

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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.

1 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.

I. RELEVANT PROCEDURAL BACKGROUND

2 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.

3 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.

SPEEDISHUTTLE WASHINGTON, LLC'S MOTION TO COMPEL
DATA REQUEST RESPONSES FROM SHUTTLE EXPRESS, INC. -

1

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601 Union Street, Suite 4100
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4 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.

5 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.

6 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.

II. ARGUMENT

7 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.

8 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.

9 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.

10 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.

- 11 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.
- 12 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.
- 13 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.

- 14 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.

- 15 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.
- 16 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.

- 17 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.

18 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?

19 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.

20 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:

21 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.

22 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.

23 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.

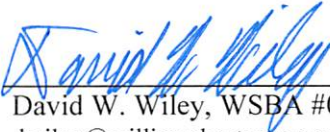
III. CONCLUSION

24 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.

RESPECTFULLY SUBMITTED,

By  _____
David W. Wiley, WSBA #08614
dwiley@williamskastner.com
Daniel J. Velloth, WSBA # 44379
dvelloth@williamskastner.com

Attorneys for Speedishuttle Washington, LLC

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:

Julian Beattie Assistant Attorney General Office of the Attorney General Utilities and Transportation Division 1400 S. Evergreen Park Dr. SW PO Box 40128 Olympia, WA 98504-0128 (360) 664-1192 Email: jbeattie@utc.wa.gov	Greg Kopta Director/Administrative Law Judge 1300 S. Evergreen Park Drive SW P.O. Box 47250 Olympia, WA 98504-7250 (360)-664-1355 gkopta@utc.wa.gov
Brooks Harlow Lukas, Nace, Gutierrez & Sachs, LLP 8300 Greensboro Dr. Suite 1200 McLean, VA 22102 (703) 584-8680 Email: bharlow@fcclaw.com	Rayne Pearson Administrative Law Judge 1300 S. Evergreen Park Drive SW P.O. Box 47250 Olympia, WA 98504-7250 360-664-1136 rpearson@utc.wa.gov

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


Maggi Gruber
Legal Assistant

EXHIBIT A

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
DOCKET NOS. TC-143691 AND TC-160516
FIRST DATA REQUESTS OF RESPONDENT SPEEDISHUTTLE
ANSWERS AND OBJECTIONS OF PETITIONER SHUTTLE EXPRESS, INC.

Date 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.

RESPONSE: Shuttle Express objects that this request is not reasonably calculated to lead to the discovery of admissible evidence because the facts sought are not material in any way to the Petition for Rehearing, the Complaint, defenses, nor the Counterclaim. Depending on how the term "all efforts" is interpreted, the request is also overbroad and potentially burdensome. Shuttle Express also objects to the production of any and all information or documents that are protected by the attorney-client privilege or the "work product doctrine" (prepared for or in anticipation of litigation).

Without waiving the foregoing objections, Shuttle Express states that it initiated UTC Docket No. TC-160516, via a complaint and initiated a rehearing in UTC Docket No. TC-143691 by a petition. Prior to its Rehearing Petition, Shuttle Express also participated in TC-143691 as a protestant and party beginning shortly after the docket was opened by the UTC. All documents submitted in that docket that might be interpreted to initiate UTC action were served on Respondent and can be found on the Commission's website.

Discovery is continuing and if responsive non-privileged documents are found and Respondent can articulate a reasonable basis in a conference pursuant to WAC 480-07-425 that they might lead to admissible evidence, they will be provided as soon as practicable.

Responding Person: Paul Kajanoff; Wesley Marks

Date of Response: September 20, 2016

Witness: Wesley Marks

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Date 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.

RESPONSE: Shuttle Express objects that this request is not reasonably calculated to lead to the discovery of admissible evidence because the facts sought are not material in any way to the Petition for Rehearing, the Complaint, defenses, nor the Counterclaim. Shuttle Express also objects that attempting to locate data that is likely over 25 years old is unduly burdensome if it is even possible and if such data still exists in Shuttle Express' files and records. Further, to the extent the Commission or Port of Seattle still has such records, it is as easy for Respondent to obtain them with a public records request as it would be for Shuttle Express.

Without waiving the foregoing objection, Shuttle Express states that it has made a reasonable attempt to locate the old accounting records and was unable to find them. Based on the search, it is unknown if they still exist in the possession of Shuttle Express. Further investigation would be unduly burdensome and could well be fruitless in any event.

Responding Person: Wesley Marks

Date of Response: September 20, 2016

Witness: Wesley Marks

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Date 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.

RESPONSE: Shuttle Express objects that this request is not reasonably calculated to lead to the discovery of admissible evidence because the facts sought are not material in any way to the Petition for Rehearing, the Complaint, defenses, nor the Counterclaim. Shuttle Express further objects because SpeediShuttle was asked for similar data in Data Requests over a month ago and has failed and refused to provide it, instead objecting that it is “imposed for an improper purpose, overbroad, and irrelevant” among other things. The propriety of discovery of Respondent’s financial data is currently a pending issue before the Commission, on the motion to compel of Shuttle Express. Shuttle Express should not be compelled to provide communications with the Port while Respondent refuses to do so. Even if Respondent produces its communications with the Port -- whether voluntarily or by order -- that does not mean that the Shuttle Express communications are material to the case, as the claims against Respondent are very different from Respondent’s counterclaims.

Once the Commission rules that Respondent must produce its communications with the Port, Shuttle Express will confer with the Respondent pursuant to WAC 480-07-425. If a reasonable case can be made that the Shuttle Express communications are reasonably calculated to lead to discovery of admissible evidence, Shuttle Express will produce any reasonably available and responsive documents.

Responding Person: Paul Kajanoff; Wesley Marks

Date of Response: September 20, 2016

Witness: Wesley Marks

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Date 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.

RESPONSE: Shuttle Express objects that this request is not reasonably calculated to lead to the discovery of admissible evidence because the facts sought are not material in any way to the Petition for Rehearing, the Complaint, defenses, nor the Counterclaim. Moreover, the request, going back over 25 years, is oppressive and unduly burdensome, as Shuttle Express does not retain such old documents or does not retain them in a way that they can be readily collected and summarized. The information sought should be available from the UTC on its website or via a request for public records, making it as easy for Respondent to obtain the information as for Shuttle Express. Based on its statements and briefing in Docket No. TC-143691, it appears that Respondent is already aware of the most recent UTC complaint as well as older ones.

Responding Person: Wesley Marks

Date of Response: September 20, 2016

Witness: Wesley Marks

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Date 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.

RESPONSE: Shuttle Express objects that this request is not reasonably calculated to lead to the discovery of admissible evidence because the facts sought are not material in any way to the Petition for Rehearing, the Complaint, defenses, nor the Counterclaim. Pursuant to WAC 480-07-425, Shuttle Express reached out to Respondent to try to clarify or understand how the request could possibly be material to the case, but was unable to schedule a conference prior to preparing this response. If, at such time as a conference pursuant to WAC 480-97-425 can be scheduled, a reasonable case can be made that request is reasonably calculated to lead to discovery of admissible evidence, Shuttle Express will reconsider its objection and may agree to produce any relevant, reasonably available, and responsive documents.

Responding Person: Wesley Marks
Date of Response: September 20, 2016
Witness: Wesley Marks

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Date 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?

RESPONSE: Shuttle Express objects that this request is not reasonably calculated to lead to the discovery of admissible evidence because the facts sought are not material in any way to the Petition for Rehearing, the Complaint, defenses, nor the Counterclaim. Pursuant to WAC 480-07-425, Shuttle Express reached out to Respondent to try to clarify or understand how the request could possibly be material to the case, but was unable to schedule a conference prior to preparing this response. If at such time as a conference pursuant to WAC 480-97-425 can be scheduled a reasonable case can be made that request is reasonably calculated to lead to discovery of admissible evidence, Shuttle Express will reconsider its objection and may agree to produce any relevant, reasonably available, and responsive documents.

Responding Person: Wesley Marks

Date of Response: September 20, 2016

Witness: Wesley Marks

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FIRST DATA REQUESTS OF RESPONDENT SPEEDISHUTTLE
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Date Request No. 14. Please provide statistical data for each reservation or trip from January 1, 2013 to date between Sea Tac Airport and:

- Bellevue/Eastgate: Hyatt Regency, Coast Hotel, Sheraton, Silver Cloud, Courtyard – Marriott, Residence Inn, Hotel Bellevue, Day’s Inn, Larkspur Landing, Embassy Suites, Courtyard Marriott, Hampton Inn;

- Issaquah Area: Motel 6, Holiday Inn, Hilton Garden Inn; University District: McMahan Hall, Terry Hall, Lander Hall, University Inn, Hotel Deca, Silver Cloud, Watertown, Travelodge;

- Kirkland Area: Baymont Inn, Carlton Inn, Motel 6, Comfort Inn, Woodmark, LaQuinta;

- Overlake/Redmond Area: Redmond Inn, Silver Cloud, Courtyard – Marriott, Residence Inn, Fairfield Inn;

- Renton Area: Econolodge, Quality Inn & Suites;

- Seattle Area: Renaissance, Crowne Plaza, Fairmont Olympic, Sheraton, Grand Hyatt, Westin, Warwick, Hyatt at Olive 8, Quality Inn & Suites, Courtyard – Marriott, Springhill Suites, Four Points, Best Western Executive Inn, Silver Cloud, Edgewater, Marriott Waterfront, Motif, Hotel 5, Paramount, Maxwell Hotel, Pier 91, Pier 66, Holiday Inn, Holiday Inn & Suites, W Hotel; Northgate Area: Hotel Nexus;

including, but not limited to, Hudson date/time stamps for:

- reservation time of day,
- ready to go time of day,
- on board time of day,
- location and drop off time of day,
- service type, number of passengers,
- how they reserved the transportation (*e.g.*, phone, computer, smartphone, in person),
- the fare(s) paid,
- the number of passengers carried in each vehicle on the same trip,
- the number and location of stops per trip,
- the time for each trip, and
- Hudson system fields for TripID and ShiftID.

RESPONSE: Shuttle Express agrees that the data is material, but it may not be able to produce it under the exact parameters sought by Respondent without undue burden. Shuttle Express is willing to provide summary data under parameters that it can readily extract using the Hudson software and systems, but would object to manually organizing the data in a way that would be unduly burdensome.

Moreover, Shuttle Express objects on the grounds that Respondent SpeediShuttle was asked for similar data in Data Requests over a month ago and has failed and refused to provide it, instead objecting that it is “proprietary ... burdensome, overbroad and oppressive” among other things. The propriety of discovery of Respondent’s reservation and trip data is currently a pending issue before the Commission, on the motion to

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compel of Shuttle Express. Shuttle Express should not be compelled to provide trip data while Respondent refuses to do so. Once the Commission rules that Respondent must produce its reservation and trip data, Shuttle Express will confer with the Respondent pursuant to WAC 480-07-425 to discuss how the data is retained and compiled and what form it can be produced without undue burden. Assuming agreement can be reached, Shuttle Express will produce any reasonably available and responsive statistical data.

Responding Person: Wesley Marks

Date of Response: September 20, 2016

Witness: Wesley Marks