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**BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In re Application of  
SEATAC SHUTTLE, LLC d/b/a SEATAC  
SHUTTLE  
For Certificate of Public Convenience and  
Necessity in Furnishing Passenger and Express  
Service.

Docket No. TC-030489

Application No. D-079145

WICKKISER INTERNATIONAL  
COMPANIES, INC.'S MOTION TO  
STRIKE APPLICANT'S CITATIONS OF  
EVENTS OUTSIDE THE RECORD

**I. NAME AND ADDRESS OF PLEADING PARTY**

The pleading party's name and address are:

Wickkiser International Companies, Inc. ("Airporter Shuttle")  
1416 Whitehorn Street  
Ferndale, Washington 98248

**II. RULES AND STATUTES RELEVANT TO THIS PLEADING**

This pleading involves RCW 81.68.040, WAC 480-09-736(19) and WAC  
480-09-780(6).

**III. SUMMARY OF MOTION TO STRIKE**

The Applicant's Answer to Airporter Shuttle's Petition for Administrative Review  
has tainted this proceeding by discussing Airporter Shuttle's decision to drop Anacortes as an  
intermediate stop on its Oak Harbor/Sea-Tac route and related events all of which occurred after  
the close of evidence. There can be no reasonable dispute that these events are not in the record,  
as the record closed in this case on July 2, 2003, and the events cited by the Applicant occurred

1 in August and September, 2003. See Answer at 11, ll. 6-15. The Applicant compounded the  
2 problem by misleading the Commission about the nature of these events and drawing the wrong  
3 conclusion from them. The only way to limit the damage is to strike the references to these  
4 events from the Answer and to allow Airporter Shuttle to file a reply to the Applicant's Answer.<sup>1</sup>

5 **IV. BACKGROUND.**

6 The Applicant filed an application on April 7, 2003 seeking to provide airporter  
7 service between Oak Harbor and Seattle-Tacoma International Airport, with intermediate points  
8 on SR 20 and SR 525 in south and central Whidbey Island. The proposed authority partially  
9 overlaps with the service territory of Airporter Shuttle, which provides service between Oak  
10 Harbor and Sea-Tac Airport. Airporter Shuttle filed a protest against the Applicant's application  
11 on April 24, 2003.

12 Administrative Law Judge Karen Caille convened evidentiary hearings on  
13 June 24, 2003 and July 2, 2003 to hear witnesses, receive exhibits, and listen to oral argument  
14 regarding the proposed service. The record closed on July 2, 2003, and Judge Caille has not  
15 allowed any parties to supplement the record. Judge Caille issued an Initial Order on  
16 September 8, 2003 granting the Applicant's application.

17 Airporter Shuttle filed a Petition for Administrative Review of the Initial Order on  
18 September 29, 2003. The Applicant filed an Answer to Airporter Shuttle's petition on October 8,  
19 2003. The Applicant's Answer inappropriately discusses Airporter Shuttle's elimination of  
20 Anacortes as an intermediate stop on its route between Oak Harbor and Sea-Tac Airport, which  
21 occurred on August 11, 2003 (Answer at 11, ll. 10-13); refers repeatedly to a related September  
22 3<sup>rd</sup> tariff filing by Airporter Shuttle, (Answer at 11, ll. 12-14; see Answer at 14, ll. 1-4; Answer  
23 at 15, ll. 10-14); and discusses alleged Commission responses to the September tariff revisions.

24  
25 \_\_\_\_\_  
26 <sup>1</sup> Airporter Shuttle is contemporaneously filing a Motion for Leave to Reply.

1 Answer at 11, ll. 15-21. These events occurred after the record closed on July 2<sup>nd</sup>. Airporter  
2 Shuttle is now filing this Motion to Strike those portions of the Applicant's Answer.

3 **V. THE COMMISSION MUST STRIKE THE ANSWER'S REFERENCES TO**  
4 **EVENTS OUTSIDE THE RECORD.**

5 The Commission must strike the Applicant's references to the August 11<sup>th</sup> service  
6 change, the September tariff filing, and subsequent Commission actions, because these events  
7 are not in the record. The Commission may only consider evidence in the record. "Only  
8 exhibits and testimony received in evidence are part of the record and subject to consideration by  
9 the Commission in its decision." WAC 480-09-736(19); see WAC 480-09-780(6). The events  
10 cited by the Applicant are not in the record, because they occurred in August and September,  
11 2003 and the record in this proceeding closed on July 2, 2003. The Commission thus may not  
12 consider these events.

13 The best way to strike these references is to adopt the attached redacted version of  
14 the Answer as a replacement for the original copy filed on October 8<sup>th</sup>. See Attachment A. This  
15 is necessary because the inappropriate claims and related argument are woven throughout the  
16 Answer and form a key part of it. The redacted document will make it easier for the  
17 Commission to ignore the inappropriate material discussed by the Applicant.

18 The second part of the solution is to grant Airporter Shuttle's contemporaneously  
19 filed Motion to Reply to the Applicant's claims. Even if the Commission chooses to strike the  
20 offending claims, it is still important for the Commission to hear Airporter Shuttle's  
21 interpretation of the events. This is because the Applicant had tainted this proceeding by  
22 misreading the relevance of Airporter Shuttle's service change and demanding that the  
23 Commission draw the wrong conclusion from the events. For example, the Applicant urges the  
24 Commission to conclude that the tariff filing and service change are inconsistent with Airporter  
25 Shuttle's position in this proceeding, when in fact these events are the natural consequence of the  
26 Initial Order's misguided grant of the Applicant's Application. Answer at 11, ll. 18-21. The

1 service change, which removes Anacortes from Airporter Shuttle's route between Sea-Tac  
2 Airport and Oak Harbor, is necessary because the Oak Harbor market is too small to be served  
3 economically by both Airporter Shuttle and the Applicant. One of these airporters will not  
4 survive, and Airporter Shuttle wants to ensure that Airporter Shuttle is not the service that fails.  
5 Airporter Shuttle's service change decreases the transit time between Oak Harbor and Sea-Tac  
6 Airport, and increases Airporter Shuttle's ability to retain customers in the impossible economic  
7 situation created by the Initial Order's grant of the Applicant's application. Airporter Shuttle's  
8 contemporaneously-filed Reply explains these issues in greater detail.

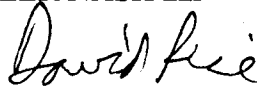
9 **VI. CONCLUSION AND PRAYER FOR RELIEF**

10 It is beyond dispute that the Applicant has cited evidence outside the record, since  
11 the alleged events occurred after the hearing in this case. For these reasons, the Commission  
12 must:

- 13 (1) Strike the improper allegations from the Answer,  
14 (2) Adopt the redacted version of the Answer provided with this filing, which  
15 redacts the following text: Answer at 11, ll. 9-21; Answer at 13, l. 1 to 14, l. 5; and Answer at  
16 15, ll. 9-14, and  
17 (3) Grant Airporter Shuttle's contemporaneously-filed Motion to Reply

18  
19 DATED this 20<sup>th</sup> day of October, 2003.

20 MILLER NASH LLP

21 

22 \_\_\_\_\_  
23 Brooks E. Harlow  
24 WSB No. 11843  
25 David L. Rice  
26 WSB No. 29180

Attorneys for Wickkiser International Companies,  
Inc., d/b/a Airporter Shuttle

1 I hereby certify that I served the foregoing WICKKISER INTERNATIONAL  
2 COMPANIES, INC.'S MOTION TO STRIKE CITATIONS OF EVENTS OUTSIDE THE  
3 RECORD on:

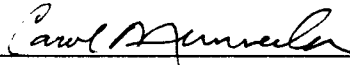
4 Mr. John Solin  
5 SeaTac Shuttle, LLC d/b/a  
6 SeaTac Shuttle  
7 558 Pebble Beach Drive  
8 Coupeville, WA 98239

8 by the following indicated method or methods:

- 9  by **faxing** full, true, and correct copies thereof to the attorneys at the fax numbers  
10 shown above, which are the last-known fax numbers for the attorneys' offices, **and**  
11 by **mailing** full, true, and correct copies thereof in a sealed, first-class postage-  
12 prepaid envelope, addressed to the attorneys as shown above, the last-known office  
13 addresses of the attorneys, and deposited with the United States Postal Service at  
14 Seattle, Washington, on the date set forth below.
- 15  by **mailing** full, true, and correct copies thereof in sealed, first-class postage-  
16 prepaid envelopes, addressed to the attorneys as shown above, the last-known  
17 office addresses of the attorneys, and deposited with the United States Postal  
18 Service at Seattle, Washington, on the date set forth below.
- 19  by sending full, true, and correct copies thereof via **overnight courier** in a sealed,  
20 prepaid envelope, addressed to the party shown above, on the date set forth below.
- 21  by causing full, true, and correct copies thereof to be **hand-delivered** to the  
22 attorneys at the attorneys' last-known office addresses listed above on the date set  
23 forth below.

24 The undersigned hereby declares, under the penalty of perjury, that the foregoing  
25 statements are true and correct to the best of my knowledge.

26 Executed at Seattle, Washington, this 20<sup>th</sup> day of October, 2003.

27   
28 \_\_\_\_\_  
29 Carol Munnerlyn, Secretary

**EXHIBIT A**

**Redacted Answer of Applicant**

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FILED  
JUN 24 1994  
M.V.C.

**BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In re Application of  
SEATAC SHUTTLE, LLC d/b/a SEATAC  
SHUTTLE, LLC  
For a Certificate of Public Convenience and  
Necessity in Furnishing Passenger and Express  
Service.

Docket No. TC-030489  
Application No. D-079145  
APPLICANT'S ANSWER TO PETITION  
FOR ADMINISTRATIVE REVIEW OF  
WICKKISER INTERNATIONAL  
COMPANIES, INC.

The Initial Order must be granted because the evidence, facts and testimony support the conclusions of the Initial Order and Applicant's application has met the test of RCW 81.68.040. At hearing, Applicant overwhelmingly met the challenges and requirements of Appendix A to the Pre-hearing Order Doc. TC-030489. Granting Applicant's application will serve to the benefit of the public necessity and convenience. It will provide fast, convenient and direct service to the satisfaction of the Commission which is now lacking in the area applied for. Petitioner makes a series of unsupported claims in its petition, that have been refuted in testimony at hearing and in the Initial Order. The circumstances and Initial Order of this Application are virtually "foresquare" with Commission DECISION AND ORDER GRANTING RE-CONSIDERATION; MODIFYING FINAL ORDER; GRANTING APPLICATION HEARING No. D-76533 ORDER M.V.C. 2057 June 24, 1994.

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**I. PROCEDURAL HISTORY.**

On April 7, 2003, the Applicant filed an application to provide airporter service between Oak Harbor and Seattle-Tacoma International Airport (“SeaTac Airport”), with intermediate pickup points on SR20 and SR525 in South and Central Whidbey Island. The proposed authority overlaps one city, namely Oak Harbor, with that of Airporter Shuttle, which presently provides service between Oak Harbor and SeaTac Airport by traveling North and East through points including Anacortes and Mount Vernon and along Interstate 5. Airporter Shuttle filed a protest against the Applicant’s application on April 24, 2003.

Administrative Law Judge Karen Caille convened evidentiary hearings on June 24, 2003 and July 2, 2003 to hear witnesses, receive exhibits, and listen to oral arguments regarding the proposed service. At the hearing, Airporter Shuttle clarified that it was only protesting the Applicant’s request to serve the Oak Harbor/SeaTac route, not with intermediate points in central and south Whidbey Island. Judge Caille issued an Initial Order on September 8, 2003 granting the Applicant’s application. This Answer is in response to Airporter Shuttle’s Petition for review of the Initial Order.

**II. THE STANDARD FOR COMMISSION REVIEW OF AN INITIAL ORDER.**

The Commission reviews the Initial Order only when the Petitioner has satisfied the requirements of WAC 480-09-780. The Petitioner must provide substantial evidence to support its petition. Substantial evidence is “evidence in sufficient quantum to persuade a fair-minded person of the truth of the declared premise.” *Olmstead v. Department of Health*, 61 Wn App. 888, 893, 812 P.2d 527 (1991) (citation omitted). The party challenging [Petitioner] the validity of the agencies action bears the burden of demonstrating the alleged invalidity. *RCW 34.05.570 (1) (a); Evans v. Employment Sec. Dep’t.* 72 Wash. App. 862, 865, 866 P. 2 d 687, reconsideration granted, March 9 (1994).. The reviewing officer of an initial order **shall give**



1 ***due regard*** (emphasis added) to the presiding officer's opportunity to observe the witnesses.

2 *RCW 34.05.464.*

3 As explained below, Petitioner's request does not meet the requirements of WAC  
4 480-09-780. The Petitioner did not provide credible proof and therefore has failed the test of  
5 *RCW 34.05.570*. A *de novo* review is inappropriate as it does not give the presiding officer due  
6 deference and is not called for under the statute.

7 **III. THE INITIAL ORDER WAS CORRECT IN FINDING THAT THE APPLICANT**  
8 **MEETS THE PREREQUISITES FOR OBTAINING A BUS CERTIFICATE.**

9 The Initial Order correctly interpreted and analyzed the testimony in concluding that the  
10 application be granted. The Applicant presented a compelling case by providing a large number  
11 of public witnesses, and exhibits. Its application was complete and met the statutory  
12 requirements for a bus certificate. It demonstrated a definitive public necessity for its proposed  
13 service and that the Petitioner is not serving the public to the satisfaction of the Commission.  
14

15 **IV. APPLICANT MEETS ALL OF THE CRITERIA FOR AUTHORITY TO**  
16 **OPERATE AN AIRPORTER SHUTTLE.**

17 To qualify for the issuance of a certificate of public need and convenience to operate an airporter  
18 shuttle where any segment of the proposed route overlaps with that of an existing certificated  
19 carrier,

20 (1) the Applicant must demonstrate that the "existing auto transportation company or  
21 companies serving such territory will not provide the same to the satisfaction of the commission,  
22 ...".

23 (2) Additionally the Applicant must show that the "public convenience and necessity  
24 require such operation". *RCW 81.68.040*

25 (3) The Applicant must show that it has sufficient financial resources and assets to  
26 conduct the proposed operations.

1 (4) The Applicant must show that it is willing and able to comply with the applicable  
2 laws and the Commission's rules. DOC. NO. TC-030489 NOTICE OF PRE-HEARING CONFERENCE,

3 APPENDIX A

4  
5 The Applicant has successfully survived all of these tests as shown in the Testimony, exhibits  
6 and facts presented at hearing. The Initial Order correctly encompasses and analyses the  
7 testimony and facts to arrive at its inevitable conclusion. The evidence [was] sufficient to  
8 persuade a fair-minded person of the declared premise. *Hensel, 82 Wash. App. At 526, 919 P.2d*  
9 *102*. The commission has found at hearing that "The Applicant showed that the public  
10 convenience and necessity require the proposed service. The Applicant also has shown that it is  
11 fit, willing, and able to provide the proposed service. Finally, the Applicant established that the  
12 existing certificate holder whose authority encompasses only a small portion of the same  
13 territory does not provide service to the satisfaction of the Commission." Docket No.

14 . TC-030489 Order No. 02 INITIAL ORDER APPROVING AND ADOPTING STIPULATION  
15 AND GRANTING APPLICATION at para. 5

16  
17 Therefore the Initial Order should be upheld and the Petition for Review denied for the  
18 Commission has found: "The Commission may grant a certificate to operate an auto  
19 transportation company in territory already served when the existing certificate holder will not  
20 provide service to the satisfaction of the Commission, the Applicant has demonstrated its fitness,  
21 the public convenience and necessity require the proposed service, and no good cause has been  
22 shown to deny the application. RCW 81.68.040. Order M. V. C. No. 1978, In re Sharyn Pearson  
23 & Linda Zepp, d/b/a Centralia/Sea-Tac Airporter Express, App. No. D-75018 (September 1992).

24 Petitioner does not dispute the main conclusions of the Initial Order in that it  
25 agrees that Applicant *is* fit, willing and able to provide the services sought *TR 302 II.20-25 , 303*  
26 *II.1-2*. Petitioner disputes only two findings of the Initial Order, i) that " the public convenience

1 and necessity do not require granting Applicant's application" and ii) that Petitioner " is  
2 providing service to the satisfaction of the Commission". *Petition for Administrative Review*  
3 *Doc. TC-030489 p.1 para. 1* . The Initial Order correctly found that "...There is substantial  
4 competent evidence in the record that the airporter service that Airporter Shuttle offers between  
5 Oak Harbor to SeaTac airport is not as direct, expedited, or convenient as the traveling public in  
6 the territory expects and desires of airporter service. Rather, the evidence shows that Airporter  
7 Shuttle has struck a compromise between economics and public need, to the detriment of public  
8 need. Based on the evidence presented Airporter Shuttle's existing service between Oak Harbor  
9 and SeaTac does not meet the reasonable expectations of the public or the Commission with  
10 respect to convenience, directness, and speed. The existing service is not to the satisfaction of  
11 the Commission." *Doc. 030489 Initial Order para. 71*

12  
13 **A. Existing carrier will not provide service to the satisfaction of the Commission.**

14 Through the testimony of eight public witnesses Applicant was able to show by  
15 an overwhelming preponderance of evidence that Petitioner does not provide service to the  
16 satisfaction of either the public or the Commission.  
17

18 Loretta Martin is the executive director of the Langley-South Whidbey Island  
19 Chamber of Commerce. She testified that the Petitioner provides no service to her area and that  
20 it would be impractical to use it as it is so far north from her location. *TR 40 ll.24-25, 41 ll. 1-6*

21 William Bradkin, a Coupeville based travel agent testified to his personal travel  
22 requirements and the needs of his clients. He stated that his personal experience with  
23 Petitioner's service took him five hours to get from Coupeville to SeaTac *TR 46 ll. 2-7*. Mr.  
24 Bradkin stated that Petitioner's service did not meet his needs.. *TR 48 ll. 14-16* He also stated  
25 that he would not use Petitioner's service again because of the time and convenience factors. *TR*  
26 *50 ll. 8-11*

1 Dr. Diane Manninen resides in Greenbank and works at the Battelle Seattle  
2 Research Center. She travels to SeaTac twelve or more times a year. *TR 63 ll. 22-25, 63 ll. 1-6*  
3 She stated that she does not use Petitioner's service because it would take too long to get to the  
4 airport using it, that it does not meet her needs. *TR 68 ll. 14-25, 69 ll. 1-15*

5 Sarah Kate Dickerson, a recently retired public school principal, lives in  
6 Coupeville. Mrs. Dickerson travels to SeaTac from her Coupeville home about 15 to 20 times a  
7 year. *TR 77 ll. 7-9* She stated that Petitioner's service did not suit her needs and is inconvenient.  
8 *TR 80 ll. 22-25, 81 ll. 1-15*

9 Sue Sebens is the owner of a travel agency in Oak Harbor. She personally travels  
10 to SeaTac five to eight times a year. *TR 88 ll. 17-20* She testified that she would never use the  
11 Petitioner's service from Oak Harbor *TR 89 ll. 15-23* and that Petitioner's service is  
12 inconvenient. She further testified that as a travel agent seventy-five percent of her clients who  
13 use Petitioner's service do so from Mt. Vernon rather than Oak Harbor because of the  
14 inconvenience of using it from Oak Harbor. *TR 92 ll. 8-25, 93 ll. 1-11, 96 ll. 16-25, 97 ll. 1-20*  
15 [T]he agents can testify as to their own business experiences and to their client's experiences.  
16 *Commission Decision and Order, In re Application of Valentinetti, Docket TC-001566 at ¶ 21*  
17 *(2002) ("Valentinetti Order")*.

18 Greg Wasinger owns two seven-eleven franchises in Oak Harbor. He travels to  
19 SeaTac about 12 times a year. *TR 111 ll. 14-15* He testified that he does not use Petitioner's  
20 service from Oak Harbor because it is indirect and inconvenient, that he drives from Oak harbor  
21 to Mt. Vernon on the occasions he uses the Airporter Shuttle. *TR 112 ll. 19-22, 114 ll. 3-16*

22 Dave Johnson is a senior vice-president with Whidbey Island Bank. He travels to  
23 SeaTac approximately eight times a year. He stated that when he rode the Airporter he drove to  
24 Mt. Vernon to board since it was more convenient than starting from Oak Harbor. *TR 125 ll. 3-6*  
25 *, 16-22*

1 Priscilla Heistad is the Executive Director of the Oak Harbor Chamber of  
2 Commerce and the Liaison for the Island County Joint Board of Tourism. She testified that for  
3 the general public the Applicant's proposed service would be more convenient than Petitioner's  
4 *TR 148 2-7* [T]he agents can testify as to their own business experiences and to their client's  
5 experiences. Commission Decision and Order, In re Application of Valentinetti, Docket TC-  
6 001566 at ¶ 21 (2002) ("*Valentinetti Order*").  
7

8 Garry Brown is the owner of an insurance agency in Oak Harbor. He travels three  
9 times a year to SeaTac *TR 155 ll. 1-3* He testified that Petitioner's service was not providing for  
10 his convenience. *TR 158 ll. 1-8*

11 **B. Public Convenience and Necessity Require Applicant's Service.**

12 Applicant's public witness all supported and testified to the public need and  
13 necessity for Applicants service.

14 Loretta Martin is the executive director of the Langley-South Whidbey Island  
15 Chamber of Commerce. She testified that the community needs a direct, expedited service for  
16 her community. *TR 36 ll. 14-18, 39 ll. 9-25*

17 William Bradkin, a Coupeville based travel agent, testified that there is a need for  
18 direct expedited service for his community and for himself personally *TR 44 ll. 14-25, 47 ll. 9-*  
19 *18*

20 Dr. Diane Manninen resides in Greenbank and works at the Battelle Seattle  
21 Research Center. Dr. Manninen testified that there is a public need for Applicant's service. *TR*  
22 *67 ll. 18-25, 68 ll. 1-13*

23 Sarah Kate Dickerson, a recently retired public school principal, lives in  
24 Coupeville. Mrs. Dickerson testified that based upon her personal experience that there is a  
25 public need for Applicant's proposed service. *TR 80 ll. 18-22*

1 Sue Sebens is the owner of a travel agency in Oak Harbor. She stated that there  
2 is a need for a direct, expedited and convenient service as proposed by Applicant. TR 85 II. 18-  
3 25

4 Greg Wasinger owns two seven-eleven franchises in Oak Harbor he testified that  
5 he needed a service such as proposed by Applicant for both his business and personal travel. TR  
6 113 II. 1-13

7 Dave Johnson is a senior vice-president with Whidbey Island Bank and past board  
8 member of the Oak Harbor Chamber of Commerce. Mr. Johnson testified that there was a public  
9 need for the service proposed by Applicant. TR 126 II. 16-25, 127 II. 1-25, 128 II. 1

10 Priscilla Heistad is the Executive Director of the Oak Harbor Chamber Of  
11 Commerce and the Liaison for the Island County Joint Board of Tourism. In her position as  
12 Executive Director she testified that the service proposed by Applicant would be an enhancement  
13 to tourism and that there is a need for Applicant's direct, expedited and convenient service to  
14 SeaTac. TR 139 II. 15-25, 140 III-2

15 Garry Brown is the owner of an insurance agency in Oak Harbor. Mr. Brown  
16 testified that the three and one half hours it takes Petitioner's service to go from Oak Harbor to  
17 SeaTac was inconvenient and that Applicant's service will only take two hours and fifteen  
18 minutes. TR 158 II. 1-25

19 **C. Fitness**

20 Applicant must show *prima facie* that it has the financial resources [fitness] to  
21 commence the operation of the business with a reasonable expectation of success. RCW  
22 81.68.040. Order M. V. C. No. 1899, In re San Juan Airlines, Inc., d/b/a Shuttle Express, App. No.D-  
23 2589 (March 1991); modified, Order M. V. C. No. 1909 (May 1991). Contained within Applicant's  
24 application is financial information regarding the fitness of the Applicant. Additionally, as an  
25 attachment to the application, Applicant provided a *pro forma* operating expense / income  
26

1 balance sheet as part of the application and record. Both the Administrative Law Judge and the  
2 Petitioner accepted this information and the testimony of John Solin, President of SeaTac  
3 Shuttle, LLC, *TR 192* . Further, Larry Wickkiser, President of Wickkiser International  
4 Companies, Inc. d/b/a Airporter Shuttle, the Petitioner, testified that the Applicant was fit. *TR*  
5 *302, 303*. The Initial Order correctly recognized the Applicant as fit. *Initial Order para. 5. Doc.*  
6 *TC-0300489*

7  
8 **D. Willing and able.**

9 The Applicant is both willing and able. Applicant provided operating witnesses  
10 Solin and Lauver who testified to their business and transportation experience as well as their  
11 educational backgrounds. The Administrative Law Judge and the Petitioner both accepted this  
12 testimony as proof of Applicants willingness and ability. *Initial Order para. 5. Doc. TC-*  
13 *0300489; TR 302, 303*. . The Initial Order correctly found that the Applicant is willing and able  
14 to comply with the applicable laws and the Commission's rules..

15 **E. Satisfaction of Commission.**

16 Because of all of the foregoing the Applicant has met all of the criteria to the  
17 satisfaction of the Commission for the issuance of authority to operate an airporter shuttle.  
18 Petitioner has raised no new issues and offers only gross misinterpretations of law and testimony  
19 as the basis for its petition. In the absence of any substantive issues or error on the part of the  
20 Administrative Law Judge at hearing or within the Initial Order, there is no cause for Review.  
*RCW 480-09-780.*

21 The Initial Order accurately accesses the qualifications and need for the authority sought  
22 for by Applicant and there is no need to review or reopen those discussions. Applicant has met  
23 the burden of proof of Appendix A, Pre-hearing Conference Order Application of SeaTac  
24 Shuttle, LLC and Initial Order Doc. No TC-030489, paragraph 5.

25 **V. PETITIONER'S CLAIMS OF ERRORS**

26 The Petitioner's claims of error are untrue and incorrect. Petitioner has not based its claims ~~of on~~

1 error of law or evidence but rather takes the position that any competition is detrimental to the  
2 Petitioner, *TR. 355 II. 19-23* and therefore by some unsupportable illogical argument, not in the  
3 public's best interest. Yet on the other hand Petitioner testified that competition is good for the  
4 consumer. *TR 296*. Petitioner presents no compelling argument or basis for its claims of  
5 error or that the Initial Order was arbitrary and capricious. Rather, all of Petitioner's arguments  
6 are based on the supposition that granting of the application might possibly have a negative  
7 financial impact on Petitioner.

8 **A. The Public Convenience and Necessity Do Not Require the Applicants**  
9 **Service.**

10 The Petitioner makes four claims under this section. (1) there is insufficient population to  
11 support two airporters on the Oak Harbor to Seatac Airport route, (2) the Applicant has proposed  
12 a predatory schedule, (3) the Applicant cannot survive by providing the proposed service and (4)  
13 there is no public need for the service. Petitioner clearly stated in its opening remarks within its  
14 petition that it challenges the Initial Order on two and only two points. First, the public  
15 convenience and necessity do not require granting the applicant's application and second, the  
16 Petitioner is providing service to the satisfaction to the commission. All other issues raised  
17 within the petition are therefore not relevant and should be disregarded. Applicant feels  
18 compelled to rebutt the irrelevant issues contained the petition, *arguendo*, for the sake of  
19 completeness.

20 **1. Petitioner asserts that the population of Oak Harbor is too small to**  
21 **support two airporter services.**

22 This point is irrelevant as previously stated. Population is not a consideration  
23 of the Commission. Service to the public is the over-riding factor in the granting of an  
24 application. RCW 81.68.040. Petitioner hides it inconvenient, indirect and non-expeditious  
25 service behind its argument that it is not cost effective for it to provide satisfactory service. RCW  
26 81.68.040. Order M. V. C. No. 2041, *In re Sharyn Pearson & Linda Zepp, d/b/a Centralia-SeaTac*  
*Airport Express*, App. No. D-76533 (March 1994).



1 Having stated that, however, Petitioner's argument that its unsatisfactory service is the only  
2 "economically feasible way" *Petition for Administrative Review p1, ll. 21-22, p2, ll. 5-7, p4, ll.*  
3 *24-25*, to provide service to Oak Harbor because it is too small of a market to stand alone and  
4 requires the addition of the Anacortes market are false. By its own measure and testimony, it is  
5 claiming that the population of Oak Harbor, a smaller market, is 40,000 people and it requires  
6 the indirect, inconvenient link to the "larger market" in Anacortes to survive. *Petition for*  
7 *Administrative Review p4, ll. 13-14.* The U.S. Census for the year 2000 shows the population of  
8 Anacortes as 14,557. Clearly Anacortes is not a larger market.  
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25 Petitioner further asserts that if they are forced to reduce or curtail service to Oak Harbor that the  
26 public would therefore suffer. Petitioner fails to mention that Applicant offered to increase the

1 number of daily trips from Oak Harbor to a level commensurate with that of Applicant and that  
2 offer was rejected by Petitioner. *TR 297, ll. 13-22*. And again, the record clearly shows that  
3 Applicant is ready, willing and able to increase the number of daily trips from Oak Harbor  
4 should the Petitioner either reduce, or curtail service or at any time that the public necessity  
5 requires. *TR. 473, l 25, TR. 474, ll. 1-5*.

6  
7 **2. Petitioner has accused Applicant of predatory scheduling.**

8 This is also irrelevant as above and is also frivolous and without any merit..  
9 Petitioner considers any competition predatory *TR 355 ll. 19-23*. Competitive scheduling is the  
10 concern of the Commission only in so far as it serves the public. If a competitor offers a better  
11 product at a more opportune time to the benefit of the public, then it is satisfying the intent of the  
12 Commission. In addition, an examination of the flight frequency at SeaTac International Airport  
13 shows that between the hours of 6:00 AM and 9:00PM the number of flights in any 2 hour block  
14 only varies between 13% lower and 31% higher than the average number of flights and  
15 therefore there are no real peak or off peak hours to create a “predatory” situation. Petitioner  
16 places this spurious argument before the Commission in a furtive attempt to maintain its  
17 monopolistic position to the detriment of the public necessity and convenience.

18 **3. Petitioner claims that the Applicant cannot survive by providing the**  
19 **proposed service.**

20 Petitioner has agreed in testimony that Applicant is **fit, willing and able to**  
21 **provide the service under the authority sought.** *TR 302,303* Therefore, this claim by Petitioner is  
22 contrary to its own testimony. Petitioner has stated time and time again in testimony *TR. 134 ll.*  
23 *22-25, Tr. 135 ll. 1-15; Petition, p2, ll. 7-8, p4, l 12, ll. 24-25, p5, ll. 17-18* that it might  
24 withdraw from the market when Applicant is granted authority. Petitioner clearly recognizes the  
25 superiority of the proposed service to the public and sees its withdrawal from the market as his  
26 only option. In reality, Petitioner is concerned about its fitness, willingness and ability to service

1 this route segment. Petitioner describes how an airporter called Anacortes/ Oak harbor Airporter  
2 failed after operating a similar route in 1990, to the one proposed by the Applicant. The true  
3 facts are that the Petitioner felt that this route was a viable one and purchased the Anacortes/Oak  
4 Harbor Airporter and operated it as the basis for his current Oak Harbor/ Anacortes / Mt. Vernon  
5 operation. *TR. 371 ll. 24-25, TR. 372 l 1*. The Petitioner is aware or should be that information  
6 on traffic and profitability that is thirteen years old should not be considered by the Commission.  
7 *Zepp, Order M.V.C. No. 2041 (1994) Page 8, Sec 5, para 2*. In addition, Petitioner has no  
8 knowledge of the profitability or capabilities of the Applicant and can in no way determine  
9 whether or not Applicant will succeed. Petitioner specifically stated it did not review  
10 Applicant's pro forma operating income and expense and balance sheet when making its claims.

11 **4. Petitioner claims the Applicant's witnesses did not show that there is a**  
12 **public need for the proposed service.**

13 Contrary to Petitioner's claim, all eight of the Applicants public witnesses  
14 who testified as to the public need and even Petitioner's one and only public witness supported  
15 the Applicant's application and proposed service *Initial Order para 27, 28, 32, 33, 34, 35, 36,*  
16 *37, TR. 243 ll. 20-25, TR. 244 l 1*. Despite having ample time to prepare and send a letter to the  
17 public, *TR. Exhibit 23*, soliciting witnesses, Petitioner was able to provide only one witness who  
18 supported their service and she stated that if the Applicant's application were granted she would  
19 use the Applicant's service. *TR. 243 ll. 20-25, TR. 244 l 1*. The testimony supports only one  
20 conclusion, there is a public need for the authority sought by Applicant. See Section IV (2)  
21 above.

22 **B. The Applicant Produced No evidence That Airporter Shuttle Is Not**  
23 **Providing Service to the Satisfaction of the Commission.**

24 The entire body of evidence leads to the conclusion in the Initial Order, that in  
25 fact, Petitioner is not providing service to the satisfaction of the Commission. Petitioner admits  
26 that its service "is a compromise" based upon economics, both in testimony *TR. 472 ll. 15-24*  
and in its petition p *12 ll. 5-9* .

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The Petitioner was able to provide one, and only one, public witness who would state, that in her opinion, on the very limited basis of her experience, that Petitioner's service was satisfactory to her does not in any way imply to the "satisfaction of the Commission". Within the monopolistic environment that Petitioner provides its service, the witness had no other alternative to Petitioner's service and therefore nothing to compare it with. Additionally, upon cross-examination the witness stated that she would also utilize Applicant's service if the schedule met her needs.

Satisfaction to the Commission and apparent satisfaction to the public are two entirely different issues. Satisfaction to the public is non-empirical. It is based upon personal opinion, individual experience, utilization history and its benefit to the consumer relative to the other options available to the public. In a market environment where competition is not present, any opinion as to satisfaction must be suspect. In any event, one person's perception of the same event may be diametrically opposed that of an other, which reinforces that it is just an opinion. Petitioner presented no witnesses that stated anything other than a personal opinion and even that was tempered by her willingness to use Applicant's proposed service. Her testimony in no way proved or even supported the contention that Petitioner was providing service to the satisfaction of the Commission.

On the other hand, Applicant presented a number of public witnesses who testified to their factual encounters with Petitioner's service and its inconvenience to them, its indirectness and its non-expeditious nature. The Commission has relied upon just such testimony in a previous application for overlapping authority as proof of unsatisfactory service

1 by an existing carrier. *CWA, Inc. d/b/a Central Washington Airporter, DOCKET NO. TC-*  
2 *021402 FINAL ORDER, Pp 20,21,22,23,24,25,26,27,28.*  
3

4 Applicant provided examples, testimony and exhibits clearly showing that  
5 Petitioner's service route from Oak Harbor through Anacortes, east to Mt. Vernon, changing  
6 buses in Mt. Vernon and arriving at SeaTac International Airport after three and one half hours  
7 was by no interpretation either convenient, direct or expeditious. See Section IV (1) above.

8 To provide service to the satisfaction of the Commission Petitioner must be convenient, direct  
9 and expeditious. *RCW 81.68.040. Order M. V. C. No. 2057, In re Sharyn Pearson & Linda Zepp, d/b/a*  
10 *Centralia Sea-Tac Airport Express, App. No. D-76533 (June 1994).*  
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14 Rather, its inordinately long travel time, indirect  
15 route and inconvenient change of buses required by its schedule as presented to the Commission  
16 at hearing and relied upon in testimony, clearly show that it has been operating a marginal  
17 service and was able to do so because of its monopoly in the market. RCW 81.68.040's  
18 requirements promote the public interest in having regular and dependable passenger transportation  
19 services available at fair rates. The restriction on entry is not a barrier behind which poor service, or  
20 service that is unresponsive to the changing requirements of the market, is shielded from competition.  
21 *RCW 81.68.040. Order M. V. C. No. 2041, In re Sharyn Pearson & Linda Zepp, d/b/a Centralia-SeaTac*  
22 *Airport Express, App. No. D-76533 (March 1994).*



23 Petitioner ignores the fact that Petitioner did file an application in 2003 for overlapping service  
24 in an area with another competitor, *CWA, Inc. d/b/a Central Washington Airporter in re:*  
25 *Application No. D-079116, Doc. TC-021402* It was granted that authority Ex. 22 and used  
26 substantially similar arguments before the Commission, i.e. 1) that the existing operator's

1 service was neither direct, convenient, or expeditious in that it took an inordinate amount of time  
2 on the route filed for, 2) that it required a change of vehicles and 3) did not provide direct  
3 service. Having been successful with that argument in their own application they would now  
4 have the Commission believe that this same argument is not a valid one as it applies to anyone  
5 else attempting to bring new, new superior service into an area served by Petitioner itself.

6  
7 **VI. PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

8           Given the correct analysis of fact, testimony and law by Judge Caille, the Initial  
9 Order must be upheld. Applicant has met the test of RCW 81.68.040 and therefore should be  
10 granted authority. Petitioner is unable to make any case under fact or law for Administrative  
11 Review of the Initial Order. All assertions made by Petitioner are unsupported by fact or  
12 testimony and do not correctly interpret applicable law. Petitioner only restates flawed analysis  
13 of testimony which were refuted at hearing and found to be lacking, unsupported, self serving  
14 and non-compelling in the Initial Order. The Petition for Administrative Review is frivolous and  
15 without merit. It should be denied with prejudice.

16  
17           Petitioner has not complied with WAC 480-09-780 (3) in that in its petition and  
18 challenge to the initial order it makes no reference or citation to applicable law, code or  
19 precedents. It relies solely on its self-serving interpretation of the testimony. A petition that  
20 challenges the summary of discussion portion of an initial order must include a statement  
21 showing the legal or factual justification for the challenge, together with a statement of how the  
22 asserted defect affects the findings of fact, the conclusions of law, and the ultimate decision.  
23 Petition has failed utterly to do so.

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25           Petitioner's request for review, *de novo*, without deference to the Initial Order  
26 findings is without merit or justification.  



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[REDACTED] The reviewing officer of an initial order shall give due regard to the presiding officer's opportunity to observe the witnesses. *RCW 34.05.464*. Further, the party challenging [Petitioner] the validity of the agencies action bears the burden of demonstrating the alleged invalidity. *RCW 34.05.570 (1) (a); Evans v. Employment Sec. Dep't. 72 Wash. App. 862, 865, 866 P. 2 d 687, reconsideration granted, March 9 (1994)*. Petitioner provided no credible evidence to support a demonstration of invalidity. Petitioner has made no claims or citations as to an error of law. Under WAC 480-09-780 (3) "... Petitions must clearly identify the nature of each challenge to the initial order, the evidence, law (emphasis added), rule or other authority that the petitioner relied upon to support the challenge... petitions for review of initial orders must be specific, ..." Absent an error of law a *de novo* review is not called for. *Tapper, 122 Wash.2d at 403, 858 P.2d 494*.


- A. The Petition for Administrative Review be denied with prejudice.
- B. The Initial Order be confirmed and upheld.
- C. The Final Order be issued without modification to the Initial Order.

**VII. CONCLUSION**

The Initial Order is correct in its scope, analysis and finding. The Petition is without merit. It is self-serving in its analysis of the facts, testimony, law and exhibits. It only serves to promote a wall of protection for its unsatisfactory service to its economic benefit and the detriment of the public. The Petition for Administrative Review should be denied.

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*JS*  
DATED this ~~7~~<sup>8</sup>th Day of October, 2003.  
*JS*

JOHN J. SOLIN  
  
\_\_\_\_\_  
John J. Solin  
Applicant, SEATAC SHUTTLE, LLC



1 I hereby certify that I served the foregoing APPLICANT'S ANSWER TO  
2 PETITION FOR ADMINISTRATIVE REVIEW OF WICKKISER INTERNATIONAL  
3 COMPANIES, INC. on:

4 David Rice, Attorney for Wickkiser  
5 International Companies, Inc.,  
6 d/b/a/ Airporter Shuttle  
7 Miller Nash LLP  
8 4400 Two Union Square  
9 601 Union Street  
10 Seattle, WA 98101-2352

11 by the following indicated method or methods:

12  by mailing full, true, and correct copies thereof in sealed, first-class postage-  
13 prepaid envelopes, addressed to the attorneys as shown above, the last-known  
14 office addresses of the attorneys, and deposited with the United States Postal  
15 Service at Oak Harbor, Washington, on the date set forth below.

16 The undersigned hereby declares, under the penalty of perjury, that the foregoing  
17 statements are true and correct to the best of my knowledge.

18 Executed at Oak Harbor, Washington, this 8<sup>th</sup> Day of October, 2003.

19 

20 John J. Solin  
21 SEATAC SHUTTLE, LLC

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Certificate of Service

1 I hereby certify that I served the foregoing APPLICANT'S ANSWER TO  
2 PETITION FOR ADMINISTRATIVE REVIEW OF WICKKISER INTERNATIONAL  
3 COMPANIES, INC. on:

4 SHANNON E. SMITH  
5 Assistant Attorney General  
6 1400 S. Evergreen Park Dr. SW  
7 P.O. Box 40128  
8 Olympia, WA 98504-0128

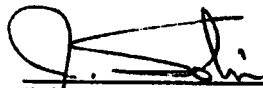
9 by the following indicated method or methods:



11 by mailing full, true, and correct copies thereof in sealed, first-class postage-  
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19 \_\_\_\_\_  
20 John J. Solin  
21 SEATAC SHUTTLE, LLC  
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