

**ORIGINAL**

Decision No. 56549

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 WESLEY J. GILBERT, doing business as )  
 MAIL DELIVERY SERVICE CO. OF SAN )  
 FRANCISCO, for exemption of the trans- ) Application No. 38666  
 portation of United States Mail from )  
 the provisions of City Carriers' Minimum )  
 Rate Tariff No. 1-A. )

In the Matter of the Investigation into )  
 the rates, rules, regulations, charges, )  
 allowances and practices of all common )  
 carriers, highway carriers and city )  
 carriers relating to the transportation ) Case No. 5441  
 of property in the City and County of )  
 San Francisco and the Counties of Ala- )  
 meda, Contra Costa, Marin, Monterey, )  
 Napa, Santa Clara, Santa Cruz, San Ben- )  
 ito, San Mateo, Solano and Sonoma. )

- Wesley J. Gilbert, applicant.
- R. L. Miller and Edward I. Wadler, for applicant.
- Edward J. Maurer, for Delivery and Messenger Service Association of San Francisco, Inc.; Russell Bevans, for Draymen's Association of San Francisco, Inc.; Natalie Gail, for Gale Messengers; protestants.
- J. C. Kaspar and Arlo D. Poe, for California Trucking Associations; J. X. Quintrall, for Western Motor Tariff Bureau; Roger Ramsay, for United Parcel Service; Edwin C. Bennett, for Ace Delivery Service;
- Royston E. Campbell, for Schlage Lock Co.; interested parties.
- Arthur M. Mooney, for the Commission's staff.

O P I N I O N

Minimum rates, rules and regulations applicable to the transportation of property within San Francisco by city carriers are set forth in City Carriers' Tariff No. 1-A. By Application No. 38666, as amended, Wesley J. Gilbert, doing business as Mail Delivery Service

Co. of San Francisco, requests that the transportation of United States mail be exempted from the provisions of said tariff.<sup>1/</sup>

Public hearing was held before Examiner Carter R. Bishop at San Francisco on February 26 and April 2, 1957.

As originally filed, the application herein sought relief, under the provisions of Section 4015 of the Public Utilities Code, for applicant only, from the provisions of City Carriers' Tariff No. 1-A in the transportation of United States mail. On March 7, 1957 applicant filed an amendment to the application, in which he changed his request to read as set forth in the first paragraph of this opinion. The effect of the amended proposal, if granted, would be to exempt the transportation of U. S. mail within San Francisco by any and all city carriers from the provisions of the aforesaid minimum rate tariff. In order to insure continuity in the various amendatory orders involving the tariff in question the adjourned hearing on April 2<sup>2/</sup> was scheduled in Case No. 5441 as well as in Application No. 38666 and notices of said adjourned hearing were mailed in advance to all parties of record in Case. No. 5441.

Applicant testified that he renders a specialized service involving, almost exclusively, the movement of mail or mailable matter of all classes between postoffices and the establishments of his customers. Occasionally, he handles letters or parcels between offices of his patrons or parcels between such offices and the depot of a parcel carrier for intercity movement. According to applicant, his service, which is provided at all hours of the day, enables

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1/ A partial exemption is currently set forth in Item No. 50-K of the tariff. The exemption applies to "United States mail transported between postoffices or points designated by a postoffice on the one hand and steamship docks, piers or wharves on the other hand".

2/ No evidence was received at the hearing of February 2, 1957.

customers to receive their mail more promptly than is possible through the regular postal deliveries. Applicant, by his expedited service, also enables his customers to deliver outbound mail to the postoffice well in advance of the late afternoon peak period, thus avoiding delays normally experienced during the latter period, when the bulk of outbound mail is received at the postoffice for processing. The operations thus described, the witness asserted, are in the nature of special delivery service and are substantially different from the customary operations of draymen. Applicant performs other incidental services for his clients, such as replenishing postage metering machines and initiating claims with the postal department.

According to applicant's testimony, it is difficult, if not impossible, to apply the minimum rate tariff provisions to the transportation which he performs. While he occasionally delivers loose items, such as a letter or package, the record discloses that by far the majority of the shipments are tendered to him in closed mail sacks. He pointed out that in order to apply the rates in City Carriers' Tariff No. 1-A it would be necessary to open the sacks, which he felt he had no right to do, weigh each item and ascertain its identity. Moreover, the witness indicated that if he were required, in accordance with minimum tariff provisions, to issue a shipping document for each shipment and to weigh and rate same the element of dispatch which is characteristic of his mail delivery service would be minimized and the value of that service to his customers would be greatly reduced.<sup>3/</sup>

In view of the foregoing and other considerations, applicant's position was that the services which he renders are not characteristic of those for which the minimum rates were designed. Moreover, his understanding, he testified, is that no provision is made

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<sup>3/</sup> This latter testimony was corroborated by employees of two of applicant's clients, who testified on his behalf.

in the minimum rate tariff for the transportation of mail or mailable matter. A traffic consultant, testifying on behalf of applicant, expressed the view that it would be difficult to determine what rate to apply under the tariff in question since no rating is provided for United States mail in the governing classification. In this connection, an associate transportation rate expert from the Commission's staff testified that the only rates established in City Carriers' Tariff No. 1-A for the transportation of first class mail are the rates per package provided in Item No. 425 series, applicable only from manufacturers, manufacturers' agents, wholesalers, jobbers, commercial distributors and warehouses. In his opinion there are no rates in the tariff applicable to first class mail originating at a postoffice except the hourly vehicle unit rates named in Item No. 560 series. These rates, the witness pointed out, apply only where the equipment furnished by the carrier is devoted to the exclusive use of a single shipper. The rate expert drew attention to a previous decision <sup>4/</sup> in which the Commission said, in effect, that articles consisting of mailable matter which is subject to second, third or fourth class postage should be rated under the class rates provided in City Carriers' Tariff No. 1-A, depending upon the commodity contained in the package to be mailed.

Applicant asserted that his operations are not competitive with other transportation performed under the minimum rate tariff and that most of his customers had utilized their own employees in the handling of their mail before taking advantage of his services. Applicant had knowledge of only one other carrier who has a comparable service in San Francisco. <sup>5/</sup>

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<sup>4/</sup> Decision No. 44302, dated June 13, 1950 in Cases Nos. 4084, 4108 and 4109.

<sup>5/</sup> The carrier was identified by applicant as Bernard Reznick, doing business as Universal Mail Service.

United Parcel Service supported the granting of the application herein. Its commerce attorney testified that the company in question, operating as a city carrier, serves a large number of San Francisco wholesalers and manufacturers in the movement of packages not exceeding 70 pounds in weight between points in that city. He stated that some of United's smaller accounts tender parcel post packages to it for transportation to the postoffice. These packages are picked up along with the regular city delivery parcels and are segregated at United's terminal, where all the parcel post packages from all customers are loaded into a single postoffice transfer truck. The subsequent movement of the parcel post to the postoffice, the witness stated, is much less costly than are the deliveries of individual, non-mail parcels to numerous locations throughout the city. For this reason, he said, it is the position of United that the parcel delivery rates in the minimum rate tariff are higher than necessary for the movement of parcel post packages to the postoffice and that said rates were not designed to cover that type of movement. Accordingly, United believes that such transportation should be exempted from the minimum rates. The witness drew attention to the fact that the Commission had, in 1955, granted a similar exemption in connection with movements between all points within a radius of 25 constructive miles of downtown Los Angeles.<sup>6/</sup>

Granting of the application was protested by Delivery and Messenger Service Association of San Francisco, Inc., by Gale Messengers and by the Draymen's Association of San Francisco. Evidence was offered only by the first-named organization, hereinafter identified as the Association. According to the testimony of the Association's general manager, the group has seven members, all of which engage in

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<sup>6/</sup> Decisions Nos. 51134 and 51135, dated February 23, 1955, in Cases Nos. 5432 and 5435.

light hauling in San Francisco as city carriers, utilizing half-ton trucks and pickup trucks similar to those operated by applicant. Included in the services of the members, he said, is delivery of mail and mailable matter. An exhibit of record discloses that, for the month of November 1956, the sum of the revenues derived by four of the Association members from the handling of mail for their customers amounted to 13 percent of the total revenues from all services of those carriers.

The reasons for the Association's protest, as stated by the general manager, include the following, among others: (1) the proposed exemption should have the support of the industry in general; (2) adoption of the proposal may result in unforeseeable complications; (3) exemption may tempt a carrier to haul mail free of charge in order to secure a client's other drayage business; (4) it is practicable to apply the provisions of the minimum rate tariff to the traffic in question; and (5) since there is a large number of haulers of this type of traffic there is undoubtedly a healthy competitive situation with respect thereto. <sup>2/</sup>

The position of the Commission's staff, according to the party appearing on its behalf is that no exemption should be accorded the transportation of mail between offices of the same or different concerns, since such transportation is not unlike other small shipment traffic for which minimum rates are now provided. The staff takes no position with respect to the movement from or to postoffices.

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<sup>2/</sup> The general manager introduced into the record the names of seven additional parcel or messenger carriers which are not members of the Association but who assertedly oppose the application. None of these appeared at the hearing and the record fails to disclose to what extent, if at all, they transport mail within San Francisco.

The record establishes clearly that applicant, in transporting mail and mailable matter from and to postoffices, is providing a specialized and expedited service which, by reason of its design and manner of functioning is of particular value to his customers. It appears, moreover, that aside from one other carrier, applicant is the only operator within San Francisco who specializes in the type of service here in issue. While mail is transported to some degree by the general parcel carriers, such transportation appears to constitute only a minor part of the traffic handled by these concerns. Thus, applicant's services are not, for the most part, directly competitive with transportation performed by for-hire carriers generally.

The record is also clear that the minimum rates, rules and regulations set forth in City Carriers' Tariff No. 1-A were not designed for and are not appropriate for the movement of mail and mailable matter from and to postoffices. If the specialized carriers of mail were compelled to comply with the weighing, classifying and billing requirements of the minimum rate tariff in connection with such traffic, it appears that the value of the services in question would be practically nullified. In the circumstances it is concluded that the transportation to and from postoffices should be exempted from City Carriers' Tariff No. 1-A. In all other respects the application has not been justified and will be denied.

Upon consideration of all of the facts and circumstances of record the Commission is of the opinion and finds as a fact that City Carriers' Tariff No. 1-A should be revised to the extent herein provided. A motion to dismiss Application No. 38666, made at the hearing on behalf of Delivery and Messenger Association of San Francisco, Inc., is hereby denied.

O R D E R

Based upon the evidence of record, and upon the conclusions and findings set forth in the preceding opinion,

IT IS ORDERED that City Carriers' Tariff No. 1-A (Appendix A of Decision No. 41363 as amended) be and it is hereby further amended by incorporating therein Twelfth Revised Page 15 Cancels Eleventh Revised Page 15, attached hereto and by reference made a part hereof, to become effective October 1, 1957.

IT IS FURTHER ORDERED that in all other respects Application No. 38666 is hereby denied.

In all other respects said Decision No. 41363, as amended, shall remain in full force and effect.

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

Dated at San Francisco, California, this 3rd day of September, 1957.

[Signature]  
 President

[Signature]

[Signature]

[Signature]

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 Commissioners

Commissioner Matthew J. Dooley, being necessarily absent, did not participate in the disposition of this proceeding.



Item No.	SECTION NO. 1-RULES AND REGULATIONS OF GENERAL APPLICATION (Continued)
	<p style="text-align: center;">APPLICATION OF TARIFF-COMMODITIES</p> <p>Rates in this tariff apply for the transportation of all commodities except the following:</p> <p>Accessories and supplies, motion picture; film, motion picture, Automobiles, Automobile parts, accessories, and related articles in secondary movement by truckway service when subject to the rates, rules and regulations set forth in Minimum Rate Tariff No. 12, amendments thereto or reissues thereof,</p> <p>Baggage,</p> <p>Cement, hydraulic, masonry, natural or Portland-also lime, common (including magnesium lime, hydrated or hydraulic lime, quick or slaked), cement flue dust, and/or limestone, powdered, shipped in mixed shipments with cement-when transported in shipments of 40,000 pounds or more, or when transported in shipments of lesser weights subject to the rates, rules and regulations, including the minimum charge computed on a minimum weight of 40,000 pounds, which are set forth in Minimum Rate Tariff No. 10, amendments thereto or reissues thereof,</p> <p>Commodities weighing 100 pounds or less per piece or package when delivered from retail stores, or when returned to the original retail store shipper via the carrier which handled the out-bound movement,</p> <p>Commodities which consist of or contain materials essential to National Defense and which have been donated to and are transported for the United States Government, governmental agencies, or nonprofit organizations acting for or in behalf of said government in the collection, assembly or transportation of said commodities in connection with the recovery of said essential materials from the commodities transported,</p> <p>Fat, sweet cream, concentrated, frozen,</p> <p>Fruits and vegetables, fresh or green (not cold pack or frozen), except as provided for in Section 7 of this tariff,</p> <p>Livestock,</p> <p>Motor vehicles when towed by a tow car,</p> <p>Newspapers; newspaper supplements, sections or inserts; (not scrap or waste),</p> <p>Pickup and delivery of common carrier shipments transported from or to points outside the San Francisco city limits under through pickup and delivery rates,</p> <p>Printed Matter, viz.: Advertising Matter, Books, Directories, Magazines, Pamphlets, Periodicals, Rating Books, Registers or Services; when tendered to one carrier at one time in a single lot consisting of identical articles for distribution to not less than eight separate addresses and where the weight of each delivery does not exceed 25 pounds,</p> <p>Property shipped to or from producers of motion pictures or television shows when transported subject to the rates, rules and regulations provided by Decision No. 33226, in Cases Nos. 4246 and 4434, as amended,</p> <p>Property transported in dump trucks,</p> <p>*Property transported to a United States post office for mailing; United States mail transported from a post office to the addressee thereof; and United States mail transported between post offices or points designated by a post office on the one hand and steamship docks, piers or wharves on the other hand,</p> <p>Telephone Directories, new, distributed to subscribers; old, picked up from subscribers,</p> <p>Unloading and distribution of freight forwarders' cars originating at points outside the State,</p>

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Furniture, household appliances and other home furnishings, transported from retail stores where they have been sold at retail by a retail merchant, or transported from retail customers to retail stores;  
Liquids, compressed gases, commodities in semiplastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semi-trailers or a combination of such highway vehicles,

Used Property, viz.: Household goods, office and store fixtures and equipment, as described in and for which rates are provided in Minimum Rate Tariff No. 4-A, amendments thereto or reissues thereof, and used property as described therein transported for the United States, State, County or Municipal governments, Voting booths, ballot boxes, election tents and election supplies, when transported from or to polling places.

\* Change ) Decision No. 55513  
# Addition )

EFFECTIVE OCTOBER 1, 1957

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San Francisco, California.  
Correction No. 254