

ORIGINAL

Decision 93274 JUL 7 1981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application)
of Odyssey Charter, Inc., doing)
business as American West Charter)
Bus Lines, for a Class "B")
Certificate to operate as a)
Charter-Party Carrier of)
Passengers, Thousand Oaks.)
(File GO 98-A.))

Application 59882
(Filed August 15, 1980)

David P. Bergland, Attorney at Law, for
Odyssey Charter, Inc., applicant.
R. D. Rierson, Attorney at Law (Illinois).
for Greyhound Lines, Inc., and James C. Dycus,
for himself and others, protestants.

O P I N I O N

Odyssey Charter, Inc. (applicant), doing business as American West Charter Bus Lines, seeks a certificate of public convenience and necessity to operate as a Class B charter-party carrier of passengers. Applicant proposes to provide service within a 40-mile radius from its terminal in Thousand Oaks.

Greyhound Lines, Inc. (Greyhound) protested the application, but offered to withdraw its protest if applicant would reduce its proposed origin territory to 15 miles. Applicant has not modified its request. A duly noticed public hearing was held March 18, 1981 at Los Angeles before Administrative Law Judge John S. Lemke. The matter was submitted upon receipt of late-filed Exhibit 14, which was received April 8, 1981.

Summary of Evidence

A. Applicant

Lawrence Gates, sole shareholder in applicant, testified essentially as follows:

1. Applicant is a family business consisting of Gates, his wife, and children.
2. In 1973, applicant obtained a Class A certificate to operate as a charter-party carrier of passengers. That permit was sold in 1977. Since 1977 applicant has worked with other carriers and on its own as a charter-party carrier within the area sought to be served by this application.
3. In 1979 applicant attempted to purchase another Class A charter-party carrier certificate. That effort was frustrated through certain legal complications.
4. Applicant does not presently hold any operating authority issued by this Commission.
5. Applicant performs charter tours for senior citizen groups, the Boy Scouts, churches, youth groups, lodges, employee associations, and ski clubs.
6. Applicant operates six buses equipped with citizens band radios, and employs six drivers and a full-time mechanic.
7. Over 90 percent of applicant's business is in the San Fernando Valley and nearby areas.
8. While more than 90 percent of applicant's charters originate within 30 miles of its terminal, charter services performed on referrals from other carriers do occasionally originate at points in Los Angeles in excess of 30 miles from Thousand Oaks.

9. Applicant has frequently provided charter bus service on referral from other charter-party carriers within the proposed origin territory.
10. Applicant currently assesses customers for its charter services on the following bases:

39-passenger bus
\$1.60 per mile, or \$160 for the first five hours plus \$25 for each additional hour, whichever produces the higher charge.

47-passenger bus
\$1.90 per mile, or \$230 for the first five hours plus \$34 for each additional hour, whichever produces the higher charge.

On charters for senior citizens groups performed on week days, applicant grants a 10 percent discount.

11. Applicant currently carries bodily injury and property damage insurance coverage well in excess of the amounts required for charter-party carriers as specified in the Commission's General Order 115-B.

On cross-examination by the attorney for protestant Greyhound, Gates testified that applicant had tried to purchase a charter-party carrier certificate from Butterfield Stage Lines a year and a half ago. Applicant made a good faith deposit, thinking it had purchased a Class A certificate. It found out later that this certificate had become entangled in a legal proceeding and decided to file this application for a Class B certificate. Gates expressed his belief that when applicant was working on referral from other bus companies, it was operating under their certificates.

Gates testified that he knows the roads in California extremely well. He has toured these roads extensively and uses this knowledge in planning trips for various groups.

Applicant also offered evidence through the testimony of Clarissa Timmsen as spokeswoman for a large group from the Presbyterian church in Van Nuys who attended the hearing. Timmsen was trip organizer for the American Association of Retired Persons, Chapter 882 in Van Nuys, from 1975 to 1979. She worked closely with Gates during this period contracting for at least one trip per month. She stated

that Gates was very considerate of the older people using applicant's service. She testified that other bus companies had to have reservations paid for well in advance of what applicant requires. She further testified that most other bus companies would simply provide a driver who would take her group where they wished to go, leave them on their own, and then pick them up when it was time to go home. Applicant's trips, on the other hand, she found unique in that it would make rest stops along the way for the convenience of passengers and would build an entire day's trip around a charter trip to the Date Festival, for example.

A statement in the application showing applicant's financial condition as of June 30, 1980 indicates total assets of \$625,000 and total liabilities of \$260,000. The attorney for Greyhound developed through cross-examination of Gates that, within the total assets figure, \$350,000 represents the cost of Gates' personal home and real property.

A statement included in the application shows approximate annual operating revenues of \$500,000 and operating expenses of \$470,000. This statement also shows that applicant transported 30,000 passengers 400,000 bus miles during the 12-month period preceding the filing of the application.

Late-filed Exhibit 14 relates to operations conducted by applicant during December 1980. It consists of two sections. The first section is a record of 39 trips performed by applicant in its regular operations, other than airport work. Eleven of these trips were to destinations outside of California. In several instances the trip record does not indicate the precise point of origin or destination.

This section shows charter pickups at points in a territory ranging from Ventura, approximately 25 miles to the northwest of Thousand Oaks, to Anaheim, well over 40 miles to the southeast. Several pickups were made in Inglewood (approximately 30 miles), Van Nuys (approximately 25 miles), and Burbank (approximately 30 miles). Some of these trips were made on referral from other bus companies.

The second section of late-filed Exhibit 14 is comprised of 12 invoices covering 40 "fog trips" performed by applicant on referral from a Class A charter-party carrier. Fog trips involve transportation performed when an airport is temporarily unable to accept flights due to poor visibility. These trips originated in many instances at Ontario International Airport, a point well in excess of 40 miles from Thousand Oaks.

B. Protestants

After introducing copies of recent correspondence with applicant, (Exhibits 1-3) Greyhound presented its case in opposition primarily through District Manager Robert O. Burlingame. In support of his testimony Burlingame introduced 10 exhibits. These exhibits contain the following information:

1. Exhibit 4 is a map of the area sought to be served by applicant.
2. Exhibit 5 is a copy of the Class A charter-party certificate issued to Greyhound February 27, 1981.
3. Exhibit 6 demonstrates that Greyhound operates 1,782 intercity buses within California.
4. Exhibit 7 shows that there are 29 Greyhound sales outlets located within applicant's proposed origin area. One of these is in Thousand Oaks.
5. Exhibit 8 illustrates Greyhound's WATS lines which enable commission agents to telephone Greyhound at no cost in order to confirm charter rates and equipment.
6. Exhibit 9 is a copy of Greyhound's authority to operate as a passenger stage corporation in southern California.
7. Exhibit 10 is a brochure entitled "Group Travel by Greyhound."
8. Exhibit 11 is a Greyhound timetable showing scheduled services through the area proposed to be served by applicant.

9. Exhibit 12 is a listing of 32 charter trips performed by Greyhound during December 1980, originating within the pickup area sought to be served by applicant. Greyhound received \$20,883 in revenue from these 32 trips.
10. Exhibit 13 is a copy of the "Bus Lines" listings from the Thousand Oaks area telephone directory, showing the names of 10 bus lines, including Greyhound and applicant.

Burlingame testified that Greyhound does not operate at a profit over any of the scheduled routes which pass through applicant's proposed origin area. He stated that the revenue received from Greyhound's charter activity offsets some of the deficit operations in its scheduled service. He also testified that the Greyhound office in Thousand Oaks has received only six inquiries since January 1981 concerning charter operations.

Protestant James C. Dycus stated that he is merely protesting Greyhound's opposition, and not the granting of the application.

Discussion

Public Utilities (PU) Code Section 5375.1 provides that the Commission "shall not grant a certificate to such an applicant unless it can be shown that the existing charter-party carrier of passengers serving the territory is not providing services which are satisfactory to the commission and adequate for the public." The evidence presented demonstrates that applicant has frequently performed charter services on its own initiative as well as on referral from other charter-party carriers who operate within the proposed origin territory. Clearly had these referral carriers been able to perform the service with their own equipment, rather than engage applicant, they would have done so. The fact of applicant's

having actually operated a charter service in the area for a period of about four years, argues convincingly for a finding that the other carriers currently serving the Thousand Oaks area are not able at all times to adequately serve the public. The further fact that only one of the nine competing carriers who advertise in the Thousand Oaks telephone directory has protested this application, suggests a need for additional charter bus service in the area.

The record establishes that applicant has provided extensive charter bus service over a period of several years. Exhibit 14 is a record of 68 intrastate charters transported during December 1980. The application shows that 30,000 passengers were transported during the preceding year, generating one-half million dollars in operating revenue. There is an apparent public need for applicant's service.

PU Code Section 5374 requires that an applicant establish reasonable fitness and financial responsibility before an annual certificate may be issued. In favor of a finding of fitness is the testimony of Timmsen concerning the special consideration expressed by applicant in the service it provides for senior citizens. Also urging such a finding is the fact, confirmed by the Passenger Operations Branch of our Transportation Division, that applicant carries insurance coverage considerably in excess of Commission-established limits set forth in General Order 115-B. After weighing the essential elements surrounding this request, we find that applicant is reasonably fit to conduct certificated charter-party carrier service.

Applicant, while not amending its original request to serve a 40-mile origin territory, admitted through the testimony of Gates that over 90 percent of the charters it initiates originate within a 30-mile area. Most of the charter trips which it performs from points more than 30 miles from Thousand Oaks are done on referral from other carriers. We will grant a Class B certificate to applicant on the basis of the foregoing evidence. PU Code Section 5375 provides that we may issue a certificate for the partial exercise of the authority sought. It also allows us to attach to a certificate such terms and conditions as the public interest requires.

The evidence presented by applicant discloses that it has been performing charter operations without any authority from this Commission, in violation of PU Code Section 5371. While punitive action will not be taken at this time, applicant is placed on notice that any future unlawful operations will not be tolerated. Any such operations will be severely dealt with. Applicant should exercise particular care to ensure that it does not exceed the scope of authority granted, whether on charters it initiates or those performed on referral from other carriers.

Findings of Fact

1. Applicant requests a certificate of public convenience and necessity to operate as a Class B charter-party carrier of passengers from all points within 40 miles from its terminal located at 2326 Stafford Road in Thousand Oaks.

2. Applicant held a Class A charter-party certificate during a period from 1973 to 1977. In 1977 applicant sold its certificate and has since held no authority from this Commission to operate a bus service of any type.

3. PU Code Section 5375.1 provides that the Commission shall not grant a charter-party carrier certificate unless it can be shown that the existing carrier(s) serving the territory is not providing services satisfactory to the Commission and adequate for the public.

4. Existing carriers serving the territory sought to be served by applicant have frequently referred charter trips to applicant when they were too busy themselves to perform such transportation.

5. More than 90 percent of the charter trips performed by applicant originate within 30 miles from its terminal in Thousand Oaks. Trips performed on referral from other carriers frequently originate at points located more than 30 miles from Thousand Oaks.

6. Applicant operates six buses ranging in size from 39-passenger to 47-passenger capacity.

7. Applicant carries bodily injury and property damage insurance coverage in excess of the limits required for charter-party carriers as specified in the Commission's General Order 115-B.

8. Applicant transported approximately 30,000 passengers about 400,000 miles during the 12-month period preceding the filing of its application. This activity generated about \$500,000 in operating revenue.

9. Only one competing carrier serving applicant's proposed origin territory protested the application.

10. The charter carriers presently serving the territory have not provided adequate service for the public, and, therefore, their service is not satisfactory to the Commission.

11. PU Code Section 5375 provides that the Commission may issue a certificate for the partial exercise of the authority sought and may attach such terms and conditions as the public interest requires.

12. Applicant has the necessary experience, ability, fitness, and financial responsibility to conduct the charter-party carrier service set forth in the ensuing order.

13. The restrictions set forth in the ensuing order are reasonably necessary to protect the existing charter-party carriers serving the Thousand Oaks area and will confine the certificated authority issued to applicant to the limits of public convenience and necessity established in this record.

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

Conclusions of Law

1. Public convenience and necessity have been demonstrated and a certificate should be granted.

2. The following order should be effective today since there is a demonstrated public need for applicant's proposed service.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity, to be renewed each year, is granted to applicant Odyssey Charter, Inc., authorizing it to operate as a Class B charter-party carrier of passengers, as defined in PU Code Section 5383, from a service area with a radius of 30 air miles from applicant's home terminal at 2326 Stafford Road, in Thousand Oaks, California. Applicant is further authorized to operate as a Class B charter-party carrier of passengers from a service area with a radius of 40 air miles from its home terminal in connection with transportation performed on referral from other charter-party carriers holding appropriate operating authority from this Commission.

2. When applicant files California Highway Patrol clearances and evidence of liability protection in compliance with General Order Series 115, the Passenger Operations Branch will issue the annual renewable certificate on Form PE-695 as authorized by Resolution PE-303, adopted July 29, 1975.

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3. In providing service under the certificate, applicant shall comply with General Orders Series 98 and 115, and the California Highway Patrol safety rules.

This order is effective today.

Dated JUL 7 1981, at San Francisco, California.

John E. Bryan
President

Richard D. Gravello
Richard D. Gravello
Commissioners

Prerulla C. Hren
Commissioners

Commissioner Richard D. Gravello, being necessarily absent, did not participate in the disposition of this proceeding.