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BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

EVERGREEN TRAILS, INC., a	)	
Washington corporation, d/b/a	)	
Grayline of Seattle,	)	
	)	
Complainant,	)	NO. TC-900407
	)	
v.	)	RESPONDENTS POST-HEARING
	)	BRIEF
SAN JUAN AIRLINES, INC., a	)	
Washington corporation, d/b/a	)	
Respondent.	)	
_____	)	

INTRODUCTION

The instant action is a complaint proceeding brought pursuant to RCW 81.04.110 against San Juan Airlines, Inc. d/b/a Shuttle Express (hereinafter Shuttle Express), the holder of auto transportation company permit number C-975. The complaint is initiated, not by the Washington Utilities and Transportation Commission on its own motion following enforcement staff investigation and recommendation, but,

rather, by Evergreen Trails, Inc. d/b/a Grayline of Seattle (hereinafter Grayline), another auto transportation company operating pursuant to permit C-819.

Grayline alleges in the complaint that Shuttle Express is operating in violation of the terms and limitations of its operating permit and that such continuing violations have caused Grayline to suffer substantial and irreparable injury.

As demonstrated at the hearing and as argued below, Shuttle Express has not been and is not operating in violation of the terms of its operating authority, and Grayline has failed to demonstrate the incurrence of any substantial and irreparable harm resulting from the operations of Shuttle Express.

#### PROCEDURAL BACKGROUND

The instant proceeding was initiated on April 25, 1990 when the complainant, Grayline, filed a complaint with the Washington Utilities and Transportation Commission against the respondent, Shuttle Express, pursuant to the provisions of RCW 81.04.110.

In essence, the complaint alleges that Shuttle Express has and is operating in violation of the "on-call" provision of its operating certificate of authority and that, as a direct result of such alleged violations, Grayline has been substantially and irreparably damaged. The complaint asks that service by Shuttle Express between the Seattle/Tacoma International Airport and "the hotels in Seattle" served by Grayline be restricted.

On May 16, 1990, Shuttle Express filed its denial of the allegations contained in the complaint.

Under service date of June 6, 1990, the Washington Utilities and Transportation Commission issued a Notice of Hearing setting the above entitled matter for hearing in Olympia, Washington on June 27, 1990.

The matter did come on for hearing before the three commissioners of the Washington Utilities and Transportation Commission and Administrative Law Judge Steven Lundstrom on June 27th and 28th, 1990.

At the close of hearing, the Administrative Law Judge requested the filing of simultaneous post-hearing briefs by all parties on or before July 31, 1990. At the request of counsel for the complainant Grayline, the due date for post-hearing briefs was extended to August 7, 1990.

#### ISSUES PRESENTED

RCW 81.04.110, the statute authorizing a competing carrier to initiate complaint proceedings against another carrier, provides, in relevant part, as follows:

"Complaint may be made by the commission on its own motion or by any person or corporation . . . setting forth any act or thing done or omitted to be done by any public service corporation in violation, or claimed to be in violation, of any provision of law or of any order or rule of the commission."

As noted in State Ex Rel Arrow Transportation v. WUTC 60 Wn.2d 825 at P. 830, 376 P.2d 433 (1962),

"One who asserts that an administrative permit is being unlawfully exercised by the permittee has the burden of proof."

Here, as noted above, Grayline alleges that Shuttle Express is violating the "on-call" provision of its permit and that, as a direct result of such violations, Grayline has sustained such substantial and irreparable damage as to warrant some restriction of service by Shuttle Express to the Seattle hotels served by Grayline.

Consequently, Grayline has the burden of proving that (1) the operations of Shuttle Express are in violation of the laws, rules, or orders of the Washington Utilities and Transportation Commission and that (2) such alleged violations are the proximate cause of such substantial and irreparable damage to Grayline as to warrant restricting the services of Shuttle Express.

Essentially, three issues are presented as follows:

1. What is the meaning and interpretation of the term "on-call" as utilized in the operating permit of Shuttle Express;
2. Is Shuttle Express violating the "on-call" provision of its operating permit; and
3. Even assuming that the operations of Shuttle Express are in violation of the "on-call" provision of its operating permit for purposes of argument only, has Grayline demonstrated and proved that such violations are the proximate cause of any substantial and irreparable injuries sustained by Grayline.

As demonstrated at hearing and as argued below, the operations of Shuttle Express are not in violation of the terms of its operating authority or of any law, rule, regulation, or order of the Washington Utilities and Transportation Commission, and, in addition, Grayline has failed to demonstrate not only any causal connection between the operations of Shuttle Express and any substantial and irreparable injury, but also any substantial and irreparable injury at all. Consequently, the complaint should be dismissed.

#### ARGUMENT

##### I MEANING AND INTERPRETATION OF "ON-CALL"

The first issue that must be decided is what is the meaning of the term "on-call" as utilized in the operating permit of Shuttle Express, which is permit number C-975.

The permit of Shuttle Express was admitted into evidence as Exhibit 3, and it reads, in relevant part, as follows:

". . . The carrier may offer only on-call, door to door type service between airports served and any points within the territory served including residences, hotels and businesses. . . "

Grayline contends and argues that "on-call" means passengers must make a telephone request for service before boarding.

As argued below, however, Shuttle Express contends, and has always contended, that the use of the term "on-call" was never intended to require and does not require a telephone request for service by the passenger prior to boarding a van. Rather, "on-call" is a term utilized

and intended to distinguish the unique Shuttle Express services from the regular route, scheduled service of the other carriers including Grayline "On-call" is a term to describe carrier service as immediately and readily available in response to a passenger's request for service in accordance with the passenger's own particular schedule as well as to or from the passenger's designated destination. The term is used to distinguish this "on-call" service from the limited, scheduled service of other carriers, like Grayline, that operate on a fixed schedule and serve only certain limited and designated locations. An "on-call" carrier stands and remains "on-call" to respond to a passenger's request for service and readily available to respond to the passenger's request.

"On-call" is not and was not intended to place a limitation on how a passenger may request the service. The service may be requested by any passenger who hails a van by any means, whether it be by telephone, in person at curbside as a walk up passenger, or by any other means. In short, "on-call" service is a term that permits the carrier to transport passengers who hail or summon the van for immediate service. The immediate service may be requested by the passenger by any means. It is intended to allow passengers to request the service at curbside as walk up passengers. Passengers may call for the service by waving down a can or by walking up and orally requesting service.

The strong arguments in support of the understanding of Shuttle Express as to the meaning of "on-call" as well as its intended interpretation as utilized in the permit authority of Shuttle Express are

set forth in that portion of Exhibit 1 that appears as correspondence to the Washington Utilities and Transportation Commission on the of November 21, 1989.

As detailed in Exhibit No. 1, the Respondent, Shuttle Express, is aware of but one grant of authority to an auto transportation company pursuant to RCW 81.68 et seq, wherein the term "on-call" has been utilized. That is order No. 1809, in the matter of the Application of San Juan Airlines, Inc. d/b/a Shuttle Express, Hearing No. D-2566 (April 21, 1989).

It has always been the rule of the Washington Utilities and Transportation Commission that the definition and interpretation of terms utilized in a grant of authority must be based, in large part, on how that term was utilized at the hearing and in the order. In the hearing and order referenced above, "on-call" service was clearly utilized only to distinguish the service provided by Shuttle Express from the regular route, scheduled service provided by the protesting and intervening carriers. Grayline was one of those other carriers. In other words, the term "on-call" is utilized to distinguish the service as readily available to passengers in response to a passenger's request for service rather than the scheduled service of other carriers.

"On-call" service is a term that permits a carrier to transport passengers who hail the car for immediate service. The immediate service may be requested by the passenger by any means. Passengers may request the service at curbside as walk up passengers.

As stated at page 3 of order No. 1809,

"...passengers will be able to hail the vans without telephone calls."

Additionally the current operating instructions between Shuttle Express and the Port of Seattle, which are incorporated into Exhibit #38 that was introduced into evidence at the application hearing, clearly provides as follows:

"Concessionaire shall be able to transport passengers who have solicited or requested their service at curbside."

At the above referenced hearing, Mr. Sherrell clearly described the applicant's proposed service to include the ability to transport passengers who hail the services at curbside. For example, at page 211, Mr. Sherrell testified as follows:

"Q. Can you tell us whether or not under the new operating agreement the manner and method of solicitation of passengers at the airport will change.

A. Yes, it will.

Q. Can you describe for us to what extent, sir.

A. It is legal for a passenger to solicit our service as a walk up.

Q. Do you have any opinion with respect to your current operating equipment as to whether or not you will be able to serve or you have the equipment capabilities of serving walk up passenger.

A. Yes. We do."

Later, at page 554 of the transcript, Mr. Sherrell testified as follows:

"In the recent proposed agreement with the Port we are allowed -- going to be allowed to take customers that solicit or hail our vans where in the past we used to have to



inconvenience them and ask them to walk back in the terminal and summon the same van to pick them up."

In this regard, it should be noted that all concerned at the application hearing anticipated, understood, and expected that the term "on-call" was utilized only to distinguish the applicant's proposed readily available service from the scheduled service of the intervenors in that proceeding. In particular, at page 1040 and 1041 of the application transcript, in response to questions by the Assistant Attorney General, Mr. Cedarbaum, Mr. Sherrell testified as follows:

"Q. I guess all I'm asking, if the certificate is granted to you, do you want the authority to operate only on-call or do you want the ability to also operate on a schedule basis?

A. No. It wouldn't be on schedule. It would be on-call."

Finally, in this regard, in response to questions from the Administrative Law Judge, commencing at page 1056 of the application transcript, Mr. Sherrell testified further as follows:

"Q. Now, you refer to a more advantageous set up in the pick-up, I believe, or the way the facility is used at Sea-Tac. Can you explain that a little bit.

A. Yes. Currently, if a potential customer requests our service, they cannot solicit a ride from us. In the new Port Agreement, which was effective January 1, customers can solicit our van service. Prior to this, we had to require our customers to go back inside to make a telephone call at their expense, and that creates a hassle and a disrespect for the ultimate customer. And we found that a lot of customers would rather that do that, just take alternate transportation."

As demonstrated above, therefore, the term "on-call" service permits the transporting of passengers who have called for the service by hailing a van at curbside.

Nothing in the record at the Shuttle Express application hearing, nor the record in the instant case, even suggest or contemplates a limitation that "on-call" service requires a request for service via telephone.

The term "on-call" service should be interpreted and utilized in this complaint proceeding just as the same was utilized at the hearing in the Shuttle Express application hearing.

The term "on-call", as utilized in permits authorizing the auto transportation of passengers to and from airports and airporter-type service, is employed to describe carrier service as immediately and readily available in response to a passenger's request for service in accordance with the passenger's own particular schedule as well as to or from the passenger's designated destination. The term is used to distinguish this "on-call" service from the limited, scheduled service of all other carriers that operate on fixed schedules and serve only certain designated locations.

The term "on-call", therefore, is a term utilized to describe the status of and type of service provided by the carrier. An "on-call" carrier stands and remains "on-call" to respond to a passenger's request for service, i.e. stands readily available to respond to the passenger's request. "On-call" is not a limitation on how a passenger may request

such service. It is merely a term used to describe the status of the carrier as readily available and to distinguish the readily available service from the limited and fixed scheduled service of the other carriers.

Passengers may hail vans for service by any means. The passenger's request for service may be by telephone, in person at curbside as walkup passengers, or by any other means.

To be consistent with the final order of the Commission in order No. 1809, therefore, the Commission should, in this proceeding, again conclude that "on-call" is a term utilized to describe the status of the carrier service as being readily available in response to the passenger's request at a time and to or from a location that the passenger, rather than the carrier, designates. The term is utilized to distinguish such readily available service from the limited and fixed scheduled service of the other carriers. Most importantly, the passenger's request for service may be made by any means, whether via telephone or in person at curbside.

Such an interpretation is also consistent with the rule of construction and interpretation that words be given their plain, usual, and ordinary meaning. Webster's New Twenty Century Unabridged Dictionary, Second Edition, defines "on-call" as,

"Available when called for or summoned."

No limitation whatsoever is placed on the method of summoning the service.

Also, there is additional testimony in this record from Mr. Holbrook, Assistant Director of the Port of Seattle and the individual at Seattle/Tacoma Airport in charge of all ground transportation, that it was understood that Shuttle Express intended and would be able to transport passengers who hailed a van at curbside without a prior telephone call. At pages 302 and 303 of the transcript in this proceeding, in response to a question by Commissioner Pardini, Mr. Holbrook testified as follows:

"Q. In the response of Shuttle Express dated November 21 and the letter from Bruce Wolf back to Mr. Paul Curl, the secretary of the Commission, at page four of that letter, Mr. Wolf paraphrases the transcript, and he says as follows, at page 554 of the transcript. Mr. Sherrell testified as follows. Quote, in the recent proposed agreement with the Port, we are allowed, going to be allowed to take customers that solicit or hail our vans where in the past we used to have to inconvenience them and ask them to walk back into the terminal and summon the same van to pick them up.

Mr. Holbrook, in your negotiations on the terms and conditions of the Port agreement, is this -- do you have the same impression that Mr. Sherrell has portrayed in his testimony that they were going to be allowed to hail vans?

A. Yes. He had a request in to the Port of Seattle to be allowed to do that and, as I testified here today, we investigated that. We did put provisions and certain conditions on the ability to do that, but it was our understanding at that time he was allowed to operate in that manner.

Additionally, at pages 170 and 171 of the transcript in this proceeding, the parties stipulated as follows:

"MR. CEDARBAUM:One for my part at least, your Honor. Yesterday there was some discussion with regard to a reference within Exhibits No. 1 in this proceeding to Exhibit No. 38 in the prior King County original application proceeding, as to whether or not Exhibit 38 was in effect a concession agreement between the Port of Seattle and Shuttle Express at the time testimony was taken in that earlier proceeding, and I think the parties have agreed to stipulate that the concession agreement that was contained in that old Exhibit 38 was a proposed but not yet effective agreement at the time that Mr. Sherrell testified in that proceeding, but that Mr. Sherrell's intentions were to conform his operations to the terms of that agreement, if and when that agreement became effective. So at the time it wasn't effective, but there was an intent on the part of the company at that point in time to conform operations to comply when the contract became effective, if it became effective."

To conclude, therefore, in this proceeding, the Washington Utilities and Transportation Commission should definitively rule that "on-call" service does not require a telephone request for service. Once such a definitive ruling is entered, the inquiry in the instant complaint proceeding ends because, clearly, in that instance, it is beyond any doubt that Shuttle Express has not violated any law, rule, regulation, or order of the Washington Utilities and Transportation Commission.

**II SHUTTLE EXPRESS IS NOT VIOLATING EVEN THE MOST  
RESTRICTIVE INTREPRETATION OF THE "ON-CALL" PROVISION OF ITS  
OPERATING AUTHORITY.**

As argued above, "on-call" does not require a telephone request for service prior to boarding a van. Rather, vans may be summoned by any means, which includes hailing a van at curbside.

The staff of the Washington Utilities and Transportation Commission, by and through its secretary, Mr. Paul Curl, in correspondence dated November 15, 1989, suggests a restrictive interpretation of the term "on-call" that would allow Shuttle Express to transport,

"only those passengers who have made a telephone request for service prior to boarding a Shuttle Express motor vehicle".

(Exhibit 1)

The balance of correspondence comprising Exhibit 1 evidences the, to date, unresolved dispute that arose between the Washington Utilities and Transportation Commission staff and Shuttle Express regarding the definition of the term "on-call".

With respect to this dispute and in this regard, it most important to note that, regardless of the merits of the argument of Shuttle Express regarding the meaning of the term "on-call", Shuttle Express has, until the dispute is definitively resolved in this proceeding, voluntarily chosen to conform its operation to the more restrictive interpretation expressed by Secretary Curl.

After the exchange of correspondence contained in Exhibit No. 1, the Port of Seattle installed three (3) additional telephones to assist passengers in making a telephone request for service from Shuttle Express prior to boarding the vans.

The testimony of Mr. Sherrell at the hearing demonstrates the change in operations instituted by Shuttle Express in order to comply

with the most restrictive interpretation of the term "on-call" as expressed by Secretary Curl. Operations were changed to require all passengers to have made a telephone request for service prior to boarding a Shuttle Express van. At pages 71 and 72 of the transcript, Mr. Sherrell testified, that, after the exchange of correspondence contained in Exhibit No. 1, Shuttle Express discontinued its practice of accepting any passenger that had not made a telephone request for service prior to boarding the van. All passengers were required to make a telephone request for service prior to boarding. (See also transcript pages 78 and 79, 92, 94, 96, 102, 106 and 107)

Commencing at page 123 of the transcript, Mr. Sherrell described the procedures instituted at Shuttle Express to insure compliance with the most restrictive interpretation of "on-call" as expressed by Secretary Curl in his correspondence to Shuttle Express on the date of November 15, 1989. The driver information manual was revised to require that all passengers make a telephone request for service prior to boarding the van. Dispatchers were instructed that no guest would be allowed to board a van without dispatch authorization, which requires that all passengers have made a telephone request for service with dispatch prior to boarding the van. Driver meetings were held to further insure driver awareness of the change in operations and to guarantee compliance with the restrictive interpretation of the term "on-call". (See transcript pages 125, 129, 130 and 132)

Again, at pages 137 through 143 of the transcript, Mr. Sherrell described in detail the nature, scope, and extent of his current operations. Such testimony and description of the operations demonstrates that the current operations of Shuttle Express are in complete compliance with even the most restrictive interpretation of the term "on-call" as expressed by Secretary Curl whether or not a passenger is departing from either Seattle/Tacoma International Airport or a Seattle hotel served by Grayline.

The change in operations subsequent to the exchange of correspondence referred to above was complete and most successful. Since the change in operations, only three citations have been received. (Transcript page 133) With regard to those citations, the record in the instant case demonstrates that the drivers were, at the time, acting contrary to company policies when they allowed a passenger to board a van without having made a prior telephone request for service. As Mr. Sherrell testified, these were driver mistakes contrary to company regulations and policy.

At this juncture, it is important to note that only three citations were received despite the fact that Shuttle Express is transporting, on average, over twenty-five thousand passengers per month. In the February, 1990 investigation, Shuttle Express was observed on February 9th and 10th. On those days, Shuttle Express transported over one thousand one hundred passengers on each day. Despite such volume, only one violation was found. (See report of investigator Gary



Moss contained in Exhibit No. 28). Additionally, as Mr. Moss stated in his report in Exhibit No. 28, prior to issuance of the citations,

"I approached six different Shuttle Express vans and was either ignored or was told they couldn't transport me without dispatch okay, which would come through a phone call by me to Shuttle Express".

The success of the change in Shuttle Express operations to comply, pending resolution of the dispute, with the most restrictive interpretation of the term "on-call" is further demonstrated on this record by the results of a subsequent investigation by WUTC enforcement staff investigators.

The subsequent investigation by WUTC enforcement staff investigators extended for over thirty-two hours of surveillance of the operations of Shuttle Express and resulted in a finding and report of no violations. (See Exhibits 29 and 30) Additionally, Mr. Sherrell testified as to the results of this subsequent investigation at pages 136 and 137 of the transcript. The extensive subsequent investigation is also described by investigator Moss at pages 426 through 428 of the transcript.

Also important to note, at this juncture, is that the extensive investigations by investigator Moss also included surveillance of the transportation of passengers by Shuttle Express from downtown hotels to the airport. That surveillance and investigation demonstrated no violations. As investigator Moss testified commencing at page 413 of the transcript,

"We took statements from the concierge at Westin and the bell-captain at the Hilton. I talked to Grayline and the garage attendant at the Westin ... I talked to Judy Fonk, and a Jennifer Lennon, Grayline's bus company ticket agents at Westin ... They stated to me that they had not observed Shuttle Express doing any solicitation at the Westin Hotel, just pull in, pick up a passenger and leave ... I talked to a gentlemen named Terry Burg, who was a parking attendant. He stated basically the same thing, and I talked to Michael Frei. He is the concierge at Westin, and he stated that Shuttle was not very often called because Grayline has a very convenient schedule and price, and that the passengers coming from Westin to the airport not very often wanted to call Shuttle because of the wait for the bus to get there and the price factor ... He stated to me that he had interviewed the bell-captain at the Hilton who had said virtually the same thing as the Westin and Grayline people had stated to me, that their had been no observation or they had not noticed any solicitation and that Shuttle Express wasn't called very often for trips because Grayline was more convenient."

In short, as testified to by Mr. Sherrell and as found by the WUTC enforcement staff investigators, all passengers are making a telephone request for service prior to boarding. Shuttle Express is, therefore, in complete compliance with even the most restrictive interpretation of the "on-call" provision of its operating authority.

In fact, even private investigators hired and paid for by the complainant Grayline in this proceeding found that Shuttle Express was operating in accordance with this most restrictive interpretation. At page 204 of the transcript, Mr. Ferleman, the private investigator hired by Grayline, testified as follows:

"Q. Was it your understanding from your conversation with the drivers of Shuttle Express that you would not be permitted to board a van until you had utilized the telephone?

A. That's correct ...

Q So, again, sir, I think where we left off is that based on all conversations you had with drivers with Shuttle Express, you left with the firm conviction that you would not be permitted to ride a Shuttle Express van prior to your utilizing the telephone?

A. That's true."

Consequently, even if "on-call" is found to require a prior telephone call request for service, then Shuttle Express has not violated the terms of even that restrictive interpretation of its operating authority.

The complainant has failed to establish, therefore, on this record, that the operations of Shuttle Express are in anyway in violation of the even most restrictive interpretation of the term of its operating permit, and the complaint, therefore, should be dismissed.

Grayline alleges, in its complaint, that Shuttle Express should be sanctioned or restricted by the Washington utilities and Transportation Commission for alleged infractions of the operating agreement between Shuttle Express and the Port of Seattle. To support such allegations, Grayline introduced Exhibits No.'s 13 and 14 into evidence. For a number of reasons, these exhibits and allegations of violations of the Port of Seattle operating agreement should be disregarded.

First, it must be remembered that the instant proceeding is one pursuant to our RCW 81.04.110, which grants jurisdiction to the WUTC to impose sanctions only for violations

"... of any provision of law or of any order or rule of the commission." (Emphasis added)

Alleged violations of the Port operating agreement are not, even if substantiated, violations of law, any rule, regulation, or order of the WUTC, or any provision of the Shuttle Express operating authority. Any such alleged violations of the Port agreement are, therefore, irrelevant in a complaint proceeding pursuant to RCW 81.04.110.

Second, only one of the alleged Port operating agreement violations involved an allegation that Shuttle Express was transporting a passenger that had hailed the van at curbside without a prior telephone call for service. After appeal by Shuttle Express, that notice of violation was rescinded. (See Exhibits No.'s 15 and 17 and testimony of Mr. Douglas Holbrook at transcript pages 257 and 258)

Also, a number of the other notices of violation were, after appeal, rescinded. (See Exhibits No's 17 and 18)

Third, any violations of the detailed and stringent Port of Seattle operating agreement were, relative to the extensive operations of Shuttle Express, minor. Of all of the alleged violations, only two allegedly involved a solicitation of a passenger in contravention of the Port operating agreement. (See transcript page 261) Of the citations received in 1990, eight have been rescinded. No violations have occurred since April, 1990. (See transcript page 262) In short, even if relevant, compliance with the Port agreement have been good. No violations have been received since May 1, 1990, despite the fact that a potential for a violation of the detailed Port of operating agreement

exists every time a Shuttle Express van enters and circles the lower drive, an occurrence that happens up to three hundred times per day and nine thousand times per month. (See transcript pages 67 through 269)

Finally, in this regard, it is important to remember that the Port of Seattle has its own independent enforcement staff and comprehensive regulatory scheme entirely separate and distinct from that of the Washington Utilities and Transportation Commission. It is a scheme completely autonomous from the WUTC and can result in a cancellation of an operating agreement. Mr. Holbrook described the extensive enforcement staff and regulatory scheme at pages 246 through 260 of the transcript. Again, as noted above, the ultimate sanction of the Port of Seattle regulatory scheme is cancellation of the operating agreement. It is most important to note, in these proceedings, that no such cancellation proceedings have ever been initiated against Shuttle Express, and no such proceedings are currently under consideration by the Port of Seattle. (See transcript page 60)

### III NO EVIDENCE ESTABLISHING ANY CAUSAL CONNECTION BETWEEN THE OPERATIONS OF SHUTTLE EXPRESS AND ANY SUBSTANTIAL AND IRREPARABLE HARM TO GRAYLINE.

Even assuming, for purposes of argument only, that the current operations of Shuttle Express are, in some fashion, violative of the laws, rules, regulations, or orders of the Washington Utilities and Transportation Commission or the terms of the operation authority of

Shuttle Express, absolutely no evidence whatsoever was presented by the complainant to meet its burden of proof that any such violations were the proximate cause of any substantial and irreparable harm to Grayline.

Mr. Gordon Barr, vice president of transportation for Grayline, was the only witness called who even attempted to argue, infer, or demonstrate any such required causal connection. Mr. Barr, however, did not even know how many, if any, passengers Shuttle Express was transporting between the Seattle/Tacoma International Airport and Seattle hotels served by Grayline. (See transcript page 362) Mr. Barr had conducted absolutely no studies to determine why passengers may be selecting Shuttle Express rather than Grayline. (See transcript page 380) In fact, Mr. Barr had conducted no studies whatsoever to determine whether any passengers were selecting Shuttle Express rather than Grayline. (See transcript page 381)

Additionally, neither Mr. Barr nor any another witness even provided, on this record, an itemization and listing of the Seattle hotels served by Grayline.

In short, neither the testimony of Mr. Barr nor any other evidence in this proceeding draws any causal connection between any damage to Grayline and the operations of Shuttle Express.

Rather, the testimony of record in this proceeding, as elicited by Commissioners' Nelson, Casad, and Pardini, demonstrates that Grayline has not been damaged in any respect and that Grayline's problems, if

any, are caused, not by Shuttle Express operations, but by Grayline's own inadequacies.

For example, commencing at page 389 of the transcript, Commissioner Nelson inquired and Mr. Barr responded as follows:

"Q. It's in paragraph 13 and the statement is the second sentence there, "Grayline's airporter service between Seattle Hotels and Sea-Tac is equivalent to or superior to Shuttle Express' in terms of speed, convenience and safety of the passenger." The next sentence says that Shuttle charges double what Grayline charges.

A. That's correct.

Q. Now, I know that you're of the opinion that you're losing passengers because of shuttle's practices, but it seems to me that if you are offering an identical quality of service and you're charging half, that consumers are making decisions which defy both economics and psychology, and I am wondering if you have considered, the company has considered, some hard hitting direct comparison price advertising campaigns to inform consumers of what your view of the facts are in order to regain market share?

A. We have -- the type of people that use the service are a very difficult group to market to. We do have several thousand dollars worth of advertising in the airport. There's one means to do that. We also advertise in in-flight magazines, so we do do that. I would say I'm probably similar to a lot of travelers. When I get to an airport, the first thing I do is go down to the baggage claim area and I stick my head out and look for either an airporter or some other means. It's -- we have done it. We've spent a lot of money marketing the airporter, both here in town and at the airport and on magazines, so we have considered -- we have done it, maybe not as effectively, maybe there are better ways, but we have tried to do that."

Commencing at page 393 of the transcript, Commissioner Casad, through his questions, showed that the documentary evidence and

testimonial evidence submitted by Mr. Barr demonstrated that Grayline was actually in a more profitable situation now than it was in 1986, which was prior to the inception of operations of Shuttle Express. Commissioner Casad demonstrated, through his questions and Mr. Barr's responses thereto, that Graylines costs per mile are less than their cost per mile were in 1986. At page 398 of the transcript, Mr. Barr admitted and testified that the total miles of operations are the same now as they were in 1986. Earlier, Mr. Barr had testified that fares had increased since 1986. In other words, Grayline is charging more per mile than it did in 1986. The inevitable and irrefutable conclusion from such testimony is that Grayline, despite its charts and graphs, has to be in a more profitable position now than it was in 1986.

In short, the testimony on this record demonstrates that Grayline is now better off and has sustained no damage as a result of the operations of Shuttle Express.

Finally, the examination by Commissioner Pardini demonstrates that any problems now being experienced by Grayline in failing to obtain its desired market share of increased ground transportation traffic traveling to and from Seattle/Tacoma International Airport is due to the inadequacies of the service provided by Grayline rather than the operations of Shuttle Express. For example, at page 398 of the transcript, Commissioner Pardini inquired of Mr. Barr as follows:

"Well, that leads me to my basic underlying question, very possibly the last question, is that your operation during this period of time has been a relatively static operation with



few changes if any in timing, service, type of vehicle, in a market when you have had declining market, and your response basically has been to do nothing. Is there a restriction in your permit from this commission or from your operating agreement with the airport that stops you from using smaller vehicles on a more frequent basis to compete with the convenience that appears to be offered by the airporter ... It becomes a competitive factor and that's why I'm asking whether your permit restricts you to coming in with a smaller vehicle on a more frequent basis. That obviously is what your competition has done and appears to me that's what beating you.

A. I don't believe the permit restricts me."

(See transcript pages 198 through 403)

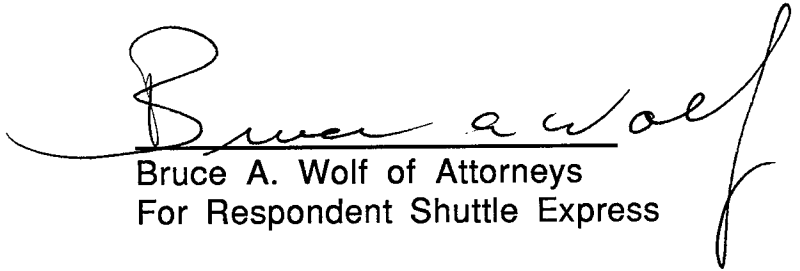
To conclude, therefore, it is clear from the testimony on this record that absolutely no demonstration has been made of any connection whatsoever between any substantial and irreparable injury to Grayline and the current operations of Shuttle Express.

#### CONCLUSION

For all of the reasons expressed above, the Washington Utilities and Transportation Commission should issue a final order in this complaint proceeding declaring that the term "on-call" in the operating permit of Shuttle Express does not require passengers to make a prior telephone call request for service prior to boarding and further declaring that the complaint be dismissed.

Respectfully submitted this 7th day of August, 1990.

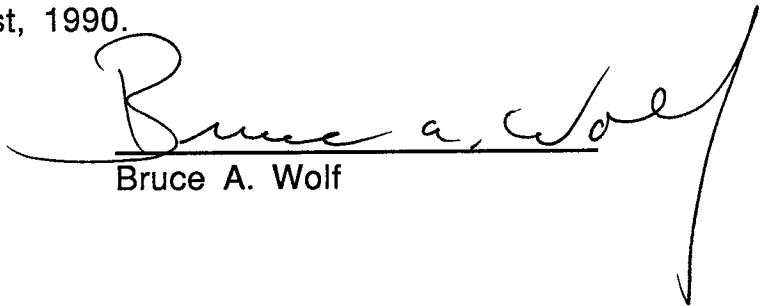
SESSIONS & CO. P.S.

  
Bruce A. Wolf of Attorneys  
For Respondent Shuttle Express

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing Post-Hearing Brief upon Mr. Clyde H. MacIver, Attorney at Law, Suite 4400, Two Union Square, Seattle, Washington 98101, Mr. Robert Cedarbaum, Assistant Attorney General, Heritage Plaza Building, 1400 South Evergreen Park Drive S.W., Olympia, Washington, 98504, Everett Airporter Services Enterprises and Diane Coombs, 6303 Swan's Trail Road, Everett, Washington 98205 and Suburban Airporter, Inc. and Richard Reininger, 200 - 118th S.E., Bellevue, Washington 98005 by mailing a copy thereof, properly addressed with first class postage pre-paid.

Dated this 7th day of August, 1990.

  
Bruce A. Wolf