EXH ___, DJW-3T

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

SHUTTLE EXPRESS, INC., Petitioner and Complainant, v. SPEEDISHUTTLE WASHINGTON, LLC Respondent.	DOCKET NOS. TC-143691 TC-160516 TC-161257

RESPONSIVE AND REBUTTAL TESTIMONY OF PETITIONER/COMPLAINANT

SHUTTLE EXPRESS, INC.

BY

DON J. WOOD

April 5, 2017

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Don J. Wood. My business address is 914 Stream Valley Trail, Alpharetta, Georgia 30022.

Q. ARE YOU THE SAME DON J. WOOD WHO PREFILED OPENING TESTIMONY ON BEHALF OF SHUTTLE EXPRESS, INC. ("SHUTTLE EXPRESS") IN THIS PROCEEDING?

A. Yes. My Revised Opening Testimony was prefiled on February 22, 2017.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. I have been asked by Shuttle Express to respond to the opening testimony of Staff and Speedishuttle in Docket No. TC-161257 and to rebut the responsive testimony of Staff and Speedishuttle in Docket Nos. TC-143691 and TC-160516. I will be responding to the testimony of Mr. David Pratt and Mr. Michael Young on behalf of WUTC Staff, and Mr. H. Jack Roemer on behalf of Speedishuttle Washington, LLC.

Q. DO YOU HAVE ANY OBSERVATIONS THAT APPLY TO THE TESTIMONY AND PROPOSALS OF BOTH THE WUTC STAFF AND SPEEDISHUTTLE?

A. Yes. The proposals of both Staff and Speedishuttle[1] will have a direct impact on the interests of the public and the future availability of share ride services – including the people (residents and visitors) who rely on these services for their transportation needs, and the Washington businesses that rely on share ride services to transport their customers to and from transportation centers.

The first – and essential – step to make sure the public's interests are served is to ensure the availability of the service, throughout the target geographic area, at reasonable rates and quality. Depending on the economic factors applicable to a given market, it may be possible to achieve these objectives through competitive market forces, but it may also require the consistent application of a regulatory construct. The challenge for any regulator is to distinguish between those circumstances in which competitive market forces can be introduced and relied upon, and those circumstances in which the regulation of the service provider or providers in a market is necessary and appropriate.[2]

Each approach has both advantages and limitations. With a pure regulatory approach, a single provider can be required to provide service throughout a geographic area, subject to pricing and quality constraints set by the regulator. This approach can ensure the availability of affordable service to all customers, including those who seek

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[1] Issues regarding the market and public interest impacts of the Commission's decision in this proceeding are addressed directly by Mr. Young, Mr. Pratt, and Mr. Roemer.

[2] Such regulation may include necessary limits on the number of providers offering the same service in a given market.

service in areas that are costly to serve.[3] In this scenario, a provider may charge different rates for service in different areas, but in order to ensure affordability its rates for service in the highest cost areas may be lower than it would otherwise seek to charge in order to fully recover its costs to provide service to that area and provide a contribution to the recovery of fixed costs. In this example, the provider's rates for service to low cost areas would be set at an affordable level, but would be sufficiently high to permit the recovery of costs not recovered when serving the high cost area. Where economies of scale are available so that average total cost continues to decline beyond the total volume of service demanded (that is, the minimum efficient size of a provider is equal to, or larger than, the total size of the market), an approach based on the regulation of a single provider also results in a more efficient method of serving the market (resulting in lower total costs and lower rates for customers). In such a case, a single provider can serve the entire market at a lower total cost than two or more providers. This scenario has an additional implication: if prices are constrained by forces external to the market, a single provider (with its lower unit cost) may be able to remain viable and continue to provide service throughout the area, including high cost areas. If, however, unit costs are increased by the presence of a second provider, neither provider may be able to increase rates to a level sufficient to recover its costs. At a minimum, this will create a strong incentive for providers to avoid serving high cost areas and to focus only on the lowest

[3] For transportation services, this is likely to include service to or from areas of low population density or areas that are relatively distant from transportation hubs.

cost customers to serve. Ultimately, even after abandoning high cost areas neither provider may be able to recover its costs and may be required to exit the market.

In contrast, if the economic characteristics of a market permit multiple providers to operate efficiently (that is, economies of scale are limited and the total size of the market is sufficient to permit multiple providers to operate at a minimum efficient size), and market prices permit all efficient providers to recover their costs, a competition-based approach can provide benefits to customers. In such a scenario, market forces would encourage lower prices and higher quality service. The primary challenge to such an approach, particularly in a geographic market in which costs vary significantly, is to ensure that providers continue to provide service in high cost areas, even though they face a strong incentive to serve only the most profitable routes. For this reason, some level of regulatory oversight remains necessary, even when competitive market forces are being relied upon to constrain prices.

A hybrid approach is also possible. In such a scenario, a regulator can authorize a provider to serve the target geographic market, and may require that provider to serve throughout the area (including high cost areas) at reasonable rates and subject to standards for service quality. Granting a certificate to a second provider to serve the same geographic area would then be conditioned on one of the following: (1) a conclusion by the regulator that the market can sustain more than one provider (because economies of scale are found to be limited, and because external constraints will permit the prices charged by each provider to recover its costs), or (2) a conclusion by the regulator that the second provider will not provide the same service as the incumbent, but will instead provide a service that either meets the needs of an unserved market segment or represents an enhancement that will expand the size of the total market. If these conditions are met, the entry of a second provider can provide benefits to customers while ensuring that service is available throughout the area (including in high cost areas) and allowing each provider to recover its costs. Such a result would be in the public interest.

Q. ARE YOUR OBSERVATIONS ABOVE CONSISTENT WITH YOUR UNDERSTANDING OF WASHINGTON STATUTES AND REGULATIONS?

A. Yes. While it is not my intention to offer a legal interpretation of any statute or regulation in my testimony, the hybrid approach described above is consistent with my understanding to the requirements in Washington regarding auto transportation services. The entry of a second provider into a territory already served by a certificate holder is limited to a scenario in which the companies will not be providing the same service. If, however, the second provider operates based on an entirely different business model that provides service to unserved market segments or introduces enhancements that expand the overall market, the entry of the second provider may be in the public interest.

Q. WHY IS THIS DISCUSSION RELEVANT TO A CONSIDERATION OF WHETHER THE SERVICE THAT SPEEDISHUTTLE CURRENTLY

PROVIDES IS CONSISTENT OR INCONSISTENT WITH THE BUSINESS MODEL APPROVED BY THE COMMISSION?

A. It is relevant – and I believe important – because it provides essential context to an evaluation of whether Speedishuttle's actual operations are consistent with its proposed business plan and the commitments made at the time of its application. The examination of individual facts in isolation fails to provide the basis for a conclusion. For example, Did Speedishuttle purchase Mercedes vans for use in Washington? Yes, it appears that they did. Did Speedishuttle implement the "multilingual business model" described in its application and supporting testimony? Available evidence suggests that they did not. Did Mr. Morton's testimony that Speedishuttle "will not have" walk-up, on-demand service prove to be accurate? No, it did not. Does Speedishuttle greet every passenger arriving at SeaTac and escort them first to baggage claim and then to their van, as Mr. Morton also testified? No.

The problem, of course, is that – individually and without context – these questions and answers are of limited utility. Without context, it is at best unclear how to treat an applicant that has met some commitments but not others. But within the context of a decision that Speedishuttle's application should be granted – *not* because the Commission concluded that the market would support multiple providers offering the same service, but because it relied on Speedishuttle's assertion that it would implement "an entirely different business model that appeals to and serves a certain subset of the market"[4] – the importance of Speedishuttle's actions, and their impact on the interests of the public, can be evaluated in a meaningful way.

Q. WHAT ARE THE SALIENT CHARACTERISTICS OF THE MARKET AT ISSUE?

A. As noted in my Opening Testimony, Shuttle Express provides door-to-door share ride service using Seattle Tacoma International Airport ("SeaTac") as its primary hub. This share ride service is provided on a scheduled (prearranged) and walk-up basis.[5]

The geographic characteristics of this market are directly relevant. Consistent with the terms of its Certificate of Public Convenience and Necessity ("CPCN") granted by this Commission, Shuttle Express provides share ride service to all requesting customers across a very large geographic area. Specifically, Shuttle Express provides service to addresses within 25 miles of SeaTac, Paine Field, Renton Airfield, and Boeing Field. This represents nearly all of King County,[6] and consists of many areas with low population density and long distances to major roadways.

It is important to consider the scope of this geographic market. King County encompasses 2,307 square miles, which is 50% larger that the state of Rhode Island

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[4] Order 04, ¶32.
[5] Shuttle Express also provides scheduled service between SeaTac and certain other locations, such as hotels, schools, and other transportation hubs.
[6] Pursuant to the terms of its CPCN, there are a limited number of areas within King County that Shuttle Express is not certificated to serve.

(1,544 square miles) and only slightly smaller than the state of Delaware (2,488 square miles). The challenges of serving such a large area, and particularly the less dense and more remote portions of the area, have a direct bearing on a determination of the public interest. If the regulatory objective is to ensure that share ride service is available to customers throughout the geographic areas currently served (and not restricted to the least expensive areas to serve), and to ensure that this service is available throughout the year (and not restricted to the most profitable seasons), it is essential to consider the impact of Speedishuttle's operations – "as implemented" as opposed to "as promised" – on the long term availability of share ride services in the target market.

External constraints on prices also represent an important characteristic of the share ride market at issue. When seeking transportation services, customers in this area can choose from other kinds of transportation providers, including but not limited to taxis, limousine services, transportation network companies (such as Uber and Lyft), or public transportation. Depending on the prices of fuel and parking, potential customers may also elect to simply drive themselves. Collectively, these alternatives provide a constraint to the level of prices that a share ride provider can charge.

Q. WITHIN THIS CONTEXT, CAN YOU RECAP THE FACTS OF THE CASE BASED ON CURRENTLY-AVAILABLE INFORMATION?

A. Yes. Shuttle Express was granted a CPCN by the Commission to provide share ride services in a large geographic area. Throughout the decades of its operation, it has provided affordable, safe, and reliable service to those who wanted a share ride option to meet their transportation needs (this includes the people who needed transportation to or from a transportation hub, and those business that rely on a share ride service to deliver their customers). When doing so, Shuttle Express has provided service on routes with relatively low unit costs (routes that are relatively short and/or have a high density of passengers), and it has also provided service on routes with high unit costs (those that are much longer in length and/or have a low passenger density). Shuttle Express has a higher tariffed rate to serve the higher-cost routes, but relies on the mix of high- and low-cost passengers to recover its total costs of doing business in this market. It is also important to note that Shuttle Express has offered and provided service on high- and low-cost routes throughout the year, and has not limited its service to peak seasons in which high passenger volumes are expected.

Throughout the time of its operation in Washington, the presence of other transportation services has limited the total demand for share ride services and the rates that Shuttle Express could charge.

In 2015, after receiving evidence (including the sworn testimony of Speedishuttle witnesses), the Commission elected to grant Speedishuttle a CPCN. When doing so, the Commission did not address the question of whether the market at issue could sustain a second share ride provider offering the same service as Shuttle Express. Instead, the Commission concluded that “Speedishuttle does not propose to offer the same service

Shuttle Express provides,"[7] but instead would be implementing "an entirely different business model."[8] It appears this entirely different business model was not expected to overlap materially with that of Shuttle Express, but instead would be targeted to "an entire demographic of travelers whose needs cannot be met by Shuttle Express's existing service."[9] Almost immediately after receiving its certificate, Speedishuttle began to offer the same walk-up, on-demand share ride service offered by Shuttle Express (at least for the routes characterized by low unit costs).

Q. WHAT HAS BEEN THE RESULT OF SPEEDISHUTTLE'S ENTRY INTO THE SHARE RIDE MARKET IN WASHINGTON?

A. While the parties continue to disagree, often rather strenuously, on issues related to what Speedishuttle did nor did not promise, and whether the business plan described to the Commission in the application proceeding was implemented, both Shuttle Express and Speedishuttle agree on a number of important issues.

First, both providers agree, based on their reporting to the Port of Seattle, that the size of the market for share ride services has not increased because of Speedishuttle's entry, but in fact has continued to decrease.

[7] Order 04, ¶17.
[8] Id., ¶32.
[9] Id., ¶20. The Commission specifically concluded that, on this basis, "Speedishuttle's proposed service is not the same service Shuttle Express currently provides."

Second, there is agreement that Speedishuttle's business model, which is based on more costly equipment and higher labor costs, makes it the higher cost provider of share ride services in the market.

Third, where there remains some quibbling regarding peripheral points, there is agreement that the service offered by Speedishuttle differs in important ways from Speedishuttle's initial description of its business plan (a description that was relied upon by the Commission when granting a certificate).

Fourth, both Shuttle Express and Speedishuttle also agree that the market for share ride services in Washington – a market that the Commission never concluded could support multiple providers offering the same service – is now occupied by two providers that are unable to recover their costs and are both losing money. This places the future availability of share ride services in jeopardy.

Simply based on these uncontested facts, it is reasonable to conclude that the Commission's expectations when granting Speedishuttle's application have not been met, and some remedy is now appropriate (and essential) to protect the availability of share ride services in this market.

Q. SHUTTLE EXPRESS HAS MADE THE PRICING OF SPEEDISHUTTLE'S SERVICE AN ISSUE IN THIS PROCEEDING. ARE THE PRICING AND SUSTAINABILITY ISSUES INTERRELATED?

A. Yes, these issues are inextricable intertwined. If the market at issue can support only a single provider of share ride services, then the long run public interest is directly impacted by whether the higher-cost or lower-cost provider ultimately survives. Based on its clear business plan to compete directly with Shuttle Express, rather than implementing its "entirely different business model" targeted to "an entire demographic of travelers whose needs cannot be met by Shuttle Express's existing service," Speedishuttle's only real path to long term viability is to eliminate Shuttle Express from the market. One opportunity for doing so is to price its service below variable cost in order to gain market share and make Shuttle Express's financial position untenable. Once Shuttle Express is eliminated, Speedishuttle would be able to raise fares and selectively operate its routes in order to achieve profitability. Such an outcome would not be in the public interest.

The survival of either provider is not a given, however. It is possible that both providers will be weakened financially to the point that they will both be required to either exit the market outright or to limit service to only the lowest-cost routes.

As described above, I believe that the essential first step to make sure the public's interests are served is to ensure the availability of the service, throughout the targeted geographic area, at reasonable rates and quality. Shuttle Express's proposed remedy – to limit Speedishuttle's operation to the "entire demographic of travelers" that the Commission stated in Order 04 that Shuttle Express could not serve – will allow this essential first step to be made.

Q. HOW IS THE REMAINDER OF YOUR TESTIMONY IMPACTED BY THESE UNDERLYING ISSUES?

A. In the following sections of my testimony, I will respond directly to the testimony of Mr. Young, Mr. Pratt, and Mr. Roemer. I will consider the assertions and proposals made by each of these witnesses in the context of a Washington share ride market that is decreasing in overall size, in which the services offered by the new entrant are substantially the same as those of the incumbent, and in which neither provider is able to recover its costs.

Response to Mr. Young

Q. AT PAGE 3 OF HIS TESTIMONY, MR. YOUNG CONCLUDES THAT "SPEEDISHUTTLE'S COMPETITION WITH SHUTTLE EXPRESS IS A WELCOME – AND LAWFUL – DEVELOPMENT." DO YOU AGREE?

A. No. As an initial matter, neither Mr. Young nor I are qualified to determine whether Speedishuttle's operation represents a "lawful" development. We can, however, examine whether it should be considered a "welcome" development by a regulator.

Mr. Young does not explain what he intends the term "welcome development" to mean. For the purposes of this discussion, I am defining a "welcome" development as one that serves the public interest. In this context, it is reasonable to further define the public interest as one in which affordable and reliable share ride services remain available to the passengers and business that rely on them, including service to/from locations that are costly to serve, throughout the year.

When reaching his conclusion that Speedishuttle's operations should be considered a welcome development, Mr. Young did not perform any "investigation, research, or analysis of the auto transportation service that Speedishuttle is actually offering or providing to the public in Washington"[10] or any "investigation, research, or analysis of the demographic of auto transportation service passengers that Speedishuttle may be targeting or actually serving in Washington."[11] In short, Staff does not know whether Speedishuttle has operated pursuant to the "entirely different business model" described by Speedishuttle in support of its application, nor does it know whether Speedishuttle has provided service to any customer belonging to a "demographic of travelers whose needs cannot be met by Shuttle Express's existing service."

Rather than basing his conclusion on any facts related to Speedishuttle's operations (promised or actual), Mr. Young asserts (p. 3) that at the time of Speedishuttle's application "Staff assumed that Speedishuttle would compete directly with Shuttle Express. Staff did not assume that Speedishuttle would limit itself to a unique 'business model'." Such an assertion appears to be directly at odds with the language of the Commission's orders, in which the Commission concludes that "Speedishuttle does not propose to offer the same service Shuttle Express provides," and

[10] Staff Response to Shuttle Express Request No. 9.
[11] Staff Response to Shuttle Express Request No. 10.

goes on to explain in detail why it believed that Speedishuttle would be offering service to a different demographic of customers.

Of course, neither Mr. Young nor I can speak for the Commission. The point here is that if the Commission based its decision to grant Speedishuttle a CPCN based on the various ways in which Speedishuttle's service would not be the same as the service offered by Shuttle Express (an assumption that I believe is fully supported by the language of the Commission's orders), Staff has conducted no analysis – and Mr. Young offers no evidence – to support a conclusion that Speedishuttle's actual operations should represent a "welcome development" or have been consistent with the public interest.

Q. MR. YOUNG ALSO ADDRESSES THE ISSUE OF PREDATORY AND "BELOW COST" PRICING." DOES HIS ANALYSIS SUPPORT HIS CONCLUSIONS?

A. No. At p. 4, Mr. Young states "Staff is satisfied that, so long as Speedishuttle is operating at or below the maximum fares set forth in its filed tariff, the company is not engaged in 'below cost' or 'predatory' service." Here, Mr. Young's testimony is difficult to reconcile with either economic principles or common sense. An examination of whether Speedishuttle is charging prices "at or below the maximum fares" in its tariff can address the question of whether the prices are *too high*, but provides no information whatsoever regarding the question of whether the prices are *too low*. Unfortunately, this is the only place in his testimony where Mr. Young addresses this issue; as a result, Staff has offered no relevant information regarding this question. And again, Staff did no investigation or analysis of the prices actually charged by Speedishuttle nor the impact of those prices on the financial condition or prospects of either carrier, as Staff admitted in response to Shuttle Express Data Request No. 11.

Q. MR. YOUNG GOES ON (P. 3) TO CONCLUDE THAT "THE COMMISSION SHOULD MAINTAIN THE STATUS QUO." IS THIS A FEASIBLE RECOMMENDATION?

A. No. This recommendation underscores the fundamental disconnect between the Staff's analysis and the current market reality. The market for share ride services in Washington today is characterized by declining overall demand and the presence of two providers offering substantially the same service, neither of which is able to recover its costs of providing that service. The Commission cannot, simply through an act of will or an order, "maintain the status quo." In order to protect the availability of affordable and reliable share ride services to and from locations throughout the target geographic area (and at all times of the year), affirmative action is required.

Response to Mr. Pratt

Q. WHAT IS THE STATED PURPOSE OF MR. PRATT'S TESTIMONY?

A. Mr. Pratt states that the purpose of his testimony is to describe Staff's investigation into Speedishuttle's allegation in Docket TC-161257 that Shuttle Express "unlawfully used independent contractors."

Q. SPEEDISHUTTLE ALSO ASSERTED IN ITS COMPLAINT THAT SHUTTLE EXPRESS "PAID UNLAWFUL REBATES OR COMMISSIONS." DID STAFF INVESTIGATE THIS CLAIM?

A. No. Mr. Pratt's testimony is limited to a description of Staff's investigation into the "independent contractor" claim.[12] In response to Shuttle Express Request No. 4, Staff responds that it "researched the [unlawful rebates or commissions] allegation in the complaint" and that "it is Staff's opinion no violations occurred." This claim should now be considered a non-issue in this proceeding.

Q. PLEASE DESCRIBE YOUR UNDERSTANDING OF THE CIRCUMSTANCES THAT GIVE RISE TO SPEEDISHUTTLE'S "INDEPENDENT CONTRACTOR" CLAIM.

A. It is my understanding that these circumstances may occur when a customer calls Shuttle Express to book share ride service. Because Shuttle Express meets its commitment to provide service to customers throughout its certificated area – including those customers who may be located in places far away from their destination or in places with low passenger density – it sometimes faces the prospect of providing transportation service to

[12] As I will address in the next section of my testimony, Mr. Roemer likewise fails to provide evidence in support of Speedishuttle's "unlawful rebates or commissions" claim that Shuttle Express engaged in any unlawful conduct.

a single customer over a given route. Often, dispatching a multi-passenger van is not the most economic means of transporting a single passenger. In these circumstances, Shuttle Express offers the passenger the opportunity to receive an "upgrade" to limousine service for the price of a share ride service.

Q. TO BE CLEAR, DID THE TRIPS INVESTIGATED BY STAFF INVOLVE SHARE RIDE OR MULTI-STOP SERVICE?

A. No. It is my understanding that the trips at issue were all single-passenger, single-stop trips. The passenger paid for a share ride service, and received direct, door-to-door limousine service (a service that would have cost more if initially requested) for the share ride price.

Q. DOES MR. PRATT ASSERT THAT, BASED ON STAFF'S INVESTIGATION, ANY OF THESE CUSTOMERS FAILED TO HAVE THEIR TRANSPORTATION NEEDS MET?

A. No.

Q. DOES MR. PRATT ASSERT THAT, BASED ON STAFF'S INVESTIGATION, ANY OF THESE CUSTOMERS EVER PAID MORE THAN THE APPLICABLE FARE FOR SHARE RIDE SERVICE?

A. No. The only difference appears to be that, instead of being the single passenger in a multi-passenger van, these customers were the single passenger in a limousine.

Q. DOES MR. PRATT SUGGEST THAT STAFF RECEIVED COMPLAINTS FROM ANY OF THE PASSENGERS WHO WERE UPGRADED TO LIMOUSINE SERVICE BY SHUTTLE EXPRESS?

A. No.

Q. IT SEEMS REASONABLE TO CONCLUDE THAT A FREE UPGRADE TO LIMOUSINE SERVICE, FOR THE PRICE OF SHARE RIDE SERVICE, WOULD REPRESENT A POSITIVE EXPERIENCE FOR CUSTOMERS. WHAT DOES MR. PRATT IDENTIFY AS THE NEGATIVE FACTORS THAT HE BELIEVES OUTWEIGH THE POSITIVE IMPACT ON THE CUSTOMER?

A. He identifies three factors that he believes represent a negative for the customer.

First, he notes (pp. 4-5) that it is Shuttle Express, and not the customer, that initiates the change. This is certainly true; if a customer could initiate the change – by booking and paying for share ride service, then upgrading themselves to limousine service – they would almost certainly do so for every trip. Shuttle Express does initiate the change, but as Mr. Kajanoff explains in his testimony, the company first contacts the customer to offer the change. Not surprisingly, customers are happy to accept Shuttle Express's offer of an upgrade, and do not turn it down.

Second, Mr. Pratt expresses concern with the way that credit card charges are handled. He correctly notes that when Shuttle Express upgrades a single passenger to limousine service, it does not refund the original charge for share ride services and then initiate a second charge for the limousine service. Instead, Shuttle Express accepts the initial charge to the customer as payment for the transportation service provided, and at its own expense incurs the cost to provide the limousine service. Mr. Pratt does not explain why a process of generating multiple charges and credits would be beneficial to the customer.

Third, Mr. Pratt expresses concern (p. 6) regarding passenger safety. Mr. Pratt does not provide any examples of specific customer safety issues that have arisen with Shuttle Express' upgraded passengers, and he acknowledges that the limousine drivers used by Shuttle Express are "licensed by the Department of Licensing." He offers no evidence for a conclusion that the Department of Licensing does not adequately ensure the safety of limousine passengers.

Q. HAS SHUTTLE EXPRESS PREVIOUSLY ENGAGED IN DISCUSSIONS WITH STAFF REGARDING SERVING SINGLE PASSENGERS WITH LIMOUSINE SERVICE?

A. Yes. As Mr. Kajanoff explains, Shuttle Express discussed both multi-stop and single-stop trips with Staff in Docket TC-120323. At that time, Staff's stated concern was limited to multi-stop scenarios, and Staff's enforcement penalties in that proceeding were limited to multi-stop scenarios. As Mr. Kajanoff explains, Staff at that time represented to him that "single stop trips were legal and not an issue in the investigation."

In order for a regulatory construct to be effective, it is important that the regulator act in a way that is consistent and logical. In this way, regulated companies understand what is expected and required, and can act accordingly. In this case, it appears that Staff now takes issue with Shuttle Express' actions to provide an upgrade to limousine service for single stop, single passenger trips, even though the same scenario was not a cause for concern in a previous proceeding. In Docket TC-120323, Staff was fully aware of approximately 6,000 single stop trips, but did not include those trips in its enforcement action against Shuttle Express. Nor did the Commission take any action in its orders, although those orders acknowledged the existence of the single stop trips.

Q. IS THE PUBLIC INTEREST SERVED BY ALLOWING SHUTTLE EXPRESS TO UPGRADE SINGLE PASSENGERS TO LIMOUSINE SERVICE?

A. Absolutely. Customers receive a higher value service that what they pay for, and there is no evidence that safety is compromised in any way. Instead of being the single passenger in a multi-passenger van, the customer is a single passenger in a limousine. Otherwise, they are still receiving transportation between the locations requested.

Allowing Shuttle Express to continue to provide service in this way has an additional public interest benefit that should not be overlooked. Mr. Pratt points out (p. 5) that Shuttle Express makes a "business decision" to switch a single passenger to limousine service, and does so “to reduce costs.” His observation is correct: Shuttle Express opts to carry single passengers in this way in order to make the service feasible. When providing this kind of upgrade, Shuttle Express incurs a cost that is higher than the fare paid by the customer (it loses money), but it incurs a cost than is lower than it would incur by dispatching a multi-passenger van to carry the single passenger (it loses less money that it would have otherwise). Doing so makes it possible to provide timely transportation service to customers in high cost areas, as well as service during the slow seasons.

Rather than being the subject of an enforcement action, Shuttle Express should be commended for its actions in this regard. A share ride provider could avoid providing service to single passengers (by requiring the customer to wait an extended amount of time in hopes of adding an additional passenger to the trip, for example), but Shuttle Express, at least, does not do so. Instead, Shuttle Express willingly loses money in order to provide a timely, high-quality transportation service to the customer.[13]

Response to Mr. Roemer

Q. DO YOU HAVE ANY OVERALL OBSERVATIONS ABOUT MR. ROEMER’S TESTIMONY?

[13] It is reasonable to expect that Speedishuttle also receives a proportional number of requests for single passenger service. The salient question is how – or if – these requests are being met by the company.

A. Yes. It is difficult to respond to many of Mr. Roemer's assertions, because his testimony is either inconsistent or contradictory. For example, in his prefiled testimony (pp. 48-49), he asserts that Speedishuttle's fares and profitability should be evaluated based on what he refers to as the company's "average variable cost": "if you use average variable cost, which we believe is required for any evaluation of the fairness of our fares, you would need to recover revenue for the trip which exceeds the cost of making just the trip for which you received fares." He then goes on (p. 49) to provide examples of the kinds of costs that he believes should, and should not, be included in a measure of "average variable cost." Mr. Roemer then goes on (p. 52) to reach specific conclusions regarding Speedishuttle's profitability to date based on this measure, and reports the results of comparing Speedishuttle's "revenue to variable costs."

Having gone to some effort in his prefiled testimony to define the measure of cost that he believes is "required for any evaluation" of Speedishuttle's fares and profitability, providing examples of the costs that would be included in his proposed category, and describing the results of comparing Speedishuttle's revenues to his proposed measure of cost, Mr. Roemer completely changes course in his deposition testimony. There, he considers (pp. 107-108) an exercise of comparing revenues and average variable cost – what he previously advocated as "required for any evaluation of the fairness of our fares" – to be a "sort of silly profitability that we don't use in our own business." Having reported a conclusion in his prefiled testimony (p. 52) that Speedishuttle's revenues have been "very close" to covering average variable cost, Mr. Roemer claims in his deposition

(p. 108) that Speedishuttle does not know the level of its average variable cost. He states unequivocally that Speedishuttle's revenues do not cover its average variable cost, but provides no basis for this conclusion (since he now asserts that the level of Speedishuttle's average variable costs is unknown).

Q. WHAT CAN YOU CONCLUDE ABOUT MR. ROEMER'S VIEWS ON THIS IMPORTANT ISSUE?

A. Based on his testimony, it is possible to conclude that he either believes a measure of average variable cost to be "required for any evaluation" of Speedishuttle's fares and profitability, or to be a "sort of silly" test that he does not advocate; that he either knows what kinds of costs should be included in a measure of average variable cost, or he doesn't; and that he has either conducted an analysis of how Speedishuttle's revenues compare to its average variable cost, or that he does not know level of Speedishuttle's average variable cost and could not conduct such an analysis.

With diametrically opposing sides of the issue both covered by Mr. Roemer's testimony, it is difficult to know exactly what to rebut here. Mr. Roemer does make one point consistently clear: he believes that Speedishuttle's revenues do not cover its average variable costs. By definition, if revenues do not cover variable costs, then they likewise do not cover total costs. As a result, we know that Speedishuttle's Washington operations are not profitable.

Q. IS THIS CONCLUSION SIGNIFICANT?

A. Yes. As addressed in the first section of my testimony, this is an important area of agreement among the parties: the market for ride share services in the target geographic area in Washington is occupied by two providers, both of which are losing money.

Q. DOES MR. ROEMER CORRECTLY DESCRIBE ANOTHER IMPORTANT CHARACTERISTIC OF THE MARKET FOR RIDE SHARE SERVICE SERVICES IN THIS SECTION OF HIS TESTIMONY?

A. Yes. Earlier in my testimony, I also noted that outside constraints limit the prices that can be charged for ride share services. At pp. 51-52, he correctly points out that "we are in the highly competitive airport transportation industry and there are numerous options available to riders … If we raise prices too high, we lose passengers to another service." I agree. The prices that both Shuttle Express and Speedishuttle can charge are limited by external forces, particularly for the lower-cost routes.

Q. MR. ROEMER ALSO ADDRESSES ISSUES ASSOCIATED WITH ECONOMIES OF SCALE. IS HIS TESTIMONY CONSISTENT ON THIS ISSUE?

A. No. This is another area in which his prefiled testimony and his deposition testimony are contradictory and somewhat confusing.

For example, Mr. Roemer addresses the term "natural monopoly" in both his prefiled testimony and deposition. In his prefiled testimony (p. 43), he is certain that he correctly understands the meaning of the term and provides a definition (albeit an incorrect one): "a natural monopoly is one in which there are high barrier costs to market entry so that once an existing provider is in place it makes little economic sense to try and compete." He is also certain that I do not have the required understanding: "Mr. Wood does not understand the meaning of natural monopoly."

Yet in his deposition, Mr. Roemer once again changes his position. When asked to define the term "natural monopoly" as he uses it in his testimony, he responded "I don't know what that means," and later states "I'm not an expert on monopolies, and apparently Mr. Wood is." Mr. Roemer was also unable to describe any characteristics of a natural monopoly in his deposition testimony, beyond his reference to "high barriers to market entry."

Q. IS MR. ROEMER CORRECT TO FOCUS ON "HIGH BARRIERS TO MARKET ENTRY" IN ORDER TO DEFINE A NATURAL MONOPOLY?

A. No. A given market represents a natural monopoly when a single provider can meet the market's total demand for a lower total cost than the total cost that would be incurred by two or more providers; that is, the average total cost declines over the market's entire range of demand. Put another way, a natural monopoly exists when the minimum efficient size of a provider is equal to or greater than the size of the total market.

In a sense, Mr. Roemer's focus on a high barrier to entry as a secondary (but not a defining characteristic) has some relevance. If prices are constrained by external forces (as Mr. Roemer and I both agree is the case with share ride services in Washington), then a new entrant would face a high economic barrier to entry: in order to be viable long term, the new entrant would have to completely displace the incumbent provider, so that it (the new entrant) could achieve the economies of scale necessary to be viable in the long run. Until it is able to do so, the new entrant would be unable to recover its costs, creating a kind of barrier to entry.

Q. MR. ROEMER GOES ON TO ASSERT (P. 44) THAT "MR. WOOD DOES NOT FULLY GRASP THE ECONOMIES OF SCALE." DO YOU AGREE?

A. No. A proper understanding and treatment of scale economies is central to the resolution of the issues in this case, but this is another issue where Mr. Roemer's testimony is all over the map. At p. 52 of his prefiled testimony, Mr. Roemer correctly notes that profitability is "an issue of economies of scale." If I understand his prefiled testimony here, I agree: He correctly notes that outside forces constrain the prices for share ride services, and that in order to be profitable (and financially viable over the long run), a provider must achieve economies of scale, thereby reducing its unit costs.

But after correctly noting that unit costs *decrease as volume increases* (the positive impact of scale economies), Mr. Roemer completely fails to recognize that unit costs will *increase as volume decreases* (the unavoidable negative impact of those same scale economies). At p. 44, Mr. Roemer suggests that a provider of share ride services can "adapt" to a reduction in demand through a "simple reduction of fleet size." Such a suggestion ignores the inescapable fact that – because of the scale economies that he previously recognized – the provider's unit costs will increase as the scale of its operations is reduced.

Q. IS THERE ANOTHER REASON WHY MR. ROEMER'S "SIMPLE REDUCTION OF FLEET SIZE" STRATEGY WOULD BE INEFFECTIVE FOR SHARE RIDE SERVICES?

A. Yes. At p. 52, he describes Speedishuttle's operating strategy: "In this industry, we have a certain number of vehicles capable of making a certain number of trips per day. The goal is to have enough customers to fill those vans to the reasonable capacity as much of the time as possible." This statement is consistent with my understanding of the industry, but it omits an essential constraint: because (as Mr. Roemer correctly points out) "there are numerous options available to riders," share ride services must be operated in a way that makes the service appealing to customers. This includes minimizing wait times.

Applying Mr. Roemer's incomplete statement of operating strategy, Speedishuttle could "fill" its vans departing from a given location by delaying the departure long enough for additional passengers to arrive.[14] Of course, a potential customer's perception of the value of share ride service will decrease as wait times increase, until the perceived value of the service no longer makes it attractive.

[14] Depending on the density and length of the route, the necessary delay might be minutes, hours, or days; but in theory if a van waits long enough it can eventually be filled with passengers.

Mr. Roemer's "simple reduction of fleet size" falls victim to this reality. A van can only be at one location at a time. If it is engaged on a given route, it cannot simultaneously be waiting at an airport to pick up passengers. If a provider is serving customers throughout its certificated geographic area, reducing the number of vans in service in response to a decrease in demand will increase wait times. Increased wait times will make the service less attractive to passengers, resulting in further loss of customers. In the end, what Mr. Roemer disparagingly refers to (p. 44) as my "doomsday scenario" is the inevitable result of the scale economies the he fully recognizes elsewhere in his testimony.

Q. WOULD IT BE IN THE PUBLIC INTEREST FOR THE COMMISSION TO SIMPLY ALLOW BOTH COMPANIES TO KEEP LOSING MONEY UNTIL ONE OF THEM EXITS THE MARKET VOLUNTARILY?

A. No, for several reasons. First, the two providers are not likely to fully exit the market, at least initially. Instead, they will reduce their service to high cost areas first in an effort to reduce costs to level that is at or below revenues. This is likely to mean reducing or eliminating service to suburban and rural areas and focusing solely on dense areas like downtown Seattle (and maybe Bellevue). Speedishuttle may have already engaged in such a strategy. Second, both providers will reduce service even more broadly by cutting service during low volume periods. This could include nights and weekends, slow times of weekdays, and slow seasons, like the wintertime (according to Mr. Roemer, Speedishuttle has already engaged in this strategy). These actions will be harmful to the public because transportation options will be reduced or eliminated. When service is no longer ubiquitous, the public may cease to rely on share ride services at all, or use them enough to make it profitable for a single company to operate in the target geographic market.

Q. IGNORING WHETHER IT COULD LEGALLY DO SO, WOULD IT BE IN THE PUBLIC INTEREST FOR THE COMMISSION TO CURTAIL OR CANCEL THE SHUTTLE EXPRESS AUTHORITY AND LET SPEEDISHUTTLE TRY TO SURVIVE AND GROW TO PROFITABILITY?

A. No. That would put the public interest at greater risk. Speedishuttle has been clear that its service is more costly to provide. Such a strategy may work in Hawaii, where most of the passengers may be well-to-do tourists or residents who don't have their own automobiles on the islands, but it is not likely to work well in King County. At the end of the day, if the higher-cost provider is the survivor, it will either have to charge higher fares – if the external constraints on fare permit such an increase – or implement additional restrictions of the geographic and seasonal availability of the service.

Q. WOULD THE SAME BE TRUE FOR SHUTTLE EXPRESS?

A. No. Shuttle Express still has the majority of the passengers. It still serves the outlying areas of the geographic market. It has built up goodwill and brand familiarity throughout the populace in King County and with many non-resident travelers. It has a track record of operating profitably for many years (and did so until recently when Speedishuttle entered the market). And most importantly, it is the acknowledged lower-cost provider. It stands a much better chance of continuing to serve the public throughout the county in both the short and long term as the sole provider than would Speedishuttle.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.