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Decision No. 31784

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application  
of SPECIAL SERVICE TRANSPORTATION  
CORPORATION, LTD., a corporation,  
for certificate of public convenience  
and necessity to operate an express  
and special messenger film service  
for transporting motion picture films  
and film accessories between Los  
Angeles, Santa Maria, Arroyo Grande,  
Pismo Beach, San Luis Obispo, Atas-  
cadero, Paso Robles, and Lompoc.

ORIGINAL

Application No. 22235

WAGY and HULSY by Philip M. Wagy for applicant

GEORGE S. REED and EDWARD STERN by Edward Stern  
for Railway Express Agency, Incorporated,  
protestant

WILLIAM MEINHOLD and E. L. H. BISSINGER for Southern  
Pacific Company and Pacific Motor Trucking  
Company, protestants

WILLIAM C. KLEBENOW for Motor Truck Association,  
interested party

EDWARD STERN for Dulcie A. Miller, doing business  
as Santa Barbara Special Delivery, protestant

BY THE COMMISSION:

O P I N I O N

By this application, as amended, Special Service Trans-  
portation Corporation, Ltd. seeks authority to establish and operate  
an automotive service as a highway common carrier of motion picture  
films and accessories, such as advertising matter, programs, carbons  
and tickets, between Los Angeles and Santa Maria, Arroyo Grande,  
Pismo Beach, San Luis Obispo, Atascadero, Lompoc and Guadalupe.

Public hearings in this matter were had before Examiner McGettigan in San Luis Obispo on November 10, 1938, and in Los Angeles on December 9, 1938.

Appearing as protestants were Railway Express Agency, Incorporated, Southern Pacific Company, Pacific Motor Trucking Company and Santa Barbara Special Delivery. Motor Truck Association entered an appearance in behalf of its members as their interests appeared. At the conclusion of applicant's presentation, protestant Railway Express Agency, Incorporated, through counsel, moved to strike the testimony of applicant's public witnesses upon the ground that any showing of public convenience and necessity to be adduced therefrom was based on illegal operation by applicant. Other protesting counsel joined in this motion.

While protestants presented no evidence, they urged that no submission of this application be made pending a ruling by the Commission on the motion to strike.

When an applicant for a certificate has completed its showing, we believe that protestants should request that the matter be submitted upon the record as made, coupled with a motion to deny, if desired, or be prepared to present their side of the controversy. In this instance, the Commission will construe the motion to strike as a motion to deny or dismiss and will proceed to determine this application on the merits of the record as presented.

The record in this proceeding, as developed through the testimony of witnesses, clearly shows that applicant, since July or August of 1938, has been operating a service which is practically identical with that for which a certificate is now being sought. It was admitted by applicant's general manager that the service had been arranged for through contacts with the various theatre owners and had

been commenced and operated with no attempt to apprise the Commission thereof or to seek any authority therefor.

With the exception of Paso Robles, applicant has been operating a daily service between Los Angeles and the points sought in the application now pending before the Commission, serving the principal theatres in each of the points named and has been and is at the present time assessing a transportation charge therefor.

No material difference exists between applicant's service as now being rendered, and that for which it is seeking certification. Unquestionably, Special Service Transportation Corporation, Ltd. is now and has in the past, been rendering an automotive service with common carrier status between the fixed termini named herein, and over a regular route, for which no authority has been sought or granted.

No mitigating circumstances exist, particularly when it is revealed that applicant is now, and has for some time past, been the holder of certificates of public convenience and necessity to conduct the same type of service between Los Angeles and points other than those here involved. Additionally, applicant has a radial highway common carrier permit and also a highway contract carrier permit from this Commission, under which it transports newspapers. These facts indicate that it is fully aware and cognizant of the various rules, regulations and operating authorities required in order to enter the automotive transportation field. No contracts or agreements exist between applicant and the various theatres for whom it is transporting films, nor was it shown that any attempt had been made to place this service on a contract basis. Certainly the Commission was not apprised by applicant that any such service was contemplated or being performed until a considerable period of operation had been indulged in.

The Commission cannot and will not condone the actions of one who deliberately enters into and develops a transportation service, palpably that of a highway common carrier, without authority, and who thereafter comes before the Commission for a certificate of public convenience and necessity to establish a service which is already in effect, and who adduces testimony in support thereof which is based entirely upon such an unlawful operation.

Despite applicant's statements as to the alleged shortcomings of the services of existing carriers, and with a full understanding of the difficulties besetting the exhibitor and producer witnesses, in all fairness, it must be noted that all of the difficulties in this particular field cannot be laid at the doors of the various carriers.

The record is quite clear that many transportation difficulties experienced are a direct result of the widespread use of radio, newspaper and magazine advertising which create increased demands for the immediate showing of films at divergent points, thereby making the time element of paramount importance and placing the burden therefor on the carrier. Certain internal operating practices induced by economic limitations and demands of the motion picture industry itself, of which the prohibitive cost of making additional prints is foremost, also contributes to these difficulties.

The Commission is aware that under these conditions a service such as applicant proposes, if possible of performance, may be of marked convenience, but must insist that the method of establishing such service follow well established and well known (to this applicant) procedural routine, and not be predicated on a disregard of regulatory laws.

Applicant, subsequent to the hearing, and on December 16, 1938 filed a request for dismissal without prejudice, and advised

that the service for which a certificate was sought would be discontinued on December 19, 1938.

Under the circumstances the application will be dismissed, but applicant is hereby placed upon notice that future operation in violation of the regulatory statute may well jeopardize its existing certificates.

O R D E R

Public hearings in the above entitled matter having been had, the matter having been duly submitted and the Commission now being fully advised in the premises,

IT IS HEREBY ORDERED that Application No. 22235, as amended, be and the same is hereby dismissed.

The effective date of this order shall be twenty (20) days from the date hereof.

Dated at San Francisco, California this 30<sup>th</sup> day of January, 1939.

Raymond W. ...  
Frank ...  
... ..  
...  
Justus F. ...  
COMMISSIONERS