

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In re the Application of
SPEEDISHUTTLE WASHINGTON, LLC
d/b/a SPEEDISHUTTLE SEATTLE
For a Certificate of Public Convenience and
Necessity to Operate Motor Vehicles in
Furnishing Passenger and Express Service as
an Auto Transportation Company

SHUTTLE EXPRESS, INC.,

Complainant,

v.

SPEEDISHUTTLE WASHINGTON, LLC
d/b/a SPEEDISHUTTLE SEATTLE,

Respondent.

SPEEDISHUTTLE WASHINGTON, LLC
d/b/a SPEEDISHUTTLE SEATTLE,

Complainant,

v.

SHUTTLE EXPRESS, INC.,

Respondent.

DOCKETS TC-143691, TC-160516,
TC-161257 (*consolidated*)

POST-HEARING BRIEF OF COMMISSION STAFF

June 19, 2017

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I. INTRODUCTION

1 Commission Staff makes two recommendations in this brief. First, Staff recommends that the Commission penalize Shuttle Express \$1,060,530 for referring jobs to non-employed drivers and non-owned vehicle on 35,351 occasions, in violation of WAC 480-30-213. Shuttle Express is now a three-time violator of WAC 480-30-213. Second, Staff recommends that the Commission take no action with respect to Speedishuttle's certificate. Notwithstanding Shuttle Express's allegations of misconduct, the record reveals no compelling legal or policy justification to restrict Speedishuttle's operating authority.

II. BACKGROUND

2 Shuttle Express has been providing regulated passenger transportation service since 1989.¹ In January 2015, over Shuttle Express's objection, the Commission approved Speedishuttle's application for a certificate of public convenience and necessity authorizing the company to provide door-to-door auto transportation service in King County.²

3 Approval was based on ALJ Rayne Pearson's finding that "Shuttle Express does not provide the same service Speedishuttle proposes to provide."³ Judge Pearson's finding was upheld by the Commission on administrative review.⁴ Shuttle Express failed to seek judicial review. Speedishuttle commenced operation.

4 In April 2015, the Commission issued Certificate C-65854 granting Speedishuttle authority to operate "DOOR TO DOOR PASSENGER SERVICE BETWEEN Seattle International Airport and points within King County." The Commission imposed no express restrictions on Speedishuttle's operating authority.

¹ Shuttle Express holds auto transportation certificate no. C-975 and charter certificate no. CH-171.

² Docket TC-143691, Order 02, Initial Order Overruling Objections (Jan. 22, 2015).

³ *Id.* p. 7, ¶ 25.

⁴ Docket TC-143691, Order 04, Final Order, p. 6-7, ¶¶ 17 and 20 (Mar. 30, 2015).

5 In May 2016, Shuttle Express filed a petition for rehearing of the application docket
and a formal complaint alleging that Speedishuttle had engaged in unlawful pricing.⁵ The
Commission agreed to rehear the application docket.⁶

6 In December 2016, Speedishuttle filed a formal complaint against Shuttle Express
alleging unlawful use of non-owned vehicles and non-employed drivers and unlawful
payment of rebates to hotel staff.⁷

7 In January 2017, the Commission consolidated Shuttle Express’s petition for
rehearing with the dueling complaints.⁸

8 In February 2017, Staff initiated an independent investigation of Shuttle Express’s
use of non-owned vehicles and non-employed drivers. Staff filed testimony recommending
that the Commission (1) penalize Shuttle Express \$1,060,530 for using non-owned vehicles
and non-employed drivers on 35,351 occasions; and (2) take no action with respect to
Speedishuttle’s certificate, notwithstanding Shuttle Express’s allegations of misconduct.

9 On May 10 and 12, 2017, the Commission held a hearing on the consolidated
dockets.

III. STAFF’S INVESTIGATION OF SHUTTLE EXPRESS

10 Staff investigated whether Shuttle Express violated WAC 480-30-213, which
provides: “(1) The vehicles operated by a passenger transportation company must be owned
by or leased to the certificate holder. (2) The driver of a vehicle operated by a passenger
transportation company must be the certificate holder or an employee of the certificate

⁵ Petition for Rehearing of Matters in Docket TC-143691 and to Cancel or Restrict Certificate No. C-65854 Based on Misrepresentations by Applicant, Errors and Omissions in Prior Proceedings, and Changed Conditions not Previously Considered (May 16, 2016).

⁶ Docket TC-143691, Order 06, Order Granting Petition for Rehearing (Aug. 4, 2016).

⁷ Docket TC-161257, Formal Complaint (Dec. 1, 2012).

⁸ Dockets TC-143691, TC-160516, TC-161257, Orders 12/05/02, Order of Consolidation (Jan. 5, 2017).

holder.” Staff found that Shuttle Express committed 35,351 violations of WAC 480-30-213 during the two-year limitations period between December 1, 2014, and December 1, 2016.

A. Shuttle Express is Very Familiar with WAC 480-30-213

11 Shuttle Express has been testing the limits of WAC 480-30-213 for many years.

12 In 2004, Shuttle Express informed the Commission that it intended to refer auto transportation jobs to charter and excursion carriers.⁹ Staff performed legal research and advised the company that such referrals constituted “a lease of [the company’s] certificate and other carrier property” in violation of multiple sections of Title 81.¹⁰

13 In 2007, Staff learned that Shuttle Express modified its contractor program and was now referring auto transportation jobs to non-regulated limousine and for-hire operators.¹¹ Staff concluded that this scheme violated WAC 480-30-213(2). In 2008, in Docket TC-072228, the Commission approved a settlement under which Shuttle Express admitted 95 violations of WAC 480-30-213(2) from June 16, 2007, to December 31, 2007.¹² Shuttle Express paid a \$9,500 penalty, terminated its contractor program, and “pledged to comply with WAC 480-30-213 on a prospective basis.”¹³

14 Within a few months yet another contractor program sprouted up.¹⁴ This time, Shuttle Express admitted that it used contract drivers to “rescue” customers who might miss a flight when traffic or mechanical issues delayed the company’s regular fleet.¹⁵ In March 2014, in Docket TC-120323, the Commission fined Shuttle Express \$60,000 for 5,715

⁹ Docket TC-072228, Order 01, Initial Order Approving Settlement Agreement, p. 2, ¶ 4 (July 11, 2008).

¹⁰ *Id.* p. 2, ¶ 5.

¹¹ Docket TC-120323, Order 03, Initial Order, p. 4, ¶ 12 (Nov. 1, 2013).

¹² Docket TC-072228, Order 01, Initial Order Approving Settlement Agreement, p. 3, ¶ 11 (July 11, 2008).

¹³ *Id.* p. 5, ¶ 16.

¹⁴ Docket TC-120323, Order 03, Initial Order, p. 5, ¶ 16 (Nov. 1, 2013).

¹⁵ *Id.* p. 2, ¶ 6.

repeat violations of WAC 480-30-213(2).¹⁶ It described these violations as “knowing and willful”¹⁷ and scolded the company for its “intransigence.”¹⁸

15 While awaiting the Commission’s final ruling in Docket TC-120323, Shuttle Express applied for its first exemption from WAC 480-30-213. The Commission granted the exemption in December 2013. The exemption allowed the company to use contractors for one month, to ensure satisfactory service during the busy holiday season.¹⁹

16 Shuttle Express received its second exemption on September 30, 2016.²⁰ This exemption is set to expire at the end of July 2017.

B. Shuttle Express Has Violated WAC 480-30-213 for a Third Time

17 The material facts are undisputed. Between January 15, 2014, and September 30, 2016, Shuttle Express admittedly referred 40,727 “passengers or parties” that “originally booked auto transportation service” to “a service provided by an independent contractor.”²¹ During this period, the company had no exemption from WAC 480-30-213. Each occurrence is a repeat violation of WAC 480-30-213.

18 In total, Shuttle Express committed 40,727 violations. The two-year statute of limitations reduces the number of violations from to 35,351.²²

19 Shuttle Express offers a familiar justification for its misconduct: there is no harm, since the customer has been “upgraded” from a shared van to a more luxurious town car or SUV “at no additional charge.”²³ So, “the passenger is happy.”²⁴

¹⁶ Docket TC-120323, Order 04, Final Order (Mar. 19, 2014).

¹⁷ *Id.* p. 19, ¶ 52.

¹⁸ Docket TC-120323, Order 03, p. 10, ¶ 39 (Nov. 1, 2013).

¹⁹ Docket TC-132141, Order 01, Order Granting Petition with Conditions (Dec. 13, 2013).

²⁰ Docket TC-160819, Order 01, Order Granting Petition with Conditions (Sept. 30, 2016).

²¹ Exh. No. DP-3, Shuttle Express Response to UTC Staff Data Request No. 2.

²² Speedishuttle filed its formal complaint against Shuttle Express on December 1, 2016. The two-year limitations period runs backwards from December 1, 2016.

²³ Marks, Exh. No. WAM-3T at 34:3-4.

20 This purported justification echoes the company’s discredited “rescue service” logic from Docket TC-120323. Then, as now, the company invites the Commission to disregard WAC 480-30-213 so long as the customer gets from Point A to Point B without apparent complaint. Customer satisfaction, however, is not the standard by which the Commission ought to evaluate liability. Absent a formal exemption or a change in the law, Shuttle Express must conform its business practices to the Commission’s rules. In its present form, WAC 480-30-213 makes no exception for either “rescue service” or, as the company now proposes, “luxury upgrades.”

21 Shuttle Express also argues that the Commission lacks jurisdiction over referrals to limousine or for-hire operators, since those services are regulated to some extent by other entities.²⁵ Staff disagrees. The Commission retains jurisdiction over the trip despite the referral because, by Shuttle Express’s admission, the trip was “originally booked” as auto transportation service.²⁶ Shuttle Express cannot unilaterally decide, in the midst of providing service, that the Commission’s jurisdiction is void. Stated differently, Shuttle Express continues to “operate” its contract drivers and vehicles within the meaning of WAC 480-30-213 because the company continues to “control or direct the functioning of” those drivers and vehicles until the conclusion of the trip.²⁷

22 Shuttle Express’s distinction between “single stop” and “multi-stop” trips is beside the point. The Commission’s jurisdiction does not hinge on the number of stops in a given trip. The key features of auto transportation service are compensation and fixed termini or a

²⁴ Marks, Exh. No. WAM-3T at 30:6.

²⁵ *E.g.*, Marks, Exh. No. WAM-3T at 29:16-30:10.

²⁶ Exh. No. DP-3, Shuttle Express Response to UTC Staff Data Request No. 2.

²⁷ Docket TC-120323, Order 04, Final Order, p. 5, ¶ 11 (Mar. 19, 2014).

regular route.²⁸ Regardless of the number of stops, Shuttle Express cannot evade regulation by unilaterally referring trips to non-regulated entities.

23 Finally, although Shuttle Express claims that its contractors are perfectly safe, the Commission should not leap to that conclusion. As Staff witness Dave Pratt testified, the Commission judges safety not through trust but through documented compliance with the detailed regulations in WAC 480-30-221.²⁹ Staff conducts no inspections of Shuttle Express's contract drivers and vehicles.³⁰ It cannot vouch for their safety.

C. The Commission Should Impose a Severe Penalty

24 Shuttle Express was no doubt surprised and alarmed when it saw Staff's recommended penalty of \$1,060,530. If so, that's a good thing. Perhaps Staff finally has the company's attention.

25 The Commission must recognize that its previous penalties were too small to deter repeat violations. The severity must now increase substantially. As Mr. Pratt observed, Shuttle Express "will continue to show disdain for the Commission's rules until the monetary penalty is large enough to make the practice uneconomic."³¹

26 Staff's penalty recommendation is severe but principled. In Docket TC-120323, the Commission penalized Shuttle Express approximately \$10 for each of the company's 5,715 repeat violations. Now, upon discovering repeat violations for a third time, Staff recommends that the Commission triple the penalty.

27 The Commission should impose a \$30 penalty for each of Shuttle Express's 35,351 violations of WAC 480-30-213, for a total penalty of \$1,060,530.

²⁸ RCW 81.68.010.

²⁹ Pratt, Exh. No. DP-6T at 7:4-8:6.

³⁰ See *id.* at 6:11-16.

³¹ *Id.* at 11:14-16. In contrast, Speedishuttle confirmed that it does not use non-owned vehicles or non-employed drivers. Roemer, Tr. Vol. VIII at 819:12-17.

IV. STATUS OF SPEEDISHUTTLE'S CERTIFICATE

28 At the hearing in the consolidated dockets, Shuttle Express witness Paul Kajanoff testified that he believes the Commission should cancel Speedishuttle's certificate, then reissue it with restrictions.³² Staff recommends that the Commission impose no restrictions.

A. Speedishuttle's Certificate Authorizes Direct Competition with Shuttle Express

29 Under RCW 81.68.040, a competitor may not offer the "same" service as the incumbent provider, unless the incumbent will not provide that service to the Commission's satisfaction. But if the competitor's proposed service is not the "same" as the incumbent's, then both providers may operate in the same geographic territory. RCW 81.68.040.

30 Under WAC 480-30-140(2)(b), adopted in 2013, "same service" is a flexible concept. The Commission may consider, among other things, the "type, means, and methods of service provided." In other words, the Commission may authorize direct competition based on differentiation of service features.

31 In Order 04 in Docket TC-143691, the Commission found that Speedishuttle would not offer the "same service" provided by Shuttle Express.³³ Differentiating features included "luxury vehicles, significantly increased accessibility for non-English speaking customers, individually-tailored customer service, tourism information, and Wi-Fi service."³⁴ Based on these distinctions, the Commission authorized Speedishuttle to provide "DOOR TO DOOR PASSENGER SERVICE BETWEEN Seattle International Airport and points within King

³² Kajanoff, Tr. Vol. VII at 463:25-464-3.

³³ Docket TC-143691, Order 04, Final Order, p. 6, ¶ 17 (Mar. 30, 2015) ("We agree that Speedishuttle does not propose to offer the same service Shuttle Express provides . . .").

³⁴ *Id.* p. 7, ¶ 21.

County.” The Commission imposed no restrictions. On its face, therefore, the certificate authorized Speedishuttle to compete directly with Shuttle Express in King County.³⁵

B. Shuttle Express Failed to Seek Judicial Review

32 Shuttle Express failed to appeal Order 04. As a matter of law, it accepted the Commission’s “same service” determination. It accepted, in other words, that it now shared its geographic service territory with an authorized competitor.

C. Shuttle Express Now Seeks Protection from an Authorized Competitor

33 Shuttle Express and Speedishuttle engaged in direct competition for about a year. Then, in May 2016, Shuttle Express filed a petition for rehearing asking the Commission to “cancel” Speedishuttle’s certificate for cause³⁶ or, in the alternative, to allow Speedishuttle to serve only (1) “persons who book advance reservations on Respondent’s website or mobile application in Chinese, Japanese, and Korean languages, but not in English,”³⁷ or (2) “persons who book reservations not less than 24 hours in advance of the commencement of their requested transportation.”³⁸

34 Shuttle Express offered two justifications for its requests. First, it argued that Speedishuttle “‘oversold’ its purported distinctions, to the point of misrepresentation of material facts, either intentionally or negligently.”³⁹ Second, it argued that Speedishuttle “has, in practice, not provided a different service targeted to ‘a specific subset of consumers’ who were unserved.”⁴⁰ Neither argument is persuasive.

³⁵ Young, Exh. No. MY-1T at 3:4-10.

³⁶ Shuttle Express’s Petition for Rehearing and Formal Complaint against Speedishuttle, p. 18, ¶ 48 (May 16, 2016).

³⁷ *Id.* p. 18, ¶ 49.

³⁸ *Id.* p. 18, ¶ 49.

³⁹ *Id.* p. 8, ¶ 20.

⁴⁰ *Id.* p. 8, ¶ 20.

D. The Commission Should Take No Action

35 The Commission should take no action on Shuttle Express’s petition for rehearing because, in Staff’s view, Speedishuttle has violated no law by competing directly with Shuttle Express. Direct competition is lawful because the overlapping services are not the “same” for purposes of RCW 81.68.040 and WAC 480-30-140(2)(b). Speedishuttle is entitled to its unrestricted certificate.

1. Speedishuttle Obtained its Unrestricted Certificate in Good Faith

36 On rehearing, the Commission could cancel or prospectively limit Speedishuttle’s unrestricted certificate if Speedishuttle submitted “false, misleading or inaccurate information” within the meaning of WAC 480-30-171(2). Staff finds that Speedishuttle made no misrepresentation that would justify cancellation or restriction.

37 The Commission in Order 08 questioned “whether Speedishuttle is limiting the service it provides to the service and customer types described in the business model on which the Commission based its grant of authority.”⁴¹ But Speedishuttle proposed no service restrictions when it applied for authority in October 2014. Rather, it proposed to provide: “Door-to-Door shared ride shuttle service between Sea-Tac Airport and points within King County.”⁴² Significantly, it made no promise that it would serve a “specific subset of consumers” or restrict itself to a particular “business model.” Staff “assumed that Speedishuttle would compete directly with Shuttle Express.”⁴³ Accordingly, Staff concludes that Speedishuttle made no material misrepresentation in its initial application.

⁴¹ Docket TC-143691, Order 08, Order Denying Requests for Review of Order 06, pp. 7-8, ¶ 25 (Sept. 24, 2016).

⁴² Docket TC-143691, Initial Filing (Oct. 10, 2014).

⁴³ Young, Exh. No. MY-1T at 3:6-7.

Likewise, Staff concludes that Speedishuttle made no material misrepresentation at the application hearing. Staff attended the hearing and was left with the impression that Speedishuttle proposed to *target* customers who seek a more upscale, more personalized, or more tech-savvy experience, and, separately, customers who might benefit from enhanced Asian language accessibility. Two years later, the record shows that Speedishuttle *fundamentally* implemented this strategy:

- **More upscale:** Speedishuttle has an all-Mercedes fleet. Its vans have an “upgraded interior” that includes six-foot-high ceilings, “zone heating and air conditioning,” a “high quality sound/acoustics system,” and “tons of luggage space.”⁴⁴ All vans have a black exterior.⁴⁵ These vans have greater “cachet” compared with the older, mostly-white Ford vans used by Shuttle Express.⁴⁶ Speedishuttle is, in fact, targeting passengers who seek a more upscale experience.
- **More personalized:** Speedishuttle offers “complementary greeters in baggage claim on arrival” to nearly all of its prearranged customers.⁴⁷ Speedishuttle is, in fact, targeting passengers who seek a more personalized experience.
- **More tech-savvy:** Speedishuttle offers free Wi-Fi,⁴⁸ SpeediShuttle TV,⁴⁹ and mobile apps for iPhone and Android.⁵⁰ Wi-Fi allows customers to avoid mobile data charges and additionally allows international customers to avoid network roaming charges.⁵¹ Speedishuttle TV is a tourism video that plays in the passenger compartment on a

⁴⁴ Roemer, Exh. No. HJR-1T at 10:23-11:3; 11:22.

⁴⁵ *Id.* at 11:8.

⁴⁶ *Id.* at 11:24.

⁴⁷ *Id.* at 8:11; 35:10.

⁴⁸ *Id.* at 7:24; 14:4-12.

⁴⁹ *Id.* at 17:21-18:12.

⁵⁰ *Id.* at 17:7-20.

⁵¹ *Id.* at 7:24-25.

high-definition screen.⁵² Speedishuttle’s mobile apps allow customers to make and store reservations.⁵³ Customers can also use “Where’s My Vehicle,” a service that automatically sends real-time vehicle and driver information via email or text message.⁵⁴ At the time Speedishuttle applied for its certificate, Shuttle Express offered Wi-Fi on “just 10 of its 107 units.”⁵⁵ Speedishuttle is, in fact, targeting passengers who seek a more tech-savvy experience.

- **More accessible to Asian language speakers:** Speedishuttle has Japanese, Chinese, and Korean versions of its website.⁵⁶ Customers who search for “airport transportation Seattle Washington” in Japanese, Chinese, or Korean can, in fact, locate the sites.⁵⁷ Shuttle Express’s website is English-only.⁵⁸ Speedishuttle is, in fact, targeting passengers who desire increased Asian language accessibility.

In sum, Staff finds that Speedishuttle was truthful about its intentions during the application phase of this case. It obtained its unrestricted certificate in good faith.

39 Shuttle Express questions whether Speedishuttle’s efforts to target certain demographics have been successful—i.e., resulted in previously unserved customers being served.⁵⁹ It observes that although Speedishuttle offers Japanese, Chinese, and Korean versions of its website, no customers have actually booked travel through those portals.⁶⁰

(And Speedishuttle admits that, as of May 15, 2017, it had no Japanese-, Chinese-, or

⁵² *Id.* at 18:6-9.

⁵³ *Id.* at 17:11.

⁵⁴ Roemer, Exh. No. HJR-1T at 17:12-20.

⁵⁵ *Id.* at 16:17.

⁵⁶ *Id.* at 20:20.

⁵⁷ *Id.* at 22:18-25.

⁵⁸ *Id.* at 24:1-16.

⁵⁹ *E.g.*, Marks, Exh. No. WAM-3T at 14:6-19:18.

⁶⁰ *Id.* at 14:6-15:2.

Korean-speaking employees.⁶¹) It also alleges that less than half” of Speedishuttle’s customers are “greeted as intended.”⁶² Shuttle Express witness Wesley Marks summarized, “We know today, conclusively, that the service they provide is *functionally* identical with the service we have long provided.”⁶³

40 Close scrutiny of Speedishuttle’s day-to-day operations is unnecessary because no statute or rule requires auto transportation companies to offer any precise set of service features, and no statute or rule requires a competitor to prove that it is serving “previously unserved customers” as a condition of retaining an unrestricted certificate.

41 Rather, the narrow legal issue is whether Speedishuttle submitted “false, misleading or inaccurate information” during the application phase of this case. WAC 480-30-171(2). Staff concludes that Speedishuttle obtained its unrestricted certificate in good faith, without misrepresenting any material fact. Speedishuttle may compete directly with Shuttle Express in King County because the two services are not the “same” within the meaning of RCW 81.68.040 and WAC 480-30-140(2)(b).

2. Shuttle’s Express’s Proposed “Business Model” Restriction is Impracticable

42 Even if the Commission assumes that Speedishuttle isn’t doing enough to implement its “business model,” there remains the question of what to do about it. At the hearing, Shuttle Express witness Paul Kajanoff testified, “What I believe should happen is the certificate is canceled and reissued as to what the intent was originally, which is—and we asked for that—is restrict it to what the business model is.”⁶⁴

⁶¹ Speedishuttle’s Response to Bench Request No. 3 (May 26, 2017).

⁶² Marks, Exh. No. WAM-1T at 17:9.

⁶³ Marks, Exh. No. WAM-1T at 23:1-2 (emphasis added).

⁶⁴ Kajanoff, Tr. Vol. VII at 463:25-464-3.

43 Staff encourages the Commission to consider how difficult it would be to enforce a “business model” restriction. Shuttle Express and Speedishuttle are different services for purposes of RCW 81.68.040 and WAC 480-30-140(2)(b), but they compete for the same King County door-to-door airport customers. Disentangling this existing, ongoing competition—that is, deciding whether a particular customer “belongs” to Shuttle Express or to Speedishuttle—is impracticable. As Staff witness Mike Young explained, the practical pitfalls are obvious:

As a practical matter, precisely how would the Commission limit Speedishuttle to a tech-savvy, multi-lingual customer base? What test would the Commission use to measure tech-savviness or ability to speak multiple languages? What if a customer speaks English only, but feels more comfortable in Speedishuttle’s Mercedes vans: would Speedishuttle have authority to provide service? What if a customer speaks a foreign language but makes a reservation in English? Staff believes it could assist the Commission in determining whether Speedishuttle is targeting a particular demographic. But determining whether the company is limiting itself to that demographic may prove to be impractical.⁶⁵

The Commission should steer clear of these murky waters.

44 Tellingly, even Mr. Kajanoff could not describe with much precision how a “business model” restriction would work. “This is not an easy answer,” he acknowledged.⁶⁶ And like Mr. Young, Mr. Kajanoff recognized that the Commission is ill-equipped to “police” blurry demographic distinctions among potential customers. He acknowledged: “Because are you a tourist; are you not a tourist? We are not going to invade people’s privacy. Do you speak English or not English? That’s not acceptable.”⁶⁷

45 Staff agrees. The Commission should not require Speedishuttle to make judgments about potential customers based on ill-defined traits such as “preference for an upscale

⁶⁵ Young, Exh. No. MY-1T at 4:4-12.

⁶⁶ Kajanoff, Tr. Vol. VII at 460:9-10.

⁶⁷ *Id.* at 463:2-6.

experience,” “tech-savviness,” and “multilingual ability.” It should instead honor its unappealed “same service” determination from Order 04 and allow the companies to continue the healthy competition. As the Commission recognized during its 2013 passenger transportation rulemaking, “there is public benefit in encouraging competition by motivating carriers to continually improve service.”⁶⁸

V. SERVICE BELOW COST

46 Shuttle Express alleges that Speedishuttle is providing service below cost in violation of RCW 81.04.110 and RCW 81.28.010. In Staff’s view, the Commission cannot resolve this issue because the record contains insufficient evidence regarding Speedishuttle’s cost of service. To understand precisely how Speedishuttle prices its services and allocates its costs, Staff would need to perform the type of in-depth investigation that occurs during a general rate case.⁶⁹ Since no such investigation occurred in these consolidated dockets, the Commission should simply hold that Shuttle Express failed to meet its burden of proof.

VI. CONCLUSION

47 Regulated companies must conform their practices to the Commission’s statutes and rules. Shuttle Express is now a three-time offender of the Commission’s rule prohibiting reliance on non-owned vehicles and non-employed drivers. The Commission should impose a monetary penalty that is large enough to make the practice uneconomical. Meanwhile, Speedishuttle is lawfully engaged in healthy competition with Shuttle Express. It has an unrestricted certificate that it obtained in good faith. The Commission should decline to impose the unworkable “business model” restriction proposed by Shuttle Express.

⁶⁸ *In the Matter of Amending and Adopting Rules in WAC 480-30 Relating to Passenger Transportation Companies*, General Order R-572, p. 12, ¶ 34.

⁶⁹ At the hearing, Shuttle Express’s expert testified that he could not determine whether Speedishuttle engaged in “predatory pricing” because he “didn’t have the data to do it.” Wood, Tr. Vol. VII at 354:6.

DATED this 19th day of June 2017.

Respectfully submitted,

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