

**BEFORE THE WASHINGTON STATE UTILITIES AND TRANSPORTATION
COMMISSION**

SEATAC SHUTTLE, LLC, C-1071)	DOCKET TC-072180
)	
Complainant)	
		PETITION TO AMEND ORIGINAL COMPLAINT
V.)	
KENMORE AIR HARBOR, LLC)	
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SYNOPSIS

1. On October 31, 2008, the Commission entered ORDER 03 in part affirming and in part remanding INITIAL ORDER 02 of February 4, 2008 ¹. The Commission affirmed Kenmore Air Harbor’s claim of federal preemption and its status as an air carrier”. However, the Commission remanded “whether the Commission is preempted from regulating the safety of Kenmore Air’s ground transportation operations” to the Administrative Law Judge in order to (1)” allow Seatac Shuttle the opportunity to amend its complaint to fully address the question of whether the Commission has jurisdiction over the licensing, insurance requirements and safety regulations governing Kenmore Air’s ground transportation operations, and if necessary, (2) consider the issue through hearing or briefing.”²

1. Final Order Denying in Part Petition For Administrative Review; Upholding Initial Order; Remanding For Consideration Oct. 31, 2008 (Final Order)
2. Final Order, pg 15 pp46

DISCUSSION

2. Seatac Shuttle, LLC filed a formal complaint, with the Commission, alleging that Kenmore Air Harbor, LLC (KA) and Kenmore Air Express, an operating entity of KA, was in violation of certain sections of RCW 81.68 and WAC 480-30 resulting from KA providing scheduled auto passenger service over a regular route without the authority required under RCW 81.68 and WAC 480-30.³ Upon consideration by the Commission FINAL ORDER 03 was issued on October 31, 2008. Neither KA nor Seatac Shuttle disputes the facts presented during the proceeding. Seatac Shuttle accepts the INTERPRETATION of LAW as presented in ORDER 03 as to issue number one with prejudice.

3. Seatac Shuttle does dispute Staff's interpretation as to issue (2) whether the Commission is preempted from regulating the safety of Kenmore Air's ground transportation operations ⁴ and requests to amend its initial formal complaint to include Kenmore Air's failure to comply with the provisions of WAC 480-30 relative to safety, insurance and financial responsibility.

3. Formal Complaint Alleging Violation of WAC 480-36 by Kenmore Air; November 8, 2007

4. Final Order pg 14 pp44

NO EXEMPTION PERMITTED

4. Staff argued to the Commission that “safety regulation is closely related to the “price” and “service” of an airline, and asserts Congress did not intend to allow local regulation of such matters under ADA.”⁵ First, the argument that safety and other such matters as insurance regulation and financial fitness are too closely related to price as to afford them preemption from state control is misplaced. If states were not to afford the public such protections and ADA does not speak to them then the public would be faced with the specter of totally unsupervised, uninspected vehicles operated by uninsured, financially unsound companies. The potential for damage to the citizens of this and any other state would be catastrophic.

5. In Federal Exp. Corp. v. California Public Utilities Com'n⁶ it is noted that “As trucks are an essential component of the system, Federal Express operates over 2,600 trucks in California. The trucks are licensed to use the highways by the PUC.”⁷ The licensing or non-economic regulation for public safety is a duty of the individual states. Trucks and buses operated by airlines are not exempt from the traffic laws of individual states, this non-economic regulation is necessary for the common good. The State of

5. Final Order pg 14 pp44

6. Federal Exp. Corp. v. California Public Utilities Com'n C.A.9 (Cal.),1991 (Fedex)

7.Fedex pg 3 pp1

Washington licenses all of the vehicles operated by KA, it has demonstrated its ability and obligation to exert at least this level of regulation. The question remains, to what extent does this regulation extend? The answer is clear, the states not only have the right but the duty to regulate those matters affecting public safety that are not part of price, route or service. It should also be noted that states retain the right to route any and all vehicular traffic for safety, size and weight considerations and may preclude certain routes and times from being used by any and all vehicles transporting hazardous materials whether or not they are owned or operated by an air carrier.

7. Staff also argues that “in a similar preemption statute governing motor carriers of property, Congress expressly excluded from preemption “the safety regulatory authority of a State with respect to motor vehicles” and that “the lack of such qualifying language in ADA suggests that state safety regulations are also preempted.”⁸ Such an interpretation would once again be against logic and common sense. Congress meant for interstate carriers to comply with non-economic regulation to the benefit of public safety. In fact it codified such sentiment in 49 U.S.C. s 41713 (4)(B)(i) stating [ADA]” shall not restrict the safety regulatory authority of a State with respect to motor vehicles, the authority of a

8. Final Order pg 14 pp44

State to impose highway route controls or limitations based on the size or weight of the motor vehicle or the hazardous nature of the cargo, or the authority of a State to regulate motor carriers with regard to minimum amounts of financial responsibility relating to insurance requirements and self-insurance authorization.” Contrary to Staff’s analysis that that the “lack of such qualifying language in ADA suggest that safety regulations are also preempted”⁹, such language does exist, the code is clear and unequivocal.

8. While the Commission may have dismissed Seatac Shuttle’s earlier argument on the issue of safety ¹⁰ on the grounds that the citation referenced tort laws, none the less, the court weighed in on the separation of preemption under ADA and the state’s rights regarding safety.

COMPLIANCE WITH WAC 480-30

9. While Seatac Shuttle does accept, with reservation, the conclusions of the Commission with regard to general exemption under ADA, it still holds that WAC provisions regarding safety, insurance and financial responsibility are the responsibility of any state and the Commission within the State of Washington. The Commission has found that absent ADA, which only encompasses those operational aspects relating to

9. Final Order pg 14 pp44

10 .Final Order pg 14 pp43

price, route or service, Kenmore would be required to comply with the full force of RCW 81.68, ¹¹ it follows that KA must comply with those State mandated requirements which serve to protect the public and do not affect price, route or service. Kenmore must be held to the safety standards required by WAC 480-30-191,206,213,221,231,256,920 and 930 at a minimum. The court stated in Harrell v. Champlain Enterprises Inc., 200 A.D.2d 290, 613 N.Y.S.2d 1002 (3d Dep't 1994), “Though the preemption language in the ADA relating to rates, routes, or services is to be broadly construed, the word "services" is not coextensive with airline safety and the traditional *role of state law is to be maintained.*”(emphasis added)

CONCLUSION

10. Order 03 did not address the issue of safety, insurance and financial responsibility of an airline. It remanded such consideration to the Administrative Law Judge giving leave to Seatac Shuttle to amend its original complaint to more succinctly include this issue.¹² The issue of non-price, route or service related sections of WAC which are not

11. Motion on Behalf of Commission Staff for Summary Determination pp20 Dec. 21,2007

12. Final Order pg 15 pp46

exempted from regulation under ADA are a core issue relating to the overall complaint against Kenmore Air Harbor. Where is the line to be drawn and what are regulated company's and the public's protections is and always has been the issue.

PETITION

11. Seatac Shuttle petitions the Commission and requests that its Initial Formal Complaint (Seatac Shuttle, LLC v. Kenmore Air Harbor, LLC) be amended to specifically include the allegation(s) that Kenmore Air Harbor, LLC did violate and continues to violate certain provisions of WAC 480-30 which include but are not limited to sections 191,206,213,221,231,256, 920 and 930 and that if granted Seatac Shuttle be permitted to file a MOTION FOR RECONSIDERATION.

Dated this 6th Day of November, 2008

Seatac Shuttle, LLC

Michael Lauver
Vice President

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