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ORIGINAL

Decision No. 90662 AUG 14 1979

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of WILLIAM H. HUNT, dba HUNT)
TRANSPORTATION, for a certificate)
of public convenience and neces-)
sity to operate a passenger stage)
service between various designated)
points and Northrop Corporation)
facilities, and for interim)
authority to operate said service)
forthwith.)

Application No. 58299
(Filed August 16, 1978)

SOUTHERN CALIFORNIA COMMUTER BUS)
SERVICE, INC., dba COM-BUS,)

Complainant,)

vs)

WILLIAM H. HUNT, dba HUNT TRANS-)
PORTATION,)

Defendant.)

Case No. 10677
(Filed October 6, 1978)

- L. R. Herrst, Attorney at Law, for Hunt Transportation, applicant and defendant.
- Ronald J. Hoffman, for Southern California Commuter Bus Service, Inc., protestant and complainant.
- James C. Carson, for Commuter Bus Lines, protestant.
- Robert Cagen, Attorney at Law, for the Commission staff.

O P I N I O N

William H. Hunt (Hunt), doing business as (dba) Hunt Transportation, seeks a certificate of public convenience and necessity to operate a passenger stage service pursuant to Section 1031 of

the Public Utilities Code^{1/} between designated points in Orange County and Northrop Corporation (Northrop) in the Los Angeles area. Hunt relies upon the following conditions as justification for granting the sought certificate:

1. His service has been enthusiastically requested by more than 30 employees of Northrop.
2. No existing company is now providing this specific service, which includes air conditioned, recliner seat buses for the rates proposed, or any service at all.
3. The sole purpose of this service is expressly to transport Northrop employees to and from their respective places of employment at Northrop. Hunt does not hold himself available to serve the public generally.
4. The fares are just and reasonable, are within the capacity of the passengers to pay, and will provide Hunt with sufficient revenue to maintain a financially sound operation.
5. This service, as a side benefit, produces a substantial saving of automobile daily travel, thereby reducing fuel consumption, smog, and traffic congestion.

^{1/} "1031. No passenger stage corporation shall operate or cause to be operated any passenger stage over any public highway in this State without first having obtained from the commission a certificate declaring that public convenience and necessity require such operation, but no such certificate shall be required of any passenger stage corporation as to the fixed termini between which, or the route over which, it was actually operating in good faith on July 29, 1927, in compliance with the provisions of Chapter 213, Statutes of 1917, nor shall any such certificate be required of any person or corporation who on January 1, 1927, was operating, or during the calendar year 1926 had operated a seasonal service of not less than three consecutive months' duration, sight-seeing buses on a continuous sight-seeing trip with one terminus only. Any right, privilege, franchise, or permit held, owned, or obtained by any passenger stage corporation may be sold, assigned, leased, mortgaged, transferred, inherited, or otherwise encumbered as other property, only upon authorization by the commission."

Hunt further alleges that in addition to the above, the following conditions exist which justify an immediate interim authority to operate said route:

1. Some 30 employees at Northrop had been riding Southern California Commuter Bus Service, Inc. (Com-Bus) until Com-Bus suddenly canceled its commuter service to said employees.
2. Said employees are without transportation service except to drive their own cars.
3. Said driving adversely impacts the following:
 - a. Employees' economics.
 - b. Employees' work performance due to not arriving at work fresh.
 - c. Traffic congestion.
 - d. Air pollution.
 - e. Depletion of natural resources.
4. Said employees have specifically, and spontaneously, solicited commuter service by Hunt Transportation and state that they would not again ride with Com-Bus.

Attached to the application was a letter dated July 31, 1978 addressed to the Commission and signed by 25 riders requesting that authority be granted immediately to Hunt. The application shows that Hunt proposes to charge a weekly fare of \$13.50; that Hunt has three buses: a 45-passenger, a 46-passenger, and a 49-passenger bus; and that temporary backup replacement equipment will be provided by Harold Bus Company of Huntington Park until such time as Hunt can purchase his own backup equipment.

Hunt's personal financial statement covering the period January 1, 1977 to July 15, 1977 was attached to the application and shows a net worth of \$64,036.00. Hunt has operated a trucking service for several years under the business name of Hunt Trucking. A financial statement for Hunt Trucking dated August 5, 1977 shows a net worth of \$95,485.00. A profit and loss statement for Hunt Trucking covering the period January 1, 1977 to June 30, 1977, also attached to the application, shows a net income of \$24,070.88 for the period. ✓

Com-Bus sent a letter of protest to Hunt's application which was received on September 5, 1978. Commuter Bus Lines also sent a letter of protest to Hunt's application which was received November 6, 1978.

On October 30, 1978 Com-Bus filed its complaint against Hunt. Com-Bus alleges that it holds a certificate of public convenience and necessity to provide commuter home-to-work passenger stage service over the route for which Hunt seeks authority, said certificate having been granted in D.83467 dated September 17, 1974 in A.54213 and A.54214. It is further alleged that:

1. Hunt is presently picking up passengers along Com-Bus' Route NA-4 and transporting them to and from the Northrop plant in Hawthorne.
2. Hunt has no authority from the Commission to operate over a route identical, or similar, to Route NA-4.
3. On August 17, 1978 Com-Bus requested the assistance of the Commission staff to prevent this unauthorized operation.
4. The staff agreed that the operation was illegal but has failed to prevent its operation.
5. The suspension of service over Route NA-4 was in accordance with the authority granted to Com-Bus, which permits discontinuance of operation over a particular route when the passenger loads fall below 30.
6. The passenger counts dropped just before the summer vacation season (a time when passenger loads typically dropped) and when a fare increase from \$13 to \$16 per week was pending.
7. Com-Bus has repeatedly stated its willingness and ability to operate this route in accordance with Commission approved authority; and that the fare presently being charged by Hunt is below that approved by the Commission on the authorized Com-Bus route.

Com-Bus seeks:

1. An immediate cease and desist order prohibiting Hunt from providing passenger stage service over Com-Bus' Route NA-4 or, along any route substantially the same as Route NA-4 or, any other route that is certificated to Com-Bus.

2. A penalty of not less than \$500 for each offense (day) of unauthorized operation by Hunt pursuant to Section 2111.
3. Such further relief as is just and proper but not less than the actual revenue lost by Com-Bus as a result of Hunt's operations.

Hunt generally denies all of the allegations in the complaint. He does admit, however, that he is presently picking up passengers along Route NA-4 and transporting them to and from the Northrop plant in Hawthorne. Hunt alleges that Com-Bus terminated service on Route NA-4 without giving the required notice of termination in writing to the passengers; that although Com-Bus indicates a willingness and ability to operate Route NA-4, it has not demonstrated that willingness and ability; that Com-Bus is operated in violation of Section 1038 which states:

"The interior of every passenger stage operated for hire in this State shall be maintained in a clean and sanitary condition."

Hunt also alleges that Com-Bus does not adhere reasonably to time-schedules and has made unauthorized adjustments in its fares.

For affirmative defense Hunt alleges that he has been besieged by requests from Northrop employees to provide them commuter service on Route NA-4; that said employees are in need of commuter transportation; and that many of said employees have stated that they would not ride with Com-Bus again but, would continue to ride with Hunt or use car pools.

The matters were consolidated pursuant to Rule 55 of our Rules of Practice and Procedure. After due notice, hearings were held in Los Angeles on February 12, 14, and March 15, 1979 before Administrative Law Judge Bernard A. Peeters. The matters were submitted subject to the filing of concurrent briefs due 20 days after the date of filing of the last transcript. On the last day of the hearing Com-Bus filed its renewed request for an immediate cease and desist order. Briefs have been filed. The matter is ready for decision.

The Issues

At the prehearing conference the parties framed the issues as follows:

1. Whether Hunt is operating as a passenger stage corporation over or along Route NA-4 without proper authority.
2. Whether Com-Bus' service on its Route NA-4 is satisfactory to the Commission and the public in accordance with Section 1032.
3. Whether it is lawful to charge fares less than those published by other passenger stage corporations for the purpose of developing a competitive route or entry into the other carrier's route.
4. Whether it is in the public interest to certificate more than one carrier in the home-to-work transportation of passengers in the aerospace industry, which is subject to wide fluctuation in employment.
5. Whether the staff encouraged Hunt Transportation to commence operations before obtaining proper authority. If so, whether this is contrary to law or to Commission policy.
6. Whether Hunt Transportation is fit and able to conduct the proposed operation.
7. Whether Hunt's proposed service is different than that service which Com-Bus offers over its Route NA-4.

The following stipulation of facts was entered into by the parties at the prehearing conference:

1. Hunt is presently operating along or over Com-Bus' Route NA-4 and/or its alternate.
2. The fare of Com-Bus over Route NA-4 of \$16.50 was authorized in D.89023 dated June 27, 1978 and effective on July 10, 1978.
3. The fare being charged by Hunt over Route NA-4 is \$13.50.
4. Hunt has no authority for operations over or between the points on Com-Bus' Route NA-4.

The Evidence

Com-Bus presented its case through its president, Mr. Hoffman, (Exhibit 1) and his wife who keeps the records for Com-Bus. Mr. Hoffman also called two members of the Commission staff as adverse witnesses. In substance Hoffman testified that Com-Bus operates many home-to-work routes which were granted to it in D.83467 dated September 17, 1974, among which routes are NA-4, the route in question here.

Hoffman alleges that Com-Bus has operated Route NA-4 continuously since its inception in 1975; that because the ridership on this route had dropped below 30 passengers weekly for several weeks running he suspended operations on May 19, 1978; that Hunt began operating over Route NA-4 without any authority from the Commission; that Com-Bus complained to the Commission staff about Hunt's illegal operations but received no cooperation from the staff; that Com-Bus has repeatedly stated its willingness and ability to operate Route NA-4 in accordance with Commission approved authority; that Com-Bus does not agree with the staff that notice, as required by paragraph 11.42 of General Order No. 98-A,^{2/} must be given to the Commission before suspending a route; that the "service" which is performed by Com-Bus is as set forth in its certificate, viz.

2/ "11.42. CHANGES RESULTING IN REDUCTION IN SERVICE.

"At least ten (10) days prior to the effective date of any change or revision in service which would result in any reduction in service, a written notice of the proposed change shall be filed with this Commission and a copy of such notice shall be posted in each agency station along the route and in each passenger stage serving such route. Upon the expiration of said ten (10) days' notice the change may be placed into effect, unless, in the event of a protest being filed or for any other cause deemed good and sufficient, this Commission should require the carrier to file a formal application requesting the prior authority of the Commission before making such a change. ..."

"Routes shall be run for minimum of 30 passengers using a 38 (or greater) passenger bus, and for minimum of 10 passengers, including the driver, using a 15 passenger (or greater) mini-bus."

Therefore, the suspension of the route when the passenger level falls below 30, and the passengers decline to ride on a mini-bus, as they did in this case, is service under its certificate. Hoffman also asserts that by the route suspension Com-Bus was not providing any "less" service than it was providing prior to the suspension, and therefore Com-Bus did not abandon Route NA-4; that along with other Northrop routes, Route NA-4, was organized at Com-Bus expense and with the cooperation of Northrop management; that the expense of initial organization, survey, and protracted Commission hearings on this matter exceeded \$30,000, which investment must be protected since Com-Bus never wanted to be regulated in the first place but would exchange a favored free-market competitive position for a regulated status along with a monopoly on certain routes.

The testimony of adverse staff witness Thomas Hunt was that Hunt has neither written nor verbal authority from the Commission to operate over Route NA-4; that the Commission staff does not have authority to grant operating authorities; that the 30-passenger restriction in Com-Bus' certificate does not apply to Route NA-4 as set forth in the authority granted in D.83467; and that Com-Bus applied this restriction to all of its routes through its tariff and timetable filings. The second adverse witness from the staff testified in a substantially similar manner.

Under cross-examination Hoffman stated that the ridership on Route NA-4 had fallen to the low 30's because of continued overtime operation at Northrop which period lasted three or four months and that for approximately four or five weeks the passenger ridership was in the range of 27 to 31.

With respect to the discontinuance of Route NA-4 because of low passenger count, Hoffman stated under cross-examination that the first notice given to the riders was done by the bus captain, orally, sometime in March 1978. The passengers were advised that if they could not bring up the passenger count to over 30, the likelihood was that the bus operation would be discontinued on that route. The passengers indicated that they would give their best efforts towards getting more riders. The oral notice was given after several months of passenger loads running between 27 and 31 per week. Approximately one month later, that is, in April, the passenger situation had not improved. The passengers were again orally advised that unless they brought up the number of passengers to substantially above 30 a week, the route would be discontinued. Hoffman stated that he did give a specific date for discontinuance at the time of the second announcement. The passengers requested that they might have one more try at increasing the passenger counts; whereupon, Hoffman stated that from then on the bus would be operating on a week-to-week basis. The passenger count did not improve and a third notice was given to the passengers during the week which ended on May 19, 1978. By this time the passenger count was down to 24 per week, and Hoffman decided that he could no longer continue to operate the route with that low a passenger count. Hoffman stated that he did advise the passengers that if they could not bring the passenger count up to substantially over 30 per week, a mini-bus would be provided; however, it would be necessary that one of the passengers drive the mini-bus. There was a very definite negative response to this offer.

In response to a question about the conditions under which Com-Bus would be willing to operate today over Route NA-4, Hoffman responded that he would be willing to provide service under guidelines in Com-Bus' authority and tariff which presently contained a restriction that the route will be operated for 30 passengers or more in a 38-passenger bus. He went on to state that if the Commission wants to lower the number of passengers in the restriction,

then Com-Bus would have to have a fare increase since the current fare structure is dependent upon the restriction to operate with 30 or more passengers. Hoffman was not certain as to exactly how his operating authority was stated with respect to the restriction; however, he did know that all of his timetables and his tariff contained the restriction, which made it applicable to all of his routes. He also expressed the belief that it was the responsibility of the passengers rather than Com-Bus to keep up the number of riders on a route so that it would continue to operate. Exhibit N of Exhibit 1 contains the applicable rules and regulations of Com-Bus insofar as passenger responsibilities are concerned.

Hoffman went on to state that the passengers themselves would have to indicate they wanted service to start again on Route NA-4 before he would offer such service. Exhibit J to his Exhibit 1 shows that Hoffman circularized the former riders on Route NA-4 but received no response to that circularization. Therefore, Hoffman believes that the only reasonable way in which these former customers would come back, particularly in view of the fact that Hoffman would be charging \$16.50 per week per rider as compared to \$13.50 per week per rider by Hunt, would be for the Commission to order Hunt to cease and desist operations over that route.

In response to a question as to whether or not that particular route could support two bus operations, Hoffman stated emphatically that it could not. However, upon further questioning, it developed that Hoffman has started another bus operation over that same route. However, it is for an earlier shift which starts one-half hour earlier than the shift for which he had been providing service before cessation of service on Route NA-4.

Hoffman renewed his motion for an immediate cease and desist order against Hunt Transportation before a final decision is reached in this matter. He stated for the record that Com-Bus is prepared on a 24-hour notice to lift the suspension and commence service over Route NA-4; that service would be reinstated even

though no customers were signed up ahead of time; and that the results would be examined later on.

Hunt's defense to the complaint and evidence in support of his application was adduced through four witnesses and eight exhibits. Exhibit 2 is the testimony of Hunt, which is in the nature of an answer to the complaint and presumably consists of his defense. Hunt alleges that he does have authority to operate on Route NA-4. Hunt refers to attachment "Exhibit B" to "Exhibit 1" (Hoffman's testimony) which is a file memorandum prepared by Ora Phillips, Supervising Transportation Engineer, wherein it is stated that Hunt had asked for interim authority but was informed that such authority could not be granted. However, it was stated that Hunt was informed that should he commence operations during the pendency of his applications, the Commission staff would not use those operations as an argument against Hunt's application. The staff memorandum reasoned that since Com-Bus had ceased service to a number of commuters, public convenience and necessity required that these persons receive service and since Hunt had the required insurance and ability to provide this service, the staff did not see fit to oppose his operations. Hunt denies Com-Bus' statement that he picks up passengers on Route NA-4 because Com-Bus had ceased operations on that route on May 19, 1978. Rather, he transports these passengers because they came to him and requested service. Hunt alleges that Com-Bus never timely filed a Notice of Suspension with either the Public Utilities Commission or with the commuter riders on Route NA-4, as required by General Order No. 98-A.

With respect to the allegation that Hunt is undercutting Com-Bus' fare, Hunt points out that he set his fare 50 cents per person per week higher than the fare (\$13.00) Com-Bus had been authorized to charge at the time it canceled its service on Route NA-4. Hunt argued that if he can make a reasonable profit at \$13.50 per week, then public convenience and necessity are not being served by Com-Bus who will charge \$16.50 per week.

With respect to the Com-Bus argument that before a certificate could be granted to Hunt we would have to find that either Com-Bus will no longer operate Route NA-4 or, that Hunt's service is different in kind, Hunt replies that a finding that Com-Bus did not provide its customers with the notice as required by General Order No. 98-A is sufficient to invoke the clause in Section 1032^{3/} and grant the certificate.

The former bus captain of Route NA-4 testified on behalf of Hunt and sponsored Exhibits 6 and 7.

Two former Com-Bus riders also testified on Hunt's behalf and sponsored Exhibits 8 and 9. Exhibits 6, 8, and 9 consist of informal complaints against Com-Bus addressed to the Commission stating that in the past there were instances of the bus not showing up in the morning or leaving customers stranded at work in the evenings; that the buses were frequently dirty to the point of soiling clothes and often had broken seats and defective air conditioning; that many times buses were switched without notice, sometimes within the same day; that the lack of identification on the buses caused confusion and delay; and that Com-Bus ignored the requirement to give two weeks' formal notice of discontinuing service on Route NA-4.

The second part of the exhibit consists of a letter addressed to the Director of Transportation of the Commission stating that each complainant was a former passenger of Com-Bus and is now commuting to work on Hunt's busline and that if Hunt is not given a certificate to operate on this route they would not return to patronize Com-Bus but would prefer driving their own automobiles to work or joining a carpool.

3/ "1032. . . . 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."

Cross-examination of the witnesses brought out the fact that the first three items in the informal complaints were experienced several times in the past and that generally these matters had been corrected. However, all witnesses were firm in their statement that they felt they were not given proper notice that the route would be discontinued. The witnesses stated that although they were told the route might be discontinued, the only definite date of discontinuance was given on Friday, May 19, leaving them without any transportation for the following Monday, May 22, 1978. The witnesses were firm in their statements that they would not return to riding with Com-Bus. Further cross-examination brought out the fact that one of Hunt's witnesses organized the route and approached Hunt for transportation over Com-Bus' route, and also was the person who prepared the informal complaints and witnessed the signature of the individual complainants. This particular witness is the bus captain for Hunt and receives free transportation in return for her services as bus captain.

The staff presented two witnesses from the Transportation Division. Their direct testimony is contained in Exhibits 3 and 4. One witness is in charge of the Surface Passenger Engineering Section who explained why he wrote a file memorandum attached to his prepared testimony which recorded the substance of a telephone conversation with Hunt. Hunt was told that the staff could not provide interim authority, but that the staff would probably not use his unauthorized operation over Route NA-4 as an argument against granting his request for authority. The staff witness took this position on the basis that Com-Bus had ceased service, that public convenience and necessity required that former customers of Com-Bus are entitled to receive service, and that Hunt had the required insurance and ability to provide such service. The witness stated that he supports the application.

The second staff witness gave the following reasons for his support of Hunt's application:

1. Hunt's proposed service is different than the service provided by Com-Bus.
2. Com-Bus has failed to meet the public needs for reliable and regular service over its Route NA-4.
3. Com-Bus has failed to comply with Commission directives.
4. It is necessary to have a passenger stage service operate on Route NA-4 - in this case Hunt Transportation - which has demonstrated its ability and accomplishment in providing a reliable and regular service over that route, superior to that given by Com-Bus.

The staff witness distinguishes difference in service between Com-Bus and Hunt by the fact that Com-Bus limits its offer to provide service over Route NA-4 only to groups of 30 or more, while Hunt does not seek a certificate which is conditional upon the number of passengers riding the route at any particular time. In the witnesses' opinion, the Com-Bus' restriction does not constitute regular and reliable service. It is his opinion that only if public transportation is run regularly and reliably can passengers be prevented from turning to private transportation, such as automobiles. He feels that it is important that passengers have bus service which they know cannot be suddenly dropped at the discretion of the operator.

Since Com-Bus is not providing service over Route NA-4, the witness feels that there is no impediment under Section 1032 to prevent the Commission from granting a certificate to Hunt over the route in question here. Because Hunt's application is not restricted to a minimum number of passengers, the witness believes that Hunt's service is superior to that previously given by Com-Bus over Route NA-4. The witness attached a number of informal complaints filed by former passengers of Com-Bus on Route NA-4 (attached to his prepared testimony as Exhibit 1), indicating customers' dissatisfaction with Com-Bus' service. The witness also stated that the

failure of Com-Bus to comply with a Commission directive regarding cessation of service on Route NA-4 is also a reason for staff support of Hunt's application.

The staff witness pointed out that the timetable filed by Com-Bus was not changed until October 5, 1978, 4½ months after the cessation of service on Route NA-4, and that the notice of cessation given to the passengers did not comply with the requirement in General Order No. 98-A. By D.87197 dated April 12, 1977 in A.56863 we ordered Com-Bus to revise all tariffs and timetables to show all operations of the carrier. We also ordered Com-Bus to "henceforth make revised tariff and timetable filings in the prescribed manner prior to implementing any change in its passenger stage service."

(Emphasis added). The witness went on to state that timetable filings take on major significance when carriers hold authorities that permit partial suspension of operating rights; otherwise, the Commission, its staff, and the public cannot identify such a carrier's actual operations. A case in point is Com-Bus' willingness to provide service only with 30 or more passengers. Unless the tariffs and timetables are up to date, the staff cannot respond accurately to public inquiries about available service or handle complaints from riders concerning service deficiencies. Unless the timetables and tariffs reflect actual rather than potential service, the Commission has no way of knowing what service, if any, is being provided. The witness asserted that D.87197 crystallized Com-Bus' obligation to alert the Commission of any changes in its service and to lay to rest any prior interpretation by Com-Bus' president that no such notification was required.

It is the witness' opinion and recommendation that if one dependable carrier can provide a service, the staff should support that operator for the purpose of allowing it to maintain high-occupancy, low-fare operations to the public's benefit. However, if an authorized carrier provides inadequate or conditional service or if such a carrier discontinues service, the Commission should grant additional authority.

Discussion

The record shows that Hunt is operating as a passenger stage corporation over or along Route NA-4 without proper authority. Hunt stipulated that he is now operating. Rather, he points out that the commuters being transported by Com-Bus suddenly found themselves without service and came to him to inaugurate a service on their behalf. Hunt filed his application, began operations, and continues to operate over the route pending action on his application in reliance on the informal representations of our staff that they would not hold the unlawful operation against him during the pendency of his application.

While we do not condone Hunt's operation without our prior authority, the fact the Com-Bus ceased operations on its route without adequate notice to its commuters to permit them an opportunity for substitute transportation, the fact that Hunt cleared with the staff ahead of time before inaugurating service some three months after the cessation of service by Com-Bus, and the fact that the commuters approached Hunt to inaugurate the service, we are of the opinion that Hunt was trying to meet a demonstrated need. In view of the ultimate disposition of this application, further discussion of Hunt's operations without authority serves no useful purpose.

Com-Bus' service on its Route NA-4 is not satisfactory to the Commission and to the public and is not in accordance with Section 1032. Com-Bus cannot rely on its tariff provision that it may suspend service if ridership drops below 30 passengers because such a restriction is permissive and is not mandatory. Such provision provides a discretionary basis for Com-Bus to cease operations if it so desires when ridership falls below 30. To the extent that Hunt is willing to provide service over the route regardless of the number of passengers, his service is different than that offered by Com-Bus. Although Hunt stated that he would operate the route even though the passenger load dropped down to a very low count, we doubt if he would continue to operate the route for one or two passengers. However, under an

unrestricted authority Hunt would be required to operate the route even if there were no passengers until such time as he was relieved of the obligation by the Commission. Thus, there is a stability in route operation offered by Hunt that does not exist in the authority held by Com-Bus. Hunt's proposed service is such that the public can depend upon its operation, whereas Com-Bus service is subject to the fluctuation and vagaries of a passenger count. A service which does not provide the degree of consistent operations proposed by Hunt is not satisfactory service.

The third issue, whether it is lawful to charge fares less than those published by other passenger stage corporations for the purpose of developing a competitive route or entry into the other carrier's route, is neither relevant nor material to the disposition of this matter in view of the facts introduced.

The fourth issue, whether it is in the public interest to certificate more than one carrier in the home-to-work transportation of passengers in the aerospace industry which is subject to wide fluctuation in employment, seeks a broad declaration of policy as to how the Commission will interpret Section 1032 of the Public Utilities Code. These proceedings are not the proper vehicle in which to make such a broad declaration because of the limited facts and parties involved. As indicated by our disposition of these matters we have decided that under the particular circumstances of this case it is in the public interest to have two carriers operating over the same route. Those circumstances are that while the two operations are over the same general route, they are not operated at the same times or for the same employee work shifts.

Section 1032 does not preclude us from issuing a certificate to Hunt. The purpose of the statute is to protect carriers which provide satisfactory service to the public. It was not designed to protect those carriers from competition which suspend bus operations and then expect to block other carriers from operating over these suspended routes. It is obvious Com-Bus is attempting

to assert that it has a statutory right to monopolize the route even after it ceased to serve that route. There is no merit to this argument. In D.83467 dated September 17, 1974 in A.54213, which granted operating authority to Com-Bus, the following admonition is found on page 10:

"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."

The staff did not encourage Hunt Transportation to commence operations before obtaining proper authority. The evidence shows that while Hunt did contact members of the staff before commencing operations he was informed that he needed formal Commission authority before commencing operations and that if he did commence such operations without authority that he would undoubtedly be subject to the filing of a complaint and subject to the penalties provided by law. He also was advised to file an application for the authority. The fact that the staff stated that it would not use the fact of unauthorized operations against Hunt in the hearing on his application, in and of itself, does not constitute encouragement to conduct unlawful operations. As we pointed out in D.90334 dated May 22, 1979 in C.10603,^{4/} staff advice cannot be used as an estoppel against the Commission. However, we must admonish the staff to refrain from advising applicants in such a way that the advice can be construed as encouragement to engage in unlawful operations.

^{4/} "While advice given by the staff to the public is intended to be helpful, it does not bind the Commission nor can it be considered as Commission action or policy since the Commission can only act as the body and in a formal manner. Reliance upon staff advice cannot be used as an estoppel against the Commission."

Hunt is fit and able to conduct the proposed operation. The record shows that Hunt has managed and/or operated a successful trucking business over the past 25 years; and is presently operating a successful home-to-work passenger stage operation. Hunt's financial exhibits (Exhibits 10 and 11) show that there was a net income for the year ended December 31, 1978 of \$6,935 from the trucking and busing operations. These exhibits also show that as of January 1, 1978 the balance in the proprietary capital account was \$31,981. Hunt's personal financial statement shows a net worth of \$76,700 and that he is employed by Dewitt Transfer and Storage at a \$375 weekly salary.

Issue number six has been previously answered in our discussion of issue number two wherein we pointed out that Hunt's service over Route NA-4 is different than the service Com-Bus offered.

No other issues require discussion.

Findings of Fact

1. Com-Bus has filed tariffs which permit it to suspend operations over Route NA-4 when ridership falls below 30 passengers.
2. The passenger count on Route NA-4 during the week ending May 19, 1978 was 29.8.
3. Service was suspended on Route NA-4 by Com-Bus on May 19, 1978.
4. Effective notice of suspension of service was first given by Com-Bus on May 19, 1978. General Order No. 98-A, Section 114.2, requires that a written notice of the proposed change shall be filed with the Commission and a copy of such notice be posted in each passenger stage serving such route at least 10 days prior to the effective date of any change.
5. Com-Bus did not provide the written notice required by General Order No. 98-A.
6. Hunt commenced operating over Route NA-4 on or about August 28, 1978 after filing his application for authority to operate on this route on August 16, 1978.

7. Com-Bus started operations over Route NA-4 under an agreement with Commuter Bus Lines to transport Northrop.

8. Com-Bus' passengers on Route NA-4 were without bus service from May 22, until on or about August 28, 1978 when Hunt commenced operations. Hunt commenced operations without prior authority from the Commission.

9. Hunt began operations on Com-Bus' Route NA-4 without having first secured a certificate of public convenience and necessity as required by Section 1031 of the Code.

10. Hunt is willing to provide service at a weekly fare of \$13.50.

11. Com-Bus had a fare increase application pending prior to cessation of service on Route NA-4. The application was granted and increased fares became effective after suspension of service on Route NA-4. The fare for this route was increased to \$16.50 weekly.

12. Former commuters of Com-Bus on Route NA-4 testified that regardless of the fare increase they would not return and patronize Com-Bus under any circumstance.

13. The former Com-Bus passengers on Route NA-4 prefer to continue commuting with Hunt rather than return to Com-Bus if Com-Bus should start service again on Route NA-4.

14. Hunt seeks unrestricted authority to provide service over Route NA-4.

15. Public convenience and necessity require Hunt's services Route NA-4.

16. Hunt has the resources, experience, and financial ability to conduct the operations for which he seeks authority.

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.

Conclusions of Law

1. Com-Bus violated the notice provision in General Order No. 98-A.

2. Com-Bus' lack of service over Route NA-4 through its suspension of operations without proper notice to its passengers does not constitute service satisfactory to the Commission as contemplated by Section 1032.

3. Hunt's operations over Route NA-4 without a certificate were the result of his understanding of oral representations by the Commission's staff and, therefore, were conducted in good faith. Such operations do not reflect adversely on Hunt's fitness to provide the proposed service.

4. Hunt is fit, willing, and able to provide the service requested by the public on Route NA-4, and should be granted such authority. ✓

5. The relief requested by the complainant should be denied. ✓

6. Since there has been demonstrated an immediate need for the applicant's proposed service, the following order should be effective the date of signature. ✓

Hunt 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 William H. Hunt, dba Hunt Transportation, authorizing him to extend operations as a passenger stage corporation, as defined in Section 226 of the Public Utilities Code, between the City of Tustin and Northrop Corporation facilities, Hawthorne.

2. Appendix A of Decision No. 88159 is amended by incorporating Second Revised Page 5 attached hereto, in revision of First Revised Page 5 and by incorporating Original Page 6.

3. 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 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 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 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, an annual report of his operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

3. The relief requested by the complainant is denied.
The effective date of this order is the date hereof.
Dated AUG 14 1979 , at San Francisco, California.

John E. Bruno
President
Vernon L. S. Truman

W. D. D. D. D. D.
Richard D. Gravelle
Commissioners

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

SECTION 3. ROUTE DESCRIPTIONS.

Route No. 1 - From the city of Irvine to the Hughes Aircraft Company facilities (LAX) and return.

To the Hughes Aircraft Company facilities within the Los Angeles Municipal Airport service area from the following pickup points only:

MacArthur Boulevard and Business Center Drive in the city of Irvine; Magnolia and Warner Avenues in the city of Fountain Valley; Valley View Street and Cerulean Avenue in the city of Garden Grove.

Route No. 2 - From the city of Anaheim to the Hughes Aircraft Company facilities (LAX) and return.

To the Hughes Aircraft Company facilities within the Los Angeles International Airport Service area from the following pickup points only:

State College Boulevard and Artesia Freeway (State Highway 91) in the city of Anaheim; Valley View Avenue and Orangethorpe Street in the city of Buena Park; Artesia Boulevard and Pioneer Boulevard in the city of Artesia.

Route No. 3 - From the city of Orange to the Hughes Aircraft Company facilities (LAX) and return.

To the Hughes Aircraft Company facilities within the Los Angeles Municipal Airport Service area from the following pickup points only:

City Boulevard and City Parkway in the city of Orange; Garden Grove Boulevard and Beach Boulevard (State Highway 39) in the city of Garden Grove; Palo Verde Avenue and Stearns Street in the city of Long Beach.

*

Issued by California Public Utilities Commission.

*Deleted by Decision No. 90662, Application No. 58299.

SECTION 3. ROUTE DESCRIPTIONS.

*Route No. 4 - From the city of Tustin to the Northrop Corporation facilities, Hawthorne, and return.

To the Northrop Corporation facilities in Hawthorne from the following pickup points only:

17th Street and the Newport Freeway (State Highway 57) in the city of Tustin; Newport Freeway (State Highway 57) and Lincoln Avenue in the city of Orange; Harbor Boulevard and Orangefair Avenue in the city of Fullerton; Beach Boulevard and Orangethorpe Avenue in the city of Buena Park; Orangethorpe Avenue and Carmenita Street in the city of Buena Park.

(END OF APPENDIX A)

Issued by California Public Utilities Commission.

*Added by Decision No. 90662, Application No. 58299.