

ORIGINAL

Decision No. 77801

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. 190

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 within San Diego County (including transportation for which rates are provided in Minimum Rate Tariff No. 9-A).

Case No. 5439
Petition for Modification
No. 114

In the Matter of the Investigation into the rates, rules, regulations, charges, allowances and practices of all common carriers, highway carriers and city carriers relating to the transportation of any and all commodities between and within all points and places in the State of California (including, but not limited to, transportation for which rates are provided in Minimum Rate Tariff No. 2).

Case No. 5432
Petition for Modification
No. 579

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 Los Angeles and Orange Counties (transportation for which rates are provided in Minimum Rate Tariff No. 5).

Case No. 5435
Petition for Modification
No. 146

In the Matter of the Application of MAIL DELIVERY SERVICE CO., INC., a corporation, to transfer a certificate of public convenience and necessity as a freight forwarder to MDS COURIER SERVICES, INC., a corporation.

Application No. 51769
(Filed March 13, 1970)

In the Matter of the Application of MDS COURIER SERVICES, INC., a corporation, and MAIL DELIVERY SERVICE CO., INC., a corporation, to amend a certificate of public convenience and necessity as a freight forwarder.

In the Matter of the Application of MDS COURIER SERVICES, INC., a corporation, for a certificate of public convenience and necessity to institute an express corporation service.

Application No. 51770
(Filed March 13, 1970)

Bertram S. Silver and John Paul Fischer, for applicants in Applications Nos. 51770 and 51769 and petitioner in Cases Nos. 5432, 5435 and 5441.

Wyman C. Knapp, for American Courier Corporation, and Arthur D. Maruna, for California Trucking Association, protestants.

Joseph C. Matson, John F. Specht and Peter N. Kujachich, for the Commission staff.

O P I N I O N

Mail Delivery Service Co., Inc. (hereinafter referred to as Mail Delivery) requests authority to sell and transfer, and MDS Courier Services, Inc. (hereinafter referred to as MDS) requests authority to purchase and acquire, a certificate of public convenience and necessity authorizing operations as a freight forwarder for a cash consideration of \$500. It is requested that the freight forwarder certificate be amended by extending service to all points within the state, but limited to the transportation of checks, drafts, money orders, securities, transit items, sales, audit items, business records, audit media,

tabulation cards, data processing materials, legal documents and printed or reproduced documents on data. Concurrently therewith MDS Courier Services, Inc. requests a statewide express corporation certificate covering the same commodities and in addition thereto requests exemption from the rates, rules and regulations set forth in Minimum Rate Tariffs Nos. 1-B, 2, 5, 9-B and 19 for the transportation of said commodities pursuant to its permitted authority.

Public hearing was held before Examiner Daly in San Francisco and was submitted on July 28, 1970.

Mail Delivery has conducted an expedited mail delivery service as a permitted carrier since 1956. On October 10, 1967, it was authorized by Decision No. 73136, in Application No. 49478, as amended, to conduct operations as a freight forwarder via the lines of air common carriers, highway common carriers and passenger stage corporations subject to the following conditions:

1. Applicant shall not ship or arrange to ship any property unless such property shall have transportation by aircraft originating at one of the following airports:

Los Angeles International Airport
Lockheed Air Terminal, Inc. (Burbank)
San Francisco International Airport
Oakland International Airport
San Jose Municipal Airport

on the one hand, and terminating at the following points served by air common carriers, on the other hand:

Arcata
Bakersfield
Burbank
Eureka
Lockheed Air Terminal - Burbank
Long Beach
Los Angeles
Los Angeles International Airport
Merced
Monterey
Oakland
Oakland International Airport
Ontario

Orange County Airport
Redding
Sacramento
Salinas
San Diego
San Francisco
San Francisco International Airport
San Jose
San Jose Municipal Airport
Santa Barbara
Stockton
Visalia

2. The authority to ship via the line of highway common carriers and passenger stage corporations and transportation by applicant in its own equipment is limited to pickup service within a 25-mile radius of the above-named origin points and delivery service within a 25-mile radius of the above-named destination points.

3. City carriers may be utilized in lieu of highway common carriers and passenger stage corporations when necessary.

Recently Mail Delivery decided to separate its mail service from its courier service and to accomplish this end caused the formation of MDS as a subsidiary corporation. If the authority herein requested is granted, it is the intent of applicants to have Mail Delivery perform the mail delivery service and to have MDS perform the courier service.

In order that the operations of MDS might be competitive with existing service it is requested that MDS be granted authority similar to that granted other carriers by Decision No. 76236, as amended.

By Decision No. 76236 dated September 30, 1969, MPA Courier Corporation and American Courier Corporation were granted exemptions from the applicable minimum rates and were granted certificates to operate as freight forwarders via the lines of air common carriers between all points and places within the State of California. Service in general was limited to the transportation of business documents and related items and in each instance pickup and delivery service was restricted to 25 air miles of any airport unless the service beyond was performed by a highway common carrier. The 25 air mile restrictions were subsequently removed by Decision No. 76434 dated November 18, 1969.

The Commission found in Decision No. 76236 that where the courier service involved the transportation of documents which were handled as baggage of the courier and as incidental to a passenger

fare, certificated authority as an express corporation was required. Shortly thereafter corresponding express corporation certificates were granted MPA Courier Corporation and American Courier Corporation. Subsequently, American Courier Corporation purchased the operations of MPA Courier Corporation and the duplicating authorities of the latter were revoked.

MDS, therefore, requests that it be placed upon the same competitive basis as American Courier Corporation by being exempt from the applicable minimum rates and by being granted statewide certificates as a freight forwarder and as an express corporation for the transportation of business documents and related items without any pickup and delivery restriction.

Applications Nos. 51769 and 51770

Courier service is primarily conducted through the use of motor vehicles such as automobiles, station wagons and panel trucks. Service is provided for various business institutions such as banks, stock brokerage houses, insurance companies, retail stores and businesses dealing in various types of commercial paper or requiring extensive business records. Mail Delivery initially transported documents for customers for which it had been moving mail. In Northern California, the area included San Francisco, Oakland, Richmond, San Jose, Palo Alto, San Mateo County and Marin County. Service was also provided in the greater Los Angeles Basin Territory as far north as the San Fernando Valley and as far east as the San Gabriel Valley. San Diego and Anaheim were also included as points of service.

In the conduct of the "air courier" service documents are picked up at the customer's place of business, usually after closing hours, transported by automobile to the airport and loaded upon an

aircraft as freight and flown to an airport near the point of destination, where they are picked up and transported by motor vehicles to destination. Occasionally, documents will accompany a courier and will be handled as baggage rather than as freight.

With respect to the removal of the 25-mile pickup and delivery restriction, it is the position of MDS that it is impractical and contrary to economic realities. According to the testimony of the president of MDS there are no carriers, other than the competitors of applicants, which are able to provide courier service beyond the 25-mile limits. Even if the services of such a carrier were available, he testified, the interchange would unnecessarily delay the movement. He further testified that, in many instances, insurance companies, banks and large department stores have branches throughout California and where air movement is necessary, it is essential that MDS be able to pickup and deliver at any point within the state. He also testified that frequently shipments moving from San Francisco to San Diego are transported by air from San Francisco to Los Angeles, because of the more frequent air schedules between these points, and then transported by motor vehicle from Los Angeles to San Diego.

Documents are transported in pouches, the largest measuring 15" x 36". The proposed express rates would be comparable to those presently being charged for similar freight forwarding services. Basically, there is a charge for each pouch and an additional charge depending upon the frequency of service.

Pickup and delivery service in Northern California would be provided by five vehicles. Until such time as MDS can establish an office in Los Angeles, the pickup and delivery service in Southern California would initially be performed by All Day Mail Service, Inc., an affiliated company.

In those instances where air transportation is not required the motor vehicle service will be performed pursuant to the permitted authority of MDS.

As of June 30, 1970, MDS indicated a net worth in the amount of \$15,000 and as of December 31, 1969, Mail Delivery indicated a net worth in the amount of \$106,760. The president of Mail Delivery, who is also the sole stockholder of both Mail Delivery and MDS, testified that all of the experience, facilities and financial support of Mail Delivery, as well as his personal financial support, would be made available to MDS.

Six public witnesses testified on behalf of the proposed operations. They represented businesses which have occasion to use a courier service. For the most part they testified that their companies have occasion to ship between such points as San Francisco, South San Francisco, San Mateo, Burlingame, Redwood City, Palo Alto, Lindsay, Fresno, Sacramento, Los Angeles, Santa Ana, Torrance, Newport Beach and San Diego. Time in transit is of great importance and an early morning delivery is essential in most cases. None of the witnesses was particularly concerned as to whether the documents were transported as freight or baggage. They have been using the service of Mail Delivery in the past and desire the proposed service of MDS be made available to them.

Exemption from Minimum Rates

In support of its requested exemption from Minimum Rate Tariffs Nos. 2, 5, 9-A and 19, the president of MDS testified that in his opinion said tariffs were never intended to cover the transportation of business records. He testified further that because of the wide range of activities, the closely coordinated schedules and the wide differences in the service requirements, it is necessary that

contracts be negotiated in accordance with the needs of each customer. He testified also that because the carrier does not know the contents of a pouch the documentation requirements of the minimum rates are impossible to comply with. According to the witness the problems of MDS are comparable to those considered by the Commission in prior decisions wherein it granted such relief. (Decisions Nos. 65794, 65795, 65796, 65797, 65798 and 76236.)

Protestant's Showing

American Courier Corporation, which operates in 42 states and Canada, commenced intrastate courier service in California in April, 1969, and its statewide certificated freight forwarding and express corporation services in March, 1970. It owns and operates 32 motor vehicles, which are stationed at such points as Burlingame, Chico, Fresno, Los Angeles and San Diego. As of May 31, 1970, it indicated a net worth in the amount of \$7,675,371 and for the five months' period ending May 31, 1970, indicated a net loss of \$65,959 from its intrastate California operations.

The vice president of American Courier Corporation testified that the existing courier service is adequate to meet the existing need and that the granting of the authorities herein sought would lead to a diversion of traffic, a cutting of rates and have an adverse public effect.

The California Trucking Association made no affirmative showing.

Findings

1. Mail Delivery has been conducting a courier service by air pursuant to a freight forwarder certificate since 1967.

2. MDS is a newly formed subsidiary corporation of Mail Delivery possessing operating authority as a highway contract carrier and as a radial highway common carrier.

3. The proposed transfer of the freight forwarder certificate from Mail Delivery to MDS would not be adverse to the public interest.

4. Many of the customers who are presently served by Mail Delivery and who would be served by MDS have occasion to ship to a number of points throughout the state.

5. As a matter of operating convenience, shipments at times would accompany a courier and would be handled as baggage rather than as air freight. In such cases MDS would require corresponding authority as an express corporation.

6. A number of customers served by MDS have branch offices, stores and banks beyond the 25-mile pickup and delivery area provided for in the freight forwarder certificate to be transferred. Because of operational reasons MDS may elect to serve an account from an airport located beyond the 25-mile limit.

7. In providing service pursuant to its permitted authority, MDS would have difficulty complying with the provisions of Minimum Rate Tariffs Nos. 1-B, 2, 5, 9-B and 19, because said minimum rate provisions are not appropriate minimum rates, rules and regulations for the courier service which MDS proposes to provide.

8. For all practical purposes the service to be conducted by MDS would not be a new service, but the continuation of a service which preceded that being provided by American Courier Corporation. Nor is the service in any way competitive with the type of service provided by highway common carriers engaged in the transportation of general commodities and therefore will not result in any diversion of traffic

from said carriers. The extension of the freight forwarder certificate, the express corporation certificate and the exemption from the applicable minimum rates will serve the purpose of placing MDS upon the same competitive basis with existing courier services.

9. Public convenience and necessity require the granting of certificates of public convenience and necessity to MDS authorizing operations as a freight forwarder and as an express corporation on a statewide basis.

The Commission therefore concludes that the applications and petitions should be granted.

MDS Courier Services, Inc. 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.

The authorization herein granted shall not be construed as a finding of the value of the rights and properties herein authorized to be transferred.

O R D E R

IT IS ORDERED that:

1. On or before May 1, 1971, Mail Delivery Service Co., Inc. may sell and transfer, and MDS Courier Services, Inc. may purchase and acquire, the operative rights and property referred to in the application.

2. Within thirty days after the consummation of the transfer herein authorized, MDS Courier Services, Inc. shall notify the Commission, in writing, of that fact and within said period shall file with the Commission a true copy of any bill of sale or other instrument of transfer which may be executed to effect said transfer.

3. On or before the end of the third month after the consummation of the transfer as herein authorized, MDS Courier Services, Inc. shall cause to be filed with the Commission, in such form as the Commission may prescribe, an annual report, or reports, related to the operations of the seller for the period commencing with the first day of the current year to and including the effective date of the transfer.

4. In the event the transfer authorized in paragraph 1 hereof is consummated, certificates of public convenience and necessity are granted to MDS Courier Services, Inc., a corporation, authorizing it to operate as an express corporation and as a freight forwarder, as defined in Sections 219 and 220 of the Public Utilities Code, between the points particularly set forth in Appendix A attached hereto and made a part hereof.

5. Concurrent with the consummation of the transfer herein authorized MDS Courier Services, Inc. shall file tariffs, in triplicate, in the Commission's office covering its freight forwarding and express corporation services. The tariff filings shall be made effective on not less than five days' notice to the Commission and the public and the effective date of the tariff filings shall be concurrent with the consummation of the transfer. Said tariff filings shall comply in all respects with the regulations governing the construction and filing of tariffs set forth in the Commission's General Order No. 117. Failure to comply with and observe the provisions of General Order No. 117 may result in cancellation of the certificates granted by this decision.

6. The certificate of public convenience and necessity granted in paragraph 4 of this order, authorizing operations as a freight forwarder, shall supersede the certificate of public convenience and necessity granted by Decision No. 73186, which certificate is revoked effective concurrently with the effective date of the tariff filings required by paragraph 5 hereof.

7. Concurrent with the transfer herein authorized MDS Courier Services, Inc. shall file a written acceptance of the certificates herein granted. MDS Courier Services, Inc. is placed on notice that, if it accepts the certificates 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-F.

8. MDS Courier Services, Inc. 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.

9. MDS Courier Services, Inc. shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If MDS Courier Services, Inc. elects not to transport collect on delivery shipments, it shall make the appropriate tariff filings as required by the General Order.

10. MDS Courier Services, Inc. is hereby exempt from observance of the rates, rules and regulations in:

Minimum Rate Tariff No. 1-B
Minimum Rate Tariff No. 2
Minimum Rate Tariff No. 5
Minimum Rate Tariff No. 9-B
Minimum Rate Tariff 19

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in connection with the transportation of checks, drafts, money orders, securities, transit items, sales audit items, business records, audit media, tabulation cards, data processing materials, legal documents, and printed or reproduced documents on data when transported in a vehicle not exceeding a licensed weight of 4,000 pounds.

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

Dated at San Francisco, California, this 6th day of OCTOBER, 1970.

[Signature] Chairman
[Signature]
[Signature]
[Signature]
[Signature] Commissioners

MDS Courier Services, Inc., by the certificates of public convenience and necessity granted in the decision noted in the margin, is authorized to operate as a freight forwarder and as an express corporation, as defined in Sections 219 and 220 of the Public Utilities Code, via the lines of air common carriers between all points and places within the State of California subject to the following limitations:

1. The authority is limited to the following commodities: checks, drafts, money orders, securities, transit items, sales audit items, business records, audit media, tabulation cards, data processing materials, legal documents, and printed or reproduced documents on data.

2. MDS Courier Services, Inc. shall establish door-to-door rates for service between all points of collection and distribution.

3. In case of an emergency, such as an airport being closed because of weather conditions which would curtail the operations of air common carriers, highway common carriers or passenger stage corporations may be used to perform transportation between airports.

Issued by California Public Utilities Commission.

Decision No. 77801, Applications Nos. 51769 and 51770.