APPENDIX 6

Letter to Staff from Seatac Shuttle
Dated August 23, 2007

August 23, 2007

Seatac Shuttle, LLC
PO Box 2895
Oak Harbor, Wa 98277

Ms. Penny Ingram
Compliance Division
Washington Utilities and Transportation Commission
Olympia, Washington 98504

VIA ELECTRONIC EMAIL pingram@utc.wa.gov

Dear Penny:

It has now been nearly five months since notice was given to the WUTC of alleged violation(s) by Kenmore Air Express (KAE). At this late date KAE is attempting to reverse staff's decision through dubious arguments that in our opinion only seeks to delay the inevitable.

The violations under investigation are not "related to a price, route, or service of an air carrier..." but rather actions of that air carrier subsequent and ancillary to intrastate flights. To suggest that 49 USC 41713(b)(1) is applicable is stretching the law beyond the breaking point. The actions of KAE in this instance are not an interstate movement nor are they under a through ticket agreement or common arrangement with an airline or other interstate transportation company. They in no way are a part of flight operations regulated by the FAA or Title 49. The State clearly has the regulatory authority over intrastate passenger ground movements.

No one disputes that KAE holds an Air Carrier Certificate or is a member of certain organizations. The plaintive cry that "The courtesy van is a vital part of Kenmore Air's overall air carrier operation" is hardly part of a valid argument that excuse it from the law. Under that logic, our company which has USDOT interstate authority should be exempt from WUTC regulation because our intrastate shuttle service is vital to us.

KAE tries to make the argument that 95% of its passengers have had or will have a "prior or subsequent movement by air under a through ticket or common arrangement with an airline" and therefore they should be exempt from State regulation. Their E-tickets are to and from Boeing field, van service is discretionary and not part of the ticketing agreement. Their air tickets state that travel is to/from Seatac with no mention of van service, we hold this to be a violation of 49 USC 41714. A common arrangement with an airline implies and must be construed to mean an arrangement with a second airline; one does not have a common arrangement with oneself. All of our passengers have had or will have a movement by air on an arrangement that meets KAE's definition of a common arrangement and we hold interstate authority from USDOT as well. I once again suggest that if you don't have authority here you don't have it over us.

The argument presented is that because of its air carrier certificate KAE should be exempt from state regulation is ridiculous. The ground transportation is an ancillary

service that is at the discretion of KAE. It is important to KAE as a marketing tool and is not a function of any authority granted them by USDOT under their air carrier certificate. It has circumvented the law in an effort to undercut the regulated transportation providers in this state. As pointed out in its letter to Mr. Trotter, its Seattle bound passengers enjoy no such unregulated transportation service but rely on their own ground transportation or taxis. Surely if the fate of the airline hinged on being able to provide unregulated ground transportation to its passengers it would do so to all of its customers. Additionally KAE despite its federal authority is not exempt from other state regulation enforced upon those doing business in Washington. They pay B&O tax, L&I, property tax, etc. The exemption for fuel tax cited is afforded any aircraft as it is to boats and off road vehicles as they do not directly impact the state road system.

To summarize, the passenger ground service provided by KAE is a commercial service subject to regulation by the WUTC. It is not "free", it is paid for by the income derived from all of its customers, they subsidize the service. It is a discretionary service provided to only some of KAE's passengers. It is not available to the general public for "free", it is not a complementary service, to be a passenger you must compensate KAE. KAE uses it as a marketing tool to attract passengers in a small market that cost the passenger 40% + more money than the allowed fare under WUTC regulation. Further, KAE operates its air service to Boeing Field, not Seatac International Airport. Its literature describes its operations to Boeing Field; it makes a distinction between the authorized air service and its van service to Seatac. It flies to Boeing Field for economic reasons not because of passenger convenience; it is circumventing the law for economic advantage. KAE has recently applied for federal grants to enable it to provide expanded passenger van service in an already assigned (by WUTC) territory as an Essential/Small Community Air Service. 49 U.S.C. 41714(a)(1) under their claims ensure the availability of landing rights at Seatac to them. Is is cheaper for them to use unregulated vans for the segment between Boeing Field and Seatac and they have made that decision in defiance of regulations.

It is now time for action. The deadline for KAE to submit an application to the WUTC has past. If WUTC does not modify its position on this issue, a cease and desist order from the commission is appropriate commensurate with the refuting of the KAE's latest argument, to be effective immediately. If your opinion is swayed by them then we will request a formal hearing on this matter and KAE must cease its ground operation until resolution. We have been very patient but five months is enough, either there is enforcement or there is not. All shuttle operators will be curious to see if the WUTC has any real authority or the intent to exercise it.

I await the letter promised in your email of August 15, 2007. A swift and satisfactory resolution of this matter is anticipated. Please keep me informed of your progress.

Sincerely,

Michael Lauver
cc: Dave Pratt