BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In re the Application of SPEEDISHUTTLE WASHINGTON, LLC d/b/a SPEEDISHUTTLE SEATTLE For a Certificate of Public Convenience and Necessity to Operate Motor Vehicles in Furnishing Passenger and Express Service as an Auto Transportation Company _____ SHUTTLE EXPRESS, INC., Complainant, v. SPEEDISHUTTLE WASHINGTON, LLC d/b/a SPEEDISHUTTLE SEATTLE, Respondent. _____ SPEEDISHUTTLE WASHINGTON, LLC d/b/a SPEEDISHUTTLE SEATTLE, Complainant, v. SHUTTLE EXPRESS, INC., Respondent.	DOCKETS TC-143691, TC-160516, TC-161257 (*consolidated*) COMMISSION STAFF'S ANSWER TO SHUTTLE EXPRESS'S PETITION FOR ADMINISTRATIVE REVIEW

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I. INTRODUCTION

1 During this rehearing, Shuttle Express has demonstrated that it welcomes the benefits of Commission regulation (qualified protection from competition, the imprimatur of state authority) but would prefer to dispense with the burdens (compliance with economic and safety regulations, candor and transparency before the administrative tribunal). It initiated this proceeding to eliminate its competitor, Speedishuttle. But it now disparages the Initial Order's insistence that it follow the rules as a precondition of wielding monopoly authority. The Initial Order got it right: Regulation is a two-way street.

2 The Commission should affirm the Initial Order because it reached correct result using sound logic. Based on Shuttle Express's various service failures, the most significant of which is the company's intentional repeat violation of WAC 480-30-213's prohibition against using contractors, the Initial Order properly concluded that Shuttle Express will not serve its territory "to the satisfaction of the commission."[1] The record also supports the Initial Order's conclusion that Shuttle Express's competitor, Speedishuttle, does not provide the "same" service as Shuttle Express.[2] Based on either conclusion, the Initial Order properly decided that (1) Shuttle Express is not entitled to an absolute monopoly; and (2) Speedishuttle may engage in direct competition with Shuttle Express where their respective territories overlap. Staff supports this outcome.

II. NOTE ABOUT SCOPE OF SHUTTLE EXPRESS'S PETITION

3 Before turning to the merits, Staff notes that Shuttle Express has improperly attempted to enlarge the scope of this administrative review through incorporation by

[1] RCW 81.68.040.
[2] *Id.*

reference and through reservation-of-rights statements. The following excerpts from the company's petition for administrative review exemplify this issue:

> [Page 1, ¶ 2 n.2] Although the relief sought is well-supported by the record, the re-hearing should not have been limited. Shuttle Express had a right under the statute to a full rehearing. If the Initial Order is reversed as advocated by this petition this issue will be moot, so it is not addressed herein. But, if not, it is not waived.
>
> [Page 3, ¶ 6 n.4] There are so many errors in the Initial Order, both big and small, that Shuttle Express will likely not be able to address them all, especially in depth. To avoid undue repetition, Shuttle Express *hereby incorporates its arguments* in its prior post-hearing briefs for further background as well as citations to the record. *Shuttle Express does not intend to waive its position on any issue that is supported by the record*.
>
> [Page 9, ¶ 6 n.18] The Commission held otherwise in Docket TC-120323. Shuttle Express does not agree with that holding, but decided not to appeal it out of a desire to try to work with the Commission cooperatively and move forward with business. But the Initial Order simply goes too far over the line and would extend the Commission's regulations over limousines even further than the 2012 case. *To preserve its arguments [related to the prior docket] for possible judicial review, Shuttle Express notes them again*.
>
> [Page 16, ¶ 32 n.39] See also, Shuttle Express Initial Brief at 46-47 and Reply Brief at 5-6, which are *incorporated herein by this reference*.
>
> [Page 52, ¶ 83] The new Commission order should adopt the revised findings of fact and conclusions of law, as shown above. They are all well-supported by the record and the law, for the reasons discussed in this Petition and *countless other reasons* that cannot possibly be fit into the applicable 60 page limit.

To protect the integrity of the review process, the Commission should state in its final order that Shuttle Express has waived any contention of error that is not specifically identified and adequately briefed in its petition. Our state courts "do not permit litigants to use incorporation by reference as a means to argue on appeal or to escape the page limits for briefs set forth in [rule]." *Diversified Wood Recycling, Inc. v. Johnson*, 161 Wn. App. 859, 890, 251 P.3d 293 (2011); *see also US W. Communs., Inc. v. Utils. & Transp. Comm'n*, 134

Wn.2d 74, 112, 949 P.2d 1337 (1997) (reliance on incorporation by reference on review brings "obvious prejudice to other parties"). Neither should the Commission.

4 Staff notes that if Shuttle Express needed additional pages, the remedy was to ask for leave to file an over-length petition. *See* WAC 480-07-825(3) (petitioner may request permission to exceed 60-page limit). The company elected not to pursue this option.

5 Shuttle Express also repeatedly criticizes the ALJ's evidentiary rulings without stating whether the company affirmatively seeks administrative review of those rulings. The following excerpts exemplify this problem:

> [Page 1, ¶ 2] To sustain objections to discovery and cross-examination and then fault Petitioner for not meeting its burden of proof is a serious and indefensible denial of procedural due process.
>
> [Page 25, ¶ 39] One of the most frustrating—and unfair—aspects of this case is how severely Speedishuttle limited access to its revenues and cost data through its refusals and failures to make discovery, plus objections to cross examination—all with the cooperation and assistance of the ALJ. [Footnote:] Indeed, even Shuttle Express's attempts to show Respondent's discovery failures and abuses were excluded. *E.g.*, TR at 383, 808-09; PK-7 (offered). After shutting out probative evidence repeatedly, in error, the Commission cannot properly hold against Petitioner on the grounds it failed to meet its burden of proof.
>
> [Page 30, ¶ 44 n. 79] Again, attempts to show how Respondent made it impossible to submit empirical data were improperly rejected at the hearing.
>
> [Page 31, ¶ 46 n. 83] Again, much more detailed data was offered, but was improperly excluded.
>
> [Page 36, ¶ 56 n. 99] To the extent specific numerical data is not in the record it is because Speedishuttle refused to provide it in discovery and the ALJ refused to require sufficiently detailed discovery responses.
>
> [Page 40, ¶ 66 n. 115] Once again, the ALJ excluded very pertinent testimony of Mr. Wood that would have bolstered the public interest case that should have been considered.
>
> [Page 42, ¶ 71 n. 123] Again much valuable testimony of Mr. Wood on sustainability was improperly excluded.

As above, the Commission should state that Shuttle Express has waived any evidentiary challenge that is not clearly presented for review.

6 Staff lastly notes that many of the above excerpts are buried within footnotes. This is a disfavored practice because it is "'ambiguous or equivocal as to whether the issue is truly intended to be part of the appeal.'" *St. Joseph Gen. Hosp. v. Dep't of Revenue*, 158 Wn. App. 450, 472, 242 P.3d 897 (2010) (quoting *State v. Johnson*, 69 Wn. App. 189, 194 n.4, 847 P.2d 960 (1993)).

III. BACKGROUND

7 Shuttle Express has been providing regulated passenger transportation service since 1989.[3] It is the largest auto transportation company regulated by the Commission.

8 In January 2015, over Shuttle Express's objection, the Commission approved Speedishuttle's application for a certificate of public convenience and necessity authorizing the company to provide door-to-door auto transportation service in King County.[4]

9 Approval was based on ALJ Rayne Pearson's finding that "Shuttle Express does not provide the same service Speedishuttle proposes to provide."[5] Judge Pearson's finding was upheld by the Commission on administrative review.[6] Shuttle Express failed to seek judicial review. Speedishuttle commenced operation.

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

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[3] Shuttle Express holds auto transportation certificate no. C-975 and charter certificate no. CH-171.
[4] Docket TC-143691, Order 02, Initial Order Overruling Objections (Jan. 22, 2015).
[5] *Id.* p. 7, ¶ 25.
[6] Docket TC-143691, Order 04, Final Order, p. 6-7, ¶¶ 17 and 20 (Mar. 30, 2015).

11 In May 2016, Shuttle Express filed a petition for rehearing of the application docket and a formal complaint alleging that Speedishuttle had engaged in unlawful pricing.[7] The Commission agreed to rehear the application docket.[8]

12 In December 2016, Speedishuttle filed a formal complaint against Shuttle Express alleging unlawful use of non-owned vehicles and non-employed drivers and unlawful payment of rebates to hotel staff.[9]

13 In January 2017, the Commission consolidated Shuttle Express's petition for rehearing with the dueling complaints.[10]

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

15 On May 10 and 12, 2017, the Commission held an evidentiary hearing on the consolidated dockets. ALJ Rayne Pearson once again presided. At the close of the hearing, the record of consisted 639 cross-examination transcript pages and 2,458 pages of written testimony and supporting exhibits.

16 On August 25, 2017, after receiving post-hearing briefs, Judge Pearson entered Initial Order 19/12/09.[11] Among other things, Judge Pearson penalized Shuttle Express $120,000 for using non-owned vehicles and non-employed drivers on 35,351 occasions.

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[7] Petition for Rehearing of Matters in Docket TC-143691 and to Cancel or Restrict Certificate No. C-65854 Based on Misrepresentations by Applicant, Errors and Omissions in Prior Proceedings, and Changed Conditions not Previously Considered (May 16, 2016).
[8] Docket TC-143691, Order 06, Order Granting Petition for Rehearing (Aug. 4, 2016).
[9] Docket TC-161257, Formal Complaint (Dec. 1, 2012).
[10] Dockets TC-143691, TC-160516, TC-161257, Orders 12/05/02, Order of Consolidation (Jan. 5, 2017).
[11] Dockets TC-143691, TC-160516, TC-161257 (consolidated), Orders 19/12/09, Initial Order (Aug. 25, 2017) (hereafter "Initial Order").

17 On September 15, 2017, Shuttle Express petitioned the Commission for administrative review of the Initial Order.[12] This Answer responds to Shuttle Express's petition.

IV. ARGUMENT

18 Staff respectfully recommends that the Commission affirm the Initial Order without modification. Despite Shuttle Express's dramatic claim that the Initial Order is "riddled" with errors,[13] the reality is that the Initial Order is thoughtful, thorough, and fair.

A. The Initial Order Properly Penalized Shuttle Express for Using Non-Owned Vehicles and Non-Employed Drivers

19 The Initial Order properly found that Shuttle Express violated former WAC 480-30-213[14] on 35,351 occasions during the two-year limitations period between December 1, 2014, and December 1, 2016. The Initial Order also properly penalized Shuttle Express $120,000 to remedy these violations. Staff advocated for a much higher penalty but accepts the Initial Order's finding that $120,000 is fair under the circumstances.[15] The Commission should affirm both the violations and the monetary penalty.

1. Legal Summary

20 During the time period relevant to this proceeding, WAC 480-30-213 provided: "(1) The vehicles operated by a passenger transportation company must be owned by or leased to the certificate holder. (2) The driver of a vehicle operated by a passenger transportation company must be the certificate holder or an employee of the certificate

[12] Dockets TC-143691, TC-160516, TC-161257 (consolidated), Petition for Administrative Review of Shuttle Express, Inc. (Sept. 15, 2017) (hereafter "Shuttle Express Pet. for Admin. Rev.").
[13] Shuttle Express Pet. for Admin. Rev., p. 35, ¶ 53.
[14] WAC 480-30-213 was repealed in August 2017 by General Order R-590.
[15] Staff witness Dave Pratt testified: "Based on all the factors I've mentioned in my testimony, and considering this is the third time Shuttle Express has committed violations of WAC 480-30-213, I recommend that the Commission penalize Shuttle Express approximately triple the amount per violation as in the previous case, for a total penalty of $1,060,530." Exh. DP-1T at 13:19-22.

holder." As the Initial Order recognizes, this rule straightforwardly "prohibits the use of independent contractors"[16] by any passenger transportation company.[17]

2. Factual Summary

21 The record shows that Shuttle Express violated WAC 480-30-213 on 35,351 occasions by using non-owned vehicles and non-employed drivers to perform Commission-regulated auto transportation services between December 1, 2014, and December 1, 2016. In a data request response, Shuttle Express admitted that it referred 35,351 "passengers or parties" that "originally booked auto transportation service" to "a service provided by an independent contractor."[18] During this period, the company had no exemption from WAC 480-30-213. On average, Shuttle Express made approximately 41 referrals per day.[19] Each trip was a repeat violation of WAC 480-30-213.

22 Shuttle Express paid no regulatory fees on the revenue earned from these trips.[20]

23 During the proceeding, Staff effectively demonstrated that a contractor trip is not the functional equivalent of a Commission-regulated trip. As Staff witness Dave Pratt testified, only the latter is subject to the Commission's comprehensive safety standards:

> If the contractors are licensed by the Department of Licensing as limousine companies, there would be some safety standards in place—though they fall short of Commission rules for auto transportation companies. In the worst-case scenario, the independent contractors are not licensed at all, and have no safety oversight. In either case, there is currently no Commission oversight of these drivers and vehicles. This raises the potential for an undocumented driver medical or qualification issue, excessive driver hours

[16] "Independent contractor" is a term with legal significance. Shuttle Express *asserts* that its contractors are "independent," but the Commission has no jurisdiction to make that finding. Mindful of this fact, Staff prefers the generic term "contractor."
[17] Initial Order, p. 15, ¶ 69.
[18] Pratt, Exh. DP-3, Shuttle Express Response to UTC Staff Data Request No. 2.
[19] Initial Order, p. 14, ¶ 63.
[20] Initial Order, p. 12, ¶ 53 (citing Kajanoff, TR 416:22-417:2).

> of service, fatigue, or an undocumented vehicle defect—all of which place the public at risk.[21]

In sum, because motor carrier safety staff "does not inspect Shuttle Express's non-owned vehicles or the records of non-employed drivers," the Commission has "no basis on which to conclude that the [referral] program is safe."[22]

3. Challenge to Finding of Fact No. 10

24 Shuttle Express challenges the following finding:

> *(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.* (Pg. 40, ¶ 160)

This finding should be upheld because it is accurate. As stated above, Shuttle Express admitted that it referred 35,351 "passengers or parties" that "originally booked auto transportation service" to "a service provided by an independent contractor."[23]

25 Shuttle Express maintains that no violations occurred because the trips in question were ultimately provided by "limousines," and "[l]imousine operations are wholly outside the Commission's jurisdiction."[24] This argument fails. The Commission retained jurisdiction over each trip despite the referral because, by Shuttle Express's admission, each trip was "originally booked" as auto transportation service. As discussed in the Initial Order, Shuttle Express cannot unilaterally decide, in the midst of providing service, that the Commission's jurisdiction is void:

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[21] Pratt, Exh. No. DP-1T at 9:8-15.
[22] Pratt, Exh. No. DP-6T at 9:7-9.
[23] Pratt, Exh. No. DP-3, Shuttle Express Response to UTC Staff Data Request No. 2.
[24] Shuttle Express Pet. for Admin. Rev., p. 5, ¶ 8. Shuttle Express asserts for the first time on review that it "operates three principal lines of business: auto transportation, charter, and limousine referral." *Id.*, p. 5, ¶ 9. Staff disputes this claim. As discussed in this Answer, Shuttle Express does not operate a "limousine referral" service that is "distinct and different" from its auto transportation and charter services. *Id.* To the contrary, it is clear that the company's "limousine referral" service is part and parcel of its auto transportation service.

> 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. 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." 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." Accordingly, WAC 480-30-213 requires that the certificated company own or lease "any vehicle the company controls or directs the function of to provide regulated service."[25]

The Commission cannot improve upon this reasoning on review.

26 As an aside, Staff notes that Shuttle Express never actually proved that the trips in question were "performed in a limousine, driven by a chauffeur, under and pursuant to the limousine laws and regulations of the DOL."[26] As Staff witness Dave Pratt testified: "Staff has no specific knowledge or information about the non-owned vehicles and non-employed drivers being used by Shuttle Express. The company provided no evidence proving that it relies on DOL-regulated limousine companies. It has only made statements that it is doing so."[27] Shuttle Express merely asserts that its contractors are "licensed and regulated."[28]

27 Shuttle Express also argues that no violations occurred because all trips involved a "single stop,"[29] and the Commission only regulates multi-stop trips.[30] Stated differently, Shuttle Express argues that a single-stop trip is by definition a limousine trip regulated

[25] Initial Order, pp. 16-17, ¶¶ 73-74 (footnotes omitted).
[26] Shuttle Express Pet. for Admin. Rev., p. 8, ¶ 14 n.14; *see also id.* at p. 7, ¶ 12.
[27] Pratt, Exh. No. DP-6T at 10:5-9; *see also* Exh. No. DP-1T at 6:11-16.
[28] Shuttle Express Pet. for Admin. Rev., p. 47, ¶ 81.
[29] Shuttle Express clarifies that "single-stop" means "one person—or perhaps more persons—going between the airport and a single non-airport location, under a single booking for service." Shuttle Express Pet. for Admin. Rev., p. 6, ¶ 10 n.7.
[30] Shuttle Express Pet. for Admin. Rev., p. 7, ¶ 12 n.13.

exclusively by DOL.[31] This argument also fails. As the Initial Order accurately states, the Commission's jurisdiction does not hinge on the number of stops in a given trip:

> Shuttle Express argues that the Commission has previously found, 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 transportation carrier makes is immaterial as long as the service otherwise meets the definition of auto transportation.

This is the correct analysis. As Mr. Pratt summarized in his testimony, "Distinguishing single stop from multi stop service obscures the primary issue here, which is Shuttle Express's ongoing disregard of the vehicle and driver rule."[32]

28 Shuttle Express lastly argues that no violations occurred because "there is no evidence that Shuttle Express operates, manages, or controls the transportation provided by the limousines" post-referral.[33] This argument, which was already rejected in Docket TC-120323, strains credulity. Does Shuttle Express really contend that, upon referral to a contractor, it relinquishes control over the trip? No, of course not. Obviously, Shuttle Express maintains control over the pick-up and drop-off points, the general route, and the price. Consider the following testimony from Shuttle Express witness Wesley Marks:

> For example, when 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 option *enables us to carry* that passenger quickly and at a small loss, while providing them an upgraded travel experience. Of course, the passenger is happy, because they get an upgraded limo ride, quickly, and *at the same price as share ride*.[34]

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[31] *See* Shuttle Express Pet. for Admin. Rev., p. 7, ¶ 13.
[32] Pratt, Exh. No. DP-6T at 5:1-2.
[33] Shuttle Express Pet. for Admin. Rev., p. 8, ¶ 15.
[34] Marks, Exh. No. WAM-3T at 30:1-7 (emphasis added).

In other words, a "referral" is nothing more than a change in equipment. As Mr. Marks acknowledged, the company merely dispatches an "alternate vehicle" and makes "no other change to [the customer's] booking."[35] This acknowledgement supported Mr. Pratt's observation that "[t]he vehicle and the driver may have changed, but the fundamental transaction has not."[36]

4. Challenge to Finding of Fact No. 23

29 Shuttle Express challenges the following finding:

> *(23) Shuttle Express made false representations at the Application hearing that it had ceased using independent contractors.*

This finding should be upheld because it is accurate. The false representations are quoted at pages 31-32 of the Initial Order.

5. Challenge to Finding of Fact No. 24

30 Shuttle Express challenges the following finding:

> *(23) 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.*

This finding should be upheld. First, the "5 percent" figure is undisputed.[37] Second, anyone familiar with Shuttle Express's compliance history knows that the company has been willfully testing the limits of WAC 480-30-213 for quite some time.

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[35] Marks, Exh. No. WAM-3T at 34:2-6.

[36] Pratt, Exh. No. DP-6T at 6:6-7. In the event the Commission is unsure whether Shuttle Express "operated" its contract vehicles within the meaning of former WAC 480-30-213, the proper remedy isn't to wipe out the violations. If the Commission decides it needs more evidence, it should "remand the matter for further proceedings" as provided in WAC 480-07-825(9).

[37] *See* Pratt, Exh. No. DP-1T at 3:22-4:4 ([Staff witness Dave Pratt:] "To summarize, our investigation revealed that Shuttle Express used independent contractors and non-company vehicles to provide regulated auto transportation service on at least 40,727 occasions between January 16, 2014, and September 29, 2016. These trips amounted to approximately 5 percent of all trips (725,451) provided by the company during that timeframe.").

31 In 2004, Shuttle Express first informed the Commission that it intended to refer auto transportation jobs to charter and excursion carriers.[38] Staff performed legal research and advised the company that such referrals constituted "a lease of [the company's] certificate and other carrier property" in violation of multiple sections of Title 81.[39]

32 In 2007, Staff learned that Shuttle Express had modified its contractor program and was now referring auto transportation jobs to non-regulated limousine and for-hire operators.[40] Staff concluded that this scheme violated WAC 480-30-213(2) and the matter was brought before the Commission. In 2008, the Commission approved a settlement under which Shuttle Express admitted 95 violations of WAC 480-30-213(2) from June 16, 2007, to December 31, 2007.[41] Shuttle Express paid a $9,500 penalty, terminated its contractor program, and "pledged to comply with WAC 480-30-213 on a prospective basis."[42]

33 But within a few months, yet another contractor program sprouted up.[43] This time, Shuttle Express admitted that it used contract drivers to "rescue" customers who might miss a flight when traffic or mechanical issues delayed the company's regular fleet.[44] Based on this admission, the Commission fined Shuttle Express $60,000 for 5,715 repeat violations of WAC 480-30-213(2).[45] The Commission described the company's violations as "knowing and willful"[46] and scolded the company for its "intransigence."[47]

34 Given this history, the Initial Order's frustration with Shuttle Express is justified. The company is now a three-time offender. As the Initial Order correctly summarizes,

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[38] Docket TC-072228, Order 01, Initial Order Approving Settlement Agreement, p. 2, ¶ 4 (July 11, 2008).
[39] *Id.* p. 2, ¶ 5.
[40] Docket TC-120323, Order 03, Initial Order, p. 4, ¶ 12 (Nov. 1, 2013).
[41] Docket TC-072228, Order 01, Initial Order Approving Settlement Agreement, p. 3, ¶ 11 (July 11, 2008).
[42] *Id.* p. 5, ¶ 16.
[43] Docket TC-120323, Order 03, Initial Order, p. 5, ¶ 16 (Nov. 1, 2013).
[44] *Id.* p. 2, ¶ 6.
[45] Docket TC-120323, Order 04, Final Order (Mar. 19, 2014).
[46] *Id.* p. 19, ¶ 52.
[47] Docket TC-120323, Order 03, p. 10, ¶ 39 (Nov. 1, 2013).

"Shuttle Express is well aware of the rules prohibiting the use of independent contractors because it has twice received penalties for these same violations."[48] In other words, the Initial Order fairly concluded that "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."[49]

6. Due Process Issue

35 Shuttle Express argues that the Commission cannot penalize single-stop referrals in these consolidated dockets because Staff allegedly knew of identical violations in the Commission's most recent enforcement action, Docket TC-120323, and declined to pursue penalties.[50] This arguments fails because the company's purported reliance on Staff's alleged acquiescence was unreasonable and hence ineffectual. As the Initial Order correctly states, the Commission speaks through its orders, and the Commission's final order in Docket TC-120323[51] never expressly ruled that single-stop referrals comport with WAC 480-30-213:

> Mr. Kajanoff cites a meeting he and company owner Jimy 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. 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.[52]

[48] Initial Order, p. 36, ¶ 137.
[49] Initial Order, p. 38, ¶ 147.
[50] *See* Shuttle Express Pet. for Admin. Rev., pp. 12-14, ¶¶ 23-27.
[51] *WUTC v. Shuttle Express, Inc.*, Docket TC-120323, Order 04, Final Order Denying, in part, and Granting, in part, Petition for Administrative Review and Assessing Penalty (Mar. 19, 2014).
[52] Initial Order, p. 18, ¶ 77 (footnote omitted).

In other words, Shuttle Express cannot demonstrate a change in the agency's official position, much less an unreasonable one that establishes a due process violation. *Cf. FCC v. Fox TV Stations, Inc.*, 567 U.S. 239, 132 S. Ct. 2307, 183 L. Ed. 2d 234 (2012) (invalidating FCC's retroactive application of a formal policy change).

36 Further, as a technical matter, there is no "notice" issue because the proscribed conduct was plainly described in a published Commission regulation, WAC 480-30-213. As the Initial Order correctly states, the rule itself provided sufficient notice:

> 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.[53]

In other words, Shuttle Express was "warned" that its conduct was unlawful. The warning was express and patent—it was right there, in the text of the rule.

37 Beyond these points, Staff disputes that it affirmatively conceded the lawfulness of single-stop referrals in Docket TC-120323.[54] Shuttle Express refers to a "meeting" in which Staff allegedly "agreed single-stops were legal."[55] But the company cites no record evidence to corroborate this hearsay, and Staff witness Dave Pratt recalled no such meeting.[56]

38 Shuttle Express also alludes to the following exchange from the hearing in Docket TC-120323 between the Administrative Law Judge and Staff witness Betty Young:

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[53] Initial Order, p. 38, ¶ 148.
[54] Pratt, Exh. No. DP-6T at 3:6-7 ("In the previous case, Staff chose not to pursue violations for single stop trips. But we never came out and said that the single stop trips were lawful.").
[55] Shuttle Express Pet. for Admin. Rev., p. 7, ¶ 13 n.13, and p. 13, ¶ 25; *see also* Shuttle Express Initial Post-Hearing Brief, p. 50, ¶ 101.
[56] Pratt, Exh. No. DP-6T at 4:12-23.

> Q. [By Judge Torem] So is it Commission Staff's position, then, that anytime Shuttle Express dispatches somebody for regulated service, and it's in a vehicle operated by them under their certificate, it has to be an employee of the company?
>
> A. [Betty Young] That's what the Commission's rules require, yes.
>
> Q. [Judge Torem] If an independent contractor drives, for whatever reason, it's a violation of this particular rule [WAC 480-30-213(2)]. Is that the Commission's position?
>
> A. [Betty Young] The independent contractors can provide other service, which is completely fine under their limo license or under their for-hire authority. That's regulated through the Department of Licensing. However, once it switches over into share ride service on Shuttle Express's regulated routes, that's where it violates Commission rules.[57]

This exchange does not aid Shuttle Express, because Staff nowhere agreed or conceded that single-stop referrals comport with WAC 480-30-213. In fact, Ms. Young reached the opposite conclusion. She identified a bright line prohibiting auto transportation companies from using contractors to provide *any* "regulated service."[58] In the present case, Shuttle Express again finds itself on the wrong side of that line.

To be sure, Ms. Young acknowledged that the Commission lacks jurisdiction over contractors who provide "other service . . . under their limo license or under their for-hire-authority."[59] But Ms. Young was merely stating the obvious: The Commission, by definition, lacks jurisdiction over non-regulated providers (e.g., limousine operators) that provide non-regulated service (e.g., limousine service) from end to end—i.e., from start to finish. In contrast, the Commission retains jurisdiction whenever an auto transportation company "dispatches somebody for regulated service."[60] And under WAC 480-30-213, the company lacks discretion to dispatch non-owned vehicles driven by non-employed drivers.

[57] Docket TC-120323, Transcript at 36:3-21 (Aug. 1, 2013).
[58] Docket TC-120323, Transcript at 36:14.
[59] Docket TC-120323, Transcript at 36:15-17.
[60] Docket TC-120323, Transcript at 36:4-5.

39 The Commission affirmed Staff's logic in its final order in Docket TC-120323. It explained that contractors may provide non-regulated service "independently" but not "*on behalf of* Shuttle Express."[61] Based on this analysis, Shuttle Express knew or should have known that the number of stops is immaterial. Whether the service ultimately makes one stop or ten, an auto transportation company unequivocally *may not refer trips to contractors*.

40 Lastly, Staff takes issue with Shuttle Express's suggestion that the Commission is engaged in regulation by surprise.[62] As the Commission recognized in Docket TC-120323—even before the current Staff investigation and Initial Order—Shuttle Express is the party playing hide-the-ball:

> Shuttle Express has been discussing independent contract programs with Staff since 2004. The Company's president sent letters to the Commission in August 2004 and February 2005 proposing to hire independent contractors as drivers of the vehicles used to provide auto transportation service, to which Staff responded that such a program would be unlawful. In 2006, Shuttle Express proposed a rule that would have allowed the Company to use a sub-carrier to perform the Company's regulated auto transportation services, which the Commission rejected as inconsistent with RCW ch. 81.68. One year later, Staff discovered that Shuttle Express had expanded its operations by contracting with independent contractors to provide regulated auto transportation services, which resulted in Order 01 in Docket TC-072228.
>
> Shuttle Express knew Staff's views on the use of independent contractors to provide regulated auto transportation service. The Company agreed in Docket TC-072228 that such use is a violation of WAC 480-30-213 and pledged not to violate that rule again. The only substantial operational difference between the independent contractor program addressed in that proceeding and the "rescue service" at issue here is that the Company provided "rescue service" on an ad hoc basis, rather than a regular schedule. The contention that Shuttle Express did not know its "rescue service" violated WAC 480-30-213 is not credible.
>
> A prudent company would have consulted with Staff, and if necessary sought a ruling from the Commission, on the permissibility of the "rescue service" before initiating it, or at least when the Company became

[61] Docket TC-120323, Order 04, p. 7, ¶ 13.
[62] *See* Shuttle Express Initial Post-Hearing Brief, p. 50, ¶ 101 n.165.

> aware of Staff's and the Commission's concerns. Shuttle Express chose not to do so, despite the long history of the Commission and Staff rejecting the Company's attempts to use independent contractors to provide regulated service. The clear implication is that, not having received the answer it wanted in the past, Shuttle Express decided to continue the program without asking, believing that seeking forgiveness would be preferable to requesting permission. Indeed, that was precisely the Company's calculus when it began operating the program at issue in Docket TC-072228. Jimy Sherrell, the Company's president, testified that "I chose to put it in place, hoping that it would be ignored, and it wasn't, so I paid a fine and I discontinued the service."[63]

To summarize, Shuttle Express had ample notice before its current violations that *any* use of non-owned vehicles and non-employed drivers was unlawful—or at the very least suspect—under WAC 480-30-213. When the company continued to refer auto transportation trips to contractors, it did so at its own peril.

7. Monetary Penalty

41 Shuttle Express asks the Commission to reverse the Initial Order's $120,000 penalty. But it suggests no alternative penalty calculation if the Commission elects to impose a penalty but seeks to alter the amount.[64] Stated differently, it's all or nothing for Shuttle Express.[65] The company does not request mitigation.

42 As stated above, Staff accepts the Initial Order's $120,000 penalty, which essentially disgorges Shuttle Express's illegal profits. The Initial Order explained that the penalty "represents a conservative estimate of the total revenue and avoided fees the company retained from its 35,351 unlawful trips." This is a principled approach. The $120,000

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[63] Docket TC-120323, Order 04, p. 11-12, ¶¶ 28-30; *see also* Pratt, Exh. No. DP-6T at 1:22-2:6 (discussing Staff's frustration with the company's repeated attempts to "outsmart the Commission").
[64] The Commission has an 11-factor enforcement policy that guides its discretion when setting penalty amounts. Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission (January 7, 2013). Staff addressed the 11 factors in its testimony and post-hearing brief. The Initial Order also analyzes the 11 factors. Shuttle Express, on the other hand, completely ignores the factors.
[65] Shuttle Express Pet. for Admin. Rev., p. 52, ¶ 84 (urging the Commission to "[a]ssess no fines or penalties against Shuttle Express").

penalty is the minimum needed to make the illegal practice uneconomic. Anything less will simply be written off as a "cost of doing business."

8. Impact of Recent Rulemaking

43 It is not lost on Staff that the Commission recently repealed WAC 480-30-213.[66] The new rules no longer require passenger transportation companies to provide service using company-owned vehicles and company-employed drivers.

44 In Staff's view, the recent rulemaking has no impact on the issues in this docket. The Initial Order said it best:

> [T]he 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.[67]

The Commission's new rules are not retroactive.

9. Impact of Recent Exemptions

45 During the past four years, the Commission has granted Shuttle Express two exemptions from WAC 480-30-213. The Commission granted a one-month exemption in December 2013[68] and, separately, granted a ten-month exemption that remained in effect from September 2016 to July 2017.[69] The fact that Shuttle Express requested these exemptions begs the question: If Shuttle Express was so confident that its referral program was lawful, *then why did it need an exemption from WAC 480-30-213?* Shuttle Express has seemingly painted itself into a corner. By requesting the exemptions, the company effectively conceded that the Commission has jurisdiction over its referral program.

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[66] *In the Matter of Amending WAC 480-30 Relating to Passenger Transportation Companies*, Docket TC-161262, General Order R-590 Repealing, Amending, and Adopting Rules Permanently (July 31, 2017).
[67] Initial Order, pp. 17-18, ¶ 76.
[68] Docket TC-132141, Order 01, Order Granting Petition with Conditions (Dec. 13, 2013).
[69] Docket TC-160819, Order 01, Order Granting Petition with Conditions (Sept. 30, 2016).

B. The Initial Order Properly Found that Shuttle Express Paid Unlawful Commissions to Hotel Concierges

46 The Initial Order properly found that Shuttle Express violated WAC 480-30-391(1) by failing to obtain Commission approval of certain ticket agent agreements.[70] During the rehearing, Staff contended that the agreements in question were not subject to WAC 480-30-391(1). But for purposes of review, Staff does not contest the Initial Order's contrary finding.

47 WAC 480-30-391(1) provides, "An auto transportation company may enter into contracts or agreements with a second party for the sale of tickets or fares on behalf of the company, provided the form of such contracts or agreements has been previously approved by the commission." Here, the record shows that Shuttle Express expressly agreed to pay 10 percent referral commissions to certain hotel staff for any service booked at the retail rate.[71] It is undisputed that the company failed to obtain Commission approval of these agreements. The Initial Order was therefore correct in finding that the company violated WAC 480-30-391(1).

C. The Initial Order Properly Found that Shuttle Express Improperly Stopped at Unlisted Flag Stops

48 The Initial Order properly found that Shuttle Express violated WAC 480-30-346 by stopping at unlisted flag stops.[72] WAC 480-30-346(2)(d) provides that an auto transportation company's filed time schedule must "[s]how the routes served, including the exact location of each regular stop, each flag stop, and any point to which service is provided." WAC 480-30-276(2), which was not cited in the Initial Order, similarly provides: "An auto transportation company must provide service along all routes, and to all points, listed on the

[70] Initial Order, p. 18, ¶ 78; *see id.*, p. 40, ¶ 161 (Finding of Fact No. 11).
[71] Initial Order, p. 18, ¶ 78 (quoting Roemer, Exh. No. HJR-26).
[72] Initial Order, p. 41, ¶ 172 (Finding of Fact No. 22).

company's filed time schedule [and] must make a good faith effort to operate in compliance with the times of arrival and/or departure shown on the company's filed time schedule." Yet another provision, WAC 480-30-281(2)(iv), mandates that a company's filed time schedule must identify "all flag stops at which the company will provide service." The purpose is to "provide sufficient information to allow prospective passengers to make informed decisions regarding their travel arrangements."[73]

49 Here, as the Initial Order states, "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."[74] Shuttle Express violated WAC 480-30-346(2)(d) and, alternatively, WAC 480-30-276(2) or WAC 480-30-281(2), because the company's scheduled trips cannot deviate from the route and stops listed in the company's filed time schedule.

D. The Initial Order Properly Concluded that Shuttle Express Will Not Serve its Territory to the Commission's Satisfaction

50 The Initial Order properly concluded that 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)."[75] As the Initial Order explained, this conclusion was amply supported by Shuttle Express's long history of using contract drivers and non-owned vehicles in violation of former WAC 480-30-213:

> [W]e 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

[73] WAC 480-30-281(2)(a).
[74] Initial Order, p. 30, ¶ 116.
[75] Initial Order, p. 42, ¶ 190 (Conclusion of Law No. 12). As discussed below, the Commission may grant overlapping certificates if the incumbent's service is unsatisfactory.

> 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.[76]

This finding alone established that Shuttle Express "will not provide [service] to the satisfaction of the commission" within the meaning of RCW 81.68.040. When a regulated company repeatedly violates a rule, and refuses to acknowledge its error, the Commission may reasonably conclude that the company's service is unsatisfactory on an ongoing basis. As the Initial Order stated, "Shuttle Express has an extensive history of noncompliance with Commission rules that constitutes a predictive pattern of behavior."[77]

51 Shuttle Express argues that because RCW 81.68.040 uses the future tense ("will not provide"), incumbent certificate-holders "should have some notice of what the Commission expects . . . before [the Commission] can abrogate their right of exclusivity."[78] This precise argument was rejected by the Washington State Court of Appeals in *Pacific Northwest Transportation Services v. Washington Utilities and Transportation Commission*. In that case, the Court held:

> We reject this restrictive view of how the Commission may proceed. Instead, we hold that the Commission, when called upon to evaluate the future, may do so in any rational way that the evidence will support. In other words, the Commission may infer an applicant's future conduct from his or her past conduct, or, alternatively, proceed in any other rational way that the evidence will support.[79]

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[76] Initial Order, p. 29, ¶ 115.
[77] Initial Order, p. 30, ¶ 117.
[78] Shuttle Express Pet. for Admin. Rev., p. 21, ¶ 33 n.58.
[79] 91 Wn. App. 589, 596, 959 P.2d 160 (1998).

Shuttle Express must not be familiar with this case because it claims "[t]his point of law is not clear."[80] Actually, the point of law is very clear.

E. The Initial Order Properly Concluded that Speedishuttle Does Not Provide the Same Service as Shuttle Express

52 The Initial Order properly concluded that "Speedishuttle provides different service than Shuttle Express provides based on the totality of its service features."[81] Stated differently, the Initial Order properly concluded that Speedishuttle's service is not the "same" as Shuttle Express's within the meaning of RCW 81.68.040.

53 The Commission has adopted non-exclusive criteria to determine whether competing services are the "same." WAC 480-30-140(2) provides that the Commission may consider:

> (a) The certificate authority granted to the existing companies and whether or not they are providing service to the full extent of that authority;
> (b) The type, means, and methods of service provided;
> (c) Whether the type of service provided reasonably serves the market;
> (d) Whether the population density warrants additional facilities or transportation;
> (e) The topography, character, and condition of the territory in which the objecting company provides service and in which the proposed service would operate;
> (f) For scheduled service, the proposed route's relation to the nearest route served by an existing certificate holder. The commission views routes narrowly for the purpose of determining whether service is the same. Alternative routes that may run parallel to an objecting company's route, but which have a convenience benefit to customers, may be considered a separate and different service; and
> (g) Door-to-door service and scheduled service in the same territory will not be considered the same service.

54 Here, the Initial Order properly found differences in the "type, means, and methods of service" provided respectively by Shuttle Express and Speedishuttle.[82] The following service feature distinctions were undisputed or are indisputable on review:

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[80] Shuttle Express Pet. for Admin. Rev., p. 21, ¶ 33 n.58.
[81] Initial Order, p. 42, ¶ 186 (Conclusion of Law No. 8). As discussed below, the Commission may grant overlapping certificates if the new entrant's service is not the "same" as the incumbent's.
[82] WAC 480-30-140(2)(b).

- **Equipment.** Speedishuttle uses Mercedes vans that are relatively newer and larger than the Ford vans used by Shuttle Express.[83] Speedishuttle's vans are black and contain few markings, whereas Shuttle Express's vans are white and display large advertisements on the side.[84] All of Speedishuttle's vans have Wi-Fi and flat-screen monitors that display a tourism video ("SpeediTV"), whereas only some of Shuttle Express's vans have Wi-Fi and none of Shuttle Express's vans have video screens.[85] Speedishuttle has a mobile app that allows passengers to track vehicles. Shuttle Express is developing a similar app but has not yet launched it.[86]
- **Type of service.** Speedishuttle exclusively provides door-to-door service, whereas Shuttle Express provides both door-to-door-service and scheduled service and often (unlawfully) combines the two.[87]
- **Greeters.** Speedishuttle provides a personal greeter to inbound airport passengers with prearranged reservations.[88] Shuttle Express does not offer this service.
- **Use of company vehicles and employees.** Speedishuttle exclusively uses company-owned vehicles and company-employed drivers, whereas Shuttle Express uses contract vehicles and drivers for approximately 5 percent of its trips.[89]

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[83] Initial Order, p. 21, ¶ 84.
[84] Initial Order, p. 21, ¶ 84.
[85] Initial Order, p. 24, ¶ 93; *see also* Shuttle Express Pet. for Admin. Rev., p. 37, ¶ 59 ("Speedishuttle did succeed in showing that it has in fact installed TV and WiFi in its vans.").
[86] Initial Order, p. 24, ¶ 94.
[87] Initial Order, pp. 27-28, ¶¶ 108-110; *see also id.*, p. 30, ¶ 116.
[88] Initial Order, p. 23, ¶ 90; *see also* Shuttle Express Pet. for Admin. Rev., pp. 36-37, ¶ 57 (acknowledging that Speedishuttle greets somewhere between 50 percent and 80 percent of its inbound passengers).
[89] Initial Order, pp. 25-26, ¶ 100.

Given these differences, the Commission can reasonably affirm that Speedishuttle's service is not the "same" as Shuttle Express's. To summarize, Speedishuttle's service is, on a relative basis, more luxurious, more tech-savvy, and more personalized.

55 Additionally, only Speedishuttle guarantees that the customer will be transported on a company-owned vehicle operated by a company-employed driver. Shuttle Express, in contrast, regularly delegates its operations to contract drivers and vehicles. Because such abdication of authority demonstrates Shuttle Express's "inability or refusal to transport certain customers due to resource constraints, inconvenience, or economic disincentive,"[90] the Initial Order properly found that Shuttle Express was not "providing service to the full extent of [its] authority" within the meaning of WAC 480-30-140(2)(a). And because this practice violated former WAC 480-30-213, the Initial Order properly found that Shuttle Express demonstrated its failure to "reasonably serve the market"[91] within the meaning of WAC 480-30-140(2)(c).

F. The Initial Order Properly Decided that Speedishuttle May Directly Compete with Shuttle Express

56 Monopoly is the default status under RCW 81.68. But that status can be overridden if (1) the incumbent will not serve its territory "to the satisfaction of the Commission" *or* (2) the new entrant will provide a service that is not the "same" as the incumbent's. RCW 81.68.040. Here, as the Initial Order properly concluded, both conditions are present:

- Based on multiple service failures, Shuttle Express does not, and will not, serve its territory to the Commission's satisfaction.

[90] Initial Order, pp. 26-27, ¶¶ 102-107.
[91] Initial Order, p. 28, ¶ 111.

- Based on multiple service feature distinctions, Speedishuttle's service is not the same as Shuttle Express's.

Based on these conclusions, the Initial Order properly decided that Speedishuttle may directly compete with Shuttle Express.

57 Staff supports this outcome. Broadly, Staff believes that "the public convenience and necessity require" Speedishuttle's presence in the market because Shuttle Express has demonstrated that it cannot serve its territory without delegating a substantial number of trips to contractors and because Speedishuttle provides an alternative for passengers seeking a more luxurious, more tech-savvy, or more personalized experience.

58 Further, Staff believes that the passenger transportation market is naturally competitive. Passengers traveling to or from the airport have a wide range of competing options, including buses, light rail, taxis, TNCs, and private vehicles (a fact admitted by Shuttle Express's expert witness).[92] Given these options, it makes little sense to continue treating auto transportation providers as natural monopolies.

59 To be sure, nothing in the Commission's governing statutes mandates strict enforcement of exclusive service territories. RCW 81.64.040 in fact expressly contemplates that a territory may be served by an "auto transportation company *or companies*." Recognizing this fact, Shuttle Express properly acknowledges that its monopoly is "qualified," rather than absolute.[93]

[92] Wood, Exh. No. DJW-3T at 10-16; *see also* Shuttle Express Pet. for Admin. Rev., p. 9, ¶ 16 n.19 (acknowledging that "[t]he share-ride business has been under assault *from all sides* and declining for years now") (emphasis added).
[93] Shuttle Express Pet. for Admin. Rev., p. 19, ¶ 31.

60 Staff lastly disputes Shuttle Express's repeated assertions that Speedishuttle's unrestricted authority directly threatens Shuttle Express's viability.[94] As Staff witness Mike Young explained, Shuttle Express might be losing money due to its own inefficiency:

> Q. [By Shuttle Express counsel] Do you think it would be in the public interest if, as a result of this competition, either SpeediShuttle or Shuttle Express were to cease doing share ride business to Sea-Tac Airport?
>
> A. [By Mike Young] Well, it would be my position that if one of the companies ceased operation that would be their decision based on their management and would not be because of anything the Commission has done or not done.
>
> Q. What if it were based on financial constraints of the competition?
>
> A. Again, I think that's the purview of the company management to –
>
> Q. Let's put aside the cause. Would it be in the public interest, for whatever reason, for one or both of those companies to cease providing share ride services?
>
> [Discussion between counsel and ALJ omitted]
>
> A. Although I find it unlikely that both companies would cease business on the exact same day, assuming—my assumption would be that the less efficient operator would go out of business. In any event, the certificate would be available for other providers.[95]

To summarize, the Commission should not assume a direct correlation between Speedishuttle's entry into the market and Shuttle Express's purported decline.[96]

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[94] *E.g.*, Shuttle Express Pet. for Admin. Rev., p. 45, ¶ 76 (alleging that Speedishuttle "has driven Shuttle Express from a profit into a loss on share-ride").
[95] Young, Tr. at 834:18-836:4.
[96] Further, to the extent Shuttle Express is losing money, cancellation or restriction of Speedishuttle's certificate isn't the only option. Shuttle Express could reduce costs. Or it could file a rate case to increase its base fare. Finally, it could attract more customers by improving its service. The company may not be as powerless as it suggests.

V. CONCLUSION

61 Staff believes the Initial Order is well reasoned and well supported. Staff respectfully recommends that the Commission affirm the Initial Order without modification.

DATED this 26th day of September 2017.

Respectfully submitted,

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