

Decision No. 90463 JUN 19 1979

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of ALBERT R. SCIALABBA,)
doing business as CAL PARCEL EXPRESS)
for an order granting exemption from)
rates, rules and regulations of Min-)
imum Rate Tariff 2.)

Application No. 58746
(Filed March 16, 1979)

OPINION AND ORDER

By this application, Albert R. Scialabba, doing business as Cal Parcel Express, seeks an exemption from the minimum rates in Minimum Rate Tariff 2 (MRT 2) for courier-type transportation.^{1/}

Applicant states that his operation, consisting of small package and parcel transportation, is gradually expanding to include courier-type service as an adjunct to his parcel service. Applicant is requesting an exemption only on the same materials that became exempt on August 5, 1978 by Decision No. 89004 in Case No. 5432 (OSH 922) as set forth in Item 42 of MRT 2 when transported in vehicles of a licensed weight of 4,500 pounds or less.

Applicant declares he operates equipment in parcel deliveries that exceeds 4,500 pounds. Several of his competitors, who have been granted deviations for courier-type service, also operate, in parcel delivery service, equipment that exceeds 4,500 pounds. Although courier-type service is exempt only when transported in vehicles of 4,500 pounds or less, there is nothing to prevent a courier from transporting small packages and parcels, in competition with applicant's present authority. Applicant alleges that this discrimination places him in a very non-competitive position and may even place him in jeopardy of losing his parcel delivery services, as shippers generally

¹Minimum Rate Tariff 2 - Item 10 defines a courier service as follows: "... (o)perations having the following characteristics: (a) A carrier vehicle fleet consisting of only vehicles having a licensed weight of 4,500 pounds or less; (b) Delivery shall be made within 24 hours after pickup."

prefer to deal with one carrier instead of searching around for several. Applicant contends that unless he is granted the exemption sought in this application, he cannot: provide the complete service desired by his shippers; maintain the economic stability of providing services which would be of benefit to his customers; enhance his operating ratio to provide reliable and dependable service; and serve the public more fully as a potential common carrier under Section 1063.5 of the Public Utilities Code.

The application was listed on the Commission's Daily Calendar of March 21, 1979.

The California Trucking Association (CTA) has protested the granting of this exemption. The protest complies with Rule 42.2 of the Commission's Rules of Practice and Procedure.

CTA's protest recognizes the competitive advantage that an exemption bestows upon a carrier. CTA also cites the present deviation that applicant now operates under as a small package carrier within 100 miles of San Jose. CTA, further alleges that the applicant, as a "single trucking entity", is not capable of providing a courier-type service.

Applicant has responded to CTA's protest stating that the phrase, "single carrier entity", describes applicant's ownership and control of only one trucking company. This did not mean that applicant operates only one unit of equipment. Applicant denies that if the exemption was granted, he would have a competitive advantage over his competitors. Rather, he states, those carriers (35) with exemptions granted prior to Decision 89004 now have a competitive advantage over him.

Applicant is not seeking an authorization to use vehicles in excess of 4,500 pounds licensed weight in courier-type service. Applicant is prepared to acquire as many light weight vehicles as is necessary to meet customer demand.

Findings:

1. Applicant is a parcel carrier operating under a Section 3666 deviation from minimum rates in connection with the transportation

of shipments weighing less than 100 pounds between points within 100 miles of San Jose. (Decision 86033, dated June 29, 1976 in Application 56493 and extended by SDD-308, dated December 31, 1976.)

2. An exemption from minimum rates is necessary because the present minimum rates are not responsive to the transportation characteristics of a courier-type service.

3. Applicant presently has vehicles in excess of 4,500 pounds licensed weight in his fleet.

4. Applicant is financially able to acquire vehicles of 4,500 pound licensed weight, or less, necessary to conduct the proposed courier-type service.

5. Applicant's business is gradually expanding and there is a need to include the courier-type service as an addition to his parcel delivery service.

6. The Commission recognizes the competitive advantages bestowed upon a carrier operating under a general exemption. It has been determined from the application and applicant's reply to CTA's protest that the exemption sought is necessary to permit the applicant to perform the special services necessary for courier type transportation and still remain in business.

7. Sufficient material has been presented in the application and the reply to CTA's protest to determine the feasibility of the application. A public hearing on this matter would not introduce any new factors for consideration.

Conclusion:

Applicant should not be denied the opportunity to fully service his accounts. An exemption from minimum rates is necessary to maintain a competitive position in the courier-type service transportation. Maintenance of the quick response, speedy delivery and on-call aspects of courier-type service is necessary. Therefore, any exemption authorized shall be conditioned to the utilization of only vehicles not exceeding 4,500 pounds licensed weight in the courier-type service of applicant's business.

In the circumstances, the Commission finds that applicant intends to engage in courier-type transportation for which competing highway carriers have heretofore been exempted from the otherwise governing minimum rates and applicant's request for similar relief has been shown to be justified. A public hearing is not necessary. The Commission concludes that the application should be granted and the effective date of this order should be the date hereof because there is an immediate need for this rate relief.

IT IS ORDERED that:

1. Albert R. Scialabba, doing business as Cal Parcel Express, is exempted from the otherwise governing provisions of Minimum Rate Tariff 2 when engaged in courier-type transportation as set forth in Appendix A, attached hereto and by this reference made a part hereof.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 14th day of JUNE, 1979.

John E. Bryson
President

Thomas L. Stinson

Richard D. Grock

Clair T. Dunning

Terrence W. Gering
Commissioners

APPENDIX A

Albert R. Scialabba, doing business as Cal Parcel Express, is exempted from the applicable provisions of Minimum Rate Tariff 2 when engaged in courier-type transportation of the following commodities:

Shipments of the following commodities, only when transported in vehicles of a licensed weight of 4,500 pounds or less: (1) Business records, viz., checks, drafts, money orders, securities, transit items, sales audit media, tabulation cards, data processing materials, legal documents, printed or reproduced documents or data and related items, video tapes, films and printed news stories; (2) Medical specimens, viz., human and animal specimens, contained in glass or plastic tubes or vials, or whole blood serum for medical laboratory examination; individual units of whole blood; glass slides for microscopic tissue examination; urine and stool specimens; sputum, wound and other similar cultures; tissue samples for pathological examination; X-ray photographs, medical transmittal documents, and documents reporting results of laboratory examination, and specimen envelopes, laboratory test forms and transmittal containers furnished by medical laboratories to their clients (subject to NOTE).

NOTE--Delivery shall be made within 24 hours after pickup.

(END OF APPENDIX A)