

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In re Application TC-143691

SPEEDISHUTTLE WASHINGTON,
LLC d/b/a SPEEDISHUTTLE SEATTLE

For a Certificate of Public Convenience
and Necessity to Operate Motor Vehicles
in Furnishing Passenger and Express
Service as an Auto Transportation
Company

DOCKET TC-143691

SPEEDISHUTTLE WASHINGTON, LLC
d/b/a SPEEDISHUTTLE SEATTLE'S
ANSWER TO SHUTTLE EXPRESS'S
PETITION FOR ADMINISTRATIVE
REVIEW OF INITIAL ORDER 02
DISMISSING OBJECTIONS AND
GRANTING APPLICATION

I. PRELIMINARY STATEMENT

1 Applicant Speedishuttle Washington, LLC. d/b/a Speedishuttle Seattle, (“Applicant” or “Speedishuttle”), pursuant to WAC 480-07-825(4), files the below Answer to the Petition for Administrative Review served by Objector Shuttle Express, Inc. (“Objector” or “Shuttle Express”) on February 10, 2014. Speedishuttle has also, pursuant to Commission rules on Motions, filed a separate Response in Opposition to Shuttle Express’s Motion to Reopen.

2 Shuttle Express’s Petition for Administrative Review is apparently based on two premises: first, that the Initial Order erred in finding the Applicant’s proposed service is not “the same service” under WAC 480-30-140(2), and secondly, the fact that the Initial Order did not make an express finding with respect to Shuttle Express’s service “to the satisfaction of the Commission” under WAC 480-30-140(3)(b), must mean its service is somehow sufficiently satisfactory to meet its unilateral version of “same service” to sustain Shuttle Express’s unwavering objections to Speedishuttle’s new entry application.¹ Shuttle Express’s premise is

¹ Moreover, WAC 480-30-136(3)(b) provides that if the objecting company will not provide the same service ((Order 02 clearly did (¶25 , Finding and Conclusion 6, p. 7 of Order 02)), to the satisfaction of the Commission, the Commission may grant the application.

flawed and the Commission, after reviewing the arguments in support and in opposition, should ultimately deny the Petitions for Administrative Review of Initial Order 02.

II. INTRODUCTION/BACKGROUND TO PROCEEDING AND OBJECTOR TESTIMONY CONTRADICTIONS

3 Although never noted by Shuttle Express, Speedishuttle’s application was sponsored and submitted in the wake of sweeping changes to the Commission’s decades-old auto transportation regulations at WAC 480-30, as authorized by RCW 81.68. Those 2013 rule revisions represented the culmination of an extensive stakeholder rulemaking and an exhaustive examination of the continuing viability of the regulatory entry model in the wake of just the kind of competitive changes repeatedly cited by Shuttle Express in its Petition. While Shuttle Express in its post-hearing arguments now seeks to blame this “new competition” on an alleged decline in market demand for its regulated services, it fails to support that premise with any evidence of record and also glaringly fails to tie the advent of unregulated competition to any documented regulated service demand decline, nor more importantly, any economic analysis of whether its current tariffs, pricing or service might create barriers to utilization, pursuant to WAC 480-30-140(1)(b).

4 Shuttle Express has chosen instead to consistently seek to thwart opportunities of parties attempting to enter the revised regulated airport auto transportation market as referenced in Order No. 4, *Sani Mahama Maurou d/b/a SeaTac Airport 24*, Docket TC-140399, (Oct. 2014)² and as particularly demonstrated by the entire record of this proceeding. Indeed, although the Petition for Administrative Review and Motion to Reopen conspicuously fails to so acknowledge, Shuttle Express was an active participant contributing to the record in the

² That Order reflects the same objector, Shuttle Express, again taking extraordinary measures to block an Order dismissing objections and granting an auto transportation application, there asking for “a temporary reversal of authority” and “stay of action.” Both requests, albeit belated in that instance, are unique and in the case of the “temporary reversal of authority,” unrecognized in rule or statute.

Commission's proposed revised auto transportation rules in Docket No. TC-121328. Yet, it also seems to have some amnesia about its previous positions on those rules. For instance, following the application and docketing for protest of the instant application, Shuttle Express formally objected, in a December 2, 2014 Motion to Strike, to consideration of this application in a Brief Adjudicative proceeding setting. However, as found by Initial Order No. 01 in this proceeding:

...[f]ar from challenging the use of BAPs to address objections to applications of for authority, Shuttle Express proposed language that would restrict the Commission's flexibility to use processes *other* than BAPs, [****] which the Commission ultimately rejected. We take a dim view of Shuttle Express's claim in this proceeding that WAC 480-30-136 is unlawful when Shuttle Express took the opposite position during the rulemaking process.³

5 Indeed, Shuttle Express supported many facets of the omnibus revisions to the auto transportation rules in 2013 and then took advantage of the rate flexibility enacted by the rule adoption in September 2013 in electing the ability to charge flexible fares.

6 Shuttle Express's additional "memory lapses" extend well beyond previous positions taken in the forerunning rulemaking cited above and also involve its recent regulatory compliance posture and its transparent "reinterpretation" of past documented violations of law and rule both in the hearing record and in its Petition for Administrative Review. In the latter, Shuttle Express casts a creative spin on a ten-plus year history of violation of Commission regulations,⁴ payment of a reduced \$60,000 fine and violation of a previous consent order for violation of the same Commission rule, WAC 480-30-213. In the aggregate, Shuttle Express's posture in this proceeding has been consistent in its inconsistencies, particularly with respect to its concerted advocacy to block competition in the midst of a hearing record which reflects its

³ Initial Order 01, ¶9, p. 4.

⁴ Shuttle Express's Petition for Administrative Review, ¶40, p. 12.
SPEEDISHUTTLE WASHINGTON, LLC d/b/a SPEEDISHUTTLE
SEATTLE'S ANSWER TO SHUTTLE EXPRESS'S PETITION FOR
ADMINISTRATIVE REVIEW- 3

own previous inability to reasonably serve the traveling public by resorting to repeat and intentional rule violations to supplement its regulated services.⁵

7 In further elaborating on footnote 4, above, the sworn declaration of the owner of Shuttle Express, Jimmy Sherrell, submitted in support of the Petition for Exemption in November 2013, magnifies the conflict in testimony between Shuttle Express's stance on "rescue service" at Speedishuttle's hearing and the reasons previously advanced by the Objector itself in support of the Petition for Exemption. For instance, at ¶4 of that Declaration, Mr. Sherrell said as follows:

[s]ince the Initial Order came out on the Staff's complaint, I directed Shuttle Express to voluntarily comply with the cease and desist. That compliance is already harming the traveling public by materially degrading Shuttle Express's service. It is resulting in longer wait times at the airport due to the need to redirect vans for inbound priority. Often a passenger becomes impatient and takes a taxi to get home. This forces them to pay a much higher fare and creates bad will for Shuttle Express. We cannot expect repeat business from people who have a bad experience like that. We now have to pick up people earlier due to bad routing to get a rescue from another van. Again, this makes our service less convenient and discourages repeat business. Passengers are now getting to the airport closer to their departure time, giving them high anxiety. Sometimes we have to ask people to drive their own car and park so they do not miss their flight. This costs us a high parking fee reimbursement. And while that is some compensation, it is not delivery of the service the passenger requested. We would much rather provide their ride to the airport and we could have if rescue service were still allowed.

8 Mr. Sherrell continued at ¶5 "...[c]ompliance with the cease and desist during the Christmas and New Year holidays puts the traveling public at particular risk. Year-end and New Year holiday air travel volumes are particularly high...[a]lso, flight delays often result in

⁵ Another rather obvious inconsistency was reflected in the testimony of Paul Kajanoff on the reasons for the Company's belated formal request for exemptions to rule in December, 2013 when, after Shuttle Express's owner claimed the Commission did not know how to regulate auto transportation services, ((Order 04, Docket No. TC-120323 (Mar. 2014) ¶33 at p. 13)), the current CEO, Mr. Kajanoff, denied any business need to institute "rescue service" (Tr. 103, Tr. 104, lines 20-25). When questioned by the presiding officer as to a possible inconsistency with rationale provided in the Petition for Exemption and at the December, 2013 Open Meeting addressing the issue, Mr. Kajanoff held to his previous answer that "rescue service" was merely instituted to upgrade vehicle types for passengers, and was not motivated by service constraints and "...was on the urging of counsel, not necessarily views of Shuttle Express." (Tr. 106, lines 3,4). Such alternating explanations are contravened by the Commission's own previous findings in Order 04 and are simply not credible.

unexpected demand at the airport at unexpected times.”⁶ Finally, at ¶6 of his Declaration Mr. Sherrell says the following: “[f]rom its inception, we have had to use some form of rescue service for its door-to-door service due to the unique type of operation that we are. *This share [sic] ride door-to-door service we offer is not viable without rescue service...*” [Emphasis added].

9 Speedishuttle will not further quote other passages of the Petition for Exemption, but that pleading, as noted, unquestionably contravenes the testimony of Shuttle Express at the January 12, 2015 hearing that there was “no business need for the rescue service.”⁷ The Commission, in evaluating service to its satisfaction under WAC 480-30-136(3), is strongly invited, pursuant to WAC 480-30-136(3)(a) and 480-30-140(3)(b), to consider whether these types of after-the-fact reversals or denials of both Shuttle Express’s own representations in petitions and the previous Commission findings and conclusions in Orders thereon in fact demonstrate service to the satisfaction of the Commission. While regulated companies can sometimes be found to have intentionally or unintentionally violated Commission regulations, a lack of candor and apparent inability to acknowledge omission in that regard should be of substantial concern in any regulatory environment.

10 Under such circumstances, no one should require an explicit finding to conclude that this documented service history within the test year prior to the filing of this application could not be considered service to the satisfaction of the Commission.

11 Finally, Applicant would note that the Objector’s Petition for Administrative Review of Shuttle Express fails to conform to WAC 480-07-825(3), by failing to specifically highlight and

⁶ Declaration of Jimmy Sherrell in Support of Petition for Exemption, Docket No. TC-132141 (November 19, 2013), at page 2.

⁷ The Applicant also asked the presiding officer to take official notice of the entire Petition for Exemption, Docket TC-132141, in this application record, which request was granted. Tr. 105, lines 20, 21.

feature findings of facts and separate conclusions of law to which it objects, nor to advance recommended ones to replace those found to be erroneous. Because the Applicant and its counsel believe the Commission, with its “liberal construction” premise codified in WAC 480-07-395(4), will disregard such omissions with respect to the procedural rules, it will nevertheless submit this Answer. It however, notes that arguments such as Shuttle Express’s discussion of “same service” and the inferences it believes should or should not be drawn from the “service to the satisfaction of the Commission” standard under WAC 480-30-136(3), would be far better focused had it done so. In short, ascertaining the gist of the specific bases for Shuttle Express’s factual and/or legal objections to the Initial Order individually or in the aggregate would be greatly facilitated had the Objector conformed to the Commission’s procedural rules in formulating its Petition.

III. ARGUMENT IN RESPONSE TO SERVICE DIFFERENTIATION FACTORS AND WHETHER THE PROPOSED SERVICE IS THE “SAME SERVICE” UNDER WAC 480-30-140(2)

A. The Claim that the New Entrant Proposed Inadequate Regulated Service Resources.

12 In a series of sweeping statements both in introductory page 1 of its Petition and its statement of the issue at page 3 ¶9 and its various legal arguments beginning at page 4 and continuing to page 10, Shuttle Express constructs a series of arguments on its “same service” renditions. The first one is that due to the quantity of Shuttle Express’s vans (80) in contrast to the 5-10 vans Speedishuttle initially proposes there is apparently both insufficient need or insufficient commitment by the Applicant to the proposed service. While the Objector attempts to make much of the initial commitment of airport shuttle equipment by a new entrant, the Commission has never required a new entrant to commit to specific levels of equipment or staffing at startup and indeed, that type of initial demand management is not typically the role of

economic regulators. Both Objectors, who have been long-standing incumbent providers in the marketplace, obviously have necessarily had many years to build up their current fleets and employment bases.⁸

13 Moreover, as to the equipment provision issue, when questioned by the principal of Capital Aeroporter under a hypothetical of increased demand, the owner of Speedishuttle, Cecil Morton responded as follows:

If we find that the demand is greater than our capacity, we will acquire new equipment. We will not be starting the business within days of obtaining our authority. We will be reaching out to all our clientele and we will adjust our ...commencement fleet accordingly.⁹

14 Indeed, Shuttle Express seems to want to make something out of Speedishuttle's prudent approach to open service with five airport vans and perhaps expand to 10 within one year. No entry standard of which Applicant is aware places any quantitative burden on a new entrant to match or even approach the number of regulated service units operated by an incumbent provider of many decades to demonstrate ability to serve, nor would such an initial approach appear to ensure viability.¹⁰

B. Service Offerings Beneficial to the Traveling Public and to the Public Convenience and Necessity.

15 Despite Shuttle Express's conscious effort to "downplay" differentiator factors such as free wifi, television, websites for customers in foreign languages (particularly Chinese and Japanese) and provision of airport greeters as "inconsequential features," these are in fact precisely the types and kinds of regulated service enhancements envisioned both in the 2013

⁸ An "employment base" which admittedly in the case of Shuttle Express historically relied on liberal use of independent contractors as drivers in direct violation of Commission rules. In contrast, Speedishuttle only utilizes employee drivers. Ex., CM-1, p. 4.

⁹ Lines 1-6, Tr 46.

¹⁰ "Ability to serve" is also an element of an applicant's fitness evaluation which the Commission shifted exclusively to its staff in Docket No. 121328 in the final rule revisions effective in September, 2013.

Auto Transportation Rulemaking and the revised rules codified therein. For instance, in assessing the critical threshold factors in reviewing applications under the chapter, WAC 480-30-140(1)(b) now provides as follows:

...the commission may, **among other things**, consider differences in operation, price, market features, and other essential characteristics of a proposed auto transportation service, tailoring its review to the individual circumstances of the application in evaluating whether the public convenience and necessity requires the commission to grant the request for the proposed service and whether an existing company is providing the same service to the satisfaction of the commission [emphasis added].

16 Under the revised rules, there are far more objective service criteria examined and delineated in WAC 480-30-140(3)(a)(ii), where the Commission also considers, under the satisfactory service standard, whether the existing provider “has made a reasonable effort to expand and improve its service to customers within the same territory or the same subarea within the territory for door-to-door service...” And, under WAC 480-30-140(3)(a)(iii), in “[e]xamining whether that service is “provide[d]... 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...*[emphasis added].” While in traditional regulated service examinations, such accoutrements or service enhancements might have been extraneous to the analysis of both comparable service and “service to the satisfaction of the commission,” under the 2013 rule changes they clearly are not.¹¹ Applicant also testified to its existing service experience in its historic base of regulated operations in the State of Hawaii and, in deriving that experience, projected replication of that service in the King County marketplace (Tr 23, 24) despite Shuttle

¹¹ “[t]here is public benefit in encouraging competition by motivating carriers to continually improve service.” *In re Amending and Adopting rules in WAC 480-30 Relating to Passenger Transportation Companies*, Docket TC-121328, General Order R-572 (Sept. 2013), “the 2013 Auto Transportation Rulemaking” at p. 12.

Express's post-hearing efforts to minimize innovative attributes or otherwise effectively label such customer service enhancements as superfluous.

17 In one such example, that of airport greeters, the Objector cites at footnote 3, page 3 (as it unfortunately does repeatedly), to evidence outside the record in this proceeding. Contrary to the Objector's unsupported argument there, the provision of airport greeters was described as follows in the record by the Applicant principal:

We're customer-service centric. We believe in, the experience starts when a passenger arrives at the airport in a particular city and not in particular their—final destination. So upon the arrival, we have receptive teams at all airports, and our plan is to do the same here, where we will greet all prearranged guests with a sign with their name on it, welcome them to Seattle and direct them to their baggage claim area, their carousel and then usher them to their shuttle that would be waiting for them.¹²

18 The provision of airport greeters is merely one example of customer service and market features that is not only directed to convenience, safety, timeliness, courteousness, etc. but is also clearly an indicia of whether increased competition will benefit the traveling public. There can be no question that despite Shuttle Express's defensiveness about the provision of airport greeter-included service, it is not a service provided without charge and prearrangement currently and would be of tremendous benefit and convenience, particularly to foreign travelers who not only would be able to initiate a reservation on a website in their native tongue, but be directed to baggage claim areas and waiting vehicles that would greatly facilitate and improve upon their door-to-door service airport experience. Far from being inconsequential, service attributes such as complimentary wifi, vehicle televisions, airport greeters and foreign language websites substantially contribute to the public convenience and necessity by improving the traveling public's experience in contrast with the incumbent objector's failure to conform,

¹² Tr 23, 24.

upgrade, or to fully implement such service enhancements over more than a 25-year regulated service tenure.

C. “Door-to-Door Service” Classification and Applicant’s Substantive Service Differentiation.

19 In addition to Shuttle Express’s transparent effort to minimize and devalue service enhancements and market features that distinguish “same service,” beginning at page 6 of its Petition for Administrative Review, Shuttle Express apparently seeks to have the proposed application denied because Speedishuttle seeks to provide “door-to-door service,” admittedly a threshold service that Shuttle Express already provides. If simply applying for the same type of regulated service automatically disqualified a new entry applicant, the 2013 stakeholder proceeding under Docket No. TC-121328 would not only be wholly nullified but any such new applications for auto transportation authority would be exercises in futility. Apparently Shuttle Express would also have this application rejected because it seeks door-to-door service, reasoning that because Shuttle Express also provides door-to-door service in many overlapping portions of King County that automatically means it’s the “same service.”

20 In so arguing, as well, Shuttle Express seeks either to obfuscate or otherwise deflect the applicant’s proposal to transplant yet another service feature from Hawaii of guaranteeing departure from the airport on arrival within 20 minutes of the passenger receiving their bags (Tr 30).¹³ Shuttle Express is understandably defensive about this service feature and differentiator. At page 9 of its Petition, while fully acknowledging such a service proposal differential, Shuttle Express attempts to attack the Initial Order finding at ¶30 here by analogizing to the recent *Sami Mahama Maurou d/b/a SeaTac Airport 24*, case.

¹³ The record is also clear in distinguishing the service guarantees of the proponent and the objector. Tr 44 reflects a 10-minute (33%) service differential window at the airport and a 5-minute differential at a passenger’s home, Tr 45, lines 5-7.

While not clear in Shuttle Express's Petition, the discussion of scheduled service differentiation factors in the *Maurou, SeaTac 24* case is actually derived from the Initial Order 01 in that matter where, at ¶12, the administrative law judge found that the applicant offered the "same service" as the second Objector, Wickkiser International/Airport Shuttle, did.¹⁴ While Shuttle Express here tries to imply that distinction applies to door-to-door service as well, that apples-to-oranges comparison is readily distinguishable. There, in fact, the applicant was proposing scheduled auto transportation service parallel to the applicant's existing route and simply making minor time schedule adjustments resulting in planned departures a half hour earlier than the Objector's current schedule with runs on the hour versus the half hour by Airport Shuttle. Here, the door-to-door auto transportation service applicant Speedishuttle is proposing involves a one-third reduction in departure time after which the passenger collecting his/her baggage would depart the airport for the pre-arranged destination. This alone would appear to be a material service differentiation factor which, when considered with numerous other factors in Order 02,¹⁵ led to an appropriate finding that Speedishuttle's was not the "same service" as the Objector's. Shuttle Express's unsupported statement in its Petition that "[s]urely, 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 insufficient¹⁶ again widely misses the mark, not only in comparing scheduled service to door-to-door auto transportation service under WAC 480-30-140(2)(f) and WAC 480-30-140(2)(g), but by incorrectly weighing an important service differentiation factor addressed in this record.

¹⁴ Initial Order 01, *In re Sami Mahama Maurou d/b/a SeaTac Airport 24*, Docket No. TC-140399, (Sep. 2014), p. 4.

¹⁵ See, for example ¶¶ 7, 10, 13 and 17, Initial Order 02 at pp. 3, 5.

¹⁶ Shuttle Express Petition for Administrative Review ¶30, p. 9.
 SPEEDISHUTTLE WASHINGTON, LLC d/b/a SPEEDISHUTTLE
 SEATTLE'S ANSWER TO SHUTTLE EXPRESS'S PETITION FOR
 ADMINISTRATIVE REVIEW- 11
 5335432.2

D. Serving the Scheduled Service, Routed Marketplace is Decidedly Different than Door-to-Door Service.

22 Similarly, Shuttle Express’s analysis on Petition goes further awry when it attempts to critique the Initial Order 02’s finding at ¶16 “...that Shuttle Express does not reasonably [or adequately] serve the King County market.” Somewhat incredulously, Shuttle Express next announces that it “was exonerated on this issue.”¹⁷

23 Its bold defense consists of a citation to Initial Order 03 in its oft-cited penalty assessment proceeding where the administrative law judge made an express finding about sufficiency of equipment to *operate its established routes and fixed time schedules* which clearly is not directed to door-to-door service conditions. Indeed, there is no finding in that Order or in Final Order 04 from March 19, 2014 in Docket TC-120323, that makes any comparable finding about its availability to provide door-to-door service. It would also appear that the chronic violation of WAC 480-30-213(2) established there leaves no room for doubt that for over a decade, Shuttle Express had insufficient equipment and/or employee operators to reasonably serve the door-to-door airport shuttle marketplace. Its owner’s Declaration in November, 2013 referenced above makes that unequivocal.

E. King County’s and Seatac Airport’s Demographic and Utilization Growth is Unchallenged under WAC 480-30-140(2)(d) here and there is also no Showing that Unregulated Competition Proliferation is Impacting Regulated Airporter Shuttle Demand.

24 The Shuttle Express demographic argument against authorizing a new door-to-door service provider similarly falls flat. Order No. 02, as expressly authorized by WAC 480-30-140(2), finds significant demographic density growth in King County in recent years as well as the significant growth of enplanements and deplanements at Sea-Tac Airport generally addressed

¹⁷ Shuttle Express Petition for Administrative Review at ¶31, p. 9.
SPEEDISHUTTLE WASHINGTON, LLC d/b/a SPEEDISHUTTLE
SEATTLE’S ANSWER TO SHUTTLE EXPRESS’S PETITION FOR
ADMINISTRATIVE REVIEW- 12
5335432.2

at Exhibits CM-3-5 in this record. As noted particularly in Applicant’s Opposition to Motion to Reopen, Shuttle Express’s purported extra-record showing of an “8.9 percent market decline”¹⁸ experienced by the company in door-to-door service over two years has never been convincingly established in this record as being linked to any diminution in demand for Shuttle Express’s service let alone reflective of any decrease in demand for regulated airport door-to-door services. The hearing record and recent Commission orders contain numerous references to increasing unregulated competition in the airport transportation market. Yet again, there is a total absence of any showing here that regulated door-to-door service would be adversely impacted by the grant of this application. Indeed, there is a countervailing testimonial offering that an introduction of a new regulated provider might actually have a beneficial, ameliorative effect on the incumbent providers which at least is the applicant’s experience in the regulated airport shuttle marketplace in Hawaii.¹⁹

F. The Petition’s Concluding Arguments on Service to the Satisfaction of the Commission are Similarly Unsubstantiated in the Record or Applicable Law.

25 As discussed previously, this record wholly fails to corroborate or otherwise support Shuttle Express’s transparent overreaching on Petition for Administrative Review suggesting, as it boldly announces in its Petition at ¶34, that “Shuttle Express has provided door-to-door service to the satisfaction of the Commission....”

26 In its concluding argument at pages 12 and 13 of its Petition, Shuttle Express quotes liberally from the relevant regulatory provisions in WAC 480-30-140(3) (albeit without consistently so noting). It then attempts to juxtapose those regulations by claiming incorrectly

¹⁸ Shuttle Express Petition for Administrative Review ¶32, p. 10.

¹⁹ Exhibit CM-1, ¶5.

that Speedishuttle failed to submit any statement from the traveling public²⁰ and by announcing conversely that Shuttle Express “had no customer complaints.” It then compounds that misperception by claiming Shuttle Express’s \$60,000 fine for a decade-plus long violation of Commission rule constitutes “mere technical violations or occasional complaints [which] do not warrant a finding of inadequate service in the absence of widespread or serious service failures,” citing the *Superior Refuse Removal* well-known appellate case on “service to the satisfaction of the Commission.”²¹

27 Notwithstanding that the Objector here relies on another statutory provision, RCW 81.77.040 (solid waste) for its entry standards analogy, Shuttle Express has confused not only regulated entry doctrines here but seeks to rely upon a “service to the satisfaction of the Commission” standard that has been broadly revised by the 2013 Auto Transportation Rulemaking. Next, it deepens this analytical wrong-turn by again arguing that its established, longstanding violation of law has no bearing on whether intentional rule violations constitute service to the Commission’s satisfaction. And, finally, that the antecedent Initial Order’s finding of sufficient equipment to serve the scheduled service market must somehow mean again that Shuttle Express’s regulated airport shuttle door-to-door service is sufficiently satisfactory to blunt any affirmative showing of service differentiation to uphold its underlying objection in this proceeding.

28 Suffice it to say that the Applicant finds such overview arguments wholly lacking in evidentiary or legal support. To conclude its argument on Petition with the penultimate observation that, “...[t]he Commission also lacks any substantiated complaint against Shuttle

²⁰ See *cf.* particularly, Attachment A, dated 9/25/14 and 9/26/14 to Speedishuttle’s application which application and attachments were officially noticed in the record at Tr. 12, lines 14 and 15.

²¹ Shuttle Express Petition for Administrative Review, ¶40, p. 12.
SPEEDISHUTTLE WASHINGTON, LLC d/b/a SPEEDISHUTTLE
SEATTLE’S ANSWER TO SHUTTLE EXPRESS’S PETITION FOR
ADMINISTRATIVE REVIEW- 14
5335432.2

Express over the last 12 months”²² typifies this mystifying perception of reality. Both on review of this record and particularly, the documented violation of rules by Shuttle Express in the March, 2014, Order 04 in the Complaint case successfully brought against it by the Commission regulatory Staff in Docket TC-120323, this statement is easily refuted. Shuttle Express’s alternating, inconsistent and ultimately unsatisfying representations of its regulatory compliance posture hardly portray a regulated company humbled by any past transgressions or missteps. Moreover, Shuttle Express remains oblivious to the evolving regulatory environment that intentionally fosters increased competition in the auto transportation industry as articulated in revised rules enacted by the agency charged with oversight of this industry by the Legislature. Again, while Shuttle Express seems to have happily embraced the flexibility afforded by the changes in rate oversight, it remains steadfastly in denial with and opposed to commensurate liberalization of market entry standards in the very same rules. The application record adduced here provides no cover to Shuttle Express’s renewed reinterpretation of either the recent changes in law nor its lack of recognition of its own rule compliance violations and the Commission should reject the arguments crafted by Shuttle Express to sustain its objection to Speedishuttle’s application and Order 02.

IV. ARGUMENT IN OPPOSITION TO SHUTTLE EXPRESS’S POST-HEARING PROCEDURAL AND SUBSTANTIVE REMEDY REQUESTS

A. **Oral Argument Should not be Entertained.**

29 Near the end of its Petition, Shuttle Express makes a request for oral argument. The Commission is not unfamiliar with such requests, but the Applicant would note that allowing oral argument is by far the exception, not the rule, and would suggest as well that its grant here would contravene the spirit of streamlined application processes inaugurated by the 2013 Auto

²² Shuttle Express Petition for Administrative Review ¶43, p. 13.
SPEEDISHUTTLE WASHINGTON, LLC d/b/a SPEEDISHUTTLE
SEATTLE’S ANSWER TO SHUTTLE EXPRESS’S PETITION FOR
ADMINISTRATIVE REVIEW- 15
5335432.2

Transportation Rulemaking. While Shuttle Express suggests oral argument would assist the Commission allowing it to “ask questions and seek clarification of various issues”²³ raised, Applicant believes that is the function of Petitions for Administrative Review and Answers thereto and has attempted to comprehensively address those issues in its submissions. The fact that the Objector is “now represented by counsel”²⁴ should also have no bearing on this question since Shuttle Express initially was represented by experienced counsel, chose to represent itself *pro se* at the hearing and now has “lawyered up” again which is obviously outside the Applicant’s and Commission’s control. Speedishuttle should not have to incur the additional cost and delays occasioned by preparing for and presenting oral argument in a brief adjudicative proceeding forum when the parties were already given the previous chance to provide closings in the hearing record²⁵ and the Objector has here failed in its request to show how oral argument could aid the Commission in reaching a decision.

30 WAC 480-07-825(6) ultimately controls the oral argument request issue and provides: “[a] party who desires to present oral argument may request argument, stating why oral argument is necessary to assist the Commission in making its decision *and why written presentations will be insufficient*” [emphasis added].

31 Here, the Objector has failed to address the written argument insufficiency element completely and its request is consequently procedurally incomplete. As the Commission has noted over the years...

[t]he grant of such request is entirely within the discretion of the Commission***. The Commission has ruled that it will ordinarily deny such requests unless it

²³ Shuttle Express Petition for Administrative Review ¶44, p. 13.

²⁴ *Id.*

²⁵ *See* Tr. 140-145.

believes or is shown that the argument will add substantially to its understanding of the issues and the positions of the parties.***²⁶

The request for oral argument should be rejected.

B. The Certificate Restriction Closing Salvo is Inappropriate, Disfavored and a Transparent Last Ditch Effort to Limit Competition by the Objector.

32 Shuttle Express concludes its Petition with a final “Hail Mary” premise that asks that all the unspecified service differentiator factors/features be “codified” or apparently translated into certificate restrictions, citing to the Commission’s jurisdiction to impose “terms and conditions” on certificates under RCW 81.68.040 in justification. While the Objector never precisely says so, the more salient of these restrictions it apparently would see imposed are based on the start-up size of Applicant’s fleet, the service guarantees described in the proposed service Speedishuttle wants to transplant from its current operations to this marketplace, and apparently service in all 80 zip codes in King County it already intends to serve.

33 Shuttle Express clearly wants finite constraints imposed on this prospective new market entrant as a fallback to blocking the application entirely should all of the previous arguments and remedies it throws up prove unsuccessful. Yet once again, neither the application hearing record nor Shuttle Express’s legal arguments support such a proposition nor does Shuttle Express make even a colorable claim that they do.²⁷

34 Indeed, in the recent commercial ferry case, *In re Application of Sean McNamara d/b/a/ Bellingham Water Taxi, et al.* Dockets TS-121253 and TS-121395, cited approvingly by Shuttle Express at page 7 of its Petition, the Commission rejected similar permit restriction conditions finding them neither necessary nor appropriate. There, the Protestant sought restrictions on the

²⁶ Order M.V. No. 138750, *In re Randy and Denise Cooper and John and Kelly Port d/b/a/ Central Washington Mobile Homes Transport Services*, App. E-19540 (Dec. 1988) at p. 1.

²⁷ Additionally, restrictive amendments or permit restrictions which involve vague descriptions and/or timing requirements which are not readily susceptible to or capable of enforcement should be rejected. Order M.V. No. 141737, *In re Application of Bullet, Inc.*, Application E-19967 (Jul. 1990).

Applicant's routing, speed and passenger capacity by superimposing such restrictions on the proposed certificate. Analyzing the three proposed restrictions separately, the Commission rejected them all, observing:

[a]lthough we require ferry companies to file and adhere to a time schedule, the Commission will not attempt to manage the day-to-day business decisions of a regulated company....²⁸

35 Moreover, the Commission's historic inclination is to disfavor permit restrictions.

Restrictive language in a permit will not be imposed without a strong showing of the need for the restriction. Order M.V. No. 147067, *In re Barry Swanson Trucking, Inc.*, Application E-76555 (Oct. 1993).

36 The only showing Shuttle Express has made for permit restrictions here is as a default if its other arguments to deny the application fail, cobbling together two or three service differentiation factors mentioned in passing to sustain a permanent limitation on the service offering of the applicant. This is not any "strong showing." Finally, this suggestion would also once again contravene the express intent of the agency in the 2013 Auto Transportation Rulemaking to streamline, expedite and make more efficient current rules and processes and would indisputably restrict, not broaden competitive forces. Shuttle Express seeks regulation of the auto transportation industry as both a foil and a shield and the Commission should deflect this alternative concluding salvo to accomplish Shuttle Express's classic "have it both ways" approach to the revised operating environment for regulated auto transportation providers.

V. PRAYER FOR RELIEF

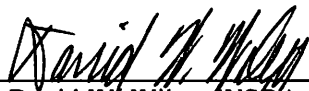
37 Having fully answered Objector Shuttle Express's Petition for Administrative Review, for all of the above reasons, Applicant Speedishuttle Washington, LLC asks that Order 02 be

²⁸ *In re Application of Sean McNamara d/b/a/ Bellingham Water Taxi, et al.* Dockets TS-121253 and TS-121395 (July 2013), ¶21, p. 7.

affirmed and that the objection to its application and the Petitions for Administrative Review be denied.

DATED this 23rd day of February, 2015.

RESPECTFULLY SUBMITTED,

By 
David W. Wiley, WSPA #08614
dwiley@williamskastner.com
Attorneys for Speedishuttle Washington, LLC

CERTIFICATE OF SERVICE

I hereby certify that on February 23, 2015, I caused to be served the original and three (3) copies of the foregoing documents to the following address via first class mail:

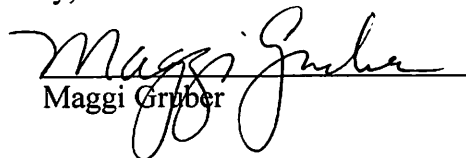
Steven V. King, Executive Director and Secretary
Washington Utilities and Transportation Commission
Attn.: Records Center
P.O. Box 47250
1300 S. Evergreen Park Dr. SW
Olympia, WA 98504-7250

I further certify that I have also provided to the Washington Utilities and Transportation Commission’s Secretary an official electronic file containing the foregoing document via email to:
records@utc.wa.gov

and served a copy via email and first class mail, postage prepaid, to:

<p>Julian Beattie Assistant Attorney General Office of the Attorney General Utilities and Transportation Division 1400 S. Evergreen Park Dr. SW PO Box 40128 Olympia, WA 98504-0128 (360) 664-1192 Email: jbeattie@utc.wa.gov</p>	<p>Greg Kopta Director/Administrative Law Judge 1300 S. Evergreen Park Drive SW P.O. Box 47250 Olympia, WA 98504-7250 (360)-664-1355 gkopta@utc.wa.gov</p>
<p>Bruce Winchell Hunter G. Jeffers Mills Meyers Swartling P.S. 1000 Second Ave, 30th Floor Seattle, WA 98104-1064 (206) 382-1000 Email: bwinchell@millsmeyers.com Email: hjeffers@millsmeyers.com</p>	<p>John Fricke Pacific Northwest Transportation Services, Inc. d/b/a Capital Aeroporter Airport Shuttle PO Box 2163 Olympia, WA 98507-2163 (360) 292-7680 johnf@capair.com</p>

Dated at Seattle, Washington this 23rd day of February, 2015.


Maggi Gruber