

**Exhibit No. DP-6T
Dockets TC-143691, TC-160516,
TC-161257 (consolidated)
Witness: David Pratt**

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

**In re the Application of
SPEEDISHUTTLE WASHINGTON,
LLC d/b/a SPEEDISHUTTLE SEATTLE
For a Certificate of Public Convenience
and Necessity to Operate Motor Vehicles
in Furnishing Passenger and Express
Service as an Auto Transportation
Company**

**DOCKETS TC-143691, TC-160516,
TC-161257 (consolidated)**

SHUTTLE EXPRESS, INC.,

Complainant,

v.

**SPEEDISHUTTLE WASHINGTON,
LLC d/b/a SPEEDISHUTTLE
SEATTLE,**

Respondent.

**SPEEDISHUTTLE WASHINGTON,
LLC d/b/a SPEEDISHUTTLE
SEATTLE,**

Complainant,

v.

SHUTTLE EXPRESS, INC.,

Respondent.

REBUTTAL TESTIMONY OF

David Pratt

**STAFF OF
WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION**

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

April 24, 2017

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1 **I. INTRODUCTION**

2

3 **Q. Please state your name and business address.**

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

6

7 **Q. Are you the same witness who provided testimony in this proceeding, Exhibit**
8 **No. DP-1T, on March 17, 2017, on behalf of Commission Staff?**

9 A. Yes.

10

11 **II. REBUTTAL TESTIMONY**

12

13 **Q. Have you read the response testimonies of Wesley Marks, Paul Kajanoff, and**
14 **Don Wood? Exhibit Nos. WAM-2T, PK-2T and DJW-3T.**

15 A. Yes.

16

17 **Q. After reading these testimonies, do you wish to revise any of your initial**
18 **testimony?**

19 A. No, I stand by my initial testimony and penalty recommendation.

20

21 **Q. Do you have any general reactions to what you read?**

22 A. It is important to remember that Shuttle Express has been penalized in two previous
23 dockets for its use of non-owned vehicles and non-employed drivers. In my view, the

1 company knows the rules well and simply believes it can outsmart the Commission
2 by using labels like “rescue service” or, in the current investigation, “upgrade” to
3 obscure or excuse its violations. The explanations and excuses keep changing, but
4 the fundamental violation does not. In each case, the company has used non-owned
5 vehicles and non-employed drivers to provide auto transportation service, in
6 violation of WAC 480-30-213.

7
8 **Q. Does any witness refute your finding that Shuttle Express used non-owned**
9 **vehicles and non-employed drivers to complete 40,727 trips that originated as**
10 **auto transportation bookings?**

11 A. No.

12
13 **Q. Mr. Wood suggests that Shuttle Express’s violations should be excused because**
14 **all customers ultimately had “their transportation needs met” and no passenger**
15 **formally complained about the practice. Exh. No. DJW-3T at 19:13-16; 20:4-7.**
16 **If true, does this fact change your analysis?**

17 A. No. Mr. Wood is basically arguing that a regulated company can violate Commission
18 rules so long as the customer ultimately gets from Point A to Point B and doesn’t
19 complain. I strongly disagree with that logic. A violation is a violation even if the
20 customer’s “transportation needs” are met. As a safety regulator, I would be very
21 worried if the Commission began to judge rule violations based on that standard.

1 **Q. Mr. Marks claims that Shuttle Express’s violations should be excused because**
2 **Staff declined to seek penalties for “single reservation trips” in Docket TC-**
3 **120323. Exh. No. WAM-2T at 28:7-29:4. He also claims that Staff’s current**
4 **position is an “about face on its position of just four years ago.” Exh. No.**
5 **WAM-2T at 31:1-2. Do you agree?**

6 A. Not at all. In the previous case, Staff chose not to pursue violations for single stop
7 trips. But we never came out and said that the single stop trips were lawful. In any
8 event, my understanding of the issue has improved since the previous investigation. I
9 now better understand that the use of non-owned vehicles and non-employed drivers
10 to provide auto transportation is a violation of WAC 480-30-213, regardless of the
11 number of stops. I no longer consider multi stop versus single stop to be a material
12 distinction. In hindsight, I might have included the single stop trips as violations in
13 Docket TC-120323.

14 The Commission should keep in mind that “single reservation,” “single stop,”
15 and “multi stop” are not defined in WAC 480-30. I am not completely sure I even
16 understand precisely how Shuttle Express defines those terms. Regardless, the
17 distinction is ultimately irrelevant under WAC 480-30-213.

18
19 **Q. To the best of your knowledge, did you ever tell Shuttle Express that its use of**
20 **non-owned vehicles and non-employed drivers was lawful if they were restricted**
21 **to “single stop” or “single reservation trips?”**

22 A. No. To the best of my knowledge, I never said that.

23

1 **Q. Please refer to Exhibit No. DP-5, which is the Commission’s Final Order 04**
2 **penalizing Shuttle Express in Docket TC-120323. As you understand this order,**
3 **did the Commission conclude that an auto transportation company’s use of non-**
4 **owned vehicles and non-employed drivers is lawful if the practice is restricted to**
5 **“single stop” or “single reservation trips?”**

6 A. I see nothing in Order 04 that says that.

7
8 **Q. Mr. Kajanoff testifies that he discussed the use of independent contractors with**
9 **Staff members Gene Eckhardt and Penny Ingram, and that both “agreed that**
10 **single stops trips were legal and not an issue in the investigation [in Docket TC-**
11 **120323].” Exh. No. PK-2T at 23:17-18. What is your reaction?**

12 A. I do not know if Gene Eckhardt or Penny Ingram ever said anything of the sort. I was
13 not part of those discussions, assuming they actually took place. I have never
14 adopted the purported statements as my own and I do not adopt them here. Besides,
15 neither Gene Eckhardt nor Penny Ingram conducted that investigation. The Staff
16 investigator in Docket TC-120323 was Betty Young, who reported to me. Ms.
17 Young’s investigation report nowhere mentions any statements by Gene Eckhardt or
18 Penny Ingram.

19 Also, Mr. Eckhardt retired from the Commission in 2015, and Ms. Ingram is
20 currently on extended leave. It is really unfair for Mr. Kajanoff to attribute
21 statements to Staff members who are unavailable to testify. He can attribute anything
22 he wants to them, and I have no way to prove him wrong. All I can say is that, again,
23 I do not adopt or endorse the purported statements.

1 Distinguishing single stop from multi stop service obscures the primary issue
2 here, which is Shuttle Express's ongoing disregard of the vehicle and driver rule. As
3 I discussed above, Shuttle Express violated WAC 480-30-213 by operating vehicles
4 it does not own and by using drivers it does not employ, and whether the trip was
5 single stop or multi stop does not affect the violations that Staff has alleged.
6

7 **Q. How do you respond to Mr. Marks' assertion that using non-owned vehicles and**
8 **non-employed drivers is the same as making "alternate arrangements for**
9 **passengers" under WAC 480-30-036(2)? Exh. No. WAM-2T at 29:7-13; 32:1-9.**
10 **Does that WAC provision excuse the company's violations?**

11 A. No, and I find this claim to be quite a stretch of the imagination. I believe the intent
12 of the alternate arrangements rule is to allow a company to make alternate
13 arrangements to transport customers in the case of unusual circumstances or an
14 emergency, not to allow *daily, ongoing* use of non-owned vehicles and non-
15 employed drivers to provide regulated transportation services. Examples of unusual
16 circumstances or emergencies might include weather-related events or a natural
17 disaster. Another example could be a small company that only operates three
18 vehicles. If two of those vehicles were to break down at the same time, that company
19 might need to make alternate arrangements to transport its customers while its
20 vehicles are being repaired. The facts in this case show that Shuttle Express used
21 non-owned vehicles and non-employed drivers 40,727 times over a 33 month period,
22 which averages to over 41 trips per day. That is not an acceptable use of the alternate
23 arrangements rule.

1 **Q. Mr. Marks claims that, in each instance, the company “honored the regulated**
2 **rate” originally quoted to the customer. Exh. No. WAM-2T at 30:12; see also**
3 **32:10-16. If true, would this fact change your analysis?**

4 A. No. That fact merely proves my point. Shuttle Express switches the customer to a
5 non-owned vehicle operated by a non-employed driver but continues to charge the
6 tariffed auto transportation rate. The vehicle and the driver may have changed, but
7 the fundamental transaction has not.

8

9 **Q. Mr. Marks suggests that the transaction is lawful because Shuttle Express**
10 **contacts each guest and obtains “verbal approval to upgrade the passenger to a**
11 **private vehicle.” Exh. No. WAM-2T at 33:11-12. Assuming that is true, does the**
12 **customer’s “verbal approval” affect your analysis?**

13 A. My analysis remains the same. The original booking was for auto transportation
14 service (not for “luxury car service,” which is Shuttle Express’s other major
15 offering). The customer’s “verbal approval to upgrade” to a private vehicle does not
16 change the fundamental nature of the service.

17

18 **Q. Mr. Marks contends that the switch to a non-owned vehicle operated by a non-**
19 **employed driver is an “upgrade.” Exh. No. WAM-2T at 33:11-12. What is your**
20 **response?**

21 A. Even if I assume that the switch is an “upgrade,” my analysis does not change. Under
22 WAC 480-30-213, Shuttle Express is not authorized to provide auto transportation

1 services using non-owned vehicles and non-employed drivers. A violation is a
2 violation even if the customer ends up feeling satisfied with the service.

3
4 **Q. But if the customer is satisfied, why are you concerned?**

5 A. As I explained in my initial testimony, I am concerned about the safety of the non-
6 owned vehicles and the qualifications of the non-employed drivers. Auto
7 transportation companies are required to follow a comprehensive set of vehicle and
8 driver safety regulations. Under WAC 480-30-221, the company must comply with
9 each of the following federal regulations:

- 10 • Part 40 – Procedures for transportation workplace drug and alcohol testing
11 programs
- 12 • Part 379 – Preservation of records
- 13 • Part 380 – Special training requirements
- 14 • Part 382 – Controlled substances and alcohol use and testing
- 15 • Part 383 – Commercial driver’s license standards; requirements and penalties
- 16 • Part 385 – Safety fitness procedures
- 17 • Part 390 – Safety regulations, general
- 18 • Part 391 – Qualification of drivers and longer combination vehicle (LCV)
19 driver instructors
- 20 • Part 392 – Driving of Commercial Motor Vehicles
- 21 • Part 393 – Parts and accessories necessary for safe operation
- 22 • Part 395 – Hours of service of drivers
- 23 • Part 396 – Inspection, repair, and maintenance

1 • Part 397 – Transportation of hazardous materials, driving and parking rules

2 Because my staff does not inspect non-owned vehicles or the records of non-
3 employed drivers, I cannot assure that the non-owned vehicles and non-employed
4 drivers used by Shuttle Express meet the Commission’s safety requirements for auto
5 transportation companies. Because it is my job to protect the traveling public, I am
6 not willing to give Shuttle Express the benefit of the doubt.

7

8 **Q. Mr. Wood claims that you “acknowledge[d] that the limousine drivers used by**
9 **Shuttle Express are ‘licensed by the Department of Licensing.’” Exh. No. DJW-**
10 **3T at 21:12. Please review your initial testimony. Did you actually**
11 **“acknowledge” this fact?**

12 A. Mr. Wood misquotes me. I actually said, “*I have heard* that Shuttle Express
13 primarily relies on limousine drivers who are licensed by the Department of
14 Licensing (DOL).” Exh. No. DP-1T at 6:14-15. I also testified that, due to Shuttle
15 Express’s reluctance to provide information about its independent contractor
16 program, I “know very little about the drivers and the vehicles they operate.” *Id.* at
17 6:15-16.

18

19 **Q. Mr. Wood criticizes your initial testimony for providing no “examples of**
20 **specific customer safety issues that have arisen with Shuttle Express’ upgraded**
21 **passengers.” Exh. No. DJW-3T at 21:10-11. How do you respond?**

1 A. First, I question Mr. Wood’s expertise to weigh in on these issues. I have reviewed
2 Mr. Wood’s CV (Exh. No. DJW-2) and understand that his training is in economics.
3 It does not appear he has any training or experience in transportation safety.

4 More importantly, I strongly disagree with Mr. Wood’s suggestion that the
5 Commission should infer from the absence of “specific customer safety issues” that
6 Shuttle Express’s independent contractor program is safe. Safety is established
7 through vehicle inspections and records audits. My Staff does not inspect Shuttle
8 Express’s non-owned vehicles or the records of non-employed drivers. Therefore, I
9 have no basis on which to conclude that the program is safe.

10

11 **Q. Mr. Wood lastly criticizes your initial testimony for providing “no evidence for**
12 **a conclusion that the Department of Licensing does not adequately ensure the**
13 **safety of limousine passengers.” Exh. No. DJW-3T at 21:12-14. Is this criticism**
14 **valid?**

15 A. No. Notice that Mr. Wood offers no evidence of his own to show that Shuttle
16 Express’s non-owned vehicles and non-employed drivers *are* safe. Instead, he
17 attempts to cast doubt on my testimony by suggesting I prove a negative: He wants
18 me to prove that those vehicles and drivers are *not* safe. I have three responses.

19 First, the issue is ultimately a red herring. The violations alleged by Staff
20 exist even if the Commission assumes that DOL-licensed limos are just as safe as
21 Commission-regulated auto transportation vehicles. Under WAC 480-30-213,
22 Shuttle Express may not use non-owned vehicles and non-employed drivers to
23 provide auto transportation service, even if those vehicles and drivers are safe.

1 Second, there is no question that DOL’s limo rules are less stringent than the
2 Commission’s auto transportation rules. For example, limousine operators are not
3 required to track their hours of service or to conduct daily driver vehicle inspections,
4 both of which are important to ensuring safety.

5 And finally, as mentioned earlier in my testimony, Staff has no specific
6 knowledge or information about the non-owned vehicles and non-employed drivers
7 being used by Shuttle Express. The company provided no evidence proving that it
8 relies on DOL-regulated limousine companies. It has only made statements that it is
9 doing so. When I requested information about the contractual arrangements between
10 the company and its contractors, and the names of those operators, Shuttle Express
11 declined to provide either, claiming the information would compromise its
12 relationships with those independent contractors and reveal contractual information
13 the company prefers to keep private.

14
15 **Q. What do you make of Mr. Marks’ “airline ticket” analogy? WAM-2T at 34:8-**
16 **17. Is the switch from a regulated shared ride van to a non-owned vehicle**
17 **operated by a non-employed driver really analogous to a complimentary**
18 **upgrade from “coach” to “first class?”**

19 **A.** What Mr. Marks neglects to mention is that the “coach” class in his analogy
20 (i.e., regulated auto transportation service) is subject to the robust safety and
21 consumer protection rules in WAC 480-30, whereas the “first-class” ticket
22 (i.e., transportation provided by a non-owned vehicle and non-employed driver) is
23 not. So, the analogy quickly breaks down when you consider factors other than the

1 customer's assumed preference for a luxury vehicle. The Commission should not
2 equate luxury with safety.

3

4 **Q. How do you recommend that the Commission proceed?**

5 A. As I stated in my initial testimony, the Commission should find that Shuttle Express
6 committed 35,351 violations of WAC 480-30-213. Companies that offer both
7 regulated and unregulated transportation services must keep those services distinct.
8 They cannot switch customers back and forth between regulated and unregulated
9 services at their whim, especially when the decision is driven by profit motives.

10 I also continue to recommend that the Commission impose a substantial
11 monetary penalty. The testimonies of Mr. Kajanoff and Mr. Marks show that Shuttle
12 Express's use of non-owned vehicles and non-employed drivers is primarily driven
13 by economic factors. In other words, Shuttle Express chooses to violate commission
14 rules when it is economically advantageous. I believe the company will continue to
15 show disdain for the Commission's rules until the monetary penalty is large enough
16 to make the practice uneconomic.

17

18 **Q. Does this conclude your testimony?**

19 A. Yes.