

Decision 00-02-002 February 3, 2000

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

Application of Xpress Management Systems LLC to provide on-call door-to-door passenger stage service to the extent required to enter into concessionaire agreement with Los Angeles World [sic] Airport (LAX).

Application 98-09-001  
(Filed September 2, 1998)

Saman Behnam, Attorney at Law, and Roger Moradi for Xpress Management Systems L.L.C., applicant.  
Jerold L. Bloom, Attorney at Law, and M. Ebi Esule for United Independent Shuttle; and Said M. Ahmed, for California Dream Airport Shuttle; protestants.  
John E. deBrauwere, Attorney at Law, for Rideshare Port Management, LLC, interested party.  
Cleveland Lee, Attorney at Law, and Moira H. Simmerson, for Rail Safety and Carriers Division.

**O P I N I O N**

**1. Summary**

This decision grants the application of Xpress Management Systems, LLC (Xpress or Applicant) for a certificate of public convenience and necessity to operate as a passenger stage corporation (PSC) between Los Angeles, Orange, Riverside, San Bernadino, and Ventura Counties and Los Angeles International Airport (LAX).

**2. Background**

Xpress is a limited liability corporation comprised originally of five Commission PSCs: AAA Shuttle, PSC-4414; Apollo-Soyuz Airport Passenger Service, PSC-8402; Mehrdad Hajimoradi and Behram Shahab, dba L.A. Xpress

Airport Shuttle, PSC-5038; Metro Shuttle, Inc., dba Best Shuttle, PSC-5858; and Coast Shuttle, Inc., PSC-1335.<sup>1</sup> Each member's service territory is different and is specified in the member's PSC.

On September 2, 1998, Xpress filed an application seeking Commission authorization to provide service by each member consistent with the member's PSC in the greater Los Angeles metropolitan area. Although each member of Xpress possesses Commission authorization, Xpress will exercise sufficient control over the members, in conformance with the requirements of LAX management, that the Commission staff initially determined that the Public Utilities Code mandated that Xpress also obtain PSC authority.

Notice of the application appeared in the Commission's Daily Calendar on September 4, 1998, and on September 17, 1998, the Commission issued Administrative Law Judge (ALJ) Resolution 176-3000 in which it preliminarily categorized the proceeding as ratesetting and found that no hearing was required.

On October 5, 1998, protests were filed by Airway Shuttle, Ace Shuttle, California Dream, 1-M Lucky Shuttle, Shuttle 2000, A-1 Prince Airport Shuttle, E-Z Shuttle, USA Shuttle, 3R Express, 1-A Sahara Shuttle, LAX Chequer Van, Inc., and Quick Trip Airport Shuttle, Inc. All protests stated that Xpress was currently operating without required Commission authority, and requested a hearing.

On October 28, 1998, the Chief ALJ issued a ruling assigning the application to Commissioner Duque and ALJ Bushey. On November 6, 1998, the assigned Commissioner and ALJ convened a telephonic prehearing conference

---

<sup>1</sup> Subsequent changes in member composition may have occurred.

(PHC) and adopted a hearing schedule. On November 11, 1998, they issued a scoping memo finding that a hearing was required and setting out the hearing schedule adopted at the PHC.

On February 25, 1999, the ALJ presided over evidentiary hearings. Applicant presented its general manager who offered testimony on the details of Xpress' operations and management. Protestants' offered one witness that disagreed with the Commission staff's requirement that Xpress obtain a PSC. Several other persons, some of whom were not protestants and none of who submitted written testimony in accord with the procedural schedule, offered comments on the application. The protestants failed to file any written testimony which raised any factual issues of fitness of Applicant. Protestants' sole issue was their assertion that the Public Utilities Code did not require organizations such as Xpress to obtain PSC authority.

On March 3, 1999, Applicants filed a motion seeking interim authority and stating that LAX management requires that they begin offering service on April 1, 1999. Protestants filed a document that states that they "object" to granting such authority but offered no basis for their objection.

On March 23, 1999, the ALJ issued a draft decision recommending that Xpress be granted interim operating authority.

On April 9, 1999, the Board of Airport Commissioners of Los Angeles World Airports (Board), the policy-making body that operates LAX, submitted comments on the ALJ's draft decision. The comments stated that the Board had made its own determination that Xpress was fit and capable of providing shuttle van service at LAX, and that the Board fully supported the draft decision.

On April 12, 1999, Applicant submitted its post hearing brief. Protestants submitted no brief. In D.99-04-045 issued April 22, 1999, the Commission granted Xpress interim operating authority.

Pursuant to § 1701.1,<sup>2</sup> this proceeding is categorized as ratesetting, and evidentiary hearings were held. Thus, § 1701.3(a) requires a report of the number of days of hearings, the number of days the Commissioner was present, and whether the decision was completed on time. The ALJ presided over one day of hearings, which the Commissioner was unable to attend. The decision was completed on time.

### **3. Discussion**

The record in this proceeding reveals that protestants have not raised a substantive issue regarding the fitness of Xpress to provide this service. Indeed, each component member of Xpress is duly authorized to provide this very service.

The essence of protestants' position is that the Commission should not issue Xpress a PSC certificate because its operations do not meet the statutory standards for PSC or common carrier. Protestants contend that Xpress will be simply "coordinating passengers" rather than running a shuttle van operation.

Several individuals, some of which were protestants and some of which were not, also appeared at the hearing. To allow these individuals a brief opportunity to present statements for the Commission's consideration, the ALJ allowed each to make comments on the record. The comments generally alleged business-related wrongdoing, most of which was irrelevant to the Commission's authority or beyond its jurisdiction. Because the commenters did not participate in the full hearing process, i.e., presenting pre-filed written testimony or briefs to which the applicant could respond, their allegations will be accorded little weight.

---

<sup>2</sup> Unless otherwise noted, all citations are to the Public Utilities Code.

#### **4. Requirement for Commission Authorization**

The Commission has previously approved the operating authority request of Blue Van Joint Venture, another LAX door-to-door shuttle van concessionaire operating as an "umbrella" or "overarching" organization whose underlying members or partners will actually operate the vehicles and hold PSC authority of their own in Decision (D.) 98-12-062. We, therefore, disagree with protestants' contention that such authority is unnecessary, for the reasons stated in that decision. The Commission reached a similar conclusion with regard to Rideshare Port Management, L.L.C. (Rideshare), in D.99-04-050.

#### **5. Tariff Filing**

Applicant states that shuttle van services under the concession agreement will be provided in accordance with the fares and the terms and conditions of service as set forth in the tariffs that each of the members has on file with the Commission. It therefore requests relief from the tariff filing requirement.

In D.98-12-062 and D.99-04-050, the Commission denied similar requests finding that Section 486 et seq. of the Public Utilities Code requires every common carrier (which includes PSCs) to file with the Commission and keep open for public inspection schedules showing rates, fares, charges and classifications, and to observe such schedules; and that practical considerations support having all of a carrier's operations at LAX subject to a uniform set of fares and operating rules which are set forth in a single tariff, not separate tariffs as proposed. In sum, the Commission found that operating under only one tariff is simpler and more consumer-friendly.

Consistent with D.98-12-062 and D.99-04-050, we will require Xpress to file a tariff as a condition of operating under a PSC certificate. We will approve the filing of fares contained in the existing tariffs of Xpress members that currently hold PSC authority from the Commission. Those fares have already been

determined by the Commission to be reasonable. These tariffs might not cover all of the territory Xpress is seeking to serve. To the extent that Xpress' tariff may therefore contain some fares not previously reviewed and approved by the Commission, those initial fares will be subject to review by the Commission staff, and if they are deemed to be unreasonable, suspension by the Commission.

Xpress did not request a Zone of Rate Freedom (ZORF) pursuant to Section 454.2 of the Public Utilities Code. Xpress, however, will be competing with Rideshare, for which we have authorized a ZORF in D.99-04-050, and with Blue Van and other transportation providers, such as taxicabs, limousines, and buses. We will authorize for Xpress the same ZORF approved for Rideshare, a range of \$10 above or below its base fare, with a minimum fare of \$2. This action is consistent with the Commission's authority under amended Section 454.2<sup>3</sup> of the Public Utilities Code to grant ZORFs on its own initiative.

## **6. Annual Reports**

General Order (GO) 104-A requires every public utility (which includes PSCs) to file an annual report of its operations in such form and content as the Commission may prescribe. Applicant seeks a waiver from GO 104-A. It states that the members will continue to comply with the annual report filing requirement.

Operations by the members of Xpress at the LAX concession will technically be as charter-party subcarriers to Xpress pursuant to the provisions of Part 3.03 of GO 158-A. A passenger carrier which holds only TCP authority is not required to file an annual report. However, the members will continue to

---

<sup>3</sup> Section 454.2 of the Public Utilities Code amended effective January 1, 2000 by Assembly Bill 1658 (Statutes of 1999, chapter 1005).

hold PSC authority to operate independently of Xpress at places other than LAX. They therefore will still be required to file an annual report containing information regarding all of their passenger carrier operations, both passenger stage and charter-party.

In the Blue Van decision, the Commission granted such an exemption because the Blue Van joint venturers would report the LAX concession operations in their respective PSC annual reports and thus the Commission would receive all the information. There, the Commission also required Blue Van's managing partner to certify annually by letter to the Commission that the joint venturers had in fact filed the requisite reports containing the financial information that Blue Van would otherwise be required to report on its own pursuant to GO 104-A. The Commission also placed Blue Van on notice that if it files an application with the Commission for a future fare increase, it will be expected to file a single financial statement of its operations to support the request.

We agree that in these circumstances, Xpress should be granted the requested relief with the same requirements as adopted for Blue Van.

### **6.1 Reimbursement Fee**

Section 421 et seq. of the Public Utilities Code requires PSCs and other transportation companies regulated by the Commission to pay a fee to the Commission to fund its regulatory activities. Fees collected are deposited in the Public Utilities Commission Transportation Reimbursement Account (PUCTRA). The fee level is determined annually by the Commission. PSCs currently pay a PUCTRA fee of  $\frac{1}{2}$  of 1% of gross revenue plus a minimum quarterly fee of \$10 or an annual fee of \$25. (Carriers are required to file a PUCTRA report quarterly

unless their annual gross revenue is \$100,000 or less, in which case the report is filed on an annual basis.)

Applicant requests relief from payment of PUCTRA fees for the same reason it seeks relief from the annual report filing requirement, that is, the individual members will continue to comply with the requirement.

In the Blue Van decision, we required Blue Van to submit a quarterly PUCTRA report, but to remit only the minimum fee of \$10. Although the joint venturers are responsible for payment of the percentage fee on passenger revenue generated under the LAX concession arrangement, Blue Van is required to attach to each of its own quarterly reports a statement signed by its manager certifying that the PUCTRA fees due on the concession revenue have been reported and paid by the joint venturers. Blue Van was also placed on notice that in the event one or more of the joint venturers fails to timely submit a quarterly PUCTRA report, Blue Van's PSC certificate, after notice, will be subject to suspension and revocation in accordance with established Commission procedures. We will impose the same limitations on Xpress' operations.

#### **7. Rule 21(k)**

Applicant seeks waiver of the Commission's requirement that every applicant for a PSC certificate forward a copy of the application to each public transit operator operating in any portion of the territory sought to be served and mailed a notice of the application to all city and county governmental entities and regional transportation planning agencies within whose boundaries passengers will be loaded or unloaded.

The Commission granted Blue Van's similar request for a waiver because Blue Van, like Xpress, sought authority to serve territories already being served by its joint venturers under their respective PSC authorities. As in the Blue Van



decision, we agree that under these circumstances that notice on the Daily Calendar was sufficient notice to affected agencies and governmental entities.

### **8. Carrier Responsibilities**

Applicant states that it will not directly provide shuttle services to the public. Services under the LAX concession agreement will be provided by the members using their own fleets of vehicles. While the Commission has no objection to this arrangement, we remind Applicant that as holder of a PSC certificate it will have ultimate responsibility for ensuring satisfactory service to the public and compliance with rules and regulations applicable to passenger stage corporations as set forth in GO 158-A. In this regard, Part 7.01 of GO 158-A requires the carrier to respond within 15 days to any written complaint concerning transportation service provided or arranged by the carrier, and within the same number of days respond to Commission staff inquiries regarding complaints. It is desirable and appropriate that Xpress through its manager be responsible for responding to and resolving service complaints, notwithstanding that the service may have been provided in a vehicle operated by one of Applicant's members.

### **9. Settlement Agreement with Rail Safety and Carriers Division**

On February 17, 1998, the Rail Safety and Carriers Division and Bahram Shahab and Merhdad Hajimoradi, as individuals and on behalf of LA Xpress Airport Shuttle (LA Express), filed a settlement agreement as part of this proceeding. The agreement resolved issues regarding LA Xpress' outstanding PUCTRA fee payments. The Rail Safety and Carriers Division had protested Xpress' application because the managing member (LA Xpress) had failed to meet its PUCTRA payment obligations. In the agreement, LA Xpress agreed to make a payment of \$15,977 in delinquent PUCTRA fees and the Rail Safety and

Carriers Division agreed to withdraw its testimony in opposition to the application.

The parties seek Commission approval of the agreement. The parties state that the agreement is reasonable, consistent with California law, and in the public interest because it achieves substantial payment of the fees at a cost far less than that of a protracted hearing.

#### **10. Comments on Proposed Decision**

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(d) and Rule 77.1 of the Rules of Practice and Procedure. No party filed comments.

#### **Findings of Fact**

1. Xpress is a limited liability company formed for the purpose of operating under a concession agreement at LAX.
2. Each of Xpress' members holds authority from the Commission to operate as a PSC and a charter-party carrier.
3. The Commission has previously concluded that because the LAX concession agreement requires the concessionaire to exercise a high degree of control over the conduct of the operation, it must hold a PSC certificate from the Commission to legally operate.
4. Xpress requests authority to operate as an on-call PSC between LAX and points in Los Angeles, Orange, Riverside, San Bernardino, and Ventura Counties.
5. Xpress requests a waiver from the requirements of filing a tariff, filing an annual financial report, and remitting the transportation reimbursement fee.
6. Xpress requests a waiver from the notice requirements set forth in Rule 21(k) of the Commission's Rules of Practice and Procedure.

7. Notice of the application appeared in the Commission's Daily Calendar on September 4, 1998, and on September 17, 1998, the Commission issued ALJ Resolution 176-3000 in which it preliminarily categorized the proceeding as ratesetting and found that no hearing was required.

8. On October 5, 1998, protests were filed by Airway Shuttle, Ace Shuttle, California Dream, 1-M Lucky Shuttle, Shuttle 2000, A-1 Prince Airport Shuttle, E-Z Shuttle, USA Shuttle, 3R Express, 1-A Sahara Shuttle, LAX Chequer Van, Inc., and Quick Trip Airport Shuttle, Inc. All protests stated that Xpress was currently operating without required Commission authority, and requested a hearing.

9. On January 21, 1999, the Commission's Rail Safety and Carriers Division filed a declaration in protest of Xpress' application stating that Xpress' managing partner, LA Xpress, Inc., was delinquent in payment of its PUCTRA fees.

10. There is no possibility that the activity in question may have a significant effect on the environment.

11. Applicant did not request authorization to establish a ZORF pursuant to § 454.2.

12. A ZORF is necessary to allow it to develop innovative service offerings and respond quickly to changing market conditions.

13. Applicant will operate in competition with Rideshare that has an authorized ZORF. Applicant will also compete with other transportation providers, such as taxicabs, limousines and buses.

14. The Rail Safety and Carriers Division and Bahram Shahab and Merhdad Hajimoradi, as individuals and on behalf of LA Xpress Airport Shuttle, filed a settlement agreement as part of this proceeding. The agreement resolved issues regarding LA Xpress' outstanding PUCTRA fee payments.

15. Pursuant to the agreement, LA Xpress agreed to make a payment of \$15,977 in delinquent PUCTRA fees and the Rail Safety and Carriers Division agreed to withdraw its testimony in opposition to the application.

### **Conclusions of Law**

1. Xpress' proposed operations as a provider of door-to-door shuttle van service under a concession agreement with LAX require passenger stage corporation authority from the Commission.
2. Public convenience and necessity requires that Xpress be granted a certificate to operate as a passenger stage corporation pursuant to Section 1031 of the Public Utilities Code.
3. Xpress should be required to file a tariff with the Commission to fulfill the requirements of Section 486 et seq. of the Public Utilities Code.
4. Xpress should be authorized to publish a new tariff reflecting fares not to exceed its members' current fares.
5. Xpress should be relieved from the requirement of filing an annual financial report under GO 104-A provided each of its members files the requisite report and Xpress certifies that its own financial information is included in those reports.
6. Xpress should be granted partial relief from PUCTRA reporting and payment requirements provided it files quarterly reports with minimum payment and certifies that its members have or will pay fees on LAX concession revenue.
7. The requirements of Rule 21(k) of the Commission's Rules of Practice and Procedure should be waived in connection with this application.

8. The public interest supports authorizing Xpress to set its rates within a zone of rate freedom, and such authorization is consistent with our previous decisions.

9. The settlement agreement between LA Xpress and the Rail Safety and Carriers Division is reasonable, consistent with California law, and in the public interest because it achieves substantial payment of the fees at a cost far less than that of a protracted hearing.

## O R D E R

### IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Xpress Management Systems, LLC (Xpress or Applicant) authorizing it to operate as a passenger stage corporation, (PSC-11323) as defined in Section 226 of the Public Utilities Code, between the points and over the routes set forth in Appendix PSC-11323 to transport persons, baggage, and/or express.

2. Applicant shall:

- a. File a written acceptance of this certificate within 30 days after this order is effective.
- b. Establish the authorized service and file a tariff and timetable within 120 days after this order is effective.
- c. State in its tariff and timetable when service will start.
- d. Comply with General Orders (GO) Series 101 and 158, and the California Highway Patrol (CHP) safety rules.
- e. Comply with the controlled substance and alcohol testing certification program pursuant to Section 1032.1 of the Public Utilities Code and GO Series 158.
- f. Comply with Sections 460.7 and 1043 of the Public Utilities Code relating to the workers' compensation laws of this state.

3. Applicant is authorized to publish a new tariff reflecting fares not to exceed its members' current fares.

4. In establishing a tariff, Applicant is authorized to use a zone of rate freedom (ZORF) within the following limitations:

- a. Fares shall be within a range of \$10 above or below Applicant's base rates. The base rates shall be the initial rates filed in accordance with Ordering Paragraphs 2b and 3.
- b. The minimum fare shall be \$2.00.
- c. Changes to the ZORF shall be made by filing tariffs on not less than 10 days' notice to the Commission and the public.

5. Public notice shall be by posting notices in its terminals and passenger carrying vehicles and shall be posted for at least five days before the effective date and shall remain posted for 30 days.

6. Applicant is relieved from the requirement of GO 104-A to file an annual financial report, provided that Applicant's manager certifies annually by letter to the Commission that all certificated members have each filed a report which includes financial information which Applicant would otherwise be required to report on its own. Applicant is placed on notice that if in the future it makes application to the Commission for a fare increase, it will be required to file a single financial statement of its operations to support the request.

7. Applicant is relieved from the requirement of remitting the Public Utilities Commission Transportation Reimbursement Account (PUCTRA) fees based on gross revenue provided that it submits quarterly PUCTRA reports with the minimum fee payment and attaches to each report a statement signed by its manager certifying that PUCTRA fees due on Los Angeles International Airport concession revenue have been paid by its members. Applicant is placed on notice that in the event one or more of these carriers fails to timely submit a quarterly PUCTRA report, Applicant's PSC certificate, after notice, will be

subject to suspension and revocation in accordance with established Commission procedures.

8. The notice requirements of Rule 21(k) of the Commission's Rules of Practice and Procedure are waived in this application.

9. Before beginning service to any airport, Applicant shall notify the airport's governing body. Applicant shall not operate into or on airport property unless such operations are also authorized by the airport's governing body.

10. Applicant is authorized to begin operations on the date that the Rail Safety and Carriers Division mails a notice to applicant that its evidence of insurance and other documents required by Ordering Paragraph 2 have been filed with the Commission and that the CHP has approved the use of Applicant's vehicles for service.

11. The certificate of public convenience and necessity to operate as a passenger stage corporation (PSC-11323), granted herein, expires unless exercised within 120 days after the effective date of this order.

12. The application is granted as set forth above.

13. The Settlement Agreement between the Rail Safety and Carriers Division and Bahram Shahab and Merhdad Hajimoradi, in their individual capacities and as LA Xpress Airport Shuttle, is approved. The parties shall comply with the terms of the agreement.

14. This proceeding is closed.

This order is effective today.

Dated February 3, 2000, at San Francisco, California.

RICHARD A. BILAS

President

HENRY M. DUQUE

JOSIAH L. NEEPER

CARL W. WOOD

LORETTA M. LYNCH

Commissioners



RSCD/PW

Appendix PSC-11323

Xpress Management Systems, LLC  
(a limited liability company)

Original Title Page

CERTIFICATE

OF

PUBLIC CONVENIENCE AND NECESSITY

AS A PASSENGER STAGE CORPORATION

PSC-11323

---

Showing passenger stage operative rights,  
restrictions, limitations, exceptions, and privileges.

---

All changes and amendments as authorized by  
the Public Utilities Commission of the State of California  
will be made as revised pages or added original pages.

---

Issued under authority of Decision 00-02-002, dated February 3, 2000, of the Public  
Utilities Commission of the State of California in Application 98-09-001.

I N D E X

	<u>Page</u>
SECTION I. GENERAL AUTHORIZATIONS, RESTRICTIONS, LIMITATIONS, AND SPECIFICATIONS .....	2
SECTION II. SERVICE AREA .....	3
SECTION III. ROUTE DESCRIPTION .....	3

Issued by California Public Utilities Commission.

Decision 00-02-002, Application 98-09-001.

SECTION I. GENERAL AUTHORIZATIONS, RESTRICTIONS,  
LIMITATIONS, AND SPECIFICATIONS.

Xpress Management Systems, LLC, a limited liability company, by the certificate of public convenience and necessity granted by the decision noted in the foot of the margin, is authorized to transport passengers and their baggage on an "on-call" basis, between points and places as described in Section IIA, and the airport described in Section IIB, over and along the route described in Section III, subject, however, to the authority of this Commission to change or modify this authority at any time and subject to the following provisions:

- a. When a route description is given in one direction, it applies to operation in either direction unless otherwise indicated.
- b. The term "on-call", as used refers to service, which is authorized to be rendered dependent on the demands of passengers. The tariff and timetable shall show the conditions under which each authorized on-call service will be rendered.
- c. No passengers shall be transported except those having a point of origin or destination as described in Section IIB.
- d. This certificate does not authorize the holder to conduct any operation on the property of or into any airport unless such operation is authorized by the airport authority involved.

Issued by California Public Utilities Commission.

Decision 00-02-002, Application 98-09-001.

SECTION II. SERVICE AREA.

- A. Within the geographical limits of the Counties of Los Angeles, Orange, Riverside, San Bernardino, and Ventura.
  
- B. Los Angeles International Airport.

SECTION III. ROUTE DESCRIPTION.

Commencing from any point as described in Section IIA, then over the most convenient streets, expressways, and highways to the airport described in Section IIB.

Issued by California Public Utilities Commission.

Decision 00-02-002, Application 98-09-001.