

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

SHUTTLE EXPRESS, INC.,

Respondent.

DOCKET TC-120323

POST-HEARING BRIEF OF
WASHINGTON UTILITIES AND
TRANSPORTATION
COMMISSION STAFF

I. INTRODUCTION

1 The Washington Utilities and Transportation Commission (Commission) served a Notice Requiring Post-Hearing Briefing (Notice) on August 5, 2013, in which it directed the parties to file post-hearing briefing, jointly if possible or individually, by September 20, 2013. In the Notice, the Commission requested that the briefing contain (1) “a summary explanation” of “why Shuttle Express believes it necessary to rely in part on independent contractors to provide its ‘rescue’ service”; (2) the options for “resolving the apparent conflict between WAC 480-30-213(2) and the operational demands of providing door-to-door airport shuttle service”; and (3) a joint recommendation on the best course of action, or each party’s preferred course of action, “to ensure future compliance with WAC 480-30-213(2) and all other associated Commission rules and regulations.” The parties agreed to file separate briefs. In this brief, Commission Staff (Staff) discusses various options and proposes a recommendation.

II. FACTS

2 Shuttle Express, Inc. (“Shuttle Express” or “the Company”) has provided regulated
auto transportation services under Certificate C-975 since 1989.¹ As can be seen from the
territory and routes in the Company’s certificate, Shuttle Express operates primarily as an
“airporter”; that is, it transports its customers primarily to and from the airport. The
Company’s gross intrastate operating revenues for 2011 totaled approximately \$13.1
million.²

3 Currently, Shuttle Express operates an independent contractor program that is
governed by a contract called “Independent Contractor Agreement” (Agreement)³. Under
the Agreement, independent contractors are required to have a “Washington State
Limousine Business License” a “Seattle Tacoma Airport Ground Transportation Permit, and
“[a]ny other Licenses [sic] as required by the Port, DOL, DOT, or WUTC.”⁴ The
independent contractors do not have auto transportation authority from the Commission.⁵

4 Shuttle Express uses independent contractors, who own and operate limousines or
other for-hire vehicles, to provide what the company terms “rescue service.” “Rescue
service” means that Shuttle Express dispatches a limousine or other for-hire vehicle operator
over Shuttle Express routes when a Shuttle Express vehicle and driver is not available to
timely complete the trip.⁶ Mr. Hagen, Shuttle Express’s Revenue Manager, testified that

¹ Exh. No. SE-1; Exh. No. BY-1, p. 6; *In the Matter of the Application San Juan Airlines, Inc., d/b/a Shuttle Express for a Certificate to Operate Motor Vehicles in Furnishing Passenger and Express Service as an Auto Transportation Company*, Order M. V. C. No. 1809, Commission Decision and Order Granting Application as Amended in Part (April 21, 1989).

² Exh. No. BY-1, p. 6.

³ Exh. No. SE-6; Exh. No. BY-1, pp. 58-76.

⁴ Exh. No. SE-6, p. 4; Exh. No. BY-1, p. 61.

⁵ Exh. No. BY-1, p. 19.

⁶ Exh. No. BY-1, p. 9; Hagen, TR. 105:14-106:3.

“rescue service is absolutely needed in our business”⁷ and that, without the use of independent contractors, service quality would drop.⁸ He admitted that Shuttle Express continues to dispatch both single- and multi-stop “rescue service”⁹ and testified also that top management had recently mandated a return to use of multi-stop “rescue service.”¹⁰

III. SUMMARY OF ISSUE

5 Shuttle Express contends that it cannot provide consistent and quality service at the prices it currently charges unless it contracts out some trips to other transportation providers. Under its independent contractor program, Shuttle Express is contracting with limousine and for-hire operators for the provision of auto transportation services. This is a violation of WAC 480-30-213(2), which requires the driver of the vehicle to be the auto transportation certificate holder or an employee of the certificate holder.

IV. OPTIONS

6 In its Notice, the Commission asks the parties to “address potential means by which Shuttle Express can satisfactorily serve its customers, including but not necessarily limited to” five options listed in the Notice. Each of these options is discussed below.

A. **Alternate methods, if any, for Shuttle Express to continue offering a “rescue” service in compliance with WAC 480-30-213(2)**

7 It is possible for Shuttle Express to comply with WAC 480-30-213(2) while continuing to operate a “rescue” service if the Company contracts with third-party transportation providers to provide only service that is consistent with limousine and for-hire authority and does not contract with them to provide any auto transportation service. If the rescue service is a service that is not regulated by the Commission, then it would not violate

⁷ TR. 101:3-19.

⁸ TR. 117:2-4.

⁹ TR. 113:1-14.

¹⁰ TR. 119:13-17.

WAC 480-30-213(2). In order for this to be a workable solution, the Company would need to keep records of every trip contracted out to a third party provider, and the Commission would need to review these records periodically. The DOL might also be interested in examining these records.

8 Another solution may be available under the leasing rule, WAC 480-30-141. Under this rule, an auto transportation company can lease a portion of its authority to another party. The auto transportation company and the third-party carrier must jointly file an auto transportation company certificate application, and the Commission must approve the lease as well as the application. This option might require a change in the application of leasing rules because leases traditionally have not resulted in concurrent service by both the lessor and lessee in the same territory or service in the same territory by the lessor and multiple lessees.

9 One more option is available and involves entering into an agreement with an existing certificated auto transportation carrier. This is possible under WAC 480-30-166. The agreement is subject to review and approval by the Commission, and the Company would need to meet the rule's requirements, such as holding exclusive authority in the territory or over the route(s) to be served. This option may also require an exception to other rules, just as the leasing option above.

B. Shuttle Express petitioning the Commission for a declaratory ruling on the legality of its independent contractor program

10 Under WAC 480-07-930, the Commission's rule on declaratory orders, the Commission will not consider a petition for a declaratory order when the same issues are pending in an adjudication. The issue of whether Shuttle Express's current independent contractor program violates WAC 480-30-213(2) is the central issue before the Commission

in the instant enforcement proceeding. Staff expects that this issue will be resolved in the Commission's order concluding the enforcement proceeding. Accordingly, it does not appear to be useful to pursue a declaratory ruling on the legality of the program at this point.

C. The Commission sponsoring a workshop to discuss differences in operations between "door-to-door" and "scheduled" automobile transportation service in the context of a potential rulemaking to consider revisions to WAC 480-30-213(2)

11 Sponsoring a workshop as a preliminary to a rulemaking potentially to revise WAC 480-30-213(2) certainly is an option. Staff does not see a reason to regulate door-to-door service any differently from scheduled service with regard to the safety considerations that underlie WAC 480-30-213(2). If the Commission opens a rulemaking to consider changing the rule, the Commission should consider applying any revisions to all auto transportation carriers, regardless of the types of auto transportation service they provide. Shuttle Express is not the only door-to-door auto transportation carrier that the Commission regulates. Opening a rulemaking would preserve parity among any similarly situated carriers.

D. Shuttle Express petitioning the Commission for an exception to rule

12 Petitioning for an exception to any rule enforced by the Commission can be done under WAC 480-07-110. An exception to a rule can be granted if the public service company can demonstrate that the exception is consistent with the public interest, the purposes underlying regulation, and applicable statutes. Factors that the Commission may consider to decide whether an exception is in the public interest include "whether application of the rule would impose undue hardship on the requesting person, of a degree or a kind different from hardships imposed on other similarly situated persons, and whether the effect of applying the rule would be contrary to the underlying purposes of the rule."

13 Staff would not support an exception to WAC 480-30-213(2) for Shuttle Express related to its independent contractor program because the independent contractor program violates State law. State law requires every person meeting the definition of “auto transportation company”¹¹ to obtain operating authority from the Commission.¹² Accordingly, limousine and for-hire carriers performing auto transportation service pursuant to Shuttle Express’s current independent contractor program would each need to obtain an auto transportation certificate. Obtaining auto transportation authority is a statutory requirement that cannot be waived. Shuttle Express previously requested that the Commission revise its rules to allow “sub carriers” (independent contractors). The Commission rejected that request as contrary to chapter 81.68 RCW.¹³ The issue is that any type of carrier, including a “sub carrier,” operating as an auto transportation company must obtain a certificate from the Commission.

E The Commission and/or Shuttle Express seeking changes to the applicable statute or Commission rules

14 As discussed above, Shuttle Express previously requested that the Commission revise its rules to allow “sub carriers” (independent contractors). The Commission rejected that request as contrary to law.

15 Either Shuttle Express or the Commission could choose to approach the Legislature regarding changes to the law. As this has been unsuccessful in the past, Staff is not hopeful that pursuing this option would result in a timely resolution of the issues.

¹¹ See RCW 81.68.010.

¹² RCW 81.68.040.

¹³ *In the Matter of Repealing, Amending, and Adopting Rules in Chapter 480-30 WAC and Chapter 480-40 WAC Relating to Passenger Transportation (Bus) Companies*, Docket TC-020497, General Order No. R-533, Order Repealing, Amending, and Adopting Rules Permanently (June 13, 2006).

V. RECOMMENDED COURSE OF ACTION


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As the agency tasked with keeping auto transportation carriage safe for the traveling public, the Commission should only approve a solution that prevents circumvention of auto transportation regulations and that equals or surpasses Commission safety requirements. According to Shuttle Express's testimony at hearing, Shuttle Express plans to continue to operate its so-called "rescue service." It is clear from Shuttle Express's testimony that the "rescue service" is viewed as an integral part of the operations rather than the occasional use the word "rescue" implies. If Shuttle Express continues to operate its "rescue service," Shuttle Express will remain in violation of WAC 480-30-213(2). Currently, WAC 480-30-213(2) is in force and exists to prevent circumvention of compliance with Commission safety requirements. So long as Shuttle Express is classified as an auto transportation provider, Staff recommends that Shuttle Express contract with limousine and other for-hire vehicle operators only for the types of transportation that are consistent with limousine and for-hire authority respectively and that Shuttle Express cease contracting with these operators for auto transportation.

Dated this 19th day of September, 2013.

Respectfully submitted,

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