

SEP 24 1996

Decision 96-09-091 September 20, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of SuperShuttle of San Francisco, Inc. (PSC-1298) for authority to provide on-call, door-to-door passenger stage service between Sacramento Metropolitan Airport (SIA), on the one hand, and points and places in the Counties of Sacramento, Sutter, Butte, Placer, El Dorado, San Joaquin, Yolo, Yuba, Nevada and Solano, on the other hand, and to establish Zones of Rate Freedom for such service.

ORIGINAL

Application 95-06-015
(Filed June 5, 1995)

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O. P. I. N. I. O. N.

In this decision we grant permanent authority for SuperShuttle of San Francisco, Inc. (SuperShuttle) to provide service between Sacramento International Airports (SIA) and all points in the surrounding ten-county region. We also find that SuperShuttle faces insufficient competition for a Zone of Rate Freedom (ZORF) to produce rates that are just and reasonable. Because of this, we revoke the ZORF granted to SuperShuttle in Decision (D.) 95-10-017.

Background

According to the Board's findings, the existing service at SIA was provided at SIA through an exclusive contract with the Airport. Due to antitrust issues, the service was deregulated by the Sacramento County Board of Supervisors (Board) in 1982. Following the deregulation of the van service, the Sacramento Department of Airports (DOA) contracted with a parking concessionaire, APCOA, to provide "Ground Transportation Starter Services" from a curbside booth at SIA.

The single APCOA employee at the booth was responsible for calling vans to the inside curb, in front of the booth, where passengers were picked up. Vans queued up in a staging area at a distant location prior to being called up to the two spaces reserved for non-prearranged walk-up passengers. The first van in the staging area would then proceed to the pick-up location in the front of the booth. This booth was located in front of the center terminal building where it remains today. According to DOA procedure, the van drivers were then supposed to direct a passenger to the first van in line that was going to that passenger's destination. If drivers waited beyond their allotted time, the APCOA employee would remind the drivers to depart. The drivers, however, would often prefer to wait until

(Footnote continues on next page)

their vans were full. Inevitably, disagreements between the drivers and the APCOA employee would arise.

In February 1993, DOA made a major change in the van operating procedures at SIA. To address curb congestion problems, DOA changed the location where vans dropped-off passengers from the inside terminal curb to the center island curb.

DOA documented numerous problems with van service and considered the van service provided to be of overall poor quality. DOA became concerned that the poor quality of van transportation made SIA a less desirable destination than would be the case if a safe and reliable van service were available to each passenger landing at SIA. Accordingly, in December 1994, DOA submitted a memorandum to the Board describing the quality of the existing van services at SIA. DOA also recommended that the Board seek to improve the overall quality of van services by directing DOA to initiate a request for proposal (RFP) process for van service at SIA. The Board accepted DOA's recommendation. Four companies responded to the RFP, and SuperShuttle was ultimately selected by DOA.

On September 5, 1995, SuperShuttle and the Board entered into a contract titled Van Service Agreement Sacramento Metropolitan DOA (Agreement). Pursuant to the Agreement, SuperShuttle was granted the following privileges at SIA: (1) The exclusive right to pick-up passengers at SIA who have not made reservations with another van company; (2) the exclusive right to drop-off and pick-up passengers on the inside terminal curb at SIA; (3) access to a parking area from which SuperShuttle may

1 Other van companies are required to drop-off and pick-up their passengers on the center island curb. The advantage of the inside curb is that it is closer to the terminal, more convenient for passengers, and allows APCOA employees to direct passengers to the van. According to DOA procedures, the van drivers were then supposed to direct a passenger to the first van in line. The APCOA employees would then direct the drivers to the van. The APCOA employees would often prefer to wait until the APCOA employees would often prefer to wait until they depart. The drivers, however, would often prefer to wait until they depart. (Footnote continues on next page)

stage its vans, and (4) SuperShuttle is the only van company with access to the curb-side information booth at SIA. As sole operator of the booth, SuperShuttle is not required, and has not provided, information regarding competing van companies to prospective bus passengers seeking information at the booth.² The Agreement does not provide SuperShuttle with any rights outside of SIA.

The Agreement also sets forth certain standards of service that SuperShuttle must meet. First, SuperShuttle must maintain its vehicles in "first class" condition. Second, SuperShuttle must provide service to a ten-county region. Third, even if departing passengers arrive during off-peak times, SuperShuttle must transport passengers from SIA within certain time limits. Specifically, departing passengers seeking van transportation to areas within 25 miles of SIA must wait no longer than 15 minutes before their shuttle van leaves SIA. For transportation to areas between 25 and 50 miles from SIA, passengers must wait no longer than 45 minutes. For areas more than 50 miles away, passengers must wait no longer than 90 minutes.

In June 1995, 13 companies provided van service from SIA. As of January 10, 1996, seven companies, including SuperShuttle,

On June 2, 1995, SuperShuttle filed (A) Application 95-06-015 to amend its operating authority 95-1295 to allow SuperShuttle to provide service between SIA and points in the counties of Sacramento, Sutter, Butte, Placer, El Dorado, and

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 convenient, and sheltered from the weather. In addition, to reach the center island curb requires the crossing of a street and exposure to the hazards of vehicular traffic which result in the information provided. Although the information provided in 2. After SuperShuttle was awarded the contract, the Taxi Association (also under contract with the County) decided that it was not interested in staffing the booth in conjunction with SuperShuttle. SuperShuttle is thus the sole user of the booth.

provided van services at SIA. Of the six companies that ceased service between June 1995 and January 1996, one went bankrupt due to a decline in its revenues as a result of the Agreement; two had their authority revoked for major safety violations; one had switched from being a PSC to a charter party carrier; and no passenger information was presented regarding the fate of the remaining two.

Since SuperShuttle began offering service in October 1995, the number of passengers using shuttle vans has risen, despite there being fewer shuttle van companies. The following table shows outbound ridership statistics for the months of October, November and December 1993, 1994 and 1995.

Month	1993	1994	1995
October	3950	4065	4438
November	3539	3920	5748
December	3190	3216	5651

In comparison, nearly 3 million passengers enplaned and deplaned at SIA during 1994.

II. Procedural History

On June 5, 1995, SuperShuttle filed (A.) Application 95-06-015 to amend its operating authority PSC-1298 to allow SuperShuttle to provide service between SIA and points in the ten counties of Sacramento, Sutter, Butte, Placer, El Dorado, San...

The owner of Gold Dust Shuttle presented oral comments in which he stated his company had gone bankrupt as a direct result of the Agreement. Although the information provided was not in the form of sworn testimony, there is no reason to doubt the veracity of the information. No firm information is available regarding the number of inbound passengers on shuttle vans.

Joaquin, Yolo, Yuba, Nevada, and Solano. The application also requested authority to establish a ZORF for service to SIA pursuant to Section 454.2 of the Public Utilities (PU) Code.⁵ The requested ZORF for the first person would be \$7 below and \$13 above the applicant's proposed initial fares. The ZORF for the second person would be \$11 below and \$5 above the proposed initial fares.

On October 5, 1995, we issued D.95-10-017. In that decision, we expressed several concerns about the Agreement. First, the Agreement provided DOA with the sole authority to determine and amend SuperShuttle's rates. We were concerned that the Agreement may not conform to the PU Code, which gives the Commission, and not the airports, jurisdiction over the rates charged by PSCs. Because of this, we requested in D.95-10-017 for SuperShuttle to amend the Agreement prior to changing any of its initial rates.

Our second concern was that the exclusive privileges conferred to SuperShuttle could unfairly restrict the operations of other PSCs. We were concerned that if SuperShuttle were to become the only viable PSC at SIA, SuperShuttle may not face the level of competition contemplated in Section 454.2 for the successful operation of a ZORF. We acknowledged SuperShuttle's assertion that it would compete with other PSCs, taxis, cabs, limousines, buses, vans, and automobiles, but we also stated that if the Agreement diminished competition from other PSCs, it was unclear whether competition from other sources would be sufficient to allow the requested ZORF to produce reasonable rates.

The third concern we expressed in D.95-10-017 was that, if the restrictions in the Agreement dissuaded competing PSCs from serving SIA, then SuperShuttle might be inclined to curtail or

On January 11, 1996, SuperShuttle filed a petition to modify D.95-10-017 so as to grant SuperShuttle permanent authority to provide service to SIA. No references are to the PU Code.

withhold service to certain of its authorized off-airport origins and destinations.

We stated in D.95-10-017 that the rate and service implications arising from the Agreement would not be immediate. We therefore granted SuperShuttle authority to operate for six months while we held hearings on the following four issues:

1. The effect of preferential curb space and other operating advantages on competition in the non-prearranged passenger stage market.
2. The effect on applicant's rates of any diminished competition from other passenger stage operators.
3. The effect of any diminished competition at SIA on nondiscriminatory service to all authorized points.
4. The effect of competition from transportation sources other than PSCs on the ability of SuperShuttle to produce reasonable rates.

We also directed the staff of the Safety & Enforcement Division (S&E) to investigate the above issues, prepare and submit a report, and participate in the hearings.

A prehearing conference (PHC) was held in Sacramento on November 16, 1996. At the PHC, dates for submitting written testimony and holding evidentiary hearings were established. Evidentiary hearings were held by Administrative Law Judge (ALJ) Kenney in Sacramento on January 29-30, 1996.

During the course of the evidentiary hearings, public comments were provided by two persons. The Commission also received four letters from the public commenting on this proceeding.

On January 11, 1996, SuperShuttle filed a petition to modify D.95-10-017 so as grant SuperShuttle permanent authority to provide service to SIA. No protests to SuperShuttle's petition

were received. In D.96-03-007, we denied SuperShuttle's petition for modification, but we did extend SuperShuttle's interim authority pending the outcome of the evidentiary hearings ordered in D.95-10-017.

Opening briefs were submitted on March 15, 1996, and reply briefs on March 25, 1996. This proceeding was submitted upon the receipt of the reply briefs. Subsequently, on April 12, 1996, S&B submitted a petition to set aside submission. In its petition, S&B requested that a declaration by its counsel be admitted into the record in order to respond to a declaration by counsel that was appended to SuperShuttle's reply brief. SuperShuttle filed in opposition to S&B's petition on April 29, 1996.

SuperShuttle provides excellent service, and is strongly opposed to any other service. III. Overview of Parties' Positions According to the Agreement, the Airport is unfair to customers who must either pay SuperShuttle

SuperShuttle requests the following: (1) That it be granted permanent authority to serve SIA; (2) that it be allowed to maintain the ZORF authorized by the Commission in D.95-10-017; and (3) that this proceeding be closed.

SuperShuttle asserts that any order by the Commission must recognize and defer to § 21690.5 et seq. (§ 21690.5) which allows a publicly owned and operated airport to displace competition at the airport through limited or exclusive agreements with a single operator or a limited number of operators. SuperShuttle believes that pursuant to § 21690.5 et seq., the decision as to the level and manner of competition in the provision of ground transportation at SIA is left to the County of Sacramento (County).

Safety & Enforcement Four letters from the public were received. S&B believes the Agreement conflicts with the Commission's policy of supporting competition in the PSC industry.

to that of SuperShuttle. Kristin Palmquist wrote that SuperShuttle had failed to pick her up on one occasion despite her having made a reservation. Palmquist recommended that SuperShuttle face as much competition as possible in order to compel SuperShuttle to provide good service. Norma Carolan wrote that she had experienced poor service from SuperShuttle and asked that SuperShuttle not be awarded any contract on a permanent basis unless the contract provided for healthy competition. The fourth letter addressed a subject not directly related to this proceeding.

California S&E concludes that the public convenience and necessity would be served by the Agreement.

The threshold issue before us is whether to grant SuperShuttle permanent authority to operate at SIA. If we decide in the negative, there is no need to consider the issues pertaining to SuperShuttle's rates and service which we ordered heard in D.95-10-017. On the other hand, if we decide SuperShuttle should be granted permanent authority, it then becomes necessary to decide on issues related to SuperShuttle's rates and service.

SuperShuttle states that it meets all of the criteria the Commission has traditionally used to evaluate the fitness of a PSC. SuperShuttle also states that there is a public need for its service as demonstrated by the strong and growing demand for its service.

S&E does not dispute that SuperShuttle is fit to serve and that public demand exists for the service being provided by SuperShuttle. However, S&E objects to the Agreement which restricts competition for PSC service to and from SIA. S&E states that the Commission's policy has long been to encourage competition in the PSC industry. The basis for this policy, according to S&E, is that competition will result in better service and lower rates to the public.

California S&E declares that public convenience and necessity require such operation.

S&E states that in order to find that the Agreement serves the public convenience and necessity under § 1031, the Commission must determine that the "downtown corridor" is a natural monopoly, and that allowing other carriers access to the same privileges SuperShuttle enjoys is not necessary to the public benefit. S&E believes that neither of these findings could be supported by the facts. S&E is also concerned that the precedential effect of a grant of authority could lay the groundwork for similar anticompetitive arrangements elsewhere in California. S&E concludes that the public convenience and necessity would not be served by a grant of authority in the context of the Agreement.

SuperShuttle disagrees with S&E about the need for the Commission to make a finding on whether the Agreement is in the public interest in order to grant SuperShuttle a CPCN pursuant to § 1031. According to SuperShuttle, the determination of whether the Agreement is in the public interest is a matter that is left to the County by § 21690.5 et seq. To the extent that § 1031 is inconsistent with § 21690.5 et seq., SuperShuttle believes that § 21690.5 et seq. should prevail since it is the later enacted and more specific statute.

S&E responds that § 21690.5 et seq. is not applicable to the instant situation. According to S&E, the intent of § 21690.5 et seq. was to extend state action immunity to municipal airports granting monopoly concessions to businesses providing "airport services." S&E states that even if § 21690.5 et seq. had been intended to allow airports to grant monopolies for ground transportation, it would not apply to the Agreement since the Commission's policy has long been to encourage competition in the PSC industry. The basis for this policy, according to S&E,

Section 1031 states that no PSC shall operate over the state's public highways without first having obtained from the Commission "a certificate declaring that public convenience and necessity require such operation."

Agreement is not a grant of monopoly per se, but of operating advantages which allow the carrier to then monopolize a market. Finally, S&E states that § 21690.5 et seq. does not require the Commission to grant authority to any carrier who enters into an exclusive deal with an airport. S&E believes that § 1033⁷ preserves the Commission's jurisdiction over PSCs regardless of any action by Sacramento County. To the extent that the Commission decides that it does not agree with the County's action to limit competition for PSC services, S&E believes that under § 1033 the Commission's decision will prevail.

The record demonstrates that SuperShuttle is unquestionably fit to serve and has thus far provided high-quality service. The need for SuperShuttle's service is evidenced by the fact that more passengers are using PSC services now than prior to SuperShuttle's arrival. We therefore find that public convenience and necessity require the authority requested by SuperShuttle, and we shall accordingly grant SuperShuttle permanent authority to serve SIA.

S&E is correct that the Agreement limits competition and thus conflicts with our long-held policy to encourage competition

⁷ Section 1033 states in pertinent part: "The Commission... may grant certificates of public convenience and necessity, make decisions and orders, and prescribe rules affecting passenger stage corporations, notwithstanding the provisions of any ordinance or permit of any city, county, or city and county, or in case of conflict between any such order or rule and any such ordinance or permit, the certificate, decision, order, or rule of the commission shall prevail".

in the PSC industry.⁸ Our goal has always been for PSCs to provide the best possible service to the public at the lowest possible cost. In our view, open and competitive markets for PSC services achieve this goal by stimulating individual PSCs to seek a competitive advantage through better service and/or lower prices to the public.⁹ On the other hand, we recognize that the Agreement was entered into for the very purpose of achieving our goal of better service to the public. Our concern is therefore not with the intent of the Agreement, but whether it is wiser to pursue the goal of better service by using the invisible hand of the market or the strong arm of government regulation.

We agree with SuperShuttle that municipal airports are vested with broad authority to limit competition for services, including PSC services, by the plain language of § 21690.8 of the PU Code:

The Legislature recognizes that to further the policies and fulfill the objectives stated in this article, it is often necessary that publicly owned or operated airports enter into exclusive or limited agreements with a single operator or a limited number of operators. The governing bodies of publicly owned or operated airports shall grant exclusive or limited agreements to displace business competition with regulation or monopoly service whenever the governing body determines, in consideration of the factors set forth in Section 21690.0, that such agreements are necessary to further the policies and to fulfill the objectives of this Article. The Legislature contemplates that publicly owned or operated airports will

8. Examples of decisions in which we stated our policy of encouraging competition in the PSC industry are the following: D. 91-279, D. 89-11-003, D. 91-11-039, D. 92-08-020, D. 93-09-037, D. 93-11-015, D. 93-12-012, and D. 95-09-004.

9. D. 90-11-065, mimeo., p. 17.

grant, exclusive or limited agreements in furtherance of the policy of this state to displace business competition by exclusive or limited agreements to fulfill these policies and objectives.

We have in the past interpreted § 21690.8 in the same manner we do today. In D.86-01-046, we denied a petition by SuperShuttle to hold hearings on whether a carrier with an exclusive contract with San Francisco International Airport (SFO) was fit to serve. Among the reasons we denied the petition was that SFO had "proceeded under color of authority of Section 21690.5 et seq. of the Public Utilities Code" when the airport entered into the exclusive contract. Subsequently, in D.89-10-028, we ruled that § 21690.5 et seq. did not interfere with airports' authority under City of Oakland v. Burns (46 C2d 401 (1956)) to govern operations of common carriers on airport premises.

Our ruling today regarding § 21690.5 et seq. is also in accord with the ruling by the Federal Appeals Court in Lorrie's Travel and Tours, Inc. v. SFO Airport, Inc. (753 Fed. 2nd 790) as demonstrated by the following excerpts from that decision:

We agree with the district court that the state of California has enacted a comprehensive statutory scheme that vests limited discretion in municipalities to restrict competition in the provision of ground transportation at municipal airports. That scheme is found in CPUC Code Sections 21690.5-21690.10. The City's decision to grant an exclusive contract to Airporter is a reasonable and necessary consequence of ground transportation at municipal airports. We are not forced to

10 D.86-01-046, mimeo., p. 16.

11 D.89-10-028, 33 CPUC 2d 5, 22

12 Lorrie's, 753 Fed. 2nd 793

surmise what the legislature contemplated when it authorized municipalities to regulate ground transportation. The legislature expressly stated that it contemplates that publicly owned or operated airports will grant exclusive or limited agreements."¹³

The Legislature clearly contemplated that the City might award an exclusive ground transportation contract pursuant to state policy to prevent the unnecessary duplication of services. (CPUC Section 21690.8).¹⁴

The authority of municipal airports to limit competition for PSC services on airport premises may not be preempted by the Commission pursuant to § 1033. This issue was settled in D.90796 and D.89-10-028. In both of these decisions, we found that § 1033 did not apply to the "private roads of airport authorities."¹⁵

In addition, case law supports our approval of the agreement we are considering. In City of Oakland, the California Supreme Court held that a municipal airport possessed the authority to (1) grant an exclusive right for one common carrier to provide services at the airport; and (2) exclude other carriers with Commission authority from operating at the airport. The following excerpts from prior Commission decisions illustrates our recognition that airports pursuant to City of Oakland, may limit the number of common carriers:

A municipal airport owned and operated by a city in a proprietary capacity can regulate the access and conduct of limousine operators at the airport regardless of what Commission

13 Ibid.

14 Id., 794.

15 D.90796, mimeo., p. 14; and D.89-10-028, mimeo., p. 33 and Conclusion of Law 2.

authority they hold; (City of Oakland v. Burns).
 [P]ermits issued by the Commission authorize the holders of those permits to provide transportation services over public highways; they do not provide authorization to provide such services on private property... [We again point out... the right of an airport to control its undedicated streets has clearly been settled by case law in City of Oakland v. Burns.

Airporter has an exclusive contract with [San Francisco International Airport/SFO] pursuant to which Airporter pays to the airport 16.25 percent of the gross revenues. In exchange, City agrees to prohibit any carrier from loading or picking up or soliciting passengers for hire to or from San Francisco. San Francisco can regulate the access and conduct of for-hire passenger stage operations on SFO property regardless of what Commission authority is held by the carriers (City of Oakland v. Burns).

Even today, our decisions granting a CPCN to a common carrier implicitly recognize City of Oakland. This recognition appears in the form of an ordering paragraph which typically states that the recipient of the CPCN "may not operate into or on airport property unless such operations are also authorized by the airport's governing body."

We acknowledge the authority of airports, and SIA in particular, to enter into exclusive agreements for services with the understanding that such authority is limited by § 21690, which states in part:

16 D.81684, 75 GPUC-362, Footnote 15; and D.85973, 80 GPUC-118.

17 D.90675, 2 GPUC-263, 268, 270.

18 D.90796, mimeo., pp. 9, 14.

The governing body (of a publicly owned or operated airport) shall consider the following factors to determine the necessity for an exclusive or limited agreement to further the policies and objectives stated in this article:

- (a) Public safety, including the need to provide such services on private property.
- (b) Public convenience, including the need to control the unattended streets has clearly been settled by case law.
- (c) Quality of service.
- (d) The need to conserve airport space.
- (e) The need to avoid duplication of services.
- (f) The impact on the environment of the facilities of the airport as an essential commercial and tourist service center.
- (g) The need to avoid destructive competition which may impair the quality of airport services to the public, lead to an uncertainty, disruption, or instability in the rendering of such services, or detract from the state's attractiveness as a center of tourism and commerce.

In making this determination, the airport operator shall not be required to take evidence or to make findings of fact.

We interpret §21690.9 as limiting the airports' authority to considerations affecting their operations only. In other words, the airports may enter into exclusive contracts for the provision of services, including PSC services, based on how the factors above pertain to the airports' own operations, and not to the state as a whole. This Commission is charged with ensuring public safety, public convenience, quality of service, and all other aspects of PSC regulation in California. Although municipal airports may govern the activities of common carriers on airport premises, the following portion of the California Constitution makes it clear that we regulate the activities of PSCs outside of airport premises:

The commission may fix rates and establish the rules for the transportation of passengers and property by transportation companies, prohibit discrimination, and award reparations for the extraction of unreasonable, excessive, or discriminatory charges. A transportation company may not raise a rate or incidental charge except after a showing to and a decision by the commission that the increase is justified, and this decision shall not be subject to judicial review except as to whether confiscation of property will result. (California Constitution, Article XIII, Section 4.)

In addition to the California Constitution, the Public Utilities Code also provides us with authority to regulate virtually every aspect of the operations of PSCs over the State's public highways.¹⁹ Thus, even if a PSC has an exclusive contract with an airport, we still retain jurisdiction over all aspects of that PSC's operations over the State's public highways. For example, if we order a PSC to provide service over public highways in a way that differs from that required by an exclusive contract, our authority shall prevail. If necessary, we could deny or revoke a CPCN to a PSC with an exclusive airports contract if the PSC lacks sufficient technical capabilities, financial resources, or is otherwise judged unfit to serve. In such an instance, our denial or revocation of authority would preclude a PSC from operating outside of an airport regardless of any rights an airport may have conferred upon the PSC pursuant to S 21690.5 et seq.

In the instant proceeding, we find that Super Shuttle is fit to provide the service called for in the SIA contract. Further, we conclude that SIA entered into such a contract based on

¹⁹ For example, see Sections 211, 216, 226, 451, 452, 453, 454 (2), 460, 460.3, 460.5, 460.7, 461.5, 486, 488, 490-494, 701, 702, 703, 728, 730, 734, 761, 762, 768, 1031-1045.

V. Rates and Service Issues

Having granted SuperShuttle permanent authority to serve SIA, we now turn to the issues regarding SuperShuttle's rates and service which we ordered heard in D.95-10-017. On the matter of rates, we expressed our concern in D.95-10-017 that SuperShuttle may face insufficient competition for a ZORF to produce rates that are just and reasonable. We also expressed our concern that the Agreement may conflict with our authority to set rates for PSCs. On the matter of service, we stated our concern in D.95-10-017 that SuperShuttle, if it were free of competition, might be inclined to curtail or even withhold service to certain off-airport locations.

We shall address first the matter of SuperShuttle's rates, followed by SuperShuttle's service to the public.

A. Should the ZORF Be Continued

In order to assess whether the ZORF we authorized in D.95-10-017 should be continued, we instructed the assigned ALJ to hold hearings on three "effects" that the Agreement may have on competition and the rates charged by SuperShuttle. Each of these three "effects" is addressed below.

1. The Effect of Preferential Curb Space and Other Operating Advantages on Competition in The Nonprearranged Passenger Stage Market

SuperShuttle readily acknowledges that the Agreement restricts competition in the non-prearranged outbound passenger stage market at SIA. SuperShuttle states that the whole point of the Agreement is not to foster competition, but to ensure that passengers receive a high level of service. SuperShuttle adds that even after the Agreement, SuperShuttle will still compete with six other PSCs providing van services at SIA.

SuperShuttle states that the Agreement has not had any significant effect on the ability of deplaning passengers to "choose" a PSC. This is because, prior to SuperShuttle's entry, has not changed substantially since the advent of the Agreement.

passengers without reservations seeking van transportation were directed to the first available van in the staging line. In this respect, SuperShuttle believes the Agreement affected competition only to the extent that "competition" is defined not in terms of customer choice, but in terms of the ability of a greater number of carriers to serve a particular submarket.

S&E disputes that SuperShuttle is the only operator at SIA allowed to serve non-prearranged passengers. S&E notes that SuperShuttle testified that it may direct non-prearranged passengers at SIA to other PSCs if SuperShuttle could not provide the requested service. S&E believes that SuperShuttle has used this ability to "pick-and-choose" customers to monopolize the "downtown corridor" and leave the less remunerative areas to other carriers. To demonstrate SuperShuttle's monopolization of the downtown corridor, S&E alleges that there was at least one period since October 1995 during which there were no competitors left for the downtown corridor. S&E's allegation was contested by DOA.

S&E also disputes SuperShuttle's assertion that the level of customer choice has not changed as a result of the agreement. S&E states that the curb is now dedicated to SuperShuttle at all times, whereas before PSCs rotated to the curb. Furthermore, due to SuperShuttle's control over the curb-side information booth, passengers are not given information about the availability of other shuttle vans even when they seek it at the booth.

We find that SuperShuttle, under the Agreement, has complete control of the market for non-prearranged passenger stage services at SIA. S&E is mistaken in its belief that SuperShuttle has chosen to control only the downtown corridor while leaving the rest of the market open to other PSCs. Since SuperShuttle began operating, no other PSC has served the non-prearranged market at SIA.

SuperShuttle's argument that the level of customer choice has not changed substantially since the advent of the Agreement has

some merit. Prior to the Agreement, SIA intended for deplaning customers without a reservation to board the next PSO in the queue. Still, customers with a preference for a particular PSC (or a dislike of the PSC at the front of the queue) could choose a PSC other than the one at the front of the queue. The process of choice was facilitated by a curbside booth that provided information on the many PSCs that were available. Now, the curbside booth only provides information about SuperShuttle and not SuperShuttle's competitors. In sum, while customer choice was limited prior to the agreement, it still existed, which is unlike the case today.

The only competition from PSCs that SuperShuttle faces at SIA is from those that provide prearranged service. However, the competition from prearranged service is minimal since this submarket is small in relation to the walk-up market. In addition, given the advantages that SuperShuttle enjoys under the Agreement, we expect SuperShuttle to dominate its competitors providing prearranged service. For example, only SuperShuttle has access to the inside curb which is safer, more convenient, and sheltered from the weather. Over time, passengers will come to appreciate SuperShuttle's advantages and will likely choose SuperShuttle's "prearranged" competitors less and less.

Other PSCs may also compete with SuperShuttle for inbound passengers traveling to SIA. But once again, the Agreement provides SuperShuttle with advantages that will allow it to dominate this submarket over time as well. The most important advantage is that SuperShuttle, when carrying passengers to SIA, can count on passengers to carry away from SIA. Hence, SuperShuttle will have paying passengers for both the inbound and outbound legs. Competing carriers, largely excluded from the outbound market by the Agreement, will likely carry few passengers on the outbound leg. Accordingly, competitors will likely have lower revenues than SuperShuttle for each mile driven.

SuperShuttle also has the advantage of being the only PSC allowed to drop off its inbound passengers at the inside curb, which is safer, more convenient, and sheltered from the weather. We conclude that the Agreement has eliminated competition in the submarket for outbound passengers without reservations, and substantially diminished competition in all other submarkets for PSC services to and from SIA.

The Effect on SuperShuttle's Rates of Any Diminished Competition from Other PSCs

SuperShuttle presents several reasons why it believes that the absence of competition from other PSCs will not affect its rates. First, SuperShuttle may only raise its rates with the approval of DOA. SuperShuttle believes that DOA, which must operate in a political environment, would be very reluctant to approve any rate increase. Second, SuperShuttle believes that it does not compete with other PSCs since they cannot match SuperShuttle's level of service. Finally, SuperShuttle believes that competition from private cars and taxicabs will serve as a competitive check on SuperShuttle's rates.

S&B disputes SuperShuttle's assertion that DOA's authority to reject rate increases constitutes a significant check on rate increases. S&B believes that the exercise of this authority by DOA would be in violation of the Commission's jurisdiction to govern rates for S&B; therefore, believes that to the extent that it is used, this "significant check" violates state law; to the extent that it is not used, it cannot operate as a check on rates.

We find that the lack of competition from other PSCs has enabled SuperShuttle to charge higher rates than would be the case if there were stronger competition from other PSCs. First, the evidence shows that SuperShuttle's rates are generally above the rates that prevailed prior to SuperShuttle's arrival. For instance, SuperShuttle's rate to downtown Sacramento is \$10 while

the prevailing rate before SuperShuttle's arrival was \$9). Even on SuperShuttle's own witness, the Operations Officer for DOA, testified that SuperShuttle's rates are higher than the previously prevailing rates.²¹ The fact that other PSCs generally charged less than SuperShuttle demonstrates their ability to compete on price, if not also on service. The elimination of this price and competition by the Agreement thus removed a key impediment to SuperShuttle charging rates higher than those that prevailed while competition existed.

SuperShuttle tries to argue that, due to its superior service, it does not face competition from other PSCs. However, SuperShuttle undermines its own argument when it testified that it never would have entered the market at SIA unless it were granted the "privilege" of being free of competition from other PSCs for non-prearranged, walk-up passengers.²²

We are unpersuaded by SuperShuttle that the ability of DOA to control rate increases constitutes an adequate substitute for the discipline of a competitive market. DOA currently allows SuperShuttle to charge more than the previously prevailing market rates. In the future, SuperShuttle may be able to convince DOA to allow even higher rates. A competitive market, on the other hand, could keep SuperShuttle from raising its rates no matter how persuasive DOA may find SuperShuttle's arguments. Indeed, competition from other PSCs could even cause SuperShuttle to lower its rates.

SuperShuttle is correct that it faces competition from cars and taxis, but these forms of transportation are imperfect substitutes for PSCs. PSCs provide service at much lower cost than

SuperShuttle states that it made a nearly identical statement in A.95-06-015. Moreover, SuperShuttle believes that in the course of this proceeding, it has provided evidence of

21 TR 1: 135-136; TR 2: 144.

22 TR 1: 10, 46, 48, 56-57, 59-62.

do taxis or auto rentals. Without other PSCs to keep a lid on the prices, competition from cars and taxis, with their much higher cost to consumers, leaves ample room for SuperShuttle to raise its rates. We conclude that diminished competition from other PSCs has enabled SuperShuttle to charge higher rates than would be the case with more vigorous competition from other PSCs. However, we will not order SuperShuttle to reduce its rates at this time for reasons stated elsewhere in this decision.

The Effect of Competition from Transportation?

Sources Other than PSCs on the Ability of the ZORF to Produce Reasonable Rates

SuperShuttle asserts that competition from other means of transportation, such as private cars, taxis, rental cars, limousines, chartered vans, etc., provide sufficient competition for the Commission to authorize a ZORF pursuant to § 454.2. To support its assertion, SuperShuttle cites D.93-09-034. In that case, the Commission granted a ZORF to the only PSC providing scheduled service to SFO since the scheduled service provider faced competition from buses, taxis, limousines, private cars, auto rental cars, and "nonscheduled" PSCs.

According to SuperShuttle, the Commission has routinely granted ZORFs based on similar or even lesser showings than that set forth in SuperShuttle's application. For example, in D.94-03-062, the Commission determined that the proposed ZORF would produce reasonable rates based on the following showing by the Applicant:

"Applicant has experienced a growing competition in his service area from private automobile, taxis, limousines, and airport van shuttle companies." (A.93-11-034.)

SuperShuttle states that it made a nearly identical statement in A.95-06-015. Moreover, SuperShuttle believes that in the course of this proceeding, it has provided evidence of

competition well in excess of the showing deemed adequate in prior Commission decisions.

S&E believes that, absent competition from PSCs, other forms of transportation cannot provide the competition needed for a ZORF to assure the public of reasonable rates. In addition, S&E disputes that private cars constitute "other form of transportation" as cited in § 454.2. According to S&E, the private car is neither substantially similar to passenger stage shuttle services nor a "service" as required by § 454.2.

S&E recommends applying the precedent established in D.91-03-064. In that case, the Commission denied ZORF authority to a carrier over one route specified in the application and granted it with respect to another. In denying the ZORF authority for one the route, the Commission said: "Clearly, Route 2 has not yet been operated in a competitive market and therefore does not meet the requirements for ZORF fares." S&E believes that applying D.91-03-064 to the situation at hand requires a denial of the requested ZORF authority.

The source of our authority to grant a ZORF stems from § 454.2 which states as follows:

"Notwithstanding Section 454, the commission may, upon application, establish a zone of rate freedom for any passenger stage transportation service which the commission finds is operating in competition with another substantially similar passenger stage transportation service or competitive passenger transportation service from any other means of transportation, if the commission finds that these competitive transportation services will result in reasonable rates and charges when considered along with the authorized zone of rate freedom. An adjustment in rates or charges within a zone of rate freedom established by the commission is hereby deemed just and reasonable. The commission may, upon its own motion, suspend any adjustment in rates or charges under this section and institute proceedings pursuant to Section 491."

As discussed previously in this decision, SuperShuttle does not face significant competition from other PSCs as a result of the Agreement. We therefore find that competition from other PSCs will not result in SuperShuttle charging reasonable rates under a ZORF regime. We are unpersuaded by SuperShuttle's argument that it should be granted a ZORF because in D.93-09-034 we granted a ZORF to the sole provider of scheduled PSC service between San Francisco and SFO. In that case, the market for scheduled PSC services was not closed to new entrants, ²³ and the PSC providing the scheduled service faced competition from several PSCs (including SuperShuttle) providing nonscheduled service.

We next turn to consider if "other means of transportation" pose sufficient competition for a ZORF to produce reasonable rates. In making this determination, we shall follow our practice of considering private automobiles as a source of competition. ²⁴ SuperShuttle's showing consists of little more than the assertion that it faces competition from "other means of transportation." Although we have previously granted ZORF authority based on similar assertions, the instant case is readily distinguishable from these prior occasions. As the citations supplied by SuperShuttle show, the prior applicants correctly asserted that they faced competition from both PSCs and "other means of transportation." SuperShuttle, on the other hand, faces only minimal, and diminishing, competition from PSCs.

23 For example, in D.93-11-015, we authorized a new entrant to provide scheduled PSC service between San Francisco and SFO.

24 Examples of decisions in which we recognized private automobiles as "competition" within the meaning of § 454.2 include the following: D.94-09-029, D.94-09-030, D.93-09-067, and D.92-07-022.

SuperShuttle's key justification for ZORF authority is that it faces formidable competition from private automobiles. We agree that private automobiles are a source of competition. However, for many people, private automobiles are simply not an option. Many PSC customers, such as students, the handicapped, the elderly, and the poor, cannot afford an automobile and/or legally operate one. In addition, travelers from out of town often have no access to private automobiles. Moreover, the same people who lack access to private automobiles often lack access to "other means of transportation" (SIA). For example, public transit does not serve SIA, and travelers on a tight budget often cannot afford to use the more expensive taxis, rental cars, and limousines. In addition, the handicapped and the elderly may be unable to use certain "other means of transportation" such as rental cars.

We conclude that SuperShuttle has not demonstrated that there is sufficient competition for a ZORF to produce rates that are just and reasonable. We therefore deny SuperShuttle's request for a ZORF and revoke the ZORF we granted in D.95-10-017. The impact on SuperShuttle of our revoking its ZORF should be minimal since SuperShuttle stated that it has no plans to raise its current rates,²⁵ and since SuperShuttle anticipates that it will be profitable at its current rates.²⁶

SuperShuttle should file new tariffs within ten days from the date of this order reflecting the revocation of its ZORF authority. Without a ZORF, SuperShuttle will have to file an application pursuant to §§ 454 and 4910 in order to change its rates. In any application for a rate increase, we expect SuperShuttle to make a much more substantial showing than we

the Commission decided as follows:

(T)he testimony is clear that applicant is providing a better quality service at rates higher than charged by [applicant]. Judging by the response to the recently introduced service by applicant, notwithstanding higher fares, it appears that there is a demand for

25 TR 1: 49
26 TR 1: 9

require of PSCs that operate in a competitive market. In particular, we expect SuperShuttle to justify any future request for a rate increase with a thorough showing that its cost of service requires the increase. Today's decision does not prevent SuperShuttle from again seeking to establish a ZORP. If and when SuperShuttle seeks to do so, it should demonstrate that it faces competition sufficient to produce rates that are just and reasonable for all of its passengers.

Should Rates Be Reduced for the Downtown Corridor? S&E states that the lack of competition from other PSCs has allowed SuperShuttle to increase the price for PSO services, particularly for the downtown corridor. S&E states that for at least three years prior to SuperShuttle's arrival, the prevailing fare for the downtown corridor was \$9. According to S&E, SuperShuttle initially charged a "special introductory price" of \$9 for the downtown corridor, but as competition from other PSCs was diminished, SuperShuttle was able to increase its rate of \$9 to its "regular" \$10 charge. S&E therefore recommends that the Commission reduce SuperShuttle's rates for the downtown corridor from the current \$10 to the "market rate" of \$9 that prevailed prior to SuperShuttle's entry into the SIA market. SuperShuttle disputes S&E's assertion that the lack of competition has caused the "market rate" between SIA and downtown to increase from \$9 to \$10. SuperShuttle counters that ridership is higher at the current \$10 fare than it was under the \$9 temporary introductory rate. SuperShuttle states that the Commission addressed a similar issue in D.93-05-037. In that case, the Commission decided as follows:

(T)he testimony is clear that applicant is providing a better quality service at rates higher than charged by [protestant]. Judging by the response to the recently introduced service by applicant, notwithstanding higher fares, it appears that there is a demand for

the more comfortable and reliable level of service offered by applicants. SuperShuttle's reliance on D.93-05-037 is misplaced. In that decision, the Commission authorized a new PSC to enter a market and charge higher fares than the PSC already serving the market. However, the situation in D.93-05-037 can be readily distinguished from the instant one, in D.93-05-037, there was open entry into the market, while no such open entry exists in the current situation. Accordingly, D.93-05-037 provides little guidance for the present situation.

We agree with S&B that rates for the downtown corridor are higher under the Agreement. However, we will not reduce SuperShuttle's rates for the downtown corridor from \$10 to \$9 as suggested by S&B. Although S&B is correct that this was the prevailing market rate for the downtown corridor prior to SuperShuttle's arrival, it was also for a lower quality of service that served the peak hours and ignored the slow hours. The higher quality of service being provided by SuperShuttle justifies the higher rate, as evidenced by the fact that more passengers are using PSC services now than prior to SuperShuttle's market entry.

C. Does Amendment of Agreement Satisfy D.95-10-017

SuperShuttle states the Agreement was amended to address the concern expressed in D.95-10-017 that the Agreement may conflict with the Commission's authority to set rates for PSCs. That specific language of the amendment is as follows:

The Director, in the Director's sole determination, to be consistent with the County's purposes for entering into this Agreement and as determined solely by the Director, to be necessary for Contractor to provide Airport Van Service to and from the Airport in an orderly, proper, professional and

28 Agreement, Paragraph 4.01(S) (b) as amended (Exhibit 2d 259. Appendix 8)

first class manner, may direct Contractor to amend the Maximum Rate Schedule pursuant to applicable statutes and regulations governing rate changes by passenger stage corporations subject to the jurisdiction of the California Public Utilities Commission.

According to SuperShuttle, the above amendment requires it to obtain the approval of both DOA and the Commission before changing its rates. In other words, the Agreement does not relieve SuperShuttle from any of its obligations under the PU Code; it only adds additional requirements. SuperShuttle states that if the Commission seeks further assurance that SuperShuttle will comply with the PU Code, the Commission needs only to order SuperShuttle to do so in the decision in this proceeding.

S&E believes that the Agreement, as amended, does not conform to PU Code in three respects. First, S&E believes that the amendment gives DOA, and not the Commission, sole discretion to initiate, approve, or disapprove of rate changes. Second, S&E states that while the amendment requires DOA to refer to the Code in directing rate changes, the amendment also allows the Director to interpret those statutes, whereas the Code gives this authority exclusively to the Commission. Finally, S&E believes that the amendment is at odds with § 454.2 which states that rates established pursuant to a ZORP are deemed just and reasonable. S&E believes that if Commission were to grant the ZORP authority, DOA would have jurisdiction to override it in violation of § 454.2.

On April 12, 1996, S&E submitted a petition to set aside submission. In its petition, S&E requested that a declaration by its counsel be admitted into the record in order to respond to a declaration by counsel that was appended to SuperShuttle's reply.

28 Agreement, Paragraph 4.01(2)(b) as amended (Exhibit 3, Appendix B).

brief. The matter at issue in the opposing declarations of counsel was whether the Commission's Legal Division had ever stated that there is no conflict between the Agreement and our jurisdiction to set rates for PSCs. The opinion of the Commission's Legal Division is not binding on the Commission. Moreover, the opinion of the Legal Division is not necessary to resolve the issue of whether the Agreement conflicts with our authority to set rates for PSCs. Accordingly, S&E's petition to set aside submission is denied. In addition, the declaration of counsel that was appended to SuperShuttle's reply brief will be given no weight since it was submitted after the close of the evidentiary record.

The Agreement, as amended, does not conflict with our authority to set rates for PSCs. Instead, the Agreement, as amended, recognizes that we have ultimate authority to approve or disapprove of rate changes requested by SuperShuttle, or to otherwise order SuperShuttle to increase or decrease its rates. SuperShuttle has thus met our request stated in D.95-10-017 that it amend the Agreement to conform with the PU Code which gives the Commission, and not the airports, jurisdiction over the rates charged by PSCs. Nonetheless, so that there is no confusion in the future, we shall adopt SuperShuttle's suggestion and order SuperShuttle to only charge rates that have been approved by us, and not to change its rates without first obtaining our approval. We also order the staff of S&E to work with the staff of DOA to ensure that any future request from SuperShuttle for a rate increase over which we retain complete jurisdiction is nevertheless considered with the interest of the airport in mind.

D. The Effect of Any Diminished Competition at SIA on Nondiscriminatory Service to All Authorized Points

SuperShuttle states that diminished competition has not affected the provision of nondiscriminatory service to the public under the Agreement is that SuperShuttle is obliged to provide

since SuperShuttle is required by both the PU Code and the Joint Agreement, to provide nondiscriminatory service, and whether the Commission's decision is correct, SuperShuttle believes that service to the public has actually improved as a result of the Agreement. For example, the Agreement requires SuperShuttle to transport all passengers from SIA to their destinations within specific time frames. SuperShuttle believes this requirement is particularly important when passengers are seeking to travel to outlying areas or are traveling during off-peak times.

SuperShuttle states there will be no reduction in service to outlying areas. SuperShuttle states that it, unlike other carriers, is contractually bound to serve all points in the ten county area within specified time frames. As evidence of its commitment to outlying areas, SuperShuttle asserts that its traffic to these areas is growing.

SuperShuttle believes that the Agreement has also promoted a higher quality of service for passengers seeking inbound transportation to SIA. Unlike other carriers, SuperShuttle has expended considerable resources on dispatch and maintenance of a sufficient number of vans to efficiently "sectorize" the market and thereby provide superior service.

S&E agrees that diminished competition has thus far not affected the provision of nondiscriminatory service. However, S&E is concerned that SuperShuttle will reduce service to the outlying areas because service to those areas is less remunerative than to the downtown corridor. S&E believes that not enough time has elapsed to adequately determine the ultimate impact of the Agreement on service to the public. S&E therefore suggests that SuperShuttle's interim authority be extended for up to one year so that S&E can look further into the issue of service, particularly service to outlying areas.

According to S&E, the only real difference in service under the Agreement is that SuperShuttle is obliged to provide

transportation services according to a specific time schedule. S&B states that there is no evidence that any demand exists for PSC service to outlying areas during odd hours. S&B believes that if demand existed, it is reasonable to expect that an open-entry market would produce carriers to fill it.

S&B finds Supershuttle's contractual obligation to provide nondiscriminatory service to be meaningless since it cannot be enforced. According to S&B, since DOA was unsuccessful in its efforts to enforce its regulations against smaller carriers, DOA will be unable to force Supershuttle, which has far more resources than the smaller carriers, to abide by the Agreement.

S&B finds little merit to Supershuttle's claim that it has brought a higher level of service to inbound passengers. For example, the Agreement contains no waiting time requirements for inbound passengers as it does for outbound ones. Furthermore, customers still have to make reservations in advance for a trip to the airport, and there is no indication that other PSCs did not provide this level of service.

The evidence clearly shows that diminished competition at SIA has not affected the provision of nondiscriminatory PSC service to the public. If anything, service has improved for all areas in the ten-county region served by Supershuttle, including the outlying areas. For example, there is now shuttle van service available at all times to take deplaning passengers to any point in the ten-county area. Previously, hundreds of passengers were left stranded at SIA each year due to a lack of PSC service during off-peak times. A strong indication that service to the public has improved since Supershuttle's arrival is the fact that more passengers than ever are using shuttle van services.

We find it unnecessary to adopt S&B's recommendation that this proceeding should be held open to further study the impact of the Agreement on nondiscriminatory service. This proceeding has shown that the Agreement has thus far had a salutatory effect on

service. Furthermore, we have ample power to monitor and investigate the operations of PSCs.

Nevertheless, S&E should continue to monitor all aspects of SuperShuttle's service at SIA, and work cooperatively with the DOA staff in ensuring the quality and availability of PSC service at SIA. When only one carrier serves a given area, we are concerned that the carrier's service may become slipshod since it is the only service available to the traveling public. We put SuperShuttle on notice that, because of the exclusive privileges it enjoys as a result of the Agreement, we will hold SuperShuttle to a higher standard of service than we require of other PSCs operating in a competitive market. If a deterioration of the current level of service provided by SuperShuttle is detected by S&E, we will open an investigation or take whatever appropriate action is required to assure that public convenience and necessity is being served. If deterioration of service becomes serious enough, we will not hesitate to apply the remedy of revoking SuperShuttle's CPCN.

There is no reason to hold this proceeding open. In order to carry out the directives of this decision as soon as possible, this decision should be made effective immediately.

VI. Response to Comments on ALJ's Proposed Decision

Pursuant to Section 311 and to our Rules of Practice and Procedure (California Code of Regulations, Title 20, Rules 77 to 77.5), the proposed decision of ALJ Kenney was issued for comment by the parties. Only SuperShuttle filed comments on the proposed decision. No changes were made to the proposed decision in response to these comments.

Findings of Fact

1. On September 5, 1995, SuperShuttle of San Francisco, Inc. (SuperShuttle), and the County of Sacramento, (County) entered

into an Agreement for SuperShuttle to provide passenger stage services at Sacramento International Airport (SIA).

Under the Agreement, SuperShuttle was granted the following privileges:

- a. The exclusive right to pick-up van passengers at SIA who have not made reservations with another van company.
- b. The exclusive right to drop-off and pick-up van passengers on the inside terminal curb at SIA.
- c. Access to a parking area at SIA from which SuperShuttle may stage its vans.
- d. Exclusive access to the curb-side information booth at SIA. As sole operator of the booth, SuperShuttle is not required to provide information regarding competing van companies to prospective passengers seeking information at the booth.

The Agreement sets forth the following standards of service that SuperShuttle must meet:

- a. SuperShuttle must maintain its vehicles in "first-class" condition.
- b. SuperShuttle must provide service to a ten-county region.
- c. SuperShuttle must provide service to deplaning passengers within specified time frames.

On June 5, 1995, SuperShuttle filed Application 95-06-015 to amend its operating authority PSC-1298 to allow SuperShuttle to provide service between SIA and points in the ten counties of Sacramento, Sutter, Butte, Placer, El Dorado, San Joaquin, Yolo, Yuba, Nevada, and Solano.

In its application, SuperShuttle requested authority to establish a ZORF for service to SIA pursuant to § 454.2 of the Public Code.

6. The Agreement was amended on October 4, 1995. The Agreement, as amended, conforms to the Public Utilities Code which gives the Commission, and not the airports, jurisdiction over the rates charged by PSCs.

7. SuperShuttle began operating under the Agreement in October 1995.

8. SuperShuttle has the ability, equipment, and financial resources to perform the proposed service.

9. There is public demand for the service provided by SuperShuttle.

10. Public convenience and necessity require SuperShuttle to be granted permanent authority to provide the service set forth in its application.

11. The Commission's policy is to encourage competition in the PSC industry.

12. Both the Agreement and the Commission's policy to encourage competition in the PSC industry are intended to result in better service to the public.

13. Section 21690.5 et seq. states that publicly owned and operated airport may displace competition at the airport through limited or exclusive agreements with a single operator or a limited number of operators should the airport deem it in the public interest to do so.

14. Section 21690.5 et seq. limits the exercise of the airports' authority to enter into exclusive or quasi-exclusive contracts to addressing operating conditions at the airport.

15. The Sacramento Department of Airports (DOA) recommended an exclusive contract for PSC service to the Sacramento County Board of Supervisors based on DOA's belief that such a contract would improve the quality of service at SIA.

16. Section 454.2 states that the Commission may authorize a ZORF for a PSC if the Commission finds that the PSC is operating in competition with another substantially similar passenger stage

transportation service or competitive passenger transportation service from any other means of transportation, and if the Commission finds that these competitive transportation services will result in reasonable rates and charges when considered along with the authorized zone of rate freedom.

17. In June 1995, 13 companies provided Van service from SIA. As of January 10, 1996, seven companies, including SuperShuttle, provided van services at SIA.

18. The Agreement has substantially diminished competition from other PSCs.

19. For many potential customers, SuperShuttle does not face significant competition from means of transportation other than PSCs.

20. Rates for PSC services have increased as a result of the Agreement.

21. Since SuperShuttle began offering service in October 1995, the number of passengers using shuttle vans has risen substantially despite there being fewer PSCs and higher rates.

22. Shuttle van service at SIA has improved as a result of the Agreement.

23. The Agreement has not affected the provision of nondiscriminatory service to the public.

24. The Commission has ample powers to investigate SuperShuttle's service to the public at any time.

25. Without any competitive threat, a carrier with a monopoly on service to a given area will have less incentive to provide high quality service at low cost to the public.

26. Monitoring of SuperShuttle's rates, service and operations by Commission staff will help ensure that public convenience and necessity is served.

27. It can be seen with certainty that there is no possibility that the activity in question will have a significant effect on the environment.

Conclusions of Law

1. SuperShuttle should be granted permanent authority to serve SIA.
2. Municipal airports may restrict competition for PSC services on airport premises pursuant to the ruling of the California Supreme Court in City of Oakland v. Burns and pursuant to § 21690.5 et seq. of the Public Utilities Code.
3. The Commission may deny or revoke a Certificate of Public Convenience and Necessity to a PSC with an exclusive airport contract if the PSC lacks sufficient technical capabilities, financial resources, or is otherwise judged unfit to serve. In such an instance, denial or revocation of Commission authority would preclude the PSC from operating outside of the airport regardless of any rights the airport may have conferred upon the PSC pursuant to § 21690.5 et seq.
4. The ZORF authority authorized by the Commission in D.95-10-017 should be revoked.
5. The Agreement, as amended, does not conflict with the Commission's authority to set rates for PSCs.
6. SuperShuttle should not charge or alter any of its rates without the approval of the Commission.
7. SuperShuttle should provide service over the state public highways as directed by the Commission.
8. SuperShuttle should be held to a higher standard of service than PSCs that operate in a competitive market.
9. Commission staff should monitor SuperShuttle's rates, service, and operations. If the Commission staff detects a deterioration in the level of service provided or other serious problem, it should bring this finding to the Commission's attention.
10. This proceeding should be closed.
11. This decision should be effective today.

ORDER

IT IS ORDERED that:

1. The petition by S&B to set aside submission is denied.
2. A certificate of public convenience and necessity is granted to SuperShuttle of San Francisco, Inc. (SuperShuttle), authorizing it to operate as a passenger stage corporation, as defined in Public Utilities Code § 226, to transport persons and baggage, between the points and over the routes set forth in Appendix PSC-1298. PSC-1298 of Decision (D.) 88-12-066 is amended by replacing Original Pages 4 and 5 with First Revised Pages 4 and 5.
3. Applicant shall file a written acceptance of this certificate within 30 days after this order is effective.
4. SuperShuttle's authority to set rates within a zone of rate freedom (ZORF) granted in D.95-10-017 is revoked.
5. SuperShuttle shall file revised tariffs within 30 days which reflect the revocation of its ZORF authority.
6. SuperShuttle shall set its rates at a level prescribed by the Commission.
7. SuperShuttle shall not change its rates without the prior approval of the Commission.
8. SuperShuttle shall provide service over the State's public highways as directed by the Commission.
9. Commission staff shall monitor SuperShuttle's rates, service, and operations. In this effort, Commission staff is to initiate a collaborative process with the staff of the Sacramento Department of Airports in order to verify that, under the SuperShuttle agreement, public safety is not compromised, public convenience and necessity are met, quality of service is assured, and all PSC regulations over which the Commission retains exclusive authority, such as rate-setting, are being followed. If the Commission staff detects a decline in the level of service provided

or other serious problem, it shall bring this finding to the Commission's attention.

10. Commission staff shall work with any other publicly owned airports that decide to enter into exclusive or quasi-exclusive contracts for PSC service to monitor the operations of the affected PSC operators in order to verify that public safety is not compromised, public convenience and necessity are met, quality of service is assured, and all PSC regulations over which the Commission retains exclusive authority, such as rate setting, are being followed.

11. This proceeding is closed. This order is effective today.

Dated September 20, 1996, at San Francisco, California.

Commissioners
JOSIAH L. NEPPER
HENRY M. DUQUE
JESSIE J. KNIGHT, JR.
DANIEL W. FESSLER
P. GREGORY CONLON
President