

Docket Nos. TC-143691 and TC-160516  
(Consolidated) - Vol. V

In re the Application of Speedishuttle  
Washington, LLC

December 28, 2016



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**GUESTS:**  
(Via bridge line)

PAUL KAJANOFF, Shuttle Express, Inc.  
JACK ROEMER

\* \* \* \* \*

1 OLYMPIA, WASHINGTON; DECEMBER 28, 2016

2 11:00 A.M.

3  
4 P R O C E E D I N G S

5  
6 JUDGE PEARSON: Well, good morning. We're  
7 on the record in consolidated Dockets TC-143691 and  
8 TC-160516. Today is Wednesday, December 28th, 2016, at  
9 11:00 a.m., and we are here to address discovery  
10 disputes as set forth in SpeediShuttle's motion to  
11 compel and Shuttle Express's answer to that motion and  
12 briefly address Shuttle Express's data request to  
13 SpeediShuttle.

14 My name is Rayne Pearson. I'm the  
15 administrative law judge presiding over these cases.

16 Let's get started by taking short  
17 appearances from the parties. I have a representative  
18 for SpeediShuttle both in the hearing room and on the  
19 bridge line. Staff is present in the hearing room and  
20 representation for Shuttle Express is also on the bridge  
21 line. So let's begin with Staff.

22 MR. BEATTIE: Good morning. Julian Beattie,  
23 assistant attorney general on behalf of Commission  
24 Staff.

25 JUDGE PEARSON: Okay. Thank you.

1 And for SpeediShuttle.

2 MR. VELLOTH: Good morning. Dan Velloth,  
3 Williams Kastner & Gibbs for SpeediShuttle.

4 JUDGE PEARSON: Thank you.

5 Mr. Wiley.

6 MR. WILEY: Yes, Dave Wiley on the bridge  
7 line for SpeediShuttle.

8 JUDGE PEARSON: Thank you.

9 And Mr. Harlow.

10 MR. HARLOW: Good morning, Brooks Harlow for  
11 petitioner and complainant, Shuttle Express.

12 JUDGE PEARSON: Okay. Is there someone else  
13 on the bridge line who wishes to identify themselves?

14 MR. KAJANOFF: Yes, Paul Kajanoff with  
15 Shuttle Express.

16 JUDGE PEARSON: Good morning, Mr. Kajanoff.

17 Okay. So I don't need to hear any further  
18 discussion from the parties because the parties' written  
19 submission contain all the information that I need to  
20 make my decisions. And as has been the case in each of  
21 our previous discovery conferences, I will not be  
22 issuing a written order. I will make decisions today  
23 from the bench.

24 We will begin with Data Request No. 4 and  
25 these are of course the data requests from SpeediShuttle

1 to Shuttle Express. Data Request No. 4 is denied. This  
2 information will not be useful to the Commission in  
3 making its decision, just as information that Shuttle  
4 Express sought about SpeediShuttle's motives to enter  
5 the Seattle market will also not be useful.

6 Data Request No. 5 is also denied because  
7 it's irrelevant. I will just remind SpeediShuttle that  
8 the Commission is not concerned with whether or not the  
9 company is making a profit. We want only to see the  
10 cost of providing services, which is a separate issue  
11 and which I addressed on December 2nd when I said I want  
12 to see what it costs the company to provide service to a  
13 single customer and how that cost is captured in the  
14 company's fares. So information about profit in the  
15 early stages of either SpeediShuttle or Shuttle  
16 Express's operations is not useful to the Commission.

17 And with respect to Data Requests 6, 7, 12,  
18 13, and 14, they are also denied. These data requests  
19 are premature and are more appropriate in the context of  
20 SpeediShuttle's complaint against Shuttle Express. And  
21 because we have not yet reached the issue of  
22 consolidation, these dockets are not the appropriate  
23 avenue for obtaining this information.

24 For Mr. Wiley, I noticed that  
25 SpeediShuttle's pleadings in the reopened application

1 docket and in Shuttle Express's complaint repeatedly  
2 raised the issue of whether Shuttle Express is providing  
3 service to the Commission's satisfaction, which  
4 SpeediShuttle claims is an affirmative defense to the  
5 claims made by Shuttle Express. However, we did not  
6 reach that question in the original application docket,  
7 and so presently as it stands, that defense is not  
8 available to your client unless the company amends its  
9 original auto transportation application to request  
10 overlapping authority on that basis or if SpeediShuttle  
11 petitions the Commission to include that issue on  
12 rehearing, which SpeediShuttle is certainly welcome to  
13 do. So the types of data --

14 MR. WILEY: Your Honor?

15 JUDGE PEARSON: Yes?

16 MR. WILEY: If I could just comment on that  
17 point, that we have been raising that more recently  
18 because Shuttle Express has argued that the Commission  
19 could not issue the certificate unless it found service  
20 was not to the satisfaction of the Commission by Shuttle  
21 Express. So it's on the basis of them raising that  
22 legal argument, which they have ever since Order 04 came  
23 out that has raised that issue.

24 JUDGE PEARSON: Yes, I understand. I just  
25 wanted to provide you some guidance on that, if you want



1 that, to get that issue before us --

2 MR. HARLOW: This is Mr. Harlow.

3 JUDGE PEARSON: Hold on, Mr. Harlow.

4 Mr. Harlow, I'm not done talking.

5 If you want to get that issue before us,

6 Mr. Wiley, that's the way you can do that.

7 MR. WILEY: How did you suggest, by amending  
8 the application --

9 JUDGE PEARSON: Either amending the original  
10 application on the basis that Shuttle Express is not  
11 providing service instead of the argument that it's a  
12 different service or petitioning the Commission to also  
13 rehear that issue since we have narrowed the issues on  
14 rehearing to not include that at this point.

15 Go ahead, Mr. Harlow. Did you want to say  
16 something?

17 MR. HARLOW: You covered it. I was going to  
18 ask you to repeat those two qualifiers and you just did.  
19 Thank you.

20 JUDGE PEARSON: So the types of data  
21 requests that we addressed here today are just not  
22 relevant to what is presently before the Commission for  
23 consideration. And with respect to Data Requests 2 and  
24 12 from Shuttle Express to SpeediShuttle, I want to  
25 provide a little bit of additional guidance based on the

1 emails I received yesterday from the parties.

2           It appears that Shuttle Express is still  
3 trying to obtain information that demonstrates  
4 SpeediShuttle's intent prior to entering the market in  
5 Seattle, and I will just reiterate that that information  
6 is not useful for the Commission. We are, again, at  
7 this time looking only at what service SpeediShuttle's  
8 actually providing and whether that service is the same  
9 service that Shuttle Express provides. We're not  
10 concerned with the ulterior motives of either party. So  
11 hopefully that will help the parties in resolving those  
12 last two data requests.

13           MR. HARLOW: I'm thinking for a minute. You  
14 know, I guess we'd be happy if the Commission were to  
15 find that the service actually being provided is not  
16 what the Commission thought it was approving and  
17 therefore the certificate is cancelled or somehow  
18 restricted. But my concern is that we're happy, but  
19 somebody, let's say the respondent, goes to court and  
20 says there isn't enough evidence to support this  
21 significant of a remedy, the court might well find that  
22 the -- that the party's intent to perhaps misrepresent  
23 the service that it really planned to provide would be a  
24 relevant factor.

25           So I just -- we're actually very close.

1 What we're missing, Your Honor, is we've got some pretty  
2 good production from yesterday that indicates the  
3 services that SpeediShuttle is intending to offer. This  
4 is between the period of the hearing and the  
5 commencement of service in the first of May. What's  
6 missing from our perspective, of course, is all of the  
7 planning that went into and in particular the Go Group,  
8 which to our independent investigation we learned that  
9 Go kicked this whole thing off apparently thinking that  
10 Shuttle Express was not going to book tickets for Go  
11 anymore.

12           So Go invited SpeediShuttle to enter this  
13 market, and there were emails between those two parties,  
14 Go and SpeediShuttle, discussing the service that was  
15 going to be provided and essentially discussing how  
16 SpeediShuttle would replace Shuttle Express which, in  
17 fact, then happened. And I got to say, Your Honor, I  
18 think those motivations and the fact that this was  
19 basically a scheme developed by Go Group in cooperation  
20 with SpeediShuttle to basically take away business from  
21 Shuttle Express with no mention -- you know, foreign  
22 languages. I think that could well be relevant in terms  
23 of either the remedy that Commission decides to enter in  
24 this case or whatever remedy it enters, the court's  
25 review of that decision as being appropriate and in the

1 public interest.

2 MR. WILEY: Your Honor?

3 JUDGE PEARSON: Yes.

4 MR. WILEY: I would take that as a motion  
5 for reconsideration of your just issued ruling. I have  
6 a number of comments.

7 First of all, you recall from the hearing in  
8 January that the Go Group was hardly obfuscated or  
9 otherwise concealed as a motivating factor for the  
10 application to the extent that they contacted  
11 SpeediShuttle about applying for authority because of  
12 problems with the relationship with Shuttle Express. So  
13 that's hardly something that was concealed, obfuscated,  
14 or shows an improper intent.

15 The whole concept of the intent of the  
16 parties you've already ruled upon, and I will remind  
17 everyone that the court -- there is a pending court  
18 action wherein the whole issue of whether the  
19 unrestricted permit can be modified by the business  
20 model is pending. So that -- the intent issue and his,  
21 as he's indicated, his goal of cancelling the permit is  
22 not relevant to your ruling about whether we are  
23 offering service consistent with a business model that  
24 the Commission either then or after the fact has  
25 intended to be provided.

1 JUDGE PEARSON: Okay. And that -- that's  
2 correct. I mean, I have said that over and over at this  
3 point. I have reiterated what the Commission is looking  
4 at. That we are only interested in what service is  
5 actually being provided and whether that service fits  
6 with what was represented to us or it overlaps and is  
7 the same service as Shuttle Express. That's what we've  
8 agreed to rehear and that's what we're looking at. So I  
9 am hopeful that the parties can continue to work  
10 together. It sounds like, based on your emails, that  
11 you're going to continue to attempt to resolve those  
12 differences and just bear in mind the guidance that I  
13 have given you when doing so.

14 MR. HARLOW: Your Honor, if I could ask for  
15 your clarification. You've been very clear and I  
16 appreciate the clarity, but going back and looking at  
17 this summer/fall of 2014 exchange of emails prior to the  
18 filing of the application, that could be deemed  
19 potentially purely to go to the intent question. But it  
20 could also be deemed to go to the question of what  
21 service was to be offered, what the serve -- how the --  
22 how the applicant considered its -- its market to be  
23 from service that it was offering. Is that -- can we  
24 take it that far, in other words?

25 JUDGE PEARSON: Well, I'm not interested in

1 that. We are looking at -- I don't see that as relevant  
2 to what we have agreed to rehear, which is what service  
3 is actually being provided.

4 MR. HARLOW: So you're just looking at the  
5 here and now, if you will, from the --

6 JUDGE PEARSON: From the date that the  
7 permit was issued --

8 MR. HARLOW: -- date onward.

9 JUDGE PEARSON: Correct, and whether the  
10 service --

11 MR. WILEY: And 2015, Your Honor, right, for  
12 the commencement?

13 JUDGE PEARSON: That's when the certificate  
14 was issued?

15 MR. WILEY: Yeah.

16 JUDGE PEARSON: Yes, we want --

17 MR. WILEY: It was issued on April 13th and  
18 we began service in May of 2015.

19 JUDGE PEARSON: Right, we know what we  
20 approved and what we had in mind when we approved it,  
21 and so we're looking at whether what actually happened  
22 between now and then is what we approved.

23 Is there anything else?

24 MR. WILEY: Nothing from the respondent,  
25 Your Honor.

1 MR. HARLOW: No, Your Honor. Appreciate the  
2 clarification, and we will keep plugging ahead, I guess.

3 JUDGE PEARSON: Okay. Thank you. Then we  
4 are adjourned. Good-bye.

5 (Adjourned at 11:13 a.m.)  
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C E R T I F I C A T E

STATE OF WASHINGTON

COUNTY OF THURSTON

I, Tayler Russell, a Certified Shorthand Reporter  
in and for the State of Washington, do hereby certify  
that the foregoing transcript is true and accurate to  
the best of my knowledge, skill, and ability.

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Tayler Russell, CCR