

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

SHUTTLE EXPRESS, INC.,

Petitioner and Complainant,

v.

SPEEDI SHUTTLE WASHINGTON, LLC

Respondent.

DOCKET NOS.

TC-143691

TC-160516

PETITIONER'S ANSWER TO  
RESPONDENT'S MOTION TO  
COMPEL

**INTRODUCTION**

1 Shuttle Express, Inc. (“Shuttle Express” or “Petitioner”) hereby answers the SpeediShuttle<sup>1</sup> Motion to Compel (“Motion”) filed in these dockets on February 21, 2017.

2 At the outset, Shuttle Express notes that the parties conferred both before and after the filing of the Motion and appear to have an agreement that resolves most of the disputed data requests. Speedishuttle has withdrawn the motion as to Data Request Nos. 31 through 40. Shuttle Express will timely file supplemental responses to Data Request Nos. 31-32, 34-36, and 39-40 that clarifies and expands somewhat the basis for the objections to those requests. Shuttle Express will timely file supplemental responses to Data Request Nos. 37 and 38 that admits or denies the matters asserted. No further responses to Data Request No. 33 is required.

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<sup>1</sup> SpeediShuttle Washington, LLC; to be referred to herein as “SpeediShuttle” or “Respondent.”

3 Data Request Nos. 15, 19 and 20 remain in dispute and will be addressed in this answer.

### **DISCUSSION**

#### I. The Motion is Procedurally Defective.

4 First, Shuttle Express notes that the Speedishuttle motion is procedurally defective in that its facts are not based on any declaration or established evidence. In particular, WAC 380-07-395(1)(c)(iii)(D) requires that, “if a party relies on ... documentary evidence, the party must quote the cited material verbatim or attach a photocopy of relevant pages to an affidavit that identifies and verifies the documents.” Speedishuttle at several places in its motion not only relies on—but unfairly characterizes—the emails that the parties exchanged in conferring informally to try to resolve the discovery dispute without the need for a motion. Those characterizations are incomplete and one-sided, precisely because the documents were not quoted or provided with the motion.

5 Shuttle Express does not dispute that the parties conferred in good faith and did not agree. Accordingly, the failure to provide the documents is not fatal to the motion.<sup>2</sup> However, Shuttle Express urges the Commission to disregard all characterizations of the informal communications in its ruling on the remaining disputes.

6 In another shortcoming of the motion, also governed by WAC 380-07-395(1)(c)(iii)(D), Speedishuttle fails to attach, provide, or quote the two pages of “definitions” that it purported to apply to each and every data request that is the subject of the pending motion. Shuttle Express interposed an objection to each and every one of those numerous “definitions” as “biased in nature” and further that “responses that

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<sup>2</sup> Indeed, as noted above, the parties continued to confer and have resolved the majority of the disputed data requests.

acknowledge such terminology could be prejudicial or misleading.” Because the movant has failed to acknowledge or provide the basis for one of the objections to all of the requests covered by the motion, it is impossible for the Commission to determine if the request is proper. The entire motion should be denied on this basis alone.

II. The Data Requests Still at Issue are Not Relevant.

7 Next, the fundamental flaw of all of the data requests that are the subject of the motion to compel is that they are not reasonably calculated to lead the discovery of admissible evidence. In simple parlance, they are not relevant. The lack of relevance therefore was the basis, in part, for every objection now at issue. Shuttle Express will address each data request that is covered by the motion, in turn, explaining why it is irrelevant and addressing any other salient objections.

8 Data Request No. 15: This request suffers from a number of flaws. It seeks the name, address, and telephone number of persons or entities who received compensation for referring passengers to Shuttle Express. These payments were made pursuant to arrangements that have been fully disclosed publicly in response to Staff Data Request Nos. 4-7, which are Exhibit B to the Motion. In addition, further detail, description and information was provided by Shuttle Express in response to Staff Data Request Nos. 9-11. Those responses were *not* included with the Motion, but *are attached* to this Answer as Exhibit A.<sup>3</sup> Also, Speedishuttle omitted the supplemental response of Shuttle Express to Request No. 16. A copy is attached (with the attached document) as Exhibit B hereto.

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<sup>3</sup> Due to their larger volume and limited relevance to the Motion or this answer, the attachments to the data requests responses are not included in Exhibit A. They can be provided upon request, if desired.

9 In sum, there is no dispute by Shuttle Express that it compensates third parties for various services they provide. The details are public and all relevant details have been provided to Speedishuttle already. Some of those compensation agreements or arrangements must be filed with the Commission and some need not be filed.<sup>4</sup> It depends on the character and nature of the agreements—which has also been fully disclosed and provided to Speedishuttle, including the agreements or form of agreements themselves.

10 Despite all of the details already provided, plus the opportunity to explore further details in upcoming depositions,<sup>5</sup> Speedishuttle insists it needs the names, addresses, and phone numbers of numerous Shuttle Express vendors. But it has offered not a single reason **why** it or the Commission needs to know the names and addresses of the third parties in order to decide whether additional types of agreements should have been filed, but were not. Not one of the third parties is subject to the Commission’s jurisdiction. Even in the unlikely event the Commission should choose to order some relief, the order would be directed at the regulated carrier, Shuttle Express, not at a handful of hotel concierges.

11 In contrast to the lack of relevance, there is a very good reason why personally identifiable information should not be provided publically or, specifically, to Speedishuttle. As noted in the objection to No. 15, Speedishuttle has hired away Shuttle Express employees. It makes them sign non-compete agreements (another indicator Speedishuttle competes directly with Shuttle Express). Those who are dissatisfied with

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<sup>4</sup> Speedishuttle may continue to contend that all of the agreements should have been filed, but that is not clear at this point. Staff is also investigating the agreements. If any party contends all the agreements should have been filed, the legal issue will be one of first impression for the Commission to decide under its relatively new auto transportation rules. Regardless, Shuttle Express has made it clear which agreements have been filed and which have not. For compliance purposes, if there even is a compliance issue, the identities of the third parties are not needed.

<sup>5</sup> Currently requested by Speedishuttle for April 10<sup>th</sup> and 11<sup>th</sup> and agreed to, but not yet filed.

working for Speedishuttle have not been able to return to their jobs with Shuttle Express. Similarly, Speedishuttle could use the personally identifying information to solicit the hotel concierges to refer passengers to Speedishuttle in lieu of Shuttle Express.

12 Given that the relevance of Request No. 15 ranges from minimal to non-existent—while the harm of disclosure could be material or significant—this request should be denied.

13 Data Request Nos. 19 and 20: These requests are an extension of Request No. 15, “on steroids.” Essentially they ask for all financial documents related to the third parties who were compensated for referring passengers to Shuttle Express, which would likely include very sensitive personal information that would expose them to identity theft or harassment, such as social security number, email address, and possibly date of birth. Indeed, in filings in Federal Court, Fed. R. Civ. P. 5.2 explicitly forbids the filing of such sensitive information as a full social security number or date of birth.

14 Speedishuttle asserts it needs the “number of violations and total dollar amount” of payments, apparently so it can establish a fine as a competing carrier. But the question does not ask for “totals.” Rather, it asks for extensive, minute, and sensitive details in the form of tax and financial documents of non-regulated third parties. Moreover, nothing in the statute upon which Speedishuttle’s complaint is based even remotely suggests that a private party can pursue fines and penalties in a complaint case. The relief provided for is forward-going; *i.e.*, the Commission may “correct the abuse complained of” by ordering *future* changes in rates or practices. *See* RCW 81.04.110. For this reason, it is especially difficult to determine why Speedishuttle would need data going back to the

beginning of 2013,<sup>6</sup> which is more than two years before Speedishuttle even began to compete with Shuttle Express at Sea-Tac.

15 Finally, the staff is intensively investigating the commission payments at issue. Staff has asked probative and appropriate discovery and Shuttle Express has been working with them so as to provide what is needed, without the needless disclosure of sensitive information that could be used for identity theft or to unfairly compete. See Exh. A to the Motion and Exh. A to this answer. Speedishuttle has received copies. No additional information is warranted.

### **CONCLUSION**

16 Based on the foregoing, Shuttle Express urges the Commission to deny the Motion to Compel.

Respectfully submitted this 1<sup>st</sup> day of March, 2017.

LUKAS, LAFURIA, GUTIERREZ &  
SACHS, LLP



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<sup>6</sup> For example, the statute of limitations for complaints seeking damages is only six months. RCW 81.04.235.

## EXHIBIT A

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION  
DOCKET NOS. TC-143691, TC-160516 and TC-161257 (consolidated)  
Shuttle Express Response to UTC Staff Data Request Nos. 9-11

### UTC STAFF DATA REQUEST NO. 9:

In response to Staff Data Request No. 5, Shuttle Express replied, “During the time period requested, Shuttle Express compensated a few hotel concierges for referring (but not selling tickets) passengers to Shuttle Express.” concluding with “All such arrangements were pursuant to agreements filed with the Commission.” Please provide the number for “a few” and the corresponding 1099s. Please provide the agreements filed with the Commission that support these arrangements.

### RESPONSE:

During the time period specified in Staff Request No. 5, a commission or referral payment was made to a total of approximately 80 individuals or companies. This total includes payments pursuant to agreements that were filed with the Commission and provided in response to Request No. 8, above, as well as to persons enrolled in the Shuttle Express Commission Guidelines, which were not filed with the Commission (see response to Request No. 11, below, and attachment and supplemental response to Request No. 16 of the Second Data Requests of Speedishuttle and attachment). A total of 21 times, through the 3 tax years, those individuals had 1099s issued that included amounts for referral, commission, or other payments.

Pursuant to a conversation with Staff, for data security and privacy reasons (*e.g.*, preventing identity theft), the actual 1099s are not being provided at this time, but are being made available herewith in Excel in a summary format. The 1099 information provided in response to Request Nos. 9 and 10 does not break out individual records by the type of service that was provided to Shuttle Express and generated the payments. Accordingly, the 1099 information will include commission payments relating to services that were outside the scope of the Commission’s jurisdiction, in whole or in part.

None of the individuals or companies who received a 1099 pursuant to the unfiled Shuttle Express Commission Guidelines during the time period specified directly sold any tariffed services to end-users. All those represented in the attached Response No. 10 either assisted an end-user to pay directly (*i.e.* helped the end-user place their request for service which was paid directly to Shuttle Express), or requested unregulated charter, limousine, or personal services not included in the agreement filing requirements. All filed agreements for certificated Auto Transportation services are referenced in and will be provided in response to Staff Request No. 8, above.

Responding Person: Wesley Marks  
Date of Response: February 21, 2017  
Witness: Wesley Marks

**UTC STAFF DATA REQUEST NO. 10:**

In response to Staff Data Request No. 6, Shuttle Express provided the number of IRS Form 1099s issued during 2015 broken down into five general categories.

Of the 116 1099s issued, please indicate those issued for selling tickets consistent with a filed ticket agreement, those payments for referring but not selling tickets, those 1099s issued for providing other services, and please include what services were provided.

**RESPONSE:**

Please see the spreadsheet provided herewith indicating the business account number and services category for the 116 1099s issued for the 2015 tax year. The Services Categories “Referral – Concierge” and “Referral – Hotel” reflect payments by Shuttle Express for referring passengers pursuant to the Shuttle Express Commission Guidelines, which were not filed with the Commission (see response to Request No. 11, below, and attachment and supplemental response to Request No. 16 of the Second Data Requests of Speedishuttle and attachment).

The 1099 information provided in response to Request Nos. 9 and 10 does not break out individual records by the type of service that was provided to Shuttle Express and generated the payments. Accordingly, the 1099 information will include commission payments relating to services that were outside the scope of the Commission’s jurisdiction, in whole or in part.

There are no 1099s in the attached spreadsheet or in existence that reflect or show “selling tickets consistent with a filed ticket agreement.” As discussed in those filed agreements, the ticket agents sell the tickets and collect the full retail fares from the passengers, but remit only the “net” rate to Shuttle Express. For example, the wholesale rate to a ticket agent might be \$14.40 on a retail fare of \$18.00. Since the payment only flows from the agent to Shuttle Express and there is no payment by Shuttle Express to wholesale agents, Shuttle Express does not issue 1099s to such agents, and is not required to do so.

Responding Person: Wesley Marks  
Date of Response: February 21, 2017  
Witness: Wesley Marks



**UTC STAFF DATA REQUEST NO. 11:**

In response to Staff Data Request No. 7, Shuttle Express acknowledged payments to Ted Milanio to refer or direct customers to Shuttle Express. Please provide the ticket agent agreement that supports this arrangement.

**RESPONSE:**

Ted Milanio did not collect and remit any payments to Shuttle Express as a third party, and as such did not have a ticket agent agreement on file with the Commission. Mr. Milanio simply used the Internet and his position as a hotel concierge to request transportation to pick up passengers who requested his assistance with arranging service, and the passengers paid Shuttle Express directly. Mr. Milanio received commission payments pursuant to his enrollment in the Shuttle Express Commission Guidelines. A copy of his signed enrollment is attached. Also, please see the Supplemental Response of Shuttle Express to Speedishuttle Data Request No. 16, dated February 13, 2017.

Responding Person: Wesley Marks

Date of Response: February 21, 2017

Witness: Wesley Marks

## EXHIBIT B

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION  
DOCKET NOS. TC-143691, TC-160516, AND TC-161257 (CONSOLIDATED)  
SECOND DATA REQUESTS OF RESPONDENT SPEEDISHUTTLE  
SUPPLEMENTAL RESPONSES AND OBJECTIONS OF  
PETITIONER SHUTTLE EXPRESS, INC.

**Data Request No. 16.** Describe (and when applicable produce) Arrangements from January 1, 2013 to the present, by which Shuttle Express paid Unauthorized Commissions any hotel, or the employees and contractors of such hotel, including but not limited to the Crowne Plaza, the Hyatt Regency Bellevue and the Westin Seattle.

### **RESPONSE:**

Shuttle Express objects to the terminology and definitions purportedly applied to each and every data request. The terms and definitions are biased in nature and responses that acknowledge such terminology could be prejudicial or misleading.

Shuttle Express also objects that the request seeks information that is proprietary and competitively injurious to the intended detriment of Shuttle Express.

Without waiving the foregoing objections, please see Shuttle Express response to Staff Data Request No. 4. As reflected in that response, Shuttle Express has contracts with agents who sell tickets for Shuttle Express, collect the fares, and remit the fares to Shuttle Express. All such contracts are filed with the Commission. Shuttle Express also has agreements to compensate hotel concierges for referring passengers to Shuttle Express, both for Commission regulated and non-Commission regulated services. Such passengers purchase their tickets directly from Shuttle Express and pay Shuttle Express the full amount of the fare at a tariffed rate, if applicable, or other agreed rate if the service is not subject to tariff. The referring party is compensated for the referral.

Discovery is continuing and this response may be supplemented if and as required.

Responding Person: Wesley Marks  
Date of Response: February 3, 2017  
Witness: Wesley Marks

### **SUPPLEMENTAL RESPONSE:**

Without waiving any of the foregoing objections, please see the attached Shuttle Express Commission Guidelines template, which is signed by hotel concierges who wish to be eligible for commissions. Note that the agreement covers both regulated and unregulated services, which are handled in different fashion from each other. Also, the language is

intended to be easily understood by hotel personal and not construed in a formal legalistic manner. Accordingly, nothing in the attached guidelines should be construed as being inconsistent with the initial response to this data request, nor as a change to the initial response, which remains accurate.

Responding Person: Wesley Marks

Date of Response: February 13, 2017

Witness: Wesley Marks



Thank you for your partnership with Shuttle Express! We are grateful for the continued opportunity to provide the highest-quality transportation services for our mutual guests. To show our appreciation for your efforts to promote and sell our services, we offer a commission to those enrolled in our commission program.

Effective January 1, 2015, hotel employees must enroll in our program to be eligible for commission. This will help us process all commissions correctly and promptly.

**Commission program details:**

- You earn 10% commission on any service you book at retail rate (shared, scheduled and private service).
- Commissions are paid monthly, by check. Checks are delivered by the 20<sup>th</sup> of the following month.
- You earn commission when you've booked a **minimum of \$20** in any rolling, three-month period.
- You must complete and submit a W-9 form before any payment will be issued.
- The preferred booking method is online through your hotel's portal – it's quick, easy and your commission is automatically tracked. If you book through our call center, you must provide your full name and your hotel name to ensure commission is added correctly.

**For bookings to be eligible for commission:**

- Shuttle Express must receive revenue for the booking. If guest does not pay, no commission given.
- Must be a new booking (not one already made through the cruise lines or wholesalers like Expedia).
- Complimentary services are not eligible for commission (for example, complimentary trips for the hotel).
- Services booked through the sales department are offered net rates and are not eligible for commission.
- Commission is paid on bookings paid through approved direct bill accounts, for service at retail rates.
- Any disputes or questions must be sent to us **within 30 days of receipt** of commission report.
- Any individual checks not deposited within three months will be reissued to the hotel.

It's important for us to have current contact information to pay commissions. Please provide your information below and return to us by Jan. 1. Your signature is your acceptance of the guidelines and is required for program enrollment:

**Commission Enrollment Information**

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*Signature*

*Date*

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*Print Name*

*Hotel*

*Email address*

**CERTIFICATE OF SERVICE**

I hereby certify that on March 1, 2017, I served a copy the foregoing document via email, with a copy via first class mail, postage prepaid, to:

<p>Julian Beattie Office of the Attorney General Utilities and Transportation Division 1400 S. Evergreen Park Dr. SW PO Box 40128 Olympia, WA 98504-0128 (360) 664-1192 Email: jbeattie@utc.wa.gov</p>	<p>David W. Wiley Williams Kastner Two Union Square 601 Union Street, Suite 4100 Seattle, WA 98101 206-233-2895 Email: dwiley@williamskastner.com</p>
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Dated at McLean, Virginia this 1<sup>st</sup> day of March, 2017.



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Joseph Mirshak  
Legal Assistant  
LUKAS, LAFURIA,  
GUTIERREZ & SACHS