

ORIGINAL

Decision 97-07-063 July 16, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking)	
regarding the specialized)	Rulemaking 95-08-002
transportation of unaccompanied)	(August 11, 1995)
infants and children.)	
)	

O P I N I O N

I. SUMMARY

By this decision we adopt rules for a new market niche form of passenger stage corporation (PSC) that specializes in the common carriage of infants and children, and parents, guardians and child-care providers accompanying the children.¹ The transportation is known as: Infant and Child Common Carriers -- sometimes referred to "kids' shuttles." Because this form of common carriage responds to a market comprised of unaccompanied children, we adopt additional interim rules which we believe respond to the public interest in assuring the safety of unaccompanied minor passengers, including having carriers conduct criminal background checks of drivers and other employees in physical contact with children passengers, through the Department of Justice's Trustline Unit, requiring driver training, and imposing a restriction on these carriers to prohibit the intermixing of unaccompanied children in the same vehicle with adult passengers who have no affiliation with a child passenger. These requirements are reasonable steps which we can take today

1. Additionally, a small portion of carriers in this industry also operate chartered operations as a valid youth bus, and transport groups of school pupils, generally under contract with a child care center or school.

to protect unaccompanied children passengers, and these requirements will assist these carriers in gaining public trust and acceptance. However, we believe our rules can be enhanced by the Legislature. We have proposed legislation (Assembly Bill No. 909) that would enable us to complete full and thorough criminal background reviews of carriers, as well as drivers and others who would be assisting in the transportation of unaccompanied infants and children -- there needs to be a law to allow the fingerprinting of prospective applicants, drivers and others in physical contact with children passengers, and to correspondingly enable criminal background checks to be conducted which use those fingerprints.² We have additionally proposed legislation concerning comprehensive and similar vehicle safety regulations for all of the vehicles involved in this new service, including those that operate within the confines of a single city or city and county, as well as rules that facilitate the ability of this specialized market niche to engage in two businesses, common carriage and chartered youth bus operations, with the same vehicle, and to establish requirements for specific behavioral and child care training for drivers and other employees in physical contact with infant and child passengers.

Because this new service concerns common carriage, it most closely resembles passenger stage corporation (PSC) operations (mixed passengers sharing a vehicle, and also the compensation will be based on individual fares), and the rules adopted today are for specialized PSC carriers whose operations primarily concern, or specialize in, the transportation of

2. See Penal Code section 11105, which permits state agencies, among others, to receive this information from the Department of Justice upon statutory authorization.

unaccompanied infants and children.³ Some carriers have already received interim PSC certificates enabling them to conduct this service. Current interim PSC certificates already issued for this service shall be extended up to an additional two years and shall expire no later than two years from of the effective date of this decision or upon further order of the Commission.

All temporary PSC authorities already granted and to be granted for this new service shall be on an interim basis only and shall be subject to cancellation upon the adoption of relevant legislation (in which case all such carriers may apply for authority under any such legislative scheme). Any carriers exclusively conducting these operations as a charter-party carrier of passengers (TCP) may apply for interim PSC authority (the otherwise applicable filing fee is waived), and interim PSC authority can be granted.

II. BACKGROUND

By Order Instituting Rulemaking (OIR) No. 95-08-002, issued August 11, 1995, the Commission began an inquiry into the need for rules for a special class of transportation service restricted to unaccompanied children and possibly their escorts.⁴ Section I of Appendix A of the OIR contains rules proposed by the former Safety and Enforcement Division of the

3. However, since some of these carriers may also be engaging in chartered youth bus operations, they must additionally obtain chartered authority and abide by the Charter-Party Carriers of Passengers Act and General Order 157 series in addition to the Passenger Stage Act and the rules we adopt today.

4. The term "unaccompanied children" used throughout this decision includes transportation of an affiliated adult accompanying a child during, or incidental to, the transportation at issue.

Commission (staff). (The duties of the former S&E Division are now administered by the Consumer Services Division and the Rail Safety and Carriers (RS&C) Division, with RS&C Division having primary interest in this proceeding.) Section II contains a list of other issues that the staff sought public comment on. Copies of the OIR were mailed to many persons and organizations concerned with the safety and welfare of children and to various passenger transportation companies and trade associations. Replies to the OIR, with comments on various parts of Appendix A, were received from the State Superintendent of Public Instruction, State Department of Education, the Child Care Law Center, Santa Cruz Transportation, Inc., Kids Kab, California Child Care Resource & Referral Network, Kids Taxi, Kids in Motion, Kidslimo/VanGo, KART, Precious Cargo, The Department of California Highway Patrol, City of Salinas, Walter H. Schlobohm, Mari Alsip, and the School Transportation News. Steve Sweetser of Sacramento, submitted a late-filed comment.

III. JURISDICTION

The transportation at issue involves serving a new and apparently rapidly expanding market niche with a new tailored form of transportation of a variety of children. The transportation is not limited to school pupils or chartered groups of children or on an exclusive vehicle-use basis, but includes year-round common carriage of children, e.g., transportation for compensation of children and infants that may have no relation whatsoever with a school or school activity, such as travel from a child's home to a medical appointment. Much of this type of transportation is provided primarily by vehicles designed to accommodate less than ten people (including the driver), which are not subject to regulations by the California Highway Patrol, and the fare charged for the service is on a per capita basis (albeit individual carriage could be purchased in advance).

Before addressing the provisions of what would be a proper set of regulations for this unique service, we shall review our jurisdiction to regulate these carriers. Under the Public Utilities Code this Commission regulates two types of carriers of passengers: common carriers, known as passenger stage corporations (Pub. Util. Code, §§ 216, 225, 226, 1031, et seq.),⁵ and chartered carriers, known as charter-party carriers of passengers (§§ 5351, et seq.). A PSC is a public utility and is subject to the Public Utilities Act. (§ 216.) As such, it is subject to any rate, route, insurance, financial reporting, and tariff requirements as the Commission may impose on this class of public utility for the protection and information of the citizens of this state and the users of the PSC's proposed services. Prior to operation a PSC must obtain a certificate of public convenience and necessity (CPCN) from this Commission. (§ 1031.) That certificate remains in force, as does the duty to serve the public, until further order of the Commission.

One commentator, a youth bus operation known as Kidslimo/VanGo, suggested that this new transportation be designated as charter-party carriage. A TCP is a chartered vehicle that operates on a prearranged basis, under the exclusive control of a single party that charters it. It may not operate as a common carrier; that is, it may not transport persons who are not part of the chartered group. A TCP must be compensated on a distance or time-of-use (or both) basis and may not base its compensation on individual fares unless it is specifically

5. Hereinafter, all statutory references are to the Public Utilities Code unless otherwise indicated.

permitted to do so by the Legislature. (§ 5401.)⁶ A TCP is not permitted to file tariffs with the Commission setting forth its fares. (§ 5375.)⁷

The Public Utilities Code recognizes that "... any stage, auto stage or other motor vehicle ... operated as a passenger stage corporation [PSC] 'between fixed termini or over a regular route' within the meaning of this part is a question of fact," to be determined by this Commission. It further provides that "[a]ny act of transporting ... any person ... by stage, auto stage, or other motor vehicle upon a public highway of this State between two or more points not both within the limits of a single city or city and county, where the rate, charge, or fare for such

6. TCPs may not engage in common carriage; they are not public utilities. As noted in our OIR, this new service is one that is premised in large part on the common carriage (or "shared ride") of children. Yet a few carriers starting out are supplementing their business through chartered youth bus type operations, generally under contract with a child care center. They transport groups of children, on behalf of a child-care center to field trips or to and from schools to child-care centers. These carriers generally use larger vehicles that accommodate no more than 16 passengers and they generally operate as a "youth bus." As a youth bus, they are subject to regulation by the California Highway Patrol (CHP). A chartered service is subject to the exclusive use of one party or parent group. Services that do not intend to provide a "shared ride" transportation situation but who intend to transport groups of children on a chartered basis are subject to the Charter-Party Carriers of Passengers Act and if such transportation involves school pupils under certain circumstances, it may also be subject to various provisions of the Vehicle Code concerning school bus, school pupil activity bus and/or youth bus services. Generally, however, these carriers intend to transport unaffiliated children in one vehicle between two or more points and they intend to charge each passenger individual fares.

7. We believe that the publishing of fares is in the public's interest. It will ensure non-discriminatory, public posting of prices for this service to the population of parents and guardians or others needing to procure this service for their children.

transportation is computed, collected, or demanded on an individual fare basis, shall be presumed to be an act of operating as a passenger stage corporation within the meaning of this part." (§ 1035.)⁸

Generally, the carriers are seeking to provide a flexible, on-call type of transportation service for children that is not confined to traditional group or chartered transportation, nor constrained by city boundaries. Because the transportation in question is not restricted to transportation of "school pupils," and is not limited between a child's home to school or vice versa, or to or from a school to a nonschool-related activity within a 25 mile radius, does not contemplate a contract between the operator and a school or school district, and is generally proposed to be conducted in vehicles accommodating less than ten persons (most applicants have proposed operations that use "mini-vans" which usually accommodate no more than eight people), the common carrier aspect of this type of transportation is not restricted to the statutory definition of a school bus (Vehicle Code, § 545), school pupil activity bus (Vehicle Code, § 546) or youth bus (Vehicle Code,

8. One commentator suggested that if the fares are collected on a monthly or weekly basis they may not be individual fares. What constitutes an individual fare is not the time of the payment but the basis of the payment--i.e., whether the payment is based on the trip of each individual being transported. Thus if a PSC providing service to the public or a portion thereof, on a "shared ride" basis, charges \$10 for a trip from point A to point B and a passenger pays the PSC \$40 at the beginning of the month for transportation from point A to point B every Monday at 3 p.m., that passenger is paying an individual fare and is not chartering the vehicle since that passenger does not have a right to an exclusive use of the vehicle in question.

§ 680).⁹ Therefore, the service falls within the jurisdiction of this Commission and is defined as passenger stage corporation operations, as most commentators agreed. Naturally, when a carrier is engaged in operations that are defined, for example, as "youth bus" operations, the carrier is subject to all of the regulations set forth for youth bus operations.

The Commission may do whatever is necessary and convenient in its regulation of public utilities and may attach terms and conditions to the right granted a PSC that, in the Commission's judgment, the public convenience and necessity require. (§§ 701, 1032.) As noted in our OIR, our current rules for PSC operations do not adequately address the needs of the particular portion of the public to be served: children passengers. Leaving child safety concerns to the discretion of each individual operator is not a conscionable decision, and nobody suggests that is wise. The protection of the children of this state should have the highest priority.

Since we have issued this OIR we have granted interim authority to a number of operators. By this decision we shall continue the interim authorities granted to those carriers to conduct PSC operations in complete compliance with the rules adopted today for up to two additional years, in which time we anticipate the adoption of Legislation specifically tailored to address this service. However, in instances where a carrier's activities are described by, or limited to, the activities set forth in the Vehicle Code and/or Education Code designations for

9. We note that Vehicle Code section 545(i) provides some definition of the term "school pupil" as: "... a student at or below the 12th grade level who is being transported to a mandated school activity." The children who will be transported by this new service are not being transported as school pupils. In fact, the need for this new service is premised in large part on the child passenger's nonschool-related transportation needs.

school bus, school pupil activity bus and/or youth bus, such carriers must abide by the relevant laws, i.e., carriers limited to transporting school pupils to and from school are likely limited to the requirements of the Vehicle Code for school bus-type operators.¹⁰ Carriers who are engaged in transportation operations aimed primarily at transporting individual children, on a common carrier or per-capita basis, to activities that may include school but also include a variety of other activities (e.g., home to grandparent's home, friend's home to medical appointment), are subject to this Commission's jurisdiction and to these rules. Carriers that perform both operations may be subject to the rules of the Commission, as well as the CHP, as has been the case for youth bus operators, for example, who are subject to the Commission's regulation as chartered carriers and are also subject to the CHP's regulations specific to youth bus operators.

IV. INTERIM RULES

Our OIR asserted a need for safety regulation of this new activity. For that reason we sought comments and now issue rules for those primarily engaging in the common carriage of unaccompanied children. In issuing these rules we state, in the clearest possible terms, that these provisions are the minimum safeguards that must be followed. Conditions for every passenger and every trip may vary, making more stringent protections reasonable under some circumstances.

With this in mind we have studied the comments to the OIR which we discuss below. Many of the suggestions have been adopted. We thank each and every respondent for contributing to

10. This may be the case for one commentator, Kidslimo/VanGo which defines itself as a "home to school" transportation company.

this rulemaking proceeding. The product of our endeavors has been materially improved by their thoughtful comments.

A. Background Checks

Currently this Commission does not have the specific statutory authority required by Penal Code section 11105 to conduct any background criminal or employment-record reviews of applicants, their key personnel, drivers or other employees in physical contact with infant and child passengers. Our prime concern in this rulemaking is the safety of children. We do not believe we can adequately address that concern without the specific authority to order thorough criminal background reviews pursuant to Penal Code section 11105, including fingerprinting (which is essential to any thorough background review) of each applicant and each of the applicant's drivers and other employees in physical contact with infant and child passengers.

Currently we have the power to conduct a thorough review of an applicant's driving record through the Department of Motor Vehicle's (DMV) Pull Notice Program. (See Veh. Code, § 1801.1, and General Order 158-A, Part 5.02; see also, Pub. Util. Code, § 1033.7.) However, the Pull Notice Review does not provide us with any information concerning a carrier, an applicant's or its driver's records, if any, concerning any history of child endangerment, abuse, molestation, neglect or other information that would be pertinent to the issue of whether the operator is fit to operate a public service aimed at a particularly precious and vulnerable portion of the public.

We currently are authorized to conduct criminal background reviews of household goods carriers and certain criminal reviews of chartered carriers. The Legislature requires criminal-background reviews of all school bus, school pupil activity bus and youth bus drivers as well as child care providers licensed by the Department of Social Services. We believe the same requisite should be applied to this new form of PSC transportation and have made such a proposal to the

Legislature. The ultimate resolution of this issue rests with the Legislature. For the interim we have imposed a requirement on each and every carrier to perform a diligent search of the records of it, its key personnel, each of its drivers and any other employee in contact with the children, which includes, but is not limited to, a background review of such persons conducted by the California Department of Justice (DOJ) through its Trustline Unit. While we believe this interim requirement is better than nothing, we do not feel it is thorough enough for the long term and urge the Legislature to review this issue and provide us with the authority to conduct adequate and thorough background reviews for licensing purposes through the DOJ and Federal Bureau of Information (FBI), of all applicants and their drivers and employees who will be in physical contact with the children passengers. We do not believe that so important a requirement be left, ultimately, to the responsibility of each individual carrier.

We received comments on this issue from a number of commentators. The City of Salinas recommends that the Commission require all applicants for PSC certification to undergo thorough background reviews, including criminal background histories.¹¹ Kelly Stratico and Laura Biondi-Williams (KART) recommend reviews of employment histories, including fingerprinting and national background checks. KART does not think bonding should be required. Mark Friedman (Kids in Motion) recommends criminal record review, including fingerprinting and bonding for all drivers. However, he states that national and international

11. The City of Salinas discussed Application 93-11-020 which resulted in the certification of Edward Martinez, who, unbeknownst to the Commission, was convicted in 1985 of felony crimes including attempted murder, robbery and two counts of false imprisonment. The Commission has since revoked this carrier's license.

background checks are costly and unnecessary. He also recommends a telephone check of previous employers. Cynthia Phillips (Precious Cargo dba Shuttle 4 Kids) and Pamela A. Henderson (Kids Kab International Franchise Corporation) also recommend criminal and employment background reviews. Kids Kab recommends, and Cindy Swanson, Program Manager for Trustline, supports, background checks through the DOJ Trustline, including fingerprinting. Ms. Swanson's comments included information on Trustline procedures, costs and plans to add searches of FBI records for an additional fee.

J. Richard Whitmore, Deputy Superintendent and Ron Kinney, School Transportation Office of the California Department of Education submitted comments recommending that drivers of infants and children use the same process required for school bus drivers, including those for holders of commercial drivers' licenses with passenger endorsements. (Veh. Code, §§ 12517, 12517.2, 12517.3, 12517.4, 13369, 13370, 13371, and 13376.)¹² John R. Edney, Vice President Marketing and Sales for Durham Transportation recommends that, in the best interest of the public, non-school transportation providers carrying children comply with the same requirements as California's school bus drivers. VanGo Incorporated, a youth bus operator, and its affiliate Kidslimo, recommends that a background review of drivers be performed by the carrier, and that annual background reviews should be determined by the employer on a case-by-case basis. Mary Alsip of Santa Cruz suggests that all issues concerning the drivers should be left to the employer's discretion and further opines that the Commission should not regulate this new PSC carrier in any manner. Steve Sweetser of Sacramento proposes that the Vehicle Code be amended so that

12. Carriers operating vehicles that accommodate no more than ten passengers are not subject to the provisions concerning bus operations.

additional background review would be handled and enforced by the DMV and the California Highway Patrol.

Until the Legislature acts on this issue, we shall continue to impose our requirement that each applicant obtain from the DOJ Trustline, a criminal background review for itself, its key personnel, and every driver and employee who has physical contact with the children being transported. Such review shall include as part of that requirement, a national review upon the DOJ offering such service. All carriers must obtain subsequent reviews of the carrier's management, key personnel and each driver and employee having contact with children being transported. General Order 158-A, Part 6.01, requires that every carrier institute and maintain in its office a set of records on the services it performs. It further requires that all such records be maintained for a minimum period of three years. We will order that these records include the above discussed criminal background reviews. No carrier shall operate until such review has been completed and until copies of the records of the review are conveyed to the Commission's RS&C Division staff. A carrier shall not use any driver or other employee in physical contact with child passengers until completing and supplying the Commission with a copy of, the review called for herein.

B. Requirements For Drivers And Others In Physical Contact With Infant and Children Passengers

The Department of Education has recommended that each driver or driver applicant be required to complete a minimum of 20 hours of classroom instruction covering all of the topics in the following three categories: (1) applicable laws and regulations, defensive driving, loading and unloading of children, emergency procedures and stress commuter driving; (2) infant and child behavior and care, infant and child first aid and CPR, (with annual refresher courses); and (3) behind-the-wheel training (including in vehicles similar to those the driver will be operating) in vehicle movement and driving fundamentals,

defensive driving, passenger loading and unloading and emergency procedures. The Department of Education recommends that, upon completion, driver training be memorialized on a form to be approved by the regulating agency and signed by the carrier and the driver. Additionally, the Department of Education recommends annual inspections of the carrier's operation. The Department of Education also recommends that if a carrier is providing services to special education children or children with other special needs, the driver or employee assisting the driver should be licensed as a child care provider. The School Transportation News submitted extensive training recommendations, and recommends that the Commission require carriers to maintain a check list of the specific skills each driver masters. The School Transportation News noted that training should be conducted by those who are knowledgeable of the needs of children being transported, such as child development specialists, manufacturer's representatives, medical specialists, educational specialists, transportation specialists, and other related specialty fields.

Durham Transportation proposed behavior management training courses in addition to courses in child first aid for all carriers and drivers. Kidslimo/VanGo recommends driver training in infant and child first aid and CPR but contends that infant and child behavior training for a driver is unnecessary. Kidslimo/VanGo recommends that drivers complete ten hours of classroom training in driving techniques to be administered by the carrier, in addition to behind-the-wheel training in a vehicle similar to that used by the carrier. Kidslimo/VanGo believes that refresher training should be left to the carrier's discretion. The Child Care Law Center recommends requiring specific training in child development and rejects the idea that drivers or carriers be licensed as child care providers. Steve Sweetser of Sacramento recommends that the same age restrictions required for school bus drivers (i.e., 18 years of age or more) be applied to this new industry. Kids Kab recommends a driver

training and safety education program, including classroom and on-the-road training, but thinks the staff's recommendations are excessive. Kids Kab recommends eight hours of combined classroom and behind-the-wheel driving.

Precious Cargo recommends that additional requirements be placed on carriers for behind-the-wheel training of drivers, loading/unloading techniques, procedures for various emergencies and problem solving techniques for various contingencies, such as alternatives when a babysitter is not present to receive a child or alternative transportation in the event a child's appointment or activity has been canceled. Precious Cargo suggested that all drivers be instructed to stop the vehicle and attend to a child in the event a child becomes ill, unmanageable, frightened, uncooperative or endangered. Precious Cargo also recommends that a driver should be at least 25 years of age.

Kids Taxi recommends classroom and behind-the-wheel training for drivers, as well as infant and child cardiopulmonary resuscitation (CPR) and safety classes; however, Kids Taxi is opposed to the imposition that carriers or drivers be licensed as child care providers. Kids in Motion opines that a ten hour training course in infant and child behavior and care is excessive. However, Kids in Motion recommends that drivers and employees working with the children passengers receive CPR and first aid training for school-age children, as well as behind-the-wheel and defensive driving instruction. KART recommends a total of ten hours of training: five hours in the vehicle observing procedures and regulations of the company and five hours behind-the-wheel in the presence of a supervisor. KART also recommends CPR certification for all drivers obtained within 30 days of employment and to be maintained throughout employment. KART also recommends that additional training and regulations be imposed on all carriers transporting children under the age of five years.

The Vehicle Code contains a number of provisions concerning the safe operations and licensing requirements for

school bus, school pupil activity bus and youth bus operations. (See R.95-08-002, at 5-7.) Similar legislation might prove helpful for this new type of PSC carrier, and we have proposed such legislation. However, until such legislation is passed, this Commission is authorized to adopt rules for PSCs that serve the public convenience and necessity.

We have received near unanimous comments regarding the necessity for age or developmental stage-specific (e.g., infant, toddler, preschool, child, young adult) child first aid and CPR training for drivers, including annual refresher courses. We have also received a majority of comments recommending training for drivers and other employees who may be working with children passengers on applicable laws and regulations, defensive driving, loading and unloading of children, emergency procedures and stress-commuter driving, as well as behind-the-wheel training in vehicles similar to those the driver will be operating, in vehicle movement and driving fundamentals, defensive driving, and passenger loading and unloading.

The carriers and all of their drivers are required to comply with all rules and regulations concerning passenger stage corporation carriage, including, that every driver hold a valid California driver's license and that every carrier enroll in the DMV's Pull Notice Program. (GO 158-A, Part 5.02.) Further, all PSC carriers and their drivers must comply with the provisions of the Vehicle Code. (*Id.*, Part 1.06.) Drivers are also required to comply with the rules in the Code of Federal Regulations Part 49, sections 392.4 and 392.5, prohibiting drivers from consuming or being under the influence of a drug or alcoholic beverage while on duty. (*Id.*, Part 5.04.) By this decision, we are also requiring all drivers to be either the certificate holder or

under the complete supervision, direction and control of the PSC carrier as an employee.¹³

By the OIR, we proposed to require these carriers to establish, in addition to the other requirements for a PSC, a driver training, safety and education program, to be administered by or at the direction of the carrier and successfully completed by the driver before he or she begins driving duties, consisting of a minimum of 10 hours of classroom instruction covering applicable laws and regulations, defensive driving practices, pick-up and delivery procedures (including loading and unloading and "stress-commuter" driving). We shall continue this requirement for all carriers that have not successfully completed these courses in response to the requirements of any other regulatory agency. For example, carriers that hold valid youth bus authority and have successfully completed these courses in pursuit of such authority shall provide the Commission with proof of having successfully completed this requirement. This requirement shall be in effect for each driver, and carriers may not use a driver until he or she has successfully completed these requirements. We shall also require annual refresher training courses of two hours.

Additionally we shall require five hours of behind-the-wheel training in a vehicle similar to that used by the carrier. If a carrier can prove that it and each of its drivers have successfully completed this requirement in response to the requirements of another agency, we shall accept that proof in satisfaction of our requirement.

Carriers, their drivers and other employees in physical contact with an infant and children passenger must successfully

13. Given the vulnerability of child passengers it does not appear, at this time, to be in the public interest to permit any form of subcarriage for this form of PSC (including use by a driver of his/her "own vehicle," as suggested by Kids Taxi).

complete infant and child first-aid and CPR training with annual refresher courses. Additionally, we shall require each and every one of a carrier's drivers and employees in physical contact with infant and child passengers to complete, prior to the assumption of driving duties, education courses on infant and child behavior and care administered by, or at the direction of, the applicant and consisting of a minimum of ten hours of classroom instruction on the subject. Again, so as not to overburden this industry with redundant regulations, carriers may submit proof that each driver and employee in physical contact with infant and child passengers has successfully completed this requirement. Drivers and employees in physical contact with infant and children passengers shall successfully complete a minimum of two hours of refresher courses on infant and child behavior and care annually. Carriers are required to maintain records of each employee's successful completion of these requirements.

Finally, we agree that a minimum age limit for drivers is preferable. We note that in California, a child of 16 may obtain a driver's license. Further, generally, a juvenile record is expunged at age 18, and thus, it is unlikely that any past criminal activity would be available in a criminal background review of an 18 year old. We find that 21 years of age is a reasonable minimum age for a driver or an assistant who is in physical contact with infant and children passengers. This affords the driver and assistant an opportunity of at least five years of driving experience and hopefully some wisdom in dealing with multiple, unaffiliated infants and children while shuttling them to numerous locations. In the event that there has been any past criminal convictions, in the adult years, such facts will be apparent in a criminal background review.

Further, we shall require all carriers to ensure that all of their drivers and other employees in physical contact with infant and child passengers shall wear on their person, in a conspicuous location, an indestructible photo identification of the employee, which shall include, but not be limited to, the

carrier's name and PSC-"CHILD" identification number, the carrier's telephone number, the Commission's toll-free telephone number, and the employee's name.

C. Unforeseen Emergencies

Almost all commentators suggested that, in the event of certain emergencies such as a vehicle accident or a severe injury or illness of a child passenger, the driver immediately notify a parent or guardian of the affected child. Many commentators recommended that the carrier and parent/guardian have a written plan of action in the event of such contingencies. This is a reasonable suggestion and we agree that carriers should adopt written contingency plans which shall accommodate not only an injured or ill child but all other children aboard. Additionally, carriers should have a written itinerary for each child's transportation executed by a parent/guardian prior to the transportation. A copy of the itinerary, which shall include the carrier's identification and telephone number and the name of the driver, shall be given to third persons (such as a dentist's office or soccer coach) into whose custody children are delivered or picked-up. Copies of such plans shall be part of a carrier's records.

D. Size of Vehicles

The interim rules we imposed were designed for PSCs using vehicles that carry ten or less people. Such vehicles are specifically exempted from the definition of a "bus." (See Veh. Code, § 233(b).)¹⁴ Such vehicles are also specifically exempted

14. Vehicle Code section 233(b) defines a "bus" as "(a) vehicle designed, used, or maintained for carrying more than 10 persons, including the driver, which is used to transport persons for compensation or profit, or is used by any nonprofit organization or group is also a bus."

from regulation as school buses, and as discussed above, given the nature of the service, are PSCs. (Veh. Code, § 545(b).) Moreover, such vehicles are defined as "passenger transportation vehicles." (Veh. Code, §§ 464, 465.)¹⁵

The school bus designation is premised on the transportation of "school pupils" to or from school activities or to or from school. (*Id.*, § 545.) This service goes far beyond the traditional borders and is simply not premised on a school pupil connection.

We did not receive many comments on this issue. Those we received were mixed.¹⁶ Some commentators stated that they need the flexibility of a larger vehicle (up to 16 passenger) to accommodate youth bus operations they may also be performing, although for common carrier operations, a smaller (under ten passenger) vehicle may work best. Kids Kab recommended that seating capacity be limited to 12 passengers. Steve Sweetser of Sacramento believes that this type of service is already addressed by the school bus regulations in the Vehicle Code; although his assertion is somewhat contradicted by his statement that the Vehicle Code exempts vehicles accommodating under ten persons from bus regulation requirements. He further states that all other buses are defined as vehicles designed for more than 15 persons. (But see Veh. Code, § 233(b).) The Department of

15. These vehicles are not subject to the same "safety regulations" as those transporting over ten people.

16. One commentator, Kidslimo/VanGo recommended that carriers redesign the vehicles to include a center aisle. However, the vehicles will generally accommodate under 10 persons and a center aisle may not be feasible; entry and exit will likely be through a side door. Most vehicles used will be "minivans" that typically have an aisle on the right side of the vehicle. While Kidslimo/VanGo raises a valid point regarding the need for a passenger to cross the seat of another passenger to exit, we believe that procedure may still be required in a vehicle equipped with a center aisle.

Education recommends that seating capacity be limited to no more than 10 passengers, with standing prohibited. The CHP also has recommended limiting this service to vehicles that accommodate no more than 10 people. Durham Transportation believes that yellow school buses are the best transportation available to children in that they provide safety and integrity in such transportation. Durham has advised us to consider the safety and liability implications of permitting private carriers to transport young children in equipment other than school buses. Walter Schlobohm challenges both the school bus and other public transit bus exemption to safety restraint requirements for children. VanGo/Kids Limo recommends permitting seating capacity of no greater than 16 persons per vehicle. It points out that there is no need to limit seating capacity to ten people since the activity is not that of a school bus.

The safety of children passengers is our primary concern. We hope to accommodate that concern and the public's need for this new service by the rules we adopt today. We are not convinced that transportation in a yellow school bus is the only safe transportation available to children, and note that it is the absence of that alternative that has created this new industry. Indeed, we note that many traditional yellow school buses do not utilize seat belts or other safety restraints and are not necessarily equipped to carry infants. We fully agree with the Department of Education that under no circumstances should any passengers be permitted to stand in a moving vehicle providing this type of transportation. Seat restraint laws must be followed.

The resolution of whether we are constrained by the Vehicle Code's exemption for vehicles carrying under 10 persons may, at this time, best be left to the Legislature. We acknowledge that a small number of carriers have received temporary authority from us to engage in this transportation in vehicles accommodating over 10 persons. This was done to accommodate those carriers' special need to engage in two

businesses, i.e., common carrier and youth bus or other chartered operations. Of course, nothing constrains us from regulating common carriers with vehicle capacity in excess of 10 persons and we have historically regulated such carriers as passengers stage corporations.

For purposes of conducting strictly infant and child common carrier operations, based on the comments we received, and given the mix of ages of children that may be transported and the fact that one driver, in one vehicle, will be transporting a variety of children to a variety of locations, we think safety can best be accommodated by limiting the amount of passengers to be transported. Accordingly, we shall, with one exception, limit this form of PSC transportation to vehicles capable of accommodating no more than 10 persons. In the event a carrier operates this service in an authorized youth bus that accommodates no more than 16 passengers, such carrier shall not transport more than seven passengers in its infant and children common carrier PSC operations, and shall be subject to all additional regulations applicable to commercial vehicles accommodating over 10 persons. Henceforth, however, any additional vehicles added to a carrier's fleet to conduct solely these operations shall accommodate 10 or less people. We believe that ultimately this must be addressed by the Legislature and that vehicles carrying under 10 people should be subject to the same regulatory safety standards as those carrying more than 10 people.

E. Intermixing the Transportation of Adults With Children

Two respondents suggested that adults unaffiliated with infant and children passengers be allowed to be transported, if room permits. While the added revenue may be beneficial to a carrier we do not agree that this is a good policy. We are requiring background checks on the carriers, key personnel, drivers and others in physical contact with the children. The

value of this protection is diminished if unassociated adults are transported along with children.

Under Public Utilities Code section 453, a PSC is prohibited from establishing or maintaining any unreasonable difference as to rates, charges, service, facilities, or in any other respect, between classes of service. Public utilities dedicate their services to the public or any portion thereof. (Pub. Util. Code, § 216; see Greyhound Lines, Inc. v. Public Utilities Commission (1968) 68 Cal.2d 406, 413; see also, Richfield Oil Corp. v. Public Utilities Com. (1961) 55 Cal.2d 187, 189 (also known as Richfield II); Richfield Oil Corp. v. Public Util. Com. (1960) 54 Cal.2d 419, 425, cert. den. Southern Counties Gas Co. v. Public Utilities Com. (1960) 364 U.S. 900 (also known as Richfield I); Yucaipa Water Co. No. 1 v. Public Utilities Com. (1960) 54 Cal.2d 823.)

An additional question concerns whether it may be reasonable for carriers to discriminate among the portion of the public they seek to transport, so that, for example, a carrier could limit its operations to children between the ages of six and ten years. Some commentators have stated that carriers should be given that option. No one has objected to this concept.

Our interim rule will permit the transportation of adults only if accompanying a child or if related or incidental to the actual transportation of a specific child or children, and we find that this is a reasonable "difference" of service under section 453. Further, we will permit carriers to limit their transportation to specific ages within the infant and child population upon a showing by the carrier and finding by the Commission that the limitation is reasonable and in the public interest. Because this transportation serves a public need, we shall consider such requests very carefully.

F. Insurance Requirements

By the OIR and our interim decisions, we imposed the standard insurance requirements set forth in GO 101-E for PSCs, which varies depending on vehicle size and capacity. Santa Cruz Transportation, Inc., agrees with these requirements but suggests that we impose a limit of \$1 million on general liability protection. Kids Kab recommends increasing insurance requirements by modifying GO 101-E so that the minimum insurance requirement for vehicles accommodating under eight people is raised to \$1 million, with incremental increases depending on vehicle capacity.

We believe that our current requirements should be revisited and may not be fully adequate given the age of the primary passengers of this new transportation service. We may eventually have to modify our general orders. However, this is not the appropriate proceeding to modify our current requirements in General Order 101-E. We have addressed this issue in our proposed legislation and recommend a minimum amount of \$1 million on general personal liability and property damage insurance for these carriers. We shall, for the time being, continue to impose the edicts set forth in General Order 101-E.

G. Vehicle Inspection Requirements

As noted, the Commission's current rules and regulations concerning PSC carriage are set forth in GO 158-A. By the OIR we required the carriers to establish a preventative maintenance program which includes, but is not limited to, inspection of the brake systems, components and leaks, fuel lines, lights, steering and suspension systems, tires and wheels, brake adjustments and vehicle devices. Some commentators stated that the requirements set forth in GO 158-A were sufficient and no other requirements should be imposed. Santa Cruz Transportation, Inc., recommends that a planned maintenance program be in place and that every vehicle be inspected by the

CHP every 45 days, in addition to annual CHP vehicle inspections. It also recommends required pre-trip and post-trip inspections.

Precious Cargo objects to additional requirements such as brake inspections every 45 days. Kids in Motion recommends mileage based vehicle maintenance programs, such as every 5,000 miles. Kids in Motion also recommends that maintenance and inspection be conducted separately and that drivers should be required to check the operation of lights, brakes and tires on a daily basis. The City of Salinas recommends and supports any rules requiring safety inspections of vehicles. The Department of Education recommends that we adopt vehicle inspection requirements similar to those required for school buses, including an inspection and certification of each vehicle at least once every thirteen months. (See e.g., Veh. Code, § 2570, et. seq; see also, *id.*, §§ 2807, 2807.1, 2807.3, and 2808.) The Department of Education recommends that vehicles passing the inspection display a certificate of inspection.

We shall require carriers to have all of their passenger stage vehicles undergo a maintenance inspection every 45 days by an independent licensed vehicle inspection facility. We believe that in this industry, timely inspections are preferable to inspections based on mileage. The 45 day inspection must include critical safety features for all vehicles used, or in conjunction with the service. The inspection program must include inspection of brake systems, components and leaks, fuel lines, lights, steering and suspension systems, tires and wheels, brake adjustments and vehicle devices. On a daily basis, carriers should inspect lights, tires, fluids, and brakes on their vehicles. All carriers must maintain a maintenance record as part of their PSC records as required by the GO 158 series.

H. ADA Requirements

We did not receive comments from all commentators on this issue.¹⁷ However, the Child Care Law Center noted that the Americans with Disabilities Act (ADA) prohibits discrimination against people with disabilities and that the transportation at issue is likely to receive requests for transportation of children with disabilities, which could affect the requisite staffing ratios on board the vehicle, the vehicle seating capacity and the amount of time children can remain in the vehicle.¹⁸ The School Transportation News noted that the ADA does not change the existing provisions of federal law protecting individuals with disabilities under section 504 of the Individuals with Disabilities Act (IDEA). It further stated that the ADA creates a higher standard of non-discrimination than does section 504 of the IDEA, and that the ADA applies to all ages, including young children with disabilities. It also noted that school buses are specifically exempted from some of the ADA's requirements. As noted earlier, the Department of Education recommends that in the event a carrier is providing service to special education children or children with special needs, the driver or employee assisting a driver should be licensed by the state as a child care provider.

17. We note that the transportation service at issue is neither a transit bus service nor a general public paratransit vehicle service. (Veh. Code, §§ 336, 642.)

18. A handicapped person is defined by Public Utilities Code section 99206.5 as "... any individual who by reason of illness, injury, age, congenital malfunction, or other permanent or temporary incapacity or disability, including, but not limited to, any individual confined to a wheelchair, is unable, without special facilities or special planning or design, to utilize public transportation facilities and services as effectively as a person who is not so affected... [A] temporary incapacity or disability is an incapacity or a disability which lasts more than 90 days [sic]."

Under Public Utilities Code section 453, PSC carriers may not subject anyone to any prejudice or disadvantage or make or grant any preference or advantage to anyone. If no other appropriate transportation source is available, carriers who are not equipped to directly provide such transportation services shall make reasonable efforts in assisting a parent or guardian in locating the provision of transportation services for handicapped children to the extent required by the ADA.

I. Ratios

By the OIR we permitted this service to transport children under the kindergarten level only when accompanied by a parent, guardian or adult supervisor designated by the parent or guardian. The Department of Education recommends that this new service be open to infants as well as children. However, that recommendation is based on one adult "escort" in addition to the driver who would act as a "behavior monitor." The Department of Education does not recommend adult escorts for children at or above the ninth-grade level.

KART believes that the driver should be considered a "parent approved escort" and that the driver alone is capable of monitoring the children passengers. KART and Precious Cargo do not recommend transportation of children under five years of age. Indeed, KART and Kids in Motion recommend that we consider a separate authorization for all carriers desiring to transport children under five years of age. Precious Cargo recommends restricting a carrier's certificate by age; however, it recommends permitting the transportation of "mature" three and four year olds. It appears that Precious Cargo believes that infants and young children under the Kindergarten level are too vulnerable to be transported without an additional adult present. However, Precious Cargo does not recommend that carriers be required to employ an adult monitor or escort. Precious Cargo does recommend that a 6:1 ratio of children to adult employee be implemented (whether driver or additional employee).

Steve Sweetser of Sacramento believes that if age restrictions are imposed they should be identical to those required of a school bus operator. The Child Care Law Center states that this service is different from that conducted by a licensed child care facility and that the rules required for licensed child care providers should not necessarily be imposed here. Kidslimo/VanGo believes there should be no age limitations placed upon this new transportation service and that the decision to transport infants and children is best left to the carrier and the parents/guardians. Additionally, Kidslimo/VanGo recommends against imposing any child/adult ratio, believing this should be left to the carrier's discretion.

There was unanimous agreement that children should not be left unattended in a vehicle. We believe that in the event that no other adult employee of the carrier is on board the vehicle, a driver should not travel any distance further than one meter (three feet) from a vehicle when any child is on board. This may necessitate the use of an assistant to escort unaccompanied infants and children to and from destinations in excess of one meter from the vehicle.

The lack of consensus among the commentators suggests that a cautious approach is best. We shall only permit the transportation of children younger than four years of age provided a child is accompanied by a parent, guardian, a family member authorized by a parent or guardian, or adult supervisor approved by the parent or guardian. Until the Commission receives authorization to conduct complete criminal background reviews, an adult supervisor affiliated with the carrier shall not be the driver of the vehicle transporting children younger than four. A parent or guardian must approve, in writing, any adult supervision provided by the carrier. Such approval must be kept as part of the carrier's records in accordance with the GO 158 series.

J. Safety Restraint Systems

There has been controversy reported recently in the news media concerning vehicles equipped with airbags. This is not a topic addressed by the commentators. However, it is a safety issue of concern to this Commission. In California, a child may be licensed to drive a passenger vehicle at age 16. We note that safety experts in the automotive field and government have long provided that it is generally safer for a child to ride in the back seat of a passenger vehicle, whether or not the vehicle contains a front passenger airbag. Indeed, the United States Department of Transportation recommends that a child be seated in a rear passenger seat at all times. We think that is sound advice and good policy. Under no circumstances may any infant or child passenger under 16 years of age be transported while seated in the front passenger seat of a vehicle used in the transport of children as defined herein.

The Department of Education recommends the use of child safety seats for all children and infants four years of age or less or under 40 pounds. (See also, 49 CFR, § 571.213.) Kidslimo/VanGo and Steve Sweetser of Sacramento believe carriers should follow existing state laws concerning safety restraint systems. Kidslimo/VanGo also believes that carriers should provide infant/child safety seats.

Carriers who provide transportation to children under 40 pounds or who are four years of age or less must provide appropriate federally approved child safety devices in accordance with California law. However, carriers may permit adults accompanying infants under 20 pounds to provide their own infant safety restraint carrier, provided the carrier ensures that such safety device is federally approved and shall be used in accordance with the device manufacturer's requirements (e.g., rear facing). Under no circumstances may unsecured child restraint systems be transported in the passenger compartment of vehicles.

K. Railroad Crossing

We did not receive comments on this issue. However, this Commission is aware of the potential danger to vehicles crossing railroad tracks. Accordingly, no infant and child common carrier vehicle with an infant or child on board, shall proceed through a railroad crossing without first stopping to determine whether a train can be seen. In the event a train can be seen in the vicinity of a railroad crossing area, or in the event a railroad signal warns of a train approaching, the infant and child common carrier vehicle shall stop until the entire train has passed and the driver has determined that it is safe to proceed through the crossing.

L. Service of Applications

We note that the Department of Education suggested that we direct all carriers to "register" with local schools, child care providers and the local office of the CHP. Kids in Motion, on the other hand does not think applicants should be required to notify anyone of an application.

Several operators objected to the cost of duplicating and mailing an application to all schools and child care facilities within a carrier's proposed service area. Since this territory could be extremely large we suspect that this suggestion could be onerous. However, because many of the passengers involved are school pupils during a portion of each day during an academic year, and since the services may include transportation to and/or from school, thus necessitating new arrival and departure procedures for such schools, it is only fair that schools and childcare facilities, as well as the local community, are notified--however, we believe the burden can be diminished by requiring applicants to serve the superintendent of each public school district in the proposed service area rather than each public school in the district. We shall additionally require service on each public pediatric health director, if any, in

the proposed services areas. An applicant shall also provide published notice of its proposed application in a newspaper of general circulation in each community it proposes to serve for two consecutive days upon its filing the application with this Commission.

M. Service Area and Route

We shall not limit the number of stops on a particular run. The service area to be served by these PSC carriers will depend on such factors as the geography in question, population density, the need for service, and the ability of the carrier. These carriers, as PSCs providing on-call service within an area, shall file with their application for PSC authority a map and service area description, which are also ultimately delineated in their filed tariffs.

We will not, at this point, limit the amount of time a child may be a passenger in a vehicle; however, we shall require carriers to provide parents or guardians with a reasonable estimate of the amount of time that a child may be in transit. We shall additionally require all carriers to ensure that all drivers are equipped with either a two-way radio transmitter that is continually monitored by the carrier or by a cellular telephone or comparable technology.

N. Intra-city Operations

Our authority to regulate passenger stage corporations is limited to those whose total route mileage is more than two percent outside the boundaries of a single city or city and county. (§ 226(a).) This OIR cannot expand or contract the statutory limitations. We have sought to include infant and child common carriers operating within a single city or city and county in our proposed legislation. (Assembly Bill 909.) If a carrier falls within the definition of the current statutes it will be regulated by this Commission. If it does not, we have no jurisdiction.

O. Remaining Suggestions/Comments

We are grateful to all of the many thoughtful comments presented to us in this proceeding. Those recommendations that we have not addressed above are not adopted.

Findings of Fact

1. There is a need for passenger stage corporation service tailored to carry unaccompanied infants and children to destinations including, but not limited to, activities, appointments, schools, etc.

2. This is a restricted class of PSC carrier not previously designated by this Commission, and special requirements need to be imposed on these carriers.

3. Because of the young age of the passengers in question there should be additional state regulations governing the conduct of carriers who wish to serve this portion of the public.

4. An Order Instituting Rulemaking containing proposed rules and several further issues to be considered was mailed to passenger stage corporations, charter-party carriers, and an extensive list of persons, governmental agencies, and organizations.

5. Comments were received from several carriers participating in this type of transportation, the State Superintendent of Public Instruction, California Department of Education, the Department of California Highway Patrol, the City of Salinas, agencies, businesses and people concerned with children.

6. Several carriers may have been providing the services at issue under charter-party carrier authority and/or pursuant to Vehicle Code provisions concerning transportation of school pupils to and from specific locations.

7. Several carriers have received temporary passenger stage corporation certificates since the initiation of the OIR in this matter.

8. Carriers providing this type of service transport infant and children passengers on a common-carrier basis.

9. Carriers presently operating this type of service collect individual fares for each passenger; typically this is accomplished in advance of the transportation provided.

10. The Legislature requires background reviews of all school bus, school pupil activity bus and youth bus drivers, as well as certain child care providers.

11. The Public Utilities Commission is a state agency that can receive state and national summary criminal history information in order to implement a statute or regulation that expressly references specific criminal conduct, pursuant to Penal Code section 11105. The ultimate resolution of this issue rests with the Legislature.

12. The GO 158 series contains the rules and regulations for PSC carriers.

13. The Vehicle Code and the Education Code contain a number of provisions concerning the safe operations and licensing requirements for school bus, school pupil activity bus and youth bus operations.

14. Similar legislation might prove helpful for this new type of PSC carrier, and the Commission has proposed such legislation.

15. It is reasonable to require ten hours of classroom instructional training for drivers on applicable laws and regulations, defensive driving, loading and unloading of children, pick-up and delivery of children and infants, emergency procedures and stress-commuter driving.

16. It is reasonable to require the carrier to provide such training or to allow for it at the carrier's direction, and to require successful completion before a driver initially begins his/her driving duties.

17. It is reasonable to require a carrier to provide for a minimum of two hours of annual refresher courses for drivers.

18. It is reasonable to require a total of five hours of behind-the-wheel instruction to each driver in a vehicle similar to the vehicle to be used by the PSC carrier before a driver initially begins her/his driving duty.

19. It is reasonable to order carriers to require drivers and employees who have physical contact with infant and children passengers to successfully complete, before initially beginning his/her driving duty, a minimum of ten hours of classroom education courses on infant and child behavior and care, which shall include a course on infant and child first aid and CPR, to be administered by, or at the direction of, the carrier.

20. It is reasonable to require the carrier to maintain evidence of each such employees' successful completion of these above requirements as part of the PSC's records.

21. It is reasonable to require carriers to ensure that their drivers and other employees assisting children passengers have successfully completed annual refresher courses for infant and child CPR and first aid, in addition to a minimum of two hours of annual refresher courses on infant and child behavior and care to be administered by or at the direction of the carrier.

22. It is reasonable to require carriers to adopt written contingency plans for emergency situations that shall accommodate not only an injured or ill child but all other children on board.

23. It is reasonable to require carriers to have a written itinerary executed by a parent/guardian for each infant and child passenger prior to providing transportation. A copy of that itinerary shall be given to all third parties who have custody of infant and child passengers. A copy shall be retained in the carrier's records.

24. It is reasonable to require carriers to ensure that all drivers and others in physical contact with infant and children passengers shall wear, at all times while on duty, on a conspicuous place on their body, an indestructible photo identification badge that shall include, but is not limited to,

the carrier's name, PSC vehicle identification number, telephone number, Commission's toll-free telephone number 1-800-894-9444, and the employee's name.

25. It is reasonable to limit this form of PSC transportation to vehicles capable of accommodating no more than ten persons, including the driver and to permit validly authorized youth bus vehicles accommodating no more than 16 passengers to be utilized in this service provided no more than seven passengers are transported.

26. It is reasonable to limit the carrier's transportation of adults to those accompanying a child or to the transportation of adults that is related or incidental to the actual transportation of a specific child or children.

27. It is reasonable to permit carriers to provide this transportation service to a particular age segment of the infant and child population, provided the limitation is found by the Commission to be reasonable and in the public interest.

28. It is reasonable to require carriers to have all of their infant child common carrier vehicles inspected every 45 days, which must include critical safety features for all vehicles used in, or used in conjunction with, the service, in addition to all vehicle-safety inspections that may be required by other agencies. It is reasonable that the inspection program include inspection of brake systems, components and leaks, fuel lines, lights, steering and suspension systems, tires and wheels, brake adjustments and vehicle devices.

29. It is reasonable to require all carriers to maintain a maintenance record as part of their PSC records as required by the GO 158 series.

30. It is reasonable to require carriers who are trained and equipped to provide transportation to disabled children to do so in accordance with the requirements of the ADA and other relevant laws.

31. It is reasonable to restrict the transportation of children below under four years of age, unless such child or

children are accompanied by a parent, guardian, family member approved by a parent or guardian, or an adult supervisor approved by the parent or guardian.

32. It is reasonable to require the carrier to receive and maintain as part of its records, written approval by a parent or guardian of any adult supervisor under the employ of a carrier.

33. It is reasonable to establish a minimum age limit of 21 years for drivers and other employees who are in physical contact with infant and child passengers.

34. It is reasonable that in the event that no other adult employee of the carrier is on board a vehicle, a driver should not leave a vehicle unattended, or travel any distance further than one meter (three feet) from a vehicle, when any unaccompanied child is on board.

35. When infant or children passengers are on board, it is reasonable to require a carrier to stop at all railroad crossings and not to proceed through such area until determining that a train cannot be seen and/or until railroad warning signals have ceased.

36. It is reasonable to permit carriers to permit adults accompanying infants and children under 20 lbs. to provide their own infant safety restraint device, provided the carrier ensures that such safety device is federally approved and shall be used in accordance with the device manufacturer's requirements.

37. It is reasonable to prohibit carriers from transporting infant or children passengers under 16 years of age in the front passenger seat of a carrier's vehicles.

38. In addition to the statutory notice requirements, it is reasonable to require applicants to serve notice of the application on each public pediatric health service director and on the superintendent of each public school district in the proposed service area rather than each public school in the district.

39. It is reasonable for an applicant to provide published notice of its application, for two consecutive days immediately

following the filing with the Commission of its proposed application, in a newspaper of general circulation in each community it proposes to serve.

40. It is reasonable to permit a carrier to operate between two or more points within a delineated service area.

41. It is reasonable not to limit the number of stops on a particular run.

42. It is reasonable to require carriers to provide parents or guardians with a reasonable estimate of the amount of time that a child may be in transit.

43. It is reasonable to require all carriers to ensure that all drivers are equipped with either a two-way radio transmitter that is continually monitored by the carrier, or by a cellular telephone or comparable equipment.

Conclusions of Law

1. On the basis of the proposed rules contained in the OIR and the comments received in response to that OIR, we conclude that there is no need for further comments at this time.

2. Transportation of passengers between two or more points, or fixed termini, where the fee collected is based on individual fares, is passenger stage corporation service.

3. Collection of fares in advance of the actual transportation provided, where the fares are based on the individual passenger's transportation and where the vehicle is not subject to the exclusive control of a chartering party, constitutes collection on an individual fare basis.

4. Transportation of infants and children, as contemplated in this order, is common carriage and passenger stage corporation service. Carriers participating in this activity must obtain certificates of public convenience and necessity from this Commission to conduct operations.

5. Carriers primarily engaged in the transportation of unaccompanied children should be subject to additional

regulations, besides those already applicable to regular passenger stage corporations.

6. The rules contained in the Appendix A to this decision are reasonable and appropriate rules for the protection of infants and children being transported by common carriers in the business of transporting unescorted children.

7. Our current insurance requirements should be reviewed in a separate proceeding. Given the young age of the primary passengers of this new transportation service, there may be a need to increase the insurance coverage required for these PSCs.

8. It is reasonable for PSCs to offer this service to a portion of the public -- unaccompanied children (and infants and children accompanied by parents, guardians, parent or guardian approved family members, or adult supervisors), and it is reasonable to prohibit the transportation of adults who are not accompanying or affiliated with child passengers.

9. Until this Commission is authorized to conduct complete criminal background reviews of applicants, their key personnel and drivers, it is reasonable to restrict the transportation of unaccompanied children under four years of age and require such young children to be accompanied by a parent, guardian, family member, or parent or guardian approved adult supervisor who is not the driver of the vehicle.

10. Our authority to regulate passenger stage corporations is limited to those whose total route mileage is more than two percent outside the boundaries of a single city or city and county.

11. This service should be limited to vehicles that accommodate no more than ten passengers, as the service is aimed at unaccompanied, unaffiliated infants and children needing transportation to a variety of locations. However, those few carriers who also hold valid youth bus authority may provide this transportation in vehicles that accommodate up to 16 passengers but, when performing this service, shall be subject to these rules, in addition to any other relevant regulations, such as the

Vehicle Code provisions for buses. When a carrier is providing these services in vehicles that are authorized to operate as youth buses, it shall transport no more than seven passengers in accordance with these rules.

12. Thorough criminal and employment background reviews should be required of this new form of PSC transportation. For completeness, such reviews must include fingerprinting.

13. This Commission is authorized to adopt rules for PSCs that serve the public's convenience and necessity.

14. If no other transportation source is available, carriers who are not equipped or appropriately trained to directly provide transportation services to disabled children should advise the public if requested and shall whenever possible, make such other service known to a parent or guardian interested in securing the provision of transportation services to children with disabilities.

IT IS ORDERED that:

1. The rules contained in the Appendix A to this decision are hereby adopted and become effective within 60 days.

2. Any charter-party carrier of passengers that is presently exclusively conducting operations of the type outlined in this decision may apply to the Commission for an exchange of its authority to that of an interim passenger stage corporation primarily engaged in infant and common carriage. All requirements of a passenger stage filing and this order must be met, but the fee for the exchanged authority is hereby waived. Absent the discovery of any issues concerning carrier fitness to conduct the proposed service, the required interim PSC authority will be issued expeditiously.

3. Interim PSC certificates already issued for this special service shall be extended and shall expire no later than two years from the effective date of this decision or upon further order of the Commission.

4. Until we have authority to conduct criminal background reviews, the Commission should require all applicants to perform a diligent search, to be conducted by the Department of Justice through its Trustline Unit, of its records, the records of key personnel, each its drivers and any other employee(s) in physical contact with the children passengers.

5. Until the Commission is authorized to conduct criminal background checks, it is not reasonable for carriers to transport children under four years of age unaccompanied by a parent, guardian, parent or guardian approved supervisor or family member, without an adult supervisor that is affiliated with the carrier and who is not the driver of the vehicle.

6. Carriers who provide transportation to children under 40 lbs. or who are four years of age or less, must provide appropriate federally approved child safety devices in accordance with California law and must utilize such restraint systems in accordance with the manufacturer's directions and as set forth in Appendix A.

7. Applicants shall serve notice by mail and a copy of their application for infant and child common carrier authority, on each public pediatric health director, and on the superintendent of each public school district in the proposed service area.

8. In addition to the statutory notice requirements for passenger stage service and Ordering Paragraph No. 7, an applicant for infant and child common carrier authority shall provide published notice of its application, for two consecutive days immediately following the filing with the Commission of its proposed application, in a newspaper of general circulation in each community it proposes to serve.

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9. The Executive Director shall serve this order by mail on all commentators, all parties who initially received the OIR, and all carriers holding interim PSC certificates to conduct this service.

This order is effective today.

Dated July 16, 1997, at San Francisco, California.

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

APPENDIX A

ADOPTED RULES FOR
INFANT AND CHILDREN COMMON CARRIERS

Applicability

These rules shall apply to those carriers primarily engaged in the transportation for compensation of unaccompanied infants and children under the age of 18 years and their parents, guardians and child care providers, in vehicles that accommodate no more than ten people, except for those carriers who will use valid youth bus vehicles that accommodate no more than sixteen passengers, and operate on a common carrier basis. These rules are in addition to any other rules that are applicable to passenger stage corporations. All logs mentioned in this rule are public documents open to public inspection upon reasonable and convenient terms.

Jurisdiction

Carriers must be aware of the requirements of the Education and Vehicle Codes of California with regard to the licensing and safety regulation of other agencies. Instances of overlapping jurisdiction between this Commission and other governmental entities may occur. In those cases, the requirements of all agencies must be met. The agency with the strictest standards for any given situation or requirement shall prevail. The fact that a carrier meets the minimum standards set by this rule shall not excuse it from complying with more stringent regulations of another agency where applicable.

Terms and Conditions of Transportation

Carriers shall abide by the GO 158 series, as set forth in the decision promulgating those rules. Carriers must file tariffs setting forth their service areas and rates. Carriers may apply to the Commission for a zone of rate freedom. Other terms and conditions of transportation shall be set between the carrier and the parent or guardian of the child. These shall include the time and means of payment, the time and place of pick-up and delivery, emergency plans, telephone numbers where a parent or guardian can be reached during transportation, transportation itineraries, individual arrangements as may be necessary for a particular child, instructions for the driver should a child become ill, instructions as to whether a child may be released alone or only to a specified adult, instructions for the driver if the specified adult is not present, charges if the carrier must retain care of the child or deliver him or her to another location, and provisions for cancelling the transportation. Under no circumstances shall a child be abandoned.

These agreements shall be in writing and a copy shall be given to the parent or guardian prior to the transportation. Copies of releases that include travel itineraries and emergency information, approved by a parent or guardian, and that include a parent's whereabouts and telephone numbers during the transportation, the Commission's toll-free telephone number 1-800-894-9444, as well as drop off and/or pick up arrangements, shall be given to third persons who have or will receive custody of an infant or child passenger, such as a soccer coach, ballet instructor, medical appointment representative, etc.

Drivers and employees who are in physical contact with children passengers shall wear, while on duty, an indestructible identifying badge indicating employment by the carrier which shall include the carrier's telephone number, the employee's name, the Commission's toll-free passenger complaint hot-line

telephone number 1-800-894-9444. Drivers shall not leave a vehicle occupied by an unaccompanied infant or child passenger unattended, nor travel any distance further than one meter (three feet) from such vehicle.

Passengers

Carriers may set in tariffs, after securing authorization from the Commission, their own rules as to age or size limits of the children they wish to transport. For example, upon authorization, they may exclude children under or over a specified age. If transporting children under four years of age, such children shall be accompanied by either a parent, guardian, parent or guardian approved family member, or an adult supervisor. If the adult supervisor is affiliated with the carrier, that person shall have been approved in writing by the parent or guardian. Until the Commission receives authorization to conduct complete criminal background reviews of applicants, carriers, and their key personnel, including drivers, an adult supervisor of a child under four years of age that is affiliated with a carrier shall not be the same person as the driver of the vehicle. No infant or child passenger under 16 years of age shall be transported in the front passenger seat of a vehicle used as an infant and child common carrier vehicle.

Adults affiliated with infant and children passengers may be transported when this is incidental to the transportation of a child. Adults may also be carried to directly pick up a child to be transported, or directly return from accompanying a child or to accompany a child to an appointment such as a medical visit, lesson, or event.

Vehicles

Except for those specific vehicles that have been approved by the California Highway Patrol to operate as valid youth bus vehicles and that accommodate no more than 16 passengers, vehicles permitted to take part in this transportation may be no larger than those manufactured to accommodate ten or less people, including the driver. Carriers that utilize valid youth bus vehicles in performance of infant and child common carrier service shall not transport more than seven passengers when conducting these operations. Vehicles shall contain consumer information that includes the Commission's toll-free passenger carrier complaint telephone number 1-800-894-9444.

Insurance

Carriers shall abide by General Order 101-E.

Seat Belts and/or Restraints

There shall be a seat belt or restraint for every passenger and the driver. It is the carrier's duty to ensure that a driver has verified that each seat belt is properly affixed according to the laws of the State of California, as well as federal requirements, prior to moving the vehicle. No child under four years of age or under 40 pounds may be transported without using, in an appropriate manner as described by the device's manufacturer, a child passenger restraint system meeting applicable federal motor vehicle safety standards. Carriers may permit adults accompanying infants under 20 pounds to provide their own infant safety restraint carrier, provided the carrier ensures that such safety device is federally approved and shall be used in accordance with the device manufacturer's requirements (e.g., rear facing infant seats). No carrier may operate a vehicle that contains unsecured child passenger safety restraint

devices in any passenger compartment. No carrier may operate a vehicle with any infant or child passenger under 16 years of age seated in the front passenger compartment.

Preventative Maintenance

The carrier shall maintain a log sheet for each vehicle used in the transportation of children showing the following:

1. A check of the operability of all lights, initialed by the driver before the vehicle is first driven in service that day.
2. A check for fluid leaks, initialed by the driver before the vehicle is first driven in service that day.
3. A check for the operability of the brakes, initialed by the driver before the vehicle is driven in service that day.
4. A check to ensure no vehicle fluid leaks, initiated by the driver, before the vehicle is driven in service that day.
5. A safety check by a garage unaffiliated with the carrier to be completed every 45 days indicating each item examined and the results of the examination. If an item is repaired or replaced, that shall be noted in the log.
6. Such inspections as are mandated by the California Highway Patrol and any other safety authority.

Safety Devices

Each vehicle shall be equipped with a first aid kit, a fire extinguisher, road flares, seat belt cutters, and a two way radio monitoring system between the carrier and its vehicles, or cellular telephone or its equivalent. Emergency and first aid kits are to be kept in a location that is accessible to a driver but out of the reach of infants and children. The driver shall initial the log sheet after checking that each of these items is present and appears to be operable before the vehicle is first driven in service that day.

Accidents

Carriers shall make reasonable attempts to notify parents or guardians of any child passenger traveling in any vehicle involved in an accident immediately within one hour of its occurrence. Carriers shall notify the Commission's Rail Safety and Carriers Division, or its successor division, within 24 hours of any accident involving property damage of more than \$500, or personal injury. A written report shall follow within one week. The report shall contain sufficient information to apprise the Commission of the cause, description, and damage or injury that occurred. The carrier shall timely furnish the Rail Safety and Carriers Division or its successor, with a copy of each police, and witness, accident report.

Railroad Crossings

Each infant and child common carrier vehicle shall stop at all railroad crossings and ensure that no on-coming train warning signals are on, and/or that no train can be seen approaching the crossing before proceeding across railroad tracks whenever an infant or child passenger is on board.

Records Availability

Carriers shall maintain all records required by this Commission and any other regulatory agency at the carrier's office. These shall be available for inspection by Commission employees in accordance with the rules governing inspection of records found in the Public Utilities Code and Commission regulations. Carriers shall anticipate random and unscheduled inspections.

Driver Age Limits

Drivers and other employees in physical contact with infant and child passengers shall be at least 21 years of age.

Background Review

All carriers and key personnel shall complete the following before receiving certification; in addition, before employing a person as a driver or as an assistant to a driver who will be in physical contact with infant and children passengers, the carrier shall:

1. Verify that the person, if his/her duties include driving, has a valid operating license from the Department of Motor Vehicles for the type of vehicle to be operated and the character of service to be provided.
2. Request a background check through the Department of Justice Trustline Unit, regarding all records that may be present concerning the potential driver or assistant, including searches for FBI records.
3. Conduct a thorough employment background review of a carrier, its key personnel, drivers and others in physical contact with passengers, prior to the assumption of operations and/or employment duties.

A record of these checks shall be maintained pursuant to the GO 158 series by the carrier at its office.

Driver Training

Before working as a driver each person shall receive training in the California Vehicle Code provisions applicable to operating a vehicle. There shall also be a minimum of ten hours of training in defensive driving, operations in inclement weather, operations at night or under impaired visibility conditions, operations under emergency situations such as

accident, flat tire, fire, earthquake, flood, etc. Each such employee shall receive a minimum of two hours of refresher courses in such techniques on an annual basis. Each driver shall also receive at least five hours of actual driving training to develop proficiency in the type vehicle to be operated. Records concerning each employee's successful completion of the requirements shall be retained by each carrier as part of its PSC records.

Additionally, each driver and assistant in physical contact with passengers shall receive training in the operation of the safety devices required to be carried on each vehicle. The driver and assistant shall be instructed in the operation of seat belts and all restraints used in and on the vehicle to be operated.

If children with special needs are to be transported, the driver and assistants in physical contact with passengers will receive training appropriate to those children's individual requirements and as required by all relevant laws. Each driver and other employees who will be in physical contact with infant and child passengers shall also receive a maximum of ten hours of infant and child care, behavior and development instruction, that shall include instruction in caring for children who have become ill, excited or disruptive. Part of that instruction shall include a course in infants' and children's first aid and cardiopulmonary resuscitation (CPR). The carrier shall maintain the certificate of completion for each driver and assistant at its office. Two hours of annual refresher courses in these fields in addition to annual refresher courses in infant and child care and first aid must be successfully completed by each driver and assistant and those records must also be retained by each carrier as part of the carrier's records. The carrier is expected to hold staff meetings or individual consultations with employees on subjects concerning the transportation and care needs of children.

The date and time spent in training for each driver on all matters specified in this section shall be entered into a log maintained at the carrier's office. Each item shall be signed by both the driver and the carrier.

Symbol

In lieu of a PSC designation, each vehicle shall contain a distinctive identifying symbol at least, on its front and rear bumpers, visible at a minimum of 100 feet, which contains the designation "CHILD---", and shall include a specified passenger stage corporation number assigned to the carrier by the Commission.

END OF APPENDIX A