



UTC

Washington Utilities
and Transportation
Commission

Investigation Report

Shuttle Express, Inc.

TC-200151

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PURPOSE, SCOPE, AND AUTHORITY

Purpose

The purpose of this investigation is to determine whether Shuttle Express, Inc., d/b/a Shuttle Express, Go Shuttle Express, Limos by Shuttle Express, and Downtown Airporter, (Shuttle Express or Company) is in compliance with Washington Utilities and Transportation Commission (commission) laws and rules outlined in Washington Administrative Code (WAC) 480-30 and Revised Code of Washington (RCW) 81.68, and to determine whether Shuttle Express is in compliance with its commission-approved tariff.

Scope

The scope of this investigation focuses on information obtained by commission staff (staff) relating to Shuttle Express's auto transportation operations between December 1, 2019, and January 31, 2020.

Authority

Staff undertakes this investigation pursuant to RCW 81.01.010, which adopts provisions of RCW 80.01 to include RCW 80.01.040, which directs the commission to regulate passenger transportation companies in the public interest. In addition, RCW 81.04.070 grants the commission specific authority to conduct such an investigation.

Staff

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EXECUTIVE SUMMARY

On November 17, 2017, Shuttle Express was penalized \$120,000 in the Final Order of consolidated Dockets TC-143691, TC-160516, and TC-161257 for 35,351 violations of WAC 480-30-213 when it used independent contractors to provide auto transportation service. The Company was also found to be combining its scheduled and door-to-door service in violation of WAC 480-30-346(2)(d). On October 16, 2019, staff received notification that Shuttle Express was not operating its scheduled service as required per Tariff No. 11 (tariff).

Due to the information received, staff reviewed Shuttle Express's trip records from December 1, 2019, to January 31, 2020, and discovered a total of 23,313 violations. Staff found Shuttle Express violated its commission-approved tariff, and the following rules in WAC Chapter 480-30:

- WAC 480-30-056(3)(a)(i)(A), Records retention, auto transportation company; Customer service records.
- WAC 480-30-276(2), Tariffs and time schedules, companies must comply with the provisions of filed tariffs and time schedules; Time schedules
- WAC 480-30-346(2)(d), Tariffs and time schedules, page format; Time schedule.

Penalty Recommendation

While the law allows the commission to assess a penalty of up to \$1,000 per violation, staff believes the full penalty of \$23,313,000 is disproportionate to the Company's annual reported revenue. Staff recommends the commission issue a formal complaint against Shuttle Express, and assess a penalty of up to \$409,030 for 23,313 violations of commission regulations, as follows:

- Up to \$190,910 for 19,091 violations of WAC 480-30-276(2) for failing to provide service along all routes, and to all points, listed on the Company's filed time schedule.
- Up to \$20,120 for 4,024 violations of WAC 480-30-056(3)(a)(i)(A) for failing to maintain complete and accurate customer service records pertaining to schedules operated.
- Up to \$198,000 for 198 violations of WAC 480-30-346(2)(d) for failing to list each flag stop, and any point to which service is provided in the Company's time schedule.

BACKGROUND

Company Information

Washington Secretary of State (SOS) records indicate Shuttle Express registered in the state of Washington as a for-profit corporation on October 26, 1970.¹ SOS records list Jimy Sherrell and Kaaren Sherrell as the governing people, and names Jimy Sherrell as the registered agent.

¹ See Attachment A for a copy of SOS records, captured on February 24, 2020.

Washington Department of Revenue (DOR) records show the Company as an active profit corporation under UBI number 600-030-043, first opened on October 17, 1970, and lists Jimy Sherrell and Kaaren Sherrell as the governing people.²

Shuttle Express has held a certificate of public convenience and necessity from the commission as a passenger transportation company since 1989, and provides auto transportation services in Pierce, King, Snohomish, Jefferson, and Island counties. Shuttle Express is located at 800 S.W. 16th Street, Renton, Washington 98057.

Recent annual reports filed by Shuttle Express reflect the following information under the Company’s intrastate auto transportation authority:

| Annual Report Year | Date Filed | Gross Revenue | Operating Miles | Vehicles Operated | Drivers Employed |
|---------------------------|-------------------|----------------------|------------------------|--------------------------|-------------------------|
| 2016 | May 1, 2017 | \$7,241,900 | 3,712,541 ³ | 103 | 126 |
| 2017 | May 1, 2018 | \$6,139,397 | 2,403,039 ⁴ | 105 | 87 |
| 2018 | April 30, 2019 | \$5,510,935 | 1,903,215 ⁵ | 75 | 80 |

A review of Shuttle Express’s complaint history with the commission reveals no informal consumer complaints filed against the Company over the last three years.

COMPLIANCE HISTORY

Docket TC-072228

On April 28, 2008, the commission assessed penalties against Shuttle Express in the amount of \$9,500 for 95 violations of WAC 480-30-213(2) because the Company used drivers who were not employees to provide passenger transportation services under Shuttle Express’s certificate between September 1 and September 30, 2007.

On July 11, 2008, the commission issued Order 01, approving and adopting the settlement agreement in full between Shuttle Express and staff. As part of the settlement agreement, Shuttle Express: (1) admitted its independent contractor driver program violated WAC 480-30-213(2), (2) agreed to pay a penalty in the amount of \$9,500, and (3) agreed to comply with all applicable rules and statutes enforced by the commission in the settlement agreement.

² See Attachment B for a copy of DOR records, captured on February 24, 2020.

³ Company reported 1,662,072 intrastate miles traveled in 2016 under charter and excursion authority.

⁴ Company reported 2,403,039 intrastate miles traveled in 2017 under charter and excursion authority.

⁵ Company reported 1,903,215 intrastate miles traveled in 2018 under charter and excursion authority.

Docket TC-091931

On December 16, 2009, Shuttle Express filed an application to remove restrictive language from its existing certificate that “service may be provided in vehicles no larger than a seven-passenger van.” On November 30, 2010, Shuttle Express conceded during a proceeding that its fleet consisted mostly of 10 passenger vans.⁶

On February 25, 2011, the commission entered Order 04, which granted Shuttle Express’s application to remove the restrictive language from its certificate. Order 04 noted:

We nevertheless remind [Shuttle Express] that WAC 480-30-276 requires that auto transportation companies abide by the tariffs and time schedules on file with the Commission and that WAC 480-30-286 directs carriers to post in each vehicle a copy of the schedule and fares for each route served by that vehicle. Commission Staff may also wish to investigate these claims further.⁷

On March 15, 2011, a petition for administrative review of Order 04 was filed. On April 14, 2011, the commission entered Order 05, which amended Shuttle Express’s certificate to remove the restriction of using vehicles no larger than seven passenger vans. Order 05 noted, “We are troubled that Shuttle Express has been exceeding the limitation in its Certificate, but this is not an enforcement proceeding.”⁸

Docket TC-120323

On May 1, 2013, staff filed a complaint against Shuttle Express alleging that between October 2010 and September 2011, the Company’s operation of its “rescue service” was an unlawful independent contractor program. The complaint alleged that: (1) Shuttle Express violated WAC 480-30-213(2) on 5,715 occasions by relying on independent contractors to transport passengers rather than using Company employees as required by the rule, (2) Shuttle Express failed to maintain sufficient reserve equipment in violation of WAC 480-30-216(6), (3) Shuttle Express improperly released private customer information to independent contractors in violation of WAC 480-30-456, and (4) the Company’s independent contractor program was a repeat offense, violating the terms of Order 01 in Docket TC-072228.

On November 1, 2013, the commission entered Order 03, which determined that Shuttle Express: (1) violated WAC 480-30-213(2) on 5,715 occasions between October 2010 and September 2011 by using independent contractors to provide regulated auto transportation service, (2) had sufficient reserve equipment and thus did not violate WAC 480-30-216(6), (3) violated WAC 480-30-456 on 5,715 occasions by releasing private customer information to independent contractors, and (4) violated Order 01 in Docket TC-072228 on 5,715 occasions by operating an independent contractor program. Order 03 assessed a penalty of \$120,000 on the Company and suspended an \$85,000 portion of the penalty for three years, subject to conditions.

⁶ Docket TC-091931, Rowley, TR. 81:18-23.

⁷ Docket TC-091931, Order 04, ¶ 32.

⁸ Docket TC-091931, Order 05, ¶ 20.

On January 3, 2014, Shuttle Express filed a petition for administrative review challenging the findings and conclusions of Order 03.

On March 19, 2014, the commission entered Order 04, which found that Shuttle Express: (1) violated WAC 480-30-213(2) on 5,715 occasions between October 2010 and September 2011, (2) did not violate WAC 480-30-456 by providing customer information to independent contractors, and (3) violated Order 01 in Docket TC-072228. Order 04 reduced the previously assessed penalty of \$120,000 to \$60,000 and required Shuttle Express to pay the entire penalty within 30 days.

In discussing whether Shuttle Express's violations were willful, Order 04 noted:

A prudent company would have consulted with Staff, and if necessary sought a ruling from the Commission, on the permissibility of the "rescue service" before initiating it, or at least when the Company became aware of Staff and the Commission's concerns. Shuttle Express chose not to do so, despite the long history of the Commission and Staff rejecting the Company's attempts to use independent contractors to provide regulated service. The clear implication is that, not having received the answer it wanted in the past, Shuttle Express decided to continue the program without asking, believing that seeking forgiveness would be preferable to requesting permission. Indeed, that was precisely the Company's calculus when it began operating the program at issue in Docket TC-072228. Jimmy Sherrell, the Company's president, testified that "I chose to put it in place, hoping that it would be ignored, and it wasn't, so I paid a fine and I discontinued the service."⁹

Docket TC-132141

On November 19, 2013, Shuttle Express filed a petition for a temporary and conditional exemption from compliance with WAC 480-30-213(2) and WAC 480-30-456 to allow the Company to operate its "rescue service" from December 13, 2013, to January 15, 2014. On December 13, 2013, the commission issued Order 01, which granted Shuttle Express's petition with conditions, and emphasized that the commission is "not condoning Shuttle Express's past practices and do not address, much less make any determinations on, the issues raised in Docket TC-120323. Nor are we endorsing the 'rescue service' or making any conclusion that this service is authorized or permissible under applicable law, including RCW 81.68 and Commission rules governing auto transportation companies."¹⁰

Dockets TC-143691, TC-160516, and TC-161257

On March 30, 2015, the commission entered Order 04 in Docket TC-143691, which granted Speedishuttle of Washington, LLC, d/b/a Speedishuttle Seattle (Speedishuttle), a certificate of public convenience and necessity to operate as an auto transportation company.

⁹ Docket TC-120323, Order 04, ¶ 30. *See generally Id.* at ¶¶ 27-34.

¹⁰ Docket TC-132141, Order 01, ¶ 13.

On May 16, 2016, Shuttle Express filed a petition to rehear the matters in Docket TC-143691, and to cancel or restrict Speedishuttle's certificate. Also on May 16, Shuttle Express filed with the commission a formal complaint against Speedishuttle in Docket TC-160516.

On August 4, 2016, the commission entered Order 06, which granted Shuttle Express's petition for rehearing in Docket TC-143691. Also on August 4, the commission issued Order 07/02, which consolidated Dockets TC-143691 and TC-160516.

On November 10, 2016, the commission entered Order 09, which held that the commission cannot grant Speedishuttle a certificate to offer the same service provided by Shuttle Express without a finding that Shuttle Express will not provide such service to the commission's satisfaction.

On December 1, 2016, Speedishuttle filed with the commission a formal complaint against Shuttle Express in Docket TC-161257. The complaint alleged that Shuttle Express used independent contractors and paid commissions to unauthorized ticket agents in violation of commission orders and rules.

On January 5, 2017, the commission entered Order 12/05/02, which consolidated Docket TC-161257 with Dockets TC-143691 and TC-160516. On January 12, 2017, staff notified the commission that it would independently investigate the allegations presented in Speedishuttle's complaint.

On March 17, 2017, staff filed testimony related to its investigation into Shuttle Express, alleging the Company violated WAC 480-30-213 by using independent contractors on 40,727 occasions¹¹ between January 16, 2014, and September 29, 2016.¹²

On April 3, 2017, the commission entered Order 17/10/07, which amended Order 08 to include rehearing the issue of whether Shuttle Express was providing service to the commission's satisfaction pursuant to RCW 81.68.040 and WAC 480-30-140.

On August 25, 2017, the commission entered Order 19/12/09, which concluded that Shuttle Express: (1) violated WAC 480-30-213 on 35,351 occasions in the two years preceding Speedishuttle's complaint; (2) violated WAC 480-30-391 by failing to file with the commission the form for its ticket agent agreements; (3) must file its ticket agent agreements within 30 days; (4) did not reasonably serve the market pursuant to WAC 480-30-140(2)(c); (5) did not provide service to the full extent of its authority pursuant to WAC 480-30-140(2)(a); (6) violated WAC 480-30-391 for failing to list all flag stops on its scheduled routes in its tariff; (7) must cease and desist its practice of stopping at unlisted flag stops; (8) must file a compliance plan within 90 days; (9) failed to reasonably expand and improve its service; (10) failed to provide service in a manner that meets advertised or posted schedules; (11) will not provide service to the

¹¹ The two-year statute of limitations reduced the number of actionable violations to 35,351.

¹² Shuttle Express operated under temporary waivers from WAC 480-30-213 prior to January 16, 2014, and after September 29, 2016.

commission's satisfaction pursuant to RCW 81.68.040 and WAC 480-30-140(3); and (12) should be penalized \$120,000 for 35,351 violations of WAC 480-30-213.¹³

With respect to whether Shuttle Express provided service to the commission's satisfaction, Order 19/12/09 held:

We also find that Shuttle Express fails to provide service in a manner that meets the advertised or posted schedules. WAC 480-30-346 requires an auto transportation carrier to include in its time schedules for scheduled service a list of each flag stop along a given route. While carriers are not required to stop at every flag stop *each time the route is traveled*, they are prohibited from stopping at any location that is not listed as a flag stop. Shuttle Express concedes that it combines its scheduled and door-to-door service, and, as Mr. Marks acknowledged at hearing, that it "more than occasionally" makes stops along scheduled routes that are not listed as flag stops in the company's tariff. As Staff noted in response to a bench request, Shuttle Express's practice of stopping at flag stops not listed for a given route violates Commission rules.

...

Overall, we find that the nature and extent of Shuttle Express's noncompliance is a predictive indicator that the company will continue to violate Commission rules as it see[s] fits, and conclude on that basis that the company will not provide service to the Commission's satisfaction. We note that RCW 81.68.030 authorizes the Commission to revoke any certificate issued pursuant to Chapter 81.68 if the certificate holder has willfully violated or refused to observe any of the Commission's orders, rules, or regulations. In light of the Commission's statutory authority to revoke Shuttle Express's certificate for willful violations of Commission rules and orders, it follows that such conduct necessarily constitutes a failure to provide service to the Commission's satisfaction. Although we will not take such escalated enforcement action at this juncture, we expect Shuttle Express to significantly overhaul its practices to ensure it complies with all applicable statutes, rules, and orders going forward.¹⁴

On September 15, 2017, Shuttle Express filed a petition for administrative review of Order 19/12/09.

On November 17, 2017, the commission issued Order 20/13/10,¹⁵ which concluded that Shuttle Express: (1) waived any challenge to the discussion, findings, and conclusions in Order 19/12/09 that it did not expressly state in its petition; (2) violated WAC 480-30-213 on 35,351 occasions when it used independent contractors; (3) violated WAC 480-30-391 by failing to obtain commission approval to pay commissions to hotel personnel; (4) must submit ticket agent agreements to the commission for approval to pay commissions to hotel personnel; (5) may not combine door-to-door and scheduled service except when it is unable to provide transportation at the time and place specified in the reservation that the Company has accepted for a given passenger; (6) should revise its tariff to remove language that is inconsistent with WAC 480-30-

¹³ Dockets TC-143691, TC-160516, and TC-161257 (*Consolidated*), Order 19/12/09, ¶¶ 178-192.

¹⁴ *Id.* at ¶¶ 116, 124 (emphasis added).

¹⁵ See Attachment C for a copy of Order 20/13/10 in Dockets TC-143691, TC-160516, and TC-161257 (*Consolidated*) (November 17, 2017).

346(2)(d) within 30 days; (7) will not provide service to the commission's satisfaction pursuant to RCW 81.68.040 and WAC 480-30-140(3); (8) must submit a compliance plan for Staff's review within 90 days; and (9) should be penalized \$120,000 for 35,351 violations of WAC 480-30-213.¹⁶

Specific to Shuttle Express combining its scheduled and door-to-door service, Order 20/13/10 noted:

Commission rules require that “[a]n auto transportation company’s filed time schedule must . . . [s]how the routes served, including the exact location of each regular stop, each flag stop, and any point to which service is provided.” The Initial Order concludes that Shuttle Express’s practice of combining scheduled and door-to-door service violates these rules. Shuttle Express interprets Commission rules not to prohibit a company from making unscheduled stops when providing scheduled service as long as the passengers who obtain scheduled service are picked up and dropped off at the locations specified in the time schedule. The rules are not susceptible to Shuttle Express’s interpretation.

Scheduled service and door-to-door service are separate auto transportation services, and Commission rules treat them as such. The time schedules for scheduled service in a company’s tariff must identify “*any* point to which service is provided.” Adding door-to-door service points on a scheduled service route is fundamentally inconsistent with this requirement.

Shuttle Express nevertheless points to its tariff in which it states under the heading ALTERNATIVE MEANS OF TRANSPORT, “We also reserve the right to combine Door-to-Door passengers on a scheduled service route so long as the scheduled pick-ups should not be adversely affected.” Shuttle Express, however, cannot reserve rights it does not have. Company tariffs must state “whether alternate means of transport will be provided by the company *when it is unable to provide transportation at the time and place specified in the reservation* that the company has accepted for that passenger.” Shuttle Express does not claim that it combines door-to-door with scheduled service only when it is unable to provide the service the passenger has reserved. Rather, Mr. Marks testified that “it would not be financially reasonable to only serve passengers on some routes, so we do combine them with others in the general area.” Shuttle Express is not unable to provide a particular service simply because doing so “would not be financially reasonable.”

Shuttle Express’s conduct with respect to this issue typifies our dissatisfaction with the company’s operations. As we discuss below, Shuttle Express repeatedly adopts practices for provisioning regulated auto transportation service despite Commission rules prohibiting such practices. While we find that Shuttle Express’s practice of combining door-to-door and scheduled service is inconsistent with WAC 480-30-346(2)(d), we do not uphold the Initial Order’s finding that Shuttle Express violated the rule. In this instance, the Commission approved Shuttle Express’s tariff provision or allowed it to go into effect by operation of law. Given the inconsistency of the tariff provision with the

¹⁶ Dockets TC-143691, TC-160516, and TC-161257 (*Consolidated*), Order 20/13/10, ¶¶ 79-91.

Commission’s rules, we require Shuttle Express to correct this provision in its tariff rules. Further, if Shuttle Express seeks to combine door-to-door and scheduled service, it should raise that issue in Docket TC-161262, the rulemaking examining the rules governing auto transportation. Pending any revisions to those rules, Shuttle Express may not combine door-to-door and scheduled service except “when it is unable to provide transportation at the time and place specified in the reservation that the company has accepted for that passenger.”¹⁷

On November 21, 2017, Shuttle Express filed a motion for stay. On December 1, 2017, the commission issued Order 21/14/11, which denied Shuttle Express’s motion, and ordered the Company to pay the entirety of the \$120,000 penalty or file jointly with Staff a proposed plan to pay the penalty in installments over a period not to exceed one year.¹⁸

On December 14, 2017, Shuttle Express appealed Order 20/13/10 by filing a petition for judicial review in Thurston County Superior Court.¹⁹

On December 15, 2017, Shuttle Express filed a tariff revision to comply with Order 20/13/10.²⁰ The Company’s revision to “ALTERNATE MEANS OF TRANSPORT” removed the language, “We also reserve the right to combine Door-to-Door passengers on a scheduled service route so long as the scheduled pickups should not be adversely affected.”²¹

On April 30, 2018, the commission and Shuttle Express entered into a settlement agreement and release of claim, which the parties agreed: (1) the commission would suspend \$50,000 of Shuttle Express’s remaining \$100,000 penalty balance for a period of two years provided Shuttle Express committed no violations of any applicable commission laws or regulations; (2) Shuttle Express would comply with all applicable commission laws and regulations, and any breach of the settlement agreement would result in imposition of the \$50,000 suspended penalty; (3) Shuttle Express would withdraw its petition for judicial review in Thurston County Superior Court; and (4) Shuttle Express released its tort claim against the State of Washington.²² On May 11, 2018, Thurston County Superior Court entered an order dismissing the action.

Dockets TC-160819 and TC-161262

On June 17, 2016, Shuttle Express filed a petition for a temporary and conditional exemption from compliance with WAC 480-30-213 and WAC 480-30-456 to permit the Company to use independent contractors to supplement its shared ride service to and from SeaTac International Airport (SeaTac) in Docket TC-160819. On September 6, 2016, Shuttle Express filed an amended petition seeking additional partial exemptions from WAC 480-30-221 and WAC 480-30-231 to exempt its independent contractors from certain safety and vehicle identification requirements.

¹⁷ *Id.*, ¶¶ 35-38 (internal citations omitted).

¹⁸ Dockets TC-143691, TC-160516, and TC-161257 (*Consolidated*), Order 21/14/11, ¶¶ 6-7.

¹⁹ Case No. 17-2-06582-34.

²⁰ See Attachment D for a copy of Shuttle Express’s Cover Letter, dated December 15, 2017.

²¹ See Attachment E for a copy of 1st Revised Page 1, and 2nd Revised Page 1 of Shuttle Express’s tariff.

²² See Attachment F for a copy of the Settlement Agreement and Release of Claim, dated April 30, 2018.

On September 30, 2016, the commission entered Order 01, which granted the Company's petitions with conditions for a period of 10 months.

On December 21, 2016, the commission initiated a rulemaking in Docket TC-161262 to consider revisions to the rules governing auto transportation companies. On June 6, 2017, the commission formally proposed to adopt revised rules that would authorize auto transportation companies to use independent contractors under certain conditions.

On June 16, 2017, Shuttle Express filed a petition for a six-month extension of the exemption granted in Order 01 in Docket TC-160819, while the commission completed the adoption process in Docket TC-161262. On June 29, 2017, the commission issued Order 02, which granted the Company's petition for an extension for a period not to exceed six months, or until 30 days after the effective date of the rules promulgated in Docket TC-161262.

On July 31, 2017, the commission issued its Adoption Order in Docket TC-161262, which amended, repealed, and adopted revisions to WAC Chapter 480-30. Shuttle Express did not raise the issue of combining door-to-door and scheduled service in the rulemaking.

INVESTIGATION

Data Request

On February 18, 2020, staff requested the following records and information from Shuttle Express:

1. Daily trip records for Shuttle Express's **door-to-door service** customers in Washington from November 1, 2019, through December 31, 2019. The daily trip records must include:
 - (1) the route traveled,
 - (2) the number of passengers carried on each trip,
 - (3) the point each passenger boarded and disembarked from the vehicle, and
 - (4) the fare charged to each customer.
2. Daily trip records for Shuttle Express's **scheduled service** customers in Washington from November 1, 2019, through December 31, 2019. The daily trip records must include:
 - (1) the route traveled,
 - (2) the tariff schedule operated,
 - (3) the number of passengers carried on each schedule,
 - (4) the point each passenger boarded and disembarked from the vehicle,
 - (5) the fare charged to each customer, and
 - (6) any condition causing the vehicle to deviate from the Company's filed time schedule by more than thirty minutes.
3. How Shuttle Express distinguishes and delineates door-to-door service from scheduled service through its online booking system.

4. How a potential customer chooses between door-to-door service and scheduled service through Shuttle Express's online booking system.
5. The name, title, telephone number, and email address of the Company's contact person that commission staff can work with directly for questions that may arise concerning any details of the data.

The purpose of staff's request for records from November 1, 2019, through December 31, 2019, was to acquire a sample period to accurately capture the Company's auto transportation operations. The deadline for the Company to respond was February 28, 2020.²³

On February 19, 2020, Shuttle Express submitted to staff one Excel spreadsheet (spreadsheet) "of all share ride and DTA reservations" from December 1, 2019, through January 31, 2020.²⁴ Although the records furnished by Shuttle Express didn't align with staff's requested sample period, the sample size remained the same. The spreadsheet provided trip numbers, pickup addresses, drop-off addresses, pickup dates and times, number of passengers, and total charges per location for each of the 4,024 regulated auto transportation trips during the time period. Kaaren Sherrell was identified as the contact.

Staff used the documents and information furnished from the original data request, all subsequent responses from Shuttle Express, and commission records to conduct its investigation of the Company's auto transportation operations.

Customer Service Records

Investigation

WAC 480-30-056(3) requires that auto transportation companies maintain complete and accurate customer service records. WAC 480-30-056(3)(a)(i) requires that the company's daily trip records (by route or by unit of equipment) show: (A) **the schedules operated**, (B) the number of passengers carried on each schedule, (C) the point each passenger boarded and disembarked from the vehicle, (D) the fare charged to each customer, and (E) any condition causing the vehicle to deviate from the company's filed time schedule by more than 30 minutes.

Staff's February 18, 2020, data request to Shuttle Express requested daily trip records for door-to-door service and scheduled service to include: (1) **the route traveled**, (2) the number of passengers carried on each trip, (3) the point each passenger boarded and disembarked from the vehicle, and (4) the fare charged to each customer.²⁵

On February 19, 2020, Shuttle Express contacted staff and explained that its computer database doesn't capture schedules operated for its trips.²⁶ During the phone conversation, staff clarified that that the Company should provide records that included the schedules operated for all of the

²³ See Attachment G for a copy of the data request, dated February 18, 2020.

²⁴ See Attachment H for a copy of the spreadsheet provided by Shuttle Express, dated February 19, 2020.

²⁵ See Attachment G for a copy of the data request, dated February 18, 2020.

²⁶ See Attachment I for a copy of phone notes with Shuttle Express, dated February 19, 2020.

trip records requested. Later that day, Shuttle Express furnished data in an Excel spreadsheet that included trip numbers, pickup addresses, drop-off addresses, pickup dates and times, number of passengers, and total charges per location, but did not include the schedule or route operated for each trip.²⁷ The Company's email stated, "[a]ddresses with DTA in them are our scheduled service addresses."²⁸ Shuttle Express's position on the meaning of the "DTA" tag appeared to change over the course of their responses.²⁹

On February 27, 2020, staff questioned why locations served with scheduled service in Shuttle Express's tariff were identified differently throughout the entire spreadsheet and asked the Company to explain the service differences between the discrepancies.³⁰

On February 27, 2020, Shuttle Express stated, "[o]ur software allows us to enter/establish 'landmarks' so we can offer the hotel name in a drop down menu to pick from in case people don't know the address, it speeds up entering the address. If someone uses the landmark address located on a drop down menu, it will have the (SCH) or (DTA). If someone types in the street address, our system utilizes Google maps address designation."³¹ Shuttle Express's response appeared to indicate that the "DTA" or "SCH" designations in the spreadsheet had no effect on whether a specific trip was operated as door-to-door service or scheduled service.

On February 27, 2020, staff asked if Shuttle Express was able to identify whether a specific address/trip was scheduled service or door-to-door service.³² The Company did not respond to this email. On March 3, 2020, staff asked Shuttle Express if it could identify whether a specific trip was operated as door-to-door service or scheduled service if staff was to provide the trip number.³³

On March 5, 2020, Shuttle Express provided a list of hotels and the type of service it provides to those locations,³⁴ explaining that, "[a]ny hotels with the 'drop down menu designation' SCH or DTA on their address in the trips will be serviced as a share-ride, scheduled or charter basis per what is specified in the list attached. We also charge a different rate for each type of service so you can tell by that also."³⁵

On March 5, 2020, staff questioned if Shuttle Express could identify whether a trip was door-to-door service, scheduled service, or a combination of door-to-door and scheduled service by the trip number. Shuttle Express did not respond to this email.

²⁷ See Attachment H for a copy of the spreadsheet provided by Shuttle Express, dated February 19, 2020.

²⁸ See Attachment J for a copy of emails with Shuttle Express, dated February 19 through March 5, 2020.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ See Attachment K for a copy of the list of hotel service types, provided on March 5, 2020.

³⁵ See Attachment J for a copy of emails with Shuttle Express, dated February 19 through March 5, 2020.

Findings

Staff ultimately made its determination on whether a trip was operated as door-to-door service, scheduled service, or a combination of the two services by identifying locations served with scheduled service in Shuttle Express's tariff,³⁶ and identifying whether the associated fares aligned with the Company's door-to-door rates³⁷ or scheduled service rates.³⁸

Shuttle Express failed to provide the schedule or route operated in conjunction with every trip provided between December 1, 2019, and January 31, 2020, resulting in 4,024 violations of WAC 480-30-056(3)(a)(i)(A).

Combination of Door-to-Door and Scheduled Service

Investigation

WAC 480-30-346(2)(d) requires that an auto transportation company's filed time schedule show the routes served, including the exact location of each regular stop, each flag stop, and any point to which service is provided.

On February 21, 2020, staff asked Shuttle Express if it could identify whether a specific trip was operated exclusively as door-to-door service, a combination of door-to-door service and scheduled service, or scheduled service with stops that are not listed in Shuttle Express's tariff.³⁹ The trip staff referenced included a location served with scheduled service in the Company's tariff, identified in the spreadsheet as "(DTA)," and two other addresses not served with scheduled service in Shuttle Express's tariff.

On February 24, 2020, Shuttle Express responded, stating that the referenced trip was a combination of door-to-door service and scheduled service, "with scheduled hotels being the first stops from SEATAC or the last pickups going to SEATAC as per Speedy Shuttle [*sic*] Case."⁴⁰

On March 5, 2020, Shuttle Express informed staff that dependent on volume, the Company "will run loops as required, otherwise all of [its] scheduled service runs are operated in conjunction with the door to door trips following the UTC requirements to do so."⁴¹

Findings

Door-to-door service and scheduled service are separate auto transportation services. Shuttle Express's practice of combining door-to-door service and scheduled service was addressed in

³⁶ See Attachment L for a copy of Shuttle Express's current tariff, pages 11-12.

³⁷ See Attachment M for a copy of Shuttle Express's current tariff, pages 7-9a.

³⁸ See Attachment N for a copy of Shuttle Express's current tariff, pages 17-20, 25-26, and 29-36.

³⁹ See Attachment J for a copy of emails with Shuttle Express, dated February 19 through March 5, 2020.

⁴⁰ *Id.*

⁴¹ See Attachment O for a copy of Shuttle Express's email, dated March 5, 2020.

consolidated Dockets TC-143691, TC-160516, and TC-161257, and as a result, the Company modified its tariff to avoid inconsistency with WAC 480-30-346(2)(d).⁴²

The practice of combining different time schedules is also inconsistent with WAC 480-30-346(2)(d) because each filed time schedule must contain a list of all flag stops and any point at which the Company will provide service.

Staff reviewed 4,024 regulated auto transportation trips between December 1, 2019, and January 31, 2020, and found that Shuttle Express continues to combine its door-to-door service and scheduled service, and also combines its various time schedules. Staff found that Shuttle Express combined its door-to-door service and scheduled service on 189 occasions, and Shuttle Express combined its various time schedules on nine occasions, resulting in 198 violations of WAC 480-30-346(2)(d).⁴³

Scheduled Service

Investigation

WAC 480-30-276(2) requires that an auto transportation company provide service along all routes, and to all points, listed on the company's filed time schedule.

On February 24, 2020, staff asked Shuttle Express if it is running scheduled routes per the time schedules provided its tariff, or if the Company is solely operating door-to-door service that happens to also include locations served with scheduled service.⁴⁴

On February 25, 2020, Shuttle Express stated that it had discontinued its scheduled service to University District, Bothell, and Everett "due to operating restrictions imposed during Speedi case making the flag stop be the first drop off or last pick up. We are operating flag stop service to those Bellevue Hotels and Downtown hotels. We do not run a vehicle in loops with a schedule unless the volume allows such as in the summer during cruise season or during peak travel times during a conference."⁴⁵

On February 27, 2020, staff asked Shuttle Express if trips without passengers would be captured in the spreadsheet the Company provided.⁴⁶ On February 27, Shuttle Express stated that it will "only run the route when there are advanced reservations or volume dictates."⁴⁷

⁴² See Attachment E for a copy of 1st Revised Page 1, and 2nd Revised Page 1 of Shuttle Express's tariff.

⁴³ See Attachment P for a list of trips Shuttle Express combined door-to-door service and scheduled service and/or combined different time schedules.

⁴⁴ See Attachment J for a copy of emails with Shuttle Express, dated February 19 through March 5, 2020.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

On March 5, 2020, Shuttle Express stated that “if volume dictates, we will **run loops as required**, otherwise all of our scheduled service runs are operated in conjunction with the door to door trips following the UTC requirements to do so.”⁴⁸

Findings

Shuttle Express’s tariff states that the Company provides scheduled services between SeaTac and Bellevue/Eastgate, the University District, and multiple Seattle locations every day of the year. Specifically, Schedule No. 3 of the tariff states that routes are operated every hour, while Schedule Nos. 4, 7, 9, 10, 11, and 17 of the tariff provides that routes are operated every half hour, totaling 312 trips per day.⁴⁹ Schedule Nos. 8, 12, 13, 14, 15, and 16 were not included in staff’s investigation because those scheduled routes are not operated between October 1 and April 30.

Staff reviewed 4,024 regulated auto transportation trips between December 1, 2019, and January 31, 2020, and found that Shuttle Express failed to provide service along all scheduled service routes on 19,091 occasions in violation of WAC 480-30-276(2), as outlined in the table below.

| Tariff 11 Schedule No. | Required Tariff Trips Dec. 2019 – Jan. 2020 | Trips Operated Dec. 2019 - Jan. 2020 | Violations |
|-----------------------------------|--|---|-------------------|
| 3 | 1,488 | 0 | 1,488 |
| 4 | 2,976 | 56 | 2,920 |
| 7 | 2,976 | 0 | 2,976 |
| 9 | 2,976 | 2 | 2,974 |
| 10 | 2,976 | 1 | 2,975 |
| 11 | 2,976 | 28 | 2,948 |
| 17 | 2,976 | 166 | 2,810 |
| Total | 19,344 | 253 | 19,091 |

Staff credited Shuttle Express with operating a scheduled route on every trip that included a scheduled service location where the passengers were assessed a rate within the base fare and max fare of scheduled service, regardless of whether the route was combined with door-to-door service or operated strictly as scheduled service.⁵⁰

SUMMARY OF RECOMMENDATIONS

Recommendation

Staff recommends that the commission issue a formal complaint against Shuttle Express. The commission is authorized to penalize Shuttle Express up to \$1,000 per violation for 23,313

⁴⁸ See Attachment O for a copy of Shuttle Express’s email, dated March 5, 2020 (emphasis added).

⁴⁹ See Attachment N for a copy of Shuttle Express’s current tariff, pages 17-20, 25-26, and 29-36.

⁵⁰ See Attachment Q for a list of trips Shuttle Express provided scheduled service.

violations of commission regulations.⁵¹ Staff considered the following factors to determine the recommended penalty amount:⁵²

1. How serious or harmful the violations are to the public.

Staff believes the violations cited in this report potentially caused harm to the public. Consumers potentially missed flights due to Shuttle Express abandoning its scheduled service and customers either directly or indirectly were assessed differing fares for the same auto transportation services. However, the commission has not received an informal consumer complaint against Shuttle Express over the last three years, which could be attributed to (1) Shuttle Express's actions not causing harm to the public, (2) a lack of customer awareness that different fares were assessed for the same service, or (3) increased transportation options available to consumers that mitigated the impact of Shuttle Express's failure to perform its scheduled service. Nevertheless, staff believes Shuttle Express failed to provide adequate and dependable service, a responsibility and requirement of all auto transportation companies.

2. Whether the violations were intentional.

On November 17, 2017, the commission entered Order 20/13/10, which held that adding door-to-door service points on a scheduled service route was fundamentally inconsistent with the requirements of WAC 480-30-346(2)(d), and required Shuttle Express to correct its tariff to come into compliance.

On December 15, 2017, Shuttle Express filed a tariff revision to comply with Order 20/13/10, which removed "the right to combine Door-to-Door passengers on a scheduled service route so long as the scheduled pickups should not be adversely affected."

On April 30, 2018, the commission and Shuttle Express entered into a settlement agreement, wherein the parties agreed that the commission would suspend a \$50,000 portion of the penalty for a period of two years provided Shuttle Express committed no violations of any applicable commission laws or regulations, and any breach of the settlement agreement would result in imposition of the \$50,000 suspended penalty.

Despite the commission addressing this very issue and incentivizing compliance by suspending a \$50,000 portion of the penalty, Shuttle Express continued its practice of combining door-to-door service and scheduled service. As referenced in the Final Order, "Shuttle Express has repeatedly and willfully violated Commission rules and regulations."⁵³

It is clear that Shuttle Express does not consider the commission's prior enforcement actions sufficient enough to deter it from continuing to violate commission rules.

⁵¹ RCW 81.04.380.

⁵² Docket A-120061 – Enforcement Policy of the Washington Utilities and Transportation Commission – Section V.

⁵³ Dockets TC-143691, TC-160516, and TC-161257 (*Consolidated*), Order 20/13/10, ¶ 76.

3. Whether the Company self-reported the violations.

Shuttle Express did not self-report any of the violations cited in this report.

4. Whether the Company was cooperative and responsive.

Shuttle Express responded immediately to staff's initial data request and was relatively cooperative and responsive throughout the investigation. There were a couple of occasions where Shuttle Express failed to respond to staff and multiple exchanges where Shuttle Express appeared to be purposely vague and provided generalized information to avoid directly answering staff's questions.

5. Whether the Company promptly corrected the violations and remedied the impacts.

Shuttle Express has not provided staff with evidence that it has corrected the violations; however, to date, the Company has not been informed of the violations in this investigation report. Shuttle Express continues to commit violations previously identified by the commission.

6. The number of violations.

Staff documented 23,313 violations of WAC Chapter 480-30. This is a significant number of violations for the two-month sample period reviewed.

7. The number of customers affected.

Staff cannot accurately calculate how many customers were affected by these violations. The Company failed to provide 19,091 scheduled service trips in a span of two months, but the commission also did not receive any consumer complaints against Shuttle Express during that timeframe. Again, consumers potentially rely on this scheduled service and may have missed flights due to Shuttle Express abandoning its scheduled service.

8. The likelihood of recurrence.

The Company continued with the same practices that it was required to cease in the previous enforcement action. Absent a significant commitment to come into compliance with commission regulations, the violations are likely to reoccur.

As the commission held in Order 19/12/09, "we find that the nature and extent of Shuttle Express's noncompliance is a predictive indicator that the company will continue to violate Commission rules as it see[s] fits"⁵⁴

⁵⁴ Dockets TC-143691, TC-160516, and TC-161257 (*Consolidated*), Order 19/12/09, ¶ 124.

9. The Company's past performance regarding compliance, violations, and penalties.

Shuttle Express has an extensive history of noncompliance with the commission, resulting in both violations and penalties. See pages 5-12 in this investigation report.

10. The Company's existing compliance program.

Kere Greene, President of Shuttle Express, is responsible for the Company's compliance program.

11. The size of the Company.

In 2018, Shuttle Express employed 80 drivers, operated 75 motor vehicles, and reported a gross revenue of \$5,510,935.

Summary

While the law allows the commission to assess a penalty of up to \$1,000 per violation, staff believes the full penalty of \$23,313,000 is disproportionate to the Company's annual reported revenue. Staff recommends the commission issue a formal complaint against Shuttle Express, and assess a penalty of up to \$409,030 for 23,313 violations of commission regulations, as follows:

- Up to \$190,910 for 19,091 violations of WAC 480-30-276(2) for failing to provide service along all routes, and to all points, listed on the Company's filed time schedule.
- Up to \$20,120 for 4,024 violations of WAC 480-30-056(3)(a)(i)(A) for failing to maintain complete and accurate customer service records pertaining to schedules operated.
- Up to \$198,000 for 198 violations of WAC 480-30-346(2)(d) for failing to list each flag stop and any point to which service is provided in the Company's time schedule.