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BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION

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In re: SHUTTLE EXPRESS, INC. )	
	)
For extension of Authority )	Docket No. TC-091931
Under Certificate No. C-975, )	
for a Certificate of Public )	
Convenience and Necessity to )	
Operate Motor Vehicles in )	VOLUME II
Furnishing Passenger and )	Pages 22 - 195
Express Service as an Auto )	
Transportation Company )	
	)

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An evidentiary hearing in the above matter was held on November 30, 2010, at 9:25 a.m., at 401 Second Avenue, Suite 350, Seattle, Washington, before Administrative Law Judge ADAM E. TOREM.

The parties were present as follows:

SHUTTLE EXPRESS, by BROOKS HARLOW, Attorney at Law, Miller Nash, LLP, 601 Union Street, Suite 4400, Seattle, Washington 98101; telephone (206) 777-7406.

SEATAC SHUTTLE, by MIKE LAUVER, Co-Owner; and JOHN SOLIN, Co-Owner; Post Office Box 2895, Oak Harbor, Washington 98277; telephone (360) 679-4003.

Shaun Linse, CCR No. 2029  
Court Reporter

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1 P R O C E E D I N G S

2 JUDGE TOREM: It's about 9:25. We'll be on the  
3 record a little bit early today on Tuesday, November 30,  
4 2010. This is Administrative Law Judge Adam Torem convening  
5 the hearing on the merits in Docket TC-091931. This is the  
6 application of Shuttle Express, Incorporated, for an  
7 extension of their Certificate No. C-975, and this hearing  
8 is being conducted pursuant to the prehearing conference  
9 order issued some months back I believe in September.

10 We will take appearances first for Shuttle  
11 Express.

12 MR. HARLOW: Good morning, Your Honor. Brooks  
13 Harlow from Miller Nash representing Applicant Shuttle  
14 Express. My address is Suite 4400, 601 Union Street,  
15 Seattle, Washington 98101.

16 JUDGE TOREM: Mr. Harlow, you have a number of  
17 witnesses for the hearing?

18 MR. HARLOW: Yes, Your Honor. To my immediate  
19 right is our company witness John Rowley, and to his right  
20 going down the line is Stacy Mattson from the Port of  
21 Seattle, and at the end of the table is Courtney Touw, a  
22 Shuttle Express rider.

23 Your Honor, we would like to start -- ordinarily  
24 it would be more eloquent to start with the company  
25 witnesses, but since we anticipate the two public witnesses

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1 will be pretty brief we thought we would go ahead and take  
2 them first so that they can be excused.

3 JUDGE TOREM: Understood.

4 Let me take appearances for Seatac Shuttle.

5 MR. LAUVER: Good morning, Your Honor. Mike  
6 Lauver, L-a-u-v-e-r, co-owner of Seatac Shuttle, LLC, and my  
7 address is P.O. Box 2895, Oak Harbor, Washington 98277.

8 JUDGE TOREM: All right. And also you have with  
9 you Mr. John Solin?

10 MR. SOLIN: John Solin, S-o-l-i-n, also a member  
11 of Seatac Shuttle, LLC, co-owner. Same P.O. Box 2895, Oak  
12 Harbor, Washington 98277.

13 JUDGE TOREM: All right. We are here pursuant to  
14 an application that was filed back in December of last year  
15 and a protest filed January of this year, and after a number  
16 of procedural back and forths we are ready for a hearing on  
17 the merits.

18 I understand there's an objection today,  
19 Mr. Lauver, that you want to lodge up front, and then  
20 depending on what that is and how it's resolved we'll  
21 proceed with the presentation of Mr. Harlow's case and then  
22 yours.

23 MR. LAUVER: Yes, Your Honor. Thank you. At this  
24 time I would like to object to Applicant's Exhibits 9, 10,  
25 and 11 as submitted. They bear absolutely no relevance

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1    whatsoever to this hearing.  Their focus seems to be to  
2    somehow impugn the protestant, ourselves, and we are not the  
3    subject of this hearing here, and any operations conducted  
4    by us are not part of this hearing.  We have the right under  
5    WAC as a certificated holder of a certificate of necessity  
6    to lodge a protest, and we have done so and the scope of  
7    this hearing is limited to the application of Shuttle  
8    Express.

9                    JUDGE TOREM:  If I understand correctly, those  
10   prefiled exhibits which we've not identified for the record  
11   yet are the ones we referred to as the cross-examine  
12   exhibits that came in last week.

13                   MR. LAUVER:  These are the most recent exhibits  
14   provided by Mr. Harlow on November 23, and I'm sure that  
15   Mr. Harlow is quite aware of the fact that we are not the  
16   subject of this hearing, and the only reason for their  
17   submission that I can see is to attempt to prejudice the  
18   hearing by somehow inferring that we are not ourselves in a  
19   position to lodge a protest of the type that we are doing  
20   questioning the fitness, willingness, and ableness of the  
21   applicant.

22                   JUDGE TOREM:  It may be premature to lodge the  
23   objection until those have been formerly offered for the  
24   record.  If you'd like, I can give Mr. Harlow a chance to  
25   explain now or just deal with those if and when they're

0029

1 presented formerly. At this time I just want to assure you  
2 no witness testimony has yet been taken nor has any exhibits  
3 been admitted to the record, and until that happens I won't  
4 consider them. I'm aware that they've been offered, but  
5 they certainly don't mean anything to me.

6 MR. LAUVER: It's our position that this sort of  
7 submission is rather grievous, and we wanted to deal with it  
8 up front, and I would welcome Mr. Harlow's response at this.

9 JUDGE TOREM: All right. Then we'll take that.

10 MR. HARLOW: Your Honor, I think that we should  
11 reserve this for the time when the exhibits are first of all  
12 identified and secondly voir dire. They may or may not  
13 prove relevant, and it's premature at this time. I'm not  
14 even certain if the protestant is presenting a witness. Of  
15 course, if they don't present a witness, it's not likely  
16 we'll use them as cross exhibits. I would like to reserve  
17 it for that part of the hearing.

18 JUDGE TOREM: Mr. Harlow, could you respond please  
19 briefly to Mr. Lauver's concern as to what the subject  
20 matter of the hearing might be?

21 MR. HARLOW: I would prefer not to, Your Honor  
22 because it would tip the witnesses as to the direct and  
23 cross and might color their answers.

24 JUDGE TOREM: All right. Well, I will have to  
25 wait, Mr. Lauver, until I have some more information as to

0030

1 how they might be offered. Again, they're not being offered  
2 yet so I can't not admit something that's not being offered  
3 yet. I can note for the record your objection and the  
4 concern. I can understand exactly the sentiment behind it  
5 and even the reason behind it as well. Let me reassure you  
6 and your company that I am not going to be persuaded one way  
7 or the other by photographs that have been submitted. If  
8 they won't be part of the record by law, they can't  
9 influence my decision.

10 So at this point let's press on with this. If  
11 they do become necessary to offer later in the hearing, I'll  
12 have Mr. Harlow submit them to the same rules of evidence  
13 and realm as your exhibits. All right.

14 MR. LAUVER: Thank you.

15 JUDGE TOREM: Did either side want to make a brief  
16 opening set of remarks as to the reason for the application,  
17 Mr. Harlow, and if necessary the protest?

18 MR. HARLOW: Your Honor, I think that will become  
19 clear through our testimony so we see no need for an opening  
20 statement.

21 JUDGE TOREM: All right. You had indicated  
22 earlier did you want to make any openings or should we hear  
23 their witnesses first?

24 MR. LAUVER: We are prepared to just proceed at  
25 this point.

0031

1 JUDGE TOREM: So proposed witnesses for Shuttle  
2 Express have been listed, and I prefer if all of you can at  
3 this time be sworn as all three and we can proceed quickly  
4 through each.

5 If you can stand and raise your right hands.

6 (Courtney Touw, Stacy Mattson, and John Rowley  
7 sworn on oath.)

8 JUDGE TOREM: We're going to start with each of  
9 your public witnesses.

10 MR. HARLOW: We would like to start with Mr. Touw.

11 JUDGE TOREM: All right. Mr. Harlow, all of your  
12 witnesses have sworn, if you'll proceed.

13 MR. HARLOW: Thank you, Your Honor.

14

15 COURTNEY TOUW,  
16 having been first duly sworn on oath,  
17 testified as follows:

18

19 DIRECT EXAMINATION

20 BY MR. HARLOW:

21 Q. Good morning. Could you please state your name for  
22 the record.

23 A. Courtly Touw.

24 Q. Where do you work, Mr. Touw?

25 A. I work for ClearPoint.

0032

1 Q. What kind of company is ClearPoint?

2 A. ClearPoint is an insurance brokerage firm here in  
3 Seattle.

4 Q. What is your position with ClearPoint?

5 A. Executive Vice President.

6 Q. Do you have experience as a passenger on Shuttle  
7 Express or vans to the airport?

8 A. I do.

9 Q. How far back does that experience go?

10 A. Probably ten years.

11 Q. Have you been happy with Shuttle Express' service?

12 A. Very.

13 Q. How did you first come to use Shuttle Express, if  
14 you can remember?

15 A. My wife and I ride to the airport so we use Shuttle  
16 Express together.

17 Q. Do you recall how large the van was? Was it a  
18 seven passenger or ten passenger van?

19 A. It was pretty big. I want to say it was big. It  
20 was the first time. There was a lot of people on the van.

21 Q. Are you aware that Shuttle Express is seeking to  
22 remove a restriction from its Utilities Commission permit, a  
23 restriction to using fewer vans that are smaller than seven  
24 passenger in capacity?

25 A. I am.

0033

1 Q. Do you support elimination of that restriction to  
2 seven passenger vans?

3 A. I do.

4 Q. Would you please tell the judge why you support the  
5 removal of that restriction?

6 A. I think we're living in a green society where the  
7 more people you can shuttle to the airport is a better thing,  
8 and a more efficient way to get people to the airport is a  
9 better thing.

10 Q. Do you prefer to ride on a larger van than a  
11 smaller van?

12 A. Yeah, it depends on the situation, but sure.

13 Q. Does it ever come in handy with the family that you  
14 travel with or the groups you travel with?

15 A. It does. Comes in handy especially with my sisters  
16 both living here locally, and they have kids and we share a  
17 van to the airport.

18 Q. How large of groups do you have sometimes?

19 A. Anywhere from, well, total the biggest 15, 16  
20 people going to the airport, but typically we're between 5  
21 and 10.

22 Q. Can you think of any other reasons why it would be  
23 in the public interest to use vans larger than seven  
24 passengers in Shuttle Express' operation?

25 A. Like I said, I think the more people that you can

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1 put into one vehicle going to the airport is a much more  
2 efficient way to get people to the airport; therefore, trying  
3 to conserve resources and everything else. It's a better  
4 way, a more efficient, and it's better for everybody.

5 MR. HARLOW: Thank you, Mr. Touw. That's all the  
6 questions I have.

7 JUDGE TOREM: Mr. Lauver, do you have any  
8 cross-exam questions?

9 MR. LAUVER: Yes, I do.

10 CROSS-EXAMINATION

11 BY MR. LAUVER:

12 Q. Good morning, Mr. Touw.

13 A. Good morning.

14 Q. You just stated that you've been riding Shuttle  
15 Express for approximately ten years. Correct?

16 A. Give or take a couple.

17 Q. Approximately.

18 A. Yes.

19 Q. In that time to the best of your recollection  
20 you've always used to use your word a big, bigger, larger  
21 vans?

22 A. Yes.

23 Q. Which would tell me that you're not riding in seven  
24 passenger or smaller vans?

25 A. Seven passenger or smaller. I'm pretty sure there

0035

1 was seven passenger vans.

2 Q. Well, the seven passenger van is one of the smaller  
3 vans out there, and you said that you were riding in bigger  
4 vans. And I believe Mr. Harlow specifically asked you if  
5 they were ten passenger vans, and your response was they were  
6 bigger and bigger vans.

7 A. I'm trying to count the seats. I would say they  
8 are probably ten passenger vans.

9 Q. Thank you. You were again asked if you supported  
10 the removal of the restriction, and you stated that, yes, in  
11 fact you were, and that you were aware that this is the  
12 nature of this hearing to deal with that restriction.

13 Correct?

14 A. Yes.

15 Q. So you're now aware of the fact that Shuttle  
16 Express has a restriction out there against using vehicles  
17 larger than seven passengers, and yet you've told us that  
18 over the past ten years to the best of your recollection  
19 you've never ridden in a seven passenger; they've always been  
20 ten-passenger vans or larger.

21 MR. HARLOW: Your Honor, if it would save time  
22 we're willing to stipulate that Shuttle Express has been  
23 operating ten passenger vans.

24 JUDGE TOREM: Let me see.

25 MR. HARLOW: That's not a fact issue.

0036

1 JUDGE TOREM: Mr. Touw, have you ever ridden in a  
2 smaller van to your recollection?

3 THE WITNESS: Yeah, I have. I've ridden in both  
4 sizes I should say.

5 Q. (By Mr. Lauver) All right. Let's get on to the  
6 public interest here. It's your feeling that larger vans are  
7 in the public interest?

8 A. That's correct.

9 Q. Do you feel that given the regulations and the fact  
10 that this restriction existed that the Commission that  
11 regulates Shuttle Express is being served satisfactorily?

12 MR. HARLOW: Your Honor, objection. There's no  
13 evidence that this witness has familiarity with the  
14 Commission's regulations.

15 JUDGE TOREM: Sustained. Can you lay a foundation  
16 to see if he has any knowledge of those regulations,  
17 Mr. Lauver?

18 MR. LAUVER: I think at this point we'll just move  
19 on, and we'll examine this with other witnesses.

20 JUDGE TOREM: All right. Any further questions?

21 MR. SOLIN: Yes.

22 MR. HARLOW: Your Honor, sorry, but I don't think  
23 that protestant is entitled to two cross-examiners for a  
24 witness.

25 JUDGE TOREM: Mr. Solin if you have other

0037

1 questions maybe you can have Mr. Lauver ask them  
2 specifically. We'll have the witness respond to one  
3 questioner. Mr. Harlow is correct.

4 Q. (By Mr. Lauver) Do you see any limitation to the  
5 size of the vehicles that in your opinion would create a  
6 better situation for the public? For instance, should  
7 Shuttle Express be operating motor coaches to 44 passengers?  
8 Would that be more satisfactory?

9 A. I don't know that I have a real opinion on that. I  
10 think it depends on the situation that people are trying to  
11 get to the airport.

12 Q. How about 24 passenger vehicles then?

13 A. You know, the same kind of thing. If there's a  
14 more efficient way and it's a better way to shuttle people to  
15 the airport and it works on everyone's behalf that would  
16 work, but I don't have a specific opinion on that.

17 Q. Well, you've expressed the opinion that ten  
18 passengers is good. You don't really know if anything beyond  
19 ten passengers is good. Can you tell me on what basis you  
20 think that ten passengers is better than seven but not  
21 necessarily better than twenty?

22 A. I've had experience with ten-passenger vans, and it  
23 has worked very well for myself and my family. I have no  
24 experience with a 24-passenger van so I don't want to comment  
25 on it.

0038

1 Q. Do you have any experience with a seven passenger  
2 van?

3 A. I have, yes.

4 Q. With Shuttle Express?

5 A. Yep.

6 Q. That was when?

7 A. I don't remember one specific date, but I know I've  
8 ridden both of them. Most of the time I've been on the  
9 ten-passenger vans.

10 Q. Has that been in the past five years?

11 A. Honestly I don't remember.

12 Q. Do you think it's reasonable that it's been more  
13 than five years?

14 A. Sure. Ten passenger vans is mostly what I've  
15 ridden with Shuttle Express.

16 MR. LAUVER: All right. Thank you. No further  
17 questions at the time.

18 JUDGE TOREM: Mr. Harlow, anything further?

19 MR. HARLOW: Just briefly, Your Honor.

20 REDIRECT EXAMINATION

21 BY MR. HARLOW:

22 Q. Would you support the Applicant having the  
23 flexibility to operate whatever size van that you need on a  
24 particular day to get to the airport?

25 A. Absolutely.

0039

1 MR. HARLOW: I have no further questions, Your  
2 Honor.

3 JUDGE TOREM: Any other questions for this  
4 witness?

5 MR. LAUVER: No.

6 JUDGE TOREM: Any other reason to keep Mr. Touw  
7 here?

8 MR. LAUVER: No, I don't think so.

9 JUDGE TOREM: Thank you, Mr. Touw, for taking the  
10 time to be here this morning.

11 Ms. Mattson, if you'll just move down the table  
12 one, you've already been sworn in.

13 JUDGE TOREM: Mr. Harlow, go ahead.

14

15 STACY MATTSON,  
16 having been first duly sworn on oath,  
17 testified as follows:

18

19 DIRECT EXAMINATION

20 BY MR. HARLOW:

21 Q. Good morning, Ms. Mattson. Would you please state  
22 your name for the court reporter.

23 A. Stacy Mattson.

24 Q. Please tell the judge and court reporter what your  
25 employer is and the job title.

0040

1 A. Port of Seattle, and I'm the manager of ground  
2 transportation at Seatac Airport.

3 Q. Can you please tell me how long you've been manager  
4 for ground transportation at Seatac?

5 A. Three and a half years.

6 Q. What was your position before you became the ground  
7 transportation manager at Seatac?

8 A. I was a program manager for the public parking  
9 department.

10 Q. Was that also in connection with the airport?

11 A. Yes.

12 Q. Did you become familiar with the operations in the  
13 garage at Seatac Airport in your current position?

14 A. Yes.

15 Q. How long did you have that position?

16 A. Four years.

17 Q. Are you familiar with the operations of Shuttle  
18 Express and the other airport bus services?

19 A. Yes.

20 Q. How did you become familiar with their operation?

21 A. As the ground transportation manager I have primary  
22 oversight for all of the ground transportation and commercial  
23 operators' agreements, whether they be a monthly agreement or  
24 a concession agreement. So I am familiar with their  
25 operations for the purposes of operating at the airport.

0041

1 Q. Do you participate in setting policy for ground  
2 operations, including the airport shuttles at Seatac Airport?

3 A. Yes.

4 Q. Do you have to approve the concession agreements  
5 with airport shuttles?

6 A. Yes, or at least be involved in it.

7 Q. Do you have a familiarity with I guess I will say  
8 the quality and success of the shuttle operations from the  
9 Port's perspective?

10 A. Yes.

11 Q. How would you characterize Shuttle Express'  
12 operation from the Port's perspective?

13 A. Shuttle Express is in good standing with the  
14 airport operations department. We have presently a  
15 door-to-door concession agreement with them for which they  
16 signed in 2003. That is still to this date extended. Their  
17 operations is they have a few different operations at the  
18 airport. The main exclusive agreement that we have with  
19 Shuttle Express is to provide door-to-door services in their  
20 territory for which they're approved to operate under the  
21 WUTC. Further they do have some charter bus operations and  
22 have a prearranged limousine business that operates at the  
23 airport.

24 Q. Thank you. For the door-to-door service do you  
25 have any familiarity with what size vans they use?

0042

1 A. Yes.

2 Q. What size is that to your knowledge?

3 A. They use seven passenger and ten passenger vans.

4 Q. Do you know what they predominantly use in terms of  
5 size?

6 A. I believe predominantly seven-passenger vans when  
7 it's share ride with the door-to-door service.

8 Q. You were here earlier when we described the purpose  
9 of this hearing. Do you support Shuttle Express'  
10 applications to eliminate the seven passenger provision in  
11 its permit?

12 A. Yes.

13 Q. Could you please tell the judge and the court  
14 reporter why that is.

15 A. Sure. From the airport's perspective we support  
16 any operators that take some type of means to reduce the  
17 trips to the airport. Not only does that reduce vehicle  
18 emissions but it also reduces congestion, congestion that we  
19 see on our airport drive and our ground transportation  
20 process. Further, if we have heavy loads like in the summer,  
21 kids returning to college after the holidays, if we're able  
22 to put several more passengers into a larger vehicle and kind  
23 of move them along out of our ground transportation areas,  
24 the quicker the better. It reduces congestion in all of our  
25 operating areas for ground transportation.

0043

1 Q. So do you feel that it's in the public interest to  
2 grant this application?

3 A. I do.

4 Q. We haven't gotten to the company witness yet, but  
5 assume this is a hypothetical, if you will, that the company  
6 witness indicated if they weren't allowed to operate in  
7 larger than seven-passenger vans then they would have to  
8 increase their number of trips by 20 to 30 percent. Do you  
9 understand my hypothetical?

10 A. Yes.

11 Q. Would that have an impact, an adverse impact on  
12 ground operations at the airport?

13 A. It certainly would have an impact on the emissions  
14 at the airport, and it would certainly have an impact on more  
15 congestion at drives and ground transportation and staging  
16 and parking areas.

17 MR. LAUVER: I'm going to object here. I don't  
18 see the relevancy of this at all. The real question here is  
19 Shuttle Express providing service to the satisfaction of the  
20 Commission. Whether or not the Port District feels that  
21 smaller vans or larger vans would do the Port District a  
22 good deed really isn't the focus here.

23 JUDGE TOREM: Your objection is that it's not  
24 relevant?

25 MR. LAUVER: It's not relevant because it does not

0044

1 speak to the satisfaction of the Commission. It's once  
2 again either a public or a special interest situation out  
3 here.

4 JUDGE TOREM: Mr. Harlow.

5 MR. HARLOW: The language from which Mr. Lauver  
6 seems to be quoting is application pending when there's an  
7 existing carrier providing the services, and that's not the  
8 circumstances here. I believe this is testifying in the  
9 public interest, and congestion and air pollution at the  
10 airport is clearly relevant to the public interest.

11 JUDGE TOREM: Mr. Lauver, I'm going to note the  
12 objection but allow the testimony to continue. We're nearly  
13 done with this line of questioning. I'll give it the  
14 appropriate weight once I sort out when writing my opinion,  
15 but I'm going to overrule the objection for now but note  
16 where it's coming from and look to giving this witness's  
17 testimony in this regard the appropriate weight later.

18 Mr. Harlow, go ahead.

19 Q. (By Mr. Harlow) Ms. Mattson, you said it would  
20 definitely have an impact. Can you describe for us would it  
21 be a positive or a negative impact if they had to switch to  
22 smaller vans and increase the number of trips from 20 to 30?

23 A. I would consider that a negative impact.

24 Q. When you say negative impact, on the Port and also  
25 on the public interest?

0045

1 A. Yes.

2 MR. HARLOW: Your Honor, that is all the questions  
3 that I have for Ms. Mattson at this time.

4 JUDGE TOREM: Ms. Mattson, if you will turn your  
5 attention back to Mr. Lauver and Mr. Solin. They will give  
6 you some cross-examination questions and I might have a few  
7 myself.

8 MR. LAUVER: Okay. Thank you.

9 CROSS-EXAMINATION

10 BY MR. LAUVER:

11 Q. Good morning, Stacy.

12 A. Good morning.

13 Q. Nice to see you again.

14 A. You too.

15 Q. Trying to review a little of your testimony here.  
16 You've been in your current position three and a half years?

17 A. That's correct.

18 Q. You stated that you're familiar with Shuttle  
19 Express' operations?

20 A. Yes, for the purposes of operating at the airport.

21 Q. For purposes of operating at the airport. Can you  
22 tell me what that really means?

23 A. I am familiar with the Exclusive Concession  
24 Agreement between the Port of Seattle and Shuttle Express.

25 Q. So --

0046

1           A.     That doesn't mean I understand all of their  
2 business outside of that.

3           Q.     So you don't necessarily understand, for instance,  
4 the quality of their service either to the public or to the  
5 Commission?

6           A.     I do have some information about the quality of  
7 their customer service because oftentimes that information  
8 comes to the Port for Shuttle Express.

9           Q.     What sort of information would come to the Port?

10          A.     Oftentimes we'll receive phone calls either good or  
11 bad about any ground transportation operator: a great  
12 service, a bad service, if they have a question and a  
13 complaint, and sometimes those things do come to my office.

14          Q.     How often would you say that with any operator,  
15 with all of the operators you have you actually get calls  
16 from people that say, "Wow, my shuttle right was great"? Is  
17 that a frequent thing or a very infrequent thing?

18          A.     Definitely not daily. I would call it, you know,  
19 20 to 25 times a year.

20          Q.     20 to 25 times a year. So maybe twice a month and  
21 that's for all the shuttle operators down there?

22          A.     Yes.

23          Q.     Do you have any idea how many passengers that  
24 represents?

25          A.     I would suspect that represents over a million

0047

1 passengers.

2 Q. So given that out of a million passengers divided  
3 amongst a large number of operators, maybe twice a month you  
4 get something positive. Can you really characterize that as  
5 knowing the quality of the operation of any particular  
6 shuttle operator, be it ourselves, be it Shuttle Express, be  
7 it Bremerton-Kitsap?

8 A. I can characterize that as I have some knowledge of  
9 customer service.

10 Q. Some knowledge, some very limited knowledge.

11 A. I would say some knowledge.

12 Q. When you said that their exclusive arrangement down  
13 there and their concession agreement is for door-to-door  
14 operations?

15 A. That's correct.

16 Q. Well, to your knowledge does Shuttle Express  
17 provide any scheduled service?

18 A. Yes, scheduled and unscheduled.

19 Q. So is there an agreement for door to door or for  
20 scheduled?

21 A. There's a concession agreement with Shuttle Express  
22 for the door-to-door service. It's not defined as one or the  
23 other.

24 Q. It seems as though that you defined it as door to  
25 door. You also stated that you're happy to work with any

0048

1 concessionaire that operates within their authority?

2 A. Is that a question?

3 Q. Yes.

4 A. Did I say that I'm happy?

5 Q. Yes.

6 A. I don't think I said I'm happy to operate.

7 Q. You said that you were willing to work with -- we  
8 can have the reporter read it back, but I believe to  
9 paraphrase your testimony it was that as long as an operator  
10 operates within its authority the Port District is happy to  
11 work with that entity as a concessionaire.

12 A. I'll have to have you read what you're talking  
13 about. I want to be clear what the question was.

14 JUDGE TOREM: All right. So we'll take a pause to  
15 find that in the record.

16 (Off the record to find question and answer.)

17 Q. (By Mr. Lauver) I'll restate the question that I  
18 asked earlier. Would you in your position with the Port  
19 approve a concession agreement with an operator that did not  
20 have authority from the WUTC to operate as an airport  
21 shuttle?

22 A. Typically what we would do is that we would ask  
23 prior to entering into a concession agreement with an  
24 operator, we would ask that they either adopt the other  
25 agency's rules and regulations for which their governed by or

0049

1 we ask them to comply with those.

2 Q. So let me be clear here. You would approve a  
3 concession agreement for an airport shuttle operator who was  
4 not licensed and regulated by the WUTC?

5 MR. HARLOW: Objection, asked and answered.

6 JUDGE TOREM: Overruled. I'll allow him to  
7 rephrase the question in this way. Ms. Mattson, can explain  
8 the Port's policy.

9 A. The answer is no. The way you asked it before  
10 required a yes answer and now it requires a no answer.

11 Q. (By Mr. Lauver) Thank you. Looking further at  
12 that, if an operator was licensed by the UTC and violated the  
13 tenets of its licensing agreement with the UTC would you  
14 continue as the Port of Seattle to support that operator in  
15 their concession agreement if you were made aware of those  
16 violations?

17 A. If we were made aware of it, we would want some  
18 demonstration that that issue, whatever it is, is being  
19 resolved.

20 Q. Then further I believe you stated that the majority  
21 of the trips that you have seen Shuttle Express operate were  
22 all done in seven passenger vans; is that correct?

23 A. That's what I typically see on a day-to-day basis,  
24 but I'm not the one that's out there on the plaza everyday,  
25 but I am aware of the use of ten-passenger vans.

0050

1 Q. Seven passenger.

2 A. Of both I'm aware.

3 Q. Of both. Okay. When were you last a passenger on  
4 a Shuttle Express vehicle?

5 A. I'm sorry. Can you repeat that.

6 Q. When were you last a passenger on a Shuttle Express  
7 vehicle?

8 A. I do not utilize shuttles.

9 Q. So you've never been a passenger on Shuttle  
10 Express?

11 A. Not on a shuttle, no.

12 Q. So as far as the quality of the ride, the service  
13 to the public, and all that you really have no information to  
14 offer an opinion?

15 A. I have some information to offer an opinion.

16 Q. And that information is all direct knowledge or  
17 second hand?

18 A. Well, both. I'm sorry. Are you considering direct  
19 knowledge me being on a Shuttle Express van?

20 Q. That is correct. I'm asking all of the knowledge  
21 you have gained is supposedly through phone calls or e-mails  
22 for something else in which you did not directly participate?

23 A. Right. So I would say some knowledge indirectly.

24 Q. Some knowledge indirectly. Do you have at the Port  
25 of Seattle any rules and regulations regarding the operation

0051

1 of airport shuttles?

2 A. Yes.

3 Q. If an operator violates those rules do you have any  
4 procedures for following up, directing, analyzing?

5 A. Yes, we have a violation procedure.

6 Q. Could you describe that briefly for me.

7 A. Sure. If an operator is found to be violating  
8 operating rules or regulations staff has the authority to  
9 issue them a \$100 citation.

10 Q. Along with the citation is there any sort of  
11 recording of previous citations? Is there a point system  
12 like on drivers' licenses, for instance?

13 A. Yes, but it varies. It's not the same for every  
14 concession agreement or every operator.

15 Q. But, in fact, there is some procedure in place  
16 whereby points are assessed based on violations with various  
17 operators?

18 A. There is a procedure in place, yes. It does not  
19 consist of points.

20 Q. Could you tell me what it consists of?

21 A. It consists of a certain number of violations.

22 Q. What happens when an operator reaches a threshold  
23 on these number of violations?

24 A. There are suspensions that go along with those.

25 Q. Suspensions of?

0052

1 A. Operating privileges.

2 Q. Operating privileges. Is there a threshold upon  
3 which revocation of operating privileges is invoked?

4 A. Yes.

5 Q. I see. So at the Port you have regulations, and  
6 you expect the operators to follow those regulations?

7 A. Yes.

8 Q. If they don't they can be suspended or permanently  
9 barred from operating at the airport.

10 A. Yes, they could.

11 Q. You stated earlier that larger vans generally mean  
12 fewer trips and you would support that or you do support  
13 that?

14 A. Yes.

15 Q. Would it be reasonable then for the Port to say  
16 that it would be better for Shuttle Express to operate all 20  
17 passenger vans and reduce their frequency by half?

18 A. I don't know. I don't know that all larger vans  
19 are right for all operation, but that's a business decision.

20 Q. I'm not questioning you about whether that's right  
21 for them in a business standpoint. I'm asking you from the  
22 Port's perspective would that be a good thing: reducing the  
23 frequency by half by having them operate larger vehicles?

24 A. I think that it's dependent on the customer, but it  
25 would certainly reduce trips into the airport and reduce the

0053

1 congestion which is something the Port is interested in.

2 MR. LAUVER: Thank you.

3 JUDGE TOREM: Anything further, Mr. Lauver?

4 MR. LAUVER: No.

5 EXAMINATION

6 BY JUDGE TOREM:

7 Q. Ms. Mattson, I have a couple of questions. When  
8 you mentioned the Port's concession agreement with Shuttle  
9 Express you said that goes back to 2003?

10 A. Yes.

11 Q. Was there any recitation in that concession  
12 agreement about Shuttle Express' certificate with the  
13 Washington Utilities and Transportation Commission?

14 A. No.

15 Q. Is there any expression in the concession agreement  
16 with the size of the vans they should or shouldn't operate at  
17 the Port?

18 A. No.

19 Q. So as far as the Port's concerned there's not a  
20 direction or a limitation on the size or number of vans?

21 A. No, there is operating areas. You know, concerns  
22 that we have to work around should we go to larger vans, but  
23 those are sort of operating things that we can amend as  
24 needed with little notice to operators.

25 Q. When you say operating area is that physical

0054

1 location in the plaza?

2 A. The physical location. They do have some  
3 restrictions.

4 Q. Okay. That's on your Port property?

5 A. That is on our Port property.

6 Q. It's their territory which is left regulated by the  
7 Commission.

8 A. That's correct.

9 Q. So for the area on the airport parking plaza where  
10 they do their pickups and stage their vans for waiting that's  
11 all part of the concession agreement with the Port?

12 A. Yes.

13 Q. At this time the Port is fine with them using both  
14 seven and ten-passenger vans?

15 A. Yes.

16 Q. If they had a different size that wasn't  
17 dramatically different in its wheelbase, would that also fit  
18 within the Port's concession agreement?

19 A. Yes.

20 Q. Mr. Lauver asked you some questions about the  
21 limitation that currently exists and that Mr. Harlow's client  
22 is now applying to remove in the certificate. Were you aware  
23 of the seven passenger van limit, and, if so, when did you  
24 become aware of it?

25 A. I was not aware of this seven-passenger van limit

0055

1 until John Rowley made me aware of it. I believe it was  
2 before summer of this year. I couldn't tell you exactly  
3 when. It's relatively new information to me.

4 Q. Was it a surprise to you?

5 A. A little bit, yes.

6 Q. I think Mr. Lauver wanted to maybe be more direct  
7 in the question so let me. Is the fact that Shuttle Express  
8 has allegedly been violating their permit everyday they drive  
9 a ten-passenger van into the Port, does that disturb you at  
10 all about the kind of company you're doing business with as a  
11 concessionaire?

12 A. Not necessarily. To me it seemed to be an  
13 oversight for what they found on the certificate, and they  
14 certainly had no airport or airport customer impacts. So  
15 that's really where I'd tend to care about things, and it  
16 didn't impact us negatively as far as that goes.

17 Q. When you said that if you knew there was a  
18 violation issue, an alleged violation issue, you would be  
19 looking to see that it's being resolved, does Mr. Rowley's  
20 application filed last December to remove that limitation  
21 address your concerns on behalf of the Port?

22 A. Yes.

23 JUDGE TOREM: Let me see if Mr. Harlow and  
24 Mr. Lauver have any additional questions based on mine, and  
25 then if they don't, you're free to go back to work.

0056

1                   MR. HARLOW: Just a very brief follow up on  
2 Mr. Lauver's questions, although it does relate to yours as  
3 well.

4                                   REDIRECT EXAMINATION

5 BY MR. HARLOW:

6           Q.       Has the WUTC ever contacted you about the legality  
7 or illegality of Shuttle Express' operations?

8           A.       No.

9           Q.       To your knowledge is the WUTC investigating or  
10 pursuing any kind of a compliance proceeding with Shuttle  
11 Express relating to the size of the vans?

12          A.       I'm not aware of that at all.

13                   MR. HARLOW: That's all I have.

14                   JUDGE TOREM: Mr. Lauver?

15                   MR. LAUVER: Yes, thank you.

16                                   RECROSS-EXAMINATION

17 BY MR. LAUVER:

18           Q.       You stated that regularly you see seven passenger  
19 vans at the airport operating for Shuttle Express. Correct?

20           A.       Correct.

21           Q.       And yet Mr. Harlow has stipulated that they don't  
22 operate seven passenger vans; that they operate ten passenger  
23 vans. How do you reconcile this?

24                   MR. HARLOW: I did not stipulate they do not  
25 operate seven-passenger vans. I stipulated that they do

0057

1 operate ten-passenger vans, and we have the full equipment  
2 list, of course, in the application which the witness  
3 doesn't have.

4 MR. LAUVER: Well, I can offer --

5 JUDGE TOREM: Let's not make this a fact witness  
6 on this issue, Mr. Lauver. Why don't you rephrase the  
7 question, and I think you can get it in cross with the  
8 evidence that is currently in the record before this  
9 witness.

10 Q. (By Mr. Lauver) So you stand by your statement that  
11 they currently operate seven passenger vans in shuttle  
12 service at the airport and you have personally witnessed  
13 this?

14 A. The last vehicle list that I had had them on it,  
15 had seven-passenger vans on the list, but admittedly I don't  
16 have the most updated list.

17 Q. That wasn't my question. You stated in your  
18 position as ground transportation manager you will often  
19 personally observe their seven passenger vans in service at  
20 the airport. Not an equipment list, I'm asking you about  
21 your observation.

22 A. I believe I have witnessed seven-passenger vans.

23 Q. All right. You feel that going to the larger vans,  
24 whether or not that's a violation, is in the interest of the  
25 customer. Correct?

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1 A. Yes, it could be in the interest of the customer.

2 Q. In an operator decided that it's in the best  
3 interest of the customer to pick them up, for instance, next  
4 to Carousel No. 16 on the arrivals deck rather than Door 00  
5 or their assigned space within the parking garage, that would  
6 be in the best interest of the customer too since they don't  
7 have to walk the 200 plus yards down to Door 00, you would  
8 have no objection to that then?

9 A. I would have a variety of objections to that. I  
10 don't think it's relevant to this.

11 MR. HARLOW: Your Honor, I'm going to object to  
12 this line of questioning. I think it goes beyond the  
13 redirect in Your Honor's questions as well.

14 JUDGE TOREM: Mr. Lauver, you are in new ground  
15 here.

16 MR. LAUVER: Well --

17 JUDGE TOREM: What do we want to get across here?

18 MR. LAUVER: I'm speaking to the selection of  
19 enforcement by Ms. Mattson, and that her opinion that it's  
20 good for the customer to do one thing because it suits her  
21 needs. It's good for the customer to do another, but it  
22 doesn't necessarily suit her needs so that's not acceptable.

23 JUDGE TOREM: I understand the nature of your  
24 concern. Let me have you reserve that for closing argument  
25 or brief. I think the nature of the question that's being

0059

1 asked to Ms. Mattson was whether she was aware of any  
2 limitations, when she became aware of this, and what the  
3 nature of the concession agreement was. That didn't have  
4 any limitations to the number of passengers and the size of  
5 the vans within reason for that operating area on the plaza.  
6 So now you're moving the area around which is outside the  
7 scope. If you have further questions about her awareness of  
8 the limitation that the UTC has in this please ask, but if  
9 not then we are going to move to the next witness.

10 MR. LAUVER: I think we should go forward then.

11 JUDGE TOREM: Any other questions for Ms. Mattson?

12 MR. HARLOW: No, Your Honor.

13 MR. LAUVER: Thanks, Stacy.

14 JUDGE TOREM: Thank you, Ms. Mattson, for your  
15 time and your patience. It's now 10:15. Let's take a brief  
16 stretch break for everybody, and then we'll put on  
17 Mr. Rowley. Okay? So we will go off the record for about  
18 five minutes.

19 (Recess taken at 10:15 a.m. to 10:25 a.m.)

20 JUDGE TOREM: We will be back on the record. It's  
21 about 10:25, 10:26, and we have Mr. John Rowley. He's  
22 already been sworn in.

23 Mr. Harlow, please go ahead.

24 MR. HARLOW: Thank you, Your Honor.

25 ///

0060

1

JOHN ROWLEY,

2

having been first duly sworn on oath,

3

testified as follows:

4

5

DIRECT EXAMINATION

6

BY MR. HARLOW:

7

Q. Would you please state your name for the record.

8

A. John Rowley.

9

Q. Do you work for Shuttle Express?

10

A. Yes, I'm the president of Shuttle Express. I've

11

been employed at Shuttle Express since 1989.

12

Q. What were your duties with Shuttle Express in the

13

past starting from 1989 moving forward?

14

A. I started by scheduling the drivers, became

15

director of operations, and then general manager in 1999, and

16

was named president just this year.

17

Q. Are you familiar with all aspects of Shuttle

18

Express' operations?

19

A. I am.

20

Q. Are you familiar with Shuttle Express' airport

21

service?

22

A. Yes.

23

Q. I wonder if you could give us a brief history with

24

Shuttle Express going back to the conception, the beginning.

25

A. Shuttle Express was actually formed by a commuter

0061

1 airplane based out of Port Angeles, a company that I actually  
2 worked at, and we had a season one time where we couldn't  
3 make any trips in the air and had to rent some vans across  
4 the Hood Canal, and I think that's where the idea came from.  
5 My CEO noticed Super Shuttle down in Los Angeles, and we  
6 emulated that company formed in 1987 and have been going ever  
7 since.

8 MR. HARLOW: Your Honor, I would like to give the  
9 witness the witness set of exhibits, please.

10 JUDGE TOREM: Let me hand you that folder back so  
11 that you can refer to the appropriate location.

12 MR. HARLOW: Thank you.

13 Q. (By Mr. Harlow) Mr. Rowley, would you please turn  
14 to Tab No. 2, Exhibit No. 2. Can you identify Exhibit No. 2.

15 A. This is one of our brochures.

16 JUDGE TOREM: Let me just interject, Mr. Harlow,  
17 and see if we can streamline these eight exhibits. Mr.  
18 Lauver, you had a chance to preview what was filed with the  
19 Commission in mid November, Exhibits 1 through 8, as  
20 proposed by Mr. Harlow on behalf of his client. Do you have  
21 any objections to admitting any of these to the record? I  
22 know the objection you've already stated about the  
23 cross-exam exhibits, but the direct exam exhibits?

24 MR. LAUVER: I don't have any objections to 1  
25 through 8 at this time. I may, however, as testimony

0062

1 includes them. I do fail to see any relevancy in any of  
2 them, but I'll let that develop as things go.

3 (Exhibit Nos. 1 through 8 identified for the  
4 record.)

5 JUDGE TOREM: All right. Well, let me just  
6 identify them for the record quickly, and then it will  
7 streamline the presentation here and we'll admit them one at  
8 a time, but to identify them, Mr. Harlow, Exhibit 1 is I  
9 believe the application to extend the existing certificate;  
10 is that right?

11 MR. HARLOW: Yes, Your Honor.

12 JUDGE TOREM: Exhibit 2 that you're referring to  
13 now is a brochure and a Shuttle Express schedule. Exhibit 3  
14 is a press release, forgetting the subject matter of that.

15 MR. HARLOW: It's a safety award for Shuttle  
16 Express.

17 JUDGE TOREM: And that press release is current as  
18 of this year. It goes back dating some other safety awards  
19 to 2004. Exhibit 4 is a photograph of a camera that I  
20 believe is mounted to the front windshield of the vans.  
21 Exhibit 5 is another photograph of a propane facility that  
22 the company owns and operates, and Exhibit 6 is a photograph  
23 of a driver and van. Exhibit 7 is another photograph of a  
24 driver in uniform. Exhibit 8 is a photograph of a computer  
25 dispatch screen utilized by Shuttle Express and its

0063

1 operations.

2 So with those eight exhibits identified we're now  
3 looking at Exhibit 2.

4 MR. HARLOW: Since there's no objection, Your  
5 Honor, would you like me to offer all eight of those  
6 exhibits?

7 JUDGE TOREM: I think we will offer them one at a  
8 time just in case there's a relevance exhibit objection to  
9 any of them.

10 MR. HARLOW: Okay.

11 JUDGE TOREM: So now we're on Exhibit 2, the  
12 brochure.

13 MR. HARLOW: Thank you.

14 Q. (By Mr. Harlow) Mr. Rowley, we turn back to you.  
15 Does Exhibit 2 give a high-level overview of Shuttle Express'  
16 operations?

17 A. Yes, it does. This is a brochure that we keep in  
18 each van. It has our fares, our schedules, and some of other  
19 services that we provide.

20 Q. Which of these services would you want to operate  
21 in larger than seven-passenger vans?

22 A. Specifically what we all share-ride rates on this  
23 brochure which is our door to door.

24 MR. HARLOW: Your Honor, I offer Exhibit 2.

25 JUDGE TOREM: Any objection?

0064

1 MR. LAUVER: No.

2 JUDGE TOREM: Exhibit 2 is admitted.

3 (Exhibit No. 2 admitted into evidence.)

4 Q. (By Mr. Harlow) Do you believe that Shuttle  
5 Express' operations, current operations serve the public  
6 interest, Mr. Rowley?

7 A. I do.

8 Q. Could you give some reasons why.

9 MR. LAUVER: I'm going to object here. Mr. Rowley  
10 should be completely knowledgeable about the WAC and rules  
11 and regulations of the Utilities and Transportation  
12 Commission, and once again I feel that this hearing speaks  
13 to the satisfaction of the Commission and not necessarily  
14 public need.

15 JUDGE TOREM: Mr. Harlow?

16 MR. HARLOW: Your Honor, the Commission determines  
17 whether services are existing and proposed services are in  
18 the public interest based on the testimony of witnesses.  
19 That includes public witnesses that we've heard today as  
20 well as company witnesses.

21 JUDGE TOREM: Mr. Lauver, I'm going to refer back  
22 to a notice of the prehearing conference that was served  
23 back on January 29 in paragraph 4. It stated I'm trying to  
24 see if I signed this or if someone else did. Our executive  
25 director and secretary signed this January 29 of this year.

0065

1 Paragraph 4 he stated the issues in this proceeding include  
2 whether modifying the existing Shuttle Express Authority for  
3 the service it proposes is necessary and is otherwise  
4 consistent with the public interest and whether other  
5 carriers authorized to serve in the requested territory will  
6 not provide this modified service to the satisfaction of the  
7 Commission. So it appears that you and Mr. Harlow are  
8 battling over two different portions of this sentence and  
9 paragraph. Both of them are relevant for the regulations  
10 and my executive secretary and director of the agency so I  
11 will entertain this testimony on public interest, as well as  
12 any other testimony you want to elicit on the satisfaction  
13 of the Commission.

14 MR. LAUVER: Further, I don't believe the  
15 Commission entertains testimony from the company as to  
16 public need. That testimony must come from a public witness  
17 and little or no credence is again to a company employee  
18 providing such testimony.

19 JUDGE TOREM: That's correct, Mr. Lauver, and I am  
20 fully familiar with our agency proceedings and what weight  
21 is given to which witnesses. If Mr. Harlow wishes to pursue  
22 this line of questioning, I think he's aware also that it  
23 will be given as much weight as any public witness and he's  
24 already provided one of those this morning. So the  
25 objection is overruled, and I'll allow Mr. Harlow to pursue

0066

1 whatever line of questioning he thinks is relevant to this  
2 witness, whether it's a warm-up question for the next one,  
3 but I think he understands these rules as well.

4 Mr. Harlow, please proceed.

5 MR. HARLOW: Thank you.

6 Q. (By Mr. Harlow) Mr. Rowley, let me just refocus you  
7 on the question. You stated that you felt the opinion  
8 removing the seven-passenger restriction from your permit  
9 would serve the public interest, and I asked you to give some  
10 reasons that you felt that way.

11 A. Removing the seven passenger restriction would  
12 certainly eliminate any of the questions that are abound  
13 surrounding that. Having to use a seven passenger vehicle  
14 would handicap our operation.

15 Q. Okay.

16 A. You want me to continue?

17 Q. No, I think I am kind of getting ahead of myself.

18 A. Or I was.

19 Q. Do you have any estimation as to how many private  
20 automobiles your service takes off the road every year as a  
21 result of share-ride operations?

22 A. Yes. Counting the trips that a private individual  
23 will take to and from the airport for each leg of a  
24 customer's trip we estimate as many as a million cars off the  
25 road on an annual basis based on the fact that we can

0067

1 eliminate essentially four trips per passenger.

2 Q. Your company's been operating for over 20 years.

3 Have you had any fatal accidents in all that time?

4 A. None.

5 Q. If you would turn please to Exhibit 3. Please tell  
6 us what that exhibit reflects.

7 A. This is a release that was made from our safety  
8 award. We had actually one safety award with the members  
9 within our insurance company which 45 carriers exist within  
10 that company, and this is the best of the best. This year we  
11 will win it again for 2010. It's on here. So we've won  
12 every year since basically 2004 with the exception of 2006.

13 Q. What is Trax?

14 A. Trax is our insurance group. It's a captive  
15 insurance, and we are owned by the members, and we are part  
16 of that.

17 Q. Is it like an industry pool?

18 A. Correct.

19 MR. HARLOW: Your Honor, we offer Exhibit 3.

20 JUDGE TOREM: Any objection?

21 MR. LAUVER: No.

22 JUDGE TOREM: All right Exhibit 3 is admitted.

23 (Exhibit No. 3 admitted into evidence.)

24 Q. (By Mr. Harlow) Mr. Rowley, you just stuck your  
25 hand on a little box. What is that, please?

0068

1           A.       This a DriveCam unit that every one of our vehicles  
2 now can use. Every vehicle before it goes out on the road  
3 must be supplied with one of these.

4                    JUDGE TOREM: All right. One of these for the  
5 record is?

6                    THE WITNESS: A DriveCam unit.

7           Q.       (By Mr. Harlow) Please turn to Exhibit 4.  
8 Exhibit 4 is that a picture of the unit you're holding?

9           A.       Yes.

10                   MR. HARLOW: Your Honor, we're just using the  
11 physical unit for illustrative purposes.

12           Q.       (By Mr. Harlow) Please explain why you use a  
13 DriveCam in every vehicle before you dispatch it?

14           A.       There are a few reasons. One, this will take  
15 shots. It's a digital camera so it's always running when the  
16 vehicle is on. When a gravitational force affects it, it  
17 takes a picture back ten seconds and forward ten seconds from  
18 the event. That gives a video via an e-mail that we can use  
19 to help us settle claims. We also use it every time there's  
20 an event to coach a driver which we found to be very useful  
21 to keep our drivers behaving in a safe manner when there's  
22 driving. These were installed in 2008. A good example is  
23 that in 2007 we had about 50 accidents. In 2008 we lowered  
24 that amount to 27 accidents.

25           Q.       Has that trend continued since 2008?

0069

1           A.     It has.  This year actually we in 2010 I didn't  
2     count the accidents from the snow which I think there were a  
3     couple, but we were at 10 accidents.  So again we're going to  
4     see a decrease again, and it is because we take advantage of  
5     every event and coach the drivers.

6           Q.     Do you feel that the DriveCam has contributed to  
7     the safety award that you got?

8           A.     Most definitely as well as reducing our premium  
9     costs for the insurance which is quite expensive.  It started  
10    at \$600,000 annually.  It's down to about \$450,000 annually,  
11    and that turns into decreased expenses so we can in turn make  
12    sure rates don't go up any further.

13                  MR. HARLOW:  Your Honor, I believe I offered 4.  I  
14    just want to be sure.

15                  JUDGE TOREM:  You haven't offered it yet, but is  
16    there any objection?

17                  MR. HARLOW:  Your Honor, I offer Exhibit 4.

18                  MR. LAUVER:  I don't to see the relevancy here.  
19    Shuttle Express' safety record, their insurance premium,  
20    diminishing those still rather high accident rate really is  
21    not the subject of this application.  Once again, the use of  
22    vans in excess of their authority is the scope of this  
23    investigation, this hearing.

24                  JUDGE TOREM:  Mr. Harlow?

25                  MR. HARLOW:  Your Honor, we need to show that the

0070

1 applicant is fit, willing, and able to provide the services  
2 proposed. We are proposing to offer services in larger than  
3 seven passenger vans and the applicant's current and prior  
4 operating history is very relevant to this hearing going  
5 forward we believe.

6 JUDGE TOREM: Mr. Harlow, at this point if you'll  
7 make sure that this particular DriveCam is linked to the  
8 proposed ten passenger vans in the record and then I will  
9 rule on the objection.

10 Q. (By Mr. Harlow) One more question, Mr. Rowley. Do  
11 you use the DriveCams in your ten-passenger vans?

12 A. Yes, we do.

13 JUDGE TOREM: I do believe, Mr. Lauver, I have to  
14 overrule your objection. You didn't object to the relevance  
15 to the safety press release. This description ties with  
16 Exhibit 3 which is already admitted. It made statements  
17 make to me at least. Exhibit 3 is more relevant by having  
18 Exhibit 4 admitted so it does help me as the fact finder,  
19 the initial decision maker here to have both exhibits  
20 together and not just the one.

21 You failed to object to Exhibit 3 so I will admit  
22 Exhibit 4 over your objection. It's for a very limited  
23 purpose of again I'm looking at the fitness and ability.  
24 The separate issue is whether this description should be  
25 removed as you're going to argue in your protest also

0071

1 specifically. But that element of what I need to sort out  
2 here in my findings and conclusions in Exhibits 3 and 4 are  
3 relevant and are both admitted.

4 (Exhibit No. 4 admitted into evidence.)

5 Q. (By Mr. Harlow) Mr. Rowley, roughly how many garage  
6 spaces in the Seatac area and parking places in the Seatac  
7 area does Shuttle Express free up each day by carrying  
8 passengers who otherwise would drive?

9 MR. LAUVER: Objection. This is pure speculation.  
10 Mr. Rowley cannot possibly know whether or not a car would  
11 have parked at Seatac, whether they would park in an  
12 outlying lot, or whether they would be dropped, the  
13 passengers would be dropped off by another person not parked  
14 in a lot. Further, whether they would use the new light  
15 rail, whether they would use Metro transit.

16 JUDGE TOREM: I will sustain the objection and  
17 give you a chance to rephrase that, Mr. Harlow.

18 Q. (By Mr. Harlow) Mr. Rowley, how many trips on  
19 average does Shuttle Express make each day to Seatac?

20 A. They make approximately -- let's see. We carry  
21 almost 2,000 passengers so approximately 1,500 per day on  
22 average.

23 Q. Do you have an opinion based on your experience in  
24 the ground transportation industry as to whether a  
25 substantial number of your passengers would otherwise ride in

0072

1 private vehicles to the airport?

2 A. I do.

3 Q. What is your opinion?

4 A. I would imagine that of those if we were not  
5 operating the 1,500 trips, you know, two-thirds of them would  
6 be driving to the airport at least.

7 Q. What about the other third?

8 A. They would be taking the various other services:  
9 taxi, light rail.

10 Q. Would some of them get a ride from a friend to the  
11 airport?

12 A. Yes.

13 Q. How many trips does that entail compared to your  
14 one?

15 A. 4 to 1, 8 to 2 round trips.

16 Q. What public need do you believe Shuttle Express  
17 serves? What's your market niche?

18 A. Our market niche is families, but we also do  
19 business. It's generally the entire market throughout the  
20 Puget Sound area.

21 Q. How do you compare to a bus, a larger bus like Gray  
22 Line runs or a cab or a taxi service?

23 A. Door-to-door or share-ride service has three to  
24 four stops; one, two, three, four stops at various places. A  
25 Gray Line bus, for instance, would make different stops

0073

1 downtown at that particular location. We make stops at  
2 specific addresses that people would like to go on the  
3 door-to-door side. So we could take them to their home or to  
4 their office or a motel if they would like to do that.

5 Q. Do you have any opinion as to why your passengers  
6 or guests take your service compared to one of those other  
7 options?

8 A. I have a few opinions.

9 Q. Okay.

10 A. Our service the drivers are well received. Elderly  
11 people like us to carry their bags for them, all people do.  
12 The fare is less expensive than a cab ride because we can put  
13 a couple different parties going from the airport where a cab  
14 takes one. The nature of share ride is such that because you  
15 can put more than one party in the trips you can charge a  
16 lesser fare.

17 Q. Would you please turn to Exhibits 6 and 7. What do  
18 those exhibits show?

19 A. They're a Shuttle Express uniformed driver speaking  
20 with customers.

21 Q. Do all your drivers wear uniforms?

22 A. Yes, all drivers wear dark pants, a white shirt,  
23 and a tie and dark socks.

24 Q. Why do your drivers wear uniforms?

25 A. We like to give a professional appearance, try to

0074

1 set ourselves apart from the rest of the options that people  
2 have.

3 Q. Does the public value that effect that your drivers  
4 wear uniforms?

5 A. Absolutely, you have another idea. Particularly  
6 single women prefer the professional look. A Shuttle Express  
7 driver is easily recognizable.

8 Q. Do you feel it increases public confidence in your  
9 service?

10 A. Absolutely.

11 Q. Exhibit 6 also appears to show one of your vans; is  
12 that correct?

13 A. Yes, that is correct.

14 Q. Can you see the DriveCam in the windshield there?

15 A. Yeah, I can barely make it out.

16 Q. Do you know if this is a seven- or a ten-passenger  
17 van?

18 A. This is a ten-passenger van. This is one of our  
19 new propane models.

20 MR. HARLOW: Your Honor, I would like to offer  
21 Exhibits 6 and 7 at this time?

22 JUDGE TOREM: Any objection to these two?

23 MR. LAUVER: I'm going to object to 7. There's  
24 been no reference to it in any of the testimony, no  
25 relevancy placed upon it.

0075

1                   JUDGE TOREM: Mr. Harlow, I know you asked about  
2 both of these together regarding a driver. Did you want to  
3 ask any additional questions about 7?

4                   MR. HARLOW: Well, they both show the drivers'  
5 uniform, and arguably they are a little bit cumulative, but  
6 I don't see any harm to that. It simply gives the  
7 Commission a better flavor of the understanding of a very  
8 ritual way of how Shuttle Express operates.

9                   JUDGE TOREM: Mr. Lauver, I understand what both  
10 pictures stand for, and they are probably worth more than a  
11 thousand more words from Mr. Harlow so I'm going to admit  
12 both of them.

13                   (Exhibit Nos. 6 and 7 admitted into evidence.)

14                   MR. LAUVER: Not to Mr. Harlow.

15                   JUDGE TOREM: Go ahead, Mr. Harlow.

16                   MR. HARLOW: I appreciate the efficiency of the  
17 words here.

18           Q.       (By Mr. Harlow) How often do you clean your vans?

19           A.       The vans are cleaned by each driver when they get  
20 off shift. So a van will normally run two shifts. It's  
21 cleaned twice a day.

22           Q.       Does this improve public confidence or comfort in  
23 your service?

24           A.       Absolutely. They're vacuumed as well as washed,  
25 and that does help getting into a clean vehicle definitely

0076

1 tells the guests that I'm getting into a clean vehicle; that  
2 I'm getting into a safe vehicle. They take care of their  
3 vehicles.

4 Q. How does that compare to taxi cabs in your opinion?

5 A. In my opinion we raise our standards above what  
6 cabs are and try to do that. So we definitely have a higher  
7 standard than a cab.

8 Q. Do your guests ever comment to you about the  
9 appearance of your drivers and vehicles compared to their  
10 experience with taxis?

11 A. Absolutely and other operators as well.

12 Q. What kind of things do you hear?

13 A. They tell us that your drivers are great, well  
14 groomed, not like so and so that they used the service in a  
15 cab.

16 Q. Could you please turn to Exhibit 8. Please tell us  
17 what Exhibit 8 represents.

18 A. This is a snapshot of one of the screens that they  
19 would use in our dispatch office to route and assign for  
20 door-to-door stops.

21 Q. Can you kind of tie into this exhibit, tell me how  
22 you plan and operate a day of share-ride service at Shuttle  
23 Express?

24 A. Share ride is a little different from an  
25 operational standpoint than a cab where you take a person

0077

1 right to where they're going. It's pretty much on call.  
2 Share ride requires some preplanning like the Metro ride  
3 share where they will plan their trips out months in advance.

4 Q. Are you talking about like the van pools?

5 A. Like the van pool. We essentially plan our trips  
6 out everyday the day before. At six o'clock we take a look  
7 at what reservations have come in. Generally there's over  
8 six hundred to a thousand reservations, and we group them  
9 together by location and by time, and there we start sorting  
10 them out so we create trips.

11 Q. Does Exhibit 8 reflect software that helps you do  
12 that?

13 A. It does. We have advanced that. This is something  
14 that we have helped move forward. We used to do this on a  
15 manual basis, and we have got it to the point now where a map  
16 is involved. There was a time where it was computerized but  
17 no map. Now there's a map which further helps the dispatcher  
18 really pinpoint the best routing for the customers.

19 Q. What's that benefit to the guest of using this  
20 sophisticated software like you designated?

21 A. The benefit to the guest is that their trips are  
22 shorter. Their stops in between each other are not as long.  
23 We can visually see what the best trips are and put those  
24 together. And by having shorter trips we are much more  
25 efficient, and we can operate with less drivers. Again, by

0078

1 operating with less drivers and less vehicles that helps our  
2 expenses which can help keep prices down.

3 MR. HARLOW: Your Honor, I'd offer Exhibit 8.

4 JUDGE TOREM: Mr. Lauver, any objection?

5 MR. LAUVER: No.

6 JUDGE TOREM: Exhibit 8 is admitted.

7 (Exhibit No. 8 is admitted into evidence.)

8 Q. (By Mr. Harlow) Could you explain how the dispatch  
9 and the planning works from the perspective of a passenger  
10 arriving at the airport by plane -

11 A. The perspective of the guest is that they will go  
12 to our booth and check in with us. They will immediately see  
13 their name on their screen with the location that they're  
14 headed too. As a van is signed they will see a van number  
15 beside their name, and at that point they know that a driver  
16 will be calling their name and he will be locating the van  
17 that has come in.

18 Q. Explain the screen a little bit more. Where is the  
19 screen located?

20 A. The screen is actually at the curb site where our  
21 vans are located where the waiting area is for the guests so  
22 they can keep tabs on where they're at in their wait time.

23 Q. Where is the area in the airport?

24 A. It's in the center of the parking garage in the  
25 third floor.

0079

1 Q. Okay. Now, from your perspective then a passenger  
2 shows up, says they want to shuttle home. What do you have  
3 to do to dispatch?

4 A. We have to route on the fly based on the people  
5 that come up. So what we will do is acquire the list of  
6 people that have come to the third floor and checked in, and  
7 we know what areas they're going to. Our dispatch will again  
8 put groups of people together based on their location to make  
9 the most efficient route all the while watching the wait  
10 times so that the customer does not have to wait too long.  
11 We recognize the balance that we have as a share-ride  
12 operator is just to combine people together, but we also do  
13 not want to lengthen the time of their trip or they're not  
14 going to use us again because the trip was too long. We do  
15 have to compete against the cabs. Sometimes they're a family  
16 and so forth, and that can be a more expedient trip so we  
17 have to make sure that we don't overdo it with our routing  
18 and create longer trips.

19 Q. Where does the van come from that picks people up  
20 at the airport to take them home?

21 A. That will come from the outlying area, anywhere in  
22 the Puget sound. It could be from our base to begin with.  
23 It could be from a previous drop off. Ideally we're trying  
24 to, like ideally we are assigning a group of passengers back  
25 to the airport.

0080

1 Q. Do you have any vans on standby at the airport?

2 A. When they arrive at the airport we have holding  
3 slots for them. We have curb space, 13 curb spaces, and we  
4 also have an area outside of there that will hold up to 8 or  
5 10 vehicles.

6 Q. So I guess I'm not sure I'm hearing the answer. Do  
7 you have vans on standby? Do you have vans waiting for  
8 people?

9 A. Yes. The nature of our operation is to try to keep  
10 the vans moving so that we are most efficient. So we don't  
11 want too have many vans waiting, but we have enough to take  
12 care of the load at the airport.

13 Q. How do you operate in the snow and other emergency  
14 situations?

15 A. It's all hands on deck. All employees come to  
16 work. The management team picks people up to get them to  
17 work, drivers, our airport coordinators, reservation agents.  
18 The culture is that everybody knows that it's our time to  
19 shine and to come to work. We try to operate as best as we  
20 can. Those people that have existing reservations we honor  
21 and pick them up. If the conditions get too bad, then we go  
22 to what's called the motel operation and we'll begin taking  
23 any new reservations and booking them at the motels. Our  
24 phones go off the hook when he get a threat of snow, and so  
25 we have to get extra staff also to answer the phones.

0081

1 Q. Using last week as an example did your passenger  
2 counts and reservations go up last week?

3 A. Well, the jury is still out on that. It appears  
4 that we did a little bit better than last year, but due to  
5 the fact that we couldn't operate nearly as quickly from  
6 location to location because of the snow we may not have done  
7 as well.

8 Q. Were you filling up most of your vans last week?

9 A. Oh, absolutely. They were very full as much as  
10 possible to take people that were waiting sometimes two and  
11 three hours.

12 Q. Were you generally carrying more than seven  
13 passengers during this snow event last week?

14 A. I would say in general. I have not looked at the  
15 figures so I can't say for sure.

16 Q. Can you give a high-level description of your  
17 fleet:

18 A. We have 80 vans, approximately 80 vans. They are  
19 mostly Ford Econo Line 350 ten-passenger vehicles. We have  
20 removed the back seat of them and put up a baggage cage. The  
21 vans themselves are actually 15 seats to begin with. By  
22 taking out the last seat we have 11 seats including the  
23 driver so a ten-passenger van. We also have a couple of  
24 handicap vehicles that we use for wheelchair accessible  
25 vehicles. Additionally we have many other vehicles: charter

0082

1 buses and a number of town cars, limousines that don't really  
2 pertain to our hearing here.

3 Q. So the purpose for removing that last row of seats  
4 is so the customers don't have to carry their luggage on  
5 board and have it on their lap or at their feet?

6 A. Yes, we found that there was no way to accommodate  
7 the -- there would be no way to accommodate the luggage if we  
8 were to keep that back seat in there. Further I think there  
9 is a top-end limit to how many seats you do with share ride.

10 Q. Is there safety issues with passengers carrying  
11 their luggage and having them at their feet?

12 A. There is and that's something that we don't do. We  
13 keep it in the back behind the cage.

14 Q. Would you please turn to Exhibit 5. There are two  
15 pages to Exhibit 5. What does Exhibit 5 show?

16 A. My book is upside down. This is a propane tank and  
17 also a propane vehicle being fueled.

18 Q. Does some of your fleet use propane instead of  
19 gasoline?

20 A. Yes, we have ten propane vans.

21 MR. LAUVER: Objection.

22 JUDGE TOREM: Mr. Lauver.

23 MR. LAUVER: Once again this doesn't speak to any  
24 issue before the Commission. It doesn't state to fitness,  
25 willingness, or ableness. It does not speak to

0083

1 seven-passenger vans. Whether or not they use propane,  
2 diesel, gasoline, electric that all may be to their economic  
3 benefit or they may perceive some other benefit from it, but  
4 it has nothing to do with their fitness or willingness or  
5 their ableness to provide the service. Providing service is  
6 not dependent upon fuel type.

7 JUDGE TOREM: Mr. Harlow.

8 MR. HARLOW: Your Honor, Shuttle Express runs a  
9 first class operation, and will do so with larger than  
10 seven-passenger vans. This particular exhibit goes to  
11 Shuttle Express' continuing drive to operate more  
12 efficiently so that fares are kept low for the public, and  
13 it ties right into the desire to use larger vehicles and  
14 have flexibility to use a vehicle size that results in  
15 efficient operations, and that's in the public interest. So  
16 this clearly goes to the fact that Shuttle Express is doing  
17 everything it can to serve the public interest in the best  
18 way possible and supports the application.

19 JUDGE TOREM: I appreciate the sentiments,  
20 Mr. Harlow and Mr. Rowley, explaining the propane facility,  
21 but I do concur with the objection that it's not relevant to  
22 the issue before me today so I'm going to sustain the  
23 objection, and we will end up not admitting the propane  
24 facility unless Mr. Harlow can make some other additional  
25 argument as to how it relates to the language you're seeking

0084

1 to remove. As far as I read in the certificate there is no  
2 restriction on the fuel type of the vehicle so it's just not  
3 a relevant issue. It's a nice to know; it's not a need to  
4 know.

5 Q. (By Mr. Harlow) Mr. Rowley, will you be using  
6 propane on your ten-passenger vans?

7 A. Yes. We will and we are looking to convert our  
8 entire fleet.

9 Q. Is there a cost to convert your entire fleet?

10 A. Yes, there will be.

11 Q. Is it based on the size of the van or is it the  
12 same cost to convert a seven- into a ten-passenger van?

13 A. The cost would be the same for a conversion,  
14 whether it's a seven or a ten.

15 Q. If you convert a ten-passenger van do you get to  
16 spread that cost over to more passengers?

17 A. That's correct.

18 Q. What are the benefits of using propane in  
19 ten-passenger vans?

20 A. The benefits are the emissions are reduced.

21 Q. What kind of emissions?

22 MR. LAUVER: Objection. We just covered this in  
23 the previous objection. Whether or not it's a propane is  
24 not at issue here.

25 JUDGE TOREM: Mr. Harlow, I'm not sure that this

0085

1 line of questioning is going prove relevant.

2 MR. HARLOW: I think we've tied it in the fact  
3 that during the conversion of propane it's beneficial to the  
4 environment as well as keeping fares low because propane is  
5 cheaper than gasoline, and it's more feasible to do that for  
6 a larger van than a smaller van because you get to spread  
7 that fixed cost over more customers.

8 JUDGE TOREM: I guess I understand where this  
9 might be a business issue and perhaps related to fares, but  
10 it's so tangential to the issues before me as to the removal  
11 of the seven-passenger versus ten-passenger limit that I can  
12 assure you that it won't sway me one way or the other so I'm  
13 not going to admit Exhibit 5.

14 (Exhibit No. 5 rejected from evidence.)

15 MR. HARLOW: We will move on.

16 Q. (By Mr. Harlow) Mr. Rowley, forgive me if I already  
17 asked you this, but I need to ask you in a different way.  
18 How many total passengers a year does Shuttle Express carry,  
19 for example, in 2010?

20 A. We carried less than 600,000 this year.

21 Q. Close to 600,000?

22 A. Close to 600,000.

23 Q. Please turn to Exhibit 1, Mr. Rowley. Can you  
24 identify Exhibit 1.

25 A. This is the authority request for extension of the

0086

1 authority we submitted.

2 Q. Did you prepare this?

3 A. Yes.

4 Q. To the best of your knowledge are the statements  
5 contained in here true and correct?

6 A. Yes, although in reviewing the conditions that  
7 justify granting of this application we did find yesterday  
8 that they do actually make vans for seven passengers.

9 JUDGE TOREM: Which page are you on, Mr. Harlow?

10 MR. HARLOW: Page 2 of 11 I believe.

11 JUDGE TOREM: Ah, toward the bottom of page 2.

12 Got it.

13 Q. (By Mr. Harlow) You're referring to the phrase vans  
14 are made with more seats now; is that correct?

15 A. Right, which is true. The restriction we felt was  
16 outdated, and they do make a larger one with more seats.  
17 Initially when we started they did not come with more seats,  
18 at least that's my recollection.

19 Q. When you say they, you mean Ford Econo Line was not  
20 available in the 15-passenger version?

21 A. Correct.

22 Q. Thank you. Why was the -- let's turn actually to  
23 Exhibit A, page 2. Is that a current copy of your permit?

24 (Exhibit A identified for the record.)

25 A. This appears to be a current copy, yes.

0087

1 Q. (By Mr. Harlow) The restriction you're seeking to  
2 eliminate would that be Restriction No. 1 at the bottom of  
3 page 2 of Exhibit A?

4 A. That's correct. Right, No. 1.

5 Q. Why was that restriction put in the permit to begin  
6 with?

7 A. The restriction was put in initially because there  
8 needed to be a differentiation between what our service was  
9 and what Gray Line did when we first went in. Gray Line was  
10 a protestant, and the fall out of that was that we needed to  
11 run vans as opposed to their buses.

12 Q. Why was the number seven picked?

13 A. At the time that is what the vans were.

14 Q. Apparently what was available from Ford?

15 A. Yes.

16 Q. Has Gray Line expressed any objection to you over  
17 the current application to remove that restrictive language?

18 A. No, nobody has protested with the exception of  
19 Seatac Shuttle.

20 Q. Referring to Exhibit 1 if you need to, just going  
21 from memory, what's the range and sizes of your current  
22 fleet?

23 A. The wheelchair accessible vans are smaller and then  
24 the rest of them are ten passengers. We do have a few nine  
25 passenger that have a little bit different configuration.

0088

1 Q. Why are you seeking to just eliminate the  
2 restriction rather than change the number seven to the number  
3 ten?

4 A. The restriction is -- because there is question on  
5 it we wanted to remove it so there was absolutely no  
6 question. We wanted to update it, our certificate. We are  
7 taking an abundance of caution to do that. As far as the  
8 flexibility, it is very apparent to us and other operators  
9 that the best way to operate share-ride service is with a  
10 ten-passenger vehicle. That's the sweet spot, and we don't  
11 feel -- we thought the easiest way would be to just remove  
12 the restriction.

13 Q. About when did you switch to the ten-passenger  
14 vans?

15 A. My recollection is mid to late '90s. We still ran  
16 seven passenger vans as the mileage ran out on them, but we  
17 started introducing the ten-passenger vans in the mid to late  
18 '90s.

19 Q. Where didn't you seek an extension or elimination  
20 of the original permit in the mid '90s?

21 A. Quite possibly that was something that we thought  
22 had been taken care of when we purchased the other  
23 certificates from Suburban and EASE.

24 Q. What does EASE stand for?

25 A. Everett Airporter Service Enterprises maybe.

0089

1 Q. All right. So honing in on Suburban and EASE did  
2 those authorities that you purchased contain the  
3 seven-passenger limitation?

4 A. No. Suburban ran a scheduled service and a  
5 door-to-door service as well.

6 Q. So in this 15 some years since you bought that  
7 authority and started operating ten-passenger vans have you  
8 ever been inspected by the WUTC?

9 A. Many times, often.

10 Q. Did UTC personnel ever question whether you have  
11 authority to operate ten-passenger vans the way you were  
12 operating them?

13 A. No.

14 Q. So why did you file for an extension in 2009?

15 A. Well, it came out of the last hearing that there  
16 was some question, and we wanted to be proactive about making  
17 sure that everything is correct with our tariff and with our  
18 certificate, and we felt that by removing that would again  
19 make no question about it.

20 Q. Do you feel qualified to make a legal determination  
21 whether your current operations are legal or illegal under  
22 your permit?

23 A. I'm not qualified legally.

24 Q. So your decision to file in 2009 was not based on a  
25 legal?

0090

1 A. No.

2 MR. HARLOW: Your Honor, I would offer Exhibit 1  
3 at this time.

4 JUDGE TOREM: Any objections to Exhibit 1?

5 MR. LAUVER: No.

6 JUDGE TOREM: Exhibit 1 is admitted.

7 (Exhibit No. 1 admitted into evidence.)

8 Q. (By Mr. Harlow) Why do you believe that the grant  
9 of your application Exhibit 1 would be in the public  
10 interest?

11 A. The removal of the seven-passenger restriction  
12 again clears that up. Ten-passenger vehicles gives us as an  
13 operation the ability to take two parties of four that are  
14 living next door to each other. Our flexibility in setting  
15 up the route and time when examined how long the trips are  
16 going to take become much simpler. We have much more  
17 flexibility. If we were to reduce the size, we would have to  
18 have more vehicles, more drivers, more expense, and it  
19 wouldn't be nearly as efficient as it is now.

20 Q. If the Commission were to tell you you had to go  
21 back to seven-passenger vans for some reason what would that  
22 do to your ability to meet peak demand?

23 A. It would crush it.

24 Q. Give us specifics.

25 A. Well, it would be approximately a 30-percent

0091

1 decrease in the potential number of seats. So we would have  
2 to increase the number of vehicles on the road to be able to  
3 serve the public. We would have to hire more drivers to be  
4 able to run those vehicles in the long run, and this would  
5 push our expenses and thus cause different decisions on our  
6 fares.

7 Q. What are you thinking that would do to the fares?

8 A. They would most certainly go up.

9 Q. Do you have a ballpark of that?

10 A. No, not really.

11 Q. Would you be more likely to turn away passengers at  
12 peak traveling times?

13 A. If we did not do what we needed to do to add more  
14 drivers and more vehicles, then definitely we would be  
15 causing people to wait longer for vans to get back to the  
16 airport which would increase the waits. We would lose  
17 business because people are waiting too long.

18 Q. Roughly how much capacity would you need to add to  
19 be able to meet the peak demand equally well with  
20 seven-passenger vans as you do today with ten-passenger vans?

21 A. It's a 30 percent decrease in seats, albeit not  
22 every seat goes out full or every van goes out full. So my  
23 guess is -- it's a guess -- is in the 10 to 15 percent range.

24 Q. What would happen to those drivers that you hired  
25 to meet peak demands for additional vans after the peak

0092

1 demand period ended?

2 A. The problem is --

3 MR. LAUVER: Objection. The economic viability of  
4 one's application is not a benefit, and the viability of the  
5 company if a portion of the application is granted or denied  
6 is not subject to review by the Commission. That's not one  
7 of the considerations under an application, the economic  
8 wherewithal and ability of the company to perform but not to  
9 make a profit. They have to show that they have the assets,  
10 but whether or not they would have an increase or a decrease  
11 in revenues because of the ruling of the Commission is not a  
12 consideration of the Commission.

13 JUDGE TOREM: I understand the distinction,  
14 Mr. Lauver, and yet I'm going to overrule the objection and  
15 allow it based on the line of questioning as to the ability  
16 of the company to continue to provide its service at peak  
17 hours. I'm less interested in the dollars and cents that  
18 come to Shuttle Express that Mr. Rowley has directly pointed  
19 out, but the line of questioning is not focused on that so I  
20 will allow that to continue but direct Mr. Harlow to stay in  
21 the ability to provide as opposed to the profitability to  
22 provide.

23 MR. HARLOW: That's where I was going, Your Honor.

24 Q. (By Mr. Harlow) do you need the question read back?

25 A. Sure. I do.

0093

1 (Last question and answer read back.)

2 JUDGE TOREM: Mr. Rowley, if you'll address the  
3 peak demand issue at driver hiring.

4 A. The challenge of running share ride at the airport  
5 are the peaks, and there are approximately I'd say three  
6 banks of people with flights that come in at various times.  
7 On the off-peak times when the aircraft are not arriving or  
8 leaving Seatac the vehicles have to wait, and oftentimes what  
9 we try to do is schedule so there's less vehicles. But if we  
10 have to have more vans to cover a peak, that means we need  
11 more vans to cover the off peak; meaning then there are more  
12 people, there are more vans waiting and not working  
13 basically. So affecting the guess again, if we can supply  
14 enough during the peak that's the issue keeping the drivers  
15 hired and paid enough when they're not really working during  
16 off peak is when it's going to be a challenge.

17 Q. (By Mr. Harlow) Would you potentially have to lay  
18 those drivers off?

19 A. At various times definitely talking about  
20 seasonality.

21 MR. LAUVER: I'm going to object here. Whether or  
22 not they're laying off drivers once again is not a concern  
23 here. That's not that they have the ability to take care of  
24 these drivers or that they're financially able to. It's an  
25 internal business decision.

0094

1 MR. HARLOW: That's the very next question, Your  
2 Honor.

3 JUDGE TOREM: Proceed.

4 Q. (By Mr. Harlow) Are you certain you would be able  
5 to hire quality drivers and obtain quality drivers when you  
6 hire and let them go, hire them and let them go, as opposed  
7 as to fewer drivers in the larger capacity vans you keep year  
8 around?

9 A. It would be a much more difficult challenge.

10 JUDGE TOREM: Mr. Harlow, can I just sum up this  
11 line of questioning so we can move along?

12 MR. HARLOW: Certainly.

13 JUDGE TOREM: If I understand this, Mr. Rowley,  
14 it's simply fewer drivers and fewer vans because the  
15 upgraded capacity makes it easier to manage a smaller staff  
16 for the company?

17 THE WITNESS: Absolutely, yes.

18 JUDGE TOREM: If the Commission chose to keep and  
19 then enforce this seven-passenger description that was  
20 originally written in, it would make it harder for your  
21 company to provide the service it currently does?

22 THE WITNESS: Correct.

23 JUDGE TOREM: I get that point and you will have  
24 an opportunity to cross-examine on that assertion.

25 Mr. Harlow, move onto the next line of questioning

0095

1 if there is one.

2 MR. HARLOW: Yes, there is.

3 Q. (By Mr. Harlow) You talked earlier about the need  
4 to raise rates if you switch back to seven-passenger vans.  
5 Apart from the obvious of having to increase rates I guess  
6 how does that impact the public?

7 A. There's more vehicles on the road so, again, it's  
8 not the way that the world is going with green. There is  
9 more traffic congestion out on the road and at the airport.  
10 It definitely does not affect the public in the right way.  
11 It would affect it in a negative way if there were more vans.

12 Q. I mean if you were forced to raise your fares would  
13 that have an impact on frequenting consumers?

14 A. Absolutely. They may not make the change to share  
15 a ride.

16 Q. Based on your earlier testimony that means they may  
17 take a taxi or a friend too?

18 A. Right, or other means.

19 Q. Would that have an impact on the environment?

20 A. Possibly.

21 Q. Would it have an impact on congestion at the  
22 airport?

23 MR. LAUVER: Objection. Mr. Harlow keeps  
24 wandering into areas that have nothing to do with this.  
25 Impact on the environment I don't see any relevancy here.

0096

1 The issue once again is, is there a restriction and have  
2 they been following that restriction, not have they killed a  
3 plant today.

4 JUDGE TOREM: Mr. Harlow, I think I understand the  
5 limited reason for these questions, and perhaps then,  
6 Mr. Lauver, you would simply stipulate to the assertion from  
7 Shuttle Express that Mr. Rowley believes running a larger  
8 fleet with less passengers available per van might result in  
9 higher fares and might result in a change of events that  
10 brings us to more independent cars on the road and greater  
11 impact on the environment. Part of this public interest  
12 assertion which he is required to make under the paragraph I  
13 quoted to you earlier, I'm willing to hear it. Again, the  
14 weight of this testimony I know where the focus is. These  
15 are tangential issues that are required based on our  
16 regulations.

17 MR. LAUVER: The stipulation that you suggested is  
18 still based on conjecture and opinion. We don't know that  
19 Shuttle Express would have to raise its rates. We don't  
20 know how much Shuttle Express would have to raise its rates.  
21 If it raised its rates a dollar is that one percent of their  
22 fare? Is that two percent? Does a two percent raise impact  
23 the public and to what degree? During the prehearing  
24 conference we were cautioned to limit the scope of our  
25 inquiries here by yourself.

0097

1 JUDGE TOREM: That's correct.

2 MR. LAUVER: And I feel Mr. Harlow is taking great  
3 license with the scope of this hearing and wandering afar.

4 JUDGE TOREM: Again, Mr. Lauver, I appreciate the  
5 reference back to my own limitation to you as to what the  
6 scope of this hearing is. It's not an enforcement hearing  
7 on this.

8 MR. LAUVER: I understand that.

9 JUDGE TOREM: So we've talked about that. One of  
10 the required elements is that the public benefit, and as  
11 tangential some of these are they are within the scope. If  
12 you want to continue to object to them -- and I'm trying to  
13 seek a way to make it efficient -- if you want to  
14 cross-examine him in all the details on the extension of  
15 just conjecture have at it, but the objections are simply  
16 slowing it down.

17 I think Mr. Harlow is checking off squares that he  
18 thinks are necessary to represent his client fully. He  
19 understands what weight, where the focus of this hearing is,  
20 and I'm pretty sure we've passed the main focal point. If  
21 we can let him finish great. If you want to object to each  
22 one you're entitled to create the record you want for my  
23 review as well as potentially the Commission's. I just am  
24 trying to make this more streamlined for all of us today.

25 MR. LAUVER: I understand that and I appreciate

0098

1 that very much, and I take no pleasure in objecting and  
2 holding up the hearing here. Believe me I'd just as soon be  
3 on the ferry home at this point.

4 JUDGE TOREM: Understood.

5 MR. LAUVER: However, I still feel that when  
6 Mr. Harlow attempts to elicit testimony based purely on  
7 unfounded conjecture, I have an obligation to question why  
8 this is being put before yourself.

9 JUDGE TOREM: Understood. Well, I want to again,  
10 Mr. Harlow, if we can focus on -- I'm going to sustain the  
11 objection. I know where it's coming from. We are a bit far  
12 afield, but if we can --

13 MR. HARLOW: I will design the opinion that is  
14 better lined behind it.

15 JUDGE TOREM: If we go back to anything like that,  
16 make sure if we can keep it just basic less what I'll call  
17 it all scrappy in nature so the chains of events of what  
18 might happen can drastically change a case we all know from  
19 our law school foreseeability and reasonableness, and then  
20 perhaps we will get to the end of Mr. Rowley's testimony and  
21 we will get to the cross-examination.

22 MR. HARLOW: I hope so, Your Honor.

23 Q. (By Mr. Harlow) Mr. Rowley, have you received any  
24 communication from the WUTC to the fact that you're not  
25 providing service to their satisfaction?

0099

1 A. No.

2 Q. Do you have any opinion whether you could provide  
3 satisfactory service better in ten-passenger vans or  
4 potentially larger compared to seven-passenger vans?

5 A. Yes. I am of the opinion we can supply better  
6 service on ten-passenger vans than we can on seven-passenger  
7 vans.

8 Q. Is there any doubt in your mind as to that fact?

9 A. No doubt whatsoever.

10 MR. HARLOW: Checking my notes, Your Honor.

11 That's all I have at this time, Your Honor.

12 JUDGE TOREM: All right. It's 11:30. Mr. Lauver,  
13 do you have an estimate as to how long your  
14 cross-examination of Mr. Rowley might last?

15 MR. LAUVER: I would hope that we could wrap it up  
16 by 12:00 or certainly 12:30 at the latest. I won't be  
17 objecting so that won't be an issue.

18 MR. HARLOW: Reserve the right to object, however.

19 JUDGE TOREM: Let's take just five minutes, a  
20 short stretch break. We will go off the record just so you  
21 can take a look at your questions and decide how to focus  
22 them and give Mr. Rowley an opportunity to be ready for all  
23 of those and the court reporter and I can get comfortable  
24 again; and then in five minutes we'll go back on the record.

25 MR. LAUVER: Very good. Thank you.

0100

1 (Recess taken at 11:30 a.m. to 11:35 a.m.)

2 JUDGE TOREM: We are ready for the  
3 cross-examination of Mr. Rowley.

4 Mr. Lauver.

5 MR. LAUVER: In the interest of brevity since I  
6 tend to become a little verbose Mr. Solin will ask all the  
7 questions of Mr. Rowley.

8 JUDGE TOREM: All right. Mr. Solin.

9 CROSS-EXAMINATION

10 BY MR. SOLIN:

11 Q. Mr. Rowley, would you turn to your Exhibit 1,  
12 please. Exhibit 1 is the original application for extension  
13 of authority. What was the date that this application was  
14 signed? It's section 8 of the last page.

15 MR. HARLOW: Mr. Solin, I have a numbered copy of  
16 Exhibit 1 to help you refer to it. I should have given that  
17 to you at the beginning. I forgot about it.

18 MR. SOLIN: Okay.

19 Q. (By Mr. Solin) Page -- it's cut off the bottom  
20 here. Just a minute. Page 6, section 8 of Exhibit 1.

21 A. December 14, 2009.

22 Q. If you turn to I guess it would be page 2 of the  
23 application you state the reason for being removal of the  
24 restriction is that it is outdated and vans are made with  
25 more seats now; is that correct?

0101

1 A. That is what it says on here, yes.

2 Q. In December of 2009 would you agree that there were  
3 several, if not at least five, minivans that had seven seats  
4 or less that would be available for purchase and use in your  
5 capacity if you were restricted to seven passengers or less?

6 A. I'm sorry. Could you repeat that.

7 Q. In 2009 were there vehicles that had seven  
8 passenger seats or less that would be available for purchase  
9 if the restriction were followed?

10 A. I would suppose there would be, yes.

11 Q. Would you agree if I read you some names that these  
12 would all be valid vehicles to Honda Odyssey, Toyota Sienna,  
13 Chrysler Town and Country, and Dodge Caravan vehicles of  
14 those nature are all seven passenger or less to the best of  
15 your knowledge?

16 A. I'm not familiar with them.

17 MR. SOLIN: May I introduce an exhibit to  
18 substantiate that there are vehicles available?

19 JUDGE TOREM: That would be agreed that they might  
20 be the specifics. If you'd like to you may.

21 MR. SOLIN: I would just like to I guess introduce  
22 this factual sheet from Kelley Blue Book and hand it to  
23 Mr. Rowley and just have him read the seating capacities of  
24 any or all of those vehicles just to clarify that there are  
25 vehicles made today or in 2009 with seven seats or less.

0102

1           JUDGE TOREM: Mr. Rowley, do you see that  
2 information on the sheet that's been provided?

3           THE WITNESS: Yes, I found it. All vehicles range  
4 from one is eight and the rest, the other four are seven.

5           Q. (By Mr. Solin) Okay. That's all I need from that.  
6 So you indicated that you began operations in approximately  
7 1987; is that correct?

8           A. That's correct.

9           Q. You also indicated that you switched over to  
10 "larger" vehicles in the mid to late 1990s; is that correct?

11          A. Correct.

12          Q. At that conversion point were you aware of the  
13 restriction that you've already discussed in your certificate  
14 of authority that did have a limitation to seven-passenger  
15 vehicles or less?

16          A. I don't recall if we were or not.

17          Q. I believe Mr. Harlow has already introduced our  
18 Exhibit A which is your certificate; is that correct?

19          A. Yes.

20          JUDGE TOREM: Yes, Mr. Harlow has referenced it  
21 but it's not yet been admitted.

22          MR. SOLIN: At this point I would like to offer  
23 our Exhibit A which is Shuttle Express' Certificate C-975.

24          JUDGE TOREM: Mr. Harlow, any objection?

25          MR. HARLOW: No objection, Your Honor.

0103

1 (Exhibit A admitted into evidence.)

2 Q. (By Mr. Solin) Mr. Rowley, do you have a copy of  
3 that exhibit available?

4 A. Yes, I have.

5 Q. On page 2 of the certificate would you read off the  
6 bottom paragraph titled Restrictions?

7 A. 1) Service may be provided in vehicles no larger  
8 than a seven-passenger van. 2) Service may not be provided  
9 to or from the Sheraton Tacoma Hotel, La Quinta Hotel,  
10 Quality Hotel, Sherwood Inn, Lakewood Motor Inn, and Tacoma  
11 Inn-Best Western.

12 Q. How long has this certificate been having that  
13 restriction on it?

14 A. I don't know the answer to that.

15 Q. In paragraph (a) it references dates about 1992.  
16 Is it fair to say that this certificate was possibly issued  
17 when you began business in 1987 or modified at some point  
18 prior to 1992?

19 A. It's possible.

20 Q. So for the past 15 years or longer this has been  
21 your current C-975 certificate with that restriction in  
22 place; is that correct?

23 A. Since 1994 for certain.

24 Q. Correct, for the past 15 years or 16 years since  
25 1994, yes. Thank you. When you decided to convert to larger

0104

1 vehicles why didn't you remove the restriction?

2 A. I don't recall if we even considered it. I don't  
3 know.

4 Q. Was the decision to convert to larger vehicles a  
5 financial decision?

6 A. I would characterize it as a way to be more  
7 efficient.

8 Q. So converting to those vehicles theoretically would  
9 either increase revenues and profits. The intent was that it  
10 would increase revenues and profits as opposed to decrease  
11 revenues and profits. Is that a fair statement?

12 A. That's a portion of a fair statement. I think the  
13 other side is that we would be able to provide better service  
14 as well.

15 Q. If you turn to page 3. I guess it's three.

16 A. Yes.

17 Q. Three and four and five of the application which is  
18 your vehicle list. Do you have any vehicles on that list  
19 that are seven passengers or less than that you use for  
20 normal door-to-door service?

21 A. I'm sorry. Where are you?

22 JUDGE TOREM: Are we in Exhibit B then?

23 MR. SOLIN: I'm sorry. We are back on their  
24 Exhibit 1, on page 3, 4, and 5 of the vehicle list submitted  
25 to the application.

0105

1                   JUDGE TOREM:  So this is Section 6 of the  
2 application.

3                   MR. SOLIN:  Section 6 of the application.

4           Q.       (By Mr. Solin) The question is are there any  
5 vehicles on your equipment list that are seven passengers or  
6 less that are not used in the normal door-to-door or  
7 scheduled service?

8           A.       No.

9           Q.       Was this equipment current as of December 14 of  
10 2009?

11          A.       Yes, it was.

12          Q.       Do you have any vehicles that have more than ten  
13 seats in your fleet?

14          A.       We do.  We have -- yes, we do.

15          Q.       Approximately how many?

16          A.       Approximately nine.

17          Q.       Is there a reason that none of them appear on this  
18 equipment list?

19          A.       They are buses and do not operate door to door, are  
20 not governed UTC.

21          Q.       I thought on this application that the requirement  
22 is that you list all vehicles in the company's equipment  
23 list.

24                   MR. HARLOW:  I'm going to object to the extent  
25 this calls for a legal conclusion.

0106

1           JUDGE TOREM: Noted. Mr. Rowley, if you can  
2 answer the question without having to make a legal  
3 conclusion.

4           THE WITNESS: Unfortunately I don't think it was a  
5 question.

6           JUDGE TOREM: Mr. Solin, can you rephrase that.

7           Q.     (By Mr. Solin) I believe I asked why didn't you  
8 list the ten vehicles or thereabouts that are larger than ten  
9 passengers on this equipment list?

10          A.     Right, and my answer was given.

11          JUDGE TOREM: Sorry. I missed it then.

12          MR. HARLOW: He said they don't operate door to  
13 door and so they're not governed by the WUTC.

14          JUDGE TOREM: Mr. Rowley, let me rephrase the  
15 question on behalf of Mr. Solin. Is this equipment list in  
16 Section 6, pages 3, 4, and 5 of your Exhibit 1 a  
17 representation of the company's vehicles used for  
18 door-to-door service?

19          THE WITNESS: Correct. Those services by which  
20 the UTC governs.

21          JUDGE TOREM: Does this list your limousine and  
22 other services you previously described?

23          THE WITNESS: No, this vehicle list does not have  
24 those vehicles.

25          JUDGE TOREM: So if you have a vehicle in the

0107

1 company's ownership that's not listed here my assumption  
2 would be it's not used in door-to-door service governed by  
3 this certificate?

4 THE WITNESS: On occasion they are, Your Honor.  
5 If, for instance, you know, we're late for a pickup, and we  
6 have another vehicle in the area, then we will send much  
7 like we would subcontract for a cab if we are running late.  
8 Our number one issue is to take care of the guests to get  
9 them there.

10 JUDGE TOREM: But for normal operations this  
11 reflects the fleet that you rely on?

12 THE WITNESS: Correct.

13 JUDGE TOREM: To be clear there are a number of  
14 other vehicles in the company's ownership pool?

15 THE WITNESS: That's correct. Approximately I'd  
16 say 35.

17 JUDGE TOREM: Mr. Solin, do you want to pick it up  
18 from there?

19 Q. (By Mr. Solin) Just to clarify then you have used  
20 larger vehicles in door-to-door service?

21 A. I don't know for sure.

22 Q. Did you use any larger vehicles than ten passenger  
23 in this recent storm?

24 A. We did take people to their hotel, yes, with our  
25 buses.

0108

1 Q. Stacy Mattson testified that she said that you  
2 operate seven-passenger vans. Correct?

3 A. I heard her testify to that fact, yes.

4 Q. Is this correct?

5 A. That she testified to that fact?

6 Q. Is it correct that you operate seven-passenger  
7 vans?

8 A. No, that is incorrect.

9 Q. Do you operate any seven passenger vans other than  
10 the one six passenger ADA?

11 A. No.

12 Q. Do you currently own seven-passenger vans?

13 A. We do not.

14 Q. Again, you mentioned in testimony that requiring  
15 the restriction to stay in place in being forced to operate  
16 seven passenger vans would handicap your operations. When  
17 did you determine that this was a problem; that this would  
18 handicap your operations? What year?

19 A. I'm not sure. Was there point in time when we --  
20 I'm not understanding your question.

21 Q. Was there a point in time when you decided to  
22 switch to ten-passenger vehicles? And you claim that you  
23 switched because you needed larger vehicles and now seven  
24 passengers would handicap you. At what point did you  
25 determine that if you had to go back to seven passengers when

0109

1 would you have done that? When did you decide to change to  
2 ten-passenger vehicles?

3 A. That decision would have been in the mid to late  
4 '90s. At that point we felt that was the better way to go.

5 Q. At that point in time in the mid '90s, again this  
6 certificate had been in place at least since '94, if not  
7 longer, you did not review this certificate to determine if  
8 there were any restrictions to convert?

9 A. I don't recall.

10 Q. Is this certificate required to be posted in your  
11 place of business?

12 A. Yes.

13 Q. Let me ask a little bit about passengers. You  
14 mentioned I believe that during the busy time or during the  
15 routine time, please clarify, that you have about 2,000  
16 passengers per day; is that correct?

17 A. Yeah, that is more of a busy time, for instance,  
18 the last few days have been a couple thousand passengers.

19 Q. Were you also referring to about 1,500 trips during  
20 this same period of time?

21 A. Correct.

22 Q. You mentioned that you had about 600,000 passengers  
23 this year; is that correct?

24 A. It would be less than that.

25 Q. Can you give me an idea about how many annual trips

0110

1 you make?

2 A. You know, I would have to look at my figures to  
3 figure that out.

4 Q. Would you say that you make more than a thousand  
5 trips a day on average?

6 A. For 2,000 passengers it's been going to be a little  
7 less than that. I may have misspoke earlier.

8 Q. You mean about the 1,500 trips in the 2,000?

9 A. Yes, because the load factor is 3 point something  
10 or other passengers.

11 Q. So based on your annual passenger count is it fair  
12 to say that your annual average load factor is perhaps three  
13 or four passengers?

14 A. Correct.

15 Q. Is that right?

16 A. Yes.

17 Q. Based on these passenger counts of three or four  
18 why did you feel you need to spend more money for a larger  
19 van?

20 A. That's an average overall annual, and there are  
21 times when we operate more than seven.

22 Q. Looking at your application again on page 2 of the  
23 exhibit, Section 2, after the title of Jim being president  
24 there's a question there about the following documents are  
25 included in your application, and you wrote not applicable.

0111

1 Why did you answer that question not applicable?

2 A. This is an extension of authority as opposed to a  
3 new authority.

4 Q. So based on that you felt that map was not required  
5 to show the territory that you were going to serve?

6 A. Correct. The map exists on file with the UTC.

7 Q. How about the question or the last question at the  
8 bottom of that same page regarding: Do other auto  
9 transportation companies currently provide service? You also  
10 answered that not applicable. What was the reason for that?

11 A. The same thing. We are not going to create a new  
12 territory.

13 Q. So it's your position that the application was  
14 filled out completely by answering N/A as opposed to listing  
15 other operators?

16 A. Yes, my intent was to do it correctly.

17 Q. Is there a specific section in the WAC where it  
18 says that the application does not require a map or a list of  
19 current operators in an extension of authority versus the  
20 original request for authority?

21 A. I couldn't tell you.

22 Q. Is that your position?

23 MR. HARLOW: Objection, asked and answered.

24 JUDGE TOREM: Mr. Solin, what are you trying to  
25 ask him? He says he filled it out correctly.

0112

1           MR. SOLIN: I'm trying to establish that  
2 Mr. Rowley has been president for quite some number of  
3 years, and he has full knowledge of the operations of the  
4 company, and I believe this application is incomplete. And  
5 the minimal justification in the application as well  
6 regarding the vehicle restriction being outdated and the  
7 vans are made with more seats now is not justification for  
8 removal of the application; that being in part.

9           MR. HARLOW: Your Honor, I have an objection based  
10 on relevance. The staff has reviewed the application, and  
11 they deemed it complete enough to send to the Office of the  
12 Administrative Law or the ALJ section I guess, and so we're  
13 beyond that issue now framed by the prehearing conference.

14           JUDGE TOREM: I'll overrule the objection.  
15 Mr. Solin, I understand the issue you're making, and the  
16 explanation of these particular entries as not applicable.  
17 I think there are at least three on this page. You skipped  
18 over the one about how many riders, but Mr. Harlow is  
19 correct. The application as it was posted to the docket  
20 went through another portion of the Commission for review  
21 and wasn't rejected for completeness. That doesn't mean  
22 it's technically complete, but those are not issues before  
23 me necessarily in this hearing. So let's move onto the next  
24 area of inquiry.

25           MR. SOLIN: Yes.

0113

1 Q. (By Mr. Solin) Please turn to the top of page 3 of  
2 the application regarding the third question on top. Have  
3 you been cited for violation of state laws or Commission  
4 rules? What did you check on that application?

5 A. Yes.

6 Q. Please elaborate on the statement, "The commission  
7 ruled our independent contractors were not legal." What did  
8 that mean?

9 A. We worked with staff initially to help us use  
10 independent contractors versus employees. At one point we  
11 started using independent contractors. The staff ruled that  
12 we couldn't use them and we were cited for using independent  
13 contractors.

14 Q. Approximately how long had you been using  
15 independent contractors prior to the staff advising you of  
16 the violation and requiring a change in your operations?

17 A. My recollection was four to five months.

18 Q. Just to confirm, you had no conversations with UTC  
19 at any point in time that they advised you that you were in  
20 violation of the certificate based on the restrictions; is  
21 that correct?

22 A. Correct.

23 JUDGE TOREM: Mr. Solin, we're talking about the  
24 seven-passenger restriction; is that correct?

25 MR. SOLIN: I'm sorry. The seven-passenger

0114

1 restriction, yes.

2 Q. (By Mr. Solin) Why did you start using independent  
3 contractors?

4 A. In an effort to increase customer service while  
5 decreasing expenses.

6 Q. Were you aware that there's a very specific WAC  
7 that says drivers must be employees?

8 MR. HARLOW: Your Honor, I think I'm going to  
9 object to relevance. I allowed a few of these questions  
10 without objection, but I think we're getting kind of far  
11 afield.

12 JUDGE TOREM: Mr. Solin, what's the relevance to  
13 the issue before me?

14 MR. SOLIN: The relevance is tying exactly to what  
15 Mr. Harlow is trying to tie to: the fit, willing, and able.  
16 They are violating, violating. They are either ignoring or  
17 not following clearcut WAC rules in operations that they  
18 have been found in the past to be in this case a specific  
19 violation. This is just one of our items that we will show  
20 that lead to them not being fit, willing, and able to the  
21 satisfaction of the Commission when it comes to observing  
22 both WAC the rules and policies of UTC.

23 JUDGE TOREM: Mr. Rowley, let me just dispense  
24 with the independent operators issue. You said it was for a  
25 period of four to five months. What four to five months in

0115

1 the year was that? Do you remember what year that issue  
2 came up?

3 THE WITNESS: Probably in the, you know, mid 2007,  
4 2005, 2006 perhaps.

5 JUDGE TOREM: Have you resolved that issue since  
6 that time with the satisfaction of the Commission?

7 THE WITNESS: Yes, we removed the independent  
8 contractors and paid the fine.

9 JUDGE TOREM: Mr. Solin, if you want to give me  
10 additional examples of noncompliance that would be relevant  
11 to what you're saying here that I think we could go further  
12 into. If it's fully resolved with the Commission by payment  
13 of a penalty, if you have a document, if you want me to take  
14 official notice of you can refer me to that.

15 MR. SOLIN: I do not have the specific docket to  
16 reference. I would acknowledge that that was the  
17 approximate time period as I recall because we were involved  
18 in the discussions at that time with the UTC hearing.

19 JUDGE TOREM: Let's move to the next example.

20 Q. (By Mr. Solin) How many 24-passenger buses do you  
21 have?

22 A. 24 passenger I believe it is two.

23 Q. You earlier stated that you occasionally use these  
24 for door-to-door service or peak load times?

25 A. Peak load times, right. They're not a vehicle

0116

1 where you want to take two or more than a couple stops. We  
2 do use those on scheduled service as well.

3 Q. Let's just take a brief look at your Exhibit 2. If  
4 you would scan starting with all of page 1 and then at the  
5 bottom of page 2.

6 MR. HARLOW: Mr. Solin, I have a numbered copy of  
7 that exhibit as well for you.

8 MR. SOLIN: Well, I'm just numbering one and two  
9 at this point. If you want to do that, I will keep that and  
10 do that.

11 Q. (By Mr. Solin) You want to just look at page 2 and  
12 what's in the picture at the bottom of the page?

13 A. One of our vans and one of our buses.

14 Q. Is that bus more than ten passenger?

15 A. Yes, it is.

16 Q. If you look at page 5 what is the vehicle on the  
17 left? It looks like a black bus.

18 A. It's a party bus.

19 Q. How many seats is in the passenger van?

20 A. It's 16.

21 Q. Is that vehicle used on the scheduled hotel  
22 service?

23 A. No.

24 Q. Is there a reason it's on that page?

25 A. To attract customers.

0117

1 Q. On page 6 you discuss a luxury fleet?

2 A. Yes.

3 Q. Are party coaches, limo vans a luxury service  
4 regulated by the UTC?

5 A. No.

6 Q. On page 7 you discuss wine tasting tours and city  
7 tours. Are those regulated by UTC?

8 A. Charter.

9 MR. HARLOW: I'm going to object it calls for a  
10 legal conclusion and also relevance.

11 MR. SOLIN: Mr. Rowley claims by certifying on the  
12 certificate of the application that he is aware of  
13 appropriate RCW and WAC rules relating to the operation of  
14 his business, as well as to the certificate that he's  
15 applied for, the extension in his certificate. He is not  
16 required to offer legal opinion. He is required to be  
17 knowledgeable of those rules and regulations and to operate  
18 his business in accordance with those rules and regulations.  
19 The point of this again is showing that they are offering an  
20 exhibit that has nothing to do with their authority under  
21 Certificate 975. They are talking about vehicles and events  
22 and buses and vans that do not even come underneath the UTC  
23 regulation for the purpose of use.

24 MR. HARLOW: The certification states I understand  
25 the responsibilities of a passenger transportation company.

0118

1 Then it says and I comply with all local, state, and federal  
2 regulations governing business in the state of Washington.  
3 It doesn't say I know every bit of detail about all the  
4 WACs.

5 JUDGE TOREM: So, Mr. Solin, if I understand the  
6 nature of your issue with Exhibit 2 which was admitted  
7 earlier without objection is you're suggesting that it  
8 contains services that are not covered by the certificate.  
9 I think that was already testified to. I'm confused as to  
10 what the nature of this inquiry really is.

11 MR. SOLIN: I guess the fact that the exhibit in  
12 its entirety was offered the only way I can challenge the  
13 sections in the exhibit is being whether they themselves  
14 should be permitted and show anything to do with this  
15 particular case is the reason I'm going after the individual  
16 pages.

17 JUDGE TOREM: Well, I thought that was made clear  
18 that this was a brochure maintained in their vans as showing  
19 their services, some of which are not regulated by the UTC.

20 MR. SOLIN: Okay. We'll move on.

21 MR. HARLOW: Your Honor, would this be a good time  
22 to address whether we need to take a lunch break? It's  
23 little after noon. I don't know how much more cross we may  
24 have, but I will have some redirect.

25 JUDGE TOREM: Mr. Solin, what's the projection.

0119

1 How far are you into your cross?

2 MR. SOLIN: 15 minutes?

3 JUDGE TOREM: More?

4 MR. SOLIN: Yes.

5 JUDGE TOREM: Why don't we finish the cross-exam,  
6 Mr. Harlow, and then we'll address where we are and timing  
7 for the rest of the day.

8 MR. HARLOW: Okay.

9 JUDGE TOREM: Mr. Solin, let's go ahead.

10 Q. (By Mr. Solin) There on page 3 of 8 of your  
11 brochure exhibit are these the current cities and ZIP codes  
12 that you offer service?

13 A. Yes, for a door to door.

14 Q. When was the last time you updated your Tariff No.  
15 7?

16 A. Just recently on the -- it's not that long ago. I  
17 want to say the 3rd of October.

18 MR. SOLIN: I would like to offer our Exhibit  
19 Letter B which has pages from their current Tariff 7. There  
20 are five pages.

21 JUDGE TOREM: Any objection?

22 MR. HARLOW: Your Honor, I would like to have a  
23 foundation laid for this exhibit before I decide whether to  
24 object or not. There's no foundation question that's been  
25 asked yet.

0120

1           JUDGE TOREM: Go ahead, Mr. Solin, and explain the  
2 relevance.

3           MR. SOLIN: The foundation is they offered Exhibit  
4 2 as their schedule. That is not an accurate representation  
5 of the territory they serve. That schedule is over six  
6 months out of date. They have modified that schedule since  
7 September 24 of this year with a revision and added  
8 approximately 60 additional ZIP codes that they are claiming  
9 to be serving in their brochure and their own exhibit  
10 represents about 120 exhibits. I'm trying to show  
11 foundation for their fitness of preparing documents that are  
12 accurate to the case at hand.

13           JUDGE TOREM: So you're suggesting that the  
14 brochure that's maintained in their van needs to be updated  
15 to better advertise to their customers they can get 60 more  
16 ZIP codes of service?

17           MR. SOLIN: I'm saying it's required to be in  
18 their vehicles as they are aware, and it's required to be  
19 current, and we are now two months since their most recent  
20 change, and they apparently have not updated their brochure  
21 or have not included anything that reflects the proper ZIP  
22 code in their vehicles; again, pointing out to their lack of  
23 observance of the rules and regulation of the UTC.

24           JUDGE TOREM: So if I understand correctly,  
25 Mr. Solin and Mr. Harlow, would be Exhibit B is being

0121

1 offered as a demonstration of Shuttle Express' alleged  
2 inattention to the requirement to maintain current list per  
3 to tariff in Exhibit B in all of its vehicles; is that  
4 correct?

5 (Exhibit B identified for the record.)

6 MR. SOLIN: That is correct.

7 MR. HARLOW: Your Honor, I object on several  
8 grounds. First of all, there's still no foundation which  
9 presumably perhaps could be cured. Secondly, we have  
10 selected excerpts so I object to the offering of an  
11 incomplete document, and it may be taken out of context.  
12 There may well be missing pages that could explain the  
13 pages, and that kind of turns on the cross which we haven't  
14 heard yet. But we have page 6 of both a first revised and  
15 original and then we skipped to page 15a it looks like with  
16 a question, and then we skip to 26 and then we have 27. So  
17 out of at least 27 pages of tariff protesting they're only  
18 offering five, and I think it's a great risk of confusing  
19 potential prejudice by them not providing a copy of the  
20 entire current tariff.

21 JUDGE TOREM: I'm not going to admit Exhibit B at  
22 this time, Mr. Solin. If you will lay additional foundation  
23 to show that Mr. Rowley knows what this document is or if  
24 you have another witness to introduce it later that's fine.  
25 I am a little bit concerned with the completion issues

0122

1 raised by Mr. Harlow, but I do understand the docket numbers  
2 on these and could cure that if necessary by taking official  
3 notice of what occurred at open meetings or otherwise in  
4 these UTC dockets.

5 I'll allow Mr. Harlow if I do admit add this  
6 document to clarify in his view use and purpose during  
7 redirect of this witness or cross-examination of another  
8 witness.

9 So please at this point I just need you to make  
10 sure that for the record the witness can answer the  
11 questions or that your questions provide foundation of which  
12 I can admit Exhibit B.

13 Q. (By Mr. Solin) Mr. Rowley, have you filed any  
14 tariff revisions in 2010?

15 A. Yes.

16 Q. When approximately? Was there one or two or do you  
17 know how many revisions to your Tariff 7 you filed in 2010?

18 A. There have been I won't give an exact number, but I  
19 would say up to half a dozen.

20 Q. When these are filed do you get anything from the  
21 UTC that acknowledges they have been filed or approved?

22 A. Yes, I receive an e-mail back.

23 Q. Did you get an approval e-mail that they had  
24 received your most recent tariff filing of September 24,  
25 2010?

0123

1           A.     I believe this actually may not be our most recent  
2 filing.

3           Q.     Did you get an e-mail that said they received this  
4 particular tariff filing of September 24, 2010?

5           A.     I can't be sure because I don't know that this was  
6 the most recent.

7           Q.     Are you operating under the most recent tariff in  
8 terms of territory that you have requested?

9           A.     Yes.

10          Q.     Do you know approximately how many ZIP codes you  
11 serve today?

12          A.     I haven't counted them.

13          Q.     Did you increase them in any tariff filing in 2010  
14 from the pre-2010 number?

15          A.     Yes, we did.

16          Q.     Do you have an idea of how many more you added?

17          A.     Twenty, twenty-five is a guess.

18          Q.     What was the reason you added these ZIP codes?

19          A.     I believe the reason was in working with staff when  
20 I filed the tariff they said that I had to list the areas  
21 within our service territory or certificate that we did not  
22 service, and I read into that that what I had better do is  
23 make sure I have fares for all of my service areas. So we  
24 created fares for the entire 25-mile radius.

25          Q.     So are you claiming that you had service in that 25

0124

1 mile radius prior to changing the ZIP codes?

2 A. Yes, I am.

3 Q. Were you serving all of those territories within  
4 that 25 mile radius?

5 A. If people would call we would offer them service  
6 but not necessarily door-to-door rates.

7 Q. Do you have an example of a ZIP code or a location  
8 where you would service them but was not listed in your  
9 tariff? Do you know of a specific additional city that you  
10 added on in your most revision of September 24 that was not  
11 in your original tariff?

12 A. Provided any service or --

13 Q. What I'm asking is can you give me a ZIP code of a  
14 place that you added in September 24 that you did not have  
15 prior to that on your tariff?

16 A. Sure, Arlington.

17 Q. Were you providing door-to-door service to  
18 Arlington before that?

19 A. No.

20 Q. I am confused. If you had this 25-mile radius and  
21 someone from Arlington calls up, what would you tell them  
22 prior to adding Arlington ZIP codes in September?

23 A. We can take that on a charter basis. We can  
24 reserve a Sedan, and we would give them other alternatives,  
25 not door to door.

0125

1 Q. So we're talking about your authority for  
2 door-to-door service here, not your authority for charter  
3 service; is that correct? This hearing is about your  
4 certificate.

5 MR. HARLOW: Objection, what do you mean by here?

6 Q. (By Mr. Solin) At this hearing. At this hearing  
7 we're talking about your Certificate 975 for door-to-door  
8 service not any certificate you may hold for charter service;  
9 is that correct?

10 A. That's correct.

11 JUDGE TOREM: So, Mr. Solin, at this point let me  
12 just direct Mr. Rowley's attention to these pages of Exhibit  
13 B. Do you recall requesting these updates to tariffs, the  
14 last four pages from May of 2010 in Docket TC-100933,  
15 Mr. Rowley?

16 THE WITNESS: Yes.

17 JUDGE TOREM: Do you recall additional update to  
18 that Tariff 7 in September of this year TC-101592?

19 THE WITNESS: Yes.

20 JUDGE TOREM: So these were documents submitted as  
21 updates as required by the administrative code and approved  
22 by the UTC sometime in 2010?

23 THE WITNESS: That's correct. There is I believe  
24 more than these as well. As I filed I was told by staff  
25 that I needed to correct some errors on them.

0126

1           JUDGE TOREM:  So although your attorney has  
2 indicated these may not be complete tariffs, does it appear  
3 that they may be complete for the purpose they're being  
4 offered today to ZIP codes?  Do you have any concerns that I  
5 think the proposition for which they're being offered is  
6 that Shuttle Express sought to add more ZIP codes through  
7 its fare rate and service area?  Is that your understanding?

8           THE WITNESS:  Yes.

9           JUDGE TOREM:  Mr. Solin, is that why Exhibit B is  
10 being offered in general?

11          MR. SOLIN:  Yes, yes, in general.

12          JUDGE TOREM:  At this point I am going to admit  
13 Exhibit B, and then I'm going anticipate I think where your  
14 questions should be going, Mr. Solin, as to the comparison  
15 of Exhibit B and Exhibit 2 and ask Mr. Rowley if these  
16 tariffs are being filed, you said at least a half dozen  
17 times in 2010, how often is Exhibit 2 reprinted and updated  
18 with the most current information?

19                   (Exhibit B admitted into evidence.)

20          THE WITNESS:  When we refile a tariff we have to  
21 redo the brochure.

22          JUDGE TOREM:  So are you telling me that every  
23 time you file a Tariff 7 update with UTC that the brochures  
24 are reprinted?

25          THE WITNESS:  If the information on the tariff

0127

1 that we submitted pertains to fares and/or locations that  
2 we're servicing.

3 JUDGE TOREM: Can you explain then if this Exhibit  
4 2 was submitted in mid November why it does not necessarily  
5 reflect the most current tariff?

6 THE WITNESS: Yeah, I can't except that if I could  
7 make a call I could probably clear it up. But either I did  
8 not provide Brooks with the latest -- we working on this  
9 quite a while ago -- and/or this has not been done.

10 JUDGE TOREM: I remember that we set the  
11 prehearing conference schedule with these dates at the end  
12 of September. Do you think that Exhibit 2 is current with  
13 the first page of Exhibit B which would have been approved  
14 shortly before that prehearing conference and the order that  
15 issued the next couple of days after? That would be the  
16 closest date that I could see September 24 tariff approval  
17 with its revisions, and the September 28, 2010 prehearing  
18 conference would have occurred the following week.

19 THE WITNESS: I'm sorry. I lost you. Are you  
20 saying page 2 of the brochure or page 2 on -- I'm sorry,  
21 Your Honor.

22 JUDGE TOREM: Let me back up and just address  
23 that. Your Exhibit 2 not page 2, but Exhibit 2 would have  
24 had to have been reprinted sometime after the September 29  
25 approval of the substituted tariff which I think would have

0128

1 been nearly contemporaneous with our prehearing conference  
2 requiring setting the deadlines which came in two months  
3 later.

4 THE WITNESS: Correct.

5 JUDGE TOREM: You were suggesting that you may not  
6 have provided Mr. Harlow with the most current version.

7 THE WITNESS: The brochure.

8 JUDGE TOREM: So has there been another printing  
9 of the brochure since the one that's in the exhibits to the  
10 best of your knowledge?

11 THE WITNESS: What I can say is that we discussed  
12 that, and I'm fairly certain that it has been done, but I  
13 would have to rely on my marketing director to give me that  
14 answer.

15 JUDGE TOREM: So for the purposes of today will  
16 you agree then with Mr. Solin's line of questioning that  
17 Exhibit 2 does not appear to be in direct matching of the  
18 most current tariff?

19 THE WITNESS: That is true, yes.

20 JUDGE TOREM: So, Mr. Solin, I think that points  
21 as to the noncompliance issue you're trying to point out to  
22 be made for the record.

23 MR. SOLIN: Yes, Your Honor, that is correct, and  
24 I would further elaborate that I believe that this brochure  
25 has the matching data of page 2 of our exhibit with the date

0129

1 of May 28.

2 JUDGE TOREM: Okay. And that would have been my  
3 supposition as well. Again, venturing into conjecture what  
4 I'm taking from this and is transparent to all of us, this  
5 has to be done multiple times per year, and your assertion  
6 is they're not nearly as attentive to this requirement of  
7 WAC as they should be which demonstrates a question of  
8 fitness. And that my supposition would be that Mr. Rowley  
9 after being told by Mr. Harlow to gather the required  
10 evidence may not have thought about the ongoing update of  
11 the brochure.

12 MR. HARLOW: Your Honor, I have the original  
13 brochure.

14 JUDGE TOREM: Does it have a print date?

15 MR. HARLOW: May I show it to the witness? It  
16 has, Your Honor.

17 JUDGE TOREM: Would I be able to see that on this  
18 particular page, Mr. Harlow, as to the print date?

19 MR. HARLOW: It may have been cut off in the copy.

20 JUDGE TOREM: I didn't see one. At the bottom of  
21 this page does it show current as of, just so for the record  
22 we're clear in this issue?

23 MR. HARLOW: It should be on the bottom of page 8  
24 of 8, and actually you can see some printing there so that's  
25 white font.

0130

1 JUDGE TOREM: So what's the date? If you will  
2 hand that to the witness so he can provide the testimony.

3 MR. HARLOW: Certainly.

4 JUDGE TOREM: Mr. Rowley, what does that page 8,  
5 what would it say if we had it in the record?

6 THE WITNESS: Your Honor, it says updated August  
7 of 2010.

8 JUDGE TOREM: I'm looking for this white font,  
9 Mr. Harlow. Where on the page would that be? It's on the  
10 page that says, "Why choose Shuttle Express?"

11 MR. HARLOW: Let me hand you the original.

12 JUDGE TOREM: All right. Yes, I see where that's  
13 located. Mr. Solin, from the very bottom right corner.

14 MR. SOLIN: On page 8?

15 JUDGE TOREM: It's on the very bottom of the page  
16 in the shaded area for the reservations and information.

17 MR. SOLIN: The copy I have is not readable.

18 JUDGE TOREM: It's barely legible on the copy I  
19 have, and I think once you see what you're looking for it  
20 comes out a little bit, but it does say current as of  
21 August. Take a quick look.

22 MR. SOLIN: Sure. And I would say that this is  
23 based on when it was printed is based on the May 28 tariff  
24 change, page 2 of our exhibit rather than the 24.

25 JUDGE TOREM: Mr. Rowley, would you agree with

0131

1 that contention?

2 THE WITNESS: Not necessarily, no.

3 JUDGE TOREM: Mr. Solin, any further questions in  
4 cross-exam?

5 MR. SOLIN: I do have questions. Obviously we've  
6 gone past 15 minutes. I would say I'm prepared to take a  
7 lunch break if Your Honor wants to do that at this point in  
8 time.

9 JUDGE TOREM: We will take a break. It's now  
10 12:25 so let's go off the record.

11 (Lunch recess from 12:25 p.m. to 1:25 p.m.)

12 JUDGE TOREM: It's about 1:25. We took an hour.  
13 We will be back on the record.

14 Mr. Solin, you're going to pick up close to or  
15 near to where you left off cross-examination of Mr. Rowley.  
16 Just I don't have to inform you but I will, Mr. Rowley, your  
17 oath still hasn't expired. It's still good for this  
18 afternoon. We had finished talking about Exhibit 2 and the  
19 tariff update issue, and I had admitted Exhibit B before  
20 lunch. So of your exhibits that you prefiled the only one  
21 left to be offered is Exhibit C.

22 MR. SOLIN: Correct.

23 JUDGE TOREM: It's all yours.

24 Q. (By Mr. Solin) So I believe that we've most  
25 recently prior to the lunch break determined that you had

0132

1 added several new ZIP codes to your May tariff and September  
2 tariff; is that correct?

3 A. That's correct.

4 Q. We've established that on August 1 you printed a  
5 brochure that may or may not have accurately reflected the  
6 May tariff but clearly did not reflect the September 24  
7 tariff changes; is that correct?

8 A. That's correct.

9 Q. Do you know at this time if you have printed a  
10 brochure since August 1?

11 A. Yes, I do know.

12 Q. Have you printed a brochure since August 1?

13 A. No, we have not.

14 Q. Do you have a copy of the most recent tariff  
15 changes in your vehicles from September 24, if that is your  
16 most recent tariff?

17 A. We do not.

18 Q. Do you understand that the UTC does require all  
19 current tariffs to be on board all vehicles?

20 A. Yes.

21 Q. Okay. Let's move on to your Exhibit 3, the exhibit  
22 titled press release. The Trax letter I believe is the title  
23 of that one.

24 A. The numbers go upside on one side. Okay.

25 Q. If you could clarify, are you a member of this

0133

1 association yourself? Are you a dues paying member or are  
2 you a member of it because they are your insurance  
3 underwriter?

4 A. This is not an association. We are a member of a  
5 captive insurance program. This is a captive insurance and  
6 National Interstate does our insurance.

7 Q. Did you state that as it being a press release?  
8 Was it published in the newspaper or in some other journals?

9 A. On the web I believe. I don't recall it in any  
10 newspapers.

11 Q. Was it published on your web page?

12 A. Yes.

13 Q. How many other operators under the Captive  
14 Resources would you say received this type of letter?

15 A. I would be unaware of that.

16 Q. How many members are in this organization?

17 A. In our organizations there are 40 some odd members.

18 Q. Are you the only company to receive the award?

19 A. No, each year there are between 10 and 15 members.  
20 This last year we had our best year ever and more members  
21 actually made the 400 point than ever before.

22 Q. Does having ten-passenger vehicles versus  
23 seven-passenger vehicles increase or decrease the likelihood  
24 of receiving this award?

25 A. It would be more vehicles and more drivers on the

0134

1 road with seven passengers so I would draw the logic that  
2 there could be more trips and more miles driven, so I would  
3 say that, yes, it's possible that this award may have been  
4 affected negatively in that manner.

5 Q. Let's talk about the highlights in the award. I'm  
6 not going to belabor all the points, but just as an example  
7 what does the ergonomics section mean in this award?

8 A. Ergonomics have to do with driver comfort, the  
9 passenger comfort.

10 Q. Is there something that you did uniquely to your  
11 vehicles for drivers as far as their seats?

12 A. No.

13 Q. Is there anything unique you did for the passenger  
14 seating that was different from the original way the vehicle  
15 was purchased from Ford?

16 A. No.

17 Q. What about the concept of, I don't know, what does  
18 accident severity control mean?

19 A. The limitation of major fatality accidents.

20 Q. Again, does operating ten passenger vehicles versus  
21 seven passenger vehicles have anything to do with accident  
22 severity control?

23 A. Absolutely. I think that again the percentage of  
24 trips and miles driven if you increase that your chance of  
25 having more accidents has risen. Less miles means less

0135

1 accidents.

2 Q. Are there any issues that you're aware with the  
3 safety of 15-passenger vehicles?

4 A. Not that I'm aware of, no.

5 Q. Have you had any rollover accidents with any of  
6 your vehicles?

7 A. I can remember a couple off the top of my head.

8 Q. Are you aware that there is a service bulletin on  
9 Ford rollovers operating 15-passenger vehicles?

10 A. I am not aware of, no.

11 Q. Let's take a look now just very briefly at  
12 Exhibit 4, the webcam or the dash cam, I'm sorry. Are these  
13 currently in all your vehicles now?

14 A. Yes.

15 Q. How long have they been in there?

16 A. Since roughly 2007.

17 Q. Let's take a look at Exhibit 5. Just very briefly  
18 what we would say at this point in time is it is in the  
19 interest of skipping Exhibits 5, 6, and 7 as we have alluded  
20 in our opinion has not a lot of bearing on anything specific  
21 propane tanks and pictures of drivers shaking hands.

22 JUDGE TOREM: And, Mr. Solin, Exhibit 5 was not  
23 admitted.

24 MR. SOLIN: Five was not admitted. I'm sorry.

25 JUDGE TOREM: So 6, 7, and 8 drivers.

0136

1 MR. HARLOW: We would withdraw the admission of  
2 Exhibit 5 if you like.

3 JUDGE TOREM: And the dispatch screen is Exhibit  
4 8.

5 MR. SOLIN: We haven't got to Exhibit 8.

6 JUDGE TOREM: Did you want to add any significance  
7 by asking questions about them?

8 MR. SOLIN: Exhibit 6 and 7 no questions. I would  
9 like to ask some questions now on Exhibit 8.

10 Q. (By Mr. Solin) Is this screen representative of  
11 vehicle use in terms of the vehicles that are listed on that  
12 picture and the drivers and the capacities?

13 A. This particular screen is not that screen. This  
14 shows locations of addresses of reservations.

15 Q. So if you could just confirm down on the bottom of  
16 the right-hand section of the screen they list a vehicle  
17 under that column that's an 801 and 306. Are those your  
18 vehicle numbers assigned for that vehicle at the bottom of  
19 the page?

20 A. I'm sorry, John. Where are you?

21 Q. The bottom right quadrant there where it says  
22 trips. It has normal vehicle 801.

23 A. Yes.

24 Q. That's a vehicle.

25 A. That is a vehicle number, correct.

0137

1 Q. And that line has how many passengers listed?

2 A. One passenger, one stop.

3 Q. Then the next vehicle 306?

4 A. Two passengers, two stops.

5 Q. You mentioned in reference to Seatac that you try  
6 and plan your loads at the part when you have a certain  
7 number of people. Just to confirm you mentioned that the 3.2  
8 was what you thought was your average load factor; is that  
9 correct?

10 A. Approximately.

11 Q. And obviously busier during peak times.

12 Approximately how long would you say that you wait to fill up  
13 a vehicle at the airport during normal operations?

14 A. At the airport our goal is to reach 80 percent of  
15 the people within 20 minutes. Within that time then there  
16 are people that leave 5, 10, 15 to up and to 20, but we want  
17 to reach 80 percent within 20 minutes.

18 Q. The number of trips again we're talking about are  
19 approximately a thousand on average; is that correct?

20 A. I think we're looking at about 600 both ways empty  
21 or not.

22 Q. So are you counting it as calling 1,200 trips or  
23 600?

24 A. 600 trips.

25 Q. 600 round trip? What I'm trying to get at is --

0138

1 A. Yes.

2 Q. -- how many to compare your 3.2. Would you explain  
3 how you get that number?

4 A. 3.2 is taking a total number of trips. So that  
5 means to the airport and from the airport, dividing that  
6 number into -- or is it the other way around -- the total  
7 number of passengers that we have per year.

8 Q. Which is approximately 600,000. Correct?

9 A. Or less than that now.

10 Q. If we do that quick math and we rounded the three  
11 that says you're doing about --

12 A. 600.

13 Q. -- 600,000 people over -- that's 200,000 total  
14 trips; is that right? Am I doing something wrong here?

15 A. That's probably about right.

16 Q. Okay. So 200,000 in 365 days. Let's see. Let's  
17 move on to our Exhibit A, again your certificate. You had  
18 previously testified that this certificate has been in  
19 existence for approximately 15 years or more; is that  
20 correct?

21 A. Correct.

22 Q. You previously testified that this certificate has  
23 been on display as required by UTC rules in your "place of  
24 business"; is that correct?

25 A. That's correct.

0139

1 Q. So explain to me how both you, your staff, your  
2 drivers, your employees who could see the certificate  
3 everyday and yet no one questioned the restriction of the  
4 seven passengers during the last 15 years? Can you tell me  
5 if that ever came up? Did anybody ever come up to you in  
6 your office, company or public, and say, "Why do you have  
7 this on here? You're operating bigger vehicles."

8 A. Yeah. Now, the location we have it displayed is  
9 behind our front desk area. Generally speaking employees  
10 aren't around that area. I can't really explain it, John.

11 Q. Do you see that daily yourself?

12 A. No.

13 Q. Who would see that daily, what employees?

14 A. It's been up there so long I don't know anybody  
15 would actually see it daily.

16 Q. Let's look at the certificate again. Do you have  
17 any exclusions on this certificate, not specifically  
18 restrictions, but is there anywhere on the certificate where  
19 it mentions exclusions of territory?

20 A. There are two exclusions. Actually there's more  
21 than that. We have exclusions to particular hotels in the  
22 first section.

23 Q. Okay.

24 A. We have exclusions to Kitsap County, and if you go  
25 to page 2 where it says between.

0140

1 Q. Right.

2 A. It actually it says Kitsap and Pierce, but below,  
3 however, part of the restriction actually eliminates the  
4 Pierce County piece, the Kitsap County stands.

5 Q. If I could point out, yeah, the first between where  
6 it says excluding points in Kitsap and Pierce counties, what  
7 part of Pierce County are not excluded and why?

8 A. The Restriction No. 2 below are the areas that are  
9 excluded in Pierce County.

10 Q. Are you talking about those hotels?

11 A. Just below that where it says restrictions.

12 Q. Yes.

13 A. Service may not be provided to or from the Sheraton  
14 Tacoma Hotel. Those are the restricted areas within Pierce  
15 County and within our 25-mile radius.

16 Q. Are those six hotels in Pierce County?

17 A. Yes.

18 Q. Those are in Pierce County. How do you know that  
19 and how does the UTC know that since it says La Quinta Hotel  
20 and Quality Hotel if the other ones are very specifically  
21 listed as Tacoma, Tacoma? Is this an exclusion only for  
22 those hotels in Pierce County or all hotels of those chains?

23 A. Just those particular hotels in Pierce County.

24 Q. Back to my first question. How do we know that?

25 MR. HARLOW: Objection, no foundation. Mr. Rowley

0141

1 doesn't draft the language; the Commission staff does.

2 JUDGE TOREM: Overruled. I'll allow Mr. Rowley to  
3 answer.

4 A. Through discussion with staff at UTC I've confirmed  
5 what I believe with them.

6 Q. (By Mr. Solin) So it's your understanding that  
7 these are only excluded in Pierce County?

8 A. Correct.

9 Q. Let's go back to page 1, and again the last  
10 sentence between right at the beginning at the top says again  
11 "excluding points in Kitsap and Pierce counties, described as  
12 follows" and then it has multiple paragraphs. Is there any  
13 place in Pierce County there you do serve?

14 A. Yes. We service all of Pierce County within the  
15 25-mile radius from Seatac Airport, excluding those points as  
16 listed on No. 2.

17 Q. So you're reading this as saying that even though  
18 the tariff says excluding points in Kitsap and Pierce  
19 counties you can service Pierce County anywhere else except  
20 those six motels.

21 A. I initially didn't read it that way until I was  
22 corrected by the UTC.

23 Q. So their interpretation is you serve Pierce County.

24 A. Yeah.

25 Q. But you do not serve any points in Kitsap County.

0142

1 A. That is correct.

2 Q. Where is Gig Harbor located? Is that Pierce or  
3 Kitsap?

4 A. I don't know.

5 Q. Can you read Subparagraph E, on page 2, of Exhibit  
6 A?

7 A. Sure. "All of any municipality wholly surrounded,  
8 or so surrounded except for a water boundary by the  
9 municipality of Seattle or by another municipality under the  
10 terms of D of this subsection."

11 Q. Can you tell me what that limitation means and give  
12 me an example of an area that that would apply to.

13 A. Actually when I read this, I read the 25-mile  
14 radius from Seatac. It seems that this particular piece of  
15 the rule is within that so it has no bearing.

16 Q. So you don't know why UTC put except for a water  
17 boundary issue in your certificate; is that correct?

18 A. I don't know.

19 Q. Just to confirm that this certificate has been in  
20 operation again for over 15 years; is that correct?

21 A. Correct.

22 Q. But you do not know why paragraph E is in there; is  
23 that correct.

24 A. Yeah.

25 Q. How would you classify your territory based on your

0143

1 certificate in terms of geography? What is the most  
2 simplistic way of stating what territory you are claiming?

3 A. Well, your exhibits actually spell that out fairly  
4 well. It's a 25-mile radius around each of the major  
5 airports, major/minor airports in the Puget Sound area.  
6 There are exclusions within that area, but as a general rule  
7 the 25-mile radius set the territory in motion, and the rest  
8 of them are exclusions within those areas.

9 MR. SOLIN: Okay. At this time since you brought  
10 it up I'd like to offer as exhibits Exhibit C, pages 1  
11 through 6.

12 (Exhibit C identified for the record.)

13 JUDGE TOREM: These are the maps you have been  
14 referring to?

15 MR. SOLIN: These are our maps, yes.

16 MR. HARLOW: Well, we don't object for  
17 illustrative purposes. We don't know if the 25-mile radius  
18 is drawn properly so we can't validate that those circles  
19 are accurate.

20 JUDGE TOREM: Well, for the purposes of  
21 illustration.

22 MR. HARLOW: There's one more, two more. The ZIP  
23 codes we can't validate those on Page C-3, and we don't  
24 really have any idea what Exhibit C-6 shows. We don't have  
25 a problem with the map, but we don't know what those dotted

0144

1 lines are along I-90 and the Kirkland waterfront. So with  
2 those exceptions we don't object for illustrative purposes.

3 JUDGE TOREM: Mr. Solin, do you have any idea what  
4 are the dotted lines on C-6?

5 MR. SOLIN: Yes, I do and the testimony of other  
6 exhibits that are already introduced will clarify exactly  
7 what the dotted lines are.

8 JUDGE TOREM: All right. Subject to further  
9 clarification and for illustrative purposes we will admit  
10 Exhibit C and it's six pages.

11 (Exhibit C admitted into evidence.)

12 Q. (By Mr. Solin) Please turn to exhibit C, page 1.  
13 This exhibit shows an approximate, and I will concede that it  
14 may not be exactly 25 miles, but an approximate 25-mile  
15 radius from the four airports mentioned in the certificate:  
16 Paine Field, Renton, Seatac, and Boeing. Assuming that these  
17 are close to the 25-mile radius does this represent the  
18 territory that you feel you are serving?

19 A. With the exceptions that are also within the  
20 certificate, yes, those are the 25-mile features of the  
21 certificate.

22 Q. Just to clarify, we'll work backward here for a  
23 moment. If you can go to Exhibit C-6, what I have done on  
24 exhibit C-6 is if you will look at also your certificate on  
25 page 3 and 4 to the best of my ability I have tried to

0145

1 demonstrate that in the dotted area enclosed around Kirkland,  
2 Bothell, 405, as well as the dots on Everett and by Lynnwood  
3 and down by Seattle. And it doesn't quite show it, but it  
4 would be east on I-90 to Issaquah is the service area that's  
5 represented by the two authorities that they transferred in  
6 1994. Would you like to briefly look at the service  
7 territories listed in the passenger service between and Sub  
8 No. 1 passenger service between and agree that this is a  
9 close representation of the acquired territories of these  
10 operators that you acquired in 1994?

11 A. I would not agree.

12 Q. Could you point out where there is an error on the  
13 map?

14 A. I see Kirkland and Redmond is not listed.

15 Q. Well, Kirkland is within the dotted area.

16 A. Redmond is not listed.

17 Q. Would you point out where Redmond is included in  
18 these two territories that you acquired?

19 A. Page 3.

20 Q. I'm talking about just the territories that you  
21 acquired in the purchase of these two transfer certificates  
22 859 and 858.

23 JUDGE TOREM: Mr. Solin.

24 MR. SOLIN: Yes.

25 JUDGE TOREM: I'm sure there's going to be some

0146

1 chase in all of this eventually, but I don't want to spend  
2 all afternoon dissecting a certificate which is not in  
3 question. So let me pose a question to you and ask if  
4 you've conferred with the UTC staff if there's any dispute  
5 over the territory that Shuttle Express is currently  
6 serving?

7 MR. SOLIN: No, I have not and I am not disputing  
8 the territories.

9 JUDGE TOREM: So why are we talking about it?

10 MR. SOLIN: The territory that they are claiming  
11 under the 25-mile radius is specifically the same territory  
12 that is excluded under the restriction of the  
13 seven-passenger vehicles. The only territory that they  
14 assert that they do not have an exclusion is this small  
15 territory in purple on C-6 and if you look back at C-1. And  
16 I'm just trying to establish that the territory that they  
17 are serving entirely is not permitted by seven-passenger  
18 vehicles or larger than seven-passenger vehicles.

19 JUDGE TOREM: They have stipulated that they have  
20 no authority currently to serve with anything larger than  
21 seven passenger vehicles; is that correct?

22 MR. HARLOW: No.

23 MR. SOLIN: They stipulated one sentence that says  
24 we are not using seven-passenger vehicles.

25 JUDGE TOREM: And that they're using ten.

0147

1 MR. LAUVER: Brooks, correct?

2 MR. SOLIN: They stipulated they're using ten  
3 passenger but not that they're not using seven passenger.

4 JUDGE TOREM: Later testimony established both  
5 propositions; that they are using ten-passenger vehicles and  
6 not using seven.

7 MR. SOLIN: That is correct.

8 JUDGE TOREM: So that's the issue in front of me  
9 whether the certificate should be expanded to strike the  
10 seven-passenger restriction. Now the nebulous language that  
11 is contained in here which I would like to have a Commission  
12 staff person here to be an expert on and interpret for me  
13 they're not present, and I'm really not prepared to delve  
14 into this this afternoon and waste anybody's time in this  
15 room trying to sort out what this arcane language was.

16 I will agree with the proposition the average  
17 person could not read this and know where Shuttle Express or  
18 perhaps if we got your certificate out where the heck you  
19 operate either. Take that up with our Commission staff, but  
20 they don't answer to me, and they don't ask my opinion as to  
21 whether this is legally enforceable language. And they may  
22 not get the answer they like if they come before judges and  
23 commissioners with this language which apparently has folded  
24 several certificates in. The enforceability of this  
25 language remains to be seen. That is not at issue today.

0148

1 If you have a proposition as with your other ones that they  
2 are deliberately violating things you've demonstrated today  
3 and assertions that they don't update their tariff sheets  
4 and he's acknowledged that.

5 You indicated previously about the knowledge of  
6 the ten versus seven passenger not being adhered to great.  
7 If we're going somewhere on this that shows they know  
8 they're serving an area they shouldn't be let's get there  
9 quick.

10 MR. SOLIN: Okay.

11 Q. (By Mr. Solin) Just to clarify then, on Exhibit C-1  
12 you do essentially claim the territory that's inside the four  
13 circled areas and we do not dispute that; is that correct?  
14 Approximately those territories.

15 A. With the exception of the exceptions that are in  
16 the certificate.

17 Q. With the exceptions or restrictions within the  
18 certificate.

19 A. Correct.

20 Q. So when you acquired this territory in 1994, the  
21 two different operators in 1994, did you make any attempt at  
22 that time to remove Restriction No. 1 from your original  
23 certificate?

24 A. I'm not aware that we did that.

25 Q. Is it not the case then that when you have a

0149

1 territory that you are suppose to serve that territory to the  
2 satisfaction of the Commission? Is that correct?

3 A. That is correct.

4 Q. If you do not serve that territory to the  
5 satisfaction of the Commission are you not then excluding  
6 other operators from operating in that territory?

7 A. Not necessarily. The company has to come in and  
8 prove that we haven't been and then we have to have a  
9 hearing.

10 Q. So when you are claiming that you have this 25-mile  
11 radius but yet until 2009 when you -- I'm sorry -- until  
12 September 24 of 2010 you had an additional 60 ZIP codes which  
13 you added -- I believe you said 20 -- but, well, you added  
14 several additional ZIP code areas after September 24; is that  
15 correct?

16 A. Correct.

17 Q. Yet you had not serviced those zip codes in the  
18 previous 15 years; is that correct?

19 A. As our testimony has shown we did but not with the  
20 door to door.

21 Q. Did you service it as a door-to-door or a scheduled  
22 operator under your Certificate 975?

23 A. No.

24 Q. So you were not serving the territory for 15 years  
25 that you claim to have the rights to serve; is that correct?

0150

1           MR. HARLOW:  Objection.  It's repetitive,  
2  argumentative, and misstates his testimony.

3           JUDGE TOREM:  Sustained.

4           Q.     (By Mr. Solin) Do you feel it was in the public  
5  interest to not serve that territory?

6           MR. HARLOW:  Objection, assumes facts not in  
7  evidence.

8           JUDGE TOREM:  I will sustain that.  Mr. Solin,  
9  what is it you're trying to get to?

10          MR. SOLIN:  That they are claiming territory that  
11  they are not serving which is a violation of excluding the  
12  ability of other operators to serve that public interest.

13          JUDGE TOREM:  What, Mr. Solin, would be the  
14  potential other operators solution to such things if they  
15  thought this territory was overbroad?  Is it for Mr. Rowley  
16  to relinquish voluntarily territory or are you proposing  
17  that they have a hearing at Mr. Rowley's behest to determine  
18  if there was room for other competitors?

19          I've adjudicated those hearings myself when  
20  someone wants to come in and there's a protest and they talk  
21  about who's serving the area and for what reasons  
22  overlapping service may be appropriate or a replacement  
23  service may be appropriate.  I'm not sure what the relevance  
24  today is.  Is Mr. Rowley under some obligation at Shuttle  
25  Express to relinquish territory?  That seems to be what

0151

1 you're getting at.

2 MR. SOLIN: The UTC is under the obligation to  
3 discontinue the service of this territory if he does not  
4 serve that territory.

5 JUDGE TOREM: So use it or lose it what you're  
6 suggesting?

7 MR. SOLIN: Absolutely.

8 JUDGE TOREM: Do I have the power in this hearing  
9 to do anything about that?

10 MR. SOLIN: I don't know.

11 JUDGE TOREM: So let's move on. I really want to  
12 just focus on what I have the power to do which is leave the  
13 restriction in place on seven passenger vans or strike it  
14 which is the company's request.

15 MR. SOLIN: Okay. Well, then this at this point I  
16 would say I have no further questions of Mr. Rowley.

17 JUDGE TOREM: Let's see. I may one or two I want  
18 to follow up on the point that you got to a few moments ago  
19 when you were asking about Exhibit 1 or Exhibit A and you  
20 asked what I thought was the pertinent question of the  
21 afternoon to Mr. Rowley, and apologize if you've answered  
22 this in one form or another.

23 EXAMINATION

24 BY JUDGE TOREM:

25 Q. But just so I'm clear, there is an acknowledged

0152

1 restriction that you're not to operate in some or all of your  
2 service territory with any larger than a seven passenger van  
3 for the door-to-door service; is that correct?

4 A. That's correct.

5 Q. And I believe it was Ms. Mattson characterized it as  
6 a potential oversight earlier today, but it wasn't the Port  
7 of Seattle's concern. Do you remember that testimony?

8 A. Yes.

9 Q. You've been the president you said I think just  
10 this year of the company?

11 A. Correct.

12 Q. Do you have in Shuttle Express a compliance manager  
13 or someone who reviews permits and certifications to make  
14 sure the company is staying within the boundaries of them or  
15 that an enforcement action might come from the governing  
16 agency?

17 A. We do not.

18 Q. Is there any other function in the company that  
19 reviews permits to make sure they don't expire or otherwise  
20 lose their the right the company might already have?

21 A. That really falls under my purview at this point.

22 Q. Prior to becoming president of the company were you  
23 aware of this allegation being raised by protestants here? I  
24 understand it has come up previously as to the ability to  
25 comply with all the areas and restrictions in your

0153

1 certificate.

2 A. Right.

3 Q. Were you aware of those kind of disputes being  
4 raised?

5 A. Prior to the hearing?

6 Q. Prior to this docket.

7 A. Yes.

8 Q. That would have been prior to you becoming  
9 president I think.

10 A. Yes. It was brought to our attention in our last  
11 hearing actually that that may be an issue, and that was in  
12 December of I think that was -- actually I don't remember  
13 when that was.

14 Q. Okay. I think the last docket I saw was an  
15 August 12, 2009 initial order. I have a copy of docket  
16 TC-090118. This was Seatac Shuttle's application for an  
17 extension of its authority, and there was an ALJ initial  
18 order denying that application. That's one that I had read  
19 and put in this folder as potentially relevant.

20 A. That was where that idea came to the forefront in  
21 my mind.

22 Q. So in the last year and a half this issue of  
23 seven-passenger vehicles has been on the company's radar  
24 screen?

25 A. Yes, and particularly from that hearing. There

0154

1 were a couple other items that definitely needed to be  
2 updated, and my attempt was to go through the tariff and make  
3 sure everything is perfect, as well as then when we got to  
4 this to file for this, and that's just the progression that  
5 has occurred.

6 Q. So have you met with Commission staff in the last  
7 year and a half or the last year you've been president of the  
8 company to get some technical assistance on interpreting the  
9 language and assuring the company is in compliance?

10 A. Yes, I've been working with staff at UTC to ensure  
11 that the tariff is correct. I've been informed in matters  
12 with the certificate as well. It feels that I'm still  
13 plowing through some of the issues.

14 Q. I think I understood in the course of your  
15 testimony that perhaps I don't know if you characterize this  
16 as oversight for the moving on from the smaller vans to  
17 larger vans, it just happened, and no one in the company  
18 checked to see if that was permissible. Is that a fair  
19 characterization?

20 A. That's how I would characterize it. I don't think  
21 we -- I really don't think we even thought of it at the time.

22 Q. You I think referenced the original limitation was  
23 to distinguish yourself from the Gray Line Bus that  
24 originally protested the initial application for permit  
25 authority?

0155

1           A.     Right.  The only conclusion I could draw from even  
2     that kind of language in there is to denote the type of  
3     vehicles that we are running at the time so that we didn't  
4     turn into what Gray Line was running.  They really didn't  
5     want us to be doing what they were doing, and that was  
6     another way to keep us only doing what we were doing.  I  
7     don't think in my opinion in hindsight I don't think the  
8     vehicle passenger number was as much of what should have been  
9     the focal point as the type of vehicle of van, but that's  
10    what it is.

11          Q.     So I guess if we had a better definition of what a  
12    van versus a bus might have been?

13          A.     Then that perhaps would have done it.  I think that  
14    was the way that they used to get to that point, yes.

15          Q.     Well, I think words being defined as lawyers  
16    wanting defined in contracts there would have been a  
17    breakpoint at some point regardless, but the characterization  
18    I'm looking at is that there is a specific number.  And  
19    Mr. Lauver was just saying and raised something that I think  
20    that's been acknowledged that Shuttle Express is not  
21    currently complying with the terms of this certificate.

22                 At the danger of asking you to make a legal  
23    conclusion that is left for me to look at, although again  
24    there is an enforcement proceeding, can you operate  
25    ten-passenger vans under the terms of the certificate as you

0156

1 read it?

2 A. Well, again, I think that there's a lot leeway in  
3 this certificate. We would ascertain that because of those  
4 purchases of the other ones that they did not have that  
5 restriction. They were operating a share-ride van. You  
6 know, we've always felt there's room within the certificate  
7 to make that observation.

8 Q. And I don't want to belabor that point because it's  
9 something if there was an enforcement provision that were a  
10 penalty at risk that was imposed by Commission staff that  
11 would be a discussion relevant for that docket. I'm not sure  
12 I have any further questions on that.

13 I just wanted to make it clear that that's where I  
14 see the focal point of this is how it came about and how  
15 it's been brought to the Commission's attention. Is there  
16 anything else you want to tell me about this situation and  
17 how you're now applying to have the restriction removed?

18 A. Well, I'm making the best good faith effort to  
19 clean up everything. So that's what this hearing or our  
20 application was all about. I would like to get to a point  
21 where there's no issues. That's what I'm trying to do.  
22 Particularly as president of the company that's my  
23 responsibility.

24 JUDGE TOREM: Mr. Harlow, do you have some  
25 redirect?

0157

1 MR. HARLOW: Yes, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. HARLOW:

4 Q. Do you recall the document you were shown but was  
5 not admitted that listed some minivans?

6 A. Yeah, could I grab that again?

7 MR. LAUVER: You need this one?

8 THE WITNESS: Yes.

9 Q. (By Mr. Harlow) Are those minivans seven-passenger  
10 or are they seven-person vehicles?

11 A. They say maximum seating capacity so I'm assuming  
12 they are including the driver which makes vehicle 1 seven  
13 passengers and vehicle 2 through 5 six-passengers vehicles.

14 Q. Do you know whether any of those vehicles would  
15 accommodate luggage without the removal of one or more seats?

16 A. I don't know. I'm not familiar with these. These  
17 don't appear to be commercial vehicles.

18 Q. Let's talk about the fact that they're not  
19 commercial vehicles. Do you know if vehicles that are  
20 intended for household uses would be as durable and reliable  
21 as the Econo Lines that you use?

22 A. I wouldn't think so. I think that having  
23 operations, testing vehicles and using those particular  
24 vehicles that would give us some indication. But I don't  
25 recognize any of these as being in anybody's fleet.

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1 Q. What about the weight of those vehicles, would you  
2 say they are as heavy and large and sturdy as your Econo  
3 Line?

4 A. No, they're definitely smaller than our Econo  
5 Lines.

6 Q. Do you think that would be safe for passengers in  
7 an accident?

8 A. No, I think --

9 MR. LAUVER: I think we need to object on that  
10 point.

11 JUDGE TOREM: On what basis?

12 MR. LAUVER: I don't think Mr. Rowley's qualified  
13 to make an objective assessment of the safety of one vehicle  
14 versus the other since he's already testified today he  
15 wasn't aware of any of these vehicles until yesterday.

16 JUDGE TOREM: Sustained.

17 Q. (By Mr. Harlow) Mr. Rowley, you made the comment  
18 when responding to Mr. Solin's question that in 1990 you  
19 decided ten-passenger vans were a better way to go. Do you  
20 recall that?

21 A. Yes.

22 Q. Did that belief the ten-passenger vans were a  
23 better way to go prove itself out in actual operations?

24 A. Yes, I think our success over the years was as a  
25 result of that decision. It's definitely helped the

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1 passenger from year to year.

2 Q. I'd like to talk a little bit about the load  
3 factors that came in in cross-examination. The 3.1 or 3.2  
4 average load factor is that what this extension application  
5 is about is your average load factors?

6 A. No.

7 Q. What's it really about?

8 A. It's really about our peak time and being able to  
9 accommodate the people as they come up at any time. So we  
10 have to be prepared for a big rush as well as the low times.  
11 The peaks at the airport are different from day to day and  
12 hour to hour. There are people going to the airport in the  
13 morning and going home in the evening. So your trips back to  
14 the airport in the morning are light, and that drives the  
15 load factor down. Your trips back to the airport in the  
16 evening are -- I said that wrong. The opposite way of the  
17 travel oftentimes is smaller or empty on the way back which  
18 drives that load factor down.

19 Q. Do you have any understanding as to whether the  
20 Commission would find you as serving satisfactorily if you  
21 only met the travel demands or the demands for service at the  
22 average load periods but failed to meet demands at peak  
23 periods?

24 A. They could find us --

25 MR. HARLOW: Objection. It's speculation.

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1 JUDGE TOREM: I'll allow.

2 A. They could find us out of compliance if we failed  
3 to operate and service people.

4 Q. (By Mr. Harlow) How would you characterize the  
5 ten-passenger size nationwide in terms of your type of  
6 operation of the share-ride service?

7 A. It is the common vehicle that is used in the  
8 share-ride industry.

9 Q. Do you have any opinion as to whether or not  
10 switching back to seven passenger vans could potentially  
11 threaten the viability of the service?

12 A. Running the logic it could threaten our market.  
13 Our people that take us would drive us out of business which  
14 would mean there would be no share-ride service for people in  
15 this area that is done by Shuttle Express.

16 Q. Do you depend on the occasional full van of all ten  
17 seats full to create profits to cover the kinds of vans you  
18 have to run empty or near empty?

19 A. Certainly.

20 Q. Why do you want to have instead of replacing the  
21 number seven in your restriction that we focused on with the  
22 number ten, why do you want it to just eliminate that  
23 restriction all together?

24 MR. LAUVER: It's been asked and answered.

25 JUDGE TOREM: I'm not sure this particular one has

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1     been asked and answered.

2                 MR. LAUVER:   It's verbatim.

3                 JUDGE TOREM:  Well, I'm not recalling it.

4                 MR. LAUVER:  I'll withdraw, but that's  
5     speculation.

6                 JUDGE TOREM:  It may be, but I'm maybe distracted  
7     by other questions, Mr. Lauver.

8                 Go ahead and answer this question, Mr. Rowley.

9             A.     I think that as an operation we need the  
10    flexibility to be able to operate to what the guest needs.  
11    So if we have more than even ten passengers that are going to  
12    the same spot and it's a snow day, I would like to be able to  
13    take a larger vehicle to take them.  So I don't think that  
14    the size of the number of seats of the vehicle needs to be on  
15    the certificate.

16            Q.     (By Mr. Harlow) Reminding you about the extensive  
17    cross on Exhibit 2, what's the status of Exhibit 2 right now  
18    as you understand it?

19            A.     It is underway and being published.

20                 JUDGE TOREM:  Excuse me.  Does that mean you're  
21    replacing it with an updated version as being published?

22                 THE WITNESS:  Yes.

23            Q.     (By Mr. Harlow) And is that replacement triggered  
24    by this hearing or was it prior to this?

25            A.     It was triggered by this hearing.

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1                   JUDGE TOREM: Can you elaborate on that. Does  
2 that mean there was a phone call placed over lunch?

3                   THE WITNESS: I made a phone call at lunch to find  
4 out where it was at and found out it had not been started.

5           Q.       (By Mr. Harlow) Would you characterize that as an  
6 oversight or was there an intent by someone not to publish a  
7 new brochure?

8           A.       No, that was an oversight.

9           Q.       You were asked some questions about Exhibit 3 which  
10 is your safety award, in particular the question about  
11 accident severity control. You talked about the additional  
12 miles. What about the additional size and weight of a  
13 ten-passenger vehicle to a seven-passenger vehicle?

14          A.       It's my opinion that a heavier vehicle is actually  
15 safer than a lighter vehicle.

16                  MR. LAUVER: Objection, same argument. He's not  
17 an expert on vehicle safety.

18                  JUDGE TOREM: This particular question I am going  
19 to overrule the objection because he's not speaking of the  
20 specific vehicles which he previously testified he had no  
21 knowledge. I'm going to assume some degree given his over a  
22 decade of experience that he has formed a personal opinion.  
23 Whether I'll give it any weight, I don't know, but I'll  
24 allow the answer.

25                  MR. HARLOW: That's all the redirect that I have.

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1                   JUDGE TOREM: Any recross with this witness,  
2 Mr. Solin?

3                   MR. SOLIN: Yes, just briefly.

4                                   RECCROSS-EXAMINATION

5 BY MR. SOLIN:

6           Q.       If the restriction were to stay in place would  
7 there be a vehicle that you could purchase that has seven  
8 seats for seven passenger seats?

9           A.       That question came up and we were able to get on  
10 the internet and find that seven passengers were still be  
11 being made.

12          Q.       Could you remove three more seats or two more  
13 seats, I guess three more seats, one row, one bench out of  
14 your current ten-passenger vehicles and operate without  
15 spending anymore at all?

16          A.       We have a luggage restraint in the back that goes  
17 as far as the back seat so there would have to be some  
18 reconfiguration done on the luggage restraints as well, but  
19 in theory, yes.

20          Q.       Did you put in that original luggage restraint or  
21 was that factory?

22          A.       That was ours, not the factory.

23          Q.       So you would be able to remove that luggage  
24 restraint with some expense.

25          A.       That would be correct.

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1 Q. You mentioned flexibility; that you wanted to have  
2 flexibility to essentially have any size vehicle permitted in  
3 your authority and yet you actually have already used larger  
4 ones during peak times; is that correct?

5 A. Yes.

6 Q. Which again would appear to be in violation of that  
7 restriction; is that correct?

8 A. Yes.

9 MR. SOLIN: That's all I have.

10 JUDGE TOREM: Any redirect to follow up?

11 MR. HARLOW: No, Your Honor.

12 JUDGE TOREM: Okay. Mr. Harlow, you've had  
13 Exhibits 1 through 8 offered. All were admitted except  
14 Exhibit 5. You presented three witnesses. Is there  
15 anything else in your case you want to present for the  
16 record today?

17 MR. HARLOW: No, Your Honor.

18 JUDGE TOREM: All right. Well, let's shift. Does  
19 anybody need to take a quick break?

20 Let's take five minutes so we can prepare and then  
21 have Mr. Lauver and Mr. Solin be prepared when we come back  
22 to be sworn in and present their case. So it's now about  
23 2:15 or thereabouts. We'll take five minutes.

24 (Recess taken from 2:15 p.m. to 2:25 p.m.)

25 JUDGE TOREM: It is about 2:25 in the afternoon

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1 and we're ready to take up Seatac Shuttle's case. I'm going  
2 to swear in both witnesses and I understand Mr. Solin is  
3 going to go first.

4 (John Solin and Mike Lauver sworn on oath.)

5 JUDGE TOREM: Mr. Solin, I understand you're going  
6 to testify first, and, Mr. Lauver, you're going to ask the  
7 questions.

8 MR. LAUVER: That is correct.

9

10 JOHN SOLIN,

11 having been first duly sworn on oath,

12 testified as follows:

13

14 DIRECT EXAMINATION

15 BY MR. LAUVER:

16 Q. To begin with would you please state your name.

17 A. John Solin.

18 Q. What is your position with Seatac Shuttle?

19 A. I am co-owner and a member of Seatac Shuttle, LLC.

20 Q. Is Seatac Shuttle a holder of a certificate of  
21 necessity issued by the WUTC?

22 A. Yes, it is.

23 Q. Where do you provide airport service?

24 A. We provide airport service from all points on  
25 Whidbey Island to Seatac and back.

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1 Q. Why did you file a protest to this application for  
2 extension of authority?

3 A. Well, as simplistic as I can put it is we reviewed  
4 their authority, we reviewed the restrictions in the  
5 authority, and we see that there's nonobservance of a  
6 particular restriction relating to serving with larger  
7 vehicles than seven passengers.

8 We feel that this just sets a bad precedent among  
9 all operators. It sets a precedent within UTC for  
10 permitting essentially willy-nilly, if you will, observance  
11 of rules and regulations, and we don't think that it's  
12 appropriate that this should be permitted by any operator  
13 for that matter. And it also sends a signal in my opinion  
14 to other operators that are either current or potential  
15 operators that if they do get a certificate and have an  
16 issue with their certificate or their territory or their  
17 vehicles that they can pretty much do what they want to do  
18 and not have any consequences, and it just should not occur.

19 Q. Why did you have to bring this protest? Doesn't  
20 the UTC police these matters? Haven't you seen enforcement  
21 proceedings where the UTC goes out and examines certificates?

22 A. Well, we've only been in business for seven years  
23 unlike Shuttle Express which has been in business for I guess  
24 24 years, and the UTC has never contacted our office to do an  
25 investigation of our authority or verify what vehicles we are

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1 operating. Their enforcement is virtually nil, and  
2 unfortunately the only people that see the operations of all  
3 the shuttle operators are those same shuttle operators. So  
4 we felt it was the right thing to do under the circumstances.

5 Q. Do you have anything further to add?

6 A. I do not. Thank you.

7 JUDGE TOREM: Mr. Harlow, any cross-exam?

8 CROSS-EXAMINATION

9 BY MR. HARLOW:

10 Q. I'm just curious, Mr. Solin, do you serve door to  
11 door on Whidbey Island?

12 A. We do not.

13 Q. So when you serve all points on Whidbey to Seatac  
14 you just serve specific stops I take it?

15 A. We have a schedule that serves all of the cities on  
16 Whidbey Island, that's correct.

17 MR. LAUVER: I'm going to object here. Our  
18 operation is irrelevant to this hearing. It has absolutely  
19 nothing to do with the application. Any questions posed by  
20 Mr. Harlow relative to our operation is outside the scope of  
21 this hearing.

22 JUDGE TOREM: I will have to overrule the  
23 objection because you asked him questions, Mr. Lauver, about  
24 what Mr. Solin does and what Seatac Shuttle does as  
25 introductory questions, and Mr. Harlow's question was

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1 soundly within the scope of an answer given about Mr. Solin.  
2 I understand that it's not an issue in the hearing, but it  
3 was within the scope of direct.

4 Mr. Harlow, Anything else?

5 Q. (By Mr. Harlow) Would you consider Shuttle Express  
6 door-to-door operations in Island County to be distinct  
7 operations from your operations in your scheduled service?

8 A. Are you talking about their current service?

9 Q. I'm talking about their ability to provide  
10 door-to-door service in Island County. Do you consider that  
11 ability to be a distinct --

12 MR. LAUVER: Objection.

13 Q. (By Mr. Harlow) -- a distinct service from -- let  
14 me finish -- a distinct service from your scheduled  
15 operations of services to city center?

16 MR. LAUVER: I'm going to object here.

17 JUDGE TOREM: I'm not sure I understand the  
18 question, Mr. Harlow.

19 MR. HARLOW: Well, it goes to they keep raising  
20 the issue of service to the satisfaction of the Commission,  
21 and I'm trying to understand why they're objecting to  
22 Shuttle Express' extension of its authority on Island County  
23 which is the only place that the two services overlap, the  
24 two permits overlap. And that's what I'm trying to  
25 understand whether they consider that to be a competing

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1 service --

2 JUDGE TOREM: Is that in the nature of --

3 MR. HARLOW: -- because of the extension.

4 JUDGE TOREM: And to the striking of the  
5 restriction.

6 MR. HARLOW: Right.

7 JUDGE TOREM: So may I rephrase the question and  
8 see if it captures the spirit?

9 Mr. Solin, you didn't list it as a basis for  
10 filing your protest, but is there any basis in what  
11 Mr. Harlow is suggesting that you're objecting to the  
12 lifting of the seven-passenger restriction in Island County  
13 per se as an added competition to your service, or is  
14 door-to-door service seen as not directly competing with  
15 your city center service? Does that capture the question,  
16 Mr. Harlow?

17 MR. HARLOW: Thank you, Your Honor, it does.

18 THE WITNESS: I don't know if that's a yes or no.  
19 We are not objecting -- we've never objected to changing  
20 their territory so I don't quite understand what you're  
21 trying to ask. You have a claimed territory in Island  
22 County based on the radius, but you've never served Island  
23 County as an operator in the last 15 years. So are you  
24 asking me about past service or right today?

25 Q. (By Mr. Harlow) Let me try and approach from that

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1 direction. Do you feel it would harm your operation in any  
2 way if Shuttle Express, in any way directly Shuttle Express  
3 were able to remove the seven-passenger provision in its  
4 permit?

5 A. Would it harm Seatac Shuttle's business?

6 Q. Yes. Do you anticipate any harm to your business?

7 A. No.

8 Q. Okay. Thank you. That gets to the point. You  
9 asked questions about WUTC enforcement and you characterized  
10 it as nil. Did you complain to the WUTC about the fact  
11 Shuttle Express was using ten-passenger vans instead of seven  
12 passenger vans?

13 MR. LAUVER: Foundation.

14 JUDGE TOREM: Overruled. If he did complain, he  
15 did, and there's no foundation that's necessary. Mr. Solin  
16 knows if he filed a complaint or Seatac Shuttle filed a  
17 complaint with the Commission.

18 A. We filed this current complaint.

19 Q. (By Mr. Harlow) You mean in the protest?

20 A. Yes. Oh, did we file a complaint?

21 Q. I take that broadly. Informally did you call up  
22 the staff and say, "Hey, these guys are using ten-passenger  
23 vans?" Did you have any contact with the staff who brought  
24 this to their attention?

25 A. We filed an informal complaint about other issues

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1 of Shuttle Express.

2 Q. What were the issues that were included in there?

3 A. Well, would you like me to produce the letter?

4 Q. (By Mr. Harlow) Was the size of the vehicles an  
5 issue that you raised with them?

6 A. I do not believe it was in the informal complaint.

7 Q. Do you have a copy of the letter?

8 A. Yes, I do.

9 Q. Would you please take a look to refresh your  
10 recollection since you're not certain that was an issue.

11 A. No, there was nothing in the informal complaint  
12 regarding size of vehicles.

13 Q. So although you view this as an issue, this  
14 operation of ten-passenger vehicles, it didn't rise to the  
15 level where you felt you should include that in your informal  
16 complaint?

17 A. The informal complaint was about other issues.

18 MR. HARLOW: Your Honor, objection. It's not  
19 responsive to the question.

20 JUDGE TOREM: Mr. Solin --

21 MR. SOLIN: State the question again.

22 (Last question read back.)

23 A. We did not.

24 Q. (By Mr. Harlow) Now you stated that in your direct  
25 testimony that you felt the grant of this authority would

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1 signal the no consequences for violating the WUTC rules. Do  
2 you recall that?

3 A. Yes.

4 Q. You also recall when you were cross-examining  
5 Mr. Rowley you asked about what happened when he was  
6 operating these independent contractors. Do you recall that?

7 A. Yes.

8 Q. Do you recall Mr. Rowley indicated that staff took  
9 enforcement actions and indeed fined Shuttle Express? Do you  
10 recall that?

11 A. I don't recall them saying they were fined.

12 MR. HARLOW: Well, the record will address that.  
13 That's all the questions that I have at this time, Your  
14 Honor.

15 JUDGE TOREM: Mr. Lauver, any follow-up questions  
16 to Mr. Solin?

17 MR. LAUVER: Yes, please.

18 REDIRECT EXAMINATION

19 BY MR. LAUVER:

20 Q. Why did you feel you had to file an informal  
21 complaint? Was anybody at the UTC taking action?

22 A. No, we had contacted --

23 Q. Did Mr. Rowley at any point say --

24 MR. HARLOW: Your Honor, I think he should be  
25 allowed to finish the answer.

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1 Q. (By Mr. Lauver) Do you have more to say?

2 A. We contacted UTC and we did not receive any initial  
3 response from UTC. We intended to file a normal complaint,  
4 and UTC suggested that at this stage we file an informal  
5 complaint which we did.

6 Q. (By Mr. Lauver) How long before there was any  
7 investigation whatsoever on that informal complaint, what  
8 time period passed approximately?

9 A. I believe it was approximately nine or ten months.

10 Q. Would you characterize that as responsive by the  
11 UTC?

12 A. Not at all.

13 Q. Would you characterize that as efficient  
14 enforcement?

15 A. No.

16 Q. Did the UTC initiate any portion of this  
17 enforcement?

18 A. No.

19 Q. Was the UTC aware of any of these potential  
20 violations through other hearings or transcripts?

21 A. Yes.

22 Q. So what you're saying is the UTC of its own  
23 volition was doing no enforcement and no policing and you  
24 felt that your only recourse was to file an informal  
25 complaint; is that correct?

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1 A. Yes, that's a characterization.

2 Q. Since Mr. Harlow wants to go back to the  
3 independent contractor situation was that brought to the  
4 attention of -- did the UTC proceed with that of its own  
5 volition or were they made aware of that through workshops  
6 and open meetings as far as you know?

7 A. Was through workshops and open meetings which we  
8 attended.

9 Q. So once again are you aware of any proceeding that  
10 the UTC sought enforcement of their own volition with regard  
11 to an airport shuttle?

12 A. No.

13 Q. So all policing has been done internally by the  
14 other operators; is that correct?

15 A. I don't know that all of it has been done, but  
16 virtually all of this has been done by either all the other  
17 shuttle operators or if there were any individual customers  
18 complaints or initiations I'm not aware of those.

19 Q. During inspections of your company by the UTC on a  
20 semi-annual basis did you ever make any statements to the  
21 inspector to the effect that enforcement was lax, and we were  
22 particularly concerned about illegal operators at Seatac,  
23 unregulated, unlicensed operators?

24 A. Yes, that's been brought up many times before.

25 Q. Did he tell you that the UTC would get right on

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1 this or that they had staffing issues or that the other  
2 operators would have to be vigilant and police themselves?

3 A. The general response was we will see what we can  
4 do. We have limited people for inspections. We have limited  
5 people to go out and do spot checks. We just basically got  
6 the feeling that they were not the resource to go to of their  
7 own volition.

8 Q. So is it your opinion and your experience that if  
9 the industry is to be policed, everybody is to be kept honest  
10 and operate according to the rules and regulations, it's  
11 going to be up to the other operators to observe these and  
12 report them when necessary?

13 A. Yes.

14 MR. LAUVER: Thank you and that's all.

15 JUDGE TOREM: Mr. Harlow, any follow up?

16 MR. HARLOW: No, Your Honor.

17 Mr. Lauver, did you want to testify as well?

18 You've been sworn.

19 MR. LAUVER: Yes.

20 JUDGE TOREM: Mr. Solin, I assume you're going to  
21 switch seats.

22

23 MIKE LAUVER,

24 having been first duly sworn on oath,

25 testified as follows:

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1

DIRECT EXAMINATION

2 BY MR. SOLIN:

3 Q. Mr. Lauver, what is your position at Whidbey Seatac  
4 Shuttle?

5 A. I'm co-owner.

6 Q. How would you best summarize why you as a member of  
7 Whidbey Seatac Shuttle why are you a party to this protest?

8 A. I don't feel that an operator can come to the  
9 Commission and change things after the fact. Closing the  
10 barn door once the horse has escaped is not a remedy. I  
11 don't feel that the intent of either the legislature or the  
12 WAC promulgated by the UTC was to alter certificates to put  
13 them in compliance with an operation, but rather an operation  
14 is to be put in compliance with a certificate.

15 Q. Is the WAC that governs the rules of applications  
16 and authority for a certificate somewhat nebulous or is it  
17 pretty clear about what the requirements are to be fit,  
18 willing, and able as well as observing the rules within the  
19 certificate?

20 MR. HARLOW: Objection, assumes to call for a  
21 legal interpretation and there is no foundation. This  
22 witness is not qualified to give legal opinions?

23 JUDGE TOREM: I'll sustain the objection, but  
24 Mr. Solin, I appreciate where you are wanting to go with  
25 this. If you break it down into individual questions to

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1 determine your witness's familiarity with the WAC and if  
2 necessary a specific portion of the administrative code,  
3 then perhaps we'll have an opinion question he can  
4 legitimately answer.

5 Q. (By Mr. Solin) Okay. I would refer to do you have  
6 a working knowledge of WAC 480-30 as vice president or  
7 co-owner of Whidbey Island Seatac Shuttle?

8 A. I'm conversant with it. I periodically review it  
9 to make sure that (a) we're in compliance, and (b) there's  
10 nothing out there that's going to jump out and bite me. Can  
11 I sit here and rattle off the various sections? No. But I'm  
12 aware of the general content and the areas which it governs.

13 Q. Let me read something from WAC 480-30-246.  
14 Application of rules: No deviation from these rules will be  
15 permitted without written authorization by the Commission.  
16 How does this apply in this protest?

17 MR. HARLOW: Again, object to the extent it calls  
18 for a legal opinion.

19 MR. SOLIN: I don't believe it calls for a legal  
20 opinion. He has a working knowledge as a result of  
21 operating for seven years under this same WAC 480-30 section  
22 which we all have a working knowledge of it in order to be  
23 in compliance of that. I am not asking for a legal opinion.  
24 I am just asking to --

25 JUDGE TOREM: Let me rephrase the question on your

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1     behalf, Mr. Solin.

2                     Mr. Lauver, what does the quoted administrative  
3     code provision in WAC 480-30-246 mean to you as a co-owner  
4     of a certificated company? How do you implement that no  
5     deviation from the rules without Commission permission I  
6     guess it is?

7                     MR. HARLOW: By the way, I'm finding that in WAC  
8     480-30-006(4). I'm not finding that in 246.

9                     MR. SOLIN: 246 is interesting to find.

10                    JUDGE TOREM: Mr. Solin, is that a current copy of  
11     the WAC or is that something that's been updated?

12                    MR. SOLIN: Well, I believe it is. Are you  
13     looking on line or are you looking at a book?

14                    MR. HARLOW: I'm looking on line. This should be  
15     up to date today. 246 deals with an entire different  
16     subject area.

17                    JUDGE TOREM: Mr. Harlow, what's the provision  
18     that you're finding the quoted language in there?

19                    MR. HARLOW: 480-30-006(4).

20                    JUDGE TOREM: Let's not spend time quivering over  
21     what number it is, but apparently the language is contained  
22     somewhere within the administrative code; is that correct,  
23     Mr. Harlow?

24                    MR. HARLOW: Yes.

25                    MR. SOLIN: I would agree that it's in 480-30.

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1           JUDGE TOREM: I think you have general agreement  
2 on that comment. So let's get to that common ground and  
3 simply allow Mr. Lauver to answer the question.

4           MR. LAUVER: If he can remember it, he will.

5           JUDGE TOREM: What does it mean no deviation from  
6 these rules is permitted without prior Commission written  
7 authorization from the Commission?

8           MR. LAUVER: The testimony provided by the  
9 applicant --

10          JUDGE TOREM: I want to know what does it mean to  
11 you?

12          MR. LAUVER: What does it mean to me? It means  
13 that you cannot make a deviation from rules and regulations  
14 without prior written authorization.

15          JUDGE TOREM: Are you interpreting rules and  
16 regulations to include a certificate as well then?

17          MR. LAUVER: To include the certificate as it is  
18 the overriding rule of who, what, why, how you perform your  
19 task as a shuttle operator under RCW 81.68.

20          JUDGE TOREM: So if I understand correctly, your  
21 position is if you are issued a certificate, pay attention  
22 to it and only do what it allows you to do.

23          MR. LAUVER: That is correct. And actually  
24 there's another WAC that says that authorities are to be  
25 strictly interpreted, and in this particular case the

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1 applicant's own witnesses have all acknowledged, Mr. Harlow  
2 has stipulated to that too they have not abided by the  
3 restrictions in their authority, and they presented no  
4 written authority to deviate from that restriction. And yet  
5 for more than 10 years possibly 15 they continued to violate  
6 it.

7 JUDGE TOREM: Just for the record, I want to note  
8 that as I understand the stipulations and the testimony  
9 there are various factual propositions as to the size of  
10 vans being used and permitted to be used. There's no legal  
11 conclusion that has been stipulated to as to whether that is  
12 a violation or not. One may be able connect those dots  
13 depending on your perspective, but I don't believe the  
14 stipulation included any violation of regulation or  
15 certificate. Even Mr. Rowley made an assertion that there  
16 was some room or maybe a lot of leeway in the certificate to  
17 find a way to operate vans perhaps under the purchased  
18 authority.

19 Again, that's not an issue for me because it's not  
20 a compliance hearing. I understand Seatac Shuttle's  
21 presentation on that, and Mr. Solin's testimony was concise  
22 and a good exposition on that one opinion of Commission  
23 staff's initiative or lack thereof in enforcing the rules  
24 and enforcing the certificates as written. I understand  
25 that issue. As we talked about in the prehearing conference

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1 that may not be the ultimate issue for me.

2 MR. LAUVER: Perhaps I wasn't clear and my  
3 statement was misinterpreted. I wasn't suggesting that  
4 Mr. Harlow stipulated to a violation, simply that they're  
5 operating the ten-passenger vehicles which is in  
6 contravention to the restriction placed on their authority  
7 which Mr. Rowley has acknowledged. And without a written  
8 deviation note from the Commission as it were that is yet  
9 another violation of WAC and further evidence of their  
10 unwillingness and their unfitness to continue operations as  
11 they are.

12 JUDGE TOREM: Mr. Solin, do you have any further  
13 questions?

14 Q. (By Mr. Solin) Just to clarify one point. WAC  
15 480-30-086 states a person must have a certificate from the  
16 Commission before operating as a passenger company in the  
17 state of Washington, and Subparagraph 6 further states that  
18 (a) a company must operate strictly within the authority  
19 described in its certificate.

20 Mr. Lauver, how do you see that applying to your  
21 protest in this matter?

22 A. I believe that question was just raised by His  
23 Honor here and I have answered that strict adherence to the  
24 authority is required by the Commission. I don't believe  
25 that that strict adherence to authority has been evidenced by

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1 the applicant.

2 Q. What are you seeking as the end result to this  
3 protest?

4 A. There can only be one resolution and only one is  
5 offered to me, to us, to any protestant here, and that simply  
6 is a denial of the application. I am not seeking anything  
7 beyond that.

8 MR. SOLIN: That's all the questions that I have.

9 JUDGE TOREM: Mr. Harlow, any cross?

10 MR. HARLOW: No questions, Your Honor.

11 JUDGE TOREM: Mr. Lauver and Mr. Solin then you  
12 have presented the witnesses that you listed except for  
13 Mr. Sherrell who I understand is not available. Was there  
14 any other evidence? I've admitted Exhibits A, B, and C to  
15 this point. Is there any evidence you want me to consider  
16 on behalf of your protest?

17 MR. SOLIN: Do we need to enter this as Exhibit D,  
18 the vehicle list?

19 JUDGE TOREM: If you would like, you can submit  
20 that by the end of the week. I am not sure we need it as  
21 necessary. It's been described in the record and it was  
22 used for illustration. There's nothing in there of  
23 substance that's going to help me with the decision.

24 MR. SOLIN: Right, there's no other exhibits.

25 MR. LAUVER: I think all the issues have been

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1 raised, we've been examined, the testimony has been  
2 provided, and we're willing to rest at this point.

3 JUDGE TOREM: All right. Then let me ask -- we're  
4 still on the record. If we need to go into details we will  
5 go off the record -- does either side want to make a closing  
6 argument this afternoon or would a closing letter brief, not  
7 a formal legal brief. If you want to include citations that  
8 pertains to the WAC that's a good opportunity to do it, but  
9 I don't know that I require that. If there are arguments to  
10 be made would you rather they be verbal or in writing?

11 Mr. Harlow.

12 MR. HARLOW: We would be fine with an oral closing  
13 argument.

14 JUDGE TOREM: Mr. Lauver and Mr. Solin?

15 MR. LAUVER: That's acceptable to us.

16 JUDGE TOREM: I'll give you a couple minutes to  
17 gather your thoughts and present them or are you ready to go  
18 now?

19 MR. LAUVER: That would be good if we have two or  
20 three minutes.

21 JUDGE TOREM: Let's take five minutes then. It's  
22 now ten until 3:00. We'll come back before three o'clock  
23 and give you five minutes.

24 MR. HARLOW: Before we go off the record, based on  
25 the case presented we've decided not to use the cross

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1 exhibits that we submitted to close that loop.

2 JUDGE TOREM: The prior objection then need not be  
3 ruled on. Exhibits 9, 10, and 11 will be not part of the  
4 record in this case. They were submitted as potential, but  
5 they weren't used, and that's common practice in a number of  
6 potential cross-examination exhibit issues. So we will go  
7 on break until a little before three o'clock and you  
8 gentlemen let me know when you're ready.

9 (Recess taken from 2:50 p.m. to 2:55 p.m.)

10 JUDGE TOREM: All right. So it's a little bit  
11 after three o'clock. I think we're ready for closing  
12 statements or arguments as the case may be.

13 Mr. Harlow, you can go first, and Mr. Lauver and  
14 Mr. Solin, whoever is going to speak for Seatac Shuttle.  
15 Okay. Mr. Lauver you will respond. One each and we'll call  
16 it a day.

17 MR. HARLOW: Okay.

18 JUDGE TOREM: Go ahead, Mr. Harlow.

19 MR. HARLOW: We're ready to call it a day.

20

21 CLOSING ARGUMENT

22 BY MR. HARLOW:

23 Just to summarize the application, it's quite  
24 narrow. It doesn't propose to add any additional territory  
25 or any additional services; that it simply would eliminate

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1 an anachronistic restriction that was in the permit for  
2 particular reasons as Your Honor knows as well the kind of  
3 compromises that people do to resolve protests. Sometimes  
4 these are less than elegant and less than understandable  
5 permit language, and that's what we have here.

6           The goal of this is to update the permit as Mr.  
7 Rowley testified to reflect the current vehicle  
8 availability, seven passengers what was available in 1989  
9 and now ten passenger is available. And it's also to meet  
10 the specialized nature of the share-ride service. Ten  
11 passengers is the sweet spot if they're going to have  
12 flexibility to go smaller or larger, and basically it's  
13 critical to operate in the operation of the share-ride  
14 service sufficiently; otherwise, the service would not be  
15 found to be viable at the rates to get to superefficient  
16 with the charging taxi rates, and then it's hard to attract  
17 ridership and service could be threatened.

18           It's kind of an application in the public  
19 interest. I think it's really self-evident. It's not  
20 obvious. Nevertheless we produced two public witnesses  
21 today who support the elimination of the restriction. It's  
22 very difficult to get a public witness on this kind of issue  
23 because it's really very technically operational in nature,  
24 and we appreciate Your Honor allowing Mr. Rowley to go into  
25 that in great depth, and we think that should be given more

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1 weight in this case than a typical case.

2           Again, you think about what's a typical public  
3 witness as in Langley where you've got a protest that's got  
4 authority, and, you know, there were people up there willing  
5 to saying, "Yeah, I would like to have a shuttle from  
6 Langley and there isn't one now." You can't get that in  
7 this kind of application. The difference between and a  
8 seven- and ten-passenger vans is not obvious to the  
9 traveling public with a few exceptions, and fortunately we  
10 found a couple.

11           But Mr. Rowley and I think our public witnesses  
12 did a good job of explaining why they like that. Our  
13 traveler witness explained how he sometimes travels in  
14 parties that are larger than seven, and he doesn't want to  
15 have to be split up, and so they have flexibility to  
16 traveling in one or two vehicles. I think he said in fact  
17 they go over 15. So 15 is the difference between two or  
18 three vans when you've got the difference between seven- and  
19 ten-passenger vans.

20           Then Mr. Rowley went into great details about the  
21 operational requirements in needing to operate efficiently  
22 to keep that service level high enough and the fare low  
23 enough to make that kind of share-ride operation viable.

24           Mr. Rowley also talked about the fitness issue  
25 describing just to summarize it really is a first-class

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1 operation that Shuttle Express runs. Are there some  
2 glitches in compliance? Yes. We didn't bring in the  
3 protestant's performance record, and we don't know if they  
4 have a record or not. I would be very surprised given it's  
5 a human endeavor that they're operation is operating at the  
6 level of perfection. It's just simply unachievable when  
7 you're carrying 600,000 passengers a year, operating close  
8 to a hundred vehicles, and trying to do it in the most  
9 efficient and cost effective manner so you can stay in  
10 business.

11 The question of satisfaction of the Commission  
12 came up, and I think that issue got a little bit mixed up.  
13 I believe that the satisfaction question goes only to the  
14 area of overlap between these two companies. It ties into  
15 RCW I believe it's 80.66.040, but it's the provision that  
16 the Commission can only grant a certificate in the same  
17 territory if the existing permit holder will not serve to  
18 the satisfaction of the Commission, and I know Your Honor  
19 knows what I'm talking about. So the question then really  
20 is, the only serious question raised in this protest  
21 conceivably would be, you know, is there a satisfaction  
22 problem at Whidbey such that Shuttle Express shouldn't be  
23 allowed to operate ten-passenger vans on Island County as  
24 opposed the seven-passenger vans on Island County? There is  
25 just simply no evidence in this record that that should be

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1 an issue. Whidbey Seatac Shuttle admitted that the  
2 extension in Island County would not impact their operations  
3 directly. They also admitted they don't have the  
4 door-to-door service so there isn't a distinction between  
5 service. There's no evidence of harm and there's no  
6 evidence coming in to the extent that there's harm to the  
7 competition. It's potentially already there with the  
8 seven-passenger vans. So there's certainly no evidence that  
9 even a hypothetical harm would be greater if this  
10 application were granted.

11           Again, we're not saying there's anything  
12 unsatisfactory in their service; just that under the statute  
13 it's not a reason to deny the permit even as to deny the  
14 extension even as to Island County.

15           Let's talk about the justification that was  
16 offered for the protest. The examples were given about an  
17 informal complaint. We don't have that in the record what  
18 the contents of that were, although it would be a Seatac  
19 witness agreed that they didn't raise the issue of seven  
20 versus ten passenger vans. They did present evidence that  
21 the WUTC staff is aware that Shuttle Express is operating  
22 ten-passenger vans, and we don't have a staff witness here,  
23 but we do have evidence that when staff sees an enforcement  
24 issue they think merits enforcements they take action. That  
25 was the case in the independent contractor situation. So

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1 it's possible staff either doesn't agree that the  
2 ten-passenger operation violates the permit or it's possible  
3 that they just don't think it's enough of a public interest  
4 issue to use their scarce resources on it.

5           So then the question that you ask yourself, Your  
6 Honor, is what's the remedy? And I agree with Seatac,  
7 Whidbey Seatac the only possible remedy would be denial of  
8 the extension in the application. While that's a possible  
9 remedy, it's simply not an appropriate remedy.

10           The key thing here is that the fitness issues that  
11 were raised such as they were I think they were fairly  
12 minor. They don't have anything to do with the application.  
13 They are generic the fitness issues. Okay. Your new  
14 brochure is a month late in getting into the vehicles after  
15 you changed your tariff. Okay. There's a question which I  
16 submit we don't even need to answer of whether or not ten  
17 passenger vans are permitted or not permitted under that  
18 confusing permits, but the fact is those fitness issues are  
19 generic and there is no showing that Shuttle Express is any  
20 less fit to operate a ten-passenger than a seven-passenger  
21 van.

22           So although there's no connection between proposed  
23 remedy and denial and the fitness of duty raised, there is  
24 clear and undisputed evidence of harm and potential harm of  
25 the public interest to not granting the extension if you

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1 assume that that could potentially lead to an enforceable  
2 action that would require switching to seven-passenger vans.

3           And harms would be immediately more vehicles on  
4 the roadway, more pollution, more carbon dioxide, higher  
5 vehicle operator costs, higher labor costs leading to higher  
6 rates, and as Mr. Rowley testified higher rates definitely  
7 impacts the choices people make when traveling to the  
8 airport. And Mr. Rowley testified ultimately that the whole  
9 share-ride concept could be jeopardized if you take away the  
10 ability to operate in that sweet spot of ten-passenger vans  
11 in the share-ride operation.

12           And you also have the public witnesses supporting  
13 the desire to be doing that, supporting the flexibility to  
14 being able to accommodate larger parties, supporting the  
15 reduction of traffic on airport drives, and supporting the  
16 efficiencies that ten-passenger vans allow as Mr. Rowley  
17 described.

18           What you've got in essence here is a theoretical  
19 benefit offered by the protestant of slapping a company down  
20 and denying an application in lieu of staff enforcement,  
21 theoretical benefits. But that's far outweighed by the  
22 actual harm that would occur to the public interest if the  
23 application were denied. Your Honor, we encourage you to  
24 issue an initial order granting the application.

25           JUDGE TOREM: Thank you, Mr. Harlow.

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1 Mr. Lauver.

2 MR. LAUVER: I probably won't be as long.

3 MR. SOLIN: Don't count on it.

4 CLOSING ARGUMENT

5 BY MR. LAUVER:

6 I think it was very nice of Mr. Harlow in his  
7 summation to thank their witness. I am certainly sorry that  
8 it was a hardship on that witness to be here. I'm not sure  
9 what that has to do with the case. The situation here is  
10 one where Shuttle Express essentially has come before the  
11 Commission and said, "We'll, we've gotten ourselves into a  
12 situation and now we want you to bail us out," and that's  
13 just not appropriate.

14 Mr. Harlow has also raised an issue of Island  
15 County and our concerns about operations in Island County.  
16 We never once raised prospective operations in Island  
17 County. It's never been a concern of ours. It's not part  
18 of our protest. Our protest is very specific. It does not  
19 detail any one county. It has to do with compliance with  
20 the law.

21 Mr. Rowley has testified before you here today  
22 that they have in fact been using ten-passenger vans for at  
23 a minimum of ten years. He has been aware of the  
24 restriction. He stated that no vans other than seven were  
25 available to him when he converted to ten-passenger vans.

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1 That's clearly been shown not to be the case. They would  
2 have us believe that their operation is too big to  
3 essentially regulate. Oh, my, it would be in the public's  
4 terrible disinterest if we followed the law at this point.  
5 We're simply too large to reduce our fleet from our ten  
6 passenger seating to seven passenger. We've passed a  
7 threshold so we can essentially ignore our restrictions  
8 because it would be economically detrimental to us and  
9 potentially according to them harmful to the public.

10 Every disregard for rules and regulations that's  
11 been discussed here today has been characterized by the  
12 applicant as an oversight or ignorance. How long can one go  
13 on claiming oversight and ignorance of the rules and  
14 regulations under which you're charged with operating by  
15 accepting a certificate of necessity? You can't continue a  
16 pattern of habitual oversight and ignorance.

17 Mr. Harlow kept pointing out to us here that  
18 Mr. Rowley can't legally analyze either the WAC or his own  
19 certificate; yet nothing was presented to suggest that  
20 Mr. Rowley ever sought any legal advice along those lines.  
21 No legal advice was apparently sought before they went to  
22 ten vans.

23 When an operator fails to follow the regulations  
24 and the dictates of the Commission and the strictures of  
25 their authority they should not be rewarded for that. And

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1 in every instance where they have acknowledged or we've  
2 alleged that they haven't been following the rules, they  
3 proclaim that we're working to fix it. Well, it certainly  
4 seems that they only fix things when somebody else catches  
5 them at it. It's the old hand in the cookie jar. If nobody  
6 sees you, you get a cookie. If you get caught, you get  
7 smacked on the wrist.

8           They're not proactive and they do not monitor  
9 their own compliance. Once again, it seems absolutely  
10 contrary to us that a certificate needs to be brought into  
11 compliance with an operation rather than an operation  
12 brought into compliance with their certificate.

13           The applicant time and again has left us with the  
14 opinion that they've felt that they could operate larger  
15 vehicles because other operators do. I mean, what's the  
16 large one, Super Shuttle, etc., that they modeled after all  
17 use the 15-passenger vans reduced. So since they do, we do.

18           There is an our opinion as I stated only one  
19 recourse open in the Commission when confronted with a  
20 habitual violator. We respectfully request that the initial  
21 order to deny this application as submitted. Thank you.

22           JUDGE TOREM: All right, gentlemen. Thank you for  
23 your arguments this afternoon and the evidence presented. I  
24 will do my best to address each of the relevant subject  
25 areas and explain the decision, however it's going to come

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1 out. It should be in the next couple of weeks because I  
2 have a few other things ahead of you and one more hearing  
3 later this week. But I am hoping you will see something by  
4 the middle or toward the end of next month ahead of the  
5 holidays and that will be an initial order. It will have  
6 all the normal appeal rights boilerplate at the end with the  
7 timing if you seek review from the Commission for either  
8 side. Any questions or procedural concerns for this  
9 afternoon?

10 MR. HARLOW: No.

11 JUDGE TOREM: Anybody want to order a copy of the  
12 transcript?

13 MR. HARLOW: Since we're not doing any briefing we  
14 don't need the transcript.

15 JUDGE TOREM: Then I think at 3:20 we're  
16 adjourned. Thank you.

17 \* \* \* \* \*

18 (Whereupon, the hearing was adjourned at 3:20  
19 p.m.)

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1 In re: Shuttle Express, Docket No. TC-091931

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I, Shaun Linse, CCR, do hereby certify that the

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foregoing transcript prepared under my direction is a

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full and complete transcript of proceedings held on

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November 30, 2010, in Seattle, Washington.

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Shaun Linse, CCR 2029

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