

Shuttle Express

July 7, 2009

VIA FEDERAL EXPRESS

2009 JUL -8 AM 9:10

David W. Danner
Executive Director and Secretary
Washington Utilities & Transportation Commission
PO Box 47250
1300 S. Evergreen Park Dr. SW
Olympia, WA 98504-7250

RE: Docket No. TC - 090118

Dear Mr. Danner:

Please find enclosed the original, plus four (4) copies of the Post Hearing Brief pertaining to Docket No. TC - 090118.

Thank you very much.

Sincerely,


Rachel Greenspan

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cc: w/encl. SeaTac Shuttle, LLC



2009 JUL -8 AM 9:10
RECEIVED
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In re Application of

Shuttle Express, Inc. DBA

SEATAC SHUTTLE, LLC

Shuttle Express C - 975

For Extension of Authority under Certificate NO. TC - 090118
No. C-1077

**RESPONDENTS POST-HEARING
BRIEF**

Shuttle Express

INTRODUCTION

Shuttle Express, Inc d/b/a Shuttle Express (SE) protests the application of SeaTac Shuttle, LLC (“Applicant”) seeking authority in Docket No. TC-090118. To grant Applicant this authority is not in the Public Interest.

RCW 81.68.040 “The Commission will not issue a certificate of public convenience and necessity for territory in which an existing carrier is presently serving, unless the existing carrier will not provide service to the satisfaction of the Commission”. Order M.V.C. No. 1443, App. No. D-2444 (May 1984).

This brief will prove the public interest is best served by denying the application of the Applicant through discussion of Speculation, Service already being provided to the satisfaction of the Commission, door to door service inclusive of scheduled service, lack of testimony, no testimony for lack of services of SE, and willingness of SE to offer scheduled service if needed by the people. Past decisions of the Commission support this protest.

SPECULATION

THIS CASE SHOULD BE DISMISSED UNDER THE GROUNDS OF SPECULATION

The reason the Applicant has applied for this extension of authority is based on “SPECULATION” that there could be Scheduled Air Service into and out of Paine Field.

Cross by Mr. Sherrell of Mr. Solin: P. 40, 11-16.

Q. “You testified that you think there are airlines that are coming into Paine Field?”

A. “Yes”.

Q. “Is that one of the reasons that you filed this application?”

A. “Yes.”

This shows the Applicant is relying on airline service to support their intended service. If air service does not materialize, they would have a certificate without passengers for financial support, or public need. Mr. Solin "THINKS" there is an airline coming to Paine Field. He does not offer substantiated proof throughout this evidentiary hearing or provide a witness that can qualify testimony that Scheduled Air Service is coming to Paine Field.

Cross by Mr. Sherrell of Mr. Solin: P. 40, 17-25 and P. 41, 1-7.

Q. "Do you have knowledge, any knowledge specifically that airlines are coming in?"

A. "Yes."

Q "What is that?"

A. "We have communicated with both Horizon and Allegiant....That has been delayed..."

This Cross reveals that there is no current scheduled air service at Paine Field. While Applicant says they have knowledge, they do not provide a witness for cross examination to give testimony. This is not credible testimony.

Mr. Lauver: P. 43, 4-15

"My answer is that is anybody starting any business speculates...As the witness indicated, he has very reliable information that this is all going to happen. Additional witnesses will further bolster that. ..."

The Applicant attempted to counter speculation by confusing a business plan based on known facts with that of hearsay and "blue sky." While the claim was made that additional (plural) witnesses will be produced to remove all doubt, the witnesses were never produced. The only suggested witness or witnesses offered might be through Bench Request No.2. However, this was solely an interview with a Snohomish County Executive. At best, this is only evidence of an Executive in favor of Air Service.

No witness was produced from an alleged Airline representative that would prove scheduled airline service was on the horizon.

Under Redirect by Mr. Lauver of Mary Kamb: P. 75, 15-21

Q. "What exactly is coming to Paine Field, could you enlighten us?"

A. "Well, I've heard... believe...I'm not sure if it's finalized yet..., but I think they are working on it..."

This is speculation by the only witness produced by the Applicant. Ms. Kamb is not sure when or even if air service will begin. Again proving there is only speculation that air service "might" come to Paine Field.

RCW 81.68.040 Order M.V.C. No. 1444 In re Pacific Northwest Transportation Services, Inc., App No. D-2445 (May 1984) "The testimony of witnesses that provide no more than speculation about a need for a commuter service in territory where a ...exists could not support a grant of authority."

RCW 81.68.040 Order MVC no. 2139 (2) "Need for new service must be established by the testimony of members of the public who require the service..."

Based on this evidence alone, the application does not have merit for granting authority for this application.

WAC 480-30-136 (3) (i) "The commission will not accept as support an applicant's own statement that its proposed service is needed by the public".

The Applicant attempted to make testimony through their own redirect by Mr. Lauver to Mr. Solin: Pages 153 through 157. This is not credible evidence.

EXISTING SERVICE

SHUTTLE EXPRESS, PROVIDES EXCELLENT SERVICE TO THE EVERETT, PAINE AREA.

RCW 81.68.040 "...unless the existing carrier will not provide service to the satisfaction of the Commission".

Proof that the existing carrier is not providing satisfactory service is the responsibility of the Applicant.

WAC 480-30-136 (4) "If an applicant requests a certificate..., the applicant must also show that the existing transportation company or companies will not provide service..."

Throughout the evidentiary hearing praise was given to SE for its service standards by both the Applicant and the Applicants witness.

Mr. Solin question to Mr. Lauver: P. 67 14-24

Q. "Final question is "Just what is your opinion of Shuttle Express's operation as to their current service...?"

A. "They're excellent. They provide very good service..."

Mary Kamb P74, 8.

And have you booked for any other companies, perhaps Shuttle Express?"

A." Shuttle Express is a good company. They don't come to the Mount Vernon area, but I have referred people to them for people leaving like from Everett and Seattle, and we use them for other cities, but they're definitely an option for, you know, other places beyond Mount Vernon."

This testimony gives us information on two aspects. First, SE does provide good service. Second, the witness indicated that she really does not make travel agent booking in the Paine Field, Everett area. She states she only "referred people". This does not qualify her testimony of knowledge for public demand in the application area.

Nowhere, either in testimony by Mr. Solin or by the Applicant's only witness was proof alleged or offered that SE is not offering satisfactory service to the public or satisfaction to the Commission. In fact, SE was praised for its service.

Service is being provided by SE to the satisfaction of the Commission and the application should not be granted.

SCHEDULED SERVICE VS. DOOR-TO-DOOR SERVICE

APPLICANT'S POSITION THAT SCHEDULED SERVICE IS NEEDED AND DIFFERENT THAN THE EXISTING DOOR-TO-DOOR SERVICE HAS NO BEARING.

There exists debate over the advantages of scheduled service as opposed to door to door service. Past cases prove that door to door service in many cases offers better customer service than scheduled service and when operated next to scheduled service, scheduled service may not be a viable operation.

Gray Line of Seattle testified to its disadvantage with scheduled service when door to door service was offered and stated it would experience financial ruin.

Evergreen Trails, Inc., No. TC-900404 Brief by Clyde H. MacIver, Attachment C—Study of Grayline Airporter's Decline in Traffic Originating at airport.

To protect Grayline Airporter business SE was restricted and made an agreement to not serve many Downtown Seattle hotels served by Gray Line. Docket No. D-75275, Order MVC No.1979, page 5 first paragraph.

"Now, Grayline, the carrier protected by this exclusion..."

"On Call" is a restriction and not a grant of authority. SE had its "ON-CALL" restriction removed. Order MVC No. 1979, page 4.

“As mentioned above the agreement and amendment provide for the removal of the ‘on-call’ restriction from the applicant’s certificate.”

Emphasis “ON-CALL RESTRICTION”. While the Applicants argue a service enhancement for “on-call”, it is nothing more than a restriction used to protect scheduled service from door to door service. The services of SE can offer both “hail” and “on-call” which ever is advantageous to the public.

The Applicant seeks to establish a credible difference between door to door and scheduled service. SE offers both scheduled and door to door service and states that the service is very similar to the public eye. While the Applicant will attempt to create the perception that a big difference exists between the two services, they are actually very similar.

Mr. Rowley: P. 93, 21-24

Q. “Are there similarities between ‘scheduled service’ and ‘door-to-door service’?”

A. “There are. Our ‘door to door’ operation, in essence, is a scheduled service operation.” If additional service was needed SE would provide that service.

Mr. Rowley: P. 93, 11-20

Q. “Do you believe the service to Paine Field and the surrounding area is sufficient and expedient?”

A. “Yes, on both counts. It is expeditious and it is meeting the current demand.”

Q. “Can Shuttle Express handle additional traffic if an airline came to Paine Field?”

A.” Absolutely.”

Mr. Rowley: P. 94, 23 and P95, 1-5

Q. “To your knowledge, is Shuttle Express allowed by the Washington Utilities and Transportation Commission license to offer scheduled service out of Paine Field?”

A. “Yes.”

Q. “And would you if there were the demand offer the service?”

A. “Yes.”

SE currently offers scheduled service in the Everett area and would continue to meet the public demands if further service was needed at Paine Field.

NEED

Bench Request BR-1 provided by SE reveals that SE "IS SERVING" Paine Field and the hotels near Paine Field. The current passenger numbers reveal there is NOT a need for two operators. If two operators were to serve this same area, neither would be financially fit within this service area. Comparing the number of passengers using the Downtown Seattle Hotels served by Gray Line with those passenger numbers using the Paine Field hotels, noted in Order MVC No. 1979 and BR-1, it is clear that the required traffic for two side-by-side carrier operations is not warranted. The Commission, in past cases, has attempted to separate the service of door to door and scheduled service where traffic does not warrant both scheduled and door-to-door service. Bottom line, there just are not enough passengers for two like "AIRPORTER SERVICES" by two separate companies.

Bench Request BR-2 provided by Applicant is merely a discussion of views by a County Executive, Aaron Reardon. No where in the article is any concrete evidence that any Airline has committed to a start date, or even air service. This is not credible evidence that anyone could "hang their hat on" let alone start an airporter service.

There was no testimony for the need of additional service by or for any of the Hotels in the Paine Field area. SE did provide evidence of their service with credible passenger numbers in BR-1. The Applicant seemed to skate around the need for any hotel service and did not provide witness testimony of public need. THE APPLICANT'S APPLICATION FOR HOTEL SERVICE SHOULD BE DENIED.

RCW 81.68.040 Order MVC No. 2139 (2)

"Need for new service ordinarily must be established by the testimony of members of the public who require the service. The Commission does not accept self-serving statements by an applicant and requires that an application be supported by independent witnesses knowledgeable about the traffic.

The Applicant did not make a case for service at these hotels; it was just a casual mention at best.

SUMMARY

In APPLE BLOSSOM LINES, INC. Order No. MVC No. 2139 Page 3

The Commission may issue a certificate authorizing auto transportation service only upon a showing that the public convenience and necessity require the operations. ...”only when the existing auto Transportation Company or companies serving such territory will not provide the same to the satisfaction to the Commission...” The Commission may “for good cause shown” refuse to issue a certificate. RCW 81.68.040; Order MVC No 2041 Application D-76533 (March 1994)

The Applicant has not shown any basis for granting this application. The Applicant did not carry its burden of proof under WAC 480-30-136. The Applicant was not able to present any evidence regarding problems with existing service or the public convenience and the necessity in the territory it seeks in its application. In that territory for which it attempted to present evidence, it did not show that the existing certificate holder, SE, will not provide service to the satisfaction of the Commission. SE did testify that it would provide additional service if service is required by the public.

Shuttle Express

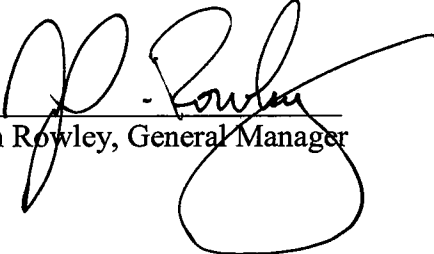
CERTIFICATE OF SERVICE

WUTC DOCKET NO. TC – 090118

I hereby certify under penalty of perjury that I caused to be served as noted below,
a copy of the BRIEF OF SHUTTLE EXPRESS at the following address by first class
mail:

SeaTac Shuttle, LLC
d/b/a Whidbey SeaTac Shuttle
John Solin
Mike Lauver
P.O. Box 2895
Oak Harbor, WA 98277

Dated this 7th day of July, 2009.



John Rowley, General Manager