

ORIGINAL

Decision No. 69586

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of RAILWAY EXPRESS AGENCY, INCORPORATED, for authority to provide pickup and delivery of express traffic by motor truck within Camarillo, California, and to extended area as described in application.

Application No. 46714
(Filed June 9, 1964)

Newlin, Tackabury & Johnston, by George W. Tackabury, for applicant.
Arthur H. Glanz, for California Cartage Company, California Motor Transport Co., Delta Lines, Inc., Pacific Intermountain Express Co., Ringsby-Pacific, Ltd., Southern California Freight Lines, Inc., Valley Motor Lines, Inc., and Walkup's Merchants Express, protestants.

O P I N I O N

By this application, as amended, Railway Express Agency, Incorporated (Agency) seeks a certificate of public convenience and necessity to operate as a highway common carrier between Camarillo, Newbury Park, Rancho Conejo Industrial Site, Thousand Oaks, and points along Ventura Freeway between Camarillo and Thousand Oaks. Applicant also seeks a like certificate authorizing it to provide so-called "tripper" service in its own trucks for air express shipments between applicant's office at Camarillo and the Oxnard Airport, at Oxnard.^{1/}

Public hearing of the application was held before Examiner Bishop at Ventura on January 7 and 8, 1965 and at Los Angeles on March 16 and 17, 1965. Evidence on behalf of applicant

^{1/} All of the points for which authority is herein sought are located in Ventura County.

was presented through the division operations manager of its Southern California-Arizona-New Mexico Division and by seven shipper witnesses.

The record shows that the Agency is presently authorized to serve Camarillo as an express corporation (as defined in Section 219 of the Public Utilities Code); that it maintains an office there staffed by a so-called merchant commission agent; that collection and delivery service is accorded patrons located within the corporate limits of Camarillo under a city carrier permit issued by this Commission;^{2/} that patrons located in that community outside said limits and in the other communities hereinbefore mentioned are required to tender and receive their intrastate express shipments at the Agency's office in Camarillo; and that, effective November 24, 1964, the Agency inaugurated collection and delivery service on interstate traffic at all of the points involved herein, which service is performed on behalf of the Agency by the aforesaid merchant commission agent with his own vehicle.

The Agency's plan, in the event the certificate herein sought is granted, is to establish collection and delivery service on intrastate shipments within defined areas at Newbury Park, Rancho Conejo Industrial Site and Thousand Oaks, as well as at points along Ventura Freeway between Camarillo and Thousand Oaks. Such service would be coextensive with the service now available

^{2/} Although the evidence discloses that collection and delivery service is performed on intrastate shipments originating or terminating within the city limits of Camarillo, Supplement 6 of the Agency's "California Section Joint Directory of Pickup and Delivery Limits at Express Offices" (Cal. P.U.C. 5) restricts said service at Camarillo to interstate shipments.

on interstate traffic. According to the application, the distances from Camarillo are as follows:

Newbury Park	6.7 Miles
Rancho Conejo Industrial Site	9.0 "
Thousand Oaks	12.1 "

As in the case of interstate traffic, intrastate shipments would be handled through the Camarillo office, collection and delivery service to be rendered with the Agency's own vehicle, based at that office. The proposed highway common carrier certificate would embrace all commodities, exclusive of a so-called standard list of excepted commodities and of certain other excepted commodities as listed in applicant's tariffs. Operations under the certificate would be conducted on an unscheduled basis over any and all public streets and highways between the points in question.

Line-haul transportation of the Agency's shipments originating or terminating at its Camarillo office is presently accomplished by Pacific Motor Trucking Company (PMT)^{3/} as underlying carrier. Shipments from both south and north arrive at the latter carrier's Oxnard terminal in through-trucks and are there transferred to local PMT trucks for delivery to applicant's Camarillo office. The reverse of this operation is involved in connection with outbound shipments. Under the instant proposal, the operations manager testified, these arrangements would continue.

Camarillo would be the waybilling point for the entire collection and delivery area, the operations manager further testified, and Camarillo rates would be applicable throughout that area.

^{3/} A subsidiary of Southern Pacific Company.

As hereinbefore stated, applicant seeks also a highway common carrier certificate to provide "tripper" service for air express shipments between applicant's Camarillo office and the Oxnard Airport, a distance of 10.6 miles. Operations would be on an unscheduled basis over any and all convenient streets and highways between the two points. The operations manager stated the reasons for this request. Air express shipments destined to Camarillo, he said, move by air to Los Angeles International Airport, from which terminal they are transported in Agency trucks to its terminal at Los Angeles Union Station. From the latter point the shipments move by PMT trucks to Camarillo, including a transfer at PMT's Oxnard terminal, as hereinbefore described. Handling accorded air express shipments originating at Camarillo is the reverse of the foregoing. Under this arrangement the shipper pays, in addition to the air express charge from or to the Los Angeles Airport, a surface express charge for the movement between that point and Camarillo.

If the "tripper" certificate herein sought between applicant's Camarillo office and Oxnard Airport is granted, the witness testified, air express shipments destined to, or originating at, Camarillo and the other points involved herein will be handled via said airport instead of Los Angeles International Airport. The effect of such operational changes, he stated, will be to eliminate the surface charge^{4/} and to reflect a reduction in transit time for air express shipments ranging from 12 to 24 hours. Oxnard

^{4/} According to an exhibit the minimum surface charge (for shipments weighing not over 10 pounds) applicable between the Los Angeles Airport and Camarillo is \$3.30.

Airport would be in the same air express tariff rate block as is Los Angeles International Airport, and under the proposals advanced in the amended application, collection and delivery service in connection with air express shipments would be accorded patrons in the Camarillo-Thousand Oaks area.

The operations manager testified also to the growth in population and economic activity which has been experienced in the aforesaid area during recent years. The record also contains a stipulation to the effect that the entire Camarillo Ranch of 4,600 acres, located between Camarillo and Newbury Park, was in the process of being purchased by an eastern real estate development corporation, it being understood that the acreage was to be used for residential purposes, together with the establishment of shopping and commercial centers.

Seven shipper witnesses testified in support of the application. They are the owners or officers of commercial or manufacturing concerns located in the communities involved herein. Four of the businesses are manufacturers of electronic, aeronautical and other devices or equipment utilized in the aerospace and defense industries. Two of the businesses are retail outlets, one a variety store and the other a men's and women's clothing store in which is also operated a gift shop.^{5/} All of the manufacturers and the research organization are located at Newbury Park; the retail stores are in Thousand Oaks.

All of these concerns, the record shows, use the services of the Agency in varying degrees. At least two have instructed their

^{5/} At the hearing, it was stipulated that the owner of another men's and women's clothing store, located at Thousand Oaks, would, if called, testify to the same effect as did the owner of the above-mentioned business of the same type.

vendors on inbound shipments not to ship by Railway Express because of the inconvenience of having to go to Camarillo to take delivery of the shipments. With one exception, most of the present Agency traffic of these patrons is interstate; however, all but one of the businesses have some intrastate shipments, and the witness for the one which has no such shipments via the Agency stated that, if the proposed service is established, his company will utilize the Agency's services for intrastate shipments. All of these witnesses testified to greater use of applicant's services in the event the certificates herein sought are granted. Some of the shippers in question have not more frequently used the Agency's interstate services, which now include collection and delivery at their places of business, because of the confusion resulting from the fact that collection and delivery are not presently available on intrastate traffic.

The testimony of the aforesaid shipper witnesses further shows that their companies employ, or would employ, the services of the Agency for shipments ranging in weight, with one exception, from a few ounces up to 150 pounds. The surface express shipments of one of the aerospace manufacturers, however, reflect average weights of from 250 to 300 pounds and sometimes reach a weight of 1,000 pounds.

Most of these shippers, in the event the proposed collection and delivery service is established, would use the Agency's services for traffic which now moves via parcel post. Their principal reasons for preferring the former are the greater speed, the more careful handling, and the greater reliability of applicant's service. In contrasting applicant's service with that

of the general freight haulers which serve the communities here in issue, the witnesses stressed the advantage of one-carrier responsibility offered by the former with its statewide and, in fact, nationwide coverage. The record shows, however, that these shippers utilize the services of the general haulers for the larger shipments and generally will continue to do so regardless of the outcome of this proceeding.

Granting of the sought certificates was opposed by eight highway common carriers of general commodities. Evidence was offered on behalf of four of these operators: California Cartage Company, California Motor Transport Co., Southern California Freight Lines, Inc. and Walkup's Merchants Express. According to the testimony of their witnesses, all of these named companies are now authorized to serve the communities involved herein; said carriers now provide daily service (Monday through Friday) from and to the points in question; they provide, under their own certificates or by means of connecting carriers, service between the Camarillo-Thousand Oaks area, on the one hand, and points generally throughout the State, on the other hand, in the transportation of general commodities, including small shipments. Service is overnight except to the more distant points. Two of the protestants have handled delicate electronic and other equipment of small compass but of relatively high value, such as is shipped and received by the technical industries in said area.

Two of the protestant carriers, the record discloses, have joint rates with air freight lines but only in connection with interstate traffic. All other air freight shipments handled by the protestant carriers which presented evidence would move at

combination rates made over the air terminal at which transfer is made.

Reasons given by the protesting carrier witnesses for opposing the granting of the sought certificates were: (1) There is ample transportation available by truck in the area already. Indeed, there are too many carriers presently in the field. An additional carrier would simply dilute the available traffic. (2) It is necessary to oppose the request because of the possible loss of revenue to existing carriers. (3) Protestants fear that if the certificates are granted the Agency will eventually join the operative rights thus obtained with existing rights (in the Los Angeles area, for example) for more efficient operation.^{6/}

In his argument at the close of the hearings counsel for protestants expressed their concern for what he characterized as the gradual transformation of the Agency from its traditional role as a carrier of small shipments by railway express, including the transportation of articles not generally handled in freight service and including the rendition of special services such as recording a deed, to that of a highway common carrier of general commodities. This transformation, he claimed, is now taking place and has been made possible through the issuance of numerous highway common carrier certificates issued to the Agency in recent years by the various state commissions and the Interstate Commerce Commission. This transformation, he indicated, is having an adverse effect on the general freight haulers, with whom the Agency assertedly now

^{6/} The Agency's present collection and delivery limits for the Van Nuys district of Los Angeles extend as far west as the intersection of Ventura Boulevard and Fallbrook Avenue. The distance from that intersection to the easterly limits of the Thousand Oaks collection and delivery zone proposed by applicant is 12 miles.

directly competes as a highway carrier. For this reason protestants are apprehensive of any further extension of the Agency's operating rights as a highway common carrier.

Counsel for protestants further argued that the Agency could have filed an application for a certificate as an express corporation to serve the points here in issue, and could have contracted with one of the existing highway common carriers to serve as its underlying carrier. However, the Agency's operations manager testified that, in his opinion, collection and delivery services could not be adequately performed for the Agency at said points by other carriers. He explained that, for the type of express service which the Agency intended to perform, the service schedules and facilities of the regular highway common carriers were, in his opinion, inadequate.

Discussion, Findings and Conclusions

The record shows that applicant is now providing collection and delivery service as an express corporation within the city limits of Camarillo, both on intrastate and interstate traffic, and that it is providing such service at Newbury Park, Rancho Conejo Industrial Site and Thousand Oaks for interstate shipments.^{7/} The implementation of the proposals now before us would result in an integrated collection and delivery service, uniform in geographic scope as well as in other respects, as to intrastate and interstate traffic. The present inconsistencies and the resulting confusion to shippers and receivers would thus be eliminated.

^{7/} The record shows that interstate service was established pursuant to Section 206(b), subdivisions 7(a) and (8), of the Interstate Commerce Act, and not by specific authorization of the Interstate Commerce Commission.

The record further discloses that a substantial number of shipments in the aggregate are tendered or received over the counter at applicant's Camarillo office by patrons from Newbury Park (7 miles) and Thousand Oaks (12 miles). Also, one of the manufacturing witnesses testified that, because of urgency, it is sometimes necessary for his company to take shipments to applicant's Van Nuys office, a distance from Newbury Park of approximately 29 miles. The fact that patrons travel these distances to utilize the services of the Agency when a number of general freight haulers now provide store-door service in their respective communities, and when parcel post service is close by, indicates that the Agency fills a need which the other services do not satisfy.

As in other recent proceedings involving the Agency, the record shows that applicant holds itself out to perform special services, such as furnishing armed guards^{8/} and recording deeds, which the regular common carriers do not render, and to transport certain classes of articles, such as those of very high value, live animals, cut flowers and human remains, which said carriers do not transport. While the shipper witnesses, with one exception, did not testify to their need for these unusual services, the fact that other carriers do not provide them makes it apparent that the Agency in this respect fills a gap which would otherwise exist in the spectrum of transportation services available for hire in the communities involved. However, to limit the sought highway common carrier certificates to these services, or even to these services

^{8/} It appears from some of the testimony of protestants' witnesses that armed guard service has been confused with escort service, which latter service is provided by the general freight truckers. An examination of the definitions of these services in the respective express and freight tariffs shows that they are separate and distinct services.

plus the transportation of light parcel-type shipments, would be confusing to the Agency's patrons, would impair the efficiency of the carrier's operations and would unduly restrict the flexibility of its services to the public.

The record is clear that the channeling of the Agency's air express traffic through Oxnard Airport would result in better service and lower charges to patrons in the Camarillo-Thousand Oaks area and that the sought certificate between said airport and the Agency's Camarillo office is required for the accomplishment of this part of its proposals.

That the area in issue in this proceeding has shown substantial growth in recent years is well supported by the record. One large-scale residential and shopping development for the future has been indicated, and there are prospects for continuing growth in terms of population, commerce and light industry. A consequence of this expansion will be an increasing demand for the types of transportation services which the Agency offers, as well as for those of the general freight carriers.

The apprehension expressed by counsel for protestant highway common carriers relative to the Agency's transformation, assertedly in progress, from its traditional role of an express corporation to that of a full-fledged general freight highway carrier has been hereinabove noted. It is true that the Agency's mode of operation has undergone, since World War II, modifications which have been largely made necessary by the elimination, over the years, of a great many railroad passenger trains. These changes have been taking place on a nationwide scale. Thus, in many instances it has been necessary to substitute existing highway common carriers

for railroads as the Agency's underlying carriers. Other operational changes have been brought about through the efforts of the Agency to improve its financial position by means of operating economies. An important factor in this program has been the substitution of a key office in a particular area for several existing offices, collection and delivery service being rendered in the involved communities by the Agency's own trucks operating out of the key point. This has necessitated, in many instances, the procurement of highway common carrier certificates from state and federal regulatory bodies.^{9/} As a matter of efficiency, and to meet the needs of expanding metropolitan areas, some of these operations involve intercity runs of considerable length.

The above-described developments, however, do not negate the fact that applicant is still essentially an express company, providing expedited service, transporting in many instances articles which the general freight haulers do not hold themselves out to carry, performing also many unusual services, and comprising a nationwide system of air and surface transportation with one-carrier responsibility. While the services of applicant are to some extent competitive with those of the general freight carriers, it is to be noted that the latter class of carriers has also improved the quality of their services. Thus, their so-called freight service has been speeded up through the use of ever more powerful trucks, operating in many instances over high-speed, nonstop, superhighways, so that such transportation today might, without inaccuracy, be designated as "express".

^{9/} The Agency and its predecessor companies have, from their earliest years, provided collection and delivery service with their own vehicles within the corporate limits of cities which they serve.

The Agency is, at the present time, in fact providing a kind of intrastate service to patrons of Newbury Park, Conejo Ranch Industrial Site and Thousand Oaks through its Camarillo office. The granting of the application herein will enable it to improve the quality of that service and to meet a demonstrated need.

Upon consideration of the evidence and argument, we find that:

1. Applicant possesses the experience, equipment, personnel and financial resources necessary to institute and maintain the transportation service hereinafter authorized.

2. Applicant performs many services which general freight highway carriers do not hold themselves out, or are not equipped, to provide.

3. Applicant's operations are so organized as to provide more careful handling of shipments than is generally accorded shipments transported by parcel post or by general freight highway carriers.

4. Applicant, which would not be restricted as to the weight or dimensions of individual packages received by it for transportation, can provide a more valuable service than is possible via parcel post.

5. There is a need in the Newbury Park-Thousand Oaks area for the types of services (referred to in Findings 2, 3 and 4) in which applicant excels.

6. Establishment of collection and delivery service by applicant in the aforesaid area will eliminate the inconvenience experienced by its patrons there of going to Camarillo to tender or receive surface or air express shipments.

7. Establishment of the proposed tripper service between Oxnard Airport and applicant's Camarillo office will reduce the time in transit of air express shipments from and to Camarillo, Newbury Park, Rancho Conejo and Thousand Oaks and will result in a reduction in transportation charges assessed against such shipments.

8. Establishment of collection and delivery service by applicant with its own vehicles and employees will enable applicant to meet most effectively its obligations to the public.

9. The Camarillo-Thousand Oaks area may reasonably be expected to continue to grow, in the number of commercial and industrial establishments and in the volume of available traffic, at least for several years.

10. Public convenience and necessity require the issuance to applicant of a certificate of public convenience and necessity as a highway common carrier as sought in the application, as amended, subject to the conditions stated in Paragraphs 5, 5-A and 6 of said application (relating to routes of travel and to commodity exclusions), subject also to the addition of "logs" to the afore-said excluded commodities, and subject to the further condition that transportation thereunder shall be limited to movements under a through bill of lading and having an immediately prior or immediately subsequent movement by rail, water, air or line-haul truck transportation.

We conclude that the application, as amended, should be granted to the extent indicated in the foregoing findings.

Railway Express Agency, Incorporated, 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.

Applicant seeks authorization for the reduction in charges which will result in connection with air express shipments by reason of the elimination of the surface express charge concurrent with the institution of such service via Oxnard Airport. Such authorization is not required.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is hereby granted to Railway Express Agency, Incorporated, authorizing it to operate as a highway common carrier, as defined in Section 213 of the Public Utilities Code, between the points and over the routes particularly set forth in Appendix A, attached hereto and hereby made a part hereof.

2. In providing service pursuant to the highway common carrier 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 it will be required, among other things, to file annual reports of its operations and to

comply with and observe the safety rules of the California Highway Patrol, and the insurance requirements of the Commission's General Order No. 100-C. Failure to file such reports, in such form and at such time as the Commission may direct, or to comply with and observe the safety rules, or the provisions of General Order No. 100-C, may result in a cancellation of the operating authority granted by this decision.

- (b) Within one hundred twenty days after the effective date hereof, applicant shall establish the service herein authorized and file tariffs, in triplicate, in the Commission's office.
- (c) The tariff filings shall be made effective not earlier than thirty days after the effective date of this order on not less than thirty days' notice to the Commission and the public, and the effective date of the tariff filings shall be concurrent with the establishment of the service herein authorized.
- (d) The tariff filings made pursuant to this order shall comply with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 80-A.

3. In all other respects Application No. 46714, as amended, is denied.

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

Dated at San Francisco, California, this 24th day of AUGUST, 1965.

Fredrick B. Hallock
President

John E. [unclear]

George H. Hoover

Augusto

William L. Berwick
Commissioners

Railway Express Agency, Incorporated, by the highway common carrier certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to transport all commodities except the following:

1. Used household goods and personal effects not packed in accordance with the crated property requirements set forth in Item No. 5 of Minimum Rate Tariff No. 4-B.
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 and bus chassis.
3. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment.
4. Liquids, compressed gases, commodities in semi-plastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semitrailers or a combination of such highway vehicles.
5. Commodities when transported in bulk in dump trucks or in hopper-type trucks.
6. Commodities when transported in motor vehicles equipped for mechanical mixing in transit.
7. Logs.
8. Excepted commodities as enumerated in Railway Express Agency, Incorporated's tariffs filed with this Commission and in effect on the date of issuance of Decision No. 69586, in Application No. 46714.

Issued by California Public Utilities Commission.

Decision No. 69586, Application No. 46714.

BETWEEN the following points:

- (a) Between Camarillo, Newbury Park, Rancho Conejo Industrial Site, Thousand Oaks and points along Ventura Freeway between Camarillo and Thousand Oaks.
- (b) Between the office of Railway Express Agency, Incorporated at Camarillo and Oxnard Airport (limited to the handling of air express shipments only).

VIA any and all convenient public streets and highways between said points.

SUBJECT to the following condition:

The highway common carrier service herein authorized shall be limited to the transportation of express traffic of Railway Express Agency, Incorporated, under a through bill of lading or express receipt, and said traffic shall receive, in addition to the highway carrier movement by applicant herein authorized, an immediately prior or immediately subsequent movement by rail, water, air or line-haul truck transportation.

End of Appendix A

Issued by California Public Utilities Commission.

Decision No. 69586, Application No. 46714.

COMMISSIONER PETER E. MITCHELL DISSENTING:

The present decision is clearly indicative there is no unity of understanding among the majority of the Commission in the issuance of common carrier certificates. Prior and subsequent to this decision, we have adhered to a standard of reasonableness in passing judgment on certificate applications. A reasonable need of a cluster of shippers for a particular carrier was sufficient to authorize common carrier operations.

In the Railway Express Decision No. 69586, Application No. 46714, which was signed by the Commission on the same day as the instant decision (August 24, 1965), the Commission, with virtually the same circumstances before it, granted a certificate. Both matters contained evidence supporting a need for the specific carrier; protestant carriers alleged a surplus of transportation equipment at certain times. Why then should one application be approved while the kindred request is denied?

The absence of any hypothesis to support the majority draws attention to recent developments in the highway common carrier field in California. The number of applications for a highway common carrier certificate has diminished noticeably. Status investigations by the Commission itself have been minimal. The conclusion is apparent that the slender line dividing permitted operations and certificated operations has been erased and the distinction remaining is one in law not in fact.

There is no necessity to review "a situation which has commanded the attention of the Commission over the years and which does not improve with age, but on the contrary, grows progressively worse as the highway carrier industry grows".^{1/} These words, written in 1954, re-echo in 1965. Now, as then, we emphasize the disharmony of the statutes, the absence of judicial guidance and the indecisiveness within the carrier and shipping industries. I do not disagree. But, I do disagree there has to exist within the Commission disharmony in decisions, absence of judicial guidance and indecisiveness in action -- as exemplified by the majority decision.

The majority decision conflicts with earlier and later orders of the Commission. No distinguishing reasons are given for the denial of a certificate extension. And the majority is silent even though the record contains convincing evidence the applicant has been in violation of a cease and desist order of this Commission.^{2/}

The application of Reliable Delivery Service, Inc., should be granted.

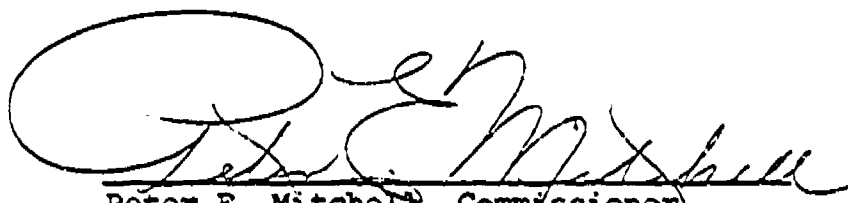
An order instituting investigation of Reliable Delivery Service, Inc., for its violation of a cease and desist order of this Commission should be issued forthwith.

^{1/} Investigation of Regulation of Carriers of Property 53 PUC 366 at 380 (1954)

^{2/} Decision No. 59118, Case No. 6122, dated October 6, 1959

The Commission and its staff should review and renew its efforts with representatives of the trucking and shipping industry:

- (1) to prepare amendatory language to the statutes for submission to the Legislature;
- (2) to establish criteria for the Commission to utilize in the separation of carriers.



Peter E. Mitchell, Commissioner

San Francisco, California

August 31, 1965