

ORIGINAL

Decision 93749 NOV 13 1981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application)
of Nelly Toomaru, doing business)
as Flamingo Tours, Inc., for a)
Class B charter bus certificate)
from home terminal in Santa)
Monica.)

Application 60564
(Filed May 12, 1981;
amended July 10, 1981)

Paul T. Gaultz, Attorney at Law, for
applicant.
R. D. Rierson, Attorney at Law (Illinois),
for Greyhound Lines, Inc., protestant.

O P I N I O N

Flamingo Tours, Inc. (applicant), a California corporation, seeks a certificate of public convenience and necessity to operate as a Class B charter-party carrier of passengers. Applicant is owned and controlled by Nelly Toomaru and one of her relatives. Applicant proposes to provide a narrated tour service, using drivers fluent in one or more foreign languages, from a home terminal at 2210 Wilshire Boulevard, Suite 779, in the City of Santa Monica.

Greyhound Lines, Inc. (Greyhound) filed a motion for filing of a late protest^{1/} and its proposed protest on June 15, 1981. Greyhound operates as a passenger stage corporation over

^{1/} The notice of filing of this application did not appear on the Commission's Daily Calendar until May 21, 1981. Therefore, Greyhound's protest, filed 25 days after calendaring, was timely filed.

a network of regular routes throughout the State of California, including Santa Monica. Greyhound is also a Class A charter-party carrier of passengers authorized to conduct charter operations throughout the State.

Greyhound's protest alleges that:

1. On June 1, 1981 it had 2,050 intercity buses licensed to operate within California;
2. It maintains substantial numbers of buses and drivers throughout the State, including Los Angeles, to meet demands on it for services;
3. It operates many schedules serving Santa Monica which connect with the balance of its regular route system; and
4. It relies heavily on charter revenues to help support its scheduled service. A substantial portion of its California intrastate charter revenue is generated within applicant's proposed area of origin.

Greyhound argues that applicant's proposed area of origin is being adequately served by existing charter-party carriers and that in accordance with Public Utilities Code Section 5375.1, the requested authority should be denied.

Hearing

Hearing was held on July 29, 1981 in Los Angeles before Administrative Law Judge Levander. The matter was submitted on receipt of late-filed Exhibits 2 and 3.

Applicant's Testimony

Nelly Toomaru, applicant's president, testified essentially as follows:

1. She has worked as a travel agent, an airline stewardess, and as a special agent for two airlines, and has also worked in several capacities in the entertainment industry.
2. She has worked on the island of Tahiti, frequently travels to Tahiti, knows the local culture, and has extensive contacts with travel agents and with persons in the hotel business.
3. Her application is supported^{2/} by 12 travel agents and persons in the hotel business in Tahiti and by M. G. Moxey, managing director of Thomas Cook Pty. Ltd. in Sidney, N.S.W. (Exhibit 1 contains 13 letters of endorsement). Another letter supporting the application was mailed to the Commission by applicant.

The letters indicated the belief that applicant's use of guides fluent in the Tahitian language and familiar with the Tahitian culture was unique in California. Several letters stated that they would book tours with applicant or would refer potential clients to applicant. Moxey's own letter states, in part:

"Having regard to your knowledge of the travel industry and the excellent service that you have provided to travellers in the past, in another capacity, I have little doubt that your company will prove to be a valuable asset in handling the requirements of travellers that may be dispatched by this Company through the Los Angeles gateway into the United States.

2/ Toomaru drafted the letters from Tahiti. She translated the contents of some letters of non-English-speaking persons endorsing the application.

"Insofar as it may prove possible, we are very happy to give you this letter of support and we look forward to forming an appropriate association with your company in the future."

4. She also expects referrals from her contacts in the Cook Islands, Australia, New Zealand, Hong Kong, Manila, and France who believe there is a need for applicant's services.
5. Many foreign tourists arrive at Los Angeles International Airport (LAX) desiring to see the regional attractions. Some incoming tourists are not accompanied by tour directors. These tourists are thrust into an alien environment where they cannot communicate in English, do not know where to get help in getting to their hotels, cannot identify regional attractions, and do not know how to get to places which would interest them. These tourists would prefer to go to various attractions with a driver familiar with their language and culture.
6. She has led caravans of cars carrying tourists to various attractions. There would be a reduction in traffic if these individuals were carried in a chartered bus.
7. Applicant now holds a Class B-2 charter-party permit from the Commission.
8. In Application 60725, applicant is seeking authority to operate as a passenger stage corporation conducting evening tours.
9. She believes most of her business will consist of charters for overseas tourists, primarily from Tahiti.

10. She can drive tour buses and has 10 drivers on call, 6 of whom speak Tahitian and French, 1 who speaks Chinese, French, and English, and 1 who speaks six languages.
11. Applicant owns a 14-passenger van and is purchasing another van for charter-party operations. It also plans to buy or lease two intercity buses either with capacities of 40-42 passengers or with capacities of 53 passengers. The buses are proposed to be used for both passenger stage and charter operations.
12. As of April 30, 1981 applicant had assets of \$56,934 including \$27,802 in cash. It owed \$12,488 on its van. Applicant estimates it would transport 60,000 charter passengers annually, realize gross charter revenues of \$215,000, and incur expenses exclusive of income taxes of \$166,200, which would yield net revenues of \$48,000.

Rosette Valente testified essentially as follows:

1. She has been a travel agent for 20 years. She has traveled extensively to Tahiti (356 trips) and to Polynesia in connection with her work as a travel agent and to manage her residential units on Tahiti.
2. She has known Toomaru for 15 years. She can verify that the people who sent the letters comprising Exhibit 1 support the application. Those travel agents are dissatisfied with existing services for travelers from Tahiti and would welcome the personalized travel service applicant would provide.

3. She goes to LAX three to four times a week to see passengers off or to meet incoming passengers. She feels that the predicament of many incoming passengers is pitiful. They do not speak English and are lost. There is no one at the airport to meet them. Other people are indifferent to their problems.
4. She assists tourists from all over the world including large numbers of tourists from Tahiti and from France. Many of these tourists complain to her that they do not know what to do in California. They want to enjoy their visits to California and to avoid excessive expenses. Existing arrangements for meeting their requirements are unsatisfactory.
5. She attempted to provide a personalized service for South American tourists (similar to the type proposed by applicant) 10 years ago, but her agency found it too burdensome to provide that service.
6. French tourists traveling to and from Tahiti want to stop in California, receive an airport greeting, and want transportation to their hotels. They want assistance in getting to restaurants, Disneyland, Marineland, San Diego, Tijuana, and to other attractions, and to be taken to stores for shopping. These tourists are intimidated by the local freeway system.

Valente conceded that arrangements to meet the needs of incoming travelers at other airports around the world often lack a personal touch.

Maeva Zimmerman testified essentially as follows:

1. She drives a van for applicant. She was born in Tahiti and has known Toomaru since childhood.
2. She was a professional tour guide in Tahiti. She has met small groups of visitors from Tahiti and has used her car to show them local attractions.

Greyhound's Testimony

Robert O. Burlingame, Greyhound's Los Angeles district manager in charge of passenger stage and charter operations, testified essentially as follows:

1. Greyhound's passenger stage schedules between Los Angeles and San Diego are its only profitable passenger stage operations, having a terminal located within applicant's proposed area of origin.
2. Exhibit 2 lists Greyhound's passenger stage routes (and related bus schedules) and agency offices, located within applicant's proposed area of origin. Greyhound's traffic on these routes could be affected by applicant's operations.

Exhibit 2 also contains a listing of Greyhound's available equipment for passenger stage and charter operations, garage and extra board locations, WATS telephone numbers (including lines for deaf persons), promotional literature for its charters, and a listing of 199 charters in February, March, and April 1981 which provided revenues of approximately \$169,000. This list showed Greyhound's intrastate movements originating within applicant's proposed area of origin which would be subject to diversion.

3. Greyhound averaged 2.2 charters per day during this period. Applicant's use of two large buses could divert most of its charter business in the affected area.
4. In the last six months Greyhound had expanded its activities to obtain more charter business. Revenues from its charter operations were needed to support its passenger stage operations. In addition to making its sales pamphlet available to agents and to the public at its terminals, Greyhound was using television, newspaper, and nationwide yellow page advertising. It was directing program advertising to minority communities, including its Spanish language advertising.
5. Greyhound picks up organized foreign tour groups.

Burlingame conceded that Greyhound has not received any requests for charter business from Tahitian tourists and that Greyhound had not solicited business from Tahitian or French-speaking tourists.

Discussion

Applicant has established that public convenience and necessity require the services it proposes to perform. Applicant plans to meet incoming tourists at LAX from Tahiti, France, and from countries in the Pacific Basin. It proposes to provide personalized tour services based on an understanding of the languages and cultures of the tourists whose business it will solicit through Toomaru's established contacts with foreign travel agents.

It would be unduly burdensome to require applicant to produce the travel agents who sent letters in support of the application. The testimony of Toomaru and Valente establishes the validity of those requests. Their testimony and that of Zimmerman establishes the need for the personalized services proposed by applicant.

Applicant would accept any legitimate charter business within its capabilities, but it is seeking to satisfy a specialized market.

Greyhound, in turn, wants to expand its charter business, but it does not propose to nor has it solicited the potential market sought by applicant. Greyhound has not received any inquiry about providing service from Tahitian or French-speaking tourists. Furthermore, Greyhound overstates its potential exposure to loss of its charter business to applicant. Greyhound has a network of offices and terminals within applicant's proposed area of origin. Its 199 charters originated from a variety of locations in this area. Only 15 of these charters originated at LAX, the focus of applicant's proposed operations.

Considering all of the evidence presented, we have determined that Greyhound's practices are not capable of evoking and satisfying all of the potential demand for charter service which exists for tourists arriving at LAX from Tahiti, France, and the Pacific Basin. We will, therefore, find that Greyhound's services are not satisfactory to the Commission.

Findings of Fact

1. There is a substantial public need for applicant's services as a Class B charter-party carrier of passengers.
2. Applicant has the ability, experience, and financial resources required to perform the proposed service.
3. Public convenience and necessity require the service proposed by applicant.
4. Greyhound does not satisfy all of the demand for charter service by tourists arriving at LAX from Tahiti, France, and the Pacific Basin. Its services are, therefore, not satisfactory to the Commission.
5. Applicant should be authorized to pick up passengers within a radius of 40 air miles from its home terminal.
6. Greyhound serves the sought territory but is not providing adequate service to that portion of the public which will be served by applicant.
7. The additional certificate is not more than public convenience and necessity require. No restrictions on applicant's certificate are reasonably necessary to protect Greyhound.
8. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

Conclusion of Law

1. Public convenience and necessity have been demonstrated and a certificate should be granted to applicant.
2. The following order should be effective on the date of signature since there is a demonstrated present need for applicant's 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 Flamingo Tours, Inc. (applicant), 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 2210 Wilshire Boulevard, Suite 779, Santa Monica, California.

2. When the required California Highway Patrol clearances are received by the Commission's Passenger Operations Branch and the evidence of adequate protection against liability imposed by law are filed in compliance with General Order Series 115 the annual renewal certificate on Form PE-695 will be issued by the Passenger Operations Branch under the authorization of Resolution PE-303.

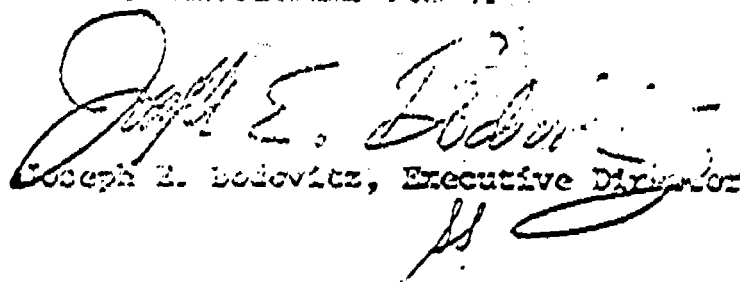
3. In providing service under the certificate, applicant shall comply with General Orders Series 98 and 115, and the California Highway Patrol safety rules.

This order is effective today.

Dated NOV 13 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.


Joseph E. Bodovitz, Executive Director