

ORIGINAL

Decision 93651 OCT 20 1981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application)
of David C. McCoy for a Class B)
charter bus certificate from home)
terminal in Fresno.)

Application 60658
(Filed June 17, 1981)

David C. McCoy, for himself, applicant.
William R. Daly and Roy C. Browning,
for World Wide Joye Tours, Inc.; and
Howard L. Everidge, Attorney at Law,
for Greyhound Lines, Inc., protestants.

O P I N I O N

Applicant David C. McCoy (McCoy), an individual whose proposed home terminal will be at 3655 East Tulare Street, Fresno, requests a Class B certificate of public convenience and necessity to operate as a charter-party carrier of passengers from a service area up to and including a 40-mile radius from his proposed home terminal. The application was protested by World Wide Joye Tours, Inc. (Joye), of Fresno and Greyhound Lines, Inc. (Greyhound). The matter was heard on August 11, 1981 at San Francisco before Administrative Law Judge Pilling.

McCoy testified he is the sole proprietor of two tour businesses located in Fresno which he operates with the part-time assistance of his daughter. In the conduct of such businesses he plans trips by bus within the state, principally to South Lake Tahoe, San Francisco, Monterey, and Carmel, and to Nevada points. He advertises the trips to the public at large in the local newspaper,

collects the trip price and individual expenses from each individual who reserves a place on the trip, and makes the necessary arrangements, such as hotel accommodations, to ensure the trip's success. He procures transportation for the trip by renting a bus which he drives himself on the entire trip. Occasionally, he will charter a bus for the trip. McCoy stated he wanted a charter-party certificate only so that he could charter his bus to himself and drive the bus on these trips that he promotes.

McCoy stated that he has been driving large tour and charter-party buses extensively on and off since 1974 and that presently he is a permanent driver and manager for a charter-party operator. At present he owns only a 15-passenger van for personal use but intends to purchase a 46-passenger bus for the proposed operation if the application is granted. His balance sheet as of June 9, 1981 shows that he has a net worth of approximately \$357,000. McCoy stated he has enough liability insurance to cover his proposed operation and will add by endorsement any acquired bus to his present insurance policy.

McCoy testified he uses about 24 tour buses a year in his present operation but that if the application is granted he will be able to run twice as many. He testified he called Greyhound twice this year to charter a bus to Reno and that both times Greyhound told him that it had no buses available. He also testified that he called Joye twice this year to charter a bus and on one of those occasions--for a trip to Reno--he was told Joye had no buses available, and on the other occasion--for a trip to South Lake Tahoe--he was quoted a price which he thought was exorbitant. He stated he had difficulty in obtaining 47-passenger buses for his tours.

McCoy introduced copies of 110 preprinted statements (Exhibit 1), each statement having been signed by a different person. McCoy testified that he had prepared the statements and had distributed them to passengers who were riding on the bus he was driving in the conduct of several of his trips, and that each signatory was a passenger on the bus. The statements attest to McCoy's excellent driving ability and to his competency in operating a tour business. The statements assert that McCoy at times has been unable to obtain equipment for the individual signatory's "assigned trips" but that "When Mr. McCoy is issued a bus permit, I feel we can take our trips as scheduled." He also introduced a letter from Lewis Travel Service and a letter from an assistant leader of a youth organization who was also a trade association president which alleged a need for an additional tour operation in the area.

The witness for Joye testified that his company operated 152 charter-party and 225 passenger stage tours during the last year and that for at least the last six months his company has been able to handle all requests made of it for buses. His company acquired three new buses this year. He stated that his company had done business with Lewis Travel Service and that his company had never turned down a request from Lewis for a bus or buses. He testified that the price quoted McCoy, which McCoy claimed was exorbitant, was only \$14 over the going rate for the particular type of service McCoy requested. He also stated that his company had buses available on the date McCoy testified he called Joye for the dates McCoy testified he needed the buses. The witness doubted McCoy ever made the call as the witness had no knowledge of the call and thinks he would have been told of the call if it had been made. Joye operates 46-, 47-, and 49-passenger buses as well as 14-, 15-, and 43-passenger buses. The witness testified that he saw no need for an additional charter-party operator in the Fresno area as there were 10 other bus companies conducting operations in that area.

Greyhound's witness testified that Greyhound operates a terminal in Fresno and has charter-party and passenger stage sales and driver employees stationed at that terminal. He stated that Greyhound drastically reduced its charter-party rates recently in order to put more charter buses out on the road and that the day before the hearing in this case Greyhound had 26 buses at its Fresno terminal available for charter. In addition to its sales employees in Fresno Greyhound has sales outlets in the proposed origination area at Hanford, Dinuba, Reedley, Visalia, Clovis, Madera, Chowchilla, Firebaugh, Mendota, Goshen Junction, and Selma. Greyhound has nationwide inward WATS phone numbers for hearing and speech-impaired persons who have TTY/TDD equipment as well as inward WATS phone numbers for Spanish-language speaking persons and others. During the months of April, May, and June, 1981 Greyhound handled, respectively, 12, 29, and 19 charters originating within a 40-air-mile radius of Fresno. The witness stated that charter revenue was important to Greyhound as the profit from it helps subsidize many of its unprofitable regular route operations. Greyhound operates 43-passenger buses but has no 47-passenger buses.

Discussion

Public Utilities (PU) Code Section 5401 prohibits charter-party carriers from selling their transportation service on an individual fare basis. McCoy intends to solicit and sell individual subscriptions to his bus trips at a price which includes passage on his bus, which is tantamount to offering and selling passenger transportation on an individual fare basis. Including nontransportation charges with the total individual subscription price for the trip does not mask the fact that the individual subscriber's bus fare is included in the total price. McCoy's proposal, therefore, runs counter to the proscription in PU Code Section 5401.

Additionally, PU Code Section 1035 states that an "act of transporting...any person...where the...charge, or fare for such transportation is computed, collected, or demanded on an individual fare basis, shall be presumed to be an act of operating as a passenger stage corporation..." Since McCoy will sell fares on an individual fare basis his proposed operation is that of a passenger stage corporation. His proposal has all the indicia of a passenger stage operation. Hence, his holding a charter-party certificate will not satisfy the requirement that he hold the proper operating authority to conduct the proposed operation. The application will be denied. McCoy may apply for a passenger stage certificate to conduct the proposed operations.

Findings of Fact

1. McCoy promotes trips by bus from the Fresno area.
2. He advertises his trips to the public at large.
3. He solicits customers for his trips on an individual subscription basis.
4. The individual subscription price includes the price of an individual passage on the bus making the trip.
5. McCoy requests a charter-party certificate authorizing operations originating within a 40-mile radius of his proposed Fresno terminal.
6. The only operations under the requested authority will consist of his using his bus to drive persons taking trips which he has promoted and sold in the manner set out in Findings 1 through 4.
7. Under the proposed operation McCoy will be assessing and collecting charges for transportation on an individual fare basis.
8. McCoy's proposed operation will not be that of a charter-party carrier but that of a passenger stage corporation.

9. Public convenience and necessity does not require the issuance of a charter-party certificate to McCoy.

Conclusions of Law

1. McCoy's proposed operations under a charter-party certificate are prohibited by PU Code Section 5401.
2. McCoy's proposed operations are not those of a charter-party carrier of passengers, rather they are those of a passenger stage corporation.
3. The application should be denied. ..

O R D E R

IT IS ORDERED that A.60658 is denied.

This order becomes effective 30 days from today.

Dated OCT 20 1981, at San Francisco, California.

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

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

John E. Bryson
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