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ORIGINAL

Decision No. 72001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Investigation into the rates, rules, regulations, charges, allowances and practices of all common carriers, highway carriers and city carriers relating to the transportation of property in the City and County of San Francisco, and the Counties of Alameda, Contra Costa, Lake, Marin, Mendocino, Monterey, Napa, San Benito, San Mateo, Santa Clara, Santa Cruz, Solano and Sonoma.

Case No. 5441  
(Petition for Modification No. 114)

E. H. Griffiths and George B. Dill, for Aero Special Delivery and Messenger Service, and Sparkie's Special Delivery and Messenger Service, Inc., petitioners.

Frank Loughran, for Ace Delivery Service and Regal Delivery Service; Thomas E. Collins, for Regal Delivery Service; John T. Reed, for California Manufacturer's Association; protestants.

Richard W. Smith, A. D. Poe and H. F. Kollmyer, for California Trucking Association; Russell Bevans, for Draymen's Association of San Francisco, Inc.; Edward J. Maurer, for General Delivery Service; Philip A. Winter, for Delivery Service Company; interested parties.

George H. Morrison and John W. Henderson, for the Commission's staff.

### O P I N I O N

Petitioners hold city carrier permits in connection with their performance of parcel delivery and messenger service within the City and County of San Francisco. <sup>1/</sup> By this petition, as amended,

1/ Petitioners also render like services in inter-city operations under appropriate authorizations from this Commission.

they seek amendment of certain provisions set forth in Item No. 425 of City Carrier's Tariff No. 1-A (Tariff 1-A). The item in question contains rules and charges applicable to parcel deliveries of freight, regardless of classification.

Public hearing of the petition was held before Examiner Bishop at San Francisco on October 13, 1966.

Item No. 425 contains charges and rules governing the transportation of "Freight, Regardless of Classification, transported within and between all zones" defined in the tariff. Such transportation is characterized, in the item, as "Parcel Deliveries". The application of the charges in the item is subject to certain commodity exclusions, as well as others. By its terms the item does not apply on any package or article weighing more than 50 pounds or exceeding 108 inches in length and girth combined. The item provides a charge of 19 cents per package, plus 3 cents for each pound or fraction thereof. Additionally there is a service charge of \$2.00 per week unless all packages or pieces are tendered at the carrier's terminal.

The parcel delivery rates in question were established in 1953 (but on a lower level) to provide, for San Francisco intracity movements, a basis of charges competitive with the highway common carrier rates of United Parcel Service, Inc. (United Parcel) applicable for intercity movements.<sup>2/</sup> The parcel delivery rates in Item No. 425 have been maintained on the same level as the "going rates" of United Parcel as published in its Local Parcel Tariff No. 17. The background and genesis of the city parcel delivery rates are set forth in Decision No. 71040, dated July 26, 1966, in Petition for Modification No. 103, in Case No. 5441, and related matters.

2/ Parcel delivery rates are also provided in the minimum rate tariffs applicable in the East Bay and Los Angeles drayage areas. ✓

As stated in said Decision No. 71040, the common carrier tariff provisions governing the parcel delivery rates of United Parcel were never completely duplicated in the minimum local drayage tariffs. By that decision modifications were made in the provisions of Item No. 425 of Tariff 1-A to bring the minimum drayage rates into greater conformity with the provisions of the United Parcel tariff. These adjustments were prompted by the granting to United Parcel of a statewide common carrier certificate,<sup>3/</sup> in connection with which certain restrictions were laid down. These conditions were subsequently reflected in the aforesaid tariff of that carrier.

One of the changes made in Item No. 425 of Tariff 1-A by Decision No. 71040 was the addition, in paragraph 2(c) of the item, of a provision to the effect that the parcel delivery rates will not apply on any package or article when consignor requests delivery on the same day that the package or article is picked up at consignor's place of business or delivered to the carrier's terminal. It was the establishment of this particular provision, effective September 3, 1966, which prompted the filing of the petition herein.

Petitioners propose, in effect, that the provision in question be revised to read:

"This item does not apply if pickup and delivery is provided during the same day".<sup>4/</sup>

The effect of this restriction would be to strictly prohibit the application of the charges in Item No. 425 on any shipment which is picked up and delivered by the carrier on the same day, whether by

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<sup>3/</sup> By Decision No. 70125, dated December 21, 1965, in Application No. 47874.

<sup>4/</sup> In the application, as amended, it is proposed to publish the above quoted provision in a separate "Note", making no change in the present provisions. This, however, would result in conflicting provisions in the item.

request of the shipper or voluntarily by the carrier, or for any other reason.

A rate expert, testifying on behalf of petitioners, pointed out that the "next-day delivery" provision of Item No. 425 was intended to equalize the comparable limitation in the United Parcel tariff. He stated, however, that the rule as now published in the minimum drayage tariff does not prohibit the use of the parcel delivery rates when same-day delivery is made by the carrier for its own convenience. This possibility opened the door for subterfuge, he asserted, and served to defeat the purpose of the parcel delivery rates. The proposed modification, he said, would correct this infirmity in the present provisions of Tariff 1-A.<sup>5/</sup>

The president of Sparkie's Special Delivery and Messenger Service, Inc. (Sparkie's), one of the petitioners, testified to the following effect: His company has, for the past 20 years, conducted a special delivery and messenger service. Half of its business is carried on with bicycles (not subject to minimum rate regulation) and half with 16 half-ton trucks. He gives same-day service, does not have regular routes, but his trucks are equipped with two-way radio, which enables the carrier to route pickups by a particular driver in the same general direction, thus realizing an over-all saving in time and equipment mileage. The carrier has no terminal facilities for the handling of shipments. The record

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<sup>5/</sup> It is to be here observed that Note 3 in Item No. 120 of United Parcel Service, Inc. Local Parcel Tariff No. 17 reads as follows:

"Except as otherwise provided, rates in this item apply only for 'next day delivery', i.e., where packages tendered to the carrier on one day are scheduled for delivery not earlier than the next business day."

A review of said Tariff No. 17 fails to disclose any exception to this rule.

indicates that the nature of the carrier's business is that of a messenger service for the delivery of such items as legal papers, rather than that of a typical parcel carrier.

Sparkie's has consistently based its charges on the minimum charges set forth in Item No. 200 of Tariff 1-A. The parcel delivery rates in Item 425, the witness said, are insufficient for the type of special messenger service which his company provides. However, since the inclusion in Item No. 425 of paragraph 2(c) above, with the qualifying expression "when consignor requests delivery on the same day", he stated, Sparkie's has lost numerous long-standing customers to other carriers who apply the lower rates in Item No. 425<sup>6/</sup>. These carriers, he said, perform the same type of special messenger service that Sparkie's renders, with same-day delivery. Assertedly, the customer does not ask these carriers for same-day service, but they provide it and technically are not in violation of the requirements of paragraph 2(c).

In order to meet the competition of the above-mentioned carriers, Sparkie's applied the rates in Item No. 425 on some of its shipments, but said rates were so unprofitable, the witness said, that the petitioner was forced to notify its customers that it would be necessary to assess on future shipment charges no lower than those provided in Item No. 200.

This witness also drew attention to the fact that by the tariff adjustment of September 3, 1966 the scope of Item No. 425 was greatly broadened. Prior to that date the rates were restricted to apply only on deliveries from manufacturers' agents, jobbers, commercial distributors and warehouses. Effective on that date

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<sup>6/</sup> According to the witness, Sparkie's also lost business before September 3, 1966, the effective date of paragraph 2(c), because competing carriers were even then misapplying Item No. 425.

this restriction was eliminated and the tariff was amended to provide that the item would not apply to any shipment transported between retail stores and their branches or warehouses, on the one hand, and, on the other hand, the premises of the customers of such stores. According to the witness, this broadening of the item had the effect of further increasing the competitive forces with which Sparkie's has to contend.

The proprietor of Aero Special Delivery and Messenger Service (Aero), the other petitioner in this matter, testified concerning his company's operations. Aero provides the same type of same-day messenger service as is maintained by Sparkie's. The plan of operation of the two carriers is substantially the same. However, in addition to bicycles, he utilizes motorcycles rather than light trucks. The motorcycles are equipped with side-cars and two-way radios. Consistently since 1945, when he commenced operations, his charges have been based on Item No. 200.<sup>7/</sup>

According to this witness, the competitive effect of carriers using Item No. 425 was bad before the adjustment of September 3, 1966, and has been worse since that date. Specifically he mentioned two carriers who have taken away business from him. As a result of Item No. 425, he said, he has lost from 85 to 100 accounts. Some of these he has regained. Aero provides same-day service; in fact, deliveries are accomplished, the witness asserted, within the hour.

The straight time wage scales paid by Sparkie's and Aero are \$3.325 and \$3.25 per hour, respectively. Both operators employ

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<sup>7/</sup> Sparkie's charges are zoned, beginning with \$1.65, the lowest charge in Item No. 200, for the first zone. The charges are graded upward for succeeding zones.

union labor but the men belong to different locals. Neither carrier introduced revenue and expense figures; each witness simply testified that the charges in Item No. 425 were noncompensatory for the kind of service which his company renders.

Granting of the petition was opposed by Ace Delivery Service (Ace), a parcel delivery carrier, which possesses city carrier and highway carrier permits from this Commission.<sup>8/</sup> The owner of the company testified that he has operated since 1953, that he specializes in parcel deliveries, mostly for wholesalers, and that he applies the charges and observes the rules contained in Item No. 425 of Tariff 1-A. His vehicles are 3/4-ton trucks, operating over regular routes, mostly on schedules. Ninety percent of Ace's shipments are accorded same-day delivery.<sup>9/</sup> It has no freight terminal. While this carrier handles some intercity shipments, approximately 85 percent of its traffic has both origin and destination within San Francisco.

Included in the record is a series of exhibits setting forth results of Ace's total operations for recent years and other financial data. While the carrier estimates that about 85 percent of the revenues are derived from its San Francisco operations there is nothing in the record to show the breakdown between San Francisco expenses and those incurred in intercity service. Thus, there is no basis in the record for determining the net results of Ace's San Francisco intracity operations for any period.

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<sup>8/</sup> Granting of the petition was opposed also by Regal Delivery Service. However, no evidence was presented by that carrier. Its participation was confined to cross-examination of petitioner's witnesses.

<sup>9/</sup> While Ace provides same-day delivery, his customers do not request such service. Therefore, the owner testified, he is not barred by the rules in Item No. 425 from observing the rates named therein.

If the petition herein is granted, Ace will be required to assess charges no lower than the minimum charges provided in Item No. 200. Assuming that the carrier were able to retain all of his present traffic the changeover would result in an estimated annual increase in revenue of \$44,832. This would be a very unreasonable increase, the owner testified. He is satisfied with the earnings he is receiving under Item No. 425.

Representatives of various interested parties assisted in the development of the record through examination of the witnesses.

Discussion, Findings and Conclusions

As hereinabove mentioned, the parcel delivery rates in Item No. 425 of Tariff 1-A were based generally on the intercity parcel delivery rates, applicable in the San Francisco Bay Area, of United Parcel Service, and were intended to provide within San Francisco rates and regulations for parcel deliveries which should be no higher in effect than were applicable between San Francisco and points outside that city. The Item No. 425 rates, accordingly, have never been directly related to the operating costs of the San Francisco city parcel carriers.

As also previously stated, the provisions of Item No. 425 have never exactly duplicated those of the United Parcel tariff, and Decision No. 71040, above, represented an attempt to revise the provisions of Item No. 425 so as to more nearly reflect the provisions of said tariff. It is important to note in this connection that Item No. 425, prior to the amendments accomplished by said Decision No. 71040, did not prohibit same-day deliveries under any circumstances. Deliveries could be made on the day on which the shipment was picked up or on a later date. Thus, prior to September 3, 1966, petitioners were subjected to the type of competition of which they



now complain. If that competition is greater now than before the tariff adjustment in question was made it appears that the increase is due to the opening up of Item No. 425 to a broader spectrum of movements, as hereinbefore described, rather than to the provisions of paragraph 2(c).<sup>11/</sup>

It is clear from the record that the business of petitioners is not that of typical parcel delivery carriers, for which the rates in Item No. 425 were designed. Theirs is a specialized messenger service, in effect a special delivery service for which their customers should expect to pay higher charges than those applicable to a parcel delivery service, conducted over regular routes, with regular pickup and delivery times.

Granting of the petition would bring the minimum rate tariff into complete accord with the United Parcel tariff with respect to same-day deliveries, in that such deliveries would not be permitted under any circumstances. The record shows, however, that at least one city parcel delivery service, that of protestant Ace Delivery Service, has been built up over a period of years on the basis of same-day deliveries under the rates in Item No. 425. Disregarding for the moment the same-day restriction which was

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<sup>11/</sup> The provision of Item No. 425 broadening the scope of the parcel delivery rates was intended to parallel the application of rates in the United Parcel tariff. However, the pertinent language in the two tariffs, cast in the form of an exception, is not identical. Paragraph 2(d) of Item No. 425 provides that the parcel delivery rates will not apply to "Any shipment between retail stores and their branches or warehouses, on the one hand, and, on the other hand, the premises of the customers of such stores". The corresponding restriction in the United Parcel tariff reads as follows: "No service shall be rendered between retail stores and their branches or warehouses, or between retail stores and their branches or warehouses, on the one hand, and, on the other, the premises of the customers of such stores." (Emphasis supplied.)

placed in that item effective September 3, 1966, it does not appear reasonable to jeopardize the business of a typical parcel delivery carrier, whose service has been based on the long-established provisions of the parcel delivery rates, in order to protect the traffic of carriers who are engaged in a different type of operation, namely, a special delivery messenger service.

The record further shows that the amendment of Item No. 425, by which paragraph 2(c) was added, restricting the rates in that item so as not to apply when shipper requests same-day delivery, is easily circumvented, and is of no practical effect. Some parcel delivery carriers regularly provide same-day deliveries, the customer knows this, and the carrier provides such service without specific request of the customer, thus permitting the application of the parcel delivery rates. It therefore appears that no useful purpose has been served by the provision and that, in the light of the preceding discussion relative to the merits of petitioners' proposal, paragraph 2(c) should be cancelled.

We find that:

1. Effective September 3, 1966 Item No. 425 of Minimum Rate Tariff No. 1-A, naming parcel delivery rates applicable within San Francisco was revised to provide that the rates therein will not apply on any package or article when consignor requests delivery on the same day that the package or article is picked up at consignor's place of business or delivered to carrier's terminal. At the same time the application of the item was broadened so as to apply on all traffic except shipments transported between retail stores and their branches or warehouses on the one hand, and the premises of the customers of such stores, on the other hand.

2. Petitioner Sparkies has, for 20 years, conducted a special delivery and messenger service within San Francisco, also from and to points outside that city, rendering same-day service with bicycles and small radio-equipped trucks which do not operate over regular routes.

3. Petitioner Sparkies does not have terminal facilities for the handling of shipments.

4. Petitioner Sparkies has consistently applied charges no lower than the minimum charges in Item No. 200 of Minimum Rate Tariff No. 1-A, except that, with respect to some shipments transported on or after September 3, 1966, charges were based on the cheaper parcel delivery rates provided in Item No. 425 of said tariff. Subsequently Sparkies notified its customers that it could no longer assess the parcel delivery rates as they were not compensatory.

5. Sparkies has been subjected to the competition of other carriers rendering the same class of service on a same-day delivery basis which latter carriers have applied the parcel delivery rates in Item No. 425. By reason of that competition Sparkies has lost some customers.

6. Petitioner Aero has, since 1945 provided the same type of delivery service as is maintained by Sparkies. Aero renders its service with bicycles and radio-equipped motorcycles. It does not operate over regular routes.

7. Aero has consistently charged rates no lower than the minimum charges set forth in Item No. 200 of Minimum Rate Tariff No. 1-A.

8. Both before and after September 3, 1966 Aero has been subjected to the competition of other carriers providing the same services on a same-day delivery basis at the rates in Item No. 425.

The force of such competition increased after the above-mentioned date.

9. By reason of the aforesaid competition Aero lost from 85 to 100 accounts but regained some of them.

10. To the extent that petitioners have experienced increased competition since September 3, 1966 from carriers which apply the parcel delivery rates in Item No. 425 such increase is occasioned by the broadened scope of that item rather than the restriction against same-day deliveries.

11. The business of petitioners is not that of typical parcel delivery carriers, for which the rates in Item No. 425 were designed, but that of a specialized messenger service providing special delivery, for which customers should expect to pay higher charges than those applicable to a parcel delivery service, conducted over regular routes, with regular pickup and delivery times.

12. Protestant Ace has operated as a parcel delivery carrier since 1953, mostly for wholesalers, rendering its service with small trucks operating over regular routes, mostly on schedules and mostly on a same-day delivery basis.

13. Ace, before and after September 3, 1966, has applied and is applying the parcel delivery rates in Item No. 425. Although he accords same-day delivery, his customers do not request such service, thus avoiding the prohibition in paragraph 2(c) of that item.

14. If petition is granted, Ace and any other carriers performing the service for which the rates in Item No. 425 were designed will be required to charge rates no lower than the minimum charges in Item No. 200, with a probable loss of customers.

15. It is not reasonable to jeopardize the business of typical parcel delivery carriers, such as Ace, whose business has been developed under the long-established provisions of the rates in Item No 425, in order to protect the traffic of carriers, such as petitioners, who are engaged in a delivery messenger service.

16. The amendment of Item No. 425, by which the restriction was added against same-day deliveries when requested by the shipper, is of no practical effect, since some carriers provide such service without specific request being made therefor by their customers, thus permitting the application of the parcel delivery rates.

17. The relief sought by petitioners has not been justified.

18. Paragraph 2(c) of Item No. 425 of Tariff 1-A is ineffectual and should be cancelled.

We conclude that:

1. Petition herein, as amended, should be denied.
2. Tariff 1-A should be amended as provided in the order which follows.

O R D E R

IT IS ORDERED that:

1. Petition for Modification No. 114, as amended, in Case No. 5441, is denied.
2. City Carriers' Tariff No. 1-A (Appendix D of Decision No. 41363, as amended) is further amended by incorporating therein Nineteenth Revised Page 40, to become effective March 18, 1967, which revised page is attached hereto and by this reference made a part hereof.

C. 5441, Pet. 114 ab \*

3. In all other respects said Decision No. 41363, as amended, shall remain in full force and effect.

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

Dated at San Francisco, California, this 15<sup>th</sup> day of FEBRUARY, 1967.

*[Signature]*  
President  
*[Signature]*  
*[Signature]*  
*[Signature]*  
*[Signature]*  
Commissioners

Item No.	SECTION NO. 4 - COMMODITY RATES (Continued) In cents per 100 lbs. except as noted	
	COMMODITY	RATES
425	<p>FREIGHT, REGARDLESS OF CLASSIFICATION, transported within and between all zones:</p> <p>PARCEL DELIVERIES</p> <p>1. The rates and provisions of this item are limited in their application to shipments of general commodities, except articles of unusual value, dangerous articles (Class A and B explosives), household goods, commodities in bulk, and commodities requiring temperature control or special equipment. Each package or article shall be considered as a separate and distinct shipment.</p> <p>2. The provisions of this item will not apply to the transportation of:</p> <p>(a) Any package or article weighing more than 50 pounds or exceeding 108 inches in length and girth combined.</p> <p>(b) Any packages or articles weighing in the aggregate more than 100 pounds from one consignor at one location to one consignee at one location during a single day.</p> <p>(c) **</p> <p>(d) Any shipment between retail stores and their branches or warehouses on the one hand, and on the other hand, the premises of the customers of such stores.</p> <p>3. Rates and charges in this item shall apply only on prepaid shipments and only where the shipper elects in writing in advance to utilize the rates and charges herein for all packages weighing 50 pounds or less tendered by said shipper to the carrier for delivery during the same calendar week.</p>	<p>In Cents Per Package</p> <p>19 Plus 3 cents for each pound or fraction thereof (See Note)</p>

NOTE.--In addition to the rates named herein the carrier shall assess a service charge of \$2.00 per week unless all packages or pieces are tendered at carrier's terminal.

ø Change )  
\*\* Eliminated ) Decision No. 72001  
ø Reduction )

EFFECTIVE MARCH 18, 1967

Issued by the Public Utilities Commission of the State of California,  
San Francisco, California.  
Correction No. 563 .