

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

SPEEDISHUTTLE WASHINGTON LLC d/b/a
SPEEDISHUTTLE SEATTLE

Complainant,

v.

SHUTTLE EXPRESS, INC.

Respondent.

DOCKET TC-

FORMAL COMPLAINT

I. PRELIMINARY STATEMENT

1.1 Speedishuttle Washington LLC d/b/a Speedishuttle Seattle, a Washington limited liability company, and files this Formal Complaint against Shuttle Express, Inc., pursuant to RCW 81.04.110, for violations of RCW 81.28.080 and WAC 480-30-391 and in support thereof alleges as follows:

II. PARTIES AND REPRESENTATIVES

2.1 Complainant is Speedishuttle Washington LLC (“Speedishuttle”), a regulated auto transportation company, whose address is 1237 South Director Street, Seattle, Washington 98108. Speedishuttle is the holder of Certificate of Public Convenience and Necessity C-65854, which authorizes door-to-door auto transportation service between SeaTac International Airport and points in King County.

2.2 Speedishuttle is represented by David W. Wiley and Blair I. Fassburg of Williams Kastner & Gibbs PLLC, which has an address of 601 Union Street, Suite 4100, Seattle, Washington 98101.

2.3 Respondent is Shuttle Express, Inc. d/b/a Shuttle Express (“Shuttle Express”), a regulated auto transportation company, with an address of 800 SW 16th St., Renton, Washington 98057. Shuttle Express is the holder of Certificate of Public Convenience and

FORMAL COMPLAINT - 1

Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, Washington 98101-2380
(206) 628-6600

Necessity No. C-975 authorizing door-to-door shared ride service and scheduled hotel service in the greater Tacoma/Seattle area.

2.4 Complainant is not yet aware of the identity of Respondent's counsel with respect to this Complaint.

III. STATEMENT OF FACTS

BACKGROUND OF SHUTTLE EXPRESS

3.1 As set forth above, Shuttle Express is a regulated and certificated auto transportation company operating both scheduled and door-to-door airporter service in the greater Seattle and Tacoma areas under its certificated authority. Shuttle Express operates pursuant to Certificate C-975 and has operated an auto transportation company in the State of Washington subject to the regulatory authority of the Washington Utilities and Transportation Commission at all times relevant to the instant Complaint.

3.2 Shuttle Express operates its door-to-door service on flexible fares, with minimum charges based upon the zip code and vehicle type.

3.3 Shuttle Express books reservations on its own behalf, and also maintains contracts with multiple ticket agents, each of whom may receive a commission for booking customer reservations on behalf of Shuttle Express.

HISTORY OF SHUTTLE EXPRESS' USE OF INDEPENDENT CONTRACTORS

3.4 In providing services under its Certificate of Public Convenience and Necessity, Shuttle Express has a long history of regulatory violations involving the use of independent contractors. In August 2004, Shuttle Express notified the Commission it would be using independent contractors in operation of vehicles in its auto transportation service under an owner-operator agreement. *See* Order 01, Docket No. TC-072228, p. 2. On November 4, 2005, Commission Staff notified Shuttle Express its use of independent contractors would constitute a violation of state law. *Id.* Nonetheless, Shuttle Express proceeded with its use of

independent contractors in its business. In April 2007, Shuttle Express again notified the Commission of its intent to use independent contractors. The Commission, through its staff, commenced an investigation into Shuttle Express' use of independent contractors in June 2007. *Id.*

3.5 After the WUTC's investigation completed it issued penalties against Shuttle Express for violations of state law by use of independent contractors as drivers, and eventually, in July 2008, the Commission approved a settlement agreement between Shuttle Express and Commission Staff and imposed a \$9,500 penalty on Shuttle Express for its use of independent contractor drivers. *Id.*

3.6 On May 1, 2013, the WUTC, on its own motion, brought a subsequent complaint against Shuttle Express in Docket No. TC-120323 alleging that Shuttle Express had again committed violations of WAC 480-30-213(2) by using independent contractors operating limousines and town cars to provide share ride services to customers when Shuttle Express' vehicle was delayed or otherwise unavailable to provide timely transportation (its "rescue service") in violation of its previous settlement agreement. The Commission found such independent contractors had been used under Shuttle Express' Certificate of Public Convenience and Necessity on 5,715 occasions between October 2010 and September 2011. *See* Complaint, Docket No. TC-120323, p. 2.

3.7 On March 14, 2014, the WUTC issued Order 04, a Final Order by which the Commission found that Shuttle Express' rescue service violated WAC 480-30-213(2) in its use of independent contractors and violated the terms of Order 01 in Docket No. TC-072228, which prohibited Shuttle Express from violating commission regulations, and issued penalties against Shuttle Express in the amount of \$60,000.00. Order 04 further found that Shuttle Express' violation of WAC 480-30-213 had been willful. *See* Order 04, Docket No. TC-120323, p. 11-13.

3.8 On November 19, 2013, Shuttle Express filed with the Commission a Petition and Request for Expedited Consideration in Docket No. TC-132141 by which it requested an exemption from WAC 480-30-213(2) and WAC 480-30-456 to authorize Shuttle Express to operate its rescue service and continue using independent contractors to provide service under its certificate during the holiday season.

3.9 Despite opposition by WUTC staff, which took the position Shuttle Express' rescue service violated the requirements of RCW 81.68, Shuttle Express' petition in that docket was granted with conditions and limited to a period of December 15, 2013 through January 15, 2014. Order 01, Docket No. TC-132141. Although granted, the Commission also noted "[w]e share Staff's Concern with Shuttle Express' history of disregarding these Commission rules and agree with the dissent of Chairman Danner on this point. The Company has a legitimate business interest in ensuring that all passengers to whom it has promised service receive that service, but we expect the Company, like all regulated companies, to comply with applicable legal requirements while pursuing that interest." *Id.* at 3.

3.10 Subsequently, on June 17, 2016, Shuttle Express filed a Petition for Exemption for WAC 480-30-213 and WAC 480-30-456, Docket TC-160819, by which it again sought an exemption for use of independent contractors for the transportation of customers of its auto transportation company by use of limousine and town car, but in this instance rather than seeking permission for use of a rescue service, it sought a blanket exemption to use independent contractors for the operation of limousines and town cars in its regulated auto transportation operations. *See*, Amended Petition for Limited and Condition Exemption, Docket No. TC-160819.

3.11 On September 30, 2016, in a 2-1 decision over the dissent of Commissioner Rendahl, the Commission granted Shuttle Express' petition for exemption, but it conditioned the exemption and limited it to a period of 10 months. *See*, Order 01, Docket No. TC-160819.

3.12 Despite the fact that Shuttle Express was penalized nearly \$70,000.00 for thousands of documented violations of WAC 480-30-213 by use of independent contractors, to Speedishuttle's information and belief, Shuttle Express continued to operate its rescue service through independently owned limousines and town cars, operated by independent contractors, doing so after its initial exemption expired and up until the time its new exemption was granted on September 30, 2016. Shuttle Express' continued use of its rescue service in violation of WAC 480-30-213, by way of example, was admitted in a post by Shuttle Express on June 10, 2016 in response to a customer complaint on its Facebook page, a copy of which is attached hereto and incorporated by reference herein as Exhibit A.

SHUTTLE EXPRESS' USE OF UNLAWFUL REBATES AND COMMISSIONS

3.13 Shuttle Express also has a documented history of unlawful rebates or commissions to unauthorized agents. Though there was no record of how many payments were made, such violation, by making payments to hotel bellhops, are documented in the Commission Decision and Order Granting Administrative Review; Modifying Initial Order; Assessing Penalties, in Docket No. TC-910789. In that Order, served January 6, 1993, the Commission found that Shuttle Express' payment of commissions to bellhops violated RCW 81.28.080, and that Shuttle Express was being put on notice that in order to make commission payments it must secure an order from the Commission allowing payment, which must identify the terms of the agreement. Further, Shuttle Express was notified it was prohibited from making commission payments indiscriminately or in a manner outside the terms of an order granting Commission approval. Finally, it was notified the Commission could enter such an order when the terms of the agreement are clear and permissible, and when the class of contractor was clearly identified. *Id.* at 7.

3.14 To Speedishuttle's information and belief, Shuttle Express has paid monthly commission checks to individuals and/or entities, including but not limited to staff at one or

more Seattle area hotel(s), for reservations booked with Shuttle Express, despite such individual and/or entities not being authorized ticket agents for Shuttle Express. *See* Exhibit B, a true and correct copy of an email confirming such payments.

IV. BASIS FOR COMPLAINT

4.1 The information set forth in paragraphs 2.1 through 3.14 is incorporated by reference as if fully set forth herein.

4.2 As an auto transportation company, as that term is defined in RCW 81.68.010(3), Shuttle Express is subject to the regulatory jurisdiction of the Washington Utilities and Transportation Commission pursuant to RCW 81.68.030 and must comply with Chapters 81.28 and 81.68 of the Revised Code of Washington.

VIOLATION OF WAC 480-30-213

UNLAWFUL OPERATION OF ITS RESCUE SERVICE

4.3 WAC 480-30-213(1) and (2) prohibit an auto transportation company from using independent contractors in the operation of vehicles or vehicles which are not leased to or owned by the auto transportation company for transportation of passengers under its certificate authority.

4.4 In addition to the prohibitions contained in WAC 480-30-213(1) and (2), Shuttle Express was specifically prohibited from violating WAC 480-30-213(1) pursuant to Order 01, Docket No. TC-072228.

4.5 Shuttle Express' provision of rescue service (during periods in which no exemption was granted) by limousine, town car, or SUV operated by independent contractors constitutes a willful violation WAC 480-30-213(1) and (2) on each and every such occasion.¹

¹ The exceptions again being the periods of granted exemptions (between December 15, 2013 and January 15, 2014 and the 10 months following September 30, 2016).

VIOLATION OF RCW 81.28.080

UNLAWFUL COMMISSIONS

4.6 RCW 81.28.080, prohibits an auto transportation company such as Shuttle Express from issuing a rebate or refund of any portion of its rate or fare except upon order of the WUTC. RCW 81.28.080 thereby prohibits the payment of commissions to unauthorized ticket agents.

4.7 Respondent's conduct, in making payments to persons without first entering into a ticket agent agreement duly disclosed to and approved by the WUTC, constitutes an unlawful rebating or commission of fares in violation of RCW 81.28.080 and WAC 480-30-391.


4.8 Shuttle Express' conduct, in violating RCW 81.28.080, constitutes a willful violation. In the private complained filed in *Everett Airporter Services Enterprises, Inc. v. San Juan Airlines, Inc. d/b/a Shuttle Express*, the Commission found that a commission paid to a bellhop by Shuttle Express without a Commission order on file approving such a ticket agent agreement (under former rule WAC 480-30-050(5)) violated RCW 81.28.080. *See* Commission Decision and Order Granting Administrative Review; Modifying Initial Order; Assessing Penalties, Docket No. TC-9170789. Consequently, Shuttle Express has actual knowledge its conduct violates RCW 81.28.080.

V. REQUEST FOR RELIEF

5.0 Speedishuttle requests the Commission issue an order directing Shuttle Express to cease and desist from engaging in payment of unauthorized commissions or rebates, and imposing the maximum allowable monetary penalty upon Shuttle Express for each and every occurrence by which Shuttle Express is shown to have acted in violation of law, as alleged in paragraphs 4.1 through 4.8, above.

5.1 Speedishuttle further requests the Commission now permit the full range of discovery as authorized by WAC 480-07-400(2)(b).

DATED this 30th day of November, 2016.



David W. Wiley
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Seattle, WA 98101-2380
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Fax: (206) 628-6611

Attorneys for Complainant Speedishuttle
Washington LLC



Meg Wilkinson reviewed Shuttle Express — 1★

June 10 · 🌐

I booked well ahead, arrived at my schedules time, and was told there would be at least an hour wait for a van. It's nearly 1:00 am. Public transportation is not an option. Don't consider this an option for transportation - They don't even apologize.

👍 Like 💬 Comment ➦ Share



Shuttle Express Hello Meg,

Thank you for contacting Shuttle Express. We sincerely apologize for the long wait time you experienced on your most trip late last night—we do see that we sent you an exclusive town car to take you directly to your residence. We appreciate the time you've taken to let us know how we may improve our customer service to our guests.

- Shuttle Express

Like · Reply · June 10 at 9:41am



Meg Wilkinson Yes, you did send a town car, but after I'd waited for over an hour, the on-site staff had gone home, I'd phoned to complain and said I'd left bad reviews on Facebook and Yelp, and a van driver who showed up to take passengers elsewhere phoned to find out why I was stranded.

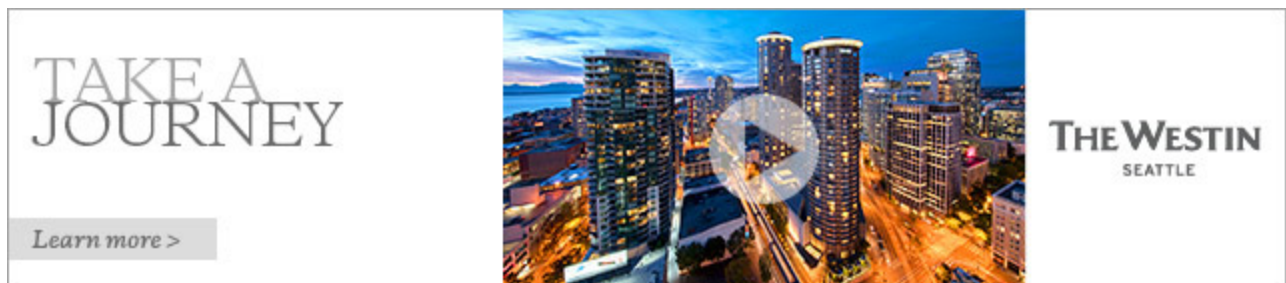
Like · Reply · June 10 at 11:57am

From: "Milanio, Ted" <Ted.Milanio@Westin.com>
Date: August 1, 2016 at 2:23:54 PM MDT
To: Terry Carroll <tcarroll@speedishuttleseattle.com>
Subject: RE: SpeediShuttle Seattle Reservation Number: SE120790

We receive checks from them one a month.

**TED
MILANIO**
conciierge

THE WESTIN SEATTLE
1900 Fifth Avenue, Seattle, Washington 98101
T 206.727.5803 F 206.728.2259 M 206.728.1000



From: Terry Carroll [<mailto:tcarroll@speedishuttleseattle.com>]
Sent: Monday, August 01, 2016 1:00 PM
To: Milanio, Ted <Ted.Milanio@Westin.com>
Subject: Re: SpeediShuttle Seattle Reservation Number: SE120790

Is that so? Then you receive commissions directly from Shuttle Express (or cash as is the case with one downtown hotel that I know of)?

Terry Carroll
Director of Sales
SpeediShuttle Seattle
[1237 South Director Street](#)
[Seattle, WA 98108](#)
Phone: [206-456-6968](tel:206-456-6968)

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EXHIBIT B

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Sent from my iPhone

On Aug 1, 2016, at 1:53 PM, Milano, Ted <Ted.Milano@Westin.com> wrote:

Nice hearing from you, also. It makes sense but the business to business partnership will not work for us at the Westin since we, as concierge, handle our own commissions at our desk with no interaction with the hotel.

**TED
MILANIO**
concierge

THE WESTIN SEATTLE
1900 Fifth Avenue, Seattle, Washington 98101
T 206.727.5803 F 206.728.2259 M 206.728.1000

<[image003.jpg](#)>

From: Terry Carroll [<mailto:tcarroll@speedishuttleseattle.com>]
Sent: Monday, August 01, 2016 9:34 AM
To: Milano, Ted <Ted.Milano@Westin.com>
Subject: RE: SpeediShuttle Seattle Reservation Number: SE120790

WOW I love hearing from you Ted!!

How r u???

We have not yet signed partnering documents with the Westin, waiting until after the brand change from Starwood to Marriott happens and I will step in and try to close this after all this time.

That said, we are now and will always be business to business in partnership. Some of our partner hotels (we have 16 to date) track what the agents book to compensate them but we mail commission checks on the 20th of every month to our business partners and do not meddle in what happens between the hotel and their employees. Make sense?

Please call/write if you have questions.

Terry Carroll
Director of Sales

EXHIBIT B

SpeediShuttle Seattle
1237 South Director Street
Seattle, WA 98108
Phone: 206-456-6968
<image001.jpg>

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From: Milano, Ted [<mailto:Ted.Milano@Westin.com>]
Sent: Monday, August 1, 2016 10:29 AM
To: Terry Carroll <tcarroll@speedishuttleseattle.com>
Subject: FW: SpeediShuttle Seattle Reservation Number: SE120790

Hi Terry,

I booked this tour and forgot to put my name on it.

Thanks,

**TED
MILANIO**
concierge

THE WESTIN SEATTLE
1900 Fifth Avenue, Seattle, Washington 98101
T 206.727.5803 F 206.728.2259 m 206.728.1000

<[image002.jpg](#)>

From: Speedi Shuttle Seattle [<mailto:reservations@speedishuttleseattle.com>]
Sent: Monday, August 01, 2016 9:24 AM
To: Milano, Ted <Ted.Milano@Westin.com>
Subject: SpeediShuttle Seattle Reservation Number: SE120790

<[image005.jpg](#)>

Seattle's Finest Airport Shuttle Service

EXHIBIT B

Reservation Confirmation

This is your reservation confirmation for ONE-WAY shared-ride transportation with SpeediShuttle Seattle.

Lead Passenger Name: [REDACTED]

One Way

Reservation Number	SE120790
Passengers	1
Pickup date	Tuesday, August 02, 2016 12:15 PM
Pickup location	1900 5th Ave. Westin Hotel - Seattle
Dropoff location	17801 International Blvd Seattle/Tacoma Airport
Flight date	Tuesday, August 02, 2016 03:00 PM
Airline	
Service type	Shared Shuttle
Fare	\$15.99 Paid by Credit card

Information

Arrival and Departure Instructions

Seattle-Tacoma International Airport

Arrivals

Please proceed to the baggage claim area. After you have gathered your luggage please look for a greeter holding a SpeediShuttle sign. Do not exit to the street. We will direct you to your transportation.

If you are unable to locate our greeter, follow the signs to Ground Transportation and take the escalator up to one of the sky bridges. Once across the sky bridge, descend one level to the third floor and follow the signs for SpeediShuttle and Door-to-Door Vans. Our service desk is located in the Ground Transportation Plaza between the purple and orange elevator banks.

Departures

Your scheduled pick up time for your departure will be confirmed by our customer call center, which is open 24/7 for your convenience, at least 24 hours prior to your departure. If you are departing from Pier 91, please look for our greeter at Pillar 3 who will direct you to your shuttle.

For departures, due to the nature of shared ride service, please be ready 15 minutes prior to and allow up to 15 minutes after the scheduled pick up time for your shuttle to arrive.

SpeediShuttle Seattle will not be responsible or liable for lost, stolen or damaged items and baggage or acts of God or nature, delays in traffic or flight plans.

CHANGES AND CANCELLATIONS

Please email us at Reservations@SpeediShuttleSeattle.com with any questions, concerns or changes or call us at 1-206-693-7100 or 1-844-877-3334 (toll free).

Our cancellation policy for shared ride service to avoid a full non-refundable charge is 2 hours before your scheduled pickup time.

No refunds are available with less than 2 hours' notice. You can make changes to or cancel your reservation online at

www.speedishuttleseattle.com/reservations up to 24 hours before your scheduled pickup or at any time by email to

Reservations@SpeediShuttleSeattle.com or by calling us at the numbers above.

Thank you for choosing SpeediShuttle Seattle

Click Below for the iPhone App!

[!\[\]\(5ddb2a112276baa148775929432349f9_img.jpg\)](#)

SpeediShuttle Seattle

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Reservation Confirmation

(206) 693-7100

<http://speedishuttleseattle.com/>

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