

Decision 97-11-027 November 5, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of CATALINA EXPLORER CO., Inc. for a certificate of public convenience and necessity to operate as a vessel common carrier between Dana Point, California and Avalon, California.

Application 96-02-030
(Filed February 2, 1996)

ORIGINAL

In the Matter of the Application of ISLAND NAVIGATION COMPANY, INC., a California corporation doing business as CATALINA ISLAND WATER TRANSPORTATION CO., (VCC-43) to amend its certificate of public convenience and necessity and to extend its operating authority to include the transportation of persons and baggage by vessel between Dana Point and Long Beach, California, on the one hand, and all points and places on Santa Catalina Island, on the other hand.

Application 96-04-013
(Filed April 9, 1996)

(See Appendix B for Appearances.)

O P I N I O N

I. Introduction and Summary

In this decision we address two applications which request authority to establish new vessel common carrier services between points on the mainland of California, on the one hand, and Santa Catalina Island, on the other. In Application (A.) 96-02-030, we deny authority to establish a new scheduled service between Dana Point Harbor and Avalon, but grant authority to establish nonscheduled service between those points. In A.96-04-013 we grant authority to establish scheduled service from Dana Point to Santa Catalina Island points, and grant authority to establish new scheduled service from Long Beach. Additionally, we grant those portions of the application which request authority to conduct nonscheduled service, and to transport newspapers, periodicals,

mail, bicycles, surfboards, and scuba gear for the authorized scheduled and nonscheduled services.

Our decision is based upon a careful analysis of the existing circumstances in the market for service to Santa Catalina Island from various ports as well as a policy preference to not restrict the choices available to passengers. Our analysis contains several assumptions about the near-term plans articulated by the parties, and by other operators who are engaged in the provision of cross-channel vessel common carrier services. First, it is presumed that Catalina Clipper, Inc. (Clipper), the successor in interest to Catalina Cruises, Inc. (Cruises), a protestant in this proceeding, will upgrade and continue to operate its "basic" high-capacity two-hour service between Long Beach and Santa Catalina Island, as it has represented to the Commission in A.97-03-038. (See Decision (D.) 97-07-103 (June 25, 1977.)) Second, it is presumed that Clipper will pursue its plans to add high-speed vessels on its runs, also as represented in A.97-03-038 (*Id.*). Third, we assume that Catalina Channel Express, Inc. (Express), another protestant in this proceeding, will expeditiously pursue its efforts to initiate the operation of scheduled service on the Dana Point-Avalon route, as it has represented to the Commission that it plans to do.¹ (See Case 97-03-050.) Our denial of a portion of A.96-02-030 in this decision is without prejudice to the applicant's option to request authority to operate those services in the future, if applicant is able to satisfy our requirements for financial and/or operational fitness more convincingly. Our decision today implements the requirement of Section 1007 of the Public Utilities (PU) Code that the services we authorize are required by public convenience and necessity. In reaching this result, we have considered both the public need for new and better service and the public interest served in providing the benefits of competition and choice to consumers whenever practicable.

¹ In making this assumption, we also assume that Express will ensure that it has current valid authority from the Commission before initiating such service. To this end, we note that Express filed a new application for such authority after the Administrative Law Judge's (ALJ) Proposed Decision (PD) was filed. See A.97-09-040 (filed September 19, 1997).

The consequences which we foresee will flow from today's decision can best be described by comparing existing service between California mainland points and Santa Catalina Island with that which we expect after the present applicants and other parties implement authorized services. Presently, Cruises/Clipper operates a basic scheduled service between Long Beach and two Santa Catalina Island points, Avalon and Two Harbors. This service is offered at a significantly lower fare than that of other carriers, and transit times are about twice as long. Scheduled service is also currently operated between Newport Beach (Orange County) and Avalon by Catalina Passenger Service, Inc. (Passenger Service). No scheduled service is operated between Dana Point (Orange County) and Santa Catalina Island points. Nonscheduled service is available on several cross-channel routes, and we recently increased the availability of such service by approving the application of Pacific Adventure Cruises, Inc., to provide nonscheduled service between Marina del Rey and all accessible points on Santa Catalina Island, including Avalon and Two Harbors. See D.97-06-043 (June 11, 1997).

Today's decision, in concert with those we have issued in other recent proceedings, is intended to accomplish the following:

- Maintain basic, low-cost scheduled service between San Pedro and Long Beach, on the one hand, and Avalon and Two Harbors, on the other hand.
- Encourage competition in the market for scheduled high-speed services between Long Beach and Santa Catalina Island.
- Authorize two competing scheduled high-speed services between Dana Point and Santa Catalina Island in the near future, with allowance made for possible additional operators who can make the requisite showing.
- Encourage the continued availability of viable, reasonably priced service between Newport Beach and Avalon.
- Foster the availability of competitive nonscheduled services, wherever needed, between major mainland harbors on the San Pedro Channel and Santa Catalina Island points.

Consequently, after all newly authorized sources are fully implemented, we anticipate that there will be basic scheduled service, as well as three competing scheduled premium services, between San Pedro/Long Beach and Avalon/Two Harbors; two

competing scheduled services between Dana Point and Avalon; and scheduled service from Newport Beach to Avalon. Nonscheduled cross-channel services will be available from all major mainland harbors to Santa Catalina Island points, principally for the benefit of group charters. Potential additional entrants may also be prepared to seek authority to operate scheduled cross-channel service if sufficient public need demonstrably exists.

II. Background and Procedural History

A. A.96-02-030—*Catalina Explorer Co., Inc. (Explorer)*

Under the amended application in A.96-02-030, Explorer seeks authority to establish and operate a common carrier vessel service to transport passengers and their baggage, and newspapers, periodicals, mail, bicycles, surfboards, and scuba gear, between Dana Point Harbor and Avalon.² Explorer proposes to operate both scheduled and what it characterizes as "on-call/charter services" on this route.

Explorer plans to operate one round trip per day, seven days per week, from the second week of May through the second week of September. During the rest of the year, Explorer plans to operate on weekends only, one round trip per day. It proposes to charge a basic round-trip fare of \$38 for an adult. Its rates for on-call/charter service would be \$300 per hour for 110 or fewer passengers, and \$395 per hour for 111 to 149 passengers, with an eight-hour minimum.

Explorer has not yet purchased or leased the vessel it intends to use to provide this service. Its plans are to acquire an 80-foot monohull vessel with a 24-knot cruising speed and a capacity of 149 passengers. Although the amended application

² The original application was filed under the name Dana Point-Catalina Transit Co., Inc. (Transit) (projected corporation). A protest filed by an existing California corporation of the same name objected to the applicant's use of this name in the application. At the first prehearing conference, the ALJ noted this as well as other deficiencies in the application, and required the applicant to file an amended application. The applicant did so, under the name of Explorer, on August 30, 1996, but for some reason did not change the caption of the proceeding. We have corrected this error by substituting the correct name of this applicant for the original in the caption of this order.

states that negotiations are underway to finalize the purchase of the vessel, the status of the transaction remains uncertain.

Explorer's organizers are experienced with maritime matters, and several are licensed by the United States Coast Guard. The balance sheet attached to the amended application³ demonstrates that, as of August 30, 1996, Explorer had cash on hand of \$10,000. Explorer's witness, Donn S. Dill, explained at the evidentiary hearing (EH) that the company intends to purchase the vessel described in the application irrespective of whether we grant the application, and that the vessel can be placed in other, unregulated service, such as whale watching, wine-tasting cruises and live-entertainment cruises, and used for other recreational activities which will generate revenue (Tr. 507-508).

Explorer notes that there is currently no service between Dana Point and Santa Catalina Island, and asserts that there is public need for such service.

B. A.96-04-013—Island Navigation Inc., d/b/a Catalina Island Water Transportation Co. (Island Navigation)

Since 1976, Island Navigation has been a certificated vessel common carrier engaged in the transportation of persons and hand-baggage between points and places on Santa Catalina Island, between those points and places and vessels offshore, and between the vessels themselves. In other words, Island Navigation provides local Santa Catalina Island transportation services.

Island Navigation seeks to modify its certificate of public convenience and necessity (CPCN) to authorize establishment of new cross-channel vessel common carrier services for persons and baggage, as well as newspapers, periodicals, mail, and recreational equipment, between (1) Dana Point and all points on Santa Catalina Island (including Avalon), and (2) Long Beach and all points on Santa Catalina Island (including Avalon). As requested in its application, the specific services it seeks to establish are:

³ Exhibit E-3 to the First Amended Application.

- Scheduled and on-call service between Dana Point and Long Beach, on the one hand, and Avalon, on the other hand.
- On-call service between Dana Point and Long Beach, on the one hand, and all points and places on Santa Catalina Island, on the other hand.
- Common carrier services by vessel transporting newspapers, periodicals, mail, bicycles, surfboards, and scuba gear between Dana Point and Long Beach, on the one hand, and all points and places on Santa Catalina Island, on the other hand.

Island Navigation owns and operates ten vessels in its present service between local Santa Catalina Island points and vessels. Entirely different vessels would be used to furnish its proposed cross-channel services. As described in the application, the cross-channel boats would be high-speed catamarans with a cruising speed of 30 knots and a passenger capacity of 149. The construction schedule which would be established calls for the availability of one vessel in 18 months, two vessels in 24 months, and three vessels in 36 months.

Island Navigation proposes to operate four daily round-trip schedules between Long Beach and Avalon, and three daily round trips between Dana Point and Avalon, from June 15 to September 15. Between September 16 and June 14 these daily frequencies would be reduced to three and one, respectively. The basic adult round-trip fare for either route would be \$36. Running time would be 60 minutes one way for the Long Beach route, and 70 minutes for the Dana Point route.

On-call service would be provided year-round between Dana Point or Long Beach and Avalon and all other points and places on Santa Catalina Island at a \$1500 hourly charter rate, or at a rate of \$18.00 per one-way passenger, with a 75-passenger minimum.

Island Navigation intends to use terminal and docking facilities in Long Beach that are owned by the City of Long Beach, and facilities in Dana Point that are owned by Orange County. The application states that it currently has suitable docking facilities on Santa Catalina Island.

The financial statements, prepared as of September 30, 1995, which are included with the application, show \$20,456 cash on hand, and retained earnings for the

year ended that date of \$397,314. Pro forma expenses for the first year of operation of the new service are estimated to be \$320,620.

In support of its application, Island Navigation cites a public need for service between Dana Point and Santa Catalina Island because none presently exists. On the Long Beach route, the applicant cites a public need for service because of the absence of competition, as it was anticipated at the time of filing that A.96-02-034 would result in the sale of Cruises to Express, its only competitor, leaving but one operator with year-round daily service between the mainland and Santa Catalina Island.⁴ Island Navigation also brought forth several witnesses who testified about problems getting a seat or making a reservation with the existing carriers during the peak summer months.

C. Consolidation

A.96-02-030 and A.96-04-013 were consolidated by ALJ Ruling dated October 16, 1996.

D. Protests and Participation

Transit protested both applications on the basis of their sufficiency, and challenges Island Navigation's application as premature because of the unavailability of a vessel to provide the service. No other protests were filed.⁵

By ALJ Ruling, Express and Cruises were permitted to appear as interested parties and participate in the EH under Rule 54 of our Rules of Practice and Procedure (Rules), to the limited extent of offering evidence and cross-examining testimony on the issue of public need for service on the Long Beach-Santa Catalina Island route generally, including any effect which the granting of authority on the Dana Point route may have upon such service. The ALJ Ruling stated that the intent of the

⁴ This set of circumstances has since changed, and Cruises has been sold to Clipper, an unrelated entity, leaving the competitive situation on the Long Beach route intact. See D.97-06-103 (June 25, 1997).

⁵ The County of Orange attempted to protest both applications on February 14, 1997, but the tendered protest was not timely.

Commission was to obtain a complete picture of the present and future need for service on the routes (ALJ Ruling dated January 27, 1997).

E. Hearing and Submission

A three-day EH was held, commencing March 3, 1997. After one round of concurrent briefs was filed, the proceeding was submitted on May 23, 1997.

III. Discussion

A. Santa Catalina Island and Cross-Channel Vessel Common Carrier Services

The uncontroverted evidence presented at the EH gives us a clear picture of Santa Catalina Island's population, economy, and service needs. These facts are amplified by a mosaic of additional information presented in a number of recent Commission proceedings which variously sought approval, modification, or transfer of CPCNs, or fare increases.⁶ This recent flurry of regulatory activity concerning Santa Catalina Island vessel services has enhanced the Commission's understanding of Santa Catalina Island's current transportation needs.

Santa Catalina Island, of course, is a historic vacation destination some 26 to 30 miles distant from California's coastal harbors. Separating the mainland from the island is San Pedro Channel. Approximately 87% of the island is, and for the foreseeable future will remain, open space. Development potential is growing slowly, if at all, and visitation has remained remarkably stable over the past two decades. Virtually all travel to and from the island is related to recreation, particularly because business travel usually relates to the businesses that serve tourism and recreation. In view of the stability of the island's land use and the slow growth in its tourist amenities, the need for common carrier vessel service is relatively finite at this point in time. About 80% of all travel is during the summer months, the "100 golden days" from Memorial Day to Labor Day.

⁶ References to several of these proceedings are made in the Introduction and Summary. These do not, by any means, comprise an exhaustive list.

Although there is air service to Santa Catalina Island, it is expensive, and virtually all commercial travel to and from the island is by vessel. Ridership has remained level for more than ten years at about one million persons annually. As described above, scheduled common carrier vessel services which serve the island are those operated to and from Long Beach and San Pedro by Cruises (or its successor) and Express, and that of Passenger Service from Newport Beach, which is daily during the summer months.

The more basic daily service is operated by Cruises (or Clipper) with large (700-passenger) vessels. The channel crossing requires approximately two hours, and the current fare level is \$23 round trip, about one-third less than the fare for the faster competing service of Express, whose high-speed vessels require about one hour for the trip at a fare level of \$33. Although Cruises' market share with its slower vessels was historically about 50%, it has consistently operated at a loss during the past decade. Express, on the other hand, has been profitable, and has made a significant investment in new boats, including a 400-passenger high-speed catamaran, in recent years.

Even though the market appears to be relatively finite, competition for the Catalina service has historically been vigorous, with new entrants appearing from time to time, sometimes successfully and sometimes not. This competitive activity appears to be responsible for the equipment and service improvements which have occurred over the years, and for preventing any unreasonable increase in fare levels. It has also been responsible for differentiating the market into two classes, one of which is distinctly "premium" as compared to the other. At present there seems to be room for both. There is also the potential that an entrant such as Island Navigation could carve out a new niche in the market by offering a unique feature to this cross-channel service, thereby differentiating its service from the existing competitors. Island Navigation could possibly offer new departure and arrival times that could attract additional riders across the channel for day trips. The entrepreneurial potential in this market is endless and could actually increase the size of the market, depending on the level of innovation and the market's response to the new service offerings. Recent success stories that have exhibited this phenomenon include Federal Express and Southwest Airlines. These two

highly successful companies provided a new and unique services, i.e. overnight package delivery and no-frills short haul air service, in markets where services had not changed in many years. In so doing, the companies are seen by many industry observers to have contributed to an increase in the number of packages mailed and the number of air trips taken respectively.

B. Standards for Certification

PU Code § 1007 requires us to authorize a vessel common carrier service if it is required by public convenience and necessity. We apply that requirement broadly, and we have interpreted it to require that the applicant demonstrate its financial and operational fitness, and make a clear showing of public need for the service. Adherence to these standards ensures that the public interest will be served by meeting the public need with competent and viable operators.

We must balance this formulation for scrutinizing an individual applicant against the effect of competition where more than one carrier is involved. In *Pacific Towboat and Salvage*, 9 CPUC2d 475 (1982), we stated that we will not limit carrier entry into the water vessel market simply to protect the interests of existing carriers. Only where competition will not lead to lower rates or better service to the traveling public do we regard competition as contrary to the public interest, and deny entry to an aspiring competitor.

To a certain degree, this is the situation which confronts us with the Santa Catalina Island services. As stated previously, the cross-channel market has witnessed equipment and service improvements since the advent of competition, as well as the differentiation of the market into two classes of service, basic and premium, where only "no-frills" service had existed previously. Given this experience, we cannot assume that another new entrant will not also offer some new and better service to the travelling public. Hence, we cannot deny entry to new carriers on these grounds alone.

Despite our unwillingness to limit new entrants, we note that Cruises'/Clipper's "basic" service, in our view, is a particularly essential part of the island's economic base. We also note that new routes and services have taken hold in

some cases, but duplicative services may have eroded the viability of existing carriers and, in some instances, have failed. Depending on the specific circumstances of the services remaining, this may or may not serve the public interest. As stated previously, we will not keep a carrier from the market solely to protect existing carriers.

Competition that hurts existing competitors does not necessarily hurt the public. Generally, competition breeds innovation. Nonetheless, we intend to continue our scrutiny of the characteristics of this market to ensure that some level of "basic" service is maintained to satisfy the public need for essential transportation. Should Cruises (Clipper) find itself unable to sustain the current level of basic daily service, it must obtain Commission authority to alter its tariff, which would trigger a reassessment of the basic service situation serving Catalina Island from Long Beach. We will carefully review such a filing.

A specific consideration in our examination of the proposed Dana Point services is Orange County Department of Harbors, Parks, and Beaches' (HPB) desire to have only one certificated carrier serve Dana Point Harbor because of asserted limitations in available parking space and berthing facilities. However, we do not view the circumstances portrayed by HPB as a sufficient basis for limiting competition on this route. Although we received a great deal of testimony on this subject, we see no reason to assume that a ferry terminal at Dana Point Harbor must be used exclusively by one carrier. Similar space limitations exist on the San Francisco Bay at Sausalito and in the Pier 39/Fisherman's Wharf and Ferry Building areas of San Francisco, yet vessel carriers have successfully implemented joint use arrangements, even for the busy commute hours. We will not allow HPB's preference for awarding an exclusive franchise to persuade us to deny authority to a qualified competing carrier, where public need is demonstrated. Joint use arrangements for the dock, and joint shuttles for parking, are solutions which are available to HPB to alleviate its space limitations.

C. A.96-02-030

The record demonstrates that there is a public need for vessel service from Dana Point to Santa Catalina Island. Dana Point has the best freeway access to Interstate

Highway 5, the major coastal arterial freeway, of any South Coast harbor, and an enormous unserved population in Orange and northern San Diego Counties could be served. Public need is established.

The principal deficiency in A.96-02-030 is that Explorer's operational and financial qualifications are weak. It plans to acquire a boat, which is purportedly available immediately, and it intends to use that vessel in unregulated recreational service. We see no reason why we should not allow Explorer to include unscheduled service among its offerings if the boat is acquired. Indeed, this may be a valuable service improvement at times of critical need. But the record does not demonstrate that Explorer has resources to provide scheduled cross-channel service for a sustained period if ridership does not meet its projections. We will therefore approve that part of the application requesting authority to operate nonscheduled services, and deny the remaining request for authority. The authority we grant must be exercised within two years.⁷

D. A.96-04-013

The record demonstrates that there is a public need for a third service between Long Beach and Santa Catalina Island at this time. Not only does the record provide the testimony of the public that demand exceeds supply on peak summer days, but a new carrier provides the potential for price competition and service enhancement through product differentiation. While a new carrier could cannibalize the market share of the existing carriers, there is also the possibility that the new carrier's service could appeal to a different customer base and not seriously affect the existing market. Our current policy preference is to allow customers to choose the provider they prefer. We find this is far better than regulatory intervention and protectionism to limit the provision of service to only the existing carriers thereby foreclosing market innovation.

⁷ Our decision today is not intended to preclude Explorer from requesting authority to operate scheduled service if it is able to make a satisfactory showing of fitness and public need at a later time.

Because Island Navigation proposes new high-speed service at a fare level higher than the current high speed service, we assume Island Navigation has some plan to differentiate its service in a new and unforeseen manner. We also assume that it will principally draw customers from the other high-speed services, rather than the basic service offered by Cruises/Clipper. If indeed the market cannot sustain three competitors for high-speed service, we prefer to let customers eliminate one of these carriers through their own choice rather than deny entry to Island Navigation. In our view, the public interest is served by providing another choice for customers and letting the market decide which companies are ultimately successful.

There is also a public need for new service between Dana Point and Santa Catalina Island points, as we have previously stated. Without a suitable vessel in its possession, Island Navigation is not in a position to initiate either scheduled or nonscheduled service immediately. However, it is otherwise operationally fit to initiate these services, and its history of operation and pro forma financials realistically demonstrate that it will be able to acquire suitable vessels on a specified schedule, and could sustain the cost of operation once they are in service. This is a situation which is clearly distinguishable from that of Explorer, *supra*. We will grant Island Navigation's request to establish scheduled service on the Long Beach route, and grant its request for authority to operate scheduled and nonscheduled services on the Dana Point route, nonscheduled service on the Long Beach route, and related carriage of newspapers, periodicals, and recreational equipment on both routes. This authority must be exercised within two years, or it will lapse.

IV. Comments

The ALJ's PD was mailed on August 21, 1997. Comments were timely filed by Island and jointly by Express, Clipper, and Transit (collectively, the parties in opposition). Island's only comment was to correct a typographical error in Appendix A, Original Page 2, Section II.B.3, which we have incorporated in the final version of that Appendix. The comments of the parties in opposition assert that the record does not support our finding that there are adequate docking, loading, and parking facilities at

Dana Point Harbor for multiple carrier services. The parties in opposition also contend that the terms "on-call service" and "charter service" are ambiguous and inconsistent with public utility law and CPUC practice, and should be replaced with the term "nonscheduled service," which we have generally used in the past.⁴

We disagree with the assertions of the parties in opposition about the capacity of Dana Point Harbor. The extensive direct and cross-examination testimony about Exhibit 6, which depicts the harbor facilities, make it clear that HPB and prospective vessel operators have a variety of unexplored options for joint use. Not only is the preferred site ("A") capable of being used by more than one operator, but one or two alternative sites are also capable of being adapted for use by vessel service. Only the absence of will on the part of the HPB and potential competitors would constrain them from achieving a solution to the challenge of joint use.

We adopt the suggestion of the parties in opposition concerning the nomenclature for nonscheduled services. Other editorial changes of a nonsubstantive nature have been made at the behest of the ALJ or the assigned Commissioner to clarify the language of the PD.

V. Conclusion

Our decision today, in concert with earlier decisions concerning cross-channel services, will encourage the establishment of a service pattern where viable carriers will provide needed service in a competitive environment. Additional operators who can demonstrate fitness and public need will not be precluded from future entry, as potential competition will promote better service and the maintenance of reasonable fares.

Findings of Fact

1. The volume of travel between Santa Catalina Island and the California mainland by common carrier is relatively finite and stable at this point in time, except to the

⁴ See, however, Appendix VCC-78 to D.97-06-013.

extent that new markets may develop for travel to Santa Catalina Island from Orange County and northern San Diego County.

2. The overwhelming majority of travel between the California mainland and Santa Catalina Island is related to recreation.

3. At the present time, the scheduled common carrier vessel services between the California mainland and Santa Catalina Island are those of Cruises/Clipper and Express from the Long Beach and San Pedro harbors, and that of Catalina Passenger Service, Inc. from Newport Beach. Service by Cruises/Clipper is a "basic," two-hour one-way service provided with 700-passenger conventional monohull vessels. Service by Express is a "premium," one-hour, one-way service provided with high-speed vessels. Fares for the "basic" service have historically been about one-third less than for the "premium" service.

4. There is a continuing public need for "basic" scheduled common carrier vessel service between San Pedro/Long Beach and the major harbors on Santa Catalina Island. These routes are the shortest available across the San Pedro Channel.

5. There is a public need for "premium" scheduled vessel common carrier service between the major mainland and Santa Catalina Island harbors. Competition on "premium" service routes is desirable.

6. There is a public need for common carrier vessel service between Dana Point Harbor and all points on Santa Catalina Island. Dana Point Harbor is the nearest protected harbor to northern San Diego County, and has reasonably good access to Interstate Highway 5, the major north-south coastal arterial highway that serves Orange and San Diego Counties.

7. The docking, loading, and parking facilities at Dana Point Harbor are adequate to accommodate vessels of the types and sizes proposed to be used by the applicants, and are capable of being developed for use by more than one vessel common carrier through joint facility arrangements, common parking shuttle service to remote parking sites, and other sharing arrangements.

8. Explorer is financially and operationally fit to operate nonscheduled services between Dana Point Harbor and Avalon, but not to operate scheduled services between those points.

9. A public need does exist for a new operator for vessel common carrier service between Long Beach Harbor and Avalon, Santa Catalina Island, because demand exceeds the supply of seats available on certain peak travel days.

10. A new carrier between Long Beach Harbor and Avalon, Santa Catalina Island, provides an additional choice for passengers and the potential for price competition and service enhancement.

11. Island Navigation is financially fit to initiate scheduled vessel common carrier service between Dana Point Harbor and Avalon, Santa Catalina Island, and is operationally fit to operate such service after acquiring an appropriate vessel for cross-channel operation in accordance with its proposed construction schedule. Island Navigation is able to acquire such a vessel within a 24-month period.

12. Island Navigation is financially fit to initiate scheduled and nonscheduled vessel common carrier service between Long Beach and all Santa Catalina Island points, and Dana Point and all other Santa Catalina Island points, and is operationally fit to operate such service after acquiring a vessel appropriate for cross-channel service.

Conclusions of Law

1. Scheduled service by an additional vessel common carrier is in the public interest and therefore a certificate of public convenience and necessity should be granted at this time between Long Beach and Avalon, Santa Catalina Island.

2. Scheduled vessel common carrier service between Dana Point Harbor and Avalon is required by public convenience and necessity at this time.

3. Nonscheduled services between Long Beach and Dana Point, on the one hand, and all Santa Catalina points (including Avalon), on the other hand, are required by public convenience and necessity, and expansion of such service is desirable in that it would provide additional capacity needed during periods of peak demand, and

broader options and choices for persons who desire to make group travel arrangements.

4. Explorer should be authorized to provide nonscheduled service between Dana Point Harbor and Avalon, and to transport newspapers, periodicals, mail, bicycles, surfboards, and scuba gear for its authorized services.

5. Island Navigation should be authorized to provide scheduled service between Dana Point Harbor, on the one hand, and Avalon, on the other, and scheduled and nonscheduled service between Long Beach and Dana Point, on the one hand, and all points and places on Santa Catalina Island (including Avalon), on the other hand, and common carrier services by vessel transporting newspapers, periodicals, mail, bicycles, surfboards, and scuba gear between Dana Point and Long Beach, on the one hand, and all points and places on Santa Catalina Island, on the other hand, in connection with these services.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Catalina Explorer Co., Inc. (Explorer), a corporation, authorizing it to operate as a vessel common carrier, as defined in Public Utilities (PU) Code §§ 211(b) and 238, to transport persons and their baggage, between the points and over the routes set forth in VCC74. This authorization shall expire unless exercised within two years after the effective date of this order.

2. The certificate of public convenience and necessity granted to Island Navigation Company, Inc. (Island Navigation), a corporation, authorizing it to operate as a vessel common carrier as defined in PU Code §§ 211(b) and 238, to transport persons and their baggage, between the points and over the routes set forth in Appendix A of Decision 89211, as amended, is further amended by replacing First Revised Page 1, with Second Revised Page 1 and Original Page 2. This authorization, as granted by this decision, shall expire unless exercised within two years after the effective date of this order.

3. Explorer and Island Navigation shall file evidence that it has complied with all safety rules and regulations of the United States Coast Guard and that the vessels have been inspected and certified for the authorized operation in this proceeding.

4. Explorer and Island Navigation shall:

- a. File a written acceptance of this certificate within 30 days after this order is effective.
- b. Establish the authorized service and file tariffs and timetables within two years after this order is effective.
- c. State in the tariffs and timetables when service will start; allow at least ten days' notice to the Commission; and make timetables and tariffs effective ten or more days after this order is effective.
- d. Comply with General Orders Series 87, 111, and 117.
- e. Maintain accounting records in conformity with the Uniform System of Accounts.
- f. Remit to the Commission the Transportation Reimbursement Fee required by PU Code § 403 when notified by mail to do so.

5. All authority requested in Application (A.) 96-02-030 and A.96-04-013 which is not specifically granted in this order is denied.

6. A.96-02-030 and A.96-04-013 are closed.

This order is effective today.

Dated November 5, 1997, at San Francisco, California.

P. GREGORY CONLON
President
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
RICHARD A. BILAS
Commissioners

I dissent.

/s/ JOSIAH L. NEEPER
Commissioner

SECTION I. GENERAL AUTHORIZATIONS, RESTRICTIONS, LIMITATIONS,
AND SPECIFICATIONS.

Catalina Explorer Co., Inc, a corporation, by the certificate of public convenience and necessity granted by the decision noted in the foot of the margin, is authorized to conduct nonscheduled common carrier services by vessels, on an "on-call" or charter basis, for the transportation of passengers and their baggage and newspapers, periodicals, mail, bicycles, surfboards, and SCUBA gear, between Dana Point and Avalon, Santa Catalina Island, subject to the following conditions:

- a. No vessel shall be operated unless it has met all applicable safety requirements, including those of the United States Coast Guard.
- b. "On-call" service shall be performed at hourly or per diem rates which include the services of vessel and crew, regardless of the number of passengers transported. Transportation shall not be performed on an individual fare basis.
- c. The term "charter" service, as used herein refers to service in which the vessel is engaged, for a specified charge, by a person or group of persons for the exclusive use of said person or group of persons. The tariffs shall show the conditions under which each "charter" service will be rendered. Transportation shall not be performed on an individual fare basis.

Issued by California Public Utilities Commission.

Decision 97-11-027, Application 96-02-030.

T/MM

Appendix A

Island Navigation
Company, Inc.
(a corporation)
(VCC-43)

Second Revised Page 1
Cancels
First Revised Page 1

SECTION I. GENERAL AUTHORIZATIONS, RESTRICTIONS, LIMITATIONS, AND SPECIFICATIONS.

Island Navigation Company, Inc., a corporation, by the certificate of public convenience and necessity granted by the *revised decision noted in the foot of the margin, is authorized to operate as a vessel common carrier to transport passengers and their baggage, between the points as described in Section II, subject to the following provisions:

- 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" or "charter" basis. The term "on-call", as used herein, refers to service which is authorized to be rendered dependent on the demands of passengers. The term "charter," as used herein, refers to service in which the vessel is engaged, for a specified charge, by a person or group of persons for the exclusive use of said person or group of persons. The tariffs shall show the conditions under which each authorized "on-call" or "charter" service will be rendered and the transportation shall not be performed on an individual fare basis.
- c. The Two Harbors area is described as the inland waters of Isthmus Cove, which is within a line drawn from Blue Cavern Point to Lion's Head and Catalina Harbor, which is within a line drawn from Pen Rock to Catalina Head.

Issued by California Public Utilities Commission.

*Revised by Decision 97-11-027, Application 96-04-013.

SECTION I. GENERAL AUTHORIZATIONS, RESTRICTIONS, LIMITATIONS, AND SPECIFICATIONS (concluded).

- d. *Carrier is authorized to transport newspapers, periodicals, mail, bicycles, surfboards, and SCUBA gear only between points described in Sections IIA, IIB2, and IIB3.

SECTION II.

A. *Scheduled Service

- 1. *Dana Point - Avalon, Santa Catalina Island
Between Dana Point and Avalon, Santa Catalina Island.
- 2. *Long Beach - Avalon, Santa Catalina Island
Between Long Beach and Avalon, Santa Catalina Island.

B. Non-Scheduled Service

- 1. Water Taxi
Water Taxi shoreboat service between vessels, and between vessels and shorepoints and between all points and places on Catalina Island to transport passengers and their hand baggage. (Formerly described on First Revised Page 1 of Appendix A, Decision 87850)

Restriction:

Service shall not be rendered within the Two Harbors area, as described in Section Ic, between any vessels, points, and places. (Formerly described on First Revised Page 1 of Appendix A, Decision 87850)

- 2. *Dana Point - Santa Catalina Island
Between Dana Point and all points and places on Santa Catalina Island.
- 3. *Long Beach - Santa Catalina Island
Between Long Beach and all points and places on Santa Catalina Island.

Issued by California Public Utilities Commission.

*Revised by Decision 97-11-027, Application 96-04-013.

APPENDIX B

A96-04-013/A96-02-030
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(END OF APPENDIX B)