

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In Re Petition of

SHUTTLE EXPRESS, INC.,

For Exemption From WAC 480-30-213 and  
WAC 480-30-456, Pursuant To  
WAC 480-07-110

DOCKET TC-160819

AMENDED PETITION FOR  
LIMITED AND CONDITIONAL  
EXEMPTION

TO: STEVEN V. KING, Executive Director and Secretary, Washington Utilities and  
Transportation Commission, P.O. Box 47250, Olympia, Washington, 98504-7250

1 Petitioner Shuttle Express, Inc. (“Shuttle Express” or “Petitioner”) is an auto transportation  
company that operates within the state of Washington and holds a certificate of public  
convenience and necessity from the Commission. The full name and address of Shuttle  
Express and name and address of its attorneys are:

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**I. INTRODUCTION AND RELIEF REQUESTED**

2 Shuttle Express respectfully requests that the Commission:

- A. Open a proceeding and consider this petition at a Commission open meeting  
by September 8, 2016, or as soon thereafter as reasonably practicable.

B. Grant Shuttle Express a *limited and conditional*<sup>1</sup> exemption, pursuant to WAC 480-07-110, from compliance with WAC 480-30-213 and WAC 480-30-456 (if applicable), to permit Shuttle Express to directly and fairly meet new competition from Uber, Lyft,<sup>2</sup> and any similar unlicensed ride-sharing carriers<sup>3</sup> currently serving SeaTac International Airport (“SeaTac”) without certificates or any oversight by the Commission.

3 Specifically, Shuttle Express seeks conditional exemption from the provision of WAC 480-30-213 that, “(1) The vehicles operated by a passenger transportation company must be owned by or leased to the certificate holder.” and “(2) The driver of a vehicle operated by a passenger transportation company must be the certificate holder or an employee of the certificate holder.”

4 Further, to the extent it may be applicable to the proposed operations, Shuttle Express seeks conditional exemption from the provision of WAC 480-30-456(3) that, “Any sale or release of customer information without the written permission of the customer is prohibited” and a partial and very limited waiver from inconsistent definitions and requirements of WAC 480-30-221 and WAC 480-30-321.

5 This Petition is based on the Declaration of Wesley Marks filed herewith (“Marks Decl.”), and the discussion and analysis set forth below.

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<sup>1</sup> A list of proposed conditions to further limit the extent of the waiver and ensure that public safety and the broader public interest are protected is set forth in Section V., below.

<sup>2</sup> Industry experts and press alike have struggled to agree on a generic term for companies like Uber. “Uber” is sometimes used generically in both noun and verb form. Hereafter, for simplicity and clarity—and to avoid implied limitations of referring to a class of service using the name of one company—the term “ride-sharing service” or “unlicensed ride-sharing” services will be used for Uber and Uber-like services. Shuttle Express and other certificated companies will be referred to as “auto transportation” companies. Shuttle Express also offers “limousine” services using independent contractor drivers. When that term used herein, the intent is to refer to companies operating and licensed under RCW Ch. 42.72A.

<sup>3</sup> See Note 2, *supra*, for defined terminology.

6 Shuttle Express files this petition because Uber and other unlicensed ride-sharing services  
have recently begun to transport passengers to and from SeaTac in competition with Shuttle  
Express' auto transportation, charter, and limousine services. Because they do not have  
certificates from the Commission and do not follow Commission regulations, they are able  
to do so at a lower cost. The Commission's independent contractor bar, in particular, makes  
it impossible for Shuttle Express to compete fairly with the unlicensed ride-sharing services.  
An exemption would be in the public interest because it would enable Shuttle Express to  
offer a better and safer ground transportation alternative to the unlicensed operators, all  
under the auspices and oversight of the Commission.

## II. APPLICABLE STATUTES AND RULES

7 This motion is based on RCW 80.01.040 and on WAC 480-07-110.

## III. STATEMENT OF FACTS

8 Shuttle Express provides door-to-door on demand auto transportation service between Sea-  
Tac Airport and homes and businesses throughout most of King County as well as in  
portions of neighboring counties. The service Shuttle Express provides is extremely popular  
and serves a very critical niche between the very expensive but direct and convenient taxi  
service and the very low-cost but indirect and inconvenient public transit buses and trains.  
Shuttle Express is now the largest auto transportation company the Commission regulates,  
and carries over three quarters of a million total passengers a year in its overall operations.  
Marks Decl., ¶ 2.

9 The niche that Shuttle Express serves is incredibly narrow. The nature of its service is  
competitive and it constantly faces cost pressures, such as the new \$15/hour minimum wage  
for its employed drivers under the City of SeaTac's ordinance. It has always been a

challenge to provide a regulated share ride service in the Seattle area as an auto transportation company on a sustainable basis. The spread between the costs of a door-to-door service and the competing rates of taxis is small. And airline passengers have a number of other options for ground transportation to and from the airport, such as taxi, limousine, or private auto. Marks Decl., ¶ 2.

10 The challenges of providing auto transportation service at SeaTac recently grew considerably as Uber and the other unlicensed ride-sharing carriers began to serve the airport this spring. The unlicensed ride-sharing carriers have several important cost advantages that a fully-regulated auto transportation company cannot match without at least a narrow exemption from this Commission. Chief among them is the ability to use independent contractors. Indeed, independent contractors are one of the two core aspects of the business model of Uber and its imitators.<sup>4</sup> Because they can use independent contractors, instead of statutory employees, the unlicensed ride-share operators do not have to pay a \$15/hour wage, or any minimum wage. They do not have to pay for benefits or payroll taxes, either. Nor do the unlicensed operators have to own vehicles and account for depreciation or wear and tear. Marks Decl., ¶¶ 2-6, 9.

11 The unlicensed ride-share operators provide services that are largely indistinguishable from the Shuttle Express door-to-door auto transportation service. They solicit passengers and offer transportation to and from the airport to unrelated persons and parties in the same vehicle and on the same trip. Their share ride service offers a lower fare than their taxi-like service which carries a single person or party, typically between a single location and the airport. Thus their fares are competitive with the regulated door-to-door operators, such as

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<sup>4</sup> The other is their booking application that has been widely downloaded and accepted by smartphone users. That is discussed further in paragraphs 14-15 below.

Shuttle Express. The primary difference in the service itself is that it is offered in an ordinary passenger vehicle, rather than a 10 passenger van or bus. This makes the service more attractive to passengers, in part because it effectively limits the number of pickups and drop-offs that the vehicle can make on the way to or from the airport. Marks Decl., ¶¶ 2-8

12 Fortunately, Shuttle Express has developed relationships with independent contractors who own and operate limousines and town cars. These independent contractors operate licensed limousine services all over the Puget Sound region. As limousine operators, they compete on a fairly even footing with Uber, taxis, and other operators when those other operators are carrying only a single party. But when the unlicensed operators are carrying unrelated parties to one or more destinations in a single trip, they are operating much like an auto transportation company. Marks Decl., ¶¶ 2, 8-10. But based on Commission precedent, Shuttle Express independent contractors cannot operate like the unlicensed ride-share operators without risking penalties. *See* Order No. 04, Final Order, Docket TC-120323 (March 19, 2014).

13 The issue of the lack of regulatory parity is most acute when the unlicensed ride-share operators provide service to and from SeaTac, because of the large volume of traffic to and from that hub. More importantly, they are able to siphon business from certificated carriers—primarily Shuttle Express—because they do not bear the costs of operating in full compliance with the Commission’s regulations and are able to make extensive use of independent contractors. Marks Decl., ¶¶ 2, 9.

14 Shuttle Express constantly strives to improve both the travel and booking experience of the public that use its service. New software and technologies to reduce the time required to book a reservation, provide direct information to the passenger of their vehicle’s location,

and overall improve the service offering are continually being developed. The new software and apps will allow Shuttle Express to compete similarly on a *technology* basis with operators such as Uber. Shuttle Express already has a mobile booking application, but its full potential is limited due to the inability to compete using independent contractors, as the unlicensed ride-share operators are doing today. Marks Decl., ¶¶ 2, 7-10.

15 The current and forthcoming development of the Shuttle Express mobile apps will enable Shuttle Express to closely match the second core aspect of the unlicensed ride-share services, which is their popular, hi-tech, and user-friendly booking and payment apps. Together with a waiver that would allow Shuttle Express to match the first core aspect—use of independent contractors—Shuttle Express would be in an excellent position to compete with the unlicensed ride-share operators on a reasonably fair and level playing field. Not coincidentally, the public would benefit greatly.

#### IV. DISCUSSION

16 The standard for consideration of a request for exemption is broadly stated as “the public interest standard.” WAC 480-07-110(2)(c). The Commission will grant an exemption in a case if the request is, “consistent with the public interest, the purposes underlying regulation, and applicable statutes.” WAC 480-07-110(1). Examining each of these three prerequisites, it is clear that a limited and conditional exemption allowing Shuttle Express to accept and refer passengers to its independent contractors in direct competition with the unlicensed ride-share operators should easily meet the Commission’s standards.

17 Allowing Shuttle Express to compete fairly with the unlicensed ride-share operators would be a great benefit to the public interest, especially with the conditions proposed herein

below. First and foremost, it would allow the public to obtain Uber-like service from a company that is certificated and regulated, both as to rates and safety.

18 Allowing use of independent contractors would also benefit Shuttle Express and its employees and contractors. Shuttle Express has excess capacity in administration and its independent contractors have capacity to make more trips. Today airline passengers who want timely ground transportation in cars (rather than vans or busses) but at a share ride cost must walk right past Shuttle Express and instead take an unlicensed ride-share operator. In the long run spreading overhead and fixed costs over a lesser, as opposed to a greater, number of trips will result in higher fares.

19 A waiver would allow passengers to consider and take a *de facto* regulated service at a price that is competitive with an unregulated service.<sup>5</sup> Both Shuttle Express and its independent contractors would be able to earn more revenues on their fixed and overhead costs and help keep fares low. To the extent the contractors should become too busy to handle more trips, it is fairly easy to engage more. The limiting factor is on the demand side,<sup>6</sup> not supply.

20 There are a number of other secondary, but important, public interest benefits that would flow from a waiver, such as:

- a. Passengers would be carried in a relatively luxurious and well-maintained town car, rather than in whatever vehicle the unlicensed ride-share contractor happens to drive.

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<sup>5</sup> Because it will be Shuttle Express that will be deemed to “operate” the service, and Shuttle Express holds the appropriate auto transportation certificate, the service will comply with RCW 81.68.040. That statute does not bar or even address use of independent contractors. Only WAC 480-20-213 addresses the employee/contractor issue, and that can be waived. The keys are a certificate covering the operations and effective Commission oversight, both of which will be preserved here.

<sup>6</sup> Caused in part by the Commission’s regulations.

- b. Passengers would receive the auto transportation rates the Commission has already reviewed and approved as being fair, just, and reasonable. The rate would often be less than that of the unlicensed ride-share operators, especially for longer trips and during busy periods.
- c. Passengers would have rate certainty and stability, not “sticker shock.” The rate would be constant, not variable, and there would be no “surge pricing.”
- d. To help ensure a safe ride and passenger confidence, each independent contractor would be required to meet all applicable Commission safety regulations and Shuttle Express standards, such as equipment, operations, drug testing, drivers’ licenses, and safe driving records.
- e. Each independent contractor would be licensed as a limousine carrier by the Department of Licensing (“DOL”) under RCW Ch. 42.72A.
- f. To further promote safety, Shuttle Express would require each independent contractor operating under the waiver to voluntarily submit to Commission safety inspections upon request under the same conditions applicable to vans owned and operated by auto transportation companies.
- g. Passengers would have the benefit of insurance procured by either the contractor, Shuttle Express, or a combination thereof with at least the same amount of coverage required by the Commission for certificated auto transportation companies.
- h. Passengers would have a degree of privacy and protection of their personal information not applicable with the unlicensed ride-share



operators based on the conditions proposed below. Both Shuttle Express and its contractors<sup>7</sup> will agree not to use customer information for any sales or marketing purposes and not disclose customer information to the full extent required by WAC 480-30-456.

21 As much as possible, this petition requests relief and proposes conditions that are intended to offer the public “the best of both worlds.” *I.e.*, the public will receive service that is equal to or better than that offered by the unlicensed ride-share operators. And, importantly, they will receive that service from a regulated, certificated, auto transportation company and its independent contractors. While the independent contractors will not be directly regulated by the Commission, Shuttle Express will be. And the conditions of the waiver, if granted, would closely mimic direct regulations. Most importantly, the public would receive the benefits of the Commission’s applicable regulations, such as rate regulation, inspections, privacy, safety, reporting, and insurance. *See* Marks Decl., ¶¶ 10-11. All of these benefits are currently absent from the operations of the unlicensed ride-share operators.

22 Commission precedent for the exemptions requested here can be found in Order No. 01, Order Granting Petition With Conditions, Docket TC-132141 (Dec. 13, 2013). There a similar waiver of 30 days was granted to allow Shuttle Express to utilize contractors to help meet peak demand expected during the Christmas and New Year holidays. While the service was well-received by Shuttle Express’s passengers, there was not as great demand as was expected and Shuttle Express did not need to extend the waiver. Nor has Shuttle Express needed to renew that waiver, as it has been able to meet demand for regular door-to-

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<sup>7</sup> Only Shuttle Express will have and control all of the aggregate customer information of all customers and it will treat it the same way it treats all of its auto transportation customers’ information. Independent contractors will only have information of the relative handful of people they carry, and with information limited to that required to perform the service requested.

door service since then using only employed drivers. Now a similar exemption is needed, but for very different reasons. Since it appears Uber and the others are here to stay, the new exemption needs to be somewhat open-ended as to time.

23 The driving factor for this petition is the new competition from unlicensed ride-share operators who are doing almost exactly what Shuttle Express was doing under the 2013 exemption order, but without any oversight or approval from this Commission. Specifically, they are using independent contractors to carry multiple unrelated passengers to and from SeaTac on the same trip. Shuttle Express, through its limousine division, is perfectly capable of doing the same, but cannot compete on cost or price unless it is able to use independent contractors, the same as Uber and the other unlicensed ride-share services.

24 Obviously a town car or limousine is no less safe when making two stops compared with making one stop, all other things being equal. Thus, the issue is not safety, but rather a technical regulatory issue. To further ensure that public safety is protected, Shuttle Express proposes a condition that will allow the Commission to exercise the same safety oversight of the independent contractors as company-owned and operated vans. See Section V., below.

25 Shuttle Express has gone to great lengths to ensure that its limousine service is not only timely, convenient, and comfortable, but also just as safe as its auto transportation service. The independent contractors are all subject to background checks, inspections, drug tests, and strict contractual obligations to ensure safe and comfortable operations. Their limousines are licensed and inspected by the DOL. Shuttle Express does its own inspections of the contractors' vehicles that go beyond the requirements of both the DOL and typical Commission inspections. All independent contractor drivers are drug tested, both at the outset and randomly. Most contractors have a DriveCam or similar video recording device

in place to monitor for any safety issues, which goes above and beyond the DOL requirements and even the Commission's requirements. Marks Decl., ¶¶ 2, 8, 10.

26 The purpose behind WAC 480-30-213 is ultimately safety, through more direct regulatory oversight over auto transportation operations. But there is nothing that makes an employee driver inherently a safer driver than an independent contractor driver. If adequate supervision, controls, and oversight are in place, the Commission can ensure that independent contractor drivers are every bit as safe as employee drivers. The conditions Shuttle Express already imposes on its independent contractors—coupled with the conditions proposed herein below—ensure more than adequate oversight, both by the Commission and Shuttle Express.

27 Condition d., below, proposes that Shuttle Express will contractually require independent contractors to comply with “applicable” Commission safety regulations. To make it clear which regulations are “applicable” and which are not, Shuttle Express proposes a waiver of some U.S. Department of Transportation (“USDOT”) regulations which are adopted—in an expanded scope—by WAC 480-30-221. The purpose of the waiver is to limit the regulations to be followed to those that are relevant to the operation of vehicles owned and operated by independent contractors that carry fewer than 8 passengers. In order for the waivers in this petition to accomplish their essential purpose, it is necessary to ensure that the contractors retain their independent status, while both being able to continue their independent limousine operations and also accept work from Shuttle Express under the waivers proposed herein. Accordingly, Shuttle Express requests partial waiver of the WAC 480-30-221 to the extent it expands the scope of coverage to vehicles small than 8 passengers, specifically, 49 CFR Parts 385, 390, 391, 392, 393, 395, 396, and 397.

28 The most efficient way to waive the irrelevant or incompatible USDOT regulations, while retain the relevant ones, is it waive the definition in WAC 480-30-221 that extends all the adopted USDOT regulations to all vehicles (per the definition in WAC 480-30-211), not just to vehicles carrying more than 8 passengers, which is the definition of “Commercial Motor Vehicle” in Part 390 of CFR Title 49. The WAC 480-30-221 language to be waived is shown here, with the waived language struck through in legislative format, for clarity:

Entire Part 390 is adopted and applies to Washington intrastate operations;  
~~with the following exceptions:~~

~~(1) The terms "motor vehicle," "commercial motor vehicle," and "private vehicle" are not adopted. Instead, where those terms are used in Title 49 C.F.R., they have the meanings assigned to them in WAC 480-30-036 (Motor vehicle and private vehicle) and WAC 480-30-211 (Commercial motor vehicle).~~

29 Shuttle Express also requests a waiver of WAC 480-30-321(1), but not WAC 480-30-321(2), requiring vehicle identification on the outside of each vehicle. This requirement is inconsistent with RCW 46.04.274, which provides that a limousines should have no external markings.

30 Next, the purpose underlying WAC 480-30-456(3), is to prohibit release of customer information to third parties for purposes unrelated to the providing or billing of the transportation services requested, such as to airlines to market air travel. Shuttle Express seeks here only to disclose customer information for the provision of a service that each of the customers requests, which WAC 480-30-456(2)(a) seems to permit. Thus, names, addresses, telephone numbers, and email addresses may be disclosed to the drivers, to facilitate coordination, pick up, and routing. And credit card information would be shared

with payment processors and banks as needed to facilitate payment for the transportation services rendered.

31 Given the limited nature of expected use of customer information to serve the customer's request for airport ground transportation, the underlying purpose of WAC 480-30-456(3) will still be met. *See* WAC 480-30-456(2)(a). To further promote this purpose, Shuttle Express proposes conditions below that would make the independent contractors contractually liable to comply with the rule as well. It may be that an exemption is not needed under these circumstances, but Shuttle Express is including it in this petition out of caution.

32 This petition is in direct response to commencement of operations by unlicensed ride-share operators. Accordingly, Shuttle Express proposes that it be limited in two ways, to be directed at the competition it is intended to address. First, a proposed condition would limit the service to carrying just three or fewer unrelated parties in the same vehicle on the same trip. This would target the service to meet competition from ordinary automobiles, as currently used by Uber and the other unlicensed ride-share services. Second, the exemption would sunset after a reasonable transition period if the unlicensed ride-share operators either get certificates or cease operating, for example due to Commission enforcement action. In this way, the Commission's options for dealing with the new services will not be unduly constrained by its order on this petition. Shuttle Express suggests that six months would be a reasonable transition period. If Shuttle Express is to invest in the new service model and attracts a large number of passengers, time will be needed to change that model or wind down the service.

33 To help ensure the public interest in fair rates, safety, and privacy are protected, Shuttle Express also proposes a number of conditions in the next section of this Petition. Collectively, they will ensure that the Commission retains sufficient direct and indirect supervision over the service so that the public can be protected in a number of ways, just as with regulated auto transportation companies. But under the Commission’s auspices they would still be able to enjoy the benefits of a nimble service provided by independent contractors. And most importantly, they would have a choice between: 1) an unlicensed ride-share operator; or 2) a competitive—but regulated and unambiguously lawful—service arranged and managed by Shuttle Express.

#### V. PROPOSED CONDITIONS

34 Having established that an exemption from WAC 480-30-213 and WAC 480-30-456 would meet the criteria of the Commission’s rule on exemptions and the underlying auto transportation statute, Shuttle Express proposes the following conditions to be applicable to the exemption. These conditions provide further assurance that the exempted operations will be consistent with the purposes of the underlying regulations and the overall public interest. Shuttle Express proposes that:

- a. All passengers must be carried at rates and under terms and conditions as set forth in the applicable Shuttle Express door-to-door auto transportation tariff as reviewed and approved by the Commission. While it is anticipated existing tariffs would be used, Shuttle Express would be permitted to file tariff changes or special tariffs, or use flexible fares, to better meet competition or serve the public interest.

- b. No more than three unrelated parties may be carried in the same vehicle on the same trip, no more than five passengers plus the driver may be carried on a trip and in no event more persons than there are seats with seat belts in such vehicle.
- c. The waiver would be in effect indefinitely, unless terminated by the Commission for cause after notice and hearing. However, if Uber, Lyft, and the other unlicensed ride-share operators cease providing share ride service to and from SeaTac, or begin operating under auto transportation certificates issued by the Commission, the waiver could be terminated without cause after a transition period of six months.
- d. Shuttle Express must ensure that each contractor operating under the waiver meets WUTC applicable safety regulations that are consistent with the proposed operations by independent contractors, such as equipment, operations, drug testing, drivers' licenses, safe driving, etc. (Commission safety regulations applicable to auto transportation companies, subject to the foregoing requested waiver of WAC 480-30-221). Safety regulations normally applicable to Limousine operators will also continue to apply, when contractors are operating under the waiver of certain Commission auto transportation rules.
- e. Shuttle Express will undertake reasonable efforts to inform passengers verbally or in writing reasonably in advance of provision of transportation that they will or may be carried by an independent contractor, rather than a Shuttle Express employee and vehicle.

- f. The independent contractors operating under the waiver must agree to voluntarily submit to Commission safety inspections upon request under the same conditions applicable to vans and buses owned and operated by Shuttle Express and other auto transportation companies.
- g. Insurance procured by either the contractor, Shuttle Express, or a combination thereof must be obtained covering the contractor with the same amount of coverages required by the Commission for Shuttle Express' auto transportation services.
- h. The contractor must agree not to use customer information for any sales or marketing purposes of its own and to protect and not disclose customer information, to the full extent required by WAC 480-30-456.
- i. Each independent contractor must be licensed as a limousine carrier by the Department of Licensing under RCW Ch. 42.72A.



- j. Shuttle Express would pay the customary regulatory fees applicable to auto transportation service on each trip using independent contractors under the authority of the exemption and, for the first year, would file quarterly reports of the total number of trips operated or passengers carried under the exemption.

## VI. CONCLUSION

35 For the foregoing reasons, Shuttle Express should be granted a limited and conditional exemption as proposed herein. It is hoped this exemption can be granted on or soon after September 8, 2016.

Respectfully submitted this 1<sup>st</sup> day of September, 2016.

LUKAS, NACE, GUTIERREZ & SACHS, LLP



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