

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In re the Application of SPEEDISHUTTLE WASHINGTON, LLC d/b/a SPEEDISHUTTLE SEATTLE For a Certificate of Public Convenience and Necessity to Operate Motor Vehicles in Furnishing Passenger and Express Service as an Auto Transportation Company	DOCKET TC-143691 <i>(Consolidated)</i> ORDER 19
SHUTTLE EXPRESS, INC., Complainant, v. SPEEDISHUTTLE WASHINGTON, LLC d/b/a SPEEDISHUTTLE SEATTLE, Respondent.	DOCKET TC-160516 <i>(Consolidated)</i> ORDER 12
SPEEDISHUTTLE WASHINGTON, LLC d/b/a SPEEDISHUTTLE SEATTLE, Complainant, v. SHUTTLE EXPRESS, INC., Respondent.	DOCKET TC-161257 <i>(Consolidated)</i> ORDER 09 INITIAL ORDER

BACKGROUND

- 1 **PROCEDURAL HISTORY.** On October 10, 2014, Speedishuttle of Washington, LLC d/b/a Speedishuttle Seattle (Speedishuttle) filed with the Washington Utilities and Transportation Commission (Commission) an application for a certificate of public convenience and necessity to operate as an auto transportation carrier (Application). Shuttle Express, Inc. (Shuttle Express) and Pacific Northwest Transportation Services, Inc. d/b/a Capital Aeroporter Shuttle (Capital Aeroporter) objected to the Application.
- 2 On January 22, 2015, following a brief adjudicative proceeding before administrative law judge Rayne Pearson, the Commission entered Order 02, Initial Order Overruling Objections to New Authority (Order 02). Order 02 found that Speedishuttle did not propose to offer the same service that either Shuttle Express or Capital Aeroporter provides. Shuttle Express and Capital Aeroporter filed petitions for administrative review of Order 02, and on March 30, 2015, the Commission entered Order 04, Final Order Affirming Order 02 (Order 04). No party sought judicial review of Order 04.
- 3 On May 16, 2016, Shuttle Express filed a Petition for Rehearing of Matters in Docket TC-143691. Shuttle Express alleges in its Petition that the facts supporting the Commission’s decision in Order 04, “have not been borne out in actuality since [Speedishuttle] began airporter service in May of 2015,”¹ and that Speedishuttle “oversold its purported distinctions, to the point of misrepresentation of material facts, either intentionally or negligently.”²
- 4 Shuttle Express specifically alleges, among other things, that Speedishuttle has made no apparent effort to hire multilingual greeters; that multilingual service may be offered only to a *de minimus* number of passengers; that it is not known whether Speedishuttle provides working TV and Wi-Fi in its vans; and that Speedishuttle has failed to implement its 20-minute departure guarantee. Shuttle Express contends that these factors formed the basis for the Commission’s finding that Speedishuttle proposed to offer different service than Shuttle Express currently provides. Shuttle Express claims that Speedishuttle is instead engaging in direct competition with Shuttle Express.

¹ Petition of Shuttle Express ¶17.

² *Id.* ¶20.

- 5 Also on May 16, 2016, Shuttle Express filed with the Commission a Formal Complaint against Speedishuttle for its Rules, Regulations, or Practices in Competition with Complainant that are Unreasonable, Insufficient, Unremunerative, Discriminatory, Illegal, Unfair, or Tending to Oppress the Complainant in Docket TC-160516. The allegations set out in Shuttle Express's Complaint substantially overlap with the allegations set out in its Petition for Rehearing, and further allege that Speedishuttle is providing service below cost.
- 6 On August 4, 2016, the Commission entered Order 06, Granting Petition for Rehearing. That same day, the Commission entered Order 07 and Order 02, Prehearing Conference Order and Order of Consolidation; Notice of Hearing, which consolidated Dockets TC-143691 and TC-160516.
- 7 On August 24, 2016, Speedishuttle filed a Petition for Administrative Review of Order 06. On September 2, 2016, Shuttle Express filed its Answer in Opposition to Petition for Review and Partial Challenge of Order 06.
- 8 On September 27, 2016, the Commission entered Order 08, Denying Requests for Review of Order 06; Denying Leave to Reply; Granting, in Part, Motion to Strike (Order 08). Order 08 provided the following guidance to the parties:
- [T]he sole issue the Commission will consider on rehearing is whether Speedishuttle is limiting the service it provides to the service and customer types described in the business model on which the Commission based its grant of authority ... To the extent that the allegations in the Petition for Rehearing in Docket TC-143691 overlap with the allegations in Shuttle Express' complaint in Docket TC-160516, the issue will be similarly limited.³
- 9 On October 4, 2016, Speedishuttle filed a Petition for Reconsideration of Order 08. Speedishuttle argued that the portions of Order 08 restricting the company's service to its business plan are inconsistent with Order 04's grant of authority, as well as the Commission's prior policy statements encouraging competition in the auto transportation industry. Speedishuttle requested that the Commission amend those portions of Order 08,

³ Order 08 ¶25.

or, alternatively, stay this proceeding to allow the company to determine whether it wishes to continue offering regulated service.

- 10 On November 10, 2016, the Commission entered Order 09, Denying Reconsideration and Request for Stay (Order 09). In Order 09, the Commission held that it cannot grant Speedishuttle a certificate to offer the same service Shuttle Express provides without a finding that Shuttle Express is not providing such service to the Commission's satisfaction. The Commission further held that Speedishuttle's prior lack of understanding of that constraint is not sufficient grounds to suspend the procedural schedule in this case.
- 11 On December 1, 2016, Speedishuttle filed with the Commission a formal complaint against Shuttle Express in Docket TC-161257, alleging that Shuttle Express has used independent contractors and paid commissions to unauthorized ticket agents in violation of Commission orders and rules. On December 16, 2016, Speedishuttle filed a Motion to Consolidate its complaint with the proceedings in Dockets TC-143691 and TC-160516.
- 12 On January 5, 2017, the Commission entered Order 12, Granting Motion to Consolidate; Order of Consolidation, which consolidated Docket TC-161257 with Dockets TC-143691 and TC-160516. In response to Order 12, Commission staff (Staff) notified the Commission that it would independently investigate the allegations set out in Speedishuttle's complaint.
- 13 On March 23, 2017, the Commission issued a Notice of Intent to Amend Order 08 and Notice of Opportunity to File Written Response. The Notice advised the parties that the Commission, on its own motion, intended to modify Order 08 to include on rehearing the issue of whether Shuttle Express is providing service to the Commission's satisfaction pursuant to RCW 81.68.040 and WAC 480-30-140. Shuttle Express filed a response opposing any amendment to Order 08. Speedishuttle filed a response supporting the Commission's proposed amendment, and Staff filed a response indicating that it did not oppose amending Order 08.
- 14 On April 3, 2017, the Commission entered Order 17, Amending Order 08, which held that:

We amend Order 08 to include in our rehearing of Order 04 the issue of whether Shuttle Express will provide the same auto transportation service Speedishuttle offers to the Commission's satisfaction. The Commission

did not reach that issue in the original BAP, finding that Speedishuttle did not propose to offer the same service Shuttle Express was providing. It has become increasingly apparent that each of the parties, as well as the Commission, has a different understanding of what comprises the “same service” under the circumstances presented here. We find that we cannot resolve the Petition for Rehearing and the complaints in this consolidated proceeding without clarifying that understanding and correspondingly determining whether Shuttle Express will provide that service to the Commission’s satisfaction.⁴

- 15 On May 10 and 12, 2017, the Commission conducted an evidentiary hearing before Judge Pearson. Shuttle Express presented testimony and evidence from Paul Kajanoff, president; Wesley Marks, director of compliance and shared services; Don Wood, consultant and expert witness; and Jason DeLeo, consultant for SMS International Port Services (SMS). Speedishuttle presented testimony and evidence from H. Jack Roemer, chief financial officer. Staff presented testimony from David Pratt, assistant director for Transportation Safety, and Mike Young, section manager for Regulatory Services.
- 16 On June 19, 2017, the parties filed initial post-hearing briefs. In its initial brief, Shuttle Express argues that the evidence shows that Speedishuttle is not greeting all passengers at the airport, not serving a non-English-speaking demographic, and not departing the airport within 20 minutes. Shuttle Express further alleges that Speedishuttle falsely represented it would provide only prearranged service despite evidence showing that it intended to provide walk-up service prior to the approval of its Application. Accordingly, Shuttle Express requests the Commission revisit the question of whether the public convenience and necessity require overlapping service in the absence of the purported service distinctions.
- 17 Shuttle Express recommends the Commission either restrict Speedishuttle’s certificate to authorize only the different service that the Commission approved by limiting Speedishuttle’s service to “reservation only,” requiring Speedishuttle to greet every passenger with a greeter who speaks that passenger’s native language, and requiring Speedishuttle to automatically issue a refund to any passenger who is not greeted. In the

⁴ Order 17 ¶14.

alternative, Shuttle Express recommends the Commission cancel Speedishuttle's certificate.

18 Finally, Shuttle Express argues that it has not violated any Commission rules by paying commissions to hotel employees or using independent contractors to transport passengers. Shuttle Express further contends that in 2012, Staff told Shuttle Express in a meeting that single-stop independent contractor trips were legal.

19 In its initial brief, Speedishuttle argues that it provides the service it originally proposed to provide: door-to-door service between SeaTac and points in King County using 11-passenger Mercedes vans equipped with Wi-Fi and "SpeediTV"; offering website reservation services in Japanese, Chinese, and Korean; and using some multi-lingual receptive team members. Speedishuttle further argues that it has largely implemented a 20-minute departure time despite encountering unanticipated obstacles at SeaTac. Although Speedishuttle acknowledges that its decision to provide walk-up service deviated from the business plan presented at the Application hearing, it argues that doing so was lawful because it sought guidance from Staff prior to its implementation.

20 Speedishuttle further argues that Shuttle Express failed to prove that its fares are unlawful; the fact that Speedishuttle has failed so far to make a cumulative profit does not, as a matter of law, establish that Speedishuttle has engaged in any harmful competitive pricing practice.

21 With respect to its complaint against Shuttle Express, Speedishuttle argues that Shuttle Express either failed to serve those passengers who were ultimately transported by independent contractors, or it served them in violation of Commission rules. Either way, Speedishuttle argues that Shuttle Express did not satisfactorily provide service to those passengers.

22 Finally, Speedishuttle argues that Shuttle Express's payments to hotel staff without prior Commission approval violate state law. Speedishuttle disagrees with Staff's opinion that Shuttle Express is merely paying commissions for referrals, because hotel employees appear to be making reservations on behalf of passengers.

23 In its initial brief, Staff recommends the Commission penalize Shuttle Express \$1,060,530 for referring trips to non-employed drivers using non-owned vehicles on 35,351 occasions in violation of WAC 480-30-213. Staff notes that Shuttle Express is now a third-time offender; the company received a \$9,500 penalty in 2008 and a \$60,000

penalty in 2014 for violations of the same rule. Staff further argues that Shuttle Express may not unilaterally decide that the Commission has no jurisdiction over trips performed by independent contractors, and contends that Shuttle Express's distinction between single-stop and multi-stop trips is fictional. Commission jurisdiction, Staff argues, hinges on compensation for transportation between fixed termini or over a regular route, not the number of stops in a given trip.

- 24 Staff further recommends the Commission take no action with respect to Speedishuttle's certificate because the Commission authorized Speedishuttle to compete directly with Shuttle Express based on a differentiation of service features between the two companies. Staff agrees with Speedishuttle that the record shows it has fundamentally implemented the business model it presented at the Application hearing.
- 25 With respect to Shuttle Express's allegation that Speedishuttle is providing service below cost, Staff contends that the record contains insufficient evidence regarding Speedishuttle's cost of service, and recommends the Commission find that Shuttle Express failed to meet its burden of proof on this issue.
- 26 On July 14, 2017, the parties filed reply briefs. In its reply brief, Shuttle Express argues that both Staff and Speedishuttle ignore the broader public interest issues in this proceeding, and reiterates its position that Speedishuttle's certificate should be restricted or cancelled. Shuttle Express restates its position that the Washington Department of Licensing has exclusive jurisdiction over limousines, and contends that it has not violated any Commission rules related to commissions or flag stops.
- 27 In its reply brief, Speedishuttle argues that Shuttle Express failed to establish that Speedishuttle made misrepresentations about its service. Speedishuttle also asserts that Shuttle Express has produced no evidence of harm to Shuttle Express, that the market cannot sustain two providers, or that Speedishuttle is "cream skimming" certain customers. Conversely, Speedishuttle argues that the evidence in the record supports a finding that Shuttle Express violated Commission rules related to time schedules and the use of independent contractors.
- 28 In its reply brief, Staff argues that Shuttle Express's proposed restrictions on Speedishuttle's certificate would be extremely difficult to enforce. Staff further argues that the Commission should not assume a direct correlation between Speedishuttle's entry into the market and Shuttle Express's purported revenue decline; Shuttle Express could reduce its costs, file a rate case to increase its base fare, or attract more customers by

improving its service. Finally, Staff contends that Shuttle Express's position that the Commission cannot penalize single-stop trips performed by independent contractors is untenable because the Commission never expressly held that single-stop referral trips comport with Commission rules.

29 **APPEARANCES.** Brooks E. Harlow, Lukas, Nace, Gutierrez & Sachs, LLP, McLean, Virginia, represents Shuttle Express. David Wiley and Blair Fassburg, Williams, Kastner & Gibbs PLLC, Seattle, Washington, represent Speedishuttle. Julian Beattie, Assistant Attorney General, Olympia, Washington, represents Staff.

EVIDENCE

1. Shuttle Express Petition for Rehearing and Complaint

30 **Speedishuttle's Business Model.** Mr. Kajanoff, Mr. Marks, and Mr. Wood offered testimony and exhibits to support Shuttle Express's claim that Speedishuttle is providing the same service that Shuttle Express provides. Mr. Roemer's testimony rebutted these allegations.

31 Mr. Kajanoff argues that Speedishuttle provides ostensibly the same service that Shuttle Express provides, and that the market in their overlapping service territory cannot sustain both providers. Mr. Kajanoff further argues that Speedishuttle has captured a large share of Shuttle Express's customer base, as evidenced by Shuttle Express's declining passenger counts and the fact that Speedishuttle has increased its fleet from five to 18 vehicles and installed a kiosk at SeaTac Airport to serve walk-up customers. Mr. Kajanoff contends that Speedishuttle avoids serving areas other than downtown Seattle, where it has undercut Shuttle Express's fares by 9 percent. By contrast, he argues, Speedishuttle's fares are 13 percent higher than Shuttle Express's fares in the remaining areas of King County.

32 On cross-examination, Mr. Kajanoff acknowledged that the number of passengers traveling to and from SeaTac airport has grown every year since 2010, and that there is no way to know for sure that Shuttle Express's decline in passengers is attributable to Speedishuttle rather than other, unregulated forms of transportation.⁵

⁵ Kajanoff, TR 412:13-413:2; 413:18-414:23.

- 33 On rebuttal, Mr. Kajanoff notes that no passengers have made reservations on Speedishuttle's website in Chinese, Japanese, or Korean, and claims that not all of Speedishuttle's passengers are met by personal greeters. Finally, Mr. Kajanoff argues that Speedishuttle is not serving a new segment of the market. Instead, he claims, the economies of scale have been diluted for both companies.
- 34 On cross-examination, Mr. Kajanoff conceded that Shuttle Express does not greet its customers at baggage claim, and that Speedishuttle's service is different on that basis.⁶
- 35 Mr. Marks argues in his testimony that Speedishuttle's operations are functionally the same as Shuttle Express's operations because they serve the same passengers. Specifically, Mr. Marks claims that Speedishuttle produced no data about the operability of its Wi-Fi network or whether customers watch TV in its vehicles. Mr. Marks also argues that Speedishuttle's use of Mercedes vans does not differentiate its service from Shuttle Express's service. On cross-examination, however, Mr. Marks acknowledged that Mercedes vans may attract customers who might not use Shuttle Express.⁷
- 36 Finally, Mr. Marks argues that Speedishuttle's kiosk was designed to facilitate direct competition with Shuttle Express. Mr. Marks notes that nearly one-third of Speedishuttle's passengers are served from its kiosk, and those passengers cannot be met by personal greeters.
- 37 On rebuttal, Mr. Marks argues that Speedishuttle should be monitoring its Wi-Fi speed and usage as Shuttle Express does, and notes that Speedishuttle's employment application does not request information about languages spoken other than English.
- 38 Mr. Wood argues in his testimony that the Commission should only grant entry to a new carrier if it serves a market segment previously unserved because the incumbent is unable or unwilling to do so, or if it provides service elements that will expand the overall size of the market. Mr. Wood acknowledged on cross-examination, however, that he has never testified in a case involving regulated auto transportation service, and that he only

⁶ Kajanoff, TR 463:12-16.

⁷ Marks, TR 516:12-20.

became familiar with Commission laws and rules for the first time in the context of this proceeding.⁸

39 Mr. Wood next contends that Speedishuttle is not providing service according to the business model approved by the Commission. First, he argues that Speedishuttle's walk-up service negates both the multilingual and personal greeter service differentiations. Next, Mr. Wood notes that one-third of Speedishuttle's customers make their bookings through Go Group, which is the same user interface previously used by Shuttle Express. On cross-examination, however, Mr. Wood conceded that customers who make reservations with Speedishuttle through wholesalers, such as Go Group, nevertheless receive different service from Speedishuttle than they would from Shuttle Express.⁹

40 Mr. Wood also argues that few if any of Speedishuttle's customers are greeted outside security, but are instead met in the baggage claim area, while many are not greeted at all. Finally, Mr. Wood argues that Speedishuttle is "cream skimming" the most lucrative, lowest cost routes because 85 percent of outbound walk-up customers seek service to downtown Seattle. Mr. Wood recommends the Commission cancel or restrict Speedishuttle's certificate.

41 In response to Mr. Wood's testimony, Mr. Roemer contends that 80 percent of Speedishuttle's customers are prearranged rather than walk-up, the majority are not scheduled through wholesalers, and typically all are met by a greeter.

42 Mr. DeLeo testified that SMS terminated its contract with Speedishuttle to transport cruise passengers between SeaTac and area hotels because guests complained that they were not being met by greeters.

43 In response to Mr. DeLeo's testimony, Mr. Roemer argues that Speedishuttle was unable to follow up on the non-specific complaints it received from SMS because no dates, names, or times were provided. Mr. Roemer disputes Shuttle Express's claim that it fails to greet its customers, and notes that Speedishuttle, not SMS, terminated the parties' contract. On cross-examination, Mr. DeLeo conceded that he was not actually aware which party terminated the contract, and acknowledged that Speedishuttle produced an

⁸ Wood, TR 271:6-17.

⁹ Wood, TR 312:10-313:6.

email demonstrating that Speedishuttle, not SMS, chose to end their business relationship.¹⁰

- 44 In his responsive testimony, Mr. Roemer maintains that Speedishuttle provides different service than Shuttle Express provides, consistent with the business model approved by the Commission. Speedishuttle's service, he contends, is different from Shuttle Express's service because it offers superior customer service, newer model Mercedes vans, shorter wait times, onboard Wi-Fi, and multilingual receptive teams. Shuttle Express, by contrast, uses basic Ford vans without additional service enhancements.
- 45 In addition, Mr. Roemer argues that two other features differentiate its service from Shuttle Express's: Speedishuttle only uses vehicles it owns and operates – unlike Shuttle Express, which contracts service out to third-party drivers and vehicles – and Speedishuttle provides only door-to-door service, while Shuttle Express combines its door-to-door and scheduled service in the same vehicles.
- 46 Mr. Roemer describes Speedishuttle's service features, including SpeediTV, which provides information about sightseeing in the Seattle area, and the Company's multilingual websites, which reduce or remove access barriers for Chinese, Korean, and Japanese-speaking customers.
- 47 In response to Shuttle Express's criticism related to its 20-minute departure time, Mr. Roemer argues that limitations imposed by SeaTac Airport, such as the requirement that Speedishuttle vehicles wait in the holding lot rather than the departure area, has impacted Speedishuttle's ability to depart timely.
- 48 Finally, Mr. Roemer testifies that Speedishuttle initially represented that it would not provide walk-up service because it was under the impression that Shuttle Express had an exclusive agreement with the Port to provide such service. Mr. Roemer notes that Speedishuttle consulted with Staff prior to installing its kiosk and was told that nothing in its certificate or Commission rules prohibited the company from providing walk-up service.

¹⁰ DeLeo, TR 264:21-265:11.

49 **Pricing Service below Cost.** To support Shuttle Express's argument that Speedishuttle is pricing its services below cost, Mr. Kajanoff notes that Speedishuttle has yet to make a profit, and is losing 0.39 cents for every dollar it makes.

50 Mr. Roemer counters that Speedishuttle is very close to making a profit, and notes that Shuttle Express admits that it also has trips for which fares do not exceed the average total cost.

2. Speedishuttle Complaint

51 **Use of Independent Contractors.** Mr. Roemer argues that Shuttle Express, at all relevant times, has failed to provide service to the Commission's satisfaction by continuously and repeatedly violating Commission rules by using independent contractors, which also demonstrates that Shuttle Express is unable to serve the entire market.

52 Mr. Roemer argues that each time Shuttle Express used independent contractors to transport passengers without a waiver from the Commission, it violated WAC 480-30-213, which requires passenger transportation companies to operate their own vehicles and use employee drivers. Mr. Roemer notes that this rule is not limited to auto transportation service; rather, it applies to all forms of passenger transportation. Although Shuttle Express offers numerous reasons for using independent contractors, Mr. Roemer argues that those passengers were either transported by Shuttle Express using independent contractors in violation of Commission rules, or Shuttle Express refused to transport them, and neither should be acceptable or satisfactory to the Commission.

53 Mr. Roemer notes that neither the revenue nor the costs of the 40,727 trips for which Shuttle Express used independent contractors in a two-year period were reported or included in Shuttle Express's annual report. Thus, Shuttle Express avoided paying regulatory fees on that revenue. On cross-examination, Mr. Kajanoff admitted that Shuttle Express excludes the fares it receives when it uses independent contractors from the revenue it reports to the Commission.¹¹ Moreover, Shuttle Express retains an 11

¹¹ Kajanoff, TR 416:22-417:2.

percent portion of each fare paid to independent contractors,¹² and those trips are neither reported to the Port of Seattle nor subject to the Port's trip fee.¹³

54 Mr. Kajanoff contends that, based on Staff's representations in 2012, the Commission has no jurisdiction over the Company's use of independent contractors for single-stop service. While Mr. Kajanoff admitted that a Shuttle Express van that makes a single stop is jurisdictional to the Commission, he contends that a limousine that makes a single stop as an independent contractor for Shuttle Express is subject only to regulation as a limousine.¹⁴

55 Mr. Marks argues that independent contractor trips are permissible under WAC 480-30-036, which allows carriers to make alternate arrangements for passengers when they are unable to provide transportation.

56 Mr. Wood notes that in a previous enforcement action in Docket TC-120323, Staff was only concerned with multi-stop rides, and represented to Mr. Kajanoff that single-stop trips performed by independent contractors were lawful.

57 **Unlawful Commissions.** With respect to Speedishuttle's claim that Shuttle Express paid unlawful commissions to hotel concierges, Mr. Roemer argues that Shuttle Express is required to file those agreements with the Commission for approval. Rather than providing discounts, Mr. Roemer contends that Shuttle Express pays commissions to circumvent Commission requirements governing ticket agent agreements.

58 Mr. Kajanoff counters Speedishuttle's argument by noting that Staff believes the Company's commissions paid to hotel employees do not violate Commission rules.

3. Staff Investigation

59 Mr. Pratt and Mr. Young provided testimony related to Staff's investigation of Shuttle Express's use of independent contractors and commission payments to hotel staff.

60 Mr. Pratt argues in his direct testimony that Commission rules require all regulated auto transportation companies to use their own vehicles and employees, which, absent a rule

¹² *Id.* 418:16-25.

¹³ *Id.* 447:4-16.

¹⁴ *Id.* 457:17-21.

waiver, prohibits the use of independent contractors. Because Shuttle Express's independent contractor service originates as an auto transportation trip, Staff contends that those trips are jurisdictional to the Commission. Staff also argues that, contrary to Shuttle Express's assertion, Commission statutes and rules apply to all auto transportation trips, not just those that make multiple stops.

61 Mr. Pratt notes that the Commission penalized Shuttle Express for using independent contractors on two prior occasions: \$9,500 in 2008 and \$60,000 in 2013. Because these are repeat violations and the likelihood of recurrence is high, Staff recommends a substantial penalty of \$1,060,530 for 35,351 violations.

62 On rebuttal, Mr. Pratt concedes that Staff chose not to pursue penalties for single-stop trips in its 2012 investigation, but never deemed those trips lawful, as Shuttle Express claims. Mr. Pratt notes that Commission rules do not define single-stop, single-reservation, or multiple-stop service. Rather, the rules equally apply to each category.

63 Mr. Pratt also disputes Mr. Marks's claim that service provided by independent contractors constitutes "alternate arrangements" under WAC 480-30-036(2), which is intended to allow carriers to make alternate arrangements in emergency or unusual circumstances. Mr. Pratt argues that switching 41 trips per day to independent contractor service is not an acceptable application of the rule.

64 Mr. Wood counters that dispatching a multi-passenger van to provide service to one passenger is not the most economic and efficient means to provide service. Mr. Wood also argues that passengers are happy to accept luxury upgrades, and urges the Commission to commend Shuttle Express for its actions because it willingly loses money to provide timely, high-quality transportation service rather than requiring customers to wait an extended amount of time for additional passengers to request service.

65 Mr. Young testified that Staff recommends the Commission take no action with respect to Speedishuttle's certificate because Staff assumed that Speedishuttle would compete directly with Shuttle Express and would not limit itself to a unique business model. Staff also argues that as long as Speedishuttle provides service within its approved flexible fare range, the company cannot be engaging in "below cost" or "predatory" pricing.

66 At hearing, Mr. Young offered Staff's position related to Shuttle Express's practices of combining scheduled and door-to-door services and making flag stops not listed in the company's tariff. While Staff believes the former is permitted, it noted in response to a

bench request that WAC 480-30-281(2)(b)(iv) requires a carrier to list all flag stops in its time schedule. Accordingly, Staff contends that Shuttle Express's practice of stopping at flag stops not identified for a given route violates Commission rules.

67 On cross-examination, Mr. Marks conceded that Shuttle Express "more than occasionally" makes stops on scheduled routes that are not listed as flag stops in the company's tariff.¹⁵

DISCUSSION AND DECISION

Speedishuttle Complaint and Staff Investigation

68 We find that Shuttle Express's use of independent contractors – as well as the company's failure to file the form for its ticket agent agreements with the Commission – violates applicable statutes and rules. We address these violations at the outset of our discussion because our findings inform other sections of this Order, particularly those related to the issue of whether Shuttle Express will provide service to the Commission's satisfaction. Accordingly, we address each violation category in turn.

69 **Use of Independent Contractors.** Speedishuttle and Staff allege that Shuttle Express's use of independent contractors for single-stop trips violates WAC 480-30-213, which requires that vehicles operated by passenger transportation companies be 1) owned or leased by the certificate holder, and 2) driven by a company employee. On its face, the rule – which applies uniformly to all passenger transportation companies – prohibits the use of independent contractors.

70 Shuttle Express argues that the Commission has previously found,¹⁶ and should continue to find, a distinction between single-stop and multi-stop auto transportation trips in its interpretation and application of WAC 480-30-213. We disagree. Neither RCW 81.68 nor WAC 480-30 make any distinction between single-stop and multi-stop trips. Rather, RCW 81.68.010 defines auto transportation as "carrying passengers ... between fixed termini or over a regular route." As Staff correctly notes, the number of stops an auto

¹⁵ Marks, TR 662:24-663:14.

¹⁶ Contrary to Shuttle Express's claim, the Commission has never expressly held that single-stop trips comport with WAC 480-30-213. The Commission's discussion in Order 04 in Docket TC-120323 addresses only the multi-stop trips for which Staff sought penalties. Staff concedes that its position has changed since the 2012 investigation, but the Commission has not had the occasion to address the legality of single-stop trips until now.

transportation carrier makes is immaterial as long as the service otherwise meets the definition of auto transportation.

- 71 To support its argument that the Commission only regulates “shared ride” service, Shuttle Express cites WAC 480-30-16, which outlines the factors the Commission will consider to determine whether a carrier’s operations require an auto transportation or charter and excursion certificate. Shuttle Express specifically cites subsection (h), which states, “Will a passenger or group of passengers have exclusive use of the vehicle or will there be shared rides or mixed use?” Consideration of this question, however, in no way implies that the Commission may not regulate trips when a single passenger or group of passengers have exclusive use of a vehicle. Rather, it is used to determine whether operations proposed as charter and excursion service may cross over into auto transportation, and therefore require a dual certificate.
- 72 Moreover, Commission rules clearly contemplate that auto transportation service may involve only a single stop. WAC 480-30-036 defines “premium service” as a type of service provided by an auto transportation company that is outside normal service. Premium service includes express service, direct route service, and nonstop door-to-door service.
- 73 We also find Shuttle Express’s argument that single-stop trips that originate as auto transportation are somehow “converted” to limousine service unpersuasive. To support its theory, Shuttle Express resurrects its previously unsuccessful argument that because the transportation is provided in a limousine, by a limousine carrier, the Commission has no jurisdiction over those trips.¹⁷ As we noted in the Commission’s Final Order in Docket TC-120323, “Commission oversight of a regulated company would be meaningless if that company could unilaterally delegate to another entity part or all of its obligations to serve the public.”¹⁸ As such, Shuttle Express is necessarily responsible for the operations of the independent contractors it employs because it directs their functioning “for the purpose of providing regulated auto transportation service.”¹⁹ Accordingly, WAC 480-30-213

¹⁷ Shuttle Express Initial Brief ¶ 100.

¹⁸ *WUTC v. Shuttle Express, Inc.*, Docket TC-120323, Order 04 ¶ 9 (March 19, 2014).

¹⁹ *Id.* ¶ 10.

requires that the certificated company own or lease “any vehicle the company controls or directs the function of to provide regulated service.”²⁰

74 Also in the Commission’s Final Order in Docket TC-120323, we similarly rejected Shuttle Express’s argument that the service provided by independent contractors meets the definition of limousine service. We noted that “the record evidence unequivocally demonstrates that [independent contractor] service was an integral part of the auto transportation service the Company is certificated to provide, and we consider it as such.”²¹ Our view has not changed.

75 Shuttle Express next argues that the Commission’s assertion of jurisdiction over single-stop trips is “puzzling” in light of its recent decision to grant Shuttle Express an exemption from WAC 480-30-213, which permits the company to use independent contractors to provide auto transportation service subject to conditions.²² These issues, however, are not irreconcilable, as Shuttle Express implies.

76 First, our decision to grant Shuttle Express’s request for an exemption does not in any way relinquish our jurisdiction over the company’s operations. To the contrary, if we believed that the company’s conduct fell outside the Commission’s purview, we would not have granted the exemption because no exemption would be necessary.²³ Second, the

²⁰ *Id.* ¶ 11.

²¹ *Id.* ¶ 13.

²² *See* Docket TC-160819.

²³ Shuttle Express goes on to mischaracterize our discussion in Order 01 in Docket TC-160819, alleging the Commission recognizes it cannot “claw back jurisdiction the legislature has taken away.” (Reply Brief of Shuttle Express ¶ 8). The company quotes a portion of one sentence – “we recognize that we have no authority to usurp the functions of DOL ...” – and presents it wholly out of context in an attempt to support its position. The paragraph from which Shuttle Express extracts this statement is provided in its entirety, below:

Other market participants providing similar passenger carrier services are governed by different statutes and regulations administered by different agencies. While we are mindful that this waiver will allow the Company to contract with limousines to provide airporter-like services, we recognize that we have no authority to usurp the functions of DOL, which regulates limousines and TNCs, or the Port of Seattle, which establishes the terms and conditions for entry and egress from SeaTac. (¶16).

We went on to note that “the Commission expresses no judgment about the applicability of DOL statutes or regulations to the Company’s operations.” (¶12) There is no tenable basis for Shuttle Express’s conclusion that the Commission ceded jurisdiction over the company’s use of independent contractors to provide auto transportation service.

violations at issue occurred prior to the company's decision to seek an exemption, and were therefore both unknown and unauthorized at the time they occurred. We see nothing even remotely puzzling about our decision to examine the Company's past conduct within the context of the regulatory framework in which it occurred.

77 Finally, we reject Shuttle Express's argument that the Commission is somehow precluded from finding that its conduct violates applicable statutes and rules. Mr. Kajanoff erroneously contends that Staff's claims represent "an unexplained change of legal position ... that runs counter to Docket TC-120323 and has not been adopted by the Commission."²⁴ To support his argument, Mr. Kajanoff cites a meeting he and company owner Jimmy Sherrell had with two Staff members in connection with Staff's 2012 investigation, during which he claims the Staff members expressed opinions that single-stop trips were legal, and thus a non-issue.²⁵ As Shuttle Express is well aware, however, Staff's alleged sanction of the company's practice has no legal force or effect. Any statements made by Staff in undocumented conversations with the company are not binding on the Commission as a determination of whether Shuttle Express's use of independent contractors for single-stop trips violates Commission rules. For the reasons discussed above, we find that it does.

78 **Unlawful Commissions.** We find that Shuttle Express's failure to file the form it uses for its commission-based booking program violates WAC 480-30-391(1), which requires auto transportation carriers to file its ticket agent agreement form with the Commission for approval.²⁶ Although both Shuttle Express and Staff characterize Shuttle Express's commission agreement as a "referral" program, the company's "2015 Commission Guidelines" include the following language:

- "You earn 10% commission on any service you book at retail rate."

²⁴ Kajanoff, Exh. No. PK-2T at 5:19-20.

²⁵ *Id.* at 23:14-18.

²⁶ In response to Bench Request No. 5, Staff quotes from the final order in Docket TC-910789, noting that the Commission's decision relied on WAC 480-30-050(5), which was repealed in 2006, and arguing that the rule's repeal signaled a policy decision to reduce Commission regulation of ticket agent agreements. Staff overlooks, however, that WAC 480-30-391 replaced WAC 480-30-050, and that it similarly requires carriers to file ticket agent agreement forms with the Commission for approval and is *more* prescriptive than its predecessor.

- “You earn commission when you’ve booked a minimum of \$20 in any rolling, three-month period.”
- “The preferred booking method is online through your hotel’s portal – it’s quick, easy, and your commission is automatically tracked. If you book through our call center, you must provide your full name and hotel name to ensure commission is added correctly.”²⁷ (Emphasis added.)

79 At hearing, Mr. Marks acknowledged that it pays commissions for reservations that hotel staff make on a passenger’s behalf.²⁸ Because the hotel employee makes the reservation for the consumer, Shuttle Express’s commission program clearly qualifies as an “agreement with a second party for the sale of tickets or fares on behalf of the company,” the form for which requires prior Commission approval.²⁹ The fact that the hotel staff does not collect the fare and keep a portion – but rather takes the customer’s credit card, uses it to make the reservation, then later receives payment equal to 10 percent of the fare – is a distinction without a difference. The plain language of the rule requires that the form a carrier uses for its written agreements with individuals or entities that make reservations on behalf of passengers in exchange for payment must be approved by the Commission.

80 We find that Shuttle Express’s commission enrollment form does not conform to the requirements set out in WAC 480-30-391(2), and has not been filed with the Commission for approval, as required. As such, we conclude that Shuttle Express’s conduct violates WAC 480-30-391(2), and we require Shuttle Express to conform the form of its agreements to the rule and file such form with the Commission for approval within 30 days of the effective date of this Order.

Shuttle Express Petition for Rehearing and Complaint - Speedishuttle’s Business Model

81 In Order 04, the Commission found that Speedishuttle’s proposed service “uniquely targets a specific subset of consumers seeking door-to-door service to and from the

²⁷ See Exh. No. HJR-26.

²⁸ Marks, TR 662:9-13.

²⁹ WAC 480-30-391(1).

airport: those who are tourists, tech-savvy, or non-English speaking,”³⁰ and concluded that Speedishuttle proposed to provide different service than Shuttle Express provides based on the totality of Speedishuttle’s service features. Those features include luxury vehicles, significantly increased accessibility for non-English speaking customers, individually-tailored customer service, tourism information, and Wi-Fi service.³¹ We further held that Speedishuttle’s multilingual business model created a significant distinction because it made Speedishuttle’s service accessible to a segment of consumers that Shuttle Express was unable to serve.

82 In Order 08 in this consolidated proceeding, we declined to revisit the issue of whether Speedishuttle’s proposed business model constitutes different service from the service that Shuttle Express provides, and held that the sole issue we will consider on rehearing is “whether Speedishuttle is limiting the service it provides to the customer and service types described in the business model on which the Commission based its grant of authority.”³² We recognize, however, that determining whether Speedishuttle’s service targets subsets of consumers necessarily requires an examination of each service feature and whether it functions to attract a particular niche of travelers. Accordingly, we address Speedishuttle’s service features in that context.

83 While the record in this proceeding does not support a finding that Speedishuttle is limiting its service to the customer and service types described in the company’s business model, it contains critical evidence about the nature of both carriers’ operations that was unknown to the Commission at the time of the Application hearing. Although we modify the basis for our decision, we nevertheless reach the same conclusion here that we reached in Order 04: that Speedishuttle provides different service than Shuttle Express provides.³³ We address each of the factors addressed in Order 04 – in addition to new factors that came to light during this proceeding – below.

³⁰ Order 04 ¶ 21.

³¹ Although Shuttle Express argues that Speedishuttle’s “20 minute departure guarantee” was a basis on which the Commission differentiated Speedishuttle’s service, we note that distinction was made only in the administrative law judge’s initial order in Docket TC-143691. The Commission’s Final Order did not address this service feature.

³² Order 08 ¶ 25.

³³ As noted above, we determined early in this proceeding that we will not revisit the question of whether Speedishuttle’s business model, as approved by the Commission, constitutes “different

84 **Luxury vehicles.** We uphold our finding in Order 04 that Speedishuttle’s use of luxury vehicles attracts a specific subset of consumers. Speedishuttle presented evidence that its fleet of vehicles is comprised of newer, black Mercedes vans with no markings.³⁴ Shuttle Express, by contrast, uses Ford vans, some of which are nearly 10 years old, and a portion of which display large advertisements on the side.³⁵ Speedishuttle’s vehicles also have a greater seating capacity than Shuttle Express’s vans.³⁶

85 We agree with Speedishuttle’s contention that its newer Mercedes vans have a cachet that older Ford vans do not, which attracts customers seeking a more upscale shared ride service. Accordingly, Speedishuttle’s vehicles constitute a different “means” or “method” of providing service than Shuttle Express provides.³⁷

86 **Multilingual Service.** Based on the evidence in the record, we modify our previous finding that Speedishuttle’s “multilingual business model” creates a significant service distinction that attracts non-English speaking passengers. We based our decision in Order 04 on representations made by Cecil Morton, Speedishuttle president and CEO, at the Application hearing. Mr. Morton emphasized the multilingual aspect of Speedishuttle’s business model with the following statements:

- “We’ll try our best to hire multilingual receptive teams so we can communicate with some of the people who are from different countries.”³⁸
- “We focus on people from around the world, travelers from around the world, so it’s every language that the marketplace – countries that the marketplace markets to, so we just – are just not focusing on the English-speaking customers.”³⁹

service.” We will, however, clarify our interpretation of the “same service” standard in our discussion here.

³⁴ See Exh. Nos. HJR-3 through HJR-9.

³⁵ Marks, TR 518:4-6; 518:18-23.

³⁶ *Id.* at 519:9-11.

³⁷ See WAC 480-30-140(2)(b).

³⁸ Morton, TR 24:8-10.

³⁹ *Id.* at 27:7-12.

- “[W]e service people from around the world that speak different languages and make it easier for them to do business with us ...”⁴⁰

87 The Commission reasonably concluded, based on Mr. Morton’s statements, that Speedishuttle would make a concerted effort to serve non-English speaking passengers. Those representations, however, have not borne out in the Company’s practices.

88 Of Speedishuttle’s 53 current employees, 19 speak a language other than English.⁴¹ Of those 19 employees, 15 come into contact with the public. Of those 15 employees, three are employed as greeters, two are employed as call center representatives, and 10 are employed as drivers.⁴² Although Speedishuttle’s website allows users to make reservations in Chinese, Japanese, or Korean, none of Speedishuttle’s current employees speak those languages.⁴³ And, perhaps most notably, none of the employees who staff Speedishuttle’s kiosk at SeaTac Airport speak a language other than English.⁴⁴ For customers seeking on-demand service – which is estimated to be between 20 and 33 percent of the Company’s total passengers – arrangements can only be made in English.⁴⁵ Finally, Speedishuttle conceded that its job applications do not request information about whether an applicant speaks languages other than English.⁴⁶

89 Although Speedishuttle’s website has increased accessibility for customers who speak Chinese, Korean, and Japanese, the company has not made sincere efforts to “focus on people from around the world.” Moreover, the availability of other languages on Speedishuttle’s website alone does not differentiate its service from Shuttle Express’s service, particularly in light of the fact that no customers have used the website to make a reservation in a language other than English.⁴⁷ Accordingly, we find that Speedishuttle

⁴⁰ *Id.* at 28:15-17.

⁴¹ Speedishuttle’s response to Bench Request No. 3.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Mr. Roemer testified that 80 percent of the company’s passengers are pre-arranged (Exh. No. HJR-1T at 35:8-10), but the data provided in response to the Commission’s Bench Request No. 2 in Docket TC-143691 indicated that walk-up customers represented 33 percent of the company’s total passenger count in the kiosk’s first month of operation.

⁴⁶ Roemer, TR 721:2-5.

⁴⁷ Marks, TR 579:16-21.

failed to demonstrate that it specifically targets non-English speaking consumers, and reverse our previous finding that this feature creates a significant service distinction.

90 **Personal Greeters.** We uphold our finding in Order 04 that the use of personal greeters targets a subset of consumers seeking more personalized service to the extent that this feature is available to passengers who make reservations prior to arriving at the airport. We afford it less weight, however, because it neither provides increased access for non-English speaking passengers as we originally believed it would, nor is it available to the segment of Speedishuttle’s customers who obtain service on demand.⁴⁸ Bearing these factors in mind, we nevertheless find that it constitutes a different “type” of service than Shuttle Express provides.⁴⁹

91 We also find that Shuttle Express failed to provide adequate evidentiary support for its claim that Speedishuttle “does not have sufficient staffing of greeters to meet all passengers.”⁵⁰ Neither Mr. DeLeo’s nor Mr. Marks’s observations prove that Speedishuttle is not greeting its passengers. Mr. Marks did not have any data about the number of passengers arriving at the airport during the time period he observed, nor does either witness have any demonstrated experience with staffing airport greeter service.⁵¹

92 Moreover, Shuttle Express complains that Speedishuttle analyzed its greeter staffing based on data captured for a few hours on a few days; however, Shuttle Express’s claim that “up to 50 percent or more of [Speedishuttle’s prearranged passengers] are not

⁴⁸ In its reply brief and throughout this proceeding, Shuttle Express has insisted that Speedishuttle represented at the Application hearing that it would greet passengers outside of security, escort them to baggage claim, and then escort them to their shuttle. Shuttle Express’s position is informed by Order 02 ¶6, which noted that “Mr. Morton testified that all Speedishuttle customers are greeted outside the security gate by a company employee, escorted to baggage claim, and then escorted to their shuttle.” While Mr. Morton did initially say that “we will greet all prearranged guests . . . and direct them to their baggage claim area, their carousel, and then usher them to their shuttle that would be waiting for them,” he later said, “we would have greeters in the baggage claim, greeting, at the baggage claim, prearranged guests.” Morton, TR 23:22-24:1; 48:13-15. Although Speedishuttle made conflicting representations, the Commission does not find a meaningful distinction between meeting passengers outside the secured area and meeting them at baggage claim.

⁴⁹ See WAC 480-30-140(2)(b).

⁵⁰ Shuttle Express Initial Brief ¶43.

⁵¹ See Wood, TR 319:22-320:7.

greeted”⁵² is based on the same time period. Shuttle Express cannot argue on the one hand that the time period in question is sufficient for proving its claim, and contend on the other that it is inadequate for the purpose of Speedishuttle’s rebuttal. Shuttle Express, not Speedishuttle, bore the burden of proving its claim, and we find that the evidence is insufficient to support it.

93 **SpeediTV and Wi-Fi.** We uphold our finding in Order 04 that both SpeediTV and onboard Wi-Fi target tech-savvy passengers and tourists. Shuttle Express did not produce any evidence establishing that Speedishuttle failed to implement these features, or that they fail to operate as Speedishuttle represented they would. Accordingly, there is no basis to alter our conclusion that these features differentiate Speedishuttle’s service from Shuttle Express’s service.

94 In addition, Speedishuttle introduced evidence about the recent addition of smart phone technology features that appeal to tech-savvy travelers, including applications for making reservations and tracking Speedishuttle vehicles similar to those used to reserve and track service from transportation network companies such as Uber and Lyft.⁵³ These additional features further demonstrate that Speedishuttle is targeting tech-savvy consumers as it represented it would.

95 **Wholesale Travel Contracts.** Shuttle Express argues that Speedishuttle’s contracts with wholesale travel companies demonstrate that Speedishuttle is “cream skimming” those customers traveling to downtown Seattle and the Piers, which are the lowest-cost, highest volume service areas.⁵⁴ Serving tourists, however, is not inconsistent with the business model the Commission approved. In fact, Speedishuttle was transparent about its relationships with wholesale contractors at the Application hearing, many of whom provided statements of support for Speedishuttle.

96 Rather than acknowledging that transporting tourists is consistent with Speedishuttle’s business model, Shuttle Express attempts to mischaracterize the Commission’s findings by claiming we based Speedishuttle’s grant of authority on its promise to serve a specific subset of customers “that are not just tourists, but also ‘tech-savvy’ and ‘non-English’

⁵² Shuttle Express immediately thereafter concedes that “the percent who are or are not greeted is not known exactly.” *Id.* ¶46.

⁵³ Roemer, Exh. No. HJR-1T at 17:7-20.

⁵⁴ Shuttle Express Initial Brief ¶78.

speaking.” We disagree. Our conclusion in Order 04 that Speedishuttle’s business model would target travelers who are “tourists, tech-savvy, or non-English speaking,”⁵⁵ was written in the disjunctive. Accordingly, we find that Speedishuttle’s business relationship with wholesale contractors is consistent with the business model approved by the Commission because it specifically targets tourists.

97 **Walk-up Service.** Shortly following the entry of Order 04, Speedishuttle installed a kiosk at SeaTac Airport and began offering walk-up service, which serves passengers who have not made any arrangement with the company for auto transportation service prior to arriving at the airport.

98 Shuttle Express argues that Speedishuttle’s implementation of walk-up service demonstrates that Speedishuttle intended all along to “mimic as closely as possible the operations of Shuttle Express at the airport,”⁵⁶ and argues that failing to restrict Speedishuttle’s certificate to “reservation only” service invites others to “misrepresent in order to get their foot in the door and then provide whatever service they choose.”⁵⁷ We disagree. The Commission did not rely on Speedishuttle’s representations that it would not provide walk-up service as a basis for its decision in Order 04, and we decline to do so now on rehearing.⁵⁸

99 Although customers who obtain on-demand service are not met by personal greeters, they nevertheless receive different service than Shuttle Express provides. In addition to being transported in newer, luxury vehicles equipped with Wi-Fi and SpeediTV, we find additional bases unrelated to “prearranged service” that distinguish Speedishuttle’s service from the service that Shuttle Express provides, as discussed below.

100 **Use of Company Vehicles and Employees.** We find that Speedishuttle’s exclusive use of company-owned vehicles, driven only by company employees, differentiates its

⁵⁵ Order 04 ¶21. Emphasis added.

⁵⁶ Shuttle Express Initial Brief ¶32.

⁵⁷ *Id.* ¶40.

⁵⁸ In November 2015, the Commission briefly considered amending Order 04 on the basis that it could be interpreted to grant Speedishuttle broader authority than the Company stated that it intended to provide. We ultimately determined, however, that such action was unwarranted because our current rules make no distinction between “prearranged” and “walk-up” door-to-door service.

service from the service provided by Shuttle Express, which uses independent contractors who drive non-company vehicles to provide service to a portion of its customers.

101 Because the Commission was unaware that Shuttle Express continued to use independent contractors at the time of the Application hearing, we did not find a service distinction on that basis. In light of this new information, however, we find that those customers who received service from an independent contractor rather than a Shuttle Express employee in a Shuttle Express vehicle received a different “type” and “means” of service – one that was not subject to Commission oversight or safety requirements – than those customers who received service from Speedishuttle.⁵⁹

102 **Providing Service to Full Extent of Authority.** WAC 480-30-140(2)(a) provides that, when determining whether an existing certificate holder provides the same service as an applicant in the territory at issue, the Commission may consider whether the existing company provides service to the full extent of its authority. We find that Shuttle Express’s decision to use independent contractors constitutes an inability or unwillingness to provide service to the full extent of its authority.

103 Over the years, Shuttle Express has offered numerous and conflicting explanations for its use of independent contractors in contravention of Commission orders or without the Commission’s knowledge. Order 04 detailed Shuttle Express’s history with “rescue service,” as follows:

From 2004 until 2014, the last year being the test period of Speedishuttle’s application, Shuttle Express used a contracted “rescue service” to serve approximately 5 percent of its customers. Mr. Kajanoff’s claim at hearing that Shuttle Express has “never turned away door-to-door business for inability to have a vehicle available” is contradicted by Shuttle Express’s owner, Jimmy Sherrell, in a declaration he submitted in support of the company’s petition for exemption from Commission rules in November 2013. In his declaration, Mr. Sherrell stated that without the use of a contracted rescue service, “Sometimes we have to ask people to drive their own car and park so they do not miss their flight. This costs us a high fee in parking reimbursement. And while that is some compensation, it is not delivery of the service the passenger requested. We would

⁵⁹ See WAC 480-30-140(2)(b).

much rather provide their ride to the airport and we could have if rescue service were still allowed.”⁶⁰

104 Mr. Sherrell’s statements support a finding that Shuttle Express was not providing service to the full extent of its authority because the company was forced to rely on independent contractors to “rescue” its customers when it was unable to provide the requested service.

105 According to Mr. Marks, however, Shuttle Express’s use of independent contractors is an economic decision influenced only by the number of passengers traveling to or from a given destination. Mr. Marks provided the following example:

[W]hen we have a single passenger going to Woodinville, with no other passengers travelling along the same general route, we could either ask them to wait hours for another passenger going to that same area or transport them at a sizeable loss in a van operated by an employee. The limo options enables us to carry that passenger quickly and at a small loss, while providing them an upgraded travel experience.⁶¹

106 Finally, in its September 2016 petition for an exemption from Commission rules that bar the use of independent contractors, Shuttle Express argued that it required an exemption so it could provide service at a lower cost and compete effectively with Uber, Lyft, and other “unlicensed ride-sharing services.”⁶²

107 Whatever the company’s true motivations, we find that Shuttle Express’s inability or refusal to transport certain customers due to resource constraints, inconvenience, or economic disincentive constitutes a failure to provide service to the full extent of its certificated authority.

108 **Combined Scheduled and Shared Ride Service.** We find that Speedishuttle’s exclusively door-to-door service is different than Shuttle Express’s service, which combines door-to-door service with scheduled route service. Shuttle Express’s scheduled service departs every 30 minutes,⁶³ which necessarily means that its door-to-door

⁶⁰ Order 04 ¶22. Internal citations omitted.

⁶¹ Marks, Exh. No. WAM-2T 30:1-6.

⁶² TC-160819, Amended Petition of Shuttle Express at ¶6.

⁶³ Marks, Exh. No. WAM-2T at 13:6-7.

passengers may experience longer wait times when they are placed in vehicles with scheduled service passengers. Although Mr. Marks testified that door-to-door passengers traveling on a combined service vehicle would not “be forced to wait differently than they would on a purely door-to-door type trip,”⁶⁴ his testimony refers only to the time spent on the trip itself, not the time spent waiting for the vehicle to depart.

109 While Speedishuttle’s target wait time is 20 minutes,⁶⁵ Shuttle Express “seeks to maintain a 20 minute or less wait time,” but ultimately uses a 30 minute measure as its “key metric.”⁶⁶ In light of the fact that Shuttle Express’s scheduled service departs every half hour, the company’s 30-minute target appears to coincide with its business decision to combine scheduled and shared ride service. As a result, the company acknowledges that “the service offered by Shuttle Express does not materially differ for the two classes of passengers.”⁶⁷

110 Shuttle Express’s door-to-door customers are necessarily impacted by its scheduled service departure times. Accordingly, we find that Speedishuttle’s door-to-door only service constitutes a different “type” of service than Shuttle Express’s combined door-to-door and scheduled service.⁶⁸

111 **Shuttle Express’s Service Does not Reasonably Serve the Market.** We uphold our finding that, at the time of the Application hearing, Shuttle Express did not reasonably serve the market.⁶⁹ As we noted in Order 04, “[b]y the company’s own admission . . . Shuttle Express was unable to reasonably serve the market for a 10-year period without relying on outside assistance.”⁷⁰ Unbeknownst to the Commission at the time of the Application hearing, Shuttle Express continued to use independent contractors to provide service to 5 percent of its customers, lending even more support to this finding.

⁶⁴ *Id.* at 8:1-2.

⁶⁵ Roemer, Exh. No. HJR-1T at 29:11-14.

⁶⁶ Marks, Exh. No. WAM-2T 12:9-17.

⁶⁷ *Id.* at 13:9-10.

⁶⁸ *See* WAC 480-30-140(2)(b).

⁶⁹ *See* WAC 480-30-140(2)(c).

⁷⁰ Order 04 ¶22.

- 112 **Same Service.** We uphold our finding in Order 04 that, based on the totality of the factors outlined above, Speedishuttle does not provide the same service that Shuttle Express provides. In addition to multiple distinctions between the carriers' service features, we find that Shuttle Express does not reasonably serve the market or provide service to the full extent of its authority. We also find that Speedishuttle's service features, taken as a whole, specifically target certain subsets of consumers, as the company represented they would.
- 113 **Service to the Commission's Satisfaction.** Pursuant to WAC 480-30-140(3), a determination of whether an objecting company is providing service to the Commission's satisfaction is dependent on, but not limited to, a number of factors. As relevant to this matter, those factors include whether the existing carrier has made a reasonable effort to expand and improve its service, and whether it provides service in a manner that meets the advertised or posted schedules. The rule does not limit the Commission's determination to the enumerated factors, which provides us with the flexibility to exercise our discretion in extraordinary or unusual circumstances.
- 114 Ultimately, we need not reach the question of whether Shuttle Express provides service to the Commission's satisfaction because we uphold our finding that Speedishuttle does not provide the same service that Shuttle Express provides. Nevertheless, we find it appropriate to address the issue of satisfactory service now in light of new, undisputed evidence that Shuttle Express continued to use independent contractors without the Commission's knowledge – discussed in detail, below – and fails to adhere to its posted schedules, as required.
- 115 First, we find that Shuttle Express has failed to make reasonable efforts to expand or improve its service. At the time of the Application hearing, Shuttle Express misrepresented to the Commission that it had ceased using independent contractors. However, the record evidence shows, and no party disputes, that Shuttle Express continuously relied on independent contractors to supplement its service for 15 years. Because Shuttle Express gave conflicting reasons for its use of independent contractors, we find that the company has demonstrated an inability to transport passengers due to insufficient resources or an unwillingness to use its own vehicles and drivers in certain areas of its service territory, neither of which is satisfactory. Even if we were to construe this practice as somehow expanding or improving the company's service, it is inherently unreasonable because it violated Commission rules and orders.

- 116 We also find that Shuttle Express fails to provide service in a manner that meets the advertised or posted schedules. WAC 480-30-346 requires an auto transportation carrier to include in its time schedules for scheduled service a list of each flag stop along a given route. While carriers are not required to stop at every flag stop each time the route is traveled, they are prohibited from stopping at any location that is not listed as a flag stop. Shuttle Express concedes that it combines its scheduled and door-to-door service, and, as Mr. Marks acknowledged at hearing, that it “more than occasionally” makes stops along scheduled routes that are not listed as flag stops in the company’s tariff.⁷¹ As Staff noted in response to a bench request, Shuttle Express’s practice of stopping at flag stops not listed for a given route violates Commission rules.
- 117 Finally, we find that Shuttle Express has an extensive history of noncompliance with Commission rules that constitutes a predictive pattern of behavior indicating that Shuttle Express will not provide service to the Commission’s satisfaction on a going-forward basis. On April 28, 2008, the Commission issued a \$9,500 Penalty Assessment in Docket TC-072228 against Shuttle Express for 95 violations of WAC 480-30-213(2) for using independent contractors to transport passengers, despite the fact that Staff “repeatedly advised Shuttle Express to either file a petition for declaratory ruling with the commission about the legality of the company’s proposed arrangement or to file an application to lease the company’s certificate.”⁷²
- 118 On July 11, 2008, the Commission entered Order 01, Initial Order Approving and Adopting Settlement in Docket TC-072228. As part of the Settlement Agreement, Shuttle Express admitted that its conduct violated WAC 480-30-213, agreed to pay a \$9,500 penalty, agreed to terminate its independent contractor program, and pledged to comply with WAC 480-30-213 on a prospective basis.⁷³
- 119 On December 22, 2009, Shuttle Express filed an application seeking an extension of its certificate to remove the restriction that it must provide service in vehicles with a seating capacity of no more than seven passengers. Over the course of the proceeding, it became evident that Shuttle Express replaced all of its vehicles with 10 passenger vans prior to requesting the change to its certificate. In Order 04, Initial Order Granting Application, we noted that “We do not endorse the sequence of actions taken by Shuttle Express in

⁷¹ Marks, TR 662:24-663:20.

⁷² *WUTC v. Shuttle Express, Inc.*, Docket TC-072228, Penalty Assessment (April 28, 2008).

⁷³ Docket TC-072228, Order 01 ¶ 16.

this matter. Shuttle Express should have requested Commission authority before obtaining the larger vans.”⁷⁴

120 In December of 2011, Staff discovered that Shuttle Express continued to use independent contractors in violation of Commission rules. On May 1, 2013, the Commission, on its own motion, issued a formal complaint against Shuttle Express in Docket TC-120323, alleging that the company used independent contractors on 5,715 occasions between October 2010 and September 2011. Following an evidentiary hearing, the Commission entered Order 03, Initial Order, on November 1, 2013. In Order 03, the Commission noted that:

When Shuttle Express signed the settlement agreement in 2008, it knew that it could no longer use non-employee drivers to transport passengers without violating Order 01 in Docket TC-072228. The evidence demonstrates that Shuttle Express knowingly returned to using independent contractors in violation of Commission rule and in violation of the terms of the July 2008 settlement agreement.⁷⁵

121 Order 03 assessed a \$120,000 penalty, an \$85,000 portion of which was suspended for a period of three years on condition of future compliance. Following a petition for administrative review, the Commission entered Final Order 04, which upheld the administrative law judge’s findings in the initial order and assessed a \$60,000 penalty.

122 Most recently, Shuttle Express falsely represented to the Commission at the Application hearing in this docket that it was no longer using independent contractors with the following sworn statements:

- “I know there was a case revolving [sic] independent contractors that we were involved with. I believe that was settled and Shuttle Express changed its practices at the request of the Commission.”⁷⁶

⁷⁴ *In re the Application TC-091931 of Shuttle Express, Inc. For Extension of Authority under Certificate No. C-975, For a Certificate of Public Convenience and Necessity to Operate Motor Vehicles in Furnishing Passenger and Express Service as an Auto Transportation Company*, Docket TC-091931, Order 04 ¶30 (February 25, 2011).

⁷⁵ *Id.* ¶ 33.

⁷⁶ Marks, TR 82:6-9.

- “Specifically what was happening would be the use of an independent contractor ... we had, on occasion, used those types of vehicles to pick up guests on a door-to-door route, and you may not have a multi-stop situation with those vehicles because they’re independent contractors, not employees ... The reality is, is the very straight definition of ‘independent contractor,’ we violated that. We paid our fine, and we don’t do it today.”⁷⁷
- “I want to make it very clear: Our vehicles and drivers were available to do those runs. This was about upgrades and a policy decision ... That’s why I filed for [a temporary rule waiver to allow the use of independent contractors]. It was a one-time urging upon our counsel to do so ... we don’t subscribe to that theory any longer.”⁷⁸

123 The evidence shows that Shuttle Express actively concealed its use of independent contractors for single-stop trips despite its claim that Staff sanctioned that practice in 2012. The egregiousness of this conduct, coupled with its poor compliance history, highlights the company’s willingness to go to great lengths to evade compliance with any law or rule it views as inconsistent with its business operations. Even if we accepted Shuttle Express’s argument that single-stop trips performed by independent contractors are somehow “converted” to limousine service not regulated by the Commission, the only logical conclusion we could reach is that Shuttle Express refused to serve those customers it “referred” to third-parties. Like service that violates Commission rules, such conduct is wholly unsatisfactory.

124 Overall, we find that the nature and extent of Shuttle Express’s noncompliance is a predictive indicator that the company will continue to violate Commission rules as it see fits, and conclude on that basis that the company will not provide service to the Commission’s satisfaction. We note that RCW 81.68.030 authorizes the Commission to revoke any certificate issued pursuant to Chapter 81.68 if the certificate holder has willfully violated or refused to observe any of the Commission’s orders, rules, or regulations. In light of the Commission’s statutory authority to revoke Shuttle Express’s certificate for willful violations of Commission rules and orders, it follows that such conduct necessarily constitutes a failure to provide service to the Commission’s satisfaction. Although we will not take such escalated enforcement action at this juncture,

⁷⁷ Kajanoff, TR 97:6-23.

⁷⁸ *Id.* at 104:25-105:8.

we expect Shuttle Express to significantly overhaul its practices to ensure it complies with all applicable statutes, rules, and orders going forward.

Shuttle Express Petition for Rehearing and Complaint – Predatory Pricing Below Cost

- 125 We find that Shuttle Express failed to establish that Speedishuttle prices its service below cost or engages in predatory pricing. The evidence in the record demonstrates that trips for both companies become profitable at nearly the same passenger capacity. Mr. Kajanoff testified that a Shuttle Express trip to downtown Seattle requires 3.5 passengers to be profitable,⁷⁹ and Mr. Roemer testified that the same trip for Speedishuttle becomes profitable with four passengers.⁸⁰ This data suggests that the companies, on average, similarly price this service.⁸¹
- 126 Shuttle Express next points to Speedishuttle’s operating losses and alleged declining passenger counts as evidence that Speedishuttle is pricing its service below cost. Speedishuttle concedes, however, that it is not yet profitable, which, it argues, is typical for any company in its first two years of operation, including Shuttle Express.⁸² The evidence also shows that Speedishuttle’s passenger count nearly doubled in 2016, its second year of operation, even after adjusting the data to account for the fact that the company only operated for nine months in 2015.⁸³
- 127 Moreover, we note that there is no evidence in the record to suggest that Speedishuttle incurs substantially more expenses than Shuttle Express does. Both companies pay their employees minimum wage, purchase fuel, and perform routine vehicle maintenance.

⁷⁹ Kajanoff, TR 466:16-467:4.

⁸⁰ Roemer, TR 820:14-17.

⁸¹ Based on Shuttle Express’s average cost of door-to-door and scheduled service.

⁸² Wood, TR 349:23-350:3.

⁸³ In response to Bench Request No. 1, Speedishuttle provided information showing that it transported 18 percent of its total passengers for 2016 between January 1 and April 30. After adjusting Speedishuttle’s passenger count for 2015 by 18 percent (from 41,037 to 48,423) for a more accurate comparative figure, Speedishuttle increased its passenger count for 2016 by an estimated 39,320.

Although Speedishuttle has newer, more upscale vehicles, it has fewer vehicles per driver and incurs more mileage per vehicle than Shuttle Express.⁸⁴

128 Nor does it appear that Speedishuttle's trips are substantially less profitable than Shuttle Express's. Based on the companies' 2016 annual reports filed with the Commission, Shuttle Express earns an average of \$69 per trip, while Speedishuttle earns an average of \$67.60.⁸⁵

129 Finally, Staff testified that the flexible fare structure under which the Commission authorizes auto transportation carriers to operate effectively prevents predatory pricing. The Commission allows auto transportation companies to maintain operating ratios of no more than 93 percent, which means that carriers may only recoup operating costs plus a 7 percent profit. Moreover, minimum flexible fares are cost-based. As such, it would be difficult, if not impossible, for a carrier to price its service below cost because it may not lawfully price its services below the base fare approved by the Commission.

Remedies

130 For the reasons set out above, we find that Shuttle Express is not entitled to any relief related to either its Petition or its Complaint. The issues we agreed to hear in this proceeding were 1) whether Speedishuttle was adhering to the business model approved by the Commission at the Application hearing and therefore providing different service than Shuttle Express, 2) whether Speedishuttle is providing service below cost, and 3) whether Shuttle Express is providing service to the Commission's satisfaction. Although Shuttle Express made multiple attempts to bring additional issues before us, we repeatedly declined to address them. Accordingly, we uphold our finding in Order 04 – albeit on different grounds based on new information unknown at the time of the Application hearing – that Speedishuttle provides different service than Shuttle Express provides. We also find, based on new information brought to light during the course of this proceeding, that Shuttle Express does not provide service to the Commission's

⁸⁴ Of course, Shuttle Express avoids all of these expenses – employee wages, fuel, and vehicle maintenance – each time it uses an independent contractor to transport passengers. It also avoids paying regulatory and port fees for those trips. For its unauthorized operations, Shuttle Express does, in fact, incur fewer expenses.

⁸⁵ Shuttle Express reported earnings of \$7,241,900.20 and transported a total of 276,173 passengers on 104,924 trips. Speedishuttle reported earnings of \$1,548,559 and transported a total of 87,743 passengers on 22,917 trips.

satisfaction. Finally, we find that Shuttle Express failed to prove that Speedishuttle is pricing its service below cost or has, in any other way, caused harm to Shuttle Express.

131 With respect to Speedishuttle's Complaint and Staff's investigation, we find that Shuttle Express violated WAC 480-30-213 by using independent contractors to provide auto transportation service on 35,351 occasions, and also find that Shuttle Express violated WAC 480-30-391 by failing to file the form for its ticket agent agreements with the Commission.

132 Because the record is insufficient as it relates to Shuttle Express's violations of WAC 480-30-391, we will not assess penalties at this juncture. Rather, as noted above, we require Shuttle Express to come into compliance with WAC 480-30-391 within 30 days of the effective date of this Order.

133 We do, however, agree with Staff that penalties are appropriate for Shuttle Express's repeat violations of WAC 480-30-213. Staff recommends the Commission assess penalties of \$30 for each of the 35,351 violations identified in Staff's investigation, for a total penalty of \$1,060,530.

134 Staff identifies 11 factors that inform the Commission's decision on appropriate penalties, which are set out in the Commission's Enforcement Policy.⁸⁶ We address each factor in turn.

135 *How serious or harmful the violation is to the public.* Shuttle Express's use of independent contractors is serious and potentially harmful to the public because non-regulated vehicles and drivers are not held to the same safety standards as regulated carriers. At the time these violations occurred, Shuttle Express had not yet obtained an exemption from Commission rules, and therefore was not required to ensure its independent contractors adhered to the 10 conditions required by the Commission's order granting the exemption.

136 Moreover, as Mr. Pratt noted in his testimony, Shuttle Express was not forthcoming about the identities of its independent contractors. Staff was therefore unable to determine whether the independent contractors Shuttle Express used at the time the violations occurred were licensed or insured. In any event, there was no Commission oversight of

⁸⁶ Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission (January 7, 2013).

the independent contractor drivers or their vehicles. As Staff notes, this raises the potential for an undocumented driver medical or qualification issue, excessive driver hours of service, fatigue, or an undocumented vehicle defect, all of which place the public at risk.⁸⁷

- 137 *Whether the violations are intentional.* The evidence demonstrates that Shuttle Express intentionally violated WAC 480-30-213 by using independent contractor drivers and non-company owned vehicles. Shuttle Express is well aware of the rules prohibiting the use of independent contractors because it has twice received penalties for these same violations, and has twice sought an exemption from WAC 480-30-213 to permit its use of independent contractors to provide auto transportation service, subject to conditions. As noted above, Staff began providing Shuttle Express with technical assistance related to this issue in 2004.
- 138 *Whether the company self-reported the violations.* Not only did Shuttle Express fail to self-report its return to its independent contractor program, it falsely represented to the Commission at the Application hearing that it had discontinued this practice entirely. The Commission only became aware of the company's actions as a result of Speedishuttle's complaint.
- 139 *Whether the company was cooperative and responsive.* The record demonstrates that Shuttle Express responded to Staff's data requests and allowed Staff to perform a site visit. The company refused, however, to provide the names of its independent contractors or copies of contracts between the company and its independent contractors.
- 140 *Whether the company promptly corrected the violations and remedied the impacts.* Shuttle Express not only continued to use independent contractors following the Application hearing, it actively concealed this practice from the Commission. The violations were not corrected and the impact was not remedied until Shuttle Express sought and received a rule exemption in September 2016.
- 141 *The number of violations.* Over the course of two years, Shuttle Express violated the independent contractor rule 35,351 times, which is a significant number of violations.

⁸⁷ Pratt, Exh. No. DP-1T at 10:12-15.

- 142 *The number of customers affected.* Again, Shuttle Express used independent contractors to complete 35,351 trips, many of which likely included multiple passengers.
- 143 *The likelihood of recurrence.* Although the Commission's rules have changed, Shuttle Express's overall approach to compliance is to actively conceal violations and seek forgiveness rather than permission. Accordingly, we find the likelihood that Shuttle Express will violate other Commission rules going forward to be very high.
- 144 *The company's past performance regarding compliance, violations, and penalties.* Shuttle Express has an extensive history of noncompliance that dates back more than 20 years. As noted above, in 2008 the Commission penalized Shuttle Express \$9,500 for 95 violations of WAC 480-30-213.⁸⁸ In 2009, the company increased the size of its vehicles without first seeking to amend its authority to do so.⁸⁹ In 2013, Shuttle Express was again penalized \$60,000 for 5,715 violations of WAC 480-30-213.⁹⁰ In 2016, the Commission penalized Shuttle Express \$400 for violations of WAC 480-30-2212, vehicle and driver safety requirements.⁹¹
- 145 *The company's existing compliance program.* The Commission is not aware of any existing compliance program, and the company's repeated violations of applicable laws and Commission orders suggests it does not have one.
- 146 *Size of the Company.* Shuttle Express is the largest auto transportation company regulated by the Commission. Its 2016 operating revenues exceeded \$7 million, which does not include revenue collected for trips performed by independent contractors.
- 147 In our final analysis, we afford some weight to the fact that Shuttle Express received misleading advice from Staff during its 2012 investigation. All things considered, the Commission determines that it should impose a penalty of \$120,000, which represents a conservative estimate of the total revenue and avoided fees the company retained from its 35,351 unlawful trips.⁹² Moreover, we note that a penalty twice the amount of that

⁸⁸ See Docket TC-072228.

⁸⁹ See Docket TC-091931.

⁹⁰ See Docket TC-120323.

⁹¹ See Docket TC-160991.

⁹² Based on Shuttle Express's representation that it retains 11 percent of each trip conducted by an independent contractor, we estimate that it received \$101,810 in revenue for the 35,351 trips (calculated as 11 percent of Shuttle Express's average trip fare of \$26.22, or \$2.88, multiplied by

assessed in Docket TC-120323, but substantially less than the penalty Staff recommends, is reasonable in light of the fact Shuttle Express is a third-time offender. Shuttle Express's business model was never designed to conform to Commission regulations, and the company has demonstrated no willingness or ability to comply with applicable laws and rules.

148 We are not persuaded by Shuttle Express's argument that penalties for these violations would violate its right to due process. The Commission has not failed to give "fair notice" that the use of independent contractors is prohibited. A plain reading of WAC 480-30-213 unequivocally requires all passenger transportation companies to 1) use company-owned vehicles, 2) driven by company employees. The rule could not reasonably be construed as ambiguous or unclear.

149 Finally, to address Shuttle Express's pervasive and long-standing history of non-compliance, we direct the company to create a comprehensive compliance plan and submit it to Staff for review and approval within 90 days of the effective date of this Order. The compliance plan should address, but not be limited to, the company's policies and procedures for complying with regulations related to vehicle and driver safety, ticket agent agreement forms, and correctly and completely identifying flag stops in posted schedules.

FINDINGS OF FACT

150 Having discussed above in detail the evidence received in this proceeding concerning all material matters, and having stated findings and conclusions upon issues in dispute among the parties and the reasons therefore, the Commission now makes and enters the following summary of those facts, incorporating by reference pertinent portions of the preceding detailed findings:

151 (1) The Commission is an agency of the state of Washington vested by statute with the authority to regulate the rates, rules, regulations, and practices of auto

35,351); avoided \$756 in regulatory fees (calculated as .004 percent of \$101,810, or \$407, plus 5 percent of the company's intrastate miles multiplied by applicable mileage fees, or \$349); and avoided \$21,754 in airport trip fees (calculated as \$1.60 for each of the 35,351 trips, or \$56,561, divided by Shuttle Express's average passenger capacity of 2.6). In sum, we estimate that Shuttle Express retained a minimum total benefit of \$124,320.

transportation companies, and has jurisdiction over the parties and subject matter of this proceeding.

- 152 (2) On May 26, 2016, Shuttle Express filed a Petition for Rehearing in Docket TC-143691, alleging that Speedishuttle was providing the same service that Shuttle Express provides.
- 153 (3) Also on May 26, 2016, Shuttle Express filed a Formal Complaint against Speedishuttle for its Rules, Regulations, or Practices in Competition with Complainant that are Unreasonable, Insufficient, Unremunerative, Discriminatory, Illegal, Unfair, or Tending to Oppress the Complainant in Docket TC-160516.
- 154 (4) On August 4, 2016, the Commission entered Order 06, Granting Petition for Rehearing.
- 155 (5) On August 24, 2016, Speedishuttle filed a Petition for Administrative Review of Order 06.
- 156 (6) On September 27, 2016, the Commission entered Order 08, Denying Petition for Review. Order 08 clarified that the sole issue the Commission would consider on rehearing is whether Speedishuttle is limiting the service it provides to the service and customer types described in the business model on which the Commission based its grant of authority. Order 08 similarly limited the issue to the extent that it overlapped with the allegations in the Petition for Rehearing.
- 157 (7) On December 1, 2016, Speedishuttle filed a formal complaint against Shuttle Express in Docket TC-161257 alleging that Shuttle Express used independent contractors and entered into ticket agent agreements without Commission approval in violation of applicable statutes and rules.
- 158 (8) On April 3, 2017, the Commission entered Order 17, Amending Order 08. Order 17 amended Order 08 to include in the rehearing of Order 04 the issue of whether Shuttle Express will provide the same auto transportation service Speedishuttle offers to the Commission's satisfaction.
- 159 (9) The Commission convened a hearing in all three dockets on May 10 and 12, 2017.

- 160 (10) In the two years prior to the date Speedishuttle's Complaint was filed, Shuttle Express used independent contractors to provide auto transportation service on 35,351 occasions.
- 161 (11) Shuttle Express enters into agreements with hotel employees to make reservations with Shuttle Express on behalf of hotel customers and, in exchange, receive a 10 percent commission. The form used for such agreements is not on file with the Commission.
- 162 (12) Speedishuttle uses newer Mercedes vans to provide service, and Shuttle Express uses older-model Ford vans.
- 163 (13) Speedishuttle has a minimal number of employees who speak a language other than English. None of Speedishuttle's employees speak Chinese, Japanese, or Korean, and none of the Speedishuttle employees who staff its walk-up kiosk speak a language other than English.
- 164 (14) Speedishuttle uses personal greeters to greet the majority of its customers.
- 165 (15) Speedishuttle has installed working SpeediTV and WiFi in all of its vehicles.
- 166 (16) The customers Speedishuttle serves through its wholesale travel contracts are primarily tourists.
- 167 (17) Speedishuttle made representations at the Application hearing that it would not provide walk-up service.
- 168 (18) Speedishuttle only uses vehicles owned by the company. Speedishuttle's vehicles are only driven by Speedishuttle employees.
- 169 (19) Shuttle Express uses non-company vehicles driven by non-employees to provide service.
- 170 (20) Shuttle Express combines its scheduled service with its door-to-door service.
- 171 (21) On average, Shuttle Express passengers experience longer wait times for departure than Speedishuttle's passengers do.

- 172 (22) Shuttle Express makes stops on its scheduled routes that are not listed as flag stops in the company's tariff.
- 173 (23) Shuttle Express made false representations at the Application hearing that it had ceased using independent contractors.
- 174 (24) Shuttle Express has consistently relied on independent contractors to supplement approximately 5 percent of its operations, and did so for more than a decade in violation of Commission rules and orders.
- 175 (25) Shuttle Express's trips become profitable at a passenger volume of 3.5, and Speedishuttle's trips become profitable at a passenger volume of 4.0.
- 176 (26) Speedishuttle's passenger count increased from 2015 to 2016 by approximately 39,000 passengers.
- 177 (27) Shuttle Express earns an average of \$69 per trip, and Speedishuttle earns an average of \$67.60 per trip.

CONCLUSIONS OF LAW

- 178 Having discussed above all matters material to this decision, and having stated detailed findings, conclusions, and the reasons therefore, the Commission now makes the following summary conclusions of law, incorporating by reference pertinent portions of the preceding detailed conclusions:
- 179 (1) Shuttle Express violated WAC 480-30-213 each time it used an independent contractor to provide auto transportation service in the two years preceding Speedishuttle's Complaint, a total of 35,351 times.
- 180 (2) Shuttle Express's failure to file with the Commission its ticket agent agreement form violates WAC 480-30-391.
- 181 (3) Shuttle Express should be required to file its ticket agent agreement form for approval within 30 days of the effective date of this Order.
- 182 (4) Speedishuttle's luxury vehicles, personal greeters, SpeediTV and Wi-Fi, wholesale travel contracts, and walk-up service are consistent with the business model previously approved by the Commission.

- 183 (5) Speedishuttle's failure to implement multilingual staffing is not consistent with the business model previously approved by the Commission.
- 184 (6) Speedishuttle's exclusive use of company-owned vehicles driven only by company employees further distinguishes its service from the service that Shuttle Express provides.
- 185 (7) Speedishuttle's provision of only door-to-door, non-combined service further distinguishes its service from the service that Shuttle Express provides.
- 186 (8) Pursuant to WAC 480-30-140(2)(b), Speedishuttle provides different service than Shuttle Express provides based on the totality of its service features.
- 187 (9) Pursuant to WAC 480-30-140(2)(c), Shuttle Express does not reasonably serve the market.
- 188 (10) Pursuant to WAC 480-30-140(2)(a), Shuttle Express does not provide service to the full extent of its authority.
- 189 (11) Shuttle Express's failure to list all flag stops on its scheduled routes in its tariff violates WAC 480-30-391. Shuttle Express should be directed to cease and desist its practice of stopping at unlisted flag stops.
- 190 (12) Due to its failure to reasonably expand and improve its service; its failure to provide service in a manner that meets advertised or posted schedules; and its extensive history of noncompliance, which constitutes a predictive pattern of behavior, Shuttle Express is not providing, and will not provide, service to the Commission's satisfaction pursuant to RCW 81.68.040 and WAC 480-30-140(3).
- 191 (13) Shuttle Express should be penalized \$120,000 for 35,351 violations of WAC 480-30-213. The \$120,000 penalty should be due within 30 days of the effective date of this Order.
- 192 (14) Shuttle Express should be required to complete and submit a compliance plan for Staff's review and approval, as described in paragraph 149, above, within 90 days of the effective date of this Order.

ORDER

THE COMMISSION ORDERS THAT:

- 193 (1) Speedishuttle Washington, LLC, d/b/a Speedishuttle Seattle is authorized to provide auto transportation service as described in its certificate.
- 194 (2) The Commission assesses a \$120,000 penalty against Shuttle Express, Inc.
- 195 (3) The \$120,000 penalty is due and payable no later than 30 days from the effective date of this Order.
- 196 (4) Shuttle Express, Inc. must conform its ticket agent agreement form to the requirements set out in WAC 480-30-391 and file the form for such agreement with the Commission for approval within 30 days of the effective date of this Order.
- 197 (5) Shuttle Express, Inc. must cease and desist from making stops on scheduled routes that are not listed as flag stops in its tariff.
- 198 (6) Shuttle Express, Inc. must complete and submit to Staff for review and approval a compliance plan for Commission Staff's review and approval, as described in paragraph 149, above, within 90 days of the effective date of this Order.
- 199 (7) The Commission retains jurisdiction over the subject matters and parties to this proceeding to effectuate the terms of this Order.

Dated at Olympia, Washington, and effective August 25, 2017.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RAYNE PEARSON
Administrative Law Judge

NOTICE TO THE PARTIES

This is an initial order. The action proposed in this initial order is not yet effective. If you disagree with this initial order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this initial order, and you would like the order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has 20 days after the entry of this initial order to file a petition for administrative review (Petition). Section (3) of the rule identifies what you must include in any Petition as well as other requirements for a Petition. WAC 480-07-825(4) states that any party may file an answer (Answer) to a Petition within 10 days after service of the petition.

WAC 480-07-830 provides that before the Commission enters a final order any party may file a petition to reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. The Commission will not accept answers to a petition to reopen unless the Commission requests answers by written notice.

RCW 80.01.060(3), as amended in the 2006 legislative session, provides that an initial order will become final without further Commission action if no party seeks administrative review of the initial order and if the Commission fails to exercise administrative review on its own motion.

Any Petition or Response must be electronically filed through the Commission's web portal as required by WAC 480-07-140(5). Any Petition or Response filed must also be electronically served on each party of record as required by WAC 480-07-140(1)(b).