BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

SHUTTLE EXPRESS, INC., Petitioner and Complainant, v. SPEEDISHUTTLE WASHINGTON, LLC, Respondent.	DOCKET NOS. TC-143691, TC-160516, and TC-161257 (consolidated)

INITIAL POST-HEARING BRIEF OF PETITIONER SHUTTLE EXPRESS, INC.

Dated: June 19, 2017

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I. INTRODUCTION AND BACKGROUND

1 Shuttle Express, Inc. ("Shuttle Express" or "Petitioner") files this post-hearing brief in support of its Petition for Rehearing and Complaint filed on May 16, 2016. This brief will also address the Formal Complaint of Speedishuttle Washington, LLC ("Speedishuttle") filed on December 1, 2016, in TC-161257 ("Speedishuttle Complaint"), as supported by Commission Staff, in part.[1]

A. Introduction.

2 The Commission is at a crossroads. It accepted the representations of Speedishuttle that its services would be "different" from Shuttle Express's and therefore would not risk undue harm to Shuttle Express or the valuable county-wide service that Shuttle Express had built up and maintained over 30 years. Because Speedishuttle has not lived up to its representations, two things are now clear from this record. First, contrary to its representations Speedishuttle is not offering or providing a different service at all.[2] Second, if the Commission fails to promptly deal with Speedishuttle's failure to implement the supposedly unique service model that it promised, the citizens of King County are likely to lose their long-valued, ubiquitous, door-to-door shuttle service.[3]

3 Failure to act promptly and decisively will continue to harm both Shuttle Express and the broader public interest.[4] At the very least, the Commission should require Speedishuttle to

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[1] Speedishuttle bears the burden of going forward and the burden of proof on the Speedishuttle Complaint. Speedishuttle has not met that burden and its complaint is not cognizable under Washington law, as will be discussed briefly below. Shuttle Express reserves its right to respond to Speedishuttle and Staff on reply, as well.

[2] *E.g.* DJW-1T at 15-26; DJW-3T at 7-8; PK-3T at 6-9; WAM-1T at 5-21.

[3] *E.g.* DJW-3T at 17.

[4] *E.g.* DJW-1T at 28-29; DJW-3T at 13.

implement and strictly maintain the business model it proposed and was authorized to provide.[5] If that is not feasible, or the Commission does not find that limited remedy to be sufficient, then the Speedishuttle certificate should be cancelled.[6]

B. Brief factual and procedural history.

4 On October 10, 2014, Speedishuttle filed an application for a certificate of public convenience and necessity to operate as an auto transportation company, providing "share ride" service. On November 12, 2014, Shuttle Express filed a letter objecting to the application. On January 12, 2015, the Commission conducted a brief adjudicative proceeding at the Commission's offices in Olympia, Washington.

5 On January 22, 2015, the Commission entered Order 02,[7] the Initial Order. Order 02 cited four purported "features in Speedishuttle's business model" that purportedly distinguished its proposed service from that of Shuttle Express.[8]

6 Shuttle Express filed a petition for administrative review of Order 02. On March 30, 2015, the Commission entered Order 04, Final Order, which affirmed the findings in Order 02 that Speedishuttle offered a different service than Shuttle Express. Based on Speedishuttle's representations and arguments, Order 04 found: "[T]here is an entire demographic of travelers whose needs cannot be met by Shuttle Express's existing service. On that basis alone,

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[5] *E.g. DJW-1T at 13, 31.*

[6] *Id.*

[7] Unless specifically stated otherwise, all citations to an "Order" followed by a two-digit number are to orders entered in TC-143691 and to the numbers assigned in that docket.

[8] Order 02, ¶ 25. The features are enumerated below.

Speedishuttle's proposed service is not the same service Shuttle Express currently provides." ¶ 20. Speedishuttle commenced service in May of 2015.

7 Starting in August, 2015, the Commission issued bench requests and briefly considered amending Order 04, *sua sponte* because Speedishuttle was accepting "walk-up" passengers contrary to express testimony that it would not do so and would only carry passengers with prior reservations. Bench Requests, Aug. 13, Aug. 28 and Aug. 31, 2015. The Commission ultimately took no action at that time, based in part on Speedishuttle's filed comments.[9] Those comments failed to address or mention WAC 480-30-036, 480-30-096(3)(a)(ii) ("'Door-to-door service' … may be restricted to 'by reservation only'…."), 480-30-281(2)(c)(ii), or 480-30-356(3)(d)(ii), however. The Determination did not analyze those rules.[10]

8 After a year of discovery and a full hearing the Commission now has both extensive facts and detailed legal analysis and briefing that it lacked when it made its Determination two years ago. It is now clear that the Commission not only can act, but must do so. Action is required by the law, public interest, and fundamental fairness.

II. STATUTORY AND PUBLIC POLICY/PUBLIC INTEREST FRAMEWORK

A. RCW 81.68.040 protects the public interest by limiting new entrants and preventing injurious competition.

9 This Petition and Complaint cannot be properly understood and dealt with absent a fundamental understanding and respect for RCW 81.68.040, which provides, in pertinent part:

> The commission may, after notice and an opportunity for a hearing, when the applicant requests a certificate to operate in a territory already served by a certificate holder under this chapter, only when the existing auto transportation company or companies serving such territory will not provide the same to the satisfaction of the commission, or when the

[9] Notice of Determination Not to Amend Order 04 (Dec. 14, 2015)("Determination").

[10] Nor did the Commission make any binding or appealable findings or orders one way or the other.

> existing auto transportation company does not object, and in all other cases with or without hearing, issue the certificate as prayed for; or for good cause shown, may refuse to issue same, or issue it for the partial exercise only of the privilege sought, and may attach to the exercise of the rights granted by the certificate to such terms and conditions as, in its judgment, the public convenience and necessity may require.

Id. (emphasis added).

10 Accordingly, the statute which governs grants of overlapping auto transportation authority gives qualified exclusivity to an incumbent certificate holder. Specifically, RCW 80.68.040 restricts an overlapping grant "to operate in a territory already served." Notably, the key provisions of the statute are "operate" and "territory." The legislature did not allow another operation in the same territory based on the "service" being different. Such a distinction based on rules and case law is nuanced and can be abused by an applicant which creates distinctions in a proposed service that are not true differences in the operations or territories. In hindsight it can be seen that is what occurred in this case. Further, whether an application is protested or not, the Commission must find "that public convenience and necessity require [the proposed] operation."[11] *Id.*

11 Because under 80.68.040 there must be a declaration that "public convenience and necessity require[s]" the proposed service, the Commission's "same service" rule must be also be read in together with the definition of "public convenience and necessity." That definition is in WAC 480-30-140, and states that, "'public convenience and necessity' means that every member of the public should be reasonably afforded the opportunity to receive auto transportation service from a person or company certificated by the commission." There is nothing in the definition of

[11] Curiously, in an irregularity that has never been explained, the Commission has never expressly stated "that public convenience and necessity require" or required Speedishuttle's service. *See, e.g.,* Orders 02 and 04.

"public convenience and necessity" that mentions accoutrements to transportation, such as the nameplate on the vehicle or the presence of a TV set.

12 Thus, assuming the Commission followed RCW 81.68.040 in granting Speedishuttle's certificate, it had to have found that some member of the public was **not** being "reasonably afforded the opportunity to receive auto transportation service" from Shuttle Express. Findings to this effect were implicitly and explicitly made in both Orders 02 and 04 based on the presentation and representations of Speedishuttle. According to Speedishuttle, it proposed to offer a different service, serve the unserved, and thereby grow the overall share ride market in King County. Speedishuttle was not expected to simply carry the same passengers that Shuttle Express previously carried,[12] thereby splitting a still shrinking market. Such a result would have been (and is) antithetical to RCW 81.68.040.[13] Had the Commission not been misled by Speedishuttle, the application should lawfully have been denied.[14]

13 Only the Commission knows what its subjective intent was in granting the Speedishuttle certificate.[15] But it is known that the record in the application case is replete with representations by Speedishuttle's testimony and exhibits and the arguments of counsel that it was seeking to offer a "different service." Thus, objectively and considering the requirements of RCW 81.66.040, the Commission had to have relied on Speedishuttle's claims to "target" a currently unserved "demographic of travelers." And the record on rehearing now establishes that

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[12] *See, e.g.*, Order 08, ¶ 23.

[13] *See, id.*, ¶ 26.

[14] *Id.*

[15] Of course, one of the three commissioners on that decision has since retired. Accordingly, the intent and import of the Commission's rulings must be ascertained from the totality of orders, ruling, and other actions on the record.

those claims by Speedishuttle either: 1) were false and may have been known to be false at the time they were made; or 2) were not borne out in the actual operation, implementation, or impact of the new service – for whatever reason.

B. <u>If the overlapping service is not materially different not only is the statute violated, the public interest is also harmed, perhaps irreparably.</u>

14 This proceeding raises important public interest issues, including whether county-wide door-to-door airport shuttle service is sustainable[16] with two carriers splitting a shrinking market, as well as whether an applicant that appears to have prevaricated about its intention to serve currently unserved airline passengers can or should be rewarded indefinitely for its prevarication.

15 The record in this case shows unequivocally that key differentiation factors touted by Speedishuttle either are not being provided as promised or, if they are being provided in some small measure are not material in the real world. These include: not serving only pre-arranged passengers, not greeting all passengers at the airport, not serving a non-English speaking demographic, and not departing airport within 20 minutes. The record also shows unequivocally that Speedishuttle has been and still is operating at a loss,[17] while at the same time driving Shuttle Express from a profit into a loss on share ride,[18] jeopardizing the very sustainability of share ride service to all of King County.[19]

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[16] Interlocutory orders and evidentiary rulings on the issue of sustainability have been a bit inconsistent, in some cases rejecting the issue. But in other cases significant testimony on sustainability has been allowed. *E.g.*, DJW-1T at 28-31; PK-3T at 8-9. Shuttle Express submits the public interest issue is the most important issue, and one the Commission is duty-bound to consider. *See, e.g.*, RCW 80.01.040(2).

[17] *E.g.* Roemer cross dep at 25; PK-1T at 6-7; PK-2.

[18] PK-3T at 18 (2016 loss of $362,000).

[19] PK-3T at 2-5; DJW-1T at 29.

16 Thus, key public interest questions need to be answered. For example, if Speedishuttle is allowed to continue to operate at all, for how long should Speedishuttle be allowed to lose money on its service to get started and capture market share?[20] Should Speedishuttle be allowed to try to drive Shuttle Express out of business?[21] Or just damage the efficiency and viability of Shuttle Express's operations sufficiently that Shuttle Express is forced to raise its fares significantly or curtail the scope of its ubiquitous service?[22]

17 Another important public interest issue is what remedy should be accorded to an existing certificate holder that has lost a significant portion of its "walk-up" passengers to an applicant who swore under oath it would not even carry walk-ups at all? The facts pleaded in the Complaint paint a compelling picture of an applicant that used guile, or perhaps flat-out lies, to obtain a grant of authority that might well not have been granted, or might have risked being overturned by a reviewing court. This kind of manipulation of the Commission's processes is unlawful and contrary to the public interest. Speedishuttle should not be permitted to retain the benefits of its ill-gotten gain.

18 The Commission has broad powers to regulate public service companies in a way that protects the public interest, not harms it, as has occurred here. The Legislature has authorized and directed the Commission to: a) enforce the Public Service laws and, b) protect and promote the public interest consistent with those laws. *E.g.*, RCW 80.01.040. As our Supreme Court has noted, "The Legislature … conferred [on the Commission] by necessary implication every power

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[20] All empirical evidence shows Speedishuttle has no realistic prospect of breaking even. *E.g.* PK-3T at 14-16, 21-23.

[21] *See* DJW-3T at 13.

[22] *Id.*

proper and necessary to the exercise of the powers and duties expressly given and imposed. … Regulatory commissions have been invested with broad powers within the sphere of duty assigned to them by law.*" State ex rel. Puget Sound Nav. Co. v. Dep't of Transp. of Wash., 33 Wash*. 2d 448, 481, 486 (1949) (internal quotation marks and citations omitted).

19 In *FCC v. Pottsville Broadcasting Co.*, 309 U.S. 134, 138 (1940), the Supreme Court described the public interest standard as a "supple instrument for the exercise of discretion by the expert body … charged to carry out … legislative policy." The public interest has suffered and will further suffer if the Commission fails to use its public interest "instrument" to remediate the wrongs Speedishuttle has committed.

C. <u>The legislature's public interest concern of injurious competition to operate in the same territory has come true here.</u>

20 The purpose of the qualified exclusivity to serve a given territory that the legislature provided in RCW 81.68.040 is to prevent the very harms that are occurring here and will likely become exacerbated in the future. Share ride airport shuttle service covering an area as big as King County is not easy to develop or maintain.[23] To cover costs, a critical mass of passengers must be attracted to go to or from a similar part of the county.[24] To incentivize airport passengers to take that service, that critical mass has to be assembled at about the same time—within about 20 or 30 minutes. Because airline passengers have a lot of options—like taxi, transit, private auto, and now Uber—fares must be kept low.[25] And the service must be offered day and night,

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[23] *See, e.g.*, DJW-3T at 9-11.

[24] *E.g.* DJW-3T at 29-30.

[25] DJW-3T at 9.

summer and winter, with the peak times and seasons supporting the off times when money is lost under the best of circumstances.[26]

21 The legislature was certainly not thinking about airport share ride when it passed RCW 81.68.040. It was probably thinking about large buses running up and down Highway 99 or its precursor, as well as the predecessor to King County Metro. But even back then it realized that bus transportation is a natural monopoly.[27] The same holds true for airport shuttles. With two providers serving the same passengers, as has happened here because of misrepresentations about who Speedishuttle would serve, it can take twice as long to aggregate enough passengers in the van of each company to get to break even.[28] Passengers wait longer.[29] A company can try to raise the fares, which may not be possible.[30] People get frustrated with the longer waits or the higher fares and abandon the service. Or the carrier can abandon the higher cost, lower volume, areas of its authority. This is exactly what Speedishuttle has already done, focusing heavily on downtown Seattle and the cruise piers, while barely serving or not serving the suburban and rural parts of the county.[31]

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[26] *See, e.g.,* DJW-3T at 10.

[27] *See* DJW-1T at 28-29.

[28] *E.g.* DJW-1T at 28-29.

[29] DJW-3T at 29.

[30] DJW-3T at 9, 26; HJR-1T at 51-52.

[31] PK-1T at 12-14; PK-3T at 8.; DJW-1T at 29-31. *See also,* Transcript ("TR") at 807-08 (not a single passenger ever carried to North Bend by Speedishuttle).

22 Everything the legislature tried to prevent in prohibiting competing providers in the same territories is happening or will happen here. Wait times are up.[32] Passenger counts industry wide are down. Both carriers are now losing money. Areas served are already limited by Speedishuttle and Shuttle Express could have to do the same thing to survive. Indeed there is a substantial risk that both carriers will be gone in the foreseeable future, leaving King County without any share ride service.[33] New entry with a new service has not caused the business to flourish. Instead it may kill it.[34]

III. GROUNDS FOR REHEARING

23 Fortunately, the Commission is far from powerless to act to prevent the current and future harms to the public interest caused by Speedishuttle's entry. Most powerful is RCW 81.04.200. The new evidence in this case supports a finding that Speedishuttle misrepresented the service that it would provide and the existence of a large demographic of previously unserved passengers. But it is important to understand that the Commission need not find malicious intent to correct even well-intentioned actions on rehearing. The Commission can provide relief under RCW 81.04.200 based on:

- "[C]hanged conditions"
- "[O]r by showing a result injuriously affecting the petitioner which was not considered or anticipated"
- "[O]r that the effect of such order has been such as was not contemplated by the commission or the petitioner,"
- "[O]r for any good and sufficient cause which for any reason was not considered and determined in such former hearing."

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[32] WAM-1T at 24.

[33] PK-3T at 4-5; DJW-1T at 28-29.

[34] DJW-1T at 29.

24 Note the legislature's repeated use of the conjunction "or." The Commission can act based on any of the foregoing grounds. And the last one, "good and sufficient cause" is extremely open-ended. But in point of fact, all four of the foregoing grounds for relief exist in this case.

A. The Commission originally granted Speedishuttle a certificate based on findings the proposed overlapping service would be "different."

25 Speedishuttle's application sought to "operate in a territory already served by a certificate holder," *i.e.*, Shuttle Express. All other things being equal, the Commission could not have granted the application without finding that Shuttle Express "will not provide the same to the satisfaction of the commission…." The Commission made no such finding in any of its orders in Docket TC- 143691. This was by design. *E.g.*, Order No. 04, ¶ 17. Instead the Commission chose to grant service in the same territory served by Shuttle Express by finding that, "Speedishuttle does not propose to offer the same service Shuttle Express provides…." *Id.* (emphasis added).

26 In sum, Speedishuttle obtained its certificate based on several representations that can now be proved were either never true, or are not now true. And the Commission accepted those assertions and representations—as it had to in order to justify a lawful grant of overlapping authority. The Initial Order in the Application Case found that "Shuttle Express does not provide the same service Speedishuttle proposes to provide." Application Case, Order 02, ¶ 25. It did so citing four purported "features in Speedishuttle's business model": 1. Airporter greeter for each customer, 2. Multilingual website, 3. Wi-Fi and television service, and 4. 20-minute versus 30-minute departure time. Order 02, ¶ 15.

27 The Final Order in the Application Case generally affirmed Order 02 and specifically affirmed the finding that Speedishuttle offered a different service than Shuttle Express, albeit based on somewhat different reasoning. The final order focused most heavily on the multilingual

distinction proffered by Speedishuttle. *See* Application Case, Order 04, ¶¶ 20-21. In particular, the Final Order stated:

> In our view, however, Speedishuttle's multilingual business model creates a significant distinction. Shuttle Express does not offer multilingual customer service, either on its website, by phone, or by way of personal greeters; there is an entire demographic of travelers whose needs cannot be met by Shuttle Express's existing service. On that basis alone, Speedishuttle's proposed service is not the same service Shuttle Express currently provides.
>
> Moreover, the totality of these features demonstrate that the proposed service uniquely targets a specific subset of consumers seeking door-to-door service to and from the airport: those who are tourists, tech-savvy, or non-English speaking. Speedishuttle's business model thus includes luxury vehicles, significantly increased accessibility for non-English speaking customers, individually-tailored customer service, tourism information, and Wi-Fi service.

Id. ¶¶ 20-12 (emphasis added).

28 In sum, between the two orders there was a grab bag of supposed service differences that were found—all based on the testimony and arguments of Speedishuttle. In various orders, the Commission has indicated that the grant was not based on any particular distinction, but rather based on the "totality" of the "business model."[35] If only the totality of the service distinctions could support the grant of authority, then the failure to provide even one of them should mean that the authority should not have been granted. Alternatively, if one of more of the service distinctions do not exist in a material and meaningful way then the Commission should revisit *de novo* the overall question of whether the "public convenience and necessity … require[s]" the overlapping service[36] absent the missing service distinctions. *See* RCW 81.68.040.

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[35] *E.g.*, Order 08, ¶ 24 ("[T]he Commission based its conclusions in Order 04 on the totality of the circumstances, and Speedishuttle's and Staff's proposal to limit rehearing to an examination of the individual components of the business model is at odds with that approach.").

[36] "Public convenience and necessity" is a statutorily required finding that was completely missing from both Order 02 and Order 04.

29 It should be assumed that the intent of the Commission in issuing Order No. 4 (and in adopting WAC 480-30-140) was to enforce and faithfully implement, not vitiate, RCW 81.68.040. This intent is implicit throughout Orders 02 and 04. And it was very explicitly stated in Order 08:

> Speedishuttle, therefore, may provide only the auto transportation service that the Commission found was different than Shuttle Express' service. While some competition at the margins of the respective customer groups may be inevitable, the Commission did not contemplate that Speedishuttle would offer to serve any and all customers seeking door-to-door service to or from the airport. Shuttle Express' allegations that Speedishuttle is engaging in such conduct, therefore, represent "a result injuriously affecting [Shuttle Express] which was not considered or anticipated at the former hearing" and an effect of Order 04 that "has been such as was not contemplated by the commission" within the meaning of the statute.

Id., ¶ 23 (Emphasis added).

30 Order 08 was interlocutory. But it was absolutely correct in interpreting its application of RCW 81.68.040 to Speedishuttle's application and the necessary scope and limitations on its power to grant duplicate authority.[37] Order 08 should be re-affirmed in the final order. And because Speedishuttle is, in actuality, "offer[ing] to serve any and all customers seeking door-to-door service to or from the airport"[38] the Commission should restrict future operations by Speedishuttle. Any future operations should strictly conform to the business model and passenger demographic on which Speedishuttle based its application. If that is not practical or adequate to protect the public interest and comply with the spirit and letter of RCW 81.68.040, then the Commission should consider cancelling the Speedishuttle certificate.

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[37] It is also a good objective window into the intent of the Commission as constituted at the time of Orders 02 and 04, before Commissioner Jones retired.

[38] *See* Order 08, ¶ 23.

B. In practice the service Speedishuttle has provided is materially the *same* as that long provided by Shuttle Express, and Speedishuttle has merely fractured a market that is continuing to shrink.

31 The issue that must be dealt with today—based on newly discovered evidence of Speedishuttle's true intent, including its actual operations—is whether or not the service that was proposed and accepted by the Commission is the service that is actually being provided. If there is no consequence for proposing a different service, but then providing the same service as the existing certificate holder, then the Commission will have failed to enforce the protections from new entrants that the legislature mandated for existing certificate holders when it adopted RCW 81.68.040. If the Commission fails to act on the new evidence today then going forward any applicant can easily vitiate the intent of the Legislature simply by claiming it will serve a new demographic (blind, deaf, Italian) and then actually target and carry the demographic that was already served by the existing certificate holder.

32 Contrary to its representations of a "different" service, Speedishuttle's stated intent in its communications with the Port of Seattle starting just days after the Commission issued its certificate, was to mimic as closely as possible the operations of Shuttle Express at the airport, including in the service of "walk up" passengers.[39] The Commission itself expressed how "troubled" it was about at least one obvious discrepancy between Speedishuttle's testimony and its subsequent operations. Notice of Determination Not to Amend Order 04 (Dec. 14, 2015).

[39] *E.g.*, PK-1T at 12; WAM-1T at 18-19; WAM-2. In numerous communications from Speedishuttle to the Port before and immediately after its certificate was issued Speedishuttle made it clear that it not only wanted to emulate Shuttle Express not only in all operational details like walk ups, but even tried to get a similar look and feel. See, e.g., HJR-39-X through HJR-42-X. Speedishuttle made it clear in those communications that it intended to compete directly with Shuttle Express for all airport passengers.

But, lacking the broad scope of the investigative tools and powers provided by a petition for rehearing, the Commission took no action at that time. *Id.*

33 The evidence now provides the procedural vehicle that was lacking in December 2015, for the Commission to take actions that will better serve the public interest than the status quo. Importantly, the Commission need not find error in its prior rulings to grant relief. It can, and should, order appropriate relief based on the new evidence in the context of the prior case.[40] Well-crafted relief can ensure that going forward the requirements of RCW 81.68.040 are met to implement the intent of the Commission—based on representations made by Speedishuttle—to provide a different service to an "entire demographic" that Shuttle Express was supposedly not serving.

34 The evidence presented on the Rehearing Petition overwhelmingly supports the need to grant relief under RCW 81.04.200. Almost nothing of substance that Speedishuttle represented or promised would occur if its requested authority were granted has been done or occurred.[41] Accordingly, nothing of substance that induced the Commission to grant the authority has proved true in fact.[42] The acts and omissions of Speedishuttle and the consequent impact on Shuttle Express and implications for ongoing public interest are well-established by the updated record in this case and are mostly undisputed except in inconsequential and immaterial ways.

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[40] *See* Order M.V.C. No 1893 *Evergreen v. San Juan Airlines (Dkt. No. TC-900407, 1990).*

[41] *See generally*, WAM-1T at 5-21; DJW-1T at 15-26.

[42] *E.g.* DJW-1T at 26-27.

1. Speedishuttle immediately began soliciting and serving "walk-up" passengers, contrary to its sworn testimony and Commission expectations.

35 Speedishuttle has admitted that it provided "walk-up" service to arriving airline passengers from the outset and still does so today. The record and documentary evidence show that Speedishuttle's decision to offer walk-up service was made sometime before Speedishuttle even began operating under its certificate. For example, an email and memo from Speedishuttle's counsel dated May 26, 2015 states, in part, "Because WUTC regulations at WAC 480-30-036 do not preclude door-to-door service providers from offering walkup service, there was **never** an understanding that service would be in any way deterred…." (Emphasis added).[43]

36 How can the representations to the Port in Exhibit WAM-2 be reconciled with the testimony of Speedishuttle's President and CEO just a few months earlier at the application hearing that, "We will not have [walk up] service. We would only have prearranged, so that's why we would have greeters in the baggage claim greeting, at the baggage claim, prearranged guests….?"[44] How can Exhibit WAM-2 be reconciled with Speedishuttle's counsel's statement in closing arguments at the application hearing that, "This company is also going to operate, again, in different territory, with different character, focused exclusively on reservation-only, door-to-door service, so I urge you to find that neither of the providers are providing or could provide the same service as that proposed by the applicant…."[45] The short answer is that they cannot be reconciled. Either the offering of walk-up service was intentionally misrepresented at the hearing, or the nature and

[43] WAM-2 at 5.

[44] Transcript at 48, Dkt. TC-143691 (emphasis added).

[45] TR. at 142.

scope of the service model changed in a very material way before or just after the certificate was even issued.[46] Whatever the reason, rehearing is appropriate and necessary.

37 Another reason the provision of walk-up service is a failure to comply with the business model the Commission approved is that walk-up passengers cannot possibly use the multi-lingual website to request their service. They must request service at the airport kiosk orally with an attendant who is most likely to speak English and ***maybe*** Somali or Hindi. The odds the passenger will get effective personally tailored or multilingual service are slim. And they are no better than if they used the Shuttle Express kiosk.

38 Under the rehearing statute it does not matter whether the failure of Speedishuttle to implement the business model as the Commission expected and understood was based on intentional misrepresentation or on an innocent (if convenient) change of business plans. The Commission is empowered to use 20/20 hindsight to correct the problems. *See* RCW 81.04.200.

39 Speedishuttle seems to posit that because its certificate contained no restrictions that the Commission is powerless to act here.[47] Such a finding would not be consistent with the law or Commission's rules. While the Commission acted in good faith, and assumed Speedishuttle would follow their business model as presented, it chose not to act in 2015. But, it can and should act now, even though it has previously declined to add restrictions to Speedishuttle's certificate. In so doing, it should ignore Speedishuttle's longstanding semantic gymnastics about "walk up" versus "by reservation only," and threats of due process challenges.

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[46] *See* WAM-2.

[47] *E.g.*, Speedishuttle Statement at 9 (Dkt. TC-143691; Nov. 25, 2015)(" Speedishuttle … lacks the express 'on-call' service restriction to dictate the result the Commission reached in the *Grayline* complaint case brought against Shuttle Express.").

40 There is a record now that establishes Speedishuttle is not providing the service it "sold" to the Commission.[48] The Commission "bought" the new service representations. It had to comply with RCW 81.68.040. The Commission now has the opportunity to hold Speedishuttle accountable by restricting the certificate to the explicit representations made by Speedishuttle. Failure to do so invites others to misrepresent in order to get their foot in the door and then provide whatever service they choose. Not holding an applicant to their representations is dangerous precedent and jeopardizes the entire auto transportation industry in Washington.

41 In WAC 480-30-036 the Commission unmistakably defines "by-reservation-only service" to mean: "transportation of passengers by an auto transportation company, with routes operated only if passengers have made **prior** reservations." (emphasis added) And for "door-to-door" authority, which Speedishuttle holds, WAC 480-30-096(3)(a)(ii) expressly provides that the service, "may be restricted to 'by reservation only'…." Both WAC 480-30-281(2)(c)(ii) and WAC 480-30-356(3)(d)(ii) also reference and acknowledge numerous times that service may be limited to "by reservation only." Accordingly, the Commission's rules unquestionably both define and allow for "by reservation only" authority.

42 The most salient precedent for a "reservation only" restriction is the "*Grayline*" case cited by Speedishuttle in its 2015 statement.[49] There, Grayline complained that its passengers were being skimmed because Shuttle Express was carrying passengers without prior reservations, even though its certificate was restricted to "on-call" service. Both the *Grayline* decision and the current rules make it clear that the Commission is empowered to restrict Speedishuttle to

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[48] *E.g.* WAM-1T at 22-23.

[49] Order M.V.C. 1893, *In re Evergreen Trails, Inc. v. San Juan Airlines* (TC-900407, Nov. 1990).

providing by reservation only—especially going forward and after full notice and hearing. Regardless of the words he chose as a non-lawyer, "by reservation only" service was the unmistakable intent of Mr. Morton when he swore that Speedishuttle would not provide "walk-up" service.[50] Everything in the Commission's orders and record in this docket since Mr. Morton's testimony indicates the Commission understood the no "walk-up" promise in the same way.

2. Speedishuttle is not greeting all arriving passengers at baggage claim and escorting them to their van.

43 There are two fundamental reasons that Speedishuttle is not greeting all arriving airline passengers. First and foremost, Speedishuttle is carrying walk-up passengers. Speedishuttle admits that this sizeable portion of their passengers outbound from the airport – something more than 20%[51] – are never greeted. And second, Speedishuttle does not have sufficient staffing of greeters to meet all passengers. Both Mr. DeLeo (a non-party witness) and Mr. Marks detailed the significant failings they observed on a number of days at the airport. The evidence makes the insufficient staffing quite clear and Mr. Roemer did not answer or rebut it in any effective or meaningful way, providing only one self-serving platitude and almost zero actual data.

44 First, as to walk-up passengers, they obviously cannot be greeted because they cannot be identified until they walk-up by themselves to the Speedishuttle kiosk in the garage, across the airport drive and hundreds of feet away from the baggage carousels. The provision of greeters to all passengers was a critical component of the supposed "upscale" theme of Speedishuttle's

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[50] Because Mr. Morton is not a lawyer, the Commission should give no credence to any argument that Speedishuttle should not be restricted because Mr. Morton did not use the exact language of the rules.

[51] HJR-1T at 35 ("closer to 80% of our passengers to date have been pre-arranged"). Mr. Roemer admits that walk up passengers cannot be greeted, and even some number of pre-arranged passengers are admittedly not greeted. *Id*.

proposed service that would both make it different and serve a supposedly unserved demographic. This was made clear in numerous Commission orders, including Order 02 ("Speedishuttle service includes a personal airport greeter for each customer at no additional cost")[52], Order 04 ("Shuttle Express does not offer multilingual customer service … by way of personal greeters; there is an entire demographic of travelers whose needs cannot be….") and Orders 06 and 08. Yet despite the importance of this proffered "personal" and "multilingual" service, Speedishuttle admittedly does not provide it to something more than 20%.[53] Nor does Speedishuttle track this data. [54]

45 On top of the walk-up passengers are passengers who have no checked luggage and no need to go to baggage claim, plus passengers booked through wholesale arrangements that do not provide flight information, a percentage that is unknown but could be sizeable because so many of Speedishuttle's bookings are wholesale.[55] If Speedishuttle were greeting passengers at all exits from the secured area as Mr. Morton promised to do in his testimony,[56] not just at baggage claim, only then might carry-on passengers be able to be greeted.

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[52] Indeed, as Order 02, ¶ 6, accurately noted: "Mr. Morton testified that all Speedishuttle customers are greeted outside the security gate by a company employee, escorted to the baggage claim, and then escorted to their shuttle. The Company plans to hire multilingual greeters to communicate with non-English speaking customers, and provides a multilingual website for reservations." (emphasis added). The company does not even pretend that it actually escorts passengers **to** baggage claim as was promised. It only pretends to greet all passengers **at** baggage claim.

[53] HJR-1T at 35 ("closer to 80% of our passengers to date have been pre-arranged").

[54] HJR-64-X.

[55] TR. at 757.

[56] TR. at 23.

46 Similarly, of Speedishuttle's ***pre-arranged*** passengers arriving at SeaTac, up to 50% or more are not greeted.[57] Admittedly, the percent who are or are not greeted is not known exactly. But the only reason that it can't be broken down into precise numbers is that Speedishuttle makes no effort to track which or how many of its passengers are in fact never greeted.[58] This self-serving failure is understandable given that the subjective evaluations of two witnesses is that the greeters are infrequently if ever seen by anyone at the airport. One of those witnesses—Jason DeLeo—was completely independent from the parties in this case.[59] His company's actions speak louder than words and they completely backed up his testimony. That company, SMS, terminated its contract with Speedishuttle and switched back to Shuttle Express and, in so doing, incurred the substantial added expense of hiring its own greeters.[60]

47 In response, Speedishuttle continues the pretense that it provides sufficient greeters. But close examination of Mr. Roemer's testimony reveals that he fails to directly or effectively rebut the strong testimony of the Shuttle Express witnesses. Instead he engages in two types of legerdemain. First he focuses narrowly on two time periods in the Shuttle Express direct testimony and presents data based on a three hour time period that he claims shows "reasonable" staffing.[61] Of course if staffing that Mr. Roemer considers adequate nevertheless fails to greet most passengers in the eyes of an impartial and expert observer, the Commission must wonder

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[57] JD-1T at 4; WAM-1T at 17.

[58] HJR-64-X.

[59] JD-1T at 2.

[60] JD-1T at 5; JD-2T at 2-3.

[61] *See* HJR-1T at 35-36.

about the strength and veracity of Speedishuttle's supposed commitment to greet "all" passengers—as well as the more cautious claim it "typically" greets passengers.. Second, Mr. Roemer makes broad, non-specific, and unsupported and unsupportable assertions to cover the remaining 700+ days.

48 Examining the first attempt at misdirection more closely, what it means is that—out of two ***years*** of operation—Speedishuttle has purported to analyze empirical data for merely a ***few hours*** on a ***few days***. And even as to that supposedly empirically-based evidence, Mr. Roemer plays games. He faults Mr. DeLeo based on a purported discrepancy between his testimony and an email.[62] But there is no discrepancy. Mr. DeLeo's testimony said he could only see two greeters.[63] His email said a Speedishuttle employee ***asserted*** (without proof) that there were three "team members" which may not all have been greeters.[64] Then Mr. Roemer uses the three greeters—based on the ambiguous hearsay only—as fact, not the two greeters established by Mr. DeLeo's personal knowledge. Mr. Roemer apparently made no effort to look at the Speedishuttle employee logs or time cards for that day, which one would expect a company CFO could easily do. Or maybe he did and confirmed there were only two greeters, <u>exactly</u> as asserted in Mr. DeLeo's testimony. The lack of any effort to provide empirical data is telling.

49 That intentional failure to respond with readily available business records leads well into the second attempt to mislead the Commission. Apart from nit-picking a handful of days, Mr. Roemer addresses their other two years of operations with nothing but a single conclusory and

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[62] HJR-24.

[63] JD-1T at 5.

[64] *See* HJR-24 at 5 of 5.

self-serving platitude: "Those [prearranged] 80% *are* typically all met by a greeter."[65] What does "typically" mean? Perhaps 51%? How does Mr. Roemer even know, when he repeatedly and vociferously denied having financial data, supervision, or direct knowledge of the greeter staffing, languages, workloads, or work flow.[66] The answer is he has no personal knowledge that could backup the "typical" claim, even as vague as it is. Thus, Speedishuttle has never even attempted to put a number on the record as to how many or what percent of its passengers are and are not greeted. The "typical" testimony was both meaningless and without foundation.

50 Based on the record, the Commission can only conclude that an admitted more than 20% and likely more than 50%[67] of Speedishuttle passengers are not personally greeted by Speedishuttle when their flight arrives. The need for a kiosk in the airport garage right next to the Shuttle Express kiosk speaks volumes. Speedishuttle needs a centrally located physical presence near where their vans load in order for many or most of their passengers to find their ride. Their service is no more personalized for these passengers than Shuttle Express's.

3. Speedishuttle is not serving non-English speakers.

51 Speedishuttle's promises to serve the non-English speaking passengers were perhaps the centerpiece of the Commission's conclusion that it was proposing to provide service to an "entire demographic" that supposedly both existed and was not being served by Shuttle Express. Order 04 characterized Speedishuttle's "multilingual business model" as creating "a significant

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[65] HJR-1T at 35.

[66] *See, e.g.*, TR. at 755-58; HJR-28-X at 39-43.

[67] JD-1T at 4; WAM-1T at 17. Mr. DeLeo testified based on personal observations and an admission by a Speedishuttle employee. Mr. Marks also testified on personal observation. The total of un-greeted passengers would include: walk ups, passengers reserved by wholesale travel companies, passengers with no checked luggage, and passengers arriving at baggage claim when no greeter is present at their baggage carousel due to insufficient staffing of the 16 carousels.

distinction." Because Shuttle Express "does not offer multilingual customer service, either on its website, by phone, or by way of personal greeters; there is an entire demographic of travelers" not being served. It concluded that: "On that basis alone, Speedishuttle's proposed service is not the same service….."

52 Numerous undisputed facts now show[68] that: 1) Speedishuttle is not serving a measurable or quantifiable number of non-English speaking customers; and 2) the unserved demographic either never existed or is not being served any more effectively by Speedishuttle than by Shuttle Express; and 3) any service of non-English speaking customers by phone or greeters is random or non-existent. In actual practice, the "multilingual business model" is a sham—barely a pretense with no real change, improvement, or expansion of service to non-English speakers.[69]

53 The only demonstrable, concrete, and objective pretense of serving multilingual passengers is Speedishuttle's websites translated into Japanese, Korean, and Chinese. But as Speedishuttle readily admitted, **they have had exactly ZERO non-English web bookings** in almost two years of operations.[70] That is exactly the same number of multilingual bookings that the Commission opined that Shuttle Express was capable of handling in Order 04. Compounding the non-existent service via web bookings, Speedishuttle offered not even a single example of multilingual service provided by a phone agent, greeter, or driver.[71] Speedishuttle has made no effort to track

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[68] Details and citations below.

[69] *See generally*, WAM-1T at 9-10; WAM-3T at 14-19.

[70] HJR-63-X; HJR-28-X at 66-68; WAM-3T at 14.

[71] *See also*, WAM-3T at 17-18.

how many non-English speakers it is actually serving.[72] Without tracking them, there is no way it can improve—or even confirm that is it providing—such service.[73]

54 Another huge gap in the supposed "multi-lingual" distinction is that Speedishuttle really built its business on signing up numerous wholesale travel companies to sell ground transportation independently or as part of a vacation package.[74] The biggest two of those are GO Group and Expedia.[75] As with numerous other subjects that would be readily susceptible to precise numbers, Speedishuttle has been elusive about what percent of its business is wholesale bookings,[76] only stating that it is not a "majority."[77] But based on the complete transfer of about $300,000 of GO Group bookings from Shuttle Express to Speedishuttle immediately in 2015, it is likely that 30% of Speedishuttle's 2015 bookings were obtained from GO.[78] And if Expedia is larger or almost as large a source of bookings, then something very close to 50% (if not over, contrary to Mr. Roemer's testimony) of Speedishutttle's bookings are wholesale.

55 The significance of the near 50% <u>wholesale</u> origination of passengers to the "multilingual distinction" cannot be understated. <u>The language</u> of the wholesale bookings <u>is controlled by the</u>

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[72] *E.g.* WAM-3T at 15, 17.

[73] *E.g.* WAM-3T at 9-11.

[74] *See, e.g.*, HJR-33-X, HJR-35-X through HJR-37-X; HJR-50-X through HJR-58-X (collectively hundreds of pages of contracts and solicitations to wholesale travel bookers); *see also,* PK-1T at 14-15.

[75] TR. at 707.

[76] *See, e.g.*, WAM-1T at 15.

[77] HJR-1T at 35.

[78] PK-1T at 14-15.

wholesaler, not Speedishuttle.[79] Indeed, Mr. Roemer claimed he did not even know what language his passengers used to book on the website of GO—one of his two largest customers.[80] While something of an incredulous claim, the answer is easy to find. It is "English."[81] Whatever language a wholesaler uses, they transmit the reservations to Speedishuttle in an English binary code text file.[82] And whatever language the wholesaler uses today to take reservations for Speedishuttle, it is likely the same language they used when they took reservations for Shuttle Express. The facts today thus show there cannot possibly be any difference in the multilingual services provided to close to 50% of Speedishuttle's reservations.

56 Speedishuttle's promises to "try" to hire multilingual greeters and others also appears to be a sham. It certainly has not happened. Speedishuttle does not even solicit multilingual applications on its website, nor is it part of their application form.[83] None of their personnel speak the three Asian languages that Speedishuttle identified as unserved and most in need of multilingual service. Instead, two greeters speak Arabic or Punjabi/Hindi, and one speaks Spanish.[84] These languages are unlikely to target a measurable number of previously unserved passengers.

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[79] TR. at 708.

[80] *Id.*

[81] *See* https://goairportshuttle.com/. If necessary to consider this fact, Shuttle Express seeks official notice of this public website.

[82] *Id.*

[83] WAM-3T at 15, 18-19; WAM-4; WAM-5; HJR-44-X through HJR-50X.

[84] BR-3.

57 Finally, there has been no increase in the number of share ride passengers carried by Shuttle Express and Speedishuttle combined. In fact, the overall numbers have continued to decline significantly.[85] That means one of two things. Either there never was an unserved demographic or it still exists because Speedishuttle is not serving it as it promised.[86]

4. Speedishuttle is not departing in 20 minutes.

58 The Commission did place some reliance on the supposed Speedishuttle "guarantee" that passengers departing the airport would not have to wait more than 20 minutes.[87] While it is not the most important point, the facts learned since that representation was made provide yet another supposedly distinguishing factor that Speedishuttle promised to under oath,[88] but has utterly failed to carry out. The "guarantee" was used to induce the Commission to grant overlapping authority and then it was ignored.

59 Speedishuttle does not even track how long its passengers have to wait to depart the airport.[89] If it fails to track that basic (and critically important) service metric, it obviously cannot possibly make a 20 minute guarantee.[90] In fact, it can't even try to achieve 20 minutes as a "best efforts" goal. It is impossible to proactively or effectively manage a business operation to a goal if the

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[85] *E.g.* WAM-1T at 11-12.

[86] *See, e.g.*, DJW-1T at 32; WAM-3T at 19.

[87] Order 02 at 15.

[88] TR. at 30 ("[W]e guarantee that we will depart the airport on your arrival within 20 minutes…")(Morton).

[89] TR. at 757-58.

[90] *See* WAM-3T at 10-12.

management has zero data on how far away from that goal the operation is and which direction the actual operations are trending.[91]

60 Based on what limited data Speedishuttle has, it admits that it does not achieve a 20 minute departure timeframe.[92] And as it further admits, it certainly does not "guarantee" a 20 minute departure.[93] In practice, the departure time cannot be distinguished from Shuttle Express in any measure.

5. The use of "luxury" vehicles is not a substantive difference – offering them—and at a lower price—merely allows cream-skimming.

61 It is undeniable that the use of "luxury" Mercedes vehicles has not attracted new or unserved passengers. If it had, the Commission would have seen a growth in the door-to-door market, which it did not.[94] As Speedishuttle grew, the Shuttle Express passengers declined in inverse proportion.[95] And the overall passengers continued to decline at about the same rate as the few years before Speedishuttle entered the market.[96] Instead of growing the market, what Speedishuttle has done by offering luxury vans at lower price is capture a significant portion of the market that was previously served by Shuttle Express.[97]

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[91] *See id.*

[92] *E.g.* HJR-65-X.

[93] HJR-1T at 29; WAM-3T at 20.

[94] *E.g.* DJW-3T at 7, 11; WAM-1T at 6-7.

[95] *E.g.* PK-1T at 5; WAM-1T at 4-5, 11-12; WAM-3T at 22-23.

[96] *E.g.* WAM-1T at 11-12.

[97] *Id.*

62 Speedishuttle has taken close to a third of the core of the pre-existing Shuttle Express business to downtown Seattle.[98] And it has done so by intentionally targeting wholesale ticketing agents, like GO Group, which used to ticket all their passengers with Shuttle Express.[99] The diversion of existing business from Shuttle Express to Speedishuttle was not incidental. Rather, it was blatantly intentional, as the evidence shows in numerous ways.[100] Indeed, Mr. Roemer continues to mislead by stating under oath that Speedishuttle is not a licensee of the GO Group despite evidence showing otherwise.[101]

63 Documents produced by Speedishuttle in mid- to late-December 2016 include dozens upon dozens of solicitations of share-ride transfers to and from SeaTac, aimed at travel agents and wholesale ticket sellers, most of which had used Shuttle Express previously. GO Group alone constituted almost a third of Speedishuttle's business in its first year.[102] And the record contains hundreds of pages of contracts and solicitations to wholesale travel agents.[103] In other words, GO Group is just the tip of the iceberg.

64 Perhaps the best example of documentation establishing a concerted effort to build its business on former Shuttle Express passengers is the email string between Speedishuttle and GTA

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[98] PK-1T at 13.

[99] *E.g.*, PK-1T at 14-15; WAM-1T at 14-16; WAM-2.

[100] *See, e.g.*, WAM-1T at 18-19.

[101] Compare, TR. at 709 (Roemer), with TR. at 421 and 483 (Kajanoff). See also, HJR-34-X ("GO" logo on Speedishuttle vans pictured). Mr. Kajanoff's testimony is based on documentation from a third party, the GO Group. Mr. Roemer's denial of a license makes no sense, as GO would jeopardize its rights in the trademark "GO" logo if it allowed third parties to use the logo without a license and quality control. *See, e.g. Bellsouth Corporation v. Datanational Corporation*, 60 F. 3d 1565 (Fed. Cir. 1995).

[102] *See* PK-1T at 14-15.

[103] *See, e.g.*, HJR-33-X, HJR-35-X through HJR-37-X; HJR-50-X through HJR-58-X.

Travel.[104] In a solicitation that is typical of the dozens of others, Speedishuttle writes: "Speedishuttle Seattle is on schedule to begin offering services in King County Seattle Washington May 1, 2015. … This is your first opportunity in decades to choose another company's services since only one company [Shuttle Express] has been permitted to operate in the entire King county service area for thirty years."[105] This email was sent on February 19, 2015, well before the final order in the application case was even issued!

65 And just in case the implicit reference to Shuttle Express in the Speedishuttle solicitation leaves any doubt, subsequent emails in the string make it abundantly clear where the passengers were coming from. For example: "The existing bookings I will leave with Shuttle Express. I am sure once I send the advert announcing New Low Rates for Shared Transfer available now in Seattle, clients will cancel and rebook with Speedishuttle."[106] This email also reflects how Speedishuttle charges less than Shuttle Express to downtown Seattle (though it charges more to rural parts of the county). Indeed the whole tone and tenor of the hundreds of pages of solicitations is that the wholesaler can switch from Shuttle Express to Speedishuttle, thereby getting the same transportation service, but in a more luxurious vehicle for a lower price.[107] A better documented case of cream-skimming could hardly be found.

66 What is notably missing from the dozens of solicitations to the former Shuttle Express wholesale ticket agents cited and discussed in the preceding three paragraphs is any mention of foreign

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[104] Exhibit HJR-58-X at 84-90 (Bates Nos. 884-890).

[105] *Id*. at 89 (emphasis added).

[106] HJR-58-X at 76-77 (Bates Nos. 0876-77)(emphasis added).

[107] In fact, a number of the emails discuss the "lower" price, sometimes even admitting it is a higher-cost service. *E.g.* HJR-58-X at 4, 167, 170.

language capability or needs. A word search in the hundreds of pages of cited exhibits for the words "foreign," "English," "Chinese," "Japanese," and Korean" will come up empty-handed. Those words **do not exist** in any of the dozens of solicitations. Like the GTA emails in Exhibit HJR-X-58, Speedishuttle's focus was not on seeking or finding an unserved demographic. It was purely about getting the ticketing agents to switch from Shuttle Express (after 30 years) to Speedishuttle, all the while using below cost pricing to lure that business.

67 As a consequence of an implementation plan and strategy rolled out before the certificate was even granted to build its business on luring wholesale customers away from Shuttle Express, Speedishuttle successfully took away over 30% of Shuttle Express's existing business to downtown and the piers.[108] Offering the luxury vehicles at a lower price proved very attractive.[109] But it did not serve anyone who could not have been served by Shuttle Express.[110] And Speedishuttle left most of the higher cost suburban and rural passengers to Shuttle Express.[111]

6. Speedishuttle has injuriously affected Shuttle Express, which was not considered or anticipated at the former hearing.

68 The Commission expressly stated on more than one occasion that it did not expect the entry of Speedishuttle to materially harm Shuttle Express. But it has, taking about 45,000 passengers and

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[108] PK-1T at 13.

[109] Indeed,

[110] Because wholesale passengers book in the language of the wholesale provider—mostly English—the wholesale providers were not serving multilingual passengers any differently than they were when the contracted with Shuttle Express. *See, e.g.,* TR. At 707-08.

[111] PK-1T at 12-14; PK-3T at 8-9.

$1.1 million in revenue from Shuttle Express annually.[112] The reason this is unexpected was that Speedishuttle had promised a new service that would serve "an entire demographic of travelers whose needs cannot be met by Shuttle Express's existing service." Order 08 elaborated on the Commission's expectations, stating, "[w]hile some competition at the margins of the respective customer groups may be inevitable, the Commission did not contemplate that Speedishuttle would offer to serve any and all customers seeking door-to-door service to or from the airport."

69 The Commission's expectations that Speedishuttle would primarily serve the unserved were built on the representations of the applicant, Speedishuttle. Those representations have not borne out as the record now makes clear. Moreover, despite taking well over a third of the highest-volume, lowest-cost traffic, from Shuttle Express,[113] Speedishuttle itself is still losing money with no realistic prospects of ever making money unless (maybe) it drives Shuttle Express out of the market entirely.[114] And even worse, Shuttle Express is now losing substantial sums in its door-to-door service. The Commission anticipated that Speedishuttle entry would grow the overall market and provide service to the unserved, not harm Shuttle Express by serving any and all share ride passengers. None of those expectations has come true. On the contrary, the entire share ride model in King County is threatened.[115]

70 The Commission has a long history that establishes its power under either a complaint or petition for rehearing to add restrictions to a certificate as necessary to effectuate the intent of the order

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[112] PK-1T at 5.

[113] PK-1T at 13-14.

[114] *Id.* PK-1T at 6-11.

[115] *E.g.* DJW-1T at 28-29.

granting the certificate to allow and implement only a new and different service, not undermine the service already offered satisfactorily by another existing carrier.[116]

IV. GROUNDS FOR COMPLAINT

71 Similar to the open-ended and broad discretion granted the Commission to correct unintended or harmful circumstances the complaint statute, RCW 81.04.110 affords the Commission additional authority. It allows for a complaint against "abuses" that: "are unreasonable, unremunerative, discriminatory, illegal, unfair or intending or tending to oppress the complainant, to stifle competition, or to create or encourage the creation of monopoly…." Again, each time the conjunction is "or." And the remedies the Commission is empowered to grant are equally broad and non-specific. It may: "correct the abuse complained of by establishing such uniform rates, charges, rules, regulations or practices in lieu of those complained of, to be observed … as shall be found reasonable, remunerative, nondiscriminatory, legal, and fair or tending to prevent oppression or monopoly or to encourage competition…."

72 Speedishuttle's: 1) representation of a niche service to the unserved, followed up by broad service only to exactly the demographic that was already served; 2) service under a revenue/cost model that undercuts Shuttle Express and cannot break even unless Shuttle Express is driven out of business altogether; and 3) failure to serve all but the lowest cost and highest volume areas of King County all constitute grounds to order Speedishuttle to "correct the abuse complained of." At the very least, Speedishuttle must be ordered to operate consistent with the proposed service

[116] *See, e.g.*, Order M.V.C. No. 1893, *Evergreen Trails, Inc. v. San Juan Airlines, Inc.*, at 4 (Dkt. TC-900407, 1990) ("The purpose of this condition was to "help ensure that the services offered by the applicant will continue to conform to the market need as demonstrated in this proceeding.").

that was the basis for it authority. And if that cannot be enforced or will not be effective, then consideration should be given to canceling Speedishuttle's certificate.

A. Speedishuttle is not providing the "new" and "different" service that it proposed.

73 In its application case, Speedishuttle claimed it would offer a "different" service that would grow the market by attracting a new demographic that Shuttle Express was not serving.[117] The Commission accepted this proposition. *See, e.g.*, Order 08. But Speedishuttle has not provided a different service, certainly not substantively. Its "walk-up" service is indistinguishable from that of Shuttle Express, at least under the applicable laws and rules. *See, e.g.*, RCW 81.68.040; WAC 480-30-140. It is not providing personal greeter service to 50% or more of its passengers. It is not providing multilingual greeter service except by occasional random chance. Indeed the overall multilingual service is non-existent in reality. And there is no 20 minute departure "guarantee."

B. Speedishuttle is providing its services below cost, with no plans or prospects to break even, and threatening the sustainability of share ride service.

74 Rates of regulated carriers must be "just, fair, reasonable, and sufficient." RCW 81.28.010. The Commission is well within its powers to find some or all of the rates of Speedishuttle are not "sufficient" based on the evidence submitted to date and Speedishuttle's admissions it is priced below cost.[118] Further, RCW 81.04.110 allows the Commission to take action upon complaint if, "the rates, charges, rules, regulations, or practices of [a carrier] are unreasonable, unremunerative, discriminatory, illegal, unfair, intending or tending to oppress the complainant." Due to Speedishuttle's refusal to provide disaggregated cost and revenue numbers despite

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[117] *See e.g.*, Transcript at 140-144.

specific request from the ALJ at the initial discovery hearing, there may not be sufficient data to order specific rate changes. But since there is no dispute that Speedishuttle is losing money[119] and has also pushed Shuttle Express into a loss position,[120] those facts provide strong support for other remedies, like restricting or cancelling the Speedishuttle certificate.

75 Speedishuttle has repeatedly admitted that it is losing money in its King County service and has always lost money.[121] Mr. Roemer claims the company is "close" to break even.[122] But that assertion was based on cherry-picking financial data from the five busiest months of the travel season in 2016 and even then Speedishuttle showed a loss of $0.26 per dollar of revenue.[123] And Speedishuttle refused to provide data that would either back up his testimony or allow Shuttle Express witnesses to rebut it.[124] There is nothing in the record that shows how the higher-cost carrier even can or will get to break even. And there is plenty in the record that says they will not.[125] And of course any break even analysis would need to include those costs absorbed in the Hawaiian operations on behalf of Speedishuttle as acknowledged by Mr. Roemer.[126]

76 Contrary to Speedishuttle's antitrust construct submitted earlier in this case, the main issue is not whether after Speedishuttle drives Shuttle Express out of the market it will be able to raise

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[119] *E.g.* PK-1T at 6-9; PK-2; HJR-1T at 48-52.

[120] *E.g.* PK-3T at 18.

[121] *E.g.* HJR-1T at 51; HJR-28-X at 31-35, 50.

[122] HJR-1T at 52.

[123] PK-3T at 22.

[124] *E.g.* PK-3T at 19-21.

[125] E.g., PK-1T at 6-11; PK-3T 14-16, 21-23.

[126] HJR-28-X at 59-60.

prices.[127] The main issue is whether it would be in the public interest and consistent with RCW 81.68.040, 81.28.010, and other statutes to permit Speedishuttle to **try** to drive Shuttle Express out of the market—and to do so using below-cost pricing to capture 24-31% of the passengers that Shuttle Express used to carry,[128] despite having asserted that it would offer a "different" service that would grow the overall market by serving the un-served.[129] The Commission should focus on the public service laws it is bound to enforce, in particular its duty to promote the long-term public interest.

77 Because in the current market both carriers are now both losing money this means that one or maybe both carriers must ultimately fail if the status quo is maintained.[130] As Mr. Wood testified, even before one or both carriers exit the market the public is already being harmed, by increased wait times, reduced efficiency, and higher operating costs per passenger.[131] All of these problems are contrary to the short-term, and especially the longer-term, public interest. A large segment of the public still uses and values the van-provided share ride service and would be forever harmed if the service must be reduced in geographic scope, time of day, or even altogether.

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[127] Although that is certainly a risk. DJW-3T at 13.

[128] PK-1T at 13.

[129] *See, e.g.* Order 04, ¶ 20 ("an entire demographic of travelers whose needs cannot be met by Shuttle Express's existing service" that applicant could meet because its "proposed service is not the same service"); see also, Transcript at 140-44.

[130] DJW-1T at 28-29.

[131] *Id.* ("Over time, increasing financial stress as both providers continue to incur losses will result in additional pressure to reduce costs, usually by further lowering service quality. The final result could be the financial weakening of both providers to the point that neither can sustain its operations and must exit the market.").

C. Speedishuttle is cream-skimming – serving mostly the low-cost, high-volume parts of the county.

78 In one very narrow respect, Speedishuttle may be serving a niche that was mentioned in the application phase of this case. That is "tourist." By targeting downtown Seattle and Bellevue, the cruise industry, and wholesale customers using higher-cost vehicles[132] but lower fares Speedishuttle appears to have garnered a large share of the tourist market.[133] But this focus on tourists of all categories is not really consistent with the dictates of RCW 81.68.040 nor the broader intent of Order 04. And it is most definitely not in interest of the public—particularly residents of suburban and rural King County.[134]

79 The first problem with serving mostly tourists going to downtown hotels and piers is a legal one; *i.e.*, Shuttle Express was already serving tourists generally satisfactorily.[135] The Commission knew this, which is likely why it based its grant on service to a "specific subset of customers" that are not just tourists, but also "tech-savvy" and "non-English" speaking. *See* Order 04, ¶ 21. But Speedishuttle is not providing any greater or different service to tech-savvy tourists.[136] Any trifling differences, such as TV sets, have done nothing to attract any noticeable – let alone measurable new "tech-savvy" passengers to share rides in King County.[137]

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[132] *E.g.* DJW-3T at 12. In addition to the higher-cost vehicles, Speedishuttle also supposedly adds the cost of greeters.

[133] *E.g.* PK-1T at 12-14; WAM-1T at 20.

[134] *See, e.g.* DJW-1T at 30-31 (service outside Seattle "at risk").

[135] WAM-1T at 20.

[136] WAM-1T at 20-21; DJW-1T at 25.

[137] *Id.*

80 The second problem is that by pricing below Shuttle Express and below cost—despite higher operating costs—and targeting wholesale customers that served tourists, Speedishuttle effectively left most of the higher cost parts of the county to Shuttle Express.[138] This is commonly known as "cream skimming."[139] And since Shuttle Express lost most of the most profitable part of its business, as well as the economies of scale, it is now losing money.[140] The sustainability of service to most of the county is now questionable at best.[141]

81 Tourists to downtown Seattle have a number of viable options for ground transportation to and from the airport, including light rail at just a few dollars. They have many more economically viable options than suburban and rural residents of the county. It would not be in the public interest for the Commission to continue to allow Speedishuttle to cream skim the tourists from out of state and thereby jeopardize the service to the residents of the state. And it would be a great disservice to the taxpayers of the state.

V. APPROPRIATE RELIEF OPTIONS ON SHUTTLE EXPRESS PETITION/COMPLAINT

82 The Washington Supreme Court has long recognized that this Commission is given broad powers to fashion remedies when one carrier complains against another based on changed conditions. The powers and remedies clearly emanate from the state's public service laws, not state or Federal antitrust laws. For example, in *State v. Dep't of Pub. Works*, 161 Wash. 622, 632, 297 P. 795, 798 (1931) the Court upheld the action of the Commission's predecessor under

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[138] PK-1T at 12-14. PK-3T at 8-9.

[139] DJW-1T at 30; PK-3T at 8-9.

[140] *E.g.* PK-3T at 18.

[141] *E.g.* DJW-1T at 28-31; PK-3T at 8-9.

the predecessor to RCW 81.04.110, noting that: "This is but a matter of adjustment of the competition differences between these transportation companies in view of changed conditions from those existing at the time of the original granting of the good-faith certificates to them."

83 Speedishuttle has not acted at all in the way the Commission expected based on its application and representations when it sought its certificate. In some respects it is because Speedishuttle has not performed as it led the Commission to believe it would. And in other respects the Commission may have misjudged what would happen in the real world if it granted a certificate based on a business model that promised growth in the market and little or no harm to the existing certificate holder but without any constraints that would hold the applicant to the proffered business model. Regardless of the cause of the problem, there is a problem. And it needs a prompt solution.

A. The UTC should restrict the certificate to authorize only the "different" service model that the Commission approved in Order 04.

84 First and foremost, and at the very least, the Commission should amend the certificate to require that service only be provided that is consistent with the express promises and representations of SpeediShuttle at the brief adjudicative hearing on their application, made under oath.

85 To ensure compliance with the proposed business model, first no service could be provided to what were called "walk-up" passengers. Service should be limited to "by reservation only" as contemplated by WAC 480-30-096. To eliminate any possible unduly expansive view of what constitutes a "prior reservation," the order should specify that arriving airline passengers riding outbound from the airport must have "reserved" by phone or on the website or mobile

application their ride before the scheduled arrival of their flight.[142] This will further help ensure that passengers who do not speak English can book on a multilingual service or website. And will mean that Speedishuttle can greet each and every arriving passenger at baggage claim, because they will have reserved carriage before they are at baggage claim. Speedishuttle should be prohibited from picking up passengers going to the airport at hotels or cruise terminals, too, unless they have made reservations on the phone, website, or Speedishuttle mobile application at least 30 minutes prior to scheduled departure to the airport.

86 Second, Speedishuttle must greet each and every passenger being transported from the airport, in the native language of the passenger. To do this, they must station an adequate number of greeters, not just at baggage claim, but also at the other security exits where passengers with no checked luggage might exit the secured area and track and staff the appropriate multi-lingual staff when requested.

87 As the vagaries of Mr. Roemer's testimony illustrates, determination of what is an "adequate" number of greeters is subjective. Accordingly, the Commission should order Speedishuttle to revise its tariff to state that any passenger from the airport who is not greeted in the main terminal (not the garage) or does not have a greeter in their requested language will be given a full refund of their one-way fare or its equivalent in the case of a round-trip purchase. To the extent possible Speedishuttle should process the refund even in the absence of and without a need for a request.

88 To ensure all passengers entitled to a refund receive one, Speedishuttle should be ordered to post a notice of this right conspicuously at its airport kiosk and in each of its vehicles, to include

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[142] Speedishuttle testifies it needs and tracks flight arrival times in order to provide greeter service, so this should not be a burden or infeasible to implement.

Commission contact information in the event of a dispute. Conspicuous notice must also be provided on Speedishuttle's webpage where outbound passengers make their reservations. Customer service representatives taking reservations by phone should notify passengers of the refund right on all calls booking outbound reservations. Commission Staff should review and approve the phone scripts and posting details and print size in advance.

B. In the alternative, the UTC should cancel the Speedishuttle certificate.

89 The Commission is empowered to cancel Speedishuttle's certificate for cause, including, among other things, its "[s]ubmission of false, misleading or inaccurate information" (WAC 480-30-171) and "For serious actions including, but not limited to, misrepresentation…." WAC 480-30-241.

90 The Commission should first make a good faith attempt to allow and require Speedishuttle to provide the service according to the business model that led to its grant of authority. If the Commission can craft relief short of cancellation that ensures Speedishuttle will not continue to "offer to serve any and all customers seeking door-to-door service," then that would be an appropriate remedy. Further, it would be consistent with what the Commission thought it was doing in the first place. See Order Nos. 02, 04, and 08. But if the Commission does not see restricting and conditioning Speedishuttle's authority as being feasible or a sufficient remedy to fully protect the public interest, it should cancel the Speedishuttle certificate for cause.

VI. THE SPEEDISHUTTLE COMPLAINT

91 Speedishuttle filed its Formal Complaint against Shuttle Express on December 1, 2016, asserting that Shuttle Express was improperly using licensed limousine carriers to transport passengers who had originally reserved auto transportation service and paying unlawful commissions to

persons who refer passengers to Shuttle Express.[143] The Formal Complaint does not allege that either practice harmed or damaged Speedishuttle in any way. Nor does it allege any harm to the public interest.[144] It appears to have been nothing more than an attempt to delay the hearing and retroactively resurrect the issue of whether Shuttle Express was serving to the "satisfaction" of the Commission in 2015. While it succeeded in both goals—on an interim basis—in the final order there is nothing in the Formal Complaint that justifies delaying or diminishing the relief to which Shuttle Express is entitled on its Petition and Complaint.

92 Staff resoundingly rejected the "unlawful commission" complaint.[145] However, Staff supported the complaint regarding the referral of single passengers to limousine carriers.[146] Indeed, Staff recommended a massive fine on a complaint brought not by the Commission, but by a private party. *Id.* Staff is right on the commissions, but dead wrong on the referral of individual passengers to limousine carriers.

93 On April 3, 2017, noting the Formal Complaint and Staff's investigation and recommendations on transportation of passengers by limousine carriers, the Commission amended Order 08 to re-inject the issue of its "satisfaction" with the Shuttle Express service. Of course, to the extent Speedishuttle and Staff seek penalties or a reversal of the Commission's rulings on satisfaction in Order Nos. 02 and 04, they bear the burden of proof. The underlying facts are largely undisputed, making the issues primarily legal. Until the other parties file their briefs, their legal

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[143] The Shuttle Express commission program is discussed in detail at WAM-3T, pages 26-27.

[144] The public interest was also ignored by Staff. But use of limousine upgrades on occasion is unquestionably in the public interest. E.g., DJW-3T at 22-23.

[145] BR-5. *See also*, DP-1T.

[146] DP-1T.

positions are largely unknown. Accordingly, Shuttle Express can only address the Formal Complaint and Staff investigation at a high level at this time.

94 Finally, at the hearing and post-hearing Bench Request No. 4, there was some discussion of the Shuttle Express practice of dropping share ride passengers at locations that are not also listed as "flag stops" for scheduled service.[147] The issue came up because Mr. Roemer took a scheduled ride in a van that had a combination of scheduled and share ride passengers on the same trip.[148] His van made a stop to drop a door-to-door share ride passenger at a location that was not a scheduled service flag stop location.[149] Mr. Marks admitted that since Shuttle Express often combines scheduled and share ride passengers for efficiency and faster service, vans will often make stops at door-to-door service locations that are not listed as flag stops in the scheduled service tariff.[150] Staff opined in the bench request response that ***if*** scheduled service passengers were dropped at unlisted scheduled service locations that would be unlawful.[151] But since there is no evidence in the record that that has ever happened, this matter should not be in issue.[152]

A. <u>Shuttle Express has not violated any statutes or rules.</u>

95 First, the referral Commissions are not unlawful, for some of the reasons that Staff discussed in its testimony and bench request response. Unlike a past case when hotels and concierges

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[147] TR. at 650, *et seq.*

[148] The Roemer trip is discussed in detail at WAM-3T, pages 3-8.

[149] TR. at 650.

[150] TR. at 662-63.

[151] BR-4.

[152] The whole discussion on the record was in the context of a <u>share ride</u> stop that was not a listed flag stop for <u>scheduled</u> service. TR. at 663 ("It was not a scheduled service stop prior to him….").

actually sold tickets, the current practice only involves compensation for the referral of a passenger.[153] The passenger pays the full tariffed fare directly to Shuttle Express and receives the ticket from Shuttle Express.[154] Moreover, the net fare that Shuttle Express retains after payment of the commissions are all within the range of its flexible fares on file with and approved by the Commission.[155] Referral commissions are lawful and should be a non-issue.

96 Next, it is admitted that Shuttle Express often asks individual passengers[156] if they would like to change from their auto transportation (share ride) service to a limousine.[157] These offers to upgrade from a share ride van to an individual town car are done at times when there are not sufficient unrelated parties going to or from an area in King County.[158] If the passenger were not referred to a limousine carrier they might have to wait much longer for a share ride service. Or, Shuttle Express could transport a single passenger in a van, which is more costly and less efficient.[159]

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[153] BR-5.

[154] *Id.*

[155] WAM-3T at 26; BR-5.

[156] Sometimes it is a related group or party, like a family or business associates traveling together on the same reservation. But in all cases the transportation is one person—or perhaps more persons—going between the airport and a single non-airport location, under a single booking for service. Thus, these trips have come to be referred to as "single-stop" trips. Mr. Pratt called them "single party" trips. DP-1T at 4.

[157] WAM-3T at 29-30, 33-34.

[158] *Id.*

[159] WAM-3T at 30-31. Passengers will be transported in a company van with a company driver if they decline the upgrade offer. WAM-3T at 33-34.

97 Unlike past investigations of Shuttle Express's use of limousine carriers, each and every one of the 40,727 trips cited by staff was a single party and a "**single-stop**."[160] The issue that led to previous investigations and penalties, dealt solely with ***multi-stop*** trips for limousine purposes. That issue does not and cannot exist here because there are only single-stop trips of individuals—or of companions traveling together. Indeed, Mr. Pratt even said, "No trips involved a 'shared ride' service." Of course, "shared ride" is what the Commission regulates. *See, e.g.,* WAC 480-30-016(2)(h).

98 The term "limousine" is defined by the nature of the motor vehicle, not the parties nor history of the arrangement of or entry into the single contract. RCW 46.04.274. Because the single-stop transportation is provided in a limousine, by a limousine carrier, the Commission has no jurisdiction over it. *E.g.*, Washington Laws, 1996, Ch. 87, § 22. Indeed, the Commission granted Shuttle Express a waiver in Docket TC-160819 to refer even multi-stop (*i.e.* share ride) trips to limousine carriers. Thus for the Commission to assert jurisdiction over single-stop trips for the first time just after it has permitted multi-stop referrals to carriers regulated by the DOL would be puzzling to say the least.

B. If a violation were found it would be a change in position by the UTC and could not support any fines or penalties.

99 The existence of the single-stop independent contractor referrals that is the basis of Mr. Pratt's pre-filed testimony in this docket was well-known by both Staff and the Commission in the 2012 docket. The Staff's answer to the Shuttle Express petition for review explained it fully:

> The enforcement in this proceeding addresses only the **multi-stop** (that is, **share-ride**) transportation provided by independent contractors on behalf

[160] *E.g.,* DP-1T. Mr. Pratt actually referred to the trips as "single party." The intent is the same.

of Shuttle Express. Staff witness Betty Young explained this at hearing in response to Judge Torem's questions:

Q [By Judge Torem] So is it Commission Staff's position, then, that anytime Shuttle Express dispatches somebody for regulated service, and it's in **a vehicle operated** by them under their certificate, it has to be an employee of the company?

A [Betty Young] That's what the Commission's rules require, yes.

Q [Judge Torem] If an independent contractor drives, for whatever reason, it's a violation of this particular rule [WAC 480-30-213(2)]. Is that the Commission's position?

A [Betty Young] The independent contractors can provide **other service, which is completely fine under their limo license or under their for-hire authority.** That's regulated through the Department of Licensing. However, once it switches over into **share ride** service on Shuttle Express's regulated routes, that's where it violates Commission rules[161]

Of course, a single-stop service is not "share ride," as the Staff witness explained then and Mr. Pratt repeated in this case. In the 2012 action both the Staff and the Commission were well aware of the single-stop service and essentially ignored it—for the reasons discussed by Ms. Young at the hearing.

100 Because the single-stop transportation is provided in a limousine, by a limousine carrier, the Commission has no jurisdiction over it. *E.g.*, Washington Laws, 1996, Ch. 87, § 22. Accordingly, both the Staff and the Commission found no violation for the more than 6,000 single-stop trips revealed repeatedly in Docket TC-120323. Of the 12,075 total trips—both single and multi-stop—that were unquestionably known and discussed extensively by the Staff in

[161] TC-120323, Commission Staff's Answer to Petition for Administrative Review, at 7, filed Jan. 13, 2014 (emphasis added).

its report and the Commission in its orders,[162] only the 5,715 multi-stop **(share-ride)** trips were the subject of any enforcement action whatsoever.[163]

101 The fact of past and ongoing single-stop referrals to independent contractors is not at all new, but merely a new and previously undisclosed enforcement interpretation by the Staff. Indeed, Mr. Pratt essentially admitted that the hearing that "in hindsight" he himself views single-stop trips differently today than in the 2012 case.[164] Similarly, in the 2012 case Staff told Shuttle Express in a meeting that they agreed single-stops were legal. If the Staff enforcement personnel can't be sure what the law is or should be, how is the regulated carrier supposed to know?[165] For the Commission to penalize Shuttle Express in any way—including a retroactive finding of no "satisfaction"—based on actions that have been considered lawful by the Commission, DOL, and Shuttle Express for many years until this case (if the Commission even agrees with Staff's legal conclusions) would be unfair and violate due process notice rights.

102 The Supreme Court made clear recently in *FCC v. Fox*, 567 U.S. 239, 132 S.Ct. 2307 (2012), that fines will violate due process if an agency has failed to give "fair notice" of the specific conduct that is prohibited. Here the Commission unquestionably did not make it clear that single-stop limousine service was not allowed. If the Commission made anything clear it was that single-stop ***was allowed***. The record shows a change of heart by the staff. But there is nothing in the record to show or support that that change of opinion was ever communicated to

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[162] *See, e.g.*, TC-120323 Staff Investigation Report by Betty Young at 10-12, March 2013.

[163] *See* TC-120323 Commission Order 03, Nov. 11, 2013, and Commission Order 04, March 19, 2014.

[164] See TR. at 850.

[165] Regulation by surprise is not effective, especially when it is inconsistent. *See* DJW-3T at 22-23.

Shuttle Express, the industry generally, or the public. There was no notice, much less "fair" notice.

VII. CONCLUSION

103 The facts now show Speedishuttle is essentially providing the same service that the Complainant has been providing to the satisfaction of the Commission for years, which is exactly what the Commission did not intend. Speedishuttle has shown a clear pattern of misrepresentation from the initial application through the last hearing. The Commission finally has an opportunity to hold Speedishuttle accountable to their statements, by restricting their certificate to the services originally represented. Specifically, that would be at a minimum: 1) prearranged reservations; 2) to meet all customers with a greeter in baggage claim and other exits from the secured areas used by passengers with no checked luggage; and 3) to offer and provide multilingual greeter and reservation call service when indicated. These are not services that Shuttle Express provides in its door to door service and thus could be clearly construed as being "different."

104 Finally, the Commission should consider hypothetically if Speedishuttle would have objected to the original certificate being issued to address and require the unique service offering that was the basis for their application to "operate" the same "service" in the same "territory" as Shuttle Express. If not, then the Speedishuttle should have no objections to a reissuance of the certificate now. If Speedishuttle would have objected to a restricted certificate, then the

Commission would have to question the integrity of Speedishuttle's representations at the initial brief adjudicative hearing.

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I hereby certify that on June 19, 2017, I electronically served via email the foregoing Initial Post-Hearing Brief on behalf of Shuttle Express, Inc. to:

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