

ORIGINALDecision No. 47716

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of United Parcel Service)
 of Los Angeles, Inc., to establish a)
 service for delivery of small packages)
 and parcels between points in Southern)
 California and the San Francisco Bay)
 area and within the San Francisco Bay)
 area.)

Application No. 33086

Preston W. Davis, for applicant.
Douglas Brookman, for California Motor Express, Ltd.
 and Pacific Greyhound Lines, protestants.
Douglas Brookman and N. R. Moon, for Merchants Express
 Corporation, protestant.
H. J. Bischoff, for Southern California Freight Lines and
 Southern California Freight Forwarders, protestants.
R. W. Walker, Matthew H. Witteman and Richard K. Knowlton,
 for Atchison, Topeka & Santa Fe Railway Company and
 Santa Fe Transportation Company, protestants.
E. L. H. Bissinger and Frederick S. Fuhrman, for Southern
 Pacific Company and Pacific Motor Trucking Company,
 protestants.
Reginald L. Vaughan, Varnum Paul and John G. Lyons, for
 Associated Freight Lines, Kellogg Express and Draying
 Company, Inter-Urban Express Corporation, United
 Transfer Company and Transbay Motor Express Company,
 protestants.
Hugh Gordon, for Pacific Freight Lines and Pacific Freight
 Lines Express, protestants.
George W. Tackabury and E. L. H. Bissinger, for Railway
 Express Agency, protestant.
Marvin Handler, for Nielson Freight Lines and West
 Berkeley Express and Draying Company, protestants.
Bertram S. Silver and Edward M. Berol, for Highway
 Transport, Inc. and Canton Transbay Express, protestants.
Thomas Dwyer, for Delta Lines, Inc., protestant.
Clifton E. Brooks, for Delivery Service Company, protestant.
James H. Lucas, for Peninsula Delivery Service, protestant.
William J. Keane, for United Transfer Company, Carley &
 Hamilton, Inc., protestants.
E. R. Goodman and L. R. Guerra, for Western Truck Lines,
 Ltd., protestant.
Russell Bevans, for Draymen's Association of San Francisco,
 interested party.

O P I N I O N

United Parcel Service of Los Angeles, Inc., by the above-
 entitled application, requests a certificate of public convenience
 and necessity to operate as a highway common carrier for the delivery

of small packages and parcels for manufacturers, manufacturers' agents, wholesalers, jobbers and commercial distributors between Los Angeles, on the one hand, and San Francisco and the East Bay Drayage Area, ⁽¹⁾ on the other hand, and from San Francisco and points located in the East Bay Drayage Area, on the one hand, to points within the territory bounded generally by Los Gatos, San Jose, Stockton, Sacramento, Napa and Santa Rosa, with five-mile lateral rights along the routes traversed, on the other hand. ⁽²⁾

Public hearings were held before Examiner Howard in Los Angeles on April 2, 3 and 4, and May 28 and 29, 1952; in San Francisco on April 28 and May 19 and 20, 1952; and in Oakland on May 2, 1952. The matter was submitted on briefs which have been received and considered together with the evidence of record.

This application was opposed by some 25 common carriers operating in the Los Angeles or San Francisco Bay Areas.

Twenty-three shippers or their representatives testified in support of the application. It was stipulated between the parties to this proceeding that another 151 potential witnesses, if called, would have testified in support of the application in substantially the same manner as those who gave testimony.

Applicant is now operating as a highway common carrier delivering packages weighing not in excess of 100 pounds each for manufacturers, manufacturers' agents, wholesalers, jobbers and commercial distributors from the Los Angeles metropolitan area, Long Beach and Pasadena to points in Southern California generally

(1) Defined in City Carriers' Tariff No. 2-A, original page 15-A, as including Emeryville, Alameda, Albany, Berkeley, Oakland and Piedmont.

(2) More specifically described in Item 20 of applicant's Exhibit No. 6 attached hereto as Appendix A and by this reference made a part hereof. Applicant designates this area as Territory B and it shall be hereafter referred to as such herein.

from Los Angeles north to Santa Barbara, east to the Riverside-
 Redlands area and south through San Diego to the Mexican border⁽³⁾
 pursuant to certificate of public convenience and necessity issued
 by the Commission.⁽⁴⁾

The instant application seeks authority to establish in the proposed territory a service similar to that now rendered in the Southern California area, subject to the restrictions that packages shall not exceed 70 pounds in weight, 120 inches in length and girth combined or eight feet in length; and that rates shall be maintained on a "per package" basis as contrasted with the "per shipment" basis employed by general merchandise carriers. The proposed service would be combined with the existing operation in Southern California so that packages destined to points in Territory B would be picked up in Los Angeles, Long Beach and Pasadena along with packages destined to points in Territory A. Likewise, trucks delivering to Territory A would handle packages originating in San Francisco and the East Bay Drayage Area along with those originating in the Los Angeles Area.

The rates proposed to be charged and the rules and regulations to be observed are in substantially the same form as those in applicant's effective tariff on file with the Commission. The basic rate for packages moving between Los Angeles and Territory B would be 16 cents a package plus 5 cents a pound.

(3) More specifically described in Item 20 of applicant's Exhibit No. 6 attached hereto as Appendix B and by this reference made a part hereof. Applicant designates this area as Territory A and it shall be hereafter referred to as such herein.

(4) D.9313, rendered August 25, 1921, in A.6781
 D.10255, rendered March 29, 1922, in A.9669
 D.13429, rendered April 17, 1924, in A.9934
 D.16425, rendered April 7, 1926, in A.11122
 D.18047, rendered March 4, 1927, in A.12859
 D.18121, rendered March 29, 1927, in A.12947
 D.20003, rendered July 9, 1928, in A.13108
 D.39698, rendered December 10, 1946, in A.27755
 D.42850, rendered May 10, 1949, in A.29898

The rate for packages moving from San Francisco and the East Bay Drayage Area to other points within Territory B would be 16 cents a package plus 2 cents a pound.

The present and proposed operations of the applicant were described in the testimony of one of its officers. Applicant has operated a specialized parcel delivery service in Southern California for more than 25 years. It has developed extremely efficient methods of gathering, sorting, routing, loading, dispatching and delivering small packages. A minimum of handling, marking, packing and processing are required. Simplified billing, C.O.D. accounting and other business procedures have been established. The "streamlining" of applicant's operations has made it possible for United Parcel to charge rates low enough to attract small parcel business from U. S. Parcel Post, and to a minor extent from other means of transportation, and to realize substantial profits from the service rendered.

United Parcel's Annual Report for 1951, which is on file with this Commission and was incorporated into this record by reference, showed total assets as of December 31, 1951, of \$2,045,075, of which \$1,387,246 were current assets. Operating revenue for the year 1951 amounted to \$6,596,271 from which a net operating revenue, before taxes, of \$327,058 was derived.

If the instant application should be granted, applicant contemplates using 35-foot semitrailers for line-haul transportation, small enclosed trucks for pickup and delivery, and such other equipment as may be needed to adequately provide the proposed service. Drivers would wear the same type of uniform as that worn by applicant's employees in Southern California. The plan of operation calls for packages destined for points in Territory B to be picked

up in Los Angeles on regular schedules, sorted and dispatched on line-haul equipment by 8 p.m. They would arrive in the San Francisco Bay Area by 10 a.m. the following day and be sorted, loaded on small trucks and delivered within San Francisco and the East Bay Drayage Area the same day. Packages for the remainder of Territory B would be delivered the following day. A similar service is proposed southbound from San Francisco and the East Bay Drayage Area with next-day delivery to Los Angeles, and second-day delivery to the remainder of Territory A. Packages picked up in San Francisco and the East Bay Drayage Area would be delivered to points in Territory B the following day. Distribution facilities would be located at San Francisco and Oakland, and, in addition, delivery terminals would be set up at such key points as the flow of traffic indicates are needed. This would be a separate operation from that conducted by United Parcel Service, Bay District, a contract carrier serving retailers in the San Francisco Bay Area, and no joint use of the contract carrier's equipment, personnel or facilities is contemplated.

United Parcel's existing service is utilized daily by more than 2,000 firms in the Los Angeles Drayage Area, Long Beach and Pasadena. The record shows that many of such firms maintain offices and distribution centers in San Francisco or Oakland. Representatives of such firms have requested applicant to inaugurate a service, similar to that rendered in Southern California, in the San Francisco and East Bay Areas, and between such areas and the southern territory. Applicant estimated that to successfully operate the proposed service at the rates contemplated, a minimum of 2,000 packages moving between Territory A and Territory B would be required. The expectation of applicant is that this minimum figure would be attained and far surpassed the first day of operation. Approximately,

4,000 packages are expected to move daily from Los Angeles to Territory B, and 8,000 to 10,000 daily from San Francisco and the East Bay Drayage Area to the remainder of Territory B and to Territory A.

The evidence shows that applicant's witnesses use Parcel Post service to transport the bulk of their small package traffic despite their unanimous and emphatic dissatisfaction with that service, and that they need and would use the service which United Parcel proposes to institute. The service rendered by Parcel Post was shown to be inadequate for these shippers in the following respects: No pickup service is provided, C.O.D. fees are too high, packages are thrown into carts and frequently damaged, service is extremely slow, no receipt is provided unless a package is insured at additional cost, packages are frequently lost and tracing is all but impossible. Due to recent legislation, reducing Parcel Post weight limits, packages moving between Territory A and Territory B which exceed 20 pounds and packages moving between points in Territory B which exceed 40 pounds must be split, so that packaging costs are increased.

In contrast, the evidence shows that if this application were granted, United Parcel would pick up daily, on a regular schedule, packages weighing up to 70 pounds, provide free insurance up to \$100 a package, charge lower C.O.D. fees, render a next-day service to some points and a second-day service to all other points, make three attempts to deliver and return undeliverable packages to the consignor without extra charge, maintain simplified records which would enable shippers to trace packages in a matter of minutes, and handle packages carefully, utilizing conveyor belts, to insure their arrival intact with a minimum of packaging cost.

The evidence shows that, except for occasional damaged shipments, these shippers are satisfied with the quality of the service rendered by existing carriers, but consider their rates for the transportation of small packages so high as to be prohibitive for all but urgent shipments. According to the testimony, the rates charged control the choice of carrier - small packages being sent by Parcel Post wherever possible or by Railway Express if speed and more careful handling are essential, and larger packages being sent by highway common carrier. This would continue to be the practice if this application were granted, and heavier shipments would move by general merchandise carriers where the rate is more favorable.

Protestants introduced evidence as to their facilities, equipment, schedules, routes, rates and financial condition for the purpose of showing that adequate service is being rendered to all points which applicant proposes to serve; that additional traffic can be handled by existing facilities and equipment; that existing carriers are not making unusual profits and in some instances are losing money despite what public witnesses in this case consider to be high minimum rates; that such carriers transport a considerable volume of small packages and that the loss of revenue from a diversion of such traffic would jeopardize their financial position; that applicant's proposed high standard of service at the rates contemplated is possible only because such service is limited to a select group of shippers who can provide a volume of traffic, and will inevitably result in a diversion of small package shipments from existing carriers.

Applicant by stipulation admits the assertion of protestants, that the service of existing carriers in the territory concerned is adequate, as to traffic handled, but its stipulation does not extend to traffic which existing carriers do not handle now.

The record clearly shows that a large number of shippers are utilizing a transportation service which, as to them, is inadequate and unsatisfactory, viz., Parcel Post service, and that although existing carriers transport small shipments rapidly and in a satisfactory manner, the rates charged are too high for many shippers to avail themselves of such service.

Protestants assert that it would be inequitable to allow a new carrier to enter a territory served by existing carriers where such new operator, by proposing to serve a limited class of shippers and to utilize specialized equipment, facilities and procedures, would be able to charge rates below the present minimum and thus attract traffic from existing carriers.

The rate structure which the Commission controls should not, at the expense of the public, impede the advent of new ideas and procedures in transportation. Conversely, the Commission must make sure that a new idea or procedure offering an immediate benefit to the public would not in the long run actually burden commerce by threatening the financial stability and operating efficiency of established carriers upon which the public depends for the bulk of its transportation requirements.

The Commission has recognized the public need for common carriers which specialize in a particular type of transportation. Such carriers, although they may be limited as to class of shippers served, type of commodity transported, and in other ways, are nonetheless common carriers so long as they hold themselves out to serve all shippers and carry all commodities within the categories to which they are limited. Parcel delivery has been recognized by the Commission as a proper field of specialization. In Decision 31606, rendered December 27, 1938, in Case 4246, establishing minimum rate levels for highway carriers, it was the finding

of the Commission that the minimum rate levels set forth therein were not designed for and should not apply to the rates of certain named parcel delivery carriers. United Parcel Service of Los Angeles, Inc. was among the carriers so named. Subsequently, other carriers desiring to specialize in the parcel delivery field have sought and, upon a showing that their proposed operations would be substantially similar to those of carriers named in Decision 31606, have received exemption from minimum rate levels.

The effect which the granting of the instant application would have upon existing carriers remains for consideration.

Exhibits introduced by protesting highway common carriers revealed that, on the average, approximately 15 per cent to 20 per cent of the total traffic of the general merchandise carriers in the territory concerned consists of shipments weighing less than 70 pounds. It is not clear from the record, however, what amount of the operating expense of the carriers should be allocated to the small package traffic; hence, the effect which a loss of a portion of this traffic would have on net operating revenue is left to conjecture. Nor is it clear from the record what proportion of such traffic is derived from the shipper category which applicant seeks to serve. The record shows that highway common carriers operating in the Southern California territory, where United Parcel has operated for many years at rates generally below the established minimum, continue to transport a considerable number of small packages.

Existing carriers render a same-day service between many points within Territory B where applicant's service would be overnight; also, their pickup area is more extensive than applicant's would be. Thus, some of the small package traffic presently

enjoyed by existing carriers would not be available to applicant; and as to that which would be, shippers may well prefer to pay a premium where existing carriers offer a faster service.

The Railway Express Agency testified that it had suffered a material loss of traffic to the Parcel Post service in recent years and had been a major proponent of the legislation reducing Parcel Post size and weight limits in the expectation of regaining a large portion of such traffic. According to the record, in three months of operation since the effective date of the new legislation the Express Agency's volume of traffic of the class and weight range covered by the instant application had increased from 11 per cent to 15 per cent. The Express Agency asserted that much of this traffic, to which it felt entitled, would be diverted to United Parcel if the proposed service were authorized, and that the Agency's already precarious financial position would be thereby jeopardized. While the percentage increase experienced by the Express Company appears substantial, it actually represents an increase of approximately 150 packages per day. It is apparent from this and from the testimony of public witnesses that most shipments which formerly moved by Parcel Post, but which exceed the new limits, are being split and continue to move by Parcel Post because shippers cannot afford to pay the higher Railway Express and highway carrier rates. Instead of being able to reduce its rates to attract additional traffic from Parcel Post, the Express Company has found it necessary, because of rising operating costs, to materially increase its rates since the new Parcel Post limitations became effective. The proportion of the Express Agency's small package traffic received from the class of shipper to which the instant application is limited is not brought out clearly. To deny

the proposed service to shippers who need it because an indeterminate amount of traffic may be diverted from the Express Agency would be a disservice to those shippers.

From the evidence of record in this proceeding the Commission makes the following findings of fact: A considerable number of shippers of small packages are utilizing U. S. Parcel Post, a service which, as to them, is unsatisfactory. The service offered by existing common carriers is inadequate for these shippers because they cannot afford to pay the rates charged for small package shipments. These shippers desire and would use the service which United Parcel proposes to institute. While some diversion to United Parcel of small package traffic would no doubt result from the granting of the instant application, it has not been established that such diversion would reach proportions where it would jeopardize the financial positions of existing carriers.

From the above findings of fact it is the conclusion of the Commission that public convenience and necessity require the service proposed in the instant application.

The Commission further finds as a fact that, except for the line-haul feature, applicant's proposed service is substantially similar to the operation which it conducts in Southern California, and concludes, on the basis of this similarity, that in conducting its proposed operation applicant is entitled to exemption from minimum rate levels.

Protestants' petition for a proposed report of the examiner in this proceeding is denied, as justification therefor has not been shown.

United Parcel Service of Los Angeles, Inc. is hereby placed upon notice that operative rights as such do not constitute a class of property which may be capitalized or used as an element

of value in rate fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed by the State, which is not in any respect limited to the number of rights which may be given.

O R D E R

Public hearings having been held in the above-entitled proceeding, the matter having been duly submitted, the Commission now being fully advised and having found that public convenience and necessity so require,

IT IS ORDERED:

(1) That a certificate of public convenience and necessity be, and it hereby is, granted to United Parcel Service of Los Angeles, Inc., authorizing the establishment and operation of a service as a highway common carrier, as that term is defined in Section 213 of the Public Utilities Code, for the transportation of property

- (a) Between Los Angeles, on the one hand, and San Francisco, Emeryville, Alameda, Albany, Berkeley, Oakland and Piedmont, on the other hand; and
- (b) From San Francisco, Emeryville, Alameda, Albany, Berkeley, Oakland and Piedmont, on the one hand, to all points within Territory B, as defined in Appendix A attached hereto and by this reference made a part hereof.

(2) That the above certificate of public convenience and necessity is granted subject to the following conditions and limitations:

- (a) The service shall be rendered only for manufacturers, manufacturers' agents, wholesalers, jobbers and commercial distributors;

- (b) Packages shall not exceed 70 pounds in weight, 120 inches in length and girth combined or eight feet in length;
- (c) Rates shall be maintained on a "per package" basis as contrasted with the "per shipment" basis employed by general merchandise carriers.

(3) That, in providing service pursuant to the certificate herein granted, applicant shall comply with and observe the following service regulations:

- (a) Within thirty (30) days after the effective date hereof, applicant shall file a written acceptance of the certificate herein granted.
- (b) Within thirty (30) days after the effective date hereof, and on not less than five (5) days' notice to the Commission and the public, applicant shall establish the service herein described and authorized and file in triplicate, and concurrently make effective, appropriate tariffs and timetables commensurate with the authority herein granted.
- (c) Subject to the authority of this Commission to change or modify the service or routes by further order, applicant shall conduct operations pursuant to the certificate granted herein over and along the following routes:

U. S. Highways 99, 101, 101 Alternate, 101 By-Pass, 40 and 50; State Highways 4, 9, 17, 21, 24 and 29.

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

Dated at San Francisco, California, this 16th day of September, 1952.

A. J. Inman
President
Justice F. Greener
Harold P. Huls
Pete E. McDell
Commissioners

APPENDIX A

DESCRIPTION OF TERRITORY

TERRITORY B (Northern California) includes all points along the following routes, including all points within five miles of the main highway travelled:

- (a) From San Francisco to Santa Rosa via Highway 101;
- (b) From San Francisco to San Jose via Highway 101 and 101 By-Pass; thence to Los Gatos via Highway 17;
- (c) From San Francisco to Vallejo and Sacramento via Highway 40; Vallejo to Napa via Highway 29;
- (d) From San Francisco to San Jose via Oakland and Highway 17;
- (e) From San Francisco to Stockton and Sacramento via Oakland and Highways 40, 4, 24, and 50 to Stockton, thence via Highway 99.
- (f) From San Francisco to Walnut Creek via Highways 9 and 21 through Hayward, Niles, Sunol and Danville; via Orinda; or via Martinez and Concord.

APPENDIX B

DESCRIPTION OF TERRITORY

TERRITORY A (Southern California) includes:

- (a) All points within the territory comprehending Belvedere, Maywood, Bell, Huntington Park, South Gate, Lynwood, Hynes, Long Beach, Wilmington, San Pedro, Palos Verdes, Redondo, Hermosa, Manhattan Beach, El Segundo, Santa Monica, Pacific Palisades, Brentwood, Beverly Hills, Glendale, Pasadena, Altadena, San Marino, San Gabriel, Wilmar, Monterey Park, and all other intermediate points; including all points within the city limits of Los Angeles;
- (b) All points within the territory comprehending Upland, Ontario, Chino, Whittier, Brea, Fullerton, Olive, Orange, Tustin, Santa Ana, Garden Grove, Westminster, Artesia, Bellflower, San Fernando, Burbank, La Crescenta, La Canada, Flintridge, Montrose, and all other intermediate points, including all points within five miles of the main highways traveled in all the last described territory;
- (c) All points within the territory comprehending Cucamonga, Rialto, San Bernardino, Redlands, Colton, Corona, Arlington, Riverside, San Juan Capistrano, Oceanside, La Jolla, San Diego, Coronado, National City, Chula Vista, Huntington Beach, Newport Beach, Laguna Beach, Calabasas, Ventura, Carpinteria, Oxnard, Santa Paula, Fillmore, Santa Barbara and all intermediate points, including all points within five miles of the main highway traveled in all of the last described territory.