

Decision No. 80127**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
 BRUNO ALBERT MALUCCHI, an individual,  
 doing business as A. M. DEVINCENZI  
 COMPANY, for a certificate of public  
 convenience and necessity to extend  
 highway common carrier service.

Application No. 52678  
 (Filed June 9, 1971)

Bertram S. Silver, John P. Fischer and Martin J.  
Rosen, Attorneys at Law, for applicant.  
Ray Greene and William Taylor, Attorneys at Law,  
for Delta Lines, Pacific Motor Trucking Company  
and Peters Truck Lines, protestants.

O P I N I O N

Applicant is presently authorized to operate as a highway common carrier between points and places in and around the San Francisco Territory as set forth in Decisions Nos. 60969 and 63061 in Application No. 42143. Said authority is also the subject of a Certificate of Registration issued by the Interstate Commerce Commission.

Applicant also operates as a permitted radial highway common carrier and contract carrier under authorities issued by this Commission.

Applicant seeks to extend its certificated operations to include service into and within what might be called the Delta area (including Stockton, Lodi and Sacramento). Applicant also seeks extensions of its present northerly authorities, which now include Napa and Santa Rosa, to include Sonoma.

The authority sought would involve issuance of an in-lieu certificate and if granted would require a cancellation of the present certificate issued to applicant.

It is alleged that applicant would apply the same scale of rates as those contained in Minimum Rate Tariff 2 and other applicable minimum rate tariffs of this Commission. The same rules and regulations now effective under applicant's presently filed tariffs would continue to be utilized.

Applicant supplemented its application by submitting a notice of filing in the Federal Register under Section 206(a)(6) of the Interstate Commerce Act.

Because of protests by the parties indicated above, among others, the matter was set for hearing. Public hearings were held before Examiner Gilman on January 4, 5 and 6 and February 10, 1972 in San Francisco.

Twenty shipper witnesses testified in support of the application. Three representatives of the protesting carriers testified in opposition.

Bruno Malucchi's testimony indicated that he had long experience and formal education in the transportation-warehousing field. As sole proprietor he is responsible for every aspect of the business, giving special attention to operations and to dealing with customers' service needs.

In the early 1950's Devincenzi Company, which was then a partnership including Malucchi, was primarily a hauler of flour. The other partners gradually sold out leaving him controlling the business. At this time Mr. Malucchi determined to branch out into general commodities, obtaining the above-mentioned certificate. In 1960 the certificate was extended to cover Salinas, Monterey and Santa Rosa.

Mr. Malucchi testified that the demands of his customers for service into the Delta area for permitted transportation had grown to such an extent that daily schedules into the Delta area

had been set up between San Francisco-Stockton, San Francisco-Brentwood, Antioch, Pittsburg area, and San Francisco-Travis. Each is a round trip daily schedule with back hauls. The area around Sonoma is also served daily as part of the Santa Rosa-Napa service.

Supporting evidence sponsored by Mr. Malucchi indicated the volume and range of commodities now carried on these services in the areas sought to be certificated.

Mr. Malucchi indicated that a significant program of upgrading and expanding the operating equipment was planned but that such a program would be necessary and implemented even if the application were denied. He expressed the opinion that the planned fleet would be sufficient to accommodate the short-term growth expected if the authority were granted. If the certificate is granted applicant plans to establish a second terminal in the Delta area.

Mr. Malucchi testified that his personal financial resources were sufficient to meet any reasonably expected capital requirements arising out of the extension of authority. His testimony indicated \$100,000 of assets which could be made available to the business without borrowing.

Protestant's witnesses testified as to the generally fierce nature of the competition within the territories in question, the adequacy and reliability of their own service, and as to the injury to the public and to existing carriers if competition is significantly increased.

#### Discussion

On analysis the testimony supporting the application indicates that applicant has achieved rapid and consistent growth by seeking out and specifically meeting the transportation needs.

of shippers who for one reason or another find themselves out of the mainstream of the generally highly competitive market for transportation. Typically the shippers tender a comparatively small quantity of freight and are unusually needful of either damage-free service or expeditious reliable scheduling, or both.

The record indicates that applicant's traffic growth in the Delta area (as in the area now certificated) is due to a deliberate policy of tailoring his service to specifically meet the needs of these shippers, and that this growth in the Delta area has not met any significant resistance by existing carriers, either by counter-solicitation or by the emergence of a program to match the unusual qualities of applicant's services.

Thus regardless of the intensity of competition in the general market for truck common carriage of freight in the Delta area, such competition has not been intense enough to induce existing carriers to fully match the characteristics of applicant's service.

Applicant's service between many of the cities and over the routes at issue herein has already reached the level and frequency expected of a highway common carrier. Denying the certificate request would result in a substantial lessening of applicant's present Delta operations, forcing these shippers against their expressed preferences to divert substantial traffic to either existing certificated Delta carriers or to other permitted carriers.

The general transportation policy jointly derived from legislation and Commission action is to place some restriction on the level of competition in the field of truck competition. None

of the arguments or evidence of protestants convinces us that we must or should reduce competition to the level where smaller shippers and those with unusually high requirements for reliable damage-free service would be less than fully satisfied.

We think that the contrary is true and that one of the primary objectives of transportation regulation is the protection of smaller, more demanding shippers.

Applicant's competitive strategy is congruent with this policy objective in that competition has induced him to find and serve a market sector not fully exploited by other competitors.

Interstate Commerce

We interpret Section 206(a)(6) of the Interstate Commerce Act as congressional recognition that markets and public needs for transportation services are not factually segregated between intrastate and interstate commerce.

Rather as is typified on this record many shippers have transportation needs which predominantly involve intrastate commerce with more or less occasional shipments classified as interstate which could be conveniently and economically accommodated without substantial additional capacity or trips.

The record indicates a substantial submarket for transportation services to be served by the applicant. A minor portion of the traffic, even though it moves between points in this state, is legally classifiable as interstate; as indicated by the findings below we think sound policy and the needs of the shippers involved are best served by allowing applicant the opportunity to provide

the service rather than requiring its diversion to other carriers solely because of its legal classification.

Motion for Deferral and Study

Protestants moved that final decision in this matter be deferred until a study has been made to quantify present service and public needs for Delta transportation. A similar proposal is the essence of Application No. 53043, which was denied by Decision No. 79744. Rehearing was denied by Decision No. 80054. The same reasoning should govern this case.

Findings

1. Applicant holds radial highway common carrier and contract permits from this Commission authorizing operations in the territory in which certification is sought.
2. Applicant, in response to shipper demands, has already instituted a daily, excluding Saturday and Sunday, schedule between places in the territory in which certification is sought, and places contained within his presently certificated territory.
3. Applicant has the ability including financial ability to render the proposed service.
4. The institution of such service has not been shown to have caused any significant injury to any certificated carrier.
5. The portion of the public whose freight supports the present scheduled operations is composed in large part of those who find the services of existing certificated carriers not fully responsive to their needs.
6. If applicant were not certificated it would be required to significantly reduce the frequency and the dependability of service into the Delta area.

7. There is a need by members of the public for expeditious minimum damage service for shipments in interstate and foreign commerce between the same points and over the same routes that applicant has sought to serve in intrastate commerce.

8. Shippers have on occasion received less than adequate service from carriers presently operating in intra and interstate and foreign commerce in the territory sought to be served by applicant.

9. The introduction of a new carrier specializing in reliable, damage-free service into the market in question will tend to upgrade the quality of service available to the general public.

10. Granting of the authority sought herein will have no significant impact on any highway common carrier having authority to operate in competition with applicant's proposed service, other than to increase such carriers' motivation to maintain and improve quality of service.

11. Notice of this application appeared in the Federal Register on Wednesday, June 23, 1971. Hearings on this matter were public and opportunity was afforded all interested parties to appear and be heard.

12. Public convenience and necessity require applicant's service for the transportation of shipments moving in intrastate, interstate and foreign commerce to the extent set forth in the ensuing order.

#### Conclusions

1. Applicant should be granted a certificate of public convenience and necessity to operate as a highway common carrier between the points and over the routes set forth in Appendix A.

2. Protestant's motion for deferral and study should be denied for the reasons set forth in Decision No. 79744, Application No. 53043.

Applicant 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. Protestant's motion for study and deferral is denied.
2. A certificate of public convenience and necessity is granted to Bruno Albert Malucchi, authorizing him to operate as a highway common carrier, as defined in Section 213 of the Public Utilities Code, between the points and over the routes particularly set forth in Appendix A attached hereto and made a part hereof.
3. In providing service pursuant to the certificate herein granted, applicant shall comply with and observe the following service regulations. Failure so to do may result in a cancellation of the operating authority granted by this decision.
  - (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 he accepts the certificate of public convenience and necessity herein granted, he 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-Series.
  - (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-Series.
- (e) Applicant shall maintain his 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 his operations in such form, content, and number of copies as the Commission, from time to time, shall prescribe.
- (f) Applicant shall comply with the requirements of the Commission's General Order No. 84-Series for the transportation of collect on delivery shipments. If applicant elects not to transport collect on delivery shipments, he shall make the appropriate tariff filings as required by the General Order.

4. The certificate of public convenience and necessity granted in paragraph 2 of this order shall supersede the certificates of public convenience and necessity granted by Decisions Nos. 60959

and 63061, which certificates are revoked effective concurrently with the effective date of the tariff filings required by paragraph 3(b) hereof.

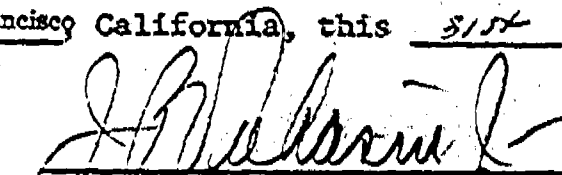
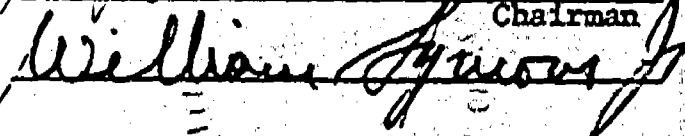
The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco California, this 5/14 day  
of MAY 1, 1972.

I dissent



Commissioner

  
Chairman  
  
Commissioners

Commissioner Thomas Moran, being necessarily absent, did not participate in the disposition of this proceeding.

Bruno Albert Malucchi, an individual, doing business as A. M. DEVINCENZI COMPANY, by the certificate of public convenience and necessity granted by the decision noted in the margin, is authorized to conduct operations as a highway common carrier as defined in Section 213 of the Public Utilities Code for the transportation of general commodities as follows:

1. BETWEEN all points and places within the San Francisco Territory as described below, and points located within 10 miles of the boundaries of said Territory.
2. BETWEEN the following points, serving all intermediate points on the said routes and all off-route points within 10 miles laterally thereof:
  - a. Santa Rosa and Salinas via San Francisco on U. S. Highway 101;
  - b. Salinas and Carmel Valley via Monterey, Pacific Grove and Carmel on State Highways 68, 218 and 1;
  - c. Castroville and Hollister via State Highway 156;
  - d. San Francisco and Monterey via State Highway 1;
  - e. San Jose and Santa Cruz via State Highway 17;
  - f. Santa Clara and Santa Cruz via State Highway 9;
  - g. San Francisco and Saratoga via State Highways 1, 35, 92, 9 and Interstate Highway 280;
  - h. Oakland and Sacramento via Interstate Highways 580, 205 and 5;
  - i. Oakland and Sacramento via Interstate Highway 80;
  - j. Vallejo and Napa via State Highway 29;
  - k. Pinole and Stockton via State Highway 4;

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- l. Vallejo and Pleasanton via Interstate Highway 680;
- m. Oakland and Walnut Creek via State Highway 24;
- n. Sacramento and junction State Highways 4 and 160 via State Highway 160;
- o. Ignacio and Vallejo via State Highway 37;
- p. Sonoma and Sears Point via State Highway 121;
- q. Fairfield and Lodi via State Highway 12;
- r. Sacramento and Modesto via State Highway 99, and
- s. Davis and Woodland via State Highway 113.

Through routes and rates may be established between any and all points specified in subparagraphs (a) through (s) above.

#### ALTERNATE ROUTES FOR OPERATING CONVENIENCE ONLY

BETWEEN points in California, serving no intermediate points except as otherwise authorized, over any and all highways within the State of California.

#### SAN FRANCISCO TERRITORY

San Francisco Territory includes all the City of San Jose and that area embraced by the following boundary: Beginning at the point the San Francisco-San Mateo County Line meets the Pacific Ocean; thence easterly along said County Line to a point 1 mile west of State Highway 82; southerly along an imaginary line 1 mile west of and paralleling State Highway 82 to its intersection with Southern Pacific Company right-of-way at Arastradero Road; southeasterly along the Southern Pacific Company right-of-way to Pollard Road, including industries served by the Southern Pacific Company spur line extending approximately 2 miles southwest from Simla to Permanente; easterly along Pollard Road to W. Parr Avenue; easterly along W. Parr Avenue to Capri Drive; southerly along Capri Drive to Division Street; easterly along Division Street to the Southern Pacific Company right-of-way; southerly along the Southern Pacific right-of-way to the Campbell-Los Gatos

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City Limits; easterly along said limits and the prolongation thereof to South Bascom Avenue (formerly San Jose-Los Gatos Road); northeasterly along South Bascom Avenue to Foxworthy Avenue; easterly along Foxworthy Avenue to Almaden Road; southerly along Almaden Road to Hillsdale Avenue; easterly along Hillsdale Avenue to State Highway 82; northwesterly along State Highway 82 to Tully Road; northeasterly along Tully Road and the prolongation thereof to White Road; northwesterly along White Road to McKee Road; southwesterly along McKee Road to Capitol Avenue; northwesterly along Capitol Avenue to State Highway 238 (Oakland Road); northerly along State Highway 238 to Warm Springs; northerly along State Highway 238 (Mission Blvd.) via Mission San Jose and Niles to Hayward; northerly along Foothill Blvd. and MacArthur Blvd. to Seminary Avenue; easterly along Seminary Avenue to Mountain Blvd.; northerly along Mountain Blvd. to Warren Blvd. (State Highway 13); northerly along Warren Blvd. to Broadway Terrace; westerly along Broadway Terrace to College Avenue; northerly along College Avenue to Dwight Way; easterly along Dwight Way to the Berkeley-Oakland Boundary Line; northerly along said boundary line to the Campus Boundary of the University of California; westerly, northerly and easterly along the campus boundary to Euclid Avenue; northerly along Euclid Avenue to Marin Avenue; westerly along Marin Avenue to Arlington Avenue; northerly along Arlington Avenue to San Pablo Avenue (State Highway 123); northerly along San Pablo Avenue to and including the City of Richmond to Point Richmond; southerly along an imaginary line from Point Richmond to the San Francisco waterfront at the foot of Market Street; westerly along said waterfront and shoreline to the Pacific Ocean; southerly along the shoreline of the Pacific Ocean to point of beginning.

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 Item 5 of Minimum Rate Tariff 4-B.
2. Automobiles, trucks and buses, viz.: new and used, finished or unfinished passenger automobiles (including jeeps), ambulances, hearses and taxis; freight automobiles, automobile chassis, trucks, truck chassis, truck trailers, trucks and trailers combined, buses and bus chassis.
3. Livestock, viz.: barrows, boars, bulls, butcher hogs, calves, cattle, cows, dairy cattle, ewes, feeder pigs, gilts, goats, heifers, hogs, kids, lambs, oxen, pigs, rams (bucks), sheep, sheep camp outfits, sows, steers, stags, swine or wethers.

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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 semiplastic 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 vehicles.
7. Commodities when transported in motor vehicles equipped for mechanical mixing in transit.
8. Logs.
9. Trailer coaches and campers, including the integral parts and contents when the contents are within the trailer coach or camper.

(END OF APPENDIX A)

D. W. HOLMES, COMMISSIONER, Dissenting:

My concurring opinion in the landmark case of Thompson Bros., Inc., Application No. 52032, Decision No. 79860, issued March 28, 1972, delineates my considered opinion that any granting of highway common carrier certificates of convenience must be based upon an evidentiary showing of public convenience and necessity which is clear and convincing.

There is nothing which I find in the record of the instant case to indicate that the showing herein meets this test. To my knowledge, no evidence has been presented to show the same service cannot be provided adequately by existing certificated carriers in the area.

This decision lends credence to my fear that the Commission decisions will begin to indicate a policy of liberality in the issuance of certificates. Implementation of such a policy could only prove detrimental to existing carriers and to the public as well. A viable transportation system cannot be maintained under these conditions.

  
Commissioner

San Francisco, California,  
May 31, 1972.