BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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| SHUTTLE EXPRESS, INC.,  Petitioner and Complainant,  v.  SPEEDISHUTTLE WASHINGTON, LLC,  Respondent. | DOCKET NOS.  TC-143691 & TC-160516  SPEEDISHUTTLE WASHINGTON, LLC’S MOTION TO COMPEL DATA REQUEST RESPONSES FROM SHUTTLE EXPRESS, INC. |

### Pursuant to WAC 480-07-375(1)(d) and 480-07-425(1), Speedishuttle Washington, LLC (“Speedishuttle”) moves the Commission for an order overruling objections asserted by Shuttle Express, Inc. (“Shuttle Express”) and compelling Shuttle Express to provide complete responses to the First Data Requests of Respondent Speedishuttle Washington, LLC to Shuttle Express, Inc.

# **relevant procedural background**

### On September 7, 2016, Speedishuttle served its First Data Requests of Speedishuttle Washington LLC to Shuttle Express, Inc. (“Speedishuttle’s First Data Requests”). Speedishuttle’s First Data Requests included just 14 numbered requests.

### On September 20, 2016, Shuttle Express served Speedishuttle its Answers and Objections of Petitioner Shuttle Express, Inc. A true and correct copy of the specific data requests at issue and Shuttle Express’ Answers and Objections to same are provided herewith as Exhibit A. Therein, Shuttle Express made objections to each and every one of Speedishuttle’s First Data Requests, provided narrative responses to some, but not all of the requests, and produced just six pages of documents.

### On September 30, 2016, Speedishuttle requested an opportunity to meet and confer on its requests to Shuttle Express. That meeting took place on October 5, 2016, and resulted in the withdrawal of some data requests but did not resolve all issues. In a further attempt to confer, Speedishuttle outlined its position on Shuttle Express’ deficiencies in correspondence dated November 8, 2016. Shuttle Express’ response to Speedishuttle’s November 8, 2016 correspondence was essentially to stand on its initial objections.

### Speedishuttle next attempted to resolve the outstanding issues with Shuttle Express’ responses to Speedishuttle’s First Data Requests through a requested discovery conference with Administrative Law Judge Pearson. A discovery conference was held on December 2, 2016, but at the conference the parties were advised that only Shuttle Express’ data requests would be considered until Speedishuttle filed a motion to compel.

### Subsequent to the discovery conference, Shuttle Express offered to confer again on Speedishuttle’s First Data Requests, and additional communications were exchanged. Unfortunately, Shuttle Express did not provide a substantive response, and instead asked for Speedishuttle to hold off on filing its motion, explaining that perhaps it could resolve or narrow some issues and that it would need until after Christmas to respond to a motion to compel anyways. This response, while seemingly open to resolving the current dispute, is strikingly similar to Shuttle Express’ previous responses to attempts to confer, each of which have resulted in negligible movement from Shuttle Express despite that Speedishuttle has agreed to compromise and stand down on certain requests. Consequently, Speedishuttle now seeks an order addressing each of the data requests discussed below.

# **ARGUMENT**

### In order to address the circumstances of each outstanding request, Speedishuttle will outline each of the data requests for which it seeks an individual ruling.

**Data Request No. 4.** Describe in detail all efforts you initiated to have Speedishuttle Washington, LLC’s “Speedishuttle’s” decision in March 2015 reversed, revised or diminished/restricted by the Commission. Provide all written correspondence, emails, memoranda, notes or other contemporaneous records referencing contacts, meetings or efforts to cancel, restrict or otherwise diminish Speedishuttle’s certificate and/or “relitigate” the matter.

### Data Request No. 4 is a relatively straightforward request which seeks plainly relevant information as to Shuttle Express’ true motivations for this action, and to flesh out Speedishuttle’s defenses to Shuttle Express’ allegations.

### Though Shuttle Express did respond in part, it also asserted multiple objections and vaguely expressed assertions of privilege. Speedishuttle subsequently asked Shuttle Express to clarify whether it withheld responsive information subject to its objections and/or assertions of privilege. Speedishuttle also requested that Shuttle Express provide a date by which it anticipated litigation relative to its assertion of the work product doctrine. Shuttle Express’ responses in attempts to confer have not provided any additional clarity.

### Speedishuttle requests Shuttle Express’ objections be overruled, that Shuttle Express be required to establish the applicability of its asserted privilege to all responsive information it is withholding from disclosure, and that it be required to produce all responsive information not subject to valid assertions of privilege.

**Data Request No. 5.** Please identify the first year following issuance of Shuttle Express’ certificate from the WUTC in 1989, when you reported a profit in regulated operations to the Commission or any other entity.

### Shuttle Express refused to respond to this Data Request No. 5, instead asserting that this request seeks irrelevant information and is unduly burdensome because the information is likely old and might not exist. It is apparent from Shuttle Express’ response that it likely has not attempted to locate responsive information.

### The documents sought by this request are plainly relevant to Shuttle Express’ complaint against Speedishuttle which asserts that Speedishuttle is engaging in predatory pricing by providing service below cost. Speedishuttle has admitted it has not yet turned a profit, which necessarily admits that its current revenues are not fully recouping its costs. Speedishuttle asserts that these facts cannot support a predatory pricing claim as a matter of law because Speedishuttle is a startup. A comparison of the time in which it took Shuttle Express to first turn a profit to Speedishuttle’s present loss is directly relevant to Speedishuttle’s defense and is probative if not dispositive of this issue.

### Speedishuttle requests that Shuttle Express’ objections be overruled and that it be required to fully respond to Data Request No. 5.

**Data Request No. 6.** Provide all written correspondence, emails, memoranda notes and/or any other contemporaneous records of contacts between the Port of Seattle and/or its staff and Shuttle Express from October 2014 to the present regarding prospective or existing service at Seattle-Tacoma International Airport by Speedishuttle.

### Through this data request, Speedishuttle seeks information regarding Shuttle Express’ attempts to exclude Speedishuttle from the marketplace and prohibit it from implementing the “business model” approved by the Commission. Speedishuttle suspects this litigation was initiated after informal efforts to limit Speedishuttle’s business failed or proved ineffective. For example, Speedishuttle seeks information to determine whether Shuttle Express ever attempted to influence the Port of Seattle with respect to placement of its staging area, counter, or loading zone, which can and will prevent Speedishuttle from processing and loading customers in a timely manner. These matters are relevant to Speedishuttle’s profitability, which was made the subject of Shuttle Express’ formal complaint, as well as Speedishuttle’s ability to comply with Order 04’s business model relative to guaranteed departure times, which was made the subject of Shuttle Express’ petition for rehearing.

### Shuttle Express objected to this request without response and did so through, in effect, a tit-for-tat approach which suggested it would consider responding, but only if the Commission ordered Speedishuttle to produce certain records which Shuttle Express believed to be equivalent. Shuttle Express subsequently offered to supplement its response, but it has given no indication it would provide a full response and has not supplied any responsive information to date.

### Rather than require Speedishuttle to wait an indeterminate length in order to continue the process of conferring with Shuttle Express, it seeks an order overruling Shuttle Express’ objections and requiring Shuttle Express to provide a complete response.

**Data Request No. 7** Please provide a list of all formal complaint actions brought by third-parties and/or the WUTC staff against the operations of Shuttle Express from 1989 to the present at the WUTC by docket number, case name and date of Final Order.

### In Data Request No. 7 Speedishuttle seeks information regarding formal complaints by third parties which to a great degree is uniquely in the control of Shuttle Express. Although documents regarding administrative proceedings before the Commission are available online for certain years, this is not true for all years, and Speedishuttle is entitled to a response from Shuttle Express. These complaints, as well as the information contained in the filing in such proceedings, are very likely directly relevant to Speedishuttle’s defenses; therefore, this request is reasonably calculated to lead to the discovery of admissible evidence.

### Shuttle Express objected to this request and provided no response. Thus, Speedishuttle requests that Shuttle Express’ objections be overruled and that it be required to fully respond.

**Data Request No. 12.** Please provide a list of all entities including names, addresses and telephone numbers to whom you made payments or commissions as compensation for referrals or bookings from October, 2013 to the present including descriptions of all such arrangements. In answering, note whether any such agreements or arrangements have been submitted to the WUTC for review and approval and under what docket numbers and date of approval of Order.

**Data Request No. 13.** Describe all arrangements from 2013 to the present by which Shuttle Express provides compensation for ticket commissions to various hotels or employees and contractors of such hotels, including but not limited to the Crowne Plaza, the Hyatt Regency Bellevue and the Westin Seattle. Has Shuttle Express sought and/or received approval for any such arrangements from the WUTC? If so, when was that approval received and under what docket numbers?

### Data Requests No. 12 and 13 can be analyzed together. Shuttle Express objected to each without response as seeking irrelevant information and has not budged from its position after multiple attempts to confer.

### Speedishuttle strongly disagrees the information is irrelevant. Speedishuttle has reason to believe Shuttle Express provides unreported commission payments to individuals. This is directly relevant to Speedishuttle’s affirmative defenses and contention that Shuttle Express violates the law and cannot be providing service to the satisfaction of the Commission. This information is also relevant with respect to Shuttle Express’ operating margins and fares. By providing undisclosed commissions, a fare which Shuttle Express must charge to make a profit is inflated. Because this has a direct bearing on fares charged by Shuttle Express and to Shuttle Express claims that Speedishuttle’s fares are predatory, this information is fully discoverable.

**Data Request No. 14.** Please provide statistical data for each reservation or trip from January 1, 2013 to date between Sea Tac Airport and:

### For purposes of brevity, only a portion of Data Request No. 14 is included herein. This request seeks information regarding the statistical data for trips made between SeaTac airport and a number of specifically identified destinations.

### Shuttle Express agreed the information sought was material, but refused to produce any responsive information indicating it would respond only if the Commission required Speedishuttle provide its reservation and trip data. This request does not seek information equivalent to Shuttle Express’ data requests to Speedishuttle; Shuttle Express’ objection is based on false equivalence.

### The information sought is relevant to the threshold question raised in the filing of a formal complaint of whether there exists competition between Shuttle Express and Speedishuttle. Further, Speedishuttle has reason to believe Shuttle Express does not actually provide or has restricted or suspended its door-to-door service to the locations identified. Thus, the information sought is thereby directly relevant to the inquiry made in Shuttle Express’ Petition for Rehearing, i.e., whether Speedishuttle is actually providing the same service as Shuttle Express.

# **Conclusion**

### Shuttle Express produced just six pages of responsive documents and has otherwise stood on its objections to the above-discussed data requests. Speedishuttle has made multiple efforts in good faith to confer with counsel for Shuttle Express, but it appears likely no further progress toward compliance may be had through informal conference. Consequently, Speedishuttle requests the Commission overrule each of Shuttle Express’ objections made to the data requests identified above and require Shuttle Express to fully respond to each such outstanding data request analyzed above.

### DATED this 9th day of December, 2016.

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|  | RESPECTFULLY sUBMITTED,  By  David W. Wiley, WSBA #08614  [dwiley@williamskastner.com](mailto:dwiley@williamskastner.com)  Daniel J. Velloth, WSBA # 44379  [dvelloth@williamskastner.com](mailto:dvelloth@williamskastner.com)    Attorneys for Speedishuttle Washington, LLC |
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**CERTIFICATE OF SERVICE**

I hereby certify that on December 9, 2016, I caused to be served the original and three (3) copies of the foregoing documents and attachments to the following address via first class mail:

Steven V. King, Executive Director and Secretary

Washington Utilities and Transportation Commission

Attn.: Records Center

P.O. Box 47250

1300 S. Evergreen Park Dr. SW

Olympia, WA 98504-7250

I further certify that I have also provided to the Washington Utilities and Transportation Commission’s Secretary an official electronic file containing the foregoing documents and attachments via the WUTC web portal; and served a copy via email and first class mail, postage prepaid, to:

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Dated at Seattle, Washington this 9th day of December 2016.

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Maggi Gruber

Legal Assistant