

**ORIGINAL**Decision No. 71196

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of

"CALL MAC" TRANSPORTATION  
COMPANY, a Corporation,Application No. 47717  
(Filed July 1, 1965)for a certificate of public conven-  
ience and necessity to extend highway  
common carrier service.

Silver & Rosen, by Martin J. Rosen and George M. Carr,  
for applicant.  
Graham, James & Rolph, by Boris H. Lakusta, E. Myron  
Bull, Jr. and Richard A. Eastman, for Boulevard  
Transportation Company, California Cartage Company,  
California Motor Transport Co. and California Motor  
Express, Ltd., T.I.M.E. Freight, Inc., Delta Lines,  
Inc., Di Salvo Trucking Company, Ringsby-Pacific Ltd.,  
Garden City Transportation Company, Walkup's Merchants  
Express, Oregon-Nevada-California Fast Freight, Pacific  
Intermountain Express, Pacific Motor Trucking Company,  
Shippers Express, Southern California Freight Lines,  
Sterling Transit Co., Inc. Valley Express Co. and  
Valley Motor Lines, Inc., Willig Freight Lines,  
Warren Transportation Co., Interlines-Blankenship Motor  
Express; Handler, Baker & Greene, by Daniel W. Baker  
and Raymond Greene, Jr., for Alta Freight and Transfer,  
Inc., Morris Draying Company, Dillon Drayage & Ware-  
house Co., Associated Freight Lines, Coast Drayage,  
A & B Garment Delivery of San Francisco, Doudell  
Trucking Company, Pozas Bros. Trucking Co., Lodi Truck  
Service; Edmund S. Nunes, for Pozas Bros. Trucking  
Company; Herbert J. Williams, for Doudell Trucking  
Company; and Philip T. Curtiss, for Beckman Express  
& Warehouse Company; protestants.  
Joseph C. Matson, for the Commission staff.

O P I N I O N

Eight days of public hearing on the above application, as amended, were held before Examiner Mooney in San Francisco and Palo Alto during October, November and December 1965. Concurrent briefs were filed on January 6, 1966, and the matter was submitted on that date.

Notice of hearing was served on all interested parties as required by the Commission. Notice of the filing of the application before the Commission was published in the Federal Register on July 14, 1965, as required by Section 206 (a) (6) of the Interstate Commerce Act.

Applicant is a highway common carrier transporting general commodities with the usual exceptions within the San Francisco-East Bay Cartage Zone;<sup>1/</sup> between the Cartage Zone and San Jose including intermediate points on or within one mile of U. S. Highways 101 and Bypass 101, also including the whole of any incorporated city intersected by said highways; and between the Cartage Zone, Crockett and intermediate points on U. S. Highway No. 40, this latter authority being subject to the limitation that no shipment will be transported unless it either weighs 20,000 pounds or transportation charges are based on 20,000 pounds or more (Exhibit 1). The certificate authorizing said transportation was granted to De Pue Drayage Corporation by Decision No. 58299 dated April 21, 1959, in Application No. 40711 and was purchased by applicant from De Pue Drayage Corporation pursuant to Decision No. 68310 dated December 9, 1964, in Application No. 47077. The certificate is registered with the Interstate Commerce Commission. Applicant commenced operating in intrastate, interstate and foreign commerce under the certificate on May 26, 1965. In addition, applicant has permits to operate as a radial highway common carrier, a highway contract carrier and a city carrier. The permits were transferred from Crandal Mackey, doing business as "Call Mac" Transportation Company, to applicant corporation on May 26, 1965.

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<sup>1/</sup> San Francisco-East Bay Cartage Zone includes the territory surrounding San Francisco Bay extending generally from San Pablo and Richmond on the north to San Francisco on the west to San Mateo on the south to Hayward on the east and to San Pablo on the north.

By the application herein applicant seeks authority to transport general commodities as a highway common carrier with the usual exceptions in intrastate, interstate and foreign commerce as follows:

1. All points and places in the San Francisco Territory as defined in Minimum Rate Tariff No. 2.

Between all points and places on Highway 17  
between Hayward and Santa Cruz, California.

2. Between all points and places on and within 20 miles of points and places on the following described routes:

- a. Between San Rafael and King City via U. S. Highway 101 and California Highway 82 (El Camino Real).
- b. Between San Francisco and Sacramento via U. S. Highway 40 and Interstate 80.
- c. Between San Francisco and Stockton via U. S. Highway 50.
- d. Between Sacramento and Modesto via U. S. Highway 99.
- e. Between Oakland and Sacramento via California Highways 24 and 160.
- f. Between Richmond and Stockton via California Highway 4.
- g. Between Fairfield and Lodi via California Highway 12.
- h. Between San Francisco and Monterey via California Highway 1.

3. Over any street, road, highway, ferry or toll bridge necessary or convenient for the purpose of performing the service herein authorized.

4. To establish through routes and rates between any and all points specified in 1. and 2.a. through h. above.

The area proposed to be served encompasses Modesto, Sacramento, Napa, Vallejo, San Rafael, Pacifica, Monterey, King City and all intermediate points (Exhibits 2 and 3). The sought

authority would include applicant's present certificated area and is, in effect, a request for an in-lieu certificate.

Applicant proposes to provide the service herein requested to most points on a daily basis Monday through Friday. The service would be overnight unless the shipper requested same day delivery. In addition, special, expedited service would be provided if requested by the shipper.

Applicant proposes to establish rates on the same level as those contained in Minimum Rate Tariff No. 2 and other applicable minimum rate tariffs of the Commission and plans to publish joint rates with other common carriers.

Applicant has terminals in East Palo Alto and Redwood City. In addition, it has a truck storage yard at Palo Alto and is negotiating for the purchase of seven acres in the Fremont area on which to construct a modern terminal. If the sought authority is granted, applicant plans to build or lease terminal facilities in the Stockton-Sacramento area.

Applicant has the following equipment (Exhibit 7):

	<u>Operable(1)</u>	<u>Reserve Operable(2)</u>	<u>Reserve(3)</u>
Trucks:			
Flatbeds	0	1	2
Vans	1	1	1
Pickups	2	0	1
Cab & Chassis only	0	2	4
Tractors	6	3	10
Trailers	13	4	1
Dollies	2	0	0
Forklifts	1	1	0
Passenger Cars	3	0	0

- (1) Equipment currently operated.
- (2) Reserve equipment that is operable and can be placed in operation when needed.
- (3) Reserve equipment which is not now operable but which can be put in operating condition.

The 13 operable trailers consist of two 20-foot, one 24-foot, two 26-foot 6-inch, one 32-foot, one 35-foot and two 40-foot flatbeds; one 21-foot, one 27-foot and one 35-foot vans; and one 25-foot tank. The reserve operable trailers consist of two 20-foot, one 35-foot and one 40-foot vans. The reserve trailer is a 24-foot flatbed.

Applicant has made arrangements to replace its pickup equipment with new tilt cab bobtail units equipped with 18-foot high cube van bodies, tail gate lifts and two-way radios. The new equipment is to be in operation in early 1966.

Applicant employs a full time solicitor, office personnel and eight drivers in addition to the president of the corporation who drives part time. For the period May 26, 1965 (the date applicant commenced operating) to June 30, 1965, applicant had a net profit, after provision for corporate income taxes of \$3,497.01. The net profit for Crandal Mackey, doing business as "Call Mac" Transportation Company (which was entirely a permit operation) for the period January 1, 1965 to May 26, 1965 was \$38,970.19. The total net profit for both applicant and the predecessor company for the first six months of 1965 was \$42,467.20 (Exhibit 4).

The president of applicant is the sole stockholder of applicant corporation and supervises its operation. He testified as follows regarding his experience and background in the transportation industry. He started operating in 1950 as a sole proprietor with one dump truck; in 1952 he changed his operation from dump truck carriage to general freight carriage; he operated a garage in Palo Alto from 1948 to 1960; he decided in 1960, which was the first year the gross revenue from his trucking operation exceeded \$50,000, to concentrate all his efforts on his trucking business; the gross revenue has continued to increase each year and was \$153,384.69 in

1964 and \$118,231.03 for the first six months of 1965 (Exhibit 9); the number of customers served has steadily increased from 25 in 1960 to approximately 150 in 1964, when the corporation purchased the De Pue certificate, to about 180 at present; prior to the purchase of the certificate, he operated statewide but most of his business was centered in the San Francisco Bay area; all of his permit authority has been transferred to the corporation and all operations are now conducted by the corporation.

The witness testified that several years ago he was informed by a member of the Commission staff that his permit operations in the San Francisco Bay area were approaching those of a highway common carrier and that he should consider obtaining a certificate for this area. He stated that it was his intent at the time to file for a certificate but that he was able to accomplish this by the purchase of the De Pue certificate. The witness testified that the frequency of applicant's service from the San Francisco Bay area to the proposed extended area, which is all intrastate traffic, has now increased to a point where it is nearing a common carrier type of service. He gave the following examples of the frequency of applicant's present service to various locations within the sought area: Daily on weekdays to Sacramento, Stockton, Fremont - Milpitas area, Marin County, Salinas, Monterey and Santa Cruz; four or five times a week to Modesto; four times a week to the Pittsburg-Antioch area; three or four times a week to Half Moon Bay and other points along State Highway 1 between Daly City and Santa Cruz; three times a week to Vacaville; two or three times a week to Hollister, Vallejo, Concord, Napa, and Fairfield; about once a week to Davis and King City; several times a month to Turlock and Oakdale. He asserted that if the requested authority is not

granted, it will be necessary for applicant to curtail its rapidly expanding operations in the sought area in order to avoid the risk of becoming an illegal highway common carrier in this area. The witness explained that applicant is not now soliciting traffic into the sought area; that its customers are requesting this service; and that if the authority is granted, it will actively solicit such traffic.

The president testified as follows regarding applicant's present operations: The substantial majority of applicant's customers are located within its present certificated areas; it operates three regular routes daily within this area extending from its East Palo Alto terminal to the San Francisco area, to the East Bay area and to the San Jose area; if extra schedules are necessary, applicant has the equipment available to meet the demand; the five drivers not on the regular routes service the other areas covered by applicant, including the sought extended area; the majority of applicant's business is less-than-truckload traffic which, during the past six months, accounted for 90 percent of the shipments and 65 to 70 percent of the tonnage transported and 75 to 80 percent of the revenue earned; about 50 percent of the traffic is within its present certificated area and practically all of the remaining 50 percent is within the requested extension with the majority of this destined to the Sacramento and Salinas areas; applicant handles a small amount of traffic within the Los Angeles area; it transports a full range of general commodities in all weight brackets; applicant performs a personalized type of service for its customers; it is familiar with the commodities they ship and can furnish the type of equipment required to meet their transportation needs; about ten percent of applicant's deliveries involve same day service and the balance is overnight service; same day delivery is provided when

requested by the shipper, and it is only on rare occasions when a request is made too late in the day and appropriate equipment is not available that applicant is unable to provide same day service.

The president testified that he personally does all of the driving for applicant on weekends but that if the volume of business increases further, it will be necessary to have additional drivers available to handle weekend service. He stated that in lieu of salary he has a drawing account with the corporation. As to safety, he stated that it is his responsibility and that he has set up a procedure whereby all personnel are informed of safety matters and all equipment receives frequent safety checks.

The witness testified that a number of applicant's customers are expanding their operations in the proposed extended area and are shipping an increasing amount of freight there; that applicant cannot now handle multiple deliveries to both the present certificated area and the sought additional area as a single split delivery shipment but must handle such transportation to each of the areas separately; and that most shippers are now very cost conscious and prefer using as few carriers as possible.

The witness asserted that applicant has the financial ability, experience and sufficient additional equipment to provide the proposed service and that should shipper requirements exceed anticipated demands, more equipment would be obtained. He stated that applicant has facilities to repair and rebuild its equipment and to modify it for particular jobs. He testified that the proposed 20 mile laterals would encompass all of the sought area and allow applicant to serve all off-route points.

The president testified that applicant now handles interstate and foreign shipments almost daily between piers and customers



located within its present certificated area and that it also handles numerous shipments in this category between airports and points it is now authorized to serve as a highway common carrier. He stated that applicant's customers also have interstate and foreign shipments between said piers and airports and points within the proposed extended area and also from and to piers and airports in the sought area; that applicant cannot now handle such traffic for its customers; and that if the sought authority is granted, it will be able to participate in this traffic and will solicit it vigorously.

Representatives of twenty-three shippers testified for applicant. One of the shippers is in the business of packing machinery and other items for shipment by air or water carrier for its customers. The others ship a variety of items including chemicals, resins, cleaning, washing and scouring compounds, reinforced plastic items, joint cement and dry wall products, stucco netting, nails, fencing, barbed wire, insulated pipe, precast underground enclosures for utilities, electrical instruments and equipment, florescent light balasts, heavy industrial equipment and supplies, steel shelving, pallets, conveyors, metal containers, auto supplies and parts, service station supplies, machinery, rocket motors, missiles, explosives, horticultural supplies, agricultural insecticides, food supplements, salt, iron, steel and other metals. Shipments vary in size from a few pounds to over a truckload. Most of the shipments are in the less-than-truckload category.

The majority of the aforementioned shippers are located within applicant's present certificated area. Two have plants in Emeryville, and one has a plant in Coyote. One has recently completed a new plant in Santa Cruz, and another is located in San Lucas

(near King City). The balance of the shippers are located within the San Francisco Peninsula area. Most of the shippers have been using applicant's service for periods ranging from eight months to ten years. Two of the shippers have been in business only a short while and will use applicant in the future as they obtain customers in the proposed area.

With the exception of the two shippers that are not as yet in full production, all are now using applicant within its present certificated area. The frequency with which the shippers use applicant's service within this area varies from occasional to substantial usage. All have indicated that they will use applicant in the area it has requested to serve if the certificate is granted. The particular points within the area to which each shipper requires service vary. Likewise the frequency of service required by the various shippers into the area varies from infrequent to 3 or more times per week. The majority of the shippers have used other carriers or their own trucks for deliveries to the proposed area and most will continue to do so if the application is granted. A number of the shippers now use applicant to transport some of their shipments into the sought area. This transportation is performed under applicant's permit authority. Several of the shipper witnesses testified that they are expanding their facilities and will have increased business in the proposed area in the near future and that they will use applicant's service with a greater degree of frequency into this area.

The shipper representatives all testified that applicant gives personal attention to their transportation needs and that it provides excellent service. A number of the representatives testified that applicant furnishes the type of equipment required to transport their commodities; that it provides same day delivery when requested; that applicant will handle emergency shipments at other

than regular working hours when requested to do so; and that other carriers do not regularly accord these services. Several of the witnesses testified that proprietary transportation has proven to be quite costly and that they would substitute applicant's service for their own equipment into the requested area if the certificate extension is granted. Several stated that they have shipments with component split deliveries within applicant's present certificated area and the proposed extended area; that applicant must handle the transportation to each area as separate shipments; that this results in increased transportation costs; that in order to avoid these additional costs, they must call other carriers with certificated rights that cover both areas to handle such shipments; and that they desire to limit the number of carriers serving them. Also, several shipper witnesses testified that they have limited dock space and for this reason would transfer a portion of the business now handled by other carriers to applicant, if the latter's authority is granted. Several testified that they prefer using a large number of carriers. Most stated, however, that it is more convenient to limit the number of carriers serving them and results in economies.

Thirteen of the shippers have interstate or foreign shipments from or to piers in the San Francisco Bay area. The requirements of the individual shippers for this service range from occasional to several times a week, and the shipments range from small lot to volume truckload movements. One of this group has an occasional shipment to the Port of Stockton. Another shipper who has been in business a short while anticipates that in the near future it will require service to piers in the San Francisco Bay area and Stockton. Some of this transportation is handled with

proprietary equipment or by other carriers and most is within the scope of applicant's present operating rights. With the exception of one witness whose company has shipments from the San Francisco piers to the proposed area, none of the shipper witnesses indicated that their companies had experienced any difficulties with shipments from or to piers. Five of the shippers indicated that they would use applicant's service for at least some of their shipments from or to the extended area if the application is granted. Of the remaining three who have pier shipments from or to the proposed area, two did not indicate whether they would use applicant for this transportation if the sought extension is authorized, and one stated that it would not.

Six of the shipper witnesses testified that their companies have interstate or foreign shipments from or to airports. Three have shipments to either the San Francisco or Oakland International airports only, and their requirements for such service are as follows: Occasional for one, one or two shipments per month for another, and three or four shipments per week for the third. The remaining three require either daily or twice daily service to one or another of the airports in the San Francisco Bay area, and in addition one of this group requires daily service to both McClellan and Travis Air Force Bases, another requires bi-weekly service to both McClellan and Travis and service once a month to Hamilton Air Force Base, and the third requires bi-monthly service to Travis. With the exception of the shipments to the Air Force Bases, most of this transportation is within applicant's present certificated area. Many of the shipments, according to the witnesses, are emergency rush shipments at other than regular working hours that must meet a particular scheduled flight departure.

Most of the shipments are in the lower weight brackets. Some of this transportation is handled by proprietary equipment or other carriers. Several of the witnesses testified that other common carriers did not want to handle the emergency shipments at other than regular working hours; that there is a need for applicant's service for such shipments; and that some of the transportation of air shipments in the proposed extended area now handled by proprietary equipment would be transferred to applicant if the sought authority is granted.

Seven of the protestants presented both oral and documentary evidence; three additional protestants presented testimony; and the testimony of one protestant was received by stipulation. The protestant carriers each have from 20 to approximately 5,000 pieces of equipment. Three have authority to serve all of the area applicant now serves and proposes to serve, and the remaining eight have authority to serve most of said area. The segment with the least amount of common carrier coverage is along State Highway 1 between Pacifica and Santa Cruz. The majority of the eleven protestants have common carrier authority to serve most of the state. All have interstate rights that are coextensive with their intrastate authority.

All of the eleven protestants purport to provide overnight service between the San Francisco Bay area and some or all of the points proposed to be served by applicant. Same day service on truckload shipments throughout the areas applicant now serves and proposes to serve and on less-than-truckload shipments from and to points along certain regular routes in the San Francisco Bay area is offered by some of the protestants. All stated that same day service throughout the proposed area or at other than regular hours is impractical because of the costs involved for special trips

and overtime wages. Several stated, however, that they will provide such service if they have equipment available and the shipper is willing to pay for the exclusive use of the equipment. Several hold themselves out to provide service seven days a week. The balance operate on a Monday through Friday basis. All carry goods in interstate and foreign commerce between the points they serve. Several have regular service to and from the San Francisco and Oakland airports. Most do not hold themselves out to meet particular airplane arrivals or departures at airports in the San Francisco Bay area or at the military airports in the area applicant proposes to serve, although several will do so if the customer is willing to pay the extra costs provided in their individual tariffs for such service. One of the protestants has employees stationed at the San Francisco piers to assist with loading and unloading pier shipments. All hold themselves out to transport shipments from and to piers in the San Francisco Bay area, Sacramento and Stockton. One of the protestants alleged that there is an imbalance of traffic from the San Francisco Bay area to valley points with the result that equipment is returning empty. All of the eleven protestants solicit traffic for the points they serve within the area in question. Some have special staffs of salesmen and elaborate advertising brochures.

All of the eleven protestants presented evidence to show that they have adequate equipment to handle any foreseeable increase in the public need for either intrastate, interstate or foreign service throughout the area applicant proposes to serve. All contended that there is more than a sufficient number of highway common carriers operating within the proposed area to handle all available traffic; that they have equipment operating in this region at much less than full capacity; and that if another carrier is

granted a certificate for this area, it would create more competition, further dilute the amount of traffic available for the existing common carriers and result in loss of revenue for them. Protestants allege that they are opposing this application because another general commodity carrier is not needed in the zone applied for and because applicant can serve all of its customers adequately under the operating authorities it now holds.

Two members of the law firm representing one of the groups of protesting carriers reviewed all freight bills issued by applicant during the months of February, March, August and September, 1965 and prepared a summary (Exhibit 34) listing 44 of the approximately 3,000 documents reviewed. The summary shows that applicant transported 23 shipments from or to the San Francisco piers, four shipments to the Oakland piers, ten shipments from or to the San Francisco International Airport and three shipments to the Oakland International Airport during the months of February and March, 1965. It is the position of protestants that these were interstate or foreign shipments which applicant transported without the required authority. Most of these shipments are within the area applicant has been serving under his state and interstate certificated rights since May 26, 1965. The summary further shows that applicant transported four shipments purported to be in interstate and foreign commerce beyond its present certificated zone during the months of August and September, 1965. The four shipments were transported from Encinal Terminals in Oakland to the Port of Stockton on September 21, 1965. Applicant's president explained that the four shipments were transported while he was out of town; that he was not aware of them until they were brought to his attention by protestants; and that to his knowledge applicant has not subsequently

transported any interstate or foreign shipments beyond its present certificated area. It is applicant's position that the evidence does not establish with certainty whether any of the 44 shipments were in fact interstate or foreign shipments. Applicant pointed out that it is possible that any prior or subsequent movement by water or air may have been between points within the state; that some of the shipments may have been in storage at the ports; and that some of the shipments may have been for ship stores. According to the summary, however, the documents for seventeen of the shipments indicated destinations beyond the state.

Protestants pointed out that Section 207 (a) of the Interstate Commerce Act requires that carriers applying for certificates to operate in interstate or foreign commerce shall be found to be "fit, willing, and able properly to perform the service proposed." They argued that applicant has openly and flagrantly violated the rules and regulations of the Interstate Commerce Commission by transporting shipments in interstate or foreign commerce without the required authority as evidenced by the summary of shipping documents and that for this reason the sought extension of authority to operate in interstate and foreign commerce should be denied. We have reviewed the various decisions by the Interstate Commerce Commission which protestants contend support their position, including Haywood Trucking Co. - Contract Carrier Application, 81 M.C.C. 437 (1959) and J. C. Poole, Jr., Extension - Lumber, 78 M.C.C. 635 (1959). In the cases cited by protestants, applications for extensions of interstate and foreign authority were denied either because the applicant had been placed on notice by the Interstate Commerce Commission to cease and desist from performing the service without the required authority and had ignored the admonishment or because



the applicant had regularly and continuously operated in interstate and foreign commerce without the necessary authority and knew that such operations were illegal.

We do not agree that applicant has been shown on this record to be unfit. There is no evidence in the record that applicant had ever been placed on notice by the Interstate Commerce Commission to cease and desist performing illegal operations in interstate and foreign commerce. Furthermore, we do not agree that the record establishes that applicant has regularly and continuously performed illegal services in interstate and foreign commerce from, to or within the proposed area. It is noted that with the exception of four shipments, all of the 44 alleged violations listed in the aforementioned summary occurred prior to the time applicant incorporated and commenced operating under its present highway common carrier authority, and the majority of these alleged violations were within the area covered by its current certificate of registration with the Interstate Commerce Commission. As to the four alleged violations which occurred on September 21, 1965, applicant's president testified that these were four isolated instances which occurred without his knowledge and that no similar instances have occurred since that date. Furthermore, the record is not entirely clear as to how many of the 44 shipments in question were in fact interstate or foreign in character and subject to regulation by the Interstate Commerce Commission. Likewise, although several witnesses did testify they had utilized applicant's services in interstate and intrastate commerce to the proposed area, the record does not indicate whether this was done on a regular basis or whether they were inadvertent, isolated errors on the part of applicant. In any event, they do not, on this record, establish applicant to be unfit.

Protestants alleged that applicant did not comply with the requirements of Section 206 (a) (5) of the Interstate Commerce Act in that the notification published in the Federal Register on July 14, 1965, did not specifically state that applicant was seeking authority to engage in interstate and foreign commerce. They pointed out that the application seeks an extension of intrastate authority but that no reference was made therein at the time the notice was published that applicant was also seeking a similar extension of its interstate and foreign authority. Applicant, on the other hand, argued that it was self-evident by the publication in the Federal Register that it was likewise seeking coextensive interstate and foreign rights, and the application was amended at the hearing to specifically show this. Protestants contended that the alleged deficiency in the publication in the Federal Register could only be cured by republishing the notification and stating therein that applicant was requesting coextensive interstate and foreign authority.

Section 206 (a) (5) requires, in part, "notice to interested persons through publication in the Federal Register of the filing of the application and of the desire of the applicant also to engage in transportation in interstate and foreign commerce within the limits of the intrastate authority granted." Notice of the filing of the application was published in the Federal Register. While it is true the notice did not specifically state that applicant was seeking coextensive authority to operate in interstate and foreign commerce, we agree with applicant that this was self-evident and obvious from the fact that the publication was made. Furthermore, each and every protestant in this proceeding was afforded ample opportunity to cross examine applicant, present

evidence in support of its position and file briefs. Due process has been accorded each and every protestant herein.

Protestants further pointed out that Section 206 (a) of the Interstate Commerce Act also requires applicant to establish public convenience and necessity. The question of what constitutes public convenience and necessity within the meaning of Section 206 (a) was considered by the Interstate Commerce Commission in John E. Dugan Extension - Certificate of Registration, 99 M.C.C. 557, 567 (1965), wherein the Commission stated as follows:

"In this connection the broad question of what constitutes 'public convenience and necessity' within the meaning of section 206(a), of which the provisions governing the instant application and petition are but a part, was considered at the advent of Federal motor carrier regulation in Pan-American Bus Lines Operation, 1 M.C.C. 190. In that decision former division 5 of this Commission, while recognizing the impracticability of establishing a rigid formula whereby the public need for each proposed operation could be determined, enunciated the following criteria (page 203):

'The question, in substance, is whether the new operation or service will serve a useful public purpose, responsive to a public demand or need; whether this purpose can and will be served as well by existing lines or carriers; and whether it can be served by applicant with the new operation or service proposed without endangering or impairing the operations of existing carriers contrary to the public interest.'

"These general tests have been employed since that time in cases too numerous to require citation."

The record establishes that respondent is regularly performing service in interstate and foreign commerce within the area included in its present certificate which is registered with the Interstate Commerce Commission. Some of the shipper witnesses testified in support of the request for authority to operate in interstate and foreign commerce in the sought extended area. They

indicated the particular locations within said area from and to which they require or will require such service. While the particular points from and to which such service is required or will be required varies for each of the individual shippers, they include Half Moon Bay, Coyote, Watsonville, Salinas, Fremont, Lodi, East Palo Alto, Newark, Port of Stockton, Travis Air Force Base, McClellan Air Force Base and Hamilton Air Force Base. Likewise the frequency and volume of the interstate and foreign shipments vary for the individual shippers.

To establish public convenience and necessity in connection with the proposed service, it is not necessary that applicant or shipper witnesses on its behalf present evidence regarding service to each and every location within the sought area. To require such would place an undue burden on applicant which it is unlikely that it could meet, with a reasonable number of shipper witnesses. Although the witnesses who testified in support of the sought interstate and foreign authority were relatively few in number and the evidence they presented was somewhat limited, nevertheless a representative showing has been made which is sufficient to support applicant's request to operate in interstate and foreign commerce.

As to protestant's further argument that the proposed interstate and foreign service would, if granted, dilute the amount of traffic now available to them, the record does not show the extent to which this might occur. Applicant is at present a relatively small carrier. The competitive threat which it now represents to the revenue of the protestant carriers is minimal. As to whether applicant will increase its activity and add to its fleet in the future and become a more potent competitive threat is purely speculative. We are concerned here with evidence and not speculation.

Protestants also alleged that they can accommodate all demands for service in interstate and foreign commerce from, to and within the proposed area and that no additional carrier is needed. To accept this type of argument would forevermore preclude the entry of any additional carrier into the proposed area. Furthermore, as hereinbefore stated, the record includes testimony by shipper witnesses that they require or will require the proposed service.

It is asserted in the brief filed by one of the groups of protestants that applicant does not require authority to operate in interstate or foreign commerce to transport shipments to McClellan, Travis or Hamilton Air Force Bases for the three shippers who presented evidence that they require transportation to these locations. It is stated in the brief that the shipments are government shipments which are delivered to a government carrier for transportation by the government carrier to ultimate destination. The beyond transportation by government carrier, it is alleged, is private carriage and, therefore, in accordance with the decision in Motor Transportation of Property Within a Single State, 94 M.C.C. 541 (1964), the for-hire transportation to said airports, which is entirely within California, is intrastate commerce. The protestants conclude that evidence regarding this transportation does not in any manner support applicant's request for interstate and foreign authority. No determination as to the merits of this argument need be made herein. Even assuming that the allegation is true, there is sufficient evidence, based upon a review of the entire record, to support an extension of applicant's authority to provide service in interstate and foreign commerce.

Upon consideration of the evidence the Commission finds that:

1. Applicant is a California corporation and has radial highway common carrier, highway contract carrier and city carrier permits issued by this Commission for the transportation of general commodities. It also has a certificate of public convenience and necessity issued by this Commission and coextensive authority from the Interstate Commerce Commission authorizing it to operate as a highway common carrier of property with the usual exceptions in intrastate, interstate and foreign commerce within the San Francisco-East Bay Cartage Zone; between said Cartage Zone, San Jose and intermediate points on or within one mile of U. S. Highways 101 and Bypass 101, including the whole of any incorporated city intersected by said highways; and between said Cartage Zone, Crockett and intermediate points on U. S. Highway 40. This latter authority is subject to the limitation that no shipment will be transported unless it either weighs 20,000 pounds or transportation charges are based on said weight.

2. Applicant has conducted highway common carrier operations since May 26, 1965 in intrastate, interstate and foreign commerce within its present certificated area described in Finding 1 above. Outside said certificated area applicant holds highway permit carrier authority.

3. Applicant has been providing daily intrastate service from the San Francisco Bay area to many locations within the extended area which it proposes to serve as a highway common carrier, including Sacramento, Stockton, Fremont-Milpitas area, points in Marin County, Salinas, Monterey and Santa Cruz. It has also been providing regular intrastate service ranging from one to four times a week to numerous other locations within the proposed extended area, including service four or five times a week to Modesto and four times a week to Pittsburg and Antioch.

4. Applicant's intrastate service between its present certificated area and the proposed extended area is approaching, if not already, a highway common carrier type of service.

5. Applicant has not advertised or solicited a highway common carrier type of service from, to or within the proposed extended area but will actively do so if the sought authority is granted.

6. The witnesses who appeared for applicant desire that applicant be authorized to render the service it seeks authority to perform. Many indicated that applicant provides a personalized, expedited service which they do not obtain from other carriers. Some desire applicant's services in interstate and foreign commerce as well as in intrastate commerce from or to the proposed area. Many now use applicant's services to some extent to or from the requested area. Most use other carriers in addition to applicant, and some also use their own trucks. Many were familiar with a number of the certificated carriers operating from, to and within the sought area, but none was familiar with all of the carriers serving said area.

7. All of the protesting carriers serve in intrastate, interstate and foreign commerce. Several serve all of the proposed extended area, and the balance serve most of said area. It is not shown that any of the protesting carriers will be seriously affected by an expansion of applicant's certificated service.

8. Notice of the filing of the application was published in the Federal Register and all protestants were afforded the opportunity to protest the sought extension by applicant of its operations in intrastate, interstate and foreign commerce. Protestants cross-examined applicant's witnesses; were granted a subpoena duces tecum to review applicant's records of transportation

performed by it in intrastate, interstate and foreign commerce for the months of February, March, August and September 1965; presented evidence on their own behalf; and filed briefs.

9. Public convenience and necessity require that the proposed service be authorized in intrastate, interstate and foreign commerce as specified in the order which follows.

10. Applicant has the experience, equipment, personnel and financial resources to institute and maintain the proposed service and the ability to add additional personnel and equipment as required.

The Commission concludes that the application should be granted to the extent set forth in the ensuing order and that in all other respects it should be denied.

"Call Mac" Transportation Company, a corporation, 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

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to "Call Mac" Transportation Company, a corporation, 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 Appendices A and B 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. Applicant is placed on notice that, if it accepts the certificate of public convenience and necessity herein granted, it will be required, among other things, 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-D. Failure to comply with and observe the safety rules, or the provisions of General Order No. 100-D, 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.
- (e) Applicant shall maintain its accounting records on a calendar year basis in conformance with the applicable Uniform System of Accounts or Chart of Accounts as prescribed or adopted by this Commission and shall file with the Commission, on or before March 31 of each year, an annual report of its operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.

3. The certificate of public convenience and necessity granted in Paragraph 1 of this order shall supersede all existing certificates of public convenience and necessity authorizing the transportation of general commodities heretofore granted to or acquired by "Call Mac" Transportation Company, a corporation, and presently possessed by it, which certificates shall be revoked effective concurrently with the effective date of the tariff filings required by Paragraph 2 (b) hereof.

4. In all other respects, Application No. 47717 is hereby denied.

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

Dated at San Francisco, California, this 2<sup>nd</sup> day of AUGUST, 1966.

[Signature]  
President

[Signature]

Commissioners

I dissent.  
George G. Grover

Commissioner Frederick B. Holoboff, being necessarily absent, did not participate in the disposition of this proceeding.

Appendix A "Call Mac" Transportation Company, Original Page 1  
(a corporation)

"Call Mac" Transportation Company, a corporation, by the certificate of public convenience and necessity granted in the decision, is authorized to transport general commodities, with exceptions hereinafter noted, in intrastate, interstate and foreign commerce as follows:

1. Between all points and places within the San Francisco Territory as described in Appendix B.

2. Between all points and places on and within five miles of points and places on the following described routes:

- a. Between the San Francisco Territory and Novato via U. S. Highway 101.
- b. Between the San Francisco Territory and Sacramento via U. S. Highway 40, including off-route service to McClellan Air Force Base.
- c. Between the San Francisco Territory and Antioch via State Highway 24 and unnumbered highway.
- d. Between the San Francisco Territory and Stockton via U. S. Highway 50.
- e. Between the San Francisco Territory and Modesto via U. S. Highway 50, State Highway 120 and U. S. Highway 99.
- f. Between the San Francisco Territory and Santa Cruz via State Highway 17.
- g. Between the San Francisco Territory and Monterey via State Highway 1 and via U. S. Highway 101 and State Highway 68.

Issued by California Public Utilities Commission.

Decision No. 71196, Application No. 47717.

3. Applicant may use U. S. Highway 99 between Stockton and Sacramento as a route traversed but not served.

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 and 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 protection from heat by the use of ice (either water or solidified carbon dioxide) or by mechanical refrigeration.
5. 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.
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.

Issued by California Public Utilities Commission.

Decision No. 71196, Application No. 47717.

## SAN FRANCISCO TERRITORY

Beginning at the foot of Market Street in the City and County of San Francisco; thence northerly and westerly along the shoreline of San Francisco Bay; thence westerly and southerly along the Pacific Ocean shoreline to the extension of Belcrest Avenue; easterly on Belcrest Avenue to Skyline Drive; northerly on Skyline Drive to Gateway Drive; easterly and southerly along Gateway Drive to Hickey Boulevard; easterly on Hickey Boulevard to Skyline Boulevard (SSR 35); southerly along Skyline Boulevard to Sharp Park Road; westerly on Sharp Park Road to Ysabel Drive; southerly on Ysabel Drive to its end; thence easterly in a direct line to the end of County Jail Road; southerly and easterly along County Jail Road and its extension Moreland Drive to College Drive; easterly along College Drive to Skyline Boulevard; southerly along Skyline Boulevard to Crystal Springs Road; easterly on Crystal Springs Road to the intersection of said road and Polhemus Road; thence southeasterly in a direct line to the intersection of Parrott Drive and Bel Aire Drive; thence southerly on Parrott Drive to Cheviott Drive; thence southwesterly in a direct line to the intersection of Haskins and East Laurel Creek Road; westerly on East Laurel Creek Road to Bartlett Way; thence westerly and southerly on Bartlett Way to Naughton Avenue; easterly on Naughton Avenue to Hillcrest Drive; southerly on Hillcrest Drive to Belmont Canyon Road; easterly and southerly on Belmont Canyon Road to Ralston Avenue; northwesterly on Ralston Avenue to Hallmark Drive; southerly on Hallmark Drive to the intersection at Wemberley Drive; thence southerly in a direct line to the end of Barbara Way; southerly on Barbara Way to Malabar Road; southerly on Malabar Road and along its extension Crestview Drive to Brittain Avenue; northeasterly along Brittain Avenue to Alameda De Las Pulgas; southeasterly on Alameda De Las Pulgas to Howard Avenue; westerly on Howard Avenue to Thornhill Drive; westerly and southerly along Thornhill Drive to De Anza Avenue; westerly on De Anza Avenue to Terrace Road; southerly on Terrace Road to Eaton Avenue; easterly on Eaton Avenue to Roland Way; southerly on Roland Way to Bromley Drive; southeasterly on Bromley Drive to its extension Clifford Avenue; easterly and northerly along Clifford Avenue to Eaton Avenue; easterly on Eaton Avenue to Alameda De Las Pulgas; southeasterly on Alameda De Las Pulgas to Whipple Avenue; southwesterly on Whipple Avenue to Upland Road; westerly on Upland Road to Cordilleras Road; southerly on Cordilleras Road to Canyon Road; southerly and easterly along Canyon Road to Highland Avenue; westerly and southerly along Highland Avenue to Jefferson Avenue; southwesterly along Jefferson Avenue to Godetia Drive; thence westerly from the intersection at Jefferson Avenue and Godetia Drive to the end of Earcross Road; northeasterly on Earcross Road to Fernside Street; southeasterly on Fernside Street to Alameda De Las Pulgas; southeasterly on Alameda De Las Pulgas to Woodside Road; southwest-erly on Woodside Road to Moore Road; easterly on Moore Road and its extension Reservoir Road to Walsh Road; northerly on Walsh Road to

SAN FRANCISCO TERRITORY - continued

Alameda De Las Pulgas; southeasterly on Alameda De Las Pulgas to Santa Cruz Avenue; along Santa Cruz Avenue and its continuation Junipero Serra Boulevard to its end at Arastradero Road; easterly on Arastradero Road to Manuella Avenue; southerly along Manuella Avenue to Estacada Drive; easterly on Estacada Drive to Miranda Road; southerly on Miranda Road to Fremont Road; easterly on Fremont Road to Edith Road; easterly on Edith Road to West Edith Avenue; westerly on West Edith Avenue to Lincoln Avenue; southeasterly on Lincoln Avenue to University Avenue; southeasterly along University Avenue to Fremont Avenue; southerly and easterly on Fremont Avenue to Grant Road; southeasterly on Grant Road to Foothill Boulevard; southerly on Foothill Boulevard and its continuation Stevens Canyon Road to Mount Eden Road; southeasterly on Mount Eden Road to Pierce Road; southerly on Pierce Road to Congress Springs Road (SSR 9); easterly on Congress Springs Road and its continuation Big Basin Way to 6th Street; southerly on 6th Street to Bollman Road; southerly along Bollman Road to the intersection with Belnap Drive; thence easterly from said intersection in a straight line to the end of Bainter Avenue; easterly on Bainter Avenue to Ravine Road; northeasterly on Ravine Road to Austin Way; easterly on Austin Way to Lancaster Road; southerly on Lancaster Road to Ojai Drive; southerly along Ojai Drive to its intersection with Lucky Road; thence southeasterly in a direct line to the intersection of Greenwood Road and Withey Road; easterly along Withey Road to Hernandez Avenue; southerly and easterly on Hernandez Avenue to Wissahickon Avenue; southerly on Wissahickon Avenue to Live Oak Avenue; westerly on Live Oak Avenue to Madrone Avenue; southerly on Madrone Avenue to its end; thence southeasterly in a straight line to the intersection of Laurel Avenue and Manzanita Avenue; easterly on Manzanita Avenue to Oak Knoll Road; southerly along Oak Knoll Road to its end; thence southeasterly in a straight line to the end of Wood Road; easterly on Wood Road to Santa Cruz Avenue; southerly on Santa Cruz Avenue to San Jose-Los Gatos Freeway (SSR 17); northeasterly on the San Jose-Los Gatos Freeway to East Main Street; easterly on East Main Street to Alpine Avenue; southeasterly on Alpine Avenue to Foster Road; northerly on Foster Road to Johnson Avenue; southeasterly on Johnson Avenue to Grove Street; easterly and northerly on Grove Street and its extension, Phillips Avenue to South Kennedy Road; easterly on South Kennedy Road to Kennedy Road; thence northeasterly in a straight line to the intersection of Shannon Road and Shannon Heights Road; northwesterly on Shannon Heights Road to Shannon Road; easterly along Shannon Road to Hicks Road; northerly on Hicks Road to Kooser Road; northeasterly on Kooser Road and its extension, Downer Avenue to Snell Road; northerly on Snell Road to Chynoweth Avenue; easterly on Chynoweth Avenue to Monterey Road (SSR 82); southeasterly on Monterey Road to Bayshore Freeway (U.S. Highway 101); northwesterly on Bayshore Freeway to Tully Road; northeasterly on Tully Road to Quimby Road; southeasterly on Quimby Road to White Road; northwesterly on White Road to Penitencia Creek Road; easterly on Penitencia Creek Road to Piedmont Road; northwesterly on Piedmont Road to Sierra Road; southwesterly on Sierra Road to Morrill Road; northwesterly on Morrill Road to Cropley Avenue; southwesterly on Cropley Avenue to No. Capitol Avenue; northwesterly on No. Capitol Avenue to Trimble Road; southwesterly on Trimble Road to Nimitz Freeway (Interstate 680, SSR 17); northwesterly on Nimitz Freeway to the Santa Clara

SAN FRANCISCO TERRITORY - continued

County Line; northeasterly along the Santa Clara County Line to Mission Peak; thence northerly in a direct line to the point where the Hetch Hetchy Water Line intersects the P G and E Power Line; thence westerly from said point in a straight line to the intersection of Interstate 680 (SSR 21) and Vargas Road; thence northwesterly along Vargas Road to Morrison Canyon Road; thence northwesterly in a straight line to the end of Old Niles Canyon Road; southeasterly along Old Niles Canyon Road to Niles Canyon Road; southeasterly along Niles Canyon Road to Mission Boulevard; northwesterly on Mission Boulevard (SSR 238) to Blanche Street; northeasterly on Blanche Street to Trevor Avenue; southeasterly on Trevor Avenue to Bernice Way; easterly and northerly on Bernice Way to Chicoine Avenue; northwesterly on Chicoine Avenue to MacDonald Way; northerly on MacDonald Way to its end; thence northwesterly in a direct line to the end of Faircliff Street; along Faircliff Street to Treoview Street; northwesterly on Treoview Street to its end; thence northwesterly in a direct line to Larrabee Street; northwesterly on Larrabee Street to Woodland Avenue; westerly on Woodland Avenue to Mission Boulevard; northwesterly on Mission Boulevard to Webster Street; easterly on Webster Street to East 17th Street; northwesterly on East 17th Street to Calhoun Street; westerly on Calhoun Street to Mission Boulevard; northwesterly on Mission Boulevard to Harder Road; easterly on Harder Road to its end; thence easterly in a straight line to the intersection of Grand View Avenue and Cotati Street; thence northeasterly on Cotati Street to Dobbel Avenue; northwesterly on Dobbel Avenue to Civic Avenue; northerly on Civic Avenue to Hayward Boulevard; northwesterly on Hayward Boulevard to Campus Drive; northeasterly and northwesterly on Campus Drive to 2nd Street; northwesterly on 2nd Street to E Street; easterly on E Street to 5th Street; northerly on 5th Street to D Street; easterly on D Street to 7th Street; thence northeasterly in a straight line to the intersection of Templeton and Hill Avenues; easterly on Hill Avenue to Vermont Street; northerly on Vermont Street to B Street; easterly on B Street to Center Street; northerly on Center Street to the San Lorenzo Creek; easterly and northerly along the San Lorenzo Creek to U.S. Highway 50; westerly on U.S. Highway 50 to Center Street; easterly and northerly on Center Street to Seaview Avenue; westerly on Seaview Avenue to Redwood Road; northerly on Redwood Road to the San Leandro Creek; westerly along the northern shores of the San Leandro Creek and Lake Chabot to the northernmost tip of Lake Chabot; thence northerly in a straight line to the intersection of Grass Valley Road and Skyline Boulevard; thence northwesterly along Skyline Boulevard and its extension Grizzly Peak Boulevard to Golf Course Drive; northerly along Golf Course Drive to Shasta Road; easterly on Shasta Road to Wildcat Canyon Road; easterly along Wildcat Canyon Road to San Pablo Dam Road; northwesterly along San Pablo Dam Road to Road 20; northwesterly on Road 20 to Eastshore Freeway (Interstate 80); northerly on Eastshore Freeway to Hilltop Drive; westerly on Hilltop Drive to San Pablo Avenue; northerly on San Pablo Avenue to Atlas Road; northwesterly on Atlas Road to Rachel Road; northeasterly on Rachel Road to Christine Drive; northwesterly on Christine Drive to its end; thence northerly in a straight line to the shoreline of San Pablo Bay; westerly and southwestwesterly along the shoreline of San Pablo Bay to the shoreline of San Francisco Bay; southeasterly along the shoreline of San Francisco Bay to Point Richmond; thence southerly along an imaginary line from Point Richmond to the foot of Market Street in the City and County of San Francisco, the point of beginning.

(End of Appendix B)

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