

Docket Nos. TC-143691 and TC-160516
(Consolidated) - Vol. VII

In re the Application of Speedishuttle
Washington, LLC

May 10, 2017



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BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

In Re: Application TC-143691)
)
) Docket Nos. TC-143691
SPEEDISHUTTLE WASHINGTON, LLC,) and TC-160516
D/B/A SPEEDISHUTTLE SEATTLE,) (Consolidated)
)
For a Certificate of Public)
Convenience and Necessity to)
Operate Motor Vehicles in)
Furnishing Passenger and Express)
Services as an Auto)
Transportation Company)

HEARING, VOL. VII

Pages 245-559

(Pages 250-297 transcribed from recording)

ADMINISTRATIVE LAW JUDGE RAYNE PEARSON

9:00 a.m.

May 10, 2017

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1 OLYMPIA, WASHINGTON; MAY 10, 2017

2 9:00 A.M.

3
4 JUDGE PEARSON: Today is Wednesday,
5 May 10th, 2017, at 9:00 a.m., and we are here on the
6 record for an evidentiary hearing in consolidated
7 dockets TC-143691, which is the original application
8 docket for SpeediShuttle of Washington, LLC, DBA
9 SpeediShuttle Seattle; docket TC-160516, which is a
10 formal complaint filed by Shuttle Express, Inc., against
11 SpeediShuttle; and a petition for rehearing of matters
12 in docket TC-143691; and docket TC-161257, which is a
13 formal complaint filed by SpeediShuttle against
14 Shuttle Express.

15 So we addressed some housekeeping matters before we
16 came on the record this morning. We have agreed to take
17 the exhibits up by witness and address which exhibits
18 have been stipulated for admission at that time before
19 each witness testifies.

20 And we are still having issues with respect to the
21 length of the hearing. We had a brief discussion about
22 that. Staff and Shuttle Express are amenable to one
23 day, essentially, for each party; SpeediShuttle getting
24 one day, Shuttle Express getting one hearing day.

25 Shuttle Express objected to that -- or sorry,

1 SpeediShuttle objected to that. And so we're just going
2 to see how it goes. I suggested that we could have a
3 third hearing day if we need it, but I think at this
4 point in time we just need to go forward and see how
5 long things actually take.

6 So this morning's proceedings are going to have
7 Shuttle Express's witnesses testifying first. Let's
8 just start by taking short appearances, please. Just
9 state your name and who you represent for the record and
10 we'll start with Staff.

11 MR. BEATTIE: Thank you, Your Honor.
12 Julian Beattie, Washington State Attorney General's
13 Office, representing Commission Staff.

14 JUDGE PEARSON: Okay. Mr. Harlow.

15 MR. HARLOW: Good morning, Your Honor.
16 Brooks Harlow representing the complainant and
17 petitioner, Shuttle Express, Inc.

18 MR. FASSBURG: Good morning, Your Honor.
19 Blair Fassburg and David Wiley of Williams, Kastner &
20 Gibbs, PLLC, on behalf of SpeediShuttle who is both
21 respondent and complainant.

22 JUDGE PEARSON: Okay. Thank you. And,
23 Mr. DeLeo, are you on the phone?

24 THE WITNESS: I am, thank you.

25 JUDGE PEARSON: Okay. So you are our

1 first witness this morning, so we can get started with
2 cross-examination. If you could stand, wherever you
3 are, and raise your right hand.

4
5 JASON DELEO, witness herein, having been first duly
6 sworn on oath, was examined and
7 testified as follows:

8
9 JUDGE PEARSON: Okay. Thank you. So if
10 you can please state and spell your last name for the
11 record.

12 THE WITNESS: Jason DeLeo, D-e-L-e-o.

13 JUDGE PEARSON: Okay. Thank you. And I
14 understand that parties don't have any objection to the
15 admission of either of Mr. DeLeo's pre-filed testimony,
16 correct?

17 MR. HARLOW: No, Your Honor, it's my
18 understanding at this time, would offer JD-1T and JD-2T.

19 JUDGE PEARSON: Okay. And that has been
20 stipulated to. So I will admit those exhibits and mark
21 them as JD-1T and JD-2T.

22 (Exhibit Nos. JD-1T and JD-2T admitted into evidence.)

23 MR. HARLOW: With that then, Mr. DeLeo,
24 this is Brooks Harlow. We've spoken before. Thank you
25 for calling in today. I don't believe I need to ask you

CROSS BY FASSBURG/DELEO

1 any questions. I think you can go straight to
2 cross-examination.

3 THE WITNESS: Got it.
4

CROSS-EXAMINATION

5
6 BY MR. FASSBURG:

7 Q Good morning, Mr. DeLeo. My name is Blair Fassburg, I'm
8 a counsel for SpeediShuttle. Would you please state
9 your full legal name.

10 **A It's Jason DeLeo.**

11 Q Mr. DeLeo, can you please provide your business address?

12 **A My home office address is 16224 16th Avenue Southwest,**
13 **and that's in Burien, B-u-r-i-e-n, Washington 98166.**

14 Q I understand you have caused on your behalf to be filed
15 the testimony with exhibit -- or exhibits JD-1T and
16 JD-2T. Are these your testimony under oath?

17 **A Yes, it is.**

18 Q Mr. DeLeo, can you please explain to the Commission who
19 SMS International Port Services is?

20 **A SMS is a third-party vendor that provides ground**
21 **operations services, as well as transportation, port**
22 **agency services, and tours services for various cruise**
23 **lines around the world. And they provide, in Seattle,**
24 **Norwegian and Oceanic services for those.**

25 Q How long have you been employed by SMS?

CROSS BY FASSBURG/DELEO

1 **A I have been a consultant with them for -- since the**
2 **beginning of -- about April of last year is when I**
3 **started.**

4 Q So April of 2016?

5 **A Correct.**

6 Q In your testimony, JD-1T, you indicate that you're a
7 part-time consultant for SMS. Can you elaborate on what
8 you mean by "part-time"?

9 **A At that time, that's what I was. So I am paid on a**
10 **weekly basis, consultancy fees for various things that**
11 **SMS requires. And I'm actually currently a full-time**
12 **consultant with them, and I'm actually moving to**
13 **full-time employment.**

14 **JUDGE PEARSON: One second. Mr. DeLeo,**
15 **this is Judge Pearson, could you please speak up? We're**
16 **having trouble hearing you.**

17 THE WITNESS: I'm sorry, let me take you
18 off -- is this better? I can take you off speakerphone
19 if it helps.

20 JUDGE PEARSON: If you can just maybe
21 speak more directly into the receiver.

22 THE WITNESS: How is that?

23 JUDGE PEARSON: That's a little bit
24 better.

25 THE WITNESS: I just took you off

CROSS BY FASSBURG/DELEO

1 speakerphone.

2 JUDGE PEARSON: Okay. Go ahead,
3 Mr. Fassburg.

4 BY MR. FASSBURG:

5 Q Thank you. Just to seek a little bit more
6 clarification, when you say you're part-time, do you
7 mean that you work less than 40 hours a week, or do you
8 mean that you are not employed year-round?

9 **A It changes. But right now I am employed year-round, but**
10 **I am not -- I was not working 40 hours a week through**
11 **the off-season and now I am. And at the time of all of**
12 **the things that we are discussing, I was working**
13 **40 hours a week. Does that help?**

14 Q Sure. Where is your primary work location? Do you work
15 out of an office?

16 **A Do you mean right now or at the time?**

17 Q Thank you for asking that. Let's focus specifically on
18 at the time that you made the observations that are
19 provided in Exhibit JD-1T, where was your primary work
20 location at that time?

21 **A It varied between the SMS office at the pier, my home**
22 **office, and the Sea-Tac Airport at that time.**

23 Q Now, you've provided some information about observations
24 that you made; do you recall when those observations
25 were made?

CROSS BY FASSBURG/DELEO

1 **A Not specific dates, but the general time period, yes.**

2 Q What would have been the general time period?

3 **A It was between April and May last year.**

4 Q That would have been right --

5 **A May, I believe, because that's when the season was**
6 **really getting going.**

7 Q What is cruise season?

8 **A Cruise season starts -- well, we consider cruise season**
9 **to start in -- with, like, February basically when we**
10 **start hiring and doing all that sort of thing and**
11 **prepping. But the actual cruise season is when the**
12 **ships come in. So it usually starts at the end of April**
13 **or the beginning of May and goes until the end of**
14 **September, beginning of October.**

15 Q So relative to cruise season, you were just coming on at
16 SMS last year?

17 **A I don't understand the question.**

18 Q If I understand your testimony so far, you started in
19 April of 2016, and the beginning of cruise season begins
20 towards the end of April of -- of every year, and so you
21 would have commenced your work with SMS towards the
22 beginning of cruise season; is that correct?

23 **A Yeah, exactly. Exactly. I do agree with that.**

24 Q Had you worked with SpeediShuttle ever before April of
25 2016?

CROSS BY FASSBURG/DELEO

1 **A I had not.**

2 Q Now, in JD-1T at page 5, beginning on line 1, you state
3 specifically, "The two greeters were basically wandering
4 around the 16 carousels at baggage claim." Are you
5 familiar with that testimony?

6 **A Let me pull it here. What page is that on?**

7 Q That's on page 5.

8 **A Page 5. Yes, I am familiar with that.**

9 Q Is it your testimony that you only ever observed two
10 greeters during that occasion that you were checking on
11 SpeediShuttle's greeters at Sea-Tac Airport?

12 **A That's my recollection, yes.**

13 Q Prior to the time that you prepared this testimony, did
14 you have an opportunity to review any other documents to
15 refresh your memory about what you observed at
16 Sea-Tac Airport?

17 **A No, I did not.**

18 Q Have you been provided a copy of the exhibit labeled
19 HJR-24?

20 **A Yes, I have.**

21 Q There is an email within that chain, which I believe
22 would be on the fifth page of that exhibit, that at
23 least appears to be one that you have created; is that
24 correct? Is that something that you created?

25 **A Yes, that's correct.**

CROSS BY FASSBURG/DELEO

1 Q Can you describe for the Commission what that email was
2 intended to provide?

3 **A Let's see here. Let me just read it again very quickly**
4 **so I make sure I speak correctly. So the purpose of**
5 **this was to basically document -- I had already had some**
6 **conversations with various parties at SMS, and this was**
7 **just the follow-up to say, Here is what I found when I**
8 **went to do a little bit more research.**

9 Q What was the date of that email?

10 **A It was May 28th.**

11 Q Would that have been closer in time to when you made
12 your observations than the date on which you prepared
13 your pre-filed testimony in this proceeding?

14 **A I'm sorry, can you repeat that?**

15 Q Would May 28, 2016, have been closer in time to the
16 dates on which you made your observations than the date
17 on which you prepared your pre-filed testimony for this
18 proceeding?

19 **A When did I prepare -- what dates did I prepare my**
20 **pre-filed testimony?**

21 Q Do you know when you prepared your pre-filed testimony?

22 **A I honestly don't recall the dates, no.**

23 Q Well, your Exhibit JD-1T includes a date of
24 December 21st, 2016. Does that sound approximately
25 around the time you finalized your testimony?

CROSS BY FASSBURG/DELEO

1 **A Yeah, that sounds about right. So -- so the question is**
2 **the -- did my -- did I write this email closer to the**
3 **time that I observed these things than to when I**
4 **talked -- so you're just saying there was a lot of time**
5 **between the two. So yes, there was a lot of time closer**
6 **to the time it occurred, as opposed to my testimony.**

7 Q Sure. And in that email you stated that when you
8 observed SpeediShuttle's greeters there were three
9 greeters as opposed to two, correct?

10 **A Let's see what I wrote. Well, what my email says is**
11 **that Kandi told me it was three key members doing this.**

12 Q Do you have any reason to believe that Kandi was wrong?

13 **A I didn't have a lot of trust in Kandi, to be perfectly**
14 **honest with you.**

15 Q How long did you know Kandi?

16 **A I met her that day when I went up to -- to see all these**
17 **things myself.**

18 Q Kandi also told you that SpeediShuttle's team does its
19 utmost to greet every guest, correct? I'll direct you
20 to page 5 of that HJR-24 starting on fourth line.

21 **A That's correct. She would have told me that if I had**
22 **typed that.**

23 Q Now, other than a complaint about whether or not
24 SpeediShuttle was actually able to greet every passenger
25 and had adequate staffing on those occasions on which

CROSS BY FASSBURG/DELEO

1 you made observations, you haven't offered any other
2 critiques of SpeediShuttle's greeting of guests at
3 Sea-Tac Airport, correct?

4 **A Say that again. I'm sorry. That's a confusing**
5 **question.**

6 Q Well, I can take that a little more piece by piece.
7 You've critiqued SpeediShuttle's staffing levels of
8 greeters at Sea-Tac on occasions for which you observed
9 their greeters, correct?

10 **A Correct.**

11 Q And you have critiqued them in that you claim they were
12 not adequately greeting every guest, correct?

13 **A Correct, they were not. It was the fact that the guests**
14 **were not being greeted in accordance with the**
15 **expectations.**

16 Q You don't claim that SpeediShuttle was in fact not
17 greeting any guest, do you?

18 **A Oh, no. Absolutely not.**

19 Q In fact, you observed their providing greeters?

20 **A I observed -- I did observe staff, yes.**

21 Q Did SpeediShuttle include any sort of surcharge or
22 additional fee to SMS for providing the greeters?

23 **A I don't know that. I'm not involved in the financial**
24 **arrangements --**

25 Q Were you involved --

CROSS BY FASSBURG/DELEO

1 **A -- contract included. I was just told that the service**
2 **included a meet-and-greet of the guest, which made it so**
3 **that we did not have to provide that service, which we**
4 **have in the past.**

5 Q Absent SpeediShuttle providing that service, is it your
6 testimony that SMS itself directly provided those
7 greeters?

8 **A We started to. As soon as we realized that the**
9 **guests -- when the complaints started coming in from**
10 **guests from the cruise line, that guests were claiming**
11 **they weren't met, and we started to put our own staff**
12 **out just to look into it to see if the guests were**
13 **indeed being met and if there were enough staff to**
14 **provide that service, once we realized very quickly that**
15 **it was not being done to the -- to the level that is**
16 **expected, we immediately put our own staff on at our own**
17 **additional expense. So yes.**

18 Q So really that was my only question is, once
19 SpeediShuttle is no longer providing that service and is
20 no longer, in fact, transporting your passengers, was
21 SMS responsible for greeting the passengers?

22 **A Correct. Because we moved to Shuttle Express and**
23 **Shuttle Express doesn't provide that service. So we had**
24 **to add our own cost -- significant cost actually.**

25 Q Did Shuttle Express -- sorry, I didn't mean to cut you

CROSS BY FASSBURG/DELEO

1 off. You can complete your answer if you had something
2 to say.

3 **A Well, the -- yeah, that's my kind of whole thought**
4 **behind this whole situation is that we wouldn't --**
5 **obviously, we would have -- you know, I would have --**
6 **SMS would prefer to stick with SpeediShuttle because**
7 **they provided a service that allowed SMS not to have to**
8 **do the meet-and-greet portion of our contract with --**
9 **with the cruise line. So it's in essence a subcontract,**
10 **and they weren't doing that. So when we moved to**
11 **Shuttle Express, our cost did go up pretty**
12 **significantly.**

13 Q Prior to 2016, did SMS operate in Washington?

14 **A No.**

15 Q So that was your first year here in this market?

16 **A That was SMS's first time in the market, not mine. I've**
17 **worked for other companies.**

18 Q Okay. Did you work for other companies that did similar
19 work for cruise lines?

20 **A Yes.**

21 Q In your experience with those other companies working
22 for cruise lines, which transportation company did they
23 use to transport to and from the airport?

24 **A During my experience -- now, I left for two years, so I**
25 **was not around for the summers 2000 -- let's see, that**

CROSS BY FASSBURG/DELEO

1 would be '15 and '14 -- but prior to that, we used
2 Shuttle Express --

3 Q Did Shuttle Express --

4 **A -- for those particular transfers. Those transfers or**
5 **the hotel transfers. It was called the milk run.**

6 Q Okay. For those particular jobs that you had in your
7 experience with Shuttle Express at that time, did they
8 provide greeters?

9 **A No, we had to provide the service.**

10 Q Did they ever provide an option by which you could pay
11 additional to have them provide greeters?

12 **A Oh, God. I probably have discussed it with them. I**
13 **know they had staffing available if we ever needed it,**
14 **but I don't remember ever using it or actually**
15 **negotiating a price. I do recall conversations where**
16 **they said it was -- that there was services available if**
17 **we ever wanted to talk about it.**

18 Q But you simply did not use them for that, correct?

19 **A Correct. And that was under meeting different people**
20 **who I worked with back then, that I worked with last**
21 **year.**

22 Q Okay. Now, you provided some testimony about the
23 reasons why SMS switched to Shuttle Express. Were you
24 involved in the decision to make that switch?

25 **A I was only consulting. It was -- it was my advice that**

CROSS BY FASSBURG/DELEO

1 I wasn't -- especially after meeting Kandi and seeing
2 the operation and hearing her -- desperation in her
3 voice and the way that she told me that they just
4 weren't staffed and then me seeing it, you know,
5 obviously and my staff reporting back to me, I reported
6 that back to the management of SMS and did recommend
7 that they either get the problem fixed or get the -- or
8 replace them. Because I know what the expectations of
9 our cruise lines are.

10 Q That probably was a poor question because I intended to
11 ask you something a little different than what you
12 answered. So let me be a little bit more clear: Did
13 you have any authority to make the decision to switch to
14 Shuttle Express?

15 **A No.**

16 Q Do you have any -- or let me rephrase that.

17 Were you involved in any of the communications
18 between SpeediShuttle and SMS that surrounded the
19 decision to terminate their agreement?

20 **A No.**

21 Q And so if Mr. Jack Roemer testified that in fact
22 SpeediShuttle terminated that agreement, you don't have
23 any personal knowledge by which you can dispute that,
24 correct?

25 **A I do not. I see the emails that was provided, because I**

CROSS BY FASSBURG/DELEO

1 was sent those emails, which say from Jack where he says
2 I don't think we should do business anymore. And that
3 wasn't -- I wasn't aware of that.

4 Q That was something that SMS did not disclose or share
5 with you?

6 **A You know, they may have later, but it kind of -- I'm**
7 **kind of a little bit fuzzy on that whether -- it was my**
8 **impression that we made the decision and then when I**
9 **went back and read all that, I'm like, Oh, okay, maybe**
10 **that's how it happened. But either way, the -- to me,**
11 **that's irrelevant. The fact was is we had to --**

12 MR. FASSBURG: I'm going to object to
13 nonresponsive. He's not answering my question at this
14 point.

15 JUDGE PEARSON: Can you wrap it up?

16 MR. FASSBURG: I was about to.

17 JUDGE PEARSON: Thanks.

18 MR. FASSBURG: Actually, I think he's
19 answered all of my questions. That's it. Thank you.

20 JUDGE PEARSON: Mr. Harlow, did you have
21 any redirect?

22 MR. HARLOW: No redirect, Your Honor.

23 JUDGE PEARSON: Okay, thank you.

24 Mr. DeLeo, thank you for calling in today.

25 THE WITNESS: My pleasure.

1 JUDGE PEARSON: And we'll excuse you so
2 you can hang up if you would like.

3 THE WITNESS: I appreciate that. Thank
4 you very much.

5 JUDGE PEARSON: Okay. Thank you.

6 So is Mr. Wood next; is that correct?

7 MR. HARLOW: Yes, Your Honor, we would
8 like to call Mr. Wood to the stand to be our next
9 witness.

10 JUDGE PEARSON: Okay. So before we do
11 that, I would like to take just a couple-minute bathroom
12 break. So we will go off the record for about two to
13 three minutes. If anyone needs to use the restroom,
14 please do so now.

15 (Recess.)

16 JUDGE PEARSON: Okay. So we will go ahead
17 and be back on record, following a brief recess.

18 And Mr. Wood, if you could please raise your right
19 hand.

20
21 DON WOOD, Witness herein, having been first duly
22 sworn on oath, was examined and
23 testified as follows:
24

25 JUDGE PEARSON: Okay. Please be seated

1 and please be sure that that microphone is on and
2 functional.

3 THE WITNESS: Check.

4 JUDGE PEARSON: Okay. If you could just
5 state and spell your last name for the record.

6 THE WITNESS: Yes, my last name is Wood,
7 W-o-o-d.

8 JUDGE PEARSON: Okay. Can you speak a
9 little more directly into that?

10 THE WITNESS: How is that?

11 JUDGE PEARSON: Is the red light on?

12 THE WITNESS: It is.

13 JUDGE PEARSON: Okay. There. Now I can
14 hear you through microphone. Okay.

15 THE WITNESS: I've never been accused of
16 being soft spoken.

17 JUDGE PEARSON: Okay. Mr. Harlow, go
18 ahead.

19 MR. HARLOW: Thank you. Based on our
20 discussion off the record and our previous discussions
21 about admissibility, at this time we would like to offer
22 DJW-1T, DJW-2, and DJW-3T. And both parties are stating
23 their objections and so we would like to state our
24 continuing desire that those entire exhibits be admitted
25 and not be stricken, as was done in the previous orders.

1 So we're preserving that.

2 JUDGE PEARSON: Okay. That's noted for
3 the record. Mr. Fassburg?

4 MR. FASSBURG: And SpeediShuttle will
5 maintain the objections it asserted via its two motions
6 in limine to the two exhibits.

7 JUDGE PEARSON: Understood. Then you may
8 proceed.

9 MR. HARLOW: Your Honor, I understand they
10 are admitted to the extent consistent with the prior
11 orders; is that correct?

12 JUDGE PEARSON: That's correct.

13 MR. HARLOW: Thank you.

14 JUDGE PEARSON: DJW-1T and DJW-3T are
15 admitted into the record as -- DJW-1T was revised on
16 February 22nd, 2017. That's the version I'm admitting
17 into the record. DJW-3T was revised on May 8th, 2017.
18 That's the version I'm admitting into the record. And
19 then I will also admit DJW-2.

20 (Exhibit Nos. DJW-1T, DJW-2, and DJW-3T
21 admitted into evidence.)

22 MR. HARLOW: And I can't remember if you
23 formally admitted JD-1 and 2.

24 JUDGE PEARSON: I'm sorry, what?

25 MR. HARLOW: I can't remember actually if

CROSS BY FASSBURG/WOOD

1 you formally admitted JD-1 and 2, Mr. DeLeo's testimony.

2 JUDGE PEARSON: I did, yes.

3 MR. HARLOW: Thank you. The witness is
4 available for cross, Your Honor.

5

6 CROSS-EXAMINATION

7 BY MR. FASSBURG:

8 Q Good morning, Mr. Wood.

9 **A Good morning, Mr. Fassburg.**

10 Q Could you please state your full legal name?

11 **A Yes, my name is Don Julian Wood, III.**

12 Q Please state your business address.

13 **A 914 Stream, S-t-r-e-a-m, Valley Trail,
14 A-l-p-h-a-r-e-t-t-a, Georgia.**

15 Q Are you presently employed with a company?

16 **A Yes.**

17 Q With what company are you employed?

18 **A Wood & Wood.**

19 Q What is your employment or what is your position?

20 **A I'm a principal partner in the firm.**

21 Q I take it you hold yourself out as a consultant and
22 witness for regulatory matters?

23 **A Yes. Most of my work relates to regulated or
24 technology-driven industries. A lot of that has been
25 telecommunications and IT, also electric power**

CROSS BY FASSBURG/WOOD

1 generation, natural gas distribution, public
2 rights-of-way. Rural economic development are also
3 areas that I do a lot of work on.

4 Q Prior to working as a consultant and as an expert
5 witness, did you have employment in companies within
6 those sectors?

7 **A I did.**

8 Q I understand that at one point in time you worked in the
9 telecommunications industry; is that correct?

10 **A I did.**

11 Q Can you describe for us succinctly your experience
12 working in the telecommunications industry?

13 **A I was initially employed in that industry by Bell South,**
14 **now part of AT&T. I was responsible for regulatory and**
15 **cost of service matters. I was also employed by**
16 **MCI Telecommunications. I was originally the manager of**
17 **regulatory for Southeast and then for later for a larger**
18 **southern division, an 11-state division.**

19 Q In your employment within the regulated industries, have
20 you had any employment with a transportation company?

21 **A I have not been employed by a transportation company.**

22 Q Before this particular case in which you were retained
23 by Shuttle Express, have you ever been retained with
24 relation to a case that related to transportation
25 matters?

CROSS BY FASSBURG/WOOD

1 **A Yes.**

2 Q What sort of transportation matters were those?

3 **A There are a number of state regulators that regulate**
4 **trucking. I've done consulting on a number of different**
5 **cases involving the trucking industry.**

6 Q Have you ever offered testimony in a case that involved
7 transportation?

8 **A I have not.**

9 Q Prior to your involvement in this case, had you made
10 yourself familiar with the rules and regulations of the
11 state of Washington that relate to auto transportation
12 companies?

13 **A My review of the statutes and the rules were in the**
14 **context of this case.**

15 Q And so to be clear, you had never before reviewed those
16 rules and regulations?

17 **A Prior to my engagement here, no.**

18 Q So I take it then you had never read, for example,
19 Washington Administrative Code 480-30-140 before being
20 retained in this matter?

21 MR. HARLOW: Objection, asked and
22 answered. And I only do that because we went over
23 double time on the last witness, and I really hope we
24 can move this along.

25 JUDGE PEARSON: Sustained. He did answer

CROSS BY FASSBURG/WOOD

1 that question.

2 BY MR. FASSBURG:

3 Q Do you have any formal legal training?

4 **A No.**

5 Q I understand that as part of your expertise, you are
6 frequently asked to provide testimony that relates to
7 pricing and cost of service and regulated
8 telecommunications markets, would that be correct?

9 **A Yes. Certainly cost of service is one of my areas. And**
10 **I -- as we discussed before, I have testified regarding**
11 **telecommunications.**

12 Q So, for example, in other matters you have frequently
13 offered opinions as to specific price structures and
14 schemes that might be considered unfair, discriminatory,
15 prejudicial, or predatory, correct?

16 **A I have.**

17 Q Now, we asked in discovery what your invoices had been
18 in this proceeding and you told us at that time 18,200,
19 which was through April 19, 2017; is that correct?

20 **A Subject to check. I would have to review.**

21 Q Okay. Do you recall when you provided that answer, if
22 you had provided invoices through all of your testimony?

23 **A I'm not sure -- I'm sorry, I'm not sure I understand**
24 **that question.**

25 Q I just want to make sure I understand the current number

CROSS BY FASSBURG/WOOD

1 so I can ask more easily. Do you know the current
2 number of the total of your invoices?

3 **A I do not.**

4 Q Do you have an estimate of the total amount you expect
5 your invoices to be for this proceeding?

6 **A No, I don't.**

7 Q How much do you charge per hour?

8 **A I believe for this matter it's 350.**

9 Q Does that include testimony?

10 **A Yes.**

11 Q Is that the same rate for all the work that you do?

12 **A Yes.**

13 Q Do you have an estimate of the number of hours you've
14 spent on this proceeding?

15 **A No, I don't. I mean, I gave you in the discovery**
16 **response the most current information that I had at that**
17 **time.**

18 Q Okay. I would like to refer you to your testimony,
19 beginning on DJW-1T at page 4, beginning on line 18.
20 The testimony there relates to your opinions about when
21 an application may be granted over the objection of an
22 existing auto transportation company providing a service
23 in the applied-for territory." And you stated, "By
24 applying these factors, the Commission can identify two
25 primary categories of services that could be

CROSS BY FASSBURG/WOOD

1 distinguished from an existing service. First, an
2 applicant may commit to provide a service that meets the
3 needs of a current unserved market or market segment so
4 that an identified group of customers that the incumbent
5 is either unwilling or unable to serve will directly
6 benefit from presence of a new entrant." Did I read
7 that testimony correctly?

8 **A I believe so.**

9 Q There are a number of ways in which a market segment
10 could be unserved or underserved, correct?

11 **A Yes.**

12 Q So, for example, if an incumbent provider is not
13 providing service that allows their service to be
14 accessible to non-English speakers, that might be an
15 unserved or underserved segment of the market, correct?

16 **A Yes, it could. And that's my understanding of part of**
17 **the Commission's reasoning when it originally granted**
18 **SpeediShuttle's application.**

19 Q Another example of a potentially unserved segment of the
20 market might be someone who requires nonstop service
21 rather than multi-stop service, correct?

22 **A I think we would have to be more precise. If this is a**
23 **share-ride service that we're talking about, then I'm**
24 **not sure a customer in that context could request**
25 **nonstop versus multi-stop, because if it's a shared**

CROSS BY FASSBURG/WOOD

1 service, there may be multi-stops.

2 Q So my question was a little different. A segment of the
3 market might require a nonstop share-ride service,
4 correct?

5 **A I'm sorry. I'm still trying to understand your**
6 **question, Mr. Fassburg. I mean, my understanding of**
7 **share-ride service is that inherent in the service there**
8 **may be multi-stop because it is a service that is shared**
9 **among multiple passengers.**

10 Q So do you disagree that there might be a market segment
11 that seeks nonstop share-ride service?

12 JUDGE PEARSON: I'm just going to stop you
13 there. That sounds like an oxymoron to me.

14 MR. FASSBURG: Your Honor, there is a rule
15 that provides specifically that a company might be
16 providing a different service if it provides nonstop
17 versus multi-stop service, express service. So I'm
18 asking him about his knowledge about these rules.

19 JUDGE PEARSON: And how would a nonstop
20 service be a shared ride? Because you would have to
21 stop more than once to pick up multiple people to share
22 the ride.

23 MR. FASSBURG: Unrelated people going from
24 and to the same place. This is specifically in the
25 rules. I didn't make it up.

CROSS BY FASSBURG/WOOD

1 JUDGE PEARSON: Okay. Go ahead.

2 BY MR. FASSBURG:

3 Q You might have people who prefer lower prices who won't
4 ride a service unless the price is right and who might
5 be underserved if the price is too high, correct?

6 **A If I understand your question correctly, I suppose. But**
7 **this is a regulated service with regulated prices. So**
8 **what's being assessed by the incumbent is already**
9 **regulated by the Commission as a fair price.**

10 Q So my question was a little different. We're talking
11 about whether or not you could have an "un" or
12 underserved segment of the market based upon different
13 criteria. So one criteria that might lead to an
14 unserved or underserved segment of the market might be a
15 price that's too high, correct?

16 **A That's a little different than the other characteristics**
17 **we're talking about, because when we're talking about**
18 **pricing in a market and the relationship between price**
19 **and demand, that is something that's generally addressed**
20 **at the market level or we could discuss specific routes**
21 **and at the route level. But that's really a different**
22 **category than the other things you're describing in**
23 **terms of unserved segments of customers that may be**
24 **non-English speaking that could book through a foreign**
25 **language website, if it were available, that couldn't**

CROSS BY FASSBURG/WOOD

1 book through an English website only, for example. So
2 these are two different categories here. Both of them
3 could increase -- potentially increase demand. But this
4 really -- we can't lump them together when we're talking
5 about unserved market segments.

6 Q Sure. So I'm not really trying to lump them together
7 because that would be pointless.

8 What I'm asking you specifically is within the
9 market that you might potentially be able to attract
10 customers, you may have people who would prefer a lower
11 price and only will ride at a certain price point, and
12 therefore will not ride a service whose price point is
13 too high?

14 **A I agree with that, yes.**

15 Q You may have the other end of the spectrum as well,
16 where someone expects premium service and will not ride
17 if they believe that the vehicle or service provided is
18 subpar or not to their expectations, correct?

19 **A I also agree with that.**

20 Q Similarly, you may have people that like particular
21 features of their service, for example, Uber, which
22 provides a smartphone application that they find
23 particularly attractive, may choose that option and
24 prefer to use that over someone who doesn't provide
25 those options, correct?

CROSS BY FASSBURG/WOOD

1 **A Yes, in part. But now we've clearly departed from the**
2 **share-ride market. We've been talking about market**
3 **segments.**

4 Q I'm talking about --

5 **A Market segments are, by definition, segments of an**
6 **identified market. I would classify those network**
7 **companies, like an Uber or Lyft, as a fundamentally**
8 **different market than what we're addressing in this**
9 **case.**

10 Q Perhaps my question was unclear. Let me try again. You
11 may have customers who prefer the amenities like the
12 smartphone application Uber provides but who would like
13 a share-ride service, correct?

14 **A Yes.**

15 Q And so some of those people may find a particular
16 transportation option more or less appealing to the
17 point where they may or may not use it based upon those
18 service offerings, correct?

19 **A Yeah. If I understand your question correctly, yes,**
20 **that is -- all of these are theoretical possibilities,**
21 **yes.**

22 Q You might have, for example, international travelers
23 that their personal data on their cell phone will charge
24 them roaming fees if they come to the U.S. who would
25 appreciate a provider who gives them Wi-Fi for free on

CROSS BY FASSBURG/WOOD

1 the shuttle, correct?

2 **A Yes. I think that's probably why both providers in this**
3 **case offer free Wi-Fi, is to meet that demand.**

4 Q You may have tourists who would prefer transportation
5 options that are tailored to tourism, that might not use
6 a service unless it offers the particular
7 tourist-focused amenities that they prefer, correct?

8 **A Yes.**

9 Q Now, you said second, on page 4 at line 18, "The
10 applicant may commit to provide an enhancement to the
11 core service that it can demonstrate will expand the
12 size of the overall market to be served by the incumbent
13 and new entrant."

14 Can you provide us the specific rule that the
15 Commission uses that states that is a particular entry
16 standard for a new applicant?

17 **A No. In fact, if you go back to the beginning of**
18 **line 18, what I said is, identify the factors that are**
19 **in the rule. And then my opinion here is that by**
20 **applying those factors, you can identify there are a**
21 **couple of different clear categories of customers that**
22 **would serve the public interest. One is previously**
23 **unserved, the other is expansion of the market itself.**

24 Q So these are your interpretations of the rules, as
25 opposed to something you believe is stated in the rule?

CROSS BY FASSBURG/WOOD

1 **A Well, yeah, I thought my testimony was clear, that these**
2 **are two primary categories of services that can be**
3 **distinguished from an existing service by applying the**
4 **factors and the rule.**

5 Q Do you disagree the Commission is free to interpret its
6 own rules?

7 **A Well, of course they are. The 480-30-140 contains a**
8 **number of factors that they may consider. And then of**
9 **course, one factor that they must consider. But it's**
10 **the Commission's opportunity there to apply those**
11 **factors.**

12 Q Moving on to page 6 of DJW-1T. You provide an opinion
13 about what would happen if a second provider is
14 providing the same core service. Specifically, you
15 state, "Conversely, if an applicant does not commit to
16 serve previously unserved customers (or makes such a
17 commitment but in practice fails to do so), and instead
18 offers a service that is fundamentally the same as the
19 service provided by the incumbent, the public interest
20 will be harmed." Did I read that correctly?

21 **A Yes, you did.**

22 Q What do you mean here by "fundamentally the same"?

23 **A Fundamentally the same as a service that does not result**
24 **in serving previously unserved customers or expansion of**
25 **the total demand for the market. So if you have a**

CROSS BY FASSBURG/WOOD

1 purported service distinction that makes the service
2 different -- you know, at the time of the application,
3 SpeediShuttle's application, we had a lot of things that
4 were promised and characterized, but we had no actual
5 track record of performance. But now you can look at
6 what has actually happened in terms of making a
7 commitment, or in practice fails to do so, and analyze
8 whether in fact these particular enhancements,
9 commitments made, have either resulted in unserved
10 customers being served or an expansion of the market
11 itself.

12 Q So is it your testimony here that there are two criteria
13 by which the Commission should allow new entrants into
14 the market when there is an incumbent, and it would be a
15 best practice of the Commission to subsequently review
16 the practices and the effect on the market of the new
17 applicant who has been granted a certificate and
18 reassess whether that application was meritorious?

19 **A I don't think I agree with that as you posed it. I**
20 **certainly would agree with the suggestion that if a new**
21 **applicant makes a number of specific commitments, and**
22 **the Commission's order in granting an application**
23 **articulates back its understanding of those commitments,**
24 **it is absolutely appropriate for the Commission to**
25 **review whether in fact that company lived up to those**

CROSS BY FASSBURG/WOOD

1 specific commitments that it made. Because if it has
2 not -- what I'm describing here is a circumstance where
3 if it has not, and unserved market segments were not
4 subsequently served or total demand was not expanded,
5 then there is a very real harm to the public interest to
6 be evaluated, which is the one factor in
7 480-30-140(1)(b) that the Commission must consider,
8 rather than may consider.

9 Q Sure.

10 **A So it's absolutely appropriate to review whether**
11 **SpeediShuttle did in fact do the things that it said it**
12 **would do, that the Commission clearly understood that it**
13 **would do, and evaluate how that -- if it has not, how**
14 **that has affected the public and the users of share-ride**
15 **service.**

16 Q My question is a little different. Are you saying it's
17 a best practice for the Commission to go back and
18 evaluate every new applicant who has been granted a
19 certificate in a territory previously served?

20 **A I think the answer I gave you was more specific than**
21 **that.**

22 Q And I'm not asking for you to talk about SpeediShuttle
23 and Shuttle Express. We're talking about what you were
24 saying from a broad perspective.

25 **A What I'm saying, from a broad perspective, is certainly**

CROSS BY FASSBURG/WOOD

1 if there is a complaint and the Commission has granted
2 an application based on its understanding of very
3 specific commitments by an applicant, that would serve
4 to differentiate its service. For the Commission to
5 then go back and review whether the applicant actually
6 lived up to those commitments and that the outcome is as
7 expected in terms of the public interest, is absolutely
8 appropriate and what I would expect the Commission to do
9 in order to protect the users of this service.

10 Q Now, going back to the words "fundamentally the same,"
11 are you saying by your testimony here today that if it
12 turns out in fact there aren't different demographics of
13 passengers served by the new transportation company's
14 service, that they are fundamentally the same?

15 **A Well, I'm saying something a little more precise than**
16 **that. I'm saying if they are -- I mean, the Commission**
17 **granted the application based on its understanding from**
18 **SpeediShuttle's testimony that it would be providing an**
19 **entirely different business model that appeals to and**
20 **serves a certain subset of the market.**

21 Q Mr. Wood, I think that you're answering something
22 different than what I'm asking because your testimony
23 was really broad and not limited to SpeediShuttle. So
24 I'm not asking you about SpeediShuttle.

25 **A All right.**

CROSS BY FASSBURG/WOOD

1 Q You're providing what you believe are the -- your
2 interpretation of the entry standards for auto
3 transportation in Washington and what the Commission
4 should and should not do from a broad perspective.

5 And I'm asking you broadly, are you saying that
6 "fundamentally the same" is the standard that would
7 apply to whenever there isn't a different subset of the
8 population that is ultimately served by a new auto
9 transportation company?

10 **A No. What I'm saying is the Commission has the**
11 **requirement under statute and then under its new rules,**
12 **under 480-30-140, to consider a number of factors that**
13 **it may consider and then one that it must consider. If**
14 **it grants an application based on specific commitments**
15 **that include serving previously unserved customers and**
16 **making service more appealing to a broader base of**
17 **customers and increasing demand, if that is the basis**
18 **for the application and the basis for the Commission's**
19 **approval, then that becomes the subject of review of**
20 **whether the applicant has actually lived up to its**
21 **commitments.**

22 Q So you understand that the Commission can grant a new
23 application based on its finding that the applicant is
24 proposing to provide something that is not the same
25 service, correct?

CROSS BY FASSBURG/WOOD

1 **A That's right. After considering the factors and the --**

2 Q Is your testimony here relating to that criteria or are
3 you referring to something else?

4 **A No, I'm referring to that criteria. But my testimony**
5 **also is specific to this case because the commitments**
6 **made by the applicant are specific to this case.**

7 Q Okay. So I think that helps clear this up. When you
8 say "fundamentally the same," you say you are referring
9 to 480-30-140. So now I would like to ask you, are you
10 familiar with the General Order R-572 that was issued in
11 the 2013 rulemaking that adopted the changes to
12 WAC 480-30-140?

13 **A I don't have it with me. I have reviewed it.**

14 Q You have reviewed it?

15 **A I have seen it, yeah.**

16 Q So because you've reviewed it, you are familiar with the
17 Commission's order and its policy decision or its policy
18 statement in which the Commission rejected a proposal to
19 use the words "essentially the same service," correct?

20 **A I don't recall. I don't have it in front of me.**

21 Q Okay.

22 **A But I have seen it.**

23 Q I'm going to hand the witness what has been previously
24 marked WAM-30X, which is a copy of Order R-572, and I've
25 turned it for the witness to page 14.

CROSS BY FASSBURG/WOOD

1 Mr. Wood, do you see where the Commission discusses
2 the proposal of Seatac Shuttle and Capital Aeroporter to
3 use the language "essentially the same service" in the
4 Commission rules or "similar service"?

5 **A I do.**

6 Q Do you see where the Commission says, "As discussed
7 above, the Commission interprets the statute to reflect
8 clearly the State's interest that it should draw a
9 bright line between service offerings. The proposed
10 rule describes adequately the factors the Commission
11 will consider in determining, on the facts, whether the
12 service proposed is the same as the service currently
13 provided."

14 **A Yes.**

15 Q When you offered this testimony about the services being
16 "fundamentally the same," did you understand that the
17 Commission had rejected the idea that "fundamentally the
18 same" was the standard?

19 **A No, I don't think that's what this says at all. I think**
20 **what I'm saying is fully consistent with this and I**
21 **fully support a bright line -- distinguishing on a**
22 **bright-line basis between service offerings. Which my**
23 **review of the Commission's Orders 02 and 04 in this case**
24 **does exactly that. It refers specifically to an entire**
25 **business model serving a certain subset of the market**

CROSS BY FASSBURG/WOOD

1 proposed by SpeediShuttle. And then in both of those
2 orders the Commission goes through and outlines a number
3 of very specific elements of that service, multilingual
4 greeters, 20-minute service guarantee, a number of items
5 that it felt in fact created just such a bright line.

6 Q Mr. Wood, I'm going to object to nonresponsive. And I
7 would like to make a deal with you. If I ask you a
8 question, because we have a limited time here today,
9 would you please answer the question that I asked you?

10 **A I will do so to the best of my ability.**

11 MR. HARLOW: Objection, Your Honor. I
12 don't think Mr. Fassburg is in the position to be
13 instructing the witness how to answer questions.

14 JUDGE PEARSON: Okay. I --

15 MR. FASSBURG: My question was did he have
16 that in mind when he made the statement, and he is
17 speaking about a number of other things.

18 JUDGE PEARSON: Well -- and, Mr. Wood, I
19 will just remind you that most of these questions are
20 yes or no questions. So please just give yes-or-no
21 answers unless something more is required.

22 THE WITNESS: Then the answer is -- your
23 question, as I recall it, was I aware that in this order
24 TC-121328, the Commission rejected my language of
25 "fundamentally." And my answer is no, that is not what

CROSS BY FASSBURG/WOOD

1 this order says.

2 BY MR. FASSBURG:

3 Q Okay. Are you familiar with what a scheduled service
4 is?

5 **A I am.**

6 Q And do you understand what a door-to-door service is?

7 **A Yes, I do.**

8 Q Is it your testimony that whenever someone is providing
9 door-to-door and a new applicant were to propose to
10 provide scheduled service within the same territory,
11 that it would increase the number of demographics or
12 subsets of the market that would be served?

13 **A I'm sorry. Mr. Fassburg, I want to do yes or no, but**
14 **"the number of demographics" is not really a meaningful**
15 **phrase.**

16 Q I can rephrase that. You have said that there really
17 are two ways in which commission could serve the public
18 interest by granting a new application. One, it's going
19 to meet the needs of a currently unserved market or
20 market segment; or, two, it's going to expand the size
21 of the overall market.

22 So my question is: Now you are saying that when
23 someone proposes to provide scheduled service in a
24 market previously only served by door-to-door, it will
25 either serve an unserved segment of the market or that

CROSS BY FASSBURG/WOOD

1 it will expand the market?

2 **A I'm sorry, Mr. Fassburg. Your question is based on a**
3 **false premise. The first half of your question, which**
4 **recharacterizes my testimony, is not consistent with my**
5 **testimony. I did not make a broad statement that the**
6 **Commission, in any review of a transportation company,**
7 **could only consider those two elements. What I said in**
8 **this case -- my testimony is, in this case it approved**
9 **an application based on very specific expectations that**
10 **involved serving unserved elements and involved**
11 **expansion of the market. In order to evaluate**
12 **SpeediShuttle's performance here in terms of those**
13 **commitments, those are what should be looked at.**

14 **Q** Okay. Now, because I think your testimony that you
15 filed didn't quite say that. I just want to make sure
16 I'm clear on what you're saying: You are not saying
17 there aren't other factors upon which the Commission
18 could grant an application that would serve the public
19 interest, you just believe these are two of them?

20 **A That's not quite right. There are multiple factors.**
21 **There are multiple factors set forth in the rule. What**
22 **I'm saying is that in this particular case, there were**
23 **specific representations made by the applicant, specific**
24 **elements of the applicant's service that the Commission**
25 **understood to exist, understood to be commitments, and**

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1 understood as part of how it drew that bright line
2 between the service offering of the applicant and the
3 incumbent. And in order to evaluate what the applicant
4 has now actually done, compared to the commitments and
5 how those are different, it is also important to look at
6 whether it's actually served any unserved market
7 segment, or whether it's actually expanded the market to
8 any degree, because both of those affect the public
9 interest.

10 Q Mr. Wood, will you please refer to page 4 of your
11 testimony in DJW-1T? Can you please read the question
12 that you were asked in that testimony, beginning on line
13 10?

14 **A On line, I'm sorry, 10?**

15 Q On line 10.

16 **A Yeah. "The Commission has adopted a number of factors
17 to consider when considering an application for a second
18 provider of transportation services in a given
19 geographic area. What is your understanding of these
20 factors?"**

21 Q And it was in response to that question that you
22 provided us this testimony about the two ways in which
23 an applicant could receive a certificate of public
24 convenience and necessity in Washington, correct?

25 **A I'm sorry, Mr. Fassburg. That's not what I said. I**

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1 responded in the first paragraph to this question by
2 citing to rule with the factors, and then the remainder
3 of the answer describes the public interest implication
4 of applying those factors in a context.

5 Q Okay. Let's move on. On page 8 of your testimony you
6 discuss what you believe to be SpeediShuttle's business
7 model. Beginning on lines 1 to 5 the question is:
8 "Please describe the elements of SpeediShuttle's
9 proposed 'entirely different business model.'" Answer,
10 "SpeediShuttle made a number of commitments that were
11 explicitly relied upon by the Commission." And then you
12 state under the heading, "Commitment to provide
13 prearranged, reservation-based service only. The
14 Commission noted Mr. Cecil Morton, SpeediShuttle owner
15 and president, described 'SpeediShuttle's business
16 model' as one 'which provides door-to-door scheduled
17 passenger service only.'"

18 **A Yes.**

19 Q Now with that in mind, you say the commitment that was
20 relied upon by the Commission is one made by
21 SpeediShuttle, correct?

22 **A Yes. As I go on in this answer to say, it was**
23 **Mr. Morton's testimony that SpeediShuttle would not**
24 **offer a walkup, on-demand service.**

25 Q Okay. Now, where in Order 04 where the Commission

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1 granted the application did the Commission discuss
2 walkup service?

3 MR. HARLOW: I kind of think the orders
4 speak for themselves. We have Order 04, we have Order
5 02, which was affirmed by Order 04. And I kind of think
6 they need to be taken together. Again, I kind of think
7 they speak for themselves. I think this is best saved
8 for post-hearing briefing.

9 JUDGE PEARSON: My recollection is that
10 neither of those orders addressed the distinction
11 between prearranged or walkup service. So I think
12 everyone in the room can agree on that. So if you can
13 just go forward.

14 MR. FASSBURG: Sure. I understand. But,
15 Your Honor, the witness has provided his testimony,
16 which I believe it erroneous, and I think I'm entitled
17 to demonstrate the errors in his testimony.

18 JUDGE PEARSON: Okay. So, Mr. Wood, I'll
19 just give you a spoiler alert that you're not going to
20 find that in Order 04. So you can just answer the
21 question and we can go forward.

22 THE WITNESS: I obviously agree with
23 Your Honor.

24 MR. FASSBURG: Thank you.

25

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1 BY MR. FASSBURG:

2 Q About -- let's move on to a different thing that you
3 state. You state that by providing walkup, on-demand
4 service, i.e., the same service Shuttle Express
5 provides, in your testimony on page 8 at lines 13 to 16.
6 When you say "same service" there, are you again
7 referring to the standards of 480-30-140?

8 **A Yes.**

9 Q And are you simply saying that because a feature of a
10 service is the same as the feature of another service,
11 it means they are the same service under 480-30-140?

12 **A No. I'm not suggesting that any one feature would be**
13 **sufficient to make that distinction.**

14 Q Okay.

15 **A What I'm saying is that both providers are offering**
16 **walkup, on-demand service.**

17 Q Now, when a provider provides walkup service, you claim
18 that means they will not be serving through personal
19 greeters; is that correct?

20 **A No. I think my testimony is the same as Mr. Roemer's,**
21 **and that's that if the company doesn't know that a**
22 **customer -- a potential customer is arriving, they would**
23 **not have the ability to provide a greeter for that**
24 **customer.**

25 Q Sure. I'll object to nonresponsive. Just yes or no on

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1 that one would have been fine.

2 I'll ask it again: Are you saying that providing
3 walkup service they are not greeting passengers?

4 **A I'm -- it's not -- they may or they may not.**

5 Q Okay. If SpeediShuttle is -- I'll use SpeediShuttle --
6 if SpeediShuttle is transporting people that are
7 tourists who prefer SpeediShuttle's tourism-focused
8 business, are they still receiving the tourist-based
9 service features, even if they are not greeted at the
10 baggage claim?

11 **A I don't know the answer to that because I don't know**
12 **what a tourist-based feature is.**

13 Q Sure. If a shuttle has a driver who speaks a different
14 language other than English, and that passenger is
15 transported by a driver who speaks a language that is
16 the same as that driver (sic), would they be receiving
17 enhanced multilingual services, regardless of whether or
18 not they were provided a greeter?

19 **A Well, I think that's more generally true. It's not**
20 **really a tourist-specific or a SpeediShuttle-specific**
21 **instance. Any customer would have that additional**
22 **benefit if the driver happened to speak the language.**

23 Q Do you understand that, unlike a for-hire transportation
24 company, walkup customers must still make a reservation
25 with SpeediShuttle?

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1 **A I'm sorry, must make a reservation beyond what they do**
2 **at the counter?**

3 Q Yeah. So let me rephrase that. Someone who walks up to
4 SpeediShuttle's counter on the third floor of the
5 parking garage at Sea-Tac Airport must still make a
6 reservation to use SpeediShuttle; did you understand
7 that?

8 **A That's not my -- my understanding is they can simply**
9 **request service to a location. I actually walked up**
10 **yesterday to the counter and asked about that.**

11 Q How is that different from making a reservation?

12 **A I don't know. It's -- "reservation" was your phrase. I**
13 **don't know -- to me, a reservation means something done**
14 **in advance of the request for service. In this case, my**
15 **understanding is that you can simply walk up to the**
16 **counter and ask for service.**

17 Q Now, is that different from prearranged in your opinion?

18 **A Yes.**

19 Q How is it different than prearranged in your opinion?

20 **A Well, prearranged would be something that is more**
21 **consistent with my understanding of your question on**
22 **reservation, which is something that is booked ahead of**
23 **time.**

24 Q Do you understand that SpeediShuttle does not have a
25 line of vehicles waiting for the next passenger like a

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1 for-hire company might?

2 **A I don't know where you stage your vehicles.**

3 Q I'll move on just a little bit. On multilingual
4 service, you state on page 9, "SpeediShuttle's
5 'multilingual business model' consists of two key
6 elements. First, SpeediShuttle promises a multilingual
7 website that would permit reservations to be made in
8 Chinese, Japanese, and Korean, in addition to English.
9 The value of such a website would be to enable a visitor
10 who is not fluent in English to make a reservation for
11 prearranged service through SpeediShuttle's website."

12 Did I read that correctly?

13 **A Yes.**

14 Q Have you visited SpeediShuttle's website?

15 **A I have.**

16 Q Do you understand that they do in fact provide a
17 multilingual website that allows a visitor who is not
18 fluent in English but who is fluent in Chinese,
19 Japanese, or Korean to make a reservation?

20 **A I can agree with the first part of the question. There**
21 **is a multilingual website, and we requested information**
22 **on whether any bookings were actually made through that**
23 **website, and my understanding is SpeediShuttle didn't**
24 **respond to that. So I don't know if the website is**
25 **actually capable of processing a reservation in one of**

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1 those other languages or not.

2 Q I'm going to object to nonresponsive to the part
3 after -- or starting with the question that you asked to
4 SpeediShuttle.

5 Did you make a determination as to whether or not
6 that website was capable of making a reservation in
7 Japanese, Chinese, or Korean?

8 **A No, I only know that the website is available in those**
9 **languages. There is no evidence one way or the other as**
10 **to whether it can actually process a reservation.**

11 Q Did you ever attempt to make a reservation in Japanese,
12 Korean, or Chinese?

13 **A I did not.**

14 Q Did you ever ask anyone who was fluent in Japanese,
15 Korean, or Chinese to make a reservation in one of those
16 languages?

17 **A No, I did not.**

18 **JUDGE PEARSON: Mr. Fassburg, I would like**
19 **to take a brief recess and allow the court reporter to**
20 **set up because she just walked in to the room.**

21 MR. FASSBURG: Sure.

22 JUDGE PEARSON: So let's go ahead and do
23 that. So we will be off the record until such time that
24 she is ready to go.

25 MR. FASSBURG: Okay.

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1 (Recess.)

2 (End of recorded portion.)

3 JUDGE PEARSON: Okay. We will be back on
4 the record following a brief recess. We now have a
5 court reporter present with us in the room. And
6 Mr. Wood is still under oath and being cross-examined by
7 Mr. Fassburg. And, Mr. Fassburg, you can resume
8 whenever you are ready.

9 BY MR. FASSBURG:

10 Q Thank you. Going back to your statement in the
11 testimony on page 9 that I had read to you, you state
12 that, "The value of such a website would be to enable a
13 visitor who is not fluent in English to make a
14 reservation."

15 Are you stating that that is the only value of such
16 a website, or are you just speaking about that
17 particular value?

18 **A Well, certainly there is a value to be able to review**
19 **the service in a native language and then to book the**
20 **service.**

21 Q Are you aware that the information on the website it
22 includes additional information beyond simply
23 SpeediShuttle service but in fact includes tourism
24 information and information about Sea-Tac Airport
25 translated into those languages?

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1 **A That I don't know.**

2 Q You also state on page 9, lines 13 to 16, "In order to
3 determine whether the promise of 'significantly
4 increased accessibility for non-English speaking
5 customers' has been met, it would be instructive to
6 review how many customers have actually made
7 reservations through the non-English pages of the
8 SpeediShuttle website." What promise do you refer to
9 there?

10 **A Well, the commitment to provide the foreign language**
11 **service through website, phone, and in-person greeters**
12 **is something that certainly does appear in Order 04 and**
13 **02 and something the Commission clearly relied on in**
14 **drawing the bright line between service that**
15 **SpeediShuttle was proposing versus what Shuttle Express**
16 **already provided.**

17 Q Is it your testimony that SpeediShuttle promised to
18 significantly increase accessibility for
19 non-English-speaking customers?

20 **A My understanding is that that was one of the underlying**
21 **themes in the entire application process.**

22 Q I will refer you to Exhibit WAM-50X, which is the
23 hearing transcript of SpeediShuttle's application. I
24 don't want to take too much time on this, but I would
25 love it if you could identify anywhere in that

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1 transcript there is testimony where SpeediShuttle
2 promised to significantly increase accessibility for
3 non-English-speaking customers.

4 **A No. My testimony is based on the language in Orders 02**
5 **and 04 where the Commission articulates its specific**
6 **expectations, referring specifically at 20 in 04 to**
7 **multilingual customer service either on its website, by**
8 **phone, or by way of personal greeter. And that that**
9 **would enable it to serve an entire demographic of**
10 **travelers whose needs cannot be met by Shuttle Express's**
11 **existing service.**

12 MR. FASSBURG: Objection, nonresponsive.
13 Move to strike the response.

14 JUDGE PEARSON: Okay, Mr. DeLeo.

15 MR. FASSBURG: He is Mr. Wood.

16 JUDGE PEARSON: Sorry, Mr. Wood. I will
17 just remind you to respond to the question.

18 THE WITNESS: Okay.

19 JUDGE PEARSON: And I would actually need
20 the court reporter to read that back to me before I can
21 rule on your objection.

22 (Previous question and answer read back.)

23 JUDGE PEARSON: Okay. Yes, and I'll
24 strike those portions of the testimony because they were
25 not responsive to the question.

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1 BY MR. FASSBURG:

2 Q Mr. Wood, I'll repeat the question. Where in the
3 application hearing transcript, identified as WAM-50X,
4 is there testimony that SpeediShuttle promised to
5 significantly increase accessibility for
6 non-English-speaking customers?

7 MR. HARLOW: Your Honor, I'm going to
8 object. That's like a 150-page transcript that hasn't
9 been given to him. I think he needs to at least ask a
10 foundational question.

11 JUDGE PEARSON: Okay. So I will just step
12 in here and again let everyone know that it does not
13 appear anywhere in the transcript. So let's move
14 forward.

15 MR. FASSBURG: Sure. Your Honor, I think
16 it's fair that I ask these questions to him because he
17 states repeatedly throughout his testimony that
18 SpeediShuttle promised this and that, and I think those
19 were all incorrect statements.

20 JUDGE PEARSON: I understand. But having
21 been the judge that presided over that hearing, I know
22 what was said and not said. So I would hope that me
23 acknowledging that on the record is significant for your
24 purposes.

25 MR. FASSBURG: It is. Thank you.

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1 MR. HARLOW: It's also unfair because the
2 record consists of more than just the transcript; there
3 is the application, there is the exhibits, et cetera.

4 JUDGE PEARSON: It does.

5 MR. FASSBURG: Well, I can ask the
6 question differently if we need to get there.

7 BY MR. FASSBURG:

8 Q Mr. Wood, where in the application hearing record is
9 there a promise from SpeediShuttle to significantly
10 increase accessibility for non-English-speaking
11 customers?

12 For the record, they weren't laughing at me but the
13 dog on the line.

14 MR. ROEMER: Her name is Molly.

15 MR. FASSBURG: The dog doesn't like my
16 question. He is objecting. Sorry, do you need me to
17 repeat it?

18 THE WITNESS: No, please don't. My
19 response is still the same. My testimony here is based
20 on the language of Orders 02 and 04, not anywhere in
21 particular in that record.

22 BY MR. FASSBURG:

23 Q Objection, nonresponsive. I think you answered at the
24 end, it's not in the record, correct?

25 **A I don't know without reviewing that record.**

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1 Q You've made statements in your testimony under oath that
2 SpeediShuttle made promises to provide certain things
3 like significantly increased accessibility for
4 non-English-speaking customers. For clarification, are
5 you saying the commission made findings that
6 SpeediShuttle's proposed service offering would provide
7 those benefits?

8 **A That is my testimony. It's also my testimony the**
9 **Commission made findings that SpeediShuttle had made**
10 **representations to it that it would operate pursuant to**
11 **that business model. It goes a little beyond what you**
12 **just said. But yes, my testimony here is based on the**
13 **language.**

14 Q Where in Order 04 or Order 02 does the Commission say
15 SpeediShuttle made representations that it is going to
16 limit itself to this business model?

17 MR. HARLOW: Objection, Your Honor. This
18 is getting argumentative and repetitive.

19 JUDGE PEARSON: Okay. So I see what
20 you're getting at. And, again, we'll just state for the
21 record that that's not anywhere in the record up until
22 this point. SpeediShuttle never said that it was going
23 to just stick to serving a specific subset. It was the
24 Commission that brought that up in the orders. So we
25 can move forward.

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1 BY MR. FASSBURG:

2 Q Mr. Wood, when you make statements that now the
3 information available after SpeediShuttle commenced
4 service can be tested and the -- basically, the
5 statements can now be -- let me rephrase this because
6 it's getting lost.

7 I'm trying to paraphrase so that we can move this
8 along. You made statements that allude to the idea you
9 can judge whether SpeediShuttle's commitments have been
10 followed through, correct?

11 **A That the Commission can evaluate now factually how the**
12 **actual performance compares to the proposed performance.**

13 Q Yes or no, please.

14 **A I have to say no because I don't agree with the way you**
15 **characterized it. I was trying to give you the proper**
16 **characterization from my testimony.**

17 Q Okay. So, Mr. Wood, if in fact SpeediShuttle didn't
18 make a specific commitment and it was the Commission
19 that made a finding, aren't you in fact attacking the
20 judgment in reaching those findings?

21 **A Well, I'm not really attacking anything. I'm looking at**
22 **what the Commission relied on in making this decision to**
23 **draw a bright-line distinction between the services. We**
24 **can -- certainly the Commission is articulating its**
25 **understanding of what was going to happen. Because of**

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1 that, it made a public-interest finding. We can now
2 evaluate that assumption based on factually what's
3 happened since then.

4 Q So just to be clear, we can evaluate the Commission's
5 assumption, not SpeediShuttle's representation, correct?

6 **A Well, in many cases they are the same, in some cases**
7 **they may be different, but we can evaluate both of them.**

8 Q If these things that you state were SpeediShuttle's
9 promises are in fact the Commission's findings, aren't
10 you just simply challenging the Commission's findings?

11 **A Well, I'm not challenging -- certainly the commission**
12 **made findings based on its understanding of the record**
13 **before it in that application proceeding. If those were**
14 **never SpeediShuttle's intent or if SpeediShuttle -- or**
15 **if they were at the time and SpeediShuttle has**
16 **subsequently acted differently, I'm not sure that that**
17 **distinction is particularly meaningful because neither**
18 **scenario gets you to the public interest and serving the**
19 **best interest of the people who rely upon share-ride**
20 **services.**

21 MR. FASSBURG: Objection, nonresponsive
22 and move to strike the response.

23 JUDGE PEARSON: Can you read it back to
24 me?

25 (Previous question and answer read back.)

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1 JUDGE PEARSON: So you can strike
2 everything after that first sentence because it was not
3 responsive to the question, which was a yes or no
4 question, Mr. Wood.

5 THE WITNESS: Okay. Then the answer is
6 no.

7 BY MR. FASSBURG:

8 Q Going to some of your more factual statements, you point
9 out on page 19 of your initial testimony, DJW-1T, that
10 there were in fact no reservations made on
11 SpeediShuttle's website in Chinese, Japanese, or Korean.

12 JUDGE PEARSON: What page? I'm sorry.

13 MR. FASSBURG: Page 19.

14 BY MR. FASSBURG:

15 Q Do you recall that testimony? Or have you found it?

16 **A Again, Mr. Fassburg, I don't want to drag this out, but**
17 **when you characterize my testimony inaccurately I can't**
18 **answer simply yes or no to your question. That was not**
19 **my testimony.**

20 **My testimony was that we sought information from**
21 **SpeediShuttle, SpeediShuttle was unable to identify any**
22 **instance of a reservation being made in a foreign**
23 **language.**

24 Q I see that as a distinction without a difference, but
25 let's move on.

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1 You say that there were none identified. Do you
2 know how many people have actually used the website in a
3 language other than English to obtain information?

4 **A No.**

5 Q Do you know how many people are multilingual and speak
6 Japanese, Chinese, or Korean but made a reservation in
7 English?

8 **A No.**

9 Q You state in page 20 of your testimony, dealing with the
10 reservation interface of wholesalers. "Mr. Kajanoff
11 describes a number of issues surrounding these
12 agreements, but the salient point here is that for the
13 significant number of customers who book their
14 reservations through GO Group, SpeediShuttle is now
15 providing the same service, booked through the same user
16 interface, that was previously provided by
17 Shuttle Express."

18 Now, when you say that the reservation system
19 SpeediShuttle is providing is the same service, are you
20 referring to the application criteria in 480-30-140?

21 **A I didn't say the application system was the same**
22 **service. I said the service -- the ride-share service**
23 **provided by SpeediShuttle is the same service to the**
24 **same group of customers.**

25 Q Let me make sure I understand this. You say that those

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1 people that book through GO Group are the same customers
2 because they use the same user interface; is that your
3 testimony?

4 **A I want to just give you a yes but I'm not sure.**

5 Q Why don't you explain your answer.

6 **A Thank you. It is my testimony that if you have a group**
7 **of customers that are booking through the GO Group and**
8 **those reservations were previously directed to**
9 **Shuttle Express and now they are being directed to**
10 **SpeediShuttle, that what you have here is no service of**
11 **unserved market segments or expansion of the market,**
12 **what you have is simply a substitution of providing a**
13 **service from one provider and now it's being provided to**
14 **the same group of customers by a different provider.**
15 **But it's none of the -- it's not the entirely different**
16 **business model, it's not serving a certain subset of the**
17 **market, it's just the same customers going to a**
18 **different provider.**

19 Q Do you have any personal knowledge of the demographics
20 or interests of the customers who reserve service
21 through GO Group?

22 **A No.**

23 Q So you're not saying that GO Group customers aren't
24 multilingual or are tourists or are tech savvy, you're
25 just saying, if they were, they could have been served

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1 by Shuttle Express; is that your testimony?

2 **A Not only could have been, they were before the GO Group**
3 **started sending the reservations to Speedy.**

4 Q Have you actually evaluated the identities of the
5 passengers to say these same people were in fact
6 transported by Shuttle Express?

7 **A The same individual people?**

8 Q Correct.

9 **A No.**

10 Q So your point here is that by having the same wholesaler
11 Shuttle Express once served, the wholesaler is the same,
12 not the passengers, correct?

13 **A Well, not the individual passengers themselves but that**
14 **group of passengers that book through GO Group are not**
15 **now being served by Speedi because Speedi is offering an**
16 **entirely different business model or serving some**
17 **unserved segment of the market. It's simply because**
18 **GO Group is now sending those reservations to**
19 **SpeediShuttle instead of Shuttle Express.**

20 Q You're not claiming it's a surprise that the Commission
21 should be giving a distinction or a significance to that
22 SpeediShuttle is using GO Group as a wholesaler, are
23 you?

24 **A I don't know how to answer that.**

25 Q Well, I'll ask you a little differently. Were you aware

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1 that GO Group was one of the shippers that supported --
2 or one of the customers that supported SpeediShuttle's
3 application and provided a statement to support that the
4 application should be granted?

5 **A I recall from the record that they were part of that**
6 **proceeding. I don't recall exactly what they said.**

7 Q Okay. If that was in fact true, it should be no
8 surprise to the Commission that GO Group in fact used
9 SpeediShuttle as an auto transportation company in
10 Washington, would it?

11 **A I can't testify as to what ought to surprise the**
12 **Commission. All I'm saying is that its customers were**
13 **being served by one provider, and now they are being**
14 **served by another, not because of any enhanced service**
15 **elements but simply because they are being redirected by**
16 **the wholesaler.**

17 MR. FASSBURG: I'm going to object as
18 nonresponsive and move to strike again.

19 BY MR. FASSBURG:

20 Q Mr. Wood, can you agree to answer my questions and only
21 my questions, please?

22 **A I have certainly endeavored to do so and will continue**
23 **to do so.**

24 Q Mr. Wood, it would in fact be a surprise if a customer
25 who supported an applicant and said we would like to see

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1 them in this market didn't use their services, correct?

2 **A I think there are a lot of elements that would go into**
3 **that decision. I can't --**

4 **JUDGE PEARSON: Mr. Wood, yes or no.**

5 THE WITNESS: No. Well, I can't remember
6 the way you asked it. I can't agree with your
7 characterization.

8 JUDGE PEARSON: You can also say "I don't
9 know." But please stop giving long narrative responses.

10 THE WITNESS: Okay.

11 BY MR. FASSBURG:

12 Q Mr. Wood, it would be a surprise if a customer who
13 supported an applicant didn't in fact use their service,
14 correct?

15 **A I can't agree to that, no.**

16 Q Are you saying that passengers who book through GO Group
17 are not met with a greeter?

18 **A I don't believe I addressed that one way or the other.**

19 Q So if a passenger -- let's use a hypothetical individual
20 passenger. If a hypothetical individual passenger in
21 the past went through GO Group and ended up receiving
22 service from Shuttle Express, later booked service
23 through GO Group and receives service from
24 SpeediShuttle, is the actual transportation one and the
25 same?

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1 **A Yes.**

2 Q You're saying that because they both received a ride on
3 a shuttle only, correct?

4 **A Well, they both are transported from point A to point B**
5 **and they do that on a share-ride service, yes.**

6 Q So you in your testimony believe that as long as they
7 both receive transportation from a place to a place it's
8 the same service?

9 **A No, that's not what I said.**

10 Q So if in fact SpeediShuttle is providing that service
11 with a greeter, did they receive a greeter that they
12 wouldn't have received with Shuttle Express?

13 **A Yes. If I understand your hypothetical, if they were**
14 **provided with a greeter, then yes, they were provided**
15 **with a greeter.**

16 Q My question was: That would be different than if they
17 received transportation previously from Shuttle Express,
18 correct?

19 **A The greeting part, yes.**

20 Q And if they received tourism information through a
21 SpeediShuttle TV, that's something Shuttle Express would
22 not have provided to that hypothetical customer in the
23 past, correct?

24 **A Yes.**

25 Q And if that person happens to speak a language that was

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1 the same as one of SpeediShuttle's multilingual
2 employees, that might be a benefit they would receive
3 they would not have necessarily received from
4 Shuttle Express as well, correct?

5 **A Yes. Unless Shuttle Express's employee also happened to**
6 **speak that language.**

7 Q Now, SpeediShuttle also offers free Wi-Fi; you
8 understand that, correct?

9 **A I do understand that.**

10 Q And you understand that Shuttle Express at the time of
11 SpeediShuttle's application had Wi-Fi on only a small
12 percentage of its vehicles?

13 **A I recall that they were in the process of deploying it;**
14 **I don't recall how far along they were.**

15 Q Would you disagree that Mr. Marks testified at the
16 application that only five of their 105 vehicles had
17 Wi-Fi at that time?

18 **A I don't remember. I know they started; they hadn't**
19 **finished.**

20 Q So if immediately after SpeediShuttle commenced service,
21 all of GO Group's reservations went to SpeediShuttle, we
22 can say with a pretty clear distinction that before
23 the application there is a good chance they might not
24 have received Wi-Fi from Shuttle Express. But now if
25 they reserved service and end up receiving it from

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1 SpeediShuttle, they would have free Wi-Fi, correct?

2 **A That could have happened, yes.**

3 Q Now, you're not saying that those features that the
4 Commission found made SpeediShuttle a different service
5 means that -- let me rephrase that.

6 Your testimony was that because they received
7 service reserved through GO Group that SpeediShuttle is
8 providing the same service. When you state that, you
9 are simply ignoring all these things we have just
10 discussed, correct?

11 **A No.**

12 Q You provide some testimony on page 21 where you are
13 discussing the level of greeters that SpeediShuttle is
14 providing. The question to you on line 2 was: "Is
15 there any evidence that SpeediShuttle has met its
16 commitment to meet all incoming passengers with a
17 multilingual agent?" Do you recall that?

18 **A I do.**

19 Q Okay. Do you recall the date on which you provided your
20 answer?

21 **A This testimony was prepared in December.**

22 Q In December SpeediShuttle hadn't submitted any
23 testimony, had they?

24 **A I don't believe so.**

25 Q When you provided your opinions about SpeediShuttle's

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1 greeters, that was based solely on testimony submitted
2 by Shuttle Express, correct?

3 MR. HARLOW: Objection, Your Honor. The
4 testimony of Mr. Wood at line 7 on page 21 refers to the
5 testimony of Mr. Morton. So the testimony he is
6 referring to obviously goes back to the 2014 hearing.

7 JUDGE PEARSON: 2015 hearing?

8 MR. FASSBURG: How could opinions based
9 upon the actual practices of SpeediShuttle relate to the
10 testimony of Mr. Morton at the application hearing?
11 That's not my question.

12 JUDGE PEARSON: So what is your question
13 exactly?

14 MR. FASSBURG: When he provides
15 conclusions about whether or not it's met its
16 commitment, are they in fact based solely on the
17 testimony submitted by Shuttle Express at that point?

18 JUDGE PEARSON: I will allow that
19 question.

20 THE WITNESS: Yes, they were.

21 BY MR. FASSBURG:

22 Q And you did not find it necessary to hear from

23 SpeediShuttle about what in fact it's doing, correct?

24 **A Well, if there have been instances of falling short,**
25 **then certainly it's interesting to see what**

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1 SpeediShuttle's response to that is. But it isn't
2 necessary to have additional information from
3 SpeediShuttle in order to reach that conclusion.

4 Q Sure. You based your opinions, lock, stock, and barrel,
5 on what Mr. Marks and DeLeo said, correct?

6 **A I relied on their testimony in order to reach a**
7 **conclusion that some of these commitments had not been**
8 **met.**

9 Q If Mr. DeLeo's testimony turns out to be erroneous,
10 would that at all affect your conclusions?

11 **A It could.**

12 Q If Mr. Marks's testimony turns out to be erroneous,
13 could that at all affect your conclusions?

14 **A It could. If SpeediShuttle were to demonstrate that it**
15 **had in fact met this commitment, that would change my**
16 **conclusion.**

17 Q But you offered those opinions in your testimony without
18 that information -- well, let me rephrase that.

19 We know you offered your conclusions without any
20 information about what Mr. Roemer had to say about
21 SpeediShuttle's greeters, correct?

22 **A Yes. As you pointed out, Mr. Roemer had not filed**
23 **testimony.**

24 Q You stated on page 23, "It seems clear that
25 SpeediShuttle has elected not to invest in the personnel

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1 (in terms of quantity or quality) that would be
2 necessary to carry out its promise to differentiate its
3 service from that already offered by Shuttle Express by
4 providing services 'that would be very useful, if not
5 critical, for non-English-speaking customers and foreign
6 travelers.'"

7 What experience do you have in evaluating the
8 staffing requirements of an auto transportation company?

9 **A Staffing? I've never staffed for an auto transportation**
10 **company.**

11 Q So you offer these conclusions despite lack of -- let me
12 rephrase.

13 Do you have any training with respect to staffing
14 with auto transportation companies?

15 **A Not with auto transportation specifically. I do have**
16 **fairly extensive HR experience.**

17 Q Have you ever worked -- we know you haven't worked
18 within an auto transportation company. So you tell me
19 what qualifications you have to provide opinions about
20 appropriate levels of greeter staffing?

21 **A Well, this particular testimony is based directly on**
22 **what were specific commitments made by SpeediShuttle in**
23 **the application proceeding to greet every customer and**
24 **to provide multilingual greeters. Obviously there are**
25 **requirements to do that. You've got to have sufficient**

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1 personnel to cover the space, and you've got to have the
2 quality of personnel who speak the multiple languages
3 who can provide the multilingual service. Both of those
4 are --

5 MR. FASSBURG: I've got to stop you there.
6 This isn't answering my question. Object to
7 nonresponsive. We can't keep doing this; we'll run out
8 of time.

9 JUDGE PEARSON: We've already run out of
10 time.

11 MR. FASSBURG: Your Honor, this is not of
12 my doing, unfortunately. I've got to move to strike the
13 response.

14 MR. HARLOW: I think it is responsive.

15 MR. FASSBURG: I asked what are his
16 qualifications to offer opinions, and he offered an
17 opinion instead of answering my question about his
18 qualifications.

19 JUDGE PEARSON: Okay. So can you read
20 back to me just his answer, please?

21 (Previous answer read back.)

22 JUDGE PEARSON: I'll go ahead and just
23 allow that. I don't think it has anything that even has
24 any value.

25 MR. FASSBURG: I agree. But I want to

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1 move through the hiring, so I'm hoping to limit this to
2 responsive answers.

3 JUDGE PEARSON: Let's try that again,
4 Mr. Wood. I will just remind you to please keep your
5 answers short and directed at what he's actually asking
6 you without offering --

7 THE WITNESS: I apologize, Your Honor.
8 I'm endeavoring to understand his questions to the best
9 of my ability.

10 JUDGE PEARSON: You can always ask for
11 clarification without just offering up additional
12 information.

13 THE WITNESS: All right.

14 BY MR. FASSBURG:

15 Q Mr. Wood, what qualification do you have to offer
16 opinions about appropriate levels of greeter staffing?

17 **A My qualifications are based on my experience providing**
18 **staffing for specific tasks, including customer service**
19 **tasks, and specifically meeting the requirements of**
20 **customers with multiple language needs in that customer**
21 **service context.**

22 Q But your qualifications don't relate to providing
23 greeters at the airport, correct?

24 **A Not at the airport.**

25 Q Do you understand how management of greeters at the

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1 airport is operated?

2 **A Not specific to the airport. Greeters, yes; at an**
3 **airport, no.**

4 Q Do you understand the workflow processes of how a
5 greeter gets their assignment and greets passengers at
6 an airport?

7 **A Again, greeters generally, yes; at an airport, no.**

8 Q What is the basis for that?

9 **A I provide staffing for the Georgia Aquarium in terms of**
10 **providing greeters for customers -- for guests and**
11 **customers, including customers -- we have a very large**
12 **number of foreign-language guests, and we provide**
13 **greeters to accommodate their needs.**

14 **So I'm dealing with managing the staff, managing**
15 **getting the right people, and having sufficient numbers**
16 **of people at all the relevant locations and also having**
17 **people with the essential language qualifications**
18 **available and in motion in order to be at those**
19 **locations when we need them.**

20 Q When is it that you managed the greeter staff at the
21 aquarium?

22 **A I've been doing that since 2010.**

23 Q And that's in addition to your busy schedule as an
24 economic consultant in regulatory proceedings?

25 **A It is.**

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1 Q Mr. Wood, do you have any information to suggest what
2 specific number of greeters SpeediShuttle uses -- you
3 know what? I'll actually strike that.

4 You simply don't have information to form an opinion
5 other what Mr. DeLeo and Marks said at the time you
6 offered this opinion, correct?

7 **A At the time I offered this opinion, I think I already**
8 **agreed with you, I relied on their testimony.**

9 Q All right. You offer an opinion on page 25 -- or rather
10 some testimony on page 25 dealing with Wi-Fi.
11 Specifically you state that, (as read) "Regarding Wi-Fi,
12 the question is whether SpeediShuttle's entry into the
13 market with Wi-Fi-equipped vans caused Shuttle Express
14 to also install Wi-Fi. The answer to this particular
15 cause-and-effect scenario is 'no.'" Did I read that
16 correctly?

17 **A You did.**

18 Q Are you familiar with post-application improvements as a
19 legal concept?

20 **A I can't offer you a legal opinion, but I'm familiar with**
21 **the phrase, yes.**

22 Q What does it mean to you?

23 **A It means a change in process or equipment or capability**
24 **that is post the initial application or the initial**
25 **certification.**

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1 Q Are you aware that at SpeediShuttle's application -- or
2 in SpeediShuttle's application Shuttle Express filed a
3 petition for review that indicated Shuttle Express was
4 on a five-year plan to install Wi-Fi?

5 **A I don't recall that.**

6 Q Have you reviewed Shuttle Express's petition for review?

7 MR. HARLOW: Are you looking for the
8 January 23rd, 2014 petition?

9 MR. WILEY: No, we're looking for the
10 February 10th, 2015 petition.

11 MR. HARLOW: You might ask him again,
12 because there are several petitions, which one --

13 MR. FASSBURG: Sure. I can make this
14 easier.

15 BY MR. FASSBURG:

16 Q Are you familiar with a claim by Shuttle Express in
17 writing that it had a five-year plan for installing
18 Wi-Fi in the Docket TC-143691?

19 **A Again, I don't recall that.**

20 Q Okay. Well, then I need to find it. Would you refer to
21 Exhibit WAM-51X.

22 JUDGE PEARSON: I'm sorry, did you say
23 51X?

24 MR. FASSBURG: 51. Correct, Your Honor.

25 JUDGE PEARSON: Shuttle Express's petition

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1 for administrative review of Order 02?

2 MR. FASSBURG: Correct. Unfortunately, I
3 had in my own notebook the wrong petition for review.

4 MR. FASSBURG:

5 Q Do you find where Shuttle Express states that it's on a
6 five-year plan for Wi-Fi, or would you like me to find
7 you the page?

8 **A I'm reading as fast as I can.**

9 Q Okay. If you will please turn to page 8. I will refer
10 you to paragraph 27 of that exhibit states,
11 "Shuttle Express is in the midst of a five-year phase-in
12 of universal Wi-Fi service." Did I read that correctly?

13 **A Yes.**

14 Q Do you know the date on which this exhibit -- I'm sorry,
15 this petition for review was filed? It should be
16 towards the back, referring to page 14.

17 **A February 10th, 2015.**

18 Q Now, is it your understanding Shuttle Express has now
19 installed Wi-Fi on all of its vehicles?

20 **A It is.**

21 Q Has it been five years since February 10, 2015?

22 **A No. This doesn't say it's about to start it today; it
23 says it's in the midst. We don't really know where in
24 the five-year period they were on February 10th, 2015.**

25 Q If you have a five-year period, you would expect it to

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1 at least take five years, correct?

2 **A I actually -- for this kind of assertion, I would expect**
3 **it to take no more than five years. Hopefully, it would**
4 **take less.**

5 Q You claim that these improvements to Shuttle Express's
6 service after SpeediShuttle's application had nothing to
7 do with SpeediShuttle's service, correct?

8 MR. HARLOW: Objection, there is no
9 foundation that he has any knowledge about this.

10 JUDGE PEARSON: That's true. I'll sustain
11 the objection.

12 BY MR. FASSBURG:

13 Q Mr. Wood, I will refer you back to page 25 of your
14 testimony.

15 **A Yes.**

16 Q You state, "Regarding Wi-Fi, the question is whether
17 SpeediShuttle's entry into the market with
18 Wi-Fi-equipped vans caused Shuttle Express to also
19 install Wi-Fi capability. The answer to this particular
20 cause-and-effect scenario is 'no.'"

21 **A Yes.**

22 Q And my question a moment ago related to this conclusion
23 of yours. You are stating that SpeediShuttle's offering
24 of Wi-Fi service had nothing to do with Shuttle
25 Express's installation of Wi-Fi in its vans after

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1 SpeediShuttle's application, correct?

2 **A Well, again, you're paraphrasing my testimony. My**
3 **testimony is that SpeediShuttle offering Wi-Fi did not**
4 **cause Shuttle Express to install Wi-Fi because**
5 **Shuttle Express was already in the midst of installing**
6 **Wi-Fi at the time of SpeediShuttle's application. So by**
7 **definition, SpeediShuttle's application occurred after**
8 **the rollout began. So it couldn't have been the cause.**

9 Q My question was still a little different, and I don't
10 think that I asked you the same question you were asked
11 in your testimony.

12 My question is: Are you saying that SpeediShuttle's
13 application and provision of Wi-Fi service had no effect
14 on Shuttle Express's installation of Wi-Fi after the
15 application?

16 MR. HARLOW: Asked and answered.

17 MR. FASSBURG: He hasn't answered that
18 question.

19 JUDGE PEARSON: Just a yes or no,
20 Mr. Wood.

21 THE WITNESS: No.

22 BY MR. FASSBURG:

23 Q So you admit that SpeediShuttle did have some effect on
24 Shuttle Express?

25 MR. HARLOW: Asked and answered.

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1 THE WITNESS: No.

2 JUDGE PEARSON: I don't think he is saying
3 that.

4 MR. FASSBURG: Well, he -- it was the
5 wording of the question and answer, but I think he has
6 clarified.

7 JUDGE PEARSON: Okay. You're getting a
8 little deep in the weeds here, Mr. Fassburg.

9 BY MR. FASSBURG:

10 Q On page 26 in your testimony you claim that the decline
11 in total trips between previous years to a combined trip
12 count for Shuttle Express and SpeediShuttle demonstrates
13 that the market for airport shuttle transportation has
14 declined. Did I paraphrase your testimony correctly?

15 **A You did.**

16 Q Is it your testimony that the market for airport
17 transportation is limited to what is provided by auto
18 transportation providers?

19 **A The market that I'm referring to here is for share-ride
20 services, and it's limited to what's been provided by
21 SpeediShuttle and Shuttle Express.**

22 Q Do you agree that the number of trips is not equivalent
23 to the number of passengers?

24 **A I do.**

25 Q Do you have any information to suggest that in fact a

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1 declining trip count could actually be coinciding with
2 an increase in passengers?

3 **A I'm sorry, Mr. Fassburg, ask me that again.**

4 Q I'll ask you a little more broadly. Is it possible you
5 can have a decline in trip count coinciding with an
6 increase in passengers?

7 **A Is it possible? Yes.**

8 Q Do you have any information to suggest to you that any
9 decline in trip count for SpeediShuttle is a result of a
10 decline in passengers?

11 **A No, I didn't suggest that here.**

12 Q Thank you. With respect to Shuttle Express, do you have
13 any information to suggest to you that any decrease in
14 its trips or passengers is specifically related to
15 SpeediShuttle as opposed to competition from
16 nonregulated transportation companies?

17 **A Mr. Kajanoff describes that in his testimony, and I
18 refer to that here. But he certainly describes elements
19 that suggests that the loss is -- some portion of that
20 loss is directly related to SpeediShuttle.**

21 Q So I'm going to ask you a hypothetical. If
22 Shuttle Express were losing passengers, and we could
23 actually track them and figure out where they went, and
24 they were all going to nonregulated modes of
25 transportation, and SpeediShuttle stepped into the

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1 market and has an increase in passengers, and all of
2 those passengers previously used a different mode of
3 transportation, we could in fact have the same trip
4 counts that we see today, correct?

5 **A Hypothetically, yes.**

6 Q How would we know which of Mr. Kajanoff's scenario or
7 that hypothetical is true?

8 **A You would apply a little reason, I think, to it. And he**
9 **describes the specific routes where Shuttle Express has**
10 **lost the most passengers. He describes the average**
11 **revenue per passenger that SpeediShuttle reports, and**
12 **its correlation to its tariffed rate for only the**
13 **highest density, shortest routes, the lowest cost**
14 **routes. So both, as you suggest, are hypothetically**
15 **true, but if we start looking at additional information,**
16 **it suggests to us that one of these is much more likely**
17 **to be true than the other.**

18 BY MR. FASSBURG:

19 Q Do we have information about the traffic volumes to
20 those same locations for nonregulated modes of
21 transportation?

22 **A No.**

23 Q Light rail is a nonregulated mode of transportation that
24 Shuttle Express competes with, isn't it?

25 **A It certainly competes with light rail. I don't know**

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1 the nature of its regulation.

2 Q Do you know where light rail provides service in
3 Seattle?

4 **A I know it extends from Sea-Tac north, through now I**
5 **think the University of Washington. And the southern**
6 **terminus I don't recall. I believe it's been expanded**
7 **also but I don't remember how far it goes.**

8 Q It has multiple stops in Seattle, doesn't it?

9 **A Yes, it does.**

10 Q So if we were to examine where those passengers actually
11 started from and where they ended, wouldn't we in fact
12 see a concentration of customers that are also going
13 from Sea-Tac to Seattle?

14 **A I'm sorry, I don't understand the question.**

15 Q Wouldn't we expect to see a concentration in certain
16 areas with that different mode of transportation?

17 **A I don't -- still don't understand what you're asking me.**

18 Q You don't understand, if we could track similarly where
19 the passengers are going to and from with light rail, we
20 might see a similar concentration to Seattle?

21 **A I expect you will see passengers going from Seattle to**
22 **Sea-Tac.**

23 Q With similar concentrations?

24 **A I don't know what "similar concentrations" means. I**
25 **don't know how you make this comparison. Because light**

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1 rail does not have an obligation pursuant to a regulated
2 certificate to serve throughout an area. Including
3 those dense areas, it would also serve all other areas
4 that are higher cost to serve because it doesn't extend
5 to those. Share-ride services do, but there is no
6 evidence that SpeediShuttle is actually going to those
7 higher cost areas. That's the fundamental distinction.

8 MR. FASSBURG: Object as nonresponsive.

9 JUDGE PEARSON: Yeah, and I will sustain
10 the objection. You were going down a completely
11 different path, Mr. Wood. It was a straightforward
12 question about if you see that the majority of people
13 taking Shuttle Express or SpeediShuttle from the airport
14 are going to downtown Seattle, then isn't it reasonable
15 to think that most of the people who are riding the
16 light rail from the airport are also going to downtown
17 Seattle. It's a population-based question. That's what
18 he was getting at.

19 THE WITNESS: Okay. And I don't know how
20 to answer that without noting that light rail -- there
21 are a lot of places that --

22 JUDGE PEARSON: Notwithstanding --

23 THE WITNESS: -- light rail doesn't go.

24 JUDGE PEARSON: Notwithstanding that.

25 We're talking about people going from the airport to

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1 downtown Seattle. Right, Mr. Fassburg?

2 MR. FASSBURG: Exactly.

3 JUDGE PEARSON: I think we can move on.

4 MR. HARLOW: There was a similar
5 concentration piece in question, and I think that's
6 where we got hung up.

7 BY MR. FASSBURG:

8 Q My point is, Mr. Wood, you are providing this testimony
9 and this conclusion that these customers went to
10 SpeediShuttle based on concentrations of transportation.
11 But wouldn't we expect to see those same concentrations
12 of transportation for every provider?

13 **A And the answer to that has to be no because you're going**
14 **to have a different percentage of traffic based on the**
15 **area over -- the geographic area over which a given**
16 **transportation provider can transport customers.**

17 Q Doesn't --

18 **A And if a transportation provider like light rail only**
19 **goes from point A to point B, you expect a concentration**
20 **because that's where it goes. If it also -- light rail**
21 **also had a tariff that said it's going to provide a**
22 **service through all of King County, whether the rail**
23 **goes there or not, and you still find that it only goes**
24 **to downtown Seattle, that's a very different situation**
25 **and leads to a very different conclusion.**

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1 Q Well, Mr. Wood, I think you're missing an obvious point
2 here. Passengers choose the service, not the service
3 provider, correct?

4 **A No, that's incorrect.**

5 Q Are you telling me that if SpeediShuttle decides to
6 operate in North Bend, it can tell the passengers, You
7 are using SpeediShuttle?

8 **A No. But SpeediShuttle can price its services and design**
9 **its availability of service in a way that can encourage**
10 **or discourage customers from using its service --**

11 **JUDGE PEARSON: Mr. Wood, you are way off**
12 **base. We're not talking about that right now.**

13 THE WITNESS: I'm sorry. I misunderstood
14 his question then completely.

15 JUDGE PEARSON: You're just offering
16 testimony on another issue that I've seen pop up
17 elsewhere that we're just not talking about right now.

18 Mr. Fassburg, we need to wrap this up. I get your
19 point. It's not particularly useful to me, so let's
20 move on.

21 MR. FASSBURG: Sure.

22 BY MR. FASSBURG:

23 Q You claim the Commission did not address sustainability
24 in the SpeediShuttle application. Are you familiar with
25 the provision in 480-30-140 that specifically states,

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1 "As part of the determination of public convenience and
2 necessity, the Commission will also consider whether
3 increased competition will benefit the traveling public,
4 including its possible impact on sustainability of
5 service"?

6 THE WITNESS: I'm sorry, Mr. Fassburg, you
7 asked me two different fundamental questions. One, you
8 characterized my testimony as saying the Commission did
9 not consider sustainability. That's incorrect. I
10 absolutely agree that the rule says the Commission will
11 consider sustainability; that's the point of my entire
12 testimony.

13 BY MR. FASSBURG:

14 Q Let me rephrase. You state on page 10 of DJW-3T, "When
15 doing so, the Commission did not address the question of
16 whether the market at issue could sustain a second share
17 provider offering the same service as Shuttle Express."

18 That's your testimony, correct?

19 **A Yes, that's a very specific observation.**

20 Q My question is only is that your testimony?

21 **A Yes, it is.**

22 Q And are you aware that WAC 480-30-140(1)(b) states
23 specifically, "The Commission will also consider whether
24 increased competition will benefit the traveling public,
25 including its possible impact on sustainability of

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1 service"?

2 **A Yes.**

3 Q Does that language limit it to when they are providing
4 the same service?

5 MR. HARLOW: I assume we're not asking for
6 a legal conclusion here, Your Honor.

7 MR. FASSBURG: He is offering a whole lot
8 of them. I think I'm entitled to ask.

9 MR. HARLOW: That's not my understanding
10 of the nature of his testimony.

11 JUDGE PEARSON: What page are you on?

12 MR. HARLOW: If you're asking for a legal
13 conclusion, I would object.

14 MR. FASSBURG: His testimony was DJW-3T,
15 so the rebuttal on page 10, line 17 to 19.

16 JUDGE PEARSON: Okay.

17 THE WITNESS: I'm sorry, I don't remember
18 which way you asked it. I can answer what I think your
19 question was or you can ask it again.

20 BY MR. FASSBURG:

21 Q The last question was: Does that language state that
22 they are going to consider it -- well, I forget the
23 exact question -- but the idea here is that they didn't
24 say they were only going to consider it if it's not the
25 same service or the same service. They said they are

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1 going to consider sustainability and the impact of the
2 new services on sustainability of service, right?

3 **A I don't know how to give you a yes or no to that. I**
4 **think I can give you a short answer.**

5 Q Why don't I rephrase.

6 **A All right.**

7 Q The rule you're requiring the Commission to consider,
8 the impact on sustainability of service isn't somehow
9 limited to a particular type of application case,
10 correct?

11 **A I don't understand it to be. I understand it to be**
12 **something that says the Commission will also consider**
13 **that that's required to consider.**

14 Q So, period, regardless of how the application is made
15 and what is different or the same about it, the
16 Commission is going to consider, during the application
17 phase, sustainability of service, period, correct?

18 **A I don't know what you mean by "period," but clearly this**
19 **is a requirement.**

20 Q Okay.

21 **A There are factors above that say it may consider it;**
22 **this one says it will consider it.**

23 Q You've read the application hearing transcript which was
24 marked as WAM-50X, correct?

25 **A Yes.**

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1 Q You have it in front of you, if you will turn to
2 page 115.

3 **A I'm sorry, what's the exhibit number?**

4 Q WAM-50.

5 **A 50.**

6 **JUDGE PEARSON: You said 115?**

7 MR. FASSBURG: 115.

8 MR. HARLOW: I don't have a 50. What's
9 50?

10 MR. FASSBURG: It's the application
11 hearing transcript.

12 BY MR. FASSBURG:

13 Q Did you find page 115?

14 **A I did.**

15 Q Line 19, Mr. Kajanoff testified, "I have one thing, the
16 most important aspect to the consumer, I believe, other
17 than safety and getting to your destination, is --
18 door-to-door share ride, it's an efficiency model, and
19 it's value-based, and it is also based on the amount of
20 customers and density. I would ask the Commission to
21 look very closely at the density piece, because the more
22 players you bring into an area, the less is available
23 for a share-ride operator, and then the share-ride
24 operator needs to raise their rates, because the rates
25 are based on density and the ability to carry multiple

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1 passengers. So I do believe it's very much in the
2 public interest to limit how many operators are in a
3 given area." Have you read that before today?

4 **A I believe I've seen all of this.**

5 Q Okay. Have you seen the declaration of Paul Kajanoff,
6 which was attached to a motion to reopen the record in
7 that proceeding?

8 **A I don't know. I don't recall that.**

9 Q Okay. I've marked as Exhibit WAM-25X, the declaration
10 of Paul Kajanoff. It's probably not in the notebook in
11 front of you.

12 Do you see where in the declaration of Paul Kajanoff
13 he attempts to include in the application hearing record
14 some information in which he claims that over the last
15 two years, in the 81 ZIP codes listed for service by
16 SpeediShuttle, Shuttle Express has experienced a
17 7.26 percent decline in passengers from 2012 to 2013 and
18 a 1.83 percent decline in passengers from 2013 to 2014?

19 **A I see that.**

20 Q Was it your understanding that in the application case
21 Shuttle Express attempted to use that information to
22 argue that the market could not support a second
23 provider?

24 **A I know they introduced this information and I see**
25 **Mr. Kajanoff's testimony here.**

CROSS BY FASSBURG/WOOD

1 Q Is it your understanding that the Commission rejected
2 the argument?

3 **A I don't recall specifically the Commission rejecting**
4 **that argument.**

5 **JUDGE PEARSON: Mr. Fassburg, I just want**
6 **to stop you right there because I don't want to**
7 **mischaracterize what happened in this instance.**
8 **Shuttle Express filed a petition -- a motion to reopen**
9 **the record. That was rejected on the basis that this**
10 **information was reasonably available at the time of the**
11 **hearing and they failed to introduce it. That's the**
12 **standard for getting information in post-hearing. So it**
13 **wasn't a rejection necessarily of this information**
14 **itself; it was a rejection of it on the basis that it**
15 **wasn't available at the time of the hearing.**

16 **MR. FASSBURG: I appreciate that,**
17 **Your Honor.**

18 **BY MR. FASSBURG:**

19 Q Mr. Wood, I've got Order 04, final order here with me.
20 If you don't mind, because I only have one copy, I would
21 like to read it with you. There is a footnote on
22 page 5. It says, "Even if we were to reopen the record,
23 the evidence Shuttle Express offers has virtually no
24 probative value. Shuttle Express provides no factual
25 explanation for its decline in business, and thus that

CROSS BY FASSBURG/WOOD

1 evidence standing alone does not tend to prove or
2 otherwise support any factual issue in this case." Did
3 I read that correctly?

4 **A Yes, you did.**

5 Q I would like to move on to your idea of when a market
6 can sustain two providers. We asked Shuttle Express in
7 Request No. 51 -- which you answered, and I'm just going
8 to ask you if you recall this -- we said, "Please
9 provide in narrative form a description of the
10 scientific, mathematical, or economic
11 model/analysis/equation/algorithm/test used by Don Wood
12 to determine whether a market can sustain more than one
13 transportation company." Do you recall that question?

14 **A I do.**

15 Q Do you recall that your answer after the objection was,
16 "Where economies of scale are available so that average
17 total cost continues to decline beyond the total volume
18 of service demanded (that is, the minimum efficient size
19 of a provider is equal to or larger than the total size
20 of the market) an approach based on the regulation of a
21 single provider also results in a more efficient method
22 of serving the market (resulting in lower total costs
23 and lower rates for customers). In such a case, a
24 single provider can serve the entire market at a lower
25 cost than two or more providers." Does that sound like

CROSS BY FASSBURG/WOOD

1 your response?

2 **A It does.**

3 Q Now, referring back to my question, I asked you to
4 provide what economic model, analysis, equation,
5 algorithm, or test demonstrating whether a market can
6 sustain more than one transportation company. I take it
7 from your answer, there is no model that can tell you
8 when you cannot have two transportation companies in a
9 given market?

10 **A No, that's incorrect.**

11 Q Well, your answer simply said that there are scenarios
12 where it is more efficient to have one, and you did not
13 provide an economic model, analysis, equation,
14 algorithm, or test that would demonstrate when you
15 cannot have more than one, correct?

16 **A No, I disagree. That is in fact the standard economic
17 test that I gave you in that response.**

18 Q So is it your testimony that within a given geographic
19 market, if the most efficient model is for there to be a
20 single provider, there is literally no scenario where,
21 within a given scale, two transportation companies can
22 both be profitable?

23 **A By definition. If, as I explained in my testimony,
24 there are external constraints on rates, either market
25 or regulatory based, then by definition, if the**

CROSS BY FASSBURG/WOOD

1 economics support that definition, the most efficient
2 size is one provider and you cannot have two profitable
3 providers, which is exactly what both parties agree
4 here. We have two parties not recovering their costs.

5 Q You state -- and thank you for covering that, because I
6 was about to get there. You state that SpeediShuttle
7 agrees it can never be profitable. Please provide your
8 foundation for that statement.

9 **A I don't recall making that statement.**

10 Q I'm sorry?

11 **A I don't recall making that statement.**

12 **JUDGE PEARSON: Can I help you out?**

13 MR. FASSBURG: I found it.

14 BY MR. FASSBURG:

15 Q Your rebuttal testimony on page 12, line 8 to 12, you
16 state, "Both Shuttle Express and SpeediShuttle also
17 agree that the market for share-ride services in
18 Washington -- a market that the Commission never
19 concluded could support two multiple providers offering
20 the same service -- is now occupied by two providers
21 that are unable to recover their costs and are both
22 losing money. This places the future availability of
23 share-ride services in jeopardy."

24 So I may have mischaracterized your comment, but you
25 did state a moment ago on the record in this hearing, if

CROSS BY FASSBURG/WOOD

1 SpeediShuttle is losing money when it has simply
2 commenced service within the last two years, does this
3 mean that it cannot become profitable?

4 **A No, in fact, I suggest the scenario where it could**
5 **become profitable, which would be to be able to lose**
6 **money and survive long enough to force Shuttle Express**
7 **to exit the market.**

8 MR. FASSBURG: Objection, nonresponsive.

9 JUDGE PEARSON: I'll sustain.

10 BY MR. FASSBURG:

11 Q Mr. Wood, you've already answered my question that you
12 state that when only a single provider is the most
13 efficient model, you can never have two profitable
14 transportation companies. Relating to that testimony,
15 is it your opinion that you can never find a scale of
16 size of an operation that can coexist with a different
17 company and both make profits?

18 **A I'm sorry. I don't know how to answer that. That was**
19 **not economics.**

20 Q Well, your testimony was that under this economic model
21 that you have discussed, where the most efficient
22 size -- I'm sorry, a single provider is the most
23 efficient means of providing the service, correct?
24 You've said that's how this market works, right?

25 **A No. I said that is the definition of how you determine**

CROSS BY FASSBURG/WOOD

1 whether there is sustainability in a market, whether it
2 is a natural monopoly or it can sustain more than one
3 provider.

4 Q Okay. You're saying that's the definition? Let me ask
5 you a slightly different question then.

6 Have you provided the Commission any foundation or
7 analysis by which it could find that you have concluded
8 that this market cannot sustain two providers?

9 **A No. I attempted to do so. That's why I sought specific**
10 **information from SpeediShuttle that was not provided. I**
11 **could have done that very specific analysis together**
12 **with Shuttle Express's --**

13 MR. FASSBURG: I'm going to object to
14 everything after "no."

15 JUDGE PEARSON: Sustained.

16 BY MR. FASSBURG:

17 Q You offered some testimony regarding cream skimming.

18 I'm going to try to keep this extremely simple.

19 **A All right.**

20 Q You don't have any evidence that SpeediShuttle has
21 turned away customers, do you?

22 **A Not explicitly or overtly, no.**

23 Q Do you know that both Shuttle Express and SpeediShuttle
24 operate under flexible fares?

25 **A Yes.**

CROSS BY FASSBURG/WOOD

1 Q That if Shuttle Express wanted to raise or lower its
2 price within the flexible fare rules, it could, correct?

3 **A Within those bounds, yes.**

4 Q And so if it thinks that SpeediShuttle is gaining market
5 share by a lower price in one market, Shuttle Express
6 can lower its price, can't it?

7 **A In the short term, yes; in the long term, no. Because**
8 **it would have to recover average variable cost in order**
9 **to be sustainable over time, something that Mr. Roemer**
10 **agrees SpeediShuttle is not doing.**

11 Q As a matter of gaining market share, it is an
12 appropriate strategy to price so that you can obtain
13 customers at a given demand, correct?

14 **A If, but only if, you were recovering average variable**
15 **cost even though you're not recovering average total**
16 **cost.**

17 Q Yes or no, please.

18 **A Well, then the answer is no to your question as you**
19 **phrased it.**

20 Q So you're saying that no, it's never appropriate to have
21 a pricing strategy used to gain market share?

22 **A That's not what I said.**

23 Q My question was that limited. You can use appropriately
24 pricing strategy to gain market share in the world; it's
25 possible, correct?

CROSS BY FASSBURG/WOOD

1 **A If you insert the word "appropriate" now, and by**
2 **"appropriate" you mean higher than average variable cost**
3 **and lower than average total cost, I would agree to**
4 **that.**

5 Q My question is simple: In the universe, there are times
6 when it is appropriate to use pricing to gain market
7 share, correct?

8 **A I do agree with that.**

9 Q It's not your testimony that simply because McDonald's
10 sells cheeseburgers and Five Guys is newer, Five Guys is
11 required to price higher than McDonald's, correct?

12 **A No, that is not my testimony.**

13 Q So it's appropriate at times to use pricing to gain
14 market share; you agree with that premise, right?

15 **A I agree with that premise subject to -- when you say**
16 **"appropriate" -- subject to the relationship of those**
17 **prices to cost.**

18 Q Sure. You're familiar with the prisoner's dilemma,
19 correct?

20 **A I am.**

21 Q If it would more profitable to both Shuttle Express and
22 SpeediShuttle for them to raise prices, that is
23 something that is expected to occur within game theory,
24 correct?

25 **A Yes. Although you're mixing unconstrained game theory**

CROSS BY FASSBURG/WOOD

1 with here, which is constrained prices, because there
2 are, as we just discussed, upper and lower bounds on
3 those prices.

4 Q I didn't ask that here. I said, within game theory
5 that's a predicted behavior, correct?

6 **A I'm sorry, I thought your question referred specifically**
7 **to SpeediShuttle and Shuttle Express.**

8 Q I'm just asking you if within game theory it's expected
9 that at times if one competitor raises its prices, the
10 other might also, correct?

11 **A Yes.**

12 Q And so if SpeediShuttle's prices are higher than
13 Shuttle Express, Shuttle Express could actually profit
14 by matching SpeediShuttle's price if it can do that
15 within its flexible fare parameters, correct?

16 **A If it can do that.**

17 Q As opposed to being cream skimming, this is simply
18 pricing strategy at times, correct?

19 **A Yes. What you described in your question is not what**
20 **I've referred to as cream skipping.**

21 Q Okay. Thank you. When you stated on your rebuttal
22 testimony, page 13, lines 8 to 9, referring to pricing
23 below cost and predatory pricing, that one way you could
24 predatorily price would be to price your service below
25 variable cost to gain market share and basically make

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1 Shuttle Express's financial position untenable, driving
2 it out of business. That's more or less what you said,
3 correct?

4 **A Yes, and that would be predatory pricing.**

5 Q And you are only offering this as a hypothetical and not
6 something that you opined occurred, correct?

7 **A Well, yes and no. Is SpeediShuttle's pricing and**
8 **service below its average variable cost? Yes.**
9 **Mr. Roemer agrees with that. Has it yet caused**
10 **Shuttle Express to exit the market? No, that hasn't**
11 **happened yet. But we have an agreement, as I understand**
12 **it from both parties, that SpeediShuttle is pricing**
13 **below its average variable cost.**

14 Q What would be the foundation for that statement?

15 **A That would be Mr. Roemer's pre-filed and deposition**
16 **testimony. Where he said originally in his prefiled**
17 **testimony that his pricing is not recovering -- he sets**
18 **forth average variable cost as the correct test. And**
19 **then -- let's see. Page 52, line 10 of his pre-filed --**
20 **"Has SpeediShuttle increased revenues to the point it**
21 **can make a profit when comparing revenues to variable**
22 **costs?" And there he says, "We have come very close."**
23 **And then when asked further in his deposition, he wanted**
24 **to amend that answer to just be, "No, they have not."**

25 Q Okay. So you're saying because he said, No, they are

CROSS BY FASSBURG/WOOD

1 not profitable, and, No, they are not yet making enough
2 money to cover any measure of cost, that they are
3 pricing below average variable cost; is that what you're
4 saying?

5 **A No. That's not what I said and that's not what he said.**

6 Q Let's talk about these on slightly different terms then.

7 You understand that in door-to-door auto transportation
8 service, individual fares for both Shuttle Express and
9 SpeediShuttle are below the cost of a trip; is that
10 correct?

11 **A An individual passenger fare could be below the total
12 cost of making that trip.**

13 Q And Shuttle Express has admitted that their prices for
14 individual passengers are below the cost of making the
15 trip, correct?

16 **A It can be, yes.**

17 Q So you understand that this is somewhat like an airline
18 model where it requires multiple passengers to make a
19 trip profitable, correct?

20 **A That is correct.**

21 Q And so is there a way to know that your pricing is below
22 average variable costs without knowing your passenger
23 count?

24 **A Yes. You can look at, as Mr. Roemer suggests in his
25 testimony, looking at your revenue, your average revenue**

CROSS BY FASSBURG/WOOD

1 and your average variable cost and comparing the two.

2 And he describes that as the only meaningful test.

3 Q Over time, passenger counts change, correct?

4 **A Yes, they do.**

5 Q And so, if at one point in time a particular price at a
6 particular cost is unprofitable, without adding to your
7 average variable cost, if you simply increase passengers
8 you can now be profitable, correct?

9 **A No. By definition, what you just said, it cannot**
10 **happen.**

11 Q You're saying that every increased passenger increases
12 your average variable cost to the point that you are
13 always going to be unprofitable?

14 **A No. What I'm saying is, you said if you could increase**
15 **passengers without increasing your average variable**
16 **cost. The definition of variable cost is the amount**
17 **that increases with that additional increase in demand.**
18 **So your question was just economically nonsensical.**

19 Q You're saying the increased cost per trip increases by
20 each passenger to an amount that you can never be
21 profitable if you start from unprofitable?

22 **A No, that's not what I said.**

23 Q Let's reset. You understand Shuttle Express started its
24 business at one point in time, correct?

25 **A I do.**

CROSS BY FASSBURG/WOOD

1 Q You understand that it did not make a profit for several
2 years, don't you?

3 **A That's correct.**

4 Q Were those predatory prices during the period of time
5 that its revenues did not exceed its variable costs?

6 **A No. That's two different things; making a profit versus**
7 **recovering average variable cost are two fundamentally**
8 **different measures.**

9 Q In fact, you're recovering more than variable cost if
10 you're profitable, correct?

11 **A That's correct.**

12 Q My point though is: At one point in time, it was not
13 making a profit, correct?

14 **A That's correct. But that doesn't suggest that it was**
15 **not recovering variable cost; it only suggests it was**
16 **not recovering total cost.**

17 Q On its first passenger, did it make a profit?

18 **A I suspect that it did not.**

19 Q And that would be because that passenger would be below
20 the variable cost, correct?

21 **A That's correct.**

22 Q And over time, with more passengers at a given price,
23 eventually those passengers provide enough revenue that
24 you are now not only above variable cost but above total
25 cost, correct?

CROSS BY FASSBURG/WOOD

1 **A Ideally. Yes.**

2 Q Okay. So with respect to Mr. Roemer's testimony, if
3 that same hypothesis were to be applied, it's possible
4 that -- Mr. Roemer's testimony -- that we are not
5 recovering our variable cost yet is simply a question
6 about where along in the development of the market share
7 they are, correct?

8 **A No, that is not correct.**

9 Q So you're saying that even if it develops more
10 passengers, it can never be profitable because its
11 current revenue does not exceed variable costs?

12 **A That is not at all what I'm saying.**

13 Q Mr. Wood, you offer some opinions about
14 Shuttle Express's use of commissions on page 18 of your
15 rebuttal testimony. You state, beginning on line 6, "In
16 response to Shuttle Express's Request No. 4, Staff
17 responds that it 'researched the [unlawful rebates or
18 commissions] allegation in the complaint' and that 'it
19 is Staff's opinion no violation occurred.' This claim
20 should now be considered a nonissue in this proceeding."
21 Did I read that correctly?

22 **A Yes, you did.**

23 Q Can I take it from your testimony that you believe
24 Staff's opinions are conclusive as to whether or not a
25 violation of rules has been committed?

CROSS BY FASSBURG/WOOD

1 **A It is my testimony that in this particular case, they**
2 **investigated, they found no violations, and that should**
3 **address that issue.**

4 Q Okay. So you didn't answer my question exactly. My
5 question was: Is it your testimony that Staff's
6 conclusions should be conclusive as to whether or not a
7 rule violation was committed?

8 **A I'm sorry, I don't -- a conclusion is conclusive?**

9 Q Conclusive legally.

10 **A I can't answer legally.**

11 Q Why do you say it's a nonissue?

12 **A Because I think it's factually been addressed.**

13 Q Okay. Similarly, Staff has factually addressed and
14 performed an investigation and researched
15 Shuttle Express's use of independent contractors. I
16 take it that you then agree, as staff has concluded,
17 that Shuttle Express violated the rules; yes or no?

18 **A No.**

19 MR. FASSBURG: Anything else? We have no
20 further questions.

21 JUDGE PEARSON: Thank you. Mr. Harlow, do
22 you have any?

23 MR. HARLOW: A little bit, yes,
24 Your Honor.

25 MR. BEATTIE: Staff has some

CROSS OF WOOD/BEATTIE

1 cross-examination as well.

2 JUDGE PEARSON: Oh, that's right.

3 MR. BEATTIE: Julian Beattie, with the
4 Washington State Attorney General's Office.

5

6 CROSS-EXAMINATION

7 BY MR. BEATTIE:

8 Q Mr. Wood, let's talk about predatory pricing. Is it
9 your testimony that SpeediShuttle engaged in predatory
10 pricing?

11 **A It's my testimony that I would like to have demonstrated**
12 **that if I had gotten information I requested. I had**
13 **Mr. Roemer's testimony that they are pricing below**
14 **variable cost. That is the first red flag in a**
15 **predatory pricing examination. I don't have the factual**
16 **record I would like to have to calculate an answer for**
17 **you, but it appears they were pricing below variable**
18 **cost.**

19 MR. FASSBURG: Objection, nonresponsive.

20 JUDGE PEARSON: Let's just go ahead.

21 MR. FASSBURG: I understand, Your Honor.

22 JUDGE PEARSON: I hear your objection.

23 Overrule it. I just want to get through this. It's
24 noted.

25

CROSS OF WOOD/BEATTIE

1 BY MR. BEATTIE:

2 Q So did you actually reach a conclusion with respect to
3 predatory pricing?

4 **A Predatory pricing has a very specific definition in**
5 **terms of marginal cost that I was not able to reach**
6 **because I didn't have the data to do it.**

7 Q Okay. And I am curious for purposes of today's hearing.
8 Would you agree that an element of predatory pricing is
9 that once the competitor is kicked out of the market,
10 that the new entrant then raises prices sufficient to
11 recoup the earlier losses?

12 **A Yes.**

13 Q Do you think that SpeediShuttle has that ability? And
14 when I say "that ability," I mean the ability to raise
15 prices sufficient to recoup earlier losses.

16 **A If they continue to focus their service only on the**
17 **lowest cost routes, I believe they can.**

18 Q Isn't it also an element that prices are controlled by
19 the Commission?

20 **A Well, as I understand it, there is a range of**
21 **permissible prices within which these companies can set**
22 **a tariffed rate. There is clearly an upper bound, but**
23 **if there is sufficient profitability in the lowest cost**
24 **route, then that kind of recoupment is possible, yes.**

25 Q I will tell you that the Commission's current policy is

CROSS OF WOOD/BEATTIE

1 to allow auto transportation companies to maintain an
2 operating ratio of no less than 93 percent. Were you
3 familiar with that fact?

4 **A No.**

5 Q Does it change your analysis about whether SpeediShuttle
6 has the ability to recoup earlier losses if in fact it
7 is able to kick SpeediShuttle out of the market?

8 **A I need to understand more about that specific
9 requirement and how it's applied.**

10 Q The Commission engages in cost-of-service ratemaking; do
11 you understand that?

12 **A Yes, sir.**

13 Q That phrase?

14 **A Yes.**

15 Q And what I just told you, and it sounds like you have no
16 information to disagree with me, is that Staff and the
17 Commission will not allow a company to recoup more than
18 its operating expenses plus a seven percent profit
19 margin?

20 **A I understand.**

21 Q So with a seven percent profit margin, do you really
22 expect that SpeediShuttle could recoup its earlier
23 losses?

24 **A In a very focused strategy, it may be able to. As I
25 said in my testimony before, my broader public interest**

CROSS OF WOOD/BEATTIE

1 concern is that neither company is able to survive going
2 forward.

3 Q Thank you. I want to move on to a new issue. You
4 testified here today that you would consider two auto
5 transportation services to be fundamentally different
6 only if the new provider served previously unserved
7 customers or the new provider's entry into the market
8 resulted in an expansion in the market, correct?

9 **A Well, that's not quite what I said. I said there were**
10 **factors, and those are the two things that appear to be**
11 **the salient tests based on my understanding of the**
12 **Commission's Order No. 2 and Order No. 4.**

13 Q All I want to know is: Do you disagree with me that
14 those two factors appear nowhere in the Washington
15 Administrative Code or the Revised Code of Washington
16 state?

17 **A Yes. Now, that's a test that I created based on the**
18 **language of the orders and the language of the**
19 **Commission's rules.**

20 Q Thank you. You also testified -- and I'm quoting you as
21 well as I am able, writing down what you said -- that it
22 would be appropriate for the Commission to review
23 whether in fact the company lived up to the commitments
24 it made. So I want to ask you a few questions about
25 that statement, okay?

CROSS OF WOOD/BEATTIE

1 **A Yes, sir.**

2 Q I want to know literally who you think in the Washington
3 Utilities and Transportation Commission should perform
4 that review?

5 **A Well, the response was given in this context, which is**
6 **the context of a complaint proceeding. So that is my**
7 **understanding of what this entire process -- or at least**
8 **a third of this proceeding is about -- is evaluating**
9 **whether those commitments were in fact -- SpeediShuttle**
10 **actually made good on those commitments.**

11 Q Right. I'm curious to know if you have any opinions
12 about who working for the UTC should perform that
13 review.

14 **A I'm not sure how to answer that. I mean, it would**
15 **obviously be however the staffing decided to engage in**
16 **this kind of proceeding and how they wanted to**
17 **participate.**

18 Q I will tell you that nobody currently employed by the
19 Commission -- it is in no one's job responsibility to
20 perform that type of review currently. So I want to
21 know, do you think that the Commission should hire
22 somebody to create a position to perform that type of
23 review?

24 **A No. I think I understand the disconnect. I apologize.**
25 **I'm not suggesting that there should be someone added to**

CROSS OF WOOD/BEATTIE

1 do some routine monitoring function outside of the scope
2 of a complaint proceeding. What I'm suggesting is that
3 in the context of a complaint proceeding such as this
4 one, those are the kinds of evaluations that should be
5 made, did the company live up to its commitments that
6 led to the conclusion that the services were different
7 and that the public interests would be served by the
8 applicant.

9 Q Are you familiar with how the Commission is staffed?

10 **A I know some of the staff folks here in different**
11 **departments, but I don't know everybody.**

12 Q I will tell you that the Commission engages in rate
13 regulation, consumer protection, and also safety. I
14 will also tell you that there is no department within
15 the Commission that is engaged in policing of what
16 various applicants said or did not say during an
17 application proceeding.

18 **A Right. To be clear, I'm not asking for that. I'm not**
19 **asking for any kind of ongoing monitoring. I'm not**
20 **suggesting that that's appropriate.**

21 Q Okay. And so just what I'm trying to tie down is that
22 you are not familiar with how the Commission is staffed?

23 **A Well, I understand that you have staffing constraints,**
24 **and I'm not suggesting anything that would add**
25 **incrementally to this ongoing workload. What I'm**

CROSS OF WOOD/BEATTIE

1 suggesting in my testimony is the kind of evaluation
2 that would be done in the context of this kind of
3 proceeding.

4 Q Okay. So you're not talking in any way that's sort of
5 matched with the reality of what goes on at the
6 Commission?

7 **A Well, I'm not suggesting that there ought to be some**
8 **routine monitoring task that's added to the staff**
9 **workload. I'm suggesting something different.**

10 Q Okay. You used the words "commitment" and
11 "expectations" to describe what you consider
12 SpeediShuttle to have made at the application hearing.

13 **A Yes. SpeediShuttle's commitments; the Commission's**
14 **expectations.**

15 Q Okay. I will tell you that the word "commitment"
16 appears nowhere in Order 02; it also appears nowhere in
17 Order 04. Do you have any information that would prove
18 that incorrect?

19 **A No, I'll accept your characterization. I'm looking at**
20 **those orders, at what the language says the Commission**
21 **expected to happen, and what its understanding of what**
22 **SpeediShuttle said its business plan would be.**

23 Q I will also tell you that those words appear nowhere in
24 the certificate that was granted to SpeediShuttle. Do
25 you disagree?

CROSS OF WOOD/BEATTIE

1 **A I have no reason to disagree.**

2 Q Okay. Are you making an allegation that SpeediShuttle
3 lied to the Commission?

4 **A I guess my testimony is that when you review what they**
5 **have done and some very specific statements that were**
6 **made by Mr. Morton, they are inconsistent. I can't**
7 **speak to intent of any of their witnesses or any of**
8 **their pleadings. But there certainly appears to be a**
9 **factual disconnect when Mr. Morton says we will not have**
10 **walk-up service and within a month the company applies**
11 **for walk-up service. That is different. Those two --**
12 **that is sworn testimony that says one thing and actions**
13 **that say something different. And they are not the same**
14 **thing.**

15 Q I'm going to ask my question one more time. Do you
16 allege that SpeediShuttle lied to the Commission at the
17 application hearing or during the application process?

18 **A Again, I can't -- that suggests intent. I don't know**
19 **intent. I know what they said and what they did are two**
20 **different things.**

21 Q I'm going to suggest to you that you are answering my
22 question, no, you are not making that allegation,
23 correct?

24 **A If we agree that lying means intending to deceive, then**
25 **I have no basis to make that allegation.**

REDIRECT OF WOOD/HARLOW

1 Q Did SpeediShuttle make any knowing misrepresentations to
2 the Commission during the hearing or during the
3 application process, in your opinion?

4 **A I have no way to know whether they were knowing or**
5 **unknowing. I have no -- like I said, I can't assess**
6 **intent. I can assess that what was factually said and**
7 **what happened are two different things, but I can't be**
8 **in the mind of Mr. Morton or anyone else to assess**
9 **whether he knew at the time what he was stating was**
10 **factually incorrect.**

11 MR. BEATTIE: I understand your
12 limitation. I have no further questions. Thank you.

13 JUDGE PEARSON: Thank you, Mr. Beattie.
14 Mr. Harlow.

15 MR. HARLOW: I take it we are going to try
16 and finish up before lunch? I will do my best.

17
18 **REDIRECT EXAMINATION**

19 **BY MR. HARLOW:**

20 Q Let's work our way backwards because I'm on the page.
21 Mr. Beattie asked you about an opinion whether
22 SpeediShuttle had been predatorily pricing, and you said
23 something to the effect you would like to have the facts
24 to calculate that. Do you recall that testimony?

25 **A Yes, sir.**

REDIRECT OF WOOD/HARLOW

1 Q What data would you have needed to make that
2 calculation?

3 **A When we asked for specific financial information,**
4 **Mr. Roemer indicated that there was monthly financial**
5 **information -- at his deposition -- and we subsequently**
6 **asked for that. All of that could have been used to do**
7 **a regression analysis to compare volumes with costs.**
8 **Variable costs we could have done two things. We could**
9 **have determined precisely the predatory pricing issue.**
10 **We could have also determined and calculated exactly the**
11 **question that Mr. Fassburg was asking about, the number**
12 **of carriers in the market. We could have calculated**
13 **what those cost curves looked like, compared that to**
14 **total market demand, and we could have quantified the**
15 **level of how costs are higher with multiple providers,**
16 **we could quantify a lot of that information.**

17 MR. FASSBURG: Objection, nonresponsive.

18 Your Honor. I don't object to the portions where he is
19 explaining what information he can use to reach a
20 conclusion. But it appears to me, based on the exhibits
21 that have been filed, this hearing is going to be about
22 the discovery disputes that have already been taken up
23 and ruled upon numerous times. I think we are all best
24 served, and time will be saved if, instead of addressing
25 discovery disputes through the hearing, we just stick to

REDIRECT OF WOOD/HARLOW

1 the actual relevant issues.

2 MR. HARLOW: Your Honor, this is my
3 question.

4 JUDGE PEARSON: What do you mean?

5 MR. HARLOW: He doesn't get to object that
6 he's nonresponsive to my question.

7 JUDGE PEARSON: Well, he can object to --

8 MR. FASSBURG: I actually do get to make
9 that objection, by the way. He can't ask one thing and
10 he can't just say whatever he wants to.

11 JUDGE PEARSON: Right. To the extent that
12 Mr. Wood is bringing up issues related to discovery
13 disputes that have already been ruled on, we need to
14 stay away from that and just move forward. It's true I
15 did repeatedly rule that Shuttle Express was not
16 entitled to certain financial data. That's been
17 decided. So you just need to move on from that.

18 MR. HARLOW: As I recall, Your Honor, we
19 had an informal conference, not part of the record,
20 regarding our inability to get updated financial
21 information. And you said that you would certainly be
22 open to potentially issuing a bench request for
23 financial information.

24 And I'm trying to establish for the record what
25 financial data we would have needed to actually find out

REDIRECT OF WOOD/HARLOW

1 whether, to use the words of several orders, the company
2 is or is not making money. We don't have that data. We
3 never got it. What we got was a substitute and we used
4 a proxy. It was then criticized in the responsive
5 testimony of Mr. Roemer as not being accurate. We sent
6 follow-up requests to try to get more accurate
7 information. We sent informal requests for additional
8 generally accepted accounting principles or GAAP
9 information. We were repeatedly denied. It's not in
10 the record, but I will put it on there now. We were
11 told, if we moved to compelled for this data, we would
12 be sanctioned.

13 And there are two consistent themes in this case,
14 one is we use fancy German automobiles to drive people
15 around instead of Fords. And the other one is we don't
16 want you to get any hard data.

17 JUDGE PEARSON: Okay.

18 MR. HARLOW: We really need that data. We
19 really would encourage you that you issue a bench
20 request, and I'm trying to establish a foundation for
21 what data is needed. It's there. They produce it
22 monthly in the ordinary course of business. We really
23 need the monthly financial statements, and that's where
24 this line of questioning is going.

25 JUDGE PEARSON: It sounds like that's the

REDIRECT OF WOOD/HARLOW

1 answer; it's the monthly financial records.

2 MR. HARLOW: Exactly.

3 JUDGE PEARSON: We can move on from that
4 now. We have that in the record.

5 MR. FASSBURG: Mr. Wood was retained a
6 long time ago. If this was information that was really
7 needed, Mr. Harlow could have addressed this through a
8 motion to compel so we could provide whatever
9 information you believe was required. I will note there
10 is no confidentiality agreement in this or there is
11 ability to get a protective order. As we have alleged
12 multiple times, Shuttle Express appears to be making
13 overt efforts to acquire proprietary business
14 information. And as Staff may or may not want to do, we
15 have volunteered that if any of this information was
16 actually critical, we would be happy to open our books
17 to Staff, not to Shuttle Express.

18 JUDGE PEARSON: It's understood. So will
19 you move on now, please?

20 MR. HARLOW: Yes, I do have a follow-up,
21 and it may be objected to, but I would like to get it on
22 the record.

23 JUDGE PEARSON: Go ahead.

24 BY MR. HARLOW:

25 Q Mr. Wood, your prior testimony, that I think was

REDIRECT OF WOOD/HARLOW

1 stricken, dealt with the question of doing a regression
2 analysis on determining predatory pricing. Let me take
3 it to a higher level. Someone who is not an economist,
4 doesn't know how to do a progression analysis, let's say
5 a lawyer or a judge that might be sitting in this room,
6 would they be able to look at those monthly financial
7 statements and determine if the company is or is not
8 making or losing money?

9 **A Not without some additional analysis being conducted on**
10 **those -- on that information. Ideally, you can look at**
11 **those monthly financials and see whether they are making**
12 **money. You can't necessarily see, without further**
13 **analysis, whether they are covering variable costs,**
14 **which goes to the predatory pricing issue. And you**
15 **wouldn't be able, without further analysis, to**
16 **demonstrate with that information why costs increase for**
17 **both carriers when they are both in this market.**

18 Q Thank you for that. At one point you were asked by
19 Mr. -- I believe it was Fassburg, yes -- Mr. Fassburg to
20 discuss your testimony referring to Mr. Roemer's
21 testimony about whether they were covering average
22 variable costs, and the, quote, "not yet," close-quote,
23 was the term, and you said it was amended to "no." And
24 then you were asked if you could say that they would
25 never be profitable. Do you recall that testimony?

REDIRECT OF WOOD/HARLOW

1 **A I do.**

2 Q That line of questioning?

3 **A Yes.**

4 Q Can you explain what you meant by that when you said
5 "no"? I think you either stopped there or it may have
6 been objected to. I don't recall which.

7 **A Well, yes. Mr. Roemer actually sets forth the test at**
8 **page 48 of his pre-filed testimony where he says, "If**
9 **you use average variable costs, which we believe is**
10 **required for any evaluation for the fairness of our**
11 **fares," and then goes on to set forth a test based on**
12 **average variable costs, a test that he then states later**
13 **his company does not pass.**

14 **There doesn't appear to be any dispute in the record**
15 **here that there is a failure to recover average variable**
16 **cost. If that is true and continues to be true, then**
17 **that goes directly to sustainability, which is -- as**
18 **Mr. Fassburg pointed out, is the factor in the rule that**
19 **the Commission must consider.**

20 Q And that rule, you mean WAC 480-30-140?

21 **A Yes, sir. I'm sorry.**

22 Q Thank you. I just wanted to get that for the record.

23 Previously, you had a long Q and A from Mr. Fassburg
24 about passenger accounts changing over time and that
25 hypothetically adding passengers could yield -- lead to

REDIRECT OF WOOD/HARLOW

1 a profit. Do you recall that?

2 **A Yes, sir.**

3 Q Has Shuttle Express received any data from SpeediShuttle
4 on its passenger trends over the last year, two years?

5 **A No, that information -- that falls in the category of**
6 **information that's been sought but has not been**
7 **produced --**

8 MR. FASSBURG: Objection, Your Honor.

9 Actually, I'm sorry. I'm sorry, I retract the
10 objection.

11 BY MR. HARLOW:

12 Q I'm sorry, did you get a chance to finish?

13 **A That is information that we sought. It would be an**
14 **essential part of this analysis in terms of evaluating**
15 **their prices and evaluating the sustainability in the**
16 **market, but it wasn't produced.**

17 Q Bear with me. I'm mentally trying to strike things so
18 we can all get to lunch.

19 Right after you discussed your experience with the
20 greeters for the Georgia Aquarium. First of all, let me
21 ask you this: Is the Georgia Aquarium position, is that
22 a paid position?

23 **A It's not.**

24 Q What is it?

25 **A It's something I do on a voluntary basis.**

REDIRECT OF WOOD/HARLOW

1 Q Okay. Thanks for clarifying that.

2 And then you were asked something that did come up
3 previously, and I just kind of closed it out, whether
4 your testimony about the inadequacy of the greeters was
5 based solely on Mr. DeLeo's and Mr. Marks' testimony,
6 and you said something to the effect of "at that time."

7 Do you recall that?

8 **A Yes, sir.**

9 Q What did you mean by "at that time"?

10 **A Well, that's the information that was available at the**
11 **time that the pretrial testimony was done.**

12 Q Do you have any additional information since that time?

13 **A Well, I have just my personal experience. But then we**
14 **have some statements from Mr. Roemer where he begins to**
15 **walk back what SpeediShuttle was providing in terms of**
16 **the number of greeters and whether they offer**
17 **multilingual service at the same time.**

18 Q Are you referring to his deposition testimony?

19 **A Yes, sir.**

20 Q And do you have any personal experience at this time?

21 **A Well, on my arrival, I did a walk of all the**
22 **carousels --**

23 MR. FASSBURG: Objection. This exceeds
24 the scope of cross, and this is new information not
25 included in any of his testimony.

REDIRECT OF WOOD/HARLOW

1 MR. HARLOW: It was repeatedly asked
2 previous to this whether or not if Mr. Marks' or
3 Mr. DeLeo's testimony on greeters were incorrect,
4 whether he would have to revise or whether he wouldn't
5 have a basis for this testimony. And in fact now he
6 does have a basis, in addition to their testimony.

7 MR. FASSBURG: That's called sandbagging,
8 Your Honor.

9 MR. HARLOW: That's called opening the
10 door, Your Honor.

11 MR. FASSBURG: I asked him if the
12 information he relied upon at the time he made his --
13 stated his conclusions in December was incorrect, would
14 it change his opinion. That doesn't depend on whether
15 or not he is offering a new opinion now or any facts
16 that he has himself learned. It's a simple question of
17 would his opinion change based on finding out the
18 information that he based it on is incorrect. That
19 doesn't open the door to sandbagging SpeediShuttle with
20 new factual testimony never submitted in writing.

21 JUDGE PEARSON: Okay. I'm just going to
22 direct you to move on, because this is not -- this is so
23 far down in the weeds and so not-useful to me. And I
24 want you to keep that in mind as we go through that a
25 lot of this stuff is just minutia.

REDIRECT OF WOOD/HARLOW

1 MR. HARLOW: We will move on. And I'm
2 close.

3 BY MR. HARLOW:

4 Q Let me conclude with the beginning of your cross, which
5 dealt with the issue of being asked about a number of
6 the premium services and features and Uber-like
7 offering. And you agreed that theoretically there might
8 be passengers who would take those kinds of services.

9 Do you recall that at the beginning?

10 **A Yes.**

11 Q Based on your review and preparation in this case, have
12 you seen any evidence that there is such a market of
13 people here of any substance?

14 **A No, sir.**

15 Q And on what do you base that?

16 **A Well, looking at any of these elements that might**
17 **increase either service to an unserved segment or an**
18 **increased demand. And market demand has continued to**
19 **decrease. There is no evidence of unserved segments**
20 **being served -- any of the described unserved segments**
21 **being served.**

22 MR. HARLOW: Thank you, Mr. Wood.

23 Your Honor, that's all the redirect I have.

24 MR. FASSBURG: Your Honor, I realize that
25 we are not entitled to recross, but there is a factual

1 misstatement that he made. I just need to point out
2 they have filed SpeediShuttle's annual reports which
3 include trip information. Shuttle Express has filed
4 them as exhibits in this record. Those include trip
5 information.

6 JUDGE PEARSON: Okay. That's noted then.

7 MR. HARLOW: Unfortunately, because it's
8 the whole-year snapshot, we can't tell trips from those
9 and we can't compare year over year.

10 JUDGE PEARSON: Okay.

11 MR. HARLOW: We will discuss that more
12 this afternoon or Friday for sure.

13 JUDGE PEARSON: So it's 12:00 o'clock. We
14 agreed to a 45-minute lunch break. We will reconvene at
15 12:45. Feel free to bring food or drinks back with you
16 in the hearing room. I have no problem with that.

17 (Lunch break taken.)

18 JUDGE PEARSON: We'll be back on the
19 record following a lunch break. Mr. Harlow, I note that
20 SpeediShuttle has objections to all of Mr. Kajanoff's
21 testimony and exhibits, but Shuttle Express did not
22 indicate whether there were any objections to the two
23 cross exhibits. One is a Commission order that I will
24 take official notice of. But PK-9X, there is nothing
25 written here whether you have an objection to that or

1 not.

2 MR. HARLOW: Yes. Give me a moment. I
3 don't believe we do, but I will confirm that. No, we
4 don't object to either of those.

5 JUDGE PEARSON: Okay. So I think then
6 before we get started, we can note, like we did earlier,
7 with respect to PK-1T and PK-3T that SpeediShuttle
8 maintains its objections as previously captured in its
9 motions in limine. And that I will admit those as
10 revised, PK-1T as revised on February 22nd, and PK-3T as
11 revised on April 24th. And we will also --

12 MR. HARLOW: Wasn't that more recent than
13 that?

14 JUDGE PEARSON: Mr. Kajanoff?

15 MR. HARLOW: Yeah, did he not have
16 something stricken last week?

17 MR. WILEY: 5/8.

18 JUDGE PEARSON: Oh, okay. I just have
19 wrong date.

20 MR. FASSBURG: They have also submitted
21 additional --

22 JUDGE PEARSON: This is not my version of
23 the exhibit list. That's why I'm reading the other
24 dates off of it. But my version of the exhibit list
25 indicates that it was revised on May 8th. And I would

1 assume that the page that was filed today conforms to my
2 last order, and that's why it was submitted as revised?

3 MR. HARLOW: No, the page that we filed
4 today, page 13, is a correction that we -- Mr. Kajanoff
5 discovered some numbers that were wrong in his prefiled
6 testimony when he was going over it last night.

7 JUDGE PEARSON: Okay.

8 MR. HARLOW: And we emailed that to
9 everybody this morning an hour or two before the
10 hearing, and everyone said they were okay with that.
11 Then we emailed it to you. We have not had time to
12 provide a paper yet.

13 JUDGE PEARSON: Okay.

14 MR. HARLOW: Paul, do you either have that
15 memorized or in front of you in some form or another?

16 THE WITNESS: Yes.

17 MR. FASSBURG: I don't intend to increase
18 the work anyone has to engage in to get that done, but
19 would I invite that an errata be filed just identifying
20 for the record what was changed. I think the rules
21 require it and it would be helpful.

22 JUDGE PEARSON: You can do that after the
23 hearing.

24 MR. FASSBURG: I didn't mean today.

25 MR. HARLOW: So then I guess as kind of

1 experimenting as we go along here, my thought would be
2 that we would offer PK-2, PK-4, PK-6, and PK-7. Those
3 essentially are the pre-filed exhibits that were not
4 identified and discussed in the testimony that was
5 stricken. So in other words, the accompanying testimony
6 was admitted, and then I'm not -- I can't speak for
7 Mr. Fassburg -- I believe the objections -- well, I'm
8 not sure what it is.

9 JUDGE PEARSON: But PK-5.

10 MR. HARLOW: But I think it may have been
11 covered already by rule, Order 18.

12 MR. FASSBURG: I think my objections to
13 the testimony is covered; the objections to the exhibits
14 are not.

15 JUDGE PEARSON: With respect to PK-5, was
16 that referenced in the stricken testimony?

17 MR. HARLOW: That one was.

18 JUDGE PEARSON: Okay. So we will strike
19 that.

20 MR. HARLOW: That's why I want to address
21 that separately and explain why we still want to
22 introduce that.

23 JUDGE PEARSON: Okay. My inclination
24 would be to strike it as related to the testimony, and I
25 probably would have done that in the order had I noticed

1 it. But I didn't. But typically, if I strike a portion
2 of testimony, then any exhibit associated with that
3 testimony would be stricken from the record as well. So
4 I'm not sure for what other reason you would offer it,
5 unless it also is referenced in other portions of his
6 testimony.

7 MR. HARLOW: In general, those data
8 request responses, which contain objections and no
9 answers really, go to the cream-skimming issue. And I
10 can't cite you all the places, but cream-skimming is
11 discussed in a lot of testimony that was not stricken.

12 MR. FASSBURG: And, Your Honor, I don't
13 know that you wanted us to take up our objections to
14 each one right now. But I don't intend to ask him
15 questions about the exhibits for which I have
16 objections, at least I largely don't, depending on your
17 rulings. I think it might be appropriate to take them
18 up now; it's up to you.

19 JUDGE PEARSON: Let's take them up now.
20 I'd rather get it over with.

21 MR. FASSBURG: Okay. Our objection to
22 PK-2 --

23 MR. HARLOW: Do we want to be on the
24 record or are we on the record?

25 JUDGE PEARSON: We are on the record, yes.

1 MR. HARLOW: I'm sorry. Thank you.

2 MR. FASSBURG: Our objection to PK-2 is
3 that Mr. Kajanoff's estimate of SpeediShuttle's
4 financial information, that isn't helpful to the
5 Commission, that doesn't inform them of anything. It's
6 not hard data. It's just his estimate. You couldn't
7 base a decision on Mr. Kajanoff's estimate even if it
8 turned out to be true because it's only an estimate.
9 The only thing that's helpful is the actual information.
10 And Your Honor has already indicated what information it
11 expected from SpeediShuttle. That information was
12 provided, and so there was no need to base testimony on
13 estimates.

14 MR. HARLOW: Your Honor, there was a need
15 to base testimony on estimates. And the reason
16 primarily is because after three months -- more than
17 three months -- three or four months of trying to get
18 the financial statements, and we had numerous
19 objections, but the one that ultimately forces us to use
20 estimates in the record is the proprietary claim of
21 SpeediShuttle.

22 And so in order to get any real financial data from
23 them at all, we had to sign a nondisclosure agreement.
24 The nondisclosure agreement did not allow us to use the
25 actual numbers in the public filings but only discuss it

1 at a high level. And that's why we had to use the pro
2 forma as a proxy, and they are high-level comparisons.

3 Now what you will note is Mr. Roemer in his
4 responsive testimony put in actual numbers. The numbers
5 we were not allowed to use under our nondisclosure
6 agreement are actually in there. Again, we would
7 welcome a bench request getting all the monthly
8 financials in. Because we pretty much know what they
9 show through these proxies, which include not only the
10 estimates that Mr. Kajanoff used in his testimony -- and
11 PK-2 is referenced not only in the opening testimony,
12 but it's also discussed in the direct -- it's also
13 discussed at length in Mr. Roemer's testimony.

14 So it's deeply engrained into the record and that's
15 why we're using estimates. But there are other proxies
16 used as well, and Mr. Kajanoff in his rebuttal discusses
17 their annual reports. And we have and are going to try
18 and introduce the most recent annual report, which was
19 filed on May 1st or 2nd of this year, just last week.

20 So, again, if we're going to try and get the most
21 complete possible record on whether they are making
22 money or losing money, PK-2 should be in and we would
23 welcome getting much more data than we have been able to
24 get through discovery process.

25 MR. FASSBURG: That was a lot to respond

1 to. If I may, I would like to try to respond to some of
2 it because it was so much.

3 First of all, with respect to the timing of
4 disclosure, Mr. Harlow didn't ask for any extensions
5 with respect to his testimony. If you thought that he
6 didn't get it in time to provide testimony, I think we
7 probably would have been reasonable in discussing
8 extensions, but Mr. Harlow has been adamant that this
9 case should not be extended at all.

10 The difficulty in the timing of disclosure of
11 financial information related to failure to reach
12 agreement on the nondisclosure. We asked for and
13 thought that it would be appropriate to have an
14 attorneys'-eyes-only provision in our nondisclosure
15 agreement, meaning the competitor wouldn't receive the
16 information. The attorney and its expert could. That
17 would have been an appropriate way to deal with this.
18 But Mr. Harlow refused to allow that sort of
19 nondisclosure agreement.

20 With respect to Mr. Harlow's statement that because
21 SpeediShuttle included some specifics from its financial
22 pro forma statement that was produced, they should be
23 able to do whatever they want with the information and
24 get even more. There is a logical leap there.
25 Mr. Roemer used aggregate data, not month-by-month data.

1 There is no connection between Mr. Roemer's use of
2 aggregate data and the allegation that that somehow
3 requires us now to produce month-to-month data.

4 You've heard from us repeatedly on these discovery
5 issues. I don't really intend to get back into that.

6 But you made your rulings. We produced what you said we
7 needed to produce. They are just complaining about it.

8 And that's really kind of the next thing, is the fact
9 they didn't get what you didn't order -- I don't know if
10 that was clear -- but you didn't order certain things,
11 they wanted them anyway, so they literally made up
12 numbers and they say -- Mr. Harlow just alleged those
13 made-up numbers prove something that leads to the need
14 for additional disclosure. That's nonsensical, in my
15 opinion. Frankly, my objection is just to the fact that
16 these aren't real numbers, they aren't helpful, and
17 pretty much the rest of what Mr. Harlow said didn't make
18 an untrue statement or change that.

19 MR. HARLOW: The only thing I want to
20 respond to is those are not made-up numbers. Those
21 numbers came from the pro forma statement that is part
22 of the application and is already in this record.

23 JUDGE PEARSON: Thank you. So I'm going
24 to allow it, recognizing that it has limited value
25 because it is an estimate. The reason I'm going to

1 allow it is because it is referenced so frequently in
2 the testimony. I want to be able to refer to it, if I
3 need to, to provide context for what I'm reading or in
4 the event that I need to seek assistance from my
5 accounting policy adviser. I just want to have it
6 available to me. I will obviously afford it the weight
7 that is appropriate given the fact that it's an estimate
8 and I'm aware of that.

9 MR. FASSBURG: As to PK-4, first of all,
10 this is a number of different data requests and
11 responses, so I need to address each of them separately.
12 Data Request No. 59 is an objection without a response.
13 And I believe the way it's being offered is a discovery
14 dispute being raised as testimony. I don't think that's
15 appropriate.

16 MR. HARLOW: Mr. Fassburg, I think you're
17 on the wrong exhibit, PK-4 should be 71.

18 MR. FASSBURG: I may have them labeled
19 incorrectly then.

20 JUDGE PEARSON: 71 and 72. It's two data
21 requests. It's labeled 3.

22 MR. FASSBURG: Okay.

23 MR. HARLOW: It was renumbered.

24 JUDGE PEARSON: And then renumbered.

25 MR. FASSBURG: I'm lost.

1 JUDGE PEARSON: Can I stop you right
2 there? Because I think we can save a lot of time if I
3 just tell you whether or not these are useful to me, and
4 they are not, because they are not responsive to the
5 data requests. So I'll go ahead and exclude those.

6 PK-4.

7 MR. FASSBURG: Your Honor, that's
8 basically my objection to all the data requests.
9 Unfortunately, I don't have the exhibit numbers in front
10 of me. But I don't want to make an untrue statement
11 because I haven't reviewed them all. If there is one
12 with a substantive response, I don't have an objection.
13 It appears to me that they all have objections only, and
14 therefore on direct I don't see the purpose in offering
15 these.

16 JUDGE PEARSON: Okay. Let me just quickly
17 review PK-5.

18 MR. HARLOW: Your Honor, one of the PKs,
19 6, is an email that -- I alluded to this just before
20 lunch and said we tried to get more representative
21 GAAP-compliant financial statements through informal
22 discovery negotiations. And that illustrates that very
23 well, what we tried to get.

24 JUDGE PEARSON: Okay. So PK-5 I'm going
25 to reject as well because it's also nonresponsive data

1 requests. That doesn't help me.

2 MR. FASSBURG: My notebook is just
3 numbered wrong. I'm going to see if I can fix that by
4 opening my computer which may take a moment. But I
5 understand PK-6 is an email exchange between counsel.
6 Unless Mr. Harlow intends to testify so we can
7 cross-examine him about the email, I don't understand
8 how that offered as an exhibit.

9 JUDGE PEARSON: It's not helpful to me.

10 MR. HARLOW: It's addressed in the
11 testimony.

12 JUDGE PEARSON: I'm going to exclude it,
13 though, because it's not helpful. And then PK-7, I'm
14 now opening up. It's mostly nonresponsive data requests
15 so I will exclude that as well.

16 So that means that we have admitted into the record
17 PK-1T, subject to preservation, SpeediShuttle's
18 objections. PK-2, PK-3T, also subject to the
19 reservation of SpeediShuttle's objections, and PK-8X and
20 PK-9. So at this point you can proceed.

21 (Exhibit Nos. PK-1T, PK-2, PK-3T, PK-8X and PK-9X
22 admitted into evidence.)

23 JUDGE PEARSON: Mr. Kajanoff, please stand
24 and raise your right hand.

25

CROSS BY FASSBURG/KAJANOFF

1 PAUL KAJANOFF, witness herein, having been first duly
2 sworn on oath, was examined and
3 testified as follows:
4

5 JUDGE PEARSON: Okay. You may be seated.
6 Please be sure to speak slowly and clearly and right
7 into the microphone so we can hear you.
8

CROSS-EXAMINATION

9
10 BY MR. FASSBURG:

11 Q Good morning, Mr. Kajanoff --

12 MR. HARLOW: Excuse me --

13 MR. FASSBURG: I'm sorry.

14 MR. HARLOW: I just want to make sure you
15 didn't want to -- we could put orally on the record the
16 revisions to page 13 or we can just agree to submit
17 those later.

18 JUDGE PEARSON: We can agree to submit
19 those later. You said they are basically typographical
20 errors?

21 MR. HARLOW: No, it's more than
22 typographical. I don't intend to cross my own witness
23 on the changes, but he is open for cross on why those
24 changes were made if anyone wants to know. So what we
25 submit will essentially be the same as we circulated by

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1 emails this morning.

2 JUDGE PEARSON: Okay.

3 MR. HARLOW: Thank you, Your Honor. The
4 witness is available for cross.

5 JUDGE PEARSON: Let's have Mr. Kajanoff
6 state his full name and spell his last name for the
7 record first.

8 THE WITNESS: My name is Paul Kajanoff.

9 JUDGE PEARSON: Can you spell your last
10 name?

11 THE WITNESS: K-a-j-a-n-o-f-f. I
12 apologize, I can actually see her typing it correctly
13 so --

14 JUDGE PEARSON: Thank you. Go ahead,
15 Mr. Fassburg.

16 BY MR. FASSBURG:

17 Q Will you please state your business address.

18 **A 800 Southwest 16th Street, Renton, Washington 98057.**

19 Q I understand you're here today to offer testimony on
20 behalf of Shuttle Express; is that correct?

21 **A That is correct.**

22 Q And I understand you have caused to be filed on your
23 behalf testimony identified as Exhibit PK-1T and PK-3T;
24 is that correct?

25 **A That's correct.**

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1 Q Are you adopting those exhibits as your testimony under
2 oath?

3 **A Yes, I am.**

4 Q Please state your position with Shuttle Express.

5 **A I'm president of Shuttle Express.**

6 Q Prior to Shuttle Express, did you have any experience in
7 the transportation industry?

8 **A Not directly.**

9 Q I understand you hold a CPA; is that correct?

10 **A Yes, I am a licensed CPA. If you could pull that a
11 little closer. Thank you.**

12 Q Are you having trouble hearing me?

13 **A Okay.**

14 Q Mr. Kajanoff, by the way I understand, during
15 SpeediShuttle's application you were having a temporary
16 hearing issue; is that correct?

17 **A It's actually a permanent hearing issue now, but yes,
18 correct.**

19 Q That's what I wanted to clarify. If you can't hear me,
20 you will let me know, correct?

21 **A Yes, I will.**

22 Q Okay. Thank you. In this proceeding or in your
23 testimony you have offered some analyses of data, some
24 of which I still believe is in the record, and I want to
25 understand your qualifications to offer the analyses of

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1 data. What sort of training, experience, knowledge,
2 education, do you have in performing statistical
3 analyses?

4 **A I've been doing statistical analysis since probably**
5 **1989. That's when I started accounting, and this was**
6 **for an insurance company, and I would do several**
7 **pro-forma-type scenarios. I actually implemented the**
8 **first forecasting process ever at the insurance company**
9 **I was at, and the only way to do that is to forecast**
10 **ahead of time based on existing information trends,**
11 **whatever else management decides to do. That experience**
12 **served me well. I've been using it ever since.**

13 Q Do you have any formal training on -- or let me rephrase
14 that. Do you have any formal education on conducting
15 statistical analysis?

16 **A Sure. That would be part of -- I have a degree from**
17 **Central Washington and part of the process curriculum is**
18 **statistical analysis, business law, accounting, typical**
19 **things related to finance.**

20 Q I would like to refer you to your testimony at PK-1T on
21 page 5.

22 **A Yes.**

23 Q Give me a moment. The computer is a little slow. In
24 Table 3 that you have provided on page 5, you are
25 providing information about the net change in

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1 Shuttle Express's passenger reservations before and
2 after SpeediShuttle entered the market; is that correct?

3 **A That is correct.**

4 Q Would you agree with me that there is not a one-to-one
5 equivalence between passenger reservations and
6 passengers?

7 **A No.**

8 Q So for every passenger reservation, you have one
9 passenger only?

10 **A That would be true.**

11 Q So would you believe that to be true for SpeediShuttle
12 as well?

13 **A One passenger, one reservation, correct, that is
14 possible. Is that the question you asked me?**

15 Q Well, what I'm really trying to get at here is your
16 table here says, "Shown below are Shuttle Express
17 passenger reservations." What I want to know, is each
18 of these reservations one passenger?

19 **A Absolutely not.**

20 Q Okay. So in the table, you're only including
21 reservations, not the number of passengers, correct?

22 **A That is correct.**

23 Q Reservations can be canceled, can't they?

24 **A Certainly.**

25 Q And within a particular reservation, you could have

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1 anywhere from one to the maximum number of people your
2 shuttle van is capable of carrying, correct?

3 **A If it is a shuttle van, that would be correct.**

4 Q Sure. Well, let's limit this to shuttle vans, at least
5 for this discussion. So this information only tells us
6 each time a group of related people made a reservation,
7 not the number of people transported, correct?

8 **A Well, if you're referring to the table itself --**

9 Q Correct.

10 **A -- those are inbound/outbound trips -- excuse me,
11 inbound/outbound total reservations, that is correct.**

12 Q Okay. Moving on to page 3, you state, starting at
13 line 20 -- and this is PK-1T. "If contrary to the great
14 weight of testimony presented, both Shuttle Express and
15 SpeediShuttle could eventually operate profitably --

16 **A Pardon me, did you say page 3? Mine is lined out.**

17 MR. WILEY: Is this stricken?

18 MR. FASSBURG: I'm sorry.

19 THE WITNESS: If you would like to ask; I
20 will answer.

21 MR. FASSBURG: I'm going to strike the
22 question.

23 BY MR. FASSBURG:

24 Q I have a question for you about discounts.

25 Shuttle Express at one time offered a number of

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1 discounts in its tariff, correct?

2 **A Yes.**

3 Q When you offer a discount, you ultimately offer a
4 passenger a price that is below your tariffed rate that
5 is agreed upon by the Commission they have approved that
6 discount, correct?

7 **A Correct.**

8 Q And in your tariff you included the statement that those
9 discounts were considered revenue neutral with the
10 intent to increase bookings and passenger volume over
11 time; is that right?

12 **A That's the intent.**

13 Q Okay. So is it your position that increasing passengers
14 over time can actually make up for loss that you might
15 incur through charging a small increment less?

16 **A No.**

17 Q How is it then that a discount can be revenue neutral?

18 **A It depends on the volume. There is other factors into
19 play.**

20 Q Explain to us why you believe a discount is revenue
21 neutral.

22 **A Generally, the reason you would discount something is to
23 either entice or give a volume discount. But a discount
24 for no basis, you would not do that.**

25 Q Okay. Did Shuttle Express offer a roundtrip discount?

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1 **A Yes, it did at the time.**

2 Q And a roundtrip discount incentivizes a repeat
3 passenger, correct?

4 **A Yes.**

5 Q And the idea is to have them take more than one trip and
6 perhaps even more than two trips in the future, correct?

7 **A It's to entice them to take a roundtrip.**

8 Q Sure, but you are hoping to acquire additional
9 passengers over time, correct?

10 **A No, it's just to entice them to take a roundtrip.**

11 Q What about military discounts, do you need to be --

12 **A Is that a question?**

13 Q Sure. Are military discounts intended to increase
14 passenger volume over time?

15 **A Military discounts are there to -- as a corporate
16 citizen, we support the military and that has been our
17 practice.**

18 Q I've got a notebook here that has some exhibits. Please
19 turn to WAM-24X. I will represent to you this is a copy
20 of Shuttle Express's tariff that was in effect on
21 February 16, 2014, produced in response to public
22 records request -- I'm sorry, 2015 -- produced in
23 response to a public records request that I've also
24 submitted just to show that that is what it is.

25 If you'll turn to page 5, please. Do you see on

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1 page 5 where Shuttle Express has listed its discounts
2 that were in place at that time?

3 **A Yes, I do.**

4 Q Would you please read the last sentence after the
5 heading, "Roundtrip Discount."

6 **A I'm sorry, are we on the same page? I don't see
7 "Roundtrip Discount" on this page.**

8 MR. HARLOW: Page 4.

9 MR. FASSBURG: Page 4. Thank you.

10 THE WITNESS: "Roundtrip discounts are
11 considered revenue neutral with the intent to increase
12 roundtrip bookings and passenger volume over time."

13 BY MR. FASSBURG:

14 Q Please read the last sentence after "Military Discount."

15 **A "Discount offers are considered revenue neutral with the
16 intent to increase passenger volume over time."**

17 Q Will you please read the last sentence under "Microsoft
18 and Boeing Employee Discount."

19 **A "Discount offers are considered revenue neutral with the
20 intent to increase passenger volume over time." Would
21 you like me to read the next one? They are all the
22 same.**

23 Q I would like you to answer the questions that I ask you.

24 Will you please read the last sentence after --

25 **A Sure. "Discount offers considered revenue neutral with**

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1 the intent to increase passenger volume over time."

2 Q What does that statement mean?

3 **A What that statement means, there is several reasons to**
4 **offer a discount; one is volume discount, there might be**
5 **a discount to offer services to someone who has never**
6 **had it before, there is a discount to offer good will.**
7 **There is multiple reasons to offer a discount. The**
8 **intent of a discount is to be revenue neutral because**
9 **you would not just give a discount away without any**
10 **thought as to additional revenue or value for the**
11 **discount.**

12 Q How does a discount become revenue neutral?

13 **A Pardon?**

14 Q How does a decrease in price ultimately become revenue
15 neutral?

16 **A It will generate more business.**

17 Q And with more business do you increase your revenue?

18 **A Yes, of course.**

19 MR. HARLOW: Your Honor, I've been quiet
20 about this, but it's going on a long time, and I don't
21 see how this ties into his direct or his rebuttal
22 testimony at all.

23 MR. FASSBURG: Mr. Kajanoff offers
24 testimony about predatory pricing; this is related to
25 that.

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1 MR. HARLOW: It seems like that should
2 come in through the witness, not through testimony about
3 discounts.

4 JUDGE PEARSON: I understand where you're
5 going with it, but if you could move it forward.

6 MR. FASSBURG: Sure. I was about to, but
7 thank you, Your Honor, I would appreciate that.
8 Obviously we're limited for time. If you think we're
9 spending too much time on something, I'm open to you
10 telling me to move along.

11 JUDGE PEARSON: Okay.

12 BY MR. FASSBURG:

13 Q Mr. Kajanoff, is it your position that SpeediShuttle
14 cannot become profitable by increasing passenger
15 volumes?

16 **A No.**

17 Q Okay. You have testified on page 9 of PK-1T starting on
18 line 4, the question is: "In submissions in this docket
19 relating to the discovery dispute over producing its
20 financial statements, SpeediShuttle referred to its
21 losses as 'startup' losses. In your opinion, can
22 SpeediShuttle realistically become profitable in this
23 market by significantly growing its revenues?"

24 "Answer: No, not unless they take away so many more
25 of our passengers that it puts Shuttle Express into a

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1 huge loss position."

2 That is consistent with what you've just told me, in
3 fact SpeediShuttle could become profitable by growing
4 its passengers, correct?

5 **A That's not what I said.**

6 Q It could become profitable by growing its passengers,
7 I'm not asking about anything other than that simple
8 fact; isn't that true?

9 **A No.**

10 Q So it's now your testimony that SpeediShuttle cannot
11 become profitable by growing its passengers; do I
12 understand you correctly?

13 **A Explain the question again.**

14 Q I'm not asking about anything other than the facts I've
15 stated in the question. Is it your testimony
16 SpeediShuttle cannot become profitable by growing its
17 passengers?

18 **A Not in its current environment, no.**

19 Q I didn't ask are the passengers available. Is it
20 possible SpeediShuttle can become profitable by
21 increasing passengers?

22 MR. HARLOW: Asked and answered.

23 Argumentative.

24 MR. FASSBURG: He didn't answer the
25 question that I had asked.

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1 MR. HARLOW: He said no.

2 JUDGE PEARSON: He said yes --

3 MR. FASSBURG: He said not in the current
4 environment, which is not responsive to my question.

5 JUDGE PEARSON: Hold on. Everybody one at
6 a time. I heard conflicting answers to the question.
7 The first time he said yes, that if SpeediShuttle
8 increases its passengers it could increase its revenues.
9 But now he is saying no. I guess I just want
10 clarification as to whether it's yes or no.

11 THE WITNESS: Mathematically, yes.

12 JUDGE PEARSON: Okay. I think that's the
13 clarification.

14 MR. FASSBURG: That's all I'm asking.

15 THE WITNESS: Mathematically, anything is
16 possible mathematically, correct.

17 BY MR. FASSBURG:

18 Q Now, you have taken the position that SpeediShuttle
19 cannot become profitable in the current environment
20 because the market for passengers is shrinking; is that
21 correct?

22 **A The data that we have says that it is.**

23 Q Is it true that an auto transportation company can
24 increase its passengers by competing with nonregulated
25 modes of transportation?

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1 **A It's possible.**

2 Q Does Shuttle Express consider any of its competitors to
3 be nonregulated modes of transportation?

4 **A No.**

5 Q You state in PK-3T on page 15 --

6 **A Pardon me.**

7 Q Let's look at PK-3T, on page 15.

8 JUDGE PEARSON: I'm sorry --

9 MR. FASSBURG: Actually, I'm going to skip
10 this one. Unfortunately, when I prepared my outline
11 here I didn't have your order. And so I thought we had
12 addressed it in terms of getting rid of what addressed
13 your stricken testimony, but I did not. So I'm going to
14 move on from that one.

15 JUDGE PEARSON: Are we in 1T or 3T?

16 MR. FASSBURG: That was 3T, but my
17 question was on something that's been stricken. I don't
18 need to ask it.

19 MR. WILEY: I gave him 1T.

20 JUDGE PEARSON: Okay.

21 MR. WILEY: Thank you.

22 JUDGE PEARSON: I just need to know where
23 I'm looking.

24 MR. FASSBURG: I apologize. I'm a little
25 scrambled with that. I'm not good with the computer in

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1 the long pages, so let me just get to my paper copy.

2 JUDGE PEARSON: Okay.

3 MR. FASSBURG: That will help.

4 JUDGE PEARSON: Excuse me, there is
5 someone on the bridge line who is attempting to dial the
6 phone. Please don't do that again.

7 BY MR. FASSBURG:

8 Q Okay. PK-3T on page 15. Are you there?

9 **A All right.**

10 Q Lines 11 to 13, you state, "And since SpeediShuttle has
11 no plans or prospects of making a profit by growing its
12 volume, Mr. Roemer cannot deny that overall it will
13 operate indefinitely based on fares and practices that
14 are below cost."

15 Do you believe that without a specific business plan
16 that can identify when exactly you believe you will
17 become profitable or projections when you will become
18 profitable that you simply cannot become profitable?

19 **A What I believe is what I said. If a company focuses**
20 **solely on their variable cost, they will never recoup**
21 **all their costs. And then by definition your costs at**
22 **some point have to be less than your revenue to make a**
23 **profit. My comment is, as I said, if you define profit**
24 **as revenue less variable costs, it will be impossible to**
25 **ever make a profit if you do not consider fixed costs.**

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1 MR. FASSBURG: Objection, nonresponsive.

2 Move to strike.

3 JUDGE PEARSON: Okay. Well, I'm going to
4 allow it because he's just restating his own testimony.

5 MR. FASSBURG: That's fine. My question
6 still needs to be answered.

7 BY MR. FASSBURG:

8 Q Mr. Kajanoff, are you saying if you don't have a
9 specific projection or business plan that will tell you
10 when you will become profitable, you cannot become
11 profitable?

12 **A Can you repeat that for me? I'm sorry.**

13 Q I can break it down a little bit more. I'm just trying
14 to move along as fast as I can. Do you understand what
15 a business plan is?

16 **A Absolutely.**

17 Q Do you understand what a profitability projection is?

18 **A Absolutely.**

19 Q Are either of those required as an absolute requirement
20 to become profitable?

21 **A Of course they are not required.**

22 Q Okay. You say since SpeediShuttle has no plans or
23 prospects of making a profit by its growing volume, it
24 will always be operating at a loss. I want to focus
25 first on plans and then prospects. Actually, I'll move

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1 on. You just answered plan.

2 On prospects, what do you mean by it has no
3 prospects of making a profit by growing its volume?

4 **A Based on the information that I have, I do not see an**
5 **outcome of the plan or prospect of developing it any**
6 **further to make a profit on the information I received.**
7 **That's what I mean.**

8 Q Okay. You state on line 16 to 19, "You need to grow the
9 volume per trip in order for the increased revenue to
10 outpace the increased cost. Shuttle Express and
11 SpeediShuttle cannot do that in the current environment.
12 Both carriers are losing volume and that is decreasing
13 the number of passengers per trip." Did I read that
14 correctly?

15 **A Yes, you did.**

16 Q What is your basis for stating SpeediShuttle is losing
17 volume?

18 **A My basis for that is what was not allowed to be**
19 **submitted as evidence. So it's the trip volume reported**
20 **by the Port of Seattle.**

21 Q I don't think that's what was struck, but at least not
22 that specific piece of data.

23 Mr. Kajanoff, what information is reported to the
24 Port of Seattle?

25 **A Trips out of the airport.**

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1 Q Okay. When you say "losing volume," do you mean trips?

2 **A Trips and load factor.**

3 Q Okay. So you say each are losing volume and that is
4 decreasing the number of passengers per trip. So
5 numbers of passengers per trip is what you mean when you
6 say "load factor," correct?

7 **A That is correct.**

8 Q When you say "volume," do you mean passengers or trips?

9 **A It can be used interchangeably, yes.**

10 Q I'm asking what you stated when you said specifically
11 "both carriers are each losing volume"?

12 **A I have to use trips because I was not given the
13 passenger information.**

14 Q Okay. So when you said each passengers are -- each
15 carrier is losing volume, you meant each is losing trips
16 and not passengers, correct? I'm just trying to clarify
17 so I can get to the next point.

18 **A I can't answer the question on passengers; I can only do
19 it based on trips.**

20 Q Trips and passengers are not equivalent, just like
21 reservations and passengers are not equivalent, correct?

22 **A Reservations and passengers are separate, yes.**

23 Q Sure. My point is: Each trip does not equal one
24 passenger; each reservation does not equal one
25 passenger, correct?

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1 **A No, they are separate definitions.**

2 Q Okay. Now, if you want to increase the number of
3 passengers per trip to achieve profitability, within the
4 realm of possibility would be that you find a way to
5 become more efficient and decrease your trips with the
6 same number of passengers, correct?

7 **A That's one component.**

8 Q You could also increase your trips but not at the same
9 rate as you increase your passengers, correct?

10 **A You could do that.**

11 Q So now that you have SpeediShuttle's 2016 annual report,
12 have you evaluated how its number of trips and number of
13 passengers compare from 2015 to 2016?

14 **A Absolutely.**

15 Q Is it your understanding that SpeediShuttle has in fact
16 more than doubled the trips it made in 2015 to 2016?

17 **A Well, I don't know if you would like to rephrase that,
18 but I'll do it on your behalf. 2015 only represented
19 eight months; 2016 represented 12 months. So I can't
20 answer that.**

21 Q Sure you can, and I'll object to nonresponsive.

22 JUDGE PEARSON: Can you repeat the
23 question?

24 BY MR. FASSBURG:

25 Q I said: Don't those annual reports in fact show that

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1 SpeediShuttle more than doubled its passengers from 2015
2 to 2016?

3 JUDGE PEARSON: And you're referring to --

4 MR. FASSBURG: I may have misspoken then.

5 Let me rephrase the question and I'll start over and
6 waive the objection.

7 BY MR. FASSBURG:

8 Q Isn't it in fact true that from 2015 to 2016
9 SpeediShuttle more than doubled its number of
10 passengers?

11 MR. HARLOW: Your Honor, I would like --
12 if the question is based on the annual reports, I would
13 like the witness to be provided copies of the annual
14 reports.

15 MR. FASSBURG: I'm fine with that, of
16 course.

17 JUDGE PEARSON: You're talking about
18 SpeediShuttle's annual reports?

19 MR. FASSBURG: They have offered them as
20 exhibits, Your Honor.

21 JUDGE PEARSON: That's fine. I'm just
22 clarifying. And the 2015 report represents a smaller
23 segment of time because they were not certificated for
24 the entire year of 2015.

25 MR. FASSBURG: Sure.

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1 JUDGE PEARSON: And the 2016 report
2 represents the entire year. I think that was what
3 Mr. Kajanoff was getting at.

4 THE WITNESS: Yes. Because I do not want
5 to misrepresent. But to answer your question with your
6 clarification, thank you, yes, that is true.

7 BY MR. FASSBURG:

8 Q You will agree with me that the busy season begins in
9 late April, early May, correct?

10 **A That is correct.**

11 Q So SpeediShuttle's first year of operation included
12 pretty much the entirety of one busy season, correct?

13 **A Pretty much, yes.**

14 Q And so what we're missing from 2015 is one slow season,
15 basically January through April, correct?

16 **A Missing four months, correct.**

17 Q Okay. And more than doubling a period of eight months
18 means you didn't just cover passengers missing from the
19 first year, but you have in fact increased your
20 passenger count, correct?

21 **A Rephrase that, please.**

22 Q If you've got two busy seasons, one in each year, you're
23 covering pretty much the majority of your passengers in
24 each of those periods, aren't you?

25 **A Correct.**

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1 Q Okay. So if we're comparing 8 months to 12, each of
2 which includes a busy season, is it a fair conclusion
3 that you have increased your passenger count and that
4 your increased number is not solely due to a greater
5 period of time in the second period?

6 **A That's possible.**

7 Q Would you agree with me that between 2015 and 2016
8 SpeediShuttle did not double the number of trips that it
9 took?

10 **A Yes, that's correct.**

11 Q So between 2015 and 2016, SpeediShuttle increased the
12 number of passengers per trip based on those simple
13 numbers, correct?

14 **A That is correct.**

15 Q So when you stated that SpeediShuttle's volumes were
16 declining, you meant the number of what exactly?

17 **A Trips. That's the only information we had at the time I**
18 **made the statement.**

19 Q And what months did you compare?

20 **A It is, once again, it's on the nonadmitted schedule of**
21 **trips. So every month of operation since May, all the**
22 **way -- May 2015 all the way through December 2016 is in**
23 **one of the nonadmitted schedules.**

24 Q Okay. Are you saying -- just for clarification, you're
25 not saying SpeediShuttle's trips declined in every month

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1 it operated, are you?

2 **A No, I'm not, not every month.**

3 Q What months did you -- I'll move on.

4 **A Can I refer to the schedule?**

5 **JUDGE PEARSON: No, let's just move on.**

6 THE WITNESS: Okay.

7 BY MR. FASSBURG:

8 Q Going back to PK-1T, page 9. Do you have the page?

9 **A PK-3 or PK-1?**

10 Q PK-1, page 9.

11 **A Yes.**

12 Q On lines 11 to 15 you state, "Next, we know from a
13 year-and-a-half of experience with their supposed
14 'different' service that they are not attracting any new
15 demographic at all. In hindsight, it is clear that
16 their entry and initial rapid growth was fueled almost
17 100 percent by their wholesale contracts with agents who
18 had previously used Shuttle Express, not non-English
19 speakers booking on their Asian-language websites." Did
20 I read that correctly?

21 **A Yes, you did.**

22 Q Now, you state that SpeediShuttle is not attracting any
23 new demographic at all. What information do you have
24 about the actual people who ride on SpeediShuttle to
25 know what demographics they have?

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1 **A They have not provided any. I have no information.**

2 Q You made the statement without information; is that
3 correct?

4 **A That's not true.**

5 Q I asked you what information you based your statement
6 on.

7 **A SpeediShuttle provided in their data request a**
8 **spreadsheet 1039 -- I believe it was labeled SS1039.**
9 **It's a report of trips sent out by ground**
10 **transportation. And I compared 2013 to 2014 --**

11 MR. FASSBURG: I'm going to stop you,
12 Mr. Kajanoff.

13 THE WITNESS: I'm sorry.

14 MR. HARLOW: The question was what
15 information did you rely on, and he is --

16 MR. FASSBURG: About the demographics.

17 MR. HARLOW: He is getting there.

18 MR. FASSBURG: That doesn't get you there.

19 He is --

20 COURT REPORTER: Hold on.

21 JUDGE PEARSON: We can't speak over each
22 other because the court reporter can only record one
23 person at a time. And I do think that maybe
24 Mr. Kajanoff didn't understand the question, that you're
25 talking about the demographic profile of the individual

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1 passengers, which obviously can't be gleaned from that
2 piece of paper.

3 So is there another basis for how you would know who
4 these passengers were as people?

5 MR. HARLOW: Your Honor, I wish he could
6 finish the answer before you conclude he is not going to
7 be able tie it back in to the demographics --

8 MR. FASSBURG: He is attempting to offer
9 the excluded exhibit through his testimony.

10 JUDGE PEARSON: I'm just trying to speed
11 this up. So I rephrased the question --

12 MR. HARLOW: I appreciate that.

13 JUDGE PEARSON: -- to get an answer so we
14 can move on.

15 THE WITNESS: What's the question now?

16 JUDGE PEARSON: So he was asking if you
17 have any information about the specific demographic
18 profile of these passengers.

19 THE WITNESS: I do not.

20 JUDGE PEARSON: Okay. There is your
21 answer. Next question.

22 BY MR. FASSBURG:

23 Q Thank you. You say that you know that because they are
24 using wholesalers and not the English-speaking -- not
25 non-English-speakers booking on their Asian-language

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1 website. And I just want to make sure that we are all
2 on the same page. Do you agree with me that people that
3 are non-English speakers have other ways of arranging
4 transportation on SpeediShuttle, correct?

5 **A I'm going to assume so.**

6 MR. HARLOW: I object as vague. I don't
7 know what the "other" he is talking about is.

8 JUDGE PEARSON: Please do clarify because
9 I didn't fully understand that either.

10 BY MR. FASSBURG:

11 Q You say that you know that because the growth was fueled
12 through wholesale contracts with agents who previously
13 used Shuttle Express, not non-English speakers booking
14 on their Asian-language websites. And my point is those
15 are not mutually exclusive, correct?

16 **A Which are not mutually exclusive?**

17 Q Wholesale contracts and Asian-language websites.

18 **A I don't know that.**

19 Q You don't know whether those are mutually exclusive?

20 **A They could be.**

21 Q You think there is no other way for someone to make
22 arrangements for transportation on SpeediShuttle than
23 wholesale contracts and the Asian-language website?

24 MR. HARLOW: I still don't understand the
25 question, Your Honor. I think he's trying to get at

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1 whether somebody could both book through a wholesaler
2 and at the same time use the SpeediShuttle non-English
3 website. But I'm not even sure that's correct.

4 JUDGE PEARSON: I think what he's asking
5 is: Are there other ways for non-English-speaking
6 people to make a reservation other than through a
7 wholesale agent or an Asian-language website; is that
8 what you're asking?

9 MR. FASSBURG: I wasn't even limiting it
10 to Asian-language people; there are other ways of making
11 a reservation.

12 JUDGE PEARSON: Gotcha. Okay.

13 THE WITNESS: Yes, I would agree, there
14 are other ways of making a reservation.

15 BY MR. FASSBURG:

16 Q And whether those people that make those reservations
17 through other means are a non-English-speaker, not
18 limited to Asian languages, or someone who is a tourist
19 or who is tech savvy, those people have other ways of
20 making reservations, correct?

21 **A Yes. I said there is other ways of making reservations,**
22 **correct.**

23 Q Okay. So your statement that we know that SpeediShuttle
24 is not attracting a new demographic at all based on
25 these two options is not the whole answer, correct?

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1 **A There is a third option.**

2 Q Okay.

3 **A But yes to what you're saying, this is not conclusive.**

4 Q Okay. That's really all I'm getting at. You're not
5 claiming by that statement that SpeediShuttle was
6 required to grow its business solely through the
7 non-English-speaking passengers booked on its website,
8 are you?

9 **A No.**

10 Q Okay. And you understand that there are wholesale
11 companies whose passengers are in fact non-English
12 speakers?

13 **A That would be correct.**

14 Q And so SpeediShuttle's use of wholesalers is actually
15 one of the ways it serves non-English speaking
16 passengers. Do you understand that?

17 **A Yes, I do understand that.**

18 Q Okay. Back on PK-1T on page 9, you state, "The only way
19 they could grow revenues is to take more of our existing
20 passengers." Did I read that correctly?

21 **A That is correct.**

22 Q Who is one of your passengers?

23 **A People that use the auto transportation as I described**
24 **as not growing, that is where I believe they would have**
25 **to get this market from.**

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1 Q So my question was a little different.

2 **A Okay.**

3 Q Who is a Shuttle Express passenger?

4 **A A person that uses Shuttle Express.**

5 Q And so there is nothing about declining trips for
6 Shuttle Express that exceed the growth by SpeediShuttle,
7 which can demonstrate which of those passengers would
8 have used Shuttle Express, correct?

9 **A My assumption is all of them could have used**
10 **Shuttle Express.**

11 Q My question was would; not could.

12 **A Of course.**

13 Q Do you agree that there is no way to know which would
14 have used Shuttle Express, correct?

15 **A There is no way for anyone to know.**

16 Q Would you agree with me that the number of passengers
17 who actually use some mode of transportation to and from
18 Sea-Tac Airport has grown year over year, every year
19 since 2010, at a minimum?

20 **A Based on the information from the Port that I have in**
21 **front of me, that would be true.**

22 Q Are you attempting to compete for every single one of
23 those new passengers?

24 **A Always.**

25 Q Is SpeediShuttle also able, theoretically, to compete

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1 for every single one of those new passengers?

2 **A Yes.**

3 Q You say in PK-3T on page 16. Are you there? Are you
4 with me?

5 **A Yeah. PK-3.**

6 Q PK-3 on page 16.

7 **A Correct.**

8 Q Okay. On lines 7 to 8 beginning with, "It was."

9 JUDGE PEARSON: Hold on a second. That's
10 not what I see.

11 THE WITNESS: That's not what I see
12 either.

13 MR. HARLOW: Me either.

14 BY MR. FASSBURG:

15 Q Page 16, line 7. "It was" is in the middle of the
16 sentence?

17 **A Thank you.**

18 Q "It was SpeediShuttle that caused Shuttle Express's
19 dramatic decline in gross revenues" is your statement?

20 **A Yes.**

21 Q There is more to it, but I'm focusing on that. Have you
22 determined what percentage of your decline in gross
23 revenues was attributable to TNC's?

24 **A That would have to be an estimate.**

25 Q Do you have a specific number that you have based on

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1 market data?

2 **A I don't know the specific number of any transportation**
3 **provider.**

4 Q Okay. So I could go through every nonregulated mode of
5 transportation, including TNCs, taxis, light rail, self
6 transportation, limos, town cars, et cetera, but the
7 bottom line is for each of those you will not be able to
8 say how many of your passengers ultimately chose a
9 different mode of transportation, correct?

10 **A Not definitive, but I can make the estimate.**

11 Q I'm just asking about definitive.

12 Now, you agree with me that TNCs are providing what
13 you would call share-ride service at Sea-Tac Airport,
14 correct?

15 **A Yes.**

16 Q For example, Uber Pool is one I know that you complained
17 to the Port of Seattle about, and I believe it was you
18 stating that they were violating the Commission rules;
19 is that correct?

20 **A That's correct.**

21 Q Uber Pool would be a mode of transportation that you
22 believe is taking Shuttle Express passengers, correct?

23 **A Certainly possible.**

24 Q And you've claimed in PK-3T that Shuttle Express has now
25 suffered an operating loss as a result of declining

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1 passengers; correct?

2 **A That is correct.**

3 Q In 2016, for the number you reported, how much of your
4 costs that went into that number were attorneys' fees
5 incurred in this proceeding?

6 JUDGE PEARSON: I'm sorry, are you talking
7 about on the annual report?

8 MR. FASSBURG: I'm talking about in his
9 testimony. I didn't cite him to a page and line, but
10 it's on page 18, on line 19 -- he states they lost
11 \$362,000 in 2016.

12 JUDGE PEARSON: Okay.

13 BY MR. FASSBURG:

14 Q So how much of that loss -- well, my question is a
15 little different -- how much of your costs in 2016 were
16 attorneys fees in this proceeding alone?

17 **A Sorry, I didn't bring the detail of that up with me. I
18 can't answer that question.**

19 Q Okay. Is it more than \$100,000?

20 **A Which year?**

21 Q Is the attorneys' fees you incurred in this proceeding
22 alone for 2016 more than \$100,000?

23 **A No.**

24 Q Okay. Are you on an hourly agreement or a contingent
25 fee agreement?

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1 MR. HARLOW: Your Honor, I don't think --

2 MR. FASSBURG: He stated he has an
3 operating loss he is attributing to SpeediShuttle, and I
4 think I'm entitled to probe the basis of it.

5 MR. HARLOW: You asked the amount, but
6 getting into specific of the fee agreement we're
7 starting to tread into privileged areas, I think.

8 JUDGE PEARSON: So for my purposes, what I
9 want to know is does that \$362,000 include legal fees
10 incurred in this proceeding in 2016?

11 THE WITNESS: Not for legal fees. Legal
12 fees for this proceeding are not in there. My counselor
13 is not in these numbers.

14 JUDGE PEARSON: The 362,000 has nothing to
15 do -- legal fees are outside that completely?

16 THE WITNESS: Yes.

17 JUDGE PEARSON: That's what you wanted to
18 know, right?

19 MR. FASSBURG: Correct. Yes.

20 JUDGE PEARSON: Okay.

21 BY MR. FASSBURG:

22 Q Now, in your revenues that you report to the Commission,
23 I understand that you exclude the fares you received
24 from independent contractors who transport passengers
25 that originally reserved auto transportation or your

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1 share-ride service, correct?

2 **A They only report auto transportation, that is correct.**

3 Q Okay. When you are talking about the loss that you
4 incurred in 2016, are you also only talking about
5 door-to-door shared ride in King County?

6 **A I'm talking about our certificate tariffed work.**

7 Q So you're talking about all tariffed work? What does
8 "tariffed work" mean?

9 **A Everything under our certificate.**

10 Q So that includes charter?

11 **A No.**

12 Q Okay. It includes scheduled as well, correct?

13 **A Auto transportation, correct.**

14 Q You actually earned positive revenue from those trips
15 made by independent contractors, correct?

16 **A I don't understand the question. What are you asking?**

17 Q Okay. To be clear, there are passengers who reserved
18 auto transportation service who were placed in town
19 cars, and you paid the drivers or independent
20 contractors of those town cars or limousines a fee,
21 correct?

22 **A Yes.**

23 Q Okay. Your net fees or your net fares exceeded what you
24 paid the independent contractors for that transportation
25 in 2016, correct?

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1 **A You're asking me about a line of business that is -- I'm**
2 **confused.**

3 **JUDGE PEARSON: Let me step in here**
4 **because I am interested in knowing the answer to this**
5 **question. Those rides that were the subject of Staff's**
6 **investigation that originate as auto transportation**
7 **reservations Shuttle Express gives to an independent**
8 **contractor, do you still make money off of those or do**
9 **you lose money off of those?**

10 THE WITNESS: Can I explain it?

11 JUDGE PEARSON: Yes.

12 THE WITNESS: Thank you. So the auto
13 transportation work under our tariff is subdivided
14 between that and everything else. I did not subdivide
15 the independent contractor work.

16 JUDGE PEARSON: I understand that. I'm
17 asking about individual trips. When someone makes a
18 reservation for auto trans, and then you -- and I'm
19 using your words -- quote, "convert it" to the
20 independent contractor trip, and you send a limo to get
21 them, you collect a fare from the customer, do you
22 retain a portion of that fare or does it all go to the
23 independent contractor?

24 THE WITNESS: Yes, we retain a portion.

25 Yes.

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1 BY MR. FASSBURG:

2 Q That portion that you've retained, is that included
3 within the numbers you used to calculate your loss?

4 **A No.**

5 Q Do you have here today what the number was for all
6 retained fares for independent contractors who
7 transported passengers -- let me rephrase.

8 The subject we're talking about, these trips, for
9 2016 do you have the total number of the amount that you
10 retained when you paid the independent contractors?

11 **A Yes.**

12 Q What is that amount?

13 **A I don't know off the top of my head. What specifically
14 are you asking?**

15 **JUDGE PEARSON: I guess my question would
16 be what's the percentage that you retained? What
17 percentage do you pay to the independent contractor and
18 what percentage do you retain for the trip fare?**

19 THE WITNESS: On average for everything
20 that we do with an independent contractor?

21 JUDGE PEARSON: No, for the trips that
22 originate as auto trans and then you, quote-unquote
23 "convert" them to an independent contractor. We're
24 speaking specifically about the violations alleged in
25 Staff's investigation. So those trips, those

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1 35,000-some-odd trips, on average, what percent do you
2 retain from that fare versus what percent is paid to the
3 independent contractor?

4 THE WITNESS: Roughly 11-ish.

5 JUDGE PEARSON: 11 percent?

6 THE WITNESS: 11 percent.

7 JUDGE PEARSON: You keep?

8 THE WITNESS: Yeah, we give 11 percent.

9 JUDGE PEARSON: You keep 11 percent or you
10 pay 11 percent?

11 THE WITNESS: We keep 11 percent.

12 JUDGE PEARSON: They get 89 percent of
13 that fare, roughly?

14 THE WITNESS: Roughly. It depends.

15 JUDGE PEARSON: Okay.

16 BY MR. FASSBURG:

17 Q Do you know whether or not -- I'm sorry, I'll move on
18 just a little bit here.

19 You state in PK-1T on page 11 --

20 **A Yes.**

21 Q -- "SpeediShuttle is a franchisee of the GO Group and
22 therefore must pay \$15 per hour for any employee while
23 they work within Seattle city limits per the City of
24 Seattle minimum wage law." Did I read that correctly?

25 **A Yes, you did.**

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1 Q Is it still your testimony under oath that
2 SpeediShuttle is a franchisee of the GO Group?

3 **A Let me clarify. Licensee. So I use the term**
4 **interchangeably. They have a license to do that, they**
5 **have a license for the GO Group. So I view them as a**
6 **franchisee.**

7 Q You are not alleging they are a member of the GO Group,
8 are you?

9 **A No. I'm saying that they are a licensee of the GO**
10 **Group.**

11 Q Let's move on. Page 11, starting on line 16, you state,
12 "It is now clear from the pro forma submitted in their
13 initial application and the most recent financials that
14 SpeediShuttle was not forthright in representing a
15 financial position indicative of the business model they
16 presented at the initial hearing. In regard to the
17 balance sheet, SpeediShuttle stated they would start
18 with five vehicles and their pro forma indicated no
19 change from the five vehicles for the first 12 months.
20 Five vehicles would certainly make sense to the
21 Commission given the supposedly unique business model
22 presented at the initial hearing. However, by the end
23 of July 2015 -- just three months since they started
24 operating -- SpeediShuttle had already acquired 18
25 vehicles, 360 percent more than presented in their pro

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1 forma." Did I read that correctly?

2 **A Yes, you did.**

3 Q Are you claiming here that SpeediShuttle misrepresented
4 to the Commission that it was going to use only five
5 vehicles?

6 **A No, I did not state that.**

7 Q If SpeediShuttle in fact informed the Commission that it
8 was going to use the number of shuttles it believed its
9 demand as estimated by SpeediShuttle by the time of the
10 commencement of their business, SpeediShuttle -- I'm
11 sorry, you know what? I lost myself there.

12 **A Can you tell me what line you are on, please?**

13 Q I wasn't on a line. You're stating here, "It's clear
14 from the pro forma SpeediShuttle was not forthright in
15 representing a financial position indicative of the
16 business model."

17 You understand that SpeediShuttle told the
18 Commission at the application hearing that they would
19 use the commencement fleet they believe required by the
20 demand, based on their conversations with their
21 customers, leading up to the commencement of their
22 service, correct?

23 **A I don't know that to be true. That's not my
24 recollection of the hearing.**

25 Q Okay. You were present at the hearing, correct?

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1 **A Yes, but I was a bit debilitated.**

2 Q That was actually my next question. You claim you don't
3 recall from the hearing; I wanted to know if you in fact
4 heard Mr. Morton's testimony.

5 **A I have read the testimony.**

6 Q Okay. You have in front of you --

7 **A I do. Oh, I'm sorry.**

8 Q No, go ahead. I'm sorry. You've read his testimony?

9 **A Yes. I thought you were going to ask if I have it in**
10 **front of me? I do not.**

11 Q You do, you just don't know it. If you will flip in
12 that notebook to Exhibit WAM-50X. It's the one with the
13 tab 50. Or does that start 450? This is it.

14 **A All right.**

15 Q Beginning on page 45. Starting on line 19 of page 45,
16 this is Mr. Fricke's examination of Mr. Morton, the
17 question was:

18 "Q I had a question about your proposed service.
19 In your application you list again on CM-1,
20 regarding the fleet, you will offer five
21 shuttles at the commencement of service."

22 I think Mr. Fricke has more to his question but
23 what's important is the answer. Mr. Morton answers on
24 page 46, beginning on line 1:

25 "A If we find that the demand is greater than our

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1 capacity, we will acquire new equipment. We
2 will not be starting the business within days
3 of obtaining our authority. We will be
4 reaching out to all our clientele, and we will
5 adjust our in -- commencement fleet
6 accordingly."

7 Did I read that correctly?

8 **A Yes, you did.**

9 Q Does that indicate that SpeediShuttle was intending to
10 represent to the Commission it would only use five
11 vehicles or it would use however many vehicles it
12 believed was necessary for its expected demand?

13 MR. HARLOW: Objection, Your Honor. I
14 don't know where this is going, reading two-year-old
15 transcripts and then asking him what the witness meant.
16 I think it's a waste of our time.

17 MR. FASSBURG: Well, I think when
18 Mr. Kajanoff wants to claim who misrepresented what,
19 what was actually stated is important.

20 JUDGE PEARSON: I think you've made your
21 point.

22 BY MR. FASSBURG:

23 Q Now, you state in PK-1T at page 13 -- or rather in that
24 area you provide your opinions about cream skimming.

25 **A I'm sorry, I want to make sure I'm on the right one.**

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1 MR. HARLOW: I'll just remind the witness,
2 this is the page that have a substitute for.

3 THE WITNESS: Right. Right. Right.
4 Would you like me to correct that?

5 MR. HARLOW: Are we in 3 or 1T?

6 JUDGE PEARSON: 1T, page 13. So is the
7 correction to 3T?

8 MR. HARLOW: No, it's to 1T.

9 JUDGE PEARSON: Oh, okay. Is it on this
10 page?

11 THE WITNESS: Yes, it is.

12 JUDGE PEARSON: So where are corrections?

13 MR. HARLOW: Do you want me to read them?
14 The witness can if he has them in front of him.

15 THE WITNESS: So starting on line 11,
16 replace "reservations" with "revenue."

17 JUDGE PEARSON: Okay.

18 MR. HARLOW: "Reservations were" with
19 "revenue was."

20 THE WITNESS: "Reservations" -- excuse me,
21 revenue is down 31 percent; so wipe out the 59. Then on
22 line 13, the 44 percent.

23 MR. HARLOW: Did you put the substitute
24 number in for 59?

25 THE WITNESS: It's 24.

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1 MR. HARLOW: No, on line 11.

2 JUDGE PEARSON: 31. So Shuttle Express
3 revenue was down 31 percent?

4 THE WITNESS: Yeah, it was down
5 31 percent. And then when we go to line 13 where it
6 says a decline of 44, the decline is actually 24.

7 JUDGE PEARSON: Okay.

8 THE WITNESS: And then line 14, 23 percent
9 needs to be 18 percent.

10 JUDGE PEARSON: Okay.

11 MR. HARLOW: Thank you, Your Honor.

12 JUDGE PEARSON: Those were not just typos;
13 those were highly substantive. Thank you.

14 MR. HARLOW: Yeah, we didn't represent
15 them as typos.

16 JUDGE PEARSON: I know. That was my
17 mischaracterization.

18 MR. HARLOW: We make mistakes sometimes.

19 MR. FASSBURG: Can we take a very short
20 break off the record?

21 JUDGE PEARSON: I would love to do that.
22 Let's take five minutes.

23 (Short break taken.)

24 JUDGE PEARSON: We will be back on the
25 record following a brief recess. Mr. Fassburg, you may

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1 continue with your cross-examination of Mr. Kajanoff.

2 BY MR. FASSBURG:

3 Q Mr. Kajanoff, I'll refer you back to page 13 of PK-1T.

4 You state that SpeediShuttle undercuts your fare to
5 downtown Seattle by about 9 percent. Are you referring
6 to SpeediShuttle's -- I'm sorry, are you referring to
7 Shuttle Express's scheduled service fare or its
8 door-to-door fare?

9 **A I put them all together.**

10 Q What do you mean you put them all together?

11 **A I ran all our tariff work by ZIP code.**

12 Q Okay. I'm asking is that undercutting your door-to-door
13 fare to downtown Seattle or your scheduled service fare
14 to downtown Seattle?

15 **A Well, if you want the specific to the 9 percent --**

16 Q Yes, thank you.

17 **A Okay. So core downtown scheduled service is \$18. The**
18 **most common fare to the same area for SpeediShuttle is**
19 **15.99, or essentially \$16. It's 11 percent.**

20 Q You are comparing two different services there, correct?

21 **A Can you get closer to the mike?**

22 Q Sure. I think problem was my mike was off. That will
23 help.

24 **A Okay.**

25 Q Just making a note, you're comparing two different

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1 services, right, door-to-door versus scheduled?

2 **A We are allowed to do both.**

3 Q My only question is what you're comparing. You're
4 comparing your scheduled service to downtown to
5 SpeediShuttle's door-to-door service, right?

6 **A When I do the totals, I combine them together by ZIP
7 code. I do not differentiate.**

8 Q Okay. So you're saying you can't answer the question
9 because you combined your fares?

10 **A I'm sorry, I thought I answered question. Which
11 question are you asking?**

12 Q You stated, "They undercut our fare to downtown
13 Seattle." All I'm asking is which fare, door-to-door or
14 scheduled?

15 **A It would be both in this instance.**

16 **JUDGE PEARSON: What did you say?**

17 THE WITNESS: It would be both in this
18 instance.

19 JUDGE PEARSON: Tell me what is the fare
20 for scheduled service from the airport to downtown
21 Seattle, and then tell me what is Shuttle Express's fare
22 for door-to-door service from the airport to downtown
23 Seattle.

24 THE WITNESS: That is an assumption of a
25 single, and I did not do single shuttles. So there is a

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1 load factor, and based on the additional passenger, that
2 will reduce cost of the trip. If you have three people,
3 it will significantly lower the cost.

4 JUDGE PEARSON: For door-to-door or for
5 scheduled?

6 THE WITNESS: For door-to-door. For
7 scheduled it's a flat rate; however, children ride free.

8 JUDGE PEARSON: What's the scheduled rate?
9 That's the \$18?

10 THE WITNESS: There is several. But the
11 most key ones downtown is \$18.

12 JUDGE PEARSON: Okay. So why don't you
13 tell me what the range of rates is for door-to-door
14 service based on passenger volume. There has got to be
15 a range.

16 THE WITNESS: I'm sorry, I do not have
17 that -- I'm sorry, I don't have them memorized.

18 JUDGE PEARSON: Okay. We have the tariff
19 here. So why don't we --

20 MR. HARLOW: We have an older tariff,
21 2015; would that be current enough?

22 MR. FASSBURG: Your Honor, while I
23 appreciate you were asking a different question, I
24 wasn't actually going to that. I'm just pointing out he
25 is comparing apples and oranges.

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1 JUDGE PEARSON: And I wanted to establish
2 that more thoroughly, I guess. There is the
3 door-to-door rates by ZIP code on page 8 of the tariff.

4 MR. HARLOW: WAM-24X?

5 JUDGE PEARSON: Right. And it looks like
6 Seattle downtown 98104 is between \$33 and \$43. I assume
7 those are the flexible fare rate, 33 and 43?

8 THE WITNESS: Yes.

9 JUDGE PEARSON: So does that account for
10 the load factor you were talking about, it will be a
11 minimum of \$33 and a maximum of \$43 for that trip?

12 THE WITNESS: That would be for the trip,
13 but the each additional is a lesser amount.

14 JUDGE PEARSON: Is that reflected in the
15 tariff? Because I don't see that, it just says
16 door-to-door rates by ZIP code. It does say for first
17 paying adult, one-way travel, but where is the rest?

18 MR. HARLOW: Is that on page 7? Do you
19 need a copy?

20 JUDGE PEARSON: No, there is the
21 additional. These are the flexible fares. Additional
22 would range between \$6 and \$7.88.

23 THE WITNESS: Yes.

24 JUDGE PEARSON: For each additional, if
25 there are two or three, depending on -- so it would be

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1 fair to say that for two passengers it would range
2 between \$39 and about \$41, depending on the load?

3 THE WITNESS: Yes. And if it is a paying
4 passenger, because children ride free up to the paying
5 adult.

6 JUDGE PEARSON: Okay. I just wanted to
7 establish then what's -- what is SpeediShuttle's fare?

8 MR. ROEMER: 15.99.

9 THE WITNESS: The most common one down
10 there is 15.99, goes to 17.99, 20.15, 20.49, 20.99,
11 21.49, and then lastly 21.99. And that's per passenger.

12 JUDGE PEARSON: Okay. So when you say,
13 "They undercut our fare to downtown Seattle by about
14 9 percent," it does sound like you might be comparing
15 the scheduled service price rather than the door-to-door
16 price.

17 THE WITNESS: It's an all-inclusive price.
18 It would be less, typically, if it was a shared service.

19 JUDGE PEARSON: Okay. Go ahead, Mr.
20 Fassburg.

21 MR. HARLOW: If we're done with that, I
22 would like to retrieve my notebook copy.

23 JUDGE PEARSON: Sure.

24 MR. HARLOW: Thank you.

25

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1 BY MR. FASSBURG:

2 Q Now, further down on page 13, we are discussing the
3 numbers that we corrected on the record earlier. Those
4 declines in what was originally stated to be your
5 reservations and now it is stated to be your revenue,
6 are those in your scheduled service or your
7 door-to-door?

8 **A They are in both.**

9 Q So you're comparing your scheduled service to
10 SpeediShuttle's door-to-door service in terms of your
11 decline?

12 **A I am comparing our scheduled and downtown versus**
13 **door-to-door service as one total to those ZIP codes.**

14 Q You're including all auto transportation?

15 **A Anything within our tariff for scheduled or**
16 **door-to-door.**

17 Q Sure. Now, are you including within that statement your
18 trips that were originally reserved as auto
19 transportation that were ultimately made by an
20 independent contractor?

21 **A No, that's not auto transportation.**

22 Q That wasn't my question. I'm asking within your figures
23 do you include them or not?

24 **A I included only auto transportation. I believe I'm**
25 **answering the question.**

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1 Q You are offering a legal conclusion as part of your
2 explanation. All I'm asking you is whether or not you
3 included the trips for the revenue in this case since
4 you've now changed it from reservation to revenue?

5 MR. HARLOW: Objection, argumentative.

6 JUDGE PEARSON: Okay. Well, I think it's
7 a fair question. Without -- I understand that you don't
8 want to characterize those trips as auto trans. We get
9 that. But you still need to answer the question because
10 you know what he's referring to.

11 THE WITNESS: Yes. And I would only put
12 in what he is referring to is anything that was booked
13 under this tariff is in there. So yes, anything that we
14 would report is in there. That is the only thing that's
15 in there.

16 JUDGE PEARSON: And those trips that were
17 referred to independent contractor are not in there,
18 correct?

19 THE WITNESS: That would be correct.

20 JUDGE PEARSON: Okay. Is that what you
21 were asking, Mr. Fassburg?

22 MR. FASSBURG: I am.

23 BY MR. FASSBURG:

24 Q Do you know what percentage of your revenue from trips
25 made by independent contractors who were originally

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1 reserved as auto transportation comprise your decrease
2 in revenue?

3 **A Not off the top of my head. I did not bring that with**
4 **me.**

5 Q Would you agree with me, if you wanted to make a fair
6 comparison between your revenue, you would need to
7 include the revenue that you are removing from your
8 total and putting it into a different part of your
9 financial statements?

10 **A Sorry, can you repeat that question?**

11 Q I can put it a lot more simply. Aren't you
12 cannibalizing your own revenue?

13 **A I'm not cannibalizing my own revenue. I disagree with**
14 **that statement.**

15 Q I'll move on. I think my point is made.

16 Do you agree with me that most tourists to the
17 Seattle area go to downtown and the piers?

18 **A That could be a reasonable assumption. I know why you**
19 **would say that.**

20 Q Yes or no? Do you agree with me that most tourists go
21 to downtown Seattle or the piers?

22 **A Sure.**

23 Q Would you agree with me that people that come to Seattle
24 for tourist reasons are not particularly likely to go to
25 the suburbs on a tourism trip?

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1 **A Statistically, I believe that would be true.**

2 Q Okay. If SpeediShuttle is supposed to be enhancing the
3 experience for tourists by providing tourist-specific
4 amenities and focusing part of its business on tourism,
5 wouldn't it be reasonable to expect them to have
6 tourists as passengers?

7 **A If that were true, I guess that would be true.**

8 Q Okay. So if those tourists are more likely to go
9 downtown and the piers, and SpeediShuttle is supposed to
10 focus on tourism, doesn't it actually make sense that
11 SpeediShuttle would have a focus on people going to
12 places that tourists go?

13 **A Assuming that that's their business model.**

14 Q Okay. The answer was yes?

15 **A No. I don't believe the certificate was issued in the**
16 **name of tourism. So I thought it was door-to-door**
17 **service. So I can't answer your question.**

18 Q I actually appreciate your answer. The SpeediShuttle
19 certificate isn't limited in that way, is it?

20 **A Apparently not.**

21 Q Okay. Now if SpeediShuttle is, nonetheless, offering
22 service features that one would believe would attract a
23 tourist demographic, wouldn't it also make logical sense
24 that SpeediShuttle's trips would go to places tourists
25 want to go?

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1 **A Once again, if that is their business. I can't argue**
2 **with your statement if that's the business.**

3 Q My only point is logically -- I'll move on. I think
4 you've answered my question.

5 Now you say there are subtle ways an auto
6 transportation company could discourage passengers from
7 going to the suburbs; isn't that right?

8 **A Certainly.**

9 Q Okay. You're not saying you have any evidence
10 SpeediShuttle has told passengers that the trip to
11 North Bend will be 45 minutes to an hour, correct? Did
12 you have trouble hearing me?

13 **A I just want to understand.**

14 Q Let me refer you to PK-1T --

15 **A You asked about North Bend, whether their trip could**
16 **have been 45 minutes to an hour?**

17 Q No. That's why I want to make sure you got this
18 correct. You stated on PK-1T, on page 14, on line 6,
19 "There are subtle ways too, like telling a walk-up
20 passenger that the wait to go to North Bend will be
21 45 minutes to an hour to fill the van."

22 I just want to clarify, you aren't saying you have
23 evidence SpeediShuttle did this; you're just talking
24 about a way that you have imagined someone could do
25 this, correct?

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1 **A It is just an example.**

2 Q This was something that you came up with?

3 **A It's an example. It's my testimony.**

4 Q An example of a way that you have come up with how that
5 could be discouraged, correct?

6 **A That is an example, correct.**

7 Q Not an example you have evidence SpeediShuttle has done,
8 correct?

9 **A That is possible.**

10 Q What's possible?

11 **A What you just said.**

12 Q Yes or no: Do you have evidence SpeediShuttle has told
13 passengers there will be a wait --

14 **A I personally do not have that.**

15 Q Okay. You have not done a ZIP-code-by-ZIP-code fare
16 comparison here. Would you agree with me, in many of
17 the suburbs Shuttle Express's fare is actually higher
18 than SpeediShuttle?

19 **A No, I would disagree with that.**

20 Q Are you disagreeing based on an average or actual
21 ZIP-code-by-ZIP-code comparison?

22 **A I'm disagreeing based on taking SpeediShuttle's tariff
23 table and applying it to our paying passengers and I did
24 a calculation.**

25 Q Okay. So let me be more clear: Have you compared your

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1 tariff -- actually, I'm not particularly concerned about
2 the tariff since it's a flexible fare. Have you
3 compared the fares you actually charge and the fares
4 SpeediShuttle actually charges per passenger to each
5 ZIP code for strictly door-to-door service?

6 **A It is done for all services.**

7 Q So the answer is no, correct?

8 **A That would be correct.**

9 Q I think I've asked someone else, I will ask you: You
10 have absolutely no evidence that SpeediShuttle has
11 turned away a passenger who wanted to reserve service
12 within its certificated territory, correct?

13 **A Not been brought to my attention.**

14 Q Moving on back to GO Group on PK-1T, page 12. You state
15 on line 8, beginning on line 8, "In the case of
16 GO Group, our largest wholesaler SpeediShuttle got an
17 exclusive agreement replacing Shuttle Express with
18 SpeediShuttle completely." Did I read that correctly?

19 **A Yes, you did.**

20 Q Do you now still believe that SpeediShuttle's contractor
21 agreement with GO Group makes it the exclusive provider?

22 **A For the GO Group.**

23 Q Do you believe that GO Group is not permitted to use
24 other auto transportation companies in SpeediShuttle's
25 territory?

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1 **A They choose not to.**

2 Q So if I understand your current testimony, it's not that
3 they have an exclusive agreement; it's that GO Group
4 chooses not to use Shuttle Express, correct?

5 **A They can choose anyone they would like to choose. So**
6 **that would be correct.**

7 Q Thank you. You stated in PK-3T, page 7 --

8 JUDGE PEARSON: Sorry, which exhibit? Did
9 you say 1T?

10 MR. FASSBURG: 3T.

11 JUDGE PEARSON: What page?

12 MR. FASSBURG: Page 7. Beginning on line
13 18, you say, "But Mr. Roemer admitted in his deposition
14 that the promise that each SpeediShuttle passenger will
15 be assisted by a personal greeter is not met in
16 actuality." Did I read that correctly?

17 **A Are you on page 7?**

18 Q Yes.

19 **A Which line?**

20 Q Beginning on 18. It's about halfway down that line.

21 **A Sorry, I was on line 8. I apologize. Thank you.**

22 Q So I said that testimony is, "But Mr. Roemer admitted in
23 his deposition that the promise that each SpeediShuttle
24 passenger will be assisted by a personal greeter is not
25 met in actuality," correct?

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1 **A Yes.**

2 Q There is a difference between you haven't greeted every
3 single passenger and you are not greeting passengers,
4 correct?

5 **A Restate that, please.**

6 Q Your testimony says Mr. Roemer admitted in his
7 deposition that the promise that each SpeediShuttle
8 passenger will be assisted by a personal greeter is not
9 met in actuality. My point is: Mr. Roemer couldn't
10 honestly say that every passenger is greeted, if they
11 have ever made a mistake, error, or had a mix-up,
12 whether it was their fault or a passenger's. So there
13 is a difference between greeting every passenger and
14 greeting zero passengers; there is somewhere in between,
15 correct?

16 **A Yes. As you described that, that is correct.**

17 Q Okay. And there hasn't been any testimony submitted
18 that SpeediShuttle isn't greeting passengers, just that
19 they have at times had passengers who were not greeted,
20 correct?

21 **A That's not how I read Mr. Roemer's deposition.**

22 Q Is it your testimony under oath that Mr. Roemer
23 testified they don't greet any of their passengers?

24 **A I only know -- I was not at Mr. Roemer's deposition, I
25 can only read what was at the deposition.**

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1 Q I just want to understand your testimony. Is it your
2 testimony Mr. Roemer testified they are not greeting any
3 passengers?

4 **A Are you asking if no greeting at all?**

5 Q I'm just trying to clarify your testimony. I think this
6 can be done a little simpler. You would agree
7 SpeediShuttle greets passengers, correct?

8 **A Can you define "greeting a passenger" for me? And I
9 don't mean to be flippant, this is very important.**

10 Q Do you agree SpeediShuttle has personal greeters who
11 meet passengers at the baggage claim?

12 **A Yes, that is my understanding.**

13 Q Okay. Do you understand that some of those greeters
14 that SpeediShuttle employs are multilingual?

15 **A I don't know if that's true or not.**

16 Q Okay. You don't know one way or another?

17 **A I was not provided that information.**

18 Q Okay. Circling back to our prior discussion about
19 needing to grow the volume per trip in order for
20 increased revenue to outpace costs, I had a few
21 follow-up questions. Do you know how many passengers
22 per trip SpeediShuttle averages?

23 **A How many passengers SpeediShuttle averages?**

24 Q Yeah. Let use a finite period to make it easier. Using
25 SpeediShuttle's 2016 annual report, do you know how many

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1 passengers per trip it has averaged?

2 **A In what period of time?**

3 Q The year 2016.

4 **A For the entire year?**

5 Q That's what's available, correct?

6 **A They reported 87,743.**

7 Q 80,000?

8 **A It says here, "87,743 passengers is what Speedi reported**
9 **on their annual report."**

10 Q That's passengers?

11 **A That's passengers.**

12 Q How many trips?

13 **A 22,917.**

14 Q So if we do the math, that's over three passengers per
15 trip but not more than four?

16 **A It's 3.83.**

17 Q 3.8? How many passengers can SpeediShuttle's vans
18 carry?

19 **A I believe there are 12 passengers including a driver.**
20 **I'm not sure. That's my educated guess.**

21 Q Would you agree then that SpeediShuttle has additional
22 capacity by which it could increase its passenger per
23 trip without need for expanding its fleet?

24 **A Mathematically true.**

25 Q Okay. If SpeediShuttle begins to carry more passengers

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1 per trip, does it have significantly increased cost as a
2 result?

3 **A It should.**

4 Q It should have more costs for the passenger that is
5 significant?

6 **A Well, if they are being greeted in baggage claim, they**
7 **would have to greet more people to get them on the**
8 **vehicle unless they are not being greeted.**

9 Q Okay. Do you agree with me that you could greet a
10 larger number of people with the same number of
11 greeters?

12 **A If everyone was -- if they were all on the same**
13 **reservation, no.**

14 Q What about if flights are in a sequence as opposed to
15 all at one? I can probably articulate that a little
16 better. What if flights don't arrive at the same time?

17 **A That's true.**

18 Q So you don't necessarily have to have increased staff
19 just to have additional passengers, correct?

20 **A Well, maybe. It depends where they are and how far**
21 **apart their baggage carousels are. There are other**
22 **variables involved.**

23 Q Sure. And I'm not trying to say it's -- that there
24 isn't a point at which you might need additional
25 greeters. The only point is you can increase passengers

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1 without necessarily needing to increase greeters,
2 couldn't you?

3 **A Sure.**

4 Q So putting aside greeters, what other costs go up when
5 your passengers go up if your fleets don't go up, if
6 your trips don't go up?

7 **A It might be driver time, assuming they stop at different**
8 **places. If they all stopped at one place, it might be**
9 **different so it depends.**

10 Q If it needs to go to a different place, other than fuel
11 and driver time, are there other costs that go up?

12 **A Generically not. I don't know their cost model, but no.**

13 Q Okay.

14 **A For example, if they have bottled water. I don't know.**

15 Q Sure. The point being, we're not talking significantly
16 increased costs to transport more passengers, at least
17 within a certain range, correct?

18 **A Yeah. Once again, mathematically true.**

19 Q That idea we're talking about where you have only
20 marginally increased cost as you increase passengers is
21 part of how you could become profitable through your
22 economy of scale, correct?

23 **A Once again, mathematically true.**

24 Q Okay. If you aren't changing your scale but you're
25 increasing output, you become more efficient and more

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1 profitable, true?

2 **A That would be the assumption.**

3 Q Okay. And you, an auto transportation company, can
4 manipulate your scale by changing the size of your
5 fleet, correct?

6 **A That's a variable, correct.**

7 Q Okay. So if a company doesn't have the volume-per-trip
8 to support it operating most efficiently within the
9 current scale, one way to increase the efficiency and
10 profitability would be to change the scale, correct?

11 **A That's what you typically would try to do.**

12 Q Okay. Thank you. Moving on just a little bit. On
13 PK-3T, page 21 -- are you on the page?

14 **A PK-3T, page 21.**

15 Q You were asked about Mr. Roemer's claims at page 55 that
16 SpeediShuttle trips have not declined. Your answer
17 includes, on line 10 -- I'm sorry, it's line 11 -- "In
18 August 2015, SpeediShuttle reported 1,438 trips compared
19 to 1,232 in August 2016. That is 206 less trips
20 represented in a decline of 14 percent. September
21 showed a decline of 119 trips or 8 percent and October
22 showed a decline of 57 trips or 5 percent. Absent some
23 real and honest data from SpeediShuttle, either
24 Mr. Roemer is lying in his testimony or SpeediShuttle is
25 underreporting trips to the Port of Seattle." Did I

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1 read that correctly?

2 **A Yes, you did.**

3 Q First, do you know how SpeediShuttle reports trips to
4 the Port of Seattle?

5 **A I'll speculate. I don't know. I assume they have a
6 card reader of some sort but I don't know.**

7 Q Okay. If I represented to you that they have some sort
8 of device that electronically reads their trips, we
9 could assume Mr. Roemer isn't underreporting his trips,
10 correct?

11 **A Possibly.**

12 Q Okay.

13 **A Can I clarify that answer?**

14 Q Sure.

15 **A In our history, they have tried to do the same with us
16 and it didn't work correctly and they asked us to report
17 the trips. Once again, I'm not SpeediShuttle so I
18 can't --**

19 Q Sure. In fact, a mild digression from my point,
20 Shuttle Express, each time you hired an independent
21 contractor or however you want to call it, each time an
22 independent contractor transports an auto transportation
23 passenger that you have referred to them, you're going
24 to not pay a trip fee to the Port of Seattle, correct?

25 **A I want to be very clear when I answer that question,**

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1 because independent contractors, other than our waiver,
2 they are not moving auto trans customers.

3 Q You're offering a legal conclusion. My question is a
4 little different. Just focused on the trips themselves,
5 the town car drivers don't pay a trip fee, correct?

6 **A They pay an annual fee, I believe; they have the right**
7 **to park at the airport.**

8 Q And numbers of trips that you're reporting are going to
9 exclude those trips, correct?

10 **A Except for our waiver, we did report those trips, but**
11 **the waiver that we have currently given to us by the**
12 **UTC. So we report those trips to the Port of Seattle.**

13 Q So the trips that you make that are the subject of
14 SpeediShuttle's complaint in this proceeding, you do
15 report to the Port of Seattle?

16 **A No.**

17 Q All right. I just wanted to make sure I had a clear
18 answer.

19 **A Not auto transportation trips.**

20 Q Okay. Now, your statement about Mr. Roemer's testimony
21 on page 55, I would like to refer you to Mr. Roemer's
22 testimony on page 55.

23 JUDGE PEARSON: This is 1T or 2T? I'm
24 sorry --

25 THE WITNESS: Mr. Roemer's testimony.

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1 JUDGE PEARSON: Which round of
2 Mr. Roemer's testimony are you referring to?

3 MR. FASSBURG: Unfortunately, the question
4 that refers to it doesn't state it, but I do believe it
5 was referring to the opening.

6 JUDGE PEARSON: It would have to be,
7 because there is no page 55. Yes.

8 BY MR. FASSBURG:

9 Q Are you looking for Mr. Roemer's testimony?

10 **A Yes.**

11 Q Let's see if we can find it.

12 **A I don't have it. Because I know --**

13 Q I may need to find it for you. When you stated that
14 Mr. Roemer was either lying in his testimony or
15 underreporting trips to the Port of Seattle, were you
16 referring to the testimony that starts with the
17 question, "What story is that"?

18 **A Which line are you referring to?**

19 Q I wish I could tell you.

20 MR. WILEY: Three.

21 BY MR. FASSBURG:

22 Q There you go, line 3.

23 **A I state that they are actually losing trips. That's my**
24 **comment.**

25 Q My question is: Is this the testimony to which you were

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1 referring, the question and answer that begins with,
2 "What story is that?"

3 **A Yes. It's the only data we are able to receive.**

4 Q So the testimony of Mr. Roemer on that page is:

5 "Q What story is that?"

6 "A Mr. Kajanoff testified that our financial
7 statements misrepresent that SpeediShuttle's
8 losses are decreasing and trips are increasing
9 and that we are actually losing trips just
10 like Shuttle Express. He is wrong."

11 Mr. Roemer's testimony refers to your testimony
12 about the financial statements, correct?

13 **A Yes.**

14 Q The financial statement did not include trips, did it?

15 **A I don't believe I'm seeing that in his statement.**

16 Q No. He stated, "Mr. Kajanoff testified that our
17 financial statements misrepresent SpeediShuttle's losses
18 are decreasing and trips are increasing and that we are
19 actually losing trips just like Shuttle Express. He is
20 wrong." He is referring to your testimony about the
21 financial statements, correct?

22 **A I believe he's referring to the fact he said our trips
23 are increasing.**

24 Q I'm sorry, he is discussing your testimony about the
25 financial statements; yes or no?

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1 **A I guess I want to know, are you asking about the trips**
2 **or the financial statements?**

3 Q This testimony that you are referring to in PK-3T about
4 Mr. Roemer's truthfulness refers to Mr. Roemer's
5 testimony. That testimony is referring to your
6 testimony about the financial statement, correct?

7 **A Which testimony? Can you point to that in PK-3?**

8 Q PK-3T was lines 10 to 14.

9 **A Which page?**

10 Q Page 21.

11 **A Okay.**

12 MR. HARLOW: Excuse me, Mr. Kajanoff filed
13 PK-3 after the HJR-1T was filed. So he couldn't have
14 been referring to PK-3.

15 MR. FASSBURG: I don't think that's what I
16 said.

17 JUDGE PEARSON: No. He is saying that in
18 Mr. Kajanoff's second round of testimony, he's referring
19 to page 55 of Mr. Roemer's first round of testimony.

20 MR. HARLOW: I thought the witness was
21 trying to be pointed to which testimony --

22 JUDGE PEARSON: No.

23 MR. HARLOW: -- Mr. Roemer was talking
24 about on page 55, line 4.

25 JUDGE PEARSON: He is pointing

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1 Mr. Kajanoff to the portion of Mr. Roemer's testimony
2 that he is addressing in his testimony, right?

3 MR. FASSBURG: Yes. I'm asking a question
4 about his testimony that refers to Mr. Roemer's
5 testimony, which requires us to understand Mr. Roemer's
6 testimony.

7 JUDGE PEARSON: And Mr. Roemer was
8 responding to his first round of testimony?

9 MR. FASSBURG: Correct.

10 JUDGE PEARSON: It's a little confusing.

11 THE WITNESS: In which I believe, when I
12 read it, it was mentioned that their trips were not
13 declining. And I said that is not true based on the
14 information I have from the Port of Seattle. That is
15 what I --

16 MR. HARLOW: Your Honor --

17 MR. FASSBURG: My question --

18 MR. HARLOW: Can we move on? I think
19 we've got -- I think we understand that Mr. Fassburg is
20 trying to point out an ambiguity, but in essence he's
21 trying to do that by asking the witness what Mr. Roemer
22 really meant in his responsive testimony. I think we
23 ought to save that for Mr. Roemer on Friday.

24 MR. FASSBURG: I think that that's a nice
25 speaking objection that's trying to coach the witness.

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1 But the reality is, if Mr. Kajanoff wants to call
2 Mr. Roemer a liar, I think it's important for us to know
3 what he said, what it was about, and understand if
4 Mr. Kajanoff is simply confused.

5 JUDGE PEARSON: I think that's fair. But
6 please do try to speed it up, because we are getting low
7 on time.

8 MR. FASSBURG: I appreciate that. And,
9 frankly, I think I'm flying through. We're almost done.

10 JUDGE PEARSON: Okay.

11 BY MR. FASSBURG:

12 Q So let's try this one more time. On page 55 of
13 Mr. Roemer's testimony where you said that he was either
14 lying or underreporting trips to the Port of Seattle, he
15 was discussing your testimony about the financial
16 statement, correct? That's what it says on page 55 of
17 Mr. Roemer's testimony, doesn't it?

18 **A Yes, I can read his testimony there.**

19 Q Okay. And he is talking about your testimony about the
20 financial statement that did not include trip
21 information in the financial statement, correct?

22 **A Well, if you separate the two, correct.**

23 Q You say, if you separate the two, the financial
24 statement about which you were discussing and which he
25 is responding to, flat-out didn't include trips,

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1 correct?

2 MR. HARLOW: Objection, argumentative.

3 Asked and answered.

4 JUDGE PEARSON: Did you answer?

5 THE WITNESS: I did not.

6 JUDGE PEARSON: Okay. Well, I'll allow
7 him to answer the question.

8 THE WITNESS: For clarity on this, I am
9 making two statements here.

10 JUDGE PEARSON: Okay.

11 THE WITNESS: I believe they are
12 misrepresenting their financial statements and the
13 degree of their losses, and I'm calling out that, from
14 the data I have, they are losing trips.

15 BY MR. FASSBURG:

16 Q Okay. Well, so when Mr. Roemer says that your testimony
17 shows that the financial statements misrepresent
18 SpeediShuttle's losses are decreasing and trips are
19 increasing, he might have believed your initial
20 testimony to state that the financial statements
21 supports that conclusion?

22 MR. HARLOW: Objection, calls for
23 speculation.

24 MR. FASSBURG: It's necessary to
25 understand this testimony.

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1 JUDGE PEARSON: I didn't really understand
2 the question, to be perfectly honest.

3 MR. FASSBURG: Sure.

4 BY MR. FASSBURG:

5 Q The bottom line is if Mr. Roemer -- let's use a
6 hypothetical -- if Mr. Roemer is saying you're wrong
7 because the financial statement doesn't say what you say
8 it says, he is not lying about trips, he is talking
9 about your testimony about financial statements; isn't
10 that entirely plausible?

11 **A Once again, I'm separating the two issues, trips and**
12 **financial statements. I read testimony to say that they**
13 **were not losing trips. I have information that's**
14 **different, and I also believe they are underreporting**
15 **their financial losses. So I don't know how else to**
16 **answer your question.**

17 JUDGE PEARSON: Can we just leave it at
18 that?

19 MR. FASSBURG: I think that was adequate.

20 JUDGE PEARSON: Okay.

21 BY MR. FASSBURG:

22 Q I don't have the page and line here in front of me. Do
23 you recall the testimony in which you say you believe
24 SpeediShuttle is underpaying its employees?

25 **A Absolutely.**

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1 Q You have absolutely no proof that SpeediShuttle is
2 underpaying its employees, do you?

3 **A Only verbal proof.**

4 Q You aren't here to testify on personal knowledge that
5 SpeediShuttle is underpaying its employees, are you?

6 **A In 2015 when they started, we had drivers who were**
7 **contemplating going over to SpeediShuttle. They said,**
8 **why are they being paid \$11 an hour? What are they**
9 **being paid all the time? \$11 an hour. I had multiple**
10 **conversations on that. So that is my reason to believe**
11 **in 2015 SpeediShuttle was not paying correctly.**

12 Q I'm going to object to nonresponsive because I asked him
13 of his personal knowledge. You're providing what would
14 be hearsay testimony.

15 MR. HARLOW: I thought you said what's
16 your basis.

17 MR. FASSBURG: On personal knowledge.

18 THE WITNESS: I don't have access to
19 SpeediShuttle's payroll system.

20 BY MR. FASSBURG:

21 Q And you haven't presented any information about what
22 SpeediShuttle has actually offered to pay its employees,
23 correct?

24 **A I've got just what people told me and what I've heard**
25 **from folks at the airport. So no.**

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1 Q Okay. You provided some testimony at the very end of
2 PK-3T about your conversation with the Commission Staff?

3 **A I'm sorry, which one are we at now?**

4 Q PK-3T.

5 JUDGE PEARSON: Page 23.

6 THE WITNESS: 20 on PK-3?

7 BY MR. FASSBURG:

8 Q Page 23.

9 **A 23, got it.**

10 Q Are you there on page 23?

11 **A I am.**

12 Q Okay. I have a couple of easy questions. Are
13 Gene Eckhardt or Penny Ingram witnesses in this
14 proceeding?

15 **A Pardon?**

16 Q It's pretty easy: Are Gene Eckhardt or Penny Ingram
17 witnesses in this proceeding?

18 **A You're referring to what line numbers?**

19 Q Let me be more clear.

20 **A You mean line number 14 and 15?**

21 Q In this proceeding we are here for today, are
22 Gene Eckhardt or Penny Ingram witnesses?

23 **A Not that I'm aware of.**

24 Q Okay. So if I want to corroborate what you say here
25 with them, I don't have an opportunity to do that,

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1 correct?

2 **A If they are not here, that would be true.**

3 MR. HARLOW: Your Honor, I might point
4 out, they could have been subpoenaed. So it's kind of a
5 legal question for a nonlegal witness. So I wanted to
6 offer that.

7 MR. FASSBURG: Okay. That's not really an
8 objection, but --

9 BY MR. FASSBURG:

10 Q Mr. Kajanoff, is it your contention that if a company is
11 making only a single stop as opposed to multiple stops,
12 it is not auto transportation?

13 **A I'm assuming you're asking if it's not in a**
14 **SpeediShuttle -- or excuse me, a Shuttle Express van? A**
15 **Shuttle Express van doing a single-stop tariff work is**
16 **still auto transportation.**

17 Q Okay. So when Shuttle Express makes a single-stop, you
18 believe it's auto transportation, but when the limousine
19 driver makes the single stop, it's not; that's where you
20 draw the line?

21 **A Yes, that falls under limousine laws.**

22 MR. FASSBURG: No further questions.

23 JUDGE PEARSON: Thank you. Mr. Beattie,
24 do you have questions?

25 MR. BEATTIE: Yes, judge.

CROSS BY BEATTIE/KAJANOFF

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CROSS-EXAMINATION

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BY MR. BEATTIE:

4

Q Mr. Kajanoff, perhaps a couple hours ago now, I think I heard you say that Shuttle Express does not compete with unregulated forms of transportation. Now you couldn't possibly have said that -- or you couldn't possibly have meant that, I should say?

5

6

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11

A In the context as I believe the question was asked, everything is regulated, it's just regulated differently.

12

13

14

Q So you would agree that Shuttle Express competes with forms of transportation such as light rail, Uber, personal drivers?

15

16

17

A There is certainly debate on whether Uber is regulated or not, but your taxis, limos, generally they have their own set of regulations.

18

19

20

21

Q In other words, SpeediShuttle is not Shuttle Express's only competitor, correct?

22

23

24

25

Q The last question -- and I'm taking a risk here because I don't know how you're going to answer this question -- but I think it would be helpful to me to know what it is that you think the Commission ought to do at the end of

CROSS BY BEATTIE/KAJANOFF

1 this proceeding. I don't think it's entirely clear from
2 your testimony just what it is that Shuttle Express is
3 asking for in this case.

4 MR. HARLOW: You know, we have a prayer
5 for relief in our complaint, and then we have a
6 post-hearing brief which will be written after the
7 evidence is all in. So I guess with those
8 qualifications I would be okay with the question based
9 on his knowledge and understanding, not as a lawyer.

10 JUDGE PEARSON: I would like to hear his
11 answer.

12 THE WITNESS: You would like me to answer
13 that question?

14 JUDGE PEARSON: Yes, please.

15 THE WITNESS: Based on what I've heard
16 today, and in any situation, I like to try to walk in
17 the other person's shoes. If I were Speedi or even the
18 UTC, you're all trying to do your jobs. I believe this
19 particular issue, and I think well pointed out earlier
20 in your comments, is difficult when something new comes
21 in, who is going to actually regulate that, meaning the
22 oversight.

23 And in this case, because it was a new process, we
24 were first on the block, truly, for the new regs. It
25 was a learning opportunity for certain things. That

CROSS BY BEATTIE/KAJANOFF

1 being said, I do strongly feel in my testimony and what
2 I've heard and what I have read there was
3 misrepresentation, meaningful or not, and I would like
4 to see something done about that. Because there is a
5 difference between an honest mistake and an intentional
6 direction.

7 It's up to the commissioners to decide what they
8 want to do, but I understand the complexities of what
9 this hearing is all about. I get it. This is not an
10 easy answer. I don't know if that answers your question
11 or not. But I mean, if you want to simplify it, we want
12 to win, they want to win, but it's not that simple in my
13 mind.

14 BY MR. BEATTIE:

15 Q What does "winning" mean to Shuttle Express?

16 **A I think it's a better question, what does it mean for**
17 **the industry.**

18 Q Well, actually --

19 **A To Mr. Fassburg's question about TNCs --**

20 Q No, I'm going to stop you there.

21 **A -- so what does it do --**

22 Q Excuse me, I'm going to stop you there. We're here for
23 two days, going past the time that we're supposed to.

24 **A Sure.**

25 Q I think it's fair to know what exactly it is that you

CROSS BY BEATTIE/KAJANOFF

1 think ought to happen and not just simply say, Well,
2 something ought to happen.

3 JUDGE PEARSON: I agree. I want a
4 specific answer.

5 THE WITNESS: A specific answer? We're
6 basically moving people from A to B. And we were given
7 that certificate and the territory. And we built an
8 infrastructure to serve not one county, not downtown
9 Seattle, it's three counties. And in order to do that
10 properly, you do have to have some assurances that you
11 will be allowed to serve that marketplace or else the
12 model of the share-ride model will never work. We've
13 already alluded to the fact of passengers, volumes, load
14 factors, all that. You have to have that. It needs to
15 be restricted. And if it is truly something different,
16 if it is a tourism model, then they should only move
17 tourists. But that's not true. Anybody could use a
18 share ride, it doesn't matter where they are from or
19 what language they speak. We don't discriminate against
20 that. So either you have a share-ride market, which we
21 have, we thought the rules were adjusted for new
22 entrants doing something totally different with some
23 overlap versus total overlap.

24 BY MR. BEATTIE:

25 Q Let me ask you this: If SpeediShuttle is restricted to

CROSS BY BEATTIE/KAJANOFF

1 a certain market segment, let's just be specific and say
2 tourists, do you agree that Shuttle Express cannot move
3 tourists anymore?

4 **A Under the way that's defined, if it's tourists and you**
5 **meet them at baggage claim and you're doing that, then**
6 **we would be encroaching on their business model. If**
7 **that's what truly -- and it wouldn't be us, it would be**
8 **any other operator coming in that said this isn't new,**
9 **we already have an operator doing this.**

10 Q Well, this is interesting. So I understand
11 SpeediShuttle claims to be serving tech-savvy customers.
12 If the Commission were to say that SpeediShuttle can
13 only serve tech-savvy customers, presumably you would
14 agree that Shuttle Express must stop serving tech-savvy
15 customers, which means what exactly I don't know, but I
16 have a smartphone so I can no longer ride
17 Shuttle Express; do you agree?

18 MR. HARLOW: I want to just make sure
19 we're not asking for legal opinions here. I'm renewing
20 my desired qualification when we started this line of
21 questioning.

22 JUDGE PEARSON: I understand, but I think
23 it's fair Mr. Kajanoff answer these questions.

24 MR. HARLOW: As a nonlawyer?

25 JUDGE PEARSON: Right.

CROSS BY BEATTIE/KAJANOFF

1 THE WITNESS: We're using examples here.
2 It has to be clear and definitive. Because are you a
3 tourist; are you not a tourist? We are not going to
4 invade people's privacy. Do you speak English or not
5 English? That's not acceptable.

6 There is a certain type of service. For example,
7 the very first hearing we had was Sea-Tac 24. They
8 wanted to do a nonstop back-and-forth to a hotel all day
9 long. That's different. Nobody does that. They will
10 go broke doing that. It's impossible to build that as a
11 sustainable model. But it is different. It has to be
12 something you can quantify as different. So if I am
13 going to meet someone in baggage claim every time they
14 show up in baggage claim, that is different. And I will
15 take that person and bring them up to the vehicle. That
16 is different. We don't do that.

17 BY MR. BEATTIE:

18 Q Fair enough. I think I will submit to you I am still a
19 little confused as to exactly what you think ought to
20 happen. So let me ask you a very direct question: Is
21 it true or not true that you want the Commission to
22 cancel SpeediShuttle's certificate? "You" meaning
23 Shuttle Express, to the extent you can speak on behalf
24 of the company?

25 **A What I believe should happen is the certificate is**

CROSS BY BEATTIE/KAJANOFF

1 canceled and reissued as to what the intent was
2 originally, which is -- and we asked for that -- is
3 restrict it to what the business model is. And then,
4 Okay, we get it because that is different. You will
5 have a greeter every time.

6 But it has to be something where somebody could
7 complain to the UTC and say: Wait a moment. I signed
8 up for a greeter service here and they are not there.
9 And you could go through and go, Well, you can do an
10 investigation. But they said only prearranged at
11 baggage claim. That's not walk-up. Because when you're
12 walk-up, you're already past baggage claim. So it
13 didn't make any sense to have a greeter for a walk-up.
14 It just doesn't.

15 Q Okay. And I will respect Mr. Harlow's comments here and
16 not go further. But I do just want to confirm that
17 you're saying cancel but then reinstate. So effectively
18 you do see a possibility of there being two providers,
19 there is just an open question how exactly that would
20 work and what the enforcement would look like. Is that
21 correctly characterizing your testimony?

22 **A They should have a different service with very little**
23 **overlap as the intent, as the regulations implied, and**
24 **then it should be restricted to what they say they would**
25 **do.**

CROSS BY BEATTIE/KAJANOFF

1 Q And by the same token, if it's mutually exclusive, that
2 means Shuttle Express cannot encroach on whatever has
3 been given to SpeediShuttle, correct?

4 MR. HARLOW: We're getting into an area
5 here that goes to Title 81.68.040. And the new entrant
6 is restricted to providing a different service. But it
7 doesn't say anything about the incumbent being
8 restricted to providing service. If a new entrant comes
9 in and then starts offering something that overlaps and
10 then suddenly the incumbent -- the prior incumbent now
11 becomes the one excluded.

12 MR. BEATTIE: I'm not sure that's been
13 determined.

14 MR. HARLOW: I think that's just too far
15 into legal questions.

16 MR. BEATTIE: Okay. I think I have gone
17 as far as I probably should go with the witness. So I
18 have no further questions. Thank you.

19

20 EXAMINATION

21 BY JUDGE PEARSON:

22 Q Okay. Thank you. I have a couple of questions. And
23 this a question I'm going to ask SpeediShuttle as well
24 just to help me better understand basically how profits
25 are calculated.

EXAM BY JUDGE PEARSON/KAJANOFF

1 I assume your lowest cost trip is to the downtown
2 Seattle area; is that true?

3 **A I'm sorry?**

4 Q Your lowest cost share-ride trip -- door-to-door, not
5 scheduled -- is it to the downtown Seattle area, is that
6 your lowest cost trip?

7 MR. HARLOW: Your Honor, can you be
8 more -- because we have had an economist, can I ask you
9 if you are asking cost or price?

10 JUDGE PEARSON: I'm talking price for the
11 customer.

12 THE WITNESS: Yes, because our fares were
13 designed when we went back in 2012 to take into account
14 load factors and distance.

15 BY JUDGE PEARSON:

16 Q Okay. And you talked about, I guess, adjusting for you
17 have that flexible fare where it's going to be higher
18 rate if there are fewer passengers. But my question is:
19 At what capacity, meaning the number of seats sold, does
20 one of those trips become profitable for
21 Shuttle Express? How many seats do you need to fill to
22 be making a profit on that trip?

23 **A Boy, that's a broad statement because it would depend on
24 your area. Because if you are going out further --**

25 Q Just to downtown.

EXAM BY JUDGE PEARSON/KAJANOFF

1 **A Just to downtown? Probably three-and-a-quarter,**
2 **three-and-a-half, about.**

3 Q Passengers?

4 **A Yep, because that's what we're averaging.**

5 Q Okay. And so I just want to clarify with respect to the
6 independent contractor service, looking back at the
7 history of Shuttle Express using independent
8 contractors. So there were penalties in, I believe,
9 2009 and again in 2013. And then there was a temporary
10 waiver that was granted at the end of 2013, I believe,
11 over the holiday season. And then we moved into 2014,
12 2015, 2016, up until September when you obtained the
13 waiver again. So between the times of the two waivers,
14 the December 2013 waiver and the September 2016 waiver,
15 did Shuttle Express only use independent contractors for
16 single-stop, single-passenger service?

17 **A Of course, sedan/limo services as well, and the upgrade**
18 **for the single stops, we treat them as sedan/limo**
19 **services. So if you were to call and we would offer a**
20 **single upgrade or you would call and say, I want this**
21 **town car for three hours to do whatever, we treat them**
22 **the same.**

23 Q Okay. But that's not my question.

24 **A I'm sorry.**

25 Q I'm asking if you used independent contractor to do

EXAM BY JUDGE PEARSON/KAJANOFF

1 multi-stop trips between the time that the 2013 waiver
2 expired and you were granted the waiver in
3 September 2016.

4 **A No.**

5 Q Okay. So you only used those for single-stop?

6 **A Yes.**

7 Q Okay. So what did you do to compensate during that
8 time? Because it's my understanding that
9 Shuttle Express has for many, many years used
10 independent contractors for multi-stop trips. But there
11 was a two-year period where you stopped doing that but
12 now you started again. So how did you handle that in
13 the interim?

14 **A So just for full disclosure, I started November of 2010,**
15 **so I don't know what the practices were.**

16 Q Okay. So I guess my question is: Let me try this to
17 rephrase it differently.

18 **A Okay.**

19 Q So after the 2013 waiver expired and until you were
20 granted a subsequent waiver in September of 2016
21 allowing you to put multiple unrelated passengers into
22 one limo, was your solution -- because it would seem
23 that the need never went away if it was there prior to
24 2013, and then is obviously still present because you
25 asked for it again in September 2016 -- was that

EXAM BY JUDGE PEARSON/KAJANOFF

1 addressed by simply parsing those passengers out to
2 individual cars and having them just be in one trip? So
3 it's not that the need changed, it's that your solution
4 changed?

5 **A Yes. It's a supplement to the one-offs, if you will.**

6 **So, yes.**

7 Q Okay. Because the other thing that I noticed is that
8 it's consistently been 5 percent from the inception of
9 this practice. It's consistently been roughly 5 percent
10 of your trips that have been -- you've used independent
11 contractors for. So I just wanted to clarify that it's
12 not that that need went away, it's that you dealt with
13 it differently and you now have a waiver so that you can
14 put multiple unrelated parties into one car.

15 **A Yes. Uh-huh.**

16 Q Thank you for clarifying that.

17 **A Just for clarity, 5 percent was never a target.**

18 Q Oh, I understand that; it's just a reality.

19 **A That's just how the math worked.**

20 **JUDGE PEARSON: Okay. Thank you for**
21 **clarifying that. Do you have any redirect for your --**

22 MR. HARLOW: I do, Your Honor. But the
23 witness is losing his voice, and I can tell he's tired.
24 I really think we need a 10-, 15-minute break here.

25 **JUDGE PEARSON: Okay. Why don't we**

REDIRECT BY HARLOW/KAJANOFF

1 take -- how is eight minutes? Does that work? We are
2 pressed for time, and I do want to get Mr. Marks on the
3 stand today.

4 MR. HARLOW: He is looking forward to it.

5 JUDGE PEARSON: We will take an
6 eight-minute break then.

7 (Short break taken.)

8 JUDGE PEARSON: We will be back on the
9 record following a brief recess. And, Mr. Harlow, you
10 may redirect Mr. Kajanoff.

11

12 REDIRECT EXAMINATION

13 BY MR. HARLOW:

14 Q Thank you. Mr. Kajanoff, thank you for your patience
15 this afternoon. We're getting close. It's the end of
16 the beginning, at least.

17 You recall at the begin of the cross-examination by
18 Mr. Fassburg you were asked about the basis for your
19 testimony at PK-3T, page 15, line 17 to 19, about
20 SpeediShuttle and Shuttle Express can't profit because
21 they are both losing volume. Do you recall that?

22 **A I'm sorry?**

23 Q Do you recall that question and answer about your basis
24 for saying that Shuttle Express and SpeediShuttle were
25 both losing volume?

REDIRECT BY HARLOW/KAJANOFF

1 **A Yes.**

2 Q And do you recall being asked what the basis for that
3 was?

4 **A Yes.**

5 Q And do you recall what your answer was?

6 **A Trips.**

7 Q So trip volume?

8 **A Yeah, trip volume declining.**

9 Q Do you recall saying that was what was not allowed?

10 **A That's correct.**

11 Q In referring to that, were you referring to PK-3 at
12 page -- page 11 really, but particularly the table on
13 page 12?

14 **A Yes.**

15 Q Okay. Leave your finger in that and then jump ahead to
16 page 21 of PK-3. Do you see there on lines 11 through
17 13 some of the trip data actually was allowed?

18 **A Yes.**

19 Q And I won't repeat that or paraphrase it again --
20 actually, it was lines 11 to 15. Do you have any more
21 recent data than what's on page 21 of PK-3?

22 **A Yes. We have it through the end of the year.**

23 Q Did you find any change in the trend of decline of trips
24 observed on page 21?

25 MR. FASSBURG: Objection, this exceeds the

REDIRECT BY HARLOW/KAJANOFF

1 scope of cross. I asked him to explain his testimony.

2 I didn't ask him for all of the bases of his testimony.

3 I didn't invite additional testimony.

4 JUDGE PEARSON: Mr. Harlow, do you want to
5 respond to that?

6 MR. HARLOW: Your Honor, I think the most
7 up-to-date data is what we should get in this record.
8 We've been trying to update the data repeatedly. We
9 illustrated that in some of the exhibits that weren't
10 admitted, but the question of sustainability of two
11 services that are offering essentially the identical
12 transportation service is definitely in this record.
13 And we offered 15 months, roughly, on page 12. It was
14 stricken. We have three months only on page 21 that was
15 not stricken. And we have more recent data in the
16 transcript continuing.

17 MR. FASSBURG: I would like to say, first
18 of all, "essentially the same" is not an issue of
19 semantics. He used the terms "essentially the same."
20 "Essentially the same" isn't in this case; "the same
21 service" is in this case. He is also attempting to
22 introduce additional evidence about this --

23 MR. HARLOW: Can he use the microphone so
24 the witness can hear him, please?

25 MR. FASSBURG: Sure. He is also

REDIRECT BY HARLOW/KAJANOFF

1 attempting to introduce additional evidence regarding
2 the slow season. They have information through late in
3 2016. The slow season isn't particularly helpful in
4 understanding what's sustainable or not. Both of these
5 companies make their money during the busy season. And
6 I believe what he's attempting to do is introduce
7 additional prejudicial, but unfair, testimony. We don't
8 have an opportunity to cross-examine him on this new
9 testimony.

10 JUDGE PEARSON: Can you tell me again what
11 your question was, Mr. Harlow?

12 MR. HARLOW: My question was if he had
13 more recent trip data and trends since October of 2016.

14 JUDGE PEARSON: Okay. Well, we'll just go
15 ahead and move forward from that question, but I don't
16 think it's particularly useful.

17 MR. HARLOW: Your Honor, at this time,
18 based on Mr. Fassburg's objection in particular -- he
19 said a lot -- but he said the slow season, which we were
20 about to offer and you asked us to move on from is not
21 represented. He said busy season is misrepresented, and
22 busy season is exactly shown by Table 2 on page 12. And
23 I would like to recover that testimony.

24 JUDGE PEARSON: Is that the testimony
25 that's been stricken?

REDIRECT BY HARLOW/KAJANOFF

1 MR. HARLOW: Yes, that's right.

2 JUDGE PEARSON: Okay. So it continues to
3 be stricken.

4 BY MR. HARLOW:

5 Q All right. Then we will move along. After that, after
6 the discussion of the stricken trip volume information,
7 you were -- you said you had to use trips because you
8 weren't given the passenger counts, only the trips. Do
9 you recall that?

10 **A Yes.**

11 Q Do you have any other data that you have been able to
12 obtain, publicly or otherwise, that would show what's
13 happened to passenger volume of SpeediShuttle as opposed
14 to trip volume?

15 MR. FASSBURG: Object, to this. This is
16 again additional testimony. It's not addressing the
17 subject of my cross.

18 MR. HARLOW: The thrust of the cross, that
19 went on for 5 or 10 minutes, was over and over and over
20 again, You don't really know past years. You only know
21 trips. The fact is we do have data that shows
22 passengers, and that's clearly tied up and responsive to
23 the cross-examination which challenged the accuracy of
24 the trip data.

25 JUDGE PEARSON: Okay. Restate the

REDIRECT BY HARLOW/KAJANOFF

1 question for me.

2 BY MR. HARLOW:

3 Q The question is: Do you have data other than trip data
4 that would indicate what's happened to the SpeediShuttle
5 passenger volumes, and I'll be more specific, in 2016
6 compared to 2015?

7 **A Yes. And we have that from their --**

8 **JUDGE PEARSON: I'll allow that, that's**
9 **fine, because there was an extensive discussion about**
10 **that. Go ahead.**

11 BY MR. HARLOW:

12 Q You may answer.

13 **A We have that from their annual filing to the UTC.**

14 Q And what do those filings show?

15 **A 87,743 passengers.**

16 Q Which year was that?

17 **A 2016.**

18 Q And how many were there in 2015?

19 **A 41,037.**

20 Q And in your opinion, does that reflect a substantial or
21 significant increase in passengers between 2015 and
22 2016?

23 MR. FASSBURG: Objection, leading.

24 THE WITNESS: No, because --

25 MR. FASSBURG: Hold on.

REDIRECT BY HARLOW/KAJANOFF

1 JUDGE PEARSON: Hold on. You think it's
2 leading because he's asking for his opinion?

3 THE WITNESS: Sorry.

4 MR. FASSBURG: No, because he provided the
5 answer and asked him to agree with it.

6 MR. HARLOW: No, I didn't provide the
7 answer.

8 JUDGE PEARSON: You can go ahead and
9 answer. The answer seems obvious to me, but he can give
10 his opinion.

11 THE WITNESS: Sure.

12 MR. HARLOW: Let's have the court reporter
13 read the question back, please.

14 (Pending question read back.)

15 THE WITNESS: No, it does not.

16 BY MR. HARLOW:

17 Q And why do you say that?

18 **A Because in 2015, they started May 1st, and they**
19 **developed that passenger count over time, and then year**
20 **over year started to decline. However, the first three**
21 **months were not typical of what I saw in 2016. So it's**
22 **not a fair comparison.**

23 Q Can you give a ballpark as to roughly what did happen to
24 the passengers of SpeediShuttle in 2016 compared to
25 2015, just a ballpark?

REDIRECT BY HARLOW/KAJANOFF

1 MR. FASSBURG: I'm going to object because
2 I don't understand the question.

3 JUDGE PEARSON: I don't understand it
4 either. It seems to me like this would be relatively
5 easy data to obtain. All you would have to do is take
6 the numbers for the first four months of 2016 and
7 subtract that, and adjust it for the 2015 number to
8 determine if, during that same eight-month period -- for
9 example, it doesn't include the first part of the slow
10 season whether the numbers have gone up. And just based
11 off what I have heard, it seems pretty obvious that they
12 have.

13 MR. HARLOW: You raise a good point,
14 Your Honor. And I would encourage you to entertain a
15 bench request for monthly passenger data because it
16 would show that exactly. We've asked for it repeatedly.
17 We have been denied repeatedly. It's not in the record
18 and we don't have it. We don't have an annual total for
19 2015 and 2016. It is a very seasonal business. It was
20 a startup in 2015. We really need those monthly
21 passenger counts.

22 JUDGE PEARSON: You do have a total
23 number; you don't have it broken down by month.

24 MR. HARLOW: Exactly.

25 JUDGE PEARSON: Because the total number

REDIRECT BY HARLOW/KAJANOFF

1 appears on the invoice.

2 MR. HARLOW: Right. We have trips in
3 Table 2, which compare year over year. We don't have
4 passengers year over year because we don't have it by
5 month.

6 MR. FASSBURG: I think there is a lot of
7 problems with trying to do that evaluation the way they
8 want to do it. It's way too much to litigate here
9 today. I probably need Mr. Roemer to help me to
10 understand it a little better, because I don't know the
11 history what occurred with their business development at
12 the beginning of their commencement of service. But I
13 think it's reasonable to assume that even during the
14 beginning of their commencement of service, they would
15 not be at full capacity because they are starting up.
16 They are beginning service. They are adding customers.
17 This is why we have been arguing repeatedly that they
18 are in their startup period. And I have exhibits, if we
19 really need to go there, that showed Shuttle Express is
20 claiming they are in their startup period three years
21 after they commenced service.

22 MR. HARLOW: We drive Mercedes and we hide
23 the data. Let's get the data, Your Honor, and not argue
24 about it.

25 JUDGE PEARSON: I have an idea of how we

REDIRECT BY HARLOW/KAJANOFF

1 can get this data. If SpeediShuttle can look at their
2 passenger count for 2016 and tell me that those total
3 passengers, what percentage of them were transported in
4 the first four months of the year, all we need is a
5 percent. Then we can figure out what's missing from the
6 2015 data and whether they transported more passengers
7 in 2016 than in 2015. Again, it seems very clear that
8 they did, given that the first four months of the year
9 is not the busy season. But let's just get that answer.
10 We'll call that bench request No. 1 to SpeediShuttle,
11 just a percentage, January 1st through April 30th, 2016,
12 what percentage of your total passengers were
13 transported during those four months.

14 MR. HARLOW: Thank you, Your Honor. We'll
15 work on it some more with Mr. Roemer on Friday. I'm
16 sure we will all have fun.

17 JUDGE PEARSON: Okay.

18 MR. HARLOW: I will move on now.

19 BY MR. HARLOW:

20 Q You were asked about other ways to make reservations by
21 Mr. Fassburg and including kind of an ending question
22 about wholesale companies might have service to
23 non-English speakers. Do you recall that?

24 **A Yes.**

25 Q Does Shuttle Express work with wholesale companies that

REDIRECT BY HARLOW/KAJANOFF

1 have non-English speaking services?

2 **A Yes.**

3 Q Were some of those the same as still use Shuttle Express
4 or used Shuttle Express and now use SpeediShuttle?

5 MR. FASSBURG: Your Honor, I have an
6 objection to relevance because the allegation of
7 SpeediShuttle isn't transporting the people it's
8 supposed to, not whether Shuttle Express did. I think
9 this is an attempt to reargue that.

10 MR. HARLOW: It's an attempt to show --

11 JUDGE PEARSON: I get the point. It's
12 been made multiple times. I get it.

13 MR. HARLOW: Let's move on then.

14 BY MR. HARLOW:

15 Q You were asked a series of questions about passengers --
16 well, it started out by saying, what is a
17 Shuttle Express passenger? Do you recall that line of
18 questioning?

19 **A Yes.**

20 Q And the question then was -- I think you said all of
21 them could use Shuttle Express and then you said there
22 is no way to know which passengers would have used
23 Shuttle Express. Do you recall that?

24 **A Yes.**

25 Q In your opinion -- well, first of all, please clarify.

REDIRECT BY HARLOW/KAJANOFF

1 Did that -- did those two answers go to any -- to the
2 specific individual passengers, or did those go to a
3 passenger market or a passenger group?

4 **A I was answering in the context just of an individual**
5 **passenger. So I don't know what an individual**
6 **passenger's choice is.**

7 Q Do you have an opinion, based on your experience in the
8 transportation industry, as to whether or not the
9 passengers that currently use SpeediShuttle would have
10 used Shuttle Express in the aggregate?

11 **A Yeah. I believe they all would, because they are**
12 **selecting share ride. That's what they are selecting as**
13 **a mode of transportation generically.**

14 Q Thank you. You were asked by the ALJ, administrative
15 law judge, what the retention percentage was of
16 referrals to independent contractors on the single-ride
17 trips. Do you recall that?

18 **A Yes.**

19 Q And I believe you said 11 percent. Was that on average?

20 **A Yeah, approximately.**

21 Q Does Shuttle Express make money on all of the
22 single-ride trips that the auto transportation side of
23 the house refers to the independent contractor limousine
24 operators?

25 **A No.**

REDIRECT BY HARLOW/KAJANOFF

1 Q Why is that?

2 **A For certain low-dollar, we actually give them**
3 **120 percent commission for the fare.**

4 Q Why would you lose money on those trips?

5 **A They wouldn't do it otherwise. It's not worth their**
6 **time.**

7 Q I don't mean from their perspective, from the company's
8 perspective?

9 **A We want to give people -- we want to move people. And**
10 **if you're in a situation where you've got an outlier and**
11 **you've got a van that goes somewhere else, it's a**
12 **resource allocation model.**

13 Q Customer service, is that the reason?

14 **A Customer service is paramount --**

15 MR. FASSBURG: I'm sorry, Your Honor. I
16 have to object because this exceeds the scope of cross.
17 I was asking him questions that related to the loss they
18 reported and whether --

19 MR. HARLOW: This goes to the --

20 COURT REPORTER: Hold on. I can't hear
21 your objection.

22 MR. FASSBURG: I still have the right to
23 control the scope of cross, although the judge does have
24 the right to ask questions. It is unfair to me, the
25 cross-examining attorney, to redirect on subjects that

REDIRECT BY HARLOW/KAJANOFF

1 were not the subject of my cross. My only point was to
2 determine whether the reported loss included revenues
3 that he reported or that he indicated exists. This is
4 on a different subject matter.

5 JUDGE PEARSON: Okay. And I agree. Just
6 let's move on from there.

7 MR. HARLOW: I'm ready to move on anyway.
8 Thank you.

9 BY MR. HARLOW:

10 Q You were asked about testimony in -- I can't remember
11 which of your testimonies, but it was regarding
12 SpeediShuttle being a franchisee of GO Group. Do you
13 remember that question?

14 **A Yes.**

15 Q And then you clarified or corrected that on the
16 cross-examination and said that SpeediShuttle is a
17 licensee of the GO Group. Do you recall that?

18 **A That's correct.**

19 Q How do you know they are a licensee of the GO Group?

20 **A We are still a member of the GO Group without the**
21 **wholesale agreement. So we get board minutes of the**
22 **meetings. And in those board meetings it says that**
23 **SpeediShuttle has a \$10,000 license agreement payable to**
24 **the GO Group for the right to use the GO Group's**
25 **license. They also have a similar one for \$5,000 for**

REDIRECT BY HARLOW/KAJANOFF

1 Hawaii.

2 Q We may be into Mr. Beattie's questions regarding how
3 much of the independent contractor work comprises the
4 revenue decreases that were part of the \$352,000 losses
5 and the other losses you allege due to SpeediShuttle.

6 Do you recall that?

7 **A Yes.**

8 Q Has the entry of SpeediShuttle impacted your need to use
9 independent contractors for these single-ride trips?

10 **A Sure. It would be because there is less volume to move**
11 **folks and now you're really scrambling to pull resources**
12 **together. The whole share-ride model is based on volume**
13 **and load factors.**

14 Q You were also asked whether you had any knowledge --
15 specific knowledge to SpeediShuttle turning away a
16 passenger. Do you recall that?

17 **A Yes.**

18 Q Do you have a general knowledge where SpeediShuttle may
19 not be serving certain passengers?

20 **A Yes.**

21 Q And what would that be?

22 **A Mr. Roemer testified that they wouldn't -- as he was**
23 **explaining how they dispatch, they said they sent a**
24 **dispatcher home at midnight. So if you send a**
25 **dispatcher home at midnight, it's kind of hard to**

REDIRECT BY HARLOW/KAJANOFF

1 dispatch a vehicle to pick someone up.

2 Q In your understanding of the SpeediShuttle tariff, is
3 that practice consistent with the tariff terms?

4 **A My understanding of their tariff is they are to operate**
5 **2/47, 365.**

6 Q Does Shuttle Express offer a 2/47, 365?

7 **A Yes, it does.**

8 Q You were asked -- give me a moment. I may skip some of
9 these. You were asked hypothetical questions about
10 SpeediShuttle carrying more passengers without incurring
11 more costs. Do you recall that line of questioning?

12 **A Yes.**

13 Q And you, I think, concluded by saying -- agreeing you
14 could become more profitable with more passengers and
15 said that was mathematically untrue. Do you recall
16 that?

17 **A Yes.**

18 Q Is that true in the real world?

19 **A No.**

20 Q Why not?

21 **A If you were meeting someone personally at baggage claim,**
22 **and you're pulling together, say, a run to downtown at a**
23 **certain time, if that flight is late or delayed, it has**
24 **to go in another vehicle. You will get to the point**
25 **where you have so much load factor in that model it will**

REDIRECT BY HARLOW/KAJANOFF

1 be impossible, unless of course you make everyone wait
2 until all the flights show up. It's not a practical
3 model. There is no need to let someone sit there for an
4 hour and a half or two hours until all eight flights
5 show up for a run. Mathematically it is possible; the
6 guest is not going to like that so much.

7 Q And you mentioned driver time as a cost that might go
8 up. If you add another passenger to an existing trip,
9 does that passenger necessarily stop at the same
10 destination or originate at the same location --

11 **A No, it does not.**

12 Q Would it be possible that fuel, tires, and vehicle
13 depreciation would also go up?

14 **A Unless they are running depreciation by mileage, no,
15 their depreciation would stay the same by period. But
16 the rest of it, sure, they are true variables.**

17 Q All right. And finally, Mr. Beattie was asking you --
18 he started to ask you what does winning mean to
19 Shuttle Express. Do you recall that?

20 **A Sorry, I did not hear that.**

21 Q What does winning mean to Shuttle Express --

22 **A Yes.**

23 Q -- do you recall that question?

24 **A Yes, I do.**

25 Q And then you were asked, kind of more broadly, what you

REDIRECT BY HARLOW/KAJANOFF

1 were looking for. I wonder if you can put that in a
2 little more pertinent context. What do you see as -- I
3 won't call it winning -- the outcome of this proceeding
4 that would best protect the public interest and ensure
5 the viability of the service going forward?

6 **A As I said, we could move everyone through a share-ride**
7 **if that's what a guest would like. They have a bunch of**
8 **opportunities to do different modes of transportation.**
9 **However, there are people that enjoy the share-ride.**
10 **The only way share-ride will work is density. And where**
11 **it's basically going flat and going down a little bit,**
12 **you have to -- a concern on density is paramount,**
13 **because it is now going down. It is, I believe,**
14 **impossible to sustain two, because economies of scale**
15 **need load factors. If you are both going to the same**
16 **place with the same vehicle, now it's double the cost.**
17 **Now it isn't to one company, but it is double the cost.**
18 **And the consumer, at the end of the day, is going to pay**
19 **for that either by higher cost or no share-ride option.**
20 **One of the two things will happen.**

21 MR. HARLOW: Thank you Mr. Kajanoff. I
22 have no more redirect, Your Honor.

EXAM BY JUDGE PEARSON/KAJANOFF

1 EXAMINATION

2 BY JUDGE PEARSON:

3 Q Okay. I have another question that I just thought of
4 while I was thinking about the earlier question that I
5 had for you.

6 Just thinking back to the materials that were filed
7 in support of the first petition for exemption that was
8 filed in 2013, I believe it was stated at that time that
9 the multi-stop independent contractor trips, that that
10 revenue was being included in the total revenue. And I
11 understand that once you change that practice to put
12 individual passengers in individual cars, you stopped
13 including that in your revenue. So isn't it true that
14 that could partially be a reason why Shuttle Express's
15 revenue has experienced a decline, since you're no
16 longer counting that but you were before for that
17 5 percent of your business?

18 **A Yes, but it's been a practice that we've had, I forget**
19 **the exact number, it's 40,000 and something -- that goes**
20 **back to 2015. So we were -- it has dropped, year over**
21 **year, regardless of what we've been doing.**

22 Q I understand that. I just wanted you to acknowledge
23 that if you're counting that money at one point in time
24 and then stopped counting it, that's obviously going to
25 have an impact on your reportable revenue.

1 **A Yes. If I moved all those folks in a share-ride van and**
2 **treated as auto transportation, I would still be**
3 **decreasing. But you're correct.**

4 Q And then my other question is: I just want to clarify,
5 does Shuttle Express offer limousine services? Do you
6 own town cars and provide that service?

7 **A No, we offer the service; we're a broker for it. We are**
8 **not a licensed --**

9 Q Okay. That's what I was trying to clarify, if you had
10 in-house limo service, or when you are farming it out,
11 it is to other unrelated entities who are not your
12 employees --

13 **A No, absolutely not. They are their own businesses. No.**

14 Q Okay.

15 **A There is obviously due diligence, but they are their own**
16 **businesses.**

17 **JUDGE PEARSON: I just wanted to clarify.**
18 **I thought this was the case. Thank you. At this point**
19 **you may step down, subject to recall, of course, if I**
20 **have more questions. It would only be if I more**
21 **questions. Everybody else has to be done at this point.**

22 **And so at this point we can bring Mr. Marks up.**
23 **Does anyone need a two-minute break or are we okay to**
24 **keep going?**

25 **MR. FASSBURG: We're okay.**

1 JUDGE PEARSON: Okay. Just raise your
2 hand if you need a break at any point in time.

3 So I want to address the exhibits here before we get
4 started and read into the record what has been
5 stipulated to and then address those items that have not
6 been stipulated to at this point in time.

7 MR. HARLOW: Your Honor, can we go off the
8 record for just a minute?

9 JUDGE PEARSON: You need a break?

10 MR. HARLOW: I need to get the right book
11 to a witness.

12 JUDGE PEARSON: We can go off the record
13 for just a moment.

14 (Short break taken.)

15 JUDGE PEARSON: We will be back on the
16 record following a brief recess. Mr. Marks is on the
17 stand and I will swear him in momentarily. I just want
18 to address the exhibits that he is sponsoring.

19 The parties have stipulated to the admission of what
20 looks like -- well, some of the numbering is strange
21 here. I don't have any notation about WAM-53, which is
22 the SpeediShuttle reservation confirmation that is not
23 reflected on the exhibit list that you gave to me --

24 MR. HARLOW: No.

25 JUDGE PEARSON: -- or that you gave to me?

1 MR. FASSBURG: I gave you both of them,
2 and that's why the error exists, I believe. And I think
3 actually it's because Mr. Harlow and I both prepared our
4 exchanges based on an exhibit list which unintentionally
5 omitted that exhibit.

6 MR. HARLOW: WAM-53 is that exhibit, I
7 believe.

8 MR. FASSBURG: We don't have an objection
9 to 53.

10 JUDGE PEARSON: Okay. So WAM-1T is
11 admitted into the record with the understanding that
12 SpeediShuttle reserves its objections to portions of
13 that testimony.

14 (Exhibit No. WAM-1T admitted into evidence.)

15 JUDGE PEARSON: I will also admit WAM-2,
16 WAM-3T, subject to the preservation of SpeediShuttle's
17 objections to portions of that testimony. And then we
18 have stipulation on the admission of WAM-4 through
19 WAM-12X. We also have stipulation with respect to
20 WAM-17X through WAM-19X. So I will admit those into the
21 record.

22 (Exhibit Nos. WAM-2, WAM-3 and WAM-3T, WAM-4-12X,
23 WAM-17X-19X admitted into evidence.)

24 JUDGE PEARSON: And I will also admit
25 based on stipulation --

1 MR. HARLOW: Your Honor, I'm sorry. When
2 you switched into cross exhibits, I lost you.

3 JUDGE PEARSON: Okay. I'm going off your
4 notations of no objection. Don't worry, I'm not
5 addressing --

6 MR. HARLOW: I don't know why I'm not
7 finding it.

8 JUDGE PEARSON: I am not indicating
9 anything to which you indicated an objection.

10 MR. HARLOW: Now I got them. Okay. So 7
11 through 12X are admitted?

12 JUDGE PEARSON: Correct. You stipulated
13 to those.

14 MR. HARLOW: Yeah.

15 JUDGE PEARSON: You have question marks to
16 13 and 14, so we will come back to those.

17 MR. HARLOW: We're not objecting to those.

18 JUDGE PEARSON: Okay. Then I will admit
19 WAM-13X and WAM-14X. And then pick up where I was,
20 which is admitting, subject to the stipulation, WAM-24X
21 through WAM-34X. Parties have also stipulated to the
22 admission of WAM-36X, WAM-39X through WAM-41X. And then
23 also to WAM-43X through WAM-51X.

24 (Exhibit Nos. WAM-13X and 14X, WAM-24X-34X, WAM-36X,
25 WAM-39X-41X, WAM-43X-51X admitted into evidence.)

1 JUDGE PEARSON: And what about Staff's
2 exhibit, Mr. Harlow? Is there any objection to that?
3 That is marked WAM-52X?

4 MR. HARLOW: Can somebody tell me what it
5 is?

6 JUDGE PEARSON: It is a response to
7 Staff's data request.

8 MR. HARLOW: From Shuttle Express?

9 JUDGE PEARSON: From Shuttle Express.

10 MR. HARLOW: No objection.

11 JUDGE PEARSON: Okay. So I will admit
12 that into the record as well, WAM-52X. And then I will
13 also admit WAM-53. So that addresses all of the
14 stipulations.

15 (Exhibit Nos. WAM-52X and WAM-53
16 admitted into evidence.)

17 JUDGE PEARSON: We can take up the
18 objections, but I will just tell you right now that I'm
19 going to take official notice of all Commission records.
20 I'm not going to exclude anything from the record that
21 is a Commission record. So that eliminates any
22 objection to WAM-37, WAM-38, WAM-42.

23 So I will take official notice of each of those. So
24 that leaves us with WAM-15X and 16X, which are printouts
25 of Shuttle Express's web page "Brand with our Vans"

1 program, if you want to address that. Okay, Mr. Harlow.

2 MR. HARLOW: Thank you, Your Honor. I'm
3 not sure what purpose these are offered for, but the
4 only thing I can think is some discussion of advertising
5 revenue, which is not a regulated revenue. I don't see
6 what relevance it has to this proceeding or the
7 Commission's regulation.

8 JUDGE PEARSON: Mr. Fassburg.

9 MR. FASSBURG: The purpose is not that
10 purpose. And I think in some instances I prefer to not
11 address the reason I'll offer it --

12 JUDGE PEARSON: Until it comes up.

13 MR. FASSBURG: -- until it comes up.

14 JUDGE PEARSON: We can reserve those two
15 then. So let's do that.

16 How do you feel about right now addressing WAM-20X?

17 MR. FASSBURG: Sure. There has been a lot
18 of testimony from Shuttle Express the market is
19 decreasing for various things. And I think that
20 Tourism Quarterly newsletter includes some information
21 in the back about tourist numbers and how they are
22 moving in Seattle.

23 JUDGE PEARSON: Mr. Harlow.

24 MR. HARLOW: These are pure hearsay. They
25 are news reports. Our client didn't produce them. I

1 think the other shortcomings -- I think the witness
2 needs to be voir dired to see if he knows anything about
3 them. I can't speak for the witness.

4 MR. FASSBURG: To make this easy, I think
5 if I had intended to use them I would have actually used
6 them with a different witness probably. If I decide to
7 use it, I will bring it up and we can address it at that
8 point.

9 JUDGE PEARSON: Okay. That sounds good.
10 I'll just ask you, Mr. Harlow, what are your objections
11 to WAM-21X and 22X, which are the SpeediShuttle job
12 advertisements on indeed.com and craigslist?

13 MR. HARLOW: Those are at best
14 SpeediShuttle documents; they are not Shuttle Express
15 documents. And I would suggest the witness probably
16 can't answer questions about them anyway, let alone
17 authenticate them.

18 JUDGE PEARSON: So I think if we can read
19 them, he can answer questions about this. I understand
20 the reason they are being offered is to rebut his
21 exhibits that he is offering, which are applications
22 printed off of SpeediShuttle's website. Is that the
23 reason?

24 MR. FASSBURG: More or less. I think
25 there is another factor to it, but that's certainly part

1 of it.

2 JUDGE PEARSON: Okay. I'm going to allow
3 those because I think they go directly to the other
4 exhibits that he sponsored and offer a rebuttal to those
5 exhibits.

6 (Exhibit Nos. WAM-21X and WAM-22X
7 admitted into evidence.)

8 MR. HARLOW: Are you admitting them?

9 JUDGE PEARSON: No, I'm allowing them.

10 MR. HARLOW: I don't have any objection.

11 Thank you for the clarification.

12 JUDGE PEARSON: And then I'm curious about
13 your objection to 23X, the public records response
14 email. I'm curious why it was submitted and then also
15 why you have an objection to it.

16 MR. FASSBURG: It was submitted because
17 there are multiple versions of the tariff, they get
18 changed over time, and I needed to authenticate that
19 that was the tariff for a particular date.

20 JUDGE PEARSON: Gotcha. So then,
21 Mr. Harlow, what's your issue with it?

22 MR. HARLOW: Until the witness is asked on
23 the stand, I don't know if he can authenticate this as
24 the accurate tariff. I believe this was obtained from a
25 request for public records. That's my understanding.

1 JUDGE PEARSON: That's what it looks like,
2 and it looks like it was the tariff in effect on
3 February 15th, 2016.

4 MR. HARLOW: The Staff is usually pretty
5 good, but these are under constant revisions, and it's
6 possible they didn't get the exact rate pages.

7 JUDGE PEARSON: So why don't we take that
8 up when it comes up?

9 MR. HARLOW: That would be fine.

10 JUDGE PEARSON: Okay. That sounds good.
11 And let's see, WAM-35X, the news article from
12 The Stranger.

13 MR. HARLOW: You know, same thing. It's
14 not a Shuttle Express document. I don't think this
15 witness can validate any of facts contained in it.
16 Maybe he can. Again, I don't object to questions to
17 him. But to admit it as though there were facts that
18 can be relied upon for a Commission decision, I think
19 that goes well beyond the hearsay rule.

20 MR. FASSBURG: I think from the
21 authenticity perspective we can locate that online right
22 now to prove it is what it says it is. It's not
23 hearsay. It's a newspaper article; that's not hearsay.
24 So I think if his objection is to authenticity, we can
25 prove that quite easily if we really need to get online.

1 If he isn't familiar with the facts that are stated in
2 there, then he won't be able to answer my questions.

3 JUDGE PEARSON: For what purposes are you
4 offering it?

5 MR. FASSBURG: Well, one of the
6 allegations -- this is something where I really don't
7 mind addressing it right now, because it will affect how
8 much time I end up spending with Mr. Marks. One of the
9 allegations that SpeediShuttle is making is that
10 Shuttle Express has demonstrated, through historical
11 rule violations all the way up to the present, that they
12 will not abide by Commission rules. And we have case
13 law from the Commission that says that is not
14 satisfaction of the Commission. And so I believe it is
15 important for SpeediShuttle, whose certificate is on the
16 line here, to be able to put on at least references, if
17 not actual evidence admitted into the record, to any of
18 those rule violations there is a history of or there is
19 a record of.

20 MR. HARLOW: This article seems to be
21 about attempts to unionize. And I remember in telecom
22 rate cases, the Commission consistently denied union
23 attempts to intervene in the proceedings and raise union
24 issues. I don't know why another party can do it --

25 MR. FASSBURG: It's not a rate case,

1 number one. And number two, there are two specific
2 instances discussed in the article that are really all I
3 want to talk about.

4 JUDGE PEARSON: I was starting to think
5 this was a rate case the amount of time it's taking.

6 MR. HARLOW: This witness wasn't here in
7 1999 with the company. I don't see how he can answer
8 questions about it.

9 JUDGE PEARSON: I'm not going to allow it
10 just because it is not something I can rely on. I
11 understand the context for which it is offered. If
12 Mr. Harlow is open to you asking questions about it,
13 which it sounds like he is, we can do that without
14 admitting the article into the record. It's not like I
15 can quote it in my order. So it's of relatively limited
16 probative value to me, but it sounds like he has agreed
17 that you can ask questions about it.

18 MR. FASSBURG: Sure.

19 JUDGE PEARSON: So we will go forward from
20 there.

21 So it looks like then we just need to address, as
22 they arise, WAM-15X and WAM-16X. And then if you offer
23 WAM-20X, we'll cross that bridge when we get there. And
24 then again, WAM-23X, which is the email from the record
25 center. And other than that, we have resolved all of

CROSS BY FASSBURG/MARKS

1 the issues with respect to these exhibits.

2 MR. FASSBURG: Thank you.

3 JUDGE PEARSON: So given that, if you
4 would please stand and raise your right hand.

5

6 WESLEY A. MARKS, witness herein, having been first
7 duly sworn on oath, was examined and
8 testified as follows:

9

10 JUDGE PEARSON: Please be seated and state
11 your full name and spell your last name for the record.

12 THE WITNESS: Sure. My name is Wesley
13 Adler Marks, last name is M-a-r-k-s.

14 JUDGE PEARSON: Okay. Thank you.

15 Mr. Harlow, do you have any preliminaries?

16 MR. HARLOW: No, I don't -- do you have
17 any corrections to your testimony?

18 THE WITNESS: I don't believe so.

19 MR. HARLOW: No, the testimony is
20 admitted. The witness is available for cross. Thank
21 you.

22 JUDGE PEARSON: Thank you.

23

24 CROSS-EXAMINATION

25

CROSS BY FASSBURG/MARKS

1 BY MR. FASSBURG:

2 Q Mr. Marks, will you please state your full name?

3 **A Wesley Adler Marks.**

4 Q Please state your business address.

5 **A 800 Southwest 16th Street, Renton, Washington 98057.**

6 Q I understand you're here today to offer testimony on
7 behalf of Shuttle Express; is that correct?

8 **A That is correct.**

9 Q And you have offered or filed on your behalf exhibits
10 WAM-1T and WAM-3T; is that correct?

11 **A Yes.**

12 Q And are you adopting those under oath here today?

13 **A I am.**

14 Q Mr. Marks, you have described briefly your role within
15 Shuttle Express in your initial testimony, specifically
16 with respect to your role as responsible for regulatory
17 compliance. When did you first enter that role?

18 **A I believe that was within the last two years.**

19 Q So that would have been after the regulatory compliance
20 proceeding involving independent contractors in 2013?

21 **A Yes, it was after that date.**

22 Q Were you involved in that proceeding?

23 **A I was not.**

24 Q Describe what you do in terms of your role for
25 regulatory compliance at Shuttle Express.

CROSS BY FASSBURG/MARKS

1 **A Currently, I work on tariff revisions, prepare and**
2 **submit to the Commission ticket agent agreements, also**
3 **do research and reach out to resources in reference to**
4 **any other regulatory issues our business may face.**

5 Q Are you in charge of rule interpretation for
6 Shuttle Express's compliance?

7 **A I would not say I'm in charge of it, no.**

8 Q Okay. If Shuttle Express is going to make a decision
9 about whether or not a particular practice is in
10 compliance with the rules, are you one of the people who
11 makes that decision?

12 **A I do not make a decision; I make a recommendation.**

13 Q Who does make the decision?

14 **A Ultimately, the decision is made by Mr. Kajanoff.**

15 Q Let's move in to your testimony a little bit. You state
16 at the beginning of page 2 on line 7 of WAM-1T that your
17 testimony will address how the operations of
18 SpeediShuttle are functionally the same as the longest
19 standing operations of Shuttle Express. I want to key
20 in on the work "functionally the same." You were here
21 in the room when I asked questions of Mr. Wood earlier,
22 correct?

23 **A Yes, I was.**

24 Q And did you hear our discussion with respect to a 2013
25 rulemaking with respect to WAC 480-30-140?

CROSS BY FASSBURG/MARKS

1 **A I did hear that, yes.**

2 Q Is it your understanding the Commission said
3 "essentially the same or similar" were rejected with
4 respect to how the rule should read?

5 **A I'm not entirely familiar with the rulemaking. I did
6 hear the conversation from what was said earlier today.**

7 Q Okay. Do you understand from that conversation in the
8 2013 rulemaking the Commission rejects a proposal that
9 uses the words "essentially the same" or "similar"?

10 **A As it was presented today, yes.**

11 Q Okay. I would like to discuss very briefly your
12 testimony about whether or not Shuttle Express is
13 serving all of the areas SpeediShuttle has a certificate
14 to serve. Do you recall your testimony about North Bend
15 and Enumclaw?

16 **A Vaguely, yes.**

17 Q Okay. I believe Mr. Roemer's contention was there are
18 areas of North Bend and Enumclaw for which SpeediShuttle
19 has certificated authority. And you indicated that
20 although you don't, you still provide service there via
21 charter. Do you recall that testimony?

22 **A That sounds familiar, yes.**

23 Q Okay. I just want to confirm, there are in fact areas
24 in those territories -- or, I'm sorry, there are in fact
25 areas in those ZIP codes for which you are not providing

CROSS BY FASSBURG/MARKS

1 auto transportation service, correct?

2 **A I believe that's correct, yes.**

3 Q Okay. And I think if I understand your testimony, if
4 SpeediShuttle were to lose authority to serve in those
5 portions of that -- to those two ZIP codes, the only
6 service that would remain for auto transportation would
7 be charter, correct?

8 **A Charter is not auto transportation.**

9 Q Let me rephrase that. Charter would be the only
10 UTC-regulated service offered in that area?

11 **A Of the two, yes; auto trans would not.**

12 Q Okay. Thank you. You've provided testimony about the
13 service features SpeediShuttle discussed at the
14 application hearing and whether or not SpeediShuttle has
15 actually provided them. So I would like to ask you a
16 few questions about those. Is it your position that
17 SpeediShuttle is in fact required to offer more service
18 features than what it represented its service would
19 include at this application hearing?

20 **A I'm sorry, can you repeat that one more time for me?**

21 Q Sure. Is it your position that SpeediShuttle was
22 required to do more than it said it would do at the
23 application hearing?

24 **A No.**

25 Q Okay. Now, on WAM-2T, page 16, I have a question, if

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1 you could turn to that page.

2 **A I'm sorry, 2T or 2?**

3 Q 3T now. I'm sorry. It was originally labeled 2T.

4 **A Page 16?**

5 Q Correct. On line 8, the middle of the sentence or the
6 middle of the line it says, "Those service features
7 which SpeediShuttle used as a basis to differentiate
8 them also appeared to be nonrequired items which
9 SpeediShuttle does not need to actually provide."

10 I want to understand, are you claiming that
11 SpeediShuttle isn't in fact required to provide the
12 things that it said it would at the application hearing?

13 **A Based on Mr. Roemer's testimony, that's correct. That's**
14 **my assertion there.**

15 Q Okay. If it is your position SpeediShuttle is not
16 required to provide what it said it would be at the
17 application hearing, why did Shuttle Express file a
18 petition for rehearing challenging that it was not
19 providing those service features?

20 **A Because we believe the intent of the order from the**
21 **Commission was that SpeediShuttle would be required to**
22 **provide those features without it being required in the**
23 **certificate language.**

24 Q Where in Order 04 did the Commission state it was
25 requiring SpeediShuttle to provide anything in

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1 particular?

2 **A Do we have the exhibit for Order 04?**

3 MR. HARLOW: Your Honor, can I ask that
4 these questions be limited to nonlegal opinions?

5 JUDGE PEARSON: Sure.

6 MR. FASSBURG: I'll present the witness
7 with a copy of Order 04.

8 THE WITNESS: Thank you. So your question
9 again, if you don't mind.

10 BY MR. FASSBURG:

11 Q I was just following up on your statement that you
12 believed SpeediShuttle was required to do certain things
13 of the Commission order; I'm asking where it says it.

14 **A Sure. So my understanding is paragraph 18 describes in**
15 **Order 02 that the administrative law judge considered**
16 **the following factors, including type, means, and**
17 **methods of service provided, which was outlined in the**
18 **VAP. Also in paragraph 21 of Order 04, it goes to speak**
19 **to specific items in SpeediShuttle's business model,**
20 **such as luxury vehicles, significantly increased**
21 **accessibility for non-English-speaking customers,**
22 **individually tailored customer service, tours and**
23 **information, and Wi-Fi service. So to me those**
24 **individual items would become acquired as the part of**
25 **the understanding of the Commission.**

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1 Q I think that's helpful in understanding your testimony.

2 So you are claiming that when you evaluate

3 SpeediShuttle's business model, each of those things

4 stated there is a requirement of SpeediShuttle's

5 service?

6 **A Based on what was proffered at the brief administrative**
7 **hearing, yes.**

8 Q Okay. Now, I want to talk about increased accessibility

9 specifically. Does accessibility mean that you're

10 allowing a segment of the market to have some additional

11 benefit or does it mean something more specific?

12 **A The increased accessibility would by definition require**
13 **a benefit to the public.**

14 Q Okay. Now, using an analogy, if you are required to

15 provide accessibility for persons who have disabilities

16 and therefore must provide a wheelchair lift, for

17 example, you are in fact increasing accessibility if you

18 provide the lift, correct?

19 **A You would be increasing it if you did not offer it**
20 **previously to that, yes.**

21 Q So if you provide the lift and nobody uses it, you've

22 still increased accessibility, correct?

23 **A You increased the opportunity for accessibility. The**
24 **actual accessibility did not change if there is no**
25 **demand.**

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1 Q Are you saying that before the provision of the
2 wheelchair lift those people could have used the
3 service?

4 **A Or alternate services.**

5 Q No, my question is a little bit more limited. If you
6 don't provide the wheelchair lift, it is unaccessible,
7 correct?

8 **A You would not have wheelchair accessibility without a
9 lift, that is correct.**

10 Q And if you provide the wheelchair lift, you provide the
11 accessibility, even if it's not used, correct?

12 **A Yes.**

13 MR. HARLOW: Objection, asked and
14 answered.

15 BY MR. FASSBURG:

16 Q Okay. So --

17 MR. HARLOW: Your Honor, he answered no
18 before.

19 JUDGE PEARSON: He is moving on.

20 BY MR. FASSBURG:

21 Q If SpeediShuttle offers the service features that it
22 said it would, and those are available for use, does
23 that not similarly increase accessibility?

24 **A It would increase the potential for accessibility.**

25 Q Do you agree with me that auto transportation companies

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1 are expected to expand and improve service by the
2 Commission?

3 **A I would agree with that on principle, yes.**

4 Q Have you reviewed WAC 480-30-140 before today?

5 **A I have reviewed all the WACs before today, yes.**

6 Q Okay. Are you familiar where, under the service to the
7 satisfaction of the Commission criteria, one of the
8 things considered is whether or not a provider has
9 continuously sought to expand and improve its service?

10 **A I am familiar with it in concept, yes.**

11 Q Okay. Would you agree with me that things that can
12 improve service are including things that increase
13 accessibility?

14 **A It is certainly a component, yes.**

15 Q Okay. Now, you would agree with me that Shuttle Express
16 competes for passengers with modes of transportation
17 that are not regulated by the UTC, correct?

18 **A Yes.**

19 Q Some of those modes of transportation may offer features
20 that passengers find appealing over other modes of
21 transportation, correct?

22 **A Yes.**

23 Q And one way to compete with another mode of
24 transportation might be to offer a service amenity or
25 feature that is similar to what the other mode of

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1 transportation offers, correct?

2 **A That is one way, yes.**

3 Q Okay. So in addition to accessibility, one way to
4 improve your service in order to better compete with
5 another mode of transportation might be to offer an
6 improvement in service through any number of means,
7 correct?

8 **A That would be one way, yes.**

9 Q Okay. For example, TNC's -- I think we discussed this
10 with Mr. Wood earlier -- offer an app on the phone; Uber
11 specifically let's you know where your driver is and how
12 long it's going to be before they get there. Are you
13 familiar with that?

14 **A Yes.**

15 Q So you understand that SpeediShuttle has offered Where
16 Is My Ride, which tells passengers when their driver is
17 going to be there and where their driver is?

18 **A I have been told that, yes.**

19 Q Do you understand that SpeediShuttle provides an IOS and
20 an Android application by which people can make
21 reservations?

22 **A I have heard that as well.**

23 Q Do you think that by SpeediShuttle offering those
24 features they might in fact be able to better compete
25 with those other modes of transportation?

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1 **A I think any operator who improves service features would**
2 **be better able to compete, yes.**

3 Q Okay. Now specifically on your testimony in WAM-1T on
4 page 7, I would like to direct you to some testimony, if
5 you'll flip to that page.

6 **A Okay.**

7 Q Specifically starting on line 9, you state, "Based on
8 how SpeediShuttle actually has operated for the last
9 year" --

10 **A Sorry.**

11 **JUDGE PEARSON: Wait. Hold on.**

12 MR. FASSBURG: I may be on the wrong one.

13 JUDGE PEARSON: So you are on 1T or 3T?

14 MR. FASSBURG: 1T.

15 JUDGE PEARSON: Page?

16 MR. FASSBURG: Page 7.

17 JUDGE PEARSON: Okay, line --

18 MR. FASSBURG: Nine.

19 JUDGE PEARSON: Okay. "I see that actual
20 experience has shown that the introduction of Mercedes
21 vans."

22 MR. FASSBURG: I may be on the wrong line.
23 Starting with, "Based on how SpeediShuttle has actually
24 operated for the last year."

25 JUDGE PEARSON: Okay. That's my line 6.

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1 BY MR. FASSBURG:

2 Q Are you with me?

3 **A Yes.**

4 MR. HARLOW: Sorry, what page, line 6?

5 MR. WILEY: Page 7, line 6.

6 JUDGE PEARSON: Halfway through the line.

7 BY MR. FASSBURG:

8 Q Line 4, you state, "Discussing the totality of service
9 features, while in hindsight it seems clear they those
10 were not a materially different business model as far as
11 providing passengers with ground transportation" --

12 **A I'm sorry. I've lost you. You said line 4.**

13 Q Yeah, let's back up to line 4.

14 MR. WILEY: Line 3.

15 BY MR. FASSBURG:

16 Q Let's go with line 3. Let me get to the right page so
17 I'm not doing that anymore. Are you with me on the
18 language, if not the line?

19 **A I'm sorry, I was looking for it so I did not hear you
20 clearly.**

21 Q Let me get to the right page. Line 3, middle of the
22 line, starting with, "While in hindsight," it says,
23 "While in hindsight it seems clear that those were not a
24 materially different form of business model as far as
25 providing passengers with ground transportation,

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1 SpeediShuttle presented a case that its model would
2 attract a new and unserved demographic of passengers."

3 So here you're saying that you believe that offering
4 those service improvements do not make SpeediShuttle a
5 different business model. Is that your testimony?

6 **A No, that was in connection to the entire section there,**
7 **which described all of the features and all of the**
8 **offerings together as one.**

9 Q Okay. So sorry if I lost you context-wise. If we go
10 back to page 6, when you were talking about luxury
11 vehicles, increased accessibility for
12 non-English-speaking customers, individually tailored
13 customer service, tourism information and Wi-Fi
14 service." And I'm asking, your testimony relating to
15 that says those are not materially different, I believe
16 you're saying, from Shuttle Express; is that right?

17 **A Yes, those on their own.**

18 Q Okay. Now, does Shuttle Express -- or rather did it at
19 the time of SpeediShuttle's application -- offer all of
20 those things?

21 **A Not all of them, no.**

22 Q And the ones that you did offer that you intended for
23 the Commission to know about at that time were presented
24 at the application hearing where you were a witness,
25 correct?

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1 **A Yes.**

2 Q Okay. Now, moving back to line 6, on page 7, you state,
3 "Based on how SpeediShuttle actually has operated for
4 the last year-and-a-half, plus the addition of actual
5 passenger data, it is now clear that those convenience
6 features may have some marketing value in attracting
7 passengers from our service. But actual experience has
8 shown the introduction of Mercedes vans did not provide
9 service to people who were or would otherwise have been
10 unserved simply because we use Ford vans." Did I read
11 that correctly?

12 **A I believe so, yes.**

13 Q Okay. Do you agree with me that in trying to compete in
14 the entire market for airport transportation, it is
15 important to have a package of features that are
16 attractive to the general public?

17 **A In the scope of two operators providing the same
18 service, yes, that would be a differentiator.**

19 MR. FASSBURG: I'm going to object to
20 nonresponsive and move to strike.

21 BY MR. FASSBURG:

22 Q My question was, in the entire airport transportation
23 market, including all people that transport themselves
24 or ride to and from the airport, in order to attract
25 customers it is important to offer an attractive set of

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1 features?

2 JUDGE PEARSON: Which is a yes or no
3 question.

4 THE WITNESS: I'll disagree with that, no.
5 BY MR. FASSBURG:

6 Q You think if you offer share-ride, they are going to use
7 it, or if they don't like share-ride, they are going to
8 use something else; is that your testimony?

9 **A That's not what I'm saying.**

10 Q Let me ask you slightly differently because that's what
11 I'm trying to get at. Do you think in order to compete
12 with all modes of transportation it is important to
13 provide an attractive set of features?

14 **A Yes.**

15 Q Okay. Now, you say that SpeediShuttle's offering of
16 Mercedes vans does not do anything other than take your
17 passengers; is that what you're saying?

18 **A No.**

19 Q Okay. So when you stated actual experience has shown
20 the introduction of Mercedes vans did not provide
21 service to people who were or would otherwise have been
22 unserved simply because we use Ford vans, you're not
23 saying that having a Mercedes van can't attract someone
24 who previously would have used a different mode of
25 transportation?

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1 **A I am not saying that that vehicle would cause that.**

2 Q Okay.

3 **A I'm sorry, I may be confused here.**

4 Q Just to be clear --

5 **A Please repeat that one more time.**

6 **JUDGE PEARSON: It was a really confusing**
7 **question.**

8 MR. FASSBURG: I think I can make it
9 simpler.

10 JUDGE PEARSON: Okay.

11 BY MR. FASSBURG:

12 Q Mercedes vans versus Ford vans may very well be very
13 attractive to some passengers who were using other modes
14 of transportation, correct?

15 **A Potentially, yes.**

16 Q And although it may be true that they choose to use
17 SpeediShuttle over Shuttle Express, they may also
18 attract people who wouldn't have used Shuttle Express,
19 correct?

20 **A Yes.**

21 Q Okay. You won't deny that the Mercedes Sprinter vans
22 that SpeediShuttle uses are more attractive and have
23 nicer furnishings than Shuttle Express's vans, wouldn't
24 you?

25 **A I don't think I can answer that because that's a**

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1 personal -- I've never been in one of those vans, so I
2 have no experience with them.

3 Q Okay. You aren't claiming that they are not nicer, you
4 just don't know?

5 **A I make a claim purely based on what was presented.**

6 Q Okay. You do talk a little bit later on about what kind
7 of passengers use TNCs. Are you claiming you don't know
8 what passengers want or you just don't know the
9 difference between the Mercedes and the Shuttle Express
10 van?

11 **A I'm not claiming I don't know what passengers want. I'm**
12 **not claiming I don't know the difference between a**
13 **Mercedes and a Shuttle Express van.**

14 Q Okay. So do you agree with me that SpeediShuttle's vans
15 are newer in Washington than Shuttle Express's vans?

16 **A On average, yes.**

17 Q Okay. SpeediShuttle has only been here for two years,
18 correct?

19 **A My understanding, yes.**

20 Q As of right now, as long as SpeediShuttle didn't buy
21 used vans they should all be two years old or newer,
22 correct?

23 **A That would be my understand, yes.**

24 Q And I understand from your testimony in the application
25 case or at the hearing it was your testimony that

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1 Shuttle Express uses a five-year replacement plan; is
2 that correct?

3 **A Yes.**

4 Q If we look at your 2016 annual report, we'll in fact
5 find 4350 vans as old as 2008 and '09 though, won't we?

6 **A Potentially yes.**

7 Q In fact, those are older than five years old. So would
8 you agree with me that Shuttle Express's vans are newer?

9 **A On average, yes.**

10 Q Okay. Would you agree with me that the furnishings are
11 higher quality?

12 **A I can't speak to that. I haven't seen the furnishings
13 of the van.**

14 Q Have you ever ridden inside a SpeediShuttle van?

15 **A I have not.**

16 Q Does SpeediShuttle place advertisements on their vans?

17 **A Not on the exterior, to my knowledge.**

18 Q Have you ever seen a Shuttle Express van with an
19 advertisement on the outside?

20 **A I have.**

21 Q Do they on some occasions cover one surface of the
22 exterior?

23 **A They do.**

24 Q And do you believe that passengers that are looking for
25 a vehicle that may have the cachet of a Mercedes are

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1 always going to be willing to ride in a Shuttle Express
2 van with an ad plastered to the outside of it?

3 **A I can't speak to what other people would do.**

4 Q Okay. Getting back to your testimony about functionally
5 the same. Are you claiming that the Mercedes van is
6 functionally the same as the Ford van?

7 **A As far as what it does to get a passenger from A to B,
8 yes.**

9 Q Does the SpeediShuttle van have higher capacity for
10 passengers than your Ford vans?

11 **A My understanding is it does.**

12 Q Has Shuttle Express ever had a certificate that was
13 issued in part because it was going to offer a different
14 size of vans than an existing certificate holder in your
15 knowledge?

16 **A If there was, I'm not aware of it.**

17 Q Are you aware of whether or not Shuttle Express ever had
18 a certificate restriction that limited the number of
19 passengers that it could carry to seven?

20 **A I don't have any knowledge of that.**

21 MR. BEATTIE: Judge Pearson, we're about
22 an hour out. Can we take a short break?

23 JUDGE PEARSON: Absolutely.

24 MR. BEATTIE: Thank you.

25 JUDGE PEARSON: Let's just take five

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1 minutes.

2 MR. BEATTIE: Sure.

3 (Short break taken.)

4 JUDGE PEARSON: Let's be back on the
5 record following a short recess.

6 BY MR. FASSBURG:

7 Q Mr. Marks, I would like to refer you to Exhibits WAM-15
8 and 16X, I believe they are.

9 **A Okay.**

10 Q Do you recognize what these are?

11 **A Yes, they appear to be a branding page from, I believe,
12 our website.**

13 Q Have you seen the pictures before?

14 **A Maybe in passing.**

15 Q Okay. Do those appear to be pictures offered on your
16 website on the "Brand with our Van" page?

17 **A It appears to be, yes.**

18 Q Have you actually seen Shuttle Express vans that appear
19 like those pictures?

20 **A I have not -- not like the first one, which is 15X. I
21 have seen like 16X.**

22 Q Is that a van that Shuttle Express has actually used in
23 its door-to-door operations?

24 **A The vehicle in the picture?**

25 Q Well, let's stick with 16X since you recognize that one.

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1 **A Yes, the identification of that vehicle appears to be**
2 **one that's active in our fleet.**

3 MR. FASSBURG: I would move to admit that
4 exhibit just as to the photograph to demonstrate what --
5 at least one Shuttle Express van appears like that's
6 used in the door-to-door operation.

7 MR. HARLOW: You know, I can't help but
8 notice the two pictures have ads on them. If he's
9 limiting what it's offered for, I don't have objection.
10 If it's talking to advertising, I don't think it's
11 relevant.

12 MR. FASSBURG: I don't have any questions
13 about advertising; just the appearance of the van.

14 JUDGE PEARSON: I will admit those and
15 mark them as WAM-15X and WAM-16X.

16 (Exhibit Nos. WAM-15X and WAM-16X
17 admitted into evidence.)

18 BY MR. FASSBURG:

19 Q Now, Mr. Marks, do I understand correctly that you are
20 the Shuttle Express witness who is going to speak about
21 whether or not SpeediShuttle has provided Wi-Fi?

22 **A I believe I would be one of them, yes.**

23 Q Okay. Now, have you ever reviewed Shuttle Express's
24 petition for rehearing in this proceeding?

25 **A I have, but it has been a while.**

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1 Q Okay. Do you recall that Shuttle Express simply brought
2 up, with respect to Wi-Fi, it is not known whether
3 respondent provides working TV or Wi-Fi in all its vans?

4 **A Yes, I remember that at that time.**

5 Q Now that you've had an opportunity to conduct some
6 discovery, you testified in WAM-1T at page 8, which I
7 would like to direct you to.

8 **A Okay.**

9 Q On line 4 you state, "We even asked them for documents
10 to show if the Wi-Fi was even turned on or working
11 properly in their vans." Did I read that correctly?

12 **A Yes, you did.**

13 Q Where does Shuttle Express ask SpeediShuttle for
14 documents to show if the Wi-Fi was even turned on?

15 **A Shuttle Express submitted data requests to SpeediShuttle
16 requesting information about the Wi-Fi, its usage and
17 utilization.**

18 Q Okay. Now, I can direct you to those data requests
19 because we've marked them as an exhibit. All of your
20 data requests to SpeediShuttle have been marked WAM-7X,
21 8X, and 9X. Can you please identify for us where you
22 asked to show if the Wi-Fi was even turned on?

23 **A I'm sorry, I think that's a mischaracterization. The
24 testimony is that we asked them for documents to show if
25 the Wi-Fi was even turned on, not that show if the Wi-Fi**

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1 was turned on.

2 Q Okay. Where did you ask for documents that would show
3 whether the Wi-Fi was turned on or not?

4 **A That would be Data Request No. 8 in WAM-7X.**

5 Q Please read that data request.

6 **A "Provide documents that show the vehicles used to**
7 **transport passengers in the market, including for each**
8 **vehicle the make, model, year, and any amenities, such**
9 **as TV and Wi-Fi facilities. Provide records that show**
10 **when such amenities were installed, operated, on/off,**
11 **disabled, (et cetera) and used, for example, Wi-Fi data**
12 **usage records."**

13 Q Okay. So are you stating that you wanted to know if the
14 Wi-Fi was activated at a given time, or are you stating
15 you asked whether they ever worked at all?

16 **A We were seeking any records relating to them.**

17 Q Okay. So just to clarify your testimony, when you say
18 they denied any knowledge of the operability or
19 real-world functioning of the Wi-Fi service, you're not
20 saying they didn't know whether they worked at all,
21 you're saying they didn't track if they were on or off
22 at a given moment?

23 **A I believe based on the data response what I'm saying is**
24 **that there was no information provided about it.**

25 Q Okay. So let's be clear: SpeediShuttle didn't deny

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1 knowledge of the operability or real-world functioning
2 of the Wi-Fi service, they told you they don't track
3 usage, correct?

4 **A That's correct.**

5 Q Okay. So when you say that, you don't mean it
6 literally, you're using that as an exaggeration,
7 correct?

8 **A I believe all that we were told is that there was a**
9 **Wi-Fi unit installed on a vehicle. That was the extent**
10 **of the information provided.**

11 Q Did you ever get on a Wi-Fi -- I'm sorry, a
12 SpeediShuttle van and try to activate Wi-Fi and see if
13 it worked?

14 **A Not from on the vehicle, no.**

15 Q So when you say "all indication from SpeediShuttle's
16 actual operations are that Wi-Fi service is not at all
17 important to the passengers they carry," you're just
18 again criticizing SpeediShuttle not tracking customer
19 usage, correct?

20 **A No, that's not correct.**

21 Q Well, you state that following your testimony about
22 whether or not they could tell you about its real world
23 functioning and knowledge of its operability, so I think
24 I misunderstand your testimony. What about their actual
25 operations indicate it's not an important service to

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1 their passengers?

2 **A The fact that SpeediShuttle has no information as to**
3 **whether the Wi-Fi was even turned on in the vehicle**
4 **indicates to me that there was not a concern as to its**
5 **operability for its passengers.**

6 Q Did SpeediShuttle tell you they don't know if it's
7 turned on or if they don't track usage?

8 MR. HARLOW: Your Honor, we're getting
9 into a lot of detail about data requests the witness
10 doesn't have in front of him.

11 MR. FASSBURG: He does have it in front of
12 him. He just read it.

13 JUDGE PEARSON: Hold on. I just want to
14 save some time here.

15 MR. FASSBURG: Sure.

16 JUDGE PEARSON: I'm not too concerned
17 about this particular issue or -- I think that,
18 SpeediShuttle has Wi-Fi, I'm not worried about who is
19 using it. I don't think it's an important feature to
20 dwell on because I am not worried about it. To put it
21 simply.

22 MR. FASSBURG: I appreciate that,
23 Your Honor. I don't mean to dwell on it because of a
24 question of whether or not it works. I think it's
25 pretty obvious that it works. I think Mr. Marks's

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1 credibility is severely challenged by when he
2 exaggerates, and I would like to draw out his
3 exaggerations.

4 JUDGE PEARSON: But I think you've done
5 that with respect to this particular issue.

6 MR. FASSBURG: I'll move on.

7 JUDGE PEARSON: Okay.

8 BY MR. FASSBURG:

9 Q Let go on to TVs. And I can make this pretty simple.
10 When you say they don't know if they use it, they don't
11 know if it's on, they don't know if people use it, and
12 I'm paraphrasing, you are saying basically the same
13 thing, they didn't tell you how they track it in that
14 same data request response, correct?

15 **A That's correct. The response was the same.**

16 Q Okay. That doesn't mean it's not on, just that they
17 don't track it, right?

18 **A I can only conclude that I don't have information.**

19 Q Okay. How do you propose someone tracks passenger TV
20 viewing?

21 **A There could be several ways to track and know when the
22 vehicle -- when the TV is on inside the vehicle.**

23 Q So my question is a little different. How do you track
24 when a passenger watches?

25 **A There could be several ways to track when a passenger**

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1 watches TV.

2 Q And I'm asking you what those ways would be.

3 **A One of them would be an indicator or survey at the end**
4 **of the trip or at the end of the carriage to ask what**
5 **someone thought of the TV.**

6 Q Is that something you think passengers exiting a vehicle
7 at their destination would want to do is answer a
8 survey?

9 **A You asked me a question of an option; that's an option**
10 **that's out there.**

11 Q Okay. Is that a legitimate viable option you believe
12 could legitimately track usage?

13 **A It's an option, yes.**

14 Q An option, but do you think it's really going to work?

15 **A If you wanted to improve service, I think that would be**
16 **an excellent way to find out, yes.**

17 Q Is it your experience passengers answer survey questions
18 if you give it to them at the end of a trip?

19 **A There is a percentage that do and don't, yes.**

20 Q With respect to the TV, you're not challenging that it
21 works, that they are installed, and that they actually
22 do what SpeediShuttle said they would do, are you?

23 **A I'm not challenging what we were told, which was that**
24 **the TVs were installed in the vehicles, no.**

25 Q Are you challenging that they showed to passengers who

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1 choose to watch tours information about Seattle?

2 **A I would say I don't have the information to answer that.**

3 Q Have you ever ridden on a SpeediShuttle shuttle to find
4 out -- actually, I'll strike that, you already answered
5 that you haven't.

6 Now, with respect to the TV, you testified that,
7 "The SpeediTV -- I'm sorry, I will refer you to the
8 page, page 8 on line 10 -- "The SpeediTV that was
9 described in their business plan presented to the
10 Commission and ALJ at the hearing again has turned out
11 to be nothing more than a marketing tool for
12 SpeediShuttle and less like the luxury TV system that
13 could be adjusted by users."

14 I want to understand your testimony. When you say
15 this was not what it was described to be at the hearing,
16 are you claiming SpeediShuttle testified that it would
17 be a luxury TV system that could be adjusted by users?

18 **A I would need to refer back to the testimony from the
19 hearing.**

20 Q We've got that here identified as WAM-50X if you would
21 like to review it.

22 **A I could if you would like me to.**

23 Q You said you would need to refer to it to answer my
24 question. If you would like to review it to find out if
25 they said it was it a luxury TV system that could be

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1 adjusted by users, please go ahead.

2 **A I don't believe it was that phrasing as you just**
3 **repeated it just now.**

4 Q Did they say it could be adjusted by users?

5 **A I'm not sure if that was included in the testimony or**
6 **not.**

7 Q Is it your recollection that Mr. Morton said it would
8 provide tourism information?

9 **A I believe that was included.**

10 Q Okay. Did he say that it was going to do anything other
11 than provide tourism information in your recollection?

12 **A I believe he elaborated on that statement.**

13 Q How so?

14 **A I believe he included other examples of the information**
15 **he would provide.**

16 Q What do you specifically recall that he said?

17 **A Again, I don't want to speculate on what his testimony**
18 **was on the record already.**

19 Q Okay. If it turns out that in fact all he said was it
20 was going to he provide tourism information, would this
21 be a misplaced criticism?

22 **A I don't believe so.**

23 Q How so?

24 **A My understanding of what was presented in the business**
25 **plan overall versus what was actually occurring --**

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1 again, as I said, I have not seen the video playing so I
2 can't testify to what the content is -- but my
3 recollection of the testimony was that it would be a
4 broad-span TV, including tourism information and other.

5 Q Sure. And you just can't say what the other part was,
6 correct?

7 **A I can't. I could go to the transcript.**

8 Q Again, I'm asking you just so we can save time. If it
9 turns out all he said was tourism information, would
10 this be a misplaced criticism?

11 **A If that's what's on the video, then yes. If it is just**
12 **tourism information and that's what was said and that's**
13 **all that's on the TV, then yes.**

14 Q Okay. You discuss Wi-Fi a little bit more.

15 JUDGE PEARSON: What exhibit are you
16 referring to?

17 MR. FASSBURG: I'm sorry, the problem in
18 my outline I had been providing a page and line, on this
19 one I didn't, so I need it find it.

20 JUDGE PEARSON: What is it referring to?

21 MR. FASSBURG: Features such as describing
22 networks -- page 8. Okay. Page 8, lines --

23 JUDGE PEARSON: 1T?

24 MR. FASSBURG: 1T.

25 JUDGE PEARSON: Okay.

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1 BY MR. FASSBURG:

2 Q You state, "Again relating to this supposed unserved
3 tech-savvy passengers to the supposed unserved
4 tech-savvy passengers, all information gleaned from
5 SpeediTV should be available as splash-page information
6 when connecting to their Wi-Fi." Are you claiming that
7 SpeediTV should not exist and that instead they should
8 provide the tourism information through the Wi-Fi splash
9 page?

10 **A I think it is in addition to what is there.**

11 Q If the information is provided in SpeediTV, why would it
12 even need to be in the splash page?

13 **A There are many methods by which people can come by
14 information.**

15 Q As opposed to criticizing SpeediShuttle, you're simply
16 saying they could have done another thing?

17 **A You could have done a lot of things.**

18 Q Sure. And is that part of this proceeding, what they
19 could have done differently?

20 **A No, I believe it's what is actually occurring.**

21 Q You state on lines 14 to 17, "Additionally, there is no
22 mention of whether SpeediTV plays constantly in a loop
23 of different languages so that all passengers can view
24 and take in the benefits of information about the
25 Seattle area." Did I read that correctly?

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1 **A Yes. Wrong lines, but yes.**

2 Q Is this again testimony that is something they could
3 have done, not something they represented they would do?

4 **A I don't believe that's a correct statement.**

5 Q Do you believe that Mr. Morton testified at the
6 application hearing that SpeediTV was going to play in a
7 loop of different languages?

8 **A He did not testify to that.**

9 Q Where did you get the idea that SpeediTV would play
10 constantly in a loop of different languages?

11 **A It was tied in with the connection to the multilingual
12 service as part of the tourism information.**

13 Q Who tied that in?

14 **A I believe it's tied in as part of the order that the
15 additional service offerings were part of. The core
16 different service was the multilingual offering, which
17 included extensions for these amenities, such as travel
18 information on SpeediTV, Wi-Fi for tech-savvy
19 passengers. Those were included together in the same
20 paragraph.**

21 Q Okay. So if I understand your testimony, is that in
22 your interpretation of Order 04, all of the service
23 amenities that SpeediShuttle testified it would offer
24 tie to multilingual service?

25 **A I believe it was based off Order 2 but, yes, that was my**

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1 understanding when I wrote this.

2 Q Okay. And so in your testimony, the Wi-Fi should be
3 offered in a multitude of languages so that whenever
4 someone logs in they can read it in Japanese, Korean,
5 Chinese, Spanish, Portuguese, whatever language it would
6 be?

7 **A Wi-Fi, by nature, is multilingual, yes.**

8 Q I'm talking specifically about, for example -- never
9 mind. I'll move on.

10 Your claim is that whatever service it is they
11 offer, it should always been multilingual; is that
12 correct?

13 **A No.**

14 Q Okay. Now moving on just a little bit. In WAM-2T you
15 discuss Shuttle Express's reason to track usage of
16 features and amenities --

17 MR. HARLOW: Excuse me, are you referring
18 to 3T?

19 MR. FASSBURG: 3T, thank you.

20 MR. WILEY: Any time we say "2T" we mean
21 "3T."

22 BY MR. FASSBURG:

23 Q If I refer to your testimony at 2T, let's just all
24 assume I meant 3T.

25 Your testimony in WAM-3T -- and I don't want to go

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1 to the specific testimony because it goes on a little
2 bit -- do you recall your testimony in which you
3 discussed why Shuttle Express has business reasons to
4 track usage?

5 THE WITNESS: Yes, I do.

6 BY MR. FASSBURG:

7 Q Are you claiming that SpeediShuttle should use
8 Shuttle Express's business purposes?

9 **A I am not making that claim, no.**

10 Q Okay. So if SpeediShuttle says, We don't track this
11 because we don't have a reason to, you're not saying
12 they should have, just that you do?

13 **A I believe I'm saying that we feel we have a business
14 need to track it.**

15 Q Okay. Going back to WAM-1T, page 24. You discuss here
16 SpeediShuttle's departure time. You state on page 6,
17 "First, there is no guarantee that I can find on
18 SpeediShuttle's website or in its tariff." Did I read
19 that correctly?

20 **A Yes.**

21 Q Did SpeediShuttle claim it was going to have a specific
22 place where it would provide a 20-minute departure time?

23 **A Can you clarify the place?**

24 Q Sure. You said you cannot find SpeediShuttle's service
25 guarantee on its website or tariff, which I'm

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1 paraphrasing.

2 **A Uh-huh.**

3 Q Did it say where it would publish a 20-minute departure
4 guarantee?

5 **A I don't believe that was part of the testimony.**

6 Q Was it your understanding that SpeediShuttle said its
7 departure times will be 20 minutes compared to yours, as
8 opposed to it's going to publish a service guarantee of
9 20-minute departure time?

10 **A I disagree with the characterization of that comment.**
11 **It was testimony pulled directly from Mr. Morton from**
12 **the initial hearing.**

13 Q Sure. Okay. Let me rephrase this. Are you saying that
14 if they have a 20-minute departure guarantee, that
15 requires that they publish somewhere, that they state:
16 We guarantee departure within 20 minutes?

17 **A Somewhere, if there is a guarantee, that guarantee needs**
18 **to be made known, otherwise it's a worthless guarantee.**

19 Q Now going specifically to the data. You provide your
20 analysis of the SpeediShuttle departure time information
21 that it provided there on page 24. You say on line 6 to
22 8, "And in response to a data request, SpeediShuttle
23 admitted that only 77 percent of its departures are
24 within 20 minutes, with about 10 to 15 percent or so
25 taking more than 26 minutes." Did I read that

CROSS BY FASSBURG/MARKS

1 correctly?

2 **A I believe so, yes.**

3 Q Okay. When you evaluated SpeediShuttle's data, did you
4 do anything with the data to determine whether it
5 included any errors?

6 **A I don't believe we received specific information. I
7 believe it was an aggregate. So no.**

8 Q Okay. Did SpeediShuttle warn you that the data included
9 errors?

10 **A There were concerns about the data presented from
11 SpeediShuttle, yes.**

12 Q Okay. Now when discussing the Shuttle Express departure
13 time information that you provided, you pointed out that
14 there are errors in Shuttle Express data, correct?

15 **A Occasionally, yes.**

16 Q Okay. Now, you say that there are sometimes obvious
17 errors, that you can remove outliers, that if you remove
18 them you can perform a better analysis of your data,
19 correct?

20 **A Yes.**

21 Q Okay. If something isn't an obvious outlier, how do you
22 know if it's erroneous or not?

23 **A Without being a certified mathematician, CPA, or
24 anything like that, my personal opinion would be you
25 take an average analysis of a trend over time. The**

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1 larger the sample, the better the average will be.

2 Q My question is a little different than that. How do you
3 know if something is an erroneous data point if it's not
4 an obvious outlier?

5 **A You would not know that without other supporting data.**

6 Q Sure. So if the error is on the large side, if you see
7 someone who has apparently been delayed by two days it
8 is pretty obvious, right?

9 **A I would make that assumption, yes.**

10 Q What if the error is in the other direction that says
11 they departed within five minutes but it's in fact
12 erroneous. How do you know that?

13 **A The same way you would be able to assess someone for two**
14 **days. You can look at the deeper underlying data if you**
15 **need to, to get -- for your information --**

16 Q So my point was a little different. When you're trying
17 to weed through what error-filled data is good data and
18 bad data, and you need to assess a particular data
19 point, is there any way to say, This data that falls
20 within an expected range is actually good data versus
21 the obvious outliers?

22 **A The assumption needs to be that your data is valid**
23 **because it's required to be. And there are outliers**
24 **that are known, but overall the vast majority of the**
25 **data is valid.**

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1 Q That isn't my question.

2 **A I'm sorry, I'm trying to understand. Because I -- can**
3 **you try it one more time for me, please?**

4 Q I can make it easier. You would agree with me that if
5 it falls within your expected range, you won't know if
6 it's erroneous, even if it actually is erroneous,
7 correct?

8 **A No, I wouldn't agree with that.**

9 Q So if someone actually took 45 minutes but it's reported
10 as 22 minutes, you will know?

11 **A If I look at it, yes.**

12 Q How will you know?

13 **A If I look at the underlying data, I can tell you the**
14 **specifics of any reservation.**

15 Q You can look at a specific data point and know there is
16 an error of a time reported in your reservation system?

17 **A Yes.**

18 Q How would you know that?

19 **A Supporting data.**

20 Q What supporting data?

21 **A GPS data, other time records for the same trip, the same**
22 **passenger.**

23 Q And so in order for you to assess your data set, you
24 would need to, on an individual data point analysis,
25 look at GPS, and rule it in or out as valid data for

CROSS BY FASSBURG/MARKS

1 every single one, correct?

2 **A If you wanted to assess every individual reservation,**
3 **yes.**

4 Q If you want to know if a data set includes erroneous
5 data for departure time, you would need to do a manual
6 review of every data point to exclude erroneous data,
7 correct?

8 **A To exclude all erroneous data, yes, you would.**

9 Q Okay. So if you know your data is filled with errors,
10 and you want to make some judgments on it, would you
11 agree that it's okay to ignore some of the errors --

12 **A I disagree with that characterization.**

13 Q Okay. How so?

14 **A I don't believe I testified that our data is filled with**
15 **errors.**

16 Q I was asking you a hypothetical. If you know your data
17 is filled with errors, is it okay to rely upon it for
18 some purposes?

19 **A Potentially, yes.**

20 Q Would you want to make any absolute conclusions based on
21 that data?

22 **A Just with that data, no.**

23 Q Now you provided WAM-3T a window into Shuttle Express's
24 departure time for February of 2017.

25 **A Do you have a page cite for us?**

CROSS BY FASSBURG/MARKS

1 MR. FASSBURG: Sure. Page 12.

2 BY MR. FASSBURG:

3 Q This is the only data you provided for comparison. In
4 fact, during the period of time that you provided,
5 Shuttle Express's departure times are larger than
6 SpeediShuttle's, correct?

7 **A I'm sorry, which part are we looking at here?**

8 Q Okay. So we can go to the specifics. I was just hoping
9 to speed this up. You provided departure time
10 information for February of 2017. That's all we have
11 for Shuttle Express. We have obviously a different
12 period of time for SpeediShuttle. But just comparing
13 those two, SpeediShuttle departed the airport within
14 20 minutes for 77 percent of all guests for its data
15 with its errors, correct?

16 **A Yes.**

17 Q For your data, did you remove your obvious outliers?

18 **A I don't believe I removed anything from it.**

19 Q Okay. So with your possible errors, you have a
20 departure time of fewer -- a smaller percentage for
21 20 minutes, correct?

22 **A The number in my testimony is smaller than the number
23 presented by SpeediShuttle, yes.**

24 Q Just for that comparison, you've got 65 percent within
25 20 minutes right?

CROSS BY FASSBURG/MARKS

1 **A WAM-3T, yes.**

2 Q Okay. That was compared to 77 percent for
3 SpeediShuttle?

4 **A I don't believe I made a comparison.**

5 Q I'm asking you, because it's in your testimony that
6 SpeediShuttle had 77 percent within 20 minutes, correct?

7 **A That is in the first set of testimony, yes.**

8 Q Okay. Now, that information is only based on walkups,
9 as you understand, correct, for SpeediShuttle?

10 **A That's what I understand now, yes.**

11 Q Okay. Now if SpeediShuttle wants to use that
12 information for its own internal purposes for routing
13 and dispatch, it would actually give SpeediShuttle some
14 pretty helpful information, errors and all, because
15 departure times are based upon arrival at the kiosk,
16 which is true for both walkups and people who made
17 advanced reservations, correct?

18 **A I disagree with that.**

19 Q How so?

20 **A I don't believe departure time is based on the arrival
21 at the kiosk.**

22 Q What is that based on?

23 **A It depends on at what point the departure happened. My
24 understanding of SpeediShuttle's operation from
25 observation is that, especially the guests that I have**

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1 seen greeted by their greeters, are walked directly to
2 their vehicle and not going to the kiosk.

3 Q So it would be difficult to make an apples-to-apples
4 comparison of those two data sets according to what
5 you're saying. How far is the walk from the baggage
6 claim to the vehicle?

7 **A It depends on the baggage claim.**

8 Q Okay. Now, you're not claiming that it should occur
9 from departure of the airplane, for example, are you?

10 **A I'm not.**

11 Q So if it's within an acceptable range, SpeediShuttle can
12 use this information for its internal purposes. But I
13 just want to stick to the point that you agree with me,
14 this is not going to tell you what their departure time
15 actually is for all of their passengers, correct?

16 **A No. This information will not give anybody that.**

17 Q Thank you. Now, in your departure times, do you include
18 scheduled-service passengers?

19 **A I believe we do, yes.**

20 Q You have a shuttle running to downtown Seattle every
21 30 minutes, correct?

22 **A Scheduled departure every 30 minutes.**

23 Q A scheduled-service passenger should never have more
24 than a 30-minute departure time, should they?

25 **A It would depend on the load of the vehicles.**

CROSS BY FASSBURG/MARKS

1 Q Do you have people that want to ride your scheduled
2 service van that you make wait for the next van because
3 you are too full?

4 **A Can you be more specific for me?**

5 Q Are there people that wait, for example, in excess of 30
6 minutes because you don't have a van available to take
7 them to downtown Seattle on the scheduled service?

8 **A There are passengers who have waited in excess of**
9 **30 minutes, yes.**

10 Q And in fact in reality you have sometimes passengers who
11 wait more than an hour for whatever service it may be,
12 correct?

13 **A On occasion, I believe that has happened.**

14 Q Now, people who are able to get on the next available
15 van for scheduled service, and they wait as little as
16 five or less minutes if the next one happens to be soon
17 after they arrive, correct?

18 **A Yes.**

19 Q So within your data set you may have people that walked
20 up and just got on a van, and then you may have people
21 who waited the full 30 minutes or longer?

22 **A Is that a question?**

23 Q That's a question.

24 **A Yes.**

25 Q Okay. Now, when you're making the comparison between

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1 SpeediShuttle and Shuttle Express, why didn't you look
2 at only door-to-door?

3 **A We look at all services that we operate under the auto**
4 **trans certificate that we have.**

5 Q Do your door-to-door peak tend to have a longer waiting
6 time than your scheduled service passengers?

7 **A I can't respond to that. I have not looked at that.**

8 Q Is there any other reason why Shuttle Express might have
9 faster departure times than SpeediShuttle on occasion?

10 **A There could be lots of different reasons.**

11 Q Okay. Well, are you allowed to stage vehicles at the
12 airport?

13 **A We are.**

14 Q You view that as a pretty critical aspect of your
15 departure time, don't you?

16 **A I don't personally.**

17 Q If you're allowed to stage a vehicle, can't you have a
18 vehicle waiting for the passengers?

19 **A You certainly could if you're allowed to stage at the**
20 **loading location.**

21 Q If you're not allowed to load at all, your passengers
22 are going to have to wait on the van to arrive from a
23 holding area, correct?

24 **A Can you repeat that one more time for me? I think I got**
25 **it, but --**

CROSS BY FASSBURG/MARKS

1 Q Sea-Tac Airport doesn't allow SpeediShuttle, for
2 example, to keep its vans in a staging area waiting for
3 passengers; you understand that, correct?

4 **A I believe that's not true.**

5 Q You believe they are allowed to stage?

6 **A I believe Sea-Tac Airport provided space at 188th Street**
7 **for SpeediShuttle.**

8 Q Okay. Have you actually observed SpeediShuttle's
9 agreements with Port of Seattle or their discussions and
10 have personal knowledge of whether or not the Port of
11 Seattle has allowed them to stage?

12 **A I do have personal knowledge, yes.**

13 Q How do you know that SpeediShuttle has been permitted to
14 stage?

15 **A At last year's regulated rate fee, the recovery fees**
16 **that the Port of Seattle charges for every vehicle trip**
17 **into the airport, they included in share-ride vans**
18 **service costs at the 188th Street holding lot, which**
19 **when I asked why it was included in our cost, that**
20 **Shuttle Express does not use it, it was told to us that**
21 **SpeediShuttle stages their vehicles at that lot.**

22 Q Thank you. So the holding lot at which they are allowed
23 to stage, is that near the passenger pickup area?

24 **A I've actually never been to that lot.**

25 Q Okay. It's not at island 2A, is it?

CROSS BY FASSBURG/MARKS

1 **A It is not at island 2A.**

2 Q Is island 2A the passenger pickup area?

3 **A I believe that is the assigned pickup area, yes.**

4 Q Okay. So if Shuttle Express is allowed to pick up
5 passengers at the passenger pickup area, that would
6 certainly save time if the vehicle was waiting for the
7 passengers, instead of the other way around, correct?

8 **A Potentially, yes.**

9 Q Okay. If Mr. Roemer's testimony is that the holding lot
10 is nowhere near the passenger pickup area, it certainly
11 won't help them pick up passengers faster, will it?

12 **A I think it's irrelevant.**

13 Q No, it's a factual matter of departure times, so you
14 need to answer my question.

15 **A Can you define the departure time basis that you're
16 setting this up for?**

17 Q If passengers are required to be at the curb waiting for
18 the van, and the driver has to drive to pick them up,
19 will that add time to the departure time?

20 **A If that's the basis, yes.**

21 Q Let's move on a little bit on page 14 of WAM-1T.
22 Starting on line 1 to 3. You state, "Despite its
23 promises of attracting a whole new and unserved
24 demographic, with hindsight the data and experience
25 since SpeediShuttle got its certificate indicates those

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1 promises were not based on an accurate understanding of
2 the nature of the Sea-Tac market." Did I read that
3 correctly?

4 **A Yes.**

5 Q When you say SpeediShuttle made "promises of attracting
6 a whole new and unserved demographic," what did you base
7 that testimony on?

8 **A I believe my basis for this -- for that part of the**
9 **statement was on Mr. Morton's testimony at the brief**
10 **administrative hearing, as well as the Commission orders**
11 **that indicated as such.**

12 Q Okay. Is it your testimony that Mr. Morton promised to
13 attract a whole new and unserved demographic?

14 **A I will say no to that.**

15 Q Is it your understanding that Mr. Morton made any
16 promises about a particular demographic being served by
17 SpeediShuttle's service?

18 **A I can't recall his entire testimony.**

19 Q So when you say, "Despite its promises of attracting a
20 whole new and unserved demographic," are you in fact not
21 referring to anything stated by SpeediShuttle?

22 **A I am referring to statements made by SpeediShuttle**
23 **testimony during the hearing.**

24 Q Okay. So I want to close the loop on this because I'm
25 confused. Where did SpeediShuttle make promises about

CROSS BY FASSBURG/MARKS

1 serving a whole new and unserved demographic?

2 **A The testimony that I recall from Mr. Morton, as well as**
3 **I believe Mr. Roemer may have testified briefly on that**
4 **as well, describe the demographic that SpeediShuttle was**
5 **seeking to provide service to that was not already**
6 **provided. That was my understanding. The promise was**
7 **not the words specifically used but the understanding of**
8 **what they were attempting to provide service to that was**
9 **not already served.**

10 Q Okay. Where did it say that they weren't already
11 served?

12 **A I believe it was the result of the ALJ's ruling.**

13 Q Okay. So if I understand you correctly, SpeediShuttle
14 promised to provide service that the Commission ruled
15 would serve a new demographic; is that right?

16 **A I believe -- if I understand your question, I believe**
17 **so, yes.**

18 Q Okay. That would be a little different than
19 SpeediShuttle promising to attract a whole new and
20 unserved demographic, correct?

21 **A Partially.**

22 Q Okay. If it's the Commission's ruling and not
23 SpeediShuttle's promise, aren't you in fact simply
24 attacking the Commission's ruling Order 04?

25 **A That's not what I'm saying.**

CROSS BY FASSBURG/MARKS

1 Q You're saying that based on data and experiences since
2 SpeediShuttle got its certificate, those promises were
3 not based on an accurate understanding of the nature of
4 the Sea-Tac market. That's your testimony, correct?

5 **A Uh-huh.**

6 Q Now, when there is an inaccurate understanding, whose
7 inaccurate understanding is that?

8 **A I believe it was an inaccurate understanding from the**
9 **testimony provided at the brief administrative hearing.**

10 MR. FASSBURG: I think we've gone through
11 this enough.

12 JUDGE PEARSON: Yes. I'll just let you
13 know that I have about five additional questions for
14 Mr. Kajanoff. Keep that in mind.

15 MR. FASSBURG: For today?

16 JUDGE PEARSON: Yes.

17 MR. FASSBURG: Truthfully I had some
18 related questions, but I think I can cover them a little
19 more succinctly.

20 MR. WILEY: It's a good place to break.

21 MR. FASSBURG: I have one more question,
22 and if it turns out I have more -- I can do them
23 tomorrow.

24 JUDGE PEARSON: Friday.

25 MR. FASSBURG: Friday. So you can ask

CROSS BY FASSBURG/MARKS

1 your questions of Mr. Kajanoff.

2 MR. HARLOW: I think we should make
3 tomorrow an honorary Friday.

4 BY MR. FASSBURG:

5 Q Mr. Marks, there is a number of places throughout your
6 testimony where you refer to SpeediShuttle presented
7 itself as focused on providing increased multilingual
8 capabilities and other promises and representations. Is
9 it your testimony that these are things SpeediShuttle
10 said, or is it your testimony the Commission made those
11 findings?

12 **A I believe it's my understanding that both of those were**
13 **present.**

14 Q Okay. And you're unable to point me to a single place
15 where Mr. Morton said that that's going to happen,
16 right?

17 **A I could go through the testimony again from the original**
18 **hearing.**

19 MR. FASSBURG: Okay. Why don't you do
20 that by Friday and we'll start there.

21 JUDGE PEARSON: Okay. You can be excused
22 for today.

23 Mr. Kajanoff, if you want to just grab a microphone,
24 you don't need to get up and move. I'll just remind you
25 that you are still under oath.

EXAM BY JUDGE PEARSON/KAJANOFF

1

2

EXAMINATION

3

BY JUDGE PEARSON:

4

Q I just have some more questions based on our discussion

5

earlier that have been kind of going through my mind. I

6

just want to clarify a couple of things. So it was your

7

testimony earlier today, and this was with respect to

8

staff's investigation in this docket related to

9

SpeediShuttle's complaint, it was your testimony earlier

10

today that if one person were to ride in a

11

Shuttle Express van, that's regulated auto

12

transportation service. But when one person rides in a

13

limo, it becomes nonregulated limo service; is that

14

correct?

15

A It becomes regulated limo service.

16

Q But nonregulated by the Commission is what I'm saying.

17

A That is correct.

18

Q Okay. So you also stated, and it's well accepted, that

19

when there are multiple people in a Shuttle Express van,

20

that's also regulated auto transportation service,

21

correct?

22

A That's correct.

23

Q Okay. So based on your earlier testimony, it would

24

follow then that multiple people in a limousine would

25

then become limousine service no longer regulated by the

EXAM BY JUDGE PEARSON/KAJANOFF

1 Commission; is that correct?

2 MR. HARLOW: Your Honor, again, I'm
3 assuming we're not talking legal --

4 JUDGE PEARSON: Right.

5 MR. HARLOW: -- opinion but rather his
6 position?

7 JUDGE PEARSON: Right.

8 MR. HARLOW: Thank you.

9 THE WITNESS: That is correct, because
10 that's why we've got the waiver to allow us to do that
11 under limo laws.

12 BY JUDGE PEARSON:

13 Q But if it requires a waiver, then it would seem that it
14 is Commission-regulated activity if you need us to waive
15 our requirements in order to do it. So I'm just trying
16 to connect the dots. Because it seems that you're
17 saying when there is one passenger the nature of the
18 service depends on the vehicle, and when there are
19 multiple passengers the nature of the service depends on
20 the number of passengers. So I want some clarification
21 around that.

22 **A So for us, we're trying to appease -- we're trying to be**
23 **proactive, because history has shown, even prior to**
24 **myself, this was an issue. The reality is I could make**
25 **a very good argument, and I believe it to be true, is**

EXAM BY JUDGE PEARSON/KAJANOFF

1 the contract is a single contract. It's a contract
2 between Shuttle Express and the business owner of the
3 limo. So I could do the same thing if my son had his
4 prom, I would collect money from all the parents. So
5 it's a single contract, that is the basis for this.

6 It's a single contract between Shuttle Express and the
7 limo driver.

8 Q I understand that. I'm just trying to follow logic
9 behind, like I said, the inconsistency where your
10 argument is that when there is one passenger the service
11 is defined by the vehicle; when there are multiple
12 passengers, the service is defined by the number of
13 passengers. I'm having a hard time reconciling that.

14 **A I believe it, and I believe I made this statement at the**
15 **hearing when we had this discussion, not this hearing**
16 **but --**

17 Q For the exemption?

18 **A For the exemption. And the reality is the service**
19 **follows the vehicle. Because once a person is in a**
20 **vehicle, the rules are applicable to that driver. So**
21 **for a coach, the coach certainly has to have a different**
22 **type of driver. They have to be licensed to do that**
23 **work. A van. There are regulations for each type of**
24 **vehicle, except still the question is TNC. That was our**
25 **point is -- that's why we picked sedan/limo by the way,**

EXAM BY JUDGE PEARSON/KAJANOFF

1 because it's one of the most safe regulations -- but it
2 follows whoever is in that vehicle.

3 Q Then why would you need a waiver from the Commission?
4 Why not a waiver from the Department of Licensing?
5 That's what I don't understand.

6 **A Well, it's because the Commission is the one that keeps**
7 **saying no. It's still auto trans regardless of what**
8 **vehicle it is. And we don't believe that to be true.**
9 **We're trying to work with the Commission to actually**
10 **resolve the issue. But the reality is it follows the**
11 **vehicle you are in; those are the rules that are**
12 **applicable for safety and follow-up and all the issues**
13 **that we've already presented. And we will have that**
14 **discussion tomorrow as well, obviously.**

15 Q Okay. So then my next question is: You discussed
16 earlier that Shuttle Express, rather than continuing to
17 seek an exemption in 2013, just began putting single
18 passengers in limos instead of grouping them.

19 So what was behind the business decision to seek
20 another waiver in September and start grouping them
21 again instead of just continuing to put them into single
22 passenger, single vehicle?

23 **A Uber.**

24 Q What do you mean?

25 **A Well, we feel strongly, and this becomes a big debate,**

1 is Uber -- granted, if you're doing a single, that's
2 fine, but Uber started doing Uber Pool, hence the email
3 I sent to the Port of Seattle commissioner saying, Look,
4 when you start doing that multiple stops, it becomes
5 share-ride, and that is governed by the UTC.

6 So we reached out to the Commission to say, Look, if
7 they are being allowed to do this, until you figure out
8 what to do with these TNCs, give us the opportunity to
9 compete with that.

10 JUDGE PEARSON: Okay. Thank you for
11 clarifying. I don't have any further questions.

12 MR. HARLOW: Your Honor, these are very
13 good questions. I'll just tell you, our thought on the
14 legal analysis is continuing to evolve, and I'm having
15 to learn limousine law and deal with Uber X for these
16 waivers. I will just let you know, when we talked to
17 DOL, one of the staff issues and the Commission issues
18 was they were inclined to grant the waiver but they
19 wanted to make sure that DOL was okay, we considered
20 those referred passengers to now be under their
21 jurisdiction so that the service wouldn't be
22 unregulated. And the question was single contract.
23 They said, Yeah, as long as Shuttle Express put them
24 together in a single contract, they are covered under
25 DOL as long as they follow all the DOL regulations.

1 So that's really -- and we haven't decided what to
2 do on this -- but it's really causing us to rethink
3 whether the multi-stop passengers that are put together
4 under single contract by Shuttle Express are still
5 regulated by the Commission. And it's kind of a gray
6 area.

7 JUDGE PEARSON: I understand your
8 position. I was there at the open meeting. I wrote the
9 order under the Commissioner's direction granting the
10 waiver. So I'm very familiar with all this. Mr. Wiley?

11 MR. WILEY: Your Honor, this just raised a
12 concern on my part about the juxtaposition of the
13 scheduling tomorrow. I think it goes without saying
14 that I'd appreciate an instruction or an admonition from
15 the bench that the issues in this case should not be a
16 subject of discussion or testimony at the stakeholder's
17 session tomorrow. But I think that there is a tendency,
18 from Mr. Kajanoff's remarks, to try to wrap them in and
19 we have rules against that.

20 JUDGE PEARSON: Right.

21 MR. HARLOW: Who is officiating tomorrow?

22 JUDGE PEARSON: Most likely Staff will
23 lead the discussion. The ALJ assigned is Judge Kopta.

24 MR. HARLOW: Okay. Will you be there?

25 JUDGE PEARSON: I may or may not be there.

1 It depends how tired I am.

2 MR. HARLOW: I think our client
3 understands the ex parte rules. I guess if we don't
4 have a decision-maker there, I'm not sure that's even an
5 issue. But I understand the need to be careful and
6 hopefully Judge Kopta will --

7 JUDGE PEARSON: And everything you say can
8 and will be used against you.

9 MR. WILEY: And Mr. Beattie will be there,
10 so he will keep them honest.

11 MR. FASSBURG: I was going to say, if they
12 do cross the line, I have no doubt we'll submit the
13 recording as an exhibit in this.

14 JUDGE PEARSON: And I will just, I guess,
15 give you a warning, for lack of a better term, that it
16 has happened in the past that regulated companies have
17 made comments at stakeholder workshops that have made
18 their way into Staff investigations and influenced
19 penalty amounts. So I will just say that. It was a
20 different industry, different situation, but it's been
21 known to happen. So I advise everyone against speaking
22 about this case tomorrow.

23 MR. HARLOW: We do understand.

24 JUDGE PEARSON: Okay. Thank you. Then we
25 will be adjourned and we will reconvene Friday at 8:30.

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Thank you all very much.

(Proceedings concluded at 5:32 p.m.)

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C E R T I F I C A T E

I, Laura Gjuka, a Certified Court Reporter in
and for the State of Washington, residing at
University Place, Washington, authorized to administer
oaths and affirmations pursuant to RCW 5.28.010, do
hereby certify;

That the foregoing Verbatim Report of Proceedings
was taken stenographically before me and transcribed
under my direction; that the transcript is a full, true
and complete transcript of the proceedings, including
all questions, objections, motions and exceptions;

That I am not a relative, employee, attorney or
counsel of any party to this action or relative or
employee of any such attorney or counsel, and that I am
not financially interested in the said action or the
outcome thereof;

That upon completion of signature, if required, the
original transcript will be securely sealed and the same
served upon the appropriate party.

IN WITNESS HEREOF, I have hereunto set my hand this
24th day of May, 2017.

Laura Gjuka, CCR No. 2057