

Decision No. 85663

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
MERRILL E. WOLKINS, doing business as
CALIFORNIA MAIL DELIVERY SERVICE, for
an in lieu certificate of public con-
venience and necessity authorizing the
transportation of general commodities
between certain designated points
within the State of California.

Application No. 55348
(Filed November 26, 1974;
amended April 4, 1975)

Handler, Baker & Greene, by Raymond A. Greene, Jr.,
and Randall M. Faccinto, Attorneys at Law, for
applicant.

Marshall G. Berol and James O. Abrams, Attorneys at
Law, for Delta Lines, Inc., protestant.

J. L. Glovka, Attorney at Law, for Loomis Courier
Service, Inc., interested party.

O P I N I O N

By his application, as amended, Merrill E. Wolkins, doing business as California Mail Delivery Service, presently providing service as a highway common carrier for the transportation of general commodities, with certain exceptions, in shipments of 500 pounds or less and transported in vehicles not exceeding 4,000 pounds, between points within the San Francisco Territory and from such points to cities such as Sausalito, Monterey, Pittsburg, and Dublin, requests authority to extend service to points within an area from Sausalito, Martinez, and Sacramento, in the north, and Monterey, Salinas, Hanford, and Tulare, in the south. Applicant also requests that the vehicle weight restriction be raised to 5,000 pounds. Corresponding interstate authority is also requested. Copies of the application were served upon 22 existing carriers with which the proposed service might compete, and an appropriate notice was published in the Federal Register on December 18, 1974. The application was protested by Cabs Unlimited, Inc., which subsequently withdrew its protest, and by Delta Lines, Inc.

Public hearing was held before Examiner Daly at San Francisco on July 9, 1975 and January 16, 1976 with the matter being submitted on the latter date.

Applicant's present certificated authority was granted by Decision No. 80612 dated October 17, 1972 in Application No. 53357. In addition to his certificated service he also conducts operations as a permitted carrier pursuant to a radial highway common carrier permit.

The proposed service would be daily, Monday through Friday. The time in transit would be both same day and overnight, depending upon the time of day requests for service are received. The proposed rates would be comparable to those set forth in Minimum Rate Tariff 2 and other applicable minimum rate tariffs.

Applicant owns and operates eight units of equipment and as of November 26, 1974 indicated a net worth in the amount of \$9,393. His principal place of business is Oakland where he maintains a terminal warehouse.

Applicant testified that he has been conducting operations within the proposed extended area as a permitted carrier for a substantial period of time; that he provides a unique service specifically designed to meet the demands and shipping requirements of companies engaged in the sale and distribution of shipments weighing less than 500 pounds; that the average weight of the shipments transported is 75 pounds; that because of his small equipment he can operate in downtown traffic; that a large portion of his shipments originate out of state and are picked up at Bay Area airports; that in many instances shipments are picked up and delivered by the same unit of equipment; that prior to operating within the proposed extended area shipments were turned over to United Parcel Service and Di Salvo Trucking Company, but this proved unsatisfactory because of

delays in transit and difficulty with tracing shipments; and that because of the unique nature of his service, he has experienced a substantial increase in requests for service and by reason thereof his operation has grown to such an extent that it was necessary to file the instant application requesting certificated authority.

Applicant introduced the testimony of four public witnesses, which is summarized as follows:

1. Joseph Barnbrick, Detroit, Michigan, vice president and general counsel - American Delivery Systems Inc. Pool car distribution system. Average weight of shipments is 130 pounds. Shipments originate out of state and are destined to local agents for distribution. Has used applicant in the Bay Area for the past 2-1/2 years. Has shipments destined to the proposed extended area. Has had problems when shipments destined to the proposed area are turned over to other carriers. Delays and confusion result when other carriers are used. Has difficulty with establishing proof of delivery and with the tracing of shipments. Has been certificated by the Interstate Commerce Commission as a freight forwarder and expects a phenomenal growth of business in the near future. Delta Lines has never solicited the business.
2. Louis Huttes, New York, New York, director of delivery systems - Standard & Poor. Financial publications which are published on a daily, weekly, monthly, and annual basis. The Blue List is a daily publication of bond prices which is delivered to brokers, businesses, and investors which must be delivered in the morning before the stock market opens. Shipments of these publications are delivered to airports at night and arrive at the San Francisco and Oakland airports early in the morning where they are picked up and delivered directly to customers in San Francisco and Oakland as well as to points in the proposed area such as Sacramento, San Jose, Stockton, Fresno, and Santa Cruz. Has shipments of stock and bond guides, for which he uses

United Parcel Service. Has difficulty with United Parcel Service. Uses applicant for the daily publications in the Bay Area. Would use applicant to the proposed area if certificated.

3. Frederick W. Hartfield, Chicago, Illinois, Douglas-Dunkell. Mail order business handling such items as watches, sewing machines, radios, and microwave ovens. Shipments are delivered to applicant's warehouse in Oakland. Presently uses applicant for distribution to points within the San Francisco Bay Area. Shipments to points in the proposed area are turned over to other carriers. Would prefer to use applicant to the proposed area. Shipments range from 55 pounds to 75 pounds.

4. Robert E. Smith, Pleasanton, California, Ejecto Systems - owner. Manufactures and distributes backpacks for high altitude fire fighting as well as safety harnesses. Shipments range from 60 to 240 pounds. Ships daily from Pleasanton to points within an area from Sacramento, on the north, to Fresno, on the south. Shipments are made on a daily basis. Has used applicant for the past five years and has found the service the best of any that he has used. The service is fast and tracing is almost immediate. Has also used the services of United Parcel Service and System 99, but prefers the service of applicant. At one time had used Delta, but it took several calls before Delta would make a pickup.

Applicant also introduced Exhibit 9, which sets forth all of the shipments that were transported from his Oakland warehouse to points within the proposed extended area for the period October 24, 1975 through November 24, 1975. There were a total of 391 shipments consisting of such items as typewriters, shoes, patterns, and microwave ovens, the majority of which weighed less than 100 pounds.

Protestant's Case

The traffic manager of Delta Lines, Inc. testified as follows:

Delta Lines, Inc. presently conducts intrastate and interstate service extensively throughout the state, including all points within the proposed extended area. It owns and operates 205 line power units, 610 pickup and delivery units, and it employs 1,566 individuals. Terminals within the proposed area are maintained at Marysville, Fresno, Merced, Modesto, Pittsburg, Sacramento, Salinas, San Francisco, Santa Clara, Stockton, and Visalia. Of its total shipments, 96 percent weigh less than 500 pounds and 28 percent weigh 100 pounds or less. Large shipments are frequently picked up and delivered by the same line haul unit. All small shipments are picked up and delivered by pickup and delivery units, which require terminal handling. Delta provides a daily scheduled pickup service and would provide such a service for applicant at its Oakland warehouse. Delta presently has unused equipment capacity and many phases of its operations are experiencing deadhead mileage. It contends that there are a large number of carriers presently serving the proposed area and that granting of the requested authority would result in a diversion of traffic.

After consideration the Commission finds that:

1. Applicant for several years has been providing a highly specialized certificated service within the San Francisco Territory for the transportation of general commodities, restricted as to weight, in vehicles which are also restricted as to weight.
2. Because of the continual growth of his operations and at the requests of his customers, applicant seeks authority to extend his certificated authority to the proposed area, which he now serves as a permitted carrier.

3. From his Oakland warehouse applicant provides a personalized service. Same-day service is a chief feature of the operation, which is accomplished by having the same piece of equipment pick up shipments at points of origin and deliver them directly to points of destination. This procedure eliminates terminal handling, which not only reduces transit time, but also minimizes damage claims.

4. Many of applicant's customers desire his personalized service, which is not only a convenience, but an essential and necessary aspect of their business operations.

5. Applicant's past operation and the public testimony indicate a one-way movement, in that shipments transported by applicant originate at points within the San Francisco Territory and move extensively to points throughout the proposed extended area.

6. Although protestant is providing a satisfactory service within the proposed extended area for most shippers, its operations do not have the same flexibility as that required by many of applicant's customers. In its method of operation protestant works all small shipments over its docks at its terminals within the origin and destination areas. This usually results in an overnight service. Although overnight service is satisfactory for most businesses, there are certain companies that require a same-day service.

7. Certificating applicant to the extent hereinafter set forth will enable applicant to meet the shipping needs and requirements of his customers as expressed during the course of hearing and will also enable applicant to continue, as a certificated carrier, the same service that he has been providing for his customers within the proposed extended area as a permitted carrier.

It is unlikely that applicant would divert any substantial amount of traffic from protestant. Applicant is not a new carrier entering the field for the first time. The diversion anticipated by protestant has for the most part already taken place.

8. Applicant possesses the necessary equipment, facilities, experience, and financial ability to provide the proposed service.

9. Public convenience and necessity require that applicant be authorized to engage in operations in intrastate commerce as hereinafter authorized, and also require that applicant be authorized to engage in operations in interstate and foreign commerce within limits which do not exceed the scope of the intrastate operations authorized by this decision.

10. We find with reasonable certainty that the project involved in this proceeding will not have a significant effect on the environment.

The Commission concludes that the application should be granted to the extent of authorizing operations from points within the San Francisco Territory, on the one hand, to points in the proposed extended area, on the other hand, to increase the vehicle weight restriction from 4,000 pounds to 5,000 pounds. Applicant's operating authority will be restated in the form of a new certificate which does not in any way exceed the geographical scope of the proposed operation as published in the Federal Register.

Merrill E. Wolkins is 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. 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. A certificate of public convenience and necessity is granted to Merrill E. Wolkins, doing business as California Mail Delivery Service, authorizing him to operate as a highway common carrier, as defined in Section 213 of the Public Utilities Code, between the points set forth in Appendix A of this decision.

2. In providing service pursuant to the authority granted by this order, applicant shall comply with the following service regulations. Failure so to do may result in cancellation of the authority.

- (a) Within thirty days after the effective date of this order, applicant shall file a written acceptance of the certificate granted. Applicant is placed on notice that if he accepts the certificate he will be required, among other things, to comply with the safety rules administered by 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 of this order, applicant shall establish the authorized service and amend or 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 authorized service.
- (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 the applicant elects not to transport collect on delivery shipments, he shall make the appropriate tariff filings as required by the General Order.

3. The certificate of public convenience and necessity granted in paragraph 1 of this order shall supersede the certificate of public convenience and necessity granted by Decision No. 80612 in Application No. 53357, which certificate is revoked effective concurrently with the effective date of the tariff filings required by paragraph 2(b). ✓

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

Dated at San Francisco, California, this 13th day of APRIL, 1976.

William Sproun, Jr. President
Vernon L. Sturgeon
Horace
Debt R... Commissioners

Commissioner D. W. Holmes, being necessarily absent, did not participate in the disposition of this proceeding.

Merrill E. Wolkins, 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, in vehicles not exceeding a licensed weight of five thousand pounds, as follows:

- A. Between all points in the San Francisco Territory as described in Note A.
- B. Between all points on and within the following routes:
 - 1. U.S. Highway 101, between San Francisco and Sausalito, inclusive;
 - 2. Interstate Highway 30, between San Pablo and Crockett, inclusive;
 - 3. Unnumbered road and route between Crockett and Martinez, inclusive;
 - 4. Unnumbered road and route between Martinez and Pittsburg, inclusive;
 - 5. Unnumbered road and route between Pittsburg and Antioch, inclusive;
 - 6. State Highway 4 between Antioch and the Willow Pass Road Intersection, inclusive;
 - 7. Willow Pass Road between the intersection of Highway 4 and the intersection of Interstate Highway 680, inclusive;
 - 8. State Highway 4 between its intersection with Willow Pass Road and its intersection with Port Chicago Highway, inclusive;

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9. Monument Boulevard between its intersection with State Highway 24 and its intersection with Willow Pass Road, inclusive;
 10. State Highway 4 between its intersection with Port Chicago Highway and its intersection with State Highway 24, inclusive;
 11. State Highway 24 between its intersection with State Highway 4 and its intersection with Interstate Highway 680, inclusive;
 12. Interstate Highway 680 between its intersection with State Highway 24 and its intersection with Interstate Highway 580 at Dublin;
 13. Interstate 680 between its intersection with Interstate Highway 580 at Dublin and its intersection with Bernal Avenue, inclusive;
 14. Bernal Avenue between its intersection with Interstate Highway 680 and the City of Pleasanton, inclusive;
 15. Interstate Highway 680 between its intersection with Interstate Highway 580 at Dublin and its intersection with State Highway 238 at Mission San Jose.
- C. Through routes and rates may be established between any and all points specified in paragraphs A and B above.
- D. All intermediate points on said routes and all off-route points within the outer perimeters of the routes designated herein may be served.
- E. From all points and places within the San Francisco Territory (See Note A), on the one hand, to all points and places on or within 10 lateral miles of the following routes, on the other hand:
1. Interstate Highway 80 between San Francisco and Sacramento, inclusive;

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2. State Highway 4 between its junction with Interstate Highway 30 near Pinole, and Stockton, inclusive;
3. Interstate Highway 580 between its intersection with State Highway 17 and its intersection with Interstate Highway 5, inclusive;
4. Interstate Highway 5 between its intersection with State Highway 4 at Stockton and its intersection with State Highway 198, inclusive;
5. State Highway 120 between its intersection with Interstate Highway 5 and its intersection with State Highway 99, inclusive;
6. State Highway 193 between its intersection with Interstate Highway 5 and its intersection with State Highway 99 near Visalia, inclusive;
7. State Highway 99 between Sacramento and Tulare, inclusive;
8. State Highway 152 between its intersection with Interstate Highway 5 and its intersection with State Highway 99, inclusive;
9. State Highway 33 between its intersection with State Highway 152 at the Dos Palos Wye and its intersection with Interstate Highway 5, via Firebaugh, inclusive;
10. State Highway 180 between its intersection with State Highway 33 and its intersection with State Highway 99, inclusive; and
11. State Highway 140 between its intersection with Interstate Highway 5 and State Highway 99, inclusive;
12. U.S. Highway 101 between its intersection with Tully Road at San Jose and Salinas;

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13. State Highway 17 between its intersection with Los Gatos-San Jose Road at Los Gatos and its intersection with State Highway 1 at Santa Cruz, inclusive;
14. State Highway 1 between its intersection with State Highway 17 at Santa Cruz and its intersection with State Highway 68 at Monterey, inclusive;
15. State Highway 156 West from its intersection with State Highway 1 at Castroville to its intersection with U.S. Highway 101, inclusive;
16. State Highway 68 between its intersection with State Highway 1 at Monterey and its intersection with U.S. Highway 101 at Salinas, inclusive;
17. State Highway 152 between its intersection with U.S. Highway 101 at Gilroy and its intersection with State Highway 1 at Watsonville, inclusive.

In performing the service herein authorized, applicant may make use of any and all streets, roads, highways and bridges necessary or convenient for the performance of said service.

Except that pursuant to the authority herein granted carrier shall not transport any shipments of:

1. Used household goods, personal effects and office, store and institution furniture, fixtures and equipment not packed in salesmen's hand sample cases, suitcases, overnight or boston bags, brief cases, hat boxes, valises, traveling bags, trunks, lift vans, barrels, boxes, cartons, crates, cases, baskets, pails, kits, tubs, drums, bags (jute, cotton, burlap or gunny) or bundles (completely wrapped in jute, cotton, burlap, gunny, fibreboard, or straw matting).

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2. 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.
3. Liquids, compressed gases, commodities in semi-plastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semitrailers or a combination of such highway vehicles.
4. Portland or similar cements, in bulk or packages, when loaded substantially to capacity of motor vehicle.
5. Logs.
6. Articles of extraordinary value.
7. Commodities requiring the use of special refrigeration or temperature control in specially designed and constructed refrigerator equipment.
8. Explosives subject to U. S. Department of Transportation Regulations governing the Transportation of Hazardous Materials.
9. Shipments weighing in excess of five-hundred pounds.

In performing the service herein authorized, carrier may make use of any and all streets, roads, highways and bridges necessary or convenient for the performance of said service.

Note A

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

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one mile west of State Highway 82; southerly along an imaginary line one 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 two 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 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.

(END OF APPENDIX A)

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