

Decision 93650 OCT 20 1981

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application )  
of Whippet Charter Service, Inc., )  
a Passenger Stage Corporation, )  
for Authority to operate a Bus )  
home-to-work Service between )  
points in Livermore and the )  
United Air Lines Maintenance Base )  
in South San Francisco. )

Application 60173  
(Filed January 6, 1981)

David E. Munoz, for Whippet Charter  
Service, Inc., applicant.  
W. Kenneth Harrell, dba Harrell's  
Tours, for himself, protestant.

O P I N I O N

Applicant Whippet Charter Service, Inc. (Whippet) requests a certificate to extend to Livermore its present home-to-work passenger stage operation between Dublin and the United Air Lines Maintenance Base (the maintenance base) in South San Francisco, the service to be restricted to the transportation of persons employed by or attached to United Air Lines. The application was protested by W. Kenneth Harrell (Harrell), dba Harrell's Tours. A hearing was held on the matter in San Francisco August 3, 1981.

Presently, three home-to-work bus companies serve between the tricity area of Livermore, Pleasanton, and Dublin and the maintenance base. Whippet offers a total of three daily round-trip schedules between Dublin and the maintenance base; protestant Harrell offers one daily round-trip schedule between Livermore and Pleasanton

and the maintenance base; and Altamont Tours (not a party to this proceeding) offers one daily round-trip schedule between Pleasanton and the maintenance base. Whippet's earliest schedule of the day leaves Dublin to accommodate day-shift workers. Its second schedule, which leaves later in the day, departs in time to accommodate swing-shift workers. Its third daily schedule leaves Dublin in the evening to accommodate workers on the graveyard shift. Harrell's single schedule, as well as that of Altamont Tours, serves only the day-shift workers.

Whippet proposes to extend its present three schedules beyond Dublin to serve Livermore. The owner of Whippet, who is employed at the maintenance base, testified that some maintenance base workers now drive from Livermore to Dublin to use Whippet's service, but he was unable to say how many, if any, Livermore residents used Whippet's day-shift schedule out of Dublin. He stated that under the proposed extension a Livermore resident whose work shift was changed in mid-month would not be inconvenienced in getting to work since the worker could merely board a different Whippet schedule and use the unused portion of his 10-ride or 20-ride ticket. The witness stated that Whippet desired the proposed extension in order to obtain income to help defray expenses of its Dublin operation, but hoped that the proposed extension would result in a small profit to it. The witness introduced into evidence a petition which had been posted in some of Whippet's buses for three days. The petition urged the granting of the proposed extension and was signed by six persons with Dublin addresses, two persons with San Ramon addresses, three persons with Pleasanton addresses, one person with a Hayward address, and 13 persons with Livermore addresses. The witness could not state which schedules the Livermore addressees were taking and thought that some of the persons who showed addresses other than in Livermore were just being helpful to Whippet's cause.

Whippet's proposed Livermore schedules serving the swing-shift and graveyard-shift will pick up and discharge at a single point in Livermore while its schedules serving the day-shift will use two different service points in that city in order to lessen the congestion of too many automobiles parked in the same area. Since the same schedules will be serving Dublin and Livermore, Whippet intends to modify to a small extent its present scheduling at Dublin. Fares will be assessed on a daily basis, with 10- and 20-ride tickets available.

Whippet owns and operates six 41-passenger buses and two 41-passenger backup buses. All its buses are covered by the required amounts of liability insurance. As of September 30, 1980 Whippet had deficit retained earnings of \$14,446 and a negative net worth of \$2,158. Whippet's only business is home-to-work busing.

Protestant Harrell, who is employed at the maintenance base, operates a duly certificated passenger stage home-to-work service between Livermore, Pleasanton, and the maintenance base on a daily basis. He currently operates one 40-passenger bus schedule a day which caters to day-shift workers. Harrell testified that for the last several months he has sold about 34 monthly tickets and averages about 29 riders a day. Of the 34 ticket holders only 12 reside in Livermore and the balance live in and are picked up in Pleasanton. He testified that Whippet's proposed pickup points in Livermore will be only about a mile distant from his pickup point. He contends that the Livermore-Pleasanton-Dublin area is saturated with maintenance base bus service and that all three bus companies are operating at or below the break-even point. He also contends that authorizing another 41 seats at Livermore will not generate additional passengers since the pool of potential passengers, particularly day-shift passengers, to draw from has been drained.

Discussion

There is currently no home-to-work bus service available to and from Livermore for swing-shift and graveyard-shift workers at the maintenance base. Since Whippet is willing to provide that service and no reason has been advanced why it should not be given, we will authorize Whippet to institute service at Livermore for workers and persons assigned to or employed on the swing- and graveyard-shifts at the maintenance base.

Day-shift workers residing in Livermore have available a monopoly home-to-work bus service. No complaints about day-shift bus service at Livermore were registered at the hearing. However, in American Buslines, Inc. Decision (D.) 91279 dated January 29, 1980, we stated that the Commission does not consider monopoly passenger stage service adequate service to the public and that "we will not apply Public Utilities (PU) Code Section 1032 as a bar to deprive the public of the most innovative, attractive, and agreeable bus service that may potentially exist for its benefit". In that decision we also stated that there may be occasions where "the market is so obviously saturated with carriers that more competition could clearly not lead to better service" and that "this could occur even though service is provided by one carrier", in which case the application would be denied. Therefore, the only question confronting us on whether to authorize Whippet to give day-shift service at Livermore is whether that market is saturated with service.

The president of Whippet was unable to state the number, if any, of the 13 Livermore resident signatories to the petition presently using Whippet's day-shift schedule. He was also unable to state the number, if any, of Livermore residents who presently take Whippet's day-shift schedule. We can only conclude from his lack of knowledge

that such numbers, if any, are impressively small and that, in all probability, the Livermore residents who currently use Whippet's service take its swing- or graveyard-shift schedules. Thus, we are left with only 12 Livermore residents who are interested in a home-to-work day-shift service--a service now being provided them by Harrell, who is able to handle more Livermore day-shift workers in the event they should turn up. We conclude from this record that the Livermore day-shift service has reached the saturation point and that no further day-shift service is needed at this time. Additional competition for the day-shift passengers would not increase the total numbers of passengers from Livermore; thus no more additional revenue would be produced. As all existing carriers are operating at a loss, further competition which would generate no incremental increase in overall revenues would be destructive competition and should not be authorized.

Findings of Fact

1. Whippet requests authority to extend to Livermore its present home-to-work passenger stage service which operates between Dublin and the maintenance base.
2. The proposed service extension will consist of separate schedules to accommodate persons working on the day-shift, the swing-shift, and the graveyard-shift.
3. The proposed extension will necessitate a slight alteration of Whippet's Dublin schedules.
4. In the event a rider in the proposed service changes shifts the rider need only board another Whippet schedule at Livermore and any unused portion of his Whippet ticket will be honored.
5. Thirteen Livermore residents who ride Whippet's Dublin schedules and who probably are on the swing- or graveyard-shifts signed a petition urging the granting of Whippet's application.

6. Few, if any, Livermore residents currently use Whippet's Dublin day-shift schedule.

7. Whippet hopes to defray part of the expenses of its Dublin service by using the income from its proposed Livermore operation.

8. Harrell operates a home-to-work bus service between Livermore-Pleasanton and the maintenance base to accommodate day-shift workers.

9. Currently, 12 Livermore residents use Harrell's service.

10. Harrell's pickup point in Livermore is only one mile from Whippet's proposed day-shift pickup point.

11. Harrell objects to the granting of the application on the ground that there are not enough Livermore day-shift passengers--present or potential--to sustain two bus services.

12. Public convenience and necessity require the granting of Whippet's application insofar as it seeks authority to serve the workers on the swing and graveyard shifts.

13. Harrell's service is more than sufficient to serve the day-shift workers living in Livermore.

14. The Livermore market is currently saturated with home-to-work bus seats for serving day-shift passengers to and from the maintenance base.

15. Public convenience and necessity do not require the granting of the application insofar as authorizing service to accommodate day-shift workers.

16. There is an immediate need for Whippet's proposed service and the following order should be effective the date of signature.

Conclusions of Law

1. The application should be granted to the extent of authorizing Whippet to institute home-to-work bus service at Livermore at times to transport swing-shift and graveyard-shift workers to and from the maintenance base.

2. The application in all other respects should be denied without prejudice.

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 Whippet Charter Service, Inc., a corporation, authorizing it to operate as a passenger stage corporation, as defined in PU Code Section 226, between the points and over the routes set forth in Appendix A to transport passengers.

2. Applicant 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.

This order is effective today.

Dated OCT 20 1981, at San Francisco, California.

JOHN E. BRYSON  
President  
RICHARD D. GRAVELLE  
LEONARD M. GRIMES, JR.  
VICTOR CALVO  
PRISCILLA C. GREW  
Commissioners

*I certify that this decision was approved by the Board Commissioners today.*

*John E. Bryson*



INDEX

	<u>Page</u>
SECTION 1. GENERAL AUTHORIZATIONS, RESTRICTIONS, LIMITATIONS, AND SPECIFICATIONS .....	3
SECTION 2. DESCRIPTION OF SERVICE AREAS	
<u>Service Area</u>	<u>Description</u>
A.	Hayward Service Area ....
B.	Union City Service Area .
C.	Newark Service Area .....
D.	Fremont Service Area ....
E.	Milpitas Service Area ...
*F.	Livermore Service Area ..
SECTION 3. ROUTE DESCRIPTION .....	5

<u>Route</u>	<u>Route Name</u>
I	Union City, Fremont, Newark Hayward to UAL .....
II	Union City, Milpitas to UAL .....
III	East San Jose/Sunnyvale to UAL .....
*IV	Livermore to UAL .....

Issued by California Public Utilities Commission.

\*Added by Decision 93650, Application 60173.

Appendix E  
(D.89213)

WHIPPET CHARTER SERVICE, INC.  
(PSC-910)

First Revised Page 3  
Cancels  
Original Page 3

SECTION 1. GENERAL AUTHORIZATIONS, RESTRICTIONS, LIMITATIONS  
AND SPECIFICATIONS.

\* This certificate supersedes all previous certificates of public convenience and necessity to operate as a passenger stage corporation issued to Whippet Charter Service, Inc., those preceding certificates being canceled effective with the acceptance of this certificate.

Whippet Charter Service, Inc., by the certificate of public convenience and necessity granted by the decision noted in the margin, is authorized to transport passengers and their baggage on passenger-carrying vehicles between the United Airlines Maintenance Base at San Francisco International Airport and the points described, over and along the routes described, subject, however, to the authority of this Commission to change or modify said routes at any time and subject to the following provisions:

- a. Motor vehicles may be turned at termini and intermediate points, in either direction, at intersections of streets or by operating around a block contiguous to such intersections, in accordance with local traffic regulations.
- b. When route descriptions are given in one direction, they apply to operations in either direction unless otherwise indicated.
- c. Passengers shall be transported only between the service areas set forth on the one hand, and the United Airlines Maintenance Base, on the other hand.

Issued by California Public Utilities Commission.

\*Added by Decision 93650, Application 60173.

SECTION 1. GENERAL AUTHORIZATIONS, RESTRICTIONS, LIMITATIONS,  
AND SPECIFICATIONS. (continued)

- d. Service shall be operated only at times necessary to meet employee shift changes.
- e. In the event of a strike, shutdown, or other closing of the airlines maintenance base, the service shall not be operated.
- f. Service in Santa Clara County shall be further restricted in its shift to specified pickup and discharge points described in Section 3, Routes II and III.
- \*g. Transportation for Livermore service area shall be restricted to operations necessary to meet graveyard and swing shifts only.

Issued by California Public Utilities Commission.

\*Added by Decision 93650, Application 60173.

SECTION 2. DESCRIPTION OF SERVICE AREAS.

A. Hayward Service Area

The City of Hayward and the area within a radius of three air miles of its corporate city limits.

B. Union City Service Area

The City of Union City and the area within a radius of three air miles of its corporate city limits.

C. Newark Service Area

The City of Newark and the area within a radius of three air miles of its corporate city limits.

D. Fremont Service Area

The City of Fremont and the area within a radius of three air miles of its corporate city limits, excluding any portion in Santa Clara County.

E. Milpitas Service Area

The northwesterly corner of South Park Victoria Drive and Landess Avenue intersection and the northwesterly corner of Landess Avenue and South Main Street (may also be known as Old Oakland Highway) in the City of Milpitas.

\*F. Livermore Service Area

The City of Livermore, subject specifically to the restriction in Section 1 (g).

T/seq/rr

Appendix E  
(D.89213)

WHIPPET CHARTER SERVICE, INC.  
(PSC-910)

First Revised Page 5  
Cancels  
Original Page 5

SECTION 3. ROUTE DESCRIPTION.

Route I. Union City/Fremont/Newark/Hayward to the United Airlines Maintenance Base

Commencing at any point within the Union City service area, then to the Fremont service area, then to the Newark service area, then via Union City service area to the Hayward service area, then to United Airlines Maintenance Base at San Francisco International Airport, via any and all appropriate routes, and return via the same routing.

Route II. Union City/Milpitas to United Airlines Maintenance Base

Commencing at the intersection of Dyer Street and Industrial Parkway SW in the City of Union City; then continuing along Dyer Street to Alvarado-Niles Road; then along Alvarado-Niles Road to State Highway 17 (also known as Nimitz Freeway), then to the City of Milpitas; and the most direct and appropriate route to United Airlines Maintenance Base at San Francisco International Airport. Pickup and discharge points in the City of Milpitas and Santa Clara County are further restricted to the graveyard and swing shifts only and to the following points only:

N. Park Victoria Drive & Kennedy Drive  
Park Victoria Drive & Calaveras Blvd.  
S. Park Victoria Drive & Landess Ave.  
Trimble Road & Old Oakland Road  
Trimble Road & De La Cruz Blvd.

Route III. East San Jose/Sunnyvale to United Airlines Maintenance Base

Between the following points only and United Airlines Maintenance Base at San Francisco International Airport, and restricted to the graveyard and swing shifts only and to the following points only:

Issued by California Public Utilities Commission.

\*Added by Decision 93650, Application 60173.

T/seq/rr

Appendix E  
(D.89213)

WHIPPET CHARTER SERVICE, INC.  
(PSC-910)

Original Page 6

SECTION 3. ROUTE DESCRIPTION.

Route III. East San Jose/Sunnyvale to United Airlines  
Maintenance Base (continued)

Monterey & Senter, San Jose  
McLaughlin & Bellingham, San Jose  
Tully & King, San Jose  
Story & King, San Jose  
Quimby & White, San Jose  
Lakewood & Lawrence Expressway, Sunnyvale

\*Route IV. Livermore to United Airlines Maintenance Base

Commencing at any point within the Livermore service area,  
then via any and all appropriate routes to United Airlines  
Maintenance Base at San Francisco International Airport, and  
restricted to the graveyard and swing shifts only.

Issued by California Public Utilities Commission.

\*Added by Decision 93650, Application 60173.