

ORIGINAL

Decision No. 48956

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
 ROBERT F. HARDING, doing business as)
 Harding's Freight Service for a)
 certificate of public convenience)
 and necessity to operate as a common)
 carrier of property, between points)
 in San Diego County, as named in this)
 application.)

Application No. 34179

Vincent Matthew Smith, for applicant.
H. J. Bischoff and James Williams, for Southern
 California Freight Lines, Southern California Freight
 Forwarders, and Boyle and Son; Robert W. Walker and
 Henry M. Moffat, by Henry M. Moffat, for The Atchison,
 Topeka and Santa Fe Railway Company and The Santa Fe
 Transportation Company, Douglas Brookman, for Pacific
 Greyhound Lines, protestants. Bertram S. Silver and
D. Paul Culy, for Culy Transportation Company, pro-
 testant and intervenor.

O P I N I O N

Robert F. Harding, an individual, doing business as
 Harding's Freight Service, has permits, issued by this Commission
 on July 8, 1946, authorizing him to render service as a radial high-
 way common carrier and as a highway contract carrier. His operations
 pursuant to these permits have been in San Diego County. The pro-
 posed operations, if certificated, will be the same as applicant's
 present operations under his permits.

By this application, as amended, Robert F. Harding seeks
 authority to transport as a highway common carrier (a) automobile
 parts and automobile accessories for all retail and wholesale dealers,
 garages and repairmen, and (b) for all persons, firms or corporations,
 the business of which is the sale of such merchandise as is dealt
 in by wholesale and retail drug, pharmaceutical, hospital supply,
 surgical instrument and surgical supply houses, alcoholic liquors

(1)
for beverage purposes excepted, between San Diego, Escondido and Fallbrook, and between Escondido, Pala, Rincon, Valley Center and Escondido, a loop, via designated highways, in each instance serving between any two or more points on either or both of the designated routes.

Public hearings were held before Examiner Rogers in Escondido on April 22 and 23, 1953, and in San Diego on July 8 and 9, 1953. The matter was submitted on the latter date. Prior to the first hearing, all competing property carriers were notified thereof. Southern California Freight Lines, Southern California Freight Forwarders, Boyle and Son, The Atchison, Topeka and Santa Fe Railway Company, Santa Fe Transportation Company, Pacific Greyhound Lines, and Culy Transportation Company appeared as protestants. Affirmative evidence in support of protests was presented by Southern California Freight Lines, Santa Fe Transportation Company and Pacific Greyhound Lines.

(1) In his original application, applicant requested authority to handle "automobile parts, and drugs, medicines, or toilet preparations." A controversy arose as to the meaning of the language "drugs, medicines or toilet preparations." Applicant's attorney was to prepare and file an amended application showing the items involved in the latter classification. An amendment was filed with the Commission which lists the items to be carried as set forth above, the applicant stating as his reason "That applicant since 1946, under a contract carrier permit issued to him by this Commission has been hauling all (sic) of the commodities shipped by wholesale drug, pharmaceutical, hospital supply, surgical instrument and surgical supply houses, sold to retail drug customers for whom he has hauled property, and he has also specialized in the hauling of automobile parts and automobile accessories from and to points named in paragraph seven of application herein; that to itemize all of the articles would be a most difficult task, the items running into the thousands, which in the end would serve no useful purpose."

At the hearings in Escondido, before the amendment to the application was filed, applicant stated that the description of commodities to be carried contained in his original application; to wit, automobile parts, and drugs, medicines or toilet preparations, covered the items he desired authority to carry. At the hearings in San Diego applicant was asked what he included in the item "drugs, medicines or toilet preparations." He stated that the term meant what it was generally understood to mean. He also stated he desires to carry all the items he has been carrying for wholesale drug supply houses. From the evidence it appears that these items include such things as glassware, pocket combs, stationery, rubbing alcohol and acids. Applicant does not carry alcoholic beverages.

From the evidence presented at the hearings it is extremely difficult to determine exactly how applicant operates or proposes to operate and the facilities to be used in the proposed operation. The evidence shows that applicant performs a limited freight service in conjunction with a newspaper delivery service. Approximately 75% of applicant's income is derived from the newspaper business. The newspapers, according to applicant, are purchased by him in San Diego at wholesale. He then delivers these papers to his dealers at various places along the entire proposed route. This newspaper service is performed seven days per week. The proposed freight service is to be performed six days per week, including holidays, and will be rendered on Sundays if needed.

In order to operate the newspaper and freight service, applicant has five Chevrolet trucks, 1951 or later models, including four one-half ton and one three-quarter ton rated capacity. All are pick-up style with low metal sides. Two, which ostensibly will be used in the freight service, have side rails built up to the height of the cab.

Applicant proposes to make freight pickups in San Diego Monday through Saturday, between 9:15 and 11 a.m. His trucks (at one time he said two trucks made pickups in San Diego, and at another time he said one truck; he also stated only one of those trucks picks up freight in San Diego, but that any overflow is carried in the newspaper truck) will bring the freight to Escondido, arriving there about noon. At Escondido the freight will be placed in the proper truck, i.e., one going north to San Marcos, Buena, Vista, Bonsall and Fallbrook, and one making the loop via Pala, Rincon, Valley Center, and back to Escondido. Delivery on the Fallbrook run will be completed about 2:30 p.m., and on the loop about 3:30 p.m. Freight pickups are made by the delivery truck at the time deliveries are made.

Applicant has no terminal. He has an office in Escondido and a telephone service in San Diego at which pick-up requests are received. All freight will be loaded in San Diego or point of origin and delivered from the trucks making the pickup with the exception of the loop freight, which will be transferred at Escondido from the San Diego trucks to the loop truck. All undelivered merchandise will be returned at night to applicant's Escondido garage where it will be locked up for next-day delivery. Applicant now carries about 30,000 pounds of freight per month, broken down into 20 to 45 shipments per day. Approximately 50% of his shipments from San Diego go to Escondido, 25% to Vista, 20% to Fallbrook, and the balance to points on the loop. Applicant stated that he makes from five to 15 pickups per day in Escondido for delivery to points between Escondido and Fallbrook.

Applicant has three part-time drivers used in the freight business. These men receive total salaries of \$525.00, admittedly less than the union scale minimum in San Diego County.

At the present time, applicant stated, he serves 15 shippers in San Diego. Thirteen of these ship auto parts, and two ship drugstore supplies.

On March 31, 1953, applicant had total assets which he valued at \$25,222.75, including \$4,874.12 cash on hand, and trucks worth \$9,227.61, including those used in the newspaper business. Against these assets applicant had total liabilities of \$8,953.66, including the balance due on all trucking equipment of \$4,995.33.⁽²⁾

To show the cost of and revenue from his freight operations, applicant prepared Exhibit No. 3a which was received in evidence. This exhibit purports to show the revenue from the freight business

(2) Exhibit No. 1.

only for one month based on an average of the first four months of 1953. According to this exhibit, applicant's monthly gross revenue is \$877.68. His total cost of freight operations for the same average month is \$555.44, leaving applicant a net income from freight operations for one month of \$322.24. It should be noted, however, that the item "Drivers' Wages" on the exhibit is listed as \$325.00. Applicant himself stated that his freight drivers (who may or may not handle newspapers also, the record is not clear) receive salaries totaling \$525.00, which is \$200.00 more than set forth in the exhibit. If the figure of \$525.00 is correct, then applicant's net from his truck operations amounts to only \$122.00 per month.

Applicant called 22 shippers or receivers to support his contention that public convenience and necessity require that he be granted the authority he has requested. The parties stipulated concerning the testimony which would be given by three additional public witnesses. Twenty-three of the consignors or consignees ship or receive, or both, automobile parts and accessories. Of the other two, one represented the Brunswick Drug Company in San Diego, and the other represented a retail drug store in Fallbrook. All but one or two of the shipping or receiving firms use and have used the services of the applicant for periods ranging from a few months to the total period during which applicant has had his permits.

Relative to the automobile parts and accessories, there were five witnesses from San Diego, thirteen from Escondido, two from Vista, two from Fallbrook, and two from the loop. These witnesses were served by applicant between the following origins and destinations:

<u>Origin</u>	<u>Destination</u>	<u>Number Desiring Service</u>
San Diego	Escondido	18
" "	Vista	7
" "	Fallbrook	4
" "	Pauma Valley Loop	3
Escondido	Vista	9
"	Fallbrook	9
"	Pauma Valley Loop	5
"	San Diego	1
Vista	Fallbrook	1
"	San Diego	1
"	Pauma Valley Loop	1
Fallbrook	San Diego	1

The representative of the Brunswig Drug Company in San Diego testified that he needs applicant's services between San Diego on the one hand, and Fallbrook and Escondido, on the other. The Fallbrook druggist desired applicant's service between Fallbrook and San Diego only, and was one of the two consignees of the Brunswig Drug Company.

There were very few complaints against the existing certificated carriers because of faulty service. The parties were concerned with the time of delivery, and collectively stated that they desired the applicant's services because of his pick-up time in San Diego and time of delivery at various points along his route. As stated, applicant will continue his present schedules if he receives the certificate he has requested. Applicant testified that his truck leaves Escondido daily, including Saturday, at 8:30 a.m. Pickups are made in San Diego between 9:15 a.m. and 11 a.m., at which time the truck departs San Diego for Escondido, arriving there at noon. Merchandise for the loop is placed on a separate truck which leaves about 1 a.m., makes the loop and returns to Escondido at about 3:30 p.m. The San Diego truck makes deliveries in Escondido and departs therefrom about 12:30 p.m., arriving in Vista at about 1:15 p.m. and Fallbrook about 2:15 p.m., having made all pickups and deliveries between Escondido and Fallbrook. After leaving Fallbrook the truck returns to Escondido.

From the testimony of the witnesses it appears that the proposed schedules have been rigidly maintained in the past. Generally, the witnesses were familiar with the other carriers but felt the schedules were wrong as far as their personal needs were concerned.

Southern California Freight Lines, Santa Fe Transportation Company and Boyle and Son, all highway common carriers, protested the granting of the requested authority.

Southern California Freight Lines has authority to serve between San Diego and Fallbrook and intermediate points, and between any two or more points en route via the route over which applicant desires authority to serve, except the loop.⁽³⁾ It has two schedules along the route providing same-day service, one leaving San Diego at 10 a.m. and serving intermediate points en route to Vista, including Escondido, arriving at Vista at noon. Shipments in the reverse direction are picked up on the return trip to San Diego. The second leaves San Diego at noon and serves to Fallbrook, including intermediate points, arriving at Fallbrook at 3:30 p.m. In addition, Southern California Freight Lines has a schedule going from San Diego to Los Angeles via Escondido, leaving San Diego at 9 p.m. This trip drops shipments at Escondido. Southern California Freight Lines also has an overnight service from San Diego via Oceanside. In this service shipments from the day before depart from Oceanside for Vista and Fallbrook at 8 a.m., arriving at Vista at 8:30 a.m. and Fallbrook at 10 a.m. No Saturday service is provided.

There were few complaints against the services of Southern California Freight Lines except that its service was later in point

(3) Decision No. 48380, dated March 24, 1953, on Application No. 32246.

of time of delivery than that of the applicant, and it renders no Saturday service. Same-day service to Fallbrook arrives at 3:30 p.m., allegedly too late for the Fallbrook consignees.

Boyle and Son is a highway common carrier authorized to carry general commodities, with exceptions not material herein, between San Diego and Fallbrook and intermediate points and between San Diego, Valley Center and Rincon, and intermediate points. All of these points are on applicant's proposed service route. The only points served by Boyle and Son and not served by Southern California Freight Lines are Valley Center and Rincon. Service to these points is twice per week only, on Tuesdays and Fridays, and no Saturday service is given.

Protestant Pacific Greyhound Lines carries passengers, baggage and express along U. S. Highway 395 and the old U. S. Highway 395 between San Diego and Fallbrook, including intermediate points. It has a terminal in San Diego at which freight can be picked up or delivered 24 hours per day. It has an agency in Escondido open from 7 a.m. to 7 p.m.; one in Vista open from 8 a.m. to 7 p.m.; and one in Fallbrook open from 8 a.m. to 7 p.m. Freight packages cannot exceed 100 pounds in weight and 24 inches by 24 inches by 44 inches in size. All shipments must be picked up at the terminal or delivered to the terminal. One schedule leaves San Diego at 7:15 a.m. and arrives at Fallbrook at 8:49 a.m. Another leaves San Diego at 5:15 p.m. and arrives in Fallbrook at 6:49 p.m.⁽⁴⁾ The witness representing Pacific Greyhound Lines was the regional director. He stated that this company carries daily from San Diego to Fallbrook, Vista and Escondido four to six shipments to each place each schedule, and about four shipments from each of said

(4) Exhibit No. 5.

places to San Diego each schedule. Some of said shipments are emergency shipments, he stated. He also stated that this freight business is important to Greyhound, and another carrier will, in his opinion, divert 15% to 20% of the freight traffic in the area involved.

Santa Fe Transportation Company has agents in the depots of The Atchison, Topeka and Santa Fe Railway Company at San Diego, Escondido, Vista, and Fallbrook. It hauls general commodities and provides an overnight truck service from San Diego via Oceanside. Service is provided Monday through Friday.

The application herein concerns a request by a man, who derives three-fourths of his income from the buying and selling of newspapers, to engage in the freight hauling business in competition with three carriers, Southern California Freight Lines, Boyle and Son, and Santa Fe Transportation Company, whose sole business is the carriage of freight for compensation. In addition, he will compete with Pacific Greyhound Lines which derives a substantial portion of its income from the transportation of freight. On the main route proposed to be served by applicant, old and new U. S. Highway 395 between San Diego and Vista, existing carriers provide a service departing San Diego one hour earlier and one hour later than applicant's proposed service, and arriving in the towns along the route at corresponding times in comparison with applicant's proposed service. Those services provide pickup and delivery the same day. Fallbrook receives a same-day service from San Diego by an existing carrier. This service is scheduled to arrive in Fallbrook approximately one hour and fifteen minutes after applicant's proposed service. In addition, two of the carriers provide an overnight

service from San Diego to the points involved on old and new U. S. Highway 395, and Pacific Greyhound Lines provides two schedules giving station-to-station same-day service. No good reason was given why the existing schedules will not meet the needs of the public. The reason for applicant's services appears to be as stated by one witness, that if the consignees could get service every hour they would accept it.

The Escondido-Pala-Escondido loop operation is now served two times per week by a certificated carrier. Only two witnesses testified that they desire applicant's services on this loop for the carriage of auto parts and supplies, and at least one of them receives newspapers daily from applicant. The total length of the loop is approximately 50 miles.

No evidence was presented to show the sizes of the communities involved, or the amount of traffic available. Southern California Freight Lines, Boyle and Son, Pacific Greyhound Lines, and Santa Fe Transportation Company appear to be rendering services which provide adequate transportation for the area involved, disregarding the wishes of the shippers and consignees for a service which makes deliveries at a different time than the existing carriers. In addition, it does not appear that applicant is in a position to continue the services in the event he should lose his newspaper business.

Upon the evidence of record herein, we find that public convenience and necessity do not require that the applicant be given the authority he has requested. The application will be denied.

ORDER

Application having been filed, public hearings having been held thereon, and the Commission having found that public convenience and necessity do not require that applicant be given a certificate of public convenience and necessity as requested in the application,

IT IS ORDERED that the application be, and the same hereby, is, denied.

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

Dated at Los Angeles, California, this 10th day of August, 1953.

[Signature]
President

[Signature]
[Signature]

[Signature]
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Commissioners