

Agenda Date: September 28, 2016
Item Number: D1

Docket: [TC-160819](#)¹
Company: Shuttle Express, Inc.,
dba Shuttle Express, Go Shuttle Express, Limos by Shuttle Express, and
Downtown Airporter

Staff: Greg Hammond, Regulatory Analyst
Dave Pratt, Assistant Director for Transportation Safety
Danny Kermode, Assistant Director for Water and Transportation
Mike Young, Section Manager, Water and Transportation

Recommendation

Refer the petition filed on June 17, 2016, and modified on September 6, 2016, by Shuttle Express, Inc., for limited and conditional exemption from *WAC 480-30-213, Vehicles and drivers*, and *WAC 480-30-456, Fair use of customer information* to the Administrative Law Division to be set for adjudication to allow additional discussion.

Discussion

Shuttle Express Inc., (Shuttle Express or company) requests a “limited and conditional” exemption from *WAC 480-30-213, Vehicles and drivers*, and *WAC 480-30-456, Fair use of customer information*, to permit the company to use independent contractors to supplement its shared ride service to and from SeaTac International Airport.

Additionally, the company requests partial waiver from *WAC 480-30-221, Vehicle and driver safety requirements*, changing the definition of “Commercial Motor Vehicle” located in Part 390 of CFR Title 49, to apply only to vehicles carrying more than 8 passengers. The exemption, as proposed, would be conditional upon the company meeting the criteria outlined in its petition. The company states the exemption is required to allow it to compete with Transportation Network Companies (TNCs) such as Uber and Lyft.

The requested exemptions raise several issues pertaining to rules and statutes outside the purview of the commission. Specifically, utilizing limousine drivers to provide auto transportation service may conflict with statutes and rules regulating limousines, which fall under the Department of Licensing. In addition, it appears that granting the waiver would remove the exception described in *WAC 480-30-211* which effectively fully adopts the federal commercial vehicle requirements listed in *WAC 480-30-221(1)*. The result is, rather than requiring stricter safety standards for all vehicles providing auto transportation, no matter the size of the vehicles, the waived rule *WAC 480-30-211* allows less stringent safety requirements for smaller than eight-passenger vehicles, which complies with chapter 49 of the Code of Federal Regulations.

In its petition, the company states that customers using transportation services to and from the airport have a number of options including traditional auto transportation, light rail, mass transit,

¹ Underlined cites indicate hyperlink to source (ctrl + click to follow link).

taxi service, limousines, and now TNCs. Shuttle Express makes the observation that the transportation service provided by TNCs is similar to traditional auto transportation service. The company believes that because TNC operators utilize independent contractors to provide the driver and vehicle components of the service, TNCs enjoy a cost advantage over traditional auto transportation providers. The company also feels that TNCs enjoy additional economic advantages because they are not required to comply with the regulatory requirements imposed on Shuttle Express by the Utilities and Transportation Commission (commission) and local governments.

According to its petition, Shuttle Express would like to implement business changes that will mirror the efficiencies of the TNCs' business model, but is hampered by regulatory rules requiring that vehicles be owned or leased by the certificate holder, and drivers be employees of the certificate holder. Shuttle Express also states that the safety rules are too burdensome on the company. However, the company argues, the requested exemption will allow the company to utilize independent contractors (limousines) to gain parity with the TNCs' business model.

The company's petition does not request any exemption from rate regulation, and further states that service will continue at tariffed rates.² Shuttle Express currently operates under a flexible fare tariff consistent with WAC 480-30-420 Fare flexibility.

Staff's concern is rooted in the impact of the company's request to waive WAC 480-30-221 Vehicle and driver safety requirements. Granting the waiver would change the commission's definition of Commercial Motor Vehicle as it pertains to the company. This would effectively waive compliance to a number of safety requirements the commission has previously deemed important to any auto transportation provider, no matter the size of vehicle. Staff believes the proposed change could potentially nullify the commission's authority to provide safety oversight in a number of significant areas such as driver and equipment standards.

For example, the requested change in definition of Commercial Motor Vehicle would effectively exempt the company from requiring its independent contract drivers to maintain hours of service logs, which are vital to monitor driver fatigue. Driver fatigue is the number one cause of accidents in our country. Also, the same waiver would result in drivers no longer being required to perform and prepare driver vehicle inspection reports. Staff is concerned that allowing the waiver could put passenger safety at risk.

Although staff disagrees with the petition on certain issues, there are areas where the company and staff agree. For example, staff is willing to recommend waiver of WAC 480-30-231(1), Vehicle and driver identification³ allowing all contract vehicles not to be marked as Shuttle Express vehicles. Also, staff does not object to the use of independent contractors so long as safety requirements are not compromised. However, although there are some commission rules which staff would recommend waiving, those cannot outweigh staff's concern of waiving driver

² TG-160819 Petition for Exemption ¶ 20 (b)

³ Although the petition states WAC 480-30-321, staff assumes this was a transposition error and should actually be WAC 480-30-231. The discussion portion of the petition supports this assumption.

hours of service and driver inspection report requirements. Decisions regarding the safety of the public cannot be a consequence of compromise.

Additionally, staff at DOL have expressed concerns about this proposed business model as it appears to violate the statute addressing limousines found in RCW 46.04.276 *Limousine carrier*. Specifically, statute appears to not allow limousines to provide shared-ride services as proposed here by Shuttle Express. Staff is unwilling to recommend approval of the petition without a clear understanding of the impact of any waiver of commission rules on the DOL's oversight of limousines.

And finally, commission staff brought two compliance cases against Shuttle Express in Dockets TC-072228 and TC-120323. In both cases, the commission found that Shuttle Express inappropriately used independent contractors to provide regulated services. TC-072228 resulted in a \$9,500 penalty and TC-120323 resulted in a \$60,000 penalty. In both cases, staff voiced concerns about potential safety issues regarding hours of service and driver vehicle inspections. And yet, in this petition, the company is asking the commission to waive those requirements. Staff's position has not changed from those two compliance cases and we continue to have concerns about the safety of the passengers and traveling public.

In staff's opinion, the petition by Shuttle Express raises a number of questions regarding both safety, and the impact of a rule waiver on the commission and other state and federal agencies. Staff believes that an adjudication is appropriate where issues and concerns held by other stakeholders, such as Department of Licensing, Washington State Patrol, and the Port of Seattle could be heard before granting any exemptions from commission rules.

Conclusion

Refer the petition filed on June 17, 2016, and modified on September 6, 2016, by Shuttle Express, Inc., for limited and conditional exemption from *WAC 480-30-213, Vehicles and drivers*, and *WAC 480-30-456, Fair use of customer information* to the Administrative Law Division to be set for adjudication to allow additional discussion.