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STATE OF WASH.  
UTIL. AND TRANSP.  
COMMISSION

BEFORE THE

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In re Application of

SEATAC SHUTTLE, LLC d/b/a SEATAC  
SHUTTLE

For Certificate of Public Convenience and  
Necessity in Furnishing Passenger and Express  
Service.

Docket No. TC-030489

Application No. D-079145

PETITION FOR ADMINISTRATIVE  
REVIEW OF WICKKISER  
INTERNATIONAL COMPANIES, INC.

The Initial Order must be overturned because its grant of authority to the Applicant is based on two critical errors. First, the Initial Order ignored a mountain of evidence showing that the public convenience and necessity do not require granting the Applicant's application. The Applicant's service would ultimately **reduce, not improve**, airporter service between Oak Harbor and SeaTac. The Oak Harbor market is just too small to support two airporter services, except with extremely limited schedules. Second, the Initial Order ignored overwhelming evidence that Protestant Wickkiser International Companies, Inc., d/b/a Airporter Shuttle ("Airporter Shuttle") is providing service to the satisfaction of the Commission by providing a high-frequency service between SeaTac and Oak Harbor in the only economically feasible manner. Indeed, the Applicant's case in support of public need is based on the continued existence of Airporter Shuttle's reliable and frequent service, which would fill gaps and inadequacies in the Applicant's schedule. These are gaps the Applicant will never be able to fill because of the limited population base on Whidbey Island.

1           The Initial Order’s decision to allow a speculative service like the Applicant’s to  
2 replace Airporter Shuttle’s existing service on which public relies is an experiment. The Initial  
3 Order utterly fails to analyze the impact that having some of Airporter Shuttle’s passengers  
4 diverted to the Applicant will have on the overall public interest. The unrebutted evidence shows  
5 that it is only due to its synergies with its Anacortes and Interstate 5 operations that Airport  
6 Shuttle is able to provide a full and complete schedule of service to a community the size of Oak  
7 Harbor. The grant of this application not only will lead to reduced service to Oak Harbor, it may  
8 also result in a reduction of service to Anacortes. The experiment posed by the Initial Order is  
9 doomed to fail, with serious adverse consequences for the public. The Initial Order was arbitrary  
10 and unreasoned, ignored the law that affords protections and rights to existing carriers and,  
11 accordingly, must be overturned.

12 **I.       PROCEDURAL HISTORY**

13           On April 7, 2003, the Applicant filed an application to provide airporter service  
14 between Oak Harbor and Seattle-Tacoma International Airport (“SeaTac Airport”), with  
15 intermediate pickup points on SR 20 and SR 525 in South and Central Whidbey Island. The  
16 proposed authority partially overlaps with that of Airporter Shuttle, which presently provides  
17 service between Oak Harbor and SeaTac Airport by travelling east through points including  
18 Anacortes and Mount Vernon and along Interstate 5. Airporter Shuttle filed a protest against the  
19 Applicant’s application on April 24, 2003.

20           Administrative Law Judge Karen Caille convened evidentiary hearings on  
21 June 24, 2003 and July 2, 2003 to hear witnesses, receive exhibits, and listen to oral argument  
22 regarding the proposed service. At that hearing, Airport Shuttle clarified that it was only  
23 protesting the Applicant’s request to serve the Oak Harbor/SeaTac route, not with intermediate  
24 points in central and south Whidbey Island. Judge Caille issued an Initial Order on September 8,  
25 2003 granting the Applicant’s application. This petition for administrative review appeals the  
26 Initial Order’s grant of authority.

1 **II. THE STANDARD FOR COMMISSION REVIEW OF AN INITIAL ORDER**

2 The Commission reviews the Initial Order in this case *de novo* without deference  
3 to the Initial Order findings. *See, e.g., In re Application D-76533 of Sharyn Pearson & Linda*  
4 *Zepp*, Order M.V.C. No. 2041 (1994). Both the Initial Order and the Commission’s Final Order  
5 must be based on substantial evidence in the record and may not be arbitrary and capricious.  
6 RCW 34.05.570(3)(e), (i). Substantial evidence is “evidence in sufficient quantum to persuade a  
7 fair-minded person of the truth of the declared premise.” *Olmstead v. Department of Health*,  
8 61 Wn. App. 888, 893, 812 P.2d 527 (1991) (*citation omitted*). As explained below, the Initial  
9 Order is both arbitrary and capricious and not based on substantial evidence.

10 **III. THE INITIAL ORDER ERRED IN FINDING THAT THE APPLICANT MEETS**  
11 **THE PREREQUISITES FOR OBTAINING A BUS CERTIFICATE**

12 The Initial Order granted the Applicant’s application despite the fact that (1) the  
13 public convenience and necessity do not require the Applicant’s service and (2) the Applicant  
14 produced no evidence that Airporter Shuttle is not providing service to the satisfaction of the  
15 Commission. The Initial Order’s grant of the Applicant’s application was thus erroneous and  
16 must be overturned.

17 **A. The Public Convenience and Necessity Do Not Require The Applicant’s**  
18 **Service.**

19 The Commission cannot grant this application unless the Applicant meets its  
20 burden to prove that the “the public convenience and necessity require the proposed service.”  
21 Notice of Prehearing Conference at Appendix A. The Applicant failed to meet its burden of  
22 proof. The record clearly showed that (1) there is insufficient population to support two  
23 airporters on the Oak Harbor to SeaTac airport route, (2) the Applicant has proposed a predatory  
24 schedule that “cream skims” the profitable travel times, (3) the Applicant cannot survive by  
25 providing the proposed service, and (4) there is no public need for the proposed service, based on  
26 the Applicant’s public witnesses. The Initial Order summarily and arbitrarily dismissed this  
evidence in a strained effort to grant the application.

1           1.       The Oak Harbor population is too small to support two airporters

2           The most critical fact in this proceeding is that there is not enough population to  
3 support both Airporter Shuttle and the Applicant on the Oak Harbor/SeaTac route. See generally  
4 Ex. 7. Richard Johnson, General Manager of Airporter Shuttle, presented a Service Impact  
5 Study (“Study”) demonstrating why this is the case. Mr. Johnson first explained that airporter  
6 services have both fixed costs and variable costs. Fixed costs include liability insurance, facility  
7 rent, telephone service, advertising, administration, asset depreciation, and taxes. Ex. 7 at 6.  
8 Airporter Shuttle incurs about \$7,120 in fixed costs per month. *Id.* Airporter Shuttle incurs  
9 fixed costs regardless of how many people ride its services, as is the case with any airporter  
10 service. Airporter Shuttle’s variable costs include wages, fuel, and repair and maintenance.  
11 Airporter Shuttle incurs about \$80 per trip in variable costs per trip. Airporter Shuttle must carry  
12 enough passengers to cover these costs or it cannot continue to provide service economically.

13           Mr. Johnson explained that Oak Harbor only has about 40,000 residents, which  
14 makes it a small market. TR 434, ll. 4-24. Whidbey Island has a population of approximately  
15 70,000, but that population is thinly spread across a large area. So, an airporter operating out of  
16 Oak Harbor cannot expect to draw riders from outside the immediate area around Oak Harbor.  
17 The Study showed that Airporter Shuttle carries an average of only 1.2 passengers per trip  
18 boarding in Oak Harbor or travelling to Oak Harbor from SeaTac. Ex. 7 at 3. Airporter Shuttle  
19 would lose money if it relied on these passengers alone because it could not cover the fixed and  
20 variable costs it incurs. There is no rational or credible reason to believe that Applicant can  
21 operate at a lower cost, because it will operate in the same market and therefore be subject to the  
22 same costs for labor, fuel, vehicles, and so forth. Indeed, due to its larger size, Airporter Shuttle  
23 likely has cost advantages due to economies of scope and scale.

24           Airporter Shuttle’s service is economically viable only because Airporter Shuttle  
25 picks up additional passengers in nearby Anacortes, which is a much larger market. TR 392,  
26 ll. 20-24. This allows Airporter Shuttle to carry more riders per trip and to cover its costs. This

1 difference is significant. With the Anacortes riders included, Airporter Shuttle averages 3.5  
2 passengers per trip, almost three times the amount for Oak Harbor alone. Ex. 7 at 12.

3 Mr. Johnson explained that, if Airporter Shuttle did not have the additional Anacortes riders:

4 It would not be economically viable. There are just too many costs to running ten  
5 [round] trips a day for such a small population. What we are doing is, I think,  
6 providing excellent service not only to the people of Oak Harbor but to the people  
7 of Skagit and Island County.

8 TR 393, ll. 3-9.

9 The Applicant now proposes to offer additional airporter service in Oak Harbor.  
10 There is no convincing evidence that the Applicant's service will increase airporter ridership, so  
11 the Applicant and Airporter Shuttle will split the existing, small market of airporter riders in Oak  
12 Harbor. The inevitable result would be that one of these airporters would be forced out of  
13 business in Oak Harbor. Mr. Johnson explained that "with the population in Oak Harbor as its  
14 stands, there is simply not enough ridership to support the costs two carriers would incur."

15 TR 403, ll. 20-23. Larry Wickkiser, owner of Airporter Shuttle, similarly testified that if  
16 Airporter Shuttle shared Oak Harbor with the Applicant, "[t]here would not be enough [riders] to  
17 provide the same level of service as provided today if the small market of Oak Harbor was  
18 divided between two providers of the service." TR 369, l. 23 to 370, l. 1. Airporter Shuttle  
19 cannot make money with empty buses, so it would have to cut or eliminate service.

20 If Airporter Shuttle eliminates or severely curtails service, the public would have  
21 less service than now in Oak Harbor. Airporter Shuttle presently operates approximately ten  
22 round trips between Oak Harbor and SeaTac airport per day. Ex. 1. That service would end. In  
23 its place, the Applicant would offer only four round trips per day. Ex. 2. Oak Harbor would lose  
24 approximately six round trips per day, thereby making it difficult for riders to coordinate their  
25 flights with the airporter service.

26 The Applicant's evidence of the projected riders for their proposed service was  
flimsy and speculative. In contrast to Airporter Shuttle's professional study, the Applicant

1 performed superficial “studies” claiming to prove that there is sufficient ridership in Oak Harbor  
2 to support both carriers. These “studies” consisted merely of “conversations with travel agents  
3 and the number of people that were travelling prior to Harbor Air being closed two years ago.”  
4 TR 207, ll. 16-21. This is not a meaningful market analysis.

5 Yet the Initial Order rejected Airporter Shuttle’s well-reasoned analysis because it  
6 was allegedly “self-serving.” Initial Order at ¶ 70. This not a legitimate based to disregard  
7 evidence, given that all evidence presented at a hearing is self-serving to someone. Moreover,  
8 the Initial Order characterized none of the evidence presented by the Applicant as self-serving.  
9 The only true issue is whether the evidence is reliable, which is the case with Airporter Shuttle’s  
10 Study. The Initial Order’s rejection of that evidence was arbitrary and capricious decision  
11 making in its purest form.

12 2. Airporter Shuttle would have to stop serving Oak Harbor because the  
13 Applicant has proposed a predatory schedule that “cream skims” the  
14 profitable travel times.

15 The Applicant’s proposed schedule will worsen the problem of two airporters  
16 serving the same small market. Specifically, the Applicant’s proposed service will serve  
17 profitable peaks but leave the less profitable non-peaks for Airporter Shuttle, a practice known as  
18 “cream skimming.” See TR 354, l. 13 to 355, l. 18. To provide some background, there are peak  
19 flight arrival times daily at SeaTac and seasonal variations, since winter travel is less than half of  
20 summer travel. TR 404, ll. 8-11. Airporter Shuttle’s frequent service serves both peak and non-  
21 peak times. TR 415, l. 21 to 416, l. 1. Airporter Shuttle uses revenue from peak service to  
22 subsidize non-peak service in periods of low demand during the day and during the winter.  
23 Mr. Johnson explained that “Airporter Shuttle generates more revenue in the peaks to cover the  
24 costs they incur throughout the year. There is a huge cost to providing service throughout the  
25 year at an equal level when the passengers travelling throughout the year vary so significantly.”  
26 TR 404, ll. 13-18.

1           The Applicant's service offering four round trips daily coincides with peak times  
2 but not the non-peak times. As Mr. Wickkiser explained, the Applicant has "picked out the peak  
3 times of the day that four trips would serve." TR 354, ll. 21-24. This will allow SeaTac to split  
4 the profitable times, with the implicit assumption that Airporter Shuttle will cover the non-  
5 profitable times. But Airport Shuttle cannot operate a route at an overall loss. The end result is  
6 that Airporter Shuttle will be unable to serve the non-peak times, assuming it is able to provide  
7 any service at all in Oak Harbor. Oak Harbor will then have a handful of departures by either  
8 Applicant or Airporter Shuttle, or maybe both arriving at SeaTac or departing SeaTac at about  
9 the same time. There may also be a reduction in service to Anacortes due to the overall loss of  
10 passengers. There is absolutely no public benefit to this situation.

11           The Initial Order did not analyze this argument at all. It was arbitrary and  
12 capricious for the Initial Order to overlook this damaging effect of the Applicant's proposed  
13 service.

14           3.     The Applicant cannot survive by providing the proposed service.

15           The Initial Order also improperly rejected the Study's conclusions that the  
16 Applicant cannot survive by providing service to Oak Harbor by traveling along State Route 20  
17 and 525 through central and south Whidbey Island. Initial Order at ¶ 70. Mr. Johnson used his  
18 knowledge of the airporter industry to calculate what the Applicant's fixed and variable costs  
19 would be and how many passengers the Applicant could expect to carry. See TR 402, ll. 1-11.  
20 Mr. Johnson estimated that the Applicant's variable costs, which include ferry fare, would be  
21 about \$80 per trip. Mr. Johnson concluded that, once the Oak Harbor market was split  
22 between the two carriers, the Applicant could not survive economically either. TR 402, l. 18 to  
23 403, l. 23. This is important is because it is irrational to allow the Applicant to initiate service to  
24 Oak Harbor, to advertise and attract customers, then to fail after Airporter Shuttle has departed  
25 Oak Harbor. Airporter Shuttle might once again serve Oak Harbor, but there would be  
26 considerable unnecessary confusion and hardship among riders during the upheaval.

1 Mr. Wickkiser described how an airporter called Anacortes/Oak Harbor Airporter  
2 failed after operating a route in the 1990's similar to that proposed by the Applicant. TR 371,  
3 1. 7 to 372, 1. 9. The Initial Order rejected this too (see Initial Order at ¶ 69), even though it is  
4 powerful evidence that the Applicant cannot succeed.

5 4. The Applicant's public witnesses did not show that there is a public need  
6 for the proposed service.

7 The Initial Order held that "the testimony of William Bradkin, Sue Sebens, Greg  
8 Wasinger, Dave Johnson, Priscilla Heistad and Gary Brown establishes that there is a need for  
9 SeaTac Shuttle's proposed airporter-type service in Oak Harbor." Initial Order at ¶ 90 (Finding  
10 of Fact No. 10); See also Initial Order at ¶ 90 (Conclusion of Law No. 5). This is wrong for two  
11 reasons. First, the Applicant merely showed that there might be a need for new service so long  
12 as Airporter Shuttle continued to provide its frequent and reliable service. In fact, the Applicant  
13 tried to reassure its witnesses that Airporter Shuttle would still offer service if the Applicant had  
14 authority. Applicant supporter John Solin asked his witness, Dave Johnson "[i]s there anything  
15 that we have indicated that you have heard today that would lead you to believe that SeaTac  
16 Shuttle is proposing an exclusive service out of Oak Harbor and requesting that the existing  
17 airporter service be closed or shut down?" TR 129, 1. 25 to 130, 1. 6. Mr. Johnson responded  
18 "[n]o. It's my understanding that the community then would have two options." Id. Similarly,  
19 Mr. Lauver characterized the Applicant's service as "a supplemental service." TR 203, 1. 15.  
20 The airporter statute has no provisions for a "supplemental service." Indeed, it grants a qualified  
21 exclusive right to existing certificate holders. There must be a public need for the Applicant's  
22 service by itself, but the Applicant never made that showing.

23 Second, the testimony of the Applicant's witnesses do not support a grant of this  
24 application. For example, Priscilla Heistad's testimony is irrelevant as a matter of law because  
25 she testified about the needs of others, not her own needs. "Need for new service must be  
26 established by the testimony of members of the public who actually require the service." Notice



1 of Prehearing Conference at Appendix A (emphasis added). But Ms. Heistad testified about  
2 needs of others she knew through the Oak Harbor Chamber of Commerce:

3 Q. (Rice) So you're testifying about the needs of the community generally  
4 rather than your own needs for travel?

5 A. (Heistad) That's correct.

6 TR 143, ll. 7-10. The Initial Order erroneously relied on her testimony anyway. Initial Order at  
7 ¶ 90.

8 William Bradkin, owner of Coupeville Travel, presented virtually no evidence of  
9 travel needs in Oak Harbor because he claimed that he only knew "a few" people who traveled  
10 from there. TR 49, ll. 17-23. He claimed that he was testifying primarily about the needs of  
11 people in South and Central Whidbey Island. Id. Moreover, he conceded that the Applicant's  
12 service would be less desirable than Airporter Shuttle in some cases. Counsel for Airporter  
13 Shuttle presented Mr. Bradkin with three hypothetical flight times and asked him whether he  
14 would prefer to use Airporter Shuttle or the Applicant to reach those flights. Mr. Bradkin agreed  
15 that "[u]nder those circumstances the Airporter Shuttle is the only option." TR 56, ll. 21-22. He  
16 further claimed that his clients "would prefer to have the option" of having service from both the  
17 Applicant and Airporter Shuttle. TR 58, ll. 1-5. As explained above, that will never happen.  
18 There are not enough riders or potential riders to support two airporters.

19 Garry Brown seemed to believe that neither Airporter Shuttle nor the Applicant  
20 would adequately serve him. He would in many cases "not take either of them." TR 161,  
21 ll. 8-14. Mr. Brown said that he wanted a fast airporter, so counsel for Airporter Shuttle  
22 presented Mr. Brown with three hypothetical flight times and asked him which service was  
23 faster. He admitted that "the departure time you leave your house or car or office to the time you  
24 arrive . . . is shorter" with Airporter Shuttle than with the Applicant. TR 161, ll. 10-13.

25 Greg Wasinger said that he was supporting the application because an airporter's  
26 speed was important to him. TR 116, ll. 7-9. But he agreed that the time between leaving Oak

1 Harbor and boarding the flight would sometimes be shorter using Airporter Shuttle compared  
2 with the Applicant, after hearing hypothetical flight times. TR 119, l. 10-14. He said that for “a  
3 community like Oak Harbor, the more options they have, the better,” (TR 120, ll. 18-19) but Oak  
4 Harbor is too small to support two airporters.

5 Dave Johnson’s travel needs are not representative of the general public’s needs.  
6 Counsel for Airporter Shuttle asked him which service he would prefer for three hypothetical  
7 flight times. He said that he would prefer to change his flight time so that he could travel on the  
8 Applicant’s service rather than take Airporter Shuttle. TR 134, ll. 7-11. This is not typical. The  
9 general public wants an airporter that accommodates their flight times, not an airporter that  
10 forces them to choose different (and possibly more expensive) flights.

11 Finally, Sue Sebens’ testimony was contradictory and unreliable. Ms. Sebens, an  
12 Oak Harbor travel agent, initially stated that she was supporting the application because “[i]n the  
13 travel business we always like to offer options to our clients.” TR 86, ll. 7-10. Yet she did not  
14 seem to care if her clients lost the option of using Airporter Shuttle. When counsel for Airporter  
15 Shuttle asked her what would happen if Airporter Shuttle stopped offering service, she admitted  
16 that her clients would “perhaps” have fewer choices (TR 109, ll. 7-10) but concluded “so be it.”  
17 TR 108, ll. 14-16. It makes no sense for Ms. Sebens to support more options for her clients and  
18 simultaneously not care whether some of those options go away. Her testimony thus is not  
19 credible.

20 In sum, it was arbitrary and capricious for the Initial Order to find that there is a  
21 public need for the Applicant’s service based on witnesses who, on cross examination, seemed  
22 either to question the application they came to support or to provide inconsistent or unreasonable  
23 testimony. The Commission thus should overturn the Initial Order’s finding that there is a public  
24 need for the Applicant’s service.

25  
26

1           **B. The Applicant Produced No Evidence That Airporter Shuttle Is Not**  
2           **Providing Service to the Satisfaction of the Commission**

3           The Initial Order claimed that Airporter Shuttle does not provide service to the  
4           satisfaction of the Commission because it has placed economics over the public need. Initial  
5           Order ¶ 71; See also Initial Order at ¶ 91 (Finding of Fact No. 11) and Initial Order at ¶ 97  
6           (Conclusion of Law No. 4). In reality, Airporter Shuttle is providing superior service to Oak  
7           Harbor in the only economical manner. Mr. Johnson explained that Airporter Shuttle is meeting  
8           the public need by offering the maximum frequency of service, which is what passengers want.  
9           TR 392, ll. 13-17. Mr. Johnson explained that:

10                     Frequency is what the customer wants. I think if the Commission looks, again, at  
11                     two of the most profitable carriers that it regulates, the Gray Line of Seattle and  
12                     the Bremerton Kitsap Airporter, those people are providing frequency better than  
13                     any of us, and the market is telling us they support them in droves because of that.

14           TR 405, ll. 17-23. The reason passengers want ubiquitous, frequent service is so that they can  
15           align their airporter travel with their flight times and minimize waits at the airport. TR 406,  
16           ll. 14-23. This is because:

17                     [A southbound passenger's] ultimate destination is the flight. It is not the bus  
18                     ride. Northbound, again, when people get to the airport, their focus is to get out  
19                     of that airport quickly. It's not to wait three to four hours for the next bus.

20           TR 414, ll. 9-14 (emphasis added). Airporter Shuttle meets this need by providing  
21           approximately ten round trips per day between Oak Harbor and SeaTac, which allows passengers  
22           to wait an average of about an hour for the bus. TR 414, ll. 15-17.

23           In contrast, the Applicant ignores this public need by only offering four round  
24           trips per day. The inevitable result is that the Applicant's passengers will not be able to align  
25           their flight arrival times with the Applicant's departures from SeaTac, and they will sit for hours  
26           at the airport. Airporter Shuttle thus meets the needs of Airporter Shuttle passengers while the  
27           Applicant believes that its own passengers should simply wait. The Applicant submitted a  
28           revised schedule after its witnesses finished testifying (Ex. 20), but the revised schedule suffers  
29           from exactly the same deficiencies as the original schedule counsel for Airporter Shuttle used

1 when cross-examining the Applicant's witnesses. That is because it had only four round-trips  
2 daily, just like the original schedule. It is impossible for the Applicant to provide convenient  
3 service without service gaps so long as it runs only four (or even five or six) round trips daily.

4 The Initial Order brushed away this compelling argument without any meaningful  
5 analysis. Initial Order at ¶ 68. The Initial Order ignores the fact that, in a small market like Oak  
6 Harbor, there are compromises. Given the population and demographics, is impossible to  
7 provide roundtrip, nonstop service from Oak Harbor to SeaTac Airport twenty times a day. The  
8 relevant issue is whether Airporter Shuttle made a reasonable decision in the compromises it has  
9 made. The answer is emphatically yes. Airporter Shuttle serves the public by maximizing the  
10 number of trips, and the reasonable compromise is to route through Anacortes and Mount  
11 Vernon, the nearby population centers to make that level of frequency possible. Potential riders  
12 would always prefer more service, but that does not mean that Airporter Shuttle's service is  
13 unsatisfactory.

14 The Initial Order also criticized Airporter Shuttle because Airporter Shuttle's  
15 transit time to the airport takes longer than the transit time proposed by the Applicant. Initial  
16 Order at ¶ 67. Transit time is meaningless however if an airporter cannot bring riders to the  
17 airport in a reasonable time before their flight, or if the traveler must sit for hours at the airport  
18 waiting for the Applicant's bus. This situation is inevitable for the Applicant's passengers,  
19 because the Applicant proposes only four round trips per day. This inconvenience will not  
20 happen to Airporter Shuttle customers because of Airporter Shuttle's frequent service.

21 The Initial Order's criticism is also misplaced because the Applicant has proposed  
22 an unrealistically fast schedule, as Mr. Johnson explained. The Applicant's schedule is based on  
23 flawed premises that ignore traffic delays, and the Applicant's transit time will actually take  
24 them longer than projected. TR 421, ll. 13-23. Airporter Shuttle has built extra time into their  
25 schedule to allow for traffic backups, so the Airporter Shuttle schedule is more reliable. TR 423,  
26 ll. 18-24. Airporter Shuttle showed how the Applicant exaggerated the transit time difference

1 between the two services to make the proposed service look better, but the Initial Order accepted  
2 the Applicant's unreliable schedule anyway.

3 Ultimately there is no justification for a finding that Airporter Shuttle does not  
4 offer service to the satisfaction of the Commission. If Airporter Shuttle is providing service to  
5 Oak Harbor in the only economically viable manner, and Airporter Shuttle's decision to  
6 maximize frequency of service is reasonable, then this Commission cannot hold that Airporter  
7 Shuttle's service is unsatisfactory. The Initial Order's summary dismissal of Airporter Shuttle's  
8 evidence is arbitrary and capricious given that the evidence is so strong.

9 **IV. PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

10 Given the foregoing deficiencies, the Commission should reverse and replace the  
11 Initial Order's Findings of Fact and Conclusions of Law as follows:

12 • Replace Finding of Fact No. 10 with the following: "The testimony of  
13 William Bradkin, Sue Sebens, Greg Wasinger, Dave Johnson, Priscilla Heistad, and Gary Brown  
14 fails to establish that there is a need for the Applicant's proposed airporter-type service in Oak  
15 Harbor."

16 • Replace Finding of Fact No. 11 with the following: "Airporter Shuttle  
17 provides service to the satisfaction of the Commission for its Oak Harbor customers because the  
18 company's service is convenient, direct, and expeditious."

19 • Replace Conclusion of Law No. 4 with the following: "The existing  
20 certificate holder serving the requested territory provides service to the satisfaction of the  
21 Commission where the Applicant proposes to operate and, therefore the Commission should not  
22 grant overlapping authority to the Applicant under RCW 81.68.040."

23 • Replace Conclusion of Law No. 5 with the following: "It is not consistent  
24 with the public interest and required by the public convenience and necessity for the Commission  
25 to issue a certificate of public convenience and necessity to operate motor vehicles in furnishing  
26

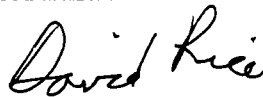
1 passenger and express service as an auto transportation company to the Applicant to provide  
2 passenger service as set forth in Appendix B.”

3 **V. CONCLUSION**

4 The Initial Order inexplicably accepts all of the Applicant’s evidence as true, even  
5 though it was based on projections and speculation; while at the same time it rejects all of  
6 Airporter Shuttle’s evidence as “self-serving,” even though it was based on actual experience,  
7 real studies, and empirical data. It was thus arbitrary and capricious for the Initial Order to grant  
8 the application when the Applicant did not meet its burdens of proof and ignored the serious  
9 harm that would result not only to Airporter Shuttle, but also to the overall interests of the public  
10 in Island and Skagit Counties.

11 DATED this 29<sup>th</sup> day of September, 2003.

12 MILLER NASH LLP

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