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I N D E X

WITNESS:	D	C	RD	RC	COMM
JIM SHERRELL	23Mac	107Wo	157Mac	163Wo	155Cas

<u>EXH. NO.</u>	<u>MARK</u>	<u>ADMIT</u>
1	70	71
2	72	76
3	119	120
4	153	153
5	160	161

1 P R O C E E D I N G S

2 MR. LUNDSTROM: The hearing will please
3 come to order. Let the record show the hearing in
4 the matter of Evergreen Trails, Incorporated versus
5 San Juan Airlines, d/b/a Shuttle Express, Docket No.
6 TC-900407 is convening before the Washington
7 Utilities and Transportation Commission, consisting
8 of Commissioner Sharon Nelson, Commissioner Robert
9 Casad and Commissioner A.J. Pardini. The
10 administrative law judge is Steven E. Lundstrom.

11 This hearing is being convened upon due
12 and proper notice to all interested parties on
13 Wednesday, June 27th, 1990. It's now 10:45 a.m.
14 Okay. I would like to take appearances, please,
15 beginning with the complainant.

16 MR. MacIVER: Yes. Thank you, your Honor.
17 My name is Clyde H. MacIver. I'm an attorney. My
18 address is Suite 4400, Two Union Square. I am
19 representing Evergreen Trails, Inc., d/b/a Gray Line,
20 the complainant in this proceeding.

21 MR. WOLF: My name is Bruce Wolf. I'm an
22 attorney at law. I'm with the law firm of Sessions
23 and Company. We're located at 5120 Columbia Center,
24 701 Fifth Avenue, Seattle, Washington, 98104. I'm
25 appearing here this morning on behalf of the

1 respondent, San Juan Airlines, d/b/a Shuttle Express.

2 JUDGE LUNDSTROM: Commission staff?

3 MR. CEDARBAUM: Robert Cedarbaum,
4 Assistant Attorney General, appearing for the
5 Commission. My business address is the Heritage
6 Plaza Building, 1400 South Evergreen Park Drive
7 Southwest, Olympia, 98504.

8 MR. REININGER: Richard Reininger,
9 Suburban Airporter, Incorporated, 2118th Southeast,
10 Bellevue, Washington, 98005. I'm here as an
11 intervenor.

12 JUDGE LUNDSTROM: Thank you. Other
13 appearances?

14 MRS. COOMBS: Mrs. Diane J. Coombs,
15 representing EASE, Everett Airporter Services
16 Enterprise, of 6303 Swan's Trail Road, Everett,
17 Washington, and appearing as an intervenor.

18 JUDGE LUNDSTROM: Thank you. Any other
19 appearances to be made? Okay. Hearing no response,
20 then, let the record show the hearing is being
21 convened now to comply with the notice, and to take
22 appearances only. Because of a conflicting
23 commitment, I am going to adjourn the hearing now to
24 hear any motions or preliminary matters and to
25 proceed with the presentation of evidence until 1:30

1 p.m. in this room.

2 MR. WOLF: You are reserving then any
3 preliminary motions until that time also, your Honor?

4 JUDGE LUNDSTROM: That's correct. No
5 motions will be heard now. I am simply opening the
6 records to take appearances, and so if you wish --
7 if you have any preliminary motions or procedural
8 matters to take up, I'll be taking them up at that
9 time.

10 MR. WOLF: I don't want my lack of saying
11 anything with regard to the appearances by the
12 intervenor to be deemed in any way a waiver of my
13 motion to exclude and to deny any intervention by
14 any parties in this proceeding.

15 JUDGE LUNDSTROM: Arguments regarding the
16 merits of any appearances for intervention will be
17 heard whenever such petitions are offered. Okay.

18 MR. WOLF: Thank you.

19 JUDGE LUNDSTROM: Very well. I have
20 adjourned the hearing until 1:30 p.m. back here.
21 The hearing will be adjourned.

22 (Recess at 10:45 a.m.)

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1 (Hearing reconvened at 1:30 p.m.)

2 JUDGE LUNDSTROM: The hearing will please
3 come to order. Let the record show the hearing was
4 opened formally at 10:30 -- 10:45 a.m. and
5 appearances were taken. It's my intention to take
6 appearances now. The hearing is being convened in
7 the matter of the complainant, Evergreen Trails,
8 Incorporated, d/b/a Gray Line of Seattle,
9 complainant, versus San Juan Airlines, Incorporated,
10 a Washington corporation, d/b/a Shuttle Express,
11 respondent.

12 This is Wednesday the 27th of June, 1990.
13 The hearing is being convened before the Washington
14 Utilities and Transportation Commission. The
15 Commission consists of Chairman Sharon L. Nelson,
16 Commissioner Richard J. Casad and Commissioner A. J.
17 Pardini. The administrative law judge is Steven E.
18 Lundstrom of the office of administrative hearings.
19 Let the record show it's 1:30 p.m.

20 I would like to take appearances now
21 beginning with the complainant, please.

22 MR. MacIVER: My appearance is as
23 previously stated when the hearing opened at 10:30,
24 this morning, your Honor.

25 My name is Clyde MacIver and I am

1 representing the complainant.

2 MR. WOLF: My name is Bruce Wolf. I'm an
3 attorney at law with the law firm of Sessions and
4 Company located at 5120 Columbia Center, 701 Fifth
5 Avenue, Seattle, Washington, 98104, appearing here
6 this afternoon now on behalf of the respondent,
7 Shuttle Express.

8 JUDGE LUNDSTROM: Okay. Commission staff?

9 MR. CEDARBAUM: Robert Cedarbaum,
10 Assistant Attorney General. My business address is
11 as previously stated this morning.

12 JUDGE LUNDSTROM: Could I take appearances,
13 please, with those -- from those who intend to
14 intervene?

15 MRS. COOMBS: Mrs. Diane J. Coombs, with
16 Everett Airporter Services Enterprise.

17 JUDGE LUNDSTROM: Mr. Richards Reiningger,
18 president, Suburban Airport, from Bellevue, and the
19 address is the same as this morning.

20 JUDGE LUNDSTROM: Thank you very much.
21 All right. As the first order of business in the
22 hearing, the petitions for intervention are heard.
23 I can take them in order of appearance. Ms. Coombs,
24 did you intend to petition for intervention?

25 MRS. COOMBS: Yes, I do at this time.

1 JUDGE LUNDSTROM: Okay. Would you like to
2 state your grounds for intervention, please?

3 MRS. COOMBS: Probably the main is that we
4 serve some of the same areas. I'm particularly
5 concerned with the on-call definition for picking up
6 of passengers at Sea-Tac and I believe that'll come
7 out in this -- in this hearing, and I think that
8 we've had an ongoing continued interest in this
9 company and their activities, and I think that we
10 should be a party -- party to this, these
11 proceedings.

12 JUDGE LUNDSTROM: You're aware, are you
13 not, that the petition -- or that the complaint
14 deals with -- entirely with traffic between Sea-Tac
15 and the downtown Seattle hotels?

16 MRS. COOMBS: Yes, we serve two Seattle
17 hotels, your Honor.

18 JUDGE LUNDSTROM: Which ones are those
19 that you serve?

20 MRS. COOMBS: Well, three, actually, the
21 Meany Towers, University Plaza, and the Ramada Inn
22 at Northgate.

23 JUDGE LUNDSTROM: Okay. Now, if your
24 petition for intervention were granted, what would
25 your presentation consist? How would you intend to

1 participate in this proceeding?

2 MRS. COOMBS: Probably be a very short
3 statement.

4 JUDGE LUNDSTROM: If you were allowed an
5 opportunity to present your statement as a party,
6 would that satisfy your interest? I mean, rather
7 than conduct extensive cross-examination and so
8 forth?

9 MRS. COOMBS: I don't believe that I will
10 be conducting any cross-examination. I would like
11 to be afforded that opportunity, not always knowing
12 what's going to come up at these hearings, but at
13 this time I don't plan on doing that, your Honor.

14 JUDGE LUNDSTROM: Okay. Any party care to
15 be heard on this, on the petition for intervention?

16 MR. WOLF: I do, your Honor. It might be
17 easier if we heard both petitions for intervention
18 and then I could respond to both of them at the same
19 time. My response will be identical. Just a
20 suggestion.

21 JUDGE LUNDSTROM: Okay. Fine. Well, I am
22 going to ask other counsel if they have any --
23 anything you would like to address to this
24 particular petition, Mr. MacIver?

25 MR. MacIVER: Not at this point in time.

1 I may after hearing what objection Mr. Wolf may have.

2 JUDGE LUNDSTROM: Mr. Cedarbaum?

3 MR. CEDARBAUM: I'd prefer to hear what
4 the objection is first and I have no -- it's
5 probably a good idea to take Mr. Reininger's
6 petition to intervene now and we'll just deal with
7 them as a package because I think they basically
8 will be allowed in or not allowed in on the same
9 basis.

10 JUDGE LUNDSTROM: Very well. Thank you.
11 Mr. Reininger, are you prepared to make a statement
12 in support of your petition?

13 MR. REININGER: Yes, I am, and we also
14 petition on the same basis as Mrs. Coombs and the --
15 with the prior reservations problems at the Sea-Tac
16 Airport, and solicitation and problems of that
17 nature, and I will just be making a direct statement,
18 no cross-examination or no witnesses.

19 JUDGE LUNDSTROM: Okay. Very well. Mr.
20 Wolf, would you care to state your objections?

21 MR. WOLF: Yes, your Honor. The way I
22 view the petitions for intervention, and given the
23 nature of the instant proceedings, this is a
24 complaint proceeding, initiated by the carrier Gray
25 Line, pursuant to a particular statutory section,

1 and the complaint alleges and those complaints must
2 be specific, the complaint alleges that Shuttle
3 Express has been violating the terms of its
4 operating authority and exceeding its operating
5 authority, and that as a result of those alleged
6 continuous violations, they have caused damage to
7 Gray Line in the 12 downtown Seattle hotels served
8 by Gray Line. That is the way these pleadings are
9 formed. They are formed with that specificity and I
10 have had a right to rely with -- on those as we have
11 prepared for this hearing. Given that, I now hear
12 the appearances for intervention to really be asking
13 for what's called a special intervention. If these
14 two carriers come in or these two parties come in,
15 they are going to be substantially broadening the
16 issues in this proceeding, and therefore that -- I
17 think that therefore is one for special intervention.
18 I don't think that would be proper notice-wise with
19 respect to the respondent. We have prepared -- we
20 have prepared to meet the arguments with regard to
21 the 12 downtown hotels. This broadens the issue.
22 It's not in compliance with the rules for special
23 intervention, with regard to the -- that they be in
24 writing and filed previously, and I think for those
25 specific reasons, that it broadens -- it

1 substantially broadens the issues, that we have
2 prepared for, and as phrased by the pleadings, that
3 the petitions for intervention should be denied.

4 JUDGE LUNDSTROM: Thank you. Mr. MacIver,
5 do you wish to be heard?

6 MR. MacIVER: I have no firm feeling on
7 this one way or the other, your Honor, other than I
8 would believe that in view of the limited nature of
9 the intervention, they are concerned about the --
10 part of our complaint is concerning what we believe
11 to be operations by Shuttle Express in excess of
12 their on-call operating authority at the airport as
13 well as at the hotels we serve.

14 These intervenors also operate out of that
15 same airport, would be impacted if indeed those
16 allegations are proven by the same type of activity,
17 and I would think the Commission would want to hear
18 it for what it's worth, go more to the weight. We
19 have specific relief requested in our complaint
20 directed to us, but I think that they may have
21 information or evidence that would be germane to the
22 issues to be raised pertaining to how Shuttle
23 Express is operating at the airport, so I wouldn't
24 think their interventions would broaden the issues
25 in this case at all in that sense.

1 JUDGE LUNDSTROM: Okay. Mr. Cedarbaum, do
2 you wish to be heard?

3 MR. CEDARBAUM: Yes, I have no objection
4 to the intervention by either Suburban Airporter or
5 EASE. The Commission -- the determination of the
6 intervention requests are controlled by WAC 48009430,
7 which for general intervention requires that the
8 petitions for intervention not broaden the issues
9 and that they show substantial interest in the
10 issues raised by the case or that intervention would
11 be in the public interest. I think one of the
12 issues in this case will certainly be the nature of
13 what on-call service is, based on the evidence
14 presented and the operations that are currently
15 being maintained by Shuttle Express. That's a
16 provision of Shuttle Express' certificate authority
17 which controls the entire expanse of their operating
18 territory, and in that sense affects and I think
19 would have a substantial impact on both of the
20 intervenors or potential intervenors, so to that
21 extent I don't think they're seeking to broaden the
22 issue. I think they have a substantial interest in
23 the issues raised by this proceeding. I would agree
24 that the remedy that is being sought would concern
25 Gray Line itself in terms of restrictions to Shuttle

1 Express' authority, and there will be evidence
2 apparently about Gray Line's financial harm or
3 alleged financial harm, and I think that getting
4 into that kind of discussion with regard to the
5 intervenors probably would be outside the scope of
6 the proceeding, but as to the on-call issue, I think
7 that that's relevant to these two operations, and I
8 would have no objection.

9 JUDGE LUNDSTROM: Okay. I would like to
10 point out to those who have -- to the two parties
11 that have petitioned for intervention that under the
12 regulations that govern this proceeding and the
13 Administrative Procedures Act, the Commission is
14 given wide authority to permit intervention with
15 several limitations on it. I am going to note that
16 having stated in general what your authority is and
17 I presume that you will proceed to prove that at
18 some point in time, where your interests in this
19 proceeding coincide with the issues that are
20 presented by this complaint is at the nature of the
21 operations of Shuttle Express at Sea-Tac, and so I
22 think it's appropriate to grant your petition for
23 intervention to a limited extent to allow you to
24 comment on matters specifically within your
25 knowledge concerning those subjects that are brought

1 up in the complaint about -- of the alleged subjects
2 of complaint of Shuttle Express operations at
3 Seattle-Tacoma International Airport and to grant
4 your petition for purposes of comment on those
5 issues only. I remind you that the complainant has
6 requested specific relief and that is limitation of
7 authority between Sea-Tac and the specified downtown
8 Seattle hotels which it serves, and that neither of
9 you I think serve those particular facilities, so
10 that's really outside -- to comment on anything
11 involving your authority would be outside the scope
12 of this proceeding. Okay. So I think that it's
13 appropriate to grant your petitions to the limited
14 extent that I've stated. Do you have any question
15 about that?

16 MR. REININGER: I have no questions.

17 MRS. COOMBS: No, sir.

18 JUDGE LUNDSTROM: Okay. Thank you. Very
19 well. Now, are there any procedural matters or
20 motions from any party before the presentations
21 begin?

22 MR. WOLF: Nothing from the respondent,
23 your Honor.

24 JUDGE LUNDSTROM: Complainant?

25 MR. MacIVER: The only procedural matter I

1 have is that we were looking at some documents that
2 were brought pursuant to subpoena by Mr. Sherrell
3 early this morning. We would like to make copies of
4 two or three of those documents and they were --
5 they left with Mr. Wolf and Mr. Sherrell at the
6 break this morning, and we would need access to
7 those documents. While I'm cross-examining Mr.
8 Sherrell, if someone could make copies of the
9 pertinent documents because I would want to use them
10 as exhibits for Mr. Sherrell.

11 MR. WOLF: They are right here, your Honor.
12 The only thing that -- problem that I see is that
13 Mr. Sherrell may be referring to the two notebooks
14 that we have here during his testimony.

15 MR. MacIVER: And I certainly have no
16 objection to that. We need to make a copy of a
17 couple of documents that I want to present as
18 exhibits.

19 JUDGE LUNDSTROM: Are they in the
20 notebooks?

21 MR. MacIVER: I haven't looked at them.
22 Mr. Harlhock of my office has.

23 JUDGE LUNDSTROM: Well maybe, if you can --
24 can we arrange to have those things extracted from
25 the notebook and copied while the examination is

1 going on? Is that okay with you, Mr. Wolf?

2 MR. WOLF: Yes.

3 JUDGE LUNDSTROM: Okay. Fine. Very well.

4 Get that underway, please. Is there any other
5 procedural matters? Are there any other persons in
6 the room who wish to petition for intervention?

7 Okay. Hearing no response, then, are you prepared
8 to commence your presentation, Mr. MacIver?

9 MR. MacIVER: Yes.

10 JUDGE LUNDSTROM: You may begin with an
11 opening statement, if you wish.

12 MR. MacIVER: Yes, your Honor, very
13 briefly I wanted to state in the way of an opening
14 statement to make it clear to you and to the
15 Commission is what we are not seeking here is that
16 the purpose of our complaint is not an effort to put
17 Shuttle Express and its door-to-door service on an
18 area-wide basis out of business. We are going to
19 try to stay very focused in our presentation and
20 concentrate on how Shuttle Express began its
21 operations, what it was representing to the
22 Commission at the time it received its authority,
23 and how those operations have now subsequently
24 leveled off into where they are today, and
25 ultimately hoping that we will be able to make our

1 case that they are exceeding the intent and the
2 spirit of the authority which they received to the
3 point where they are now operating in a fashion
4 which the Commission did not anticipate they would
5 and inflicting harm on Gray Line which was not
6 anticipated. Some of these issues were addressed
7 initially in our petition of reconsideration which
8 the Commission denied in belief that the on-call
9 restriction would provide adequate protection and
10 we're here to demonstrate that it has not, and so we
11 will try to stay very focused on those issues and
12 move along as rapidly as we can.

13 JUDGE LUNDSTROM: Okay. Mr. Wolf, would
14 you care to make an opening statement now or wait
15 until you begin?

16 MR. WOLF: Just briefly and very briefly --

17 COMMISSIONER PARDINI: Excuse me just a
18 moment. Would each of you gentlemen move the
19 microphones just a little bit closer to you?

20 MR. MacIVER: I don't know that they're on,
21 Commissioner Pardini.

22 COMMISSIONER PARDINI: They're on, but
23 they've just got to be a little closer to you.

24 MR. WOLF: Is that better?

25 COMMISSIONER PARDINI: Yes. It's a public

1 hearing. People in the back of the room would like
2 to hear what you're saying, too.

3 MR. WOLF: Yes, your Honor, very briefly,
4 I would like to echo the words of counsel for the
5 complainant in this proceeding, and that is to the
6 effect that the issues presented to yourself and to
7 the Commission are very narrow. This is a complaint
8 proceeding brought pursuant to RCW 81.04.110. Gray
9 Line alleges that Shuttle Express has violated the
10 terms of its operating permit, and that as a result
11 of those violations, Gray Line has been damaged
12 which should warrant the Commissioners in granting
13 Gray Line some relief, and placing additional
14 restrictions on the operating permit of Shuttle
15 Express. The complainant has the burden of proving
16 both of those factors, number one, violations of the
17 terms of the current operating permit, number two,
18 that has more probably than not resulted in damage
19 to Gray Line's operations. It will be our
20 contention that neither principal or neither
21 allegation, neither prong can be proven. Not before
22 this Commission is a retrial or a rehearing of the
23 issues in the initial application of Shuttle Express,
24 in the classification proceeding of Shuttle Express,
25 in the petition for reconsideration or in those

1 matters that now sit with the Thurston County
2 Superior Court on Gray Line's petition for judicial
3 review of this Commission's, or not -- the
4 Commission has already determined and decided as a
5 final order of this Commission that the public
6 interest demands the type of service proposed and
7 now offered by Shuttle Express, The Commission
8 notice with regard to what the public interest
9 required and that is now in the form of the permit.
10 Those issues, the public need -- those are not
11 before the Commissioners or -- those are not issues
12 in this proceeding. Again, they are only the two
13 that I mentioned, have there been violations, and
14 repeated violations, and has that caused Gray Line
15 damage. Thank you.

16 JUDGE LUNDSTROM: Mr. Cedarbaum, do you
17 wish to make a statement at this point?

18 MR. CEDARBAUM: Just I guess one point of
19 clarification. I would agree that those were the
20 issues raised by the complaint, but I think an issue
21 that -- or an area of concern would be what the
22 Commission meant by "on-call" and what "on-call"
23 means in the certificate authority based on the
24 proposed operations and whether those operations now
25 exceed the scope of the on-call authority that was

1 originally granted, so to that extent we may be
2 going back into that old record or operations that
3 existed at that time to determine what was proposed
4 and what the Commission intended, but certainly
5 public convenience and necessity at that point in
6 time is not an issue or the other specific issues
7 raised by an application proceeding.

8 MR. MacIVER: Yes, I certainly agree with
9 that and will be asking Mr. Sherrell questions about
10 positions he took in the prior proceedings to
11 determine his intent in his proposal at that time.
12 I am not quarreling at all over filings of public
13 convenience and necessity that were made. I would
14 agree with Mr. Wolf, those are not an issue, but we
15 will be going over the history of this so you can
16 see how this evolved over time.

17 JUDGE LUNDSTROM: I might point out to the
18 parties that in addition to the general complaint
19 statute which is 8104.110 which outlines in broad
20 general form some of the quasi judicial and quasi
21 legislative steps that the Commission may take in
22 response to a complaint, the last paragraph of RCW
23 801.62.030 states that the Commission may at any
24 time by its order duly entered after a hearing had
25 upon notice to the holder of any certificate under

1 this chapter, which is the position of the
2 respondent here, and an opportunity to the holder to
3 be heard, the Commission has -- may determine
4 whether its orders have been violated willfully, so
5 forth, and as a part of such considerations and
6 considerations under the complaint statutes if it's
7 necessary to interpret the authority that has been
8 granted, so I think that the extent of the authority,
9 rather than a relitigation of the public need, is a
10 legitimate subject matter here. Okay. Anything
11 further from any parties?

12 MR. MacIVER: We're ready to proceed, your
13 Honor.

14 JUDGE LUNDSTROM: Thank you. Call your
15 first witness, please.

16 MR. MacIVER: I would call Mr. Sherrell.

17 JUDGE LUNDSTROM: Would you take the
18 witness stand, Mr. Sherrell? I am going to ask you
19 to raise your right hand and be sworn, please.
20 Whereupon,

21 JIMY M. SHERRELL,
22 having been duly sworn, was called as a witness and
23 was examined herein and testified as follows:

24 JUDGE LUNDSTROM: Thank you. Be seated,
25 please.

1

2

DIRECT EXAMINATION

3 BY MR. MacIVER:

4 Q. Mr. Sherrell, would you please state your
5 name and give us your business address, please.

6 A. Jimmy, J I M Y, M, S H E R R E L L, 80511
7 Aurora, Seattle, Washington.

8 Q. Mr. Sherrell, are you the president and
9 general manager of Shuttle Express?

10 A. Yes. I am president, not general manager.

11 Q. Are you responsible for the day-to-day
12 operations and the policies adopted and followed by
13 Shuttle Express?

14 A. Yes.

15 Q. Mr. Sherrell, I gather you live in Bend,
16 Oregon, and commute to Seattle during the week to
17 conduct your business affairs with Shuttle Express?

18 A. My residence is Seattle, Washington. I
19 have a ranch in Oregon.

20 Q. And the principal other owner of Shuttle
21 Express, the majority owner, I gather, is Mr.
22 Whittier?

23 A. Yes.

24 Q. And he has homes in Northern California
25 and one up in the San Juan Islands?

1 A. Yes.

2 Q. Mr. Sherrell, you are here under subpoena
3 today; is that correct?

4 A. Yes, I am.

5 Q. Would you please get before you a copy of
6 the subpoena that I served -- had served upon you
7 last week.

8 I just wanted to clarify for the record a
9 couple of things. The item number one on the
10 subpoena, we asked you to bring all documents that
11 show driver and dispatcher procedures, and all
12 revisions to such procedures, including but not
13 limited to manuals, training materials, bulletins,
14 et cetera, from January 1, 1989 to the present. I
15 am advised that you have not produced anything other
16 than your current driver manuals, is that correct?

17 MR. WOLF: Object to the form of the
18 question. It assumes that there were documents not
19 supplied that exist, which is not the case.

20 BY MR. MacIVER:

21 Q. Is it a fact, Mr. Sherrell, that you
22 didn't supply the earlier driver procedures and
23 manuals because you've indicated they have been
24 destroyed and are no longer kept at your company?

25 A. Yes.

1 Q. So you did in fact bring only the current
2 ones, is that correct, in response to item one on
3 the subpoena?

4 A. Yes.

5 Q. And you have brought none of your prior
6 driver manuals or procedures such as those that were
7 in effect at the time you were applying for or were
8 early operating under your authority?

9 A. Yes, that's correct.

10 Q. You don't have those here?

11 A. I do not.

12 Q. And you say they've all been destroyed?

13 A. I don't know their whereabouts, unless
14 they're in a file that would be from the earlier
15 WUTC. I don't know.

16 Q. Item number two, Mr. Sherrell, we asked
17 you to show all documents that show number of
18 passengers transported by Shuttle Express as an
19 airport operator and not as a charter party operator
20 between hotels in Seattle and the Seattle-Tacoma
21 International Airport from January 1, 1989, to
22 present. Am I also correct in my understanding that
23 you indicate you do not keep such records that would
24 show specifically the traffic to and from between
25 Sea-Tac and the hotels?

1 MR. WOLF: Again I object to the form of
2 the question. In response to that section of the
3 subpoena, ten boxes of driver daily recap records
4 were produced and that was over a day at which Mr.
5 MacIver's office was -- had -- that were completely
6 available to him to peruse, to copy, to do whatever
7 they wanted to with them.

8 MR. MacIVER: Your Honor, we're going to
9 be here under these questions for many hours if we
10 have to endure a speech after every one of my
11 questions. I asked Mr. Sherrell a question and I
12 think he can respond to it.

13 JUDGE LUNDSTROM: Sure. Would you respond
14 to the question, please? Overrule the objection.
15 Go ahead. If you can.

16 A. Can I elaborate on that, on your question,
17 to answer it fully?

18 Q. Yes. Please do.

19 A. Okay. We do not have a composite, a
20 summary of traffic between hotels in Seattle and
21 Sea-Tac International Airport. We have daily
22 passenger driver records which were offered to you.

23 Q. You only have driver records, you don't
24 have dispatcher records to show those trips to and
25 from the hotels?

1 A. That is correct.

2 Q. Okay. Well, Mr. Sherrell, when you
3 testified in the -- what I am referring to in the
4 King County proceeding, which is Docket No. -- which
5 is the proceeding where you were applying for
6 authority, which is Docket No. D-2566, you stated as
7 follows at page 552 of that transcript, as to your
8 method of operation, "Once we have the reservation
9 and it's confirmed, then this is passed into
10 dispatch. The dispatch conducts a routing the day
11 before travel and puts usually three pickups
12 together, so that we can facilitate higher
13 utilization of our vans." That would suggest to me
14 that you would, sir, have dispatch records showing
15 how the vehicles were dispatched between the hotels
16 and Sea-Tac, and refreshing your memory with that
17 testimony, is it still your testimony that you have
18 no dispatch records showing this type of tracking?

19 A. Yes.

20 Q. So your testimony was incorrect?

21 A. No.

22 Q. Your testimony is that you have changed
23 your method of operation?

24 MR. WOLF: Your Honor, I am going to --

25 A. No.

1 MR. WOLF: -- object. This is improper
2 impeachment. It's not --

3 MR. MacIVER: I am not trying to impeach
4 the witness. I am trying to find out why certain
5 information were not produced in response to our
6 subpoena. Mr. Sherrell had testified before this
7 Commission under oath that his dispatch conducts
8 routing the day before service and I imagine that
9 there is -- should be a paper trail of that
10 information.

11 JUDGE LUNDSTROM: I don't perceive this as
12 being impeachment. I think it's proper inquiry into
13 the records kept by the business. Overruled.

14 Go ahead, please.

15 A. May I elaborate on that, explain it fully?

16 Q. Please do.

17 A. Our routing is done one day, two days and
18 three days prior, and the way we route is we have a
19 reservation slip, and this is to the airport, from
20 reservations. These are put up on a metal board,
21 and they are routed, but there is no per se route
22 figured out per van. Routes are assigned vans as
23 they become available during each hour, each second,
24 so there is no record of that. From the port, our
25 record only consists of a passenger's name and time

1 that it's called in. Their destination is written
2 on a white erasable board so that we put the routes
3 together and then immediately pick up our guests, so
4 therefore I don't have a summary and the only thing
5 I really have to offer is our driver recaps which
6 show the origin destination for every passenger that
7 we carry.

8 Q. So your statement in your King County case,
9 for purposes of reference, Mr. Sherrell, I will
10 refer to your proceeding where you were applying for
11 authority in the King County case.

12 A. I understand.

13 Q. I get confused on the docket number.

14 A. I understand.

15 Q. So when you say there "and dispatch
16 conducts a routing the day before travel, and puts
17 usually three pickups together so that we can
18 facilitate higher utilization of our vans," there is
19 no routing slips to show how dispatch in fact routed
20 these vans?

21 A. No. Let me explain it again. Okay?
22 There's a reservation slip taken, and it will have a
23 specific passenger origin. Then that goes into
24 dispatch. Dispatch then the day before -- or
25 actually up to three days before, starts putting

1 these together to make a route. The slips are only
2 put together and they're put up on a metal board
3 with a magnet, and this can change -- well, if we
4 start today and we're doing two days prior, it'll
5 change tonight for tomorrow, so there is no paper
6 per se, but they are routed, yes, and they are put
7 together, and they're a visual, and then the records
8 are then put in a box which we offered you.

9 Q. Mr. Sherrell, you've testified earlier
10 that the Shuttle Express airporter idea was
11 conceived and implemented initially by you, that
12 you're responsible for the creation of Shuttle
13 Express airporters; is that correct?

14 A. Yes.

15 Q. And that you began your operations as an
16 airporter in approximately September of 1987; is
17 that correct?

18 A. Yes.

19 Q. And is it not true, sir, that from
20 September of 1987 up to the time of hearing on your
21 application for authority in King County, it was
22 your position that Shuttle Express airporter
23 operations were not subject to this Commission's
24 regulations, because all passengers were served
25 under prior or common arrangement with the airlines?

1 A. Yes.

2 Q. In other words, it was your representation
3 to this Commission that all Shuttle Express
4 passengers had prearranged for your airporter
5 service in conjunction with their air travel
6 arrangements; is that correct?

7 A. Yes.

8 Q. You further represented to the Commission
9 at the time you sought authority that if your
10 application was granted, there would be "no change
11 in the manner or method of your operations." Did
12 you not so state?

13 A. I can't remember back that far, but I'm
14 sure there's a record on it that you could refer me
15 to.

16 Q. I am referring to page 205 of the
17 transcript of the proceeding in which you were
18 seeking authority. You had not received authority
19 at this time but you were seeking it and you had
20 described your arrangement of making -- handling
21 your passengers and prior common arrangement with
22 airlines. You were asked the following question by
23 your counsel, Mr. Wolf, question, "Mr. Sherrell,
24 with respect to the operations that have taken place
25 from September 1987 to present, can you tell us

1 whether or not if this application is granted, you
2 anticipate any change in the manner or methods of
3 your operations?" Your answer to that question was
4 no. Do you recall that, Mr. Sherrell?

5 A. Yes, I do.

6 Q. You further testified, Mr. Sherrell, in
7 the King County case, that people wanting your
8 service from Sea-Tac would "make prior arrangements.
9 If they were traveling out of Seattle, we would make
10 reservations on their return to pick them up." Do
11 you recall that testimony, Mr. Sherrell?

12 MR. WOLF: Your Honor, I am going to
13 object to the relevancy. We were in hearing for
14 approximately ten days with regard to the -- what we
15 are referring to as the King County application. As
16 a result of that a final order was issued and a
17 permit was issued authorizing operations. The
18 issues that are relevant in this proceeding are
19 whether or not the terms of that permit are being
20 violated. I object to the relevancy of this line of
21 inquiry.

22 MR. MacIVER: I would be happy to explain
23 that relevancy. I think a key issue in this
24 proceeding is the type of service Mr. Sherrell
25 represented he was proposing and had been conducting

1 when he was requesting the authority. It goes
2 indeed in large part to the type of authority the
3 Commission envisioned granting Mr. Sherrell when he
4 got his authority, and I -- it's very critical to
5 our case to go over this background to make it clear
6 how Mr. Sherrell held himself out to this Commission
7 at the time he sought authority and compare it then
8 to how he is operating today, and that is the
9 purpose of this line of questioning, your Honor.

10 JUDGE LUNDSTROM: Okay. I think I agree
11 with the statement of relevancy and overrule the
12 objection and allow the examination to continue. Go
13 ahead, please.

14 Q. I'll repeat the question, if you would
15 like, Mr. Sherrell.

16 A. Please.

17 Q. Is it not true that in the King County
18 case you further testified that people wanting your
19 service from Sea-Tac would "make prior arrangements.
20 If they were traveling out of Seattle, we would make
21 arrangements on their return to pick them up"? Do
22 you recall that?

23 A. I vaguely recall that there was a lot of
24 testimony, but --

25 Q. If you would like, I would specifically

1 read the question and answer.

2 A. No.

3 Q. If you can accept that subject to check,
4 that's at page 208 of the transcript, I will move on.

5 A. I would accept that, yes, I will.

6 Q. Mr. Sherrell, with respect to the Sea-Tac
7 originations, you also testified that Shuttle
8 Express had "been providing that type of service
9 with advance reservations to passengers arriving at
10 Sea-Tac." Do you accept that you so testified at
11 page 208 of the transcript?

12 A. Yes.

13 Q. With respect to passengers leaving from
14 home, Mr. Sherrell, you testified in the King County
15 case that "Shuttle Express requests a day in advance
16 notice so dispatch can efficiently route the
17 equipment."

18 A. No.

19 Q. Mr. Sherrell, I am reading you your answer
20 to a question from your counsel which appears on
21 page 552 of the transcript.

22 MR. WOLF: May we have the full question
23 and answer, please?

24 Q. The question goes, "Does the customer have
25 any input as to the" -- oh, I'm sorry, I started

1 once.

2 "Does the customer have any input as to
3 the decision as to what the pickup time is,
4 discussion as to how in operational standpoint the
5 arrangement works or the pickup works?"

6 Your reply to that was, "Once we have the
7 reservation and it's confirmed, then this is passed
8 into dispatch and dispatch conducts a routing the
9 day before travel, and puts usually three pickups
10 together so that we can facilitate higher
11 utilization of our vans."

12 MR. WOLF: Is that the complete answer?

13 MR. MacIVER: That's the complete answer.

14 A. My answer is no.

15 Q. Your answer is no, you did not say that?

16 A. No, I said that. You asked -- can I
17 elaborate? I'm getting carried away here. I got a
18 little upset because this has been a subject that
19 was brought up by the previous manager that I have
20 never, never condoned, to require 24 hours in
21 advance, never, and I may have stated that, but
22 you're taking it out of text.

23 Q. All right. Referring also to page 1081,
24 Mr. Sherrell, questions from Mr. Wolf, you say --
25 the question is, "Moving on, then, also in response

1 to questions by Mr. Reininger, in Exhibit 26 there
2 is a reference that you request 24-hour advance
3 reservations. Are there any exceptions?" He was
4 interrupted, some colloquy, then Mr. Wolf continued
5 on with the question. Are there any exceptions to
6 the "24-hour rule"? Answer by Mr. Sherrell, "Yes."

7 "Question: Could you itemize those for us,
8 please, Mr. Sherrell?

9 "Answer: Hotels, motels, are not required.
10 In fact, we actually do not require our customers to --
11 we do not require our customers to give us 24 hours
12 advance notice and this is more of a typo error. We
13 actually request 24 hours' advance notification,
14 which was precisely the question I had asked you,
15 Mr. Sherrell, and you went on to say, "We do not
16 require it." Now, I had asked you and I quote, With
17 respect to passengers leaving from their homes, did
18 you testify in King County that "Shuttle Express
19 requests a day in advance notice so that you can
20 dispatch your equipment more efficiently"?

21 A. Sir, yes, we used to request it. I
22 misunderstood you. I thought you said we require.

23 Q. I used the word request, sir.

24 A. I'm sorry.

25 Q. Keep in mind, now, these questions -- I am

1 not trying to entrap you. These questions are
2 pertaining to what you were representing to the
3 Commission in January of 1989 when you were seeking
4 your authority. That's the context of which I am
5 asking these questions.

6 A. I totally understand that and I also heard
7 "require" in that communication, and I have some
8 very strong feelings in that mode of operation
9 because it does ill service to the guests out there.
10 That is why I reacted like I did.

11 Q. Mr. Sherrell, in connection with your
12 application for authority, Shuttle Express presented
13 a number of public witnesses; is that correct?

14 A. Yet.

15 Q. And also is it not a fact, Mr. Sherrell,
16 that not a single public witness, a witness who
17 would be a rider of your service, testified in
18 support of an on-demand or walk-up or hail the van
19 demand type service as contrasted to the customer
20 who wanted a service that they could call in advance
21 to reserve your services?

22 MR. WOLF: Your Honor, I am going to
23 object again to this line of inquiry. We are
24 reopening the entirety of the proceedings that were
25 had and decided by this Commission. If counsel is

1 going to persist with regard to that, are -- is the
2 respondent then going to be permitted to bring back
3 those in excess of 20 public witnesses that
4 testified or to rehash and go over the volumes and
5 volumes of testimony that were presented at that
6 hearing? I object on the basis of relevancy.

7 MR. MacIVER: Your Honor, I am not asking
8 these questions to quarrel over whether or not
9 public convenience and necessity existed or did not.
10 I am asking these questions to elicit the nature of
11 the public support that was presented because it
12 bears on the type of authority which was granted,
13 and that's the purpose of the questions, and it's
14 very relevant.

15 JUDGE LUNDSTROM: Okay. Mr. Cedarbaum?

16 MR. CEDARBAUM: I see the relevance. A
17 key element of any authority granted by the
18 Commission are expressions of need by the public,
19 and so what the public expressed as their need back
20 in January of 1989 when the original application was
21 heard is certainly relevant as to what authority was
22 granted, and that's one of the issues that was
23 raised by the complaint.

24 JUDGE LUNDSTROM: The issue here is not to
25 redecide the issue of need as it was presented

1 previously, but to determine -- possibly give some
2 nature of what on-call service means, and I think if
3 there was any discussion of that issue in the
4 previous proceeding, Mr. Sherrell is certainly
5 entitled to bring that out in response to this
6 question. Go ahead, please.

7 MR. MacIVER: And as I stated initially,
8 we are not here for the purpose of seeking
9 cancellation of Shuttle Express' authority. We're
10 not disputing the fact he has authority and -- we're
11 trying to determine the type of need that was
12 demonstrated to which the authority was granted,
13 because it has a bearing on interpreting the
14 authority.

15 MR. WOLF: But, your Honor, the need was
16 established and the permit was issued and the permit
17 reads as it reads. If in fact there are violations
18 of the current permit the way it reads, that's one
19 thing, but why the Commission -- the testimony
20 underlying the Commission's decision and the
21 issuance of the permit and the terms of the permit
22 is -- is not relevant to this complaint proceeding,
23 that alleges a violation of that permit. If it --

24 MR. MacIVER: May I proceed with my
25 questioning of this witness?

1 JUDGE LUNDSTROM: I have overruled the
2 objection, and I think that the reason for that is
3 that Mr. MacIver having drawn the complaint is
4 entitled to make his record regarding that. I point
5 out once again that this is not a relitigation of
6 need as that issue was presented in the previous
7 proceeding. Go ahead, please.

8 Q. Mr. Sherrell, I'll repeat the question.

9 A. I know the question. You don't need to if
10 you don't want to. It's difficult for me to recall
11 all the specifics of the testimony. However, as I
12 recall that time, the Seattle Port agreement did not
13 allow us to take up --

14 Q. Excuse me.

15 A. Walk up or hail the van --

16 Q. Excuse me. You're not being responsive.

17 A. Yeah, I am. I am trying to tell you my
18 background of my memory. Your Honor --

19 Q. May I repeat the question? He's not even
20 near responding. I asked him a very direct question
21 and it had nothing to do with port concession
22 agreements or any other factor. I asked him -- may
23 I repeat the question so it's clear?

24 JUDGE LUNDSTROM: Well, I think he was
25 attempting to respond to it. Do you have the

1 previous question in mind?

2 THE WITNESS: Yes, I do, exactly, and I
3 was setting the stage for what I can remember of the
4 testimony.

5 JUDGE LUNDSTROM: Go ahead and answer the
6 question.

7 A. At that time we were not allowed to take
8 walk up or hail guests at the port, and therefore I
9 doubt very much that any of our witnesses would have
10 referenced being able to walk up because it was a
11 violation of the port at that time, so my answer
12 would be no, I don't think they would have testified,
13 but I can't remember specifically.

14 Q. So your answer is to the best of your
15 recollection not a single public witness testified
16 as to a requirement for hail the van, walk up or
17 demand type service from Shuttle Express as
18 contrasted to service prearranged by reservation in
19 vans?

20 A. Yeah, they couldn't have, so I doubt if
21 they would have testified that they would.

22 Q. You understand, sir, it is this Commission
23 that grants authority, not the port?

24 MR. WOLF: Object to the relevancy. I
25 think this is argumentative also.

1 MR. MacIVER: I would like to know if the
2 witness understands that, that he is not receiving
3 this operating authority from the Port of Seattle
4 but from this Commission.

5 Q. You understand that, Mr. Sherrell?

6 JUDGE LUNDSTROM: There is an objection to
7 it. I don't see what his understanding has -- adds
8 to the proceeding.

9 MR. MacIVER: Well, he was indicating that
10 he did not call public witnesses because he
11 perceived that his concession agreement would
12 prohibit it, and I am asking him whether or not he
13 understands that this Commission issues authority,
14 the port then grants concession agreements to
15 operate consistent with the authority he has been
16 granted. I am just curious whether Mr. Sherrell
17 understood that.

18 JUDGE LUNDSTROM: Please answer the
19 question.

20 A. We have two governing bodies over us. One
21 is the port and the other is the Washington
22 Utilities and Transportation Commission. At that
23 time of the hearing, we had claimed to be and felt
24 we were an interstate commerce. Therefore, our
25 governing body at that time was the Port of Seattle.

1 Q. Mr. Sherrell, you further testified and
2 represented in support of your application that the
3 type of individual, the "major client" that Shuttle
4 Express was proposing service to would be the
5 individual that would otherwise drive their own car
6 to the airport; is that correct?

7 A. Oh, definitely, yes. The majority -- you
8 said the majority, is that what you said?

9 Q. Yes. You said "your major client." The
10 major customers you were after, proposing to serve,
11 would be the customers that drive their own car to
12 the airport.

13 A. Definitely, and it is.

14 Q. And that would not be typically a hotel
15 guest, would it, Mr. Sherrell?

16 A. That specific, no, it would not, not
17 driving a car.

18 Q. And have you found that to be the case
19 since you've been operating, that that is your major
20 type of clientele?

21 MR. WOLF: Object to the relevancy. His
22 permit authorizes taking door to door passengers
23 on-call in a geographic area. Where his passengers
24 are coming from now is not relevant to this
25 proceeding. If he is taking those passengers

1 illegally in violation of the terms of his permit,
2 that is certainly and definitely relevant to this
3 proceeding, but where his passengers are coming from
4 is not.

5 MR. MacIVER: Your Honor, all of these
6 questions are very relevant in that, as I've said
7 before, I am exploring now with Mr. Sherrell the
8 type of service he approached this Commission as
9 proposing at the time he got authority, the type of
10 market that he said his service was designed to
11 serve. I am simply asking if his expectations
12 proved true and that is in fact the type of market
13 that his service has primarily served. Again, I am
14 not debating whether -- his authority is not at
15 issue here as being cancelled. I am talking about
16 what he proposed, how he's operating and how he's
17 operating now.

18 JUDGE LUNDSTROM: Frankly, I don't see the
19 relevance of that last question to the subject
20 matter of this --

21 MR. MacIVER: I'll remove it. I'll
22 withdraw it. It's not that significant.

23 JUDGE LUNDSTROM: Go ahead, please.

24 Q. Mr. Sherrell, can you tell us what percent
25 of your travelers in 1989, people you haul to and

1 from the airport, were hotel guests, staying at
2 downtown Seattle hotels?

3 A. No, I don't have any records of that.

4 Q. Can you estimate for us what percent of
5 your business is conducted between the Seattle
6 hotels and the airport?

7 MR. WOLF: Object to the relevancy.

8 JUDGE LUNDSTROM: I think there's some
9 relevance to this at least. It's on the subject of
10 traffic, and I presume you're going to proceed to
11 other levels.

12 MR. MacIVER: Yes.

13 JUDGE LUNDSTROM: Go ahead, please.
14 Answer the question.

15 A. The majority of our traffic -- I am going
16 through that backwards, aren't I? Could you ask me
17 that real briefly once again?

18 Q. Yes. I asked you if you knew what percent
19 of your traffic that Shuttle Express is handling in
20 fact is between Sea-Tac and the downtown Seattle
21 hotels. You responded you did not know.

22 A. Right.

23 Q. I just wanted to know if you could
24 estimate about what percent of your traffic would
25 fall in that category.

1 MR. WOLF: Can I ask a clarification? Am
2 I assuming in your questions, Mr. MacIver, or can
3 the witness assume that you are referring to the 12
4 apparent locations serviced by Gray Line, the
5 complainant in this proceeding?

6 MR. MacIVER: If he wishes, he can do it
7 that way, yes.

8 A. It's not a high percentage. I watch
9 dispatch all the time. I spend a lot of hours in
10 there watching our traffic flow. Most of our
11 traffic to the airports -- I couldn't -- it's a
12 small percentage.

13 Q. So in the event the Commission in response
14 to this complaint were to restrict you from service
15 to those hotels, that would not inflict material
16 harm on your operations in your door to door service
17 throughout the remainder of your territory, would it,
18 Mr. Sherrell?

19 MR. WOLF: Objection, your Honor. The
20 harm or the lack of harm resulting from an
21 anticipated -- or a ruling of this Commission in the
22 future is not relevant.

23 MR. MacIVER: Part of the relief we would
24 request is that since they have now expanded their
25 use of this on-call authority to change the nature

1 of their operations to harm us, we've asked that
2 they be restricted from these hotels. I would think
3 the Commission would want to know if we did that
4 would that inflict severe harm on Shuttle Express or
5 not. It's a public interest question, so I wanted
6 to ask him if he thought it would. He's testified
7 he has very little traffic from the hotels.

8 JUDGE LUNDSTROM: I think the relevance is
9 dealing with the remedy here, or potential remedy
10 under this complaint, so I'll allow the question.
11 Go ahead, please.

12 A. Yes, I do, and the reason -- do you want
13 just yes or no or do you want reasons?

14 Q. Go ahead, Mr. Sherrell.

15 A. The reason I do is because we've been
16 fighting to gain profitability, and when you look at
17 the effect it would have on the full service of
18 telling some guest no, we can't take you to a hotel
19 and then they want to be picked up later from a
20 business, that would actually be a different type of
21 service, then we would never get that guest, number
22 one. Number two, every passenger that we receive
23 riding on us gets us that much closer to
24 profitability, so it would have devastating effects
25 in my general opinion.

1 Q. Would have devastating effects, yet you
2 can't tell us how much of your traffic is serving
3 that market, can you?

4 A. No.

5 Q. Mr. Sherrell, with respect to your driving
6 compensation, in January of 1989 in the King County
7 case, you testified that your drivers were paid as
8 follows, "base -- it's basically 5.50 an hour, plus
9 they get two percent of gross.

10 Question by Mr. Wolf: "They get two
11 percent of gross generated by Shuttle Express or
12 generated by their own activities?

13 "Answer: Generated by Shuttle Express.

14 "Question: So they share a pool of two
15 percent of the gross revenue of Shuttle Express?

16 "Answer: yes.

17 "Question: There's no relationship to how
18 many passengers any particular driver has
19 transported during any particular time?

20 "Answer: No, there is not."

21 Do you recall that testimony, Mr. Sherrell,
22 January of '89 in your application for authority?

23 A. Yeah, but it sounds like the wrong --
24 that's not the way we were operating.

25 Q. You testified that you paid 5.50 an hour

1 plus they get two percent of gross. That's what you
2 testified to in January of '89.

3 A. Two percent of their specific gross, is
4 what it -- is what they got.

5 MR. WOLF: The question before you is do
6 you remember so testifying at the earlier hearing.
7 He's asking do you recall saying those words.

8 A. I don't, I can't recall saying that.

9 Q. If you want to see the testimony -- if you
10 would accept it subject to check, fine. If you want
11 to see the testimony, I'll show it to you.

12 A. I don't recall saying that, and what I
13 would say is what I said previously to you.

14 Q. So you would correct that testimony today
15 and say they were given 5.50 an hour plus two
16 percent of what they generated?

17 A. To the best of my recollection, I think
18 that's right. And I can't -- a lot of times gone by.
19 We have a different pay system now.

20 Q. I understand.

21 A. I could be wrong now and I can't -- I
22 cannot swear to -- I cannot swear to that.

23 Q. Let's take our time and go over this, Mr.
24 Sherrell. In respect to a very specific question
25 from your counsel, your counsel asked you, they get

1 two percent of the gross generated by Shuttle
2 Express or generated by their own activities.

3 "Answer: Generated by Shuttle Express.

4 "Question: So they share in a pool of two
5 percent of gross revenue Shuttle Express?

6 "Answer: Yes.

7 "Question: There's no relationship to how
8 many passengers any particular driver has
9 transported during any particular time?

10 "Answer: No, there is not."

11 So your counsel was very specific in
12 eliciting from you a fact that the drivers shared on
13 a pooled basis and not on the basis of fares they
14 hauled; is that correct?

15 A. I think that statement is wrong, to the
16 best of my ability.

17 Q. Is it your testimony now that you were
18 erroneous in your testimony in January of '89,
19 despite the very specific questions by your counsel?

20 MR. WOLF: Your Honor, I am going to
21 object to this line of inquiry. How Shuttle Express
22 pays its drivers, how it paid -- how they were paid
23 then or how they are paid now, as long as it is not
24 in violation of Commission regulations, doesn't
25 matter. It is not relevant.

1 MR. MacIVER: I assure you that this will
2 be connected up and will be a very enlightening and
3 significant issue in this case, your Honor.

4 JUDGE LUNDSTROM: There was discussion of
5 that in the complaint, so I think there is some
6 relevance. Go ahead, please. Overruled.

7 Q. Mr. Sherrell, I don't want to leave this
8 point until we are clear on it. I am reading to you
9 from your testimony.

10 A. I understand the question, if you want me
11 to answer it.

12 Q. On January 12, 1989, before this
13 Commission. Now, is it your testimony that is how
14 you paid your drivers. There were several very
15 specific questions asked you by Mr. Wolf in that
16 hearing and you were very specific in your answers.

17 A. To the best of my ability in recalling
18 that at that time, and I could be wrong today,
19 because that was -- that was set up and handled
20 through accounting, is that we paid them on their
21 own personal gross.

22 Q. So they -- is it your testimony today that
23 you were not testifying accurately there, that they
24 were paid the two percent, but two percent of what
25 each individual driver hauled?

1 A. I can't swear to it. I --

2 Q. You are the general manager of this
3 company, are you not, or the president of it,
4 responsible for its day-to-day operations?

5 A. Yes.

6 Q. By May of 1990 -- well, before we leave
7 this, so your testimony is either that they were
8 paid two percent of a pooled gross or they were paid
9 two percent of the fares they hauled as individual
10 drivers, it would be one or the other?

11 A. Yes, that is correct, and I can't tell you
12 more than that. I wish I could.

13 Q. Now, you subsequently materially changed
14 your way of compensating your drivers, didn't you,
15 Mr. Sherrell?

16 A. Yes.

17 Q. When did you make that change?

18 A. You have my page. Is it okay if I
19 reference something?

20 Q. The specific date isn't so significant,
21 Mr. Sherrell, if you could just give us an idea as
22 to when you made the change.

23 A. What I am referencing here is our driver
24 information manual. Approximately October. I can't
25 find a specific date on this particular one.

1 Q. Mr. Sherrell, I am now referring to your
2 testimony in the Docket No. 2589, the proceeding in
3 Pierce County where you were seeking to extend your
4 authority. Let me read you a question and answer
5 that was put to you by me and your answer, see if
6 this is accurate.

7 Question by MacIver: "How do you pay your
8 drivers, Mr. Sherrell?"

9 "Answer: We have a guaranteed wage of
10 4.40 an hour or 30 percent of gross revenues from
11 that specific driver for the day, whichever is
12 greater.

13 "Question: So your drivers -- so you pay
14 your drivers either a flat hourly rate or a
15 Commission based on revenues transported?"

16 "Answer: Yes, correct.

17 "Question: Revenues from passengers
18 transported?"

19 "Answer: Correct."

20 Is that how you pay your drivers today,
21 Mr. Sherrell?

22 MR. WOLF: Again, I object to the
23 relevancy and I will challenge counsel at this point
24 to enlighten us with regard to which violation that
25 manner and method of compensating drivers is.

1 MR. MacIVER: Your Honor --

2 MR. WOLF: What regulation is being
3 violated?

4 JUDGE LUNDSTROM: Excuse me. I think that
5 the objection is to relevancy. If you're prepared
6 to make some statement, it might as well be
7 connected up. Would you do that?

8 MR. MacIVER: I would welcome the
9 opportunity to, your Honor. When Mr. Sherrell came
10 to this Commission with proposed operating authority,
11 he had been operating without the benefit of
12 authority for some time and claiming that, well, he
13 didn't need authority because all of his airporter
14 passengers were conducted in prior known arrangement
15 with airlines, and he swept along for a couple of
16 years that way, and then when he applied for
17 authority in his proceeding, Mr. Wolf asked Mr.
18 Sherrell, in this proceeding, if you are granted
19 authority, will you, quote, "In any manner or method
20 change the nature of your operations from this prior
21 reservation mode?" Mr. Sherrell responded, "No."
22 Now we have his pay scale going from 5.50 an hour
23 and two percent of gross, suddenly changes to 4.40
24 an hour or 30 percent of the fares transported by
25 that driver.

1 Now, if that is not an inducement to
2 drivers to go out and sweep people off any sidewalk
3 or corner, including out of the hotels and out of
4 the airport who do not have prior reservations, I
5 don't know what greater inducement there is. A
6 driver gets 4.40 an hour. The fare from Seattle to
7 the airport is 12 bucks. For every single passenger
8 that driver can get into his van, he's going to get
9 four bucks, an hour's wage, and yet they contend
10 they're operating in compliance with their authority.
11 We're having our traffic diverted. Their violating
12 testimony will show later the rules and regulations
13 at the airport -- I don't blame the drivers for
14 doing that. If I had not -- if I had a choice of
15 making 5.50 an hour or \$4 for every person that got
16 into my van, I would be doing that. My point is
17 this gentleman, Mr. Sherrell, is responsible for
18 that, and he's responsible for setting up a pay
19 scheme that is inducing his drivers for doing just
20 that, and that is the relevance.

21 MR. WOLF: Your Honor, if there is
22 evidence of solicitation and violation of some sort
23 of rule against solicitation, let's have it. If
24 there is -- if people are being swept off the street,
25 let's have that testimony, but the manner and method

1 by which Mr. Sherrell compensates his drivers is not
2 relevant to this proceeding unless it is itself a
3 violation of some law, rule or regulation of the
4 Commission.

5 JUDGE LUNDSTROM: Okay. The standard of
6 evidence in this proceeding is of course that which
7 obtains under the Administrative Procedure Act and
8 under the rules of this Commission, and this
9 tribunal is allowed to refer to the rules of
10 evidence that apply and to the general law of the
11 state of Washington in making these kinds of
12 decisions. Now, the suggestion being made on behalf
13 of the complainant is that the manner of
14 compensation I think affects the solicitation mode
15 of operation of this company, and I think that
16 evidence concerning that would tend to make more or
17 less likely the conclusions urged upon this
18 Commission by the complainant. That meets the test
19 of relevance under the course rules which obtain and
20 also the general law of the state of Washington. I
21 think it also meets relevance standards under this
22 Commission's rules and the Administrative Procedures
23 Act which allows for consideration of evidence which
24 the ordinary person would apply in conducting their
25 own business, so I think under any standard which

1 applies, the evidence tends I think to make more or
2 less likely that -- the type of compensation offered
3 to drivers affects solicitation, and contributes to
4 what the complainant sees as activities outside the
5 permit, this inquiry is relevant, so that's
6 overruled. Go ahead, please.

7 MR. MacIVER: Was there an unanswered
8 question pending? I apologize. I can't remember.

9 JUDGE LUNDSTROM: Okay.

10 (Record read as requested.)

11 Q. I thought there was an open question. Is
12 that how you currently pay your drivers today, Mr.
13 Sherrell?

14 A. Yes, it is.

15 Q. Mr. Sherrell, we've been discussing the
16 King County case where you were before the
17 Commission contending that you were operating your
18 airporter service in prior common arrangement with
19 airlines, dealing with customers on a prior
20 reservation basis, correct?

21 A. Yes.

22 Q. Now I am going to take you into the Pierce
23 County case and the Lloyds Connection (CK) case,
24 where -- which is Docket No. 2589 -- no, I'm sorry,
25 in the Pierce County case, and ask you some

1 questions, which is Docket No. 2589, and you were
2 testifying in that case, now, it's a little over a
3 year later, now it's May of 1990, the prior
4 testimony was January of 1989. In the Pierce County
5 case, and I'll refer to that that way rather than go
6 back to the docket, you testified on May 22 as
7 follows, Mr. Sherrell -- excuse me. Excuse me.
8 I've gone over that.

9 What is your current rate -- what is your
10 current rate between Sea-Tac hotels and the airport,
11 Mr. Sherrell?

12 MR. WOLF: Objection.

13 MR. MacIVER: I guarantee I will --

14 MR. WOLF: There's no allegation -- my
15 objection is there's no allegation in the complaint
16 that Shuttle Express is violating any of the
17 provisions of its tariff on file with this
18 Commission. Its rates are irrelevant.

19 MR. MacIVER: I am not contending they're
20 violating its tariff, but the rates are relevant and
21 I will tie it in. This is a complaint case and I've
22 got an adverse witness here and I am asking some
23 questions that are going to be foundations for later
24 questions.

25 JUDGE LUNDSTROM: What will your later

1 questions concern?

2 MR. MacIVER: Well, I will get on to them.
3 It's going to concern really the driver compensation
4 and how they tie into rates and I -- I will agree
5 this can be stricken if I don't tie it in. But I
6 will ask him some questions about his rates, not
7 contending they are illegal rates or not properly
8 filed rates.

9 JUDGE LUNDSTROM: That's overruled.

10 MR. WOLF: And that is -- just by
11 clarification, that's with the understanding that if
12 not tied into a violation you'll be susceptible to a
13 motion to strike?

14 JUDGE LUNDSTROM: If you wish to make that
15 motion, please do so at the proper time. I'll
16 overrule the objection for now. Go ahead, please.

17 Q. What is your rate between Sea-Tac and the
18 hotels now, your present rate?

19 A. I believe it's about \$12.

20 Q. In January of 1989, according to that
21 transcript in that case, you testified your rate was
22 about nine dollars, is that correct, or would you
23 accept that subject to check, you testified your
24 rate was nine dollars?

25 A. I would do that, yes.

1 Q. And also in January of 1989, you testified
2 that you were employing between 68 and 72 drivers,
3 and would you accept that subject to check, full-
4 time drivers?

5 A. Yes.

6 Q. And in the Lloyds Connection case, Docket
7 No. 2556, you testified that you were running load
8 factors of about 3.5 passengers and that it could
9 run as high as 4.2 passengers on each trip. Do you
10 recall that being correct?

11 A. Subject to check, I would agree with it,
12 yes.

13 Q. Right. Mr. Sherrell, I had assumed that a
14 driver with those kind of load factors, if you were
15 operating between Sea-Tac and, say, downtown Seattle
16 hotels, could they haul over an eight-hour shift 40
17 or more passengers?

18 A. 40 passengers?

19 Q. Right. Over an eight-hour shift.

20 A. No. Wait a minute. I don't know that I
21 understand. Could they, you mean, if there was just
22 passengers on both ends that were just standing in
23 line to get on or in a normal course of business?

24 Q. You've indicated you were enjoying average
25 load factors of 3.5 to 4.2 passengers. My question

1 was given that, would it be fair to assume that
2 passengers between Sea-Tac and downtown Seattle, a
3 driver on an eight-hour shift, could transport
4 approximately 40 passengers? If it's a different
5 number, please give it to me.

6 A. Let me think about it just a second. Our
7 average drivers right now are -- our drivers don't
8 have a specific area they serve. They go wherever
9 they're dispatched to. The average driver right now
10 is bringing in \$180 a day. The highest average, and
11 I am talking about the average for a full 24-hour
12 day, runs about 210, to my best recollection, and
13 the difference that you'll find is in how many trips
14 they make, because we connect to the banks at
15 Sea-Tac.

16 Q. So how many passengers a day would you
17 assume a driver operating between Sea-Tac and
18 Seattle could haul in an eight-hour shift?

19 MR. WOLF: Your Honor, it's speculative
20 and again I don't believe it's relevant to any
21 violations or to the issues in this complaint
22 proceeding. The trouble that I have is there will
23 be no end to discussions in minute detail of the
24 day-to-day operations of Shuttle Express, but what
25 we're interested in here is if there is any evidence

1 that exists is evidence they are violating the terms
2 of their permit for the laws, rules and regulations
3 of the Commission.

4 JUDGE LUNDSTROM: I think the testimony
5 was drivers go wherever they're sent.

6 Q. Well, let me rephrase the question. What
7 would an average number of passengers in your
8 opinion, one of your drivers, haul on an eight-hour
9 shift given your testimony of load factors of 3.5 to
10 4.2 passengers?

11 A. Most of our shifts run ten hours, firstly.
12 The average passenger fare is \$12.40, if you average
13 every passenger we carry, and the drivers do about
14 \$185 a day divided by 12, I think that's 14, 15. I
15 would have to do the calculations, but that strikes
16 my mind, that that's how many passengers they
17 transport a day, on the average.

18 Q. Mr. Sherrell, from a monetary standpoint,
19 the current payment that -- for your drivers, your
20 incentive payment of 30 percent of fare is hauled,
21 would indeed give your drivers an incentive to
22 accept walk-up, hail-the-van type fares, would it
23 not?

24 A. That specific question, yes.

25 Q. Mr. Sherrell, after the King County case,

1 you appeared before this Commission in connection
2 with a case known as Lloyds Connection. Do you
3 recall testifying in opposition to Lloyds Connection's
4 application?

5 A. Yes.

6 Q. Do you recall that in your support -- that
7 in your testimony in opposition to Lloyd Connection's
8 application for authority, you testified that
9 Shuttle Express was still operating in interstate
10 commerce and not in intrastate commerce, and that
11 was in October of 1989, do you recall that testimony?

12 A. Subject to check, yes.

13 Q. Yes. And you further testified in the
14 Lloyds Connection case that, "We operate on a three-
15 ticket basis"?

16 A. Yes.

17 Q. In other words, you were testifying that
18 Shuttle Express operated on a prearranged
19 reservation basis and common arrangement with
20 airlines when you were testifying in the Lloyds
21 Connection case in October of 1989, correct?

22 A. Repeat that, because we're getting in
23 interstate commerce, and it's sticky.

24 Q. And, in other words, the essence of your
25 testimony in Lloyds Connection case in October of

1 1989 was that you were still operating on a
2 prearranged reservation basis in common arrangement
3 with airline travel, is that not correct?

4 MR. WOLF: Your Honor, again, the
5 relevancy. Whether Mr. Sherrell is in intra or
6 interstate commerce is not an issue in this
7 proceeding. It was not an issue in the original
8 application proceeding. Mr. Sherrell holds
9 permitting authority granted by this Commission. He
10 has his permit C-975, and he subscribes to that. So
11 whether he's operating in -- again, like we did in
12 the classification hearing, we could have five to
13 six days of hearing with regard to the issue of
14 whether or not Mr. Sherrell's operations are in
15 inter or intrastate commerce, but that is not
16 relevant to this proceeding and I would ask that the
17 line of inquiry in this regard be precluded.

18 MR. MacIVER: The issue of whether he is
19 or is not operating in inter or intrastate commerce,
20 I indeed agree is not relevant, but the manner in
21 which he operated at the time he got his authority
22 was under a prior arrangement basis. He's already
23 acknowledged that he testified that if granted the
24 authority, he would not change the manner or method
25 of his operations. Now, I am just moving him along.

1 That was in January. Now consistent with that
2 testimony in October, he's still saying, I am an
3 airporter that operates under prior arrangements.
4 This is all very relevant to the manner in which
5 this carrier held himself out to this Commission and
6 it's all going to be connected up because when we
7 finish here we're going to be showing how Mr.
8 Sherrell is in fact currently operating and you will
9 see it is distinctly different from the way he held
10 out his service to this Commission initially. That
11 is the relevancy of these questions and I think it's
12 very germane.

13 MR. WOLF: Your Honor, the manner and
14 method, nature of Mr. Sherrell's operations were
15 described over pages and pages and pages of
16 testimony at the earlier proceeding, but they are
17 not relevant here because the permit authorizes
18 certain operations. Whether or not he is operating
19 on a through ticket basis or whether or not he's
20 operating in accordance with an ICC determination of
21 a common arrangement is not relevant. That is only
22 relevant with regard to the issue of inter versus
23 intrastate commerce. It's not relevant here.

24 JUDGE LUNDSTROM: Thank you. I think I
25 agree with the objection here since the order MC

1 1809, which is rather a lengthy, I think discusses
2 and -- it discusses the mode of operation expected,
3 and represented to be undertaken by Shuttle Express,
4 I don't see the relevancy of any representations
5 that he might have had with regard to issues
6 arranged -- issues involving arrangements with
7 airlines and through ticketing, I don't see the
8 relevancy to this proceeding.

9 MR. MacIVER: The purpose I am bringing --
10 the point I am bringing out, your Honor, is that for
11 quite a period of time, Mr. Sherrell was testifying
12 that he operated only a prearranged basis. Whether
13 it's with airlines or not is of no moment to me.
14 That's just the way he phrased it, but he was
15 operating on a prearranged basis. He was not taking
16 walk-up, hail-the-van type traffic. Now, as we
17 progress through this, and I am three-quarters of
18 the way through now, we will find out that after
19 having made those representations leading up to
20 getting his authority, once he has his authority, he
21 is now changing his manner and method of operation,
22 in direct conflict with his testimony before this
23 Commission, and is now behaving in a way entirely
24 different than he represented he would behave then.
25 That is -- part of the relevancy is the driver

1 incentive plan. Now, I don't expect Mr. Sherrell to
2 get on the stand and confess anything. I have to
3 bring out the relevant information and let you, the
4 Commission, decide, when you have this information
5 and that's my purpose of doing this. I am trying to
6 give you the background and then lead him into today
7 and to how he's operating now. I am not concerned
8 whether he's an exempt carrier or not, but these
9 questions go to the way he was holding himself out
10 and representing to this Commission in testimony
11 before the Commission as to how he was operating,
12 and I think that's very relevant.

13 JUDGE LUNDSTROM: Well, I think the issue
14 is whether the service provided is on-call or not,
15 and whether his presently tendered service violates
16 that standard, so I don't see the relevance of your
17 questions in regard to the mode of service suggested
18 previous to this kind of mode of operation that's
19 contained in the order in which he got his authority,
20 so I'll sustain the objection. Go ahead, please.

21 Q. Mr. Sherrell, having in mind how you
22 previously testified how you initially operated, how
23 you testified when you were attempting to get your
24 authority, I am now referring you to the Lloyds
25 Connection case where you now state as follows, on

1 page 1221 of the transcript. In that case, is it
2 not true that you now are testifying in October of
3 1989 that it is now proper for Shuttle Express to
4 accept walk-up, on-demand passengers, do you recall
5 that?

6 A. Yes, I do.

7 Q. Do you see any inconsistency in this
8 statement, Mr. Sherrell, from your previous
9 testimony in your application where you were seeking
10 authority where you indicated that you transported
11 only prearranged passengers on a reservation basis?

12 MR. WOLF: Objection. That's unfair to
13 the witness. His prior testimony with regard to how
14 he was going to operate goes over pages and pages
15 and pages and pages of testimony, and particularly
16 the -- Mr. Sherrell's testimony at the earlier
17 proceeding, he referred to his Port Commission
18 operating agreement which specifically allowed him
19 to take walk-up passengers and testified that that's
20 the way he would be operating.

21 JUDGE LUNDSTROM: Well, I think the
22 question is very limited, as to whether he sees any
23 inconsistency or whether he doesn't.

24 MR. MacIVER: That's right.

25 JUDGE LUNDSTROM: Answer the question,

1 please.

2 A. Could you repeat the full question for me,
3 please?

4 Q. Do you see any inconsistency, Mr. Sherrell,
5 from your testimony in the application where you
6 were seeking authority, where you testified that you
7 were operating strictly on a prearranged reservation
8 basis and "would not change the manner or method of
9 my operations if authority is granted me in this
10 proceeding" to the testimony you submitted later in
11 the Lloyds Connection case where you were then
12 contending after having received authority from the
13 Commission, that you could now handle walk-up and
14 hail-the-van traffic? Do you see any inconsistency
15 between those two testimonies?

16 A. Yeah, there's inconsistency. Well,
17 there's differences. Inconsistency is a word that I
18 don't think I can define that to, but there is a
19 difference in what I stated, yes.

20 Q. Following your testimony, Mr. Sherrell, in
21 the Lloyds Connection case, concerning the fact that
22 you were now stating you could handle walk-up and
23 hail-the-van opportunity type fare traffic, do you
24 recall a series of letters that were exchanged
25 between Paul Curl of the Commission and you and your

1 counsel and the Commission?

2 A. Yes, I do.

3 Q. Concerning the nature of your operations?

4 A. I'm sorry. Yes, I do.

5 MR. MacIVER: I am handing up and
6 requesting that be marked as Exhibit No. 1 for
7 identification a series of four letters that I am
8 referring to.

9 JUDGE LUNDSTROM: Let the record show I am
10 marking for identification as Exhibit No. 1 the
11 multi-page document, the first page of which is a
12 letter on Washington Utility and Transportation
13 Commission letterhead dated November 15th, 1989,
14 addressed to Mr. Sherrell. That's Exhibit No. 1 for
15 identification.

16 (Marked Exhibit 1.)

17 JUDGE LUNDSTROM: To shorten this up, I
18 gather, Mr. Wolf, you do not have any objection to
19 this series of correspondence going into evidence.

20 MR. WOLF: None, your Honor.

21 JUDGE LUNDSTROM: Thank you. Are you now
22 making an offer?

23 MR. MacIVER: I offer Exhibit 1.

24 JUDGE LUNDSTROM: Mr. Cedarbaum?

25 MR. CEDARBAUM: No objection.

1 JUDGE LUNDSTROM: Let the record show
2 Exhibit 1 will be admitted.

3 (Admitted Exhibit 1.)

4 Q. Exhibit 1 consists of a letter dated
5 November 15 from Paul Curl to Jim Sherrell. Next is
6 a letter dated November 21, 1989, first one is 1989
7 as well, from Bruce Wolf to Paul Curl. The third
8 letter is December 8, 1989 letter from Paul Curl to
9 Bruce Wolf, and the final letter is a December 11,
10 1989 letter from Bruce Wolf to Paul Curl.

11 Mr. Sherrell, you testified earlier when
12 these letters were presented to you in a prior
13 recent case that you had discussed these letters
14 with your counsel.

15 A. Yes.

16 Q. Mr. Wolf, I am referring you to the second
17 paragraph of the November 15, 1989 letter, the third
18 sentence therein, wherein it is stated, this letter
19 is directed to you, "thus, 'walk-up,' 'hail the van'
20 or 'opportunity end of fare' service was not
21 included in the authority granted to Shuttle Express."
22 Do you see that sentence, Mr. Sherrell?

23 A. Yes, I do.

24 Q. Yet Shuttle Express has continued, has it
25 not, to accept walk-up, hail the van and demand

1 fares even after receipt of these letters?

2 A. No.

3 Q. It is your testimony that you have not
4 accepted walk-up, hail-the-van or on-demand fares
5 even after receipt of these letters?

6 A. That is correct.

7 JUDGE LUNDSTROM: Let the record show that
8 I am marking for identification a single-page
9 document on the letterhead of Shuttle Express,
10 drivers information manual. The title of the
11 subject matter in that is WUTC phone reservations.
12 That date is 2-13-90. That's Exhibit 2 for
13 identification.

14 (Marked Exhibit 2.)

15 Q. Mr. Sherrell, Exhibit 2 for identification
16 was produced pursuant to subpoena this morning among
17 the documents that you produced this morning; is
18 that correct?

19 A. Yes.

20 Q. And this document bears a date of February
21 13, 1990. It's entitled Shuttle Express drivers'
22 information manual. Are you familiar with this
23 document, sir?

24 A. Yes, sir.

25 Q. And does it not state, the third paragraph

1 from the bottom, "When a 'walk-up' guest has not
2 made a reservation, assist the necessary phone call
3 by," and then you go and instruct the driver what to
4 do?

5 A. Yes.

6 Q. And is that not the instructions for your
7 drivers, to handle walk-up guests, Mr. Sherrell?

8 A. Yes.

9 Q. Mr. Sherrell, I am going to refer briefly
10 to the Pierce County proceeding where you have
11 sought to expand your on-call operating authority in
12 Pierce County, and the description of your authority
13 there is you were using the same term "on-call" as a
14 restrictor to your authority in Pierce County, are
15 you not? You're using the same phrase, "on-call"?

16 A. Yes, yes.

17 Q. In February of 1990, in the Pierce County
18 case, you testified that Shuttle Express continued
19 to accept customers at both hotels and the airport
20 who had not made a -- who had not made a prior
21 reservation for service but had simply walked up and
22 hailed the van, is that not correct, Mr. Sherrell?

23 A. I would have to know the full context of
24 that questioning.

25 Q. All right. Mr. Sherrell, in the Pierce

1 County case at page 41, beginning at line 24, you
2 were asked a question by Mr. Wolf and the following
3 occurred:

4 "Question: If you were called in by a
5 concierge for say two or three passengers and you
6 come from that facility and meantime another
7 passenger has come up to the concierge and asked for
8 service at the passenger, will you take that
9 passenger?

10 "Yes.

11 "Question: And that passenger, however,
12 must request your service, isn't that correct?

13 "Answer: Yes.

14 "Question: Is it your understanding, what
15 do you do with respect to calling in a reservation
16 for a passenger like that?

17 "Question: We have the driver make the
18 reservation for the individual person."

19 Do you recall that testimony?

20 A. Yes, I do.

21 Q. And also in that same proceeding, just
22 last month, this is in May of 19 -- this is in
23 February of 1990 in Docket No. 2589, also on that
24 same proceeding, Mr. Sherrell, you further testified
25 as follows, and the -- in answer to questions by

1 your counsel:

2 "Question: How does a passenger arriving
3 at the airport request your service?

4 "Answer: There's two basic ways. One is
5 via telephone, whether that be on the phone board,
6 pay phone or curbside phones, the others to walk up
7 to one of our vans and request service." Do you
8 recall that testimony, Mr. Sherrell?

9 A. When was that given? I mean, which case
10 is that?

11 Q. That is in the Pierce County -- what I
12 refer to as the Pierce County case, your application
13 for extension into authority into Pierce County.
14 You were testifying on February 14, 1990.

15 A. Subject to check, I would -- I may have
16 said that, yes.

17 JUDGE LUNDSTROM: Mr. MacIver, it's 3:00
18 p.m. We usually take a recess at this time.

19 MR. MacIVER: Very well, your Honor, and I
20 might indicate I am within half an hour of finishing
21 with Mr. Sherrell.

22 JUDGE LUNDSTROM: Thank you very much.
23 We'll reconvene at 3:15.

24 MR. MacIVER: Mr. Wolf, may I move for
25 admission of Exhibit 2?

1 JUDGE LUNDSTROM: Objections, Mr. Wolf?

2 MR. WOLF: None, your Honor.

3 MR. CEDARBAUM: No objection.

4 JUDGE LUNDSTROM: Let the record show
5 Exhibit 2 will be admitted.

6 (Admitted Exhibit 2.)

7 (Recess.)

8 JUDGE LUNDSTROM: Hearing will come to
9 order, please, resuming the examination of Mr.
10 Sherrell by Mr. MacIver. Go ahead, please.

11 BY MR. MacIVER:

12 Q. Mr. Sherrell, I am still referring to the
13 hearing docket 2589 which is your application in
14 Pierce County where you were testifying in February
15 of this year.

16 A. Yes.

17 Q. Mr. Sherrell, is it not correct that on
18 page 48 of that transcript or during that hearing,
19 you testified as follows with respect to someone
20 waving down the van.

21 "Question: Are there also passengers going
22 from the airport that request your service by waving
23 down a van?

24 "Answer: Yes, they do.

25 "Question: In those instances how -- what

1 do you could?

2 "Answer: Currently we are requiring each
3 person to use a telephone call to the office.

4 "Question: Can those passengers also
5 utilize radio phones in your vans to make a
6 reservation?

7 "Answer: Yes, they can.

8 "Question: And can the drivers also do
9 that for them?

10 "Answer: Yes, he can."

11 Do you recall that testimony?

12 A. Could you give me the exact date of that?

13 Q. Yes. That was your testimony on February
14 14, 1990. Do you recall that testimony?

15 A. Yes.

16 Q. Finally on this subject and then I will
17 move on, Mr. Sherrell, on transcript page 50 of that
18 same case, that staple date, you testified as
19 follows, do you consider it to be --

20 "Question: Do you consider it to be
21 within the term on-call a passenger that calls for
22 your service by a wave of the hand?

23 "Answer: Yes.

24 "Question: Do you consider a call for
25 on-call service to include the passenger that comes

1 up to your van and personally requests service to
2 the driver?

3 "Answer: Well, yeah. He's coming up and
4 asking for on-call. He wants service."

5 Do you recall that testimony, Mr. Sherrell?

6 A. Yeah, that's my personal interpretation.
7 It's not necessarily the way they conduct their
8 business, though.

9 Q. Mr. Sherrell, following the receipt of the
10 Commission's letter of November 15, 1989, which is
11 Exhibit 1 in this case, you caused to be installed
12 at the airport three automatic dial phones on the
13 curb on the lower concourse of the airport
14 immediately outside the area where people obtain
15 their baggage, is that not correct?

16 MR. WOLF: You phrased it "you caused"?

17 Q. Correct, you caused, you paid for and had
18 installed three curbside phones outside the airport
19 on the sidewalk, outside the baggage claim area
20 which is commonly known as the lower concourse area
21 of the airport, is that not correct?

22 A. I don't know if it was -- they were
23 installed after this letter. I think there was
24 discussion of the phones prior to that. There's
25 some times in there that -- I can't be real specific

1 on times in my memory.

2 Q. Would you accept subject to check, Mr.
3 Holbrook will confirm this in the morning, Mr.
4 Sherrell, but that you had those phones installed in
5 December of 1989?

6 A. Yes, installation was in December, yes.

7 Q. Which was approximately one month after
8 receiving the letter from the Commission concerning
9 your manner and method of operating?

10 A. Yes.

11 Q. And, Mr. Sherrell, is it not true that
12 even after these phones were installed along the
13 curb at the airport, Shuttle Express in fact
14 continued to accept walk-up passengers?

15 A. We had a citation of accepting walk-up,
16 however, operation did not permit it, or operational
17 mode did not permit it.

18 Q. Mr. Sherrell, on page 273 of that
19 transcript, you responded as follows to a question
20 by me concerning that.

21 "Question: So it's your testimony that
22 even after the phones were placed by the sidewalk at
23 the airport, that Shuttle Express nevertheless
24 accepted walk-on passengers even after those phones
25 were installed?

1 "Answer: Yes."

2 Will you accept your answer to that
3 question subject to check in the transcript?

4 A. Yes, the same as my previous testimony.

5 Q. And further along that same vein, Mr.
6 Sherrell, I asked you another question.

7 "Question: So you were in fact still
8 accepting walk-on passengers at the airport even
9 after the telephones were installed on the sidewalk,
10 were you not?

11 "Answer: It is not our operation mode,
12 no.

13 "Question: Well, in fact, it occurred,
14 did it not?

15 "Answer: It occurred, yes."

16 Do you recall that testimony, Mr. Sherrell?

17 A. Yes.

18 Q. Mr. Sherrell, you are -- having discussed
19 and reviewed these letters which are in Exhibit 1,
20 you are aware of the fact, are you not, the
21 Commission on December 8, 1989, several months prior
22 to these -- to your testimony in the Pierce County
23 case, admonished you that, quote, "Any operations
24 performed by Shuttle Express contrary to the terms
25 of your client certificate as explained in the

1 Commission's letter," that is the November 15 letter,
2 are performed at the peril of Shuttle Express," you
3 are aware of that admonition, were you not?

4 A. Yes.

5 Q. In your opinion, Mr. Sherrell, have you
6 satisfied the on-call restriction in your permit if
7 a walk-up or hail-the-van customer after the driver
8 has agreed to serve that customer picks up one of
9 your auto-dial phones on the curb and hails the van
10 literally seconds later?

11 A. Well, the driver cannot agree to serve
12 that passenger, so I can't -- that's not in our mode
13 of operation.

14 Q. Let me repeat the question because I don't
15 think you understood it. In your opinion, Mr.
16 Sherrell, have you satisfied the on-call restriction
17 in your permit if a walk-up or hail-the-van customer
18 after the driver has agreed to serve the customer
19 picks up one of your auto-dial phones on the curb at
20 the airport and boards the van literally seconds
21 later, in your opinion, have you complied with your
22 on-call restriction under those circumstances?

23 A. Well, I am troubled with the driver
24 accepting the passenger prior to the phone call
25 because that doesn't happen. He can't take a

1 passenger without dispatch, so that's a difficult
2 question to answer. Part of it I say yes and part
3 of it I say no.

4 Q. The scenario I'm describing, Mr. Sherrell,
5 is someone without a prior reservation for your
6 service, walks up to your van, the driver at the
7 airport, makes a deal to ride your van downtown
8 Seattle without a prior reservation prior to this
9 conversation, then picks up a curbside phone, calls
10 into your company and within a second or two after
11 making that call steps aboard your van and departs.
12 My question is is that in compliance, in your
13 opinion, in your current opinion, with your on-call
14 restriction in your certificate?

15 MR. WOLF: Point of clarification. Are we
16 to assume in the question that the passenger made
17 the reservation with the driver without making the
18 phone call?

19 MR. MacIVER: I haven't distinguished
20 whether the driver at this point made the call or
21 the passenger made the call. The scenario I am
22 describing to you, Mr. Sherrell, is someone without
23 a prior reservation picks up his baggage, walks out
24 on the sidewalk of the lower concourse, engages in a
25 discussion with your driver, driver points to the

1 telephone, says, "Well, I can take you, but before I
2 take you, you must make this call." Passenger then
3 picks up the automatic-dial phone which is literally
4 five feet from the van and then steps two seconds
5 later onto your van and leaves. My question to you
6 under that scenario is is it now your opinion that
7 that type of service satisfies the on-call
8 restriction in your permit?

9 A. I have a problem with the driver stating
10 to the passenger that they can take him because he
11 can't take him. There's no way he can take him
12 without authorization from dispatch, so that portion
13 of it the answer would be no. The other portion of
14 it, making a telephone call to us, making
15 reservation, yes. You've asked two questions in
16 there.

17 Q. Let's just assume your dispatch says sure.
18 The point is the first contact with your driver for
19 this service was made seconds before the service is
20 provided, with the brief intervening picking up an
21 auto-dial phone which is positioned right beside
22 your van, and then the passenger steps aboard. In
23 your opinion does that satisfy the on-call
24 restriction in your permit?

25 A. Could I state it so I can say yes, the

1 scenario, because you're saying the driver made the
2 agreement. The driver can't make the agreement.

3 Q. Well, the driver says, "I'll take you, but
4 you must make this call first," and then he calls in
5 and dispatch says, "Sure, you can get on the van,"
6 and then he gets on the van. This whole transaction
7 takes five seconds.

8 MR. WOLF: Your Honor, I am going to
9 object. This has been asked and answered. Mr.
10 Sherrell has stated that his drivers don't do that.
11 It's not a fair assumption for him to make because
12 he cannot assume the facts in the question because
13 they don't happen.

14 JUDGE LUNDSTROM: Well, for one thing,
15 I've heard a couple of facts being added to the
16 question since we've gone along here. If you have
17 an answer in mind to the question as it now stands,
18 Mr. Sherrell, do you have this clear in your mind?

19 THE WITNESS: Yes, I have it very clear.

20 JUDGE LUNDSTROM: Could you go ahead and
21 answer, please.

22 A. Yes, my answer is the same as previous.
23 Our driver cannot tell a guest that he's going to
24 take him without dispatch authorization, so as far
25 as that question, they can't do it. As far as a

1 passenger coming out and asking to go in the van and
2 the driver directing the passenger to a telephone to
3 make a reservation and then dispatch authorizing
4 that, yes.

5 Q. Okay. Let's return to what you've
6 actually said under oath in prior proceedings before
7 this Commission, Mr. Sherrell. I am referring you
8 to docket D-2589 where you testified on May 22,
9 approximately one month ago, and I asked you this
10 question: "So you will accept reservations from
11 passengers which are made for the first time at the
12 telephones on the curb at the airport?"

13 "Answer: Yes."

14 Do you recall that testimony?

15 A. Yes.

16 Q. You also testified in that same proceeding
17 as follows in response to another question by me. "But
18 it is your opinion that you have satisfied the
19 on-call restriction if a passenger without a prior
20 reservation uses one of the direct dial phones on
21 the sidewalk at the airport to call Shuttle Express
22 and immediately thereafter boards a van?"

23 "Answer: Yes, definitely."

24 A. Yes, definitely.

25 Q. All right. And, Mr. Sherrell, this is a

1 prior reservation under your current mode of
2 operation at the airport, a call that's made
3 literally seconds before the person boards the van?

4 A. Oh, definitely, you have a lot of incoming
5 flights. Their only opportunity is when they get
6 off an airplane. You bet.

7 Q. So in your opinion you are complying with
8 your on-call restriction, if this prior reservation
9 for your service occurs literally two seconds before
10 the service is provided?

11 A. That's straight service to the guest in
12 the city, yes.

13 Q. Is your answer yes?

14 A. Yes.

15 Q. And at hotels, Mr. Sherrell, you have
16 satisfied the on-call restriction if the driver
17 accepts a walk-up or hail-the-van fare and simply
18 calls in the fare on the radio in his van, is that
19 true?

20 A. No.

21 Q. Mr. Sherrell, I am referring to your
22 testimony where you testified before this Commission
23 on February 14, 1990, a few months ago, in
24 connection with the Pierce County proceeding, and
25 you were asked the following questions and answered

1 as follows.

2 "Question: If you were called in by a
3 concierge for say two or three passengers and you
4 have come in that facility and meantime another
5 passenger has come up to the concierge and asked for
6 service to the airport, will you take that passenger?

7 "Answer: Yes."

8 MR. WOLF: Your Honor, I am going to
9 object. This is improper. That portion of the
10 record, Mr. Sherrell was in the middle of an
11 application, an extension application proceeding,
12 and he was describing the nature and extent of his
13 operations as they would be conducted with regard to
14 Tacoma.

15 MR. MacIVER: Improper. He was discussing
16 his operations as they presently existed, and in
17 addition he was using the same descriptive on-call
18 service in that authority as this.

19 MR. WOLF: I haven't finished even --

20 JUDGE LUNDSTROM: Finish the question,
21 please.

22 Q. "Question: And that passenger must,
23 however, request your service, isn't that correct?

24 "Answer: Yes.

25 "Question: Is it your understanding --

1 what do you do with respect to calling in a
2 reservation for a passenger like that?

3 "Answer: We have the driver make the
4 reservation for the individual or person."

5 Do you recall so testifying, Mr. Sherrell?
6 Will you accept subject to check I correctly read
7 your questions and answers?

8 A. Yes.

9 Q. And also, Mr. Sherrell, in that same
10 proceeding you also testified as follows: "Can
11 those passengers use the radio phones in your vans
12 to make reservations?"

13 "Answer: Yes, they can.

14 "Question: And can the driver also do
15 that?

16 "Answer: Yes, he can."

17 Do you recall that testimony, Mr. Sherrell?

18 A. Yes, I do.

19 Q. So it is now your position, now that we've
20 evolved up to early this year, your testimony, that
21 prior reservation means even a situation where a
22 passenger gets in your van and the driver uses his
23 radio to call in a reservation, is that correct, Mr.
24 Sherrell?

25 MR. WOLF: Objection. Asked and answered,

1 in the negative.

2 MR. MacIVER: I beg to differ. Mr.
3 Sherrell has just been quoted testimony where he
4 said that is precisely --

5 JUDGE LUNDSTROM: Answer the question,
6 please. Overruled.

7 A. No, I don't think that that is on-call.

8 Q. So is the service you were describing here,
9 Mr. Sherrell, in your opinion in violation of your
10 on-call authority, where a driver makes the call for
11 the passenger, either from a phone or from his own
12 van?

13 A. Through a discussion with counsel, yes,
14 and that operation was changed I think right after
15 that hearing or during that hearing.

16 Q. Really? Well, this testimony occurred
17 very recently, Mr. Sherrell.

18 A. Well --

19 Q. Do you have any recollection in that
20 hearing of changing your method of operation?

21 JUDGE LUNDSTROM: You pose a --

22 Q. Did you? Did you make any mention in that
23 proceeding that you were anticipating making any
24 change in your method of operation, Mr. Sherrell?

25 A. I can't recall that specific reference.

1 Q. Does that testimony describe how you were
2 operating, in fact, Mr. Sherrell, as of February of
3 1990? I can go over the testimony again with you,
4 if you'd prefer.

5 A. I can't relate to what I -- exactly I was
6 thinking of when I was discussing that, but during
7 the realm of discussion on on-call, we -- my legal
8 counsel and I had discussed that a van operator
9 could make a radio call, would be a reservation,
10 which is convenient for the guest. We don't do that
11 and I don't know why I stated that in that
12 proceeding.

13 Q. You testified repeatedly in that
14 proceeding you did that, Mr. Sherrell.

15 A. I have just made the statement to you and
16 it's on record that I don't know why I stated that.

17 Q. Isn't it a fact you stated it because it's
18 in fact what you were doing? Why would you have
19 stated it otherwise?

20 A. I don't agree with that. I don't know. I
21 don't necessarily agree with that statement.

22 Q. Mr. Sherrell, you in fact do not agree
23 with the Commission's interpretation of the on-call
24 restriction in your authority as contained in
25 Exhibit 1, the Commission's November 15 letter of '89

1 to you, do you?

2 MR. WOLF: Your Honor, this is irrelevant.
3 Whether or not Mr. Sherrell has a personal agreement
4 or disagreement with the Commission's interpretation
5 is not relevant. Whether or not he is in compliance
6 with it and operating in that fashion is.

7 JUDGE LUNDSTROM: Well, I don't see the
8 relevance of the opinion.

9 MR. MacIVER: I think the intent of this
10 applicant to abide by the laws, rules and
11 regulations of this Commission are very relevant.
12 Our whole purpose here is showing that Mr. Sherrell,
13 from the time he got his authority, has drastically
14 changed his method and mode of operation, contrary
15 to what he testified when he got the authority, and
16 whether or not his opinion towards regulation, his
17 agreement with the Commission's interpretation of
18 the certificate goes to his own fitness and to
19 whether he's operating in good faith in compliance
20 with his authority, keeping in mind we have alleged
21 that he is not, and I think we are demonstrating
22 here that he is not operating in compliance with his
23 authority, and our request is that he be restricted
24 from hotels because of that, so his state of mind
25 and whether he agrees with the Commission, and is

1 willing to abide by the laws, rules and regulations
2 of the committees, is relevant.

3 JUDGE LUNDSTROM: As long as your question
4 intends to ask whether his interpretation differs,
5 he can respond to that. Go ahead, please.

6 A. My interpretation of on-call is definitely
7 opposite of the Commission's. However, I will abide
8 by the Commission's decision, and I do abide by the
9 Commission. These rules and regulations are not new
10 to me whatsoever and I do abide by them.

11 Q. That's correct. And you were operating in
12 direct violation to the Commission's interpretation
13 of your permit as testified to you in May of 1990,
14 weren't you, Mr. Sherrell, when you were testifying
15 to the testimony I just read to you?

16 A. No, I was not. There was three instances
17 where we were, but to the best of my knowledge, my
18 drivers --

19 Q. Shall I go back over the testimony about
20 your drivers making reservations from vans and
21 drivers making the calls and accepting passengers on
22 two seconds' advance reservation?

23 MR. WOLF: Your Honor, Mr. --

24 Q. Excuse me. Do you consider that
25 compliance?

1 JUDGE LUNDSTROM: The objection was being
2 stayed, Mr. MacIver.

3 MR. WOLF: I object to the form of the
4 question and Mr. MacIver is assuming that his
5 interpretation of on-call is that of the
6 Commission's and that Mr. Sherrell has been
7 violating Mr. MacIver's definition of on-call, and I
8 object to the form of the question on that basis.

9 JUDGE LUNDSTROM: I think the form of the
10 question was somewhat argumentative. Would you like
11 to rephrase it?

12 Q. You have in fact not been operating in
13 compliance with the Commission's interpretation of
14 your permit as stated in the November 15, 1989
15 letter, have you?

16 A. That's false.

17 Q. And you so testified in the Lloyd's
18 Connection case and in the Pierce County case,
19 testimony we have just gone over?

20 A. Lloyd's Connection, my interpretation was
21 that walk-up, hail the van is on-call, and that is
22 my feeling personally. However, after receiving the
23 letter from the WUTC, we require all of our guests
24 to use a telephone to make an on-call.

25 Q. I have just been reading to you testimony

1 that you gave under oath to this Commission
2 subsequent to receiving those letters, and if you
3 want to go back over it we'll take the time to do it,
4 but there you were testifying that the drivers would
5 make the calls, maybe even from the radio in the van
6 after the passenger got on the van. Now, do you
7 consider that compliance with the November 15 letter?

8 A. There was considerable discussion, as I
9 stated previously, with my legal counsel, whether
10 that was in fact our interpretation of on-call, and
11 after discussing it, I felt that let's comply with
12 the far reaches of any regulation and make everybody --
13 make a phone call, even from the hotels or anywhere,
14 so regardless of what you read, I mean, we can go
15 over anything you want. I am willing to do that
16 with you.

17 Q. I am just reading your sworn testimony
18 before this Commission.

19 A. Well, when you're making that much
20 testimony and the volumes that I have made, I am
21 telling you the way I feel, the way I recollect to
22 the very best of my ability and I am under oath and
23 I am saying the truth.

24 Q. Your testimony is accurate today?

25 A. You bet. I swore and I take that very

1 seriously.

2 Q. Was your testimony accurate before?

3 A. I would imagine that I was trying to
4 testify to the very best of my ability, and I have
5 testified on the witness stand a very long time, and
6 like I said, there was a lot of discussion with
7 legal counsel concerning on-call because it's in our
8 type of operation to providing service to our guests,
9 it affects the service and convenience to guests.

10 Q. My question was, Mr. Sherrell, you say
11 you're testifying truthfully today. Were you
12 testifying truthfully before?

13 A. I always testify as truthfully as I
14 honestly can, yes.

15 Q. Thank you. Under your interpretation
16 today of the on-call restriction in your permit, is
17 the driver permitted to make the telephone calls for
18 these "prior reservations" for your passengers?

19 A. May I ask a clarification of that?

20 Q. Certainly.

21 A. My interpretation of what I abide by with
22 the Commission or my personal interpretation of the
23 way I think it should be.

24 Q. I am asking what you're doing, what you're
25 doing.

1 A. I understand. What we're doing is we
2 require all of our guests to make a telephone call.

3 Q. So your drivers, according to your
4 testimony today, are not to make the telephone call?

5 A. Let me restate that, and it brings up an
6 issue that when you start asking me questions I say
7 all of our guests are required to make a telephone
8 call. That's false, because if a guest has already
9 made a telephone call or a reservation from a travel
10 agent going to the airport that return reservation
11 has been made, and you can walk up to a van and say,
12 "Hey, I've made a return reservation prior or my
13 travel agent has and they have a ticket," so, you
14 know, things can be taken out of context.

15 Q. Well, I am asking for the instance where I
16 walk up -- walk out of the airport without a prior
17 reservation, and the driver makes my reservation for
18 me, under your interpretation or is it your present
19 practice that the driver can make the reservation
20 for me, I don't even have to use the phone?

21 A. No.

22 Q. Your testimony is that the passenger must
23 use the phone to make the call to your dispatch?

24 A. Yes, unless they have made a prior --

25 Q. I understand that.

1 JUDGE LUNDSTROM: Excuse me. Let the
2 witness finish, please. Go ahead.

3 A. Yes, unless the customer has made a prior
4 reservation. I want to clarify.

5 Q. My scenario was one who had not done that.

6 A. Yes. The answer is yes.

7 Q. Mr. Sherrell, would you refer to Exhibit 2?

8 A. What is that, just the heading?

9 Q. That's your driver information manual.
10 Does it not state here, "When a walk-up guest has
11 not made a reservation, assists the phone call by:
12 Lifting the receiver and "you," that being the
13 driver talking first to dispatch, stating walk-up
14 passenger and destination, then," underline the word
15 "then," "pass the phone to the guest who 'merely'
16 gives their name," is that your version of requiring
17 a passenger to make his own reservation on your --
18 for your service, a passenger that doesn't have a
19 prior reservation?

20 A. Yes.

21 Q. Thank you. And that would hold true for
22 the hotels as well, as well as your automatic dial
23 phones at the airport, with that method of operation
24 as stated in Exhibit 2 would hold true for the
25 hotels too as well, I gather, you don't make a

1 distinction here?

2 A. I don't know. I've never discussed that
3 out of the hotels. We have only discussed it out of
4 the airport with this. The guest is required to
5 make a telephone call, however, out of the hotel.

6 Q. At least in the manner and method
7 described in this Exhibit 2, correct?

8 A. Yes. The usual manner of the hotel is
9 dispatch instructs the driver to have the guest make
10 a telephone call. We have not implemented anything
11 like this.

12 Q. This Exhibit 2, your driver's information
13 manual, makes no distinction between this procedure
14 at the hotels versus the airport, does it?

15 A. Yes, it does.

16 Q. Would you point to me the part that says
17 that this method of utilizing the driver to make the
18 phone call does not apply to hotels but applies to
19 the port only?

20 A. Yes, I wrote this myself and implemented
21 it in the third sentence down, "Did you ride to the
22 airport?" My intention was to address the airport
23 and that's why I said did you ride to the airport
24 whether it's to make a return reservation.

25 Q. Mr. Sherrell, from a practical standpoint,

1 given your testimony now that you can accept a
2 passenger without a prior reservation if literally
3 seconds before the passenger rides your service, a
4 driver under this scenario calls up and makes the
5 reservation for the passenger, given our
6 understanding of that, how, Mr. Sherrell, from a
7 practical standpoint, would you distinguish that
8 passenger from a walk-up or hail-the-van customer
9 such as referred to by the Commission in its
10 November 15 letter to you?

11 A. Well, you made an erroneous statement.
12 You said our driver had made the reservation. The
13 driver does not make the reservation.

14 Q. Well, I am referring to the procedures
15 that you wrote, and you just testified you wrote
16 these procedures and this is how you operate, so how
17 do you distinguish a passenger that walks up to your
18 van and gets aboard your van -- the van seconds
19 after the procedure that is described in Exhibit 2
20 is followed by your driver and the passenger? How
21 do you distinguish that passenger from a normal --
22 from any other hail-the-van or walk-up passenger
23 from a practical standpoint?

24 A. Whether you're at a pay phone at the gate,
25 whether you're at a pay phone at the ticket counter,

1 whether you're at a free phone in baggage claim on
2 the telephone board or whether you're at a phone on
3 the outside curb, they all ring into one place. A
4 guest must make a phone call reservation.

5 Q. Mr. Sherrell, I am asking you from a
6 practical standpoint now, out in the real world, is
7 there any real distinction between me just walking
8 up to your van without a reservation, climbing
9 aboard and leaving the airport, versus walking up to
10 your van and following this procedure and five
11 seconds later I'm on your van and leaving the
12 airport? What distinction really is there between
13 this passenger and the other passenger who just gets
14 on your van?

15 A. The passenger makes a phone call, makes a
16 reservation. Whether you make it one second or one
17 hour or one day, you're still calling reservations
18 and making a reservation.

19 Q. So, Mr. Sherrell, from an operational or
20 practical standpoint, there is no real distinction
21 in your mind between a walk-up or hail-the-van fare
22 and a fare with a prior reservation by phone, is
23 there?

24 MR. WOLF: Objection. It was asked and he
25 just answered and he told what the distinction was.

1 Asked and answered.

2 Q. There is no real -- excuse me. There is
3 an objection.

4 JUDGE LUNDSTROM: Excuse me. I think it
5 had been asked and answered. There's no meaningful
6 distinction between this and the previous question.
7 Sustained. Go ahead, please.

8 Q. Well, in other words, Mr. Sherrell, so the
9 distinction as you have described it between on-call
10 service as you interpret it and apparently are
11 applying it out there today and the hail-the-van
12 walk-up fare is very slight, is it?

13 MR. WOLF: I object to the form of the
14 question. His answer stands. Whether Mr. MacIver
15 considers it to be very slight or not is not
16 important and irrelevant.

17 Q. Do you consider it, Mr. Sherrell --

18 JUDGE LUNDSTROM: That's sustained. Go
19 ahead, please.

20 Q. -- a serious restriction from an
21 operational standpoint, the distinction between me
22 walking on your van and getting on without making a
23 call or me walking up to your van and having this
24 procedure in Exhibit 2 followed and me getting on
25 your van two seconds later? Is that a serious

1 restriction from your ability to handle a
2 hail-the-van or walk-up fare in your mind?

3 A. It's a restriction to the guests that use
4 Sea-Tac Airport. It's no different than you walk up
5 to a ticket counter at an airline and ask to go on
6 an airplane to Los Angeles and you make a
7 reservation and get on the airplane and leave a
8 second later. As far as restriction on Shuttle
9 Express requiring people to make a phone call, I am
10 going to abide by that regulation and we've worked
11 it out to the least duress of our guests, and I am
12 going to abide by the regulation. That's the way it
13 is.

14 Q. And that's not much of an impediment to
15 your handling hail-the-van or walk-up traffic, is it?

16 A. Well, it depends. I think our primary
17 guests that we serve is the little old ladies
18 because they're the ones I love the most, that have
19 a bunch of luggage and they come in from a city,
20 they drag it through the airport, they go out on a
21 curb and they want to get on our van and we require
22 them to drag it inside to get on the phone and then
23 drag it out again, that's of paramount importance to
24 the guest, and that's who you're addressed with here.

25 Q. I am concerned with how you're operating

1 your service, Mr. Sherrell. We love the little old
2 ladies and we all want to provide them good service.
3 Guarantee you that. I am concerned with how you're
4 operating the airporter service.

5 JUDGE LUNDSTROM: Do we have a question in
6 mind, Mr. MacIver?

7 Q. The question that was before you, Mr.
8 Sherrell, is it's not really much of an impediment,
9 is it, the way you were utilizing the on-call
10 restriction to you handling walk-up and hail-the-van
11 customers at the airport, this procedure that you've
12 listed here?

13 A. Impediment to us requiring a phone call?
14 Actually, no, it is not, as long as we have phones
15 that do not inconvenience our guests because it
16 allows us to put rides together and runs together
17 and have --

18 Q. In your opinion -- your view of on-call
19 today, Mr. Sherrell, is really quite different, is
20 it not, from what your opinion of on-call was when
21 you were attempting to get your authority in the
22 first place?

23 A. On-call today is definitely -- yes, I
24 interpret on-call personally different than the
25 Commission had interpreted on-call.

1 Q. No, I mean you yourself --

2 JUDGE LUNDSTROM: Excuse me. Mr. Sherrell,
3 did you have more to your answer? Sounded as though
4 you were answering -- you were in the middle of your
5 answer. Did you have any more that you wanted to
6 say?

7 A. Could you repeat that question?

8 Q. Yes, Mr. Sherrell, if I've confused you, I
9 apologize. Your view of the on-call restriction
10 today is far more liberal, is it not, than it was at
11 the time you testified when you were seeking
12 authority from this Commission in the first place?

13 MR. WOLF: I truly don't understand that,
14 that question. If the witness does, he can go ahead
15 and answer. It's not for me to understand. It's
16 the witness. I'm sorry.

17 A. I think I do.

18 JUDGE LUNDSTROM: If you feel you can
19 answer.

20 A. I think I do and I have to ask Mr. MacIver
21 to correct me if I'm wrong, but my first
22 interpretation of on-call would allow walk-up,
23 hail-the-van, just people going out and getting on a
24 van, that's what I thought we were applying for was
25 on-call, and on-call separated on-call and scheduled,

1 because we're not a scheduled carrier. I thought
2 that was my interpretation. Today with the
3 interpretation of the Commission, yes, that's
4 different than what I thought we were applying for.
5 Is that what you're asking me?

6 Q. No, I am asking whether you have changed
7 now since you have received the authority, whether
8 you are now applying a much more liberal view of
9 what the on-call restriction is than you were
10 applying at the time you were seeking authority.
11 Has not your opinion as to what the on-call
12 restriction really means changed substantially from
13 January of 1989 when you were seeking authority to
14 now?

15 A. I think I answered that.

16 Q. And your answer is no, it has not, you've
17 always taken this, you can handle hail-the-van
18 walk-up type passengers?

19 A. No, that's not what I stated.

20 Q. Has your opinion as to the severity of the
21 restriction, of the on-call restriction in your
22 authority changed from the time you were applying
23 for authority and the way you view that restriction
24 today?

25 MR. WOLF: I think the witness has

1 answered this to the best of his ability.

2 JUDGE LUNDSTROM: Do you have anything to
3 add to what you've already answered?

4 THE WITNESS: Well, I want to answer this
5 so it's understood. Let me state again that I
6 thought the only difference on on-call, when we made
7 the original application would be that we were not a
8 scheduled carrier, that we were allowed on-call
9 which means you could take a walk-up, hail-the-van,
10 and that's the reason that the agreement with the
11 Port of Seattle was written to allow us to take walk-ups
12 and on-call.

13 Q. So you're --

14 A. So it's more restrictive today.

15 Q. I am not asking, Mr. Sherrell, of the
16 Commission's interpretation. I am asking about you
17 as the operator of Shuttle Express, whether you have
18 changed your version of what on-call means from the
19 time you applied for the authority using that term
20 to date.

21 A. Okay. You're asking me personally the way
22 I feel?

23 Q. Correct. Correct.

24 A. Personally the way I feel is that on-call
25 is, as I intend to apply for it, on call is being

1 able to take walk-ups, hail, any passengers that
2 wants to go with us and we can't operate on schedule.
3 That's my personal feeling. However, that's not the
4 way we run our business.

5 Q. Mr. Sherrell, I am going to read you a
6 brief question and answer that you gave in your
7 testimony before the Commission on January 12, 1989,
8 which is when you were seeking the authority. Mr.
9 Cedarbaum asked the question of you.

10 "Question: Do you want a certificate to
11 be limited to on-call service?"

12 Mr. Sherrell's answer: "Yes, as we stated,
13 we did put some heavy restrictions on ourselves."

14 Do you accept subject to check that that
15 was your testimony in January of 1990?

16 A. Oh, yeah, and that's what I previously
17 stated.

18 MR. MacIVER: I have no further questions
19 of this witness on direct.

20 JUDGE LUNDSTROM: Okay. Mr. Wolf?

21 MR. WOLF: Yes, thank you, your Honor.

22

23 CROSS-EXAMINATION

24 BY MR. WOLF:

25 Q. Mr. Sherrell, Mr. MacIver's questions have

1 raised about four areas that I would like the
2 opportunity to inquire. First of all, Mr. MacIver
3 in his questions spent a bit of time with regard to
4 the -- and on the point as to whether or not there
5 was any testimony in the record in the -- what we've
6 been calling the King County proceedings regarding
7 the manner and method of your operations, in other
8 words, whether or not they would be -- whether or
9 not you would intend to take walk-up passengers.
10 Are you familiar with those portions of the
11 proceeding?

12 A. The general context, not specific wordage.
13 It's been too long ago, but I know the content of it.

14 Q. With regard to -- you testified at that
15 first proceeding, did you not?

16 A. Yes.

17 Q. And do you also recall, Mr. Sherrell, that
18 in that first proceeding a copy of your expected and
19 anticipated operating instructions with the Port of
20 Seattle were introduced as evidence into that
21 proceeding?

22 A. Yes.

23 Q. Now, I am going to have -- if you look at
24 Exhibit 1 to this proceeding which is the group of
25 letters submitted by Mr. MacIver and have been

1 admitted into evidence, if you look at my letter to
2 the Commission dated November 21, 1989, page four of
3 that, does that Exhibit No. 1 make reference to
4 Exhibit No. 38, up at the top, well, second
5 paragraph on the page? Does Exhibit No. 1 make
6 reference to the prior Exhibit 38? May I approach
7 the witness, your Honor?

8 JUDGE LUNDSTROM: Sure.

9 A. The answer is yes. I wanted to read it
10 all.

11 Q. Okay. And what did Exhibit No. 38 advise
12 with regard to your ability to take or not take or
13 your intentions with regarding taking or not taking
14 walk-up passengers?

15 A. It was agreed with the port through their
16 examination of serving the people of Sea-Tac Airport
17 that availability and knowing how to catch different
18 modes of transportation is very difficult in all
19 airports. Thus, they had changed their operation
20 agreement with us to allow us to take walk-up
21 passengers that were seeking our service.

22 Q. And again, sir, this portion of Exhibit
23 No. 38 which states that concessionaire, and that's
24 Shuttle Express, is it not, shall be able to
25 transport passengers who have solicited or requested

1 their service at curbside, that was admitted into
2 testimony in the King County proceeding, was it not?

3 A. Yes.

4 MR. CEDARBAUM: Can I ask just a
5 clarification question? You're talking about what
6 was a proposed operating agreement with the Port of
7 Seattle at the time that that testimony was taken;
8 is that right?

9 MR. WOLF: I am asking whether or not
10 Exhibit No. 38 was introduced into evidence at the
11 earlier hearing and whether or not Exhibit No. 38
12 contains the clause "Concessionaire shall be able to
13 transport passengers who have solicited or requested
14 their service at curbside."

15 MR. CEDARBAUM: Right. And my question
16 for clarification purposes is what is Exhibit 38.
17 It's my understanding you're talking about a
18 proposed operating agreement or an operating
19 agreement that was proposed at that point in time.
20 It was not the then currently effective operating
21 agreement with the Port of Seattle. Is that right?

22 Q. Let me ask Mr. Sherrell. At the time of
23 the King County hearing, Exhibit No. 38 in that
24 proceeding had not gone into effect yet, had it?
25 Can you tell us whether or not it had or had not

1 been in effect?

2 A. I think to the best of my ability that it
3 had been put in place, that we'd signed the
4 agreement. If it wasn't, it was shortly thereafter,
5 but to my best recollection --

6 MR. CEDARBAUM: Your Honor, I guess I have
7 to ask the witness to really think back because I
8 was involved in that proceeding and I just have a
9 clearly different memory of what went on with
10 Exhibit 38, that it was the proposed operating
11 agreement, we fought about whether it was effective
12 or not, and we found out that at that time it wasn't
13 effective, it was just the proposed contract to
14 replace the then existing one, but it hadn't yet
15 replaced it.

16 MR. WOLF: Your Honor, if there's
17 testimony to that effect or if Mr. Cedarbaum -- but
18 Mr. Cedarbaum is attempting to testify. Let's see.
19 Mr. Sherrell is here testifying with regard to his
20 recollection.

21 MR. MacIVER: The record will show it's
22 not.

23 JUDGE LUNDSTROM: I'm certain -- now --

24 MR. CEDARBAUM: I think Mr. Wolf is quite
25 frankly trying to hide that fact and I think that

1 should just be stated on the record because that was
2 the way it developed in that proceeding, and to
3 state that Exhibit 38 is the then currently
4 effective operating agreement that the witness was
5 testifying its operations were proposed to be under
6 his current operating authority -- operating
7 agreement with the Port of Seattle is just not true.

8 MR. WOLF: Your Honor, I am not trying to
9 hide anything. I asked Mr. Sherrell whether or not
10 Exhibit No. 38 was introduced and accepted into
11 evidence at the earlier proceeding, and I've asked
12 Mr. Sherrell whether or not it's his recollection as
13 to whether or not Exhibit No. 38 was the then
14 current operating instructions.

15 JUDGE LUNDSTROM: All right. He can
16 answer as to his question. Now, I think I ought to
17 remind you, though, that if a portion of the record
18 of the previous proceeding is offered in this
19 proceeding, or if this tribunal is asked to take
20 notice of a portion of that, whether it was in
21 effect or not will certainly be reflected from that
22 evidence, so if the recollection is different and
23 someone in cross-examination wants to resolve a
24 potential conflict, I guess they may. I think
25 that's the time for you to bring up that, Mr.

1 Cedarbaum, and also if you want to offer a portion
2 of the previous record to clarify this record, you
3 may.

4 All right. Go ahead, please.

5 Q. Let me ask the question this way. Can you
6 recall, Mr. Sherrell, whether or not at the time of
7 the King County hearing, you were operating under --
8 or your operations were in accordance with the port
9 operating instructions as expressed in prior Exhibit
10 No. 38, the section that we've been talking about,
11 if you know?

12 A. There had been a lot of previous
13 conversation between ground transportation and
14 ourselves because we had so many guests walking up
15 to our van and wanting to get on, and we both felt
16 that it was an injustice to send them back in the
17 terminal, so we had made an agreement that we could
18 take walk-ups. I can't testify without really
19 getting this specific agreement out whether this was
20 or was not in place at the time, but I know
21 conceptually we had agreed with the airport
22 management that we could take walk-ups, and that is --
23 basically we were operating that way, I think, but
24 it's a long time ago.

25 Q. I don't mean to make a big point of this

1 but I think I can also clear it up and as a matter
2 of fact as I read more of the correspondence, I
3 think we can clear it up. Mr. Sherrell, did you
4 recall testifying at the earlier proceeding at page
5 211 of the transcript in accordance with the
6 quotation of the testimony as stated in the November
7 21, 1984 correspondence? That's on the same page.
8 Do you recall that I -- let me do it this way. Do
9 you recall that I asked you a question, "Can you
10 tell us whether or not under the new operating
11 agreement, the manner and method of solicitation of
12 passengers at the airport will change?"

13 "Answer: Yes, it will.

14 "Question: Can you describe for us to
15 what extent, sir?

16 "Answer: It is legal for a passenger to
17 solicit our service as a walk-up.

18 "Question: Do you have any opinion with
19 respect to your current operating equipment as to
20 whether or not you will be able to serve or you have
21 the equipment capabilities of serving walk-up
22 passengers?

23 "Answer: Yes, we do."

24 Is that the -- do you recall receiving
25 those questions and giving those answers?

1 A. Yes.

2 Q. Another area of inquiry by Mr. MacIver was
3 the manner and method by which you are compensating
4 your drivers. Mr. Sherrell, you are currently
5 compensating your drivers, are you not, on a
6 combination of salary and commission basis; is that
7 correct?

8 A. Yes.

9 Q. Could you tell us, please, sir, in your
10 own words the reason or reasons for you adopting a
11 commission -- combination of salary and commission
12 basis for a driver? How does it help your
13 operations?

14 A. We looked at a lot of different pay
15 schedules. Looked at other similar operations in
16 the parts of the country, and we also looked at the
17 amount of money our drivers could make under the
18 5.50 an hour scenario. Like any company, we had to
19 restrict overtime. By going to 30 percent
20 commission, our drivers benefit as the company grows
21 and gains in passengers overall, and we've been
22 growing at a substantial rate of about 50 --
23 anywhere from 40 to 80 percent over the last year
24 depending on each month. Secondly, drivers are
25 rewarded for knowing their routes, their maps, the

1 shortcuts to and from the airport, figuring out how
2 to work traffic so there is a definite reward for
3 knowing their mapping better. I think I covered as
4 the company grows they benefit also.

5 Q. Any other reasons, sir?

6 A. Yeah. Just trying to think. Had so many
7 things going on today, and through my mind. Oh,
8 there's also incentive for the drivers that want to
9 get out there and not take a lot of time for 20, 30
10 breaks a day, the ones that want to work and take
11 their breaks accordingly, which we require. There's
12 more incentive. So basically it's a reward as the
13 company grows and also for knowing their job better.

14 Q. Mr. Sherrell, I have to take a step back
15 and if you could get Exhibit No. 1 in front of you
16 again and turn to my November 21, 1989 letter on
17 page five. With regard to testimony in the prior
18 proceeding about in the middle of the page, did you
19 not testify in the earlier proceeding that the port
20 agreement, Exhibit No. 38, was effective January 1,
21 or had been effective January 1?

22 A. What page are you on?

23 Q. Five of the November 21, 1989 letter. I
24 asked you -- I'm in the middle of the page. "Now,
25 you refer to a more advantageous setup in the pickup

1 I believe or the bay the facility is used at Sea-Tac.
2 Can you explain that a little bit?" And you
3 answered: "Yes. Currently if a potential customer
4 requests our service they cannot solicit a ride from
5 us. In the new port agreement which was effective
6 January 1, customers can solicit our van service.
7 Prior to this, we had to require our customers to go
8 back inside to make a telephone call at their
9 expense and that creates a hassle and a disrespect
10 for the ultimate consumer, and we found that a lot
11 of customers would, rather than do that, just take
12 alternate transportation."

13 A. Yes, I see that.

14 Q. And that hearing, you testified, was
15 subsequent to January 1, was it not?

16 A. Yes.

17 Q. January 1 you were referring to?

18 A. Yes.

19 Q. Okay. With regard -- I'm sorry for the
20 change of pace, but with regard to the reasons for
21 the combination of salary and commission pay scale
22 for your drivers, in your opinion, sir, has that
23 helped your company improve service to the general
24 public?

25 A. Yes, it has.

1 Q. And in what fashion, sir, or how so?

2 MR. MacIVER: Excuse me. I believe that
3 question has been asked and answered in some detail
4 and Mr. Sherrell went on some time, so I would
5 object to that second question as just being
6 repetitive.

7 MR. WOLF: I'll withdraw it.

8 Q. I want to move on to a third area and it
9 has to do, Mr. Sherrell, with regard to the
10 interpretation or what is meant by the term on-call
11 in your permit authority. You agree with me, do you
12 not, that the term on-call is utilized in your
13 permit authority?

14 A. Yes, it is.

15 MR. WOLF: As a matter of fact, your Honor,
16 we've all been talking about a permit, and let me at
17 this time ask that a two-page document be marked as
18 the exhibit next in order.

19 JUDGE LUNDSTROM: Let the record show that
20 I am marking for identification Exhibit 3 for
21 identification a two-page document which is
22 designated on its first page as permit number C-975
23 standing in the name of San Juan Airlines
24 Incorporated, dba Shuttle Express. Exhibit 3 for
25 identification.

1 (Marked Exhibit 3.)

2 JUDGE LUNDSTROM: Go ahead, please.

3 Q. Mr. Sherrell, I am handing you what has
4 been marked for identification as Exhibit 3. Can
5 you please tell us, sir, what that is?

6 A. It's the WUTC license for Shuttle Express,
7 San Juan Airlines dba Shuttle Express.

8 Q. And that operating authority was granted
9 to you when, sir? Is there a date on the back?

10 A. Yes, August 30, 1989.

11 Q. Have you been operating or are you
12 currently operating to the full extent of that
13 permit?

14 A. Yes, we are.

15 MR. WOLF: I offer Exhibit No. 3, your
16 Honor.

17 JUDGE LUNDSTROM: Objections, Mr. MacIver?

18 MR. MacIVER: No, your Honor.

19 MR. CEDARBAUM: I have one question on
20 voir dire. Mr. Sherrell, do you recall when Exhibit
21 No. 3 was received by you? Or do you know when it
22 was served by the Commission?

23 THE WITNESS: I specific -- specific date,
24 I do not know.

25 MR. CEDARBAUM: Would you accept subject

1 to check that it was served on November 22nd, 1989?

2 And I can show you -- your official permit that's in
3 the Commission files that stays that.

4 THE WITNESS: If you have that information,
5 I would accept it, yes.

6 MR. CEDARBAUM: I have no objection.

7 JUDGE LUNDSTROM: Let the record show
8 Exhibit No. 3 will be admitted. Go ahead, please.

9 (Admitted Exhibit 3.)

10 Q. Commencing on or about November of 1989, a
11 dispute or a disagreement or an issue arose with the
12 Washington Utilities and Transportation Commission
13 regarding the definition of the term on-call in your
14 permit authority; is that correct?

15 A. Yes, it did.

16 Q. And the Commission wrote to you under date
17 of November 15, 1989, did they not?

18 A. Yes, they did.

19 Q. And that's the first letter contained in
20 the packet of letters, Exhibit No. 1, correct?

21 A. Yes.

22 Q. I want to direct your attention -- isn't
23 it true that in that correspondence the Washington
24 Utilities and Transportation Commission by and
25 through its Commissioner, Mr. Paul Curl, is advising

1 you as to how the Commission interprets or will
2 expect interpretation of the term on-call?

3 A. Yes.

4 Q. And do they not draw a distinction in that
5 correspondence between walk-up and on-call service?

6 A. Yes, they do.

7 Q. I want to direct your attention to the
8 second sentence of the second paragraph that begins,
9 "The Commission order MVC." Do you see that?

10 A. Yes, I do.

11 Q. And I'll go ahead and I'll read it.
12 Number 1809 in that docket clearly indicated that
13 the on-call restriction allowed Shuttle Express to
14 transport on an unscheduled basis only those
15 passengers who have made a telephone request for
16 service prior to boarding a Shuttle Express motor
17 vehicle; is that correct?

18 A. Yes, it is.

19 Q. Is there anything in that correspondence
20 that tells you how much prior to the boarding the
21 telephone request must be made?

22 A. No.

23 Q. Is there anything in that correspondence
24 that suggests where the telephone must be located?

25 A. No.

1 Q. After you received the Commission's letter
2 of November 15, 1989, I think it's fair to say that
3 you had some discussions with my office, did you not?

4 A. Yes, I did.

5 Q. And what resulted from those discussions
6 was a series of correspondence. Or you authorized
7 me to send letters to the Washington Utilities and
8 Transportation Commission; is that correct?

9 A. Yes.

10 Q. And those are seen in this series of
11 correspondence, are they not?

12 A. Yes.

13 Q. In my last correspondence to the
14 Commission, December 11, which is the last two pages
15 of Exhibit No. 1 --

16 A. Yes?

17 Q. -- I guess in typical lawyerly manner on
18 the second page of that December 11 letter, I
19 suggested or I made a suggestion that everyone get
20 together and let's discuss the definition of on-call
21 given the differing interpretations that were
22 developing, did I not?

23 A. Yes.

24 Q. Did I also sit down with you and have a
25 discussion and relate to you my personal feelings

1 with regard to whether I agreed or disagreed with
2 Secretary Curl?

3 A. Yes, you did.

4 Q. And did I give you advice with regard to
5 whether or not Secretary Curl's interpretation would
6 be subject or could be subject to challenge?

7 A. Yes.

8 Q. And that yours may be the right one?

9 A. Yes, I did.

10 Q. Did I offer to proceed through Commission
11 hearings to -- on your behalf to put forth your
12 position?

13 A. Yes, you did.

14 Q. What did you advise me to do?

15 A. It was on a telephone call to my office
16 and I said we're going to abide by the Commission's
17 interpretation of on-call.

18 Q. And after that point in time, sir, did you
19 then -- what did you do, and please take us and the
20 Commissioners, administrative law judge, through the
21 steps that you did to begin compliance with the
22 Commission's interpretation of what on-call meant as
23 expressed to you in their letter of November 15,
24 1989? What did you do?

25 A. If I could have just a moment to reference

1 some of my material.

2 MRS. COOMBS: Your Honor, while we're
3 doing this, could Mr. Reininger and I not be treated
4 as siamese twins and have the same documents that
5 everybody else is receiving so that we can review
6 them also, especially on the on-call issue as in the
7 certificate which I do not have a copy of?

8 JUDGE LUNDSTROM: Okay.

9 MR. WOLF: I will be very happy to provide
10 it at the first break. I did not anticipate
11 intervention and I do not have any more copies of
12 the permit authority. At the very first opportunity
13 I'll be very happy to supply copies to everyone.

14 MR. CEDARBAUM: Mr. Wolf, I can supply
15 permit authority.

16 MR. REININGER: Thank you very much.

17 MRS. COOMBS: Appreciate it.

18 JUDGE LUNDSTROM: Go ahead, please.

19 A. I had most of this referenced with tags
20 and some of them are gone so it's going to take me
21 just a few minutes.

22 Q. Mr. Sherrell, let me try and help you a
23 little bit, and that was calling for kind of a
24 narrative answer. Let me try and break it up a
25 little bit.

1 A. It's okay.

2 Q. Well, go ahead. My question to you was
3 what did you do to install or insure compliance with
4 the Commission's interpretation of the on-call
5 restriction or the on-call wording in your permit as
6 contained in their correspondence of November 15,
7 1989?

8 A. I put out a driver's information manual
9 which is our manual to the drivers of how we perform
10 our operations, immediately requiring that all of
11 our guests make a phone reservation, except those
12 who have -- had a previous reservation made by their
13 travel agency or prior phone reservation to the
14 airport. This information manual, says 2-13-90, I
15 made one out prior to that and somehow they got
16 taken out of our driver information manual, and that
17 was evident when we had an inspection by Mr. Moss
18 and I was going to show him our information manual
19 that stated that and I couldn't find that in there.
20 To control this, everything is controlled through
21 dispatch, so when we made this decision that we
22 would go by a phone reservation, I immediately went
23 to dispatch and I said, "You people are responsible
24 for making sure that all guests make a phone
25 reservation because dispatch controls who gets on

1 the van. Nobody can get on the van without their
2 authorization."

3 Q. Okay. Let me go back a little bit here.
4 First of all, with regard to your decision to adopt
5 the Commission's interpretation of the term on-call
6 as expressed in their November 15, 1989
7 correspondence, did you talk with the -- anyone at
8 the Port of Seattle with regard to this?

9 A. Yes, I did. I keep the Port of Seattle
10 informed on all regulatory matters and
11 correspondence and I believe I discussed it with Mr.
12 Holbrook.

13 Q. And did you ask the Port of Seattle
14 whether or not they could do anything to help you
15 comply with the Commission's letter of November 15,
16 1989?

17 A. I think -- were you leading to telephones?

18 Q. Yes.

19 A. And there's a gray area in there. In
20 negotiating with the port for the telephones, we had
21 always had a lot of problems with vandalism on the
22 kiosk phones, the hotel, motel phones in the lower
23 drive. They were vandalized just prior to
24 Thanksgiving. Someone went through and stabbed each
25 individual button, so all of our guests that were

1 coming into Sea-Tac had to phone us -- they would go
2 to a board and they couldn't use the buttons.
3 Secondly, Ackerley, who controls them, took all of
4 our advertising and all of our reference material
5 off of the boards so all of a sudden we didn't exist,
6 and I brought this up to the port and I said, "You
7 know, it's a disservice for all of the incoming
8 people coming into Sea-Tac to not be able to choose
9 their appropriate transportation, whatever that may
10 be." In addition, and I can't honestly remember if
11 I ever referenced the on-call portion of it, because
12 in my conversation with you, Bruce, on the legal
13 phone, I said, let's -- and I remember my statement
14 explicitly, "Let's go ahead and abide by it." The
15 phones are going in anyway so that wasn't the total
16 reason from the phones. When we had vandalism on
17 the inside, we also had phones on the outside.

18 Q. The phones have helped your ability to
19 comply with the interpretation, have they not?

20 A. Oh, definitely. It's not a -- it doesn't
21 put our disservice to run back in and make a phone
22 call from either the pay phone or the pay boards.

23 Q. Do you have an opinion as to whether or
24 not it would be a disservice to your passengers to
25 require them to return to the terminal to make a

1 phone call when there's a phone on the drive?

2 MR. MacIVER: I object to that question,
3 your Honor. It's not relevant to the issue of
4 whether he is abiding with the certificate or not.
5 We're talking about public convenience and necessity
6 here.

7 JUDGE LUNDSTROM: Well, I think it's his --
8 it goes to the basis for his interpretation of his
9 authority. I'll allow the question. Go ahead,
10 please.

11 A. There was lengthy discussion with not only
12 myself, but with the airport managers, and that
13 included a senior management of the port, and we all
14 felt that it is definitely a disservice to require
15 somebody to walk back in and grab a telephone,
16 because there's been a lot of theft, pickpocketing
17 lately, and you can't leave your bag outside, so you
18 have to drag your bag back inside. You don't have
19 the option of selecting the motor transportation
20 that's available to you, with EASE.

21 Q. Who at the Port of Seattle had the
22 ultimate determination as to whether or not the
23 phones would be installed?

24 A. I think that was between Mr. Charles Blood
25 and Doug Holbrook.

1 Q. You didn't hold that ultimate decision,
2 did you, sir?

3 A. No, I did not.

4 Q. Phones certainly couldn't go in without
5 board Port of Seattle approval?

6 A. You know, that -- you just brought up a
7 thought in my mind, on the timing of this. When the
8 phones downstairs were cut, was when we started
9 discussing, that was prior to Thanksgiving, about
10 putting the phones in. No, I do not have that
11 ultimate decision, no.

12 Q. Another area, what did you do or how did
13 you instruct your drivers to comply with the
14 Commission's interpretation of the November 15, 1989
15 letter from Secretary Curl? I think you told us
16 first with regard to the memos, you referred to a
17 memo, I think Exhibit No. 2?

18 A. Two, yes.

19 Q. You also have a page of your documents
20 there, page 48? That was one of the ones that Mr.
21 MacIver copied. You see that?

22 A. Yes, I have it.

23 Q. That also directs our --

24 MR. MACIVER: That's Exhibit 2.

25 MR. WOLF: I don't think it is exactly the

1 same.

2 MR. MacIVER: I'm sorry.

3 Q. Exhibit -- my question is page 48 of your
4 driver manual is another memo that relates to the
5 on-call terminology in your permit, does it not?

6 A. Yes.

7 Q. Or it teaches your drivers how to handle
8 things at the airport; is that correct?

9 A. Yes, it does.

10 Q. What did you do with regard to instructing
11 your dispatchers?

12 A. It's exactly the same and it's marked
13 number 70 which came out of the dispatch manual.

14 Q. Now, with regard to your drivers, do you
15 hold periodic driver meetings?

16 A. Yes, we do.

17 Q. How frequently do you hold those?

18 A. Monthly.

19 Q. And was compliance with the WUTC
20 interpretation ever discussed at any of those driver
21 meetings?

22 A. Definitely.

23 Q. Were there any special driver meetings
24 held, can you recall?

25 A. We have a -- we have two meetings a month.

1 One is a general meeting for any discussion, any
2 subject, and the others are team meeting, and we
3 discuss specific items.

4 Q. Now, with regard to the driver manual that
5 we have been referring to wherein there are some
6 written instructions with regard to airport
7 procedures and the on-call terminology of your
8 permit, how do you insure that your drivers read
9 those memos?

10 A. The information manual has listed in the
11 front of it each and every driver that is in our
12 employment, and it also lists on one side across the
13 top, lists each revision or each page, and a driver
14 is required to initial. To make sure the drivers
15 keep up on this, it is the responsibility of our
16 training department to go through and monitor and
17 then follow up with our shift coordinators to make
18 sure everybody reads and is informed of all changes
19 and all operation modes.

20 Q. Do you employ any other training devices
21 such as films or any other instructional aids for
22 your drivers?

23 A. Yes, we do. We use visual film.

24 Q. Have you made any films with -- to show
25 your drivers with regard to airport operations?

1 A. Yes, we have, and we had a special meeting
2 in which that film was shown to each and every
3 driver, a mandatory meeting, and it was explained to
4 all of them.

5 Q. Does that film instruct your drivers with
6 respect to the proper utilization of the telephones
7 at the airport?

8 A. Yes, it does.

9 Q. And how to direct a passenger to them, or
10 potential passenger to them?

11 A. Yes, it does.

12 Q. And for how long has that film been
13 available?

14 A. Oh, this is the second one we've used. I
15 can't remember the date on the film. It seems like
16 it's been out there about 30 to 60 days and I know
17 it's a broad spectrum, but it's something like that.
18 I'm not good on dates. The other one I did a year,
19 year and a half ago.

20 Q. Despite your best efforts with regard to
21 compliance with the Commission's interpretation,
22 there were some violations received, were there not?

23 A. Yes, there were.

24 Q. And I believe those were received as a
25 result of Commission enforcement investigation that

1 took place in February of 1990; is that right?

2 A. Yes.

3 Q. We're going to have, and I will be calling
4 Inspector Moss as a witness in this proceeding to
5 describe the full nature, scope and extent of that
6 investigation. Do you know whether or not there
7 were any subsequent investigations by the -- strike
8 that. With regard to the citations that were
9 received in February, were your drivers at that time
10 acting in accordance with company policy when they
11 took a walk-up passenger?

12 A. They were not, no.

13 Q. And I guess are you telling us then, Mr.
14 Sherrell, that despite your best efforts and your
15 training, that some drivers made some mistakes on
16 that occasion?

17 A. Three did, yes.

18 Q. What's the policy of your company with
19 regard to hammering home to drivers their inability
20 to take a walk-up passenger that has not made a
21 telephone request for service? Are you continuing
22 your education efforts or what are you doing in that
23 regard?

24 A. How about if I state the way I feel about
25 regulations to the drivers?

1 Q. Okay.

2 A. That's been in existence a long time, if I
3 can find it here. This was dated -- this is out of
4 the operations manual to all of our drivers and it
5 was written 2-27 1990, number 56, and it says -- let
6 me make sure I've got the right one. That's the
7 wrong one. That's the wrong one. Here we go. Here
8 we go. I'm sorry. It was February 13th, 1990. And
9 I'll read it to you. "Inspection by Agency," is the
10 title. "Shuttle Express is a regulated business by
11 city, county, port and state. From time to to time
12 each of these agencies will be inspecting vans,
13 operations and driver certificates. It is
14 imperative as well as company policy to treat each
15 agency inspector as our guest by providing
16 information requested in a friendly, helpful manner.
17 Under 'NO CIRCUMSTANCES' will rudeness or
18 unwillingness be tolerated. These officials have a
19 job to perform and we will assist them in providing
20 information as requested. When approached by any of
21 these agencies, present your Shuttle Express ID
22 badge. Then record the following information on
23 your recap sheet, name, badge number and agency.
24 All agencies and agents are our friends and we will
25 maintain this friendly relationship."

1 Q. During the February investigation, did you
2 cooperate with the investigators from the Washington
3 Utilities and Transportation Commission?

4 A. I felt we did 100 percent, yes.

5 Q. And after the February investigation, did
6 you continue your efforts to educate your drivers
7 against taking a walk-up customer?

8 A. Yes. We implemented a new procedure in
9 dispatch that required all dispatchers to log name
10 and time of our Sea-Tac guests, and I personally
11 monitored their performance and made sure they were
12 making all of our drivers perform to the letters of
13 the law that we had written in our operations manual.

14 Q. There was a subsequent investigation or a
15 follow-up investigation by the Washington Utilities
16 and Transportation Commission, was there not, Mr.
17 Sherrell?

18 A. Yes. I was informed of that by the --
19 Doug Holbrook at Sea-Tac.

20 Q. Again, Mr. Moss will be here and he will
21 be a witness and will describe the results of that
22 second investigation, but what is your understanding
23 as to whether or not the investigators found any
24 violations on the second investigation?

25 MR. CEDARBAUM: Your Honor, I'll object.

1 Mr. Moss has been subpoenaed. He's been in the
2 hearing room all day, although I don't see him here
3 right now. He'll testify tomorrow as to what he was
4 assigned to do, what he did and what he saw, and
5 that's the best evidence of what the Commission
6 evidence was. This witness' interpretation of what
7 that investigation entailed I think is improper. I
8 have no problem with Mr. Moss testifying and I think
9 that's the appropriate person from which to get this
10 testimony.

11 MR. WOLF: I am calling Mr. Moss as a
12 witness, your Honor, but we're talking about Mr.
13 Sherrell educating his drivers and the efforts that
14 he took. We talked about in February there was a
15 violation. I asked him if those efforts continued
16 and then there was another investigation, and I want
17 to know what Mr. Sherrell understood were the
18 results of that second investigation so he could
19 formulate an opinion as to whether or not his
20 efforts were working.

21 JUDGE LUNDSTROM: Okay. That's fine.
22 Answer the question, please.

23 A. Yes, after Mr. Holbrook informed me that
24 there had been a second investigation, which
25 surprised me, at my first opportunity I spoke with

1 Mr. Moss, Inspector Moss, and asked him if there was
2 any violations or if he found anything out of the
3 ordinary of our mode of operation, and he informed
4 me that he had not.

5 Q. Mr. Sherrell, I have just a little bit
6 more. The complaint in this proceeding alleges that
7 you continue to operate in violation of the on-call
8 terminology of your permit. I would like to ask you
9 directly, sir, what is your current manner, method
10 and mode of operations for passengers arriving at
11 the airport without a prior -- or without a prior
12 reservation, before their arrival at the airport?

13 A. You're asking me when a passenger comes
14 into Sea-Tac, what do we require each guest do?

15 Q. Yes.

16 A. We require all of our guests to phone us
17 on the telephone and we take the reservation and
18 write it on our board.

19 Q. Okay. So when the passenger comes into
20 the airport, are there a number of telephones that
21 are available to that passenger?

22 A. Yes, there are.

23 Q. And where are they located?

24 A. Throughout the port. In the gate, and
25 that would be where airplanes come in, the gate,

1 around ticketing on the upper level, around baggage
2 claim on the lower level, and those that I've
3 referenced so far are all pay phones. Then on the
4 hotel, motel board, transportation board, there is a
5 toll-free number 48 button they push and call, or
6 they can go curbside and use the Shuttle Express
7 direct line from there.

8 Q. Now, the direct line that is at curbside,
9 where does -- the passenger could pick that up or
10 the passenger gets on the phone, and where does it
11 answer to? Where is it ringing to?

12 A. That rings into -- we have two reservation
13 systems. One is to the airport and one is from the
14 airport and from the airport is located in dispatch
15 office, and that's a reservations center from the
16 airport and that's where it's located.

17 Q. And is the passenger at that time
18 requesting service?

19 A. Yes.

20 Q. Is the passenger utilizing a telephone to
21 do it?

22 A. Yes.

23 Q. Is that passenger doing that prior to
24 their boarding the van?

25 A. Definitely.

1 Q. Do the drivers have any -- what happens on
2 the telephone with the dispatcher? Is that where a
3 reservation for service is made?

4 A. Yes.

5 Q. Now, what happens physically? Does the
6 dispatcher make any written notation while on the
7 telephone with the passenger?

8 A. Yes. Our standard is "Shuttle Express,
9 your destination, please," so we first put down the
10 destination. Then we get the passenger's name and
11 we ask them do they have their luggage. If they
12 have their luggage then we know they're on the
13 curbside waiting for us and we ask their location,
14 whether it's inside or outside, and we direct them
15 to one of our pickup areas, if they want our service.
16 It is also then dispatch's responsibility to sector
17 and make sure that people going to a specific sector
18 get on that specific van.

19 Q. Okay. So the passenger picks up --
20 passenger gets on the telephone, and the -- he's
21 talking -- the passenger is talking to the
22 dispatcher. Does the dispatcher write anything down
23 during that telephone conversation?

24 A. Yes, he does. He enters all the
25 information I gave you on the board and the board is

1 all sectored out, specific sectors. In addition,
2 then, the dispatcher writes on a log sheet name and
3 time, so we have a log of name and time, so -- and
4 that's the result of an inspection that we did.

5 Q. And does the dispatcher then make the
6 reservation and direct the passenger to the
7 appropriate van?

8 A. That is reservations. Yes, the
9 reservation is taken.

10 Q. Is the passenger at that time directed to
11 a van?

12 A. Yes.

13 Q. Could the passenger be directed to a van
14 that may be right in front of them?

15 A. Each van that's down there is basically
16 going to a different area or we may not have a van
17 and we're going to drive over to that area, yes.

18 Q. Listen to my question. Could the
19 passenger be directed to a van that's right in front
20 of the telephone?

21 A. Yes, definitely.

22 Q. You have three stopping areas at the
23 airport, do you not?

24 A. Yes.

25 Q. And they're spaced along the drive

1 probably sort of equa-distant, is that correct?

2 A. Yes.

3 Q. If a passenger picked up the phone on the
4 drive at space one, is it possible, sir, that the
5 dispatcher would direct that passenger to a van at
6 space two, then parked at space two?

7 A. No.

8 Q. Why not?

9 A. Because we'd have the guest wait at that
10 phone and then we would come back and pick them up.

11 Q. Okay. Would you send in -- and could you
12 at times -- what if passenger or -- what if the
13 passenger on the phone at stop number one is not
14 going on a location convenient to the other
15 passengers or already on the van, what would you do
16 in that instance?

17 A. We'll send in a different van for them.

18 Q. Can the dispatcher determine when the
19 phone rings from or which telephone at the airport
20 is being utilized by the passenger?

21 A. No.

22 Q. The -- it's no difference to the
23 dispatcher whether or not the passenger is inside
24 the terminal or at the curbside telephone that's
25 been installed for you folks; is that right?

1 A. Well, there's a difference in directing
2 the passenger to find us.

3 Q. When the phone rings?

4 A. No, we can't tell where they are.

5 Q. Just give them different advice on what
6 directions to take, correct?

7 A. Yes.

8 Q. Now, I want to switch quickly to the
9 current manner and method of your operations from
10 the 12 hotel facilities that are serviced by Gray
11 Line. Let me lump them all together. What is your
12 current mode of operations with regard to passengers
13 departing to the airport from any one of those 12
14 downtown hotels? First of all, let me ask you, sir,
15 do you ever go into those hotel facilities without
16 receiving an advance telephone call?

17 A. Never.

18 Q. Would any concierge or bellhop allow you
19 to stay at those hotel facilities without having a
20 prior request to come in for service?

21 A. I doubt it. We don't do it so I can't
22 answer that.

23 Q. Okay. With regard to the potential
24 walk-up situation at a hotel, what's your company
25 policy? What are you doing on the -- what's your

1 current mode of operation with regard to that in
2 order to comply with the Commission's letter of
3 November 15, 1989, first page of Exhibit 1?

4 A. I can only remember one instance and --
5 that I was in dispatch and I heard it, and our
6 operation is, and it was verified at that time, have
7 our guest use a telephone and give us a call.

8 Q. And does that mean that the guest must go
9 back into the hotel facility?

10 A. Yes, they must.

11 Q. Would you consider it a violation, sir, if
12 the driver used his telephone or even handed his
13 telephone to the passenger at a hotel?

14 A. Yes, I interpret -- yes, I have read the
15 regulations today, yes, from the Commission. Yes.

16 Q. And that's not your current method of
17 operation is to have the driver make a call?

18 A. Correct.

19 Q. This is probably irrelevant, but does it
20 seem to make any sense to you -- strike that. It is
21 irrelevant.

22 I want to -- another area of the complaint
23 is that Mr. -- Gray Line is complaining that you are
24 soliciting passengers and that that solicitation
25 constitutes a violation of your permit authority.

1 Are you familiar with that? I mean, you read
2 through the complaint with me, did you not?

3 A. I read through the complaint, yes.

4 Q. I want to draw your attention to Exhibit
5 No. 3 which is your permit authority, and can you
6 find for me in there, Mr. Sherrell, any portion of
7 your permit that prohibits in any way whatsoever
8 solicitation of passengers?

9 A. No.

10 Q. Regardless of what the terms of your
11 permit say, you also have another regulatory body
12 that governs your operations and that's the Port of
13 Seattle, is it not?

14 A. Yes.

15 Q. The agreement that you have with the Port
16 of Seattle precludes you from soliciting on the
17 airport drive, does it not?

18 A. Yes.

19 Q. And do you abide by that portion of your
20 operating instructions with the Port of Seattle?

21 A. Very strictly.

22 Q. Mr. Sherrell, what is your attitude with
23 regard to compliance with that provision of the port
24 agreement regarding solicitation? What's your
25 attitude towards solicitation?

1 A. I've seen solicitation in California. I
2 think it's atrocious and abusive and I do not
3 endorse solicitation.

4 Q. What do you instruct your drivers with
5 regard to solicitation?

6 A. They cannot solicit.

7 Q. You have received a violation -- a
8 citation from the Port of Seattle for solicitation,
9 have you not?

10 A. Two.

11 Q. When was the last time you received a
12 solicitation violation?

13 A. 11-26-89.

14 Q. You have not received one since that time;
15 is that correct?

16 A. We have not.

17 Q. How long have you been operating at the
18 port? Strike that. Is it against -- strike that.
19 Have you discussed with Mr. Holbrook from the Port
20 of Seattle -- by the way, we've talked about Mr.
21 Holbrook. Who is Mr. Holbrook?

22 A. Mr. Holbrook is head of ground
23 transportation under Mr. Shaw.

24 Q. Now, we will be calling Mr. Holbrook as a
25 witness, but have you discussed solicitation or your

1 attitudes towards solicitation with Mr. Holbrook?

2 A. From our inception.

3 Q. And have you discussed attitudes with
4 regard to compliance with the port operating
5 agreement with Mr. Holbrook?

6 A. Since our -- since we started, yes.

7 MR. WOLF: I don't think I have anything
8 more, your Honor. If I could just take a second and
9 check my notes.

10 Q. Just one last area. You testified earlier
11 in response to questions from Mr. MacIver that at
12 the time that you applied for this authority, it was
13 you, was it not, Mr. Sherrell, who utilized the term
14 "on-call"? In other words, sir, on-call appears in
15 the very first application form that was filled out
16 by my office and filed with the Commission, does it
17 not?

18 A. Yes, it does.

19 Q. So it was a term that you utilized, was it
20 not?

21 A. Yes.

22 Q. And when you testified at the hearing, I
23 think you've already testified here, at the hearing
24 on that application -- you've already told us here,
25 did you not, that when you used the term on-call in

1 that fashion, you were utilizing it simply to
2 distinguish from the scheduled service of the other
3 carriers and to really mean immediately available;
4 isn't that correct?

5 A. Yes, I stated that earlier.

6 Q. And we have some -- and that's what you
7 thought it meant at the time, did you not?

8 A. Yes.

9 Q. Is there anything, can you recall any bit
10 of testimony at the hearing on your King County
11 application that suggested at all that on-call meant
12 or would mean a prior telephone request for service?

13 A. No.

14 Q. Again, sir, regardless of what you thought
15 it meant, regardless of why you applied and how you
16 applied, regardless of how you may personally
17 believe here today what on-call means, is it your
18 testimony here, sir, that you are conforming your
19 operations to the interpretation placed on that
20 terminology in your permit as found in the November
21 15th, 1989 letter?

22 A. Yes, and I always will.

23 Q. And will you continue to do that, sir?

24 A. I always will.

25 Q. If drivers slip up, will you reprimand

1 drivers if they take a walk-up passenger?

2 A. Definitely.

3 Q. Thank you, Mr. Sherrell. I have nothing
4 further.

5 JUDGE LUNDSTROM: Mr. Cedarbaum, questions?

6 MR. CEDARBAUM: Yes, thank you. I just
7 have a couple of short areas, Mr. Sherrell.

8

9

CROSS EXAMINATION

10 BY MR. CEDARBAUM:

11 Q. One, beginning in Exhibit No. 1, page four
12 of the November 21st letter of 1989 which Mr. Wolf
13 wrote to the Commission in response to the first
14 Commission letter --

15 A. What page?

16 Q. Page four.

17 A. Okay.

18 Q. Do you have it?

19 A. Yes.

20 Q. At the top of the page, Mr. Wolf writes, "The
21 order itself contemplates a contrary interpretation.
22 As stated at page three of the order, 'Passengers
23 will be able to hail the vans without telephone
24 calls'." Now, in the context of this letter, the
25 order, as you understand it, was the Commission

1 order granting your application in the King County
2 proceeding; is that right?

3 A. Yes.

4 Q. And if we look at page three of that order,
5 which for your reference is Exhibit A to the
6 complaint in this proceeding, maybe you have it
7 there in front of you?

8 A. You've lost me.

9 Q. Okay.

10 A. Just real slowly.

11 Q. I want you to look at page three if you
12 have it or you can accept this subject to check, but
13 page three of the Commission's order granting your
14 application in the King County proceeding is
15 attached as Exhibit A to Gray Line's complaint in
16 this case. I just thought you might have it in
17 front of you.

18 A. I don't have it.

19 Q. Okay. Would you accept subject to check
20 then at page three, the full sentence from which Mr.
21 Wolf quotes a portion states, "If the current
22 operation agreement between Shuttle Express and the
23 Port of Seattle is superseded by the currently
24 proposed agreement, then the quoted portion,
25 'passengers will be able to hail the vans without

1 telephone calls,' " do you recall that?

2 A. I can't recall something like that. I
3 just have to accept that you've read it and that's
4 in the testimony.

5 Q. Is it correct from that portion of the
6 order that I've just cited that the current
7 operating agreement at that point in time did not
8 allow hail-the-van, walk-up type --

9 A. I don't know. I can't comment on that.

10 Q. Did you read the Commission's order in
11 that case?

12 A. I read everything that's come across my
13 desk. I'm telling you I can't recall.

14 Q. You can't recall at that time when you
15 testified in that proceeding whether or not your
16 then currently effective operating agreement with
17 the port did or did not allow you to take walk-up
18 passengers?

19 A. I have expressed myself prior to your
20 questions on all those things, so --

21 Q. Farther down on page four of this portion
22 of Exhibit 1, the -- about the last quarter of the
23 page, Mr. Wolf says, later, at page 554 of the
24 transcript, "Mr. Sherrell testified as follows."
25 Then he quotes, "In the recent proposed agreement

1 with the port we are going to be allowed to take
2 customers as solicit or hail or vans, but in the
3 past we used to have to inconvenience them and ask
4 him to walk back into the terminal and summon the
5 same van to pick them up." Do you see that?

6 A. Yes.

7 Q. When you refer to the proposed agreement
8 with the port, that refers to Exhibit 38 earlier
9 referenced on this page of Exhibit 1; is that
10 correct?

11 A. I don't know. I am sure that in the
12 records you have the port agreement, and it -- you
13 can look it up and see if we had the port agreement
14 real easy. I'm sure you'll do that. You're asking
15 me questions that I would have to go do what I just
16 mentioned to you. Is that the right answer for you?

17 Q. In response to a question by Mr. Wolf
18 concerning page five of his letter, you were able to
19 testify about what you thought was the effective
20 date of January 1st.

21 A. Okay.

22 Q. And now you're telling me that you can't
23 testify as to when that operating agreement was
24 effective.

25 A. Well, obviously you've read some --

1 there's -- one thing that says yes, I said that, it
2 said that. I say yes, I said this. I think your
3 best resolution is to take a look at the contract
4 and see if it was in effect or not. My testimony --
5 I am not going to stand up here and say yeah, that
6 was in effect, when you've got to take a look at the
7 actual document. I know we had an agreement and we
8 stated that earlier. We had an agreement, a meeting
9 of the minds with the port to issue this, that we
10 could take walk-up passengers. Now, I think it was
11 in effect. I'm not sure. And you have the records
12 to look it up.

13 Q. So you have no objection if after we go
14 off the record today I go back to my office, pull my
15 file and find out and then bring that information
16 back to the hearing room tomorrow?

17 A. I think that would be good for you to do
18 that. Then the Commission and everybody involved
19 would know what was actually there and I endorse
20 that 100 percent.

21 Q. Just one last area. You've made reference
22 to a penalty assessment essentially. I don't know
23 that you actually used those words, but a penalty
24 assessment that was issued to you by the Commission,
25 and if I could have marked for identification as

1 Exhibit 4 penalty assessment number 1070.

2 JUDGE LUNDSTROM: Let the record show I am
3 marking for identification as Exhibit 4 the document
4 referred to by Mr. Cedarbaum, described as penalty
5 assessment as number 1070, multi-page document. Go
6 ahead, please.

7 (Marked Exhibit 4.)

8 Q. Referring you to Exhibit No. 4, Mr.
9 Sherrell, do you recognize that as the penalty
10 assessment that the Commission issued to your
11 company for violation of its certificate authority,
12 specifically the on-call restriction?

13 A. Yes.

14 Q. And you did receive this penalty
15 assessment from the Commission?

16 A. Yes, we did and we paid it.

17 Q. You have paid it.

18 MR. CEDARBAUM: Thank you. I would offer
19 Exhibit 4.

20 JUDGE LUNDSTROM: Objections?

21 MR. WOLF: None, your Honor.

22 MR. MacIVER: No objection.

23 JUDGE LUNDSTROM: Let the record show
24 Exhibit 4 will be admitted.

25 (Admitted Exhibit 4.)

1 MR. CEDARBAUM: I have no more questions
2 of Mr. Sherrell. I would like to take him up on his
3 offer to check my file from the King County case so
4 we're sure on the record as to what Exhibit 38 was
5 and provide that information tomorrow. I am not
6 sure that Mr. Sherrell will still be on the stand.

7 JUDGE LUNDSTROM: Thank you.

8 MR. WOLF: Are you going to bring Exhibit
9 38 with you?

10 MR. CEDARBAUM: I could do that and also
11 the transcript references that identify it.

12 MR. MacIVER: Or we could maybe just
13 stipulate.

14 JUDGE LUNDSTROM: Possibly you could
15 consult among counsel before the hearing commences
16 and offer a stipulation.

17 MR. CEDARBAUM: What I propose to do is
18 bring back and -- talk to Mr. Wolf and Mr. MacIver
19 and possibly the intervenors, hopefully agree as to
20 what it is and then just state that on the record.

21 JUDGE LUNDSTROM: The witness is now
22 available for questions by the Commission.

23

24

25

1 E X A M I N A T I O N

2 BY COMMISSIONER CASAD:

3 Q. I just have one I want to clear up, if I
4 could. I understood in response to Mr. MacIver that
5 you indicated that a passenger could enter the van
6 and the van operator would call the dispatcher and
7 then the customer would provide his name, and you
8 felt that was providing excellent service to the
9 customer, is that correct? Are you presently doing
10 that?

11 A. Can I restate what I think I said the way
12 I've written this, is that when a guess walks up to
13 a van and requests service on that van, we then have
14 the driver go over, pick up the phone, and not them
15 do it, I wish they did, but give some of the
16 pertinent information so it takes kind of the
17 pressure off them using the phone, and then hand the
18 phone to the customer to make the reservation. The
19 guest never enters the van prior to that reservation.

20 Q. Okay. That was the point, because I
21 understood the response that you gave Mr. MacIver
22 that the passenger could enter the van, the call
23 could be made from the van, and the transaction
24 completed there, so I must have misinterpreted then
25 your response to Mr. MacIver.

1 A. At one time working with legal counsel we
2 felt that the driver could make a radio phone call
3 and that would constitute a reservation and it
4 didn't. I think Mr. MacIver is referencing in
5 hotels that we could not do that, and, no, we could
6 not do that, so that may be where it came from, but,
7 no, we can't.

8 BY COMMISSIONER PARDINI:

9 Q. I drew the same conclusion that
10 Commissioner Casad did, and I thought it was your
11 testimony, Mr. Sherrell, that you believe that you
12 still can do that, that the driver can call in right
13 from the van over your communications system and say,
14 "You have passenger Smith going downtown," and that
15 constitutes adequate service?

16 A. No, that would constitute illegal
17 operation.

18 Q. Okay. I misunderstood that response, then.
19 I have one question only, and that deals with the
20 phrase "on call." Mr. Sherrell, has your definition
21 of on-call always been the same or has it evolved
22 from the time the original permit was issued until
23 subsequent penalties and assessments and complaints
24 were filed against you?

25 A. I'll swear on the Bible that it's always

1 been the same, that we could take our guests. I
2 would like to say that the phone requirement is not
3 that bad a deal, and I have -- you know, what the
4 Commission has put on is not that bad, to require a
5 phone call. I don't think that should be lifted.

6 Q. Thank you.

7 JUDGE LUNDSTROM: Questions, Mr. MacIver?

8 MR. MacIVER: Oh, yes. I'll keep it brief.

9

10 REDIRECT EXAMINATION

11 BY MR. MacIVER:

12 Q. At least what you believe the Commission
13 means by on-call is not that bad, in your opinion;
14 is that correct?

15 A. As I stated, that the past we were asked
16 to make a phone call, we can live with that and I'm
17 sure our guests can live with that.

18 Q. And, in fact, according to Exhibit 2, the
19 passenger doesn't even make the phone call, does he,
20 Mr. Sherrell, your driver does?

21 A. No -- well, when you say "making a phone
22 call," do you mean initiating the phone call or
23 making the reservation?

24 Q. Well, let me refresh your memory. When a
25 walk-up guest -- by the way, walk-up is the type of

1 guest the Commission advised you not to take, but
2 you then on February 13, 1990 say, "When a walk-up
3 guest has not made a reservation, assist the
4 necessary phone call by," and I am reading. This is
5 what the driver does, lifting the receiver and you,
6 that's the driver, talking first to dispatch,
7 stating walk-up passenger and destination. Then
8 pass the phone to guest who, quote, "merely," end of
9 quotes, gives their name, so what you have -- isn't
10 that a fact?

11 A. Yes.

12 Q. Isn't that accurate?

13 A. Definitely.

14 Q. So what you have done, is it not, Mr.
15 Sherrell, in response to the Commission's direction
16 you not handle walk-up is put phones on the curb of
17 the airport within a month after the November 15
18 letter came out and then figure out away to convert
19 what the Commission really meant by walk-up through
20 this procedure into what you now call a prior
21 reserved telephone guest?

22 A. That was not the intent.

23 Q. That's what has happened, has it not?

24 A. We have different views on that.

25 Q. And I see little wonder why you don't view

1 that as a burdensome restriction, if this is the
2 procedure where you can convert a walk-up to what
3 you call a prior telephone reservation guest.

4 MR. WOLF: There's no question before you.
5 Wait until there's a question.

6 Q. And in response to Mr. -- Commissioner
7 Pardini's comment about has your opinion of on-call
8 restriction and the severity of it evolved, I remind
9 you, Mr. Sherrell, did you not testify on January 12,
10 1989, when you were applying for authority as
11 follows, "Question: Do you want a certificate to be
12 limited to on-call service?

13 "Answer: Yes, as we stated. We did put
14 some heavy restrictions on ourselves." Is this your
15 idea of a heavy restriction?

16 A. I think it's a heavy restriction, not
17 specifically with that, but the fact that we're not
18 running a schedule and that we can only serve
19 airport passengers.

20 Q. Mr. Sherrell, when I asked you whether any
21 public testimony was presented at the time you
22 applied for authority to support on demand walk-up
23 type service, you conceded, "Well, no, but after all,
24 we weren't permitted by the port to handle walk-ups."
25 Now, when Mr. Wolf asked you questions, you're now

1 saying you were permitted to handle walk-ups or at
2 least you believe you were, but, nevertheless, you
3 didn't present any public riders who testified in
4 support of a walk-up on-demand service, did you, you
5 supported only riders who were talking about a truly
6 prior reservation by phone?

7 A. Yeah, and the problem we had with that was
8 the port did not allow us to take walk-up hail
9 passengers. That was in our first contract. We had
10 entered into an agreement with the port and -- I'm
11 starting to lose my mind here. We had entered into
12 the port -- agreement with the port in principal
13 that we could take walk-up passengers, is to -- you
14 know, and I stated that I didn't really know if
15 anybody ever stated it that had testified to walk-up,
16 because I don't know. The record I'm sure will show
17 what they testified to.

18 MR. MacIVER: Passing out another Shuttle
19 Express driver's information manual.

20 JUDGE LUNDSTROM: Marking for
21 identification as Exhibit 5 a document on Shuttle
22 Express letterhead, driver's information manual, in
23 the upper right-hand corner it's got number 62, date
24 3-12, Exhibit 5 for identification.

25 (Marked Exhibit 5.)

1 JUDGE LUNDSTROM: Go ahead, please.

2 Q. Mr. Sherrell, you testified that you made
3 your best effort to comply with the Commission's
4 November 15 letter, and I've handed to you what was
5 the document produced among the numerous documents
6 under subpoena today which is a driver's information
7 manual bearing date of March 12.

8 A. Yes.

9 Q. Do you have this?

10 A. Yes.

11 Q. Do you recognize this as coming from your
12 driver's manual?

13 A. Yes, I wrote it.

14 MR. MacIVER: I request this be marked for
15 identification as exhibit --

16 JUDGE LUNDSTROM: I have marked for
17 identification Exhibit 5.

18 MR. MacIVER: Five, and move for admission.

19 JUDGE LUNDSTROM: Objections, Mr. Wolf?

20 MR. WOLF: None.

21 MR. CEDARBAUM: No objection.

22 JUDGE LUNDSTROM: Let the record show
23 Exhibit 5 will be admitted. Go ahead, please.

24 (Admitted Exhibit 5.)

25 Q. Again, is this part of your program to

1 comply with the Commission's November 15 letter?

2 A. Yes, I think it is, yes, definitely.

3 Q. And again you refer to the WAC walk-up
4 guest?

5 A. Yes.

6 Q. And this tells how your driver can
7 position himself to accept a walk-up guest, does it
8 not?

9 MR. WOLF: Tells him how to take change it
10 from a walk-up to -- I'm sorry.

11 A. I can handle it.

12 MR. WOLF: I apologize. It's late in the
13 day.

14 A. This letter goes out to drivers.

15 Q. Correct.

16 A. Drivers' interpretation of regulations and
17 rules and specific language is very broad and very
18 general, and this reference is somebody that walks
19 up to the van and asks to get on the van, correct.

20 Q. Yes. So this is how you're telling your
21 drivers how to handle a walk-up.

22 MR. MacIVER: I've got no further
23 questions.

24 JUDGE LUNDSTROM: Mr. Wolf?

25

1 RE CROSS-EXAMINATION

2 BY MR. WOLF:

3 Q. Just two. Directing you to Exhibit No. 5,
4 which was just admitted, directing you to paragraph
5 two of that at the end, you're advising your drivers
6 of the Commission's interpretation of on-call, are
7 you not?

8 A. Yes, I am.

9 Q. And you're telling your drivers that all
10 guests must phone for reservations from the port; is
11 that right?

12 A. Yes, I am.

13 Q. Now, you're telling them emphatically, are
14 you not, sir, that this procedure policy must be
15 followed?

16 A. It must be followed, yes.

17 Q. And then down in the third paragraph
18 you're telling them that there can be no exceptions
19 to the procedure; is that right?

20 A. Yes.

21 Q. Is that your current policy, sir?

22 A. It is our current policy, yes.

23 Q. Just one last point. With regard to
24 Exhibit No. 4 which was the -- I think you received
25 three violations in February of this year; is that

1 right, Mr. Sherrell?

2 A. Yes, I did.

3 Q. One of them was a -- one of your drivers
4 was Larry Patton or Lauren Patton; is that correct?

5 A. Yes.

6 Q. Did you discuss at all the violation with
7 Mr. Patton?

8 A. I personally discussed the violation with
9 each one of these three people.

10 Q. Did you tell them that they were wrong?

11 A. Yes, I counseled each one them
12 individually.

13 Q. Did they seem to understand?

14 A. Yes, they did when I discussed it with
15 them.

16 Q. Have any of these three ever had any more?

17 A. No. Two are still with us and our top
18 drivers. Mr. James had a bypass. He's gone. I
19 mean, he's not with us.

20 Q. Okay. And now I see that -- when Mr. Moss
21 testifies, we're going to have the full
22 investigatory file. Mr. Moss is going to bring that
23 with him and we will learn then that driver Lauren
24 Patton hauled a passenger by the name of Mrs. Paine,
25 and you can see it on the recap sheet on the back of

1 Exhibit 4, Mrs. Paine? Can you find her name?

2 A. I got it, yes.

3 Q. She was going to the Mayflower Park Hotel,
4 was she not?

5 A. Yes.

6 Q. Are you familiar with whether or not the
7 complainant in this proceeding provides service
8 directly to the Mayflower Park Hotel?

9 MR. MacIVER: Objection.

10 Q. They don't, do they, Mr. Sherrell?

11 MR. MacIVER: Excuse me. I don't see any
12 relevance to that. The 12 hotels that are involved
13 are the hotels that we serve, which is not the
14 Mayflower Hotel. I don't see any relevancy to
15 whether we go to that hotel or not, unless Mr. Wolf
16 wants to argue public convenience and necessity now
17 and open that up.

18 JUDGE LUNDSTROM: Would you like to
19 respond?

20 MR. WOLF: I think it's proper
21 cross-examination with respect to the exhibit, and
22 that is I think it's relevant to the extent that a
23 violation was issued and we've got a particular
24 complainant in this proceeding. The complainant is
25 going to use those -- and the complainant itself

1 can't even carry or would not provide transportation
2 to the passenger that admittedly was not handled
3 properly.

4 MR. MacIVER: I do have a response to that
5 line of rationale, your Honor. We are taking the
6 position that there is a pattern of operation by
7 this company at the airport.

8 MR. WOLF: I'll withdraw the question. I
9 have nothing further.

10 JUDGE LUNDSTROM: Okay. Mr. Cedarbaum?

11 MR. CEDARBAUM: No questions.

12 JUDGE LUNDSTROM: Commission, anything
13 further?

14 COMMISSIONER PARDINI: No, thank you.

15 COMMISSIONER CASAD: No.

16 JUDGE LUNDSTROM: We've had two rounds. I
17 think you very much, Mr. Sherrell. You may be
18 excused. We'll reconvene at 9:00 a.m. and the
19 hearing will now be recessed, 9:00 a.m. tomorrow
20 morning.

21 Excuse me. For the record, the location
22 will still be the same, room 250 in these offices.

23 (Hearing adjourned at 5:15 p.m.)

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C E R T I F I C A T E

As Court Reporter, I hereby certify that the foregoing transcript is true and accurate and contains all the facts, matters, and proceedings of the hearing held 6/27/90

Marilyn A Johnson
COLUMBIA REPORTING SERVICE