

Decision No. 91710

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of )  
AMERICAN BUSLINES, INC., a corporation, )  
for a certificate of public convenience )  
and necessity as a passenger stage )  
corporation authorizing service )  
(1) between San Diego, California )  
and the California-Arizona State line, )  
and (2) between Calexico, California )  
and Los Angeles, California. )

Application No. 58457  
(Filed November 6, 1978)

ORDER DENYING REHEARING  
OF DECISION NO. 91279

On February 13, 1980, a petition for rehearing of Decision No. 91279 was filed by Greyhound Lines, Inc. A response to the petition was filed by American Buslines, Inc., on March 3, 1980. The Commission has considered each and every allegation of the petition and is of the opinion that good cause for granting rehearing has not been shown. Therefore,

IT IS ORDERED that rehearing of Decision No. 91279 is hereby denied.

The effective date of this decision is the date hereof.

Dated APR 15 1980, at San Francisco, California.

Commissioner John E. Bryson,  
being necessarily absent, did  
not participate.

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President  
*Vernon L. Sturgeon*  
\_\_\_\_\_  
*Richard D. Knudsen*  
\_\_\_\_\_  
*Charles T. ...*  
\_\_\_\_\_  
*James W. ...*  
Commissioner

Decision No. 91279 January 29, 1980

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of )  
 AMERICAN BUSLINES, INC., a corpo- )  
 ration, for a certificate of public )  
 convenience and necessity as a )  
 passenger stage corporation author- )  
 izing service (1) between San Diego, )  
 California and the California-Arizona )  
 State line, and (2) between Calexico, )  
 California and Los Angeles, California.)  
 \_\_\_\_\_ )

Application No. 58457  
 (Filed November 6, 1978)

Russell, Schureman & Hancock, by R. Y. Schureman and George W. Hanthorn, Attorneys at Law, for applicant.  
Anthony P. Carr and Robert E. Rierson, Attorneys at Law, for Greyhound Lines, Inc.; and Eric Rath, for Mexicocoach, Inc.; protestants.

O P I N I O N

American Buslines, Inc. (ABL), a corporation organized under and existing pursuant to the laws of the State of Delaware, seeks a certificate of public convenience and necessity, pursuant to Sections 1031-1038 of the Public Utilities Code, authorizing it to transport passengers and their baggage, and shipments of express (including newspapers) weighing 100 pounds or less, on passenger-carrying vehicles between the following points and places:

- (a) Between San Diego, California, and the California-Arizona State Line:

From San Diego, California, over Interstate Highway 8 (I-8) to the California-Arizona State line, serving all intermediate points and including Holtville, and return over the same route.

- (b) Between Calexico, California, and Los Angeles, California:

From Calexico, California, over California State Highway 111 to Indio, then over Interstate Highway 10 (I-10) to Los Angeles, California, serving all intermediate points and including El Centro, and return over the same route.

RESTRICTED against the transportation of passengers and their baggage in local service between Los Angeles, California, and San Bernardino, California.

After due notice, public hearings on the matter were held before Administrative Law Judge N. R. Johnson in El Centro on February 27 and 28 and March 1, 1979; in San Diego on April 17, 18, and 19, 1979; in Imperial on May 15, 16, and 17, 1979; and in Los Angeles on May 18, 1979; and the matter was submitted upon receipt of concurrent briefs due July 20, 1979. Testimony was presented on behalf of ABL by a vice president of rates and authorities of Trailways, Inc. (Trailways) and its subsidiary carriers, David V. Taylor; by Trailways' and its subsidiaries area sales manager of charters and tours, Joe A. Matajcich; by its sales manager for southern California and western Arizona, Patrick R. Crawford; by its garage manager in Los Angeles, William J. Snyder; by one of its technical supervisors, Thomas J. Peterson; by its branch manager for San Diego, Virgil D. Willey; by one of its operations managers, Robert L. Hossler; by four of its bus drivers; and by 43 public witnesses. Testimony was presented on behalf of Greyhound Lines, Inc. (Greyhound) by its regional manager of maintenance for Area V, Rodney B. Moreland; by its director of traffic, M. G. Gragg; by one of its assistants to vice president-accounting, Bernard Rotenberg; by its vice president of sales and marketing, Charles D. Kirkpatrick; by its director of general accounts, Warren May; and by 69 public witnesses, 12 Greyhound

agents, and eight Greyhound drivers. In addition, Eric Rath, president of Mexicoach, made a statement in opposition to granting the requested certificate on the basis that service between Calexico and San Diego is presently adequate and, consequently, no further authorization should be granted.

Other Filings

On July 10, 1979 Greyhound filed a petition to set aside submission and reopen the proceeding for additional evidence alleging that Trailways' extra section policy has changed and extra sections are not being operated. Greyhound further alleged that Trailways is not operating all of its published schedules nor serving all scheduled stops. The affidavit by Greyhound's senior director of traffic, which formed the basis for Greyhound's petition, concerned routes and stops outside the area relating to the instant application. Consequently, the motion to reopen this proceeding is hereby denied.

On May 11, 1979 ABL filed A.58858 seeking a temporary certificate as a passenger stage corporation between San Francisco and Sacramento, California; between Los Angeles and Doheny Park, California; and between San Diego, California, and the California-Arizona State line. The temporary authorization sought between San Diego and the California-Arizona State line was the same between these two points as set forth in this application and was for the period June 15, 1979 to September 15, 1979 pending final determination of this matter. D.90800, dated September 12, 1979, denied the application.

ABL's Present Operations

ABL is a wholly owned subsidiary of Trailways. Trailways presently holds a passenger stage corporation certificate from this Commission authorizing service over I-10 between Indio and Los Angeles. To avoid potential future splitting of duplicate operating rights, ABL consents to the imposition of a restriction limiting the transfer of duplicative rights solely to Trailways.

ABL holds authority from the Interstate Commerce Commission (ICC) to provide motor common carrier service in the transportation of passengers between Los Angeles, California, and various points in and east of Yuma, Arizona, via the San Diego and Yuma gateways over Interstate Highway 5 (I-5) between Los Angeles and San Diego, and over I-8 between San Diego and Yuma. ABL is also authorized to provide intrastate service between Los Angeles and San Diego over various routes. Trailways, ABL's parent company, is authorized to operate in both intrastate and interstate commerce between Los Angeles and the California-Oregon State line over I-5 and California Highway 99, between Modesto and San Francisco, and between Stockton and San Francisco. According to ABL, a grant of the requested certificate would permit passengers to travel throughout California to points served by both carriers. In addition, ABL has pending before the ICC an application to operate between Calexico and Indio over California State Highway 111. A grant of both this application and the ICC application would permit ABL to provide a complete service to the traveling public in the territories involved.

ABL presently operates terminals or commission agency stations at El Cajon, El Centro, El Monte, Holtville, Indio, Los Angeles, Pomona, Riverside, San Bernardino, San Diego, and West Covina.

ABL's Proposed Operations

ABL proposes to operate three schedules daily in each direction between San Diego and Yuma (existing schedules) and four schedules daily in each direction between Calexico and Los Angeles. The Calexico-Los Angeles schedules are designed to coordinate with the San Diego-Yuma schedules to facilitate transfer at the El Centro terminal with respect to passengers moving between Calexico and San Diego. The schedules between San Diego and Yuma will serve the

intermediate points of El Cajon, El Centro, Holtville, and Winterhaven; and the schedules between Calexico and Los Angeles will serve the intermediate points of El Centro, Brawley, Calipatria, Niland, Durmid, Salton Beach, Mecca, Coachella, Indio, Banning, San Bernardino, Pomona, West Covina, El Monte, Azusa, and Pasadena. If the application is granted, ABL proposes to establish additional terminals at Brawley, Calexico, Calipatria, Mecca, and Niland.

ABL and Trailways propose to establish, within California, new marketing techniques, such as flexible fare structures designed to attract new segments of the public.

ABL Public Witnesses' Testimony

ABL presented testimony by 43 witnesses, including public officials, representatives of chambers of commerce and city councils, bus passengers, and express shippers. The breakdown between locales is as follows: Brawley-4, Calexico-9, Calipatria-5, Claremont-1, Holtville-7, Lakeside-1, Mexicali-1, Niland-8, and San Diego-7. In general, the public witnesses' testimony reflected their opinion that (1) competitive bus service would result in overall better service at lower rates; (2) Trailways' equipment was generally cleaner, more comfortable, and better maintained than Greyhound's facilities; (3) Greyhound buses are generally more crowded and less clean than those of Trailways; (4) Greyhound personnel were less courteous and accommodating than comparable personnel of Trailways; (5) the air conditioning on the Greyhound buses leaving El Centro is inadequate; and (6) the express baggage service provided by Trailways was superior to that provided by Greyhound. Included among those presenting the above testimony were the Honorable C. Armando Gallego Moreno, equivalent of lieutenant governor, State of Baja California, Mexico, appearing at the request of Governor de la Madrig, governor of the State of Baja California; Walker J. Ritter, city manager of the city of Brawley; and Ralph Carbajal, Sr., president of Niland Chamber of Commerce.

ABL Personnel's Testimony

The direct and rebuttal testimony presented into evidence by personnel of ABL included: financial statements indicating that for the nine months ended September 30, 1978 ABL suffered substantial operating losses due primarily to bad accidents and intemperate weather east of the Mississippi River but that both ABL and its parent, Trailways, were solvent corporations; a summary of ABL's and Trailways' present operations showing present and proposed routes, load factors, and timetables, together with a list of existing and proposed terminal facilities; a description of ABL's program of installing road speed governors in an attempt to increase gas mileage from approximately six to approximately seven and one-half miles per gallon of fuel; and a summary of innovative fares and rates utilized in attempts to overcome the loss of long-haul customers by providing improved service to the rural areas.

Greyhound Public Witnesses' Testimony

There were 69 public witnesses who testified on behalf of Greyhound consisting of five from San Diego, 10 from San Ysidro, 11 from Tijuana, 25 from El Centro, 10 from Brawley, two each from Calexico and Imperial, and one each from Chula Vista, National City, San Bernardino, and Westmorland. The purport of these witnesses' testimony was generally that (1) Greyhound provides modern, comfortable, and well-maintained buses that are operated in an efficient and punctual manner by cordial, polite, and helpful personnel; (2) the Greyhound terminals are superior to Trailways' and are kept in a clean and sanitary condition; (3) the express package service of Greyhound's is satisfactory even though customers are required to pay double for "next bus out" service; (4) it is sometimes difficult to contact a Trailways representative to obtain information or purchase a ticket; and (5) the service provided by Greyhound is adequate so there is no need for an additional busline and, in any case, these people would continue to patronize Greyhound even if ABL is granted its requested certificate.

Greyhound Personnel's Testimony

Testimony, surrebuttal testimony, and exhibits presented on behalf of Greyhound by some of its managerial personnel, commission station agents, and bus drivers included the following: a description of Greyhound's comprehensive preventative maintenance program reflecting complete periodic inspections of the buses, together with a general description of its buses, maintenance centers, and bus terminals; statistical data setting forth operating ratios, operating expenses per bus mile, and the computed miles per gallon of fuel recently experienced by ABL and Greyhound; the possible adverse effect on Greyhound's operations of granting the requested certificate, including such items as the diversion of passengers, express shipments, and revenue to ABL with the resultant possible closure of Greyhound agencies and bus driver economic hardship; a description of Trailways' advertising programs intended to induce bus passengers to change from Greyhound to ABL or Trailways; and examples of Greyhound's innovative rates designed to induce people from their private automobiles into the bus.

Discussion

As previously summarized, ABL is attempting to secure authorization to supplement and complement its existing intrastate and interstate operations by securing requisite authority from both this Commission and ICC to enable its passengers to travel between the routes and points included in this application to points throughout California served by both ABL and Trailways and, thus, to provide a complete service to the traveling public. According to ABL, if the requested authority is granted, it will operate three schedules daily in each direction between San Diego and Yuma and four schedules daily in each direction between Calexico and Los Angeles. The existing interstate schedules between San Diego and Yuma will be



modified to serve the intermediate points of El Cajon, El Centro, Holtville, and Winterhaven in intrastate operations permitting more extensive utilization of current operating equipment and possibly result in the implementation of additional schedules between these points. As previously stated, ABL proposes to serve in intrastate commerce between Calexico and Los Angeles; the intermediate points of El Centro, Brawley, Calipatria, Niland, Durmid, Salton Beach, Mecca, Coachella, Indio, Banning, San Bernardino, Pomona, West Covina, El Monte, Azusa, and Pasadena.

According to the record, ABL envisions that such proposed operations, coupled with planned innovative schedules and rates and the ever-increasing cost of gasoline, will induce automobile passengers into its buses. ABL argues that the unnatural limitations on its intrastate operations, imposed by present certification, preclude it and its parent, Trailways, from investing in the equipment and facilities necessary to provide the adequate and responsive service envisioned by the grant of the requested certification. According to the record, the greater utilization of equipment by the intrastate expansion of existing interstate operations and the resulting enhanced earnings opportunities will provide the motivation to ABL to supplement and improve existing terminal equipment so as to provide fully adequate and responsive service to the traveling public. Such additional investment in bus and terminal equipment will tend to close the current existing gap of investment per bus mile between ABL and Greyhound.

In its brief ABL argues that it has been firmly established in this proceeding that service by Greyhound has been less than satisfactory to representative members of the public in the area served. In support of this position ABL refers to public witness testimony about Greyhound's alleged unresponsive bus schedules, filthy equipment and terminals, discourteous drivers and terminal

agents, and the operation of buses with malfunctioning air conditioning equipment in the boiling summer temperatures of Imperial Valley. Comprehensive testimony by Greyhound's operating personnel and commission agents, detailing the procedures for maintaining the buses and terminals in a clean condition, indicates that Greyhound is taking reasonable measures to maintain the cleanliness of its facilities. Unfortunately, the tendency of a large portion of the traveling public to carelessly discard food wrappings and beverage containers rather than dispose of them in provided receptacles precludes the possibility of maintaining immaculate facilities. Other factors being equal, such public apathy about cleanliness will apply equally to ABL and Greyhound.

With respect to ABL's referral to public witness testimony complaining about lack of adequate air conditioning on buses, it should be noted that such testimony was premised on ambient temperatures of 120 or more degrees. Evidence submitted by Greyhound indicated the highest recorded temperature was 119 degrees registered four times since 1914 with the last such temperature occurring June 25, 1970. A review of the weather records reveals a total of 20 days in 1978 when the maximum temperature exceeded 110 degrees. According to the record, the air conditioning equipment in Greyhound's buses is capable of satisfactory operation in the range of experienced temperatures in the El Centro area. Furthermore, Greyhound's bus drivers testified that in hot weather the buses are not placed into service unless the air conditioning equipment is operating satisfactorily.

From the public witnesses' testimony, however, it is obvious that a segment of the population in the area is dissatisfied with Greyhound and use its facilities reluctantly if at all. It is equally obvious that an approximately equal segment of the population is completely satisfied with Greyhound's service and would not utilize ABL even if the requested authority is granted. Such testimony contradicts testimony presented by Greyhound's operating personnel indicating that the overlap between Greyhound's present operations and ABL's proposed operations could result in the diversion from Greyhound to ABL of from 270,000 to 288,000 passengers and from \$2,421,000 to \$2,590,000 loss of operating revenues and an additional diversion in excess of \$200,000 of express package revenues. In general, satisfied customers are not motivated to change to a competing utility and, therefore, it would appear that Greyhound's concerns are overemphasized. Under these circumstances, it can be concluded that there presently exists a demand for the requested ABL service and that granting the requested authorization should not result in a substantial diversion of existing Greyhound passengers.

Both Greyhound and ABL have demonstrated the ability, experience, and financial resources to render service over the routes and between the points encompassed by this application. Consequently, the primary issue in this proceeding is not whether ABL is able to satisfactorily render the proposed service (for it clearly is) but rather Greyhound's protest.

Statutory Provisions

This application was filed pursuant to Sections 1031-1038 of the Public Utilities Code. Particularly germane to this proceeding is Section 1031 stating in part:

"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, ..."

and Section 1032 which states 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."

Section 1032 was enacted as a portion of Section 50½ of the Public Utilities Act in 1931. Shortly thereafter the question of the limitation of granting a certificate imposed by this section was considered. We had this to say:

"The main question here presented, then is whether the Commission is prohibited by section 50½, as amended, to grant to a new applicant a certificate for a passenger stage service when an existing operator is authorized to render a like service. If the proviso added in 1931 is to be so construed, then all existing passenger stage corporations have obtained certificates or rights which are virtually exclusive. Regardless of the accepted policy of this State prohibiting the grant of exclusive franchises or privileges, this proviso, if so construed, would, in the field of motor bus transportation, abrogate such policy and in effect grant to existing carriers of this class virtual monopolies in their respective

fields. It is evident that such a construction of the statute should not be accepted unless the language used compels that conclusion. But it is as clearly evident from the enactment itself that such was not the intention underlying the legislative action." (Re Fialer's, Inc. (1933) 38 CRC 880, 883.)

Thirty-four years later we were somewhat more literal in interpreting Section 1032 and stated:

". . . The last sentence of Pub. Util. Code Section 1032 precludes, as a matter of law, the granting of an application by a carrier seeking to enter a territory served by an existing carrier, unless the existing carrier will not provide service to the satisfaction of the Commission." (Re Southern California Sightseeing Company, Inc. and Greyhound Lines, Inc. (1967) 67 CPUC 125.)

In 1972 we again addressed this particular issue and stated:

"We were apparently faced with conflicting decisions. Fialer's finds no prohibition in Section 1032 on the granting of a certificate when the tests of public convenience and necessity are met. Tanner, on the other hand, finds Section 1032 to be a limitation on our authority to issue a certificate even when said certificate is required by the tests of public convenience and necessity.

"[1] Since both decisions have been passed upon by the Supreme Court and since we, further, cannot logically follow both of them, we chose to follow that decision which reflects the latest thinking of both this Commission and the Court. In addition, it is our opinion that the language of Section 1032 is so clear that it cannot be reasonably interpreted in any other way than to be a legislative mandate to this Commission prohibiting competition in a territory served by an existing carrier. It is inescapable that Tanner impliedly overrules Fialer's to the extent that they are inconsistent. Decision No. 79625 follows Tanner." (Re Franciscan Lines, Inc. (1972) 73 CPUC 167.)

Since the decision on Franciscan Lines, Inc., the regulatory posture of this Commission, as well as regulatory agencies throughout the country, is undergoing a metamorphosis with respect to the transportation industry. Currently included in consideration of public convenience and necessity, or public interest, is the value of the competitive effect on transportation utility operations as well as compliance with the intent and letter of federal and state antitrust laws. The California Supreme Court recognized the necessity of relating anticompetitive implications to the public interest in certification proceedings when it stated:

"It is no longer open to serious question that in reaching a decision to grant or deny a certificate of public convenience and necessity, the Commission should consider the antitrust implications of the matter before it. The Commission itself has stated: 'There can be no doubt that competition is a relevant factor in weighing the public interest,' and that 'antitrust considerations are also relevant to the issues of...public convenience and necessity'. (M. Lee (Radio Pacific Co.) (1966) 65 Cal. P.U.C. 635, 640 and fn. 1.)" and

"Speaking through Judge J. Skelly Wright, the court stated: 'Although the Commission is not bound by the dictates of the antitrust laws, it is clear that antitrust concepts are intimately involved in a determination of what action is in the public interest, and therefore the Commission is obliged to weigh antitrust policy'. (Fn. omitted.) (399) F. 2d at p. 958.'" (Northern California Power Agency v Public Utilities Commission (1971) 5 C 3d 370.)

It is therefore incumbent upon us in this proceeding to carefully weigh the advantages and disadvantages of competitive and monopolistic service in terms of overall benefit to the general public. In general, antitrust laws and policies are premised on the basis that competitive service generally results in a superior overall level of service to the public. Competition stimulates efforts of competitors to excel, which accrues to the benefit of the general public. In the instant proceeding active competition between the involved parties will have a direct bearing on the quality of overall treatment afforded passengers, rates, scheduling, equipment condition, and operational innovation generally. The overall effect of such competitive practices could very well be the provision of a publicly acceptable alternative to private automobile use which, in these times of energy shortage, will redound to the overall benefit of the general public.

With competitive considerations forming a cornerstone for a determination of public convenience and necessity, it is axiomatic that the literal interpretation of Section 1032 in Franciscan Lines, Inc. would effectively preclude the establishment of competitive service to the detriment of public interest. Consequently, we will give precedence to the basic regulatory concept of public convenience and necessity encompassed in Section 1031 and interpret Section 1032 as being of secondary importance in the matter under consideration.

In addition, we also note that Section 1032 leaves the Commission the task of determining whether, and under what circumstances, existing passenger stage corporations provide satisfactory service (which would preclude a new entrant into the field).

In these times of acute and prolonged energy shortage it is essential that Californians be exposed to the greatest variety of innovative surface passenger transportation modes and operations. Passenger stage corporations will stand a better chance of rising to

this challenge, and luring the public out of the private automobile, if they have a clear incentive to innovate and provide the best possible service. Just as the numerous public witnesses that testified in this proceeding were unable to agree on whether Greyhound or ABL was the ultimate or best carrier, we cannot say with certainty which carrier will initially or eventually provide the best service to the public. We do know both carriers have the resources and facilities to provide passenger stage service. The only meaningful test of which carrier will provide the most appealing - and therefore the best - service is that resulting from both carriers exercising their maximum ability and rendering public service, side by side. Furthermore, we believe that monopoly service (resulting from regulators protecting a carrier by excluding all new entrants) is not satisfactory service. Monopoly service deprives the public from being served by carriers with the greatest incentive to innovate and provide the most appealing service - the incentive of competition. Competition generally heightens the desire to perform, and equated to bus service means, as public witnesses testified, potentially better service in areas such as:

1. Cleaner, better maintained facilities.
2. More courteous and accommodating personnel.
3. Improved ambience.

It is important that carriers operate in an environment that encourages and rewards those with the better ideas on how to attract and serve patrons, and for better execution of such ideas. In the evidence presented in this proceeding, it is apparent that there will be no mass diversion of patrons to ABL if it is granted the requested operating authority; rather, we believe the end result would be a favor to both ABL and Greyhound because they will have an even greater challenge to provide excellent passenger stage service and could both benefit from increased patronage.



Finally, we wish to emphasize that we do not consider monopoly passenger stage service adequate service to the public. And we will not apply Section 1032 as a bar to deprive the public of the most innovative, attractive, and agreeable bus service that may potentially exist for its benefit. Rather, we will apply Section 1032 in an enlightened manner, consistent with today's realities and requirements, which is what the Legislature intended when it granted to us the task of weighing all factors in determining whether existing passenger stage corporations provide adequate service. However, there may arise occasions when Section 1032 would be determinative in denying an application for operating authority such as, for example, when a traffic market is so obviously saturated with carriers that more competition could clearly not lead to better service. This could occur even though service is provided by one carrier.

Findings of Fact

1. Applicant and/or Trailways holds authority from ICC to provide motor carrier service in the transportation of passengers in interstate service between Los Angeles, California, and Phoenix, Arizona, and between San Diego, California, and Yuma, Arizona.
2. Applicant is authorized to provide intrastate service between Los Angeles and San Diego over various routes.
3. Applicant is a wholly owned subsidiary of Trailways. Trailways presently holds a passenger stage corporation certificate to provide motor carrier service between Indio and Los Angeles.
4. Trailways is authorized to operate as a passenger stage corporation in both intrastate and interstate commerce between Los Angeles and the California-Oregon State line over I-5 and California Highway 99, between Modesto and San Francisco, and between Stockton and San Francisco.

5. Applicant possesses the ability, experience, and financial resources to perform the proposed service.

6. Protestant, Greyhound, has for many years provided service over routes requested in this application.

7. The service routes provided by Greyhound is, in general, and viewed alone, from the standpoint of minimum service criteria, satisfactory.

8. A segment of the population in the area proposed to be served by applicant believes that Greyhound is incapable of providing satisfactory service and patronize it reluctantly, if at all.

9. An equal segment of the population in the area proposed to be served by applicant is completely satisfied with the service provided by Greyhound and would not patronize applicant even if the requested certification is granted.

10. Competition between applicant and Greyhound, to the extent it will exist, will have a beneficial effect for the public interest, will promote good service, and will encourage innovative rate schedules and practices.

11. The diversion of passengers and express baggage from Greyhound to applicant, as a result of granting the requested certification, should be minimal.

12. There is public demand for applicant's proposed service.

13. Public convenience and necessity require that the service proposed by applicant be certificated.

14. 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. Anticompetitive considerations are relevant to the issues of public convenience and necessity.

2. Antitrust concepts are intimately involved in a determination of what action is in the public interest and it is incumbent upon this Commission to give consideration to such concepts in arriving at a decision in this matter.

3. The antitrust requirements for the determination of public interest and public convenience and necessity, under Section 1031 of the Public Utilities Code, are basic, primary requirements and outweigh any anticompetitive implications included in Section 1032.

4. Existing passenger stage service provided by Greyhound is conducted as a monopoly, without the benefit of competition to insure the rendering of the best possible service to the public, and in view of the instant application is not service performed to the satisfaction of the Commission.

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

ABL 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 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. Appendix B of Decision No. 84065 in Application No. 55212 is amended by incorporating First Revised Page 2, attached hereto, in revision of Original Page 2, and Original Page 6, attached hereto.

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 filing 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 Order 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 January 29, 1980, at San Francisco, California.

JOHN E. BRYSON  
President  
VERNON L. STURGEON  
RICHARD D. GRAVELLE  
CLAIRE T. DEDRICK  
LEONARD M. GRIMES, JR.  
Commissioners

I N D E X

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SECTION 1. GENERAL AUTHORIZATIONS, RESTRICTIONS, LIMITATIONS AND SPECIFICATIONS . . . . . 3, 4

SECTION 2. ROUTE DESCRIPTIONS.

Route

I. NORTHERN CALIFORNIA OPERATIONS

1 San Francisco - California Nevada State Line . . . 5

II. SOUTHERN CALIFORNIA OPERATIONS

1 Los Angeles - San Diego . . . . . 5

2 Los Angeles - Junction Interstate Highway 5/California State Highway 1 (near Doheny Park) . . . . . 5

3 Buena Park - Junction California State Highway 39/California State Highway 1 . . . . . 5

4 Del Mar - Del Mar Race Track and Fair Grounds . . 5

5 Los Angeles - Long Beach (See restrictions) . . . 5

6 Junction Interstate Highway 5/Laguna Canyon - Laguna Beach . . . . . 5

7 Long Beach - Junction Interstate Highway 405/Interstate Highway 5 . . . . . 5

\*8 San Diego - Arizona State Line . . . . . 6

\*9 Calexico - Los Angeles . . . . . 6

Issued by California Public Utilities Commission.

\*Amended by Decision No. 91279, Application No. 58457.

## SECTION 2. ROUTE DESCRIPTIONS. (Continued)

Route 8 San Diego - Arizona Border  
From San Diego, over Interstate Highway 8(I-8) to the California-Arizona State Line, serving all intermediate points, including Holtville.

Route 9 Calexico - Los Angeles  
From Calexico, California over California Highway 111 (SSR-111) to Indio, California; thence from Indio, California over Interstate Highway 10(I-10) to Los Angeles, California serving all intermediate points, except as indicated in the following restrictions:

RESTRICTED against the transportation of passengers and their baggage in local service between Los Angeles, and San Bernardino.

Also to avoid potential splitting of duplicate operating rights, American Buslines, Inc. is limited to transfer of duplicate operating rights solely to Trailways, Inc. of which American Buslines, Inc. is a wholly owned subsidiary.

Issued by California Public Utilities Commission.

Decision No. 91279, Application No. 58457.