

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 CAPITAL AEROPORTER'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 Pacific Northwest Transportation Services, Inc. d/b/a Capital Aeroporter (“Capital”) on February 11, 2014.

2 Capital’s Petition for Administrative Review (“Capital Petition”) is essentially based on two arguments: (1) contesting criteria found by Initial Order 02 that Speedishuttle’s proposed service is not “the same service” under WAC 480-30-140(2) as that offered by Capital; and (2) an alleged misreading of the applicable law by the Initial Order in arguing that Speedishuttle did not present actual customer statements or interested customer statements of “public need” or “public necessity” (it did), proposes to provide inadequate service (a fitness consideration not at issue here), and failed to provide service failure evidence of Capital’s performance not to the satisfaction of the Commission (a permissive type of evidence). The Commission, after reviewing the arguments in support and in opposition, should ultimately deny Capital’s Petition for Administrative Review of Initial Order 02.

## II. SUMMARY/BACKGROUND TO PROCEEDING

3 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 rate 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 in the marketplace.<sup>1</sup> The rulemaking goals were both to give companies rate flexibility, and promote competition in the auto transportation industry.<sup>2</sup> Capital on appeal does not address Speedishuttle’s sustainability evidence under WAC 480-30-140(b). Capital instead, only generally takes issue with the viability of employing airport greeters without any citation to authority or evidence. Capital also fails to address the evidence Speedishuttle presented regarding population density in King County pursuant to WAC 480-30-140(2)(d).<sup>3</sup> Consequently, Speedishuttle does not address general sustainability issues here in its Answer.<sup>4</sup>

4 Additionally, despite its objections to process and forum here on Petition for Administrative Review, Capital was an active participant in commenting on the Commission’s proposed revised auto transportation rules in Docket No. TC-121328, and did not object in comments to the institution of BAP proceedings for considering applications in response to proposed WAC 480-30-136.

5 Finally, Applicant notes that Capital’s Petition for Administrative Review Express fails to specifically conform to WAC 480-07-825(3) by failing to specifically highlight and feature

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<sup>1</sup> *In re Amending and Adopting Rules in WAC 480-30 Relating to Passenger Transportation Companies*, Docket TC-121328, General Order R-572, Order Amending and Adopting Rules Permanently (2013), “The 2013 Auto Transportation Rulemaking” *codified at* WAC 480-30 (General Order R-572).

<sup>2</sup> Initial Order 02 at ¶ 12.

<sup>3</sup> See e.g., Initial Order 02 at ¶ 19.

<sup>4</sup> Speedishuttle presented evidence of sustainability both prior to and at the January 12, 2015 hearing on this matter, and discusses that evidence in depth in its Answer to Shuttle Express’s Petition for Administrative Review.

findings of facts and separate conclusions of law to which it objects, nor to advance any recommended ones.<sup>5</sup> Because Applicant and its counsel believe the Commission consistent with “liberal construction” approaches will disregard such omissions with respect to the procedural rules, Speedishuttle will nevertheless submit this Answer. Ascertaining the merit of the specific bases for Capital’s discussion of “same service” under WAC 480-30-136(3), and/or factual objections to the Initial Order would have been greatly facilitated had Capital conformed to the Commission’s procedural rules in formulating its Petition, a problem shared with its fellow Objector, Shuttle Express, Inc.

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

#### **A. Capital Cannot Argue It Provides the Same Service in Territory Where it is Not Authorized to Operate.**

6 Although not acknowledged by Capital in its Petition, Capital does not operate in the majority of King County. Indeed, C-862 only authorizes service in select incorporated south King County cities, and is subject to further limitations. When questioned at hearing, Capital’s witness admitted that: (1) Capital does not serve all of King County, as it is limited geographically from serving any points north or east of Tukwila, or any points in unincorporated King County;<sup>6</sup> (2) the vast majority, approximately 75 percent, of its customers travel not to King County but to Thurston County or points south of there;<sup>7</sup> and, (3) only 10 percent of its passengers were traveling to points within King County, accounting for only 5 percent of

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<sup>5</sup>Consequently, it is possible that Capital only suggests three changes to the Initial Order contained in paragraphs 5 and 6 of Capital’s Petition for Administrative Review. Those paragraphs identify sections, and possible replacements, but fail to provide any basis for making the requested changes. Speedishuttle therefore maintains the Initial Order No. 2 should be fully upheld, especially without any demonstration of why the language of the Order should be altered.

<sup>6</sup> Tr. 139:13-20.

<sup>7</sup> Tr. 138:15-24.

Capital's overall revenues.<sup>8</sup> By contrast, Speedishuttle seeks to provide service between SeaTac Airport and points throughout King County, including locations in unincorporated King County. A necessary prerequisite to any determination of "same service" is "...that the objecting company holds a certificate to provide the same service **in the same territory...**" WAC 480-30-136(c)(a) [emphasis added]. Because, the geographic overlap between the Capital's existing services and Speedishuttle's proposed services is minimal for the vast majority of Speedishuttle's proposed operating area, Capital simply cannot demonstrate that it offers the "same service."<sup>9</sup> Moreover, even if Speedishuttle did not offer a single differentiation in service as to those areas not served by Capital, Capital's objection could not be sustained. As explained below, Speedishuttle also offers a number of different service and market features that preclude a finding of "same service" within the meaning of the rules.

**B. Capital Cannot Now Redefine the Criteria for Determining Same Service Simply Because it Disagrees with the Proposed Result.**

7 Capital, on Petition, essentially reargues its position in the hearing, i.e. that the service Speedishuttle proposes is the "same service" it offers despite the Initial Orders finding to the contrary.<sup>10</sup> To do so, Capital addresses the findings of the administrative law judge dismissively, characterizing them as not the sort of material differences to be taken into account when considering an auto transportation application. Capital intentionally and inaccurately seeks to downplay differentiator factors such as wifi, television, websites for customers in foreign languages, provision of airport greeters, onboard TV's playing original programming specific to the events in the King County area, and shorter passenger wait times. In fact, these service

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<sup>8</sup> Tr. 138:7-14, 139:3-7.

<sup>9</sup> Indeed, even under the prior auto transportation rules regime, the Commission has noted that a protest is not valid to the extent it opposes an application for authority that exceeds the protestant's [now objector's] authority. Order M.V.C. No. 1444, *In re Richard & Helen Asche, Bremerton-Kitsap Airporter, Inc. d/b/a Bremerton Kitsap Airporter, Inc. et al.*, App. D-2445, (May 1984).

<sup>10</sup> See, Capital Petition at ¶ 7.

differences represent precisely the types and kinds of service enhancements envisioned both in the 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]. The service features outlined in WAC 480-30-140(1)(b) properly considered in a “same service” analysis are part of an inclusive list, granting discretion to the Commission to consider the enumerated factors “among other things” when determining whether the proposed service is the “same service” within the rule. The administrative law judge appropriately did so in her ruling.

8 Ignoring the language of WAC 480-30-140(1)(b) completely, Capital on review announces the same service analysis requires a showing of different “type, means, and methods” of existing service, and then purports to restrict what types of evidence can be presented to support these certain categories all without citation to any authority.<sup>11</sup> That interpretation ignores not only the possible differentiators non-exhaustively listed in WAC 430-30-140(1)(b) described above, but the also non-exhaustive nature of categories listed under WAC 430-30-140(2) on which, ironically, Capital relies:

When determining whether one or more existing certificate holders provide the same service in the territory at issue, the commission **may, among other things, consider...**(b)The type, means and methods of service provided...

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<sup>11</sup> Capital Petition at ¶ 7.  
SPEEDISHUTTLE WASHINGTON, LLC d/b/a SPEEDISHUTTLE  
SEATTLE’S ANSWER TO CAPITAL AEROPORTER’S PETITION  
FOR ADMINISTRATIVE REVIEW- 5  
5341582.3

[emphasis added]. Speedishuttle demonstrated, and the presiding officer found, that Speedishuttle would offer specific services that differed from Capital. Namely “24 hour door-to-door service” in comparison to Capital’s shared door-to-door service of less than 24 hours, “a multilingual website” (Capital’s is in English only), multilingual “airport greeters” and “television service” all of which Capital does not provide.<sup>12</sup> Indeed, Capital does not dispute that these are differences in the proposed service, and also offers up an additional difference of a shorter wait time for Speedishuttle than Capital currently provides consumers. *Id.*

9 Capital however, proceeds to dismiss all of these acknowledged differences, and reargue appropriate criteria for determining “same service” within the meaning of the rule. As noted, this argument would have been more pertinent for the 2013 stakeholder proceeding under Docket No. TC-121328, in which Capital apparently did not object to the consideration of “differences in operation, price, market features” as part of the determination of “same service.”<sup>13</sup> Nor did Capital object to the categories of considerations codified as inclusive rather than exhaustive. Instead, Capital posits this interpretive argument here on Petition, but, in so doing, simply ignores the enacted rules, both as detailed above, and under WAC 480-30-140(3)(a)(iii), which also provides the Commission may examine whether that service is provided “in a manner that... *meets consumer preferences or needs for travel...*” [emphasis added]. Here, Speedishuttle’s CEO testified to its existing service experience in its historic base of regulated operations in the State of Hawaii and projected replication of that service in the King County marketplace (Tr 23, 24).

10 Capital, again without support, chooses to take issue with only one of those identified services, claiming that supplying an airport greeter to arriving passengers “would not be

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<sup>12</sup> Initial Order 02 at ¶ 19.

<sup>13</sup> See, Docket No. TC-121328 May 17, 2013 Comment “2nd Draft Rule – 4-14-13 (2) Jim F.pdf”.  
SPEEDISHUTTLE WASHINGTON, LLC d/b/a SPEEDISHUTTLE  
SEATTLE’S ANSWER TO CAPITAL AEROPORTER’S PETITION  
FOR ADMINISTRATIVE REVIEW- 6  
5341582.3

economically sustainable with proposed fares.”<sup>14</sup> Yet, despite another of Capital’s unsupported arguments, Speedishuttle currently provides airport greeters in Hawaii and testified it expects to do so here:

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.<sup>15</sup>

11 Capital does not dispute, and indeed cannot credibly claim that airport greeters for arriving passengers as part of an inclusive service represents a service enhancement or market feature when compared to the services currently offered by it and the other Objector. Such a feature not only highlights the benefits to the traveling public of increased competition, but also provides another example of increased service levels that also lends a corresponding added benefit of ensuring more timely departures from the airport. The supplied greeters may also serve a dual purpose of assisting travelers, especially foreign language travelers, to their baggage and the shuttle as well as providing updates regarding the location and status of the customers of Speedishuttle to dispatchers. Accordingly, Speedishuttle can potentially minimize down time for its vehicles, while promoting convenience, safety, timeliness and efficiency of its regulated services.

12 There is no dispute that Capital does not currently offer any such service, and so deliberately here attempts to characterize that proposed service and others as inconsequential. Increased competition in this context encourages precisely the type of service enhancements and

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<sup>14</sup> Capital Petition, ¶ 3.

<sup>15</sup> Tr 23, 24.

improvements to the traveling public that the Commission's 2013 Auto Transportation Rulemaking expressly intended.

IV. CAPITAL'S CONCLUDING MISCELLANEOUS ARGUMENTS ON PETITION ARE SIMILARLY CONTRIVED AND WITHOUT SUPPORT IN THE RECORD

A. Speedishuttle Introduced Ample Interested Customer Statements.

13 Capital next inexplicably claims Speedishuttle did not introduce evidence of interested customer statements to demonstrate "public need" or "public convenience and necessity" prior to or at the hearing on this matter.<sup>16</sup> On the contrary, evidence admitted as CM-2 consists of 18 separate letters from public commercial entities which expressed interest in utilizing Speedishuttle's proposed service. Capital did not object to the introduction of this evidence and its current argument here is more properly directed to the limited weight the judge attributed to that evidence rather than an incorrect claim that no such evidence was entered. It also fails to consider two appendices attached to Speedishuttle's application and admitted into the hearing record. Additionally, Speedishuttle provided ample evidence of population density, and SeaTac Airport utilization growth statistics both in testimony at the hearing, and in exhibits CM-1 and 3-5 which all implicate evolving need for regulated airport shuttle service.

14 The specific public convenience and necessity factors evidence in the record are also summarized in Initial Order 02 at ¶ 6. These include the previously-noted 20 minute service guarantee of departure from the airport after the time the customer has claimed their bags,<sup>17</sup> personal greeters, multilingual staff and website, specialized television service and wifi.<sup>18</sup> Admittedly Capital does have wifi on its vehicles, but the remaining features clearly appeal to

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<sup>16</sup> While this is admittedly a more traditional indicia of public convenience and necessity, the Commission's revised auto transportation rules broaden and amplify the demonstration of public need in their definition of "public convenience and necessity" at WAC 480-30-140(1)(a) and (1)(b).

<sup>17</sup> TR 30:2-7; Initial Order 02 at ¶ 6

<sup>18</sup> *Id.*



and enhance the public convenience as well as satisfy traveler's needs. Simply put, Speedishuttle has presented more than ample evidence and testimony demonstrating that its service would satisfy the public from a convenience and need perspective.

**B. Capital Provides No Basis to Object to the Proposed Allocation of Applicant Resources (A Fitness Issue).**

15 Second, Capital attacks Speedishuttle for what Capital views as an inadequate allocation of five (5) vehicles at the outset of service. In so doing, Capital relies upon no cited evidence or legal authority and implies that because Speedishuttle may prudently commence service with a modest number of vans and then grow its fleet as demands warrant, it cannot provide adequate service.<sup>19</sup> As noted in its other Answer to the Petition for Administrative Review of Shuttle Express, not only has the Commission failed to require a new entrant to commit to a specific level of equipment or staffing levels at startup, but that type of demand management is not typically the role of economic regulators.<sup>20</sup> Further, Capital's argument is again contravened by the record, since it in fact put this question in hypothetical form to Cecil Morton, the owner of Speedishuttle on cross-examination at the hearing, to which he responded as follows:

[i]f 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.<sup>21</sup>

Capital cannot, *sua sponte*, impose some sort of arbitrary entry requirement based on subjective resource allocation.

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<sup>19</sup> Capital Petition at ¶ 3.

<sup>20</sup> "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.

<sup>21</sup> Lines 1-6, Tr 46.

**C. Speedishuttle is Not Required to Provide Evidence of Negative Experiences by Capital Customers.**

16 Third, Capital critiques Speedishuttle for not providing evidence of service failures with its existing service or customer complaint evidence against Capital. Such evidence is not a prerequisite to approval of an application, but rather simply one potential factor in the non-exhaustive list of evidence the Commission may consider under WAC 480-30-140(3) to determine if the objecting company is providing service to the satisfaction of the Commission. As described, *infra*, WAC 480-30-140(3) is written in the permissive and subsection (a) states “[t]he determination of whether the objecting company is providing service to the satisfaction to the commission is dependent on, **but not limited to...**” [emphasis added]. The rule goes on to list four such categories numbered (i) – (iv). Subsection (c) of that same rule deals with potential negative evidence put on by the applicant, directing the Commission to consider such evidence under the same categories listed in subsection (a) (i)-(iv) if presented, but not requiring that such evidence be produced by an applicant. Nor is such a requirement present elsewhere in the revised rules. As Speedishuttle made clear at the hearing, it has not previously operated in the proposed marketplace, and has had no direct contact with present users of Capital’s services, thus it does not seek to predicate entry into the market based on material service failures of Capital.<sup>22</sup> In any event, evidence of such failures would be relevant only to the analysis of whether Capital operates to the satisfaction of the Commission. The Initial Order did not predicate its grant of Speedishuttle’s application on Capital’s service failures, but rather on the fact that Speedishuttle offered service distinguishable from that Capital offers.<sup>23</sup> Thus Capital’s arguments here are irrelevant and misplaced.

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<sup>22</sup> Tr. 9:21 – 10: 6.

<sup>23</sup> Initial Order 02 at ¶¶ 26 and 27.

**D. Capital also Waived Any Argument that This Proceeding Should Have Been Conducted as a Regular Adjudicative Hearing.**

17 Finally, Capital mentions in passing near the conclusion of its Petition that the more appropriate forum for an Objection to Application would have been “a full, Regular Adjudicative Hearing.”<sup>24</sup> This now familiar charge is yet another untimely and unsupported objection. First, as noted previously, Capital actively participated in the 2013 stakeholder proceeding under Docket No. TC-121328, and did not object to and supported the streamlined processes for how those objections would be adjudicated. Both the proposed and enacted WAC 480-30-136(1) state:

The commission will consider applications for which an objection has been received through brief adjudicative proceedings...

As Appendix B to the CR-102 Order in the 2013 Auto Transportation Rulemaking reflects, Capital actually advocated that the rulemaking’s goals should include “streamlin[ing] the certificate application process” and later “...make more efficient the Certificate authorization process...”<sup>25</sup> Capital once again cannot credibly argue that a full adjudicative proceeding would have been more efficient. Second, this issue was already resolved in this very proceeding, by the Motion to Strike filed by the other Objector to Speedishuttle’s application, and the Commission rejected those objections to the forum for hearing this application as prescribed by the revised rules.<sup>26</sup> Capital elected not to join in the Motion to Strike or otherwise participate on that issue and has lost the opportunity to now be heard to collaterally attack that prior ruling. The Brief Adjudicative Proceeding was the forum ratified as appropriate by Order 01 for consideration of this application and the objections thereto. Capital’s outdated challenge to that procedural

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<sup>24</sup> Capital Petition at ¶ 8.

<sup>25</sup> Undated email of James (Jim) Fricke, President/CEO of Capital Aeroporter, included as part of the Docket No. TC-121328 record.


<sup>26</sup> Order 01, Docket No. TC-143691.

format now is without merit, tantamount to *laches* and irrelevant at this procedural juncture. As with all its other arguments for reversal of the Initial Order, Capital's *forum non conveniens*-type eleventh-hour assertion is groundless.

18 For all of the above reasons, Applicant Speedishuttle Washington, LLC asks that Order 02 be affirmed and that the objection to its application and the Petitions for Administrative Review be denied.

DATED this 23<sup>rd</sup> day of February, 2015.

RESPECTFULLY SUBMITTED,

By  \_\_\_\_\_  
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**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

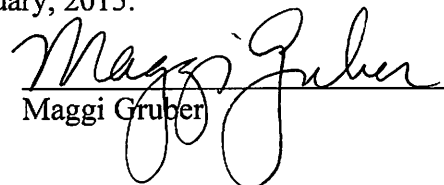
I further certify that I have also provided to the Washington Utilities and Transportation Commission's Secretary an official electronic file containing the foregoing document via email to:

[records@utc.wa.gov](mailto:records@utc.wa.gov)

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

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Dated at Seattle, Washington this 23<sup>rd</sup> day of February, 2015.

  
Maggi Gruber