

DATE PREPARED: April 3, 2017
DOCKET: TC-143691, TC-160516
REQUESTER: Shuttle Express, Inc.

WITNESS: Jack Roemer
RESPONDER: Jack Roemer
TELEPHONE: (206) 233-2895

Data Request No. 54:

Referring to Mr. Roemer's testimony at p. 49 (lines 8-10), describing a calculation of SpeediShuttle's profitability.

- (a) Define the term "cost" as Mr. Roemer intends that term to be understood in his testimony.
- (b) If Mr. Roemer intends the term to mean anything other than "average variable cost" as defined in response to Request No. 51, above, provide a complete definition of "cost" as this term is being used by Mr. Roemer in his testimony and explain in detail how "cost" differs from "average variable cost."
- (c) For each month of operation, provide a calculation of whether SpeediShuttle is "profitable" according to the test proposed by Mr. Roemer, based on the actual number of "passengers," SpeediShuttle's applicable "tariffed fares," and the relevant "cost" advocated by Mr. Roemer.

RESPONSE to Data Request No. 54:

Response to (a): Average variable cost.

Response to (b): Not applicable.

Response to (c): Speedishuttle objects that this data request is incomprehensible such that Speedishuttle is unable to respond. For purposes of providing a response, Speedishuttle will assume this is intended to request a month by month profitability calculation, a month by month passenger total, and a month by month collected fares total, but does not limit its objections to that interpretation of this data request. Speedishuttle objects that Shuttle Express has predicated its entire pricing complaint case on "fares below cost" and attempts to establish that as fact in its testimony by showing that Speedishuttle has an operating loss. Speedishuttle's testimony demonstrates that Shuttle Express' case does not make sense, but has not opened the door to an examination by Shuttle Express of Speedishuttle's overall financial information. Further, Shuttle Express has repeatedly in this proceeding attempted to use discovery to secure proprietary information from Speedishuttle and simultaneously refused to produce similar information. For example, Shuttle Express asserted the following objection to Speedishuttle's Data Request No. 32, which Speedishuttle adopts herein for purpose of its response here:

SPEEDISHUTTLE'S RESPONSES TO SHUTTLE EXPRESS'
THIRD DATA REQUESTS - 16

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“Shuttle Express further objects to this request as overbroad, unduly burdensome, irrelevant in the discovery sense, imposed for an improper competitive and harassing purpose and not made in good faith. Moreover, Shuttle Express objects that this question seeks proprietary and competitively damaging information and is thus sought for an improper purpose, particularly in light of the unavailability of a protective order in this proceeding. Sharing specific cost and revenue data with a competitor would essentially, and unfairly, enable that competitor to target its services, marketing, and fares to better compete with Shuttle Express for the most profitable territories and services and to avoid competing for the less profitable or unprofitable territories an service. If, and only if, Respondent can show significant relevance to the case, narrow its request to more appropriate aggregate data, agree to reasonable protections for the use and public disclosure of the data, and agree reciprocate by sharing data of the same character with Shuttle Express under the same conditions, then Shuttle Express would consider amending its response accordingly.”

Speedishuttle has already produced variable cost information in the aggregate, which Shuttle Express insisted was the only format agreeable. Thus, Speedishuttle will not produce any information in more detail, which objection is supported by the above objection of Shuttle Express.

Finally, the Administrative Law Judge ruled on March 28, 2017 during a discovery conference during the deposition of Mr. Roemer that sustainability is not an issue in this proceeding.

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Data Request No. 57:

Referring to Mr. Roemer's testimony at p. 52 (lines 10-12). For each month of SpeediShuttle's operation in Washington, provide the following information:

- (a) SpeediShuttle's total revenue derived from passenger fares
- (b) SpeediShuttle average fare revenue per passenger
- (c) SpeediShuttle's total variable costs
- (d) SpeediShuttle's average variable costs

RESPONSE to Data Request No. 57:

Speedishuttle objects that this request seeks information which cannot assist the Commission in a vacuum. Speedishuttle believes that only a comparison between Speedishuttle and Shuttle Express will assist the Commission, but Shuttle Express has refused to produce similar information objecting in each instance that the information Speedishuttle requested was proprietary business information, as it did in the objection below, asserted in response to Speedishuttle's Data Request No. 31:

“Shuttle Express further objects to this request as overbroad, unduly burdensome, irrelevant in the discovery sense, imposed for an improper competitive and harassing purpose and not made in good faith. Moreover, Shuttle Express objects that this question seeks proprietary and competitively damaging information and is thus sought for an improper purpose, particularly in light of the unavailability of a protective order in this proceeding. Sharing specific cost and revenue data with a competitor would essentially, and unfairly, enable that competitor to target its services, marketing, and fares to better compete with Shuttle Express for the most profitable territories and services and to avoid competing for the less profitable or unprofitable territories an service.”

Further, Shuttle Express has already submitted its opening testimony and Speedishuttle has already submitted its response. If Shuttle Express had intended to discuss the comparison suggested by Speedishuttle, it should have responded to Speedishuttle's discovery at a time when both parties could have submitted testimony providing a comparison. Requesting this information now leaves only the possibility that Shuttle Express intends to file out-of-sequence testimony on an issue which Speedishuttle has not provided testimony, in an attempt to prevent a balanced discussion of the comparison of revenues to costs.

Finally, the Administrative Law Judge ruled on March 28, 2017 during a discovery conference at the deposition of Mr. Roemer that sustainability is not an issue in this proceeding.

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Data Request No. 58:

Referring to Mr. Roemer's testimony at p. 52 (lines 10-12). Provide a complete copy of any and all analyses that support Mr. Roemer's assertion that SpeediShuttle has "come very close" to making a "profit when comparing revenues to variable costs." Include any and all calculations, workpapers, assumptions, and documentation.

RESPONSE to Data Request No. 58:

Speedishuttle objects that this request is overbroad and propounded for an improper purpose. The fact that Mr. Roemer testifies that Speedishuttle's revenues have "come close" to making a profit is hardly a basis for an intrusive "fishing expedition" into Speedishuttle's proprietary financial data.

Speedishuttle objects that Shuttle Express refused to produce any of its own financial information on costs, and therefore incorporates the following objection asserted by Shuttle Express:

"Shuttle Express further objects to this request as overbroad, unduly burdensome, irrelevant in the discovery sense, imposed for an improper competitive and harassing purpose and not made in good faith. Moreover, Shuttle Express objects that this question seeks proprietary and competitively damaging information and is thus sought for an improper purpose, particularly in light of the unavailability of a protective order in this proceeding. Sharing specific cost and revenue data with a competitor would essentially, and unfairly, enable that competitor to target its services, marketing, and fares to better compete with Shuttle Express for the most profitable territories and services and to avoid competing for the less profitable or unprofitable territories an service."