

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In re Application of)	DOCKET TC-143691
)	
SPEEDISHUTTLE WASHINGTON,)	
LLC d/b/a SPEEDISHUTTLE)	SHUTTLE EXPRESS'S PETITION
SEATTLE)	FOR ADMINISTRATIVE REVIEW
)	
For a Certificate of Public Convenience)	ORAL ARGUMENT REQUESTED
and Necessity to Operate Motor Vehicles)	
in Furnishing Passenger and Express)	
Service as an Auto Transportation)	
Company)	
.....)	

INTRODUCTION & RELIEF REQUESTED

1 Applicant Speedishuttle Washington, LLC, seeks to provide the same service that certificate holder Shuttle Express, Inc., already provides: door-to-door service within King County. Shuttle Express operates over 80 vans to serve the public. Speedishuttle proposes to do so with five vans and perhaps 10 within one year. Speedishuttle's application did not otherwise distinguish this service and recognized that Shuttle Express already provides it. Now, Speedishuttle and the Initial Order attempt to distinguish Speedishuttle's transportation service based on a few amenities, such as Wi-Fi and television in Speedishuttle's vehicles. These amenities may be relevant to whether the Shuttle Express is providing a quality transportation service to the satisfaction of the commission, but they do not disqualify Speedishuttle's proposed service from being considered the same as the existing service. Quite simply, Speedishuttle seeks to provide door-to-door shared ride service between Sea-Tac Airport and points within King County. Because Shuttle Express already provides this

door-to-door service to the satisfaction of the commission, Speedishuttle's application should be denied pursuant to WAC 480-30-116.

FACTUAL BACKGROUND

2 On October 10, 2014, Speedishuttle filed with the Commission an application for a certificate of public convenience and necessity to operate as an auto transportation company. Speedishuttle proposes to provide door-to-door service between SeaTac International Airport (SeaTac) and points within King County.

3 On November 12, 2014, Shuttle Express filed a letter objecting to Speedishuttle's Application on the grounds that Speedishuttle seeks to provide the same service Shuttle Express already provides.

4 On November 20, 2014, Pacific Northwest Transportation Services, Inc., d/b/a Capital Aeroporter Shuttle, also filed an objection.

5 On January 12, 2015, the Commission conducted a brief adjudicative proceeding pursuant to Washington Administrative Code (WAC) 480-30-116. The proceeding was held at the Commission's offices in Olympia, Washington, before Administrative Law Judge Rayne Pearson.

6 The adjudicative proceeding was limited to the question of whether the objecting companies hold a certificate to provide the same service in the same territory, and whether an objecting company will provide the same service to the satisfaction of the Commission. WAC 480-30-116(3)

7 On January 22, 2015, Judge Pearson issued the Initial Order overruling all objections to Speedishuttle's application and referring the Application to the Commission Staff for evaluation. (Initial Order Overruling Objections to Application for New Authority ¶ 28)

STATEMENT OF THE ISSUE

8 Speedishuttle's application to provide door-to-door service in King County should be denied if Shuttle Express provides (1) the same service (2) to the satisfaction of the commission.

9 (1) Speedishuttle's Application proposes to provide door-to-door service in King County and recognizes that Shuttle Express already provides this service. Speedishuttle now attempts to distinguish the door-to-door service that Shuttle Express provides based on inconsequential features, some of which are already offered by Shuttle Express. Where both parties provide timely door-to-door passenger transportation in clean, safe, comfortable vans operated by trained and vetted drivers, do minor features such as Wi-Fi,¹ pre-recorded video about Seattle,² and greeters³ properly distinguish Speedishuttle's service as not the same auto transportation service?

10 (2) Speedishuttle fails to provide any evidence showing that any portion of the public is dissatisfied with Shuttle Express's service. Shuttle Express has received no UTC complaints within the last 12 months, has sufficient equipment to meet the market's needs, and continues to expand and improve its customer-oriented service. In light of these facts, has Shuttle Express provided door-to-door service to the reasonable satisfaction of the commission?

EVIDENCE RELIED UPON

11 Shuttle Express relies upon the pleadings, transcripts, exhibits and Initial Order contained in the record. In addition, Shuttle Express has filed a Motion to Reopen and

¹ Shuttle Express is phasing in Wi-Fi over five years.

² Most passengers are residents, for whom pre-recorded video about Seattle is likely to be an annoyance, not an amenity.

³ Greeters are unnecessary because airport signage directs passengers to ground transit services, where Shuttle Express staffs a customer service desk.

accompanying Declaration of Paul Kajanoff to submit additional evidence that will assist the Commission in making a proper decision.

LEGAL ARGUMENT

12 A party may challenge an initial order by filing a petition for review. WAC 480-07-825. The Commission may adopt, modify, reject or remand the initial order for further proceedings consistent with the terms of its final order. WAC 480-07-610(8). The reviewing officer shall give due regard to the presiding officer's opportunity to observe witnesses, but otherwise the Commission conducts a *de novo* review of the issues decided in the initial order. *City of Kennewick v. Port of Benton, et al.*, TR-130499, Order 03, Final Order Granting Petition for Administrative Review, ¶ 19, n.14 (May 29, 2014) (citing RCW 34.05.464(4): "The reviewing officer shall exercise all the decision-making power that the reviewing officer would have had to decide and enter the final order had the reviewing officer presided over the hearing").

13 Shuttle Express respectfully submits this Petition for review of the Initial Order on the grounds that the inconsequential features Speedishuttle claims it will provide do not disqualify an applicant's proposed service from being the same as the existing service. Such features irrelevant to the Commission's analysis of whether an applicant and objecting party provide the "same service" under WAC 480-07-116 and WAC 480-30-140. As such, Shuttle Express respectfully requests the Commission review the Initial order and deny Speedishuttle's application.

A. Speedishuttle must demonstrate that Shuttle Express does not already provide (1) the same service (2) to the satisfaction of the commission.

14 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 obtaining from the commission a certificate declaring “that public convenience and necessity require such operation.” RCW 81.68.040 (emphasis added). These requirements promote the public interest in having regular and dependable passenger transportation services available at fair rates. *In re Application of Sharyn Pearson and Linda Zepp, d/b/a Centralia-SeaTac Airport Express*, Hearing No. D-76533, Order M.V.C. No. 2041, Commission Order Granting Review and Modifying Initial Order, ¶ 17 (Mar. 9, 1994) (citing *Davis & Banker v. Nickell*, 126 Wn. 421, 218 P.198 (1923)).⁴

15 When an applicant requests a certificate to operate in a territory already served by a certificate holder, the Commission may, after notice and an opportunity for a hearing, issue the certificate prayed for “only when the existing auto transportation company or companies serving such territory will not provide the same to the satisfaction of the commission. RCW 81.68.040. An adjudicative hearing on a party’s application is accordingly limited to the questions of (1) whether the objecting company provides the same service, and (2) whether an objecting company will provide the same service to the satisfaction of the commission. WAC 480-30-116.

16 The applicant bears the burden of proof. *See e.g., Superior Refuse Removal v. Washington Utils. & Transp. Comm’n*, No. 14841-6-III, 1997 Wash. App. LEXIS 787 *10–*12 (May 22, 1997) (analyzing the burden of proof in the context of Chapter 81.77 RCW, which governs solid waste collection. A certificate to operate is similarly only granted where an existing company does not already serve the territory to the satisfaction of the Commission). Absent a strong showing that the objecting company does not provide the same service to the satisfaction of the Commission, the Commission may not grant a competitor’s application. *Id.* at *12, n.3.

⁴ Though it has no effect on this particular citation, the Commission should be aware that Order M.V.C. No. 2041 was reconsidered and modified by Order M.V.C. No. 2057 on June 24, 1994.

17 Here, Speedishuttle requests a certificate to operate a door-to-door shuttle service between Sea-Tac Airport and points within King County. (Speedishuttle’s Auto Transportation Authority Appl. 4) It therefore has the burden of proof to show Speedishuttle identifies the zip codes it intends to serve with door-to-door transportation in its application. Pursuant to Certificate of Public Convenience and Necessity number C-975, Shuttle Express currently provides door-to-door service to every single ZIP code identified by Speedishuttle. (Transcript of Br. Adjudicative Hr’g at 67:10–14) It is undisputed that Shuttle Express uses clean, comfortable, safe and reliable vans that are operated by carefully screened drivers.

18 Because Speedishuttle is the applicant and Shuttle Express indisputably serves the territory requested by Speedishuttle, Speedishuttle bears the burden of making a strong showing that Shuttle Express does not provide (1) the same service (2) to the satisfaction of the Commission. WAC 480-30-116. This is consistent with the statutory requirement that a certificate cannot be granted absent a showing of public necessity.

19 Speedishuttle cannot meet this burden. Its application should be denied because Shuttle Express already provides door-to-door service to the satisfaction of the commission. Speedishuttle’s proposed service is simply not a public necessity.

B. Shuttle Express already provides the same service Speedishuttle seeks to provide: door-to-door service.

20 The primary issue on review is whether Speedishuttle proposes to provide the same service Shuttle Express already provides. The Initial Order overruled Shuttle Express’s objections on these grounds. (Initial Order Overruling Objections to Appl. for New Authority ¶¶ 24–25)

21 When determining whether existing certificate holders provide the same service, the Commission considers, among other things, “(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; (b) the type, means, and methods of service provided; (c) Whether the type of service provided *reasonably* serves the market; (d) Whether the population density⁵ warrants additional facilities or transportation; [and] (e) The topography, character, and condition of the territory in which the objecting company provides service and in which the proposed service would operate.” WAC 480-30-140(2) (emphasis added).

22 Prior decisions illuminate how the Commission disqualifies a proposed service from being the “same service” already provided. “Door-to-door service and scheduled service are not the same service.” *In re Application of Sani Mahama Maurou d/b/a SeaTac Airport 24*, Docket No. TC-140399, Order 01, Initial Order, ¶ 19 (Sep. 24, 2014). The Commission also recognized that “multiple-stop transportation service is not the same as nonstop service” because “nonstop service . . . provides a convenience benefit,” *Id.* at ¶ ¶ 17–18.

23 Finally, the applicant in *SeaTac Airport 24* proposed a different but parallel route for scheduled service that would begin service 30 minutes earlier than the certificate holder and offer service on the hour where the certificate holder provided service on the half-hour. *Id.* at ¶ 11-12. The Commission nonetheless found that the applicant proposed to provide the same service: “[T]hese factors do not disqualify the Applicant’s proposed service from being considered the same as [the certificate holder’s] existing service.” *Id.*

24 In the context of Chapter 81.84 RCW, addressing commercial ferries, the Commission phrased the inquiry as whether “the nature of the new service proposed is sufficiently different from the incumbent’s offerings.” *In re Application of Sean McNamara d/b/a Bellingham Water Taxi*, Docket No. TS-121253, Order 04, Final Order Denying Petition for Administrative Review, ¶ 15 (July 17, 2013).

⁵ This factor is a proxy for market demand. Because of new competition from light rail and services such as Uber, demand has sharply declined in recent years.

A.1. Offering inconsequential features, such as Wi-Fi and recorded video messages, does not meaningfully distinguish Speedishuttle's door-to-door service from that already being offered by Shuttle Express.

25 Here, the Initial Order distinguishes Speedishuttle's service based on its "features": 1) personal airport greeter; 2) multi-lingual reservation website; 3) Wi-Fi and recorded video messages in each of its vehicles; and 4) a 20 minute "guaranteed"⁶ airport departure time whereas Shuttle Express guarantees a 30-minute departure time. (Initial Order ¶ 15)

26 A service's incidental features do not determine the nature of the transportation service actually being provided, nor whether those features represent a public necessity. The essential nature of service actually being provided is door-to-door service in clean, safe and comfortable vans that provide service at reasonable and reliable intervals. Shuttle Express already provides this service pursuant to Certificate C-975 to the fullest extent of its authority. (Initial Order ¶ 15) If incidental features defined the type, means and method of service being offered, a potentially infinite number of companies would have grounds for a certificate to provide door-to-door service. Distinguishing characteristics must be sufficiently critical to qualify as a public necessity.

27 Shuttle Express is in the midst of a five-year phase-in of universal Wi-Fi service. In the era of nearly universal smart phones, this feature is not sufficiently important to be identified as a public necessity.

28 Shuttle Express already provides a staffed customer service desk between 18 and 20 hours per day in the center of SeaTac's Ground Transportation Plaza, which can easily be found by prominent airport signage. Shuttle Express provides a cost-free, courtesy phone at the customer service desk that can handle any questions during hours in which the service desk is not staffed. The phone connects to a 24-hour guest service center. While Shuttle

⁶ Speedishuttle made no showing that it is actually capable of meeting this so called guarantee where it serves more than 80 ZIP codes with, initially, only five vans.

Express also provides airport greeters upon request, public necessity does not demand such a service in light of Shuttle Express's staffed customer service desk. No evidence suggests that Speedishuttle intends to provide a similarly staffed customer service center.

29 Speedishuttle claims to have a multi-lingual website but its CEO's testimony suggests that it uses the same online booking platform as Shuttle Express and Capital Aeroporter. (Transcript of Br. Adjudicative Hr'g at 51:8-18) Speedishuttle presented no evidence that multi-lingual customers can actually book their trip on its website.

30 A 20-minute guaranteed airport departure time, where Shuttle Express offers a 30-minute guarantee, is insufficient alone to distinguish Speedishuttle's service. The applicant in *SeaTac Airport 24* proposed to provide service a full 30 minutes earlier than the certificate holder, along with serving a parallel route and providing service on the hour instead of the half-hour. In the view of the Commission, this was insufficient to distinguish the proposed new service. Surely, where a scheduled service that begins 30 minutes earlier is insufficient to establish a different service, a 10-minute difference in departure times is also insufficient.

A.2. *The Initial Order erred in that the UTC has never found Shuttle Express to have insufficient equipment to meet customer's needs.*

31 The Initial Order erred in deciding that Shuttle Express has not reasonably served the King County market. (Initial Order ¶¶ 1617) The Initial Order relied exclusively on prior proceedings to find that Shuttle Express cannot reasonably serve its territory. However, Shuttle Express was exonerated on this issue: "Shuttle Express, Inc. has sufficient reserve equipment to ensure the reasonable operation of its established routes and fixed time schedules and thus did not violate WAC 480-30-216." *Washington Util. and Transp. Comm'n v. Shuttle Express, Inc.*, Docket No. TC-120323, Order 03, Initial Order ¶ 67 (Nov. 1, 2013). Shuttle Express has "never turned away door-to-door business for inability to have a vehicle available." (Transcript of Br. Adjudicative Hr'g at 87:5-9)

A.3. Despite King County's population growth, the demand for door-to-door service is declining.

32 Third, the area's population does not warrant an additional door-to-door service operator. The Initial Order argues that there has been significant growth in King County's population but no corresponding increase in regulated airport shuttle transportation. (Initial Order ¶ 18) But demand for door-to-door service is actually declining. The light rail, Uber, Lyft, Sidecar, and others are now providing passengers additional, affordable means of transportation to/from SeaTac airport. Because of this new competition, market demand has declined 8.9 percent in the last two years alone. (Decl. of Paul Kajanoff in Support of Motion to Reopen ¶ 3, Ex. A) Public necessity and convenience do not require another door-to-door operator where demand for door-to-door shared ride transportation is declining

33 In summary, Speedishuttle has not made any remotely reasonable showing that it proposes to provide a different service than Shuttle Express. Prior Commission decisions, WAC 480-30-140(2), and RCW 81.68.040 confirm this. Should its application be granted, both Shuttle Express and Speedishuttle would be providing door-to-door service for King County passengers to/from SeaTac airport. Because it is facially evident that these two companies would provide the same service, the question necessarily becomes whether Shuttle Express provides that service to the satisfaction of the commission.

C. Satisfaction of the Commission.

34 Shuttle Express has provided door-to-door service to the satisfaction of the Commission and the Initial Order did not find to the contrary.

35 Whether an objecting company is providing service to the satisfaction of the commission is dependent on, but not limited to, whether the objecting company: (i) Holds authority to provide, and provides, the same service as proposed by the applicant in the same territory or the same subarea within the territory, for door-to-door service, or along the same

route, for scheduled service, in which the service is proposed; (ii) Has made a reasonable effort to expand and improve its service to consumers within the same territory or the same subarea within the territory, for door-to-door service, or along the same route, for scheduled service, in which the service is proposed; (iii) Provides the service in a manner that is convenient, safe, timely, direct, frequent, expeditious, courteous and respectful, meets the advertised or posted schedules, fulfills commitments made to customers, meets consumer preferences or needs for travel, is responsive to consumer requests by reviewing the company's tariff and certificate in response to requests and when reasonable, proposing changes to the commission, and meets other reasonable performance expectations of consumers; (iv) Has provided the same service as proposed by the applicant in the same territory or the same subarea within the territory, for door-to-door service, or along the same route, for scheduled service, in which the service is proposed, at fares competitive with those proposed by the applicant. WAC 480-30-140(3)(a).

36 In considering whether the objecting company has provided service to the satisfaction of the commission, the commission will consider statements or testimony from members of the public that they choose not to use the objecting company's services because the company fails to meet any of the satisfaction criteria identified in (a) of this subsection to the witness' satisfaction, unless the service failure was caused by extraordinary events as determined by the commission. Objecting companies may present witnesses to counter claims of an applicant and to substantiate the level of service and customer satisfaction provided. WAC 480-30-140(3)(c).

37 Generally, analysis of these factors is limited to one-year prior. WAC 480-30-140(3)(b).

38 Here, Speedishuttle fails to submit any relevant testimony or statements from
members of the public. Failing to do so means Speedishuttle has not met its burden.
Speedishuttle's only support for its application came from boilerplate letters to which Judge
Pearson justifiably assigned little significance. (Speedishuttle's Auto Transportation Authority
Appl. 10-11; Application Transcript of Br. Adjudicative Hr'g at 20:8-15).

39 Over the 12 months prior to this proceeding, there have been no Commission
complaints filed against Shuttle Express.

40 Shuttle Express acknowledges using independent contractors in the past, but it has
discontinued this service. Mere technical violations or occasional complaints do not warrant a
finding of inadequate service in the absence of widespread or serious service failures.
Superior Refuse Removal Inc. v. Washington UTC, 81 Wn. App. 43, 48, n.4, 913 P.2d 818
(1996). The use of the independent contractors did not demonstrate widespread or serious
service failures. The service was more luxurious for customers and simply more cost-efficient
for Shuttle Express. The Commission expressly found that Shuttle Express had sufficient
equipment to serve the market.

41 Shuttle Express continues to expand and improve its service to customers. Shuttle
Express invests heavily in web presence and strives to be customer-centric. (Transcript of Br.
Adjudicative Hr'g at 87:13-15). Shuttle Express's fleet of vans is well maintained and
operates 24 hours a day, 7 days a week, 365 days a year. (*Id.* at 87:5-12).

42 Speedishuttle relies on its status as a member of the GO Group as evidence of
inadequate service by Shuttle Express. While Shuttle Express is no longer a franchisee of GO
Group, passengers still can and do book Shuttle Express through the GO Group. (Transcript
of Br. Adjudicative Hr'g at 39:24-40:5) This has provided over 600 reservations in the last

three months. (*Id.* at 87:16–20) There is no evidence any customers experienced any inconvenience related to this relationship.

43 In short, the record is completely void of any evidence to even suggest that members of the public are unsatisfied with Shuttle Express’s service. The Commission also lacks any substantiated Complaint against Shuttle Express over the last 12 months. Speedishuttle’s application should be denied because Shuttle Express has been fulfilling its certificate to the satisfaction of the Commission.

D. Oral Argument Requested

44 Shuttle Express requests oral argument to assist the Commission in making its decision. Oral argument would provide the Commission with an opportunity to ask questions and seek clarification of the various issues that have been briefed by the parties. Shuttle Express is now represented by counsel and is fully able to present and respond to evidence, unlike in the brief adjudicative proceeding where its President was impaired by severe hearing loss.

E. Should the Commission distinguish Speedishuttle’s service as not the same service, Shuttle Express asks that Speedishuttle’s certificate be conditioned upon Speedishuttle providing the features it now relies upon to distinguish its service.

45 The only dispute in this case is whether inconsequential features distinguish Speedishuttle’s service. Otherwise, it is undisputed that the two companies propose to provide the same service. Any certificate Speedishuttle receives should therefore be conditioned upon Speedishuttle actually providing these features.

46 Pursuant to RCW 81.68.040, the Commission has discretion and authority to attach terms and conditions to a certificate.

47 Speedishuttle proposes to serve over 80 ZIP Codes with five, and eventually ten, vans. Yet, Speedishuttle guarantees departure wait times that do not exceed 20 minutes, and pickup

wait times that do not exceed 15 minutes. (Transcript of Br. Adjudicative Hr'g at 44:1-20)
Speedishuttle further promises to provide a complimentary airport greeter for every customer.

48 This is a physical impossibility without sacrificing the quality of its service. Shuttle Express maintains a fleet of more than 80 vans to maintain quality, reliable, and swift door-to-door service to over 300,000 passengers per year. (Transcript of Br. Adjudicative Hr'g at 86:22-23; 87:5) To propose the same quality of service but guarantee even faster departure and pickup times is not logically conceivable with only five to ten vans. If the Commission grants Speedishuttle's certificate on these features and "guarantees," the certificate should be conditioned upon Speedishuttle 1) actually delivering on its guarantees to the satisfaction of the Commission, and 2) Speedishuttle not declining service to customers that request door-to-door service in its territory.

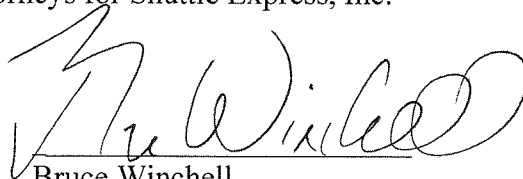
CONCLUSION

49 For the foregoing reasons, Shuttle Express petitions the Commission to deny Speedishuttle's application on the grounds that Shuttle Express already provides the same service to the satisfaction of the Commission.

DATED: February 10, 2015.

MILLS MEYERS SWARTLING P.S.
Attorneys for Shuttle Express, Inc.

By:



Bruce Winchell
WSBA No. 14582
Eric W. Robinson
WSBA No. 40458
Hunter G. Jeffers
WSBA No. 48161

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on this date I caused to be served in the manner indicated a copy of the within and foregoing document upon the following persons:

Attorney for SpeediShuttle:

David Wiley
Williams, Kastner & Gibbs, PLLC
Two Union Square
601 Union Street, Suite 4100
Seattle, WA 98101
dwiley@williamskastner.com

- Via first class mail, postage prepaid
- Via facsimile
- Via legal messenger
- Via e-mail:

For Pacific NW Transp. Services, Inc.:

John E. Fricke
VP Operations
P.O. Box 2163
Olympia, WA 98507-2163
johnf@capair.com

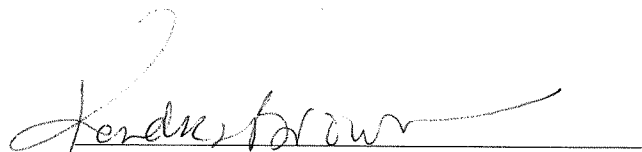
- Via first class mail, postage prepaid
- Via facsimile
- Via legal messenger
- Via e-mail:

Attorney for Staff of Washington UTC:

Julian Beattie
Office of the Attorney General
Utilities and Transportation Division
1400 S. Evergreen Park Drive SW
P.O. Box 40128
Olympia, WA 98504-0128
jbeattie@utc.wa.gov

- Via first class mail, postage prepaid
- Via facsimile
- Via legal messenger
- Via e-mail:

DATED February 10, 2015.


Kendra Brown