

Decision No. 91504 APR 2 1980

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PUBLIC SERVICES PLANNING
AND ANALYSIS CORPORATION dba BERKELEY-
AIRPORT CONNECTION, for a Class "B"
certificate to operate as a charter-
party carrier of passengers, Berkeley
(TCP-47-B).

Application No. 57050
(Filed February 1, 1977)

Judith C. Orloff and C. S. Orloff, for applicant.
Allan T. Smith, for Falcon Charter Service; W. L.
McCracken, Attorney at Law, for Greyhound Lines,
Inc.; Irwin J. Borof, Attorney at Law, for
Peerless Stages, Inc. and Guiton Charter Bus
Co.; protestants.
Brenda S. Maldonado, for herself, interested party.
Barbara Weiss, for the Commission staff.

O P I N I O N

This is an application for a Class B certificate for authority to operate as a charter-party carrier of passengers within a 40-mile radius of applicant's terminal in Berkeley. The application is protested by Falcon Charter Service, Inc. (Falcon), Greyhound Lines, Inc. (Greyhound), Peerless Stages, Inc. (Peerless), and Guiton Charter Bus Co. (Guiton). Pursuant to Section 5375.1 of the Public Utilities Code public hearing was held April 25, 1977 before the assigned Administrative Law Judge, at San Francisco and the matter was submitted.

Applicant is engaged in operations as a passenger stage corporation between Berkeley and San Francisco International Airport pursuant to a certificate of public convenience and necessity issued by the Commission in Decision No. 86569 dated October 26, 1976 in Application No. 56524. That certificate authorizes applicant to provide airporter service with vehicles seating no more than 15 passengers including the driver (called a minibus). Applicant also holds a

permit authorizing charter-party carrier operations with which it uses its minibuses.^{1/}

Two reasons motivated applicant to apply for a certificate. In the conduct of its charter operations under its permit there have been a number of occasions when the party has exceeded 14 persons necessitating the use of two minibuses. This, applicant asserts, is not only inefficient but results in a higher cost to the charter-party than if one bus were provided. The second reason results from a projected sightseeing enterprise contemplated to be operated by California Tour and Exhibition Co., a corporation in which the stockholders of applicant hold 51 percent of the stock. With those circumstances in mind applicant has purchased, but not received, a 1953 Flexible 29-passenger bus.

For its minibus applicant charges \$15 per hour, which includes 16 free miles, and \$0.55 per mile for additional miles. It does not assess a deadhead charge in the Berkeley vicinity. It proposes to charge for the 29-passenger bus a rate of \$18.75 per hour, which includes 16 free miles, and \$0.69 per mile for additional miles.

^{1/} The Public Utilities Code provides for the issuance of permits as follows:

"Section 5384. The commission shall issue permits to persons, who are otherwise qualified, whose passenger carrier operations fall into the following categories:

- " (a) Specialized carriers, who do not hold themselves out to serve the general public, but only provide service under contract with industrial and business firms, governmental agencies and private schools or who only transport agricultural workers to and from farms for compensation or who only conduct transportation services, which are incidental to another business. Such permits shall be limited to a 50-mile radius of operation from the home terminal.
- " (b) Carriers using only vehicles under 15-passenger seating capacity and under 7,000 pounds gross weight."

Applicant's permit authorizes operations under (b) above.

During the months of February and March 1977 applicant has had charters of 20 buses for eight charter parties, most of which were for Armco Steel Corporation, Berkeley Institute, and United States Civil Service Commission Executive Seminar Center.

In two instances two minibuses were chartered to Federal Executive Seminars when one 29-passenger bus could have been used. There was one such instance in charters to Armco Steel. Applicant asserts that there would have been a savings to the customers of \$11.25 per hour had it been able to provide a 29-passenger bus.

Applicant's Exhibit 1 asserts that as of April 22, 1977 it has received between 13 and 16 firm and tentative charter requests for each of the months of June, July, and August 1977 which would require vehicles with seating capacity greater than 15. It projects a demand for almost 200 large capacity bus charters for the year ending May 31, 1978. It also estimates that the business will expand sufficiently for it to acquire an additional large bus to be ready for the peak months of June, July, and August 1978 for which time it projects 90 charters for a large bus.

As shown on the application applicant has leased three maxi-wagons and owns one 29-passenger bus. As of January 6, 1977 applicant had assets of \$54,000, liabilities of \$34,500, and a net worth of \$20,000.

Protestants presented witnesses in their respective managements who testified regarding the charter services they offer in the area proposed to be served by applicant, the number of buses they have available for charter, and the rates and charges for their charter services.

Greyhound has a large fleet of buses, 1,658 of which are licensed in California. All of them are 38-, 39-, or 43-passenger intercity buses equipped with restroom, air conditioning, tinted picture windows, reading lights, public address system, and air suspension ride. Greyhound has terminals throughout the State; however, a bus chartered for service at Berkeley would probably be dispatched from Oakland or San Francisco. The minimum time that a bus could report to Berkeley upon a request for charter would be

between three and four hours. During November 1976 Greyhound chartered 129 buses in the San Francisco Bay area involving 4,505 passengers.

Peerless has 23 intercity buses of the type described above and 9 transit buses available for charter. The capacities of the buses range from 38 to 53 passengers. Peerless' terminal is at Oakland.

Guilton has its terminal at Oakland. It has 65 buses of various sizes available for charter. Falcon has its terminal at San Francisco at which it has a number of intercity and transit buses available for charter.

The rates of protestants vary with the sizes and types of buses chartered. Some of them also maintain special reduced rates for charter buses to and from the airports. In most instances they provide for a rate of 85 cents per mile for deadheading, which in the case of a Berkeley charter would be around \$10. With respect to the charter of 38-passenger buses of the type described in connection with Greyhound, the rates of protestants are similar, differing with respect to minimum charges, maximum daily charges, and rates per mile. Greyhound's basic rate for that type of bus is five hours for \$131.25 with each additional hour at \$15.75 or \$1.05 per mile. Falcon maintains the same mileage rate but its time rate is \$115 for the first five hours and \$14 for each additional hour. Peerless also maintains the \$1.05 per mile rate with a different time basis, and Guilton's rate is \$115 for five hours and \$10 per hour thereafter.

It is difficult to make rate comparisons because of the variances in the application of minimum charges; in general applicant's proposed charge for charter of its 29-passenger bus for less than five hours would be less than the charter of protestants' 38-passenger buses, but would be almost the same for a quarter-day charter.

Protestants contend that the provisions of Section 5375.1 of the Public Utilities Code preclude the award of a certificate to applicant. That section provides:

"Notwithstanding the provisions of Section 5375, if the applicant desires to operate in a territory already served by the holder of a certificate, the commission shall hold a hearing before granting the certificate. The commission shall not grant a certificate to such an applicant unless it can be shown that the existing charter-party carrier of passengers serving the territory is not providing services which are satisfactory to the commission and adequate for the public. In no event shall the commission issue more certificates than public convenience and necessity require and the commission shall place any restrictions upon such certificates as may reasonably be necessary to protect any existing charter-party carrier of passengers."

It is also contended with respect to the instances when applicant furnished two minibuses where one 29-passenger bus would have accommodated the charter-parties involved, that applicant's permit provided sufficient authorization to utilize a larger bus in that the contracts were with industrial and business firms or governmental agencies, and the operations were within a 50-mile radius from applicant's home terminal. Applicant's showing regarding the charters that it provided during February and March 1977 discloses that all of them were for operations within 50 miles of Berkeley and that all, save possibly one, were for industrial and business firms or governmental agencies.

Protestants also contend with respect to operations that may be conducted by applicant for California Tour and Exhibition Co. that applicant would be aiding a violation of Section 1031 or of Section 5402 of the Public Utilities Code. We need not make any such determination, as applicant has not asserted that any activities which may be conducted by California Tour and Exhibition Co. will provide a need for applicant's service as a charter-party carrier of passengers.

Discussion

The protestants all have Class A charter-party carrier certificates. The facts of this case closely resemble those discussed in Decision No. 74858 (October 22, 1968) which granted a Class B certificate to H & J Brighton Bus Company for service in the Santa Maria area notwithstanding both Greyhound's operations within the 40-mile radius service area encompassed by the application, and Greyhound's permanent terminal facilities located 30 miles from applicant's base of operations (see 69 CPUC 10, 14). In granting the application, the Commission reasoned as follows:

"Although both Greyhound and Melni hold themselves out to perform passenger charter service within Santa Maria and the immediate vicinity thereof and have performed such service therein, neither has passenger equipment based in said area. The majority of Greyhound's charter activity in this section of the state is centered around San Luis Obispo, and the majority of Melni's charter activity is outside the Santa Maria area. According to the record, applicant's equipment is the only charter equipment based in the immediate Santa Maria area. Furthermore, the fact that there are only two protestants certainly does not evidence an overabundance of available charter service for the general public within the Santa Maria area." (Id. at 15.)

The Commission also stated in Application of Melvin Combs (D.88196, December 6, 1977) that:

"... (N)o present holder of a Class-B certificate protested in this proceeding. Rather, all protestants herein are holders of Class-A certificates, granting them statewide operating rights. Because holders of Class-A certificates have such rights and possess de jure right to operate within the area covered by any Class-B certificate, it is in principle impossible for any Class-B applicant to prove the nonexistence or inadequacy of a Class-A holder's operations in the area subject to his application. This is particularly aggravated in this case, in which the absence of protest by holders of Class-B certificates would suggest an

absence of concern over disruption of the competitive climate in the Fresno area. Again, under these circumstances, it is the Commission's opinion that no significant competitive description [sic-disruption] would follow from a grant of this application such that the requirements of Section 5375.1 would become operative."

The protestants do not provide locally based charter service. For this reason their service is not adequate for the local public. The facts summarized above clearly indicate the existence of a public need for applicant's proposed service originating from Berkeley. Applicant possesses satisfactory fitness and financial ability to initiate and conduct the proposed service and has shown that it will faithfully comply with the rules and regulations adopted by the Commission governing Class B operators. Under these circumstances this application should be granted. ✓

Findings of Fact

1. Applicant has the ability, experience, equipment, and financial resources to perform the proposed service.
2. Public convenience and necessity require that the service proposed by the applicant be established.
3. Protestants do not provide locally based charter service. For this reason their service is not adequate to meet the local public need.
4. Applicant should be authorized to pick up passengers within a radius of not more than 40 air miles from its home terminal at 2490 Channing Way, Berkeley, California.
5. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

Conclusions of Law

1. The grant of this Class B charter-party certificate is not adverse to the public interest.
2. Protestants are not providing services which are satisfactory to the Commission and adequate for the public.

3. The proposed authority should be issued as provided in the following order.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity, to be renewed each year, is granted to Public Services Planning and Analysis Corporation, dba Berkeley-Airport Connection, authorizing it to operate as a Class B charter-party carrier of passengers, as defined in Section 5383 of the Public Utilities Code, from a service area encompassing a radius of 40 air miles from applicant's home terminal at 2490 Channing Way, Berkeley, California.

2. In providing service pursuant to the certificate herein granted, applicant shall comply with and observe the following service regulations. Failure to do so may result in cancellation of the operating authority granted by this decision. Applicant will be required, among other things, to comply with and observe the safety rules administered by the California Highway Patrol, the rules and other regulations of the Commission's General Order No. 98-Series, and the insurance requirements of the Commission's General Order No. 115-Series.

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

Dated APR 2 1980, at San Francisco, California.

Commissioner Claire T. Dedrick, being necessarily absent, did not participate in the disposition of this proceeding.

John E. Bryan
President
Dennis L. Stapp
Michael D. Goble
Leonard H. Smith
Commissioners