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1 BEFORE THE WASHINGTON UTILITIES AND
2 TRANSPORTATION COMMISSION

3 In re Application No D-78904)
4 of HECKMAN MOTORS, INC.,)
5 d/b/a OLYMPIC BUS LINES for) DOCKET NO. TC-000676
6 Extension of Authority) Volume 1
7 Under Certificate of Public) Pages 1 - 34
8 Convenience and Necessity)
9 No. C-992.)
-----)
10 In re Application No. D-78916)
11 of JEFFREY LYNN PORTER d/b/a)
12 PENNCO TRANSPORTATION for) DOCKET NO. TC-000835
13 Extension of Authority Under) Volume 1
14 Certificate of Public) Pages 1 - 34
15 Convenience and Necessity)
16 No. C-1054.)
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13 A prehearing conference in the above matter
14 was held on September 8, 2000, at 9:35 a.m., at 1300
15 South Evergreen Park Drive Southwest, Olympia,
16 Washington, before Administrative Law Judge DENNIS MOSS.

17 The parties were present as follows:

18 HECKMAN MOTORS, INC., d/b/a OLYMPIC BUS LINES,
19 via bridge line, by JACK HECKMAN, 111 East Front Street,
20 Port Angeles, Washington 98362.

21 PENNCO TRANSPORTATION, by JEFFREY LYNN PORTER,
22 P.O. Box 1687, Port Angeles, Washington 98362.

23 SHUTTLE EXPRESS, INC. and EVERGREEN TRAILS,
24 INC., via bridge line, by BROOKS E. HARLOW, Attorney at
25 Law, 601 Union Street, Suite 4400, Seattle, Washington
98101.

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25 Joan E. Kinn, CCR, RPR
Court Reporter

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1 PARATRANSIT SERVICES, by STEVE HUTCHINS, 4810
Auto Center Way, Bremerton, Washington 98312.

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3 PARATRANSIT SERVICES CLALLAM, by ROBERT
CAMPBELL, 212 North Gales, Port Angeles, Washington
98362.

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5 THE COMMISSION, by ROBERT CEDARBAUM, Assistant
Attorney General, 1400 South Evergreen Park Drive
Southwest, Olympia, Washington 98504-0128.

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1 P R O C E E D I N G S

2 JUDGE MOSS: We are convened this morning in
3 two matters in a joint prehearing conference at this
4 juncture. We are going to take up momentarily the
5 question of whether these proceedings should be
6 consolidated, but for the moment at least, they are
7 being conducted jointly.

8 The first docket I have is captioned In re
9 Application Number D-78904 of Heckman Motors, Inc.,
10 doing business as Olympic Bus Lines, for Extension of
11 Authority Under Certificate of Public Convenience and
12 Necessity Number C-992, and that is Docket Number
13 TC-000676.

14 The other matter I have is in re Application
15 Number D-78916 of Jeffrey Lynn Porter doing business as
16 Pennco Transportation for Extension of Authority Under
17 Certificate of Public Convenience and Necessity Number
18 C-1054, and that's Docket Number TC-000835.

19 As the matter is presented to me, these
20 applications were filed within 30 days of one another
21 and do at least overlap in some fashion, and so they
22 should be considered together at least jointly and
23 perhaps on a consolidated basis, a matter we will take
24 up momentarily.

25 The basic agenda that we have today,

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1 momentarily we will take appearances, then I want to
2 take up the various protests that have been filed, and
3 in connection with that, I have been handed this morning
4 a stipulation requesting conditions with respect to the
5 Pennco matter and similarly a stipulation requesting
6 conditions in the Heckman matter. And I do have those,
7 and we will take those up in connection with the
8 protest. We will consider any other motions, and
9 included in that will be the question of consolidation.
10 We will discuss what issues we may need to take up in
11 the course of our proceedings. We will discuss process
12 and procedural schedule and any other business that
13 parties wish to bring to the table today that's
14 appropriate to a prehearing conference at least.

15 So let's begin by taking appearances, and I
16 know Mr. Heckman is on the line, and I will ask that he
17 enter his appearance. Just state your name, your
18 mailing address, telephone number, fax and E-mail.

19 MR. HECKMAN: Jack Heckman, Heckman Motors
20 Incorporated doing business as Olympic Bus Lines.

21 JUDGE MOSS: Mr. Heckman.

22 MR. HECKMAN: Yes.

23 JUDGE MOSS: We can't quite hear. I will ask
24 you to just sort of speak up a little bit there, and I
25 think it will be all right.

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1 MR. HECKMAN: Okay, I will start over then.
2 I'm Jack Heckman with Heckman Motors Incorporated doing
3 business as Olympic Bus Lines. We're at 111 East Front
4 Street in Port Angeles, Washington. Phone number is
5 area code (360) 452-4774. Fax number is (360) 452-1460.
6 Can everyone hear that okay?
7 JUDGE MOSS: Yeah, we can hear you fine now.
8 And do you have an E-mail that you use?
9 MR. HECKMAN: I do, it's jheckman,
10 H-E-C-K-M-A-N, @ prodigy, P-R-O-D-I-G-Y, .net.
11 JUDGE MOSS: All right, and I think the one
12 missing piece on my notes at least is your zip code.
13 MR. HECKMAN: 98362.
14 JUDGE MOSS: Thank you very much.
15 Mr. Porter.
16 MR. PORTER: Jeffrey L. Porter doing business
17 as Pennco Transportation. Our mailing address is P.O.
18 Box 1687, Port Angeles, Washington, 98362. The phone
19 number is (360) 452-5104. Fax number is (360) 417-7596.
20 E-mail address is pennco97@olyphen.com.
21 JUDGE MOSS: Okay, I think I'm going to need
22 that service provider, pennco@?
23 MR. PORTER: Olyphen, O-L-Y-P-E-N.
24 JUDGE MOSS: Is that .com?
25 MR. PORTER: Yes.

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1 JUDGE MOSS: All right. We have Mr. Harlow
2 on the line, I know that at least, so I will ask you to
3 enter your appearance, Mr. Harlow.

4 MR. HARLOW: Good morning, Your Honor, Brooks
5 Harlow appearing on behalf of Shuttle Express, Inc. in
6 the Porter docket and appearing on behalf of Shuttle
7 Express, Inc. and Evergreen Trails, Inc. in the Heckman
8 Motors docket. My address is 601 Union Street, Suite
9 4400, Seattle, Washington 98101. Telephone number is
10 (206) 622-8484. Fax number is (206) 627-7485.

11 Did you ask for E-mail address, Your Honor?

12 JUDGE MOSS: Yes, please.

13 MR. HARLOW: Harlow, H-A-R-L-O-W,
14 @millernash.com.

15 JUDGE MOSS: All right. Do we have anyone
16 else on the teleconference line?

17 Apparently not. We have others present in
18 the room.

19 MR. HUTCHINS: My name is Steve Hutchins with
20 Paratransit Services. My address is 4810 Auto Center
21 Way, Bremerton, Washington. My phone number is (360)
22 377-7176 extension 310. My E-mail is seh, Steven Edward
23 Hutchins, seh@paratransit.net.

24 JUDGE MOSS: And are you counsel, or are you
25 an officer with the organization?

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1 MR. HUTCHINS: I'm an officer with
2 Paratransit Services.

3 JUDGE MOSS: All right. And are you entering
4 an appearance, sir?

5 MR. CAMPBELL: Yes, I'm Robert Campbell from
6 Paratransit Services, Clallam Paratransit Services, and
7 my address is 212 North Gales, G-A-L-E-S, Port Angeles,
8 Washington 98362. Phone number is area code (360)
9 452-1397. Fax number is area code (360) 452-1102.
10 E-mail address is P-A-R-A-T-R-A-N, paratran@olympen,
11 O-L-Y-P-E-N, .com.

12 JUDGE MOSS: All right. Do we have anyone
13 appearing today for protestant Bremerton Kitsap
14 Airporter, Inc. in the Docket Number 000835, which is
15 the Pennco matter?

16 Apparently not.

17 Mr. Cedarbaum.

18 MR. CEDARBAUM: Thank you, Your Honor. My
19 name is Robert Cedarbaum, I am an assistant attorney
20 general representing Commission staff. My business
21 address is the Heritage Plaza Building, 1400 South
22 Evergreen Park Drive Southwest, Olympia, Washington
23 98504.

24 Do you want our telephone numbers?

25 JUDGE MOSS: We may as well have it for the

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1 record, I think. I know you have done it a million
2 times.

3 MR. CEDARBAUM: Telephone number is area code
4 (360) 664-1188. Fax number is the same area code,
5 586-5522, and my E-mail address is bcedarba@wutc.wa.gov.

6 JUDGE MOSS: And for the benefit of those in
7 the room, you might introduce your Commission staff
8 support here.

9 MR. CEDARBAUM: Bonnie Allen is to my left.
10 Linda Elhardt is to her left.

11 JUDGE MOSS: Thank you very much.

12 We have a number of protests, and we have
13 appearances by some of them at least. I think the
14 appropriate order of business here will be to take up,
15 Mr. Harlow, the stipulations in both of these matters.
16 I guess we should just do them one at a time to avoid
17 confusion.

18 So let's take up the Heckman Motors, Inc.
19 matter first. And we have Mr. Heckman on the line, who
20 will have a very direct interest in that. And I have
21 just received these literally moments ago, so perhaps,
22 Mr. Harlow, you could just brief me on them.

23 MR. HARLOW: Thank you, Your Honor.

24 Mr. Heckman's current certificate provides -- contains a
25 restriction that no service shall be rendered between

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1 any point in Seattle and the Seattle Tacoma
2 International Airport. The intent of the stipulation is
3 to avoid any confusion if this extension application is
4 granted as to whether or not this restriction will
5 continue to apply to the new authority. Sometimes when
6 extended authority is granted, there can be ambiguity in
7 terms of how the certificate is ultimately phrased as to
8 whether or not prior restrictions extend to the new
9 granted authority. And the intent of the stipulation is
10 simply to clarify that the restriction will continue to
11 apply to the full authority as amended in this docket.

12 JUDGE MOSS: All right. And I have here
13 signature pages that reflect the agreement of the
14 parties, one signed by Mr. Harlow, and one signed by
15 Mr. Heckman.

16 Mr. Heckman, do you have anything to add with
17 respect to the stipulation?

18 MR. HECKMAN: No, that was fine. I signed
19 that and faxed that back to Mr. Rice I believe
20 yesterday, so that's what we intended to begin with, to
21 have it that way.

22 JUDGE MOSS: Okay, thank you very much. Let
23 me ask staff if there's any comment on this.

24 MR. CEDARBAUM: Staff has no objection with
25 the clarification amendment.

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1 JUDGE MOSS: Does anybody else have anything
2 they wish to say about the restrictions?

3 And with this stipulation, Mr. Harlow, would
4 the protest be withdrawn?

5 MR. HARLOW: Your Honor, we would request
6 leave to not participate actively in the docket, but we
7 would like to remain appraised of records for purposes
8 of receiving initial and final orders. And that's on
9 the second page in the stipulation, and that's simply so
10 that we can ensure that by the time the docket is
11 concluded that either through inadvertence or mistake,
12 make sure the effect of the stipulation does find its
13 way into the final order.

14 JUDGE MOSS: All right. Any problem with
15 that from anybody?

16 All right, then I will grant the stipulation
17 then, accept the stipulation then and with the
18 understandings as we have discussed this morning.

19 Let's turn then to the stipulation concerning
20 the Pennco Transportation application. And, Mr. Harlow,
21 again I will turn to you and ask you to just briefly
22 summarize for me.

23 MR. HARLOW: Thank you, Your Honor. I think
24 the overall effect and intent in the Porter stipulation
25 is the same as the Heckman stipulation. But in

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1 reviewing the actual language of the current certificate
2 as well as the requested extension of authority, we
3 found that there might already be some ambiguity in the
4 certificate.

5 And so rather than continuing an existing
6 restriction, we propose and have stipulated to add the
7 following restriction, which reads:

8 No service shall be rendered under the
9 certificate between points in King,
10 Pierce, and Snohomish Counties and
11 Seattle Tacoma International Airport.

12 And again, we requested to remain a party
13 simply for purposes of receiving the initial and final
14 order, but would like leave to not participate actively,
15 assuming this stipulation is accepted.

16 JUDGE MOSS: All right, now you mentioned
17 that this, would this replace some existing language
18 that you found to be ambiguous?

19 MR. HARLOW: Well, we usually leave it up to
20 the staff to actually draw the certificate, but I assume
21 that there would be some language that could come out.

22 JUDGE MOSS: Can you point us to some
23 specific language that staff should be looking at, or so
24 we can do that later, if necessary.

25 MR. HARLOW: As we speak, I'm looking for the

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1 existing certificate. Okay, I have located it. Give me
2 a moment. Actually, I do not see a restriction that
3 would need to be replaced, Your Honor. It appears to me
4 as though this certificate was built up over time,
5 perhaps several extensions, and if you read the
6 authority very strictly, arguably it wouldn't encompass
7 authority to provide service as is being proposed to be
8 restricted. This is, if you will, kind of an insurance
9 policy. So I do not think, on reviewing this, I do not
10 think any language would need to be replaced in the
11 certificate.

12 JUDGE MOSS: Yeah, I'm sort of casting my
13 mind back. I sat on a matter with Pennco, oh, I guess
14 it's been close to three years ago now, and I recall
15 that we handled this by having some reference to closed
16 door service during some portion of the routes.

17 MR. HARLOW: Yeah.

18 JUDGE MOSS: That's probably the case.

19 MR. HARLOW: Now I see it finally. It's in
20 the second paragraph, closed door service between
21 Edmonds and Seattle. Sometimes when you cobble together
22 and continually and repeatedly tack on authorities, you
23 get a rather convoluted authority, and we simply wanted
24 to avoid any argument by the applicant or perhaps a
25 buyer of the applicant that they could provide service

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1 between those counties and SeaTac, and the applicant is
2 willing to stipulate to that.

3 JUDGE MOSS: Okay.

4 And, Mr. Porter, you're in agreement with
5 this stipulation?

6 MR. PORTER: That's correct.

7 JUDGE MOSS: It has your signature on the
8 copy of it here.

9 Does staff have anything on this one?

10 MR. CEDARBAUM: Staff has no objection. I
11 think we're reasonably willing to work with the parties
12 to make sure that the certificate reads the way we all
13 understand it should read if granted.

14 JUDGE MOSS: That has historically been the
15 practice, as Mr. Harlow reminds me, that staff will work
16 on the language of the certificates, and we try to get
17 them as unambiguous as possible. But as Mr. Harlow also
18 correctly observed, over periods of time, these things
19 can become sort of like legislation, it can be pages
20 long and undoes things that were previously done.

21 All right, does anybody else have any comment
22 on this?

23 MR. HUTCHINS: That particular issue?

24 JUDGE MOSS: Yes, just on the stipulation.

25 MR. HUTCHINS: No.

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1 JUDGE MOSS: Okay, fine. Again, I will
2 accept the stipulation, and the intent, as I understand
3 it, is the same with respect to both then, Mr. Harlow,
4 that we will keep you in the loop, so to speak, but you
5 will not be actively participating in our process unless
6 something should go awry in your view.

7 MR. HARLOW: Yes, thank you, Your Honor. And
8 along that vein, if it's all right with you, I would
9 like to drop off the line at this time.

10 JUDGE MOSS: Sure, and I will be sure that
11 you get a copy of our prehearing conference order so
12 that you're fully apprised of the process and procedure
13 schedule.

14 MR. HARLOW: Thank you, Your Honor, and thank
15 the Commission as well for letting us participate by
16 telephone this morning.

17 JUDGE MOSS: All right, not a problem.

18 MR. HARLOW: Goodbye.

19 JUDGE MOSS: Goodbye.

20 All right, then we have the Clallam
21 Paratransit Services seeks to participate as a
22 protestant, and we do have representatives here. Which
23 of you will be speaking?

24 MR. HUTCHINS: I will.

25 JUDGE MOSS: Okay, go ahead, Mr. Campbell,

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1 tell us what the interest of the Paratransit Services is
2 in the proceeding.

3 MR. HUTCHINS: Actually, my name is Steve
4 Hutchins, and I'm the Executive Vice President.

5 JUDGE MOSS: I apologize, I got the two of
6 you confused.

7 MR. HUTCHINS: That's fine, there's a card
8 for you.

9 JUDGE MOSS: Thank you very much.

10 MR. HUTCHINS: We at Paratransit Services, we
11 play the role where we're the broker for the Medicaid
12 transportation. In the application --

13 JUDGE MOSS: Slow down a little bit, please.

14 MR. HUTCHINS: Thank you. We play the role
15 as the Medicaid transportation broker for MAA, Medical
16 Assistance Administration. What we try to do is provide
17 trips at the lowest cost, most appropriate available
18 provider. With the way that the services have been
19 described to us and we have seen in the legal documents,
20 we're concerned that when we would be able to actually
21 refer any trips to the service, and it is mentioned that
22 they would be taking trips for this, and I would like to
23 address why we have these concerns.

24 The first concern that we have is the ability
25 on the fares that they mention and the regularity of the

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1 service to be able to fund the service on a regular
2 ongoing basis. The number of passengers, we don't see
3 based on our experience providing service in the
4 peninsula area, is not a significant number.

5 And when we look at the potential fares that
6 you're going to generate at \$30 a round trip and the
7 potential load, we're concerned of the longevity of the
8 service going after a short period of time when there's
9 revenue enough to continue. Then when we start to
10 develop a relationship with this provider doing these
11 runs and they're not there, we have to then go back and
12 reappeal to MAA to modify our budget to distribute those
13 trips.

14 JUDGE MOSS: And MAA is?

15 MR. HUTCHINS: DSHS, Department of Social and
16 Health Services, office of Medical Assistance
17 Administration.

18 JUDGE MOSS: Thank you.

19 MR. HUTCHINS: The second concern that we
20 have is the ADA accessibility of the service, and
21 nowhere is it addressed that wheelchair accessible
22 service will be provided. And that is a key element of
23 providing public transportation under the Americans with
24 Disabilities Act. And the best of our knowledge is
25 there currently is no accessible service from Pennco to

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1 provide this service, so they would be having to
2 redesign their service.

3 So what we would like to see on that if they
4 go further with this application is that the ADA
5 transportation is addressed, and that would probably
6 also require them to readjust their rates, because they
7 will have to provide different vehicles that do have
8 accessibility to meet ADA requirements.

9 JUDGE MOSS: Mr. Hutchins, let me ask you if
10 you have had any direct discussions with Mr. Porter
11 regarding your concerns?

12 MR. HUTCHINS: No, we have not.

13 JUDGE MOSS: Mr. Porter, do you have any
14 objection to Paratransit Services participating in the
15 proceeding given their statement of interest?

16 MR. PORTER: I do after I comment on his two
17 concerns.

18 MR. HUTCHINS: Well, I have a third concern.

19 JUDGE MOSS: Oh, I'm sorry, I didn't mean to
20 cut you off prematurely there. Go ahead.

21 MR. HUTCHINS: The third concern is the
22 schedule regularity. When we looked at the schedule, a
23 person would have to get on the bus, for a 10:30
24 appointment, would have to get on the bus around say in
25 the Port Angeles, in the Port Hadlock area, and I will

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1 use approximates, around 6:15, 6:30 for a 9:30
2 appointment. And then they would not be able to get a
3 return transportation back home until almost 4:45 or
4 something like that.

5 The people that we're serving on the MAA for
6 a greater part are frail, elderly, disabled folks that
7 are going to Seattle for serious medical appointments.
8 And to have a transportation day of around 14 hours
9 could affect our ability to distribute trips to Pennco,
10 because we have to take into consideration the lowest
11 cost, most appropriate available transportation.

12 So we're concerned with the ability of the
13 fares to meet the long-term service, the ADA
14 accessibility, and we're concerned with the schedule
15 regularity for us to be able to give a large number of
16 trips to Pennco.

17 JUDGE MOSS: Okay.

18 MR. HUTCHINS: So those are our three
19 concerns.

20 JUDGE MOSS: Okay, thank you very much.

21 Mr. Porter, you go ahead.

22 MR. PORTER: Well, just to make this real
23 short, in order to address his concerns, I have to be
24 able -- I have to submit a rate sheet or whatever to
25 extend my contract, the contract with Paratransit to

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1 provide the service for those customers. This is not
2 going to be a contract with Paratransit. This is
3 strictly for the private sector. This has nothing to do
4 with my subcontract with them.

5 JUDGE MOSS: Okay.

6 MR. PORTER: This service will not be
7 provided to those people. For one, this has to be cash
8 on demand transportation. I can not wait six, seven
9 weeks to get reimbursed for providing the service. So
10 this is a service that's going to be provided for the
11 private sector. It has nothing to do with Paratransit.

12 JUDGE MOSS: And you do have a contract with
13 Paratransit now?

14 MR. PORTER: That's correct.

15 JUDGE MOSS: And this will simply be outside
16 that contract?

17 MR. PORTER: That's correct.

18 MR. HUTCHINS: My response to that is the
19 verbiage is modified in the contract to not say that
20 they would be doing that in the proposal that they have
21 going forward that I have my concerns. But right now it
22 does say that a number of trips will be provided from
23 Paratransit Services as a part of this in the
24 projections. So if that's the case, I certainly didn't
25 interpret that way when I read it.

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1 JUDGE MOSS: Sometimes we do simply have some
2 misunderstandings that can be resolved informally, and
3 there will be an opportunity for that, but let me first
4 ask if staff has any thoughts on this particular
5 protest.

6 MR. CEDARBAUM: I'm sort of learning as I go
7 here.

8 JUDGE MOSS: Well, as are we all.

9 MR. CEDARBAUM: On the facts. I guess up
10 until Mr. Porter spoke, I was ready to not object to the
11 intervention, because I thought it went to the public
12 convenience and necessity aspect of the application.
13 But if what Mr. Porter states is true, that this
14 application will have nothing to do with the services
15 provided to Clallam Paratransit, then I don't see where
16 their interest lies in this case. And if they can work
17 this issue out informally or whether it's worked out on
18 the record now, it doesn't seem to me that they would
19 have the interest to allow intervention or protest. So
20 given the facts as I understand them, I would join in
21 the objection, if Mr. Porter was making that objection
22 to the intervention.

23 JUDGE MOSS: Yeah, I understood it to be an
24 objection.

25 Let me ask if it would be helpful at this

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1 point if we went off the record, and those of us who
2 perhaps, or I at least, could leave the room and give
3 you all an opportunity to discuss this between
4 yourselves and see if you can come to a satisfactory
5 understanding, and then we can resolve it on that basis.
6 Or if that's not possible or convenient, then I can
7 resolve it for you. But I always prefer to give the
8 parties the opportunity to handle these things
9 informally. We have time, and you all have traveled
10 distances to be here this morning, so would that be a
11 good -- I see heads nodding affirmatively, so I gather
12 that's an acceptable suggestion to go off the record?

13 MR. HUTCHINS: That would be fine to go off
14 the record. You guys could even stay and listen if you
15 like.

16 MR. PORTER: It's pretty cut and dried; it's
17 not a big issue.

18 JUDGE MOSS: I think it would be best if I
19 leave the room, but Mr. Cedarbaum knows where my office
20 is and can come retrieve me at the appropriate moment.
21 And he certainly can stay, and it perhaps probably would
22 be easier if he stayed, so let's go off the record.

23 (Discussion off the record.)

24 JUDGE MOSS: The parties have had an
25 opportunity to discuss matters off the record, and I get

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1 the sense that things have been brought to a
2 satisfactory conclusion as between these parties. And
3 so if you all will simply tell me briefly on the record
4 that that is the case, then we can move on, and you all
5 can head back to your offices.

6 MR. HUTCHINS: We have agreed that
7 Paratransit -- since we will not be referring to it
8 since it's not a Medicaid service that he's going to
9 asking for customers to be on that, we have no interest
10 in it. Our only concern then became the ADA
11 accessibility, and we understand that that's not a
12 regulatory issue of the UTC.

13 Is that the correct wording?

14 MR. CEDARBAUM: What I indicated off the
15 record was the Commission does not enforce the Americans
16 with Disabilities Act. If there are issues with respect
17 to that, there are other procedures and agencies and
18 remedies that control, but that's not something this
19 Commission looks to.

20 JUDGE MOSS: All right. And so with that
21 understanding, then would Paratransit be withdrawing
22 your protest?

23 MR. HUTCHINS: We would withdraw our protest.
24 We would ask the same thing as Mr. Hickman's attorney
25 did, that we be kept on the --

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1 JUDGE MOSS: On the service list?

2 MR. HUTCHINS: On the service list, yes.

3 JUDGE MOSS: All right, we will continue to
4 keep you apprised of developments, send you a copy of
5 the prehearing order and so forth. But my understanding
6 is that the protest at least is withdrawn, and so we
7 will treat you with that sort of special status that we
8 discussed with respect to the other party as well.

9 And with that, if you would like to leave us
10 this morning, you're free to do so, and we appreciate
11 you coming and participating.

12 MR. HUTCHINS: All right, thank you very
13 much.

14 JUDGE MOSS: Thank you.

15 MR. HUTCHINS: Is it okay if we stick around
16 and listen? This is my first time in a UTC hearing, so
17 I will learn a little bit for the next few minutes.

18 JUDGE MOSS: Our hearings are open public
19 hearings, and you're welcome to stay.

20 MR. HUTCHINS: Okay, thank you.

21 JUDGE MOSS: All right. Now it's not
22 entirely clear to me from the applications and the
23 various materials that I have looked at whether Heckman
24 and Pennco are protesting each other's applications or
25 not, so let's clarify that for the record now.

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1 Mr. Porter, I will start with you since
2 you're sitting here.

3 MR. PORTER: I am not protesting his
4 application.

5 JUDGE MOSS: All right, so Mr. Porter is not
6 protesting Mr. Heckman.

7 Mr. Heckman.

8 MR. HECKMAN: I initially was not going to
9 protest, however, I just overheard Mr. Porter when we
10 were off the record speaking about having two runs daily
11 at a discounted rate, which sounds to me as if it's a
12 scheduled service, which is in direct competition to
13 what we do currently. His current authority is door to
14 door by reservation only, so I do have a concern about
15 that if that's the case.

16 JUDGE MOSS: Mr. Porter, do you wish to speak
17 to that?

18 MR. PORTER: It is indeed a scheduled
19 service. It is twice a day, and it is at a lower fare
20 than what Olympic offers to Seattle.

21 JUDGE MOSS: And is this in overlapping
22 territory then? That was my next question, that I need
23 to be clear on that.

24 MR. PORTER: It overlaps only because there's
25 pretty much only one road in and one road out for the

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1 same route.

2 JUDGE MOSS: All right.

3 So, Mr. Heckman, then do I understand that
4 you would oppose the application by Pennco as filed?

5 MR. HECKMAN: Yes, I would based on that
6 basis. If it is scheduled service, I would protest
7 that. That's the distinction between our two companies
8 basically is that his is by reservation door to door
9 only, and we have the scheduled service, which we do
10 twice a day. And so that would, especially at
11 discounted fares, would drastically, I believe, affect
12 our service.

13 JUDGE MOSS: All right.

14 Staff, anything on this point?

15 MR. CEDARBAUM: I'm not sure my recollection
16 is correct or not. I thought that there was -- there
17 might be a requirement that if protests were to be
18 filed, they had to be filed earlier than the hearing,
19 and at least my file doesn't reflect a protest by
20 Mr. Heckman of Mr. Porter's application.

21 JUDGE MOSS: Within 20 days I believe is what
22 the rules require.

23 MR. CEDARBAUM: I guess it seems to me that
24 there would be a reason then to dismiss the protest for
25 that procedural grounds. But I guess from my

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1 perspective and I think from staff's perspective, we
2 probably wouldn't object to the protest because the
3 applications were filed within 30 days of each other. I
4 suppose from Mr. Porter's point of view, there's harm
5 done, but I don't think there is any surprise of the
6 protest of his application. So we wouldn't object to
7 the protest even though there are, I think, that
8 procedural error was a problem.

9 JUDGE MOSS: Well, you know, the purpose of
10 the procedural rules insofar as the time requirements
11 are concerned is that everybody have adequate notice of
12 who is going to be participating in the proceeding. And
13 so in that sense, I would tend to want to err toward the
14 side of the fuller participation rather than restricting
15 participation on a narrow procedural basis. At least
16 that's my preliminary thought.

17 And really what I have in mind at this
18 juncture is the question of whether these should be
19 heard simply jointly or whether we should consolidate
20 them. And the difference being that if we consolidate
21 them, we have a common record that applies by force of
22 law. Whereas if we just hear them jointly, then we have
23 to jump through some additional hoops in order to make
24 that happen if it's appropriate for it to happen.

25 And then, of course, the other aspect of it

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1 procedurally is that if the applications are
2 unprotested, then we can have our evidence of need by
3 affidavit and avoid the necessity of live witnesses.

4 So there are some process differences
5 depending on how we view this. So it would appear to me
6 that there is an issue here that bears some further
7 consideration, and so I would ask staff again,
8 Mr. Cedarbaum, whether you have a view on whether we
9 should proceed on a consolidated basis or a joint basis
10 with the applications?

11 MR. CEDARBAUM: I think if the protest of
12 Mr. Heckman is allowed, it makes sense to consolidate it
13 for the reasons that you stated. And WAC 480-30-032
14 provides the Commission authority to do that. Up until
15 hearing Mr. Heckman's protest, I was prepared to say we
16 should not consolidate, because these were unprotested
17 applications, and we could go with the shipping
18 supporting statements. That seemed to me to be cleaner.

19 So I think it really depends on whether the
20 protest of Heckman is allowed. If it is, I would say
21 consolidate. If not, I don't think consolidation will
22 add to the convenience of the process.

23 JUDGE MOSS: The Commission's concern in all
24 of this, of course, is whether the public convenience
25 and necessity requires the services applied for. And I

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1 think the point that has been raised is a relevant one,
2 because part of the Commission's analysis of this
3 question concerns the financial viability of the two
4 services that would overlap. And, of course, the nature
5 of the service being reservation or scheduled does bear
6 on that question. So in that sense at least, I would
7 allow the protest. I want the issue to be considered
8 and fully aired.

9 And so I think the appropriate course of
10 action is, as you suggest, to go ahead and consolidate
11 the proceedings under WAC 480-30-032. And it makes, as
12 I mentioned, some practical difference in the sense that
13 if we do have to go forward on a protested basis, then
14 we will require live testimony as opposed to simply
15 having shipper statements. And there may be some
16 opportunity for the parties to work together after this
17 morning to resolve this question by stipulation, and I
18 want to encourage that and leave that thought on the
19 table for now. So that resolves the question then of
20 consolidation.

21 And I think that brings us then -- and I
22 think we also understand the issues, that that would
23 appear to be the one issue that we really have, along
24 with the standard issues of public need, which has to be
25 demonstrated in every application.

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1 Am I missing -- well, fitness, I suppose,
2 just looking at the financial fitness and so forth. Of
3 course, these are both existing operations, and we have
4 that material on file, and we have that history
5 available to us through the Commission's records, which
6 will in some fashion or another become part of the
7 record in these proceedings, now this proceeding since
8 they will be consolidated, and we will consolidate them
9 under the lower docket number, which happens to be
10 the Heckman one, 676.

11 So we do need to discuss then the process and
12 procedural schedule, and we typically take that up off
13 the record briefly and then come back on the record to
14 memorialize it, so why don't we go off the record.

15 MR. CEDARBAUM: Your Honor.

16 JUDGE MOSS: Excuse me, before we do that.

17 MR. CEDARBAUM: I'm sorry, we haven't
18 formally disposed of the Bremerton Kitsap Airporter
19 protest, and I don't think they're on the phone, they're
20 not in the hearing room, but I thought we ought to at
21 least dispose of that.

22 JUDGE MOSS: Yes, I think it's appropriate
23 that we do that, and I appreciate your reminding me of
24 that.

25 Since they have not previously indicated that

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1 they are present, let me ask again if there is anyone
2 present on the teleconference bridge line for Bremerton
3 Kitsap Airporter Inc.

4 And I hear nothing, and this is in the Pennco
5 Transportation matter, 835.

6 Mr. Porter, do you have an objection to the
7 participation by protestant Bremerton Kitsap Airporter,
8 Inc.?

9 MR. PORTER: No.

10 JUDGE MOSS: Staff?

11 MR. CEDARBAUM: Yes.

12 JUDGE MOSS: Staff objects, all right.

13 MR. CEDARBAUM: I just -- well, maybe I
14 shouldn't state it that strongly, got the litigation
15 juices running. Bremerton Kitsap received a copy of the
16 notice of hearing in this case. The notice of hearing
17 specifically told them on page four in bold in capital
18 printing that their failure to appear would result or
19 may result in their default in the case. They are a
20 company that's been involved with Commission regulation
21 for a long time. They know the policies and procedures
22 of the Commission. I think their failure to appear and
23 present their protest could result in the Commission
24 dismissing it.

25 So I guess I'm a little -- Mr. Porter doesn't

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1 object to their protest. I guess I haven't heard
2 Mr. Heckman one way or the other.

3 JUDGE MOSS: Well, they haven't --
4 Mr. Heckman would have an opportunity to speak to that,
5 but they haven't sought intervention in his application
6 I don't believe, no.

7 MR. PORTER: I don't have my copy of his
8 protest, but he was basically looking for some
9 clarification also which stipulated the same thing that
10 Shuttle Express was looking for.

11 JUDGE MOSS: The door to door --

12 MR. PORTER: The closed door policy, yeah.

13 JUDGE MOSS: That was my understanding as
14 well.

15 MR. CEDARBAUM: Well, I guess at this point
16 then, I withdraw the objection to the protest, given
17 that it appears that the amendment this morning would
18 resolve their issue. Although it would be nice, perhaps
19 maybe someone on staff or by the Commission's prehearing
20 conference order, they can be alerted to the fact that
21 that amendment was made and at least get them to respond
22 that it does take care of their issues.

23 JUDGE MOSS: It would be nice to have that as
24 a matter of record, and I think under the circumstances
25 that we have and the discussion that we had, the most

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1 appropriate thing would be to consider them for present
2 purposes to be in the same category as the other
3 preliminary protestants, which is to say that with
4 clarification, they may wish to continue to be kept in
5 the loop in terms of what happens in the proceeding, and
6 that they probably, as suggested by their failure to
7 appear this morning, will not be active in the process.

8 And particularly given that Mr. Porter has no
9 objection and the nature of things being what they are,
10 we will not dismiss them this morning. And I will
11 endeavor to make the prehearing order reflect the
12 circumstances in such a fashion as to elicit something
13 in writing from them, and that will clarify the record
14 as well. So that's how I want to handle that.

15 Okay, and then that brings us to the process.
16 Anything else before we go off the record to discuss
17 process and procedural schedule?

18 Hearing nothing, then let's do go off the
19 record briefly and take that up.

20 (Discussion off the record.)

21 JUDGE MOSS: We have had some off the record
22 discussion regarding our process and procedural
23 schedule. Mr. Cedarbaum has rightly reminded me that
24 even if the two applicants resolve this scheduling issue
25 between themselves, and therefore the matter is

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1 unprotested, we will need to have some record regarding
2 the fitness of the operators and that that would
3 typically be handled by live testimony.

4 So we're leaving our process decisions a bit
5 open today in the sense that preliminarily we will set a
6 hearing for Tuesday, October 10th, beginning at 9:30,
7 with the location to be Port Angeles if we have to have
8 live witnesses on the subject, that is to say shipper
9 witnesses. If we are reduced to the need for operator
10 only testimony, we may change the location of the
11 hearing to Olympia. And Mr. Porter and Mr. Heckman have
12 indicated that they could do that and would be willing
13 to do that if things turn out that way. So the order
14 will reflect the preliminary situation, and then we may
15 amend that later as we learn more.

16 We typically don't need to establish other
17 procedural dates in connection with these. Is there
18 anything else we need to put on the record with respect
19 to the process and procedural schedule?

20 Mr. Cedarbaum, nothing from staff?

21 MR. CEDARBAUM: No.

22 JUDGE MOSS: Okay, fine. Then is there any
23 other business we need to take up this morning?

24 Hearing no indication that there is, I will
25 thank you all very much for participating with us this

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1 morning in person and by telephone, and I will draft and
2 enter a prehearing conference order to capture the
3 essence of our proceedings this morning, and we will go
4 off the record. Thank you.

5 (Hearing adjourned at 10:35 a.m.)

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