

**STAFF INVESTIGATION  
OF  
SHUTTLE EXPRESS, INC.  
TC-072228**

*Prepared by:*  
**Betty Young**  
**Compliance Specialist**  
**Transportation Safety and Enforcement**  
**April 2008**

**TABLE OF CONTENTS**

Executive Summary .....3  
Purpose, Scope & Authority .....4  
Background .....5  
Staff Investigation.....8  
Analysis of Operations.....13  
Summary and Findings .....17  
Appendices.....18

## EXECUTIVE SUMMARY

The commission's Transportation Safety Enforcement staff received information that Shuttle Express, Inc. (Shuttle Express), was using charter bus carriers as "independent contractor" drivers to provide transportation services authorized under Shuttle Express's certificate.

WAC 480-30-213(2) requires that the driver of a vehicle operated by a passenger transportation company be the certificate holder or an employee of the certificate holder.

Commission staff worked with Shuttle Express since 2004 regarding the company's proposal to use independent contractors. Staff advised Shuttle Express that, as proposed, the financial, legal and operational arrangement between Shuttle Express and its independent contractor drivers would constitute a lease of Shuttle Express's certificate, which would require commission approval and would require the independent contractor drivers to obtain auto transportation certificates. Commission staff also advised Shuttle Express that it would be in violation of state law if it conducted business in the manner described in its proposed arrangement.

Commission staff repeatedly advised Shuttle Express to either file a petition for declaratory ruling with the commission about the legality of the company's proposed arrangement or to file an application to lease the company's certificate. Instead, Shuttle Express instituted its independent contractor program with neither a declaratory ruling from the commission nor an approved application to lease its certificate.

As described by Shuttle Express and the charter bus carriers in response to staff's inquiries, the company's independent contractor program works this way:

- Shuttle Express manages the operations of the charter bus carriers.
- The charter bus carriers contract for services only with Shuttle Express.
- The vehicles driven by the charter bus carriers are leased from Shuttle Express's subsidiary.
- The vehicles driven by the charter bus carriers show the Shuttle Express name.
- Shuttle Express compensates the charter bus carriers for providing transportation services authorized under Shuttle Express's authority.
- Shuttle Express provides reservation and dispatching services for the charter bus carriers.
- Fare tickets used by the charter bus carriers show the Shuttle Express name.

Each of the six charter bus carriers voluntarily surrendered its charter permit for cancellation as of January 31, 2008. However, based on a review of the information provided by Shuttle Express and the charter bus carriers, commission staff finds that Shuttle Express violated WAC 480-30-213(2) when it used drivers who were not employees to provide passenger transportation services under Shuttle Express's certificate authority.

Commission staff finds a total of 95 violations of WAC 480-30-213(2), from September 1 through 30, 2007, where Shuttle Express used these drivers to provide passenger transportation 95 times over a period of 30 days. RCW 81.04.405 allows penalties of one hundred dollars for every such violation. Total possible penalties are \$9,500.

## **PURPOSE, SCOPE, AND AUTHORITY**

### **Purpose**

The purpose of this investigation is to determine if Shuttle Express violated Washington Administrative Code (WAC) 480-30-213 by using drivers of vehicles operated by Shuttle Express who were neither holders of Certificates of Public Convenience and Necessity nor employees of the certificate holder.

### **Scope**

The scope of the investigation focuses on information obtained by staff of the Washington Utilities and Transportation Commission (commission) concerning the business practices of Shuttle Express related to its independent contractor program.

### **Authority**

Staff undertakes this investigation under the authority of the Revised Code of Washington (RCW) 81.01.010 which adopts provisions of RCW 80.01 including RCW 80.01.040. RCW 80.01.040 directs the commission to regulate passenger transportation companies in the public interest and to adopt such rules and regulations as may be necessary to do so. The commission adopted such rules in Washington Administrative Code (WAC) Chapter 480.30. In addition, RCW 81.04.070 makes it clear that the commission is authorized to conduct such an investigation. Appendix A includes copies of the appropriate laws and rules.

## BACKGROUND

Shuttle Express, Inc., doing business as Shuttle Express, has held a Certificate of Public Convenience and Necessity (C-975) and a charter party carrier certificate (CH-171) since 1989.<sup>1</sup> The company is located at 805 Lenora Street, Seattle, Washington, 98121. Jimmy Sherrell is the company's president. Shuttle Express reported approximately \$11.5 million in gross intrastate operating revenues for 2006.

### Commission Contact with Shuttle Express

Prior to this investigation, commission staff has had a number of contacts with the company that are relevant to this issues addressed in this report. These are described below.

#### 2004-2005 - Shuttle Express's proposal to use "independent contractors"

In August 2004, Mr. Sherrell sent a letter to the commission's Transportation Policy staff stating that Shuttle Express could no longer sustain its market position by running a fleet of employee drivers. The company proposed hiring drivers as independent contractors. Shuttle Express claimed the public would benefit by stabilized pricing of fares and increased service. In addition, Shuttle Express claimed drivers would benefit by working "productive hours matching the ebb and flow of airline traffic." Mr. Sherrell asserted that UTC regulation would be seamless because all rules, regulations, reports and fees would remain the responsibility of Shuttle Express. The letter included a proposed contract referred to as the "Owner-Operator Agreement."<sup>2</sup>

In February 2005, Shuttle Express submitted a revised version of its Owner-Operator Agreement for commission staff review.<sup>3</sup> Transportation policy staff communicated with Shuttle Express over the next several months by phone and electronic mail regarding the feasibility of such an arrangement and the use of independent contractors in similar situations in other states. Staff from the Attorney General's office, on behalf of commission staff, also communicated with Shuttle Express's legal representative.

In November 2005, commission staff sent a letter to Shuttle Express stating:

- "The financial, legal and operational arrangement between Shuttle Express and its 'independent-contractor' drivers would constitute a lease of Shuttle Express's certificate or other carrier property, which requires prior Commission approval (RCW 81.12.020 and 030, and RCW 81.68.040 and 070)."
- "The financial, legal and operational arrangement between Shuttle Express and its 'independent-contractor' drivers would require the 'independent-contractor' drivers to obtain auto transportation certificates under RCW 81.68.010(3) and .040."
- "Without the approvals and certificates identified above, Shuttle Express would be in violation of state law if it conducted its business in the manner described in the proposed 'Owner-Operator Agreement.'"<sup>4</sup>

---

<sup>1</sup> The company was previously known as San Juan Airlines d/b/a Shuttle Express.

<sup>2</sup> August 19, 2004, letter from Jimmy Sherrell to Gene Eckhardt – Appendix B

<sup>3</sup> Feb 2005 Shuttle Express Owner Operator Agreement – Appendix C

<sup>4</sup> Commission staff letter to Jimmy Sherrell dated November 4, 2005 – Appendix D

## Shuttle Express, Inc. Staff Investigation

Commission staff advised Shuttle Express that the company could:

- a) Request a declaratory ruling by the commission about the legality of the proposed Owner-Operator Agreement.
- b) Consider filing an application to lease Shuttle Express's certificate authority and other properties under the proposed agreement.
- c) Seek legislative changes that would allow such an arrangement.

Shuttle Express responded to this letter with a public records request, seeking a more detailed explanation of the reasoning behind staff's conclusions.<sup>5</sup> Shuttle Express stated that it did not understand how the proposed Owner-Operator Agreement constituted a "lease" of Shuttle Express's certificate, when it was the company's intention to remain completely responsible to its customers under that certificate.

Commission staff responded with the requested information on December 27, 2005.<sup>6</sup> In its response, commission staff concluded that based on a review of the Owner-Operator Agreement and the applicable statutes, the agreement would effectively transfer control of carrier operations and transfer certain carrier property (e.g. names, logos, etc.) to the "independent-contractor" drivers. Each of these transfers would require an application to the commission. Commission staff reminded Shuttle Express of its options to file a petition for a declaratory ruling by the commission about the legality of the proposed agreement or file an application to lease the company's certificate.

### 2006 - Passenger Transportation Company (Bus) Rulemaking

In February 2006, during the Passenger Transportation Company rulemaking in docket TC-020497, Shuttle Express proposed a new rule dealing with driver status and sub-carrier agreements.<sup>7</sup> The proposed rule would have allowed an auto transportation company (prime carrier) to enter into an agreement with a passenger charter carrier (sub-carrier) to use the sub-carrier's vehicle and drivers to perform transportation services authorized under the prime carrier's certificate.

At the March 2006 rule adoption hearing, John Rowley of Shuttle Express restated the company's request that the commission adopt a method of allowing the use of sub-carriers to transport passengers for a prime carrier. Mr. Rowley expressed the opinion that under such an arrangement, the accountability structure of the certificate holder and enforcement ability against the certificate holder remains intact. Mr. Rowley asked the commission to consider either introducing the company's proposal or slightly modified changes within the proposed rules or at a minimum, consider them at a later time.

The commission rejected Shuttle Express's recommendation, stating that the commission's legal staff advised the commission that Chapter 81.68 RCW does not allow auto transportation companies to use sub-carriers as proposed.<sup>8</sup>

---

<sup>5</sup> E-mail from Jimy Sherrell to Gene Eckhardt dated November 29, 2005 – Appendix E

<sup>6</sup> Commission staff letter to Jimy Sherrell dated December 27, 2005 – Appendix F

<sup>7</sup> Shuttle Express's comments in docket TC-020497 – Appendix G

<sup>8</sup> Commission order/excerpt from adoption order appendix in docket TC-020497 – Appendix H

## Shuttle Express, Inc. Staff Investigation

### 2007 - Motor Carrier Safety Inspections of Charter Bus Carriers

In June 2007, Bob Myles of Shuttle Express contacted commission Motor Carrier Safety investigator John Foster by e-mail stating that the company was expanding its charter business by contracting with independent contractors. Mr. Myles advised that the contractors would be applying for their own charter carrier permits and asked questions about vehicle inspections.<sup>9</sup>

The following shows the dates the “independent contractor” companies applied for charter authority, the dates the commission’s Motor Carrier Safety staff conducted vehicle inspections and technical assistance visits with the companies, and the dates the commission granted each company’s charter authority.

<b>Carrier Name/ Certificate #</b>	<b>Date Applied for Authority</b>	<b>Vehicle Inspection/ Technical Assistance Visit</b>	<b>Date Granted Authority/ Permit Number<sup>10</sup></b>
<b>Gurjeet Gill</b> CH-62899	June 16, 2007	June 28, 2007	July 12, 2007
<b>Stephen Reeves</b> CH-62900	June 16, 2007	June 28, 2007	July 12, 2007
<b>Randy Leach d/b/a Randy Leach Transportation</b> CH-62932	July 9, 2007	July 24, 2007	July 27, 2007
<b>C&amp;S Services, LLC (Charles Eagan)</b> CH-62978	July 23, 2007	July 24, 2007	August 27, 2007
<b>Yvonne Porreca</b> CH-63041	Sept. 20, 2007	October 1, 2007	October 5, 2007
<b>Timothy Pak</b> CH-63045	Sept. 20, 2007	October 8, 2007	October 11, 2007

During Motor Carrier Safety investigator Tom McVaugh’s visits to Randy Leach and C&S Services in July 2007, both companies advised Mr. McVaugh that they were independent contractors for Shuttle Express. When Mr. McVaugh met with Timothy Pak in October 2007, Mr. Pak advised Mr. McVaugh that he would be conducting airporter service brokered by Shuttle Express.<sup>11</sup>

At this point, Mr. McVaugh referred the matter to Transportation Safety Enforcement for investigation because of his concerns that Shuttle Express and the charter carriers would be operating in violation of commission laws and rules.

<sup>9</sup> June 13, 2007, e-mail from Bob Myles of Shuttle Express – Appendix I

<sup>10</sup> Each of the charter bus carriers voluntarily surrendered its charter permit for cancellation as of January 31, 2008.

<sup>11</sup> Declaration of Tom McVaugh – Appendix J

## STAFF INVESTIGATION

To better understand the business relationship between Shuttle Express and the charter bus carriers, commission staff sent a letter to Jimmy Sherrell on October 23, 2007, requesting specific information.<sup>12</sup> The letter to Mr. Sherrell stated, in part,

“As you know, staff of the Washington Utilities and Transportation Commission (commission) has worked with Shuttle Express for several years on the issue of using independent contractors as drivers. Commission staff reviewed your proposal of an “Owner-Operator Agreement” in 2005 and provided you with its opinion on such an agreement...

The commission recently received information which leads us to believe that the following charter bus carriers may be operating as independent contractors for Shuttle Express:

- Gurjeet Singh Gill – CH-62899
- Stephen Arthur Reeves – CH-62900
- Randy Leach d/b/a Randy Leach Transportation – CH-62932
- Timothy C. Pak – CH-63045
- Yvonne Porrecca d/b/a Traveling With Yvonne – CH-63041
- C&S Services, LLC – CH-62978”

Within the letter, staff requested specific information about Shuttle Express’s equipment arrangements and business structure relating to the charter bus carriers.

Commission staff also sent letters to each of the six charter bus carriers, requesting information relating to the carrier’s relationship with Shuttle Express. Each letter advised the carrier that the commission had received information indicating that the carrier may be providing passenger transportation services not authorized under its charter bus certificate.<sup>13</sup>

### Company Responses

Shuttle Express responded to the commission’s information requests through its attorney, Brooks Harlow, on November 21, 2007.<sup>14</sup> On November 30, Mr. Harlow provided corrected responses, stating that the wrong independent contractor and lease agreements were filed with Shuttle Express’s November 21 response.<sup>15</sup>

Commission staff received responses from Brooks Harlow on behalf of five of the charter bus carriers on December 11, 2007. Charter bus carrier Yvonne Porrecca did not respond. She voluntarily cancelled her charter bus authority on December 17, 2007.

In order to organize staff’s questions and the responses of both Shuttle Express and the charter companies, staff created the following tables, presented by subject matter. Because every charter bus company responded in substantially the same way, staff summarized their responses as one response.<sup>16</sup>

---

<sup>12</sup> Letter to Jimmy Sherrell – Appendix K

<sup>13</sup> Letters to the six charter bus carriers – Appendix L

<sup>14</sup> Response from Shuttle Express – Appendix M

<sup>15</sup> Revised response from Shuttle Express – Appendix N

<sup>16</sup> Responses of charter bus carriers – Appendices O & P



### Equipment

In its information requests, Commission staff inquired about the equipment arrangements between Shuttle Express and the charter bus carriers. The questions and responses are outlined below.

Subject Matter	Shuttle Express	Charter Bus Carriers
<b>Equipment Leasing/Rental</b>	<p><b>Question:</b> Does Shuttle Express lease or rent vehicles to any of the charter bus carriers listed above?</p> <p><b>Response:</b> No.</p>	<p><b>Question:</b> Do you own, lease or rent the vehicles? If you rent or lease, from whom do you lease or rent?</p> <p><b>Response:</b> Lease the vehicle from Express Leasing, LLC.</p>
<b>Maintenance</b>	<p><b>Question:</b> Does Shuttle Express maintain any of the vehicles operated by any of the charter bus carriers, or pay for another party to provide maintenance for the vehicles?</p> <p><b>Response:</b> The charter bus carriers listed above are independent contractors who are responsible for providing and maintaining the vehicles they operate. Contractors are free to obtain their vehicles from any source, provided they meet the applicable safety, quality, Port, and other standards. Currently all independent contractors lease their vehicles from Express Leasing LLC. The current lease form includes a maintenance contract for certain types of maintenance. Covered maintenance is provided by the Shuttle Express maintenance shop.<sup>17</sup> Contractors pay a fully compensatory rate to Express Leasing for the covered maintenance services.</p>	<p><b>Question:</b> Does your company maintain the vehicles? If not, who maintains the vehicles? Who pays for maintenance of the vehicles? To whom are bills for maintenance paid?</p> <p><b>Response:</b> I am responsible for maintenance of my leased vehicle, though I do not perform the maintenance myself. As part of my lease agreement, I pay Express Leasing to do the maintenance. It is my understanding that Express Leasing contracts with Shuttle Express maintenance shop and/or other shops to do the work. I pay Express Leasing for maintenance as part of my lease agreement. For other work outside normal maintenance required, I pay for it directly. I pay Express Leasing seven cents a mile for covered maintenance. It is my understanding that Express Leasing compensates the Shuttle Express Shop for maintenance covered as part of my lease agreement. For other work, I can take my vehicle to the Shuttle Express maintenance shop and they may do the work themselves or outsource the work. Les Schwab (tires), the Renton Midas shop, and Sound Ford are some of the shops used.</p>
<b>Fuel</b>	<p><b>Question:</b> Does Shuttle Express pay for fuel to operate the vehicles operated by any of the charter bus carriers?</p> <p><b>Response:</b> No.</p>	<p><b>Question:</b> Do you pay for fuel to operate the vehicles?</p> <p><b>Response:</b> Yes.</p>
<b>Company Identification</b>		<p><b>Question:</b> Is your company identified on the exterior of the vehicle? If so, how? Is Shuttle Express, Inc., or any other carrier identified on the exterior of the vehicle?</p> <p><b>Response:</b> Yes - My name and the WUTC charter number are on the side of the vehicle. Yes - Shuttle Express compensates me to advertise their "Limos by Shuttle Express" service.</p>

<sup>17</sup> See charter bus carrier response at 3(c). Carrier states, "It is my understanding that Express Leasing contracts with Shuttle Express maintenance shop and/or other shops to do the work."

**Business Structure**

In its information requests, Commission staff inquired about the business structure between Shuttle Express and the charter bus carriers. The questions and responses are outlined in the table below.

Subject Matter	Shuttle Express	Charter Bus Carriers
<b>Contract</b>	<p><b>Question:</b> Does Shuttle Express have a contract with any of the charter bus carriers for any reason?</p> <p><b>Response:</b> Yes.</p>	<p><b>Question:</b> Do you have a contract with Shuttle Express, Inc. for any reason?</p> <p><b>Response:</b> Yes.</p>
<b>Compensation to Charter Bus Carriers</b>	<p><b>Question:</b> Does Shuttle Express compensate any of these carriers in any way for any reason? If so, describe the compensation structure and the amounts received.</p> <p><b>Response:</b> Yes. Under the current form of contract, Shuttle Express compensates willing carriers for advertising of “Limos by Shuttle Express” service on the vehicle. The compensation structure is in the process of review.</p>	<p><b>Question:</b> Do you receive compensation from Shuttle Express, Inc. in any way for any reason? If so, describe the compensation structure and amounts received.</p> <p><b>Response:</b> When I accept a charter offered by Shuttle Express to or from Sea-Tac Airport to transport passengers they have contracted with under their airporter certificate, I receive a percentage of the rates that they are allowed to charge the passengers under their tariff for providing a vehicle and driver for the transportation. In addition, I receive advertising fees.</p> <p>I receive 50% of Shuttle Express’ tarified fares as described above...Also, as part of my contract with Shuttle Express, I receive a 10% credit to advertise Shuttle Express’s Limo Service on the side of my vehicle. The copy says: “Limos by Shuttle Express.”</p>
<b>Compensation to Shuttle Express</b>	<p><b>Question:</b> Does Shuttle Express receive compensation from any of these carriers in any way for any reason? If so, describe the compensation structure and the amounts received.</p> <p><b>Response:</b> Yes. Under RCW 80.68.010, an ‘Auto transportation company’ means every corporation...managing any motor propelled vehicle used in the business of transporting persons...’ The Shuttle Express independent contractor program is intended to ensure that Shuttle, as a holder of an auto transportation company certificate of public convenience and necessity (“CPCN”), provides sufficient “management” over the operation of the independent contractors’ vehicles so that those operations fall under ambit of Shuttle’s CPCN without creating a master-servant or employer-employee relationship. Much like a prime contractor on a construction project who manages sub contractors doing the actual work of building a structure to plans and specifications, Shuttle provides the overall management and functionality of an auto</p>	<p><b>Question:</b> Do you compensate Shuttle Express Inc. in any way for any reason?</p> <p><b>Response:</b> When I accept a charter offered by Shuttle Express to or from Sea-Tac Airport to transport passengers they have contracted with under their airporter certificate, Shuttle Express receives a percentage of the rates that they charge the passengers under their tariff for referring business to my company, for my use of their trademarks, and for marketing, reservation, and dispatch services.</p>

## Shuttle Express, Inc. Staff Investigation

Subject Matter	Shuttle Express	Charter Bus Carriers
	<p>transportation company but uses subcontractors to provide vehicles and drivers. The Independent Contractor Agreement gives Shuttle Express sufficient management rights to ensure that operations under its CPCN will comply with all safety and economic regulations of the WUTC applicable to an auto transportation company.</p> <p>Under the current form of contract, Shuttle Express and the independent contractors share revenues generated from contractors' activities covered by the contracts. The compensation structure is a percentage of the revenues generated. Amounts vary with the revenue from each reservation. See enclosed Independent Contractors Agreement for full details. The compensation structure is in the process of review.</p>	

### Charter Bus Carrier Operations

In its information requests, Commission staff inquired about the specific operations of the charter bus carriers. The questions and responses are outlined in the table below.

Subject Matter	Charter Bus Carriers
<b>Contracts Other than Shuttle Express</b>	<p><b>Question:</b> Do you have contracts with hotels or other entities to perform charter or other bus services?</p> <p><b>Response:</b> Currently I do not have any contracts independent of my contract with Shuttle Express.</p>
<b>Customer Pick-ups</b>	<p><b>Question:</b> Where do you pick up customers (i.e., at SeaTac airport, at their homes, at hotels, at another predetermined stop or at other locations)?</p> <p><b>Response:</b> When Shuttle Express offers me a charter, they relay the information received from the passengers regarding the location or locations to pick up passengers; which include residences, apartment complexes, hotels, airports, public sport centers, businesses, malls, transit centers, ferry terminals, public buildings, cruise ship piers (during cruise ship season), park-and-ride lots, and condominiums.</p>
<b>Customer Drop-offs</b>	<p><b>Question:</b> What is the end destination for your customers (i.e., SeaTac airport, shopping mall or other location)?</p> <p><b>Response:</b> When Shuttle Express offers me a charter, they relay the information received from the passengers regarding the location or locations to drop off the passengers; which include residences, apartment complexes, hotels, airports, public sport centers, businesses, malls, transit centers, ferry terminals, public buildings, cruise ship piers (during cruise ship season), park-and-ride lots, and condominiums.</p>
<b>Route/Schedule</b>	<p><b>Question:</b> Do you have a regular route or schedule, (i.e., do you stop at the same places each day and do you stop at them at the same time each day)? If so, provide copies of your route and schedule if available; otherwise describe your route and schedule. If not, describe how your routes and schedules vary from day to day.</p> <p><b>Response:</b> No. My routes and schedules vary because each pick-up point is different.</p>
<b>Charges/Rate Structure</b>	<p><b>Question:</b> How do you charge customers for providing transportation? Describe your rate structure (i.e., do you charge every customer an amount for transportation on an individual basis or charge a group of customers a single amount for transportation?).</p>

Shuttle Express, Inc. Staff Investigation

Subject Matter	Charter Bus Carriers
	<p>Include the amount you charge customers for transportation.</p> <p><b>Response:</b> If I begin performing independent charter work for parties other than Shuttle Express, I plan to charge the charter group a rate which both the group and I agree upon at the time the transportation arrangement is made. For charters I do for Shuttle Express, the customer is charged the Shuttle Express tariff, and I charge Shuttle Express 50% of that tariff rate for my services and another 10% of that tariff rate for advertising the “Limos by Shuttle Express” in accordance with my IC Agreement with Shuttle Express.</p>

In addition, each charter bus carrier was asked to provide the following:

1. Copies of every invoice or receipt for any charter or other bus service performed at any time during September 2007.
2. A list of every pick-up location for every passenger during September 2007.
3. A list of every destination location for every passenger during September 2007.

The charter bus carriers provided the information as requested. A review of the documents shows that the charter bus carriers operated for a combined total of 95 days during the month of September 2007.<sup>18</sup>

Charter Bus Carrier	Dates Operated - September 2007	Number of Days
Gurjeet Gill	1, 2, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30	23
Stephen Reeves	5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 18, 19, 20, 21, 25, 26, 27, 28, 29, 30	20
Randy Leach d/b/a Randy Leach Transportation	1, 2, 3, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24	21
C&S Services, LLC (Charles Eagan)	1, 2, 3, 6, 7, 8, 9, 10, 14, 15, 16, 17, 20, 21, 22, 23, 24, 27, 28, 29, 30	21
Timothy Pak	20, 21, 22, 23, 24, 25, 27, 28, 29, 30 <sup>19</sup>	10
<b>Total Days</b>		<b>95</b>

<sup>18</sup> See “Van IC Pick-up/Drop-off Data” for each carrier - Appendix Q

<sup>19</sup> The commission did not grant Timothy Pak charter authority until October 11, 2007.

## ANALYSIS OF OPERATIONS

WAC 480-30-213 – Vehicles and drivers, states:

1. The vehicles operated by a passenger transportation company must be owned by or leased to the certificate holder.
2. The driver of a vehicle operated by a passenger transportation company must be the certificate holder or an employee of the certificate holder.

In order to determine if Shuttle Express violated WAC 480-30-213(2), commission staff sought to answer the following question:

***Are the vehicles driven by the charter bus carriers actually “operated” by Shuttle Express?***

Commission staff concludes that the answer to this question is “yes.” In coming to this conclusion, staff reviewed the business structure and arrangements between Shuttle Express and its independent contractors as described by Shuttle Express and the other charter bus carriers in their responses to staff’s data requests. Staff found the following.

### **Management**

Shuttle Express states that it “manages” the operations of the independent contractors. In its response to commission staff’s information request, Shuttle Express stated, in part:

“The Shuttle Express independent contractor program is intended to ensure that Shuttle, as a holder of an auto transportation company certificate of public convenience and necessity (“CPCN”), provides sufficient “management” over the operation of the independent contractors’ vehicles so that those operations fall under ambit of Shuttle’s CPCN without creating a master-servant or employer-employee relationship. Much like a prime contractor on a construction project who manages sub-contractors doing the actual work of building a structure to plans and specifications, Shuttle provides the overall management and functionality of an auto transportation company but uses subcontractors to provide vehicles and drivers. The Independent Contractor Agreement gives Shuttle Express sufficient management rights to ensure that operations under its CPCN will comply with all safety and economic regulations of the WUTC applicable to an auto transportation company.”

The 2007 Independent Contractor Agreement submitted by Shuttle Express contains the same problematic terms as the “Owner-Operator Agreement” the company submitted for commission staff’s review in 2004 and 2005. In addition, the 2007 agreement expressly requires the “independent-contractor” drivers to obtain charter certificates.

When commission staff reviewed the 2004 and 2005 contracts, commission staff informed Shuttle Express that the financial, legal and operational arrangement between Shuttle Express and its “independent-contractor” drivers would require the “independent-contractor” drivers to obtain auto transportation certificates under RCW 81.68.010(3) and .040. Shuttle Express “independent contractors” not only never applied for auto transportation certificates, but, as required by the 2007 agreement, applied for and received charter authority instead.

## Shuttle Express, Inc. Staff Investigation

Within the Independent Contractor Agreement, Shuttle Express and the charter bus carriers agree that no employer-employee or master-servant relationship exists between them.

### Contracts

When asked if they had contracts with hotels or other entities to perform charter or other business services, each of the charter bus carriers stated they do not have any contracts independent of the contract with Shuttle Express.<sup>20</sup>

### Operation of Vehicles

According to the responses received from Shuttle Express and the charter bus carriers, Shuttle Express does not lease or rent vehicles to any of the charter bus carriers. The carriers lease their vehicles from a company called "Express Leasing, Inc."<sup>21</sup> Express Leasing, Inc. is Shuttle Express's wholly owned leasing subsidiary.<sup>22</sup>

Shuttle Express grants the charter bus carriers the right to use Shuttle Express's licensed property and symbols, which include trademarks, trade names, logos, insignia, colors and color combinations.<sup>23</sup> Shuttle Express compensates the charter bus carriers for advertising Shuttle Express's limo service on the exterior of the vehicles.<sup>24</sup>

Shuttle Express is an auto transportation company. Under its Certificate of Public Convenience, Shuttle Express may offer passenger transportation as indicated in the company's certificate (e.g. transportation to and from the airport).

WAC 480-30-036 defines "auto transportation company" as:

"...every person owning, controlling, operating, or managing any motor-propelled vehicle not usually operated on or over rails, used in the business of transporting persons over any public highway in this state between fixed termini or over a regular route, and not operating exclusively within the incorporated limits of any city or town."

None of the charter bus carriers have an auto transportation certificate from the commission. Charter services authorized under the charter bus carriers' commission-issued charter certificates do not include transporting passengers to or from an airport when the only goal the passengers have in common is getting to or from the airport.

WAC 480-30-036 also contains the following definitions:

"Charter party carrier of passengers" or "charter carrier" means every person engaged in the transportation of a group of persons who, pursuant to a **common purpose** and under a single contract, have acquired the use of a motor bus to travel together as a group to a specified destination or for a particular itinerary, either agreed upon in advance or modified by the chartering group after having left the place of origin."

---

<sup>20</sup> Charter bus carrier responses at question 11.

<sup>21</sup> Shuttle Express response at questions 1 and 2. See also charter bus carrier responses at question 2.

<sup>22</sup> Shuttle Express's comments in docket TC-020497 – Appendix G

<sup>23</sup> Independent Contractor Agreement at 2.

<sup>24</sup> Shuttle Express response at question 7 and charter bus carrier responses at question 5.

**"Common purpose"** means that a group of persons is traveling together to achieve a common goal or objective. For example, a group of persons traveling together to attend a common function or to visit a common location. For the purposes of these rules it does not mean a group of persons who have no common goal other than transportation to, or from, the airport. (*Emphasis added.*)

A charter company may provide service to or from the airport if the passengers have a common goal other than transportation to or from the airport. For example, if all passengers have booked a trip through a local senior center to the same place that departs from an airport, the senior center may charter a bus to take all of those passengers to the airport as the first leg of their trip. These passengers have a common goal other than transportation to or from the airport.

### **Compensation**

The charter bus carriers state that they receive compensation from Shuttle Express for transporting passengers, whom Shuttle Express has contracted with under its airporter certificate, to or from Sea-Tac Airport and other locations. The charter bus carriers are also compensated for advertising Shuttle Express's "Limos by Shuttle Express" service on the exterior of the charter bus vehicles.<sup>25</sup>

Shuttle Express stated that under the current contract, Shuttle Express and the charter bus carriers share revenues generated from the charter bus carriers' activities.<sup>26</sup> The charter bus carriers stated that when they accept a charter offered by Shuttle Express, Shuttle Express receives a percentage of the rates charged to passengers under Shuttle Express's tariff for referring business to the charter bus carriers, for the charter bus carriers' use of Shuttle Express's trademarks, and for marketing, reservation and dispatch services.<sup>27</sup>

The Independent Contractor Agreement states that the contractors (charter bus carriers) must charge "only those tariffs/fares assigned and approved by Company (Shuttle Express) and no variation is allowed unless authorized by the Company (i.e.: Fuel Surcharge)."<sup>28</sup>

### **Reservations and Dispatching**

The Independent Contractor Agreement states that contractors receive referrals to transport passengers through Shuttle Express's reservation and referral center.<sup>29</sup>

When commission staff asked the charter bus carriers about pick up locations and end destinations for their customers, the carriers provided the following information:

"When Shuttle Express offers me a charter, they relay the information received from the passengers regarding the location or locations to pick up passengers; which include residences, apartment complexes, hotels, airports, public sport centers, businesses, malls,

---

<sup>25</sup> Charter bus carrier responses at questions 5 and 8

<sup>26</sup> Shuttle Express response at question 6

<sup>27</sup> Charter bus carrier responses at question 9

<sup>28</sup> Independent Contractor Agreement at 6(b)

<sup>29</sup> Independent Contractor Agreement at 5(a)

## Shuttle Express, Inc. Staff Investigation

transit centers, ferry terminals, public buildings, cruise ship piers (during cruise ship season), park-and-ride lots, and condominiums.”

Based on the records provided by the charter bus carriers, the carriers also accept walk-on customers, which is not authorized under charter authority.<sup>30</sup>

### **Fare Tickets**

Copies of fare tickets provided by the charter bus carriers all say “Shuttle Express” at the top.<sup>31</sup>

### **Advertising**

When asked about advertising, a few of the carriers stated they have business cards; the remaining carriers stated they do not advertise.<sup>32</sup> When commission staff asked the charter bus carriers how they attract or obtain business, the charter bus carriers stated that “most of” their charter work is for Shuttle Express performed under the Independent Contractor contract. However, each of the carriers stated they do not have any contracts independent of the contract with Shuttle Express.<sup>33</sup>

---

<sup>30</sup> Record of Charles Eagan for September 14, 2007 – Appendix R

<sup>31</sup> Copies of fare tickets – Appendix S

<sup>32</sup> Charter bus carrier responses at question 6

<sup>33</sup> Charter bus carrier responses at question 11



## SUMMARY AND FINDINGS

WAC 480-30-213(2) requires that the driver of a vehicle operated by a passenger transportation company be the certificate holder or an employee of the certificate holder.

Commission staff worked with Shuttle Express over a period of several years regarding the company's proposal to use independent contractors. Staff advised Shuttle Express that, as proposed, the financial, legal and operational arrangement between Shuttle Express and its independent contractor drivers would constitute a lease of Shuttle Express's certificate, which would require Commission approval and would require the independent contractor drivers to obtain auto transportation certificates. Commission staff also advised Shuttle Express that it would be in violation of state law if it conducted business in the manner described in its proposed "Owner-Operator Agreement."

Commission staff repeatedly advised Shuttle Express to either file a petition for declaratory ruling with the commission about the legality of the company's proposed arrangement or to file an application to lease the company's certificate. Instead, Shuttle Express instituted its independent contractor program with neither a declaratory ruling from the commission nor an approved application to lease its certificate.

As described by Shuttle Express and the charter bus carriers in response to staff's inquiries, the company's independent contractor program works this way:

- Shuttle Express manages the operations of the charter bus carriers.
- The charter bus carriers work only for Shuttle Express.
- The vehicles driven by the charter bus carriers are leased from Shuttle Express's subsidiary.
- The vehicles driven by the charter bus carriers show the Shuttle Express name.
- Shuttle Express compensates the charter bus carriers for providing transportation services authorized under Shuttle Express's authority.
- Shuttle Express provides reservation and dispatching services for the charter bus carriers.
- Fare tickets used by the charter bus carriers show the Shuttle Express name.

Based on a review of the information provided by Shuttle Express and the charter bus carriers, commission staff finds that Shuttle Express violated WAC 480-30-213(2) when it used drivers who were not employees to provide passenger transportation services under Shuttle Express's certificate authority.

Commission staff finds a total of 95 violations of WAC 480-30-213(2), from September 1 through 30, 2007, where Shuttle Express used these drivers to provide passenger transportation 95 times over a period of 30 days. RCW 81.04.405 allows penalties of one hundred dollars for every such violation. Total possible penalties are \$9,500.