

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

In re the Application of Speedishuttle
Washington, LLC

December 28, 2016



1325 Fourth Avenue • Suite 1840 • Seattle, Washington 98101

206.287.9066

www.buellrealtime.com

Olympia | **360.534.9066** Spokane | **509.624.3261** National | **800.846.6989**

email: info@buellrealtime.com



Page 220

1 BEFORE THE WASHINGTON
 2 UTILITIES AND TRANSPORTATION COMMISSION

4 In Re: Application TC-143691)
 5 SPEEDISHUTTLE WASHINGTON, LLC,))
 6 D/B/A SPEEDISHUTTLE SEATTLE,))
 7) Docket Nos. TC-143691)
 8 For a Certificate of Public) and TC-160516)
 9 Convenience and Necessity to) (Consolidated)
 10 Operate Motor Vehicles in)
 11 Furnishing Passenger and)
 12 Express Services as an Auto)
 13 Transportation Company)

11 DISCOVERY CONFERENCE, VOLUME V
 12 Pages 220-234
 13 ADMINISTRATIVE LAW JUDGE RAYNE PEARSON

15 11:00 a.m.
 16 December 28, 2016

18 Washington Utilities and Transportation Commission
 19 1300 South Evergreen Park Drive SW
 Olympia, Washington 98504

20 REPORTED BY: TAYLER RUSSELL, CCR #3358
 21 Buell Realtime Reporting, LLC
 22 1325 Fourth Avenue, Suite 1840
 23 Seattle, Washington 98101
 24 (206) 287.9066 | Seattle
 (360) 534.9066 | Olympia
 (800) 846.6989 | National
 25 www.buellrealtime.com

Page 222

1 GUESTS:
 2 (Via bridge line)
 3 PAUL KAJANOFF, Shuttle Express, Inc.
 JACK ROEMER

9 * * * * *

Page 221

1 A P P E A R A N C E S
 2 ADMINISTRATIVE LAW JUDGE:
 3 RAYNE PEARSON
 4 Washington Utilities and
 5 Transportation Commission
 6 1300 South Evergreen Park Drive SW
 7 P. O. Box 47250
 Olympia, Washington 98504
 (360) 664.1136
 rpearson@utc.wa.gov

8 FOR COMMISSION STAFF:
 9 JULIAN BEATTIE
 10 Assistant Attorney General
 11 P. O. Box 40128
 12 Olympia, Washington 98504-0128
 (360) 664.1225
 jbeattie@utc.wa.gov

13 FOR SPEEDISHUTTLE WASHINGTON, LLC:
 14 DANIEL J. VELLOTH
 15 DAVID W. WILEY (via bridge line)
 16 Williams Kastner
 17 Two Union Square
 18 601 Union Street, Suite 4100
 Seattle, Washington 98101
 (206) 628.6600
 dvelloth@williamskastner.com

19 FOR SHUTTLE EXPRESS, INC.:
 20 (Via bridge line)
 21 BROOKS E. HARLOW
 22 Lukas, Nace, Gutierrez & Sachs, LLP
 23 8300 Greensboro Drive, Suite 1200
 24 McLean, Virginia 22102
 (703) 584.8680
 bharlow@lcclaw.com

Page 223

1 OLYMPIA, WASHINGTON; DECEMBER 28, 2016
 2 11:00 A.M.

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

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.

Page 224	Page 226
<p>1 And for SpeediShuttle.</p> <p>2 MR. VELLOTH: Good morning. Dan Velloth,</p> <p>3 Williams Kastner & Gibbs for SpeediShuttle.</p> <p>4 JUDGE PEARSON: Thank you.</p> <p>5 Mr. Wiley.</p> <p>6 MR. WILEY: Yes, Dave Wiley on the bridge</p> <p>7 line for SpeediShuttle.</p> <p>8 JUDGE PEARSON: Thank you.</p> <p>9 And Mr. Harlow.</p> <p>10 MR. HARLOW: Good morning, Brooks Harlow for</p> <p>11 petitioner and complainant, Shuttle Express.</p> <p>12 JUDGE PEARSON: Okay. Is there someone else</p> <p>13 on the bridge line who wishes to identify themselves?</p> <p>14 MR. KAJANOFF: Yes, Paul Kajanoff with</p> <p>15 Shuttle Express.</p> <p>16 JUDGE PEARSON: Good morning, Mr. Kajanoff.</p> <p>17 Okay. So I don't need to hear any further</p> <p>18 discussion from the parties because the parties' written</p> <p>19 submission contain all the information that I need to</p> <p>20 make my decisions. And as has been the case in each of</p> <p>21 our previous discovery conferences, I will not be</p> <p>22 issuing a written order. I will make decisions today</p> <p>23 from the bench.</p> <p>24 We will begin with Data Request No. 4 and</p> <p>25 these are of course the data requests from SpeediShuttle</p>	<p>1 docket and in Shuttle Express's complaint repeatedly</p> <p>2 raised the issue of whether Shuttle Express is providing</p> <p>3 service to the Commission's satisfaction, which</p> <p>4 SpeediShuttle claims is an affirmative defense to the</p> <p>5 claims made by Shuttle Express. However, we did not</p> <p>6 reach that question in the original application docket,</p> <p>7 and so presently as it stands, that defense is not</p> <p>8 available to your client unless the company amends its</p> <p>9 original auto transportation application to request</p> <p>10 overlapping authority on that basis or if SpeediShuttle</p> <p>11 petitions the Commission to include that issue on</p> <p>12 rehearing, which SpeediShuttle is certainly welcome to</p> <p>13 do. So the types of data --</p> <p>14 MR. WILEY: Your Honor?</p> <p>15 JUDGE PEARSON: Yes?</p> <p>16 MR. WILEY: If I could just comment on that</p> <p>17 point, that we have been raising that more recently</p> <p>18 because Shuttle Express has argued that the Commission</p> <p>19 could not issue the certificate unless it found service</p> <p>20 was not to the satisfaction of the Commission by Shuttle</p> <p>21 Express. So it's on the basis of them raising that</p> <p>22 legal argument, which they have ever since Order 04 came</p> <p>23 out that has raised that issue.</p> <p>24 JUDGE PEARSON: Yes, I understand. I just</p> <p>25 wanted to provide you some guidance on that, if you want</p>
Page 225	Page 227
<p>1 to Shuttle Express. Data Request No. 4 is denied. This</p> <p>2 information will not be useful to the Commission in</p> <p>3 making its decision, just as information that Shuttle</p> <p>4 Express sought about SpeediShuttle's motives to enter</p> <p>5 the Seattle market will also not be useful.</p> <p>6 Data Request No. 5 is also denied because</p> <p>7 it's irrelevant. I will just remind SpeediShuttle that</p> <p>8 the Commission is not concerned with whether or not the</p> <p>9 company is making a profit. We want only to see the</p> <p>10 cost of providing services, which is a separate issue</p> <p>11 and which I addressed on December 2nd when I said I want</p> <p>12 to see what it costs the company to provide service to a</p> <p>13 single customer and how that cost is captured in the</p> <p>14 company's fares. So information about profit in the</p> <p>15 early stages of either SpeediShuttle or Shuttle</p> <p>16 Express's operations is not useful to the Commission.</p> <p>17 And with respect to Data Requests 6, 7, 12,</p> <p>18 13, and 14, they are also denied. These data requests</p> <p>19 are premature and are more appropriate in the context of</p> <p>20 SpeediShuttle's complaint against Shuttle Express. And</p> <p>21 because we have not yet reached the issue of</p> <p>22 consolidation, these dockets are not the appropriate</p> <p>23 avenue for obtaining this information.</p> <p>24 For Mr. Wiley, I noticed that</p> <p>25 SpeediShuttle's pleadings in the reopened application</p>	<p>1 that, to get that issue before us --</p> <p>2 MR. HARLOW: This is Mr. Harlow.</p> <p>3 JUDGE PEARSON: Hold on, Mr. Harlow.</p> <p>4 Mr. Harlow, I'm not done talking.</p> <p>5 If you want to get that issue before us,</p> <p>6 Mr. Wiley, that's the way you can do that.</p> <p>7 MR. WILEY: How did you suggest, by amending</p> <p>8 the application --</p> <p>9 JUDGE PEARSON: Either amending the original</p> <p>10 application on the basis that Shuttle Express is not</p> <p>11 providing service instead of the argument that it's a</p> <p>12 different service or petitioning the Commission to also</p> <p>13 rehear that issue since we have narrowed the issues on</p> <p>14 rehearing to not include that at this point.</p> <p>15 Go ahead, Mr. Harlow. Did you want to say</p> <p>16 something?</p> <p>17 MR. HARLOW: You covered it. I was going to</p> <p>18 ask you to repeat those two qualifiers and you just did.</p> <p>19 Thank you.</p> <p>20 JUDGE PEARSON: So the types of data</p> <p>21 requests that we addressed here today are just not</p> <p>22 relevant to what is presently before the Commission for</p> <p>23 consideration. And with respect to Data Requests 2 and</p> <p>24 12 from Shuttle Express to SpeediShuttle, I want to</p> <p>25 provide a little bit of additional guidance based on the</p>

Page 228

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.

Page 229

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

Page 230

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.

Page 231

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

Page 232

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.

Page 233

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.)
 6
 7
 8
 9
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

Page 234

1 CERTIFICATE
 2
 3 STATE OF WASHINGTON
 4 COUNTY OF THURSTON
 5
 6 I, Tayler Russell, a Certified Shorthand Reporter
 7 in and for the State of Washington, do hereby certify
 8 that the foregoing transcript is true and accurate to
 9 the best of my knowledge, skill, and ability.
 10
 11
 12 Tayler Russell, CCR
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25