

TC-900407

**MILLER, NASH, WIENER,
HAGER & CARLSEN**

ATTORNEYS AND COUNSELORS AT LAW
4400 TWO UNION SQUARE
601 UNION STREET
SEATTLE, WASHINGTON 98101-2352
TELEPHONE (206) 622-8484
FACSIMILE (206) 622-7485

PORTLAND OFFICE:
3500 U.S. BANCORP TOWER
111 S.W. FIFTH AVENUE
PORTLAND, OREGON 97204-3699
TELEPHONE (503) 224-5858
TELEX 364462 KINGMAR PTL
FACSIMILE (503) 224-0155

Clyde H. MacIver
DIRECT DIAL: (206) 684-4413

90 APR 25 AS:10

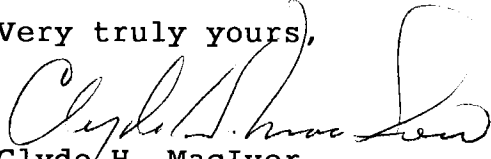
April 24, 1990

Mr. Paul Curl
Acting Secretary
Washington Utilities
and Transportation Commission
1300 S. Evergreen Park Drive S.W.
Chandler Plaza Building
Olympia, Washington 98504

Subject: Evergreen Trails, Inc. v. San Juan Airlines, Inc., d/b/a Shuttle Express

Dear Mr. Curl:

Enclosed for filing is an original and five copies of the Formal Complaint Against San Juan Airlines, Inc. For Illegal Operations And Request For Expedited Handling Of Evergreen Trails, Inc. ("Evergreen"). It is requested that the Commission immediately cause this Complaint to be served on Shuttle Express and advise this office of the date service is accomplished.

Very truly yours,

Clyde H. MacIver

Certificate No. C-819 authorizes Grayline to provide an airporter service between hotels in Seattle and the Seattle-Tacoma Airport.

2. Respondent Shuttle Express commenced operations as an auto transportation company providing airporter service between Seattle-Tacoma Airport and, among other places, Seattle hotels on or about September of 1987, without first securing the required authority from the Commission. Following classification proceedings conducted by the Commission, Shuttle Express, on or about October 13, 1988, filed an application with the Commission seeking a certificate of authority to provide said airporter service. Hearings were held on the application in In the Matter of the Application of San Juan Airlines, Inc., dba Shuttle Express, for a Certificate to Operate Motor Vehicles in Furnishing Passenger and Express Service as an Auto Transportation Company, Application No. D-2566. Shuttle Express sought authority from the Commission under protest and with reservation of rights, contending its airporter passengers traveled with prior reservations arranged in common with interstate airline travel.

Grayline and other providers of airporter service between the Seattle-Tacoma Airport and the surrounding territory intervened in opposition to the application and participated in the hearings. Shuttle Express continued to operate an airporter service during the pendency of this

proceeding without the benefit of authority from the Commission, contending its airporter passengers made prior reservations in common arrangements with interstate airline travel.

3. On April 21, 1989, the Commission issued Order M.V.C. No. 1809 granting the application, in part, with certain restrictions, including the "on-call" restriction in response to the public testimony as to need and in reliance upon applicant's claimed prior reservation method of operation. A copy of Order M.V.C. No. 1809 is attached hereto as Exhibit A and incorporated herein by this reference. By this time, Shuttle Express had operated for over two years without authority from the Commission under its claim of prior passenger reservations in common arrangements with interstate air travel. In its Order M.V.C. No. 1809 the Commission made special note of the substantial evidence of numerous violations by Shuttle Express of applicable laws, rules, and regulations and cautioned Shuttle Express against future violations:

The applicant will be required to conform to the requirements of all applicable statutes and regulations in its operation. It will be expected to be candid and forthcoming in its dealings with the Commission. All public complaints about the applicant's operation will be given due consideration. (Emphasis added).

Id. at 22. Commissioner Pardini, in a concurring opinion, observed that Shuttle Express ". . . has displayed more than a

casual disregard for the laws regarding public transportation in this state," and further stated:

Testimony in this record indicates direct solicitation of unticketed passengers in air terminals. Officials responsible for ground transportation services at the Sea-Tac airport have testified that the applicants violations caused the Port of Seattle to contemplate terminating the operating agreement established with the airport. The record casts large doubts on the applicant's testimony. . . . These factors lead to serious questions as to whether or not the applicant is fit, willing and able to operate within a regulated environment. . . . attempts to pick and choose those parts of the law that apply to them and other parts of the law that do not apply to them will not be condoned or accepted. (Emphasis added).

4. Grayline timely filed a Petition for Reconsideration of Order M.V.C. No. 1809 requesting the Commission to restrict Shuttle Express from providing duplicating airporter services between the Seattle-Tacoma Airport and the Seattle hotels served by Grayline. A copy of the petition is attached hereto as Exhibit B and incorporated herein by this reference. A principal contention of Grayline in its petition, aside from the legal issues presented, was that without the requested restriction Shuttle Express would divert a substantial amount of Grayline's traffic and revenues, which diversion would be unwarranted in light of the acknowledged high-quality airporter service Grayline provides between the Seattle-Tacoma Airport and the Seattle hotels served by it. On August 30, 1989, the Commission issued Order M.V.C. No. 1834 in which it declined to restrict Shuttle

Express from serving the same hotels served by Grayline. A copy of Order M.V.C. No. 1834 is attached hereto as Exhibit C and incorporated herein by this reference.

5. In its Order M.V.C. No. 1834 the Commission recognized the validity of Grayline's concern that it could be impacted by an unwarranted diversion of traffic by Shuttle Express:

". . . Grayline is particularly vulnerable to an airporter such as Shuttle Express which could and, according to credible testimony, has skimmed Grayline's traffic. . . ."

Exhibit C at 3. However, the Commission expressed the belief that the "on-call" restriction in Shuttle Express's certificate, which was intended to limit Shuttle-Express's service to transporting only those passengers who had made prior reservations for service, would protect Grayline from unwarranted diversion of traffic:

However, the authority granted in the final order limits Shuttle Express to on call service only; this limitation should offer some protection to Grayline from the complained of practice.

Exhibit C at 3.

SHUTTLE EXPRESS'S CONTINUED VIOLATIONS
OF THE "ON-CALL" RESTRICTION HAVE
RENDERED THE RESTRICTION MEANINGLESS

6. Shuttle Express's conduct subsequent to receiving authority from the Commission makes it clear that it has no intent to abide by the purpose and intent of the "on-call" restriction in its certificate. The ongoing illegal conduct

and defiant intent of Shuttle Express were clearly demonstrated on October 11, 1989 in Docket No. D-2556, a proceeding in which Shuttle Express opposed the application of Lloyd's Connection Inc. for airporter authority in Pierce County. In that proceeding, Mr. Bruce Wolf, Shuttle Express's attorney, stated on the record:

. . . we [Shuttle Express] are allowed to take walk-on passengers. . . . That's an on-call. They come up and ask to go on the van.

(TR. 1221-22).

7. In response to the position taken by Shuttle Express in Docket No. D-2556, the Secretary of the Commission, Mr. Paul Curl, admonished Shuttle Express, in a November 15, 1989 letter (attached hereto as Exhibit D) to Jim Sherrell, its President, making it clear that "walk-up," "hail the van," and "opportunity fare" service is not consistent with the "on-call" restriction:

The Commission Order M.V.C. No. 1809 in that docket clearly indicated that the on-call restriction allowed Shuttle Express to transport, on an unscheduled basis, only those passengers who have made a telephone request for service prior to boarding a Shuttle Express motor vehicle. . . . The Commission believed that the on-call restriction accurately characterized the record evidence as to public need, existing carriers' failure to serve, and operations maintained and proposed by Shuttle Express.

Mr. Wolf, in a November 21, 1989 letter responding to the Commission's November 15, 1989 letter, again confirmed Shuttle Express's intent to continue to operate in defiance of the

meaning, intent and purpose of the "on-call" restriction in Shuttle Express's certificate:

Shuttle Express operates only in response to a passenger's call for service. Those calls for service, however, are not limited to only telephone calls. Passengers may call for the service by waving down a van or by walking up and orally requesting service.

The Commission, on December 8, 1989, responded to Mr. Wolf's November 21, 1989 letter and again put Shuttle Express on notice of the meaning of the "on-call" restriction and pointed out that the restriction was consistent with (1) the public testimony in Shuttle Express's application proceeding and (2) Mr. Sherrell's claimed prior reservation method of operation. The Commission further stated that enforcement action would be pursued against Shuttle Express if violations continued. (See December 8, 1989 Commission letter attached hereto as Exhibit E.)

8. Shuttle Express continues to defy the on-call restriction in its certificate and the written clarifications thereof and warnings by the Commission. Shuttle Express's current and ongoing practices demonstrate it remains fully committed to directly violating and circumventing the meaning, intent, and purpose of the restriction in its certificate. Shuttle Express's current intent and practices are illustrated by:

(a) adoption of a compensation system for drivers that pays them a percentage of fares

collected. The only conceivable motive for such a system of compensation is to encourage drivers to solicit passengers and otherwise engage in conduct that is directed towards encouraging "hail the van" passengers and "opportunity fares";

(b) a series of violation notices from the Port of Seattle Ground Transportation Manager advising Shuttle Express of incidents of illegal passenger solicitation, dispatching vans to passenger boarding areas without prior passenger reservations and "cruising" passenger boarding areas at the airport; and

(c) recent citations for illegal solicitations of opportunity fares by the Commission.

9. To further circumvent the on-call restriction in its certificate, Shuttle Express recently installed three automatic dial telephones on the sidewalk on the baggage area concourse at the airport. These telephones are connected directly to a Shuttle Express operator and are situated next to the curb at the three loading zones that the Port of Seattle has created for vans. Shuttle Express drivers park their vans next to the phones and leave the vans to respond to "hail the van" passengers and to otherwise directly solicit "walk-ups" and "opportunity fares." The drivers, after locating a prospective passenger, will lead the passenger to the nearest

sidewalk telephone and instruct the passenger to pickup the phone which automatically dials Shuttle Express. In the event the passenger declines to use the phone, the driver will make the call for the passenger. The passenger is then invited to immediately board the Shuttle Express van which is waiting at the curb next to the phone.

This current modus operandi at the airport is Shuttle Express's response to the repeated warnings and citations from the Commission and the Port of Seattle cited above. What Shuttle Express fails to acknowledge is that it is the "walk-up," "hail the van," "opportunity fare," and "solicitation" that occurs before the telephone call that is illegal; the telephone call charade that occurs after that does not legitimize the earlier conduct any more than does the return of stolen goods by a thief absolve him or her of the crime already committed.

10. In addition, Shuttle Express operators engage in other conduct in open contempt and defiance of the "on-call" restriction in its certificate:

(a) "cruising" the baggage area concourse (making several slow trips around before leaving the airport) in order to encourage passengers to hail the van;

(b) parking for extended periods in loading zones at the airport and at hotels in order to encourage "walk-up" and "hail the van" passengers; and

(c) soliciting opportunity fares off the sidewalks at the airport and adjacent to Seattle hotels.

11. Commissioner Pardini, in his concurring opinion to M.V.C. Order 1809, dated April 21, 1989, questioned "whether or not the applicant is fit, willing, and able to operate within a regulated environment," and warned the applicant and other operators that "attempts to pick and choose those parts of the law that apply to them and other parts of the law that do not apply to them will not be condoned or accepted." The subsequent conduct and expressed attitude and intent of Shuttle Express has answered Commissioner Pardini's question. Shuttle Express is not "fit, willing, and able to operate within a regulated environment."

Shuttle Express originally operated without authority from the Commission under the bogus claim of serving only passengers with prior reservations made in common arrangement with interstate air travel. Later in its application proceeding, Shuttle Express continued the deception by claiming that its service was different and distinguishable from the services of Grayline and other airporters because it served only on-call (prior reservations) passengers. Since receiving its certificate from the Commission, Shuttle Express has perpetuated the fraud by ignoring the on-call restriction in its certificate and aggressively soliciting "walk-ups," "opportunity fares," and "hail the van" passengers. The use of

telephones located next to Shuttle Express's waiting vans at the airport does not legitimize the numerous solicitation techniques being employed by Shuttle Express immediately prior to the use of the telephone. In defiance of Commissioner Pardini's admonition to Shuttle Express, Shuttle Express is in fact attempting "to pick and choose those parts of the law that apply to them and other parts of the law that do not."

12. The impact of Shuttle Express's failure and refusal to comply with the "on-call" restriction in its certificate has been swift and dramatic for Grayline. At a time when traffic revenues should be increasing as the use of the airport expands, Grayline has experienced a marked and serious downturn. The Commission, as stated by Secretary Curl in his November 15, 1989 letter to Shuttle Express, intended to avoid unwarranted diversion of traffic from Grayline and, in fact, cautioned Shuttle Express that Grayline's Petition for Reconsideration seeking a restriction against service to hotels was denied in reliance on the protection believed to be provided by the "on-call restriction":

The on-call restriction was also a significant factor in the Commission's denial of a Petition for Reconsideration submitted by . . . Grayline. . . . Grayline's Petition was based, in part, on its concern that Shuttle Express was "skimming". . . . The Commission believed that the on-call restriction contained in your authority would provide some protection to Grayline against such activity by Shuttle Express.

The "on-call" restriction in fact provides Grayline with no protection whatsoever because, in the hands of Shuttle Express, it is no restriction at all.

ILLEGAL OPERATIONS OF SHUTTLE EXPRESS
ARE HARMFUL TO PUBLIC WELFARE

13. In addition to inflicting irreparable harm on Grayline, Shuttle Express's illegal operations are harmful to the public welfare. Grayline's airporter service between Seattle hotels and the Seattle-Tacoma Airport is equivalent or superior to Shuttle Express's in terms of speed, convenience and safety to the passenger. Shuttle Express, however, charges the public \$12 for the same service Grayline provides for \$6. Shuttle Express's aggressive solicitation of unticketed passengers which occurs immediately as the passengers leave the baggage claim area at the airport effectively intercepts the public before they have the opportunity to proceed to Grayline's holding areas located at the north and south ends of the concourse. Thus, Shuttle Express's practice of soliciting and diverting passengers from Grayline's airporter service at the airport results in the public paying double what they otherwise would pay for airporter service to the Seattle hotels served by Grayline.

14. The illegal solicitation practices of Shuttle Express have caused substantial diversion of Grayline's traffic and revenues over a period of time when overall traffic to and from the Airport has been increasing. This diversion of

Grayline's traffic has caused and is causing substantial and irreparable harm to Grayline's airporter service. This diversion of traffic is so substantial and harmful that, if Shuttle Express is allowed to continue serving the same hotels Grayline serves, Grayline will not be able to continue its airporter service to these hotels.

15. The above-described unlawful activities of Shuttle Express constitute conditions and new circumstances which the Commission did not anticipate at the time it granted restricted authority to Shuttle Express. Further, the Commission, assuming Shuttle Express would operate in compliance with the restrictions in its certificate did not anticipate the irreparable harm to Grayline and the injurious impact to the public which is resulting from Shuttle Express's continued determination to operate in defiance of the "on-call" restriction in its certificate.

RELIEF REQUESTED

Based on the foregoing, Grayline requests relief as follows:

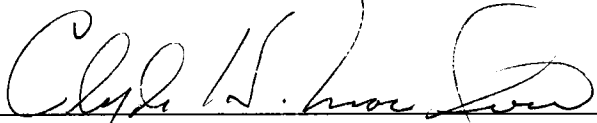
1. That the Commission immediately schedule hearings following service of this complaint on Shuttle Express to receive evidence of the ongoing violations by Shuttle Express of the restrictions in its operating certificate; and

2. That the Commission thereafter restrict Shuttle Express from providing airporter service between Seattle-Tacoma Airport and the hotels in Seattle served by Grayline; and

3. That the Commission take such other and further enforcement action against Shuttle Express as the Commission deems appropriate with respect to the balance of Shuttle Express's airporter services within the territory it serves.

DATED this 24th day of April, 1990.

MILLER, NASH, WIENER, HAGER & CARLSEN



Clyde H. MacIver
Brooks E. Harlow

Attorneys for Complainant
Grayline

0205M

EXHIBITS TO COMPLAINT

- Exhibit A Commission Decision and Order Granting
Application as Amended in Part
- Exhibit B Petition for Reconsideration of a Portion of
Order M.V.C. No. 1809
- Exhibit C Commission Decision and Order Granting
Reconsideration; Affirming Final Order
- Exhibit D Letter dated November 15, 1989, to Jim Sherrill
from Paul Curl
- Exhibit E Letter dated December 8, 1989, to Bruce Wolf from
Paul Curl

RECEIVED

APR 24 1989

MILLER, NASH

SERVICE DATE

APR 21 1989

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Application	)	ORDER M. V. C. NO. 1809
SAN JUAN AIRLINES, INC., d/b/a)	
SHUTTLE EXPRESS for a Certificate	)	HEARING NO. D-2566
to Operate Motor Vehicles in)	
Furnishing Passenger and Express	)	COMMISSION DECISION
Service as an Auto Transportation	)	AND ORDER GRANTING
Company.	)	APPLICATION AS AMENDED
	)	IN PART
.)	

PROCEEDING: The applicant has applied for authority to provide nonscheduled, irregular route, door-to-door service between airports in the Seattle Commercial Zone as defined by WAC 480-12-081, and points within the Seattle Commercial Zone or within a 25-mile radius of airports within the Seattle Commercial Zone. The applicant seeks authority to provide motor carrier service under the provisions of chapter 81.68 of the Revised Code of Washington.

HEARINGS: Hearings were conducted before Steven E. Lundstrom, Administrative Law Judge of the Office of Administrative Hearings, on January 9 through 13, and February 7 and 8, 1989, in Seattle, Washington, and on February 16, 1989, in Olympia, Washington. All briefs were received by March 16, 1989.

APPEARANCES: The applicant was represented by Bruce A. Wolf, Attorney at Law, Seattle, Washington. Intervenor Evergreen Trails, Inc., d/b/a Evergreen Trailways, and also operating and known in this proceeding as Grayline Airport Express, was represented by Clyde H. MacIver, Attorney at Law, Seattle, Washington. Intervenor Everett Airporter Services Enterprises, Inc., was represented by Kirk L. Griffin, Attorney at Law. Intervenor Suburban Airporter, Inc., was represented by Richard Reininger, president. Intervenor Pacific Northwest Transportation Services, Inc., d/b/a Capital Airporter, Tours and Charters, was represented by James N. Fricke, president. Intervenor Travelines, Inc., d/b/a Travelines Airporter, was represented by Richard D. Hansen, president. Intervenor Bremerton-Kitsap Airporter, Inc., was represented by James K. Sells, Attorney at Law. The Washington Utilities and Transportation Commission was represented by Robert Cedarbaum, Assistant Attorney General, Olympia, Washington.

PROCEDURAL STATUS: All parties remaining at the close of the hearing waived a proposed order of the Administrative Law Judge. The case has accordingly proceeded to the Commission for decision. Although intervenor Travelines, Inc. did not waive a proposed decision, the intervention of Travelines was dismissed

after all of its airporter authority was transferred to intervenor Pacific Northwest Transportation Services, Inc. Travelines, Inc. was therefore not a party to this proceeding at the close of hearings.

At the beginning of the hearing, the applicant amended its application to exclude service to McChord Air Force Base or to Fort Lewis. Based upon this amendment, Bremerton-Kitsap Airporter, Inc., moved for dismissal of its intervention. The motion was granted, and Bremerton-Kitsap Airporter was dismissed from the proceeding.

SUMMARY: The application is granted in part, upon terms and conditions. Authority is granted to provide service in those portions of King and Snohomish Counties lying within the Seattle Commercial Zone, subject to the terms and conditions that the authority may not be transferred within three years of issuance, that the applicant must provide door-to-door service upon request between any points in the area included in the authority and airports served, and that vehicles employed in the service may be no larger than the seven-passenger vans currently employed. The application for authority to serve Pierce County, or any other area encompassed in the application other than King or Snohomish Counties, is denied. The applicant has demonstrated that the services it provides are required by the present or future public convenience and necessity in King and Snohomish Counties. Currently-certified carriers providing airporter service in areas for which authority is granted will not provide service to the satisfaction of the Commission, considering the current realities of the market. Good cause has not been shown to refuse to issue the applicant the Certificate of Public Convenience and Necessity granting the above-stated authority.

MEMORANDUM

1. Background

Since September 1987, the applicant has provided passenger transport between Seattle-Tacoma International Airport and other locations within the Seattle Commercial zone, principally homes, offices and hotels. Shuttle Express is a division of San Juan Airlines, Inc. Neither San Juan Airlines or Shuttle Express has ever held authority from the Commission to provide auto transportation services under chapter 81.68 RCW.

The credible testimony of Jim M. Sherrell, president of San Juan Airlines and Shuttle Express, establishes that the Shuttle Express enterprise has been operated under the good-faith belief that its ground passenger transport functions were part of

interstate commerce. As such, Mr. Sherrell believed the enterprise to be beyond Commission regulatory jurisdiction.

The Commission began a classification proceeding to determine whether Shuttle Express is subject to Commission regulation. To ensure that all legal requirements were met, Shuttle Express filed its application for authority on October 13, 1988. Letters protesting the application were received by the Commission, and a hearing was scheduled concerning the application.

2. Applicant's Proposed Service

a. Nature of Services

The applicant wishes to transport persons between locations in the Seattle Commercial Zone (or within 25-miles of airports in that Commercial Zone, whichever is farther) and commercial airports in that Commercial Zone. The transportation is intended to be between airplane flights and home or business passenger locations.

Passengers would be, and now are, transported in seven-passenger vans. For transport to an airport, a passenger boards the van at a point designated by the passenger. Such a point may be the passenger's home, workplace, or even a business location where the passenger may be waiting. The service is designed to make no more than four stops on the way to an airport from Seattle, and no more than three stops in outlying areas.

The service operates on a nonscheduled reservation basis. A person travelling to the airport calls Shuttle Express at least 24 hours before the approximate time of need. The Shuttle Express representative suggests a time of departure from the point designated by the passenger. The departure time will be based on the passenger's flight departure time. The reservationist schedules a pick up, and the passenger is advised to expect the Shuttle Express within 15 minutes preceding or 15 minutes following the designated time. In the past, and currently, persons wanting Shuttle Express Service from an airport were required to telephone Shuttle Express from the airport. Shuttle Express then would dispatch a van to provide service within one-half hour. If the current operation agreement between Shuttle Express and the Port of Seattle is superseded by the currently proposed agreement, passengers will be able to hail the vans without telephone calls. Passengers are then carried to any designated point within the Seattle Commercial Zone or within 25 miles of the airport.

Shuttle Express drivers will assist passengers with luggage. On trips from the airport, drivers will assist with luggage to the destination doorway.

b. Equipment, Personnel and Management.

Service is provided by 25 7-passenger vans. The applicant maintains these vans in suitable shop facilities. The vans are regularly and properly maintained. They are appropriately insured.

Driver selection is based in part upon driving safety records. Drivers are carefully screened and thoroughly tested and trained. Training includes vehicle safety, location of destinations, and customer service. Drivers are responsible for their own neatness and also for the cleanliness of the vehicle.

Drivers are supervised by experienced driver supervisors. The applicant employs 92 drivers. Other employees include one training director with three assistants, nine dispatchers, two part-time sales persons, and two reservationists.

The Shuttle Express operation is managed by Mr. Sherrell through a general manager. Mr. Sherrell is familiar with the laws and regulations governing auto transport companies in the State of Washington. If the authority applied for is granted, he intends that Shuttle Express will comply with those laws and regulations in its operations.

c. Financial Ability of Applicant and Economic Feasibility of Service.

San Juan Airlines was purchased by its present owners in 1979. The company has grown from \$1.1 million in gross revenue in 1979 to \$14 to \$16 million annually. As of September 30, 1988, investment in the company showed a retained deficit of \$8,390,163.

San Juan Airlines operated at a loss through November 30, 1988, for that year. Negotiations are in progress for the sale of San Juan routes which yield 60% to 70% of the airline revenue. About one third of the airline employees have been laid off. However, Mr. Sherrell's uncontradicted testimony establishes that he expects both enterprises to become profitable in approximately mid-1989. His expectations are based upon his business plan. Also, he believes Shuttle Express management has learned much about operations since it began and that it can become profitable.

The Shuttle Express income statement shows total monthly expenses of \$207,048 through November 1988. Through December 1988, Shuttle Express carried 154,085 passengers. The 1988 average revenue per passenger was \$10.71. During December 1988, 14,522 passengers were carried, at an average revenue of \$11.17 per passenger. During December 1987 15,184 passengers were carried at an average revenue of \$7.34 per passenger. Although Shuttle Express carried only 14,522 passengers during December 1988, the evidence shows that this decline in passenger count represented a movement from lower revenue per passenger charter group service to more profitable individual airport shuttle passengers.

Shuttle Express increased its monthly passenger count by 3,022 from January to December, 1988. Although some of this difference does represent seasonal differences, it is reasonable to find that Shuttle Express is increasing its airport shuttle business. Shuttle Express expects to begin profitable operations when it carries 20,000 passengers each month for total revenue of \$220,000 per month. Considering that the passengers carried during December 1988 contributed \$11.17 each to gross revenue, and that 1988 total expenses through November were \$207,048 monthly, this break-even estimate is reasonable. The growth of 5,500 passengers per month that would be required to reach profitability may be an overly optimistic goal for mid-1989, considering the growth in ridership shown in 1988. Passenger rate increases may be necessary to attain profitability. But the combined growth in traffic and revenue per passenger shows that it is reasonable to expect Shuttle Express to eventually become profitable, possibly during 1989. Its history of revenue producing operations, together with the demonstrated commitment of its management to maintain operations until profitability, show that Shuttle Express is financially able to engage in operations.

The evidence presented does not show that the proposed service is not economically viable. The retained deficit represents investments made in San Juan Airlines which have contributed to gross revenue growth. It represents only in part losses sustained in Shuttle Express operations.

3. Services Currently Provided

a. City of Seattle in Area Served by Grayline.

Evergreen Trails, Inc., otherwise known as Grayline, provides passenger service between Seattle and Seattle-Tacoma International Airport. This service is provided under Certificate of Public Convenience and Necessity No. C-819, which limits service to ". . . transportation of airline passengers and flight

crews between Seattle-Tacoma International Airport on the one hand, and hotels and airline offices in Seattle on the other hand. . ."

Grayline currently serves twelve Seattle hotels from nine stops on its regular-route airport service. Trips run each half hour between Seattle and Seattle-Tacoma International Airport from 4:55 a.m. (Seattle) to 12:45 a.m. (last departure from Seattle-Tacoma International Airport). Transport is provided by six 47- to 51-passenger motor coaches.

Grayline does not provide transportation other than from designated stops at scheduled times. It will not take pick-up passengers on request from hotels not currently served. It will not, because it cannot under its authority, serve points other than hotels and airline offices.

Grayline has expanded the number of hotels it serves from six to twelve during the past year. Grayline maintains a sales and marketing staff of five persons, and claims it has never turned down a request from a Seattle hotel to be included on its route. But testimony from Richard Young, Managing Director of the Edgewater Inn in Seattle, and Mary Dempcy, General Manager of the Mayflower Park Hotel in Seattle, establish that both hotels have inquired about or asked for service from Grayline more than once with no result. The failure to provide service may, as Grayline suggests, be the result of inadequate communication. But it is reasonable to find that Grayline's marketing arrangements contribute to limitations of service.

When a hotel inquires of a Grayline salesperson about Grayline service, the inquirer is told to put the request in writing and send it to the Grayline general manager. The Grayline general manager on the other hand, believes that the sales people are participating in negotiations for airporter service to Seattle hotels. He adheres strictly to the policy that Grayline will not serve passengers from a hotel unless that hotel invites or allows Grayline on the premises for that purpose. Because Grayline does not serve the Edgewater Inn or the Mayflower Park hotels, passengers from those locations must either transport themselves to a Grayline stop, with luggage, or adopt an alternative service.

The Edgewater Inn has recently entered a contract with Shuttle Express. Shuttle Express will pick up guests requiring transportation to Seattle-Tacoma International Airport within one-half hour of the request. Service has so far been satisfactory. Mr. Young has used Shuttle Express. He has found the service to be fast, clean and friendly.

Mayflower Park Hotel guests have a daily need for airport transportation. Grayline has not made the Mayflower Park a route stop, partly because of parking problems. The Mayflower Park's guests have obtained service from Shuttle Express. When they use Shuttle Express, they don't have to walk or travel by taxi the two blocks to the nearest Grayline stop. Ms. Dempcy, the Mayflower Park manager, has used Shuttle Express once and found it satisfactory.

Downtown Seattle apartment residents also require airport transportation. Mr. Francis Hale, Ms. Joy Newman, and Ms. Susan Westcott, for example, who testified in support of Shuttle Express, live downtown. They find it difficult and inconvenient to travel, with luggage, to the nearest airporter stop. They use Shuttle Express, which they find clean, safe, efficient and convenient.

Gregg Coe, a travel guide, has arranged for transport of sales groups between Seattle and Seattle-Tacoma International Airport. He has used Shuttle Express instead of Grayline because Shuttle Express offers home pick up. That service avoids problems with assembly of passengers downtown.

b. South Snohomish and North King Counties in the Area Served by EASE.

Everett Airport Service Enterprises, Inc. (hereafter EASE), provides airport-related transportation services between Everett and Seattle-Tacoma International Airport. EASE serves a regular route with designated scheduled stops. These stops include the Everett Pacific Hotel, the Everett Holiday Inn, the Landmark Inn in Lynnwood, the Northgate Ramada Inn and the University Plaza at Northeast 45th and Highway 5 in Seattle. EASE provides airport transportation service from 3:30 a.m. to 12:30 a.m. with four 12-person vans and two 19- to 21-passenger motor coaches.

EASE operates under Certificate No. 858, which provides authority as follows:

PASSENGER SERVICE

BETWEEN: Everett, the Everett Holiday Inn and Lynnwood and the Ramada Inn, 2140 North Northgate Way, Seattle, on the one hand, and the Seattle-Tacoma International Airport on the other hand via local streets, Interstate Highway 5, State Road 518 or Interstate 405 to 99,

BETWEEN: Sherwood Inn located in the University District at the intersection of Interstate 5 and Northeast 45th Street and the Seattle-Tacoma International Airport via I-5 and Northeast 45th Street or altered in routes north and south.

EASE airport service is generally limited to its scheduled stops, with occasional group service to or from other locations. Home pick-up and delivery is only offered to potential passengers on an individual request basis at the option of EASE management. There are no guidelines of record in these proceedings which govern the exercise of that option. Such service will not be provided if a scheduled run would be put off schedule.

Ralph Kemper, the manager of the Northgate Ramada Inn, established that EASE service has been satisfactory from his point of view. EASE has added runs to its permanent schedule and made special runs at his request. He has observed Shuttle Express collecting passengers at the Ramada Inn between EASE runs, but there is no evidence to show whether or not Shuttle Express was responding to a request for its services.

Paul Alley, Viking Travel in Everett, has used EASE for tour group travel four or five times in the last five or six years. He has found EASE service satisfactory. He has heard of no dissatisfaction among his clients with EASE service.

Several residents of the North Seattle areas to the east and west of stops served by EASE testified in support of the application. These include Ms. Molly O'Kane, Captain T. McManus, and Mr. Robert Grant. Their testimony establishes that even if, as has been suggested by EASE, free parking at EASE stops were available, they would use Shuttle Express instead of EASE. They base their decisions on the convenience and safety of door-to-door transportation offered by Shuttle Express. They found the service offered by Shuttle Express to be satisfactory, and would take Shuttle Express in the future.

The guests of the Meany Hotel, 4507 Brooklyn Avenue, Seattle, use the Shuttle Express about six times a day. James Veenhuizen, manager of the hotel, established that Shuttle Express provides airport transportation for his guests that would otherwise only be available from taxicabs or limousines. The 165-room hotel operated at a 69.8 percent occupancy rate in 1988. On four occasions beginning in 1985, Mr. Veenhuizen has asked EASE to stop regularly at the Meany Hotel without success. The

Meany Hotel is about six blocks from the EASE southernmost regular stop at the University Plaza. In refusing service, EASE alleged that traffic problems would make satisfactory scheduling impossible. Evidence does not show whether all possible route options for providing service to the Meany Hotel were considered by EASE. Even though the EASE certificate includes no Seattle stop other than the Northgate Ramada Inn or the University Plaza, there is no evidence that EASE sought authority to serve the Meany Hotel directly.

Ruth Ann Olson, manager of Conference Management at the University of Washington, manages on-campus conferences for up to several thousand participants. Many of the conferees arrive at Seattle-Tacoma International Airport. In 1988, 3,000 conferees required transportation between Seattle-Tacoma International Airport and the University of Washington, while 1,000 persons attended downtown conferences. Ms. Olson does not arrange transport, except group charters with Grayline, but she recommends Shuttle Express among the options. Conference speakers and attendees have commented favorably on Shuttle Express service. Ms. Olson has used Shuttle Express, and likes the service. The conference programs would benefit because of convenience to participants from continued Shuttle Express Service. Direct service to the airports from the University of Washington is a great convenience.

In 1986 or 1987, Ms. Olson asked EASE to include a University of Washington stop on the EASE schedule. EASE refused, but offered service for seven or more riders at a time. The seven rider minimum did not work for most of the conference attendees, who did not travel in groups of seven or more. There is no evidence that EASE has asked the Commission for authority to serve the University of Washington directly.

Lloyd W. West is the owner of Plan-It Travel in Lynnwood. His clients come from the Everett, Lynnwood and Edmonds areas. Mr. West serves about 100 airline travel clients each week. Many of his clients use Shuttle Express. His service receives two or three positive comments about Shuttle Express service each week. He has used Shuttle Express, and liked the service so well he would use it again.

Many of Mr. West's clients are senior citizens. They particularly like the safety and convenience of the door-to-door service. Shuttle Express helps these travelers with their luggage, and has contributed to a pleasant travel experience for customers. Other airporter service, which serves only pick up points, is not desirable for Mr. West's clients. They don't like to have to drive to pick up points and don't like to leave cars

unattended while they travel. Mr. West would like to see Shuttle Express service continue.

c. North East King County and South Snohomish County Areas Served by Suburban Airporter, Inc.

Suburban Airporter provides scheduled airporter service from designated stops in Kirkland, Redmond, Bellevue, Mercer Island, Renton, and points in North King County outside the City of Seattle. Suburban provides service under Certificate No. 859, which contains authority detailed in finding of fact No. 6 herein. Suburban serves Mountlake Terrace, Woodway, and Edmonds in Snohomish County. Suburban's schedule provides that service to Aurora Village, Edmonds, Kenmore, and Lake Forest Park are provided by reservation only. The schedule also offers "door-to-door" pick up only in Bellevue, Kirkland and western Redmond, and north to Northeast 116th Street. But Suburban plans to offer door-to-door service some time in the Spring north to Snohomish County.

Most service outside the door-to-door service zone is designated "terminal only". That means the passenger must come to the designated stop. Passengers are so advised. Home pick-up may be provided if Suburban feels it is justified. Some of the home pick-up services are provided on the basis of a transfer to a regularly-scheduled vehicle at a terminal point.

Suburban offers 26 round-trips each day. The first leaves Bellevue at 5:15 a.m. and the last leaves Seattle-Tacoma International Airport at 12:30 a.m. Trips depart each 30 to 45 minutes. Ninety-seven percent of Suburban's trips leave Bellevue within five minutes of the scheduled time. Each six months, airline arrivals and departures and passenger flows are studied to ensure that the schedule is convenient for travellers.

Karen Wilson Drew, Bellevue, is Travel Coordinator for Egghead Discount Software. She travels by air once a month on business and twice a year for pleasure. She has used Suburban herself, and has used it once a month for transportation of business associates. She has found Suburban's service satisfactory and timely.

Ms. Drew has used Shuttle Express twice. On May 19, 1988, she arranged a 5 a.m. pick up to catch a 7:15 flight at Seattle-Tacoma International Airport. After the van picked her up, it was driven to Mercer Island where the driver required 45 minutes to locate the address of the next passenger. The trip from Ms. Drew's home to Seattle-Tacoma International Airport required one hour and fifteen minutes.

On the second occasion, Ms. Drew arranged a 6:45 a.m. pick up time to catch an 8:30 flight. The van arrived at her home twenty minutes ahead of the designated time, causing some inconvenience. By contrast, the Suburban vans have always been on time or no more than 5 minutes early. Shuttle Express vans on both trips were clean and neat.

Thomas Hopper is a businessman who has used Suburban Airporter for fifteen to eighteen round trips during the last two years. He has received adequate service from Suburban. On the one occasion when he used Shuttle Express, the van was one hour and ten minutes late. Mr. Hopper made his flight, but his luggage was misdirected. He was dissatisfied with the Shuttle Express Service.

Mr. Sam Saleh is the manager of the Bellevue Holiday Inn. He established that Suburban has satisfactorily served that hotel for seventeen years. He would not wish to have the hotel served by a carrier that would require one hour and fifteen minutes to take a passenger, such as Ms. Drew, from Bellevue to Seattle-Tacoma International Airport.

Jane Glynn resided in Lake Forest Park when she used Shuttle Express. She was satisfied with the service. She was particularly pleased when she was able to acquire Shuttle Express service from Seattle-Tacoma International Airport at 3 a.m. after what she termed a "horrible" flight. In the past, when she had parking available downtown, she and her husband used Grayline. She no longer has parking available, so she would use Shuttle Express in the future. She would not like to travel to an airporter terminal location.

Joseph Haleva is a travel agent and president of the Northwest group of the Association of Retail Travel Agents. He has used Shuttle Express, and conveyed the unanimous support of the ARTA board for the continued operation of Shuttle Express. He serves Mercer Island and East King County as well as downtown Seattle clients. His opinions are based on substantial experience serving clients as a travel agent.

Mr. Haleva believes that the safe door-to-door Shuttle Express service meets a public transportation need. He believes the competition offered by Shuttle Express to other forms of airport transportation will benefit the public by encouraging the development of the mode of transport most competitive in the market. His opinions are based on substantial experience serving clients as a travel agent.

Jim Browder is director of sales for the Hyatt Regency Hotel in Bellevue. Based on his observations of airport transportation during his several years in the hotel business, he believes Shuttle Express should be available. He has experienced Shuttle Express-type operations in larger urban markets as well as in the Seattle area. He believes his guests will always have a need for the door-to-door, nonscheduled service, just as they will always need the scheduled service of the type provided by Suburban Airporter.

d. South King, Pierce and Thurston Counties in the Area Served by Pacific Northwest Transportation Services.

Pacific Northwest Transportation Services, d/b/a Capital Aeroporter, provides scheduled service to points in South King, Pierce and Thurston Counties, including the Olympia area, McChord Air Force Base, Lakewood, Parkland, the Tacoma Mall, South Tacoma motels, Puyallup and Sumner. Capital provides service under Certificate C-862, which contains authority as shown in finding of fact 2. Capital has authority under its Certificate No. C-862 to provide service to Seattle-Tacoma International Airport from Tukwila, Kent, Auburn, Algona, and Pacific, but does not serve those points.

At the beginning of the hearing, Travelines, Inc., was a separate intervenor, providing airporter service under Certificate of Public Convenience and Necessity No. C-894. It provided service to the City of Tacoma, and to Fife and Federal Way, except points served by Capital Aeroporter under Certificate No. C-862, and other points not relevant to this proceeding. On January 25, 1989, Order M. V. C. No. 1791 of the Washington Utilities and Transportation Commission was entered transferring all airporter authority under Certificate No. C-894 to Pacific Northwest Transportation Service, Inc. Official notice of this order was taken in this proceeding on February 6, 1989. Because Travelines, Inc., no longer possessed airporter authority, it had no standing to participate further in this proceeding and its intervention was dismissed.

At the time of the hearing, Capital offered home pick-up only in the Olympia area but could offer that service in Puyallup for \$4 extra per passenger. Potential customers inquiring about service were told of regular stops. There is no evidence that Capital regularly offered door-to-door service outside the Olympia area.

Before the transfer of authority, Travelines offered scheduled pick up at the Tacoma Sheraton and at the Tacoma La Quinta Inn. Stops at the University of Puget Sound, Tacoma Community College or the Tacoma Dome Hotel could be arranged by

reservation. Reservations were received through a special phone number, purchased by Capital Aeroporter, and were entered into a computerized scheduling system.

At the time of the hearing, Mr. Richard D. Hansen, proprietor of Travelines, continued to administer the former Travelines service on behalf of Capital. That arrangement was not intended to continue indefinitely. Mr. James N. Fricke, the proprietor of Capital, had not yet decided whether to purchase additional equipment to operate the acquired authority. He had no specific plans for serving the Tacoma/Fife/Federal Way area, except that, as of February 6, 1989, he intended to offer home pick-up. Home pick-up was to be offered in Tacoma, Fife, Parkland, and Puyallup.

No details of the proposed door-to-door service of Capital were presented so it is not possible to compare that service with Shuttle Express. No evidence was presented to establish that a current or future unmet need for on-call, door-to-door airporter service exists in Pierce or Thurston Counties.

e. Seattle-Tacoma International Airport.

The intervenors and Shuttle Express take on passengers who have arrived at Seattle-Tacoma International Airport on the lower level of the terminal facility, adjacent to the luggage collection area. Airporter services have specific areas they use while loading customers. Suburban Airporter has at least two luggage racks for use by those wishing its service. Grayline has two ticket booth structures at the airport.

Shuttle Express has no specific location where its vans may stop. Under the temporary operating agreement between Shuttle Express and the Port of Seattle, these vans are allowed to stop in the loading area only to load or unload. Drivers may not solicit passengers. Shuttle Express vans are to appear only when they are summoned by a dispatcher. Customers must request service by telephone. The agreement does not specify what might be a reasonable waiting time if a Shuttle Express van is not immediately contacted by a passenger upon its arrival in the pick up area. The agreement does not prohibit a driver from performing a brief and reasonable search for a passenger who has made a reservation.

During the months of October 1987 through November 1988, Shuttle Express received 46 letters from the Port of Seattle alleging separate violations of the temporary operating agreement. Violations alleged include solicitation by drivers, drivers waiting in vans in the passenger pick up area, vans obstructing traffic, and vans taking several turns through the

pick up area. The Port sent fourteen separate notification letters on October 29, 1987. Fifteen violations allegedly occurred in October 1987. Eleven alleged violations occurred in September 1988.

The evidence presented, including the testimony of Mr. Holbrook, superintendent of parking and ground transportation from the Port of Seattle, establishes that Shuttle Express made good-faith efforts to improve its performance under the contract. Shuttle Express was able to substantially reduce the number of violations of the agreement noted by the Port authorities. At one time, the Port was considering nonrenewal of the operating agreement with Shuttle Express. Currently, however, the Port and Shuttle Express have reached substantial agreement on the terms of a new operating agreement. That agreement is awaiting formal acceptance and signature by representatives of Shuttle Express and the Port.

Mr. Orville Coombs and Mr. O. Paul Coombs representing EASE testified concerning their observation of what they believe to be Shuttle Express violations of its operating agreement. They saw Shuttle Express vans waiting in the loading area for several minutes. Mr. Orville Coombs saw the vans move around the loading area changing destination signs. He saw them load waiting passengers. Mr. O. Paul Coombs saw Shuttle Express vans load passengers shortly before other airporter vans were to arrive. These observations may have been consistent with the operating agreement or may have been incidents that the Port considered violations and which were later corrected by Shuttle Express. Considering the Shuttle Express response to the Port violation notices, and its demonstrated improvement in compliance with Port operating requirements, the evidence concerning its airport activities does not show that Shuttle Express will not comply with Commission rules and laws and regulations in running its operations if its application is granted.

Frank McAnulty is the general manager for United Airlines Operations at Seattle-Tacoma International Airport. He appeared on his own behalf. He did not purport to present an official position of United Airlines. He regards it as part of his duties to facilitate convenient and high-quality ground transportation service for United customers. He supports Shuttle Express, and believes continued Shuttle Express service would be a convenience to United passengers. Quality ground transportation is part of the whole travel experience and should be supported, in his opinion.

Douglas Holbrook is superintendent of parking and ground transportation of the Port of Seattle at Seattle-Tacoma International Airport. His investigations show that Shuttle

Express is a well-organized company that provides a unique unscheduled service for many of the 35 to 40,000 passengers who pass through Seattle-Tacoma International Airport each day. Based on his observations and user comments that he has received, he finds that Shuttle Express service stresses customer service and has met customer needs.

Ground transport demand at Seattle-Tacoma International Airport now exceeds capacity. More passengers without expanded facilities will aggravate the congestion. Shuttle Express, with its multi-passenger vehicles, will help lessen the problem. The Port encourages high-capacity vehicle use.

4. Commission Discussion

The applicant requests authority to carry passengers between airports in the Seattle Commercial Zone and points within that commercial zone or within a 25-mile radius of any such airport. The issuance of that authority is governed by RCW 81.68.040. That statute does not specifically mention applicant fitness and financial ability, but those factors are implicit in the definition of public convenience and necessity, and must be considered. That statute does require that, where a territory is already served by an existing certificate holder, a certificate to serve may be issued "only when the existing auto transportation companies serving such territory will not provide the same to the satisfaction of the Commission. . .". In any case, the Commission may determine the requirements of public convenience and necessity, and "for good cause shown" refuse to issue a certificate. The Commission may also place terms and conditions required by the public convenience and necessity on any authority issued.

The intervenors alleged that they will serve the territory at issue to the satisfaction of the Commission. They also alleged that the public convenience and necessity do not require the grant of authority applied for. They further asserted that the applicant is unfit, financially and otherwise, to hold the authority for which it applies.

Within the limits of the services they have provided in the past, the intervenors have provided adequate service. They have served scheduled stops in their territories promptly and efficiently. In the case of Suburban Airporter and Travelines, some limited home passenger pick-up has been offered. It is not disputed that the intervenors have provided clean, neat, safe, courteous, and timely service. They operate with appropriately trained personnel and properly maintained equipment. These are all service features which are important to the public. But

service to the satisfaction of the Commission is not based on these factors alone.

The Commission must consider whether the territory at issue is "territory already served" within the meaning of the statute. The Washington Supreme Court has held that issue to be ". . . a question of fact . . . to be determined from a consideration of economic as well as of legal principles.", Suburban Transportation System v. Furse, et al., 125 P.2d 266 (1942). The court, quoting Puget Sound Navigation Company v. Department of Public Works, 152 Wash. 417, 278 P. 189, 191, held that the Commission must consider economic conditions including:

". . . a consideration of the kinds, means, and methods of travel; the question of population warranting additional facilities for transportation, or the possibilities of the additional means of transportation increasing the population so as to ultimately make the venture a success." In addition to those factors it often becomes necessary. . . to consider the topography, character, and condition of the country into which the services to be introduced, and its relation to the nearest territory through which transportation service is already supplied.

One factor to be considered is the extent of the authority of the intervenors. Another is whether or not they are serving to the extent of that authority. A third is whether the type of service provided reasonably serves the market. These factors were considered in In Re Bremerton-Kitsap Airporter, Inc., d/b/a Bremerton-Kitsap Airporter, et al., Hearing No. D-2444, Order M. V. C. No. 1443 (May, 1984) and Order M. V. C. 1457 (August, 1984), and in In Re Pacific Northwest Transportation Services, Inc., d/b/a Capital Aeroporter-Tours-Charters, Hearing No. D-2445, Order M. V. C. No. 1444 (May, 1984).

Suburban has authority to serve communities throughout east and north King County and south Snohomish County. But much of this area, outside Bellevue, Kirkland and Redmond, is served on a "terminal only" basis. Capital does not serve the communities within its authority in King County. The shape its service will take under its newly-acquired authority in Pierce County is unknown. Otherwise, it serves the Olympia area and designated terminal points in southwest Pierce County.

Of the intervenors, only Capital Aeroporter (including its authority required from Travelines) and Suburban Airporter purported to offer home pick-up and passenger delivery on a regular basis. In the past, those services have been offered only in limited areas. EASE has not demonstrated any home pick-up and delivery activity for individual passengers in Everett or Lynnwood. Those are the two communities which are designated as areas of service for EASE, rather than specific pick-up points, as in the case of the Everett Holiday Inn, Northgate and the University Plaza Hotel.

Grayline does not have authority to provide home pick-up service. But the evidence shows that Grayline will serve downtown hotels within the limits of its authority under conditions which discourage many hotels from persevering to obtain such service. The sales staff instructs hotels to request service in writing from the general manager, while the general manager is under the impression that the sales staff participates in arranging hotel service.

The evidence shows that a substantial market for airport-related auto transport exists which is not adequately served by the intervenors. In the month of November 1988, 14,500 persons used the applicant's door-to-door airport transportation service. The trend in utilization shows that the applicant's ridership is growing. The evidence shows that many airport patrons use the applicant's service because use of the intervenors' service involves substantial inconvenience.

Many travellers, especially senior citizens and women travelling alone, find considerable inconvenience in transporting luggage between intervenors' scheduled stops and parking places or residences. To these problems, safety considerations are added when a very late or early flight is involved. Transport to pick-up points can be inconvenient. Even if a parking place is found, leaving a vehicle unattended is not desirable. These problems are minimized for guests at hotels where intervenors stop. But many hotels are not directly served by the intervenors.

Many airport travellers would use private or non-regulated transit rather than the intervenors' scheduled service. Use of private transport would only add to airport congestion problems. Shuttle Express research shows that its customers are those who would otherwise drive themselves or take taxis to the airport.

The intervenors have left a substantial portion of the airport transportation market unserved. The applicant has demonstrated that large areas of the unserved market can be

served by nonscheduled, reservation-only van service. The Commission must conclude that intervenors will not provide the scope of service necessary to serve the territory to the satisfaction of the Commission.

It is also necessary to determine whether the proposed service is economically feasible and whether the applicant has the financial ability to provide that service.

The applicant, which has been serving the door-to-door airport transportation market since September, 1987, has never operated at a profit. Up to November, 1988, the applicant had shown a loss of over \$700,000 in this service for the year. In its peak month of December, 1988, the applicant carried 14,500 passengers. If present revenue per passenger continues, the enterprise will make a profit when it carries 20,000 passengers per month.

The applicant plans to break even in mid-1989. The evidence shows that this expectation may be overly optimistic. Rate increases may be required to achieve profitability. But the difficulty in obtaining profitability in this service does not justify refusal to issue a certificate of public convenience and necessity. Management decisions have been made to increase revenue per rider, and more changes may be necessary to show a profit. The evidence does not show that the home pick-up or passenger delivery market cannot be served profitably. The record shows that the company's owners are ready, willing and able to provide the financial resources necessary to offer services for the indefinite future.

It is reasonable to consider whether a grant of the requested authority to the applicant, and the increased competition for riders that may result, will benefit the public. Any positive effects that competition may have in better service to the public should be considered pursuant to Blackball Freight Service, Inc. v. Washington Utilities and Transportation Commission, 447 P.2d 597 (1969). The evidence shows that a large segment of the travelling public was not served by the intervenors. During the course of the hearing, Suburban Airporter and Capital Airporter declared their intention to offer home pick-up and delivery service in their areas. There is objective evidence on this record that competition in this instance has resulted in an increase in service levels to the public. See Order M. V. No. 131565, In re United Truck Lines, Inc., App. No. E-18895 (March, 1985). EASE and Grayline have indicated no intent to expand services, except on the same conditions as have prevailed in the past.

The evidence shows that increased competition will probably benefit the public, See United Truck Lines, Inc., Supra. EASE and Grayline claimed to have suffered reduced revenues since Shuttle Express began service. But, these providers have demonstrated no willingness to make changes to serve segments of the market within their authority that Shuttle Express has served satisfactorily. None of the intervenors has shown grave financial problems related to Shuttle Express activities. A grant of authority to the applicant can be expected to encourage Shuttle Express and the intervenors to serve all parts of the airport transportation market in ways most suited to the abilities of each provider.

Suburban Airporter and EASE have presented witnesses who testified about their satisfaction with the services currently provided. When all public testimony concerning public need is considered, the issues of satisfactory service here resemble those present in 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). The Commission stated, at page 5, that:

The issue 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. There has been a credible demonstration that it does not meet the standards of airporter service and that it is failing to meet the bona fide needs of a substantial segment of the travelling public. The applicant's ability to serve other segments of the market satisfactorily would do nothing to remove that failure in its service.

The intervenors and Commission counsel alleged that Shuttle Express has not demonstrated its fitness for a grant of authority. Their position was based in part on their view that Mr. Sherrell misrepresented the true form of Shuttle Express financial records to deceive the Commission concerning the applicant's financial condition. Specifically, these parties allege that Mr. Sherrell falsely represented that separate financial books and records were not maintained for Shuttle Express (as distinct from San Juan Airlines) to conceal the extent of financial loss resulting from Shuttle Express operations.

Mr. Sherrell did testify that separate books and records were not maintained for Shuttle Express. Later,

Exhibits 57 through 61, were offered, which are financial statements including a balance sheet and multi-page, detailed income statement for Shuttle Express. These exhibits disclose that financial statements existed as of November 30, 1988. Also, Mr. Sherrell testified that the September 30, 1988, balance sheet was the latest such statement prepared for San Juan Airlines. Mr. Sherrell's rebuttal testimony established that, while the November 30th balance sheet may have been more recent in time, he considered it incorrect.

Mr. Sherrell continued to maintain that separate records were not kept for Shuttle Express, even in light of Exhibits 57 through 61. He apparently does not consider periodic financial statements to be "books and records". While such an opinion may appear unreasonable in light of Mr. Sherrell's demonstrated business sophistication, nevertheless, assertion of such an interpretation does not, in itself, demonstrate bad faith. Mr. Sherrell's testimony would be consistent with the maintenance of a single set of books for San Juan Airlines which includes entries and accounts dealing with Shuttle Express matters. This opinion may be reasonably held in good faith. The evidence does not show it was held in bad faith.

Shuttle Express operations include some demonstrations of violations of law, such as a failure to register Shuttle Express vans as for-hire vehicles instead of private passenger vehicles. But the evidence does not show consistent patterns of bad faith that would remove credibility from Mr. Sherrell's statements of opinion about Shuttle Express financial records. Shuttle Express is reminded, however, that WAC 480-30-020 requires correct licensing of all auto transportation company vehicles.

The intervenors have alleged that the applicant is unfit to hold the authority it seeks. The claim is based in part upon numerous violations of its agreement with the Port of Seattle, the applicant's failure to appropriately license its vans, and operations without authority. When the applicant has had agreement compliance problems in the past, it has shown the ability to successfully reduce them. This, along with credible assurances of willingness to comply with applicable laws and regulations, showed that the applicant is fit to hold authority. Past operations without Commission authority were undertaken under the belief that such operations were lawful. Because of the questions raised of record regarding applicant's actions and its history including violations, the Commission will monitor its operations under authority and will expect strict compliance with law and rule.

Intervenors allege that Shuttle Express may wish to sell any authority it is granted. No evidence was offered in support of this assertion, but such a transfer is a distinct possibility in view of the potential value of the authority and applicant's large financial losses. Transfer of authority granted in this proceeding will therefore be prohibited for a three-year period.

The evidence shows that the service proposed by Shuttle Express is convenient. Another issue is whether the services are also necessary. In North Bend Stageline, Inc. v. Denny, 153 Wash. 439, 279 P. 752 (1929), the Washington Supreme Court said:

. . . it is manifest that the word necessity does not mean necessary in the ordinary sense of the word. The convenience of the public must not be circumscribed by according to word "necessity" its lexicographical meaning of "an essential requisite." The statute is to be so construed as to encourage rather than retard mechanical and other improvements in the appliances devoted to the public service, and in the use thereof in that service, to the end that both the quality and quantity of that which is offered in to the public for its pleasure, convenience or necessity. Necessities may be improved and increased. 279 P. at 753.

The evidence of record demonstrates that the services proposed by Shuttle Express fall within the court's definition of necessity. The grant of the authority applied for is therefore consistent with the public convenience and necessity.

The application will be granted in part because the evidence shows that the intervenors will not serve the territories at issue in King and Snohomish Counties to the satisfaction of the Commission, and no good cause has been shown to deny the application as provided by RCW 81.68.040. Grant of authority for the territory within those counties is consistent with the public convenience and necessity. No such showing has been made for other areas at issue, including Pierce and Thurston Counties.

The intervenors allege, and the evidence shows, that terms and conditions should be attached to the exercise of authority granted in this proceeding, pursuant to RCW 81.68.040. First, the authority may not be transferred for a period of three years from the date of issue. Second, the applicant may offer only on-call, door-to-door type service between airports served

and any points within the territory served, including residences, hotels and businesses. This is consistent with applicant's demonstration of need and other carriers' failure to serve. Third, service may be provided in vehicles no larger than the currently used seven passenger vans. The first condition addresses concerns that the authority is requested only for resale. The other conditions help ensure that the services offered by the applicant will continue to conform to the market need as demonstrated in this proceeding. No showing has been made that additional services similar to that provided by the intervenors is required on a scale such that another such provider is required by the public convenience and necessity.

The intervenors suggested additional restrictions. These included prohibition of service to hotels, restriction to residential service, and a territorial restriction to Seattle and King County west of Lake Washington. The evidence does not show good cause for these restrictions, and therefore they will not be imposed.

No need for the applicant's services outside King and Snohomish Counties has been shown in this proceeding. But such a need may be demonstrable in the future. The applicant may apply for extension of authority as it may see fit.

The evidence does not show that the applicant is unfit to hold the authority for which it applies. But the evidence shows a significant number of violations of the applicant's operating agreement with the Port of Seattle. The applicant has also disregarded vehicle registration requirements. The applicant will be required to conform to the requirements of all applicable statutes and regulations in its operations. It will be expected to be candid and forthcoming in its dealings with the Commission. All public complaints about the applicant's operations will be given due consideration.

Having discussed the evidence in detail, the Commission enters the following findings of fact, conclusions of law and order.

FINDINGS OF FACT

1. On October 13, 1988, San Juan Airlines, Inc., d/b/a Shuttle Express, filed an application for a certificate to operate motor vehicles in furnishing passenger and express service as an auto transportation company as follows:

Shuttle Express does not propose to operate on an established time schedule or over a regular route. Shuttle Express proposes to operate exclusively on a long haul basis

transporting passengers, baggage and express who or that have had or will have a prior or subsequent movement by air between the passenger's designated point of origin or destination and the airport of arrival or departure. The passenger designated point of origin or destination must be within a zone encompassed by a 25-mile radius of an airport located within the ICC Seattle Commercial Zone or the boundaries of the ICC Seattle Commercial Zone, whichever is greater.

2. Bremerton-Kitsap Airporter, Inc., petitioned for intervention. Under Washington Utilities and Transportation Commission Certificate of Public Convenience and Necessity No. 903, it holds authority to provide airporter service between points in Kitsap and Pierce Counties and Seattle-Tacoma International Airport and between Fort Lewis and McChord Air Force Base and (Sea-Tac). Upon amendment of the application to exclude service between Fort Lewis and McChord Air Force Base and (Sea-Tac), the intervention was withdrawn. Bremerton-Kitsap Airporter was dismissed as a party to this proceeding. Exclusion of Pierce County from the authority granted obviates the need for a specific restriction upon service.

3. Pacific Northwest Transportation Services, Inc., d/b/a Capital Aeroporter, petitioned for intervention. Under Certificate No. C-862, it holds the following authority, in part:

Passenger and express service between Chehalis, Centralia, Tumwater, Olympia, and Lacey on the one hand and Seattle-Tacoma International Airport and the King County (Boeing Field) Airport on the other hand by Interstate Highway No. 5, State Road No. 518, and State Road No. 99, serving the intermediate and off route points of the Vance Tye Motor Inn in Tumwater, the Greenwood Inn, the Lakewood Motor Inn and in the unincorporated area of Pierce County known as Lakewood, the Sherwood Inn on Interstate Highway No. 5 in Pierce County, the Roadway Inn, the Tacoma Eight Motel and the Tacoma Mall in Tacoma.

BETWEEN:

Chehalis, Centralia, Tumwater, Olympia, Lacey and Seattle-Tacoma International Airport via I-5 and SR-99 or as an alternate route any

combination of I-5, SR-99, SR-512, SR-181, SR-167, I-405, SR-518.

BETWEEN:

The Evergreen State College and Seattle-Tacoma International Airport.

BETWEEN:

Kent and Tukwila and Seattle-Tacoma International Airport.

BETWEEN:

Seattle-Tacoma International Airport and Boeing Field on the one hand, and Shelton, Auburn, Algona, Pacific, Sumner, Puyallup, Parkland, Lakewood, Steilacoom, Pacific Lutheran University, Nendel's Motel (in South Tacoma) and Denny's Restaurant on 38th Street (Tacoma) on the other hand.

BETWEEN:

Tumwater, Olympia and Lacey and a radius of 3 miles beyond the city limits of each city and Seattle-Tacoma International Airport.

The intervenor opposed the application.

4. Travelines, Inc., d/b/a Travelines Airporter, petitioned for intervention. Until transfer of its airporter authority under its previous Certificate No. C-894 to Pacific Northwest Transportation Services, Inc., it held the following authority:

AIRPORTER AND PASSENGER EXPRESS SERVICE

between the city of Tacoma, Fife or Federal Way and Seattle-Tacoma International Airport.

LIMITATIONS:

Service restricted to closed door operations between the city of Tacoma, Fife or Federal Way and Seattle-Tacoma International Airport and further restricted against service to or

from the following points within the city limits of the city of Tacoma as of December 14, 1984, which are specifically authorized to Pacific Northwest Transportation Services, Inc., under Certificate of Public Convenience and Necessity No. 862 or to Bremerton-Kitsap Airporter, Inc., under Certificate of Public Convenience and Necessity No. 903: "Nendel's Inn (in South Tacoma); Motel 6; Sherwood Inn; Butler's Heritage Inn; Tacoma Mall; Denny's Restaurant on 38th Street; Amtrak Railway Station; Denny's Restaurant at 5924 6th Avenue in Tacoma; and from the corner of Bance Boulevard and 6th Avenue in Tacoma to the Tacoma Narrows Bridge by SR 16."

Travelines opposed the application. After the transfer of Travelines Airporter authority on January 26, 1989, it no longer possessed authority which conflicted with the authority requested in the application. Its intervention was therefore dismissed. Ability to provide service pursuant to the authority granted in Certificate No. C-894 will be considered in relation to Pacific Northwest Transportation Services, Inc., Travelines' successor, in this proceeding.

5. Evergreen Trails, Inc., d/b/a Evergreen Trailways and also operating under the name of Grayline Airport Express, petitioned for intervention. Under Certificate No. C-819, Evergreen Trails, Inc., possesses the following authority which conflicts with the authority requested by the applicant:

PASSENGER SERVICE

BETWEEN: Seattle and the Seattle-Tacoma Airport.

LIMITATIONS:

1. Service hereunder is expressly limited to the transportation of airline passengers and flight crews between Seattle-Tacoma Airport on the one hand and hotels and airlines offices in Seattle on the other hand, at rates substantially higher than the fares of regular common carriers.

2. No express service may be rendered hereunder except in the carrying of baggage

and excess baggage of passengers and flight crews.

3. No service may be rendered from, to or between intermediate points.

Evergreen Trails, Inc., opposed the application.

6. Suburban Airporter, Inc., petitioned for intervention in this proceeding. Under Washington Utilities and Transportation Certificate No. 859, Suburban Airporter, Inc., possesses the following authority which conflicts with the authority requested by the applicant:

PASSENGER SERVICE:

BETWEEN: Kirkland, Redmond, Bellevue, Mercer Island and Renton on the one hand and the Seattle-Tacoma International Airport on the other hand, via Interstate Highway 405 and connecting highways; subject to the following limitations: (1) The transportation services limited to passengers, and their baggage, to or from Seattle-Tacoma International Airport. (2) No service is authorized except at points named. (3) Service at the said airport shall be conducted in accordance with authorization issued by the Port of Seattle and such authorization is a term of this certificate. In the event of failure to comply with such authorization, this certificate, after hearing may be suspended and revoked, in whole or in part. The holder of this certificate shall file with the Commission a copy of the authorization, or cancellation thereof issued by the Port of Seattle.

Sub. 1 Passenger Service

BETWEEN: Seattle-Tacoma International Airport, and/or Boeing Field Airport, and Kirkland, Washington, via county roads or city streets to enter State Highway No. 5, thence over Interstate Highway No. 5 to the King-Snohomish County line, thence over State Highway No. 104 to its junction with State Highway No. 522, thence over State Highway No. 522 to its junction with Interstate Highway No. 405, thence over Interstate

Highway No. 405 at county roads to Kirkland. Service is authorized to all intermediate points on Interstate Highway No. 5 north the limits of the city of Seattle in King County and to all intermediate points on State Highways 104 and 522 and those north of Kirkland on Interstate Highway No. 405 and to the following off route points:

(a) Those in King County lying northerly of the Seattle City limits and those lying westerly of Interstate Highway No. 405 and northerly of Kirkland; (b) Mountlake Terrace, Woodway in Edmonds in Snohomish County; and (c) Issaquah in King County.

Suburban Airporter, Inc., opposed the application.

7. Everett Airport Services Enterprises, Inc., d/b/a Everett Airport Service Enterprises, or "EASE", petitioned for intervention. Under Washington Utilities and Transportation Commission Certificate No. 858, EASE, Inc., exercises the following authority which conflicts with the authority requested in the application in this proceeding:

PASSENGER SERVICE

BETWEEN: Everett, the Everett Holiday Inn and Lynnwood and the Ramada Inn, 2140 North Northgate Way, Seattle, on the one hand, and the Seattle-Tacoma International Airport on the other hand via local streets, Interstate Highway 5, State Road 518 or Interstate 405 to 99,

BETWEEN: Sherwood Inn located in the University District at the intersection of Interstate 5 and Northeast 45th Street and the Seattle-Tacoma International Airport via I-5 and Northeast 45th Street or altered in routes north and south.

EASE opposed the application.

8. The applicant possesses appropriate equipment to perform the services for which it requests authority in this proceeding. Its maintenance programs and facilities, personnel, training and safety programs are appropriate to the provision of

the services for which authority is requested. Based on the evidence presented, the applicant, if the application is granted, will comply with the laws, rules and regulations governing auto transportation companies under Chapter 81.68 of the Revised Code of Washington.

9. The applicant possesses, or can obtain, sufficient operating capital to sustain operations. Although the applicant has never made a profit in the operation of its services which are identical to the services for which it requests authority in this proceeding, the financial evidence presented shows that the proposed service may be provided on an economically remunerative basis.

10. Based upon the evidence presented, there is a significant segment of airport transportation service required by the public in those areas of King and Snohomish Counties included within the Seattle Commercial Zone that is not being served by the intervenors. A grant of authority to the applicant as requested in this proceeding would provide for service to the public that would otherwise not be provided. The evidence presented establishes that the intervenors will not serve the portions of King and Snohomish Counties included within the Seattle Commercial Zone to the satisfaction of the Commission.

11. The evidence presented does not establish that airport transportation requirements of the public remain unserved in areas outside King and Snohomish Counties for which authority is requested. The evidence presented establishes that door-to-door, on-call service is or will be provided in Pierce and Thurston Counties. The evidence does not establish that areas outside King and Snohomish Counties will not be served to the satisfaction of the Commission by currently certificated carriers.

12. The evidence presented establishes good cause to issue part of the authority requested only upon terms and conditions governing the exercise of that authority. Those terms and conditions are, first, that the authority may not be transferred within three years of the date of issue. Second, the applicant may offer only on-call, door-to-door type service between airports served and any points within the territory served, including residences, hotels, and other business locations. Third, service must be provided in vehicles no larger than the currently used seven passenger vans. These terms and conditions are required by the public convenience and necessity because they will ensure that service will be provided that will serve only the public needs shown to exist in this proceeding.

13. Although the intervenors and Commission staff have challenged the fitness and the financial ability of the applicant to exercise authority if the application is granted, the evidence does not show good cause for refusal to issue a certificate of public convenience and necessity authorizing the exercise of the authority by the applicant in accordance with the application.

CONCLUSIONS OF LAW

1. The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of this application and the parties thereto.
2. The petitions for intervention should be granted.
3. The motion of the applicant to amend its application to exclude service between Fort Lewis and McChord Air Force Base and (Sea-Tac) should be granted. The motion of Bremerton-Kitsap Airporter, Inc., to withdraw its intervention based on that amendment should be granted. Bremerton-Kitsap Airporter, Inc., should be dismissed as a party to this proceeding. No provision need be made in the authority herein granted, as it will not include Fort Lewis or McChord Air Force Base.
4. The intervention of Travelines, Inc., should be dismissed because, since the transfer of all airporter authority under its Certificate No. C-894, it no longer possesses authority conflicting with the application and therefore no longer has standing to participate in these proceedings.
5. Upon the grant of authority for those portions of King and Snohomish Counties located within the Seattle Commercial Zone as defined by WAC 480-12-081, the applicant will be an auto transportation company as defined by RCW 81.68.010(3).
6. The applicant has applied for authority to provide service as an auto transportation company as defined by RCW 81.68.010(3).
7. Because public need is shown for service as hereinafter granted, because the intervenors will not serve the portions of King and Snohomish Counties within the Seattle Commercial Zone for which authority is requested in this proceeding to the satisfaction of the Commission, and because the evidence presented does not show good cause for refusal to issue a certificate of public convenience and necessity granting authority to serve those areas, a grant of such authority is consistent with the public convenience and necessity, and the

application should be granted to serve those areas pursuant to RCW 81.68.040.

8. The evidence does not show a need for service or that currently certificated airporter service providers will not serve territories outside the portions of King and Snohomish Counties within the Seattle Commercial Zone as defined by WAC 480-12-081 to the satisfaction of the Commission. Therefore, no authority applied for will be granted except for the authority specifically set out in Conclusion of Law No. 7.

9. Pursuant to RCW 81.68.040, the public convenience and necessity require that terms and conditions attach to the exercise of the rights and authority granted in this proceeding. These terms and conditions are, first, that the authority granted in this proceeding may not be transferred within three years of issuance. Second, the applicant may only offer on-call, door-to-door type service between airports served and any points within the territory served, including residences, hotels and other business locations. Third, service must be provided in vehicles not larger than the currently-used seven passenger vans.

O R D E R

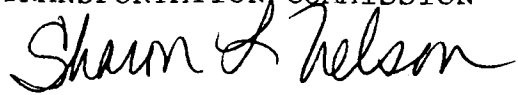
WHEREFORE, IT IS HEREBY ORDERED That Application No. D-2566 of San Juan Airlines, Inc., d/b/a Shuttle Express, as amended, requesting authority to provide nonscheduled, irregular route service as a carrier of passengers luggage and express items in the Seattle Commercial Zone or within a radius of 25 miles of any airport located in that commercial zone, be granted in part; and that, contingent upon compliance by the applicant with the provisions of Chapter 81.68 RCW and the rules and regulations of the Washington Utilities and Transportation Commission governing auto transportation companies, a certificate of public convenience and necessity shall issue containing the authority set forth in Appendix A, attached hereto and by this reference made a part hereof; and

IT IS FURTHER ORDERED That, except as specified above, Application No. D-2566 of San Juan Airlines, Inc., d/b/a Shuttle Express, be, and the same is hereby, denied; and

IT IS FURTHER ORDERED That the interventions of Travelines, Inc., and Bremerton-Kitsap Airporter, Inc., be and they hereby are, dismissed.

DATED at Olympia, Washington, and effective this 21st day
of April, 1989.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



SHARON L. NELSON, Chairman



RICHARD D. CASAD, Commissioner

Separate Concurring Opinion of A. J. Pardini, Commissioner


This applicant has displayed more than a casual disregard for the laws regarding public transportation in this state. The record is clear that he initially held his service as a continuation of air travel to ticketed passengers for the purpose of sidestepping any regulatory authorities. When pressed on this point, he sought approval from the Interstate Commerce Commission claiming that his service was interstate transportation. Finally, after having been in operation for over a year, he presented an application to this Commission as though it were an afterthought.

Testimony in this record indicates direct solicitation of unticketed passengers in air terminals. Officials responsible for ground transportation services at the Sea-Tac airport have testified that the applicant's violations caused the Port of Seattle to contemplate terminating the operating agreement established with the airport. The record casts large doubts on the applicant's testimony during this proceeding regarding the business plan and financial records of the Shuttle Express. In fact the record leaves some doubt as to whether or not Shuttle Express exists independently or as an operating unit of San Juan Air Lines. The proposed business plan of Shuttle Express must be termed as very optimistic. These factors lead to serious questions as to whether or not the applicant is fit, willing and able to operate within a regulated environment.

Nonetheless, the applicant has demonstrated clearly and convincingly that a need for this type of service exists and that the public interest would not be served by a denial of this application. My doubts regarding the applicant's fitness do not compel such a denial.

Accordingly, I concur with the decision to grant the application with the restrictions set forth. Further, I hold out to subsequent applicants that attempts to pick and choose those parts of the law that apply to them and other parts of the law that do not apply to them will not be condoned or accepted.

Date April 21, 1989


A. J. PARDINI, Commissioner

BEFORE THE

Washington Utilities and Transportation Commission

In re Application D-2566 of)	
)	
SAN JUAN AIRLINES, INC.,	)	No. D-2566
d/b/a SHUTTLE EXPRESS)	
)	
for a Certificate of Public)	
Convenience and Necessity to)	
operate motor vehicles in fur-)	
nishing passenger and express)	
service as an auto transporta-)	
tion company between points)	
hereinafter listed.)	
_____)	

PETITION FOR RECONSIDERATION
OF A PORTION OF ORDER M.V.C. NO. 1809

Date: May 1, 1989

Clyde H. MacIver
Miller, Nash, Wiener, Hager & Carlsen
6500 Columbia Center
701 Fifth Avenue
Seattle, Washington 98104

Attorneys for Gray Line
of Seattle

DATE DUE: _____
DATE: _____

EXHIBIT B

APPENDIX A

PASSENGER AND EXPRESS AIRPORTER SERVICE.

Between: The Seattle-Tacoma International Airport, Boeing Field, Renton Airport, and Paine Field and points within the Seattle Commercial Zone in King and Snohomish Counties and excluding points in Kitsap and Pierce Counties, described as follows:

(a) the municipality of Seattle;

(b) all points within a line drawn fifteen miles beyond the municipal line of Seattle;

(c) those points in King County which are not within the area described in (b) of this subsection and which are west of a line beginning at the intersection of the line described in (b) of this subsection and Washington Highway 18, thence northerly along Washington Highway 18 to junction of Interstate Highway 90, thence westerly along Interstate Highway 90 to junction of Washington Highway 203, thence northerly along Washington Highway 203 to the King County line; and those points in Snohomish County, which are not within the area described in (b) of this subsection and which are west of Washington Highway 9.

(d) All on any municipality any part of which is within the limits of the combined areas defined in (b) and (c) of this subsection; and

(e) all on any municipality wholly surrounded, or so surrounded except for a water boundary, by the municipality of Seattle or by any other municipality included under the terms of (d) of this subsection.

Between: The Seattle-Tacoma International Airport, Boeing Field, Renton Airport and Paine Field and points within a 25 mile radius of these airports, excluding points in Kitsap and Pierce Counties.

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In re Application D-2566 of)	
)	
SAN JUAN AIRLINES, INC.,	)	No. D-2566
d/b/a SHUTTLE EXPRESS)	
	)	PETITION FOR RECONSIDERA-
for a Certificate of Public	)	TION OF A PORTION OF
Convenience and Necessity to	)	ORDER M.V.C. NO. 1809
operate motor vehicles in fur-)	
nishing passenger and express)	
service as an auto transporta-)	
tion company between points)	
hereinafter listed.)	
_____)	

I
SCOPE OF PETITION

Petitioner Gray Line seeks reconsideration of Order M.V.C. No. 1809 to the extent it grants applicant authority to provide airporter service between the Seattle-Tacoma International Airport and the 12 hotel properties in Seattle petitioner is serving on a daily basis pursuant to its Permit No. C-189. By limiting the scope of its petition as described herein, petitioner does not wish to convey agreement with the Commission's findings and conclusions regarding (1) the applicant's fitness, (2) the issues concerning the "territory served" by intervenor Gray Line, and (3) public convenience and necessity. However, petitioner herein seeks a resolution of the issues pertaining to the hotel properties it serves in Seattle which would enable it to accept the Commission's final order herein and co-exist with the applicant, without the necessity of further proceedings. It is in this spirit that this petition for reconsideration is tendered to the Commission.

II
RECONSIDERATION REQUESTED

Petitioner herein requests that the Commission reconsider its Order M.V.C. No. 1809 only to the extent it grants applicant Shuttle Express authority to provide airporter service between the Seattle-Tacoma International Airport and the 12 hotels in Seattle petitioner provides daily scheduled and on-call service to. These hotels, which are identified in Exhibit 4 herein, are:

Stouffer Madison Hotel
Crowne Plaza Hotel
Four Seasons Olympic Hotel
Seattle Hilton Hotel
Seattle Sheraton Hotel
Westin Hotel
Warwick Hotel
Loyal Inn
Quality Inn
Days Inn
Downtown TraveLodge
Best Western Executive Inn

III
DISCUSSION

A. Gray Line Provides Both "On-Call" and Scheduled Airporter Services to Seattle Hotels

Exhibit 4 herein identifies the 12 hotel properties in Seattle served by Gray Line. Gray Line provides both "on-call," as well as a scheduled airporter service, to these properties. The Commission's order herein makes no reference to the fact that Gray Line provides "on-call" service, in addition to scheduled service, to the hotels it serves. Gray Line's "on-call" service is described herein in Exhibit 4 and by Mr. Gordon Barr, Gray Line's General Manager, who testified as follows:

- Q. (By Mr. MacIver) Exhibit 4, which is your airporter schedule, refers on the back, under the section with the word fares in capital letters at the top, under the reservation section there, refers to an on-call service.
- A. (By Mr. Barr) Yes.
- Q. And it says "Required only for on-call service, reservations: required only for on-call service as indicated on this schedule. Reservations must be made at least 30 minutes prior to the previous stop, by calling," and then it gives a number.
- A. Yes.
- Q. If you turn the exhibit over, on-call service is again referred to at the bottom of the middle section under the letters OC. It states, "On-call. Reservations required at least 30 [minutes] prior to previous stop."
. . .
- A. I'm sorry.
- Q. Do you see those portions in the exhibit?
- A. Yes I do.
- Q. Mr. Barr, would you explain what on-call service means to Gray Line as indicated in this exhibit?
- A. It means that if you were, for example, staying at the Loyal Inn, and you wanted to be picked up, you would be required to call us 30 minutes in advance so that we could -- of the particular schedule that you were calling about for us to pick you up.
- Q. Now, the Loyal Inn is one of the hotels served by your company on a regular basis, is that true?
- A. That's correct.
- Q. So, in other words, the on-call in that sense would be that you will supplement or augment your service to a hotel that's on your regular schedule if you're given 30 minutes' notice in advance to the prior stop of the bus?

A. That's correct.

(TR 1651-53.)

In addition to its "on-call" service, Exhibit 4 establishes that Gray Line provides scheduled airporter service to these hotels every 15 to 30 minutes from 4:55 a.m. to 12:45 a.m. Thus, even without "on-call" service, Gray Line is serving the hotels more frequently than Shuttle Express's "on-call" service, which offers service within one half hour of the requested pick-up time.

Accordingly, it would be a fiction to draw a distinction between the airporter service Gray Line provides to these hotels and the services proposed by applicant. Gray Line provides both "on-call" and "scheduled" service to the hotels it services in Seattle.

The Commission, in its Order M.V.C. No. 1809, recognized that Gray Line is serving these properties adequately:

. . . the intervenors have provided adequate service. They have served scheduled stops in their territories promptly and efficiently . . . It is not disputed that the intervenors have provided clean, neat, safe, courteous, and timely service. They operate with appropriately trained personnel and properly maintained equipment. These are all service features which are important to the public.

(Order M.V.C. No. 1809, p. 15.)

B. Gray Line's Territory is Restricted to Hotels

Gray Line is unique as to Shuttle Express and the intervenors herein in that it is the most vulnerable to harm from another airporter service operating within its territory

and serving the same market. Gray Line's Permit No. C-189 limits its airporter service to hotels in Seattle. (While Gray Line is also authorized to serve airline offices, airline offices, unless located within a hotel, do not generate airporter traffic.) Thus Gray Line's "territory" is, for all practical purposes, restricted to hotels. Gray Line is not permitted to serve any other market or territory, such as residences, apartments, or office buildings, as the other airporters are authorized to do.

Gray Line is uniquely vulnerable to being harmed if the Commission grants another airporter authority to serve the same hotels which Gray Line is dependent upon for survival. Hotels, by their nature, provide a defined and limited market. Any given hotel, with an established number of rooms and facilities, can generate only so much traffic. Assuming the existing airporter is providing adequate service to a hotel facility, adding a second airporter to vie for the same traffic from the same facility will unquestionably harm the initial airporter. The record herein establishes that Gray Line is already being harmed by the duplicating services of Shuttle Express at the hotels it serves, as described by Mr. Barr:

Q. (By Mr. MacIver) Mr. Barr, is the revenue from the airporter services between Seattle and Sea-Tac of your company increasing or decreasing, say, comparing 1988 to 1987?

A. (By Mr. Barr) It's decreasing. Our average revenue per mile has decreased approximately 13 percent over that time frame.

Q. Do you have an opinion as to what is causing this?

A. Yes, I do.

Q. And what is causing it, in your opinion?

A. In my opinion, the cause of the decline in our revenue per mile is certainly in part -- I can't think of any other reason, but I will say in part due to Shuttle Express operators soliciting our office either at Sea-Tac or at the downtown hotels. It has been reported to me by my drivers of the airport express, Shuttle Express vans have pulled in front of our vehicles both at the airport and at downtown hotels.

Q. You mean arrived at a hotel just prior to your scheduled departure?

A. That's correct.

(TR 1664-65.)

Mr. Barr further testified that he has personally observed Shuttle Express's "skimming" practices at the hotels served by Gray Line in Seattle:

Q. (By Mr. MacIver) Have you personally observed Shuttle Express yourself pulling into hotels that are on your scheduled service between Seattle and the airport?

A. (By Mr. Barr) Yes, I have.

Q. And have you seen them pick up passengers?

A. Yes, I have.

(TR 1666.)

An airporter operator, even under the best of circumstances, operates at a very low profit margin. As Mr. Barr testified, Gray Line's revenue per mile has decreased approximately 13 percent in 1988 as contrasted to 1987. If the Commission allows Shuttle Express to continue serving and skimming traffic from the hotels in Seattle which Gray Line is

unquestionably providing an excellent service to, both Gray Line and the public will be harmed:

- Q. (By Mr. MacIver) If that [skimming] continues, will that have an adverse impact on your fares to the public?
- A. (By Mr. Barr) Well, ultimately it could have an impact on the fares and the service we provide to the public. It has the potential of increasing our fares and/or decreasing our service.

(TR 1666.)

It is significant to observe that Mr. Sherrell, applicant's operating witness, testified subsequent to Mr. Barr and made no attempt to rebut the testimony of Mr. Barr to the effect that Shuttle Express has adopted the practice of slipping into the hotels in Seattle that Gray Line serves just ahead of Gray Line's scheduled departure and skimming traffic.

Authorizing Shuttle Express to operate out of the same hotel properties in Seattle served by Gray Line will divide the traffic and reduce equipment utilization. Two fleets of equipment will then be transporting the same number of hotel guests to and from the airport. Mr. Holbrook, on behalf of the Port of Seattle, testified that he would not favor such a result at the airport:

- Q. (By Mr. MacIver) So while you favor high capacity vehicles, I gather you would not favor duplicating services to the point where it could add commercial vehicles to the airport that would not otherwise be there?
- A. (By Mr. Holbrook) I would not favor that, yes.

(TR 483.)

C. Shuttle Express Pays Bellhops to "Call" Shuttle Express

The "on-call" restriction in Shuttle Express's authority will not prevent the skimming of traffic from Gray Line's limited market and territory. Mr. Sherrell conceded during his cross examination that Shuttle Express was offering bellhops in Seattle hotels an "incentive" of \$1 to \$2 per reservation for calling Shuttle Express for hotel guests:

Q. (By Mr. MacIver) Are there any other commissions with respect to the sale of Shuttle Express services?

A. (By Mr. Sherrell) We have recently implemented a bellman's incentive, which varies between a dollar and two dollars per reservation.

Q. How does it vary? When would it be a dollar and when would it be two dollars?

A. It depends on the agreement that we have with the hotel.

Q. So some bellmen get a buck a passenger and some bellmen get two dollars a passenger?

A. Yes.

(TR 907.)

With this "incentive," bellhops will "call" Shuttle Express even though they know that Gray Line serves to the hotel. Gray Line's airporter fare out of Seattle hotels is \$5.50. Gray Line obviously cannot afford to pay a \$1 to \$2 commission in order to protect a \$5.50 fare.

Gray Line is providing high-frequency both on-call and scheduled daily airporter service to 12 hotels in Seattle at a fare of only \$5.50. If the Commission authorizes a second airporter to serve these same hotel properties and dilute Gray

Line's traffic, Gray Line will not be able to maintain its frequent schedules at this fare to the public.

IV CONCLUSION

It is respectfully submitted that the Commission, in its initial order, did not fully consider the issues concerning the territory presently served by Gray Line in light of its uniquely restricted operating authority. It is not disputed herein that Gray Line is currently providing an excellent high-frequency service at very reasonable rates between the hotels in Seattle it serves and the airport. If Gray Line were to expand its service to virtually all hotels in Seattle, its cost of service and rates would increase and its schedules would be reduced.

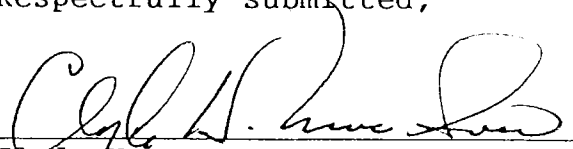
Gray Line is serving its authorized territory (hotels in Seattle) in a fashion which enables it to serve the maximum number of hotel patrons at the most reasonable fare possible. Gray Line is serving a total of 12 hotel properties in Seattle, which is a high number in light of the size of the city. If the Commission believes that Gray Line must serve all hotels in Seattle to satisfy the Commission, Gray Line could do so, but the return to the public could be diminished. The frequency of service and the cost to the public would obviously be impacted. Gray Line is continually studying its hotel market in Seattle and is, in good faith, tailoring its airporter service to meet the needs of the maximum number of travelers at the most reasonable fare possible within the territory it is authorized to serve.

It is in the public interest and required by RCW 81.68.040 that the Commission not grant airporter authority which will enable Shuttle Express to provide duplicating airporter services out of the 12 hotel facilities presently receiving adequate and satisfactory service from Gray Line. Shuttle Express, with the very broad authority granted in Order M.V.C. No. 1809, will have an ample territory and market to service without the necessity of duplicating the services of Gray Line which Gray Line is providing under its restricted authority.

The Commission has the authority and, in addition, ample evidence herein to justify defining Gray Line's "territory served" for the purposes of this proceeding as the 12 hotel properties being served by Gray Line and restricting Shuttle Express against providing duplicative airporter services to these facilities.

WHEREFORE, it is respectfully urged that the Commission reconsider its Order M.V.C. No. 1809 in response to this limited petition for reconsideration and not authorize duplicative airporter services within the "territory served" by Gray Line. Such a result will enable Gray Line and Shuttle Express to co-exist without unnecessary harm to either airporter service or the public which relies on the services of Gray Line.

Respectfully submitted,


Clyde H. MacIver

Attorney for Evergreen Trails,
Inc., dba Gray Line

CERTIFICATE OF SERVICE

Docket No. D-2566


I hereby certify that I have this day caused to be served one copy of the foregoing document upon the following parties of record by mailing a copy thereof, properly addressed with postage prepaid:

Mr. Kirk Griffin
1500 Hoge Building
Seattle, Washington 98104

Mr. James H. Fricke
Post Office Box 2163
Olympia, Washington 98507

Mr. Richard Reininger
2000 118th Southeast
Bellevue, Washington 98005

DATED the 1st day of May, 1989.


Clyde H. MacIver

CERTIFICATE OF SERVICE

Docket No. D-2566

I hereby certify that I have this day caused to be served one copy of the foregoing document upon the following parties of record by hand delivery:

Mr. Paul Curl, Acting Secretary
Washington Utilities and Trans-
portation Commission
Chandler Plaza Building
1300 Evergreen Park Drive S.
Olympia, Washington 98504

Mr. Steven Lundstrom
Administrative Law Judge
Washington Utilities and Trans-
portation Commission
Office of Administrative Hearings
1212 Jefferson, Suite 200
Olympia, Washington 98504

Mr. Robert Cedarbaum
Assistant Attorney General
Washington Utilities and Trans-
portation Commission
1300 Evergreen Park Drive South
Olympia, Washington 98365

Mr. Bruce A. Wolf
Attorney at Law
5100 Columbia Center
701 Fifth Avenue
Seattle, Washington 98104

DATED the 1st day of May, 1989.



Clyde H. MacIver

RECEIVED

SERVICE DATE

SEP 1 1989

AUG 31 1989

MILLER, NASH

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Application)	ORDER M. V. C. NO. 1834
of SAN JUAN AIRLINES, INC., d/b/a)	
SHUTTLE EXPRESS for a Certificate)	HEARING NO. D-2566
to Operate Motor Vehicles in)	
Furnishing Passenger and Express)	COMMISSION DECISION
Service as an Auto Transportation)	AND ORDER GRANTING
Company.)	RECONSIDERATION;
.)	AFFIRMING FINAL ORDER

NATURE OF PROCEEDING: This is an application for authority to provide nonscheduled, irregular route, door-to-door service between airports in the Seattle Commercial Zone and points within the Seattle Commercial Zone or within a 25-mile radius of airports within the Seattle Commercial Zone.

PROCEDURAL STATUS: A Commission final order entered after waiver of a proposed order granted the application in part. The order found that need for additional auto transportation service was shown in King and Snohomish Counties, and granted the application as to those counties.

PETITION: Protestants Suburban Airporter and Evergreen Trails, Inc., d/b/a Grayline ("Grayline" in this order) filed petitions for reconsideration of the final order. Suburban contends that there is insufficient evidence to justify a grant of authority east of Lake Washington. Grayline contests the grant as to the 12 hotels it serves, contending that no need has been shown as to that territory.

COMMISSION: The Commission denies the petition of Suburban Airporter, grants the petition of Grayline, and affirms the final order.

APPEARANCES: The applicant was represented by Bruce A. Wolf, Attorney at Law, Seattle, Washington. Intervenor Evergreen Trails, Inc., d/b/a Evergreen Trailways, and also operating and known in this proceeding as Grayline Airport Express, was represented by Clyde H. MacIver, Attorney at Law, Seattle, Washington. Intervenor Everett Airporter Services Enterprises, Inc., was represented by Kirk L. Griffin, Attorney at Law. Intervenor Suburban Airporter, Inc., was represented by Richard Reininger, president. Intervenor Pacific Northwest Transportation Services, Inc., d/b/a Capital Airporter, Tours and Charters, was represented by James N. Fricke, president. Intervenor Travelines, Inc., d/b/a Travelines Airporter, was represented by Richard D. Hansen, president. Intervenor Bremerton-Kitsap Airporter, Inc., was represented by James K. Sells, Attorney at Law. The Washington Utilities and

transportation company or companies serving such territory will not provide the same to the satisfaction of the commission

The final order addressed the service provided by Grayline. The record shows that the hotels actually served by Grayline are satisfied with its service and, in fact, the Commission found in its final order that the service provided by Grayline is "clean, neat, safe, courteous, and timely." However, the record also showed that Grayline does not provide service to all of the hotels which it has authority to serve and that at least two hotels, the Mayflower and the Edgewater Inn, have requested service from Grayline without result. Thus, while Grayline's service to the 12 hotels is satisfactory, Grayline does not serve within the requested territory or to the extent of its authority to the satisfaction of the Commission.

The Commission recognizes that Grayline is particularly vulnerable to an airporter such as Shuttle Express, which could and, according to credible testimony, has skimmed Grayline's traffic by pulling up to any of the hotels served by Grayline ahead of Grayline's scheduled stop and picking up passengers who would otherwise have been served by Grayline. However, the authority granted in the final order limits Shuttle Express to on-call service only; this limitation should offer some protection to Grayline from the complained of practice.

Finally, as a practical matter, the Commission believes that to grant Grayline's request would result in a certificate with restrictions which would be almost impossible to enforce. Such restrictions would also be confusing and very possibly frustrating to the public, especially at the airport. The Commission concludes that sound public policy weighs against such restrictions.

Suburban Airporter also petitioned for reconsideration. It contends that there is insufficient evidence to support any grant of authority east of Lake Washington. The evidence is insufficient, according to Suburban, for five reasons: (1) applicant did not provide supporting witnesses who resided or worked in the area east of Lake Washington; (2) applicant did not supply information as to the number of passengers it had served in the area east of Lake Washington; (3) witness Joseph Haleva provided no proof that there was unanimous support from the board of the Association of Retail Travel Agents and his testimony is tainted because he received complimentary transportation from the applicant; and, (4) applicant presented no written business plan to substantiate projections of profitability.

DATED at Olympia, Washington, and effective this *30th*
day of August, 1989.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



SHARON L. NELSON, Chairman



RICHARD D. CASAD, Commissioner



A. J. PARDINI, Commissioner

Sharon L. Nelson, Chairman
Richard D. Casad, Commissioner
A. J. "Bud" Pardini, Commissioner



RECEIVED

NOV 17 1989

MILLER, NASH

STATE OF WASHINGTON

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

1300 S. Evergreen Park Dr. S.W. • Olympia, Washington 98504-8002 • (206) 753-6423 • (SCAN) 234-6423

November 15, 1989

Mr. Jim Sherrill
805 Lenora
Seattle, Washington 98121

Re: Shuttle Express

Dear Mr. Sherrill:

In Docket No. D-2566, the Commission granted conditional authority to Shuttle Express to operate as an auto transportation company pursuant to chapter 81.68 RCW.

One of the conditions which the Commission established was that Shuttle Express could provide only "on-call" service within the designated geographic territory. The Commission Order M.V.C. No. 1809 in that docket clearly indicated that the on-call restriction allowed Shuttle Express to transport, on an unscheduled basis, only those passengers who have made a telephone request for service prior to boarding a Shuttle Express motor vehicle. Thus, "walk-up," "hail the van," or "opportunity fare" service was not included in the authority granted to Shuttle Express. The Commission believed that the on-call restriction accurately characterized the record evidence as to public need, existing carriers' failure to serve, and operations maintained and proposed by Shuttle Express. The on-call restriction was also a significant factor in the Commission's denial of a Petition for Reconsideration submitted by Evergreen Trails, Inc., d/b/a Grayline of Seattle in Docket No. D-2566. Grayline's Petition was based, in part, on its concern that Shuttle Express was "skimming" Grayline's passengers from downtown Seattle hotels. The Commission believed that the on-call restriction contained in your authority would provide some protection to Grayline against such activity by Shuttle Express (Order M.V.C. No. 1834).

It has, nevertheless, come to the attention of the Commission that Shuttle Express does not intend to comply with

EXHIBIT D

Mr. Jim M. Sherrill
November 15, 1989
Page two

the on-call restriction contained in its authority. In Docket No. D-2556, you testified in opposition to a grant of authority to Lloyd's Connection, Inc., d/b/a Airport Connection Airporter. Your testimony indicated that you intend to transport not only those passengers who have made prior reservations by telephone but also passengers who merely walk-up or hail a van from the sidewalk. Apparently, the only restriction you have placed upon your operations is that your drivers cannot actively "solicit" passengers.

Please be advised that such operations do not fall within the scope of the authority granted to you in Docket No. D-2566 and that the Commission expects that such transportation activities will not occur. Please also be advised that your failure to comply with all conditions contained in your authority may subject you to penalty assessments and other administrative enforcement action.

In its Order M.V.C. No. 1809, the Commission expressed serious reservations concerning your past illegal and inappropriate operations. The Commission will not tolerate similar activity in the future.

Very truly yours,

Kathy Bartle, —
for

PAUL CURL
Secretary

PC:kaj

cc: Bruce A. Wolf
All Parties of record
in Docket No. D-2566

Sharon L. Nelson, Chairman
Richard D. Casad, Commissioner
A. J. "Bud" Pardini, Commissioner



RECEIVED

DEC 11 1989

MILLER, NASH

STATE OF WASHINGTON

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

1300 S. Evergreen Park Dr. S.W. • Olympia, Washington 98501-8002 • (360) 753-6433 • (SCAN) 234-6423

December 8, 1989

Mr. Bruce Wolf
Attorney at Law
Columbia Center
Suite 5120
701 Fifth Avenue
Seattle, WA 98104

Re: Shuttle Express
Docket No. D-2566

Dear Mr. Wolf:

The Commission is in receipt of your letter of November 21, 1989. Please be advised that the Commission's position remains as stated in its letter of November 15, 1989. Any operations performed by Shuttle Express contrary to the terms of your client's certificate as explained in Commission's letter are performed at the peril of Shuttle Express.

Sincerely,

Paul Curl
Secretary

cc: Parties of Record in Docket No. 2566

EXHIBIT E