

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of

SHUTTLE EXPRESS, INC.,

For Exemption From WAC 480-30-213,
WAC 480-30-221, WAC 480-30-231,
and WAC 480-30-456 Pursuant to WAC
480-07-110

DOCKET TC-160819

ORDER 01

ORDER GRANTING PETITION
WITH CONDITIONS

BACKGROUND

- 1 On June 17, 2016, Shuttle Express, Inc. (Shuttle Express or Company) filed with the Washington Utilities and Transportation Commission (Commission) a petition pursuant to WAC 480-07-110 for a temporary and conditional exemption from compliance with WAC 480-30-213 and WAC 480-30-456 (Petition) to permit Shuttle Express to use independent contractors to supplement its shared ride service to and from SeaTac International Airport (SeaTac).
- 2 On September 6, 2016, Shuttle Express filed an amended petition seeking an additional partial exemption from the “inconsistent definitions and requirements” of WAC 480-30-221 and WAC 480-30-231 to exempt its independent contractors from certain safety and vehicle identification requirements.
- 3 In its Petition, Shuttle Express explains that it competes directly with Transportation Network Companies (TNCs) such as Uber and Lyft to transport passengers to and from SeaTac. The Company claims that, because TNCs are not subject to Commission regulation, they are able to provide shared-ride airport transportation services at a cost lower than Shuttle Express can provide. Granting Shuttle Express’s Petition would allow the Company to use independent contractors – thereby eliminating hourly minimum wage requirements, employee benefits, and payroll taxes – to offer shared-ride passenger service at rates competitive with those offered by TNCs. Shuttle Express argues that granting its Petition would be in the public interest because it would enable the Company to offer a better and safer transportation alternative to unlicensed TNC operators.
- 4 Shuttle Express requests exemptions from WAC 480-30-213(1), which states that vehicles operated by transportation companies must be owned by or leased to the certificate holder, and WAC 480-30-213(2), which states that drivers must be the certificate holder or an employee of the certificate holder. These provisions prohibit the Company from using independent contractors that own and maintain their own vehicles.

- 5 Shuttle Express also requests an exemption from WAC 480-30-221(1) to the extent that it expands the scope of US Department of Transportation Federal Motor Carrier Safety Administration (FMCSA) regulations adopted by the Commission to vehicles that carry fewer than nine passengers. If this exemption is granted, independent contractors operating under contract with Shuttle Express would not be required to comply with the following FMCSA regulations: 49 C.F.R. Part 385 related to safety fitness procedures; 49 C.F.R. Part 390 related to the general applicability of safety requirements; 49 C.F.R. Part 391 related qualifications of drivers; 49 C.F.R. Part 392 related to the scope of the applicability to drivers; 49 C.F.R. Part 393 related to parts and accessories related to safe operation; 49 C.F.R. Part 395 related to driver hours of service; 49 C.F.R. Part 396 related to vehicle inspection, repair, and maintenance; and 49 C.F.R. Part 397 related to the transportation of hazardous materials.
- 6 Shuttle Express further requests an exemption from WAC 480-30-231(1), which requires exterior vehicle identification. The Company's independent contractors would operate limousines, and RCW 46.04.274 prohibits external markings on limousines.
- 7 Finally, Shuttle Express requests an exemption from WAC 480-30-456, which prohibits the sale or release of customer information. The Company requests the ability to release customer information to its independent contractors solely for the purpose of providing service.
- 8 Commission staff (Staff) reviewed the Company's Petition and has not yet determined whether it is appropriate to remove Commission oversight of driver and equipment safety. Specifically, Shuttle Express's independent contractors would be exempt from requirements to maintain driver hours of service logs and prepare driver vehicle inspection reports. Staff also notes that the Department of Licensing (DOL), which has regulatory jurisdiction over limousines, has expressed concerns about whether limousines are prohibited from providing shared-ride service by RCW 46.04.276, which defines limousine service as the use of a limousine on a prearranged basis under a single contract.
- 9 In light of these concerns, Staff recommends the Commission refer the Petition to the Administrative Law Division for adjudication to allow additional discussion with the Company and other stakeholders.

DISCUSSION

- 10 The Company's Petition presents policy issues that are ripe for discussion. Currently, TNCs, mass transit, for-hire companies, and limousines all provide options for getting to and from SeaTac Airport. Yet the statutory framework governing the Commission's economic regulation of certificated auto transportation companies has not been updated

since 1961, when exclusive service territories for certificated carriers were established to provide airport transportation service as a regulated monopoly. While the Commission has the broad duty and authority to regulate auto transportation companies, it does not have regulatory authority over its flexibility to effectively regulate auto transportation companies in a dynamic and competitive marketplace.¹

11 In 2013, the Commission acknowledged how vastly conditions have changed since RCW 81.68 was enacted and amended its rules governing auto transportation companies. In the final Order Amending and Adopting Rules in Docket TC-121328, we noted that “the Commission must review current rules and processes to ensure that they recognize current competitive conditions.”² This Petition presents us with an opportunity to do exactly that.

12 Other market participants providing similar passenger carrier services are governed by different statutes and regulations administered by different agencies. While we are mindful that this waiver will allow the Company to contract with limousines to provide airporter-like services, we recognize that we have no authority to usurp the functions of DOL, which regulates limousines and TNCs, or the Port of Seattle, which establishes the terms and conditions for entry and egress from SeaTac.

13 While we appreciate Staff’s concerns, we believe that granting a limited waiver – subject to certain conditions – will best serve the public interest, and we are optimistic that it will prompt discussion and resolution of the larger policy issues presented by the Petition. As a consequence of the current regulatory landscape, we recognize that granting a waiver will not create equal terms in a market that is increasingly competitive; any action we take may advantage or disadvantage one market competitor vis-à-vis another to some degree. However, granting a waiver for a limited duration will provide the Commission and other stakeholders some time to properly address competition and harmonize the regulation of disparate participants. However, given the current statutes governing auto transportation companies, it is the legislature, ultimately, that must update the applicable statutes to reflect the realities of today’s marketplace.

14 Accordingly, we approve the Company’s Petition for a limited and conditional exemption, for a period not to exceed 10 months, from the following Commission rules:

¹ RCW 81.68.030(4) requires the Commission to “supervise and regulate the [auto transportation] companies in all other matters affecting the relationship between such companies and the traveling and shipping public.”

² *In re Amending and Adopting Rules in WAC 480-30 Relating to Passenger Transportation Companies*, Docket TC-121328, General Order R-572, Order Amending and Adopting Rules Permanently (2013), *codified at* WAC 480-30 at 9.

1) WAC 480-30-213, which relates to vehicles and drivers; 2) WAC 480-30-456, which relates to the fair use of customer information; 3) WAC 480-30-231(1), which relates to identification of vehicles; and 4) WAC 480-30-221(1), which relates to vehicle and driver safety requirements to the extent it expands the scope of coverage to vehicles carrying fewer than nine passengers. The exemption applies to rides provided under the Company's certificate not to exceed 25 percent of the rides provided by the Company in any one-month period.

15 While we acknowledge Staff's concerns about waiving certain safety rules, we also recognize that the vehicles driven by contracted drivers will continue to be inspected for safety by the State Patrol, and the drivers themselves will continue to be subject to random drug and alcohol testing. On a provisional basis, we believe it is reasonable to rely on the safety requirements that apply to similarly-sized limousines and for-hire vehicles as enforced by the State Patrol and DOL for vehicles that do not meet the FMCSA passenger capacity threshold.

16 By approving this limited waiver, the Commission expresses no judgment about the applicability of DOL statutes or regulations to the Company's operations, nor does it make any judgment about the existence or nonexistence of an employer-employee relationship between Shuttle Express and its contracted drivers.

FINDINGS AND CONCLUSIONS

17 (1) The Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, regulations, and practices of public service companies, including auto transportation companies, and has jurisdiction over the subject matter of this proceeding.

18 (2) Shuttle Express is an auto transportation company and holds a certificate of public convenience and necessity to transport passengers.

19 (3) This matter came before the Commission at its regularly scheduled meeting on September 8, 2016, and again at the recessed portion of the September 22, 2016, open meeting on September 28, 2016.

20 (4) On June 17, 2016, Shuttle Express filed a Petition pursuant to WAC 480-07-110 for a temporary and conditional exemption from compliance with WAC 480-30-213 and WAC 480-30-456. On September 6, 2016, the Company filed a revised Petition requesting additional exemptions from WAC 480-30-221 and WAC 480-30-231.

- 21 (5) After reviewing Shuttle Express's Petition, as revised on September 6, 2016, and giving due consideration to all relevant matters and for good cause shown, the Commission finds it is in the public interest to approve the Petition for a limited and conditional exemption, for a period not to exceed ten months, from the following Commission rules: 1) WAC 480-30-213, which relates to vehicles and drivers; 2) WAC 480-30-456, which relates to the fair use of customer information; 3) WAC 480-30-231(1), which relates to the identification of vehicles; and 4) WAC 480-30-221(1), which relates to vehicle and driver safety requirements to the extent it expands the scope of coverage to vehicles carrying fewer than nine passengers. The exemption applies to rides provided under the Company's certificate not to exceed 25 percent of the rides provided by the Company in any one-month period.

ORDER

THE COMMISSION ORDERS That

- 22 (1) Shuttle Express, Inc.'s Petition for conditional exemption from compliance with WAC 480-30-213, WAC 480-30-221(1), WAC 480-30-231(1), and WAC 480-30-456, as revised on September 6, 2016, is granted for a period not to exceed 10 months.
- 23 (2) The exemption applies to rides provided under the Company's certificate not to exceed 25 percent of the rides provided by the Company in any one-month period.
- 24 (3) The Commission retains jurisdiction over this matter to effectuate the terms of this Order.

DATED at Olympia, Washington, and effective September 30, 2016.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

PHILIP B. JONES, Commissioner

Commissioner Ann Rendahl does not concur with this decision or join in this Order.