

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

SHUTTLE EXPRESS, INC.,

Petitioner and Complainant,

v.

SPEEDISHUTTLE WASHINGTON, LLC,

Respondent.

DOCKET TC-143691

DECLARATION OF DAVID W. WILEY IN
SUPPORT OF SPEEDISHUTTLE'S
OPPOSITION TO SHUTTLE EXPRESS'
MOTION TO COMPEL

1 David W. Wiley hereby declares as follows:

2 I am one of the attorneys for Speedishuttle Washington, LLC in the above-captioned
matter and, in support of Speedishuttle's Opposition to Shuttle Express' Motion to Compel,
allege as follows:

3 Attached as Exhibit A is a true and correct copy of my letter dated August 29, 2016 to
counsel for Shuttle Express and the Commission Staff.

The foregoing statement is made under penalty of perjury under the laws of the State of
Washington and is true and correct.

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


David W. Wiley

EXHIBIT A

August 29, 2016

29208.0101

VIA E-MAIL

Brooks Harlow
Lukas, Nace, Gutierrez & Sacks, LLP
8300 Greensboro Dr. Suite 1200
McLean, VA 22102

Re: Docket Nos. TC-143691 and 160516; *In re Shuttle Express, Inc. v. Speedishuttle LLC*; Data Requests Transmitted Electronically on August 17, 2016

Dear Brooks:

This acknowledges your call Wednesday, August 24 regarding service of data requests without a certificate of service to which the initial response date is Wednesday, August 31. As I indicated to you in our call, we had yet to turn to those data requests pending completion of our Petition for Administrative Review which was filed later that afternoon. Now that we are turning to the data requests, I wanted to inform you formally that first, pursuant to WAC 480-07-405(7), we are unable to address, identify and/or complete responsive materials by the deadline. We anticipate as noted below, some production in the latter half of September. Secondly, we believe that the pending Administrative Review Petition could materially affect the scope, applicability and discoverability of data sought by the data requests (i.e. Data Request #9 et al.), particularly if the Petition for Rehearing is either denied or limited as alternatively suggested by the Respondent, and thus, they are premature.

As I also underscored in our call, we have extreme concerns about the lack of protective order being issued in this matter even though we understand and predicted the judge's ruling on the Commission's lack of apparent jurisdiction to issue protective orders in non-Title (RCW 81.77) proceedings. Understanding that legal rationale, however, does not solve the substantive, permanent risk of competitive harm caused by financial disclosure, potentially not only to both of our clients, but in the overall marketplace. Speedishuttle has advised me that it will not release any pertinent financial data that could become a matter of public record in this proceeding and potentially used to its detriment by your client or other regulated and non-regulated competitors. Thus, in light of the Judge's ruling on lack of protective orders, we are going to have to confront that first in a likely analogous "meet and confer" under FRCP 26 and later, in a motion practice before the judge, prior to *any* compelled financial disclosure, which interlocutory ruling would also be potentially appealable to the full Commission.

It is also my preliminary understanding that your theory of "predatory pricing" in the Complaint is somehow predicated on the possibility that Speedishuttle has not allegedly been profitable in its first year, or at least, that is your theory. That is necessarily a legal issue under Commission precedent, if Shuttle Express is somehow maintaining that lack of start-up profitability connotes or in any way equates to predatory pricing. A further legal issue at the outset and which is raised in our original

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Answer to your Complaint June 7, is whether a company whose rates are established by filing with, and review by the WUTC, and which operates within a recognized band of rates pursuant to WAC 480-30-420, can even theoretically “predatorily price” under that circumstance. If you have any authority for that contention, I would be happy to review that, but barring any legal authority on that issue, we should consider a motion for summary determination on that point unless you can indicate what possible disputed facts or law exist in order to support the threshold contention.

To summarize: the purpose of this correspondence is to advise you that: a) answers to your data requests will not be forthcoming by the deadline; b) because of the pending Petition for Administrative Review and the possibility that the scope of the Petition for Rehearing could be limited or denied altogether, we believe data requests in the consolidated action are premature; and c) that contentions of predatory pricing based on alleged lack of first-year profitability or on the basis of that application of Commission-approved tariffs in the marketplace operating under the banded rate concept established by the 2013 Rulemaking are discriminatory or somehow based on anti-competitive conduct, appear to us to be a threshold question of law.

Finally, we must address the overarching anti-competitive issue of disclosure of proprietary financial information in this consolidated proceeding which as we both know could be reciprocal. Certainly, neither side wants to harm itself in the marketplace through this proceeding but that is what your current course of action seems destined for through routine responses to the current data requests. Please consider the above and get back to me in response. Again, as of Wednesday, you should expect to be seeing broad objections to almost the entirety of your data requests.

Please also consider this letter pursuant to WAC 480-07-405(7)(b), as an indication on the remaining data requests which I broadly describe below and which will experience delays in production pending a ruling by the Commission on the Petition for Rehearing and/or any limitations on the scope on the Petition for Rehearing proceeding.

At this point, I would think September 30 is a reasonable receipt date for the portions of the data requests responses with which we will voluntarily supply at least in part and which are pertinent to Data Request Nos. 1, 2, 5, 8, and 13:

Data Request No. 1: A list of full or part-time current or past multilingual employees with job descriptions.

Data Request No. 2: Screenshots of websites and any printed marketing materials that address multilingual services.

Data Request No. 5: Summary list of greeters by name employed at SeaTac Airport by Speedishuttle from May, 2015 to May, 2016.

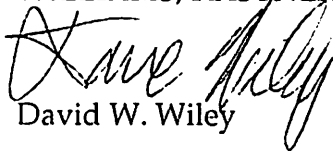
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Data Request No. 8: Current fleet list with accessory features which will include the make, model, year and any amenities included and the general dates of installation.

Data Request No. 13: Advertising material, including website solicitation, screenshots and other printed solicitation information by which Speedishuttle holds out to provide service in the marketplace.

Yours truly,

WILLIAMS, KASTNER & GIBBS PLLC



David W. Wiley

cc: Client
Julian Beattie, AAG