

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

<p>In re the Application of</p> <p>SPEEDISHUTTLE WASHINGTON, LLC d/b/a SPEEDISHUTTLE SEATTLE</p> <p>For a Certificate of Public Convenience and Necessity to Operate Motor Vehicles in Furnishing Passenger and Express Service as an Auto Transportation Company</p>	<p>DOCKET TC-143691 <i>(Consolidated)</i></p> <p>ORDER 20</p>
<p>SHUTTLE EXPRESS, INC.,</p> <p>Complainant,</p> <p>v.</p> <p>SPEEDISHUTTLE WASHINGTON, LLC d/b/a SPEEDISHUTTLE SEATTLE,</p> <p>Respondent.</p>	<p>DOCKET TC-160516 <i>(Consolidated)</i></p> <p>ORDER 13</p>
<p>SPEEDISHUTTLE WASHINGTON, LLC d/b/a SPEEDISHUTTLE SEATTLE,</p> <p>Complainant,</p> <p>v.</p> <p>SHUTTLE EXPRESS, INC.,</p> <p>Respondent.</p>	<p>DOCKET TC-161257 <i>(Consolidated)</i></p> <p>ORDER 10</p> <p>FINAL ORDER</p>

BACKGROUND

- 1 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) objected to the Application. On March 30, 2015, the Commission entered Order 04, Final Order Affirming Order 02, which affirmed the initial order finding that Speedishuttle did not propose to offer the same service that Shuttle Express provides and overruled the objection to granting the Application.
- 2 On May 16, 2016, Shuttle Express filed a Petition for Rehearing of Matters in Docket TC-143691 alleging that Speedishuttle is providing the same service as Shuttle Express, not the service that the Commission found to be different. Shuttle Express contemporaneously filed a Formal Complaint against Speedishuttle in Docket TC-160516. The allegations in the complaint substantially overlap with the allegations in the Petition for Rehearing and further allege that Speedishuttle is engaging in predatory pricing by providing service below cost. On August 4, 2016, the Commission agreed to rehear matters in Docket TC-143691, adjudicate the complaint in Docket TC-160516, and consolidate the two dockets.
- 3 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 January 5, 2017, the Commission consolidated this docket with Dockets TC-143691 and TC-160516.
- 4 On May 10 and 12, 2017, the Commission conducted an evidentiary hearing before Administrative Law Judge Rayne Pearson. The parties filed initial post-hearing briefs on June 19, 2017, and reply briefs on July 14, 2017.¹
- 5 On August 25, 2017, the Commission entered its initial order in the consolidated dockets (Initial Order). The order finds that Shuttle Express's use of independent contractors violates applicable statutes and rules and assesses a \$120,000 penalty for those violations.

¹ Rather than repeat them here, we adopt the summary of the procedural history, evidence, and parties' positions in paragraphs 1-28 and 30-67 in the Initial Order.

The Initial Order also finds that Shuttle Express violated Commission rules by failing to file the form for its ticket agent agreements and by combining scheduled and door-to-door service. The Initial Order upholds the Commission's grant of a certificate to Speedishuttle both because Shuttle Express will not provide service to the Commission's satisfaction and because Speedishuttle provides a different service than Shuttle Express provides. Finally, the Initial Order finds that Shuttle Express failed to establish that Speedishuttle sets prices for its service below cost or engages in predatory pricing.

6 On September 15, 2017, Shuttle Express submitted a Petition for Administrative Review of the Initial Order (Petition). Shuttle Express essentially assigns error to all of the findings of fact and conclusions of law in the Initial Order. More generally, Shuttle Express contends that (1) it lawfully used independent contractors and paid commissions for referrals from hotel concierges; (2) "Speedishuttle's Business Model differences were not real, were not meaningfully implemented, and did not constitute a different service under the law"; (3) the Initial Order's findings and conclusions concerning whether Shuttle Express will provide service to the Commission's satisfaction are "not supported by cognizable new evidence"; (4) Shuttle Express's complaint that Speedishuttle is engaging in predatory pricing below cost is "actually supported by overwhelming evidence and admitted by Speedishuttle"; and (5) the remedies in the Initial Order "fail to properly apply and enforce the public service laws."²

7 On September 26, 2017, Speedishuttle and Commission staff (Staff) submitted their answers to the Petition. Both of these parties oppose the Petition and urge the Commission to approve and adopt the Initial Order as its own.

8 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.

DISCUSSION AND DECISION

9 We largely deny the Petition. The record amply demonstrates that Shuttle Express has repeatedly and willfully violated Commission rules and regulations, will not provide auto transportation service to the Commission's satisfaction, and should be penalized for its

² Petition ¶ 7.

most recent infractions. Shuttle Express has not proven that Speedishuttle can engage, much less has engaged, in predatory pricing. Accordingly, Speedishuttle may retain its existing certificate without modifications. We agree with and adopt as our own much of the discussion in the Initial Order on those issues as supplemented by this Order.

- 10 On the other hand, because we conclude that Shuttle Express will not provide service to the Commission's satisfaction, we need not, and do not conclude that Speedishuttle provides a different service than Shuttle Express. Accordingly, we vacate those aspects of the Initial Order.

Misconduct and Scope of Review

- 11 As an initial matter, Shuttle Express accuses the administrative law judge of conducting a "one-sided and patently unfair proceeding."³ More specifically, Shuttle Express claims that she engaged in an "improper and undue (not to mention one-sided) narrowing of the proceeding,"⁴ "revis[ed] prior Commission orders to make the unassailable facts no longer relevant,"⁵ and used "invented" evidence to "freely and liberally" expand the case to support the other parties' positions.⁶ Such claims, like all allegations in a pleading or brief, must be well grounded in fact.⁷ These are not.
- 12 We find no basis in fact or law for Shuttle Express's accusations. The record demonstrates that the judge's conduct of the proceedings was fair and balanced, her rulings were consistent with Commission rules and prior orders, and substantial evidence supports her findings of fact. Shuttle Express's unsupported accusations to the contrary appear to us to go beyond zealous advocacy and are wholly inconsistent with the behavior we expect from counsel who appear before us and the parties they represent.
- 13 We expect parties, particularly those represented by counsel, to comply with the Commission's procedural rules. In its Answer to the Petition, Staff notes several instances in which Shuttle Express purports to preserve challenges and arguments that are

³ Petition ¶ 5.

⁴ *Id.* ¶ 2.

⁵ *Id.* ¶ 3.

⁶ *Id.*

⁷ *See, e.g.*, CR 11(a)(1) (stating that a party's or attorney's signature on a pleading, motion, or legal memorandum certifies that it is well grounded in fact).

not raised or discussed in the Petition. Staff recommends, “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.”⁸ We agree and so state.

14 The Commission’s procedural rule governing review of initial orders is prescriptive:

Petitions for administrative review must clearly identify the nature of each challenge to the initial order, the evidence, law, rule or other authority that the petitioner relies upon to support the challenge, and state the remedy that the petitioner seeks. *Petitions for review of initial orders must be specific.* The petitioner must separately state and number every contention. A petition that challenges a finding of fact must cite the pertinent page or part of the record or must otherwise state the evidence it relies on to support its petition, and should include a recommended finding of fact. A petition that challenges a conclusion of law must cite the appropriate statute, rule, or case involved and should include a recommended conclusion of law. A petition that challenges the summary or discussion portion of an initial order must include a statement showing the legal or factual justification for the challenge, and a statement of how the asserted defect affects the findings of fact, the conclusions of law, and the ultimate decision.⁹

The Commission will consider the challenges raised in a petition for administrative review that comply with these requirements. Unless it raises them on its own motion, the Commission will not address issues to which a party obliquely refers or attempts to cross-reference in a prior brief or other filing. Those issues are waived.

15 Accordingly, the only issues Shuttle Express has preserved for administrative review are those it has raised consistent with the requirements in WAC 480-07-825, specifically the contentions of error listed and summarized in paragraph 7 of the Petition. Whether intentional or not, Shuttle Express has waived all other issues, and we do not consider them.

⁸ Staff Answer ¶¶ 3 and 5.

⁹ WAC 480-07-825(3) (emphasis added).

Use of Independent Contractors

- 16 Prior to the date on which Speedishuttle filed its original Application and, later, its complaint, WAC 480-30-213 required an auto transportation company to use vehicles it owns and employ its own drivers to provide auto transportation service. The Initial Order concludes, “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.”¹⁰ Shuttle Express challenges this conclusion on several grounds, primarily based on its position that the service being provided was not auto transportation service but limousine service, which is not subject to Commission regulation. We disagree.
- 17 Shuttle Express concedes that it arranged for vehicles and drivers other than its own vans and employees to transport passengers to the airport on 35,251 occasions during the relevant time period. Shuttle Express refers to these as instances of “upgrade service,” which the company explains as follows:
- We use the term upgrade to indicate that we’ve contacted the passenger and received positive approval to send them an *alternate vehicle* for their transportation. Generally, the dispatcher advises the guest that Shuttle Express would like to *upgrade their service from a shared van to a private town car or SUV at no additional charge*. If the customer accepts the change, then we dispatch the replacement vehicle and service to the guest and make no other change to their booking. If they decline, we send an employee driver in a company owned vehicle.¹¹
- 18 While some customers may prefer a town car to a shared-ride van, Shuttle Express cannot plausibly contend that its upgrade service is not auto transportation service as defined in Commission rules and the company’s tariff. A customer requested auto transportation service from Shuttle Express at the rates, terms, and conditions in the tariff, and Shuttle Express provided that service at those rates, terms, and conditions. The only distinction is that Shuttle Express used a vehicle owned and driven by a third-party contractor, rather than an employee driver in a company-owned vehicle. It is a distinction without a

¹⁰ Initial Order ¶ 179.

¹¹ Marks, Exh. WAM-2T at 34:1-7 (emphasis added).

difference. Shuttle Express represented to its customers that upgrade service is *better* service, not *different* service.¹²

- 19 Shuttle Express also contends that its upgrade service is not auto transportation service because Shuttle Express does not own the vehicle, and the statute defines “auto transportation company” as a person “owning, controlling, operating, or managing any motor-propelled vehicle used in the business of transporting persons and their baggage *on the vehicles of auto transportation companies* carrying passengers.”¹³ According to Shuttle Express, the highlighted language reflects legislative intent to define auto transportation companies as only those who use their own vehicles dedicated to providing that service.
- 20 The statutory language on which Shuttle Express relies is not reasonably susceptible to its interpretation. The phrase “on the vehicles of auto transportation companies” merely modifies “baggage,” requiring passengers and baggage to be transported in the same vehicle. That language does not limit which companies are auto transportation companies. The remainder of the definition does so by specifying persons “owning, controlling, operating, or managing *any* motor-propelled vehicle.” Shuttle Express cannot claim it is not an auto transportation company as defined in the statute because it is providing auto transportation service using vehicles it does not own.¹⁴
- 21 Shuttle Express further asserts that the Commission cannot regulate upgrade service because the vehicles used to provide that service are limousines, which are subject to the exclusive jurisdiction of the Department of Licensing (DOL). Staff correctly observes that we rejected a similar argument the last time the Commission found that Shuttle Express violated former WAC 480-30-213.¹⁵ Further, as Staff notes in its Answer, Shuttle Express cites to no record evidence demonstrating that DOL regulates these vehicles.

¹² Shuttle Express’s operations are consistent with the common meaning of the word “upgrade,” *i.e.*, “to raise the quality of.” <https://www.merriam-webster.com/dictionary/upgrade>.

¹³ RCW 81.68.010(3) (emphasis added).

¹⁴ Indeed, the Commission’s most recent revisions to its rules governing auto transportation service allowing companies to use independent contractors would conflict with the statute if it required those companies to provide service only using their own vehicles.

¹⁵ *Commission v. Shuttle Express*, Docket TC-120323, Order 04 ¶ 13 (March 19, 2014).

- 22 Upgrade service actually involves two separate services. The first service is auto transportation service the travelling passenger receives from Shuttle Express. The passenger contacts Shuttle Express to arrange that service from Shuttle Express and pays Shuttle Express for the service. The second service is “limousine service” (for purposes of this discussion) that Shuttle Express obtains from an independent contractor. Shuttle Express contacts the contractor to arrange the limousine service and pays the contractor for that service. Shuttle Express then uses the limousine service to physically provision the auto transportation service to the travelling passenger. Whether or not DOL regulates the limousine service the independent contractor provides to Shuttle Express, the Commission has jurisdiction over the auto transportation service Shuttle Express provides to the passenger, regardless of the vehicles or drivers Shuttle Express uses to provision that service.¹⁶
- 23 Shuttle Express claims in its Petition that it merely “solicits passengers for the limousine carriers, refers them, and assists with the booking with independent limousine carriers who accept the proposed transportation. Shuttle Express may, in some cases, assist with the billing and collection of the limousine fares.”¹⁷ The testimony Shuttle Express cites for this proposition is to the contrary. Mr. Marks testified that the *only* change Shuttle Express made to the original booking was the vehicle used to provide the service: “If the customer accepts the change, we dispatch the replacement vehicle and service to the guest and make no other change to their booking.”¹⁸ Shuttle Express thus does not “refer” the customers to a limousine carrier or “assist with the billing and collection of the limousine fares” when providing upgrade service. The customer books auto transportation service from Shuttle Express and pays Shuttle Express the tariffed fare while Shuttle Express books and pays the limousine carrier.¹⁹

¹⁶ The Commission codified that concept in its most recent revisions. *See, e.g.*, WAC 480-30-221(1) (“A passenger transportation company must ensure that all vehicles and drivers used to provide passenger transportation services under the authority of the company's certificate comply with all federal, state, and local laws and rules, and commission orders, governing licensing, vehicle safety, and driver safety.”)

¹⁷ Petition ¶ 15 (footnotes omitted).

¹⁸ Marks, Exh. WAM-2T at 34:5-7.

¹⁹ We need not, and do not, reach Shuttle Express’s constitutional takings challenge because as a matter of fact and law, the Commission has not asserted jurisdiction over limousine services.

- 24 Finally, Shuttle Express argues that all of the trips at issue in this proceeding involved a single stop and that the Commission regulates only multi-stop trips as auto transportation service. According to Shuttle Express, Staff previously agreed with this conclusion and the Commission in its final order in Docket TC-120323 implicitly validated it. Shuttle Express is incorrect.
- 25 As the Initial Order observes, “Neither RCW 81.68 nor WAC 480-30 make any distinction between single-stop and multi-stop trips.”²⁰ Nor did the Commission implicitly validate such a distinction in Docket TC-120323. The only trips at issue in that docket were multi-stop trips. The Commission summarized Shuttle Express’s position that “Staff concedes that ‘rescue service’ provided on a single-stop basis complies with Commission regulations”²¹ but thereafter ignored that argument because it was not germane. The Commission did not conclude, implicitly or otherwise, that regulated auto transportation service does not include single-stop trips.
- 26 Shuttle Express nevertheless contends that Staff told the company that the Commission does not regulate single-stop trips and that Shuttle Express relied on that advice to its detriment. Staff, however, disputes that it ever gave such guidance. The only evidence Shuttle Express offered to support the alleged conversation with Staff was the self-serving hearsay of one of its own personnel. We do not find this credible, particularly in light of the circumstances surrounding upgrade service. Shuttle Express accepts the original booking from the travelling passenger as auto transportation service and only seeks to provide upgrade service if other passengers are not available to share the ride. Auto transportation service does not cease being auto transportation service simply because Shuttle Express does not subsequently receive additional bookings for a particular trip. Indeed, Shuttle Express acknowledges the regulatory status of this service by using its own vehicle and employee driver to provide the service to a single passenger or party if they decline an upgrade.²² Shuttle Express’s upgrade service is auto transportation service as defined in Commission rules and the company’s tariff.

²⁰ Initial Order ¶ 70.

²¹ *Commission v. Shuttle Express*, Docket TC-120323, Order 04 Final Order ¶ 37 (March 19, 2014).

²² Marks, Exh. WAM-2T at 34:6-7.

27 The Initial Order did not err by concluding that Shuttle Express violated former WAC 480-30-213 a total of 35,351 times in the two years prior to the date Speedishuttle filed its complaint.²³

Hotel Personnel Commissions

28 “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.”²⁴ The Initial Order finds that “Shuttle Express’s failure to file the form it uses for its commission-based booking program violates” this requirement.²⁵ Shuttle Express challenges this finding as unsupported and directly contrary to the evidentiary record. We disagree.

29 The Initial Order quotes several provisions in Shuttle Express’s “2015 Commission Guidelines” detailing how hotel personnel can earn commissions on Shuttle Express service they book for others, as well as Mr. Mark’s acknowledgement of that arrangement. This evidence provides substantial support for the Initial Order’s finding.

30 Shuttle Express argues that the term “book” is undefined in that context and thus does not support a legal conclusion that hotel personnel were acting as agents of Shuttle Express. We find no ambiguity in that verb or any reason to believe it has anything other than the common meaning: “to register (something, such as a name) for some future activity or condition (as to engage transportation or reserve lodgings).”²⁶ Shuttle Express also claims that Mr. Marks’s testimony came in response to a “very leading question that was framed in the passive voice about ‘reservations made for Shuttle Express service on behalf of passengers.’”²⁷ Shuttle Express made no objection to the question at the hearing, and the context of the questioning makes clear that it refers to reservations the hotel employee made for the travelling passenger.

31 Shuttle Express nevertheless claims that Staff in its response to Bench Request No. 5 stated that “Staff found that Shuttle Express was, in fact, paying certain Seattle-area hotel

²³ Accordingly, we adopt paragraphs 69-77 in the Initial Order.

²⁴ WAC 480-30-391(1).

²⁵ Initial Order ¶ 78.

²⁶ <https://www.merriam-webster.com/dictionary/book>.

²⁷ Petition ¶ 28.

staff for referring customers to Shuttle Express. However, the hotel staff are not selling tickets or acting as ticket agents. Instead, they are simply referring customers to Shuttle Express.” At best, this raises a conflict with other record evidence. Under the circumstances presented here, we find that the weight of the evidence supports the Initial Order’s findings. Shuttle Express’s 2015 Commission Guidelines document, witness testimony, and Staff’s finding that Shuttle Express was paying hotel staff in conjunction with auto transportation service, support the conclusion that Shuttle Express’s commission arrangement comes within WAC 480-30-391, and Shuttle Express should have filed the form of its agreement for Commission approval to make such payments prior to doing so.

32 Finally, Shuttle Express argues that it could not have violated the rule unless an agent actually sells the ticket for the service and collects the payment from the passenger, which was not the case here. We do not read the rule so narrowly. Both the language and the intent of the rule require an auto transportation company to inform the Commission in advance of any agreement to pay a portion of a company’s regulated fares to another person involved in the company’s ticket sales. The form agreement must include “a statement as to how and when payment will be made to the company for tickets, less commission,” among other items, but such a requirement does not specify who must make the payment or how the company will pay the commission.

33 Even if WAC 480-30-391 did not apply, Shuttle Express’s arrangement with hotel personnel would violate RCW 81.28.080. That statute provides, in relevant part, that a company “shall not refund or remit in any manner or by any device any portion of the rates, fares, or charges [in its tariff] excepting on order of the commission.”²⁸ As the Commission explained when it previously found that Shuttle Express had violated the applicable rule,

The regulation is designed to facilitate a carrier’s contract with agents such as travel agents or institutions. It is not designed to supersede the requirements of RCW 81.28.080, nor to allow payments to individuals whose jobs do not regularly include such duties. Payment is not proper to bellhops or other individuals whose regular vocations do not involve similar agencies or services, who are not understood by the public to be

²⁸ RCW 81.28.080(1).

engaged in such agency roles for compensation, and whose strategic locations afford them the opportunity to refer customers to certain carriers and away from others.²⁹

The current rule permits companies to compensate non-company personnel involved in the sale of tickets or fares for company services as long as the Commission has approved that arrangement, but pursuant to the statute, the Commission must approve *any* payment to third parties that is a refund or remittance of any portion of the company's tariffed fares. Paying a percentage of a company's fare to a third party in compensation for referring the customer is just such a payment.³⁰ Having failed to obtain Commission approval for those payments, Shuttle Express is violating applicable law by making them.

34 The Initial Order did not err by finding that Shuttle Express's failure to file the form it uses for its commission-based booking program violates WAC 480-30-391(1).³¹

Combining Scheduled and Door-to-Door Service

35 Commission rules require that "[a]n 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."³² The Initial Order concludes that Shuttle Express's practice of combining scheduled and door-to-door service violates

²⁹ *Everett Airporter Services Enterprises, Inc. v. San Juan Airlines, Inc., d/b/a Shuttle Express*, Docket TC-910789, Commission Decision and Order Granting Administrative Review; Modifying Initial Order; Assessing Penalties at 6-7 (Jan. 6, 1993) (*EASE v. Shuttle Express*).

³⁰ Staff does not contest the Initial Order's findings on this issue for purposes of administrative review but took the view in response to Bench Request No. 5 that "the purpose of RCW 81.28.080 is not to restrict companies from using hotel staff to provide referrals for transportation. Rather, the statute protects passengers from being charged rates outside the filed tariff." We do not interpret the statute so narrowly. It expressly prohibits *any* refund or remittance, and we must give full effect to the words the legislature used. While "remit" can mean "refrain from exacting," it is also defined as "to send (money) to a person or place." <https://www.merriam-webster.com/dictionary/remit>. The statutory language thus is broader than reducing a tariff rate for a customer. Protecting passengers from being charged non-tariffed rates is certainly one of the statute's objectives, but particularly in the competitive transportation market, we adhere to our previous conclusion that the legislature is also concerned with payments to third parties "whose strategic locations afford them the opportunity to refer customers to certain carriers and away from others." *EASE v. Shuttle Express* at 7.

³¹ Accordingly, we adopt paragraphs 78-80 in the Initial Order.

³² WAC 480-30-346(2)(d); accord WAC 480-30-276(2); WAC 480-30-281(2)(b)(iv).

these rules.³³ Shuttle Express interprets Commission rules not to prohibit a company from making unscheduled stops when providing scheduled service as long as the passengers who obtain scheduled service are picked up and dropped off at the locations specified in the time schedule. The rules are not susceptible to Shuttle Express's interpretation.

36 Scheduled service and door-to-door service are separate auto transportation services, and Commission rules treat them as such. The time schedules for scheduled service in a company's tariff must identify "any point to which service is provided."³⁴ Adding door-to-door service points on a scheduled service route is fundamentally inconsistent with this requirement.³⁵

37 Shuttle Express nevertheless points to its tariff in which it states under the heading ALTERNATIVE MEANS OF TRANSPORT, "We also reserve the right to combine Door-to-Door passengers on a scheduled service route so long as the scheduled pick-ups should not be adversely affected."³⁶ Shuttle Express, however, cannot reserve rights it does not have. Company tariffs must state "whether alternate means of transport will be provided by the company *when it is unable to provide transportation at the time and place specified in the reservation* that the company has accepted for that passenger."³⁷ Shuttle Express does not claim that it combines door-to-door with scheduled service only when it is unable to provide the service the passenger has reserved. Rather, Mr. Marks testified that "it would not be financially reasonable to only serve passengers on some routes, so we do combine them with others in the general area."³⁸ Shuttle Express is not unable to provide a particular service simply because doing so "would not be financially reasonable."

38 Shuttle Express's conduct with respect to this issue typifies our dissatisfaction with the company's operations. As we discuss below, Shuttle Express repeatedly adopts practices

³³ Initial Order ¶¶ 170, 172 & 189.

³⁴ WAC 480-30-346(2)(d) (emphasis added).

³⁵ Shuttle Express misses the point by arguing that these additional service points are not "flag stops." Whether characterized as unscheduled flag stops or a combination of door-to-door and scheduled service, Shuttle Express has not listed those service points in its time schedule for scheduled service in violation of Commission rules.

³⁶ Marks, Exh. WAM-2T at 4:15-18.

³⁷ WAC 480-30-356(3)(g) (emphasis added).

³⁸ Marks, Exh. WAM-2T at 4:8-9.

for provisioning regulated auto transportation service despite Commission rules prohibiting such practices. While we find that Shuttle Express's practice of combining door-to-door and scheduled service is inconsistent with WAC 480-30-346(2)(d), we do not uphold the Initial Order's finding that Shuttle Express violated the rule. In this instance, the Commission approved Shuttle Express's tariff provision or allowed it to go into effect by operation of law. Given the inconsistency of the tariff provision with the Commission's rules, we require Shuttle Express to correct this provision in its tariff rules. Further, if Shuttle Express seeks to combine door-to-door and scheduled service, it should raise that issue in Docket TC-161262, the rulemaking examining the rules governing auto transportation. Pending any revisions to those rules, Shuttle Express may not combine door-to-door and scheduled service except "when it is unable to provide transportation at the time and place specified in the reservation that the company has accepted for that passenger."³⁹

Application of RCW 81.68.040

³⁹ The statute governing Commission regulation of auto transportation companies provides in relevant part,

An auto transportation company shall not operate for the transportation of persons and their baggage for compensation between fixed termini or over a regular route in this state, without first having obtained from the commission under this chapter a certificate declaring that public convenience and necessity require such operation. . . . The commission may, after notice and an opportunity for a hearing, when the applicant requests a certificate to operate in a territory already served by a certificate holder under this chapter, only when the existing auto transportation company or companies serving such territory will not provide the same to the satisfaction of the commission⁴⁰

The Initial Order concludes that the auto transportation service Speedishuttle provides is not the same as Shuttle Express's service, and thus the Commission should continue to

³⁹ WAC 480-30-356(3)(g).

⁴⁰ RCW 81.68.040.

authorize Speedishuttle to provide service pursuant to its existing certificate.⁴¹ Although stating it was unnecessary in light of this finding, the Initial Order also concluded that Shuttle Express's repeated and persistent noncompliance with Commission rules demonstrates that Shuttle Express has not provided, and will not provide, service to the Commission's satisfaction.⁴² Shuttle Express challenges both of these conclusions.

- 40 The Commission may grant an application to provide auto transportation service in a territory that is being served by one or more existing carriers only if that company or those companies "will not provide the same to the satisfaction of the commission." The Commission has interpreted that statutory provision to require that an applicant seeking to provide service in an area already served by one or more certificated carriers must demonstrate that either (1) the applicant does not propose to offer the same service that is currently being provided in the territory; or (2) the existing provider(s) will not provide service to the Commission's satisfaction. We depart from the Initial Order by addressing the second inquiry first.

Service to the Commission's Satisfaction

- 41 The Commission has established several non-exclusive factors it considers when determining whether an auto transportation company is providing service to the Commission's satisfaction. As relevant here, those factors include whether the company (a) "[h]as made a reasonable effort to expand and improve its service"; and (b) "meets advertised or posted schedules."⁴³ The Commission bases its determination on the company's performance prior to the date the application for competing service is filed and will take into consideration whether evidence presented at the hearing "shows a pattern of behavior."⁴⁴
- 42 The Initial Order finds that (a) Shuttle Express's use of independent contractors to supplement its service demonstrates that it has failed to make reasonable efforts to expand or improve its service;⁴⁵ (b) Shuttle Express's practice of combining door-to-door

⁴¹ *E.g.*, Initial Order ¶ 112.

⁴² *E.g.*, *id.* ¶ 124.

⁴³ WAC 480-30-140(3)(a).

⁴⁴ WAC 480-30-140(3)(b).

⁴⁵ *E.g.*, Initial Order ¶ 115.

and scheduled service is a failure to meet advertised or posted schedules;⁴⁶ and (c) Shuttle Express's "extensive history of noncompliance with Commission rules . . . constitutes a predictive pattern of behavior indicating that Shuttle Express will not provide service to the Commission's satisfaction on a going-forward basis."⁴⁷ Shuttle Express's challenge to these findings and conclusions is perfunctory at best. Shuttle Express simply characterizes them as "finding fault with operations that are outside the scope of the Commission's jurisdiction and finding violations of rules that have never been articulated or enforced before. But when those are stripped away, as they must be, there is no new evidence that supports a finding that Shuttle Express 'will not provide' service to the Commission's satisfaction."⁴⁸ We disagree.

43 We affirm and adopt the Initial Order's findings and conclusions that Shuttle Express has repeatedly violated Commission rules and on that basis conclude that Shuttle Express will not provide service to the Commission's satisfaction.⁴⁹ Shuttle Express has *thrice* violated the Commission's former prohibition on using independent contractors to provide regulated auto transportation services. Shuttle Express has twice violated rules requiring Commission approval of agreements to pay ticket sale commissions to third parties. While we do not find that Shuttle Express is violating rules requiring separate provisioning of scheduled and door-to-door service, our review in this proceeding indicates that the company's tariff rules do not conform to Commission rules and should be modified. Shuttle Express also violated its certificate by increasing the size of its vans beyond the restrictions in that certificate.⁵⁰

44 These violations show an unacceptable pattern of behavior. Rather than seek to amend its certificate or tariff or change Commission regulations with which the company disagrees,

⁴⁶ *E.g., id.* ¶ 116.

⁴⁷ *Id.* ¶ 117.

⁴⁸ Petition ¶ 33. Shuttle Express also argues in a footnote that the use of the future tense in the statute and "basic principles of due process suggest that notice and an opportunity to meet a new expectation is essential" prior to concluding that a company will not provide service to the Commission's satisfaction. *Id.* n.58. The Commission and the Court of Appeals have already rejected this argument. *Pacific NW Transp. Servs. v. Washington Utils. and Transp. Comm'n*, 91 Wn. App. 589, 596, 959 P.2d 160 (1998). We continue to reject it here.

⁴⁹ Initial Order ¶¶ 116-124. We do not address and do not adopt the findings and conclusions in the Initial Order concerning the other factors.

⁵⁰ Initial Order ¶¶ 117-23.

Shuttle Express simply ignores those requirements and provides service as it chooses. The Commission's auto transportation rules are designed primarily to protect consumers and the travelling public. While the Commission continues to examine those rules and make revisions as necessary to better reflect the evolving marketplace, the Commission expects auto transportation companies to comply with the rules unless and until the Commission waives or modifies them.

45 WAC 480-30-140(3) does not specify repeated or willful violations of Commission regulations among the factors for determining whether a company will provide service to the Commission's satisfaction, but the rule provides that those factors are not exclusive. The court of appeals has held in these circumstances "that the Commission, when called upon to evaluate the future, may do so in any rational way that the evidence will support."⁵¹ The legislature has authorized the Commission to revoke an auto transportation company's certificate if that company "willfully violates or refuses to observe any of the commission's proper orders, rules, or regulations."⁵² Such conduct is *per se* unsatisfactory service. Shuttle Express has repeatedly and willfully violated Commission rules and regulations. The record evidence fully supports the conclusion that Shuttle Express has not provided, and will not provide, service to the satisfaction of the Commission within the meaning of RCW 81.68.040.

46 The Initial Order did not err in finding and concluding that Shuttle Express will not provide service to the Commission's satisfaction.

Different Service

47 The Commission has adopted nonexclusive factors it considers when determining whether an applicant for auto transportation authority proposes to provide the same service as the existing certificated carrier(s), including as relevant here, (1) whether the existing companies "are providing service to the full extent of their authority"; (2) "whether the type of service provided reasonably serves the market"; and (3) "[t]he type, means, and methods of service provided."⁵³ The Initial Order found that Shuttle Express is not providing service to the full extent of its authority or reasonably serving the market

⁵¹ *Pacific N.W. Transp. Servs., Inc. v. Washington Utils. & Transp. Comm'n*, 91 Wn. App. 589, 596, 959 P.2d 160 (1998).

⁵² RCW 81.68.130.

⁵³ WAC 480-30-140(2).

because of its reliance on independent contractors.⁵⁴ The Initial Order also found that the type, means, and methods by which Speedishuttle provides service are different than how Shuttle Express provisions its service based on features such as newer luxury vehicles, personal greeters, SpeediTV and Wi-Fi, and use of only company-owned vehicles and drivers to provide exclusively door-to-door service.⁵⁵

48 Shuttle Express challenges these findings as superficial distinctions without a difference that lack evidentiary support. Shuttle Express claims that their speciousness is exemplified by the Commission’s apparent “view that it cannot enforce or require that a carrier – once certificated – must maintain or perpetuate such promised distinctions.”⁵⁶ Shuttle Express contends, “At a minimum, Speedishuttle should be required to provide only a service of the type the Commission initially found was different than Shuttle Express’s, *i.e.*, by reservation only and with multi-lingual and greeter service provided to all passengers.”⁵⁷

49 Because we conclude that Shuttle Express is not providing, and will not provide, service to the Commission’s satisfaction, under RCW 81.68.040 we need not, and do not, determine whether some or all of the service Speedishuttle offers is the same as Shuttle Express’s service. We also need not, and do not, decide the extent to which Speedishuttle is adhering to its original business model. By finding that Shuttle Express is not providing and will not provide service to our satisfaction, whether Speedishuttle is serving only the customers it originally targeted is now moot. Speedishuttle is not limited in the auto transportation service it can provide under our decision but may compete head to head with Shuttle Express to the full extent it chooses to do so. We therefore vacate those provisions of the Initial Order.⁵⁸

50 We nevertheless note, as did the Initial Order, that some of Speedishuttle’s representations in its initial application have not been borne out in the company’s practices. For example, the Initial Order found the company failed to demonstrate that it specifically targets non-English speaking customers, which was one of several bases

⁵⁴ *E.g.*, Initial Order ¶¶ 102-07 & 111.

⁵⁵ *E.g.*, *id.* ¶¶ 84-101.

⁵⁶ Petition ¶ 32.

⁵⁷ *Id.* ¶ 38.

⁵⁸ Initial Order ¶¶ 81-112, 114, 162-68, and 182-86.

upon which the Commission concluded that Speedishuttle would provide different service.⁵⁹ While these portions of the order are vacated, the Commission will continue to monitor Speedishuttle's business practices to ensure it is providing service to the Commission's satisfaction.

Public Convenience and Necessity

- 51 A company may not provide auto transportation service until the Commission has granted it "a certificate declaring that public convenience and necessity require such operation."⁶⁰ Shuttle Express argues, "In an irregularity that has never been explained, the Commission has never expressly stated 'that public convenience and necessity requires' or ever required Speedishuttle's service. And even though this missing statutory prerequisite was brought to the Commission's attention, the Initial Order failed to make the required finding."⁶¹ This issue, however, is not before the Commission.
- 52 The current proceeding in Docket TC-143691 is on rehearing of Order 04, the Commission's original final order in this docket. In granting the petition for rehearing, we expressly limited the scope of the rehearing to "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."⁶² The Commission subsequently amended that limitation to "include on rehearing the issue of whether Shuttle Express will provide service to the Commission's satisfaction pursuant to RCW 81.68.040 and WAC 480-30-143(3)(a)."⁶³ The Commission did not agree to rehear whether the public convenience and necessity require Speedishuttle's service. Shuttle Express had the opportunity to raise that issue when seeking administrative review of Order 02, the original initial order overruling Shuttle Express's objection to Speedishuttle's application. Having failed to do so, Shuttle Express has waived that issue, and we do not consider it.
- 53 The Initial Order did not err by not addressing whether the public convenience and necessity require Speedishuttle's operations.

⁵⁹ Initial Order ¶¶ 87-89, 163 and 183.

⁶⁰ RCW 81.68.040.

⁶¹ Petition ¶ 34 (emphasis in original) (citation and footnote omitted).

⁶² Order 08 ¶ 25.

⁶³ Order 17 ¶ 19.

Speedishuttle Pricing

- 54 Shuttle Express’s complaint in Docket TC-160516 alleges that Speedishuttle is engaging in predatory pricing by offering its services at rates below its costs.⁶⁴ The Initial Order finds that “Shuttle Express failed to establish that Speedishuttle prices its service below cost or engages in predatory pricing.”⁶⁵ Shuttle Express challenges this and related findings as inconsistent with the record evidence and to the extent accurate, as “caused by the withholding and concealment of the data by Speedishuttle.”⁶⁶ We disagree.
- 55 No party disputes that Speedishuttle’s operations are not profitable and that it has yet to attract the passenger volumes needed to generate sufficient revenues to cover the average variable costs of its shared ride service.⁶⁷ These facts, however, are unremarkable for a company that only recently began providing service. Entering the auto transportation market is a capital-intensive undertaking, and we expect it will take a new company like Speedishuttle facing many established competitors a significant period of time to recover all of its costs and become profitable. Indeed, Shuttle Express “lost a great deal of money during its first years of operation.”⁶⁸
- 56 Shuttle Express nevertheless claims that Speedishuttle’s expenses and losses are far in excess of the amounts the Initial Order finds or Speedishuttle admits. The level of Speedishuttle’s losses after less than two years of operations is immaterial.⁶⁹ Whether

⁶⁴ Shuttle Express Petition for Rehearing and Formal Complaint ¶ 41.

⁶⁵ Initial Order ¶ 125.

⁶⁶ Petition ¶ 39.

⁶⁷ Mr. Roemer explained on behalf of Speedishuttle that “average variable cost” in this context is the cost the company incurs to make the trip for which it receives fares, which essentially is the cost of operating the vehicle. Roemer, Exh. HJR-1T at 48:23 – 49:4. To be profitable on a per trip basis, Speedishuttle must have “[e]nough passengers at [its] tariffed fares to exceed the cost of providing that trip.” *Id.* at 49:8-10.

⁶⁸ *EASE v. Shuttle Express* at 3; see Wood, TR. at 349:23 – 350:4 (acknowledging that Shuttle Express was not profitable for several years after it began to provide service).

⁶⁹ We also agree with Speedishuttle that Shuttle Express largely fails to cite any record evidence to support its assertions and instead relies on supposition and extrapolation. Shuttle Express claims that it was unfairly denied access to much of Speedishuttle’s financial information, but the only error Shuttle Express specifies with respect to the Initial Order’s findings and conclusions on Shuttle Express’s predatory pricing complaint is that it is “actually supported by overwhelming evidence and admitted by Speedishuttle.” Petition ¶ 7 at 5. Shuttle Express did not expressly seek

Speedishuttle needs four passengers or six per trip to break even, we are not willing to second-guess Speedishuttle's business judgment at this time on how and when it will achieve the requisite passenger counts to achieve full cost recovery and profitability. As the Commission has previously explained,

The Commission does not guarantee profitability nor mandate that a carrier achieve an approved operating ratio when it approves tariff rates. The Commission merely affords a carrier the opportunity to achieve profitability. Operating losses do not prove that the carrier's pricing is predatory.

The Commission requires that rates bear a demonstrable relationship with costs. It allows a carrier the opportunity, when pricing its services, to consider charges for competitive non-regulated services, volumes of service, start-up costs, and other relevant factors.⁷⁰

57 We reject Shuttle Express's argument that offering service at rates that do not recover all costs is *per se* predatory pricing. As the Federal Trade Commission (FTC) explains, such a link exists only in very limited and rare circumstances:

Consumers are harmed only if below-cost pricing allows a dominant competitor to knock its rivals out of the market and then raise prices to above-market levels for a substantial time. A firm's independent decision to reduce prices to a level below its own costs does not necessarily injure competition, and, in fact, may simply reflect particularly vigorous competition. Instances of a large firm using low prices to drive smaller competitors out of the market in hopes of raising prices after they leave are rare. This strategy can only be successful if the short-run losses from pricing below cost will be made up for by much higher prices over a longer period of time after competitors leave the market. Although the

review of the ALJ's discovery and evidentiary rulings and thus has waived any challenge to those rulings.

⁷⁰ *EASE v. Shuttle Express* at 4.

FTC examines claims of predatory pricing carefully, courts, including the Supreme Court, have been skeptical of such claims.⁷¹

58 Those circumstances do not exist here. Shuttle Express, not Speedishuttle, is the larger, dominant provider of auto transportation services in Washington. Nor could Speedishuttle charge much higher prices than its current fares. The market for transportation services to and from the airport includes taxis, limousines, buses, light rail, transportation network companies (TNCs), and personal vehicles. Shuttle Express acknowledges that “[b]ecause of competition from unregulated ground transportation services, neither Shuttle Express nor Speedishuttle can stem their current losses with fare increases. The public will not pay more A fare increase would lead to less overall revenues, not more.”⁷² Speedishuttle thus could not raise its rates to recover losses from the allegedly improper below-cost pricing even if Shuttle Express exited the market.⁷³ Speedishuttle is not engaging, and cannot engage, in predatory pricing.

59 Shuttle Express nevertheless argues that Speedishuttle is “using below-cost pricing to capture 21-34% of the passengers Shuttle Express used to carry.”⁷⁴ No evidence supports a connection between the reduction in the number of passengers Shuttle Express carries and Speedishuttle’s rates. To the contrary, Mr. Marks testified on behalf of Shuttle Express that a variety of factors have caused that reduction, including lower gas prices, the availability of light rail, and the entry of Speedishuttle and TNCs into the market.⁷⁵ The record also reflects that Speedishuttle’s rates are comparable to, and in some cases higher than, Shuttle Express’s fares,⁷⁶ and the decline in Shuttle Express’s passenger volumes began long before Speedishuttle entered the market.⁷⁷ Shuttle Express did not

⁷¹ <https://www.ftc.gov/tips-advice/competition-guidance/guide-antitrust-laws/single-firm-conduct/predatory-or-below-cost>.

⁷² Kajanoff, Exh. PK-2T at 14:2-6; *accord* Roemer, Exh. HJR-1T at 51:22 – 52:2.

⁷³ As the Initial Order correctly observes, Commission oversight of Speedishuttle’s rates also would preclude it from engaging in the pricing behavior Shuttle Express alleges. Initial Order ¶ 129.

⁷⁴ Petition ¶ 52.

⁷⁵ Marks, Exh. WAM-1T at 4:6 – 5:5; Marks, TR. at 596:15 – 599:17.

⁷⁶ Roemer, Exh. HJR-1T at 52-53.

⁷⁷ *Id.* at 47. Even after Speedishuttle began operations, Shuttle Express experienced an 18 percent reduction in reservations in areas in which it does not compete with Speedishuttle. Kajanoff, Exh. PK-1T at 13:14-15.

fail to prove that Speedishuttle has yet to generate sufficient revenues to recover all of its costs. Rather, Shuttle Express failed to prove that Speedishuttle's rates "are unreasonable, unremunerative, discriminatory, illegal, unfair or intending or tending to oppress the complainant, to stifle competition, or to create or encourage the creation of monopoly."⁷⁸

60 The Initial Order did not err by finding and concluding that Shuttle Express failed to prove that Speedishuttle's fares are unlawful.

Public Interest

61 Shuttle Express contends that the Initial Order fails to address the public interest. According to Shuttle Express, "This proceeding raises important public interest issues, including whether county-wide door-to-door airport shuttle service is sustainable with two carriers splitting a shrinking market."⁷⁹ Shuttle Express does not include this issue among its assignments of error, but we nevertheless address the public interest impacts of our decision.

62 Shuttle Express correctly observes that the Commission must regulate in the public interest. Shuttle Express contends that auto transportation service is a natural monopoly that cannot survive competitive entry: "Because in the current market both carriers are now losing money this means that one or maybe both carriers must ultimately fail if the status quo is maintained," and "the public is already being harmed, by increased wait times, reduced efficiency, and higher operating costs per passenger."⁸⁰ We view the market and the public interest differently.

63 Door-to-door auto transportation service is not a unique or monopoly market but is part of a larger competitive market for transportation services to and from the airport. The decline in Shuttle Express's ridership over the last few years while airport usage has steadily increased demonstrates that the travelling public views the many alternative forms of transportation as substitutes for auto transportation service.⁸¹ Speedishuttle's

⁷⁸ RCW 81.04.110.

⁷⁹ Petition ¶ 75 (footnote omitted).

⁸⁰ Petition ¶ 77.

⁸¹ Indeed, Shuttle Express recently represented that it needed a waiver of Commission rules prohibiting the use of independent contractors because "unlicensed ride-share operators provide services that are largely indistinguishable from the Shuttle Express door-to-door auto transportation service," and "their fares are competitive with the regulated door-to-door operators,

entry into the market may have contributed to that decline, but the record evidence does not support a finding that this was the sole or even primary cause.⁸² Without such evidence, Shuttle Express cannot plausibly claim that a natural monopoly exists or that continuing to permit both Shuttle Express and Speedishuttle to offer auto transportation service necessarily will result in the failure of one or both companies.

64 We find that Speedishuttle’s entry into the market is fully consistent with the public interest. We have concluded that Shuttle Express is not providing, and will not provide, service to the Commission’s satisfaction. As the legislature envisioned, permitting another carrier to serve the same territory under such circumstances will create a greater incentive for Shuttle Express to improve its service. The Commission revised its rules governing auto transportation service in 2013, in part, to facilitate such competitive entry.⁸³ Whether or not they are indicative of a different service, the newer vehicles, features, and amenities Speedishuttle offers enhance the quality of auto transportation service offered to customers in King County. To the extent Shuttle Express must correspondingly raise the level of service it provides, including complying with Commission rules, in order to survive in the market, we view that outcome as beneficial to the public interest.

Remedies

65 The Initial Order assesses a penalty of \$120,000 against Shuttle Express for its 35,351 violations of former WAC 480-30-213.⁸⁴ Shuttle Express contends that it should not be penalized at all because it did not commit these violations but does not otherwise challenge the amount of the penalty or how the Initial Order calculates it. No other party takes issue with the penalty. Neither do we.

such as Shuttle Express.” *In re Petition of Shuttle Express for Exemption from WAC 480-30-213 and WAC 480-30-456*, Docket TC-160819, Amended Petition for Limited and Conditional Exemption ¶ 11 (Sept. 6, 2016).

⁸² See, e.g., Kajanoff, TR. at 412:5 – 414:10 (testifying that Shuttle Express cannot know what portion of its gross revenue losses is attributable to Speedishuttle or any one of the many other competitors); accord Wood, TR. at 327:12 – 328:5.

⁸³ *In re Amending and Adopting Rules in WAC 480-30 Relating to Passenger Transportation Companies*, Docket TC-121328, General Order R-572 ¶¶ 25 & 33-34 (Aug. 22, 2013).

⁸⁴ Initial Order ¶ 147.

66 Having concluded for the third time that Shuttle Express has violated former WAC 480-30-213, in this instance a total of 35,351 times, we affirm and adopt the penalty of \$120,000 against Shuttle Express and the provisions in the Initial Order calculating that amount.⁸⁵

67 The Initial Order also requires Shuttle Express to submit a comprehensive compliance plan for Staff's review detailing how the company will comply with its legal obligations.⁸⁶ Shuttle Express does not challenge this aspect of the Initial Order. We believe such a plan would be useful and accordingly affirm and adopt this provision of the Initial Order.

FINDINGS OF FACT

68 The Commission affirms many of the findings of fact in the Initial Order. To minimize potential confusion, the Commission summarizes all of its findings of fact below:

- 69 (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 transportation companies, and has jurisdiction over the parties and subject matter of this proceeding.
- 70 (2) In the two years prior to the date Speedishuttle filed its complaint in Docket TC-160257, Shuttle Express used independent contractors to provide auto transportation service on 35,351 occasions.
- 71 (3) Shuttle Express enters into agreements with hotel personnel 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.
- 72 (4) Shuttle Express combines its scheduled service with its door-to-door service.
- 73 (5) Shuttle Express makes stops on its scheduled routes that are not listed as flag stops in the company's tariff or time schedule.

⁸⁵ Initial Order ¶¶ 131-48.

⁸⁶ Initial Order ¶ 149.

- 74 (6) Shuttle Express made false representations at the Application hearing that it had
ceased using independent contractors.
- 75 (7) 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.
- 76 (8) Shuttle Express has repeatedly and willfully violated Commission rules and
regulations.
- 77 (9) No record evidence supports a connection between the reduction in the number of
auto transportation passengers Shuttle Express carries and Speedishuttle's rates.
- 78 (10) Record evidence does not show that Speedishuttle is engaging in predatory
pricing of its auto transportation service.

CONCLUSIONS OF LAW

79 The Commission makes the following summary conclusions of law:

- 80 (1) Shuttle Express has waived any challenge to the discussion, findings, and
conclusions in the Initial Order that Shuttle Express did not expressly state in its
Petition in conformance with WAC 480-07-825.
- 81 (2) Shuttle Express violated WAC 480-30-213 each of the 35,351 times it used an
independent contractor to provide auto transportation service in the two years
preceding Speedishuttle's complaint.
- 82 (3) Shuttle Express's failure to obtain Commission approval of the company's form
of agreement to pay commissions to hotel personnel violates WAC 480-30-391.
- 83 (4) Shuttle Express should be required to submit to the Commission for approval the
company's form of agreement to pay commissions to hotel personnel.
- 84 (5) Shuttle Express may not combine door-to-door and scheduled service except
when it is unable to provide transportation at the time and place specified in the
reservation that the company has accepted for a given passenger.

- 85 (6) Shuttle Express should revise its tariff to remove language that is inconsistent with WAC 480-30-346(2)(d), as described in paragraphs 37 and 38, above, within 30 days of the effective date of this Order.
- 86 (7) Repeated or willful violations of Commission rules and regulations are grounds for the Commission to conclude that a company will not provide service to the Commission's satisfaction pursuant to RCW 81.68.040.
- 87 (8) 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).
- 88 (9) Shuttle Express did not prove that Speedishuttle's rates are unlawful.
- 89 (10) Speedishuttle's entry as an auto transportation company into the market for transportation services to and from the airport is in the public interest.
- 90 (11) The Commission should penalize Shuttle Express \$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.
- 91 (12) Shuttle Express should be required to complete and submit a compliance plan for Staff's review and approval, as described in paragraph 149 in the Initial Order, within 90 days of the effective date of this Order.

ORDER

THE COMMISSION ORDERS THAT:

- 92 (1) Speedishuttle Washington, LLC, d/b/a Speedishuttle Seattle is authorized to provide auto transportation service as described in its certificate.
- 93 (2) The Commission assesses a \$120,000 penalty against Shuttle Express, Inc., for 35,351 violations of former WAC 480-30-213.
- 94 (3) The \$120,000 penalty is due and payable no later than 30 days from the date of this Order.
- 95 (4) Shuttle Express, Inc., must conform its form of agreement to pay commissions to hotel personnel to the requirements set out in WAC 480-30-391 and submit the

form for such agreement with the Commission for approval within 30 days of the effective date of this Order.

- 96 (5) Shuttle Express, Inc., may not make stops on scheduled routes that are not listed as flag stops in its tariff and time schedule except when it is unable to provide transportation at the time and place specified in the reservation that the company has accepted for a given passenger.
- 97 (6) Shuttle Express, Inc. must file revisions to its tariff removing language that is inconsistent with WAC 480-30-346(2)(d), as described in paragraphs 37 and 38, above, within 30 days of the effective date of this Order.
- 98 (7) 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 of the Initial Order within 90 days of the date of this Order.
- 99 (8) The Commission delegates to the Secretary the authority to approve parties' submissions in compliance with this Order.
- 100 (9) 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 November 17, 2017.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

ANN E. RENDAHL, Commissioner

JAY M. BALASBAS, Commissioner

NOTICE TO PARTIES: This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-07-870.