

ORIGINAL

Decision 93696 NOV 3 - 1987

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application )  
of AMERICAN TRAILS STAGE LINE & )  
TOUR CO., INC. for a Class B )  
charter bus certificate from )  
home terminal in Anaheim, Ca. )

Application 60320  
(Filed March 4, 1981)

William N. McCormick, for applicant.  
R. D. Rierson, Attorney at Law, for  
Greyhound Lines, Inc., protestant.

O P I N I O N

American Trails Stage Line & Tour Co., Inc. (applicant), a California corporation, requests a certificate of public convenience and necessity under Public Utilities (PU) Code Section 5371.2 to operate as a Class B charter-party carrier of passengers with an area of origin within a 40-mile radius of its home terminal at 1006 East Orangefair Lane in the City of Anaheim. Applicant proposes to use a 1964 GMC intercity bus with a 41-passenger capacity in its operations. William N. McCormick, applicant's president, has transported passengers by motor vehicle over public highways from 1975 to 1981 for several bus lines (i.e., Fun Bus Company, Stardust Tours, Roberts Holiday Lines, Angeltown Charters, Tradewinds Charter, Andy's Charter Leasing, and Robinson Charter Lines), and has eight years of experience as a truck owner-operator for Navajo Freight Lines. He has been employed as a vehicle safety and maintenance supervisor and now has a bus repair facility used by several bus lines.

Applicant's assets of \$63,900 include cash \$4,200, accounts receivable \$5,100, inventory of materials and supplies \$2,600, motor vehicle equipment \$20,000, shop equipment \$30,000, and miscellaneous assets \$2,000. Its liabilities, accounts payable, and notes payable total \$5,075. Applicant projects annual operating revenues of \$133,200 and operating expenses of \$60,094. Applicant has not requested Commission authorization to issue any of the 100,000 shares of common stock authorized in its articles of incorporation. Applicant must file an application and secure Commission authorization prior to issuance of its common stock.

Greyhound Lines, Inc. (Greyhound) operates as a passenger stage corporation over a network of regular routes throughout the State of California, including Anaheim. Greyhound is also a Class A charter-party carrier of passengers in California, authorized to conduct charter operations throughout the state. Greyhound's protest alleges that the territory sought by applicant is being adequately served by existing charter-party carriers and that in accordance with PU Code Section 5375.1 the requested authority should be denied. Greyhound further alleges that:

1. It is licensed to operate 1,802 intercity buses in California.
2. It uses substantial numbers of drivers, buses, and maintenance facilities located throughout California, including the Los Angeles area, to meet demands for its services.
3. It relies heavily on revenues from its charter service to support its regular route operations throughout California.
4. It operates many schedules serving Anaheim, which connect to the balance of its regular California system.
5. A substantial portion of its intrastate charter revenue is generated within applicant's proposed originating service area.

Hearing

Greyhound requested a public hearing. After notice, a public hearing was held in Los Angeles on May 11, 1981 before Administrative Law Judge Levander. The matter was submitted on that day subject to receipt of late-filed Exhibits 2 and 3 documenting an alleged charter tour cancellation by Greyhound. Exhibits 2 and 3 were not received. The proceeding is submitted.

Applicant's Testimony

Following is a summary of the evidence presented by applicant's president McCormick:

1. He drove leased buses owned by Class A and Class B charter-party operators.
2. He operated a bus repair facility certified by the California Highway Patrol.
3. He purchased a 41-passenger bus in January 1981 which he uses in providing 24-hour emergency airport service, particularly for transporting people between airports when fog interrupted service at one airport and operations were shifted to another airport.
4. He provides a backup bus for commuter bus lines.
5. He leases his bus to other bus lines to transport people to ski resorts. His bus lease revenues of \$10,000 for 6-7 months were mainly derived from trips to skiing areas in the Mammoth Lakes and China Peak areas. His lease rates are \$160 for an initial five hours of operation and \$60 for each additional hour of operation or \$1.60 per mile, whichever is greater.

McCormick admitted to providing drivers for leased buses to transport groups to Nevada in which the carrier possessed no authority to conduct interstate operations from the Interstate Commerce Commission. He stated that applicant would not transport passengers to Nevada.

Following is a summary of the evidence presented by Robert Keech in support of applicant:

1. He owns Sierra Ski Service, a skiers travel service, and American West Group Travel Development, which arranges bus tours. He has been in the ski charter business for 25 years.
2. In the skiing season he charters 25-40 ski tour buses per weekend.
3. He used Greyhound as his single prime bus supplier until 1968 or 1969 until a Greyhound representative informed him that it wanted to cut back on the volume of its ski charter business.
4. Greyhound indicated it was cutting back on these charters because ski trips caused severe wear and tear on its buses, required extensive downtime on buses used for ski service both before and after ski trips, the isolation of ski resorts made it virtually impossible to provide immediate mechanical aid needed to repair disabled buses, and because Greyhound was reluctant to make major commitments of equipment for ski charters which were subject to cancellation if there was no snow at the ski resorts.

5. Since then, he has sought out carriers willing to provide the well-maintained buses he needs for ski charters and which have bus drivers capable of making necessary field repairs.
6. He believes that most bus drivers cannot even handle minor bus repairs, but that McCormick trains drivers to avoid equipment problems and to take care of the problems if they should occur. He would charter McCormick's buses for ski trips.

Delays in Charter Payments by Keech

By way of impeachment, Greyhound questioned Keech on which companies he now charters buses from, on his slow payment of bills for bus charters from those carriers, and of his extensive delay on paying Greyhound for charters it provided for him. Keech admitted that he had been in arrears with Greyhound and with other carriers but stated that his accounts were now current. By way of explanation for his delaying payments for Greyhound charters of approximately six months, Keech testified that:

1. In December 1967 or 1968 Greyhound abruptly canceled a 17-bus charter to transport students from several campuses of the University of California to a "Winter Carnival" at Jackson Hole, Wyoming, one day before the departure date.
2. A Greyhound representative (now employed by another carrier) informed him that the buses were needed to meet increased demands caused by an airlines strike.
3. He immediately had to charter buses from other carriers to carry out his obligations.
4. He did not adequately check out the liability insurance of these other carriers.

5. One of these buses was involved in an accident and the carrier's insurance company denied its responsibility for paying the resultant claims. After the ensuing litigation, Keech had to pay \$162,000 in accident claims.
6. After that sequence of events, he admitted to slow payment of Greyhound's past-due charter bills.

Greyhound, in turn, denies canceling the charters described by Keech. In rebuttal of Keech, Greyhound produced its office employee. A summary of her testimony is as follows:

1. Greyhound routinely confirmed charter cancellations in writing.
2. She would have been aware of a sudden charter cancellation as described by Keech but no cancellation was reported to her.
3. Keech was required to pay for charters in advance due to his falling behind on charter payments.

Late-filed Exhibit 2 was reserved for documentation, if any, in Keech's files on the cancellation.

If that documentation was produced, Greyhound was authorized to file the documents in its files on the cancellation, late-filed Exhibit 3. As noted above, these exhibits were not received.

Greyhound's Evidence

Carlos Juarez, Greyhound's Los Angeles district manager, testified that granting certification to applicant would adversely affect Greyhound. A summary of his testimony is as follows:

1. He prepared Exhibit 1 which shows and describes (a) the portion of Greyhound's passenger stage routes within applicant's proposed territory of origin; (b) timetables for Los Angeles passenger stage operations; (c) a description of Greyhound's 2,010 buses licensed for intercity routes in California by type, age, capacity, and average purchase price; (d) a nationwide map of its extra board locations (places drivers are available for extra service requirements, including a location in Los Angeles) and a nationwide map of its garage and service points; (e) a list of toll-free telephone numbers available to permit agents to obtain information on Greyhound's charter rates and equipment and to handle customer service calls; (f) a brochure promoting group travel by Greyhound charter; and (g) a list of charters handled by Greyhound in December 1980 originating within applicant's proposed origin area that would be subject to diversion. He testified that Greyhound's Los Angeles to San Bernardino route, originating within applicant's proposed area of origin, is unprofitable. But he did not provide cost information to support that conclusion.
2. Greyhound is promoting group travel by furnishing its group travel brochure to travel agents and to the public in its offices through the activities of a specialized regional office and through yellow page, direct mail, and newspaper advertising. Greyhound keeps buses and drivers available at many locations for meeting extra service needs, including charter operations.

3. Greyhound's drivers can perform certain repairs and can call their dispatchers for assistance in the event of breakdowns.

He admitted that in December 1980 none of the 44 buses<sup>1/</sup> chartered within applicant's proposed area of origin went to a ski resort and that ski areas were open in December 1980.

Discussion

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 that 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. Applicant presented evidence showing that it and/or McCormick have actually operated charter services from the requested area of origin and that it and/or McCormick have taken extra measures to ensure the reliability of operation of buses of other carriers and of applicant's bus operating under adverse conditions in remote areas (cold climates in winter and hot areas in summer). These measures include preventive maintenance in applicant's garage and its training of drivers to detect potential problems before trips or to make necessary repairs in the field. These facts argue convincingly

---

<sup>1/</sup> Exhibit 1 incorrectly shows a total of 62 buses chartered. The revenues from these charters totaled \$35,382.69.



for a finding that the other carriers currently serving the Anaheim area are not able at all times to adequately serve the public. We note that only Greyhound of the competing carriers who advertised in the local yellow page telephone directory<sup>2/</sup> has protested this application. This further suggests a need for additional charter bus service in the area.

The record is insufficient to clearly determine whether or not Greyhound abruptly canceled the 17 buses claimed to have been chartered by Keech. Keech's testimony that Greyhound planned to cut back on its skiing charters could have been related to the collection problems Greyhound was then experiencing with Keech or to a substantial increase in Greyhound's billings for chartered buses. But those issues are not central to determining whether the Commission should grant the requested authorization. The relevant portion of Keech's testimony on certification is that he books many bus charters, particularly during the skiing season, believes that applicant's garage operations and driver training better ensures trouble-free bus operations, and he would use applicant's services.

Applicant's largest revenue source has been for charters to ski areas. McCormick will continue to supervise applicant's garage operations and driver training for applicant.

---

<sup>2/</sup> We take official notice of pages 484-486 of the November 1980 yellow page telephone directory of The Pacific Telephone and Telegraph Company (PT&T) for Orange County Central and North listings of "Buses-Charter and Rental". PT&T files copies of the yellow page directories it supplies to the public with the Commission. Greyhound has 3 of 46 listings in the Orange County directory as Greyhound Charter Bus Service, Greyhound Bus Lines, and American Pacific Tours Greyhound El Toro. Applicant is listed in that directory.

In December 1980, the month in the skiing season Greyhound analyzed to show possible loss of charter business, it did not charter any trips to ski resorts from applicant's proposed area of origin. Thus, Greyhound is not providing a satisfactory service to meet that need. In addition, Keech's testimony indicates his preference for service from applicant rather than from Greyhound.

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 that applicant carries adequate liability insurance for its bus and garage operations and that it provides a superior quality of bus maintenance service and driver repair training to provide reliable service to the public. After weighing the essential elements surrounding this request, we find that applicant is reasonably fit to conduct certificated charter-party carrier service.

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 1006 East Orangefair Lane in the City of Anaheim.

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

3. Applicant operates one bus with a 41-passenger capacity.

4. Applicant operates a garage approved for servicing its bus and the buses of other carriers.

5. Applicant carries insurance for its bus and garage operations.

6. Applicant has operated a bus in intrastate commerce and in interstate commerce.

7. Applicant does not have authority to operate buses outside of California. Applicant did not seek this authority and it does not propose to operate buses outside of California in the future.

8. Only one competing carrier serving applicant's proposed area of origin protested the application.

9. 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.

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

11. 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, American Trails Stage Line & Tour Co., 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 40 air miles from applicant's home terminal at 1006 East Orangefair Lane in the City of Anaheim.
2. The Passenger Operations Branch will issue the annual renewable certificate on Form PE-695 as authorized by Resolution PE-303, when it receives California Highway Patrol clearances and evidence of liability protection in compliance with General Order Series 115.

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 NOV 3 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 above Commissioners today.*

*John E. Bryson*