

APPENDIX 5

**Letter to Staff counsel from Kenmore Air's counsel
Dated July 24, 2007**



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July 24, 2007

VIA ELECTRONIC MAIL

Mr. Don Trotter
Assistant Attorney General
Attorney General's Office
900 Fourth Avenue, Suite 2000
Seattle, Washington 98164-1012

Subject: Kenmore Air Harbor, Inc. – Courtesy Van Service

Dear Don:

Thank you for discussing this matter with me recently. Upon thorough review, we conclude that Kenmore Air Harbor, Inc. ("Kenmore Air") is exempt from any WUTC regulation, including its incidental van service between SeaTac Airport ("SEA") and its terminals at Boeing Field ("BFI"), Lake Union, and Kenmore under federal law. Specifically, 49 U.S.C. 41713(b)(1) broadly exempts an air carrier from any state law that relates to the carrier's prices, routes or services:

(b) Preemption

(1) Except as provided in this subsection, a State, political subdivision of a State, or political authority of at least 2 States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier that may provide air transportation under this subpart. (Emphasis added).

State law also exempts Kenmore Air from WUTC regulation. Consistent with federal law, WAC 480-30-11(1) specifically exempts transportation of "passengers who have had or will have had a prior or subsequent movement by air under a through ticket or common arrangement with an airline or with a connecting out of state passenger transportation company." (Emphasis added).



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Kenmore Air is an "air carrier" under federal law.¹ Attached are its federal Certificate and Registration. Kenmore Air is a "commuter" carrier that operates as a regular schedule airline. Kenmore Air is also a participating carrier of International Airline Transportation Association and has the code number of M5. All Kenmore Air flights are listed to and from SEA in the Official Airline Guide ("OAG"). Travel agents and the Navy are able to book connecting flights to and from other air carriers on Kenmore.

Kenmore Air itself operates the van service, not an affiliate or separate corporation. Thus, the courtesy van service Kenmore Air offers is an integral part of the "service of an air carrier."² Indeed, were it not for the van portion of Kenmore Air's air service, passengers from Oak Harbor, Port Angeles, and other cities served probably would not have viable air service between those cities and the rest of the world. The integrated service that Kenmore Air offers is an extremely valuable economic asset for the communities it serves, to the point that three cities have applied for federal grants to support it under Small Communities Air Carrier program. The courtesy van is a vital part of Kenmore Air's overall air carrier operation.

Kenmore Air also qualifies for exemption under 480-30-011(1), because all Kenmore Air passengers have had or will have had a "prior or subsequent movement by air under a through ticket or common arrangement with an airline." About 95% of Kenmore Air's passengers go to or from SEA for connecting flights and SEA is listed as the origin or destination on their tickets.³ These passengers thus have both a prior and a subsequent movement by air and a through ticket. Attached are typical examples of paper tickets written by the Navy and travel agents, showing the through arrangement to or from SEA. An electronic ticket showing SEA as the destination, is also attached. The exemption also applies to a "common arrangement with an airline." Since Kenmore Air is an airline and provides the van service as part of the air reservation, there is a "common arrangement."

We appreciated the cases you cited to us. They helped us get started on our research. Based on the additional facts we have provided, we trust you will understand why they are not relevant to the facts at hand. For example, in *Chouest v. American Airlines, Inc.*, 839 F. Supp. 412, 417 (E.D.La 1993). In *Chouest, American*

¹ The WAC does not define "air carrier," but Kenmore Air should qualify under state law as well.

² The state Department of Revenue has exempted Kenmore from state fuel taxes as an airline as well. Kenmore pays the same airline federal taxes, such as the Passenger Facility Charge, as larger air carriers.

³ The remaining passengers are destined for the Seattle area and arrange for their own ground transportation, such as taxis.



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Airlines, procured a tour bus for its passengers as part of its vacation package. While riding on the bus, one of the passengers sustained injuries and sued the airline for negligence. The court held that the negligence claims of the passenger were not preempted by federal law pursuant to Section 41713(b)(1) because the suit involved state tort remedies rather than economic regulations imposed by a state. Additionally, the court found that the tour bus service was not "integral" to the air transportation service provided by the airline. *Id.* The *Port of Seattle* case (92 Wn.2d 789), dealt with a stand-alone airporter service, not an integrated operation of an airline with through ticketing.

Here, Kenmore Air provides through-tickets that include both air and ground transportation. Kenmore Air operates the courtesy van itself. Additionally, classification of Kenmore Air has nothing to do with state tort law remedies, but rather involves potential direct economic regulation of Kenmore Air's airline business. Finally, unlike the tour bus in *Chouest*, the Kenmore Air shuttle is an integral and essential part of a Kenmore Air's passenger transportation system.

After you have a chance to review this letter and the e-mailed attachments, please give me a call to discuss where we go from here.

Very truly yours,

Brooks E. Harlow, P.C.

cc: Mr. Gene Eckhardt (via e-mail)