

Decision 99-05-053

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of DAVID REGWAN, an individual, dba PRIME TIME SHUTTLE OF VENTURA, ORANGE, and LOS ANGELES COUNTIES to sell, and AMRAT, INC., a California corporation, to purchase that Passenger Stage Certificate granted by Decision 90-03-066 in Application 89-08-029, pursuant to Sections 854 and 1036(b) of the California Public Utilities Code and establish a zone of rate freedom.

Application 97-09-031
(Filed September 18, 1997)

ORDER CORRECTING OMISSION

Decision 99-05-033 authorized the transfer of a passenger stage certificate from David Regwan dba Prime Shuttle of Ventura, Orange and Los Angeles Counties, (PSC-5998, to AMARAT, Inc., a California corporation. The certificate authorizes operations between certain points as specifically set forth in Appendix PSC-10811. However, this appendix was not attached to the authorized decision which was mailed on May 14, 1999. The appendix is part of the operating authority and should be included in the decision to complete the description of the authorized service. The order herein is issued under Resolution A-4661.

IT IS ORDERED that Appendix PSC-10811 attached to this order shall be included in Decision 99-05-033.

This order is effective today.

Dated May 28, 1999, at San Francisco, California.

/s/ WESLEY M. FRANKLIN

WESLEY M. FRANKLIN
Executive Director

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



June 4, 1999

TO ALL PARTIES OF RECORD IN APPLICATION 97-09-031

On May 14, 1999, we mailed to you a signed decision in the above-referenced proceeding. It has been brought to our attention that Appendix PSC-10811 may have been omitted on some copies.

Please find attached a complete copy of the signed decision.

We apologize for any inconvenience this may have caused you.

Very truly yours,

A handwritten signature in cursive script that reads "Patricia A. Bennett".

PATRICIA A. BENNETT
Administrative Law Judge

PAB:epg

Attachment

Decision 99-05-033 May 13, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of DAVID REGWAN, an individual, dba PRIME TIME SHUTTLE OF VENTURA, ORANGE, and LOS ANGELES COUNTIES to sell, and AMRAT, INC., a California corporation, to purchase that Passenger Stage Certificate granted by Decision 90-03-066 in Application 89-08-029, pursuant to Sections 854 and 1036(b) of the California Public Utilities Code and establish a zone of rate freedom.

Application 97-09-031
(Filed September 18, 1997)

John DeBrauwere and Thomas Virant, Attorneys
at Law, for David Regwan and AMRAT, Inc., applicants.
Eldon Johnson, Attorney at Law, for E-Z Shuttle &
Charter Service, and Oscar Gonzalez, for Airport Connection,
protestants.
James P. Jones, for United Transportation Union,
Sean F.H. Khoran, Reza Taheri, Claudio Nuanes, and
Angeles Rosales, for themselves, interested parties.
Cleveland Lee, Attorney at Law, for Commission
Rail Safety and Carriers Division.

OPINION

Summary

Applicants David Regwan, an individual doing business as Prime Time Shuttle of Ventura, Orange and Los Angeles Counties and AMRAT, Inc. (AMRAT), a California corporation, seek to transfer the passenger stage certificate (PSC-5998) granted by Decision (D.) 90-03-066 (Application

(A.) 89-08-029) from Regwan to AMRAT pursuant to Public Utilities (Pub. Util.) Code Section 851. Regwan will sell and AMRAT will buy Regwan's PSC authority, permits to operate at Los Angeles International Airport (LAX), and business goodwill.

AMRAT also requests authority to issue a new tariff to update operating costs. As part of the new tariff, AMRAT requests to establish a zone of rate freedom (ZORF) pursuant to Rule 23 of the Commission's Rules of Practice and Procedure and Pub. Util. Code § 454.2 which govern such rate flexibility. Applicants request exemption from the provisions of Pub. Util. Code § 460, the long- and short-haul provisions, which may result from its proposed ZORF.

AMRAT intends to provide service to all areas now served in Regwan's territory and continue Regwan's practice of using charter-party carriers as sub-haulers. Because the proposed operations are the same as the existing operations, applicants allege the transfer of authority will have no adverse effect upon other carriers, traffic at LAX, or the environment.

AMRAT's statement of financial ability shows that its assets are over 12 times its liabilities.

Applicants served the application on affected airports. Notice of the application was published on the Commission's Daily Calendar on September 24, 1997. The application was timely protested by E-Z Shuttle and the Commission Rail Safety and Carriers Division (RSCD); however E-Z Shuttle failed to participate further in the proceeding.

We herein conclude that AMRAT meets the fitness, technical, and financial requirements to operate the proposed service and has no third-party control, and that RSCD has not proved its allegations in opposition to the transfer by a preponderance of the evidence. However, we share RSCD's concern over the ambiguity of Rattan Joesa's records. Therefore, the request to transfer the

authority is herein granted upon the conditions that AMRAT: provides within 30 days of the effective date of this decision a letter from each bank stating that AMRAT does not deposit total revenues into any bank account controlled by a third party; assures that all sub-carriers have on file with the Commission their current address and prime carrier; maintains books and records in accordance with Commission requirements, especially identity of owner-operators and trip records; and, within 24 months of the effective date of this decision, provides evidence that all existing customer complaints have been resolved. We encourage RSCD to schedule annual audits of AMRAT's books and records for the next three years.

Since the request to establish a ZORF with increased rates and be exempted from the short- and long-haul rules governing ZORFs is undisputed and is one often granted to competing carriers, it is also granted to applicants.

Proposed Decision

The proposed decision of the assigned Administrative Law Judge was mailed April 7, 1999. Applicants filed a response on April 9, 1999 requesting findings approving a rate increase in the new tariff to be filed. We deny this request because no amount of increase or cost justification for such an increase is contained in the application.

RSCD filed a response on April 27, 1999 alleging factual error and requesting a ruling on its Motion to Cease And Desist. Minor revisions have been made to the order to clarify the facts. These revisions do not change the conclusions reached in the proposed decision. The record in this proceeding is confusing on the motions made orally and later withdrawn during the proceeding. RSCD indicated early during the hearing that it had not served Kindt with any pleadings regarding this proceeding. The record does not reflect that these circumstances changed during the course of the proceeding. Thus, it

appears that Kindt has received no notice of this motion and has not had an opportunity to respond. These constitutional rights must be extended prior to any ruling on a permanent cease and desist order. In addition, RSCD was constantly cautioned that this proceeding was not an investigation of Kindt and that only his relationship with applicants was relevant in this proceeding. Since we find no such relationship, matters regarding other action by Kindt are irrelevant. Therefore, to the extent that the motion for John Kindt, Jr. (Kindt) to cease and desist from controlling passenger stage operations is still pending, it is denied.

Background

After the revocation of Prime Time Shuttle International's (PTSI's) PSC authority¹ and the Commission notified all sub-carriers that they must cease operations under PTSI's authority, three individual carriers (AMRAT, B.A.D.D.J, Inc. (BADDJ), and CABAC, Inc. (CABAC) and a joint venture of carriers (Rideshare) filed applications for PSC authority. Competing carriers protested each application. Advisory Letters from RSCD in each application indicated applicants did not show sufficient evidence of financial capability, equipment, or operations to service the territories requested and that the relationship between these applicants should be identified.

Subsequently, the applicants in this proceeding filed an application instituting this proceeding. Competing carriers protested alleging that applicants were controlled by a revoked carrier, PTSI or John Kindt, Jr. (Kindt). This third

¹ PTSI relinquished PSC-7039 on July 25, 1997. However, because the Commission revoked the authority on August 2, 1996 in D.96-08-034 and suspended the revocation during a probationary period, the Commission lifted the suspension of revocation and revoked this authority for failure to abide by probation terms. (D.97-08-066, issued August 1, 1997.)

party was not named in the application. RSCD alleged AMRAT conducted PSC operations in violation of Pub. Util. Code § 1031 before authorized by the Commission and that Regwan violated Pub. Util. Code § 1037 by aiding and abetting these unlawful operations. RSCD also noted that AMRAT intends to operate as a franchisee of Prime Time Franchise Corporation (PTF), also known as Freehold, Inc.,² will engage sub-carriers to perform part of its service and has changed the address of 50 Prime Time sub-carriers to that of AMRAT's, implying that these acts are also unlawful.

A prehearing conference (PHC) was held on November 20, 1997. An evidentiary hearing (EH) was held on the following dates: April 6-10, 20-22, 27-30, and July 7-10 and 14-17, 1998. At the hearing, applicants and RSCD presented evidence to support their respective positions. Protestants E-Z Shuttle and Airport Connection did not participate in the hearing.³

Claudia Nuanes and Sean Khoram, two interested parties, who were granted the right to intervene for the limited purpose of testifying about their relationship with applicants and filing a brief, did not participate as a party in the hearing. Instead they testified as State witnesses. A third interested party, James

² In December 1996, the Department of Corporations authorized Prime Time Franchise Corporation, organized by John Kindt, Jr., to sell franchises conferring permission to use the transportation system and system services created by Kindt and permission to sell this system to others. Those purchasing a franchise were called "developers," "area developers," "franchisees," or "sub-franchisors." The seller was called the "franchisor." The franchisor allowed franchisees with charter-party permits to operate as sub-carriers under PTSI's PSC authority, PSC-7039. The franchise company name was later changed to Freehold, Inc.

³ On May 1, 1998, E-Z Shuttle informed the Commission that it would either reorganize or go out of business.

P. Jones, intervened to provide information on the impact of the application on scheduled bus service; however, Jones did not participate in the hearing.

At the PHC, the five applications were joined for purposes of hearing evidence since all applications had the common issue of control by PTSI.

At the hearing, AMRAT and Rideshare withdrew their individual applications, BADDJ did not appear, and the person appearing for CABAC was not authorized to do so. Therefore, these applications were dismissed⁴ leaving only the transfer application of Regwan and AMRAT in dispute.

Issues

There are five disputed issues in this proceeding:

1. Did AMRAT operate unlawfully prior to certification?
2. Is Regwan aiding and abetting any unlawful operation of AMRAT?
3. Is AMRAT controlled by PTSI?
4. Is AMRAT's franchise agreement or franchise relationship with PTF unlawful?
5. Does AMRAT's failure to pay customer claims warrant denial of the application?

Regwan's Past Operations

Regwan has been issued a PSC since March 28, 1990 with no liens or disciplinary action by the Commission. His PSC authority was suspended for a matter of hours in 1994 when his insurance broker failed to file evidence of his insurance with the Commission, even though the premium had been paid.

⁴ Three of the applications were dismissed by the following decisions: BADDJ, A.97-06-012 by D.98-01-011; AMRAT, A.97-06-013 by D.97-12-126; and Rideshare Joint Venture, A.97-07-041 by D.98-02-129. CABAC, A.97-06-011, is being dismissed in a companion decision.

Regwan operated an airport passenger service under the authorized fictitious name of "All American Shuttle" in Los Angeles, Orange, and Ventura Counties. He has been audited by the Commission staff once, with no subsequent action.

LAX has a moratorium on new shuttle services and in 1997 began accepting Requests for Proposals (RFPs) from carriers with vehicle fleets of 50 or more. Only two carriers, Super Shuttle and PTSI, had fleets this large. Because of this policy change, initially, Regwan decided to sell his PSC authority rather than join with other carriers to meet these fleet requirements.

In May 1997 Kindt indicated he might have a buyer of Regwan's certificate. Regwan subsequently signed a sales agreement with BADDJ to purchase his authority. BADDJ later failed to pursue an application with the Commission to approve the transfer. Therefore, on August 12, 1997 the sales agreement was rescinded, effective August 17. However, by that time 44 owner-operators who had formerly operated under PTSI's authority had signed independent contractor agreements with Regwan. Thus, Regwan had roughly 50 vehicles in his fleet.

In June 1997 Regwan saw an opportunity to remain in business and purchased a franchise from Prime Time Franchise Corporation (PTF), a company organized by Kindt. Regwan became an area developer entitled to use the name, logo, reservation system, and other services of PTF for a fee. Regwan changed his fictitious business name to "Prime Time Shuttle of Los Angeles" (PTLA) and obtained a new LAX license agreement in that name.

In a meeting with RSCD on August 7, 1997 regarding the investigation of whether AMRAT had begun to operate Econo-Ride, Inc.'s (Econo-Ride's) company without PSC authority, Regwan was introduced to the officers of AMRAT, Joea, and Amit Singh (Singh). Joea eventually signed a sales agreement

with Regwan on September 5, 1997 to purchase Regwan's PSC and manage his company until the transfer was approved by the Commission. Regwan's attorney prepared the application in this proceeding to approve this sale and transfer of the authority. PTF agreed that AMRAT would assume all of Regwan's responsibility as an area developer of PTLA.

AMRAT elected Regwan to its board of directors. Regwan instructed Joea, an officer of AMRAT, to transfer financial operations to AMRAT's bank account because AMRAT's credit rating would assure lower merchant account discount rates. Regwan retained the right to terminate these banking arrangements.

Joea's Past Operations

Joea was issued a charter-party carrier permit, TCP-9646-P, and operated as an independent owner-operator for PTSI under PSC-7039 from March 1995 until April 13, 1997 when he allowed his TCP permit to expire.

In 1997, after operating as a sub-carrier for PTSI, Joea executed a franchise agreement with PTF for the Prime Time Shuttle L.A. - North franchise entitling him to operate under PSC-7039 and at LAX under PTSI's permits. On January 31, 1997, Joea filed the fictitious business name of "Prime Time Shuttle of L.A.- North" (PTLAN) and opened a bank account at Wells Fargo Bank in this name.

Joea knew, as did other carriers, that PSTI intended to relinquish its PSC authority. Thus, after this occurred, the sub-carriers operating under PTSI's authority would need to obtain their own PSC authority, purchase that of another, or engage in subcontractor operations with another PSC. Therefore, on March 13, 1997 Joea and Singh executed an agreement to purchase Econo-Ride's authority, PSC-8302, and an agreement to manage this company until approval or disapproval of the transfer application by the Commission. RSCD does not dispute that Joea displayed the PSC number of Econo-Ride on his vans from

April to June 1997. The agreement was rescinded in August 1997 because the seller did not file an application with the Commission to approve the transfer.

AMRAT was incorporated on May 23, 1997 with Joea as principal officer and filed its own application for PSC authority on June 6, 1997, A.97-06-013⁵.

On July 10, 1997 Joea opened a merchant account at Martin Howe in the name of "Prime Time Shuttle" to process credit card payments.

On September 3, 1997 AMRAT executed sales and management agreements with Regwan. After signing the management agreement, Joea and Singh, another AMRAT officer, performed dispatching, orders for service, reservation coordination, and other business operations for Regwan's business in Regwan's offices. As agreed by Regwan, Joea opened a merchant's account for PTLA, Regwan's company, with Joea as sole signatory. In performing dispatching, Joea took over these duties from PTF who furnished the service temporarily due to the increased volume of work as sub-carriers were added. Several months after Joea was hired, when the reservation system crashed and all back-up data was lost, Joea purchased the computerized reservation system from PTF. Although RSCD disputes this purchase, Joea produced documents to verify the purchase.

RSCD's Allegations of Unlawful Operations

RSCD alleges that AMRAT operated unlawfully from March 1997 to the present based upon statements made to RSCD, advertising by use of a business card, the acquisition of numerous franchises, and the lack of PSC authority in franchise areas. RSCD also alleges Regwan aided AMRAT's unlawful PSC operations.

⁵ This is the application that was withdrawn at the hearing in the application in this proceeding.

Alleged Unlawful Operations Prior to September 3, 1997

RSCD alleges that AMRAT began operating as a passenger stage carrier prior to signing a purchase agreement with Regwan on September 3, 1997 based upon the following evidence: trip sheets during June 21-July 18, 1997; Joea's statements to RSCD on August 7, 1997; Joea's business card; Joea's representation in A.97-06-013 and a fictitious business name statement; a letter dated July 3, 1997 disbursing AMRAT funds; and the opening of a credit card account on July 10, 1997. Joea denies that these facts are true or that they show unlawful operations.

1. Trip Sheets

RSCD alleges that on August 7 and 12, 1997, Joea and Singh stated to RSCD agents that they were doing business under the name of AMRAT and supplied trip sheets dated from June 21 to July 18, 1997 showing transportation by van drivers hired by AMRAT. However, these documents are labelled "PTLAN" and make no mention of "AMRAT." Even if they did, they do not show whether the drivers have signed owner-operator agreements with Regwan as he testified, or with one of Joea's companies. Neither do these documents show whether they were used under AMRAT's management of Regwan's operations. Therefore, the reference to PTLAN is ambiguous and fails to prove RSCD's allegation of unlawful operations.

RSCD witness Zundel testified that she mailed on July 18, 1997 a letter to AMRAT regarding the commencement of operations before Commission authorization. Zundel requested the transportation records, which were provided in a meeting with Joea and Singh on August 7, 1997.

On cross-examination, Zundel admitted that there is no mention of AMRAT on PTLAN's fictitious business name statement filed on January 31, 1997, the royalty report, billing report, or worker's compensation policy. These documents do reference PTLAN, a sole proprietorship, operated

by Joea and not a fictitious name of AMRAT. Zundel alleges the documents were represented as the business records of AMRAT. However, the documents themselves do not confirm this representation raising questions about the conversations at the August meeting.

Zundel explained that even if these operations occurred at a time when Joea had a valid TCP license and operated as a sub-carrier of a valid PTSI license, Joea's operations would be unlawful because his area developer agreement had not been approved by the Commission. We discuss this issue below.

Regwan testified that drivers signed owner-operator agreements with him. Therefore, RSCD's allegations are disputed by credible evidence and do not prevail.

2. Statements by Joea and Singh

RSCD alleges that unlawful operations are shown by statements of Joea and Singh on August 7 and 12, 1997. At meetings with staff, RSCD alleges they made the following statements: they were doing business under the name of AMRAT; PTLAN started operating on March 8, 1997 after signing an area development agreement for Prime Time San Fernando Valley and Orange County; AMRAT was using approximately 60 vans by owner-operators to perform the transportation; and Kindt referred them to an attorney to prepare an application and incorporation papers.

Zundel admitted she believes that references to AMRAT were in fact references to Joea and Singh that is, that Joea and AMRAT are synonymous. However, these are two separate business entities, one a sole proprietorship and the other a corporation. Thus, documents of PTLAN cannot be presumed to be those of AMRAT.

At the hearing, Zundel admitted that RSCD did not investigate whether Joea operated, as he represented at the hearing, under authorized TCP permits and valid PSC authority. In addition, RSCD itself produced letters the Commission received from PTLAN notifying the Commission of the change of address to that of Econo-ride and the change to Econo-Ride's PSC authority for itself and all its drivers. RSCD responded in writing that these changes must be authorized by the individual owner-operators and RSCD testified that this individual notice was not provided. However, these documents show an effort to keep the Commission apprised of changes in PTLAN operations.

It is reasonable to assume that given the uncertainty of the continued effectiveness of PTSI's PSC-7039, Joea, an authorized TCP, switched from operating as a sub-carrier for PTSI to that of Econo-Ride. In fact, a letter from Kindt to his sub-carriers confirms that this switch was advised by him. This was simply an effort to continue the drivers' employment. Therefore, Joea's statements alone, that he operated AMRAT with 60 vans without specifying his operating authority, and the absence of a showing that owner-operators signed agreements with AMRAT, are ambiguous and do not show unlawful operations given other surrounding facts.

In addition, RSCD admitted that General Order 157-C does not prohibit a charter-party carrier from using the services of another charter carrier as a sub-carrier. RSCD's argument in a prior case that such sub-carrier operations are unlawful was settled and rejected in D.96-08-034. Thus, RSCD's allegations of unlawful operations appear to be based solely upon AMRAT's prior affiliation with PTSI, and the charge that AMRAT operated under an unlawful area development agreement from PTF because the authority to engage in this purchase and agreement was not approved by the Commission as

allegedly required by Pub. Util. Code §§ 851 and 1031 and/or PTF or Kindt controlled AMRAT through this arrangement. These issues are discussed below.

3. Advertising

RSCD alleges that Joea gave staff a business card on August 7 indicating that he was doing business as AMRAT. RSCD considers the printing of the card and giving RSCD the business cards to be advertising as a passenger stage corporation without a valid PSC and a violation of § 1034.5 by AMRAT. The business card states: " Prime Time Shuttle Los Angeles... dba AMRAT, Inc."

This card alone is ambiguous for the purpose of showing unlawful PSC operations since AMRAT's articles of incorporation allow it to engage in any lawful activity and AMRAT had a management agreement with Regwan. In addition, handing the card to staff can hardly be determined to be solicitation, a required element to show advertising.

For this reason and the reasons stated above regarding Joea's statements on this date, we likewise conclude that this evidence is ambiguous and does not show proof of unlawful PSC operations.

4. Application and Fictitious Name

RSCD alleges that Joea signs A.97-06-013 as president of AMRAT and on July 1, 1997 stated in a fictitious business name filing that AMRAT began doing business as PTLAN on July 1, 1997.

Technically, Joea became president of AMRAT and AMRAT began operations on the date of incorporation July 1, 1997. These statements are also ambiguous, do not constitute wrongdoing or an admission of wrongdoing, and do not prove unlawful PSC operations.

5. Distribution of Funds

RSCD alleges that on July 3, 1997 Joea and Singh directed Ross Anderson, Esq. to disburse \$2,300 held in trust for AMRAT. Since the application to transfer Econo-Ride PSC authority to Joea was never filed, these agreements

were rescinded in August 1997 and Joea's deposit disbursed as he instructed. This act shows no unlawful PSC operations.

6. Formation of Rideshare Port Management

In July 1997, a limited liability company comprised of "All American/David Regwan," Universal Transportation Systems, Inc. and Good Life Enterprises, Inc., submitted a proposal to provide van service to LAX in response to LAX's request for proposals from companies with 50 or more natural gas-powered vans. The proposal provides respectively that the companies have the following interest in the limited liability company: 76.8%, 19.2%, and 4.0%.

RSCD alleges Joea's signature on the Rideshare Port Management Proposal (proposal) as "C.E.O." of PTLA, Regwan's company, indicates Joea is operating Regwan's PSC prior to Commission approval. At the hearing, Regwan testified that he knew nothing of this proposal and that the fictitious name "All American Shuttle" had expired prior to the submission of this proposal. However, the "Questionnaire" in the proposal does indicate that a transfer is pending in "#9709031." Assessing the entirety of this document, we conclude that there may be some statements that raise ambiguity, but the allegation of unlawful PSC operations is not clearly substantiated. Joea gives some notice in the proposal that his status as a PSC is pending.

7. Merchant Account

RSCD alleges that on July 10, 1997 Joea applied for credit card processing services as owner of AMRAT and that AMRAT is doing business as PTLA. The existence of these facts on their face do not show unlawful PSC operations.

Econo-Ride Purchase and Management Agreements

RSCD alleges that AMRAT "acquired use and management" of Econo-Ride without the required Commission approval required by § 854.

The Joea/Econo-Ride purchase and management agreements were drafted by competent counsel. The purchase agreement specifies that, "As soon as the necessary regulatory approval is obtained from the California Public Utilities Commission (CPUC), Seller will transfer and convey its operating authority to Buyers together with the LAX permits, all as described on the attached Schedule A." Thus, the purchase agreement expressly recognizes that the parties understand that transfer of operations requires the approval of the Commission.

In the management agreement, Econo-Ride expressly states that it desires to retain the services of others to manage its passenger stage operations pending Commission approval of an application to transfer the operating authority. Commission regulation and public utilities statutes do not prohibit a PSC from hiring a manager, unless it can be shown that the manager exhibits control equivalent to violation of Pub. Util. Code § 851 or § 854. Thus, on its face Econo Ride expressly hired PTLAN to manage its operations from March 13, 1997 until the Commission either approved or disapproved the transfer application.

RSCD does not deny that vehicles owned by and operated under Joea's valid charter-party license, TCP-9646-P, were engaged as sub-carriers of Econo Ride as of the date of the purchase agreement. Neither does RSCD deny that Joea's vans lawfully displayed the PSC number of Econo-Ride as of the date of the purchase agreement.

A letter from counsel retained to draft the agreements explained that the enclosed management agreement authorized each buyer to operate under the passenger stage authority of Econo-Ride, subject to Econo-Ride's direction and control until the Commission formally approved the requested operating authorities. The record shows that Kindt directed van owners to change their

PSC display from his authority (PSC-7039) to that of Econo-Ride (PSC-8302) and Joea notified the Commission on May 30, 1997 that his prime carrier was changed to Econo-Ride. Applicants deny that any unlawful operations ensued during the existence of these agreements.

Applicants correctly point out that there is no other evidence of unlawful operations regarding Econo-Ride or Joea's performance as a manager of Econo Ride, such as owner-operator agreements between owner-operators and Joea or Singh or their companies or actions in excess of Joea's authority. We cannot conclude unlawful operations occurred during March-June 1997 based upon the Econo-Ride purchase and management agreements or performance thereunder. The area developer agreement is discussed below.

In addition, we note that the purchase and management agreements were drafted by competent counsel. To say that the agreements were unlawful implies unlawful acts on the part of retained counsel. There is no evidence of such a proposition.

Regwan Purchase and Management Agreements

RSCD does not appear to consider Joea's management agreement with Regwan germane to its contentions. However, Joea executed a management agreement with Regwan at the same time as the purchase agreement. Under this agreement, Joea supervised reservations, paid bills, opened business accounts in the name of Regwan's company, PTLA, paid Regwan "draws" on the revenues when requested, and ran advertising for drivers for Regwan's business. RSCD considers all of these acts unlawful PSC operations, ignoring the management agreement. Regwan testified of his constant oversight, direction, and decision-making in all of Joea's tasks. Joea's performance under supervision does not constitute unlawful control.

1. Merchant Account

RSCD considers Joea's acts unlawful because he placed money generated by Regwan's business in a bank account with Joea as the sole signatory. However, the bank account is in the name of Regwan's company, PTLA, which corroborates Regwan's allegation that he requested Joea to open an account because his credit rating provided lower discount rates than Regwan's.⁶ Joea did not open this account in any of his affiliated company names, but in the name of PTLA, Regwan's company. During the proceeding, applicants presented a signature card to show that Regwan's name was added in June 1998. The mere existence of this account with Joea as sole signatory does not show unlawful PSC operations.

2. Payments to Regwan

RSCD alleges Joea told its agent, Zundel, that he was paying Regwan \$3,000 a month for managing AMRAT and CABAC operations, and that Regwan acknowledged to Zundel receipt of a check from Joea under this agreement. Regwan testified that he owned this business and he had a right to withdraw funds. Joea testified that this amount was a "draw" on Regwan's own revenues. No checks or other evidence of this transaction were produced. The record reflects a management agreement between Regwan and AMRAT and that Regwan owned PTLA. Since Regwan did own the business, without further evidence to show unlawful activity, it is lawful for Regwan to receive money from his own revenues.

RSDC alleges that CABAC and AMRAT paid Regwan in order to operate under his authority based upon statements from a CABAC partner,

⁶ We note that this may violate banking regulations since Joea was not the owner of PTLA and opened this account in its name.

Angela Rosales, (Rosales). Rosales also told RSCD agents that according to Kindt's directions, the money originally paid to Econo-ride for the use of its authority was to be paid to Regwan, and that CABAC was still required to pay Regwan additional monies in order to use his authority. Rosales was unavailable to testify due to illness. However, RSCD agent, Zundel, admitted no evidence of these payments to Regwan was found.

Other complaints made to RSCD investigators by Rosales were about the fees being charged by Kindt to purchase area development territories and use of another PSC, presumably after Kindt was revoked. However, Kindt was not served with notice of this proceeding nor did he appear. Therefore, these allegations cannot be resolved in this proceeding. Nor do they appear to be relevant to this proceeding.

3. Increase in Vans at LAX

RSCD argues that AMRAT engaged in unlawful operations because LAX gave Regwan 107 decals for vans under his LAX permit. Regwan testified he had 50 vans and did not use all of the decals. Joa testified he had authority to advertise and hire drivers to work for Regwan. Thus, it is reasonable to assume between 50 and 107 owner-operators worked for Regwan, especially after Joa's TCP expired and other sub-carriers for Kindt went out of business. There is no evidence to show that drivers were not owner-operators lawfully working for Regwan's company.

Legality of the Area Developer Franchise Agreement

RSCD alleges that PTF is required to obtain authority from the Commission under Pub. Util. Code §§ 851 and 1031 to engage in the franchise operations in which it participated with AMRAT. Because PTF did not obtain such approval, RSCD alleges AMRAT's area development agreement and operations under this agreement are unlawful.

As stated above, Joes engaged in lawful operations during the period he had a valid TCP and sub-carried for a valid PSC. The record does not show that he has operated a PSC as an area developer since his TCP expired. The record does not show he has sold any franchises to sub-franchisees, or that any sub-franchisees which may be under AMRAT operate without TCP and/or PSC authority. However, if this transfer is granted, obviously AMRAT will be entitled to operate a PSC as a prime carrier and area developer in the future. Therefore, we resolve this issue.

Sections 851 and 1031 each include the term "franchise" in their language. Section 851 was last revised in 1965 and § 1031 was last revised in 1951. The key question is whether the franchise at issue in § 851 is the same as the franchise agreement which RSCD takes issue with here. A review of each statute is instructive.

Section 851 provides that:

"No public utility other than a common carrier by railroad...shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its railroad, street railroad, line, plant, system, or other property necessary or useful in the performance of its duties to the public, or any *franchise* or permit or any right thereunder, nor by any means whatsoever, directly or indirectly, merge or consolidate its railroad, street railroad, line, plant, system, or other property, or *franchises* or permits or any part thereof, with any other public utility, without first having secured from the commission an order authorizing it to do so.

"The permission and approval of the commission to the exercise of a franchise or permit under Article 1 (commencing with Section 1001) of Chapter 5 of this part, or the sale, lease, assignment, mortgage, or other disposition or encumbrance of a *franchise* or permit under this article shall not revive or validate any lapsed or invalid franchise or permit, or enlarge or add to the powers or privileges contained in the grant of any franchise or permit, or waive any forfeiture."
(Emphasis added.)

When read in conjunction with § 1031 this segment is clear on its face that the franchise or permit referenced in this section is one granted under § 1001 et seq., certificates of public convenience and necessity, granted by this Commission.

Section 1031 provides that:

"No passenger stage corporation shall operate or cause to be operated any passenger stage over any public highway in this State without first having obtained from the commission a certificate declaring that public convenience and necessity require such operation. . . .Any right, privilege, *franchise*, or permit held, owned, or obtained by any passenger stage corporation may be sold, assigned, leased, mortgaged, transferred, inherited, or otherwise encumbered as other property, only upon authorization by the commission." (Emphasis added.)

Thus, Section 851 prohibits the sale or transfer of the right to operate a certified passenger stage service. However, the franchise agreement at issue here does not seek to transfer to area developers the authority to operate any type of passenger service. The agreement is silent on the transfer of this type of authority and expressly provides that the area developer must maintain all permits necessary to operate its business and abide by all applicable laws.

The franchise purchased by applicants under the area development agreement from PTF is the right to recruit sub-franchisees to train, supervise, and assist franchisees, use and display the trademarks, and use the system developed by the franchisor. This is not a PSC operation. These type of franchise sales are regulated by the Department of Corporations (DOC) under the Franchise Investment Law, §§ 31000 et seq., to prevent fraudulent promises or conveyances.

Sections 851 and 1031 were enacted 20 years prior to the Franchise Investment Law and before the existence of the type of franchises that PTF sold. In enacting this legislation in 1971 the law expressly states that:

"The Legislature hereby finds and declares that the widespread sale of franchises is a relatively new form of business which has created numerous problems both from an investment and a business point of view in the State of California. Prior to the enactment of this division, the sale of franchises was regulated only to the limited extent to which the Corporate Securities Law of 1968 applied to such transactions. . . . Further, it is the intent of this law to protect the sale of franchises where such sale would lead to fraud or a likelihood that the franchisor's promises would not be fulfilled, and to protect the franchisor by providing a better understanding of the relationship between the franchisor and the franchisee with regard to their business relationship." (Corp. Code 31001.)

Section 31005 of the Corporations Code defines franchise as:

" a 'Franchise' means a contract or agreement, either expressed or implied, whether oral or written, between two or more persons by which:

- "1) A franchisee is granted the right to engage in the business of offering, selling or distributing goods or services under a marketing plan or system prescribed in substantial parity by the franchisor;
- "2) The operation of the franchisee's business pursuant to such plan or system is substantially associated with the franchisor's trademark, service mark, trade name, logo type, advertising, or other commercial symbol designating the franchise or its affiliate; and
- "3) The franchisee is required to pay, directly or indirectly, a franchise fee."

Based on our review of the relevant statutes, we do not agree with RSCD that PTF is required to obtain authority under §§ 851 and 1031 to engage in the franchise operations in which it participates with AMRAT.

Control of Applicants' Proposed Operations by PTF

RSCD alleges PTF is conducting unauthorized operations by controlling applicants through the area development agreement. If PTSI controls applicants, these parties have an agency relationship, meaning one is liable for the actions of the other. In this proceeding, if this is true, the application must be denied since at the time of revocation, the Commission expressly ordered John Kindt, Jr. to disclose any such involvement. (D.96-08-034, D.97-08-066.)

The DOC makes a determination of whether there is an agency relationship in order to determine whether each franchisee must register with the department. DOC determined that PTF's promise to provide training, start-up expenses, and a communication system did not establish such a relationship. Therefore, area developers were independent contractors and no registration of sales were required to be reported.

Caselaw makes the distinction between an agent and independent contractor on a case-by-case basis. The general rule is where a franchise agreement gives the franchisor the right of complete or substantial control over the franchisee, an agency relationship exists. (*Cislav v. Southland Corporation* (1991) 4 CA4th 1287; *Wickham v. Southland Corp.* (1985) 168 CA3d 49.)

Fees Paid to PTF

The *Cislav* case holds that a provision in the agreement requiring that the franchisee pays a monthly franchise fee to the franchisor consisting of a percentage of revenues does not establish an agency relationship. Thus, Regwan/AMRAT's payments of 3.8% of gross revenues and installment payments on a debt owed by Joea are not conclusive evidence of control by PTF.

Policies and Procedures

RSCD alleges AMRAT is required to strictly adhere to the franchisor proprietary processes, methods, procedures and standards developed by the

franchisor which are contained in the Prime Time Area Developer Operations Manual, including computer automated reservation, dispatching, routing and cashiering. RSCD alleges these provisions are mandatory and only altered upon prior written consent by the franchisor. The control which RSCD references is largely over the trademarks, logo, color scheme of vehicles and uniforms of drivers. Applicants' witness, Jerry Cole, an expert in franchise operations, testified that such provisions are standard language for a franchise and do not constitute control. Therefore, we cannot agree that these provisions evidence control over AMRAT in operating PSC business.

Revenues

On March 3, 1997 Joea and other area developers opened bank accounts for credit card processing services from Superior BankCard Service (Superior). On July 10, 1997 Joea transferred this activity from the Superior account to Martin Howe Associates (First Tennessee Bank) with the same arrangement to automatically deposit verified and collected charges into Kindt's account. Monies collected for transportation services via PTF's telephone number, 1-800-Red-Vans, and paid by credit cards were processed in this account. Kindt and PTSI's secretary, Steve Johnston, are the sole signators on this account. Therefore, RSCD alleged that PTF "controlled" applicants' operations.

Drivers deposit credit card payments into a second bank account opened by Joea at Wells Fargo.

After hearing RSCD's testimony of the appearance of control by Kindt that this arrangement gives, applicants directed First Tennessee Bank to terminate this arrangement and direct all merchant account credit card deposits from the 800 telephone reservations to the applicants' account which is now under the joint control of Regwan and Joea. Joea presented a copy of this letter.

RSCD correctly points out that this letter provides no assurance that this action has been taken. Therefore, we will condition the grant of authority upon receipt of evidence showing no deposit of revenues into any account with third-party control and require that this arrangement be permanent.

Improper Motive

RSCD alleges that Joea's actions show a motive to operate unlawfully. We cannot agree because Joea attempted to lawfully notify the Commission of every change in operations that he made. He sent letters to this effect, even though they were inadequate to change the status of other drivers. On two occasions, prior to engaging in any operations, he signed a management agreement pending his request for a transfer of PSC authority. He rescinded a purchase transaction when the purchaser failed to request Commission approval of the certificate. These acts show some inclination to operate lawfully.

In addition, AMRAT filed two applications for certification which they served on the relevant airports and competing carriers. These applications were guaranteed to invite scrutiny of AMRAT, PTLAN, and Joea's operations by the airport, this Commission, and any competitors. It is illogical to conclude that AMRAT and Regwan intended to operate unlawfully.

Pattern and Practice

RSCD alleges Joea's operations as a sub-carrier with PTSI, Econo-Ride, Regwan, and as an area developer, show a pattern and practice of unlawful behavior and "trafficking" in PSC licenses. However, the record reflects the existence of valid TCP and PSC authority or a valid management agreement as Joea engaged in these operations, and letters to the Commission reporting these changes.

1997

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec
Joea TCP Valid	_____→											
Kindt PSC Valid	_____→											
Econo-Ride Purchase Pending			_____→									
Econo-Ride Mgt. Agreement			_____→									
Regwan Purchase Pending									_____→			
Regwan Mgt. Agreement									_____→			

The fact that Joea may have purchased numerous franchises is not evidence of unlawful conduct. Joea's statements regarding advertising and hiring drivers are made in the context of having a management agreement with Regwan where these are his duties. The record does not reflect that the advertising is to solicit business for PTLAN or AMRAT. In fact, no advertisements were produced other than Joea's business card.

RSCD argues that Joea has not requested Commission authority to operate in areas other than points in Regwan's certificate. There is no requirement that AMRAT make this request or address this issue in this proceeding. Moreover, there is no evidence in this proceeding to show that this argument is true.

Customer Complaints

From the time he was hired, Joea used PTF's computer dispatching system to perform Regwan's transportation services. However, the entire reservation system malfunctioned from September 5 through October 9, 1997. As a result of this system breakdown, AMRAT initiated the purchase of the system, including software. The purchase price was deducted from revenues PTF held in their account for Regwan. Applicants presented an itemized report of the costs of various components of the system. This system breakdown resulted in the

erasure of customer reservation data, meaning operators do not know whether a customer has a valid claim for a refund when they complain.

Regwan testified that he has created a system of responding to customer complaints which involves more telephone lines and special telephone lines dedicated to customer complaints. He responds to these telephone complaints generally within 24-48 hours. He has also refunded substantial sums of money to customers regardless of whether there is proof that their claim is valid. He considers it a good business practice to do so.

However, there appears to be a second source of customer complaints. RSCD alleges that staff found 230 or more customer complaints against AMRAT from June 12 to July 29, 1997 unrelated to the computer crash on September 5, 1997. Applicants indicated there could have been instances of double-billing due to charges by the office dispatcher and duplicate charges by the driver. Interestingly, the bank manager, Segura, testified that after Joes opened the account in July in Regwan's business name, PTLA, there was a problem with the manner in which PTF processed credit card charges. PTF had no cross-checking system to verify when credit card charges sent for payment were actually paid. In addition, PTF often sent more than the 500 charges allotted for each batch of charges. With no system to verify that a charge had been paid by the credit card company, Segura testified that this could easily result in double or triple billing by PTF. This flaw in processing batches would likely affect all franchisees and may reasonably be the cause of any double-billing.

RSCD alleges that no Prime Time Shuttle area franchisees would take responsibility for 83 of the complaints examined by staff until they contacted all franchisees. This supports Joes's claim that the complaints probably involved all area developers. The Southern California Automobile Association received

nearly 100 customer complaints from January to December 1997. In April 1997, the company stopped promoting Prime Time Shuttle's services to its members because of persistent complaints of double-billing or failure to pick-up.

In February 1998, RSCD contends AMRAT began to respond to these complaints. Until then, they informed some customers they would have to wait until AMRAT was reimbursed for losses due to the computer equipment failure in September 1997. Thus, RSCD contends AMRAT has harmed the public and this attitude is a preview of future handling of customer complaints. RSCD requests that the application be denied, or alternatively a grant be conditional to a future time, and the Commission institute a compliance proceeding in the interim to ascertain whether AMRAT is still denying refunds to these customers.

Applicants allege it cannot identify whether a customer has a valid claim for a refund without relevant reservation data which was erased in the computer crash, and that PTF has not distributed proceeds from its insurance claim to reimburse AMRAT for any refunds paid, and that they are financially unable to refund the outstanding \$30,000-35,000 in claims. Should a computer crash happen in the future, AMRAT has insurance that should provide some reimbursement for customer claims.

General Order (GO) 157-C, 7.01, requires that a carrier respond to written customer complaints within 15 days, not that they be resolved in 15 days. However, the status of customer complaints is always a matter of Commission concern. Therefore, AMRAT must expeditiously resolve its share of these customers complaints. However, denying its request to transfer authority is harsh and ordering a compliance proceeding may not be necessary. AMRAT indicates it is willing to pay some of the claims, but cannot pay the total \$30,000-35,000. Therefore, we will order AMRAT to resolve its share of these claims within 24 months after effective date of this decision based upon its percentage of

revenues of all PTF franchises during 1997. We will order quarterly progress reports to the Commission during this period.

Ambiguous Representations

While we do not herein agree with RSCD that a number of representations show knowing or willful intent to engage in unlawful PSC operations, we share RSCD's concern over such representations made by experienced carriers. Therefore, we will order applicants in the future to provide clear documentation on trip sheets and all other company documents, especially the correct entity with whom owner-operators have signed agreements. We will specifically order that all books and records be kept as required by Commission regulation so as to be ready for audit by Commission staff. We would anticipate that RSCD would periodically audit AMRAT's book and records given the uncertainty of its record keeping evidenced in this proceeding. Should RSCD have probable cause that any irregularities in operations, record keeping or other violations are occurring, we encourage it to take appropriate measures to have the Commission issue an order instituting investigation into AMRAT's operations.

ZORF

AMRAT requests authority to establish a ZORF of \$10 above and below the base rate. The base rate shall mean Regwan's present adult one-way fares filed with this Commission. The minimum fare shall not be less than \$2 for any adult one-way fare.

AMRAT will compete with other passenger stage corporations, taxi cabs, limousines, buses, and automobiles in its service area. The establishment of the ZORF of \$10 is fair and reasonable.

Identity of Vehicles

Based upon the customer's inability to identify which Prime Time company provided inadequate service, we also encourage staff to ascertain

whether Prime Time vehicles should add the location of its service or the name of its area developer territory or other identifying information visible to the public to its vehicles.

Findings of Fact

1. Applicant Regwan, an individual, doing business as Prime Time Shuttle of Ventura, Orange and Los Angeles counties requests authority to transfer passenger stage certificate (PSC-5998) to AMRAT, a California corporation, as well as Regwan's operating permits at LAX and business goodwill.

2. Applicant AMRAT requests authority to issue a new tariff updating operating costs and establish a zone of rate freedom exempt from long- and short-haul provisions.

3. AMRAT will provide service to all areas now served by Regwan and continue the practice of using charter-party carriers as sub-haulers.

4. Because the proposed operations are the same as the existing operations, the transfer of authority will have no adverse effect on other carriers, traffic at LAX or the environment.

5. AMRAT's assets are over 12 times its liabilities and AMRAT possesses the technical expertise to operate the proposed service.

6. Applicant duly served notice of its application on affected airports; notice of the application was published in the Commission's Daily Calendar on September 24, 1997.

7. E-Z Shuttle and Airport Connection, Inc. protested the application and requested a hearing, but failed to participate in the hearing. Claudino Nuanes and Angeles Rosales, officers of CABAC and Sean Khoran and Reza Taheri, owners of United Transportation Systems, were granted status as protestants but did not participate as parties. Instead, Nuanes and Khoran testified as State witnesses.

8. RSCD protested the application in this proceeding alleging unlawful operations by AMRAT prior to certification, aiding and abetting unlawful operations by Regwan, control of operations by a third party unnamed in the application, and engaging in acts adverse to the public interest by failing to issue refunds to complaining customers.

9. Sean Khoram and Claudino Nuanes were granted status as interested parties but failed to participate in the proceeding.

10. Regwan was certified as a PSC in 1990 and has had no disciplinary action.

11. Regwan purchased PTLA franchise from Prime Time Franchise Corporation in 1997.

12. The PSC authority of PTSI (PSC-7039) was revoked on August 2, 1997 with a provision that the owner, John Kindt, Jr., must disclose any interest in any future passenger carrier operation. The Commission notified all PTSI sub-carriers of this revocation.

13. Regwan entered into a purchase agreement for his PSC authority and a management agreement with BADDJ in May 1997. This agreement was rescinded effective August 17, 1997 when BADDJ failed to assist in management operations and pursue Commission approval of the transfer of authority. However, at the time of the rescission, 44 additional owner-operators who had formerly operated under PTSI's PSC had been signed to work under Regwan's authority.

14. Joa operated as a charter party carrier (TCP-9646-P) as an owner-operator for PTSI from March 1995 until April 13, 1997 when he allowed his permit to expire.

15. Joa purchased Prime Time Shuttle Los Angeles-North franchise from Prime Time Franchise Corporation in early 1997 and began to operate under this duly filed fictitious name.

16. In March 1997 Joes opened a merchant account at Wells Fargo Bank in his business name. A second business account was opened at Wells Fargo in 1997 in the name of Regwan's business with only Rattan Joes as signatory until June 1998.

17. Joes entered into purchase and management agreements to purchase Econo-Ride's authority (PSC-8302) on March 13, 1997. This agreement was rescinded in August 1997 because the seller did not file an application with the Commission to approve the transfer.

18. On May 30, 1997 Joes notified the Commission of the change to PSC-8302.

19. AMRAT was incorporated on May 23, 1997 to engage in any lawful activity, with Joes and Amit Singh as the principal officers.

20. On June 6, 1998, Joes filed A. 97-06-013 requesting authority to operate as a passenger stage corporation.

21. In 1997 Joes transferred his Superior BankCard Service account to Martin Howe Associates.

22. Regwan entered into a purchase agreement for his PSC authority and a management agreement with AMRAT on September 5, 1997. AMRAT began managing Regwan's operations and both filed the transfer application in this proceeding on September 9, 1997.

23. Regwan requested that Joes use his bank account (Wells Fargo #2) for Regwan's business because the merchant account discount rate would be lower with Joes's better credit rating.

24. Joes's duties included managing dispatch operations, advertising for and hiring drivers, paying salaries and expenses.

25. Regwan did not approve Joes's signing or submitting statistics for the proposal by Rideshare Port Management to LAX as Chief Executive Officer of PTLA, Regwan's company. However, the questionnaire that Joes signed indicates

the transfer of authority is pending and provides the application number of this proceeding.

26. PTLAN trip sheets, fictitious name statement, royalty report, billing report and worker's compensation policy do not reference AMRAT and are ambiguous as to whether they are used in unlawful AMRAT operations or lawful PTLAN or AMRAT management operations.

27. Statements made by Joea to RSCD on August 7 and 12, 1997 that he was doing business as AMRAT; that PTLAN started operating on March 8, 1997; and that AMRAT was using 60 owner-operators to perform transportation services, were denied by Joea at the hearing. The statement that Kindt referred Joea to Kindt's attorney shows no unlawful intent or third party control.

28. Joea's act of handing RSCD staff a business card does not show he was soliciting business or advertising as AMRAT or operating a passenger stage service.

29. Joea's signing A. 97-06-013 as president of AMRAT and stating that AMRAT began operations on July 1, 1997, its incorporation date, or disbursing funds held in trust for AMRAT do not alone show unlawful PSC operations.

30. The record shows no evidence to support the hearsay allegation that Regwan received \$30,000 in payment for operating under his authority.

31. Regwan owns PTSLA, therefore, he is entitled to withdraw funds in the form of checks drawn on his account. This act does not show aiding and abetting unlawful operations.

32. AMRAT requests authority to establish a ZORF of \$10 above and below the base rate. The base rate is the present adult one-way fares of Regwan. The minimum fare is \$2 one-way. The ZORF is fair and reasonable.

33. AMRAT will compete with passenger stage corporations, taxi, cabs, limousines, buses, and automobiles in its operations.

34. Prime Time Franchise (PTF) sells franchises consisting of trademarked, copyrighted, and patented transportation services. Applicants are franchisees of PTF.

Conclusions of Law

1. It may be seen with certainty that granting the application does not adversely affect the environment.
2. The transferee, AMRAT, possesses the financial and technical ability to operate the proposed service.
3. The application for a ZORF of \$10 should be granted.
4. Before AMRAT changes fares under the ZORF authorized below, AMRAT should give this Commission 10 days' notice.
5. The filing of ZORF fares should be accompanied by a tariff amendment showing between each service point the high and low ends of the ZORF and the then currently effective fare.
6. The application is in the public interest and should be granted provided certain conditions are met.
7. Applicant's area development agreement is not unlawful.
8. AMRAT has not exerted unlawful control over Regwan and Kindt has not exerted control over applicants.

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

O R D E R

IT IS ORDERED that:

1. David Regwan (transferor), an individual, doing business as Prime Time Shuttle of Ventura, Orange and Los Angeles Counties may transfer the certificate

of public convenience and necessity, PSC-5998, to AMRAT, Inc. (AMRAT), including permits to operate at Los Angeles International Airport and subject to all rules and regulations of this airport when the following conditions are met:

- a. AMRAT provides written notice to the Commission from each bank where it has an account or credit card checking services that it does not deposit revenues into any account controlled by a third party, and,
- b. AMRAT provides a written agreement to permanently maintain these banking arrangements for all bank accounts.

2. AMRAT is authorized to establish a zone of rate freedom (ZORF) based upon current rates subject to the rules and regulations of this Commission. Any such established ZORF is exempt from long- and short-haul rates.

3. The transferee shall:

- a. File with the Division written acceptance of the certificate and a copy of the bill of sale or other transfer document within 30 days after transfer.
- b. Establish the authorized service and file tariffs and timetables within 120 days after this order is effective.
- c. Amend or reissue seller's tariffs and timetables, state in them when the service will start, make them effective 10 or more days after this order is effective, and allow at least 10 days' notice to the Commission. Comply with General Orders Series 101, 104, 157, and 158, and the California Highway Patrol (CHP) safety rules.
- d. Maintain accounting records in conformity with the Uniform System of Accounts.
- e. Comply with General Orders Series 101, 104, and 158, and the CHP safety rules.
- f. Comply with the controlled substance and alcohol testing certification program pursuant to Pub. Util. Code § 1032.1 and General Order Series 158.
- g. Remit to the Commission the Transportation Reimbursement fee required by Pub. Util. Code 403 when notified by mail to do so.

- h. Comply with Pub. Util. Code §§ 460.7 and 1043, relating to the Workers' Compensation laws of this state.
- i. Enroll all drivers in the pull notice system as required by Section 1808.1 of the Vehicle Code.
- j. Comply with the terms contained in Appendix A attached hereunto.
- k. Provide quarterly monitoring reports for 24 months recording the current and cumulative refunds to customers pursuant to complaints and the total revenues of all area developers forming a basis of total refunds by AMRAT.

5. If the transfer is completed, on the effective date of the tariffs a certificate of public convenience and necessity is granted to AMRAT Inc., a California corporation, authorizing it to operate as a passenger stage corporation, as defined in Pub. Util. § 226, between the points and over the routes set forth in Appendix PSC-10811, to transport passengers and baggage.

6. Before beginning service to any airport, transferee 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.

7. Operations may begin on the date that the Executive Director mails a notice to purchaser that its evidence of insurance is on file with the Commission, that the CHP has approved the use of purchaser's vehicles and terminal for service and the banking arrangement herein is verified.

8. The certificate of public convenience and necessity granted by Decision 90-03-066 is revoked on the effective date of the tariffs.

9. Transferee shall assess fares no higher than those presently named in the tariff of transferor until such time as increases in such fares may be authorized by the Commission.

10. Application 97-09-031 is closed.

This order is effective today.

Dated May 13, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners

CERTIFICATE
OF
PUBLIC CONVENIENCE AND NECESSITY
AS A PASSENGER STAGE CORPORATION
PSC-10811

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.

Supersedes the authority heretofore granted to
David Regwan, an individual, by D.90-03-066.

Issued under authority of Decision 99-05-033, dated May 13, 1999, of the Public
Utilities Commission of the State of California in Application 97-09-031.

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

This certificate supersedes all passenger stage operative authorities granted to David Regwan, an individual.

Amrat, Inc., a corporation, 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 between points and places as described in Section IIA, and points or places as 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 the route 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 tariffs shall show the conditions under which each authorized on-call service will be provided, and shall include the description of the boundary of each fare zone, except when a single fare is charged to all points within a single incorporated city.
- 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 99-05-033, Application 97-09-031.

SECTION II. SERVICE AREAS.

- A. All points within the geographical limits of Los Angeles and Orange Counties and all points within the cities of Ventura, Simi Valley, Fillmore, Thousand Oaks, Oxnard, Ojai, Moorpark, Camarillo, Port Hueneme, and Santa Paula, in Ventura County.
- B. Los Angeles International Airport.
Burbank Airport.
Long Beach Airport.
Ontario International Airport.
John Wayne Airport.
Los Angeles AMTRAK Station.
Los Angeles and Long Beach Harbors.

SECTION III. ROUTE DESCRIPTION.

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