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BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

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2

3 In re Application TC-111446 of) DOCKET TC-111446
4 SHUTTLE EXPRESS, INC.) (consolidated)
5) Pages 195-235

6 For Extension of Authority under)
7 Certificate No. C-975, For a Certificate of)
8 Public Convenience and Necessity to Operate)
9 Motor Vehicles in Furnishing Passenger and)
10 Express Service as an Auto Transportation)
11 Company)

12)
13 In re Application TC-111643 of) DOCKET TC-111643
14) (consolidated)
15 EXCALIBUR LIMOUSINE LLC) Pages 195-235
16 d/b/a SEATTLE GREEN LIMO)

17 For a Certificate of Public Convenience and)
18 Necessity to Operate Motor Vehicles in)
19 Furnishing Passenger and Express Service as)
20 an Auto Transportation Company)

21)
22 In re Application TC-111619 of) Docket TC-111619
23) (consolidated)
24 PACIFIC NORTHWEST TRANSPORTATION SERVICES,) Pages 195-235
25 INC. d/b/a CAPITAL AEROPORTER;)
AIRPORT SHUTTLE,)

26 For Extension of Authority under)
27 Certificate No. C-862, For a Certificate of)
28 Public Convenience and Necessity to Operate)
29 Motor Vehicles in Furnishing Passenger and)
30 Express Service as an Auto Transportation)
31 Company)

EVIDENTIARY HEARING, VOLUME III
Pages 195-235
ADMINISTRATIVE LAW JUDGE MARTIN LOVINGER

10:01 A.M.
JANUARY 31, 2012

Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive Southwest

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A P P E A R A N C E S

2 ADMINISTRATIVE LAW JUDGE:

3 MARTIN LOVINGER
4 Washington Utilities and
5 Transportation Commission
6 1300 South Evergreen Park Drive SW
7 P.O. Box 47250
8 Olympia, Washington 98504
9 360.664.1163

6

7 FOR WASHINGTON UTILITIES AND
8 TRANSPORTATION COMMISSION:

9 JENNIFER CAMERON-RULKOWSKI
10 Assistant Attorney General
11 1400 South Evergreen Park Drive
12 Southwest
13 P.O. Box 40128
14 Olympia, Washington 98504
15 360.664.1186
16 jcameron@utc.wa.gov

10

11

12 FOR SHUTTLE EXPRESS, INC.:

13 BROOKS E. HARLOW
14 Lukas, Nace, Gutierrez & Sachs
15 8300 Greensboro Drive
16 Suite 1200
17 McLean, Virginia 22102
18 206.650.8206
19 bharlow@fcclaw.com

16

17 FOR CAPITAL AEROPORTER; AIRPORT SHUTTLE:

18 JAMES N. FRICKE
19 President/CEO
20 P.O. Box 2163
21 Olympia, Washington 98507
22 360.292.7686
23 jimf@capair.com

20

21 REPORTED BY: SHELBY KAY K. FUKUSHIMA, CCR #2028

22 Buell Realtime Reporting, LLC

23 1411 Fourth Avenue, Suite 820

24 Seattle, Washington 98101

25 206.287.9066 | Seattle

360.534.9066 | Olympia

800.846.6989 | National

www.buellrealtime.com

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OLYMPIA, WASHINGTON, JANUARY 31, 2012

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10:01 A.M.

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P R O C E E D I N G S

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JUDGE LOVINGER: Good morning. It is about 10:01, and this is the time set for the resumption of the hearing in Dockets TC-111446, Docket TC-111643, and Docket TC-111619.

Are the parties -- is everyone here ready to resume?

MR. HARLOW: Yes. Good morning, Your Honor.

JUDGE LOVINGER: Good morning. Good morning.

We left off yesterday with -- that Mr. Fricke was going to bring in some more witnesses today, or at least one. I'm not sure if there's more than one. And unless there's anything preliminary to that, we'll take that up in just a moment.

I did want to remind the parties that we had discussed the possibility of doing oral argument after the evidence, and I would also want to remind the parties that the main evidence that we're looking for here -- or the main arguments that we're looking for here would be those that go to the areas where there's overlap in the applications.

You know, we -- while there are a lot of standards that people are looking for, I think there's been a fairly good showing of a willingness and readiness to perform. I think at this point, what we need to really be looking at is how do we do

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1 those areas where there's overlap in the applications.

2 All right. Mr. Fricke, it's said that -- I think
3 your corporate representative has indicated that it's going to
4 be a couple more minutes before you have your witness; is that
5 correct?

6 MR. FRICKE: Yes. We had asked her to make it about
7 five after just so that we get the preliminary started here and
8 so --

9 JUDGE LOVINGER: Okay.

10 MR. FRICKE: -- in a couple more minutes, she should
11 call.

12 JUDGE LOVINGER: Does anybody have anything else
13 preliminary before we -- since we have a couple of minutes?

14 Anybody heard any funny jokes recently? No. I'm
15 kidding.

16 Let's go off the record for a couple of minutes.

17 (A break was taken from 10:03 a.m.
18 to 10:08 a.m.)

19 JUDGE LOVINGER: Let's go on the record.

20 Mr. Fricke?

21 MR. FRICKE: Your Honor, our witness problems here of
22 trying to communicate with them even by phone is that they're
23 travel agents, and the particular one that we thought we had
24 lined up here just was advised by her boss she had to go on a
25 webinar. But she happens to be the only person in her office

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1 this day as well, and the alternative, their Tacoma office, we
2 haven't been able to establish communication with this morning.
3 I don't know how long the webinar is. She didn't say that, so I
4 don't know whether we're really going to be able to do it in a
5 short time here or not in terms of establishing communication.

6 JUDGE LOVINGER: Are you making a request?

7 MR. FRICKE: Well, I guess I would like to request a
8 little extra time here, you know, I suppose within the hour,
9 because there may be even a possible third one within the hour
10 that we found out after yesterday, in communication after we
11 ended, that she had an appointment until eleven.

12 JUDGE LOVINGER: I'm open for input from any of the
13 other parties.

14 MS. CAMERON-RULKOWSKI: Your Honor, Staff would not
15 have any objection to recessing and coming back a little bit
16 later. I don't think that Staff's presentation will take longer
17 than five or ten minutes.

18 JUDGE LOVINGER: Mr. Harlow?

19 MR. HARLOW: Yeah. We kind of anticipated this
20 yesterday. What's reasonable is -- the more it gets turned.
21 But it's a long drive north and a long drive back south.

22 Their witnesses, if they don't show, we do have a
23 hard stop at noon, I understand. I think we ought to allow
24 maybe as much as 45 minutes or even an hour for argument.

25 So do we think 10:30 would -- would be reasonable to

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1 make sure that we have time for the rest of the witnesses and
2 oral argument?

3 MR. FRICKE: I don't know whether we're actually
4 going to be able to reach any one of the three necessarily in
5 the next 20 minutes. I know the one I spoke to yesterday
6 afterwards here in person had an appointment scheduled till
7 eleven o'clock.

8 I don't know how long this webinar that just got
9 called at between the time just before the hearing and right
10 after we just started all of a sudden was dropped on her lap,
11 that that was the priority she had to deal with.

12 MR. HARLOW: I mean, do we really need another
13 witness to establish need for Thurston, Lewis, Mason, Grays
14 Harbor, and Pierce Counties, or are we there?

15 JUDGE LOVINGER: I don't think that's what you were
16 getting a witness for, is it, Mr. Fricke?

17 MR. FRICKE: Yes. It was in additional witness in
18 relation to everything outside of the airport to the piers.

19 JUDGE LOVINGER: Was this for a Rainier and...

20 MR. FRICKE: Grays Harbor -- well, no. This was for
21 Grays Harbor -- no. This -- I'm sorry.

22 This is for between points in Grays Harbor, Lewis,
23 Mason, Thurston, Pierce, and King Counties to the piers. We had
24 the one in person, Irene Emmens, yesterday as the...

25 JUDGE LOVINGER: Right.

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1 (Mr. John Fricke confers with Mr. Fricke.)

2 MR. HARLOW: It's certainly not our contention
3 there's not a need for the service from the counties south of
4 King.

5 JUDGE LOVINGER: Commission Staff, you're the ones
6 who raised the point that it couldn't be by stipulation.

7 And do you feel that there's been a sufficient level
8 of testimony here now that it goes beyond stipulation on the
9 issue of whether or not there's a need for airport shuttle
10 services to Grays Harbor and Lewis County and points in between?

11 MS. CAMERON-RULKOWSKI: I think I misunderstood
12 yesterday what exactly this witness was going to be offered for,
13 and I'm trying to recall now what the record was yesterday from
14 the other travel agency owner.

15 But if that was also showing a need from points
16 within the -- those southern counties to the piers, then that
17 would seem sufficient to Staff.

18 MR. FRICKE: Okay.

19 JUDGE LOVINGER: I think --

20 MR. FRICKE: And my concern about Staff -- about the
21 Staff's advice here, or concern was whether it was how one
22 interpreted the establishing of need in the entire region that
23 is being requested as to whether that witness who was here in
24 person was sufficient testimony to establish a need or the need.

25 JUDGE LOVINGER: I will tell you what I'm going to

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1 do. I think that there's some indication here from the parties
2 that they're not arguing that point with your application. I'm
3 going to put us at recess until 10:30 to give you a chance to
4 communicate with your various witnesses to see if you can line
5 somebody up.

6 Unfortunately, as Mr. Harlow pointed out, we do have
7 a time when we have to be out of this room.

8 MR. FRICKE: I understand.

9 JUDGE LOVINGER: I think people have come down here
10 prepared for argument. You've certainly had 60 days in which to
11 line up your witness.

12 MR. FRICKE: I understand.

13 JUDGE LOVINGER: While I understand that they're free
14 people and they have busy schedules, the fact is, is that at
15 some point in that, you need to get witnesses who can actually
16 testify.

17 MR. FRICKE: Okay.

18 JUDGE LOVINGER: So let's break until 10:30 and give
19 you a chance to try and line up your witnesses.

20 MR. FRICKE: Okay.

21 JUDGE LOVINGER: And we'll see what we do at that
22 point. I would come back at that point prepared to resume. I'm
23 assuming Mr. Gomez will be testifying and then be prepared after
24 that to follow with oral argument.

25 MR. FRICKE: Okay.

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1 JUDGE LOVINGER: Thank you.

2 MR. HARLOW: Thank you, Your Honor.

3 MR. FRICKE: Thank you.

4 MS. CAMERON-RULKOWSKI: Thank you, Your Honor.

5 (A break was taken from 10:16 a.m.

6 to 10:30 a.m.)

7 JUDGE LOVINGER: It's appears to be 10:30. We're
8 back in session.

9 Mr. Fricke, have you been able to resolve your issue,
10 or ready to call a witness?

11 MR. FRICKE: Your Honor, we have not been able to
12 communicate with them either due to the fact that they're with
13 clients, or getting ready for an eminent cruise event for their
14 customers.

15 We have asked when we were off the record of the
16 possibility of a Staff witness related to the restriction
17 removal to Longmire, Ashford, et cetera, to establish that that
18 was a restriction, because it was another company and
19 certificate in operation at that time.

20 And we were asking for a Staff witness to simply
21 verify -- or recall a Staff witness to verify the fact that that
22 certificate no longer exists.

23 JUDGE LOVINGER: Okay. And you are going to be
24 calling that witness?

25 MR. FRICKE: That's -- yes. We would like to call

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1 Penny Ingram of the Staff to verify that that certificate no
2 longer exists.

3 JUDGE LOVINGER: Does anybody object?

4 MS. CAMERON-RULKOWSKI: Your Honor, Staff does not
5 object to recalling Ms. Ingram for that limited purpose.

6 JUDGE LOVINGER: Mr. Harlow?

7 MR. HARLOW: No objection.

8 JUDGE LOVINGER: Thank you. Is Ms. Ingram here?

9 MS. CAMERON-RULKOWSKI: Apparently not, Your Honor.

10 JUDGE LOVINGER: Okay.

11 MS. CAMERON-RULKOWSKI: I believe she will be back.
12 I believe she's refreshing her memory on that issue, Your Honor.

13 JUDGE LOVINGER: Okay. Well, let's go off the record
14 again for a couple more minutes, please. Thank you.

15 (A break was taken from 10:31 a.m.

16 to 10:33 a.m.)

17 JUDGE LOVINGER: Let's go back on the record.

18 THE WITNESS: I'm glad I came back.

19 JUDGE LOVINGER: Ms. Ingram, you know you're still
20 under oath, right?

21 THE WITNESS: Yes.

22 JUDGE LOVINGER: Thank you.

23 Are we going to have Mr. Fricke do the questions
24 or...

25 MS. CAMERON-RULKOWSKI: Yes, Your Honor.

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1 JUDGE LOVINGER: Mr. Fricke?

2

3 D I R E C T E X A M I N A T I O N

4 BY MR. FRICKE:

5 Q. Ms. Ingram, can you verify that Rainier Shuttle and
6 the certificate that they held no longer operates nor does that
7 certificate exist?

8 A. Yes. Rainier Shuttle petitioned the Commission to
9 voluntarily cancel its certificate in Docket TC-082248.

10 Q. And under that certificate, they had provided
11 transportation between Sea-Tac Airport and what locations?

12 A. Unfortunately, I wasn't able to get a copy of their
13 certificate right now.

14 Q. Oh, okay.

15 MR. FRICKE: Those are the locations that we were
16 restricted because they were in operation at that time, Your
17 Honor, and those are the ones we're asking to be removed from
18 our -- from our certificate, which includes Longmire --

19 JUDGE LOVINGER: Well, Mr. Fricke, I really would
20 rather have testimony coming from sworn witnesses --

21 MR. FRICKE: Okay.

22 JUDGE LOVINGER: -- at this time.

23 ////

24 ////

25 ////

1

E X A M I N A T I O N

2 BY JUDGE LOVINGER:

3 Q. Ms. Ingram, is it your understanding that the
4 certificate covered the transportation -- shuttle transportation
5 between Rainier, Longmire and the airport and the cruise lines?

6 A. It's subject to check. I'd need to look at the
7 certificate. I don't have the certificate available for me
8 right at this moment.

9 Q. Okay. And so you don't know what the content -- at
10 all what the contents of Rainier's certificate was?

11 A. Not off the top of my head.

12 MS. CAMERON-RULKOWSKI: Your Honor, could I address
13 the witness?

14 JUDGE LOVINGER: Thank you.

15

16

C R O S S - E X A M I N A T I O N

17 BY MS. CAMERON-RULKOWSKI:

18 Q. Ms. Ingram, is it your understanding that the
19 territory, the expanded territory that Capital Aeroporter is
20 proposing to serve, which contains Elbe, Ashford, Longmire, and
21 Mount Rainier, that that currently is not served?

22 A. Yes.

23 Q. And up until the time that the transportation -- the
24 auto transportation company that was serving that territory --
25 that there -- that there was service from that territory to --

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1 to the airport and back?

2 Let me rephrase the question.

3 JUDGE LOVINGER: Thank you.

4 BY MS. CAMERON-RULKOWSKI:

5 Q. Do you happen to know approximately when the auto
6 transportation company that was serving that area ceased
7 service?

8 A. Yes. December 29, 2008, according to a Commission's
9 order that canceled their certificate.

10 Q. And do you have any knowledge as to whether any auto
11 transportation companies have been serving between these four
12 locations and Sea-Tac Airport since 2008?

13 A. No.

14 MS. CAMERON-RULKOWSKI: Thank you. I have no further
15 questions.

16 JUDGE LOVINGER: Thank you.

17 MR. HARLOW: No questions.

18 JUDGE LOVINGER: Any further questions, Mr. Fricke?

19 MR. FRICKE: No. Thank you, Your Honor.

20 JUDGE LOVINGER: You're excused. Thank you very
21 much.

22 Do you have any other witnesses, Mr. Fricke?

23 MR. FRICKE: I have no other witnesses at this time,
24 Your Honor.

25 JUDGE LOVINGER: Thank you.

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1 Commission Staff?

2 MS. CAMERON-RULKOWSKI: Thank you, Your Honor. I
3 would like to recall David Gomez at this time.

4 JUDGE LOVINGER: Mr. Gomez, you know you're still
5 under oath?

6 THE WITNESS: Yes, Your Honor.

7 JUDGE LOVINGER: Thank you.

8

9 D I R E C T E X A M I N A T I O N (Resumed)

10 BY MS. CAMERON-RULKOWSKI:

11 Q. Good morning, Mr. Gomez.

12 A. Good morning.

13 Q. Have you been listening to the testimony given during
14 the hearing yesterday and today?

15 A. Yes.

16 Q. Does any of the evidence from this hearing, or any of
17 Shuttle Express's regulatory history with the Commission, of
18 which you are aware, cause you concern about granting Shuttle
19 Express's requested extension of authority?

20 A. No.

21 Q. Does any of the evidence from this hearing, or any of
22 Capital Aeroporter's regulatory history with the Commission, of
23 which you are aware, cause you concern about whether Capital
24 Aeroporter is able to comply and about whether it has the
25 requisite knowledge, experience, and resources, and is fit and

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1 willing to provide the service extensions it proposes?

2 A. Can you repeat the question? I'm sorry. I want to
3 make sure I answer the right "yes" or "no."

4 Q. Certainly. Did you have any concern?

5 A. No.

6 MS. CAMERON-RULKOWSKI: Thank you. I have no further
7 questions for Mr. Gomez at this time.

8 JUDGE LOVINGER: Mr. Harlow?

9 MR. HARLOW: Thank you, Your Honor.

10

11 C R O S S - E X A M I N A T I O N

12 BY MR. HARLOW:

13 Q. Mr. Gomez, with reference to the testimony you just
14 gave, as well as your testimony yesterday, I just want to
15 clarify what I don't think I heard. I do not think I heard any
16 testimony from you on whether or not Shuttle Express is serving
17 between Sea-Tac Airport and the piers in downtown Seattle to the
18 satisfaction of the Commission.

19 Am I correct that you're not intending to address
20 that question?

21 MS. CAMERON-RULKOWSKI: I'd like to object. Part of
22 that question is a legal question, and so perhaps we could parse
23 that out, that question out a little bit more. And I think that
24 what you are trying to address is whether you have any concerns
25 about the -- about whether there are any service problems, that

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1 sort of issue.

2 MR. HARLOW: Let me put it this way, if I could, just
3 to clarify that.

4 JUDGE LOVINGER: Please.

5 BY MR. HARLOW:

6 Q. All right. My understanding is you're not intending
7 to give a professional opinion, not a legal opinion, but as a
8 regulator on that question, the question of satisfaction?

9 A. Would the question be whether one party is better
10 over the other?

11 Q. Yeah. I'm just not hearing that you've addressed
12 whether or not Shuttle Express is currently providing
13 satisfactory service between Sea-Tac and the piers.

14 MS. CAMERON-RULKOWSKI: Again, I'm going to object,
15 because it really is -- you're asking for -- you say that you're
16 asking for an expert opinion.

17 MR. HARLOW: No, no. I'm asking him to confirm that
18 he's not offering an opinion on that issue in this proceeding.

19 THE WITNESS: Staff has not offered an opinion as to
20 any particular segment of Shuttle Express's service, whether
21 it's being performed in a satisfactory fashion or not.

22 In general, the information that we have as a
23 regulator is a matter of our internal records and proceedings
24 that we've had in the past, and to that extent, Staff is not
25 aware in general that Shuttle Express is not performing

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1 consistent with its authority or with the terms and conditions
2 of service as it's contained in its tariff.

3 MR. HARLOW: Thank you, Mr. Gomez. That's all I have
4 for you.

5 JUDGE LOVINGER: Mr. Fricke, do you have any
6 questions?

7 MR. FRICKE: I have no questions.

8 JUDGE LOVINGER: Anything further, Counsel?

9 MS. CAMERON-RULKOWSKI: No redirect. Thank you.

10 JUDGE LOVINGER: Mr. Gomez, you're excused.
11 Are there any other witnesses at this time for any
12 party?

13 MR. HARLOW: We have no rebuttal, Your Honor.

14 JUDGE LOVINGER: Okay. We will move into oral
15 argument. I like to give people a few minutes to prepare.

16 How much time do you think you would take before
17 you'd be ready to go?

18 MR. HARLOW: I'm ready.

19 MS. CAMERON-RULKOWSKI: I'm ready also, Your Honor.

20 MR. FRICKE: Ready.

21 JUDGE LOVINGER: Okay. Then we'll...

22 MR. HARLOW: If we could, Your Honor, off the record,
23 maybe discuss the order of argument briefly?

24 JUDGE LOVINGER: Okay. Can we please go off the
25 record?

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1 (Discussion off the record.)

2 JUDGE LOVINGER: Back on the record, please.

3 MS. CAMERON-RULKOWSKI: I have a very brief closing
4 statement for the Commission on behalf of Commission Staff.
5 Staff will not be providing a recommendation on the legal
6 questions, but I will go ahead and set them out.

7 As I had indicated at one point, Staff typically has
8 not picked winners in protested auto transportation application
9 cases. In this case, as in all cases, Staff has participated in
10 the proceeding in order to ensure a clear record, especially
11 because they were parties who were unrepresented by counsel.

12 Staff has fulfilled its task with respect to the
13 record, so I'll move to the setting out of the legal questions.

14 The applicable statute is RCW 81.68.040. Under this
15 law, an auto transportation company may not operate without
16 first obtaining a certificate from the Commission declaring that
17 public convenience and necessity require such operation.

18 Pursuant to Commission Rule, WAC 480-30-126, the
19 Commission determines whether an Applicant has the knowledge,
20 experience, and resources to conduct the proposed services;
21 whether an Applicant is fit, willing, and able to comply with
22 State law and the Commission rules in Chapter WAC 480-30
23 governing auto transportation providers; whether the public
24 convenience and necessity requires the proposed service; and
25 whether -- or rather -- and if an existing auto transportation

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1 company is already serving in a same territory proposed to be
2 served and protests the application, the Commission also
3 determines whether the existing certificate holder is providing
4 service to the satisfaction of the Commission. To make these
5 determinations, the Commission examines the criteria in WAC
6 480-30-136.

7 The requested authority that is really at issue in
8 this proceeding is Capital Aeroporter's request for expanded
9 authority to serve between the airport and the cruise terminals.
10 It is Staff's position that Shuttle Express currently holds this
11 authority, as does Evergreen Trails, and I thought I would take
12 a moment to point that out in the certificate.

13 I'm referring to Exhibit JR-4, which is Shuttle
14 Express's certificate, and Shuttle Express's authority to serve
15 between Sea-Tac Airport and the cruise terminals is on that
16 first page.

17 Shuttle Express is authorized to serve between
18 Sea-Tac and also between Sea-Tac and points within 15 miles
19 beyond the municipal line of Seattle. And in addition, Shuttle
20 Express is authorized to serve from the Sea-Tac -- from Sea-Tac
21 Airport and within the 25-mile radius of the airport. And both
22 of these expressions of authority would encompass the route
23 between Sea-Tac Airport and the cruise terminals.

24 From Staff's perspective, because both Shuttle
25 Express and Capital Aeroporter have provided service under the

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1 Commission's regulation for such a long period of time and
2 without consumer complaint, the legal issue at the heart of this
3 case is whether the territory between the airport and the cruise
4 terminals is already served, which question is part of the
5 analysis of whether Shuttle Express is providing service to the
6 satisfaction of the Commission within this territory.

7 And that concludes Staff's closing.

8 JUDGE LOVINGER: Thank you.

9 Mr. Harlow, we'll follow with you.

10 MR. HARLOW: Thank you, Your Honor.

11 I'm not going to cover the same ground as
12 Ms. Cameron-Rulkowski. I appreciate her analyzing the
13 certificate. Obviously, we agree Shuttle Express has the
14 authority to serve between Sea-Tac and the piers and is, indeed,
15 serving that authority.

16 The purpose of Shuttle Express's application in this
17 case is to expand its authority, an extension, if you will, and
18 it's to add all other points in King County, with the
19 carve-outs, the exceptions that are stated, and to the Seattle
20 piers. So, for example, the Bellevue hotels, residences in East
21 King County, any points that are regulated and not carved out.

22 There has been no protest to this request for
23 authority. No other carrier holds the authority, although we do
24 have a concurrent application by Capital Aeroporter, which I'll
25 address in a moment.

1 Accordingly, Shuttle Express only needs to present a
2 prima facie case that it is fit, willing, and able, and that its
3 proposed service is in the public convenience and necessity.

4 It bears, I think, looking closely at Capital
5 Aeroporter's described request for extension of its authority.
6 Shuttle Express has no interest in the removal of the
7 restrictions and takes no position on that.

8 In terms of service to the piers, Capital has applied
9 for Grays Harbor, Lewis, Mason, Thurston, Pierce, and King
10 County to the piers, but all via Sea-Tac Airport. So if their
11 authority were granted as applied for, all of their
12 transportation would have to go through Sea-Tac Airport.

13 And I think based on the limited evidence we have
14 seen, the main target market is for the points south of King
15 County via the airport to the piers. As to all of the counties
16 proposed to be served other than King, Shuttle Express has no
17 position one way or the other on whether that should be granted.

18 Shuttle Express has protested the application; that
19 Shuttle's concern is the request for authority to serve King
20 County, and, specifically, we protest the whole thing because,
21 you know, conceivably, operations could expand someday.
22 Although we don't think it wouldn't necessarily be a very
23 attractive service to serve Bellevue hotels via Sea-Tac to the
24 piers. It doesn't sound like direct. Nevertheless, our protest
25 goes to the entire county.

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1 And certainly we have shown that we have -- provide
2 satisfactory service, but I will address in rebuttal as we have
3 reserved, Mr. Fricke's argument as to why overlapping authority
4 should be granted between Sea-Tac and the piers.

5 So addressing simply at this point in time, the
6 Shuttle Express application is a very high-level overview. As
7 to fitness, Shuttle Express has shown that it carries over
8 650,000 passengers a year. Has an exemplary safety record.
9 Zero fatal accidents in over 20 years of operation. Clearly a
10 very modern and efficient operation. No complaints to Staff, no
11 concerns by Staff in this docket, and Shuttle Express has
12 specific experience serving Pier 66 and 91 from the airport,
13 which is within its existing authority. And as the evidence, I
14 think, made very clear, that pier operation is a very
15 complicated operation to serve because of the challenges of
16 space for ground transportation. Again, more on that later.

17 As to the need for the service, Ms. Wheeler from the
18 Bellevue Red Lion supported the need for both package services
19 that the hotel might sell, as well as walk-up passengers going
20 from the hotels to the piers.

21 Mr. Gudgel testified really as an expert in ground
22 transportation, as well as of his own personal experience, and
23 supported a need for bus service to the piers, to and from
24 hotels, as well as the direct service to residences in King
25 County.

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1 Mr. Groesbeck, who was a delight, I think one of the
2 most knowledgeable public witnesses I have ever seen and
3 certainly the most knowledgeable in this proceeding, provided
4 broad support for public need for a bus service throughout King
5 County. He gave examples of people asking for this service to
6 and from hotels and residences as opposed to having to take a
7 taxi. In short, the Shuttle Express application is unopposed,
8 well-supported, and should be granted.

9 Turning again briefly to the Capital Aeroporter
10 application, as I mentioned, our sole issue is with the King
11 County operations to the piers, and, specifically, the operation
12 that we're already providing. And we will hear what Mr. Fricke
13 has to say about the satisfactory nature of that service, and
14 we'll reserve further comment for rebuttal.

15 Thank you, Your Honor.

16 JUDGE LOVINGER: Before Mr. Fricke resumes, do you
17 mind if I ask you a question?

18 MR. HARLOW: Of course not.

19 JUDGE LOVINGER: So Shuttle Express is protesting the
20 portion of the application from Capital Aeroporter that requests
21 to be able to provide service from East King County to the
22 piers?

23 MR. HARLOW: Yes, Your Honor. And I'll get ahead of
24 myself, since you want to know.

25 The two public witnesses that Capital Aeroporter had

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1 first was Ms. Emmens. And according to my notes, she testified
2 to a need between Grays Harbor, Lewis, Mason, Thurston
3 Counties -- I can't remember if she did Pierce, but she did not
4 mention King County. I was obviously listening for that very
5 carefully. So she did not support a public need for Capital
6 Aeroporter's transportation from King County via the airport.

7 The second public witness they had was Ms. Fletcher,
8 who was with the Port of Seattle, and we will obviously take
9 issue with whether or not she provided support as a legal matter
10 for any King County transportation. But her testimony was
11 solely focused on the airport and her perceived need for --
12 well, I don't know if she characterized it as a need, but she
13 supported the request by Capital Aeroporter to be able to
14 provide service between the airport and the piers. She did not
15 support a request for any service beyond that one geographic
16 location of King County to the piers.

17 So we do not think there's any evidence in the record
18 to support a grant of authority throughout King County as it has
19 been applied for, even under the restriction that it has to run
20 through the airport.

21 JUDGE LOVINGER: All right. Thank you.

22 MR. HARLOW: You're welcome.

23 JUDGE LOVINGER: I wanted to make sure that that's
24 what you're saying.

25 Mr. Fricke?

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1 MR. FRICKE: Your Honor, Capital Aeroporter, in its
2 application here, has applied for three different pieces. One
3 was the removal of restrictions to points en route to Mount
4 Rainier on the basis that the restrictions were there at the
5 time -- or were put there at the time of its last extension
6 because of the fact that there was an operating company called
7 "Rainier Shuttle" at the time, that has been documented before
8 this proceeding no longer exists, neither the company, nor the
9 certificate.

10 Secondly, for areas between Thurston, Mason, Lewis
11 Grays Harbor, Pierce, and King Counties, all of that geographic
12 entity to the cruise ship piers via Sea-Tac Airport, we contend
13 that the witness, Ms. Emmens that we submitted here, established
14 that there was a need in a significant portion of that entire
15 regional area that is all contiguous.

16 Furthermore, because all of the requests would be via
17 Sea-Tac Airport, it was our understanding that Shuttle Express
18 wasn't really concerned about points within King County because
19 of that factor; that it would be via the airport, and it
20 certainly would not be practical in the northern part of the
21 county to bring those people to Sea-Tac Airport and then back to
22 the piers. So we certainly understand that. We are still
23 interested, particularly in the southern part of the county, and
24 are willing to reduce the King County part of it as to the area
25 south of SR 512 via 405 to SR 169 and southwest of 169, from a

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1 practical point of view, to route via the airport.

2 (Mr. John Fricke confers with Mr. Fricke.)

3 MR. FRICKE: 518. Did I say 512? I meant 518 in my
4 first reference there. That is from Burien through the southern
5 part of Tukwila, and then as you go from SR 169 toward Enumclaw,
6 then it would be southwest of that area in the southern part of
7 King County. We believe that we have established that there is
8 a need in that regional area.

9 To the matter of most direct concern, as indicated by
10 Shuttle Express, was -- or is providing cruise ship
11 transportation, you know, on an auto transportation or a
12 scheduled basis between Sea-Tac Airport and the waterfront,
13 Seattle Waterfront.

14 Specifically, our interest in becoming involved in
15 this was the fact that the transportation that was being
16 provided from the south end of the terminal, has become very
17 obscure in the change of ownership under the current owner of --
18 operating as Gray Line Tours. And Gray Line Tours, while they
19 may have authority there (1) did not protest our request, and is
20 provided under 81.68.040, the Commission can grant authority
21 if -- even in an existing territory if it is not objected to by
22 an existing company.

23 Now, Shuttle Express, who has protested our
24 application, we are asking for two things that are distinctively
25 different than Shuttle Express's service to and from the cruise

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1 ship piers: (1) is that it be only from where the cruise ship
2 departures are from the airport to the piers; and (2) that it
3 would be closed-door; therefore, express or nonstop service to
4 the waterfront.

5 Both features are distinctively different than what
6 Shuttle Express offers to the cruise ship-bound passengers, and
7 we believe that through our -- the testimony of our public
8 witness, Ms. Fletcher, from the Port of Seattle, that we
9 established that there is a need for a number of people who show
10 up at the south end, and I think -- the south end of the
11 terminal building as noted in Exhibit JF-5. You know, and
12 you'll see that by that diagram, there is a -- I'm sorry -- JF-3
13 that there is a significant difference -- distance for which
14 people may need to travel from Door 00, south of the lot area,
15 once they -- for those people who are not part of the chartered
16 groups that are pre-vouchered for cruise ships to then go to the
17 center of the diagram -- you'll see to the center of the parking
18 garage -- up, over, and across and down to Island 2 in the
19 center of the parking garage on a floor below -- or I guess it
20 would be an equivalent floor, but they have to go up and across
21 and down, a significant difference of retracking, if you will,
22 to find transportation, whether it be Shuttle Express, taxi,
23 limousine, et cetera, to go to the cruise ship piers.

24 As testified by Shuttle Express, their stops vary as
25 to the number of stops that they may make between the airport

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1 and the cruise ship piers.

2 Our application, again, is to provide nonstop service
3 to the piers, or at least to the waterfront, and then limited
4 stops, obviously, at the waterfront itself to serve the various
5 terminals there.

6 (Mr. John Fricke confers with Mr. Fricke.)

7 MR. FRICKE: We have indicated that we are fit,
8 willing, and able to provide this. We would pray that the
9 Commission would determine that, indeed, the existing service
10 from there is not convenient for these parties at the south end
11 and, therefore, would not be to the satisfaction of the
12 Commission for those who arrive at that cruise ship check-in
13 area at the south end, and this is the distinctions that we
14 have.

15 As I've said, we are ready, willing, and able. We
16 will add equipment as required as noted earlier in the record.
17 We have a good record with the Commission itself and -- and make
18 efforts as they do to provide for a convenient, safe, customer
19 service-oriented business -- service. And, of course, that
20 would also be an efficient return from the cruise terminals to
21 the airport.

22 To address the one point that was made that the
23 cruise ship terminals themselves are crowded in terms of space
24 available for people to come in and out of there, we would
25 simply contend that the more people that you can put on fewer

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1 vehicles, the less that that's -- the more that that's going to
2 address the congestion at the terminals.

3 And as the cruise industry continues to grow with the
4 limited space that they have to service people in and out of
5 there, it makes more and more sense for people to travel to and
6 from those terminals in multi-passenger vehicles rather than to
7 drive and park and ride.

8 JUDGE LOVINGER: Thank you, Mr. Fricke.

9 Mr. Harlow, you had indicated you might wish to
10 finish?

11 MR. HARLOW: Yes. Thank you, Your Honor, I would. I
12 appreciate Mr. Fricke's presentation and the clarification of
13 the satisfaction issues he sees.

14 The one area where we take issue with Staff a little
15 bit is we do see a fitness issue with regard to Capital
16 Aeroporter. They're a small operator. And as Mr. Fricke -- the
17 other Mr. Fricke admitted on the stand, they're going to need to
18 expand a little bit to add this scheduled operation between
19 Sea-Tac and the piers.

20 Mr. Gudgel, who's known Capital Aeroporter for a long
21 time, who's very active in the industry, noted that he had a
22 history and a reputation for being slow to pay their bills.
23 And, indeed, if we look at their applications -- this is Exhibit
24 JF-1, specifically Section 5 -- and we went over this in cross,
25 but they have current assets of fifty-four -- this is at the

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1 peak of their season. This is their healthiest time of the year
2 financially. Current assets at the time of application of
3 54,000. That's cash in the banks and accounts receivable, and
4 they owed -- had a current debt of \$187,000. So nearly four
5 times as much current debt as current assets. That is a very,
6 very unhealthy balance sheet, Your Honor.

7 And while we have no position on whether they should
8 be allowed to continue to operate and carry their passengers on
9 from Olympia and beyond to the piers, that's a minor extension
10 of their operations. But to potentially have to buy additional
11 vehicles with this kind of a balance sheet, could, we think,
12 jeopardize their existing airporter service, and we don't think
13 that's a very good gamble for the Commission to take with regard
14 to the Sea-Tac -- to the pier portion of the application.

15 Next, let's address the two satisfaction arguments
16 that were raised. And my hat is off to Mr. Fricke. He's come
17 up with a creative approach to things, but it's simply not
18 supported by the law.

19 The one witness who supported this claim of need for
20 service to Door 00 was Ms. Fletcher of the Port, but recalled
21 that the statute provides the Commission may -- I'm going to
22 skip some here.

23 (As read): "When an Applicant requests a certificate
24 to operate in a territory already served by another certificate
25 holder" -- and because of the way this actually is worded, I

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1 can't read it right, but the test, of course, as you read at the
2 beginning of this hearing, is that the existing holder will not
3 provide to the satisfaction of the Commission.

4 Let me emphasize two points there. The first one is
5 the test is the satisfaction of the Commission. The
6 satisfaction of a single property owner is not the test. In
7 fact, that one single property owner with a very larger property
8 is not satisfied, does not meet the test.

9 But, secondly, look at that word "territory," okay?
10 The statute does not say a particular property. The statute
11 thinks in terms of a broader area than Door 0 versus Door 20 at
12 Sea-Tac Airport or the garage. And, of course, the rule tracks
13 that statute and uses those terms as well, and that would be WAC
14 40-30-126(5).

15 This interpretation of the statute is further
16 supported by the nature of the certificates, all right? If
17 you'll look at Shuttle Express's certificate, they weren't
18 granted a certificate to serve the third floor of the garage at
19 Sea-Tac Airport. They were granted the certificate to serve
20 Sea-Tac Airport.

21 Likewise, Capital Aeroporter has not filed an
22 application to serve Door 00 at Sea-Tac Airport, they have filed
23 an application to serve Sea-Tac Airport, the exact same property
24 that Shuttle Express has a certificate to serve.

25 The fact is the Commission doesn't have any say or

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1 control over where carriers are going to serve and stage at the
2 airport. That issue, as Ms. Fletcher testified, is within the
3 exclusive control of the Port of Seattle, the property owner.

4 The Port could move Capital Aeroporter to Floor 3 of
5 the garage next to Shuttle Express tomorrow, for all we know,
6 and Capital would have to move its operations there, and the
7 certificate would still cover it, because the certificate covers
8 the whole airport. Or they could move Shuttle Express to Door
9 00 tomorrow. The same thing could be happened -- could happen.

10 The analogy that I think maybe would be helpful here
11 to understand is let's take one of our other witnesses, the Red
12 Lion.

13 Supposing the Red Lion told Shuttle Express all of a
14 sudden, "We're no longer going to allow you to bring your buses
15 on our property," and Shuttle Express now had to serve the Red
16 Lion its airporter service by parking out on the curb out at the
17 street. And now a competing Applicant comes in to serve the Red
18 Lion, and Ms. Wheeler gets on the stand and says, "Well, I
19 support this new Applicant, because Shuttle Express's passengers
20 have to walk all the way through the parking lot in the rain and
21 go out to the street to get the bus, and the new Applicant is
22 going to come into the porte-cochere right to the front door,
23 and that's inconvenient for the passengers."

24 In short, this is a self-inflicted problem for the
25 Port. The Port's created the problem. We understand why.

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1 We're not here to trash the Port. It's a big, big property, and
2 they do their best to organize and have signage and so on and so
3 forth. But they have created the problem that they identified.
4 It's not a problem created by the existing certificate holder.
5 The existing certificate holder is serving the airport in all
6 respects, according to all witnesses, in a satisfactory manner.
7 The only issue is which door they go to, which this Commission
8 can't really control, which the carriers can't really control.
9 It's totally within the control of the Port.

10 Second, and if you get beyond that, and I hope you
11 don't have to, just note that the need was shown, was strictly
12 one-way, okay?

13 Ms. Fletcher only testified to the issue of the few
14 passengers, and by the way, we don't -- we don't have no clue
15 how many passengers that is. Out of maybe 7,000 passengers
16 coming in on a busy day, you know, is it five? Is it six? Is
17 it ten? Is it four? How many are going down to Door 00? It's
18 obviously a very small number. Nobody's counting. Nobody's
19 tried to change the signage.

20 You know, these are people who come in. Obviously,
21 they haven't prereserved through the -- through the cruise
22 lines. They haven't prereserved through Shuttle Express. They
23 haven't decided -- they haven't done their homework, in other
24 words.

25 And we know not everybody's going to do their

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1 homework, but do you grant an overlapping certificate which
2 could have some public interest and negative impacts simply
3 because a small, tiny, less than 1 percent of the public doesn't
4 do things as efficiently as they might have? You know, we don't
5 think the law supports that. But think about the reverse, and,
6 of course, Capital Aeroporter has applied for both ways from the
7 pier to Sea-Tac.

8 Where is their evidence that the passengers are going
9 to come out of the ship at the piers, and they're going to find
10 Capital Aeroporter right there, whereas they'll have to walk
11 farther to get to the Shuttle Express van?

12 In fact, the opposite is likely to be true, because
13 certainly at Pier 91, Shuttle Express has two reserved places
14 and could use a third, and it could be Capital Aeroporter where
15 the customers have to walk an additional -- well, a few hundred
16 feet or whatever. So there's no need to support transportation
17 in the other direction.

18 The second and concluding response I have is this
19 issue of the nonstop service. And certainly everybody would
20 rather take a nonstop bus than, you know what? We have to make
21 a stop.

22 But remember the testimony, and if -- and if you
23 don't remember it, you know, I hope you'll wait and look at
24 the -- at the record, because Mr. Rowley was very concise.
25 Ninety-five percent of their pier transportation to and from the

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1 airport is nonstop. That was the number he used.

2 Further, he testified that only during the off-peak
3 periods do they sometimes have to combine the Sea-Tac traffic
4 with the -- or the pier to Sea-Tac traffic with some other stop
5 like, say, a downtown hotel.

6 And in that regard, I want to ask you, if you would,
7 please, to turn to Exhibit JF-1, which is the application. Now
8 we're later, and compare that with Exhibit JR-11, which is
9 Shuttle Express's tariff.

10 So this would be...

11 JUDGE LOVINGER: I think JR-11 is actually NG- --

12 MR. HARLOW: And it's Schedule No. 1 of JF-1 --

13 JUDGE LOVINGER: There we go.

14 MR. HARLOW: -- and page 38 of JR-11. So these are
15 the comparative time schedules, and if you're ready, I'll
16 proceed.

17 JUDGE LOVINGER: Okay.

18 MR. HARLOW: If you'll look at Schedule No. 1, which
19 is the proposed time schedule of Capital Aeroporter, you will
20 see that traveling to the waterfront, they propose to serve
21 between the hours of 10:30 a.m. to one p.m., and returning from
22 the waterfront to the airport, they propose to serve from eight
23 a.m. to 10:30 a.m. In essence, they are proposing the cream
24 skin, the peak times from the airport and do it on a nonstop
25 basis.

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1 Now, if you'll look at page 38 of Exhibit JR-11, you
2 will see Shuttle Express is going to offer service from -- does
3 offer service from four a.m. to 10:30 at night, and the other
4 direction from 4:50 a.m. to -- I'm sorry. It's 20:30. That's
5 8:30 at night. And this is the scheduled service, and, of
6 course, there's also on call from 4:50 a.m. to ten p.m.

7 So of course at the off-peak periods, if you're going
8 to run an efficient operation, you're going to have to try and
9 pick up some other passengers. Running efficiently is not the
10 same as running unsatisfactory. I suspect strongly that if
11 Shuttle Express were to limit its operation to 2 1/2 hours a
12 day, the peak periods, that they could probably guarantee they
13 would all be nonstop as well.

14 In sum, there's simply no evidence that would support
15 a finding as required by the statute that Shuttle Express's
16 service is not satisfactory, and the convenience here of having
17 an additional carrier is simply a convenience to Capital
18 Aeroporter to be able to, if you will, fill up their van. And
19 while that's also an efficient operation, the statute simply
20 doesn't allow it.

21 And then, finally, you have to consider whatever
22 slight benefit there might be, as perceived by Ms. Fletcher, to
23 have only a few passengers not have to walk back to the
24 certificated carriers area that they assign in the garage.
25 That's offset. It is not a situation at the piers of the more

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1 the merrier.

2 Mr. Fricke's right. The fewer vehicles you have
3 coming in and taking the most passengers, that is what is
4 beneficial to the piers, but you don't achieve that by letting
5 more carriers in. You achieve the opposite.

6 The best way to accomplish that is to have at most,
7 one, or as we currently have, two operators that are
8 coordinating their activities. There would be no coordination
9 between Shuttle Express and Capital Aeroporter. It's just
10 another van that they don't have room for when, as Mr. Rowley
11 testified, he's already got room on his van, or his bus. So
12 there is definitely a downside to the congestion and the public
13 confusion at the piers, and that more than offsets any slight
14 advantage there might be at Door 00.

15 We submit that that portion of Capital Aeroporter's
16 application that goes to serving King County should be denied.

17 JUDGE LOVINGER: Thank you very much. I'll take it
18 all under advisement. You will have an opinion -- you'll have
19 the orders at some point.

20 I'm sorry. Mr. Fricke, what?

21 MR. FRICKE: Your Honor, do I have the opportunity to
22 rebut his statements?

23 JUDGE LOVINGER: Well, his statement was rebuttal,
24 and at this point -- and they are to the arguments that you
25 made. We can go on back and forth with this over and over.

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1 I've actually heard all the evidence that I need to, and hearing
2 both of you summarize the evidence again isn't going to really
3 help me any.

4 MR. FRICKE: Well...

5 JUDGE LOVINGER: His argument is argument. It is not
6 testimony. What's going to happen is the decision is going to
7 be made based upon the testimony that was provided in this
8 hearing, not based upon how well somebody argued or didn't argue
9 their case. But the problem is, is that we would end up having
10 you say something, and then Mr. Harlow would feel that he has to
11 respond back to that, and we could just spend the rest of the
12 day here hearing and go back and forth saying...

13 MR. FRICKE: Okay. I understand Your Honor's
14 position here, but there were misstatements and actually
15 conflicting statements made in what Mr. Harlow offered compared
16 to testimony.

17 JUDGE LOVINGER: I understand. That's what I was
18 trying to tell you. What we're going to be basing the orders
19 on --

20 MR. FRICKE: Okay.

21 JUDGE LOVINGER: -- is going to be the testimony, not
22 Mr. Harlow's arguments.

23 MR. FRICKE: Okay.

24 JUDGE LOVINGER: And if he stated something better
25 for his side than it was stated in the testimony, it's not going

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1 to help the testimony be any better than it is.

2 But I appreciate the point that you're trying to
3 make.

4 MR. FRICKE: Okay.

5 JUDGE LOVINGER: Thank you very much.

6 Does anybody have anything further at this time?

7 Well, then, Dockets TC-111619, TC-111446, and
8 TC-111643 are now adjourned.

9 MS. CAMERON-RULKOWSKI: Thank you, Your Honor.

10 MR. HARLOW: Thank you, Your Honor.

11 (Proceeding concluded at 11:22 a.m.)

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