

ORIGINAL

Decision No. 59245

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of JOHN R. CHAMBERLAIN, HARRY C. FLESHER, REID C. NECKER and SAM COON, doing business as AZTEC TRANSPORTATION COMPANY, for a certificate of public convenience and necessity extending its operations as a common carrier for the transportation of property.

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) Application No. 41290  
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Donald Murchison, for applicant.  
Glanz & Russell, by Robert Schureman, for Harding's Freight Service, protestant, and Consumers Transport Co., interested party.  
W. Ross Starkey and Rodney Starkey, for Pacific Messenger Service, interested party.

O P I N I O N

The original application was filed on July 8, 1959, by John R. Chamberlain and Harry C. Flesher, doing business as Aztec Transportation Company. Since 1954 they have been engaged in the transportation of property in the County of San Diego pursuant to permits granted by this Commission.<sup>1/</sup> By two amendments to their application, filed August 20 and September 10, 1959, Reid C. Necker and Sam Coon were added as partners and proposed service changes were made.

An application is now pending before the Commission for authority to transfer the permits and business to the new partners who will operate under the same fictitious firm name.

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<sup>1/</sup> Radial Highway Common Permit No. 37-4660, Highway Contract Carrier Permit No. 37-4661, and City Carrier Permit No. 37-4662.

By the application, as amended, authority is sought to transport general commodities, with the usual exceptions, (1) between the City of San Diego, on the one hand, and the adjacent cities of La Mesa, El Cajon, Lemon Grove, Coronado, Imperial Beach, National City and Chula Vista, on the other hand, and (2) between the San Diego Drayage Area, as defined in Minimum Rate Tariff No. 9-A, on the one hand, and Camp Pendleton and Fallbrook, on the other hand, serving also all intermediate points via U.S. Highways Nos. 101 and 395, State Highways Nos. 76 and 78, and unnamed county roads, and serving also off-route points within three miles thereof, including the off-route points of Poway and Rancho Santa Fe.

A public hearing was held at San Diego before Examiner Mark V. Chiesa, and evidence, oral and documentary, having been adduced, the matter was submitted.

The evidence of record shows, and we find, the facts to be as hereinafter set forth.

Applicants now transport dry freight as a contract carrier, radial highway common carrier or city carrier pursuant to permits granted by this Commission. Their principal place of business is in San Diego where they maintain a terminal consisting of a yard, dock, and office. Ten persons are employed and seven trucks are used in the operation. The lading consists principally of electrical appliances such as television sets, radios, high fidelity equipment, and household "white goods" such as refrigerators, washers, driers, and water heaters. The record shows that applicants also transport steel and metal products, garden supplies, restaurant supplies, tires, batteries, and floor coverings. Sixty percent of the business is

contract carriage and approximately forty percent of the commodities transported are electrical household appliances.

Three of the partners are experienced in the trucking business. The financial condition of the new partnership as of July 31, 1959, was as follows:

Total tangible assets	\$28,170.17
Total liabilities	<u>11,371.62</u>
Net worth	\$16,798.55

For the period October 31, 1958, to July 31, 1959, the business was operated at a net profit of \$8,221.85.

Each of the four partners has a fourth interest in the partnership. Applicants' equipment consists of seven small trucks, two pickups, three van-type, two stake-type and one with hydraulic lift gate. Applicants propose same-day delivery and also following-morning delivery five days per week plus Saturday morning deliveries. Most points will have two deliveries daily if required.

Sixteen shipper witnesses testified in support of applicants' request, and it was stipulated that three additional witnesses would also testify in favor of applicants' proposed service. All the witnesses have been using applicants' service, have their businesses in the San Diego Drayage Area, and ship daily to various of the points and places proposed to be served. The commodities shipped are radios, television and high fidelity sets, refrigerators, freezers, electrical appliances, floor coverings, hardware, garden supplies, restaurant supplies, tires and batteries, toys, paints, wallpaper, and paper products such as boxes and knocked-down cartons.

The evidence shows clearly that applicants are not equipped to perform a general commodity transportation service, nor have

applicants established that there is a public need for such service. Shipments are all less-truckload. There was no substantial evidence that points and places situated more than one mile off route require applicants' transportation service. On the other hand, there is evidence of need for a highway common carrier service to the extent indicated.

Robert F. Harding, doing business as Harding's Freight Service, protestant, objected to the issuance of a certificate on grounds that his service is available to most of the shippers who testified for applicant (Decision No. 58280, dated April 14, 1959). This protestant also operates seven small trucks between San Diego, on the one hand, and Oceanside, Escondido, Vista, Fallbrook and Pala, on the other hand, and intermediate points, as more specifically set forth in said decision. However, his certificate also limits the commodities which may be transported, and many of the products shipped by applicants' witnesses are not included in protestant's authority. Also, applicants propose service to several cities and communities which are not served by protestant.

Having considered the entire record and having found the facts as hereinabove set forth, the Commission further finds that public convenience and necessity require that applicants be authorized to operate as a highway common carrier to the extent hereinafter set forth. The application will be granted in part and denied in part.

John R. Chamberlain, Harry C. Flesher, Reid C. Necker and Sam Coon 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, such rights extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be modified or canceled at any time by the State which is not in any respect limited as to the number of rights which may be given.

ORDER

A public hearing having been held, the Commission being fully advised in the premises and finding that public convenience and necessity so require,

IT IS ORDERED:

(1) That a certificate of public convenience and necessity is granted to John R. Chamberlain, Harry C. Flesher, Reid C. Necker and Sam Coon, doing business as Aztec Transportation Company, authorizing them to operate as a highway common carrier as defined by Section 213 of the Public Utilities Code for the transportation of property between the points and over the routes as more particularly set forth in Appendix A attached hereto and made a part hereof.

(2) That in providing service pursuant to the certificate herein granted, applicants 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. By accepting the certificate of public convenience and necessity herein granted, applicants are placed upon notice that they will be required, among other things, to file annual reports of their operations and to comply with and observe the safety rules and other regulations of the Commission's General Order No. 99. Failure to file such reports, in such form and at such time as the

Commission may direct, or to comply with and observe the provisions of General Order No. 99, may result in a cancellation of the operating authority granted by this decision.

- b. Within sixty days after the effective date hereof, and upon not less than ten 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.

(3) That, except as herein authorized, Application No. 41290 be, and it hereby is, denied.

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

Dated at San Francisco, California,  
this 10th day of November, 1959.

[Signature]  
President  
[Signature]  
[Signature]  
[Signature]  
Theodore Jenner  
Commissioners

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Appendix A      JOHN R. CHAMBERLAIN, HARRY C. FLESHER,      Original Page 1  
                    REID C. NECKER and SAM COON  
                    dba Aztec Transportation Company

John R. Chamberlain, Harry C. Flesher, Reid C. Necker and Sam Coon, doing business as Aztec Transportation Company, by the certificate of public convenience and necessity granted in the decision noted in the margin are authorized to transport the following commodities:

AGRICULTURAL IMPLEMENTS, HAND, OR PARTS NAMED, as listed under that heading in Items Nos. 2710 through 3191 of Western Classification No. 77, J. P. Hackler, Tariff Publishing Officer, on the issue date thereof.

BOXES OR CRATES, INCLUDING FIBREBOARD, PAPER OR PULPBOARD BOTTLES OR CANS, as listed under that heading in Items Nos. 14060 through 14068, and 14550 through 14575, of Western Classification No. 77, J. P. Hackler, Tariff Publishing Officer, on the issue date thereof.

COOLERS, COOLING BOXES, COOLING ROOMS OR REFRIGERATORS, as listed under that heading in Items Nos. 30600 through 30744 of Western Classification No. 77, J. P. Hackler, Tariff Publishing Officer, on the issue date thereof.

ELECTRICAL APPLIANCES OR EQUIPMENT, OR PARTS NAMED, as listed under that heading in Items Nos. 34020 through 35430 of Western Classification No. 77, J. P. Hackler, Tariff Publishing Officer, on the issue date thereof.

FLOOR COVERINGS OR RELATED ARTICLES, as listed under that heading in Items Nos. 38830 through 39061 of Western Classification No. 77, J. P. Hackler, Tariff Publishing Officer, on the issue date thereof.

GAMES OR TOYS, as listed under that heading in Items Nos. 44710 through 45200 of Western Classification No. 77, J. P. Hackler, Tariff Publishing Officer, on the issue date thereof.

HARDWARE, as listed under that heading in Items Nos. 48640 through 51180 of Western Classification No. 77, J. P. Hackler, Tariff Publishing Officer, on the issue date thereof.

INSECTICIDES OR FUNGICIDES, AGRICULTURAL, as listed under that heading in Items Nos. 52960 through 53110 of Western Classification No. 77, J. P. Hackler, Tariff Publishing Officer, on the issue date thereof.

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MACHINERY OR MACHINES, OR PARTS NAMED, Household Laundry, as listed under that heading in Items Nos. 62420 through 62501 of Western Classification No. 77, J. P. Hackler, Tariff Publishing Officer, on the issue date thereof.

PAINTS, PAINT MATERIAL OR PUTTY, as listed under that heading in Items Nos. 74750 through 75200 of Western Classification No. 77, J. P. Hackler, Tariff Publishing Officer, on the issue date thereof.

RESTAURANT OR HOTEL KITCHEN EQUIPMENT, as listed under that heading in Items Nos. 83310 through 83312 of Western Classification No. 77, J. P. Hackler, Tariff Publishing Officer, on the issue date thereof.

MISCELLANEOUS COMMODITIES, VIZ.:

Garden tool sets, hand, consisting of trowels, spading forks, cultivators and dibbles.  
Paper, wall, or wall paper samples or sample books.  
Seed, flower or garden.  
Sprinklers, garden or lawn.  
Talking machines, or recorders, tape or wire.  
Talking machine operating and sound mechanism assemblies or turntables.  
Talking machine parts or needles.  
Talking machine record carrying cases.  
Talking machine record compound.  
Talking machine record shaving machines.  
Talking machine records or record blanks.  
Tires or Tire Tubes, pneumatic, rubber, artificial, guayule, natural, neoprene or synthetic.

BETWEEN:

- (1) San Diego, California, on the one hand, and La Mesa, El Cajon, Lemon Grove, Coronado, Imperial Beach, National City and Chula Vista, via U.S. Highways Nos. 80 and 101 and State Highways Nos. 94 and 75, on the other hand.
- (2) San Diego Drayage Area, California, as described in Appendix B hereof, on the one hand, and Camp Pendleton, California, on the other hand, via U.S. Highways Nos. 101 and 80.
- (3) San Diego Drayage Area, California, as described in Appendix B hereof, on the one hand, Fallbrook, California, on the other hand, via U.S. Highway No. 395, State Highways Nos. 78 and 76 and various county roads, with service to off-route points of Poway and Rancho Santa Fe.

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- (4) Serving all intermediate points and places on the above-described routes, and all off-route points within a radius of one mile from said routes, and between said termini, off-route and intermediate points and operating over the above-described routes in combination with each other.

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SAN DIEGO DRAYAGE AREA includes the area embraced by the following boundary:

Beginning at a point where the Otay River enters San Diego Bay; thence easterly along the Otay River to an intersection with Beyer Way; northerly along 3rd Street and Del Monte Avenue to Tremont Street; westerly along Tremont Street to 3rd Avenue; northerly along 3rd Avenue to Quintard Street; easterly along Quintard Street to 1st Avenue; northerly along 1st Avenue to Oxford Street; easterly along Oxford Street and the southerly boundary line of the City of Chula Vista; northerly along the easterly boundary line and its prolongation and continuing northerly along the easterly boundary line of said city; westerly and northerly along said boundary line and its prolongation to an intersection with Sweetwater Road; easterly along Sweetwater Road and Valley Road to the southerly boundary line of the City of San Diego; easterly, northerly, westerly, northerly, and easterly along said boundary line to an intersection with the southerly prolongation of 69th Street; northeasterly and northerly along said city limits line to Jamacha Road; easterly along Jamacha Road to Helix Street; northerly along Helix Street to Lamar Street; easterly along Lamar Street and Upland Street to Kenora Drive; northerly along Kenora Drive to Dale Road; easterly along Dale Road to Bonita Street; southerly along Bonita Street to Buena Vista Drive; easterly along Buena Vista Drive to Sweetwater Springs Boulevard; southerly along Sweetwater Springs Boulevard to Del Rio Road; easterly along Del Rio Road to Calavo Drive; northerly along Calavo Drive to Campo Road; northeasterly along Campo Road to Avocado Boulevard; northerly along Avocado Boulevard to Chase Avenue; easterly along Chase Avenue to Anza Street; northerly along Anza Street to Washington Avenue; easterly along Washington Avenue to Dorothy Street; northerly along Dorothy Street to Jamacha Road; northwesterly along Jamacha Road to Main Street (U.S. Highway No. 80); northeasterly along Main Street (U.S. Highway No. 80) to Greenfield Drive; northwesterly and westerly along Greenfield Drive to Magnolia Avenue; southerly along Magnolia Avenue to Broadway; westerly along Broadway and Lake Murray Boulevard to the easterly city limit line of the City of San Diego; northerly and westerly along said city limits and its westerly prolongation to an intersection with the southeasterly boundary line of Camp Elliott; southwestly and westerly along said line of Camp Elliott to Murphy Canyon Road; northerly along Murphy Canyon Road to the city limit line of the City of San Diego; southwestly and northwesterly along said city limit line to the Pacific Ocean; southerly along the shoreline of the Pacific Ocean to San Diego Bay; northerly, easterly and southerly along the shoreline of San Diego Bay to point of beginning; also all territory within the U.S. Naval Amphibious Base and that portion of the corporate city limits of Coronado lying north thereof and the U.S. Naval Air Station, North Island.