

MAR 12 1998

Decision 98-03-018 March 12, 1998

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

Prime Time Shuttle International, Inc.

Complainant,

v.

Lorrie's Travel Tours (PSC 1003); AAA Shuttle (PSC 4414); ABC Shuttle (PSC 8496); Airport Express (PSC 1169); Airport Flyer (PSC 5543); Airport Ride (PSC 5828); Airport Shuttle (PSC 6382); Airport Shuttle (PSC 8146); Airtrans Express (PSC 6369); All American Shuttle (PSC 5998); Dani Shuttle (PSC 7735); Five Star Shuttle (PSC 6064); Jet Shuttle (PSC 6909); LAX Chequer Van, Inc. (PSC 6288); Sea Side Shuttle (PSC 5625); Supreme Shuttle (PSC 7857); U.S.A. Shuttle (PSC 6896);

Defendants.

In the matter of the regulation of the operations of Passenger Stage Corporations.

**ORIGINAL**

Case 95-09-019  
(September 12, 1995)

Rulemaking 88-03-012  
(Filed March 9, 1988)

**O P I N I O N**

**Summary**

In this decision, we dismiss a complaint filed by Prime Time Shuttle International, Inc. (Prime Time) against 17 other passenger stage corporations (PSCs) relating to alleged violations of Public Utilities (PU) Code § 1036(b) and Part 4.07 of the Commission's General Order (GO) 158. We also deny Prime Time's separately-filed petition for modification of Decision (D.) 89-10-028 in Rulemaking (R.) 88-03-012.

**Discussion**

Prime Time, a PSC holding operating authority from this Commission, was the respondent in Investigation (I.) 95-07-001, filed July 6, 1995, and in an earlier

investigation, I.93-05-004. These proceedings were initiated by the Commission to investigate a broad spectrum of allegations concerning Prime Time, including a claim that Prime Time violated PU Code § 1036(b) and Part 4.07 of GO 158 by providing services through the use of charter-party subcarriers. The two investigations recently concluded with the issuance of a final decision revoking Prime Time's operating authority, but did so on grounds other than those relating to the use of subcarriers. (D.97-08-066, mimeo, mailed August 4, 1997.)

On September 8, 1995, while its operating authority was still in effect, Prime Time filed a petition to modify D.89-10-028 in R.88-03-012, the decision which had adopted GO 158. GO 158 sets forth rules and regulations governing the operations of PSCs. If granted, the petition would revise GO 158 by affirming that a PSC may utilize a licensed charter-party carrier (TCP) as a sub-carrier in the airport shuttle industry. In support of its petition Prime Time argued that the use of sub-carriers became pervasive in the airport shuttle industry after D.89-10-028 was issued, and that various airport authorities have expressed concern about the lack of specific regulation and Commission policy regarding those operations. Prime Time's petition asserts that the Commission Staff and various airport authorities have interpreted the current rule inconsistently or incorrectly.

On September 12, 1995, four days after filing its petition, Prime Time filed complaint (C.) 95-09-019. The complaint alleges that the defendants, each of which is also a PSC providing airport shuttle service, were in violation of the same statute and rule governing the use of charter-party drivers that Prime Time was accused of violating, and were therefore able to compete unlawfully and unfairly with Prime Time and other PSCs. Prime Time asks the Commission to consolidate the complaint proceeding with two other PSC investigations, and with the proceeding on its Petition for Modification of D.89-10-028; to direct our Staff to identify each PSC it believes to be in violation of the cited statute and rule; to permit Prime Time to add PSCs to the complaint as additional violators are disclosed; and to treat all violators in the same manner to ensure equal protection under the law. The thrust of Prime Time's effort is

obviously to initiate an industry-wide review of PSCs' employment practices and secure nondiscriminatory treatment of all putative violators of the rules in question.

D.96-08-034, the interim order in the consolidated investigation proceedings, exonerated Prime Time from violating these particular rules by interpreting GO 158 in a light favorable to Prime Time. This interpretation moots the petition for modification. Although the decision revoked Prime Time's operating authority on other grounds, it suspended the revocation contingent upon Prime Time's compliance with the terms of its probation. Ordering Paragraph (OP) 9 of the decision also required our Staff to consult with interested persons about the need for changes to the current versions of GO 157 and GO 158, and directed our Legal Division to prepare for our consideration an Order Instituting Rulemaking to review the rules in question. Two workshops were conducted by Commission staff in response to that directive. Later, in D.97-08-066, we terminated Prime Time's probation and revoked its operating authority for violating the terms of its probation. Accordingly, we ordered Prime Time to cease all operations under its Commission operating authority and directed our Rail Safety/Carriers Division to enforce the termination of operations.

As these events have rendered Prime Time's complaint moot, Prime Time can no longer allege that it suffered or now suffers any harm as a consequence of purported actions of the defendants, the nature of which was adjudicated not to be unlawful. Prime Time also cannot complain that the defendants continue to compete unlawfully or unfairly with it, because Prime Time is not competing at all. In light of Prime Time's present circumstances and the status of all of the proceedings in which it is involved, we will order C.95-09-019 to be dismissed.

Judicial review of Commission decisions is governed by Division 1, Part 1, Chapter 9, Article 3 of the PU Code. The appropriate court for judicial review is dependent on the nature of the proceeding. This is a complaint case not challenging the reasonable of rates or charges, and so this decision is issued in an "adjudicatory proceeding" as defined in PU Code § 1757.1. The filing of a timely application for rehearing with the Commission remains a prerequisite to court review. See PU Code § 1732.

### Findings of Fact

1. Prime Time was the respondent in I.95-07-001 and I.93-05-004. The issues in these investigations included that of whether Prime Time had violated PU Code § 1036(b) and Part 4.07 of GO 158 by providing services through the use of charter party subcarriers.

2. Prime Time has filed a petition to modify D.89-10-028 in R.88-03-012, the effect of which, if granted, would be to revise GO 158 by affirming that a PSC may use a licensed TCP as a subcarrier in the airport shuttle industry.

3. In its petition and in C.95-09-019, Prime Time alleges that other PSCs are using TCPs as subcarriers in the airport shuttle industry, and that staff has taken the position that this practice violates PU Code § 1036(b) and Part 4.07 of GO 158.

4. The issues presented by Prime Time's modification of D.89-10-028 have been resolved in D.96-08-034.

5. I.95-07-001 concluded with D.97-08-066 revoking Prime Time's operating authority on grounds other than those referred to in the preceding paragraph.

### Conclusions of Law

1. C.95-09-019 is moot.

2. C.95-09-019 should be dismissed.

3. Prime Time's petition for modification of D.89-10-028 should be denied.

4. This is a complaint case not challenging the reasonableness of rates or charges, and so this decision is issued in an "adjudicatory proceeding" as defined in PU Code § 1757.1.

### O R D E R

IT IS ORDERED that:

1. Case 95-09-019 is dismissed.

2. Prime Time Shuttle International, Inc.'s petition for modification of Decision 89-10-028 is denied.

This order is effective today.

Dated March 12, 1998, at San Francisco, California.

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