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May 4, 2017

VIA WUTC WEB PORTAL

Mr. Steven V. King
Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, WA 98504-7250

**Re: PETITIONER/ COMPLAINANT SHUTTLE EXPRESS INC. RESPONSE TO
SPEEDISHUTTLE'S OBJECTIONS TO, AND MOTION IN LIMINE AS TO
PORTIONS OF PRE-FILED REBUTTAL TESTIMONY
DOCKET NOS. TC-143691, TC-160516, TC-161257 (CONSOLIDATED)**

Dear Mr. King:

On behalf of Shuttle Express, Inc., please find enclosed for electronic filing in the above-referenced dockets, the response of Shuttle Express to SpeediShuttle's Objections to, and Motion in Limine as to Portions of Pre-Filed Rebuttal Testimony.

If you have any questions regarding this filing, please do not hesitate to contact me.

Respectfully submitted,

/s/ _____
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Cc: Ms. Rayne Pearson, Administrative Law Judge (via email)
Mr. Julian Beattie (via email)
Mr. Dave Wiley (via email)
Mr. Blair Fassburg (via email)
Mr. Julian Beattie
Ms. Jennifer Cameron-Rulkowski (via email)

Enclosures

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

SHUTTLE EXPRESS, INC.,

Petitioner and Complainant,

v.

SPEEDISHUTTLE WASHINGTON, LLC,

Respondent.

DOCKET NOS.

TC-143691, TC-160516 & TC-161257

PETITIONER'S RESPONSE TO
SPEEDISHUTTLE'S OBJECTIONS TO,
AND MOTION IN LIMINE AS TO
PORTIONS OF PRE-FILED REBUTTAL
TESTIMONY

I. INTRODUCTION

- 1 Shuttle Express, Inc. (“Shuttle Express”) files this answer in opposition to the most recent motion in limine of Speedishuttle of Washington, LLC (“SpeediShuttle”).¹ Yet again, SpeediShuttle invites the Commission to make a decision that is not based upon—but instead upon the exclusion of—valuable evidence that not only exists but has been offered.
- 2 The undisputed evidence is that the Commission is presently faced with two airport shuttle share ride operators that are now both losing money. And contrary to the intent and findings of Order 04, they are both serving exactly the same demographic of passenger. Further, they are doing so in a market for a service that for some time has been declining for both carriers. As a consequence of these and numerous other factors, neither carrier has the scope and scale of economies to serve all of King County indefinitely. Thus, by inadvertently creating competition in a market that is a “natural monopoly” the Commission has set in motion market forces that could bankrupt one or both companies. Or it will see the elimination of

¹¹ Factually, this answer is based generally on the record in the case and prior filings, primarily the pre-filed direct and rebuttal testimonies of Shuttle Express. The legal arguments in Shuttle Express’s answer to the prior SpeediShuttle motion in limine are also relevant. Thus, they are partially repeated here. In addition, to avoid inadvertent waiver and undue repetition, the prior answer is also incorporated by this reference.

share ride service for the residents and business people in suburban and rural King County. Only tourists and conventioners will still be served, primarily to the piers and hotels in Bellevue in Seattle.

3 What law or Commission order precludes the Commission from considering the evidence of this bleak future for an important transportation option currently available to all residents of King County, and valued by many of them, if the Commission fails to take corrective action? Fortunately, none. Indeed, the primary charge the legislature has given to the Commission—in every case and at all times—is to “[r]egulate in the public interest, as provided by the public service laws, all persons engaging in the transportation of persons within this state for compensation.” RCW 80.01.040(2)(emphasis added). The Commission not only can, but must, carefully consider whether its eventual actions or inactions in these dockets will serve or harm the long-term public interest by eliminating or severely curtailing a valuable public service.

4 In addition to consideration of the public interest, the Commission has expressly described the issues much more broadly in numerous orders that have never been revoked or modified. Moreover, the testimony of Mr. Roemer is incredibly broad (if conclusory and vague) and all of the Shuttle Express rebuttal testimony responds to the specifics, inferences, implications, and innuendos of Mr. Roemer.

II. DISCUSSION

A. The testimony Speedishuttle seeks to strike is directly relevant to the key statutes upon which the Shuttle Express Petition and complaint are based.

5 Starting from the premise of regulating in the public interest in accordance with the public service laws, the Commission here should focus primarily on two laws. First is the rehearing statute, RCW 81.04.200, which allows rehearing for “changed conditions ... a result

injuriously affecting the petitioner which was not considered or anticipated ... that the effect of [the prior] order has been such as was not contemplated ... or for any good and sufficient cause.” The Commission wisely ordered a rehearing in Order 06² and re-affirmed that in several subsequent orders.³ The Commission clearly did not “anticipate” in Orders 02 and 04 that it would have two carriers competing across the board to the point that both might fail or be financially unable to continue offering a viable share ride service to King County as a whole. On the contrary, the Commission had anticipated that SS would grow the overall service by primarily serving a perceived unserved demographic. That has not happened.

6 The second salient public service law is the complaint statute, RCW 81.04.110, which allows a public service company to challenge the “rates and practices” of a competitor which may be considered “unreasonable, unremunerative, discriminatory, illegal, unfair or intending or tending to oppress the complainant, to stifle competition, or to create or encourage the creation of monopoly....” The Commission soundly denied Respondent’s earlier motion to dismiss the Complaint and has, more than once, expressly addressed and acknowledged the broad scope of the Complaint.

B. The testimony Speedishuttle seeks to strike falls well within the permissible scope or implications of the commission’s prior orders.

7 To support its arguments that the sustainability of two competing identical offerings should be stricken, SpeediShuttle selectively cites Order 16 and ignores the bigger picture. The

² For simplicity’s sake, all order citations herein are to the order numbers in Docket TC-143691.

³ As Order 06 noted: “Shuttle Express alleges ... the effect of Order 04 has caused it to suffer financially.... Shuttle Express [alleges] that Shuttle Express is aggrieved by the effect of Order 04.” And Order 08 notes: “Shuttle Express alleges that Speedishuttle is not targeting the customers the Commission authorized that company to serve and is providing the same service Shuttle Express has the exclusive right to provide, resulting in injury to Shuttle Express. These allegations provide sufficient ‘grounds and reasons’ to exercise discretion to grant the Petition for Rehearing.” Thus, under Orders 06 and 08, which are still law of the case, evidence of financial harm to Shuttle Express and evidence that that harm was caused by Speedishuttle’s entry are more than relevant. That evidence is inherent to Shuttle Express’s burden of proof on the rehearing law.

order stated: “Shuttle Express’s witness testimony and evidence attempts to reopen and argue the issue of market sustainability, which was rejected in Order 04.⁴ We agree, in part, and exclude portions of Mr. Kajanoff’s testimony related to market sustainability.” But, more importantly—and unquestionably correctly—Order 16 goes on to find that, “[l]ike portions of Mr. Kajanoff’s testimony,⁵ Mr. Wood’s testimony focuses on the sustainability of the market when two providers offer the same service, not when two providers offer different service. Accordingly, we will allow Mr. Wood’s testimony...”

8 Thus Order 16 expressly stated that “sustainability” of two carriers offering the same service is relevant and a proper issue for testimony. And the whole thrust of the Shuttle Express rebuttal and case in chief is that the two carriers are in fact offering the same service and competing directly for the same passengers. Order 16 was not challenged by either party and has not been modified by the Commission.

9 SpeediShuttle also relies on Order 17, which added the issue of “satisfaction of the Commission” into the case. Certain language in this order is puzzling. In particular:

We decline Shuttle Express’s invitation to broaden the scope of the issues to include the market sustainability of two carriers serving the same territory. Shuttle Express fails to establish any connection between the market’s ability to sustain two auto transportation providers and whether Shuttle Express will provide service to the Commission’s satisfaction. We also deny Shuttle Express’s request that we revisit our prior rulings and allow Shuttle Express to pursue its data requests seeking Speedishuttle’s financial and ridership data. We continue to find that Shuttle Express is not entitled to such information.

⁴ The statement that the issue of “market sustainability ... was rejected in Order 04” is certainly puzzling. The issue was only mentioned in the context of summarizing Capital Aeroporter’s arguments and then it was never directly discussed anywhere else in the order.

⁵ All of Mr. Kajanoff’s testimony was submitted in the context of Shuttle Express’s case, which is premised on the fact that SpeediShuttle is providing the same service as Shuttle Express. Thus, all of Mr. Kajanoff’s testimony on sustainability should have been allowed to go to the same issue that Order 16 found Mr. Wood’s testimony properly addressed. Shuttle Express did not seek administrative review, but has re-offered some of the stricken testimony to directly rebut Mr. Roemer’s testimony, as is discussed in more detail below.

- 10 Read literally and out of context Order 17 could be read to take sustainability out of the case. But to do that, one would have to assume that the administrative law judge intended to modify her express holding in Order 16 that sustainability is a proper issue even though Order 17 never mentions Order 16 at all. Worse, that interpretation of Order 17 would require an assumption that the administrative judge implicitly intended to narrow the broad issues established by the full Commission in Orders 08 and 09, plus several other prior orders of the judge.
- 11 Review of Order 14—another ALJ order—can help put Order 17 in proper context based on the prior Commission orders:

Speedishuttle relies on our decision in Order 08, arguing that because the Commission held it would not permit Shuttle Express to “relitigate the BAP,” we summarily dismissed all of the allegations in the complaint other than whether Speedishuttle provides service below cost. Speedishuttle completely ignores, however, that we provided the following guidance in the very next paragraph: [internal quotation omitted.]

Thus, the Commission acknowledged in Order 08 that Shuttle Express’s complaint includes allegations related to the service Speedishuttle currently provides, and in no way limited the issues solely to whether Speedishuttle is providing service at fares below cost. [Note 4: “Moreover ... [a]s Shuttle Express notes in its Answer, each of the Commission’s previous orders and rulings accepts a broader range of issues than only below-cost pricing.” Accordingly, Speedishuttle’s Motion fails to address the complaint as a whole.

Order 14 at 3 (emphasis added). Speedishuttle again makes the same overarching mistake in interpretation of the Commission’s prior orders as it did its prior motion in limine, which was largely denied by Order 16. While Order 17 clearly declined to expand the issues as previously delineated, it likewise did not contract issues compare to prior orders.

12 The language of Order 17 can only be understood to relate to the issue of “satisfaction” and whether addition of “satisfaction” to the case would or would not allow for an expansion of the scope of discovery. To interpret the Order more broadly would be inconsistent with a number of the judge’s and the Commission’s prior orders.

C. **All of the testimony Speedishuttle seeks to strike directly rebuts Mr. Roemer’s response testimony.**

13 Finally, all of the rebuttal testimony proffered by Shuttle Express responds directly to the statements, conclusions, and inferences of Mr. Roemer’s responsive testimony. Even a casual reader of his testimony can see that it is very broad in its scope and discusses numerous issues that his own counsel now asserts are irrelevant or excluded. But SpeediShuttle cannot have it both ways. If Mr. Roemer can testify on an issue, then Shuttle Express is permitted to file rebuttal on the issue.

14 Shuttle Express will not attempt to cover every issue line-by-line.⁶ Moreover, the Commission need not waste its time comparing Mr. Roemer’s testimony line-by-line with Shuttle Express’s testimony, line-by-line. That would not only be tedious, but is ultimately a fruitless endeavor. The correct outcome on this motion can only be achieved by stepping back and reviewing and understanding the themes of the competing testimony, as a macro view. A painstaking examination of every tree will miss the forest.

15 SpeediShuttle bases a significant part of its argument on the assertion that the “testimony is not rebuttal.” This argument is incorrect and can only be supported if one ignores the “forests” and tries to directly tie a specific “tree” in one forest to another “tree” in the other

⁶ SpeediShuttle took almost three weeks after getting the testimony to file its last-minute motion, which Shuttle Express has only six days to answer, all while trying to prepare for hearing, make the required filings in this case, and prepare filings due in several other unrelated cases.

forest. Such a myopic view is not proper and will not only keep important evidence out of the case, to the benefit of SpeediShuttle and the detriment of Shuttle Express and the public interest.

16 In support of its arguments about what supposedly is “rebuttal” SpeediShuttle cites only a single case that addressed a completely different issue. *See In the Matter of the Petition of Verizon Northwest, Inc.*, Ninth Supplemental Order, Docket No. UT-011439⁷ (Nov. 1, 2002)(“*Verizon*”). But the *Verizon* case struck Staff reply testimony because it addressed Verizon’s case, when an explicit order that allowed for the Staff reply expressly limited that particular reply round to a discussion of Qwest’s case, not Verizon’s. It had nothing to do with whether or not the reply was or was not responsive to Verizon, and therefore is not material to the instant motion.

17 Even in criminal jury cases, courts in this state are allowed great latitude to admit rebuttal or surrebuttal testimony that raises new facts. *See, e.g., State v. White*, 74 Wash. 2d 386, 394–95, 444 P.2d 661, 667 (1968). This is true even when the rebuttal overlaps with the direct testimony. *See, id.* As the court noted in *State v. DuPont*, 14 Wash. App. 22, 24, 538 P.2d 823, 825 (1975): “Testimony which contradicts substantive testimony of opponent's witness is a proper impeachment tool. [Citation omitted]. Impeachment is proper on surrebuttal....”

18 The testimony of Mr. Roemer may only be an inch deep, but it is a mile wide. Fairness and due process dictates that Shuttle Express be permitted to rebut his conclusory assertions, innuendos, and false statements with the kind of probative facts that Shuttle Express offers:

It would be a curious rule of evidence which allowed one party to bring up a subject, drop it at a point where it might appear advantageous to him, and then bar the other party from all further inquiries about it. Rules of evidence are designed to aid in establishing the truth. To close the door after receiving

⁷ SpeediShuttle mis-cited the case as “UT-11439.” The correct case number is actually “UT-011439.”

only a part of the evidence not only leaves the matter suspended in air at a point markedly advantageous to the party who opened the door, but might well limit the proof to half-truths. Thus, it is a sound general rule that, when a party opens up a subject of inquiry on direct or cross-examination, he contemplates that the rules will permit cross-examination or redirect examination, as the case may be, within the scope of the examination in which the subject matter was first introduced.

State v. Gefeller, 76 Wash. 2d 449, 455, 458 P.2d 17, 20 (1969) (emphasis added). Were this a criminal trial in front of a jury, the tribunal might need to balance the need to “establish the truth” against undue prejudice to the defendant. But in a case before an expert body, exclusion of evidence merely to “enhance efficiency at the hearing” merely risks interjecting error into the proceeding, not to mention reaching a result that fails to protect the public interest. The Commission should err on the side of inclusion, not exclusion.

19 Regardless of exactly where the Commission draws the line, it is clear that all of the testimony SpeediShuttle seeks to strike is not only relevant—in the sense that it is within the scope of the issues as established in prior orders—it is also directly or indirectly responsive to Mr. Roemer’s March 17 testimony. Below are summary tables that tie the Shuttle Express rebuttal testimony to the Roemer response testimony at a high level, with examples.⁸ The examples should not be view as the totality of what the rebuttal responds to. The Commission should look at the totality of Mr. Roemer’s testimony, including any inferences that could be argued from it on post-hearing brief. In so doing, it should be clear that all of the Shuttle Express testimony is relevant not just to the case, but also to SpeediShuttle’s proffered testimony.

⁸ For ease of comprehension, Shuttle Express has done its best to group the passages sought to be stricken by topic, rather than randomly or in page order.

1. Paul Kajanoff

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<p>SpeediShuttle objections to testimony on the basis of <u>sustainability</u></p> <p>2: 15-18 3: 1-2 3: 3-7 3: 10 – 5: 8 5: 15-16 8: 11 – 9: 4 9: 5-15 10: 8 - 13: 9 14: 8 – 15: 7 18: 11-22</p>	<p>SpeediShuttle (Second Revised) Testimony of H. Jack Roemer</p> <p>4:1-3, “Yes, I have a number of opinions which relate to Shuttle Express’ complaint against Speedishuttle as well as Shuttle Express’ claims about the <u>sustainability of service</u> which I intend to offer.”</p> <p>44:4-45:13, ““Do you have any comments on Mr. Wood’s testimony that “the final result could be the financial weakening of both providers to the point that <u>neither can sustain its operations</u> and must exit the market’?”</p> <p>45:14-48:8, “Is this argument on <u>sustainability a new issue</u> raised to the Commission for the first time in this rehearing?” “If Mr. Wood is suggesting that the Commission must carve up the market based upon unique market niches...”</p> <p>48:4-7, “Shuttle Express has failed to answer how these new providers, or other factors, could have impacted their passenger counts and therefore, even any accelerating decline in Shuttle Express’ passenger counts cannot be attributed to Speedishuttle...”⁹</p> <p>49:16-18, “They focus on us losing money, but don’t really explain it. Q. Assuming they simply compared your total cost to your total revenue, would that be a fair way of evaluating whether your fares were oppressive to Shuttle Express?”¹⁰</p>
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⁹ Much of the testimony on both sides regarding causation—*i.e.*, that the entry of Speedishuttle caused some or all of the decline in passengers suffered by Shuttle Express—also relates directly to the sustainability of two competing carriers. If the carriers were not offering the same service, then the new entrant would not affect the sustainability of the incumbent; nor would it cause any change in the passenger counts of the incumbent.

¹⁰ Like causation, much of the testimony on both sides regarding whether the rates, charges, and practices of Speedishuttle are “oppressive” (not to mention “unfair” or “unreasonable”) also intertwines inextricably with the sustainability issue. The Commission is much more likely to find that Speedishuttle’s acts and omissions are “oppressive” to Shuttle Express if Shuttle Express’ services have been rendered unsustainable by those acts and omissions. *See, e.g.*, RCW 81.04.110. Mr. Wood explains the connection between the two issues at some length in his rebuttal. DJW-3T.

<p>SpeediShuttle objections regarding relevance/not rebuttal—re public interest, failure to serve outside urban cores, and multi-lingual passengers</p> <p>6: 13 – 7: 10¹¹ 8: 11 – 9: 4</p>	<p>SpeediShuttle (Second Revised) Testimony of H. Jack Roemer</p> <p>20:13 – 28:19 Multilingual Services, “Q. Did Speedishuttle follow through on what it represented it would do with respect to multi-lingual services? A. We did and are providing precisely what we said we would.”</p> <p>45:19-46:7, Q. Is Speedishuttle doing anything to avoid serving segments of the market, as suggested by Mr. Wood (Exhibit No. ___(DJW-1T), page 30) and Mr. Kajanoff? A. Absolutely not.</p> <p>46:8-46:24, Features of SpeediShuttle, “Thus, I believe Mr. Wood’s conclusion is directly contrary to the public interest.”</p>
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¹¹ In addition to addressing the supposed service distinctions discussed at length by Mr. Roemer, Mr. Kajanoff ties those distinctions to the public interest here. So did Mr. Roemer, in HJR-1T at 46, ll. 12-24 (Wood testimony regarding service distinctions, “directly contrary to the public interest.”).

<p>Objections regarding financial analysis/sustainability/fares</p> <p>14: 8 – 15: 7¹² 15: 8 – 16: 2</p>	<p>SpeediShuttle (Second Revised) Testimony of H. Jack Roemer</p> <p>50:23 – 51:4, Did the demand for Speedishuttle service require that you acquire additional vehicles beyond the initially proposed five? A. By the time we commenced operations at SeaTac it was soon apparent to us more vehicles would be required. Q. Did that increase the total startup costs to Speedishuttle? A. Yes, it did.</p> <p>52:3 – 52:7, “Q. If you can’t raise prices, how do you become profitable? A. This is an issue of economies of scale. In this industry, we have a certain number of vehicles capable of making a certain number of trips per day. The goal is to have enough customers to fill those vans to the reasonable capacity as much of the time as possible.”</p> <p>52:8 – 52:9 “If we lose customers, or during slow seasons, we might not want to operate at full capacity in order to trim expenses.”</p> <p>52:10 – 52:12, “Has Speedishuttle increased its revenues to the point it can make a profit when comparing revenues to variable costs? A. We have come very close.”</p> <p>54:1-55:18, “SpeediShuttle Financial Statement” section of testimony.</p>
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¹² This testimony also covers in part and ties directly to the issue of whether Speedishuttle is continuing to operate at a loss, as well as whether it is likely to continue to operate at a loss. It directly rebuts Mr. Roemer’s lengthy but flawed cost analysis and his inference of sustainability with “economies of scale.” And again, it falls squarely within most of the factors listed in RCW 81.04.110.

<p>Objections regarding Cream skimming</p> <p>8: 11 – 9: 4 9: 5-15</p> <p>16: 15 – 18: 10</p>	<p>SpeediShuttle (Second Revised) Testimony of H. Jack Roemer</p> <p>45:21 – 46:7, “If Mr. Wood (or Mr. Kajanoff) think we are actively attempting to avoid serving a market segment, rather than pointing to hypothetical ways a provider might do that and then basing conclusions on hypotheticals without foundation, Mr. Wood could have done a simple analysis of our fares. Take North Bend for example I suppose by Mr. Kajanoff’s logic, Shuttle Express, in addition to not actually serving all of North Bend, must actually be trying to avoid serving it by pricing even higher than Speedishuttle.”</p> <p>52:8 – 9, “If we lose customers, or during slow seasons, we might not want to operate at full capacity in order to trim expenses.</p>
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2. Don J. Wood

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<p>SpeediShuttle objections regarding testimony it claims is not rebuttal or responsive. 2:17 – 14:9</p>	<p>SpeediShuttle (Second Revised) Testimony of H. Jack Roemer</p>
<p><u>Availability of shared ride service and economies of scale</u>, Wood at 3:1 – 5:13</p>	<p>46:8-46:24, Features of SpeediShuttle, “Thus, I believe Mr. Wood’s conclusion is directly contrary to the public interest.”</p> <p>Roemer at 52:4, “This is an issue of economies of scale.”</p>
<p><u>Meets the needs of an unserved market segment or...expand the size of the total market</u>, Wood at 5:14 – 8:2</p>	<p>Roemer at 26:7 – 26:10 “First, I would like to note that I do not see what difference it makes whether a demographic was already served. Our application was predicated on service feature differentiation and Shuttle Express’ failure to serve to the satisfaction of the Commission based on its need for third parties to “rescue” its passengers.”</p>

<p><u>Geographic characteristics of market, Wood at 8:4 – 9:9</u></p>	<p>Roemer at 44:14 – 17, “Can you think of any other markets that have two shared ride door-to-door service providers operating in the same territory? A. To put it simply, I cannot think of a single large market that has only one door-to-door shared ride transportation company.”¹³</p>
<p><u>Constraint on prices from other kinds of transportation providers, Wood at 9:10 – 16</u></p>	<p>Roemer at 51:23 – 52:2, “But, again, we are in the highly competitive airport transportation industry and there are numerous options available to riders outside of auto transportation. If we raise prices too high, we lose passengers to another service. So we have to be careful to set prices at a competitive rate.”</p>
<p><u>Business model of Shuttle Express and proposed and actual business model of SpeediShuttle, Wood at 9:18 – 11:14</u></p>	<p>Roemer at 6:14 – 10:11, “SpeediShuttle’s Business Model” section.</p>
<p><u>Parties agree market for share ride services has continued to decrease, SpeediShuttle is higher cost provider, service offered by SpeediShuttle differs from description relied upon by Commission, market occupied by two shared ride providers both losing money. Wood at 11:15 – 12:16</u></p>	<p>Roemer at 39:5 “Market Analytics”; at 8:7 – 15, “service enhancement features”; at 48:17-18, “Mr. Roemer, did Speedishuttle lose money in its first year of operation? A. Absolutely, we did.”</p>

¹³ Moreover, Mr. Roemer repeatedly compares their King County service to their Hawaii share ride service, both in terms of their “business model” and in terms of sustainability of two carriers offering the same service in the same geographic market. For example, “Additionally, it was proposed that Speedishuttle Seattle offer a similar service as that offered by Speedishuttle Hawaii, which serves over one million passengers per year.” A word search for “Hawaii” in his testimony results in 28 hits.

<p><u>Pricing of SpeediShuttle’s Service, sustainability, Wood at 12:18 – 13:21</u></p>	<p>Roemer at 48:16-52:16 (e.g., “[b]ut, again, we are in the highly competitive airport transportation industry and there are numerous options available to riders outside of auto transportation. If we raise prices too high, we lose passengers to another service. So we have to be careful to set prices at a competitive rate. Roemer at 51:23 – 52:2.”¹⁴</p>
<p><u>Context of share ride market, Wood at 14:2 - 9</u></p>	<p>Roemer at 43:10-14, “Shuttle Express’ customers could already choose to ride with someone else. Speedishuttle simply proposed to provide one more choice, and never pretended that it would serve only this non-English speaking, tech savvy-tourists-from Japan, China or Korea-niche manufactured by Shuttle Express in order to make a retroactive straw-man argument.”</p>
<p>SpeediShuttle objections on basis of sustainability, overall market trends, and whether costs can be recovered</p>	<p>SpeediShuttle (Second Revised) Testimony of H. Jack Roemer</p>
<p><u>With current market reality of two providers unable to recover costs, Commission cannot simply maintain the status quo, Wood at 17:5 – 17:15</u></p>	<p>Young at 3:18, “The Commission should maintain the status quo.”¹⁵</p>
<p><u>Serve public interest to have both companies continue losing money until one exits?, Wood at 30:11 – 32:5</u></p>	<p>Roemer at 46:23-24, “Thus, I believe Mr. Wood’s conclusion is directly contrary to the public interest.”</p> <p>Roemer at 48:8 – 10, “So if we used average variable cost, what does it take for Speedishuttle to be profitable on its first trip? A. Enough passengers at our tariffed fares to exceed the cost of providing that trip.</p> <p>Roemer at 52:8 – 52:9, “If we lose customers, or during slow seasons, we might not want to operate at full capacity in order to trim expenses.”</p>

¹⁴ See also, Note 10, *supra*, regarding the relationship between pricing and sustainability testimony.

¹⁵ SpeediShuttle has objected here to the inclusion of responsive and rebuttal testimony of Don Wood for Shuttle Express to the Staff testimony of Michael Young,

3. Wesley A. Marks

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<p>SpeediShuttle objection on the basis of sustainability 24: 1—25: 19</p> <p><u>By splitting an already decreasing market, each operator must bear additional costs to support the service they provide</u></p>	<p>SpeediShuttle (Second Revised) Testimony of H. Jack Roemer</p> <p>Roemer at 52:4, “This is an issue of economies of scale.”</p> <p>Roemer at 44:8 – 12, “Yes, by his “doomsday scenario” here, Mr. Wood apparently does not fully grasp the economies of scale. While it might be true that if you lose passengers and do not adapt you may fail, before that would ever occur, a well-run business would try to adapt and innovate. A simple reduction of fleet size could avoid the kind of losses that result in a total failure in this industry.</p>
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CONCLUSION

23 As the Commission acknowledged in Order 14, the Complaint has never been narrowed. Respondent should not be allowed, in the guise of yet another, last-minute, motion in limine, to re-litigate Commission Orders 06, 08, 09, 14, and 16. The arguments in the motion regarding relevance are best reserved for post-hearing briefing after all the evidence is in. Moreover, exclusion of Shuttle Express testimony that rebuts Speedishuttle’s testimony would be contrary to the public service laws, the APA, and principles of due process. Worse, by excluding extensive testimony addressing the public interest issues that were directly raised, denied, or shrugged off by Mr. Roemer, the Commission would be committing reversible error.

Respectfully submitted,

/s/

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Counsel for Shuttle Express, Inc.

Dated: May 4, 2017

CERTIFICATE OF SERVICE

I hereby certify that on May 4, 2017, I electronically served via email the foregoing Response on behalf of Shuttle Express, Inc. to:

<p>Julian Beattie Jennifer Cameron-Rulkowski Office of the Attorney General Utilities and Transportation Division 1400 S. Evergreen Park Dr. SW PO Box 40128 Olympia, WA 98504-0128(360) 664-1192 Email: jbeattie@utc.wa.gov Email: jcameron@utc.wa.gov</p>	<p>David W. Wiley Blair I. Fassburg Williams Kastner Two Union Square 601 Union Street, Suite 4100 Seattle, WA 98101 (206) 233-2895 Email: dwiley@williamskastner.com Email: bfassburg@williamskastner.com</p>
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Dated at Tysons, Virginia this 4th day of May, 2017.

/s/ _____
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