

Decision 93273 JUN 2 1981

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

YOSEMITE PARK & CURRY CO.,  
a Corporation,

Complainant,

vs.

EXPRESS TOURS UNLIMITED, a  
Corporation, RICHARD KLINE,  
MARY KLINE, and NANCY TISHER,

Respondents.

Case 10925  
(Filed November 24, 1980)

In the Matter of the Application  
of EXPRESS TOURS UNLIMITED, a  
California corporation, for a  
Certificate of Public Convenience  
and Necessity to operate as a  
Passenger Stage Corporation,  
authorizing the transportation of  
passengers in sightseeing service  
between specified points in  
Alameda and San Mateo counties on  
the one hand, and Yosemite National  
Park, pursuant to the provisions of  
section 1031, et seq. of the Public  
Utilities Code.

Application 59689  
(Filed May 23, 1980)

In the Matter of the Application  
of EXPRESS TOURS UNLIMITED, a  
California corporation, for a  
Certificate of Public Convenience  
and Necessity to operate as a  
Passenger Stage Corporation,  
authorizing the transportation of  
passengers in sightseeing service  
between San Francisco and Yosemite  
National Park, pursuant to the  
provisions of section 1031, et seq.  
of the Public Utilities Code.

Application 59974  
(Filed September 29, 1980)

Eldon M. Johnson, Attorney at Law, for Express Tours Unlimited, applicant in A.59689 and A.59974 and defendant in C.10925, and for Richard Kline, Mary Kline, and Nancy Tisher, defendants in C.10925.

Silver, Rosen, Fischer & Stecher, by John Paul Fischer and Ellis Ross Anderson, Attorneys at Law, for Yosemite Park & Curry Co., complainant in C.10925 and protestant in A.59689 and 59974.

Condie, Lee & Gee, by Richard J. Lee, Attorney at Law, and J. Mark Lavelle, for J. Mark Lavelle, dba Dolphin Tours, protestant in A.59689 and A.59974 and intervenor in C.10925.

Baker & Mc Kenzie, by John F. Mc Kenzie, Attorney at Law, for Toyonari Yanagase; James S. Clapp, by Cristina Ortega Morris, Attorney at Law, for O'Connor Limousine Service, Inc.; and Steven G. Teraoka, Attorney at Law, for San Francisco Bay Tours, Inc.; interested parties in A.59689 and A.59974.

Mark Sepaspour, for the Commission staff.

#### O P I N I O N

By Applications (A.) 59689 and 59974, Express Tours Unlimited (XTU), a California corporation,<sup>1/</sup> seeks authority to provide round-trip passenger stage corporation sightseeing service between named points in San Mateo and Alameda Counties and San Francisco, on the one hand, and Yosemite National Park (Yosemite), on the other hand. Case (C.) 10925 is a complaint by Yosemite Park & Curry Co. (Curry) against XTU and Richard Kline (Mr. Kline), Mary Kline (Mrs. Kline), and Nancy Tisher as officers, agents, or employees of XTU. The complaint alleges that defendants are providing illegal per capita sightseeing service to Yosemite and requests various relief.

XTU holds a certificate of public convenience and necessity, PSC-1075, to provide passenger stage corporation sightseeing service over the following routes:

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<sup>1/</sup> The former name of the corporation was San Francisco - Yosemite Tours, Inc. (SFYT).

1. Single-day, round-trip service between San Francisco and the Curry facility in Merced granted by Decision (D.) 90352 dated May 22, 1979 in A.57152, as amended by D.91927 and 92272 dated June 17 and September 16, 1980, respectively. As stated in D.90352, XTU's purpose for seeking this authority was to provide sightseeing service to Yosemite in conjunction with Curry which holds certificated authority to transport passengers between Merced and Yosemite.
2. Single-day and overnight, round-trip service between San Francisco and three named hotels in San Mateo County, on the one hand, and Hearst San Simeon State Historical Monument (Hearst Castle), on the other hand, granted by D.92046 dated July 15, 1980 in A.59382.

The aforementioned authority is subject to certain terms and conditions which are somewhat similar to those proposed by XTU in its two applications.

XTU also holds a Class A Charter-Party Carrier of Passengers Certificate, TCP-62-A, transferred to it by Schedule 131 C-P Action on September 7, 1979 and confirmed by D.92616 dated January 21, 1981 in A.59153. Since its original transfer to XTU, this certificate has been renewed each year.

XTU has been granted permanent authority by the Interstate Commerce Commission (ICC) to operate as a common carrier by motor vehicle in interstate or foreign commerce over irregular routes transporting passengers and their baggage in charter and special operations beginning and ending at San Francisco and points in Alameda County and extending to points in the United States (Express Tours Unlimited, MC-150712 (Sub No. 1)F, served January 7, 1981, rehearing denied). Prior to this it had been issued temporary authority by the ICC on June 25, 1980 for charter and special operations beginning and ending at San Francisco and extending to points in Nevada.

The specific sightseeing service for which XTU seeks authority is direct single-line service to Yosemite and is as follows:

1. In A.59689, from the Hyatt Hotel on Old Bayshore Boulevard in Burlingame, the Hilton Hotel adjacent to the San Francisco International Airport, and

the Grosvenor Hotel on South Airport Boulevard in South San Francisco, all three of which are in San Mateo County, and from The Holiday Inn on Powell Street in Emeryville, the corner of Lakeshore and McArthur Boulevards in Oakland, and the Edgewater Hotel on Hegenberger Boulevard in Oakland, all three of which are in Alameda County, to Yosemite and return.

2. In A.59974, from all hotels and motels in San Francisco to Yosemite and return.

The proposed sightseeing services would be subject to the following terms and conditions:

1. The service is "on call" daily, including weekends and holidays. Advance reservations by 5 p.m. the previous day are required.
2. Carrier reserves the right not to operate a tour if there are less than five reservations for the Alameda and San Mateo County service or less than 11 reservations for the San Francisco service by 5 p.m. the day preceding the tour.
3. Service is limited to round-trip service with return not later than the second day following the inbound trip to Yosemite.
4. Overnight accommodations are not included, and XTU will advise a potential tour-taker not returning the same day that accommodations are frequently unavailable in Yosemite and that advance reservations by the passenger are an absolute necessity in order to avoid extreme inconvenience and hardship.
5. Lunch and all entry fees to and transportation within Yosemite are included.

The proposed fares for the service are as follows:

	<u>Origin</u>	
	<u>San Francisco and Alameda County</u>	<u>San Mateo County</u>
Adults	\$50	\$55
Children 5-12	25	27
Children under 5	18	19

The route for the proposed tours is as follows: From the three San Mateo points to San Francisco; thence via the San Francisco - Oakland Bay Bridge to the three Alameda points; thence along

State Highway 17, Interstate Highway 580, and State Highways 132, 99, and 140 to Yosemite; and return via the reverse of the same route.

Both applications were protested by Curry and J. Mark Lavelle (Lavelle), doing business as Dolphin Tours. In addition to its Merced - Yosemite operation, Curry holds passenger stage corporation operating authority to provide service between Fresno, Lee Vining, Hetch Hetchy, and Modesto, on the one hand, and Yosemite, on the other hand, and certain intermediate points (D.84295 dated April 8, 1975 in A.55385). It also holds a Class A Charter-Party Carrier of Passengers Certificate. Additionally, it has authority from the National Park Service (NPS), a division of the U.S. Department of Interior, to transport passengers, including sightseeing service, within Yosemite. Lavelle and San Francisco Bay Tours, Inc. (SFB Tours) were each granted certificates to operate passenger sightseeing service narrated in the Japanese language only, from San Francisco to numerous points of interest, including a one-day sightseeing trip to Yosemite (D.89731 dated December 12, 1978 in A.57596 et al.). SFB Tours is not a protestant. Basically, protestants allege that XTU is providing direct service to Yosemite without the required authority and, for this reason, is not a fit person and should be denied the requested authority, and that public convenience and necessity do not require the sought service.

In its complaint in C.10925, Curry asserts that:

1. D.90352 authorizes XTU to operate only the San Francisco - Merced leg of the one-day round-trip Yosemite sightseeing service, and Curry was to operate the Merced - Yosemite leg.
2. XTU's existing Merced certificate was modified in part by D.91927. Ordering Paragraphs 3 and 4 of the decision provided as follows:
  - "3. SFYT shall enter into good faith negotiations with Curry for the purpose of concluding a written agreement with Curry which will permit Curry personnel to drive SFYT's buses between Merced and Yosemite, thus making it unnecessary for SFYT's passengers to change buses at Merced.

"4. SFYT shall strictly observe the limits of its authority regarding its route, its equipment size, and in all other particulars, SFYT is admonished that we shall take prompt action in the event of further violations."

3. XTU's petition for reconsideration of the directives in the two quoted ordering paragraphs was denied by D.92272.
4. XTU has repeatedly and is continuing to conduct operations as a passenger stage corporation between Merced and Yosemite without authority to do so and has refused to enter good faith negotiations with Curry as required by D.91927.

The complaint asserts that because of XTU's illegal operations, the public and it have been and will be damaged and that this has and will continue to impair Curry's ability to render adequate passenger stage corporation service to the public. Among other things, the complaint requests that the Commission find defendants in contempt of D.91927 and 92272, direct them to cease and desist from operating between Merced and Yosemite until the necessary interline or other agreement legalizing such operation has been executed, and dismiss or abate XTU's A.59689 and 59974 pending resolution of the question of the fitness of defendants raised by the complaint.

In addition to protesting the two applications, Lavelle was an intervenor in Curry's complaint and urged the Commission to grant the relief sought.

In the answer filed by defendants on December 30, 1980, it is admitted that the three persons named in the complaint are officers of XTU. The answer denies any illegal operations or violations of any Commission orders and requests that the complaint be dismissed. Following is a brief summary of the allegations set forth in the answer:

1. Curry's primary purpose in filing the complaint is to block XTU from operating the Merced to Yosemite leg of the San Francisco to Yosemite sightseeing unless XTU pays Curry \$21 per passenger transported for this privilege.

2. Another reason for the complaint is to delay or avoid any decision in A.59689 and 59974, both of which, based on the Commission's current policy regarding sightseeing matters, should be granted.
3. XTU has attempted in good faith to negotiate the written agreement specified in Ordering Paragraph 3 of D.91927 with Curry, but Curry has refused to cooperate in this matter.
4. Although XTU has been unsuccessful in its attempts to negotiate an interline agreement with Curry, a concurrence had been executed by XTU and Curry on June 15, 1979 and has never been canceled. Based on the concurrence and an appropriate lawful and legal through tariff between San Francisco and Yosemite filed with the Commission, XTU was provided with authority to operate per capita sightseeing service from San Francisco to Yosemite and return. Under this agreement, XTU did provide service to Yosemite.
5. XTU terminated per capita sightseeing service to Yosemite on December 12, 1980 pending resolution of the issues raised in the complaint.
6. For each per capita sightseeing trip provided by XTU to Yosemite, it entered a NPS trip lease agreement with Curry at the entrance to Yosemite to cover transportation service within the park.
7. The service XTU had performed between San Francisco and Yosemite did not harm Curry or the public. Curry is not authorized to serve San Francisco. Had XTU not provided the service, the passengers it transported from San Francisco would have not gone to Yosemite, or they would have used private or rented automobiles or one of the many van or bus companies that are providing per capita sightseeing service to Yosemite without certificated authority.

The three matters were consolidated for public hearing before Administrative Law Judge (ALJ) Arthur M. Mooney. Twelve days of hearing were held in San Francisco between December 1980 and March 1981. The proceeding was submitted upon the filing of concurrent closing briefs on April 13, 1981 by those parties wishing to do so. Opening and closing briefs were filed by XTU and Curry.

An opening brief only was filed by Lavelle. While the Commission staff did participate in the proceeding by cross-examining witnesses, it did not file any brief or take a position in any of the matters.

While much of the evidence does apply to all three matters, it was agreed generally at the outset of the hearing by all parties that evidence primarily concerned with the complaint would be taken first followed by evidence primarily concerned with the two applications. This is the procedure that was followed. However, as stated, there is a crossover in the evidence presented between all matters. For example, the issue of fitness raised in the complaint is one of the issues considered in an application for a sightseeing passenger stage certificate.

We will first briefly set forth the motions by XTU and Curry that could have a bearing on the disposition of the proceeding. We will then summarize the evidence relating primarily to the complaint, and then that relating primarily to the two applications. This will be followed by a discussion, findings, conclusions, and order relating to all matters.

#### Motions

Various motions, both written and oral, for specific relief were made by both XTU and Curry during the course of the proceeding. Those by XTU were for immediate interim authority to provide the services requested in the two applications pending final decision in the proceeding. Those by Curry were for prompt specific Commission action regarding its complaint pending the final decision. All motions were either denied or recommended for denial by the ALJ. We concur with his rulings and recommendations.

The primary issues in the applications are XTU's fitness and whether public convenience and necessity require the proposed services.

As stated by defendants in their reply to the complaint, XTU ceased all per capita operations to Yosemite on December 12, 1980. Its officers also testified that service would not again be provided to Yosemite unless the applications are granted. Since XTU was no longer providing per capita service between Merced and Yosemite after this date, there was no urgency to consider any of the interim actions requested by Curry prior to the final decision.

Complaint

Four witnesses were called by Curry in the complaint phase of the proceeding. The first was Thomas Williams, a vice president of Curry. The second was Bipin Ramaiya, vice president and general manager of California Parlor Car Tours Company, Inc. (CPCT), a passenger stage corporation. The remaining two were defendants Mr. Kline and Mrs. Kline who were called as adverse witnesses. Additionally, with the agreement of defendants, it presented the verified statement of a public witness, Virginia Brayfield, in evidence as Exhibit 21.

Williams testified that he has been vice president of Curry since September 1979 and has been with the company since 1970. He stated that Curry is one of the major concessionaires in Yosemite and that he is responsible for plant services and guest recreation, including the supervision of all transportation services performed by Curry. The witness pointed out that the passenger bus transportation services provided by Curry within Yosemite are under authority from the NPS and those performed by it to and from Yosemite are under authority from the Commission. He explained that most service subject to the jurisdiction of the Commission is over its Merced - Yosemite route.

The vice president stated that Curry operates 16 buses in its passenger stage service and sightseeing operations within Yosemite. According to Curry's Exhibit 10, several are new and the others are older, the seating capacity of the equipment ranges from 39 to 47,

and the total capacity of all of this equipment is 696 seats. The witness testified that Curry also operates 21 shuttle-type buses. He stated that Curry employs approximately 70 drivers in the peak summer season and 30 in the winter and that all are members of the Teamsters Union.

Williams testified that Curry provides the following passenger transportation services:

1. Free shuttle - bus service both in the Yosemite floor and at Mariposa Grove.
2. Sightseeing services within Yosemite.
3. Lease arrangements for transportation within Yosemite with bus operators carrying passengers to Yosemite on an infrequent or charter basis.
4. Per capita passenger stage service over the routes authorized by the Commission.
5. Interline arrangements with certificated passenger stage operators for transportation to, from, and within Yosemite.
6. Arrangements with other modes of passenger transportation to transport passengers to, from, and within Yosemite.

The witness testified as follows regarding the lease arrangements for transportation within Yosemite with the bus operators that come to the park entrance:

1. The agreement extends Curry's NPS authority to the bus operator to provide service within Yosemite. Under this arrangement, passengers remain on the same bus and are not discommoded.
2. Curry furnishes blank trip lease agreement forms to bus operators. They are titled "Trip Lease Addendum."
3. The form is partially filled out by the bus operator prior to arriving at Yosemite. The operator fills in the name of the bus and tour company and address, whether a bus or van is used, and the park entrance and dates of arrival and departure. This partially completed document is shown to the NPS ranger for entry to Yosemite.

4. The bus operator then brings the document to one of the three Curry transportation desks which are at convenient rest stop or lunch locations.
5. At the transportation desk, Curry personnel complete the document. The number of passengers and charges are entered. There is a per passenger charge to the bus operator and a per mile rental payment to it for the lease of the bus by Curry while it is in Yosemite. The per passenger charge varies depending on the particular entrance used and whether the equipment is a bus or van. The lease rental rates per mile are \$1.15 for a bus and \$.80 for a van. From the Arch Rock Western Entrance, which is the one used from Merced to Yosemite Valley, the one-way distance is 14 miles and the one-way per passenger charge is \$1.00. For the round-trip from this entrance, the per person charge would be \$2.00 and the rental payment by Curry for a bus lease would be the 28 round-trip miles times \$1.15 which is \$32.20.
6. Curry also collects a \$.50 per passenger Yosemite entrance fee which it transmits to the NPS.
7. The trip lease procedure has been in use since at least 1978. There are similar arrangements in other national parks. The details were worked out with the U.S. Department of Interior. Curry could use other methods of handling this in-park transportation if it wished. In the past, passengers arriving by bus at Yosemite were transferred to the concessionaires' equipment for transportation within the park.

Williams testified that Curry is actively engaged in interline/interchange services between various points and Yosemite with other passenger stage corporations, including CPCT. He explained that for most of such transportation, the travelers are never discommoded, receiving direct line service on the same bus. The witness testified as follows regarding the interline sightseeing service Curry provides with CPCT between San Francisco and Yosemite:

1. As shown in CPCT's Local and Joint Passenger Tariff 40-B (Exhibit 18), which lists tours

to various locations, it has 1-, 2-, and 3-day sightseeing tours from San Francisco to Yosemite and return in conjunction with Curry. The tours include ancillary services, such as meals, entrance fees, lectures, overnight accommodations, where applicable, and other features incidental to the package tour.

2. There has been a written interline "Through Service Agreement" for this service in effect between CPCT and Curry since 1960. Under this arrangement, CPCT's equipment is used for the through transportation. CPCT's driver operates the equipment to Merced for which it has authority, and Curry's driver takes over at Merced and operates the equipment and narrates the tour to, from, and within Yosemite for which it has authority. Curry assumes all control, responsibility, and liability for the equipment and operation between Merced and Yosemite and within Yosemite. CPCT pays Curry the round-trip \$21.00 fare in Curry's Local Passenger Tariff 9 (Exhibit 16) for each passenger less a 10% commission, and Curry pays CPCT a mileage rate for the lease of the equipment while it is under its control.
3. There has been a tariff concurrence in effect for many years between the parties authorizing the publication of the through rates for the San Francisco - Yosemite Tours.
4. Because of XTU's cessation of one-day passenger service to Yosemite last December, the one-day joint tour was added to CPCT's tariff recently to make such service available to the public. This tour has not yet commenced but should shortly. The tour package will include lunch at the Ahwahnee Hotel and a tour of Yosemite valley.
5. Passengers on these tours will be picked up and returned to CPCT's facilities at the Jack Tar Hotel in San Francisco.
6. No trip lease agreement for the transportation within Yosemite is necessary because Curry is operating the equipment under the interline agreement.

The witness testified that Curry also provides connecting service to Yosemite for air and rail carriers and that most of this service is through Merced. He explained that Curry has two schedules in each direction between Yosemite and Merced year round and an additional schedule in the summer season and that the transit time between the points is approximately one and a half hours. He stated that Amtrak passengers on a one-day trip from San Francisco would take the 10:15 a.m. bus from Merced which arrives at Yosemite at 12:45 p.m. and the return bus which leaves at 4:15 p.m. and arrives back at Merced at 6:45 p.m. and that both of these schedules are year round.

Williams testified that although XTU has authority to operate only between San Francisco and Merced, it has been providing per capita service to the Arch Rock Entrance to Yosemite. He pointed out that D.91927, as amended by D.92272, specifically directed XTU to enter good faith negotiations with Curry for the purpose of concluding an interline agreement with it for the Merced - Yosemite transportation and to observe the limits of its operating authority. He asserted that XTU has failed to enter the good faith negotiations and has continued to operate to Yosemite in violation of these directives. The witness stated that Curry has done its part in attempting to negotiate the required interline agreement with XTU. In this connection, he referred to his November 14, 1979 letter to Mr. Kline wherein he pointed out that:

1. Although a tariff concurrence for the publication of a through rate for the San Francisco - Yosemite tour by XTU was executed by Curry on June 15, 1979, no inter-carrier arrangement for the physical transportation of passengers over the routes of the two carriers had been worked out.
2. XTU has been conducting substantial operations to Yosemite purportedly under the concurrence.
3. Absent the necessary interline agreement for the physical transportation, this operation cannot be legally rendered under the concurrence which relates to the publication of the tariff rate only.

4. Curry is ready, willing, and able to negotiate the interline agreement for the through transportation.
5. XTU should contact Curry regarding this.

The witness stated that this matter was brought to XTU's attention at meetings and by telephone and correspondence on numerous subsequent occasions to no avail and that Curry continues to be ready to negotiate any time XTU is willing to do so.

The attorney for XTU cross-examined Williams regarding Curry's good faith willingness to negotiate an interline agreement. In this connection he introduced his April 18, 1980 letter to Curry's attorney in evidence (Exhibit 3). The letter stated that it is XTU's position that it was properly operating under a joint line concurrence and requested certain information regarding the following two options for an interline agreement Curry had previously offered to XTU:

1. Transfer passengers at Merced to Curry equipment with a Curry driver for the Merced - Yosemite transportation. Curry would charge XTU its tariff rate per passenger less a 10% commission.
2. Curry would lease and operate XTU's equipment with its own driver between Merced and Yosemite. Curry's charge would be calculated on the same bases as for Option 1, and it would pay a per mile rate to XTU for the lease of the equipment.

The letter stated that the requested information was necessary as a basis for further negotiations. The specific questions asked concerning Option 1 related to:

1. The connecting schedule Curry would use to meet XTU's buses at Merced.
2. Whether the Curry driver would narrate the Merced - Yosemite leg of the tour.
3. Whether Curry would support XTU in a needed rate increase request to the Commission if this option were adopted.

The specific questions asked concerning Option 2 related to:

1. Whether the per mile lease rate of \$.80 for a bus and \$.40 for a van previously quoted by Curry would be changed.

2. Whether Curry would participate in promotional and development expenses for the tour.
3. Whether Curry has or will obtain sufficient liability insurance to match the \$5,000,000 carried by XTU.
4. Whether Curry would guarantee that XTU would not lose financially under the proposed payment plan.

A review of the further exchanges of correspondence between the parties included in Exhibit 3 discloses that the questions were never specifically answered in writing by Curry. Williams testified that in his opinion they were answered in general terms by the statement in Curry's subsequent letter of July 1, 1980 to XTU which stated that it was willing to meet with XTU to "hammer out the details of the agreement required by the Commission's order."

In answer to questions by his own attorney regarding the information requested in the April 18, 1980 letter concerning Option 1, Williams testified that:

1. Curry is willing to establish an appropriate schedule that will meet XTU's Modesto schedule.
2. The Curry driver would narrate the Merced - Yosemite leg of the sightseeing tour. This is done by its drivers on all sightseeing tours.
3. Curry would join with XTU in any required rate increase proceeding for the tour.

The witness testified as follows regarding the information requested concerning Option 2:

1. The per mile lease rates are no longer current and new ones would be negotiated with XTU. The present per mile lease rate paid to CPCT is \$.95. This information has been previously given to XTU.
2. Curry is willing to share in promotional expenses for the tour. It does this with other carriers with whom it has an interline agreement.
3. Curry has a basic \$1,000,000 liability policy with an umbrella coverage of another \$150,000,000.
4. An answer to the last question is not necessary.

Williams testified that Curry is willing to enter an interline agreement with XTU based on either of the above-described options or any other reasonable alternative. He asserted that XTU has never made any proposals regarding this. He stated that he has seen XTU equipment in Yosemite subsequent to the December 12, 1980 date it stated it was suspending its per capita Yosemite sightseeing service, but he did not know if the equipment was chartered to someone else.

According to the financial data in Exhibit 17, Curry had an operating income of \$95,532 from all transportation services it performed in 1979; however, its intrastate certificated operations during this period resulted in a loss of \$147,706. Although results for 1980 were not available, Curry projected a \$255,010 loss from its certificated intrastate operations for the year.

Exhibit 15 shows that Curry transported a total of 68,127 passengers in its California certificate operations in 1980, including 57,049 on its Merced route of which regular operations accounted for 44,049 and interline accounted for the remaining 13,000. The revenue derived from this service was \$594,396 for all routes and \$463,304 for the Merced route.

According to Exhibit 14, the passenger count for XTU's San Francisco - Yosemite sightseeing service for 1980 was 4,433. Williams explained that this information was obtained from Curry's copies of XTU's Trip Lease Addenda for transportation within Yosemite. He stated that although a few might be missing, this study included substantially all of these documents. The witness pointed out that had Curry transported a like number of passengers between Merced and Yosemite at its \$21 per passenger round-trip tariff fare, its 1980 revenue would have been increased by \$93,093. He asserted that as evidenced by this, and its operating losses from its intrastate certificated service, Curry is losing much needed revenue

because of the lack of an interline arrangement with XTU. It is to be noted that if there were an interline agreement, XTU would receive a 10% commission on Curry's tariff fare and also a lease payment if its equipment were used for the Merced - Yosemite transportation.

Ramaiya testified that he has been vice president and general manager of CPCT since 1976 and with the company since 1970 and that prior to that he was employed for several years by Greyhound Lines, Inc., the owner of CPCT. He confirmed the evidence presented by Williams regarding the interline agreement between CPCT and Curry for Yosemite sightseeing and the operation of this service, including the new one-day trip. The witness stated that CPCT's Yosemite tours are from San Francisco and do not include pickups in San Mateo and Alameda Counties. He testified that the only service CPCT presently offers from San Francisco to Yosemite and return is a two-night tour. It did provide a one-night tour in the summers of 1977 and 1978 and will again offer this tour in the summer of 1981, and it has not operated a one-day Yosemite tour. He explained that operation of the one-day trip has not yet commenced but will shortly and that the brochures for it will be printed in English and Japanese. He stated that the price that will be set for this tour for adults would be based on the combined individual transportation fare of both carriers, the \$.50 park entrance fee, and a cost of \$6 to \$8 for lunch, and would be somewhere around \$62.

When called as an adverse witness by Curry's attorney, Mr. Kline testified as follows regarding the officers of XTU and their duties:

1. He is the president and in charge of the day-to-day activities and general operation of the business, including dispatching, outside sales, maintenance, and the like.
2. His wife, Mrs. Kline, is vice president and in charge of accounting, telephone reservations, and other office activities.

3. Their niece, Tisher, is the secretary and assists with telephone reservations and other office activities.
4. All three are shareholders in the corporation.

Mr. Kline further testified as follows:

1. When XTU first commenced operating the one-day Yosemite tour in June 1979, he had an oral understanding with L. L. Branscum, who at the time occupied the position of vice president of Curry now held by Williams, that XTU could operate its equipment over the Merced - Yosemite leg of the tour and that nothing more than the concurrence was necessary. The Trip Lease Addendum covering transportation within Yosemite was part of this oral understanding. This arrangement was to continue indefinitely. XTU was then using vans, and Branscum informed him that because the operation was small, it would not be profitable for Curry to become involved in the Merced - Yosemite transportation. Because of the gas shortage at the time, XTU commenced using a diesel bus shortly after and larger bus equipment later.
2. He did receive Williams' letter of November 14, 1979 in which Williams stated that an inter-carrier agreement was necessary for the Yosemite tour. He was involved in other matters at the time and turned the letter over to his attorney for handling.
3. He did read D.91927 and 92272 and continued to operate per capita sightseeing service to Yosemite until December 12, 1980, after which date the service was suspended. He is of the opinion that this operation was legal because of the concurrence and oral understanding.
4. In San Francisco XTU picks up passengers at and returns them to their hotels. Sometimes this is done with a shuttle bus.
5. XTU did at times use vans for the Yosemite tour. The brochures and advertising for the tour refer to buses only. If a van were to be used for a particular tour, those holding reservations would be contacted and informed, and a refund would be made to anyone who did not want to travel on a van.

6. The Yosemite tour has been advertised in the Hyatt Regency book which is placed in guest rooms and the San Francisco Visitor News.
7. XTU's gross revenue from the Yosemite tour for the first 11 months of 1980 was approximately \$251,000.
8. Anytime an XTU bus was in Yosemite after December 12, 1980, it was there on a charter and not per capita trip.

Mrs. Kline was called as an adverse witness by Curry's attorney to verify that ads had been placed by XTU for its Yosemite service in the Hyatt Regency book and in the San Francisco Visitor News. She testified that she had signed the contracts for this.

The verified statement of Brayfield (Exhibit 21) concerned a per capita one-day sightseeing trip she had taken to Yosemite on XTU. According to the statement:

1. She telephoned XTU on November 11, 1980 and was informed that it had daily service to Yosemite. She then made a reservation with a \$5.00 deposit at the Commodore Hotel in San Francisco for the next day.
2. On November 12, 1980 she boarded the bus at 7:15 a.m. and paid the driver the \$45 balance of the fare and was given a receipt which is attached to the statement. The bus was a large restroom-equipped bus. There were 18 people on the trip. A stop was made for breakfast, and they arrived at Yosemite Lodge around 12:35 p.m. They were left on their own until approximately 3:45 p.m. when they boarded the bus for the return trip. They arrived at the Commodore Hotel at approximately 8:30 p.m. where she disembarked.
3. The driver gave each passenger a coupon redeemable for \$4.24 in trade, in the cafeteria at Yosemite Lodge. He narrated the portion of the trip from San Francisco to the lodge. Passengers were furnished with various brochures, including XTU's brochure entitled "Yosemite-In-A-Day." The same driver and equipment were used for the entire trip. It appeared that all passengers were taking the trip on a per capita basis.

Counsel for Curry argued that the evidence presented clearly establishes that XTU is operating beyond the scope of its certificate directly to Yosemite and is knowingly and willfully violating the Commission's orders and that the complaint should be granted.

Counsel for XTU asserted that his client had a right created by the concurrence to serve between Merced and Yosemite and requested that the complaint be dismissed. He stated that although no evidence was presented on behalf of his client in the complaint phase of the proceeding, the evidence to be introduced in support of the two applications will serve a dual purpose as a defense to the complaint.

Applications

The authority sought by XTU in its A.59689 and 59974 and the intrastate and interstate authority it now holds and also the pertinent operating authority protestants Curry and Lavelle hold have been set out above and will not be repeated.

XTU now operates eight 40-foot highway coaches manufactured by Motor Coach Industries. All are restroom equipped. Seven have a seating capacity of 49 each and are leased by XTU from PAX Unlimited (PAX), a company owned by its attorney. Of these, four are 1980 and three are 1979 MC-9 models. The remaining bus is a 47-passenger 1970 MC-7 model and is owned by XTU. It also operates one 1979 Dodge Maxiwagon van that is leased from its president. Its office and terminal are in San Francisco.

According to Exhibit 31, as of November 30, 1980, XTU had assets of \$219,317.21, liabilities of \$164,749.83, and a shareholders' equity of \$54,567.38. It had a net loss of \$13,243.38 in 1979. For the first 11 months of 1980, it had an operating profit of \$52,810.70 and an operating ratio of 91.5% from all of its operations, both intrastate and interstate. The breakdown of its operating revenue from its charter and per capita service for this 11-month period is as follows:

*Charter (both intrastate and interstate)	\$335,341.34
Yosemite (per capita intrastate)	251,921.00
Lake Tahoe (per capita interstate)	18,495.00
Hearst Castle (per capita intrastate)	<u>950.00</u>
Total	\$606,707.34

\* Not broken down between intrastate and interstate.

For the months of September, October, and November 1980, the last three full months XTU ran the Yosemite tour, it operated the tour daily, except for three days in November when there were not sufficient reservations (Exhibit 41). During this period, the total number of tours operated was 38, the total number of passengers transported was 1,488, and a van was used for 16 of the trips, most of which were in November. On the trips for which a van was used, the number of passengers ranged from 3 - 14. The demand for service is greatest during the spring to early fall season and declines in the winter season. XTU has transported numerous visitors from many foreign countries on its Yosemite tour (Exhibit 46), including 51 visitors from Japan referred to it by protestant Lavelle during the period February to October 1980 (Exhibit 42).

Following is a summary of the testimony of Mr. and Mrs. Kline describing the history of XTU's operations:

1. When XTU was granted its initial authority by D.90352 dated May 22, 1979 to operate the San Francisco - Merced leg of the Yosemite tour with van equipment, there were two main problems: (1) many small operators with no authority to serve Yosemite began running tours there with vans, and (2) gasoline was extremely difficult to obtain because of an acute shortage, and diesel fuel was much easier to obtain. At that time, a 39-passenger older diesel bus became available and was acquired by XTU. Prior to operating the first tour on June 27, 1979, XTU filed a modification petition on June 15, 1979 for authority to use this bus. It filed an additional modification petition on July 23, 1979 for authority to provide overnight service. D.91927 dated June 17, 1980 authorized the use of the 39-passenger diesel bus and denied the

request for overnight service. A petition for reconsideration of this decision was filed by XTU and D.92272 dated September 16, 1980 in the petition removed all restrictions on equipment size from its certificate and denied the other relief requested.

2. All of the Yosemite tours were operated directly between San Francisco and the Arch Rock entrance to Yosemite with XTU equipment and drivers. All transportation within Yosemite was under the trip lease agreement program with Curry. Both witnesses were of the opinion that an interchange of equipment with drivers and/or drivers only at Merced was not necessary because of XTU's concurrence with Curry and statements allegedly made to them prior to the commencement of the service in June 1979 by representatives of Curry to come on down to the Arch Rock entrance and fill out the Curry Trip Lease Addendum for the transportation within Yosemite. They asserted that they continued to believe this was so even after correspondence was received from Williams stating that an interline agreement was required and the issuance of D.91927, as modified by D.92272, which directed XTU to enter good faith negotiations with Curry to work out a written agreement for the Merced - Yosemite transportation and to strictly observe the limits of its authority. They and their attorney had attempted to negotiate in good faith with Curry as required by the decisions but Curry would not cooperate. In this regard, they repeatedly requested Curry to furnish them with the limits of its insurance coverage which it did not do. XTU carries \$5,000,000 liability insurance, and PAX carries an additional \$6,000,000 on the leased equipment. They considered the \$1,000,000 liability insurance mentioned in the Curry - Yosemite trip lease document inadequate and were concerned about the exact amount Curry carried. They relied on the opinion of their attorney and tariff agent that XTU could operate directly to Yosemite.
3. From June to October 1979, the 39-passenger diesel bus and a van were used for the Yosemite service. Because this bus was exceptionally expensive to maintain, it was replaced by the 1970 MC-7 which XTU purchased in October 1979.

4. XTU obtained its Class-A charter-party certificate in September 1979.
5. XTU leased the three 1979 coaches from PAX in December 1979 and the four 1980 coaches in latter 1980.
6. XTU was granted the temporary interstate authority to serve between San Francisco and Nevada on June 25, 1980 and the permanent expanded interstate authority on January 7, 1981. Subsequent to obtaining the temporary authority, it has provided some interstate per capita service to the Lake Tahoe - Reno area and a substantial amount of interstate charter service to Nevada. With its new permanent expanded authority its interstate operations will be increased considerably.
7. By D.92046 dated July 15, 1980, XTU was authorized to provide same day and overnight per capita service on two separate routes between San Francisco and the same three San Mateo hotels named in its A.59689, on the one hand, and Hearst Castle, on the other hand. The overnight trip has not been operated as yet. Three one-day tours were operated in late September 1980. It had not been promoted in advance. A total of about 15 passengers were transported on them. Because of a lack of demand at that time, it was a money loser and was discontinued. Both tours will be operated during the 1981 tourist season if the two applications are granted.
8. On December 12, 1980, XTU voluntarily suspended per capita service to Yosemite pending the outcome of this proceeding. It immediately collected all of its Yosemite brochures it could retrieve from hotels, tourist agents, and other locations. Since that date the only intra-state operations it has conducted are charter services. It also canceled its Yosemite tariff rate and published one to Merced. It has had only one call regarding Merced service and has operated no service there.

Mrs. Kline introduced in evidence copies of four brochures that XTU has had prepared: Hearst Castle Overnight, Yosemite-In-A-Day, Hearst Castle In-A-Day, and a combined brochure for Tahoe and for

Yosemite-In-A-Day (Exhibit 28). She stated that the Tahoe - Yosemite brochure replaced the brochure for Yosemite only and that the two for Hearst Castle would be distributed when this service commences. She stated that the reason for combining Tahoe and Yosemite in a single brochure was because one tour can sell another. She also introduced a number of exhibits relating to the efficiency and safety of buses as compared with autos.

Mrs. Kline asserted that prior to August or September 1980 XTU lost money on the Yosemite tour and around this time it started breaking even on the service. She stated that based on the \$50 adult fare and the present commission, Trip Lease Addendum, which includes the park entrance fee and lunch arrangements, the breakeven point for a trip is 15 to 20 passengers, and if the cost of fuel continues to escalate, it will be 20 or more. According to the witness, if XTU were to interchange equipment with drivers or drivers only with Curry at Merced, the tour would not be profitable because of the additional cost involved, and since this is the main source of revenue for all of XTU's intrastate certificated service, this entire per capita operation would be a money loser.

Mrs. Kline presented Exhibit 36 in evidence which is an Amtrak/Curry brochure for a one-day Yosemite tour from San Francisco, Oakland, and other intermediate points. The cost is \$51.95 for an adult. According to the brochure, the tour leaves the San Francisco Transbay Terminal at First and Mission Streets by bus at 7:00 a.m., leaves Oakland by train at 7:25 a.m., and arrives at Merced at 10:45 a.m., at which place passengers are transferred to a Curry bus and transported to Yosemite for two hours sightseeing in the valley and lunch at the Ahwahnee Hotel. The passengers are returned by Curry to Merced for the 7:00 p.m. train which arrives back at Oakland at 10:25 p.m., and the bus from there arrives at the San Francisco Transbay Terminal at 10:45 p.m. Mrs. Kline asserted that although she has not taken the trip, she does not feel it is a quality tour. She pointed out that passengers must get to and from the Transbay Terminal on their own, there is no narration on the Amtrak part of

the trip, it requires a longer period of time than XTU's tour, passengers must change equipment at Merced, the Transbay Terminal is deserted at 10:45 p.m. and has no taxicabs readily available.

Exhibit 39 includes brochures of three tour operators in San Francisco. Each brochure advertises a per capita sightseeing tour to Yosemite. Mrs. Kline testified that a search of Commission records by Mr. Kline disclosed that none hold certificated authority for this service. She asserted that these operators have caused problems for XTU at hotels and undercut its fares. The witness introduced Exhibit 38 which includes copies of CPCT 1980 and 1981 brochures which show the three-day tour it provides to Yosemite year round and the two-day tour it will provide during the 1981 tourist season. She pointed out that neither shows a one-day tour. Mrs. Kline also introduced Exhibit 37 which includes copies of Greyhound Lines' and Trailways Bus System's San Francisco - Yosemite schedules published in Russell's Official Bus Guide. The schedules connect with Curry at Merced, and it provides the Merced - Yosemite leg of the transportation. As shown in Greyhound's schedule, the transit time to Yosemite is eight hours and the return time is eight hours and 35 minutes; and as shown in the schedule for Trailways, the transit time to Yosemite is 10 hours and the return time is six hours and 35 minutes. The witness asserted that the transit times over the lines of these companies are inordinately long and that neither provides a sightseeing type of service to Yosemite.

Mrs. Kline testified that in addition to the ads previously mentioned for XTU's Yosemite service in the free San Francisco Visitor News (Exhibit 40) and the Hyatt Regency magazine (Exhibit 23), ads for this service have been placed in the San Francisco Visitors and Convention Guide (Exhibit 50) and in the San Francisco Map & Current Events Guide (Exhibit 51) which is a free pamphlet distributed at the San Francisco International Airport. She stated that none of the ads mention that a van might be used for the Yosemite tour and that most of the ads request people to call XTU for information about its

Lake Tahoe and Hearst Castle tours. She also pointed out that recent articles in Time magazine and the Wall Street Journal state that many foreign visitors are coming to California and other parts of the United States and that many of the Japanese visitors prefer English-narrated tours. She asserted that XTU gives excellent service to its customers and that many of its drivers are bilingual.

Tisher (secretary of XTU) testified that prior to XTU's suspension of its Yosemite service on December 12, 1980, she handled many of the telephone reservation requests for this service. She explained that inquiries were received from travel agents, tour desks and bell captains at hotels, relatives of visitors to the area, and directly from clients. She stated that if a van were to be used for a particular tour, she so advised the customer. She asserted that many reservations were made by people staying at the Alameda and San Mateo County hotels for which authority is sought and at other places within an 80-mile radius of San Francisco, and that if the authority to serve these hotels is granted, it would be more convenient for such customers to be picked up at and returned to these locations rather than coming to San Francisco on their own. The witness explained that Alan Ashmore, the principal driver on the Yosemite tour, speaks fluent Spanish and that his relief driver also speaks Spanish and in addition, Italian, Arabic, French, and Portuguese. She stated that passengers understanding Spanish only could take the tour on any day, and those understanding only the other languages spoken by the relief driver were encouraged to take the tour on a day he was driving. She testified that depending on the number of hotels that were involved, a second bus or van might be used for the pickup and return of passengers to their hotels. Tisher explained that when she did receive a request for overnight service, she informed the caller of the necessity of having accommodation reservations and referred them to Greyhound. She asserted that 95% of such callers informed her that they had reservations and that most stated they would go by automobile because of Greyhound's inconvenient schedule.

Tisher presented in evidence a copy of CPCT's new brochure for its one-day Yosemite tour in conjunction with Curry (Exhibit 51). The cost is \$63 per person. It leaves the Jack Tar Hotel in San Francisco at 7:30 a.m. and includes the park entrance fee, lunch at the Ahwahnee Hotel, and sightseeing in Yosemite. It leaves Yosemite at 3 p.m. and returns to the Jack Tar Hotel at 7:30 p.m. Tours are scheduled every two or three days through April 1981, and the brochure states that the frequency from May on will be announced later. It also states that reservations must be made by 4 p.m. the day prior to the tour. Tisher pointed out that passengers staying at other hotels are not provided pickup and return service at their hotel. She stated that she called CPCT's San Francisco office around 3:30 p.m. on February 25, 1981 regarding the next day's tour and was informed that it would not be operated because there were not enough reservations.

A substantial amount of the evidence presented by Mr. Kline was similar in nature to that presented by Mrs. Kline and by himself when called by Curry as an adverse witness in the complaint phase of this proceeding. Following is a summary of the additional evidence he presented.

1. He has had considerable experience in the transportation field, including driving bus tours to Yosemite and other locations for Eastshore Lines between 1960 and 1974. He has his own travel agency, Cal Tours, which arranges many tours for Reno and Lake Tahoe.
2. The Klines have invested a substantial amount of money in XIU. It is family-owned and operated. In addition to the three related officers, his daughter assists with the office and reservations, and his son-in-law oversees equipment maintenance. The amount he takes out of the company is less than the salary paid to a driver. This is also true of the amount paid his wife and Tisher.
3. The waiting time for new equipment is approximately two years and the cost is substantial. A new MC-9 bus costs approximately \$140,000. Because of this XIU leased equipment from PAX. Leases from other

sources would have been similar in terms, but new equipment may not have been as readily available from them. XTU placed orders for two MC-9 buses in August 1980, and delivery is expected sometime in 1982. They will be financed by the manufacturer which requires a 20% down payment a month before delivery.

4. There would be a problem with putting a Curry driver on an XTU bus. XTU would not control the driver's qualifications. While Curry would be responsible for the equipment between Merced and Yosemite, the placing of responsibility for damages such as minor dents and the like would be difficult. To have inspections of the equipment and reports prepared at Merced for this purpose would be time-consuming and cause delays. Passengers prefer the same driver throughout a tour for continuity of the narration. They also become acquainted with the driver and rely on him for their needs. The XTU driver would have a lengthy layover in Merced with nothing to do and would have to be paid for this. A driver change would also adversely affect driver tips.
5. Subsequent to suspending Yosemite service on December 12, 1980, he telephoned Williams to attempt further good faith negotiations but was informed by him that Curry would not revise its demand that its full local fare of \$21 between Merced and Yosemite be paid by XTU if Curry's equipment and driver or driver only were used for this leg of the tour.
6. Curry could have canceled the concurrence at any time but did not. Had it done so, XTU would have immediately ceased the service it was providing to Yosemite.
7. He has gone to hotels, travel agencies, and travel conventions and trade shows to publicize XTU's service and distribute its brochures. Travel agents from throughout the country and many foreign lands attend many of these conventions and trade shows. XTU's one-day Yosemite tour has been mentioned in California Travel News and Fodor's USA 1981, two travel guides. No charge was made for this. (CPCT's multiday Yosemite tours are also mentioned in these publications.)

8. The best way to fight the illegal operators serving Yosemite is to grant the two applications, and XTU will be a legal first-line carrier and able to competitively eliminate them in the market place.
9. If the sought authority is granted, XTU will operate strictly within the limits of the authority and not modify the service unless authorized to do so by the Commission.
10. If XTU is not authorized to provide direct service to Yosemite from San Francisco, it will most likely give up all of its intrastate per capita authority.
11. Yosemite is one of the wonders of the world and has tremendous public appeal. Public convenience and necessity require the proposed service.

Ashmore, XTU's main driver on the Yosemite tour, testified that he has spent considerable time in Central America and is fluent in Spanish. He stated he has been with XTU since it commenced operations in June 1979. The witness asserted that people on the Yosemite tour enjoyed it and appreciated being picked up at and returned to their hotels. He cited the same problems as Mr. Kline regarding a change of drivers or vehicles and drivers at Merced. He stated that if this were to occur, he would request another run.

A representative of the United Bus Owners of America, an independent trade association of smaller bus companies of the United States, testified that XTU is a member. He stated that much of the association's efforts is to shift passengers from automobiles to substantially more fuel-efficient buses. The witness presented evidence regarding the background of and its participation in the 1976 negotiations between Curry and NPS regarding Curry's present trip lease arrangement with bus companies for transportation within Yosemite, which replaced the prior program of transferring passengers to Curry equipment at the park entrance.

Nine witnesses testified in support of the authority sought by XTU. One was a representative of the San Mateo County Convention and Visitors Bureau, four were representatives of travel agencies, two were representatives of bus companies, and two were members of the public. Some had taken XTU's Yosemite tour, and their impression of it was very favorable. The convention bureau witness stated that there is now no service from San Mateo County to Yosemite, the pickup points in San Mateo requested by XTU would be far more convenient for people in San Mateo County than going to San Francisco for the tour, and he knows of no van operators serving Yosemite from San Mateo County. Two of the representatives of travel agencies, which are located in Burlingame and San Mateo in San Mateo County, presented similar testimony. They also stated that it would destroy the continuity of a trip for passengers if equipment and drivers or drivers only were changed en route on a tour, the daily service and option of one or two nights' stay at Yosemite proposed by XTU is desirable, and they have sold XTU's per capita Yosemite service and will continue to be its agent if the sought authority is granted. The third representative of a travel agency, which is located in South San Francisco, testified that her company specializes in services for European, Canadian, and South American visitors, she has gone on an XTU Yosemite tour as an interpreter for a Spanish-speaking client who was extremely pleased with the tour, and she will recommend the tour to her customers. The fourth representative of a travel agency, which is located in San Francisco, testified that his company's clients are primarily Asian, he handles tours for China Airlines, he has done business with XTU for a year but has not as yet sent any visitors from Asia on its Yosemite tour, and he will commence doing this during the tourist season for the Asian visitors traveling individually or in small groups of two or so and will furnish an interpreter for them if necessary. One of the public witnesses resides in Oakland, is an amateur naturalist, goes to Yosemite three or more times a year, would find XTU's proposed Oakland service most convenient, and would use it if it is authorized.

The other public witness had taken the Amtrak-Curry tour to Yosemite and felt it was an unsatisfactory tour, and she asserted that if the authority sought by XTU is not granted and direct bus service does not become available, she will use her private automobile for future trips to Yosemite.

The representative of one of the bus company supporters was the president of Scenic Hyway Tours, which is in the charter bus business and operates 12 Provost Prestige Coaches. He stated that a forced change of buses and drivers or drivers only on a tour is very inconvenient for passengers, his company will not allow anyone not on its payroll and under its control to drive its expensive equipment, Yosemite is the number one tourist attraction in California, his company does not sell per capita tours for anyone, and if someone called for such a tour to Yosemite, he would refer the person to XTU. The representative of the other bus company was the president of Grosvener Bus Lines, Inc., which does business in San Francisco under the name Gray Line, Inc., a per capita sightseeing company. He testified that he supports the two applications because he believes there should be direct, single-line sightseeing service from the San Francisco area to Yosemite, he does not believe this should be an exclusive right and his company may request similar authority, his company picks up at all hotels, he feels CPCT's service with pickup at the Jack Tar Hotel only is impractical, and illegal bus operations to Yosemite should be stopped.

Evidence on behalf of protestant Curry was presented by two witnesses. One was the president of a travel agent in Lodi. He testified his company arranged one-day Amtrak-Curry tours from Stockton for approximately 300 individuals in 1980, the train was the same one used for the San Francisco tour, someone from his office accompanied each tour to assist the customers and answer their questions, the passengers enjoyed the trip and felt the train and Curry service was excellent, and his company will continue to market this tour in 1981. He feels the interchange at Merced is not objectionable and that a

one-day bus trip from Lodi or Stockton to Yosemite and return is too strenuous for passengers. XTU's proposed route does not go through Lodi or Stockton.

The other Curry witness was Williams, its vice president. He asserted that Curry's protest to XTU's two applications is premised on its belief that XTU should interline with Curry at Merced and that if this were to be done, it would have no objection to the one-, two-, and three-day service XTU proposes. The witness testified that Curry would prefer to lease XTU's bus at Merced and place a Curry driver on it rather than interchange equipment. He stated that if this were done, the XTU driver could remain on the bus or wait in Merced which would be less fatiguing on him and preferable from a safety standpoint because of the 12 to 14 hours required for a tour. As to the responsibility for any dents or like damage that might occur to XTU's equipment, Williams suggested that both drivers could make a visual inspection of the equipment at Merced and fill out and initial a report form. This, he stated, is the procedure used with CPCT's equipment.

With respect to the trip lease program with other carriers for transportation within Yosemite, Williams testified that Curry was acquired by MCA, Inc. in 1973. The first full year of service under the new ownership was 1974. Initially there were some problems with changing buses at the entrance to Yosemite. This was worked out with the NPS in 1976. The trip lease arrangement was drafted by the legal department of MCA, Inc. and approved by the NPS.

Williams testified that he did call Mr. Kline after the December 1980 hearing and wrote XTU's attorney in February 1981 regarding negotiating an interline agreement. He explained that Curry's \$21 fare, which is subject to a 10% commission, was merely a starting point and that the lease charge and terms for the use of XTU's equipment, the cost of lunch, and advertising and promotional expenses were open to negotiation. He stated that Curry would be

agreeable to any reasonable negotiations, would guarantee XTU that it would base its share of the revenue for a tour only on earnings above XTU's breakeven point which is determined by the number of passengers that would generate sufficient revenue to cover all of XTU's costs for the tour, and would be willing to bind itself to arbitration of an interline agreement by a third party. Exhibit 64 is a proposed interline agreement by Curry which, among other things, provides that XTU may lease its bus with or without driver for the one-day tour and that if it operates an overnight package tour, a Curry driver shall be used. The parties did take time to consider the possibility of negotiating an interline arrangement but were unable to reach an agreement. Williams urged the Commission to require the interline at Merced as previously ordered.

Protestant Lavelle (Dolphin Tours) presented five witnesses: Kline as an adverse witness, three subpoenaed witnesses, and Noriko Abe, his wife and general manager of his company. Kline testified that he does not speak Japanese and is not familiar with Japanese culture, the tourists from Japan who have been transported by XTU have spoken English, XTU would provide an interpreter at cost for any Japanese-speaking passengers requesting one, and XTU does not want any language restrictions, including Japanese, in its proposed authority. He stated he ceased paying commissions to Lavelle for passenger referrals when Lavelle requested an increase in the amount.

The three subpoenaed witnesses called by Lavelle were Arik Shirabi, doing business as California Minibus, who holds authority to provide minibus charter service; Togonari Yanagase, a regional manager of Pacifico Creative Services, Inc. (Pacifico), and Kazuhiro Nakagawa, the president of SFB Tours. Shirabi testified that he sells tours for other companies, including Lavelle's Japanese language and XTU's tours to Yosemite and that he has provided some charter service for Lavelle. He stated that Lavelle's guides are well-trained and speak Japanese fluently, Japanese tourists like the family approach used by them, and Lavelle ran tours for as little as one, two, or

three passengers during his first year of operation and now has a six-passenger minimum for a tour. The witness testified that Lavelle and his personnel have had difficulties with other operators of Japanese language tours because his fares to Yosemite are less and that the Japanese tourist market is difficult to penetrate.

Yanagase explained that Pacifico is owned by Japan Creative Tours, a Japanese company, that wholesales tours in Japan and that it acts as receptive agent for tours sold by its parent company. He testified that in 1979 Pacifico handled approximately 15,000 Japanese tourists, most of whom were on package tours marketed by its parent company, and that due to inflation the number of tourists dropped in 1980. The witness stated that Yosemite is a popular attraction for Japanese visitors, the average stay for the Japanese visitor in the San Francisco area is four days, due to time constraints those going to Yosemite prefer a one-day trip, and the Japanese have a different culture and require special handling. He asserted that Pacifico has referred English-speaking Japanese to XTU for its Yosemite tour and that the market for optional tours for Japanese tourists is available to local certificated sightseeing companies.

Nakagawa testified that SFB Tours holds a passenger stage certificate authorizing sightseeing service narrated in the Japanese language only, including a one-day tour to Yosemite, and it leases its equipment from Golden West Express which holds Class A charter authority and is owned by him. He stated he has had six years experience in the Japanese tourist business, Japanese tourists are different from other tourists and expect more personal services, most speak Japanese only, and tour guides handling Japanese tours require considerable experience and training. The witness asserted that 95% of the Japanese travelers are on package tours, local subsidiary companies of tour wholesalers in Japan handle optional tours here and engage charter bus companies to provide the transportation for these tours, by so doing they feel they do not need a passenger stage certificate for such tours sold on a per capita basis, for this reason it is almost impossible for a certificate sightseeing operator to obtain any of this business, and

the remaining balance of the Japanese tourist market is insignificant and not sufficient to sustain a Japanese language sightseeing service.

Lavelle's wife, Abe, stated that she is from Japan and has been in the United States for seven years. Much of her testimony was similar to that presented by the three subpoenaed witnesses. Additionally, she testified that Japanese tour operators advertise optional one-day Yosemite tours in their brochures. She asserted that if one of these operators cancels a Yosemite tour because of insufficient patronage, it does not refer its clients to Lavelle because his fares are \$15 to \$20 less, and it does not want them to know because it would reflect unfavorably on the tour operator. According to the witness, illegal operators have severely hurt Lavelle financially, and he has had substantial losses the last two years. She stated that Lavelle referred English-speaking Japanese to XTU until June 1980 when the Commission directed it to cease operating beyond the scope of its operating authority, Lavelle now leases one minibus and will obtain another shortly, and Lavelle has not filed an application with the Commission requesting removal of the Japanese language narration only restriction in his sightseeing certificate. The witness asserted that it would be unfair to grant XTU's applications without a restriction prohibiting Japanese language tours for the reasons that Lavelle has invested substantial time and money in pioneering Japanese-narrated tours, another Japanese language tour operator would dilute Lavelle's business which he cannot afford, and without this restriction, Lavelle would be placed at a competitive disadvantage since he is limited to Japanese language only and XTU could subsidize its Japanese tours with revenue from tours in other languages.

Mrs. Kline was recalled as a rebuttal witness for XTU. She testified that with the approach of the tourist season, XTU has been receiving many inquiries about Yosemite service. In this regard she stated that between February 16 and March 4, 103 telephone inquiries were received, including some long distance and four from foreign countries, and that during this period, mail inquiries from travel agents and several letters requesting tours with checks enclosed have

also been received. She testified that in her opinion an interline agreement with Curry was not possible.

In their respective briefs, XTU urged that the two applications be granted with no language restrictions; Curry argued that the two applications should be denied and that, at the very least, the Commission should direct XTU to cease and desist operating beyond the scope of its present authority and to enter an interline agreement with Curry if Yosemite service is to be provided; and Lavelle requested that both applications be denied and that the Commission in no event grant any authority to XTU without a restriction prohibiting tours narrated in the Japanese language.

#### Discussion

The major issue for our consideration in this proceeding is the fitness of XTU, and the secondary issue is whether public convenience and necessity require any of the service proposed by applicant. Our determination of the fitness issue will weigh heavily on our conclusion regarding the disposition of each of the three consolidated matters. A negative finding on this issue would render the secondary issue moot.

The evidence regarding XTU's fitness has been adequately summarized above and will not again be set forth in detail in our discussion. XTU has never been authorized to provide same day sightseeing service on its own directly from San Francisco to Yosemite and return. The certificate granted to it by D.90352 in mid-1979 authorized it to operate the San Francisco - Merced leg of a Yosemite one-day sightseeing service with van equipment in conjunction with Curry which holds the necessary certificated authority for the Merced - Yosemite leg of the tour. The decision provided that XTU would operate to the Merced terminal of Curry. Other than the removal of restrictions on equipment size, this authority has never been enlarged. Nonetheless, from the very first Yosemite sightseeing tour operated by XTU in June 1979 until it voluntarily suspended its Yosemite service in December 1980 pending the outcome of this proceeding, it continually operated same day per capita sightseeing tours on its own from San Francisco to

Yosemite and return. At no time did it interline this service with Curry at Merced. This action by itself certainly makes the fitness of XTU suspect.

XTU argued that the concurrence it has had with Curry since June 15, 1979 and statements purportedly made to the Klines at the outset of the service by Curry personnel to come on down to the Arch Rock entrance to Yosemite and execute the Curry trip lease agreement for the in-park transportation bestowed on it a continual right to operate per capita service over the Merced - Yosemite operating right of Curry. It is the position of Curry that XTU has never had such right and that it knowingly and willfully operated beyond the scope of its operating authority in providing the service. This is the main basis for Curry's complaint and protest to the applications.

For the establishment of a through service over the separate operating rights of two certificated carriers, a concurrence and an interline agreement are both necessary. As is generally understood, a concurrence is the authorization for the publication of a joint-through rate from a point on the line of one carrier to a point on the line of another carrier. It and the publication of the joint-through rate do not by themselves authorize the physical transportation by one carrier over the line of another carrier as contended by XTU. Highway Transport Company (1925) 26 CRC 942, cited by XTU as supporting its position, is not in point. The issue involved in that case was whether the publication of a joint rate by one company over two operating rights joined at a common point, both of which are held by it, would serve to enlarge the certificate of that company, and the conclusion was that it would. Here we have operating rights of two separate companies.

As is also generally understood, an interline agreement establishes the procedures and responsibilities for actually accomplishing the physical transportation. Among other things, it sets forth the division of the rate or other method for settling charges between the carriers, whether the equipment and drivers of one or both companies

are to be used, any interchange points, and any other factors considered to be significant, such as insurance limits, advertising, and the like. As admitted by the Klines, XTU never executed an interline agreement with Curry other than the trip lease agreement on each tour it operated for the transportation within Yosemite. It is obvious that the in-park trip lease agreement could in no way be considered a substitute for an interline agreement for the San Francisco - Yosemite transportation and further comment on this is not necessary. A review of the concurrence signed by Branscum of XTU discloses that it was concerned only with the tariff publication of the joint-through rate and in no way could be considered to be an interline agreement also (Exhibit 2).

Even assuming there was an oral agreement for the interline when the initial transportation commenced and that it was valid as asserted by the Klines, XTU was subsequently informed by the Curry letter of November 14, 1979 signed by Williams and other correspondence of the necessity of negotiating a written interline agreement. This correspondence certainly evidenced the understanding of Curry that there was no oral agreement, and if there had been one, it was canceled. It was also placed on notice by D.91927 and 92272 in June and September of 1980 that it should enter good faith negotiations with Curry to work out such an agreement. These decisions also placed it on notice that it should not provide service beyond the scope of its operating authority. XTU continued its through-Yosemite sightseeing service after the two decisions.

In answer to above, the Klines both testified that at all times they believed that there was no illegality in the operation of the through-sightseeing tours by XTU. They further testified that this belief was based on the oral authority by Curry personnel at the commencement of the service together with the concurrence and the rate XTU had published. Both stated that this continued to be their belief after the correspondence from Williams and the issuance of the two Commission decisions concerning an agreement. As to the requirement in the two decisions regarding good faith negotiations with Curry to execute an agreement, it is their testimony that

they and XTU's attorney had attempted in good faith to do so but Curry had refused to give them information requested in various letters regarding its liability insurance limits, current lease rates, willingness to participate in promotional and advertising expenses, and other information as a basis for further negotiations.

On the fitness issue, Curry also raised questions regarding XTU's use of bus equipment before it had authority to do so, advertising, Hearst Castle service, and financial condition. With respect to the equipment question, XTU did use various-size buses before it had authority to do so. However, there were mitigating reasons for this including fuel shortages and conservation, and by D.92272 we removed all vehicle-size restrictions from its certificate.

D.91927 did instruct XTU that if van equipment were to be used for any of the tours, to state in its advertising that vans might be substituted for a bus. All of its advertising refers to buses only and it has used vans for some of the tours. We will accept the explanations by the Klines that a substantial number of brochures had been printed prior to this directive and were being used up, the advertising was placed prior to the directive, and that it did inform a prospective tour-taker prior to the tour if a van were to be used. It is expected that in the future it will comply with this directive when new brochures are printed and new advertising is placed.

XTU has only provided 3 tours to Hearst Castle. Its authority provides for daily service and also provides that it has the option to cancel a tour if there are less than 12 reservations. It did not have 12 passengers on any of the three tours it did run. It has not as yet promoted this tour to any extent, and until it does, it is unlikely it will have 12 people requesting service to Hearst Castle on the same day. The Klines testified that they will actively promote and operate this service as soon as the tourist season begins together with the service sought, if granted.

The Klines did admit that XTU had lost money on the start-up of the Yosemite service as they had expected. They asserted, however, that this service was at or approaching a breakeven point in latter 1980. They testified that with the new authority, if granted, they anticipate XTU will make money on the tour. According to XTU financial data of record, it does have the necessary financial resources to provide the proposed service.

The determination of fitness is a question of fact. It is a subjective consideration. Generally, it is based on the past record of an applicant. If it has knowingly engaged in illegal operations and is requesting authority to legitimize such operations, this will weigh heavily on a determination of its fitness. Here, XTU has operated over the line of Curry with no real authority to do so. It had a concurrence for the publication of a rate for the service. This was not enough without some sort of agreement between the parties for the actual operation of the tour. There may have been some sort of oral understanding initially. Even if this were so, subsequent correspondence and Commission decisions placed it on notice that a formal interline agreement was necessary.

On the other hand, other than Japanese tours by Lavelle and SFB Tours, no other bus company was providing one-day round-trip sightseeing service from San Francisco to Yosemite. XTU transported approximately 5,000 passengers on the tour. No passenger complaints were voiced at the hearing. Curry could have canceled its concurrence at any time and terminated the matter. XTU did make some attempt to negotiate in good faith with Curry. XTU did on the first day of hearing suspend its Yosemite service pending the outcome of this proceeding. The Klines testified that it was their honest belief that XTU had the right from Curry to operate between Merced and Yosemite. We will give XTU the benefit of the doubt and accept the explanation by the Klines regarding their belief. We will, therefore, based on this interpretation of the Kline's intent, conclude that there is sufficient mitigation regarding XTU's past actions, and that they, in and of themselves, do not constitute XTU to be an unfit party.

Having determined favorably on the fitness issue, we come next to the issue of whether public convenience and necessity require the service proposed in the two applications. Our answer is in the affirmative. XTU has in the year and a half it operated the one-day tour transported approximately 5,000 people. This certainly shows that there is a public interest in its tour to Yosemite. No other certificated carrier provides a Yosemite sightseeing tour from the San Mateo County points sought to be served. While CPCT and Curry are to provide a joint one-day tour from San Francisco, this tour is from the Jack Tar hotel and does not include hotel pickup and return as would XTU's service. The Amtrak-Curry San Francisco - Yosemite tour starts and terminates at the Transbay Terminal.

No other certificated carrier provides Yosemite sightseeing service from the 3 named Alameda County points XTU seeks to serve. The Amtrak-Curry service is from the Oakland Terminal.

The one- and two-night service proposed by XTU is in response to requests it has received. Its purpose is to accommodate tourists who wish to spend more than several hours at Yosemite. It is not its intent to provide a package one- or two-night tour that would include lodging, meals, and other attractions. XTU will notify parties requesting the one- or two-night service of the necessity of having reservations. All overnight tours operated by CPCT are package tours including lodging and other items and attractions. The protestants were not concerned about the one- and two-night aspects of the applications.

As we have stated in recent decisions, sightseeing service is a luxury service, recreationally oriented, and less entitled to the strict territorial protection from competition and competitive factors accorded the conventional point-to-point public transportation. Competition in the certificated passenger bus sightseeing industry is in the public interest in that it will lead to the development of the territories served and will promote good service and hold down fares. (See In re Mexicursions, Inc., D.90155 dated April 10, 1979 in A.57763.)

Most of the supporting witnesses called by XTU were in businesses related to the tourist industry. According to the evidence they presented, there are many foreign and domestic visitors to the San Francisco Bay Area who would use the per capita Yosemite sight-seeing service proposed by XTU in the two applications. Several pointed out that the one-day service would be particularly attractive to visitors who have a limited amount of time in the area. We are of the opinion that it has been sufficiently established that there is a public need for the proposed service.

Based on the same reasoning stated above, we are not persuaded by Lavelle's request that the complaint be granted and the applications be denied. We likewise do not concur with his request that a restriction prohibiting Japanese language narrated tours be inserted in any operating authority that might be granted. We recognize that Lavelle's one-day Yosemite sightseeing authority is limited to Japanese language tours only. However, XTU has never operated such a tour, and although Mr. Kline stated he might consider such tours, XTU does not appear to be concerned about this market. In any event, as stated above, sightseeing service is less entitled to strict territorial protection from competition and other competitive factors than other particular utilities. The limited competition that might occur here is speculative.

XTU is placed on notice that any operations not specifically authorized by the authority it now holds and that granted will not be tolerated. It is admonished that we will take prompt action against it if such violations occur.

Each of the two applications has a provision that unless a certain number of reservations are received for a particular tour, XTU has the option of canceling the tour. The minimum number differs in each application. For uniformity we will adopt 12 as the minimum number.

The complaint will be dismissed and the two applications will be granted. Our decision in this consolidated proceeding is based on the unique facts and circumstances developed and is not to be

considered as establishing a Commission policy applicable to the sightseeing field generally.

Findings of Fact

1. XTU holds a passenger stage corporation certificate to provide same-day, round-trip service between San Francisco and the Curry facility in Merced. Its purpose in obtaining this authority was to provide sightseeing service to Yosemite in conjunction with Curry which holds certificated bus authority between Merced and Yosemite. It also holds certificated authority to provide sightseeing service between San Francisco and named San Mateo County points, on the one hand, and Hearst Castle, on the other hand, a Class A Charter-Party Carrier of Passengers Certificate, and certain interstate authority.

2. A concurrence with XTU was executed by Curry on June 15, 1979. Under this, XTU published a joint-through rate between San Francisco and Yosemite.

3. A formal interline agreement for the physical transportation between San Francisco and Yosemite was never executed by XTU and Curry.

4. From the commencement of its Yosemite sightseeing operation in latter June 1979 to its voluntary suspension of this service on December 12, 1980, XTU continually operated direct per capita sightseeing service from San Francisco to Yosemite and return. It has never interlined with Curry at Merced.

5. XTU was advised by a letter from Curry dated November 14, 1979 and subsequent correspondence that an interline agreement was necessary for the Yosemite service. It was also placed on notice by D.91927 and 92272 in June and September of 1980 that it should enter good faith negotiations with Curry to work out an interline agreement and that it should not provide service beyond the scope of its operating authority. It did make an attempt to enter good faith negotiations with Curry and continued to operate direct service to Yosemite.

6. XTU was of the opinion that the concurrence and the publication of the through rate authorized it to operate over Curry's certificate between Merced and Yosemite.

7. XTU proposes to provide same-day, overnight, and two-night sightseeing service between San Francisco and certain points in San Mateo and Alameda Counties, on the one hand, and Yosemite, on the other hand.

8. XTU is a fit person to receive additional operating authority.

9. Competition between XTU and existing certificated passenger stage corporations providing similar sightseeing services to those described in Finding 7 will be in the public interest in that it will lead to the development of the territory served by such passenger stages, will promote good service, and hold down fares.

10. XTU is ready, willing, and able to provide the sightseeing service it proposes.

11. XTU has demonstrated that public convenience and necessity require the proposed service.

12. No Japanese language restriction should be inserted in the authority XTU seeks.

13. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

14. Reserving the right to cancel a tour if there are less than 11 reservations for a particular tour is reasonable.

#### Conclusions of Law

1. XTU should be granted a certificate of public convenience and necessity to operate the proposed sightseeing service as provided in the order which follows.

2. An in lieu certificate should be issued restating applicant's present authority with the authority granted.

3. XTU should be directed to strictly observe the limits of its operating authority and should be admonished that prompt action will be taken against it if any violations occur.

4. This order should be effective on the date it is signed because the summer tourist season is commencing and public convenience and necessity require prompt commencement of the proposed service.

Only the amount paid to the State for operative rights may be used in rate fixing. The State may grant any number of rights and may cancel or modify the monopoly feature of these rights at any time.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Express Tours Unlimited (XTU), a corporation, authorizing it to operate as a passenger stage corporation, as defined in PU Code § 226, between the points and over the routes set forth in Appendix A, to transport persons and their baggage.

2. The certificate of public convenience and necessity granted in paragraph 1 shall supersede those granted by D.90352, as amended, and 92046. Those certificates are revoked on the effective date of the tariff filings required by paragraph 3.b.

3. XTU shall:

- a. File a written acceptance of this certificate within 30 days after this order is effective.
- b. Establish the authorized service and file tariffs and timetables within 120 days after this order is effective.
- c. State in its tariffs and timetables when service will start; allow at least 10 days' notice to the Commission; and make timetables and tariffs effective 10 or more days after this order is effective.
- d. Comply with General Orders Series 79, 98, 101, and 104, and the California Highway Patrol safety rules.

- e. Maintain accounting records in conformity with the Uniform System of Accounts.
- 4. XTU shall strictly observe the limits of its operating authority and is admonished that we will take prompt action in the event of any violations.
- 5. C.10925 is dismissed.

This order is effective today.

Dated JUN 2 1981, at San Francisco, California.

James E. Boyer  
President  
Richard D. Kelly  
Fernando M. ...  
Priscilla C. Grew  
Commissioners

Commissioner Priscilla C. Grew, being necessarily absent, did not participate in the disposition of this proceeding.

T/MS/FS/WPSC

Appendix A

EXPRESS TOURS UNLIMITED

Original Title Page

CERTIFICATE

OF

PUBLIC CONVENIENCE AND NECESSITY

AS A PASSENGER STAGE CORPORATION

PSC -1075

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

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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.

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Issued under authority of Decision 93173,  
dated JUN 2 1981, of the Public Utilities Commission  
of the State of California, in Applications 59689 and 59974.

T/MS/FS/WPSC

Appendix A

EXPRESS TOURS UNLIMITED  
(PSC-1075)

Original Page 1

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

This certificate supersedes all operative authority previously granted to EXPRESS TOURS UNLIMITED, or its predecessors.

EXPRESS TOURS UNLIMITED, a California corporation, by the certificate of public convenience and necessity to operate as a Passenger Stage Corporation granted by the decision noted in the margin, is authorized to transport passengers on an "on-call" basis on sightseeing tours between points in the City and County of San Francisco, and specified points in San Mateo and Alameda Counties, on the one hand, and Yosemite National Park, on the other hand, and between the City and County of San Francisco and specified points in the County of San Mateo, on the one hand, and Hearst San Simeon State Historical Monument, on the other hand, over and along the routes described, subject, however, to the authority of this Commission to change or modify these routes at any time and subject to the following provisions:

Issued by California Public Utilities Commission.

Decision 93173, in Applications 59689 and 59974.

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

- (a) The term "on-call" as used refers to service which is authorized to be rendered dependent on the demands of passengers. The tariffs and timetables shall show the conditions under which each authorized on-call service will be rendered.
- (b) All sightseeing service authorized shall be limited to the transportation of round-trip passengers only.
- (c) Scheduled daily service shall be provided, including weekdays, weekends, and holidays.
- (d) Carrier shall not transport any baggage, except hand-carried items of the passengers.
- (e) Service authorized on Tour 1 shall be limited to the transportation of single-day round-trip passengers only.
- (f) Service authorized on Tour 2 shall be for the transportation of overnight round-trip passengers only.
- (g) Service authorized on Tours 3, 4, and 5 shall be for the transportation of round-trip passengers, with the return trip not later than the second day following the inbound trip. Carrier will provide guaranteed return trip for passengers who elect to stay in the park for one or two nights.

Issued by California Public Utilities Commission.

Decision 93173, in Applications 59689 and 59974.

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

- (h) Carrier reserves the right not to operate a tour in the event that there are less than 11 reservations by 5:00 P.M. on the day preceding that tour. However, when carrier receives an advance reservation request from a passenger, carrier must either immediately accept the reservation on a guaranteed and unconditional basis, or inform the passenger that the tour is subject to cancellation because of the required reservation limit, and arrange to inform the passenger as soon as possible when it is determined that the tour will or will not operate on a given day.
- (i) Pickup and Delivery Points:
1. Within the City and County of San Francisco - at or near the passengers' hotels or motels.
  2. Within San Mateo County - the following points only:
    - a. The Hyatt Hotel on Old Bayshore Highway in Burlingame.
    - b. The Hilton Hotel adjacent to the San Francisco International Airport.
    - c. The Grosvenor Hotel on South Airport Boulevard in South San Francisco.

Issued by California Public Utilities Commission.

Decision 93173, in Applications 59689 and 59974.

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

3. Within Alameda County - the following points only:
  - a. The Holiday Inn on Powell Street in Emeryville.
  - b. The corner of Lakeshore Boulevard and MacArthur Boulevard in Oakland.
  - c. The Edgewater Hotel on Hegenberger Road in Oakland.

SECTION II. TOUR DESCRIPTIONS.

Tour 1 - Hearst Castle in a Day

From San Francisco along U.S. Highway 101 to its intersection in South San Francisco with South Airport Boulevard, then along South Airport Boulevard and Old Bayshore Highway, re-entering U.S. Highway 101 at the intersection of Old Bayshore Highway, Broadway and U.S. Highway 101 in Burlingame, and then along U.S. Highway 101, leaving U.S. Highway 101 in Paso Robles, and then along California Highway 46 to Cambria, and then along California Highway 1 to the entry of the Hearst San Simeon State Historical Monument, and return over the same route.

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Decision 93173, in Applications 59689 and 59974.

## SECTION II. TOUR DESCRIPTIONS. (Continued)

Tour 2 - Hearst Castle Overnight

From San Francisco along U.S. Highway 101 to its intersection in South San Francisco with South Airport Boulevard, then along South Airport Boulevard and Old Bayshore Highway, re-entering U.S. Highway 101 at the intersection of Old Bayshore Highway, Broadway and U.S. Highway 101 in Burlingame, along U.S. Highway 101 to its intersection with California Highway 85 in Mountain View, along California Highway 85 to its intersection with Interstate Highway 280, along Interstate Highway 280 to its intersection with California Highway 17 in San Jose, then along California Highway 17 to Santa Cruz, then along California Highway 1 to the entry of the Hearst San Simeon State Historical Monument with an overnight stay in Cambria, San Simeon, Morro Bay, or San Luis Obispo, and with a return movement over California Highway 41 or 46 to U.S. Highway 101, and a return to origin over U.S. Highway 101 or Interstate Highway 280.

This tour will include an off-route stop for a wine-tasting visit in either the Saratoga, Santa Cruz, or Monterey area, and will also include a lunch stop along Cannery Row in Monterey prior to arrival in the Hearst Castle area. Carrier will not provide service on the "17-Mile Drive" in the Monterey Area.

Tour 3 - San Francisco to Yosemite

From San Francisco pickup points along Interstate Highway 80 (the San Francisco-Oakland Bay Bridge) to its intersection with California Highway 17, then along California Highway 17, Interstate Highway 580, California Highway 132, California Highway 99, California Highway 140 to Yosemite National Park, with return on the same route.

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Decision 93173, in Applications 59689 and 59974.

SECTION II. TOUR DESCRIPTIONS. (Continued)

Tour 3 - San Francisco to Yosemite (Continued)

Alternate Route - From San Francisco pickup points, along Interstate Highway 80 (San Francisco-Oakland Bay Bridge) to its intersection with Highway 17, then to the designated pickup points in Alameda County, then along California Highway 17, Interstate Highway 580, California Highways 132, 99, and 140 to Yosemite National Park, with return on the same route.

Tour 4 - San Mateo County to Yosemite

From designated pickup points in San Mateo County to San Francisco, then along Interstate Highway 80 (San Francisco-Oakland Bay Bridge) to its intersection with California Highway 17; then along California Highway 17, Interstate Highway 580, California Highway 132, California Highway 99, California Highway 140 to Yosemite National Park, with return on the same route.

Alternate Route 1 - From the designated pickup points in San Mateo County to San Francisco, then along Interstate Highway 80 (San Francisco-Oakland Bay Bridge) to its intersection with California Highway 17, then along California Highway 17 to the designated pickup points on Tour 5 (Alameda County to Yosemite National Park), then along California Highway 17, Interstate Highway 580, California Highway 132, California Highway 99, California Highway 140 to Yosemite National park, with return on the same route.

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Decision 93173, in Applications 59689 and 59974.

SECTION II. TOUR DESCRIPTIONS. (Continued)

Tour 4 - San Mateo County to Yosemite (Continued)

Alternative Route 2 - From the designated pickup points in San Mateo County over California Highways 101, 92, 17, and 238 to its intersection with Interstate Highway 580 near Castro Valley, then along Interstate Highway 580 to California Highways 132, 99, and 140 to Yosemite National Park, with return on the same route.

Tour 5 - Alameda County to Yosemite

From the designated pickup points in Alameda County along Highway 17 to Interstate Highway 580 to California Highways 132, 99, and 140 to Yosemite National Park, with return on the same route.

(END OF APPENDIX A)

Issued by California Public Utilities Commission.

Decision 93173, in Applications 59689 and 59974.