Exhibit No. DP-1T
Dockets TC-143691, TC-160516,
TC-161257 (*consolidated*)
Witness: David Pratt

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In re the Application of SPEEDISHUTTLE WASHINGTON, LLC d/b/a SPEEDISHUTTLE SEATTLE For a Certificate of Public Convenience and Necessity to Operate Motor Vehicles in Furnishing Passenger and Express Service as an Auto Transportation Company	**DOCKETS TC-143691, TC-160516, TC-161257 (*consolidated*)**
SHUTTLE EXPRESS, INC., **Complainant,** **v.** **SPEEDISHUTTLE WASHINGTON, LLC d/b/a SPEEDISHUTTLE SEATTLE,** **Respondent.**	
SPEEDISHUTTLE WASHINGTON, LLC d/b/a SPEEDISHUTTLE SEATTLE, **Complainant,** **v.** **SHUTTLE EXPRESS, INC.,** **Respondent.**	

TESTIMONY OF

David Pratt

STAFF OF
WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

Staff's Investigation of Shuttle Express in Docket TC-161257

March 17, 2017

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EXHIBITS

I. INTRODUCTION

Q. Please state your name and business address.

A. My name is David Pratt. My business address is 1300 S. Evergreen Park Drive S.W., P.O. Box 47250, Olympia, WA 98504.

Q. By whom are you employed and in what capacity?

A. I am employed by the Washington Utilities and Transportation Commission as the Assistant Director for Transportation Safety.

Q. For how long have you been employed by the Commission?

A. Twelve years.

Q Please summarize your educational and professional background.

A. I have a Bachelor's degree in Public Administration from The Evergreen State College. I've been employed in Washington State government for 30 years and have been at the UTC for 12 of those years. For two years, I was the Assistant Director for Consumer Protection. I have been the Assistant Director for Transportation Safety for the past 10 years. Prior to working at the UTC, I spent 18 years at the Department of Labor and Industries (L&I). At L&I, I held several different positions including E-Commerce Business Manager, Special Assistant to the Director, and Assistant Director for Communications. During all of these positions, my focus was on worker safety issues.

II. SCOPE AND SUMMARY OF TESTIMONY

Q. What is the scope of your testimony?

A. On December 1, 2016, Speedishuttle Washington LLC d/b/a Speedishuttle Seattle filed a formal complaint against Shuttle Express, Inc., in Docket TC-161257. Speedishuttle alleged that Shuttle Express: (1) unlawfully used independent contractors to perform regulated auto transportation service; and (2) paid unlawful rebates or commissions to certain Seattle-area hotel staff.

Transportation Safety Staff undertook an investigation of Speedishuttle's first allegation, regarding independent contractors. The purpose of my testimony is to summarize the background, process, and findings of Staff's investigation. At the conclusion of my testimony, I will recommend that the Commission impose administrative penalties against Shuttle Express for unlawfully using independent contractors and non-owned vehicles to provide regulated auto transportation service.

III. INVESTIGATION OF SHUTTLE EXPRESS

Q. Did you participate in Staff's investigation of Shuttle Express?

A. Yes, I led Staff's investigation. Mike Turcott, a member of my staff, assisted me.

Q. What was the purpose of your investigation?

A. We sought to determine whether Shuttle Express violated WAC 480-30-213, which provides that Shuttle Express, when providing regulated auto transportation service, must (1) own or lease its vehicles, and (2) employ its drivers.

Q. What time frame did you investigate?

A. Staff focused on the period between January 16, 2014, and September 29, 2016. That period is important because the company operated under temporary waivers from the requirements of WAC 480-30-213 prior to January 16, 2014, and again after September 29, 2016.

Q. How did you conduct your investigation?

A. Staff sent written data requests to Shuttle Express and conducted a site visit at the company's Renton headquarters on February 14, 2017. Mr. Turcott, staff safety investigator Mat Perkinson, and I conducted the visit. Shuttle Express representatives Wesley Marks and Paul Kajanoff gave us a tour of the company's dispatch center and assisted us in performing an on-site records review.

Q. Please summarize your findings.

A. Mr. Turcott and I prepared a report, attached as Exhibit No. DP-2, which reflects our findings.

To summarize, our investigation revealed that Shuttle Express used independent contractors and non-company vehicles to provide regulated auto

transportation service on at least 40,727 occasions between January 16, 2014, and September 29, 2016. These trips amounted to approximately 5 percent of all trips (725,451) provided by the company during that timeframe. During each trip, the company charged the published tariff rate for door-to-door service. All trips served single parties. No trips involved a "shared ride" service.

Q. How did you calculate the number of trips provided by independent contractors?

A. Shuttle Express provided that number in its response to Staff Data Request No. 2, which is attached as Exhibit DP-3. Staff had asked the company for detailed information about "each occurrence in which Shuttle Express used an independent contractor to provide any transportation service." between January 16, 2014, and September 29, 2016. The company provided an Excel spreadsheet and represented that it "shows all **40,727** passengers or parties during the period requested **who originally booked auto transportation service** and who subsequently switched to a service provided by an independent contractor."[1]

Q. Shuttle Express indicates that these passengers "switched" to a service provided by an independent contractor. What do you make of that claim?

A. Shuttle Express makes it appear that the customer initiated the "switch." I view the transaction differently. When Staff performed its February 14 site visit, Wes Marks and Paul Kajanoff told me that, for each of the 40,727 trips in the spreadsheet, the

[1] Exh. No. DP-3.

customer booked an auto transportation trip, and then *the company* switched the customer to an independent contractor on its own initiative. Mr. Marks also confirmed to me that the original trips were *not canceled* and the credit card payments were not refunded. In other words, the company orchestrated the switch.

During the site visit, Mr. Marks gave me an example that confirms my viewpoint. In the example, an individual books a trip on a shared ride van in the early morning hours. The origin is the individual's home. The destination is the airport. After the reservation is made, Shuttle Express determines that no other customers have booked a shared ride van from the individual's geographic area at a similar departure time. From the company's perspective, it is cheaper to transport a single passenger using an independent contractor and a non-owned vehicle than to transport the passenger in a company-owned shared ride van using an employed driver. Accordingly, the company makes a business decision to dispatch a non-owned vehicle driven by an independent contractor. It's all about economics. The company "switches" the customer to reduce costs, not to accommodate the customer's request. The customer believes he or she is still using a regulated auto transportation service.

Q. You mentioned that each trip listed on the spreadsheet involved service to a single party, as opposed to "shared ride," or "multi-stop," service. Do you believe the Commission has jurisdiction over single-stop service provided by an independent contractor?

A. Under my reading of the law, the Commission has jurisdiction over single-stop service provided by an independent contractor if that service originates as a regulated auto transportation trip and the company "switches" the customer to an independent contractor on its own initiative, with no official cancellation of the original booking.

The company may claim that the customer has been transferred to, or "re-booked," on a non-regulated service. But that's just fiction. For all practical purposes, the company is still providing a regulated service. The customer rightly believes that he or she is receiving the auto transportation service that he or she originally booked.

Q. We've been talking a lot about "independent contractors." Do you have any sense of who these contractors are and what training they might have?

A. Not really. The company was reluctant to provide the names of the independent contractors. I have heard that Shuttle Express primarily relies on limousine drivers who are licensed by the Department of Licensing. But the truth is that I know very little about the drivers and the vehicles they operate.

Q. Does that concern you?

A. Yes. The Commission holds auto transportation companies to rigorous vehicle and driver safety requirements, as outlined in WAC 480-30-221. Non-owned vehicles and non-employed drivers may follow some of these requirements but disregard others.

Q. Has Shuttle Express been cited previously for its use of non-employed drivers?

A. Yes, on two prior occasions.

Q. Tell us about the first occasion.

A. In 2008, in Docket TC-072228, the Commission approved a settlement under which Shuttle Express admitted that it violated WAC 480-30-213(2) by using independent contractors on 95 occasions between June 16, 2007, and December 31, 2007.[2] Shuttle Express also agreed to pay a $9,500 penalty. In the Commission's order approving the settlement, the Commission remarked that "Shuttle has since terminated its independent contractor program and has pledged to comply with WAC 480-30-213 on a prospective basis."[3]

Q. Did Shuttle Express honor its pledge?

A. No, it did not.

Q. Tell us about the Commission's subsequent enforcement action.

A. In 2013, in Docket TC-120323, the Commission filed a complaint against Shuttle Express alleging that it committed 5,715 repeat violations of WAC 480-30-213(2) by using independent contractors.[4] Staff recommended a total penalty of $250,000. The case went to hearing, and the Commission found that the allegations were proven. The Commission imposed a $60,000 penalty and ordered Shuttle Express to cease

[2] Exh. No. DP-4.
[3] Exh. No. DP-4, pg. 5, ¶ 16.
[4] Exh. No. DP-5.

using "independent contractors to provide its 'rescue service' or any other automobile transportation service the Commission regulates."[5]

Q. Based on your current investigation, do you think Shuttle Express honored the Commission's most recent enforcement order?

A. No. As I previously described, our investigation revealed that Shuttle Express did not cease its use of independent contractors to provide regulated auto transportation service.

IV. PROPOSED VIOLATIONS

Q. Based on Staff's investigation, do you believe that Shuttle Express violated any laws or Commission rules?

A. Yes. Staff finds that Shuttle Express violated WAC 480-30-213 on 40,727 occasions between January 16, 2014, and September 29, 2016, by using non-owned vehicles and non-employee drivers to provide regulated auto transportation service.

These violations are subject to a two-year statute of limitations running backwards from December 1, 2016, the date Speedishuttle filed its complaint. The Commission's jurisdiction is therefore limited to the period between December 1, 2014, and December 1, 2016. By my calculation, 35,351 out of the 40,727 total violations occurred during that timeframe.

[5] Exh. No. DP-5, p. 20, ¶¶ 59-60.

V. PROPOSED PENALTY

Q. Should Shuttle Express be penalized for its violations?

A. Yes. As allowed by RCW 81.04.380, the Commission should penalize Shuttle Express up to $1,000 per violation for each of the 35,351 violations that occurred between December 1, 2014, and December 1, 2016.

Q. What is your reasoning?

A. This is the third time that Staff has investigated Shuttle Express in the past nine years and found violations of WAC 480-30-213. The company is a three-time offender and should be penalized as such. A penalty should result in financial discomfort, particularly for a repeat offender, and I believe that requiring the company to pay a substantial penalty sends the appropriate message that the Commission will not tolerate flouting of its rules and orders.

Q. Are you familiar with the 11-factor enforcement policy adopted by the Commission in Docket A-120061?

A. Yes. Among other aims, that policy statement helps the Commission decide "whether an enforcement action, beyond technical assistance, is appropriate and, if so, which action to take." The policy sets forth 11 factors for the Commission to consider.

Q. How do the 11 factors play out in this case?

A. *Factor 1 - How serious or harmful the violation is to the public.* Use of independent contractors by auto transportation companies is serious and potentially harmful to the public. Non-regulated drivers and vehicles are not held to the same safety standards as regulated companies.

In the current investigation, Shuttle Express would not identify its independent contractors, so Staff was unable to determine what licensure each driver carried. If the contractors are licensed by the Department of Licensing as limousine companies, there would be some safety standards in place—though they fall short of Commission rules for auto transportation companies. In the worst-case scenario, the independent contractors are not licensed at all, and have no safety oversight. In either case, there is currently no Commission oversight of these drivers and vehicles. This raises the potential for an undocumented driver medical or qualification issue, excessive driver hours of service, fatigue, or an undocumented vehicle defect—all of which place the public at risk.

Factor 2 - Whether the violation is intentional. Considerations include:

- Whether the company ignored Commission Staff's previous technical assistance; and
- Whether there is clear evidence through documentation or other means that shows the company knew of and failed to correct the violation.

Staff believes Shuttle Express is well aware of the rules surrounding independent contractors, and that it knowingly violated those rules—now for the third time.

Staff began providing technical assistance to Shuttle Express with regard to independent contractors beginning in 2004. Shuttle Express was advised that use of independent contractors to provide auto transportation services was a violation of Commission rules.

Since 2008, the company has been penalized twice for providing auto transportation services using independent contractors. In addition, the company has applied for, and received, two waivers from Commission rules, which allowed the company to use independent contractors on a limited basis. The waiver applications provide further evidence that Shuttle Express knows the rules. This latest round of violations suggests a blatant and intentional disregard of the rules by the company.

Factor 3 - Whether the company self-reported the violation. Shuttle Express did not report any of these violations.

Factor 4 - Whether the company was cooperative and responsive. Shuttle Express responded to Staff's data requests and allowed Staff to perform a site visit, during which Wes Marks and Paul Kajanoff provided helpful information. The company balked, however, at providing the names of its independent contractors and a copy of the contract between the company and its independent contractors.

Factor 5 - Whether the company promptly corrected the violations and remedied the impacts. Shuttle Express "corrected its violations and remedied the impacts" by obtaining another temporary waiver (effective September 30, 2016). This latest temporary waiver allowed the company to provide auto transportation services using independent contractors for 10 months.

Factor 6 - The number of violations. Staff found that non-employed drivers completed 35,351 trips using non-owned vehicles during the two-year limitations period. Staff believes this is a significant number of violations over a 22-month period—an average of 1,606 per month.

Factor 7 - The number of customers affected. Again, independent contractors completed 35,351 trips. We find it likely that many of the trips included multiple passengers, which would increase the number of customers affected.

Factor 8 - The likelihood of recurrence. Shuttle Express seems committed to using independent contractors. It appears that the company prefers to take its chances with penalties, or to obtain temporary waivers, rather than ceasing its independent contractor program or seeking legislative action to change the law. Staff believes the likelihood of recurrence is high, unless significant penalties are assessed in this case.

Factor 9 - The company's past performance regarding compliance, violations, and penalties. Staff reviewed Shuttle Express's penalty and compliance history for the past ten years. With three exceptions noted below, the company has demonstrated compliance with Commission rules and regulations with respect to annual reports and regulatory fees, regulatory filings, and safety compliance reviews.

- Docket TC-072228: In July 2008, the Commission penalized Shuttle Express $9,500 for 95 violations of WAC 480-30-213(2), using independent contractor drivers.
- Docket TC-120323: In May 2013, the Commission penalized Shuttle Express $60,000 for 5,715 violations of WAC 480-30-213(2), using independent contractor drivers.

- Docket TC-160991: In August 2016, the Commission penalized Shuttle Express $400 for violations of WAC 480-30-221, Vehicle and Driver Safety Requirements.

Factor 10 - The company's existing compliance program. Shuttle Express complies with Commission rules, with the notable exception of those rules that the company has violated in order to continue to use independent contractor drivers.

Factor 11 - The size of the company. Shuttle Express is the largest auto transportation company regulated by the Commission. In its 2016 annual report, the company reported 4.9 million miles traveled and $9.3 million in gross intrastate operating revenues. Shuttle Express employs 150 drivers and operates 104 vehicles.

Q. Given these considerations, do you have a penalty recommendation?

A. Yes. As discussed earlier in my testimony, in Docket TC-072228, the Commission penalized Shuttle Express $100 per violation for 95 violations ($9,500). In the most recent case, in Docket TC-120323, the Commission penalized the company approximately $10 per violation for 5,715 violations, resulting in a total penalty of $60,000.

Based on all the factors I've mentioned in my testimony, and considering this is the third time Shuttle Express has committed violations of WAC 480-30-213, I recommend that the Commission penalize Shuttle Express approximately triple the amount per violation as in the previous case, for a total penalty of $1,060,530. My math is as follows: 35,351 violations * $30 per violation = $1,060,530 total penalty.

Q. Does this conclude your testimony?

A. Yes.