

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In re Application TC-143691 of

SPEEDISHUTTLE WASHINGTON, LLC,
d/b/a SPEEDISHUTTLE SEATTLE

For a Certificate of Public Convenience and
Necessity to Operate Motor Vehicles in
Furnishing Passenger and Express Service as
an Auto Transportation Company

DOCKET TC-143691

COMMISSION STAFF'S COMMENTS
OPPOSING AMENDMENT OF
ORDER 04

I. INTRODUCTION

1 Commission Staff respectfully opposes the Commission's proposal to amend
Order 04 to "specify that Speedishuttle's authority extends only to providing the
prearranged, door-to-door service the Company described in its application and at the brief
adjudicative proceeding."¹ The amendment is unnecessary, since Speedishuttle is not
operating outside of its applied-for authority, and inadvisable, since the Commission's
policy is to promote, not restrain, competition in the auto transportation industry.

II. ARGUMENT

A. The Proposed Amendment is Unnecessary

2 The Commission's proposed amendment is unnecessary because Speedishuttle is
operating within its applied-for authority. In October 2014, Speedishuttle applied for
authority to operate "DOOR TO DOOR PASSENGER SERVICE BETWEEN Seattle
International Airport and points within King County."² It is important to note that
Speedishuttle did not apply for "*prearranged, door-to-door service,*" as the Commission's

¹ *In re the Application of Speedishuttle Washington, LLC d/b/a Speedishuttle Seattle*, Docket TC-143691, Notice of Intent to Amend Order 04 at 2 (Nov. 4, 2015).

² *In re the Application of Speedishuttle Washington, LLC d/b/a Speedishuttle Seattle*, Docket TC-143691, Docket Notice (Oct. 21, 2014).

Notice indicates. The word “prearranged” appears nowhere in the docket notice associated with Speedishuttle’s application.³ Instead, the notice merely states that the company applied for “door-to-door passenger service,” with no limitations or conditions.

3 In Staff’s view, based on the available evidence, Speedishuttle’s current operations constitute “door-to-door passenger service” between SeaTac Airport and points within King County. The company, in other words, has not attempted to enlarge its authority.

4 Staff is aware that Speedishuttle currently accepts passengers at SeaTac Airport who reserve auto transportation services at the company’s in-airport kiosk.⁴ The Commission appears to be concerned that such operations constitute something other than “door-to-door passenger service.” There is no need for concern. In Staff’s view, Speedishuttle’s kiosk-based service falls within the Commission’s definition of “door-to-door service.”⁵

5 The best way to analyze this issue is to understand that the Commission’s rules recognize only two categories of auto transportation service: (1) “door-to-door service;” and (2) “scheduled service.” Although there is some overlap, all regulated shuttle services ultimately fall within one of these two “buckets.” Staff’s position is that Speedishuttle’s kiosk-based service fits most neatly in the first bucket—i.e., door-to-door service.

6 Under the Commission’s rules, “door-to-door service” means “service provided between a location identified by the passenger and a point specifically named by the

³ The origin of the term “prearranged” is somewhat of a mystery to Staff—the term appears nowhere in statute or rule.

⁴ See *In re the Application of Speedishuttle Washington, LLC d/b/a Speedishuttle Seattle*, Docket TC-143691, Response After Objection to Bench Request No. 2C on behalf of Speedishuttle Washington, LLC (Sept. 17, 2015).

⁵ In a 1990 order, the Commission asserted a distinction between “non-scheduled, reservation only van service” and what it described as “walk-up,” “hail-the-van,” and “opportunity fare” services. *Evergreen Trails, Inc., v. San Juan Airlines, Inc. d/b/a Shuttle Express*, Docket TC-900407, Order M. V. C. No. 1893 (Nov. 6, 1990). Staff uses the term “kiosk-based service” in this brief to avoid confusion with terms like “walk-up,” “hail-the-van,” and “opportunity fare.” To be clear, Staff does not assert that “kiosk-based services” are a new category of auto transportation services. Instead, Staff merely asserts that “kiosk-based services” are a type of “door-to-door service,” as defined in WAC 480-30-036(2).

company in its filed tariff and time schedule.” WAC 480-30-036(2). Speedishuttle’s kiosk-based service fits this definition. Customers will approach the kiosk, negotiate service between the airport and a custom destination within the company’s service territory, and then, with reservation in hand, board the vehicle. This sequence of events constitutes “service provided between a location identified by the passenger and a point specifically named by the company in its filed tariff and time schedule.” WAC 480-30-036(2).

7 If the Commission is skeptical, the question that arises is whether Speedishuttle’s kiosk-based service fits more neatly into the second bucket—“scheduled service.” Staff believes the answer is no.

8 The Commission defines “scheduled service” as “passenger service at specified arrival and/or departure times at points on a route.” WAC 480-30-036(2). Scheduled service, in other words, occurs when a passenger boards a vehicle that adheres to an established timetable and a regular route. The route is preordained, not customized based on a negotiated agreement between the company and each passenger.

9 Speedishuttle’s kiosk-based service is not “scheduled.” The vehicle that arrives to serve a “scheduled” customer does so because the driver is following an established route and timetable. In contrast, the vehicle that serves a “kiosk-based” customer does so because the customer has reserved auto transportation services at the company’s in-airport kiosk.

10 In sum, Speedishuttle’s kiosk-based service is merely a type of “door-to-door service,” as defined in WAC 480-30-036(2). Because Speedishuttle applied for “door-to-door” service, Staff respectfully proposes that there is no reason to amend Order 04.

B. The Proposed Amendment is Inadvisable

11 A secondary issue raised by the Commission's Notice of Intent to Amend is whether Speedishuttle somehow waived its right to accept kiosk-based customers at the January 2015 brief adjudicative proceeding in this docket.⁶ In Staff's view, no waiver occurred, and, even if it did, acceptance of such waiver this late in the proceeding would be contrary to the principle of finality, and further contrary to the Commission's policy promoting competition in the auto transportation industry.

12 At the hearing, Speedishuttle's owner, Cecil Morton, testified that the company would not operate "what Shuttle Express operates at the airport today under the concession agreement, [under] which you and I can arrive at the airport and decide what option we'd like to take: maybe a taxi, black car—excuse me, or shuttle, or a rental car for that matter."⁷

13 Staff understands why the Commission might construe Mr. Morton's testimony as an affirmative pledge that the company would not accept kiosk-based passengers. But to the extent Mr. Morton made such a pledge, his representation is neither discussed, nor reflected, either in Judge Pearson's initial order or in the Commission's final order.

14 Staff respects the Commission's authority to amend its orders at any time to ensure accuracy and precision. Still, there is great value in finality, and the idea that limitations can be imposed post-order (here, seven months post-order) seems problematic. This is particularly true in the present case, where there is no record evidence that Speedishuttle's acceptance of kiosk-based passengers harms the public and, on the contrary, the entry of a

⁶ "A waiver is the intentional and voluntary relinquishment of a known right." *Jones v. Best*, 134 Wn.2d 232, 241, 950 P.2d 1 (1998).

⁷ *In re the Application of Speedishuttle Washington, LLC d/b/a Speedishuttle Seattle*, Docket TC-143691, Transcript at 48 (Jan. 12, 2015).

new participant in the airport kiosk-based market appears to be precisely the sort of competition the Commission's rules, as recently amended, seek to promote.

15 As the Commission explained in Order 04 in this docket, the Commission amended its auto transportation rules in 2013 to “clarify and streamline the application process for companies seeking to provide [passenger transportation] service, give companies rate flexibility, and *promote competition* in the auto transportation industry.”⁸ The Commission granted Speedishuttle’s application in this docket because “[a]n entirely different business model that appeals and serves a certain subset of the market—like Speedishuttle proposes to offer—is precisely the type of service differentiation contemplated by the new rules.”⁹

16 From a policy standpoint, Speedishuttle’s acceptance of kiosk-based passengers is a positive development, not a cause for concern. Staff’s understanding is that existing airport carriers already provide kiosk-based services under authority that is functionally no broader than the authority granted to Speedishuttle in Order 04. If the Commission chooses to restrict Speedishuttle’s authority, it should ensure that a similar restriction applies to Speedishuttle’s competitors. All would agree that this industry must be regulated in an even-handed manner.

C. The Comments Filed Today by Shuttle Express are Inappropriate

17 In its comments filed today, November 25, 2015, Shuttle Express asks the Commission to: (1) “specify that that Speedishuttle’s authority is limited to prearranged service prior to the passenger’s arrival at Seattle Tacoma International Airport,” and (2) require Speedishuttle, as a condition of its certificate, to “provide a personal greeter at

⁸ *In re the Application of Speedishuttle Washington, LLC d/b/a Speedishuttle Seattle*, Docket TC-143691, Order 04 ¶ 10 n.3 (March 30, 2015) (emphasis added).

⁹ *In re the Application of Speedishuttle Washington, LLC d/b/a Speedishuttle Seattle*, Docket TC-143691, Order 04 ¶ 32 (March 30, 2015).

[the] baggage claim for each arriving reservation.”¹⁰ Additionally, Shuttle Express asserts that it has been “substantially harmed by Speedishuttle’s encroachment on Shuttle Express’s exclusive authority to provide walk-up, on-demand service to SeaTac Airport passengers.”¹¹ These comments are wholly inappropriate.

18 First, the company’s mere assertion of “substantial harm,” unaccompanied by any sworn declaration, is nothing more than argument of counsel. The Commission should ignore this unsupported allegation.

19 Second, and more importantly, the company has no right to litigate an apparent territorial dispute in a closed docket. There is a proper way to challenge a competitor’s authority and an improper way to do so. The proper method is a formal complaint against Speedishuttle under RCW 81.04.110. Upon receipt of this private complaint, the Commission would open a new docket and, if Shuttle Express has suffered any legally-cognizable harm, evidence could be received to that effect. The improper method—chosen by Shuttle Express here—is an off-the-record, “back door” protest funneled to the Commission without the knowledge or participation of Commission Staff, several months after the Commission overruled all objections to Speedishuttle’s application in a *final, unappealed order*. These tactics make a mockery of due process. Shuttle Express should be required to follow the proper channels.

III. CONCLUSION

20 Speedishuttle’s acceptance of kiosk-based passengers is consistent with the company’s applied-for authority, particularly when one considers that the word


¹⁰ *In re the Application of Speedishuttle Washington, LLC d/b/a Speedishuttle Seattle*, Docket TC-143691, Shuttle Express’s Response to Commission’s Proposed Amendment to Order 04 ¶ 12 (Nov. 25, 2015).

¹¹ *In re the Application of Speedishuttle Washington, LLC d/b/a Speedishuttle Seattle*, Docket TC-143691, Shuttle Express’s Response to Commission’s Proposed Amendment to Order 04 ¶ 13 (Nov. 25, 2015).

“prearranged” appears nowhere in the docket notice associated with the company’s application. Further, from a policy standpoint, Speedishuttle’s operations provide a public benefit in the form of increased competition. For these reasons, Staff respectfully opposes the Commission’s proposal to amend Order 04 to “specify that Speedishuttle’s authority extends only to providing the prearranged, door-to-door service the Company described in its application and at the brief adjudicative proceeding.”

DATED November 25, 2015.

Respectfully submitted,



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