

ORIGINAL

Decision No. 48372

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)	
CHESTER STANFORD McLEOD and FREDERICK)	
THOMAS JEWETT (Mercury Parcel and)	
Drayage Service) for certificate of)	Application No. 33767
public convenience and necessity to)	
operate property service between)	
Oakland and San Francisco and San Jose.)	

- Jerome Cohen for applicant.
- Roger L. Ramsey and Preston Davis for United Parcel Service, interested party.
- John F. Balaam for Peerless Stages as protestant.
- Douglas Brookman for Merchants Express Corporation and Pacific Greyhound Lines, protestants.
- Frederick E. Fuhrman for Southern Pacific Company, Pacific Motor Trucking Company and Railway Express Agency, protestants.
- Bertram S. Silver and Edward M. Berol for Highway Transport Express and Highway Transport, Inc., protestants.
- Clifton E. Brooks and Philip A. Winter for C. R. Becker, doing business as Delivery Service Company protestant.

O P I N I O N

This application filed October 7, 1952, requested authority to operate as a highway common carrier of general commodities between San Francisco and San Jose and Alvarado and intermediate points including Los Gatos, Sunnyvale, Cupertino, Saratoga and Campbell and between San Francisco, Oakland and adjacent points and Hayward and intermediate points. The rates proposed were the same as Highway Carriers' Tariff No. 2. As justification for the issuance of the requested authority it was alleged that with the growth of the peninsular and surrounding communities there is a need for more personalized highway common carrier service.

Hearings were held on January 19, and February 2, and 3, 1953, in San Francisco before Examiner Rowe. Oral and documentary evidence was adduced and after argument by counsel the matter was duly submitted for decision.

Applicants under their contract carriers' permit are presently serving five manufacturers or distributors of paint, painters supplies and equipment, one tape and label company and one distributor of printing supplies and sundries. The representatives of five of these firms appeared and testified that they were satisfied with the service rendered by applicants which generally met their business needs. Two of these witnesses stated that in their opinion the service would be improved if applicant were authorized to operate as a highway common carrier because as a contract carrier he had refused to handle collect shipments for them.

These witnesses testified that the highway common carriers on occasions had been slow in responding to requests for pick-up service. These complaints were not specific with two or three exceptions. The witnesses stated that most of such delays occurred more than a year ago. Two of these witnesses stated that the morning service of Highway Transport, Inc., known as the "Bullet Service" was satisfactory and dependable between San Francisco and peninsula points but that otherwise their requirements as to rush shipments were satisfactorily met only by applicants. Protestant Greyhound met their needs for urgent freight service but did not provide store-door pickup and delivery.

Applicants have evidenced sufficient experience and financial ability to successfully continue the operation in substantially its present scope and volume.

The Commission finds as a fact that the service herein proposed, reasonably limited within its present scope and extent, is required by public convenience and necessity. The contention of protestants that the continuance of the present operation under vague oral contracts could be properly continued without authority as a highway common carrier is not convincing. However, in accordance with previously stated policy the certificate to be issued will

limit the scope of applicants' operations to that justified by the showing made.

Chester Stanford McLeod and Frederick Thomas Jewett doing business as Mercury Parcel and Drayage Service are 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 particular routes. This monopoly feature may be changed or destroyed at any time by the State, which is not in any respect limited to the number of rights which may be given.

O R D E R

Application as above-entitled having been filed, public hearings having been held thereon, the matter being duly submitted, and the Commission finding that public convenience and necessity so require,

IT IS ORDERED:

(1) That a certificate of public convenience and necessity be and it is granted to Chester Stanford McLeod and Frederick Thomas Jewett, doing business as Mercury Parcel and Drayage Service, authorizing them to operate as a highway common carrier for the transportation of paint, painters equipment and supplies, paint sundries, printing equipment and printers supplies, tape and labels and wallpaper and paperhangers supplies and equipment between San Francisco on the one hand and on the other hand Oakland, Berkeley, Emeryville, Richmond, San Pablo, El Cerrito, Albany, San Leandro, San Lorenzo, Hayward, Sunnyvale and points intermediate to San

Francisco and Sunnyvale, Cupertino, Saratoga, Los Gatos, Campbell, Santa Clara, San Jose, Agnew, Alviso, Milpitas, Centerville and Alvarado subject to the restriction that applicants shall operate no trucks of a rated carrying capacity in excess of two-tons.

(2) That, in the operation of the highway common carrier service pursuant to the foregoing certificate, applicant shall comply with and observe the following service regulations:

- (a) Within thirty days after the effective date hereof, applicants shall file a written acceptance of the certificate herein granted.
- (b) Within sixty days after the effective date hereof, and upon not less than five days' notice to the Commission and the public applicants shall establish the service herein authorized and file in triplicate, and concurrently make effective, tariffs satisfactory to the Commission.
- (c) Subject to the authority of this Commission to change or modify such at any time, applicants shall conduct said highway common carrier operations between the above-named points and places over and along the following highways:

U. S. Highway 101, Bayshore Highway, (U. S. 101 By-pass), U. S. Highway 40, State Highways 17 and 9, U. S. Highway 50, the Santa Clara-Los Gatos Road, the San Jose-Alviso Road and the Alviso-Milpitas Road.

The effective date of this order shall be twenty days after its date.

Dated at San Francisco, California, this 17th day of March, 1953..

[Signature]
 PRESIDENT
[Signature]
[Signature]

COMMISSIONERS