

Decision No. 60969**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
 BRUNO ALBERT MALUCCHI, an individual,
 doing business as A. M. DEVINCENZI
 COMPANY, for a certificate of public
 convenience and necessity to extend
 highway common carrier service.

Application No. 42143

Bertram S. Silver, for applicant.
Handler and Baker by Daniel W. Baker, for Nielsen
 Freight Lines, California Motor Transport, Ltd.,
 et al., and Merchants Express of California,
 protestants.

O P I N I O N

Applicant is a for-hire carrier of property with head-
 quarters in San Francisco. He holds certificates in the San Francisco-
 East Bay Cartage Zone (Decision No. 50992 in Application No. 35202)
 and between San Mateo and San Jose (Decision No. 53641 in Application
 No. 35999). No linkage is authorized between east bay points and the
 San Mateo-San Jose area. Applicant also operates extensively under
 permits.

By the instant application, filed April 12, 1960, applicant
 seeks authority to extend service to an area extending from Santa Rosa
 and Napa on the north to Carmel and Salinas on the south with two
 offshoots to the east ending at Pittsburg and Livermore. General
 commodities authority with customary exceptions is sought.

Public hearings were held before Examiner John Power on
 June 23 and August 17, 1960. Both were in San Francisco where the
 matter was submitted on the latter date.

Applicant testified on operating matters and presented a number of public witnesses. The testimony of nine additional shipper witnesses was received under a stipulation. The gist of the stipulation was that these proffered witnesses would have testified in a manner substantially similar to the testimony of those who actually appeared.

These witnesses had used the common carrier and, in many instances, the permitted services of applicant. They had found these suited to their needs. They prefer a local carrier who can cover their immediate market area, or as much of it as possible. They had been pleased by the service of applicant and expected to continue to use it. They supported the application.

Protest was most vigorous on the north bay part of the request. One carrier in that area did appear and testify. Considering his testimony with that of other witnesses it would appear that the ten-mile lateral rights requested by applicant north of Novato and Vallejo should be limited but that applicant should be authorized to serve Napa, Petaluma and Santa Rosa.

The Commission is of the opinion and finds that public convenience and necessity require that the application be granted to the extent provided by the following order.

Applicant previously has been authorized to perform certain transportation of flour at rates lower than the established minimum rates (Decision No. 60491, dated August 2, 1960, in Applications Nos. 41696 and 41697). In the instant certificate application applicant did not request nor justify the establishment of any rates lower than the minimum rates applicable to carriers generally. Applicant is cautioned that the certificate extension hereinafter authorized does not confer upon applicant any authority to deviate from the minimum rates.

Applicant is 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.

O R D E R

Public hearing having been held and based upon the evidence adduced therein, the application, and the findings and conclusions set forth in the foregoing opinion,

IT IS ORDERED that:

(1) A certificate of public convenience and necessity is granted to Bruno Albert Malucchi authorizing him 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 particularly set forth in Appendix A attached hereto and made a part hereof.

(2) In providing service pursuant to the certificate herein granted, applicant shall comply with and observe the following service regulations:

- a. Within thirty days after the effective date hereof, applicant shall file a written acceptance of the certificate herein granted. By accepting the certificate of public convenience and necessity herein granted, applicant is placed on notice that he will be required, among other things, to file annual reports of his operations and to comply with and observe the safety rules and other regulations of the Commission's General Order No. 99 and insurance requirements of the Commission's General Order No. 100-A. Failure

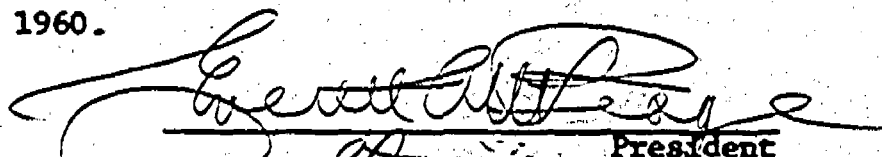
to file such reports, in such form and at such time as the Commission may direct, or to comply with and observe the provisions of General Orders Nos. 99 and 100-A, may result in a cancellation of the operating authority granted by this decision.

- b. Within sixty days after the effective date hereof, and on not less than ten days' notice to the Commission and to the public, applicant shall establish the service herein authorized and file in triplicate and concurrently make effective, tariffs satisfactory to the Commission.

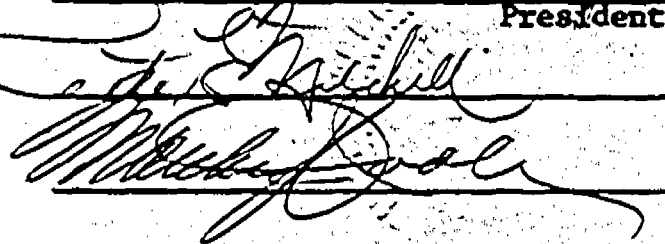
(3) That the certificate of public convenience and necessity granted in paragraph (1) of this order is in lieu of and supersedes all existing certificates of public convenience and necessity authorizing the transportation of general commodities heretofore granted to or acquired by Bruno Albert Malucchi, which certificates are hereby canceled and revoked, said revocation to become effective concurrently with the effective date of the tariff filings required by paragraph (2) b. hereof.

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

Dated at San Francisco, California, this 25th day of OCTOBER, 1960.



President



Commissioners

C. Lyn Fox
Commissioner S. Theodore H. Jenner, being necessarily absent, did not participate in the disposition of this proceeding.

Bruno Albert Malucchi by the certificate of public convenience and necessity granted by the decision noted in the margin is authorized to transport general commodities between all points and places over and along the following routes and all points and places within 10 miles laterally thereof except as such lateral rights are limited by notes 1 and 2.

1. All points and places in the San Francisco Territory as described in Appendix B hereto attached.
2. U. S. Highway No. 101 between Santa Rosa and Salinas (subject to Note 1).
3. Unnumbered highway between Salinas and Carmel Valley via Monterey, Pacific Grove and Carmel.
4. State Highway No. 156 between Castroville and Hollister.
5. State Highway No. 1 between San Francisco and Monterey.
6. State Highway No. 17 between San Jose and Santa Cruz.
7. State Highway No. 9 between Santa Clara and Santa Cruz.
8. State Highway No. 5 between San Francisco and Saratoga.
9. U. S. Highway No. 50 between Oakland and Livermore.
10. U. S. Highway No. 40 between Oakland and Vallejo.
11. State Highway No. 29 between Vallejo and Napa (subject to Note 2).
12. U. S. Highway No. 4 between Pinole and Pittsburg.

NOTE 1: Lateral rights on U. S. Highway No. 101 north of Novato are to be limited to one mile from said Highway and 3 miles from the cities and communities of Petaluma, Penngrove, Cotati and Santa Rosa.

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NOTE 2: Lateral rights on State Highway No. 29 are limited to one mile from said highway and 3 miles from the City of Napa. Through routes and rates may be established between any and all points specified in subparagraphs 1 through 12 above.

Applicant shall not transport any shipments of:

1. Used household goods and personal effects not packed in accordance with the crated property requirements set forth in paragraph (d) of Item No. 10-C of Minimum Rate Tariff No. 4-A.
2. Automobiles, trucks and buses; viz.; new and used, finished or unfinished passenger automobiles (including jeeps), ambulances, hearses and taxis; freight automobiles, automobile chassis, trucks, truck chassis, truck trailers, trucks and trailers combined, buses, bus chassis.
3. Livestock; viz.; bucks, bulls, calves, cattle, cows, dairy cattle, ewes, goats, hogs, horses, kids, lambs, oxen, pigs, sheep, sheep camp outfits, sows, steers, stags or swine.
4. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment.
5. Liquids, compressed gases, commodities in semiplastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semitrailers or a combination of such highway vehicles.
6. Commodities when transported in bulk in dump trucks or in hopper-type trucks.
7. Commodities when transported in motor vehicles equipped for mechanical mixing in transit.
8. Logs.

End of Appendix A

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SAN FRANCISCO TERRITORY includes all the City of San Jose and that area embraced by the following boundary: Beginning at the point the San Francisco-San Mateo County boundary line meets the Pacific Ocean; thence easterly along said boundary line to a point 1 mile west of U. S. Highway 101; southerly along an imaginary line 1 mile west of and paralleling U. S. Highway 101 to its intersection with Southern Pacific Company right of way at Arastradero Road; southeasterly along the Southern Pacific Company right of way to Pollard Road, including industries served by the Southern Pacific Company spur line extending approximately 2 miles southwest from Simla to Permanente; easterly along Pollard Road to W. Parr Avenue; easterly along W. Parr Avenue to Capri Drive; southerly along Capri Drive to E. Parr Avenue; easterly along E. Parr Avenue to the Southern Pacific Company right of way; southerly along the Southern Pacific Company right of way to the Campbell-Los Gatos city limits; easterly along said limits and the prolongation thereof to the San Jose-Los Gatos Road; northeasterly along San Jose-Los Gatos Road to Foxworthy Avenue; easterly along Foxworthy Avenue to Almaden Road; southerly along Almaden Road to Hillsdale Avenue; easterly along Hillsdale Avenue to U. S. Highway 101; northwesterly along U. S. Highway 101 to Tully Road; north-easterly along Tully Road to White Road; northwesterly along White Road to McKee Road; southwesterly along McKee Road to Capitol Avenue; northwesterly along Capitol Avenue to State Highway 17 (Oakland Road); northerly along State Highway 17 to Warm Springs; northerly along the unnumbered highway via Mission San Jose and Niles to Hayward; northerly along Foothill Boulevard to Seminary Avenue; easterly along Seminary Avenue to Mountain Boulevard; northerly along Mountain Boulevard and Moraga Avenue to Estates Drive; westerly along Estates Drive, Harbord Drive and Broadway Terrace to College Avenue; northerly along College Avenue to Dwight Way; easterly along Dwight Way to the Berkeley-Oakland boundary line; northerly along said boundary line to the campus boundary of the University of California; northerly and westerly along the campus boundary of the University of California to Euclid Avenue; northerly along Euclid Avenue to Marin Avenue; westerly along Marin Avenue to Arlington Avenue; northerly along Arlington Avenue to U. S. Highway 40 (San Pablo Avenue); northerly along U. S. Highway 40 to and including the City of Richmond; southwesterly along the highway extending from the City of Richmond to Point Richmond; southerly along an imaginary line from Point Richmond to the San Francisco Waterfront at the foot of Market Street; westerly along said waterfront and shore line to the Pacific Ocean; southerly along the shore line of the Pacific Ocean to point of beginning.