

Decision No. 90844 SEP 25 1979

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of THE GRAY LINE TOURS)
COMPANY for modification of its)
existing Certificate of Public)
Convenience and Necessity to)
eliminate circuitous operations. }

Application No. 58276
(Filed August 3, 1978)

Warren N. Grossman, Attorney at Law,
for applicant.
James H. Lyons, Attorney at Law, for
Orange Coast Sightseeing Company,
protestant.
Thomas P. Hunt, for the Commission
staff.

O P I N I O N

The Gray Line Tours Company (Gray Line), a California corporation and a certificated passenger stage corporation, was authorized by D.81036 dated February 14, 1973 and D.84749 dated August 5, 1975 to perform sightseeing service in the transportation of passengers from its Anaheim-Buena Park territory to Universal Studios in Universal City and NBC in Burbank. The Commission provided that in performing transportation under the authority granted, Gray Line would be required to detour from the otherwise direct route to its terminal at 1207 West Third Street, Los Angeles. Gray Line alleges that the restriction was presumably in order to render it less competitive with Orange Coast Sightseeing Company (Orange Coast), another certificated passenger stage corporation.

Item 15 to Appendix A of D.84749 dated August 5, 1975 provides as follows:

"Direct Operations: For operating convenience and not as an enlargement of any authority granted herein, The Gray Line Tours Company may, if it deems that it has picked up a sufficient number of passengers in one of the pickup areas provided in Section II of this certificate for one of the tours authorized in Section III herein, proceed directly to the tour from the pickup area without going to its terminal. This authority, however, does not apply to the following:

- "a. Item No. 420, Tour 20, and Item No. 425, Tour 21, from Anaheim-Buena Park Pickup Area to MGM^{1/} and Universal City Studios.
- "b. Item No. 500, Tour 32, from Anaheim-Buena Park Pickup Area to Lion Country Safari.
- "c. Items Nos. 430, 440, 445, and 450 (Tours 22, 23, 24, and 25) for passengers originating at Los Angeles International Airport to Disneyland and/or Knott's Berry Farm."

By this application Gray Line requests that the Commission remove the restriction as set forth in subparagraph a, above, to permit it to perform direct service between its Anaheim-Buena Park pickup area and Universal Studios and NBC, so that the tour to Universal Studios can be accomplished without the necessity of stopping at its terminal.

Orange Coast has authority to operate a tour from the Anaheim-Buena Park area to NBC television studio in Burbank and Universal Studios in Universal City (NBC-Universal Studios). This authority was granted by D.76527 dated December 9, 1969. By letter of August 16, 1978, Orange Coast has protested the granting of the relief sought by Gray Line.

^{1/} Should be NBC. MGM was inserted by error. (See (1973) 74 CPUC 669, 684, Finding 30.)

Orange Coast contends that the reason the restriction was placed on Gray Line is set forth on page 38 of Attachment A to D.81036, which provides: "If Gray Line is given pickup authority in the Anaheim-Buena Park area, this, coupled with the direct movement authorization, provided for in the case of a sufficient number of persons, would in effect give Gray Line authority to serve directly from Anaheim-Buena Park to Universal and NBC. There is nothing in this record which would justify a finding that Orange Coast is not operating this tour to the satisfaction of the Commission. However, the Section 1032 problem can be avoided by providing that the direct movement authority will not apply to tours from Anaheim-Buena Park to Universal and NBC."

A hearing was held in Los Angeles before Administrative Law Judge James D. Tante on November 28, 1978. The parties were authorized to present concurrent briefs in the form of letters to the hearing officer on or before December 15, 1978 and the matter was submitted as of that date.

Pursuant to the motion of Gray Line, there being no objection, the application was amended on page 3 by interlineation to add after "Tour 20," the words "and Item No. 425, Tour 21,".

A vice president-general manager, who is in charge of Gray Line's administrative functions, testified for Gray Line, and the president of Orange Coast, who is also the president of Airport Service, Inc., testified for Orange Coast.

Exhibit 1, a document showing Gray Line's passenger volume on its Anaheim-Buena Park-Universal Studios tour during 1976, 1977, and the first 10 months of 1978; Exhibit 2, a questionnaire which Gray Line submitted to some of its passengers

on the Universal Studios tour; and Exhibit 3, an Orange Coast Sightseeing Company tour brochure; were received in evidence.

The parties stipulated and the witness for Gray Line testified that Gray Line has the ability, experience, financial ability, equipment, and the proper insurance necessary to perform the service it requests in this application.

The witness for Gray Line testified that Gray Line is engaged in providing sightseeing and special transportation service throughout southern California and in connection therewith, offers a service from the Anaheim-Buena Park pickup territory to Universal Studios and return (Universal Studios Tour). The tour is operated pursuant to authority granted by the Commission. There is a provision in the certificate of public convenience and necessity (certificate) of Gray Line which is embodied in its tariff requiring that the tour detour from the Hollywood Freeway to the Third Street terminal of Gray Line in downtown Los Angeles and back to the Hollywood Freeway, in each direction. The detour requires approximately 2.9 miles. The 2.9-mile detour has not adversely affected the tour from a competitive standpoint and, in spite of the detour, Gray Line has been able to achieve a degree of competitiveness offering service from the Anaheim-Buena Park area to Universal Studios.

Exhibit 1 was received in evidence which showed that on the Universal Studios tour 30,852 passengers were transported in 759 buses in 1976; 36,007 passengers were transported in 851 buses in 1977; and 36,571 passengers were transported in 920 buses during the first ten months of 1978. The witness stated that based on the regular business number of buses only, and not reflecting the approximately 500 special sightseeing buses

that are operated by Gray Line for groups, at 2.9 miles per trip, 2,200 extra miles were traveled in 1976, 2,400 extra miles were traveled in 1977, and 2,668 extra miles were traveled in the first ten months of 1978; and approximately 1,500 excess miles in group sightseeing operated in addition to that reflected on Exhibit 1. Running the excess miles increases the cost of doing business by increasing the consumption of fuel, the wear and tear on tires and equipment, and the maintenance. Traveling the additional miles also adds to traffic congestion.

The witness testified that a questionnaire (Exhibit 2) was prepared and distributed to passengers who took its Universal Studios tour during a 26-day period from November 1 to November 27, 1978. There were approximately 268 total responses, of which 201 indicated a negative reaction to the detour and 67 indicated that the detour was interesting and worthwhile. He testified that it is his opinion that the detour detracts from the enjoyment of the passengers taking the tour causing them a waste of time and an uninteresting detour. He testified that usually the trip from the Anaheim area to the Universal Studios, without the detour, takes approximately 45 minutes, but the detour adds a minimum of ten minutes in each direction because the bus usually conducts the detour in the downtown area of Los Angeles at a time when traffic is heavy.

The witness testified that in making the detour, the bus leaves the Hollywood Freeway, proceeds south on the Harbor Freeway to Third Street, then west on Third Street to the terminal facilities of Gray Line, then continues west on Third Street to Glendale Boulevard, where it proceeds north to return to the Hollywood Freeway. The witness testified that in calculating the 2.9 extra miles caused by the detour, he did not take

into consideration the distance from the point where the bus leaves the Hollywood Freeway to start the detour and the point where it returns to the Hollywood Freeway after the detour, a distance of approximately one-half mile.

The witness testified that it was his opinion that at the present time there is no competition with Gray Line relative to its Universal Studio tour and it does not compete with Orange Coast's NBC-Universal Studios tour.

The witness testified that except on a rare occasion, the passengers do not change buses at the Third Street terminal when taking the Universal Studios tour, and passengers on this tour are not combined with other passengers who transfer at the Third Street terminal. He stated that in effect the tour is not a shuttle service which in turn meets a tour, but a tour from the Anaheim-Buena Park area to Universal Studios, and there are three scheduled bus departures from the Anaheim-Buena Park area each day. In some instances the third bus is only partially full but does not stop at the Third Street terminal to fill the bus with passengers originating at that terminal.

The witness testified that Gray Line has a very broad pickup territory and in many cases it is necessary to bring passengers through its Third Street terminal to board them on the proper buses for the tour that they have purchased for that day, and in a month such as July or August there may be 50 or 60 buses using the terminal location. In boarding the passengers and distributing them on the proper buses for the tours they have selected, the diversion of the buses used on the Universal Studios tours contributes greatly to the congestion created by from three to six buses being at the terminal at any given time. The buses on the Universal Studios tour simply proceed by the terminal and do not stop at that location.

Orange Coast's witness testified that Orange Coast presently has pickup areas in Buena Park, Anaheim, and South Orange County, which comprises the cities of or portions of Santa Ana, Costa Mesa, Newport Beach, Irvine, and certain Orange County territory.

He testified that Orange Coast now holds Commission authority to conduct a tour from points in Orange County to NBC and Universal Studios. The authority was granted by D.76527 dated December 9, 1969 in A.49730, 70 CPUC 479.

The witness testified that Orange Coast presently has an application before the Commission for authority to conduct an additional tour from certain points in Orange County to Universal Studios without stopping at NBC studio.

The witness testified that there is serious, direct competition between Orange Coast and Gray Line. He testified that for the period November 1, 1976 to and including October 31, 1977 the total revenue which Orange Coast derived from the payment of fares by passengers or paid by someone in behalf of passengers was \$623,616. During this period, \$430,915 was derived from its NBC-Universal Studios tours. For the year ending October 31, 1978, the revenue derived from such tours was \$470,192. He stated that if the application of Gray Line is granted as requested, there would be an adverse effect on Orange Coast in that Gray Line would have a direct tour to Universal Studios, advertise it, and have a lower fare than that of Orange Coast because Orange Coast's tour goes by NBC studio and is longer.

The witness testified that when the application was filed, which resulted in D.76527 and which granted Orange Coast its present authority to conduct a tour to NBC and Universal Studios, Orange Coast had an opportunity to request in the

application a tour directly to Universal Studios but did not do so because at that time the direct tour to Universal Studios was not necessary, but the combination tour to NBC and Universal Studios was necessary.

The witness testified that on a previous occasion Orange Coast protested the application of Gray Line which sought authority to operate from the Anaheim-Buena Park area to Universal Studios and return because it was his opinion that such authority would have an adverse effect upon and interfere with Orange Coast's tour to NBC and Universal Studios, and there was no other reason that there was such a protest.

The witness stated that from 1969 to 1978, before Orange Coast filed its present application to extend its authority, he continued to believe that the public only required an NBC and Universal Studios combined tour; but since December 1976, when Orange Coast commenced to operate its second tour to NBC-Universal Studios, it has had requests from persons asking for a third departure time to Universal Studios only and to last only one-half day.

The witness testified that, except for a six-month period, Gray Line has been operating a tour from the Anaheim-Buena Park area to Universal Studios and return for at least ten years. The witness testified that he did not have an opinion as to whether the detour from the Hollywood Freeway to its Los Angeles terminal by Gray Line had caused Orange Coast to have any increase in business on its NBC-Universal Studios tour. He testified that the passenger count on Orange Coast's NBC-Universal Studios tour has remained fairly constant.

Discussion

In conducting some of its tours from pickup areas, Gray Line may, if it deems it has picked up a sufficient number of passengers, proceed directly to the tour from the pickup area without going to its terminal. There is a restriction preventing it from doing so in its Universal Studios tour and its Anaheim-Buena Park to NBC tour.

There was no evidence to indicate that Item 15 to Appendix A of D.84749 dated August 5, 1975 should be modified to delete the restriction as it applies to Item 420, Tour 20, from Anaheim-Buena Park to NBC. At the hearing and in its brief, Gray Line took the position that the application was filed for the sole purpose of removing the Item 15 restriction as it applies to Item 425, Tour 21, Universal Studios tour only, and not for the purpose of removing the restriction applicable to its tour to NBC.

The detour from the point where the bus leaves the Hollywood Freeway^{2/} to the point where it returns to that freeway is 2.9 miles. We take official notice that the distance on the Hollywood Freeway, without the detour, from the point where the bus leaves to the point where it returns to that freeway is 1.1 miles, and would take approximately one and one-half minutes to traverse. Therefore, 1.8 miles and approximately eight and one-half minutes are consumed by the detour, over and above the number of miles and the time consumed by the tour without the detour.

^{2/} The bus leaves at a point just before the interchange where the San Bernardino Freeway ends and the Hollywood Freeway begins, but for this purpose we have referred to the point of departure as well as the point of return as the Hollywood Freeway.

The additional travel because of the detour was 1,656 miles for the first ten months of 1978, 1,532 miles for 1977, and 1,366 miles for 1976; in addition to approximately 900 miles per year relating to group sightseeing tours to Universal Studios. The excess miles increase fuel consumption and wear and tear on tires and equipment. Congestion in the neighborhood of Gray Line's terminal is increased by the required movement of buses to and from that facility, and most of the patrons responding to the inquiry disliked the detour.

Gray Line's patronage on its Universal Studios tour is substantial, is increasing, and has proven to be economically feasible. The evidence did not indicate that the patronage on Orange Coast's NBC-Universal Studios tour was affected by reason of the restriction which required Gray Line to proceed by way of its terminal instead of going directly to Universal Studios.

Section 1032 of the Public Utilities Code (Section 1032) provides in part:

"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."

Gray Line argues that the tour operated by Orange Coast is by way of NBC, is not the same as the tour operated by Gray Line to Universal Studios, and Orange Coast is offered no protection by reason of Section 1032. Gray Line contends that no existing carrier provides the service comparable to that proposed by it and the requested service is not in a territory already served by a certificate holder since the proposed and existing services are dissimilar.

Orange Coast argues, among other things, that Gray Line's request to remove the restriction requiring it to go by its Los Angeles terminal on its Universal Studios tour is not merely a request to remove that restriction but is an application for authority to conduct a tour from the Anaheim-Buena Park area to Universal Studios. It argues that the lifting of the restriction would have a severe adverse effect upon Orange Coast's revenue and, in addition, it would forever frustrate any future expansion of service from the Anaheim-Buena Park area by Orange Coast, the only sightseeing company authorized to operate tours from the Anaheim-Buena Park area to Los Angeles, and that this effect would be detrimental to the public.

Orange Coast argues that inasmuch as the application is a request for a new tour, it can be granted only if the Commission finds that the existing carrier serving the territory, namely, Orange Coast, will not operate service to the satisfaction of the public and the Commission as set forth in Section 1032. It argues correctly that there has been no evidence to support a new tour and there has been no evidence to show that Orange Coast is not providing or will not provide service to the satisfaction of the Commission. To lift the restriction would enable Gray Line to oppose the application of Orange Coast now pending before the Commission, A.58412 filed October 16, 1978, wherein Orange Coast is seeking authority to proceed directly from the Anaheim-Buena Park area to Universal Studios in addition to the authority it now has to conduct a tour to the Universal Studios in combination with NBC. Orange Coast argues that if the restriction herein is lifted, Gray Line will contend that there is no need for Orange Coast to serve Universal Studios directly from the Anaheim-Buena Park area. Application No. 58412 has been heard and was taken under submission on May 4, 1979.

In Decision No. 90155 issued April 10, 1979 in Application No. 57763 of Mexcursions, Inc., the Commission recently stated:

"The threshold issue in any sightseeing bus application is always whether or not public convenience and necessity require the particular service sought to be authorized by that application (See Public Utilities Code Section 1031). If it can be demonstrated that public convenience and necessity require it, a certificate may be issued, provided that, in those instances where a certificate holder or holders are already serving the territory, holder or holders will not provide service to the satisfaction of the Commission (See Public Utilities Code Section 1032). Traditionally, the satisfactory service test of existing carriers has been based on the relatively narrow analysis of factors such as route patterns, service frequency, adequacy of equipment, and the fitness of the applicant. There are, however, other significant underlying factors which, in our opinion, have not received enough attention. For example, is monopoly service of itself unsatisfactory service to the public?

"This nation's antitrust laws and policies are premised on the understanding that competitive service generally results in a superior overall level of service to the public. Competition tends to bring out the highest degree of effort and imagination in a business endeavor to the benefit of the public. In the area of sightseeing bus operations, competition will have a direct bearing on the quality of overall treatment afforded passengers, rates, scheduling, equipment condition, and operational innovation generally. California needs an influx of vigorous, innovative thinking and application if publicly acceptable alternatives to private auto-use are to fully develop. We state now that competition in the area of sightseeing bus operations is a most desirable goal.

"We are dealing here with sightseeing service. This class of service, unlike the traditional common carrier passenger stage operation, is essentially a luxury service, recreationally oriented and essentially different from the conventional point-to-point public transportation service, and therefore it is a service less imbued with that essentiality to the public welfare which we usually hold inherent in the underlying concept of public convenience and necessity. Accordingly, it is a service less entitled to the strict territorial protectionism from competition and competitive factors which necessarily is accorded the 'natural' utility monopolies such as electric, gas, or telephone utilities."

Gray Line's proposal, if authorized, will result in an improvement in an existing service. The questionnaire which was taken indicated a negative reaction to the detour by 75 percent of the passengers who responded. Furthermore, during these times of energy shortages it is important to reduce fuel consumption and wear and tear of equipment. The public will also benefit from the reduction in traffic congestion in the neighborhood of the Gray Line terminal.

Finally, with respect to the contention of Orange Coast that Section 1032 bars the granting of Gray Line's request, Orange Coast's NBC Universal Studios tour is a materially different tour than the Anaheim-Buena Park-Universal Studios tour offered by Gray Line, as the Orange Coast tour includes the NBC Studios as well as the Universal Studios. Accordingly, given this material difference, Section 1032 is not applicable.

Findings of Fact

1. Orange Coast's tour from the Anaheim-Buena Park area to NBC Television Studio in Burbank and Universal Studios in Universal

City is a different tour than the Gray Line tour from the Anaheim-Buena Park pickup area to Universal Studios in Universal City as the Gray Line tour does not include the NBC Television Studio.

2. The deletion of subparagraph a. from Item 15 to Appendix A of Decision No. 84749 dated August 5, 1975, will permit Gray Line to proceed directly on its tour from the Anaheim-Buena Park pickup area to Universal City Studios instead of detouring by its Los Angeles terminal, if and when it deems it has picked up enough passengers in its Anaheim-Buena Park pickup area.

3. Gray Line's proposal to delete subparagraph a. from Item 15 of Appendix A of Decision No. 84749 will improve Gray Line's existing service, reduce traffic congestion in the neighborhood of the Gray Line terminal, and reduce fuel consumption and wear and tear on Gray Line's equipment.

4. Competition between Gray Line and the existing certificated passenger stages under regulation will be in the public interest in that it will lead to the development of the territory served by such passenger stages and will promote good service and hold down fares.

5. Gray Line has demonstrated that public convenience and necessity require the proposed improvement in service.

6. 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 of Law

1. The service that Gray Line proposes is materially different from that offered by protestant Orange Coast, and Section 1032 is accordingly not applicable.

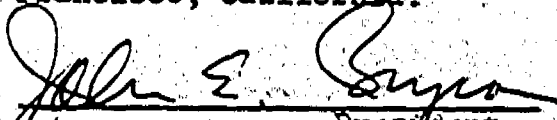
2. The application of Gray Line should be granted as provided in the order which follows.

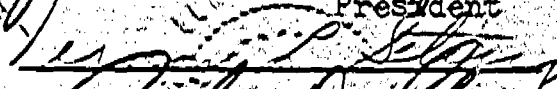
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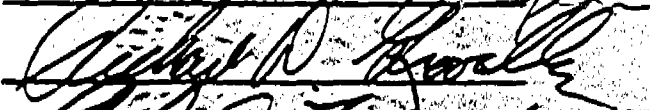
IT IS ORDERED that Appendix A of Decision No. 84749 in Application No. 54366, as amended by Decision No. 84915 in Application No. 54366, is further amended by incorporating Third Revised Page 8, attached hereto, in revision of Second Revised Page 8.


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


Dated SEP 25 1979, at San Francisco, California.



President








Commissioners

Item
No.

SECTION I, General Authorizations--Contd.

15

Direct Operations: For operating convenience and not as an enlargement of any authority granted herein, The Gray Line Tours Company may, if it deems that it has picked up a sufficient number of passengers in one of the pickup areas provided in Section II of this certificate for one of the tours authorized in Section III herein, proceed directly to the tour from the pickup area without going to its terminal. This authority, however, does not apply to the following:

- *a. Item No. 500, Tour 32, from Anaheim-Buena Park Pickup Area to Lion Country Safari.
- *b. Items Nos. 430, 440, 445, and 450 (Tours 22, 23, 24, and 25) for passengers originating at Los Angeles International Airport to Disneyland and/or Knott's Berry Farm.
- *c. Item 415, Tour 19 from Anaheim-Buena Park Pickup Area to Palm Springs.

For operating convenience only and not as an enlargement of any authority granted herein, The Gray Line Tours Company may, if it deems that it has picked up a sufficient number of passengers in the pickup areas provided in Section IV of this certificate for one of the tours authorized in Section V herein, proceed directly to the tour without going to its terminal.

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Baggage Limitations: Transportation of baggage shall be that which is incidental to the transportation of passengers as herein authorized.

Issued by California Public Utilities Commission.

*Amended by Decision No. 90844, Application No. 58276.