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August 29, 2002

VIA E-MAIL & FEDERAL EXPRESS

Ms. Carole J. Washburn
Executive Secretary
Washington Utilities and Transportation Commission
Post Office Box 47250
1300 S. Evergreen Park Dr. SW
Olympia, Washington 98504-7250

Subject: Docket No. TC-020497 - Passenger Transportation Company Rulemaking
Rulemaking Issues Paper

Dear Ms. Washburn:

This letter is in response to the request to the Commission Staff for further comments on the "rulemaking issues paper" issued on July 31, 2002. We file herewith an original and 10 copies of our comments and a 3-1/2" diskette in Word format as requested. We file these comments on behalf of Washington Airporter Operators Association and Evergreen Trails, Inc., d/b/a Grayline (collectively "Airporters").

The structure of these comments will be by issue and proposal numbers, as set forth in the July 31 issues paper. The Airporters do not have comments on all proposals at this time, either because they have no position or because finalization of their position will require further development of the issues through the workshop, rule drafting, and comment process. Thus, these comments skip certain proposals. However, the lack of comments on an issue should not be construed as a position, one way or the other, on a proposal.

Issue 1 – General Discussion

The Airporters would encourage the Commission to improve enforcement of safety regulations. The Airporters operate high quality services at a premium price. The demands of airport passengers would not allow for shoddy service or patently unsafe operations. Some of the Airporters also operate charter and excursion operations and note that the quality of their competitors outside of the airporter industry is often less than would be desirable. The Airporters believe that some carriers have no insurance, fail to comply with drug and alcohol testing requirements, do not properly maintain vehicles, fail to conduct background checks of

drivers and mechanics, and cut numerous other "corners" on safety. Because the charter and excursion businesses are so highly price competitive, some carriers are tempted to sacrifice safety compliance to make ends meet. The market is incapable of promoting safety in a competitive industry. Indeed, competitive incentives in the short term may be inconsistent with safe operations. The Airporters recommend that the Commission make every effort to step up enforcement of safety regulations through increased audits and inspections.

In the recent past, the Commission has focused a tremendous amount of resources on ratemaking. The Airporters believe that those resources would be more beneficial to the public interest if applied, instead, to enforcement of safety regulations. As the Airporters discuss further below, in spite of the limited entry provisions in RCW 81.68.040, the passenger transportation business is highly competitive in general and for airporters in particular.

Issue 2 – Form and Structure of Rules

The Airporters have no objection to these proposals in principal.

Issue 3 – Policy Statement

1. As noted above the Commission should emphasize its primary role in ensuring safe operations. When the statutes and many of the existing rules were passed, a much smaller percentage of the public had access to private automobiles. This is the primary competitive force that regulates the prices of all carriers, including Airporters. The price constraining capability of the private automobile is so extreme that most traditional bus companies have gone bankrupt. Other modes of transportation suffice to protect the public from unreasonable rates. Safety is another issue, however. The market is not always adequate to ensure safe operations. Indeed, the incentives are often reversed. Accordingly, the Commission should, in both its policy statements and in its actions, focus its very limited resources on safety and enforcement.

4. The Airporters oppose any reference to Public Transportation Benefit Areas in Commission rules. The Commission has no authority over PTBAs nor municipal corporations. Those entities are well represented and aware of their legal rights over carriers. Historically they have aggressively protected their rights. The Airporters are concerned that the inclusion of such comments in the Commission's rules could be cited by PTBAs and municipal corporations to expand their authority. No such references are necessary, since the rights of PTBAs and municipal corporations are clearly spelled out in statutes over which the Commission has no authority.

6. The Airporters have similar concerns with regard to references of licenses under Title 46 of the RCW as they do with regard to mention of PTBAs and municipal corporations. See comment on Issue 3, proposal 4, supra.

Issue 4 - Definitions

The Airporters support improving definitions and clarifying definition of terms used in statutes. In addition to the terms mentioned in the proposals, the Airporters suggest defining certain terms that give the Commission regulatory flexibility, such as "service to the satisfaction" of the Commission. Both existing carriers and new applicants may benefit from knowing what the expectations are. While vague standards give the Commission discretion, they can also lead to a tremendous expenditure of resources because the expectations are not clearly delineated.

Issue 5 – Unscheduled or Irregular Service

1. The Airporters are not convinced at this point that it is essential to distinguish between traditional regularly scheduled services and door-to-door or on call services. The Airporters will be willing to reevaluate based on specific rule proposals.

2. The Airporters note that "current entry standards" are largely set by statute. More importantly, the phrasing of the proposal seems to reflect a view that relaxing entry standards would prompt carriers to reduce rates so that rate oversight by the Commission could be reduced. In fact, the Airporters believe the exact opposite will occur. The Airporters are able to keep rates low by keeping their volumes up. If increased entry results in lower rates at all, it would be only for peak times and the most heavily traveled routes. In the long run, as a result of inefficient duplication of operations, rates are likely to go up over all, service will be cut, schedules will be reduced, and carriers will be tempted to compromise on safety. Where the Commission has allowed competitive entry, there has been no downward pressure on rates. The Commission should not tie these two issues together. If it does, it should not presume that easing entry will reduce rates, since the facts do not support this presumption.

Issue 6 – Applications and Certificates

1. The Airporters agree with this suggestion.
4. The Airporters could support this proposal provided that the standards for operations, safety, and insurance are the same and that all companies must meet the higher standards between the two services.
5. The Airporters concur in this recommendation provided that the auto transportation certificate boundaries continue to be clearly defined.
6. As discussed above, the Airporters are concerned regarding the number of charter and excursion carriers operating buses over the highway with inadequate safety

standards. Entry requirements should not be eased unless and until the Commission is in a position to effectively enforce safety requirements.

8. The Airporters recommend using the longer time period (30 days) in reconciling the time frames.

10. The Commission should ensure that new map filing requirements are not burdensome or unduly costly to implement.

Issue 7 – Condemned or Purchased Authority

1. The Airporters do not see a pressing need for rules in this area. If the “notice” provisions relate to notice to the public of discontinuance of service, then it is not clear why general rules regarding notice to passengers would not be sufficient.

2. Regarding amendment or cancellation of certificates, the Airporters have seen instances when PTBAs have taken over private carrier operations without compensating a certificate holder(s). Any rules should clearly recognize and protect the compensation rights of existing certificate holders under Washington law.

Issue 8 - Safety

1 & 2. The Airporters agree, provided that non-CDL drivers may be given non-DOT drug screens.

3. Generally insurance policies require that drivers be at least 25 years old. The Commission may wish to consider eliminating the 18 year old exception to help improve safety.

Issue 9 - Maps

1. Rules need to be flexible to take into account the different types of operations, size and scope of different carriers operations, and the needs of the public and the Commission. They also need to allow use of “off the shelf” resources so that carriers do not need to hire cartographers to comply with the rule.

Issue 10 - Insurance

1. The Airporters suggest that liability minimums be set at up to \$4 million for all types of passenger carriers. Limit could also be based on the capacity of the vehicles a carrier is operating. Provisions should be made for self insurance in appropriate circumstances. A few carriers are able to provide financial protection for the public with self-insurance and save substantial costs.

4. Insurance companies already allow carriers to add and remove vehicles from coverage seasonally. What is needed is WUTC enforcement to make sure that all the vehicles a carrier is operating have active insurance.

Issue 11 – Compliance Policy

The Airporters strongly support meaningful efforts to improve enforcement of applicable laws, rules, and regulations. Their concern is that additional rules alone are not sufficient without resources for enforcement. Additionally, the Commission should not encourage illegal operations. Currently, it seems illegal operators are given “technical” assistance in preparing their applications for certificates. Because illegal operators are subject to no real regulation, they likely do not have adequate insurance, safety programs, maintenance, and so on. Illegal operators should be penalized, not rewarded with a certificate. They should be shut down and barred from applying for a certificate for a reasonable period of time.

Issue 12 – Equipment Leasing

1. New rules should clarify that trip leasing is not the same as sub-contracting individual pieces of work. A carrier should assume all liability as outlined in this section when the sub-contracted carrier is not registered with the WUTC.

Issue 13 – Consumer Protection

1 – 3. The focus should be on safety and notice, not extensive rules and procedures for Commission involvement in consumer complaints. The carriers can simply notify passengers of the Commission’s toll free number and website for further information about Commission assistance. The Commission has very limited resources for enforcement. Safety is an issue in the industry for certain operators, particularly illegal operators. Safety is where the Commission’s limited resources should be focused. The competitive market does a much better job of regulating the industry regarding service, comfort, convenience, and rates than the Commission can.

4. Regrettably, scheduled trips must sometimes be cancelled, due to driver service hour limitations, unscheduled maintenance, peak demand, and other reasons that are difficult to control. The carrier should be responsible for making alternate arrangements.

5. The Airporters agree with mirroring federal baggage liability limits.

Issue 14 – Outdated References

1 & 2. The Airporters support these proposals.

Issue 15 - Tariff/Schedule Filings

2. See discussion above regarding mapping.
3. Flexibility is important given the wide variations on how operations are conducted.
4. Ticketing requirements should be minimal. Other than ensuring that reasonable record keeping requirements are met, carriers should have flexibility to issue tickets that work with their systems, size of operations, nature of operations, and any through or joint ticketing arrangements. Given the Commission's limited resources, extensive regulation of the form of tickets should have a very low priority.
8. The Commission should regulate sales arrangements minimally, or not at all. This should be left to the carrier based on its needs and competitive demands.
10. Agreed.
11. See discussion of Issue 16, below.

Issue 16 – Free and Reduced Rates

1 & 3. Any rules should allow carriers the flexibility to adopt policies and rates that enable them to succeed in a competitive marketplace. There are many potential reasons for providing free or reduced rate transportation. Nearly all of them are to increase revenues or reduce expenses. In other words, free or reduced rates help contribute to the carrier's bottom line. Thus, in addition to the public interest benefit of the promotional or discounted rate, the overall fares of the carrier are reduced.

Free transportation is often used to address a customer complaint. Reduced rates for seniors may be used to stimulate traffic and increase revenues. A carrier may offer free rides to employees on a space available basis as a no-cost benefit. This can help keep wage rates lower and improves employee morale and loyalty. Building customer goodwill or public relations are other potential motives for free or reduced fares. Carriers will offer such promotions when their vehicles can accommodate extra passengers at little or no incremental cost.

2. The Airporters strongly oppose this concept. As discussed above, free or reduced fares are offered to improve profitability, and generally do so. To artificially reduce a carrier's profit for reduced fares will strongly discourage such fares. Since free or reduced fares are designed to increase revenues or reduce expenses, the effect of such a rule would be the opposite of its apparent intended goal. The public interest would suffer under such a rule.

Issue 17 – Public Notice

Public notice requirements should require minimal expense. Unless they are extensive and overwhelming, public responses are unlikely in most cases to be a representative sample of overall public opinion. Moreover, the public can provide little or no probative input on the financial issues that govern ratemaking. The carriers know how their passengers react to fare and schedule changes and take public reaction into account when they make changes, due to the competitive environment in which they operate. Accordingly, extensive and expensive public notice requirements are of little benefit to the public interest.

Issue 18 – Obligation to Serve/Refusal of Service

1 & 2. The Airporters can support appropriately drafted rules to define the nature and scope of the obligation to serve to the Commission's "satisfaction," particularly if the rules also make clear that competing authority will not be granted against carriers meeting the requirements of the rules. In this regard, clarification may reduce the regulatory burden on the Commission and carriers alike, while giving the public clearly defined and realistic expectations. That said, it will be challenging to adopt uniform rules that balance the service needs and expectations with the costs and resultant impact on fares, as discussed below.

3. Truly "scheduled" runs should be run regardless of passenger counts. Due to some unique characteristics of their service, however, many airporters offer "scheduled service by reservation only." With adequate notice to the public of the reservation requirement, this type of service is most definitely in the interest of the traveling public and must be allowed. It enables carriers to offer more frequent service and maintain lower fares to the public. Reservations only allows for more efficient operations and benefits the public in two ways:

A. Lower rates. Operation cost directly relates to a portion of ticket price. Operating equipment without passengers is a direct cost of business and must be considered in pricing. Additionally, if a route and/or specific stops do not have passengers a carrier is forced by pure economics to add additional stops before and after to support a route in hopes of making it financially viable. These additional stops are warranted when no passengers are using the service. However when passengers are present they are dragged through excessive number of stops which is dictated by a lack of passengers.

B. Frequency of service. The number of service trips per day are dependent on the number of passengers throughout the day and specifically per trip. Thus with lower number of passengers a carrier is forced to reduce number of trips and service. It has been proven through the experience of operations that increased frequency to the public increases riders. Thus to balance the number of

riders and frequency, service by reservations allows a carrier to keep service frequency levels high, promoting increased riders while using reservation only to keep costs lower by not operating empty equipment. Operating empty equipment only adds to the overall costs to a operations and must be passed on the public.

An example of how "by reservation only" service keeps costs down is Blaine - 25 miles north of the vehicle base for Wickkiser International Companies ("WIC"). To provide that service involves a 50 mile round trip prior to departure of service south to all of WIC's other destinations. There is not enough volume of business to provide scheduled regular service to Blaine and there are often no shows. It is not financially viable for WIC to go there without prepaid "by reservation only" and at a price that pays for round trip miles.

Credit cards are an essential tool to hold confirmed reservations and facilitate payment for some airporters. First, they expedite the processing and boarding of passengers by the driver. Second, they obligate the carrier to provide seats for those passengers who have prepaid for a specific trip.¹ Third, use of credit cards gives the carrier an accurate count of the expected passengers who will be on a certain trip, allowing it to use the most efficient vehicles for that run. Several airporters are substantially more than an hour between their base and SeaTac Airport, which would make it impractical to provide back up equipment for all walk on passengers. They need to know the passenger count to be able to serve the public efficiently.

Issue 19 – Reports and Regulatory Fees

The Airporters are in general agreement with these proposals.

Issue 20 – Uniform System of Accounts

With the understanding that the goal is to reduce the burden of reporting, the Airporters are in general agreement with these proposals.

Issue 21 – Financial and Operating Documents Required

See response to Issue 20.

Issue 22 - Rates

1 & 2. The traditional scheme for regulating rates of auto transportation companies is no longer appropriate, for several reasons. First, it fails to take into account the very high levels of inter-modal competition that carriers face, particularly from the private auto.

¹ "Walk-ons" are welcome of course. But if a bus is full, priority is given to passengers with pre-paid reservations. Passengers without credit cards can mail in a check to reserve a seat.

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Second, it keeps carriers too close to the “edge” financially. Third, it does not give them the flexibility to respond to changing market conditions. Fourth, it discourages efficient investment. Fifth, it discourages efficiency and rewards inefficiency. Most traditional bus companies have gone bankrupt, some more than once. The Airporters do not want to see their industry suffer the same fate. While most airporters have survived, the industry is not generally thriving. It has been buffeted by volatile fuel and insurance costs and huge decline in traffic after September 11, 2001. The industry needs some good years (i.e. high profits) to weather the inevitable bad ones.

3. The Commission’s focus on “competitive providers with overlapping routes” seems to reflect a presumption that only other regulated carriers constitute rate-constraining competition. If this is the presumption, then it needs to be re-examined. Most of the competition for passenger carriers is from private automobiles self-driven (owned or rented) or friends. This is particularly true for airporters, since few low income people travel by air. Those who do have very low cost ground transportation options with public transit, or a combination of Greyhound and public transit.²

The Airporters run a high cost premium service. A passenger paying up to \$50 to travel to Sea-Tac is not going to care much if the fare goes up or down \$5. They are going to care a lot if they miss their flight or have to ride the bus an extra 30 minutes. The Airporters compete primarily on safety, comfort, and convenience. Rates are important, but secondary. The Airporters need rate flexibility to ensure that they can continue to offer the safe, comfortable, and convenient service that is essential for them to remain competitively viable and financially healthy.

Very truly yours,

Brooks E. Harlow

² For example, passengers from Bellingham and Mount Vernon can travel to SeaTac via Greyhound and Metro for less than \$20 and \$10, respectively. This compares to WIC's regulated fares of \$32 and \$28.

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