

ORIGINAL

OCT 22 1980

Decision No. 92337

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application
of MILKEN EXPEDITING, INC., a
corporation, for a certificate of
public convenience and necessity
as an air freight forwarder of
general commodities.)

Application No. 59342
(Filed December 18, 1979)

Handler, Baker, Greene & Taylor, by Marvin Handler,
Attorney at Law, for applicant.
Loughran & Hegarty, by Thomas Loughran, Attorney at
Law, for Priority Parcel Express, protestant.
Thomas A. Bogott, Attorney at Law, for the State of
California, Department of Corporations; and
James A. Wattson, Attorney at Law, for
Cathy Nelson; interested parties.

ORDER OF DISMISSAL

Applicant Milken Expediting, Inc., a Michigan 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 is registered as a domestic freight forwarder
with the Civil Aeronautics Board.

A duly noticed prehearing conference in this matter was
held before Administrative Law Judge Mallory in San Francisco on
February 11, 1980. The protest of Priority Parcel Service (Priority)
was withdrawn based on the understanding reached with applicant that
it would not protest any application for a certificate to operate as
an air freight forwarder filed by Priority. Interested parties
stated that they did not desire that a public hearing be held.

A.59342 ALJ/jn/hh


The basic operation contemplated by applicant as a freight forwarder is to consolidate freight for several shippers for movement by air. Firms which assemble and ship air freight are "indirect air carriers" subject to regulation by the Civil Aeronautics Board under Title IV of the Federal Aviation Act of 1958, as amended. Pursuant to the order of the U.S. District Court for the Northern District of California in Sierra Flite Service Inc., et al. v California P.U.C., et al., Civil No. 079-0840 SW, June 1 1979, this Commission is permanently enjoined from regulating the rates, routes, or services of any air carrier having authority or holding an exemption under Title IV of the Federal Aviation Act of 1958, as amended. The court held that the sole authority to regulate such air carriers lies with the Civil Aeronautics Board. The federal district court order has been appealed by this Commission.

Processing of this application has been withheld pending resolution of jurisdictional issues. The facts under which this application was filed have changed and the record is stale. This application should be dismissed because the jurisdictional issue raised on appeal may not be finally resolved for some time. If the jurisdictional issue is resolved in favor of California, the application may be refiled.

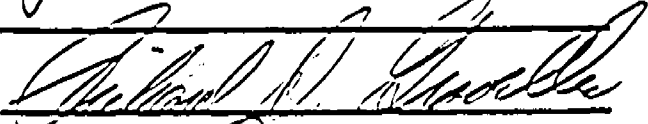
Therefore, IT IS ORDERED that Application No. 59342 is dismissed without prejudice.

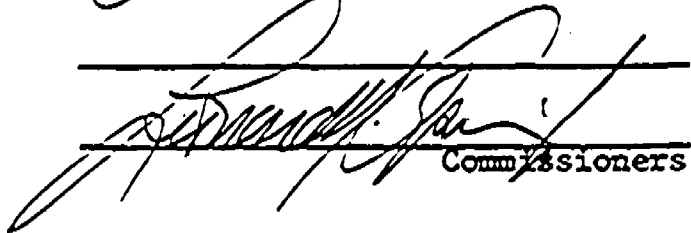
The effective date of this order shall be thirty days after the date hereof.

Dated OCT 22 1980, at San Francisco, California.



President





Commissioners

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

Commissioner Claire T. Dedrick, being necessarily absent, did not participate in the disposition of this proceeding.