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2 WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION  
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5 Speedishuttle Washington, LLC ) Case No.: TC-143691  
6 d/b/a Speedishuttle Seattle, )  
7 Applicant )  
8 )  
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10 1. Shuttle Express respectfully objects to, and moves to strike, the Notice of Brief  
11 Adjudicative Proceeding issue in this docket on December 2, 2014 (“Notice”). The basis of this  
12 objection is that use of brief adjudicative proceeding (“BAP”) procedures is barred by state law  
13 and is not in the public interest in this case.

14 2. Shuttle Express is a party to this proceeding, having filed a timely objection to the  
15 application for permanent authority filed by Speedishuttle, which duplicates the existing  
16 authority of Shuttle Express under Certificate of Public Convenience and Necessity number C-  
17 975. Under RCW Title 81, as an existing certificate holder in the territory, Shuttle Express has  
18 both standing to object, and a statutory right to a hearing. *E.g.* RCW 81.68.040. Further, as  
19 objector (formerly “protestant”), Shuttle Express has a right to an adjudicative proceeding under  
20 the Commission’s procedural rules. WAC 480-07-305(3)(g). Neither the statute nor the  
21 procedural rule contemplate a BAP.<sup>1</sup> The statutory provision predates even the existence of the  
22 BAP procedures by many decades, so the Legislature can only have contemplated a full  
23 administrative hearing for contested auto transportation applications.  
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28 <sup>1</sup> WAC 480-07-610 permits the commission to use BAPs, but only, “when doing so is consistent with other provisions of law.” *Id.* As demonstrated below, use of a BAP is not consistent with applicable law.

1           3. The Commission’s auto transportation rules go further than the procedural rules.  
2 WAC 480-30-136(1) suggests that a BAP will normally be conducted on contested applications:  
3 “The commission will consider applications for which an objection has been received through  
4 brief adjudicative proceedings under WAC 480-07-610....” But there is an important limitation  
5 on this provision, which is, “unless the presiding officer determines, based on the facts and  
6 circumstances presented, that a hearing or different process is required.” *Id.* (emphasis added).  
7 Under the APA, a hearing under the regular adjudicative proceeding procedures is expressly  
8 required by the state’s Administrative Procedure Act (RCW Ch. 34.50)(“APA”).  
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11           4. The Commission’s rules must, if at all possible, be construed and applied in a manner  
12 that is fully consistent with the APA. The APA only allows an agency to use BAP “if ... (d)  
13 [t]he issue and interests involved in the controversy do not warrant use of the procedures of  
14 RCW 34.05.413 through 34.05.479. RCW 34.05.482(1). Included in the sections that are  
15 carved out of—and therefore barred from application of BAP procedures—is RCW 34.05.422,  
16 which states, in relevant part:  
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18                   Unless otherwise provided by law: ... (b) applications for licenses that are  
19                   contested by a person having standing to contest under the law and  
20                   review of denials of applications for licenses or rate changes must be  
21                   conducted as adjudicative proceedings ....

22 (Emphasis added). Thus, the APA not only expressly carves out contested applications from the  
23 provision that allows agencies to conduct BAPs, it also expressly requires a full adjudicative  
24 proceeding be held on contested applications.

25           5. The “facts and circumstances” here require a regular adjudicative proceeding. *See*  
26 WAC 480-30-136(1); *see also* WAC 480-07-610(1). First, the APA plainly bars the use of a  
27 BAP. *E.g.*, RCW 34.05.482. Second, Shuttle Express respectfully submits that a brief  
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1 adjudication in this matter is not in the public interest. *See, e.g.*, WAC 480-07-610(1). The  
2 applicant is an incumbent carrier with similar operations in Hawaii. The applicant is represented  
3 by an attorney who is very experienced in matters before the Commission. The application seeks  
4 to completely overlap the door-to-door airporter service offered by Shuttle Express in King  
5 County. The application would, if granted, threaten and possibly undermine the economics of  
6 providing nearly ubiquitous door-to-door airporter service throughout King County. Under the  
7 circumstances, protection of the public interest requires full participation by the existing  
8 certificate holders in the investigation and hearing and should not be limited to BAP procedures.  
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11 **CONCLUSION**

12 6. For the foregoing reasons, the Commission should strike the Notice and re-issue a  
13 notice scheduling further proceedings consistent with the requirements, and protections for the  
14 parties, of a regular adjudicative proceeding under the APA and the Commission's rules for  
15 adjudicative proceedings. The existing hearing date might be used as a pre-hearing conference  
16 date, to address further requirements, such as discovery and a protective order.  
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18 Dated this 3<sup>rd</sup> day of December, 2014.

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1 **CERTIFICATE OF SERVICE**

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3 I hereby certify that I have this day served this document upon the following party of

4 record in this proceeding by email and U.S. mail:

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Elisheva Simon