

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

SHUTTLE EXPRESS, INC.,

Petitioner and Complainant,

v.

SPEEDISHUTTLE WASHINGTON, LLC,

Respondent.

DOCKET TC-143691

SPEEDISHUTTLE'S RESPONSE IN
OPPOSITION TO SHUTTLE EXPRESS'
MOTION TO COMPEL DATA REQUEST
RESPONSES

I. INTRODUCTION

1 Pursuant to WAC 480-07-375(4) and 480-07-425(1), Speedishuttle Washington, LLC (“Speedishuttle” or “Respondent”) responds to Shuttle Express, Inc.’s (“Shuttle Express” or “Petitioner”) Motion to Compel. This Response is based on the documents on file in the matter and the accompanying Declarations of Jack Roemer and David W. Wiley.

2 For a company that chronically complains Speedishuttle is improperly arguing its case, Shuttle Express spends an inordinate number of pages on conspiracy theories arguing what it has apparently decided is true about Speedishuttle’s business practices and motivations in its entry into the marketplace in the Motion to Compel. And, no mental gymnastics are required to grasp the scope of these Data Requests for exactly what they are -- “broad” -- at a minimum.¹ Further analysis does not change that conclusion, no matter how Shuttle Express seeks to characterize the analysis. Shuttle Express propounded 23 data requests, nearly all of which are compound in the extreme. The reality is these data requests are astonishingly broad and overreaching.

3 Even before the initial discovery response deadline of August 31, 2016, Speedishuttle notified Shuttle Express and the Commission staff in writing regarding its initial objections by formal

¹ Motion to Compel, ¶7, p.3.

letter before this motion was filed.² That letter also noted that information for five of the responses would be provided by September 30, 2016.

II. AUTHORITY AND ARGUMENT IN OPPOSITION TO MOTION TO COMPEL

A. Shuttle Express' Requests are Not Targeted At Developing Relevant Information, but Instead Seek Elimination of Speedishuttle from the Marketplace.

4 It is important to consider the context in which this Motion to Compel should be viewed. Shuttle Express seeks limitless discovery. However, WAC 480-07-400(3), provides the limiting standard, omitted entirely from reference or analysis by Shuttle Express in its Motion to Compel:

... Parties must not seek discovery that is unreasonably cumulative or duplicative, or is attainable from some other source that is more convenient, less burdensome or less expensive. A discovery request is inappropriate when the party seeking discovery has had ample opportunity to obtain the information sought or the discovery is unduly burdensome or expensive, taking into account the needs of the adjudicative proceeding, limitations on the parties' resources ... Discovery through data requests or otherwise must not be used for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the costs of litigation.

5 The admonition in the rule as a backdrop to the present discovery dispute here should be closely considered. Especially where Shuttle Express eagerly volunteered to “do the lion’s share of the investigation” supposedly to protect and restore the public interest [ideally no self-serving motive here] without “consum[ing] a great deal of the Commission’s resources.”³ Shuttle Express’ sincere concern for the public interest is further belied by its continuing collateral attacks on the Commission’s rulemaking and omission of previous decisions in the auto transportation field, all well-documented by positions advanced within this very litigation.

² A copy of that letter is attached as Exhibit A to the declaration of David Wiley.

³ Shuttle Express’ Answer in Opposition to Petition for Review and Partial Challenge of Order 06, ¶50, p. 19.

6 Shuttle Express also repeatedly cites to Initial Order 02 in its Motion to Compel in order to justify its hugely overreaching discovery. Putting aside Speedishuttle’s dispute with Shuttle Express’ interpretation of that Initial Order, the appropriate reference document is Final Order 04 which supersedes Initial Order 02 and is, after all, the Commission’s actual decision. This “transference” also subsumes its evolved argument, for instance, that in order for the “greeters” factor to matter, every passenger must be met by a multilingual greeter, and for the 20 minute departure “guarantee,” again discussed in Order 02, but not the subject of any finding in Order 04. This rather subtle transfer should not distract anyone from the basis of the Commission’s decision in Order 04 which is again specifically set out in Sections 21 – 23 of that Order.

7 Rather than address the holdings on “same service” or failure to reasonably serve the market actually raised by Order 04, Shuttle Express seeks instead through discovery to isolate the operations of Speedishuttle, categorizing them into the individual differentiation factors and then, hoping to find a way to discredit the previous conclusions in the aggregate, propounds individual data requests in conformity with that approach. Again, to the contrary, the Commission in Order 04 found instead that it was a “totality of the features” not any single feature in a vacuum which justified approval of Speedishuttle’s application. The Commission also in Order 04 found:

[W]e also conclude that Shuttle Express’s existing services does not reasonably serve the entire market. From 2004 until 2014, the last year being the test period of Speedishuttle’s application Shuttle Express used a contracted “rescue service” to serve approximately 5 percent of its customers. Mr. Kajanoff’s claim at hearing that Shuttle Express has “never turned away door-to-door business for inability to have a vehicle available” is contradicted by Shuttle Express’s owner Jimy Sherrell...**By the company’s own admission when it sought the**

exemption, Shuttle Express was unable to reasonably serve the market for a 10-year period without relying on outside assistance.⁴

8 Shuttle Express appears here to be propounding discovery requests in another collateral attack on the WAC 480-30-140 definition of “same service,” seeking to define it as any sort of auto transportation service, and in the process attempting to redefine what is “material” for that determination. But as the Commission has previously also found in Order 04,

“Mr. Kajanoff attempted to distinguish this upgraded [rescue] service from Shuttle Express’s standard service as a rationale for offering rescue service without the Commission’s authorization. Yet, Shuttle Express now attempts to characterize Speedishuttle’s upgraded business model as indistinguishable from its own. **Shuttle Express cannot have it both ways.**”⁵

B. The Discovery Sought Is Well Beyond the Scope Permitted or Relevant.

9 The general scope of permissible discovery reflects litigation and court rules. F.R.Civ.P. 26(b)(1) provides:

1) Scope in General. Unless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

10 “Relevant information for purposes of discovery is information ‘reasonably calculated to lead to the discovery of admissible evidence.’ *Brown Bag Software v. Symantec Corp.*, 960 F.2d 1465, 1470 (9th Cir. 1992).” *Survivor Media, Inc. v. Survivor Prods.*, 406 F.3d 625, 635 (9th Cir. Haw. 2005). This tribunal has broad discretion in determining relevancy for discovery purposes. *Id.*

⁴ Order 04, ¶22, p.7 (emphasis added). And in the spirit of Shuttle Express’ approach a finding Initial Order 02 first announced in ¶17 of that Order.

⁵ *Id.*, ¶23, p8, (emphasis added).

Indeed, it must. “On motion by a party or *sua sponte* courts must limit discovery that is unreasonably cumulative or duplicative, or can be obtained from a more convenient, less burdensome, or less expensive source.” *Elkharwily v. Franciscan Health System*, 2016 WL 406175 (W.D. Wash. July 29, 2016).

11 Additionally, regarding electronically stored information, a party “need not provide discovery...[when] not reasonably accessible because of undue burden or cost.” The *Elkharwily* Court found that the electronic discovery sought by the plaintiff in that case was not reasonably accessible due to the burden and cost, but Defendants could be required to provide it at the Plaintiff’s sole expense. *Id.* There is also no question that if Shuttle Express is here seeking ultimate admissions. The requests for production it seeks could be streamlined through requests for admission which would undoubtedly be far less burdensome, expensive and intrusive than these present broad requests.

12 Shuttle Express’ requested discovery must therefore be both reasonably calculated to lead to the discovery of admissible evidence, not impose undue burden or expense and must be proportional to the needs of the case, and the expense must not outweigh its usefulness. Shuttle Express grossly overreaches the permissible extent of discovery in this case as demonstrated by the chart, *infra*, and ostensibly accepts none of Speedishuttle’s responses or intended production as sufficient.

C. Shuttle Express Claims, Without Evidence, that Speedishuttle Is Engaged In a Collusive Relationship with the Go Group and/or the Hudson Group and that Speedishuttle Has Access to Data and Reports that it Simply Does Not Have.

13 For the first time here, Shuttle Express defends its overbroad discovery requests in part by postulating a conspiracy theory based on its own former arrangement with the GO Group. There

is of course absolutely no supporting evidence for this theory which it seeks to construct through discovery. In fact, Speedishuttle does not even have a written agreement with the GO Group other than the Ticket Agent Agreement filed with and approved by the Commission.⁶ Yet, Shuttle Express posits that Go Group is the nexus and reason for Speedishuttle seeking to enter the Washington market, and that somehow discovery directed to all communications with the Go Group would therefore support this theory. That theory has no basis in fact or reality.

14 Shuttle Express goes on in this context through the Declaration of Wesley Marks to opine on the availability and ease of production of documents related to trip information apparently through the Hudson Group, which Shuttle Express used for booking services, amongst other activities. But Shuttle Express' presumption that Speedishuttle is modeling its operations after its own operations is the only assumption for such discovery here.⁷ Speedishuttle uses different processes and software programs than Shuttle Express, does not maintain the same information, nor can it generate the same reports with the apparent ease of Shuttle Express.⁸ Not only that, but Speedishuttle knows (and suspects Shuttle Express does as well) that the information sought by Shuttle Express from the Hudson database provides a false sense of detail. Though the system appears to log timestamps and track departures, it actually lacks accuracy.⁹ Analysis based on this faulty data could only serve to mislead the Commission.¹⁰ Moreover, if Shuttle Express believes that it knows of the existence of a particular data summary or report from

⁶ See Roemer Declaration, ¶10.

⁷ That assumption is also incorrect. See Roemer Decl., ¶¶3- 4, 8-12.

⁸ Roemer Declaration, ¶¶8-9. For instance, Speedishuttle does not have the ability to run reports on numerous parameters, and would not do so because the information in the Hudson database, at least for it, has some inherent accuracy issues.

⁹ Roemer Declaration, ¶6. The times in Hudson are not reliable as they are reset incorrectly multiple times a day.

¹⁰ Roemer Declaration, ¶7. Speedishuttle does not track "Ready to Go" data because of the inherent unreliability described.

Hudson Group which would encompass the information actually sought by its requests, it should tell Speedishuttle which specific report it wants.¹¹ Yet the data requests do not ask for any specified report, for instance, in Data Request No. 23, which seeks:

Provide copies of all correspondence to or from the Hudson Group. The scope of this request is January 1, 2012 to the date of hearing in this matter. This request encompasses all forms of correspondence, including paper, emails, or text messages. It is intended to include aggregate reservation or transportation data, but is not intended to include all specific or individual reservations, bookings, or requests for ground transportation.

15 This type of electronic discovery is not specifically provided for in the rules governing Commission adjudications, nor is it nearly as straightforward as Shuttle Express facilely seeks to imply. Speedishuttle Washington, LLC has over 50 employees and was not formed until 2014, yet Shuttle Express expects that it will just turn over the .pst files of all of those individuals and in all related companies without any sort of narrowing for subject, search terms, or review for a time frame of nearly five years. In this question alone, there could be tens of thousands of emails implicated, all with disparate subjects and implicating competitive as well as irrelevant data.

16 The attached Declaration of Jack Roemer, explains just how complicated and time consuming accessing the data Shuttle Express is seeking truly is, for instance, in data request #23.¹² Such an endeavor is not reasonable, nor necessary to address the issues upon which this Commission entered Order 04, nor any articulable basis of the Complaint. Moreover, to the extent that Shuttle Express is now claiming that Speedishuttle should respond to the issues raised relevant to its petition for rehearing because Speedishuttle did not move to stay the proceeding, Order 06 specifically states on its face that it is “an initial order” and “[t]he action proposed in this initial

¹¹ Roemer Declaration, ¶8. Speedishuttle is not able to generate the sort of reports which Shuttle Express requests.

¹² Roemer Declaration, ¶¶ 4-9.

order is not yet effective.”¹³ Speedishuttle obviously objected to the Initial Order in its lengthy Petition for Administrative Review. Again, it is not Speedishuttle’s fault that the Shuttle Express’ pleadings are so hopelessly intertwined that the petition and complaint are inextricable. That is a problem of its own making and consolidation of the two actions does not, in and of itself, mean the bases of the two pleadings and discovery related thereto should and cannot be bifurcated for analysis. Moreover, order and clarity dictate that the issues which will actually be a part of the proceeding be determined before Speedishuttle engages in broad discovery. On that basis alone, Speedishuttle’s initial objection that the data requests are premature is correct. Apparently, Shuttle Express’ rejoinder is that the business is seasonal, and Shuttle Express seeks Speedishuttle’s elimination from the market before the next tourism season starts.¹⁴

D. The Rulings in Order 06 are Expressly not Effective by Their Terms --Yet the Pending Complaint Case and the Data Requests Apparently Directed to the Complaint are Glaringly Lacking in Merit

17 While, as just noted, Initial Order 06 and the underlying Petition for Rehearing issues are currently subject to a Petition for Administrative Review, some discussion of the Complaint case issues as they relate to the Motion to Compel are now in order. In quickly parsing through the Complaint, in Speedishuttle’s view, the allegations appear to be based on alleged anti-competitive conduct, allegations of predatory pricing, below cost operations, and lack of profitability. As previously noted to the applicant, the Commission has dealt with these overall issues in an auto transportation complaint case brought over twenty years ago against, ironically, Shuttle Express. See Docket No. TC-910789, *In re Everett Airporter Services Enterprises, Inc. v. San Juan Shuttle, Express, Inc. d/b/a Shuttle Express* (Jan. 1993). There the Commission

¹³ See Order 06 (Aug. 2016), “Notice to the Parties,” p. 5.

¹⁴ Motion, ¶ 51, pp. 15-16.

noted that Shuttle Express “lost a great deal of money during its first years of operations.” But, the Commission also found in Shuttle Express’ favor that “operating losses do not prove that the carrier’s pricing is predatory.”

18 Shuttle Express is obviously well aware of these findings yet nevertheless chooses to predicate its overall Complaint on the theory of exactly these types of broad, resolved allegations. However, in lieu of overbroad data requests, it could again easily direct requests for admission to Speedishuttle to find the answer to the question of first-year profitability and other startup cost experience without seeking financial statements, loan agreements or other intrusive, proprietary and burdensome records. Moreover, the Complaint-based Data Request responses sought to be compelled here also ignore the revised test for financial ability codified in WAC 480-30-126(5)(b). There the Commission makes clear that “financial ability” means:

“that the applicant has sufficient financing or assets to begin operations and continue them for a reasonable period while developing business. This determination does not require a comprehensive analysis of cost and revenue estimates of the full scope of proposed operations and balancing start-up and long-run operating costs over an extended period...”

19 As the Commission also said in the *Everett Airporter* case, “the Commission does not guarantee profitability nor mandate that a carrier achieve an approved operating ratio when it approves tariff rates. The Commission merely affords a carrier the opportunity to achieve profitability.”¹⁵

20 Indeed, in Order 04, *In re Sani Mohama Maurou, d/b/a SeaTac Airport* Docket No. TC-140399 (Oct. 2014), on the financial fitness showing the Commission found Shuttle Express was not even an “affected person” under RCW 80.01.030, as the consideration of the financial fitness

¹⁵ See Docket No. TC-910789 *In re Everett Airporter Services Enterprises, Inc. v. San Juan Shuttle, Express, Inc. d/b/a Shuttle Express* (Jan. 1993), ¶2, p.4.

issues in a new auto transportation application is something the staff and the Applicant are engaged in, not the objecting incumbent carrier. Yet, now Shuttle Express prosecutes a Complaint and requires the expense and resources of staff, the Commission and the prior Applicant alike predicated upon financial fitness issues, further analysis of first-time rates and their supposed impact on the incumbent, once again collaterally attacking the scope, implementation and efficacy of the 2013 Rulemaking.

21 Thus, in resolving data requests directed to the Complaint on finances, costs and profitability, at a minimum, the administrative law judge and the Commission should now ask Shuttle Express exactly why it is pursuing claims on the basis of legal arguments previously resolved by the Commission in a prior complaint case brought against it? Indeed, how a prospective, first-year operating loss relates to a predatory pricing allegation and how initial rate filings submitted to and approved by the Commission staff constitute discriminatory or anti-competitive pricing? And, moreover again, how such rates expressly established under fare flexibility pursuant to WAC 480-30-420, could possibly serve as the basis for an anti-competitive predatory/discriminatory pricing complaint?

22 While Speedishuttle raises such salient questions in opposition to overbroad, obtrusive and inappropriate discovery that will hardly lead to the discovery of admissible evidence, it would also appear now that the gist of the Complaint allegations are fatally flawed. Speedishuttle makes these statements here so that it is very clear that it believes the Complaint discovery requests are irrelevant to any issues in the adjudicative proceeding pursuant to WAC 480-07-400(3). It, for now, will reserve to a later stage of the Complaint proceeding a potential dispositive motion on these foundational issues.

E. Shuttle Express Ultimately Seeks Proprietary Information for Improper Purposes Prohibited by Statute.

23 By its latest Motion, Shuttle Express also curiously invokes the doctrine regarding public service companies in Washington to argue that no amount of data is proprietary and therefore Speedishuttle’s objections cannot have any basis in law. Shuttle Express misses the point.¹⁶ Speedishuttle is not required to produce proprietary data that do not meet the criteria for a valid data request. “Discovery through data requests or otherwise must not be used for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the costs of litigation.”¹⁷ But Shuttle Express again oversteps by these particular requests. See for example:

Provide copies of all documents that reflect, show, or relate to hiring or engagement of employees or contractors to serve the market, including advertisements, qualifications, hiring manuals, employment manuals, questionnaires, interview questions, evaluation forms, and decision records or notices.

Data Request 3.

24 Shuttle Express attempts to defend this particular data request as reasonable to determine whether employees are multi-lingual or tech-savvy.¹⁸ Yet, that is not what this question asks. Instead, it seeks every detail about how Speedishuttle identifies and hires employees. This is overbroad, proprietary information which has no bearing on the consolidated case, instead the request seems directed to harass, burden, and improperly obtain market-based hiring protocols.

¹⁶ Even governmental agencies subject to the Public Records Disclosure Act are not required to disclose data or guiding hypotheses where the private person seeking the information would use it for private gain to the public loss. *Servais v. Port of Bellingham*, 127 Wash. 2d 820, 829, 904 P.2d 1124, 1129 (1995) (“The clear purpose of the exemption is to prevent private persons from using the Act to appropriate potentially valuable intellectual property for private gain.”) Here, the Commission has specifically confirmed there is a public benefit in encouraging competition, and Shuttle Express seeks to undermine that by obtaining Speedishuttle’s most detailed business plans, finances, marketing and other information for improper purposes. Order 04, ¶31, p.10.

¹⁷ WAC 480-07-400(3).

¹⁸ Motion to Compel, ¶31, p.11.

This is also a common and pervasive theme which becomes clearer under an aggregate examination of the data requests as a whole, provided below.

F. Shuttle Express' Data Requests That Mimic Interrogatories are also Improper.

25 Shuttle Express is permitted to ask questions in its data requests that call for a “narrative response explaining a policy, position, or a document...” WAC 480-07-400(1)(b)(iii). However, Shuttle Express far exceeds that authorization in i.e, Data Request Nos. 10, 11 and 18. Shuttle Express preemptively seeks to characterize these requests as basic “contention data requests.”¹⁹ However, the law is that requests that purport to require a party to “describe in detail every aspect of...” as Shuttle Express’ requests do, are improper and overbroad. *Olson v. City of Bainbridge Island*, 2009 U.S. Dist. LEXIS 58171, at *9-10 (W.D. Wash. 2009) (upholding objection to interrogatory seeking “all facts and evidence” that support an allegation, as improper and overbroad.).

26 Speedishuttle duly provided an initial letter and specific objections that appropriately notified Shuttle Express of its coming objections. It then provided responses and objections that sufficiently noticed Shuttle Express of the basis of those arguments. Speedishuttle is entitled to object to the overall scope of those requests and not be forced to attempt to cobble together or decipher every possible fact and supporting piece of evidence relevant to the complainant’s contentions within ten business days. Shuttle Express cites no authority to support its bold claim to the contrary, resting on inflammatory rhetoric that serves as a preamble to actual discussion of the data requests themselves in its Motion. Shuttle Express has been provided a reasonable description of Speedishuttle’s position, to which it is entitled. No supplementation of the

¹⁹ Motion, ¶38, p.12.

responses to contention Data Requests 10, 11, and 18²⁰ is therefore appropriate. And Shuttle Express’ conclusory demand that Speedishuttle be prohibited at hearing from relying on any other facts or arguments not identified in its response is also wholly without support.

G. Shuttle Express Attempts to Cast Its Requests as Reasonable, but They are Overbroad, Unreasonable and not Calculated to Lead to Discoverable Evidence and Interposed for an Improper Purpose as Described Below.

27 Finally, Speedishuttle responds to Shuttle Express’ individual characterizations of its specific data request objections here. Speedishuttle stands on those objections as appropriate and permissible as described more specifically below.

Shuttle Express Data Request	Shuttle Express Justification	Speedishuttle Response in Addition to Objections.
Data Request 1: Provide a list of each current or past employees of SS who works in or serves the market, whether full time or part time. For each employee, provide the following information, if known: name, age, place or places worked, job title, employer, job description, nationality, and languages spoken, read or written.	Shuttle Express clarifies that it is seeking these details for all employees working in SeaTac or King County.	Speedishuttle does not track or collect the information which Shuttle Express seeks. This request is compound. Shuttle Express also does not clarify whether it seeks to interview these employees. A list of multilingual employees is being collected to be provided which is ostensibly relevant to Shuttle Express’ Complaint/Petition
Data Request 2: Provide copies of all emails between or among SS personnel and/or third parties that address or relate to the availability or provision of services to passengers or potential in the market that do not speak or do not read and write English or who are tech-savvy.	The documents are relevant to the nature of the planned service to SeaTac, and the PST files should be turned over in their entirety because there is no burden.	This request is exceedingly overbroad and implicates literally tens of thousands of emails, demonstrating substantial burden and immense cost. Shuttle Express does not suggest search terms for emails, instead simply requests all emails regardless of subject

²⁰ Data request #18 purports to require Speedishuttle to “Describe all efforts...” and is subject to the same objection.

		matter. The facts are Speedishuttle has provided multilingual booking options for its customers, has released an App for iPhone, provides free Wi-Fi, provides Speedishuttle TV.
Data Request 3: Provide copies of all documents that reflect, show, or relate to hiring or engagement of employees or contractors to serve the market, including advertisements, qualifications, hiring manuals, employment manuals, questionnaires, interview questions, evaluation forms, and decision records or notices.	Hiring materials are relevant to whether efforts are made to serve tech-savvy non-English speakers.	As described above, Shuttle Express is implicitly seeking to obtain all of Speedishuttle’s hiring practices and manuals. This discovery request is not targeted and is vague and ambiguous especially as to “decision records or notices.”
Data Request 4: Provide all records that show online inquiries or bookings in the market and what language was used by the passenger or prospective passenger to make the inquiry or booking.	This goes to the heart of “unserved” non-English speaking travelers.	Speedishuttle does not have this information. Nor is there any requirement that it should hold out to so provide. Shuttle Express does not target service to non-English speaking travelers. This request is also in no way limited to non-English speaking guests and is a transparent attempt to obtain customer lists for their own use.
Data Request 5: Provide all records that reflect, show, or relate to airport greeters at SeaTac, including duty rosters, schedules, time records, passenger meet/greet lists, locations, languages spoken and numbers of passengers served—by language or nationality, if known.	The “list of greeters” proffered by Speedishuttle is insufficient. Records showing passengers greeted or not are needed.	Again, an overbroad, compound data request, which requests information not tracked or maintained by Speedishuttle. Shuttle Express does not have a legitimate reason, except likely competition and ostensibly harassment, to have the entire employee scheduling strategy of Speedishuttle. Shuttle

		<p>Express may also apparently be asking for this information to determine how to structure a greeting service and to obtain additional customer information since a record of the greeter hours worked by payroll period would be sufficient to show that Speedishuttle does indeed provide greeters.</p>
<p>Data Request 6: Please provide statistical data for each reservation or trip to or from SeaTac Airport including, but not limited to, Hudson date/time stamps for reservation time of day, ready to go time of day, on board time of day, location and drop off time of day served in the market to or from SeaTac Airport, how they reserved the transportation (e.g., phone, computer, smartphone, in person, language used), the fare(s) paid, whether or not they spoke English, whether they used Wi-Fi or watched TV, the number of passengers carried in each vehicle on the same trip, the number of stops per trip, the time for each trip, and Hudson system fields for TripID and ShiftID.</p>	<p>Shuttle Express uses Hudson also, so Speedishuttle should be able to produce records. Also, Wi-Fi usage is traceable by service providers.</p>	<p>As explained more fully in the Declaration of Jack Roemer, Shuttle Express' assumptions are wrong. Speedishuttle does not track the information requested, and it cannot therefore be readily obtained. This is in reality, a request for the details of every single reservation taken by Speedishuttle, not statistical data. This request encompasses how Speedishuttle obtained the reservation, how it was serviced and how much was charged. Shuttle Express is again seeking here to obtain proprietary information about Speedishuttle's operations for improper purposes. Each vehicle has data usage by virtue of the way the Hudson system works. A working tablet is required in every vehicle in order for communication with dispatch and GPS service to operate. Billing records do not indicate Wi-Fi usage, only cellular minutes. The only conceivable use of this</p>

		information is to determine Speedishuttle’s pricing for cellular service.
Data Request 7: Please provide all documents that show or relate to the time elapsed that passengers departing SeaTac Airport waited from their check in or presentment with SS until the departure of the vehicle from the loading area, including statistical data, emails, memoranda, “guarantees” or other representations to passengers, or complaints.	Shuttle Express uses the same or similar systems to Shuttle Express, and Order 02 discusses wait times.	Refer again to the accompanying Declaration of Jack Roemer. Shuttle Express is apparently misleading the Commission about the accuracy of the systems, and whether those systems are used by Speedishuttle. Order 04 does not include any reference to a 20 minute guarantee nor was it the basis of any “same service” analysis in that Final Order.
Data Request 8: Provide documents that show the vehicles used to transport passengers in the market, including, for each vehicle, the make, model, year, and any amenities, such as TVs and Wi-Fi facilities. Provide records that show when such amenities were installed, operated (on/off/disabled, etc.) and used (e.g. Wi-Fi data usage records).		Speedishuttle has agreed to provide a fleet list although one is already on file with the Commission. Speedishuttle previously responded that all vehicles have TV and Wi-Fi except the ADA van, which does not have room for a TV but is required by the ADA. Speedishuttle does not have a means to track on/off/disabled, although Wi-Fi is generally off when there are no passengers on board, and as noted above, there is no record of “Wi-Fi” usage. In any event, the fact that these amenities exist and are provided are easily verifiable and really the gist of Shuttle Express’ Petition and Complaint.
Data Request 9: Provide documents that reflect, show, or relate to a decision or practice to carry “walk-up” or		This has already been decided, and ruled upon by the Commission in December 2015, without notice of

<p>not “pre-arranged” passengers or the like (by whatever terminology or nomenclature), in the market.</p>		<p>appeal/challenge by Shuttle Express. The original and unfortunate misunderstanding by Speedishuttle as to the availability of serving walk up customers has been thoroughly addressed including in various post Order 04 filings. This is not relevant in a discovery sense and is also currently an issue on review by the Commission in Petition for Administrative Review of Initial Order 06 Granting Rehearing.</p>
<p>Data Requests 10 and 11.</p>	<p>These are contention data requests.</p>	<p>Speedishuttle provided a sufficient response in answer to the contention data request and is not required to detail “each and every fact” supporting its arguments as Shuttle Express claims. See above, Section F.</p>
<p>Data Request 12: Provide all documents that reflect, show, or relate to an attempt by Speedishuttle to compete with Shuttle Express or to carry passengers that could instead take Shuttle Express, including advertising, communications with the Port of Seattle, or communications with trade associations or travel groups.</p>	<p>Argument of Shuttle Express’ case, assertions that Speedishuttle competes with Shuttle Express, and the conspiracy theory regarding the Go Group.</p>	<p>Speedishuttle’s marketing efforts and strategies in general are not relevant to the differentiation in service factors. The question is also subjective as to attempts by Speedishuttle to compete or to carry passengers that could instead take Shuttle Express. There is no question Speedishuttle offers luxury vehicles and luxury service compared to Shuttle Express. The 2013 Rulemaking made it clear that competition already exists in the regulated auto transportation industry and sought to enhance that existing competition. Shuttle Express seeks this information not to</p>

		explore the issues raised, but to use them in the market to compete which is improper.
Data Request 13: Provide all documents that reflect, show, or relate to efforts by Speedishuttle to attract non-English speaking passengers in the market, or in Hawaii, including websites, advertising, or outreach to trade associations or travel groups.	Same argument as 12 above with the addition that the Hawaii market has more non-English speaking tourists and could provide a useful comparison to the King County market.	Speedishuttle objects to this Request because Hawaii is obviously not part of this auto transportation application process or WUTC jurisdiction. This request is thus well beyond the scope of any issues here, and actually seeks customers' information of the Hawaii Speedishuttle entity. Speedishuttle promised to provide some related information on Washington services related to non-English speaking customers and is collecting that data.
Data Request 14: Provide documents that reflect, show, or relate to loans or capital investments to Respondent by shareholders, financial institutions, corporate affiliates, or third parties, including the amounts, dates, terms, and any related documents, such as applications, agreements, bank statements, demands, repayments, reports, extensions, renewals, guarantees, or security interests.	This is directed to whether Speedishuttle is pricing below market or obtaining improper subsidies.	This is one of its most egregious requests. Why would Shuttle Express need Speedishuttle's bank statements? Since the Commission long ago accepted the premise that a startup is potentially unlikely to be profitable, the only concern would only be that there are sufficient resources for it to support its operations. Shuttle Express does not need to know the sources of financing or the bank or lender rates and terms Speedishuttle pays for such financing. While Speedishuttle has asked a "mirror image" inquiry in its own data requests to Shuttle Express, it will gladly withdraw that and related financial inquiries to Shuttle

		Express if its objections are here sustained.
Data Request 15: Provide financial statements of the Respondent, by month, on the following bases: consolidated with corporate affiliates, separate, or both, if available. Provide any audit documents, if available.	Goes to the issues of profitability and predatory pricing.	Speedishuttle’s rates have been approved by the Commission. Profitability is not indicative of predatory pricing, in fact, as a matter of law, profitability is irrelevant to that determination. The corporate affiliates of Speedishuttle are not applicants or parties here, and their financial information is neither relevant nor subject to private party discovery in this proceeding.
Data Request 16: Provide all business plans, projections, cash flow analyses, profitability analyses, and other documents that reflect, show, or relate to the Respondent’s profitability, lack of profitability, or plans or expectations to become profitable.	Same as 14 and 15.	Same responses to those requests, and just as inappropriate. Business plans? Cash flow analysis and future plans? These are simply overbroad, and seeking to obtain improper competitive information. Again, Speedishuttle’s rates were reviewed by the WUTC staff and approved, and its 2015 Annual Report is on file with the WUTC.
Data Request 17: Describe efforts to attract or target tech-savvy or non-English speaking passengers in the market and provide any documents that reflect, show, or relate to such efforts.	Goes to the issue of whether Speedishuttle is making efforts to serve the non-English speaking or tech-savvy market.	Shuttle Express does not have the right to obtain, under the guise of discovery, for lack of better description, an “instruction manual” on how to better attract customers it was previously not serving. Speedishuttle’s application was approved on the basis of the “totality of the circumstances,” and its continued viability is based on that differing model.

<p>Data Request 18: Please describe all efforts to serve passengers in the market that were not being served or could not be served by Shuttle Express prior to your UTC application and provide documents that reflect, show, or relate to any such efforts.</p>	<p>Seeks information about Speedishuttle’s true intentions.</p>	<p>Speedishuttle provided a sufficient response to the contention data requests and is not required to detail “each and every fact” supporting its previous arguments as Shuttle Express claims. See again, above Section F.</p>
<p>Data Request 19: Provide copies of all agreements with airlines, Go Group, and Hudson Group for or relating to ground transportation in the market.</p>	<p>General argument regarding Shuttle Express’ conspiracy theory involving the Go Group and availability of information.</p>	<p>Speedishuttle has already responded that it has no shared ride agreements with airlines in the market. As noted above, Shuttle Express is mistaken or deliberately misrepresenting in its assumptions regarding Speedishuttle’s relationship with the Go Group. Again, Speedishuttle is not a “member” of the Go Group. Speedishuttle does not have a “franchise agreement” nor any other written agreement with the Go Group except the Ticket Agent agreement on file with and approved by the Commission. Speedishuttle instead believes Shuttle Express and/or its owners or affiliates have an ownership interest in the Go Group and thus fails to understand why it would seek information that does not exist when it should have access to information through its principal’s or other affiliate’s ownership position in Go Group.</p> <p>Separately, Speedishuttle does not have the relationship with the Hudson Group which Shuttle Express represents. Speedishuttle maintains its</p>

		own website, only inserting frames from the Hudson Group, and utilizing pages, in different languages designed and maintained by Speedishuttle as generally set forth in the Declaration of Jack Roemer. The Hudson Group is merely a software vendor.
Data Request 20: Provide copies of all reports provided to or prepared for the UTC, the Port of Seattle, Go Group, and Hudson Group.	Same as Data Request 19 above.	Speedishuttle does not provide reports to its customer, Go Group. Speedishuttle does not provide reports to its vendor, Hudson Group. Reports provided to the WUTC and the Port of Seattle are publicly available at nominal cost.
Data Request 21: Provide analyses of air and/or ground transportation in, to, or from the market, including demand, needs, existing providers, and any drafts or plans to enter the market or obtain operating authority. The scope of this request is January 1, 2012 to the date of hearing in this matter.	Shuttle Express states it is relevant.	This request is vastly overbroad in scope and time period. Speedishuttle, like most small businesses, does not have the capacity to analyze air and ground transportation in the fashion suggested by Shuttle Express nor did it perform or commission such a sophisticated type of study or plan prior to entering the market. Instead, Speedishuttle relies on publicly-available sources for information such as the Port, Visit Seattle and the US Government. The request for drafts or plans to enter the market is also not relevant and are improperly sought to compete with Speedishuttle. Speedishuttle provided the Commission with its application “plans” which were ultimately approved and

		with which it can demonstrate compliance.
Data Request 22: Provide copies of all correspondence to or from the Go Group. The scope of this request is January 1, 2012 to the date of hearing in this matter. This request encompasses all forms of correspondence, including paper, emails, or text messages. It is intended to include aggregate reservation or transportation data, but is not intended to include all specific or individual reservations, bookings, or requests for ground transportation.	Shuttle Express states it is relevant.	This is vastly overbroad in scope and time period. Again, Shuttle Express misrepresents the relationship between Speedishuttle and Go Group. Go Group is a customer of Speedishuttle. They sell services on their own and to various other travel wholesalers.
Data Request 23		In addition to the discussion above and in the Declaration of Jack Roemer, Speedishuttle notes, Hudson Group is a software vendor to Speedishuttle and until recently, apparently was a software vendor as well to Shuttle Express. Hudson Group does not book reservations with Speedishuttle but does provide it with software and technical assistance including the development of technological tools such as iOS App and its live vehicle tracking for customers. It is unclear how this information would lead to the production of discoverable evidence. Shuttle Express may be seeking pricing information so it can compare that to what it pays. On

		<p>information and belief from Shuttle Express, John Rowley, COO of Hudson Group, may have had a covenant not to compete with Shuttle Express. To the extent that this request is designed to seek evidence against Mr. Rowley or the Hudson Group, it is an entirely inappropriate use of the Commission's resources and forum.</p>
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III. CONCLUSION/PRAAYER FOR RELIEF

31 As is obvious, the overarching theme of the contested data requests and Shuttle Express' characterization of them as the theory of its case is apparently that Speedishuttle may only compete and service customers who would never use Shuttle Express. That is a flawed premise to say the least. The Commission expressly found that Shuttle Express was not able to serve the entire market, and that there already was widespread competition in the airport ground transportation market. The Commission, in 2013, revised its rules on the basis of that competition and Speedishuttle applied for an auto transportation certificate in 2014. Speedishuttle has and does provide service commensurate with the differentiation factors which Order 04 called out. It also provides a service which is obviously more desirable to many individuals who may have otherwise used Shuttle Express. This was anticipated, and implicit in the Commission's findings in Order 04. Shuttle Express should not be permitted to use the fact that it cannot retain ridership at previous levels for a host of reasons as the basis to litigate Speedishuttle out of the market, nor obtain access to the business plans and materials which make Speedishuttle successful through discovery.

32 Shuttle Express admits its goal is to put Speedishuttle out of business before next summer. These overbroad, improper and ultimately harassing data requests are an integral part of that plan and strategy. The Commission should not allow Shuttle Express to use the Commission's discovery rules in its [anti] competitive stratagem and send a clear message instead that any further discovery litigation should be within the acceptable limits of relevant information consistent with its procedural rules and the Commission's past and prospective decisions. The Commission should therefore deny the Motion to Compel.

DATED this 20 day of September, 2016.

RESPECTFULLY SUBMITTED,

By 
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CERTIFICATE OF SERVICE

I hereby certify that on September 20, 2016, I caused to be served the original and three (3) copies of the foregoing documents and attachments to the following address via first class mail:

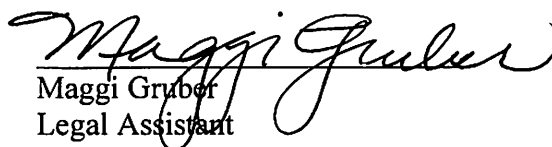
Steven V. King, Executive Director and Secretary
Washington Utilities and Transportation Commission
Attn.: Records Center
P.O. Box 47250
1300 S. Evergreen Park Dr. SW
Olympia, WA 98504-7250

I further certify that I have also provided to the Washington Utilities and Transportation Commission's Secretary an official electronic file containing the foregoing documents and attachments via the WUTC web portal;

and served a copy via email and first class mail, postage prepaid, to:

Julian Beattie Assistant Attorney General Office of the Attorney General Utilities and Transportation Division 1400 S. Evergreen Park Dr. SW PO Box 40128 Olympia, WA 98504-0128 (360) 664-1192 Email: jbeattie@utc.wa.gov	Greg Kopta Director/Administrative Law Judge 1300 S. Evergreen Park Drive SW P.O. Box 47250 Olympia, WA 98504-7250 (360)-664-1355 gkopta@utc.wa.gov
Brooks Harlow Lukas, Nace, Gutierrez & Sachs, LLP 8300 Greensboro Dr. Suite 1200 McLean, VA 22102 (703) 584-8680 Email: bharlow@fcclaw.com	Rayne Pearson Administrative Law Judge 1300 S. Evergreen Park Drive SW P.O. Box 47250 Olympia, WA 98504-7250 360-664-1136 rpearson@utc.wa.gov

Dated at Seattle, Washington this 20th day of September, 2016.


Maggi Gruber
Legal Assistant