

Decision No. 92312 OCT 8 1980

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application )  
of Frank C. McClendon, Jr., doing )  
business as North Bay Transit, )  
for a class "B" certificate to )  
operate as a charter-party carrier )  
of passengers, Vallejo. )  
(File No. B-16). )

Application No. 59398  
(Filed January 24, 1980)

Frank C. McClendon, Jr., for himself,  
applicant.

Robert D. Rieson, Attorney at Law (Illinois),  
for Greyhound Lines, Inc.; Handler, Baker,  
Greene & Taylor, by Raymond A. Greene,  
Attorney at Law, for Vaca Valley Bus Lines,  
Inc.; Ernest Held, for Peerless Stages Inc.;  
Alan T. Smith, for Falcon Charter Service;  
and Denis E. Richardson, for Franciscan  
Lines, Inc.; protestants.

I N T E R I M D E C I S I O N

Frank C. McClendon, Jr. (applicant), dba North Bay  
Transit, requests a Class B charter-party carrier of passengers  
certificate out of Vallejo, Solano County.<sup>1/</sup>

Timely protests to the application were filed by Vaca  
Valley Bus Lines, Inc. (Vaca Valley) of Fairfield, Coast  
Counties Charter (Coast) of Campbell, Peerless Stages Inc. (Peerless)

---

<sup>1/</sup> On January 14, 1980 applicant filed Application No. 59381  
requesting a passenger stage certificate to operate between  
Vallejo, Benicia, Cordelia, Fairfield, Suisun City, Vacaville,  
and various other points in Solano County.

of Oakland, and Franciscan Lines, Inc. (Franciscan) of San Francisco. Duly noticed public hearing was held April 21, 1980 at San Francisco before Administrative Law Judge Burt E. Banks. Falcon Charter Service (Falcon) appeared at the hearing to protest the application.

Applicant has some experience operating a bus line.

By Decision No. 90239 dated April 24, 1979 in Application No. 58570, applicant was granted a certificate of public convenience and necessity to operate as a passenger stage corporation between Vallejo and Hilltop Mall in Richmond and between Vallejo and Benicia, on the one hand, and Concord (Sun Valley Mall and BART), on the other hand. Since October 17, 1979 however applicant's operating authority has been suspended for failure to carry adequate liability insurance.

The financial statement attached to the application shows a net worth of approximately \$51,000, the bulk of which is residential real estate and furnishings.

Applicant testified that he was of the opinion that due to the fuel crisis more people are starting to use club bus service, i.e., charters and that the service he intends to provide is needed. He stated that it would be unfair to restrict his operation to a 10-mile radius as proposed by some of the protestants because he is only seeking Class B authority and protestants have Class A certificates with statewide authority. Using a map of the greater San Francisco Bay Area to illustrate his point, applicant noted the number of Class A and Class B charter certificate operators, stating there were no Class B operators in the North Bay where he intended to operate. He stated that he would like to serve the area, that he feels there is a need for his service, and that people seeking an alternative to Greyhound Lines, Inc. (Greyhound) or Vaca Valley have requested

that he provide charter service. Finally, applicant stated that he was working with another company to use specially equipped coaches to carry the handicapped.

On cross-examination applicant acknowledged that there are approximately 30 Class A or Class B charter-party operators within the 40-mile radius of Benicia.<sup>2/</sup> He also agreed that there were in excess of 2,000 buses available for charter in San Francisco County and that he had received no requests for charter from Alameda County nor knew of anyone that had not been served from Alameda or Contra Costa County. When asked what equipment he intended to use for his charter operations, applicant stated that the bus now available for his passenger stage service would also be available for charter but that he was anticipating the purchase of some new equipment. Finally, applicant stated that he received his passenger stage certificate in April or May 1979, that he operated daily between Vallejo, Concord, and Vallejo-Hilltop, Richmond, for about 2½ months before his operating authority was suspended in October 1979. ✓

Testifying in support of the application were senior citizens Mary Ray and Helen Yates. Ms. Ray stated that she was vice president of the Fifty Plus Club and was also speaking for other senior citizen clubs of which she is a member. She stated that applicant's service was needed very much so the club members could get to San Francisco on tours. Ms. Yates stated that she was vice president of North Bay Senior Citizens and a member of several senior citizen clubs in Vallejo. She stated that the various clubs supported the application because of the members' desire to get out of Vallejo and go and see different scenery, including going over to Hilltop or over to Sun Valley. ✓

---

<sup>2/</sup> Applicant had an office in Benicia until his passenger stage certificate was suspended for failure to carry adequate liability insurance.

On cross-examination both Ms. Ray and Ms. Yates admitted that they had never had any trouble chartering buses, nor were they responsible for charter service for their clubs. Ms. Yates stated that during the past year the club had taken two charters, one with the applicant and the other with a charter bus operating out of Petaluma.

The thrust of protestants' testimony and evidence was that the charter-party market proposed to be served is very competitive and is being adequately served by the existing certificated carriers and that public convenience and necessity do not require the proposed service.

Protestants each hold a Class A charter-party carrier of passengers certificate authorizing them to conduct service in the area proposed to be served by applicant. A summation of protestants' showing is that (1) each presently holds authority encompassing the scope of the subject application, (2) each has operated charter-party service throughout the proposed service area on a continuous basis since receiving such authority, (3) a number of pieces of equipment are maintained throughout the area to provide the service authorized, (4) there is a continuous holding out to serve the public on a regular and continuous basis, and (5) despite an active continuous solicitation program, there is still significant unused capacity of equipment. Protestants further state that there is a significant amount of competition from other bus operators authorized to provide the service proposed by applicant and that granting the application would only compound an already serious competitive situation.

At the conclusion of applicant's testimony, Peerless made a motion to dismiss the application for lack of evidence of financial ability and failure to show public necessity. Greyhound

joined in the motion. Following the testimony of protestants' witnesses, Peerless and Franciscan again moved for dismissal citing lack of a showing of the need for additional charter service. At that time Vaca Valley moved for dismissal stating that applicant's showing was tantamount to no showing at all and that applicant showed a lack of operating and financial fitness. The administrative law judge took all motions under submission so that they could be disposed of in this decision and order.

#### Discussion

The sections of the Public Utilities Code relevant to the issuance of charter-party certificates are Sections 5375 and 5375.1. These sections require that (1) the proposed service be one required by public convenience and necessity, (2) applicant possess satisfactory fitness and financial responsibility to initiate and conduct the proposed service, (3) applicant will faithfully comply with the rules and regulations of the Commission, and (4) the existing certificated carriers in the territory are not providing such service to the satisfaction of the Commission. Section 5391 in addition requires all charter-party carriers to file evidence of adequate liability insurance with the Commission and to maintain such insurance during the life of the permit or certificate.

Public convenience and necessity are, broadly speaking, synonymous with public interest. Although we believe that the public interest is best served by promotion and maintenance of responsible competition in the charter-party field, applicant has failed to show that the public interest requires the proposed service. ✓

Applicant provided no operational plans for the record, no evidence or testimony regarding promotions to attract business; he made no market survey to support his claim for the needed service, no projections of income or expenses, and no rate proposals. ✓

The only evidence offered of any public interest or need for additional service was applicant's opinion and the inconclusive testimony of two supporting witnesses who acknowledged no inadequacy in existing service or problem chartering buses for any purpose. Applicant's showing was simply inadequate to establish public convenience and necessity.

✓  
SS

~~As a result~~  
~~Secondary~~ concern is applicant's fitness and financial responsibility. Applicant was issued a passenger stage certificate on April 24, 1979. He filed his acceptance on May 24, 1979 and his certificate of insurance on July 3, 1979. After operating less than 2½ months his liability insurance was canceled for failure to maintain premium payments on the insurance. Applicant could not state when he ceased operations but to our knowledge he has not operated as a passenger stage corporation since the suspension. While we do not wish to preclude qualified applicants from entering into charter-party service, the safety of the traveling public must be our paramount concern, and applicant's failure to maintain adequate insurance for his authorized passenger stage operation raises questions as to whether he would be able or willing to carry out his responsibilities to comply with the insurance requirement to conduct the additional authority he requests.

✓  
✓  
✓

We reach these conclusions reluctantly, because it is this Commission's general policy to encourage increased competition and increased entry on the field of passenger transportation. Although applicant's failure to meet statutory requirements compels the denial of this application, we shall make that denial interim in nature and without prejudice to applicant's submission of further evidence which may meet the requirements of Sections 5375 and 5375.1.

Findings of Fact

1. Applicant seeks a Class B charter-party certificate to provide charter service in Vallejo and the surrounding areas.

2. Applicant was issued a passenger stage certificate on April 24, 1979 to provide service between Vallejo and Hilltop Mall in Richmond and between Vallejo and Benicia, on the one hand, and Concord (Sun Valley Mall and BART), on the other hand.

3. Applicant commenced passenger stage operations in April 1979. Operations ceased after 2½ months.

4. Applicant's passenger stage certificate was suspended effective October 17, 1979 for failure to maintain adequate liability insurance.

5. There are approximately 30 existing certificated charter-party carriers in the San Francisco Bay Area.

6. The presently certificated carriers have unused capacity and stand ready, willing, and able to provide charter-party service in the territory proposed to be served by applicant.

7. Applicant has not established that presently certificated carriers are not providing satisfactory service in the territory and to the customers proposed to be served.

8. Applicant has not established satisfactory fitness and financial responsibility to initiate and conduct the proposed service.

Conclusions of Law

1. Applicant has failed to demonstrate fitness to operate as a Class B charter-party carrier.

2. Public convenience and necessity for the applicant's service has not been demonstrated.

3. The certificate sought by applicant should be denied without prejudice.

I N T E R I M    O R D E R

IT IS ORDERED that:

1. The application of Frank C. McClendon, Jr., for a Class B charter-party carrier of passengers certificate is denied without prejudice.

2. The applicant may, no later than December 31, 1980, submit, with service upon all parties to this proceeding, further written evidence in this proceeding to establish (1) that the proposed service is required by the public convenience and necessity; (2) that applicant is now satisfactorily fit and financially responsible and prepared to comply fully with Commission regulations; and (3) that existing carriers in the territory proposed to be served are not providing satisfactory service or service of the same character as that proposed.

3. The assigned Administrative Law Judge shall determine whether such submission presents a possibility that an award of authority would be in order, and if so, shall set a schedule for submission of evidence by other parties and for further hearing.

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

Dated,   OCT 8 1980  , at San Francisco, California.

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

John E. Gray

Wesley L. Sturgeon

Richard D. Ewald

Samuel J. Smith