

ORIGINAL

Decision No. 79659

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

Case No. 5439  
 Petition for Modification No. 153  
 (Filed December 7, 1971)

Loughran, Berol and Heggarty, by Marshall Berol,  
 Attorney at Law, for Television Maintenance,  
 Inc., doing business as Butler Service Company,  
 petitioner.

Arthur J. Maruna, H. F. Kollmyer, and A. D. Pce,  
 Attorney at Law, for California Trucking  
 Association, protestant.

Rodney Starkey, for Pacific Messenger Service,  
 interested party.

George L. Hunt, for the Commission staff.

## O P I N I O N

Minimum Rate Tariff 9-B (MRT 9-B) contains minimum rates and rules governing the transportation of general commodities within the San Diego Drayage Area.

Petitioner, Television Maintenance Inc., doing business as Butler Service Company (hereinafter Butler), operates as a highway contract carrier. It presently serves the optical trade in the greater Los Angeles area. In connection with such service, Minimum Rate Tariff 2 (MRT 2) exempts from the minimum rates set forth therein the transportation of "optical goods transported from or to wholesale houses in packages weighing 10 pounds or less".<sup>1/</sup> The

<sup>1/</sup> Said exemption was placed in MRT 2 by Decision No. 50530, dated September 14, 1954, in Case No. 5432, Petition No. 31. Butler was the petitioner in that proceeding.

petition states that Butler intends to serve optical houses in the greater San Diego area, and seeks an exemption in MRT 9-B similar to that under which it performs operations within the greater Los Angeles area. Specifically, the petition seeks the addition of the following exemption in MRT 9-B:

"Optical goods transported from or to wholesale houses in packages weighing 10 pounds or less when transported by carriers which operate no vehicles exceeding a licensed weight of 4000 pounds."

Public hearing was held and the petition submitted before Examiner Mallory at San Diego on January 6, 1972. Evidence in support of the relief sought was presented by petitioner's vice president and by representative of two optical companies which intend to use petitioner's services if the proposed exemption is granted. An officer of a parcel carrier operating in San Diego opposed the exemption unless the restriction on the size of equipment which may be operated thereunder is removed. The representative of California Trucking Association (CTA) stated that it is CTA's policy to oppose all new exemptions from minimum rates, and urged that the petition be denied.

Petitioner's witness testified as follows: At the present time Butler operates primarily in the extended Los Angeles area. For the past eight years its services have been devoted exclusively to the optical industry. Such services involve primarily the movement of optical supplies between wholesalers and doctors and opticians. Optical supplies include frames, lenses, completed eyeglasses, eyeglass cases, and contact lenses. Trained personnel operate passenger type vehicles, because of the small size of the material transported. Pickups from wholesalers are brought to the carrier's terminal and sorted as to regular routes. A single delivery to a doctor or optician may include items which originate from different wholesalers. Each item, such as a set of eyeglasses, is placed in a separate envelope which is color-coded so as to identify the wholesaler at which it originated. The route driver, in making his

delivery to the doctor or optician, will pickup for return to the wholesaler prescriptions and customer's eyeglass frames. No freight bills or other documentation are required in connection with the service performed by Butler.

The witness stated that Butler's service was analagous to delivering a newspaper route, inasmuch as the same retail customers are served daily. Butler provides service under contracts with optical wholesalers which provide for flat monthly charges which vary among wholesalers, based on each wholesaler's daily volume, the distance traveled, and the number of deliveries required.

The witness testified that Butler's present service is profitable; Butler's operating ratio in 1969 was 91.5 percent, in 1970 it was 92.3 percent and in 1971 was 93.1 percent.

Butler has been requested to provide a similar service in the greater San Diego area for many of the same optical companies it serves in Los Angeles at rates similar to those now assessed. Butler's witness stated that the service to be performed by it is now performed with personnel and equipment provided by each individual wholesaler; therefore, Butler's service would replace a proprietary transportation service and would generate new traffic to for-hire carriers. The optical concerns for whom service would be provided and the cities where service would be performed are set forth in Exhibit 153-1.

Witnesses appearing for American Optical Service and Custom Craft Optical Company testified in support of the relief sought. The witnesses stated that their companies now use their own employees and automobiles to perform the service sought to be performed by Butler. Said proprietary service is not as efficient or economical as Butler's because it cannot reach all potential customers nor cover as many daily routes. At the present time, United States parcel post is used to reach isolated or outlying customers who cannot feasibly be served under present arrangements.

The optical houses are desirous of Butler's service, and believe it will be satisfactory because of familiarity with Butler's operations in the greater Los Angeles area.

A witness for Pacific Messenger Service (Pacific) testified that said company operates as a highway common carrier of small parcels within the greater San Diego area. Pacific is desirous of competing with Butler, but it would be impossible to do so under the wording of the proposed exemption because Pacific operates a few units of equipment which have licensed weight exceeding 4000 pounds. The witness stated that Pacific has no objection to an exemption for optical goods, as long as said exemption is worded so that it does not preclude Pacific from operating under it.

The Commission staff and CTA representatives assisted in development of the record through examination of the witnesses. The Commission staff representative took no position in the matter, but pointed out that the Commission has consistently held that the general class rates and minimum charges are not appropriate for parcel delivery service and has exempted many parcel carriers from said rates.

CTA's representative urged that the petition be denied. He pointed out that the term "optical goods" does not clearly indicate the commodities which are to be exempted, and that there is a possibility of rebates in connection with claims for loss or damage because there are no records maintained of the goods actually transported.

Petitioner pointed out that the exemption sought is the same as that under which petitioner has operated since 1954; and if there are no minimum rates for the transportation service there is no possibility of rebates therefrom.

The Commission finds:

1. Petitioner exclusively engages in providing a highly specialized type of delivery service for wholesalers of eyeglasses, contact lenses and related commodities in the extended Los Angeles area. Said operation is conducted under an exemption from minimum

rates under provision of Item 40 of MRT 2 established pursuant to Decision No. 50530 (supra).

2. Petitioner's operations under said exemption were profitable in 1969, 1970 and 1971.

3. Petitioner has been requested by optical firms to provide, in the San Diego area, the same type of specialized service using the same basis of rates as is now provided by it in the Los Angeles area.

4. The service proposed to be conducted for optical firms in the San Diego area will replace proprietary operations and, thus, will generate new traffic to for-hire carriers.

5. The Commission has previously found that the specific rates in the Commission's minimum rate tariffs are not the reasonable rates for parcel delivery service by highway carriers wholly engaged in conducting parcel delivery operations. (See Marnell and Heikel (Finesse Delivery Service), 63 Cal. P.U.C. 375, 379, and J. S. Aaronson, 58 Cal. P.U.C. 533, 536.)

6. The sought exemption is necessary to the performance of the operations proposed to be conducted in the greater San Diego area by petitioner, and should be authorized.

7. The proposed wording of the tariff exemption should be modified (a) to require that the actual service be performed with equipment of a licensed weight of 4,000 pounds or less, without restricting the carrier solely to the operation of vehicles of that weight capacity, and (b) to list in the exemption the item numbers of the National Motor Freight Classification (governing classification) that contain the commodity descriptions of the items to be transported under the exemption.

The Commission concludes that the proposed exemption, modified as indicated in the above findings, should be granted, and that Minimum Rate Tariff 9-B should be amended accordingly.

O R D E R

IT IS ORDERED that:

1. Minimum Rate Tariff 9-B (Appendix A of Decision No. 67766, as amended) is further amended by incorporating therein, to become effective March 11, 1972, Tenth Revised Page 17, attached hereto and by this reference made a part hereof.

2. Common carriers subject to the Public Utilities Act, to the extent that they are subject to Decision No. 67766, as amended, are hereby authorized to establish in their tariffs the amendments necessary to conform with the further adjustments ordered herein.

3. Tariff publications authorized to be made by common carriers as a result of the order herein shall be filed not earlier than the effective date of this order and may be made effective not earlier than the tenth day after the effective date of this order and may be made effective on not less than ten days' notice to the Commission and to the public if filed not later than sixty days after the effective date of the minimum rate tariff pages incorporated in this order.

4. In all other respects said Decision No. 67766, as amended, shall remain in full force and effect.

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

Dated at San Francisco, California, this 1st day of FEBRUARY, 1972.

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

SECTION 1--RULES (Continued)	ITEM
<p style="text-align: center;">APPLICATION OF TARIFF--COMMODITIES (Concluded)                      (Items 50 and 51)</p> <p>Rates in this tariff apply for the transportation of all commodities except the following:</p> <ul style="list-style-type: none"> <li>Furniture, household appliances and other home furnishings transported from retail stores or retail store warehouses where they have been sold at retail by a retail merchant, or transported from retail customers to retail stores, or retail store warehouses,</li> <li>Houses which have been disengaged from their foundations, or sections thereof and integral parts or contents when the contents are transported within the houses,</li> <li>Liquids, compressed gases, commodities in semi-plastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semi-trailers or a combination of such highway vehicles. *The terms "tank trucks, tank trailers and tank semi-trailers" include any truck, trailer or semi-trailer with carrier or shipper provided collapsible tanks or bags, 20 feet or more in length, 2,000 gallons or more in capacity and 20,000 pounds or more weight carrying capacity (Subject to Note),</li> <li>Mushrooms, fresh (not cold pack nor frozen),</li> <li>Newspapers, newspaper supplements, sections or inserts (not scrap nor waste),</li> <li>Nuts, in the shell,</li> <li>Nuts, field shelled (rough shelled, with or without removal of broken shells, dirt, residue, or foreign material, and not cleaned nor further processed),</li> <li>*Optical goods, as described in Items 41600, 41610, 57820, 57940, 58090, 58110 and 58320 of the Governing Classification, and prescription order forms, transported from or to wholesale houses in packages weighing 10 pounds or less when transported in vehicles not exceeding a licensed weight of 4,000 pounds,</li> <li>Poultry, live,</li> <li>Property shipped to or from producers of motion pictures or television shows when transported subject to the rates, rules and regulations provided by Decision No. 33226, in Cases Nos. 4246 and 4434, as amended,</li> <li>Property of the United States, or property transported under an agreement whereby the United States contracted for the carrier's services,</li> <li>Property transported to a United States Post Office for mailing, United States mail transported from a post office to the addressee thereof, and United States mail transported for the Post Office Department under contract,</li> <li>Property which is exempt from regulation by the Interstate Commerce Commission under Sections 203 (b) (6) and 203 (b) (8) of the Interstate Commerce Act,</li> <li>Trailer coaches and campers set up, (including contents and furniture and other personal effects for use outside of trailer coaches) for which rates are provided in Minimum Rate Tariff 18,</li> <li>Used property, viz.: household goods, personal effects, furniture, musical instruments, radios, television sets, and office and store fixtures and equipment as described in and for which rates are provided in Minimum Rate Tariff 4-B, and used property as described therein of state, county or municipal governments, or transported under an agreement whereby the governments contracted for the carrier's services,</li> <li>Vegetables, fresh or green (not cold pack nor frozen),</li> <li>Vehicles, disabled, when transported by towing,</li> <li>Voting booths, ballot boxes, election tents, and election supplies when transported from or to polling places.</li> </ul> <p>*NOTE.--The portion of this exemption preceded by * expires upon further order of the Commission.</p>	<p>651</p>
<p>                     † Change            )                      * Addition        ) Decision No. <b>79659</b> </p>	
EFFECTIVE	
Correction	ISSUED BY THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, SAN FRANCISCO, CALIFORNIA