

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In re the Application of)	DOCKET TC-143691
)	
SPEEDISHUTTLE WASHINGTON,)	
LLC d/b/a SPEEDISHUTTLE)	ORDER 04
SEATTLE)	
)	
For a Certificate of Public Convenience)	FINAL ORDER
and Necessity to Operate Motor)	
Vehicles in Furnishing Passenger and)	
Express Service as an Auto)	
Transportation Company)	
.....)	

BACKGROUND

- 1 On October 10, 2014, Speedishuttle Washington, LLC d/b/a Speedishuttle Seattle (Speedishuttle or Applicant) filed with the Washington Utilities and Transportation Commission (Commission) an application for a certificate of public convenience and necessity to operate as an auto transportation company (Application). Speedishuttle proposes to offer shared-ride, door-to-door, multilingual service within King County in upscale vehicles equipped with onboard televisions and Wi-Fi. Each Speedishuttle passenger will be assisted by a personal greeter.
- 2 On November 12, 2014, Shuttle Express, Inc. (Shuttle Express) filed a letter objecting to the Application on the grounds that the Applicant seeks to provide the same service Shuttle Express currently provides. On November 20, 2014, Pacific Northwest Transportation Services, Inc. d/b/a Capital Aeroporter Shuttle (Capital Aeroporter) also filed an objection. On December 2, 2014, the Commission issued a Notice of Brief Adjudicative Proceeding Setting Time for Oral Statements on January 12, 2015, at 1:30 p.m.
- 3 On January 12, 2015, the Commission conducted a brief adjudicative proceeding at the Commission’s offices in Olympia, Washington, before Administrative Law Judge Rayne Pearson. On January 22, 2015, the Commission entered Order 02, Initial Order Overruling Objections to New Authority (Order 02).

- 4 On February 9, 2015, Shuttle Express filed a Motion to Reopen the Record and Petition for Administrative Review (Motion). In its Motion, Shuttle Express argues that because company president Paul Kajanoff was denied a technological accommodation for his temporary hearing loss, he was unable to represent the company's interests adequately at hearing. Coupled with the fact that Shuttle Express was not represented by counsel, the company asserts that there is good and sufficient cause to reopen the record to allow it to present additional evidence. Shuttle Express seeks to introduce an exhibit documenting the company's nearly 9 percent decline in business in the last two years.
- 5 On February 10, 2015, Shuttle Express filed a second Petition for Administrative Review (Shuttle Express Petition).¹ Shuttle Express contends that Order 02 distinguishes Shuttle Express's service from the service the Applicant seeks to provide based on "inconsequential amenities" such as onboard Wi-Fi and website features, and that Speedishuttle's application should be denied because Shuttle Express provides the same service to the Commission's satisfaction. In the alternative, Shuttle Express requests the Commission condition Speedishuttle's certificate on the requirement that Speedishuttle provide the features on which it relies to distinguish its service.²
- 6 On February 10, 2015, Capital Aeroporter filed a Petition for Administrative Review (Capital Aeroporter Petition). Capital Aeroporter argues that 24-hour direct service is the same service as 24-hour shared-ride service, and that airport greeters, onboard TVs, and wait times do not differentiate service. Capital Aeroporter also contends that because Speedishuttle did not introduce evidence of interested customer statements to demonstrate public need, the Application should be denied. Finally, Capital Aeroporter maintains that Speedishuttle's business model, which includes the allocation of five vehicles at the outset of service, is inadequate and unsustainable.
- 7 On February 13, 2015, Commission Staff (Staff) filed a Response to Shuttle Express's Motion. Staff argues that Shuttle Express failed to demonstrate "good and sufficient cause" to reopen the record. Staff notes that there is no alleged nexus between the

¹ Under WAC 480-07-825(1), the Commission will only accept one petition for administrative review from a party. We construe Shuttle Express' February 9, 2015, filing as a motion and address only the February 10, 2015, filing as that party's petition for administrative review.

² We deny Shuttle Express's request for oral argument; Speedishuttle correctly noted that Shuttle Express failed to demonstrate why written presentations are insufficient, as required by WAC 480-07-825(6).

conditions at hearing and the company's failure to offer the readily available evidence it now attempts to introduce. Staff also contends that because Shuttle Express neither requested a continuance nor raised a formal objection to the alleged lack of accommodation for Mr. Kajanoff's impairment at hearing, it has no grounds to do so at this stage in the proceeding. Staff also points to Shuttle Express's contention that it was prejudiced by not having counsel as a situation of the company's own making; the company's attorney withdrew approximately two and a half weeks before the hearing, which left ample time to obtain new representation. Finally, Staff notes that although Shuttle Express argues the Commission failed to provide an interpreter, Shuttle Express never requested one.

- 8 On February 17, 2015, Speedishuttle filed a Response to Shuttle Express's Motion. Speedishuttle argues that Shuttle Express was able to represent itself adequately at hearing through two qualified representatives, both of whom were able to present evidence in opposition to the Application. Speedishuttle also notes that Shuttle Express fails to explain why it was unable to produce the evidence it now seeks to introduce or why it did not introduce the information at hearing through its second witness, Wesley Marks. Speedishuttle argues that Shuttle Express has made no showing of why the evidence it seeks to admit is essential to the decision, was unavailable, and was not reasonably discoverable with due diligence at the time of the hearing. Finally, Speedishuttle argues that even if the Commission considers the evidence proffered by Shuttle Express, it has no probative value.
- 9 On February 23, 2015, Staff filed a Response to the Petitions for Administrative Review filed by Shuttle Express and Capital Aeroporter. Consistent with its position with respect to both objections at hearing, Staff declines to address the merits of either petition for review.
- 10 On February 23, 2015, Speedishuttle filed a Response to the Shuttle Express and Capital Aeroporter Petitions. With respect to Shuttle Express, Speedishuttle argues that despite Shuttle Express's efforts to downplay differentiating service factors such as free Wi-Fi, onboard television, foreign language websites, and personal airport greeters, those are precisely the type of service enhancements envisioned in the Commission's 2013 rulemaking and codified in the revised rules.³ Speedishuttle also

³On September 21, 2013, the Commission amended its rules governing the Commission's review of applications for authority to operate a passenger transportation company in Washington. The changes clarify and streamline the application process for companies seeking to provide such service, give companies rate flexibility, and promote competition in the auto transportation

maintains that Shuttle Express has failed to make a strong showing that imposing permit conditions is necessary.

- 11 Speedishuttle argues that Capital Aeroporter attempts to redefine “same service” because it disagrees with the result in Order 02, ignoring completely the language in WAC 480-30-140(1)(b)⁴ and reframing the analysis as requiring a limited showing of different “types, means, and methods” of existing service. Speedishuttle argues that Capital Aeroporter inappropriately attempts to raise a fitness issue related to the number of the Applicant’s proposed vehicles, and provides no evidence for its argument that the Applicant’s business model is insufficient and unsustainable.
- 12 On February 23, 2015, Capital Aeroporter responded to Shuttle Express’s Petition. Capital Aeroporter argues that Speedishuttle has neither demonstrated a need for its service nor provided supporting statements from members of the general public. Capital Aeroporter cautions that granting Speedishuttle’s application based on the factors outlined in Order 02 will spur a multitude of new applicants and applications to extend authority, which may increase local or port regulation, degrade quality and safety of service, or create instability. Finally, Capital Aeroporter acknowledges that a surge of new applicants may create a stronger, more competitive marketplace.

DISCUSSION AND DECISION

- 13 We deny Shuttle Express’ Motion and uphold the findings and conclusions in Order 02. We will address the Motion and each Petition in turn.⁵

industry. *See 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), *codified at* WAC 480-30 (General Order R-572).

⁴ WAC 480-30-140(1)(b) provides that “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.”

⁵ Under RCW 34.05.419(5), a request for review is deemed to have been denied if the agency does not make a disposition of the matter within 20 days after the request is submitted. We extend the deadline for disposing of the petitions for review until the date of this order.

Shuttle Express Motion

- 14 WAC 480-07-830 provides that in contested proceedings, the Commission may reopen the record to “allow receipt of evidence that is essential to a decision and that was unavailable and not reasonably discoverable with due diligence at the time of hearing or for any other good and sufficient cause.” Shuttle Express has not put forth any argument that the evidence it now offers is essential to a decision and was unavailable at the time of hearing. Therefore, the only question we address here is whether the company has demonstrated “good and sufficient cause” to reopen the record.
- 15 Shuttle Express argues that it was prejudiced by Mr. Kajanoff’s inability to participate fully in the hearing due to the Commission’s failure to accommodate his temporary hearing loss. Mr. Kajanoff’s request for accommodation, however, stated only that he was temporarily hearing-impaired and asked the Commission to “ensure microphones are set high enough to allow me to hear.” The Commission accommodated his request by turning the microphones to their highest setting. When Mr. Kajanoff indicated that he was still unable to hear, the presiding judge asked him if he wished to proceed or continue the hearing until a later date.⁶ Mr. Kajanoff stated he wished to proceed, and both he and Wesley Marks, financial officer for Shuttle Express, presented direct testimony and participated in cross-examining the Applicant’s witness, with Mr. Marks even writing out certain questions directed at Mr. Kajanoff so that he could fully answer them.
- 16 We deny Shuttle Express’s Motion. Shuttle Express received the accommodation it requested, declined to request a continuance, and fully participated in the hearing. Shuttle Express, therefore, presents no basis on which to present additional evidence now.⁷

⁶ Off the record and prior to the start of the hearing, the parties addressed the possibility of continuing the matter until a later date.

⁷ Even if we were to reopen the record, the evidence Shuttle Express offers has virtually no probative value. Shuttle Express provides no factual explanation for its decline in business, and thus that evidence, standing alone, does not tend to prove or otherwise support any factual issue in this case.

Shuttle Express Petition for Review

- 17 The Initial Order, Order 02, addressed the considerations set forth in WAC 480-30-116(3), which provides that adjudications of auto transportation applications are “limited to the question of whether the objecting company holds a certificate to provide the same service in the same territory, whether the objecting company provides the same service, and whether an objecting company will provide the same service to the satisfaction of the Commission.” All three elements must be present for the Commission to deny an application to serve a given route. We agree that Speedishuttle does not propose to offer the same service Shuttle Express provides and thus need not address whether Shuttle Express is providing service to the Commission’s satisfaction.
- 18 Under WAC 480-30-140(2), the Commission may consider a number of factors to determine whether the service applied for is the same as existing service. In Order 02, the Administrative Law Judge considered the following factors listed in the rule: (1) the type, means, and methods of service provided; (2) whether the type of service provided reasonably serves the market; and (3) whether the population density warrants additional facilities or transportation. The Commission may also consider “differences in operation, price, market features, and other essential characteristics of a proposed auto transportation service.”⁸
- 19 Shuttle Express contends that the service features Speedishuttle proposes to offer – complimentary onboard Wi-Fi and television, a multilingual website, the use of multilingual personal greeters, and departure time guarantees – are inconsequential and do not distinguish Speedishuttle’s proposed service from Shuttle Express’s service. Shuttle Express individually addresses these features and argues that each one fails to create any meaningful distinction between the proposed and existing services.
- 20 We disagree. The Administrative Law Judge found in Order 02 that no one feature distinguishes Speedishuttle’s proposed service from Shuttle Express’s existing service. In our view, however, Speedishuttle’s multilingual business model creates a significant distinction. Shuttle Express does not offer multilingual customer service, either on its website, by phone, or by way of personal greeters; there is an entire demographic of travelers whose needs cannot be met by Shuttle Express’s existing

⁸ WAC 480-30-140(1)(b).

service. On that basis alone, Speedishuttle's proposed service is not the same service Shuttle Express currently provides.

- 21 Moreover, the totality of these features demonstrate that the proposed service uniquely targets a specific subset of consumers seeking door-to-door service to and from the airport: those who are tourists, tech-savvy, or non-English speaking. Speedishuttle's business model thus includes luxury vehicles, significantly increased accessibility for non-English speaking customers, individually-tailored customer service, tourism information, and Wi-Fi service. Such service is substantially different from the existing service the objecting carriers offer.
- 22 For those same reasons, we also conclude that Shuttle Express's existing service does not reasonably serve the entire market.⁹ From 2004 until 2014, the last year being the test period of Speedishuttle's application, Shuttle Express used a contracted "rescue service" to serve approximately 5 percent of its customers. Mr. Kajanoff's claim at hearing that Shuttle Express has "never turned away door-to-door business for inability to have a vehicle available"¹⁰ is contradicted by Shuttle Express's owner, Jimmy Sherrell, in a declaration he submitted in support of the company's petition for exemption from Commission rules in November 2013.¹¹ In his declaration, Mr. Sherrell stated that without the use of a contracted rescue service, "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 fee in parking 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."¹² By the company's own admission when it sought the exemption, Shuttle Express was unable to reasonably serve the market for a 10-year period without relying on outside assistance.

⁹ Shuttle Express argues that it was previously exonerated on the issue of whether it reasonably serves its territory. In *WUTC v. Shuttle Express, Inc.*, Docket TC-120323, Order 03 (November 1, 2013) at ¶67, the Commission found that "Shuttle Express, Inc. has sufficient reserve equipment to ensure the reasonable operation of its *established routes and fixed times schedules* and thus did not violate WAC 480-30-216." As Speedishuttle notes in its Response, however, this finding – and the applicable rule – relates only to scheduled service, not door-to-door service.

¹⁰ Kajanoff, TR 87:7-9.

¹¹ Shuttle Express filed a petition for exemption from WAC 480-30-213(2) and WAC 480-30-456 in Docket TC-132141. The Company requested that the Commission allow it to continue to use a contracted "rescue service."

¹² Docket TC-132141, Declaration of Jimmy Sherrell at ¶4.

- 23 Moreover, Mr. Kajanoff characterized Shuttle Express's former rescue service at hearing as "an upgraded luxury service"¹³ which, because "most people like getting picked up in a luxury vehicle,"¹⁴ was "in the public's interest."¹⁵ Mr. Kajanoff attempted to distinguish this upgraded service from Shuttle Express's standard service as a rationale for offering rescue service without the Commission's authorization. Yet, Shuttle Express now attempts to characterize Speedishuttle's upgraded business model as indistinguishable from its own. Shuttle Express cannot have it both ways.
- 24 We uphold the Administrative Law Judge's findings in Order 02 that Speedishuttle does not propose to offer the same service that Shuttle Express provides. Speedishuttle's service proposes to use luxury vehicles, and proposes to provide services that would be very useful, if not critical, for non-English speaking and foreign travelers.
- 25 We also decline to attach the conditions proposed by Shuttle Express to Speedishuttle's permit.¹⁶ The Commission requires only that an applicant demonstrate that it has the ability to start up the business, not that it is able to operate over the long term.¹⁷ Staff must still ensure that Speedishuttle satisfies the other requirements for obtaining a permit, and we will rely on Staff's review of the tariff Speedishuttle files – as well as the company's track record for providing the same type of service in Hawaii – to ensure that the service in Washington is consistent with the authority the Commission grants.

¹³ Kajanoff, TR 97:9.

¹⁴ *Id.* at 97:15-16.

¹⁵ *Id.* at 97:19-20.

¹⁶ As Speedishuttle correctly notes in its response to Shuttle Express's Petition, 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).

¹⁷ See Order R-572, ¶30 n.2, citing *See Application of San Juan Airlines, Inc., d/b/a Shuttle Express*, Order M.V.C. No. 1899, Commission Decision and Order Granting Administrative Review and Reversing Initial Order Denying Application, pp 3-4 (Mar. 7, 1991); *see also Application of Valentinetti, Steve & Brian Hartley, d/b/a Seattle Super Shuttle*, Docket TC-001566, Commission Decision and Order Reversing Initial Order; Denying Application ¶¶ 42-43 (Feb. 15, 2002).

Capital Aeroporter's Petition for Review

- 26 Like Shuttle Express, Capital Aeroporter contends that Speedishuttle seeks to provide the same service Capital Aeroporter currently provides to the Commission's satisfaction. Again, we reach a different conclusion.
- 27 Capital Aeroporter requests the Commission find that shared-ride door-to-door service and direct door-to-door service are the same, and find that, overall, Capital Aeroporter provides "substantially the same service Speedishuttle seeks to provide." During the 2013 rulemaking, Capital Aeroporter proposed that the Commission modify the statutory phrase "same service" to read "essentially the same" or "similar" service. Just as we declined to adopt that language during the rulemaking, we decline to adopt that interpretation of "same service" here.¹⁸
- 28 Instead, we find that Speedishuttle's hours of operation and pricing for shared-ride door-to-door service distinguish the proposed service from Capital Aeroporter's existing service. Capital Aeroporter offers only direct service between certain hours for a flexible fare that ranges from \$85 to \$111.56. During those same blocks of time, Speedishuttle seeks to provide shared-ride service for flexible fares that range from \$10.49 to \$47.61. This significant price difference is one of several aspects of Speedishuttle's business model that distinguishes Capital Aeroporter's service from the service Speedishuttle seeks to provide. In addition, Capital Aeroporter serves a much smaller portion of King County than Speedishuttle seeks to serve, and is restricted from serving unincorporated areas of the county.
- 29 Capital Aeroporter goes on to argue that service cannot be distinguished by airport greeters, onboard TVs, or wait time. As we discussed in relation to Shuttle Express's Petition, Speedishuttle uses a business model that will cater to a specific subset of the population. Capital Aeroporter, by contrast, uses an entirely different business model that does not include upgraded vehicles or personalized, multilingual, tourist-centered service. Contrary to Capital Aeroporter's claim, the distinction between these two business models is significant. Accordingly, we uphold the finding in Order 02 that,

¹⁸ "...The Commission interprets the statute to reflect clearly the state's interest that is should draw a bright line between service offerings. The proposed rule describes adequately the factors the Commission will consider in determining, on the facts, whether the service proposed is the same as the service currently provided. As it has in prior cases, the Commission can and must draw distinctions between what is the 'same' service in a particular market." General Order R-572 at ¶40.

based on the totality of the factors outlined above, Capital Aeroporter does not provide the same service Speedishuttle seeks to provide.

30 As we discussed with respect to Shuttle Express, we reach the question of satisfactory service only if we make a finding that the Applicant seeks to provide the same service an existing carrier currently provides. Again, we make no such finding here.

Conclusion

31 The Commission adopted rules in 2013 governing auto transportation services to reflect the more competitive marketplace, including both granting existing companies greater regulatory and fare flexibility and facilitating the ability of other providers to enter the market. As the Commission noted in its order adopting rules governing whether service is the same, the state court of appeals in a case involving the grant of overlapping airporter service found that the statutes grant the Commission the discretion to interpret the standards “in any logical and reasonable way supported by the evidence,” and noted that there is public benefit in encouraging competition by motivating carriers to continually improve service.¹⁹

32 The Commission adopted a more objective analysis for permitting new entrants that examines many aspects of service and lists inclusive, rather than exhaustive, factors the Commission may consider, and has previously considered, when determining whether services are the same.²⁰ An entirely different business model that appeals to and serves a certain subset of the market – like Speedishuttle proposes to offer – is precisely the type of service differentiation contemplated by the new rules.

¹⁹ General Order R-572 at ¶¶ 33-34, quoting *Pacific Northwest Transp. Serv., Inc. v. Washington Utils. and Transp. Comm’n*, 91 Wn. App. 589, 596-97, 959 P.2d 160 (1998).

²⁰ See General Order R-572 at ¶¶ 33-35 for a discussion about the Commission’s flexibility and discretion when determining whether proposed service is the same as existing service.

- 33 For the reasons set out above, the Commission adopts as its own the findings and conclusions in paragraphs 20 through 27 of Order 02 and denies Shuttle Express's Motion.

ORDER

THE COMMISSION ORDERS That:

- (1) The deadline for disposing of the petitions for review is extended until the date of this Order.
- (2) Shuttle Express's Motion to Reopen the Record is DENIED, and Order 02 in this Docket is AFFIRMED.

Dated at Olympia, Washington, and effective March 30, 2015.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

PHILIP B. JONES, Commissioner

ANN E. RENDAHL, Commissioner

NOTICE TO PARTIES: This is a final order of the Commission. Parties may seek judicial review pursuant to RCW 34.04.542.