

Decision No. 80478

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of HARBOR CARRIERS, INC., a cor-)
poration, for a Certificate of)
Public Convenience and Necessity,)
authorizing an extension of its)
operating authority so as to)
authorize it to operate vessels)
"on-call" as a common carrier of)
passengers between points from)
Dana Point to Port Hueneme and)
Santa Catalina Island.)

Application No. 52863
(Filed September 14, 1971;
Amended January 5, 1972
and January 13, 1972)

Vaughan, Paul & Lyons, by John G. Lyons, Attorney
at Law, for Harbor Carriers, Inc., applicant.
James H. Lyons, Attorney at Law, for Catalina Motor
Cruisers, Inc., M.G.R.S., Inc., Catalina Trans-
portation Co., and Southland Harbor Cruises, Inc.;
Wooley & Allen, by Thomas W. Allen, Attorney
at Law; Phillo R. Tozer, for Davey's Locker, Inc.;
and George M. Stephenson, Attorney at Law,
Captain Frank C. Seehorn, Sr., and Frank C.
Seehorn, Jr., for H-10 Water Taxi Company, Ltd.,
protestants.
Louis Possner, for City of Long Beach; J. F. Fleming,
for Dana Village Properties; Daryl R. Faulkner,
for Harbor District, County of Orange; and Harvey
H. Cowell, for City of Avalon, interested parties.
John Johnson, for the Commission staff.

O P I N I O N

This application was heard January 25, 26 and 27 and
February 8 and 9, 1972 before Examiner Thompson at Los Angeles and
was submitted on briefs filed May 19, 1972.

Harbor Carriers, Inc., is a common carrier by vessel
operating in waters in and around San Francisco Bay and is a common

carrier of passengers by vessel between Long Beach and Avalon. It here seeks a certificate of public convenience and necessity as a common carrier of passengers by vessel to:

- (a) Extend and enlarge upon its scheduled service between Long Beach and Avalon by serving additional points on Santa Catalina Island, namely, Camp Fox, Toyon Bay, Whites Landing and Isthmus Cove, subject to the condition that service will be provided on a space-available basis to groups consisting of 100 or more passengers upon seven days' prior notice by the group.
- (b) Transport passengers on an on-call basis between coastal points in California extending between Port Hueneme and Point Dana, both points inclusive; and between said coastal points, except San Pedro, on the one hand, and points on Santa Catalina Island, on the other hand, at hourly rates and for the exclusive use of the vessel.

The application is protested by a number of common carriers of passengers by vessel with certificates of public convenience and necessity authorizing operations in those waters.

In its operations between Long Beach and Avalon, applicant makes use of two vessels. MV Long Beach Prince is 132-feet overall with a 34-foot beam having twin engines producing about 9,100 horsepower. It is certified by the U. S. Coast Guard for a capacity of 500 passengers. Most of the main deck is enclosed and is furnished with tables and chairs. It has a bar and a snack bar. Topside there are a number of benches. The vessel is owned by an affiliate of applicant. MV Eagle is 100-feet overall with a 24-foot beam having twin screws producing about 1,800 horsepower and is also owned by an affiliate of applicant. It is single decked with the passenger spaces enclosed. It has a carrying capacity of 149 passengers. Both vessels are used in applicant's Long Beach-Avalon operation and also in scenic cruise operations in and around Long Beach Harbor. Applicant proposes to utilize these same vessels in its proposed operations. ✓

We consider, first, applicant's proposal to serve points on Santa Catalina Island, except Avalon, on an on-call basis as an extension of its scheduled service between Long Beach and Avalon. This service would be available only to groups of 100 or more passengers between Long Beach and four specific points on Santa Catalina Island. Except at Avalon the wharves and landings on Santa Catalina Island are privately owned and the land served by such landings is privately held. As a practical matter, the only groups which could utilize the proposed service are Y.M.C.A. at Camp Fox, Boy Scouts of America and possibly Girl Scouts at Cherry Cove (Isthmus Cove), an unidentified private school at Toyon Bay, and an unidentified religious organization at Whites Landing. For this service, applicant proposes round trip fares between Long Beach and Camp Fox, Toyon Bay and Whites Landing of \$4.00 per person. Between Long Beach and Isthmus Cove the proposed round trip fare is \$4.25.

Present common carrier vessel service between the aforesaid four points on the island and Long Beach/Los Angeles Harbor include:

For individuals or groups - From mainland to Avalon via applicant, MGRS, or Catalina Motor Cruisers, and from Avalon to the island points via Island Boat Service. Cost per round trip to Isthmus Cove approximately \$13.00 and to the other three points approximately \$12.50 per person.

For groups of 20 or more - Via Catalina Motor Cruisers direct at a cost per person of approximately \$6.50 per round trip.

For charter at hourly rates - There are a number of vessels offered when available for charter service between Long Beach/Los Angeles Harbor and Santa Catalina Island. The hourly rates vary widely depending upon the size of the vessel and its speed.

Camp Fox is a camp operated by the Y.M.C.A. and is located adjacent to Long Point, Santa Catalina Island, four and one-half miles northwest of Avalon. The camp accommodates 235 campers and with staff personnel the total capacity of the camp is 300 persons.

During the summer season, extending generally from the middle of June through the end of September, groups of campers move into and out of the camp each Monday. The average number of persons moving in or out averages between 220 and 260. During the remaining portion of the year, the camp is operated on about 20 weekends. There is a landing pier at Camp Fox, and transportation of campers between the camp and the mainland is by vessel. In the past, Y.M.C.A. has utilized H-10 Water Taxi, Catalina Motor Cruisers and Davey's Locker for such transportation. Under a joint arrangement with Island Boat Service, applicant transported 209 campers from Long Beach to Camp Fox via Avalon and return on a weekend in October, 1971. Applicant operates two daily schedules between Long Beach and Avalon, leaving Long Beach at 9:00 a.m., arriving Avalon at 10:45 a.m., leaving Avalon at 11:00 a.m., and arriving Long Beach at 12:45 p.m.; then leaving Long Beach at 2:30 p.m., arriving Avalon at 4:15 p.m., leaving Avalon at 5:30 p.m., and arriving Long Beach at 7:15 p.m. Applicant proposes that during the summer season, every Monday the Y.M.C.A. group would board the 9:00 a.m. schedule at Long Beach. The vessel would arrive at Avalon at 10:45 a.m. to disembark its regular passengers and embark passengers for its regular run. At 11:00 a.m. the vessel would depart Avalon for Camp Fox and arrive there at about 11:20 a.m. and disembark the Y.M.C.A. group after which another Y.M.C.A. group would board. At approximately noon, the vessel would depart Camp Fox and arrive at Long Beach at about 1:30 p.m., about 45 minutes late from its regular schedule. It was estimated that the disembarking of 235 campers would take about 20 minutes, and the boarding of 235 passengers at Camp Fox would take about 20 minutes. On the weekends during the remaining portion of the year, it is the custom of the Y.M.C.A. campers to leave the mainland on Saturday morning and return Sunday evening. Integrating the Y.M.C.A. campers into applicant's regular schedule on Saturday would result in the regular passengers boarding at Avalon at 11:00 a.m., arriving at Long Beach at least 25 minutes late. On

Sunday applicant's afternoon schedule arrives at Avalon at 4:15. It could leave Avalon at 4:30 for Camp Fox, arrive there at 4:50, leave at 5:10 and arrive back at Avalon at 5:30 to board its regular Avalon passengers. Its regular schedule calls for it to depart Avalon at 5:30 so that it is probable that this schedule would be at least 10 minutes late.

Boy Scouts of America (BSA) operates Camp Cherry Valley at Cherry Cove approximately two miles northwest of Isthmus Cove, which in turn is 12 miles northwest of Avalon. For eleven weeks during the summer 250 to 300 Boy Scouts enjoy one week of camping at the facility. The changeover of campers occurs each Saturday during the season. The camp is made available during weekends at other times of the year to other groups such as the Girl Scouts, Campfire Girls and Y.M.C.A. Such other groups are required to make their own arrangements for transportation to and from the camp. In the past, BSA has engaged H-10 Water Taxi to effect the changeover of groups on Saturdays during the summer season. During 1971, H-10 chartered the MV Sportsman (111 passenger capacity) from Catalina Motor Cruisers to augment its water taxis. H-10 has now obtained the MV Velleron (96 passenger capacity) which may be used to augment the water taxis.

Applicant proposes to transport the Boy Scouts on the Saturday changeovers as follows: The 11:00 a.m. schedule from Avalon with passengers for the mainland would be diverted to Isthmus Cove, arriving there at about 11:50 a.m.. It would take about 20 to 30 minutes to embark between 250 and 300 scouts and their gear so that the vessel would depart Isthmus Cove at about 12:20 p.m., arriving at Long Beach at 1:40 p.m., about 55 minutes behind its regular schedule. The applicant would then have 50 minutes to disembark passengers, clean the passenger spaces and embark regular passengers to Avalon plus 250 to 300 Boy Scouts. Assuming that the vessel was able to leave at its regular departure time of 2:30, it would arrive at Isthmus Cove at 3:50 p.m. to disembark the scouts

and depart at 4:20 p.m., arriving at Avalon at 5:10 p.m., 55 minutes behind schedule. It would then just have 20 minutes to disembark its Avalon passengers, tidy the passenger spaces, and board the passengers for its regular 5:30 schedule, which would appear to be impossible.

At times of the year other than during the summer season, Camp Cherry is made available on weekends to other groups. Applicant did not state how it proposed to serve such groups on its regular schedules. It is a reasonable assumption that such groups would desire to leave the mainland on the Friday afternoon or the Saturday morning schedule and return on the last schedule on Sunday. It would be impossible, from an operating standpoint, to provide service to regular Avalon passengers, campers at Camp Fox and campers at Camp Cherry on the same schedule. If only Avalon and Camp Cherry were to be served, the schedules would be delayed far greater than in the case of service to Avalon and Camp Fox, mentioned earlier herein, because of the greater distance between Avalon and Isthmus Cove.

Applicant did not state how it would perform service to Toyon Bay and Whites Landing on its scheduled service between Long Beach and Avalon. From the evidence concerning proposed operations to Camp Fox and to Isthmus Cove, it is apparent that any such operations would be disruptive of service between Long Beach and Avalon.

It may be possible for applicant to change its daily schedules so as to space them out through the day by starting service earlier in the day and ending later in the day. We do not know because applicant made no such proposal. In its brief, applicant stated that the Saturday and Monday schedules could be flagged to show there would be changes in arrivals and departures when the vessel serves Camp Fox and Isthmus Cove. Nothing was mentioned concerning Toyon Bay and Whites Landing. This could be very confusing

to the regular Avalon passengers. In any event, on the schedules which would serve Camp Fox and Isthmus Cove, the time for passage between Avalon and Long Beach would be between 2-1/2 and 3 hours instead of the one hour and 45 minutes provided in its regular schedule.

We have hereinbefore stated that the integration of service to Camp Fox and Isthmus Cove with applicant's regular service to Avalon would be disruptive of its wintertime weekend schedules and that service to Avalon, Camp Fox and Isthmus Cove on the same schedule would be impossible from an operating standpoint. In its brief, applicant asserts that such would prove no problem because it could place both the MV Long Beach Prince and the MV Eagle on the same schedule. Assuming such was done, and giving applicant the benefit of maximum revenues and most efficient operating conditions, we will consider that the Prince serves Avalon and Camp Fox and that the Eagle has its capacity of campers (149) for Isthmus Cove. The revenue produced by the latter would be \$633.25 at the proposed round trip fare. The time required for the Eagle to be in service to provide the round trip transportation would be at least three hours on Saturday and three hours on Sunday. Keeping in mind applicant's proposed hourly rate for chartering the Eagle, it is doubtful that it could recover its operating costs.

Applicant was granted its certificate of public convenience and necessity to transport passengers by vessel between Long Beach and Avalon by the Commission in Decision No. 76496 in Application No. 50710. The Commission found therein that there is a need for a faster and better service between Long Beach and Avalon than is available through the port at San Pedro, and that the certification of a financially strong and independent operator to serve Catalina will generate additional tourists to Catalina, will provide more schedules during the wintertime, will motivate improvement in service by all carriers and will have the tendency to keep rates down.

Applicant's proposed operations to Camp Fox, Isthmus Cove, Whites Landing and Toyon Bay would be disruptive of its service between Avalon and Long Beach and would conflict with the requirements of public convenience and necessity recited in said Decision No. 76496.

Protestants made a number of other representations concerning the proposed service to Camp Fox and Isthmus Cove, including inconsistencies and possible discriminations in rates and the adverse effect upon H-10 and other carriers providing service to Santa Catalina Island. We do not reach such issues because of our finding that public convenience and necessity would not be served by the establishment of the proposed service.

We come now to applicant's proposal to offer charter service at hourly rates. Preliminarily it should be noted that Y.M.C.A. and BSA were not interested in charter service to Camp Fox and to Isthmus Cove at the hourly rates proposed by applicant.^{1/}

The testimony of public witnesses and the statement of applicant concerning requests for service show that there are two general categories of requirements for charter boat service by groups: One, which may be characterized as a ferry service, is when the group is taken to a particular place and the vessel and the group part company, and the other, which may be characterized as an excursion, is when the principal interest is the boat cruise, and a landing is merely one feature of the cruise and is of short duration with the vessel standing by.

1/ Rates (not including taxes and landing fees):

MV Long Beach Prince - \$300.00 per hour, subject to minimum charge of \$1,275 for first four hours or portion thereof.

MV Eagle - \$130.00 per hour, subject to minimum charge of \$520 for first four hours or portion thereof.

Rates to apply to time of vessel's departure from applicant's Long Beach terminal to its return thereto.

There was no evidence of a demand or need for a ferry service between mainland points by the MV Eagle or the MV Long Beach Prince, nor would there appear to be any potential demand for that type of service. The charge for a charter would not be competitive with those of other forms of transportation. With respect to a charter for a ferry service between the mainland and Santa Catalina Island, it would appear that demand for that type of service is limited. As was stated earlier, except at Avalon, all landings on the island are on private property and, except in one instance which will be discussed later, any demand for service for groups of 150 or 500 to points other than Avalon, Camp Fox and Camp Cherry has not been made apparent. Y.M.C.A. and BSA which operate the latter camps have stated on this record that they are not interested in chartering the MV Long Beach Prince or the MV Eagle at the proposed charter rates. With respect to charter service for transportation from Long Beach or Los Angeles to Avalon and return, the proposed charges are far in excess of the charges at the published group rates for scheduled service on the MV Long Beach Prince and the S. S. Catalina. The only groups to whom applicant's proposed charter service to Avalon would appeal are those willing to pay a premium price to have a private party aboard ship and a stop at Avalon for an hour or two to look around before returning to the mainland. This would be more in the nature of an excursion rather than a ferry service.

The exception referred to above concerns transportation between Newport Beach and Hamilton Cove on Santa Catalina Island. The Balboa Bay Club is a private social club with 3,000 members. It is developing some property at Hamilton Cove to provide for a clubhouse facility, tennis courts, swimming pool, mooring dock and 326 family-type units. In the promotion of this development the club has arranged parties for members and guests at and enroute to and from the development. The club desires the exclusive use of a vessel with a capacity of at least 150 persons and desires to have a band and liquor aboard for the entertainment of the group. The purpose of the trips is two-fold, to provide for a social gathering and outing for members and to promote the sale of units in the development. The character of this operation is a combination ferry service and a pleasure cruise.

In July and August 1971 the Balboa Bay Club had outings to Hamilton Cove. Members were transported from Newport Beach to Long Beach by charter bus and were embarked in the MV Eagle around 9:00 a.m. They were then transported to Avalon where charter buses took them to Hamilton Cove. The party boarded the MV Eagle at Avalon at around 10:00 p.m. for return to Long Beach. The general manager of the club stated that it cost about \$1,200 per outing for boat transportation and about \$400 for bus transportation. He said that during the development of the complex at Hamilton Cove the club would have about two outings per month and that after the facilities were constructed it was contemplated that such social outings would increase. At times there would be parties with 300 or more members. He said that the club would desire the services of the MV Eagle, and at times the MV Long Beach Prince, on a charter basis to provide transportation direct between Newport Beach and Avalon or Hamilton Cove when the mooring dock at the latter is constructed. He testified that because the outings are in the nature of club parties it is necessary that the group be together and that he is not aware of any other vessels that will accommodate the club's needs. Considering the operating times of the vessels between Long Beach and Avalon, it would appear that

with boarding and discharge of passengers a loop trip of Long Beach, Newport, Avalon or Hamilton Cove, and return to Long Beach could be accomplished in a time something less than six hours. The charge for two ferry services at applicant's proposed rates in the case of the period of outing described above would be approximately \$1,560 in the case of the MV Eagle (which is close to the club's transportation cost in 1971) and \$3,600 in the case of the MV Long Beach Prince. If the party were to leave Newport at 9:00 a.m. and return thereto at midnight and the vessel were to be chartered for that entire time, allowing 1-1/2 hours each way for the vessel to go between Long Beach and Newport the charges for that charter at applicant's proposed rates would be \$2,340 for the MV Eagle and \$5,400 for the MV Long Beach Prince.

The manager of applicant's Long Beach operations testified that during the recent longshoremen's strike he had been asked by representatives of a number of steamships moored in the harbor for service at charter rates to take passengers of the steamships to various places in the harbor and to Avalon. Whether the services requested were for excursions leaving the steamship and returning thereto with stops to permit the passengers to do some sightseeing and shopping, or whether the service requested was for ferrying passengers between the ship and points ashore was not established.

Applicant's manager and public witnesses testified concerning other existing or potential charter services at hourly rates all of which involve an outing or excursion with the passengers making a round trip or loop trip with a stop along the way. Illustrative of this type of service is taking a group from Point Mugu and returning thereto with a stop at Malibu to permit the group to swim, and an excursion out of Long Beach and return with a stop at Marina del Rey to permit the passengers to dine at the Reef Restaurant. In such instances the vessel would stand by during the stop.

Applicant and protestants Catalina Motor Cruisers and Davey's Locker provide what is called a loop service at charter rates. The loop service is when the vessel boards passengers at a particular point, sails around the harbor or along the coast and returns to that same point without a stop enroute. A certificate of public convenience and necessity is not required for loop-service operations. (Golden Gate Scenic S.S. Lines v. Pub. Util. Com'n., 57 Cal. 2d 373, 19 Cal. Rptr. 657.)

Applicant and protestants are of the opinion that what would ordinarily be a loop trip under charter, except that a stop is made enroute for the passengers to do something ashore, such as dine at the Reef Restaurant or take a swim at Malibu, is not a loop trip and such operation is within the purview of Section 1007 of the Public Utilities Code. We do not share that opinion. In Golden Gate Scenic S.S. Lines v. Pub. Util. Com'n. the factual situation was that the vessel made loop trips without stops enroute, that is to say that the vessel left its terminal with passengers and returned to that terminal with the same passengers without stopping at any landing enroute. The conclusions of law set forth in the opinion of the court, in arriving at its determination that such operation is not within the scope of Section 1007 of the Public Utilities Code, however, are equally applicable to the situations described above concerning loop trips made under charter where the vessel stops enroute and stands by for the accommodation of the passengers. Speaking for the court, Justice McComb held,

"Section 1007 of the Public Utilities Code provides in part as follows: 'No corporation or person shall begin to operate or cause to be operated any vessel for the transportation of persons or property, for compensation, between points in this State, without first having obtained from the Commission a certificate declaring that public convenience and necessity require such operation...'. (Emphasis added.)

"Under settled rules of statutory construction, it appears that the phrase 'between points in this State' is not merely a reference to the territorial extent

of operation, as held by the Commission, but is a description of the kind or type of movement or carriage to which the section applies.

"The words show the legislative intention to make the statute applicable, not to all operations of a vessel in this state, but just to those operations in this state that consist of movement or carriage between two points or places.

"The legislative history of the section, as well as the context in which the critical language is found in section 1007, demonstrates that the word 'points' is used in the sense of 'places' or 'termini'.

"'Terminus' is not a word of territorial extent. It is a word connoting the end of a transportation line.

"'Points', as used in section 1007, is the equivalent of 'termini'. It thus follows that to meet the statutory limitation to 'transportation...between points' there must be two or more ends-of-the-line, stations, towns, or places between which the vessel operates.

"A key word in section 1007 is 'transportation'. This word has been judicially defined as implying 'the taking up of persons or property at some point and putting them down at another'."

When a passenger or a group of passengers charters a vessel at a point for a cruise and a return to that same point, and the vessel stays with the passengers throughout the cruise, the fact that the vessel makes a landing at some other point during the cruise at which the passengers may leave the ship temporarily for the purpose of sightseeing, picnicking, swimming or dining in a restaurant does not result in an operation between points. On such a cruise the original point of departure is also "the end-of-the-line" as would be the case if the vessel did not stop at all enroute. That type of cruise is not the same as a "round trip" as that term is used in transportation; in the latter the passenger and the vessel part company at the point where the passenger disembarks, whereas on the cruise the passenger and the vessel are in company at all times and the passenger continues to be a passenger on the vessel from departure to return.

We find that:

1. Applicant is a common carrier by vessel between Long Beach and Avalon with authority granted by Decision No. 76496 in Application No. 50710 in which the Commission found, among other things, that there is a need for a faster and better service between Long Beach and Avalon than is available through the port of San Pedro.

2. Applicant proposes to provide a service to groups of 100 or more between Long Beach, on the one hand, and Camp Fox, Toyon Bay, Whites Landing and Isthmus Cove, on the other hand, as an extension of its service between Long Beach and Avalon.

3. There are existing common carrier facilities for the transportation of passengers by vessel between Long Beach/Los Angeles Harbor and Camp Fox, Toyon Bay, Whites Landing and Isthmus Cove; however, applicant's proposed service would be more convenient to Y.M.C.A. and BSA for weekly changeover of campers at Camp Fox and Isthmus Cove than the existing common carrier service.

4. The extension of service proposed by applicant will result in delays in the transportation of passengers between Long Beach and Avalon and will conflict with the needs of passengers for fast and good service between said points.

5. The requirements of public convenience and necessity for fast and good service by applicant between Long Beach and Avalon outweigh any convenience that may be afforded to Y.M.C.A. and BSA by the extension of such service to Camp Fox and Isthmus Cove.

6. Applicant also proposes to transport passengers between coastal points in California extending from Port Hueneme to Point Dana, both points inclusive, and between said coastal points except San Pedro, on the one hand, and points on Santa Catalina Island, on the other hand, at hourly rates for the exclusive use of the vessel on an on-call basis.

7. The only past, present or future demand that has been indicated on this record for the transportation of passengers between points by applicant in its proposed service is in connection with water taxi service between ships moored in the harbor and points

ashore during the recent longshoremen's strike, and in connection with the transportation of groups between Newport Beach and Avalon or Hamilton Cove for the Balboa Bay Club.

8. The only requests to applicant for transportation service between ships and points ashore occurred during the longshoremen's strike which, although of some time in duration, was nevertheless a temporary situation.

9. It has not been shown that the service of H-10 Water Taxi is inadequate to provide transportation of passengers between ships and points ashore.

10. Balboa Bay Club desires a deluxe service between Newport Beach and Avalon or Hamilton Cove by vessel that will accommodate over 100 passengers, with bar, dancing and other facilities for entertainment of members and guests.

11. Although it has been shown that the charge at applicant's proposed rates for the MV Eagle for round trip transportation between Newport Beach and Hamilton Cove would be close to the cost incurred by Balboa Bay Club in using applicant's service between Long Beach and Avalon and charter bus service for land transportation, the club was not fully informed regarding the application of the proposed rates so that the extent of use by the club of the proposed service is conjectural.

12. It has not been shown that public convenience and necessity require the on-call transportation of passengers by applicant at hourly rates as proposed herein.

We conclude that:

1. When a common carrier vessel has been authorized by the Commission to provide transportation of persons between two points because public convenience and necessity require a faster and better service between said points than would otherwise be available, a proposed extension of that transportation operation to other points where there are other transportation facilities available, and which would result in a slower and poorer transportation service between

the points already served, would be inconsistent with the requirements of public convenience and necessity.

2. "Points", as used in Section 1007 of the Public Utilities Code, is the equivalent of "termini". It thus follows that to meet the statutory limitation to "transportation...between points" there must be two or more ends-of-the-line, stations, towns, or places between which the vessel operates. (Golden Gate Scenic S.S. Lines v. Pub. Util. Com'n., 57 Cal. 2d 373.)

3. A key word in Section 1007 is "transportation". This word has been judicially defined as implying "the taking up of persons or property at some point and putting them down at another". (Golden Gate Scenic S.S. Line v. Pub. Util. Com'n., supra.)

4. When a vessel is chartered for exclusive use at hourly rates at a particular point for a cruise and a return to that same point with a stop enroute to permit passengers to go ashore and at which stop the vessel stands by and there is no parting of company of vessel and passengers, such operation is not transportation between points as that term is used in Section 1007 of the Public Utilities Code.

5. A showing of public convenience and necessity for on-call transportation by vessel at hourly rates between all coastal points extending between Point Dana and Port Hueneme, and between said coastal points and Santa Catalina Island, has not been made where it has been shown that the only requests for such service have involved water taxi service to ships during a temporary and extraordinary situation which no longer obtains, and have involved a special and deluxe service between Newport Beach and Catalina Island for a private social club.

6. Under Section 1007 of the Public Utilities Code the Commission may issue a certificate of public convenience and necessity for the partial exercise only of the privilege sought in an application, or issue it for operation between certain points only; however, it is not required to sift and extract from applicant's showing all

of the possibilities or probabilities of whether a small portion of the total proposal may be operated in some manner which will meet the requirements of public convenience and necessity.

7. The application should be denied.

8. Denial of the application on the merits has the effect of making the renewal by protestants of motion for dismissal of the application on procedural grounds moot and therefore no ruling on said motion is necessary.

It is deemed desirable to add that our Conclusion No. 4 will undoubtedly take applicant and protestants by surprise and there may be some conjecture as to whether such conclusion may result in vessel operators attempting to cloak round trip transportation between points under the guise of a charter cruise with a stop enroute to accommodate passengers. While all persons concerned may be more comfortable with a construction of Section 1007 that exempts only loop trips without stops, that is not what the statute as interpreted in the Golden Gate Scenic S.S. Lines case provides. The key to the construction of Section 1007 is in the judicial definition of the words "points" and "transportation" set forth in Conclusions Nos. 2 and 3, above. Whether a passenger has been "put down" at a stop enroute, or whether the place at which the stop is made is an "end-of-the-line", depend upon the facts in each instance. We have used the term "parting of company" in Conclusion No. 4 meaning a disassociation which is implied by the terms "put down" and "end-of-the-line". In order to avoid the promotion of uncertainty regarding this matter we set forth, as a guideline, some factual circumstances which generally should be made to appear for a vessel under charter at hourly rates not to be within the purview of Section 1007:

1. The charter begins and ends at the same point and is continuously in force during the interim.

2. At any stops enroute called for in the charter the passengers, or any of them, may remain aboard.

3. At any stops enroute the vessel shall be standing by and continuously be available to the passengers who may have gone ashore.

4. Subject to port regulations the duration of any stop shall be the option and determination of the charterer.

5. There shall be no change in the entity or composition of the passengers during the vessel's operation from the point of origin of the charter to its return thereto.

O R D E R

IT IS ORDERED that Application No. 52863, as amended, of Harbor Carriers, Inc., is denied.

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

Dated at San Francisco, California, this 12th day of SEPTEMBER, 1972.

Vernon L. Sturgen
President
William J. ...

[Signature]
[Signature]
Commissioners

I dissent
Thom M...
Commissioner

Commissioner J. P. Vukasin, Jr., being necessarily absent, did not participate in the disposition of this proceeding.