

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In re Application of

BREMERTON KITSAP AIRPORTER,
INC., d/b/a SOUND CONNECTION
and FT. LEWIS McCHORD
AIRPORTER

For an Extension of Existing Auto
Transportation Certificate C-903

DOCKET TC-181008

ORDER 01

INITIAL ORDER OVERRULING
OBJECTION TO APPLICATION FOR
EXTENSION OF EXISTING AUTO
TRANSPORTATION CERTIFICATE

BACKGROUND

- 1 On December 5, 2018, Bremerton Kitsap Airporter, Inc., d/b/a The Sound Connection and Ft. Lewis McChord Airporter (Bremerton Kitsap Airporter or Applicant) filed with the Washington Utilities and Transportation Commission (Commission) an application for extension of its existing Certificate C-903 for authority to provide scheduled service between the Holiday Inn Express located at 11751 Pacific Hwy SW in Lakewood (Lakewood Holiday Inn) and the Seattle-Tacoma International Airport (SeaTac) via I-5, including connecting streets and roads (Application). The Applicant is currently authorized to provide closed-door service between Joint Base Lewis McChord (JBLM) and SeaTac under Certificate C-903. The Application proposes adding the Lakewood Holiday Inn as an intermediate stop between JBLM and SeaTac.
- 2 On January 11, 2019, Pacific Northwest Transportation Services, Inc., d/b/a Capital Aeroporter Airport Shuttle (Capital Aeroporter or Objecting Company) filed an Objection to the Application (Objection) stating that it operates, and will continue to operate, scheduled service between the Lakewood Holiday Inn and SeaTac under the authority of Certificate C-862. The Objection further states that Capital Aeroporter operates the same service as proposed by the Applicant to the satisfaction of the Commission. In accordance with Washington Administrative Code (WAC) 480-30-136(1), the Commission scheduled a brief adjudicative proceeding on the Application for March 18, 2019.

3 On March 18, 2019, the Commission conducted a brief adjudicative proceeding at the Commission's offices in Olympia, Washington, before Judge Laura Chartoff. In accordance with WAC 480-30-116(3), the hearing was limited to the question of:

(1) Whether the objecting company holds a certificate to provide the same service in the same territory,

(2) Whether the objecting company provides the same service, and

(3) Whether the objecting company will provide the same service to the satisfaction of the commission.

4 Blair Fassberg, Williams Kastner & Gibbs PLLC, Seattle, Washington, represents Bremerton Kitsap Airporter. James N. Fricke, President and Chief Operating Officer, and John Fricke, Vice President Operations and Chief Operating Officer, represent Capital Aeroporter. Nash Callaghan, Assistant Attorney General, Olympia, Washington, represents Commission Staff (Staff).

5 Richard Ashe, President and Chief Operating Officer of Bremerton Kitsap Airporter, sponsored exhibits describing the proposed service and the Applicant's reasons for wanting to expand its service beyond the confines of JBLM. Mr. Ashe also provided exhibits intending to show that Capital Aeroporter provides door-to-door service, which is not the "same service" as proposed in the Application, and that Capital Aeroporter is not providing its service to the satisfaction of the Commission.

6 John Fricke and James Fricke testified and sponsored exhibits for Capital Aeroporter intending to show that Capital Aeroporter provides the same service as proposed by the Applicant to the satisfaction to the Commission. Msrs. Fricke and Fricke described Capital Aeroporter's service as a "scheduled service" and provided testimony describing their business practices and operations.

7 Staff did not present any evidence or take a position on Capital Aeroporter's objections to the Application.

DISCUSSION AND DECISION

8 On September 21, 2013, the Commission amended its rules governing the Commission's review of applications for authority to operate a passenger transportation company in Washington. The changes clarify and streamline the application process for companies

seeking to provide such service, give companies rate flexibility, and promote competition in the auto transportation industry. Existing companies may file objections to new applications on limited grounds that, if sustained, will result in denial of the application. If the objections are overruled, the application proceeds through a Commission Staff review of fitness and compliance with the other prerequisites for obtaining a certificate of convenience and public necessity.

- 9 WAC 480-30-116(3) provides that adjudications of auto transportation applications are “limited to the question of whether the objecting company holds a certificate to provide the same service in the same territory, whether the objecting company provides the same service, and whether an objecting company will provide the same service to the satisfaction of the Commission.” If all three elements are present, the Commission will deny an application to serve a given route.¹
- 10 Under WAC 480-30-140(2), the Commission may consider a number of factors to determine whether the service applied for is the same as existing service. Those factors include, but are not limited to: whether existing companies are providing service to the full extent of their authority; the type, means, and methods of service provided; whether the type of service provided reasonably serves the market; and whether the population density warrants additional facilities or transportation. Finally, the rule states door-to-door and scheduled service in the same territory are not considered the same service.
- 11 In this case, the Applicant proposes to add a stop at the Lakewood Holiday Inn to its regularly scheduled service between JBLM and SeaTac. Capital Aeroporter opposes the Application by claiming that it already provides the same scheduled service between the Holiday Inn and SeaTac to the satisfaction of the Commission. The Applicant disagrees, arguing Capital Aeroporter provides door-to-door service only, and that WAC 480-30-140(2)(g) expressly provides that “door-to-door service and scheduled service in the same territory will not be considered the same service.”
- 12 WAC 480-30-036(2) defines “Scheduled service” as “an auto transportation company providing passenger service at specified arrival and/or departure times at points on a route.”

¹ WAC 480-30-136(3)(a).

- 13 WAC 480-30-036(2) defines “Door-to-door service” as “an auto transportation company service provided between a location identified by the passenger and a point specifically named by the company in its filed tariff and time schedule.”
- 14 Bremerton Kitsap Airporter’s Application proposes to provide scheduled service between SeaTac and JBLM, with an intermediate stop at the Lakewood Holiday Inn.² Applicant proposes to offer service 13 times per day, approximately every 90 minutes, at specified departure times at points along a route. As proposed in the Application, this is consistent with the definition of “scheduled service.”
- 15 Capital Aeroporter’s testimony and evidence do not corroborate its assertion that it provides scheduled service between the Lakewood Holiday Inn and SeaTac, and instead establishes that it provides door-to-door service. Capital Aeroporter’s Schedule No. 72 filed with the Commission describes door-to-door service. The schedule is titled “Schedule of Door to Door Share Ride Passenger Service in reference to Certificate No. C-862: Between Seatac International Airport and points service in King, Pierce” In addition, the schedule lists departure and arrival times for SeaTac only. The schedule does not specify other points along a route, or list any other arrival or departure times. Accordingly, Capital Aeroporter’s service as described in its Schedule No. 72 does not fit the definition of “scheduled service” because the schedule does not describe passenger service at specified arrival and/or departure times at points along a route.
- 16 Mr. John Fricke testified that Capital Aeroporter provides scheduled service at regular stops along a route, and door-to-door service at home locations designated by the customer.³ He describes scheduled service as service between SeaTac and motels, hotels, or other commercial lodging facilities or designated stops located in cities listed in the company’s tariff.⁴ He also claims the company “operate[s] under scheduled line runs, which are basically timed out pick-up points along a route.”⁵ However, Mr. Fricke admitted there is no schedule available to the public that lists the route, or the arrival and

² Application of Bremerton Kitsap Airporter Inc. d/b/a Sound Connection and Ft. Lewis McChord Airporter for an Extension of Existing Auto Transportation Certificate C-903.

³ TR at 44:24-5, TR at 45:1-5, TR at 48:6-12.

⁴ TR at 48:6-12.

⁵ TR at 45:21-23.

departure times for stops along a route other than for SeaTac.⁶ Rather, Capital Aeroporter operates irregular routes based on reservations.⁷ In addition, scheduled service and door-to-door service passengers may be combined in one vehicle when convenient to the customer and the operator.⁸ Mr. Fricke testified that Capital Aeroporter advises customers of the estimated pickup and drop-off times when they make a reservation, but the actual route will vary based on where the other passengers requesting service at the same time choose to go.⁹

17 Accordingly, Mr. Fricke did not use the term “scheduled service” as it is defined in WAC 480-30-036 (*i.e.*, “[p]roviding passenger service at specified arrival and/or departure times at points on a route.”) Capital Aeroporter will *schedule* a pickup or drop-off time at commercial lodging establishments within its territory, and it honors the scheduled arrival and departure times at the airport. But, Capital Aeroporter does not provide passenger service at specified arrival and/or departure times at points on a route.

18 We find that Capital Aeroporter provides door-to-door service between the Lakewood Holiday Inn and SeaTac, which is a different service than the scheduled service proposed in the Application. Because Capital Aeroporter does not provide the same service as proposed in the Application, Capital Aeroporter’s objection to Bremerton Kitsap Airporter’s Application should be overruled.

19 Because we conclude Capital Airporter does not provide the same service that Bremerton Kitsap Airporter proposes to provide, we need not reach the question of whether Capital Airporter provides the same service to the satisfaction of the Commission.

FINDINGS AND CONCLUSIONS

20 (1) The Commission is an agency of the state of Washington vested by statute with the authority to regulate the rates, rules, regulations, and practices of auto transportation companies.

⁶ TR at 45:19-25, TR at 46:1-12, TR 86:22-25, TR at 87:1-4.

⁷ TR at 45:24-25, TR at 46:1.

⁸ TR at 45:1-5.

⁹ TR at 81:11-19.

- 21 (2) In Pierce County, Bremerton Kitsap Airporter is currently authorized under Certificate C-903 to provide closed door auto transportation services between JBLM and SeaTac, via I-5 and SR 99, including connecting streets and roads.
- 22 (3) On December 5, 2018, Bremerton Kitsap Airporter filed an Application with the Commission for extension of Certificate C-903 for extension of its authority to provide service between JBLM, the Lakewood Holiday Inn, and SeaTac.
- 23 (4) On January 11, 2019, Capital Aeroporter filed an objection to the Application on the grounds that Capital Aeroporter provides the same service to the satisfaction of the Commission. Capital Aeroporter holds a certificate to provide auto transportation services in the same territory.
- 24 (5) If the objecting company provides the same service to satisfaction of the Commission, the Commission will deny the application. If the objecting company will not provide the same service to the satisfaction of the commission, the Commission may grant the application. WAC 480-30-136.
- 25 (6) “When determining whether one of more existing certificate holders provide the same service in the territory at issue, the commission may, among other things consider: . . . Door to door service and scheduled service in the same territory will not be considered the same service.” WAC 480-30-140.
- 26 (7) “Door-to-door service” means an auto transportation company service provided between a location identified by the passenger and a point specifically named by the company in its filed tariff and time schedule. WAC 480-30-036(2).
- 27 (8) “Scheduled service” means an auto transportation company providing passenger service at specified arrival and/or departure times at points on a route. WAC 480-30-036(2).
- 28 (9) Bremerton Kitsap Airporter’s Application proposes to add an intermediate point at the Lakewood Holiday Inn to its scheduled service between JBLM and SeaTac. Service would be 13 times a day at 90 minute intervals, with arrival or departure times according to a schedule to be filed with the Commission. Bremerton Kitsap Airporter’s Application is for a scheduled service.
- 29 (10) Capital Aeroporter’s service is not a scheduled service because it does not provide service at specified arrival and/or departure times at points along a route. Capital

Aerporter's schedule filed with the Commission is titled "Schedule of Door to Door Share Ride Passenger Service in reference to Certificate No. C-862: Between Seatac International Airport and points service in King, Pierce . . ." In addition, the schedule lists only departure and arrival times at SeaTac, and does not list any other arrival or departure times, or any other points along a route.

- 30 (11) Capital Aerporter provides "door to door service" as defined in WAC 480-30-036(2) because it provides service between a location identified by the passenger and a point identified by the Company. Capital Aerporter provides transportation on irregular routes between SeaTac and locations identified by the customer.
- 31 (12) Because door-to-door service and scheduled service are not considered the same service, we conclude Capital Aerporter does not provide the same service Bremerton Kitsap Airporter proposes to provide, and Capital Aerporter's objection to Bremerton Kitsap Airporter's application should thus be overruled.

ORDER

THE COMMISSION ORDERS:

- 32 (1) Pacific Northwest Transportation Services, Inc., d/b/a Capital Aerporter Airport Shuttle's objection to Bremerton Kitsap Airporter, Inc. d/b/a The Sound Connection and Ft. Lewis McChord Airporter's Application to provide service between the Holiday Inn Express in Lakewood and SeaTac Airport is overruled.
- 33 (2) Bremerton Kitsap Airporter, Inc. d/b/a The Sound Connection and Ft. Lewis McChord Airporter's Application is referred to Commission Staff for evaluation and processing.

DATED at Olympia, Washington, and effective April 12, 2019.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

LAURA CHARTOFF
Administrative Law Judge

NOTICE TO PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-610(7) provides that any party to this proceeding has twenty-one (21) days after the entry of this Initial Order to file a *Petition for Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-610(7)(b). WAC 480-07-610(7)(c) states that any party may file a *Response* to a Petition for review within seven (7) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

RCW 80.01.060(3) provides that an Initial Order will become final without further Commission action if no party seeks administrative review of the Initial Order and if the Commission fails to exercise administrative review on its own motion.

Any Petition or Response must be electronically filed through the Commission's web portal as required by WAC 480-07-140(5). Any Petition or Response filed must also be electronically served on each party of record as required by WAC 480-07-140(1)(b).