

**ORIGINAL**Decision No. 67894

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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 of any and  
 all commodities between and within  
 all points and places in the State  
 of California (including, but not  
 limited to, transportation for  
 which rates are provided in Minimum  
 Rate Tariff No. 2).

Case No. 5432  
 (Petition for Modification  
 No. 344, filed June 24, 1964)

Broad, Busterud and Khourie, by  
Michael N. Khourie, for petitioners,  
Edward J. Marnell and Jean M. Heikel,  
 doing business as Finesse Delivery  
 Service.

Baker, Handler and Greene, by Daniel  
 W. Baker, for A & B Garment Delivery  
 of San Francisco; and Lloyd Rasmussen,  
 for Trans Bay Motor Express; respondents.

C. D. Gilbert, A. D. Poe and H. F.  
 Kollmyer, for California Trucking  
 Association, protestant.

Bob I. Shoda and E. M. Jennings, for  
 the Commission staff.

O P I N I O N

A duly noticed public hearing in this matter was held before Examiner Mallory at San Francisco on July 27, 1964, and the matter was submitted on that date. Evidence in support of the petition was submitted by one of the petitioners. California Trucking Association (C.T.A.) opposed the sought authority. Representatives of A & B Garment Delivery of San Francisco and of the Commission staff assisted in the development of the record through

cross-examination of the witness. Edward J. Marnell and Jean M. Heikel, (going business as Finesse Delivery Service), seek exemption from the minimum rates established by this Commission for the transportation of packages (parcels) weighing less than 100 pounds delivered from retail stores to retail store customers within an area 150 miles of San Francisco. Petitioners hold a contract carrier permit from this Commission authorizing the transportation of "furniture, household appliances from retail store to retail customer and packages and parcels weighing less than 100 pounds, excluding transportation subject to yearly, monthly and weekly vehicle unit rates" within a radius of 150 miles of San Francisco. Said permit was issued October 22, 1963 and amended to include the foregoing description of commodities on July 7, 1964.

The evidence presented by petitioners is summarized in the following statements. Finesse's present operations consist solely of the transportation of packages weighing 100 pounds or less from the seven retail stores named in the petition to the customers of those stores. Said stores are located in San Francisco, Westlake (Daly City), Hillsdale (San Mateo), San Leandro, Palo Alto and Mountain View. The carrier operates eight pieces of equipment (step-in vans) and employs seven drivers. It maintains a terminal in San Francisco. In handling the packages, daily pickups are made from each store, six days a week (Sundays excluded). A truck will pick up packages from several stores and will take the packages to the carrier's terminal, where the packages are sorted by delivery routes and then loaded for delivery on route vans. Thus, no single store has the exclusive use of any piece of equipment.

Petitioners have written contracts containing thirty-day cancellation clauses with each of the seven retail stores named in the petition. These contracts provide a basis for collection of charges. The bases in the contracts are different, but the charges in each are based on a so-called package-count method of assessing charges. Under this method a standard is established for the average or usual size of package. Smaller packages are not counted as a full package. Packages of unusual size or weight are counted as multiple packages. The package rate applies regardless of distance between all points within the carrier's service area. Petitioners' present service area encompasses the metropolitan portions of San Francisco, San Mateo, Santa Clara, Solano, Alameda, Contra Costa and Marin Counties. The carrier intends to expand operations to other points in the 150-mile radius of San Francisco covered by its permit when additional accounts are acquired. The carrier is actively soliciting the business of other retail stores in the Bay area.

According to petitioners' witness, Finesse Delivery Service and United Parcel Service, Inc., are the only carriers engaged in the delivery of packages of less than 100 pounds from retail stores to retail store customers in the San Francisco Bay area for distances over 35 constructive miles.<sup>1/</sup> The witness testified that Finesse's principal competitor in this field, namely

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<sup>1/</sup> Item No. 40 of Minimum Rate Tariff No. 2 exempts from the minimum rates therein "shipments weighing 100 pounds or less when delivered from retail stores or retail warehouses where the property has been sold at retail by a retail merchant, or when returned to the original retail store shipper via the carrier which handled the outbound movement," when the distance between point of origin and point of destination does not exceed 35 constructive miles.

United Parcel Service, Inc., is exempted in full from the rates in Minimum Rate Tariff No. 2. (Finding 14, Decision No. 31606 (41CRC 671), as superseded by Decision No. 52199, dated November 7, 1955, in Case No. 5432) (unreported). The witness testified that as long as petitioners' principal competitor has complete exemption from the minimum rates, petitioners cannot continue to operate unless they also have a similar exemption. Two reasons for this conclusion were stated. Charges for retail parcel delivery service maintained by Finesse and by United Parcel Service are on a different basis, and result in lower charges, than the minimum rates. If Finesse's principal competitor can maintain lower rates than the minimum rates, and Finesse cannot, Finesse would not be able to compete for the available traffic. The second reason given is that if Finesse's rates are required to be made known, its competitor, which is completely exempted from the minimum rates, would have an unfair advantage in the solicitation of traffic now enjoyed by Finesse. The witness stated that petitioners would have no objection to assessing any scale of rates established by the Commission for retail parcel delivery service if all of its competitors are required to observe similar rates. No showing was presented by petitioners' witness concerning the present levels of rates they now assess or the levels of rates to be assessed in the future; nor of the cost of providing service under such rates. Profit and loss statements and balance sheets covering operations since petitioners started business were received. The profit and loss statements show that Finesse has not operated at a profit since operations were begun. The witness ex-

plained that volume of traffic is requisite to efficiency in the field in which Finesse is engaged. He stated that if the contracts with additional retail stores now in the process of negotiation are consummated, he felt that operations would increase to a volume which would provide an overall profit to the carrier.

United Parcel Service, Inc. was not represented at the hearing. Participants at the hearing other than C.T.A. did not protest the granting of the relief sought. C.T.A. requested that the petition be denied. C.T.A. cited several prior decisions of this Commission involving requests for exemption from the minimum rates for transportation of parcels, in which it was held that whenever any highway carrier requests authority to depart from the provisions of the established minimum rates, the order granting such relief should prescribe the minimum rates to be assessed by that carrier in lieu thereof; and in the case of a parcel delivery carrier, the establishment or approval of minimum parcel rates to be assessed by it will remove the possibility of any abuse of the exemption granted.<sup>2/</sup> The C.T.A. representative stated that petitioners had made no showing of the rates proposed to be assessed, nor any showing of the costs of providing the service or other data which would show that rates less than the minimum rates would be reasonable. The C.T.A. representative asserted in absence of such a showing, Commission action in prior proceedings would indicate that the instant petition should be denied. The C.T.A. representative stated that the complete exemption from minimum rates enjoyed by certain parcel de-

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<sup>2/</sup> J. S. Aaronson (Peninsula Delivery & Transport Co.) 58 Cal. PUC 533 (1961); Decision No. 62417, dated Aug. 15, 1961, in Case No. 5432, Petition No. 224, Lloyd Enos (unreported); and Sanford H. Sanger, 60 Cal. PUC 572 (1963).

livery carriers since the inception of statewide minimum rates in 1939, pursuant to Decision No. 31606 (supra), has caused competitive problems between carriers and has given the exempted carriers unfair competitive advantages. He indicated that the California Trucking Association is considering the filing of an appropriate petition with the Commission seeking an investigation of and cancellation of all historical complete exemptions from the minimum rates granted to individual highway carriers.<sup>3/</sup>

Petitioners argue that the decisions of this Commission cited by C.T.A. in support of its request for denial of the petition all involve so-called wholesale parcel delivery service, a field extensively occupied by highway carriers, many of which are highway common carriers whose rates must be published and observed without deviation. Petitioners' counsel averred that the policy of the Commission as set forth in the decisions cited by C.T.A. should not be applied herein as the competitive situation in the field of parcel delivery service from retail stores is entirely different from that in the wholesale parcel delivery field. Petitioners' counsel asserted that petitioners have only one real competitor, who is com-

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<sup>3/</sup> Subsequent to the submission of this proceeding, the Commission, on August 11, 1964, issued an Order Setting Hearing in Case No. 5432, for the receipt of evidence "relating to the question whether and under what circumstances the existing minimum rates are unsuitable or inappropriate for transportation service provided by certain parcel delivery and other carriers, and to determine whether the exemption authorities granted to such carriers pursuant to Finding 14 in Decision No. 31606, 41 CRC 671, 724, as amended by Decision No. 52199 dated February 23, 1960, in Case No. 5432 (unreported) and as further amended, should be canceled or the extent to which they should be amended."

pletely exempted from minimum rates; whose operations are those of a contract carrier, as are those of petitioners; whose rates are not published and can be, and are, varied between customers, and are adjusted frequently without the necessity of obtaining prior authority from the Commission. Counsel stated that petitioners could not continue to operate if they are not placed in the same position concerning rates as is enjoyed by their principal competitor.

Based upon the record in this proceeding we find:

1. Petitioners' contract carrier permit authorizes the transportation of furniture, household appliances from retail store to retail store customer and packages and parcels weighing less than 100 pounds, excluding transportation subject to yearly, monthly and weekly vehicle unit rates between points within a 150-mile radius of San Francisco.

2. Edward J. Marnell and Jean M. Heikel, a partnership, doing business as Finesse Delivery Service, operate as a highway contract carrier exclusively for the transportation of parcels and packages weighing less than 100 pounds from retail stores to retail store customers between points and places within the metropolitan areas of the following counties: San Francisco, San Mateo, Santa Clara, Solano, Alameda, Contra Costa and Marin.

3. Petitioners' operations are conducted under written contracts with seven retail stores. Said contracts provide flat rates for transportation anywhere in petitioners' service area; such rates being determined on a package-count basis. Said rates are on a basis different than the applicable minimum rates.

4. The Commission has previously found that the minimum rates in Minimum Rate Tariff No. 2 are not the minimum reasonable rates

for parcel delivery service by carriers wholly engaged in conducting parcel delivery operations. (See J. S. Aaronson, 58 Cal. PUC 533, 536).

5. Petitioners' operations, when the distance between point of origin and point of destination is not more than 35 constructive miles, are now exempted from the rates set forth in Minimum Rate Tariff No. 2 under the exemption for "Shipments weighing 100 pounds or less when delivered from retail stores or retail warehouses where the property has been sold at retail by a retail merchant, or when returned to the original retail store shipper via the carrier which handled the outbound movement."

6. Operations conducted by petitioners within their service area for distances in excess of 35 constructive miles are directly competitive with the retail parcel service operations of United Parcel Service, Inc., which operates in this service as a highway contract carrier. Said operations of United Parcel Service, Inc. are wholly exempt from the rates in Minimum Rate Tariff No. 2.

In view of the foregoing, we conclude that Petition For Modification No. 344 should be granted.

ORDER

IT IS ORDERED that Edward J. Marnell and Jean M. Heikel, a co-partnership, doing business as Finesse Delivery Service, are authorized to charge, collect, and assess rates and charges different from the minimum rates and charges set forth in Minimum Rate Tariff

No. 2 for the transportation of shipments weighing less than 100 pounds from retail stores to retail store customers between points within a 150-mile radius of San Francisco.

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

Dated at San Francisco, California, this 22nd day of SEPTEMBER, 1964.

Fredrick B. Holbeck  
President  
George H. Hoover  
William M. Bennett  
Commissioners