

1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
2 COMMISSION

3 In re Application No. D-079145)
of SEATAC SHUTTLE, LLC, D/B/A)
4 SEATAC SHUTTLE, for a) DOCKET NO. TC-030489
Certificate of Public) Volume III
5 Convenience and Necessity to) Pages 273 - 478
Operate Motor Vehicles in)
6 Furnishing Passenger and Express)
Service as an Auto)
7 Transportation Company.)

8
9 A hearing in the above matter was held on
10 July 2, 2003, at 10:06 a.m., at 1300 South Evergreen
11 Park Drive Southwest, Olympia, Washington, before
12 Administrative Law Judge KAREN M. CAILLE

13
14 The parties were present as follows:

15 SEATAC SHUTTLE, LLC, by JOHN SOLIN,
16 President, and MICHAEL LAUVER, General Manager, 1150
Southeast Dock Street, Suite 201, Oak Harbor,
17 Washington 98277; telephone, (360) 320-2445.

18 BELLAIR AIRPORTER SHUTTLE, by DAVID L. RICE,
19 Attorney at Law, Miller Nash, 601 Union Street, Suite
4400, Seattle, Washington 98101; telephone, (206)
622-8484.

20 THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION, by MARY M. TENNYSON, Senior Assistant
21 Attorney General, 1400 South Evergreen Park Drive
Southwest, Post Office Box 40128, Olympia, Washington
22 98504; telephone, (360) 664-1220.

23
24 Kathryn T. Wilson, CCR
25 Court Reporter

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1 P R O C E E D I N G S

2 JUDGE CAILLE: We are here this morning for
3 the continuation of an evidentiary hearing in Docket
4 TC-030489. This is an application by SeaTac Shuttle to
5 operate an airporter service, and if the parties would
6 just enter your appearances by stating your name and
7 who you represent, that would be sufficient for today.
8 Let's begin with the applicant.

9 MR. SOLIN: John Solin --

10 JUDGE CAILLE: Let me just finish. We are in
11 the Commission's hearing room in Olympia, Washington,
12 and today is July the 2nd, and I just wanted to advise
13 everyone to please bring the microphone close to your
14 mouth when you speak. They are very sensitive that
15 way, so we won't hear you if you don't. Please, again,
16 if you will speak one at a time and wait for the
17 question to be completed before you begin your answer.
18 Okay. With that, let's have the applicant's
19 appearance.

20 MR. SOLIN: John Solin, S-o-l-i-n, the
21 applicant, for SeaTac Shuttle, LLC.

22 MR. LAUVER: Michael Lauver, L-a-u-v-e-r,
23 also with the applicant SeaTac Shuttle.

24 MR. RICE: David Rice here on behalf of
25 Airporter Shuttle.

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1 JUDGE CAILLE: I think it's just you,
2 Mr. Rice, that I need the appearance of.

3 MR. RICE: Okay.

4 MS. TENNYSON: Mary Tennyson on behalf of
5 Commission staff. With me at counsel table is Bonnie
6 Allen of Commission staff. She was not present at the
7 last part of the hearing.

8 JUDGE CAILLE: Let the record reflect there
9 are no other appearances. When we adjourned the
10 meeting last week, I noticed that there was a
11 discrepancy in the way I had numbered exhibits, and so
12 in order to take care of that discrepancy, here is what
13 I have proposed and the parties have agreed to.

14 The exhibit that I had called Joint Exhibit
15 No. 1 will just be called Joint Exhibit. I corrected
16 that, I believe, at the last hearing, but just to make
17 sure, I'm doing it again, and then I notice that we had
18 two Exhibit No. 2, so in order to rectify that
19 confusion, I'm going to designate what was formally
20 applicant's Exhibit No. 2, which was the revised
21 schedule. We will now call that Exhibit 20, and that
22 way, the remainder of exhibits can stay as numbered,
23 and I think that will eliminate any confusion.

24 Also when we adjourned last Tuesday, there
25 was an objection to what is now Exhibit No. 20, and

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1 there was also objection to Exhibits 4 and 6, so at
2 this time, I would like to hear, Mr. Rice, your
3 objection, to Exhibit No. 20. That is the revised
4 schedule.

5 MR. RICE: Thank you, Your Honor. You should
6 strike this exhibit from the record. Allowing SeaTac
7 to amend its application after I crossed their public
8 witnesses violates the Commission rules. WAC
9 480-09-736 requires, Each party must advise other
10 parties of substantive corrections to evidence that
11 have been prefiled as soon as the need for the change
12 is discovered, and the applicant failed to do that in
13 this case --

14 JUDGE CAILLE: I'm sorry. What was the WAC
15 reference?

16 MR. RICE: 480-09-736. They had a prefiled
17 application with this schedule in it, the schedule that
18 I crossed their exhibits on, and what happened was
19 apparently, they prepared a new schedule two to three
20 weeks ago. They had it in front of them during the
21 hearing, and in fact, at the beginning of the hearing,
22 there was an argument as to whether or not we had the
23 correct schedule, and after that argument was
24 concluded, the applicant said, "Oh, yes, Mr. Rice does
25 have the correct schedule," and as you may recall, that

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1 was the dispute over the Whidbey Island reference in
2 the schedule.

3 So at that point, we were left with the
4 impression we had the correct schedule, and that's what
5 they informed this court of, and then they took that
6 schedule and cross-examined neither of their witnesses
7 about it. During this time, they never mentioned this
8 revised schedule, and then poof, it appears on their
9 direct. That's a plain violation of this rule, and
10 frankly, it's a violation of the duty to show before
11 this tribunal. If they knew they had a new schedule
12 that they wanted to introduce in this hearing, they
13 should not have said that we were working with the
14 correct schedule early on in the proceeding. Frankly,
15 we have pro se applicants here, but they are held in
16 the same duty as attorneys are. If I had done
17 something like that, I think it would be an ethical
18 violation.

19 In addition to violating the Commission's
20 rules, this is really a due-process violation.
21 Airporter Shuttle has a property right in being the
22 only certificate holder in this area, and there is a
23 hearing that's required by statute before this
24 commission to take that status away, and at the
25 hearing, we have the right to test the applicant by

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1 evaluating the application that they filed, and part of
2 that involves cross-examining their public witnesses,
3 about aspects of the application, and part of that
4 application was the schedule. Here, we lost that
5 right, because what they almost certainly are going to
6 argue is, "Hey, you don't have to listen to that
7 cross-examination of our public witnesses on the old
8 schedule because that's the old schedule. We are never
9 going to run it." So it's simply not fair.

10 And what's the remedy here? There are two
11 remedies. You can either strike the new schedule and
12 force them to live with the schedule that was
13 originally filed, and, in fact, was the only schedule
14 up until the moment during direct when they produced
15 the new schedule, or you can strike their witnesses,
16 because those witnesses testified about an application
17 that was changed after they left the stand, but the
18 situation as it stands now is fundamentally unfair and
19 violates Commission rules.

20 JUDGE CAILLE: All right. Response?

21 MR. LAUVER: While the applicant did submit a
22 revised schedule, they did so fairly on in the direct
23 questioning of their witnesses. Mr. Rice posed
24 enumerable questions to all of the applicant's
25 witnesses or a significant portion of the applicant's

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1 witnesses, and certainly, all of those witnesses that
2 resided in the territory that is served under the
3 certificate by the protestant were questioned about the
4 revised schedule and not the original schedule.

5 All the questions posed by Mr. Rice about the
6 revised schedule were hypothetical questions based on
7 flights that did not even necessarily exist, so I'm
8 unclear as to why he has a problem with this. He
9 questioned the witnesses that had any relationship to
10 the schedule and that all the early witnesses stated
11 categorically they did not use the service because the
12 service was not provided in their territory and it's
13 outside the territory of the certificate of Wickkiser
14 International.

15 At that point, we did provide a revised
16 schedule, which is a working document, and may be
17 revised at some point further downstream, which is
18 certainly permitted. I see no reason for this not to
19 be admitted since Mr. Rice has examined our witnesses,
20 and certainly, all those witnesses are pertinent to the
21 disputed territory based on the revised schedule.

22 JUDGE CAILLE: Does Staff wish to be heard on
23 this?

24 MS. TENNYSON: Yes, we do, Your Honor.
25 Basically, the purpose of having any schedule at all

1 filed with the application is to allow the Commission
2 to judge whether the service is providing or the
3 proposed service to be provided is something that would
4 be of use to the public and to get a general idea of
5 what the applicant is proposing to provide in terms of
6 the service.

7 The applicant is correct in what they argued
8 when this was first presented at the hearing last week
9 that they can change their schedule up until the time
10 when they file a tariff, assuming they are granted
11 authority. There is no vested right of the protestant
12 to have a particular schedule be one that is filed and
13 stuck to throughout the hearing or at any time.

14 The questions that Mr. Rice posed, whether
15 they were on the earlier, his cross-examination exhibit
16 schedule or this Exhibit 20, were all hypothetical
17 questions, and similar answers could have been
18 obtained. If he asks based on this particular
19 schedule, they were all hypothetical because they are
20 all based on hypothetical flight times, and I think he
21 was able to adequately make the point about timing of
22 arrival at the airport using the applicant's service,
23 using the existing service that his client provides.

24 Because they are only required to present a
25 draft tariff and draft schedule in the application, I

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1 don't believe there is any form of due-process
2 violation, and I do not believe that the WAC that is
3 cited by Mr. Rice in his argument really applies to
4 this situation. It was prefiled with the application.
5 They could have changed it at any time. They can
6 change it now. They can change it two weeks from now.
7 I don't believe it changes the nature of it, and I
8 don't believe there is any violation of Commission
9 rules if this is allowed in as an exhibit at this time.

10 JUDGE CAILLE: Do you have a subsection
11 reference to that WAC that you cited, Mr. Rice?

12 MR. RICE: It's subsection (6)(b).

13 JUDGE CAILLE: Did you have some response?

14 MR. RICE: I do. It's really irrelevant as
15 to whether or not the applicant could change their
16 schedule after they get a certificate or could have
17 changed it a couple of weeks ago or anything like that.
18 The question is what's their duty when they get to a
19 hearing, and I read from the rule, and it's very
20 specific, and it says, as soon as you find out the need
21 for the change, you let people know, and the reason is
22 because when people go into the hearing, they are going
23 to ask questions about your evidence, and this rule
24 recognizes that it's fundamentally unfair to change the
25 evidence around after the public witnesses are gone.

1 It may not seem like it matters very much
2 because, oh, I could have asked the same questions
3 about the new schedule, but, in fact, it does matter.
4 I had some specific examples, and all of a sudden,
5 those examples are gone, and I have no cross of the
6 public witnesses on this schedule, and in order to find
7 out, in order to hold that this schedule gets in, we
8 basically have to ignore the plain language of this
9 rule, and in addition to that, it's really rewarding
10 bad behavior, even if they had this exhibit at the
11 beginning of the hearing and told this court, "Yes,
12 Mr. Rice has the correct exhibit, Your Honor. This is
13 the correct exhibit."

14 Then to spring this other one that they had
15 two to three weeks ago is fundamentally unfair. If
16 they handed it out at the beginning of the hearing,
17 that would be different, but they plainly waited until
18 all the witnesses were gone so I couldn't ask questions
19 about it, and I do believe it is a due-process
20 violation. It certainly violates the plain language of
21 this rule.

22 JUDGE CAILLE: Anything further?

23 MR. LAUVER: Yes; two points I strongly
24 dispute Mr. Rice's assertion that the public witnesses
25 were all gone prior to the distribution and the

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1 tendering of this exhibit. The exhibit was tendered,
2 as I've stated, after our public witnesses that resided
3 outside the territory served by Wickkiser International
4 Companies spoke and prior to Mr. Rice's
5 cross-examination of the public witnesses that reside
6 in Oak Harbor, the area that is served by Wickkiser
7 International Companies, so he did have, and in fact,
8 did cross-examine the public witnesses on the basis of
9 the exhibit.

10 Additionally, I agree with him. The heart of
11 this statute is that we are required as soon as the
12 need for change is discovered. We saw no need for
13 change until such time as Mr. Rice continued to
14 cross-examine witnesses within the territory that
15 Wickkiser serves and at no time before as we saw no
16 relevancy. At that time, we did bring it forward
17 immediately. We also felt that no need for change was
18 required in that this is a working document, not a
19 final document, a draft document tendered only with the
20 application for the purpose of initial review by the
21 Commission.

22 JUDGE CAILLE: Anything further?

23 MS. TENNYSON: I did have one additional
24 point. Although I don't have a transcript of last
25 week's hearing, my recollection was that at the time

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1 that Mr. Rice presented the cross-examination exhibit,
2 which was the old schedule, the applicants did, at that
3 point, state, "We have a revised schedule." I don't
4 recall at what point in the hearing it was presented,
5 but they did say, "You have the wrong schedule." I
6 believe there was an objection to them presenting it at
7 that point.

8 JUDGE CAILLE: I'm kind of fuzzy on when this
9 occurred as well, but the transcript will definitely --
10 it will be what it will be.

11 MS. TENNYSON: Again, my recollection of that
12 is I know I went at that point to my copy of the
13 application because it had a different name for the
14 company on it, and that was part of my inquiry, and I
15 do recall that was at the start of the hearing that I
16 made that inquiry, so I know I wouldn't have looked had
17 it not been for that being raised at that point.

18 MR. RICE: May I say something very short and
19 final? My recollection is that the new schedule
20 appeared once Mr. Solin started his direct, and I guess
21 we don't have the same recollection. I think that's
22 something that should be clarified when you review the
23 transcript. That's when the new schedule popped out,
24 according to my notes that are sitting in front of me,
25 and at that time, all the Oak Harbor witnesses, all the

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1 Coupeville witnesses, everybody, all the public
2 witnesses were gone.

3 JUDGE CAILLE: Could we just specify, do you
4 mean all the public witnesses for the applicant?

5 MR. RICE: All the applicant's public
6 witnesses.

7 JUDGE CAILLE: Because that's what I recall.
8 I recall all the applicant's public witnesses had been
9 on the stand, and then maybe it was Mr. Solin was on
10 the stand.

11 MR. RICE: That's what my notes reflect.

12 MS. TENNYSON: I would agree with that in
13 terms of when we actually saw the schedule. I recall
14 the applicant telling us there was a revised schedule
15 at the start of the hearing.

16 MR. RICE: I don't have that same
17 recollection, but if it's in the transcript, the
18 transcript will be what decides that.

19 JUDGE CAILLE: I'm going to allow the exhibit
20 in for the following reasons: First, we have pro se
21 applicants here, and I really can't hold them to the
22 standard of an attorney because they are not attorneys,
23 and first of all, I think they've been doing an
24 excellent job. They've impressed me as far as pro se
25 litigants go.

1 It strikes me as a bit unfair to pull this
2 out at that time, but, you know, the truth of the
3 matter is is that this schedule isn't that far off the
4 other schedule, and as Ms. Tennyson says, this is the
5 draft document, and the applicant could have changed
6 this at any time before he goes into business. Again,
7 I think it's sufficient to the cross-examination that
8 Mr. Rice has done with the public witnesses with the
9 old schedule, I just really think it's sufficient to
10 show what he was trying to demonstrate.

11 I don't think there is a due-process
12 violation here for that reason, and I also am not
13 convinced that the WAC 480-09-736 (b) is applicable.
14 We are dealing with an application here, and we are not
15 dealing with prefile testimony, so I'm thinking that
16 that is more geared to making corrections to prefile
17 testimony before it's submitted.

18 The other thing I wanted to mention is that I
19 think I recall that all the parties waived discovery in
20 this matter, and perhaps if discovery hadn't been
21 waived, the protestant would have requested any other
22 changes or whatever, and that didn't happen. Now, when
23 we have attorneys representing both sides, they are
24 held to ethical obligations to respond to questions,
25 data requests, and any changes that are made, if that

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1 has been requested, so I just don't see that this is
2 the same circumstance, and I don't see that this is a
3 violation of due process, and I largely agree with what
4 Ms. Tennyson stated in her comments. So the Exhibit
5 exhibit will be admitted. That's Exhibit No. 20 will
6 be admitted over the protestant's objection.

7 So now, let's now go to Exhibit No. 4. That
8 was a schedule comparison presented by the protestant.
9 Did the applicant have an objection to that exhibit,
10 and Ms. Tennyson? I'm not quite sure.

11 MR. LAUVER: There were two exhibits that
12 there were objections to --

13 JUDGE CAILLE: No. 4 and No. 6.

14 MR. LAUVER: And No. 6 is now....

15 JUDGE CAILLE: The statistics. I believe
16 that's the sheet with the pictures on it.

17 MR. LAUVER: I think we will just withdraw
18 our objection to No. 4.

19 JUDGE CAILLE: That's the schedule
20 comparison.

21 MR. LAUVER: That's the schedule comparison,
22 correct.

23 JUDGE CAILLE: Ms. Tennyson, do you have any
24 further....

25 MS. TENNYSON: My objection to Exhibit 4 is

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1 simply to the characterization, the word "faster" in
2 the last line on each page. "Airporter Shuttle is 11
3 hours and 45 minutes faster."

4 JUDGE CAILLE: Let me get the exhibit in
5 front of me. Any response, Mr. Rice?

6 MS. TENNYSON: I just wanted to pursue it a
7 bit further. To me, stating the word "faster" is a
8 conclusion that whoever prepared this made. I don't
9 know who prepared it, and I don't believe "faster" is
10 an appropriate characterization. If we can agree or
11 stipulate that the characterization is that the total
12 time between departure from Oak Harbor and the flight
13 time is the 11 hours and 55 minutes on the first sheet
14 and the one hour and 55 minutes on the second, then I
15 would not have an objection.

16 JUDGE CAILLE: So the proposal would be to
17 amend it so that it would say that the total time
18 between departure and flight time is --

19 MS. TENNYSON: Yes. If you use Airporter
20 Shuttle, that the time between departure from Oak
21 Harbor and flight time is the stipulated number of
22 hours less, hours and minutes less.

23 JUDGE CAILLE: Do you have any objection to
24 that, Mr. Rice, or a response?

25 MR. RICE: I have another approach. We can

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1 say Airporter Shuttle is 11 hours 55 minutes faster,
2 based on the time of departure from Oak Harbor and the
3 flight departure from SeaTac. We could do that.
4 That's really what the number is intended to represent
5 anyway.

6 JUDGE CAILLE: Based on a time departure from
7 Oak Harbor, and did you say flight departure at SeaTac?

8 MR. RICE: Yes.

9 MS. TENNYSON: Perhaps a simpler way to do
10 it, the last column has time between Oak Harbor
11 departure and flight and then has the times for SeaTac
12 Shuttle and Airporter Shuttle, and therefore, so the
13 reader doesn't have to calculate the time. It is
14 calculated below. We could just say difference is 11
15 hours 55 minutes.

16 MR. RICE: We could do that, but I do think
17 we want to make the point that it is faster based on
18 the criteria we are looking at, so we do want to have
19 that language in there. I think that once we clarify
20 that "faster" means based on the time departure from
21 Oak Harbor and the flight departure time, you get all
22 the information that we want to get the disclaimers in
23 there. That's another way to do it.

24 JUDGE CAILLE: Looks like you are leaving it
25 up to me. Does the applicant have any suggestion, or

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1 do you want to weigh in on this?

2 MR. LAUVER: We will probably be touching on
3 the issue of "faster" later on in the hearing, and we
4 can clarify it from our position at that time.

5 JUDGE CAILLE: You didn't have any objection.

6 MR. LAUVER: At this point, I don't have an
7 objection that I'm willing to put forward. It's not
8 worth it to us at this time.

9 JUDGE CAILLE: Just so you know, I'm going to
10 be ruling on whether to admit this as it is or not.

11 MR. LAUVER: That's fine.

12 JUDGE CAILLE: I think that we should clarify
13 this, even though it's going to perhaps be clarified
14 later in the hearing process, because I do think it's
15 somewhat misleading. As Ms. Tennyson said, the third
16 line down in the first column says, time between Oak
17 Harbor departure and flight. Then I'm sorry,
18 Ms. Tennyson, how were we going to rectify or clarify
19 the bottom line? We were thinking of moving it up?

20 MS. TENNYSON: My preference would be to
21 change the last line to say, "time difference is 11
22 hours 55 minutes," or something like that, because you
23 have all of the relevant information above, and the 11
24 hours and 55 minutes only adds the calculation of the
25 time.

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1 I guess another proposal would be to just
2 strike the last line on each page with the calculation
3 of the time, because it's drawing a conclusion, and I
4 think the "faster" inappropriately characterizes that.
5 You have all the information otherwise that is in the
6 prior parts of the exhibit.

7 JUDGE CAILLE: I'm going to amend this
8 exhibit. I'm going to amend the exhibit so that it
9 does say that the time difference is 11 hours and 55
10 minutes, largely because I do believe it draws a
11 conclusion, and I think that's up to the trier of fact
12 to make those conclusions.

13 MS. TENNYSON: So then on each page we would
14 make that same....

15 JUDGE CAILLE: And there are two pages, so I
16 am amending that.

17 MS. TENNYSON: Three pages total.

18 JUDGE CAILLE: Now Exhibit No. 6, which is
19 the statistics.

20 MS. TENNYSON: On that, I wish to voir dire
21 Mr. Wickkiser, so we could wait until we go through
22 cross-examination. I simply wanted to ask questions
23 about origin and preparation, that sort of thing.

24 JUDGE CAILLE: All right. I believe we are
25 ready to have Mr. Wickkiser resume the stand, and

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1 Mr. Wickkiser, if you will have a seat over here in
2 this chair.

3 Mr. Wickkiser, you have been previously sworn
4 and you are still under oath, and my understanding is
5 that we had completed the direct examination of
6 Mr. Wickkiser. We did that last Tuesday, and we are
7 now ready for cross-examination, and let's begin with
8 the applicant.

9 MR. LAUVER: Thank you, Your Honor.

10

11

12

CROSS-EXAMINATION

13 BY MR. LAUVER:

14 Q. Good morning, Mr. Wickkiser. Since it's been
15 a week since we were at hearing, I want to touch on
16 just a few things to refresh all our memories here, if
17 you don't mind. You were present in the hearing room
18 when all the applicant's witnesses testified?

19 A. Yes, I was.

20 Q. As the protestants in this hearing, were you
21 paying close attention when witnesses testified?

22 A. Yes, I was.

23 Q. Did you testify that your father started
24 Wickkiser International Companies?

25 A. Correct.

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1 Q. Is Wickkiser International Companies a
2 corporate entity?

3 A. Yes, it is.

4 Q. And is it a publicly-held company?

5 A. No. It's private.

6 Q. Who owns the majority of Wickkiser
7 International?

8 A. I own 100 percent of the shares.

9 Q. You are currently president at Wickkiser.

10 A. That's correct.

11 Q. You are also the CEO?

12 A. I can call myself anything, but basically,
13 I'm both of those.

14 Q. You don't have somebody else designated as
15 CEO.

16 A. No.

17 Q. Then you are, in essence, directly
18 responsible for all the actions of Wickkiser
19 International.

20 A. That's correct.

21 Q. Do you hold any college degrees?

22 A. No, I don't.

23 Q. Do you have any formal training at the
24 post-secondary level in management or business?

25 A. No, I don't.

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1 Q. Do you have an employee named Catherine
2 Sheard?

3 A. Yes.

4 Q. What's her position with your company?

5 A. She's the sales and marketing manager.

6 Q. As your sales and marketing manager, does she
7 report directly to you?

8 A. She reports to Richard Johnson, the general
9 manager, primarily, and I oversee that.

10 Q. Mr. Johnson then reports to you?

11 A. Correct.

12 Q. Do you agree that under the American economic
13 system, competition is generally a good thing? Just
14 yes, no, you agree that competition is good or
15 competition is bad would be satisfactory.

16 A. No. Yes, no, maybe. I would say yes, it's
17 good.

18 Q. Does Wickkiser International have any other
19 authorities granted by the Washington Utilities and
20 Transportation Commission to operate an airporter
21 service in the State of Washington?

22 A. Yes, I do. The Central Washington Airporter
23 from Yakima, Ellensburg, and Cle Elum to SeaTac
24 Airport.

25 Q. When were you granted that authority?

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1 A. This year.

2 Q. April, perhaps?

3 A. That sounds close.

4 Q. April 14, 2003?

5 A. That would be it.

6 Q. That sort of clears up the quickies I wanted
7 to revisit. From your previous questions to our
8 witnesses, it seemed that the focus of your protest had
9 to do with the difference in the frequency of runs
10 between the Wickkiser Airporter and SeaTac Shuttle's
11 proposed services; is that correct?

12 A. Yes.

13 Q. If SeaTac Shuttle was to amend its schedule
14 to provide for the same frequency, would you withdraw
15 your protest?

16 A. What do you mean "the same frequency"?

17 Q. I mean if SeaTac Shuttle were to amend its
18 schedule to provide for the same number of runs in a
19 24-hour period as Wickkiser, would you withdraw your
20 protest; whereby, we would have the same frequency of
21 runs that Wickkiser does?

22 A. No, I would not.

23 Q. So frequency really wasn't the issue in your
24 protest. What I was asking is frequency the issue;
25 yes, no?

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1 A. Yes.

2 Q. Frequency is the issue?

3 A. Yes.

4 Q. But if frequency is the issue and we were to
5 match your frequency, you still wouldn't withdraw your
6 protest.

7 A. That's correct.

8 Q. I'm a little unclear as to really what your
9 protest is all about. The only thing I can go on then
10 is your written protest, in which you stated, and
11 quote, "The applicant is not fit, willing, and able to
12 provide the proposed service in accordance with
13 applicable rules, laws, and regulations." Can you
14 explain to me how the applicant is not fit?

15 A. I would assume you are both intelligent men
16 with educations and experience. I would question your
17 understanding of the particular business that we are
18 discussing and the economics and statistics involved in
19 creating and running a regulated airporter shuttle
20 business in a limited rural area.

21 Q. I believe you stated that your father was a
22 military pilot before he started Wickkiser?

23 A. He was a military pilot and then commercial
24 pilot for 40 years.

25 Q. And a commercial pilot.

0299

1 A. Correct.

2 Q. In what respect, with an airline or charter?

3 A. He worked for scheduled airlines and charter
4 airlines.

5 Q. So he was an employee. He was not an owner
6 or a operator or a management person.

7 A. He was a chief pilot for some time.

8 Q. Chief pilot with whom?

9 A. Southern Airlines out of Atlanta and Memphis
10 Airlines; Atlanta, Georgia; Memphis, Tennessee in the
11 '60's.

12 Q. How long was that, how many years?

13 A. Three years. He was with the company for 20
14 years.

15 Q. Did he have any other business experience
16 outside the military in his three years as a pilot in
17 the commercial sector?

18 A. 40 years as a pilot.

19 Q. 40 years as a pilot in total.

20 A. Correct, and three years as a manager and
21 chief pilot --

22 JUDGE CAILLE: Gentlemen, please be very
23 careful. You are running over each other's words, and
24 it's impossible for the court reporter to get you both
25 down, so let each other complete your answers and

0300

1 questions before you speak.

2 Q. Let me just clarify that. He had a total
3 time as a pilot of approximately 40 years of which the
4 preponderance was in the military and three years was
5 in commercial aviation. Is that essentially correct?

6 A. That's not correct. He was a pilot in the
7 commercial aviation industry for 40 years. Prior to
8 that, he was a military pilot.

9 Q. Now I understand. Thank you. Did he have
10 any additional business experience outside of being a
11 commercial pilot?

12 A. Small businesses that he started, tried,
13 worked on, in addition to his regular work as a pilot.

14 Q. Prior to starting Wickkiser International
15 Companies, did your father own any other transportation
16 companies?

17 A. No, he did not. He worked for Kitsap
18 Airporter for three years with Dick Ashie (phonetic).

19 Q. Is Wickkiser International Companies a
20 successful company?

21 A. Well, it depends on how you measure it. If I
22 was rich, I would think that was successful. If we are
23 in business, it's successful.

24 Q. So you've been in business for many years.
25 You've been employing people and making a reasonable

0301

1 income off of it, so by any measure, I would call that
2 successful?

3 A. Yes.

4 Q. Would you agree then that having perhaps an
5 extensive aviation background and a very limited
6 business background and no particular background in
7 owning or operating an airporter was not in any way an
8 impediment to Wickkiser International being a sound and
9 successful company.

10 A. I would say that.

11 Q. You were here when Mr. Solin and myself
12 testified as to our background?

13 A. Yes, I was.

14 Q. And you heard us testify, I believe, to our
15 over 50 years of combined business experience, 60 years
16 of aviation experience, 15 years in transportation?

17 A. I heard that.

18 Q. Would you feel that our background would be
19 any impediment to forming a successful start-up
20 airporter company?

21 A. I think your experience is valid. I think
22 where you are trying to start up gives some question to
23 your knowledge of the business environment.

24 Q. Do you feel that we are any less qualified
25 than your father was to start up an airporter service

0302

1 in this area?

2 A. No.

3 Q. How is it that you feel that the applicant is
4 not willing to provide service?

5 A. Well, I would say you are probably willing to
6 do it.

7 Q. However, in your protest, you stated
8 specifically that we were not willing to provide the
9 service called for, so are you willing to drop that
10 from your protest?

11 A. It's a protest. We write what we write and
12 that's what we are going to stand behind.

13 Q. But you just told me you felt that we were
14 willing. Are we willing or are we not willing? If you
15 are agreeing now that we are willing, I suggest that
16 you remove from your written protest to the Commission
17 that we are not willing.

18 A. Okay. I'll take your suggestion under
19 consideration.

20 Q. You stated that we were not able to provide
21 the service or to abide by the regulations. Can you
22 explain that?

23 A. No.

24 Q. So you are willing to concede that we are
25 able and that we are willing and that we are at least

0303

1 as fit as your father was to start a company.

2 A. Yes.

3 Q. That is the entire basis for your protest to
4 the Commission. I suggest that at this point, your
5 protest is entirely unfounded. Do you agree with that?

6 MR. RICE: Your Honor, is he moving to
7 dismiss our protest?

8 JUDGE CAILLE: I'm not quite sure.

9 MR. LAUVER: No, I'm not. At this point, I'm
10 merely trying to understand from the witness what the
11 basis of his submission of a protest to the Commission
12 was.

13 MR. RICE: Your Honor, he has asked the
14 questions of the witness and the witness has answered,
15 and if he wants to make a separate motion or raise
16 arguments during closing, that's fine.

17 JUDGE CAILLE: I was just about to say that
18 it sounded like you were becoming argumentative, so I
19 would just caution you to -- we will have an
20 opportunity at the close of the hearing for arguments
21 on the evidence, and you will have plenty of time to
22 argue then, so you may proceed.

23 MR. LAUVER: Thank you.

24 Q. (By Mr. Lauver) We touched earlier here in a
25 discussion of the exhibits on the term "faster," and I

0304

1 would like to look at that in a little more depth. I
2 want to give you a few examples here and ask for your
3 comments on them.

4 Let's look at a rifle bullet traveling at
5 three thousand feet per second. A rock thrown by a
6 child travels 30 feet per second. Which is faster?

7 A. I suppose the rifle bullet is.

8 Q. If I look up in a ballistic's table to find
9 the velocity of the rifle bullet, and I later determine
10 through direct means the speed of the rock thrown by
11 the child, does that in any way affect which one is
12 faster?

13 A. Say that again?

14 Q. Today, I look up in a ballistic's table the
15 speed of the rifle bullet that I'm interested in.
16 Tomorrow, I use a radar gun and I determine the speed
17 of the rock thrown by the child. Does that in any way
18 affect which one is faster?

19 A. You are saying there is an evidence today and
20 evidence tomorrow, does it change?

21 Q. That's correct.

22 A. Well, if they are both valid ways of
23 measuring, I guess it's as good today as it is
24 tomorrow.

25 Q. So would you agree that faster is a

0305

1 measurement of time over distance as independent of
2 when the action took place?

3 A. I'm not a Webster. I don't know what
4 "faster" is defined as. I would assume if I was a
5 customer and I wanted to get from my house to an
6 airplane, I could call that a time and distance. If I
7 wanted to get on the bus in the middle of that and go
8 from here to here, we could define that as a fast trip.

9 How do you define "fast"? Is it the time on
10 the bus, or is the time between the trip and the time
11 you get on the plane or the time off the plane until
12 you get to your house, or is it the time in the middle
13 where you ride the bus? I think there is faster is
14 faster. There is both ways to define "fast".

15 Q. Let's look at your example then. If one
16 vehicle travels between Point A and Point B in two
17 hours and 15 minutes, and the second vehicle travels
18 between Point A and Point B in three hours and 30
19 minutes, then by your definition, which one is faster?

20 A. I think there is a point where you need to
21 make a clarification of your timing. My time on my
22 schedule is accurately --

23 Q. Excuse me. I didn't ask about your --

24 MR. RICE: Your Honor, the witness should be
25 allowed to complete the testimony.

0306

1 MR. LAUVER: If I may, I asked a specific
2 question. I wasn't asking for a narrative. I wanted
3 to know in a specific case. At no time did I reference
4 his schedule.

5 JUDGE CAILLE: I would like the witness to
6 answer the question as posed. If you feel that you
7 need to add something additional, please -- first of
8 all, please answer the question yes or no, and if
9 that's sufficient in your mind, then that's it for the
10 question. Otherwise, if you feel you need to add
11 something to clarify your answer, then add it after
12 either the yes response or the no response. Do you
13 understand?

14 THE WITNESS: Pretty Well.

15 JUDGE CAILLE: So we get a clear answer. All
16 right. Could you pose your question again?

17 Q. (By Mr. Lauver) If one vehicle traveled
18 between Point A and Point B in two hours and 15 minutes
19 and the second vehicle traveled between Point A and
20 Point B in three hours and 30 minutes, then by your
21 definition, which is faster?

22 A. Which was my definition?

23 Q. I'm asking the questions. You defined faster
24 here a moment ago.

25 A. I defined it in two ways. Before I answer

0307

1 yes or no, if I may, I defined the ride from here to
2 here and you defined it on the bus. I'm going to
3 answer this yes or no --

4 JUDGE CAILLE: Sir, I'm the judge here, and
5 you are going to be quiet when I ask you to be quiet.
6 Now, the record is not going to show anything, this
7 distance from here to here or this distance from here
8 to here, and it's my responsibility to make sure that
9 the record is clear, so I think what we need to do is
10 reframe this question into a yes or no answer. You are
11 asking him, is this faster or is this faster, and if
12 you could reframe it that way, I think that it would
13 eliminate some of the confusion and would make for a
14 clearer response.

15 THE WITNESS: Thank you.

16 JUDGE CAILLE: Are you ready to go?

17 Q. (By Mr. Lauver) I'll make one last attempt,
18 and then we will move on. We don't need to belabor
19 this.

20 If Vehicle 1 travels the same distance as
21 Vehicle 2 in hours less time, is Vehicle 1 faster than
22 Vehicle 2?

23 A. Yes.

24 Q. Thank you. What's the current guideline for
25 airline passengers regarding the minimum amount of time

0308

1 they should arrive before their scheduled flight
2 departures?

3 A. I believe it's relative to the particular
4 airline, but it's an hour and a half to two hours.
5 That's what I'm understanding at this point.

6 Q. Do you have any specific guidelines that you
7 offer your passengers?

8 A. Hour and a half to two hours prior to
9 departure.

10 MR. LAUVER: I would like to at this time
11 offer Exhibit No. 21.

12 JUDGE CAILLE: Does everybody have a copy of
13 that exhibit?

14 MR. LAUVER: No. We will pass those out at
15 this time.

16 JUDGE CAILLE: If you could approach the
17 Bench, please. Just so I'm clear, Mr. Lauver, the
18 exhibit you have identified as Exhibit No. 21, is that
19 the first sheet that says "Bellair Airporter Shuttle,"
20 and in the top left-hand corner, it says "terms and
21 conditions"?

22 MR. LAUVER: That is correct.

23 JUDGE CAILLE: That particular one sheet is
24 Exhibit 21.

25 MR. LAUVER: That is correct, Your Honor.

0309

1 For convenience, actually, we could append a second
2 page to that rather than making it a separate exhibit.

3 JUDGE CAILLE: That would be fine. So the
4 second page of Exhibit 21 is something designated, "the
5 latest news, travelers' news," and the left-hand corner
6 has "Port of Seattle and SeaTac Airport traveller news
7 travel tips."

8 MR. LAUVER: That is correct.

9 JUDGE CAILLE: You may proceed with this.

10 MR. LAUVER: Thank you. The witness will
11 need a copy of this. Should we provide one?

12 (Marked Exhibit No. 21.)

13 JUDGE CAILLE: Okay, Mr. Lauver, go ahead.

14 Q. (By Mr. Lauver) I ask you to look at Page 1
15 of Exhibit 21. Is this a document produced by
16 Wickkiser International relative to its airporter
17 shuttle service?

18 A. It appears to be.

19 Q. Would you read the third line from the bottom
20 to me?

21 A. If you were traveling to SeaTac to catch an
22 outbound flight, the Port of Seattle and the airlines
23 recommend arriving at the airport at least two hours
24 prior to your scheduled flight departure time.

25 Q. The "at least two hours prior," that's

0310

1 highlighted. That's bold faced and italics, and that's
2 your emphasis placed on?

3 A. Yes, it is.

4 Q. Referring to Page 2 of Exhibit 21, under the
5 heading "the latest news" about a third of the way down
6 the page, would you please read that bold paragraph
7 beginning with "new staff"?

8 A. "New staff and procedures help cut lengthy
9 lines at security checkpoints. Travellers should still
10 plan on being at the airport two hours before
11 departure."

12 Q. Again, the very last paragraph?

13 A. "Travelers are still advised to get to the
14 airport two hours before departure." Do you want me to
15 continue?

16 Q. No. Would you please tell me when this
17 document was last updated as evidenced in the upper
18 right-hand corner?

19 A. 6/30/03.

20 Q. So the day before yesterday; is that correct?

21 A. That's what it looks like.

22 Q. Is it correct that you have testified that in
23 certain instances involving hypothetical flight
24 connections, a traveller might have more -- actually,
25 I'm going to back up here a little bit and look at

0311

1 something else first before we get into that?

2 JUDGE CAILLE: Just for the record, I want to
3 point out that this Page 2 is a Port of Seattle
4 document, and it appears to be from their Web site.
5 Whereas Page 1 looks like it may be a flyer that
6 Bellair Airporter Shuttle, the Airporter Shuttle has
7 put out.

8 Q. Earlier, you made some comparisons between
9 our proposed schedule and your schedule. In those
10 comparisons, I believe you used hypothetical flights;
11 is that correct?

12 A. I believe we did.

13 Q. I would like to walk you through a few more
14 comparisons here which use actual flights, not
15 hypothetical flights. Would you please refer to
16 Exhibits 1 and 20? Do you have that available?
17 Exhibits 1, I believe, is your Bellair Airporter
18 Shuttle schedule, and Exhibit 20 is the revised SeaTac
19 Shuttle schedule.

20 MR. LAUVER: Mr. Rice, can you provide that
21 to your witness?

22 MR. RICE: Complies.

23 Q. (By Mr. Lauver) I want to apologize in
24 advance for having to walk through all these exercises,
25 but I think it's important that we discuss the

0312

1 schedules here.

2 So what we are going to look at is a
3 comparison of actual flight times today, on today, July
4 2nd, 2003's, actual flight schedule for flights
5 departing out of SeaTac, and as you have just
6 testified, your company and the Port of Seattle urges,
7 recommends that passengers arrive at least, and it was
8 your emphasis placed on your marketing literature, two
9 hours prior to flight departure times.

10 So let's look at an actual flight to Sun
11 Valley, Horizon Flight 2341, departs for Sun Valley at
12 8:30 a.m., and it is the only flight of the day. There
13 is not an option to take another flight. If we look at
14 the Airporter Shuttle schedule, can you tell me when
15 you would need to depart Oak Harbor to arrive at SeaTac
16 at least two hours prior to departure time?

17 A. 6:10 p.m., arrival at 9:40 p.m.

18 Q. And what time would you need to depart Oak
19 Harbor on SeaTac Shuttle schedule?

20 A. Excuse me, that's what I just read, my
21 schedule. Were you talking about yours first?

22 Q. No. You answered correctly --

23 A. You are SeaTac Shuttle. I am Airporter
24 Shuttle.

25 Q. I often wonder myself.

0313

1 A. SeaTac Shuttle departure two hours prior to
2 8:30 departure would depart Oak Harbor at 4:15 a.m.
3 arriving at SeaTac at 6:30 a.m.

4 Q. Which shuttle would get you there in the
5 least amount of time with the least amount of time
6 waiting at the terminal prior to flight departure?

7 A. SeaTac Shuttle.

8 Q. Let's look at a flight to Detroit. We are
9 going to buy ourselves a new car here. We are going to
10 take Northwest Flight 212 to Detroit, which departs at
11 12:45 p.m., which means we have to arrive at SeaTac no
12 later than 10:45 a.m. Once again, looking at your
13 Airporter schedule, when would you have to depart Oak
14 Harbor to arrive at SeaTac?

15 A. What time is the flight?

16 Q. The flight is at 12:45 p.m., so you would
17 have to arrive at SeaTac at 10:45 a.m..

18 A. On Airporter Shuttle, you would depart Oak
19 Harbor at 6:10 p.m. and arrive at SeaTac at 9:40 p.m.

20 Q. These are a.m. flights. It's a 12:45 p.m.,
21 just after noon, so you must arrive at SeaTac at 10:45
22 a.m. to meet the two-hour window.

23 A. It looks like I have a 6:40 a.m. departure
24 that arrives at SeaTac at 10:10 on the Airporter
25 Shuttle.

0314

1 Q. And your flight would not depart until 12:45
2 p.m., which I believe is an elapsed time of six hours
3 and five minutes, is it not?

4 A. From Oak Harbor to the departure of the
5 airplane?

6 Q. That's correct.

7 A. If I had to be there by 10:30, that would be
8 correct.

9 Q. If we use the same set of circumstances on
10 the SeaTac Shuttle, would you speed this up, perhaps,
11 not leave at 8:15 a.m.?

12 A. That would be correct.

13 Q. And you would arrive at 10:30 a.m.?

14 A. That's correct.

15 Q. Would that be an elapsed time of four hours
16 and 30 minutes?

17 A. Yes, it would.

18 Q. So once again, that's an hour and a half
19 faster, if you will, or less total time than the
20 Airporter Shuttle?

21 A. That's correct.

22 Q. Looking again at your schedule, catching
23 Continental Flight 385 to Houston -- that flight
24 departs at 1:30 p.m. requiring an 11:30 a.m. arrival at
25 SeaTac -- on your schedule, when would you have to

0315

1 depart Oak Harbor?

2 A. You want me to say that a 6:40 departure from
3 Oak Harbor would arrive at 10:10, because it would be
4 ten minutes late if you left at 10:10 arriving at
5 11:40.

6 Q. I don't want you to say anything. I'm asking
7 you which one you would be required to take to meet
8 your guidelines.

9 A. The guidelines of two hours would require you
10 to take the 6:40 departure from Oak Harbor arriving at
11 10:10.

12 Q. That would be an elapsed time between
13 boarding the shuttle and departing on your flight, of,
14 I believe, six hours and 50 minutes; is that correct?

15 A. Close, whatever. I would agree to the time.

16 Q. Looking at SeaTac Shuttle's schedule for the
17 same set of circumstances, that is, catching
18 Continental 385 at 1:30 p.m., what time would you
19 depart Oak Harbor?

20 A. Say that again.

21 Q. We need to be at SeaTac at 11:30 a.m. to
22 catch the 1:30 p.m. Continental flight.

23 A. It looks like the 8:15 a.m. departure; -- is
24 that correct?

25 Q. Yes.

0316

1 A. -- for the 10:30 arrival at SeaTac.

2 Q. And would that not be approximately five
3 hours and 15 minutes of elapsed time?

4 A. I believe it would.

5 Q. Is that elapsed time also more than an hour
6 and a half faster, if you will, than your airport
7 shuttle?

8 A. That's correct.

9 MR. LAUVER: If I could have just a moment,
10 please.

11 (Discussion off the record.)

12 Q. (By Mr. Lauver) We can continue with this
13 exercise for quite some time, but are you willing to
14 concede that using real flights, not hypothetical
15 flights, that in many instances across the entire
16 spectrum of your Airporter schedule, SeaTac Shuttle
17 schedule can meet or beat the service provided by the
18 airporter?

19 MR. RICE: Your Honor, I ask him to clarify
20 what he means by "meet or beat."

21 MR. LAUVER: Elapsed time from boarding the
22 respective shuttle to the departure time of the
23 aircraft.

24 THE WITNESS: Are you asking for a yes or no?

25 Q. (By Mr. Lauver) That's correct; I'm asking

0317

1 for a yes or no.

2 A. According to your proposed schedule comparing
3 those specific flights to my existing schedule, yes.

4 Q. I want you to be comfortable with this,
5 because I can go on with just not those specific
6 flights. I can go on with many, many actual
7 nonhypothetical flights that are departing today from
8 SeaTac. These are real-world situations.

9 A. We could have done the same thing with our
10 witnesses and picked a flight. It is general. There
11 are thousands of flights a day, yes --

12 JUDGE CAILLE: Excuse me. I think that
13 you've made your point, and I don't believe there was a
14 question pending, Mr. Wickkiser. That's why I cut you
15 off. I believe his last answer was specific to what
16 you have given to him so far. Now, I think you've
17 demonstrated your point. I don't think you need to go
18 further.

19 MR. LAUVER: Thank you. In the interest of
20 moving things along, I will not continue along this
21 line.

22 Q. (By Mr. Lauver) Would you then please define
23 the word "direct" for me as it relates to
24 transportation?

25 A. May I have a moment to think about it? I

0318

1 can't quote from a book, and I don't know where to look
2 for a book that would tell me that, so if you have one
3 that you want me to agree that I agree to the
4 definition, I could do that. I would think that there
5 are very many ways to define things. "Direct" is --
6 what was the question?

7 Q. I'll restate it, perhaps, to make it easier
8 for you. I'm not looking for a quotation from a
9 dictionary. I'm asking for your definition of "direct"
10 as it relates to transportation. What do you feel
11 "direct service" means?

12 A. Expedient.

13 Q. Expedient. Doesn't expedient refer to speed,
14 whereas directness would be more of an indication of
15 the path of travel or travel that is not interrupted?

16 A. I don't know that I could agree to that.

17 Q. Then let me pose it this way: When you look
18 at an airline schedule and you see a nonstop flight,
19 what does that mean to you?

20 A. Nonstop means nonstop.

21 Q. It means it makes no intermediate stops.

22 A. That's what I understand.

23 Q. When you see a direct flight, what does that
24 mean?

25 A. Knowing the difference between nonstop, and

0319

1 if I saw nonstop, I would say nonstop. If I saw an
2 airline offering direct, I might assume that there
3 could be a stop.

4 Q. Okay. So there would be a stop along the
5 route, and it would not proceed straight to. It could
6 go to an intermediate position.

7 A. That would be my understanding.

8 Q. But is there a change of planes involved in a
9 direct flight?

10 A. There could be.

11 Q. There could be.

12 A. Yes.

13 Q. We'll move on and talk about directness in a
14 little bit here. You testified that you own CWA, or
15 Central Washington Airporter; is that correct?

16 A. That's correct.

17 Q. What's your relationship to that company
18 other than owner, or is that it?

19 A. I am a partner with Mr. Johnson. I have 80
20 percent of the shares in that business.

21 Q. In your filing of your Central Washington
22 Airporter, CWA, application, did you include an initial
23 proposed schedule?

24 A. I'm sure I did.

25 Q. The answer is yes?

0320

1 A. Yes.

2 Q. Subsequent to that filing, did you at any
3 time change your schedule in any fashion?

4 A. I guess we did. We may have. I can't
5 honestly remember. I'm sure we adjusted things.

6 Q. Did you, in fact, not submit a revised
7 schedule prior to commencing operations?

8 A. I would have to ask Mr. Johnson. May I? I
9 bet I did.

10 Q. I will ask Mr. Johnson when he comes to the
11 stand.

12 JUDGE CAILLE: That would be the proper way
13 to do it.

14 MR. LAUVER: Thank you. Excuse me.

15 Q. (By Mr. Lauver) The authority sought by CWA,
16 was that for service between Yakima and other Central
17 Washington points and SeaTac?

18 A. That's correct.

19 Q. Was that an application for overlapping
20 service?

21 A. Overlapping what?

22 Q. Overlapping service, as defined in the code.

23 A. There was no regulated operator providing
24 service to SeaTac.

25 Q. Are you familiar with Greyhound?

0321

1 A. Greyhound is not a regulated intrastate
2 airporter shuttle service. It's an interstate
3 unregulated by the State of Washington.

4 Q. In your application, did you state that
5 Greyhound provided service to Seattle and to the Amtrak
6 station, and therefore, you would be in overlapping
7 service?

8 A. No, I did not. They don't provide service to
9 Amtrak. They provide service to Seattle.

10 Q. Between Yakima, Cle Elum, and Seattle, does
11 Greyhound provide any service that would be overlapping
12 the authority you sought?

13 A. Their scheduled service by Greyhound between
14 Yakima, Ellensburg, and Cle Elum to Seattle. My
15 proposed service was Yakima, Ellensburg, Cle Elum to
16 SeaTac and Seattle at Amtrak station.

17 Q. Did you present any witnesses in support of
18 your application either in person or by declaration for
19 your CWA application?

20 A. Yes, I did.

21 Q. How did you present them?

22 A. They were signed affidavits.

23 Q. So by declaration.

24 A. By declaration, yes.

25 Q. What specific points did they all make

0322

1 regarding the lack of convenience in serving the public
2 necessity about the existing carrier over the route
3 that you were granted?

4 A. That there was no service to SeaTac Airport
5 from those areas presently. There was no other
6 airporter service to SeaTac.

7 Q. Did they have any concerns about the time and
8 route or having to change buses or transportation to
9 continue on to SeaTac?

10 A. Their choices were with Greyhound that
11 Greyhound would deliver them; that there were a lot of
12 stops. They would have to go to Seattle to the
13 Greyhound station. There was no particular service
14 from Greyhound to SeaTac, other than Metro or a taxi,
15 so what we were proposing and did propose was service
16 to SeaTac without having to transfer in downtown
17 Seattle.

18 Q. Let me ask you the question again. What
19 specific points did they make, and did they include the
20 time and route and changing buses on the existing
21 carrier service? Did they include those two points?

22 A. Yes.

23 MR. LAUVER: Your Honor, I have another
24 exhibit to offer at this time, No. 22, which is the
25 final order granting CWA application of

0323

1 public convenience and necessity, Docket TC-021402.

2 JUDGE CAILLE: That is marked as Exhibit
3 No. 22 for identification.

4 (Marked Exhibit No. 22.)

5 JUDGE CAILLE: You may proceed.

6 Q. (By Mr. Lauver) In order to keep this moving
7 along, I'm simply going to ask you to verify for me the
8 testimony of some of your witnesses here as
9 encapsulated here in the final order granting you your
10 authority as CWA to operate, and I'm going to refer you
11 to Paragraph 20.

12 JUDGE CAILLE: You know, Mr. Lauver, the
13 Commission can take judicial notice of this, and this
14 is our own order, and I suppose if you want to verify
15 that what the Commission wrote what his witnesses said
16 is correct, I guess you could do that.

17 MR. LAUVER: I have copies of all the
18 declarations of all of the witnesses, and I felt this
19 would be the quickest fashion to get this testimony,
20 and I'll make it very brief just to make my point.

21 JUDGE CAILLE: Go ahead.

22 Q. (By Mr. Lauver) Are you at Paragraph 20?

23 A. Yes.

24 Q. I would just like you to verify this for me:
25 "Mrs. Boochetti testified that she needs CWA's proposed

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1 service because it would allow her to travel to SeaTac
2 or Amtrak stations without changing buses. According
3 to Boochetti, CWA service would save a lot of time."

4 MR. RICE: Your Honor, I would like to
5 object. I don't think it's appropriate to just begin
6 reading sections of the final order into the record.
7 The applicant, if they want to, can submit exhibits,
8 but Mr. Wickkiser is supposed to be here to testify as
9 to his personal knowledge. The final order is what it
10 is, so I just don't think this is appropriate for him
11 to testify about.

12 JUDGE CAILLE: Response?

13 MR. LAUVER: Yes. This is his personal
14 knowledge. These are his witnesses that he presented
15 in support of an overlapping authority, a request for
16 an overlapping authority. All the witnesses provided
17 testimony, which is, in essence, the same argument that
18 SeaTac Shuttle is making for overlapping authority in
19 its request for application. On one hand,
20 Mr. Wickkiser uses the same argument as we are to be
21 granted authority and then is attempting to turn to
22 deny this.

23 JUDGE CAILLE: You are drifting into argument
24 here. Can you rephrase your question to, perhaps...

25 MS. TENNYSON: Your Honor, if I might, my

0325

1 notes show the witness was asked were the concerns of
2 his supporting witnesses in the CWA application that
3 there was no direct service. He did not answer that
4 question directly. I believe that's what the applicant
5 is trying to get at here because his answer was, well,
6 there were concerns with lots of stops and you had to
7 go to Greyhound, but he didn't essentially admit that
8 direct service was a concern, but portions of the order
9 that I've just scanned indicate those witnesses
10 testified to that.

11 JUDGE CAILLE: Perhaps you could ask the
12 question witness that question, whether there are
13 portions of this order or whether his witnesses
14 testified to that. So maybe we can get through it
15 without going through each witness, and as I said,
16 we'll take judicial notice of our order, so go ahead.

17 Q. (By Mr. Lauver) Having presented these
18 witnesses and having the final order in front of you,
19 would you agree in essence that your witnesses in
20 support of your overlapping authority request testified
21 that they felt your service was necessary because
22 Greyhound did not provide direct service without
23 changing buses or vehicles and took too long?

24 A. That's what Ms. Bochetti said.

25 Q. Is that, in essence, what all of your

0326

1 witnesses testified to?

2 A. Well...

3 JUDGE CAILLE: Then I guess we will go
4 through each one.

5 MR. LAUVER: I'm willing to let the order be
6 entered into as an exhibit and move on. I think the
7 point is made.

8 JUDGE CAILLE: All right.

9 Q. (By Mr. Lauver) How long does it take your
10 scheduled run from the Coachman Inn at Oak Harbor to
11 get to SeaTac?

12 A. Our published schedule indicates in two
13 cases, it takes from 3:50 or 5:50 to 6:40 or 8:40.
14 I'll have to look at my clock. You tell me the exact
15 time of that.

16 Q. Would you agree that it takes
17 three-and-a-half hours?

18 A. That's the published schedule.

19 Q. Do your passengers have to change buses to
20 get to SeaTac on this route?

21 A. Yes, they do.

22 Q. Do any of these scheduled runs go direct to
23 SeaTac without changing buses?

24 A. All of these schedules require the customer
25 to change buses.

0327

1 Q. Do these routes go via Anacortes and Mount
2 Vernon rather than directly to SeaTac?

3 A. They go via Anacortes and Mount Vernon to
4 SeaTac.

5 Q. So they do not go directly to SeaTac. They
6 go to Anacortes first and then to Mount Vernon
7 connecting to your direct service to SeaTac; is that
8 correct?

9 A. That's correct.

10 Q. Are you aware that the service that SeaTac
11 Shuttle proposes from Oak Harbor is one hour and 15
12 minutes shorter than the route you currently provide
13 from Oak Harbor?

14 A. I see your schedule indicates that. The
15 reality I don't think is the same.

16 Q. Are you aware that SeaTac Shuttle's proposed
17 service will be direct with no change of vehicles?

18 A. If you don't count the ferry. You have to
19 get on the ferry. Are you going to sit on the ferry in
20 your van for half an hour on the ferry or 25 minutes?

21 Q. Do we change vehicles?

22 A. I believe the same vehicle that picks you up
23 in Oak Harbor will deliver you to SeaTac on the SeaTac
24 Shuttle schedule.

25 Q. So there is no change of buses on the SeaTac

0328

1 Shuttle run.

2 A. Well, vehicle.

3 Q. How many passengers did you carry on your
4 Airporter service last year?

5 A. Over 107,000.

6 Q. Does that include all of the passengers that
7 -- just a second here. How many passengers did you
8 carry from Oak Harbor?

9 A. I don't have that number off the top of my
10 head, but I believe it's eighty-six hundred.

11 Q. Does that include the Naval Air Station or
12 just Oak Harbor?

13 A. That includes both the Naval Air Station and
14 Oak Harbor.

15 Q. Does that include all the passengers that
16 travel to Mount Vernon on their own rather than
17 catching the shuttle in Oak Harbor?

18 A. No, it does not.

19 Q. All of your earlier references and questions
20 have been limited to the Coachman Inn. All of your
21 scheduling and time issues have been limited to the
22 Coachman Inn. Do you think that by now stating that
23 you currently embark eighty-six hundred passengers a
24 year from Oak Harbor, and in your previous testimony in
25 the last session that your, quote, Oak Harbor passenger

0329

1 count was eighty-six hundred, without explaining to the
2 Commission that this really was two separate locations,
3 one at the Naval Air Station and one in Oak Harbor,
4 that this was perhaps somewhat misleading?

5 A. I think it's public record how many people I
6 carry. The UTC -- it's public record. You can look it
7 up. I'm not trying to mislead anybody.

8 Q. I wasn't looking it up. I was asking
9 questions of you and your attorney asked questions of
10 you, and you responded with these numbers relative to
11 Oak Harbor.

12 A. No, I don't believe I'm misleading anyone.

13 Q. How many passengers per year do you really
14 embark from Oak Harbor at the Coachman Inn?

15 A. I don't know that. I don't have the numbers
16 in front of me. I'm sure it's available. Mr. Johnson
17 has it.

18 Q. Thank you. If we accept the eighty-six
19 hundred figure -- actually, I think I'll pursue this
20 with Mr. Johnson.

21 You've implied in a number of instances here
22 that if, in fact, any competition was introduced into
23 your one location on your route that it would
24 constitute overlapping service that you might have to
25 reduce or curtail your service entirely to the

0330

1 Oak Harbor area. Do you feel that the possible loss of
2 a few runs in Oak Harbor outweighs the benefit to the
3 rest of the island that would be provided by SeaTac
4 Shuttle service?

5 A. Can you ask that again?

6 Q. You have stated in your previous testimony
7 and you have asked the applicant's witnesses whether or
8 not -- you've stated to them that if --

9 JUDGE CAILLE: I can have the court reporter
10 ask the question back. Would you like that?

11 MR. LAUVER: Very good.

12 THE WITNESS: Yes.

13 (Question on Page 329, Lines 21 through 25,
14 and Pages 330, Lines 1 through 4, read by the
15 reporter.)

16 THE WITNESS: Yes.

17 Q. (By Mr. Lauver) I believe that you stated --
18 well, actually, with your eighty-six hundred passengers
19 per year, it works out to a little less than
20 two-and-a-half passengers per load or per trip on your
21 current schedule. Why do you suppose that your load
22 factor is so low in Oak Harbor?

23 A. There is a percentage of passengers,
24 percentage of a population that most any airporter
25 service will carry. I believe the limited population

0331

1 in Oak Harbor is one factor. There are only so many
2 people that will ride a bus, a van, any kind of
3 scheduled service to a destination.

4 Q. You heard applicant's witness earlier testify
5 that with the loss of Harbor Airlines, 68 passengers
6 per day on average were no longer being serviced. With
7 the addition of those 68 and all of the other air
8 tickets that are being sold as testified to by previous
9 witnesses, do you still feel that you are carrying all
10 the passengers that are available in your market?

11 A. There is always an opportunity to offer some
12 kind of additional service. Kenmore Air flies out of
13 there. There is one or two, if not more, limo
14 services. We aren't going to get those people. I
15 think the business people that you are talking about
16 are probably going to drive, whether you had anything
17 other than airplane in the half hour trip there to
18 SeaTac.

19 Q. You heard a travel agent witness testify that
20 70 percent of the tickets she sells on your behalf were
21 for embarkation in Mount Vernon rather than Oak Harbor.
22 Why do you suppose that is?

23 A. For the first thing, it's not true. She
24 misrepresented the facts.

25 Q. The witness testified to what she testified

0332

1 to.

2 A. She testified and her facts were wrong, and
3 we have documentation to prove that. She testified
4 what she knew, but apparently, she didn't know what she
5 was testifying. Her facts are wrong. That's it. We
6 can show you that.

7 Q. Do a significant portion of your Oak Harbor
8 residents purchase tickets for embarkation in Mount
9 Vernon rather than Oak Harbor?

10 A. Our records indicate about 32 percent of the
11 population of Oak Harbor who purchases tickets on our
12 shuttle, because we track their addresses and their
13 phone numbers and where they originate, use our service
14 in Mount Vernon.

15 Q. Does that include the Naval Air Station?

16 A. I believe it does.

17 Q. Which is a significant portion of the
18 passengers that you take from Oak Harbor; correct?

19 A. I don't know the portion between Oak Harbor
20 and NAS; so I would have to look that up.

21 Q. For the moment, let's accept your 32 percent.
22 Why do you suppose 32 percent go to Mount Vernon via
23 other means of transportation rather than catching your
24 service right near their home?

25 A. I believe they like to drive. They possibly

0333

1 like to drive to Mount Vernon. There is a significant
2 time, if you will, 45 minutes extra if you pick us up
3 in Oak Harbor and go through Anacortes, so those people
4 that don't want to ride through Anacortes on our bus
5 might prefer to go to Mount Vernon to start their trip.
6 It saves them time.

7 I believe there are people that like the
8 Cotton Tree. There is somewhat secure parking and it's
9 free. They may want to go to Mount Vernon to do some
10 shopping before or after their trip. They may like to
11 stay at the Cotton Tree rather than the Coachman.

12 Q. So you've just stated that a number of these
13 people go because it takes significantly longer if they
14 ride the bus from Oak Harbor than if they just drive to
15 Mount Vernon and catch your bus there. Wouldn't you
16 characterize that as inconvenient and not expeditious
17 or direct?

18 A. I believe it gives people an option. We have
19 the ability on I-5 to run more service because of the
20 population based on I-5 and Bellingham and Skagit
21 County that goes through Mount Vernon as well as north
22 Snohomish County. The population base in those areas
23 allows us to provide as much service as we do in
24 Oak Harbor, which has a smaller population and would
25 not support stand-alone service.

0334

1 Q. We will move along here then. Let's talk
2 about South Whidbey briefly. Do you currently provide
3 any scheduled Airporter service south of the Coachman
4 Inn on Whidbey Island?

5 A. I do not.

6 Q. Have you ever provided any service south of
7 the Coachman Inn on Whidbey Island?

8 A. Yes, I have.

9 Q. When was that?

10 A. Approximately ten years ago.

11 Q. Did you just discontinue that service?

12 A. Yes, I did.

13 Q. So you do not currently serve the population
14 of Whidbey Island outside of those in or near Oak
15 Harbor.

16 A. That is correct.

17 Q. Since you do not service any area outside of
18 the north end of Oak Harbor, have you petitioned the
19 Commission to relieve you of the burden of servicing
20 the rest of the island and your petition was granted?
21 Are you saying that your protest is limited to the
22 overlapping service in north Oak Harbor?

23 A. I would say that.

24 Q. Did Wickkiser International Companies send an
25 unsolicited letter to any businesses in Oak Harbor

0335

1 regarding this hearing?

2 A. I don't believe we did.

3 MR. LAUVER: Your Honor, at this time I would
4 like to submit Exhibit 23.

5 JUDGE CAILLE: That would be Exhibit 23.

6 MR. LAUVER: If you could give us just a
7 moment, we'll pass those out.

8 JUDGE CAILLE: For the record, this is a
9 letter from Catherine Sheard dated June 19th, 2003 on
10 the letterhead of Bellair Charters Airporter Shuttle.

11 (Marked Exhibit No. 23.)

12 THE WITNESS: May I get a drink of water from
13 my bottle?

14 JUDGE CAILLE: Go ahead.

15 Q. (By Mr. Lauver) What was the purpose of this
16 letter?

17 A. I believe it was written so that we could see
18 if we could get some witnesses to testify on our behalf
19 and speak to the issue of another service from Oak
20 Harbor.

21 Q. Did you in this letter make any claims
22 regarding your schedule?

23 A. I believe we did. In the first paragraph, it
24 looks like we did.

25 Q. Have you seen this letter prior to this

0336

1 morning?

2 A. Yes, I had. I had forgotten about it.

3 Q. Did you claim that the, quote, first two
4 morning trips and the last two evening trips take
5 approximately two hours and 30 minutes, in this letter?

6 A. That's what it says in this letter.

7 Q. I refer you to your Airporter schedule, which
8 I believe is Exhibit 1. According to your schedule,
9 your first trip leaves the Coachman Inn at 3:50 a.m.
10 and arrives at SeaTac at 6:40 a.m. after changing buses
11 in Mount Vernon; is that correct?

12 A. That's correct.

13 Q. How long is it from 3:50 a.m. to 6:40 a.m.?

14 A. Ten minutes less than three hours.

15 Q. So two hours and 50 minutes, just slightly
16 less than three hours?

17 A. That's correct.

18 Q. Let's look again at your second a.m.
19 departure. What is the elapsed time?

20 A. It's the same as the first.

21 Q. So that one is also two hours and 50 minutes.

22 A. Correct.

23 Q. Your last evening trip departs the Coachman
24 in at what time?

25 A. 6:10.

0337

1 Q. And arrives at SeaTac...

2 A. At 9:40.

3 Q. The elapsed time on that?

4 A. Appears to be three hours and 30 minutes.

5 Q. That was your last trip. Your next to last?

6 A. Same elapsed time as the other one, as the
7 last one.

8 Q. So we have your earlier trips at two hours
9 and 50 minutes, or nearly three hours, and your last
10 trips at three hours and 30 minutes.

11 So your letter states that your trips take
12 two hours and 30 minutes for the first two morning
13 trips and three hours and 10 minutes for the last
14 evening trips, so the information in your letter, is it
15 accurate or correct?

16 A. It states in here that there is a 20-minute
17 time period. Go ahead?

18 Q. Yes, please.

19 A. The letter states that our scheduled
20 departure time from the beginning were -- well, the
21 letter doesn't state this, but the fact is we put out a
22 schedule so that we are 97 percent of the time going to
23 meet or beat the time schedule. The answer to the
24 question is that the letter states that, that we have
25 built in a 20-minute pad for the arrival times.

0338

1 Q. The letter states, and I quote, "The first
2 two morning trips and the last two evening trips take
3 approximately two hours and 30 minutes while the
4 remaining trips take approximately three hours and 10
5 minutes." Are those accurate?

6 A. I think they are close.

7 Q. Do they reflect accurately the times
8 published in your schedule and tariff?

9 A. They are not exactly the same.

10 Q. So would you characterize your statements
11 regarding your schedule in the letter sent to the
12 businesses in Oak Harbor as truthful or misleading?

13 A. It's truthful.

14 Q. Prior to the hearing, what did you know about
15 the experience level of the applicant?

16 A. Nothing.

17 Q. You are now aware of the applicant's
18 experience levels?

19 A. Yes.

20 Q. Did you state in your letter that you were
21 being, quote, threatened by an inexperienced newcomer
22 who wants to provide four trips a day to SeaTac from
23 Oak Harbor and South Whidbey Island?

24 A. That's what it states.

25 Q. Having no information as to the experience

0339

1 level of the applicant prior to this hearing, what did
2 you base this statement on?

3 A. That you had not been an airporter operator.

4 Q. You just stated you knew nothing about our
5 experience level.

6 A. I saw no reason to know you were an airporter
7 operator. I've never heard of you in the airporter
8 business in this state. You're inexperienced as an
9 airporter operator. That's fact.

10 Q. But you knew nothing of our experience level
11 to operate a business or our transportation
12 background --

13 MR. RICE: Objection. I think the witness
14 has answered this twice now.

15 JUDGE CAILLE: Yes, that's been asked and
16 answered.

17 Q. (By Mr. Lauver) Did you suggest that the
18 applicant could only meet the proposed route of two
19 hours and 15 minutes if, quote, the ferries are on time
20 and the tides cooperate?

21 A. That's what it says.

22 Q. Can you tell me how many times in the past
23 year the Clinton Mukilteo ferry has been delayed by
24 tides?

25 A. No, I cannot.

0340

1 Q. Can you tell me how many times in the past
2 year the Clinton Mukilteo ferry has not met its
3 schedule?

4 A. No.

5 Q. Can you tell me what the percentage of
6 on-time departures in the past year the Clinton
7 Mukilteo ferry has accomplished?

8 A. No.

9 Q. So once again, you had to information
10 whatsoever to base this statement upon?

11 A. Our knowledge in the past is that it's going
12 to take you more than two hours and 15 minutes to get
13 to SeaTac from Oak Harbor.

14 Q. That wasn't my question.

15 A. What was it?

16 Q. My question was, did you have any knowledge
17 concerning either tide delays, on-time departures, or
18 any other delays regarding the ferry as you stated
19 would be an impediment to efficient service in your
20 letter?

21 A. No.

22 Q. You testified earlier that you accommodated
23 approximately eighty-six hundred passengers from Oak
24 Harbor.

25 A. That's correct.

0341

1 Q. If you spread that out across your scheduled
2 trips on an annual basis, that works out to
3 approximately 2.5 passengers per trip. Yet you state
4 in your letter that, however, based on its average
5 number of customers, Airporter Shuttle carries from Oak
6 Harbor less than 1.5 per trip. How long can a newcomer
7 stay in business?

8 MR. RICE: Your Honor, is there a question?

9 Q. Can you explain, first of all, the
10 discrepancy between this number and the number you
11 testified to?

12 A. There is an explanation. I'm not exactly
13 sure what the statistics are. If eighty-six hundred is
14 a good number and you divide it by the number of trips
15 and come out with 2.5 or 1.5, I'm not familiar with
16 which one it will turn out to be.

17 Q. So you are then unclear as to what your
18 actual passengers loads are per trip.

19 A. Between Catherine Sheard and Richard Johnson,
20 there is clarity. I personally right now don't know
21 the difference, which one it is.

22 Q. Prior to writing this letter, had you seen
23 the applicant's initial tariff?

24 A. I believe we had.

25 Q. Having seen the tariff, can you tell me some

0342

1 of the other areas that the applicant proposed to serve
2 other than Oak Harbor?

3 A. I don't have it in front of me, but as I
4 remember, it's down Whidbey Island, Coupeville,
5 Greenbank, near Langley, Clinton. There is another
6 little town in there somewhere, I think.

7 Q. Do you expect that it's reasonable that the
8 applicant would generate some passengers from the whole
9 rest of Whidbey Island exclusive of north Oak Harbor?

10 A. That would be reasonable, some.

11 Q. But doesn't your statement imply that SeaTac
12 Shuttle would have to survive on an average of less
13 than one and a half passengers per trip, even if they
14 took all of your passengers?

15 A. The population base of Oak Harbor or Whidbey
16 Island in total, I believe -- this is by guesstimate --
17 is 60,000. That includes, and I'm going to ask
18 Mr. Johnson, but I believe that would include some of
19 Camano Island. I'm thinking there is somewhere in the
20 average of 5,000 people on Whidbey Island minus north
21 Whidbey, which is Oak Harbor and those areas north of
22 Oak Harbor, so 5,000 people on the whole island is not
23 going to support a whole lot of service.

24 Q. I was asking basically for a yes or no
25 answer.

0343

1 A. Ask me again.

2 Q. I'll pass. We will just move on. Under your
3 Certificate C-933, do you have authority to serve the
4 Amtrak station or the Greyhound bus depot from Oak
5 Harbor?

6 A. Which one? Which Amtrak or station?

7 Q. In Seattle?

8 MR. RICE: Your Honor, if he's going to ask
9 the witness about his authority, may I ask that the
10 witness have his certificate in front of him? Is that
11 appropriate?

12 MR. LAUVER: That's fine.

13 JUDGE CAILLE: Try to avoid asking a compound
14 question. If you will ask them each individually.
15 This was admitted into evidence as Exhibit No. 3;
16 correct?

17 MR. SOLIN: Correct.

18 MR. LAUVER: Your Honor, I will wrap this up
19 quickly here.

20 JUDGE CAILLE: Thank you.

21 Q. (By Mr. Lauver) Once again, do you have
22 authority to travel to the Greyhound or Amtrak station
23 in Seattle from Oak Harbor?

24 A. Under the first paragraph with service to
25 Everett and Seattle would include those stations, I

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1 believe.

2 Q. Scheduled service to those.

3 A. That's correct.

4 Q. Do you, in fact, provide that service?

5 A. On Friday I do to the Alaska ferry terminal
6 passengers.

7 Q. To the Alaska ferry terminal passengers but
8 not to Greyhound or the Amtrak station from Oak Harbor.

9 A. I don't provide that service on a scheduled
10 basis --

11 Q. Thank you.

12 A. -- except on Friday to the Alaska ferry
13 terminal passengers.

14 Q. Which are not your Oak Harbor passengers.

15 A. Correct.

16 Q. Since you don't provide that service, why in
17 your letter did you state that you would, perhaps,
18 curtail those stops to the Oak Harbor passengers?

19 A. The paragraph that you are referring to in
20 the letter that Catherine Sheard wrote refers to Amtrak
21 and Greyhound stations in Mount Vernon.

22 Q. I don't necessarily read it that way, but if
23 you do, that's fine.

24 A. That's the intent of it, that we have
25 intercity service to Mount Vernon.

0345

1 Q. Do you service Amtrak stations and Greyhound
2 bus stations in Mount Vernon?

3 A. Yes, we do.

4 Q. Could you show me that on your schedule?

5 A. It's not in the time schedule. It's just
6 referred to as Mount Vernon.

7 Q. So if I wanted to book a trip to Mount
8 Vernon, I could name essentially any point in Mount
9 Vernon that I wanted and you would take me from Oak
10 Harbor on a run?

11 A. No.

12 Q. The last paragraph here in your letter, "We
13 are looking for a few people to speak to the need for
14 public service. These people will come forward at a
15 hearing on June 24th or 5th to state they like our
16 service and they are happy with it and would have
17 concerns if it went away." Were you telling people
18 exactly what they had to say at the hearing?

19 A. No.

20 Q. You weren't. You stated that people will
21 come forward at a hearing on June 24th or 25th. In as
22 much as you stated that your witnesses could testify at
23 the hearing on either the 24th or 25th of June, and in
24 this letter you are acknowledging that you expect
25 testimony to take two days, how is it that you were

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1 unprepared to continue this hearing before this date, a
2 week after the previous session?

3 MR. RICE: I object. I don't see any
4 relevance at all of this question to the ultimate
5 question in this case.

6 JUDGE CAILLE: Since we were discussing -- I
7 agree with you, Mr. Rice, as far as whether that
8 particular question doesn't have relevance to the
9 ultimate decision in this case, but it could reflect on
10 the credibility of the witness in that we were trying
11 to schedule a hearing as quickly as possible. I'm
12 going to overrule the objection.

13 Q. Perhaps the reporter could read the question
14 back.

15 (Question on Page 345, Lines 20 through 25,
16 and Page 346, Lines 1 through 2, read by the reporter.)

17 THE WITNESS: I don't know. I don't remember
18 how I was unprepared.

19 Q. (By Mr. Lauver) Thank you. As a result of
20 this letter, did any witnesses come forward?

21 A. I think our decision was to decide that we
22 would not go ahead with witnesses, and we didn't ask
23 them to come to the hearing, except for the one lady
24 that did come.

25 Q. So you did have witnesses that responded to

0347

1 this but you rejected them.

2 A. There were a few that could not show up for
3 business reasons or other personal reasons that they
4 decided not to show up.

5 Q. So was the decision theirs or yours?

6 A. In some cases it was theirs and in some cases
7 ours.

8 Q. So back to my original question. Did you
9 reject some witnesses that came forward?

10 A. We told them it wouldn't be necessary. There
11 was only a few that could, that said they could, and
12 they were -- at that point, we said we don't think we
13 well need them.

14 Q. So the answer is yes, you rejected some
15 witnesses.

16 A. And some decided not to come, yes and no.

17 Q. How is it that you accepted the one witness
18 that you did bring?

19 A. We thought she would have something relevant
20 to say.

21 Q. Was her testimony significantly different
22 than you were expecting from the people you rejected?

23 A. We didn't think we needed witnesses to
24 testify in a case that we have a hearing and we have
25 the authority, so we decided, and with the attorney's

0348

1 advice...

2 Q. Without belaboring the point, you said you
3 don't need witnesses but you did bring a witness. I'm
4 not sure, really --

5 JUDGE CAILLE: I think you can just leave it.

6 MR. LAUVER: Thank you.

7 Q. (By Mr. Lauver) So having gone through this
8 letter now at this point, we've identified that your
9 schedule claims did not match your published schedule;
10 is that correct?

11 A. It states in the letter what we believe is
12 the actual time that it takes because we added a
13 20-minute pad, so that's what we told people. We
14 publish a schedule and we beat that schedule. That's a
15 20-minute time pad we built in.

16 MR. RICE: Your Honor, again I object. This
17 is the third time he's been asked to answer this
18 question.

19 JUDGE CAILLE: Yes.

20 Q. (By Mr. Lauver) Would be characterize the
21 information in this letter --

22 JUDGE CAILLE: Let me make this clear. That
23 objection is sustained.

24 Q. Would you characterize the information in
25 this letter as presented as well-founded in fact,

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1 truthful, or based on speculation and proposed with no
2 basis in fact?

3 A. That's three questions. Do you want to start
4 over and I can answer them one at a time?

5 JUDGE CAILLE: Excuse me. I would prefer
6 that you direct your question -- if the witness is
7 having difficulty, please let me know that. There
8 doesn't need to be that kind of dialogue between the
9 attorney and the witness.

10 Secondly, if you could frame your question
11 for a yes or no answer and ask. He's correct, you did
12 sort of ask three questions there, so if you can
13 rephrase your question and ask it in such a way so you
14 will get a yes or no answer, that would be helpful.

15 Q. (By Mr. Lauver) Would you characterize the
16 content of this letter as misleading?

17 A. No.

18 Q. Last topic here, I believe, and we will be
19 done for awhile. You stated your concerns about the
20 south island run and pointed out safety issues, traffic
21 issues. Can you tell me the accident rate per mile on
22 an annual basis for your Oak Harbor, Anacortes I-5
23 segment?

24 A. I could find that out if Mr. Johnson doesn't
25 know it, but last year, there were no accidents.

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1 Q. I'm asking, do you know the accident rate?
2 I'm not referring to yours. I'm asking you, do you
3 know the accident rate as published by the Department
4 of Transportation for that route segment between Oak
5 Harbor and the I-5 junction at Burlington and Mount
6 Vernon?

7 A. No, I do not.

8 Q. Do you know the accident rate as published by
9 the Department of Transportation between Oak Harbor and
10 the Clinton Mukilteo ferry?

11 A. No, I do not.

12 Q. Do you know what the traffic count is along
13 your route segment between Oak Harbor and the
14 Burlington I-5 junction?

15 A. No.

16 Q. Do you know what the traffic count is from
17 Oak Harbor south to the Clinton Mukilteo ferry,
18 according to the Department of Transportation?

19 A. No.

20 MR. LAUVER: I'm going to ask to enter two
21 exhibits here, Your Honor.

22 JUDGE CAILLE: You are going to ask for
23 identification of exhibits.

24 MR. LAUVER: Yes. Thank you.

25 JUDGE CAILLE: Mr. Lauver, just to let you

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1 know, at the end of your cross-examination of this
2 witness, you were going to offer your exhibits into
3 evidence and then I would rule.

4 MR. LAUVER: Thank you. Would you prefer
5 that we wait at this time?

6 JUDGE CAILLE: No. Maybe I didn't make that
7 clear. Let's go off the record for just a moment.

8 (Discussion off the record.)

9 (Marked Exhibits No. 24 and 25.)

10 JUDGE CAILLE: Let's go back on the record,
11 and I've marked for identification the total accident
12 count as Exhibit 24 and the traffic count as Exhibit
13 25, and you may proceed, Mr. Lauver.

14 MR. RICE: Your Honor, if I may, could you
15 please say what the exhibit numbers are?

16 JUDGE CAILLE: The accident number, which is
17 this exhibit here, is No. 24. (Indicating.)

18 MR. RICE: That's a two-page exhibit?

19 JUDGE CAILLE: That's a two-page exhibit.
20 There is also a two-page exhibit for the traffic count,
21 and that will be Exhibit 25.

22 MR. SOLIN: We will be with you in just a
23 second. We are going to discuss accident rate first.

24 Q. (By Mr. Lauver) Can you tell me from looking
25 at Exhibit 24, I believe, the accident rate?

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1 MR. SOLIN: 24 is the accident rate; is that
2 correct?

3 JUDGE CAILLE: That's correct. That's the
4 exhibit number.

5 Q. (By Mr. Lauver) On the page relating to the
6 SeaTac Shuttle route, can you see in the lower
7 right-hand corner the accident rate per mile as
8 determined from the Department of Transportation?

9 A. I believe that's 7.98.

10 Q. On the next page, can you see in the lower
11 right-hand corner along the Airporter route from
12 Arlington to Burlington via Anacortes the accident rate
13 per mile?

14 A. It appears to be 12.12.

15 Q. Thank you.

16 A. On the Exhibit 25, is it then?

17 MR. RICE: Your Honor, before we get started,
18 I would like to object. Mr. Wickkiser is supposed to
19 be here to testify about his personal knowledge.
20 Unless they establish that he personally knows about
21 the figures behind this, I don't think it's appropriate
22 to cross him on it.

23 MR. LAUVER: Mr. Wickkiser in his direct
24 testimony asserted that his route segment was safer
25 than the route segment proposed through South Whidbey

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1 by the applicant. I'm merely asking him here to verify
2 the Department of Transportation numbers or give me
3 some other explanation as to how he arrived at his
4 statement that his route segment was safer.

5 JUDGE CAILLE: I'm going to allow the exhibit
6 in, and I suppose I would characterize it more as an
7 impeachment exhibit because it's contradicting his
8 testimony.

9 MR. LAUVER: Thank you. May I proceed?

10 JUDGE CAILLE: Yes.

11 JUDGE CAILLE: But I do want to caution you
12 that he doesn't have personal knowledge of this. I
13 don't know how much further you need to cross on this.

14 Q. (By Mr. Lauver) On the same page as the
15 accident figures for SeaTac Shuttle's route, you see
16 the column labeled "average daily traffic"?

17 A. Yes.

18 Q. Can you see from that that on SeaTac
19 Shuttle's route, the average daily traffic, depending
20 on where you are along the route, varies from
21 fifty-four hundred to 11, 800?

22 A. Well, I see a 19,900.

23 Q. That's excluding Oak Harbor. We are talking
24 South Whidbey Island here.

25 A. I'm just assuming what you are telling me is

0354

1 correct. I see the numbers.

2 Q. I'm just asking if you see that. Then on the
3 following page, you see the traffic count along the
4 route from Oak Harbor that the Airporter takes goes
5 from ninety-four hundred to 26,600?

6 A. I see that.

7 Q. Based on these numbers, do you agree that
8 there is a higher traffic count on the Airporter
9 Shuttle route going north from Oak Harbor than the
10 proposed SeaTac Shuttle route going south from Oak
11 Harbor?

12 A. That appears to be the case.

13 Q. Do you consider SeaTac Shuttle's application
14 predatory or competitive?

15 A. Predatory.

16 Q. Why do you characterize it as predatory?

17 A. What I believe you are proposing to do is
18 come into a small population, a rural area, if you
19 will, Oak Harbor and North Whidbey Island, and look at
20 the peak times of the day, whether you look at your
21 first schedule or your second submitted schedule, and
22 you are obviously knowledgeable enough of the arrivals
23 and departures of SeaTac to have picked out the peak
24 times of the day that four trips would serve and
25 round-trip the other ones northbound.

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1 So when you have a small population base, an
2 area that doesn't have stand-alone business, and you
3 are coming in on top of an existing carrier, I would
4 characterize that as predatory when you look at the
5 peak times and add trips to a peak time. You look at
6 also the times of the year when there are much less
7 passenger count.

8 An airporter operates and the ability for us
9 to operate the ten trips a day we have to Oak Harbor is
10 only -- we are only able to do that because we have
11 peak times when we can provide service to people and
12 when people ride with us that supports the greater
13 times of the day when there are not as many passengers
14 riding, so that, to me, is an evidence of a predatory
15 action when you take the peaks and share them with
16 someone and you don't have enough money left over to
17 provide service during the slow times of the day or the
18 slow times of the year.

19 Q. Do you feel that any entrance into the
20 Whidbey Island market -- that includes Oak Harbor --
21 any competitive entry, is by your definition predatory?

22 A. Yes, I do. As long as it's a scheduled
23 airporter service.

24 Q. Do you feel that your service to SeaTac via
25 Anacortes and Mount Vernon is direct and expedited

0356

1 service as called for by the Commission?

2 A. I believe it's the best available service
3 given the population that exists in Oak Harbor,
4 therefore, the passengers we can carry.

5 Q. That really wasn't an answer to my question,
6 but I will move on to, do you feel the routes by which
7 your testimony and exhibits have been demonstrated to
8 take one hour and 15 minutes longer than the applicants
9 are sufficient as called for by the Commission?

10 A. I'm sorry?

11 JUDGE CAILLE: Could you repeat that
12 question?

13 Q. Do you feel that your routes, which take one
14 hour and 15 minutes longer than the applicant's
15 proposed routes, are efficient as called for by the
16 Commission?

17 A. Yes.

18 Q. Do you feel that the Commission regulates
19 airporters to provide a shield behind which poor
20 service is tolerated?

21 A. No.

22 MR. LAUVER: We are at the end. Thank you.

23 JUDGE CAILLE: Do you some cross-examination?
24 I think we should break now for lunch. Come back in an
25 hour, and then we will do cross-examination by Staff.

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(Lunch recess taken at 12:30 p.m.)

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AFTERNOON SESSION

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(1:40 p.m.)

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JUDGE CAILLE: We are back from a lunch

4

recess, and we are now ready for cross-examination by

5

Ms. Tennyson. You may proceed.

6

7

8

CROSS-EXAMINATION

9

BY MS. TENNYSON:

10

Q. Good afternoon, Mr. Wickkiser.

11

A. Good afternoon.

12

Q. Does your company have current authority to

13

serve the south end of Whidbey Island with an airporter

14

service?

15

A. I believe we do.

16

Q. Do you intend to provide airporter service to

17

the south end of the island, even at limited times of

18

the day, at this point?

19

A. It's an option for us.

20

Q. Do you have any current plans to do that, to

21

provide that service?

22

A. No.

23

Q. Do you recollect in your direct examination

24

by Mr. Rice, you gave us a run-through of the number of

25

vehicles, the number of passengers, and we have an

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1 exhibit, Exhibit 5, with the listing on there. I'm not
2 sure I understood correctly what vehicles and how many
3 passengers they hold that you use currently to provide
4 airporter service from Oak Harbor. Can you run that
5 down for me?

6 A. Yes. I don't need it, particularly, to look
7 at, but we have one 47-passenger bus that's based in
8 Oak Harbor primarily as a charter vehicle, but it's
9 also available if we need it for airporter service.
10 The majority of the vehicles that are there are of the
11 20-passenger minibus variety, and we can trade out with
12 24- and 28-passenger minibuses if it's necessary.

13 Q. From Oak Harbor, do you provide only service
14 by reservation?

15 A. We pick up at those stops that are scheduled
16 in Oak Harbor, NAS, and the Coachman Inn, and we will
17 show up at both of those places. If someone is there
18 that doesn't have a reservation, we would certainly
19 pick them up and ticket them. The driver could ticket
20 them.

21 Q. So I guess a follow-up on that then, as of
22 this afternoon or six o'clock tonight, say you had no
23 one who had made a reservation for a pickup from Oak
24 Harbor at the Coachman Inn. Would you have a van show
25 up there at 3:50 a.m. tomorrow morning?

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1 A. We show up on all our scheduled times in Oak
2 Harbor. We are there. We provide a schedule, and we
3 will show up at those times whether there is someone
4 scheduled there or not.

5 Q. So even if someone hadn't made their 24-hour
6 reservation on the Internet or by phone, your van would
7 still show up at those scheduled shops.

8 A. Absolutely. My understanding of the
9 Commission is if you provide a scheduled service, you
10 run it as a scheduled service and you run it whether
11 there is reservations or not, and that's generally the
12 way we do that.

13 Q. You refer to vehicles based in Oak Harbor.
14 So if you were going to do the early morning run from
15 Oak Harbor, you would have a driver and a vehicle
16 there. They wouldn't have to drive from Lynden or
17 somewhere else, would they?

18 A. That's correct. Our maintenance base, the
19 main part of the base, is in Ferndale, and we will
20 bring back vehicles from Oak Harbor to Ferndale to do
21 the A and B services as required, but there is oil and
22 all the fluids available in Oak Harbor for the driver,
23 what driver maintenance can be done or preventative
24 maintenance or part of the VIR that he could get going
25 with oil and fluids and a light bulb and those things,

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1 so those buses are then stationed at our facility in
2 Oak Harbor. That's where they start and finish for the
3 day, unless we are transferring one to Ferndale for
4 some maintenance, and then we will trade somewhere
5 along the route or have one driven by mechanics all the
6 way to Oak Harbor and take another one back, something
7 like that.

8 Q. Thank you. I had a couple of questions just
9 to orient us a little bit to where places are. On
10 Whidbey Island, is the Naval Air Station north or south
11 of Oak Harbor?

12 A. As I see it, it's in -- I don't know city
13 limits, but it's in that area of the city limits that's
14 right in Oak Harbor.

15 Q. I can phrase it a little more directly. Is
16 it north or south of the Coachman Inn stop?

17 A. It's north two miles, mile and a half, two
18 miles from the Coachman.

19 Q. So when you have the stop, your schedule
20 shows a pickup, say, at 6:25 at the Naval Air Station
21 followed by a 6:40 a.m. pickup at the Coachman and then
22 a third one in Oak Harbor at the Soundview Chevron,
23 what direction does the vehicle travel from Oak Harbor
24 Naval Air Station to the Coachman to Soundview Chevron
25 and then on to Anacortes?

0362

1 A. The specifics of where our vehicles are
2 located is that they are closer to the Charles Porter
3 gate at NAS, and NAS frowns on and at some time doesn't
4 allow civilians to go on, so those drivers that are
5 assigned to the vehicle are cleared, so therefore, from
6 our base, we go to the NAS with no customers on board,
7 do our round at NAS, then go to the Coachman where we
8 can pick up civilians, if you will, or other people,
9 which is a mile and a half south, and then we go back
10 north again to get on Highway 20 to go north to our
11 next pickup point.

12 Q. Thank you. If you need to refer to the
13 schedule, feel free to do so. If a person were picked
14 up at Oak Harbor at the Coachman Inn at 6:40 a.m., we
15 know they would arrive at SeaTac at 10:10 a.m. but
16 you've already testified they would go from Oak Harbor
17 into Mount Vernon where they would transfer to a bus.
18 What time would that bus be leaving Mount Vernon to go
19 down to Seattle Tacoma Airport?

20 A. For somewhat ease of space and working it
21 out, the quadrant above that indicates Bellingham or
22 the I-5 corridor run, so that Mount Vernon departure
23 there on this area, which is --

24 Q. Would it be in the same column?

25 A. It would be in the same column. As you go

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1 down that left side and go down through Bellingham, you
2 will find Mount Vernon. That's the time the bus from
3 Oak Harbor would depart Mount Vernon, or the passengers
4 would depart Mount Vernon on the bus that started in
5 Bellingham.

6 Q. Okay. So if I'm reading it correctly, I
7 would leave Oak Harbor at 6:40 a.m. and travel via
8 Anacortes to Mount Vernon, and it would leave Mount
9 Vernon at 8:20 a.m.?

10 A. That's correct.

11 Q. Does Airporter Shuttle provide any
12 unscheduled service at this point in time? Do you do
13 direct pickups or like a limousine, similar to that
14 kind of service?

15 A. Airporter Shuttle does not. Bellair Charters
16 does.

17 Q. So Airporter Shuttle doesn't do the
18 door-to-door service.

19 A. Correct.

20 Q. That would be true also between Oak Harbor
21 and Mount Vernon. You only provide scheduled stops?

22 A. Yes.

23 Q. So you don't go door-to-door there either.

24 A. That's correct.

25 MS. TENNYSON: I would like to refer at this

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1 point to what's been marked Exhibit 6, and we did have
2 color copies made so we can read all of the text on
3 there. If no one objects, I would like to substitute
4 this for the black-and-white version.

5 JUDGE CAILLE: Any objection?

6 MR. RICE: No objection.

7 JUDGE CAILLE: Then the color version of
8 Exhibit 6 will be substituted for the black-and-white
9 version in order that we can read the text more easily.

10 Q. (By Ms. Tennyson) Mr. Wickkiser, referring
11 to Exhibit 6, can you tell me when this was prepared?

12 A. This was prepared earlier this year, January
13 or February, after we accumulated all of the data for
14 the year 2002.

15 Q. Did you prepare it yourself or someone under
16 your supervision?

17 A. Someone under my supervision.

18 Q. You indicate here that the passengers carried
19 to and from SeaTac Airport, and then you have a number
20 in parenthesis that indicates a number of boardings,
21 and there is two different numbers. Can you tell us
22 what that represents?

23 A. That was directed toward transit. I put this
24 together to have, I guess, a multipurpose use, and it's
25 a tactic, I guess, of transit agencies to talk about

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1 how many times people get on buses, and we were trying
2 to compare ourselves in some cases to, I think, show
3 people carried, and the actual number of people that we
4 carried was 107,778. The difference between 135 and
5 107 is those people that did get on a bus in Mount
6 Vernon from either Anacortes or Oak Harbor areas, and
7 if you are familiar with transit, they talk about one
8 passenger who may make four transfers. Instead of them
9 carrying a thousand people they can say, well, we had
10 four thousand boardings. I was just playing a numbers
11 game for transit sake.

12 Q. If I were to take the shuttle from Mount
13 Vernon and make a reservation for a return trip, when I
14 came back, would that be two boardings, one passenger?
15 Is that how it would fit in?

16 A. If you went to Mount Vernon, you would only
17 be counted as the passenger carried. If you got off of
18 a bus from SeaTac at Mount Vernon and transferred to
19 Anacortes or Oak Harbor, we could count you as two
20 boardings, one customer.

21 Q. What I'm referring to is if I took your
22 service both ways. I'm going down to SeaTac, spending
23 a week somewhere, coming back, so I would catch it from
24 any of your locations. I'll just say Mount Vernon
25 because I'm getting on at Mount Vernon, going south to

0366

1 SeaTac and then getting on at SeaTac when I come back
2 returning to Mount Vernon.

3 A. Yes.

4 Q. Am I one passenger, two boardings in that
5 circumstance?

6 A. Correct.

7 Q. So you are tracking the people, not just
8 individual --

9 A. Right. The boardings is how many times you
10 get on or off our buses. Passengers carried is one
11 person. Ms. Tennyson is one person, not a boarding.

12 Q. Where have you distributed copies of this
13 document? You said there were multiple uses.

14 A. I have a big copy of it in my office
15 laminated just because I like the graphs and I like the
16 numbers. I used it when we had our 2000 statistics
17 with Airporter Operators Association to indicate to
18 politicians, if you will, that we as an industry carry
19 a significant number of people and do provide
20 alternatives to the private occupancy vehicle. We are
21 contributors to taxes, and we have this much.

22 So it's kind of a statistic to provide the
23 politics to show relevancy of our industry, and we are
24 actually doing some things and providing some solutions
25 to transportation problems around the state. That's

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1 primarily the intent of it, and it's just a little bit
2 of -- I like to see the graphs, and we are growing and
3 carrying more people.

4 MS. TENNYSON: Your Honor, at this point, I
5 will withdraw my objection to the admission of this
6 exhibit.

7 JUDGE CAILLE: Is there any other objection
8 to the admission of this exhibit? Then Exhibit No. 6
9 is admitted into the record.

10 MS. TENNYSON: I have no further questions at
11 this time.

12 JUDGE CAILLE: Thank you. Is there any
13 follow-up -- normally at this time, I will give anyone
14 else in the room an opportunity to do any kind of
15 follow-up cross if Ms. Tennyson brought up anything
16 that you would like to further explore with the
17 witness, but it has to be limited to what she has
18 explored with the witness.

19 MR. SOLIN: We have no further questions.

20 MR. RICE: Will I have an opportunity for
21 redirect?

22 JUDGE CAILLE: That's what I'm going to right
23 now, redirect.

24 MR. RICE: Thank you.

25

0368

1 REDIRECT EXAMINATION

2 BY MR. RICE:

3 Q. Based on your experience in the airporter
4 industry, what are the public benefits you see from the
5 regulation of airporter service?

6 A. I think there are several things. One is
7 that, obviously, public convenience and necessity is
8 provided. My understanding of the reason that the
9 industry is regulated is so that the state can have
10 controlled entry to the market so that there are ways
11 to regulate what's the minimum requirements to entry so
12 that somebody with a 1987 van doesn't show up someday
13 and start providing service and hold themselves out to
14 the public as a safe, reliable, dependable provider.

15 I think that's the reason that there is a
16 regulated industry and that it's not just any
17 competitive thing anyone wants to show up and provide
18 service. It allows a single operator to be
19 accountable, because when something happens that the
20 customers are unhappy with, that the public doesn't
21 like, or that they find a problem with a provider,
22 there is a person and a place to go to and find that
23 operator. There is an enforcement agency or arm of the
24 UTC that comes around and checks our vehicles, records,
25 checks things in the procedures and policies and

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1 accidents and all of that, so there is a way to follow
2 through and follow up with one provider and keep that
3 area consistent, and again, accountable.

4 I think it allows and is specifically set up
5 so that it's not a free enterprise, if you will. It's
6 a regulated industry to provide the public with a safe,
7 dependable, convenient service, and that's, in this
8 state, not just anybody can do it, anybody can show up
9 that day and become a provider. I think the record
10 also allows the airporters that are in the Puget Sound
11 area that serve SeaTac, we know who they are. The UTC
12 knows who they are. They can follow up and regulate
13 and enforce. I just think that way, that allows that
14 company to stay in compliance and as well to be able to
15 grow to provide service to expand service and to be
16 free to offer the best service out to the public that's
17 possible to offer in a specific area.

18 Q. The applicant asked you about what you
19 thought of competition. If you had to share the Oak
20 Harbor market with the SeaTac Shuttle, would there be
21 enough riders, in your opinion, to support both
22 carriers?

23 A. In my opinion, there would not be enough to
24 provide the same level of service as provided today if
25 the small market of Oak Harbor was divided between two

0370

1 providers of the service.

2 Q. Would it make any difference if one of you
3 started on the north end of Oak Harbor and the other
4 started on the south end?

5 A. I don't believe so. Oak Harbor is a small
6 enough city. I don't know the dimensions of the city
7 limits, but it's probably not more than two to four
8 miles north and south and possibly the same way east
9 and west in the whole city. Our numbers indicate that
10 the entire north population of Whidbey Island from
11 Deception Pass to the Oak Harbor city limits is only
12 40,000 people.

13 Q. Is Oak Harbor the city effectively one market
14 or more than that for the Airporter Shuttle service?

15 A. How do you mean "one market"?

16 Q. Let me rephrase it. Do your passengers who
17 board at the Coachman Inn and other places in Oak
18 Harbor, do they come from all areas of Oak Harbor or
19 just areas right next to the Coachman Inn?

20 A. I believe they come from surrounding area. I
21 don't know if they are coming from very far south, but
22 they could certainly come from as far north as
23 Deception Pass if we had other locations that were more
24 convenient for them. The Soundview Chevron, which is
25 on the way, there might be somebody that is picked up

0371

1 there, but within the four or five neighborhoods of Oak
2 Harbor that are limited to our customers.

3 Q. You said there are not enough riders to
4 support both carriers in Oak Harbor. Could you
5 describe in some detail why you believe that's the
6 case?

7 A. My background in other Oak Harbor was ten
8 years ago, there was a company that started called
9 Anacortes/Oak Harbor Airporter. They ran and obviously
10 had a choice as to which way they wanted to take their
11 service. They chose to go to the Navy base. They were
12 actually at the Coachman Inn. They went north along
13 the route that we currently provide to the backside of
14 Anacortes, which is down at Skyline Marina to the ferry
15 terminal and then into Anacortes.

16 From there, they took Highway 20 out to the
17 Farmhouse or, what is that called, the Farmhouse Inn
18 and cut south to La Conner and I-5. Their last pickup,
19 as far as I knew, was occasionally at The Farmhouse,
20 but it was the Anacortes area. Their times, I can't
21 exactly remember, but there were some obviously, using
22 the words "fast" and "faster" times from Oak Harbor and
23 Anacortes to SeaTac.

24 At that point when we bought their business,
25 they were running three round trips a day. That

0372

1 included service with Anacortes. We were running six
2 to eight trips on the I-5 corridor. What I know is
3 that we were in a position to compete with them, and a
4 lot of people came to Mount Vernon to use our service
5 because they perceived it to be more convenient because
6 of the frequency we offered compared to the pickups in
7 Oak Harbor. Our business prevailed, and we were able
8 to buy them out, and they were not going to survive the
9 competition that we were offering them.

10 Q. Can you think of any other examples of
11 Airporter services that have emphasized frequency over
12 other attributes or to service customer needs?

13 A. The two biggest operators that are providing
14 scheduled service, there is Gray Line in Seattle, who
15 provides service every 15 minutes between SeaTac and
16 Seattle. Frequency matters to them and their
17 customers. Obviously, they have a large population
18 base between SeaTac and Seattle. Bremerton Kitsap
19 Airporter runs 20 trips a day, hourly service, almost
20 all day long.

21 I know the statistics. I know the managers
22 and owners of both companies, and if I ask them which
23 is more important, the fact that you are going to offer
24 speed -- I understand that customers, the general
25 public, and I've had people tell me, get on my bus from

0373

1 Los Angeles and say, "Gee, when I was in LA, we had
2 service every half an hour up to someplace 100 miles
3 away." Okay, that's great. What will the population
4 support here. So our population in the areas that we
5 serve requires, and from every other operator that I'm
6 aware of, people prefer frequency. We tried to offer
7 that frequency in a stand-alone market like Oak Harbor
8 with a small population compared to the other areas on
9 the corridor. I think we are providing the best
10 possible service that could be offered to that
11 community.

12 Q. If SeaTac Shuttle gets their certificate,
13 what will happen to the frequency of service you offer?

14 MR. LAUVER: Your Honor, if I could object
15 here, the witness has already previously testified to
16 frequency is not an issue in this proceeding. He was
17 specifically asked if frequency was an issue, and he
18 replied no.

19 JUDGE CAILLE: I do recall that. I'm going
20 to let him proceed with this line of redirect though.
21 I have lost the question. Could you please read it
22 back, or do you recall it and can you just pose it
23 again?

24 MR. RICE: Will you read it back, please?

25 (Question on Page 373, Lines 12 through 13,

0374

1 read by the reporter.)

2 THE WITNESS: There are several options that
3 Airporter Shuttle can pursue. We haven't decided at
4 this point which option we would take. Obviously, as I
5 said earlier, if there is a limited population in a
6 remote or outlying area, and we are only carrying
7 one-and-a-half to two-and-a-half passengers per trip,
8 which does not pay for that trip by itself, and we have
9 to split those peak times and peak passenger loads with
10 another provider, any impact on our loads will
11 financially cause us to have to make some decisions
12 about the quality and quantity of service that we
13 offer.

14 Q. The applicant asked you whether you thought
15 that they were able to provide the service that they
16 propose. Do you think that they would be able to
17 provide, that economically they would be able to
18 provide their service if they ran the routes that they
19 propose?

20 A. I do not.

21 Q. Why is that the case?

22 A. I think, again, the population that they are
23 thinking of serving on Whidbey Island north and south
24 will not sustain a stand-alone business, and my
25 perception of what's going to happen is that, again,

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1 they are going to go out there at the peak times for
2 arrivals and departures at SeaTac.

3 If there is a finite number of passengers
4 that travel on an airporter shuttle and we have to
5 split those passengers with them, and I don't believe
6 there is any perception that they are just going to
7 create their own passengers or not take some of the
8 passenger count that we have, I think the result will
9 be less money for each of us and less service,
10 ultimately, for the population, for the consumer.

11 Q. Do you recall the applicant asking you about
12 the application of CWA to provide airporter service?

13 A. Yes, I do.

14 Q. Do you see any differences between CWA's
15 application and the application of SeaTac?

16 A. Yes, I do.

17 Q. What are those differences?

18 A. CWA is offering service from an area just
19 Yakima County with a quarter of a million people. It's
20 service, if you define it, compared to Greyhound,
21 Greyhound service is not just a bus transfer in Seattle
22 to get to SeaTac. There are no buses that provide
23 service from Greyhound station to SeaTac, so I think
24 when you look at Greyhound service to SeaTac, there is
25 no service from Greyhound to SeaTac. Therefore, they

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1 are not a competitor. They are not in the same market.

2 The only way to get from Greyhound Seattle to

3 SeaTac is on another carrier, none of which come into

4 Greyhound other than a taxi. You could call a limo.

5 You could catch a transit bus. You could go up

6 somewhere into town and find Gray Line that runs direct

7 service, "direct" defined as stops along the way. Our

8 service from CWA or Yakima, Ellensburg, and Cle Elum is

9 service that's going to SeaTac with two stops along the

10 way. You can define that as direct, but there are no

11 transfers required.

12 Q. In the CWA case, as you mentioned, Greyhound

13 was the existing provider. Did they offer direct

14 service between Yakima and SeaTac?

15 A. They did not.

16 Q. Would Greyhound allow a passenger in Yakima

17 to buy a ticket from Yakima to SeaTac?

18 A. They would not. They have no offer of

19 service.

20 Q. Can a passenger buy a ticket from Oak Harbor

21 to SeaTac on Airporter Shuttle service?

22 A. Yes, they can.

23 Q. What happened to a Greyhound passenger

24 traveling from Yakima once they arrived in Seattle if

25 they wanted to go further on to SeaTac? What would

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1 they have to do?

2 A. They would have to find their own way to
3 SeaTac. Again, Greyhound does not provide that
4 service, doesn't offer that service. It's not in
5 Greyhound's -- it's not something that Greyhound
6 offers.

7 Q. What do Airporter Shuttle passengers bound
8 from Oak Harbor to SeaTac do when they arrive in Mount
9 Vernon?

10 A. When passengers arrive at the Cotton Tree,
11 the bus to SeaTac that originated in Bellingham is
12 already there or within a minute of being there. We've
13 designed the schedule so that both buses will be there
14 at the same time.

15 Passengers get off of the Oak Harbor
16 originating bus. They can go walk right into the
17 vehicle that's at Mount Vernon to go to see SeaTac.
18 They have an option, if they want to, to go to the
19 bathroom, to go into the motel and get a cup of coffee.
20 Occasionally, they will partake of the continental
21 breakfast that's there, but the bus is there for five
22 minutes. The driver transfers baggage. Both drivers
23 are working together to transfer passengers. The count
24 is already taken. There is no more ticketing or
25 transfer of information that the passengers have to do.

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1 The drivers are both taking care of that. It's an
2 expedited and still a direct service from Oak Harbor to
3 SeaTac.

4 Q. Do you recall SeaTac Shuttle's schedule?

5 A. Yes.

6 Q. Do you think that the times that they have
7 allotted for themselves to travel between Oak Harbor
8 and SeaTac are realistic?

9 A. I do not.

10 Q. Why do you believe that's the case?

11 A. I believe that's the case because I've
12 traveled that route. I ran it ten years ago. I have
13 driven it since, and I'm aware of the population or the
14 problems that are there. I don't think you can run
15 from Oak Harbor to Clinton in 45 minutes -- I believe
16 that was their time -- and make five stops, load
17 passengers, and still make a schedule.

18 I believe you have to be at the ferry at
19 least 10 minutes prior to the ferry departure so you
20 can be in the priority boarding lane. If you are late,
21 all the other cars will be loaded and you'll be at the
22 back of the ferry. Then you won't get off the ferry.
23 I think it's misleading to represent a time from
24 Clinton ferry, boarding Clinton ferry to being at
25 SeaTac in an hour. It's a 20- to 25-minute ferry run.

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1 There may be a time of the day at midnight
2 where you can get off the Clinton ferry at Mukilteo and
3 get to SeaTac in 25 to 35 minutes, but the schedule
4 they are proposing to run, whether they get in the
5 express lanes or going the speed limit, I think it will
6 be impossible to make their proposed or their presented
7 times. It's not reasonable, and I don't believe it's
8 realistic.

9 Q. How much more time do you think they should
10 add to their schedule to meet their projected times?

11 A. I'm going to say 20 to 30 minutes, 20 at a
12 minimum.

13 Q. Do you recall the applicant's questions to
14 you about Harbor Air?

15 A. Yes.

16 Q. And the questions about the passengers who
17 used to ride on Harbor Air?

18 A. Yes, I do.

19 Q. Do you think the Harbor Air served the same
20 market that an airporter would serve?

21 A. Not at all. I compete with Horizon Airlines,
22 as well as previous to 9/11, the United Airlines out of
23 Bellingham. We continue to compete with Horizon
24 Airlines out of Bellingham. They carry two to three
25 times the passengers we carry out of Bellingham. I in

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1 the past offered nonstop service from Bellingham to
2 SeaTac.

3 I could not compete with an airplane in time.
4 Their prices can be twice what our prices are as an
5 airporter, but if passengers have a choice to fly or
6 drive, there is no way that an airporter ground
7 transportation that has scheduled stops is going to be
8 faster or cheaper than an airplane, and I don't believe
9 that unless these gentlemen propose an airline that
10 they are going to assume or they are going to just
11 capture the 60-plus people a day that used to fly
12 Harbor Airline just because I don't believe that's a
13 realistic number that they are going to get those
14 people to ride down the island.

15 My studies and the background on Oak Harbor
16 when I bought the other business was people -- and I've
17 heard this before, the majority of people in Oak
18 Harbor, if they are given a choice to drive, don't
19 drive down the island and catch the ferry. They go
20 around. If you are driving, it's a quicker trip. My
21 option is to go around because that's what we can
22 afford to do and that's how we afford the ten trips a
23 day we do because we also pick up in Anacortes.

24 MR. RICE: That's all I have.

25 JUDGE CAILLE: This might be a little out of

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1 line, but this came up, was brought to mind, and I just
2 want to make sure I understood this correctly. During
3 the cross-examination by the applicant, one of the
4 questions asked you is whether you were protesting
5 service south of Oak Harbor, and I recall that I heard
6 you say no, you are not; is that correct?

7 THE WITNESS: That's correct. If I might use
8 a stipulation word, I think if there were -- my concern
9 is the Oak Harbor market. I don't believe that -- I
10 guess I'm saying though I wouldn't be concerned with
11 the Coupeville and south service that the applicants
12 are proposing to provide. I have no problem with that.

13 JUDGE CAILLE: Any recross?

14 MR. LAUVER: Yes, please.

15 JUDGE CAILLE: Can you give me an estimate of
16 how long this will be?

17 MR. LAUVER: I'm going to hope for five
18 minutes or less. I'm going to do my very best.

19

20

21 FURTHER CROSS-EXAMINATION

22 BY MR. LAUVER:

23 Q. You stated the purpose of the Commission is
24 to provide to the public need and necessity. Do you
25 provide for such public need and necessity to all of

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1 Whidbey Island?

2 A. No.

3 Q. You also stated that another purpose of the
4 Commission was to provide for controlled entry and not
5 prohibited entry. If a current operator is not
6 provided service to the satisfaction of the Commission,
7 should they allow controlled entry into a market?

8 A. That appears to be their privilege.

9 Q. You also stated that it was to keep operators
10 with, quote, 1987 vans from showing up and offering
11 service to the public. Are you suggesting that the
12 applicant in any way, shape, or form has proposed to
13 show up with a 1987 van and offer service to the
14 public?

15 A. No, I did not.

16 Q. When you began your CWA service in Central
17 Washington, did that impact Greyhound service?

18 A. I don't believe it did.

19 Q. Did they curtail any routes?

20 A. Not that I know of.

21 Q. Did they reduce the frequency of their
22 routes?

23 A. Well, they haven't yet, but I'm just starting
24 that service.

25 Q. You stated that the population of Whidbey

0383

1 Island was approximately 40,000?

2 A. I believe what I stated was that the
3 population of North Whidbey, as I understand it, is in
4 that 40,000 range, 20 in Oak Harbor and 20 in those
5 northern outlying areas north of Coupeville. That's my
6 understanding of it. An additional five thousand, I
7 believe, south of Oak Harbor, Coupeville, and all the
8 way to Clinton.

9 Q. So 40,000 in the greater Oak Harbor area and
10 five thousand on the rest of the island; correct?

11 A. That's my understanding of it.

12 Q. And you further stated, I believe -- please
13 correct me here -- that the applicant, in your opinion,
14 could not be successful based on that population base;
15 is that correct?

16 A. That's correct.

17 Q. If that population base was, in fact, nearly
18 double that amount, would you expect that the applicant
19 would have a reasonable expectation of being
20 successful?

21 A. No.

22 Q. So a population of 70,000 is still not
23 sufficient to support the applicant, in your opinion?

24 A. What I know from -- if I may answer something
25 other than yes and no.

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1 Q. I would prefer you just answer my question.

2 JUDGE CAILLE: I would prefer it not be a
3 long narrative, so if you are going to answer in a
4 couple of sentences, that's fine, but I don't want a
5 treatise on this.

6 THE WITNESS: If, in fact, the population is
7 70,000, there would be a better chance for a service to
8 provide and survive. Again, it's predatory, in my
9 opinion, in Oak Harbor.

10 Q. (By Mr. Lauver) You suggested that the
11 applicant would be cutting into your passengers and
12 taking your passengers away from you if they were
13 granted this authority. If, in fact, this is true,
14 would you consider this an indication of the
15 applicant's service being more convenient than your
16 service?

17 A. I think there was two answers to that. One,
18 I've heard you say that you didn't want to take any of
19 my passengers. You just wanted to have an alternative
20 service for people. I think if there were any
21 significant number of my passengers or passengers in
22 Oak Harbor that had ridden with me in the past that
23 chose to ride with your service, that would indicate a
24 choice for them. It would also indicate an opportunity
25 for two companies to not survive. I don't believe

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1 there is enough population in Oak Harbor to warrant two
2 services competing over the small population that's
3 there.

4 Q. Let me restate the question. If, in fact,
5 the applicant was able to take a significant or all of
6 your passengers away as a result of being granted this
7 authority, would you consider that an indication of a
8 measurement of the relative convenience of the two
9 services?

10 A. Yes, I would.

11 Q. Thank you. You stated that in your CWA
12 application, you based your performance figures on a
13 population base of 250,000 and that the Oak Harbor
14 Whidbey Island base is so significantly less than that
15 that there is no comparison of the two. However, in
16 your pro forma that you submitted with your
17 application, you used a population base of 90,000 for
18 your CWA application. That's at Attachment 15 to your
19 application. Do you feel that this actually brings it
20 more in line with the Oak Harbor market now and makes a
21 suitable comparison?

22 A. No, I do not.

23 Q. Even if it were found that the greater Oak
24 Harbor and Whidbey Island were 70,000 as compared to
25 the 90,000 in your CWA application?

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1 A. 90,000 is the population of Yakima. The
2 quarter of a million is the population of Yakima
3 County.

4 Q. We'll move on. Can a passenger on the
5 Wickkiser Airporter buy a ticket from Coupeville to
6 SeaTac.

7 A. No, they cannot.

8 Q. Can they buy a ticket from Greenbank to
9 SeaTac?

10 A. No.

11 Q. Can they buy a ticket from Freeland to
12 SeaTac?

13 A. No.

14 Q. Can they buy a ticket from Langley to SeaTac?

15 A. No, Clinton.

16 Q. Do you compete with Harbor Airlines?

17 A. They are not in business anymore.

18 Q. Do you compete with Harbor Airlines today?

19 A. Harbor Airlines doesn't exist --

20 Q. Can I infer from that that your answer is no?

21 A. I cannot compete with them. They don't
22 exist.

23 Q. How do those passengers travel now?

24 A. I think they drive.

25 Q. Why would you expect that they would drive

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1 rather than taking your airporter?

2 A. I would assume there are some of those Harbor
3 Airline passengers that would ride with me.

4 Q. You assume, but you don't know.

5 A. I haven't surveyed them. I haven't asked
6 everyone if they were a Harbor Airlines previously.

7 Q. You additionally stated that the applicant
8 allows 45 minutes on their route structure to get from
9 Oak Harbor to the Clinton ferry, did you not?

10 A. I did.

11 Q. In fact, if you will refer to Exhibit 20,
12 would you tell me what that time actually is?

13 A. I don't have it in front of me.

14 Q. Would you agree it's actually an hour and 15
15 minutes?

16 A. If that's what it says there.

17 Q. So given an hour and 15 minutes rather than
18 45 minutes, it's quite reasonable to expect that the
19 applicant's vans would, in fact, connect with the ferry
20 in a timely fashion.

21 A. If that's the case, yes.

22 Q. You also stated that the applicant would not
23 be able to make its scheduled trip time to see SeaTac
24 in two hours and 15 minutes, I believe.

25 A. Yes, I did.

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1 Q. However, in your letter, which is entered as
2 Exhibit 23, you stated, and I quote: "He may be able
3 to make the trip in two hours and 15 minutes if the
4 ferries are on time and the tides cooperate," unquote.
5 The clear inference there is that the only impediment
6 to making that trip time of two hours and 15 minutes
7 are the ferries. How do you reconcile this with your
8 statement?

9 A. I don't think you can make an hour -- I can
10 reconcile because I don't think you can make that time
11 from the Clinton ferry to SeaTac in the time that you
12 state.

13 Q. So once again, what you've put in the letter
14 is contrary to your testimony.

15 A. Maybe.

16 MR. LAUVER: That's all I have.

17 JUDGE CAILLE: Anything further?

18 MR. RICE: No follow-up.

19 JUDGE CAILLE: At this point, would you like
20 to offer any of the exhibits that we've identified for
21 you? They would be Exhibits 21, 22, 23, 24, and 25.

22 MR. LAUVER: Yes, Your Honor we would.

23 JUDGE CAILLE: All of them?

24 MR. LAUVER: Yes.

25 JUDGE CAILLE: Is there any objection to the

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1 admission of Exhibits 21, 22, 23, 24, 25?

2 MR. RICE: I would like to have those in
3 front of me before I say that's okay.

4 JUDGE CAILLE: Why don't we take a
5 five-minute break so we can get the other witness on
6 the stand, and you can look at those, and I will ask
7 you after the break. The witness is excused.

8 (Recess.)

9 JUDGE CAILLE: Why don't you have a seat
10 right now. Did you have any objection to those
11 exhibits, Mr. Rice? Those are Exhibit 21, which is the
12 Bellair Airporter Shuttle.

13 MR. RICE: No objection to that.

14 JUDGE CAILLE: The final order?

15 MR. RICE: No objection.

16 JUDGE CAILLE: The letter for the Airporter
17 Shuttle?

18 MR. RICE: No objection.

19 JUDGE CAILLE: Accident count?

20 MR. RICE: No objection.

21 JUDGE CAILLE: Traffic count?

22 MR. RICE: No objection.

23 JUDGE CAILLE: Exhibits 21 through 25 are
24 admitted into the record.

25 MR. RICE: This is Richard Johnson.

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1 JUDGE CAILLE: Mr. Johnson, will you please
2 stand and I will swear you in.

3 (Witness sworn.)

4 JUDGE CAILLE: Go ahead, Mr. Rice.

5 MR. RICE: Thank you, Your Honor.

6

7

8 DIRECT EXAMINATION

9 BY MR. RICE:

10 Q. Mr. Johnson, please tell me your educational
11 background.

12 A. I have a couple of degrees. The first is an
13 honors degree in business administration with a focus
14 on marketing, and the second is a master's degree in
15 business with a focus on finance.

16 Q. Where do you work?

17 A. Wickkiser International.

18 Q. Does Wickkiser International operate
19 Airporter Shuttle?

20 A. It does.

21 Q. What is your role there?

22 A. I'm the general manager.

23 Q. What are your duties as general manager?

24 A. They vary. I think in a sentence, I oversee
25 the operations of the business. That includes

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1 supervision of marketing operations, personnel, and so
2 forth, finance.

3 Q. Would you say that you are familiar with all
4 aspects of Airporter Shuttle's operations?

5 A. Yes, I am.

6 Q. Are you familiar with the market demand for
7 airporter service on Whidbey Island and in the other
8 areas of Airporter Shuttle service?

9 A. I am. It's very important, I think, to
10 thoroughly understand what the market is telling us.
11 The Airporter Shuttle market, the people who ride the
12 Airporter Shuttle, I think, are unique in the regulated
13 industries.

14 Our customers have all kinds of options to
15 get to the airport. There is taxis. There is
16 limousines. There is airplanes. That's unlike, say,
17 utility or garbage haulers where there are many fewer
18 alternatives. People are forced to purchase from those
19 entities. Our people, again, have all kinds of
20 options, and I think the biggest one is the private
21 car. So I understand the market thoroughly, and it's a
22 very unique market, as I said, in the regulated
23 industry world.

24 Q. Can you provide a brief overview of the
25 purpose of your testimony, what you hope to show?

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1 A. I would like to show three things. The first
2 is that the people of Oak Harbor are well served. The
3 second, I would like to talk about the demographics in
4 support of that first argument, and the third, I'll
5 show the financial implications of the business as it
6 stands right now and the business as it would exist if
7 two carriers were to operate competing for the same
8 market.

9 Q. Do you think the way Airporter Shuttle
10 currently offers service is the only economic way to
11 serve Oak Harbor, or do you think there is a multitude
12 of other ways it could be done?

13 A. I think it is the only way to service Oak
14 Harbor with the kind of frequency they are enjoying
15 right now. It's such a small population to have the
16 kind of frequency they do that the frequency that a
17 large city might have, I think, is just extraordinary.

18 Q. How is it that Airporter Shuttle is able to
19 provide that frequency?

20 A. We not only pick up passengers in Oak Harbor,
21 we pick up passengers along State Route 20 in
22 Anacortes, and you've got more passengers then to more
23 revenue, if you will, to roll over those costs, those
24 frequency costs.

25 Q. If you didn't have those larger population

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1 centers that you connect with your Oak Harbor run,
2 would it be economical to have the service?

3 A. No, not at the frequency we are to provide
4 Oak Harbor with right now. It would not be
5 economically viable. There are just too many costs to
6 running ten trips a day for such a small population.
7 What we are doing is, I think, providing excellent
8 service not only to the people of Oak Harbor but to the
9 people of Skagit and Island County.

10 Q. Do you think it's economically possible for
11 both Airporter Shuttle and SeaTac Shuttle to
12 simultaneously serve Oak Harbor?

13 A. No, I don't. There is not enough revenue
14 because of the small populations for us both to run a
15 good service for the people of Oak Harbor. It's a
16 matter of revenues against costs.

17 MR. RICE: Your Honor, I would like to
18 introduce an exhibit at this time.

19 JUDGE CAILLE: Let's have that marked as
20 Exhibit No. 7.

21 (Marked Exhibit No. 7.)

22 Q. Richard, would you please identify this
23 document?

24 A. This is a service impact study that I
25 prepared for the Commission.

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1 Q. Did you prepare this study based on
2 information that you gathered in your job?

3 A. I did. All of what I'm going to talk about
4 in this afternoon's testimony are hard, solid facts. I
5 think there has been a lot said that are assumptions,
6 hopes, speculation, and what I'm going to talk about
7 now are the hard, solid facts, both the demographic
8 facts and the financial facts that the Airporter
9 Shuttle, the census bureau, a number of other folks
10 have provided us or we've collected.

11 Q. If you would, please, turn to Page 2 of this
12 document and explain what appears here.

13 A. This first page, I'm just trying to be
14 helpful to the Commission to outline exactly what the
15 Airporter Shuttle is providing the market with right
16 now and what the applicant is proposing to do.

17 Q. Does this show that you are comparing
18 Airporter Shuttle and SeaTac Shuttle?

19 A. It does. At the time I prepared it, we were
20 operating 19 one-way trips per day. We still are. The
21 first schedule that the applicant put into its
22 application, I didn't show any return trip from SeaTac.
23 I gather now from Exhibit 20 that that has changed, so
24 we can say four trips per day could be four round trips
25 per day.

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1 Q. If you would turn to the next page, could you
2 explain what these numbers are?

3 A. Certainly. They are hard, solid facts that
4 show the number of passengers we carried in total from
5 Oak Harbor, and this does include Naval Air Station
6 Whidbey both from Oak Harbor to SeaTac and then back
7 again from SeaTac to Oak Harbor.

8 Q. If you could explain what you mean in the
9 last line of this on this page.

10 A. It's mathematics. I added 3849 plus 4813. I
11 divided it by the 6878 trips per year. That number
12 came from 19 one-ways times 362 days a year, and that
13 works out to 1.2. So what we are saying is the
14 Airporter Shuttle on all of its sixty-nine hundred
15 trips carries roughly one or so people per trip.

16 Q. So each leg.

17 A. That's correct. Just other one person per
18 leg.

19 Q. Thank you. Please turn to the next page and
20 explain the significance of these figures?

21 A. I said earlier on in the testimony that Oak
22 Harbor is able to receive and enjoy the frequency of
23 trips that it has because of the additional passengers
24 we can pick up in Anacortes, and so what I'm
25 illustrating to the Commission here are the hard, solid

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1 facts of the number of people we do pick up in
2 Anacortes. It's an identical analysis to what was on
3 Page 3. I totaled the number of passengers that we
4 took from Anacortes and to Anacortes, divided it over
5 the number of trips, and I came up with an average of
6 just over two people per trip.

7 Q. Thank you. Please turn to Page 5. The title
8 of this is "variable operating costs." Can you tell me
9 what you mean by that?

10 A. In any business, there are variable costs and
11 fixed costs. The variable costs are those costs that
12 vary with the operation. In a restaurant, for example,
13 your variable costs are meals, if you don't incur those
14 costs until you serve or prepare the meals.

15 In our business, the variable costs are
16 driver's wages, fuel, repair and maintenance, and in
17 the case here, a ferry fee both for the driver and for
18 the passengers.

19 Q. So each time a bus leaves from Oak Harbor to
20 SeaTac, it will incur these costs, and I assume ferry
21 fees is only if you go south; correct?

22 A. Yes, that's right. For every hour the driver
23 is on the clock, it will cost the company just over
24 \$12. For every mile that the vehicle runs, you are
25 going to be paying about a dime for fuel, and for every

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1 mile the vehicle runs, you are going to be paying a
2 quarter or so for repair and maintenance costs. And I
3 need to add here that these are solid facts based over
4 millions of miles a data.

5 Q. So this is data that you've gathered at
6 Airporter Shuttle; correct? This is through the
7 experiences of Airporter Shuttle.

8 A. That's correct.

9 Q. If you could turn to the next page and
10 explain what you mean by "fixed operating costs," I
11 would appreciate it.

12 A. Certainly. Again, there are two types of
13 cost in business. One are the variable, and they vary
14 with the service you provide. The other are the fixed
15 costs that you incur, whether you are providing your
16 service or not.

17 What I've done here is I've tried to at least
18 capture that the big fixed costs. Insurance is a very
19 difficult one right now. We provide for five million
20 dollars of liability insurance. I'm not sure what the
21 applicant is providing, but I imagine it's a million.
22 It's very expensive, but it's certainly necessary in
23 today's environment, and that's going to run you
24 between three and five thousand dollars a year. It
25 varies on the vehicle type and the amount of liability

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1 or comprehensive insurance you take.

2 Rent, I think Mr. Solin owns the building
3 that he's in, but there certainly is an opportunity
4 cost because he's not renting it to somebody else.

5 I've tried to illustrate there what the cost of a small
6 office might be. Telephone, compared to the kind of
7 bill we are getting for carrying one hundred thousand
8 passengers, this is an extremely low number. I've
9 tried to be conservative here.

10 Advertising, we all have a responsibility
11 under the Commission rules to make sure the public is
12 very aware of what our service is going to be, and
13 again, I've suggested there that we need to be spending
14 at least a thousand dollars a month on advertising, and
15 frankly, with our experience over in CWA, that's not a
16 whole pile.

17 Q. If I may clarify something, are these your
18 projections of their costs based on what -- whose costs
19 are you trying to project here? Are you talking about
20 costs of Airporter Shuttle?

21 A. These are not the costs of Airporter Shuttle.
22 We have substantially more costs than this; many, many
23 more times.

24 JUDGE CAILLE: That's the question I was
25 going to ask. So these are your projections of what

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1 you think it will cost for SeaTac to operate?

2 THE WITNESS: In a fixed cost scenario, yes,
3 and they are based on what I know are costs are going
4 to be operating a business that is 10 to 50 times as
5 big as what they are going to be doing. I know this
6 because of what we are doing over at CWA.

7 JUDGE CAILLE: Did you have an objection?

8 MR. LAUVER: Yes, I did. Under RCW
9 81.68.040, "The Commission shall have the power after
10 hearing when the applicant requests a certificate to
11 operate in a territory already served by certificate
12 holder under this chapter only when the existing auto
13 transportation company or companies serving such
14 territories will not provide same to the satisfaction
15 of the Commission, and in all other cases or with or
16 without hearing to issue said certificate as prayed
17 for.

18 There is no provision for a financial
19 analysis of either the existing carrier or the
20 applicant other than a prima facia showing of fitness,
21 willingness, ableness, and a financial capability to
22 provide the service in a reasonable fashion for a
23 reasonable period during start-up. I do not understand
24 the relevancy of this question or this entire line of
25 questioning, frankly.

0400

1 MR. RICE: Your Honor?

2 JUDGE CAILLE: Yes.

3 MR. RICE: One of the things we are going to
4 show is that Airporter Shuttle service is satisfactory
5 because they are providing their service in the only
6 economically possible manner, and in order to do that,
7 we need to understand why they are not doing it a
8 different way, and if we don't have the opportunity to
9 explain that, then we aren't going to be able to fully
10 explain why we have satisfactory service.

11 JUDGE CAILLE: I just see on Page 11 the
12 implications of two carriers. I am somewhat persuaded
13 by what Mr. Lauver is saying about what's the relevancy
14 of the witness's projection of what it would cost for
15 this company to operate. I don't feel that that's
16 valuable.

17 THE WITNESS: My projections are only for the
18 fixed costs. The variable costs are the hard fact of
19 what we incur right now?

20 MR. LAUVER: Make I make a comment?

21 JUDGE CAILLE: Go ahead.

22 MR. LAUVER: The Commission has no duty or
23 obligation to protect an existing carrier for
24 competition merely to determine whether or not
25 satisfactory service is being provided.

0401

1 JUDGE CAILLE: You are absolutely correct.
2 That's a very good argument to make at the end of the
3 day. I'm just trying to focus on this exhibit right
4 now and decide whether it is relevant.

5 JUDGE CAILLE: How much more questioning do
6 you have on this exhibit, Mr. Rice?

7 MR. RICE: We can move more quickly through
8 it if you want. The most important thing -- I think we
9 can move more quickly through it, if you would prefer
10 that, because the whole thing will be going into
11 evidence.

12 JUDGE CAILLE: Yes. I will admit it, and if
13 it should come in, I will admit it and give it the
14 appropriate weight. Let's go ahead.

15 MR. RICE: Thank you.

16 Q. (By Mr. Rice) On Page 7, if you could
17 quickly explain what costs you've identified here.

18 A. These are the variable costs multiplied by
19 the number of miles that the vehicle would travel, and
20 they are illustrative of the cost the company would
21 incur to SeaTac Airport.

22 JUDGE CAILLE: I must interrupt you again,
23 Mr. Johnson. You said that the variable costs that you
24 have assumed for the applicant, or is it the fixed
25 costs?

0402

1 THE WITNESS: I assumed the fixed costs for
2 the applicant. The variable costs are based on the
3 data of Airporter Shuttle, our experience.

4 JUDGE CAILLE: You may proceed.

5 MR. RICE: Thank you.

6 Q. (By Mr. Rice) So these are the costs to
7 travel by State Route 525?

8 A. That's correct.

9 Q. And that's the northern route?

10 A. That is going south, so every trip to SeaTac,
11 you would have to spend between \$76 and \$80 dollars.

12 Q. Could you move to the next slide?

13 A. Those costs are what you would have to spend
14 if you went directly via I-5.

15 Q. And those costs are approximately the same?

16 A. Yes, they are. One has ferry costs. The
17 other one has a little more fuel and maintenance cost.

18 Q. I'm going to skip the pro forma that you did
19 on the next two pages, and let's go to Page 11, and
20 let's talk about what the numbers show on this page.

21 A. Certainly. On the revenue side, the numbers
22 show that there would be just over \$100,000 if each
23 carrier carried 4,000 people. On the cost side, there
24 would be substantially more than that, so what I tried
25 to illustrate there is just how many trips a carrier

0403

1 could meet if it just generated \$100,000 in revenue,
2 and that's only for one-way trips. So what I'm
3 illustrating is currently the market is enjoying ten
4 trips. If there were two carriers splitting the
5 existing passengers, it would move down to four trips.

6 Q. Because that's all the economics will
7 support?

8 A. That's correct.

9 Q. And on Page 12, please explain what you mean
10 by this.

11 A. I thought that the Commission would have a
12 question of how was the Airporter Shuttle doing it
13 right now. How are they offering ten trips with such
14 slow passenger out of Oak Harbor, and we are doing it
15 because we can combine those costs and generate some
16 additional revenue by going through Anacortes and
17 picking up those people, so for the same costs, we've
18 got more revenue, and both cities win.

19 Q. On Page 13, you have a summary.

20 A. Yeah. I'm trying to summarize, again, the
21 facts that with the population in Oak Harbor as it
22 stands, there is simply not enough ridership to support
23 the costs two carriers would incur.

24 What this would mean is that the community
25 would end of up having less service, and it probably

0404

1 would mean that each of us would cherry-pick the peaks,
2 cherry-pick both in a sense of time at the airport and
3 season. Also, any passengers that enjoy the intercity
4 service right now getting to the Greyhound or Amtrak in
5 Mount Vernon probably wouldn't have any service.

6 Q. You have a chart at the end. Could you
7 explain the relevance of that?

8 A. This is to illustrate just the cyclicity of
9 the travel in Island and Skagit County. You can see
10 that the travel just jumps in the summertime, and it's
11 roughly twice, if not more, what the winter months are.

12 Q. Why is that important?

13 A. The Airporter Shuttle generates more revenue
14 in the peaks to cover the costs they incur throughout
15 the year. There is a huge cost to providing service
16 throughout the year at an equal level when the
17 passengers traveling throughout the year vary so
18 significantly.

19 Q. Does Airporter Shuttle's decision not to
20 provide service going south on Whidbey Island mean that
21 it doesn't provide service to the satisfaction of the
22 Commission?

23 A. I don't think so. As I've said earlier, this
24 small community of 40,000 people are enjoying ten trips
25 a day. That's the kind of service much larger

0405

1 populations get. I think the market is being very well
2 served.

3 Q. If it's impossible to make money running
4 south, why not allow SeaTac to get its authority and
5 then fail? What's the impact on the public interest
6 going to be?

7 A. I think it would be very disruptive to the
8 market. We will have to react in one way or another
9 because we won't have the revenue to support our costs
10 if the market will have a carrier and then the carrier
11 will go away. It's going to be very disruptive.
12 Certainly, the Commission won't be seeing it as moving
13 the service and the market ahead in Oak Harbor. It
14 will be a step backwards. I'm convinced of that.

15 Q. You mentioned the number of round trips. Why
16 do you provide so many round trips?

17 A. Frequency is what the customer wants. I
18 think if the Commission looks, again, at two of the
19 most profitable carriers that it regulates, the Gray
20 Line of Seattle and the Bremerton Kitsap Airporter,
21 those people are providing frequency better than any of
22 us, and the market is telling us they support them in
23 droves because of that.

24 We talk to hundreds of people a year. I
25 think these folks have talked to substantially less,

0406

1 maybe several dozen. We talked to hundreds directly.
2 We are very involved in chambers of customers, tourism.
3 We are close to the market, and the market is telling
4 us time and again that frequency is what matters.

5 On my very specific experience, I'll get on
6 the phone a couple of times a week just so I can get
7 close to the customers and listen to what they are
8 saying. I think the Airporter Shuttle clearly knows
9 that what we are doing by providing frequency is what
10 the market is asking for.

11 Q. Why do you think the market wants that? What
12 benefit do people receive by having more frequency
13 service?

14 A. I think they've got more choice of airlines
15 to choose, and when we get into SeaTac and we are
16 finished with our trip, what matters is we get out of
17 the airport quickly. We want to get on the bus and get
18 home. Four trips a day, as the applicant is proposing,
19 can't do that. They will be waiting two or three
20 hours. Our folks wait two hours and then there is a
21 bus, tops. It's very important that they get out of
22 that airport quickly. We are providing what the market
23 is asking.

24 Q. Do you recall the testimony of Mr. Solin last
25 week that he believes there is an unserved market of

0407

1 potential airporter users in Oak Harbor that seek his
2 service?

3 A. I do.

4 Q. Do you think that he's correct in his belief?

5 A. No, I don't. I think a lot of testimony was
6 based on gathering the business traveller, and the
7 business traveller is focused on time. If a ground
8 transportation provider cannot provide a service that's
9 at least equivalent to what they get in their car, they
10 are not going to use you. SeaTac Airport's numbers
11 alone, out of all the people that travel through SeaTac
12 in a year, three percent of them, just three percent of
13 them use ground transportation. It's a tiny number.

14 Q. Excuse me. When you say ground
15 transportation you mean --

16 A. In airporter service. Further, the business
17 traveller, again, is focused on quickness. The service
18 has to be at least as good as their car. The applicant
19 talked about the air service. The air service was half
20 an hour ride to SeaTac. It was more frequent than what
21 they were proposing. It was five times a day. It was
22 \$82, \$84.

23 Clearly there, the business traveler, the
24 person who chose the airplane was getting a service
25 that was better than their private car could give them.

0408

1 The business traveller, frankly, is not a market that
2 any of the airporters in Washington State are
3 successfully serving. We just can't.

4 Q. So did you hear his witness last week testify
5 about working for Horizon Air and the number of people
6 that travel on Horizon Air?

7 A. It was Harbor Air, and I do recall that. I
8 have some questions about those statistics at this
9 time. Harbor Air also serviced East Sound and Friday
10 Harbor, and it wasn't clear to me whether those
11 statistics included passengers or total passengers out
12 of Oak Harbor, and again, the air service got the
13 people to SeaTac in half an hour. That company has
14 folded because it didn't have enough passengers. What
15 Oak Harbor has right now is an air service in Kenmore
16 Air.

17 Q. Based on what you just testified, do you
18 think that the market served by Horizon Air and the
19 market -- Harbor Air, the market served by Harbor Air
20 and the market served by Airporter Shuttle are the same
21 or completely different?

22 A. Completely different. The demographics of
23 the passenger who takes air travel is different than
24 the people who take Airporter. It's like the market
25 that's going for a Hyundai car versus the market going

0409

1 for a Cadillac. They are two separate groups going
2 after two separate products. It's not reasonable to
3 expect, and I think any airporter company here in
4 Washington State would support this. It's not
5 reasonable to expect the same passenger, the same
6 demographic who chooses an airplane or a service that
7 takes half an hour is going to get on a bus.

8 Q. Did you hear Mr. Lauver say that they had not
9 operated an airporter service before and had never
10 worked for an airporter company?

11 A. I did hear that, yes.

12 Q. Do you believe people like that are qualified
13 to gauge the public demand for airporter service?

14 A. No, I don't think they are, and I think
15 they've made some fatal flaws, first of all, in the
16 demographics. One percent of all the people that
17 travel through SeaTac take ground transportation, and
18 that's a verifiable statistic. I think the Washington
19 Utilities and Transportation Commission could support
20 that.

21 MR. SOLIN: Could you clarify? I think you
22 said three percent earlier.

23 THE WITNESS: I'm sorry. It is three
24 percent. The other demographics, there are 70,000
25 people to clarify in Island County. Island County

0410

1 consists of Camano Island, Whidbey Island. It also
2 consists of people on the Naval Air Station.

3 What you do is you take 70,000. You subtract
4 15,000 or so for Camano. You take away ten or so for
5 the Naval Air Station. You take away 40 for Oak
6 Harbor, and you are left with five to seven thousand
7 people on the south side of the island. That's not
8 enough population to run a service four times a day to
9 SeaTac. You've got way too many variable costs against
10 the revenue that you can generate.

11 Further demographic, one of you had an
12 education in statistics. Statistics will tell you that
13 you need to sample over a thousand people and then hope
14 that fits into the normal distribution for you to be
15 accurate nine times out of 20 on your survey. We
16 haven't heard nor have we seen any facts to tell you
17 how many people you've surveyed to talk about your
18 service and that quickness is better than frequency.

19 MR. LAUVER: I get the feeling that we are
20 being lectured here rather than responding to a
21 question.

22 THE WITNESS: These are concerns I do have.

23 MR. RICE: We can move on to the next
24 question.

25 JUDGE CAILLE: All right.

0411

1 Q. (By Mr. Rice) Did you hear the applicant's
2 public witnesses testify they anticipated Airporter
3 Shuttle to provide the same level, the same frequency
4 of service even if SeaTac's application is granted?

5 A. Yes, I did.

6 Q. Will there ever be a time when Airporter
7 Shuttle does provide the same service with the same
8 frequency as it does now at the same time as SeaTac is
9 providing its service?

10 A. No. There are, again, too many costs and not
11 enough revenue-generating passengers.

12 Q. So the applicants who testified with that
13 explanation will not have their expectations met?

14 A. I would expect that to be true. We will have
15 to react.

16 Q. So do you think that they would ultimately
17 have the same, more, or fewer choices than they have
18 now?

19 A. They will have fewer choices at year's end.

20 MR. RICE: I would like to introduce another
21 exhibit.

22 JUDGE CAILLE: This would be No. 8.

23 Q. (By Mr. Rice) Richard, can you please
24 identify this document?

25 A. This is a document that illustrates our

0412

1 Airporter Shuttle's travel agency sales. Oak Harbor
2 Travel, as an example at the top of the list, they sold
3 \$15,158 worth of Airporter Shuttle tickets.

4 Q. So Oak Harbor Travel Service is your top
5 travel service in terms of sales?

6 A. Yes, they are, and I would assume they are
7 quite satisfied with our service being that they are at
8 the top.

9 Q. Did any of the applicant's witnesses work for
10 Oak Harbor Travel?

11 A. Yes.

12 Q. Who was that; do you recall?

13 A. Sue Sebens.

14 Q. Were you present in the hearing room when Sue
15 Sebens testified?

16 A. I was.

17 Q. Did you hear her testimony about the number
18 of people she believed who originated in Oak Harbor but
19 actually boarded Airporter Shuttle in Mount Vernon?

20 A. I did.

21 Q. What do you think about her testimony on that
22 matter?

23 A. Sue didn't understand the facts. She was
24 inaccurate. In fact, it was completely reverse of what
25 she suggested to the Commission at that time.

0413

1 Q. Does this exhibit show that?

2 A. It does show that. What it shows is that out
3 of all of the tickets Oak Harbor Travel Service sold
4 for us, 78 percent of those tickets started their trip
5 on the Airporter Shuttle in Oak Harbor.

6 MR. SOLIN: Question. Where does it state
7 that other than what's written in there? He shows the
8 Oak Harbor tickets sold, but there is no statistics to
9 support that.

10 JUDGE CAILLE: You can ask him that on cross.

11 THE WITNESS: What this exhibit also
12 illustrates is that as a company, 86 percent of all the
13 tickets we sell to Oak Harbor residents start their
14 trip in Oak Harbor, and what this means to me is that
15 the Oak Harbor population is satisfied with our service
16 and is embracing us.

17 Q. (By Mr. Rice) Were you present in the
18 hearing room when I was talking with the public
19 witnesses of the applicant regarding various flights
20 and comparing which service was faster, Airporter
21 Shuttle or SeaTac Shuttle?

22 A. I was.

23 Q. There has been some debate about which is the
24 appropriate way to measure what is faster. Is it
25 appropriate to examine whether a service is faster

0414

1 based on the time that a rider spends traveling on an
2 airporter bus or based on the entire time between the
3 departure from Oak Harbor and the departure time of the
4 flights?

5 A. What the customers are telling us is that
6 it's more important to base it on the entire length of
7 time.

8 Q. Why is that?

9 A. Their ultimate destination is the flight.
10 It's not the bus ride. Northbound, again, when people
11 get to the airport, their focus is to get out of that
12 airport quickly. It's not to wait three to four hours
13 for the next bus. In fact, they won't. They will rent
14 a car.

15 Our schedule offers service every couple of
16 hours. Chances are pretty good they won't be waiting a
17 couple hours, but probably an hour. Let's take that as
18 an average. They will get out of the airport quickly
19 and get home. That's what the focus is for people who
20 arrive at SeaTac. It's service. It's frequency. It's
21 getting out.

22 Q. I'm going to switch gears a bit. Do airplane
23 arrivals at SeaTac occur on a consistent basis
24 throughout the day, or are there peak arrival times?

25 A. There are very definite peak arrival times.

0415

1 Q. Are you familiar with those peaks?

2 A. I am. There are peaks of departures in the
3 morning, and there is really a shared peak around the
4 noon hour where flights depart and come in kind of
5 equal, and then later in the afternoon, there is a peak
6 of flights that arrive into SeaTac.

7 Q. You have seen SeaTac Shuttle's proposed
8 schedule; correct?

9 A. I've seen them both, yes.

10 Q. Does SeaTac's proposed shuttle when looking
11 at arrival and departure times at SeaTac, does that
12 correspond with those peaks?

13 A. It does. It hits the peaks.

14 Q. Does Airporter Shuttle have departure times
15 that correspond with those peaks as will?

16 A. Well, certainly, we do, but we also have
17 service that hits the lulls.

18 Q. Does SeaTac Shuttle's schedule correspond
19 with any low-arrival periods or nonpeak periods?

20 A. No, I don't think it does.

21 Q. Does Airporter Shuttle's schedule correspond
22 with any low-arrival or nonpeak periods?

23 A. It does. We are kind of homogeneous in what
24 we do. We depart SeaTac every two hours, regardless of
25 the season or the time of day, and that's important to

0416

1 customers, as I've illustrated.

2 Q. What does it indicate when you see that
3 SeaTac Shuttle is taking the peak times and not
4 covering the nonpeaks?

5 A. I think it's predatory, like what Larry said
6 in his testimony.

7 Q. What do you mean by predatory?

8 A. They will cherry-pick the high-revenue trips
9 and not take care of the market at the other times, and
10 that's not good service. I think if we are going to be
11 given the authority to provide service, we need to do
12 it well, and trips every two hours are as well as we
13 can do it.

14 Q. So if both carriers were both providing
15 service, and assume hypothetically Airporter Shuttle
16 did remain in Oak Harbor, what impact would it have on
17 their schedule? Would they have to drop those --

18 A. I would imagine so knowing the numbers. The
19 business needs to generate a profit if it's to expect
20 to reinvest in new equipment. This stuff wears out
21 pretty quickly when you are doing hundreds of miles a
22 day, so we need to generate a profit, and you can't
23 generate a profit if you don't have anybody on board
24 your vehicle, or at least a sufficient number of people
25 on your vehicle, which in slow times of the year and

0417

1 slow times of the day, you don't have a lot.

2 So yeah, what we would probably have to do is
3 also cherry pick those peak times and ignore the lulls.
4 It would be unfortunate, and at the end of the day if
5 we were to continue to provide service, we would have
6 to do that.

7 MR. RICE: Thank you. I would like to
8 distribute two final exhibits. I'm sorry, I have three
9 final exhibits. I will hand them all out now just to
10 save walk-around time.

11 Q. If you could please turn to the exhibit that
12 says, "transportation from Oak Harbor to SeaTac."

13 JUDGE CAILLE: Let's mark that one for
14 identification as Exhibit No. 9.

15 (Marked Exhibit No. 9.)

16 Q. Can you please tell me what this document is?

17 A. This is something we prepared to show the
18 Commission just the kind of service the people on
19 Whidbey Island are receiving, and as you can see, there
20 are many different ways to get to the airport.

21 In addition to these, there is always the
22 private car, which, believe it or not, is the mode of
23 choice, and for the Commission to consider now adding
24 an additional carrier in an already fragmented market,
25 in a small market, would be unwise to do. There just

0418

1 isn't the population, and therefore, the revenue to
2 support the costs that one would incur to provide the
3 kind of service that we are doing, ten trips a day.

4 Q. I'm going to ask you a few minor details
5 about Airporter Shuttle's operations now. First of
6 all, could you please identify the document with the
7 photograph in it?

8 JUDGE CAILLE: Let's mark that as Exhibit
9 No. 10.

10 (Marked Exhibit No. 10.)

11 THE WITNESS: These are examples of the
12 advertising we've placed in the Oak Harbor market. We
13 spend tens of thousands. In fact, it's a budget of
14 over \$80,000 to communicate to the market annually
15 about our service. We will tell as many people as we
16 can as often as we can about the service, and these are
17 some illustrations to support that.

18 JUDGE CAILLE: Excuse me; did you say \$80,000
19 a year?

20 THE WITNESS: I did, yes. We think it's
21 important to get the name out there and the service out
22 there.

23 Q. (By Mr. Rice) There is a list on Page 5.
24 What is that list?

25 A. This is a summary of the publications that we

0419

1 put our advertisements in. These publications
2 primarily go to the folks of Whidbey Island, Anacortes
3 area.

4 Q. Could you please turn to the last exhibit
5 I've given you?

6 JUDGE CAILLE: And we will mark that as
7 Exhibit No. 11.

8 (Marked Exhibit No. 11.)

9 Q. Could you identify this document, please?

10 A. We take safety extremely serious. If we
11 can't provide a safe service, neither Larry nor I will
12 do it. There is no point. And part of that safety is
13 hiring drivers properly, and once they are hired,
14 training them properly. More than many other
15 transportation providers that we know closely, we pay
16 attention to this, and this exhibit illustrates that,
17 the various steps that we go through to make sure the
18 driver has been hired correctly.

19 He's been checked out correctly in terms of
20 prior employers, drug testing, driving testing. Once
21 we've gone through this, we then go into the training
22 phase, and we will spend as much time as is necessary
23 to make sure the driver is 100 percent comfortable when
24 they make their initial solo run, and that will consist
25 of understanding our procedures, understanding safety,

0420

1 understanding customer service, understanding how to
2 drive safely, and then the usual admin functions that a
3 driver is also responsible for.

4 We spend a lot of time and invest a lot of
5 money to make sure these drivers are well trained and
6 safe, and it's worth it. As Larry said, last year, we
7 didn't have any accidents. It's an outstanding record
8 in transportation. The last page of this exhibit
9 indicates what we do with the drivers after they've
10 been hired. It's an ongoing process at our company.
11 We train folks regularly on wheelchair training,
12 operator safety, and so forth.

13 MR. LAUVER: Your Honor, we are more than
14 willing to stipulate that the protestant has a
15 comprehensive new-hiring process and training facility,
16 if that will expedite the process here.

17 MR. RICE: I think we are done with this
18 exhibit. I want to ask him something, and then I think
19 we may be done.

20 (Discussion off the record.)

21 MR. RICE: That's all we have.

22 JUDGE CAILLE: Okay.

23 THE WITNESS: David, may I say something
24 about the schedule, or will that come later?

25 MR. RICE: What schedule are you referring

0421

1 to?

2 THE WITNESS: The SeaTac Shuttle schedule.
3 Should I have asked you, Judge? I'm sorry. I don't
4 understand the process.

5 JUDGE CAILLE: Normally, you are asked a
6 question and then you respond.

7 Q. (By Mr. Rice) Do you have any thoughts about
8 SeaTac Shuttle's schedule?

9 A. In fact, I do.

10 Q. What are those thoughts?

11 JUDGE CAILLE: Just so long as it's isn't
12 going to be a long answer.

13 THE WITNESS: I think the schedule at two
14 hours and 15 minutes is an inaccurate representation to
15 the Commission. It's inaccurate when I compare my own
16 experience driving down southbound on Whidbey Island.
17 Island Transit does that run 19 times a day. It takes
18 then one hour and 25 minutes. They have eight stops.
19 These folks have said they could do it in 55 minutes
20 with five stops. Surely when you look at Island
21 Transit, three additional stops, it's not reasonable to
22 think that these folks can do five stops in 25 minutes
23 less. It's just not accurate.

24 JUDGE CAILLE: How many minutes Island
25 Transit for eight stops? How long was that?

0422

1 THE WITNESS: One hour and 20 minutes. These
2 folks are proposing to do five stops in 55 minutes.
3 This is a rural road. You get behind a tractor or a
4 slow-moving vehicle, there is not a lot of opportunity
5 to pass. You can't make speed safely down that stretch
6 of the island. That's on Whidbey Island. I don't
7 think the schedule is accurate.

8 What these folks have also said is that they
9 can get to SeaTac Airport in an hour from the Clinton
10 ferry landing. Not possible. Under any experienced
11 transportation provider's numbers, it's not possible.
12 There is a 20-minute ferry ride. The ferry's own rule
13 is that if you want expedited service, you have to be
14 there 30 minutes early. Now, I think those rules would
15 be waived in your favor because of the frequency of the
16 ferry service. Nonetheless, you have to be there 10
17 minutes early minimum, probably 15 to get priority
18 boarding on the ferry. You add those times into their
19 schedule, it's not possible in two hours and 15
20 minutes.

21 When you get to the other side, into
22 Mukilteo, you've got an easy ten minutes to I-5. You
23 are going through some heavy traffic, some residential
24 area up the big hill. You are dealing with Boeing
25 traffic at times of the day. I've done it. It's very

0423

1 heavy. I've talked to Shuttle Express. They have
2 supported the heavy amount of traffic.

3 You get onto I-5. I hope you are aware that
4 express lanes on I-5 aren't open all hours of the day,
5 and my point here is that again to say that two hours
6 and 15 minutes is not a reasonable expectation for this
7 schedule. I think they are misrepresenting it to the
8 Commission and to the public. What is a reasonable
9 expectation for this schedule, two hours and 50 minutes
10 to three hours. There needs to be time built in for
11 loading, unloading, accidents, traffic, bad weather,
12 and you need to promise what you can deliver, and I
13 don't think we are seeing it here.

14 Q. Does Airporter Shuttle have time built into
15 its schedule, the printed schedule, to account for
16 things like traffic and accidents, things of that
17 nature?

18 A. Yes, they do, and I think that's what
19 Catherine was referring to in her letter, her earlier
20 exhibit. We have 20 minutes built into our schedule to
21 allow for traffic, bad weather, and so forth. We
22 insist that if we are going to tell the public
23 something, we are going to deliver it, and we do like
24 Larry said. 97 percent of the time, we get to SeaTac
25 on time, and I think that's what these folks should do

0424

1 as well.

2 MR. RICE: That concludes our direct.

3 JUDGE CAILLE: Cross?

4

5

6 CROSS-EXAMINATION

7 BY MR. SOLIN:

8 Q. You heard Mr. Wickkiser testify that he was
9 not aware if you had changed the schedule from your CWA
10 application to your current CWA schedule. Do you know
11 if you've made a change from your application to your
12 current schedule?

13 A. I don't know. What I can tell you, and I can
14 tell the Commission what our schedule is today, right
15 now.

16 Q. That's fine. You also heard Mr. Wickkiser
17 testify that he indicated that 32 percent of the people
18 from Oak Harbor by address drive to Mount Vernon for
19 the convenience of picking up in Oak Harbor rather than
20 the entire trip from Oak Harbor; is that correct, what
21 you heard him state, the 32 percent?

22 A. I heard him state that.

23 Q. Is it your testimony that that is incorrect?

24 A. That's right. Larry hires me to be
25 responsible for the operations. He isn't responsible

0425

1 for the numbers.

2 Q. So your testimony is that now it's changed
3 from 32 percent to 14 percent?

4 A. 32 percent is Sue Sebens Oak Harbor Travel
5 number. 14 percent is the Oak Harbor population
6 number, the company number.

7 Q. Again, to clarify, Mr. Wickkiser said --
8 let's back up. Sue Sebens said 70 percent of the
9 people from Oak Harbor drive to Mount Vernon. You
10 claim that that is not correct. Mr. Wickkiser claimed
11 it was 32 percent. You claim that is not correct. You
12 are stating that it is 14 percent, which is the
13 difference between 100 percent and 86 percent; is that
14 correct?

15 A. That's correct. I think that's illustrated
16 on the exhibit that we handed out.

17 Q. On Exhibit 8, in which you claim a combined
18 company-wide number of 86 percent?

19 A. Eighty-six hundred.

20 Q. I'm talking 86 percent of the people from Oak
21 Harbor board --

22 A. Is this Exhibit 8?

23 Q. Yes. You say company-wide 86 percent
24 boardings from Oak Harbor, so that is your final
25 testimony on the actual percent of tickets that drive

0426

1 from Oak Harbor to Mount Vernon?

2 A. This is hard data that our numbers calculate,
3 and what this is saying is that 86 percent of the
4 people with Oak Harbor addresses start their trip from
5 Oak Harbor. Conversely, 14 percent of the people who
6 have Oak Harbor addresses start their trip in Mount
7 Vernon.

8 Q. Other than your handwritten notation, is
9 there any data on the form that shows that?

10 A. John, I'm under oath. The data that's on the
11 form I wrote and is accurate.

12 Q. Were you present when we gave our actual
13 flight comparisons of time versus total block-to-block
14 time?

15 A. Yes. That was this morning.

16 Q. Do you feel that the consumer thinks it's
17 more important to get to their flight rather than what
18 time they get home after their flight arrives in SeaTac
19 and come back home?

20 A. My understanding of your question is which is
21 more important, the southbound leg or the northbound
22 leg of an individual's flight?

23 Q. Yes.

24 A. I think that people are more sensitive to the
25 time they need to depart from SeaTac home. They just

0427

1 seem more uptight. I look at myself as an example.
2 When I finish my trip, I want to get home. When I'm
3 heading down to the airport, I know I've got to spend
4 time in security and so forth, so it's not as big an
5 issue for me.

6 Q. Again, to clarify one more issue, in the
7 To-the-Whom-It-May-Concern letter dated June 19th, I
8 believe, Exhibit --

9 JUDGE CAILLE: Exhibit 23.

10 Q. -- Exhibit 23 that we admitted, that letter
11 states you average 1.5 passengers per trip.
12 Mr. Wickkiser's testimony based on eighty-six hundred
13 says it's 2.5 passengers per trip. What is your
14 testimony?

15 A. It's the 1.5. Just do the math. It's
16 eighty-six hundred divided by 6878 trips.

17 Q. So the letter by Catherine was erroneous?

18 A. Why do you say that, John?

19 JUDGE CAILLE: I just want to make sure. The
20 letter says 1.50 and the witness said 1.50.

21 Q. I believe if you take eighty-six hundred and
22 divide it by 365 by the number of trips they offer, you
23 come out to 2.5.

24 A. No. You take eighty-six hundred and divide
25 it by the calculation of 362 times 19, and that's the

0428

1 number of one-way trips we do each year, which is 6878.

2 Q. So you are counting one-way trips.

3 A. Yes. You have to.

4 Q. Thank you. If we increased our frequency to
5 service the market, and Wickkiser Airporter Shuttle
6 determined to cease or cut back service as a result,
7 how would the consumer be negatively impacted if they
8 are now riding on SeaTac Shuttle's trips to get to
9 SeaTac?

10 A. If you could promise ten trips a day, they
11 obviously wouldn't be, but you folks are bright enough
12 to understand there isn't enough population, and
13 therefore, not enough revenue to support your costs to
14 run ten trips a day. Multiply it out, \$75 for a
15 one-way trip times that frequency. You've got hundreds
16 of thousands of dollars in costs and you've got no
17 revenue.

18 JUDGE CAILLE: I'm going to ask the witness
19 to just please answer the question, and I'm also going
20 to ask the applicant to please try to ask a yes or no
21 question.

22 Q. (By Mr. Solin) Do you have access to any of
23 our pro forma information?

24 A. No.

25 Q. Is the information that you presented in your

0429

1 Exhibit 7 based on access to our information or your
2 speculation?

3 A. My information is not speculation. It's hard
4 data based on 1.4 million miles.

5 Q. If it's hard data operating your miles, are
6 you operating the same vehicles that we are proposing
7 to use?

8 A. We are very familiar with the Mercedes
9 Freightliner vehicle. We have evaluated the
10 Freightliner vehicle. We took it over to Yakima across
11 the mountain. I know how it performs. I know what the
12 warranty information is on it.

13 Q. So it's your position that these variable
14 operating costs are accurate according to your
15 information, not the manufacturer's as stated in the
16 marketing material for the vehicle?

17 A. It's based on my information; that's correct.

18 Q. So if I told you that the marketing people
19 say that highway mileage is 22 miles per gallon as
20 opposed to 16, you would say that your numbers are more
21 accurate?

22 A. No. We are talking fuel costs, and it's a
23 small amount of money. It's a dollar.

24 Q. Thank you. In Yakima, is that a larger
25 market than Oak Harbor?

0430

1 A. Substantially.

2 Q. How many trips a day did you propose in the
3 market?

4 A. We proposed four.

5 Q. How many are you operating today?

6 A. Four.

7 Q. Is it your statement that four a day in Oak
8 Harbor for SeaTac Shuttle will not serve a smaller
9 market?

10 A. There isn't enough population.

11 Q. That wasn't the question. Answer the
12 question please.

13 A. Would you ask me the question again?

14 Q. Is four a day in Oak Harbor not enough to
15 serve a market that is smaller than Yakima's market in
16 which you currently serve four a day with CWA?

17 A. I'm not sure I understand the question given
18 there are ten trips a day right now. There are ten
19 trips a day from Oak Harbor to SeaTac right now.

20 Q. I'm just trying to state that four a day in a
21 market larger than Oak Harbor and Yakima is fine for
22 CWA, but it's not fine for SeaTac Shuttle to do the
23 same thing in Oak Harbor, which is a smaller market.

24 MR. RICE: It's sounds like the applicant is
25 testifying now.

0431

1 MR. SOLIN: That was my question.

2 JUDGE CAILLE: You have to put it in the form
3 of a question.

4 Q. (By Mr. Solin) My question is, would you say
5 yes or no that four trips a day in the Oak Harbor
6 market is not enough to serve the market?

7 A. And I need to answer that yes or no?

8 Q. Yes; yes or no.

9 A. Yes.

10 JUDGE CAILLE: I'm sorry. I'm not sure I
11 understand. There is a negative in there.

12 Q. Is four trips a day in the Oak Harbor market,
13 which is a smaller market than Yakima, adequate to
14 service the market, yes or no?

15 A. There are ten trips a day right now.

16 Q. Yes or no, please.

17 A. Sure, yeah.

18 Q. So frequency alone is not an issue.

19 A. Frequency is the most important issue to
20 customers. We've been told that time and time again.
21 The market has supported it, as illustrated by the
22 success of the Bremerton Kitsap and the Gray Line
23 folks.

24 Q. You stated that the population of Island
25 County is 70,000, I believe; is that correct?

0432

1 A. Yes.

2 Q. And you estimated 15,000 on Camano, 10,000 on
3 NAS, and 40,000 on the remainder of the north end; is
4 that correct?

5 A. That's correct.

6 Q. Do you have anything to substantiate these
7 numbers, or are these your opinion?

8 A. No. These are fully substantiated.
9 Catherine collects those numbers. She's used census
10 data to do it.

11 Q. So it's your position that there are 10,000
12 people that live on NAS; is that correct?

13 A. That's what the military base has told us.
14 It varies substantially. I think it varies two- to
15 three-thousand people. That's what they've told us.

16 Q. You stated that SeaTac Shuttle managed to hit
17 the peaks of the traffic period to SeaTac for
18 departures, and I assume arrivals, and avoid the lows;
19 is that correct?

20 A. That seemed to be what you did when you
21 changed from your first schedule to your second, yes,
22 and I'm specifically thinking about the morning.

23 MR. SOLIN: Could I back up briefly and
24 submit an exhibit for population?

25 JUDGE CAILLE: All right. Let's mark that as

0433

1 Exhibit 26.

2 (Marked Exhibit No. 26.)

3 Q. Would you look down under the column titled,
4 "county" and find Island County, please?

5 A. I have done that.

6 Q. Would you look under the column "population"
7 for July 1st, 2002?

8 A. I've got it.

9 Q. Would you please read that population figure?

10 A. 75,050.

11 Q. Would you go to the far column labeled
12 "population percentage change state rank" and read the
13 number under that column corresponding to Island
14 County?

15 A. It's four.

16 Q. Do you know what that four means, or would
17 you interpret that four?

18 A. I think you will have to do that for me.

19 Q. If you look at the numbers, the four means
20 it's the fourth fastest growing county in the State of
21 Washington. To verify that, if you look at the column
22 to the left of that number four, you will see a
23 population change of 2.3 percent. That is the
24 population change from 2001 to 2002, and as you can
25 see, it is number four in that number category of 38

0434

1 counties in the state. Would you agree with that
2 analysis?

3 A. Yes.

4 Q. Again, what did you base your Camano Island
5 and South Island population data on for coming up with
6 your breakdown of the Oak Harbor market?

7 A. The southbound data is a calculation. Like I
8 said, you have your 70-odd-thousand people in Island
9 County, and you subtract from that the populations of
10 those three areas, and what's left is what's on the
11 south end of the island.

12 Q. Thank you. Likewise, how did you determine
13 the Oak Harbor market then?

14 A. We have that data. I don't specifically know
15 Catherine's sources on that data.

16 Q. When you say Oak Harbor is 40,000, what do
17 you mean by that?

18 A. Number of people.

19 Q. In what geographical area, city limits?

20 A. Yes. I think the city limits and north as
21 well.

22 Q. City limits and all of the north to the
23 bridge?

24 A. Yeah, right.

25 Q. Do you think that it's the purpose of the

0435

1 utility commission to stifle competition?

2 A. No.

3 Q. Would you answer that yes or no? I'm sorry.

4 A. No.

5 Q. Would you answer yes or no? Do you think the

6 Commission should protect existing providers from

7 competition?

8 A. No.

9 Q. Is your \$80,000 a year ad budget company-wide
10 or Oak Harbor only?

11 A. It's company-wide.

12 Q. Do you have a feel for how much of that

13 \$80,000 you spend in the Oak Harbor market?

14 A. No.

15 Q. Would you say it's less than ten percent?

16 A. No. I would say it's much more than that.

17 Q. What is your minimum age to hire drivers?

18 A. It's 25, and that's an age imposed by our
19 insurance folks.

20 Q. How many years of experience do they have to
21 have?

22 A. We like them to have at least five. We very
23 carefully --

24 Q. That is fine. Is that a company policy of
25 five, or is that an insurance-mandated requirement?

0436

1 A. I think that's our company policy. It seems
2 to have been. I haven't heard anything from the
3 insurance company regarding that.

4 Q. When is the last time you drove from Oak
5 Harbor down Highway 20 and 525 to the Clinton Mukilteo
6 ferry?

7 A. Last fall.

8 Q. When is the last time you boarded the ferry
9 with priority boarding?

10 A. I haven't.

11 Q. When is the last time you drove from the
12 other side of the ferry to SeaTac without stopping
13 anywhere?

14 A. It would be last fall.

15 Q. Did you use the commuter lane?

16 A. I believe I did it with our family, so we may
17 have. I don't specifically recall.

18 Q. Do you recall how long the total trip took?

19 A. No.

20 Q. You testified that you thought it would take
21 us two hours and 50 minutes to three hours to make that
22 same trip; correct.

23 A. Roughly, yes, sir.

24 Q. Based on what information, since you have
25 never made that trip and you've only made the trip

0437

1 once?

2 A. You asked me when I last made it. I made it
3 more than once, and my information is based on what
4 I've done, what Island Transit does 19 times a day,
5 what the ferry requires for preboarding, what Shuttle
6 Express has told us, what we know going down I-5.

7 Q. Thank you. Do you know how long it is in
8 miles from the Clinton ferry to SeaTac?

9 A. 39.7 miles, I think it is. Close to 40.
10 Let's call it 40.

11 Q. Do you know how many miles of that are
12 freeway miles?

13 A. Well, I would say the majority of it is.

14 Q. Yes or no. Do you know how many miles are
15 freeway miles with a number answer, please?

16 A. Yes.

17 Q. How many miles?

18 A. 36.

19 Q. What's the speed limit posted on that 36
20 miles of highway?

21 A. If it's like the rest of the state, it's 65.

22 Q. Thank you.

23 JUDGE CAILLE: I don't think it's 65. I
24 drive it a lot.

25 MS. TENNYSON: Isn't it 60 or 70, depending

0438

1 on where you are driving?

2 MR. SOLIN: I assume this discussion is all
3 off the record.

4 JUDGE CAILLE: No. I would like to know for
5 the record what it is.

6 MR. SOLIN: I will agree with whoever said
7 it's 60. That's all the questions I have. Thank you.

8 JUDGE CAILLE: Ms. Tennyson?

9 MS. TENNYSON: Thank you.

10

11

12 CROSS-EXAMINATION

13 BY MS. TENNYSON:

14 Q. Mr. Johnson, you were asked a couple of
15 questions about the advertising budget for the company.
16 You had set it was \$80,000 company-wide. Does that
17 also include advertising for the charter service?

18 A. A small component would be for charters.
19 Charters is a different animal. We have a sales rep
20 that --

21 Q. My question is the advertising budget
22 includes advertising for the charter service as well as
23 the airporter service; correct?

24 A. The \$80,000 would include money for charters,
25 be it very small.

0439

1 Q. Referring to Exhibit 8, your tickets sold by
2 travel agents, can you tell me for what time period
3 that is?

4 A. That's all of 2002.

5 Q. So that's all of 2002.

6 A. Yes.

7 Q. Didn't Sue testify to her sales for the last
8 five months?

9 A. I don't recall. I will have to check the
10 record.

11 Q. How did you determine boardings at Oak Harbor
12 versus tickets that Oak Harbor Travel may have sold for
13 boardings in Mount Vernon?

14 A. We have a very sophisticated computer system,
15 and we ask the computer system to show us all the
16 tickets that Oak Harbor Travel sold, and from there, we
17 can quickly see out of those tickets that they sold,
18 did the people board in Oak Harbor or did they board in
19 Mount Vernon. We've got pickup codes in the computer,
20 so you just query it on information you are looking
21 for, so that was basically the source.

22 Q. So you would be able to provide us with a
23 dollar amount of tickets sold by any of these agencies
24 for boarding in Oak Harbor versus boarding in Mount
25 Vernon or another location?

0440

1 A. You bet.

2 Q. So travel agents sometimes provide service to
3 customers who are going from other locations.
4 Normally, we like to go to a local agent, but if I'm
5 traveling to New York, and my travel agent can book me
6 an airporter service from where I'm staying in New York
7 to the airport in New York, they could book that as
8 well; correct?

9 A. They could, yes.

10 Q. When you were running through your exhibit of
11 the financial calculations, you have wages as part of
12 the expenses. Do you pay benefits to your drivers or
13 just an hourly wage?

14 A. We do have benefits.

15 Q. When you were referring to Page 5 of the --

16 A. That's the cash wage. It does not include
17 the benefit costs.

18 Q. These were your estimates of the applicant's
19 costs and not actual costs?

20 A. No. The variable costs are actuals.

21 Q. Based on what?

22 A. Our experience. This is what we are
23 incurring right now.

24 Q. So they are your actual costs, not the
25 applicant's actual costs.

0441

1 A. The variable costs are our actual costs for
2 running a vehicle or hiring a driver, so forth. The
3 fixed costs -- the insurance is our actual. The
4 marketing, the telephone, the rent is an assumption
5 that I made to illustrate there are substantial fixed
6 costs to running an airporter business, and those have
7 to be covered eventually by the revenues.

8 Q. Are you familiar with the type of vehicles
9 that Island Transit drives?

10 A. Yeah, I am. They are very similar to -- in
11 appearance, certainly, not in amenities -- to what we
12 run. They are a 20-odd-passenger vehicle.

13 Q. So they are not the big diesel buses --

14 A. No. It's a very rural market. They don't
15 have a lot of people on their buses.

16 Q. I asked the question of Mr. Wickkiser, but I
17 don't think I really got an answer. Of your list of
18 vehicles, how many of them do you actually use to
19 service the Oak Harbor route.

20 A. Between five and seven.

21 Q. What type of vehicles would those be?

22 A. 21-passenger vehicles, primarily.

23 Q. So it's bigger than a minivan, smaller than a
24 full-fledged bus. Is this the wide vehicle that we see
25 that most airporter services use?

0442

1 A. That's right. They are high-back seats and
2 reclining.

3 Q. With a little bit of space for luggage?

4 A. In the back; that's right.

5 MS. TENNYSON: Let me dig through my stack to
6 make sure I don't have any other questions.

7 THE WITNESS: Larry is holding up a picture
8 of what the vehicle looks like, if that helps you.

9 MS. TENNYSON: That's what I anticipated.
10 Thank you. I don't have any other questions at this
11 time. Thank you.

12 JUDGE CAILLE: Redirect?

13 MR. RICE: I have a very brief bit of
14 redirect.

15

16

17 REDIRECT EXAMINATION

18 BY MR. RICE:

19 Q. Richard, Mr. Solin asked you about the Yakima
20 market and the Oak Harbor market. Are those markets
21 the same or different for airporter service?

22 A. I think they are fully different.

23 Q. Can you tell me why?

24 A. Certainly. The Oak Harbor market has a
25 service that has ten trips a day right now. It has an

0443

1 Island County population of 70,000. That includes 15
2 in Camano Island that we are not talking about, so
3 let's say Island County for our purposes has 55,000.

4 Over in Yakima, there is not a service.
5 They've got a huge population relative to Oak Harbor.
6 Using John's numbers here, we said a quarter of a
7 million people lived in Yakima County, and John showed
8 224,823, so we are not that far off, so I think there
9 are two points. One is that there was not a service in
10 Yakima. The population was a quarter of a million
11 people, which is of sufficient size to support an
12 airporter, we believe, and to support an airporter that
13 can run initially four trips a day. Certainly, both
14 Larry and mine's hope is that we will add frequency
15 once the market shows they will embrace the service.

16 MR. RICE: That's all I have.

17 JUDGE CAILLE: Any recross?

18 MR. RICE: May I ask one follow-up question?
19 I'm sorry.

20 JUDGE CAILLE: Go ahead.

21

22

23 FURTHER REDIRECT EXAMINATION

24 BY MR. RICE:

25 Q. You were asked about your report and the

0444

1 meaning of it, and there was some financial data that
2 was in your report about costs. Could you give me a
3 scenario where if SeaTac or Airporter Shuttle, if it
4 were to run south, how many -- if they got a certain
5 number of passengers how much revenue they would need
6 to be able to make a profitable enterprise out of it?

7 A. Certainly. I'll use rough numbers. I think
8 it's important to remember that only one percent of all
9 the people who use SeaTac use ground transportation.
10 I'm sorry, three percent. So let's just assume that
11 the applicant's business gets 3,000 people, and just
12 help me do the math, times a ticket of \$35. 3,000
13 times 35 is roughly one-hundred-odd-thousand dollars in
14 revenue.

15 I've shown that each time you go to SeaTac
16 one way, you are going to be spending around \$75, and
17 if you multiply that out by the four trips they are
18 proposing times the 365 days per year, you are going to
19 come up with costs of around a quarter of a million
20 dollars, I believe. So on one hand, you've got
21 revenues of roughly a hundred or so and costs of 200 or
22 so. It's not a viable business given the market side.

23 Q. Are those variable costs you are referring
24 to?

25 A. Yes.

0445

1 Q. It doesn't refer to fixed costs?

2 A. They haven't been touched. It's not a very
3 attractive market.

4 Q. Do you know approximately the number of
5 passengers they would need to get in order to break
6 even just for variable costs?

7 MR. LAUVER: Your Honor, that's absolute
8 speculation. I object.

9 JUDGE CAILLE: I agree. The objection is
10 sustained.

11 MR. RICE: We have no more.

12 JUDGE CAILLE: Recross?

13

14

15 FURTHER CROSS-EXAMINATION

16 BY MR. SOLIN:

17 Q. Is it reasonable to expect if we do, in fact,
18 service the market and our ridership supports it that
19 we would increase the frequency of our service as well?

20 A. I would hope you would. If you are
21 successful, that's what the market wants.

22 Q. You stated that the priority boarding
23 requirement with the state ferry system was 30 minutes.
24 Did you obtain that from someone?

25 A. Directly from the horse's mouth. We called

0446

1 them and talked to them about priority boarding. I did
2 also say, John, that I think that requirement would
3 probably be waived in your case because of the
4 frequency of the Clinton Mukilteo ferry. I think it
5 would be reasonable to expect that you would still have
6 to be there 10 to 15 minutes early. There is going to
7 be other cars that have to get on, so I would say 10 to
8 15 minutes you have to get there early.

9 Q. Do you agree that we will have the
10 opportunity to get priority boarding?

11 A. If you are there early enough.

12 Q. If we are there 10 to 15 minutes prior.

13 A. Yes, I think you would.

14 Q. Again, your entire basis of Exhibit 7, your
15 pro formas, are estimates for our operation based on
16 your experience in the business, but at best, are
17 estimates and are not based on any data we have
18 provided to you specifically to create them.

19 A. All of my testimony, John, is hard,
20 substantiated fact. This is data that we've collected
21 over 1.4 million miles. It is right.

22 Q. Your final comment about not being profitable
23 is if we have one passenger per trip, like you are
24 currently carrying, that we would lose money; is that
25 correct?

0447

1 A. That's correct.

2 Q. And you estimated that our costs might be
3 250,000 a year; is that correct?

4 A. Between 200 and 250. I don't have a
5 calculator, but between 200 and 250, four round trips.

6 Q. So if we carry four people per trip on
7 average, we would gross approximately \$400,000 a year;
8 is that correct?

9 A. Yes.

10 Q. And our costs would not go significantly up;
11 is that correct?

12 A. That's correct.

13 Q. So we would net approximately 150- to 200,000
14 a year; is that correct?

15 A. Under those assumptions yes.

16 Q. If we carry four passengers per trip, how
17 many people a day would that be from Oak Harbor with
18 our currently proposed departures?

19 A. Four people per trip times four, 16.

20 Q. So we can be profitable carrying 16 people
21 per day from Oak Harbor; is that correct?

22 A. It would cover your variable costs, yes, I
23 think so.

24 Q. I believe 16 per day indicated we would make
25 a profit of 150- to \$200,000 per year based on your

0448

1 assumptions of our business.

2 MR. RICE: Is that a question?

3 Q. Based on your assumption of our business with
4 a total cost of 200- to 250,000 if we carry 16 people a
5 day, what will our revenue be per year?

6 A. Well, 16 times 30 is 480,000.

7 Q. If you subtract the cost of 200 to 250,000
8 from 480,000, approximately what will our net income
9 be?

10 A. 16 people per day, you need to multiply it by
11 365 and then multiply it by 30, and that's too much for
12 my head. At any rate, that would come out to your
13 revenues, and against that, you would have a quarter of
14 a million dollars in variable costs, and you would
15 cover your fixed and that would be your profit.

16 Q. So would we be profitable carrying four
17 people per trip?

18 A. Four people per trip. You have to do it --

19 Q. 16 people per day?

20 A. And you have to do it every day through a
21 very cyclical season --

22 Q. Would we be profitable on an annual basis
23 with those estimates of revenue?

24 A. I would assume you would.

25 MR. SOLIN: Thank you. That's all I have.

0449

1 JUDGE CAILLE: Anything further?

2 MR. RICE: I'll be real quick.

3

4

5 FURTHER REDIRECT EXAMINATION

6 BY MR. RICE:

7 Q. When you say 16 people a day under the
8 applicant's example, are we talking about one-way trips
9 from Oak Harbor to SeaTac or are we talking a total of
10 32 total, 16 to SeaTac, 16 back? Is that what the
11 example was referring to?

12 A. 16 total, 16 fare-paying people.

13 JUDGE CAILLE: Just so I understand, that
14 doesn't mean 16 round trips. It means 16 one-ways.

15 THE WITNESS: Let me just go through the math
16 in my head. You've got 16 people times \$30 is 480 in
17 revenue. You've got \$150, roughly, in variable costs
18 for a round trip. You've got four of those round
19 trips, so you've got \$600 in costs, so there are the
20 numbers. You've got 480 in revenue and 600 in costs.
21 Using our hard data, it's not enough.

22 MR. SOLIN: I believe you just made a math
23 mistake, I think, only because you already stated that
24 with one person per trip, we would gross \$100,000,
25 roughly. With four people per trip, we would gross

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1 \$400,000. The fixed costs you stated were 200- to
2 \$250,000 per year, so four people is 400,000 in revenue
3 minus 200 to 250 in costs is a profit. That's what I'm
4 trying to establish.

5 JUDGE CAILLE: Are you asking him whether he
6 agrees with that or not, because you have testified,
7 and what I need is for the witness to testify.

8 MR. SOLIN: We can start the simple question
9 over from the beginning.

10 JUDGE CAILLE: Or you could do the math in
11 your closing argument.

12 MR. SOLIN: That's fine.

13 JUDGE CAILLE: Why don't we take a ten-minute
14 break and come back at 4:30 and I will hear argument,
15 and since we are approaching the five o'clock hour,
16 what I would like to do is really try to have people
17 limit themselves to 10 minutes.

18 MR. LAUVER: Your Honor, I may well have
19 objection to a couple of the exhibits.

20 JUDGE CAILLE: That's right, exhibits. Are
21 you moving for admission of all of your exhibits, 7, 8,
22 9, 10, 11?

23 MR. RICE: I am.

24 JUDGE CAILLE: You have objection to...

25 MR. LAUVER: I have objections to Nos. 8

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1 and 9.

2 JUDGE CAILLE: Can you tell me why you object
3 to those?

4 MR. LAUVER: Exhibit No. 8 purports to be
5 evidence of an 84 percent boarding factor in Oak Harbor
6 of Oak Harbor residents. There is absolutely nothing
7 on this document to substantiate that other than a
8 handwritten note. The witness testified that he was
9 under oath, and therefore, we should simply accept it.

10 Our witness, however, also testified under
11 oath and provided a radically different figure. The
12 protestant had an opportunity to cross-examine our
13 witness if they didn't feel that her testimony was
14 accurate. They did not challenge her numbers. Now
15 they come in with unsubstantiated evidence and expect
16 us to accept it.

17 JUDGE CAILLE: I'm going to allow this
18 exhibit in, and I will consider your arguments and give
19 it the due weight. So the other exhibit was 9?

20 MR. LAUVER: Yes. Exhibit No. 9 is
21 purporting to show other services supposedly available
22 in the Oak Harbor market and is being used to show why
23 we should not be allowed in that market. Everything,
24 with the exception of the protestant's own service, is
25 an unregulated service, and the Commission has no

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1 concern or authority over such services. I don't see
2 the relevancy of these other alleged providers to be
3 the issue at hand.

4 JUDGE CAILLE: Mr. Rice?

5 MR. RICE: They all go to the weight of the
6 evidence here. It's certainly relevant when gauging
7 whether the public is receiving adequate service to
8 consider what else is out there, and if he doesn't
9 think it's relevant or marginally relevant, he can talk
10 about it in his closing argument, but certainly, it
11 should get in.

12 JUDGE CAILLE: I'm going to allow this one in
13 as we will and give it its due weight. Now let's take
14 a ten-minute break.

15 (Recess.)

16 JUDGE CAILLE: This applicant's Exhibit 26,
17 it is an exhibit of Washington County population
18 estimate, the population change July 1st, 2001, to July
19 1st, 2002. Is there any objection to the admission of
20 this exhibit?

21 MR. RICE: No, Your Honor.

22 JUDGE CAILLE: Then the exhibit is admitted
23 into evidence. Since the applicant has the burden of
24 proof here, my proposal is that we hopefully will be
25 able to complete your argument in ten minutes. Then

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1 the protestant will have ten minutes. Ms. Tennyson,
2 ten minutes or less or none?

3 MS. TENNYSON: Staff doesn't intend to offer
4 argument.

5 JUDGE CAILLE: Then I will allow the
6 applicant five minutes of rebuttal.

7 MR. RICE: Your Honor, if I may, if you are
8 going to grant them five minutes of rebuttal and ten
9 minutes to start with, can I have a full 25 minutes if
10 I need it?

11 JUDGE CAILLE: I suppose that would be fair,
12 if you need it.

13 MR. RICE: I may not need it.

14 JUDGE CAILLE: Let's begin now.

15 MR. LAUVER: Thank you. This is a new area
16 for me so I hope you will bear with me on this. I will
17 do my best to keep the pace up but not too fast.

18 SeaTac Shuttle, LLC, d/b/a SeaTac Shuttle,
19 meets the requirements of RCW 81.68.040 to obtain an
20 auto transportation certificate. The evidence
21 presented in testimony and in the record shows that the
22 public convenience and necessity requires granting
23 SeaTac Shuttle's application because there is a public
24 need for SeaTac Shuttle's proposed airporter service.
25 The existing certificate holder in the territory as

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1 SeaTac Shuttle proposes to serve doesn't meet the
2 public need and does not offer satisfactory service,
3 and SeaTac Shuttle is fit, willing, and able to provide
4 this proposed service. Accordingly, the Commission
5 should grant SeaTac Shuttle's application.

6 As to the facts of our case, on April 7,
7 2003, SeaTac Shuttle filed an application for an auto
8 transportation company with the Commission seeking
9 authority under RCW 81.68.040 as provided in WAC
10 480-30-32 to provide airporter service involving
11 passenger service between Oak Harbor and Seattle/Tacoma
12 International Airport via the Clinton Mukilteo ferry.

13 SeaTac Shuttle will offer four round trips
14 daily initially. SeaTac Shuttle proposes this service
15 because it believes there is a strong public need for
16 an airporter serving this route. In support of its
17 application, SeaTac Shuttle presented the testimony of
18 John Solin, SeaTac Shuttle's president; myself, Michael
19 Lauver, its general manager, and nine public witnesses.
20 The Commission is holding this hearing on SeaTac
21 Shuttle's application because the route SeaTac Shuttle
22 seeks to serve is presently served, in part, by
23 Wickkiser International Companies' airporter.
24 Wickkiser filed a protest to the application.

25 Importantly, Wickkiser Airporter does not

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1 offer direct service from Oak Harbor to SeaTac Airport,
2 which the applicant proposes to do, and Wickkiser
3 serves only one community along the SeaTac Shuttle's
4 proposed route. SeaTac Shuttle meets the auto
5 transportation certificate requirements, and it is our
6 burden to show that we must show to the Commission's
7 satisfaction that there is a public need for the
8 service proposed by the applicant and that the
9 applicant is fit, willing, and able to provide the
10 proposed service.

11 Additionally, it's our burden to show that
12 the existing certificate holder in the area we seek to
13 serve, in this case, Wickkiser, does not propose to
14 serve that service to the satisfaction of the
15 Commission. The Commission may grant overlapping
16 authority, and I quote here from RCW 81.68.040: "When
17 the existing auto transportation company or companies
18 serving such territory will not provide the same to the
19 satisfaction of the Commission." The evidence and
20 testimony SeaTac Shuttle has presented shows that the
21 Commission should grant the application based on all of
22 these criteria.

23 As to the public need, SeaTac Shuttle has
24 introduced the testimony of nine public witnesses,
25 eight of whom stated that they had a need for SeaTac

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1 Shuttle's proposed service. The ninth witness
2 testified to the loss of service of Harbor Airlines and
3 the number of airline passengers that were then
4 unserved. Mr. Johnson of the protestant testified
5 that passengers using air service would not consider
6 ground transportation and would only consider ground
7 transportation that would be effectively the same
8 length and time or faster than that they could obtain
9 by driving their own private vehicles. An examination
10 of SeaTac Shuttle's proposed schedule clearly shows
11 that it is equal to or faster than driving a private
12 vehicle as we have priority boarding on the ferry and
13 we have use of the commuter lanes.

14 Wickkiser presented only one witness. That
15 witness testified that on three trips that she made in
16 the past 18 months that those trips were, in fact, safe
17 and on time. She also testified she would be willing
18 to use SeaTac Shuttle's services if they were
19 available. The witnesses from Langley, Greenbank, and
20 Coupeville stated that Wickkiser provided no service to
21 their communities. All of SeaTac Shuttle's Oak Harbor
22 witnesses testified that the Wickkiser service to their
23 community was inconvenient because it was not direct in
24 that it went first to Anacortes, the opposite direction
25 from SeaTac; that it was inconvenient in that it goes

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1 to Mount Vernon where passengers are forced to change
2 buses, and it was not expedited as it takes
3 three-and-a-half hours to get from Oak Harbor to
4 SeaTac.

5 The Commission has stated convenience,
6 directness, and speed are essential characteristics of
7 airporter service. The Commission will give
8 substantial weight to those factors in its satisfactory
9 determination and in its public convenience and
10 necessity determination in an application of
11 overlapping airporter authority.

12 Loretta Martin, executive director of the
13 Langley/South Whidbey Island Chamber of Commerce,
14 stated that she personally travels to and assists
15 tourist and residents identifying transportation means
16 to SeaTac 30 times or more each year. She stated that
17 Wickkiser does not serve her community or South Whidbey
18 Island. She testified that she would use SeaTac
19 Shuttle service if authority was granted.

20 Diane Menninen of Greenbank, who is employed
21 by Battelle's Seattle Research Center, testified that
22 she travels to SeaTac about one or more times a year.
23 She stated that Wickkiser does not provide service to
24 her community. She has in the past used a combination
25 of public transit to get to SeaTac but found it very

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1 inconvenient. She testified that she would use SeaTac
2 Shuttle service if authority were granted a
3 certificate. Similar testimony from all of our other
4 South Island witnesses, including Katie Dickerson, who
5 travels 15 to 20 times per week.

6 Greg Wasinger of Oak Harbor, a businessman
7 and store owner, testified that he travels 12 or more
8 times a year to SeaTac. He testified that the
9 Wickkiser Shuttle was inconvenient; that the times he
10 has used the Wickkiser Shuttle, he has driven to Mount
11 Vernon to avoid the long transit time of going by way
12 of Anacortes. He also stated he did not care to change
13 buses in Mount Vernon. He stated he would use
14 Wickkiser Service (sic) if the authority were granted.
15 We have additional witnesses that testified to the same
16 thing, and they are in the record.

17 Two of SeaTac Shuttle's witnesses are travel
18 agents. The Commission has accepted supporting
19 testimony from travel agents whose business it is to
20 serve clients with transportation needs. The agent's
21 businesses require available service for their clients,
22 and agents can testify as to their own business
23 experience and to their clients' experience. It is the
24 sort of information on which a reasonable person would
25 rely in the conduct of their business affairs. We have

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1 two travel agents, Mr. Bill Bradkin of Coupeville, who
2 travels six times a year, and Ms. Sue Sebens, who
3 travels to SeaTac eight or more times a year. Both
4 stated that they felt their clients would use -- a
5 significant portion of their clients would use SeaTac
6 Shuttle, and in addition, Ms. Sebens testified that
7 this year, she has sold slightly in excess of 190
8 tickets for the Wickkiser Shuttle, and of those 190
9 tickets sold so far this year, 70 percent were for
10 embarkation in Mount Vernon. This high percentage was
11 because of the inconvenience of taking the Wickkiser
12 Shuttle from Oak Harbor.

13 Michael Lauver, myself as the general
14 manager, I testified to the willingness and ability of
15 SeaTac Shuttle to conduct our business and other
16 extensive business background, including experience in
17 transportation and transportation-related businesses.
18 I travel 30 times or more to SeaTac. There is no
19 service from Wickkiser in my community. Mr. Solin
20 testified to our financial ability and management
21 ability. The testimony of these witnesses shows that
22 there is a strong public need for a direct, convenient,
23 and expedited airporter service from Oak Harbor serving
24 all of Whidbey Island to SeaTac.

25 The Oak Harbor witnesses testified that the

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1 current service is neither direct, convenient, or
2 expedited. Generally, an airporter that does not
3 provide direct, expedited, and convenient service
4 between a major urban center in its territory and the
5 major airport serving that urban center is not
6 providing service to the satisfaction of the
7 Commission.

8 When an operator provides poor service to the
9 public, as evidenced by Wickkiser's low ridership and
10 the large number of their Oak Harbor passengers who are
11 willing to travel to Mount Vernon to avoid the
12 indirect, inefficient route of the Commission, the
13 Commission has stated that the restriction on entry is
14 not a barrier behind which poor service or service that
15 is unresponsive to the changing requirement of the
16 market is shielded from competition.

17 Mr. Johnson testified to the possible
18 financial impact on Wickkiser if SeaTac Shuttle were to
19 take away Wickkiser's passengers because SeaTac Shuttle
20 was more convenient. Under RCW 81.68.040, "The
21 Commission shall have the power after hearing when the
22 applicant requests a certificate to operate in a
23 territory already served by a certificate holder under
24 this chapter only when the existing auto transportation
25 company or companies serving such territory will not

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1 provide the same to the satisfaction of the Commission
2 and in all other cases with or without hearing to issue
3 said certificate as prayed for."

4 JUDGE CAILLE: I'm going to give you one
5 minute to conclude.

6 MR. LAUVER: Mr. Wickkiser admitted that
7 under testimony that SeaTac Shuttle was fit, willing,
8 and able to provide the services requested. That is
9 essentially the sole basis for their protest. Having
10 acknowledged that we are fit, willing, and able, there
11 is no basis for this protest. We have demonstrated
12 prima facia our financial and managerial abilities. We
13 have showed the experience we have in transportation.
14 However, the Commission has found, neither are they
15 required to demonstrate, extensive experience in
16 running a large business of the sort they seek to
17 enter. Such a demand would operate to stifle rather
18 than expand the adequacy of the service to the public.
19 I'm skipping through here as fast as I can.

20 JUDGE CAILLE: Keep in mind I'm going to be
21 reading the records.

22 MR. LAUVER: Okay. The protestant has stated
23 the applicant as is fit -- we already covered that. In
24 that case, the Commission should therefore grant SeaTac
25 Shuttle's application.

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1 JUDGE CAILLE: Thank you. You will have the
2 opportunity for some rebuttal.

3 MR. LAUVER: Thank you.

4 JUDGE CAILLE: Mr. Rice?

5 MR. RICE: Thank you. I would like to say at
6 the outset that to make sure it's clear, Airporter
7 Shuttle takes no position as to whether the applicant
8 meets the standard for a certificate for the route from
9 Coupeville to SeaTac. That is something for the
10 Commission to decide. Instead, Airporter Shuttle is
11 only addressing the certificate requirements for the
12 route between Oak Harbor and SeaTac, and I can
13 summarize the bottom line here. The applicant is
14 required to show a public need for their service, and
15 they have failed to do that.

16 What have they shown? Their witnesses have
17 shown that they have said that they wanted both
18 Airporter Shuttle service and SeaTac service at the
19 same time, and that's not the same thing. There really
20 are two problems with that. First of all, that's never
21 going to happen, because the Oak Harbor market is never
22 going to support two airporters, and this Commission
23 cannot grant an application based on an expression of
24 need that will never be met. That's pure conjecture.

25 Additionally, they cannot meet their burden

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1 to show the public need by relying on the continued
2 operation of Airporter Shuttle. They must establish an
3 independent need for their service that exists
4 regardless of whether Airporter Shuttle exists or not.
5 They have failed to do that, and there are no cases I'm
6 aware of that have said that an applicant can have an
7 application granted where they've got some kind of
8 supplemental service, a need for supplemental service.

9 Additionally, the applicant must show that
10 Airporter Shuttle has not provided and will not provide
11 service to the satisfaction of the Commission, and
12 again, they failed to do this. On the contrary, each
13 witness I asked admitted the service was satisfactory.
14 Moreover, the applicant at the hearing towards the end
15 particularly tried to reassure the witnesses that
16 Airporter Shuttle would not have to stop service if
17 SeaTac got its certificate. It was not an exclusive
18 service or anything like that, and the obvious
19 conclusion is that Airporter Shuttle's service can't be
20 unsatisfactory if the applicant is trying to convince
21 their own witnesses that it won't go away, and there
22 are no cases to support that this showing equals
23 unsatisfactory service, and it doesn't meet their
24 burden.

25 What I would like to do now is turn to the

1 applicant's witnesses, and I would like to deal first
2 with the ones who are irrelevant. First of all, the
3 non Oak Harbor witnesses, they did not testify about
4 their needs to travel from Oak Harbor, and so we don't
5 have to concern ourselves with them. Loretta Martin,
6 William Bradkin, Diane Menninen, Sarah Kate Dickerson,
7 they are not relevant to Oak Harbor.

8 Second of all, Priscilla Heistad, she does
9 reside in Oak Harbor, but she testified about the needs
10 of others, not her own needs, and the prehearing
11 conference order specifically states that need for new
12 service must be established by the testimony of members
13 of the public who actually require the service. Yet
14 she testified about the needs of others. She knew
15 through Oak Harbor Chamber of Commerce. When I
16 specifically asked her if she knew of Oak Harbor's
17 service, she said no because she had children and felt
18 uncomfortable traveling with them on an airporter bus,
19 so we don't have to think about her either.

20 Another witness was Dave Johnson, a former
21 Harbor Air employee. None of Mr. Johnson's testimony
22 was relevant. First of all, he never testified that he
23 personally needed the applicant's service. When the
24 applicant brings forward a witness, they need to
25 testify about their own need. There is no exception

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1 for people designated as experts to ruminate about the
2 general public need.

3 Second, he testified about passengers carried
4 by Harbor Air. That's totally irrelevant to this case.
5 It's a different service. When I asked Mr. Johnson
6 whether those passengers who took Harbor Air would take
7 an airporter service, he said he had no idea. He also
8 said he didn't know if the market was the same for
9 those two services. His testimony isn't relevant. He
10 never said the Airporter Shuttle provided
11 unsatisfactory service, and his testimony has no
12 bearing on this case.

13 So that's leaves us with really only four
14 witnesses who are from Oak Harbor who testified about
15 their own needs, and these people don't help the
16 applicant either. That's Greg Wasinger, Gary Brown,
17 Dave Johnson, and Sue Sebens. Now, these people do not
18 show there is a public need for SeaTac service. As I
19 mentioned before, they testified they just want service
20 from Airporter Shuttle and SeaTac simultaneously. They
21 want both, and as I mentioned before, that is a problem
22 because it is never going to happen.

23 And how do we know that? Well, Larry
24 Wickkiser and Richard Johnson of Airporter Shuttle
25 explained that the Airporter Shuttle has severely got

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1 to cut or eliminate service if SeaTac's certificate is
2 granted. Why is that? It's an issue of simple
3 economics. Richard discussed these economics in his
4 report. Now, he observed that the two carriers are
5 going to split the small number of people who presently
6 are riding an airporter out of Oak Harbor, and when you
7 talk about an airporter service, you are talking about
8 something that has fixed costs that don't change based
9 on the number of riders.

10 So let me put this in concrete terms here.
11 Right now, Airporter Shuttle averages about one rider
12 for each of its departures from Oak Harbor. Well, if
13 you cut those customers in half, half of the buses are
14 going to be empty, and you can't make money with empty
15 buses, so what do you do? You cut service, and the
16 reality is it's probably going to be worse than that,
17 because really what they've proposed is a predatory
18 schedule. They want to hit the peaks, the peak times
19 that are most profitable and leave the lag times for
20 Airporter Shuttle to pick up. That's known as
21 cream-skimming, and the problem is it doesn't leave
22 Airporter Shuttle any way to subsidize nonpeaks. So
23 what are they going to do? They are just going to
24 eliminate the service. It's not worth the trouble to
25 run the service to capture such a small market. You

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1 are going to start the run in Anacortes or Mount
2 Vernon.

3 So what are the customers going to be left
4 with? They are going to have SeaTac service four times
5 a day at peak hours at best. Richard also showed how
6 we don't think they can make money running south
7 either, so that's even speculative too. The applicants
8 have said they think they can find new customers who
9 aren't currently being served, but frankly, that begs
10 the question, how would they know that? It's pure
11 conjecture. These people are not experts on airporter
12 shuttle service. They've never done this before, and
13 when they are talking about these new customers they
14 claim they will find, it's not clear they are talking
15 about in Oak Harbor or in points south, so we don't
16 really know exactly what they are referring to.

17 So let's come back to the witnesses. With
18 all these factors in mind, I asked them what would
19 happen if Airporter Shuttle cut service, and uniformly,
20 they said that would be bad. Now, the only exception
21 is Sue Sebens, and I will explain in a moment why her
22 testimony is not credible. So ultimately, witnesses
23 are never going to get the nine round trips from
24 Airporter Shuttle and the four round trips from SeaTac
25 Shuttle they claim to be, and on that basis, the

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1 Commission cannot grant this application.

2 I also mentioned earlier, the applicant has
3 got to show a need for their service that is
4 independent from our service. So long as the applicant
5 was trying to assure their witnesses that our service
6 is not going to go away and that it will still be
7 available to fill holes in SeaTac's service, you can't
8 say that SeaTac is showing a need for their service.
9 In order to be consistent with how the Commission has
10 treated this issue in the past, it must be as if
11 Airporter Shuttle were not even in existence, but that
12 wasn't how these witnesses testified, and I don't think
13 the Commission has ever done before what SeaTac Shuttle
14 requests, so I think you need to deny this based on
15 public need.

16 Because the applicant needs to prove public
17 need, the fact that they haven't shown it means you
18 should deny it, but I'm going to go on and talk about
19 satisfactory service for the sake of argument, because
20 that's another thing they must show and that they
21 failed to show. The witnesses did not show that
22 Airporter Shuttle offers unsatisfactory service. Each
23 witness I asked said the Airporter Shuttle service is
24 satisfactory. We know that the applicant was sitting
25 there saying, Look, witnesses, you understand this is

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1 not an exclusive service, and Mr. Lauver said that -- I
2 believe he referred to SeaTac as a supplemental service
3 to Airporter Shuttle service. If it's a supplemental
4 service, how can it be unsatisfactory? That just
5 doesn't make any sense, and it just doesn't meet the
6 applicant's duty.

7 Finally, the applicant failed to show that
8 Airporter Shuttle's service is unsatisfactory because
9 it's slower. There was a lot of debate about that, and
10 it was clear that sometimes their service was slower
11 and sometimes faster, and basically, what we did learn
12 though was that in the end, the important thing to
13 consider when evaluating whether something is faster or
14 slower is to look at the total elapsed time between
15 departure from Oak Harbor and the time your flight
16 arrives, because people don't want to sit around the
17 airport for four hours waiting for their flight, and
18 they also don't want to sit around waiting at the
19 airport for four hours waiting for their bus to take
20 them home. Under those circumstances, I think
21 Airporter Shuttle offers satisfactory service.

22 Now, the applicant did mention Greg Wasinger
23 as someone who they thought was convincing, but I want
24 to point out at least in his case that they said to
25 Mr. Wasinger, Do you believe that you would be able to

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1 schedule your flights around the four round trips that
2 we have proposed, and he said he would not be able to
3 do that. He did not know if he could do that, so it's
4 clear that he's being critical of SeaTac's service. So
5 it's hard to understand how someone who is critical of
6 their service is somehow supporting their application.
7 I don't see it.

8 The bottom line is we compared all of these
9 frequency of service and things like that. So long as
10 they only propose four round trips, they are always
11 going to run into a problem, because you can move those
12 around as much as you want, and there is always going
13 to be holes. They just want us to fill those holes.
14 Richard Johnson also showed that the schedule they are
15 proposing that they use argued shows that they are
16 faster is also based on flawed premises. The reality
17 of this is that they should add more time onto their
18 schedules in order to reflect what will really happen
19 and to build in protections for traffic, because that's
20 what Airporter Shuttle does and it's responsible, and
21 if do you did that, you realize their time advantage
22 virtually disappears.

23 I would like to turn to Sue Sebens. I
24 mentioned I would deal with her separately. She is the
25 Oak Harbor Travel agent. She doesn't help the

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1 applicant because she never said that Airporter Shuttle
2 service is unsatisfactory. In fact, we knew that she
3 writes between one and one-and-a-half tickets per day
4 for her customers on Airporter Shuttle. She's the top
5 grossing travel agent for Airporter Shuttle. How can
6 we rely on her to say that our service is
7 unsatisfactory? It doesn't make any sense.

8 We also know she's factually wrong in
9 understanding the market in Oak Harbor. She was the
10 one who said that 75 percent of Oak Harbor riders board
11 in Mount Vernon, and that's wrong based on the
12 statistics that we have. The figure is almost opposite
13 of that. I believe that 86 percent of Oak Harbor
14 riders actually board in Oak Harbor, so I just don't
15 think her testimony is reliable.

16 Finally, she was highly contradictory. She
17 initially said she was here in support of the
18 applicants application because she wanted to maximize
19 airporter options for her clients, and then she said
20 that she expected both services to operate
21 simultaneously. I asked her whether her clients would
22 mind if Airporter Shuttle discontinued or cut service,
23 and she became somewhat defensive and said she didn't
24 care, so be it. Well, that doesn't make any sense. I
25 don't know if she panicked on the stand or something

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1 like that. I don't really have an explanation for it,
2 but certainly, it's not the testimony that's reliable,
3 and it can't support the application.

4 Now, we did put on affirmative evidence
5 showing that we provide satisfactory service in
6 explaining why we do things the way we do. As Richard
7 Johnson explained, you look at the data we collected.
8 Oak Harbor is a small city with low airporter
9 ridership. The only way to serve that community is to
10 take a route that connects with larger population
11 centers and more riders. Airporter Shuttle has done
12 that by running from Anacortes to Mount Vernon.

13 Now, we have established our schedule in a
14 way that maximizes the number of trips possible for
15 this small market. When you have a small market, there
16 are going to be compromises. It's impossible to
17 provide nonstop service from Oak Harbor to SeaTac 20
18 times a day. The issue is, has Airporter Shuttle made
19 a reasonable decision in its compromises it's made.
20 The answer is yes. Airporter Shuttle is serving the
21 public by maximizing the number of trips. Now, the
22 compromise is to run north through Anacortes and Mount
23 Vernon, but that compromise is acceptable in light of
24 the small market we are dealing with here. Would it be
25 nice to have another airporter that provided more

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1 trips? Well, sure, but that's not saying our service
2 is unsatisfactory.

3 In conclusion on this issue, if Airporter
4 Shuttle is providing service to Oak Harbor in the only
5 economically viable manner, and Airporter Shuttle's
6 decision to maximize frequency of service is
7 reasonable, and none of the applicant's Oak Harbor
8 witnesses say the service is unsatisfactory, then this
9 commission can't hold that the Airporter Shuttle
10 service is unsatisfactory, and you must deny the
11 applicant's application on that basis.

12 Very briefly I will deal with fitness. We do
13 not believe the applicant is fit to provide this
14 service. They've never done it before. They've never
15 worked for an airporter before, and it's inappropriate
16 to allow on-the-job training in an industry that
17 involves transportation of people and important safety
18 issues, and in conclusion, the applicant has failed to
19 make their case, and the application should be denied.

20 JUDGE CAILLE: Rebuttal?

21 MR. LAUVER: Thank you. It appears from
22 Mr. Rice's statement here that the total concern of the
23 protestant has little, if anything, to do with the
24 public necessity and convenience but strictly their
25 bottom line. The applicant offered to increase the

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1 frequency of their runs to match the protestant's runs
2 if they would drop their protest. They stated
3 categorically that they would not do so, so we have
4 state that we were willing to do that. They did not
5 accept it.

6 Mr. Rice claims that all of our South Island
7 witnesses were irrelevant. Yet, he extensively
8 cross-examined each one of those witnesses,
9 specifically with regard to the Airporter Shuttle's
10 schedule, even though they stated they did not use it.
11 So now even though he questioned them at great length,
12 now he's claiming that they are irrelevant.

13 Sue Sebens testified that of the tickets that
14 she has sold on behalf of Wickkiser in the past five
15 months, that is, since the beginning of the year, that
16 70 percent of those tickets were for Mount Vernon. The
17 protestant has provided no evidence to show that in
18 2003, those numbers are not correct. I'm going to let
19 the testimony of all of the other witnesses stand as it
20 is in the record and not make any attempt to pick it
21 apart at this time. I'm only going to state that I
22 feel Mr. Rice's characterization of our witnesses and
23 their testimony is in conflict with that actual
24 testimony.

25 Additionally, at no time did we imply that we

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1 were counting on Wickkiser to remain in business for
2 our business to be a success. Our comments were
3 specifically in response to the protestant's questions
4 to all of our witnesses regarding, what if they
5 withdrew. We are perfectly happy if they withdraw from
6 the market and we are the sole operator there.

7 If the protestant is concerned about us
8 coming in and taking the peak-time passengers, if we
9 can't provide satisfactory service, why would those
10 peak-time passengers move to us, or for that matter,
11 any type of passengers. They are acknowledging that if
12 we enter the market, our service will be better. We
13 will take their passengers. We are more convenient.
14 We are more efficient. We are we offering direct,
15 expeditious, and convenient service.

16 Therefore, I feel strongly that in order to
17 serve the public and not Wickkiser's bottom line, the
18 Commission, who under 81.68.040 is not offered any
19 latitude in considering the financial impact on an
20 existing carrier based on a competitor moving into the
21 market. I suggest that the Commission must grant this
22 request for authority. Thank you.

23 JUDGE CAILLE: Thank you very much.

24 MS. TENNYSON: Your Honor, at the risk of
25 prolonging this proceeding, we don't intend to offer

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1 argument on behalf of either party. I did want to just
2 address the standards that are set out in the statute
3 and in the authority that the Commission has adopted
4 over a period of years.

5 The majority of the cases that deal with the
6 subject are cited in the order that is Exhibit 22 in
7 this case, the CWA order. A couple of themes that I
8 would like to stress are that in their testimony about
9 the needs of the traveling public, even if not offered
10 on behalf of the individual who is doing the traveling,
11 are commonly accepted by the Commission in these cases
12 supporting the service. The Commission also does not
13 consider unregulated services such as taxi cabs and
14 other sources of transportation in determining if the
15 existing carrier is providing service to the
16 satisfaction of the Commission.

17 On that particular point, not providing
18 service to the satisfaction of the Commission is not
19 equated, as Mr. Rice has indicated, with not providing
20 satisfactory service. It's a term of art. If the
21 Commission enters a finding that the existing carrier
22 is not providing service to the satisfaction of the
23 Commission, the cases have held there is an unmet need,
24 not that the current carrier is not providing
25 satisfactory service. "Satisfaction" and

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1 "satisfactory" are two distinct terms and are used
2 distinctly by the Commission in the cases.

3 Cases referenced in the CWA decision include
4 the Centralia SeaTac Airport Express decision in 1992
5 that addressed overlapping service, as well as the
6 Lloyd's Connection, doing business as Airport
7 Connection Airporter in 1990. Both of those are cited
8 in the CWA decision as well as a couple of others, and
9 I would encourage you to review those decisions in
10 making your determination.

11 JUDGE CAILLE: Thank you. I will.

12 MR. RICE: Your Honor, I have a question.
13 Since those cases were raised and they weren't
14 addressed by either of us, will we be given an
15 opportunity to distinguish those cases from --

16 JUDGE CAILLE: As I understand it, I will
17 writing an initial order. You folks are not going to
18 be waiving the initial order and just going to a final
19 order by the Commission. I assume you are aware of
20 those cases since you were the applicant in that
21 proceeding, and actually, I've already read the CWA
22 case. I've not read the cases supporting that, but I
23 intend to. Either side, depending on how I rule, will
24 have an opportunity to raise that in petitions for
25 consideration.

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1 MS. TENNYSON: Petitions for administrative
2 review.

3 JUDGE CAILLE: Thank you. Thank you,
4 everyone. I want to commend both sides for doing an
5 excellent job, and I'm going to need to wait until the
6 court reporter transcribes the record, so we have to at
7 least figure two weeks from today before I get this
8 portion of the record. I should be getting the other
9 within a week. I'll be able to begin then. Thank you
10 very much for coming.

11 MR. LAUVER: Thank you for your patience,
12 Your Honor.

13 (Hearing concluded at 5:11 p.m.)

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