

1 BEFORE THE WASHINGTON STATE

2 UTILITIES AND TRANSPORTATION COMMISSION

3
4 In Re: Application TC-143691)
5)
6 SPEEDISHUTTLE WASHINGTON, LLC,)
7 D/B/A SPEEDISHUTTLE SEATTLE,)
8) Docket Nos.
9 For a Certificate of Public) TC-143691 and TC-160516
10 Convenience and Necessity to) (Consolidated)
11 Operate Motor Vehicles in)
12 Furnishing Passenger and)
13 Express Service as an Auto)
14 Transportation Company)
15)

11 TELEPHONIC HEARING, VOLUME III

12 Pages 168 - 199

13 ADMINISTRATIVE LAW JUDGE RAYNE PEARSON

14
15 11:00 a.m.

16 September 27, 2016

17 Washington Utilities and Transportation Commission
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* * * * *

1 OLYMPIA, WASHINGTON; SEPTEMBER 27, 2016

2 11:00 A.M.

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4
5 JUDGE PEARSON: Then we are on the record in
6 consolidated Dockets TC-143691 and TC-160516. Today is
7 Tuesday, September 27th, 2016, at 11:00 a.m., and we are
8 here to resolve a discovery dispute between the parties
9 as set forth in Shuttle Express's motion to compel and
10 SpeediShuttle's answer to that motion.

11 My name is Rayne Pearson. I'm the
12 administrative law judge presiding over these cases.
13 Both Staff and Mr. Wiley are present with me in the
14 hearing room today, and Mr. Harlow is on the bridge
15 line, as well as Mr. Marks for Shuttle Express,
16 Mr. Roemer for SpeediShuttle, and what was the other
17 gentleman's name?

18 MR. WILEY: Velloth, V-E-L-L-O-T-H.

19 JUDGE PEARSON: And what's --

20 MR. WILEY: He's a colleague in my office.

21 JUDGE PEARSON: Okay. So he works for you,
22 not for the company?

23 MR. WILEY: Yes.

24 JUDGE PEARSON: Okay. Got it.

25 So let's get started by taking short

1 appearances, beginning with Staff.

2 MR. BEATTIE: Thank you. Julian Beattie,
3 B-E-A-T-T-I-E, Washington State Attorney General's
4 Office, and I'm here of behalf of Commission Staff.

5 JUDGE PEARSON: Okay. And for Shuttle
6 Express?

7 MR. HARLOW (via the bridge line): Good
8 morning, your Honor. Brooks Harlow, attorney for
9 petitioner and complainant, Shuttle Express. And we
10 also have on the line Wesley Marks, who is -- I'll call
11 him the subject matter expert with the company.

12 JUDGE PEARSON: Thank you. And for
13 SpeediShuttle?

14 MR. WILEY: Yes, your Honor. Dave Wiley,
15 attorney for respondent, SpeediShuttle. And as you
16 noted, we also have on the record Mr. Roemer from
17 SpeediShuttle, who is the chief financial officer.

18 JUDGE PEARSON: Okay. Thank you.

19 So both parties have filed extensive
20 pleadings related to the motion to compel, so there's
21 not need for much discussion here today. I will let
22 each party briefly make a statement, and then I'll make
23 my rulings on each data request.

24 So Mr. Harlow, if you'd like to go first.

25 MR. HARLOW: Thank you, your Honor. I will

1 comment briefly, and I will be available to address any
2 particular questions about any particular request if you
3 wish to do -- to make some.

4 Kind of big picture, we find it very ironic
5 that the pervasive mantra of the data request objections
6 is that the answers will somehow better enable Shuttle
7 Express to compete with the respondent.

8 JUDGE PEARSON: Mr. Harlow, excuse me. Can
9 you speak up for the court reporter? She's having
10 trouble hearing you.

11 MR. HARLOW: I'll try to move the microphone
12 closer. Is that better?

13 JUDGE PEARSON: Yes.

14 MR. HARLOW: Yes. Yeah. The irony is the
15 pervasive mantra of the application case was that Speedi
16 would not compete, it was supposed to be offering a
17 different service to an entire demographic that Shuttle
18 Express not only was not serving, but could not serve.

19 I will say we have done a great deal of
20 investigation, both before we filed our petition and
21 after. We have a lot more details than we've let on.
22 We've hinted about that. We certainly don't want to
23 provide that all now. It's work product, and we feel it
24 will unfairly enable the respondent to further hide the
25 ball in its responses to discovery.

1 But we certainly have good reason to believe
2 that the documents that we're seeking will show that the
3 respondent never intended to serve a new demographic at
4 all. Their sole goal was to convince the Commission
5 that they were offering a new service to the unserved.

6 Now, in our 20 -- barely over 20 data
7 requests, almost every single one has not been answered,
8 and fairly will not be answered if the objections are
9 upheld.

10 Clearly, the last thing this respondent
11 wants is for the Commission to see what their real
12 intent was and what the real facts were that were behind
13 the application. But their desire to hide the facts or
14 to have only the facts that support their theory of the
15 case come out are not grounds for objection.

16 The second high-level point I want to
17 address is that many of their objections assert that the
18 documents do not exist or would be too hard to provide.
19 And I have to say, again, in my 30 years of experience
20 representing mostly companies, I have never seen a
21 company that had so few records of its essential
22 business metrics. Plus many of the records they claim
23 not to have are records and files that need to be
24 retained for the Commission, for Labor and Industries
25 and for taxing authorities to review and audit should

1 the desire arise.

2 The respondent's objections try to convince
3 you -- just going through the first half, they try to
4 convince you of these things. First of all, they don't
5 know who works at the airport, what they do, what days
6 they do it or for how long. How in the world do they
7 make payroll?

8 Second, they try to convince you they don't
9 know where their sales or their bookings come from. How
10 do they market and serve the public if they don't know
11 these basic facts?

12 Third, they don't know when or where their
13 pre-reserved passengers are arriving from or on what
14 flight, even though they promise to greet each one
15 personally with a personal greeter. How do they staff
16 SeaTac? Where do they staff SeaTac? And when do they
17 staff SeaTac? It's a big place, and they supposedly
18 have thousands of passengers coming in. How do they
19 greet them if they don't track where they're coming
20 from?

21 Fourth, they don't supposedly keep records
22 of their sales and services for more than 60 days. Now,
23 mind you, the standard for business record retention is
24 seven years in the case of the IRS, and for several
25 years for WUTC audits. These are basic business records

1 that must be retained. They can't be deleted for [sic]
2 60 days.

3 Oh, and by the way, this data should come
4 from the Hudson Group. Hudson basically stepped in for
5 SpeediShuttle doing what they were doing for Shuttle
6 Express, so we know pretty much exactly what records
7 they have.

8 Fifth or sixth -- I don't know what number
9 I'm on -- they don't know how long their passengers have
10 to wait for a pickup or a departure, even though they
11 supposedly guarantee 20 minutes. How do they guarantee
12 something they don't even know or track?

13 And finally, supposedly they don't get
14 cellular bills that show their Wi-Fi connectivity or
15 usage.

16 And then finally, let me just drill down a
17 couple -- on a couple of the key metrics, which are the
18 Hudson data and the GO Group data. And the pictures I
19 sent you are illustrative of the kind of prevarication
20 that we've been seeing in this case from the original
21 application and, if anything, it's getting worse.

22 You will notice on each of those two vans,
23 and it's two of their vans, but we know that all of
24 those vans have the GO Group logo on it. The GO Group
25 is a national franchisor, and that is their logo.

1 That's their key trademark. And it's on -- it's on the
2 SpeediShuttle vans because there must be some kind of a
3 license agreement that allows them to use the trademark.

4 Shuttle Express had one, but terminated it,
5 so we know what it probably looks like, although we
6 haven't received a copy of the agreement that
7 SpeediShuttle has, but we know there has to be one.
8 We're pretty -- we're reasonably certain that GO Group
9 has done the same deal with SpeediShuttle that they had
10 previously done with Shuttle Express.

11 But Mr. Roemer claims there's no such
12 agreement, only the ticket agreement. Well, I've looked
13 at our ticket agreement, and it says nothing about use
14 of logos. We don't think that the GO Group is allowing
15 their logo to be used -- their key national trademark to
16 be used without some kind of an agreement, that we've
17 asked for and they've denied the existence of.

18 Hudson Group. Okay. Mr. Marks -- if you
19 want to ask him any questions, you can put him under
20 oath if you want, but Mr. Marks is on the phone because
21 he is -- he's the subject matter of the Hudson
22 agreement, which has recently been terminated by Shuttle
23 Express as well.

24 He went into the booking engine on the
25 SpeediShuttle website. Yes, it starts on SpeediShuttle,

1 but as Mr. Roemer admits in his declaration, quote, "The
2 Hudson Group provides SpeediShuttle with multiple sites
3 for actually booking the reservation." That's exactly
4 right. That's a true statement, which he then tries to
5 completely confuse and twist around.

6 What happens is the -- as Mr. Marks well
7 knows, and tried to make clear in his declaration,
8 the -- the bookings that are done in the foreign
9 languages redirect to the URLs, which are listed in
10 Mr. Roemer's declaration, which are Hudson Group URLs.
11 In other words, it redirects to their website. That's
12 where the booking takes place.

13 Even if you believe Mr. Roemer that somehow
14 the bookings go back to SpeediShuttle, the fact that
15 there's a click on a Hudson Group website means they're
16 tracking it. We used to routinely pull statistical data
17 from Hudson Group, and did up until a few weeks ago when
18 we terminated our agreement with them. It was the
19 easiest thing in the world to get this statistical data
20 that we've asked for.

21 Mr. Roemer apparently doesn't know how to do
22 that, but Mr. -- sorry, Mr. Marks, what's the name of
23 the fellow who used to work for Shuttle Express?

24 MR. MARKS: Mr. Nelson.

25 MR. HARLOW: Mr. Nelson, whose name is

1 disclosed in the screenshot in Mr. Roemer's declaration,
2 Mr. Nelson knows fully well how to do it. He used to
3 work for Shuttle Express. He used to do it with us all
4 the time.

5 So I'm sorry if there's tension in my voice,
6 but the lies -- I'm sorry -- or the misrepresentations
7 or the mistakes, whatever you want to call them, they're
8 continuing, and they're continuing in such a big way
9 that it's extremely frustrating to us.

10 This case should have had our discovery done
11 in July and August, and we should be having a hearing
12 now. Instead, we're having our first discovery dispute
13 at the end of September, and I'm very concerned that our
14 February 1st hearing date is at risk at the rate this
15 case is going.

16 Thank you, your Honor.

17 JUDGE PEARSON: Thank you. Mr. Wiley?

18 MR. WILEY: Yes, your Honor. If I could
19 approach the bench, I wanted to hand you two cases from
20 the Commission that I'm going to be referring to in my
21 remarks.

22 Well, that was more of focus in the weeds
23 than an opening statement. In my experience, I'll try
24 to keep mine at a less specific and higher level, and if
25 we want to get into specificity as you analyze the data

1 requests, I'll be happy to do that.

2 First of all, thank you for your time today.
3 I know it's not a fun endeavor for the Court or tribunal
4 to be involved in discovery disputes, but we have them
5 here, and they are starting out, and I will not comment
6 on the ad hominem sort of labels that have been coming
7 repeatedly from the other side.

8 What I will say, your Honor, is that the
9 Waste Management case, Order 03 from Docket No. 120033,
10 was an enlightening case that I wasn't aware of until I
11 was researching a solid waste discovery issue last week.

12 In that order, the case clearly stands for
13 the proposition that discovery at the Commission is very
14 different from superior or federal court. Discovery for
15 Commission proceedings is governed under the APA
16 34.05.446, and the rule that you cited in your
17 prehearing conference order, which is WAC 480-07-400.

18 The Commission prescribes under what
19 circumstances discovery, if any, will take place in any
20 proceeding. So far in this proceeding, as mentioned, we
21 have an acknowledgement in the prehearing conference
22 order that discovery will be governed by the basic rules
23 that you cite. But that order, and neither Order 06,
24 02, 07, none of them clearly announce or set forth the
25 appropriate scope of discovery that will occur, and

1 there has been no ruling in this case on the appropriate
2 scope of discovery.

3 As the Waste Management case suggests, in
4 application cases -- which, after all, is what a
5 petition for rehearing of an application is -- in
6 application cases, there is no inherent right to
7 discovery.

8 In auto transportation cases, that right is
9 even more constrained, since the Commission now decides
10 those cases on brief adjudicative proceeding records,
11 and has already stated -- the Commission, that is --
12 that by rule and case law, an objecting carrier has no
13 right to, and is not involved in financial or
14 operational fitness issues in an application case.

15 In other words, they completely lack
16 standing to inquire as to financial fitness issues, so
17 any rehearing of an application case for auto
18 transportation authority should and must be consistent
19 with that approach.

20 Now, what we have in this case is a
21 hopelessly intertwined pleading. You've seen numerous
22 references to that position by both the respondent and
23 the staff. And it's very important, for today's
24 rulings, that we bifurcate those two proceedings. They
25 are consolidated for economy; we understand that. We

1 support efficiency. But it's very important that you,
2 in analyzing data requests, consider whether it's
3 directed to the petition for rehearing or the complaint.

4 If it is directed to the complaint, we
5 acknowledge, as we did at the prehearing conference,
6 that discovery is allowed generally where
7 anti-competitive conduct is alleged, and that's allowed
8 by the Commission rule. But the Commission and
9 your Honor can and should limit appropriate discovery
10 based on allegations already resolved by the Commission
11 in the Everett Airporter case that we cited in our
12 opposition to the motion to compel.

13 It is disingenuous, at a minimum, for this
14 complainant to be broadly alleging anti-competitive
15 behavior based on first-year operating losses or
16 below-cost rates on the basis of Commission staff
17 analyzed and approved rates, and on the basis of fair
18 flexibility authorized by the Commission in 2013.

19 In a complaint case, there is simply no
20 unfettered right to obtain a competitor's financial
21 information simply by noticed pleading, a parade of
22 horrors, through a complaint, and then casting the
23 widest net possible to sweep up any scintillas of proof,
24 one, that are irrelevant, as a matter of law, to a
25 complaint, as is already established by this Commission

1 for this industry; and, two, that would force risk of
2 disclosure of proprietary information that, in addition
3 to being irrelevant, could cause a real risk of harm to
4 an existing provider in an industry that the Commission
5 has described as fully competitive. And thus, the scope
6 of allowable discovery in a case like this should be
7 informed and well-informed by those decisions by the
8 Commission.

9 One of the concerns that we have, in looking
10 at the objected-to data requests, is that they weren't
11 analyzed on the basis of statute, rule or case law.
12 They were just propounded as the broadest possible
13 requests to get proof against allegations that are
14 noticed pleading.

15 One of the other concerns that we have,
16 your Honor, is that a lot of the scope of the discovery
17 sought by the complainant fails to consider
18 proportionality. Proportionality is a doctrine and now
19 codified in federal rules of civil procedure on
20 discovery.

21 And there's no better context on the
22 breadth, cost and scope of what the discovery involves
23 here than a review of the annual report of the
24 respondent. That recent annual report reflects \$754,000
25 in annual revenues in the first year of operation. The

1 expansive scope of Shuttle Express's discovery requests
2 threaten to pale that, and there is no proportionality
3 in many of the questions that they are seeking.

4 In addition to that, your Honor, the
5 complainant fails to acknowledge that Order 06 is on
6 review at the Commission. And I think even you would
7 acknowledge that that order, by its express terms, was
8 not effective until and unless the Commission reviewed
9 that ruling. Many of the requests sought in this
10 current dispute go to the heart of the petition for
11 rehearing, which is on review.

12 So your Honor, I can go through a number of
13 the particularities in the weeds that were alleged and
14 respond, but I don't think that's what you're seeking,
15 at least based on your opening comments. I am happy to
16 respond individually. We did a very detailed response.

17 I do want to say, your Honor, that I believe
18 the attack on the credibility of a declarant, who swears
19 under oath, is entirely inappropriate at this
20 Commission. I also think that Mr. Roemer's very pointed
21 responses to Mr. Marks' declaration set forth the
22 accurate circumstance of this company's operations.

23 I also believe that the website references
24 to foreign language and all the other reservation and
25 trip distinctions that are in Mr. Roemer's declaration

1 point out some of the flaws in the wide net that they're
2 seeking to cast.

3 But your Honor, I do think that it's time
4 that we bifurcate analytically the petition for
5 rehearing and the complaint and decide which are
6 appropriate under which statute, rule and case law. And
7 we don't -- what we have to date is a bunch of
8 allegations thrown against the wall, and now
9 proof-seeking by the complainant to support those
10 overbroad and inappropriate allegations.

11 JUDGE PEARSON: Thank you, Mr. Wiley.

12 Mr. Beattie, did you want to --

13 MR. BEATTIE: Thank you, Judge Pearson.

14 On behalf of Staff, I'll just make a general
15 comment. It's my observation, as Staff counsel, that
16 Shuttle Express believes the scope of discovery in this
17 case is wide open, and perhaps after your rulings today
18 will learn a little bit more about the scope.

19 But before hearing your rulings, I'll just
20 offer that as an observation that, indeed, it's not just
21 hyperbole on Mr. Wiley's part. I believe that Shuttle
22 Express really does believe that the door is wide open,
23 everything is relevant.

24 From Staff's perspective, Shuttle Express's
25 data requests go beyond what Staff would need to offer

1 this Commission in analysis in the form of testimony,
2 and so we certainly would support narrowing the scope of
3 discovery.

4 JUDGE PEARSON: Thank you, Mr. Beattie, and
5 that provides an excellent segue into my next comment,
6 which was going to be that I want to clarify the scope
7 of the proceeding at this point, and just make it clear
8 that it's limited to, number one, whether SpeediShuttle
9 is providing the service the Commission authorized it to
10 provide consistent with the business model approved by
11 the Commission in Docket TC-143691, and whether
12 SpeediShuttle is providing service below cost as alleged
13 in the complaint in Docket TC-160516. And those are the
14 only issues that we're looking at. So my decisions
15 related to each data request will reflect the scope of
16 the proceeding, and I trust that subsequent data
17 requests issued by the parties will do the same.

18 So I also want to be clear that I don't need
19 to hear any additional argument on the motion to compel,
20 so please refrain from making any additional argument as
21 I walk through the data requests. But do feel free to
22 ask clarifying questions as we go, if necessary.

23 And finally, I will not be issuing a written
24 order. My decisions will be made from the bench today,
25 so please take notes, and I will give you time to do

1 that.

2 MR. WILEY: Thank you.

3 JUDGE PEARSON: Are there any questions
4 before we go through the data requests? Okay.

5 So with respect to Data Request No. 1 -- and
6 I'm not going to read the data requests because I expect
7 that everyone has them in front of them and know which
8 ones I'm referring to -- Shuttle Express is entitled to
9 the following information: The total number of
10 SpeediShuttle employees who work for SpeediShuttle
11 Seattle; the number of those employees who speak a
12 language other than English -- and I do mean fluently
13 speak the language and are able to converse with
14 customers; for those employees who speak a language
15 other than English, please identify them by job title
16 and job description and identify which languages they
17 speak.

18 MR. WILEY: Can you slow down just a little
19 bit?

20 JUDGE PEARSON: Sure. And I can repeat
21 anything that you --

22 MR. WILEY: Can you repeat the last portion
23 of that?

24 JUDGE PEARSON: Sure. For those employees
25 who speak a language other than English, identify them

1 by job title and job description and identify which
2 languages they fluently speak.

3 Let me know when you're ready and I'll move
4 to No. 2.

5 MR. WILEY: I am.

6 JUDGE PEARSON: All right.

7 For Data Request No. 2, SpeediShuttle must
8 provide any correspondence that demonstrates how
9 SpeediShuttle is executing the business plan approved by
10 the Commission, and providing only the service it is
11 authorized to provide.

12 MR. HARLOW: Can you say the first part
13 again? Any correspondence on how SpeediShuttle is
14 executing --

15 JUDGE PEARSON: Any correspondence that
16 demonstrates how SpeediShuttle is executing the business
17 plan approved by the Commission, and providing only the
18 service it is authorized to provide.

19 MR. HARLOW: Thank you, your Honor.

20 JUDGE PEARSON: Are you ready, Mr. Wiley?

21 MR. WILEY: Yes, I am. I'm sorry.

22 JUDGE PEARSON: Okay.

23 Data Request No. 3, SpeediShuttle must
24 provide any documents that demonstrate how its hiring
25 practices support the business model approved by the

1 Commission.

2 Are you ready, Mr. Wiley?

3 MR. WILEY: Yes, I am, your Honor.

4 JUDGE PEARSON: For Data Request No. 4,
5 SpeediShuttle must provide the total number of
6 reservations made between May 2015 and the most recent
7 available date, and the number of reservations made in a
8 language other than English for that same time period.

9 Okay. So with respect to Data Request
10 No. 5, because the information related to the number of
11 SpeediShuttle employees who speak languages other than
12 English that are working as airport greeters at SeaTac
13 will be provided in response to Data Request No. 1, for
14 Data Request No. 5, SpeediShuttle must provide the total
15 number of customers who have been greeted by a personal
16 greeter at SeaTac between May 2015 and the most recent
17 available date, and, of those customers, the number who
18 requested or required a greeter who spoke a language
19 other than English.

20 Okay. So Data Request No. 6 is denied.

21 Data Request No. 7, SpeediShuttle must
22 provide all documents that demonstrate that departures
23 either are or are not being made within 20 minutes.

24 MR. HARLOW: Your Honor, can you give me the
25 first part of that again, please?

1 JUDGE PEARSON: Sure. SpeediShuttle must
2 provide all documents that demonstrate that departures
3 either are or are not being made within 20 minutes.

4 MR. HARLOW: Thank you, your Honor.

5 MR. WILEY: Thank you.

6 JUDGE PEARSON: So for Data Request No. 8,
7 this answer will be complete once SpeediShuttle provides
8 its fleet list, which it has said it will do, and
9 nothing else is required.

10 For Data Request No. 9, SpeediShuttle must
11 provide all documents that demonstrate how walk-up
12 service will be or is used pursuant to the business plan
13 approved by the Commission.

14 MR. WILEY: Could you do that one again,
15 please?

16 JUDGE PEARSON: Sure. SpeediShuttle must
17 provide all documents that demonstrate how walk-up
18 service will be or is used pursuant to the business plan
19 approved by the Commission.

20 Data Request No. 10 is denied.

21 Data Request No. 11 is denied.

22 For Data Request No. 12, SpeediShuttle must
23 provide all documents that concern SpeediShuttle
24 providing service other than the service described in
25 the business plan approved by the Commission.

1 MR. WILEY: One more time.

2 JUDGE PEARSON: Sure. SpeediShuttle must
3 provide all documents that concern or address
4 SpeediShuttle providing service other than the service
5 described in the business plan approved by the
6 Commission.

7 MR. WILEY: Your Honor, clarification. In
8 other words, just general, how they promote themselves
9 in the marketplace; is that -- that, I assume, would go
10 to your ruling?

11 JUDGE PEARSON: Well --

12 MR. WILEY: If it doesn't deal with the
13 conditions or service distinctions that the Commission
14 talked about in Order 04, but just talks about how they
15 promote their service, I assume that --

16 JUDGE PEARSON: Right. Or any internal
17 documentation as well.

18 For Data Request No. 13, SpeediShuttle must
19 provide the information requested with the exception of
20 the data related to Hawaii. So from Data Request
21 No. 13, just delete the words "or in Hawaii."

22 Data Requests 14, 15 and 16 are generally
23 denied. To obtain the information sought in those three
24 data requests, SpeediShuttle must provide financial
25 documents that demonstrate the costs of providing

1 service in Washington, and the revenues generated from
2 that service from May 2015 to the most recent date
3 available.

4 MR. HARLOW: Your Honor, this is Mr. Harlow.
5 For clarification, we have requested, obtained and
6 reviewed the financial reports that SpeediShuttle
7 submitted for 2015 to the Commission, and those show --
8 I haven't looked at them for a while, but they generally
9 show operating costs and operating revenues, but they
10 don't show what I call GS and A, general services
11 administration marketing numbers, and they don't show
12 the fully-loaded costs, much of which may be being done
13 out of Hawaii. Like management may be done, hiring may
14 be done out of Hawaii, advertising may be done
15 company-wide in airline magazines that serve both
16 markets and so on, so forth.

17 So understanding the scope of your ruling,
18 can we understand that it goes beyond simply the
19 operating data that's provided to the Commission? It
20 does cover shared and common costs.

21 JUDGE PEARSON: It does go beyond that. I
22 want to know the entirety of the costs of providing
23 service in Washington.

24 MR. HARLOW: Thank you for the
25 clarification, your Honor.

1 MR. WILEY: Your Honor, we may seek some
2 further guidance on this regarding disclosure of the
3 financial information? There is no protective order in
4 this matter, and so, you know, if we can have some sort
5 of nondisclosure agreement negotiated between the
6 parties -- that I know you won't be involved in -- but
7 there is concern because of what I said previously.

8 The Commission said this is a competitive
9 industry, and clearly providing financial information to
10 a competitor, as opposed to a public utility or someone
11 who is operating exclusively within Commission
12 jurisdiction, is just a theoretical and practical
13 concern. So that's where the lack of protective
14 order -- I fully understand why you've ruled that way
15 and didn't dispute it, but that's where, in this unique
16 industry, if we could seek some protection, we'd like
17 it.

18 JUDGE PEARSON: I'll leave that up to the
19 parties to work that out.

20 MR. WILEY: Okay. And so I just wanted you
21 to understand, we need to discuss that --

22 JUDGE PEARSON: Okay.

23 MR. WILEY: -- amongst ourselves.

24 MR. HARLOW: Your Honor, we've reached out
25 to Mr. Wiley on several occasions to try to do that, and

1 I'm hopeful that we can do that. He's asked for
2 essentially the same information from Shuttle Express,
3 so it is a two-way street.

4 MR. WILEY: Which I did indicate, as you'll
5 recall, is that we'd withdraw if those data requests
6 were rejected or denied.

7 JUDGE PEARSON: Okay.

8 MR. HARLOW: Yeah. We'll have conferences,
9 your Honor.

10 JUDGE PEARSON: Okay. Thank you.

11 With respect to Data Request 17,
12 SpeediShuttle must provide the information requested
13 with the exception of the data related to
14 non-English-speaking passengers, because that was
15 addressed in an earlier data request. So the words "or
16 non-English-speaking" should be deleted from Data
17 Request 17.

18 For Data Request 18, it's denied.

19 Data Request 19, the answer was already
20 provided.

21 Data Request 20, SpeediShuttle must provide
22 copies of reports filed with the Commission and the Port
23 of Seattle.

24 MR. HARLOW: I'm sorry, your Honor. If I
25 could just stop you and just go back to 19, because I

1 got behind in my notes.

2 JUDGE PEARSON: Uh-huh.

3 MR. HARLOW: But I assume that you're saying
4 that was already provided pursuant to an earlier data
5 request order --

6 JUDGE PEARSON: Sorry. Can you speak up?

7 MR. HARLOW: -- Order 06, perhaps? Can you
8 hear me now?

9 JUDGE PEARSON: Yeah. You're talking about
10 19?

11 MR. HARLOW: Yeah. So are you basically
12 saying that's covered by, I think, 04 and 06 probably?

13 JUDGE PEARSON: Right.

14 MR. HARLOW: Okay. Thank you for clarifying
15 that.

16 JUDGE PEARSON: Okay.

17 And did you all hear me for Data Request
18 No. 20?

19 MR. HARLOW: No, I missed that.

20 JUDGE PEARSON: Okay. SpeediShuttle must
21 provide copies of reports filed with the Commission in
22 the Port of Seattle.

23 And Data Requests 21, 22 and 23 are denied.

24 So Mr. Wiley, do you have an estimated date
25 by which you can provide responses?

1 MR. WILEY: That was going to be my next
2 point, your Honor. You anticipated.

3 We will have some discovery responses in by
4 the end -- by Friday, the 30th, as we indicated.

5 JUDGE PEARSON: Okay.

6 MR. WILEY: The other requests, I want to
7 take -- I want to analyze them, talk to the client, and
8 I'll be happy to tell you a date that we would propose
9 and see what your response is. I don't know how you
10 want to handle it.

11 JUDGE PEARSON: Well, my inclination is to
12 just assign the default response of ten business days
13 from today, which is October 11th, and then if you are
14 unable to meet that deadline, you can work that out with
15 Mr. Harlow.

16 MR. WILEY: Yeah, I think that would --

17 MR. HARLOW: Your Honor, if it helps
18 Mr. Wiley, I will be out of the country until -- from
19 the 8th to the 15th. So if he could get it to me by the
20 8th, great; if not, then he might as well take until
21 Monday, the 17th.

22 MR. WILEY: I appreciate that. And with the
23 kind of complications that Mr. Harlow is aware of in my
24 schedule right now through the fall, I would think that
25 the 15th would be appreciated.

1 JUDGE PEARSON: The 17th.

2 MR. WILEY: The 17th, excuse me, yes.

3 JUDGE PEARSON: Okay.

4 MR. WILEY: But I will -- we will
5 endeavor -- we will go forward on this right away, as
6 you would expect.

7 JUDGE PEARSON: Okay. Great.

8 MR. HARLOW: We would appreciate partial
9 responses before the 8th.

10 MR. WILEY: Sure.

11 MR. HARLOW: I'll be working on it until
12 that date, so --

13 JUDGE PEARSON: Mr. Wiley has indicated yes
14 to that.

15 MR. HARLOW: Great.

16 JUDGE PEARSON: Okay. Are there any other
17 questions or anything else from either party?

18 MR. HARLOW: Your Honor, as long as we're
19 all here, maybe save a drive for the court reporter and
20 Mr. Wiley, you have allowed depositions, as I understand
21 it, in your prior -- your order this summer, and we've
22 had some discussions with Mr. Wiley and I think we're
23 gonna reach -- I think we're already at impasse; if not,
24 we're gonna reach it soon.

25 But we anticipate wanting to take

1 Mr. Roemer's deposition. He's on the phone. He's
2 submitted a declaration and he's indicated as a likely
3 witness in the discovery responses.

4 We would also want to take Mr. Morton's
5 deposition. He's the gentleman who testified about
6 walk-up at the prior hearing, and he's kind of the key
7 to understanding why that testimony was given in light
8 of subsequent activities.

9 And here's the question. Do we have to go
10 to Hawaii or will they have to come to Seattle? And as
11 I see it, the Commission's rule basically incorporates
12 the civil rules, Civil Rule 30 specifically, and if you
13 look at Civil Rule 30, it says it really -- without
14 expressly saying it, it matches the provisions of Civil
15 Rule 43(f), and 43(f) says that "a party or officer,
16 director or managing agent may be compelled to attend
17 within the jurisdiction merely by the notice."

18 And this was hotly contested until many
19 years ago in the Campbell vs. A.H. Robins case. I can
20 give you the citation to that if you need it.

21 JUDGE PEARSON: Mr. Harlow, I think this is
22 premature at this point. That's not why we're here
23 today.

24 MR. HARLOW: Okay.

25 JUDGE PEARSON: So we'll take that up as it

1 arises.

2 MR. HARLOW: All right. We will defer that
3 then. I was hoping we could get a little bit ahead of
4 the curve here.

5 JUDGE PEARSON: Anything else?

6 MR. WILEY: Nothing, your Honor.

7 JUDGE PEARSON: Okay. Then we will be off
8 the record. We're adjourned. Thank you.

9 MR. HARLOW: Thank you.

10 (Hearing concluded at 11:43 a.m.)

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C E R T I F I C A T E

STATE OF WASHINGTON)
COUNTY OF KING) ss.
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I, ANITA W. SELF, a Certified Shorthand Reporter in and for the State of Washington, do hereby certify that the foregoing transcript is true and accurate to the best of my knowledge, skill and ability.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 6th day of October, 2016.

ANITA W. SELF, RPR, CCR #3032