

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



May 2, 2003

Agenda ID #2165

TO: PARTIES OF RECORD IN APPLICATION 02-08-027

This is the draft decision of Administrative Law Judge Rosenthal. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at <http://www.cpuc.ca.gov>. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ Angela K. Minkin
Angela K. Minkin, Chief
Administrative Law Judge

ANG: avs

Decision **DRAFT DECISION OF ALJ ROSENTHAL** (Mailed 5/2/2003)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Michael Muramoto D.B.A. Mike's Ride for Certificate of Public Convenience and Necessity to Operate as a Passenger Stage Corporation Between Isla Vista, California and Santa Barbara, California.

Application 02-08-027
(Filed August 21, 2002)

O P I N I O N**Summary**

The Application of Michael Muramoto, doing business as Mike's Ride (Applicant) for a passenger stage certificate for service between Isla Vista and Santa Barbara is granted.

Background

Applicant seeks a passenger stage certificate to operate between Isla Vista and Santa Barbara. Service will be in the evenings. Patrons will basically be students attending the University of California, Santa Barbara. Proposed fares are \$6.00 for round trips and \$4.00 for one-way. Applicant also requests a zone of rate freedom of \$5.00 above and \$4.00 below its fares.

This matter is protested by William Singer (Protestant), operator of an existing service between these two communities. Protestant claims that there is not sufficient potential ridership for competing bus companies, that Applicant is duplicating the routes of Protestant and threatening to undercut his fares, that there are conscious errors in the application, and that procedural errors are

present in this application. Protestant requests an evidentiary hearing.

Applicant filed a reply to this protest.

Discussion

The mere filing of a protest does not guarantee an evidentiary hearing. As stated in Rule 44.2 of our Rules of Practice and Procedure:

“The filing of a protest does not insure that an evidentiary hearing will be held. The decision whether or not to hold an evidentiary hearing will be based on the content of the protest.”

Thus, we must consider the allegations in the protest before ordering a hearing.

The gravamen of the protest is that the Applicant will duplicate the service of Protestant, thereby causing great financial hardship. It is the established policy of this Commission to favor competition. *American Business, Inc.*, 3 CPUC2d 246 (1980). As stated in *American Airport Shuttle*, 52 CPUC2d 35, 36 (1993):

“The Commission’s policy is that we do not consider monopoly passenger stage service adequate service to the public, and we will not apply Sec. 1032 of the PU Code as a bar to deprive the public of the most innovative, attractive, and agreeable bus service that may potentially exist for its benefits.”

In light of this stated policy it is our view that this application should be granted without an evidentiary hearing.

Categorization

This matter appeared on the Commission Calendar dated September 6, 2002. In Resolution ALJ 176-3094, dated September 5, 2002, the Commission preliminarily categorized this proceeding as ratesetting and preliminarily determined that no hearings were required. These preliminary determinations are confirmed.

Comments on Draft Decision

The draft decision of the Administrative Law Judge in this matter was mailed to the parties in accordance with Pub. Util. Code Section 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____.

Assignment of Proceeding

Carl Wood is the Assigned Commissioner and Sheldon Rosenthal is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Applicant proposes to conduct passenger stage operations between Isla Vista and Santa Barbara.
2. Applicant indicates that he has the finances, equipment and experience to conduct the service proposed.
3. Applicant will be operating in direct competition with an existing carrier.
4. Applicant requests authority to establish a ZORF of \$5 above and \$4 below the proposed fares of \$6 for round trips and \$4 for one-way. The minimum fare will be \$2.
5. Applicant will compete with PSCs, taxicabs, limousines, buses, and automobiles in its operations. The ZORF is fair and reasonable.

Conclusions of Law

1. The Commission favors competition in the transportation industry.
2. Monopoly service is not considered to be adequate service under Pub. Util. Code § 1032.
3. Applicant should be granted a certificate of public convenience and necessity and a zone of rate freedom as requested. A public hearing is not necessary.

O R D E R**IT IS ORDERED** that:

1. A certificate of public convenience and necessity (CPCN) is granted to Michael Muramoto (Applicant), an individual, authorizing him to operate as a passenger stage corporation (PSC), as defined in Pub. Util. Code § 226, to transport persons and their baggage, between the points and over the routes set forth in Appendix PSC-15476, subject to the conditions contained in the following paragraphs.
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 tariffs and timetables within 120 days after this order is effective.
 - c. File tariffs on or after the effective date of this order. They shall become effective 10 days or more after the effective date of this order, provided that the Commission and the public are given not less than 10 days' notice.
 - d. Comply with General Orders 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 Pub. Util. Code § 1032.1 and General Order Series 158.
 - f. Remit to the Commission the Transportation Reimbursement Fee required by Pub. Util. Code § 423 when notified by mail to do so.
 - g. Comply with Pub. Util. Code §§ 460.7 and 1043, relating to the Workers' Compensation laws of this state.
 - h. Enroll all drivers in the pull notice system as required by Section 1808.1 of the Vehicle Code.
3. Applicant is authorized under Pub. Util. Code § 454.2 to establish a zone of rate freedom (ZORF) of \$5 above and \$4 below the proposed fares of \$6 for round trips and \$4 for one-way. The minimum fare will be \$2.

4. Applicant shall file a ZORF tariff in accordance with the application. The ZORF shall expire unless exercised within 120 days after the effective date of this order. Applicant shall give this Commission at least 10 days' notice. The tariff should show between each pair of service points the high and low ends of the ZORF and the then currently effective fare.

5. Applicant may make changes within the ZORF by filing amended tariffs on not less than 10 days' notice to the Commission and to the public. The tariff shall include between each pair of service points the authorized maximum and minimum fares and the fare to be charged.

6. In addition to posting and filing tariffs, Applicant shall post notices explaining fare changes in his terminals and passenger-carrying vehicles. Such notices shall be posted at least 10 days before the effective date of the fare changes and shall remain posted for at least 30 days.

7. Applicant is authorized to begin operations on the date that the Consumer Protection and Safety Division mails a notice to Applicant that his 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.

8. 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 authorized by the airport's governing body.

9. The CPCN to operate as PSC-15476, granted herein, expires unless exercised within 120 days after the effective date of this order.

10. The Application is granted as set forth above.
11. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.

CERTIFICATE

OF

PUBLIC CONVENIENCE AND NECESSITY

AS A PASSENGER STAGE CORPORATION

PSC-15476

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 _____,
dated _____, of the Public Utilities Commission
of the State of California in Application 02-08-027.

I N D E X

	Page
SECTION I. GENERAL AUTHORIZATIONS, RESTRICTIONS, LIMITATIONS, AND SPECIFICATIONS	2
SECTION II. ROUTE DESCRIPTION	3

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

Michael Muramoto, an individual, 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 a scheduled basis, between points and places as described in Section II, and over and along the routes 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. Scheduled service will be operated only at the designated communities and cities described in Section II. A description of all the stop points and the arrival and departure times from such points shall be indicated in the timetable filed with the Commission.
- C. No passengers shall be transported except those having a point of origin or destination as described in Section II.
- D. This certificate does not authorize the holder to conduct any operation on the property of any airport unless such operation is authorized by the airport authority involved.

SECTION II. ROUTE DESCRIPTIONS.

Isla Vista / Santa Barbara

Commencing from Isla Vista, then over the most convenient streets, expressways, and highways to Santa Barbara.