

ORIGINAL

Decision No. 90943 OCT 23 1979

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application)
of JAMSHID ANVARIPOUR, dba TIFFANY)
TOUR AND TRAVEL SERVICE, INC., for)
a certificate of public conven-)
ience to operate passenger service)
between a location in the County of)
Los Angeles to Disneyland in the)
City of Anaheim, CA and various)
locations in Hollywood-Beverly)
Hills area of CA.)

Application No. 58772
(Filed March 28, 1979)

Cadoo, Tretheway, McGinn & Morgan, by
C. David Serena, Attorney at Law,
for applicant.

Knapp, Grossman & Marsh, by Warren N.
Grossman, Attorney at Law, for The
Gray Line Tours Company; James H.
Lyons, Attorney at Law, for Starline
Sightseeing Tours, Inc.; Jack Allen,
Senior Assistant City Attorney, for
City of Beverly Hills; and Joe A. Lyle,
for Southern California Rapid Transit
District; protestants.

Kenneth E. Cude, for Department of
Transportation, City of Los Angeles,
interested party.

William Austin, for the Commission staff.

O P I N I O N

Janshid Anvaripour, dba Tiffany Tour and Travel Service, Inc. (Tiffany), a California corporation, seeks a certificate of public convenience and necessity, pursuant to Section 1031, et seq., of the Public Utilities Code, to perform regularly scheduled sight-seeing services between a service area near the Los Angeles

International Airport (LAX), on the one hand, and one tour to Disneyland and another to the Hollywood-Beverly Hills area, on the other hand.

The Hollywood-Beverly Hills tour will run daily, and the Disneyland tour will run daily March through September and Wednesday through Sunday during the remaining months.

A public hearing was held in Los Angeles before Administrative Law Judge N. R. Johnson on July 9, 1979, and the matter was submitted on that date. Testimony was presented on behalf of Tiffany by its president, Jamshid Anvaripour, by a salesman from Ronald Moran Cadillac, Hamid Anvaripour, and by an independent taxi driver, Victor DeManuel Santos. Statements and/or testimony in opposition to the granting were given by four Beverly Hills residents whose houses are located on existing sightseeing tour routes and by The Gray Line Tours Company's (Grayline) executive vice president and general manager, G. E. Ballinger. In addition, five letters in opposition to the granting of the requested certificate of public convenience and necessity, by residents of Beverly Hills, were read into the record.

Tiffany proposes to acquire a 20-passenger Chevrolet van to transport passengers from hotels and motels within a four-mile radius of LAX and transport them to either Disneyland or the Hollywood-Beverly Hills area. The tour to Disneyland will depart at approximately 9:30 a.m. in the morning and will return to pickup point at 6:30 p.m. The fare, including 11-"E" tickets, attractions, and guide, will be \$23 per person and without a guide will be \$20 per person.

After discharging passengers at Disneyland, the bus will return to the LAX service area and pick up passengers for a tour of the Hollywood-Beverly Hills area (including "movie stars'" homes),

and downtown Los Angeles. This tour will depart at 11:30 a.m. and return to starting point at 3:00 p.m. Mr. Jamshid Anvaripour described the route for the Hollywood-Beverly Hills tour as follows: north on La Cienega Boulevard to Wilshire, west on Wilshire to Beverly Drive, north on Beverly Drive to Sunset Strip, east on Sunset Strip to La Brea, north to Hollywood Boulevard, east to the Hollywood Freeway, south to Los Angeles, and return to the LAX area. Complete round-trip fare will be \$7.50. After discharging passengers, the bus will return to Disneyland to pick up its passengers for the return trip to the LAX service area. According to the testimony, Tiffany will have access to a Holiday Inn van in the event that its own bus is out of service for maintenance or repairs.

Tiffany differentiates its proposed operations with Grayline's present operations on the bases of size of buses, scheduling, and routing of passengers. Tiffany plans to use a 20-passenger van to depart for Disneyland at 9:30 a.m. and drive directly to its destination. Such operations contrast with Grayline's in that the passenger capacity of Grayline's bus ranges from 39 to 57, the passenger pickup time is 7:30 a.m., and the passengers are generally driven to a central point in Los Angeles for reassignment to a bus for the particular tour for which the passenger has purchased his ticket. According to Tiffany's witness, the generally undesirable early departure time and the extra time required to transport the passenger to Los Angeles for bus reassignment combine to create a demand for the proposed operations. According to the testimony, most of the passengers that would utilize Tiffany's offering do not patronize Grayline's present tours because of the early departure time and additional time required and, therefore, Tiffany would not siphon off any of

Grayline's revenues. Tiffany also noted that Starline Sightseeing Tour, Inc. (Starline) does not pick up passengers at hotels or motels so that the proposed operations should not adversely affect its revenues.

Tiffany's witness stated that he possessed a Class 2 driver's license and was experienced in driving vans, buses, and limousines. He further testified that the assets listed in Exhibit "E" to the application were his personal assets; that the corporation has no assets of its own; and that the profit and loss statement attached to the application as Exhibit "F" indicated the proposed operations would be profitable.

The tickets for the proposed tours are to be sold by bell captains and others at various hotels, including Holiday Inn, Quality Inn, Airport Century Inn, Travelodge Motel, Marriott Hotel, and others.

Letters, statements, and/or testimony presented in opposition to the proposed Hollywood-Beverly Hills tour by residents of Beverly Hills focused on the frequency and number of tours with their accompanying noise, diesel fuel stench, and health hazards and the resulting total lack of privacy resulting from such tours.

It was generally acknowledged that such sightseeing tours commence early in the morning and continue throughout the day until late evening, seven days a week, rain or shine. The frequency of such tours was reported to range from one every ten minutes at peak to one every one-half hour during the off-peak periods. During these periods, according to the record, no member of any family is able to be in front of his house without being gawked at and/or verbally accosted. In addition, the diesel fumes resulting from the numerous slow-moving tours allegedly preclude residents from opening front-facing windows to obtain good cross-ventilation on humid days.

The adverse effects of these sightseeing tours reportedly resulted in mass meetings attended by several hundred Beverly Hills residents. As a result, the city of Beverly Hills began rigidly policing the certification requirements for such tours and mitigated some of the nuisances of such tours by stopping the practice of permitting passengers to get off the buses "for a closer look". In addition, in this proceeding the city of Beverly Hills filed a written protest to the granting of the sightseeing authority for the Hollywood-Beverly Hills area on the following bases:

1. Public convenience and necessity must include consideration of all the public and not just those who would use the stage line service.
2. The application is too vague and does not specify definite routes so, if granted, Tiffany would be free to travel any street in Beverly Hills when most streets are posted as light hauling.
3. The Commission has authority to refuse the application on consideration of the effect of unnecessary congestion or wear and tear upon such highways.
4. There is no evidence to support Tiffany's allegation that its proposed operation would help alleviate adverse environmental impacts by replacing other vehicles.
5. The territory is already adequately served by Starline, Grayline, and Holiday Line tours.

Position of Grayline

Testimony presented on behalf of Grayline indicated that:

1. Grayline conducts 26 tours daily in the Los Angeles-Anaheim area, including two to the Hollywood-Beverly Hills area and five to Disneyland.
2. The two tours proposed by Tiffany are among the more profitable tours conducted by Grayline and any siphoning of revenues from these tours by Tiffany would have adverse effects on Grayline's operations.

3. The Hollywood-Beverly Hills tour, as proposed by Tiffany, lacks sufficient points of interest to be successful.

4. Grayline maintains 135 buses in the Los Angeles area at this time and is an established operation, whereas Tiffany lacks sightseeing tour experience.

Discussion

In determining whether or not to grant a certificate the Commission has traditionally considered such factors as: (1) public requirements for the service; (2) adequacy of existing service; (3) adequacy of proposed service; (4) quality of proposed service; (5) revenue requirements and rates; (6) technical feasibility; (7) technical competence and financial integrity of the operator; (8) economic feasibility of the proposed operations; and (9) present operations. (Silver Beehive Tel. Co. (1970) 71 CPUC 304.)

There is no question that Tiffany has the burden of proving public convenience and necessity to obtain a certificate. But there is no requirement that this burden be met by public witness testimony, particularly in an application for a sight-seeing tour in a resort area, which is sui generis and by its nature serves an itinerant vacationing public. Consequently, the lack of numerous public witnesses testifying in support of the proposed tour is not an adequate basis for denial of the application.

In addition, the relatively narrow analysis of the factors listed above omit other significant underlying considerations which have not received enough attention. For example, has the Commission addressed the ultimate question of whether monopoly service is 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. 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 here dealing 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.

In the sightseeing field a policy of fostering limited competition under regulation would have a beneficial effect for the public interest in that it would tend to lead to development of a territory and improved methods, forms, or routes of transportation and would best meet special requirements of segments of the general public. Furthermore, it would tend to promote good service and to hold down fares. We believe that the competition

of ideas and results is healthy and, accordingly, we look to the circumstances of each application in the sightseeing field to determine whether or not the public interest requires certification of that application. The granting or withholding of a certificate of public convenience and necessity is a legislative act which rests in the discretion of this Commission. The Commission may grant a number of certificates covering the same route or routes.

The scheduling, routing, and passenger handling of the proposed LAX-Disneyland tour materially differs from those now provided by Grayline's Disneyland tours sufficiently that Public Utilities Code Section 1032 is inapplicable for these proposed operations.

With respect to the Hollywood-Beverly Hills tour, it is evident that relative size of Tiffany's buses and operations, as compared to other certificated operations in the area, severely mitigate the competitive factors. Furthermore, as discussed above, the proposed tour is essentially a luxury service less entitled to the strict territorial protectionism from competitive factors accorded "natural" utility monopolies. Of greater concern in this proceeding is the impact of the proposed operations on the health, safety, and general well-being of the residents of Beverly Hills who would be affected by the proposed tour. The specific route proposed by Tiffany traverses only heavily traveled thoroughfares, wherein the addition of one or possibly two 20-passenger vans will have a relatively minuscule incremental effect on the residents along such route. Consequently, the order that follows will grant the requested certificate of public convenience and necessity limited to travel on the specific route previously described.

Findings of Fact

1. Tiffany has sufficient financial resources and can acquire the necessary equipment to perform the proposed service.

2. Tiffany has met the burden of proving public convenience and necessity for the purposes of a sightseeing tour.

3. Public convenience and necessity require that the service proposed by Tiffany be certificated.

4. Sightseeing tours are a specialized type of passenger stage service primarily serving an itinerant segment of the public.

5. The tours proposed by Tiffany materially differ from those offered for similar areas by competitors with respect to size, scheduling, and routing.

6. Competition between Tiffany and other certificated sightseeing tours, to the extent it will exist, will have a beneficial effect for the public interest in that it will lead to the development of the territory served and will promote good service.

7. The Hollywood-Beverly Hills tour proposed by Tiffany will traverse only the more heavily traveled main streets, and the addition of Tiffany's smaller 20-passenger tour buses to such streets will have little incremental effect on the bus and automobile traffic on such streets. Therefore, the health, safety, and general well-being of the residents of Beverly Hills affected by the proposed tours will be only minimally impacted.

8. 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. The tours proposed by Tiffany are sufficiently different from those offered in the same areas by protestant tour companies so as to render inapplicable the competitive clause of Section 1032 of the Public Utilities Code.

2. The Commission concludes that the application should be granted as set forth in the ensuing order.

Tiffany is hereby 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 over a particular route. 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 Tiffany Tour and Travel Service, Inc., a corporation, authorizing it to operate as a passenger stage corporation, as defined in Section 226 of the Public Utilities Code, between the points and subject to the conditions particularly 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 the cancellation of the authority.

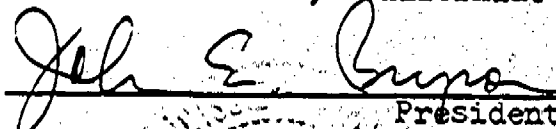
- (a) Within thirty days after the effective date of this order, applicant shall file a written acceptance of the certificate granted. Applicant is placed on notice that if it accepts the certificate it will be required, among other things, to comply with the safety rules administered by the California 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 its 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 its operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

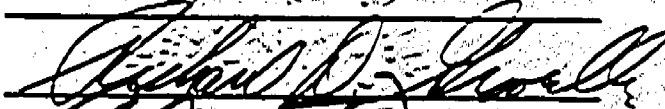
The effective date of this order shall be thirty days after the date hereof.

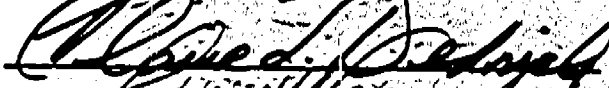
Dated OCT 23 1979, at San Francisco, California.

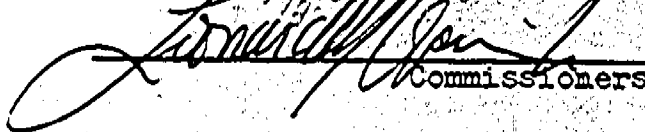
Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.



President







Commissioners

EA/nm/ec *

TIFFANY TOUR AND TRAVEL SERVICE, INC.
Appendix A (& California corporation)

Original Title Page ✓

CERTIFICATE
OF
PUBLIC CONVENIENCE AND NECESSITY

PSC 1083 ✓

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

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. **90943**, dated
OCT 23 1979, of the Public Utilities Commission
of the State of California, in Application No. 58772. ✓

EA/nm/ec *

Appendix A TIFFANY TOUR AND TRAVEL SERVICE, INC.
(a California corporation)

Original Page 1 ✓

INDEX

| | <u>Page No.</u> |
|---|-----------------|
| SECTION 1. GENERAL AUTHORIZATIONS, RESTRICTIONS, LIMITATIONS, AND SPECIFICATIONS | 2 |
| SECTION 2. DESCRIPTION OF AREAS AND LOCATIONS | 3 |
| SECTION 3. ROUTE DESCRIPTIONS | 4 |

| <u>Route</u> | <u>Name</u> |
|--------------|--|
| 1 | Beverly Hills-Hollywood-Downtown Los Angeles |
| 2 | Disneyland |

TIFFANY TOUR AND TRAVEL SERVICE, INC.
(a California corporation)

Appendix A

Original Page 2 ✓

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

Jamshid Anvaripour, doing business as Tiffany Tour and Travel Service, Inc., by the certificate of public convenience and necessity granted by the decision noted in the margin, is authorized to conduct a sightseeing service for the transportation of passengers between the Los Angeles International Airport service area, as hereinafter set forth, on the one hand, and points of interest in Orange and Los Angeles Counties, on the other hand, over and along the routes hereinafter described, subject to the following conditions and restrictions:

- a. Motor vehicles may be turned at termini and intermediate points, in either direction, at intersections of streets or by operating around a block contiguous to such intersections in accordance with local traffic regulations.
- b. When route descriptions are given in one direction, they apply to operation in either direction unless otherwise indicated.
- c. All service herein authorized shall be limited to the transportation of round-trip passengers only.
- d. Applicant shall not pick up or discharge passengers, except within the limits of the specified service area as hereinafter set forth. This restriction shall not prevent stopovers for the purpose of permitting sightseeing passengers to visit various points of interest along the route.
- e. Tour No. 1 - Beverly Hills-Hollywood-Downtown Los Angeles
Service will be rendered on a year-round basis, Monday through Saturday of each week, excluding New Year's Day, Thanksgiving Day, and Christmas Day.

Issued by California Public Utilities Commission.

Decision No. 90943, Application No. 58772. ✓

SECTION 1. GENERAL AUTHORIZATIONS, RESTRICTIONS, LIMITATIONS, AND SPECIFICATIONS. (Continued)

f. Tour No. 2 - Disneyland

Regular scheduled daily service shall be provided during the months of March through September. During the remaining five months thereafter, service shall be provided on Wednesday through Sunday only. Each of the above is to include service on all holidays.

SECTION 2. DESCRIPTION OF AREAS AND LOCATION.

Los Angeles International Airport Service Area

That area bounded by Manchester on the north, the San Diego Freeway on the east, El Segundo Boulevard on the south, and the Pacific Ocean on the west.

SECTION 3. ROUTE DESCRIPTIONS.

Subject to the authority of this Commission to change or modify such at any time, Tiffany Tour and Travel Service, Inc. shall conduct said sightseeing passenger stage operations over and along the following routes:

Tour No. 1 - Beverly Hills-Hollywood-Downtown Los Angeles

Commencing at any point in the Los Angeles International Airport service area along the most appropriate route or routes north on La Cienega Boulevard to Wilshire Boulevard, west on Wilshire Boulevard to Beverly Drive in the city of Beverly Hills, north on Beverly Drive to Sunset Boulevard, east on Sunset Boulevard to La Brea Avenue in the city of Los Angeles, north on La Brea Avenue to Hollywood Boulevard, east on Hollywood Boulevard to the Hollywood Freeway (Highway 101), south on Hollywood Freeway to Temple Street off ramp, east on Temple Street to Broadway, north on Broadway to Sunset Boulevard (Chinatown), east on Sunset Boulevard to San Pedro Street (Olvera Mission), south on San Pedro Street to Fifth Street, west on Fifth Street to Figueroa Street (Bonaventure Hotel), and return over and along the most appropriate route or routes to the Los Angeles International Airport service area.

Tour No. 2 - Disneyland

Commencing at any point in the Los Angeles International Airport service area along the most appropriate route or routes to Disneyland and return.

(END OF APPENDIX A)