

**ORIGINAL**

Decision No. 35793

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of DICK W. MERRILL to let and W. H. SHACKELFORD, to lease an automobile (passenger and freight) line operated between Hornbrook and Happy Camp, California. )  
Application No. 25061 )

In the Matter of the Application of W. H. SHACKELFORD, doing business as KLAMATH AUTO STAGE LINE, for certificate and permit to extend his freight and passenger stage line from its present terminal at Happy Camp, California, a distance of 8.7 miles, to Gray Eagle mine, California. )  
Application No. 25107 )

In the Matter of the Application of WM. A. RUTLEDGE and HUGH VETTEL for a certificate of public convenience and necessity to operate a passenger, property and baggage stage line between Hornbrook, California, and Happy Camp, California, and Classic Hill Bridge. )  
Application No. 25192 )

EARL CONSTABLE, for Dick W. Merrill and W. H. Shackelford.

W. H. SHACKELFORD, in propria persona.

TEBBE & CORREIA, by J. P. Correia, for William A. Rutledge and Hugh Vettel.

SACHSE, Commissioner:

O P I N I O N

These applications deal with the matter of public transportation of passengers and property to and from points along and adjacent to Klamath River between the U. S. Highway No. 99 bridge over the river and Happy Camp, Siskiyou County.

A public hearing was held at Yreka, August 13, 1942, the matters were submitted and are now ready for decision.

The three applications involve certain features common to all and it was stipulated and ordered that they be considered on a common record. To decide each matter separately would require duplicating orders to a considerable extent which would serve no useful purpose. The three applications will, therefore, be dealt with in one decision.

GENERAL

The transportation of property referred to in this record is, in general, between points on U. S. Highway No. 99, including both Yreka or Hornbrook, on the one hand, and points along the Klamath River lying between the bridge carrying U. S. Highway No. 99 over the river, and Happy Camp, on the other hand. (1)

The back-haul of property from the river points to Yreka or Hornbrook is comparatively small. The passenger traffic is approximately balanced in each direction of the operation.

The area along the Klamath River is mountainous country, sparsely settled. (2) The development consists largely of stock

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- (1) This bridge is located on U. S. Highway No. 99 between Yreka and Hornbrook. The highway distances between the bridge and various points involved herein are as follows:

Hornbrook	7	Miles	North
Yreka	9	"	South
Hamburg	35	"	West
Seiad Valley	45	"	"
Happy Camp	65	"	"

- (2) The record indicates the estimated population at certain river points to be as follows:

Hamburg	125
Seiad Valley	175
Happy Camp	600

(3)  
raising, small ranches, mining and summer resorts.

The preponderance of the for-hire freight movement is from Yreka to river points. It consists largely of food, supplies and machinery destined to residents and to business establishments located in this area. Most of this freight originates at the larger trading centers in California and Oregon, from where it is transported to Yreka or Hornbrook in line-haul trucks, operating along U.S. Highway No. 99, or by rail over the Southern Pacific line.

Southern Pacific passes through Hornbrook but does not serve Yreka directly. From Montague, the nearest rail station, Southern Pacific traffic moves to or from Yreka, a distance of six miles, by Yreka Western Railroad or by truck.

APPLICATION NO. 25061

By his application, filed June 10, 1942, Dick W. Merrill seeks authority to lease to W. H. Shackelford an operative right to transport passengers and property as a common carrier by motor vehicle between Hornbrook and Happy Camp. This operative right, which rests upon the "grandfather" clause of the Auto Stage and Truck Transportation Act (Stats. 1917, Ch. 213), was acquired by Merrill pursuant to Decision No. 33602, in Application No. 23718, dated October 15, 1940.

The record shows that Merrill's contract with the United States Post Office Department, under which he had been carrying the mail between Hornbrook and Happy Camp, terminated June 30, 1942.

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(3) During recent months, it was shown, the operation of gold mining dredges along the Klamath River has declined to a marked degree. This has affected the volume of traffic moving into this territory.

On July 17, Merrill advised the Commission that since the transportation business, without the mail, was no longer remunerative, he had sold his truck, and that W. H. Shackelford (the applicant in Application No. 25107) had undertaken to continue the operation, without authority from this Commission, between Hornbrook and Happy Camp in conjunction with the latter's certificated service between Yreka and Happy Camp. This change occurred July 1, 1942. Clearly, Merrill has abandoned his common carrier operations between Hornbrook and Happy Camp and disposed of his equipment, without the Commission's sanction. Under the circumstances, this application should be denied and the operative right revoked.

APPLICATION NO. 25107

In this proceeding, W. H. Shackelford, doing business as Klamath Auto Stage Line, proposes to extend his existing operations. Shackelford now operates as a common carrier, by motor vehicle, of both passengers and freight between Yreka and Happy Camp under a "grandfather" operative right which he acquired pursuant to Decision No. 34667.<sup>(4)</sup> However, he is not authorized to serve lateral points such as Walker and Scott Bar, distant one mile and three miles, respectively, from the Klamath River Highway and reached over connecting county roads.

By his original application, this applicant sought authority to engage in the transportation of passengers and freight between Happy Camp and Gray Eagle mine, situated approximately

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(4) Shackelford's operative right originated under the "grandfather" clause of the Auto Stage and Truck Transportation Act, supra. It was acquired by Shackelford and Paul Colburn, pursuant to Decision No. 15716, rendered December 5, 1925, in Application No. 12119. Subsequently, Shackelford became the sole owner of the operation. (See Decision No. 34667, rendered October 14, 1941, in Application No. 24285.)

eight miles north of Happy Camp. By an amendment to the application, filed subsequent to the hearing, he proposes, in addition, to extend his service from the junction of U. S. Highway No. 99 and the Klamath River Highway, to Hornbrook and also from the Klamath River Highway to Walker and Scott Bar, respectively; he also seeks permission to operate within a zone extending laterally ten miles on each side of the Klamath River Highway.

Shackelford has operated regularly between Yreka and Happy Camp, providing two schedules daily, leaving Yreka in the morning and in the afternoon, respectively. The equipment comprises an 11-passenger car and a Chevrolet unit designed to handle both passengers and freight. The volume of traffic is small. Of the inbound freight, approximately 10 per cent originates locally in Yreka, 60 per cent is interchanged with Southern Pacific, and 30 per cent is received from connecting truck lines. The rail traffic could be interchanged more readily at Hornbrook, a rail point. The rates, both existing and prospective, conform to those established as minimum by the Commission.

At Gray Eagle is located a copper mine now in course of development. A common carrier service is essential, the record shows, to permit the transportation of employees and supplies. If transportation were available, many employees would reside at Happy Camp where housing facilities exist.

Merrill formerly served Walker and Scott Bar and, following the abandonment of his operations, Shackelford has continued that service, though somewhat indifferently. Small packages consigned to Scott Bar are delivered to the post office at Horse Creek, five miles east of the junction, from which point they are handled by parcel post to Scott Bar. However, passengers and larger

shipments are carried to that point, and both freight and passengers outbound are handled on call. The record indicates that this applicant is qualified financially and by experience to serve the Klamath River territory, including the extensions which he seeks.

In the order that follows we shall grant that part of the application under which a certificate is sought authorizing operation between Happy Camp and Gray Eagle mine. However, the remainder of the application will be disposed of by a subsequent order.

APPLICATION NO. 25192

By this application, as amended, Wm. A. Rutledge and Hugh Vettel undertake to engage in the transportation of both passengers and freight as a common carrier by motor vehicle between Hornbook and Happy Camp, between Happy Camp and Classic Hill Bridge, a point on Indian Creek Road situated approximately 14 miles north of Happy Camp, and between a point on Indian Creek Road situated five miles north of Happy Camp and Gray Eagle mine, located  $2\frac{1}{2}$  miles easterly. Applicant proposes to operate under a regular daily schedule between Hornbrook and Happy Camp, tri-weekly between Happy Camp and Indian River Bridge and on-call, daily if necessary, to Gray Eagle mine. Points adjacent to the Klamath River Highway, such as Walker and Scott Bar, would be served as well as those within a zone extending three miles laterally on each side of the highways traversed. The Commission's minimum rates would be observed. Two one-half ton trucks would be used to provide the service.

Between 1935 and 1938, Rutledge was associated with H. T. Watson in the transportation of freight and passengers

(5)  
between Hornbrook and Happy Camp. On July 1, 1942, Rutledge succeeded Merrill as the Star Route mail contractor operating between Hornbrook, Happy Camp and Classic Hill Bridge. Under this contract, which will remain in force for a period of four years, expiring June 30, 1946, Rutledge is obligated to handle the mail over this route. Two public witnesses called by this applicant, engaged in the mercantile business at Hornbrook, testified that his service as a common carrier in this area had been satisfactory.

#### CONCLUSIONS

In these proceedings we are dealing with two applicants, one of whom now serves the territory as a highway common carrier, and has performed that service for almost twenty years, while the other has entered into the obligation to carry the mail between the same points for a limited period (four years). The latter asserts that with the mail contract should go the right to serve this territory as a common carrier. The record indicates that the revenue derived from the mail contract alone would not be sufficient to render that operation profitable. And it is equally clear that the traffic, both passenger and freight, moving to and from this territory will not support more than one common carrier. We are therefore called upon to choose between applicant Shackelford, on the one hand, and applicants Rutledge and Vettel, on the other. Merrill's application, as we have stated, cannot be

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(5) By Decision No. 28059, in Application No. 20011, dated June 24, 1935, Bruce F. Woodworth, who then conducted the operation between Hornbrook and Happy Camp subsequently acquired by applicant Merrill, was authorized to lease the operative right to H. T. Watson for the term extending from May 20, 1935, to July 1, 1938. Rutledge was associated with Watson in the performance of this service.

considered. The controlling consideration for the Commission must be, of course, how public convenience and necessity can best be served.

As stated, Shackelford now serves the territory. Rutledge and Vettel are not now authorized to operate as a common carrier, nor does the fact that they are privileged to handle the mail, standing alone, warrant the extension to them of the right to engage in a common carrier service. Under the circumstances, it is our conclusion that applicants Shackelford, Rutledge and Vettel should submit to the Commission an agreed plan of operation under which but one common carrier would operate between the points involved in these proceedings. Pursuant to this arrangement, the operator of the common carrier service should, if possible, also carry the mail. These applicants have indicated that, if afforded a reasonable period for consideration, they would undertake to arrive at such an understanding. Accordingly, Applications Nos. 25107 and 25192 will be held open until October 31, 1942, to enable applicants to consummate such an agreement and report the result of their negotiations to the Commission. ✓

The following interim order is recommended:

INTERIM ORDER

Applications having been made as above entitled; the Commission being now fully advised; and the Commission being of the opinion and now finding that public convenience and necessity so require:

IT IS ORDERED:

(1) (a) That Application No. 25061 be and it hereby is denied.

(b) That the operative right owned by applicant Dick W. Merrill, acquired by him pursuant to Decision No. 33602, rendered October 15, 1940, in Application No. 23718, authorizing operation as a passenger stage corporation and as a highway common carrier between Hornbrook and Happy Camp, shall be and it hereby is annulled, cancelled and revoked.

(c) That any and all tariffs and time schedules heretofore filed with the Commission by applicant Dick W. Merrill, and now in effect, relating to said operations be and they hereby are, and each of them is, cancelled and annulled.

(2) That a certificate of public convenience and necessity be and it hereby is granted to W. H. Shackelford, doing business as Klamath Auto Stage Line, authorizing operation of service as a highway common carrier, as defined by Section 2-3/4 of the Public Utilities Act, and as a passenger stage corporation, as defined by Section 2-1/4 of said Act, between Happy Camp and Gray Eagle mine, as an extension of and to be consolidated with the existing operative rights of said W. H. Shackelford as a passenger stage corporation and as a highway common carrier.

(3) W. H. Shackelford, his successors or assigns, may never claim before this Commission or any court or other public body a value, for any purpose, for the certificate herein granted in excess of the actual cost incurred by him in securing said operative authority.

(4) That jurisdiction shall be and it hereby is reserved to make such further order or orders in Applications Nos. 25107 and 25192 affecting said proceedings in any respect, as the Commission in its discretion may deem just and proper.

(5) That, in the operation of the highway common carrier

service and the passenger stage service herein authorized, W. H. Shackelford shall comply with and observe the following service regulations:

- (a) Said applicant shall file a written acceptance of the certificate herein granted within a period of not to exceed thirty (30) days from the date hereof.
- (b) Said applicant shall comply with the provisions of General Orders Nos. 79 and 80 by filing, in triplicate, and concurrently making effective, tariffs and time schedules satisfactory to the Commission within sixty (60) days from the effective date hereof and on not less than one (1) day's notice to the Commission and the public.
- (c) Subject to the authority of this Commission to change or modify them at any time by further order said applicant shall conduct said passenger stage service over and along the following routes:

Over any and all highways extending between Happy Camp and Gray Eagle mine that may be open to and available for motor vehicle operation.

The effective date of this order shall be the date hereof.

The foregoing opinion and interim order are hereby approved and ordered filed as the opinion and interim order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 22<sup>nd</sup> day of September, 1942.

Justus D. Gallen

A. J. Baker

Francis R. Havens

Arthur R. Baker

COMMISSIONERS