers than larger cities such as Sacramento. He opposes certification of Mosquedo on the ground that there is an adequate supply of charter bus service for the Fresno metropolitan area.

Orange's president testified that he has been over 50 years in the bus business, operating Class A charter and scheduled runs in the Hanford, Visalia, Porterfield, Exeter, Lindsay, Bakersfield, and Paso Robles areas. He introduced into evidence a copy of Decision No. 89642, dated November 9, 1978, in Application No. 58041. This decision shows that after receipt of a 15 percent intrastate fare increase, Orange still anticipates a net income loss in 1979 from its three intrastate bus routes, losses it expects to offset by profits made out of its annual \$600,000 charter business and its interstate operations. Orange has 17 buses available in the Visalia and Bakersfield areas for charter. Orange's live-mile charge is \$1.15 per mile; \$145 for the first five hours, \$17 an hour after that. The witness opposed certification of Mosquedo, pointing out that if additional competition decreases charter profits, his company must discontinue part of its scheduled operations which transport some 46,000 passengers a year.

Discussion

The factors which this Commission must consider in determining

^{4/} Fortier was only able to get a listing in the yellow page directory beginning November 1, 1978.

whether or not to grant a Class B Charter Party Carrier of Passengers Certificate are set forth in Sections 5374, 5375 and 5375.1 of the Public Utilities Code. These sections provide that an applicant must be fit and financially responsible; that an applicant show that public convenience and necessity require, the service and that existing carriers serving the same territory are not providing services which are satisfactory to the Commission.

We have little difficulty resolving the issue of the fitness of the applicant and his financial responsibility to accomplish and conduct the proposed service. The applicant has accumulated a basic and substantial stake with which to undertake the proposed venture. During the application process, Mr. Mosquedo has analyzed in detail and made business judgments concerning projected revenues, costs and results of operation. He has also assertedly successfully interested the Small Business Administration in granting him a loan. This is clearly not a case of an unknowing underfinanced applicant entering a market with very little personal financial risk, which entrance could dilute profitable traffic and contribute to instability in the industry. On the contrary, Mosquedo is a good example of a responsible competitor who has identified a segment of the charter market in which he is willing to risk his capital to develop a profitable operation.

The applicant, as previously mentioned, is of Mexican-American descent with close ties to various social and religious groups in Fresno's Mexican-American community. The testimony and letters of support, taken together, asserted two themes: (1) That support for Mosquedo's application was based on lower rates that he would provide; and (2) That the Mexican-American community required the services of an operator completely oriented to the distinct needs, values and language of the community.

The first theme, that support was based on expected lower fares, was discredited at the hearing. At least two existing competing carriers provide lower rates than the rates to be charged by Mosquedo.

However, as to the second assertion, the record establishes an express need for a carrier that would provide not just bilingual drivers but one whose entire ownership and management, in addition to the drivers, are perceived by the public to be sensitive to and serve the needs of the Mexican-American community. Because of this established present need, it is clear that existing carriers are not presently providing this service to the satisfaction of the Commission.

Protestants established that there are several competing carriers in the local area who have adequate equipment and are willing to provide service required by any of the supporting witnesses. However, the protestants failed to show the extent of the traffic, if any, which would probably be diverted from them to the applicant if the certificate is awarded.

The applicant's certificate should be limited to the operation of a maximum of three buses until further order of the Commission. This will enable it to conduct the operations proposed, but will insure that any successor will not conduct more extensive operations than now anticipated in the granting of this additional Class B charter party certificate.

Findings of Fact

1. Mosquedo has the satisfactory experience, ability, fitness and financial ability to initiate and conduct the proposed service.
2. The potential class of customers Mosquedo largely seeks to serve requires the services of a carrier culturally oriented to the Mexican-American community of the Fresno area.
3. Mosquedo's proposed operations are oriented toward the Mexican-American community and are in furtherance of the public interest.
4. The existing certificated charter-party carriers in the Fresno area are not providing service satisfactory to the Commission.
5. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.
6. Public convenience and necessity require that the service proposed by the applicant be established as authorized in the following Order.

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 Robert Mosquedo, 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 1406 North Fresno Street, Fresno, CA 93703.

2. In providing service pursuant to the certificate herein granted, applicant shall comply with and observe the following service regulation. Failure to do so 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-A, and the insurance requirements of the Commission's General Order No. 115-A.

3. The applicant shall operate a maximum of three buses until further Order of the Commission.

The effective date of this Order shall be 15 days after the date hereof.

Dated at San Francisco, California, this 3rd day of JULY, 1979.

John E. Bay
President
James L. Shroyer
Robert D. Gault
Charles T. ...
James W. ...
Commissioners