

SERVICE DATE

APR 21 1989

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

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

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

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

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

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

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

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

MEMORANDUM

1. Background

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

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

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

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

2. Applicant's Proposed Service

a. Nature of Services

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

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

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

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

7. Equipment, Personnel and Management.

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

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

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

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

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

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

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

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

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

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

3. Services Currently Provided

a. City-of Seattle in Area Served by Grayline.

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

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

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

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

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

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

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

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

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

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

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

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

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

PASSENGER SERVICE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

e. Seattle-Tacoma International Airport.

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

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

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

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

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

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

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

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

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

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

4. Commission Discussion

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Suburban Airporter and EASE have presented witnesses who testified about their satisfaction with the services currently provided. When all public testimony concerning public need is considered, the issues of satisfactory service here resemble those present in In re Bremerton-Kitsap Airporter, Inc., d/b/a Bremerton-Kitsap Airporter, et al., Hearing No. D-2444, Order M. V. C. No. 1457 (August, 1984). The Commission stated, at page 5, that:

The issue is not whether more persons like the service than dislike it, or find it satisfactory or not, but whether the service is meeting the needs of the public. There has been a credible demonstration that it does not meet the standards of airporter service and that it is failing to meet the bona fide needs of a substantial segment of the travelling public. The applicant's ability to serve other segments of the market satisfactorily would do nothing to remove that failure in its service,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FINDINGS OF FACT

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

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

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

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

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

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

BETWEEN:

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

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

BETWEEN:

The Evergreen State College and Seattle-Tacoma International Airport.

BETWEEN:

Kent and Tukwila and Seattle-Tacoma International Airport.

BETWEEN:

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

BETWEEN:

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

The intervenor opposed the application,

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

AIRPORTER AND PASSENGER EXPRESS SERVICE

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

LIMITATIONS:

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

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

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

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

PASSENGER SERVICE

BETWEEN: Seattle and the Seattle-Tacoma Airport.

LIMITATIONS:

1. Service hereunder is expressly limited to the transportation of airline passengers and flight crews between Seattle-Tacoma Airport on the one hand and hotels and airlines offices in Seattle on the other hand, at rates substantially higher than the fares of regular common carriers.
2. No express service may be rendered hereunder except in the carrying of baggage

and excess baggage of passengers and flight crews.

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

Evergreen Trails, Inc., opposed the application,

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

PASSENGER SERVICE:

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

sub. 1 Passenger Service

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

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

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

Suburban Airporter, Inc., opposed the application.

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

PASSENGER SERVICE

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

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

EASE opposed the application.

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

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

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

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

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

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

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

CONCLUSIONS OF LAW

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

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

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

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

O R D E R

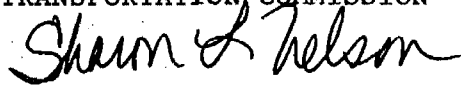
WHEREFORE, IT IS HEREBY ORDERED That Application No. D-2566 of San Juan Airlines, Inc., d/b/a Shuttle Express, as amended, requesting authority to provide nonscheduled, irregular route service as a carrier of passengers luggage and express items in the Seattle Commercial Zone or within a radius of 25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

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

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

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

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



SHARON L. NELSON, Chairman



RICHARD D. CASAD, Commissioner

Separate, Concurring Opinion of A. J. Pardini, Commissioner


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

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

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

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

Date April 21, 1989


A. J. PARDINI, Commissioner

APPENDIX A

PASSENGER AND EXPRESS AIRPORTER SERVICE.

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

(a) the municipality of Seattle;

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

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

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

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

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

RESTRICTIONS:

1) This authority may not be transferred for three years from the date of issue.

2) The carrier may offer only on-call, door to door type service between airports, served and any points within the territory served including residences, hotels and businesses

3) Service may be provided in vehicles no larger than a seven passenger van.

V. C. NO, 1809