

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 FOR SUMMARY
DETERMINATION OF SHUTTLE
EXPRESS' FORMAL COMPLAINT

1 Pursuant to WAC 480-07-380(2), Respondent, Speedishuttle Washington LLC d/b/a
Speedishuttle Seattle ("Speedishuttle"), files this Motion for Summary Determination of the
Formal Complaint of Petitioner, Shuttle Express, Inc. ("Shuttle Express").

I. INTRODUCTION AND SUMMARY

2 The instant Motion is brought by Speedishuttle directed to Shuttle Express' Formal Complaint
alleging predatory pricing by Speedishuttle, which is part of this consolidated proceeding in
which Shuttle Express alternatively seeks to cancel Speedishuttle's certificate or otherwise
restrict Speedishuttle's ability to operate as an auto transportation service in King County,
Washington.

3 Throughout this proceeding, Speedishuttle has questioned Shuttle Express' motives in bringing
its Petition for Rehearing and Formal Complaint, as it appears that Shuttle Express is attempting
to use litigation before the Commission in an attempt to reinterpret WAC 480-30-140 and raise
the bar for entry into the auto transportation industry in Washington following the Commission's
2013 rulemaking for this industry.¹ More specifically, it appears that Shuttle Express is
attempting to use this litigation to eject Speedishuttle from the market, doing so by increasing the

¹ General Order R-572, Docket TC-121328 (Aug. 21, 2013). Shuttle Express has strategically ignored this rule revision throughout this proceeding and apparently believes is not effective as a matter of law.

literal cost of entry, attempting to cancel Speedishuttle's certificate, and/or retroactively amending WAC 480-30-140 such that, irrespective of a finding that an applicant will not provide the same service, it only authorizes new entrants in a territory served by an existing auto transportation company if the new transportation company will serve only those passengers who could not have been served by an incumbent carrier (which ostensibly Shuttle Express will argue do not exist). The deliberate and concerted effort by which Shuttle Express is seeking to exclude Speedishuttle from the marketplace is magnified by Shuttle Express' comments in ¶ 51 of its Motion to Compel filed September 13, 2016, which alludes to an intention to remove Speedishuttle from the marketplace no later than the summer 2017 travel season.

4 Shuttle Express believes it is entitled to monopoly or a quasi, "qualified" monopoly status under RCW 81.68. However, the Commission's policy statement with respect to its 2013 rulemaking demonstrates that it intended for the auto transportation industry in Washington to become more competitive, including the provision of flexibility on prices and market adaptability, and did so in part by streamlining the application process.

5 Nonetheless, this application docket for Speedishuttle has ultimately been the antithesis of streamlined. Speedishuttle has faced unrelenting, recurring efforts to cancel or restrict its certificate by Shuttle Express even after the March 30, 2015 Final Order granting Speedishuttle its unrestricted permit, despite the lack of any judicial appeal by Shuttle Express of that benchmark ruling. One such effort by Shuttle Express can be now found in the remedy it seeks with respect to its boilerplate allegation on predatory pricing in its Complaint (through which Shuttle Express has also attempted to obtain all of its competitor's proprietary financial information in discovery).

6 In the lone remaining issue in its Formal Complaint,² Shuttle Express alleges that Speedishuttle is providing its services at fares that are below cost, which Shuttle Express alleges constitutes predatory pricing in violation of RCW 81.04.110 and RCW 81.28.010. Shuttle Express further requests that as a result, Speedishuttle’s certificate should be cancelled, or alternatively, Speedishuttle should be subject to regulated minimum fares and regular financial monitoring and reporting through proceedings in which Shuttle Express, a *de facto* competitor of Speedishuttle, would no doubt seek to actively participate.

7 While Speedishuttle will prove below that Shuttle Express’ Complaint should be denied as a matter of law because its tariff practices cannot constitute predatory pricing, any relief that permits Shuttle Express to participate in the regulation and control of a *de facto* competitor would be inherently anti-competitive and would preserve for Shuttle Express an unprecedented advantage in the regulated, intrastate auto transportation industry.

8 Under these facts, the Commission should find the remedy sought by Shuttle Express in its Complaint unavailable as a matter of law. Notwithstanding this resolution, it is unnecessary for the Commission to reach a determination on Shuttle Express’ requested remedy, because, as Speedishuttle will demonstrate, Speedishuttle is a start-up and therefore the mere fact that its

² The specific claims for relief asserted in Shuttle Express’ Formal Complaint are unclear, but any uncertainty about what claims were made was resolved by ¶24 of Order 08, in which the Commission ruled that it would not permit Shuttle Express to relitigate the BAP. As all other allegations made in the Formal Complaint consist of complaints about the BAP and thereby collaterally attack the Commission’s unchallenged ruling therein, the only remaining issue now is Shuttle Express’ allegation of predatory pricing. This was further clarified by the Administrative Law Judge in her ruling on Shuttle Express’ Motion to Compel, stating “[I] want to clarify the scope of the proceeding at this point, and just make it clear that it’s limited to, number one, whether Speedishuttle is providing the service the Commission authorized it to provide consistent with the business model approved by the Commission in Docket TC-143691, and whether Speedishuttle is providing service below cost as alleged in the Complaint in Docket TC-160516. And those are the only issues we’re looking at.” *See*, the September 27, 2016 hearing transcript at page 183, lines 4-13.

costs currently exceed its generated fares does not constitute actionable conduct under the laws of the state of Washington.

9 Apart from its position as a start-up, an even more fundamental basis demonstrating that Speedishuttle is entitled to summary determination, is that the undisputed facts support Speedishuttle services only a small segment of the market for airport transportation in its territory. This, alone, is dispositive because it demonstrates that Speedishuttle is incapable of predatory pricing as a matter of law.

10 Because the relief requested by Shuttle Express would also provide Shuttle Express inappropriate regulatory oversight of a competing auto transportation company, and because the undisputed facts support that Speedishuttle has not engaged in any acts of predatory pricing, Speedishuttle moves the Commission for an order denying all relief requested in Shuttle Express' remaining Formal Complaint.

II. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

A. Relevant Chronological History

i. **Background Relevant to Shuttle Express**

11 Though the instant proceeding is focused on Speedishuttle's conduct, a simple comparison of Speedishuttle's current market position as a startup to Shuttle Express' own well-documented startup period is enlightening and will assist the Commission in understanding why Shuttle Express' predatory pricing Complaint is fatally flawed.

12 Shuttle Express originally came into existence as a part of San Juan Airlines, Inc., a commuter airline, and has been operating as an airporter service in Washington since on or about September 1987. After being notified it was required to obtain a certificate of public

convenience and necessity from the WUTC *before* commencing operations, Shuttle Express finally applied for a certificate on October 13, 1988.³

13 In its initial application, Shuttle Express sought authority to provide service between airports in the Seattle Commercial Zone and points within the Seattle Commercial Zone. In 1991, not long after obtaining its initial certificate in April 1989, Shuttle Express sought to expand its certificate authority to cover points in Pierce County as well. The initial order in that proceeding, however, ruled that Shuttle Express's extension should be denied for lack of financial fitness. Shuttle Express, on review, contended that it should not be held to making a profit during its start-up phase, and sought to demonstrate its financial fitness through an alternative measure. *See*, Exhibit A.⁴ The Commission ultimately agreed that Shuttle Express' ongoing operating losses were not by themselves a sufficient basis to determine that Shuttle Express lacked the financial fitness to expand its territory, especially in light of Shuttle Express' representations that it needed only to increase its passenger volume to become profitable and that its owners would continue to support its operations financially until it reached profitability, and granted an extension to Shuttle Express' certificate territory.⁵ Despite its efforts at expansion, Shuttle Express's financial losses apparently continued to mount for some time. *See*, Exhibit B.⁶

ii. Background Relevant to Speedishuttle's Entry into the Market

14 Although its founders are thoroughly experienced in operating an auto transportation company through its sister company in Hawaii, Speedishuttle is a relatively new auto transportation entrant

³ *See*, Order M.V.C. No. 1809, *In re San Juan Airlines, Inc. d/b/a Shuttle Express*, (Apr. 1989).

⁴ Order M.V.C. No. 1899, *In re Application D-2589 of San Juan Airlines, Inc. d/b/a Shuttle Express*, (Mar. 1991).

⁵ *Id.*

⁶ *Everett Airporter Services Enterprises, Inc. v. San Juan Airlines, Inc. d/b/a Shuttle Express*, Commission Decision and Order Granting Administrative Review; Modifying Initial Order; Assessing Penalties; Docket TC-910789 (Jan. 7, 1993).

in the State of Washington, having only filed its application for auto transportation authority for door-to-door service from SeaTac International Airport to points in King County with the Commission on October 10, 2014.

15 Despite the fact that Speedishuttle's auto transportation application was submitted more than one year after the Commission's rulemaking in Docket TC-121328, which again was aimed to streamline and simplify the application process and limit the scope of the objections an objecting incumbent provider could make, Shuttle Express made a herculean effort to prevent Speedishuttle from obtaining authority to provide any regulated service in King County. The Commission is familiar with these efforts, but a short summary of that proceeding bears discussion here.

16 When Shuttle Express first appeared in Speedishuttle's application case, it did so by filing a motion to strike the prehearing conference notice, arguing that a full adjudicative proceeding with full blown discovery was required by law. Shuttle Express' Motion was denied and eventually, a contested brief adjudicative proceeding on Speedishuttle's application commenced.

17 Following the hearing on Speedishuttle's application an Initial Order, Order 02, was entered in January 2015 rejecting the objections of Shuttle Express and Capital Aeroporter and granting Speedishuttle's application. Shuttle Express next filed two petitions on February 9 and 10, 2015 seeking to reopen the hearing record and introduce new evidence. These motions to reopen were denied and after Petitions for Administrative Review were considered, Speedishuttle's application was ultimately granted by Order 04 on March 30, 2015. Following the entry of Order 04, Speedishuttle was issued unrestricted Certificate C-65854, authorizing door-to-door auto transportation service between SeaTac International Airport and points in King County.

18 Speedishuttle began providing service consistent with its Certificate C-65854 in May 2015. However, rather than being simply permitted to operate the auto transportation service authorized by Certificate C-65854, Speedishuttle has been subjected to prolonged litigation and continuing challenges by Shuttle Express ever since summer of 2015, materially increasing Speedishuttle's costs of service to operate in Washington.

19 First, at the instigation of Shuttle Express,⁷ Speedishuttle was ultimately required to respond to bench requests on a closed record and a proposed amendment to Order 04 relating to its post-hearing decision to provide walk-up service at the airport. The Commission ultimately determined that walk-up service was authorized by Speedishuttle's certificate, but not before considerable additional legal expense was incurred by Speedishuttle.⁸

20 Subsequently, the instant consolidated proceedings were initiated by Shuttle Express in May 2016, again, with the ultimate goal of excluding Speedishuttle from the market through cancellation of its certificate. The history of the omnibus proceeding is well documented in this docket and will not be repeated here, but it unquestionably demonstrates that Speedishuttle has been forced to incur considerable time, effort and monetary expense to defend itself from Shuttle Express litigation challenges almost from the day Shuttle Express' objections were denied by Final Order 04 in March, 2015.

⁷ See, e-mail chain attached hereto as Exhibit D-1.

⁸ See, Notice of Determination Not to Amend Order 04, *In re Application of Speedishuttle*, Docket TC-143691, (Dec. 14, 2015).

B. Background Specific to Shuttle Express' Predatory Pricing Complaint

21 As of the time this Motion is filed, Speedishuttle has operated in Washington for just over 20 months. In that time, although its passenger volumes have steadily increased, it has admittedly not yet reached a point of profitability.

22 Compared to Shuttle Express, Speedishuttle's operations in Washington remain relatively small. Indeed, Shuttle Express alluded to those size differences at the Open Meeting held September 28, 2016 in the proceeding on Shuttle Express' Petition for Exemption; (Docket TC-160819). At that meeting, counsel for Shuttle Express explained that he didn't believe there would be other companies applying for exemptions [from WAC 480-30-213] because "[i]n King County there's only, there's really only one major company with an autotrans certificate and that's Shuttle Express. And then there's a new entrant, which is Speedishuttle. And there's a couple of really tiny ones, um, and they don't have county-wide authority. Only the two companies have it." *See*, the excerpt of the unofficial transcription of audio recording of open meeting, attached as Exhibit D-2.

23 To elaborate on Shuttle Express' explanation, Shuttle Express reported transporting 241,529 passengers in 2015. *See*, Exhibit C.⁹ Conversely, Speedishuttle booked just 61,721 passenger reservations between May 2015 and August 2016. *See*, Exhibit D-3.¹⁰ Similarly, Shuttle Express's website claims a fleet of "more than 85 10-passenger shuttle vans" are used in its

⁹ 2015 Annual Report for Shuttle Express, Inc.

¹⁰ Speedishuttle's response to Data Request 4 of Shuttle Express.

Share Ride service. *See*, Exhibit D-4.¹¹ Speedishuttle’s Washington fleet now utilizes just 18 passenger vehicles. *See*, Exhibit D-5.¹²

24 To recap, Shuttle Express filed its conjoined petition for rehearing and formal complaint against Speedishuttle in May 2016, just one year after Speedishuttle commenced service. In Shuttle Express’ formal complaint, the only remaining aspect of the proceeding at issue is its allegation that Speedishuttle offers fares below cost, which Shuttle Express alleges constitutes predatory pricing.

25 More specifically, Shuttle Express requested in ¶ 50 of its Complaint, that the Commission direct Speedishuttle “to cease and desist from offering service below cost, including both direct costs and a reasonable allocation of indirect, joint, and common costs.” By this prayer for relief, Shuttle Express essentially asks that the Commission require Speedishuttle to raise its prices so that they exceed average total cost.

III. STATEMENT OF UNDISPUTED FACTS

26 Speedishuttle bases its Motion for Summary Determination on the undisputed facts set forth in ¶¶ 27-29, below, and the evidence set forth in ¶ 30, below.

27 Shuttle Express is the largest company providing regulated intrastate auto transportation service between SeaTac International Airport and points in King County, Washington by size of fleet, volume of passengers, and gross revenues. *See*, Exhibit D-2, D-3, D-4 and D-5.

¹¹ Print-out of fleet information from Shuttle Express’s website.

¹² Speedishuttle’s Response to Shuttle Express’ Data Request No. 8.

28 Shuttle Express's operations to provide service between SeaTac International Airport and points
in King County Washington did not make a profit at least between 1989 and 1993. *See*, Exhibits
A and B.¹³

29 As noted above, since commencing operations to provide service between SeaTac International
Airport and points in King County, Washington in May 2015, Speedishuttle admits it has not yet
made an operating profit.

IV. EVIDENCE IN SUPPORT OF MOTION FOR SUMMARY DETERMINATION

30 Speedishuttle offers the following exhibits, which are attached hereto and incorporated as if fully
set forth herein:

Exhibit A: A true and correct copy of Order M.V.C. No. 1899, *In re Application D-2589 of San Juan Airlines, Inc.*, (Mar. 6, 1991);

Exhibit B: A true and correct copy of Commission Decision and Order Granting Administrative Review; Modifying Initial Order; Assessing Penalties, *Everett Airporter Services, Inc. v. San Juan Airlines*, Docket TC-910789, (Jan. 7, 1993);

Exhibit C: A true and correct copy of Shuttle Express, Inc.'s 2015 Annual Report filed with the Commission on April 27, 2016;

Exhibit D: Declaration of Blair I. Fassburg;

Exhibit D-1: A true and correct copy of an e-mail chain with emails from Jimy Sherrell to Steve King and from Steve King to others addressing the provision by Speedishuttle of walk-up service, dated June 2015;

Exhibit D-2: Excerpt of unofficial transcript of audio recording taken of the open meeting held by the Washington Utilities and Transportation Commission on September 28, 2016;

Exhibit D-3: A true and correct copy of Speedishuttle's response to Shuttle Express' Data Request No. 4;

¹³ Speedishuttle has been seeking through discovery since September 7, 2016 an update on this loss chronology which it believes extends past 1993, but Shuttle Express has objected to and otherwise failed to answer Data Request No. 5, which is before the Commission presently on a Motion to Compel.

Exhibit D-4: A true and correct copy of printout of the Share Ride Fleet page from Shuttle Express' website; and

Exhibit D-5: A true and correct copy of Speedishuttle's response to Shuttle Express' Data Request No. 8.

V. ARGUMENT AND AUTHORITY IN SUPPORT OF SUMMARY DETERMINATION

A. Predatory pricing defined

31 As discussed below, the Commission does not appear to have ever established standards of proof by which a claim for predatory pricing claim must be made. In economic theory, predatory pricing can be explained simply as "pricing below an appropriate measure of cost for the purpose of eliminating competitors in the short run and reducing competition in the long run."¹⁴ In expanding on that simple definition, the United States Supreme Court has explained that actionable predatory pricing is a strategic scheme by which a business rival prices its products in an unfair manner with the object of eliminating competition and thereby gaining and exercising control over prices in the relevant market, followed by a rise in prices sufficient to recoup the loss sustained.¹⁵

B. There is no Commission authority whatsoever Supporting Shuttle Express' alleged standard for predatory pricing

32 Shuttle Express's complaint for predatory pricing is alleged to have been brought pursuant to RCW 81.04.110 and RCW 81.28.010 and "other laws and regulations." However, there is a dearth of authority to support that either statute authorizes a formal complaint for predatory pricing. Neither of the cited statutes contains the words "predatory pricing" nor expressly requires that fares must exceed any measure of cost. To be precise, RCW 81.04.110 provides, in

¹⁴ *Cargill, Inc. v. Monfort of Colo., Inc.*, 479 U.S. 104, 117, 107 S. Ct. 484, 493, 93 L.Ed.2d 427, 440 (1986).

¹⁵ *See Brooke Group v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209; 113 S. Ct. 2578 (1993).

pertinent part, that when two or more public service companies are in competition in any locality in the state either can allege:

...the rates, charges, rules, regulations or practices of such other or others with or in respect to which the complainant is in competition, are unreasonable, remunerative, discriminatory, illegal, unfair or intending or tending to oppress the complainant, to stifle competition, or to create or encourage the creation of monopoly...

Similarly, RCW 81.28.010 provides, in pertinent part:

All charges made for any service rendered or to be rendered in the transportation of persons or property, or in connection therewith, by any common carrier subject to regulation by the commission as to rates and service, or by any two or more such common carriers, must be just, fair, reasonable, and sufficient...

33 Shuttle Express apparently takes the position that these statutes prohibit fares below cost. In the Complaint, that is indeed Shuttle Express' lone factual assertion regarding its predatory pricing allegation. However, nothing specifically found in RCW 81.04.110 or 81.28.010 supports that "fares below cost" are prohibited and there exists no other authority which suggests that an auto transportation company operating pursuant to RCW 81.68 must set all regulated fares above "cost."

34 Simplistic allegations of the nature lodged by Shuttle Express might possibly have been supportable had this proceeding related to a different regulated industry. For example, in the telecommunications industry (at least in prior years), the Legislature required that prices or rates charged for competitive telecommunications services must cover their cost.¹⁶ However, there is no similar statute contained in RCW 81.68 and the economic theory for what constitutes predatory pricing accepted by the United States Supreme Court is a far more exacting standard.

¹⁶ RCW 80.36.330.

C. Prior Commission precedent also supports the determination that Speedishuttle is not engaged in predatory pricing

35 Assuming *arguendo* that either RCW 81.04.110 or 81.28.010 prohibits predatory pricing, the Commission nevertheless has expressly found that the fact a regulated auto transportation company suffered operating losses during its startup period did not support an allegation of predatory pricing.

36 As noted, this issue was previously addressed in a proceeding involving a complaint filed by Everett Airporter Services Enterprises, Inc. (“Everett Airporter”) against Shuttle Express over Shuttle Express’ fares. In that proceeding, Everett Airporter challenged the fares set by Shuttle Express and filed a complaint alleging (among other things) that Shuttle Express’ losses established predatory pricing. Although Shuttle Express’ operating losses were duly acknowledged in its Order, the Commission concluded that it “does not guarantee profitability nor mandate that a carrier achieve an approved operating ratio when it approves tariff rates. The Commission merely affords a carrier the opportunity to achieve profitability. Operating losses do not prove that the carrier’s pricing is predatory.”¹⁷ Thus, Shuttle Express was not found to be engaged in predatory pricing (despite being penalized for other violations).¹⁸

37 The premise the Commission applied to Shuttle Express in that instance applies with equal logic to Speedishuttle in this case. If an auto transportation company is not yet achieving a profit, it follows that its fares do not exceed its costs. Thus, if an auto transportation company is not required to achieve a profit during its startup period, consequently it is not required to assess fares in excess of its costs. Thus, the Commission does not require that Speedishuttle achieve a

¹⁷ *Everett Airporter, supra.*

¹⁸ *Id.*

profit during its startup phase and the stipulation or finding that it has not cannot support a claim of predatory pricing, again, as a matter of law.

38 While Speedishuttle's present failure to achieve a profit is justifiable for no greater reason than it is a startup, it is also important to reemphasize that its startup costs have been significantly exaggerated due solely to the multiplicity of actions by Shuttle Express in its unceasing efforts to bar Speedishuttle first from entering the market and then its subsequent attempts to force Speedishuttle out of the market, which have significantly increased Speedishuttle's legal expenses and, consequently, its overall costs to operate.

D. Federal predatory pricing law, as adopted by the Washington legislature and courts, supports the premise that Speedishuttle's minor market share eliminates the possibility of it engaging in predatory pricing

i. Federal law bases for predatory pricing complaints are similar to RCW 81.04.110

39 While Commission precedent above should serve as ample authority to find that Speedishuttle's startup losses do not in and of themselves establish predatory pricing, federal predatory pricing authority also exists (which Washington has treated as authority in the context of the Consumer Protection Act, RCW 19, et seq.) and further signals that Speedishuttle is entitled to summary determination here.

40 Federal law provides two statutory bases of authority to enable a predatory pricing cause of action against a competitor. One, found in the Sherman Antitrust Act,¹⁹ and the other found in the Robinson-Patman Act.²⁰ Although these two provisions afford slightly different protections to competition, both have been held to authorize a cause of action for predatory pricing under

¹⁹ 15 U.S.C. § 2.

²⁰ 15 U.S.C. § 13(a).

federal law, and both utilize nearly identical standards for establishing a cause for predatory pricing.²¹

41 While both the Sherman and Robinson-Patman Acts thus provide protection from predatory pricing, the latter’s protections are based on language more akin to that contained in RCW 81.04.110. The Robinson-Patman Act, in pertinent part, prohibits a person from discriminating in price between different purchasers of commodities of like grade and quality where the effect of such discrimination may be substantially to lessen competition, or tending to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition.²² Compared to the applicable portions of RCW 81.04.110, which permit complaints with the Commission relating to the assessment of fares that are “unreasonable, remunerative, discriminatory, illegal, unfair or intending or tending to oppress the complainant, to stifle competition, or to create or encourage the creation of monopoly,” it appears the goals of the Robinson-Patman Act are similar to that of RCW 81.04.110. Accordingly, federal predatory pricing decisions here should inform the Commission’s determination.

ii. **Federal law standards for predatory pricing demonstrate Speedishuttle is incapable of engaging in predatory pricing**

42 The operative elements necessary to establishing a claim for predatory pricing under federal law were again set forth by the United States Supreme Court in *Brooke Group*. After the decision in *Brooke Group*, the plaintiff in a predatory pricing case brought under the Robinson-Patman Act has been required to prove each of the following elements:

²¹ The sole difference in the standards is that under the Sherman Act the plaintiff has a higher burden of proof with respect to the likelihood of loss recoupment. See *Brooke Group*, 509 U.S. 209.

²² 15 U.S.C. § 13(a).

- 1) The prices complained of are below an appropriate measure of costs²³; and
- 2) The competitor has a reasonable prospect of recouping the losses incurred while prices were low.

Brooke Group, 509 U.S. 209; Am Jur 2d Monopolies, Restraints of Trade, Unfair Trade Prac. § 186 (2nd 2015).

iii. Recoupment is difficult to establish and frequently a basis for summary disposition

43 *Brooke Group* involved an appeal by the defendant following a 115 day jury trial which resulted in a judgment finding the defendant had engaged in predatory pricing. The plaintiff, a cigarette manufacturer with a minor market share, alleged its competitor, with just 11-12% market share, had engaged in a scheme to raise the market price of generic cigarettes by lowering its own price below cost. Though the defendant had been shown at trial to have lowered its prices below an appropriate measure of its cost, the Supreme Court found that the plaintiff failed to establish a claim for predatory pricing because the defendant's market share was simply inadequate to cause a competitive injury through the likelihood of later recoupment.

44 As the Supreme Court explained, for the predatory pricing decision to be rational, the predator must have a reasonable expectation of recovering its loss through monopolistic profits.²⁴ This prerequisite to recovery requires the plaintiff to show that the scheme will result in a rise in prices which can be sustained long enough to compensate for the amounts expended on the

²³ Although the U.S. Supreme Court did not specifically require the measure of costs to be average variable cost, numerous federal Circuit Court decisions, including decisions by the 9th Circuit, hold that to constitute predatory pricing, the plaintiff should establish that prices are offered below average variable cost, and that prices below average total cost are irrelevant to a predatory pricing complaint. See *Cal. Comput. Products, Inc. v. Int'l Bus. Machs. Corp.*, 613 F.2d 727, 743 (9th Cir. 1979).

²⁴ *Id.* at 225 (citing *Matsushita Elec. Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, (1986)(emphasis added).

predation, “including the time value of the money invested.”²⁵ The Supreme Court acknowledged that this would be difficult hurdle for a predatory pricing plaintiff, but it nonetheless required it because one goal of competition is lower prices, and an unsuccessful predatory pricing scheme could actually benefit consumers.²⁶

45 The Supreme Court also offered two scenarios by which it would be particularly appropriate to dispose of a predatory pricing case by summary disposition: 1) where new entry is easy, and 2) where the alleged pricing predator does not have the excess capacity to easily absorb its rival’s market share or purchase new capacity.²⁷

46 Decisions subsequent to *Brooke Group* have also ruled that summary judgment is appropriate where the plaintiff is unable to establish a reasonable likelihood of recoupment because there are low barriers to market entry or the defendant lacked sufficient market power to control prices.

47 In *W. Parcel Express v. UPS of Am.*, 190 F.3d 974 (9th Cir. 1999), the 9th Circuit considered an appeal taken from a summary judgment granted by the Northern District of California in a predatory pricing case brought by Western Parcel Express against UPS. In its decision, the 9th Circuit focused much of its discussion on the necessity that the plaintiff establish the market power of the defendant, holding that the plaintiff is required to: “(1) define the relevant market, (2) show that the defendant owns a dominant share of that market, and (3) show that there are significant barriers to entry and show that existing competitors lack the capacity to increase their output in the short run.”²⁸ While the plaintiff in that matter insisted there were high barriers to market entry, the court found that because the defendant’s contracts could be terminated and

²⁵ *Id.*

²⁶ *Id.* at 224.

²⁷ *Id.* at 226.

²⁸ *Id.*

were not exclusive, and because other competitors had entered the market, the plaintiff was unable to establish that the defendant had sufficient market power to recoup losses of lower prices. Consequently, the summary judgment on plaintiff's predatory pricing complaint was affirmed.

48 A similar approach has been used in Washington State, where federal laws have been followed with respect to the Consumer Protection Improvements Act. In *Seattle Rendering Works v. Darling-Delaware Co.*, 10 Wn.2d 15, 701 P.2d 502 (1985), the Washington Supreme Court considered the appeal of a predatory pricing complaint brought pursuant to (among other bases) the Consumer Protection Improvements Act, which permitted a state remedy for violations of federal predatory pricing law. The complaint was brought by one rendering plant against another and alleged that its below-cost pricing constituted predatory pricing. In reaching its decision to reverse the trial court and dismiss the plaintiff's complaint, the Supreme Court of Washington held that a predatory pricing complaint required the plaintiff to prove that the defendant set its prices below average variable cost and that the defendant "had a substantial share of the market."²⁹ Because the plaintiff failed to prove either, a dismissal was required.

iv. Speedishuttle is a relatively minor player in a transportation market which has relaxed entry barriers and relatively high competition; thus, summary determination is appropriate

49 Following the precedent in *Brooke Group*, it is fully appropriate to grant Speedishuttle's motion for the sole reason that it is incapable of recouping its current losses through monopoly prices. This is true for any number of reasons, including that Speedishuttle is a much smaller service provider than Shuttle Express in volume of passengers and fleet size, the auto transportation

²⁹ *Id.* at 22.

industry in fares in Washington are regulated, and because the relevant market includes multiple alternatives which create economic disincentives to raise prices to monopoly levels.

50 As noted above, Speedishuttle booked 61,721 passenger reservations in its first 16 months of service, while Shuttle Express transported more than 240,000 people in that same period. Similarly, Speedishuttle operates using just 18 vehicles to Shuttle Express' more than 85 shared ride vans (not to mention numerous other vehicle types used in its other services). Therefore, in any head-to-head comparison, Speedishuttle lacks a substantial share of the market. On that point alone, it is entitled to summary disposition.

51 Further, in determining whether Speedishuttle could ever recoup its current operating losses through monopoly prices, it is critical to remember that Speedishuttle's maximum fares are determined by the Commission, which has afforded broad price flexibility to electing operators under WAC 480-30-420.³⁰ Thus, the Commission can ensure that monopoly prices will not be achieved should one of the several airporter services exit the market.

52 Even without Commission oversight and regulation of fares, it is even less likely that such high fares could be sustained for a prolonged period of time due to the existing competition in the airport transportation industry. While the Washington auto transportation industry may be regulated and still subject to standards which limit entry, the Commission's 2013 rulemaking unquestionably eased the bar for entry into the industry and, as discussed in the Commission's accompanying policy statement, there already exists ample competition for airport transportation outside of the auto transportation industry, including through paid parking, public transportation

³⁰ Under which fare flexibility both Shuttle Express and Speedishuttle operate by prior Commission approval.

(including light rail, King County Metro), charter services, taxis, town cars, limos, and increasingly, transportation networks such as Uber and Lyft. These alternative providers mean that consumers would never be forced into accepting higher prices from Speedishuttle, and thus it is inconceivable that Speedishuttle could ever recoup its operating losses through a subsequent period of increased fares.

53 Because all of these facts, Shuttle Express cannot possibly establish a critical element of predatory pricing, and thus under federal standards as well, its claim should be summarily denied.

VI. CONCLUSION AND PRAYER FOR RELIEF

54 Shuttle Express' formal complaint against Speedishuttle now asserts a single remaining factual basis for relief: that Speedishuttle is offering fares below cost. As addressed in this Motion, no available claim for relief exists under Washington law for "fares below cost." Predatory pricing claims require a far more exacting standard of proof through establishment of fares below average variable cost and likelihood of recoupment through monopolistic pricing practices. As demonstrated above, Speedishuttle is currently a minor player in the SeaTac International Airport transportation industry which is already highly competitive, as expressly found by the Commission. Therefore, as a matter of law, Shuttle Express cannot establish any predatory pricing by Speedishuttle, and respectfully, the Commission should grant Speedishuttle relief through an order denying Shuttle Express relief on its claim for predatory pricing and dismissing the Complaint portion of the consolidated proceeding.

DATED this 21st day of December, 2016.

RESPECTFULLY SUBMITTED,

By 
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Attorneys for Speedishuttle Washington, LLC

CERTIFICATE OF SERVICE

I hereby certify that on December 21, 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/or 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 21st day of December 2016.

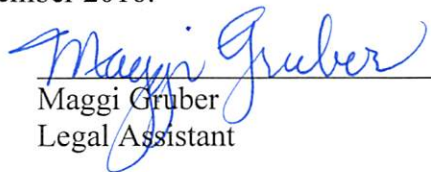

Maggi Gruber
Legal Assistant

EXHIBIT A

SERVICE DATE
MAR 07 1991

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In re Application D-2589 of)	ORDER M. V. C. NO. 1899
SAN JUAN AIRLINES, INC.,)	HEARING NO. D-2589
d/b/a SHUTTLE EXPRESS)	
for an Extension of its)	COMMISSION DECISION AND
Certificate to Operate)	ORDER GRANTING ADMINISTRATIVE
Motor Vehicles in furnishing)	REVIEW AND REVERSING INITIAL
AUTO TRANSPORTATION SERVICE.)	ORDER DENYING APPLICATION
.)	

NATURE OF PROCEEDING: This is an application for authority to perform airporter service between points in Pierce County and the Seattle-Tacoma International Airport.

INITIAL ORDER: An initial order was entered on August 13, 1990, which would deny the application on the basis that the applicant failed to demonstrate its financial fitness to conduct the extended operations.

ADMINISTRATIVE REVIEW: The applicant seeks administrative review, contending that it is financially viable and that the test applied in the initial order was improper. Applicant also seeks reopening, contending that a rate increase not of record should be considered in applicant's financial fitness.

ANSWERS: Intervenor and counsel for the Commission answered the petition, contending that the initial order is correct, that it applied the proper test for financial fitness, and that later-developed evidence should not support reopening.

COMMISSION: The Commission grants administrative review but denies reopening. The applicant has sufficiently demonstrated its financial fitness, given its owners' history of supporting its operations and balancing the demonstrated need for its services. Later-developed evidence, which a party could have developed and submitted at the time of hearing, will not support reopening. An on-call requirement should be added to the permit to be granted, for consistency with the demonstration of need and the carrier's existing permit, and for ease of enforcement.

[1]* The Commission's examination of an applicant's financial fitness must be commensurate with the responsibilities of the public service which the firm seeks to provide, the risks

* Headnotes are provided as a service to the readers and do not constitute an official statement of the Commission. That statement is made in the order itself.

to the public of failure, and the firm's financial history.

[2] Information about an applicant's post-hearing rate increase is not information that is reasonably undiscoverable at the time of the hearing by the applicant, who had full control over whether, and when, to pursue a rate increase.

[3] An applicant for unrestricted service which demonstrates a need for service subject to restrictions in the carrier's existing permit, including the provision of only on-call service in small vans, should be granted authority subject to those restrictions.

APPEARANCES: Applicant is represented by Bruce Wolf, attorney, Seattle; Intervenor Pacific Northwest Transportation Services, Inc., d/b/a Capitol Aeroporter, by Clyde H. MacIver, attorney, Seattle; and the Commission, by Robert D. Cedarbaum, assistant attorney general, Olympia.

MEMORANDUM

San Juan Airlines, doing business as Shuttle Express¹ provides airporter service in portions of King and Snohomish counties. In its initial application, it sought Pierce County authority as well; it failed to demonstrate a need for that authority in its presentation and the authority was denied.

It reapplied for Pierce County authority in this application. The initial order finds, the parties do not challenge, and the Commission agrees that the applicant has demonstrated need for the on-call service which it proposes to offer. We will accept and adopt the initial order's finding of need.

The central issue here is the applicant's financial fitness. The initial order discussed extensively the applicant's financial situation, as shown by its own evidence. The initial order found that the carrier had not demonstrated its financial ability to expand operations.

The initial order acknowledges applicant's contentions that it could achieve profitability with increased passenger count, but found that increased passenger counts during the prior year had not led to the profitability which the firm had previously predicted. The order rejects the applicant's contention that its financial fitness should be judged by whether it has been able to pay its bills as they came due. The order

¹When naming the applicant, we will refer to it as "Shuttle Express".

points to applicant's continuous and increasing losses, and it recommends that the application be denied as inconsistent with the public interest.

FINANCIAL ISSUES

The applicant vigorously seeks review. It contends that the proper test for financial fitness was enunciated in Order M. V. No. 141006, In re Becker Trucking, Inc., App. No. E-19787 (March, 1990). The issue in Becker centered on a balance sheet showing that Becker's liabilities exceeded its assets. The Commission there affirmed a proposed finding that the applicant had demonstrated an ability to pay its obligations when due, and rejected protestants' argument that a positive net worth should be a requisite for a grant of authority. The commission said,

We live and regulate in a transitional period. The Commission views it important to determine what its appropriate regulatory public interests are, and then to regulate with those interests, and not others, in mind. Here, proper public interests underlying financial fitness include the carrier's abilities to maintain insurance, keep equipment in repair and provide some measure of operating stability.

Shuttle Express argues that it has paid its obligations when due; that its service is stable and consistent over the three-year period it has operated; that it has the financial resources to conduct operations, including a positive net worth, according to its balance sheet, of \$700,000; that the initial order erroneously read the financial statements; that the applicant should not be held to make a profit during its start-up period; and that the investors' contribution to initial and expansion capital needs demonstrates their commitment to maintaining service and to making a profit.

Becker does not speak to the circumstances presented here. It merely says that a positive net worth is not a mandatory element for approval of a motor carrier application. Becker sought motor carrier authority, not airporter authority. It was a carrier with a number of years' operating history. There was no contention that Becker was operating at a loss. Becker operated in a field in which the legislature has authorized a large measure of competition. Motor carrier entry is less onerous -- no finding need be made that existing carriers are not providing satisfactory service -- and markets, once entered, are largely competitive markets. The demise of one carrier usually leaves remaining carriers able to absorb the business without disruption of service.

[1] We still consider the principles discussed in Becker to be valid. However, there are statutory and policy differences --not to mention large factual differences -- between Becker's circumstances and those of Shuttle Express. Becker does not mandate the result which the applicant argues. Our examination of finances must be commensurate with the responsibilities of the public service which the firm seeks to provide, the risks of failure, and the firm's financial history.

Although we agree with the initial order that the applicant's presentation here is sketchy, we face the practical dilemma of balancing the showing of extensive public need for a service with the valid regulatory concern that the carrier be financially able to meet its public and its regulatory obligations. We decide that the showing of financial fitness is sufficient, based on this record and balanced with the need and the potential risks to the public.

Two principal factors support our decision. First, we observe the carrier's history of supporting the operations. Its present financial condition is due in large part to large and repeated infusions of cash from its principals. The company spokesperson, Mr. Sherrell, gave assurances on the record of further contributions.

Second, we find credible the carrier's evidence that it can begin service by using its existing equipment and its existing personnel, without incurring additional capital expenses. It will be able to expand its operations, therefore, incurring only the direct costs of operation such as hourly- and mileage-related expenses.

Coupling the record assurances and the backers' history of support with the lack of substantial start-up costs for the proposed service, particularly in light of the extensive demonstrated public need for the service, the Commission believes that the carrier has met its burden of demonstrating financial fitness even when balanced against the possibility of substantial consequences to the public if the carrier were to fail.

REOPENING

The applicant moves for reopening. It contends that it has sought and received a rate increase since the close of the application record, that the Commission staff believes that the rate increase will make the company profitable, and that the requested reopening will thus resolve issues of financial viability. Both the intervenor and Commission counsel oppose the petition, citing to pertinent procedural rules and to prior Commission cases.

[2] The Commission denies reopening. Whether to seek a rate increase is a matter entirely within the control of the carrier. Information about the rate increase was not reasonably undiscoverable by the applicant, who had full control over whether, and when, to pursue a rate increase.

CERTIFICATE RESTRICTION

[3] The carrier's present permit is restricted to on-call service in seven- or fewer-passenger vans. Its evidence demonstrated, and the initial order found, a need for on-call service. It proposed to provide service in its existing, small-van equipment. The Commission believes that the authority granted in this order should be subject to the permit's existing restrictions.

The burden on the carrier and on the public from the on-call requirement is slight. The carrier provides this sort of service under its present certificate and it demonstrated need for that service to Pierce County locations. Also, the certificate terms must be consistent for enforcement purposes. It would be hopelessly confusing to the public, for example, and extremely difficult to enforce, if some arriving airline passengers could use one method of obtaining service, while other passengers were required to use another. Maintaining the existing limitations will allow the carrier to be consistent in its instructions to its employees and the public and to have consistent advertising and tariff provisions.

SUMMARY

The petition for administrative review should be granted, although the motion to reopen should be denied. The initial order should be reversed, and the carrier authorized to extend its on-call operations between the Seattle-Tacoma International Airport and points in Pierce County.

FINDINGS OF FACT

1. On November 15, 1989, San Juan Airlines, Inc., d/b/a Shuttle Express, filed an application for an extension of Certificate of Public Convenience and Necessity No. C-975 to furnish passenger and express service between points in Pierce County and the Seattle-Tacoma International Airport.

2. On the basis of the applicant's proposed amendment to exclude service to Fort Lewis and McChord Air Force Base, the protest of Bremerton-Kitsap Airporter, Inc. was withdrawn.

3. Pacific Northwest Transportation Services, Inc., d/b/a Capital Aeroporter, the holder of Certificate No. C-862,

intervened in opposition to the application.

4. San Juan Airlines, Inc., d/b/a Shuttle Express, is a Washington corporation. Paul Whittier owns 96.25% of the stock; Jimmy M. Sherrell owns 2.38%; and the remainder is owned by others. The company is undergoing restructuring and these proportions are subject to change.

5. Jimmy Sherrell, president of the applicant corporation, testified as its operating witness. He described the business of Shuttle Express as an on-call, door-to-door service serving the Seattle-Tacoma International Airport (Sea-Tac) to and from the general service areas of King and Snohomish Counties pursuant to its WUTC certificate. It operates 24 hours per day, 365 days per year.

6. The applicant holds Certificate of Public Convenience and Necessity No. C-975. That certificate, along with the authority granted herein, is set out in Appendix A to this order. The applicant also holds WUTC charter party authority for King, Pierce and Snohomish Counties.

7. The applicant's general offices and maintenance facilities are located in Seattle. This facility will be sufficient for the proposed operations.

8. The applicant's equipment consists of 44 vans, each capable of carrying seven passengers and luggage. All vans are 1988, 1989 or 1990 Dodge vans, Series Ram 150. All vans are radio-equipped. The actual number of vans in operation varies due to the seasonality of the business. In view of applicant's unused equipment, it will not need to acquire additional equipment to serve Pierce County. New equipment will continue to be added as needed. Appropriate insurance is carried on the vehicles. This equipment is regularly serviced and maintained in good operating condition, and is suitable for the proposed operations.

9. The applicant employs from 74 to 85 professional drivers. Each of the drivers is trained, screened and checked. Safety is stressed in the hiring and training of drivers.

10. The applicant is familiar with the laws and Commission rules and regulations governing auto transportation companies. Notwithstanding past violations, its operating witness gave credible assurance that the applicant intends and has the ability to comply with all applicable laws, rules and regulations.

11. Testimony in support of the amended application was given by Brian Correll, guest services director of the Tacoma

Sheraton Hotel, Tacoma; Patricia Schaier, assistant vice-president of the Burlington Northern Credit Union and president of the Pierce County Credit Association, Tacoma; Elizabeth Wisner, resident of Tacoma; Herb Munson, Jr., resident of Pierce County; Jerry Rogers, Pierce County resident; Melba Knudson, co-owner of Knudson Travel, Tacoma; Max Cook, resident of Tacoma; and Rose Osage, resident of Tacoma. This testimony established a public need for on-call, door-to-door passenger and express service of an auto transportation company between Sea-Tac airport and points in Pierce County.

12. Intervenor Pacific Northwest Transportation Services, Inc., d/b/a Capital Aeroporter, is the holder of Certificate No. C-862, which authorizes service between the Seattle-Tacoma International Airport and the City of Tacoma and Fife, and specified locations in Pierce County, including the Lakewood Motor Inn, Sherwood Inn, Days Inn, Motel 6, Tacoma Mall, Sumner, Puyallup, Parkland, Lakewood, Steilacoom, Pacific Lutheran University, Nendel's Motel (in South Tacoma), Denny's Restaurant on 38th Street (Tacoma), and the Tacoma Amtrak Railway Station.

13. James N. Fricke, president of Capital Aeroporter, testified in opposition to the application. Capital Aeroporter generally operates a scheduled service. Its facilities and equipment are based in Olympia. Nine of its 13 employees are drivers. It has 6 vans, with capacities ranging from 10 to 20 passengers per van; it uses 2 to 3 vans on a regular basis. Capital Aeroporter currently makes 12 scheduled runs between points in Pierce County and Sea-Tac. The earliest pick up to Sea-Tac is 4:35 a.m. and the latest is 10:55 p.m. Departures from Sea-Tac range from 5:45 a.m. to 12:45 a.m. the next morning. Capital Aeroporter is not in the business of providing door-to-door, residential service, but rather picks up passengers at predesignated, scheduled points, which are primarily hotels and motels. Mr. Fricke feels it would be too costly to provide door-to-door, on-call service. The carrier is not willing to pick up an individual at a time other than the regularly scheduled time even if the pick up point were his principal and most important Pierce County pick up point, the Tacoma Sheraton Hotel.

14. Mr. Fricke predicts that a grant of this application will have a serious adverse impact on its business. Even a 10% drop in its traffic could cause the company to operate at a loss, and continued losses could cause it to fail.

CONCLUSIONS OF LAW

1. The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of this application and the parties thereto.

2. The applicant's proposed amendment to exclude service to or from the Fort Lewis Army Base and the McChord Air Force Base is permissible and should be accepted.

3. The protest of Bremerton-Kitsap Airporter, Inc., was withdrawn and should be dismissed.

4. Capital Aeroporter will not provide the needed on-call, door-to-door services between points in Pierce County and Sea-Tac Airport to the satisfaction of the Commission.

5. The evidence of public need for service is substantial and supports a grant of authority, and the applicant has demonstrated that it has the financial ability to support the proposed services. It is in the public interest, and is required by public convenience and necessity, pursuant to the provisions of RCW 81.68.040, that the applicant be granted an extension of Certificate of Public Convenience No. C-975 to extend its presently-authorized service to those Pierce County locations sought in this application.

ORDER

IT IS HEREBY ORDERED That Application D-2589 of San Juan Airlines, d/b/a Shuttle Express, as amended, for extension of Certificate No. C-975 is granted, subject to the restrictions in the carrier's existing permit regarding alienation, vehicle size and limitation to on-call service.

IT IS FURTHER ORDERED That the protest of Bremerton-Kitsap Airporter, Inc. is dismissed; and

IT IS FURTHER ORDERED That, on applicant's compliance with pertinent provisions of law and rule, a revised permit shall

be issued to the applicant as set forth in Appendix A, attached to this order and incorporated herein by reference.

DATED at Olympia, Washington, and effective this 6th day of March, 1991.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



SHARON L. NELSON, Chairman



RICHARD D. CASAD, Commissioner



A. J. PARDINI, Commissioner

NOTICE TO PARTIES:

This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).

APPENDIX A

PASSENGER AND EXPRESS AIRPORTER SERVICE.

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

- (a) the municipality of Seattle;
- (b) all points within a line drawn fifteen miles beyond the municipal line of Seattle;
- (c) those points in King County which are not within the area described in (b) of this subsection and which are west of a line beginning at the intersection of the line described in (b) of this subsection and Washington Highway 18, thence northerly along Washington Highway 18 to junction of Interstate Highway 90, thence westerly along Interstate Highway 90 to junction of Washington Highway 203, thence northerly along Washington Highway 203 to the King County line; and those points in Snohomish County, which are not within the area described in (b) of this subsection and which are west of Washington Highway 9.
- (d) All on any municipality any part of which is within the limits of the combined areas defined in (b) and (c) of this subsection; and
- (e) all on any municipality wholly surrounded, or so surrounded except for a water boundary, by the municipality of Seattle or by any other municipality included under the terms of (d) of this subsection.

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

Between: The Seattle-Tacoma International Airport and

EXHIBIT B

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

EVERETT AIRPORTER SERVICES)
 ENTERPRISES, INC.,)
 Complainant,)
 v.)
 SAN JUAN AIRLINES, INC., d/b/a)
 SHUTTLE EXPRESS,)
 Respondent.)
)

DOCKET NO. TC-910789

COMMISSION DECISION
AND ORDER GRANTING
ADMINISTRATIVE REVIEW;
MODIFYING INITIAL ORDER;
ASSESSING PENALTIES

NATURE OF PROCEEDING: This is a private complaint filed by one airporter bus service -- an auto transportation company under governing statutes -- against another such service. It alleges violation of rule, violation of a Commission order, and rates that are predatory and discriminatory. It asks application of such penalties as the Commission deems appropriate.

INITIAL ORDER: Administrative Law Judge Elmer Canfield entered an order on July 24, 1992, rejecting the complaint's allegations of discriminatory pricing and violation of rule, but finding violations of Commission order and assessing penalties totalling \$2,000.

PETITION FOR REVIEW: Complainant petitions for review of the entire initial order. It alleges that it did prove the elements of the complaint rejected in the initial order, and asks substantial increases in the penalties for the violations that were found to exist.

COMMISSION: The Commission affirms the rejection of allegations regarding discriminatory pricing; the complainant failed to prove its case. The Commission modifies the initial order to increase the penalties for violation of Commission order and reverses the initial order to find a violation and assess a penalty for rebating a portion of the ticket purchase price without prior Commission approval by order.

[1] The Commission does not grant voluntary dismissal of a proceeding as a matter of right after entry of an

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initial order, but will consider whether dismissal is consistent with the public interest.

[2] When a private complaint presents real issues, results from a real controversy, has completed all procedural stages except final order, involves issues of interest to the industry or the public, and when a request for voluntary dismissal is based only on the respondent's purchase of the complainant, the Commission will deny dismissal and will enter an order resolving the issues.

[3] A complainant challenging a carrier's rates for violation of RCW 81.28.190, prohibiting unreasonable preferences, or RCW 81.28.180, prohibiting unequal charges for similar services, has the burden of persuasion to demonstrate that a violation has occurred.

[4] A penalty under RCW 81.04.380 should equate with the seriousness of the offense, offer a disincentive to future violations, and demonstrate the magnitude of the Commission's concern about open and repeated violations.

[5] RCW 81.28.080 forbids a carrier from rebating any portion of a fare except pursuant to a Commission order. Having a commission payment form in the carrier's tariff pursuant to WAC 480-30-050(5) does not substitute for the statutory requirement.

APPEARANCES: Kirk Griffin, attorney, Seattle, represented the Complainant. Jimmy Sherrell, Respondent's president, represented it. Robert E. Simpson, Assistant Attorney General, represented the Commission Staff.

MEMORANDUM

This is a private complaint by Everett Airporter Services Enterprises ("EASE") against San Juan Airlines, Inc., d/b/a Shuttle Express ("Shuttle"). Both firms offer service between portions of Snohomish counties and the Seattle-Tacoma International Airport ("Sea-Tac").

EASE' complaint alleges violations of three sorts. First, it contends that Shuttle's rates for customers in the territory also served by Ease are predatory, taking business away from it, and discriminatory, against passengers in Pierce County. Second, it alleges that Shuttle violated a Commission order and the requirements of its permit when it regularly and frequently offered service to and from locations it was forbidden to serve. Third, it alleges violations of rule in Shuttle's practice of rebating \$1.00 of the cost of each ticket to bell persons or others delivering the fare to Shuttle for service.

A. Dismissal. EASE now asks that its complaint be dismissed. It explains that it is being purchased by the respondent, and contends that the purchase makes the issues of the complaint moot. It represents that it has agreement from the assistant attorney general, although it provides no written concurrence.

[1] The Commission does not allow withdrawal as a matter of right after entry of an initial order. Instead, because it is charged with regulating in the public interest, it will consider public interest factors to determine whether to grant the dismissal. It believes that the public interest requires us to deny the request for dismissal.

Here, the issues were real issues and the controversy was a real controversy. It has gone through all stages of a proceeding except entry of a final order: hearing, post-hearing memoranda, initial order, petition for administrative review and answer. It is ready for the Commission to decide.

[2] The only closure to the controversy comes from respondent's purchase of the complainant; granting the motion could encourage any respondent to eliminate a challenge by purchasing the complainant. Because the issues are real and ready for decision; because the issues are significant to the public and the regulated industry; and because failing to reach a final order could send an inappropriate signal about respondents' options in a complaint, the Commission denies the motion to dismiss the complaint.

EASE challenges the initial order's determination on each of the issues.²

B. Discriminatory Pricing. Shuttle Express' fares between Sea-Tac and the territory north of Seattle also served by EASE are higher than EASE' fares.³ They are similar in total, but less per mile, than Shuttle's fares to points in Pierce County, south of Seattle. Shuttle lost a great deal of money during its first years of operation.

²The parties' post-hearing briefs to the presiding officer were not filed with the Commission. The presiding officer specifically directed the respondent to serve other parties and to file a copy with the Commission, but it responded only with certification of service on the parties. The Commission must thus make its decision without the benefit of any argument or citations contained in those briefs.

³The statements of fact are drawn from the record and reflect circumstances as of that time.

The initial order rejected the complaint's claim of discrimination, finding that the complainant had not sustained its burden of proof to demonstrate that the pricing operated in an unfair or discriminatory manner. The Commission affirms the initial order's ruling.

The evidence demonstrates that the respondent's north of Seattle rates are less than its average operating cost per mile, and that its Pierce County rates exceed that average. That does not prove, however, that the carrier's rates are discriminatory or predatory.⁴

The Commission does not guarantee profitability nor mandate that a carrier achieve an approved operating ratio when it approves tariff rates. The Commission merely affords a carrier the opportunity to achieve profitability. Operating losses do not prove that the carrier's pricing is predatory.

The Commission requires that rates bear a demonstrable relationship with costs. It allows a carrier the opportunity, when pricing its services, to consider charges for competitive non-regulated services, volumes of service, start-up costs, and other relevant factors. Respondent's Pierce County rates were reviewed by Commission Staff on submission and were not challenged.

Respondent's Pierce County rates were based upon its anticipated and experienced costs and upon lower traffic densities. The per-passenger-mile differential between those rates and its Snohomish county rates is neither discriminatory nor predatory.

A carrier's rates can legitimately consider a number of reasonable factors, such as traffic density, operating efficiencies, and references to unregulated competition. Here, the northern territory had been served longer and respondent's service was established. Passenger traffic density to the north was

⁴RCW 81.28.190 provides that a carrier may not give any undue or unreasonable preference or advantage to any person or to any locality or to any description of traffic, or subject any person to any undue or reasonable prejudice or disadvantage. RCW 81.28.180 prohibits a carrier from charging or receiving a greater or lesser rate from one person than from another for doing a like and contemporaneous service in the transportation of a like kind of traffic under the same or substantially similar circumstances.

substantially greater than to the south of the airport.⁵ Service to the southern territory began more recently and involved initial expenses. Differing rate levels based on reasonable, particularly cost-based, factors may be found permissible.

[3] The initial order correctly determines that the financial detail of record does not demonstrate that the system average per-mile costs should apply equally to the different routes for pricing purposes, or that the per-mile price differences are discriminatory, either against Pierce County passengers or against EASE.

The Commission does not take this allegation lightly. Here, however, the Commission agrees with the initial order that the complainant failed to meet its burden to demonstrate that the differences are impermissible under the statute.

C. Penalty assessments for violations. The initial order found that service to forbidden hotels or motels constituted a violation of the Commission order granting Shuttle its authority, and of the resulting permit. It found that at least twenty violations had occurred, and assessed penalties under RCW 81.04.405 at \$100 per occurrence, for a total of \$2,000.

Complainant contends that the penalty is inappropriate, considering the frequency and the circumstances of the violations. It urges a penalty of \$500 per violation. Respondent answers that many of the alleged violations did not occur and that others are excused, but does not cite to evidence of record to support its claims.

The Commission agrees with the complainant. The initial order found that the violations occurred. Although the respondent denies some and makes excuses for others of the incidents, it is abundantly clear from the record that violations occurred and that they occurred regularly.

The Commission order's provisions were clear and were inserted because of a need to maintain diverse, economically viable service for the public. Credible testimony states that similar violations occurred both before and after the itemized violations, and that similar violations occurred regularly in other territory. There is no excuse for the frequent and flagrant violations that occurred. The carrier's management knew or had

⁵Although the initial order was incorrect in asserting that Shuttle did not have authority to serve points in King County south of the airport, that does not affect the validity of the order.

access to knowledge about the violations, and at the very least tacitly approved improper behavior.

[4] RCW 81.04.380 allows the Commission to assess a penalty of up to \$1,000 per occurrence upon a finding of violation. The penalty imposed should demonstrate the level of the Commission's concern about open and repeated violations should equate with the severeness of the violations and should offer a disincentive to future violations. In the Commission's judgment, the \$100 penalty does not meet these tests.

Instead, the Commission believes that a \$500 per occurrence penalty under RCW 81.04.380, totalling \$10,000 for the twenty proved violations, considers the respondent's response while it demonstrates the seriousness of the violations and promotes future compliance by the respondent and others. The Commission perceives no reason why violations could have occurred under management that was firmly committed to lawful operations. This penalty will offer encouragement for management to make or to reaffirm its commitment.

D. Unlawful rebates. The complaint alleged that the respondent's practice of paying \$1 for each ticket sold by certain hotel staff constitutes an unlawful rebate. The initial order disagreed; the Commission reverses.

The initial order ruled that the practice is governed by WAC 480-30-050(5),⁶ and that the respondent had complied with the regulation by including its form of agreement as an element in a filed tariff. Therefore, it reasoned, the carrier complied with law and its actions were not improper. It argues that once a form is in the carrier's tariff, any payment to anyone in any amount is permissible. We reject that view.

The regulation is designed to facilitate a carrier's contract with agents such as travel agents or institutions. It is not designed to supersede the requirements of RCW 81.28.080, nor to allow payments to individuals whose jobs do not regularly include such duties. Payment is not proper to bellhops or other individuals whose regular vocations do not involve similar agencies

⁶The regulation reads as follows:

(5) No auto transportation company shall pay any commission to any individual, firm, association or corporation, their lessees, trustees or receivers, for the sale of any ticket or fare, or for transportation by express unless upon a contract or agreement, the form of which has previously been approved by the commission.

or services, who are not understood by the public to be engaged in such agency roles for compensation, and whose strategic locations afford them the opportunity to refer customers to certain carriers and away from others.

The record contains no proof of the carrier's tariff nor of its contents. Respondent did not submit a copy of the tariff, despite its record commitment to do so, to determine whether the tariff, if followed, would provide proper public protections. The respondent admitted that it paid rebates to bellhops and others, allegedly per the form agreement. The Commission cannot find compliance because there is no order as required by statute.

[5] RCW 81.28.080 forbids a carrier from rebating any portion of a fare except pursuant to a Commission order. The respondent does not contend that its actions were pursuant to a Commission order. Existence of a form in the tariff does not meet this statutory requirement. The carrier's actions are not protected and constitute unlawful rebates.

It is not necessary that every contract be individually approved, but it is necessary that an order be entered clearly identifying the terms of payment, the class of persons who are eligible for payment, and the other terms of the agreement. Although the form of agreement may be contained in a tariff provision, an order can call into play mechanisms for compliance when the arrangement is misused or when its terms are not followed. Neither is there an easy mechanism for enforcement, unless the commission amount is contained in or calculable from an order of approval. The statute's wisdom is clear.

There is possible confusion about the meaning of the regulation and its interface with the statute. The number of violations is not clear from the record. Therefore, the Commission will assess one penalty under RCW 81.04.405, at \$100. It will mitigate that penalty to zero. The respondent is now on notice that its practice is impermissible and of steps it must take to bring its actions into compliance.

To allow its commission payments, the respondent must secure a Commission order allowing payment, before making any payments. It may not make such payments indiscriminantly or in a manner outside terms of an order granting Commission approval. The Commission may enter an order allowing payment when terms of the agreement are clear and permissible, and when the class of allowable contractee is clearly identified. Only then is there statutory compliance, and only then can the Commission undertake enforcement.

Conclusion. The Commission affirms the initial order's determination that respondent failed to demonstrate that respondent's rates are predatory or discriminatory. It affirms the initial order's determination that twenty violations occurred of the Commission's order forbidding service to specified hotels or motels. It recalculates the appropriate penalty for those violations, not subject to mitigation, at \$500 per violation. It reverses the initial order's determination that a rebate of a portion of the ticket price to bellhops or others was permissible, and assesses a penalty, but mitigates the penalty for past violations to zero.

FINDINGS OF FACT

Having discussed the evidence and having stated findings and conclusions above, the Commission makes the following findings of fact. Those portions of the preceding findings pertaining to the ultimate facts are incorporated by this reference.

1. This is a formal complaint by Orville J. and Diane J. Coombs, d/b/a Everett Airporter Services Enterprises (EASE) against San Juan Airlines, Inc. d/b/a Shuttle Express. The complaint alleges that the respondent engages in predatory and discriminatory pricing in its Snohomish County service territory. The complainant also alleges specific violations of Commission Order M. V. C. No. 1918, and that the respondent improperly rebated fares to bellhops and travel agents.

2. Complainant EASE is engaged in the transportation of passengers for hire between points in north King and Snohomish Counties and the Seattle-Tacoma International (Sea-Tac) Airport. Service is conducted under certificate C-858. The complainants operate a regular route, scheduled service, although door-to-door service is authorized and offered at a higher rate. The complainants pick up and deliver passengers at hotels along the route to and from the airport. The rates in effect at the time of hearing for this service are as follows: \$13 between Everett and the airport; \$12 between 128th Street in Snohomish County and the airport; \$11 between Lynnwood and the airport; \$9 between Seattle's University District and the airport.

3. The respondent holds authority from the Commission under certificates C-975 and CH-171. Shuttle Express has authority under its charter party certificate CH-171 to provide charter party service in King, Pierce and Snohomish Counties. Under certificate C-975, Shuttle Express provides on call, door-to-door service between points in King and Snohomish Counties and the airport. Its rates for service at the time the complaint was filed were as follows: \$22 from Everett to the airport and \$18 from Lynnwood to the airport. These rates were increased on March 1, 1992 to \$24 and \$21. In addition, the respondent recently acquired authority

to expand its service into Pierce County. Shuttle Express rates for some Pierce County territory are \$21 and \$24. It also has a \$28 fare for service between the airport and Steilacoom, Spanaway and other territory in Pierce County south of Highway 410.

4. Shuttle Express provided financial information which shows that it has been losing money for the past several years. Its average operating cost per mile for all miles driven was \$1.05 for the calendar year 1991.

5. Everett is approximately 45 miles from the airport and respondent's fare is \$24. That same fare to areas in Pierce County covers a territory which is only 20 to 25 miles from the airport.

6. Commission Order M.V.C. No. 1918 restricted Shuttle Express against serving various hotels, some of which the complainant is authorized to serve. The effective date of that order is August 8, 1991 and the restriction applies to service provided under C-975.

7. On at least twenty separate occasions between August 9, 1991 and November 30, 1991, Shuttle Express either picked up or dropped off an airport passenger at a hotel named in Order M.V.C. No. 1918 as one which Shuttle Express is not allowed to provide airporter service.

8. Shuttle Express routinely pays a rebate of one dollar per fare to persons, including travel agents and bellhops who arrange to have a customer use Shuttle's service. The practice is not authorized by Commission order.

CONCLUSIONS OF LAW

1. The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of and the parties to this complaint.

2. RCW 81.28.190 provides that a carrier may not give any undue or unreasonable preference or advantage to any person or to any locality or to any description of traffic, or subject any person to any undue or reasonable prejudice or disadvantage. In this case, the evidence does not establish an undue preference or prejudice. The complainant has not established that the fares are or should be based exclusively on the company's average operating cost per mile. Although an Everett passenger may travel a greater distance than a Tacoma passenger, for the same fare, the respondent may consider other elements of cost in designing its rates. Complainant has not proved a violation of RCW 81.28.190.

3. RCW 81.28.180 prohibits a carrier from charging or receiving a greater or lesser rate from one person than from another for doing a like and contemporaneous service in the transportation of a like kind of traffic under the same or substantially similar circumstances. Respondent's transportation between the airport and Tacoma and between the airport and Snohomish County is performed under sufficiently differing circumstances and conditions because traffic densities and costs of operation vary substantially. The complainant did not demonstrate that respondent's rates violate RCW 81.28.100.

4. The respondent did serve hotels from which it was restricted by Order M.V.C. No. 1918 and the terms of its permit, and did so openly and repeatedly after the order was entered and served. The complainant established no fewer than 20 violations between August and November, 1991. The respondent should be assessed a penalty, pursuant to RCW 81.04.380, of \$500 per violation, \$10,000 total, for those violations. That penalty level recognizes the willful and repeated nature of the violations and provides a sufficient disincentive against repeat violations.

5. RCW 81.28.080 prohibits rebates except upon order of the Commission. WAC 480-30-050(3), provides that a commission may be paid on ticket sales if done pursuant to a contract or agreement, the form of which has been approved by the Commission. Although the respondent's tariff may contain a form for an agency agreement providing for compensation to a person who arranges the fare, implemented agreements including all relevant terms have not been approved by order of the Commission. Therefore, the \$1 commission paid on ticket sales is not permissible. Because specific instances are not proved with sufficient precision to support individual penalties, the Commission assesses one penalty under RCW 81.04.405, totalling \$100. Because the proper action may have been unclear at the time of violation, the Commission mitigates the penalty to zero for purposes of this order.

ORDER

THE COMMISSION ORDERS That the complaint is sustained, in part. The Commission finds violations in the service to establishments forbidden by Commission order, and by paying rebates without a prior Commission order approving such payments.

THE COMMISSION FURTHER ORDERS That the respondent shall pay a penalty in the amount of \$10,000 for twenty violations of Commission order M.V.C. No. 1918.

THE COMMISSION ORDERS That penalty is assessed in the amount of \$100 under RCW 81.04.405 for violation of RCW 81.28.080,

the payment of rebates without a prior order of the Commission. The Commission mitigates that penalty to zero.

THE COMMISSION ALSO ORDERS That the balance of the complaint is denied.

DATED at Olympia, Washington and effective this 6th day of January 1993.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



SHARON L. NELSON, Chairman



RICHARD D. CASAD, Commissioner



A. J. PARDINI, Commissioner

NOTICE TO PARTIES:

This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).

EXHIBIT C

AUTO TRANSPORTATION COMPANIES
Approved to Operate Under Flexible Fares
CHARTER & EXCURSION CARRIERS
2015
ANNUAL REPORT

FOR

Shuttle Express Incorporated

(NAME UNDER WHICH CORPORATION, PARTNERSHIP, OR INDIVIDUAL IS DOING BUSINESS)

800 S.W 16th St.

(OFFICIAL MAILING ADDRESS)

Renton

(CITY)

WA

(STATE)

98057

(ZIP)

Please check if address listed above is an updated address

Report Year Ended: December 31, 2015

Inquiries concerning this Annual Report should be addressed to:

Name/Title: Paul Kajanoff / President
Address: 800 SW 16th St.
City: Renton
State/Zip: Washington / 98057
Telephone: 425-981-7063
Email: pkajanoff@shuttleexpress.net

STATE OF WA
UTIL. AND TRANSP.
COMMISSION

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SUBMIT TO:

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
PO Box 47250
Olympia, WA 98504-7250

File online: www.utc.wa.gov

WASHINGTON

UTC

UTILITIES AND TRANSPORTATION
COMMISSION

REPORT MUST BE RECEIVED NO LATER THAN MAY 2, 2016

Please refer to the Instructions for Completing the Annual Report on Page 2

INSTRUCTIONS FOR ANNUAL REPORT COMPLETION

Commission Authority

The purpose of this form is to collect financial and operational information from auto transportation and charter companies regulated by the Washington Utilities and Transportation Commission (UTC). The commission's authority for requiring this report is found in RCW 81.04.080. This report is a non-confidential public use form.

Certification

The Annual Report Certification must be signed by an authorized officer, partner or owner.

Regulatory Fees

Regulatory fees are set by commission order A-140166.

Deadlines and Penalties

All auto transportation and charter companies regulated by the UTC are required to complete this form, including all schedules. Failure to complete all schedules will result in the report being considered incomplete and subject to penalties. Completed forms and regulatory fee payments must be received by the UTC no later than **May 2, 2016**. Failure to file the annual report by the above deadline will result in a financial penalty of \$100 for each business day after May 2. Failure to pay the regulatory fees by the above deadline will result in a 2 percent penalty on the amount due and a 1 percent monthly interest charge on the unpaid balance.

Extension Requests

You may file a written request for an extension to file the completed annual report; however, the commission will not extend the deadline for paying regulatory fees. Any extension request must be filed with the commission by **April 15, 2016**, and must state a valid reason for why the extension is needed and identify a specific date which the report will be filed with the commission. The commission will notify you by April 30 whether your request is approved or denied. Even if your request is approved, you will still be liable for penalties and interest payments if you fail to pay your regulatory fees by May 2. To file your extension request online visit:

<http://www.utc.wa.gov/docs/Pages/ElectronicFiling.aspx>

No longer operating in Washington

You may cancel your registration or permit by using the Voluntary Cancellation Form available at:

<http://www.utc.wa.gov/regulatedIndustries/transportation/charterBuses/Pages/default.aspx>

However, if your company operated in Washington at any time during the 2015 calendar year, you must pay regulatory fees and file a closing annual report based on the months of operation during 2015.

Confidential Status

Auto transportation and charter/excursion companies are not permitted to file annual report documents as confidential. If a company regulated under RCW Title 81 submits its annual report or fee sheet as confidential, the commission will reject that submission and will not consider the report to be filed until the date the company submits the report and all required documents and information without any designation of confidentiality. If that date is after May 1, the company will be subject to the penalties described above. The commission will not disclose credit card information, if included, on the Payment Information Page or via online filing.

Electronic Filing and Payment

To obtain an electronic format of the report, submit a report online or pay your regulatory fees online visit:

www.utc.wa.gov/regulatedindustries/pages/annualreports

Staff Contact

Kim Anderson at (360) 664-1153 or kanderso@utc.wa.gov

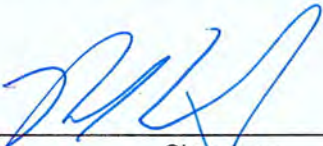
TTY Toll-Free phone number 1-800-416-5289

ANNUAL REPORT CERTIFICATION

(PLEASE VERIFY THAT ALL SCHEDULES ARE ACCURATE AND COMPLETE BEFORE SIGNING)

I, the undersigned Paul Kajanoff
 Responsible Account Officer (Please Print)
 of Shuttle Express Incorporated
 Name of Company

have examined the foregoing report; that, to the best of my knowledge and belief, all statement of fact contained in said report are true and said report is a correct statement of the business and affairs of the above-named respondent in respect to each and every matter set forth therein during the period from January 1, 2015, to December 31, 2015, inclusive.

<u>President</u> Title (please print)	 Signature (please type if filing electronically)
<u>425-981-7063</u> Telephone Number	<u>4/26/2016</u> Date

GENERAL INFORMATION

Washington Unified Business Identifier (UBI) No.: 600-030-043
 (If you do not know your UBI No. please contact Business Licensing Service at 1-800-451-7985 or BLS@dor.wa.gov)

Business Structure (please check the appropriate designation):

Individual / Sole Proprietor
 Partnership
 Other (LP, LLP, LLC)
 Corporation
 Nonprofit Corporation

List the name, title, and percentage of partner's share or stock distribution for major stockholders. If LLC, list members and percentage of ownership.

Name	Title	Percent / Shares / Stock / Ownership
<u>JKS Trust</u>	<u>Trust</u>	<u>100%</u>

SCHEDULE 1

(complete all information for the year 2015)

Staff Contact Information

Safety Director Name: Kore Greene Phone: 425-981-7051

Customer Service Contact Name: Kore Greene Phone: 425-981-7051

Recordable Intrastate and Interstate Accidents

Recordable Accidents	Intrastate		Interstate	
	Auto-Trans	Charter	Auto-Trans	Charter
A fatality	0	0	0	0
An injury to a person requiring immediate treatment away from the scene of the accident	1			
Disabling damage to a vehicle, requiring it to be towed from the accident scene	5			
Total Recordable Accidents	6	0	0	0

Vehicle and Mileage Information - Auto Transportation Authority Only

Driver and Vehicle Information	
Commercial motor vehicle drivers employed	150
# of vehicles 16 passengers or less	79
# of vehicles 17 passengers or more	25

Mileage Information	
Total Operating Miles	
Intrastate	4,905,088
Interstate	0

Intrastate: Trips that operate exclusive within WA

Interstate: Trips that operate outside of WA

Mileage Information - Charter & Excursion Authority Only

Did you provide charter bus operations for any Washington School Districts during 2014?

Yes No

Mileage Information	
Total Operating Miles	
Intrastate	1,624,477
Interstate	5,000

Intrastate: Trips that operate exclusive within WA

Interstate: Trips that operate outside of WA

General Operations

Terminal Facilities - Auto Transportation Authority Only

List each terminal and location located in Washington state:

SCHEDULE 3 REVENUES

(this schedule is mandatory for Auto Transportation companies)

Gross intrastate revenue reported to the State Department of Revenue:

9,246,026

SCHEDULE 4 OPERATING STATISTICS

OPERATIONS

(list individually for each regulated route operated and provide separate sheets if required)

<i>Not applicable if exclusively door-to-door by reservation</i>	Route 1	Route 2	Route 3	Route 4	Route 5
Number of terminals between stops		<i>See attached</i>			
Total number of trips annually for each route					
Total passengers carried annually per route					

<i>Door-to-door by reservation</i>	2015
Annual total number of trips	
Annual total passengers carried	

REGULATORY FEE CALCULATION SCHEDULE

Due May 1, 2015

Company Name:

Shuttle Express Inc 0

Annual Report Year

2015

In accordance with RCW 81.24.020 and 81.70.350 "Regulatory Fees", the Commission requires auto transportation companies and charter and excursion carriers to file reports of gross intrstate revenue and number of vehicles operated and pay fees on that revenue and sum of vehicles operated respectively. Every company subject to regulation shall file with the Commission a statement under oath and pay to the commission fees as instructed below.

Regulatory Fee Calculations - Auto Transportation Authority (Approved for Flexible Fares)

- 1 Total Gross Intrastate Operating Revenue (From Schedule 3) 9,246,026
- 2 If Line 1 is UNDER \$5000, enter ZERO (skip to Charter Regulatory Fee)
- 3 If Line 1 is OVER \$5000, enter amount from Line 1 x 0.4% 9,246,026 x 0.004 36,984 \$0.00
- 4 Auto Transportation Regulatory Fees owed (Line 2 or 3, whichever is applicable) 36,984

Agency Use Only 001-111-0268-230-01

Mileage Fees - Auto Transportation Authority (Approved for Flexible Fares)

Fees due WA Motor Vehicle Fund	Vehicle Miles			Fee Calculation (Intrastate Miles x Rate Per Mile)		
	Vehicle Propulsion	Total	Interstate Miles	Intrastate Miles	Rate Per Mile	Amount Owed
5 Gasoline		<u>667,829</u>	<u>0</u>	<u>667,829</u>	x 0.0015 =	<u>1,002</u> \$0.00
6 Other Fuel		<u>4,237,259</u>	<u>0</u>	<u>4,237,259</u>	x 0.0020 =	<u>8,475</u> \$0.00
7 Total Washington Motor Vehicle Fund Fees owed (Line 5 plus Line 6)						<u>9,477</u> \$0.00

Agency Use Only 001-108-0170-230-13

Penalty & Interest Calculations - Auto Transportation Authority (Approved for Flexible Fares)

- 8 Penalties on Regulatory Fees being paid after **May 2**
- 9 Enter amount from Line 4 x 2% _____ x 0.02 _____ \$0.00
- 10 Interest on Regulatory Fees being paid after **May 31**
- 11 Amount from Line 4 x Number of months past May 31 x 1% _____ x _____ x 0.01 _____ \$0.00
- 12 Penalties on Vehicle Mileage Fees being paid after May 2
- 13 Enter amount from Line 7 (Per RCW 46.16.125) _____ x 1.00 _____ \$0.00
- 14 Total Penalties and Interest owed (all lines 9, 11 and 13) _____ \$0.00

Agency Use Only 001-111-0268-230-11

*****Continue on Next Page*****

Schedule 2

Year	Make	Model	State of Reg	Lic No	VIN	Number	Seating
2007	Ford	Krystal F550	WA	B45055D	1HVBTAAM67H426269	103	36
2007	Chevy	5500	WA	B45053D	1GBE5V1G97F419606	104	29
2007	Chevy	5500	WA	B45052D	1GBE5V1G17F419969	105	29
2007	Chevy	5500	WA	B45054D	1GBE5V1G37F420072	106	29
2007	Chevy	Turtle Top C5500 (L)	WA	B51893G	1GBJ5V1997F418925	107	32
2011	Ford	Bus F-550	WA	B61922S	1FDGF5GT8BE878122	110	33
2009	Chevy	Turtle Top C5500 (L)	WA	B61648S	1GBJ5V1918F414871	111	32
2009	Ford	Bus E-450 (PB)	WA	B61649S	1FDXE45S27DA83642	112	16
2011	Ford	Champion F550	WA	B85266S	1FDGF5GT5BEC26367	113	29
2011	Ford	Krystal F550	WA	B85269S	1FDAF5GY0BE876964	114	29
2011	Ford	Krystal F550	WA	B85267S	1FDUF5GT6BE859474	115	29
2011	Ford	Krystal F550	WA	B85308S	1FDUF5GT8BE867575	116	29
2011	Ford	Krystal F550	WA	B85462S	1FDUF5GT9BEC31784	117	32
2011	Ford	Champion F550	WA	B19526T	1FDGF5GTXBEC37977	118	32
2005	Chevy	ADA Van	WA	B93210T	1GBDVI3E95D114535	200	4
2008	Chevy	ADA Van	WA	546ZRZ	1GBDVI3W18D210933	201	4
2010	Ford	E-350 S-DUT	WA	B59664Y	1FBSS3BL6ADA66661	900	10
2010	Ford	E-350 S-DUT	WA	B96750Y	1FBSS3BL1ADA66664	901	10
2010	Ford	E-350 S-DUT	WA	B96751Y	1FBSS3BLXADA66663	902	10
2010	Ford	E-350 S-DUT	WA	B96752Y	1FBSS3BL8ADA66662	903	10
2010	Ford	E-350 S-DUT	WA	B96753Y	1FBSS3BL3ADA66665	904	10
2010	Ford	E-350 S-DUT	WA	B96754Y	1FBSS3BL5ADA66666	905	10
2010	Ford	E-350 S-DUT	WA	B96755Y	1FBSS3BL7ADA66667	906	10
2010	Ford	E-350 S-DUT	WA	B96756Y	1FBSS3BL9ADA66668	907	10
2010	Ford	E-350 S-DUT	WA	B96757Y	1FBSS3BL7ADA66670	909	10
2009	Ford	E-350 XLT	WA	B71382R	1FBSS31L69DA09910	910	10
2009	Ford	E-350 XLT	WA	B71383R	1FBSS31L69DA17201	911	10
2009	Ford	E-350 XLT	WA	021-ZDD	1FBSS31L59DA75039	912	10
2009	Ford	E-350 XLT	WA	B91697H	1FBSS31L59DA57703	913	10
2009	Ford	E-350 XLT	WA	B86713S	1FBSS31L59DA51436	914	10
2009	Ford	E-350 XLT	WA	B86712S	1FBSS31L79DA51440	915	10
2009	Ford	E-350 XLT	WA	B17733X	1FBSS31L49DA59284	916	10
2009	Ford	E-350 XLT	WA	B96771Y	1FBSS31L09DA12110	917	10
2009	Ford	E-350 XLT	WA	B86717S	1FBSS31L99DA51438	918	10
2009	Ford	E-350 XLT	WA	B86716S	1FBSS31L79DA12119	919	10
2009	Ford	E-350 XLT	WA	B86718S	1FBSS31L89DA12114	920	10
2009	Ford	E-350 XLT	WA	B86719S	1FBSS31L79DA33908	921	10
2009	Ford	E-350 XLT	WA	B93640U	1FBSS31L89DA66786	922	10
2009	Ford	E-350 XLT	WA	B93639U	1FBSS31L79DA66780	923	10
2009	Ford	E-350 XLT	WA	B93638U	1FBSS31L29DA69005	924	10
2009	Ford	E-350 XLT	WA	B93726U	1FBSS31L49DA68969	925	10
2009	Ford	E-350 XLT	WA	B99856V	1FBSS31L49DA66784	926	10
2009	Ford	E-350 XLT	WA	B76912V	1FBSS31L19DA09314	927	10
2009	Ford	E-350 XLT	WA	C00136A	1FBSS31L19DA53863	928	10
2009	Ford	E-350 XLT	WA	B80990V	1FBSS31L69DA27260	929	10
2009	Ford	E-350 XLT	WA	B91695H	1FBSS31L69DA57701	930	10
2009	Ford	E-350 XLT	WA	B99858V	1FBSS31L49DA09243	931	10
2009	Ford	E-350 XLT	WA	B99860V	1FBSS31L69DA59285	932	10
2009	Ford	E-350 XLT	WA	B76908V	1FBSS31L39DA66808	933	10
2009	Ford	E-350 XLT	WA	B99857V	1FBSS31L79DA59277	934	10
2009	Ford	E-350 XLT	WA	B99854V	1FBSS31LX9DA63839	935	10
2009	Ford	E-350 XLT	WA	B99859V	1FBSS31L09DA51442	936	10
2009	Ford	E-350 XLT	WA	B99855V	1FBSS31L39DA51435	937	10
2009	Ford	E-350 XLT	WA	B76911V	1FBSS31L79DA74975	938	10
2009	Ford	E-350 XLT	WA	B76909V	1FBSS31L39DA52259	939	10
2009	Ford	E-350 XLT	WA	B91691H	1FBSS31L89DA57697	940	10
2009	Ford	E-350 XLT	WA	B76913V	1FBSS31L19DA66788	941	10
2010	Ford	E-350 XLT	WA	B30619X	1FBSS3BL9ADA81672	942	10
2010	Ford	WSD/ES	WA	B30621X	1FBSS3BL4ADA81675	943	10
2010	Ford	WSD/ES	WA	B30585X	1FBSS3BL2ADA81674	944	10
2010	Ford	WSD/ES	WA	B30583X	1FBSS3BL5ADA18245	945	10
2010	Ford	WSD/ES	WA	B30622X	1FBSS3BL7ADA81671	946	10
2010	Ford	WSD/ES	WA	B30618X	1FBSS3BL7ADA81668	947	10
2010	Ford	WSD/ES	WA	B30584X	1FBSS3BL9ADA81669	948	10
2010	Ford	WSD/ES	WA	B30620X	1FBSS3BL1ADA18243	949	10
2011	Ford	WSD/ES	WA	B59450Y	1FBSS3BL18DB17761	950	10
2011	Ford	WSD/ES	WA	B59451Y	1FBSS3BL38DA47812	951	10

Schedule 2

Year	Make	Model	State of Reg	Lic No	VIN	Number	Seating
2011	Ford	WSD/ES	WA	B59449Y	1FBSS3BL3CDA20482	952	10
2011	Ford	WSD/ES	WA	B32452Z	1FBSS3BL3BDB11301	953	10
2011	Ford	WSD/ES	WA	B96877Y	1FBSS3BL8BDB37246	954	10
2011	Ford	WSD/ES	WA	B70599Z	1FBSS3BL8BDB37263	955	10
2011	Ford	WSD/ES	WA	B32450Z	1FBSS3BL2BDB37260	956	10
2011	Ford	E-350 XLT	WA	B96879Y	1FBSS3BL3BDB37266	957	10
2011	Ford	E-350 XLT	WA	B96878Y	1FBSS3BL1BDB37248	958	10
2011	Ford	E-350 XLT	WA	B32451Z	1FBSS3BL4BDB37258	959	10
2011	Ford	E-350 XLT	WA	B59657Y	1FBSS3BLXBDB17094	1013	14
2012	Ford	E-350	WA	AIM9815	1FBSS3BL6CDA98836	1014	14
2013	Ford	E-350 XLT	WA	C42354D	1FBSS3BL0DDA34423	1015	10
2011	Ford	E-350 XLT	WA	B59656Y	1FBSS3BL9CDA56077	1113	14
2012	Ford	E-350	WA	AI24272	1FBSS3BL8CDB20447	1114	14
2013	Ford	E-350 XLT	WA	C42352D	1FBSS3BL1DDA87194	1115	10
2012	Ford	E-350	WA	AIM9686	1FBSS3BL4CDA98835	1214	10
2013	Ford	E-350 XLT	WA	C42357D	1FBSS3BLXDDA61337	1215	10
2013	Ford	WSD/ES	WA	C13426B	1FBSS3BL6DDA00812	1314	10
2013	Ford	E-350 XLT	WA	C42356D	1FBSS3BL1DDA61338	1315	10
2013	Ford	WSD/ES	WA	C13427B	1FBSS3BL6DDA43269	1414	10
2013	Ford	E-350 XLT	WA	C42355D	1FBSS3BL4DDA43142	1415	10
2013	Ford	WSD/ES	WA	C13428B	1FBSS3BL6DDA43143	1514	10
2013	Ford	E-350 XLT	WA	C73414D	1FBSS3BL1DDB13325	1515	10
2013	Ford	E-350 XLT	WA	C73415D	1FBSS3BL9DDA43105	1615	10
2000	MCI	MCI DL3 W/C	WA	APH9633	1M8PDMTA0YP052537	501455	55
2007	MCI	D4505	WA	C01849D	1M86DMPA47P057759	501555	55
2000	MCI	MCI DL3 W/C	WA	APH9632	1M8PDMTAXYP052528	511455	55
2007	MCI	D4505	WA	C01848D	1M86DMPAX7P057555	511555	55
1999	MCI	102 DL3	WA	C60569A	1M8PDMPA4XP052159	521455	55
2007	MCI	D4505	WA	C01810D	1M86DMPA37P057557	521555	55
2000	MCI	102 DL3 W/C	WA	C60570A	1M8PDMTA7YP052535	531455	55
2007	MCI	D4505	WA	C01851D	1M86DMPA57P057558	531555	55
2007	MCI	D4505	WA	C01850D	1M86DMPA37P057560	541555	55
2005	MCI	J4500	WA	C01856D	2M93JMPA95W062783	551555	55
2013	Ford	Turtle Top F550 (L)	WA	B14797Y	1FDAF5GYXDEA24824	601326	26
2014	Ford	E-350	WA	C14431B	1FDEE3FL2EDA67303	601414	14
2013	Ford	Turtle Top F550 (L)	WA	B14796Y	1FDAF5GY1DEA24825	611326	26
2014	Ford	E-350	WA	C14430B	1FDEE3FL3EDA67360	611414	14

**SCHEDULE 4
OPERATING STATISTICS**

Scheduled Service by Reservation	Route 1	Route 2	Route 3	Route 4	Route 5	Route 6	Route 7	Route 8	Route 9	Route 10	Route 11	Route 12	Route 13	Route 14	Route 15	Route 16	Route 17
Number of terminals between stops	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total distance between terminals	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total number of trips annually for each route	1,153	1,189	662	6,571	936	5,128	7,271	1,918	3,366	1,577	4,360	40	420	166	71	209	14,749
Total passengers carried annual per route	1,383	1,441	782	11,983	1,667	7,171	12,601	14,389	6,661	2,919	7,854	207	2,300	808	309	1,072	43,987

Door to Door by Reservation	2015
Annual total number of trips	88,990
Annual total passengers carried	241,529

PAYMENT INFORMATION

The commission accepts the following methods of payment:

- Cash (in-person at commission)
- Check (must be in US Funds)
- Online payments* (ACH, American Express, Discover/Novus, Mastercard, Visa)
- Pay-by-phone (credit card payments only) at (360) 664-1349

**Please note: A convenience fee of 2.5 percent (minimum of \$3.95) is charged by Official Payments for using the credit card processing service.*

To pay online visit:

<https://fortress.wa.gov/wutc/utcweb/regulatedIndustries/Pages/onlinepayments.asp>

FILING YOUR REPORT

All annual reports and regulatory fees must be received by the commission no later than May 1 each year (or the following business day if May 1 lands on a weekend). Postmark dates are not considered the date received. It is strongly recommended to use a mail delivery service, such as certified mail via USPS, with delivery confirmation or filing online to receive an email notification of receipt.

Reports may be mailed, faxed, delivered in person or submitted online:

- Mail to: *(recommend via certified mail no later than April 15 to ensure timely delivery)*
Utilities and Transportation Commission
PO Box 47250
Olympia, WA 98504
- Physical Address for express delivery services (Fedex, UPS):
1300 S. Evergreen Park Dr. S.W.
Olympia, WA 98504
- Fax to: (360) 664-1289 *(Contact commission staff below to verify receipt)*
- File online using the commission e-file system: *(System will generate automatic email receipt)*
<https://fortress.wa.gov/wutc/utcweb/docs/Pages/ElectronicFiling.asp>

NEED MORE ASSISTANCE?

For more information about annual reports please reference the Annual Report FAQ document at the website below or contact Kim Anderson at (360) 664-1153 or kanderso@utc.wa.gov.

<https://fortress.wa.gov/wutc/utcweb/regulatedindustries/Pages/annualReports.aspx>

EXHIBIT D

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

SHUTTLE EXPRESS, INC.,

Petitioner and Complainant,

v.

SPEEDISHUTTLE WASHINGTON, LLC,

Respondent.

DOCKET NOS. TC-143691 & TC-160516

DECLARATION OF BLAIR I. FASSBURG
IN SUPPORT OF SPEEDISHUTTLE'S
MOTION FOR SUMMARY
DETERMINATION

1 Blair I. Fassburg hereby declares as follows:

2 I am one of the attorneys for Speedishuttle Washington, LLC in the above-captioned
matter and, in support of Speedishuttle's Motion to for Summary Determination, declare
as follows:

3 Attached hereto as Exhibit D-1 is a true and correct copy of an email-chain with emails
among multiple persons, including Jim Sherrell to Steven King and from Steven King to
others, addressing the provision by Speedishuttle of walk-up service at SeaTac
International Airport from June 2015 just after Speedishuttle commenced regulated
operations.

4 Attached hereto as Exhibit D-2 is a true and correct excerpted transcription of the audio
recording taken of the Open Meeting held by the Washington Utilities and Transportation
Commission on September 28, 2016 in Docket No. TC-160819 where Shuttle Express'
Petition for Exemption was considered.

5 Attached hereto as Exhibit D-3 is a true and correct copy of Speedishuttle's response to
Shuttle Express' Data Request No. 4.

DECLARATION OF BLAIR I. FASSBURG IN SUPPORT OF
SPEEDISHUTTLE'S MOTION FOR SUMMARY
DETERMINATION - 1

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

6 Attached hereto as Exhibit D-4 is a true and correct of a printout of the Share Ride Vans page on Shuttle Express' webpage as it existed on December 20, 2016, located at <https://shuttleexpress.com/seattle/fleet/private-vans/>.

7 Attached hereto as Exhibit D-5 is a true and correct copy of Speedishuttle's response to Shuttle Express' Data Request No. 8.

The foregoing statement is made under penalty of perjury under the laws of the State of Washington, is based on personal knowledge, and is true and correct.

SIGNED at Seattle, Washington this 20th day of September, 2016.

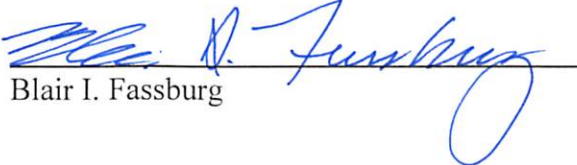
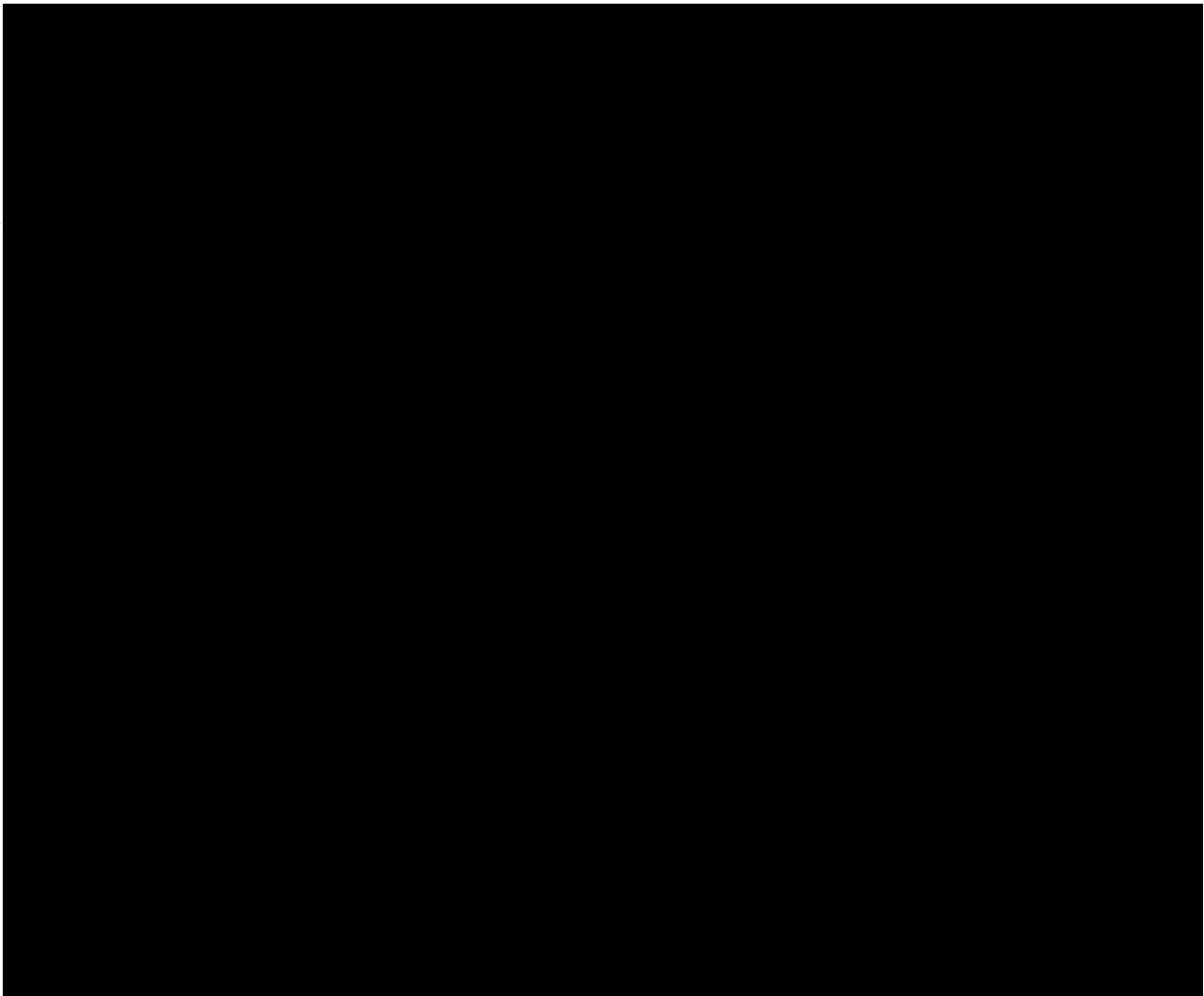

Blair I. Fassburg

EXHIBIT D-1

Shelfer, Megan (UTC) ---



From: Hazzard, Pat (UTC)
Sent: Monday, June 22, 2015 8:16 AM
To: Ingram, Penny (UTC) <pingram@utc.wa.gov>
Cc: Foster, John (UTC) <jfoster@utc.wa.gov>; Pratt, David (UTC) <dpratt@utc.wa.gov>; Vasconi, Mark (UTC) <mvasconi@utc.wa.gov>; Young, Betty (UTC) <byoung@utc.wa.gov>; Kermode, Danny (UTC) <dkermode@utc.wa.gov>; Beattie, Julian (UTC) <jbeattie@utc.wa.gov>; Smith, Pam (UTC) <psmith@utc.wa.gov>
Subject: RE: Complaint by Shuttle Express

Penny - thanks for your work on this. Steve updated that Rayne has also reviewed your analysis and agrees with it. Dave Danner plans to call Jimy on Monday to close the loop on this.

From: Ingram, Penny (UTC)
Sent: Wednesday, June 17, 2015 11:47 AM
To: King, Steve (UTC)
Cc: Foster, John (UTC); Hazzard, Pat (UTC); Pratt, David (UTC); Vasconi, Mark (UTC); Young, Betty (UTC); Kermode, Danny (UTC); Beattie, Julian (UTC); Smith, Pam (UTC)
Subject: RE: Complaint by Shuttle Express

Greetings,

I have reviewed both the Initial Order 02 and the Final Order 04 to determine if the Commission placed any limitations on the certificate issued to peediShuttle of Washington, LLC.

My review concludes that the Commission did not place any limitation or restriction on SpeediShuttle's certificate. In fact, in paragraph 25 of the Final Order, the Commission states:

"We also decline to attach the conditions proposed by Shuttle Express to SpeediShuttle's permit."

The Commission granted SpeediShuttle the authority to provide the following service in Washington:

DOOR TO DOOR PASSENGER SERVICE BETWEEN Seattle International Airport and points within King County.

WAC 480-30-036, Definitions defines:

"Door-to-door service" means an auto transportation company service provided between a location identified by the passenger and a point specifically named by the company in its filed tariff and time schedule.

I have also reviewed SpeediShuttle's tariff and time schedule and find that it reflects the authority granted by the Commission accurately.

I conclude that the complaint issued by Shuttle Express against SpeediShuttle has no merit. The Commission did not restrict SpeediShuttle's authority or set any limitations as a result of the hearing. Both the Initial Order 02 and the Final Order 04 do not discuss a "walk up customer" anywhere.

On the contrary, the Port has authorized SpeediShuttle a location available for members of the public at the airport to prearrange travel to a point within King County, should that person want to use SpeediShuttle's service. As indicated in the definition of door-to-door service, a customer identifies the location where they want the service to begin. A customer can identify the airport as the location, purchase a ticket, which then establishes a reservation for the transportation. In my opinion, this is competition working.

Please let me know if anyone has any further questions or if I can assist in this matter further.

This e-mail states the informal opinions of commission staff, offered as technical assistance, and are not intended as legal advice. We reserve the right to amend these opinions should circumstances change or additional information be brought to our attention. Staff's opinions are not binding on the commission.

Sincerely,

Penny L. Ingram | Regulatory Analyst

Washington Utilities & Transportation Commission, Regulatory Services Division
P.O. Box 47250 | 1300 S. Evergreen Park Dr SW, Olympia, WA 98504
ph: 360.664.1242 | pingram@utc.wa.gov | fax: 360-586-1150



From: King, Steve (UTC)
Sent: Monday, June 15, 2015 11:01 AM
To: Foster, John (UTC); Hazzard, Pat (UTC); Ingram, Penny (UTC); Pratt, David (UTC); Vasconi, Mark (UTC); Young, Betty (UTC)
Subject: Complaint by Shuttle Express

Good morning:

Mr. Sherrell called me this morning to report the information below.

He stated that in the application hearing, Mortensen, a SpeediShuttle witness, stated they would not take walk ups – that this was one of the things that set them apart (pg. 48 transcript). Mr. Sherrell noted this was also addressed in paragraph 15 in the commission's order.

Please let me know how you propose to investigate this and how long this might take given staff availability and other work load.

Thank you.

Steve

From: Jimmy Sherrell [<mailto:jimysh@centurylink.net>]
Sent: Monday, June 15, 2015 10:45 AM
To: King, Steve (UTC)
Subject: Fwd: New podium for SpeediShuttle

This email we received from the airport. jimy

Begin forwarded message:

From: "Paul Kajanoff" <pkajanoff@shuttleexpress.net>
Date: June 11, 2015 6:46:14 PM PDT
To: <jimysh@centurylink.net>
Subject: FW: New podium for SpeediShuttle

Perfect, let's share with Dave Danner

From: Ausbun, Vicky [<mailto:Ausbun.V@portseattle.org>]
Sent: Thursday, June 11, 2015 6:08 PM
To: pkajanoff@shuttleexpress.net

Cc: Fletcher, Tonia; Warfield, Deborah; Anderson, Jeannette; Hoevet, Jeff
Subject: New podium for SpeediShuttle

Hello Paul – I'm the new Ground Transportation Manager. I believe Jeff Hoevet sent you an email in April letting you know that Stacy Mattson has a new position and that I am new to the department.

As a courtesy, I'm emailing to let you know that starting tomorrow or possibly Saturday, SpeediShuttle will be leasing a small podium in the Ground Transportation Plaza area as they will now be taking walk up customers. Their podium will be located to the north of your desk, at the end of the wind screen. This podium is a temporary location as SpeediShuttle is interested in a permanent counter/desk but none is available for lease at the moment.

If you have any questions, please feel free to contact me. Thank you, Vicky

Vicky Ausbun
Manager, Airport Operations - Landside
Seattle-Tacoma International Airport
P: 206-787-4072
C: 206-390-7714
F: 206-787-7499
E: ausbun.v@portseattle.org

Port
of Seattle

Where a sustainable world is headed.



EXHIBIT D-2

1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

2 SHUTTLE EXPRESS, INC.,

3 Petitioner and Complainant,

4 v.

5 SPEEDISHUTTLE WASHINGTON, LLC,

6 Respondent.

DOCKET NOS. TC-143691 & TC-160516

EXCERPT OF TRANSCRIPTED AUDIO
RECORDING OF OPEN MEETING HELD
SEPTEMBER 28, 2016 IN *IN RE SHUTTLE
EXPRESS, INC.*, DOCKET TC-160819.

7 Under the penalty of perjury, I declare the following is a true and correct transcription
8 of an excerpted portion of an audio recording of the open meeting held on September 28, 2016
9 before the Washington Utilities and Transportation Commission in *In re Shuttle Express, Inc.*,
10 Docket No. TC-160819, commencing at approximately 38 minutes and 18 seconds into the
11 recording:

12
13 **Mr. Harlow:** I hate to take a second crack, but, um, we've kind of been shaking our heads
14 here on this all these other companies are going to come in and we don't see it. In King
15 County there's only, there's really only one major company with an autotrans certificate and
16 that's Shuttle Express. And then there's a new entrant, which is Speedishuttle. And there's a
17 couple of really tiny ones, um, and they don't have county-wide authority. Only the two
18 companies have it. And then you've got county-wide authority, in um, I believe in, uh,
19 Thurston and you've got Capital Aeroporter down here and then you've got companies that go
20 up to Bellingham, but Uber doesn't compete in those arenas, okay, and it's a very different
21 market cause the distances are (*clears throat*) excuse me, the distances are such they just aren't
22 amenable to these little operations, so we just really don't see it because there... there's... you
23 can hold in one hand the companies that have the auto transportation certificates. And those
24 are the only companies that need or would apply for waiver so we see this as a very small
25 universe.

Excerpted Transcription of Audio Recording of Open Meeting - 1

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

1 **Chairman Danner:** Well, um, and it may be today but my question is what happens a year
2 from now when Uber and Lyft and others are always looking for new business and, uh, you
3 know this isn't something where you'd have somebody full time driving between Bellingham
4 and the airport, it would be on as needed with no capital investment whatsoever so.

5 **Mr. Harlow:** What I really see as happening is, as long as you're going after Uber and Lyft,
6 anybody else who wants to do it, they're going to do it just like Uber and Lyft. They aren't
7 gonna come in here, apply for autotrans and apply for a waiver. Why would they do that when
8 you're not going after Uber or Lyft? They'll just... they'll just mimic Uber and Lyft.

9
10 SIGNED at Seattle, Washington this 21st day of September, 2016.

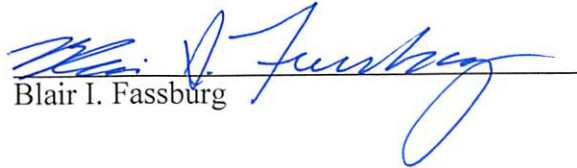
11
12 
13 Blair I. Fassburg

EXHIBIT D-3

RESPONDENT SPEEDISHUTTLE'S RESPONSES TO DATA REQUESTS

DATE PREPARED: November 4, 2016	WITNESS: Jack Roemer
DOCKET: TC-143691, TC-160516	RESPONDER: Jack Roemer
REQUESTER: Shuttle Express, Inc.	TELEPHONE: (206) 233-2895

Data Request 4:

Provide all records that show online inquiries or bookings in the market and what language was used by the passenger or prospective passenger to make the inquiry or booking.

Speedishuttle must provide the total number of reservations made between May 2015 and most recent available date and number of reservations made in a language other than English in same time period.

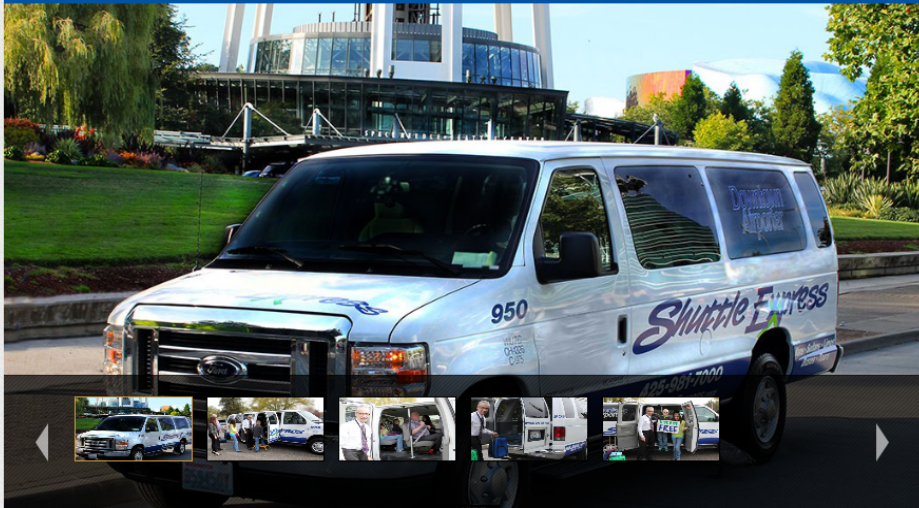
RESPONSE to DR 4:

Total completed and pending Shared Ride Reservations May 2015 – August 2016: 61,721.
Our records do not indicate any reservations made in a language other than English.

EXHIBIT D-4



Share Ride Vans



Shuttle Express maintains more than 85 10-passenger shuttle vans in its fleet, using them for its iconic Share Ride service and for any private hourly or point-to-point service. The logoed vans are a common sight throughout the Greater Seattle area, running 24-hours a day between SeaTac Airport and area homes, hotels, offices and tourist locations.

Share Ride Vans:

- Shuttle vans seat up to 10 passengers.
- Vans feature ample room for luggage in the back compartment.
- Vans are available for private service, with a one-hour minimum booking time.

In 2010, Shuttle Express began converting its van fleet from gasoline to propane-fueled. Propane is a clean-burning fuel that cuts down our carbon footprint and helps keep our air clean. Now, 100% of our van fleet runs on propane, as well as several of our coaches. In addition, our Share Ride service is estimated to save more than a million car trips a year! So, if you're looking for a "green" choice for your transportation, choose Shuttle Express!

Book Your Ride

Your ticket to safe, stress-free transportation

[BOOK ONE WAY](#)

[BOOK ROUND TRIP](#)

[Get Receipts](#)

Testimonials

My son needed a ride to the airport from the University of Washington. Shuttle Express reservations were easy, the shuttle was on time picking him up, and easy to find at the airport.... It was well worth the price to know that he would make it to the airport safely and on time. Great peace of mind for the parents, too.

- Nancy F.

Sign up for Enews Offers!

[SUBSCRIBE](#)

Company info

Shuttle Express
800 SW 16th St.
Renton WA, 98057
sales@shuttleexpress.net
Call Us: +1 425 981 7000

Fax: +1 425 981 7071

Seattle Airport Transportation

- Share Ride
- Private Van Service
- Downtown Airporter
- Scheduled Hotel Service
- Town Cars & Limo
- Large Group Charters

Corporate & Event Transportation

- Large Group Charters
- Private Van Service
- Town cars & Limos

Cruise Transfers

- Tours & Charters
- Wedding
- Prom
- Wine Tasting
- Charters
- Specialty Tours
- Our Fleet
- Brand with our Vans Ad Program

About Shuttle Express

- Web Discounts and Coupons
- Community Service
- Careers
- FAQ Information
- Hotel Partners
- Privacy & Rider Policies
- Online Brochure
- Contact Us
- Storm Operations
- News
- Get Receipts



EXHIBIT D-5

SPEEDISHUTTLE WASHINGTON, LLC
RESPONSES TO DATA REQUESTS

DATE PREPARED: September 30, 2016
DOCKET: TC-143691, TC-160516
REQUESTER: Shuttle Express, Inc.

WITNESS: Jack Roemer
RESPONDER: Jack Roemer
TELEPHONE: (206) 233-2895

Data Request 8:

Provide documents that show the vehicles used to transport passengers in the market, including, for each vehicle, the make, model, year, and any amenities, such as TVs and Wi-Fi facilities. Provide records that show when such amenities were installed, operated (on/off/disabled, etc.) and used (e.g. Wi-Fi data usage records).

Fleet list, nothing else is required.

RESPONSE to DR 8:

Vehicle Name	Acquired	VIN	Registration	Year	Make	Model	Wi-Fi	Wi-Fi Date	TV Install Date
01 (11 seats) Black	4/30/2015	WDZPE8DC0FP108444	C44217D	2015	Mercedes-Benz	Sprinter	Yes	4/30/2015	4/30/2015
02 (11 seats) Black	4/30/2015	WDZPE8DC5F5988469	C44214D	2015	Mercedes-Benz	Sprinter	Yes	4/30/2015	4/30/2015
03 (11 seats) Black	4/30/2015	WDZPE8DC6E5921779	C92914D	2014	Mercedes-Benz	Sprinter	Yes	4/30/2015	4/30/2015
04 (11 seats) Black	4/30/2015	WDZPE8DC9FP109009	C44218D	2015	Mercedes-Benz	Sprinter	Yes	4/30/2015	4/30/2015
05 (11 seats) Black	4/30/2015	WDZPE8DC1FP108453	C44219D	2015	Mercedes-Benz	Sprinter	Yes	4/30/2015	4/30/2015
06 (11 seats) Black	4/30/2015	WDZPE8DCXFP108449	C44215D	2015	Mercedes-Benz	Sprinter	Yes	4/30/2015	4/30/2015
07 (11 seats) Black	4/30/2015	WDZPE8DC6FP5980915	C44222D	2015	Mercedes-Benz	Sprinter	Yes	4/30/2015	4/30/2015
08 (11 seats) Black	4/30/2015	WDZPE8DC6F5962818	C44216D	2015	Mercedes-Benz	Sprinter	Yes	4/30/2015	4/30/2015
09 (11 seats) Black	4/30/2015	WDZPE8DC6FP107315	C44220D	2015	Mercedes-Benz	Sprinter	Yes	4/30/2015	4/30/2015
10 (11 seats) Black	5/22/2015	WDZPE8CC6FP133060	C93021D	2015	Mercedes-Benz	Sprinter	Yes	5/22/2015	5/22/2015
11 (11 seats) Black	5/22/2015	WDZPE8CC0FP134057	C93023D	2015	Mercedes-Benz	Sprinter	Yes	5/22/2015	5/22/2015
12 (11 seats) Black	5/22/2015	WDZPE8CC2FP134058	C93022D	2015	Mercedes-Benz	Sprinter	Yes	5/22/2015	5/22/2015
13 (4/ADA) Black	5/22/2015	5TDZK22C68S116414	AUW7030	2008	Toyota	Sienna	Yes	5/22/2015	5/22/2015
14 (11 seats) Black	7/31/2015	WDZPE8DC4FP145805	C42165E	2015	Mercedes-Benz	Sprinter	Yes	7/31/2015	7/31/2015
15 (11 seats) Black	7/31/2015	WDZPE8DC6FP146891	C42164E	2015	Mercedes-Benz	Sprinter	Yes	7/31/2015	7/31/2015
16 (11 seats) Black	7/31/2015	WDZPE8DC2FP147939	C42163E	2015	Mercedes-Benz	Sprinter	Yes	7/31/2015	7/31/2015
17 (11 seats) Black	7/31/2015	WDZPE8DC8FP146892	C42166E	2015	Mercedes-Benz	Sprinter	Yes	7/31/2015	7/31/2015
18 (11 seats) Black	7/31/2015	WDZPE8DC8FP145807	C42167E	2015	Mercedes-Benz	Sprinter	Yes	7/31/2015	7/31/2015