

Decision 97-07-033 July 16, 1997

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Investigation into the operations and practices of Mike E. Chandler, an individual doing business as At Your Service (TCP 10134-P)

1.97-01-027  
(Filed January 23, 1997)

**OPINION**

**ORIGINAL**

**Summary**

This order approves the settlement agreement between the Commission's Rail Safety and Carriers Division (Carriers Division) and Mike E. Chandler, an individual, doing business as At Your Service. The settlement agreement imposes certain restrictions on At Your Service's future operations in California and requires At Your Service to pay a monetary penalty.

**Procedural Background**

On January 23, 1997, the Commission issued an Order Instituting Investigation (OII), Investigation (I.) 97-01-027, into the operations of At Your Service. The OII alleged that At Your Service was engaging in the following unlawful activities:

1. Conducting operations as a charter-party carrier prior to Commission authorization on January 21, 1996;
2. Failing to enroll all drivers in the Department of Motor Vehicles (DMV) "Pull Notice" program;
3. Engaging an "independent contractor" driver who was neither an employee nor a charter-party sub-carrier holding a valid Commission permit;
4. Aiding and abetting violations of the Public Utilities Code by another charter-party carrier; and
5. Failing to memorialize agreements with sub-carriers in writing.

Subsequent to the filing of the OII, the Commission Carriers Division and At Your Service met and agreed to the terms of a settlement which would resolve all issues in this proceeding, if approved by the Commission. A copy of the settlement agreement is Attachment A.

#### **Description of the Settlement Agreement**

Pursuant to the settlement agreement At Your Service will:

1. Pay a penalty of \$2,000;
2. Immediately enroll all drivers in the DMV "Pull Notice" program;
3. Comply with all state law and Commission rules and regulations;
4. Memorialize all sub-carrier agreements in writing; and
5. Agree to a 90-day suspension of its operating authority should it violate any provision of the agreement.

In return the Commission Carriers Division will:

1. Take no further action to seek Commission revocation of At Your Service's operating authority; and
2. Prepare an order for the Commission suspending At Your Services' Operating authority for 90 days, should At Your Service violate any provision of the agreement.

#### **Discussion**

Commission's Rule of Practice and Procedure 51(e) requires that settlement agreements be (1) reasonable in light of the whole record, (2) consistent with the law, and (3) in the public interest be approved by the Commission.

##### **a. Reasonable in Light of the Whole Record**

The record in this case reveals allegations of violations of statutes and Commission rules and regulations regarding the conduct of passenger carriers. Such violations, if proven, could lead to harm to the traveling public.

The settlement agreement imposes significant burdens on At Your Service to bring its operations into complete compliance with the applicable statutes and regulations. It is also required to pay a financial penalty which will underscore the importance of such compliance.

The burdens on At Your Service reasonably address the harms to which this proceeding was directed. At Your Service will conform to the laws and regulations or immediate suspension of its operating authority will take place.

b. Consistent with the Law

None of the actions required by the settlement agreement are in violation of any statute or Commission rule or regulation.

c. In the Public Interest

The Commission is responsible for ensuring that the public is protected from unsafe practices by passenger carriers. The settlement agreement protects the public by requiring complete compliance with statutes and Commission rules and regulations.

For the above-stated reasons, the Commission finds the settlement agreement is reasonable in light of the whole record, is consistent with the law, and is in the public interest. The agreement is approved pursuant to Rules 51 through 51.10 of the Commission's Rules. (See also San Diego Gas & Electric Company, 46 CPUC 2d 538 (1992).)

**Findings of Fact**

1. The Commission opened an investigation into At Your Service's operations based on allegations of unlawful conduct of a passenger carrier service.
2. As a result of settlement discussions, the parties reached a settlement agreement which is Attachment A to this decision.
3. The settlement agreement resolves all matters relating to this proceeding.

**Conclusions of Law**

1. The settlement agreement is reasonable in light of the whole record, is consistent with the law, and is in the public interest.

2. The settlement agreement should be approved.

**O R D E R**

**IT IS ORDERED that:**

1. The settlement agreement affixed hereto as Attachment A and made a part hereof is approved, and the parties are directed to comply with the terms set forth in the settlement agreement.
2. This proceeding is closed.

This order is effective today.

Dated July 16, 1997, at San Francisco, California.

**P. GREGORY CONLON**  
President  
**JESSIE J. KNIGHT, JR.**  
**HENRY M. DUQUE**  
**JOSIAH L. NEEPER**  
**RICHARD A. BILAS**  
Commissioners

# ATTACHMENT A

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation into the )  
 operations and practices of Mike E. )  
 Chandler, an individual doing business )  
 as At Your Service (TCP 10134-P) )  
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I.97-01-027  
 (Filed January 23, 1997)

## SETTLEMENT AGREEMENT

### I. SCOPE OF AGREEMENT

The undersigned parties to this Settlement Agreement (Agreement) are the Rail Safety and Carriers Division (RSCD) of the California Public Utilities Commission (Commission) and Mike E. Chandler, an individual doing business as At Your Service (AYS).<sup>1</sup> RSCD and AYS are hereinafter collectively referred to as the "Parties."

RSCD is the Commission division responsible for enforcing California laws and Commission rules, regulations, and general orders governing charter-party

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<sup>1</sup> All references to "AYS" hereinafter also include Mike E. Chandler.

## ATTACHMENT A

carriers of passengers (charter-party carriers).<sup>2</sup> AYS was approved as a charter-party carrier by the Commission on January 21, 1996.

In August 1996, Commission staff began investigating AYS, and on January 23, 1997, the Commission issued Order to Initiate Investigation, I.97-01-027 (OI), against AYS. Specifically, the Commission found AYS engaging in the following unlawful activities:

- Operating as a charter-party carrier prior to Commission issuance on January 21, 1996 of AYS' permit. Calif. Public Utilities Code § 5371;
- Failing to enroll all AYS drivers in the California Department of Motor Vehicles' (DMV) "Pull Notice Program." General Order (GO) 157-C, § 5.02, and Calif. Vehicle Code § 1808.1;
- Unlawfully employing drivers, who are neither an AYS employee nor an independent owner-driver holding charter-party authority as a sub-carrier. GO 157-C, § 5.03;
- Aiding and/or abetting an unlicensed charter-party carrier in violating pertinent California law or Commission rules and regulations. Calif. Pub. Utilities Code § 5411;
- Failing to evidence by written agreement the hiring of sub-carriers. GO 157-C, § 3.04.

On January 30, 1997, Commission staff member William G. Waldorf and AYS met to discuss a settlement of I.97-01-027. To avoid the expense of an

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<sup>2</sup> See Calif. Pub. Utilities Code § 5360: "charter-party carrier of passengers" means every person engaged in the transportation of persons by motor vehicle, for compensation, whether in common or contract carriage, over any public highway in this state.

## ATTACHMENT A

administrative hearing, Chandler orally agreed to a settlement in exchange for RSCD foregoing further litigation. By their execution of this Agreement, the Parties jointly represent that the Agreement is a fair and reasonable settlement, consistent with California law and Commission authorities, and in the public's interests.

### II. TERMS OF AGREEMENT

The Parties hereby stipulate in writing for settlement of I.97-01-027 based on the following Terms:

1. Probation. AYS shall serve a two-year probation term to begin on the effective date of this Agreement. During such probation, if AYS fails to comply with or otherwise violates the Terms of this Agreement, the Commission may reopen I.97-01-027 upon the preparation of an order by RSCD, for the taking of further evidence and the levying of penalties and fines that would be in addition to those set forth in this Agreement.
2. Suspension of Enforcement. RSCD will suspend enforcement of I.97-01-027 and take no action to suspend AYS' operating authority as long as AYS complies with the Terms of this Agreement during the probationary period. However, RSCD will reopen this enforcement proceeding if AYS violates such Terms during such probation. In that event, AYS will stipulate to I.97-01-027's findings of unlawful activities

## ATTACHMENT A

and to a ninety (90) day suspension of its operating permit to begin on the day that RSCD prepares such an order.

3. Monetary Payment. AYS shall pay a total of two thousand dollars (\$2,000.00) in five consecutive monthly installments of four hundred dollars (\$ 400.00) each, with the first monthly installment paid on or before April 1, 1997.
4. Authorized Operations. AYS shall not conduct any charter-party carrier operation unless it has a currently valid Commission permit authorizing such operation.
5. DMV Pull Notice Program. AYS shall immediately enroll all its drivers in the DMV Driver Pull Notice Program and forward by April 1, 1997, to the Rail Safety and Carriers Division certification of such enrollment.
6. Compliance With State Law. AYS shall comply with all pertinent California statutes and Commission general orders, rules, and regulations that govern the practices and operations of charter-party carriers.<sup>3</sup>

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<sup>3</sup> E.g., California Public Utilities Code, Division 2, Chapter 8, Articles 1-6; GO 157-C. According to California Public Utilities Code § 5374 as amended in 1996, AYS must establish reasonable fitness and financial responsibility to conduct any proposed or existing transportation services.



## ATTACHMENT A

7. Sub-Carrier Agreements. AYS will evidence any hiring of a sub-carrier by a written sub-carrier agreement which shall contain the carriers' names, TCP numbers, and the services to be provided.<sup>4</sup>
8. Abetting Unlawful Activity. AYS shall immediately stop hiring any sub-carrier<sup>5</sup> which is unlicensed or whose Commission permit is suspended or revoked.
9. AYS Compliance. Either prior to or immediately upon Commission approval of this Agreement, AYS shall be in compliance with the Terms of this Agreement.

### III. GENERAL CONDITIONS OF THIS AGREEMENT

#### A. No Precedent

The Parties agree that this Agreement shall become binding on all Parties to this proceeding, on the date that the Commission adopts this Agreement in a final decision. However, unless the Commission expressly provides otherwise, such adoption does not constitute approval of, or precedent regarding, any principle or issue in this or any future proceedings.

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<sup>4</sup> Pursuant to GO 157-C, § 3.04.

<sup>5</sup> As defined by *id.*

Except as otherwise set forth in this Agreement, no discussion, admission, concession or offer to stipulate or settle, whether oral or written, made during any negotiation regarding a stipulation or settlement shall be subject to discovery or admissible in any evidentiary hearing against any Party to this proceeding who objects to its admission.

**C. Other Obligations Imposed**

Unless specifically provided for in this Agreement, none of the Parties' obligations under pertinent California statutes or Commission orders, rules, regulations, or decisions, are waived or altered.

**D. Entire Agreement**

This writing and any attached appendices constitute the entire Agreement between the Parties to this proceeding. No modification or waiver of this Agreement shall be valid unless it is in writing and approved by the Commission. None of the Parties shall be bound by any representation, promise, statement or information, unless it is specifically set forth in this Agreement.

## ATTACHMENT A

### E. Interpretation

This Agreement shall in all respects be interpreted, enforced, and governed exclusively by and under California laws in effect when the Commission adopts this Agreement in a final decision

### F. Commission Jurisdiction

The Parties agree that Commission shall have exclusive jurisdiction over any issue attendant to or arising out of I.97-01-027 and this Agreement. All rights and remedies related to interpretation or enforcement of the Agreement are limited to those available before the Commission.

### G. Execution of Agreement

The Parties may execute this Agreement in one or more counterparts, each of which shall be deemed an original, but all of which, together shall constitute one and the same document.

### H. Effective Date of Agreement

This Agreement shall become effective and binding on the Parties upon its adoption by the Commission in a final decision.

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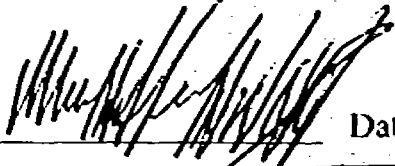
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**ATTACHMENT A**

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date set forth opposite their names.

AT YOUR SERVICE

By:  Dated: 3 11 97  
MIKE E. CHANDLER, OWNER

RAIL SAFETY AND CARRIERS DIVISION

By:  Dated: 3/17/97  
KENNETH L. KOSS,  
DIRECTOR

CWL

(END OF ATTACHMENT A)

Decision 97-07-033 July 16, 1997

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Investigation into the operations and practices of Mike E. Chandler, an individual doing business as At Your Service (TCP 10134-P)

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**OPINION**

**ORIGINAL**

**Summary**

This order approves the settlement agreement between the Commission's Rail Safety and Carriers Division (Carriers Division) and Mike E. Chandler, an individual, doing business as At Your Service. The settlement agreement imposes certain restrictions on At Your Service's future operations in California and requires At Your Service to pay a monetary penalty.

**Procedural Background**

On January 23, 1997, the Commission issued an Order Instituting Investigation (OII), Investigation (I.) 97-01-027, into the operations of At Your Service. The OII alleged that At Your Service was engaging in the following unlawful activities:

1. Conducting operations as a charter-party carrier prior to Commission authorization on January 21, 1996;
2. Failing to enroll all drivers in the Department of Motor Vehicles (DMV) "Pull Notice" program;
3. Engaging an "independent contractor" driver who was neither an employee nor a charter-party sub-carrier holding a valid Commission permit;
4. Aiding and abetting violations of the Public Utilities Code by another charter-party carrier; and
5. Failing to memorialize agreements with sub-carriers in writing.

Subsequent to the filing of the OII, the Commission Carriers Division and At Your Service met and agreed to the terms of a settlement which would resolve all issues in this proceeding, if approved by the Commission. A copy of the settlement agreement is Attachment A.

**Description of the Settlement Agreement**

Pursuant to the settlement agreement At Your Service will:

1. Pay a penalty of \$2,000;
2. Immediately enroll all drivers in the DMV "Pull Notice" program;
3. Comply with all state law and Commission rules and regulations;
4. Memorialize all sub-carrier agreements in writing; and
5. Agree to a 90-day suspension of its operating authority should it violate any provision of the agreement.

In return the Commission Carriers Division will:

1. Take no further action to seek Commission revocation of At Your Service's operating authority; and
2. Prepare an order for the Commission suspending At Your Services' Operating authority for 90 days, should At Your Service violate any provision of the agreement.

**Discussion**

Commission's Rule of Practice and Procedure 51(e) requires that settlement agreements be (1) reasonable in light of the whole record, (2) consistent with the law, and (3) in the public interest be approved by the Commission.

a. Reasonable in Light of the Whole Record

The record in this case reveals allegations of violations of statutes and Commission rules and regulations regarding the conduct of passenger carriers. Such violations, if proven, could lead to harm to the traveling public.

The settlement agreement imposes significant burdens on At Your Service to bring its operations into complete compliance with the applicable statutes and regulations. It is also required to pay a financial penalty which will underscore the importance of such compliance.

The burdens on At Your Service reasonably address the harms to which this proceeding was directed. At Your Service will conform to the laws and regulations or immediate suspension of its operating authority will take place.

**b. Consistent with the Law**

None of the actions required by the settlement agreement are in violation of any statute or Commission rule or regulation.

**c. In the Public Interest**

The Commission is responsible for ensuring that the public is protected from unsafe practices by passenger carriers. The settlement agreement protects the public by requiring complete compliance with statutes and Commission rules and regulations.

For the above-stated reasons, the Commission finds the settlement agreement is reasonable in light of the whole record, is consistent with the law, and is in the public interest. The agreement is approved pursuant to Rules 51 through 51.10 of the Commission's Rules. (See also San Diego Gas & Electric Company, 46 CPUC 2d 538 (1992).)

**Findings of Fact**

1. The Commission opened an investigation into At Your Service's operations based on allegations of unlawful conduct of a passenger carrier service.
2. As a result of settlement discussions, the parties reached a settlement agreement which is Attachment A to this decision.
3. The settlement agreement resolves all matters relating to this proceeding.

**Conclusions of Law**

1. The settlement agreement is reasonable in light of the whole record, is consistent with the law, and is in the public interest.

2. The settlement agreement should be approved.

**O R D E R**

**IT IS ORDERED that:**

1. The settlement agreement affixed hereto as Attachment A and made a part hereof is approved, and the parties are directed to comply with the terms set forth in the settlement agreement.

2. This proceeding is closed.

This order is effective today.

Dated July 16, 1997, at San Francisco, California.

**P. GREGORY CONLON**

President

**JESSIE J. KNIGHT, JR.**

**HENRY M. DUQUE**

**JOSIAH L. NEEPER**

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Commissioners



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In August 1996, Commission staff began investigating AYS, and on January 23, 1997, the Commission issued Order to Initiate Investigation, I.97-01-027 (OII), against AYS. Specifically, the Commission found AYS engaging in the following unlawful activities:

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- Aiding and/or abetting an unlicensed charter-party carrier in violating pertinent California law or Commission rules and regulations. Calif. Pub. Utilities Code § 5411;
- Failing to evidence by written agreement the hiring of sub-carriers. GO 157-C, § 3.04.

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<sup>2</sup> See Calif. Pub. Utilities Code § 5360: "charter-party carrier of passengers" means every person engaged in the transportation of persons by motor vehicle, for compensation, whether in common or contract carriage, over any public highway in this state.

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administrative hearing, Chandler orally agreed to a settlement in exchange for RSCD foregoing further litigation. By their execution of this Agreement, the Parties jointly represent that the Agreement is a fair and reasonable settlement, consistent with California law and Commission authorities, and in the public's interests.

### II. TERMS OF AGREEMENT

The Parties hereby stipulate in writing for settlement of I.97-01-027 based on the following Terms:

1. **Probation.** AYS shall serve a two-year probation term to begin on the effective date of this Agreement. During such probation, if AYS fails to comply with or otherwise violates the Terms of this Agreement, the Commission may reopen I.97-01-027 upon the preparation of an order by RSCD, for the taking of further evidence and the levying of penalties and fines that would be in addition to those set forth in this Agreement.
2. **Suspension of Enforcement.** RSCD will suspend enforcement of I.97-01-027 and take no action to suspend AYS' operating authority as long as AYS complies with the Terms of this Agreement during the probationary period. However, RSCD will reopen this enforcement proceeding if AYS violates such Terms during such probation. In that event, AYS will stipulate to I.97-01-027's findings of unlawful activities

## ATTACHMENT A

and to a ninety (90) day suspension of its operating permit to begin on the day that RSCD prepares such an order.

3. **Monetary Payment.** AYS shall pay a total of two thousand dollars (\$2,000.00) in five consecutive monthly installments of four hundred dollars (\$ 400.00) each, with the first monthly installment paid on or before April 1, 1997.
4. **Authorized Operations.** AYS shall not conduct any charter-party carrier operation unless it has a currently valid Commission permit authorizing such operation.
5. **DMV Pull Notice Program.** AYS shall immediately enroll all its drivers in the DMV Driver Pull Notice Program and forward by April 1, 1997, to the Rail Safety and Carriers Division certification of such enrollment.
6. **Compliance With State Law.** AYS shall comply with all pertinent California statutes and Commission general orders, rules, and regulations that govern the practices and operations of charter-party carriers.<sup>3</sup>

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<sup>3</sup> E.g., California Public Utilities Code, Division 2, Chapter 8, Articles 1-6; GO 157-C. According to California Public Utilities Code § 5374 as amended in 1996, AYS must establish reasonable fitness and financial responsibility to conduct any proposed or existing transportation services.

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7. Sub-Carrier Agreements. AYS will evidence any hiring of a sub-carrier by a written sub-carrier agreement which shall contain the carriers' names, TCP numbers, and the services to be provided.<sup>4</sup>
8. Abetting Unlawful Activity. AYS shall immediately stop hiring any sub-carrier<sup>5</sup> which is unlicensed or whose Commission permit is suspended or revoked.
9. AYS Compliance. Either prior to or immediately upon Commission approval of this Agreement, AYS shall be in compliance with the Terms of this Agreement.

### III. GENERAL CONDITIONS OF THIS AGREEMENT

#### A. No Precedent

The Parties agree that this Agreement shall become binding on all Parties to this proceeding, on the date that the Commission adopts this Agreement in a final decision. However, unless the Commission expressly provides otherwise, such adoption does not constitute approval of, or precedent regarding, any principle or issue in this or any future proceedings.

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<sup>4</sup> Pursuant to GO 157-C, § 3.04.

<sup>5</sup> As defined by *id.*

Except as otherwise set forth in this Agreement, no discussion, admission, concession or offer to stipulate or settle, whether oral or written, made during any negotiation regarding a stipulation or settlement shall be subject to discovery or admissible in any evidentiary hearing against any Party to this proceeding who objects to its admission.

**C. Other Obligations Imposed**

Unless specifically provided for in this Agreement, none of the Parties' obligations under pertinent California statutes or Commission orders, rules, regulations, or decisions, are waived or altered.

**D. Entire Agreement**

This writing and any attached appendices constitute the entire Agreement between the Parties to this proceeding. No modification or waiver of this Agreement shall be valid unless it is in writing and approved by the Commission. None of the Parties shall be bound by any representation, promise, statement or information, unless it is specifically set forth in this Agreement.

## ATTACHMENT A

### E. Interpretation

This Agreement shall in all respects be interpreted, enforced, and governed exclusively by and under California laws in effect when the Commission adopts this Agreement in a final decision

### F. Commission Jurisdiction

The Parties agree that Commission shall have exclusive jurisdiction over any issue attendant to or arising out of I.97-01-027 and this Agreement. All rights and remedies related to interpretation or enforcement of the Agreement are limited to those available before the Commission.

### G. Execution of Agreement

The Parties may execute this Agreement in one or more counterparts, each of which shall be deemed an original, but all of which, together shall constitute one and the same document.

### H. Effective Date of Agreement

This Agreement shall become effective and binding on the Parties upon its adoption by the Commission in a final decision.

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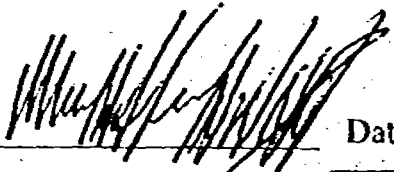
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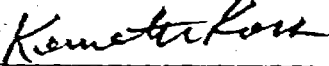
**ATTACHMENT A**

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date set forth opposite their names.

AT YOUR SERVICE

By:  Dated: 3 11 97  
MIKE E. CHANDLER, OWNER

RAIL SAFETY AND CARRIERS DIVISION

By:  Dated: 3/17/97  
KENNETH L. KOSS,  
DIRECTOR

CWL

(END OF ATTACHMENT A)