

ORIGINAL

Decision No. 81850

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of HARBOR CARRIERS, INC., a
corporation, 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
(Order Granting Rehearing
Issued November 21, 1972;
Order Modifying Order
Granting Rehearing Issued
January 16, 1973)

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
Transportation Co., and Southland Harbor
Cruises, Inc.; and George M. Stephenson,
Attorney at Law, for H-10 Water Taxi Company,
Ltd.; protestants.
Louis Possner, for City of Long Beach, interested
party.
John deBrauwere, for the Commission staff.

OPINION ON REHEARING

Harbor Carriers, Inc. provides daily scheduled common carrier service throughout the year, by vessel for the transportation of passengers and their baggage between the Port of Long Beach and Avalon, Santa Catalina Island, pursuant to authority granted by Decision No. 76496 dated December 2, 1969. Decision No. 80478 dated September 12, 1972 denied Application No. 52863 of Harbor Carriers to enlarge its vessel passenger service in the southern California area. Decision No. 80737 dated November 21, 1972 granted petition of Harbor Carriers for rehearing of Decision No. 80478, limited to oral argument on its request to extend its existing scheduled service between Long Beach and Avalon to include

other points on Santa Catalina Island. In this connection Harbor Carriers seeks extension of its scheduled service to include Camp Fox, Toyon Bay, Whites Landing, and the Isthmus.^{1/} Decision No. 80968 dated January 16, 1973 modified Decision No. 80737 to include in the rehearing of Decision No. 80478 oral argument on the legal interpretation of Public Utilities Code Section 1007. This involves issues raised by applicant concerning Conclusion 4 and related provisions of Decision No. 80478.

Rehearing was held before Examiner Norman Haley at Los Angeles on January 26, 1973.^{2/} A detailed statement of the evidence in this proceeding is set forth in Decision No. 80478. The protestant carriers directed their opposition at rehearing to applicant's request to extend its existing scheduled service (Decision No. 80737). Protestants supported applicant in its request that the Commission reconsider its interpretation of Public Utilities Code Section 1007 relative to Conclusion 4 of Decision No. 80478 (Decision No. 80968). Rehearing was submitted February 23, 1973 with receipt of suggested language relative to the legal interpretation of Public Utilities Code Section 1007.

Proposed Extension of Applicant's Existing Scheduled Service between Long Beach and Avalon to Include Other Points on Santa Catalina Island

Applicant's proposal to extend its scheduled service is to lengthen a limited number of its regular trips from approximately 45 minutes to an hour to serve large groups of persons (young campers and their leaders) that require transportation between Long Beach and

^{1/} Rehearing of applicant's proposal in Application No. 52863 to provide on-call service at hourly rates between points from Dana Point to Port Hueneme and Santa Catalina Island was not granted and that proposal therefore is not involved herein.

^{2/} This also was the original hearing in Case No. 9413 (H-10 Water Taxi Company, Ltd., a corporation, complainant, vs. Harbor Carriers, Inc., a corporation, defendant). However, at the hearing complainant's attorney stated that it did not receive notice of the hearing. At complainant's request Case No. 9413 was adjourned to a date to be set.

Camp Fox and between Long Beach and the Isthmus. Decision No. 80478 denied Harbor Carriers authority to extend its scheduled service (although it would be more convenient to the user groups than existing common carrier service) because the extension would result in delays to passengers on certain trips between Long Beach and Avalon, and because other transportation facilities are available.^{3/}

3/ These matters are covered in Findings 3, 4, and 5, and Conclusion 1 of Decision No. 80478, reproduced below:

Finding 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.

Finding 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.

Finding 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.

Conclusion 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.

Applicant alleges that the Commission erred in denying extension of its scheduled common carrier service. The carrier denies that the proposed extension of service would conflict with the needs of passengers for fast and good service between Long Beach and Avalon. Applicant asserts that if it is authorized to serve Camp Fox and the Isthmus, as proposed, its scheduled service generally will not be slower or poorer. It argues that its scheduled service between the mainland and Avalon will still be far better and more frequent service throughout the year than the service of any other common carrier.

Applicant contends that the only question relevant to its existing operations is whether changing the lapsed time on certain trips would disrupt scheduled service. It asserts that its present common carrier requirements would not be hampered by the proposal to extend service in one direction on the particular trips involved, which are relatively few out of the total operated during the week. It explains that no party had any objection to the proposed lengthening of certain schedules, including the City of Avalon. Applicant contends that its proposal involves furnishing a safe and convenient service in one vessel for as many as 200 to 300 young people who now have to split up into groups and travel in 49 passenger water taxis.^{4/} It argues that the convenience of large numbers of young people is entitled to great weight.

Applicant also alleges that the Commission erred when it failed to find that the existing common carrier services of other

^{4/} Week-long camp groups in the summer range between 200 and 300 persons. Weekend camp groups during the remainder of the year are generally smaller.

carriers between the mainland and Camp Fox and the Isthmus are inadequate to meet the needs of the public. It directs attention to those portions of the original record which it asserts demonstrate the inadequacy of services offered by protestants to YMCA at Camp Fox and BSA at the Isthmus, and to those portions of the record upon which it relies as showing need for its services with the 500-passenger motor vessel, Long Beach Prince.

Harbor Carriers now provides two round trips a day between Long Beach and Avalon every day of the year. During the summer season, which extends from approximately June 17 through September 30, an additional round trip is provided on Fridays. The basic adult one-way fare is \$4.25. The round trip fare is \$8.50. An adult group fare (25 or more) is published at \$7.65 each per round trip. Reduced commute fares and fares for children also are provided.

Harbor Carriers proposes to extend three of its schedules per week in the summer and two per week during the remainder of the year between Long Beach and Avalon, by making one additional stop to serve the organized groups of people going to and from campsites northwest of Avalon. For the most part one group of campers replaces another so that the carrier would deliver one group and, before departure, pick up another group for return to Long Beach. Harbor Carriers would transport the groups on the 500-passenger Long Beach Prince with its regular passengers traveling on scheduled runs between Long Beach and Avalon. The proposed round trip fare would be \$4.00 between Long Beach and Camp Fox and \$4.25 between Long Beach and the Isthmus, applicable in both cases to a minimum charge of 100 fares. Service would be available upon seven days' prior notice on a space-available basis.

Applicant proposes to flag its time schedule to show extension of service to include stops at the intermediate points

of Camp Fox and the Isthmus on the trips shown as follows:

SUMMER
(Approximately June 17 through September 30)

	<u>Leave</u> <u>Long</u> <u>Beach</u>	<u>Arrive</u> <u>Avalon</u>	<u>Leave</u> <u>Avalon</u>	<u>Arrive</u> <u>Isthmus*</u>	<u>Leave</u> <u>Isthmus*</u>	<u>Arrive</u> <u>Long</u> <u>Beach</u>
Sat.	9:00A	10:45A	11:00A	11:50A	12:20P	1:45P
		<u>Arrive</u> <u>Isthmus*</u>	<u>Leave</u> <u>Isthmus*</u>	<u>Arrive</u> <u>Avalon</u>	<u>Leave</u> <u>Avalon</u>	
Sat.	2:30P	4:00P	4:30P	5:15P	5:30P	7:15P
		<u>Arrive</u> <u>Avalon</u>	<u>Leave</u> <u>Avalon</u>	<u>Arrive</u> <u>Camp Fox*</u>	<u>Leave</u> <u>Camp Fox*</u>	
Mon.	9:00A	10:45A	11:00A	11:20A	12:00N	1:30P

REMAINDER OF YEAR

	<u>Leave</u> <u>Long</u> <u>Beach</u>	<u>Arrive</u> <u>Avalon</u>	<u>Leave</u> <u>Avalon</u>	<u>Arrive</u> <u>Camp Fox*</u>	<u>Leave</u> <u>Camp Fox*</u>	<u>Arrive</u> <u>Long</u> <u>Beach</u>
Sat.	9:00A	10:45A	11:00A	11:20A	11:50A	1:20P
		<u>Arrive</u> <u>Camp Fox*</u>	<u>Leave</u> <u>Camp Fox*</u>	<u>Arrive</u> <u>Avalon</u>	<u>Leave</u> <u>Avalon</u>	
Sun.	1:45P	3:15P	3:45P	4:05P	4:30P	6:15P

* Proposed additional stops

The trips identified above would be extended approximately 45 minutes to one hour beyond the present schedules. Service to the Isthmus would be provided only in the summer.

Applicant contends that the groups using camp facilities at Camp Fox and the Isthmus have tried all available vessel services in southern California and that none are satisfactory for their current needs. Applicant asserts that Catalina Motor Cruisers, Inc. (CMC) has been reticent to commit the Sportsman (111 passengers) in the summer, and that Davey's Locker has only one fairly large vessel, the Island Holiday (143 passengers) which is committed to scheduled service between Newport Beach and Avalon

during the summer. Newport Beach is too far south to be convenient to YMCA during the remainder of the year. YMCA moved 5512 people to Camp Fox in 1971. It does not like to use the small boats of H-10 Water Taxi Company, Ltd. (H-10). BSA requires six or seven boats of H-10 to transport a group of between 250 and 300 people. Passengers must stay seated in the small boats during the voyage.

Applicant points out that splitting large camp groups into smaller groups for transportation in a number of small vessels creates problems in the layover of bus drivers on the mainland; slows down camp changeovers on the island so that it is difficult to clean up between groups and to get the camps started; causes adult leaders to be separated from some of their units; and requires group personnel to spend more time on the dock. Service proposed by applicant assertedly would allow campers to return home at an earlier hour.

Applicant states that it maintains adequate terminal facilities in Long Beach to handle the additional traffic, including waiting room and parking facilities, and that no additional employees or facilities would be required to provide the extended service. Applicant asserts that it is financially fit and able to conduct the proposed operations. It states that there are adequate landing facilities at Camp Fox and the Isthmus for the Long Beach Prince.

Applicant argues that the proposed group fares are reasonable because they will be necessary to meet the needs of the traffic to Camp Fox and the Isthmus, and also because they would more than cover the additional costs for the extended service. It contends that only the fuel and oil expenses attributable to the approximate one hour additional operation of its vessel will be involved. It explains that no additional employees would be required and no additional labor costs would be incurred because the extended trips would still be within one crew shift. Applicant

points out that the additional traffic would afford a higher use factor for the vessels. It requests authority to publish the new group fares on a basis lower than fares to Avalon (an intermediate point on some of the trips).

The arguments of protestants in opposition to applicant's proposed extension of scheduled service were made principally on behalf of CMC and H-10. Protestants point out that among other operations CMC is authorized to provide non-scheduled (on call), restricted service (minimum number of persons) between Long Beach, Wilmington, and San Pedro, on the one hand, and all points on Santa Catalina Island. Among other operations, H-10 provides on-call service for vessels on hourly bases between the Los Angeles and Long Beach Harbors, and all points and places on Santa Catalina Island. Protestants contend that applicant's proposal at rehearing for extension of scheduled service has been limited to Camp Fox (all year) and the Isthmus (summer only) and no longer includes other points on Santa Catalina Island. Specifically, it is asserted that the proposal does not include Gallagher's Beach, Toyon Bay, Whites Landing, Empire Landing, or Emerald Bay (points named in the CMC tariff in addition to Avalon, Camp Fox, and the Isthmus).

CMC and H-10 provide service to groups desiring to go to points on the island in accordance with their published tariffs. They have served the BSA and YMCA camps for many years. H-10 renders service for those groups during their regular weekly changeovers during the summer. CMC does not provide service to the camps in the summer because it contends that it has not been asked to do so. Assertedly, there have been no demands for charters by CMC that have not been met. CMC and H-10 have provided service in vessels ranging in size from 49 to 111 passengers.

Protestants contend that when applicant received its certificate for service between Long Beach and Avalon all it wanted

to do was provide faster and better service between those points; that it did not want group rates, commuter rates, or charter rates; that since that time applicant has established group rates and commuter rates; and that it is now seeking to enter the camp operations. Protestants contend that when applicant was granted its certificate to serve Avalon by Decision No. 76496 the parties were assured that the existing carriers would not suffer financially, but subsequent events have shown that by exercising its rights applicant has taken business away from the existing carriers.

Protestants argue that the camp business is not new business so that revenue added to Harbor Carriers would be subtracted from the existing carriers. They forecast that if this application is granted it will further weaken the existing carriers, thereby jeopardizing continued services particularly the services of H-10. Assertedly, the camp revenue represents from 16 to 20 percent of the revenue of H-10.

Protestants stated that applicant has lost one-half million dollars on the Catalina operation in two years (through 1971). They acknowledge that it would be economically beneficial to Harbor Carriers to provide the requested service but allege that this would not bring it to the break-even point. They assert that a proposed extension of an operating right which would benefit the carrier by increasing operating revenue is not evidence of public convenience and necessity, particularly where the route proposed would practically duplicate the existing service. Protestants state that applicant has not produced a summary of revenues and expenses for the proposed group operations.

It was questioned whether the regular schedules which applicant proposes to extend are actually lightly traveled schedules, as alleged, particularly those on Saturday and Sunday to the Isthmus. Protestants assert that no passenger counts have been put on the record in this case. For this reason they express concern that the

Commission does not know how many persons will be delayed on a trip between Long Beach and Avalon as a result of the proposed extended service. They contend that applicant's proposal to flag its time schedules would not warn the public sufficiently that it may take 2 hours and 45 minutes for a one-way trip, rather than 1 hour and 45 minutes. Protestants take exception to the ability of applicant to render the service on the schedules that it has set forth, particularly those going to the Isthmus leaving Avalon at 11:00 in the morning and arriving at the Isthmus at 11:50. They assert that the Isthmus in the summertime is extremely crowded with private boats, and that it is ambitious for applicant to think that it can pull in and get up to the dock and load all of the boy scouts required in half an hour. The protestants also believe that the proposed schedule which would arrive Saturday in Long Beach at 1:45 P.M. would not be able to unload 200 to 300 boy scouts and their gear, and to load another such a group with gear, each group passing through the other, and then leave for Avalon at 2:30 P.M. Protestants believe that the traveling public paying for full fares should not be subjected to delays of this nature for the benefit of the carrier so that it can obtain additional revenue at a little additional expense. They argue that the Commission properly concluded that the proposed extension of scheduled service would result in a slower and poorer transportation service between Long Beach and Avalon.

Protestants contend that what the proposal amounts to is a price reduction that YMCA and BSA have negotiated and are willing to pay. They state that there is no guarantee that the proposed fares are compensatory. The protestants agree that applicant's service in a large vessel would be more convenient to the organized groups and their camp operations, but assert that this is no basis for public convenience and necessity. They contend that there is no need for the service at this time. Exception was taken to applicant's statement that there were no complaints or objections

to the proposed service and that the City of Avalon did not object to the proposal. Protestants argue that the primary service to Catalina is a tourist-type trade; that tourists are transient from year to year; that it is unrealistic to expect a group of tourists to come to a hearing and object to a proposal as presented because they are not organized; and the fact that there was no objection means nothing at all as far as the City of Avalon is concerned because the record does not show why it did not take a position. Protestants conjectured that the people of Avalon now have so much service (more than they need) that they had no reason to come to the mainland and object to the proposed extended schedules of Harbor Carriers.

Protestants argue that there is no advantage to providing scheduled service to Camp Fox or the Isthmus. They assert that group transportation must be coordinated with carriers according to mutually agreeable departure times. A fixed departure time, such as 9:00 A.M. proposed by applicant, assertedly would be beneficial to the carrier but not the users of the service. It is claimed that there would be problems with some parents not showing up on time, so that some campers would miss scheduled runs as proposed by applicant, and have to find another way across the channel to the campsites.

It was argued that there is confusion concerning whether applicant's proposal with respect to fares is limited to a minimum of 100 persons or to a minimum of 100 fares. Assertedly, there would be a problem if 95 people showed up at the dock if service is conditioned only upon 100 persons being present. Although they believe that this may not create a particular problem in the summer-time it was argued that it would create an extensive problem during the winter. The protestants also assert that the proposal whereby the group fare would apply only if space is available would cause confusion as to what the restriction actually means. The opinion was expressed that under the proposal for a minimum of 100 persons

on a space available basis if there were not enough seats some of the campers might not be able to obtain transportation. Protestants were critical of the proposal that fares should apply only on a round trip basis to Camp Fox or the Isthmus. They explain that anyone desiring to go to these points one way would have to pay the round trip fare. Protestants argue that the fare restrictions do not constitute an extension of regular scheduled service. They say that the proposal is so tied up with conditions that a person or group could not be guaranteed service, particularly for the portion of the year excluding summer.

Protestants allege that no evidence was presented as to any point on the island, other than Camp Fox and the Isthmus. They also allege that there is no evidence to justify the extension of service of Harbor Carriers except for the groups of 230 or more campers that go to Camp Fox and the Isthmus. They assert that there is no evidence to indicate that as few as 100 passengers ever go to those points. They believe that the proposed figure of 100 passengers was arrived at arbitrarily and that to be realistic applicant should have modified its proposal to apply only when 220 passengers are available.

The Commission staff is of the opinion that if the additional service is authorized that necessary timetable changes can be made with notations sufficient to direct attention to them. The staff believes that if more time is required to disembark passengers at Avalon than has been estimated, the timetable can be adjusted to reflect it.

The record shows that a number of vessels ranging in size from 49 to 143 passengers are utilized by protestants between the mainland (from the Port of Los Angeles to Newport Beach) and Santa Catalina Island, and for other purposes. During the summer the demand for the larger vessels operated by or available to protestants becomes greater and the supply available for any given use becomes shorter. Service to and from Camp Fox and the Isthmus during the

heavy camping periods in the past summers has been performed to a large extent by water taxis and other vessels operated by H-10. Organized camp groups must divide into a number of smaller groups to be accommodated in a number of the smaller boats. Even if the Sportsman and the Velleron (111 and 96 passengers, respectively) were made available at one time by H-10 they could not accommodate a camp group of 230 persons without adding still another boat.

The primary consideration here is public convenience and necessity and the levels of the proposed rates for transportation of large numbers of persons in organized groups from the mainland to Camp Fox and the Isthmus. Applicant stands ready to provide a more convenient and efficient service not contemporaneously performed by competing transportation companies. Such service would include use of a 500 passenger vessel operated on a regular basis. The record is clear that in most instances a single group of 200 to 300 persons moving between Long Beach and Camp Fox or the Isthmus could be transported at one time on such a vessel without the necessity for splitting up into smaller groups for transportation by smaller vessels. Such service is needed. It would be more convenient to the public traveling between those points than service offered by other carriers. With service available in large equipment operating on a regular basis the public no longer accepts the smaller boats operated by protestants.

In granting applicant its certificate between Long Beach and Avalon we found in Finding 8 of Decision No. 76496 that service between the Port of Long Beach and Catalina Island was inadequate. Pursuant to that decision, applicant provides two round trips daily between Long Beach and Avalon all year, with a third trip on Fridays during the summer. There is nothing in the record to show that extension by applicant of a limited number of trips by approximately one hour to serve Camp Fox or the Isthmus would conflict with the needs of Avalon or Long Beach or materially reduce scheduled service

between those points. Upon further consideration we find that applicant should be authorized to extend a limited number of schedules to serve Camp Fox and the Isthmus, as proposed. In this connection applicant should be required to post notices at appropriate locations to show clearly which schedules will be extended to include a stop at Camp Fox or the Isthmus. We do not find that there is need for applicant to extend its scheduled service to include other points on Santa Catalina Island.

The record indicates that from time to time there may be some groups of approximately 100 persons that would require transportation to Camp Fox or the Isthmus. It would not be in the public interest to limit applicant to a minimum group of 220 persons, as suggested by protestants, or to a minimum charge for 220 persons. If applicant can transport 100 persons profitably it should not be prohibited from doing so. To limit applicant in the manner suggested would be to require a smaller group to use another carrier either from the island or from another mainland port, even though applicant was running schedules and was willing and able to provide the service.

It is clear that applicant's proposal is to extend certain of its scheduled trips in accordance with the time schedule set forth above, with service available upon seven days' prior notice, on a space available basis, at applicable rates subject to a minimum of 100 round trip fares (RT 576). It would not be in the public interest for applicant to limit service to the condition that 100 persons actually show up for transportation. If 95 persons show up, applicant should be able to transport them subject to the charge for 100 round trip fares.

Protestants argue that for various reasons applicant could not meet the time schedules which it proposes. The record indicates differently. Applicant has had extensive experience in the vessel transportation business. The organized user groups have had many years of experience operating the camps and arranging groups.

and scheduling their departures and arrivals. If, however, a proposed schedule is proved to be inaccurate or impractical, based upon actual operating experience, the carrier can adjust its published timetable. It also can add more service.

The level of proposed fares would be compensatory. In Second Revised Exhibit B to the application Harbor Carriers proposed an on-call rate for the Long Beach Prince of \$300.00 per hour.^{5/} Clearly that rate was intended to cover the full costs of operating the vessel. For an approximate one-hour extension of its regular scheduled service applicant would receive a minimum charge of \$400.00 to Camp Fox or \$425.00 to the Isthmus for 100 fares.^{6/} For an exchange of two typical groups of 230 persons the revenue for one additional hour to Camp Fox or the Isthmus would be \$920.00 and \$977.50, respectively.

Legal Interpretation of
Public Utilities Code Section 1007

The first portion of Public Utilities Code Section 1007 reads, 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

^{5/} Subject to a minimum charge of \$1,275.00 for the first four hours or portion thereof. This minimum would not be relatable to the proposed scheduled service because the vessel already would be in continuous operation.

^{6/} This contemplates round trip revenue for round trip service from Long Beach involving an exchange of two groups of 100 persons at either one of the stops.

having obtained from the commission a certificate declaring that public convenience and necessity require such operation . . ."

Conclusion 4 of Decision No. 80478 reads as follows:

"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."

Conclusion 4 relies upon the California Supreme Court decision in Golden Gate Scenic S.S. Lines, Inc., v. Pub. Util. Com'n. (57 C 2d 373). That decision held that the Commission does not have authority under Public Utilities Code Section 1007 to require a certificate of public convenience and necessity for the operation of vessels for the transportation of persons for compensation starting at a San Francisco wharf, carrying the passengers in a continuous loop around the bay without touching or stopping at any other point, and returning to the point of embarkation. In Decision No. 80478 we reasoned that the conclusions of law set forth in the opinion of the court in arriving at its determination were equally applicable to a loop trip where a stop is made enroute and the vessel stands by for the accommodation of the passengers while they do something ashore, such as

sightseeing, picnicking, swimming, or dining.^{7/} We further reasoned that 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. We stated that such a cruise is not the same as a

7/ Further discussion and guidelines concerning Conclusion 4 are set forth on pages 17 and 18 of Decision No. 80478, as follows:

"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."

"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.

Applicant argues that Conclusion 4 and the attendant discussion and guidelines on pages 17 and 18 of Decision No. 80478, is erroneous in that (a) the Commission misconstrued the Golden Gate Scenic decision; (b) the exemption described destroys a valuable property right of applicant without due process of law; (c) the exemption will lead to chaos in the regulation of passengers by vessel common carriers; and (d) the exemption is unnecessary to the decision.

Applicant asserts that the Commission has gone far beyond the loop operations exempted from its jurisdiction by the Supreme Court. It argues that the Supreme Court decision relied upon exempts only loop operations where there is no stop made enroute for the passengers to go ashore before they are returned to point of origin. It contends that where a passenger is transported from one place to another as described in Conclusion 4, that such transportation is "between points in this State" for the purpose of Section 1007.

Applicant contends that when it or any other carrier operates a vessel between Long Beach and Avalon it is operating between two towns or places; that whether the persons on applicant's vessel are on a cruise for a day or are intending to spend a week in Avalon is of absolutely no moment; that the Golden Gate Scenic case did not consider the frame of mind of the passengers or any other facts except whether the movement of the vessel was or was not from one point to another point; that when the Commission, at page 17 of Decision No. 80478, talks about "parting of company" as implied by the terms "put down" and "end-of-the-line"

the Commission is imputing to the Supreme Court more than the Supreme Court expressed; that nowhere in its opinion in the Golden Gate Scenic decision does the Supreme Court mention the idea of "parting of company"; and that nowhere does the Supreme Court indicate that any disassociation is implied by the term "put down." In this regard, however, applicant states that when it takes a passenger from Long Beach to Avalon and that passenger steps off the boat at Avalon, it is putting that passenger down at Avalon.

In connection with its certificate of public convenience and necessity applicant states that if any party is allowed by the Commission to transport persons on a one-day cruise from Long Beach to Avalon and back without a certificate its property right will be partially destroyed. Applicant explains that a very substantial portion of its scheduled business between Long Beach and Avalon is comprised of the transportation of persons who intend to remain in Avalon for a few hours and return the same day. Applicant states that the term "parting of company" used in Decision No. 80478 with respect to vessel and passengers apparently would establish a distinction between first, a passenger who buys a round trip ticket from Long Beach to Avalon and back without indicating how long he plans to stay in Avalon and second, a passenger who buys a round trip ticket from Long Beach to Avalon and back and says that he is going to Avalon only for a few minutes and intends to return to Long Beach on the vessel which takes him over to Avalon. Under Decision No. 80478, applicant contends that the first transportation would be regulated by the Commission, but the second transportation would not. Applicant submits that there can be no justification for such a distinction and that it constitutes an unreasonable classification in violation of the equal protection of the laws clause of the Fourteenth Amendment to the Constitution of the United States.

Applicant is concerned that one or more third parties will start operating vessels on so-called daily cruises between the mainland and Avalon free of Commission regulation, which assertedly could destroy the operation which it has been striving to develop for the past two years at considerable cost. It believes that competition provided by unregulated third parties would make it impossible for it to sustain its operations. Applicant contends that all holders of certificates of public convenience and necessity for the transportation of passengers by vessel are equally jeopardized. It believes that under Conclusion 4 of Decision No. 80478 regulation of vessel passenger transportation would become chaotic.

Applicant takes exception to the qualification for the exemption stated on page 17 of the decision that the vessel would be chartered for exclusive use at hourly rates. It contends that whether hourly rates or individual fare rates were made applicable could have no bearing on whether the transportation was between points for the purposes of Section 1007. It contends that if the transportation in question were exempt, it would be exempt regardless of the form of fare charged, and that if the operation were exempt it would make no difference that the operators of the vessel solicited patronage from the public at individual fares through one or more kinds of advertising. Applicant asserts that loop operations which are exempt are widely advertised and charges are assessed on an individual fare basis.

As we stated above, protestants supported applicant in its arguments concerning Conclusion 4 of Decision No. 80478. They argued additionally that under Public Utilities Code Section 211(b) defining common carrier (vessel), the word "compensation" means remuneration of any kind; that compensation can be on a per capita basis or on a charter basis; and that the Commission has stated that charter of the steamship Catalina between points on the mainland and Avalon requires the filing of rates. Assertedly

the vast majority of people who ride the steamer come back the same day, and the steamer waits for them. Practically all of the operations of CMC to Catalina involve taking passengers over in the morning and standing by to bring them back in the evening.

H-10 has been certificated as a water taxi since the 1930's. A substantial portion of the water taxi service it provides consists of taking people from the shore out to a ship in Los Angeles Harbor, standing by, and then bringing them back to the point of origin. It was alleged that if the interpretation in Conclusion 4 of Decision No. 80478 is allowed to stand, the Commission will have divested itself of jurisdiction which up to this time it has maintained and exercised. It was contended that such a decision should be reached only in a proceeding where all affected parties could come in and give their views.

In support of their position, protestants cited George Garvin, SS Lux (1947) 47 CPUC 241; Van Loben Sels (1950) 49 CPUC 290; and Pioneer Skate Arena (1965) 64 CPUC 405. In the George Garvin (Lux) case water taxis engaged in the transportation of persons for compensation between a point on the California shore and return thereto with a stop en route at a ship anchored off shore, for the discharge of passengers or the taking on of others, were held to be common carriers regardless of whether the ship is anchored within or outside of territorial waters. In that case no distinction was made between a passenger who returned with the return trip of the water taxi or one which stayed on the ship at anchor and waited for another trip of the same or another water taxi to return to the mainland. In the Van Loben Sels case we held that the fact that fares are not charged to or collected from any passenger, i.e., the failure to collect "individual fares," did not preclude the defendant bus companies from being passenger stage corporations. In the Pioneer Skate Arena decision we held that proposed service without charge by the owner of a skate arena would

amount to transportation of passengers by motor vehicle for compensation over the public highways.

The representative of the City of Long Beach stated that a company has applied for and received a lease for waterfront and terminal facilities from that city, and plans to provide daily cruises by vessel to Catalina. It was reported that the president of the company believes that the trips they propose, where the passengers may disembark for a brief visit on the island and then return to the cruise ship, would not require approval from this Commission.

The Commission staff representative stated that the Transportation Division is not in accord with Conclusion 4 of Decision No. 80478.

It is clear that once a passenger steps ashore at Avalon there is no way of controlling what he does. He may return on the return trip of the vessel that brought him, or he may stay for several days. However, regardless of what action the passenger takes at Avalon, we agree upon further consideration that the purpose of the vessel stop is not important. The passenger has been transported between points. Transportation by vessel between the mainland and Avalon has been treated administratively as transportation "between points within this State" for 60 years, Re: Miller and Donaldson v Wilmington Transportation Company (1913) 3 CRC 42. No good purpose would result from changing this construction.

The arguments of the parties are convincing that the construction of Public Utilities Code Section 1007 contained in Conclusion 4 of Decision 80478 would inject uncertainty into vessel common carrier passenger operations throughout the State. Although we have been referring principally to transportation between the mainland and Avalon, the circumstances described by the parties are not limited to transportation between those points.

Upon further consideration we conclude that Conclusion 4 of Decision No. 80478 is unnecessary to decision of the issues in Application No. 52863, and goes beyond the certificate exemption with respect to loop operations contained in the Golden Gate Scenic decision. The transportation of passengers for compensation by vessel from point of embarkation in California to any other place in California, where some or all of the passengers disembark, constitutes transportation "between points in this State" as used in Public Utilities Code Section 1007. It is not controlling that the same vessel may stand by and thereafter returns the same passengers to point of embarkation. The Golden Gate Scenic decision exempted from the scope of Section 1007 only the operation of vessels for the transportation of persons for compensation from a point of embarkation, travelling in a loop without stopping or touching at any other point, and returning to the point of embarkation.

Findings

1. By Decision No. 76496 applicant was authorized to conduct daily scheduled common carrier service throughout the year, by vessel, for the transportation of passengers and their baggage between the port of Long Beach and Avalon, Santa Catalina Island.

2. In providing daily scheduled service between Long Beach and Avalon applicant uses the motor vessel Long Beach Prince with a capacity of 500 passengers, and the motor vessel Eagle with a capacity of 149 passengers.

3. Applicant proposes to extend its scheduled service between Long Beach and Avalon to include stops on a limited number of its trips to serve large groups of persons travelling regularly between Long Beach and Camp Fox and between Long Beach and the Isthmus.

4. Service is offered by CMC and H-10 on an on-call basis to and from points on Santa Catalina Island by use of water taxis and other vessels ranging in size from 49 to 111 passengers.

5. Service by water taxis and other vessels offered by protestants require substantially all of the groups travelling to and from Camp Fox and the Isthmus to split up for transportation into smaller groups which has caused substantial inconvenience to the patrons.

6. CMC generally has not provided service in the summer to groups desiring transportation to Camp Fox or the Isthmus.

7. The user groups have tried available services offered by all protestants to and from Camp Fox and the Isthmus and have found none of them to be as satisfactory for their needs as the service proposed by applicant.

8. With service available in vessels capable of transporting several hundred persons in one group at one time on a regular basis to and from Camp Fox and the Isthmus, the public no longer accepts the smaller boats operated by protestants. Neither does the public any longer accept combination service available by vessel carriers operating between the mainland and Avalon, and thence by Island Boat Service operating between Avalon and Camp Fox and the Isthmus.

9. Applicant's proposed service would draw from the same market utilized by the smaller vessels in cross channel service provided by CMC and H-10, and would take some of their business.

10. There is no evidence in this record to find that applicant's proposed service will weaken the protestant's to the point of jeopardizing their continued services.

11. The proposed extension by applicant of a limited number of scheduled trips to serve Camp Fox and the Isthmus, as indicated in the foregoing opinion, would not disrupt scheduled common carrier service between Long Beach and Avalon.

12. Public convenience and necessity of large groups of persons that need transportation regularly between Long Beach and Camp Fox, and between Long Beach and the Isthmus, require that service be available in vessel equipment large enough to accommodate one large group in one vessel at one time on a regular basis.

13. Public convenience and necessity require that applicant be authorized to extend its scheduled common carrier service between Long Beach and Avalon to serve Camp Fox and the Isthmus. No good

purpose would be served by limiting applicant to a specific number of trips which it may extend to make a stop at either Camp Fox or the Isthmus.

14. Applicant has not shown that public convenience and necessity require service to be performed by it between Long Beach and points on Santa Catalina Island, other than Avalon, Camp Fox, and the Isthmus.

15. The proposed fare between Long Beach and Camp Fox would be \$4.00, and the proposed fare between Long Beach and the Isthmus would be \$4.25. Both fares would be subject to a minimum charge for 100 fares. Service would be on a space-available basis upon seven days' prior notice to Harbor Carriers, Inc. The proposed fares would be subject to rules provided in applicant's tariff applicable to service between Long Beach and Avalon.

16. The proposed fares are justified. Applicant should be authorized to depart from the long-and-short haul provisions of Section 460 of the Public Utilities Code to the extent necessary to establish the new round trip group fares between Long Beach and Camp Fox and the Isthmus, via Avalon.

17. In compliance with the order which follows, applicant shall be directed to give due notice to the public by posting at its Long Beach terminal, at Avalon, and on its vessels clear explanation of those trips where a stop is to be made one way either at Camp Fox or the Isthmus.

The Commission has carefully reviewed the entire record in this matter and concludes that:

1. Harbor Carriers, Inc. should be granted a certificate of public convenience and necessity to transport passengers between Long Beach and Camp Fox and between Long Beach and the Isthmus, as specified in the following order.

2. The transportation of passengers by vessel for compensation from a point in California to any other place in California, where some or all of the passengers disembark with the vessel

standing by, the same passengers thereafter being returned by that vessel to point of embarkation, constitutes transportation of persons "between points in this State," as that term is used in Section 1007 of the Public Utilities Code.

3. The decision of the California Supreme Court in Golden Gate Scenic S.S. Lines v Pub. Util. Com'n, 57 Cal 2d 273 does not remove from the jurisdiction of the Commission authority to require a certificate of public convenience and necessity under Public Utilities Code Section 1007 for transportation described in Conclusion 2.

4. The findings, conclusions, and orders in Decision No. 80478 which are inconsistent with those contained herein should be rescinded.

Harbor Carriers, 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 cancelled at time by the State, which is not in any respect limited as to the number of rights which may be given.

ORDER ON REHEARING

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Harbor Carriers, Inc., a corporation, authorizing it to operate as a common carrier by vessel, as defined in Sections 211(b) and 238 of the Public Utilities Code, between the points and over the routes particularly set forth in paragraph 2, First Revised Page 3 to Appendix A in Decision No. 73811 in Application

No. 49712, attached hereto and made a part hereof with the fares and service proposed in Application No. 52863.

2. 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 it accepts the certificate of public convenience and necessity herein granted, it will be required, among other things, to comply with and observe the insurance requirements of the Commission's General Order No. 111-B.
- (b) Within one hundred twenty days after the effective date hereof, applicant shall establish the service herein authorized and file tariffs and timetables, in triplicate, in the Commission's office.
- (c) The tariff and timetable filings shall be made effective not earlier than ten days after the effective date of this order on not less than ten days' notice to the Commission and the public, and the effective date of the tariff and timetable filings shall be concurrent with the establishment of the service herein authorized.
- (d) The tariff and timetable filings made pursuant to this order shall comply with the regulations governing the construction and filing of tariffs and timetables set forth in the Commission's General Orders Nos. 87 and 117.
- (e) Applicant shall give due notice to the public by posting at its terminal in Long Beach, at Avalon, and on its vessels a printed explanation of its schedules specifying clearly those trips where a stop is to be made one way either at Camp Fox or the Isthmus.

- (f) Applicant 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.

3. Applicant is authorized to depart from the long- and short-haul provisions of Section 460 of the Public Utilities Code to the extent necessary to establish the new round trip group fares between Long Beach and Camp Fox and the Isthmus, via Avalon.

4. The findings, conclusions, and orders in Decision No. 80478, to the extent that they are inconsistent with the findings, conclusions, and orders contained herein, are rescinded.

5. In all other respects Decision No. 80478 shall remain in full force and effect.

The effective date of this order is the date hereof.

Dated at San Francisco, California,
this 12th day of SEPTEMBER, 1973.

I dissent:

[Signature], Commissioner

William Symons President
[Signature]
[Signature]
Commissioners

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.

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Appendix A
(Dec. 73811)

HARBOR CARRIERS, INC.
(a corporation)

First Revised Page 3
Cancels
Original Page 3

1. Harbor Carriers, Inc., a corporation, by Decision No. 76496, Application No. 50710 is authorized to conduct daily scheduled common carrier service throughout the year, by vessel, for the transportation of passengers and their baggage between the Port of Long Beach and Avalon, Santa Catalina Island.

2. Harbor Carriers, Inc., a corporation, by the decision noted in the margin, is authorized to conduct scheduled common carrier service by vessel for the transportation of passengers and their baggage between the Port of Long Beach and Camp Fox, Santa Catalina Island, and between the Port of Long Beach and the Isthmus, Santa Catalina Island, either directly, or via Avalon. Service is authorized on a space-available basis upon seven days' prior notice to Harbor Carriers, Inc., on vessels operating on scheduled runs between the Port of Long Beach and Avalon, pursuant to authority granted in paragraph 1, above.

Issued by California Public Utilities Commission.

Decision No. 81850, Application No. 52863.