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BEFORE THE WASHINGTON STATE

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UTILITIES AND TRANSPORTATION COMMISSION

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4 In re Application TC-111306 of ) DOCKET TC-111306  
5 MILLER SCHMER, INC., d/b/a ) Pages 1-35  
6 SEATTLE EXPRESS )  
7 For Extension of Authority under )  
8 Certificate No. C-1052, for a Certificate of )  
9 Public Convenience and Necessity to Operate )  
Motor Vehicles in Furnishing Passenger and )  
Express Service as an Auto Transportation )  
Company )

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PREHEARING CONFERENCE, VOLUME I

12

Pages 1-35

13

ADMINISTRATIVE LAW JUDGE MARTIN LOVINGER

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1:00 P.M.

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NOVEMBER 22, 2011

17

Washington Utilities and Transportation Commission  
1300 South Evergreen Park Drive Southwest  
Olympia, Washington 98504-7250

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(Continued...)

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OLYMPIA, WASHINGTON, NOVEMBER 22, 2011

1:00 P.M.

P R O C E E D I N G S

JUDGE LOVINGER: Let's go on the record.

Good afternoon. It is approximately one p.m. on November 22, 2011, in the Washington Utilities and Transportation Commission's hearing room, 108, in Olympia, Washington.

This is the time and place set for prehearing conference in Docket No. 111306, In re Application of Miller Schmer, Inc., d/b/a Seattle Express, for Extension of Authority under Certificate No. C-1052, for a Certificate of Public Convenience and Necessity to Operate Motor Vehicles and Furnishing Passenger and Express Service as an Auto Transportation Company.

Also Docket No. TC-111619, In re Application of Pacific Northwest Transportation Services, Inc., d/b/a Capital Aeroporter, also d/b/a Airport Shuttle, for Extension of Authority under Certificate C-862, for a Certificate of Public Convenience and Necessity to Operate Motor Vehicles and Furnishing Passenger and Express Service as an Auto Transportation Company.

And Docket No. TC-111446, In re Application of

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1 Shuttle Express, Inc., for Extension of Authority under  
2 Certificate No. C-975, for a Certificate of Public Convenience  
3 and Necessity to Operate Motor Vehicles and Furnishing Passenger  
4 and Express Service as an Auto Transportation Company, which was  
5 consolidated by notice of the Commission on October 26, 2011,  
6 with Docket No. TC-111643, In re Application of Excalibur  
7 Limousine, LLC, d/b/a Seattle Green Limo, for a Certificate of  
8 Public Convenience and Necessity to Operate Motor Vehicles and  
9 Furnishing Passenger and Express Service as an Auto  
10 Transportation Company.

11 In Docket No. TC-111306, Miller Schmer, Inc., doing  
12 business as Seattle Express, the Applicant filed an application  
13 for the extension of a certificate to revise its existing  
14 authority to include passenger service between cruise line  
15 terminals, 66 and 91, and the Sea-Tac Airport on July 20, 2011.  
16 On August 31, 2011, Shuttle Express, Inc., filed a protest to  
17 the Application.

18 In Docket No. TC-111619, Pacific Northwest  
19 Transportation Services, doing business as Capital Aeroporter,  
20 filed an application on September 9, 2011, for the extension of  
21 a certificate to revise its existing authority to include  
22 passenger service between Sea-Tac International Airport and the  
23 Seattle Waterfront, and between points in Grays Harbor, Lewis  
24 County, Mason County, Thurston County, Pierce and King Counties  
25 and the Seattle Waterfront via Sea-Tac International Airport

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1 with some limitations and to remove some existing limitations.

2 On September 16, 2011, Shuttle Express, Inc., filed a  
3 protest to the Application.

4 In Docket No. TC-111446, Shuttle Express, Inc., filed  
5 an application on August 9, 2011, for the extension of an  
6 existing certificate, for a Certificate of Public Convenience  
7 and Necessity to Operate Motor Vehicles and Furnishing Passenger  
8 and Express Service as an Auto Transportation Company between  
9 points in King County and waterfront terminals in Seattle with  
10 some limitations.

11 In Docket No. 111643, Excalibur Limousine, LLC, doing  
12 business as Seattle Green Limo, filed an application on  
13 September 8, 2011, for a Certificate of Public Convenience and  
14 Necessity to Operate Motor Vehicles and Furnishing Passenger and  
15 Express Service as an Auto Transportation Company by reservation  
16 only between all hotels and Piers 66 and 91 in Seattle,  
17 excluding hotels within the City of Tukwila and within a 3-mile  
18 radius of Sea-Tac International Airport.

19 Dockets TC-111446 and TC-111643 seek overlapping  
20 authority, and the latter application was filed within 30 days  
21 of the earlier one appearing on the application docket. Because  
22 both seek to provide comparable service that no carrier  
23 currently provides, the Commission consolidated these two  
24 dockets on October 26, 2011.

25 My name is Martin Lovinger, and I am the

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1 Administrative Law Judge presiding over these proceedings. Also  
2 present for this prehearing conference is Administrative Law  
3 Judge Patricia Clark.

4 Preliminarily, I would appreciate it if everyone in  
5 the room would please turn off their cell phones or turn them to  
6 silent and we'll get started.

7 Since some of the parties are appearing on the  
8 Commission's conference bridge and not in person, I would ask  
9 that you identify yourself each time you speak so that all  
10 parties, and especially the court reporter, Ms. Shelby  
11 Fukushima, will know who is speaking.

12 Also please speak as clearly and audibly as possible  
13 to make sure that we hear you. And because this proceeding is  
14 being transcribed by our court reporter, she may interrupt you  
15 to let you know that she didn't hear what you were saying.  
16 Let's try to avoid the necessity of repeating what you have  
17 already said.

18 Our first order of business is the taking of  
19 appearances. Please state your name, the spelling of your last  
20 name, your business address, telephone number, fax number, and  
21 e-mail address.

22 And I'm going to start with Commission Staff.

23 MS. CAMERON-RULKOWSKI: Appearing on behalf of  
24 Commission Staff, Jennifer Cameron-Rulkowski, Assistant Attorney  
25 General. My address is 1400 South Evergreen Park Drive

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1 Southwest, PO Box 40128, Olympia, Washington 98504-0128. My  
2 telephone number is 360.664.1186, my fax number is 360.586.5522,  
3 and my e-mail address is jcameron@utc.wa.gov.

4 JUDGE LOVINGER: Thank you very much.

5 Next I would like to hear from a representative from  
6 Miller Schmer.

7 MR. WILEY: That would be me, Your Honor.

8 David Wiley with the law firm of Williams Kastner.  
9 601 Union Street, Suite 4100, Two Union Square, Seattle,  
10 Washington 98111-3926. Main phone line is 206.628.6600, my  
11 direct line is 206.233.2895, our fax number is 206.628.6611, and  
12 my e-mail address is dwiley@williamskastner.com.

13 And Kastner is with a K, K-a-s-t-n-e-r, and I'm  
14 appearing today on behalf of the Applicant in Docket TC-111306,  
15 Miller Schmer, Inc., d/b/a Seattle Express.

16 JUDGE LOVINGER: Thank you.

17 Next I would like to hear from Shuttle Express.

18 MR. HARLOW: Good afternoon. This is Brooks Harlow  
19 appearing on behalf of Shuttle Express, Inc., as the Applicant  
20 in Docket TC-111446, as well as representing the same company as  
21 Protestant in Dockets TC-111619 and TC-111306.

22 I'm with the law firm of Lukas, Nace -- N-a-c --  
23 Lukas is spelled L-u-k-a-s, Nace, N-a-c-e, Gutierrez,  
24 G-u-t-i-e-r-r-e-z, ampersand, Sachs, S-a-c-h-s, LLP. My mailing  
25 address is 8300 Greensboro Drive, Suite 1200, McLean, M-c,



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1 capital, e-l -- capital L-e-a-n, Virginia. ZIP code is 22102.  
2 My e-mail address is bharlow@fcclaw.com, and my telephone is  
3 206.650.8206.

4 Believe it or not, Your Honor, I don't know my fax  
5 number. And it's not even on my card, and so I couldn't look it  
6 up.

7 JUDGE LOVINGER: We have a fax number for you here.  
8 That would seem to indicate it's 703.584.8693; is that accurate?

9 MR. HARLOW: I'm sure that's it, Your Honor. I'm  
10 sure that was what we put on our written materials.

11 JUDGE LOVINGER: Thank you very much.

12 Next I would like to hear from Pacific Northwest  
13 Transportation Services.

14 MR. FRICKE: James Fricke, F-r-i-c-k-e, President/CEO  
15 of Pacific Northwest Transportation Services, Inc., d/b/a  
16 Capital Aeroporter. 2745 29th Avenue Southwest, Tumwater.  
17 Mailing address: PO Box 2163, Olympia, Washington 98507-2163.  
18 Direct phone line is 360.292.7686. Main administrative number  
19 is 360.754.7118. Fax number: 360.754.7118.

20 And e-mail? E-mail address is Jim "f" as in Fricke,  
21 at capair -- c-a-p-a-i-r -- dotcom.

22 JUDGE LOVINGER: All right. I would like to check  
23 one thing if I can.

24 You indicated the fax number and the telephone number  
25 are the same?

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1 MR. FRICKE: Yes.

2 JUDGE LOVINGER: Thank you.

3 Next I would like to hear from Excalibur Limousine,  
4 LLC.

5 MR. WILLIAMS: This is Kevin Williams, Excalibur  
6 Limousine, LLC, operating as Seattle Green Limo. Address:  
7 15810 74th Avenue Northeast in Kenmore, Washington 98028. Phone  
8 number: 206.407.3656. I have a fax number. I haven't received  
9 a fax in more than two years, so I couldn't tell it. So you may  
10 have it on file.

11 JUDGE LOVINGER: Okay. And an e-mail address?

12 MR. WILLIAMS: Kevin@seattlegreenlimo.com.

13 JUDGE LOVINGER: Thank you very much.

14 MR. WILLIAMS: Thank you.

15 JUDGE LOVINGER: Is there anyone who wishes to  
16 intervene?

17 Hearing no, we will proceed.

18 The first issue we have to deal with is  
19 consolidation.

20 In the Commission's notice of prehearing conference,  
21 we indicated that we would address the issue of consolidation.  
22 Two of these cases already have been -- two of these dockets  
23 have already been consolidated, and the Commission will consider  
24 whether it should consolidate all four of these dockets which  
25 involve proposals for providing shuttle service to the cruise

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1 ship terminals on the Seattle Waterfront.

2 I would ask your feedback at this time.

3 MR. HARLOW: This is Brooks Harlow, Your Honor, and  
4 Shuttle Express -- of course it's already done, but Shuttle  
5 Express agrees it's appropriate to consolidate the overlapping  
6 applications, but there are enough differences between the  
7 others and we shall see, when we get to timing, there's  
8 different desires on timing and moving these proceedings along  
9 that we don't think it's appropriate or even really efficient to  
10 consolidate any further than what we already have. I think it  
11 would just create a confusing -- it would just confuse the  
12 dockets. They look the same, but they're really -- apart from  
13 subtle differences, they're different.

14 JUDGE LOVINGER: Thank you.

15 Can I hear from anyone else?

16 MR. WILEY: Yes. Judge Lovinger, Dave Wiley. A  
17 couple things. I do want to say at the end I do want to make  
18 sure that we talk about the Staff legislative request bill and  
19 how that may impact these proceedings, but as far as the  
20 consolidation issue is concerned, I believe our client's  
21 application was the first in time. I don't believe that  
22 consolidation for hearing purposes is appropriate under these  
23 circumstances.

24 I do believe that there may be some comparative  
25 review, and I would cite you to a case in the commercial ferry

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1 area that is very comparable to the statute 81.68 that we are  
2 dealing with here. The statute in the commercial ferry area is  
3 81.84. There's an order out of the Commission, S.B.C. No. 467,  
4 on In re Application B-308 of Jack Rood and Jack L. Harmon, Jr.,  
5 d/b/a Arrow Launch Service, issued in May of 1990, in which the  
6 Commission looked at the issue of comparative review,  
7 consolidation, and also talked about the Ashbacker doctrine and  
8 whether Ashbacker was an appropriate consideration in this  
9 circumstance.

10 Under the Commission's entry statute in this -- in  
11 the auto transportation area, 81.68.040, there are very  
12 comparable wordings about no other certificate can be issued  
13 unless the existing provider is not providing service to the  
14 satisfaction of the Commission. Very comparable to the fail or  
15 refuse concept in 81.84.

16 The bottom line is I don't believe that consolidation  
17 is indicated in our client's application. Comparative review  
18 may be appropriate and the Commission may want to talk about  
19 whether Ashbacker applies. I don't think these are necessarily  
20 mutually exclusive applications despite the wording of the  
21 statute.

22 So I don't think Ashbacker is ultimately going to be  
23 found to be applicable, but the Commission may want to consider  
24 it in the comparative review phase.

25 JUDGE LOVINGER: Are there any other?

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1                   MR. FRICKE: James Fricke, Pacific Northwest  
2 Transportation.

3                   In view of the concern that I have and I would hope  
4 that we would all have in terms of the next cruise ship season  
5 beginning in May, I think it, indeed, would be appropriate to  
6 consolidate these matters since I think that the major part of  
7 every one of these applications in terms of need is really  
8 probably between Sea-Tac Airport and the cruise ship terminals.  
9 And in the interest of making it more expedited in this short  
10 time frame, I think it is entirely appropriate to consolidate  
11 these into a single hearing.

12                   JUDGE LOVINGER: Thank you.

13                   MS. CAMERON-RULKOWSKI: On behalf of Commission  
14 Staff, I would note that consolidation might facilitate dispute  
15 resolution. And I recognize that the applications are not  
16 asking for exactly the same service territory in each case, but  
17 as Mr. Fricke observed, at least three of the four do want to  
18 serve between the airport and the cruise ship terminals.

19                   And if we're going to have any sort of group  
20 discussion about how to -- how to potentially resolve some of  
21 the conflicts, I think it would be helpful to have all of the  
22 parties able to sit down at the same table.

23                   MR. WILEY: Your Honor, this is Dave Wiley for Miller  
24 Schmer. I don't obviously oppose ADR or any sort of  
25 facilitation of a possible settlement. I did want to respond to

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1 Mr. Fricke's comment about the cruise ship season and  
2 consolidation.

3           Again, I don't think consolidation is necessarily at  
4 all the most efficient approach. Having been in many  
5 overlapping medical waste and other applications, I think it  
6 could -- that the record can get very extended and protracted.

7           I would also point out that 81.68.046 provides a  
8 temporary certificate period which would seem to be ideal for  
9 this circumstance for the applicants as an interim relief  
10 measure.

11           I also think that we need to discuss the fact that  
12 there isn't a Staff request bill to effectively deregulate auto  
13 transportation that's going to be submitted in the next  
14 legislative session.

15           Having been in the trucking preemption deal in 1994  
16 when the Feds preempted State proceedings and having some very  
17 unhappy applicants who had just received Certificates of Public  
18 Convenience and Necessity when Congress removed the State  
19 authority and dealing with that aftermath, I don't think we need  
20 to talk and spend the time and resources if this -- if this  
21 statute is going to effectively be deregulated.

22           So I would propose that no action be taken on these  
23 applications until March so that we don't engage in an exercise  
24 in expensive futility for all of us.

25           JUDGE LOVINGER: Thank you. We haven't yet heard --

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1 I'm sorry. We haven't yet heard from Excalibur.

2 I would like to hear from Mr. Williams on behalf of  
3 Excalibur before we continue with the debate.

4 MR. WILLIAMS: Thank you. This is Kevin Williams,  
5 Excalibur Limousine.

6 This all originally started back on 4/26/2011, when I  
7 applied for permission to serve the waterfront after years of  
8 Shuttle Express serving the waterfront without permission and  
9 spreading the word that they had the exclusive right, just as  
10 they have at Sea-Tac Airport, to service the Seattle area. I  
11 have applied once I got the public records showing that they  
12 clearly don't have the -- a right to serve the area.

13 After that, Shuttle Express protested on the grounds  
14 that they have the ability to service door to door within the  
15 Seattle -- the City of Seattle. They don't. Even if they have,  
16 of course, the Port of Seattle is a separate municipality and  
17 wouldn't be covered by that jurisdiction which they do not hold  
18 and have been serving for at least seven years to the tune of  
19 hundreds of thousands of dollars blocking out many, many other  
20 companies, including myself.

21 I was unable to appear on the hearing at the  
22 beginning of August. I did not, in fact, reply to the UTC  
23 asking for requested dates that I would be available. My mother  
24 is in hospice care, and I moved in with her to take care of her.  
25 I do apologize to everyone for not making that hearing.

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1           Immediately after that hearing, of course, Shuttle  
2 Express applied as 111306 asking for jurisdiction over the very  
3 area that it claimed previously it had jurisdiction over.

4           Of course the Commission Staff at the time raised the  
5 issue of Shuttle Express's standing to protest and found that  
6 they were deeply troubled by Shuttle Express's actions at this  
7 point.

8           So this all really goes back to Docket No. 110733, at  
9 which time I was unable to appear. I have no problem with  
10 consolidation of any of these. I believe I was the first one to  
11 ask for legal standing in this matter. And upon Shuttle  
12 Express's reapplication, I received a letter from the UTC  
13 Commission stating that my application, if I reapplied, would be  
14 considered in deference to Shuttle Express's application for  
15 service to provide to an area which they claim previously to  
16 already have permission to provide.

17           And that's it. Thank you.

18           MR. HARLOW: Your Honor, this is Brooks Harlow again.

19           JUDGE LOVINGER: Yes.

20           MR. HARLOW: And in seeing the positions of the other  
21 parties, I would suggest that maybe we could take sort of a  
22 middle ground approach here.

23           As I eluded to earlier, there were scheduling issues,  
24 and Mr. Fricke basically raised what was on our minds, which is  
25 that, you know, we would like to have this settled before the



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1 cruise season. I think there are some uncertainties about the  
2 ability of anybody to get temporary authorities under these  
3 circumstances and -- and there should be time to get a final  
4 decision before the cruise season on permanent authority.

5 That said, Mr. Wiley doesn't appear to have any  
6 overlap between the other applications. His client, Seattle  
7 Express, is applying for authority between Sea-Tac Airport and  
8 the piers, which is the one area of authority that Shuttle  
9 Express clearly has.

10 And so -- and Mr. Wiley apparently wants to wait  
11 until after the session where the other three applicants all  
12 want to move forward.

13 So my suggestion would be that we have one more  
14 consolidation and we include Capital Aeroporter in TC-111619 in  
15 the consolidated docket with Shuttle Express and Excalibur and  
16 handle those three on a consolidated basis and then handle the  
17 Seattle Express application which has the Shuttle Express  
18 protest.

19 And I don't -- I can't really speak for them, but I  
20 don't think that the -- Excalibur or Capital have an interest in  
21 the Seattle Express application. They certainly haven't  
22 protested.

23 So maybe that's the way to do it as kind of a  
24 three-and-one approach here. Three and one, not three in one.

25 MR. WILLIAMS: Your Honor, may I?

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1 JUDGE LOVINGER: Yes, Mr. Williams.

2 MR. WILLIAMS: Kevin Williams with Excalibur  
3 Limousine.

4 From the initial docket, No. 110733 and the  
5 Commission's comments on it, it's clear that Shuttle Express  
6 does not have the jurisdiction to operate between the airport  
7 and the cruise ship terminals as determined by their certificate  
8 number, C-975, where it clearly lists that areas surrounded by a  
9 water boundary are not included in the certificate under Section  
10 C-975(d).

11 I have to ask Mr. Wiley: Are you the same Mr. Wiley  
12 who represented the -- or may currently represent the Puget  
13 Sound Limousine Association?

14 MR. WILEY: I don't currently represent them. I have  
15 done some work for them, yes.

16 Mr. Williams, what's the purpose of that?

17 MR. WILLIAMS: Oh, okay. Well, I'm a part-owner of  
18 Blackstone Limousine, who's a member of the Puget Sound  
19 Limousine Association, so I will contact you at a later time and  
20 discuss a conflict of interest.

21 MR. WILEY: What's the conflict? I want to hear what  
22 you think the conflict is.

23 MR. WILLIAMS: Well, I happen to understand --

24 JUDGE LOVINGER: I'm sorry.

25 MR. WILLIAMS: Sorry. Go ahead.



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1 to 1:31 p.m.)

2 JUDGE LOVINGER: We're going to go back on the  
3 record.

4 I have considered all of the comments and the various  
5 weights given to the different arguments and I have decided that  
6 we will proceed by consolidating all four of these dockets.

7 The issue has been raised about the fact that there  
8 is a bill that deals with the jurisdiction of the Commission for  
9 regulation of this industry. I think that that's going to be --  
10 that may affect your feelings about the scheduling. I would  
11 like to take a brief recess and allow the various parties to see  
12 if you can reach an agreement on how we should -- on the timing  
13 of proceeding in this, the scheduling of the hearing, and any  
14 briefings that might be necessary.

15 So unless there's further comment on what I have just  
16 said, I would like to go -- I will go to recess now. Thank you.

17 (A break was taken from 1:32 p.m.  
18 to 2:25 p.m.)

19 JUDGE LOVINGER: We're back on the record.

20 It's my understanding the parties have all reached  
21 some sort of agreement on scheduling?

22 MR. WILEY: Yes, Judge Lovinger. Dave Wiley. I  
23 wanted to indicate that while we were on a protracted  
24 off-the-record discussion, I reached agreement with the parties  
25 putting the only protest in Shuttle Express in the Miller Schmer

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1 application that we could be stayed and not consolidated,  
2 severed, and then go to hearing in the March time frame or  
3 thereafter without prejudice of our right to seek a temporary  
4 authority for this season.

5 JUDGE LOVINGER: Okay. So am I understanding  
6 correctly that you're basically saying that there won't be --  
7 okay. There won't be the hearing on TC-111306 in the Miller  
8 Schmer application?

9 MR. WILEY: We would like that delayed until at least  
10 March without any prejudice to our right to seek a temporary  
11 authority that would be coextensive with the permanent  
12 application that we filed already.

13 And we are not objecting to the issuance of temporary  
14 or permanent authority to any of the three other applicants.  
15 And once -- I explained that off record. I believe I removed  
16 any objection from any Protestant -- I mean, for any Applicant,  
17 the one Protestant, Shuttle Express, and the Staff, correct?

18 MR. HARLOW: That's correct. I do want to clarify  
19 and hopefully not correct what you have said, but just clarify,  
20 nothing in the current proceeding, the current application, or  
21 the stipulation would prejudice your client's right to seek  
22 temporary authority. But just to be clear, our preexisting  
23 authority and our current permit, we would not be waiving any  
24 right we might have to object to a temporary --

25 MR. WILEY: Well, whatever that might be, I

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1 understand that.

2 MR. HARLOW: Okay. Good.

3 MR. WILEY: You're not stating a position, as I  
4 understand it, on any temporary applications whether you oppose  
5 them or support them at this point?

6 MR. HARLOW: That's correct.

7 MR. WILEY: Your Honor, I think that just simply  
8 states our position and the positions of the parties with  
9 respect to not consolidating 111036 [sic], if that's the  
10 caption.

11 JUDGE LOVINGER: And is there anybody who objects to  
12 that proposal --

13 MR. FRICKE: No.

14 JUDGE LOVINGER: -- of any of the other parties?

15 MR. FRICKE: No.

16 MR. HARLOW: No.

17 MS. CAMERON-RULKOWSKI: No objection from Staff to  
18 severing Seattle Express.

19 JUDGE LOVINGER: From the consolidation?

20 MS. CAMERON-RULKOWSKI: That's correct, Your Honor,  
21 and we do have a hearing date for you for the remaining parties.

22 JUDGE LOVINGER: Okay. Then I will modify the  
23 consolidation order to incorporate three other dockets, and  
24 TC-111306 will be served from the original consolidation order.

25 MR. WILEY: Thank you.

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1 JUDGE LOVINGER: Now, you said you have a date?

2 MS. CAMERON-RULKOWSKI: We do, Your Honor. We did  
3 consult the Commission calendar, that was very helpful, and it  
4 looks like all of the parties would be available on January 30th  
5 and 31st. We don't have your calendar, but it looks like there  
6 is Commission room availability.

7 JUDGE LOVINGER: My calendar is there. That actually  
8 would work fine with me.

9 Now this is the dates of the hearing?

10 MS. CAMERON-RULKOWSKI: That's correct, Your Honor.

11 JUDGE LOVINGER: Okay. January 30th and 31st?

12 MS. CAMERON-RULKOWSKI: That's correct. And we did  
13 also want to exchange exhibits and witness lists in advance.

14 JUDGE LOVINGER: Okay. And can you give me the  
15 suggested dates for those?

16 MS. CAMERON-RULKOWSKI: And we're proposing January  
17 25th.

18 JUDGE LOVINGER: For prefiled direct testimony or...

19 MR. HARLOW: We don't ordinarily prefile in these  
20 transportation dockets.

21 MS. CAMERON-RULKOWSKI: Your Honor?

22 JUDGE LOVINGER: Okay.

23 MR. WILEY: That's correct.

24 MS. CAMERON-RULKOWSKI: We had anticipated having a  
25 live hearing.

0024

1 JUDGE LOVINGER: Okay.

2 THE REPORTER: Judge Lovinger, could you just remind  
3 them to identify themselves when they speak?

4 JUDGE LOVINGER: Oh, yes. I have just been asked by  
5 the court clerk if we can remind the people on the conference  
6 bridge to please identify yourself when you speak so that she  
7 can get the names down. Thank you.

8 January 25th is not going to work for me.

9 Can we pick a different date for the -- this is for  
10 testimony?

11 JUDGE CLARK: No, no.

12 MR. HARLOW: I'm sorry. Your Honor, this is Brooks  
13 Harlow. I couldn't hear what you just said about the 25th.

14 JUDGE LOVINGER: Okay.

15 MR. HARLOW: Hello?

16 JUDGE LOVINGER: Yes. Thank you very much.

17 (Judge Lovinger confers with Judge Clark.)

18 JUDGE LOVINGER: I'm sorry. I stand corrected. I am  
19 busy that day but there would be no problem in receiving the  
20 testimony. So we will stay with January 25th.

21 MS. CAMERON-RULKOWSKI: And, Your Honor, I believe --  
22 and, please, other folks correct me if I'm wrong, but I'm  
23 anticipating not filing any of the -- I wasn't anticipating  
24 filing the exhibits. I was anticipating filing the witness  
25 lists; am I incorrect?



0025

1           MR. HARLOW: That's my understanding that we just  
2 list our witnesses, and I think we should identify, you know,  
3 who they are employed by. So like, you know, John Doe, Acme  
4 Company, and then we would --

5           JUDGE LOVINGER: And can you --

6           MR. HARLOW: I don't know if we need to file  
7 exhibits.

8           This is Mr. Harlow. I'm sorry.

9           JUDGE LOVINGER: Thank you very much.

10          MR. HARLOW: I don't know if we would file exhibits  
11 necessarily, but certainly the parties should exchange among  
12 each other their proposed direct and cross exhibits on the 25th.

13          JUDGE LOVINGER: Okay.

14          MS. CAMERON-RULKOWSKI: And we could go ahead and  
15 mark those, perhaps, at the beginning of the hearing if that  
16 were acceptable to Judge Lovinger.

17          JUDGE LOVINGER: That's fine.

18          I'm told that the number of copies that will need to  
19 be filed will be an original and 12 copies.

20          In the case that was not consolidated, Docket No.  
21 111306, an original and 11 copies would be sufficient.

22          MR. WILEY: Original and 11, Your Honor?

23          JUDGE LOVINGER: That is correct.

24          MR. WILEY: Okay. So you don't want to follow the  
25 original and three on the transportation case rule typically?

0026

1 JUDGE LOVINGER: We have 11 people to receive the  
2 information, so we're asking that it be...

3 MR. WILEY: That would be good for my recycling  
4 clients, Your Honor.

5 JUDGE LOVINGER: And ours, too. Thank you.

6 MR. HARLOW: So, Your Honor, you do want us to  
7 prefile the original and 12 on the 25th, rather than bring them  
8 to the hearing and distribute them at that time?

9 JUDGE LOVINGER: That's my understanding of the  
10 proposal.

11 Is that not, Counsel?

12 MR. HARLOW: I wasn't clear on whether it was going  
13 to be filing or just distribution among the parties. I'm sorry.  
14 This is Mr. Harlow.

15 Either way would be fine, although it's -- well, no.  
16 I don't even think we need the extra day. We'll just FedEx them  
17 on the 24th. That will be fine.

18 JUDGE LOVINGER: Thank you. I appreciate that.

19 Mr. Fricke?

20 MR. FRICKE: Your Honor, James Fricke. I would like  
21 to suggest that the Commission consider communicating with the  
22 Port of Seattle to hold the hearing at Sea-Tac Airport, since I  
23 think that that would be more practical for witnesses involved  
24 and is -- I think the centerpiece of most of these applications  
25 anyway is in relation to the airport as the one terminus.

0027

1 JUDGE LOVINGER: You know what? Let's take that  
2 under advisement. An interesting suggestion, but I would like  
3 to think about it before we proceed with that. We'll stick with  
4 the date, and we'll figure out where it's going to be.

5 Now, the question becomes for -- we've got three of  
6 the dockets scheduled.

7 What's going to be the schedule for Docket 111306?

8 MR. WILEY: I can answer that, Your Honor.

9 Mr. Harlow and I haven't discussed that, nor have I discussed it  
10 yet with Ms. Rulkowski, Cameron-Rulkowski.

11 I would suggest to you maybe schedule a status  
12 conference in February where we could then provide dates. We'll  
13 know more about what's going on in the legislature then, and we  
14 can in the interim talk about a schedule. But I think that  
15 would be the most efficient use of everyone's resources right  
16 now.

17 MR. HARLOW: Mr. Harlow, and I would support that.

18 MS. CAMERON-RULKOWSKI: That's acceptable to Staff.

19 JUDGE LOVINGER: Okay. Is there a suggested date for  
20 that?

21 MR. WILEY: Let me look at my calendar, Your Honor.  
22 Actually, unlike January, I think I'm in almost all of February.  
23 Hold on.

24 Let's do it -- I don't know when cutoff is, but let's  
25 suggest maybe the 17th, Friday the 17th?

0028

1 MS. CAMERON-RULKOWSKI: Could I suggest a --

2 MR. WILEY: Sure.

3 MS. CAMERON-RULKOWSKI: -- Thursday?

4 MR. WILEY: Sure. Absolutely.

5 And, Your Honor, at that time I assume we'd be  
6 talking to you about some hearing dates, witness -- just, you  
7 know, all the sort of things you just did now assuming that the  
8 bill has failed to make it out of committee and we're going  
9 forward in March.

10 JUDGE LOVINGER: You know, we're not going to have a  
11 bridge line available on that date.

12 Can we --

13 MR. WILEY: I can make the conference call from my  
14 office if you'd want, Your Honor, to bring everybody in. I have  
15 done that before.

16 JUDGE LOVINGER: No, I'd rather not.

17 Can we -- do you have a problem with the week after?

18 MR. WILEY: No. No --

19 JUDGE LOVINGER: Is that okay?

20 MR. WILEY: -- if they're fine; Mr. Harlow and  
21 Ms. Cameron-Rulkowski are fine.

22 JUDGE LOVINGER: Is that okay, the 23rd?

23 MR. HARLOW: I'm sorry. What month?

24 JUDGE LOVINGER: Of February.

25 MR. HARLOW: February?

0029

1 JUDGE LOVINGER: This is just --

2 MR. HARLOW: I think that will probably work. I  
3 may -- I'm representing a witness in the AT&T/T-Mobile merger  
4 case, and I have no idea of when it's going to be. It's a  
5 six-week trial, but I assume we could accommodate it somehow.  
6 But let's -- let's just say yes to that.

7 MR. WILEY: What day of the week is that, Your Honor?

8 JUDGE LOVINGER: That's a Thursday also.

9 MR. WILEY: Thank you.

10 JUDGE LOVINGER: And, again, can I please remind you  
11 to identify yourselves?

12 MR. WILEY: Yes. I'm sorry. That's Mr. Wiley.

13 MS. CAMERON-RULKOWSKI: Thursday, February 23rd.  
14 That works for me.

15 (Judge Lovinger confers with Judge Clark.)

16 JUDGE LOVINGER: Is there any other business at this  
17 time?

18 MS. CAMERON-RULKOWSKI: I'd just like to clarify that  
19 when we exchange the exhibits, I did then hear something again  
20 about filing.

21 So are we filing those exhibits on the week before,  
22 or are we simply exchanging them among the parties?

23 MR. HARLOW: My understanding is we're exchanging and  
24 filing on January the 25th.

25 (Judge Lovinger confers with Judge Clark.)

0030

1 JUDGE LOVINGER: Let me request that -- what I would  
2 like is a copy for me at the same time. You don't have to do  
3 the official filing with the Commission.

4 MS. CAMERON-RULKOWSKI: Thank you, Your Honor.

5 MR. HARLOW: Okay. So now we're talking about just  
6 copying the Administrative Law Judge, and bring the original and  
7 12 to the hearing; is that the new...

8 JUDGE LOVINGER: That is correct.

9 MR. HARLOW: Okay.

10 THE REPORTER: Mr. Harlow, could you repeat, please?

11 JUDGE LOVINGER: Mr. Harlow, could you repeat that  
12 for the court reporter?

13 MR. HARLOW: Yes. So my understanding is now we are  
14 just filing a copy with the Administrative Law Judge --

15 MR. FRICKE: And the parties exchange?

16 MR. HARLOW: -- and the original and 12 copies will  
17 be brought to the hearing and distributed at the hearing?

18 JUDGE LOVINGER: That's fine.

19 MR. WILEY: This is Dave Wiley, Judge Lovinger.

20 What time did you say for our status conference call  
21 on the 23rd?

22 JUDGE LOVINGER: I actually didn't set a time.

23 MR. WILEY: Okay.

24 JUDGE LOVINGER: Is there a particular time that's  
25 going to work?

0031

1 MR. WILEY: Well, 9:30 or 1:30 is what we usually do.

2 I'm fine with --

3 JUDGE LOVINGER: Let's do 1:30.

4 MR. WILEY: Okay.

5 MS. CAMERON-RULKOWSKI: I believe there's an open  
6 meeting on that day, so if we did want to have the bridge line,  
7 probably the afternoon would be good.

8 MR. WILEY: Yeah, that would be fine.

9 JUDGE LOVINGER: Okay. That is correct.

10 MR. FRICKE: So are we -- Jim Fricke.

11 Are we still suggesting that the parties exchange  
12 exhibits on that day also?

13 MR. HARLOW: Yes.

14 MR. FRICKE: Okay.

15 JUDGE LOVINGER: Yes, on the 25th.

16 MR. FRICKE: Right.

17 MS. CAMERON-RULKOWSKI: But then you don't have to  
18 send all the copies...

19 MR. FRICKE: Right, right, right, right. Got it.

20 MS. CAMERON-RULKOWSKI: The only other issue, Your  
21 Honor, is discovery. Staff would request that the discovery --  
22 that discovery be made available.

23 JUDGE LOVINGER: To?

24 MS. CAMERON-RULKOWSKI: To all of the parties, Your  
25 Honor.

0032

1 MR. WILEY: If we're going to do that, I would ask  
2 that the protective order be issued as well.

3 MR. WILLIAMS: Who's asking?

4 JUDGE CLARK: You need to identify yourselves when  
5 you speak.

6 MR. WILEY: Oh, I'm sorry. Mr. Wiley.

7 If we're going to trigger the discovery rule, I would  
8 ask that the form protective order also be issued.

9 JUDGE LOVINGER: Counsel?

10 MS. CAMERON-RULKOWSKI: Mr. Wiley, I'm anticipating  
11 that Staff would be requesting primarily financial fitness  
12 materials from the one company that is not already a certificate  
13 holder.

14 MR. WILEY: Okay.

15 MS. CAMERON-RULKOWSKI: And so I don't --

16 MR. WILEY: That's public record information. You're  
17 suggesting --

18 MS. CAMERON-RULKOWSKI: I'm sorry? Can you repeat  
19 that?

20 MR. WILEY: Yeah. If that's all you're requesting, I  
21 wouldn't imagine a protective order would be needed since that  
22 has to be in the file in order for the Commission to make its  
23 finding.

24 What I would ask is if discovery goes beyond that,  
25 that the routine concomitant protective order for discovery in



0033

1 both transportation and 81 -- Title 80 cases be issued in sort  
2 of a matter of course.

3 MS. CAMERON-RULKOWSKI: I think if the discovery went  
4 beyond what I'm anticipating right now in what I have just  
5 stated, then Staff would support --

6 MR. WILEY: Okay.

7 MS. CAMERON-RULKOWSKI: -- issuing a discovery order.  
8 And certainly it is incumbent on the companies to state when  
9 they need a protective order, but I don't think that we'll need  
10 one.

11 MR. WILEY: We usually do that at the prehearing  
12 conference. That's why I was suggesting it. But if it's  
13 not your intent that you go beyond public record and financial  
14 fitness issues, there may not be a need for one.

15 JUDGE LOVINGER: There's a request that's been made.  
16 Does anybody else want to be heard on that issue?

17 MR. FRICKE: No.

18 MR. HARLOW: No.

19 JUDGE LOVINGER: Okay. We'll grant the request for  
20 discovery. We'll look at the protective order if the need  
21 arises later on.

22 And anything else at this time?

23 MS. CAMERON-RULKOWSKI: Not from Staff, Your Honor.  
24 Thank you.

25 JUDGE LOVINGER: Thank you. Any of the Applicants?

0034

1 MR. HARLOW: Not from Shuttle Express, Your Honor.

2 MR. WILEY: Not from Miller Schmer, Your Honor. Dave  
3 Wiley.

4 JUDGE LOVINGER: Okay. Thank you very much. We'll  
5 take all of this under advisement, we'll have an order out, and  
6 with that, we'll adjourn.

7 MR. WILEY: Thank you.

8 MR. HARLOW: Thank you, Your Honor.

9 MS. CAMERON-RULKOWSKI: Thank you, Your Honor.

10 (Proceeding concluded at 2:44 p.m.)

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C E R T I F I C A T E

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3 STATE OF WASHINGTON )  
 ) ss  
 4 COUNTY OF KING )

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6 I, SHELBY KAY K. FUKUSHIMA, a Certified Shorthand Reporter  
 7 and Notary Public in and for the State of Washington, do hereby  
 8 certify that the foregoing transcript is true and accurate to  
 9 the best of my knowledge, skill and ability.

10 IN WITNESS WHEREOF, I have hereunto set my hand and seal  
 11 this 30th day of November, 2011.

12

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 SHELBY KAY K. FUKUSHIMA, CCR

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16 My commission expires:  
 June 29, 2013

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