

ORIGINAL

Decision 93499 SEP 1 1981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of Variety Tours to operate as a)
Class "B" Charter-Party Carrier)
of Passengers, Los Angeles)

Application 60187
(Filed January 15, 1981)

In the Matter of the Application)
of James D. McCarnes, doing)
business as Charter Bus Service,)
for a certificate to operate as a)
Class "B" Charter-Party Carrier)
of Passengers, Los Angeles.)

Application 60188
(Filed January 15, 1981)

Al David, for Variety Tours, Inc., applicant in A.60187.
James D. McCarnes, for himself, applicant in A.60188.
R. D. Rierson, Attorney at Law (Illinois), for Greyhound
Lines, Inc., protestant.

O P I N I O N

Variety Tours, Inc. (Variety) filed its application for a Class B certificate as a charter-party carrier on January 15, 1981. The McCarnes application was filed by J. D. McCarnes on behalf of himself and his brother, Westley D. McCarnes, as partners, on the same date. Both applicants seek to render service within 40 air miles of home terminals in Los Angeles.

Greyhound Lines, Inc. (Greyhound) protested both applications. The protests noted that Greyhound is authorized to perform regular route operations throughout California as a passenger

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stage corporation, and also holds a Class A charter certificate. It alleged that it maintains substantial numbers of buses and drivers in Los Angeles and other points, more than sufficient to meet all needs for both classes of service.

Greyhound argued that it relies heavily on charter revenues to support costs which otherwise would be borne solely by its scheduled service. It further contended that a substantial portion of its total intrastate charter revenue is generated within the Los Angeles area. Greyhound alleged that the territory is already adequately served by existing charter carriers, itself included, and that consequently the Commission, acting in accordance with Public Utilities (PU) Code Section 5375.1, must deny both applications.

Hearing was held on April 13, 1981, in Los Angeles before Administrative Law Judge (ALJ) Gilman.^{1/} The president of Variety Tours and both of the partners in the McCarnes venture testified in support of the applications. A district manager testified on behalf of Greyhound. After taking evidence and receiving oral argument, the ALJ submitted the matter to the Commission on April 23, 1981.

^{1/} The hearing was held on a joint record with Application (A.) 60186, App. of Constantine. Since applicant Constantine was able to reach a settlement with Greyhound, that application was severed for separate decision.

Testimony

According to Variety's owner and president, he is an experienced driver who purchased his first vehicle from Greyhound in 1978. Since then he has acquired four more units, one of which is now on a long-term lease to another individual. The corporation currently obtains all of its revenues by making short-term leases to numerous freelance drivers who promote and operate charter tours, primarily in the inner-city community. His vehicles are maintained by freelance mechanics.

He presented a statement of his own financial condition and indicated that he makes all of his payments to Greyhound without fail. If authority is granted, he plans to concentrate on local charters. He would no longer rely on freelance drivers, but would instead hire several drivers on a parttime basis.

J. D. McCarnes testified that he is in partnership with his brother. Each of them owns one over-the-road bus. There is a \$5,000 balance owing on his vehicle; his brother's is owned outright. He is an experienced bus driver, presently employed by the Southern California Rapid Transit District. His brother is employed as a supervisor for the District. Currently both buses are operated in the same manner as Variety's vehicles, except that J. D. McCarnes sometimes drives himself. His brother testified describing his responsibilities for the District and presented a separate financial statement, in addition to that provided by his brother.

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Greyhound's district manager testified that it has 200 buses stationed within the area. He claimed that Greyhound aggressively promotes charter business, but even so on a maximum day the charter bus requirement is for less than 20 buses. However, as a byproduct of its need to meet peak-day demands for scheduled service, Greyhound normally has up to 130 vehicles available for chartering. He contended that Greyhound's overall operations within his district, which includes Los Angeles, are at a break-even point with an operating ratio of 99.9%. According to the witness, only the routes between Los Angeles and Las Vegas and between Los Angeles and San Diego are profitable.

Discussion

We are satisfied that there is a public need for the services which both applicants propose to conduct. The Commission may accept evidence of successful but unlicensed operations to show a public need for proposed licensed service.

In this case both applicants have established successful charter bus leasing businesses. The requested change of business operations to hire drivers requires Commission approval. The present services are provided largely to the inner-city community. Applicants actively solicit the business and are patronized by local community groups, churches and small organizations. This local market has proven to be sufficient to sustain carriers targeting this segment of the city.

There could be no question on this record that Greyhound does, in fact, welcome charter business from the inner city. It claims that its merchandising techniques are designed to assure all prospective charter patrons that their business is welcome, regardless of race or socio-economic factors.

Nevertheless, we believe that if Greyhound were left without competition from carriers, such as applicants, a substantial number of potential charter trips originating in the inner city would never be performed. There is a marked contrast between merchandising, such as applicants', which relies on personal contracts and which is designed to promote trips, and Greyhound's, which relies on impersonal media and apparently does little to stimulate additional charter traffic.

Considering all of the evidence presented, we have determined that Greyhound's practices in this area are not capable of evoking and satisfying all of the potential demand for charter service which exists in the inner city community. We will, therefore, find that its services are not satisfactory to the Commission.

Applicants should be authorized to reorganize their operations as requested. As licensed charter-party carriers, they

all be directed to comply with our insurance regulations and other requirements.

Findings of Fact

1. There is a substantial public need for the services as charter-party carriers of both applicants, sufficient to support operations by at least six additional vehicles.

2. Applicants have the ability, experience, equipment, and financial resources to perform the proposed service.

3. Public convenience and necessity require the service proposed by applicants.

4. Greyhound does not satisfy all of the demand for charter service in the Los Angeles inner city community. Its services are therefore not satisfactory to the Commission.

5. Applicants should be authorized to pick up passengers within a radius of 40 air miles from their home terminals.

6. Greyhound serves the sought territory but is not providing adequate service to that portion of the public which has been served by applicants.

7. Two additional certificates are not more than public convenience and necessity require. No restrictions on applicants certificates are reasonably necessary to protect Greyhound.

8. It can be seen with certainty that the proposed operation will have no significant effect on the environment.

Conclusion of Law

Public convenience and necessity have been demonstrated and certificates should be granted to applicants.

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 Variety Tours, Inc. authorizing it to operate as a Class B charter-party carrier of passengers, as defined in Public Utilities (PU) Code Section 5383 from a service area with a radius of 40 air miles from applicant's home terminal at 3840 Crenshaw Boulevard, Los Angeles, California.

2. A certificate of public convenience and necessity to be renewed each year is granted to applicants James Daniel and Westley Donald McCarnes authorizing them to operate in partnership as a Class B charter-party carrier of passengers, as defined in PU Code Section 5383 from a service area with a radius of 40 air miles from their home terminal at 4714 Crenshaw Boulevard, Los Angeles, California.

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

4. In providing service under their certificates, each applicant shall comply with General Order Series 98 and 115 in the California Highway Patrol Safety Rules.

This order becomes effective immediately.

Dated SEP 1 1981, at San Francisco, California.

John E. Bryson
President
Richard D. Hoyle
Lawrence W. Smith
Robert Calvo
Frederic C. Green
Commissioners