

Docket No. TC-181008 - Vol. I

In re the Application of: Bremerton Kitsap  
Airporter, Inc.

March 18, 2019



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BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION

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In re the Application of ) DOCKET NO. TC-181008  
)  
BREMERTON KITSAP AIRPORTER, )  
INC., d/b/a THE SOUND )  
CONNECTION AND FT. LEWIS )  
McCHORD AIRPORTER )  
)  
For an Extension of Existing)  
Auto Transportation )  
Certificate C-903 )

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BRIEF ADJUDICATIVE PROCEEDING, VOLUME I  
Pages 1-130  
ADMINISTRATIVE LAW JUDGE LAURA CHARTOFF

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March 18, 2019  
9:00 a.m.

Washington Utilities and Transportation Commission  
1300 South Evergreen Park Drive Southwest  
Olympia, Washington 98504

REPORTED BY: TAYLER GARLINGHOUSE, CCR 3358

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A P P E A R A N C E S

ADMINISTRATIVE LAW JUDGE:

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1 OLYMPIA, WASHINGTON; MARCH 18, 2019

2 9:00 A.M.

3 --o0o--

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

5  
6 JUDGE CHARTOFF: Okay. Let's be on the  
7 record. This is Docket TC-181008, captioned regarding  
8 the application of Bremerton Kitsap Airporter, Inc.,  
9 doing business as The Sound Connection and Ft. Lewis  
10 McChord Airporter for the -- for an extension of  
11 existing auto transportation certificate C-903.

12 My name is Laura Chartoff. I'm an  
13 administrative law judge presiding over today's brief  
14 adjudicative proceeding.

15 Today is Monday, March 18th, 2019, and the  
16 time is 9:04 a.m.

17 So the purpose of today's proceeding is to  
18 hear objections to the application filed by Bremerton  
19 Kitsap Airporter made by an existing auto transportation  
20 company, Capital Aeroporter Airport Shuttle.

21 RCW 81.68.040 and WAC 480-30-136 allow  
22 existing auto transportation companies to object to an  
23 application for new or extended authority only if the  
24 objecting company holds a certificate that authorizes  
25 the same service and the company provides the same

1 service to the Commission's satisfaction. WAC  
2 480-30-116 provides that the adjudication will be  
3 limited to the question of whether the objecting company  
4 holds a certificate to provide the same service in the  
5 same territory, whether the objecting company provides  
6 the same service, and whether an objecting company will  
7 provide the same service to the satisfaction of the  
8 Commission. And the term "same service" and satis- --  
9 "service to the satisfaction of the Commission" are  
10 defined in WAC 480-30-140.

11 So before we went on the record, the parties  
12 have stipulated to the admission of Bremerton Kitsap  
13 Airporter's prefiled exhibits, and those are marked  
14 BKA-1 through BKA-12.

15 (Exhibits BKA-1 through BKA-12 admitted.)

16 JUDGE CHARTOFF: So when I call on each  
17 party to testify, I will swear any witnesses in with the  
18 oath of witness so that anything you tell the Court will  
19 be under oath and can be considered sworn testimony.  
20 For the court reporter's benefit, please speak slowly  
21 and clearly and please use the microphone on the table  
22 in front of you. And once you're sworn in, you can  
23 present testimony and call witnesses, and you can also  
24 introduce exhibits that you have prefiled, and I will  
25 rule on those.

1           So the applicant will go first today  
2 followed by Capital Aeroporter, and my understanding is  
3 that Staff will not be presenting any witnesses today?

4           MR. CALLAGHAN: That's correct, Your Honor.

5           JUDGE CHARTOFF: Okay. But Staff may wish  
6 to ask parties clarifying or follow-up questions, and  
7 that's fine.

8           So each of the parties will have the  
9 opportunity to ask questions of each other, and I will  
10 let you know when it's your turn to do that.

11           And then finally, I won't be making any  
12 decisions from the bench today. I will take it under  
13 advisement, and I'll issue an order within ten days or  
14 if I determine that I need the transcript prior to  
15 writing the decision, it will be ten days from when I  
16 get the transcript. So I'll let you know at the end.

17           Okay. So let's begin by taking short  
18 appearances starting with Staff.

19           MR. CALLAGHAN: Thank you, Your Honor. Nash  
20 Callaghan, Assistant Attorney General, on behalf of  
21 Commission Staff.

22           JUDGE CHARTOFF: Thank you.

23           MR. FASSBURG: Morning. Blair Fassburg with  
24 Williams Kastner & Gibbs in Seattle, Washington, on  
25 behalf of Bremerton Kitsap Airporter.



1 JAMES FRICKE: Good morning, Your Honor.  
2 James N. Fricke, President and CEO of Pacific Northwest  
3 Transportation Services, Inc., d/b/a Capital Aeroporter.  
4 PO Box 2163, Olympia, Washington 98507-2164, appearing  
5 on behalf of the objector.

6 JUDGE CHARTOFF: Thank you.

7 JOHN FRICKE: Good morning, Your Honor.  
8 John E. Fricke, Vice President Operations, Chief  
9 Operating Officer Pacific Northwest Transportation  
10 Services, Incorporated, d/b/a Capital Aeroporter. Same  
11 address details as mentioned by James Fricke.

12 JUDGE CHARTOFF: Thank you.

13 Okay. So, Mr. Fassburg, you'll be going  
14 first today.

15 MR. FASSBURG: Sure. Thank you, Your Honor.  
16 First I'd like to say that pursuant to WAC 480-07-610, a  
17 brief adjudicative proceeding is supposed to be a  
18 streamlined proceeding and not a full-blown  
19 adjudication. It provides in subpart 5, the parties may  
20 offer written exhibits for inclusion in the record and  
21 may make oral statements in support of their positions.  
22 The presiding officer also may permit parties to present  
23 one or more witnesses to testify.

24 Because those are optional and we believe  
25 that the record that we have submitted speaks for itself

1 and the exhibits have all been admitted by stipulation,  
2 we don't intend to offer a witness in addition to the  
3 sworn statements that were offered today. So long as we  
4 are permitted to make argument sort of tying together  
5 what we believe the evidence shows, I think that we can  
6 reserve the discussion of much of what's been presented  
7 for that presentation after the taking of testimony.

8 I will say, just to make sure this is up  
9 front, what we believe is that the objecting auto  
10 transportation company does not, in fact, have  
11 certificate authority that provides for the same  
12 service. And that if it does, and I think it's -- it's  
13 arguable that it does not, but it's not clear that it  
14 does not, if its certificate authorizes that service, it  
15 isn't actually providing that service. And even if it  
16 could say that it were, we don't believe its service is  
17 being offered at the satisfaction of the Commission.

18 The primary differences are in the fact that  
19 its authority is for a zone for a particular location to  
20 SeaTac Airport as opposed to specific locations. Its  
21 time schedule does not state specific locations as would  
22 be required for scheduled service, which is what the  
23 applicant is applying for, and its locations that are  
24 provided on its time schedule are a locations by zone,  
25 not specific locations.

1           And so I think as we'll walk through more  
2 specifically when I have an opportunity for argument,  
3 the evidence of their time schedule on its face  
4 demonstrates they aren't providing the service being  
5 applied for, which to be clear, is -- Bremerton Kitsap  
6 Airporter provides scheduled service along a fixed  
7 route.

8           It provides two separate routes; one that  
9 goes from the West Sound, Kitsap and Pierce County, and  
10 frankly, I don't have it memorized off the top of my  
11 head, but one route that comes from the West Sound and  
12 another that goes from JBLM, and they're applying to add  
13 to that route the Holiday Inn Express down to SeaTac.

14           The particular route that's applied for is  
15 listed in a time schedule to which there will be an  
16 added stop clearly dictating the route that the -- the  
17 vehicle will travel. And that route, as a result of its  
18 configuration, will provide essentially direct express  
19 service from that Holiday Inn Express to SeaTac Airport,  
20 which is something the protesting party does not offer.

21           We believe that an additional stop is needed  
22 due to security issues at JBLM and because that location  
23 provides overflow to JBLM to people that aren't able to  
24 stay at JBLM. But, again, I'll -- I'd like to go  
25 through all of the details more succinctly and

1 specifically during sort of the closing argument if I  
2 may.

3 And with that, I think we have nothing else  
4 to add since our exhibits have been admitted.

5 JUDGE CHARTOFF: Thank you.

6 Okay. I'm going to take a two-minute recess  
7 because I have to clarify a procedural question I have.  
8 So we'll just do -- we're in recess for two minutes.

9 (Recess was taken from 9:13 a.m.  
10 until 9:17 a.m.)

11 JUDGE CHARTOFF: Okay. We're back on the  
12 record. My -- my concern that I needed to get some  
13 clarification on was that, because there is -- what  
14 appears to be -- there is a supplemental -- oh, what was  
15 it? I know there are some statements of Mr. Asche in  
16 some of these exhibits, and it -- if the other parties  
17 do want to ask Mr. Asche questions, that seems like the  
18 fair thing to do. Do -- does anyone want -- I guess I  
19 would ask the other parties if they do want to cross  
20 Mr. Asche with respect to the exhibits that were  
21 entered.

22 JOHN FRICKE: Yes, Your Honor. We certainly  
23 would like to cross-examine the statement of Mr. Asche.

24 JUDGE CHARTOFF: Staff?

25 MR. CALLAGHAN: Yes, Your Honor.

1 JUDGE CHARTOFF: Um --

2 MR. FASSBURG: Okay. I -- I think it's  
3 unusual to cross-examine someone on statement when they  
4 haven't offered testimony, but I guess we won't object  
5 to that.

6 JUDGE CHARTOFF: Thank you. Thank you. So  
7 is Mr. Asche present?

8 MR. FASSBURG: Mr. Asche?

9 MR. ASCHE: Present.

10 JOHN FRICKE: Your Honor, another procedural  
11 question before we continue. Also pursuant to WAC  
12 480-07-470, Section 2, hearing guidelines, oral  
13 appearance at a hearing does not substitute for the  
14 requirement for written notice of appearance in the --  
15 the adjudicative proceeding. There's been no written  
16 appearance, written notice of appearance of Mr. Fassburg  
17 to represent Bremerton Kitsap Airporter in this matter.  
18 On the application on page 8, it listed a Dave Wiley as  
19 the attorney for the applicant, and according to  
20 480-07-345, Section 2, with the written notice of  
21 appearance and a withdrawal by counsel or other  
22 representative is required.

23 Stated in Section A, attorneys who wish to  
24 appear on behalf of a party or person seeking party  
25 status must file a written notice of appearance with the

1 Commission and serve all parties to the proceeding prior  
2 to acting in a representative capacity --

3 JUDGE CHARTOFF: Okay. All right. I'm  
4 going to cut you off there. I believe Mr. Fassburg is  
5 in the same firm as Mr. Wiley?

6 MR. FASSBURG: That is correct. And beyond  
7 that, Mr. Fricke served me personally with a copy of his  
8 exhibits last week. He was aware of my involvement in  
9 this case, and Mr. Callaghan had, in fact, emailed all  
10 the parties indicating it was his understanding that I  
11 would be appearing and asking me to advise if that was  
12 incorrect. I did not respond because that was a correct  
13 statement. Everybody understood I would be here today.

14 JUDGE CHARTOFF: Okay. Yeah.

15 JOHN FRICKE: If I may, Your Honor. Section  
16 D requires any attorney listed to -- who wishes to  
17 withdraw from the -- representing a party to file a  
18 separate written notice of withdrawal with the  
19 Commission and serve all parties. It does not -- it  
20 does not specify law firm, it specifies attorney  
21 representing the party.

22 JUDGE CHARTOFF: Okay. I'm going to  
23 overrule your objection.

24 Okay. So let's -- where should Mr. Asche  
25 sit that makes sense?

1 MR. FASSBURG: It doesn't matter.

2 Mr. Asche, would you like to take a seat  
3 here?

4 JUDGE CHARTOFF: So can you pull the  
5 microphone a little closer to you and make sure it's on.

6 MR. ASCHE: Push this button, I guess.  
7 Okay. It's on.

8 JUDGE CHARTOFF: Okay. Can you state your  
9 first and last name for the court reporter?

10 MR. ASCHE: Richard E. Asche, A-s-c-h-e,  
11 spelling the last name.

12 JUDGE CHARTOFF: And what's your position  
13 with the company?

14 MR. ASCHE: I'm the president, CEO of  
15 Bremerton Kitsap Airporter, Inc., d/b/a Sound Connection  
16 and also JBLM -- or Ft. Lewis McChord Airporter.

17 JUDGE CHARTOFF: Okay. I'm going to swear  
18 you in.

19

20 RICHARD ASCHE, witness herein, having been

21 first duly sworn on oath,

22 was examined and testified

23 as follows:

24

25 JUDGE CHARTOFF: Okay. Mr. Fassburg, is he

## EXAMINATION OF ASCHE / CALLAGHAN

1 available for cross?

2 MR. FASSBURG: Yes, Your Honor.

3 JUDGE CHARTOFF: Okay. We'll start with --  
4 we will start with Staff. Mr. Callaghan?

5

6 EXAMINATION

7 BY MR. CALLAGHAN:

8 Q. Good morning, Mr. Asche.

9 **A. Morning.**

10 Q. Mr. Asche, in your application, you submitted a  
11 statement with respect to your application to extend; is  
12 that correct?

13 **A. That's correct.**

14 Q. And in that application, you also submitted a  
15 statement from the hotel's manager; is that correct?

16 **A. That's correct, Holiday Inn Express.**

17 Q. All right. And did you speak with -- who --  
18 what's the name of the general manager at the hotel?

19 **A. The name escapes me right now. It's a lady.**

20 MR. FASSBURG: Mr. Asche, do you have the  
21 exhibits here? You can look at those to refresh your  
22 memory.

23 BY MR. CALLAGHAN:

24 Q. And, Mr. Asche, if you could let me know which  
25 exhibit you're referring to.



## EXAMINATION OF ASCHE / CALLAGHAN

1     **A. I don't have it available to me right now. It's**  
2     **here someplace. Okay. The name -- the name of the**  
3     **individual was Teresa Simplot. She's the general**  
4     **manager of the Holiday Inn Express & Suites and the**  
5     **exhibit number is --**

6     Q. I'm sorry. Mr. Asche, could you remember to  
7     speak into the microphone? Thank you.

8     **A. The exhibit number is BKA-2.**

9     Q. All right. So, Mr. Asche, did you reach out to  
10    Ms. Simplot?

11    **A. Yes, we did.**

12    Q. All right. And when you -- did she ever reach  
13    out to you to see if you would offer service to this  
14    hotel?

15    **A. No, we asked her. We didn't -- she didn't reach**  
16    **out to us. We asked her if she would be all right,**  
17    **because we understood that the Holiday Inn Express was**  
18    **an overflow facility for the two Expresses that --**  
19    **housing at JBLM at Ft. Lewis and McChord as an overflow.**  
20    **So they sent their overflow guests to the Holiday Inn**  
21    **Express, because they're all part of the same chain.**  
22    **It's the Holiday Inn Express at both JBLM facilities.**  
23    **So they're one and the same chain.**

24    Q. And, Mr. Asche, in your application, how much do  
25    you propose to charge individuals for the service from

## EXAMINATION OF ASCHE / CALLAGHAN

1 the hotel to SeaTac Airport?

2 **A. The fare will be \$20. Same as it is at McChord**  
3 **pick-up location.**

4 Q. And how many times per day do you propose that  
5 there's a scheduled pick-up?

6 **A. Right now, we provide nine daily trips to and**  
7 **from JBLM. We propose with this new -- with this new**  
8 **addition, that we'll propose 13 trips a day and they'll**  
9 **be spaced an hour and a half apart.**

10 Q. And what is Bremerton Kitsap's expectation in  
11 terms of the number of passengers or customers that you  
12 expect to get from this stop?

13 **A. We don't have an exact number what we expect to**  
14 **get from this stop, but we do expect that we will**  
15 **increase our passenger counts simply because two**  
16 **reasons; basically, our low, low fares, and secondly,**  
17 **the increased duration of the number of trips we take.**  
18 **So which reduces the -- the interval between trips from**  
19 **two and a half hours to one and a half hours.**

20 Q. And are you proposing to provide a scheduled  
21 service by reservation only?

22 **A. Reservation only to the airport. From the**  
23 **airport, it's first come, first serve as it is in our**  
24 **Kitsap route.**

25 Q. And when you say "first come, first serve," what

## EXAMINATION OF ASCHE / CALLAGHAN

1 do you mean by that?

2 **A. Well, we don't have them yet, but we're going to**  
3 **have kiosks at the airport, and a passenger walks up to**  
4 **the kiosk, he inserts his credit card or his reservation**  
5 **number if he's already made a prepaid reservation and --**  
6 **on going to the airport, and it spits out his name and**  
7 **what trip he's on and he's ready to go. Kicks out his**  
8 **ticket, takes the ticket to present to the driver and**  
9 **he's on his way.**

10 MR. CALLAGHAN: Okay. Thank you. No  
11 further questions, Your Honor.

12 JUDGE CHARTOFF: Thank you.

13 Okay. Mr. Fricke?

14 JAMES FRICKE: And I -- we want to  
15 distinguish by my identifying myself as Jim or James and  
16 John as John so that the record will be clear who's...

17 JUDGE CHARTOFF: Sure.

18 JAMES FRICKE: Okay.

19 MR. FASSBURG: Your Honor, they -- they are  
20 a mutual party. I think it would be correct if only one  
21 of them has an opportunity to cross-examine. Normally,  
22 parties don't have two different attorneys cross-examine  
23 the same witness, and I would think it would be the same  
24 even when they are layperson representatives in a pro se  
25 capacity.

## EXAMINATION OF ASCHE / JAMES FRICKE

1 EXAMINATION

2 BY JAMES FRICKE:

3 Q. Okay. Mr. Asche, did you prepare the exhibits  
4 that have been entered on behalf of Bremerton Kitsap  
5 Airporter?

6 **A. Yes, I did.**

7 (Phone ringing.)

8 THE WITNESS: It's a spam call.

9 **A. Yes, I did.**

10 **BY JAMES FRICKE:**

11 Q. Do you have copies of the exhibits in front of  
12 you?

13 **A. Yes, I do.**

14 Q. Okay. I draw your attention to BK Exhibit No.  
15 1, which is identified as additional supporting  
16 comments. And I note that in the introductory sentence  
17 that you indicate that as one of the supplemental  
18 reasons here that you were operating the JBLM route at a  
19 monetary loss; is that correct?

20 **A. At times. During slow periods, it is at a loss.**  
21 **During peak periods, like holiday season, it's**  
22 **profitable.**

23 Q. Well, on an annual basis, is it operated at a  
24 loss?

25 **A. That's questionable. Sometimes it is and some**

**EXAMINATION OF ASCHE / JAMES FRICKE**

1 years it isn't. It does -- appears to be this year.

2 Q. Okay. So have you, then, prepared the numbers  
3 or do you have the numbers for the ending year of 2018?  
4 Was that a profit or loss?

5 **A. We don't have those figures yet. We don't have**  
6 **the profit statements for that period.**

7 Q. How about the year 2017?

8 **A. It was at a slight gain.**

9 Q. Repeat, please.

10 **A. It was a slight profit.**

11 Q. So your statement here is in slow months,  
12 basically, you might be operating at a loss and other  
13 months you're operating at a profit. But on an annual  
14 basis, you apparently are operating at a profit?

15 MR. CALLAGHAN: Objection, Your Honor. At  
16 this point, I would object based on relevance. As you  
17 stated in the beginning of this hearing, the scope of  
18 today's hearing is narrow. It's based on WAC  
19 480-30-116, Subsection 3, and that is limited to the  
20 question of whether the objecting company holds the same  
21 certificate, whether they are providing the same  
22 service, and whether the objecting company is providing  
23 the same service to the satisfaction of the Commission.  
24 I don't think this line of questioning is relevant.

25 JUDGE CHARTOFF: Yeah, I -- I agree.

## EXAMINATION OF ASCHE / JAMES FRICKE

1 Mr. Fricke, can you please keep --

2 JAMES FRICKE: Your Honor, if I may state  
3 before you rule. My concern, and why I'm raising this  
4 question, is that information including this  
5 supplemental part of the application would suggest that  
6 perhaps the real reason that Bremerton Kitsap is  
7 applying for this location is to stabilize the -- the  
8 financial condition of this route.

9 MR. CALLAGHAN: And I'm sorry, Your Honor,  
10 if I could add. And even if that were true, I don't  
11 believe that that would be relevant to today's hearing.

12 JUDGE CHARTOFF: Yeah, I -- I agree that  
13 this line of questioning is not relevant. The issue is,  
14 you know, whether the objecting company holds a  
15 certificate to provide the same service in the same  
16 territory and whether the objecting company will provide  
17 the same service to the satisfaction of the Commission.  
18 So your questions need to be limited to that.

19 JAMES FRICKE: Okay. So I guess I don't  
20 understand what the purpose of this exhibit is, then. I  
21 guess I'll ask that question.

22 BY MR. FRICKE:

23 Q. What is the purpose of the exhibit, Mr. Asche?

24 MR. FASSBURG: I'm going to object. Calls  
25 for a legal conclusion as to what is the relevance of

1 evidence. It's essentially what he's asking is, what is  
2 the relevance of the evidence that's submitted. If  
3 there is an objection after the fact to its  
4 admissibility, I'd be happy to address that from a legal  
5 perspective. If he's asking something other than  
6 relevance, I think it would be helpful if he restated  
7 the question.

8 JUDGE CHARTOFF: Yeah, sustained.

9 JAMES FRICKE: Your Honor, I -- I would move  
10 that the supportive information that is provided in  
11 Exhibits 2, 3, and 4 be with -- withdrawn or not  
12 accepted on the basis that the manager of the Inn is not  
13 truly an independent public witness.

14 MR. FASSBURG: I'm not sure I understand the  
15 basis of the objection. The manager of the Holiday Inn  
16 Express, whose exhibit has already been admitted, is  
17 providing testimony relevant to the satisfaction of the  
18 Commission question that may or may not be addressed  
19 here with respect to the service being provided by  
20 Capital Aeroporter.

21 JUDGE CHARTOFF: Yeah, I -- I agree that it  
22 is relevant to that.

23 Mr. Fricke, perhaps some of the points you  
24 want to make will be better made in direct testimony or  
25 in your oral statement that you give when you put your

1 side of the -- your case on the stand. Excuse me, when  
2 you present your case.

3 JAMES FRICKE: Okay.

4 JUDGE CHARTOFF: Those exhibits have been  
5 admitted. You will get the opportunity when you present  
6 your case to, you know, explain the weight they should  
7 be given or to state why, you know -- why, you don't  
8 think they're relevant.

9 JAMES FRICKE: Okay. Your Honor, then I  
10 would have no further questions at this time, but would  
11 reserve the right to recall this witness for any  
12 clarification in -- and further in this -- later in this  
13 hearing.

14 JUDGE CHARTOFF: Thank you.

15 MR. FASSBURG: And just for the record, Your  
16 Honor, we would object to witnesses being recalled out  
17 of sequence.

18 JUDGE CHARTOFF: Maybe I didn't understand  
19 what you just said. Can you repeat that?

20 JAMES FRICKE: Me?

21 JUDGE CHARTOFF: Yeah, Mr. Fricke.

22 JAMES FRICKE: That I would reserve the  
23 right to -- to recall the witness in relation to any  
24 questions further in this proceeding.

25 JUDGE CHARTOFF: Yeah, I -- I can't do that.



1 I can't allow that.

2 JAMES FRICKE: Okay. Again, I would go back  
3 and ask for -- object to 2, 3, and 4 on the basis that  
4 we do not have this person here to cross-examine her  
5 support of the application.

6 JUDGE CHARTOFF: Okay. And your objection  
7 is overruled. We routinely accept this type of  
8 testimony in these proceedings.

9 Okay. So, Mr. Fassburg, do you have any  
10 redirect?

11 MR. FASSBURG: No, I don't believe I do.

12 JUDGE CHARTOFF: Okay.

13 MR. FASSBURG: Mr. Asche, I think you're  
14 free to step down from the witness stand.

15 THE WITNESS: Okay.

16 JUDGE CHARTOFF: Okay. And, Mr. Fassburg,  
17 you have no further -- oh, you already told me. You  
18 have no additional witnesses and you want to put on  
19 closing?

20 MR. FASSBURG: That -- that's correct,  
21 assuming that I am correctly understanding, since we do  
22 not have post-hearing briefing, I would be permitted an  
23 opportunity to argue and tie together what the evidence  
24 reflects. And if -- if that is correct, then I don't  
25 intend to use any more time on our direct case.

1 JUDGE CHARTOFF: Okay. Thank you.  
2 Okay. So -- so, Mr. John Fricke and  
3 Mr. James Fricke, it's your turn to present your case.  
4 Do you both intend to make statements today?

5 JAMES FRICKE: Yes, Your Honor.

6 JOHN FRICKE: Yes, Your Honor.

7 JUDGE CHARTOFF: Okay. So I will swear you  
8 both in.

9 (John Fricke and James Fricke sworn.)

10 JUDGE CHARTOFF: So who will be speaking  
11 first today?

12 JAMES FRICKE: Your Honor, I have written  
13 down essentially my testimony. It was not offered  
14 earlier as an exhibit. To facilitate the manner, I  
15 could offer that as an exhibit if it would be  
16 acceptable.

17 MR. FASSBURG: I think we would object, only  
18 in the sense that we didn't have an opportunity to  
19 review in advance and prepare. If he wants to provide  
20 oral testimony in form of reading his statement, I  
21 wouldn't object to that.

22 JAMES FRICKE: Okay. I will do that, then.  
23 Pardon, but I have a vision problem and -- if you  
24 haven't already figured that out, so I will try to --  
25 try to do this.

1 I, James N. Fricke, president and CEO of --  
2 am president and CEO of Pacific Northwest Transportation  
3 Services, Inc., d/b/a Cap Aeroporter and would wish to  
4 submit the following in opposition to the extension of  
5 the application in this proceeding.

6 Pacific Northwest Transportation Services,  
7 Inc., holds auto transportation authority under  
8 certificate C-862, which includes in part Holiday Inn  
9 Express & Suites Tacoma South - Lakewood, address 11751  
10 Pacific Avenue Southwest, Lakewood, Washington 98499,  
11 which is applied for. Capital Aeroporter has provided  
12 scheduled aeroporter service for points within Pierce  
13 County, et al., since 1973. Scheduled service has been  
14 provided from the Holiday Inn Express & Suites at the  
15 above named add- -- or before-mentioned address and its  
16 predecessor on the same site since the inn or hotel was  
17 built.

18 The number of scheduled runs has been  
19 increased over the years from eight to 23 to help  
20 passengers better match their flights depart --  
21 departing from as early as 5:00 a.m. in the morning,  
22 which is earlier than the schedule that is proposed by  
23 the applicant.

24 The frequency of departures varies from as  
25 short as 40-minute intervals. These intervals and

1 departures are adjusted from time to time based upon  
2 semiannual reviews of our passengers' waited flight  
3 times. To our knowledge, this is done by no other  
4 carrier out of SeaTac Airport to facilitate and update  
5 connection times to make them smoother for our  
6 customers.

7 Airport shuttle services -- service between  
8 SeaTac Airport and -- and a city, for example, Lakewood  
9 or Tacoma, by very -- can be accessed by customers by  
10 the very commonly used method of Google Search, which  
11 will -- which refer inquirers to Capital Aeroporter's  
12 website by link. And on that website, they may make  
13 reservations directly or they can call us by phone to  
14 make reservations.

15 We offer link portals to hotels or inns for  
16 their websites to facilitate their guests' airport  
17 schedule needs and reservations. Reservations are  
18 required to assure seat abil- -- abili- -- availability  
19 to and from SeaTac Airport. On -- on-site air --  
20 airport coordinator staff, this is at the airport, now  
21 monitor flights, flight arrivals to accommodate  
22 passengers who we therefore discern are going to be  
23 arriving early or late in relation to the scheduled  
24 departure time that they originally been placed on and  
25 to accommodate potential customers who need

1 transportation that walk up to our counter on a space  
2 available basis without a reservation.

3 Passengers may make reservations, as I noted  
4 earlier, by website or by telephone. We -- we affirm --  
5 confirm reservations with passengers for their  
6 reservations by email, by text, and by telephone. And,  
7 in fact, we actually reconfirm them either the day  
8 before or the day of travel depending on the time of the  
9 day.

10 We make effort -- every effort to  
11 accommodate passengers even on a short notice basis. An  
12 example, if we had a trip going up the freeway and even  
13 if we were called or communicated with five minutes  
14 before in this particular location, since it's a quick  
15 on and off and we have a seat available, we would  
16 accommodate the -- the customer at that point in time.

17 Passengers after their ride are texted by a  
18 process that's referred to as Rate My Ride. This is to  
19 communicate with customers on how we can make  
20 improvements in -- in our services to the traveling  
21 public. Capital Aeroporter is unaware of any service  
22 issues or service failures not caused by extraordinary  
23 events such as ice and snow that dumped on us in early  
24 February in relation to our scheduled service at the  
25 Holiday Inn Express & Suites Tacoma South - Lakewood.

1           This testimony is intended to show that --  
2           that we are responding to customers' needs and that we  
3           have increased almost triple -- we essentially tripled  
4           the number of trips over the years to offer more choices  
5           of people that better fit their needs. And we believe  
6           that this addresses many of the questions related to the  
7           fact that we are providing to the -- should be providing  
8           to the satisfaction not only of the customers but of the  
9           Commission in our scheduled service option.

10           JUDGE CHARTOFF: Thank you.

11           Okay. Before we move on to cross, I did  
12           want to talk about the exhibits. So -- okay. So you  
13           have offered 27 exhibits.

14           Are there objections to these exhibits?

15           MR. FASSBURG: Yes, Your Honor. I'll repeat  
16           my objection of earlier in the sense that they don't  
17           have labels. It's difficult to identify by exhibit  
18           numbers which we have objections to. But we have  
19           objections to a number of exhibits due to their  
20           relevance to the three factors to be considered by the  
21           Commission, which are whether they have a certificate to  
22           provide the same service, whether they are providing the  
23           same service, and whether they're providing that to the  
24           satisfaction of the Commission. And I take it back,  
25           they are numbered, I was just looking in the wrong part

1 of the page. We have objections specifically to CA-18  
2 through 27. We do not object to Exhibits CA-1 through  
3 17.

4 JUDGE CHARTOFF: So, Mr. Fricke, I -- when I  
5 reviewed these -- these exhibits earlier, I did come to  
6 the same conclusion that CA-18 through 27 did not seem  
7 relevant to the limited issue that we're dealing with  
8 here.

9 JAMES FRICKE: I understand, so we'll  
10 withdraw those.

11 JUDGE CHARTOFF: Okay. So --

12 JAMES FRICKE: 18 on.

13 JUDGE CHARTOFF: Okay. So we are admitting  
14 Exhibits CA-1 through CA-17.

15 (Exhibits CA-1 through CA-17 admitted.)

16 JAMES FRICKE: And I would still offer this  
17 as a new exhibit.

18 JUDGE CHARTOFF: Oh, you would like to offer  
19 the statement you just made?

20 JAMES FRICKE: I'm sorry. This -- does this  
21 have a number? This -- I don't think this one's  
22 numbered yet.

23 JUDGE CHARTOFF: Oh, you -- you want to  
24 offer the statement you just read into the record?

25 JAMES FRICKE: Yes.

1 JUDGE CHARTOFF: Any objections?

2 MR. FASSBURG: I don't necessarily have an  
3 objection to its admissibility as testimony that he just  
4 offered that should now be part of the record, and I --  
5 I hope to make this clear and not overly difficult.

6 You haven't submitted a paper exhibit for me  
7 to have a record of what your testimony should now be  
8 part of the record. And so I see no need to admit it as  
9 a separate exhibit.

10 JUDGE CHARTOFF: I'm going to go ahead and  
11 admit it. Do you have copies for counsel?

12 JOHN FRICKE: Yes.

13 JUDGE CHARTOFF: And we will number that  
14 CA-28.

15 (Exhibit CA-28 admitted.)

16 MR. FASSBURG: Thank you.

17 JOHN FRICKE: Your Honor, would you like a  
18 copy as well?

19 JUDGE CHARTOFF: Yes. Please approach.  
20 Okay. And for the record, Exhibits CA-18  
21 versus CA-17 are not admitted.

22 Thank you.

23 MR. CALLAGHAN: Thank you.

24 JUDGE CHARTOFF: So --

25 JAMES FRICKE: Your Honor, I would like to



1 shift, then, to John here for the remainder of...

2 JUDGE CHARTOFF: Let me -- let me ask the  
3 parties, would you like to cross Mr. -- Mr. John  
4 Fricke -- John Fricke -- James Fricke first or should --  
5 Mr. John Fricke, would it be easier if he provides his  
6 statement and then you cross them both? Wait, that  
7 won't work. Forget that.

8 MR. FASSBURG: Your Honor, we've -- we've  
9 actually done that here before.

10 JUDGE CHARTOFF: Oh, really?

11 MR. FASSBURG: I've actually offered  
12 witnesses as a panel and then allowed cross-examination  
13 of them as a panel. I actually don't have an objection  
14 to doing that today if that's what they would prefer.

15 MR. CALLAGHAN: No objection, Your Honor. I  
16 think that that makes sense just to understand who has  
17 knowledge of what in the company.

18 JUDGE CHARTOFF: Okay. Go ahead.

19 JOHN FRICKE: Your Honor, I too have  
20 prepared a typed version of my -- what will be my oral  
21 testimony in this proceeding, and also would like to  
22 offer it as an exhibit.

23 MR. FASSBURG: Do you have a copy of it?

24 JOHN FRICKE: I certainly do.

25 JUDGE CHARTOFF: Please provide copies to

1 counsel and myself, and I will want you to read it into  
2 the record since it wasn't provided earlier. But I will  
3 admit it as CA-29.

4 MR. FASSBURG: Before it's admitted, can we  
5 have an opportunity to review? I think the substance of  
6 what the statement contains may have some relevance to  
7 its admissibility.

8 JUDGE CHARTOFF: Right.

9 MR. FASSBURG: When senior Mr. Fricke read  
10 his statement, I intended to make objections if I had  
11 any, and so here if I can at least review it and have an  
12 opportunity to object, that would be preferable.

13 JUDGE CHARTOFF: Okay. That makes sense.  
14 So...

15 Thank you.

16 MR. CALLAGHAN: Thank you.

17 MR. FASSBURG: Do you have an extra copy?

18 JUDGE CHARTOFF: Okay. And for the record,  
19 CA-29 has been offered, there is an objection, and I  
20 will rule on its admissibility after the testimony has  
21 been presented.

22 Whenever you're ready, Mr. Fricke.

23 JOHN FRICKE: Yes, Your Honor. Your Honor,  
24 I, John E. Fricke, Vice President Operations, Chief  
25 Operating Officer of Pacific Northwest Transportation

1 Services, Incorporated, d/b/a Capital Aeroporter am  
2 submitting the following in opposition to the extension  
3 application in this proceeding.

4 Capital Aeroporter, referred to as Capital,  
5 has provided and will continue to provide scheduled  
6 service between the Holiday Inn Express & Suites Tacoma  
7 South - Lakewood, located at 11751 Pacific Highway  
8 Southwest, Lakewood, Washington 98499, and the  
9 Seattle-Tacoma International Airport located in the city  
10 of SeaTac.

11 Capital continues to monitor the needs of  
12 the ground transportation marketplace and steady ways to  
13 improve the service provided to the general public and  
14 guests of the Holiday Inn Express in Lakewood. These  
15 improvements include increasing the number of trips,  
16 adding additional vehicles during peak travel times and  
17 high demand, convenient online booking options, email  
18 and text booking confirmations, and most recently, our  
19 newly added interactive service features, Airport  
20 Instructions Guidance, Where's My Van, Driver on  
21 Location, and Rate My Ride, all of which utilize GPS  
22 tracking of all our vehicles.

23 By adding additional convenient features  
24 like these to our service, as well as our innovative  
25 fleet tracking system, we are increasing our efficiency

1 and ensuring safety. The service delivered to our  
2 customers is timely, punctual, frequent, and  
3 expeditious. Our drivers and customer service staff  
4 work hard with courtesy and respect to provide all  
5 customers with exceptional service including driver  
6 luggage handling for every customer.

7 Our scheduled service times are conveniently  
8 available online through our website to all consumers or  
9 as they consider what optional pick-up and drop-off  
10 times work best with their desired pick-up time or  
11 flight itinerary as well as over the phone with our  
12 customer service representatives. We are committed to  
13 maintaining our schedules for the best customer service  
14 possible.

15 Capital operates essentially the same  
16 service as the applicant, Bremerton Kitsap Airporter,  
17 yet to a higher degree of service, specifically 23 trips  
18 to SeaTac compared with applicant's proposed 13 trips.  
19 Scheduled times that allow for actual travel distance of  
20 32 miles by road compared to Applicant's impossible 25  
21 minutes allowed by proposed time schedule.

22 Per WAC 480-30-140, Capital provides  
23 scheduled service between the Holiday Inn Express &  
24 Suites Tacoma South - Lakewood and satisfies the public  
25 convenience and necessity by providing the same service

1 as proposed by the applicant and does so to the  
2 satisfaction of the Commission. We offer numerous  
3 options to the general public. In fact, over the past  
4 six months, we have been exploring new ways to improve  
5 our scheduled service options, including testing market  
6 fare elasticity to attract new customers with lower fare  
7 options at different stops along the I-5 corridor.

8 Specifically in October 2018, we contacted  
9 the Holiday Inn Express Tacoma South - Lakewood to  
10 inquire how we could better serve their guests. I  
11 scheduled an appointment with Amanda Richardson, front  
12 office manager, and Teresa Simplot, general manager, on  
13 October 22nd, 2018, for a 1:00 p.m. meeting.

14 Unfortunately, Ms. Simplot was unable to attend the  
15 scheduled meeting; however, Mr. James Fricke, Jim  
16 Fricke, and I were able to provide Ms. Richardson with  
17 all the details of our scheduled service.

18 I followed up with an email in early  
19 December 2018 with details discussed at the meeting and  
20 details about a portal link setup with a discount  
21 offering for guests of the Holiday Inn Express Lakewood.  
22 We also stopped by the hotel again on December 12, 2018,  
23 at 11:30 a.m. in an attempt to meet with Ms. Simplot.  
24 Again, she was unavailable. I also reached out numerous  
25 times via phone and email to follow up and continue to

1 foster our business relationship.

2           Fortunately, in early January 2019, I was  
3 able to speak directly with Ms. Simplot to confirm she  
4 received the emails and ask how we could better serve  
5 the Holiday Inn Lakewood guests. She told me she  
6 received the emails and that we could drop off some of  
7 our brochures. On January 21, 2019, one of our company  
8 representatives stopped by and briefly spoke with  
9 Ms. Simplot and dropped off brochures.

10           I, again, followed up with another email in  
11 February of 2019. Ms. Simplot only reached out once via  
12 phone on Monday, March 11, 2019, at 9:30 a.m. During  
13 that conversation, she again acknowledged receiving the  
14 emails.

15           JUDGE CHARTOFF: Okay. Thank you.

16           Are there any objections to the admission of  
17 CA-29?

18           MR. FASSBURG: There are, Your Honor. To  
19 articulate this will be a little difficult, but a  
20 section of what Mr. Fricke has just read, beginning on  
21 the second page, the fourth paragraph down, beginning  
22 with, (as read) We offer numerous service options to the  
23 general public, et cetera, what Mr. Fricke has just  
24 described, and which should be stricken from the record,  
25 are attempts to improve service after the application.

1           In fact, although this application was filed  
2 in December, it originated in a September 10, 2018  
3 application for tariff revision by Bremerton Kitsap  
4 Airporter. It was determined that that should have been  
5 filed as an application as opposed to a tariff revision.  
6 And so that docket I believe was closed and a new  
7 application filed.

8           Per its statement or per Mr. Fricke's  
9 statement, these attempts to improve service occurred in  
10 October 2018 after Bremerton Kitsap Airporter attempted  
11 to seek service at that additional stop. Post  
12 application service improvements are inadmissible and  
13 irrelevant to the application of Bremerton Kitsap  
14 Airporter by rule.

15           JOHN FRICKE: Your Honor, if I may?

16           JUDGE CHARTOFF: Yes.

17           JOHN FRICKE: That application was submitted  
18 in December 2018 for the extension of authority.

19           JUDGE CHARTOFF: Okay. I -- I am reading  
20 the rule. Rule 1, 480-30-140 does say that the -- when  
21 looking at whether service is to the satisfaction of the  
22 Commission, you look at the objecting company's  
23 performance prior to the date of application and you  
24 look back generally no more than one year.

25           Is that what you're referring to?

1 MR. FASSBURG: That is the rule I'm  
2 referring to, but what I'm noting is that this was  
3 originally -- this -- it's a new docket number, but this  
4 attempt by Bremerton Kitsap Airporter to expand service  
5 to the Holiday Inn Express in Lakewood was initiated in  
6 September 2018 as a -- what I'll state was erroneously  
7 as a tariff revision when instead it really needed to be  
8 a new application.

9 And so the post-application service  
10 improvement rule should relate back to the original  
11 filing. Here on its face, and according to Mr. Fricke's  
12 reading of his statement, these service improvement  
13 attempts occurred after Bremerton Air -- Bremerton  
14 Kitsap Airporter attempted to expand service to that  
15 location.

16 JOHN FRICKE: Your Honor, again, the  
17 application was submitted in December 2018. Bremerton  
18 Kitsap's attempt to ignore WAC and RCW -- or RCW 81.68  
19 and WAC 480-30 regarding the rules of application for  
20 extension of authority were that was not an application  
21 submitted in September. That was an attempt to add  
22 authority that they did not have. That was -- there was  
23 no application provided until December 2018.

24 JUDGE CHARTOFF: Okay. I -- the -- the  
25 testimony is already -- he read it into the record.



1 MR. FASSBURG: Sure.

2 JUDGE CHARTOFF: So I am going to admit  
3 CA-29.

4 (Exhibit CA-29 admitted.)

5 JUDGE CHARTOFF: So at this time, do you  
6 have anything further or are you available for cross?

7 JOHN FRICKE: Nothing further from our  
8 testimony. I do have one additional exhibit to offer  
9 the proceeding. It is -- and it did not become apparent  
10 that -- that it was necessary until Bremerton Kitsap's  
11 exhibit list and exhibits were contributed on this past  
12 week in reviewing, but the supplemental state -- the  
13 supplemental customer support statement where the -- the  
14 support statement, the supplemental support statement  
15 suddenly included the name Capital Aeroporter in the  
16 statement, which was not previously provided back on the  
17 signed statement of November 2018.

18 I do have an email chain of communication to  
19 the Holiday Inn Express & Suites Lakewood - Tacoma  
20 South, and it provides additional factual information to  
21 support the fact that Capital Aeroporter provides  
22 scheduled service between SeaTac Airport and the Holiday  
23 Express Tacoma South - Lakewood.

24 JUDGE CHARTOFF: Okay. Can you provide  
25 copies to counsel and myself?

1 JOHN FRICKE: Yes, I can.

2 JUDGE CHARTOFF: So, Mr. Fassburg and  
3 Mr. Callaghan, once you've had a chance to review it --

4 MR. FASSBURG: Sure.

5 JUDGE CHARTOFF: -- let me know if you have  
6 any objections.

7 MR. FASSBURG: Your Honor, we do have an  
8 objection, and frankly, reading this over, I wanted to  
9 see if this was something that contained information of  
10 a third party. It appears to be a chain of emails from  
11 Mr. Fricke to Teresa Simplot and Amanda, whose last name  
12 I am not seeing, but apparently someone at the Holiday  
13 Inn Express in Lakewood, and these appear to be emails  
14 strictly from Mr. Fricke to those people.

15 And in which case, they appear to be solely  
16 self-serving attempts from Mr. Fricke to communicate to  
17 the Holiday Inn Express his point of view. I think  
18 there's no value in this exhibit. If Mr. Fricke wants  
19 to testify about the services being offered by Capital  
20 Aeroporter, he would be free to do so relevant to this  
21 proceeding.

22 MR. CALLAGHAN: Your Honor, Commission Staff  
23 would also object. Because the statements in Exhibit 28  
24 and 29 were essentially testimony that were written into  
25 the record, I didn't find it objectionable that those

1 exhibits weren't provided on March 11 as was required by  
2 the prehearing order. However, this exhibit is an email  
3 chain, and it appears that the last email was sent on  
4 February 20th of 2019, and I find that the explanation  
5 that this wasn't provided because its relevance wasn't  
6 apparent to the parties, I don't find that to be  
7 credible.

8 I mean, this is a set of emails between  
9 the -- well, this is to the manager of the hotel that is  
10 the stop in question. I don't believe it's fair to the  
11 parties that this was provided after March 11th. I  
12 think the relevance was clear and so I -- on procedural  
13 grounds, I would ask that this not be admitted.

14 JOHN FRICKE: Your Honor, again, it provides  
15 more facts and details regarding the communication  
16 and -- and building relationships with not only the  
17 Holiday Inn Express, but it -- it specifically is a  
18 continuation of the communication made with and  
19 interaction meeting with the hotel front desk manager,  
20 Amanda Richardson, from back in October. And -- and  
21 pertains to the -- the fact of providing same service as  
22 proposed by the applicant.

23 MR. FASSBURG: Your Honor, his --  
24 Mr. Fricke's statement about this somehow relating back  
25 to October isn't apparent from the face of the exhibit.

1 This email chain, the earliest dated email is  
2 December 11, 2018, which is clearly after the  
3 application date. Notwithstanding Mr. Fricke's argument  
4 about the technical date of application, that was  
5 December 4, 2018.

6 JUDGE CHARTOFF: Okay. I am ready to rule.  
7 I am going to admit this exhibit. I think it's  
8 relevant. I think it has limited probative value, but  
9 I'm not -- I can't say at this time that it's not at all  
10 relevant. So I am going to admit it.

11 (Exhibit CA-30 admitted.)

12 JOHN FRICKE: Your Honor, also added  
13 additional to my testimony, I would like to speak to  
14 Exhibits CA-1 through CA-17.

15 JUDGE CHARTOFF: Okay.

16 JOHN FRICKE: As well as Exhibit BKA-1  
17 through BKA-5.

18 JUDGE CHARTOFF: Okay. Please proceed.

19 JOHN FRICKE: Also providing support  
20 statement from an independent witness of the public, we  
21 have Exhibit No. CA-1 from Ms. Debra Curner who was the  
22 best -- manager at the Best Western Liberty Inn located  
23 in DuPont and very familiar with our operations in  
24 Pierce County inclusive of Lakewood, DuPont, JBLM area.  
25 Do I need to describe the details within the letter

1 or...

2 JUDGE CHARTOFF: No, I -- I have read all  
3 the exhibits.

4 JOHN FRICKE: Okay. Okay. Okay. Okay.  
5 Additional and as well as Ms. Debra Curner is available  
6 via telephone. We can have her call in to the -- the  
7 bridge line to be available to provide additional  
8 testimony and available for cross-examination.

9 Additionally, we have a second supporting  
10 witness again affirming the fact of Capital Aeroporter's  
11 offering and providing the scheduled service from  
12 Exhibit No. CA-2, Shelly Grundon, who is a front desk  
13 guest services at the TownePlace Suites in Lakewood  
14 right next door to the Holiday Inn Express Suites in  
15 Lakewood.

16 JUDGE CHARTOFF: Okay.

17 JOHN FRICKE: Exhibit No. CA-3, the  
18 certificate of authority CA-62, section -- section 2,  
19 part B, providing passenger service between  
20 Seattle-Tacoma International Airport and specifically  
21 Lakewood named in our authority, of which the Holiday  
22 Inn Express Suites Tacoma South - Lakewood, it falls  
23 within the city of Lakewood.

24 Also making note of section 7 of our  
25 authority in certificate CA-62, combined operations

1 under the certificate may be combined in one vehicle for  
2 operational convenience of the carrier in which Capital  
3 Aeroporter combines both door-to-door service and  
4 scheduled service when convenient for the customer and  
5 the operator.

6 JUDGE CHARTOFF: So I have a clarifying  
7 question. So on -- I'm looking at schedule 72, is that  
8 what you were just talking about?

9 JOHN FRICKE: I was referring to certificate  
10 CA-62.

11 JUDGE CHARTOFF: Oh, okay. You're on the  
12 previous.

13 JOHN FRICKE: But yes, now on to C --  
14 Exhibit CA-4, time schedule No. 72.

15 JUDGE CHARTOFF: So I see that the schedule  
16 provides the times that you leave the airport and the  
17 times that you arrive at the airport.

18 JOHN FRICKE: That is correct.

19 JUDGE CHARTOFF: Do you have a schedule that  
20 lists any other stops?

21 JOHN FRICKE: Our -- our schedule of -- of  
22 pick-ups are we operate under scheduled line runs, which  
23 are basically timed out pick-up points along the route.  
24 We operate an irregular route as -- as opposed to the  
25 regular route of the applicant where we -- we operate

1 based upon reservations.

2           So dependent upon the reservations and the  
3 time, which allows operational efficiencies for  
4 customers for the most efficient ride to the airport,  
5 we -- we stand by this arrival time at the airport and  
6 provide the pick-up time to the customer for both  
7 scheduled service and for door-to-door service.

8           So the -- the pick-up times may vary  
9 slightly, but, again, it is -- it is a schedule that is  
10 operated for the efficiency of the customers and all  
11 operated by reservation only to the airport similar to  
12 the applicant.

13           From the airport, we do require reservations  
14 and that is so that we have a good understanding of the  
15 passenger loads that are expected so that during peaks  
16 of -- during times of high demand, such as holiday time,  
17 when a high number of people will be coming into the  
18 airport, we add additional vehicles for convenience of  
19 the customers so we aren't overloading the vehicles and  
20 leaving people behind at the airport for a couple hours.  
21 And that is operated on a scheduled -- scheduled  
22 departure times as well.

23           JUDGE CHARTOFF: Oh --

24           JOHN FRICKE: Did you have a -- did you have  
25 a question for this or should we wait for questions?

1 JUDGE CHARTOFF: Oh, yeah, please move on  
2 and --

3 JOHN FRICKE: Okay. Okay. Exhibit  
4 No. CA-5, Tariff No. 4, the rates that are set and  
5 passenger rules for operation. There you can see  
6 section 4 discount fares that we offer as another added  
7 convenience and to enhance the service to meet the  
8 market demands and needs of potential customers  
9 providing military discounts to those service members,  
10 active service duty members in and around JBLM as well  
11 as student, senior discounts, airline employee  
12 discounts, and numerous other discounts.

13 Additional rules to provide for operational  
14 safety and efficiency. We then have our 25th revised  
15 page 4-A, which displays our schedule of fares. And  
16 this is for -- it's notated with zone letters that are  
17 related to specific cities and areas within our  
18 authorized service area. The double letter zones are  
19 the fares, base fares and max fares, as we operate under  
20 the flexibility fare rule. The double letter zones are  
21 the inns and regular stops fares for our scheduled  
22 service. And the single letter zones are for  
23 door-to-door fares. And also shows different service  
24 options of direct nonstop service that we provide in  
25 zones AC through zone GG and zone J.



1           Next page, 20th revised page 4 is the key  
2 for the zones. The one zone that pertains to this  
3 proceeding is zone DD, where it's notated -- notated  
4 98499 Lakewood. So that would refer to the scheduled  
5 service options in Lakewood 98499.

6           Again, footnoted on 15th revised page 4-G  
7 you will see the inn's regular stops equals motels,  
8 hotels, or other commercial lodging facility or  
9 designated stop, which is designated by Capital  
10 Aeroporter for pick-up for scheduled service, in -- in  
11 contrast to the door-to-door service at home locations  
12 where the stop is designated by the customer.

13           Next we have Exhibit No. CA-6, which  
14 provides a full list of our fleet that we utilize to  
15 provide our services. You will see the majority of them  
16 are 2016 vehicles, so fairly new vehicles to provide the  
17 best service possible for the customers. We operate in  
18 the majority Mercedes Sprinter fleets, with a couple  
19 Mercedes Metris, which are smaller vans, and  
20 additionally, a couple Ford Transit vans, one higher  
21 capacity 14-passenger van as well as a Ford Starcraft  
22 van, which seats up to 28 customers.

23           Next exhibit, No. CA-7, is a screen shot of  
24 a search on Google for a scheduled Lakewood, Washington  
25 airport shuttle. You'll see the first result on there

1 is an ad that we pay for for SeaTac Airport Shuttle.  
2 The second listing, which is the first organic result  
3 when someone from the public searches online, Lakewood  
4 Airport Shuttle, Capital Aeroporter Tacoma, (as read)  
5 Check out our airport shuttle packages from SeaTac to  
6 Lakewood with scheduled service and door-to-door service  
7 near Ft. Lewis-McChord, JBLM.

8 The next result is SeaTac Airport Shuttle  
9 Seattle and Tacoma, Capital Aeroporter, described with  
10 our SeaTac Airport Shuttle door-to-door and scheduled  
11 transportation service offers. Airport shuttles also  
12 serving in Auburn, Federal Way, Kent, Lacey, and  
13 Lakewood.

14 Next exhibit we provided is Exhibit  
15 No. CA-8. This is the web page that is shown from  
16 previous Exhibit No. CA-7. If you click through from  
17 that top organic result from Google, you get our page  
18 for Lakewood airport shuttles. Is it necessary to  
19 describe the details within that or --

20 JUDGE CHARTOFF: No.

21 JOHN FRICKE: -- have you -- you've reviewed  
22 those?

23 JUDGE CHARTOFF: And it is 10:30. I want  
24 to -- we have to take a break at some point, and I want  
25 to get a sense for how much more testimony you're going

1 to give.

2 JOHN FRICKE: I can probably finish this  
3 portion through our -- the exhibits offered by Capital  
4 Aeroporter in the next ten minutes.

5 JUDGE CHARTOFF: Okay.

6 JOHN FRICKE: And then I would prob- -- I  
7 would need until -- we can wait until after the break to  
8 continue with the BKA exhibits. Maybe possibly --

9 JUDGE CHARTOFF: Okay.

10 JOHN FRICKE: -- 20 minutes of testimony  
11 upon the BKA exhibits.

12 JUDGE CHARTOFF: 20 minutes, okay. Well,  
13 keep it moving.

14 JOHN FRICKE: Okay. Let me know when you'd  
15 like me to stop.

16 Okay. So Exhibit No. CA-9, this is a screen  
17 shot of our reservation page online. This in particular  
18 relates to -- in testing our fare elasticity, as  
19 mentioned previously in my testimony, where we have  
20 tested a \$20 discount from the standard fare of what we  
21 charge. Our standard fare is \$43 for one adult, where  
22 this is offering \$23, and then each additional passenger  
23 is \$11. And it displays the share ride scheduled van  
24 option from the Holiday Inn Express & Suites Lakewood -  
25 Tacoma South.

1           The next exhibit, CA-10, displays again the  
2 same option, however, with two passengers. So the --  
3 the price we have tested with only \$34 for two customers  
4 so that breaks down to only \$17 per -- per person for  
5 the shared ride scheduled van option. And this  
6 specifically is for the Holiday Inn Express Lakewood -  
7 Tacoma South.

8           Exhibit No. CA-11 shows our reservation data  
9 for scheduled pick-up dates from December 1, 2016, to  
10 November 30, 2017. And you can see listed about  
11 two-thirds of the way down, Holiday Inn Express  
12 Lakewood. During that 12-month period, we had 20  
13 reservations, ten of them were made online for a total  
14 of 26 customers, which comes out to about 1.2 customers  
15 per month from the Holiday Inn Express Lakewood.

16           Exhibit No. CA-12 shows the scheduled  
17 pick-up dates from December 1, 2017, to  
18 November 30, 2018, pretty much fully within one year of  
19 the application of the applicant. Shows Holiday Inn  
20 Express Lakewood. For some reason, there's one --  
21 separate one up above, but if you add the one with the  
22 ten, there is a total of 11 reservations booked, six  
23 online, and a total of 12 passengers, which actually  
24 shows a decline then of only one customer per month for  
25 that year.

1           Then again, most recently we show the  
2 scheduled pick-up time, Exhibit No. CA-13. Scheduled  
3 pick-up dates February 18, 2019, to March 10, 2019.  
4 This is to display the most recent activity at -- from  
5 the Holiday Inn Express Lakewood where we have over a  
6 three-week period two customers booked -- or two  
7 reservations booked with a total of two customers.

8           Exhibit No. CA-14 shows scheduled pick-up  
9 dates by drop-off location, so this would be from SeaTac  
10 Airport, for example, to Holiday Inn Express Lakewood.  
11 December 1, 2016, to November 30, 2017, here we are  
12 shown 27 booking reservations online, 13 made on the web  
13 for a total of 33 customers. So that shows about two  
14 and a half customers from the airport to the Holiday Inn  
15 Express Lakewood. And the majority of those were  
16 walk-on, added at the airport, as there was no other  
17 available service at the time the customers wanted to go  
18 to the Holiday Inn Express Lakewood or nearby to JBLM.

19           Exhibit No. CA-15, scheduled pick-up dates  
20 December 1, 2017, to November 30th, 2018, again, by  
21 drop-off location. So that would be from SeaTac Airport  
22 to the Holiday Inn Express Lakewood. Shows 18  
23 reservations, eight made online, and the total of 36  
24 passengers. For an average of two and a half -- or  
25 sorry, three customers per month.

1           And then Exhibit No. CA-16, scheduled  
2 pick-up dates by drop-off location from SeaTac Airport,  
3 February 18, 2019, through March 10, 2019, which shows  
4 two reservations booked for a total of two customers, so  
5 that would be about one and a half customers average per  
6 week.

7           JUDGE CHARTOFF: Can I ask a clarifying  
8 question? So on your form, it says "average fare" and  
9 then "average fare PP," is -- what is the difference  
10 between those two?

11           JOHN FRICKE: On which exhibit are you  
12 referring?

13           JUDGE CHARTOFF: I think it's on --

14           JOHN FRICKE: Oh, average fare would be per  
15 reservation, average fare PP would be per person.

16           JUDGE CHARTOFF: Oh, okay. So the total  
17 passengers would be total passengers, average passengers  
18 per trip; is that --

19           JOHN FRICKE: Average -- average fare, so --

20           JUDGE CHARTOFF: Oh, no, I mean, and then  
21 further along --

22           (Multiple speakers.)

23           JOHN FRICKE: That -- that would be average  
24 passengers per reservation to or from that location.

25           JUDGE CHARTOFF: Okay.

1 JOHN FRICKE: And then the total is for the  
2 total fare during that time period, for example, the  
3 entire year for one of the one-year test periods.

4 JUDGE CHARTOFF: Oh, okay.

5 JOHN FRICKE: And then you can see during  
6 the February 18, 2019, to March 10, 2019, for example,  
7 by drop-off location Holiday Inn Express Suites  
8 Lakewood, if you go over and you see total fare 66,  
9 average fare is 33, average fare per person 33, that  
10 would mean one was booked at our standard fare of 43 and  
11 then one was booked at the promotional discounted fare  
12 of 23.

13 JUDGE CHARTOFF: Okay.

14 JOHN FRICKE: Where's the exhibit list?

15 So then the only other exhibit left is  
16 CA-17, but I believe that is also -- that is Bremerton  
17 Kitsap Airporter's time schedule No. 23, which is also  
18 an Exhibit BKA-11. I'll speak to that after the break.

19 JUDGE CHARTOFF: Okay. Would everyone -- is  
20 there anyone who wants to take a break now or -- yes?  
21 Okay. We -- we will be in recess for ten minutes at --  
22 okay. Thank you.

23 (Recess was taken from 10:39 a.m.  
24 until 10:49 a.m.)

25 JUDGE CHARTOFF: We are back on the record.

1 Mr. John Fricke is continuing his testimony.

2           You are still under oath. Please proceed  
3 when you're ready.

4           JOHN FRICKE: Yes, Your Honor. Before I  
5 move on to the Bremerton Kitsap exhibits, I would like  
6 to make note to Exhibit -- Exhibit No. CA-30 admitted  
7 today. So, again, this is communication to the  
8 manager -- management, both managers at the Holiday Inn  
9 Express & Suites Lakewood - Tacoma South reiterating the  
10 contents of our meeting from October 2018. Just  
11 clarifying the number of trips that we offered, 23  
12 scheduled trips to them, in fact, I had listed out every  
13 scheduled pick-up time available.

14           Listed are standard one-way fares of one  
15 passenger, 43; two passengers, \$54; three passengers for  
16 \$65; and four passengers for 76. As well as the  
17 promotional fare of a \$20 discount with one passenger at  
18 \$23, two passengers at \$34, three passengers at \$45, and  
19 four passengers at \$56.

20           This test period went on for a period of 90  
21 days, and I received no -- we received no additional  
22 requests for service to or from the Holiday Inn Express  
23 Lakewood as we had previously had in comparison to the  
24 standard fare \$43 that we had been charging. So it  
25 showed no change in demand for service, which remained



1 at the same level.

2           Okay. Continuing on to Bremerton Kitsap  
3 Exhibit BKA-2. This is a letter provided by Teresa  
4 Simplot, general manager, Holiday Inn Express & Suites  
5 Lakewood. I don't see a date on this letter, so I'm not  
6 sure when it was written. The letter makes no mention  
7 of Capital Aeroporter or our service that we provide  
8 in -- to or from the hotel. And it does note at -- at  
9 this time when this letter was written, (as read)  
10 Transportation that is cost-effective and available has  
11 a two-and-a-half-hour interval between runs, which  
12 simply will not accommodate guests' needs.

13           So the frequency that we have been operating  
14 and were operating at the time of this letter, since it  
15 was apparently not before 2013 when we made our last  
16 schedule change, we operate an average of every 60  
17 minutes to and from the hotel.

18           JUDGE CHARTOFF: Okay.

19           JOHN FRICKE: And then furthermore, it -- it  
20 notates, (as read) I appreciate any company that will go  
21 out there not -- to try to not only expand the service,  
22 but to work on a more efficient and cost-effective means  
23 of transportation. So it speaks directly to the needs  
24 of the guests only. It does not -- it does not provide  
25 any information or support for any non-hotel guest to or

1 from the Holiday Inn Express Lakewood.

2           Exhibit No. BKA-3, again, it addresses the  
3 question of description of transportation service that  
4 is needed, that the hotel services all types of guests  
5 in need of transportation to and from the airport, which  
6 Capital Aeroporter provided and does provide. To have  
7 additional times, the transportation runs back and forth  
8 would be extremely beneficial. Again, our -- our  
9 service is more frequent than that proposed by the  
10 applicant.

11           (As read) Are transportation needs being met  
12 now? No. So the statement says that they are not, the  
13 cost is prohibitive and times of transportation do not  
14 fit the needs of guests. (As read) We need to have  
15 other options that are more convenient; more times, more  
16 runs. Again, Capital Aeroporter has been providing and  
17 will continue to provide more times and more runs than  
18 that offered by the applicant.

19           (As read) If the request is denied, would it  
20 have an effect on the business? Yes. We see some  
21 guests will check out early and move to an airport hotel  
22 the day before they fly out. So this isn't convenient  
23 to get them from our hotel to SeaTac.

24           So, again, we do provide and have provided  
25 service very early morning until late at night. And so

1 this statement is not acknowledging that fact, and, in  
2 fact, supporting the applicant to financially support  
3 the hotel.

4 Exhibit BKA-4, supplemental support  
5 statement provided March 8, 2019. In this statement,  
6 our company, Capital Aeroporter, is now specifically  
7 mentioned, not at the time of application, but three --  
8 more than three months after application for this  
9 service. (As read) Briefly describe the transportation  
10 service you need. Some guests have complained that the  
11 fares charged by Capital Aeroporter for transportation  
12 to SeaTac are too high. Ms. Simplot never reached out  
13 regarding any customers or any complaints about our  
14 fares.

15 JUDGE CHARTOFF: Okay.

16 JOHN FRICKE: Even with the discounted fares  
17 offered before this date of March 8, 2019.

18 (As read) Are transportation needs being met  
19 now? No. The cost of using Capital Aeroporter can be  
20 prohibitive and the times of transportation do not fit  
21 the needs of our guests. If there are lower -- other  
22 lower price options with additional times and more runs,  
23 it would be more convenient.

24 Again, well before March 8, 2019, I had  
25 indicated the services and prices we were offering in

1 that string of emails, Exhibit No. CA-30, with lower  
2 prices and more additional times than that proposed by  
3 the applicant.

4 Next, Exhibit No. BKA-5. This is the  
5 verified statement of the applicant. I won't go through  
6 the beginning details, but down in the third paragraph,  
7 Mr. Asche speaks to all BKA drivers must be pre-screened  
8 and all individual passenger military identifications  
9 are checked upon entry to the base. This results in  
10 delays. This does not -- how do I say this? Again, we  
11 provide the scheduled service available to and from  
12 Holiday Inn Lakewood where this is not an issue. There  
13 is no security issues at that location.

14 Further down, the last paragraph on the page  
15 1 of 2, (as read) The Holiday Inn Express in Lakewood is  
16 a spillover lodging site for overflow guests at both  
17 Evergreen Lodges at JBLM. Again, the Holiday Inn  
18 Express Lakewood is in our Capital Aeroporter  
19 certificated authority and we service that location.

20 Next, I will address BKA -- BKA-10, Tariff  
21 No. 10, which -- in which we, Capital Aeroporter, offers  
22 reservations, again, to and from the airport to allow  
23 convenience and frequency to the traveling public, where  
24 this is not an option from the applicant with this --  
25 with the service proposed and vehicles could become

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1 overloaded or not have rides for customers without  
2 reservations.

3           Next we have BKA-11, time schedule No. 23.  
4 This shows locations not authorized by our -- us for to  
5 provide same service. However, again, the service that  
6 Capital Aeroporter provides, we allow adequate travel  
7 time for traffic issues to make sure that we get our  
8 customers to the airport at scheduled times, which is  
9 not necessarily practical upon this schedule.

10           And then I believe that will be all for my  
11 testimony at this time.

12           JUDGE CHARTOFF: Thank you. Thank you.  
13 We'll move to cross.

14           Mr. Callaghan?

15           MR. CALLAGHAN: Thank you, Your Honor. And,  
16 Your Honor, I only have questions for Mr. John Fricke.

17

## 18           E X A M I N A T I O N

19 BY MR. CALLAGHAN:

20           Q. So, Mr. Fricke, earlier in your testimony, I  
21 think that you stated that the \$23 fare amount was a  
22 promotional figure; is that correct?

23           **A. That's correct.**

24           Q. And for a single scheduled fare, what is the  
25 current amount that Capital charges?

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1     **A. For -- for a standard fare is \$43 one-way.**  
2     **Standard fare -- the discounted fare military, student,**  
3     **airline employee, et cetera, is \$40.**

4     Q. Okay. So that is the amount that you charge for  
5     a single person on a shared reservation from the  
6     Lakewood Holiday Inn hotel to SeaTac Airport; is that  
7     correct?

8     **A. That's -- that's what we charge for a scheduled**  
9     **shared service from the Holiday Inn Express Lakewood,**  
10    **yes.**

11    Q. Okay. And in your testimony, you stated that  
12    you had spoke with the hotel manager, Ms. Simplot, on  
13    Monday, March 11th; is that correct?

14    **A. Yes, that's correct.**

15    Q. And at that time, had you reviewed the  
16    statements that she had signed and which were filed as  
17    exhibits by Bremerton Kitsap in this case?

18    **A. In October?**

19    Q. I'm sorry, March 11 --

20    **A. Oh, oh.**

21    Q. -- 2019?

22    **A. March, I'm sorry. Can you restate the question?**

23    Q. Yes. At the time that you spoke with  
24    Ms. Simplot on the phone on Monday, March 11, 2019, had  
25    you reviewed the exhibits that were the signed

## EXAMINATION OF JOHN FRICKE / CALLAGHAN

1 statements of Ms. Simplot that were the proposed  
2 exhibits from Bremerton Kitsap?

3 **A. There were no exhibits submitted until 4:30 p.m.**  
4 **on Monday, March 11th by Bremerton Kitsap Airporter.**

5 Q. All right. At the time you spoke with  
6 Ms. Simplot, did you ask her about any customer  
7 complaints about Capital's service at the hotel?

8 **A. Yes, I certainly did. I asked Ms. Simplot, have**  
9 **we ever refused service or had any complaints about**  
10 **service to or from your hotel location for your guests,**  
11 **and she replied --**

12 MR. FASSBURG: I'm going to object. He's  
13 attempting to offer a hearsay statement from a person  
14 who is not here to discuss what she said.

15 JOHN FRICKE: Certainly --

16 MR. FASSBURG: Can you wait --

17 JOHN FRICKE: Sorry, sorry.

18 MR. FASSBURG: -- until she rules on my  
19 objection?

20 MR. CALLAGHAN: And, Your Honor, given that  
21 this is a brief adjudicative proceeding, I believe that  
22 hearsay is allowed and that it can simply be offered and  
23 given the appropriate weight given that it normally  
24 would be considered hearsay.

25 JUDGE CHARTOFF: Okay. I will allow it.

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1           You may respond.

2           JOHN FRICKE: Okay.

3           **A. I'm sorry, I forgot where I was at in my**  
4 **statement.**

5 BY MR. CALLAGHAN:

6           Q. So, Mr. Fricke, what was Ms. Simplot's response  
7 to your question about the adequacy of Capital --  
8 Capital's service to the hotel?

9           **A. She said, I have not had any problems with my**  
10 **hotel guests traveling with you. However, she was a bit**  
11 **dismayed about during the snowstorm, where we had to**  
12 **operate particularly along the I-5 corridor in February,**  
13 **that we had dropped off some customers at the hotel**  
14 **location because it was a safe, warm lodging facility**  
15 **that were not guests of the hotel. And she was not**  
16 **pleased. Other than that, she said we provided service**  
17 **just fine, but she was not actively utilizing our**  
18 **services.**

19           Q. Did Ms. Simplot have any complaint regarding the  
20 frequency of scheduled pick-ups from the hotel?

21           **A. No, she did not.**

22           Q. And in your testimony, you stated that Capital  
23 picks up customers from the hotel 23 times a day; is  
24 that correct?

25           **A. That's correct, by reservation only.**



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1 Q. And the 23 trips, are those all at scheduled  
2 times?

3 **A. Yes, and those are the times that are listed in**  
4 **Exhibit CA-30.**

5 Q. All right. And have you reviewed the Bremerton  
6 Kitsap's Exhibit No. 2?

7 **A. Yes, I have, the letter from Ms. Simplot.**

8 Q. And so in Ms. Simplot's statement, did you  
9 review the second paragraph in which she states that the  
10 cost-effective transportation is available in  
11 two-and-a-half-hour intervals?

12 **A. Did I review it?**

13 Q. Yes.

14 **A. Yes, I did.**

15 Q. And if Ms. Simplot is referring to Capital  
16 Aeroporter, is that accurate in terms of the amount of  
17 time in between your scheduled pick-up intervals?

18 **A. No, that is an inaccurate statement. I believe**  
19 **it refers to that of Ft. Lewis McChord Airporter**  
20 **operated by Bremerton Kitsap Airporter to and from JBLM.**

21 Q. And I'm sorry, what -- what leads you to believe  
22 that?

23 **A. In reviewing the Exhibit BKA-11, the time**  
24 **schedule No. 23 as well as checking online, the**  
25 **frequency of service is every two and a half hours of**

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1 Ft. Lewis McChord Airporter.

2 Q. But Bremerton Kitsap doesn't currently serve the  
3 Holiday Inn Express in Lakewood; is that correct?

4 **A. That is correct.**

5 Q. And, Mr. Fricke, did you review Bremerton  
6 Kitsap's Exhibit No. 4?

7 **A. Yes, I reviewed Exhibit No. 4, BKA-4.**

8 Q. And is this a statement from Teresa Simplot?

9 **A. There's no way to verify for sure. However, the**  
10 **signature seems to match that of the statement provided**  
11 **approximately four months prior.**

12 Q. And --

13 **A. Sorry, in Exhibit BKA-3.**

14 Q. And have you reviewed Exhibit 4, have you read  
15 its contents?

16 **A. Yes, I have.**

17 Q. When -- in answer to I believe the second  
18 question, Ms. Simplot states that Capital Aeroporter's  
19 costs can be prohibitive for some of the guests. Have  
20 you reached out to Ms. Simplot to discuss that?

21 **A. I attempted to reach out to Ms. Simplot numerous**  
22 **times via phone, email, and appearing at the hotel twice**  
23 **in which none of those times she was available except**  
24 **for one in early January 2019, I was able to speak with**  
25 **her to confirm receipt of the emails. And then when she**

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1 called on Monday, March 11th at 9:30 a.m., and she did  
2 not speak to our costs being prohibitive or anything  
3 about guests complaining.

4 Q. And you stated earlier that the promotional  
5 price of \$23 for a single person at a scheduled time did  
6 not increase the amount of customers you were receiving;  
7 is that correct?

8 **A. There was no significant change. Well, a slight**  
9 **change prior to the -- the year prior to that, we had an**  
10 **average of one customer per month. In the -- the latest**  
11 **test period there of February, the -- the previous three**  
12 **weeks, February 18 through March 10, I believe as in the**  
13 **exhibit I previously mentioned, there were three**  
14 **customers in two weeks.**

15 **So that was actually -- I'm sorry, two customers**  
16 **in three weeks which would make that approximately one**  
17 **and a half customers per month, which is -- which is not**  
18 **a significant amount of income.**

19 MR. CALLAGHAN: Nothing further, Your Honor.

20 JUDGE CHARTOFF: Thank you.

21 MR. FASSBURG: I think similarly, all of my  
22 questions will be for John Fricke.

23 JUDGE CHARTOFF: Okay.

24 /////

25 /////

## EXAMINATION OF JOHN FRICKE / FASSBURG

1 EXAMINATION

2 BY MR. FASSBURG:

3 Q. Mr. Fricke, who at Pacific Northwest  
4 Transportation is in charge with regulatory compliance?

5 **A. I am in charge of regulatory compliance as well**  
6 **as Chris Dunmore, our safety and compliance director.**

7 Q. Are you familiar with the rules at the UTC that  
8 relate to auto transportation companies?

9 **A. Yes, I am.**

10 Q. Okay. Under the application standard for auto  
11 transportation, at WAC 480-30-140, it provides in  
12 Subsection 2(g), door-to-door service and scheduled  
13 service in the same territory will not be considered the  
14 same service. Are you familiar with that?

15 **A. I am familiar with that, yes.**

16 Q. You provided in your statement submitted today,  
17 which was I believe labeled Exhibit CA-29, Capital --  
18 and this is on the second page, second paragraph, (as  
19 read) Capital operates essentially the same service as  
20 the applicant, Bremerton Kitsap Airporter, yet to a  
21 higher degree of service, and I'm not going to complete  
22 reading that sentence. Do you recall that part of your  
23 statement?

24 **A. Yes, I do.**

25 Q. When the UTC considered changes to the

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1 application standards in 2013, did you take part in that  
2 rulemaking?

3 **A. I attended a couple of the workshops, yes.**

4 Q. Have you read the order adopting rulemaking in  
5 Docket TC-121328 General Order 572, R-572?

6 **A. I have not read it in great detail. I believe**  
7 **James Fricke has.**

8 Q. Do you have a copy of Bremerton Kitsap  
9 Airporter's exhibits in front of you?

10 **A. Specifically BKA-6?**

11 Q. That's correct.

12 **A. Yes, I do.**

13 Q. Will you turn to page 7 of that exhibit?

14 **A. Okay.**

15 Q. Commencing on paragraph 21, the bottom of page 7  
16 states, (as read) Mr. Fricke, Capital Aeroporter, stated  
17 that he supports continued regulation of the industry.

18 Do you know whether that refers to you or your father?

19 **A. That would be James Fricke.**

20 Q. That would be your father?

21 **A. Yes.**

22 Q. Have you read this paragraph before?

23 **A. I think maybe five years ago.**

24 Q. Okay. Well, let's read through it. That  
25 paragraph states, (as read) Mr. Fricke, Capital

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1 Aeroporter, stated he supports continued regulation of  
2 the industry. He identified several concerns about the  
3 cost and complexity of current rate regulation. For  
4 that reason, he supported the proposed fare flexibility  
5 rule, yet raised a concern he had expressed in prior  
6 comments with a 25 percent maximum rate and 5 percent  
7 annual increase might not be sufficient and that limited  
8 exceptions to the rule should be allowed. Mr. Fricke  
9 also repeated concerns he had identified in prior  
10 comments. Next page. One, the Commission should  
11 include in WAC 480-30-001 a policy statement that  
12 balances the interest of new applications --

13 THE COURT REPORTER: Mr. Fassburg, can you  
14 slow down a little bit?

15 MR. FASSBURG: I will.

16 THE COURT REPORTER: Thank you.

17 BY MR. FASSBURG:

18 Q. The Commission should include in WAC 480-30-001  
19 a policy statement that balances the interest of a new  
20 application with the interest of the greater public  
21 siting a company's prior experience when the Commission  
22 granted competing service to Centralia SeaTac Express;

23 Two, the term, quote, same service, end quote,  
24 in WAC 480-30-140(2) should be interpreted as  
25 essentially the same or similar;

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1 Three, the distinction between door-to-door and  
2 scheduled service should refer to routes as door-to-door  
3 can also be scheduled;

4 And four, in the third sentence of WAC  
5 480-30-126(5) regarding financial requirements for  
6 applicants who are not should be removed to require a  
7 full analysis of the financial fitness.

8 Have you read that before, Mr. Fricke?

9 **A. I'm not that familiar with it, but obviously**  
10 **Mr. James Fricke is very familiar with it.**

11 Q. Can you please turn to page 13. In page --  
12 paragraph 38, it states, (as read) The proposed rule  
13 clearly distinguishes between scheduled service along a  
14 route and door-to-door service within a territory allows  
15 companies to choose to offer those two services and  
16 enables the Commission to more properly judge whether a  
17 company is providing the same service the applicant  
18 proposes to provide.

19 Are you familiar with that paragraph?

20 **A. Yes, I am.**

21 Q. And then in footnote 6 on that page, it states,  
22 (as read) While we recognize that door-to-door service  
23 also can be a scheduled service, when we refer to a  
24 scheduled service in this order, we are referring to  
25 service between points designated by the company,

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1 whereas door-to-door service is between a point  
2 designated by the customer and a point designated by the  
3 company.

4 Are you familiar with that footnote?

5 **A. I am familiar, as I stated in my testimony, the**  
6 **distinction between the two.**

7 Q. If you'll turn to the next page, paragraph 40,  
8 it states, (as read) SeaTac Shuttle and Capital  
9 Aeroporter both express concern that the Commission's  
10 interpretation of the statutory phrase, quote, same  
11 service, end quote, is too narrow and suggests that the  
12 Commission modify the term to read, quote, essentially  
13 the same, end quote, or, quote, similar, end quote.

14 As discussed above, the Commission interprets  
15 the statute to reflect clearly the state's interest that  
16 it should draw a bright line between the service  
17 offerings. The proposed rule describes adequately the  
18 factors the Commission will consider in determining on  
19 the facts whether the proposed service is the same as  
20 the service currently provided.

21 As it has in prior cases, the Commission can and  
22 must draw distinctions between what is the, quote, same,  
23 end quote, service in a particular market. For example,  
24 in Subsection 2(e) of the proposed rule, states the  
25 Commission may consider the topography, character, and



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1 condition of the territory.

2 In using these factors, the Commission expects  
3 that whether an alt- -- alternative route has a  
4 convenience benefit to customers and is therefore a,  
5 quote, separate and different service, end quote, may be  
6 very different and different environments.

7 Are you familiar with that paragraph?

8 MR. CALLAGHAN: Objection, Your Honor. Your  
9 Honor, at this point, I -- I'd object based on relevance  
10 and being duplicative. This has already been admitted  
11 into evidence. If Mr. Fassburg wants to present a legal  
12 argument regarding the rules and interpretation of  
13 Commission rules and statute, he may do so at closing  
14 argument.

15 Simply rereading parts of this order into  
16 the record and asking Mr. Fricke if he's familiar with  
17 them when he's already stated that he has not read the  
18 order, I don't believe that this is relevant, and I  
19 believe it's duplicative given that the exhibits have  
20 been admitted.

21 MR. FASSBURG: Your Honor, Mr. Fricke  
22 offered his statement in Exhibit 29 that's been admitted  
23 stating that Capital operates the -- essentially the  
24 same service, and he provides in a later provision that  
25 it provides the same service. These are legal

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1 conclusions. I believe I'm entitled to probe the  
2 foundation of the statements made by Mr. Fricke in his  
3 exhibits.

4 JUDGE CHARTOFF: I will allow it. I'm -- it  
5 may be that he doesn't -- I don't know what -- it's  
6 funny, I don't know how to explain what I'm trying to  
7 say, but please just get to the point.

8 MR. FASSBURG: Sure. It'll take a couple  
9 more questions before I do, Your Honor, if you'll --

10 JOHN FRICKE: I'm sorry --

11 MR. FASSBURG: -- allow me some leeway.

12 JOHN FRICKE: I'm sorry, are you asking me  
13 questions or reading?

14 MR. FASSBURG: At that point -- right now  
15 I'm addressing the judge, but I will -- I will get to  
16 the point, but I have a couple more before I can.

17 BY MR. FASSBURG:

18 Q. And so I think the question was still on the  
19 table. Mr. Fricke, are you familiar with the provision  
20 I just read?

21 **A. I am familiar as that relates to WAC 40 --**  
22 **480-30 in the rules in which we operate and how we**  
23 **operate both scheduled service and door-to-door service**  
24 **sometimes separately, sometimes combined as allowed in**  
25 **our certificate of authority.**

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1 Q. So that was a "yes," you're familiar?

2 **A. Yes.**

3 Q. Are you familiar with the definition of  
4 door-to-door service provided in WAC 480-30-036?

5 **A. Not the specific details. Can you read them?**

6 Q. Yeah, I can read it to you. (As read) An auto  
7 transportation company service provided between a  
8 location identified by the passenger in a point  
9 specifically named by the company in its tariff filed  
10 and time schedule.

11 Are you familiar with the definition of  
12 scheduled service in WAC 480-30-036?

13 **A. Yes, I am. That is when a customer chooses a  
14 pick-up or drop-off point designated by the company.**

15 Q. So more specifically, the rule says an auto  
16 transportation company providing passenger service at  
17 specified arrival and/or -- and/or departure times at  
18 points on a route.

19 Mr. Fricke, we discussed the time schedule of  
20 Bremerton Kitsap Airporter earlier, or rather, you did  
21 during your testimony. I'll refer you back to your  
22 exhibit.

23 **A. Are you referring to the Capital Aeroporter  
24 exhibit or the Bremerton Kitsap exhibit?**

25 Q. Right now we'll refer back to yours, which was

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1 CA-4. You testified I believe that on page 2 was your  
2 scheduled runs; is that right?

3 **A. On page 2 and page 3, yes.**

4 Q. Okay. Is it your testimony that this is the  
5 time schedule of a scheduled service?

6 **A. That is the time schedule of our scheduled  
7 service and it is the time schedule of our door-to-door  
8 service.**

9 Q. So if I understand your answer correctly, this  
10 is a combined schedule for both services?

11 **A. It is a schedule that we abide by with departure  
12 and/or arrival times to provide our scheduled service  
13 and the same schedule, yes, that we abide by to provide  
14 our door-to-door service.**

15 Q. Mr. Fricke, on this time schedule, does it list  
16 times of arrival and/or departure from intermediate  
17 points?

18 **A. It refers to "R" for reservations required and  
19 states transportation from all points to and from SeaTac  
20 will require reservations.**

21 Q. So my question was a little different. Does it  
22 include times of arrival and/or departure from  
23 intermediate points?

24 **A. No, it does not, as those are dependent upon  
25 reservations.**

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1 Q. Does it list the schedule of arrival at and/or  
2 departure from all termini?

3 **A. Yes, it does.**

4 Q. So if someone is traveling to -- or I'm sorry,  
5 from SeaTac Airport, where on here can we determine the  
6 time of arrival at the terminus of that route?

7 **A. That depends on reservations, road conditions,  
8 traffic, just the same as Bremerton Kitsap Airporter and  
9 time schedule No. 23.**

10 Q. So your -- your answer's a little different than  
11 my question. What is the estimated time of arrival at a  
12 terminus provided on this time schedule?

13 **A. There is not an estimated arrival time.**

14 Q. So if a passenger wanted to travel from SeaTac  
15 Airport to a point on a route that you allege Capital  
16 Aeroporter runs, they cannot determine that from this  
17 time schedule?

18 **A. No, they cannot, just the same as Bremerton  
19 Kitsap's proposed time schedule from the airport.**

20 Q. If a person wants to know what the route is so  
21 that they can determine for themselves whether this is a  
22 route they would like to be on, when they book a fare or  
23 book -- book a ride with Capital Aeroporter, can they  
24 determine from your time schedule what that route will  
25 be?

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1     **A. They certainly can. We provide an estimated**  
2 **arrival time when they input flight information or**  
3 **preferred requested pick-up time from the airport.**

4     Q. So I will refer you back to page 13 of General  
5 Order R-572 to ask it slightly differently. I read to  
6 you and you said you were familiar with the language --

7     **A. I'm sorry, which page was that from?**

8     Q. This was page 13, paragraph 36. (As read) While  
9 every route serves a territory in the sense that  
10 consumers who ride along the company's route are drawn  
11 from populations that live within a reasonable distance  
12 of that route. Door-to-door -- I'm sorry. I'm reading  
13 the wrong provision.

14     Okay. Page -- paragraph 38. (As read) The  
15 proposed rule clearly distinguishes between scheduled  
16 service along a route. And door-to-door service within  
17 a territory allows companies to choose to offer the two  
18 services and enables the Commission to more properly  
19 judge whether the Commission is providing the same  
20 services as the applicant proposes to provide.

21     And then -- lost my place. Okay. Let's go with  
22 paragraph 37 on the same page. (As read) SeaTac Shuttle  
23 with concurrence of Wickkiser and Bremerton Kitsap  
24 asserted that proposed rules in 480-30-142(f) eliminate  
25 the distinction between territories and routes.

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1           That subsection states that the Commission may  
2 consider for scheduled service the propout- -- proposed  
3 route's relation to the nearest route served by an  
4 existing certificate holder. The Commission views  
5 routes narrowly for the purpose of determining whether  
6 service is the same. Alternative routes that may run  
7 parallel to an objecting company's route, but which have  
8 a convenience benefit to customers, may be considered a  
9 separate and different service.

10           And I didn't ask you earlier, are you familiar  
11 with that paragraph 37?

12           **A. Yes, I am now familiar with it.**

13           Q. Okay. So going back to your time schedule, if a  
14 customer wants to determine whether the route being  
15 offered is the one that they prefer due to its  
16 convenience, are they able to determine from your time  
17 schedule what route they will go along in terms of the  
18 physical roads traveled?

19           **A. I'm sorry, the -- the route? Are you talking**  
20 **about the route or the time?**

21           Q. The route, the path traveled by the vehicle.

22           **A. They are not able to tell the route, but there**  
23 **is only one road route usable between SeaTac Airport and**  
24 **Holiday Inn Express Lakewood, which is Interstate 5.**

25           Q. Mr. Fricke, my question was different. Can they

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1 determine the route a vehicle will take from your time  
2 schedule?

3 **A. No, because the route can be -- it can be an**  
4 **irregular route.**

5 Q. In fact, because you combine door-to-door and  
6 scheduled service passengers in a vehicle pursuant to  
7 section 7 of your certificate, there are times when a  
8 person who books scheduled service will be taken to  
9 points that were reserved by a door-to-door passenger;  
10 isn't that right?

11 **A. Some -- at some times that is correct and**  
12 **sometimes it is just scheduled service.**

13 Q. So if a person were to book a reservation with  
14 Capital Aeroporter at the Holiday Inn Express in  
15 Lakewood, could they conceivably be taken along the way  
16 to that hotel anyplace within Capital Aeroporter's  
17 certificate territory?

18 **A. They would be picked up at the scheduled time**  
19 **and dropped off at the -- at the scheduled arrival time.**  
20 **And the route, again, is determined by other customers,**  
21 **traffic, and other considerations.**

22 Q. Mr. Fricke, that wasn't my question. I will ask  
23 you slightly differently.

24 Capital Aeroporter provides door-to-door service  
25 in Tacoma; does it not?



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1     **A. Yes, Tacoma is part of our certificated**  
2 **authority.**

3     Q. Capital Aer- -- Capital Aeroporter provides  
4 door-to-door service in Federal Way and Kent and  
5 Tukwila; does it not?

6     **A. Yes, it does.**

7     Q. And if you combine a person who has booked a  
8 scheduled reservation for the Hilton in Lakewood, they  
9 could be taken first to someone's home in Federal Way or  
10 Kent or Tacoma before they would go to the hotel in  
11 Lakewood; is that right?

12     **A. First of all, from your question, I don't**  
13 **believe there is a Hilton in Lakewood, and --**

14     Q. I'm sorry. Let me -- let me rephrase that. The  
15 Holiday Inn Express is what I intended to ask about. If  
16 someone booking a reservation for the Holiday Inn  
17 Express in Lakewood getting on a vehicle in SeaTac could  
18 ver- -- could first be taken to homes in any location  
19 within Federal Way, Kent, or Tacoma before going to the  
20 Holiday Inn Express in Lakewood, correct?

21     **A. We generally separate those stops out by adding**  
22 **additional vehicles to the trip, so it's not likely that**  
23 **a customer to the Holiday Inn Express Lakewood would go**  
24 **to those locations. However, it is, again, allowed**  
25 **under our certificate for combined operations to combine**

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1 those scheduled service and door-to-door service in the  
2 same vehicle.

3 Q. Okay. Now, going back to your time schedule, if  
4 someone is trying to determine the route the vehicle  
5 will take, the answer is they can't because they won't  
6 know in advance what other passengers will be grouped  
7 into their vehicle; is that correct?

8 **A. They know in advance before the -- the shuttle**  
9 **leaves as -- if they inquire. Are you talking about at**  
10 **the time of booking or at the time of service?**

11 Q. If they want to know that before they book a  
12 reservation, is that information available to them?

13 **A. I'm -- I don't think that they would -- no, they**  
14 **wouldn't know the route, but in our experience in 47**  
15 **years as a company, there really aren't -- that question**  
16 **is not asked, like what is -- what is the route we're**  
17 **taking. They are given a scheduled pick-up time and an**  
18 **estimated arrival time, again, dependent upon traffic**  
19 **conditions and other customers.**

20 Q. So I think your answer with a little surplus is  
21 they would not know before they booked the reservation  
22 where else the vehicle might go; is that right?

23 **A. That's probably correct, yes.**

24 Q. I assume since you're one of the two people  
25 responsible for regulatory compliance for Capital

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1 Aeroporter, you're also familiar with the time schedule  
2 rules in WAC 480-30-281; is that correct?

3 **A. Not the details of it.**

4 Q. I will read to you in 480-30-281, Subsection 2,  
5 it provides in Subsection B, (as read) The time schedule  
6 filed by an auto transportation company that provides  
7 scheduled service must contain, but is not limited to;  
8 one, the times of arrival at and/or the departure from  
9 all termini;

10 Two, the times of arrival at and/or departure  
11 from all intermediate points served;

12 Three, the distance between all points shown in  
13 the scheduled;

14 Four, a list of all flight stops at which the  
15 company will provide service.

16 And I will stop there. Are you familiar with  
17 that portion of the rule?

18 **A. I'm sorry, which rule was it again? 480-30...**

19 Q. 480-30-281, Subsection 2.

20 **A. I was not familiar with that before you just  
21 read that to me, no.**

22 Q. Do you agree with me that the time schedule that  
23 has been filed by Capital Aeroporter does not comply  
24 with that provision of the rule?

25 **A. Which section of the rule?**

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1 Q. Why don't I take them one by one. Subsection  
2 2(b)(1) provided that it must include the times of  
3 arrival at and/or the departure from all termini.

4 Does your time schedule include the times of  
5 arrival at and departure from all termini at which you  
6 provide scheduled service?

7 **A. "Termini" is referring to SeaTac Airport?**

8 Q. Either end of a run.

9 **A. So yes, our schedule would show the times of**  
10 **arrival or departure from termini, yes.**

11 Q. Is it your understanding that "termini" is  
12 plural or singular?

13 **A. Oh, we also operate to and from Pier 66, Pier**  
14 **91, so I guess those would be multiple termini.**

15 Q. Would a single run go from SeaTac to Pier -- the  
16 piers?

17 **A. Yes.**

18 Q. Okay. Would that be a separate route from  
19 someone going from SeaTac Airport to --

20 **A. I'm sorry.**

21 Q. -- the Holiday Inn Express in Lakewood?

22 **A. Would that be a separate route? Yes, that would**  
23 **be a separate route.**

24 Q. Okay. So focusing on the route that would go  
25 from the Holiday Inn Express in Lakewood to SeaTac

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1 Airport, are both termini's arrival and departure time  
2 listed in your time schedule?

3 **A. The time of arrival at SeaTac for a pick up from**  
4 **the Holiday Inn Express is listed in our time schedule.**

5 Q. My question is different, and I think -- I think  
6 you're alluding to the answer. The answer is they're  
7 not both in your time schedule; is that right?

8 **A. They're not both listed in our schedule.**

9 Q. Okay.

10 **A. Referred to as "R," by reservation only and**  
11 **depends on the -- the reservations.**

12 Q. Okay.

13 **A. Taken for that particular route.**

14 Q. So for this hypothetical passenger that's going  
15 to be traveling from SeaTac Airport to the Holiday Inn  
16 Express in Lakewood who, as you conceded, could have  
17 stops in Federal Way, Kent, and Tacoma along the way,  
18 which would be intermediate points, does your time  
19 schedule list the times of arrival at and/or departure  
20 from all intermediate points served?

21 **A. As I stated in my previous answer, customers**  
22 **going to Federal Way, Kent -- I'm sorry, what was the**  
23 **other one?**

24 Q. Tacoma.

25 **A. And Tacoma, are a majority of the time split off**

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1 on an additional vehicle because we try to make it as  
2 convenient and -- and quick as -- as it can for the  
3 customer. So I'm sorry, can you restate your question  
4 one more time?

5 Q. So my question reworded is that intermediate  
6 points would include points along the way between the  
7 termini. In a route, which you've again conceded could  
8 include stops in Federal Way, Kent, and Tacoma on the  
9 way to the Holiday Inn Express in Lakewood, does your  
10 time schedule include the times of arrival at or  
11 departure from the intermediate points?

12 **A. I'm sorry, you said from SeaTac Airport?**

13 Q. The answer is "no," correct?

14 **A. Are you answering for me?**

15 Q. Is the answer, is it "yes" --

16 **A. I'm clarifying the question --**

17 Q. Let me ask you --

18 **A. -- was that question from SeaTac Airport or to**  
19 **SeaTac Airport?**

20 Q. Let me --

21 JUDGE CHARTOFF: Okay.

22 **A. I -- I don't --**

23 **JUDGE CHARTOFF: Yeah, let's -- I -- I think**  
24 **your questions are getting duplicative.**

25 MR. FASSBURG: If the witness would answer

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1 my questions. I haven't yet asked you to instruct  
2 the --

3 THE WITNESS: I'm sorry --

4 MR. FASSBURG: -- my questions because I  
5 feel like we can get through this without that, but he  
6 isn't answering my questions. And so there is a  
7 reason --

8 THE WITNESS: Your question is very long and  
9 detailed. What -- was that from SeaTac Airport to the  
10 Holiday Inn Express?

11 MR. FASSBURG: I'm sorry. Is -- is she an  
12 attorney?

13 JUDGE CHARTOFF: Yeah, what -- what is that?

14 THE WITNESS: She -- she said she wants to  
15 take a break, me to take a break --

16 MR. FASSBURG: Let's get --

17 THE WITNESS: -- but I'm fine.

18 MR. FASSBURG: -- through this first.

19 BY MR. FASSBURG:

20 Q. Okay. I'm going to -- I'm going to try to make  
21 this as simple as possible.

22 Do you agree with me that your time schedule  
23 does not list intermediate points because the only point  
24 it lists is SeaTac Airport?

25 **A. It does not list intermediate points from SeaTac**

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1 Airport, similar to that of the applicant, with their  
2 proposed schedule. To the airport, it does not list  
3 intermediate points to the airport, it lists the  
4 scheduled arrival time at SeaTac Airport.

5 Q. Okay. Now, you're familiar with the Bremerton  
6 Kitsap Airporter time schedule because you've filed it  
7 as an exhibit. I'll refer you, though, to BKA-11. On  
8 the second page, the list runs and it shows departure  
9 times. So daily run one, which departs at 2:45 a.m., we  
10 have a departure time, and then we have a departure time  
11 of Lewis Waller Hall at 2:55 a.m., and then at 3:00 a.m.  
12 departure time from Lewis Rainier Lodge. We could go  
13 on, but I won't go through the entire run No. 1. Then  
14 it reflects an arrival time at SeaTac Airport of 4:10  
15 a.m.

16 Would you agree with me that this reflects the  
17 departure times of each point along a route?

18 MR. CALLAGHAN: Objection, relevance. Your  
19 Honor, again, I -- I think that this hearing, as we've  
20 stated before, is focused on the question of whether the  
21 current certificate holder is providing the same service  
22 and whether it is providing the same service to the  
23 satisfaction of the Commission. I don't find the  
24 applicant's current schedule to be relevant to that  
25 question. Thank you.



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1 MR. FASSBURG: So, Your Honor, the witness  
2 claimed that the time schedule provided by Capital  
3 Aeroporter was similar to that provided by Bremerton  
4 Kitsap Airporter, which I believe is factually false.  
5 And I think it is material to the question of whether  
6 Capital Aeroporter is, in fact, providing scheduled  
7 service. And so I'm highlighting the distinction  
8 between what is a genuine scheduled service tariff and  
9 time schedule versus a door-to-door time schedule.

10 JUDGE CHARTOFF: I -- I agree with  
11 Mr. Callaghan. I think you -- you've provided -- you've  
12 entered the, you know, your time schedule into evidence,  
13 and you will speak about it in your closing statement.  
14 I don't think Mr. Fricke's opinion of your time schedule  
15 is really relevant. So --

16 MR. FASSBURG: I'll move on.

17 JUDGE CHARTOFF: Thank you.

18 BY MR. FASSBURG:

19 Q. Mr. Fricke, you stated that Kitsap -- I'm sorry,  
20 Capital Aeroporter's standard fare for scheduled service  
21 from Holiday Inn Express is I believe you said \$43; is  
22 that correct?

23 **A. That's what we've charged since the last fare**  
24 **flexibility increase as of May 1, 2018.**

25 Q. Has Capital Aeroporter since the date in May of

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1 2018 sought to increase its fares pursuant to the fare  
2 flexibility rules again?

3 **A. We have filed for fare flexibility max fare**  
4 **increase as of May 1, 2019.**

5 Q. I'm sorry, you say May 1? Did you mean March 1?

6 **A. Effective May 1 --**

7 Q. Oh, effective?

8 **A. -- of 2018, yes.**

9 Q. Okay. The base fare that Capital Aeroporter  
10 charges on its current tariff for scheduled service to  
11 Lakewood is what amount?

12 **A. I would have to get that in front of me here.**  
13 **One moment. The base fare listed in our tariff under**  
14 **fare flexibility filing for the Holiday Inn Express**  
15 **Lakewood would be \$27; however, with fare flexibility,**  
16 **we have the discretion to charge from one cent up to the**  
17 **maximum fare of \$43.07.**

18 Q. Mr. Fricke, are you familiar with the reduced  
19 rate rule in WAC 480-30-396?

20 **A. No, I am not.**

21 Q. I'll read to you. It says in that rule, (as  
22 read) No auto transportation company will charge,  
23 demand, collect, or receive a greater, lesser, or  
24 different compensation for transportation of persons in  
25 the rates that are contained in that company's effective

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1 tariff filed with the Commission.

2 And then in Subsection 2, (as read) An auto  
3 transportation company wishing to provide service at  
4 free or reduced rates must first publish those free or  
5 reduced rates in a tariff in accordance with RCW  
6 81.28.080.

7 When you provided your promotional rates, did  
8 you first amend your tariff?

9 **A. Our tariff states at the bottom, (as read)**  
10 **Flexible fares means the authority to charge at the**  
11 **company's discretion fares in any amount between one**  
12 **cent and the maximum fares.**

13 **JUDGE CHARTOFF: Mr. Fassburg, what -- how**  
14 **is this relevant to the legal issue?**

15 MR. FASSBURG: Your Honor, if I could  
16 establish rule violation, and maybe I can't, they would  
17 be directly relevant to whether the incumbent is  
18 providing service to the satisfaction of the Commission  
19 pursuant to Commission order.

20 JUDGE CHARTOFF: I'm going to take a look at  
21 the statute that we're applying. I want to ask, so  
22 wouldn't we be looking at the one-year period prior to  
23 the filing of the application?

24 MR. FASSBURG: Sure, that is the relevant  
25 time period, I think we need to establish that. But the

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1 question was relevant in terms of if there's a  
2 Commission rule violation in the period, it would be  
3 relevant.

4 JUDGE CHARTOFF: Are you trying to get at  
5 violations that would occur in that period?

6 MR. FASSBURG: I'm trying to determine if  
7 when in fact occurs.

8 THE WITNESS: Your Honor, I could help clear  
9 this up, if I may?

10 JUDGE CHARTOFF: Okay.

11 THE WITNESS: WAC 480-30-420 fare  
12 flexibility.

13 JUDGE CHARTOFF: Oh, okay. You --

14 THE WITNESS: Section 3, a company may file  
15 a tariff with the Commission to charge flexible fares.  
16 Because the filing authorizes a company to increase or  
17 decrease any fare at any time singly or in any  
18 combination, the tariff must be filed within 30 days of  
19 the Commission under RCW --

20 JUDGE CHARTOFF: Okay. Hold on. I'm going  
21 to put a stop to this. I don't think -- I think we  
22 would be interested in violations that were found by the  
23 Commission during that period, but I'm not going to -- I  
24 think it would be beyond the scope of this proceeding  
25 for me to go through the rule and find new violations

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1 that haven't been cited.

2 MR. FASSBURG: With all due respect, Your  
3 Honor, that was the -- one of the major bases of the  
4 Commission's finding in the final order in the rehearing  
5 of the SpeediShuttle application. The incumbent,  
6 Shuttle Express, in that proceeding, granted there was a  
7 combined proceeding involving a complaint against  
8 Shuttle Express, but in that combined proceeding, that  
9 was one of the major bases of the Commission's findings  
10 that the incumbent was not providing service to the  
11 satisfaction of the Commission.

12 And so I think it's worth exploring here a  
13 little further if the company is admitting to in this  
14 proceeding in an attempt to disprove the validity of a  
15 point being made by the applicant that it violated  
16 Commission rules.

17 JUDGE CHARTOFF: Okay. I'm not aware of --  
18 my understanding in that case is that there was a  
19 history that the -- that the Commission was looking at  
20 the history of action of -- of violations that had  
21 occurred. I'll give you, you know, a couple more  
22 questions to -- to get to your point on this issue.

23 MR. FASSBURG: Okay. So I think  
24 Mr. Fricke's attempt to clarify directed us to the rule  
25 that he believes supports the practice that he has

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1 described here today.

2 BY MR. FASSBURG:

3 Q. Mr. Fricke, can you point to the provision in  
4 WAC 480-30-420 that permits an auto transportation  
5 company operating under flexible fares to charge below  
6 its base fare?

7 **A. Yeah, 480-30-420, Section 7, (as read) Any**  
8 **change in fares charged by a company at or below the**  
9 **maximum fares down to one cent, it's referring later on,**  
10 **is not considered a tariff change and is not subject to**  
11 **tariff filing rules, publication rules, and notice**  
12 **requirements under this chapter.**

13 **Companies may provide notice of changes in fares**  
14 **that the company will charge by posting their actual**  
15 **fares on the website or notices or brochures provided to**  
16 **customers subject to the requirements in Subsections 8**  
17 **and 14. I mean, are we -- are we reading this whole --**

18 Q. I'm asking --

19 **A. -- section or --**

20 Q. -- specifically what you relied upon in  
21 providing your testimony.

22 **A. Section 15, an example of maximum fare -- okay.**  
23 **I'm sorry, that's maximum fare calculation. Well, I**  
24 **guess back up to section 2(d) as I stated before.**  
25 **Flexible fares -- I could start with section A. (As**

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1 read) Base fare means the fares set forth in the  
2 company's tariff except for tariff supplements in effect  
3 on the date that the company files a proposed tariff for  
4 flexible fares as a means to establish maximum fares.

5 B, (as read) Definition of flexible fares means  
6 the authority to charge at the company's discretion  
7 fares in any amount at or below the maximum fares. It  
8 does not specify that you cannot go below the base fare.

9 In fact, this rule provided in Section 6 will  
10 essentially allow you to charge one cent from any  
11 location. Section 6 reads, (as read) If a company seeks  
12 to offer free fares, then the company must file tariff  
13 revisions if not already contained in the tariff in  
14 compliance with WAC 480-30-396 and all other filing  
15 requirements including tariff publication rules in those  
16 requirements.

17 Therefore, this 480-30-420 fare flexibility,  
18 again, establishes flexible fares meaning the authority  
19 to charge at the company's discretion fares in any  
20 amount at or below the maximum fares.

21 MR. CALLAGHAN: So, Your Honor, at this  
22 point, I would object to continuing this line of  
23 proceeding. It took me a while to find the correct  
24 citation, but under WAC 480-30-140, Subsection 3(b), the  
25 question of whether the objecting company is providing

1 service to the satisfaction of the Commission is based  
2 on the company's -- the objecting company's performance  
3 regarding criteria in Subsection A prior to the date the  
4 application for proposed service is filed with the  
5 Commission.

6 Now, Subsection A is what we have been  
7 discussing as the criteria and -- and the question in  
8 this case, but it does not list any violations.  
9 Specifically what it says is that there are questions  
10 about whether the objecting company provides service in  
11 a manner that is convenient, safe, timely, direct,  
12 frequent, expeditious.

13 So any kind of violation of the tariff in  
14 order to be relevant, it would have to speak to those --  
15 those considerations that are outlined in Subsection  
16 3(a). I don't believe that this is covered by  
17 Subsection 3(a)(i) through 4. And so I would object on  
18 relevance.

19 MR. FASSBURG: Again, Your Honor, with all  
20 due respect, I have pulled it up so that we can all be  
21 clear. In Docket TC-143691, Order 20, the Commission  
22 ruled that Shuttle Express was not providing service to  
23 the satisfaction of the Commission as a result of its  
24 rule violations. Those were not the factors that  
25 Mr. Callaghan just cited to specifically. But the



1 Commission, nonetheless, determined that rule violations  
2 are relevant and, in fact, were a significant basis for  
3 the Commission's decision.

4 MR. CALLAGHAN: So, Your Honor, I don't have  
5 that case in front of me, but if the rule violations  
6 were relevant to the question of convenience, safety,  
7 timeliness, were relevant to the questions laid out in  
8 Subsection 3(a), then those violations would be  
9 relevant.

10 The violation or potential violation that  
11 we're talking about here is not necessarily -- it's --  
12 there's no demonstration that they have impacted  
13 customers in terms of safety, convenience, the frequency  
14 of the service offered. And so I don't believe that  
15 it's relevant today unless Bremerton Kitsap can  
16 demonstrate that there has been some harm to consumers  
17 as a result of this potential violation of Commission  
18 rules. Thank you.

19 MR. FASSBURG: So, Your Honor, I'll say in  
20 response to that, this case is really about what the  
21 service actually is and what is attempted or what has  
22 been attempted by Capital Aeroporter after the  
23 application to try to persuade the Commission not to  
24 allow a new application.

25 The rules have been clear for almost time

1 and more in memorial at the UTC that post-application  
2 service improvements are irrelevant and, in fact,  
3 Capital Aeroporter knows that because they appealed all  
4 the way to the Court of Appeals an overlapping  
5 application that was granted. And the Court of Appeals  
6 said in that case, Pacific Transportation Northwest, I  
7 don't have the citation for you presently, the reason  
8 post-application service improvements are not considered  
9 in part of the application process is if every time  
10 someone applied for overlapping authority, the incumbent  
11 could just improve its service and then nobody could  
12 ever be granted a new application that overlapped with  
13 an existing carrier's territory.

14 So the reason these questions are relevant  
15 are, one, to establish that Capital Aeroporter is only  
16 attempting to make efforts to improve service as a  
17 result and in response to the application; and two, they  
18 demonstrate that they aren't providing service to the  
19 satisfaction of the Commission.

20 I think whether or not it's a rule  
21 violation, the issue of the price that was temporarily  
22 offered up by Capital Aeroporter has been offered up as  
23 a reason not to grant the application, and I think it  
24 merits full discussion.

25 JUDGE CHARTOFF: Okay. Hold on. So when

1 were these promotion fares offered?

2 THE WITNESS: This was from December  
3 through -- December, January, February, essentially the  
4 middle of December through the middle of March or March  
5 10th.

6 JUDGE CHARTOFF: Okay. So that is --

7 THE WITNESS: And -- and it was not -- it  
8 was not done as a way to --

9 JUDGE CHARTOFF: That's okay.

10 THE WITNESS: -- persuade the UTC. If I may  
11 respond --

12 JUDGE CHARTOFF: No.

13 THE WITNESS: No?

14 JUDGE CHARTOFF: Okay. Yeah.

15 THE WITNESS: It was --

16 JUDGE CHARTOFF: What happened after the  
17 application was filed is not relevant to this  
18 proceeding. So yeah, I'd like -- I'm going to sustain  
19 the objection. Let's move on.

20 MR. FASSBURG: Sure, we -- we can move on.  
21 That was going to be my next question, and anything else  
22 I have on that, if I need to, I can make an argument. I  
23 just needed to lay some of the foundation here to  
24 respond to what Capital Aeroporter has been arguing.  
25 Just a few more questions, I believe.

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1 BY MR. FASSBURG:

2 Q. Mr. Fricke, when you spoke to Teresa Simplot at  
3 the Holiday Inn Express, she did not dispute providing  
4 statements in support of Bremerton Kitsap Airporter's  
5 application, did she?

6 **A. She did not dispute that fact.**

7 Q. Did Ms. Simplot repudiate to you any of the  
8 statements made in her support statement?

9 **A. No, she did not.**

10 MR. FASSBURG: I think we have no further  
11 questions. Thank you.

12 JUDGE CHARTOFF: Thank you.

13 Do you have anything you want to clarify as  
14 a result of the questioning --

15 JOHN FRICKE: Yes, I -- I -- I would like to  
16 clarify an understanding that the Commission does not  
17 view any changes made to service after the application  
18 is submitted. Capital Aeroporter did not do so in an  
19 attempt to match the service or were -- try to copy the  
20 applicant as suggested by Bremerton Kitsap's counsel.

21 We operated that fare in a way to show the  
22 sustainability of the service of scheduled service from  
23 and to the Holiday Inn Express Lakewood where, in fact,  
24 if we are -- if we -- if we have one to two customers  
25 per month for our company operating from that location

1 with scheduled service, if an additional scheduled  
2 service would be operating from and to that location, we  
3 would have half of a customer per month to one customer  
4 per month between the two services.

5 And the purpose was to illustrate the fact  
6 that it's not the specific fare of \$43 or \$23, it's  
7 the -- the -- the density at that location is not  
8 sustainable for more than one scheduled service.

9 JUDGE CHARTOFF: Okay. Thank you.

10 MR. FASSBURG: May I ask one follow-up  
11 question to that?

12 JUDGE CHARTOFF: I -- no, no, sorry. We're  
13 gonna move on.

14 So it's noon, and are you planning on  
15 calling additional witnesses?

16 JOHN FRICKE: No, Your Honor.

17 JUDGE CHARTOFF: Okay. So we can do --

18 Are you okay to continue?

19 THE COURT REPORTER: Yes.

20 JUDGE CHARTOFF: Is everyone okay to  
21 continue and do closing?

22 MR. FASSBURG: Can we take a two- or  
23 three-minute break first?

24 JUDGE CHARTOFF: Okay. So we can do -- you  
25 want to start up at 12:10?

1 MR. FASSBURG: Sure.

2 JUDGE CHARTOFF: Okay. We're in recess.

3 (Recess was taken from 12:07 p.m.

4 until 12:10 p.m.)

5 JUDGE CHARTOFF: We're back on the record.

6 I just have to do a brief housekeeping matter.

7 Commission rules require us to list the witnesses  
8 responsible for sponsoring the exhibits. So with regard  
9 to Bremerton Kitsap's exhibits, I would list Richard  
10 Asche as the sponsor of those exhibits?

11 MR. FASSBURG: Yes, that's correct.

12 JUDGE CHARTOFF: And then with regard to  
13 Capital Aeroporter's exhibits, can I list John -- or  
14 James -- who -- who would like to sponsor the exhibits?

15 JOHN FRICKE: I will sponsor them, John  
16 Fricke.

17 JUDGE CHARTOFF: Okay. John Fricke will  
18 sponsor the exhibits except for the one exhibit that  
19 James Fricke read into the record. I believe that's  
20 CA-28.

21 Okay. So I'll allow the parties to make a  
22 brief closing statement, starting with Mr. Fassburg.

23 MR. FASSBURG: Thank you, Your Honor. Your  
24 Honor, as I'm sure you're familiar, the -- the statute  
25 that has long been in place in Washington to permit UTC

1 to regulate the entry of auto transportation companies  
2 into the market in Washington provides that if there is  
3 an incumbent providing service in the same territory,  
4 and I'm paraphrasing, then the -- an applicant can only  
5 be granted a certificate if they demonstrate the  
6 incumbent is not providing service to the satisfaction  
7 of the Commission.

8 In 2013, a rulemaking was initiated in some  
9 degree as a result of a 1998 court proceeding in which  
10 Pacific Northwest Transportation, Capital Aeroporter,  
11 lost an overlap case, and the Court of Appeals ruled  
12 that the Commission has broad discretion to determine  
13 when an applicant seeking territory or seeking the route  
14 for auto transportation service in a territory already  
15 served should be authorized.

16 One of the reasons the Court of Appeals  
17 believed the Commission had that broad discretion,  
18 because the Commission, unlike in other transportation  
19 industries it regulates, promotes competition for the  
20 benefit of consumers.

21 In that auto transportation rulemaking  
22 documented by General Order R-572, which has been filed  
23 as an exhibit for your easy reference, the Commission  
24 discussed its policy in creating bright line rules that  
25 would distinguish between different service offerings

1 for determining what is considered the same service.  
2 Because when you apply for auto transportation  
3 authority, it is only considered overlapping if you  
4 provide the same service as that provided by the  
5 incumbent.

6 The Commission has created in rule some  
7 clear distinctions, one of which is in 480-30-140(2)(g)  
8 and it states explicitly, (as read) Door-to-door and  
9 scheduled service in the same territory will not be  
10 considered the same service.

11 And then in (f) -- oh, I'm sorry, let me  
12 back up even further. In 2(a), it states, (as read) The  
13 certificate authority granted to the existing companies  
14 and whether or not they are providing service to the  
15 full extent of that authority is a factor to be  
16 considered.

17 In (d), (as read) The population density is  
18 a factor, but in (e), (as read) If the topography,  
19 character, and condition of the territory in which the  
20 objecting company provides service in which the proposed  
21 service is a factor. And for scheduled service, the  
22 proposed route's relation to the nearest route served by  
23 an existing certificate holder.

24 The Commission views routes narrowly for the  
25 purpose of determining whether the service is the same.



1 Alternative routes that may run parallel to an objecting  
2 company's route, which have a convenience benefit to the  
3 customers, may be considered a separate and different  
4 service. In keeping in mind the policy of the  
5 Commission in promoting competition to enhance the  
6 customers' experience, the efficiency and the economy of  
7 the companies including price.

8         The proposed service from Bremerton Kitsap  
9 Airporter is not, in fact, the same service as that  
10 which is provided in reality by Pacific Northwest  
11 Transportation. That starts with the certificate  
12 itself. In Capital Aeroporter's certificate, their  
13 authority to provide service in Lakewood does not state  
14 it is scheduled service. It states, (as read) Between  
15 Seattle International Airport and the cities of Kent,  
16 Tukwila, Auburn, Algona, Pacific, Sumner, Puyallup,  
17 Parkland, Lakewood and Steilacoom and Pacific Lutheran  
18 University.

19         If you read the definition of door-to-door  
20 service, which I raised earlier, it provides, (as read)  
21 An auto transportation company service provided between  
22 a location identified by the passenger in a point  
23 specifically named by the company in its filed tariff  
24 and time schedule. That point refers to the territory,  
25 the zone, or an area. Not a specific address or

1 location.

2           So on its face, the certificate of Capital  
3 Aeroporter provides service between one point, SeaTac  
4 Airport and an area, city of Lakewood. They have  
5 authority to provide service anywhere in that territory,  
6 but it is not limited to a specific route or specific  
7 points. That is by definition door-to-door service.

8           And, in fact, according to the time schedule  
9 operated by Capital Aeroporter, they provide by  
10 definition door-to-door service. Their time schedule  
11 for what they call scheduled runs, in fact, says on page  
12 2 of 3, this is the schedule for -- I'm sorry, the time  
13 schedule for scheduled door-to-door share ride service.  
14 Nowhere on here does it state this is scheduled service.  
15 And while the word "scheduled" is used just like in the  
16 Commission order, R-572 that we addressed earlier, in  
17 footnote 6 on page 13, it says, (as read) While we  
18 recognize that a door-to-door service also can be a  
19 scheduled service, when we refer to scheduled service in  
20 this order, we are referring to a service between points  
21 designated by the company.

22           The time schedule rules take this one step  
23 further. Provide that if you're going to provide  
24 scheduled service, your time schedule must contain the  
25 times of an arrival at and/or departure from all

1 termini, the times of arrival at and/or departure from  
2 all intermediate served, the distance between all points  
3 shown in the schedule a list of all flight stops at  
4 which the company will provide service and more.

5 The time schedule actually operated by  
6 Capital Aeroporter does not provide the termini. It  
7 only provides one terminus. And then it provides times  
8 for service in all other locations. Those are zones,  
9 not points. Those, therefore, are door-to-door service  
10 and a time schedule for door-to-door service, not a  
11 scheduled service.

12 By contrast, the time schedule for Bremerton  
13 Kitsap Airporter, as was highlighted earlier, includes  
14 the times for arrival at and depart from all termini  
15 including all intermediate points. And it also includes  
16 the distance between those points. This time schedule  
17 is a scheduled service time schedule., and that is the  
18 one that Bremerton Kitsap Airporter seeks to expand upon  
19 by adding a single point. That point would be one  
20 nearest to SeaTac airport.

21 On their proposed route, a customer looking  
22 at their time schedule will know exactly all the stops  
23 they will take, they will know approximately how long it  
24 should take, and the distance between those stops so  
25 they can make a choice. Even if Bremerton Kitsap

1 Airporter were proposing to provide scheduled service on  
2 a route similar to a route of Bremerton -- I'm sorry,  
3 Capital Aeroporter, although we know that route does not  
4 in fact exist for Capital Aeroporter.

5         Again, the Commission has stated that if  
6 there are convenient benefits to an alternative route,  
7 then the Commission can determine that the applicant  
8 does not propose to provide the same service.

9         We heard from Mr. Fricke that a vehicle  
10 departing SeaTac Airport to the Holiday Inn Express in  
11 Lakewood could, in fact, stop at intermediate points  
12 anywhere on their certificate territory that are between  
13 SeaTac and the Holiday Inn Express in Lakewood. And  
14 while I did not review every single one of those points  
15 in their territory by geography, there are more points,  
16 in fact, than just Kent, Federal Way, and Tacoma. But  
17 Kent, Federal Way, and Tacoma are, in fact, all points  
18 someone could stop on that so-called schedule service  
19 route for Capital Aeroporter.

20         The proposed service for Bremerton Kitsap  
21 Airporter would allow that that is the first stop on the  
22 route, the Holiday Inn Express. So for someone who is  
23 departing SeaTac Airport heading to the Holiday Inn  
24 Express, they have essentially what is an express  
25 service. For someone who is heading to SeaTac Airport

1 from the Holiday Inn Express, they have what is in  
2 effect an express service because there is no  
3 door-to-door service with which they will be combined.  
4 There is no possibility that they will be taken on a  
5 zigzag route across South King County on the way from  
6 Pierce County to SeaTac Airport.

7 Now, Capital Aeroporter has attempted to  
8 interject post-application service improvements in this  
9 case. And as I have repeatedly objected, those are not  
10 relevant to this proceeding. I will also point out that  
11 Mr. Fricke's last comment about the purpose of his  
12 experiment with \$23 pricing occurred, as he stated,  
13 starting in December heading through -- I'm not entirely  
14 sure of when that went through, but I believe he said it  
15 was a three-month period. So I think we can assume  
16 basically December to March. And he believes that  
17 somehow establishes there is an insufficient density of  
18 ridership.

19 Had I been allowed to follow up, what I  
20 would have pointed out, and I think is apparent to  
21 anyone who knows this industry, is that the months  
22 during which his so-called experiment occurred were the  
23 slow season. If you want to know truly what density of  
24 ridership there would be, you need to look at a 12-month  
25 period, because auto transportation service has

1 seasonality. Typically, the peak period is when the  
2 cruise ships are running, because that's when people  
3 come to this area for vacation. More or less whether or  
4 not it's for the cruise ships, the seasonality of  
5 transportation services runs high in summer when people  
6 are visiting Washington during our beautiful summer.

7           However, there is, in fact, a significant  
8 price point difference between these two services. That  
9 experiment attempting to show what service density there  
10 would be or what ridership density would there be,  
11 highlighted truly the price differences. Capital  
12 Aeroporter's standard base rate that they charge  
13 customers -- and maybe I shouldn't use the word "base  
14 rate," because that's a specific tariff term, but their  
15 standard rate that they charge people Mr. Fricke said is  
16 \$43 per passenger. Cap Aeroporter therefore is pricing  
17 their service at more than 100 percent higher than what  
18 Bremerton Kitsap Airporter proposes to provide and has  
19 been providing to JBLM.

20           The reason why Capital Aeroporter -- or I'm  
21 sorry, Bremerton Kitsap Airporter, however, is seeking  
22 to expand the service is for the convenience of its JBLM  
23 customers. In fact, it has served JBLM for a  
24 significant period of time, but as Mr. Asche stated in  
25 his support statement, there is a post-911 inconvenience

1 to passengers that are seeking to go to JBLM. Once upon  
2 a time, pre-911, when those passengers traveled to JBLM,  
3 the vehicles could pass through security without  
4 significant stop -- without a significant stop, without  
5 significant security protocols applying, and people  
6 could go to their point of destination without delay.

7           Some passengers would prefer not to go  
8 through that delay and receive service at an adjacent  
9 point. And so the Holiday Inn Express is proposed to be  
10 provided as an adjacent point where there's no need to  
11 go through security, delaying passengers to their  
12 ultimate point of destination.

13           And as Ms. Simplot indicated in her  
14 statement, there are, in fact, passengers who would  
15 prefer a lower price point from the Holiday Inn Express.  
16 And as a result of the pricing, they instead of staying  
17 at the Holiday Inn Express on the final night of their  
18 vacation or their trip to Washington, they relocate to a  
19 hotel closer to the airport so they don't have to pay  
20 that high price. So allowing this additional service  
21 would both benefit those customers and the business  
22 there at the Holiday Inn Express.

23           We believe that this is, in fact, going to  
24 be a growing service. It is not uncommon that people  
25 choose between competing services based on price, and

1 the Commission recognizes that. In fact, in General  
2 Order R-572, the Commission responded to comments made  
3 by Capital Aeroporter that if you were to raise your  
4 price too high, someone might file for overlap and point  
5 out that the higher price was not providing service to  
6 the satisfaction of the Commission. And if you'd like  
7 the citation for that discussion, I can find it for you,  
8 although I don't have it at the moment.

9           So to recap, the certificate held by Capital  
10 Aeroporter does not expressly provide that it is  
11 providing scheduled service. The time schedule of  
12 Capital Aeroporter reflects that it is not truly  
13 providing scheduled service, it is providing a sort of  
14 modified door-to-door service, and I believe the  
15 testimony of Mr. Fricke supports that.

16           There is no route along which vehicles run.  
17 To the contrary, Bremerton Kitsap offers a clear route  
18 with estimated times for all intermediate points. We  
19 believe that's not only a benefit to the customer, but  
20 just simply on its face legally a different service for  
21 which an application should be granted without  
22 objection.

23           Should the Commission decide it needs to  
24 consider additional factors such as whether or not the  
25 incumbent is providing satisfaction -- service to the



1 satisfaction of the Commission, we believe the price is  
2 a major point of issue. For the incumbent to provide  
3 service at a price more than 100 percent of the proposed  
4 price is significant. It doesn't allow a service like  
5 Capital Aeroporter to compete with more direct and  
6 express services.

7           Although we don't have pricing for you here  
8 today, I will tell you that generally speaking, taxis  
9 and Uber and Lyft are more money than an airporter, but  
10 they do not offer service anywhere near the low price  
11 being offered by Bremerton Kitsap Airporter, which  
12 should allow it to be significantly more competitive.

13           We also believe that due to the complaints  
14 made by customers to Teresa Simplot, there is adequate  
15 support for the fact that that price point is  
16 significant to the customers and not just a theoretical  
17 issue.

18           I'll review my notes and make sure I've made  
19 all the comments we intended to make. I think -- I  
20 think that covers the primary legal points. I wanted to  
21 point out that the exhibits that we have submitted speak  
22 for themselves. We believe they more than adequately  
23 support that there is a convenience to customers to  
24 receive this additional service, and that because  
25 customers simply do not always use Capital Aeroporter

1 due to its price, there is going to be sufficient  
2 gravity of ridership in that territory to support the  
3 additional service, notwithstanding the fact that the  
4 fitness to run the new proposed service is not a factor  
5 to be considered here today. Thank you.

6 JUDGE CHARTOFF: Thank you.

7 Mr. Callaghan, do -- does Staff normally  
8 make a closing statement in these?

9 MR. CALLAGHAN: Your Honor, this is actually  
10 my first brief adjudicative proceeding. I was going to  
11 just make a brief comment that unfortunately, because  
12 the assigned Commission Staff member is not with me  
13 today and this is a highly fact-based inquiry, I  
14 couldn't give the Commission Staff's opinion on this  
15 matter based on the fact that a lot of evidence and  
16 testimony has been presented today that simply wasn't  
17 available to the Staff member. Thank you.

18 JUDGE CHARTOFF: Okay.

19 You -- you can proceed when you're ready.

20 JOHN FRICKE: Your Honor, the main purpose  
21 of the proceeding today, again, is to establish the fact  
22 whether or not -- and using all the evidence and facts  
23 that Capital Aeroporter has provided today, in objection  
24 to this application, that Capital Aeroporter certainly  
25 does provide service to the satisfaction to the

1 Commission upon many factors.

2 Capital Aeroporter does hold the authority  
3 to provide the same scheduled service proposed by the  
4 applicant along the route of Interstate 5 between  
5 Holiday Inn Express Lakewood and Seattle-Tacoma  
6 International Airport.

7 Over the years, Capital Aeroporter has made  
8 more than a reasonable effort to expand and improve its  
9 service to the customers, as heard in Mr. Jim Fricke's  
10 testimony, starting back with eight scheduled trips to  
11 the current 23 trips offered by Capital Aeroporter to  
12 and from the airport in which our scheduled service  
13 operates from the Holiday Inn Express Lakewood earlier  
14 in the day than proposed by the applicant and continues  
15 later in the day with more frequency and more  
16 convenience to the traveling public.

17 Capital Aeroporter has shown that we -- we  
18 continue to make efforts to provide convenient and safe  
19 service. We provide timely frequent service in the fact  
20 that we constantly monitor our -- our passenger loads,  
21 add additional vehicles, and provide our customers with  
22 the most efficient route and -- and transportation  
23 possible, while also operating a business that -- that  
24 doesn't lose money as referred to by the owner of  
25 Bremerton Kitsap in his first statement, first exhibit

1 in this case. We are currently operating the JBLM route  
2 at a monetary loss for several reasons.

3           So that's a true indication of the real  
4 purpose of Bremerton Kitsap's application to add this  
5 point. It is not for the public convenience and  
6 necessity, and it has not been proven to provide it --  
7 to provide it for the public convenience and necessity,  
8 and it is not required by the public.

9           Bremerton Kitsap simply wants to add an  
10 additional stop because they're losing money operating a  
11 route that is no longer profitable or sustainable. So  
12 they'd like to just jump on the next spot available and  
13 try and add -- grab a few more customers to create a bit  
14 of financial gain for the company.

15           Capital Aeroporter has continued to meet all  
16 advertised schedules, which is also a consideration in  
17 WAC 480-30-140. It's not just focusing on the time  
18 schedule that's posted with the Utilities and  
19 Transportation Commission. As we all know, no -- nobody  
20 goes to the UTC to check the time schedule operated by a  
21 carrier. People go online, they check Google, they ask  
22 their friends, they get references, personal references  
23 from hotel managers, especially for -- for service. And  
24 Capital Aeroporter provides the scheduled pick-up and  
25 drop-off times for customers to the airport and from the

1 airport.

2           When customers make requests for service  
3 changes, we respond, and they -- when they inform us  
4 about any sort -- type of a service difficulty on our  
5 Rate My Ride app, we instantly know the information and  
6 make -- if -- we respond to it accordingly, either  
7 providing additional service or looking how we can  
8 better serve the general public.

9           Capital Aeroporter has provided scheduled  
10 service the same as that proposed by the applicant and  
11 will continue to provide that service in a manner which  
12 is safe, courteous, and respectful.

13           Capital Aeroporter, again, operates 23 trips  
14 to SeaTac as opposed to Bremerton Kitsap, the  
15 applicant's, 13 trips. In our schedule, we allow for  
16 traffic delays and other situations that happen on a  
17 daily basis on Interstate 5.

18           I want to point out in the application of  
19 Bremerton Kitsap on their schedule, their proposed  
20 schedule. So opening -- opening statements of Bremerton  
21 Kitsap in -- in their supporting comments from the owner  
22 state that, (as read) Well, the Holiday Inn Express  
23 Lakewood operates as an overflow facility for the  
24 Rainier Lodge and the Evergreen Lodge on base. So we  
25 thought we'd -- we'd go there to help, you know, get

1 those -- those people.

2 Well, if you look at the proposed time  
3 schedule No. 24 on the application, you'll notice that  
4 the Rainier Lodge and the Evergreen Lodge are no longer  
5 stops proposed by the applicant. If you also look at  
6 time schedule 23, the current schedule operated by  
7 Bremerton Kitsap, they currently offer pick-ups and  
8 drop-offs at Madigan as well as Waller Hall, the McChord  
9 passenger air terminal. All of those stops are being  
10 eliminated from this proposed schedule. So there's  
11 obviously something else at play here and something that  
12 is for, again, financial gain for the company and the  
13 best interest of the company.

14 Furthermore, on the time schedule proposed,  
15 as very detailed illustrated by -- by counsel of the  
16 applicant, they have a wonderful time schedule that  
17 shows all these times and runs at intermediate stops to  
18 the airport. However, adding the Holiday Inn Express  
19 Lakewood on each run thir- -- 25 minutes before arriving  
20 at SeaTac Airport.

21 Well, the distance between the Holiday Inn  
22 Express Lakewood is 32.2 miles on the road driving to  
23 the airport. I would find that nearly impossible to  
24 legally and safely get to SeaTac Airport when 25 minutes  
25 for a distance of 32.2 miles is about 80 miles per hour.

1           Furthermore, on the time schedule, there are  
2 departure times listed from the airport. So in 25  
3 minutes, the applicant proposes to get to the airport,  
4 drop off everyone upstairs, go back around, pick up and  
5 depart within ten minutes of that time.

6           There -- there were not -- there were some  
7 exhibits that were objected to today, but there have  
8 been some service issues noted in the public about  
9 staying on --

10           MR. FASSBURG: I'm going to object -- I'm  
11 going to object to this. Not only were they already --  
12 well, I objected to them and that objection was  
13 sustained. If we were going there, there's certainly  
14 plenty of potential material establishing the same for  
15 Capital Aeroporter that we didn't attempt to introduce  
16 for the very reason that it's irrelevant to this  
17 proceeding.

18           JUDGE CHARTOFF: Yeah, you -- you can't talk  
19 about exhibits that were not admitted into the record.

20           JOHN FRICKE: Okay. No problem. I'll just  
21 simply refer back again to the -- the application at  
22 this point, then, because this is also a determining  
23 factor in this -- in this proceeding.

24           The letter, initial letter by Ms. Simplot  
25 states that they'd like to have more additional

1 transportation service to stop at the hotel for guests  
2 that would be convenient and efficient. Referring to  
3 apparently an inefficient two-and-a-half-hour interval  
4 between runs for a current operator. That obviously  
5 with Bremerton Kitsap's schedule is the only operator  
6 that operates at a two-and-a-half-hour interval at this  
7 time.

8           The manager also goes on to -- to state that  
9 there -- would be appreciative that any company would go  
10 out to try to expand, work on a more efficient  
11 cost-effective means of transportation.

12           The original support statement filed with  
13 the application made no mention of Capital Aeroporter or  
14 our scheduled service available. It simply refers to  
15 prices compared to taking a taxi, and that to have  
16 additional times would be extremely beneficial. We need  
17 to have other options, more convenient, more times, more  
18 runs and, again, Capital Aeroporter, 23 trips to the  
19 proposed 13 trips is more than that proposed by the  
20 applicant.

21           During the last six months, Capital  
22 Aeroporter has continued to explore different options  
23 how to improve our scheduled service, not only with the  
24 Holiday Inn Express Lakewood, but with the TownePlace  
25 Suites Lakewood, hotels in DuPont and Olympia because we



1 feel it is very important to consider -- to continually  
2 try to expand scheduled service offering to the general  
3 public. However, operating more than one company from  
4 the Holiday Inn Express Lakewood is not economically  
5 feasible or sustainable. There simply is not the  
6 population density available for guests of the Holiday  
7 Inn Express.

8           As stated in -- in -- previously in my  
9 testimony, my -- my conversation with Ms. Simplot, she  
10 was not pleased with having someone from Lakewood area  
11 dropped off at her hotel that was not a guest.

12           As you will see, as the Commission will see  
13 in the support statement from Ms. Simplot and the  
14 supplemental support statement, Applicant's only witness  
15 to this case for support is not really someone  
16 independent from the public. It's someone that they  
17 contacted to try to persuade to help them achieve the  
18 goal of adding a stop outside of JBLM so that they could  
19 make more money. And the witness only requests service  
20 for hotel guests from the Holiday Inn Express or to the  
21 Holiday Inn Express.

22           There is no public support or need or  
23 necessity or requirement stated anywhere in their  
24 application or exhibits from the public that shows the  
25 need for any type of passenger other than a hotel guest

1 to or from the Holiday Inn Express.

2 In September 2018, Bremerton Kitsap  
3 attempted to circumvent UTC rules and laws set forth --

4 MR. FASSBURG: Objection. This is  
5 irrelevant to the application proceeding.

6 JOHN FRICKE: It is relevant. It shows fact  
7 and matter leading up to the application.

8 MR. FASSBURG: This isn't relevant to  
9 whether it's the same service, whether the incumbent is  
10 actually providing the service for which it has  
11 certificate authority, or whether the incumbent provides  
12 service to the satisfaction of the Commission --

13 JOHN FRICKE: I am providing a statement and  
14 foundation to illustrate the comparison of same service  
15 and what is proposed by the applicant for what is  
16 already existing at the location.

17 JUDGE CHARTOFF: I'm going to sustain the  
18 objection.

19 JOHN FRICKE: Capital Aeroporter continues  
20 to operate efficient routes to and from the Holiday Inn  
21 Express Lakewood. We do not operate zigzag all over the  
22 county. We establish the number of customers, we make  
23 adjustments within minutes of the passenger loads with  
24 our airport coordinator and vehicles and drivers that  
25 are on -- that are ready to make schedule adjustments at

1 SeaTac Airport.

2 In fact, when our shuttles are traveling to  
3 the airport, a customer could call from the Holiday Inn  
4 Express Lakewood minutes before needing scheduled  
5 service to the airport, and our next available scheduled  
6 shuttle would be able to pick them up.

7 MR. FASSBURG: Your Honor, I'm going to  
8 object to the extent that Mr. Fricke is now arguing  
9 outside the scope of the record. I don't have an  
10 opportunity to cross-examine him on new facts that he  
11 has been inserting throughout his closing. I've  
12 obviously given him broad leeway without objecting too  
13 much because I think that's appropriate, but I'd ask you  
14 to instruct him to stick to the record as been presented  
15 in his argument.

16 JUDGE CHARTOFF: Right. What -- I --

17 JOHN FRICKE: I already testified to the  
18 fact of -- of the service that we are and will continue  
19 to provide for customers for Holiday Inn.

20 JUDGE CHARTOFF: Okay. I am giving you --

21 JOHN FRICKE: How -- I mean, this is -- this  
22 is a statement to further confirm the facts of -- of my  
23 testimony.

24 MR. FASSBURG: And -- and, Your Honor, he's  
25 elaborating in ways on which I didn't have an

1 opportunity for cross.

2 JUDGE CHARTOFF: I understand. I am giving  
3 him some leeway because he is unrepresented, and I will  
4 not use any facts in -- if there are new facts in his  
5 closing, I will not rely on those if they're not -- they  
6 aren't in evidence.

7 MR. FASSBURG: I appreciate that.

8 JOHN FRICKE: Thank you, Your Honor. You  
9 can refer to the testimony of Mr. Jim Fricke, in fact,  
10 where he says we would respond within five minutes to --  
11 for a request for service from the Holiday Inn Express  
12 Lakewood.

13 I would like to also for the Commission to  
14 take notice of a situation with the application as well  
15 as required for application of a -- of an extension of  
16 authority or new authority. It is necessary to provide  
17 and it is required, in fact, by WAC R -- to provide  
18 ridership and revenue forecast for the first 12 months  
19 of operation and a pro forma balance sheet and income  
20 statement for the first 12 months of operation. All of  
21 those are absent with just a general statement of --  
22 of --

23 JUDGE CHARTOFF: Okay.

24 JOHN FRICKE: -- an owner.

25 JUDGE CHARTOFF: Yeah, we -- I think we

1 talked about the scope of this proceeding, we've talked  
2 about that a lot. It's limited to whether the objecting  
3 company holds a certificate, whether it's the same  
4 service, and whether the service is provided to the  
5 satisfaction of the Commission. The Commission will be  
6 considering those other things you're looking at, but  
7 not in this proceeding. Those other factors that you're  
8 talking about.

9           JOHN FRICKE: Okay. Okay. I understand.  
10 Well, just to finish up, then. As Capital has  
11 illustrated and presented evidence throughout the  
12 proceeding, both from testimony and exhibits, we provide  
13 and continue to provide scheduled service to the  
14 satisfaction of the Commission. Applicant's counsel  
15 clearly showed differences in time schedules; however,  
16 our time schedule that we operate our scheduled service  
17 on was approved by the UTC on January 31, 2013, and we  
18 received no counsel or recommendations to make any  
19 changes to such schedule.

20           We are very -- very careful in making sure  
21 we abide by our scheduled times, because that is one of  
22 the very important factors of scheduled service. We --  
23 we pick up customers when we say we're picking them up,  
24 we arrive, plan to arrive, on time unless any unforeseen  
25 circumstances with traffic or weather that are out of

1 our control. We operate all available trips out of the  
2 airport and, in fact, provide service to anyone who's --  
3 who's not able to get on any service that doesn't take  
4 reservations. We will do our best to accommodate them  
5 to provide the best scheduled service to and from the  
6 Holiday Inn Express.

7 And in -- in my final comment, again,  
8 referring back to the witness, Ms. Teresa Simplot, the  
9 supplemental statement provided on -- on March 8th  
10 obviously was changed from the initial on -- on November  
11 15th. And I made every attempt at providing better  
12 service from before the -- the statement that was made  
13 that there were any complaints about fares or -- or  
14 Capital Aeroporter. We never -- in my two  
15 communications with Ms. Simplot, I specifically asked  
16 her if there were any issues or difficulties or -- or  
17 complaints and nothing was provided to me at that time.

18 Thank you.

19 JUDGE CHARTOFF: Thank you.

20 Okay. Is there anything further?

21 MR. CALLAGHAN: Your Honor, I would like to  
22 make a brief final note.

23 JUDGE CHARTOFF: Okay.

24 MR. CALLAGHAN: If I may.

25 JUDGE CHARTOFF: Mm-hmm.

1 MR. CALLAGHAN: Thank you.

2 I would just like to note on the record that  
3 based on the figures provided by Capital in Exhibits 11  
4 through 16, it's entirely possible that this proceeding  
5 has cost the parties the equivalent of the annual  
6 revenue generated by this stop. And so Commission  
7 Staff, as always, strongly encourages parties to try to  
8 settle these matters before a hearing. It's not always  
9 possible, but -- and I -- I know that both parties  
10 understand this, but I think it bears repeating, that  
11 taking matters like this to a hearing, while it's always  
12 the party's right to do so, it seems like this --  
13 regardless of the outcome today is probably is  
14 suboptimal outcome for everyone involved. Thank you.

15 JUDGE CHARTOFF: Thank you. Okay.

16 MR. FASSBURG: I would -- if you -- if you  
17 would permit a brief response for the comments made by  
18 Mr. Fricke specifically.

19 JUDGE CHARTOFF: Okay. Can --

20 MR. FASSBURG: It'll be very brief, Your  
21 Honor.

22 JUDGE CHARTOFF: Okay.

23 MR. FASSBURG: Sure. So one of the things  
24 that I think is worth noting and articulating is that  
25 Mr. Fricke states they provide scheduled service because

1 of the fact that they call it scheduled service. And I  
2 think I have been clear in pointing out that the law  
3 describes scheduled service and door-to-door  
4 differently.

5 But one of the things I think just really  
6 needs to be made as clear as possible is that it's not  
7 just enough that you have authority to provide a  
8 service. You have to actually provide that service.  
9 What Mr. Fricke has described isn't a scheduled service.  
10 It's a service that you can schedule. You can schedule  
11 door-to-door service by making a reservation to be  
12 picked up at a particular location or be dropped off at  
13 a particular location. That's the same as the so-called  
14 scheduled service they have provided.

15 And so despite the label being applied by  
16 the protestant, the -- the reality is what matters here.  
17 Capital Aeroporter doesn't provide scheduled service  
18 wherein there is a schedule of stops and times, period,  
19 as a matter of fact, as they have admitted repeatedly.  
20 And so when the Commission decides whether to grant an  
21 application if the incumbent isn't actually providing  
22 the service, even if they have authority, the incumbent  
23 doesn't, in fact, by rule have a right to protest.

24 They have protested and we've had this  
25 proceeding here today, but if you re-review the



1 standards in WAC 480-30-116, you'll find that unless  
2 they are providing the service, they can't object. I  
3 think it can't be more clear that the Commission  
4 intended to allow a new application under the  
5 circumstances here. Thank you.

6 JUDGE CHARTOFF: Thank you.

7 JOHN FRICKE: Your Honor, may I just make  
8 one brief two-sentence response?

9 JUDGE CHARTOFF: Okay. Two sentences.

10 JOHN FRICKE: Okay.

11 JUDGE CHARTOFF: But it has to be related to  
12 what he just said.

13 JOHN FRICKE: Yes, definitely. The  
14 applicant is attempting to cloud or change the fact that  
15 we provide scheduled service, and even according to WAC  
16 480-30-036, the specific definitions in which auto  
17 transportation companies operate by a specific  
18 definition of scheduled service means an auto  
19 transportation company providing passenger service at  
20 specified arrival and/or departure times at points on a  
21 route. We have specified departure times, we have  
22 specified arrival times. Thank you.

23 JUDGE CHARTOFF: Okay. Thank you.

24 So before we adjourn, I do find good cause  
25 to extend the deadline. I think I may need to consult

1 the transcript. So I will issue a decision within ten  
2 days of receiving the transcript, which should probably  
3 be about 20 days from now. Anything else?

4 MR. FASSBURG: That's it from us. Thank  
5 you.

6 MR. CALLAGHAN: No, Your Honor.

7 JOHN FRICKE: Thank you, Your Honor.

8 JUDGE CHARTOFF: Okay. We are adjourned.  
9 Thank you.

10 (Adjourned at 12:55 p.m.)

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CERTIFICATE

STATE OF WASHINGTON

COUNTY OF THURSTON

I, Tayler Garlinghouse, 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.

\_\_\_\_\_  
Tayler Garlinghouse, CCR 3358