

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

SeaTac Shuttle, LLC, C-1077,

Complainant

v.

Kenmore Air Harbor, LLC
(Certified)

Respondent

Docket No. TC-072180

ANSWER TO FORMAL COMPLAINT OF
SEATAC SHUTTLE, LLC

1 Kenmore Air Harbor, Inc. (“Kenmore Air”) answers the “formal complaint” by
SeaTac Shuttle, LLC (“Complaint”) as follows:

2 Kenmore Air denies the first paragraph of the complaint.

3 Kenmore Air admits that it received a letter from the Washington Utilities and
Transportation Commission (“WUTC” or “Commission”) dated July 26, 2007. The
remainder of paragraph 2 of the Complaint is denied.

4 Kenmore Air admits that WUTC regulatory authority over it is pre-empted by as
alleged in paragraph 3 of the Complaint. The remaining allegations in paragraph 3 of the
Complaint are denied.

5 Kenmore Air lacks sufficient knowledge of the facts contained in paragraph 4 of
the Complaint and therefore denies paragraph 4; except that Kenmore Air admits that
federal law pre-empts the WUTC’s regulation of Kenmore Air.

6 Kenmore Air lacks sufficient knowledge of the facts contained in paragraph 5 of
the Complaint and therefore denies paragraph 5.

7 Paragraph 6 of the Complaint states legal conclusions, which require no answer.
However, to the extent an answer is required, Kenmore Air denies paragraph 6 of the
Complaint.

8 Kenmore Air denies paragraph 7 of the Complaint.

9 Paragraph 8 of the Complaint states legal conclusions, which require no answer.
However, to the extent an answer is required, Kenmore Air denies paragraph 8 of the
Complaint.

10 Paragraph 9 of the Complaint states legal conclusions, which require no answer.
However, to the extent an answer is required, Kenmore Air denies paragraph 9 of the
Complaint.

AFFIRMATIVE DEFENSES

11 The Complaint should be dismissed based on the following affirmative defenses:

12 The Commission lacks jurisdiction over Kenmore Air.

13 The Complaint should be dismissed for failure to comply with applicable
procedural rules including, without limitation, WAC 480-07-370(1)(a)(ii).

14 The Complaint apparently seeks classification of Kenmore Air as a carrier subject
to regulation by the WUTC. To the extent the Complaint seeks classification,
complainant lacks standing to commence such a proceeding.

15 The Commission lacks jurisdiction over the subject matter of the Complaint due
to federal pre-emption, specifically 49 U.S.C. § 41713(b)(1). Consistent with federal
statutory pre-emption, WAC 480-30-11(1) also precludes regulation of the operations of
Kenmore Air.

COUNTERCLAIM

16 Kenmore Air, is an air carrier, holding air carrier Certificate No. GJRA163A,
issued by the U. S. Department of Transportation, Federal Aviation Administration.

17 Complainant is an auto transportation company holding Certificate of Public Convenience and Necessity (“Certificate”) No. C-1077. Thus, complainant has submitted to and is subject to the jurisdiction of the WUTC and is obligated to follow all laws, rules, regulations, and orders contained in applicable sections of RCW Titles 80 and 81 and WAC Title 480.

18 Complainant’s “formal complaint” is pre-empted by federal law and violates provisions of WAC Title 480, including, without limitation, WAC §480-07-370. Complainant filed its unlawful and pre-empted complaint willfully. Accordingly, complainant is liable to Kenmore Air for all damages Kenmore Air may suffer as a result of complainant’s wrongful acts and omissions, including reasonable attorney fees for responding to the Complaint, pursuant to RCW § 81.04.440.

19 Kenmore Air has suffered and continues to suffers damages as a result of complainant’s violations of applicable WAC Title 480 provisions and has incurred attorney fees to respond to an improper and unlawful complaint. Such damages will be proved at the time of hearing and fees will be proved on post-order submission or as directed by the Commission.

REQUEST FOR RELIEF

20 Based on the foregoing, Kenmore Air requests the following relief:

21 The Complaint should be dismissed with prejudice.

22 Kenmore Air should be awarded its damages and reasonable attorney fees caused by the improper and unlawful acts and omissions of the complainant.

23 Kenmore Air should be allowed to amend its answer and counterclaim during the course of the proceeding.

Respectfully submitted this 4th day of December, 2007

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