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January 6, 1992

Mr. Paul Curl
Acting Secretary
Washington Utilities and
Transportation Commission
Chandler Plaza Building
1300 S. Evergreen Park Drive S.W.
Mail Stop FY-11
Olympia, Washington 98504

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RECORDED

Subject: Evergreen d/b/a Grayline v. San Juan Airlines
d/b/a ShuttleExpress
Docket No. TC-900407

Application of San Juan Airlines d/b/a
ShuttleExpress
Docket No. D-75275

Dear Mr. Curl:

Enclosed for filing in Docket No. TC-900407 are the original and three copies of Grayline's petition for rehearing and in Docket No. D-75275 are the original and three copies of Grayline's motion for continuance of hearing and stay of proceeding. Also enclosed with each pleading are the required certificates of service.

Very truly yours,


Clyde H. MacIver

cc w/encs: Judge Elmer Canfield
Mr. Robert Cedarbaum

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BEFORE THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

EVERGREEN TRAILS, INC.,)	
a Washington corporation, dba)	
Grayline of Seattle,)	DOCKET NO. TC-900407
)	
Complainant,)	PETITION OF GRAYLINE
)	FOR REHEARING
vs.)	
)	
SAN JUAN AIRLINES, INC., a)	
Washington corporation, dba)	
ShuttleExpress,)	
)	
Respondent.)	

INTRODUCTION

Complainant Evergreen Trails, Inc., dba Grayline of Seattle ("Grayline") petitions for a rehearing in this matter. The basis for this petition is that ShuttleExpress is currently willfully violating the restrictions in its airporter authority in defiance of the Commission's Order M.V.C. No. 1893 in this proceeding. Instead of complying with the restrictions in its airporter authority and the Commission's order herein, ShuttleExpress, in a separate extension proceeding, seeks removal of the restrictions it has never complied with. (See Application D-75275). Concurrently with this petition, Grayline has filed with the Commission a motion to stay

1 proceedings in the extension proceeding pending Commission
2 action herein.

3 FACTS

4 I. ShuttleExpress's History of Illegal Operations.

5 A. ShuttleExpress was granted operating authority in 1989
6 with warnings from the Commission.

7 After approximately two years of operating without
8 authority, respondent San Juan Airlines, Inc., dba
9 ShuttleExpress ("ShuttleExpress") received airporter authority
10 from the Washington Utilities and Transportation Commission
11 ("Commission") by order dated April 21, 1989. The Commission,
12 in Order M.V.C. No. 1809, noted that while ShuttleExpress would
13 be serving, in part, the same territory as Grayline, the
14 "on-call" restriction in ShuttleExpress's authority would
15 distinguish ShuttleExpress's service from that provided by
16 Grayline and provide Grayline with a measure of protection from
17 harmful diversion of traffic. ShuttleExpress itself had
18 proposed the "on-call" restriction in its operations,
19 contending that this restriction distinguished its service from
20 the service of other airporters operating within the same
21 territory ShuttleExpress sought to serve.

22 The Commission, in its order granting ShuttleExpress
23 its initial authority, specifically warned ShuttleExpress of
24 its concern about ShuttleExpress's history of violations of the
25 laws, rules, and regulations applicable to airporters and
26 cautioned against future violations:

1 The applicant will be required to conform to the
2 requirements of all applicable statutes and
3 regulations in its operations. It will be expected to
4 be candid and forthcoming in its dealings with the
5 Commission. All public complaints about the
6 applicant's operation will be given due consideration.

7 Order M.V.C. No. 1809 at 22 (emphasis added).

8 Grayline, concerned about duplicating service to the
9 12 downtown Seattle hotels already served by Grayline, filed a
10 petition seeking reconsideration of Order M.V.C. No. 1809 to
11 the extent that it authorized duplicating airporter services to
12 the hotel properties. The Commission denied Grayline's
13 petition based on the belief that the "on-call" restriction in
14 ShuttleExpress's certificate would protect Grayline from
15 unwarranted diversion of traffic:

16 . . . the authority granted in the final order limits
17 Shuttle Express to on-call service only; this
18 limitation should offer some protection to Grayline
19 from the complained of practice.

20 Order M.V.C. No. 1834 at 3 (August 30, 1989) (emphasis the
21 Commission's).

22 B. ShuttleExpress continued to operate illegally and
23 attempted to circumvent the on-call restriction.

24 Despite the Commission's warnings, ShuttleExpress
25 continued to engage in its willful violations of the on-call
26 restriction. By letter dated November 15, 1989, the Commission
noted ShuttleExpress's illegal operations and again put
ShuttleExpress on notice that the Commission would not tolerate
such operations in the future:

1 The Commission's Order M.V.C. No. 1809 . . . clearly
2 indicated that the on-call restriction allowed Shuttle
3 Express to transport, on an unscheduled basis, only
4 those passengers who have made a telephone request for
5 service prior to boarding a Shuttle Express motor
6 vehicle. Thus, "walk up," "hail the van," or
7 "opportunity fare" service was not included in the
8 authority granted to Shuttle Express.

9 The letter concluded with a statement that the Commission would
10 "not tolerate" illegal operations in the future.

11 In spite of these clear warnings from the Commission,
12 ShuttleExpress continued to ignore the on-call restriction in
13 its certificate. Therefore, on April 25, 1990, Grayline filed
14 a formal complaint against ShuttleExpress. After notice and
15 hearing, the Commission, on November 6, 1990, issued Order
16 M.V.C. No. 1893 finding that ShuttleExpress had engaged in
17 willful violations of its certificate and amending
18 ShuttleExpress's authority to prohibit service to the 12
19 Seattle hotels served by Grayline.

20 Once again, the Commission formally noted its concern
21 with ShuttleExpress's unwillingness to operate within the scope
22 of its authority:

23 Of great concern to this Commission is the
24 ongoing propensity of Shuttle Express to act in
25 accordance with its own definition of regulatory
26 requirements regardless of the clear directives of
27 this Commission and the requirements of laws and
28 regulations. Tortured definitions of "on-call"
29 service which are inconsistent with Commission orders
30 are but an example of this activity. The evidence
31 overwhelmingly indicates an unwillingness or inability
32 of Shuttle Express to comply with even this limited
33 level of restriction on its operating authority. This
34 is not the type of "candid and forthcoming" dealing
35 with this Commission that was contemplated in Order

1 M.V.C. NO. 1809, and it will not be tolerated in the
2 future.

3 Order M.V.C. No. 1893 at 7-8 (emphasis added).

4 II. Changed Circumstances Upon Which Petition for Rehearing is
5 Based.

6 A. ShuttleExpress has applied to remove both the on-call
7 and hotel restrictions in its certificate.

8 Less than one year after the Commission entered its
9 order in the complaint case reaffirming the on-call restriction
10 and adding the restriction against serving the Seattle hotels
11 served by Grayline, ShuttleExpress has filed an application to
12 extend its authority by removing these restrictions. Grayline
13 timely filed a protest to that application. The Commission has
14 scheduled hearings on the application commencing January 15,
15 1992, under Docket No. D-75275.

16 B. ShuttleExpress is currently violating the restrictions
17 it seeks to have removed from its permit.

18 During the period between the order in the complaint
19 case and the filing of the application for extended authority,
20 ShuttleExpress continued its pattern of willful violations of
21 the restrictions in its authority, i.e. ShuttleExpress
22 (1) solicits and accepts passengers who have not made prior
23 reservations and (2) accepts passengers traveling to the 12
24 restricted hotels. To confirm this fact, Grayline commissioned
25 private investigators to observe ShuttleExpress's operations at
26 the Seattle-Tacoma International Airport in November and

1 December 1991. The investigation confirmed that ShuttleExpress
2 continues its pattern of willful violations of both the on-call
3 and hotel restrictions in its certificate. On 26 separate
4 occasions at Sea-Tac Airport, the investigators sought rides to
5 downtown hotels that ShuttleExpress is prohibited from serving;
6 in each case, the investigators did not have any advance
7 reservation. In 24 of the 26 attempts (more than 90 percent of
8 the time), the investigators were taken to the hotels. Sworn
9 affidavits from the investigators are available. A summary of
10 the findings of the investigators is attached hereto as
11 Attachment A.

12 Further, the investigators discovered that
13 ShuttleExpress frequently attempts to disguise its violations
14 of the hotel restriction by dropping passengers destined to the
15 restricted hotels at the hotel garage as contrasted to the
16 hotel door, behind the hotel, or at a nearby restaurant or
17 street corner. The drivers engaged in these practices knew
18 that the passenger was in fact destined to the restricted
19 hotel. The violations, therefore, are both willful and
20 deceitful.

21 GROUND FOR RELIEF

22 A person "affected by" an order of the Commission may
23 petition for a rehearing. WAC 480-09-820. See also RCW
24 80.04.200. The Commission may grant the petition:

25 (a) If there are changed circumstances injurious
26 to the petitioner since the entry of the final order
which were not considered by the commission; or

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3 (c) For any good and sufficient cause which, for
4 any reason, was not considered and determined in the
5 original order.

6 Id.

7 ShuttleExpress's application in Docket No. 75275 to
8 remove the restrictions in its permit which were recently
9 affirmed and imposed by the Commission in this complaint
10 proceeding, while, at the same time, it ignores those
11 restrictions and continues to operate illegally, constitutes
12 "changed circumstances" and "good and sufficient cause" for the
13 Commission to revisit this case and grant the relief requested
14 below. The circumstances demonstrate a need for the Commission
15 to take further action to curb ShuttleExpress's continuing
16 willful illegal operations and disregard for the Commission's
17 written warnings and orders, to monitor ShuttleExpress's
18 compliance more closely in the future, and to place
19 ShuttleExpress on probation for an appropriate period of time
20 during which period ShuttleExpress may not apply to the
21 Commission to expand its existing operations or remove
22 restrictions in its permit.

23 By its extension application, ShuttleExpress seeks to
24 "legalize" its current illegal operations. Grayline's
25 investigation shows that there has been no change in the method
26 or manner of operations of ShuttleExpress since the Commission
issued its order in this complaint case. ShuttleExpress

1 continues to demonstrate disregard for the restrictions in its
2 certificate and for the Commission's past orders directing it
3 to comply with those restrictions. Accordingly, further
4 Commission action is mandatory.

5 RELIEF REQUESTED

6 RCW 81.68.030 provides as follows:

7 The Commission may, at any time, by its order duly
8 entered after a hearing . . . at which it shall be
9 proven that the holder willfully violates or refuses
10 to observe any of the Commission's proper orders,
rules, or regulations, suspend, revoke, alter, or
amend any certificate issued under the provisions of
this chapter . . .

11 While Grayline does not seek to eliminate the
12 door-to-door on-call service of ShuttleExpress which
13 constitutes the basis for its initial grant of authority,
14 Grayline cannot ignore the harm caused by ShuttleExpress's
15 ongoing and willful violations of the restrictions in its
16 authority. ShuttleExpress is not content to serve the market
17 it represented to the Commission it desired to serve at the
18 time it was granted its airporter authority. It is clear that
19 ShuttleExpress is determined to provide a duplicating airporter
20 service to the hotels served by Grayline, with or without
21 authority granted by this Commission. If the Commission's past
22 written warnings and orders are to have any credibility, this
23 attitude and activity of ShuttleExpress must not be tolerated
24 any longer.
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1 Therefore, Grayline respectfully requests the
2 Commission to immediately reopen and hold hearings in Docket
3 No. TC-90047 and thereafter grant the following relief:

4 1. Place ShuttleExpress on probation for a period of
5 not less than one year during which time it may not apply to
6 the Commission to expand its existing operations or remove
7 restrictions from its present operating authority;

8 2. During the probation period, require
9 ShuttleExpress to provide reports to the Commission on a
10 monthly basis containing such information as the Commission
11 deems required to accurately monitor on an ongoing basis
12 ShuttleExpress's compliance with the on-call and hotel
13 restrictions in its certificate;

14 3. Direct that ShuttleExpress be assessed the
15 maximum monetary penalty allowed by law for each and every past
16 violation of the limitations in its permit proven herein and
17 during the probation period; and

18 4. Further limit ShuttleExpress's operating
19 authority by prohibiting it from picking up passengers from, or
20 taking passengers to, the geographic area in Seattle described
21 as follows: Denny Way on the North, Interstate 5 on the East,
22 James Street on the South, and Third Avenue on the West.

23 5. Provide that if ShuttleExpress, during the
24 probation period, continues to willfully violate the
25 restrictions in its permit that the Commission will, after
26 hearing, entertain a request by Grayline to cancel

1 ShuttleExpress's authority to provide any service within the
2 city limits of Seattle.

3 RESPECTFULLY SUBMITTED this 6th day of January, 1992.

4 MILLER, NASH, WIENER, HAGER & CARLSEN

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6
7 Clyde H. MacIver
Brooks E. Harlow

8 Attorneys for Complainant
9 Evergreen Trails, Inc.

10 2664H

**SUMMARY RESULTS OF INVESTIGATION
OF SHUTTLE EXPRESS' OPERATIONS AT SEA-TAC**

DATE	VIOLATIONS COMMITTED*	
	Hotel Served	Service Without Reservation
11/12/91	WARWICK	✓
	TRAVELODGE	✓
	WESTIN	✓
11/13/91	DAYS INN	✓
	TRAVELODGE	✓
	HILTON	✓
	TRAVELODGE	✓
	SHERATON	✓
11/14/91	FOUR SEASONS	✓
	CROWN PLAZA	✓
	HILTON	✓
	STOUFFER MADISON	✓
	WESTIN	✓
11/15/91	WESTIN	✓
	DAYS INN	✓
12/15/91	STOUFFER MADISON	✓
12/16/91	DAYS INN	✓
	QUALITY INN	✓
	TRAVELODGE	✓
	FOUR SEASONS	✓
	WESTIN	✓
12/17/91	SHERATON	✓
12/18/91	WARWICK	✓
	TRAVELODGE	✓
Total Violations	24	24

* During the investigation in November and December, 1991, on only two occasions were investigators turned down on requests for service to the restricted hotels.