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Decision 95-07-026 July 19, 1995

Stipulation provides that L.A. Top may apply to be excused from the provisions of the Public Utilities Code and the Public Utilities Commission of the State of California.

Order instituting investigation into the operations of L.A. Top Shuttle, Inc., a California Corporation, and Entezamoldin Nazemzadeh and M. Aram, Respondents.

On September 1, 1993, the Commission instituted this investigation (OII) for the purpose of determining whether respondents had violated certain regulations of the Commission as particularly set forth in the OII. Finally, on March 7, 1995, the attorney representing the Commission's Safety and Enforcement (S&E) Division in this proceeding, filed a motion for adoption of a document entitled "STIPULATION FOR SETTLEMENT" (Stipulation). The Stipulation is intended to resolve all of the issues raised in the OII. A copy of the Stipulation was attached to the motion, and is also included in this decision as Appendix A. The signatories to the settlement are Entezamoldin Nazemzadeh, the president of L.A. Top Shuttle, Inc. (L.A. Top) and William R. Schulte, Director of S&E. The Stipulation is silent with respect to respondent M. Aram. The motion discloses that the president of L.A. Top has informed the Commission staff that M. Aram no longer works for L.A. Top.

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The Stipulation places L.A. Top on probation for two years, during which time L.A. Top will report semi-annually to S&E on January 1 and July 1 of each year regarding its compliance with Commission regulations. The settlement also imposes a 90-day stayed suspension and a fine in the amount of \$7,000, payable in two installments of \$3,500; the first installment is due July 30, 1995 and the second installment is due March 31, 1997. The

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Stipulation provides that L.A. Top may apply to be excused from the second installment and S&E may not oppose such an application

provided that L.A. Top has fully complied with the terms of the Stipulation. Under the terms of the Stipulation, L.A. Top agrees not to knowingly operate unsafe vehicles, agrees to engage the services of a certified Bureau of Automotive Repair inspector in an on-going inspection program, and agrees to report the results of these inspections semi-annually to S&E. L.A. Top agrees to abstain from using independent or leased drivers and to treat all drivers as employees and observe all employee entitlements as required by law. L.A. Top also agrees to enroll in the Department of Motor Vehicles "Pull-Notice" Program and to file accurate Public Utilities Commission Transportation Reimbursement Account Reports with the Commission. Finally, L.A. Top agrees to maintain a public schedule of all rates and fares in its vehicles and to prominently post a notice that it is subject to the Commission's jurisdiction. Findings of Fact

1. The Stipulation is reasonable, consistent with the law, and in the public interest.

2. Respondent Mr. Aram is not a party to the Stipulation.

3. Respondent H. Aram no longer works for respondent L.A. Top.

4. The Stipulation is uncontested. Conclusions of Law

1. The motion for adoption of the Stipulation should be granted.

2. The Stipulation should be adopted.

3. The OII should be discontinued as to respondent Mr. Aram.

4. Since this matter is resolved by a stipulation, this order should become effective immediately.

Commission regulations. Commission suspension and a fine in the amount of \$2,000, payable in two installments of \$1,000; the first installment is due July 30,

and the second installment is due March 31, 1993.

ORDER is hereby entered as follows:

IT IS ORDERED that:

1. The motion for adoption of the Stipulation for Settlement (Stipulation) is granted.
2. The Stipulation, appended hereto as Appendix A, is adopted.
3. L.A. Top Shuttle, Inc. (L.A. Top) shall pay to the Commission a fine of \$71,000, which shall be payable in two installments of \$35,500, the first of which shall be paid on or before July 30, 1995, the second installment shall be paid on or before March 31, 1997. No interest shall be due with respect to either installment provided timely payments are made.
4. L.A. Top is placed on probation for two years from the effective date of this decision. Should L.A. Top not comply with this decision, including the terms of the Stipulation appended hereto, or Commission regulations during the probation period, this proceeding may be reopened to determine whether the 90-day suspension of operating authority set forth in the Stipulation should be imposed.
5. The Order Instituting Investigation is discontinued as to respondent M. Aram.

6. This docket is closed; subject to being reopened as set forth above.

This order is effective today. Dated July 19, 1995, at San Francisco, California.

3. L.A. Top Shuttle, Inc. (L.A. Top) shall pay to the Commission... DANIEL Wm. FESSLER, President... GREGORY CONLON... JESSIE J. KNIGHT, JR. ... HENRY M. DUQUE, Commissioners

I CERTIFY THAT THIS DECISION WAS APPROVED BY THE ABOVE COMMISSIONERS TODAY.

Wesley Frank... Acting Executive Director

2. The Order instituting investigation is discontinued as to respondent M. Aram...

On September 1, 1993, the Commission issued an Order instituting investigation (OII) into the passenger stage operations of LA TOP. More particularly, the OII sought to determine:

Order Instituting Investigation into the operations of L.A. Top Shuttle, Inc., a California Corporation, and Entezamoldin Nazemzadeh. I. 93-09-001 FILED SEPTEMBER 1, 1993

LA TOP has failed to properly maintain its vehicles and to comply with the requirement of the California Highway Patrol and California Administrative Code relative to motor carrier safety;

(b) Failure to Comply with Airport Authority Regulations: Whether LA TOP complies with airport regulations relating to dual operations and independent drivers;

(c) Failure to Maintain a Current Equipment List: Whether LA TOP maintains a current equipment list;

This agreement is entered into between the LA TOP and the Safety and Enforcement Division of the California Public Utilities Commission, (Safety and Enforcement Division) and L.A. Top Shuttle, Inc. (LA TOP); Entezamoldin Nazemzadeh. The effective date of this Agreement shall be the date of its approval and adoption by the California Public Utilities Commission (Commission).

(e) Use of Independent Operator: Whether the provisions of General Order 158 by engaging employees violated the provisions of General Order 158 by engaging employees. The Commission regulates intrastate airport passenger shuttle operations pursuant to the California Constitution, Article XII, by Public Utilities Code Section 103158. LA TOP is such operations under its passenger stage operating authority No. 62355 and General Order (GO) 158. LA TOP is such operations under its passenger stage operating authority No. 62355 and fees in violation of Section 103158.2 of the Public Utilities Code.

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On September 1, 1993, the Commission issued an Order Instituting Investigation (OII) into the passenger stage operations of LA TOP. More particularly, the OII sought to determine:

(a) Failure To Comply With Safety Requirements: Whether LA TOP has failed to properly maintain its vehicles and to comply with the requirements of General Order 158, the California Highway Patrol and Title 13 of the California Administrative Code relative to motor carrier safety;

(b) Failure To Comply With Airport Authority Regulations: Whether LA TOP has failed to comply with airport regulations relating to dual operations and independent drivers;

(c) Failure To Maintain a Current Equipment List: Whether LA TOP failed to maintain a current equipment list of all vehicles under its permit or certificate on file with the Commission;

(d) Failure to Participate in the DMV Pull Notice Program: Whether LA TOP had failed to enroll in the DMV driver pull notice program;

(e) Use of Independent Operators: Whether LA TOP had violated the provisions of General Order 158 by engaging employee drivers not holding authority from this Commission as "independent" or "leased" drivers and had further failed to treat such drivers as "bona fide" employees;

(f) Filing a False Report Which Understates Revenues: Whether LA TOP had filed a false report which understated revenues and fees in violation of Section 1033.5 of the Public Utilities Code;

(g) Failure To Post Schedule of Rates in Vehicles: Whether LA TOP had failed to post its schedule of rates in its vans;

(h) Failure To Assess Tariff Rates: Whether LA TOP failed to assess its applicable tariff rates;

(i) Failure To File Annual Report With the Commission: Whether LA TOP failed to file its annual report with the Commission.

(j) Failure To Provide Records: Whether LA TOP had failed to provide requested records to authorized representatives of the Commission;

(k) Operations as a Charter Party Carrier Without Commission Operating Authority: Whether LA TOP conducted operations as a Charter Party Carrier without holding a Charter Party Carrier Permit from the Commission authorizing such operations;

THE PARTIES TO THIS PROCEEDING now pending before the Public Utilities Commission, desiring to avoid the expense, inconvenience, and uncertainty attendant to litigation of the issues in dispute between them have agreed upon a settlement of the said issues and desire to submit to the Public Utilities Commission this stipulation for approval and adoption as its final disposition of the matters herein. The parties herein are: the California Public Utilities Commission's Safety and Enforcement Division and L.A. Top Shuttle, Inc., Entezamoldin Nazemzadeh

In order to effectuate a settlement of this matter before the Commission, L.A. Top Shuttle, Inc. and Entezamoldin Nazemzadeh shall not contest the above allegations BUT wishes to resolve this matter without further litigation. Entezamoldin Nazemzadeh agrees that CPUC Staff can, in any future enforcement or licensing proceeding involving either L.A. Top Shuttle or Entezamoldin Nazemzadeh, introduce the alleged violations and they will not be contested.

(g) Failure to Post Schedule of Rates in Vehicles;
 NOW, THEREFORE, in consideration of the mutual promises set forth herein, the parties agree as follows:
 (h) Failure to Assess Tolls Rates;
 (i) Failure to Report With the Commission;
 Whether LA TOP failed to file its annual report with the Commission.

1. Probation. L.A. TOP SHUTTLE, INC. shall serve a two year probation which shall begin on the effective date of this Agreement, subject to the following terms and conditions:

(k) Operations as a Charter Party Carrier Without
 (a) Progress Reports. During the probation, L.A. TOP SHUTTLE, INC. shall prepare and present to the Safety and Enforcement Division semi-annual reports of its compliance with Commission regulations in a letter every six months, explaining the progress in progress. The first report will be due July 1, 1995 and subsequent reports due every six months thereafter until completion of probation of the said LA TOP Shuttle, Inc. in the Public Utilities Commission for approval and adoption as a charter party carrier without.

(b) Further Proceedings. In the event that LA TOP Shuttle, Inc. violates the terms of this Agreement, the Commission may respond to this proceeding to reconsider the terms of this Agreement, including, without limitation, in order to find and impose applicable regulations and those regulations shall not constitute a violation of this Agreement. The Commission may wish to resolve this matter without further litigation. LA TOP Shuttle, Inc. agrees that CPUC staff can, in any future enforcement or licensing proceeding involving either L.A. Top Shuttle or LA TOP Shuttle, Inc., introduce the alleged violations and they will not be contested.

which have been or should be imposed for any past, present or future acts or omissions with respect to LA TOP'S performance of its passenger stage operation.

2. Suspension. Beginning on the effective date of this Agreement, the operating authority of LA TOP shall be subject to suspension for ninety (90) consecutive days, with actual suspension stayed, subject to LA TOP observing the requirements of this Settlement. The stay of the suspension may be lifted on further order of the Commission provided that Respondents are accorded notice and an opportunity to be heard.

3. Monetary Payment. LA TOP SHUTTLE, INC. agrees to pay a total of \$27,000 in two installments as follows: the first installment of \$3,500 shall be paid on or before July 30, 1995. The second installment of \$3,500 shall be paid on or before March 31, 1997. No interest is payable with respect to the settlement amount or any installment thereof. On or before March 31, 1997, LA TOP SHUTTLE, INC. may apply to the Commission to be excused from the second installment payment totaling \$3,500.

In the event that LA TOP SHUTTLE, INC. has fully complied with the terms of this Agreement, the Safety and Enforcement Division would not oppose said application as drivers as employees as required by law and withholding and other employee entitlements required by law and

4. Safe Operations. LA TOP SHUTTLE, INC. agrees not to knowingly operate an unsafe vehicle and to make all necessary repairs for safe operation before any vehicle is placed in service. LA TOP will take all necessary means to assure that its vehicles are safely operated in compliance with the Vehicle Code and Title 13 of the California Administrative Code.

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which have been or should be inspected

5. Vehicle Inspections. LA TOP agrees, and has engaged the services of Terry D. Spahr, an inspector certified by the Bureau of Automotive Repair to inspect each of the vehicles operated by them. The inspection program is ongoing. LA TOP agrees that it will promptly correct any deficiencies noted by the inspector. The results of these inspections shall be provided to the Safety and Enforcement Division staff every six months as part of LA TOP's progress reports.

6. Driver Retention, DMV Pull Notice Program. LA TOP further agrees not to allow any unlicensed driver to operate any company vehicle and shall also immediately enroll in the Department of Motor Vehicle's Driver Pull-Notice Program and shall forward the verification of enrollment certification to the Safety and Enforcement Division by January 31, 1995.

7. Cancellation of Pre-Franchise Agreements. On or before the effective date of this agreement, LA TOP will cancel, pursuant to their provisions, all pre-franchise agreements entered into with "employee" drivers that is to say, those drivers which are alleged by the OII to have been engaged by LA TOP as "independent" or "leased" drivers, who or which hold no operating authority from this Commission. LA TOP agrees to treat all such drivers as employees and to observe all FICA, FUTA, withholding and other employee entitlements required by law and airport regulations. LA TOP will bear the costs of premiums applicable to workers' compensation insurance for all employee drivers without deduction from employee compensation for such coverage as required by law. LA TOP will take all necessary steps to ensure that vehicles are safely operated in compliance with the Vehicle Code and Title 13 of the California Administrative Code.

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The parties agree jointly by executing and submitting this Settlement Agreement that the relief requested herein is just and equitable.

8. Compliance With General Order 158. LA TOP will comply with the provisions of General Order 158 including the requirement that it utilize only bona fide employees or licensed charter party carriers in the performance of its passenger stage operations. LA TOP is aware of the content of Section 5401 of the Public Utilities Code.

9. PUCTRA Fee Reports. LA TOP will file accurate PUCTRA reports on a timely basis.

10. Posted Rates. LA TOP will (i) maintain a schedule of all its rates in all of its vehicles, available to any customer upon request; (ii) prominently post a notice that it is subject to the Commission's jurisdiction, and that the driver is required to maintain a complete list of all fares; (iii) post representative fares in all vehicles; and (iv) post other fares should it be directed to do so by the staff.

11. LA TOP agrees that immediately upon the adopting of this Settlement Agreement by the Commission that it will be in compliance with the terms of the Settlement Agreement.

12. LA TOP agrees that this Settlement Agreement is intended only to resolve the instant regulatory matter affecting them that is before the Commission.

BY: William R. Schultz Dated: 5/21/93
WILLIAM R. SCHULTZ
Director of Safety and
Enforcement Division

The parties agree jointly by executing and submitting this Settlement Agreement that the relief requested herein is just, fair and reasonable and in the public interest, and that the terms herein are binding when approved by the Commission. The parties respectfully request that the Commission adopt findings and conclusions consistent with the Settlement Agreement and that the instant proceeding be terminated upon such order of the Commission.

IN WITNESS WHEREOF, the parties hereto have executed this Settlement Agreement on the date set forth opposite their respective signatures.

10. Forged Rates. L.A. Top will (i) maintain a schedule of rates and rates, available to any customer upon request; (ii) provide notice that it is subject to the Commission's jurisdiction, and that the driver is required to maintain a schedule of rates; and (iii) provide notice to maintain a schedule of rates in all vehicles; and (iv) provide notice to maintain a schedule of rates in all vehicles; and (v) provide notice to maintain a schedule of rates in all vehicles.

Dated: 2/16/95
 By: ENTEZAMOLDIN NAZEMZADEH
 President, for L.A. Top Shuttle, Inc.

11. L.A. Top Shuttle, Inc. shall immediately upon the adoption of this Settlement Agreement by the Commission that it will be in compliance with the terms of the Settlement Agreement.

STAFF OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION

12. It is intended only to resolve the instant regulatory matter affecting the parties and not to resolve other matters before the Commission.

Dated: 2/27/95
 By: William R. Schulte
 WILLIAM R. SCHULTE
 Director of Safety and Enforcement Division

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all known parties of record in this proceeding by mailing by first-class a copy thereof properly addressed to each party.

Dated at San Francisco, California this 7th day of March, 1995.

/s/ MARGARITA LEZCANO

Margarita Lezcano

(END OF APPENDIX A)