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**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In re Application No. D-78932 of  
VALENTINETTI, STEVE & BRIAN  
HARTLEY, D/B/A SEATTLE SUPER  
SHUTTLE,  
For a Certificate of Public Convenience and  
Necessity to Operate Motor Vehicles in  
Furnishing Passenger and Express Service as  
an Auto Transportation Company

Docket No. TC-001566

**PROTESTANTS'  
POST-HEARING BRIEF**

12 Shuttle Express, Inc., and Evergreen Trails, Inc., d/b/a Gray Line of Seattle  
13 (collectively the "Protestants") file this post-hearing brief opposing the application of Seattle  
14 Super Shuttle ("Applicant") for a certificate to offer airporter service between Sea-Tac  
15 International Airport ("Sea-Tac") and Seattle. Seattle Super Shuttle has not proven the required  
16 elements of this case, that 1) there is a public need for the service, 2) the Protestants provide  
17 unsatisfactory service, and 3) the Applicant is fit, willing, and able to provide the proposed  
18 service. Because the Applicant failed to prove any of these elements, all of which are required,  
19 the Commission should deny the application.

20 **I. FACTS**

21 On October 11, 2000, the Applicant filed an application to provide airporter  
22 service between Sea-Tac and all points within 25 miles, including Seattle. Exhibit 2 at page 2.  
23 The Protestants, which currently provide airporter service in the proposed service area, filed a  
24 protest against the application on October 27<sup>th</sup>. The Commission held a hearing on May 3<sup>rd</sup> to  
25 consider the merits of the application. The Applicant presented four witnesses: Steven  
26 Valentinetti, president of Seattle Super Shuttle; Mathias Eichelberger, a travel agent; Ernest

1 Rosengren, a driver for Airline Delivery Systems, a transportation company owned by  
2 Mr. Valentinetti; and David Estes, the owner of Vashon Shuttle and VIP Shuttle, which are  
3 airporter companies serving the Sea-Tac to Vashon Island route. The Protestants presented two  
4 witnesses: David Gudgel, General Manager of Gray Line of Seattle, and John Rowley, Vice  
5 President and General Manager of Shuttle Express. At the conclusion of the hearing,  
6 Administrative Law Judge Marjorie Schaer directed the parties to file post-petition briefs  
7 summarizing their positions. TR 324, ll. 6-8.

8 **II. THE APPLICANTS HAVE FAILED TO PROVE THAT THEY MEET THE**  
9 **PREREQUISITES FOR OBTAINING A BUS CERTIFICATE**

10 **A. The Standard for Approval of a Bus Certificate Application**

11 The Commission must deny an application if an applicant cannot prove *all* of the  
12 following:

- 13 (a) "That there is a public need for the service proposed by the  
14 applicant . . . ,"  
15 (b) "That the applicant is fit, willing, and able to provide the proposed  
16 service. . . ," and  
17 (c) "[T]he existing transportation company or companies will not  
18 provide service in that territory to the satisfaction of the  
Commission. . . ."

19 Notice of Prehearing Conference, Docket No. TC-001566, Appendix A (February 9, 2001); *See*  
20 Prehearing Conference Order, Docket No. TC-001566 at p. 1 (March 16, 2001). As explained  
21 below, Seattle Super Shuttle has failed to prove even *one* of these elements.

22 **B. The Applicant Failed to Show a Public Need for Additional**  
23 **Service**

24 An applicant must present independent witnesses who personally have an unmet  
25 need for additional service:

26 Need for new service must be established by the testimony of members of the  
public *who actually require the service*. The Commission does not accept

1 self-serving statements of an applicant. The applicant must support its application  
2 with *independent* witnesses knowledgeable about the need for service in the  
territory in which the applicant seeks authority.

3 Notice of Prehearing Conference, Appendix A (*emphasis added*). "[T]he sort of evidence that  
4 the Commission has found persuasive on the issue of public convenience and necessity is the  
5 testimony of witnesses that they have been unable to get service when they needed it from  
6 existing carriers." Final Order, *In re Application of Ali*, Order M.V.C. No. 2160 (Sept. 4, 1997).

7 There is clearly no public need for the Applicant's service. First, the Applicant  
8 has no concession agreement with Sea-Tac and thus is incapable of offering the proposed  
9 service. TR 207, l. 15 to 208, l. 3. A concession agreement is a contract that transportation  
10 companies must enter with Sea-Tac to pick-up and drop-off passengers at the airport. It is  
11 essential to provide airporter service. The Applicant cannot obtain a concession agreement in the  
12 near future because Shuttle Express currently has an exclusive concession to provide door-to-  
13 door airporter service at Sea-Tac. Exhibit 14. This agreement does not expire until  
14 December 31, 2001 and has a possible 3-year extension. *Id.*<sup>1</sup> Mr. Valentinetti did not explain  
15 how the Applicant will provide service without a concession agreement.

16 Moreover, the Applicant's testimony regarding the public need was marginal, at  
17 best. For example, Mr. Eichelberger testified generally about the "need for transportation at the  
18 travel agencies" and the fact that "there is a need for additional service," but provided virtually  
19 no details. TR 118, l. 12 to 120, l. 13; TR 114, ll. 3-4; TR 116, ll. 15-16. He never indicated that  
20 he personally has any need for service and only identified one person by name who might want  
21 or need it. TR 118, ll. 12-15. He argued that travel agencies "are not really eager to promote any  
22 of the [currently available] services," but conceded that he is not currently acting as a travel  
23 agent and has no personal knowledge of the travel agencies' experiences with the Protestants.

24 \_\_\_\_\_  
25 <sup>1</sup> The Protestants do not ask this Commission to enforce Shuttle Express' concession agreement with the airport.  
26 Rather, Protestants believe Shuttle Express' concession agreement is strong evidence that the Applicant will be  
unable to obtain a concession agreement to serve Sea-Tac. This is an additional factor countering the Applicant's  
claim of need for an additional door-to-door airporter.

1 TR 118, ll. 15-23; TR 124, ll. 7-20. Mr. Eichelberger's testimony is even less convincing in light  
2 of the fact that he has been a friend of Mr. Valentinetti's for two and a half years. TR 122, ll. 10-  
3 23.

4 Similarly, Mr. Estes' testimony was vague and unsupported. He personally has no  
5 unserved need, because he would never use a ride-sharing airporter service like that proposed by  
6 the Applicants. TR 156, ll. 17-22; TR 157, ll. 13-20.<sup>2</sup> Yet, he believes that there is an unserved  
7 public need due to the fact that "customers say to us" that they need an alternative means of  
8 transportation and that during a severe ice storm passengers at the airport were "begging us to  
9 take them." TR 144, ll. 2-8; TR 148, ll. 23-24; TR 137, ll. 4-7. Of course, these statements are  
10 hearsay and thus highly unreliable. "Hearsay evidence is inherently weak; when it is . . . vague  
11 and incomplete . . . , it cannot be relied on as the basis for a decision." *In re Application of*  
12 *Pro Ag Transport*, Order M.V. No. 145062 at p. 7 (June 9, 1992). In this case, Mr. Estes has not  
13 provided the names of the complaining parties, their dates of travel, or any other information  
14 necessary to evaluate the veracity of these alleged statements or the weight that should be  
15 accorded to them.

16 Indeed, there are good reasons to question Mr. Estes' reliability. He argued that  
17 the Protestants should not have a "monopoly" on the Sea-Tac to Seattle route, TR 145, ll. 9-13,  
18 but later contended that there is nothing wrong with the monopoly held by *his* airporter company  
19 on the Sea-Tac to Vashon Island route. TR 159, l. 25 to 160, l. 7. When asked why he would  
20 oppose the application of another airporter company to serve the Sea-Tac to Vashon Island route,  
21 he explained that "I think it's just a matter of self-interest. We are out there to make money, and  
22 if somebody takes away our territory, then we are going to oppose it." TR 160, ll. 5-7. Mr. Estes  
23 apparently was unaware until the hearing that the application, if granted, would permit the  
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26 <sup>2</sup> This is apparently the case even though Mr. Estes himself owns and operates a ride-sharing service. TR 142,  
ll. 12-15.

1 Applicant to serve the Sea-Tac to Vashon Island route. When informed of this fact, Mr. Estes  
2 admitted that he was concerned. TR 163, l. 24 to 164, l. 3.

3 Mr. Rosengren's testimony was similarly unpersuasive. Like the other witnesses,  
4 Mr. Rosengren did not testify that he personally has a need for additional service. Instead, he  
5 testified that other people needed additional service during one Thanksgiving weekend and the  
6 "holiday season." TR 137, ll. 1-7. Of course, these are peak travel periods that are not  
7 representative of the day-to-day travel needs of the public. In any event, Mr. Rosengren cannot  
8 offer testimony regarding public need. All public witnesses must be "independent." Notice of  
9 Prehearing Conference, Appendix A. Mr. Rosengren lacks independence, because he is a driver  
10 for a transportation company owned by Mr. Valentinetti, the president of the Applicant. TR 139,  
11 ll. 16-17. Mr. Rosengren cannot offer evidence of public need so long as he depends on  
12 Mr. Valentinetti for a paycheck.

13 Mr. Valentinetti also testified that there is a public need, but he is similarly unfit  
14 to testify on this issue. *See, e.g.*, TR 320, l. 15–321, l. 14. As stated above, the Commission  
15 "does not accept self-serving statements of an applicant." *Notice of Prehearing Conference*,  
16 Appendix A. Mr. Valentinetti is the Applicant's president and primary sponsor, so he can only  
17 testify about the Applicant's operations.

18 Finally, the Applicant presented no witnesses whatsoever regarding any unserved  
19 need for additional service between downtown Seattle hotels and Sea-Tac, which is the route  
20 served by Gray Line. This requires a finding that there is no need on this route.

21 In contrast to the Applicant, the Protestants used verifiable data to prove that there  
22 is no unmet public need. They did this by showing that their vehicles are not fully utilized. For  
23 example, Gray Line's monthly utilization averages between 37% and 65%. Exhibit 19. Shuttle  
24 Express has an average utilization rate of approximately 17%, based on comparing seat capacity  
25 with guests carried. Exhibit 27. This extra capacity is available to serve the public need, should  
26 it arise. TR 248, l. 17 to 249, l. 1; TR 288, l. 12-15. The fact that these vehicles are not fully

1 utilized demonstrates that there is no additional need for another airporter service. Accordingly,  
2 additional service would merely dilute the small number of available riders without serving the  
3 public convenience and necessity.

4 In conclusion, the Applicant's evidence was vague and unverifiable. The  
5 Applicant failed to produce even one witness to testify about their own need for additional  
6 service. Because the Applicant presented minimal evidence of public need, the Commission  
7 should deny the application without further consideration.

8 **C. The Applicant Failed to Meet Its Burden to Show That It Is Fit,**  
9 **Willing, and Able to Provide the Requested Service**

10 Since the Applicant failed to show a public need, the Commission should deny the  
11 application without considering any remaining issues. However, this brief discusses the  
12 Applicant's failure to show fitness, for the sake of completeness.

13 As stated previously, an applicant must be "fit, willing, and able to provide the  
14 proposed service." Notice of Prehearing Conference, Appendix A; *In re Lloyd's Connection, Inc.*  
15 *d/b/a Airport Connection Airporter*, Order M.V.C. 1892 at p. 3 (December 1990). As part of this  
16 demonstration, the Applicant must prove "that it is willing and able to comply with the  
17 applicable laws and the Commission's rules" and "that it has sufficient financial resources and  
18 assets to conduct the proposed operations." Notice of Prehearing Conference, Appendix A. The  
19 Applicant failed to meet these conditions.

20 **1. The Applicant Is Unprepared to Provide the Proposed**  
21 **Service**

22 The Applicant presented little evidence of fitness, and the Protestants raised  
23 serious questions at the hearing about the Applicant's ability to provide an airporter service.  
24 First, the Applicant's principal managers lack sufficient experience and qualifications to operate  
25 the proposed service. Mr. Valentinetti has never operated a door-to-door passenger service.  
26 TR 99, ll. 2-3. He is a proposed driver, yet he had a suspended license due to reckless driving  
and subsequent failure to appear in court, violations for speeding, a "trip permit violation," and

1 an overweight violation. Exhibit 7. Mr. Valentinetti or someone else working for one of his  
2 companies has also acquired several violations from the Sea-Tac Ground Transportation Review  
3 Board. See Exhibit 9. Mr. Hartley, the proposed "day-to-day operations manager," has merely  
4 one year of experience with a baggage delivery service, and prior to that was a college student.  
5 TR 179, l. 11 to 180, l. 9. He will be in charge of driver training, even though Mr. Valentinetti  
6 admits that "we don't think he's an expert." TR 213, ll. 9-15.

7 The Applicant also has inadequate procedures and guidelines to operate an  
8 airporter service. Mr. Valentinetti has only a "mental plan" about how the dispatch system will  
9 operate. TR 181, l. 19. There is no designated location for the dispatch operations. TR 182,  
10 ll. 22-23. The dispatch system is merely a computer mapping software that was not designed to  
11 coordinate dispatch services. TR 276, ll. 20-24. The vans are not equipped to handle disabled  
12 passengers. TR 188, ll. 1-3. The maintenance facility has only one bay, with no lifts or wash  
13 rack. TR 183, ll. 5-12. Even Mr. Valentinetti admitted that "[a]t this time we are not ready to go  
14 yet." TR 180, l. 13.

## 15 **2. The Applicant Is Unprepared to Follow Applicable Laws** 16 **and Rules**

17 The Applicant stated in the application that it complies with Parts 391, 392, 395,  
18 and 396 of the Department of Transportation regulations, but it actually does not do so. For  
19 example, the application states that the Applicant presently has written hiring policies and  
20 procedures in place that are being followed when hiring new drivers, in compliance with  
21 Part 391. Exhibit 2. At the hearing, Mr. Valentinetti conceded that there are no procedures.  
22 TR 170, ll. 2-9. The application states that a qualified doctor examines the Applicant's drivers  
23 and provides a "certificate of physical examination." Exhibit 2; 49 CFR § 391.43. However, this  
24 does not actually occur. TR 169, ll. 10-11. The application indicates that the Applicant conducts  
25 a road test and issues a "certificate of road test" before qualifying new drivers. 49 CFR § 391.31;  
26 Exhibit 2. Yet, at the hearing, Mr. Valentinetti could not verify that the Applicant does this.

1 TR 169, l. 14 to 170, l. 13. He mentioned that somebody named Scotty White might be  
2 responsible for compliance, but Mr. White is merely a friend who is not an employee and has no  
3 formal relationship with the Applicant. TR 170, l. 23 to 172, l. 8. In fact, Mr. Valentinetti  
4 admitted that Seattle Super Shuttle had incorrectly checked "yes" by *every* Part 391 requirement  
5 listed in the application, with the possible exception of the road test provisions. TR 170, ll. 2-12.

6 The Applicant indicated that it currently has procedures concerning the use of  
7 alcohol and drugs in accordance with Part 392, yet Mr. Valentinetti admitted at the hearing that  
8 the Applicant does not have these procedures. TR 170, l. 18-22; *See* 47 C.F.R. § 392.4, 392.5.  
9 The application states that there are written procedures regarding vehicle inspection,  
10 maintenance, repair, and record keeping, in accordance with Part 396. Exhibit 2 at p. 5; *See* 47  
11 C.F.R. § 396.3. At the hearing, Mr. Valentinetti admitted that "no, we do not have a written  
12 manual." TR 171, ll. 1-2. Ann Aexel is responsible for vehicle maintenance record keeping  
13 even though she has never read Part 396. TR 173, ll. 7-13. Mr. Valentinetti is uncertain if the  
14 Applicant even has a copy of Part 396. TR 173, ll. 14-18. This disorganization has apparently  
15 resulted in inaccurate maintenance records. For example, Mr. Valentinetti claimed that each van  
16 underwent a daily inspection as well as other maintenance. TR 178, ll. 8-25. Yet, the  
17 maintenance log shows only four dates of maintenance for each van. *See* Exhibit 8.

18 Mr. Valentinetti reasoned that the Applicant does not need to follow Department  
19 of Transportation regulations because "[w]e are not in operation yet," TR 170, l. 6, but in fact the  
20 Applicant's vans are currently used to haul airline crews. TR 89, ll. 17-19. Even if he were  
21 correct, this does not excuse the misleading statements in the application.

22 There is a substantial amount of other inaccurate information in the application,  
23 reflecting an inability to comply with Commission requests for information. For example, the  
24 application states that Seattle Super Shuttle is familiar with the Commission's accident reporting  
25 rules and takes action against drivers involved in preventable accidents. Exhibit 2 at p. 4. At the  
26 hearing, Mr. Valentinetti admitted that this is not true. TR 170, ll. 18-22. The response to



1 Question 15 also improperly lists the assets of Mr. Valentinetti and Mr. Hartley, not the  
2 Applicant. Exhibit 2; TR 198, ll. 17-23. Mr. Valentinetti did not correct this problem until the  
3 day of the May 3<sup>rd</sup> hearing, seven months after filing the application. The application lists as a  
4 current asset a \$150,000 piece of property that Mr. Valentinetti now admits neither he nor the  
5 Applicant ever owned. TR 199, ll. 14-24.

6 The application contains inaccurate information about the Applicant's equipment.  
7 Question 16 of the application requests an equipment list indicating the year and make of the  
8 vehicle, the license plate number, the identification number, and the seating capacity. Exhibit 2  
9 at p. 3. Mr. Valentinetti omitted this information from the original application, then provided on  
10 March 20<sup>th</sup> an equipment list that he later admitted was inaccurate. TR 185, ll. 5-7.  
11 Mr. Valentinetti further claimed at the prehearing conference that the Applicant was buying vans  
12 biweekly, which he later admitted was untrue. TR 183, l. 22 to 184, l. 5.

13 There are also questions as to whether the Applicant's management understands  
14 applicable tax law or is capable of complying with it. In 1997, the Department of Revenue  
15 issued a tax warrant against Courtesy Transport, a transportation company owned by  
16 Mr. Valentinetti. TR 109, ll. 6-8. There is also a possibility that Mr. Valentinetti transferred the  
17 Applicant's present place of business to Ms. Aexel for less than fair market value in order to  
18 evade creditors or the real estate excise tax. TR 112, ll. 1-7.

19 Mr. Valentinetti also failed to comply fully with the subpoena served on him by  
20 the Protestants. Mr. Valentinetti did not bring to the hearing the employment applications of any  
21 proposed drivers, even though he previously admitted having "some" applications. TR 33, ll. 22-  
22 23. He also did not bring registration information for the Applicant's vans, or a title for van  
23 number 2. TR 195, ll. 5-19.

1                   **3.     The Applicant Did Not Prove That It Has Sufficient**  
2                   **Financial Resources to Provide the Proposed Service**

3                   Applicant fitness and financial ability "are implicit in the definition of public  
4                   convenience and necessity, and must be considered" for every applicant. *In re San Juan*  
5                   *Airlines, Inc., d/b/a Shuttle Express*, Order M.V.C. 1809 at p. 15 (April 1989). An applicant's  
6                   cost and revenue estimates must consider the full scope of proposed operations, the start-up and  
7                   operating costs and the likely volume of passengers. *In re Marcia Sams, d/b/a Rose's Limousine*,  
8                   Order M.V.C. 1894 at p. 4 (December 1990). The applicant's operating witness must have some  
9                   knowledge of the company's finances and be able to explain whether the company is making  
10                  money or not. *In re Evergreen Trails, Inc. d/b/a Evergreen Trailways*, Order M.V.C. 1824 at  
11                  p. 5 (July 1989).

12                 Here, Mr. Valentinetti provided none of the Applicant's bank statements, despite  
13                 being directed to do so at the April 30<sup>th</sup> prehearing conference. TR 37, l. 22 to 38, l. 3. He had  
14                 difficulty explaining the entries on the balance sheet. TR 196, l. 21 to l. 197, l. 1. He claimed  
15                 that Seattle Super Shuttle had a six-month reserve that he would back up with personal funds, but  
16                 provided no supporting documents or evidence. TR 174, ll. 7-10. Mr. Valentinetti does not  
17                 know who the officers of the company are. TR 176, l. 12-21. He does not even know who is on  
18                 the payroll. TR 196, ll. 4-7. Clearly, the Applicant's finances are in disarray.

19                 Clearly, the Applicant is 1) unprepared, 2) incapable of following relevant laws,  
20                 and 3) financially unfit. Accordingly, the Applicant is not fit, willing, and able to provide the  
21                 proposed service.

22                 **D.     The Applicant Did Not Demonstrate That the Protestants**  
23                 **Provide Unsatisfactory Service**

24                 As stated previously, the Applicants failure to prove either that there is a public  
25                 need or that it is fit to offer the service means that the Commission should dismiss the  
26                 application without further consideration. However, this brief discusses the Applicant's failure to  
                    show that the Protestants offer unsatisfactory service, for the sake of completeness.

1 The Commission may *only* issue a certificate to operate in a territory already  
2 served by a certificate holder "when the existing auto transportation company or companies  
3 serving such territory will not provide the same to the satisfaction of the commission. . . ."  
4 RCW 81.68.040 (*emphasis added*); Notice of Prehearing Conference, Appendix A. The  
5 Commission will give substantial weight to convenience, directness, and speed of the airporter  
6 service. *In re Sharyn Pearson and Linda Zepp*, Order M.V.C. 2057 at p. 3 (June 1994).  
7 Complaints about the existing operators must be "of the magnitude or frequency that would  
8 require a conclusion that [the existing operators] will not provide service to the satisfaction of the  
9 Commission." *In re Apple Blossom Lines, Ind.*, Order M.V.C. 2139 at p. 7 (Jan. 26, 1996).

10 **1. The Applicant did not show that the Protestants provide**  
11 **unsatisfactory service**

12 The Applicant's witnesses only testified about isolated and infrequent problems  
13 with the Protestants' service, if any. For example, Mr. Estes alleged that several third parties  
14 complained about the Protestants' service during a 1996 ice storm. TR 144, ll. 9-22. However,  
15 the ice storm was an extremely unusual event that did not involve ordinary driving conditions. If  
16 it occurred again, the Applicant's service would be just as impaired by the weather and traffic  
17 conditions as the Protestants' service. Also, the Protestants *did* provide service that day to the  
18 best of their ability, resulting in accolades for Gray Line from the City of Seattle and some  
19 passengers and hotels. TR 246, ll. 9-14; TR 289, l. 22 to 290, l. 12. Even if Mr. Estes' second-  
20 hand stories were relevant, they are unreliable hearsay. They lack sufficient information about  
21 the people involved and the routes of travel to be convincing.

22 Moreover, Mr. Estes' judgment is suspect. He stated that if one of his  
23 "experienced" drivers refused to drive during the ice storm due to the unsafe conditions, he  
24 "would fire them right on the spot." TR 161, ll. 9-16. This shows a disregard for safety. In the  
25  
26

1 end, even Mr. Estes conceded that Shuttle Express is "fairly good at what they do." TR 143,  
2 ll. 19-20.<sup>3</sup>

3 Mr. Eichelberger's complaints were equally unconvincing. He criticized the  
4 Protestants because they do not give travel agents commissions to promote their service and  
5 allegedly do not provide pamphlets to travel agents. TR 115, l. 18 to 116, l. 3; TR 114, ll. 9-17.  
6 However, carriers need not provide every conceivable form of promotion or advertising. An  
7 existing certificate holder is advertising sufficiently if it is "reasonably holding out its services to  
8 the public." *Apple Blossom* at p. 8. Here, the Protestants introduced substantial evidence that  
9 they advertise and promote their services widely. Shuttle Express has an incentive program with  
10 approximately 300 to 400 travel agents to promote their service and distributes pamphlets that  
11 have travel agents' names and addresses printed on them. TR 278, ll. 9-19. Even  
12 Mr. Eichelberger himself admitted that he "saw a lot of promotions" for Shuttle Express.  
13 TR 126, l. 23 to 127, l. 1. Similarly, Gray Line's pamphlets "are available all throughout  
14 Seattle," including hotels, ferry terminals, and the airport baggage claim and travel information  
15 booths, as well as being "mailed out to travel agencies both locally and internationally." TR 232,  
16 ll. 17-25. Gray Line also offers a "travel agency incentive program" to encourage travel agencies  
17 to promote their service. TR 233, ll. 1-6.

18 Mr. Eichelberger 's only specific complaint about Shuttle Express' service was  
19 very minor. He stated that Shuttle Express changed a friend's early morning pick-up location  
20 thirty minutes prior to the pick-up time. TR 119, l. 15 to 120, l. 13. At most, this is a small  
21 inconvenience. What probably occurred is that an alert driver made the change because the  
22 address given by Mr. Eichelberger was not appropriate as a pickup location. TR 291, ll. 9-15. In  
23 the end, Mr. Eichelberger conceded that when he used Shuttle Express it was timely, the vans  
24 were clean, the driver was courteous, and the ride was safe. TR 123, l. 21 to 124, l. 4.

25 \_\_\_\_\_  
26 <sup>3</sup> Mr. Estes mistakenly referred to Shuttle Express as Super Shuttle during this part of the hearing but later confirmed that all references to Super Shuttle were actually directed at Shuttle Express. TR 151, l. 19-21.

1 Mr. Rosengren testified that several years ago some customers did not like the  
2 fact that Shuttle Express picks up additional passengers on the way to the airport and that, when  
3 he worked for Shuttle Express, customers told him that they sometimes wait around  
4 thirty minutes for Shuttle Express to pick them up. TR 136, ll. 3-22. Again, this is unreliable  
5 hearsay and not current information. Mr. Rosengren has not identified any of the passengers  
6 who complained, the relevant dates, the routes at issue, or any other specific information that  
7 would enable the Commission to evaluate these claims. The Applicant could have called these  
8 passengers to testify, but did not do so. Mr. Rosengren's recollection is also unreliable because  
9 he was only a part-time driver for seven months sometime between 1996 and 1998. TR 133,  
10 ll. 16-18. Of course, even if these complaints actually occurred, there is a certain amount of  
11 waiting that is inherent with ride-share services, since it involves other passengers who board the  
12 bus at slightly different times. Passengers who do not like to wait can take a taxi and pay a  
13 higher rate. Mr. Rosengren's other contention that Shuttle Express experienced delays during  
14 one Thanksgiving is undermined by his admission that he never again saw delays of that  
15 magnitude and that "everybody was in the same boat." TR 138, ll. 3-6. Similar to the  
16 Applicant's other witnesses, Mr. Rosengren admitted that Shuttle Express provided "adequate"  
17 service, and he would use it again. TR 140, ll. 10-12.

18 Mr. Valentinetti criticized the Protestants' service, but this testimony is self-  
19 serving and thus irrelevant. *See* TR 318, l. 20 to 319, l. 6. He also undercut these complaints by  
20 admitting that "I think that Shuttle Express runs a good operation" and "Gray Line is also good  
21 too." TR 318, ll. 15-18. In doing so, Mr. Valentinetti effectively conceded that the Petitioners  
22 operate satisfactory airporter services.

23 **2. The record demonstrates that the Protestants provide**  
24 **highly satisfactory service.**

25 Although it was not necessary to do so, the Protestants rebutted the Applicant's  
26 case by demonstrating that they give passengers convenient, direct, speedy, safe, and highly

1 satisfactory airporter service. For example, Gray Line serves around 300,000 passengers per  
2 year. TR 229, ll. 10-13. It has a sophisticated dispatch system that enables drivers to arrive  
3 timely at frequently scheduled stops. TR 230, l. 21 to 231, l. 5. It has an extensive maintenance  
4 facility and parts inventory that allows buses to stay running and to meet the demand during peak  
5 periods. TR 235, l. 11 to 236, l. 13. It keeps its buses clean and recycles wash water and waste  
6 oil. TR 237, l. 18 to 238, l. 20. Gray Line also has equipment to assist disabled passengers.  
7 TR 238, l. 23 to 239, l. 13. Moreover, Gray Line has 225 drivers available to offer airporter  
8 service, all of whom are subject to extensive hiring policies and procedures as well as ongoing  
9 monitoring of driver performance. TR 240, l. 17; TR 241, l. 12 to 242, l. 8. Gray Line has a  
10 sophisticated safety program to ensure that these drivers operate the vehicles properly. TR 242,  
11 l. 19 to 243, l. 8. Unlike the Applicant, Gray Line's managers are aware of and follow state and  
12 federal regulations that govern their operations. TR 244, ll. 11-15. It also has a concession  
13 agreement with Sea-Tac that allows it to furnish ground transportation by bus. Exhibit 14.  
14 Finally, Gray Line has received community accolades for the quality of its service. Exhibits 17  
15 and 18.

16 Similarly, Shuttle Express provides highly satisfactory service. Shuttle Express  
17 handles 45,000 people per month, and 99.75% of these trips occur without a complaint. TR 277,  
18 ll. 7-10. It has a highly sophisticated dispatch procedure that enables it to route vans in the most  
19 efficient manner possible. TR 272, l. 12 to 273, l. 21; TR 273, l. 24 to 274, l. 9. It has  
20 procedures to handle the needs of disabled passengers. TR 281, l. 23 to 282, l. 5. Shuttle  
21 Express' drivers are subject to extensive hiring policies and procedures as well as ongoing  
22 monitoring after they begin employment. TR 282, l. 23 to 284, l. 4. Shuttle Express has a safety  
23 manager with 10 years of experience who is responsible for maintaining the safety of Shuttle  
24 Express' operations. TR 284, l. 14 to 285, l. 2. Shuttle Express, like Gray Line, has a  
25 sophisticated maintenance facility, TR at 280, ll. 2-20, and it recycles waste water after washing  
26 the airporter vans. TR 281, ll. 14-20. Shuttle Express' managers are familiar with state and

1 federal regulations affecting their operations, and they follow these regulations. TR 287, ll. 4-9.  
2 As stated above, Shuttle Express also has an exclusive concession to provide door-to-door  
3 airporter service at Sea-Tac International Airport.

4 In sum, the Protestants have sophisticated operations that provide safe, reliable  
5 and timely service. In fact, all of the Applicant's witnesses praised the Protestants' service at one  
6 point during the hearing. In contrast, the Applicant has presented only second-hand anecdotes  
7 about the experiences of unnamed third parties. If there were significant problems with the  
8 Protestants' service, the Applicant should have no difficulty in calling witnesses to testify about  
9 their own experiences. They did not do so, and this strongly indicates that problems with the  
10 Protestants' service are minor and infrequent. Accordingly, the Applicant has not proved that the  
11 Protestants provide unsatisfactory service.

12 **III. CONCLUSION**

13 The Applicant's marginal case is built almost exclusively on hearsay and  
14 anecdotes. This sort of evidence is insufficient to prove that 1) there is a public need for the  
15 proposed service, 2) the Protestants provide unsatisfactory service, and 3) the Applicant is fit,  
16 willing and able to provide the proposed service. For this reason, the Commission should deny  
17 the application.

18 DATED at Seattle, Washington, this \_\_\_\_\_ day of June, 2001.

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