

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION**

In re Application of)	DOCKET TC-090118
)	
SEATAC SHUTTLE, LLC d/b/a)	
WHIDBEY-SEATAC SHUTTLE)	ORDER 03
)	
For Extension of Authority under)	
Certificate No. C-1077, For a)	INITIAL ORDER DENYING THE
Certificate of Public Convenience and)	APPLICATION FOR EXTENSION
Necessity to Operate Motor Vehicles in)	OF AUTHORITY
Furnishing Passenger and Express)	
Service as an Auto Transportation)	
Company)	
.....)	

Synopsis: This is an Administrative Law Judge’s Initial Order that is not effective unless approved by the Commission or allowed to become effective pursuant to the notice at the end of this order. This order denies SeaTac Shuttles’ application for an extension of authority, finding that the evidence of record does not demonstrate a public need for the requested authority.

1 NATURE OF PROCEEDING. This proceeding involves an application submitted by SeaTac Shuttle, LLC, d/b/a Whidbey-SeaTac Shuttle (SeaTac Shuttle) for an extension of authority under Certificate No. C-1077¹ to operate motor vehicles in

¹Pursuant to Certificate No. C-1077, SeaTac Shuttle is currently authorized to provide:

PASSENGER SERVICE by reservation only:

AIRPORTER PASSENGER SERVICE BETWEEN: Whidbey Island and Seattle Tacoma International Airport via Deception Pass or the Clinton Ferry; Door to door service in conjunction with the above route; Oak Harbor and Lupien Field.

furnishing passenger and express service as an auto transportation company. SeaTac Shuttle requests additional authority to operate airporter passenger service between Whidbey Island and Paine Field, Paine Field and the Seattle Tacoma International Airport, and Seattle and Paine Field; auto transportation service by reservation only between Whidbey Island and Seattle and between hotels and motels within a 1-mile radius of Paine Field; closed door service between Seattle and the Seattle Tacoma International Airport.² Nothing in SeaTac Shuttle's proposed authority would authorize transportation between Paine Field and hotels and motels within a 1-mile radius of Paine Field.³

- 2 **PROCEDURAL HISTORY.** On January 16, 2009, SeaTac Shuttle filed an application with the Washington Utilities and Transportation Commission (Commission) requesting an extension of its authority under Certificate No. C-1077 to operate as an auto transportation service provider. Notice of the application was published in the Commission's weekly Docket of February 2, 2009. The Commission convened a prehearing conference in this docket at Olympia, Washington on April 20, 2009, before Administrative Law Judge Marguerite E. Friedlander.

AUTO TRANSPORTATION SERVICE by reservation only BETWEEN: Oak Harbor and Coupeville; Coupeville and the Keystone Ferry; Langley and Clinton.

BETWEEN: Oak Harbor and hotels and motels within a 1-mile radius and hotels and motels within a 1-mile radius of the Seattle Tacoma International Airport.

CLOSED DOOR SERVICE BETWEEN: Deception Pass and Seattle Tacoma International Airport; and BETWEEN the Clinton Ferry and the Seattle Tacoma International Airport.

NOTE: Nothing in this certificate authorizes transportation between the Seattle Tacoma International Airport and hotels and motels within a 1-mile radius of the Seattle Tacoma International Airport.

Commission's weekly Docket of February 2, 2009, at 2.

²*Id.*, at 1.

³*Id.*

3 On February 17, 2009, Shuttle Express, Inc., d/b/a Shuttle Express (Shuttle Express), filed a protest to the application. On February 23, 2009, Evergreen Trails, Inc., d/b/a Gray Line of Seattle (Gray Line), filed a protest to the application. Both Shuttle Express and Gray Line stated the same objection to SeaTac Shuttle's application; namely, that each already serves a portion of the territory SeaTac Shuttle seeks and there is no reason for the Commission to grant SeaTac Shuttle's proposed service which they argue would be duplicative.

4 On May 14, 2009, Gray Line and SeaTac Shuttle filed a stipulation⁴ which modifies SeaTac Shuttle's extension request by including the caveat that SeaTac Shuttle will not transport passengers between Seattle and Seattle Tacoma International Airport.⁵ Gray Line states that it has no objection to SeaTac Shuttle's application as long as the Commission approves the stipulated language. Shuttle Express did not join in the stipulation.

5 The Commission held an evidentiary hearing to address SeaTac Shuttle's application and a settlement hearing to address the stipulation on June 10, 2009, at the Commission's office in Olympia, Washington. At the evidentiary hearing, the parties presented 8 exhibits and 4 witnesses. At the settlement hearing, the parties presented 1 exhibit and 1 witness.⁶

⁴While Gray Line and SeaTac Shuttle filed the stipulation on May 14, 2009, the companies did not file the requisite statement in support of the stipulation until June 3, 2009.

⁵Gray Line and SeaTac Shuttle request that the caveat is featured in SeaTac Shuttle's certificate thusly:

CLOSED DOOR SERVICE BETWEEN: Seattle and Seattle Tacoma International Airport. *No passengers may be transported between points in Seattle and the Seattle Tacoma International Airport.*

(Italics represent the stipulated language.)

⁶At the evidentiary hearing, the Commission took administrative notice of Commission Dockets TC-001566 and TC-041340. In addition, the ALJ issued two bench requests (BR), with responses to the bench requests due June 17, 2009. BR-1 directed Shuttle Express to file a survey of customers it picked up at Paine Field, separated by those actually picked up at Paine Field and those customers who were picked up within a 1-mile vicinity of Paine Field. BR-2 directed SeaTac Shuttle to file a copy of the business article in the *Snohomish Business Journal*, as referenced by the company at hearing, which discussed the potential use of Paine Field by various

6 On July 8, 2009, Shuttle Express and SeaTac Shuttle filed post-hearing briefs with the Commission.

7 **APPEARANCES.** Mike Lauver and John Solin, members and co-owners of SeaTac Shuttle, Oak Harbor, Washington, appeared *pro se* on behalf of SeaTac Shuttle. Jimmy Sherrell, owner and President of Shuttle Express, and John Rowley, General Manager and Chief Operating Officer of Shuttle Express, Renton, Washington, appeared *pro se* on behalf of Shuttle Express. David L. Rice, attorney, Miller Nash LLP, appeared on behalf of Gray Line.

8 **PRELIMINARY ISSUE.** SeaTac Shuttle argues that Shuttle Express improperly lodged its protest against the application based solely upon Shuttle Express' operations as a door-to-door carrier.⁷ The applicant asserts that it has requested authority to provide scheduled service,⁸ not door-to-door service.⁹ SeaTac Shuttle points out that the Commission has held "that there is no overlap or infringement when one provider provides door-to-door service and the other schedule [service]" even in the same geographic area.¹⁰

airlines. SeaTac Shuttle filed the information requested in BR-2 in a timely manner, while Shuttle Express filed its response to BR-1 one day late.

⁷SeaTac Shuttle's post-hearing brief, at 6. Door-to-door service means an auto transportation company service provided between a location identified by the passenger and a point specifically named by the company in its filed tariff and time schedule. WAC 480-30-036(2) and *In re Application of Pennco Transportation, Inc., for Extension of Authority under Certificate No. C-01054, for a Certificate of Public Convenience and Necessity to Operate Motor Vehicles in Furnishing Passenger and Express Service as an Auto Transportation Company*, Docket No. TC-041340 and *In re Application of Heckman Motors, Inc., d/b/a Olympic Bus Lines, for Extension of Authority under Certificate No. C-992, for a Certificate of Public Convenience and Necessity to Operate Motor Vehicles in Furnishing Passenger and Express Service as an Auto Transportation Company*, Docket No. TC-041593, consolidated, (hereinafter referred to as Pennco Order 04), Order 04 (July 26, 2005) at fn 1.

⁸Scheduled service occurs when an auto transportation company provides passenger service at specified arrival and/or departure times at points on a route. WAC 480-30-036(2).

⁹SeaTac Shuttle's Brief, at 5.

¹⁰*Id.*, at 6.

- 9 While SeaTac Shuttle is correct that the Commission has found under certain facts that door-to-door service and scheduled service are distinct and not overlapping, that does not mean Shuttle Express has no right to protest this application.¹¹ Contrary to SeaTac Shuttle's assertion, WAC 480-30-116(2) provides that an existing auto transportation company certificate holder may file a protest to an application published in the application docket. The Commission's rule makes no mention of the necessity for overlapping services to justify the protest's validity.
- 10 The case SeaTac Shuttle references involved two applicants, both of whom applied for an extension of authority to operate in the same geographic area.¹² In that case, the Commission held that the services applied for by each were not overlapping, but the Commission did not dismiss the protests of each against the other's application.¹³ SeaTac Shuttle's argument that a door-to-door provider has no basis to protest an application for scheduled service is unpersuasive.

MEMORANDUM

- 11 The fundamental standard governing this application is contained in RCW 81.68.040:

An auto transportation company shall not operate for the transportation of persons and their baggage for compensation between fixed termini or over a regular route in this state, without first having obtained from the [C]ommission under this chapter a certificate declaring that public convenience and necessity require such operation ... The [C]ommission may, after notice and an opportunity for a hearing, when the applicant requests a certificate to operate in a territory already served by a certificate holder under this chapter, only when the existing auto transportation company or companies serving such territory will not provide the same to the satisfaction of the [C]ommission, or when

¹¹*Id.*, at 22.

¹²Pennco Order 04, at fn 2.

¹³*Id.*

the existing auto transportation company does not object, and in all other cases with or without hearing, issue the certificate as prayed for; or for good cause shown, may refuse to issue same, or issue it for the partial exercise only of the privilege sought, and may attach to the exercise of the rights granted by the certificate to such terms and conditions as, in its judgment, the public convenience and necessity may require.¹⁴

12 The Commission must address, then, two questions with respect to the application:

Public convenience and necessity:

- a. Does the public convenience and necessity require the proposed service?
- b. Does an existing auto transportation company operating in the territory at issue provide service to the satisfaction of the Commission?¹⁵

PUBLIC CONVENIENCE AND NECESSITY

A. Public Need for Proposed Service

SeaTac Shuttle

13 SeaTac Shuttle presented the testimony of two witnesses on the issue of public need: John Solin, member and co-owner of SeaTac Shuttle; and Mary Kamb, a travel agent for the AAA office in Mount Vernon, Washington. Mr. Solin testified that SeaTac Shuttle filed its application requesting the authority to provide scheduled service from Whidbey Island to and from Paine Field and from Paine Field to and from SeaTac

¹⁴*In re Application of CWA, Inc., d/b/a Central Washington Airporter, For a Certificate of Public Convenience and Necessity* (hereinafter referred to as CWA Final Order), Docket TC-021402, Final Order, (April 14, 2003), at 2-3.

¹⁵CWA Final Order, at 3.

because the company foresees a public need.¹⁶ Mr. Solin stated that this public need is a result of two airlines that have proposed to serve the traveling public out of Paine Field sometime in 2009.¹⁷ He testified regarding a discussion with Dave Wagner, airport manager of Paine Field, who confirmed that both Horizon and Allegiant airlines desire to provide service out of Paine Field.¹⁸ Mr. Solin asserted that the airport authority receives approximately \$17 million in federal subsidies to support and maintain Paine Field.¹⁹ If the airport authority refuses access to a certificated air carrier, Paine Field loses its subsidy.²⁰ He opined that Mr. Wagner made it very clear to him that “they will do whatever it takes to accommodate the airlines ... versus the loss of their funding...”²¹

14 During direct examination, Mr. Solin was asked, “[n]ow in the future if airlines do start up there ... the necessity for this service as you see it is because?”²² Mr. Solin answered that the traveling public always has a need for scheduled service, such that people know when the shuttle leaves and when it will arrive.²³ He testified that SeaTac Shuttle’s application is not based on speculation that the airlines will sign on to provide service to the traveling public at Paine Field.²⁴

¹⁶Solin, II Tr. 24:22-25.

¹⁷Solin, II Tr. 25:18-26:4.

¹⁸Solin, II Tr. 40:24-41:2.

¹⁹Solin, II Tr. 154:23-155:5.

²⁰Solin, II Tr. 155:6-11.

²¹Solin, II Tr. 156:5-7.

²²Lauver, II Tr. 25:18-20.

²³Solin, II Tr. 25:21-23.

²⁴Solin, II Tr. 42:12.

15 However, on cross-examination, Mr. Solin clarified that currently no airline is providing service out of Paine Field, and he is not certain when such service may commence or even if it will commence at all.²⁵ He testified, however, that had SeaTac Shuttle waited until there was an absolute provable and quantifiable necessity for scheduled service out of Paine Field, the company would be operating approximately seven or eight months behind the airlines, and no one would be able to provide scheduled service to the airport.²⁶

16 The only other witness to address the public need for the proposed service,²⁷ Ms. Kamb, testified that her AAA office serves a big portion of the AAA members on Whidbey Island.²⁸ She makes airport shuttle reservations for her clients.²⁹ With regard to the time frame when passengers may need transportation to and from the Paine Field airport, Ms. Kamb stated that:

Well, I've heard that Allegiant and Horizon are going to try to operate service. I believe they're talking anywhere from this October on. I'm not sure if it's finalized yet, but I think that's what they're working on.³⁰

²⁵Solin, II Tr. 41:3-7 and 42:12-16. Mr. Solin pointed out that the regulatory lag time for the Commission to process an application for an extension of authority requires that SeaTac Shuttle apply for the authority in advance of the airlines providing service out of Paine Field at which time there would be an existing public need for transportation to and from the airport. *Id.*, at 44:1-10.

²⁶Solin, II Tr. 53:7-14:

Mr. Lauver: And so if you waited until such time as there was some absolute provable quantifiable necessity for this rather than an informed business move and plan, you would be –
Mr. Solin: It would be again seven or eight months behind the start of the airline service, so there would be seven or eight months when no one would be able to provide scheduled service from Paine Field.

²⁷Mr. Lauver did not testify specifically on the topic of the public need for applicant's proposed service.

²⁸Kamb, II Tr. 72:22-73:1.

²⁹*Id.*, II Tr. 72:22-25 and 73:8-15.

³⁰*Id.*, II Tr. 75:15-19.

- 17 Ms. Kamb further stated that a public need would exist for scheduled service if the airlines operate out of Paine Field.³¹ She indicated that, in her opinion, there was a need for both scheduled service and door-to-door service, as provided by Shuttle Express, since “it [is] really going to be important to offer both options.”³²
- 18 SeaTac Shuttle presented exhibit BR-2, a copy of an interview from the March 2009 issue of *Snohomish Business Journal*. The interview with Aaron Reardon, Snohomish County Executive, relates to the possibility of airline service coming to Paine Field.³³ Mr. Reardon describes his qualms with having airline service operate out of Paine Field.³⁴ In fact, the interviewer insinuates that Mr. Reardon is actively working to stall the airport project.³⁵ Mr. Reardon argues that “my philosophy on the airport is that air service will be necessary sometime in the future but because it wasn’t planned for I’m not comfortable with it.”³⁶
- 19 In addressing the suggestion that public need for the requested authority is speculative, SeaTac Shuttle stated that all business is speculative and this is not a subject for the Commission’s review.³⁷ SeaTac Shuttle further asserted that Ms. Kamb’s testimony showed that scheduled service is preferred by some passengers, and she could not foresee a disadvantage to having the service available to her AAA clients.³⁸

³¹*Id.*, II Tr. 75:22-76:9.

³²*Id.*, II Tr. 77:3-12. While Ms. Kamb’s statement of public need for both service options appears ambiguous as to whether she is referring to the public need pre- or post-airline involvement at Paine Field, her words “going to be important” points to a future need that may occur should the airlines commence service as planned.

³³BR-2, at 2.

³⁴*Id.*

³⁵*Id.*

³⁶*Id.*

³⁷SeaTac Shuttle’s Brief, at 5 and 18.

³⁸*Id.*, at 21-22.

Shuttle Express

- 20 John Rowley, General Manager and Chief Operating Officer for Shuttle Express, testified that there is no demand for service out of Paine Field, and as such, Shuttle Express is providing sufficient service to that area under its certificated authority.³⁹ Mr. Rowley stated that, should the airlines operate out of Paine Field, Shuttle Express will apply for the authority to address the potential need for scheduled service.⁴⁰
- 21 Jimmy Sherrell, owner and President of Shuttle Express, stated in response to questioning from the ALJ, that the only passengers who would currently request transport out of Paine Field are people who work there.⁴¹ Mr. Sherrell argued that there isn't any traffic in Paine Field but there is some traffic in the surrounding area and at nearby hotels.⁴² Shuttle Express provided an exhibit, BR-1, which is a service matrix showing that the company did not pick up any passengers at Paine Field from January 2008 to May 2009.⁴³ In response to BR-1 Shuttle Express asserts that it provided service to 1,931 passengers at the hotels within a 1-mile radius of the airport during the same time frame.⁴⁴
- 22 **Commission discussion/decision.** Pursuant to WAC 480-30-126(2), the Commission must determine that a public need exists for the proposed service before granting an application for an extension of authority. Public need is typically shown by the presentation of live witnesses.⁴⁵ The applicant must support its application with

³⁹Rowley, II Tr. 152:23-24 and 93:11-14.

⁴⁰*Id.*, II Tr. 93:8-10 and 15-17.

⁴¹Sherrell, II Tr. 140:4-6.

⁴²*Id.*, II Tr. 140:16-17.

⁴³BR-1, at 1.

⁴⁴BR-1, at 3.

⁴⁵Pennco Order 04, at 7.

independent witnesses who actually require the service or are knowledgeable about the need for service in the territory in which the applicant seeks authority.⁴⁶

23 The Commission will not accept as support an applicant's own statements that its proposed service is needed by the public.⁴⁷ The Commission has historically disregarded such testimony and viewed it as self-serving.⁴⁸ Furthermore, for an applicant to establish a prima facie case for public need the evidence presented by the applicant must relate to a period of time within one year of the application.⁴⁹

24 In many cases, an applicant will present the testimony of residential or business travelers who are inconvenienced by the existing carrier's service or who prefer not to drive themselves to the airport and who affirmatively state that they would use the applicant's service if its request were granted. SeaTac Shuttle has presented no such evidence in this proceeding. One of SeaTac Shuttle's two witnesses presenting testimony relating to the public need issue is the company's co-owner, Mr. Solin. As co-owner of SeaTac Shuttle he cannot be viewed as an independent witness, and the testimony he offers with regard to the need of the traveling public for the proposed service is self-serving.⁵⁰

⁴⁶WAC 480-30-136(3)(g)(ii).

⁴⁷WAC 480-30-136(3)(g)(i).

⁴⁸*In re Application of SeaTac Shuttle, LLC, d/b/a SeaTac Shuttle, For a Certificate of Public Convenience and Necessity to Operate Motor Vehicles in Furnishing Passenger and Express Service as an Auto Transportation Company* (hereinafter referred to as SeaTac Order 02), Docket TC-030489, Order No. 02, (September 8, 2003), at 21 and *In re Application of Sharyn Pearson & Linda Zepp d/b/a Centralia-SeaTac Airport Express, for an extension of their Certificate No. C-993 to Operate Motor Vehicles in Furnishing Passenger and Express Service as an Auto Transportation Company* (hereinafter referred to as Centralia-SeaTac Order), Hearing No. D-76533, Order M.V.C. No. 2057, (June 24, 1994), at 4.

⁴⁹*Id.*, at 4.

⁵⁰Curiously, SeaTac Shuttle has presented evidence of need before the Commission with the use of independent witnesses in the past. In Docket TC-030489, SeaTac Shuttle introduced the testimony of nine public witnesses regarding the present needs of the traveling public. So the requirement of independent witnesses is not foreign to the company. *See*, SeaTac Order 02.

25 The remaining SeaTac Shuttle witness, Ms. Kamb, is a travel agent with the Mount Vernon, Washington, AAA office. The Commission has previously accepted the testimony of a travel agent on the issue of public need when the travel agent is responsible for securing travel arrangements for her clients including airporter bus services.⁵¹ Ms. Kamb testified that she does indeed make airport shuttle reservations for her clients. As a result, her testimony is independent of the applicant and is suitable for consideration by the Commission on the subject of public need.

26 That being said, Ms. Kamb's testimony on the public's need for additional shuttle service to Paine Field airport is based entirely upon the supposition that two airlines will eventually operate out of Paine Field and that their prospective passengers will need transportation to and from the airport. Ms. Kamb's best guess, based on what she has heard,⁵² is that the airlines may operate out of Paine Field by October of 2009, at the earliest. She indicated very generally that her clients like to have choices. However, she did not testify that her clients have a current, *bona fide* need for scheduled shuttle service to and from Paine Field that is not being met.

27 SeaTac Shuttle incorrectly opined in its brief that the speculative nature of the airport's future is not a concern of the Commission. It is the Commission's responsibility to determine whether a public need for the service proposed exists, and the Commission has denied applications when the evidence of public need was found deficient.⁵³ Speculative evidence of public need has resulted in the denial of an application even when the service requested was not protested.⁵⁴ In one such

⁵¹*In re Application of SeaTac Shuttle, LLC, d/b/a SeaTac Shuttle, For a Certificate of Public Convenience and Necessity to Operate Motor Vehicles in Furnishing Passenger and Express Service as an Auto Transportation Company* (hereinafter referred to as SeaTac Order 03), Docket TC-030489, Order 03, (November 26, 2003), ¶ 39.

⁵²In her testimony, Ms. Kamb did not attribute the information she received to any particular source so the Commission has no idea where it came from.

⁵³See, *In re Application of Lloyd's Connection, Inc., d/b/a Airport Connection Airporter for a Certificate of Public Convenience and Necessity to Operate Motor Vehicles in Furnishing Passenger and Express Service as an Auto Transportation Company*, Order M.V.C. 1864, (May 11, 1990); CWA Final Order, ¶ 33; and Pennco Order 04, ¶ 40.

⁵⁴*In re Application of Pacific Northwest Transportation Services, Inc., d/b/a Capital Airporter-Tours-Charters for an extension of Certificate of Public Convenience and Necessity No. 862 to*

Commission decision, the applicant presented the testimony of one commuter whose needs were currently met by a van pool arrangement but who would have preferred a set ticket price for service rather than cost sharing.⁵⁵ This testimony was deemed speculative and unpersuasive by the Commission.

28 In this case, SeaTac Shuttle has admitted plainly that the company is requesting an extension of its authority not based on a quantifiable public need but based on a business plan that speculates that airlines will operate out of Paine Field sometime in the future. SeaTac Shuttle presented no conclusive evidence of when, or even if, the airlines will provide service to Paine Field. Further, the company's response to BR-2 raised more doubt than certainty as to any future public need for transportation to and from the airport.

29 In addition, as stated previously, evidence of public need must relate to a time frame within one year of the filed application in order to be deemed relevant. Based on the minimal evidence presented by the applicant, there continues to be the distinct possibility that the airlines will not come to Paine Field at all, much less by January of 2010, one year from the filing date of the application. The Commission finds that SeaTac Shuttle has not met its burden of proof that the public need requires the service requested.

B. Existing Carrier Serving to the Satisfaction of the Commission

SeaTac Shuttle

30 Mr. Solin argued that Shuttle Express is not currently providing service to the satisfaction of the Commission.⁵⁶ He asserted that the services Shuttle Express

Operate Motor Vehicles in Furnishing Passenger and Express Service Between Points Hereinafter Listed, Order M.V.C. No 1444, (May 16, 1984), at 4.

⁵⁵*Id.*

⁵⁶Solin, II Tr. 25:4-8. Shuttle Express' Certificate No. C-975 authorizes the company to provide passenger and express airporter service "[b]etween [SeaTac], Boeing Field, Renton Airport and Paine Field and points within a 25 mile radius of these airports, excluding points in Kitsap and Pierce Counties." Shuttle Express' Certificate No. C-975, at 2.

purports to provide in its tariff do not correspond to the services the company actually provides. For example, he attempted to book scheduled service⁵⁷ with Shuttle Express that would take him from the Everett Holiday Inn to SeaTac, since the service is listed in Shuttle Express' tariff.⁵⁸ Mr. Solin testified that he was told by a Shuttle Express employee that he had to make a reservation and that he would then be booked on a shared ride van.⁵⁹ He verified this information with the Everett Holiday Inn and the Best Western-Cascadia, and both confirmed that he would need a reservation because Shuttle Express will only stop at the hotels when reservations had been made.⁶⁰ Mr. Solin stated that the Commission requires that a carrier operating by reservation only needs to have this designation on its certificate.⁶¹ He further testified that the answers he received from a Shuttle Express reservationist and the two hotels are inconsistent with the scheduled services that are referenced in Shuttle Express' tariff.⁶²

31 Mr. Lauver referenced inquiries he made at the Comfort Inn in South Everett and the Hampton Inn in Langley, two hotels specifically listed in Shuttle Express' tariff as not requiring reservations, to see when Shuttle Express would be stopping at the hotels for its scheduled runs.⁶³ According to Mr. Lauver, he was told at both locations that Shuttle Express operated out of the hotels by reservation only.⁶⁴

⁵⁷Scheduled service is when an auto transportation company provides passenger service at specified arrival and/or departure times at points on a route. WAC 480-30-036.

⁵⁸Solin, II Tr. 30:1-14.

⁵⁹*Id.*, Tr. 30:15-31:4.

⁶⁰*Id.*, Tr. 32:18-33:20.

⁶¹*Id.*, Tr. 54:20-25.

⁶²*Id.*, Tr. 34:10-15. See Exhibit JS-3, 3rd Revised Page 3b-1.

⁶³Lauver, II Tr. 63:4-19.

⁶⁴*Id.*, II Tr. 63:21-64:7.

32 SeaTac Shuttle alleged in its brief that Shuttle Express lists stops on its tariff for which the company does not provide service, and it likewise stops at locations not listed in its tariff.⁶⁵ SeaTac Shuttle also claimed that Shuttle Express does not exhibit its time schedule and rates aboard its vehicles for passengers.⁶⁶ For the foregoing reasons, Shuttle Express posits SeaTac Shuttle does not provide service to the satisfaction of the Commission in the territory requested by SeaTac Shuttle.⁶⁷

Shuttle Express

33 Mr. Rowley testified that Shuttle Express does provide door-to-door service from Paine Field, and not scheduled service.⁶⁸ He added that, if scheduled service were needed out of Paine Field, Shuttle Express would apply for that authority.⁶⁹ Mr. Rowley asserted that Shuttle Express' service is sufficient to meet the current public demand.⁷⁰

34 During cross examination, Mr. Rowley admitted that Shuttle Express does not carry a separate time schedule for each of the routes served by the vehicle in all of its passenger vans.⁷¹ Mr. Rowley also acknowledged that Shuttle Express does not

⁶⁵SeaTac Shuttle's post-hearing brief, at 13.

⁶⁶*Id.* According to SeaTac Shuttle, protestant's certificate requires that it conduct its service operations in vehicles whose seating capacity is 7 passengers or less. However, this allegation was not fully developed by the applicant given Shuttle Express' contention that its acquisition of multiple certificates allows it to utilize higher capacity vehicles. SeaTac Shuttle concluded examining Mr. Rowley by drawing the connection between the period when Shuttle Express acquired Certificate C-859 and when the protestant began using larger capacity vehicles. The applicant did not pursue this avenue of questioning further.

⁶⁷*Id.*, at 15.

⁶⁸Rowley, II Tr. 101:2-18. Despite Mr. Rowley's apparent confusion regarding the difference between door-to-door service and scheduled service, he did admit several times during the evidentiary hearing that Shuttle Express provides door-to-door service in the Paine Field area. See, Rowley, II Tr. 102:9-11; 107:20-21; and 108:15-22.

⁶⁹*Id.*, Tr. 93:8-10.

⁷⁰*Id.*, Tr. 91:1-4.

⁷¹*Id.*, Tr 123:2-10.

provide service along all points listed in its time schedule on file with the Commission.⁷²

35 Shuttle Express argued in its brief that both SeaTac Shuttle and Ms. Kamb commended and praised Shuttle Express' service.⁷³ Shuttle Express asserted that its response to exhibit BR-1 demonstrates that the company is providing sufficient service to the Paine Field area.⁷⁴ The company emphasized that SeaTac Shuttle has not provided any evidence that the public is not satisfied with Shuttle Express' service.⁷⁵

36 **Commission discussion/decision.** Pursuant to WAC 480-30-136(4), if an applicant requests an extension of authority for a territory already served by another certificate holder, the applicant must show that the existing transportation company or companies will not provide service in that territory to the satisfaction of the Commission. Failure to meet the real needs of travelers is a sufficient basis for finding that a carrier has failed to provide service to the Commission's satisfaction under RCW 81.68.040.⁷⁶

37 The requirement that the existing carrier meet the real needs of passengers in its service territory has been interpreted as providing convenient, direct, and timely service to travelers.⁷⁷ SeaTac Shuttle has not presented evidence that Shuttle Express' services have caused passengers delay or inconvenience or evidence that the routes Shuttle Express operates are circuitous and not direct, all of which would speak to inadequacy of service. In fact, two SeaTac Shuttle witnesses, Mr. Lauver and Ms. Kamb, praised Shuttle Express for the service it provides the public. The

⁷²*Id.*, Tr. 123:16-22.

⁷³Shuttle Express' Brief, at 4-5.

⁷⁴*Id.*, at 7.

⁷⁵*Ibid.*

⁷⁶CWA Final Order, at 9.

⁷⁷*Id.*, at 8 and Centralia-SeaTac Order, at 3-4.

Commission finds that Shuttle Express is providing service to the satisfaction of the Commission.

- 38 Concerning the allegations raised regarding Shuttle Express' compliance with the Commission's rules and regulations, the company is reminded that WAC 480-30-276 requires that auto transportation companies abide by the tariffs and time schedules on file with the Commission and that WAC 480-30-286 directs carriers to post in each vehicle a copy of the schedule and fares for each route served by that vehicle. Commission Staff may wish to investigate these claims further.

GRAY LINE STIPULATION

- 39 The stipulation between SeaTac Shuttle and Gray Line restricts SeaTac Shuttle's requested authority such that no passengers would be transported between points in Seattle and the Seattle Tacoma International Airport. As the Commission denies SeaTac Shuttle's application for an extension of authority, the stipulation is moot and will not be addressed herein.

FINDINGS OF FACT

- 40 Having discussed above in detail the evidence received in this proceeding concerning all material matters, and having stated findings and conclusions upon issues in dispute among the parties and the reasons therefore, the Commission now makes and enters the following summary findings of fact, incorporating by reference pertinent portions of the preceding detailed findings:
- 41 (1) On January 16, 2009, SeaTac Shuttle, LLC, d/b/a Whidbey-SeaTac Shuttle filed an application with the Commission requesting an extension of its authority under Certificate No. C-1077
- 42 (2) On February 17, 2009, Shuttle Express, Inc., d/b/a Shuttle Express, filed a protest to the application.

- 43 (3) On February 23, 2009, Evergreen Trails, Inc., d/b/a Gray Line of Seattle, filed a protest to the Application.
- 44 (4) The public need does not exist for the service requested by SeaTac Shuttle.
- 45 (5) Shuttle Express is providing service to satisfy the public need in the Paine Field area. Further, SeaTac Shuttle has failed to present evidence that Shuttle Express' service is inconvenient, indirect, and untimely.

CONCLUSIONS OF LAW

- 46 Having discussed above all matters material to this decision, and having stated detailed findings, conclusions, and the reasons therefore, the Commission now makes the following summary conclusions of law incorporating by reference pertinent portions of the preceding detailed conclusions:
- 47 (1) The Washington Utilities and Transportation Commission has jurisdiction over the parties to and the subject matter of this application.
- 48 (2) SeaTac Shuttle has not shown a public need for its proposed service.
- 49 (3) SeaTac Shuttle has failed to prove that Shuttle Express is not providing convenient, direct, and expedient service to the traveling public.
- 50 (4) The public convenience and necessity do not require that the applicant be granted an extension of authority to operate as an auto transportation company in the requested service territory.

ORDER

THE COMMISSION ORDERS:

- 51 (1) The application of SeaTac Shuttle, LLC, d/b/a Whidbey-SeaTac Shuttle is denied.

Dated at Olympia, Washington, and effective August 12, 2009.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARGUERITE E. FRIEDLANDER
Administrative Law Judge

NOTICE TO THE PARTIES

This is an Initial Order. The action proposed in this Initial Order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within (10) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such answer.

RCW 80.01.060(3) provides that an initial order will become final without further Commission action if no party seeks administrative review of the initial order and if the Commission fails to exercise administrative review on its own motion.

One copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An Original and four (4) copies of any Petition or Answer must be filed by mail delivery to:

Attn: David W. Danner, Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, Washington 98504-7250