

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

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|--------------------------------------|---|---------------------------|
| In re Application No. D-079257 of |) | DOCKET NO. TC-040369 |
| |) | |
| MUHLBAIER, BARRY & AMY, d/b/a |) | |
| A & B SPECIALIZED TRANSPORT |) | ORDER NO. 02 |
| |) | |
| for a Certificate of Public |) | FINAL ORDER GRANTING |
| Convenience and Necessity to |) | APPLICATION FOR A |
| Operate Motor Vehicles in Furnishing |) | CERTIFICATE OF PUBLIC |
| Passenger and Express Service as an |) | CONVENIENCE AND NECESSITY |
| Auto Transportation Company |) | |
| |) | |

1 **Synopsis.** *This order grants an application for new authority to operate door-to-door, by reservation only, airporter bus service between Seattle Tacoma International Airport and the Key/Kitsap Peninsula area.*

I. INTRODUCTION

2 **Nature of the Proceeding.** This is an application by Barry & Amy Muhlbaier, d/b/a A & B Specialized Transport (A&B or Applicant) for authority to operate door-to-door “airporter” passenger bus service, by reservation only, between Seattle-Tacoma International Airport and the Key/Kitsap Peninsula area. The authority overlaps that of Bremerton Kitsap Airporter, Inc. Initially, Bremerton Kitsap Airporter protested the application, but then withdrew its protest prior to the prehearing conference.

3 **Parties.** Barry Muhlbaier, Lakebay, Washington, represents Applicant. Christopher Swanson, Assistant Attorney General, Olympia, Washington, represents the Commission’s regulatory staff (“Commission Staff” or “Staff”).

4 **Procedural Background.** On February 25, 2004, Barry and Amy Muhlbaier, d/b/a
A & B Specialized Transport filed an application (Number D-079257) for a
Certificate of Public Convenience and Necessity to Operate Motor Vehicles in
furnishing Passenger and Express Service as an Auto Transportation Company
(Application). Notice of the Application was published in the Commission's
weekly Docket of April 12, 2004.

5 The Application requests authority to provide door-to-door passenger service, by
reservation only, between Seattle-Tacoma International Airport and the
Key/Kitsap Peninsula Area.

6 The Key/Kitsap Peninsula area consists of Herron Island, Fox Island, Raft Island
and that portion of Pierce and Kitsap Counties described as follows: Beginning
at Port Orchard in Kitsap County then following the shoreline easterly and
southerly to Gig Harbor in Pierce County; thence from Gig Harbor following the
shoreline southerly, westerly, and northerly to its intersection with the Mason
County Line, thence following the Mason County line northerly to its
intersection with the Old Belfair Valley Road then Belfair Valley Road extended
to the shoreline of Sinclair Inlet; thence following the shoreline to the point of
beginning at Port Orchard.

7 Bremerton Kitsap Airporter filed a timely protest within the 20 days required by
WAC 480-30-032 (1). On June 17, 2004, Bremerton Kitsap Airporter withdrew its
protest by letter to the Commission Secretary.

8 The Commission convened a prehearing conference in this docket at Olympia,
Washington on July 8, 2004, before Administrative Law Judge Karen Caillé.
Since the only protest to the application had been withdrawn, the Commission
determined that it would accept written statements from members of the
community as to the need for Applicant's services. On August 5, 2004, the

Applicant submitted thirteen letters expressing need for Applicant's service, admitted as Exhibit No. 1, and a list of about seventy customers who have called for Applicant's services, admitted as Exhibit No. 2.

9 RCW 81.68.040 requires that the Commission grant authority in a territory already served only after hearing. The route that A&B seeks to serve is presently served by Bremerton Kitsap Airporter. Administrative Law Judge Karen M. Caillé (ALJ) convened an evidentiary hearing in Olympia, Washington on August 18, 2004. The ALJ heard A&B's application, received evidence from witnesses called by A&B, and admitted two exhibits into evidence. The Applicant and Commission Staff waived entry of an Initial Order in this proceeding, and agreed to entry of a Final Order by the Commission.

10 **Standard for Determination.** The fundamental standard governing this application is contained in RCW 81.68.040.

No auto transportation company shall operate for the transportation of persons, and baggage, mail and express on the vehicles of auto transportation companies carrying passengers, for compensation between fixed termini or over a regular route in this state, without first having obtained from the commission under the provisions of this chapter, a certificate declaring that public convenience and necessity require such operation; The commission shall have power, after hearing, when the applicant requests a certificate to operate in a territory already served by a certificate holder under this chapter, only such territory will not provide the same to the satisfaction of the commission, and in all other cases with or without hearing, to issue said certificate as prayed for; or for good cause shown to refuse to issue same, or to issue it for the partial exercise only of said privilege sought, and may attach to the exercise of the rights granted by said when the existing auto transportation company or companies serving certificate to such terms and conditions as, in its judgment, the public convenience and necessity may require.

In addition, consistent with the Commission's rules for auto transportation companies in Chapter 480-30 WAC, the Commission considers an applicant's financial fitness, and its fitness generally to provide the service for which it seeks authorization. Thus, two sets of questions must be addressed with respect to the application:

- 1) Public convenience and necessity:
 - a) Do the public convenience and necessity require the proposed service?
 - b) Does an existing auto transportation company operating in the territory at issue provide service to the satisfaction of the Commission?
- 2) Financial Fitness:
 - a) Is the company financially fit and capable of providing the service?
 - b) Does the company exhibit regulatory fitness?

II. MEMORANDUM

11 **Factual Basis.** A&B wants to provide door-to-door passenger service, by reservation only, between Seattle-Tacoma International Airport and the Key/Kitsap Peninsula area over all the subroutes of the Kitsap Peninsula, and State Route 3, State Route 16, and Interstate 5.¹

12 Bremerton Kitsap Airporter offers service that would overlap with that proposed by Applicant. Importantly, Bremerton Kitsap Airporter does not offer door-to-door service. Rather, Bremerton Kitsap meets its passengers at pick-up points.²

¹ Muhlbaier, Tr. at 24-25.

² Muhlbaier, Tr. at 23, Von Ruden, Tr. 12, Doyle, Tr. at 16.

- 13 Mr. Muhlbaier testified that he is currently employed as a truck driver by B&C Trucking out of Port Orchard, Washington.³ He stated that he and his wife Amy will be co-owners of A&B Transport. Initially, they intend to run the business out of their home office in Lakebay, Washington.⁴
- 14 Mr. Muhlbaier testified that following graduation from high school, he joined the United States Marine Corps. After completing his Marine Corps service in 1985, he spent the next nineteen years as a commercial truck driver. He represented that he logged over a million to a million-and-a-half miles during that time.⁵ Over the course of his nineteen years as a commercial truck driver, Mr. Muhlbaier served as a mechanic for several different trucking companies.⁶ Mr. Muhlbaier testified that he owned two of his own trucks and managed the financial matters associated with the two trucks.⁷
- 15 Mr. Muhlbaier testified that his wife has experience providing passenger transport service. She worked as a driver for Bremerton Kitsap Airporter.⁸ He reported that his wife runs her own Avon Business, and that she is a stand-in district sales manager for the Avon Corporation.⁹ In addition, Mr. Muhlbaier noted that they have a very close friend who is a certified public accountant, and she has offered her expertise should they need it.¹⁰
- 16 Mr. Muhlbaier testified that he is familiar with and intends to fully comply with the Commission's regulations on transportation service and operations, including safety, driver training, insurance, operations, maintenance, dispatch, reservations, and marketing. He noted that he has taken steps to acquire liability

³ Muhlbaier, Tr. at 18.

⁴ Muhlbaier, Tr. 18-19.

⁵ Muhlbaier, Tr. at 22

⁶ Muhlbaier, Tr. at 21.

⁷ Muhlbaier, Tr. at 26.

⁸ Muhlbaier, Tr. at 25.

⁹ Muhlbaier, Tr. at 26.

¹⁰ Ibid.

insurance on the vehicles, and he has inquired about a concession agreement with SeaTac Airport authority.¹¹ Mr. Muhlbaier confirmed that he will comply fully with all requirements of the Washington State Department of Transportation (DOT), and will hire, train, and monitor his drivers according to Commission and DOT regulations.¹²

17 Mr. Muhlbaier testified that A&B has three vehicles to begin service: a 1998 Windstar, a 1989 Dodge Caravan, and a 1987 Chevy Suburban, all of which have new motors. He stated that he intends to upgrade the Windstar to a fifteen passenger vehicle once the business is established. He testified that he will do minor preventive maintenance himself. He will take the vehicles to their respective dealerships for anything more than oil changes and light replacements.¹³ Mr. Muhlbaier acknowledged that A&B will maintain vehicle maintenance files. He also confirmed that A&B will conduct pretrip vehicle inspections.¹⁴

18 Mr. Muhlbaier acknowledged that A&B had placed advertising in the Gig Harbor phone book and another phone book prior to learning about the certification requirements. Mr. Muhlbaier explained that was how they came up with the list of seventy-plus names in Exhibit 2. The people on the list responded to the advertising for A&B transport service placed in the phone books. Mr. Muhlbaier stated that A&B intends to place advertising in the Kitsap phone book and to contact radio stations when the Application is approved.¹⁵

¹¹ Muhlbaier, Tr. at 26-27.

¹² Muhlbaier, Tr. at 28, 30, 31.

¹³ Muhlbaier, Tr. at 20-22.

¹⁴ Muhlbaier, Tr. at 21.

¹⁵ Muhlbaier, Tr. at 36.

- 19 **Applicant's public witnesses.** A&B offered into evidence the testimony of two live public witnesses and thirteen letters regarding the needs of the traveling public and the adequacy of Bremerton Kitsap Airporter's services in meeting those needs.
- 20 Melissa Von Ruden testified that she is a resident of Lakebay, Washington. She travels to SeaTac Airport six or seven times a year for travel for herself, and to pick up family who have come to visit. Generally, she or her husband drives to the airport. She describes those trips as very stressful because of the long drive and the difficulties with airport parking. Ms. Von Ruden testified that it takes about two and one-half hours to drive to SeaTac airport under normal traffic conditions. Ms. Von Ruden stated that there is no shuttle service to the airport from the Key Peninsula. The Bremerton Kitsap airporter is the nearest shuttle with a pick-up point in Gig Harbor, a 45-minute drive from Lakebay. Ms. Von Ruden confirmed that if there was a door-to-door service like that proposed by A&B, she would use it, as well as her family from out-of-state.¹⁶
- 21 Ms. Von Ruden is also one of the thirteen people who sent in letters expressing the need for A&B's service. In her letter, Ms. Von Ruden expressed the inconvenience of having to go to Gig Harbor to take the shuttle or to meet someone arriving on the shuttle. She explained that her father lives out-of-state, and he always takes the red-eye into Seattle. He refuses to bother her to pick him up at the airport or the Bremerton Kitsap Airporter drop-off in Gig Harbor. He rents a car for the sole purpose of driving from the airport to Lakebay.¹⁷
- 22 Patrick Doyle testified that he lives between Port Orchard and Belfair. Mr. Doyle works for FXI, Inc. out of Houston, Texas. Mr. Doyle testified that he could have used A&B's service that morning. He stated that he travels to SeaTac between two and six times a year to pick up relatives. He does not fly himself. Mr. Doyle

¹⁶ Von Ruden, Tr. at 10-13.

¹⁷ Exhibit No. 1, Von Ruden letter.

reported that there are no airporters serving his area. The only airporter service is a park-and-ride, and that is 20 miles away. He testified that door-to-door service is valued in his area because you would not have to deal with the expense and hassle of parking, and the service would accommodate the individual's schedule rather than the airporter's schedule. Mr. Doyle was also one of the thirteen people to send in a letter supporting the need for A&B's service.¹⁸

23 Dennis and Mao Johnson, Heather Olson, and LeRoy West of Gig Harbor wrote letters expressing the need for door-to-door airporter service in Gig Harbor. They all stated that they would use the service if it were available.¹⁹

24 Mark and Ann Rumbaugh, Robert and Janelle Mitchell, Linda Martin, and an unidentified person of Port Orchard wrote that they needed a service such as A&B because it offered door-to-door service and would accommodate their flight schedules. Two of the four commenters from Port Orchard expressed their dissatisfaction with Bremerton Kitsap Airporter service. Three of the four commenters stated that they would definitely use A&B's service. The fourth commenter reflected that there are a lot of elderly people in Port Orchard who would benefit from the service.²⁰

25 Janet Doyle of Lakebay wrote that in her area there is a large population of retired, disabled, and single people who cannot manage to drive to a pick up point to meet up with the Bremerton Kitsap Airporter. She recalled that many times she had to wait at the pick-up point for a friend or relative in bad weather and the shuttle was late. She stated that she felt that it was not safe to wait alone for long periods of time not knowing when the shuttle would arrive. Ms. Cline noted that her daughter is disabled, and suggested that it would be more

¹⁸ Doyle, Tr. at 14-16; Exhibit No. 1, Doyle letter.

¹⁹ Exhibit No. 1, Johnson, Olson, and West letters.

²⁰ Exhibit No. 1, Rumbaugh, Mitchell, Martin, and "unidentified" letters.

comfortable for her to have less stress and movement with a single pick-up. She sees A&B's proposed service not only as a more convenient option, but also as a necessary one.²¹

26 Ms. Diane Allred of Ollala also wrote a letter in support of A&B's service, as did Sharon Cavanaugh, and Darrell and Dorine Doyle on the Key Peninsula. All four commenters expressed a need for such a service to the remote areas of the Key Peninsula, and that they would use the service if it were available.²²

III. DISCUSSION AND DECISION

27 The State of Washington regulates entry into the airporter auto transportation (bus) business through the provisions of Chapter 81.68 RCW. Among other things, the law provides that the Commission may not grant an application for authority to serve in a territory served by another carrier until after a hearing in which it finds (1) that the new service is required by the public convenience and necessity; and (2) that the existing carrier will not serve to the Commission's satisfaction. In addition, the Commission examines an applicant's regulatory and financial fitness to conduct the proposed operations and considers whether the proposal is consistent with the public interest.

Public Convenience and Necessity

a) Do the public convenience and necessity require the proposed service?

28 An applicant for an auto transportation certificate must establish that the public convenience and necessity require the proposed operations. *RCW 81.68.040. In re Lloyd's Connection, Inc., d/b/a Airport Connection Airporter, Hearing No. D-2556, Order M.V.C. No. 1892 (December 1990).* Public convenience and necessity require

²¹ Exhibit No. 1, Cline letter.

²² Exhibit No. 1, Allred, Cavanaugh, and Doyle letters.

the services of an additional carrier if existing carriers cannot meet the needs of the traveling public. *Id.* Convenience, directness, and speed are essential characteristics of airporter passenger service. The Commission will give substantial weight to those factors in its satisfactory service determination and in its public convenience and necessity determination. *In re Sharyn Pearson & Linda Zepp, d/b/a Centralia Sea-Tac Airport Express, App. No. D-76533, Order M.V.C. No. 2057 (June 1994), In re CWA, Inc., d/b/a Central Washington Airporter, App. No. D-079116, Docket No. TC-021402 (April 2003).*

29 The testimony and letters of Melissa Von Ruden and Patrick Doyle, and the letters submitted by Janet Cline, Leroy West, Heather Olson, Linda Martin, Robert and Janelle Mitchell, Diane Allred, Sharon Cavanaugh, and Darrell and Dorine Doyle establish that there is a need for door-to-door service between the Key/Kitsap Peninsula area and SeaTac airport. Ms. Von Ruden, Mr. Patrick Doyle, Ms. Cline, Ms. Martin, the Mitchells, Ms. Cavanaugh, and Darrell and Dorine Doyle all stated that there is no airporter service from the Key/Kitsap Peninsula area to SeaTac. They all noted that the closest airporter service in the area is Bremerton Kitsap Airporter, with a pick-up point in Gig Harbor. They all expressed a need for the convenience of door-to-door service that accommodated individual travel plans, rather than a scheduled service.

b) Do existing auto transportation companies operating in the territory at issue provide service to the satisfaction of the Commission?

30 When an applicant requests authority to operate in a territory already served by a certificate holder, the Commission has the power to grant the requested authority “only when the existing auto transportation company or companies serving such territory will not provide the same to the satisfaction of the commission, . . .” *RCW 81.68.040*. The issue of satisfactory service “is not whether more persons like the service than dislike it, or find it satisfactory or not, but whether the service is meeting the needs of the public.” *In re Bremerton-*

Kitsap Airporter, Inc., d/b/a Bremerton-Kitsap Airporter, et al., Hearing No. D-2444, Order M.V.C. No. 1457 (August 1984) at p. 5. Failure to meet the real needs of travelers is a sufficient basis for finding that a carrier has failed to provide service to the Commission's satisfaction under RCW 81.68.040. In re Sharyn Pearson & Linda Zepp, d/b/a Centralia Sea-Tac Airport Express, App. No. D-76533, Order M.V.C. No. 2057 (June 1994), In re CWA, Inc., d/b/a Central Washington Airporter, App. No. D-079116, Docket No. TC-021402 (April 2003).

31 The testimony and letters of Melissa Von Ruden and Patrick Doyle, and the letters submitted by Janet Cline, Leroy West, Linda Martin, Robert and Janelle Mitchell, and Darrell and Dorine Doyle reveal that the service available from Bremerton Kitsap Airporter does not meet the needs of travelers in remote areas of the Key/Kitsap Peninsula. They stated that service out of Gig Harbor is inconvenient because of the long drive to the pick-up point, in some cases as much as a 45-minute drive. They also mentioned the inconvenience of meeting the Bremerton Kitsap schedule as opposed to a service that would accommodate individual travel plans.

Fitness

a) Is the company financially fit and capable of providing the service?

32 The Commission's examination of an applicant's financial fitness must be commensurate with the responsibilities of the public service that the firm seeks to provide, the risks to the public of failure, and the firm's financial history. *RCW 81.68.040. In re San Juan Airlines, Inc., d/b/a Shuttle Express, App. No. D-2589, Order M.V.C. No. 1899 (March 1991); modified, Order M.V.C. No. 1909 (May 1991).* However, the Commission does not consider an applicant's financial condition to be a critical element in a grant of authority, if there is credible evidence that the applicant has sufficient financing to begin operations and continue them for a reasonable period while its business is building. *In re Application of Valentinetti,*

Commission Decision and Order, Docket No. TC-001566, App. No. D-78932 (February 2002).

33 In this proceeding, the Applicant has provided information in A&B's Application and through the testimony of Mr. Muhlbaier to show that Applicant has adequate resources to begin operations. Moreover, Mr. Muhlbaier has nineteen years' experience as a commercial truck driver and mechanic, and Mrs. Muhlbaier has driven for Bremerton Kitsap Airporter.

b) Does the company exhibit regulatory fitness?

34 To qualify for authority, an applicant must establish that it is willing and able to comply with Washington laws and Commission rules. *In re Lloyd's Connection, Inc., d/b/a Airport Connection Airporter, Hearing No. D-2556, Order M.V.C. No. 1892 (December 1990).*

35 The testimony of Mr. Muhlbaier demonstrates his knowledge of Washington laws and Commission rules, and what A & B must do to comply with those laws and rules. Applicant has shown both a willingness and the ability to comply with those laws and rules as well as Washington State Department of Transportation's laws and rules.

36 **Commission Decision.** We find that A & B Specialized Transport has shown by substantial competent evidence that the public convenience and necessity require the proposed service. Because Bremerton Kitsap Airporter, the existing certificate holder whose authority encompasses the same territory, does not provide door-to-door, by-reservation-only service, it is not serving the needs of the public to the satisfaction of the Commission. We find that A & B Specialized Transport is fit, willing and able to provide the proposed service. We grant the Application for these reasons in accordance with RCW 81.68.040.

IV. FINDINGS OF FACT

37 Having discussed above all matters material to this decision, and having stated
the findings and conclusions, the summary findings of fact are set forth below.
Those portions of the preceding discussion that include findings pertaining to
the ultimate decisions in this order are incorporated by this reference.

38 (1) On February 25, 2004, Barry and Amy Muhlbaier, d/b/a A & B Specialized
Transport filed with the Commission Application No. D-079257 for a
certificate of public convenience and necessity to operate motor vehicles in
furnishing passenger and express service as an auto transportation
company. The Application requests authority to provide door-to-door
passenger service, by reservation only, between the Key/Kitsap Peninsula
area and SeaTac International Airport.

39 (2) Bremerton Kitsap Airporter is an existing auto transportation company
whose authority overlaps with the authority requested by A & B
Specialized Transport.

40 (3) Bremerton Kitsap Airporter filed a timely protest of the Application.

41 (4) Bremerton Kitsap Airporter withdrew its protest prior to the prehearing
conference.

42 (5) A & B Specialized Transport possesses sufficient financial resources to
begin operations and continue them for a reasonable period while its
business is building.

43 (6) The testimony and letters of Melissa Von Ruden and Patrick Doyle, and
the letters submitted by Janet Cline, Leroy West, Heather Olson, Linda
Martin, Robert and Janelle Mitchell, Diane Allred, Sharon Cavanaugh, and

Darrell and Dorine Doyle establish that there is a need for door-to-door service between the Key/Kitsap Peninsula area and SeaTac airport.

- 44 (7) Bremerton Kitsap Airporter does not provide service to the satisfaction of the Commission for its Key/Kitsap Peninsula area customers because the company does not provide door-to-door service, does not accommodate individual travel plans, and is inconvenient to the remote areas of the Key/Kitsap Peninsula.
- 45 (8) A & B Specialized Transport is financially fit and capable of providing its proposed service, and exhibits regulatory fitness.

V. CONCLUSIONS OF LAW

46 Having discussed above all matters material to this decision, and having stated general findings and conclusions, the summary conclusions of law are set forth below. Those portions of the preceding detailed discussion that state conclusions pertaining to the ultimate decisions in this order are incorporated by this reference.

- 47 (1) The Washington Utilities and Transportation Commission has jurisdiction over the parties to and subject matter of this application.
- 48 (2) A & B Specialized Transport is fit, willing, and able to provide the services requested under chapter 81.68 RCW and chapter 480-30 WAC.
- 49 (3) The existing certificate holder serving the requested territory does not provide service to the satisfaction of the Commission, therefore the Commission should grant overlapping authority to A & B Specialized Transport under RCW 81.68.040.

- 50 (4) It is consistent with the public interest and required by the public convenience and necessity that the Commission issue a certificate of public convenience and necessity to operate motor vehicles in furnishing passenger and express service as an auto transportation company to Barry and Amy Muhlbaier, d/b/a A & B Specialized Transport to provide passenger service as set forth in Appendix A.

VI. ORDER

- 51 THE COMMISSION ORDERS That the application No. D-79257 of A & B Specialized Transport for a certificate of public and necessity to operate motor vehicles in furnishing passenger and express service as an auto transportation company is granted; and that contingent on the Applicant's compliance with the pertinent provisions of chapter 81.68 RCW and the rules of the Commission governing auto transportation companies, a Certificate of Public Convenience and Necessity shall be issued to read in accordance with Appendix A, which is attached and, by this reference, made a part of this order.

Dated in Olympia, Washington, and effective this 27th day of October 2004.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner

NOTICE TO PARTIES: This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-07-870.

APPENDIX A

Barry and Amy Muhlbaier d/b/a
A & B Specialized Transport
601 204th Avenue Court, KPS
Lakebay, Washington 98349

DOOR-TO-DOOR PASSENGER SERVICE by reservation only:

BETWEEN: Seattle-Tacoma International Airport and the Key/Kitsap Peninsula area. The Key/Kitsap Peninsula area consists of Herron Island, Fox Island, Raft Island and that portion of Pierce and Kitsap Counties described as follows:

Beginning at Port Orchard in Kitsap County then following the shoreline easterly and southerly to Gig Harbor in Pierce County; thence from Gig Harbor following the shoreline southerly, westerly, and northerly to its intersection with the Mason County Line, thence following the Mason County line northerly to its intersection with the Old Belfair Valley Road then Belfair Valley Road extended to the shoreline of Sinclair Inlet; thence following the shoreline to the point of beginning at Port Orchard.