

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In re the Application of	DOCKET TC-143691
SPEEDISHUTTLE WASHINGTON, LLC d/b/a SPEEDISHUTTLE SEATTLE	ORDER 09
For a Certificate of Public Convenience and Necessity to Operate Motor Vehicles in Furnishing Passenger and Express Service as an Auto Transportation Company	ORDER DENYING RECONSIDERATION AND REQUEST FOR STAY

**BACKGROUND**

- 1 On October 10, 2014, Speedishuttle of Washington, LLC d/b/a Speedishuttle Seattle (Speedishuttle) filed with the Washington Utilities and Transportation Commission (Commission) an application for a certificate of public convenience and necessity to operate as an auto transportation company.
- 2 On January 22, 2015, following a brief adjudicative proceeding, the Commission entered Order 02, Initial Order Overruling Objections to New Authority (Order 02). Order 02 found that Speedishuttle did not propose to offer the same service that Shuttle Express, Inc. (Shuttle Express) provides. On March 30, 2015, the Commission entered Order 04, Final Order Affirming Order 02 (Order 04).
- 3 On May 16, 2016, Shuttle Express filed a Petition for Rehearing alleging that contrary to its representations, Speedishuttle is not providing the service it represented it would offer but instead is providing the same service Shuttle Express has the exclusive authority to provide. On August 4, 2016, the Commission entered Order 06, Initial Order Granting Petition for Rehearing (Order 06).
- 4 On August 24, 2016, Speedishuttle filed a Petition for Administrative Review of Order 06 (Petition for Review). On September 27, 2016, the Commission entered Order 08, Order Denying Requests for Review of Order 06; Denying Leave to Reply; Granting, in Part, Motion to Strike (Order 08) denying the Petition for Review and clarifying the scope of the proceeding.

5 On October 4, 2016, Speedishuttle filed a Petition for Reconsideration of Order 08. Speedishuttle contends that the portions of Order 08 restricting the company's service to its business plan are inconsistent with Order 04 granting Speedishuttle its certificate, as well as the Commission's prior policy statements encouraging competition for auto transportation service. Speedishuttle requests that the Commission amend those portions of Order 08, or alternatively stay this proceeding to allow the company to determine whether it will continue to offer regulated service or exit that market.

6 On October 6, 2016, the Commission issued a Notice of Opportunity to Respond to Request for Suspension of Procedural Schedule. On October 13, 2016, Commission regulatory staff (Staff) filed a response to the Notice supporting suspension. On October 21, 2016, Shuttle Express filed its opposition to suspension.

### **DISCUSSION AND DECISION**

7 We deny both the petition for reconsideration and the request for stay. We adhere to our determination that the Commission must act within its statutory authority as the Commission interprets that authority, and we cannot grant Speedishuttle a certificate to offer the same service Shuttle Express provides without a finding that it is not providing such service to the Commission's satisfaction. Speedishuttle's prior lack of understanding of this constraint is not sufficient grounds to suspend the procedural schedule in this case.

#### **Petition for Reconsideration**

8 Speedishuttle takes issue with the following two paragraphs in Order 08:

Nor are we as sanguine as Speedishuttle about the development of competition in the wake of Order 04. The Commission expressly did not address whether Shuttle Express was providing service to the Commission's satisfaction. Speedishuttle, therefore, may provide only the auto transportation service that the Commission found was different than Shuttle Express' service. While some competition at the margins of the respective customer groups may be inevitable, the Commission did not contemplate that Speedishuttle would offer to serve any and all customers seeking door-to-door service to or from the airport. Shuttle Express' allegations that Speedishuttle is engaging in such conduct, therefore, represent "a result injuriously affecting [Shuttle Express] which was not considered or anticipated at the former hearing" and an effect of Order 04

that “has been such as was not contemplated by the commission” within the meaning of the statute.<sup>1</sup>

Shuttle Express correctly observes that the Commission’s ultimate responsibility is to ensure compliance with RCW 81.68.040 and other applicable laws. Consistent with the legislature’s directive, we did not and cannot authorize Speedishuttle to depart from its business model and offer the same service Shuttle Express provides. If the evidence demonstrates that Speedishuttle is doing so or is otherwise violating its regulatory obligations, we will take appropriate enforcement action.<sup>2</sup>

9 Speedishuttle contends that these paragraphs conflict with the certificate the Commission granted to the company as a result of Order 04. In that order, the Commission did not condition Speedishuttle’s authority as Shuttle Express had urged. Accordingly, Speedishuttle’s understanding is that it is entitled to serve any and all customers who seek door-to-door service to or from the airport within King County. Order 08, in Speedishuttle’s view, “would appear to constitute a retroactive condition of an extant certificate, which the Commission has already acknowledged in this docket its own rules ‘do not permit.’”<sup>3</sup>

10 Speedishuttle’s understanding is incorrect. As we explained in Order 08, the Commission must comply with RCW 81.68.040 when granting a certificate to any company to provide auto transportation service. That statute provides in relevant part,

An auto transportation company shall not operate for **the transportation of persons and their baggage for compensation between fixed termini or over a regular route in this state**, without first having obtained from the commission under this chapter a certificate declaring that public convenience and necessity require such operation. . . . The commission may, after notice and an opportunity for a hearing, when the applicant requests a certificate to operate in a territory already served by a certificate holder under this chapter, **only when the existing auto transportation**

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<sup>1</sup> Order 08 ¶ 23 (footnote omitted).

<sup>2</sup> *Id.* ¶ 26.

<sup>3</sup> Speedishuttle Petition for Reconsideration ¶ 9 (footnote omitted).

**company or companies serving such territory will not provide the same to the satisfaction of the commission.** (Emphasis added.)

- 11 The Commission previously concluded that “transportation of persons and their baggage for compensation between fixed termini or over a regular route” includes door-to-door service to or from Seatac Airport.<sup>4</sup> Shuttle Express has a certificate to provide such service within its service territory. The Commission, therefore, cannot authorize any other carrier to offer the same service in that area unless Shuttle Express “will not provide the same to the satisfaction of the commission.”
- 12 Speedishuttle did not claim, nor did we find, that Shuttle Express will not provide basic door-to-door service to or from the airport within its territory to the satisfaction of the Commission. Accordingly, the only basis on which the statute authorizes the Commission to grant Speedishuttle a certificate to offer auto transportation service in Shuttle Express’ territory is if that service is different than the service Shuttle Express provides. We concluded that the service Speedishuttle described in its business plan is different than Shuttle Express’ service, and we granted Speedishuttle a certificate to provide that different service. Nothing in Order 04 provides any authority for Speedishuttle to offer the same service Shuttle Express provides.
- 13 Our denial of Shuttle Express’ request to include conditions in that certificate is not to the contrary. Shuttle Express advocated two conditions on Speedishuttle: “1) actually delivering on its guarantees to the satisfaction of the Commission, and 2) Speedishuttle not declining service to customers that request door-to-door service in its territory.”<sup>5</sup> Both of these conditions address *how* Speedishuttle performs, not *what* service it provides. We declined to impose such conditions because “[t]he Commission requires only that an applicant demonstrate that it has the ability to start up the business, not that it is able to operate over the long term.”<sup>6</sup> We nevertheless also added that we would rely on Staff “to ensure that the service [Speedishuttle provides] is consistent with the authority the Commission grants.”<sup>7</sup> Under these circumstances, the Commission did not believe it was necessary to be more prescriptive in describing the service Speedishuttle can offer. We

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<sup>4</sup> *In re Determining the Proper Carrier Classification of San Juan Air Services, Inc. d/b/a Shuttle Express*, Order M.V.C. 1810 (April 21, 1989).

<sup>5</sup> Shuttle Express Petition for Administrative Review ¶ 48.

<sup>6</sup> Order 04 ¶ 25.

<sup>7</sup> *Id.*

expected the company to conform its operations to those it described in its business plan, which Order 04 authorized Speedishuttle to provide.

14 Speedishuttle also argues that Order 08 is a contraction of the policy of “encouraging broad competition” that the Commission announced in 2013 when adopting revisions to its auto transportation rules. Speedishuttle, as it suggests, “adopted an overbroad reading of the Commission’s policy articulations in light of the 2013 Rulemaking.”<sup>8</sup> We recognized then, as we do now, that multiple alternatives exist for consumers seeking transportation to or from Seatac airport, and our regulation of auto transportation services should be informed by the evolving transportation market. But we remain fully aware that we can only act within the parameters the legislature has established, and we cannot authorize competition beyond our statutory limitations.

15 Finally, Speedishuttle raises practical questions about how it could limit the customers it serves to those described in its business plan. Speedishuttle states that it “is not aware that a for-hire common carrier performing door-to-door auto transportation passenger service between Seattle International Airport and points within King County could lawfully fulfill its common carrier obligations by unilaterally limiting its service to service restrictions it understood to be disfavored by policy and by actual previous decision in this record.”<sup>9</sup>

16 We acknowledge these concerns, but they do not change our statutory authority or our decision. Speedishuttle bore the burden to identify and define the service it proposed to offer – both to differentiate it from the service Shuttle Express provides and to establish how Speedishuttle would provide that service. The Commission approved the company’s business plan as describing a new service. If Speedishuttle has not determined how to implement that plan consistent with its regulatory obligations, this proceeding will provide the company with an opportunity to do so.

### **Request for Stay**

17 Speedishuttle requests that if the Commission denies reconsideration of Order 08, it suspend “this proceeding to allow a necessary reevaluation in light of [Speedishuttle’s] present substantial investment in personnel, resources, equipment and other infrastructure

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<sup>8</sup> Speedishuttle Petition for Reconsideration ¶ 9 (footnote omitted).

<sup>9</sup> *Id.* ¶ 15 at 9.

including facilities leases, marketing efforts and ticketing arrangements.”<sup>10</sup> Speedishuttle requests “sufficient time to reevaluate its multi-million dollar commitment to this marketplace over the last 20 months to determine whether it wishes to continue to provide regulated service now expressly limited only to the differentiation factors and business model based thereon or effect an orderly exit from the regulated Washington auto transportation marketplace.”<sup>11</sup>

18 In its Notice of Opportunity to Respond to Request for Suspension of Procedural Schedule, the Commission requested comment on whether it should suspend the proceedings for the same time period as the Commission granted Shuttle Express a temporary waiver of rules governing auto transportation companies to address competitive pressures from transportation network companies (TNCs), such as Uber and Lyft. Commission Staff and Shuttle Express both responded to this notice. Commission Staff supported such a suspension of the procedural schedule, while Shuttle Express strongly argued against such action.

19 After considering the parties responses, we find it appropriate to deny Speedishuttle’s request. The Commission has an interest in resolving adjudicative proceedings, such as this matter, without further delay. Speedishuttle’s request for time to consider its business arrangement does not outweigh Shuttle Express’ interest in a prompt resolution of its petition and complaint. Speedishuttle may still consider its options as we proceed with the merits of Shuttle Express’ petition and complaint.

20 In granting the temporary waiver of Commission rules governing auto transportation companies, the Commission noted that the ten-month period would “provide the Commission and other stakeholders some time to respond to properly address competition and harmonize the regulation of disparate participants.”<sup>12</sup> The Commission will be engaging with stakeholders in a separate proceeding or another forum to review the Commission’s rules governing the regulation of auto transportation service in view of the competition from TNCs and others. We appreciate Staff’s concern that the resources of the parties and the Commission would be better spent focusing on that inquiry. We nevertheless conclude that we should proceed with this case in a timely manner, based on existing facts, laws and rules.

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<sup>10</sup> *Id.* ¶ 7.

<sup>11</sup> *Id.* ¶ 17.

<sup>12</sup> *In re Petition of Shuttle Express, Inc.*, Docket TC-160819, Order 01 ¶ 13.

**ORDER**

**THE COMMISSION ORDERS THAT:**

- 21 (1) The Commission DENIES the Petition of Speedishuttle of Washington, LLC  
d/b/a Speedishuttle Seattle for Reconsideration of Order 08.
- 22 (2) The Commission DENIES the request of Speedishuttle of Washington, LLC d/b/a  
Speedishuttle Seattle to stay these proceedings.

DATED at Olympia, Washington, and effective November 10, 2016.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

PHILIP B. JONES, Commissioner

ANN E. RENDAHL, Commissioner