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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

SPEEDISHUTTLE WASHINGTON, LLC
d/b/a SPEEDISHUTTLE SEATTLE

NO. **16-2-27898-1S**
SUMMONS (20 DAYS)

Petitioner,

v.

The WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION, an
agency organized and existing under the laws of
the State of Washington

Respondent.

2016 NOV 18 PM 4:54
U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
SEATTLE

THE STATE OF WASHINGTON, TO: The above-named respondent.

TO THE RESPONDENT: An action for judicial review has been started against you in the above-entitled Court by the above-named petitioner. Petitioner's claim is stated in the written Petition for Judicial Review, a copy of which is served upon you with this summons.

In order to defend against this action for judicial review, you must respond to the petition by stating your defense in writing, and by serving a copy upon the person signing this summons within 20 days (if service is made on you within the State of Washington) or within 60 days (if service is made on you outside the State of Washington) after the date of the service on you of this summons, excluding the day of service, or a default judgment may be entered against you without notice. A default judgment is one where petitioner is entitled to what has

SUMMONS (20 DAYS) - 1

Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, Washington 98101-2380
(206) 628-6600


1 been asked for because you have not responded. If you serve a notice of appearance on the
2 undersigned person, you are entitled to notice before a default judgment may be entered.

3 If you wish to seek the advice of an attorney in this matter, you should do so promptly
4 so that your written response, if any, may be served on time.

5 THIS SUMMONS is issued pursuant to Rule 4 of the Superior Court Civil Rules of the
6 State of Washington.

7 DATED this 1st day of November, 2016.

8 WILLIAMS, KASTNER & GIBBS PLLC

9
10 By 
11 David W. Wiley, WSBA #08614
12 Blair I. Fassburg WSBA #41207

13 Attorneys for Petitioner Speedishuttle
14 Washington, LLC

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

SPEEDISHUTTLE
WASHINGTON, LLC

Appellant(s),

vs.

WASHINGTON UTILITIES AND
TRANSPORTATION
COMMISSION

Respondent(s)

NO. 16-2-27898-1 SEA
ORDER SETTING ADMINISTRATIVE APPEAL
CASE SCHEDULE

ASSIGNED JUDGE: Erlick, John, Dept. 51

FILED DATE: 11/17/2016

TRIAL DATE: 6/19/2017

SCOMIS CODE: *ORSCS

A Notice of Appeal of a decision of an administrative agency or appeal board has been filed for case management in the King County Superior Court and will be managed by the Case Schedule on Page 3 as ordered by the King County Superior Court Presiding Judge.

I NOTICES

THE PERSON APPEALING A DECISION OF AN ADMINISTRATIVE AGENCY/APPEAL BOARD MUST:

1. File a *Notice of Appeal* with the administrative agency/appeal board within the time frames as instructed by applicable statutes.
2. Serve a copy of the *Notice of Appeal* and this *Order Setting Case Schedule (Administrative Appeal) (Schedule)* (including these Notices) on all other parties to this action. You, as the person who started this appeal, must make sure the other person and/or agency is notified of your action and gets a copy of the Schedule. You may choose certified mail, personal delivery by someone other than you, or a "process serving service" (see telephone directory). Your signature must appear on this form showing that you understand that you must make sure the other person and/or agency gets a copy of this form.
3. Pay the statutory filing fee to the Clerk of the Superior Court in which the *Notice of Appeal* is filed, unless the party filing the *Notice* first secures an "Order of *In Forma Pauperis*" from the Presiding Judge of the Superior Court, or is exempt from paying fees by statute.

"I understand that I am required to give a copy of these documents to all parties in this case."

Maggi Gruber

Print Name

Maggi Gruber

Sign Name

I NOTICES (continued)

NOTICE TO ALL PARTIES:

All attorneys and parties should make themselves familiar with the King County Local Rules [KCLCR] – especially those referred to in this *Schedule*. In order to comply with the *Schedule*, it will be necessary for attorneys and parties to pursue their cases vigorously from the day the case is filed. For example, discovery must be undertaken promptly in order to comply with the deadlines for joining additional parties, claims, and defenses, for disclosing possible witnesses [See KCLCR 26], and for meeting the discovery cutoff date [See KCLCR 37(g)].

PENDING DUE DATES CANCELED BY FILING PAPERS THAT RESOLVE THE CASE:

When a final decree, judgment, or order of dismissal of all claims is filed with the Superior Court Clerk's Office, and a courtesy copy delivered to the assigned judge, all pending due dates in this *Schedule* are automatically canceled, including the scheduled Trial Date. It is the responsibility of the parties to 1) file such dispositive documents within 45 days of the resolution of the case, and 2) strike any pending motions by notifying the bailiff to the assigned judge.

Parties may also authorize the Superior Court to strike all pending due dates and the Trial Date by filing a *Notice of Settlement* pursuant to KCLCR 41, and forwarding a courtesy copy to the assigned judge. If a final decree, judgment or order of dismissal of all claims is not filed by 45 days after a *Notice of Settlement*, the case may be dismissed with notice.

If you miss your scheduled Trial Date, the Superior Court Clerk is authorized by KCLCR 41(b)(2)(A) to present an *Order of Dismissal*, without further notice, for failure to appear at the scheduled Trial Date.

NOTICES OF APPEARANCE OR WITHDRAWAL AND ADDRESS CHANGES:

All parties to this action must keep the court informed of their addresses. When a Notice of Appearance/Withdrawal or Notice of Change of Address is filed with the Superior Court Clerk's Office, parties must provide the assigned judge with a courtesy copy.

NOTICE OF NON-COMPLIANCE FEES:

All parties will be assessed a fee authorized by King County Code 4A.630.020 whenever the Superior Court Clerk must send notice of non-compliance of schedule requirements and/or Local Rule 41.

King County Local Rules are available for viewing at www.kingcounty.gov/courts/clerk.

IL CASE SCHEDULE

✓	CASE EVENTS	DATE
	Notice of Appeal/Petition for Review Filed and Schedule Issued.	11/17/2016
	Filing of Notice of Appearance (if applicable).	12/15/2016
✓	Filing of Administrative Agency Record.	1/19/2017
✓	Filing of Jury Demand (if applicable).	2/9/2017
✓	Filing of Petitioner's Trial Brief.	5/1/2017
✓	Filing of Respondent's Trial Brief.	5/22/2017
✓	DEADLINE to file Joint Confirmation of Trial Readiness - FOR JURY TRIALS ONLY [See KCLCR 16(a)(2)].	5/30/2017
✓	Filing of Petitioner's Reply Brief.	6/5/2017
	Review Hearing or Trial Date (See KCLCR 40).	6/19/2017

The ✓ indicates a document that must be filed with the Superior Court Clerk's Office by the date shown.

IL ORDER

Pursuant to King County Local Rule 4 (KCLCR 4), it is ORDERED that all parties involved in this action shall comply with the schedule listed above and that failure to meet these event dates will result in the dismissal of the appeal. It is FURTHER ORDERED that the party filing this action must serve this *Order Setting Administrative Appeal Case Schedule* and attachment on all other parties.

Sumner J. Oringland

DATED: 11/17/2016

PRESIDING JUDGE

IV. ORDER ON CIVIL PROCEEDINGS FOR ASSIGNMENT TO JUDGE

READ THIS ORDER BEFORE CONTACTING YOUR ASSIGNED JUDGE.

This case is assigned to the Superior Court Judge whose name appears in the caption of this case schedule. The assigned Superior Court Judge will preside over and manage this case for all pretrial matters.

COMPLEX LITIGATION: If you anticipate an unusually complex or lengthy trial, please notify the assigned court as soon as possible.

APPLICABLE RULES: Except as specifically modified below, all the provisions of King County Local Civil Rules 4 through 26 shall apply to the processing of civil cases before Superior Court Judges. The local civil rules can be found at www.kingcounty.gov/courts/clerk/rules/Civil.

CASE SCHEDULE AND REQUIREMENTS: Deadlines are set by the case schedule, issued pursuant to Local Civil Rule 4.

THE PARTIES ARE RESPONSIBLE FOR KNOWING AND COMPLYING WITH ALL DEADLINES IMPOSED BY THE COURT'S LOCAL CIVIL RULES.

A. Joint Confirmation regarding Trial Readiness Report

No later than twenty one (21) days before the trial date, parties shall complete and file (with a copy to the assigned judge) a joint confirmation report setting forth whether a jury demand has been filed, the expected duration of the trial, whether a settlement conference has been held, and special problems and needs (e.g., interpreters, equipment).

The Joint Confirmation Regarding Trial Readiness form is available at www.kingcounty.gov/courts/scforms. If parties wish to request a CR 16 conference, they must contact the assigned court. Plaintiff's/petitioner's counsel is responsible for contacting the other parties regarding the report.

B. Settlement/Mediation/ADR

a. Forty five (45) days before the trial date, counsel for plaintiff/petitioner shall submit a written settlement demand. Ten (10) days after receiving plaintiff's/petitioner's written demand, counsel for defendant/respondent shall respond (with a counter offer, if appropriate).

b. Twenty eight (28) days before the trial date, a Settlement/Mediation/ADR conference shall have been held. FAILURE TO COMPLY WITH THIS SETTLEMENT CONFERENCE REQUIREMENT MAY RESULT IN SANCTIONS.

C. Trial

Trial is scheduled for 9:00 a.m. on the date on the case schedule or as soon thereafter as convened by the court. The Friday before trial, the parties should access the court's civil standby calendar on the King County Superior Court website www.kingcounty.gov/courts/superiorcourt to confirm the trial judge assignment.

MOTIONS PROCEDURES

A. Noting of Motions

Dispositive Motions: All summary judgment or other dispositive motions will be heard with oral argument before the assigned judge. The moving party must arrange with the hearing judge a date and time for the hearing, consistent with the court rules. Local Civil Rule 7 and Local Civil Rule 56 govern procedures for summary judgment or other motions that dispose of the case in whole or in part. The local civil rules can be found at www.kingcounty.gov/courts/clerk/rules/Civil.

Non-dispositive Motions: These motions, which include discovery motions, will be ruled on by the assigned judge without oral argument, unless otherwise ordered. All such motions must be noted for a date by which the ruling is

requested; this date must likewise conform to the applicable notice requirements. Rather than noting a time of day, the Note for Motion should state "Without Oral Argument." Local Civil Rule 7 governs these motions, which include discovery motions. The local civil rules can be found at www.kingcounty.gov/courts/clerk/rules/Civil.

Motions in Family Law Cases not involving children: Discovery motions to compel, motions in limine, motions relating to trial dates and motions to vacate judgments/dismissals shall be brought before the assigned judge. All other motions should be noted and heard on the Family Law Motions calendar. Local Civil Rule 7 and King County Family Law Local Rules govern these procedures. The local rules can be found at www.kingcounty.gov/courts/clerk/rules.

Emergency Motions: Under the court's local civil rules, emergency motions will usually be allowed only upon entry of an Order Shortening Time. However, some emergency motions may be brought in the Ex Parte and Probate Department as expressly authorized by local rule. In addition, discovery disputes may be addressed by telephone call and without written motion, if the judge approves in advance.

B. Original Documents/Working Copies/ Filing of Documents: All original documents must be filed with the Clerk's Office. Please see information on the Clerk's Office website at www.kingcounty.gov/courts/clerk regarding the requirement outlined in LGR 30 that attorneys must e-file documents in King County Superior Court. The exceptions to the e-filing requirement are also available on the Clerk's Office website. The local rules can be found at www.kingcounty.gov/courts/clerk/rules.

The working copies of all documents in support or opposition must be marked on the upperright corner of the first page with the date of consideration or hearing and the name of the assigned judge. The assigned judge's working copies must be delivered to his/her courtroom or the Judges' mailroom. Working copies of motions to be heard on the Family Law Motions Calendar should be filed with the Family Law Motions Coordinator. Working copies can be submitted through the Clerk's office E-Filing application at www.kingcounty.gov/courts/clerk/documents/eWC.

Service of documents: Pursuant to Local General Rule 30(b)(4)(B), e-filed documents shall be electronically served through the e-Service feature within the Clerk's eFiling application. Pre-registration to accept e-service is required. E-Service generates a record of service document that can be e-filed. Please see the Clerk's office website at www.kingcounty.gov/courts/clerk/documents/efiling regarding E-Service.

Original Proposed Order: Each of the parties must include an original proposed order granting requested relief with the working copy materials submitted on any motion. Do not file the original of the proposed order with the Clerk of the Court. Should any party desire a copy of the order as signed and filed by the judge, a pre-addressed, stamped envelope shall accompany the proposed order. The court may distribute orders electronically. Review the judge's website for information: www.kingcounty.gov/courts/SuperiorCourt/judges.

Presentation of Orders for Signature: All orders must be presented to the assigned judge or to the Ex Parte and Probate Department, in accordance with Local Civil Rules 40 and 40.1. Such orders, if presented to the Ex Parte and Probate Department, shall be submitted through the E-Filing/Ex Parte via the Clerk application by the attorney(s) of record. E-filing is not required for self-represented parties (non-attorneys). If the assigned judge is absent, contact the assigned court for further instructions. If another judge enters an order on the case, counsel is responsible for providing the assigned judge with a copy.

Proposed orders finalizing settlement and/or dismissal by agreement of all parties shall be presented to the Ex Parte and Probate Department. Such orders shall be submitted through the E-Filing/Ex Parte via the Clerk application by the attorney(s) of record. E-filing is not required for self-represented parties (non-attorneys). Formal proof in Family Law cases must be scheduled before the assigned judge by contacting the bailiff, or formal proof may be entered in the Ex Parte Department. If final order and/or formal proof are entered in the Ex Parte and Probate Department, counsel is responsible for providing the assigned judge with a copy.

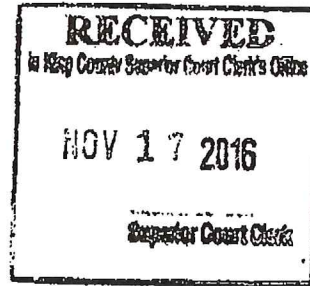
C. Form

Pursuant to Local Civil Rule 7(b)(5)(B), the initial motion and opposing memorandum shall not exceed 4,200 words and reply memoranda shall not exceed 1,750 words without authorization of the court. The word count includes all portions of the document, including headings and footnotes, except 1) the caption; 2) table of contents and/or authorities, if any; and 3) the signature block. Over-length memoranda/briefs and motions supported by such memoranda/briefs may be stricken.

IT IS SO ORDERED. FAILURE TO COMPLY WITH THE PROVISIONS OF THIS ORDER MAY RESULT IN DISMISSAL OR OTHER SANCTIONS. PLAINTIFF/PETITIONER SHALL FORWARD A COPY OF THIS ORDER AS SOON AS PRACTICABLE TO ANY PARTY WHO HAS NOT RECEIVED THIS ORDER.

James J. Craighead

PRESIDING JUDGE



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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

SPEEDISHUTTLE WASHINGTON, LLC
d/b/a SPEEDISHUTTLE SEATTLE,

Petitioner,

v.

The WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION, an
agency organized and existing under the laws of
the State of Washington

Respondent.

NO. 16-2-27898-1 SEA

PETITION FOR JUDICIAL REVIEW OF
FINAL ORDER OF THE WASHINGTON
UTILITIES AND TRANSPORTATION
COMMISSION

Speedishuttle Washington, LLC d/b/a Speedishuttle Seattle ("Speedishuttle") and its undersigned counsel respectfully petition the Court for review of a final administrative decision by the Washington Utilities and Transportation Commission, attached hereto as Exhibit A, which is incorporated by reference herein.

I. PARTIES

1.1 Petitioner Speedishuttle is a private limited liability company organized pursuant to the laws of the State of Washington with its principal place of business located at 1237 South Director Street, Seattle, Washington 98108.

1.2 Speedishuttle is represented by David W. Wiley and Blair I. Fassburg of Williams, Kastner & Gibbs, PLLC, 601 Union Street, Suite 4100, Seattle, Washington 98101.

PETITION FOR JUDICIAL REVIEW OF FINAL ORDER OF THE
WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION - 1

Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, Washington 98101-2380
(206) 628-6600

1 1.3 Respondent Washington Utilities and Transportation Commission ("WUTC") is
2 an agency organized and existing under the laws of the state of Washington, and has a mailing
3 address of P.O. Box 47250, Olympia, Washington 98504.

4 1.4 The WUTC staff is currently represented by Assistant Attorney General Julian
5 Beattie with a mailing address of P.O. Box 40128, 1400 S. Evergreen Park Drive S.W.,
6 Olympia, Washington 98504.

7 **II. JURISDICTION, VENUE, AND STANDING**

8 2.1 Jurisdiction in this Court is proper pursuant to RCW 34.05.510 & 570.

9 2.2 Venue is proper pursuant to RCW 34.05.514(1) because King County,
10 Washington is the county of Speedishuttle's principal place of business.

11 2.3 Speedishuttle has standing to bring this Petition pursuant to RCW 34.05.530.

12 **III. IDENTIFICATION OF AGENCY ACTION AT ISSUE**

13 3.1 The agency action at issue is the WUTC's Final Order captioned Order 08
14 Order Denying Requests for Review of Order 06; Denying Leave to Reply; Granting, in part,
15 Motion to Strike, Docket TC-143691 (rel. September 27, 2016), Exhibit A.

16 **IV. FACTS DEMONSTRATING RIGHT TO JUDICIAL REVIEW AND**
17 **PROCEDURAL HISTORY**

18 4.1 On October 10, 2014, Speedishuttle filed an application for a certificate of
19 public convenience and necessity with the WUTC to operate as an auto transportation company
20 providing door-to-door service between SeaTac International Airport ("SeaTac") and points
21 within King County, Washington.

22 4.2 Shuttle Express, Inc. ("Shuttle Express"), an incumbent carrier providing
23 airporter service to and from SeaTac et al., filed an objection to the issuance of a certificate of
24 public convenience and necessity ("PCN certificate") to Speedishuttle, alleging that
25 Speedishuttle offered the same service as Shuttle Express. Pacific Northwest Transportation

1 Services, Inc. d/b/a Capital Aeroporter Shuttle ("Capital Aeroporter") also objected to
2 Speedishuttle's application on grounds that Speedishuttle's proposed service was essentially
3 the same as that offered by Capital Aeroporter.

4 4.3 A brief adjudicative hearing was held on January 12, 2015. In that brief
5 adjudicative proceeding, Speedishuttle submitted evidence that its proposed service would be
6 different from that of the incumbent carriers and made that showing based on a differentiation
7 of its features, including its use of luxury vehicles, significantly increased accessibility for non-
8 English speaking customers, individually-tailored customer service, tourism information, and
9 Wi-Fi service. Finding that the service offered was sufficiently different from the services
10 offered by reference to the criteria set forth in WAC 480-30-140(1)(b), in establishing a
11 different service from that offered by the objecting carriers, the WUTC issued an Initial Order
12 (Order 02), overruling the objections of Shuttle Express and Capital Aeroporter, and finding
13 the service proposed by Speedishuttle was not the same as the services offered by Shuttle
14 Express and Capital Aeroporter.

15 4.4 On February 9, 2015, Shuttle Express filed a Motion to Reopen the Record and
16 Petition for Administrative Review arguing to reopen the record on bases not relevant to the
17 instant Petition for Judicial Review. The next day, on February 10, 2015, Shuttle Express filed
18 a second Petition for Administrative Review, contending that Speedishuttle should be denied a
19 PCN certificate on the grounds that Speedishuttle was required to prove Shuttle Express failed
20 to perform to the satisfaction of the Commission before the WUTC could issue a PCN
21 certificate to Speedishuttle for the same service, and that should the WUTC find the service
22 proposed by Speedishuttle was not the same service, restricting its certificate through terms and
23 conditions to limit Speedishuttle's service to its distinguishing features.

24 4.5 After considering the written submissions by the parties, including the reply by
25 Speedishuttle, on March 30, 2015, the WUTC issued a Final Order, Order 04, Docket TC-

1 143691, which is filed as Exhibit B. Order 04 denied Shuttle Express's Petition for
2 Administrative Review, making the following findings, in pertinent part:

3 17. The Initial Order, Order 02, addressed the considerations
4 set forth in WAC 480-30-116(3), which provides that
5 adjudication of auto transportation applications are "limited
6 to the question of whether the objecting company holds a
7 certificate to provide the same service in the same territory,
8 whether the objecting company provides the same service,
9 and whether an objecting company will provide the same
10 service to the satisfaction of the Commission." All three
11 elements must be present for the Commission to deny an
12 application to serve a given route. We agree that
13 Speedishuttle does not propose to offer the same service
14 Shuttle Express provides and thus need not address whether
15 Shuttle Express is providing service to the Commission's
16 satisfaction.

17 20. ...The Administrative Law Judge found in Order 02 that no
18 one feature distinguishes Speedishuttle's proposed service
19 from Shuttle Express's existing service. In our view,
20 however, Speedishuttle's multilingual business model
21 creates a significant distinction. Shuttle Express does not
22 offer multilingual customer service, either on its website,
23 by phone, or by way of personal greeters; there is an entire
24 demographic of travelers whose needs cannot be met by
25 Shuttle Express's existing service. On that basis alone,
Speedishuttle's proposed service is not the same service
Shuttle Express currently provides.

26 21. Moreover, the totality of these features demonstrate that the
27 proposed service uniquely targets a specific subset of
28 consumers seeking door-to-door service to and from the
29 airport: those who are tourists, tech-savvy, or non-English
30 speaking. Speedishuttle's business model thus includes
31 luxury vehicles, significantly increased accessibility for
32 Non-English speaking customers, individually-tailored
33 customer service, tourism information, and Wi-Fi service.
34 Such service is substantially different from the existing
35 service the objecting carriers offer.

36 22. For those same reasons, we also conclude that Shuttle
37 Express's existing service does not reasonably serve the
38 entire market...

39 25. We also decline to attach the conditions proposed by
40 Shuttle Express to Speedishuttle's permit...

41 Exhibit B.

PETITION FOR JUDICIAL REVIEW OF FINAL ORDER OF THE
WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION - 4

Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, Washington 98101-2380
(206) 628-6600

1 4.6 No party sought judicial review of Order 04.

2 4.7 Following the entry of Order 04, on April 9, 2015, the WUTC issued to
3 Speedishuttle, Certificate C-65854, authorizing "door to door passenger service between
4 Seattle International Airport and points within King County. Charter and Excursion Carrier
5 Services in the state of Washington." Certificate C-65854 is attached hereto as Exhibit C. In
6 accordance with its ruling in Order 04, the WUTC issued an unrestricted PCN certificate to
7 Speedishuttle.

8 4.8 Speedishuttle has been operating a regulated door-to-door service between
9 points in King County and SeaTac International Airport under Certificate C-65854 since
10 spring, 2015 and offers service in accordance with its certificate.

11 4.8 On May 16, 2016, Shuttle Express filed a Petition for Rehearing of Matters in
12 Docket TC-143691 and a Complaint alleging that Speedishuttle was not offering service with
13 the features identified by Speedishuttle as differentiating its service from Shuttle Express's
14 service, and was in fact offering the same service as Shuttle Express.

15 4.9 After various responsive pleadings and a prehearing conference on August 2,
16 2016, the WUTC issued Order 06 on August 4, 2016, granting Shuttle Express's Petition for
17 Rehearing and Complaint.

18 4.10 On August 24, 2016, Speedishuttle filed a Petition for Administrative Review of
19 Order 06. Speedishuttle's Petition for Administrative Review of Order 06 was denied on
20 September 27, 2016 by Order 08, the Order at issue in the instant Petition for Judicial Review
21 which, for the first time, restricted the authorized service to be offered by Speedishuttle.

22 4.11 Included in Order 08 are the following pertinent portions:

23 23. Nor are we as sanguine as Speedishuttle about the
24 development of competition in the wake of Order 04. The
25 commission expressly did not address whether Shuttle
Express was providing service to the Commission's
satisfaction. Speedishuttle, therefore, may provide only the

1 auto transportation service that the Commission found was
2 different than Shuttle Express's service. While some
3 competition at the margins of the respective customer
4 groups may be inevitable, the Commission did not
5 contemplate that Speedishuttle would offer to serve any and
6 all customers seeking door-to-door service to or from the
7 airport.

8 26. Shuttle Express correctly observes that the Commission's
9 ultimate responsibility is to ensure compliance with RCW
10 81.68.040 and other applicable laws. Consistent with the
11 legislature's directive, we did not and cannot authorize
12 Speedishuttle to depart from its business model and offer
13 the same service Shuttle Express provides. If the evidence
14 demonstrates that Speedishuttle is doing so or is otherwise
15 violating its regulatory obligations, we will take appropriate
16 enforcement action.

17 Exhibit B.

18 4.12 Following the entry of Order 08, Speedishuttle filed a timely Petition for
19 Reconsideration of Order 08 on October 4, 2016, attached hereto as Exhibit D. In its Petition
20 for Reconsideration, Speedishuttle set forth arguments to demonstrate to the WUTC that Order
21 08 included certificate restrictions inconsistent with multiple findings in Order 04 and which
22 attempted to retroactively modify the services authorized under Certificate C-65854, which
23 was done, in part, by limiting Speedishuttle to serving only "customer types" it proposed to
24 target, which retroactive restrictions the Commission, by law, is not permitted to implement, as
25 it has already acknowledged in the underlying application docket.

4.13 On November 10, 2016, the WUTC issued Order 09, Denying Reconsideration
and Request for Stay, in Docket No. TC-143691, attached hereto as Exhibit E.

V. EXHIBITS

5.1 The following exhibits referenced individually above are attached hereto and are
hereby incorporated by reference as if fully set forth herein:

- Exhibit A: Order 08 Order Denying Requests for Review of Order 06; Denying
Leave to Reply; Granting, in part, Motion to Strike, Docket TC-143691;

- 1 • Exhibit B: Final Order, Order 04, Docket TC-143691;
- 2 • Exhibit C: Certificate C-65854;
- 3 • Exhibit D: Speedishuttle's Petition for Reconsideration of Order 08; and
- 4 • Exhibit E: Order 09, Order Denying Reconsideration and Request for Stay, Docket
- 5 TC-143691.

6 VI. REASONS RELIEF SHOULD BE GRANTED

7 6.1 Pursuant to RCW 34.05.570, Speedishuttle alleges that the actions and Orders of
8 the WUTC, *inter alia*, retroactively modified the service authorized by the terms of the
9 certificate issued to Speedishuttle. Consequently, the WUTC's Final Order 08 should be found
10 unlawful pursuant to RCW 34.05.570(3) for the following bases:

- 11 1. the WUTC's Order is in violation of constitutional provisions on their face, or
12 as applied;
- 13 2. The WUTC's Order is outside the statutory authority or jurisdiction of the
14 agency conferred by any provision of law;
- 15 3. The WUTC erroneously interpreted or applied the law;
- 16 4. The WUTC's Final Order 08 is inconsistent with a rule of the agency and the
17 agency failed to explain the inconsistency by stating facts and reasons to
18 demonstrate a rational basis for the inconsistency; and
- 19 5. The WUTC's Final Order 08 is arbitrary and capricious.

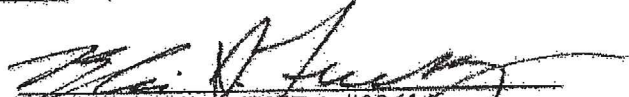
20 VII. REQUEST FOR RELIEF

21 7.1 Based on the foregoing, Petitioner Speedishuttle Washington, LLC respectfully
22 requests the Court grant relief pursuant to RCW 34.05.574 as follows:

- 23 1. Setting aside the portions of Order 08 in Docket TC-143691 to the extent it
24 retroactively imposes restrictions on Certificate C-65854 and is contrary to law.

- 1 2. Awarding Speedishuttle its costs and disbursements herein; and
2 3. Ordering such other and further relief as the Court may deem just and equitable.
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6 Respectfully submitted this 17th day of November, 2016.

7 

8 David W. Wiley, WSBA #08614
9 Blair I. Fassburg WSBA #41207
10 WILLIAMS, KASTNER & GIBBS PLLC
11 601 Union Street, Suite 4100
12 Seattle, WA 98101-2380
13 Telephone: (206) 628-6600
14 Fax: (206) 628-6611

15 Attorneys for Defendant Speedishuttle
16 Washington, LLC
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EXHIBIT A

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In re the Application of

SPEEDISHUTTLE WASHINGTON,
LLC d/b/a SPEEDISHUTTLE
SEATTLE

For a Certificate of Public Convenience
and Necessity to Operate Motor Vehicles
in Furnishing Passenger and Express
Service as an Auto Transportation
Company

DOCKET TC-143691

ORDER 08

ORDER DENYING REQUESTS FOR
REVIEW OF ORDER 06; DENYING
LEAVE TO REPLY; GRANTING, IN
PART, MOTION TO STRIKE

BACKGROUND

- 1 On October 10, 2014, Speedishuttle of Washington, LLC d/b/a Speedishuttle Seattle (Speedishuttle) filed with the Washington Utilities and Transportation Commission (Commission) an application for a certificate of public convenience and necessity to operate as an auto transportation company. Shuttle Express, Inc. (Shuttle Express) and Pacific Northwest Transportation Services, Inc. d/b/a Capital Aeroporter Shuttle (Capital Aeroporter) objected to the application.
- 2 On January 22, 2015, following a brief adjudicative proceeding, the Commission entered Order 02, Initial Order Overruling Objections to New Authority (Order 02). Order 02 found that Speedishuttle did not propose to offer the same service that either Shuttle Express or Capital Aeroporter provides. Shuttle Express and Capital Aeroporter filed petitions for administrative review of Order 02, and on March 30, 2015, the Commission entered Order 04, Final Order Affirming Order 02 (Order 04). No party sought judicial review of Order 04.
- 3 On May 16, 2016, Shuttle Express filed a Petition for Rehearing of Matters in Docket TC-143691 and to Cancel or Restrict Certificate No. C-65854 Based on Misrepresentations by Applicant, Errors and Omissions in Prior Proceedings, and Changed Conditions not Previously Considered (Petition for Rehearing).
- 4 Shuttle Express alleges in its Petition for Rehearing that the facts supporting the Commission's decision in Order 04 "have not been borne out in actuality since

[Speedishuttle] began airporter service in May of 2015,”¹ and that Speedishuttle “oversold its purported distinctions, to the point of misrepresentation of material facts, either intentionally or negligently.”² Shuttle Express specifically alleges, among other things, that Speedishuttle is offering walk-up service at the airport; has made no apparent effort to hire multilingual greeters; may be offering multilingual service only to a *de minimis* number of passengers; may not provide working TV and Wi-Fi in its vans; and has failed to implement its 20-minute departure guarantee, all of which were factors on which the Commission relied to find that Speedishuttle proposed to offer different service than Shuttle Express. Shuttle Express contends that Speedishuttle is instead engaging in direct competition with Shuttle Express by providing service identical to the service that Shuttle Express provides.³

5 On June 7, 2016, Commission staff (Staff) and Speedishuttle filed answers to the Petition. In its answer, Staff supported the Petition but recommended the Commission schedule a brief adjudicative proceeding – separate from the hearing on the corresponding complaint Shuttle Express filed in Docket TC-160516 – strictly for the limited purpose of determining whether Speedishuttle promised, but is presently failing to provide: (1) personal, multilingual greeters at SeaTac Airport; (2) in-vehicle televisions and wireless internet; and (3) guaranteed 20-minute departures.

6 In its answer, Speedishuttle requested the Commission deny the Petition for Rehearing because it is “riddled with hearsay, unsubstantiated allegations, and after-the-fact conjecture and suppositions that are not in way sufficient to support a petition for rehearing nor do they even deny, much less disprove, that Speedishuttle has utilized technology and a multilingual business model in offering and operating its regulated services.”⁴

7 On August 4, 2016, the Commission entered Order 06, Initial Order Granting Petition for Rehearing (Order 06). In that order, the Administrative Law Judge exercised the Commission’s discretion under RCW 81.04.200 to consider the Petition for Rehearing,

¹ Petition for Rehearing of Shuttle Express ¶17.

² *Id.* ¶20.

³ Also on May 16, 2016, Shuttle Express filed with the Commission a Formal Complaint against Speedishuttle for its Rules, Regulations, or Practices in Competition with Complainant that are Unreasonable, Insufficient, Unremunerative, Discriminatory, Illegal, Unfair, or Tending to Oppress the Complainant in Docket TC-160516.

⁴ Speedishuttle’s Answer to Petition for Rehearing ¶16.

even though two years have not elapsed since Order 02 became effective. She granted the Petition for Rehearing, finding that "Shuttle Express's Petition alleges facts that, if true and known to the Commission at the time of the previous hearing, may have impacted the Commission's ultimate decision."⁵

- 8 On August 24, 2016, Speedishuttle filed a Petition for Administrative Review of Order 06 (Petition for Review). Speedishuttle contends that allegations of fact are insufficient to justify rehearing, and that Shuttle Express has failed to produce evidence to support its Petition for Rehearing. Alternatively, Speedishuttle would support Staff's recommendation to conduct a BAP limited to the specific, discrete allegations Shuttle Express has made.
- 9 On September 2, 2016, Shuttle Express filed its Answer in Opposition to Petition for Review and Partial Challenge of Order 06 (Shuttle Express Challenge). Shuttle Express argues that it need not provide evidence at this stage of the proceeding. A petition for rehearing, according to Shuttle Express, is a pleading that is sufficient if it alleges new facts that, if proven, would warrant a change to the Commission's prior determination. Shuttle Express challenges the conclusion in Order 06 that RCW 81.04.200 required the company to wait two years before bringing its Petition for Rehearing. Shuttle Express claims that because Order 04 was not appealed, the plain language of the statute gives Shuttle Express the right to rehearing after six months, not two years.
- 10 On September 6, 2016, Staff filed its Answer to Speedishuttle's Petition for Administrative Review of Order 06. Staff shares Speedishuttle's concern that Order 06 could be interpreted to allow a complete relitigation of the original BAP. Staff supports Speedishuttle's proposal to limit any rehearing to the five specific factual contentions that Shuttle Express raises in its Petition for Rehearing.
- 11 On September 12, 2016, Speedishuttle filed its Reply to Shuttle Express' Challenge to Order 06. Speedishuttle opposes that challenge on the grounds that Shuttle Express cites no authority in support of its position and the statute establishes Commission discretion to grant rehearing, not a right to rehearing. In addition, Speedishuttle filed a motion to strike Shuttle Express' response to Speedishuttle's Petition for Review, arguing that response far exceeds the scope of the Petition. Speedishuttle also filed a petition for leave to respond to Shuttle Express' response, claiming the need to address unanticipated arguments.

⁵ Order 06 ¶ 8.

- 12 On September 15, 2016, Shuttle Express filed its Answer to Speedishuttle's Motion to Strike, opposing that motion. On September 16, 2016, Shuttle Express filed its Answer to Speedishuttle's Petition for Leave to Reply, opposing that petition.

DISCUSSION AND DECISION

- 13 At the outset we observe that both Speedishuttle and Shuttle Express attempt to litigate the merits of the Petition for Rehearing in the guise of Speedishuttle's Petition for Review and Shuttle Express' Challenge.⁶ We will not address the substance of the Petition for Rehearing at this stage of the proceeding. Accordingly, we deny Speedishuttle's petition for leave to reply, which is devoted almost entirely to such arguments.
- 14 Nor will we address the discovery dispute Shuttle Express describes in the body of its response and exhibits. Those issues are not germane to the Petition for Review, and we leave resolution of that dispute, at least in the first instance, to the presiding Administrative Law Judge. We therefore grant, in part, Speedishuttle's motion to strike as it relates to those portions of Shuttle Express' response. We otherwise deny that motion. Shuttle Express takes no more liberties with the issues in its answer than Speedishuttle takes in its Petition for Review, and the Commission will assess the weight to give the information in both pleadings.
- 15 With respect to the issues that are properly before us, we deny both Speedishuttle's Petition for Review and Shuttle Express' Challenge. We conclude that the language of RCW 81.04.200 supports the determinations in Order 06.⁷

⁶ We also note that the increasingly caustic rhetoric and inflammatory accusations both of these parties use is neither persuasive nor welcomed.

⁷ Speedishuttle questions the Commission's consolidation of the Petition for Rehearing in this docket and Shuttle Express' complaint in Docket TC-160516. *See* Petition for Review ¶ 7, n.3. Speedishuttle, however, incorrectly refers to Order 06 as the source of that determination. Order 06 merely states that the Commission will schedule hearings in the two dockets concurrently. Order 07, Prehearing Conference Order and Order of Consolidation (Order 07) is the order that consolidated the dockets. No party objected or otherwise sought review of Order 07 within 10 days after the Commission entered it, and thus the issue of consolidation is not before us.

Speedishuttle Petition for Review

- 16 RCW 81.04.200 provides, in relevant part, that a public service company seeking rehearing of a Commission order must set forth in its

petition the *grounds and reasons* for such rehearing, which grounds and reasons may comprise and consist of changed conditions since the issuance of such order, or by showing a result injuriously affecting the petitioners which was not considered or anticipated at the former hearing, or that the effect of such order has been such as was not contemplated by the commission or petitioner, or for any good or sufficient cause which for any reason was not considered and determined in such former hearing.
(Emphasis added.)

The statute thus requires a petitioner to provide sufficient information in the petition to describe and explain the circumstances that justify the Commission rehearing a prior order.

- 17 Speedishuttle contends that Shuttle Express must “advance more than mere argument and allegations to invoke that extraordinary remedy in its filing.”⁸ Accordingly to Speedishuttle, Shuttle Express “fails to present any sufficient evidence or basis for this Commission to exercise its discretion to reopen these proceedings.”⁹ We disagree.

- 18 RCW 81.04.200 requires only that a petition state the “grounds and reasons” for rehearing. We do not construe that term necessarily to require the production of evidence to support the petition, particularly where, as here, the petitioner has limited access to such evidence. Evidence will enhance a petition’s persuasiveness, but allegations can satisfy the statutory requirement if they provide sufficient detail to demonstrate changed conditions since the Commission entered the order or unanticipated results arising from that order.

- 19 Shuttle Express has provided such detailed allegations. We found in Order 04 that Speedishuttle proposed to provide a different service than Shuttle Express based on the totality of features in Speedishuttle’s multilingual business model, which

⁸ Petition for Review ¶ 6.

⁹ Petition for Review ¶ 7.

uniquely targets a specific subset of consumers seeking door-to-door service to and from the airport: those who are tourists, tech-savvy, or non-English speaking. Speedishuttle's business model thus includes luxury vehicles, significantly increased accessibility for non-English speaking customers, individually tailored customer service, tourism information, and Wi-Fi service. Such service is substantially different from the existing service [Shuttle Express] offer[s].¹⁰

Shuttle Express alleges in its Petition for Rehearing that Speedishuttle "has, in practice, not provided a different service targeted to 'a specific subset of customers' who were unserved. Instead it has targeted the general travelling public that would have been served by Shuttle Express and provided a service that is substantially the same as that offered by Shuttle Express."¹¹

20 Shuttle Express knows only what it can observe of the market and Speedishuttle's operations, including but not limited to a significant reduction in trips Shuttle Express makes to and from the airport and Speedishuttle's deployment of a walk-up kiosk, both contrary to representations Speedishuttle made at the evidentiary hearing. Based on these and other observations, Shuttle Express alleges that Speedishuttle is not targeting the customers the Commission authorized that company to serve and is providing the same service Shuttle Express has the exclusive right to provide, resulting in injury to Shuttle Express. These allegations provide sufficient "grounds and reasons" to exercise discretion to grant the Petition for Rehearing.

21 Speedishuttle disputes the allegations and contends that they represent nothing more than a rehash of issues the Commission considered and resolved in Order 04. Speedishuttle claims, "That Speedishuttle would compete with Shuttle Express was never in doubt, and this premise and allegation cannot serve as a basis of any justification of retrial of this application by the Commission."¹² We construe the Petition for Rehearing and Order 04 differently.

22 Order 04 addressed whether Speedishuttle proposed to offer a distinct service, but the Commission has yet to consider whether Speedishuttle is adhering to the business model it represented to the Commission. The evidence before the Commission in the BAP

¹⁰ Order 04 ¶ 21.

¹¹ Petition for Rehearing ¶ 20.

¹² Petition for Review ¶ 17.

concerned what Speedishuttle said it would do if granted a certificate. Shuttle Express now asks the Commission to consider what Speedishuttle is actually doing, which allegedly differs from its representations. Shuttle Express' allegations describe precisely the type of "changed conditions" the statute provides the Commission with discretion to consider.

23 Nor are we as sanguine as Speedishuttle about the development of competition in the wake of Order 04. The Commission expressly did not address whether Shuttle Express was providing service to the Commission's satisfaction.¹³ Speedishuttle, therefore, may provide only the auto transportation service that the Commission found was different than Shuttle Express' service. While some competition at the margins of the respective customer groups may be inevitable, the Commission did not contemplate that Speedishuttle would offer to serve any and all customers seeking door-to-door service to or from the airport. Shuttle Express' allegations that Speedishuttle is engaging in such conduct, therefore, represent "a result injuriously affecting [Shuttle Express] which was not considered or anticipated at the former hearing" and an effect of Order 04 that "has been such as was not contemplated by the commission" within the meaning of the statute.¹⁴

24 We nevertheless share the concerns Speedishuttle and Staff express about the scope of rehearing. We will not allow Shuttle Express to relitigate the BAP. The Commission will not alter its conclusion that the business model Speedishuttle described in its application and during the evidentiary hearings represents a different service than the service Shuttle Express provides. Nor will we permit a collateral attack on our rules that do not distinguish between "prearranged" and "walk up" door-to-door service.¹⁵ At the same time, however, the Commission based its conclusions in Order 04 on the totality of the circumstances, and Speedishuttle's and Staff's proposal to limit rehearing to an examination of the individual components of the business model is at odds with that approach.

25 By way of guidance for the parties, the sole issue the Commission will consider on rehearing is whether Speedishuttle is limiting the service it provides to the service and customer types described in the business model on which the Commission based its grant

¹³ Order 04 ¶ 17.

¹⁴ RCW 81.04.200.

¹⁵ WAC 480-30-36.

of authority. The Commission will not conduct a separate BAP on rehearing but will address this issue as part of the full adjudication in the consolidated dockets. To the extent that the allegations in the Petition for Rehearing in Docket TC-143691 overlap with the allegations in Shuttle Express' complaint in Docket TC-160516, the issue will be similarly limited.

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

Shuttle Express Challenge

- 27 Shuttle Express has a different objection to Order 06. Shuttle Express does not contest the ultimate determination in that order but contends that the Administrative Law Judge erred by relying on Commission discretion, rather than a statutory right, to grant the Petition for Rehearing. According to Shuttle Express, RCW 81.04.200 authorizes a public service company to file a petition for rehearing after only six months if the order was not subject to judicial review. No party appealed Order 04, and Shuttle Express filed its Petition for Rehearing more than one year (but less than two years) after Order 04 became effective. Shuttle Express thus contends that "the rehearing should not be a matter of discretion, because the six month provision applies in this case, not the two year period."¹⁶ We disagree.
- 28 Shuttle Express has no right to rehearing. The statute only authorizes a public service company to *petition* for rehearing. "Upon the filing of such petition, such proceedings shall be had thereon as are provided for hearings upon complaint."¹⁷ The Commission has discretion to initiate an adjudication in response to a complaint,¹⁸ and thus RCW 81.04.200 provides the Commission with the same discretion to grant or deny a petition for rehearing.

¹⁶ Shuttle Express Challenge ¶ 44.

¹⁷ RCW 81.04.200.

¹⁸ RCW 34.05.419; WAC 480-07-305(S).

29 The question, then, is whether Shuttle Express had the right to *petition* for rehearing after six months, rather than two years, from the date Order 04 became effective. We need not resolve this question because we uphold the exercise of Commission discretion in Order 06 to grant the Petition for Rehearing. In the absence of a dispute, we will not issue an advisory opinion. We note, however, that because the statute provides the Commission with discretion both to grant rehearing and to permit the filing of a petition for rehearing at any time, the distinction between filing a petition within six months or two years will rarely, if ever, be the only basis for a Commission decision denying rehearing.

THE COMMISSION ORDERS THAT:

- 30 (1) The Commission DENIES the Petition of Speedishuttle of Washington, LLC
d/b/a Speedishuttle Seattle for Administrative Review of Order 06.
- 31 (2) The Commission DENIES the Partial Challenge of Shuttle Express, Inc., to Order
06.
- 32 (3) The Commission DENIES the Petition of Speedishuttle of Washington, LLC
d/b/a Speedishuttle Seattle for Leave to File Reply to Shuttle Express' Answer to
Speedishuttle's Petition for Administrative Review.
- 33 (4) The Commission GRANTS, in part, the Motion of Speedishuttle of Washington,
LLC d/b/a Speedishuttle Seattle to Strike Answer to Petition for Administrative
Review of Shuttle Express, Inc., as described in the body of this Order. The
Commission otherwise DENIES that Motion.

DATED at Olympia, Washington, and effective September 27, 2016.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

PHILIP B. JONES, Commissioner

ANN E. RENDAHL, Commissioner

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

EXHIBIT B

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In re the Application of)	DOCKET TC-143691
)	
SPEEDISHUTTLE WASHINGTON,)	
LLC d/b/a SPEEDISHUTTLE)	ORDER 04
SEATTLE)	
)	
For a Certificate of Public Convenience)	FINAL ORDER
and Necessity to Operate Motor)	
Vehicles in Furnishing Passenger and)	
Express Service as an Auto)	
Transportation Company)	
.....)	

BACKGROUND

- 1 On October 10, 2014, Speedishuttle Washington, LLC d/b/a Speedishuttle Seattle (Speedishuttle or Applicant) filed with the Washington Utilities and Transportation Commission (Commission) an application for a certificate of public convenience and necessity to operate as an auto transportation company (Application). Speedishuttle proposes to offer shared-ride, door-to-door, multilingual service within King County in upscale vehicles equipped with onboard televisions and Wi-Fi. Each Speedishuttle passenger will be assisted by a personal greeter.

- 2 On November 12, 2014, Shuttle Express, Inc. (Shuttle Express) filed a letter objecting to the Application on the grounds that the Applicant seeks to provide the same service Shuttle Express currently provides. On November 20, 2014, Pacific Northwest Transportation Services, Inc. d/b/a Capital Aeroporter Shuttle (Capital Aeroporter) also filed an objection. On December 2, 2014, the Commission issued a Notice of Brief Adjudicative Proceeding Setting Time for Oral Statements on January 12, 2015, at 1:30 p.m.

- 3 On January 12, 2015, the Commission conducted a brief adjudicative proceeding at the Commission's offices in Olympia, Washington, before Administrative Law Judge Rayne Pearson. On January 22, 2015, the Commission entered Order 02, Initial Order Overruling Objections to New Authority (Order 02).

- 4 On February 9, 2015, Shuttle Express filed a Motion to Reopen the Record and Petition for Administrative Review (Motion). In its Motion, Shuttle Express argues that because company president Paul Kajanoff was denied a technological accommodation for his temporary hearing loss, he was unable to represent the company's interests adequately at hearing. Coupled with the fact that Shuttle Express was not represented by counsel, the company asserts that there is good and sufficient cause to reopen the record to allow it to present additional evidence. Shuttle Express seeks to introduce an exhibit documenting the company's nearly 9 percent decline in business in the last two years.
- 5 On February 10, 2015, Shuttle Express filed a second Petition for Administrative Review (Shuttle Express Petition).¹ Shuttle Express contends that Order 02 distinguishes Shuttle Express's service from the service the Applicant seeks to provide based on "inconsequential amenities" such as onboard Wi-Fi and website features, and that Speedishuttle's application should be denied because Shuttle Express provides the same service to the Commission's satisfaction. In the alternative, Shuttle Express requests the Commission condition Speedishuttle's certificate on the requirement that Speedishuttle provide the features on which it relies to distinguish its service.²
- 6 On February 10, 2015, Capital Aeroporter filed a Petition for Administrative Review (Capital Aeroporter Petition). Capital Aeroporter argues that 24-hour direct service is the same service as 24-hour shared-ride service, and that airport greeters, onboard TVs, and wait times do not differentiate service. Capital Aeroporter also contends that because Speedishuttle did not introduce evidence of interested customer statements to demonstrate public need, the Application should be denied. Finally, Capital Aeroporter maintains that Speedishuttle's business model, which includes the allocation of five vehicles at the outset of service, is inadequate and unsustainable.
- 7 On February 13, 2015, Commission Staff (Staff) filed a Response to Shuttle Express's Motion. Staff argues that Shuttle Express failed to demonstrate "good and sufficient cause" to reopen the record. Staff notes that there is no alleged nexus between the

¹ Under WAC 480-07-825(1), the Commission will only accept one petition for administrative review from a party. We construe Shuttle Express' February 9, 2015, filing as a motion and address only the February 10, 2015, filing as that party's petition for administrative review.

² We deny Shuttle Express's request for oral argument; Speedishuttle correctly noted that Shuttle Express failed to demonstrate why written presentations are insufficient, as required by WAC 480-07-825(6).

conditions at hearing and the company's failure to offer the readily available evidence it now attempts to introduce. Staff also contends that because Shuttle Express neither requested a continuance nor raised a formal objection to the alleged lack of accommodation for Mr. Kajanoff's impairment at hearing, it has no grounds to do so at this stage in the proceeding. Staff also points to Shuttle Express's contention that it was prejudiced by not having counsel as a situation of the company's own making; the company's attorney withdrew approximately two and a half weeks before the hearing, which left ample time to obtain new representation. Finally, Staff notes that although Shuttle Express argues the Commission failed to provide an interpreter, Shuttle Express never requested one.

- 8 On February 17, 2015, Speedishuttle filed a Response to Shuttle Express's Motion. Speedishuttle argues that Shuttle Express was able to represent itself adequately at hearing through two qualified representatives, both of whom were able to present evidence in opposition to the Application. Speedishuttle also notes that Shuttle Express fails to explain why it was unable to produce the evidence it now seeks to introduce or why it did not introduce the information at hearing through its second witness, Wesley Marks. Speedishuttle argues that Shuttle Express has made no showing of why the evidence it seeks to admit is essential to the decision, was unavailable, and was not reasonably discoverable with due diligence at the time of the hearing. Finally, Speedishuttle argues that even if the Commission considers the evidence proffered by Shuttle Express, it has no probative value.
- 9 On February 23, 2015, Staff filed a Response to the Petitions for Administrative Review filed by Shuttle Express and Capital Aeroporter. Consistent with its position with respect to both objections at hearing, Staff declines to address the merits of either petition for review.
- 10 On February 23, 2015, Speedishuttle filed a Response to the Shuttle Express and Capital Aeroporter Petitions. With respect to Shuttle Express, Speedishuttle argues that despite Shuttle Express's efforts to downplay differentiating service factors such as free Wi-Fi, onboard television, foreign language websites, and personal airport greeters, those are precisely the type of service enhancements envisioned in the Commission's 2013 rulemaking and codified in the revised rules.³ Speedishuttle also

³On September 21, 2013, the Commission amended its rules governing the Commission's review of applications for authority to operate a passenger transportation company in Washington. The changes clarify and streamline the application process for companies seeking to provide such service, give companies rate flexibility, and promote competition in the auto transportation

maintains that Shuttle Express has failed to make a strong showing that imposing permit conditions is necessary.

- 11 Speedishuttle argues that Capital Aeroporter attempts to redefine “same service” because it disagrees with the result in Order 02, ignoring completely the language in WAC 480-30-140(1)(b)⁴ and reframing the analysis as requiring a limited showing of different “types, means, and methods” of existing service. Speedishuttle argues that Capital Aeroporter inappropriately attempts to raise a fitness issue related to the number of the Applicant’s proposed vehicles, and provides no evidence for its argument that the Applicant’s business model is insufficient and unsustainable.
- 12 On February 23, 2015, Capital Aeroporter responded to Shuttle Express’s Petition. Capital Aeroporter argues that Speedishuttle has neither demonstrated a need for its service nor provided supporting statements from members of the general public. Capital Aeroporter cautions that granting Speedishuttle’s application based on the factors outlined in Order 02 will spur a multitude of new applicants and applications to extend authority, which may increase local or port regulation, degrade quality and safety of service, or create instability. Finally, Capital Aeroporter acknowledges that a surge of new applicants may create a stronger, more competitive marketplace.

DISCUSSION AND DECISION

- 13 We deny Shuttle Express’ Motion and uphold the findings and conclusions in Order 02. We will address the Motion and each Petition in turn.⁵

industry. See *In re Amending and Adopting Rules in WAC 480-30 Relating to Passenger Transportation Companies*, Docket TC-121328, General Order R-572, Order Amending and Adopting Rules Permanently (2013), *codified at* WAC 480-30 (General Order R-572).

⁴ WAC 480-30-140(1)(b) provides that “the commission may, among other things, consider differences in operation, price, market features, and other essential characteristics of a proposed auto transportation service, tailoring its review to the individual circumstances of the application in evaluating whether the public convenience and necessity requires the commission to grant the request for the proposed service and whether an existing company is providing the same service to the satisfaction of the commission.”

⁵ Under RCW 34.05.419(5), a request for review is deemed to have been denied if the agency does not make a disposition of the matter within 20 days after the request is submitted. We extend the deadline for disposing of the petitions for review until the date of this order.

Shuttle Express Motion

- 14 WAC 480-07-830 provides that in contested proceedings, the Commission may reopen the record to “allow receipt of evidence that is essential to a decision and that was unavailable and not reasonably discoverable with due diligence at the time of hearing or for any other good and sufficient cause.” Shuttle Express has not put forth any argument that the evidence it now offers is essential to a decision and was unavailable at the time of hearing. Therefore, the only question we address here is whether the company has demonstrated “good and sufficient cause” to reopen the record.
- 15 Shuttle Express argues that it was prejudiced by Mr. Kajanoff’s inability to participate fully in the hearing due to the Commission’s failure to accommodate his temporary hearing loss. Mr. Kajanoff’s request for accommodation, however, stated only that he was temporarily hearing-impaired and asked the Commission to “ensure microphones are set high enough to allow me to hear.” The Commission accommodated his request by turning the microphones to their highest setting. When Mr. Kajanoff indicated that he was still unable to hear, the presiding judge asked him if he wished to proceed or continue the hearing until a later date.⁶ Mr. Kajanoff stated he wished to proceed, and both he and Wesley Marks, financial officer for Shuttle Express, presented direct testimony and participated in cross-examining the Applicant’s witness, with Mr. Marks even writing out certain questions directed at Mr. Kajanoff so that he could fully answer them.
- 16 We deny Shuttle Express’s Motion. Shuttle Express received the accommodation it requested, declined to request a continuance, and fully participated in the hearing. Shuttle Express, therefore, presents no basis on which to present additional evidence now.⁷

⁶ Off the record and prior to the start of the hearing, the parties addressed the possibility of continuing the matter until a later date.

⁷ Even if we were to reopen the record, the evidence Shuttle Express offers has virtually no probative value. Shuttle Express provides no factual explanation for its decline in business, and thus that evidence, standing alone, does not tend to prove or otherwise support any factual issue in this case.

Shuttle Express Petition for Review

- 17 The Initial Order, Order 02, addressed the considerations set forth in WAC 480-30-116(3), which provides that adjudications of auto transportation applications are “limited to the question of whether the objecting company holds a certificate to provide the same service in the same territory, whether the objecting company provides the same service, and whether an objecting company will provide the same service to the satisfaction of the Commission.” All three elements must be present for the Commission to deny an application to serve a given route. We agree that Speedishuttle does not propose to offer the same service Shuttle Express provides and thus need not address whether Shuttle Express is providing service to the Commission’s satisfaction.
- 18 Under WAC 480-30-140(2), the Commission may consider a number of factors to determine whether the service applied for is the same as existing service. In Order 02, the Administrative Law Judge considered the following factors listed in the rule: (1) the type, means, and methods of service provided; (2) whether the type of service provided reasonably serves the market; and (3) whether the population density warrants additional facilities or transportation. The Commission may also consider “differences in operation, price, market features, and other essential characteristics of a proposed auto transportation service.”⁸
- 19 Shuttle Express contends that the service features Speedishuttle proposes to offer – complimentary onboard Wi-Fi and television, a multilingual website, the use of multilingual personal greeters, and departure time guarantees – are inconsequential and do not distinguish Speedishuttle’s proposed service from Shuttle Express’s service. Shuttle Express individually addresses these features and argues that each one fails to create any meaningful distinction between the proposed and existing services.
- 20 We disagree. The Administrative Law Judge found in Order 02 that no one feature distinguishes Speedishuttle’s proposed service from Shuttle Express’s existing service. In our view, however, Speedishuttle’s multilingual business model creates a significant distinction. Shuttle Express does not offer multilingual customer service, either on its website, by phone, or by way of personal greeters; there is an entire demographic of travelers whose needs cannot be met by Shuttle Express’s existing

⁸ WAC 480-30-140(1)(b).

service. On that basis alone, Speedishuttle's proposed service is not the same service Shuttle Express currently provides.

21 Moreover, the totality of these features demonstrate that the proposed service uniquely targets a specific subset of consumers seeking door-to-door service to and from the airport: those who are tourists, tech-savvy, or non-English speaking. Speedishuttle's business model thus includes luxury vehicles, significantly increased accessibility for non-English speaking customers, individually-tailored customer service, tourism information, and Wi-Fi service. Such service is substantially different from the existing service the objecting carriers offer.

22 For those same reasons, we also conclude that Shuttle Express's existing service does not reasonably serve the entire market.⁹ From 2004 until 2014, the last year being the test period of Speedishuttle's application, Shuttle Express used a contracted "rescue service" to serve approximately 5 percent of its customers. Mr. Kajanoff's claim at hearing that Shuttle Express has "never turned away door-to-door business for inability to have a vehicle available"¹⁰ is contradicted by Shuttle Express's owner, Jimmy Sherrell, in a declaration he submitted in support of the company's petition for exemption from Commission rules in November 2013.¹¹ In his declaration, Mr. Sherrell stated that without the use of a contracted rescue service, "Sometimes we have to ask people to drive their own car and park so they do not miss their flight. This costs us a high fee in parking reimbursement. And while that is some compensation, it is not delivery of the service the passenger requested. We would much rather provide their ride to the airport and we could have if rescue service were still allowed."¹² By the company's own admission when it sought the exemption, Shuttle Express was unable to reasonably serve the market for a 10-year period without relying on outside assistance.

⁹ Shuttle Express argues that it was previously exonerated on the issue of whether it reasonably serves its territory. In *WUTC v. Shuttle Express, Inc.*, Docket TC-120323, Order 03 (November 1, 2013) at ¶67, the Commission found that "Shuttle Express, Inc. has sufficient reserve equipment to ensure the reasonable operation of its *established routes and fixed times schedules* and thus did not violate WAC 480-30-216." As Speedishuttle notes in its Response, however, this finding -- and the applicable rule -- relates only to scheduled service, not door-to-door service.

¹⁰ Kajanoff, TR 87:7-9.

¹¹ Shuttle Express filed a petition for exemption from WAC 480-30-213(2) and WAC 480-30-456 in Docket TC-132141. The Company requested that the Commission allow it to continue to use a contracted "rescue service."

¹² Docket TC-132141, Declaration of Jimmy Sherrell at ¶4.

23 Moreover, Mr. Kajanoff characterized Shuttle Express's former rescue service at hearing as "an upgraded luxury service"¹³ which, because "most people like getting picked up in a luxury vehicle,"¹⁴ was "in the public's interest."¹⁵ Mr. Kajanoff attempted to distinguish this upgraded service from Shuttle Express's standard service as a rationale for offering rescue service without the Commission's authorization. Yet, Shuttle Express now attempts to characterize Speedishuttle's upgraded business model as indistinguishable from its own. Shuttle Express cannot have it both ways,

24 We uphold the Administrative Law Judge's findings in Order 02 that Speedishuttle does not propose to offer the same service that Shuttle Express provides. Speedishuttle's service proposes to use luxury vehicles, and proposes to provide services that would be very useful, if not critical, for non-English speaking and foreign travelers.

25 We also decline to attach the conditions proposed by Shuttle Express to Speedishuttle's permit.¹⁶ The Commission requires only that an applicant demonstrate that it has the ability to start up the business, not that it is able to operate over the long term.¹⁷ Staff must still ensure that Speedishuttle satisfies the other requirements for obtaining a permit, and we will rely on Staff's review of the tariff Speedishuttle files – as well as the company's track record for providing the same type of service in Hawaii – to ensure that the service in Washington is consistent with the authority the Commission grants.

¹³ Kajanoff, TR 97:9.

¹⁴ *Id.* at 97:15-16.

¹⁵ *Id.* at 97:19-20.

¹⁶ As Speedishuttle correctly notes in its response to Shuttle Express's Petition, restrictive language in a permit will not be imposed without a strong showing of the need for the restriction. Order M.V. No. 147067, *In re Barry Swanson Trucking, Inc.*, Application E-76555 (Oct. 1993).

¹⁷ See Order R-572, ¶30 n.2, citing *See Application of San Juan Airlines, Inc., d/b/a Shuttle Express*, Order M.V.C. No. 1899, Commission Decision and Order Granting Administrative Review and Reversing Initial Order Denying Application, pp 3-4 (Mar. 7, 1991); *see also Application of Valentinetti, Steve & Brian Hartley, d/b/a Seattle Super Shuttle*, Docket TC-001566, Commission Decision and Order Reversing Initial Order; Denying Application ¶¶ 42-43 (Feb. 15, 2002).