

Decision No: 37683

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of JAMES C. KELLY and THOMAS F. THOMPSON, copartners, doing business as RED TOP CAB CO., for a certificate of public convenience and necessity authorizing an extension of operations as a common carrier for the transportation of passengers in the city of Santa Rosa and area immediately adjacent thereto.

ORIGINAL

Application No. 25946

In the Matter of the Application of MOTOR STREET-CAR SERVICE, INCORPORATED, for a certificate of public convenience and necessity authorizing an extension of operations as a common carrier for the transportation of passengers in the city of Santa Rosa and area immediately adjacent thereto.

Application No. 26001

AARON H. GLICKMAN, for James C. Kelly and Thomas F. Thompson, partners, applicants in Application No. 25946, and protestants in Application No. 26001.

C. W. ANDERSON, for Motor Street-Car Service, Inc., applicant in Application No. 26001 and protestant in Application No. 25946.

DOUGLAS BROOKMAN and R. E. THOMAS, for Pacific Greyhound Lines, interested party.

L. G. HITCHCOCK, City Attorney for the city of Santa Rosa, interested party.

RALPH STONE, for Santa Rosa Chamber of Commerce, interested party.

BY THE COMMISSION:

O P I N I O N

In Application No. 25946, James C. Kelly and Thomas F. Thompson, partners doing business as Red Top Cab Co., hereinafter referred to as Red Top, seek a certificate of public convenience and necessity authorizing the establishment and operation of a passenger stage service within and in the vicinity of Santa Rosa. One of the

proposed routes extends about three miles southwesterly of the city to a United States Naval Air Base, and another route extends northerly to the Sonoma County Hospital.

In Application No. 26001 Motor Street-Car Service, Incorporated, a corporation, hereinafter referred to as Motor Service, seeks a certificate of public convenience and necessity authorizing a passenger stage service similar to that sought by Red Top except that it does not propose to serve the Naval Air Base, nor the Sonoma County Hospital.

A public hearing thereon was had before Examiner Paul at Santa Rosa on February 24, 25, 26 and March 30, 31, 1944. These matters were consolidated for the taking of evidence and decision. They were submitted subject to the filing of concurrent opening and concurrent reply briefs, the last of which was filed on June 12, 1944. Each applicant protested the granting of the other application. However, Motor Service did not oppose the granting of a certificate to Red Top between Santa Rosa and the Naval Air Base, provided a restriction be imposed prohibiting Red Top from picking up or discharging passengers at any point intermediate to the Santa Rosa terminus and the intersection of Sebastopol Road and Avalon Avenue except those passengers destined to or originating at points westerly of this intersection.

#### PROPOSAL OF RED TOP

Red Top's plan of operation would be over three cross-town routes which would intersect at the County Court House, in the central portion of the city of Santa Rosa, where transfers from one line to the other would be made.

Proposed Route No. 1 extends from the Sonoma County Hospital, on the north, to the junction of Flower Avenue and Petaluma Hill Road, on the south, a distance of about 3.8 route miles.

Proposed Route No. 2 would extend from the junction of Coulter Street and 9th Street, on the west, to the intersection of East Haven Drive and Sonoma Highway, on the east, a distance of about 3.1 route miles.

Proposed Route No. 3 extends from the intersection of Sonoma Avenue and Talbot Avenue, in the Talbot District on the east, to the United States Naval Air Base on the west, a distance of about 4.6 route miles. This base is approximately three miles southwesterly from the city limits of Santa Rosa.

The termini of each route is characterized by a proposed loop operation to serve the respective districts involved, except that on the northerly portion of Route No. 1; a loop operation would be conducted in the Lewis Addition District, situated northerly of the Santa Rosa city limits approximately midway between the northerly terminus of this route and the County Court House.

Red Top now provides a passenger stage service between Santa Rosa and the Santa Rosa Army Air Base, approximately 10 miles northwesterly of Santa Rosa. This service would be operated independently of the service for which authority is now sought.

The following fares are proposed:

Base fare	\$ .10
Children, 5 to 12 years, inclusive	.05
Commutation tickets, 12 rides	1.00
(Commute fare would not apply to or from points west of Stony Point Road)	
School children's commutation tickets, 20 rides.	1.00

In general, Red Top proposes a 15-minute service during morning and evening peaks, which is expanded to 30-minute headway during other portions of the day. On Sundays and legal holidays  
(1)  
service on all routes would be at 30-minute intervals.

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- (1) Service on Routes Nos. 1 and 2 would be provided on a 15-minute headway during peak periods between the approximate hours of 6:00 A.M. and 9:00 A.M., and between 2:00 P.M. and 7:00 P.M. Between the approximate hours of 9:00 A.M. and 2:00 P.M. and between 7:00 P.M. and 10:00 P.M. service would be performed on a 30-minute headway. On Route No. 3, which would serve the Naval Air Base, service would be on a 20-minute headway from approximately 6:00 A.M. to 9:00 A.M. and between 2:00 P.M. and 10:00 P.M. A 30-minute headway on this route would be provided between the approximate hours of 9:00 A.M. and 2:00 P.M. On the westerly portion of the route extending to the Naval Air Base there would also be operated a 15-minute headway between approximately 10:15 P.M. and 11:45 P.M.

The equipment which would be used would be 1936 year models, city transit type, twin-coach busses of 20-passenger seating capacity, which accommodate 15 standees. This applicant stated that while he does not possess this equipment at this time, he has an option on one piece and other such units are available.

PROPOSAL OF MOTOR SERVICE

Motor Service is presently conducting a service for the transportation of passengers entirely within the corporate boundaries of the city of Santa Rosa under authority of a franchise granted by the city. This service is provided over five different routes, each of which has a common terminus consisting of a loop around the County Court House, situated in the central part of Santa Rosa. These routes radiate in different directions from the Court House to serve the denser residential sections of Santa Rosa by operations over a loop-route arrangement. It proposes to extend three of these routes to serve residential areas outside the corporate limits of Santa Rosa. Routes Nos. 1, 2 and 4 would be so extended.

Route No. 1 now has its northerly limit at Spencer Avenue. It would be extended over Humboldt Street from its junction with Spencer Avenue to its junction with Mervyn Avenue, returning over the same street.

Route No. 2, which operates northeasterly along 4th Street to St. Helena Avenue and thence northerly to serve the Proctor Tract, would be extended from the junction of 4th Street and St. Helena Avenue, along 4th Street to Talbot Avenue, to Sonoma Avenue and thence over a loop along Sonoma Avenue, Rosedale Avenue and Montgomery Drive to Talbot Avenue to serve the Talbot District.

Route No. 4, which now operates southerly to the intersection of Santa Rosa Avenue, South Park and Earle Street, would be extended southerly along South Park and Petaluma Hill Road to Pressley Street, thence over a loop consisting of Pressley Street, Deturk Avenue and Ware Street to South Park. This loop is designed to serve the residential section westerly of the Sonoma County Fair Grounds, generally referred to as South Park Addition.

It is not proposed to alter or extend applicant's present Routes Nos. 3 and 5.

The proposed fare is 10-cents with a free transfer privilege between routes. A 20-ride commutation ticket would be sold for \$1.50.

This carrier now provides a 15-minute headway on one of its routes throughout the day. On two of its routes it provides a 15-minute headway during morning and evening peak hours with 30-minute headway during the remainder of the day. On the other two routes the headway is 30-minutes during the day. At the present time service is discontinued after 6:00 P.M. It is proposed herein to extend service until approximately 10:30 P.M. (2)

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- (2) On Route No. 1 Motor Service presently operates on a 15-minute headway between the hours of 7:30 A.M. and 6:00 P.M. which would be continued. Over the extension of this route along Humboldt Street, between its junction with Spencer Avenue and Mervyn Avenue, service would be provided hourly from 7:20 A.M. until 7:20 P.M., and then at 9:20 P.M. and 10:20 P.M. This hourly service would provide a headway shorter than 15 minutes at hourly intervals over that portion of Route No. 1 which receives a 15-minute headway between the Court House and the junction of Spencer Street and Humboldt Street.

On Route No. 2, between the Court House and the Proctor Tract, service is now provided over 4th Street between approximately 7:30 A.M. and 6:00 P.M. on a 15-minute headway, except that between 9:00 A.M. and 11:00 A.M. the headway is 30-minutes. Under the proposed plan to extend service to the Talbot Subdivision a 15-minute headway would be provided on this route along 4th Street between the Court House and the intersection of 4th Street and St. Helena Avenue where alternate schedules would serve the Proctor Tract and Talbot Subdivision on a 30-minute headway. After 6:00 P.M. the Proctor Tract would be served by schedules at 7:15 P.M., 9:30 P.M. and 10:00 P.M.

On Route No. 4, between the Court House and the city limits at Sebastopol Avenue, service is now provided every 15 minutes between 7:30 A.M. and 6:00 P.M. except that between 9:00 A.M. and 11:00 A.M. the headway is 30 minutes. Under the proposed plan to extend service to the South Park Addition a 15-minute headway would be provided on the present route between the Court House and the junction of Santa Rosa Avenue and Earle Street, where alternate schedules would serve the present terminus at Sebastopol Avenue and the South Park Addition on a 30-minute headway.

No service is now provided on Sundays and principal holidays and none is contemplated at this time.

The total one-way route mileage of this applicant's present operation is approximately 6-1/3 miles, and that of the proposed extension is about 1-2/3 miles, making a total one-way route mileage of approximately 8-1/3 miles.

Motor Service presently operates five units of equipment, one being held in reserve. These are Federal chassis with a Knight motor and custom built bodies having a seating capacity of 14 passengers. Four of these units were purchased in the latter part of 1925 and the other in 1926. If the proposed extensions are authorized it plans to acquire a 17-passenger seating capacity twin-coach transit type 1932 model similar to that proposed to be used by Red Top.

EVIDENCE RE PUBLIC CONVENIENCE  
AND NECESSITY

More than 40 public witnesses were produced by Red Top who testified, or whose testimony was received by stipulation, in regard to their needs for transportation service. This testimony was directed to the needs of the residents of seven general districts which Red Top proposes to <sup>(3)</sup>serve. These seven districts to which public testimony was directed are either presently served by Motor Service or would be served by it under its proposal, with the exception of East Haven District, a small portion of Sonoma Avenue District, Sebastopol Road District and the Naval Air Base. Motor Service introduced no evidence from public witnesses. In addition,

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(3) These districts will be referred to as Sonoma Avenue District, Talbot District, East Haven District, Lewis District, Sebastopol Road District, Coulter Street District and Naval Air Base.

testimony was received from operative witnesses of both applicants. Red Top introduced a transportation study (Exhibit No. 5) prepared by F. H. Chesnut, a consulting engineer, who gave testimony in connection therewith. Both applicants introduced evidence in regard to the population of the area involved.

For the most part, the proposed routes of Red Top are on the same streets or closely parallel the present or proposed routes of Motor Service. The major exception to this is the proposal of Red Top to serve the Naval Air Base situated about three miles southwesterly of the city limits of Santa Rosa, the present terminus of Motor Service's Route No. 4. The other chief exception is the proposal of Red Top to serve the Sonoma County Hospital situated less than two miles beyond the northerly city limits of Santa Rosa and about 3/4 mile beyond the terminus of the proposed extension of Motor Service's Route No. 1. A minor exception is the eastern extension of Red Top's Route No. 3 over Sonoma Avenue. A part of this latter route is over the same streets served by Motor Service to the intersection of E Street and Sonoma Avenue. The easterly end of this proposed route would terminate at Talbot District which Motor Service proposes to serve by an extension of its Route No. 2.

Through the study referred to it was contended by Red Top that the total population of Santa Rosa and the adjacent areas involved is approximately 20,000. Motor Service produced testimony by which it contended that said population is something in excess of 17,000. Neither estimate took into consideration the personnel stationed at the Naval Air Base. Exhibit No. 5 shows that 780,000 annual fares are necessary to support the two proposed operations, which was calculated upon a basis of 605,000 fares for Red Top and

175,000 annual fares for Motor Service, which Red Top estimated Motor Service was transporting. It was later shown by Motor Service that during 1943 it transported approximately 348,000 fares.

In support of its proposal to establish service between Santa Rosa and the Naval Air Base, Red Top produced the Domestic Transportation Officer of the 12th Naval District who testified in substance that the Navy is presently providing service between these points for personnel established at this Base. If the application of Red Top were granted the Navy would discontinue its service. (4) From a traffic count it was shown that for the seven day period of January 27 to February 2, 1944, inclusive, 2,010 passengers were transported by this service between Santa Rosa and the Base. This service is operated on a general 15-minute headway between the hours of 6:00 A.M. and 6:45 A.M., and between 4:45 P.M. and 1:30 A.M. Alternate schedules are provided for enlisted personnel and officers. Exhibit No. 7 shows that the Navy operated 21 round-trips daily during the week January 27 to and including February 2, 1944, or a total for the week of 147 round trips. This is a less extensive service than that proposed by Red Top which extends over a greater portion of the day.

Mr. Kelly stated that if this portion of his application only were granted and the remainder denied that he did not believe that he could establish and operate such service on a fare of 10-cents. However, Red Top's Exhibit No. 5, Schedule VI, shows the overall estimated costs for operating this route to be \$0.84 for the round trip of about seven miles. This Exhibit also shows additional potential sources of traffic which added to that of the

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(4). Exhibit No. 7.



Air Base would appear to justify the establishment of service over this route at an approximate 10-cent fare.

The preponderance of the testimony of public witnesses was directed to the need for extension and improvement of service in the Lewis District, East Haven District, Talbot District, Sonoma Avenue District and the Naval Air Base and the easterly portion of the route to this base. Only one witness testified in regard to a need for service to the Coulter Street District. There was no evidence in regard to a need for service to and from the Sonoma County Hospital, nor the South Park Addition on Petaluma Hill Road.

In substance, such testimony was to the effect that there was a public need for an extension of service to these districts principally for those traveling to and from work in the central business district of Santa Rosa, as well as shopping, theaters and church on Sundays. Some witnesses stated that they needed a service in the evenings after 6:00 P.M. which is not now provided. There was similar testimony in regard to a need for some service on Sundays, which likewise is now unavailable.

#### DISCUSSION AND CONCLUSIONS

After thorough consideration of all the evidence of record in these proceedings, it is our conclusion that the application of Motor Service should be granted and that the application of Red Top should be granted only between Santa Rosa and the Naval Air Base and subject to a local restriction. While there is some testimony to the effect that Motor Service has failed to exercise proper diligence in performing an adequate service to meet the needs of the public as shown herein to exist, the record shows that this carrier for more than twenty years has consistently provided some service, even when it appeared doubtful at times that such service could be

continued on a remunerative basis because of insufficient revenue. This record, in our opinion, does not justify the operation of two carriers, as proposed herein, with highly competitive conditions, as sufficient revenue cannot be developed to support both carriers on an enduring basis. Therefore, we do not believe it to be consistent with the public interest that both carriers should be certificated.

While the equipment now used by Motor Service is old and outmoded it appears to be maintained in a fairly safe operating condition. It should in the reasonably near future be put into substantial compliance with the Commission's General Order No. 93-A. We believe that this carrier should exert every effort to retire this equipment for more modern units at an early date. This would not only enable it to better serve the public needs but would have a definite tendency to induce additional traffic. While Motor Service does not now conduct any service on Sundays or holidays it proposes to do so if its application is granted and its evening schedules prove successful. In the light of the record it is our opinion that it should establish service on Sundays and holidays to meet the public requirements. However, if the public wishes such service to be continued, it should be patronized.

Protestant Red Top contends in its brief that Motor Service because of its financial condition is not capable of undertaking the limited extensions of service proposed. The record shows the operating results of Motor Service for the year 1943 to be as follows:

Operating income	\$20,253.17
Operating expenses	<u>15,853.73</u>
Net operating income	\$ 4,399.44

The total income deductions for interest, federal income taxes and miscellaneous charges amounted to \$1,280.67, leaving a net income for the year of \$3,118.77. From this statement it does not appear that the establishment of the proposed extensions would jeopardize the ability of this applicant to continue its operations on a profitable basis.

Motor Street-Car Service, Incorporated, and James C. Kelly and Thomas F. Thompson, partners, are hereby placed upon 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, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the State, which is not in any respect limited to the number of rights which may be given.

O R D E R

A public hearing thereon having been had; evidence adduced; the matters submitted; and the Commission being fully informed therein,

IT IS ORDERED as follows:

(1) That a certificate of public convenience and necessity is hereby granted to Motor Street-Car Service, Incorporated, a corporation, authorizing the establishment and operation of service as a passenger stage corporation, as defined in Section 24 of the Public Utilities Act, for the transportation of passengers between points within Santa Rosa and between Santa Rosa and the Lewis District, Talbot District, South Park District and intermediate points.

(2) That in providing service pursuant to the certificate herein granted, the following service regulations shall be complied with:

1. Applicant shall file a written acceptance of the certificate herein granted within a period of not to exceed 30 days from the effective date hereof.
2. Applicant shall comply with the provisions of General Order No. 79 and Part IV of General Order No. 93-A by filing, in triplicate, and concurrently making effective, appropriate tariffs and time schedules within 60 days from the effective date hereof and on not less than 10 days' notice to the Commission and the public.
3. Subject to the authority of the Commission to change or modify them by further order, applicant shall conduct operations, pursuant to the certificate herein granted, over and along the following routes:

Route No. 1

Beginning at the Court House square, Santa Rosa, thence along Mendocino Avenue, Spencer Avenue, Beaver Avenue, Howard Street, Wright Street, Fenton Street, Humboldt Street to the intersection of Humboldt Street and Mervyn Avenue.

Route No. 2

(a) Beginning at the Court House square, Santa Rosa, thence along 4th Street, St. Helena Avenue, Austin Way, Clyde Avenue, Proctor Drive, 17th Street and McDonald Avenue to its intersection with 4th Street.

(b) Between the intersection of 4th Street and St. Helena Avenue, thence along 4th Street, Talbot Avenue, Sonoma Avenue, Macklyn Avenue, Montgomery Drive to its intersection with Talbot Avenue.

Route No. 3

Beginning at the Court House square, Santa Rosa, thence along 3rd Street, E Street, South E Street, Bennett Avenue, Hendley Street, Oak Street, Brown Street, Tupper Street, to its intersection with South E Street.

Route No. 4

(a) Beginning at the Court House square, Santa Rosa, thence along Main Street, Santa Rosa Avenue, Earle Street, South A Street, an unnamed street, South Davis Street, and Sebastopol Avenue to the westerly city boundary of Santa Rosa.

(b) Between the intersection of Santa Rosa Avenue and South Park, thence along South Park, Petaluma Hill Road, Pressley Street, Deturk Avenue and Ware Street to its intersection with South Park.

Route No. 5

Beginning at the Court House square, Santa Rosa, thence along 4th Street, Wilson Street, 9th Street, Ripley Street, Fenton Street, Glenn Street, Carrillo Street, Morgan Street, 9th Street, Davis Street to its intersection with 4th Street.

Applicant may turn its motor vehicles at termini or intermediate points either in the intersection of the street or by operating in either direction around a block contiguous to such intersection.

(3) That a certificate of public convenience and necessity is hereby granted to James C. Kelly and Thomas F. Thompson, partners, authorizing the establishment and operation of service as a passenger stage corporation, as defined in Section 24 of the Public Utilities Act, for the transportation of passengers between Santa Rosa and the United States Naval Air Base and intermediate points, provided that no passengers may be picked up or discharged at any point easterly of the junction of Avalon Avenue and Sebastopol Avenue, except passengers having point of origin or point of destination westerly of said junction.

(4) That in all other respects Application No. 25946 is hereby denied.

(5) That in providing service pursuant to the certificate herein granted, the following service regulations shall be complied with:

1. Applicants shall file a written acceptance of the certificate herein granted within a period of not to exceed 30 days from the effective date hereof.
2. Applicants shall comply with the provisions of General Order No. 79 and Part IV of General Order No. 93-A by filing, in triplicate, and concurrently making effective, appropriate tariffs and time schedules within 60 days from the effective date hereof and on not less than 10 days' notice to the Commission and the public.
3. Subject to the authority of the Commission to change or modify it by further order, applicants shall conduct operations, pursuant to the certificate herein granted, over and along the following route:

Beginning at the intersection of Mendocino Avenue and 4th Street, Santa Rosa, thence over and along 4th Street, South A Street, Sebastopol Avenue, Wall Road, Finley Avenue and Fresno Avenue to its junction with Sebastopol Avenue.

Applicants may turn their motor vehicles at termini or intermediate points either in the intersection of the street or by operating in either direction around a block contiguous to such intersection.

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

Dated at San Francisco, California, this 20<sup>th</sup> day of February, 1945.

David Rubin  
Justin F. Green  
Richard Kachre  
Frank C. ...  
Frank ...  
COMMISSIONERS