Decision No. 53272

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of JOHN V. GIBSON, an individual doing business as GIBSON FREIGHT LINE, to sell, and NIELSEN FREIGHT LINES, a corporation, to purchase a certificate of public convenience and necessity.	Application No. 37974

Frank W. Finn, for John V. Gibson;
Marvin Handler, for Nielsen Freight Lines.

O P I N I O N

This is an application for an order of the Commission authorizing John V. Gibson to transfer operative rights to Nielsen Freight Lines, a corporation hereinafter referred to as Nielsen.

This application was filed on April 30, 1956, and a public hearing was held before Examiner Coleman in San Francisco on May 22, at which time the matter was taken under submission. The Commission has received no protests in the proceeding.

Both applicants are engaged in business as highway common carriers of property. Applicant Gibson operates generally between Santa Rosa and Willits, and applicant Nielsen between San Francisco and Santa Rosa and points in the Sonoma Valley, and between San Francisco and East Bay points, subject to the restrictions and conditions of the operating authorizations. Pursuant to Decision No. 49790, dated March 16, 1954, the applicants have established through service and joint rates.

In financial statements submitted to the Commission, applicants have reported their results of operations during 1955 as follows:

	Gibson	Nielsen
Operating revenues	$119,437	$380,391
Operating expenses (exc. depreciation)	109,497	334,176
Balance	9,940	46,215
Depreciation	5,378	14,074
Net operating income	$ 4,562	$ 32,141

The record shows that applicant Gibson has contracts for the delivery of mail. His 1955 revenues of $119,437 include $74,023 arising from the operation under such contracts, $44,646 from the common carrier activities, and $768 from miscellaneous sources.

It appears that Gibson now desires to withdraw from his highway common carrier operations and that he has made arrangements, and now seeks Commission authorization, to sell his operative rights and his common carrier business as a going concern to applicant Nielsen for the sum of $25,000, payable in cash. He will not transfer his motor vehicle equipment but will dispose of some units and will utilize the others for his mail contract hauling.

Applicant Gibson for many years operated a for-hire truck service between Santa Rosa and Willits. He was certificated in 1953 by Decision No. 49395, dated December 1 of that year, and undertook to furnish highway common carrier service over his certificated route and also to furnish inter-line service with Nielsen by the arrangement approved by the Commission. The record shows that the inter-line traffic, which was nonexistent prior to the inception of the highway common carrier operations, exceeds the traffic handled by Gibson in his certificated territory. During 1955 the revenues received from shipments inter-lined with Nielsen were $26,167, out of total revenues of $44,646 from highway common carrier activities.

The testimony shows that most of the inter-line freight moves northward and is originated by Nielsen. Nielsen is of the opinion that it would not be to its advantage for the Gibson operations to be acquired by a competitor and for some time it has been negotiating with Gibson for the purchase of his lines. The $25,000 is a figure finally agreed upon by the parties, and represents, according to the testimony, the lowest price the present owner would accept and a fair price for the rights and the good will of the business as a going concern. Gibson testified that there were other bidders for the purchase of his operations.

James P. Nielsen, the president of Nielsen, testified that the corporation had adequate equipment on hand or on order to service the combined operations, that he has the resources and available credit to finance the cost of new equipment, and that in his judgement, on the basis of the volume of business being acquired, the corporation is warranted in paying the agreed price and can do so without jeopardizing its financial strength or interfering with the service to the public. On the other hand, he indicated that the service would be improved in that new and modern equipment will be placed on the line and savings in transit time will be realized on the San Francisco - Willits run. Mr. Nielsen further testified that the purchase price would be financed with advances of his personal funds.

With respect to the purchaser, it appears that it was organized in 1954 but that it acquired operations which had been conducted for a number of years by James P. Nielsen, who is the sole stockholder. During the last five years the gross revenues from the business have risen from $186,726 in 1951 to $380,391 in 1956.

The corporation's financial position as of March 31, 1956, is indicated in the following balance sheet:

Assets

Current assets -		
Cash and deposits	$16,032	
Accounts receivable	41,355	
Prepayments	6,718	
Total current assets		$ 64,105
Tangible assets less reserves		67,213
Other investments		15,532
Total		$146,850

Liabilities and Capital

Current liabilities		$ 21,953
Equipment obligations		8,890
Capital		
Common stock	$88,580	
Surplus	27,427	
Total capital		116,007
Total		$146,850

Upon reviewing the application and the testimony, we have concluded that, upon the consummation of the transaction as herein proposed, the shippers will be accorded the same through service at the same rates but with improved facilities and operating schedules, and that the corporation will undertake the combined operation with what appears to be a reasonable amount of working capital, with financial resources, and with adequate terminal facilities and equipment. Under the circumstances as disclosed in this proceeding, we are of the opinion, and so find, that the proposed transfer and the payment of the $25,000 purchase price will not be adverse to the public interest. We will enter our order approving the transaction, but in doing so we will make no finding of the value of the operative rights to be transferred.

Applicants are hereby placed on 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 at any time by the state, which is not in any respect limited as to the number of rights which may be given.

O R D E R

A public hearing having been held in the above-entitled matter, and the Commission having considered the evidence submitted and being fully advised in the premises,

IT IS HEREBY ORDERED as follows:

1. John V. Gibson, on and after the effective date hereof and on or before October 31, 1956, may sell and transfer to Nielsen Freight Lines, and the latter may purchase and acquire, the operative right granted by Decision No. 49395, dated December 1, 1953, in accordance with the provisions of the Agreement of Purchase and Sale attached to this application as Exhibit A.

2. On not less than five days' notice to the Commission and to the public, effective concurrently with the consummation of such transfer, applicants shall supplement or reissue the tariffs on file with the Commission naming rates, rules and regulations governing the common carrier operations here involved so as to show that John V. Gibson has withdrawn or canceled and that Nielsen