

Decision No. 35869

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)	
COAST LINE STAGES, INC., a corporation)	
for an alternate route, and a certifi-)	
cate of public convenience and)	Application No. 24855
necessity, for the transportation of)	
passengers, baggage and express, between)	
Navarro River Junction on the one hand)	
and Santa Rosa on the other hand.)	

BEROL & HANDLER, by EDWARD M. BEROL and HERBERT A. RUSK, for applicant.

McCUTCHEEN, OLNEY, MANNON & GREENE, by F. W. MIELKE and JAMES M. SOUBY, for Mendocino Transit Company, protestant.

A. T. NELSON, for California Western Railroad & Navigation Company, interested party.

BY THE COMMISSION:

O P I N I O N

By this amended application Coast Line Stages, Inc. (1) requests that the Commission grant it an alternate route over which to conduct its passenger stage operation, such alternate route to extend from Navarro River Junction via California State Highway No. 28 and U. S. Highway No. 101 to Santa Rosa. Applicant also requests a certificate of public convenience and necessity to operate as a passenger stage corporation between Mountain House and Ukiah via an unnumbered highway from Mountain House to Hopland, thence via U.S. Highway No. 101 from Hopland to Ukiah.

(1) This is a misnomer. The route is not an "alternate" one but would be used regularly and at all times.

A public hearing was held by Examiner Gannon at Fort Bragg on May 13, 1942.

Mendocino Transit Company, hereinafter referred to as Mendocino Transit, appears as the sole protestant.

It is proposed to transport passengers, baggage and express, and to serve intermediate points in both operations, save and except that no local service is proposed between Santa Rosa and Cloverdale and points intermediate thereto, nor between Hopland and Ukiah and points intermediate thereto.

The present operative rights of applicant were established by Decision No. 34300, dated June 10, 1941, at which time a certificate was granted in lieu of all operative rights theretofore held. In the order therein applicant was authorized to operate as a passenger stage corporation for the transportation of passengers, baggage and express between Rockport and Petaluma and intermediate points. Freight transportation rights in general were established as between Jenner and Rockport and between Cloverdale and Rockport, and between San Francisco and points north of Cloverdale and Jenner.

The underlying purpose of this proceeding is admittedly an effort on the part of applicant to recapture some of the business it claims to have formerly enjoyed. An application was filed on September 18, 1940, seeking, among other things, the extension of applicant's service between Navarro River Junction and Cloverdale. The Commission denied that part of the application on the ground that there was not sufficient traffic to support the operation of two carriers between those points.⁽²⁾

(2) Decision No.34300, dated June 10, 1941, Application No.23698.

Simultaneously, the Commission issued its decision⁽³⁾ granting Mendocino Transit a certificate to operate a passenger stage service between Fort Bragg and Santa Rosa and intermediate points, via Anderson Valley and Cloverdale, exclusive of local service between Cloverdale and Santa Rosa and intermediate points.

Applicant protested that application on the ground that any diversion of traffic would impair its revenue and result in a possible abandonment of its coast passenger service, though admitting that any diversion would be due chiefly to Mendocino Transit superior service between Fort Bragg and Santa Rosa.

The Commission found that protestant, Coast Line Stages, Inc. had failed to advance sufficient reason why the proposed service should not be authorized, and that Mendocino Transit was the first to make a survey of the field and to file an application.

Following closely upon this decision, Coast Line Stages, Inc. filed a petition for a modification of the order therein requesting the exclusion of authority for Mendocino Transit to render local service between Fort Bragg and Navarro River Junction, which had been granted in said decision. The Commission made its order re-opening the proceeding for further hearing and rendered a supplemental decision (No. 34835) eliminating local service between Fort Bragg and Navarro River Junction. Mendocino Transit sought a revocation of the order excluding local service but subsequently withdrew its petition, and there the matter rested.

It is alleged in the present application that

(3) Decision No. 34293, dated June 10, 1941, Application No. 23616.

applicant and its predecessors have continuously rendered passenger service along the Shoreline Highway between Rockport and Petaluma for a period of approximately thirty years, but that by reason of existing competitive conditions and consequent loss of revenue it is forced to look elsewhere for additional business or abandon entirely its coast-wise operation. It is further alleged that the proposed new service through the Anderson Valley is over a shorter route and better roads and would enable applicant to compete with Mendocino Transit on an equal basis for traffic which it formerly possessed.

Applicant bases its request for authority to establish a service between Mountain House and Ukiah on an alleged need for transportation facilities for residents on the Shoreline Highway between Rockport and Point Arena, to Ukiah, the county seat of Mendocino County. Incidentally, it is alleged that such service would be available to residents along the highway between Navarro River Junction and Cloverdale, and would permit of better connection with Pacific Greyhound Lines on traffic to and from Portland and Eureka and other points.

The testimony of applicant's traffic manager sums up to the following: that the passenger stage operations of applicant were conducted at an out-of-pocket loss of \$1691.79 for the year 1941 and of \$2836.58 for the nine months period ending March 31, 1942; that with the benefit of new or reclaimed revenue resulting from the granting of the application the 1941 loss together with the anticipated profit from the proposed Ukiah run would be converted into an estimated profit of \$1148.51; that the present equipment could be used to the extent of 257,000 miles per year instead of 108,000 miles per year; that no additional financial investment for terminal facilities or

equipment would be required; that with revenue steadily declining towards a point where the freight operations will no longer sustain the unremunerative passenger service, abandonment of the entire route is inevitable; and that applicant had suffered a diversion of revenue by reason of the establishment of the Anderson Valley route by protestant, Mendocino Transit.

On cross examination this witness admitted that the Pony Cruiser stage operated by Mendocino Transit was superior to applicant's best piece of equipment for this particular operation; that protestant pioneered the Anderson Valley territory and established two round-trips daily between Fort Bragg and Santa Rosa, with lower fare than that fixed by applicant's predecessor between Fort Bragg and Cloverdale.⁽⁴⁾ Witness further testified that the Company expected to derive \$7500 in revenue per year out of the operation between Fort Bragg and Santa Rosa on a basis of 6½ cents per passenger car mile, with the cost of operating fixed at 8 cents per car mile. He estimated the revenue from the Ukiah operation at \$6000 per year from Point Arena, the revenue per car

(4) He stated the position of applicant thus:

"We are proposing it (the service) as an alternate route to take care of traffic we have lost by reason of the diversion of traffic which we formerly enjoyed, which is necessary to sustain the operation."

There then followed this interchange of questions and answers between the witness and counsel for Mendocino Transit:

"Q. Then you are not proposing it because you think the service of the Mendocino Transit that is afforded over that route, is inadequate?"

"A. Not necessarily."

"Q. You admit that that service is adequate?"

"A. It is."

mile in this instance being $11\frac{1}{2}$ cents as against an operating cost of 8 cents. In his opinion the route of Mendocino Transit from Fort Bragg to Santa Rosa and thence on into the bay area is more convenient and expeditious to the general public.

The witness pointed out that under its present schedule passengers leave Rockport at 10:00 a.m. arriving in Petaluma at 4:00 p.m.; return, leave Petaluma at 11:12 a.m. arriving at Rockport at 5:00 p.m. This schedule made it impossible for a passenger to go to Petaluma and return the same day.

Six public witnesses were called by applicant. Their testimony was not of such a nature as to convey the impression that the proposed service was necessary. Four witnesses from the coast testified generally that the present service offered by Mendocino Transit through Anderson Valley was satisfactory, and, in the public interest, should be continued. Relative to the Ukiah service, it was stated by one of the witnesses that about one-third of the superior court jurors are drawn from the coastal communities. The Secretary of the Chamber of Commerce of Ukiah testified that the service to Ukiah would be an advantage. An attorney from that city testified he would not use the service personally in going to the coast. One of the witnesses from Fort Bragg had not been in Ukiah since last December. Another witness from Point Arena had not been in Anderson Valley for a year and had been to Ukiah only once in his life.

The position of protestant, Mendocino Transit, is that it pioneered the territory served by it through Anderson Valley, that it is rendering a complete and satisfactory service, and that no showing is made by applicant either that there is need for additional service, or that in the event of the intrusion of

applicant into the field, the result will not be a demoralization of the present service. It produced only two public witnesses, one from Yorkville and one from Boonville, whose testimony was somewhat confusing, but under a fair analysis may be said to definitely favor protestant's service and to discount the necessity of added service.

P. B. Hackley, sole owner and operator of Mendocino Transit was called on behalf of protestant. He had made a survey of the transportation facilities in the territory and found that it required from 8 to 9 hours to make the trip from Fort Bragg to San Francisco via the coast. Three days were required for the round trip, if business were to be transacted, and this applied to Santa Rosa as well. As a result of this survey, the application of Mendocino Transit was filed, and granted by Decision No.34293 as noted above. Service was commenced on June 28, 1941 with one daily schedule each way. This has been increased to two daily schedules leaving Fort Bragg at 7:20 a.m. arriving at Santa Rosa at 11:10 a.m.; returning, leave Santa Rosa at 2:00 p.m. arriving at Fort Bragg at 5:45 p.m. The second schedule leaving Fort Bragg at 1:20 p.m. arrives at Santa Rosa at 5:10 p.m., leaves Santa Rosa at 6:00 p.m. and arrives in Fort Bragg at 9:45 p.m. His equipment consists of two station wagons, with seating capacity of seven passengers each, and a 16-passenger Pony Cruiser bus. Witness testified that at the time he established the second schedule his operations were not providing sufficient revenue to pay expenses. His profit and loss statement for the year 1941 shows a profit of \$90.69. The witness estimated that applicant would take away from four to five thousand dollars in revenue per year from protestant, which would amount to a diversion of 90 per cent of its traffic. In his opinion only a small proportion would

be new business. With that diversion, protestant was certain his service could not endure, and that he would at least have to eliminate one schedule. As to the service to Ukiah, witness testified that no appreciable demand for such service had been brought to his attention. He was ready at all times to coordinate his schedules with applicant's line.

The granting of this application is opposed by official action of the following public bodies:

Mendocino County Board of Supervisors
Anderson Farm Center
Healdsburg City Council
Fort Bragg Grange No. 672
Anderson Valley Grange No. 669
Santa Rosa Chamber of Commerce

Favoring the application is Point Arena-Manchester Chamber of Commerce, and, for the Ukiah service only, the Ukiah Chamber of Commerce.

As we view the record in this application, the primary question involved is not one of public convenience and necessity, as that term is ordinarily used and accepted in proceedings before the Commission. Applicant admits that protestant is, and has been, rendering a satisfactory and adequate service between Fort Bragg and Santa Rosa and, on the other hand, there is no showing that protestant questions the contention of applicant that the Coast Line Stages, Inc.'s passenger operation is being conducted at a loss. The Commission has consistently rendered

(5)

(5) The issue here is frankly stated by applicant itself in this language:

"Shall the Commission grant a certificate to operate a passenger stage service to an applicant who, in order to continue a needed service, the absence of which would leave an entire district without any public transportation whatsoever, maintains that he must have additional territory in order to continue operating, even though that additional territory may be adequately served?"

decisions over a long period of years in conformity with the intent of section 50 $\frac{1}{2}$ of the Public Utilities Act. Directly in point is the Palo Verde case in which the Commission held that it would not authorize service into a territory already adequately served merely to render the applicant's operation profitable.

Our decisions have been uniformly of the same tenor, and to the effect that when the existing service is satisfactory, where no new or superior or cheaper service is offered, when there is no indication of a probable development of new business, and when such business as is secured must be diverted from existing carriers, the Commission will be slow to permit a competitor to enter the field. Public convenience and necessity is not to be confused with the mere desire or need of the applicant.

(6) The pertinent part of this section reads as follows:

".....the railroad commission shall have power, after hearing, to issue said certificate when an applicant requests a certificate to operate in a territory already served by a certificate holder under this act only when the existing passenger stage corporation or corporations serving such territory will not provide the same to the satisfaction of the railroad commission."

(7) The decision reads in part:

"The Commission cannot, in the absence of affirmative testimony, authorize the establishment of a new carrier into districts regarding which there is no showing that adequate service does not exist, for the purpose of permitting an applicant to serve sufficient territory and to make his operation profitable."-17 C.R.C. 722

Pertinent also is the language in the George Learned Decision:

"The Commission cannot authorize the establishment of duplicate facilities in the absence of an affirmative showing that the facilities of existing carriers are not satisfactorily meeting the demands of the public desiring transportation."-17 C.R.C. 594

In our opinion this record does not disclose any public demand for the proposed service between the coastal points of Point Arena and Rockport, on the one hand, and Ukiah, on the other. This proposal apparently came as an afterthought and there appears nowhere in the record any evidence of a substantial desire on the part of the traveling public for such service. With respect to the proposed service to take care of the purported large number of litigants and witnesses, in attendance at court sessions in Ukiah, it would appear that if there really existed such a need it would be manifested by the affirmative testimony of witnesses. No such showing was made. Instead of a public demand we have only a mere desire on the part of applicant to establish a service which gives no indication of being necessary or compensatory.

It would be unjust for this Commission to permit a duplication of service, where the carrier presently serving the territory is rendering an admittedly satisfactory service, with adequate equipment and convenient time schedules.

There is not the slightest intimation of dissatisfaction with the present service in Anderson Valley. Applicant, public

(8) The amended application was filed 47 days after the original application, and 6 days prior to the hearing.

(9) As was said by us in the Motor Transit case, 21 C.R.C. 509:

".....this Commission has repeatedly held, on applications for certificates of public necessity and convenience, particularly where an additional service is proposed which will virtually parallel existing carriers, that a clear and affirmative showing must be made that the existing transportation facilities are inadequate or unsatisfactory. There is no evidence in this case that the existing transportation facilities are in any way inadequate, even though it may appear that the convenience of a limited few may be served at one or two intermediate points."

witnesses and civic bodies all attest to its adequacy. To authorize destructive competition, especially under present emergency conditions, would result either in curtailment of schedules or complete abandonment by the present operator. Mendocino Transit has put its best effort into the building up of what business it has acquired and from which it has as yet realized only a nominal profit. With another carrier in the field it would be difficult for both to survive.

We have given due consideration to the evidence in this proceeding and it is our conclusion that public convenience and necessity do not require the service as proposed and that the application should be denied. It will be so ordered.

O R D E R

The above application having been filed, a public hearing having been held, and the Commission being fully advised,

IT IS ORDERED that the above entitled application is hereby denied without prejudice.

The effective date of this order shall be twenty (20) days from the date hereof.

Dated at Los Angeles, California, this 20th day of October, 1942.

Justice F. Cooney
Ray L. Riley
W. H. Kelly
Frank R. Havener
Richard L. Jackson
 COMMISSIONERS