

ALJ/km/md

Decision 93717

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of Claude M. Fernholz, elected)
President of the Valley Commuter)
Association, for authority to)
operate as a passenger stage)
non-profit, non-incorporated,)
private association in a Home to)
Work service between points in)
the San Fernando Valley, City)
of Los Angeles and the McDonnell)
Douglas Astronautics Co.)
facilities in Huntington Beach,)
Ca.)

Application 60884
(Filed September 8, 1981)

SOUTHERN CALIFORNIA COMMUTER)
BUS SERVICE, INC., d.b.a.)
COM-BUS,)

Complainant,)

vs.)

COMMUTER BUS LINES, INC. and)
DOES 1 through 40,)

Defendants.)

Case 11020
(Filed August 26, 1981)

CLAUDE M. FERNHOLZ, President,)
VALLEY COMMUTER ASSOCIATION,)

Complainant,)

vs.)

SOUTHERN CALIFORNIA COMMUTER)
BUS SERVICE, INC., d.b.a.)
COM-BUS,)

Defendant.)

Case 11026
(Filed September 3, 1981)

INTERIM OPINION

On August 26, 1981, Southern California Commuter Bus Service, Inc., doing business as Com-Bus (Com-Bus), filed a complaint against Commuter Bus Lines, Inc. (CBL), wherein it requested an order of the Commission directing CBL to cease and desist from conducting passenger stage operations between points in north San Fernando Valley and the plant of McDonnell-Douglas Astronautics Company (McDonnell-Douglas) located in Huntington Beach, California.

On September 3, 1981, Claude M. Fernholz, as president of Valley Commuter Association (VCA), filed a complaint against Com-Bus requesting an order of the Commission revoking the authority of Com-Bus to operate a passenger stage service between points in north San Fernando Valley and McDonnell-Douglas.

On September 8, 1981, VCA filed an application for a certificate of public convenience and necessity authorizing service, as a passenger stage corporation for the transportation of McDonnell-Douglas employees between points in north San Fernando Valley and the McDonnell-Douglas plant in Huntington Beach. Included in the application is a motion to dismiss for lack of jurisdiction. A similar motion was filed by CBL in Case (C.) 11020 on September 18, 1981.

The following summary is based upon the pleadings filed in these proceedings and upon official records of the Commission.

By Decision (D.) 83467 dated September 11, 1974, in Applications (A.) 54213 and 54214 Com-Bus was authorized to transport employees of specified industries between:

1. Certain points in Orange, Los Angeles, and Ventura Counties, on the one hand, and the places of employment in the Los Angeles Airport-South Bay Area, on the other hand.

2. Certain points in Los Angeles, Ventura, and Orange Counties, on the one hand, and the Los Angeles Civic Center and the Federal Building in Westwood, on the other hand, subject to the conditions (a) that service would be limited to the employees of the city, county, state, and federal governments working in the Los Angeles Civic Center area and to employees of the federal government working in the Westwood Federal Building, and (b) that service would be provided for a minimum of 30 passengers using a 38-passenger bus, and for a minimum of 10 passengers using a 13-passenger (or greater) minibus.

By D.84624 dated July 8, 1975 in A.55668 Com-Bus was authorized to acquire a certificate authorizing the transportation of McDonnell-Douglas employees between various points and the McDonnell-Douglas plant in Huntington Beach subject to the condition that the carrier would not be obligated to perform service for fewer than 10 passengers. Under this certificate the San Fernando Valley was authorized to be served by Routes 3, 3 alternate, and 4.

Until recently Com-Bus operated two buses in the San Fernando Valley. One operated over Route 3 and served the west side of the Valley and the other operated over Route 4 and served the north end of the Valley. Each route covered a distance of approximately 65 miles and converged near Balboa and Burbank Boulevards, a point approximately seven miles south of Route 4's point of commencement.

On June 26, 1981, Com-Bus filed a timetable revision with the Commission which in effect discontinued service over Route 4. As justification for the revision, Com-Bus stated:

"Route MDAC 4 has been operating with less than thirty paid passengers for eight weeks and more recently has dropped to the 24 to 26

level. MDAC 3 has operated with 30-34 passengers until recently when it has dropped to the 25-27 level due to vacations.

"In order to accommodate most, if not in fact all, of the present passengers on these two routes, we will operate a 'combined' route during the summer months, beginning on July 6 and extending until September 21, 1981. Most of the West Valley passengers (MDAC 3) will be unaffected by the change. Many of the North Valley passengers will have to drive several miles further to get on the bus at Balboa and Burbank Blvd. In light of the extremely long length of these routes, we feel that the additional mileage will be acceptable to most of the North Valley passengers."

On August 17, 1981, three patrons of discontinued Route 4 formed VCA, a nonprofit association, and entered into a contract with CBL whereby CBL would furnish, operate, and maintain one bus for the transportation of VCA members between points in north San Fernando Valley and the McDonnell-Douglas plant in Huntington Beach. The lease arrangement is similar to that which Com-Bus had with CBL in providing service on Route 4 before it was discontinued. On August 24, 1981, VCA commenced service for its members.

In their motions to dismiss, VCA and CBL take the position that the service being provided is similar to that conducted by San Fernando Valley-Northrup Association of Passengers, Inc., which the Commission found in D.91780 dated May 6, 1980 in A.59129 was "proprietary in nature since it will transport only shareholders, and is a cooperative undertaking and not that of a public utility passenger stage corporation." In the event its motion to dismiss the application is denied, VCA requests that a certificate be issued.

Discussion

It appears that Com-Bus improperly discontinued service over Route 4 by misinterpreting its operating authority. The 30-passenger minimum condition, which Com-Bus relied upon, applies only to the transportation of government employees working in the Los Angeles Civic Center area and in the Westwood Federal Building as set forth in D.83467. The transportation of McDonnell-Douglas employees as authorized by D.84624 is subject to a 10-passenger minimum condition and there were 24 passengers using the service at the time it was discontinued.

VCA was formed to restore an essential commuter service, and it is safe to assume that its members are more concerned with service and not necessarily with who performs it.

Unless Com-Bus restores service over Route 4 within 20 days after the effective date of this order, a certificate of public convenience and necessity will be issued to VCA and the operating authority of Com-Bus will be modified accordingly by subsequent order of the Commission.

We are issuing an interim decision so we can continue to follow the situation. If VCA elects to exercise the operating authority granted, because Com-Bus will not resume operations, we need evidence to ultimately rule on the motion to dismiss VCA's application because it is allegedly proprietary. We think this interim solution is practical, in the public interest, and an expeditious way of making something happen to benefit the affected commuters.

Findings of Fact

1. Until recently Com-Bus was providing passenger stage service over Routes 3 and 4 for the transportation of employees

of McDonnell-Douglas between points in the San Fernando Valley and the McDonnell-Douglas plant in Huntington Beach.

2. On July 6, 1981, Com-Bus discontinued service over Route 4 because the patronage had fallen below 30 passengers. At the time Com-Bus was transporting 24 passengers on the bus operating over Route 4.

3. On August 17, 1981, patrons of discontinued Route 4 formed VCA, a nonprofit association, for the purpose of restoring the commuter service and on September 8, 1981 filed an application for authority to operate a passenger stage service over discontinued Route 4.

4. In the event Com-Bus does not restore service over Route 4, public convenience and necessity will require the service of VCA as proposed.

5. VCA has the necessary equipment, ability, fitness, and financial ability to conduct the proposed service.

6. 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. The operating authority to operate over Route 4, as set forth in D.84624, requires Com-Bus to provide service for 10 or more passengers, and its discontinuance when being used by 24 passengers was in violation of that authority.

2. The application of VCA should be granted unless Com-Bus, within 20 days after the effective date of this order on appropriate notice to the Commission and to the public, restores service on Route 4.

3. In the event Com-Bus does not restore service within the time specified, its operating authority to operate over Route 4 should be revoked by subsequent order of the Commission.

4. C.11020 and 11026 should be dismissed without prejudice.

5. Ruling on the motions to dismiss filed by VCA and CBL should be deferred.

Because of the urgency of this matter, this order will be made effective on the date of signing.

INTERIM ORDER

IT IS ORDERED that:

1. Unless Southern California Commuter Bus Service, Inc. restores service over Route 4, as authorized by D.84624, within 20 days after the effective date of this order on not less than 10 days' notice to the Commission and to the public, a certificate of public convenience and necessity is granted to Valley Commuter Association authorizing it to operate as a passenger stage corporation, as defined in Public Utilities Code Section 226, between the points and over the routes set forth in Appendix A, to transport persons.

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.

3. In the event Southern California Commuter Bus Service, Inc. fails to restore service over Route 4, its authority to so operate will be revoked by subsequent Commission order.

4. In the event Southern California Commuter Bus Service, Inc. restores service over Route 4, A.60884 is denied without prejudice.

5. C.11020 and 11026 are dismissed without prejudice.

This order is effective today.

Dated NOV 3 1981, at San Francisco, California.

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

*I certify that the Decision was approved
by the above Commissioners today.*

John E. Dryson
JD

T/seq/md

Appendix A

VALLEY COMMUTER ASSOCIATION

Original Title Page

CERTIFICATE

OF

PUBLIC CONVENIENCE AND NECESSITY

AS A PASSENGER STAGE CORPORATION

PSC - 1192

Showing passenger stage operative rights, restrictions, limitations,
exceptions, and privileges.

All changes and amendments as authorized by
the Public Utilities Commission of the State of California
will be made as revised pages or added original pages.

Issued under authority of Decision 93717, dated
NOV 3 1981, 1981, of the Public Utilities Commission
of the State of California, in Application 60884.

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

Valley Commuter Association, a nonprofit, nonincorporated private association, by the certificate granted by the decision noted in the margin, is authorized to transport passengers between certain points in the San Fernando Valley, City of Los Angeles, on the one hand, and the McDonnell-Douglas plant in Huntington Beach, on the other hand, over and along the route described, subject, however, to the authority of this Commission to change or modify these 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 operation in either direction unless otherwise indicated.
- c. All service authorized shall be limited to the transportation of round-trip passengers only.
- d. All service authorized shall be limited to the transportation of McDonnell-Douglas employees only.
- e. Carrier shall not be obligated to perform passenger stage service for fewer than ten passengers.
- f. Carrier shall not pick up or discharge passengers, except at the points and places set forth.

Issued by California Public Utilities Commission.

Decision 93717, Application 60884.

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Appendix A

VALLEY COMMUTER ASSOCIATION
(PSC-1192)

Original Page 2

SECTION 2. ROUTE DESCRIPTIONS.

Commencing at and picking up passengers at the intersection of Balboa Boulevard and San Fernando Mission Boulevard, Los Angeles; then on Balboa Boulevard, picking up passengers at Mayall Street, Nordhoff Street, Saticoy Boulevard, Vanowen Street and Balboa Park; then on the appropriate freeways to the McDonnell-Douglas plant in Huntington Beach.

Issued by California Public Utilities Commission.

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