

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In re Application No. D-079130 of)	
)	DOCKET NO. TC-030122
EVERGREEN TRAILS, INC. D/B/A)	
EVERGREEN TRAILWAYS AND)	ORDER NO. 02
GRAY LINE OF SEATTLE,)	
)	
For an Extension of Certificate No.)	FINAL ORDER
C-819 for a Certificate of Public)	
Convenience and Necessity to)	GRANTING APPLICATION TO
Operate Motor Vehicles in)	EXTEND CERTIFICATE OF
Furnishing Passenger and Express)	PUBLIC CONVENIENCE AND
Service as an Auto Transportation)	NECESSITY
Company.)	
.....)	

1 **Synopsis.** *This order grants an application to extend existing passenger transportation service authority to include points between SeaTac airport and Pier 66 and Terminal 30 on the Port of Seattle waterfront. The record establishes that the public convenience and necessity require the proposed service and that the applicant is financially fit.*

I. INTRODUCTION

2 **Proceedings.** This is an application by Evergreen Trails, Inc. d/b/a Evergreen Trailways and Gray Line of Seattle (“Gray Line” or “the Applicant”) to extend its certificate of public convenience and necessity to operate motor vehicles in furnishing passenger between Seattle-Tacoma International Airport (“SeaTac”) and points in the city of Seattle. Gray Line seeks to add service to Pier 66 and Terminal 30 on the Port of Seattle waterfront. The authority requested overlaps that of Shuttle Express, Inc., d/b/a Super Shuttle (“Shuttle Express”).¹

3 **Parties.** Brooks Harlow and David L. Rice, attorneys, Seattle, represent Gray Line. Shannon Smith, Assistant Attorney General, represents staff of the Washington Utilities and Transportation Commission.

¹ Shuttle Express did not file a protest to Gray Line’s Application in this proceeding.

4 **Procedural Background.** On January 22, 2003, Gray Line filed an application – Number D-079130 – for an extension of Certificate No. C-819 for a Certificate of Public Convenience and Necessity to Operate Motor Vehicles in Furnishing Passenger and Express Service as an Auto Transportation Company (“Application”). Notice of the Application was published in the Commission’s weekly Docket of February 3, 2003. No protests were filed against the Application. An evidentiary hearing was held on March 25, 2003, Administrative Law Judge Lawrence Berg presiding. The Commission heard Gray Line’s application and received evidence from Gray Line’s witnesses. The Applicant and Commission Staff waived entry of an Initial Order in this proceeding.

5 **Standard for Determination.** The fundamental standard governing this application is contained in RCW 81.68.040:

The Commission shall have power, after 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 Commission, and in all other cases with or without hearing, to issue said certificate as prayed for; or for good cause shown to refuse to issue same, or to issue it for the partial exercise only of said privilege sought, and may attach to the exercise of the rights granted by said certificate to such terms and conditions as, in its judgment, the public convenience and necessity may require.

6 In addition, consistent with the Commission’s rules for auto transportation companies in Chapter 480-30 WAC, the Commission considers an applicant’s financial fitness, and its fitness generally to provide the service for which it seeks authorization. We must address, then, two sets of questions with respect to the application:

1) Public convenience and necessity:

a) Do the public convenience and necessity require the proposed service?

b) Does an existing auto transportation company operating in the territory at issue provide service to the satisfaction of the Commission?

2) Financial Fitness:

a) Is the company financially fit and capable of providing the service?

b) Does the company exhibit regulatory fitness?

These questions are considered and answered below.

II. MEMORANDUM

7 **Factual Basis.** Gray Line wants to provide scheduled passenger service between SeaTac and cruise ship terminals on the Port of Seattle waterfront.

8 The Applicant presented four witnesses: David Grudgel, General Manager, Gray Line of Seattle; Keith Griffall, CEO, Western Leisure, a travel agency in Salt Lake City, Utah; David Musselwhite, Vice President – Finance and Management, Princess Tours, a travel agency associated with Princess Cruises in Seattle; and Steven Pomranz, Vice President of Travel Services, Automobile Association of America (“AAA”) Washington/Inland in Bellevue, Washington.

9 Mr. Grudgel oversees all operations of Gray Line. Gray Line inspects and maintains its own fleet of vehicles, primarily 47- to 68-seat buses. The Company also has a safety director who oversees performance of Gray Line’s drivers. The Company has maintenance facilities near the Port of Seattle waterfront area, has substantial insurance coverage, and has a concession agreement with the Port of Seattle for operations at SeaTac airport. The Applicant offered nine exhibits consisting of the Application and attachments through Mr. Grudgel’s testimony.

10 The balance sheet and profit/loss statement of Gray Line at attachment 15 to the Application (Exhibit 8) shows the Applicants assets and liabilities. The Applicant is currently providing service and has substantial capital.

- 11 Gray Line has formal hiring policies and procedures, and an extensive training program for drivers. The Company also has a central dispatcher and radio communications with its fleet in service, and back-up high occupancy vehicles in the event of a mechanical breakdown.
- 12 The Applicant routinely purchases new vehicles and retains complete maintenance records. Drivers are trained to perform pre-trip inspections of vehicles, and Gray Line is developing an electronic inspection capability. Gray Line is familiar with Commission regulations as the result of its current operating authority.
- 13 David Grudgel distinguished Gray Line from Shuttle Express. Shuttle Express operates a fleet of vans, each with a capacity of 7 to 14 passengers and limited storage capacity for luggage. Shuttle Express is a shared ride transport, with riders picked-up and dropped-off at different destinations. Shuttle Express does not pick-up or drop-off passengers on a predetermined time schedule. In contrast, Gray Line vehicles are intended to accommodate large groups and have a large luggage storage capacity. Grey Line also proposes to schedule departures from points at SeaTac and the Seattle waterfront area every fifteen minutes on high-volume travel days.
- 14 Mr. Grudgel testified that Gray Line's proposed extension of its authority is intended to specifically serve cruise line passengers. Cruise line operators with service to Alaska and the Panama Canal have changed their home port from Vancouver, B.C., to Seattle, Washington. Accordingly, during the 2003 cruise season, there will be approximately 7,500 new passengers debarking from ships docked at Pier 66 and Terminal 30 every Saturday morning, and another 7,500 new passengers arriving shortly thereafter to embark on scheduled cruises. Many of these passengers will arrive and depart from SeaTac. Mr. Grudgel testified that Shuttle Express does a good job in providing the service it offers, but that it does not provide sufficient service at busy times to meet the public's needs. Those needs include the ability to transport large groups, the ability to transport travelers with relatively large amounts of luggage, and the ability to transport to a specific destination at a specific time. He also testified to growing traffic congestion in the Seattle area, and he argues that high-occupancy vehicles are a necessary component in meeting the future need for transportation in the Seattle area.

- 15 Three other witnesses testified to the needs of the traveling public, and the adequacy of Shuttle Express's services in meeting those needs. Keith Griffall, David Musselwhite, and Steven Pomranz, all profess to being familiar with the cruise line industry in Seattle, and the transportation services offered by Gray Line and Shuttle Express.
- 16 Keith Griffall sees a strong need for high-occupancy vehicles such as the Gray Line fleet to effectively manage cruise line arrivals and departures. Mr. Griffall plans and operates tours for his agency and other groups. Passengers come from all over and outside the United States, and the majority arrive at SeaTac. In the past, Mr. Griffall has chartered buses to accommodate large groups when logistically and economically feasible. Mr. Griffall states that regularly scheduled high-occupancy vehicle transportation would obviate the need for more expensive charter services.
- 17 Mr. Griffall maintains that a van fleet, such as that operated by Shuttle Express, is insufficient to manage the increased influx of cruise line passengers that will occur this season, because Shuttle Express's ride share service can not provide adequate assurances to large numbers of cruise passengers arriving and departing at the same time that they will timely arrive at SeaTac or at the cruise line terminals. Furthermore, cruise passengers typically travel with more luggage than other vacationers, and passenger vans such as those operated by Shuttle Express are not capable of transporting a full complement of cruise line passengers and their luggage. According to Mr. Griffall, Gray Line's proposed service would eliminate confusion, and be environmentally and cost effective.
- 18 David Musselwhite manages financial reporting and logistical operations for Princess Tours, an affiliated business to Princess Cruises. Princess Cruises is new to the Seattle market, and will operate one cruise ship from the Seattle port this year and two ships next year. The majority of Princess Tours clients arrive and depart via SeaTac. Princess Tours makes travel arrangements for large groups. Timely service is considered essential, and Gray Line's point-to-point service is more suitable for cruise passengers than Shuttle Express's van pool arrangement. In the past, Princess Tours has arranged for high occupancy vehicles to transport its customers, rather than refer customers to shared-ride van services. Mr. Musselwhite also testified that the Shuttle Express is inadequate for serving

cruise passengers because its van fleet service cannot effectively manage the relatively large amount of luggage that typically accompanies cruise passengers.

19 Steven Pomranz has responsibility for AAA's travel agency operations with 21 locations in Washington and Northern Idaho, and gross revenues of \$60-70 million. Mr. Pomranz foresees a dramatic increase in the number of cruise passengers in Seattle this year because the cruise industry is originating cruises in Seattle that formally originated in Vancouver, B.C. This dramatic increase in passenger traffic will impact both SeaTac and the Seattle waterfront area. According to Mr. Pomranz, the issue regarding transport vehicle capacity is critical, and high occupancy vehicles are necessary to move large numbers of passengers from the waterfront to the airport, and from the airport to the waterfront, in short periods of time. Mr. Pomranz states that Shuttle Express provides excellent service, but its van fleet is inadequate to transport the large numbers of cruise passengers that will need service.

Public convenience and necessity:

A. Do the public convenience and necessity require the proposed service?

B. Do existing auto transportation companies operating in the territory at issue provide service to the satisfaction of the Commission?

20 An applicant for an auto transportation certificate must establish that the public convenience and necessity require the proposed operations. *RCW 81.68.040*. Order M. V. C. No. 1892, *In re Lloyd's Connection, Inc. d/b/a Airport Connection Airporter*, Hearing No. D-2556 (December 1990). Public convenience and necessity require the services of an additional carrier if existing carriers cannot meet the needs of the traveling public. *RCW 81.68.040 ("Need")*. Order M. V. C. No. 1892, *Id.*

21 Testimony of David Grudgel established that there will be a large increase in the number of cruise line passengers requiring transport services between SeaTac and the Seattle waterfront area this year, and that cruise line passengers have special needs. Those needs include the ability to travel with and transport a relatively large amount of luggage, and the ability to arrive at a specific destination at a specific time. Because of the large number of cruise ship passengers who will disembark and embark within a relatively short period of time, the public convenience and necessity require high-occupancy vehicle

service to efficiently move passengers between SeaTac and the Seattle waterfront area.

22 The testimony of Keith Griffall, David Musselwhite, and Steven Pomranz established that Shuttle Express operates a fleet of vans with occupancies of 7 to 14 persons per vehicle, that these vans have limited luggage space, and that Shuttle Express's shared ride service provides minimal assurances of arriving at a specific destination at a specific time. Their testimony also established that the van fleet necessary to accommodate the increased influx of passengers between SeaTac and the Seattle waterfront area during peak travel periods would cause significant traffic congestion in both areas.

23 The Commission views the service offered by Gray Line as a different kind of service from that offered by Shuttle Express. The service offerings are sufficiently different to appeal to discrete segments of the market, and extending Gray Line's authority will expand the options available to the traveling public generally.

24 The record makes it clear that Shuttle Express is not directed toward and is not meeting all of the public needs for scheduled direct service between SeaTac and cruise ship terminals on the Seattle waterfront. Shuttle Express operates a fleet of vehicles that do not provide satisfactory service for large groups of cruise line passengers. Its vehicles are too small and have insufficient luggage capacity to transport the large number of cruise ship passengers that will disembark and embark at the same time during the cruise season. Furthermore, Shuttle Express's shared ride service does not satisfactorily assure cruise passengers that they will arrive at SeaTac or the Seattle waterfront area on a definite schedule.

25 RCW 81.68.040's requirements promote the public interest in having regular and dependable passenger transportation services available at fair rates. When the Applicant shows a *prima facie* case that existing transportation companies will not serve the territory in question to the satisfaction of the Commission, and that no good cause has been shown to deny the application, a grant of authority for the territory is consistent with the public convenience and necessity. *RCW 81.68.040*. Order M. V. C. No. 1809, *In re San Juan Airlines, Inc., d/b/a Shuttle Express*, App. No. D-2566 (April 1989). Convenience, directness, and timeliness are essential characteristics of airporter and cruise line passenger service. The Commission

will give substantial weight to those factors in its satisfactory service determination and in its public convenience and necessity determination in an application for overlapping airporter authority. *RCW 81.68.040*. Order M. V. C. No. 2057, *In re Sharyn Pearson & Linda Zepp, d/b/a Centralia Sea-Tac Airport Express*, App. No. D-76533 (June 1994).

- 26 Failure to meet the real needs of travelers is a sufficient basis for finding that a carrier has failed to provide service to the Commission's satisfaction under *RCW 81.68.040*. *Id.* In sum, there is substantial competent evidence in the record to support a finding that the public convenience and necessity require Gray Line's proposed service.

Fitness:

A. Is the company financially fit and capable of providing the service?

- 27 The Commission's examination of an applicant's financial fitness must be commensurate with the responsibilities of the public service that the firm seeks to provide, the risks to the public of failure, and the firm's financial history. *RCW 81.68.040*. Order M. V. C. No. 1899, *In re San Juan Airlines, Inc., d/b/a Shuttle Express*, App. No.D-2589 (March 1991); *modified*, Order M. V. C. No. 1909 (May 1991). In this proceeding the Applicant has provided a balance sheet and profit and loss statement for current business operations. *Exhibit 8*. These establish that the Applicant's business is financially fit, and that Gray Line is capable of providing the service.

B. Does the company exhibit regulatory fitness?

- 28 To qualify for authority, an applicant must establish that it is willing and able to comply with Washington laws and Commission rules. Order M. V. C. No. 1892, *In re Lloyd's Connection, Inc. d/b/a Airport Connection Airporter*, Hearing No. D-2556 (December 1990). The Applicant's General Manager, Mr. Grudgel, testified that the Applicant is currently operating and offering transportation services between SeaTac and Seattle destinations other than cruise ship terminals on the waterfront. Mr. Grudgel credibly testified that Gray Line is knowledgeable about and complies with Washington laws and Commission rules. The Applicant has established both the willingness and the ability to comply with Washington laws and Commission rules, and the Applicant is fit.

29 **Conclusion.** Gray Line showed by substantial competent evidence that the public convenience and necessity require the proposed extension of service. Gray Line showed by substantial competent evidence that Shuttle Express, the existing certificate holder whose authority encompasses the same territory, does not provide service to the satisfaction of the Commission. Gray Line is fit, willing and able to provide the proposed extended service. The application is granted for these reasons in accordance with RCW 81.68.040.

III. FINDINGS OF FACT

- 30 (1) On January 22, 2003, Evergreen Trails, Inc., d/b/a Evergreen Trailways and Gray Line of Seattle (“Gray Line”) filed with the Commission an application for an extension of its certificate for public convenience and necessity to operate motor vehicles in furnishing passenger service between Seattle-Tacoma International Airport and cruise line terminals in the Seattle waterfront area. Shuttle Express, Inc., d/b/a Super Shuttle (“Shuttle Express”) is an existing auto transportation company serving such territory, but did not protest the application.
- 31 (2) Gray Line possesses appropriate equipment and has sufficient financial resources to perform the services for which it requests authority in this proceeding. Based on the evidence presented, Gray Line, if the application is granted, will comply with the laws and rules governing auto transportation companies under Chapter 81.68 of the Revised Code of Washington.
- 32 (3) The testimony of Keith Griffall, David Musselwhite, and Steven Pomranz establish that there is a need for Gray Line’s proposed extension of service. Their testimony establishes that Shuttle Express operates a fleet of vans with occupancies of 7 to 14 persons per vehicle, that these vans have limited passenger and luggage space, and that Shuttle Express’s shared ride service provides minimal assurances of arriving at a specific destination at a specific time.
- 33 (4) Shuttle Express does not provide service to the satisfaction of the Commission because the scope and nature of its services do not meet the public needs for high-occupancy vehicle transportation for cruise line

passengers on a scheduled service traveling between SeaTac and the Seattle waterfront area.

- 34 (5) Gray Line is financially fit and capable of providing its proposed extension of service, and exhibits regulatory fitness.

IV. CONCLUSIONS OF LAW

- 35 (1) The Washington Utilities and Transportation Commission has jurisdiction over the parties and subject matter of this application.

- 36 (2) Gray Line is fit, willing and able to provide the services requested under chapter 81.68 RCW and chapter 480-30 WAC.

- 37 (3) The existing certificate holders serving the requested territory do not provide service to the satisfaction of the Commission where Gray Line proposes to extend operations and it therefore is proper to grant overlapping authority to Gray Line under RCW 81.68.040.

- 38 (4) It is in the public interest and required by the public convenience and necessity that Certificate of Public Convenience and Necessity No. C-819 to Operate Motor Vehicles in Furnishing Passenger and Express Service as an Auto Transportation Company held in the name of Evergreen Trails, Inc., d/b/a Evergreen Trailways and Gray Line of Seattle be revised and reissued by the Commission in the ordinary course of business to include the following extended limitation:

Service hereunder is expressly limited to the transportation of airline passengers and flight crews between Seattle-Tacoma Airport on the one hand, and hotels and air and water and ground transportation offices and facilities in Seattle on the other hand, at rates substantially higher than the fares of regular common carriers.

V. ORDER

THE COMMISSION ORDERS That:

- 39 Application No. D-079130 of Evergreen Trails, Inc., d/b/a Evergreen Trailways and Gray Line of Seattle for an extension of Certificate No. C-819 for a Certificate of Public Convenience and Necessity to Operate Motor Vehicles in Furnishing Passenger and Express Service as an Auto Transportation Company is granted; and a revised Certificate of Public Convenience and Necessity shall be issued to read in accordance with Appendix A, which is attached and, by this reference, made a part of this Order.

DATED at Olympia, Washington, and effective this ____ day of April, 2003.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, 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 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).

APPENDIX A

Service hereunder is expressly limited to the transportation of airline passengers and flight crews between Seattle-Tacoma Airport on the one hand, and hotels and air and water and ground transportation offices and facilities in Seattle on the other hand, at rates substantially higher than the fares of regular common carriers.

ORDER NO. TC-030122-02

(April 8, 2003)