

OCT 22 1980

ORIGINAL

Decision No. 92340

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Application of)
Rodgers Stage Coach Lines, Inc. for)
a Class "B" Certificate to operate)
as a Charter-Party Carrier of)
Passengers, Arcadia (G.O. 98-A).)

Application No. 59758
(Filed June 24, 1980)

Wayne Willford, Attorney at Law, for
applicant.
R. D. Rierson, Attorney at Law, for
Greyhound Lines, Inc., protestant.

O P I N I O N

Applicant Rodgers Stage Coach Lines, Incorporated, requests authority to operate as a Class "B" charter-party carrier of passengers from its headquarters in San Gabriel, California. Applicant proposes to provide such service with two 41-passenger buses which it presently owns and utilizes under its passenger stage certificate of public convenience and necessity issued by the Commission in 1973. In addition, it hopes to obtain an additional bus in the future. Its bank is the Temple City branch of the Security Pacific National Bank and its insurance broker is Paul Johnson, 1725 West Sixth Street, Los Angeles, California.

Greyhound Lines, Inc. (Greyhound), holder of a Class "A" charter-party certificate and who conducts extensive charter operations from the area encompassed by this application, protested the application.

Following notice, a public hearing was held in Los Angeles on August 20, 1980 before Administrative Law Judge William A. Turkish pursuant to Section 5375.1 of the Public Utilities Code, and the matter was submitted on that date.

Carl Rodgers, applicant's president, testified on behalf of applicant. Bernardo Flores, assistant director of traffic, testified on behalf of Greyhound.

According to the testimony of applicant's witness, applicant is an experienced bus operator since 1973 when it was issued a passenger stage corporation certificate of public convenience and necessity by this Commission. Since that time applicant has primarily been transporting race track employees, residing in the San Gabriel Valley, from Santa Anita Race Track to various race tracks in southern California during the racing season. Applicant's president is employed most of the year as a race track parimutuel betting clerk and works at the various race tracks in southern California during their racing meets, as do many race track employees. During the season when racing meets are held at tracks other than Santa Anita, he also drives one of applicant's buses. He testified that none of his passengers has ever missed any work because of his bus service. Since applicant does not transport track employees during the Santa Anita race meeting, its buses are idle for approximately $4\frac{1}{2}$ months of the year. Applicant believes the granting of a charter-party certificate will enable it to utilize its equipment to the fullest extent by making it available for charter groups during the Santa Anita race meeting, when it would otherwise lie idle. During this idle

period, applicant intends to transport charter groups from local bars and taverns to various sporting events in the area. The witness testified that there is a market demand for such service and for special holiday charters as well. He stated that he recently tried to obtain a charter bus from Greyhound as well as from several other bus companies for the Labor Day holiday, but was unable to find any available. According to the witness, there are no other charter bus companies headquartered in the Arcadia area.

The testimony of Greyhound's witness Bernardo Flores can be summarized as follows: Greyhound is certificated to operate as a Class "A" charter-party carrier of passengers. It has sales outlets throughout applicant's proposed origination area. It owns and operates 4,440 active buses as of August 1, 1980 with 1,913 intercity buses licensed in California which are available for regular service and charter service. It operates and maintains numerous garages and service points throughout the state. During the last quarter of 1979 and the months February through April 1980, it handled 266 intra-state charters, utilizing 338 buses, originating within applicant's proposed origination area. These charters produced revenues of \$238,716.01. Greyhound believes that it can adequately handle all charter-party requests, that there is no need for additional charter-party operators, and that the entry of another charter-bus company will have an adverse financial effect on Greyhound because of diversion of traffic.

Discussion

Based upon its past experience as a bus operator, applicant has demonstrated fitness and financial responsibility to adequately conduct the proposed service.

In the past, we gave consideration to relatively few factors in determining whether the service of existing carriers was satisfactory in charter-bus certificate applications. Previously, we considered only the adequacy of the service, adequacy of the equipment, and the reasonableness of the rates. This had the effect of supporting monopolistic service in the field of passenger bus service. In D.90154, issued April 10, 1979, we closely examined the question of whether monopoly service is of itself unsatisfactory service to the public, and we observed that this nation's antitrust laws and policies are premised on the understanding that competitive service generally results in a superior level of service to the public. We also pointed out that competition tends to bring out the highest degree of effort and imagination in a business endeavor to the benefit of the public. In that decision, dealing with a sightseeing bus application, we concluded that competition in the area of sightseeing bus operations was a most desirable goal because of its direct bearing on the quality of overall treatment afforded passengers, rates, scheduling, equipment condition, and operational innovation generally. The relevant Public Utilities Code provisions considered in D.90154 were Sections 1031 and 1032,^{1/} which deal with passenger stage certification. More recently in D.91279, we again examined Sections 1031 and 1032 and the benefits of competition in a

^{1/} All code references are to the Public Utilities Code unless otherwise stated.

passenger stage bus application in further depth. After reviewing the history of Section 1032 and its various conflicting interpretations by this Commission over the years, we pointed out that the regulatory posture of this Commission, as well as regulatory agencies throughout the country, was undergoing a metamorphosis with respect to the transportation industry and that the value of competitive effect on the transportation utility operations as well as federal and state antitrust laws would be given consideration in determining public convenience and necessity. Public convenience and necessity, broadly speaking, are synonymous with the public interest. After weighing the advantages and disadvantages of competitive and monopolistic service in terms of overall benefit to the general public, we concluded that competition stimulates efforts of competitors to excel and that this accrues to the benefit of the general public. We also concluded that we would give precedence to the basic regulatory concept of public convenience and necessity encompassed in Section 1031 and that we would interpret Section 1032 as being of secondary importance in certificate matters.

In D.91279 we also undertook the task under Section 1032 of determining whether, and under what circumstances, existing passenger stage corporations provide satisfactory service and we stated that it was our belief that monopoly service (resulting from regulators protecting a carrier by excluding new entrants) was not satisfactory service. We were of the opinion that 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 offers the potential of better service, cleaner and better maintained equipment, and lower fares.

Although we have been discussing current policy with respect to Sections 1031 and 1032 which govern passenger stage corporation certificate applications, the discussion above is equally applicable to corresponding Sections 5375 and 5375.1 which apply to charter-party carrier of passengers certificate applications.

In D.91206, issued January 8, 1980, we stated that competition in the area of charter-party bus operations is a most desirable goal and that a policy of limited competition under regulation would have a beneficial effect for the public interest. We stated, also, that we would look to the circumstances of each application to determine whether public interest requires granting the requested authorization since the granting or withholding of charter-party permits was a legislative act resting within our jurisdiction.

In the instant proceeding, applicant is already operating under a certificate of public convenience issued pursuant to Section 1031. Its buses are idle for approximately 4½ months of the year when the racing meet is at Santa Anita. It would be an irresponsible act to deny applicant the opportunity to use its existing equipment to the maximum possible during those idle months and offer a service, which has been requested of applicant by potential customers according to the testimony of applicant's witness. While Greyhound does extensive charter business in California, it is noted that

not one single charter originated in Arcadia or in applicant's immediate area during the six-month period illustrated in its Exhibit 12. Thus, we seriously doubt that the granting of the requested certificate will divert any significant traffic away from Greyhound or have any significant financial effect on Greyhound's revenues.

Findings of Fact

1. Applicant holds authority from this Commission to operate as a passenger stage bus carrier and is engaged in transporting race track employees between Santa Anita Race Track in Arcadia, on the one hand, and various race tracks in southern California, on the other hand.
2. Applicant proposes to provide service as a charter-party carrier of passengers from its headquarters in Arcadia.
3. Applicant plans to conduct its charter-party operations when its buses are not being used for passenger stage operations.
4. Applicant has the ability, experience, and financial resources to perform the proposed service.
5. Public convenience and necessity require that the service proposed by applicant be established.
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.
7. Competition between applicant and other certificated charter-party carriers, to the extent that it will exist, will have a beneficial effect for the public interest in that it will lead to better service and promote lower fares.

Conclusion of Law

The Commission concludes that the requested 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 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 forty air miles from applicant's home terminal at 5532 Halifax Road, Arcadia, California 91006, is authorized to be issued to Rodgers Stage Coach Lines, Incorporated.

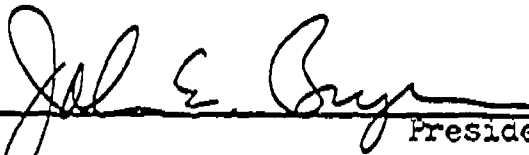
2. When the required California Highway Patrol clearances are received by the Passenger Operations Branch of the Commission and the evidence of adequate protection against liability imposed by law are filed in compliance with General Order No. 115-B, the annual renewable certificate on Form PE-695 will be issued by the Passenger Operations Branch of the Commission under the authorization of Resolution No. PE-303, approved July 29, 1976.

3. In providing service pursuant to the certificate herein granted, applicant shall comply with and observe, among other things, 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

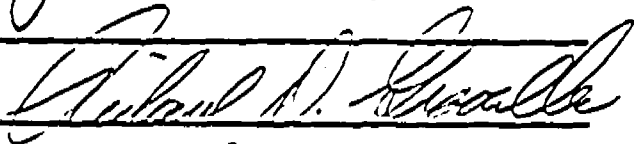
General Order No. 115-Series. Failure to do so may result in cancellation of the operating authority granted by this decision.

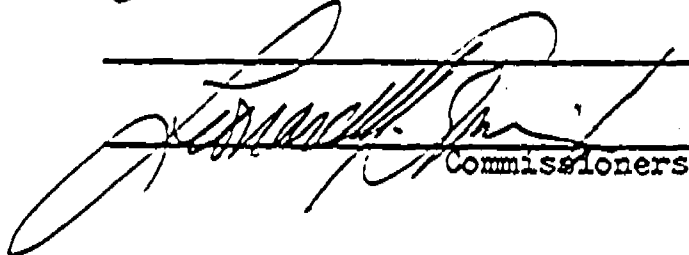
The effective date of this order shall be thirty days after the date hereof.

Dated OCT 22 1980, at San Francisco, California.



President





Commissioners

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

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