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Decision 93860 December 15, 1981

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of AIRPORT PASSENGER, INC., for a
certificate to operate as a Class
"B" Charter-Party Carrier of
Passengers, Stockton.

Application 60055
(Filed November 6, 1980)

Willie J. Billingsly, for Airport Passenger,
Inc., applicant. ✓
Richard M. Hannon, Attorney at Law, for
Greyhound Lines, Inc., and W. R. Allen,
for Amador Stage Lines, Inc.; protestants.

O P I N I O N

Because of a protest filed by Greyhound Lines, Inc. (Greyhound) this application of Airport Passenger, Inc. (Airport) for a Class B charter certificate was set for hearing. Hearing was held before Administrative Law Judge (ALJ) Gilman on February 23, 1981 in San Francisco. Amador Stage Lines, Inc. (Amador) also appeared as a protestant at the hearing.

Airport holds a limited certificate of public convenience and necessity to operate as a passenger stage corporation from Stockton to public airports in Stockton, Sacramento, and San Francisco.^{1/} It also holds a permit as a charter party carrier to operate van-type vehicles under Public Utilities (PU) Code § 5384. ✓

Airport has recently purchased a single 40-passenger transit-type bus. Consequently it has filed this application to

^{1/} Decision (D) 92389 in Application (A.) 59814 issued November 4, 1980. It can only transport persons with airline connections.

obtain authority to operate larger than 15-passenger vehicles in charter service.

The Evidence

Airport's evidence was presented by its principal stockholder who also manages the transportation operation.

His testimony shows that applicant is a member of the Visitors and Convention Bureau of Stockton (Bureau). It expects to have "a full calendar" over the next three years as a result of this contact with the Bureau. It has also negotiated to provide transportation to San Joaquin County (County) and the Stockton Unified School District. Airport's witness estimated that on the average it would be able to operate the large bus 650 miles per month in revenue charter service. This estimate is based on inquiries and requests for transportation of groups too large to be transported in a single 15-passenger vehicle. He expects to charge \$38 per hour and to use the large bus in 575 hours of revenue service annually.

He testified that the corporation's clientele will include a number of community organizations such as churches, private schools, and business organizations. He claimed that Greyhound and Amador do not serve these groups. Most of the expected trips will be short range, confined to San Joaquin County. However, based on past experience, it is expected that there will be some trips to Sacramento and Marin Counties and to South Lake Tahoe.

Under a contract with County, applicant has transported groups of senior citizens to lunch and return on a daily basis. It also performed a regular repeated service transporting school children to a Y.M.C.A. facility. The witness hopes to be able to continue similar operations. He conceded that his estimates for the future revenues and expenses for operating the additional

bus were somewhat speculative. He explained that this was due to the difficulty of predicting the results of a new venture.

At the time of the hearing, the corporation regularly operated four van-type vehicles and one station wagon. It had conducted some operations with the 40-passenger bus, which was recently purchased secondhand for \$12,000. The corporation has three part-time drivers and employs a manager and two parttime secretaries in the office. The office personnel also provides services to the principal owner's real estate operations.

The witness insisted that his clientele would never be solicited by either Greyhound or Amador. He pointed out that County has an affirmative action policy applicable to contract services and claimed that Airport is the only PUC-licensed carrier in the County able to take advantage of this policy.

Greyhound's testimony indicates that it holds a Class A charter certificate authorizing it to initiate charter moves from any place in the State including Airport's chosen territory. It also operates scheduled services as a passenger stage between many California cities. It normally has seven to ten full-size buses available for the charter-service station in Stockton. If there is an unusual demand it can call on a larger fleet of buses permanently stationed in Sacramento. If that is insufficient, it has over 1,700 buses stationed throughout the State which can be called on. Greyhound has drivers available in both Stockton and Sacramento.

Greyhound regularly solicits all sorts of charter business and is especially active in the territory within 40 miles of Stockton. It has numerous sales outlets and agencies in this area. It actively solicits churches, schools, and various civic groups. It provides brochures which are available in all its terminals and agencies. It also advertises in the mass media, including ethnic radio stations.

All of its vehicles are maintained, and its drivers have received the training necessary, to comply with the School Pupil Activity Bus (SPAB) safety program administered by the Highway Patrol (cf. Vehicle Code, §§ 545, 2807.1, and 2807.2).

Amador's representative testified that it had been operating continuously since 1880^{2/}. It has two locations, in Sacramento and in Stockton. It can maintain five to ten buses at its Stockton location. In Stockton it now has three fulltime and three parttime drivers supplemented by a substantially larger number available in Sacramento. Its scheduled service includes routes from the two valley cities to Jackson and to South Lake Tahoe.

Amador's buses are comparatively new, averaging three and one-half years old. They are each equipped with a restroom, a stereo sound system, and reversible seats. They are classified as over-the-road vehicles. Three of these buses have been converted to accept wheelchairs. The wheelchair conversions cost approximately \$20,000 per bus. None of the expenditure is covered by state or federal grants or loans. It plans additional conversions.

It was the first carrier in the State to have an on-the-premises SPAB instruction program. It claims that its operations on behalf of school districts provide a substantial portion of its charter revenue.

Position of Protestants

Greyhound contends that a certificate should be denied on the following grounds:

- a. Applicant has performed transportation subject to the SPAB program without having either the required vehicle checks or personnel training.
- b. Applicant did not present a cogent estimate of the expected revenue and expense of operating the new equipment.

^{2/} While it does not appear of record, we assume that Amador has not been operating motor vehicles for the entire period.

- c. Applicant has used the large bus in charter operations in violation of its permit.
- d. There is no evidence of public need for additional charter service other than the self-serving assertions of applicant's owner.

Amador contends that granting any additional authority to applicant will divert potential charter revenue from its own operations. It contends that it needs charter revenues to help support the cost of its scheduled passenger stage operations.

The Interim Opinion

On May 19, 1981, this Commission issued an interim opinion in this proceeding, D.93109. That decision found that Airport transported groups composed of school pupils and persons accompanying them for supervisory purposes on trips to or from a public or private school or to or from school activities. It further found that Airport had conducted such operations in vehicles which were not certified by the Highway Patrol under Vehicle Code §§ 2807.1 and 2807.2. Further, it was found that drivers were not licensed as required by Vehicle Code § 545. Airport was ordered not to conduct any more such activities except in vehicles certified as required by the Vehicle Code sections and driven by persons holding the appropriate licenses. It was further ordered that this application would not be processed until appropriate evidence of such compliance was supplied to the Executive Director. Such evidence is now available. Applicant has employed one driver who is properly licensed. It has one vehicle certified.^{3/}

Our previous order prohibiting operations in violation of the Vehicle Code will be ratified and continued in effect.

Discussion

The question presented is not whether applicant should be permitted to start a completely new transportation operation. It is

^{3/} Greyhound has informally indicated that it now has no objection to issuing a final decision in this matter.

already conducting both a passenger stage and a charter operation using small vehicles. The question is rather whether it should be permitted to operate a larger vehicle in charter service and thus to transport groups which would otherwise require it to dispatch two or even three of the smaller vehicles. There is no dispute that a multiple-vehicle operation would be unreasonably expensive and would not be fuel-efficient.

We cannot agree with protestants that the public interest requires us to prevent Airport from becoming a more efficient competitor.

First, we note that Airport already holds itself out to transport groups of more than 15. It can be expected to continue to perform such services. It can do so lawfully if it is willing to pay for the extra wages and extra fuel necessary to use two or more vans, to transport what would otherwise be a single busload. It is at least arguable that the public interest can tolerate a form of regulation which compels one competitor to employ more workers than another. We cannot, however, believe that it ever again will be in the public interest to require a waste of fuel, in the name of controlling competition.

Thus the statutory distinction between permitted and certificated operations does not effectively protect protestants from competition. At the same time, it interferes with an overriding public interest in fuel conservation. It should not continue to handicap Airport; rather, Airport should be permitted to use a full-size bus when it is more efficient to do so. Second, the record does not support protestants' implicit assumption that any additional traffic Airport attracts will be traffic which would otherwise have come to them. If Airport were using the impersonal promotional methods protestants use, such a conclusion might be warranted. Applicant's highly personal promotional style is more likely to create new demand than it is to change the buying habits of any of those groups which now patronize protestants.

Whatever charter business Airport attracts will come from the inner-city community. Neither carrier has shown that its promotional efforts produce any substantial revenue from that community.

Greyhound claims that the projected results of operations submitted with Airport's application are not internally consistent. Part of its brief on this point is quoted in Appendix A. It claims that these inconsistencies are not merely a reflection on the witness' ability as a forecaster; rather, they are claimed to be so remarkable as to demonstrate an inability to manage the proposed operation.

If Airport were planning an acquisition which burdened it with a great amount of additional fixed costs, we would be more concerned with the quality of its economic projection. In this case, however, the purchase price of the bus was very moderate; fixed costs should likewise be moderate. Since we have no reason to anticipate that driver's wages or fuel costs will be extraordinarily high, we can expect Airport to reach the break-even point in operating its bus without an extraordinary amount of additional revenue.

The self-evident promotional abilities of Airport's manager convinces us that it has more than a reasonable chance of developing enough of the potential demand for charter service in the inner-city market to achieve the needed revenue without significantly affecting protestants' revenue, or engaging in destructively competitive operations.

Airport's showing is barely sufficient to support the addition of one large vehicle to its fleet; it could not support any proposal to incur any more fixed costs. We will, therefore, restrict applicant to the use of a single bus seating more than 15 passengers in charter service. If it should apply to operate more full-size buses, it will be expected to provide realistic projections of revenues and expense and to be able to defend them on cross-examination.

Needless to say we do not condone unlawful operations. On the other hand, we have a longstanding policy not to refuse to issue a certificate solely because of a few unauthorized operations. In this proceeding it is not clear that the operations which Airport admitted required a charter certificate. All of the trips with the large vehicle could have been performed under contract with local government. Under certain circumstances a permit holder can perform such operations with a permit (PU Code § 5384(a)). Even if it were clear that Airport's operations did not completely fit within that statute's definition, its language could prove confusing to a layman.

We cannot find that applicant's difficulties with the Highway Patrol's safety regulations render him unfit to hold operating authority from this Commission. Rather than indicating that management is indifferent to the safety of passengers, these problems seem to stem from confusion or lack of knowledge.

Amador is to be commended for using its own funds to provide wheelchair access to its vehicles. It is especially important for California's charter carriers to be able to serve groups which include both fully mobile and mobility-restricted persons. The latter should not be segregated from the majority when outings or other activities requiring group transportation are scheduled. Generally speaking, a carrier which makes such investments should expect some additional protection from competition until it recovers the cost of wheelchair conversions. However, this record would not justify finding that certificating applicant will significantly reduce Amador's ability to recover this investment.

Findings of Fact

1. Public convenience and necessity require that Airport be authorized to operate a full-size bus in its charter operation.
2. Protestants will not adequately develop and serve the potential demand for charter service existing in the inner-city community. Protestants' services are therefore not satisfactory to the Commission or adequate for the public.

3. Ordering Paragraph 1 of D.93109 should remain in full force and effect.

4. Airport has a reasonable chance of obtaining enough additional revenue to break even on the operation of a single additional bus, without attracting significant amounts of traffic now enjoyed by protestants, or employing destructively competitive practices.

5. Airport's showing could not support the incurring of any significant amount of additional fixed costs; Airport should be restricted to the operation of single full-size bus in charter operations until and unless it makes a better showing.

6. Airport has the ability, experience, equipment, and financial resources to perform the service authorized.

7. Airport should be conditionally authorized to pick up passengers within a radius of 40-air miles from its home terminal at 2305 South Airport Way, Stockton, Ca.

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

Public convenience and necessity have been demonstrated and a conditional certificate should be granted. Since there is a public need for the proposed service the following order should be effective today.

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 Airport Passenger, Inc. (Airport) authorizing it to operate as a Class 3 charter-party carrier of passengers, as defined in PU Code § 5383, from a service area with a radius of 40-air miles from Airport's home terminal at 2305 South

Airport Way, Stockton, CA, subject to the condition stated in Ordering Paragraph 4.

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, Airport shall comply with General Orders Series 98 and 115, and the California Highway Patrol safety rules. Airport shall continue to comply with Ordering Paragraph 4 of D.93109.

4. The certificate issued shall be subject to the following condition:

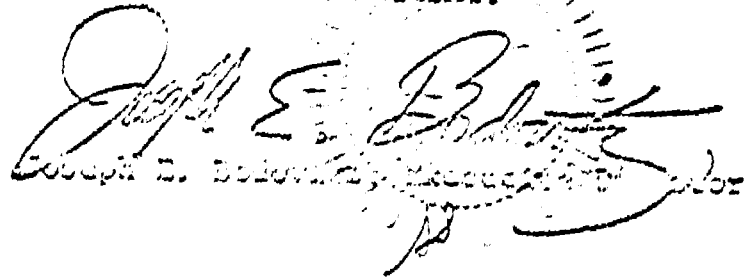
The certificate of public convenience and necessity issued to Airport authorizes it to operate only one vehicle having a seating capacity of more than 15 passengers in charter service.

This order is effective today.

Dated DEC 15 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.


Joseph D. Boland, Secretary

APPENDIX A
Page 1

Excerpt from Brief of Greyhound Lines, Inc.

"Applicant estimates that it will operate 7,000 revenue miles per year; that it will pay its drivers \$6.50 per hour (Tr. 43); that its annual expenses for drivers and fuel will be \$3,000.00; and that it will operate at \$38.00 per hour or 575 hours (21,840 ÷ \$38 per hour).

"Simply using the above figures and estimates of applicant, the following results occur: 7,000 miles of operation divided [sic] by the number of revenue hours proposed by applicant -575-; means that Applicant's vehicles will operate at an average of 12 miles per hour when in service. The driver/fuel expense of \$3,000.00 when the fuel expense is estimated and subtracted [sic] leaves about \$2,066.00 for driver's wages. The fuel expense is estimated as follows: 7,000 ÷ 9 miles per gallon = 777.7 gallons of fuel X \$1.20 per gallon = \$933.24 for fuel. \$3,000 - 933.24 = \$2,066.76 for driver's wages. Since Applicant has estimated 575 hours of revenue service, the driver's wage may be divided by hours of revenue service to compute dollars per hour for wages or \$2,066 ÷ 575 = \$3.59 per hour. Yet Applicant estimated wages to be \$6.50 per hour or 575 X 6.50 = \$3,735.50 for wages. Adding fuel cost to the driver's cost, the result is \$4,670.44. Applicant has understated its expense by approximately 65%. More importantly, the inconsistencies reflect a general lack of understanding of the transportation business.

"In 1980, Applicant grossed \$14,500.00 and had driver expenses of approximately \$600.00 per month (Tr. 41), or \$7,200.00 per year. \$7,200.00 is 49% of total income for drivers in the existing operation. Yet Applicant computes driver expense as only 9% of its gross in the

APPENDIX A
Page 2

Excerpt from Brief of Greyhound Lines, Inc.

proposed operation. Using 49% of its proposed gross, the driver's expense would be \$10,701.60, increasing operating [sic] expenses from \$9,850.00 to \$18,485.00. A similar calculation can be made for station expenses. Applicant currently pays its station employees \$300.00 per month (Tr. 44) or \$3,600.00 per year. Station expenses were 24% of Applicant's 1980 gross revenue. Twenty-four percent of Applicant's proposed revenue would be \$5,241.00, again increasing operating expenses to \$23,726.00, a figure in excess of estimated revenue. Even if these percentage figures should be factored for operating efficiencies, they are far more realistic than those submitted by Applicant and far more pessimistic."