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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

**In Re Passenger Transportation Company
Rulemaking**

Docket No. TC-020497

**COMMENTS OF WASHINGTON
AIRPORTER OPERATORS
ASSOCIATION AND EVERGREEN
TRAILS, INC.**

INTRODUCTION

The Washington Airporter Operators Association ("Association") and Evergreen Trails, Inc., d/b/a Grayline (collectively "Airporters") file these comments pursuant to the Commission's notice in this docket dated May 28, 2002. The Airporters welcome this opportunity to participate in a comprehensive review of the Commission rules governing passenger transportation companies.¹ For the most part, the industry generally has enjoyed a number of years of relative good health. Operations have been conducted without serious mishaps. The industry/regulator relationship has generally been cooperative. Steady increases in air travel until last fall helped compensate for any shortcomings in the regulatory scheme. Recent events have put some strain on both regulators and operators, however. Accordingly, this is a good time to review the Commission's rules with an eye toward making the regulatory scheme work better for the regulators, industry, and ultimately the public interest.

¹ Although the Airporters may also operate as excursion companies and charter carriers, their comments at this stage of the proceeding will focus on the auto transportation company aspects of the rules.

1 **FACTUAL BACKGROUND**

2 Although the Commission theoretically regulates entry of all auto transportation
3 companies, as a practical matter the Commission's remaining responsibilities in this area are
4 focussed more on Airporters than traditional inter-city bus companies. Most traditional bus
5 companies have gone out of business due to competition from airlines and private automobiles.
6 A handful operate under an interstate exemption from Commission regulation. Only the special
7 niche of auto transportation company referred to as "airporter" service seems to have remaining
8 financial viability. This circumstance alone should cause the Commission to proceed carefully in
9 regulating the industry to avoid taking action that might lead to the same kind of decline in
10 airporter service as has occurred elsewhere in the bus industry. One critically important way the
11 Commission can do this is to ensure that it fully enforces the limitations of RCW 81.68.040 with
12 regard to new entrants.

13 The Airporters are a specialized subset of carriers that the Revised Code of
14 Washington defines as "auto transportation companies." See RCW 81.68.010(3). The Airporters
15 all have in common that they originate and terminate their routes at an airport.² Airporters
16 operate in two ways. One is to originate and terminate traffic at specific places, such as hotels.
17 The other is to operate "door-to-door" service, in which the passenger is picked up at their home,
18 office, or other specific location of their choosing. Some carriers provide both types of service.

19 The airporter industry provides but one of many options that the traveling public
20 has available to it to travel to or from the airport. The primary competitor to airporter service is
21 the private automobile. Competition from the private automobile takes three forms. The
22 passenger may drive themselves and their family or business associates to the airport. Second,
23 the passenger may get a ride from a friend, neighbor, or business associate. Third, particularly if
24 the traveler originates from outside of the state, rental cars are readily available at competitive

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26 ² Although other airports can be served and are being served by airporter service, the vast majority of airporter traffic originates and terminates at SeaTac.

1 rates. Travelers weighing an airporter service against the private automobile are very sensitive to
2 two factors. First, they are very sensitive to airporter rates.³ Second, they are very sensitive to
3 the speed and convenience of the service.

4 Taxi cabs also provide competition to airporter service. While taxicabs generally
5 operate at a higher price than airporter services, they have a competitive advantage in terms of
6 speed and convenience.⁴ For the more discriminating traveler, town car or limousine services
7 operate much the same as taxis. While the price is higher than taxis, the perceived value of the
8 service is higher as well. Many travelers do not like taxi cabs because of the perception that they
9 are unclean and unsafe. In this regard, limousines and town cars compete directly with
10 certificated airporters, which are also perceived as clean and safe alternatives to taxicabs.

11 For the most price sensitive travelers, public transit provides a competitive option
12 to the Airporters. While public transit is not perceived as being as convenient as an airporter
13 service, as a subsidized service it operates at a fraction of the price of most airporter services.

14 Finally, even the airlines themselves compete with the Airporters. Horizon Air,
15 for example, operates from Bellingham and the Olympic Peninsula to SeaTac Airport. It
16 frequently offers promotional rates that are comparable to or even lower than the Airporters'
17 prices. Of course, its service is much faster and more convenient with through ticketing and
18 baggage transfers.

19 While the Airporter industry has enjoyed a number of years of financial good
20 fortune, recent events have pointed out just how vulnerable the industry can be to outside forces.
21 While no carriers have failed in Washington, airporters in other regions of the country have
22 failed in the wake of the September 11, 2001, terrorist action and resulting precipitous decline in
23 airline travel. The Nisqually earthquake in 2001 also had a significant impact on Airporter

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25 ³ Competition from private automobiles is very effective at constraining airporter rates.

26 ⁴ Taxi competition also constrains airporter rates. Airporters must maintain a sufficient
differential between their rates and taxi fares to offset the taxi cabs' advantages of speed and
convenience.

1 operations in this state. The offices and maintenance facilities of Shuttle Express were severally
2 damaged and Shuttle Express had to make an emergency move into a temporary new location.
3 The Alaska Way viaduct, which Grayline used for its large buses has been closed to such traffic
4 for many months. This required Grayline to substantially revise its routes and decreased its
5 efficiency while substantially increasing its operating costs.

6 While the September 11 tragedy and the earthquake are recent events, and
7 therefore memorable, risk in the auto transportation business is nothing new. The Airporters
8 carry hundreds of thousands of passengers over many millions of miles every year. Operating
9 motor vehicles is an inherently hazardous activity. The legislature has recognized this in
10 requiring carriers to have liability insurance to cover personal injury and property damage. No
11 amount of insurance the Commission might reasonably require, however, can eliminate the risk
12 that the Airporters face with every turn of a wheel. There is always the potential for a very
13 serious accident involving a bus and a large number of people that could exceed insurance limits
14 and bankrupt a carrier in an instant. Passenger buses could even be used as terrorist weapons,
15 particularly as security at airports becomes tighter, exposing carriers to huge potential liabilities.

16 There are four things that have a significant impact on the financial viability and
17 health of Airporters. They are operating costs, airline passenger traffic, competition, and rates.
18 Of these, the Commission has absolutely no control whatsoever over airline passenger traffic,
19 which is subject to the whims of the economy and events such as occurred on September 11,
20 2001. The Commission also has relatively little control over costs. While many costs are
21 relatively stable, fuel and insurance costs have often been volatile. The Commission has a great
22 deal of control over Airporters' rates, though that control is shared with a competitive market.
23 Finally, the Commission has limited control over competitive pressures that the Airporters face.⁵

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26 ⁵ The Commission controls intramodal competition; i.e. competition from other auto
transportation companies. It cannot control intermodal competition; i.e. competition from autos,
taxis, transit, etc.

1 **LEGAL BACKGROUND**

2 The Commission's review and amendment of rules governing passenger
3 transportation companies should begin with the applicable statutes. In the case of Airporters, the
4 Commission "shall":

- 5 (1) Fix, alter, and amend just, fair, reasonable, and sufficient rates, fares, charges,
6 classifications, rules, and regulations;
- 7 (2) Regulate the accounts, service, and safety of operations;
- 8 (3) Require the filing of annual and other reports and of other data;
- 9 (4) Supervise and regulate the companies in all other matters affecting the
relationship between such companies and the traveling and shipping public;
- 10 (5) By general order or otherwise, prescribed rules and regulations in conformity
11 with this chapter, applicable to any and all such companies, and within such limits
make orders.

12 RCW 80.68.030. The legislature has restricted entry by auto transportation companies. An
13 applicant for a certificate to operate as an auto transportation company must demonstrate "that
14 public convenience and necessity requires" the proposed operation and, if there is an existing
15 certificate holder in the territory that the existing company "will not provide [service] to the
16 satisfaction of the Commission." RCW 81.68.040.

17 Excursion and charter carriers are subject to less regulation. Provisions governing
18 excursion companies are set forth in a single code section, RCW 81.68.045. Passenger charter
19 carriers are governed by RCW Ch. 81.70. Entry is not nearly as restrictive as for auto
20 transportation companies. Applicants need to show they are fit and financially responsible.

21 Aside from the minimum requirement that rates be "just, fair, reasonable, and
22 sufficient" the Commission has not been given specific direction as to how to regulate rates for
23 auto transportation companies. The Commission has no rules regarding rates, but has
24 consistently followed an "operating ratio" approach for many years.

1 **SUGGESTED AREAS FOR RULE REVISION**

2 I. **Introduction.**

3 The Airporters recognize that the goal of regulation should be to protect and
4 advance the public interest. Sometimes this means balancing the interests of the carriers against
5 the interests of the public. Often, however, the interests of carriers and the public go hand in
6 hand. This is particularly true when the industry and regulators take a longer term view, rather
7 than seeking short term "fixes." For example, while the public might benefit in the short term
8 from setting rates that are so low that they are not "sufficient," in the long run insufficient rates
9 will lead to a decline in quality of service, reduction in schedules, and possibly even safety
10 problems.⁶ Moreover, carriers that constantly operate on the "edge" financially are at greater risk
11 of bankruptcy, which can result in a temporary or even permanent cessation of service in that
12 carrier's territory. In the long run, the public benefits from a financially strong Airporter
13 industry.

14 Because the Commission has the most control over competitive entry and rates,
15 those are the two main areas on which the Airporters will focus their comments at this stage of
16 this proceeding. The Commission has a statutory responsibility to limit competitive entry as
17 provided in RCW 81.68.040 and to ensure just, fair, reasonable, and sufficient rates under
18 RCW 81.68.030 (emphasis added). Moreover, the public interest requires that the airporter
19 industry be financially strong enough to provide safe, efficient, and commodious service to the
20 public and be able to weather downturns regardless of the cause.

21 II. **New Entry.**

22 Of course, the Commission must follow the limitations on new entry of
23 RCW 81.68.040, whether it believes they are in the public interest or not. Even if the
24 Commission feels that it has some flexibility to allow head-to-head competition within a

25 ⁶ Experience in the charter and motor carrier industries has shown that, in spite of safety
26 regulations, carriers facing financial difficulty are more likely to cut corners with safety.
Carriers will defer maintenance before going out of business.

1 territory⁷ the Commission should carefully weigh the detriment to the public interests that would
2 result from relaxed entry standards. While some might argue that more competition is always
3 better, that is truism that must be rejected as to airporter service.

4 As discussed above, there are two types of airporter operations, the scheduled
5 route and door-to-door services. The door-to-door carriers require development of vast and
6 sophisticated scheduling systems. By coordinating all of the door-to-door traffic within their
7 serving territory, door-to-door carriers are able to maximize vehicle occupancy while minimizing
8 travel distances and times. Regular route scheduled operators require passengers to travel to a
9 terminal or pick up point near their hotel, home, or place of business.⁸ By concentrating traffic
10 in this way, these Airporters are able to operate more frequent schedules, fill their buses to a
11 greater capacity, and thereby keep fares lower through efficient operations.

12 The introduction of a new carrier into a territory that is already being fully served
13 by either a scheduled operator or a door-to-door operator, or both in some cases, is not likely to
14 result in successful price or service quality competition in this industry. Rates can only be driven
15 down if profits are above normal competitive levels. Such is not the case in the airporter
16 industry. First, of course, the Commission regulates rates. However, under the established
17 Commission formula for setting rates, several of the carriers already are not able to charge the
18 maximum amount the Commission would allow, due to competitive pressures.

19 The effect of making it easier for new entrants into areas already served would
20 actually be the opposite of that intended. Part of the reason for this is that new entrants would
21 tend to focus on the peak travel periods and most densely populated areas. This would reduce
22 the efficiencies of the existing carriers because it would reduce their passenger loads and force
23 them to recover their overheads with a smaller revenue base. It would drive up fares, decrease
24 service levels, and possibly drive carriers out of business. In the process, carriers might be

25 ⁷ Which the Airporters do not agree the Commission has.

26 ⁸ This type of operation works well where there is a large concentration of traffic, such as Seattle
hotels, or in rural communities, where traffic volumes cannot support door to door service.

1 tempted to sacrifice safety to survive. In the long run, the scheduled operators would be forced
2 to cut back their overhead, i.e., buses, resulting in less frequent schedules. The door-to-door
3 operators would be forced to travel greater distances to fill their vans, thereby increasing per
4 passenger costs and increasing the time required to fill a van on the way to the airport.

5 The Commission cannot foreclose new entry altogether. It can, however, take
6 modest steps to discourage applicants that are not financially fit, that have questionable
7 backgrounds, and are not truly proposing an innovative service from applying. For example, the
8 application fee could be increased. Minimum balance sheet requirements could be adopted.
9 Persons engaged in unlawful transportation of passengers could be barred from applying. A
10 background check including criminal and driving records should be required. Persons convicted
11 of felonies and misdemeanors, as well as certain traffic violations,⁹ could be barred from owning
12 or controlling certificates. These are common-sense requirements and would help screen out
13 irresponsible applicants.

14 **III. Regulation of Rates.**

15 The Airporters urge the Commission to examine the standards and methods by
16 which it establishes rates for their services. The existing test, which is not set forth in a
17 Commission rule, has been in place for decades. The circumstances have changed dramatically
18 over that time period, yet the rate making method and standards have failed to grow and adapt to
19 today's circumstances.

20 The rate-setting method used today was established at a time when the
21 Commission actively regulated a number of inter-city bus companies and had fewer airporter-
22 type auto transportation companies. Air travel provided little in the way of a competitive check
23 to inter-city bus company rates and fares. Absent regulation, the inter-city bus companies would
24 face only one other viable check on their rate setting capabilities, the private automobile. In
25 contrast, as discussed above, travelers to the airport have numerous competitive options, ranging

26 ⁹ For example, reckless driving or driving under the influence.

1 from the extremely spartan and inexpensive service provided by public transit services to
2 premium competitors such as private automobiles and limousines.

3 Apart from all the competition the Airporters face, business risks have increased
4 over the decades. Due to the proliferation of litigation and rise in personal injury awards,
5 carriers face much greater financial exposure as a result of their operations than they used to.
6 Moreover, as recent events demonstrated, calamity can strike the travel industry at any time, due
7 to terrorism, recession, or even earthquake. Carriers need to have the incentive and wherewithal
8 to establish reserves and have a healthy balance sheet to weather the "storms" that could result
9 from declines in revenues. The current rate setting formula discourages capital formation and
10 provides rather thin profit margins from which to build reserves.

11 The current rate setting formula also creates some perverse incentives for carriers
12 that are contrary to the public interest. For example, the formula creates incentives to increase
13 expenses, rather than to decrease them. Because the formula is an operating ratio, a company
14 that has higher expenses is allowed to earn greater gross revenues, which equates to a higher
15 profit. It will do so by raising rates, assuming that competitive forces permit the carrier to do so.
16 Because there is no provision for a return on investment, carriers are encouraged to operate
17 vehicles longer than they should. This increases maintenance costs and leads to higher rates. It
18 is difficult to allow for extraordinary expenses. For example, rate cases or events such as the
19 costs of dealing with an earthquake, fire, or other unexpected loss or damage are not likely to
20 have occurred during most "test" years.

21 Carriers not only have no incentive, but actually have disincentives to making
22 investments that could reduce expenses. For example, a carrier that might be sufficiently large
23 enough to build and own its own maintenance facility will be discouraged from doing so because
24 of the lack of a return on investment. The carrier might be better off continuing to outsource
25 maintenance, even though the cost is higher. Finally, the current approach does not allow for
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1 flexibility in rate setting. Carriers would find it difficult under the current regime to offer
2 promotional or other creative fares to attempt to stimulate traffic or respond to competition.

3 The Commission has applied the current rate setting method as though it were a
4 rule. Accordingly, it is appropriate to consider the possibility of adopting rules governing the
5 rates of auto transportation companies. In so doing, the Airporters urge that the current formula
6 be updated to provide the needed flexibility, incentives to reduce costs, ability to raise necessary
7 capital, and to ensure a healthy industry that can meet the needs of the travelling public.

8 IV. Insurance Minimums.

9 The Airporters suggest that the Commission consider increasing minimum
10 insurance requirements. As noted above, the exposure to personal injury claims, in particular, is
11 greater. Increasing insurance limits will recognize the reality of today's exposures. Moreover,
12 insurance carriers writing high limit policies fulfill an important role in helping to assist in the
13 policing the safe operation of carriers. By increasing insurance limits, the Commission helps to
14 ensure that carriers continue to operate in the safest possible manner.

15 V. Consolidation of Rules.

16 While the Commission may, for administrative convenience, combine the rules
17 for auto transportation companies, excursion service companies, and passenger charter carriers
18 into a single chapter of the WAC, it is important that the Commission take care to recognize the
19 statutory differences regarding the three types of passenger carriers. In particular, the standards
20 for obtaining certificates to operate as a carrier are significantly different for auto transportation
21 companies. An applicant for a certificate to operate as an auto transportation company must
22 demonstrate two things: (1) "that public convenience and necessity requires such operation;" and
23 (2) if the applicant requests to operate in a territory already served by an existing certificate
24 holder it must demonstrate that the existing company "will not provide [service] to the
25 satisfaction of the Commission." RCW 81.68.040. In contrast, the Commission is required to
26 grant a certificate to an excursion service company applicant merely upon a showing that the

1 applicant is "fit, willing, and able to properly perform the services proposed" and that the
2 operations will be "consistent with the public interest." RCW 81.68.045. The entry standards
3 for passenger charter carriers are even lower. The applicant need only show that it is "fit,
4 willing, and able" to perform the service and conform to the Commission's rules and regulations.

5 A similarity among the three types of carriers is that the law requires that all
6 carriers have adequate insurance or other financial responsibility to cover liability for personal
7 injury or property damage. RCW 81.68.060, 81.70.280. The Commission is given discretion,
8 subject to certain minimums, regarding amount of insurance carriers are required to procure. Id.

9 Thus, the Commission may well wish to adopt rules common to all three types of
10 passenger carriers, for example regarding reports or minimum insurance requirements but, in so
11 doing, must accommodate the different statutory minimums and requirements applicable to the
12 different types of carriers.

13 CONCLUSION

14 For the foregoing reasons, the Airporters encourage the Commission to update
15 and modernize its rules, but move cautiously. The Commission should recognize that
16 circumstances have changed over time and allow increased rate flexibility. At the same time, the
17 public interest is best protected by ensuring that the airporter industry is not cannibalized by a
18 number of small carriers all seeking to serve the same high-density routes and travel times. The
19 goal of this proceeding should be to strengthen the industry so that it can continue to serve the
20 public with the excellent service at reasonable rates.

1 Respectfully submitted this 11th day of July, 2002.

2 MILLER NASH LLP

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4 Brooks E. Harlow
5 WSB No. 11843
6 Fax: (206) 622-7485
7 harlow@millernash.com

8 Attorneys for Washington Airporter
9 Operators Association and Evergreen
10 Trails, Inc.