

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

SPEEDISHUTTLE WASHINGTON LLC
d/b/a SPEEDISHUTTLE SEATTLE,
Complainant,
v.
SHUTTLE EXPRESS, INC.
Respondent.

**REBUTTAL TESTIMONY OF
H. JACK ROEMER
CHIEF FINANCIAL OFFICER, SPEEDISHUTTLE WASHINGTON, LLC**

April 24, 2017

1 **I. INTRODUCTION & SUMMARY OF REBUTTAL TESTIMONY**

2 **Q. Please state your name, position at Speedishuttle Washington, LLC and business**
3 **address.**

4 A. My name is H. Jack Roemer (I go by “Jack”) and I am the Chief Financial Officer of
5 Speedishuttle Washington LLC. My business address is 1237 S. Director St., Seattle,
6 WA 98108.

7 **Q. Please provide a summary of your testimony.**

8 A. My pre-filed testimony in Exhibit No. ____ (HJR-1T) responded to Shuttle Express’
9 opening testimony provided Speedishuttle’s opening testimony regarding its complaint
10 case against Shuttle Express and addressed a number of ways in which Shuttle Express’
11 service should not be found to the satisfaction of the Commission, including the rule
12 violations as alleged in the Complaint, as well as identifying other potential rule
13 violations and service failures. The issue of whether Shuttle Express’ service is to the
14 satisfaction of the Commission was subsequently brought within the scope of the
15 rehearing in Docket TC-143691 by the Commission in Order 17. Shuttle Express then
16 provided its rebuttal to Speedishuttle’s response testimony and its response to
17 Speedishuttle’s testimony in support of its Complaint (as well as that of the UTC Staff).
18 This new testimony is now to provide rebuttal to the pre-filed testimony of Wesley A.
19 Marks, Paul Kajanoff, and Don Wood with respect to the subjects of Speedishuttle’s
20 Complaint against Shuttle Express and the issue of whether Shuttle Express has
21 provided service to the satisfaction of the Commission.

22 **II. USE OF INDEPENDENT CONTRACTORS**

23 **Q. Mr. Roemer, is it Speedishuttle’s allegation that Shuttle Express’ use of**
24 **independent contractors to provide transportation to passengers who originally**
25

1 **booked or reserved transportation from Shuttle Express for either door-to-door or**
2 **scheduled service is a violation of Commission rules?**

3 A. I am not an attorney, but based on my understanding of Commission rules, yes, it is.

4 **Q. I understand you also allege this practice demonstrates that Shuttle Express is not**
5 **providing service to the satisfaction of the Commission. Is that correct?**

6 A. That is one of the bases for our allegations, yes. Particularly, we do not believe that
7 repeat violations of Commission rules and multiple fines for violations thereof can
8 possibly mean satisfactory service is being rendered.

9 **Q. Mr. Marks provided testimony about Shuttle Express' use of independent**
10 **contractors, stating more or less that Shuttle Express tailored its practices based**
11 **upon statements purportedly attributable to Commission Staff during the last**
12 **enforcement proceeding in 2013. Do you have any comments on that testimony?**

13 A. I do. For starters, Mr. Marks alludes to the fact that he was not involved in that
14 proceeding, which is corroborated by the testimony of Paul Kajanoff, so I believe
15 Marks' testimony on what Staff did or did not say in that proceeding should carry no
16 weight whatsoever. Further, he relies on statements of Commission staff Member Ms.
17 Betty Young, but Ms. Young is not a witness in the current proceeding. Moreover, I'm
18 not sure that any of her comments mean what he attributes to them.

19 **Q. Similarly, Mr. Kajanoff testified that he and Jimmy Sherrell met with Commission**
20 **Staff to discuss single-stop trips versus multi-stop trips in Exhibit ____ (PJK-2T).**
21 **Do you have any comments on that testimony?**

22 A. Yes, I do. Mr. Kajanoff is attempting to supply or otherwise attribute testimony on
23 behalf of Commission Staff members who have not provided testimony in this case and
24 whom I have been informed are no longer working for the Commission. We simply
25 cannot know what Commission Staff said because it wasn't Commission Staff who

1 made the statement here, and we have no way of asking Commission Staff any probing
2 questions if that truly was their opinion because those staff members no longer work at
3 the Commission (or are on extended leave). More importantly, Mr. Kajanoff says this
4 conversation occurred in the context of Docket TC-120323. I do not see how Shuttle
5 Express' recent practice with respect to use of independent contractors can be justified
6 as relying on Commission Staff's opinion (if Mr. Kajanoff's testimony is even
7 accurate) when in that docket the Staff advocated, and the Commission agreed, that it
8 was actually Shuttle Express who was providing service through its independent
9 contractors, as opposed to the independent contractors who were operating the
10 transportation service.

11 **Q. Can you explain why it matters who is providing the transportation service?**

12 A. It matters because these trips originate as auto-transportation service and based on the
13 Commission's prior ruling in Docket TC-120323 those passengers are still being
14 transported by Shuttle Express when they ride in a vehicle owned and operated by an
15 independent contractor, but hired by Shuttle Express. Thus, I don't see how any
16 reasonable person reviewing the rules and prior ruling could conclude the passenger
17 service can ever be converted to non-regulated transportation simply by using a
18 "gimmick" single stop trip, and Shuttle Express should have known the practice was a
19 rule violation.

20 **Q. In your opinion, should Shuttle Express be given the benefit of the doubt with**
21 **respect to its professed beliefs as to whether the at-issue practice of using**
22 **independent contractors was a permissible practice under Commission rules?**

23 A. Not at all. Beyond what I just mentioned, I have reviewed a number of the many
24 documents found on the Commission website from past complaint proceedings against
25 Shuttle Express. Based on those documents, it appears Shuttle Express has a long,

1 well-documented history of disregarding Commission rules, especially when it comes
2 to using independent contractors, and then, when caught, claiming their practice was
3 based on a good-faith belief that it was permitted, and actually arguing that it should be
4 commended instead of punished because its practice benefitted the general public. It
5 has gone through this same routine at least two times before not to mention its
6 exemption proceedings, variously claiming use of independent contractors was to
7 provide luxury upgrades, more timely service, cheaper service, or any other number of
8 excuses. Its explanations are classic “goalpost moving,” offering shifting rationale to
9 excuse additional episodes where they are confronted with repeat rule violations.
10 Shuttle Express now appears to be making those same arguments again in this
11 proceeding, despite the fact that the applicable rules have never changed. Throughout
12 the time Shuttle Express has been subjected to various enforcement proceedings,
13 including this complaint proceeding, WAC 480-30-213 required passenger
14 transportation companies to operate their own vehicles and use employee drivers.

15 **Q. Don’t you mean auto transportation companies?**

16 A. No, I don’t. WAC 480-30-213 isn’t limited to auto transportation service. The rule says
17 “passenger transportation” and it appears to apply regardless of whether Shuttle
18 Express is using independent contractors’ “rescue,” to cut expenses, to provide luxury
19 upgrades, or to transport single-stop passengers rather than previously provide multi-
20 stop service.

21 **Q. Does anything about Mr. Marks’ testimony suggest Shuttle Express is actually**
22 **incapable of providing service to those 40,727 passengers it transported using**
23 **independent contractors?**

24 A. Either Shuttle Express cannot transport the passengers it places with independent
25 contractors, or it chooses not to. Either outcome or both should be of concern and

1 completely unsatisfactory to the Commission in considering whether Shuttle Express
2 committed a violation of the Commission's rules and whether Shuttle Express is
3 providing service to the satisfaction of the Commission.

4 **Q. Can you explain that further?**

5 A. Of course. Although I suspect their true motivations always included cutting costs by
6 avoiding use of employee drivers, at one point in the past, Shuttle Express claimed it
7 was compelled to use independent contractors to "rescue" passengers which Shuttle
8 Express could not timely serve in order to avoid causing the passenger a delay in either
9 reaching or departing the airport. An example illustrative of that point is the
10 Declaration of Jimy Sherrell, which was filed in Docket No. TC-132141 in fall, 2013
11 (Exhibit No. ____ (HJR-18). That document explained that Shuttle Express then needed
12 an exemption from Commission rules regarding use of independent contractors because
13 Shuttle Express' belated, recent compliance with those rules was materially degrading
14 Shuttle Express' service, causing delays and sometimes forcing Shuttle Express
15 passengers to take a taxi or park at the airport rather than wait for Shuttle Express.
16 Thus, at that time, Shuttle Express' own drivers and vehicles were insufficient to serve
17 the entire market, as expressly found by the Commission in Order 04 in Speedishuttle's
18 application case (Docket TC-143691). Whether at that time Shuttle Express' inability
19 to fully serve its passengers was due to an inadequate fleet or some other explanation
20 (e.g., dispatching problems), it was apparent and it acknowledged then it could not
21 serve its passengers. Nevertheless, as the Commission found in Order 04 in Docket
22 143691, Shuttle Express still wanted it both ways.

23 **Q. What does that say about Shuttle Express' more recent use of independent**
24 **contractors and whether it either cannot transport its passengers or refused to do**
25 **so?**

1 A. Shuttle Express had no exemption from WAC 430-30-213 during the period of January
2 16, 2014 to September 29, 2016. So, if Mr. Sherrell's declaration was truthful, during
3 that period, Shuttle Express either had to improve its service (by changes to its logistics
4 or through permanent expansion of its facilities and service), or fill in the
5 acknowledged gaps in service with continued use of independent contractors. Because
6 Shuttle Express admits independent contractors have been transporting passengers who
7 reserved door-to-door shuttle service, and it appears Shuttle Express has actually used
8 independent contractors even more frequently than before it was granted a temporary
9 and conditional exemption in late 2013, it appears to me that it unilaterally chose to fill
10 in the gaps in its service by transporting its passengers through continued, unabated use
11 of independent contractors. Thus, it continues to fail to serve the public through
12 permissible means.

13 **Q. Do you agree that ensuring that passengers are timely transported is actually**
14 **beneficial to the public?**

15 A. Of course I do. But Shuttle Express does not now claim to be "rescuing" passengers
16 who would otherwise be stranded or delayed (although that was certainly the case of the
17 passenger whose Facebook post we submitted as an attachment to Speedishuttle's
18 Complaint), and contrary to Mr. Marks' testimony about "alternative means of
19 transportation," it appears Shuttle Express has not been using independent contractors
20 to transport passengers who were potentially going to be stranded due to any urgent or
21 unforeseen circumstances. David Pratt's investigation report and Mr. Marks' testimony
22 both reveal that Shuttle Express is instead now using independent contractors to save
23 money, i.e., as a permanent cost-saving mechanism. It thus appears to me that Shuttle
24 Express elected to use independent contractors to supplement its service rather than
25 expand its own fleet or find other legal means to serve its passengers. In other words,

1 Shuttle Express is not now using a service-related excuse for using independent
2 contractors this time around and is just flat out avoiding serving unprofitable passengers
3 in its own vehicles using employee drivers.

4 **Q. Regarding those cost-related excuses given by Shuttle Express witnesses, how**
5 **could use of an independent contractor reduce costs?**

6 A. By way of example, in defense of Speedishuttle's pricing in response to the original
7 Complaint, I explained that Speedishuttle's individual fares are lower than the unit cost
8 of making a trip and that we expect to make a profit on the volume of passengers
9 (Exhibit No. ____ (HJR-1T), 51: 12-17). On average, at least for now, Speedishuttle
10 does not yet have enough passengers to be profitable. While Shuttle Express calls it
11 "predatory pricing" when Speedishuttle transports a single passenger at our stated fare,
12 using our own vehicle and employee driver and is doing so at a loss simply because we
13 didn't have enough passengers on the shuttle, yet when Shuttle Express has only a
14 single passenger (and thereby can't fill a shuttle to a profitable level) rather than
15 transport the passenger and absorb the loss which results from that trip, it just hires an
16 independent contractor, who ostensibly charges Shuttle Express less than Shuttle
17 Express' cost for making the trip.

18 **Q. What, in your opinion, does this say about whether Shuttle Express is serving to**
19 **the satisfaction of the Commission?**

20 A. Once again, it says Shuttle Express is not willing to fully provide a complete service to
21 all its passengers, which should be a problem for the Commission, since Shuttle
22 Express failed to serve its own passengers on 40,727 occasions between January 16,
23 2014 and September 29, 2016, according to Shuttle Express' own response to Staff's
24 data requests Exhibit No. ____ (HJR-20).

1 **Q. Shuttle Express was also asked in a data request from Commission Staff whether**
2 **it included the revenue in its applicable annual report to the Commission from the**
3 **40,727 trips it admitted were made by independent contractors. Have you**
4 **reviewed that data request and Shuttle Express' response?**

5 A. Yes, I have and I am providing Commission Staff's Data Request No. 13 and the
6 response from Paul Kajanoff as Exhibit No. ____ (HJR-27) dated April 21, 2017. Mr.
7 Kajanoff there states that that neither the gross revenue nor the costs of the 40,727 trips
8 were reported or would be included in an annual report.

9 **Q. Does Shuttle Express' latest response through Mr. Kajanoff suggest any additional**
10 **motivation of Shuttle Express in using independent contractors?**

11 A. Absolutely. By collecting money from passengers who reserved a share ride trip on
12 one of Shuttle Express' door-to-door shuttles, actually providing service (through an
13 independent contractor), but failing to report that revenue to the Commission, Shuttle
14 Express avoids paying regulatory fees on the revenue.

15 **Q. Can you think of any other motivations of Shuttle Express might have in using**
16 **independent contractors?**

17 A. Yes I can. Auto transportation companies pay the Port of Seattle a fee for trips
18 departing the airport. However, black car services pay only an annual fee. Thus, every
19 time Shuttle Express uses a limousine to transport its passengers who reserved door-to-
20 door shuttle service, it avoids paying the Port of Seattle a trip charge for that limousine
21 service.

22 **Q. If the Commission were to accept Shuttle Express' latest theory that using**
23 **independent contractors to provide single-stop service is not a violation of**
24 **Commission rules, does that mean the Commission should also find that Shuttle**
25 **Express is actually providing satisfactory service?**

1 A. I don't see how that could ever be possible. The passengers who booked transportation
2 did not know they were receiving single-stop service when they made the reservation.
3 Each of the 40,727 trips made by Shuttle Express using independent contractors was
4 reserved as an auto-transportation trip and Shuttle Express unilaterally determined it
5 would prefer to offload or otherwise arrange to transport those passengers through use
6 of an independent contractor. So either the passengers were transported by Shuttle
7 Express through use of independent contractors, which constitutes tens of thousands of
8 rule violations, or if the Commission finds that Shuttle Express was no longer
9 transporting the passengers and no rule violations were committed, it means there were
10 40,727 instances where Shuttle Express unilaterally chose not to transport persons who
11 sought door-to-door auto transportation service from Shuttle Express. Regardless of
12 which of those options is ultimately found by the Commission, Shuttle Express'
13 conduct plainly shows that it is not willing to provide satisfactory service.

14 **III. COMMISSIONS**

15 **Q. Mr. Marks also testified about Commission Staff's conclusions about Shuttle**
16 **Express' payment of commissions to other companies' employees for ticket sales.**
17 **Which of Staff's witnesses provided testimony on that issue?**

18 A. None of them did.

19 **Q. Why does that matter?**

20 A. If there is no witness to sponsor such a conclusion, how can its basis ever be probed
21 through cross-examination?

22 **Q. Why would Speedishuttle file agreements for payment of commissions to hotels, as**
23 **referenced by Mr. Marks at Exhibit No. ____ (WAM-2T), p. 27: 15?**

24 A. We believe any agreement with a third party to sell transportation for Speedishuttle
25 requires an approved ticket agent agreement be on file with the Commission. In our

1 case, we also do not pay commissions to hotel staff, because we believe it is
2 inappropriate to make someone else's employee our ticket agent, so we deal solely with
3 the company-employer when it comes to commission payments. Additionally, we want
4 the public to have information and/or transparency about the incentives of anyone who
5 would sell our transportation services and their financial motivations. If there is no
6 ticket agent agreement on file, the person booking transportation might believe a
7 recommendation was based purely on service quality or value, and not on any financial
8 "incentive" of the party making that recommendation.

9 **Q. But aren't Shuttle Express' payments to hotel concierge staff just referral fees for**
10 **making a recommendation, which might appear different to the public?**

11 A. No. Shuttle Express' Commissions Guidelines, which were produced in discovery by
12 Shuttle Express and which I am providing as Exhibit No. ____ (HJR-26), state "thank
13 you for your partnership with Shuttle Express! We are grateful for the continued
14 opportunity to provide the highest-quality transportation services for our mutual guests.
15 To show our appreciation for your efforts to promote and sell our services, we offer a
16 commission to those enrolled in our commission program." It also states "You earn
17 10% commission on any service you book at retail rate." Thus, Shuttle Express' own
18 commission program provides that the hotel concierges are *selling* transportation
19 services on behalf of Shuttle Express. That is no different from any other ticket agent,
20 whose agreement is required to be filed with the WUTC as a matter of public record.

21 **Q. Can you elaborate on how ticket agents work to explain this point?**

22 A. In our experience, ticket agents don't sell tickets at a higher price than the fare an auto
23 transportation company is permitted to charge; they make their money through either a
24 discount or a commission. The only difference between a discount and a commission is
25 whether the ticket agent remits less than the fare to Shuttle Express (a discount) or

1 Shuttle Express receives the full fare directly from its agent or the customer and then
2 remits a portion to the agent (a commission). As an illustration, Shuttle Express
3 recently filed for approval of ticket agent agreements with SMS International Shore
4 Operations U.S., Inc. and Clipper Vacations (TC-170113). Each of these agreements
5 reflects a 20% discount to Shuttle Express' fares. If the agreements were restricted to
6 provide that Shuttle Express would invoice the agent the retail price and issue a
7 commission statement for 20% of the invoiced fares, the agent could then offset the
8 commission statement against the invoice and pay the net amount, effectively achieving
9 the same result. Using Shuttle Express' argument, these agreements would then not
10 need to receive the Commission's approval since the full fare was collected by Shuttle
11 Express.

12 **Q. But if the public is not paying any more or less for service, how does that practice**
13 **harm them?**

14 A. The rule requiring ticket agent agreements be filed with the Commission is about
15 ensuring compliance with Commission rules and transparency for the public. If all
16 ticket agent agreements can be made secret by paying commissions rather than
17 providing discounts, the public will lose that transparency.

18 **Q. Does the Shuttle Express practice, for example, of using and compensating hotel**
19 **concierges as ticket agents cause harm to Speedishuttle?**

20 A. Certainly, it does. People often rely on the hotel concierge to book transportation on
21 their behalf without asking too many questions, and trust them to make honest
22 recommendations. Thus, when the concierge has an undisclosed direct financial
23 interest in selecting Shuttle Express, they are likely to do so, which provides Shuttle
24 Express an unfair competitive advantage.

1 **IV. COMBINING DOOR-TO-DOOR WITH SCHEDULED SERVICE**

2 **Q. Mr. Marks testified that your February 2015 trip on a scheduled shuttle of Shuttle**
3 **Express did not take any longer than it should have because you were dropped off**
4 **within 56 minutes, as stated in Shuttle Express' tariff. Does that mean by taking**
5 **door-to-door passengers on that scheduled shuttle that your arrival did not take**
6 **any longer in reality?**

7 A. How could it possibly mean that? Mr. Marks is disregarding the facts of what would
8 have actually occurred had Shuttle Express not combined its door-to-door and
9 scheduled services in favor of what appears to be their time projection of how long that
10 trip should take. The truth is, had Shuttle Express not combined those services, I would
11 not have waited for the unscheduled stop at Harborview and would have reached my
12 destination considerably sooner. And because the stop was not a "flag stop," I (and any
13 other passenger who was subjected to combined service), had no way of knowing in
14 advance that the shuttle might have made undisclosed stops at the locations not
15 included in its tariff.

16 **Q. Mr. Marks also testified that because its stops on a scheduled route are all flag**
17 **stops and therefore those stops are "viewed by other passengers as just another**
18 **door-to-door stop." (Exhibit No. ___(WAM-2T). How, in your opinion, does**
19 **combining services negatively impact door-to-door passengers who are placed on a**
20 **scheduled service shuttle?**

21 A. Mr. Marks is correct, to the extent that Shuttle Express can probably fool its passengers.
22 Those unsuspecting door-to-door passengers probably don't know any better than to
23 think that those flag stops were just other door-to-door stops. But they paid a premium
24 price for door-to-door service and yet are being placed on the same shuttle as the
25 passengers who paid for scheduled service, which then potentially makes more stops.

1 Additionally, if those passengers paid for door-to-door service for one of the flag-stops
2 on the scheduled route, for which they could have paid less as described by Mr. Marks,
3 they are not actually receiving the premium service for which they paid.

4 **Q. Do you see any other inherent conflict in this “combination” practice of door-to-**
5 **door and scheduled service?**

6 A. Yes. Remember door-to-door and scheduled auto transportation are distinct services
7 under Commission rules and a regulated carrier should be expected to distinguish and
8 delineate their operations consistent with those characteristics.

9 **Q. Does that conclude your testimony at the present time?**

10 A. Yes it does.

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CERTIFICATE OF SERVICE

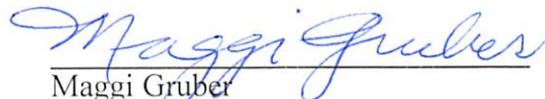
I hereby certify that on April 24, 2017, I provided to the Washington Utilities and Transportation Commission's Secretary an official electronic file containing the foregoing document(s) via the web portal and provided an electronic copy to:

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Signed at Seattle, Washington the 24th day of April, 2017.

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