

Decision No. 90938 OCT 23 1979

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of NOW AIR COURIER, a corporation,)
for certificate of public con-)
venience and necessity as an air)
freight forwarder of general)
commodities between points in the)
State of California.)

Application No. 59118
(Filed September 4, 1979)
(Amended October 19, 1979)

OPINION AND ORDER

Now Air Courier, a California corporation, seeks a certificate of public convenience and necessity authorizing it to operate as a freight forwarder by air utilizing the lines of air common carriers, highway common carriers, and passenger stage corporations in the transportation of property by aircraft between various points and places in California.

Applicant has registered as a domestic freight forwarder with the Civil Aeronautics Board pursuant to Form 296B.

Applicant proposes to provide pickup and delivery service within 25 statute miles of the airports served in California. No collection or distribution service will be provided to or from any point more than 25 statute miles distant from any airport unless the service beyond is provided by a highway common carrier. In that regard, it proposes to charge the shipper the highway common carrier rate for the beyond movement in addition to its charges for door-to-door service.

The basic operation contemplated by applicant as a freight forwarder is to consolidate freight for several shippers for movement by air. It is anticipated that there will be a greater movement of consolidated freight between the larger airports, such as Los Angeles, San Francisco and Oakland. Applicant's rates will take into consideration the consolidation of freight between these volume points. Additionally, the air freight rates between those points are, in many instances, lower than the rates to some of the smaller airports. As a

result, and also because of the circumstances regarding the rates for service to points beyond 25 statute miles of an airport, the rates applicant proposes may, in some instances, be greater for shorter distances than for longer distances. Applicant requests that it be authorized to depart from the long- and short-haul provisions of Section 461.5 of the Public Utilities Code in that regard.

Financial statements attached to the application show that the applicant has the financial ability to establish and operate the proposed service.

The certificate of service indicates that copies of the application were mailed to various interested parties on July 13, 1979. The application was listed on the Commission's Daily Calendar of September 6, 1979. Silver, Rosen, Fischer and Stecher, Attorneys for Air Couriers International filed a formal protest with the Commission objecting to certain aspects of the application. Applicant has filed an amendment to the application answering the protestant's objections.

In the circumstances, the Commission finds that:

1. Applicant has the experience and financial ability required to institute and maintain the proposed service.
2. Public convenience and necessity require the operation by applicant of the proposed service.
3. Departure from the long- and short-haul provisions in connection with the establishment of rates by applicant between its break-bulk terminal points and in connection with its door-to-door service is justified.
4. It can be seen with certainty that there is no possibility that the proposed activity will have a significant effect on the environment.
5. A public hearing is not necessary.

The Commission concludes that the application, as amended, should be granted.

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

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Now Air Courier, a California corporation, authorizing it to operate as a freight forwarder as defined in Section 220 of the Public Utilities Code, via the lines of air common carriers, highway common carriers, and passenger stage corporations, as specifically set forth in Appendix A of this decision.

2. In providing service pursuant to the authority granted by this order, applicant shall comply with and observe the following service regulations. Failure to do so 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.
- (b) Within one hundred twenty days after the effective date of this order, applicant shall establish the authorized service and 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 117-Series.

- (e) Applicant 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.
- (f) Applicant shall comply with the requirements of the Commission's General Order 84-Series for the transportation of collect on delivery shipments. If applicant elects not to transport collect on delivery shipments, it shall make the appropriate tariff filings required by the General Order.
- (g) Applicant shall comply with the requirements of the Commission's General Order 100-Series and the safety rules administered by the California Highway Patrol if applicant intends to operate a motor vehicle under this authority.

3. In the establishment of rates for transportation service as a freight forwarder, Now Air Courier is authorized to establish and maintain lesser rates for a longer distance for the transportation of property between its major consolidation terminal points than for the transportation of property for shorter distances to other points, and in the establishment and maintenance of rates from or to points within 25 miles of an airport as compared to points beyond 25 miles of an airport.

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

Dated OCT 23 1979, at San Francisco, California.

Commissioner JOHN E. BRYSON.

Present but not participating.

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

President

Richard D. Lovell

Charles T. ...

James M. ...

Commissioners

Now Air Courier, a California corporation, by the certificate of public convenience and necessity granted in the decision noted in the margin, is authorized to operate as a freight forwarder, as defined in Section 220 of the Public Utilities Code, via the lines of air common carriers, highway common carriers, and passenger stage corporations, subject to the following conditions:

1. Applicant shall not ship or arrange to ship any property unless such property shall have transportation by aircraft originating and terminating at one of the following points served by air common Carrier.

Arcata	Lancaster	Riverside
Bakersfield	Long Beach	Sacramento
Bishop	Los Angeles	Salinas
Blythe	Marysville	San Bernardino
Borrego Springs	Merced	San Diego
Burbank	Modesto	San Francisco
Carlsbad	Mojave	San Jose
Chico	Monterey	San Luis Obispo
Crescent City	Oakland	Santa Ana
El Centro	Ontario	Santa Barbara
Eureka	John Wayne Airport	Santa Maria
Fresno	Oxnard	Santa Rosa
Fullerton	Palmdale	Stockton
Indio	Palm Springs	Ventura
Laguna Beach	Paso Robles	Visalia
Lake Tahoe Airport	Redding	Yuba City

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2. The underlying carrier used by Now Air Courier between airports shall be an air common carrier, except that in emergencies only, such as an airport being closed because of inclement weather, highway common carriers or passenger stage corporations may be used as underlying carriers to provide the transportation.
3. No collection or distribution service shall be provided by Now Air Courier to or from any point more than 25 statute miles distant from any airport served by it unless said service beyond said 25 statute miles is performed by a highway common carrier. As used herein "point" means any point within 25 statute miles of the city limits of any city in which is located an airport, or 25 statute miles of any airport located in an unincorporated area.
4. Now Air Courier shall establish door-to-door rates for service between airports, including points within 25 statute miles thereof as defined in paragraph 3 herein. On traffic moving to or from points beyond said 25-mile radius Now Air Courier shall, in addition to said door-to-door rates, assess the lawful tariff rates of any highway common carrier utilized to perform said beyond service.
5. Now Air Courier shall not forward any shipments containing commodities prohibited by law from transportation by aircraft.
6. Applicant shall ship or arrange to ship packages weighing only up to fifty (50) pounds.

(END OF APPENDIX A)

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