



STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION
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May 6, 2014

Steven V. King
 Executive Director and Secretary
 1300 S Evergreen Park Dr. S.W.
 P.O. Box 47250
 Olympia, WA 98504-7250

2014 MAY 13 AM 11:10
 STATE OF WASHINGTON
 UTILITIES AND TRANSPORTATION COMMISSION

Dear Mr. King,

By Order 01, Docket TC-132141, dated December 13, 2013, the commission granted Shuttle Express, Inc.'s (Shuttle or Company) petition for a temporary exemption from compliance with WAC 480-30-213(2) and WAC 480-30-456, subject to conditions set forth in Order 01 Appendix A, attached to this memorandum together with staff's analysis. The exemption was limited to December 15, 2013, through January 15, 2014.

On January 31, 2014, in compliance with Condition O, Shuttle filed a report of its rescue service operations during the exemption period. On March 18, 2014, staff requested additional information, and Shuttle responded on March 19, 2014.

During the exemption period, the Company provided rescue service on 16 occasions to 32 reservations as follows:

Reason	12/21/2013	12/26/2013	12/27/2013	12/28/2013	12/31/2013	01/13/2014	02/01/2014	07/01/2014	Grand Total
Dispatch Error		1							1
Driver Lost - Flight Concern				1					1
Driver Shortage - Illness	1				1	5	2	1	10
Passenger needed to return home						1			1
Vehicle Luggage Space Full			1						1
Vehicle Mechanical - Flat Tire				1					1
Vehicle Mechanical en-route							1		1
Grand Total	1	1	1	2	1	6	3	1	16

Condition G limited rescue service to no more than five percent of Shuttle Express's total business – by trips or revenue, whichever is less. Shuttle reported 0.15 percent by total revenue.

Letter to Steve King
Shuttle Express TC-132141
May 6, 2014

Staff concludes that Shuttle complied with all of the conditions, perhaps with the exception of Condition I, which states:


Shuttle Express may use rescue service from the airport only when wait times exceed reasonable staging times – typically more than 45 minutes – caused by unexpected circumstances or unforeseen numbers of passengers seeking service that were not pre-booked.

The company operated one rescue trip (# 365973) that transported two “rescue reservations from the airport,” both of which were less than the “typically more than 45 minutes” criterion: Reservation # 4008742 (41 minutes) and Reservation # 4008368 (29 minutes). Because the 45-minute criterion is “typical,” staff does not interpret it as a strict condition. However, even if considered a strict condition, staff considers this one instance to be a very minor infraction within the context of the overall rescue service operations.

RECOMMENDATION:

Staff concludes that Shuttle complied with the conditions of the temporary exemption and recommends that the commission (1) acknowledge the company complied with the conditions for the temporary exemption and (2) close this docket.

Sincerely,



Gene Eckhardt
Assistant Director of Solid Waste, Water and Transportation

Attachment

Appendix A

Conditions

- A. Shuttle Express may provide rescue service only for interrupted service or to serve a guest request when Shuttle Express is unable to timely fulfill its commitment due to circumstances not reasonably within its control.
- B. Shuttle Express may use only a company (independent contractor) licensed as a limousine carrier by the Department of Licensing (“DOL”) under RCW Ch. 42.72A to provide rescue service. The independent contractor must operate in accordance with the requirements of its license in all respects, except that under a single contract with Shuttle Express, unrelated parties may be carried on the same trip and multiple pickups and drop offs may be made.

Complied. All of the companies listed on the “Contractor Detail” page submitted by Shuttle Express were licensed as limousine carriers by DOL during the exemption period.

- C. Shuttle Express must ensure that the independent contractor meets all Commission safety regulations applicable to auto transportation companies, including regulations governing equipment, operations, drug testing, drivers’ licenses, safe driving, etc.

Complied. It appears that Shuttle Express has complied with this condition; however, the only way for us to know if these independent contractors actually met all of the auto trans safety rules is for us to do individual safety compliance reviews of each contractor, which we will not do, as we have no authority to inspect limousine carriers.

Limousine carriers are required to renew their limousine licenses annually through DOL and limousines are inspected annually by the Washington State Patrol (WSP), except when a port district, or a city with a population of five hundred thousand or more, enforces limousine carrier regulations, (RCW 46.72A.030)

Staff requested drug testing records and copies of any safety inspections conducted for each independent contractor. Shuttle Express provided a copy of one drug test, even though it took place after the exemption period (Data request response 8c), stated that it was not aware of any inspections performed by WSP (Data request response 8d), and stated that it was not aware of any violations by independent contractors during the review period (Data request response 7a-c).

In its contract with independent contractors, Shuttle Express requires independent contractors to comply with “all laws and governmental regulations relating to the operation of the vehicle” (IC contract, page 6) and report all accidents, incidents or “citation or notice of violation of any law or regulation in connection with the operation of any vehicle” to Shuttle Express immediately.

(IC contract, pages 9 - 10). Failure to comply with the contract can result in termination of the contract (IC contract pages 13 - 14).

D. Shuttle Express must inform passengers verbally or in writing reasonably in advance (under the circumstances of the exigent event) of the pickup and give them the option to use rescue service. Shuttle Express will provide passengers who decline rescue service with a full refund of any prepaid fare and any courtesy adjustment (e.g. reimburse airport parking or airline fees or fare increases) consistent with Shuttle Express's policies for late or delayed service.

Complied. The company stated that no customer declined the rescue service (page 1(b)).

E. Shuttle Express may not provide rescue service as a scheduled or planned event as part of the Company's regulated service. Shortage of equipment is not a viable reason for a rescue, but an unexpected shortage of drivers or equipment not being timely available at the particular pickup location is.

Complied. There appears to be no pattern that would suggest that the rescue trips were a part of a scheduled or planned event. No rescue trip was attributed to a shortage of equipment.

Reason	Reservations	Trips
Dispatch Error	2	1
Driver Lost -Flight Concern	2	1
Driver Shortage -Illness	20	10
Passenger needed to return home	2	1
Vehicle Luggage Space Full	2	1
Vehicle Mechanical en-route	2	1
Vehicle Mechanical -Flat Tire	2	1
Grand Total	32	16

F. No up-charge may be levied on the passenger receiving rescue service; the original tariffed or quoted fares must be honored.

Complied. Of 32 reservations:

- 25 reservations were charged the base rate (three originated from Sea-Tac Airport)
- Seven reservations were charged more than the base rate, but equal to, or less than, the maximum rate.
 - Reservation # 3999258: Tacoma – NE 98422 Charged \$49 (Base \$43; Max \$53.75)
 - Reservation # 4002674: Kirkland 98033 [charged \$46 (base \$40; max \$50)]

- Reservation # 3995867: Snohomish 98296 [charged \$61 (base \$55; max \$68.75)]
- Reservation # 4006696: Snohomish – N of Hwy 2 98290 [charged \$109 (base \$103; max 128.75)]
- Reservation # 4009163: From Sea-Tac To Spanaway - N of 212th St E 98387 [charged \$80 (base \$64; max \$80)]
- Reservation # 4009029: Seattle-West 98116 [charged \$46 (base \$40; max \$50)]
- Reservation # 4016839: Maple Valley 98038 [charged \$58 (base \$52; max \$65)]

G. In the aggregate during the exemption period, no more than five percent of Shuttle Express’s total business – by trips or revenue, whichever is less – may be served by rescue service.

Complied.

	All Service	Rescue Service	Rescue as % All Service
Total Trips	11,329	16	0.14%
Total Revenue	\$ 1,006,234	\$ 1,530	0.15%

Note: Shuttle Express reported 32 reservations, transported on 16 trips.

H. Shuttle Express may use rescue service to the airport only when Shuttle Express cannot otherwise ensure the passenger will make their flight.

Complied. During the exemption period, Shuttle Express maintained 149 - 156 total drivers. Shuttle Express reported 16 rescue trips (32 reservations) due to drivers getting lost, flat tires, dispatch error, or unexpected driver shortfall due to illnesses. Staff notes that during the exemption period, the reason stated for the rescue trip was “driver shortage – illness” for 10 trips (20 reservations) of the total 16 trips (32 reservations).

SUMMARY OF RESCUE TRIP ACTIVITY

Reason	12/21/2013	12/26/2013	12/27/2013	12/28/2013	12/31/2013	01/13/2014	02/01/2014	07/01/2014	Grand Total
Dispatch Error		1							1
Driver Lost - Flight Concern				1					1
Driver Shortage - Illness	1				1	5	2	1	10
Passenger needed to return home						1			1
Vehicle Luggage Space Full			1						1
Vehicle Mechanical - Flat Tire				1					1
Vehicle Mechanical en-route							1		1
Grand Total	1	1	1	2	1	6	3	1	16

- I. Shuttle Express may use rescue service from the airport only when wait times exceed reasonable staging times – typically more than 45 minutes – caused by unexpected circumstances or unforeseen numbers of passengers seeking service that were not pre-booked.

Discussion. The company operated one rescue trip (# 365973) that transported two “rescue reservations from the airport,” both of which were less than the “typically more than 45 minutes” criterion: Reservation # 4008742 (41 minutes) and Reservation # 4008368 (29 minutes). Because the 45-minute criterion is “typical,” staff does not interpret it as a strict condition. However, even if considered a strict condition, staff considers this one instance to be a very minor infraction within the context of the overall rescue service operations.

- J. The independent contractor must agree to voluntarily submit to Commission safety inspections upon request under the same conditions applicable to vans owned and operated by Shuttle Express and other auto transportation companies.

Complied. Motor Carrier Safety did not request any inspections of independent contractors.

- K. Shuttle Express and the independent contractor must procure insurance covering the contractor for rescue trips in an amount that collectively is no less than the amount of coverage the Commission requires Shuttle Express to maintain.

Complied. Shuttle Express provided a copy of its insurance policy, which contains a for hire endorsement covering any hired auto while under dispatch for Shuttle Express. Although the company represents that this endorsement covers the independent contractor, staff reiterates its concerns expressed at the open meeting that may not be true. This insurance appears to be the same as, or very similar to, the insurance coverage provided by so-called Transportation Network Companies (e.g. UBER, Lyft, etc.), and which some state and city jurisdictions are concerned may not provide sufficient insurance.

In March 2014, DOL reported that Northwest Limos had a limousine license but “no valid active vehicles with insurance.” According to DOL, the company’s insurance had expired July 20, 2013. However, Shuttle Express provided proof of insurance coverage for Northwest Limos effective July 20, 2013, through July 20, 2014.

- L. The independent contractor must not use customer information for any sales or marketing purposes of its own and must protect and not disclose customer information to the full extent required by WAC 480-30-456. Any violation of that rule by a contractor will be deemed and treated as a violation of WAC 480-30-456 by Shuttle Express itself.

Complied. Based on the company's initial responses, it appears the company is safeguarding customer information. We would need a second round of data requests to make sure all of the contractor's drivers have signed confidentiality agreements (see below). However, CP staff recommends that we not issue the additional data requests at this time.

- There are no statements from the contractors themselves regarding what they do with the customer information. Shuttle Express summarized what they believe should be happening.
- The individual contractors (eight used during the temporary period) signed confidentiality agreements (non-disclosure agreements). However, we do not have any copies of any non-disclosure agreements signed from any other drivers that might be working for the contractors.
- We could also ask the company to produce copies of their customer surveys.

M. Shuttle Express shall be liable for any violation of law an independent contractor commits while participating in the rescue service to the same extent Shuttle Express would be liable if Shuttle Express committed the violation.

Complied. Shuttle Express stated that no company or independent contractor received a violation during the exemption period while participating in rescue service.

N. Shuttle Express must require the independent contractor to provide a notice to each customer to whom rescue service is provided identifying Shuttle Express as the operator of the service and explaining the reasons for the service. Shuttle Express must work with Commission Staff and obtain its approval on the appropriate content and wording of that notice before commencing rescue service under this order.

Complied. Shuttle Express provided draft language to commission staff, which Dave Pratt approved by email sent to Mr. Paul Kajanoff on December, 16, 2013. Staff determined that it would be inappropriate to contact individual customers to verify that the customer received the information.

O. Shuttle Express must compile records on the operation of the Company's rescue service sufficient to show compliance with these conditions, and Shuttle Express must maintain those records in its primary company office. These records must include drug testing records and documentation of insurance for each independent contractor. Shuttle Express must provide a report to the Commission by February 1, 2014, on the operation of that service during the period in which the rule exemptions are in effect.

Complied. Shuttle Express provided documentation certifying that each independent contractor driver was subject to random drug testing. None of the independent contractors were selected for random drug testing during the exemption period. One independent contractor was selected after the exemption period, and Shuttle Express provided a copy of the drug test.

Documentation of insurance was provided for each independent contractor.