

Decision 83 06 038

JUN 1 1983

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
CATALINA CHANNEL EXPRESS, INC., a
California corporation, for removal
of restrictions contained in Decision
93291 and to amend location of
principal place of business.

Application 82-07-64
(Filed July 28, 1982)

James E. Lyons, Attorney at Law,
for Catalina Channel Express, Inc.,
applicant.
Edward J. Hegarty, Attorney at Law,
for H. Tourist, Inc., protestant.

O P I N I O N

By this application, Catalina Channel Express, Inc. (Express), a California corporation, requests the removal of certain restrictions and requirements from the certificate of public convenience and necessity to operate as a common carrier by vessel granted to it by Decision (D.) 93291 dated July 7, 1981 in Application (A.) 60379. The certificate authorizes the following transportation of passengers and their baggage:

1. Scheduled service between Berth 94-95 in San Pedro Harbor, Los Angeles (San Pedro), on the one hand, and Avalon and Two Harbors on Santa Catalina Island (Catalina), on the other hand.
2. Nonscheduled service between Berth 94-95 in San Pedro and the Queensway Hilton Hotel in Long Beach, on the one hand, and Avalon and Two Harbors on Catalina, on the other hand.

Following are the restrictions and requirements in the certificate which Express seeks to have removed:

1. No schedule shall be operated between 7:15 a.m. and 12:00 noon daily from Berth 94-95, San Pedro to Avalon.

2. One schedule shall be operated at 4:30 p.m. from Berth 94-95, San Pedro to Avalon.
3. No schedule shall be operated from Berth 94-95, San Pedro to Avalon which leaves within one hour before or after the scheduled departures of E. Tourist, Inc. (Tourist) on file with the Commission on June 18, 1981.
4. A minimum of one round-trip schedule per day for a minimum of five days per week shall be operated throughout the year between Berth 94-95, San Pedro and Two Harbors.
5. The fleet shall be limited to no more than two vessels, each with a maximum capacity of 75 passengers.

A.60379 was protested by Tourist. However, upon the agreement by Express that any authority granted to it should include the above conditions, Tourist withdrew its protest to that application. The opinion in D.93291 includes the following statement:

"If applicant ever desires these restrictions modified or removed it may file an application to modify this decision."

In addition to the removal of these conditions, authorization is also requested by Express to change the location of its San Pedro docking facility from Berth 94-95 shown in its certificate to Berth 95-96.

This application was protested by Tourist which is a wholly owned subsidiary of Harbor Tug and Barge Company which, in turn, is a wholly owned subsidiary of Crowley Maritime Corporation. Tourist and its affiliated predecessor in interest have provided Catalina passenger vessel service for a number of years. Tourist's certificate was last revised by D.93162 dated June 2, 1981 in A.59840, et al. The certificate authorizes the following transportation of passengers and their baggage:

1. Scheduled and nonscheduled service between San Pedro or Long Beach, on the one hand, and

Avalon and other Catalina points, on the other hand.

2. Scheduled service between Avalon and Two Harbors and certain intermediate points on Catalina.
3. Nonscheduled service between all points on the coast of Catalina.

The protest states that Tourist is providing daily service between the mainland and Catalina points it is authorized to serve and that its overall operation has been profitable. It points out that many commuters, tourists, campers, hunters, and other persons depend on this service. It asserts that the added competition that would result from removing the restrictions from Express' certificate would seriously jeopardize the viability and economic feasibility of this service to the detriment of the general public. The protest also points out that Tourist's place of business in San Pedro is at Berth 95-96, and it objects to Express having its business at the same location.

Public hearing in this proceeding was held before Administrative Law Judge Arthur M. Mooney in Los Angeles on December 8, 9, and 10, 1982. The matter was submitted upon the filing of concurrent briefs by Express and Tourist on February 4, 1983. Evidence on behalf of Express was presented by its operating witness, Gregory (G.) Bombard, and eight public witnesses. Evidence on behalf of Tourist was presented by its operating witness, Tim Mazur. No other parties participated in the proceeding.

Express

Express commenced operations on July 14, 1981. It operates one 60-passenger vessel, the Catalina Express (CX). Its president is Douglas (D.) Bombard, and he oversees the company's finances. His son, G. Bombard, is a vice president and the general manager and is in charge of the office, advertising, sales, and general operations of the business. Thomas Rutter is the other vice president and is

responsible for the boat operation. All three are directors.

D. Bombard owns 30,000 shares of the corporation's stock. The other two each hold 1,000 shares of the remaining outstanding stock.

D. Bombard owns the majority interest in Doug Bombard Enterprises (Enterprises), a corporation, which leases the isthmus section of Catalina from the Island Company. Enterprises operates various camps here. The camps are leased to the Boy Scouts and are also used for firearm and archery hunting during the respective seasons in the late and early part of the year. Enterprises controls the docks on the isthmus and also maintains all boat moorings on the island outside Avalon. It owns the CY and leases it on a bare boat charter to Express. Under this arrangement Express is responsible for all operating expenses for the boat, including insurance, fuel, crew, maintenance, and repairs. The lease provides for a \$4,000 monthly payment by Express. However, because of start-up costs for the business, the monthly lease amount has been temporarily adjusted to \$2,000.

The October 31, 1982 balance sheet for Express shows assets of \$94,161, liabilities of \$92,154, and a net worth of \$2,007. According to the statement, Express lost \$51,432 during its first six months of operations which included many start-up costs. Included in the assets is \$11,091 for its certificate. The amount paid to the Commission for this certificate was \$500.

Express' income statement for the 10 months ended October 31, 1982 shows income of \$326,613 from scheduled runs, \$24,063 from food and beverage service, and \$15,482 from other sources, which includes charters for hunting parties, for a total income of \$426,178. The total of the expenses shown on the statement is \$382,739, and the resulting net return before income taxes for the period is \$43,439.

G. Bombard presented the following evidence regarding Express' operations and the reason for moving its San Pedro docking location from Berth 94-95 to Berth 95-96.

1. Since commencing service in mid-July 1981, Express has operated the CX continually except for brief periods when it has been out of service for maintenance or repairs. During these periods, it has chartered and operated a second vessel which has also been used for its charters on occasions during the hunting seasons. It has operated no other vessels.
2. Prior to commencing service, the CX, which was not new, was completely refurbished. The interior of the vessel is carpeted and equipped with airline-type reclining seats for the 60 passengers. Refreshments are served to the passengers' seats by a stewardess. Passenger baggage is handled between the dock and boat and stored on board by the crew. The vessel cruises at 20 knots and crosses the channel between San Pedro and Avalon or Two Harbors in 1 1/2 hours. The crossing is approximately 26 miles.
3. Express' scheduled operations conform with the service restrictions and requirements in its certificate. It operates two daily round trips between San Pedro and Avalon and one round trip daily, except Tuesday, between San Pedro and Two Harbors. These schedules are operated throughout the year. It also operates an additional Friday evening Two Harbors round trip in the summer season. The adult fare between San Pedro and either Catalina location is \$12.50 one way and \$25 round trip. There are also children and group fares. Except as noted, the daily scheduled departure times are as follows:

Avalon Service

Leave San Pedro

(1) 7:00 a.m.
4:30 p.m.

Leave Avalon

(1) 9:00 a.m.
6:30 p.m.

Twin Harbors Service

Leave San Pedro

(2) 11:00 a.m.
(3) 8:30 p.m.

Leave Two Harbors

1:00 p.m.
10:30 p.m.

- (1) Leaves one hour earlier on Monday only.
 - (2) Not operated on Tuesday.
 - (3) Friday only from June through September.
4. Express transported a total of 31,060 one-way passengers in its scheduled service during the first 10 months of 1982. The passenger load factors were highest during the summer season. For the entire 10 months, they averaged 31.5% for the Avalon service, 25.2% for the Two Harbors service, and 25.2% for both.
 5. In its nonscheduled service, Express has operated 12 to 15 Avalon charters and also some Two Harbors charters.
 6. Express' San Pedro ticket office is located in space leased from the Los Angeles Harbor Department (LAHD). All Catalina operations at San Pedro are centered at the Catalina Terminal which includes docking facilities, a terminal building, facilities for seaplanes and helicopters, and parking areas. The three carriers now providing regular San Pedro-Catalina service, Tourist, Express, and a helicopter service are here. Their ticket offices are all in the same part of the terminal building with Express in the middle and the other two immediately adjacent on either side.
 7. The Berth 94-95 shown in Express' certificate was the docking area it was temporarily authorized to use when it commenced operations. Berth 95-96 is the docking area designated for the Catalina Terminal. Express applied to the LAHD for a docking

permit here, which was issued six to seven months later. It took Express an additional three to four weeks to build its docking facilities. During this interim period, it used the guest dock at Berth 94 where a floating restaurant is located. Its present permanent facilities are in the Berth 95 area, and Tourist's docking facilities are in the Berth 96 area. The distance from Express' ticket office to the guest dock is approximately 900 feet and to its present docking facilities is 500 feet.

G. Bombard asserted that the conditions in Express' certificate regarding schedules and vessel size are unjust and a severe handicap to its operation. He stated that these are matters that should be left to managerial discretion. The witness testified that if the requested removal of these conditions is granted, Express would continue to operate all of its present schedules and add an Avalon schedule departing San Pedro at 9:00 a.m. and returning from Avalon at 4:30 p.m. He stated that a new larger vessel would be obtained for this additional Avalon schedule which would be operated from May through October.

Following is a summary of the evidence presented by

G. Bombard concerning the proposed new Avalon schedule and vessel:

1. Although Express' present Avalon schedule is popular with island residents and people having business with them, it has received numerous requests from its regular customers, including commuters and others, for a 9:00 a.m. San Pedro departure and a 4:30 p.m. Avalon departure. Also, it has received two or three requests a week during the summer season from groups for transportation to Avalon and return. However, it has been unable to accommodate them because of the difficulty of organizing a group and getting it to the terminal for a 7:00 a.m. departure. They have advised Express that if it had a 9:00 a.m. departure, they would use its service.

2. In the summertime, it is Express' experience that many reservations do not materialize. The number of no shows averages around 30%. As a result when the full 60-passenger capacity of the present boat has been reserved, it frequently sails with only 40 to 45 passengers. In this connection, when the boat has been booked to capacity, additional reservations are refused, and people are told they will be placed on a standby list. However, people are reluctant to come to the terminal for a 7:00 a.m. sailing when they are not certain of passage on the vessel.
3. The new larger boat Express proposes to obtain would cost \$600,000 to \$700,000. Various methods of financing or leasing the vessel are under consideration. According to the blueprints, it would be approximately 80 feet long and have a beam of about 20 feet. While this type of vessel would be certified by the U.S Coast Guard to carry a maximum of 140 passengers, it would be designed to carry 125 people. The main cabin would have airline-type seats for 107 to 110 passengers, a bar, and television. Refreshments would be served to the passengers' seats. There would also be covered but not enclosed seating for 12 to 15 more passengers on an aft deck. Additionally, there would be outside seating fore and aft and on the upper deck for the convenience of passengers if they wished to move around. These seats would not be sold. Baggage would be handled in the same manner as with the CX and stored in a hold. It would have a crew of four, an operator, two deckhands, and a stewardess. The boat would cruise at 23 knots and make the crossing in approximately 1-1/4 hours.
4. Express intends to use the new larger vessel in scheduled service for the proposed 9:00 a.m. San Pedro departure and 4:30 p.m. Avalon return only. The 4:30 p.m. departure time would be varied slightly to avoid congestion if there were another departure by another company from Avalon at this time. The 9:00 a.m. schedule would minimize the no-show problem and accommodate tourists, groups, and others who have requested this

later sailing. It is estimated that even with no shows the new boat would generally leave with 105-110 passengers. The boat would be available for charters when not in scheduled service. In this regard, Express has had some requests for charters for groups of a hundred or so from archery hunters during the winter season and from other groups.

5. The pro forma income statement based on a 50% load factor for the new boat for the first May through October operating period shows income of \$414,592 for scheduled service and \$28,600 for charter service for a total of \$443,192, total expenses of \$401,000, and a gross profit of \$42,192 before income taxes.

G. Bombard pointed out that Tourist added a 7:30 a.m. San Pedro departure on weekends during the summer to its schedule, which is one-half hour after Express' 7:00 a.m. departure. This, he asserted, has frustrated the intent of the condition in Express' certificate which prohibits it from departing San Pedro for Avalon within one hour of a scheduled departure time shown on Tourist's June 18, 1981 filed schedule. It is Express' opinion that such a condition which severely restricts its scheduling while Tourist has complete flexibility in such matters is extremely unfair to it.

G. Bombard testified that the services provided by Express and by Tourist are not competitive but really complementary. He explained that Express offers a luxury-type commuter service designed for the members of the public not in the normal tourist stream; whereas, Tourist offers a service designed primarily for tourists. The witness stated that Express advertises its service in local newspapers and magazines and that it distributes brochures advertising its service. According to its income statement for the first 10 months of 1982, Express spent \$14,764 on advertising during this period.

The eight public witness testified in support of the proposed new boat and 9:00 a.m. San Pedro departure and 4:30 p.m. Avalon return. All have used Express' service. One has used it once, and the others use it weekly, weekly during the summer season, or less frequently. Several have used helicopter service but find it expensive and the distance between the Catalina landing facility and Avalon inconvenient. All have used Tourist at some time but prefer Express. Generally, their reasons for this preference were that Express' service is faster and more luxurious and personal. They were of the opinion that the proposed new San Pedro-Avalon schedule would be more convenient for them. Two, an official of a boat shop and a travel agent, have business dealings with both Tourist and Express. Another sells soft drinks to Express. The others have no business dealings with either company.

In his written closing statement, counsel for Express urged that the restrictions be removed from his client's certificate so it can build the new vessel and use it to the best advantage of itself and the public.

Tourist

Tourist provides daily scheduled service between San Pedro or Long Beach, on the one hand, and Avalon and other Catalina points, on the other hand. The San Pedro-Avalon service commenced in 1976. Tourist operates five 700-passenger capacity vessels which it asserts have a present replacement value of almost three million dollars each. It also operates one 100-passenger vessel. Its San Pedro operations are at the same Catalina Terminal at which Express is located. Its business address is Berth 95-96, Catalina Terminal, San Pedro, Los Angeles. As stated above, it also has a terminal at Long Beach.

The one-way passenger count for Tourist's San Pedro-Avalon service has grown from less than 100,000 in 1976 to a high of approximately 650,000 in 1980. The number dropped to around 542,000

one-way passengers in 1981 and has continued to drop further in 1982. The passenger traffic fluctuates substantially with the season. July through September are the busiest months. The revenue generated during these months subsidizes the service Tourist provides at a loss in the slow months from November through March. As little as one round-trip San Pedro-Avalon schedule per day is operated during the slow months. This increases to an average of 6.2 schedules in each direction in the summer season. Even with these scheduling adjustments, Tourist operates with excess capacity throughout the year. In the few instances in the summer season when the number of passengers exceed the capacity of a vessel, a second vessel is added to the schedule and is operated at less than capacity.

Tourist extensively promotes its Catalina service through media advertising, brochure distribution, and other advertising. It spent over \$360,000 on this in 1981. For the first nine months of 1982, it spent \$283,275 on advertising and promotion, and of this \$210,000 was spent on radio, newspaper, and radio advertising to attract passengers to its San Pedro and Long Beach terminals.

Generally, the number of passengers transported by Tourist through its San Pedro and Long Beach terminals are about the same, except for the period mid-March through early June 1980 when the Long Beach terminal was closed because the Los Angeles River was silted up and all boats were operated out of San Pedro.

The substantial majority of passengers transported by Tourist pay per capita fares. Most of the balance of the passengers are commuters or a part of a charter or group. Charters account for a very small part of Tourist's income.

Mazur has been the general manager of Tourist since 1976. He has had experience in the passenger vessel service between the Los Angeles area and Catalina since 1947. Following is a summary of the evidence he presented:

1. Tourist provides the public within an efficient, year-round, high-quality service. The decline in patronage at San Pedro in 1981 and the further decline in 1982 is due in part at least to the commencement of service by Express in 1981. Any further decline in this traffic may require Tourist to seek a fare increase or reduce service.
2. The new 9:00 a.m. summer schedule from San Pedro to Avalon proposed by Express would directly compete with Tourist's morning schedules leaving at 8:15 a.m. on weekdays and 8:30 a.m. on weekends and at 9:15 a.m. daily and syphon off customers from it, particularly walk-ins without reservations. Since passengers generally arrive at the terminal up to an hour before sailing, a 9:00 a.m. departure with the proposed new 149-passenger capacity vessel would increase the number of passengers at the terminal in the morning, cause confusion and havoc for them, and create parking problems.
3. The 7:30 a.m. departure from San Pedro to Avalon on weekends added by Tourist to its 1982 summer schedule was 30 minutes after Express' 7:00 a.m. departure. However, it was far enough behind Express' schedule to create no problems at that early hour.
4. Tourist has the name Catalina Tours, which is the business name for its San Pedro operations, above its ticket office. Express has the name Express Tours, which is not its full name, above its immediately adjacent ticket office which is also near to the entrance to the terminal building. This similarity in names on the ticket offices is confusing to Tourist's customers and could cause them to think it is an express service operated by it. While this is not a real problem now, it could become one if Express operated a 9:00 a.m. departure and result in the loss of Tourist's customers to Express.
5. Although Express asserts that the proposed new boat would be used in scheduled service for the 9:00 a.m. San Pedro and 4:30 p.m.

Avalon departures and would be available for charter at other times, it is Tourist's experience that there are very few Catalina charters. It is highly likely, therefore, that Express would not leave the boat idle but would use it for an additional schedule which would intensify the competitive threat to Tourist.

6. During the summer, Tourist has a 4:30 p.m. Avalon departure for Long Beach. Another company operating to Newport/Balboa also has a departure at the same time. The proposed 4:30 p.m. Avalon departure by Express would compound docking problems here and confuse the public.
7. The service provided by Express is not unique. The channel crossing time for both services is not much different. Tourist's timetable shows an elapsed sailing time of one hour and 45 minutes. Both provide comfortable seating, carpeted interiors, baggage space, and other amenities for passengers. Tourist's larger vessels provide a smoother ride in the open sea.
8. Tourist relies on the passenger revenue generated during the peak summer season to sustain its year-round operations. Any erosion of this needed revenue by a competing 9:00 a.m. San Pedro and 4:30 p.m. Avalon schedule of Express could adversely affect Tourist's ability to provide needed service to the public in the slow early and late months of the year.

Mazur testified that his company would have no objection to an additional schedule by Express leaving San Pedro at approximately 11:00 a.m. He pointed out that Tourist has no summer schedule leaving San Pedro after 9:45 a.m. or before 12:00 noon on weekends and 12:45 p.m. on weekdays. It is his opinion that an 11:00 a.m. Express departure would cause no problems at the terminal. The general manager also stated that his company would have no objection to the removal of the 75-passenger vessel capacity limitation in Express' certificate providing the restriction prohibiting sailing

times within one hour before or after Tourist is retained. The witness recommended that the conditions in the certificate requiring a 4:30 p.m. departure from San Pedro to Avalon and a minimum of one round-trip schedule per day for a minimum of five days per week throughout the year should remain. In this connection, he pointed out that these requirements were part of the stipulation that was adopted and found reasonable by D.93291.

In his closing statement, counsel for Tourist argued that it has not been established on this record that public convenience and necessity require the 9:00 a.m. San Pedro departure and 4:30 p.m. Avalon departure in the summer season proposed by Express. He asserted that Express has no plans for generating new traffic for this schedule and would, if it were granted, syphon off customers generated by Tourist through its extensive advertising and promotional campaigns. Counsel stated that the additional competition that would be engendered by this schedule would be unfair to Tourist and the economic consequences could adversely affect its ability to provide the public with a good reliable year-round service. He pointed out that he realizes that since Express has set up its San Pedro operations at the Catalina Terminal Berth 95-96, the Commission will authorize this change in Express' certificate. He explained that his client would have no objections if the conditions and restrictions in Express' certificate were amended as follows, which would include the elimination of the vessel number and size limitations:

- "(a) No schedules will be operated between 7:15 a.m. and 10:45 a.m. leaving Berth 95-96 in the Los Angeles Harbor for Avalon, Santa Catalina Island.
- "(b) Schedules presently operated pursuant to tariffs and timetables on file with the Public Utilities Commission will continue to be operated. E. Tourist, Inc. will be given notice and opportunity to be heard if

modification or discontinuance of these schedules is requested.

- "(c) A schedule leaving Berth 95-96 in the Los Angeles Harbor for Avalon, Santa Catalina Island may be operated during the period between 10:45 a.m. and 11:15 a.m.
- "(d) Other than as authorized above, no schedules will be operated leaving Berth 95-96 in the Los Angeles Harbor destined for Avalon, Santa Catalina Island within one hour before or after the scheduled departures of H. Tourist, Inc.
- "(e) No departure or arrival schedule will be instituted if it interferes with the normal docking procedure required to maintain the established schedules of H. Tourist, Inc. at Avalon, Santa Catalina Island."

Discussion

Express requests the removal of all service restrictions and limitations from its certificate. Its primary purpose for this request is to operate a 9:00 a.m. San Pedro - 4:30 p.m. Avalon round-trip schedule during the prime midyear season with a new vessel certified to carry a maximum of 149 passengers but which would be designed to carry 125 passengers. While it asserts that it will continue to operate all of its present scheduled service, its secondary purpose is to have complete freedom from all scheduling and service restrictions and requirements. With such freedom, it could adjust its present scheduled service in any manner it deemed appropriate, and it would not be limited to a specific number of boats or vessel size.

Tourist would not object to the removal of the vessel limitations or the amendment of the time period stated in the restriction prohibiting morning service from San Pedro to Avalon from between 7:15 a.m. and noon to between 7:15 a.m. and 10:45 a.m. provided the restriction prohibiting any sailing from San Pedro to

Avalon within one hour of Tourist's departure times shown on its schedule on file with the Commission is retained. The one-hour restriction now in Express' certificate is tied to Tourist's schedule on file on June 18, 1961. The proposal in Tourist's written closing statement is not limited to this schedule. It is assumed that this was an oversight, and it is so interpreted. Otherwise Tourist could block any sailing times available to Express at will by changing its schedule. In addition to these suggested revisions, Tourist recommends that Express be specifically authorized to add an additional San Pedro sailing for Avalon in the 10:45 a.m. to 11:15 a.m. time frame. Additionally, Tourist requests that a new restriction be inserted in Express' certificate that would prohibit it from establishing any new Avalon departure or arrival that would interfere with the normal docking procedure required to maintain Tourist's established schedules at Avalon. It also urges that Express be required to continue to operate its present scheduled service.

The service and schedule conditions and restrictions in Express' certificate were, as indicated above, the result of a stipulation between it and Tourist in A.60279 to avoid the necessity of hearing. While they may not have been a severe hindrance to Express' operations when it commenced service with a single 60-passenger vessel, they prevent any major expansion of its service such as it now proposes. We are of the opinion that they should be amended as discussed below.

We will remove the limitations on the number of vessels Express may operate and the number of passengers any of its boats may carry. As stated, Tourist's real concern is with the schedule restrictions and not with the vessel conditions. Furthermore, according to G. Bombard, Express has had requests for service from large groups which its present 60-passenger vessel cannot

accommodate, and the proposed larger vessel would minimize its no-show problem. We recognize that Express' immediate plan is to add only the new vessel designed for 125 passengers. However, to merely adjust the vessel conditions to allow this boat would continue the limitation on Express' ability to obtain additional and/or different equipment that might be necessary to meet the demands of the public. The record does not establish any need for continuing these restrictions.

We will remove the restriction in Express' certificate prohibiting any service from San Pedro to Avalon between 7:15 a.m. and 12:00 noon. We will also revise the restriction prohibiting such service within one hour before or after the scheduled departures of Tourist on file with the Commission on June 18, 1981 to one-half hour before or after such departures. Tourist's departures for Avalon on that date were at 8:15 a.m., 9:45 a.m., 12:45 p.m., and 2:15 p.m. daily; at 6:30 p.m. daily except Friday; at 7:00 p.m. Friday; and at 8:30 p.m. on Saturday and Sunday. All were direct schedules except the 2:15 p.m. departure which was via Two Harbors. The 9:45 a.m. and 7:00 p.m. departures continued on to Two Harbors after Avalon. Tourist had no other San Pedro departures on that date.

The evidence presented by Express in support of the removal of all time restrictions on San Pedro departures for Avalon was essentially directed to its request to operate the proposed May through October 9:00 a.m. San Pedro to Avalon and 4:30 p.m. return daily schedule with the new vessel. It is Tourist's position that the evidence does not support this schedule or the complete freedom from any time restrictions on this service which Express seeks. Tourist asserts that the thrust of the testimony by the public witnesses was their enthusiasm over Express' present vessel and service which is not relevant to the issues here. A review of their testimony does show that it is their intent to use the proposed

schedule, at least occasionally, if it is authorized. Also, G. Bombard testified that Express has received requests from groups, commuters, and others for the additional Avalon schedule. While the evidence regarding a public need for the new San Pedro-Avalon round trip was not extensive, nonetheless, it is sufficient to establish that public convenience and necessity require this service. Tourist's arguments to the contrary are not persuasive.

In addition to authorizing the 9:00 a.m. San Pedro sailing, the removal of the restriction on morning sailings after 7:16 a.m. and the revision of the further time restriction to one-half hour before or after Tourist's June 18, 1981 schedule gives Express flexibility to develop its service and adjust its schedules as may be necessary to better serve the public. The one-half hour schedule differential requirement should minimize the San Pedro terminal congestion and passenger confusion problems which might occur if both companies had sailings at the same time.

In the absence of a clear need to the contrary, the Commission is opposed to undue excessive restrictions on service to the public. Such restrictions frequently render a carrier's service incomplete and ineffective. The present time restriction on Express' service from San Pedro to Avalon fall within this category. The revisions that will be made will remedy this undesirable situation and benefit the public.

Furthermore, Tourist and Express are the only two vessel carriers providing common carrier passenger service from San Pedro to Avalon. Under the present time restraints in Express' certificate on service to Avalon, Tourist has a complete monopoly on this service from 7:16 a.m. to noon. While, as the evidence shows, there are some commuters, Avalon residents, business people, and other more-or-less regular customers that travel to Avalon during this time period, a

substantial number of the passengers are tourists or use the service for recreation-oriented purposes such as hunting or boating. This is, for a substantial part, a luxury service rather than essential point-to-point transportation. As has been enunciated in numerous decisions in recent years involving passenger transportation, monopoly service tends to create unsatisfactory service to the public; whereas, competition between carriers has a direct bearing on quality of service, rates, schedules, and operational innovations generally. Except for the retention of the revised one-half hour departure time differential for the specific reasons stated above, this same reasoning is applicable here.

Additionally, we concur with Express that there are differences in the service Tourist provides and that which Express proposes to offer. While both carriers operate good equipment, the recitation of the evidence above clearly indicates the differences between the two in vessel sizes, passenger accommodations, amenities, fares, and channel crossing time. With the removal of the vessel restrictions, Express could use any size vessel. However, its service is designed for the new equipment it intends to obtain.

The recommendation by Tourist that a new restriction be inserted in Express' certificate which would specifically prohibit any new Express arrivals or departures at Avalon if it interferes with the normal docking procedures required to maintain Tourist's established schedules will not be adopted. According to the evidence, it is Express' intent to avoid any interference with established docking procedures of other cross-channel carriers at Avalon. In this connection, G. Bombard testified that Express would make any necessary adjustments in its proposed 4:30 p.m. departure so as not to interfere with summer departures by Tourist for Long Beach and another carrier for Newport/Balboa at this time. To anticipate that Tourist would not so act is speculation not supported by the evidence.

No need has been shown for the removal of the conditions in Express' certificate that require it to operate throughout the year a daily 4:30 p.m. San Pedro departure for Avalon and a minimum of one daily round trip for a minimum of five days per week between San Pedro and Two Harbors. According to the evidence, this service is now being provided and Express intends to continue the service. One of the reasons for granting the certificate to Express was that there was a public need for this service. Other than G. Bombard's testimony that Express would like to have complete freedom in scheduling its service, there is nothing in the record to support the removal of the two conditions. They assure that this service will be continued. It is noted that Tourist's certificate requires the operation of certain specified service.

The San Pedro terminal location shown in Express' certificate will be changed from Berth 94-95 to Berth 95-96 which is the area designated for the Catalina Terminal. As the evidence shows, Berth 94-95 was the temporary facility Express was authorized to use until its permit was approved by the LAED and its permanent docking facilities were constructed. Also, no change will be required in the location of the ticket office space in the terminal building it has leased from the LAED.

Because the busy summer tourist season is now commencing, there is an immediate need for the authority granted by the order which follows. For this reason, it should be made effective on the date it is signed.

Findings of Fact

1. Express was granted Certificate of Public Convenience and Necessity TCC-52 by D.93291 dated July 7, 1961 in A.60379. The certificate authorizes the transportation of passengers and their baggage in scheduled and charter service between Berth 94-95 in San Pedro, on the one hand, and Avalon and Two Harbors, on the other

hand. It also authorizes charter service between the Queensway Hilton Hotel in Long Beach and the same two Catalina points.

2. Express' Certificate 700-52 includes the following service conditions and requirements:

- a. No schedule shall be operated from San Pedro to Avalon between 7:15 a.m. and 12:00 noon or within one hour before or after Tourist's scheduled San Pedro departures on file with the Commission on June 18, 1981.
- b. Express shall operate throughout the year a daily 4:30 p.m. departure from San Pedro for Avalon and also a minimum of one round-trip schedule between San Pedro and Two Harbors per day for a minimum of five days per week.
- c. Express' fleet shall be limited to two vessels, each with a maximum passenger capacity of 75.

3. Express requests that the above conditions and requirements be removed from its certificate.

4. Tourist operates as a common carrier of passengers and their baggage by vessel in scheduled and nonscheduled service between San Pedro and Long Beach, on the one hand, and various Catalina points, including Avalon, on the other hand, and also between Catalina points.

5. Other than Tourist, no other vessel common carrier of passengers and their baggage operates a scheduled service over the same routes Express is authorized to serve.

6. Subject to several exceptions, Tourist protests the removal of the service conditions and restrictions referred to in Finding 2 from Express' certificate. The exceptions are that Tourist would not object to the removal of the fleet number and size limitations and the operation of an additional morning schedule by Express from San Pedro to Avalon departing during the period between 10:45 a.m. and 11:15 a.m. provided the balance of the restrictions are retained.

7. Express now operates a single 60-passenger vessel and is complying with all conditions, limitations, and requirements in its certificate.

8. Tourist now operates five 700-passenger vessels and one 100-passenger boat.

9. The demand for passenger service by vessel between San Pedro and Avalon is seasonal. The maximum demand is during the summer tourist season. Tourist operates more schedules at this time than during the remainder of the year.

10. Express now operates a single-morning schedule from San Pedro to Avalon throughout the year departing at 6:00 a.m. on Monday and at 7:00 a.m. the balance of the week.

11. If Express' request for removal of conditions is granted, it will obtain a new larger vessel. The proposed vessel would be certified to carry 149 passengers but would be designed to carry approximately 125 passengers. It proposes to operate a new May through October schedule leaving San Pedro for Avalon at 9:00 a.m. and returning at 4:30 p.m. with the new vessel.

12. Express has demonstrated that public convenience and necessity require the proposed new boat and schedule.

13. The restrictions in Express' certificate prohibiting any service by it from San Pedro to Avalon between 7:16 a.m. and 12:00 noon and limiting the number and size of vessels it may operate are excessive restraints not in the public interest and should be removed.

14. Passenger congestion and confusion problems could occur at the San Pedro Catalina Terminal if Express and Tourist had departures at the same time.

15. The time period in the restriction in Express' certificate prohibiting departures from San Pedro within one hour before or after Tourist's scheduled San Pedro's departures on file with the Commission on June 12, 1981 is excessive. The time period should be changed to one-half hour. By so doing, the possibility of the problems of congestion and confusion should be minimized. (Tourist has no San Pedro departures within one-half hour of Express' proposed 9:00 a.m. San Pedro sailing for Avalon.)

16. While it is Express' intent to continue to operate the schedule and service required by the conditions in its certificate referred to in Finding 2.b., its request to have these conditions removed has not been justified. Their retention will assure that Express will continue to provide a needed service for the public. (Tourist's certificate also requires that it provide certain services.)

17. It is Express' intent to adjust any new schedules at Avalon so as not to interfere with established schedules of vessel common carriers of passengers here. No need has been established for inserting the specific condition recommended by Tourist regarding this in Express' certificate.

18. The reference in Express' certificate to Berth 94-95 at San Pedro, which was the temporary docking facility assigned to it when it commenced operations, should be changed to Berth 95-96, which is the permanent San Pedro facility assigned to it by LAED.

19. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

Conclusions of Law

1. The restrictions, limitations, and specifications in Certificate of Public Convenience and Necessity 700-52 issued to Express by D.93291 should be amended as provided in the following order.

2. This order should be effective today because the tourist season is commencing and there is a need for the service.

O R D E R

IT IS ORDERED that:

1. Appendix A of Decision 93291 is amended by replacing Original Pages 1, 2, and 3 with First Revised Pages 1, 2, and 3 (attached).

2. In all other respects Decision 93291 shall remain in full force and effect.

This order is effective today.

Dated JUN 1 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.
President

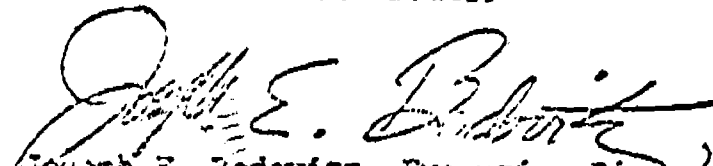
VICTOR CALVO

PRISCILLA C. CREW

DONALD VIAL

Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.


Joseph E. Bodovitz, Executive Director

Catalina Channel Express, Inc., a California corporation, by this certificate of public convenience and necessity, is authorized to conduct common carriage by vessels for the transportation of passengers and their baggage between Berth 95-96 in the Los Angeles Harbor and the Queensway Hilton Hotel, Long Beach, on the one hand, and Avalon and Two Harbors on Santa Catalina Island, on the other hand, as described below:

I. Scheduled Service

Between Berth 95-96 in the Los Angeles Harbor, on the one hand, and Avalon, Santa Catalina Island, on the other hand, with the following restrictions, limitations, and specifications:

- a. One schedule will be operated in the afternoon daily at 4:30 p.m. leaving Berth 95-96 in the Los Angeles Harbor to Avalon, Santa Catalina Island.
- b. No schedules will be operated leaving Berth 95-96 in the Los Angeles Harbor destined for Avalon, Santa Catalina Island with a departure time within one-half hour before or after the scheduled departures of H. Tourist, Inc. on file with this Commission on June 18, 1961.

Between Berth 95-96 in the Los Angeles Harbor, on the one hand, and Two Harbors, Santa Catalina Island, on the other hand, with the following limitation:

A minimum of one round-trip schedule per day for a minimum of five days per week will be operated throughout the year.

Issued by California Public Utilities Commission.

Revised by Decision 83-06 CCS, Application 82-07-64.

II. Nonscheduled Service

Between Berth 95-96 in the Los Angeles Harbor and the Queensway Hilton Hotel, on the one hand, and Avalon and Two Harbors on Santa Catalina Island, on the other hand.

Issued by California Public Utilities Commission.

Revised by Decision 83 06 038, Application 82-07-64.

III. General Restrictions, Limitations, and Specifications.

- a. No vessel shall be operated unless it has met all applicable safety requirements, including those of the United States Coast Guard.
- b. Nonscheduled service shall be operated on an "on-call" basis. The term on-call as used refers to service which is authorized to be rendered dependent on the demands of passengers. The tariffs and timetables shall show the conditions under which each authorized on-call service will be rendered.

Issued by California Public Utilities Commission.

Revised by Decision 83 06 028, Application 82-07-64.