

Decision 98-11-057 November 19, 1998

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

In the Matter of the Application of SuperShuttle International, Inc., a Delaware corporation, to acquire Preferred Transportation, Inc. (PSC-8937), a California corporation, and Tamarack Transportation, Inc. (PSC-9635), a California corporation.

Application 98-04-030  
(Filed April 21, 1998)

**ORIGINAL**

**OPINION**

**Summary**

Application of SuperShuttle International, Inc. to acquire control of Preferred Transportation, Inc. and Tamarack Transportation, Inc. as wholly owned subsidiaries granted. Application for a *nunc pro tunc* order denied. The Staff is directed to look into allegations of wrongdoing by SuperShuttle, including possible violations of Public Utilities (PU) Code §§ 851-854 and possible violations of Rule 1 of the Commission's Rules of Practice and Procedure.

**Discussion**

SuperShuttle International, Inc. (SuperShuttle) has several wholly owned subsidiaries that provide passenger stage service within California. It also enters into franchise agreements with unaffiliated passenger stage corporations through its subsidiary, SuperShuttle Franchise Corporation. Both Preferred Transportation, Inc. (Preferred) and Tamarack Transportation, Inc. (Tamarack) have entered into such franchise agreements.

Preferred is a passenger stage corporation (PSC-8937) authorized to provide on-call door-to-door service to transport passengers and their baggage

between points in Los Angeles, Orange, Riverside, San Bernardino, and Ventura Counties, on the one hand, and Los Angeles International Airport (LAX), John Wayne Airport, Long Beach Airport, Ontario Airport, Burbank Airport, the Los Angeles and Long Beach Harbors, and the Los Angeles Amtrak station, on the other hand. Tamarack is a passenger stage corporation (PSC-9635) with authorization identical to that of Preferred.

SuperShuttle proposes to acquire all of the shares of Preferred and Tamarack, resulting in those corporations becoming wholly owned subsidiaries of SuperShuttle. All of the assets and liabilities of Preferred and Tamarack will be transferred to SuperShuttle. Both Preferred and Tamarack will continue to operate under their own names. Change of ownership will be accomplished by an exchange of stock and will be transparent to the public. The purpose of the transaction is alleged to be to clarify control issues and the chain of responsibility with respect to obtaining a concession from LAX.

Accompanying the application is a financial statement of SuperShuttle indicating that it has sufficient financial strength to operate the merged companies. Operations will continue under the existing tariffs of Preferred and Tamarack.

On May 18, 1998 a protest on behalf of Ground Systems, Inc. (Protestant) was filed. This protest was withdrawn by letter dated June 18, 1998. This withdrawal was retracted by a pleading dated September 3, 1998. The September 3, 1998 pleading quoted from a filing by SuperShuttle before the Securities and Exchange Commission (SEC) stating that Preferred and Tamarack had been acquired by SuperShuttle in March 1998 (before the filing with this Commission for authorization to merge), and that SuperShuttle immediately began to integrate the acquired companies.

SuperShuttle responded on September 21, 1998 with verified declarations of the presidents of Preferred and Tamarack and the vice-president of SuperShuttle indicating that the shares have not been transferred and that the acquisition has not been accomplished. On September 22, 1998, Protestant mailed a reply to SuperShuttle's Response of September 21, 1998. Included was an excerpt from SuperShuttle's verified filing with the SEC, which contained the statements alleged in the protest.

A prehearing conference was held in San Francisco on October 8, 1998, at which appearances were entered for SuperShuttle, Ground Systems, Inc., Buslink Corp., Inc. and the Commission's Rail Safety and Carriers Division. Issues were disclosed by the parties and a hearing was scheduled for November 9, 1998. The parties were given 20 days for discovery. At the urging of the Administrative Law Judge (ALJ), the parties engaged in discussions in an attempt to settle this matter, but the effort proved fruitless.

On October 16, 1998, SuperShuttle filed to obtain Commission authorization of the merger that is the subject of this proceeding through the Advice Letter procedure. This was determined to be an attempt to circumvent the instant application procedure and was rejected by letter dated October 22, 1998.

The Assigned Commissioner determined that a hearing was not necessary in this proceeding, in that he was of the opinion that even if proved, the conflict between the SEC filing and the filing before this Commission would not render SuperShuttle unfit to receive a certificate as a passenger stage corporation under the terms of the merger. Therefore, he directed the hearing scheduled for November 9, 1998 be cancelled. The Assigned Commissioner is concerned about the allegations raised by Protestant and desires the Rail Safety and Carriers Division report to the Commission within 60 days of the date of this order with

suggestions on whether further investigations into these allegations are warranted and if so, how the Commission should proceed. He also desires the Staff look into whether there have been any violations of PU Code §§ 851-854 and/or Rule 1 of the Commission's Rules of Practice and Procedure and provide a letter to the Assigned Commissioner and ALJ on the results of this review.<sup>1</sup> We agree with all the positions of the Assigned Commissioner.

SuperShuttle asks that we grant this application *nunc pro tunc* (retroactive approval). It states that SuperShuttle "probably" will have to close the transaction before obtaining Commission approval. We do not find this request of sufficient merit to warrant the extraordinary relief requested. We note that there is no specific date to which the request has been pegged. We further note that there is no support for this request from LAX, indicating that such an order from us would be required, or even helpful to LAX in considering a concession for SuperShuttle. We only have SuperShuttle's statement that LAX "seemed reluctant" to award a concession without the acquisition of control proposed here. (Application, p. 7.) Thus, we are asked to issue the order without knowing when it is supposed to become effective or whether it is even required by LAX. *Nunc pro tunc* is an unusual remedy available "...only to avoid injustice." Williamson v. Plant Insulation Co. (1994) 23 Cal.App.4<sup>th</sup> 1406, 1415. SuperShuttle has failed to substantiate its request.

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<sup>1</sup> In ALJ 176-2991 this matter was initially determined to be a ratesetting matter not requiring hearing. Subsequently, a protest was filed and a prehearing conference held. The Assigned Commissioner's determination that a hearing was not necessary averts a necessity to amend the initial determination of ALJ 176-2991.

### Findings of Fact

1. Preferred and Tamarack are passenger stage corporations operating under certificates issued by this Commission.
2. Preferred and Tamarack operate franchises from SuperShuttle.
3. SuperShuttle wishes to acquire control of Preferred and Tamarack for purposes of obtaining a concession from LAX. Preferred and Tamarack join in this application.
4. SuperShuttle has the financial capability of acquiring Preferred and Tamarack and operating the companies.
5. Preferred and Tamarack will continue to serve the public in the same manner as in the past. There will be no changes in tariffs.
6. A protest to the application was filed alleging a conflict between verified applications before the SEC and this Commission.
7. Applicants ask that this order be made *nunc pro tunc*. There is no allegation that such an order is necessary or statement of when SuperShuttle would have the order apply.

### Conclusions of Law

1. The conflict between the federal and state filings, even if proven, do not convince us that SuperShuttle is unfit to acquire the certificates of public convenience and necessity in this application.
2. Acquisition of Preferred and Tamarack by SuperShuttle will not be adverse to the public interest.
3. The request that the order be made *nunc pro tunc* has not been supported.
4. Because of the long delay since filing of the application and the date of this order, the application should be made effective immediately.

**ORDER**

**IT IS ORDERED that:**

1. The application of SuperShuttle International, Inc. to acquire Preferred Transportation, Inc. and Tamarack Transportation Inc. is granted.

2. The Rail Safety and Carriers Division shall report to the Assigned Administrative Law Judge and Commissioner by letter within 60 days with suggestions on whether further investigations are warranted into allegations raised by Ground Systems, Inc. and if so, how the Commission should proceed. The Staff shall conduct a preliminary investigation into possible violations of Public Utilities Code §§ 851-854 and Rule 1 of the Commission's Rules of Practice and Procedure.

3. The request for this application to be granted *nunc pro tunc* is denied.

Only the amount paid to the state for operative rights may be used in rate fixing. The State may grant any number of rights and may cancel or modify the monopoly feature of any of these rights at any time.

4. This proceeding is closed.

This order is effective today.

Dated November 19, 1998, at San Francisco, California.

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