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 1 BEFORE THE WASHINGTON

 UTILITIES AND TRANSPORTATION COMMISSION

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 In Re: Application TC-143691)

 4 )

 SPEEDISHUTTLE WASHINGTON, ) Docket Nos. TC-143691

 5 LLC, D/B/A SPEEDISHUTTLE ) and TC-160516

 SEATTLE, ) (Consolidated)

 6 )

 For a Certificate of Public )

 7 Convenience and Necessity to )

 Operate Motor Vehicles in )

 8 Furnishing Passenger and )

 Express Services as an Auto )

 9 Transportation Company )

10 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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 HEARING, VOLUME VIII

12

 Pages 560-885

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 ADMINISTRATIVE LAW JUDGE RAYNE PEARSON

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16 8:40 a.m.

17 May 12, 2017

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19 Washington Utilities and Transportation Commission

 800 South Evergreen Park Drive Southwest

20 Olympia, Washington

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23 REPORTED BY: Nancy M. Kottenstette, RPR, CCR 3377

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 (4/24/17)

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0570

 1 OLYMPIA, WASHINGTON; May 12, 2017

 2 8:40 a.m.

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 4 JUDGE PEARSON: We'll go ahead and be

 5 on the record. We are back on the record on Friday,

 6 May 12, at approximately 8:40 a.m., and we will

 7 continue the evidentiary hearing in these consolidated

 8 dockets.

 9 We had a brief discussion off the record about

10 Mr. Kajanoff's desire to update some of his testimony

11 from Wednesday, specifically related to questions that

12 I asked him at the end of his testimony. So I'm going

13 to give Mr. Harlow an opportunity to present that, and

14 then we'll see if any of the parties have any

15 objections.

16 MR. HARLOW: Thank you, Your Honor.

17 And, yeah, this is intended to clarify to ensure

18 there's no -- nothing misleading due to omission of

19 potential material or information related to your

20 questions. Mr. Kajanoff can explain much better than

21 I can, and he does understand he's still under oath

22 this morning.

23 JUDGE PEARSON: Okay. Thank you.

24 MR. KAJANOFF: On Exhibit PK-1T,

25 page 13, and that is lines -- first line is 19 where

0571

 1 it says "They undercut our fare to downtown Seattle by

 2 about 9%." If it is door-to-door only, that number is

 3 now 22 percent.

 4 JUDGE PEARSON: For door-to-door only?

 5 MR. KAJANOFF: Door-to-door only.

 6 JUDGE PEARSON: So it was 9 percent

 7 with respect to combined?

 8 MR. KAJANOFF: Door to door and

 9 scheduled service.

10 JUDGE PEARSON: Okay. And that makes

11 more sense, because your scheduled service is quite a

12 bit cheaper than what we determined the flexible fare

13 for your door-to-door service.

14 MR. KAJANOFF: If you were a single

15 door-to-door service, it's higher.

16 JUDGE PEARSON: Okay. And is that the

17 extent of your update?

18 MR. KAJANOFF: Pardon?

19 JUDGE PEARSON: Is that the extent of

20 your update?

21 MR. KAJANOFF: No. Line 21, where it

22 states that "...most of the rest of the county there

23 fare is about 13%...," that number is now 18 percent.

24 MR. WILEY: To be clear, the 18 percent

25 is door-to-door only; is that right?

0572

 1 MR. KAJANOFF: Door-to-door only.

 2 JUDGE PEARSON: Can you repeat that

 3 last part?

 4 MR. KAJANOFF: Line 21 should now read:

 5 But in most of the rest of the county, the fare is

 6 about 18 percent higher than ours for door-to-door

 7 only.

 8 JUDGE PEARSON: We've resolved the

 9 technical difficulties mainly due to user error

10 unbeknownst to me.

11 So, Mr. Fassburg, are you okay with those

12 updates? They seem relatively minor.

13 MR. FASSBURG: Yes. I don't think I

14 have an objection to them offering it. I would like

15 to ask him a couple questions.

16 JUDGE PEARSON: Okay. Go ahead.

17 E X A M I N A T I O N

18 BY MR. FASSBURG:

19 Q Mr. Kajanoff, with respect to the rest of the

20 county, you're doing that on an aggregate basis. Did

21 you get compared ZIP Code by ZIP Code?

22 A Those numbers that on the percentages are in

23 aggregate of ZIP Codes.

24 Q My question was different. Have you compared

25 ZIP Code by ZIP Code?

0573

 1 A I'm sorry. I'm not --

 2 Q So there's 81 ZIP Codes in which SpeediShuttle

 3 provides service. You've provided a comparison for

 4 one ZIP Code to one ZIP Code and then 80 ZIP Codes to

 5 80 ZIP Codes. So my question is: Did you compare

 6 individually all 81 ZIP Codes?

 7 A No. I compared the reference ZIP Codes to the

 8 downtown core that I reference in the rest of my

 9 testimony compared to all the other ZIP Codes.

10 Q Okay. So, for example, if SpeediShuttle's

11 fares are actually lower in some of the suburbs, you

12 haven't offered testimony one way or the other on that

13 issue to the Commission because you have combined them

14 in aggregate; is that correct?

15 A I combined the non-downtown ZIP Codes in

16 aggregate.

17 Q With respect to the door-to-door versus your

18 scheduled service fares for downtown, why is there

19 such a significant difference in your fare?

20 A Our fares on the door-to-door are higher for

21 the first passenger and much lower for the second. So

22 if it is a single person going to downtown, it would

23 be higher.

24 Q If I understand you correctly, then, when you

25 have two passengers together, they're not -- the

0574

 1 average fare per person is not significantly higher?

 2 A It will -- excuse me. Depending on the number

 3 of additional passengers on the reservation, the

 4 average cost per passenger will go down relative to

 5 the number of passengers on a reservation.

 6 Q And that's true for SpeediShuttle as well;

 7 correct?

 8 A Huh?

 9 Q That is true for SpeediShuttle as well;

10 correct?

11 A Not for the ZIP Codes I compared. The ZIP

12 Codes that I used for comparison are where

13 SpeediShuttle charges per passenger the exact same for

14 the first passenger or the second.

15 Q Is it your testimony under oath that

16 SpeediShuttle charges the same price for the second

17 passenger as it does for the first passenger in each

18 of the ZIP Codes that you've compared?

19 A For the ZIP Codes, I used the tariff. My

20 understanding is per person those were the same

21 charges per person per tariff.

22 Q So in this comparison that you've offered to

23 the Commission, your assumption was that SpeediShuttle

24 charges this same per person whether it's one, two,

25 three, or four, or more passengers on the reservation?

0575

 1 A Yes. Once again, based on the tariff, that's

 2 my understanding of the pricing procedure.

 3 MR. FASSBURG: Thank you. I have no

 4 further questions.

 5 JUDGE PEARSON: Okay. Thank you.

 6 Are we ready to move on? Back to Mr. Marks?

 7 Okay. So, Mr. Marks, I'll just remind you

 8 that you're still under oath.

 9 MR. MARKS: Yes, Your Honor.

10 JUDGE PEARSON: And we can just pick up

11 where we left off on Wednesday, Mr. Fassburg.

12 E X A M I N A T I O N

13 BY MR. FASSBURG:

14 Q Thank you. Mr. Marks, where we left off, I

15 asked you to do homework and review the application

16 hearing transcript. Have you done that?

17 A I have, sir.

18 Q Thank you for doing that. That will make this

19 a little easier.

20 My question last actually, other than to do

21 that homework, was in relation to some of your

22 assertions about the promises that SpeediShuttle

23 supposedly made according to you. So, for example,

24 one of those places about which I asked you was in

25 WAM-1T, page 14 at line 1 to 3.

0576

 1 And you stated "Despite its promises of

 2 attracting a whole new and unserved demographic, which

 3 hindsight the data and experience since SpeediShuttle

 4 got its certificate indicates those promises were not

 5 based on an accurate understanding of the nature of

 6 the SeaTac market."

 7 And the question about that testimony was:

 8 Where is it that there was testimony supporting the

 9 promise was made to attract a whole new and unserved

10 demographic?

11 A Sure. So on the initial transcript from the

12 brief adjudicative hearing on page 24, lines 8 through

13 14, which is the response by Mr. Morton to Mr. Wiley's

14 questioning, he states: We'll do our best to hire

15 multilingual receptive teams to communicate with some

16 of the people that are from different countries, and

17 here we're seeing there's a lot of people coming from

18 the Far East. Like we have in Honolulu, as an

19 example, Japanese-speaking as well as

20 Hispanic-speaking -- Spanish-speaking --

21 Spanish-speaking, excuse me.

22 And also moving to page 27 of that transcript,

23 lines 8 through 12, Mr. -- I believe this is still

24 Mr. Morton's testimony, beginning on line 8: Focus on

25 people from around the world, travelers from around

0577

 1 the world. So it's every language that the

 2 marketplace markets so we just -- are just not

 3 focusing on the English-speaking customers.

 4 And then moving to page 28, lines 14 through

 5 19, Mr. Morton, again, continues on the next one:

 6 Thank you. It's just talking about not only do we

 7 service people from everywhere around the world that

 8 speak different languages and make it easy to do

 9 business with us, but we transfer people who need more

10 assistance. And that's the lifts -- that's with lifts

11 always available.

12 And that was the extent of it from that

13 transcript. There was additional comments made in

14 Mr. Morton's statement, which was CM-1 in that

15 hearing.

16 Q Do you have CM-1 with you right now?

17 A I do.

18 Q Can you refer to us where there is anything in

19 there that is a promise to attract a whole new and

20 unserved demographic?

21 A Sure. In paragraph 2 of the statement from --

22 on behalf of Cecil Morton, towards the end of the

23 paragraph, Mr. Morton's states: Have bilingual

24 websites and ticketing agents serving Asian customers

25 from China, Japan, and Korea and have particularly

0578

 1 adapted our operations to facilitating visitors from

 2 the Asian markets who come to Hawaii for either

 3 pleasure or on business.

 4 Q Okay. So I'll try to take those one at a

 5 time. Unfortunately, I don't have all the references

 6 right in front of me. But where Mr. Morton stated

 7 that SpeediShuttle does its best to hire multilingual

 8 greeters, is that a promise to serve a whole new and

 9 unserved demographic?

10 A I believe, based on that context of the

11 testimony, that Mr. Morton intended to lead the

12 discussion that it was intending to do everything it

13 had possible, their best, to facilitate that

14 marketplace.

15 Q That's your interpretation of Mr. Morton's

16 testimony when he said "we'll do our best"; correct?

17 A Yes, as I stated --

18 Q Please yes or no. That's your interpretation?

19 A Yes.

20 Q With respect to serving people of -- I think

21 he said Japanese- and Spanish-speaking customers.

22 Again, is that a promise to attract a whole new and

23 unserved demographic the way you've put it in your

24 testimony?

25 A Yes. I view that as a promise.

0579

 1 Q That's your interpretation of his testimony?

 2 A That is my interpretation of his testimony,

 3 yes.

 4 Q And with respect to serving people that speak

 5 Asian languages, again, that's your interpretation of

 6 his testimony; correct?

 7 A Yes.

 8 Q And with respect to any service they provided

 9 that would cater to people from other countries

10 speaking other languages, that's all, again, your

11 interpretation of his testimony; correct?

12 A Yes, my testimony is my interpretation.

13 Q Okay. Now, do you have any evidence that

14 SpeediShuttle is not actually serving people that are

15 non-English-speaking?

16 A We have -- we have presented evidence, I

17 believe it was a data request -- I'm sorry. I believe

18 it was part of the deposition of Mr. Roemer that

19 indicated that zero passengers had booked reservations

20 through the booking agent on the foreign language

21 websites.

22 Q And you would agree with me that that doesn't

23 prove they are not serving people who are

24 non-English-speaking? That only proves that those

25 people did not reserve through the Japanese, Korean,

0580

 1 or Chinese version of SpeediShuttle's website;

 2 correct?

 3 A I would not agree with that.

 4 Q Okay. So you believe if no one has made a

 5 reservation through that particular portal they could

 6 not possibly be a non-English-speaking person?

 7 A I'm sorry. Can you repeat that one more time?

 8 Q Sure. I'm trying to understand your

 9 testimony. I asked you if you had any evidence

10 SpeediShuttle was actually not serving people who are

11 non-English-speaking, and you pointed to that there

12 were zero reservations on one website.

13 I'm asking you if that means there are, in

14 fact, no non-English-speaking passengers who reserved

15 service through any other means?

16 A No. That would not indicate that.

17 Q Okay. And so other than that one particular

18 point, is there any evidence SpeediShuttle is, in

19 fact, not serving non-English speaking passengers?

20 A I will say no to that.

21 Q Now, with respect to the specific languages,

22 is there anything in Order 04 that says that

23 SpeediShuttle should serve people of particular

24 languages?

25 A Bear with me one moment. I believe I have

0581

 1 Order 04 here.

 2 Could you repeat the question one more time?

 3 I apologize.

 4 Q Sure. I just want to know about specific

 5 languages. Is there anything in Order 04 that says

 6 something about specific languages that are to be

 7 served?

 8 A No. Order 04 does not specify the languages

 9 on its -- in its language.

10 Q I'd like to refer to WAM-1T, page 9. Are you

11 with me?

12 A Yeah.

13 Q Okay. Starting on line 19, you're answering

14 the question that begins on line 17, so maybe we

15 should start there.

16 The question is: "What else have you been

17 able to learn from SpeediShuttle's actual operations

18 about their multilingual capabilities?

19 Starting on line 19, your answer: "Well,

20 next, you have to look at whether SpeediShuttle has

21 truly implemented the multilingual business model or

22 plan that was the basis for getting its certificate.

23 The premise of that model was that there was a growing

24 number of Asian passengers coming to Seattle who were

25 not being served because of a language barrier. The

0582

 1 only concrete evidence SpeediShuttle presented on how

 2 it would serve these supposed unserved was the three

 3 links to booking pages presented in Chinese, Japanese,

 4 and Korean."

 5 Did I read that correctly?

 6 A Yes, you did.

 7 Q Are you here suggesting that SpeediShuttle is

 8 supposed to be limiting its multilingual services to

 9 people who speak Chinese, Japanese, and Korean?

10 A No.

11 Q Are you suggesting that only passengers who

12 speak Chinese, Japanese, or Korean are multilingual

13 for purposes of SpeediShuttle's business model?

14 A No.

15 Q Now, you would agree with me, using your

16 language, the only concrete evidence SpeediShuttle

17 offered on what it would do to offer multilingual

18 service was Chinese, Japanese, and Korean through that

19 website; correct?

20 A I disagree with that statement. The only

21 concrete evidence SpeediShuttle presented was on how

22 it would serve, not what it would do.

23 Q Okay. So just to be clear, you're not trying

24 to step back from your statement here that the only

25 concrete evidence SpeediShuttle presented on how it

0583

 1 would serve the supposed unserved was the three links

 2 to booking pages presented in Chinese, Japanese, and

 3 Korean; correct?

 4 A Yes. I believe that's the only concrete

 5 evidence.

 6 Q Do you agree with me that that's the only

 7 specific commitment that SpeediShuttle said it was

 8 going to do with respect to multilingual service?

 9 A No. I believe the comment about multilingual

10 greeters was also a commitment.

11 Q If your interpretation of Mr. Morton's

12 testimony is not the one given to it by the Commission

13 and they, in fact, come to a different conclusion than

14 you as to what is to be required, that's certainly

15 something they're entitled to do; correct?

16 A Absolutely.

17 Q And if Mr. Morton's only specific commitment

18 that SpeediShuttle would make is to provide a website

19 in Japanese, Chinese, and Korean and to do their best

20 to hire multilingual greeters, those would be the only

21 two things for which there was an actual proposal of

22 service; correct?

23 A If that's how the Commission saw it, yes.

24 Q Now, with respect to your complaints about

25 multilingual service, do I understand correctly that

0584

 1 you believe SpeediShuttle was supposed to be limited

 2 to serving multilingual demographics?

 3 A Give me one moment to run your question

 4 through my head a second here.

 5 MR. HARLOW: I'm not sure the question

 6 is very clear. When you say "supposed to," I'm not

 7 sure whose mind, the witness's or the Commission's or

 8 your client's.

 9 MR. FASSBURG: I think I was clear. I

10 asked him if he was suggesting that SpeediShuttle was

11 supposed to be limited to serving the

12 non-English-speaking or multilingual demographic.

13 A I don't believe so, no.

14 Q In fact, in Shuttle Express's Petition for

15 Review of Order 02 in Docket TC-143691, didn't, in

16 fact, Shuttle Express argue that SpeediShuttle was

17 offering a door-to-door service that was no different

18 than Shuttle Express except for offering

19 inconsequential features?

20 A I believe so, yes.

21 Q In fact, you asked or rather Shuttle Express

22 asked in the Petition for Review for SpeediShuttle to

23 be required to serve every passenger who requested

24 service in King County?

25 A I'd have to review that, but that sounds

0585

 1 accurate.

 2 Q Well, if you have a question about whether

 3 that's accurate, I'm happy to show you where you made

 4 that argument or where Shuttle Express made the

 5 argument in the Petition for Review. Would you like

 6 to review it?

 7 A I'm confident that you're correct.

 8 Q You offered some testimony about

 9 SpeediShuttle's multilingual hiring practices. I'll

10 refer you to WAM-1T at page 9. On line 6 to 7, you

11 state "To start with, they do not seek out foreign

12 language speakers in hiring."

13 Did I read that correctly?

14 A Yes.

15 Q Are you basing this statement purely on

16 SpeediShuttle's job application and listings on its

17 web page?

18 A Not solely, no.

19 Q What other information do you base that

20 statement on?

21 A Additional information is communications,

22 personal communications, with individuals who have

23 spoken with representatives at SpeediShuttle.

24 Q Okay. Have you ever interviewed for a job at

25 SpeediShuttle?

0586

 1 A I have not personally, no.

 2 Q Okay. So you don't have any personal

 3 knowledge of what their job hiring process is like and

 4 what the interview would entail; correct?

 5 A I do not know what the interview would entail,

 6 no.

 7 Q So you don't ask or you don't know if

 8 SpeediShuttle asks about the languages prospective

 9 employees speak, do you?

10 A I do not know what conversations they have,

11 no.

12 Q You know that SpeediShuttle has, in fact,

13 hired drivers and greeters who speak languages other

14 than English; correct?

15 A Of course.

16 Q You've offered as an exhibit identified as

17 WAM-6 SpeediShuttle's response to Shuttle Express's

18 Data Request 1 that lists the languages of its

19 receptive team members; correct?

20 MR. HARLOW: Your Honor, if you'd give

21 me a minute, please.

22 JUDGE PEARSON: Sure.

23 MR. HARLOW: I believe this was

24 admitted.

25 JUDGE PEARSON: This was WAM-6; right?

0587

 1 MR. FASSBURG: Yes.

 2 MR. HARLOW: Okay. No objection.

 3 A The characterization, I believe, of it is

 4 incorrect, but, yes, it is a listing of a data

 5 response that provides all of the multilingual

 6 employees at SpeediShuttle.

 7 Q Okay. That list includes both drivers and

 8 greeters; correct?

 9 A As well as other positions, yes.

10 Q Sure. That wasn't my question. But you've

11 answered it enough.

12 Now, on that list, do you find that there are

13 both greeters and drivers who speak languages other

14 than English?

15 A Yes.

16 Q Do you have that list in front of you?

17 A I do.

18 Q Would you agree with me that there's actually

19 quite a few languages the drivers and greeters speak?

20 A Yes. There are multiple languages.

21 Q Now, in your testimony at WAM-1T on page 9,

22 lines 12 to 16, you state -- I'm sorry. It's actually

23 13 to 16. You state "From the list, the languages do

24 not reflect any effort to target unserved foreign

25 passengers. Rather, it reflects the nationalities or

0588

 1 background of people who apply for unskilled and

 2 minimum wage jobs in the Seattle area."

 3 Did I read that correctly?

 4 A Yes.

 5 Q Are you saying here that there's a certain

 6 kind of multilingual or non-English-speaking passenger

 7 that count and some who don't?

 8 A No. That's not what I'm saying.

 9 Q So you would agree with me, then, that as far

10 as non-English-speaking passengers go, SpeediShuttle

11 has, in fact, offered receptive team members that

12 speak the potential languages of non-English-speaking

13 customers; correct?

14 A To some extent, yes.

15 Q Mr. Morton, in that testimony you read, he

16 said, We'll do our best to hire multilingual receptive

17 teams to serve some of our passengers; correct? I

18 think it was on page 24.

19 A No. He said, We will do our best to hire

20 multilingual receptive teams so we can communicate

21 with some of the people that are from different

22 countries.

23 Q Okay. Operative word being "some." You agree

24 with me that it will serve some of the passengers, and

25 he promised, in your words, to serve some of the

0589

 1 customers; correct?

 2 A Yes.

 3 Q Thank you. Now, you stated on page 10 of

 4 WAM-1, on lines 10 to 12, speaking about the people

 5 that SpeediShuttle has hired, "There are some Spanish

 6 speakers, but that was never identified as an unserved

 7 demographic and we in fact serve it."

 8 Did I read that correctly?

 9 A Yes.

10 Q You read to us Mr. Morton's testimony a moment

11 ago in which he actually identified as

12 Spanish-speaking passengers as some of the people that

13 they have served in Honolulu and would expect to serve

14 here; correct?

15 A Yes.

16 Q Did you offer any testimony at the application

17 hearing or did Mr. Kajanoff offer any testimony at the

18 application hearing suggesting that Spanish-speaking

19 passengers were already receiving multilingual service

20 from Shuttle Express?

21 A Yes.

22 Q Where is that testimony?

23 A So on transcript page 70, which is the

24 cross-examination of myself by Mr. Beattie from the

25 Attorney General's Office, lines 21 through 24, my --

0590

 1 we'll start with line 18, which is Mr. Beattie's

 2 question, which is: For customers booking

 3 door-to-door service within King County, does

 4 SpeediShuttle provide any bilingual services?

 5 My answer on line 21 or beginning on line 21:

 6 We do have several agents who speak multiple

 7 languages. We also have several drivers that are

 8 multilingual that we use for both our regulated as

 9 well as nonregulated services for the public.

10 Q And I didn't hear the word "Spanish" in there.

11 Did I miss it?

12 A No. We did not isolate Spanish specifically

13 as one of the languages.

14 Q And you would agree with me the Commission

15 didn't identify specific languages either; correct?

16 MR. HARLOW: I think the record speaks

17 for itself, and I'm not sure Mr. Marks should be

18 testifying to a whole record.

19 MR. FASSBURG: I think that sounds like

20 a speaking objection as opposed to a legal objection.

21 MR. HARLOW: It's an objection. It's

22 an inappropriate question.

23 JUDGE PEARSON: I do think he already

24 answered it.

25 MR. FASSBURG: That's fine.

0591

 1 BY MR. FASSBURG:

 2 Q Now, at WAM-1T, on page 18, going back to

 3 hiring practices on line 17 to 21 --

 4 A Which page?

 5 Q Page 18 -- I'm sorry. I have a wrong

 6 reference again. We'll be on 3T this time.

 7 A Thank you.

 8 Q Beginning on line 17, the question is: "Well,

 9 is SpeediShuttle at least making an effort to hire

10 multilingual drivers and greeters as Mr. Roemer

11 testified?"

12 You answered: "Not in a meaningful way. As

13 discussed above, we looked at the pages of their

14 website that is geared to attracting new hires. The

15 pages that are for drivers and greeters say nothing

16 about languages. And their employment applications

17 have nothing about languages. Mr. Roemer claimed that

18 their Craigslist ads mention languages, but we could

19 not validate that, except for the most current ad."

20 Did I read that correctly?

21 A Yes.

22 Q When you found the most current ad, did it, in

23 fact, include a listing that suggested they were

24 seeking to hire multilingual drivers?

25 A I believe, yes, it did.

0592

 1 Q Okay. So did you find any other job

 2 advertisements beyond SpeediShuttle's website and its

 3 own job application?

 4 A I don't recall if we actually ended up

 5 searching or not. I know we discussed it, but I don't

 6 recall specifically.

 7 Q So when you say SpeediShuttle is not making a

 8 meaningful effort to hire multilingual drivers and

 9 greeters, you're just referring to the SpeediShuttle

10 website and job application and whatever ads you found

11 when you searched; correct?

12 A That would be -- that would be accurate, yes.

13 Q And you actually don't know beyond that what

14 efforts SpeediShuttle has taken; correct?

15 A Beyond what was found and what was asked for,

16 no.

17 Q Now, you also provided testimony in WAM-1T on

18 page 11 I'd like to ask you about.

19 A 1T, page 11?

20 Q Correct.

21 A Okay.

22 Q You state, beginning on line 3, "We know from

23 over a year of experience that SpeediShuttle is not

24 really carrying unserved Chinese, Japanese, and Korean

25 passengers in any meaningful numbers."

0593

 1 Did I read that correctly?

 2 A Yes.

 3 Q Does that mean that you are not discussing any

 4 other languages for which SpeediShuttle's passengers

 5 speak?

 6 A That statement was very directed to those

 7 individual languages but I think could be broadened

 8 beyond that.

 9 Q Are you suggesting here, once again, that

10 perhaps they were supposed to be limited to only those

11 three languages?

12 A No. Those are the three languages that I

13 specified in the question and response.

14 Q Okay. So in the graph that you've provided

15 and the data that you're analyzing, you were looking

16 specifically for evidence that SpeediShuttle served

17 passengers speaking Chinese, Japanese, and Korean;

18 correct?

19 A No. The graph would indicate any increase in

20 passengers from any unserved demographic.

21 Q What was this chart based on? Let me make

22 that more clear. What was the data that you were

23 using to create the chart?

24 A I believe this data was trips provided by the

25 Port of Seattle through a public records request.

0594

 1 Q Does the Port of Seattle trips information

 2 include the demographics of the passengers who are

 3 being transported?

 4 A Not on the trip data, no.

 5 Q Does the Port of Seattle provide information

 6 about passenger demographics anywhere else that you're

 7 aware of?

 8 A Not that I'm aware of the specific passengers,

 9 no.

10 Q So in your analysis here, you're only talking

11 about actual trip counts and the trends as opposed to

12 the demographics of the passengers, if I understand

13 you?

14 A Yes. This is looking at the specific trip

15 counts alone.

16 Q So if I understand your testimony correctly

17 here on page 11, you're suggesting that SpeediShuttle

18 could not have began to serve new customers because

19 the total trips between SpeediShuttle and Shuttle

20 Express went down from Shuttle Express's prior year;

21 correct?

22 A So the question was that SpeediShuttle could

23 not have -- I'm sorry. Can you repeat the question?

24 I want to make sure I answer correctly.

25 Q I'll break it up for you a little bit. In the

0595

 1 chart, we start with a period of time in which

 2 SpeediShuttle did not offer service in Washington;

 3 correct?

 4 A Yes.

 5 Q And over its first few months here in

 6 Washington, the period that you're providing analysis

 7 of, obviously, its passenger count went up because it

 8 comes from zero to some number; correct?

 9 A Yes.

10 Q Okay. If I understand your analysis, you're

11 comparing the number they are serving plus the number

12 you're serving and how that trend goes over time;

13 correct?

14 A Yes.

15 Q Okay. So what you've done is you've taken a

16 period of time during which only Shuttle Express is

17 transporting passengers and then a period of time in

18 which both are transporting passengers; correct?

19 A Yes.

20 Q Okay. Now, within those trends, we have no

21 information about the demographics because we've just

22 covered that. So your conclusion is that

23 SpeediShuttle's increase cannot include unserved

24 passengers because the total trips went down compared

25 to the time when only Shuttle Express is serving; is

0596

 1 that right?

 2 A Yes.

 3 Q Okay. Isn't it also possible that Shuttle

 4 Express's decline has simply exceeded SpeediShuttle's

 5 increase in non-English-speaking passengers?

 6 A It's possible.

 7 Q And you have no information that would suggest

 8 which answer is actually correct, do you?

 9 A Nothing more than these trip numbers at this

10 point.

11 Q And I think this has been covered to death,

12 but you agree trips do not equal total passengers;

13 correct?

14 A Absolutely.

15 Q Now, you provided some testimony at WAM-1T on

16 page 4 that I'd like to ask you about. You were

17 asked, beginning at line 9, "Do you have an opinion as

18 to the cause of that decline," referring to Shuttle

19 Express's decline in passengers and trips.

20 And you answered, beginning at line 10, "Yes.

21 Over the last several years, there has been a

22 considerable shift in the consumer market and the

23 options available to that market. Gas prices have

24 dropped in recent years and stayed reasonably low,

25 causing more people to consider driving themselves to

0597

 1 the airport, or in taking a...trip in general. SeaTac

 2 Airport has also latched on to these lower gas prices

 3 and now actively promotes to its travelers to drive to

 4 the airport and use 'No Shuttle' as their advertising

 5 puts it."

 6 Did I read that correctly?

 7 A You omitted the word "driving." "In taking a

 8 driving trip." Other than that, yes, it's accurate.

 9 Q Thank you for the correction.

10 Your point here is that part of the reason

11 Shuttle Express is declining is due to competition

12 from other options; correct?

13 A That's partially, yes.

14 Q Here on line 16, you add, "Sound Transit also

15 recently just completed an expansion of its light rail

16 system, continuing it south beyond the airport, and

17 north past the downtown core and into the University

18 of Washington area."

19 Did I read that correctly?

20 A Yes.

21 Q Are you familiar with the reported traffic

22 numbers on the light rail since the expansion to the

23 University of Washington?

24 A Not specifically, but I'm aware that there

25 have been some.

0598

 1 Q Do you generally understand that light rail

 2 has seen a significant increase in passengers since

 3 that expansion occurred?

 4 A That would be my understanding.

 5 Q When did that expansion get completed?

 6 A I'm sorry. I don't recall.

 7 Q Does 2016 sound accurate?

 8 A Subject to check, I believe that's probably

 9 right.

10 Q You state on line 18, "And more recently, both

11 the entry of SpeediShuttle and TNC's -- or

12 Transportation Network Companies -- such as Uber and

13 Lyft into the airport ground transportation business

14 at SeaTac Airport have accelerated the decline in our

15 business."

16 Did I read that correctly?

17 A Yes.

18 Q When did TNCs first begin to operate at the

19 airport with the Port of Seattle's approval?

20 A I believe -- you know, I don't want to

21 speculate. I don't remember exactly. It was April or

22 March or April or May. I don't remember the year.

23 Q Does 2016 sound correct?

24 A It would, yes.

25 Q So if you've got increased transportation

0599

 1 options seeing an increase in passengers around the

 2 same time of SpeediShuttle's entry to the market,

 3 couldn't those possibly explain why Shuttle Express's

 4 trip numbers went down in excess of its prior trend?

 5 A Partially, but that decline had already begun

 6 with the TNCs not being allowed at the airport while

 7 they were still serving it.

 8 Q You don't have any specific numbers that could

 9 tell the Commission how many of your Shuttle Express

10 prior passengers were lost to TNCs, do you?

11 A I do not, no.

12 Q And the same would be true for the flat rate

13 taxis; correct?

14 A That would be correct.

15 Q And the same would be true for light rail?

16 A That would be correct as well as any other

17 service.

18 Q Now, when Mr. Roemer offered some data to show

19 that the actual passengers from Sea-Tac were changed

20 over time, you critiqued that testimony. Do you

21 recall that?

22 A I do.

23 Q I'll refer you to WAM-3T on page 22.

24 Beginning at the top of the page, the question was:

25 "Do you have any comments on Mr. Roemer's chart at

0600

 1 showing Shuttle Express Passengers decreasing over

 2 time while SeaTac Arrival Trips are increasing over

 3 time?"

 4 Did I read the question correctly?

 5 A Yes.

 6 Q You answered: "I do. The chart that

 7 Mr. Roemer presented appears to be misleading on its

 8 face. We submitted a data request to see the

 9 information that was used for this chart, and upon

10 examination it appeared that Mr. Roemer used total

11 passenger data from the annual reports we have

12 submitted, and compared that to information provided

13 by the Port of Seattle regarding all trips for all

14 types of ground transportation operators departing

15 SeaTac Airport."

16 Did I read that correctly?

17 A Yes, sir.

18 Q You go on to describe your complaint with that

19 comparison on line 11, "There is a very large problem.

20 First, Mr. Roemer is comparing apples to oranges by

21 comparing passengers to trips."

22 Did I read that correctly?

23 A Yes.

24 Q Okay. We've already discussed more than once

25 that trips include potentially more than one

0601

 1 passenger; correct?

 2 A Yes.

 3 Q So your complaint is that it's comparing your

 4 actual number of passengers for Shuttle Express to

 5 trips, which are potentially more than one passenger,

 6 on the other side; correct?

 7 A Yes.

 8 Q So your complaint is that there might actually

 9 be far more passengers going to or from Sea-Tac

10 Airport in one category while the other is only

11 passengers; correct?

12 A No. That's not my complaint.

13 Q So you are saying here that you're complaining

14 it's comparing passengers to trips. What is your

15 complaint about the use of trips?

16 A The complaint about the use of trips is that

17 if you're going to compare something to trips, trips

18 needs to be the other data set being used in the

19 comparison.

20 Q Isn't it actually more favorable to Shuttle

21 Express to compare Shuttle Express's passengers to

22 trips from Sea-Tac Airport if, in fact, trips could,

23 in fact, be a much larger number if we included all of

24 the passengers in each of those trips?

25 A I don't know if it would be favorable or not.

0602

 1 Q If a shuttle can carry up to 10 passengers but

 2 it's only counted as one trip, it might, in fact, be

 3 tenfold more for a particular trip than the single

 4 trip as a count towards the total; correct?

 5 A You could look at it that way, yes.

 6 Q Okay. So in terms of fairness, this is

 7 actually more conservative in favor of Shuttle Express

 8 than if we used all passengers, is it not?

 9 A I don't agree with that.

10 Q You say "Second" -- on line 12, "Second, the

11 data provided in Shuttle Express annual reports is

12 related to ALL regulated activities, not simply our

13 airport arrival passengers."

14 Now, when Shuttle Express is marketing and

15 attempting to gain passengers, is it worried only

16 about a particular set of passengers who go to and

17 from Sea-Tac Airport?

18 A Depending on marketing material.

19 Q Okay. I don't mean specific marketing

20 material. Are you trying to gain market share

21 specifically from only a subset or from any passenger

22 who might be going to and from Sea-Tac Airport?

23 A It would be the latter part. Every passenger

24 that was a potential passenger.

25 Q So if we're trying to figure out what the

0603

 1 market might potentially be for shuttle passengers

 2 going to and from the airport, wouldn't we want to

 3 look at all passengers going to and from the airport?

 4 A Sorry. Could you repeat the first part?

 5 Q If we're trying to figure out what the market

 6 might be for potential passengers on a door-to-door

 7 service, wouldn't we want to look at all passengers

 8 who were going to and from the airport?

 9 A You could look at that, yes.

10 Q Okay. So considering those things, if you're

11 trying to figure out whether or not there's actually

12 the potential for growth of a particular subset of

13 passengers or in general, wouldn't it actually be

14 helpful to know all of the people going to and from

15 the airport?

16 A Potentially, yes.

17 Q I'd like to ask you a question about a

18 document that's been marked WAM-20X.

19 MR. FASSBURG: I understand it has not

20 been admitted?

21 JUDGE PEARSON: Let me pull that up.

22 MR. HARLOW: I'm sorry. I didn't catch

23 the number.

24 MR. WILEY: 20X.

25 MR. HARLOW: WAM-20X?

0604

 1 MR. WILEY: Yes.

 2 JUDGE PEARSON: With respect to this, I

 3 believe what we decided was that we wouldn't admit it

 4 but that you would ask -- you could ask questions

 5 about it.

 6 Mr. Harlow, you agreed to that?

 7 MR. HARLOW: I think that's right. I'd

 8 like to see some foundational questions before we get

 9 into the meat of it.

10 MR. FASSBURG: I appreciate that.

11 That's where I was going to start.

12 BY MR. FASSBURG:

13 Q Mr. Marks, do you have that exhibit in front

14 of you?

15 A I do.

16 Q Have you ever seen that before?

17 A I saw it when we received the evidence

18 submission for this case.

19 Q Are you familiar with that particular

20 newsletter?

21 A I am not.

22 Q Do you receive a newsletter from Visit

23 Seattle?

24 A I do not.

25 Q Do you engage with Visit Seattle in any way?

0605

 1 A Our business does, yes.

 2 Q Are you familiar with who they are?

 3 A I am familiar with them.

 4 Q Do you question the authenticity of this

 5 particular document?

 6 MR. HARLOW: Objection, no foundation.

 7 MR. FASSBURG: I asked if he questions

 8 it. That's all I asked.

 9 MR. HARLOW: The implication is that if

10 he doesn't question it that he's validating it. He's

11 never seen it. He doesn't know what it is. I don't

12 see how he can really answer that question. There's

13 no foundation.

14 JUDGE PEARSON: I thought that we

15 weren't going to move to admit it.

16 MR. FASSBURG: I haven't moved to admit

17 it. I'm just asking if he questions it.

18 A I would have no way to tell one way or another

19 because I've never received it.

20 Q Have you seen from any other source

21 information about arrivals at the port of entry in

22 Seattle that regard the countries from which

23 passengers have been arriving?

24 A Yes, I believe I have.

25 Q Is it your understanding that there is an

0606

 1 upward trend in passengers who speak languages other

 2 than English?

 3 A I don't believe I can make that assumption

 4 based on the data.

 5 Q Assuming the information provided in WAM-20X

 6 to be true, does it not, in fact, show that there are

 7 upward trends for persons who speak Chinese and a

 8 number of languages, in fact?

 9 JUDGE PEARSON: Can you tell me what

10 page?

11 MR. HARLOW: Same objection. No

12 foundation still.

13 MR. FASSBURG: I'm sorry. There are

14 not page numbers in the particular newsletter. I

15 believe it's --

16 JUDGE PEARSON: It's page 22. It's the

17 second to last page in the pdf document, so I would

18 assume it's the second --

19 MR. FASSBURG: Sure. I was looking at

20 probably what would be the third to last page because

21 there's two pages showing that information.

22 JUDGE PEARSON: I see that. And,

23 Mr. Harlow, with respect to your objection --

24 MR. HARLOW: If I may modify this

25 statement, if Mr. Fassburg can represent this is Port

0607

 1 of Seattle data, I would not object to this table at

 2 the top of the page coming in. It's entitled

 3 "Arrivals with First Intended Address of Washington

 4 State."

 5 MR. FASSBURG: I can't represent what

 6 it is because I didn't create it.

 7 MR. HARLOW: Well, then there's just no

 8 foundation to know that this is valid or accurate.

 9 MR. FASSBURG: I'll move on.

10 JUDGE PEARSON: Okay.

11 BY MR. FASSBURG:

12 Q Mr. Marks, did you receive Port of Seattle

13 press releases?

14 A I believe I have received some, yes.

15 Q Did you see the press release from April 27,

16 2017, in which the Port of Seattle stated that it

17 expects this to be the biggest cruise season ever with

18 one million passengers on 218 vessels making Seattle

19 the biggest cruise port on the West Coast?

20 A I don't believe I received that one.

21 Q I'd like to refer you to WAM-1T to page 23

22 discussing tech-savvy passengers. On lines 12

23 forward, you state, "Specifically speaking to the

24 demographic of tech-savvy tourists, it would appear

25 that the vast majority of those passengers are opting

0608

 1 for the unregulated options now available at the

 2 airport, such as Uber."

 3 Did I read that correctly?

 4 A Yes.

 5 Q Why did you state specifically tech-savvy

 6 tourists?

 7 A My understanding is that is specifically one

 8 of the markets that businesses such as Uber market

 9 direct to.

10 Q Okay. Are there -- is there a different

11 demographic that's tech-savvy passengers who are not

12 tourists?

13 A By definition, a tourist that is at their home

14 location would not be a tourist anymore.

15 Q That wasn't really my question. Are there

16 tech-savvy passengers who are not tourists?

17 A I would say yes.

18 Q Why did you specifically limit your response

19 to tech-savvy tourists?

20 A I believe that was the language in one of the

21 orders.

22 Q So if I understand you correctly, you believe

23 that SpeediShuttle's business model is supposed to be

24 tech-savvy tourists; is that right?

25 A That would be my belief based on the order's

0609

 1 interpretation.

 2 Q So that's your interpretation of Order 04, do

 3 I understand that correctly?

 4 A I believe that's correct.

 5 Q Okay. Now, we've talked about this a little

 6 before, but I want to be clear. Are you suggesting

 7 that SpeediShuttle, by that order, is supposed to be

 8 limited to serving tech-savvy tourists passengers in

 9 addition to multilingual passengers?

10 A The question was: Do I believe they are

11 supposed to be restricted to that group; correct?

12 Q Yes.

13 A My answer to that would be no.

14 Q Okay. Just to clarify, because you make some

15 comments that I didn't quite understand in your

16 testimony, are you suggesting that SpeediShuttle was

17 supposed to be restricted to serving any particular

18 demographic, whether it be tech-savvy tourists or

19 multilingual?

20 A I don't believe a restriction is the language.

21 No, I don't believe restriction.

22 Q Now, do you have any specific data that could

23 say one way or another whether tech-savvy passengers

24 are all going to one mode of transportation versus

25 another?

0610

 1 A No.

 2 Q Do you have any specific information that

 3 could help the Commission understand what modes of

 4 transportation tech-savvy tourists are using?

 5 A No.

 6 Q Is this largely your guess as to what they are

 7 using?

 8 A Yeah. Beyond what's already been provided,

 9 yes.

10 Q Can you clarify what you mean by "what's

11 already been provided"?

12 A The evidence submitted in these consolidated

13 dockets already as far as testimony and other

14 evidence.

15 Q Do you agree with me that if you're trying to

16 gain market share at the Sea-Tac Airport with respect

17 to passengers traveling to or from Sea-Tac Airport it

18 would be wise to compete for tech-savvy tourists?

19 A Absolutely.

20 Q Do you agree that you would want to compete

21 for tech-savvy passengers?

22 A Absolutely.

23 Q Are you suggesting in any way that

24 SpeediShuttle has failed to provide options by which

25 it might try to compete for those passengers?

0611

 1 A No.

 2 Q You've provided testimony in WAM-1T at page 17

 3 I'd like to ask you about. You provided here some

 4 observations that you made regarding the personal

 5 greeters being used at Sea-Tac Airport by

 6 SpeediShuttle.

 7 How many days did you spend observing

 8 SpeediShuttle's greeters?

 9 A In terms of calendar days that I observed at

10 the airport?

11 Q Yes.

12 A It was in excess of five.

13 Q Okay. How many hours of each of those days

14 did you spend at Sea-Tac?

15 A At least two.

16 Q Now, outside of what sounds like,

17 approximately, ten hours, do you have any personal

18 information regarding whether or not SpeediShuttle

19 provided greeters at the airport?

20 A Outside of my personal observations --

21 Q I'm only asking about your personal knowledge.

22 A Yes.

23 Q What information do you have in your personal

24 knowledge outside of those ten hours?

25 A I've spoken with guests who have ridden with

0612

 1 SpeediShuttle that have not been greeted.

 2 Q So beyond individual guests who claim they

 3 were not greeted -- and, actually, let me stop that

 4 and start over. How many guests have you spoken to?

 5 A At least two.

 6 Q Do you know the circumstances under which

 7 those guests were not greeted according to

 8 SpeediShuttle?

 9 A No. I have not asked SpeediShuttle.

10 Q Okay. So other than what the guests said

11 about what their experience was from their perspective

12 in your ten hours, do you have any other personal

13 information about SpeediShuttle's greeters?

14 A For clarification, it was excess of ten hours.

15 I said a minimum of two hours on five days. No. I do

16 not have any additional information beyond that.

17 Q Would you agree with me that there are many

18 days and many hours SpeediShuttle operates at the

19 airport on which you have no personal information?

20 A Yes.

21 Q Okay. And you can't say whether or not

22 SpeediShuttle successfully greeted its passengers

23 during that period of time because you have no

24 knowledge about which you can provide observations;

25 correct?

0613

 1 A No.

 2 Q Okay. Let's -- just to clarify, I'm referring

 3 to your personal knowledge. So other than what we've

 4 just discussed, outside of that, you can't say one way

 5 or another from your personal knowledge what

 6 SpeediShuttle has done to meet its guests with

 7 personal greeters; correct?

 8 A From personal knowledge, no.

 9 Q Thank you.

10 I'd like to refer you to WAM-1T, page 18. I'm

11 sorry. Page 14.

12 You state here "...there has been at least one

13 wholesale provider who signed an agreement with

14 SpeediShuttle who have asked Shuttle Express to serve

15 [sic] them instead, clearly indicating that the need

16 for the additional provider did not serve the guests

17 through special...services, but rather as a

18 provider" --

19 A I'm sorry. Could you please repeat the page

20 or the line because I don't see it.

21 Q It's page 14, and I probably didn't give you

22 the line is probably the problem. Starting on

23 page 20.

24 JUDGE PEARSON: Line 20 or page 20?

25 MR. FASSBURG: Excuse me. Thank you.

0614

 1 Page 14, line 20 is what I have, and that is correct.

 2 A I see. Thank you.

 3 Q "Additionally, there has been at least one

 4 wholesale provider who signed an agreement with

 5 SpeediShuttle who have asked Shuttle Express to

 6 service them instead, clearly indicating that the need

 7 for the additional provider did not serve these guests

 8 for special different services, but rather as a

 9 provider serving the same market as already existed

10 with Shuttle Express."

11 Are you referring here to SMS?

12 A That is one of them, yes.

13 Q Shuttle Express is not, in fact, providing

14 greeters to SMS passengers; correct?

15 A That has not been requested, no.

16 Q Now, referring back to WAM-1T on page 17,

17 beginning on line 11 -- actually, on line 10, you

18 state "In the application hearing, Mr. Morton

19 testified, even emphasized, that they had 60 receptive

20 teams in Oahu alone. They have nothing like that kind

21 of presence in SeaTac."

22 Did I read that correctly?

23 A Yes.

24 Q Were you expecting that SpeediShuttle would

25 have 60 receptive teams at Sea-Tac?

0615

 1 A No.

 2 Q In fact, with a commencement fleet of

 3 18 vehicles, it would be nonsensical to have 60

 4 receptive teams at Sea-Tac?

 5 A If those were the circumstances -- actually, I

 6 can't say that that would be correct or not. It would

 7 depend on the passenger volume.

 8 Q It would seem a little excessive, wouldn't it?

 9 A It could be, yeah.

10 Q If you'll turn the page to page 18, beginning

11 on line 8, you state, respecting the provision of a

12 kiosk and walk-up service by SpeediShuttle, "In emails

13 released by the Port of Seattle through a public

14 records request, it was said that SpeediShuttle

15 intended to be a direct competitor with Shuttle

16 Express and wished to serve the market in an identical

17 way as was already being provided."

18 Did I read that correctly?

19 A Yes.

20 Q Other than wishing to have a kiosk similar to

21 Shuttle Express and having signage similar to Shuttle

22 Express's in the airport, is there anything

23 specifically SpeediShuttle said that would demonstrate

24 it intended to be a direct competitor with Shuttle

25 Express and wished to serve the market in an identical

0616

 1 way?

 2 A They additionally asked to utilize some of the

 3 lease space that we have specifically for Shuttle

 4 Express behind our counter.

 5 Q And did that occur?

 6 A It was not allowed, no.

 7 Q So other than those three things, is there

 8 something that they wanted from the Port of Seattle

 9 that would somehow demonstrate they were providing

10 service in an identical way?

11 JUDGE PEARSON: Can I just stop you

12 there for a second?

13 MR. FASSBURG: Yes.

14 JUDGE PEARSON: Can you clarify what

15 you mean by the leased space?

16 MR. MARKS: Certainly. So there are --

17 there is a location right next to the ground

18 transportation booth that is under a specific lease

19 agreement. Shuttle Express shares that space with a

20 limousine company. It's almost a back office area.

21 It's open to the public, but it is separate. And it

22 is not currently where we accept customer check-ins,

23 reservations. That is separate from the guest

24 check-in area. It's like an employee storage area.

25 JUDGE PEARSON: I was just clarifying

0617

 1 whether it was near the kiosk or not, but this is

 2 separate?

 3 MR. MARKS: It's about 50 to 100 feet

 4 away.

 5 JUDGE PEARSON: Okay. Thank you.

 6 BY MR. FASSBURG:

 7 Q Now, are you claiming that simply using a

 8 kiosk and providing walk-up service to passengers

 9 makes SpeediShuttle the same service as Shuttle

10 Express?

11 A That alone would not, no.

12 Q Will you please turn to page 14 on WAM-1T.

13 JUDGE PEARSON: Fourteen, you said?

14 MR. FASSBURG: Fourteen.

15 Q Here on line 15 -- my line is off again.

16 MR. HARLOW: I'm wondering, I thought

17 we were close to finishing on Wednesday. I don't know

18 if we're getting anywhere close after an hour.

19 JUDGE PEARSON: Let's let him finish

20 that question, and then we'll talk about that and

21 taking a break.

22 Q Okay. So I have the wrong page, and that's

23 the problem. On page 15, the question is: "What does

24 the fact" -- beginning on line 15, "What does the fact

25 that the majority of SpeediShuttle's passenger

0618

 1 reservations come from wholesale bookings mean in

 2 terms of whether they are following their proposed

 3 business model?"

 4 You answer: "What it means is that these

 5 wholesale bookings were not an unserved demographic,

 6 but merely an effective and seemingly deliberate

 7 effort for SpeediShuttle to gain a sizeable share of

 8 the passengers we were already serving satisfactorily,

 9 which they did very quickly."

10 Did I read that correctly?

11 A Yes.

12 Q Now, you understood that SpeediShuttle would

13 use wholesales at the application hearing because

14 its -- one of its shipper's support statements came

15 from GO Group; correct?

16 A Yes.

17 Q And, in fact, had multiple wholesalers who

18 were supporting it, and that's no surprise that

19 SpeediShuttle uses wholesalers to grow its business;

20 correct?

21 A Yes.

22 Q But you say you were already satisfactorily

23 serving those passengers that SpeediShuttle gained

24 from wholesalers; correct?

25 A Yes.

0619

 1 Q I think you stated yesterday -- or I'm sorry.

 2 Wednesday when we began your examination that you are

 3 responsible for regulatory compliance for Shuttle

 4 Express; correct?

 5 A I am now, yes.

 6 Q How long have you held that position?

 7 A I believe it was about two years is what I

 8 stated.

 9 Q As part of your role in providing regulatory

10 compliance for Shuttle Express, have you determined

11 what regulatory obligations Shuttle Express is

12 obligated to comply with?

13 A I don't determine them, no.

14 Q Have you reviewed them to help ensure Shuttle

15 Express complies with the rules and regulations that

16 it is obligated to comply with?

17 A Yes.

18 Q Have you also reviewed past enforcement or

19 complaint procedures to determine what Shuttle

20 Express's history has been with respect to regulatory

21 compliance?

22 A Only on occasion when necessary.

23 Q Are you familiar with Shuttle Express's past

24 use of independent contractors?

25 A I am aware of it.

0620

 1 Q Have you ever reviewed the information

 2 contained in Seattle SuperShuttle's application

 3 proceeding?

 4 A I've never heard of that company.

 5 JUDGE PEARSON: Mr. Fassburg, are we

 6 going down a different line of questioning? Because

 7 maybe we should take a break.

 8 MR. FASSBURG: That's fine.

 9 JUDGE PEARSON: And with respect to

10 your concerns, Mr. Harlow, I'm also interested in kind

11 of establishing a time line. Because if we have

12 Mr. Roemer estimated as five hours of cross, is that

13 still accurate, Mr. Harlow, or is that --

14 MR. HARLOW: It's going to depend, in

15 large part, on whether you admit the deposition

16 excerpts. We submitted, roughly, 70, 80 pages of

17 deposition transcript. That was about a third of the

18 transcript. The transcript took a whole day.

19 JUDGE PEARSON: But a lot of it is

20 blacked out. I looked through everything.

21 MR. HARLOW: That's true, but that's

22 two or three hours of questioning and so forth that we

23 could avoid if that's admitted.

24 JUDGE PEARSON: Okay. And then with

25 respect to the rest of the time estimates, it looks

0621

 1 like about another hour with Staff's witnesses, hour

 2 and we'll say an hour and a half just to be safe. So

 3 with that putting us at, potentially, up to six and a

 4 half hours, how much time do you think you still need

 5 with Mr. Marks?

 6 MR. FASSBURG: I'm going to estimate an

 7 hour.

 8 JUDGE PEARSON: Another hour, which

 9 would put us about 10:45. So if anyone is faster at

10 math than me, speak up.

11 MR. HARLOW: We have two and a half

12 days of hearing and two days to fit it in. I wish we

13 could move Mr. Marks a little faster. I think there's

14 a lot of repetitiveness in these questions.

15 MR. FASSBURG: There may be a small

16 amount of repetitiveness. Some of that is due to the

17 witness not understanding the question, and some of it

18 is due to the amount of testimony on which I'm asking

19 him questions.

20 I'll say I don't know what you're going to do.

21 I think you shouldn't make any rulings right now. My

22 thought is a lot of the questions that he says he'll

23 need to ask if he can't admit the deposition

24 transcript portions that he seeks to admit are

25 unhelpful to the Commission, and they probably are not

0622

 1 going to move this hearing faster, nor help the

 2 Commission. I'm going to make an objection. We can

 3 take it up later, but that may save some time

 4 depending on your ruling.

 5 JUDGE PEARSON: What I will need to do,

 6 most likely, is quickly review those again, because,

 7 as I've said, I did read them, but I didn't retain

 8 them. I'll have to look over those again, and that

 9 may speed things up depending on what I decide.

10 Let's take a break right now, let's say, for

11 seven minutes. We'll come back at five till, and then

12 we'll proceed with Mr. Marks at that time.

13 (A break was taken from 9:48 a.m. to

14 9:59 a.m.)

15 JUDGE PEARSON: Back on the record.

16 We'll proceed with Mr. Marks. Once you're finished

17 with him, I think we'll probably take a 10- to

18 15-minute recess so I can review those portions of the

19 deposition, and then, most likely, what I'll do is

20 come back and let you know which portions I'm going to

21 admit and not admit and why. And then we can go

22 forward, and that should help cut down the time, I'm

23 thinking.

24 MR. HARLOW: Okay.

25 JUDGE PEARSON: Okay. So you may

0623

 1 proceed. Thank you.

 2 BY MR. FASSBURG:

 3 Q Mr. Marks, to try to accelerate this, I'll

 4 make a representation to you that in Seattle

 5 SuperShuttle's application to provide auto

 6 transportation, Shuttle Express was a protestant, and

 7 Seattle SuperShuttle alleged that Shuttle Express was

 8 not providing service to its satisfaction of the

 9 Commission because it was transporting overflow via

10 limousines and taxi drivers, specifically town cars

11 and taxis.

12 Are you familiar with a period of time in

13 Shuttle Express's history when that was occurring?

14 A The question am I familiar with the period of

15 time when the passengers were being transported by

16 town cars, yes, I am.

17 Q And what about when they were being

18 transported by taxicabs?

19 A I'm aware that that's happened, yes.

20 Q Are you familiar with the fact that at that

21 time Mr. John Rowley testified that actually was

22 occurring when there was overflow where Shuttle

23 Express really couldn't transport those passengers?

24 A I'm not aware where he testified.

25 JUDGE PEARSON: Who was that, you said?

0624

 1 MR. FASSBURG: John Rowley.

 2 JUDGE PEARSON: Who is he?

 3 MR. FASSBURG: He was the president of

 4 Shuttle Express at the time.

 5 JUDGE PEARSON: Before Mr. Kajanoff?

 6 MR. FASSBURG: Yes.

 7 BY MR. FASSBURG:

 8 Q I'm not going to find you the page and line

 9 right now to read with you. But for the record, this

10 is in the transcript which we have submitted as

11 Exhibit 38X on pages 306 to 309.

12 JUDGE PEARSON: Okay. I took

13 official --

14 MR. HARLOW: WAM-38X?

15 MR. FASSBURG: Yes, WAM-38X.

16 JUDGE PEARSON: And I took official

17 notice of that, and this is -- was this Shuttle

18 Express at the time, or was it operating under a

19 different name?

20 MR. FASSBURG: I believe --

21 MR. HARLOW: Name hasn't changed.

22 MR. FASSBURG: I believe it was Shuttle

23 Express at that time.

24 JUDGE PEARSON: But was it at one point

25 San Juan Shuttle doing business as --

0625

 1 MR. HARLOW: San Juan Airlines.

 2 JUDGE PEARSON: San Juan Airlines.

 3 Okay.

 4 MR. HARLOW: Not in anybody's recent

 5 memory. I think I'm the only one in the room who was

 6 around. Wiley was doing garbage companies at the

 7 time.

 8 BY MR. FASSBURG:

 9 Q Moving forward in time in 2008, Shuttle

10 Express was investigated by the Commission again for

11 use of independent contractors. Are you familiar with

12 that proceeding?

13 A Not personally, no.

14 Q Have you reviewed records that relate to that

15 proceeding?

16 A Not specifically that I'm aware.

17 Q Has anyone informed you or have you had any

18 discussions with anyone regarding the use of charter

19 buses to provide auto transportation service in the

20 past?

21 A I have no personal knowledge of that.

22 Q My question was a little different. Have you

23 ever discussed that with anyone or have you heard of

24 that?

25 A I have not heard about charter bus service in

0626

 1 that way.

 2 Q Are you familiar with the distinction in the

 3 names "rescue service" versus "luxury upgrade"?

 4 A As used in what context?

 5 Q As used by Shuttle Express.

 6 A We have used both terms, yes.

 7 Q What does "rescue service" mean?

 8 A Rescue service is my understanding -- again, I

 9 have limited knowledge of the use in testimony, but

10 rescue service was intended to be used when a vehicle

11 was originally dispatched would break down or be

12 unavailable due to unknown traffic issues. And

13 another vehicle was in the area, the rescue service

14 would be dispatched to provide the service expected by

15 the passenger.

16 Q And what was a luxury upgrade, using Shuttle

17 Express's terminology?

18 A A luxury upgrade would be providing the

19 passenger an option to change the vehicle transport

20 that was being provided to them to a different vehicle

21 at their option.

22 Q And were luxury upgrades offered to people who

23 had reserved auto transportation service originally?

24 A Yes.

25 Q Were those passengers, if they elected to

0627

 1 receive the luxury upgrade, then transported on a

 2 vehicle owned by someone other than Shuttle Express?

 3 A My understanding, yes.

 4 Q Were those passengers transported on a vehicle

 5 driven by a driver who was not an employee of Shuttle

 6 Express?

 7 A My understanding would be yes.

 8 Q Do I understand correctly the luxury upgrades

 9 were provided to someone who might have a wait in

10 excess of 45 minutes?

11 A That would be an option.

12 Q Is that, in fact, what Shuttle Express's

13 options were -- or rather, is that, in fact, Shuttle

14 Express's practice in the past?

15 A It's a portion of it.

16 Q What other reasons would Shuttle Express offer

17 luxury upgrades for?

18 A Customer service, convenience, routing, and

19 efficiency. There's a multitude of reasons. It's not

20 restricted to any one particular reason.

21 Q Did any of those reasons have to do with

22 saving costs?

23 A That would factor in there, yes.

24 Q I'll refer you to Exhibit WAM-26X, which is

25 the Staff investigation report referenced in Docket

0628

 1 TC-120323. I'll refer you to that to a page in the

 2 appendices, which was page 130 of the appendices. Are

 3 you on page 130 of the appendices?

 4 A I believe so. The page says Appendix L, 130

 5 at the bottom right corner.

 6 JUDGE PEARSON: Page 130, is that what

 7 you said? Is it labeled Appendix L?

 8 MR. FASSBURG: I believe it is.

 9 Unfortunately, I have an excerpt of it on my page.

10 JUDGE PEARSON: Is it an e-mail?

11 MR. FASSBURG: It is an e-mail.

12 BY MR. FASSBURG:

13 Q Can you find for me the line that starts with

14 the word "times" followed by "we feel." Have you

15 found it?

16 A No, not yet.

17 Q Okay. It's the fourth line in the second

18 paragraph.

19 A I see, yes.

20 Q This is an e-mail, by the way, that says it's

21 being sent on behalf of Jimmy Sherrell by Paul

22 Kajanoff; correct?

23 A That appears to be what it says.

24 Q Okay. And the line that I referred you to

25 says "We feel there is a length of staging time that

0629

 1 is acceptable and one that is not. Once we have a

 2 staging time in excess, which is easy to identify on

 3 the recent report attachment of 45 minutes or longer,

 4 we seek to find these travelers an alternative to get

 5 them on their way, staying in the convenience/service

 6 time zone. Because we have affiliated independent

 7 towncar operators who are regulated, licensed and

 8 insured we have a viable legal alternative."

 9 Did I read that correctly?

10 A I believe so, yes.

11 Q What is the date of that e-mail?

12 A The date in the header of this page says

13 Friday, September 21, 2012.

14 Q Is it your understanding in 2012 the primary

15 reason Shuttle Express was representing that it was

16 providing luxury upgrades was when there was an

17 excessive wait time?

18 A I can't represent that statement.

19 Q Is that what this e-mail states?

20 MR. HARLOW: Objection. It speaks for

21 itself.

22 JUDGE PEARSON: Which portion of the

23 e-mail were you referring to?

24 MR. FASSBURG: Specifically that

25 portion where he's describing where he's doing it.

0630

 1 MR. HARLOW: We're pressed for time,

 2 and he's had to read the statement. Now he's asking

 3 him if it says something that it speaks for itself,

 4 and we're wasting time.

 5 JUDGE PEARSON: I agree. I think we

 6 need to --

 7 MR. FASSBURG: Sure. I think there is,

 8 in fact, a reason for this. But if he isn't the one

 9 who can answer it, perhaps someone else could have.

10 They've only offered limited testimony from other

11 witnesses that address their use of independent

12 contractors. Mr. Marks has provided the testimony for

13 which there's a reason to cross.

14 JUDGE PEARSON: I understand. I think

15 it's clear, though, that the reason they do it is

16 because there's an excess waiting time, and there was

17 testimony to that effect in the application docket as

18 well. And so I fully recognize that that's the main

19 reason why Shuttle Express has relied on this service

20 in the past.

21 MR. FASSBURG: Okay. I appreciate

22 that.

23 BY MR. FASSBURG:

24 Q I understand that you agree Shuttle Express

25 still places people who have -- let me rephrase that.

0631

 1 The practice has been since the exemption, the

 2 conditional exemption, ended in January 2014 that

 3 Shuttle Express has had passengers who reserved auto

 4 transportation service that it provided the option of

 5 a luxury upgrade; is that correct?

 6 A Yes.

 7 Q And those luxury upgrades are still operated

 8 by persons who are not employees by Shuttle Express

 9 driving vehicles not owned by Shuttle Express;

10 correct?

11 A Yes.

12 Q Now, you have offered in your testimony that

13 you do that for a cost reason because it is cheaper

14 for Shuttle Express to provide service to passengers

15 when there are -- let me rephrase it.

16 It is cheaper for Shuttle Express to provide

17 service to certain passengers through an independent

18 contractor than to use its own van; correct?

19 A Not that. I wouldn't word it that way.

20 Q Okay. Well, let's find in your testimony

21 where you discuss that. I'll refer you to WAM-3T.

22 I'll refer you to page 30, beginning on line 1. You

23 state there, "For example, when we have a single

24 passenger going to Woodinville, with no other

25 passengers traveling along the same general route, we

0632

 1 could either ask them to wait hours for another

 2 passenger going to that same area or transport with a

 3 sizeable loss in a van operated by an employee. The

 4 limo option enables us to carry that passenger quickly

 5 and at a small loss, while providing them an upgraded

 6 travel experience."

 7 Did I read that correctly?

 8 A Yes.

 9 Q First of all, we understand that you don't

10 remit all of the fare to the limo driver; correct?

11 A Depending on circumstances.

12 Q In some circumstances, you might pay more than

13 the fare to the limo driver. But, in fact, on the

14 whole, there has been a net revenue to Shuttle Express

15 for use of those independent contractor drivers;

16 correct?

17 A For that service, yes.

18 Q Now, there you refer to the basis for doing it

19 being a cost basis; is that correct?

20 A No.

21 Q Okay. Well, I think the testimony speaks for

22 itself. I'll move on.

23 With respect to your use of independent

24 contractors, do those independent contractor drivers

25 receive training from Shuttle Express?

0633

 1 A No, they do not.

 2 Q Are you familiar with the claim on Shuttle

 3 Express's web page that all drivers undergo extensive

 4 safety training?

 5 A Yes, I am.

 6 Q I take it when you're advertising to your

 7 passengers about all drivers undergoing extensive

 8 safety training you're referring only to Shuttle

 9 Express drivers; correct?

10 A No, I'm not.

11 Q Which drivers are those?

12 A That would be all drivers.

13 Q So what extensive safety training do the

14 drivers of the vehicles that are not owned by Shuttle

15 Express -- you know, I'm wording it poorly. Just to

16 be clear, what training do those limo drivers receive?

17 A There is mandated state training for limousine

18 and for-hire drivers.

19 Q Do those drivers receive the same training

20 Shuttle Express drivers receive?

21 A Not the same training, no.

22 Q And when you say safety training, what safety

23 training do limo drivers receive from the State as you

24 just referred?

25 A I don't have the exact training materials, but

0634

 1 it's available on the Department of Licensing website,

 2 I believe.

 3 Q Other than, basically, being required to pass

 4 a test, what training does the State provide?

 5 A I'm not aware of what training the State

 6 provides. The State requires a course be taken.

 7 Q Does the State, to your knowledge, require any

 8 ongoing training?

 9 A I'm not aware of that.

10 Q And just to be clear, Shuttle Express does

11 provide safety training to its own drivers; correct?

12 A Yes, we do.

13 Q And so that would be training that is not the

14 same as the training received by the independent

15 contractors; correct?

16 A That is correct.

17 Q I think some of this is already clear in the

18 record, but I just want to confirm. Does Shuttle

19 Express allow passengers to choose when an independent

20 contractor will transport them?

21 A Yes.

22 Q So if a passenger comes to you and says I'd

23 like to take a town car instead, that's their option;

24 correct?

25 A Yes.

0635

 1 Q But if it's not one that you have provided

 2 them but one they've asked for, you, instead, charge

 3 them the town car price; correct?

 4 A Yes.

 5 Q So when you provide a town car at the same

 6 price as the fare for the auto transportation, that is

 7 limited to a situation where Shuttle Express provides

 8 the option; correct?

 9 A Yes.

10 Q If the passenger would like to be transported

11 by an independent contractor, who selects the

12 independent contractor?

13 A The passenger has the option of requesting a

14 specific contractor; otherwise, it is dispatched by

15 our dispatch office.

16 Q Can that passenger choose an independent

17 contractor that is not within the roster of

18 independent contractors used by Shuttle Express?

19 A No, they cannot.

20 Q Who chooses the limo drivers that are within

21 the roster of independent contractors used by Shuttle

22 Express?

23 A That would be our contractor manager as well

24 as others on the team.

25 Q Someone who works for Shuttle Express?

0636

 1 A Yes.

 2 Q Does Shuttle Express ensure that the

 3 independent contractors that it uses have insurance?

 4 A Yes, we do.

 5 Q Is Shuttle Express named as an additional

 6 insured?

 7 A Yes, we are.

 8 Q Why do you do that?

 9 A I can't speak to the reasons for the

10 insurance. I just have it as a requirement on my

11 regulations list.

12 Q Is it your understanding that if an

13 independent contractor who was transporting a

14 passenger who originally had reserved service as auto

15 transportation were to end up in an accident causing

16 personal injury that Shuttle Express might potentially

17 be liable?

18 A I think that would be reasonable.

19 Q Do you think that's one of the reasons why you

20 have insurance?

21 MR. HARLOW: Objection, calls for

22 speculation. He said he didn't know.

23 MR. FASSBURG: I think after the

24 follow-up I think it's reasonable, but it's up to him.

25 JUDGE PEARSON: He's just offering an

0637

 1 opinion.

 2 MR. FASSBURG: I understand.

 3 JUDGE PEARSON: So you can go ahead and

 4 answer with respect to your opinion.

 5 A I believe that, yes.

 6 Q Please tell me generally, not conclusively,

 7 what Shuttle Express does to ensure that drivers who

 8 are independent contractors are safe.

 9 A Generally, we do several checks, including

10 ride-alongs, inspections, validating credentials,

11 validating driver records, medical certificates, and

12 the requirements under state law.

13 Q Did I understand correctly that you expect the

14 limousine drivers to have a medical certificate that

15 would be compliant with the FMCSRs?

16 A We require a medical certificate that's

17 compliant with the State requirements for the medical

18 certificate.

19 Q Is that under State law or is that under the

20 Federal Motor Carrier Safety Regulations in which auto

21 transportation drivers are certified?

22 A That is state law for the limousine law that

23 those drivers are certified for.

24 Q Do you know whether that medical certification

25 uses the same criteria?

0638

 1 A My understanding is it does.

 2 Q Beyond that, is there anything else that you

 3 do to ensure those drivers are safe?

 4 A There is continual tracking, monitoring,

 5 review of any complaints, any concerns, video camera

 6 review of any incidents as well as communications from

 7 the public and internal.

 8 Q Do you require those drivers to report their

 9 hours of service for all operation of vehicles to

10 Shuttle Express?

11 A No.

12 Q If a driver was in excess of their hours of

13 service, is there a way Shuttle Express would know

14 that?

15 A I am not aware of the hours of service

16 requirements for a limousine driver.

17 Q Does Shuttle Express track its employee

18 drivers' hours of service?

19 A Yes, we do.

20 Q Do you believe that if one of your drivers was

21 about to exceed their hours of service requirements or

22 limitations you would be able to successfully take

23 them out of service?

24 A Yes.

25 Q Are you able to do the same for limousine

0639

 1 drivers?

 2 A I can't respond to that. It's a different

 3 standard.

 4 Q Sure. If we were to attempt to ensure a

 5 limousine driver was not exceeding the hours of

 6 service requirements applicable to an auto

 7 transportation driver as a hypothetical, would you

 8 have any way to do it?

 9 A There would be a potential to do that.

10 Q How would you do it?

11 A It would need to be reported as it is with an

12 employee driver under FMCSA rules.

13 Q And you do not do that; is that correct?

14 A That is correct.

15 Q I'd like to refer you to Exhibit WAM-28X. Do

16 you have 28X in front of you?

17 A Yes.

18 Q If you'll please turn to page 36. For the

19 record, this is Shuttle Express's Petition for Review

20 of Initial Order in Docket TC-120323.

21 In paragraph 85 of that document, it states

22 "The Commission should not penalize or prohibit a

23 program that serves the broader public interest.

24 Rather, it should allow Shuttle Express to work

25 proactively with the Commission going forward to make

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 1 the regulatory hole a little less round, until a

 2 proper fit is obtained. Allowing rescue service to

 3 continue pending an exemption petition would best

 4 serve the overall public interest. In return, Shuttle

 5 Express commits to being more proactive in seeking

 6 regulatory guidance and permissions when it modifies

 7 its operations and specifically will review any

 8 independent contractor operations or operational

 9 changes whatsoever in the Commission in advance."

10 Did I read that correctly?

11 A Yes.

12 Q Can you read the date below that on which that

13 statement was submitted to the Commission?

14 A Date is stated as the 3rd day of January 2014.

15 Q Has Shuttle Express reviewed with the

16 Commission any of its independent contractor

17 operations since that date?

18 A I believe it has, yes.

19 Q Which specific ones?

20 A Pending the submission by the exemption which

21 was submitted, I believe, last summer, the discussions

22 were taking place as to what options and operations

23 would be available and what the requirements and

24 changes would be needed.

25 Q Are you referring specifically to the petition

0641

 1 for exemption filed in 2016?

 2 A Yes, I am.

 3 Q Did Shuttle Express ever meet with the

 4 Commission staff subsequent to that date to determine

 5 whether use of independent contractors without an

 6 exemption would be permissible under Commission rules?

 7 A I don't believe that conversation ever

 8 occurred.

 9 Q That's a no; correct?

10 A That would be a no as you stated it.

11 JUDGE PEARSON: Ms. Fassburg, just to

12 clarify, you mean after January 3, 2014?

13 MR. FASSBURG: Correct.

14 JUDGE PEARSON: Okay.

15 Q You now claim that you can provide luxury

16 upgrades for single-stop service; correct?

17 A Yes.

18 Q And the single-stop service records that you

19 provided in an Excel spreadsheet, which is rather

20 voluminous and I have not provided as a result,

21 includes the trips that you reported that constitute

22 the 40,727 trips between January 16, 2014, and

23 September 30, 2016; correct?

24 A Subject to check, that sounds accurate.

25 Q Okay. In that data set, are they all

0642

 1 single-stop trips?

 2 A My knowledge of that data set is yes.

 3 Q Are they all single-passenger trips?

 4 A I cannot attest to that.

 5 Q Is Shuttle Express's practice to allow single

 6 reservations to be transported by independent

 7 contractors?

 8 A Yes.

 9 Q Okay. So if there's more than one passenger

10 on a reservation, they would be transported -- they

11 could be transported by an independent contractor?

12 A That's my understanding, yes.

13 Q That's the practice of Shuttle Express?

14 A Yes.

15 Q I understand in your testimony in WAM-3T one

16 of the justifications that you have provided for doing

17 that is a provision in your tariff regarding alternate

18 means of transportation; is that correct?

19 A That is one of them, yes.

20 Q Have you reviewed WAC 480-30-356(3)(g)?

21 A I have.

22 Q Do you have a copy with you today?

23 A I do not, I don't believe.

24 MR. HARLOW: What was that cite then,

25 please?

0643

 1 MR. FASSBURG: 480-30-356(3)(g). And,

 2 actually, I'm sorry. That's (3)(h).

 3 Q I've handed the witness a copy of that rule

 4 from the Commission -- from the website that -- the

 5 government website on which it is provided.

 6 Mr. Marks, under this rule, Shuttle Express is

 7 required to provide certain information in its tariff;

 8 correct?

 9 A Yes.

10 Q And on part (3)(h), it states: Whether

11 alternative means of transportation -- I'm sorry. Let

12 me read it correctly.

13 "Whether alternate means of transport will be

14 provided by the company when it is unable to provide

15 transportation at the time and place specified in the

16 reservation that the company has accepted for that

17 passenger." Did I read that correctly?

18 A Yes.

19 Q The hypothetical passenger in Woodinville that

20 you discussed on page 30 of WAM-3T is not someone who

21 Shuttle Express is unable to provide transportation

22 to; correct?

23 A That's correct.

24 Q Have you reviewed WAC 480-30-036?

25 A I believe I have in the past, yes.

0644

 1 Q There's a copy of WAC 480-30-036.

 2 Please find for us the definition of "premium

 3 service."

 4 A Okay.

 5 Q The rule states "'Premium Service' means a

 6 type of service provided by an auto transportation

 7 company that is outside normal service. Examples

 8 include express service, direct route service, and

 9 nonstop door-to-door service."

10 Did I read that correct?

11 A Yes.

12 JUDGE PEARSON: Can you tell me the

13 citation again?

14 MR. FASSBURG: It was 408-30-036.

15 Q Does nonstop door-to-door service mean that

16 only one stop would be made?

17 MR. HARLOW: Objection. Your Honor,

18 we're asking a nonlawyer witness to start interpreting

19 and defining and give opinions on the Commission's

20 regulations. I think this is best for post-hearing

21 briefing, not the witness.

22 MR. FASSBURG: Your Honor, that's

23 another speaking objection. But, Your Honor, he's

24 offered his opinions as to why Shuttle Express is in

25 compliance with the rules in his testimony. If I'm

0645

 1 not permitted to cross-examine him on the foundation

 2 of his opinions, I don't know who I'd be allowed to

 3 cross-examine on that. He is the witness.

 4 JUDGE PEARSON: Yeah. I will allow it

 5 because I think it does go to the company's

 6 justification for its action and why it believes it's

 7 operating in compliance with Commission rules, which

 8 is definitely relevant. So go ahead.

 9 MR. FASSBURG: Thank you.

10 A Can you ask the question again, please?

11 Q Under that rule, do you believe nonstop

12 door-to-door service would be one -- a service by

13 which a single stop would be made?

14 A Yes.

15 Q Are you familiar with WAC 480-30-016?

16 A Yes.

17 Q Do you understand that to be the rule by which

18 someone who would like to provide service could ask

19 for an informal Staff opinion as to whether or not a

20 certificate is required to provide the service?

21 A That sounds familiar.

22 Q I don't need to review the language of the

23 rule with you. Did you or anyone at Shuttle Express

24 ask from the Commission Staff an informal opinion as

25 to whether or not its use of independent contractors

0646

 1 would be permissible under Commission rules?

 2 A I can't speak to others, but I personally did

 3 not.

 4 Q I'd like to ask you a few questions about

 5 Shuttle Express's practice in combining door-to-door

 6 and scheduled services. I'll refer you to WAM-1T

 7 first on page 3.

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

 9 MR. FASSBURG: I'm sorry. It's page 3

10 of WAM-1T.

11 JUDGE PEARSON: 1T?

12 MR. FASSBURG: Yes.

13 BY MR. FASSBURG:

14 Q Beginning on line 9, you state "Shuttle

15 Express operates two different services under its

16 certificate, and each of those services operates to

17 and from two different termini. The primary operation

18 of Shuttle Express is its airport door-to-door share

19 ride service."

20 Did I read that correctly?

21 A Yes.

22 Q And then you state "In addition to the share

23 ride service, we also offer scheduled service between

24 SeaTac Airport and specific locations, such as hotels,

25 schools and transit centers."

0647

 1 Did I read that correctly?

 2 I'm sorry. I think that's further down the

 3 page on line 17.

 4 A Yes.

 5 Q Okay. Do you admit in WAM-3T that, in fact,

 6 there are times when you combine those services; is

 7 that correct?

 8 A We combine the passengers for those services,

 9 yes.

10 Q Okay. When you say you combine the passengers

11 for those services, do you mean that one vehicle

12 operates both door-to-door and scheduled service with

13 a mix of those two different types of passengers on

14 the same vehicle?

15 A Yes.

16 Q If I understand correctly, you justify that,

17 again, based on the rule for alternate means for

18 transportation in the tariff rule; correct?

19 A I believe that was at least one of the

20 justifications.

21 Q Okay. The justification that related to that

22 is that you stated in your provision for alternate

23 means of transport that you reserve the right to

24 combine them; correct?

25 A That was a section under that portion of the

0648

 1 tariff, yes.

 2 Q Okay. You understand that alternate means of

 3 transport is a provision that allows alternate

 4 transportation for when the company is unable to

 5 provide transportation; correct?

 6 A That distinction, yes.

 7 Q Are you suggesting by your testimony that

 8 Shuttle Express is permitted to combine its services

 9 because it notified its passengers that there might be

10 a circumstance under which you need to combine

11 services?

12 A I don't see anywhere where that has been

13 restricted otherwise.

14 Q Okay.

15 A Yes, I believe we've notified the passengers

16 of that.

17 Q My question was a little different. My

18 question is: Are you saying that because you stated

19 under alternative means of transport on your tariff

20 that you can combine them?

21 A I don't think it's because of where its at,

22 but it is stated that they would be combined.

23 Q Okay. Now, does that suggest, in your

24 opinion, that passengers might be subject to receiving

25 combined service when you are otherwise unable to

0649

 1 provide transportation at the time and place specified

 2 in the reservation as the rule states?

 3 A It could, yes.

 4 Q Do you believe that provides passengers

 5 adequate notice that you might, at your option,

 6 regardless of whether you were otherwise able to

 7 provide service, combine them onto a vehicle providing

 8 a different type of service?

 9 A Yes, I believe so.

10 Q Now, to clarify, your testimony in WAM-3T is

11 responding to Mr. Roemer discussing a specific

12 instance in which he received service; correct?

13 A Yes.

14 Q Is it your recollection that Mr. Roemer was a

15 passenger who paid for scheduled service?

16 A Based on the information provided, yes.

17 Q Have you actually confirmed his reservation?

18 A I have seen his reservation, yes.

19 Q Was it for scheduled service?

20 A It was to a scheduled service location, yes.

21 Q And do you agree that on the same vehicle that

22 Mr. Roemer was transported were door-to-door

23 passengers?

24 A That's my understanding, although I didn't

25 look at the other passengers on that trip.

0650

 1 Q Okay. You've stated in your testimony in

 2 WAM-3T that Mr. Roemer was not, in fact, delayed as a

 3 result of combining services. Did I paraphrase your

 4 testimony correctly?

 5 A I believe so, yes.

 6 Q And you state that because the trip was

 7 completed within a projection of -- or really a time

 8 that you provided within your tariff; correct?

 9 A And, I believe, it was also on the booking

10 page when he made his reservation.

11 Q So you're saying the time estimate or time

12 projection for the completion of the route is also on

13 your web page?

14 A Yes.

15 Q Now, do you understand that Mr. Roemer was not

16 the first stop the vehicle made that day? I'm sorry.

17 The place where Mr. Roemer was heading was not the

18 first stop the vehicle made that day?

19 A That's my understanding from his testimony.

20 Q Okay. Do you understand that before the stop

21 to which he was being transported the vehicle went to

22 a stop that was not one of your flag stops in your

23 tariff?

24 A That, I believe, was his testimony.

25 Q Okay. Do you have any information by which

0651

 1 you can contend he is incorrect?

 2 A I don't have any information to support or

 3 deny it.

 4 Q Okay. Now, in reality, regardless of time

 5 estimates for the completion of a route, had

 6 Mr. Roemer not waited for a door-to-door passenger to

 7 be taken to a location not listed on the flag stop,

 8 you would agree with me that he would have arrived at

 9 his destination sooner; correct?

10 A I would not agree with you.

11 Q You believe that taking an additional stop

12 adds zero additional time to the trip?

13 A That is not what I said.

14 Q And so if that passenger did not need to stop

15 at a new location, how is it conceivably possible that

16 it didn't take additional time?

17 A If that trip was routed differently as a

18 result of not having that passenger before Mr. Roemer,

19 there could have been additional scheduled service

20 stops prior to Mr. Roemer being dropped off.

21 Q So your point is simply it could have gone to

22 different scheduled stops first?

23 A It could have.

24 Q I'm talking about reality as opposed to

25 hypotheticals. If they didn't make an additional

0652

 1 unscheduled stop before the scheduled stop, it would

 2 have taken less time; correct?

 3 MR. HARLOW: Objection, asked and

 4 answered. I think we spent enough time on this

 5 hypothetical.

 6 JUDGE PEARSON: Let's move on.

 7 BY MR. FASSBURG:

 8 Q Okay. Are you familiar with 480-30-369?

 9 A I believe so. I don't have it in front of me

10 yet.

11 JUDGE PEARSON: Do you have a different

12 citation? I don't see --

13 MR. FASSBURG: You know what, I do. I

14 just realized, based on the actual rule, that's not

15 what I'm looking for. I'm actually referring to

16 WAC 480-30-281.

17 JUDGE PEARSON: 281?

18 MR. FASSBURG: I believe so.

19 MR. HARLOW: 281?

20 MR. FASSBURG: 281.

21 JUDGE PEARSON: That is "Tariffs and

22 time schedules, content."

23 MR. FASSBURG: Yes.

24 JUDGE PEARSON: Okay.

25

0653

 1 BY MR. FASSBURG:

 2 Q I'll refer you within that rule to (2) where

 3 it says "Time schedules."

 4 A Uh-huh.

 5 Q It says "The time schedule filed with the

 6 commission by an auto transportation company must be

 7 filed as a separate document or as a section of the

 8 company's tariff. The filed time schedule must

 9 provide sufficient information to allow prospective

10 passengers to make informed decisions regarding their

11 travel arrangements."

12 Did I read those correctly?

13 A Yes.

14 Q Under "(b) The time schedule filed by an auto

15 transportation company that provides scheduled service

16 must contain, but is not limited to: (i) The times of

17 arrival at, and/or departure from, all termini; (ii)

18 The times of arrival at, and/or departure, from all

19 intermediate points served; (iii) The distance between

20 all points shown in the schedule; (iv) A list of all

21 flag stops at which the company will provide service."

22 I'll stop there. Did I read those correctly?

23 A Yes.

24 Q If you're combining door-to-door and scheduled

25 service, does your tariff for your scheduled service,

0654

 1 in fact, include every point at which the vehicle

 2 might stop?

 3 A I don't believe that's the requirement in

 4 here.

 5 JUDGE PEARSON: I have a question.

 6 What's a flag stop?

 7 MR. FASSBURG: A flag stop is a point

 8 along a scheduled route at which it might stop or

 9 might not stop depending on whether or not a passenger

10 is reserving service there. Just to paraphrase, the

11 rules require that if you run a route on a schedule,

12 you have to list all the stops and the times at which

13 you'll arrive and depart.

14 JUDGE PEARSON: It's kind of like a

15 city bus?

16 MR. FASSBURG: Right. They're running

17 on a flag stop service, which means they only go to

18 places people actually have reserved service. But

19 they still must list, according to this rule, every

20 place they will stop.

21 JUDGE PEARSON: For the given route?

22 MR. FASSBURG: For the given route.

23 JUDGE PEARSON: Got it. Thank you.

24 BY MR. FASSBURG:

25 Q I'll move on.

0655

 1 If a passenger goes to your website and wants

 2 to reserve door-to-door service, is there an option on

 3 your website that states door-to-door service?

 4 A I am not sure what it previously said. I

 5 don't know that door-to-door service is advertised on

 6 the website to book.

 7 Q And if you enter the reservation portal, once

 8 someone has entered it, it will be the same portal

 9 regardless of whether they select to reserve

10 door-to-door or scheduled; correct?

11 A It could be the same, yes.

12 Q Isn't it, in fact, the same?

13 A Not always, no.

14 Q Okay. So how about back when Mr. Roemer was

15 on that trip, did Mr. Roemer, when he entered the

16 website, experience a portal that told him whether he

17 could reserve door-to-door or scheduled service?

18 A I'm not aware of what the portal said that he

19 used.

20 Q You're not familiar with what the Shuttle

21 Express portal provided in February of 2015?

22 A In February 2015, I believe we had over 400

23 different policies and procedures set up.

24 Q I'm asking about the one on your website.

25 A They're all on our website.

0656

 1 Q When someone enters that reservation system

 2 from the door-to-door page, can they not end up

 3 reserving scheduled service based on the options they

 4 pick in the reservation system?

 5 A Yes. There are options for that service as

 6 well.

 7 Q Those are actually labeled by destination type

 8 or location type; correct?

 9 A I believe that would be correct.

10 Q So if someone wanted to receive door-to-door

11 service on your website's reservations portal, they

12 would need to know that they received door-to-door

13 service by picking a ZIP Code; correct?

14 A That was the beginning process for that time,

15 yes.

16 Q When they pick a ZIP Code, they would receive

17 door-to-door service, but they don't know that from

18 the labels; correct?

19 A I can't speak to what they do or don't know.

20 Q The labels don't state door-to-door versus

21 schedule. They state ZIP Code versus location;

22 correct?

23 A At the first page that you select the

24 location, I believe that is correct, but that's not

25 true later on in the system when it offers different

0657

 1 pricing.

 2 Q When it offers different pricing, doesn't it

 3 simply offer a shared ride version -- shared ride

 4 price versus a different price?

 5 A It would be share ride, scheduled, and other

 6 options, yes.

 7 Q So it's your testimony today here under oath

 8 if someone were to enter your reservation system and

 9 select a location, that they would have the option of

10 choosing door-to-door?

11 A If it is a main location by us, no, they would

12 not.

13 Q Now, if someone were to enter into your

14 reservation system and choose by ZIP Code a hotel that

15 you also provide scheduled service to and reserve

16 door-to-door service, would they pay a higher price

17 than a person who reserved service to the same

18 location by location type?

19 A That is circumstantial depending on number of

20 passengers.

21 Q Let's talk about one. Would a person who

22 reserves service to a hotel by address and ZIP Code

23 pay more than a person who reserved service to the

24 same location by the location name?

25 A For a single passenger, yes.

0658

 1 Q Okay. Could that person end up on the same

 2 vehicle as the hypothetical second person who paid

 3 less money?

 4 A Yes.

 5 Q And do you ever offer to remit a portion of

 6 the higher fare you charged to the door-to-door person

 7 for receiving the same service as the person who paid

 8 for scheduled service?

 9 A We have offered to adjust the reservations,

10 yes.

11 Q Do you offer to remit that routinely?

12 A Routinely is -- I can't say routinely. It

13 happens.

14 Q Let me ask it a little differently. You can't

15 tell the Commission under oath today that every person

16 who has ever ended up paying more because they chose

17 the ZIP Code and address as opposed to the location

18 that you haven't in every occasion remitted the fare

19 difference, have you?

20 A No, not in every occasion.

21 Q You don't even track certain circumstances in

22 which you have a door-to-door and a scheduled

23 passenger going to the same location going in the same

24 vehicle, do you?

25 A I'm sorry. We don't track --

0659

 1 Q You don't track occasions in which you have

 2 that scenario occur, do you?

 3 A Certainly, we do.

 4 Q If you do, then you would be able to know in

 5 each instance when to remit their fare difference for

 6 having received these scheduled service at the

 7 door-to-door price; correct?

 8 A They receive the service that they had

 9 requested.

10 Q But they're on the same vehicle as the other

11 person, aren't they?

12 A They certainly would be.

13 Q With the same driver?

14 A Uh-huh.

15 Q They're both going to Sea-Tac to the same

16 destination; correct?

17 A Yes.

18 Q They would have all the same intermediate

19 stops on the way; correct?

20 A Yes.

21 Q They are charged two different prices;

22 correct?

23 A Both in line with the tariff.

24 Q And you know they were on the same vehicle

25 because you tracked that, as you just stated; correct?

0660

 1 A Yes. We have all of our customer data.

 2 Q And you do not make it a practice to remit the

 3 difference in fares you charge to the door-to-door

 4 passenger; correct?

 5 A Not automatically, no.

 6 JUDGE PEARSON: I have a question. In

 7 the event that you do remit the difference, is it on

 8 Shuttle Express's own accord or because a customer

 9 recognizes what happened and asks for an adjustment?

10 MR. MARKS: It would be both. Our

11 coordinators at the airport locate those. Our drivers

12 locate those and ask the passenger if they would like

13 to pay the reduced fare in most cases, and at that

14 point, we remit the fare back to the customer that's

15 different.

16 JUDGE PEARSON: So in most cases, the

17 company identifies it and fixes it, but not always?

18 MR. MARKS: We attempt to, but in

19 circumstances such as five passengers traveling to a

20 scheduled service location, the fare may actually be

21 lower for the door-to-door service. While both are

22 offered, we provide the customer, up until the trip is

23 complete, with the option to adjust that service to a

24 lower fare.

25 JUDGE PEARSON: Okay. Thank you. Go

0661

 1 ahead.

 2 BY MR. FASSBURG:

 3 Q I just want to confirm. There are

 4 circumstances where that has occurred and you didn't

 5 catch it and remit the fare; correct?

 6 A Yes.

 7 Q And as you sit here today, you don't know how

 8 many times that occurred; correct?

 9 A As I sit here, no, I would not.

10 Q I'm going to guess you've never reviewed the

11 hearing transcript in Docket TC 09118, which was an

12 application by -- I'm going to get the name wrong, but

13 it's Whidbey Island Airport.

14 A That was before my time.

15 Q Are you aware -- I think I know the answer --

16 that in that docket Whidbey Island actually alleged

17 that Shuttle Express was not providing scheduled

18 service when its tariff indicated that it was going

19 to?

20 A I'm not aware, no.

21 Q You've admitted that Shuttle Express makes

22 payments to concierge staff at hotels for what I think

23 we've alleged were unlawful commissions or rebates;

24 correct?

25 A That was your allegation, yes.

0662

 1 Q So just to be clear on the record, you have an

 2 agreement with those concierges that you produced in

 3 discovery that's the Shuttle Express commission

 4 guidelines; correct?

 5 A Yes.

 6 Q You don't file those with the Commission;

 7 correct?

 8 A That is correct.

 9 Q And those cover a payment from Shuttle Express

10 to the concierge staff for reservations made for

11 Shuttle Express service on behalf of passengers;

12 correct?

13 A Yes.

14 Q Are you aware that just last year Shuttle

15 Express was penalized $400 for a rule violation for

16 having a driver who was not qualified to drive?

17 A I am aware of that.

18 MR. FASSBURG: I think we have no

19 further questions.

20 E X A M I N A T I O N

21 BY JUDGE PEARSON:

22 Q Okay. Thank you. I have a follow-up question

23 just because I don't remember what you said.

24 Going back to the discussion of the trip that

25 Mr. Roemer took on the Shuttle Express van, did you

0663

 1 concede that there was a stop made on that route that

 2 was not a flag stop listed for that particular

 3 scheduled service in the company's tariff?

 4 A Yes. My understanding of Mr. Roemer's

 5 testimony conceded that he indicated there was a stop.

 6 It was not a scheduled service stop prior to him, and

 7 I would agree with that based on his testimony.

 8 Q And you would agreed that that was not a flag

 9 stop listed in the company's tariff?

10 A Based on the location, yes.

11 Q And to your knowledge, does that happen

12 routinely?

13 A To my -- probably occasionally, more than

14 occasionally.

15 Q Okay. So more than occasionally, Shuttle

16 Express makes stops at what you would consider flag

17 stops that are not listed in the tariff schedule?

18 A In the scheduled service route.

19 Q Right. That's what I'm talking about.

20 A Okay. Thank you.

21 JUDGE PEARSON: Mr. Beattie.

22 MR. BEATTIE: Thank you, Judge Pearson.

23 E X A M I N A T I O N

24 BY MR. BEATTIE:

25 Q I have just one line of questions for you,

0664

 1 Mr. Marks. Mr. Fassburg in his questioning to you

 2 used the term "independent contractor." Are you aware

 3 that that is a term of legal significance?

 4 A I believe it is for employment law.

 5 Q I just want to know if you know. Answer if

 6 you do. Has Shuttle Express ever received any kind of

 7 determination, formal or informal, from the Washington

 8 State Employment Security Division, Labor and

 9 Industries, or the Federal IRS that the drivers

10 Shuttle Express contracts with are, in fact or in law,

11 independent contractors?

12 A I don't know of any of that. I'm sorry.

13 MR. BEATTIE: Okay. Thank you.

14 I'm finished. Thank you.

15 JUDGE PEARSON: Okay. Thank you.

16 Mr. Harlow, did you have anything?

17 MR. HARLOW: Yes, Your Honor. Give me

18 one moment.

19 Thank you for that moment.

20 E X A M I N A T I O N

21 BY MR. HARLOW:

22 Q Good morning, again, Mr. Marks. I think we'll

23 work backwards here just because it's easier. So

24 let's start with the $400 penalty you mentioned for

25 nonqualified driver.

0665

 1 Can you please provide the full set of

 2 circumstances and the company's positions regarding

 3 that?

 4 A Sure. Absolutely. Our driver compliance

 5 tracking at that time indicated that we maintained

 6 records that showed that a driver had compliant

 7 documents, had maintained their medical certificate,

 8 and maintained their licensure status as well as all

 9 the other requirements under federal and state law.

10 The driver in question in that circumstance had

11 obtained a new medical examination card through the

12 FMCSA's medical examiner registry program process and

13 had turned that into us as proof that that examination

14 had occurred in time.

15 At that point, we secured the card, and our

16 understanding at that point was that there was a

17 14-day period at which point that that card needed to

18 be verified in the registry as well as the driver's

19 license update. Unfortunately, I believe on the 14th

20 day, that driver was inspected; and, as such, she had

21 not provided to the state licensing department the

22 update of the card as required and so her CDL status

23 was revoked.

24 We became aware of it, immediately pulled her

25 off the road, and required her to submit that card to

0666

 1 the Department of Licensing. As a result of both that

 2 circumstance as well as communication with Staff on

 3 that, we have changed our procedures and policies on

 4 that to require, at the time of the license renewal,

 5 proof that it has already been verified in the system

 6 with updated medical information.

 7 Q Thank you for that clarification.

 8 You were questioned by both Mr. Fassburg and

 9 the administrative law judge about the flag stop and

10 specifically one trip by Mr. Roemer, which,

11 apparently, was a combined door-to-door and scheduled

12 service; is that correct?

13 A Yes.

14 Q If you would, turn back to WAM-3T at page 4,

15 beginning of line 15 on that page, and you were asked

16 by Mr. Fassburg about alternate means of transport.

17 And he asked that as a follow-up to a rule which

18 defined alternate means of transport.

19 Is it your understanding that the Shuttle

20 Express tariff that you quote, starting at line 15, is

21 limited to providing alternate means of transport as

22 defined by the rule that Mr. Fassburg cited?

23 A I'm sorry. The question was is our --

24 Q Is it your understanding that the language

25 that you quote, beginning at line 15 on that page, is

0667

 1 limited to providing the kind of alternate means of

 2 transport as provided by the Commission's rule?

 3 A No, I don't believe it's limited. It was an

 4 extension of that alternate means statement in the

 5 tariff.

 6 Q In fact, based on the language, what's your

 7 intention in terms of advising customers as to how

 8 their services might be provided?

 9 A Our intention is to provide advanced notice

10 through the tariff that we may combine door-to-door

11 and scheduled service passengers on a flag stop route

12 with the notification that this is not intended to

13 impact the flag stop or scheduled service as it was

14 originally requested.

15 Q Was this tariff provision reviewed by the

16 Commission Staff?

17 A It has been, yes.

18 Q Has it become effective either through

19 expressed approval or no action?

20 A It has.

21 Q Are there public interest benefits in your

22 overall operation to combining operations in the way

23 that you've described between door-to-door and

24 scheduled services?

25 A Certainly. It reduces congestion, first of

0668

 1 all. It also provides a more efficient way to carry

 2 passengers more efficiently, lower wait times,

 3 reducing cost to service overall. It has many

 4 benefits.

 5 Q Are there potentially circumstances where a

 6 customer who selects door-to-door, even though they

 7 pay a higher fare, might be dispatched in a way that

 8 they would receive a benefit for that?

 9 A Absolutely.

10 Q And how would that occur?

11 A They could be a passenger that may be

12 traveling somewhere similar to a scheduled service

13 location, and instead of having to wait for other

14 passengers on a similar route, they can be combined

15 with that route to depart quicker and receive much

16 more expeditious services as a result.

17 Q And the administrative law judge, working

18 backwards again, indicated that -- well, you were --

19 this came up in a discussion of WAC 480-30-356 about

20 the definition of alternate means of transport, and

21 the administrative law judge allowed that question.

22 My understanding is that that was based on --

23 it was relevant why Shuttle Express believes it is

24 operating in compliance. Do you recall that?

25 A Yes.

0669

 1 Q Does Shuttle Express have any reasons to

 2 believe it is operating in compliance with the law in

 3 the State of Washington when it refers single-stop

 4 passengers to its independent contractors on occasion?

 5 A I believe we do.

 6 Q And what other basis would that be?

 7 A We've had conversations as a result of several

 8 waiver proceedings and rule-makings with the

 9 Commission where Department of Licensing has expressed

10 that their jurisdiction for a single contract may take

11 precedence over that based on the vehicle used.

12 Q Were you at the workshop yesterday afternoon

13 here in this room?

14 A Yes.

15 Q Was anyone from the Department of Licensing

16 here?

17 A Yes. There was. I believe Jody Sisk from the

18 Department of Licensing was present.

19 Q Do you recall what she said the Department of

20 Licensing --

21 MR. BEATTIE: Objection, hearsay.

22 MR. HARLOW: I'm not finished with the

23 question, but the witness will give a moment to allow

24 for the objections if I can finish it.

25 JUDGE PEARSON: Okay. Go ahead and

0670

 1 finish the question. Then we'll see. Don't answer

 2 until --

 3 BY MR. HARLOW:

 4 Q Do you recall what Ms. Sisk said the

 5 Department of Licensing position was with regard to

 6 whether a referral by an auto transportation company

 7 would constitute a single contract for purposes of the

 8 limousine statutes and rules?

 9 JUDGE PEARSON: I'll just stop you

10 right there, because I'm not concerned with what the

11 Department of Licensing thinks about this.

12 MR. HARLOW: Your Honor, I think it

13 goes to the penalty, and one of the factors is whether

14 the company's violation, if found, was willful or not.

15 The company here has been talking to the Department of

16 Licensing for many years, and the Department of

17 Licensing has asserted jurisdiction.

18 JUDGE PEARSON: I'll just stop you

19 right there that what the Department of Licensing says

20 has no bearing on what the Commission believes in the

21 enforcement of its rules.

22 MR. HARLOW: I'm making my offer if I

23 can see where I'm going, but I'll finish. The

24 Department of -- when the limousines were transferred

25 from the Utilities Commission to the Department of

0671

 1 Licensing, the legislature divested this Commission a

 2 jurisdiction. If, in fact, the Department of

 3 Licensing asserts jurisdiction correctly, this

 4 Commission has no jurisdiction. And that's why I

 5 think it's a good faith belief on the part of the

 6 company when the DOL says we have jurisdiction the

 7 company has a good faith belief and shouldn't be fined

 8 for that.

 9 JUDGE PEARSON: I understand that, but

10 I also understand that this was not a discussion that

11 occurred until the most recent request for exemption

12 in September of 2016. That's when the Commission

13 first became aware of these discussions, and the

14 violations alleged were all prior to that date. So

15 it's not relevant now.

16 MR. HARLOW: Would you allow redirect

17 on conversations with the DOL prior to December of

18 2016?

19 JUDGE PEARSON: If the Commission was

20 not aware of those conversations, then, no, they have

21 no bearing on this situation. The conversations

22 should have occurred with all interested parties like

23 they did when the petition for exemption was filed in

24 September 2016. So any conversations that the

25 Commission was not aware of wouldn't have any bearing

0672

 1 on that time period.

 2 MR. HARLOW: I actually don't remember,

 3 so if I can ask one more foundational question related

 4 to that specific question.

 5 BY MR. HARLOW:

 6 Q Mr. Marks, do you recall any conversations

 7 that you're aware of between the company and the

 8 Department of Licensing in which the Utilities and

 9 Transportation Commission or its Staff were involved?

10 MR. FASSBURG: We object to the

11 question. I think there's still no relevance to this.

12 JUDGE PEARSON: Yeah. I would agree

13 with that. Let's move on.

14 MR. HARLOW: Let me offer proof, and

15 we'll move on. Thank you, Your Honor.

16 Q Just for clarification, we talked -- you

17 talked a lot on cross-examination about single-stop

18 trips by independent contractors. Do you recall that

19 line?

20 A Yes.

21 Q And when we say "single-stop trips," does that

22 bear any relationship to the number of parties on one

23 of those trips?

24 A It would indicate it was actually single

25 reservations in those, so it was a single reservation

0673

 1 with a single stop.

 2 Q To be clear, does that mean it's a single

 3 party?

 4 A Single party that may have multiple

 5 passengers.

 6 Q There was prior to that the significant

 7 discussion about safety requirements of independent

 8 contractors relative to auto transportation drivers.

 9 Do you recall that?

10 A Yes.

11 Q In your experience, are your independent

12 contractors operating in what your opinion would be

13 considered a safe manner?

14 A In my experience, yes, absolutely.

15 Q In your experience, can you recall a single

16 injury/accident that was incurred by one of your

17 independent contractors while operating under contract

18 with Shuttle Express?

19 A I cannot, no.

20 Q And how many years does that go back?

21 A My knowledge of independent contractors and

22 their operations to that extent would extend in excess

23 of four years.

24 Q And, roughly, how many trips would that be?

25 A It would be voluminous.

0674

 1 Q Tens of thousands?

 2 A More than likely, yes.

 3 Q More than 100,000?

 4 A Based on the information I have, yes. It

 5 would be in excess of that.

 6 Q Thank you. Do you recall being asked by

 7 Mr. Fassburg whether you had seen data indicating

 8 which countries Sea-Tac passengers are arriving from

 9 or departing to?

10 A Yes.

11 Q And what was the source of that data that you

12 said you had seen?

13 A I believe it was the census data that

14 Mr. Morton presented as evidence in the initial

15 hearing.

16 Q Do you recall seeing any meaningful number of

17 Somalian passengers arriving or departing Sea-Tac

18 Airport?

19 A I don't recall any.

20 Q Do you recall seeing any meaningful number of

21 Samoan passengers arriving or departing Sea-Tac

22 Airport?

23 A I don't.

24 Q WAM-6, which is the data request with the

25 languages that we received from SpeediShuttle, lists a

0675

 1 language of -- I'm not sure I'm pronouncing this

 2 right. Amharic? Do you recall that?

 3 A I see that, yes.

 4 Q Do you know what language or country that is?

 5 A I'm not aware, no.

 6 Q Does Shuttle Express have Spanish-speaking

 7 drivers and customer service representatives?

 8 MR. FASSBURG: Objection for relevance.

 9 JUDGE PEARSON: I'm sorry. Can you

10 repeat the question?

11 MR. HARLOW: Just read it back.

12 (Record read back as requested.)

13 JUDGE PEARSON: I think we've already

14 established that they have, so you can move forward.

15 MR. HARLOW: Certainly.

16 BY MR. HARLOW:

17 Q Then you were asked questions about your

18 observations of the greeters for more than ten hours.

19 Do you recall that?

20 A Yes.

21 Q I guess if I could characterize that those

22 questions they were challenging your ability to give

23 meaningful testimony on the adequacy of your greeter

24 staffing, what would be needed to really get a good

25 determination, a valid determination, of whether

0676

 1 SpeediShuttle's greeter staffing is adequate?

 2 MR. FASSBURG: Objection. This seems

 3 like a question about the weight of the evidence or

 4 the sufficiency of the evidence. I don't see how this

 5 helps.

 6 JUDGE PEARSON: Yeah. I agree. I'm

 7 going to sustain the objection.

 8 Q The questions were limited to whether you had

 9 personal information about the adequacy of the greeter

10 staff. My question follow-up is: Do you have any

11 information that is not based on personal knowledge

12 that indicates whether SpeediShuttle's greeter staff

13 is adequate?

14 MR. FASSBURG: That would exceed the

15 scope of cross.

16 JUDGE PEARSON: And I think he answered

17 that question and he did. He answered that question.

18 He said he talked to two other customers who said that

19 they weren't greeted, but he was unable to identify

20 who they were. So I think that's been asked and

21 answered.

22 Q Then we'll go backward, hopefully. Not my

23 favorite direction, but it works today.

24 You were asked if you had specific numbers

25 regarding losses to TNCs and other modes of

0677

 1 transportations, losses of Shuttle Express passenger

 2 traffic. Do you recall that?

 3 A Yes.

 4 Q Do you have an opinion regarding the biggest

 5 cause of Shuttle Express's decline in passenger

 6 traffic since 2015?

 7 A I have lots of opinions. There are

 8 significant forces that have continually influenced

 9 the available market for share ride services.

10 Q Can you identify the biggest single cause of

11 your decline since 2015?

12 A I think the biggest single cause of our

13 decline I would attribute to SpeediShuttle.

14 Q Is there any doubt in your mind on that based

15 on the statistical data?

16 MR. FASSBURG: Objection, leading.

17 JUDGE PEARSON: I think you can move

18 on, because I think it's well established that Shuttle

19 Express believes that SpeediShuttle is the No. 1 cause

20 for its passenger decline.

21 Q You were asked about the distinction between

22 passengers versus trips. Do you recall that?

23 A Yes.

24 Q Has Shuttle Express ever asked for actual

25 passenger data from SpeediShuttle in this proceeding?

0678

 1 MR. FASSBURG: Again, we're going to

 2 object to the discovery disputes in the hearing.

 3 There's no benefit for the Commission hearing about

 4 this.

 5 JUDGE PEARSON: I'll sustain that

 6 objection. We had this discussion yesterday, two days

 7 ago. Excuse me.

 8 Q Okay. Moving on, you were asked about

 9 non-English-speaking passengers at some length this

10 morning, and you indicated that based on discovery

11 responses from SpeediShuttle they have not had a

12 single passenger use any of their three non-English

13 web pages. Do you recall that?

14 A Yes.

15 Q What's the importance, in your opinion, of

16 that fact in terms of whether they are providing the

17 service they said they would?

18 A My understanding is that the enhanced features

19 were expected to expand the market share, expand the

20 accessibility for foreign language speakers as part of

21 Mr. Morton's testimony, and it doesn't appear that

22 that factor has come to fruition or had any advantage

23 to the public as a whole.

24 Q If you don't have Japanese, Korean, and

25 Chinese web portals and they have them but nobody is

0679

 1 using them, does that matter that they have those?

 2 MR. FASSBURG: Objection, that calls

 3 for a legal conclusion.

 4 MR. HARLOW: It calls for his opinion.

 5 JUDGE PEARSON: What's that?

 6 MR. HARLOW: I'm calling for his

 7 opinion.

 8 MR. FASSBURG: It's also outside the

 9 scope of cross.

10 JUDGE PEARSON: I agree that it is

11 outside the scope, and so I will sustain the

12 objection.

13 BY MR. HARLOW:

14 Q We're back to Wednesday, which is an honorary

15 Thursday. Now, on Wednesday toward the end of the

16 day, there was discussion about the wait times for

17 Shuttle Express passengers versus the wait times for

18 SpeediShuttle passengers. Do you recall that?

19 A I do.

20 Q And let me ask you generally, first of all:

21 Do you have any reason to believe that SpeediShuttle's

22 wait times are materially less than Shuttle Express's

23 wait times for passengers?

24 A No. In fact, we don't really have a good

25 sense of them because the data provided was restricted

0680

 1 to just non-pre-reserved passengers.

 2 Q And the data that is in the record was

 3 65 percent for Shuttle Express leaving in 20 minutes

 4 or less and 77 percent for SpeediShuttle leaving in 20

 5 minutes or less. Do you recall those two data points?

 6 A I do.

 7 Q Can you compare those data points and comment

 8 on whether those are representative data points?

 9 A I don't believe they're similar at all. The

10 Shuttle Express data cited in my testimony was from

11 February, which is, traditionally, the slowest month

12 of the year for us and the hardest to group multiple

13 passengers together in an efficient way; whereas, the

14 data provided by SpeediShuttle was from the, I

15 believe, last quarter or last half of the prior year,

16 which the end of the year is usually much busier than

17 the beginning of the following year.

18 As I said, it also excluded data from the

19 pre-reserved passengers, so it was a selected subset

20 of their data.

21 Q Okay. Mr. Roemer testified in his direct and

22 you were asked about it on cross here about the

23 SpeediShuttle TV. Do you recall that?

24 A Yeah.

25 Q Apparently, it provides tourism information?

0681

 1 A That's my understanding.

 2 Q Do Shuttle Express passengers have a way to

 3 get that information?

 4 MR. FASSBURG: Objection, relevance.

 5 Outside the scope of cross.

 6 JUDGE PEARSON: This is outside the

 7 scope, Mr. Harlow.

 8 Q Okay. Let's go to the Mercedes vehicles.

 9 You were asked whether they were more

10 attractive to customers. Do you recall that?

11 A Yes.

12 Q Is there another consequence to use of

13 Mercedes vehicles to the public?

14 MR. FASSBURG: Objection, exceeds the

15 scope of cross.

16 JUDGE PEARSON: I'm going to sustain.

17 Q Well, we're moving right along here. You were

18 asked about whether or not Shuttle Express served all

19 of the North Bend ZIP Code. Do you recall that?

20 A Yes.

21 Q And the answer is no. Can you describe the

22 characteristics of the portions of the ZIP Code that

23 you served in the North Bend ZIP Code versus the

24 characteristics of the areas you do not serve?

25 A My understanding of the area where our

0682

 1 certificated service is allowed in that ZIP Code is

 2 the majority of the city center and populated areas to

 3 the west of North Bend, including populated areas of

 4 North Bend. The restricted areas would be to the east

 5 and are the more rural areas of that ZIP Code.

 6 Q Thank you. And then you were asked whether in

 7 hypothetically or theory SpeediShuttle would be better

 8 able to compete with other modes of transportation, in

 9 other words, other than regular share ride because of

10 their features and applications. Do you recall that?

11 A Yes.

12 Q You said hypothetically or whatever the

13 question was, theoretically, yes. But in reality, are

14 they demonstrating that they're better able to compete

15 with those other modes of transportation?

16 A I don't feel there's any differentiation.

17 Q What do you base that opinion on?

18 A The passengers that are requesting the service

19 are looking for the service type and the price point.

20 The features don't necessarily make a difference in

21 which service they're going with.

22 For example, with Uber, you're looking for a

23 very individual personalized small vehicle to take you

24 where you're going; whereas, a public bus, you're

25 looking for a cheap way to stop at all these places

0683

 1 along the way and have the expectation of traveling

 2 with other passengers. It's a different class of

 3 service entirely.

 4 MR. HARLOW: Thank you, Mr. Marks.

 5 Thank you, Your Honor. We're done with our

 6 redirect.

 7 JUDGE PEARSON: Thank you. So why

 8 don't we take our 15-minute break now. I will review

 9 the portions of the deposition that Shuttle Express is

10 offering, and we can reconvene at 11:30 and proceed

11 with Mr. Roemer at that time. So we'll be off the

12 record and recess.

13 (A break was taken from 11:13 a.m. to

14 11:33 a.m.)

15 JUDGE PEARSON: So let's be back on the

16 record. During the recess, I had a chance to review

17 the excerpts of Mr. Roemer's deposition transcript,

18 and while I did determine that large portions of it

19 are irrelevant and most likely not useful to me, I'm

20 going to go ahead and admit it because I don't think

21 it contains anything that is prejudicial to

22 SpeediShuttle, and I'll take what I need and leave the

23 rest behind and afford it the weight as I see fit.

24 MR. FASSBURG: And we understand your

25 ruling. We just want to make sure our objection to

0684

 1 the admission is on the record.

 2 JUDGE PEARSON: Okay. And that is

 3 noted on the record as our -- the objections contained

 4 within the deposition transcript itself. I saw that

 5 those were there.

 6 MR. FASSBURG: Sure. And, obviously,

 7 those are -- there's deposition objections, and

 8 there's admissibility objections. We are objecting to

 9 the admissibility.

10 JUDGE PEARSON: Right. And recognizing

11 all of that.

12 So before we start with Mr. Roemer, I think we

13 should go through the exhibit list and address the

14 objections. I think I have -- I don't have your list

15 anymore; right?

16 MR. FASSBURG: Did you give it back?

17 JUDGE PEARSON: I gave yours back,

18 which is the one I need. But before we get to that, I

19 think Shuttle, you had a partial objection to HJR-25T?

20 MR. HARLOW: I think that's the only

21 objection we have for prefiled. Whenever you're

22 ready, I'll tell who you what the objection is.

23 JUDGE PEARSON: Go ahead.

24 MR. HARLOW: The objection is to the

25 testimony beginning on page 13.

0685

 1 JUDGE PEARSON: Let me open it real

 2 quick.

 3 MR. HARLOW: HJR-25T, page 13,

 4 beginning at line 1.

 5 JUDGE PEARSON: I'm sorry. Page?

 6 MR. HARLOW: Thirteen.

 7 JUDGE PEARSON: Thirteen.

 8 MR. HARLOW: See the heading "Combining

 9 Door-To-Door With Scheduled Service"?

10 JUDGE PEARSON: Okay.

11 MR. HARLOW: The objection goes from

12 line one on that page to page 14, line 8 inclusive.

13 JUDGE PEARSON: Hold on. Okay. What's

14 your objection?

15 MR. HARLOW: The objection is it's

16 beyond the scope of the schedule which allowed this

17 round of rebuttal testimony. It was supposed to only

18 be on the SpeediShuttle complaint, which is

19 Docket 161257, and that complaint alleged two things.

20 One of them were the commissions paid to hotel

21 concierges. The other one was the use of independent

22 contractors to provide service.

23 And, in fact, we had, informally, among the

24 parties, confirmed that that was a limitation of this

25 round of testimony were those two topics. And the

0686

 1 combining door-to-door with scheduled service is not

 2 part of it.

 3 MR. WILEY: Your Honor, we were

 4 notified of this objection yesterday morning.

 5 Obviously, we had previously filed motions to strike

 6 to address issues like that.

 7 What Mr. Harlow leaves out in his argument is

 8 that between that time and the present, there was

 9 Order 17 issued by Your Honor, which amended Order 08

10 to address the issue of service to the satisfaction of

11 the Commission. One of the -- as you will note, if

12 you go back to our, I believe, March 30 response to

13 that notice of intention to amend, we did not object

14 to preserving the schedule, but we made very clear

15 that we intended our rebuttal to address service to

16 the satisfaction of the Commission. That's an indicia

17 of that, and that's what that's directed to.

18 MR. HARLOW: May I, Your Honor?

19 JUDGE PEARSON: Sure.

20 MR. HARLOW: I reviewed Order 17 before

21 I reached out to them on the previous agreement, and I

22 could find nothing in there that changed the

23 procedural schedule and scope of any other rounds of

24 testimony.

25 JUDGE PEARSON: So I would just say

0687

 1 that I was not aware of any agreement between the

 2 parties to limit --

 3 MR. HARLOW: I understand.

 4 JUDGE PEARSON: -- the scope of this

 5 testimony, nor did I believe that that was what was

 6 built into the schedule. I think that my

 7 understanding has been all along that with each round

 8 the parties would be responding to testimony and

 9 exhibits provided by the other parties in the previous

10 round.

11 And it looks here like Mr. Roemer is

12 responding to Mr. Marks's testimony. So I'm going to

13 allow it and also because it does fit within the

14 expanded scope of these proceedings with respect to

15 the question of whether Shuttle Express is providing

16 service to the Commission's satisfaction. And it is

17 something that I'm going to take into consideration

18 because I wasn't even fully aware of it until today

19 when Mr. Marks testified about it and I was able to

20 ask some follow-up questions. I didn't even

21 understand what a flag stop was until this morning.

22 And so that's additional information that I will be

23 taking into consideration.

24 So we can move on now to -- do you have your

25 copy of your objections to the other exhibits?

0688

 1 MR. FASSBURG: I do, Your Honor.

 2 JUDGE PEARSON: I will clarify for the

 3 record right now that the parties stipulated to the

 4 admission of Exhibit HJR-1T through HJR-24, so those

 5 are all admitted and marked accordingly. I just ruled

 6 that I will admit HJR-25T. The parties have also

 7 stipulated to the admission of HJR-26 and HJR-27. I

 8 also ruled that I will admit HJR-28X. There is a

 9 stipulation regarding HJR-29X and HJR-30X, and so I

10 will admit those into the record and mark them

11 accordingly.

12 (Exhibit HJR-1T through HJR-30X were

13 admitted.)

14 JUDGE PEARSON: SpeediShuttle has

15 objected to HJR-31X, which is SpeediShuttle's 2015

16 annual report. That is a Commission document, so just

17 as I held yesterday, I will take official notice of

18 that. What was the basis for your objection?

19 MR. FASSBURG: We waive the objection.

20 It's fine.

21 JUDGE PEARSON: There's stipulation

22 with respect HJR-32X, so I will admit that and mark it

23 accordingly.

24 (Exhibit HJR-31X and Exhibit HJR-32X

25 were marked.)

0689

 1 JUDGE PEARSON: There were objections

 2 to HJR-33X, HJR-35X, and HJR-36X, which are similar in

 3 nature, I assume, because they are all copies of

 4 wholesale agreements. So do you want to take them up

 5 individually or as a group? Is it the same basis?

 6 MR. FASSBURG: Without the complete

 7 list in front of me, Your Honor, I don't actually

 8 remember which is which.

 9 JUDGE PEARSON: So HJR-33X is the 2015

10 wholesale share ride rate agreement with The GO Group.

11 MR. FASSBURG: I think we don't have an

12 objection to that.

13 JUDGE PEARSON: Okay. So I will admit

14 that and mark it as HJR-33X.

15 (Exhibit HJR-33X was admitted.)

16 JUDGE PEARSON: The parties have

17 stipulated to the admission of HJR-34X, so I will

18 admit that.

19 (Exhibit HJR-34X was admitted.)

20 JUDGE PEARSON: HJR-35X is the 2015

21 wholesale shared ride rate agreement with Travelscape.

22 MR. FASSBURG: I don't know why it's

23 offered, so I think it would be better to take it up

24 when it's offered.

25 JUDGE PEARSON: And same with HJR-36X?

0690

 1 MR. FASSBURG: Yes.

 2 JUDGE PEARSON: So we will address

 3 those later.

 4 The parties have stipulated to the admission

 5 of Exhibits HJR-37X through HJR-42X, so I will admit

 6 those and mark them accordingly.

 7 (Exhibit HJR-37X through

 8 Exhibit HJR-42X were admitted.)

 9 JUDGE PEARSON: And SpeediShuttle has

10 an objection to HJR-43X, which is an e-mail string

11 from Mr. Harlow to Ms. Gruber dated November 15, 2016.

12 MR. HARLOW: Your Honor, we'll withdraw

13 that.

14 JUDGE PEARSON: You'll withdraw that,

15 so that is withdrawn.

16 There is stipulation with respect to the

17 admission of HJR-44X through HJR-57X, so I will admit

18 those and mark them accordingly.

19 (Exhibit HJR-44X through

20 Exhibit HJR-57X, were admitted.)

21 MR. HARLOW: Your Honor, what happened

22 with 43 is one we just -- thank you. Sorry.

23 JUDGE PEARSON: That's okay.

24 And then HJR-58X is an e-mail string --

25 MR. FASSBURG: It's multiple e-mail

0691

 1 strings. It's 224 pages of many, many e-mails, most

 2 of which are duplicative. It would be much easier to

 3 address if this hadn't been filed as 224 pages of

 4 e-mails.

 5 My understanding is this is at least a portion

 6 of all of SpeediShuttle's response to a particular

 7 data request in terms of what was responsive to what

 8 we were required to produce, but I don't think even a

 9 tenth of this is actually helpful information. And

10 it's just problematic to have such a big chunk. I

11 haven't been able to really go through it to the point

12 where I can say here's what I can agree to and here's

13 what I can't.

14 JUDGE PEARSON: Mr. Harlow?

15 MR. HARLOW: There's a lot in here.

16 It's a wealth of information relevant to the case.

17 First of all, it all came out of the SpeediShuttle

18 records and files, and you'll notice every document on

19 the bottom right-hand corner has a Bates No. of SS and

20 then there's four digits. This was provided in

21 response to a data request.

22 And if it's important -- it's Nos. 2 and 12,

23 and you ordered these responses. So these were

24 pursuant to a motion to compel and an order, so you

25 found them relevant for that purpose. So I'm sure

0692

 1 there's stuff in there -- this will go to the

 2 weight -- that's isn't particularly useful. In fact,

 3 there's a lot of junk. There's a lot of form e-mails.

 4 There's a lot of repetition to it, but in there, there

 5 are tidbits. I just want to quote you one, which is

 6 Document SS0876.

 7 MR. FASSBURG: Your Honor, I appreciate

 8 that he's just arguing as to why it's admissible. It

 9 seems like he could just take the pages that he wants

10 to ask Mr. Roemer questions about and offer those as

11 separate exhibits.

12 MR. HARLOW: I don't want to ask

13 Mr. Roemer questions about it at all.

14 JUDGE PEARSON: Why is it a cross

15 exhibit?

16 MR. HARLOW: Well, because that's the

17 way we get it -- I would ask him the foundation. But,

18 I mean, I could ask questions about it, but we don't

19 have the third day of hearing because we decided we're

20 going to finish today. So we just want to get it in.

21 This goes to whether or not the companies

22 compete directly. It goes to the question of whether

23 they're undercutting on the rates and using that to

24 compete. It goes to the question of multilingual

25 service. It goes to the question of commissions. You

0693

 1 know, these things address a lot, and we want to have

 2 them in the record to be able to cite them in

 3 post-hearing briefs.

 4 MR. FASSBURG: Your Honor, it seems

 5 like if he doesn't have any questions to ask about it,

 6 there really isn't any point. He can say it's

 7 authenticated, but that doesn't really mean there's

 8 really any evidence -- weight that can be attributed

 9 to it because there's no context from a witness.

10 MR. HARLOW: These are the records of

11 the opposing party.

12 JUDGE PEARSON: Right. I understand

13 that. I'm curious why you didn't have one of your own

14 witnesses offer it.

15 MR. HARLOW: I don't even remember that

16 we had it in December. It took us -- I don't think we

17 did. It took us three months of discovery disputes to

18 get some of the stuff you ordered, so we probably just

19 didn't have time to read it or didn't have the

20 documents at the time.

21 MR. FASSBURG: This was produced months

22 ago.

23 MR. WILEY: December, Your Honor.

24 MR. HARLOW: Our testimony was filed

25 December 19.

0694

 1 MR. WILEY: And also on April 5.

 2 MR. HARLOW: It's not necessarily

 3 rebuttal testimony.

 4 JUDGE PEARSON: So I have actually

 5 looked through this. I recall now there's a lot of

 6 duplication. I do vaguely recall that.

 7 MR. HARLOW: That's unavoidable. You'd

 8 have to redact, you know, stuff out of long e-mail

 9 strings. Some of these strings go on for 10, 20

10 pages.

11 MR. FASSBURG: Or you could have

12 submitted each individual e-mail string separate.

13 Part of the problem is it's a whole lot of unnecessary

14 information with maybe a nugget of things here or

15 there, and, frankly, if he's not going to ask

16 Mr. Roemer about it, I don't know how it's going to be

17 understood in context.

18 MR. HARLOW: I probably will have some

19 questions, but I'm not going to go through all

20 200 pages. We just don't have time.

21 JUDGE PEARSON: Why don't we just wait

22 and see if there's an opportunity for you to address

23 this, because I can't -- if you weren't introducing it

24 for the purposes of cross-examination, it doesn't seem

25 like it was properly offered. So if it comes up that

0695

 1 you want to refer to it in your questions to

 2 Mr. Roemer, we can address it then.

 3 I don't think that it's necessarily harmful to

 4 admit it into the record. I just don't think there's

 5 a basis for it at this point in time. So can we just

 6 take that up as we go?

 7 MR. HARLOW: Okay.

 8 JUDGE PEARSON: And then HJR-59X is an

 9 e-mail to the Velloth and others from Harlow dated

10 December 8, 2016.

11 MR. FASSBURG: Your Honor, this is, I

12 think, the third or fourth exhibit that is solely

13 related to discovery disputes.

14 JUDGE PEARSON: Let me see.

15 MR. FASSBURG: And, again, this is

16 e-mails between counsel. As I proposed before, if

17 Mr. Harlow wants to testify and we're going to ask him

18 questions under oath, I would think that might make it

19 appropriate. But since it isn't -- that's how this is

20 proceeding, it doesn't seem to be relevant as an

21 exhibit.

22 MR. HARLOW: Your Honor, if I may

23 short-circuit this, I would actually like to ask the

24 witness questions about this before we offer it. I

25 think we can wait and see on this one as well.

0696

 1 JUDGE PEARSON: We can wait and see.

 2 That's fine.

 3 With respect to HJR-60X through HJR-72X, the

 4 parties have stipulated to the admission of those

 5 exhibits, and so I will admit them and mark them

 6 accordingly.

 7 (Exhibit HJR-60X through

 8 Exhibit HJR-72X were admitted.)

 9 JUDGE PEARSON: The rest of the

10 objections appear to be to SpeediShuttle's responses

11 to data requests, so -- and then is it safe to assume

12 you're withdrawing your objection to the 2016 annual

13 report as well?

14 MR. FASSBURG: Yes.

15 JUDGE PEARSON: So I will admit HJR-83X

16 into the record.

17 (Exhibit HJR-83X was admitted.)

18 JUDGE PEARSON: Now, with response to

19 data requests, do you have a general argument about

20 that? I see some you didn't object to and others you

21 did.

22 MR. HARLOW: I think we're going to

23 withdraw 73X.

24 JUDGE PEARSON: Seventy-three. Okay.

25 I will cross that out.

0697

 1 So then we're just dealing with 74 through 82.

 2 Mr. Fassburg, I'll leave it up to you whether

 3 you are going to be making a general argument, general

 4 objection, or if you want to take them up

 5 individually.

 6 MR. FASSBURG: Okay. So 74X I can't

 7 say yes or no because there's two data requests and

 8 responses in here. In fact, I think it's three of

 9 them. Two of them have an answer; one of them

10 doesn't. I don't have an objection to ones that have

11 an answer, but there's one that doesn't. And I don't

12 know why it's in here, so I don't know how to object

13 to part of it. So I have to object to the whole.

14 JUDGE PEARSON: I see. Well, with

15 respect to those where some are answered and some

16 aren't, you know, I rejected some that were offered on

17 Wednesday because they were nonresponsive. That's

18 just simply because they're not useful. If two-thirds

19 of it is and one-third is not, there's no harm in

20 letting it in.

21 MR. FASSBURG: I don't disagree. I'm

22 just trying to save time on having discovery disputes

23 play out in this examination.

24 JUDGE PEARSON: Sure. I'll just say

25 right now that I'm not going to do that. I'm not

0698

 1 going to allow that.

 2 So with respect to the data requests that are

 3 responsive, we can let those in; and with respect to

 4 the ones that aren't, we aren't going to reargue --

 5 MR. FASSBURG: Understood.

 6 JUDGE PEARSON: -- discovery-related

 7 issues.

 8 And, you know, with that caveat, Mr. Harlow,

 9 if -- well, I guess we should just take it up as we

10 go. But if there are areas where you can briefly

11 describe information that you think would be useful, I

12 can decide whether I need it or not, and we can move

13 on from there.

14 MR. HARLOW: Do the best we can. We

15 have, basically, a half day of hearing left, an hour

16 and a half of which is for the Staff witnesses. All I

17 can do is cover as much ground as possible in that

18 limited time.

19 JUDGE PEARSON: Understood.

20 MR. FASSBURG: He got the deposition

21 already. He said that will save some time.

22 JUDGE PEARSON: Is that true?

23 MR. HARLOW: Yes, it should save some

24 time.

25 JUDGE PEARSON: Okay. So why don't we

0699

 1 wait until the remainder of these data request

 2 responses are offered, because, typically, not every

 3 cross-examination exhibit is offered. If they're not

 4 offered, I don't admit them. That's just my practice

 5 unless the parties stipulate they want them in the

 6 record.

 7 MR. FASSBURG: That makes sense. I

 8 file a lot of things in case the witness didn't answer

 9 the question the way I expected to.

10 JUDGE PEARSON: Why don't we do that

11 with the rest of those questions.

12 And so it is just a few minutes before 12:00.

13 Would it make sense to get started for ten minutes, or

14 would you rather break for lunch now? How hungry are

15 you?

16 MR. WILEY: Is an hour possible today?

17 Forty-five was tough.

18 JUDGE PEARSON: Well, we agreed to

19 45 minutes, and you took up most of the morning.

20 MR. FASSBURG: We'll do it. I'll make

21 him.

22 JUDGE PEARSON: So if we break now, we

23 would come back at 12:40.

24 But I'll leave it up to Mr. Harlow whether you

25 want to go for ten minutes and break or rather just

0700

 1 take a break.

 2 MR. HARLOW: He's sitting there. Why

 3 don't we do the direct at least.

 4 JUDGE PEARSON: Mr. Roemer, if you

 5 would, stand and raise your right hand.

 6

 7 H. JACK ROEMER, witness herein, having been

 8 first duly sworn on oath,

 9 was examined and testified

10 as follows:

11 JUDGE PEARSON: You may be seated.

12 E X A M I N A T I O N

13 BY MR. FASSBURG:

14 Q State your full legal name.

15 A H. Jack Roemer.

16 Q Please provide your business address.

17 A 1132 Bishop Street, Suite 2312, Honolulu,

18 Hawaii.

19 Q Are you offering testimony today on behalf of

20 SpeediShuttle?

21 A Yes, I am.

22 Q Have you caused to be filed on your behalf

23 prefiled testimony identified as Exhibits HJR-1T and

24 HJR-25T?

25 A Yes, I have.

0701

 1 Q Are you adopting that testimony under oath

 2 today?

 3 A Yes.

 4 MR. FASSBURG: We'll present the

 5 witness.

 6 MR. HARLOW: Okay. I'm ready for a

 7 lunch break.

 8 JUDGE PEARSON: Okay. We can do that

 9 now, so it's 11:55. And we will be off the record for

10 lunch break, and we will reconvene here at 12:40.

11 (A luncheon recess was taken from

12 11:55 a.m. to 12:43 p.m.)

13 JUDGE PEARSON: We will be back on the

14 record following a recess for lunch, and I believe

15 Mr. Harlow is going to begin his cross-examination --

16 MR. HARLOW: Yes, Your Honor.

17 JUDGE PEARSON: -- questions for

18 Mr. Roemer. And if you could just hold on one second,

19 I actually forgot to grab something. Let's just go

20 off the record for one minute.

21 (A break was taken from 12:44 p.m. to

22 12:45 p.m.)

23 JUDGE PEARSON: Okay. We will be back

24 on the record. And, Mr. Harlow, whenever you're

25 ready.

0702

 1 MR. HARLOW: Thank you, Your Honor.

 2 I'm as ready as I'm going to be.

 3 E X A M I N A T I O N

 4 BY MR. HARLOW:

 5 Q Good morning, Mr. Roemer. I take it you have

 6 in front of you your prefiled testimony and exhibits?

 7 A I do.

 8 Q Okay. At this point, I'm going to start,

 9 generally, with HJR-1T and, in particular, page 44 and

10 45, if you want to refer to anything. Also I will be

11 referring to SpeediShuttle -- SpeediShuttle of

12 Washington, LLC, yes. So when I say SpeediShuttle,

13 I'm not referring to the Hawaiian company unless I say

14 so. Okay?

15 A Okay.

16 Q Good. Now, on page 45, you talked about there

17 are more than two providers at every Hawaiian airport.

18 Do you recall that testimony?

19 A Yes.

20 Q And then at line 5 you say, "We have multiple

21 providers at every airport for the last 19 years...."

22 Do you have that in mind?

23 A Yeah.

24 JUDGE PEARSON: Can you pull the

25 microphone closer to you. And is it turned on?

0703

 1 MR. ROEMER: I believe it is.

 2 JUDGE PEARSON: Is the red light on?

 3 MR. ROEMER: I can hear it.

 4 JUDGE PEARSON: If you could pull it

 5 closer to you and speak more directly into it just so

 6 the court reporter can hear you more clearly and the

 7 folks on the bridge line can hear you.

 8 MR. ROEMER: Okay.

 9 JUDGE PEARSON: Thank you.

10 BY MR. HARLOW:

11 Q In this instance, because you're talking about

12 Hawaii, I'm going to ask you about your Hawaiian

13 company. Does your Hawaiian company have exclusives

14 at some of its airports?

15 A Exclusive what?

16 Q Exclusive agreement with the port authority

17 that provide share ride service?

18 A There is no port authority at the airports in

19 Hawaii.

20 Q The airport operator or the manager or whoever

21 manages ground transportation?

22 A We have a concession agreement with the

23 Department of Transportation Airport Division at

24 Honolulu International Airport to provide on-demand

25 shared service. We do not have an exclusive agreement

0704

 1 to provide service at any airport.

 2 Q Do you have an exclusive agreement for the

 3 on-demand at Oahu?

 4 A We have an exclusive agreement to provide

 5 on-demand share ride service at Honolulu International

 6 Airport.

 7 Q Thank you for the clarification.

 8 If you would, please, I'm going to start now

 9 in your cross-examination exhibits. Have you been

10 provided with a copy of those?

11 A Yeah.

12 Q Okay. Let's start with Exhibit HJR-32X, and

13 that's a copy of your Ground Transportation Operating

14 Agreement -- when I say "your," I mean SpeediShuttle.

15 Operating agreement for Seattle; is that correct?

16 A It is called the Ground Transportation

17 Operating Agreement.

18 Q And to your knowledge, is this operating

19 agreement materially different from the operating

20 agreement with Shuttle Express with the Port of

21 Seattle?

22 A I do not know what agreement Shuttle Express

23 has.

24 Q Does this agreement allow you to provide any

25 service to the public that's within the scope of your

0705

 1 certificate of operating authority for this

 2 Commission?

 3 A I do not know if this agreement even refers to

 4 our operating authority from this Commission.

 5 Q I'm using that as a short. Does this allow

 6 you to do everything at the airport that the

 7 Commission does, to your knowledge?

 8 A It allows us to provide door-to-door shuttle

 9 service to and from -- from -- from specifically

10 Sea-Tac Airport.

11 Q And does it allow you to provide walk-up

12 service?

13 A It doesn't distinguish -- I don't believe

14 there's anything in here about walk-up service being

15 anything any different than any other kind of service.

16 Q It doesn't prohibit you from offering walk-up

17 service?

18 A No, it does not.

19 Q Does it require you to use Mercedes vehicles?

20 A No.

21 Q Does it require you to offer multilingual

22 service?

23 A No.

24 Q Is there anything in here about greeters?

25 A No.

0706

 1 Q Turn, please, to Exhibit 33, HJR-33X. Is this

 2 a copy of your wholesale agreement with The GO Group?

 3 A This is the ticket agent agreement with The GO

 4 Group.

 5 Q And if you would, look, please, at Exhibit A,

 6 the Wholesale Shared Ride Rates. Do you see that?

 7 A Uh-huh.

 8 Q It's on page 3 of 3.

 9 A Uh-huh.

10 Q There aren't any rates for any rural areas.

11 Do you notice that?

12 A Yeah.

13 Q Does The GO Group ever refer customers for the

14 rural parts of your service area?

15 A They do the same -- the same discount

16 presented.

17 Q What does The GO Group do generally? What's

18 their business?

19 A They're a travel wholesaler.

20 Q How do they get customers?

21 A I don't actually know that.

22 Q But they refer a number of customers to you;

23 is that correct?

24 A That's correct.

25 Q Would it be fair to say that The GO Group is

0707

 1 your No. 1 largest wholesale customer?

 2 MR. FASSBURG: We're going to object.

 3 I think that isn't relevant to this proceeding. And,

 4 frankly, I know that how SpeediShuttle's business is

 5 comprised in terms of its percentage of revenue from

 6 what type of customer is information they would

 7 consider proprietary and not something they want

 8 disclosed to Shuttle Express.

 9 MR. HARLOW: I wasn't going to ask

10 specific numbers.

11 A They're one of the two largest. I don't know

12 whether they are the largest or not.

13 MR. FASSBURG: Jack, in the future,

14 please let the judge rule on objections before you

15 answer.

16 MR. ROEMER: I'm sorry.

17 JUDGE PEARSON: I'm going to allow it

18 just because I am curious about it myself as to which

19 is largest wholesale group.

20 BY MR. HARLOW:

21 Q What's the other one that might be the largest

22 at any given time?

23 A Expedia. All the agreements are on file with

24 the Commission.

25 Q So I want to understand. When a customer

0708

 1 comes to you through The GO Group, who handles the

 2 booking and the reservations for that particular

 3 transportation?

 4 A The GO Group.

 5 Q Okay. So when they then -- they have to give

 6 you that reservation; correct?

 7 A They have to give us the data to fulfill the

 8 reservations, yes.

 9 Q And do they give that data in English?

10 A They actually give it in binary form, but I

11 suppose it's English. It's a text file.

12 Q Okay. Do you know if the customer doesn't

13 speak English how would they make a reservation with

14 The GO Group, if you know?

15 A GO does business with other wholesalers. GO

16 has their own website. GO as their own apps. I don't

17 know what languages GO is available in.

18 Q All right. Thank you.

19 Is there anything in this agreement that

20 you're aware of where you can find right now that

21 talks about serving non-English-speaking tourists?

22 A Absolutely not.

23 Q Turn the page to Exhibit HJR-34X. That's some

24 pictures of some of your vans; correct?

25 A It appears to be.

0709

 1 Q And it has the GO logo on it; is that correct?

 2 A Yes, it does.

 3 Q And that's pursuant to an agreement with GO

 4 Group that you'll have their logo on your vans?

 5 A We don't actually have an agreement with GO

 6 Group other than the agreement you just saw. We have

 7 just informally agreed to put these on our vans to

 8 make it easier for their customers to identify the

 9 carrier.

10 Q On Wednesday you were here when Mr. Kajanoff

11 testified that The GO Group has billed you $10,000 for

12 a license agreement. Do you recall that?

13 A I recall Mr. Kajanoff saying that, yes.

14 Q So you're disputing that?

15 A Absolutely. That's a false statement.

16 Q You said you took a semester of law school.

17 Do you remember that?

18 A Yes, sir.

19 Q Did you take any trademark law?

20 A No, sir.

21 Q Do you know what a trademark is in layman's

22 terms?

23 A No, sir.

24 Q Okay. Then we'll move on.

25 Turn, please, to Exhibit HJR-35X. And this is

0710

 1 a wholesale agreement with Travelscape; correct?

 2 A Yes.

 3 Q And then in parentheses, it says "('Expedia')"

 4 in quotes. What does that mean exactly?

 5 A That means that the company that the agreement

 6 is with is Travelscape, LLC, and VacationSpot SL, and

 7 the business name that they represent is Expedia.

 8 Q Do you see that phone number there, plus 44?

 9 Do you know where that is?

10 A That's London.

11 Q Is it common for travel wholesalers that you

12 work with to sometimes be out of the country?

13 A Sometimes.

14 Q Again, with Travelscape, they refer you to

15 customer reservations in a binary file?

16 A Yes.

17 Q This looks to me like it's perhaps the same,

18 substantially, if not exactly, template form as

19 Exhibit HJR-33X; is that correct?

20 A No.

21 Q All right. How does this differ from 33X?

22 A Expedia has a higher discount than GO Group.

23 Q And where do we find that, what page, first of

24 all?

25 A On Exhibit A.

0711

 1 Q Exhibit A.

 2 A Yeah.

 3 Q All right. So are pages 1 and 2 the same

 4 except for the names that have been filled in?

 5 A I would have to compare line by line.

 6 Q Okay. Well, spare us that.

 7 Turn, please, to the next exhibit, HJR-36X.

 8 JUDGE PEARSON: Just before you do, so

 9 you didn't object to that last one even though that

10 was not an exhibit that you had stipulated to the

11 admission -- are you --

12 MR. FASSBURG: I think that on the

13 ticket agent agreements I said let's see what he asks.

14 I didn't have an objection to the question, so I don't

15 have an objection to the exhibit.

16 JUDGE PEARSON: So I will go ahead and

17 admit that and mark it as HJR-35X.

18 (Exhibit HJR-35X was admitted.)

19 MR. HARLOW: Thank you for the

20 reminder, Your Honor.

21 JUDGE PEARSON: Sure.

22 Then you pointed to HJR-36X?

23 MR. HARLOW: Yes.

24 BY MR. HARLOW:

25 Q This is a similar wholesale agreement to 33

0712

 1 and 35?

 2 A Yeah.

 3 Q And where is Viator based?

 4 A It's Viator.

 5 Q Viator?

 6 A Viator is based in San Francisco, California.

 7 Viator is a wholly owned subsidiary of TripAdvisor,

 8 LLC.

 9 Q And turn to page 3 of 3 of that exhibit.

10 A Uh-huh.

11 Q And, again, you list the mostly downtown

12 Seattle and Bellevue hotels ZIP Codes. Do you see

13 that?

14 A I think the University District is on there,

15 and I think there's Redmond. So, no, I don't think

16 that's what it is.

17 Q Okay. Let's turn, next, to Exhibit HJR-37X.

18 JUDGE PEARSON: Before we do that, that

19 was another one to which you did not --

20 MR. FASSBURG: Don't object.

21 JUDGE PEARSON: I will admit that and

22 mark it as HJR-36X.

23 (Exhibit HJR-36X was admitted.)

24 MR. HARLOW: I already had that one

25 admitted.

0713

 1 MR. FASSBURG: You asked.

 2 MR. HARLOW: Your Honor, if I may,

 3 between now and 49, were there any others you show --

 4 MR. WILEY: You withdrew 43.

 5 JUDGE PEARSON: You withdrew 43, and,

 6 otherwise, we're fine.

 7 MR. HARLOW: Okay. Thank you. Speed

 8 then accurate.

 9 BY MR. HARLOW:

10 Q So is this a similar wholesale agreement with

11 the Hilton Hotel in Seattle?

12 A No.

13 Q What is this?

14 A This is a commission agreement. This is a

15 commission-based as opposed to a discount-based

16 agreement.

17 Q So this means if the Hilton refers a

18 passenger, you'll pay them a commission; is that

19 right?

20 A That's correct.

21 Q And the difference between that and a

22 wholesale agreement is the wholesaler will collect the

23 fare and remit to you all the discounted amount?

24 A That's correct.

25 Q Okay. So the money flows the opposite

0714

 1 direction; right?

 2 A Yeah. But they're still acting as our agent

 3 either way.

 4 Q And you filed these; correct?

 5 A We do. I believe the statute requires it.

 6 Q Going back to the wholesale agreement, which I

 7 believe were 33, 35, and 36 -- I forgot my question.

 8 Let's keep moving.

 9 Turn, please, to Exhibit HJR-38X. Do you

10 remember answering this bench request?

11 A Yeah.

12 Q And do you see in the response to "C,"

13 two-thirds of the way down the page, it starts out

14 "Every prearranged door-to-door SpeediShuttle guest is

15 met in baggage claim by a SpeediShuttle greeter with a

16 name sign."

17 Do you see that?

18 A Yeah.

19 Q Do you recall in your deposition you said,

20 "Well, of course, we don't meet every passenger." Do

21 you recall that?

22 A No. I don't recall specifically saying that.

23 Q We're going to have to come back to that so as

24 not to slow us down too much.

25 Turn, please, to Exhibit HJR-39X on page 2 of

0715

 1 9, third full paragraph, it starts out with the word

 2 "finally." You say "...we would like to have a

 3 parking space on the third level near the

 4 Transportation Plaza...."

 5 Do you see that?

 6 A Yes.

 7 Q I take it this is your request from you to the

 8 Port of Seattle?

 9 A Yes.

10 Q Did you get that parking place on the third

11 floor of the parking structure?

12 A We did.

13 Q Are you allowed to bring your Mercedes vans

14 into that same area?

15 A No.

16 Q And does this go to the staging issue you were

17 discussing in your testimony?

18 A This has nothing to do with staging. This has

19 to do with having a place for ADA customers.

20 Q Okay.

21 A Which is a requirement of the American -- I

22 can't remember what ADA --

23 Q Americans with Disabilities Act.

24 A The disabilities act.

25 Q Okay. ADA.

0716

 1 You're familiar with the layout of the garage

 2 where the share ride services go?

 3 A Yes.

 4 Q Tell us where your Mercedes vans go to pick up

 5 passengers, how they enter and how they exit.

 6 A We are allowed to pick up at Island 2A, which

 7 is right outside of the third level of the parking

 8 garage.

 9 Q Is that -- do you have a name for that in the

10 industry, like an outer drive or something?

11 A The airport refers to it as Island 2A.

12 Q All right. I'm going to call it the outer

13 drive so we're talking about the same thing,

14 Island 2A.

15 JUDGE PEARSON: You're going to call it

16 the what?

17 MR. HARLOW: Outer drive.

18 JUDGE PEARSON: Outer drive, okay.

19 BY MR. HARLOW:

20 Q So this outer drive, it goes along the

21 perimeter of the parking structure; is that correct?

22 A Yes.

23 Q Okay. And so this is across the private car

24 double-decker drive from the terminal. Is that a good

25 description of it?

0717

 1 A Yeah, that will work.

 2 Q So passengers, to get there from the main

 3 terminal, would take a sky bridge across both of the

 4 drives actually, is that correct, at the fourth level?

 5 A Yeah.

 6 Q And then they come down to what level for

 7 your --

 8 A Level 3.

 9 Q Level 3. Now, do the Shuttle Express vans go

10 along that drive as well?

11 A No.

12 Q Where do they go?

13 A Inside the parking structure.

14 Q Is that where they stage their vans?

15 A Yes.

16 Q And what is the height limitation of the

17 parking structure where the Shuttle Express vans

18 stage?

19 A I don't know what the height is. Mercedes

20 Sprinters are taller than the garage, but you didn't

21 ask about staging our vehicles at 2A. We're not

22 allowed to.

23 Q So, in other words, your vehicles are too tall

24 for the garage, but they're not too tall for the outer

25 drive?

0718

 1 A Correct.

 2 Q Turn, please, to Exhibit HJR-40X. And is this

 3 some of the communications between your lawyer,

 4 Mr. Wiley, and Port of Seattle that you were referring

 5 to in your prefiled testimony?

 6 A I can't -- I can't say. It appears to be, but

 7 this isn't my communication. I wasn't copied on any

 8 of it. This is between -- it appears to be between

 9 Mr. Wiley and Mr. Bintinger.

10 THE REPORTER: Who was the second one?

11 MR. ROEMER: Bintinger.

12 MR. HARLOW: B-I-N-T-I-N-G-E-R.

13 MR. ROEMER: Whom I don't know.

14 BY MR. HARLOW:

15 Q At the time this is dated, May 26, 2015, on

16 the first page, what was going on with regard to your

17 business, you're starting business, in Seattle

18 concerning the Port of Seattle?

19 You were trying to get started, right, and get

20 space and arrangements; is that correct?

21 A In May?

22 Q Yes.

23 A I believe in May, we had actually started

24 operating on May 1, unless I'm severely mistaken here.

25 Q At the time were you trying to make

0719

 1 arrangements with the ports that would facilitate

 2 being able to take walk-up passengers?

 3 A I don't know. I'd have to read this

 4 correspondence. As I said, it wasn't mine. I don't

 5 know what it's about.

 6 Q I'll give you a minute to skim it.

 7 A Yes. I believe this is related to our asking

 8 for space in Level 3 of the parking garage to service

 9 our customers and take walk-ups.

10 Q And that would have been, in part, a request

11 for a kiosk near the Shuttle Express kiosk; is that

12 correct?

13 A A request for space for a kiosk or counter,

14 yeah.

15 Q Turn, please -- let's skip some here -- to

16 Exhibit HJR-44X.

17 A Okay.

18 Q And this is an application to go to work for

19 SpeediShuttle; correct?

20 A Yes.

21 Q Is this a driver application or an application

22 for other types of employees?

23 A If it's a driver application, it's not a

24 complete application.

25 Q What else would be included in that?

0720

 1 A The driver application is vastly more

 2 complicated, because there's a whole bunch of

 3 information we're required to obtain. This may be an

 4 initial expression of interest that someone could

 5 submit perhaps.

 6 Q Turn, please, then, to Exhibit HJR-49X. Is

 7 that a complete driver's application?

 8 A I can't say it's complete. It's definitely

 9 more complete than what I just saw. Yes.

10 Q All right.

11 A It's more complete.

12 Q And what are these application forms used for?

13 A For applicants for open positions.

14 Q All right. How does an applicant get one of

15 these?

16 A Either there's something on our website, but

17 I'm not sure what you pulled from our website. This

18 is not on our website, I don't think. I think this

19 probably you have to pick up at our office. If you

20 called us, that's what we would tell you, to come in

21 and get an application.

22 Q All right. And is this what the company

23 initially relies on to decide whether or not to hire a

24 particular applicant, review of this form?

25 A This form is reviewed to determine whether or

0721

 1 not to have an applicant come in for a job interview.

 2 Q Is there anything in this application that you

 3 can find that indicates whether the applicant does or

 4 does not speak a language other than English?

 5 A No, there is not.

 6 MR. HARLOW: Excuse me a moment. We

 7 need to backtrack a little bit to Exhibit HJR-45X.

 8 JUDGE PEARSON: Did you say 45?

 9 MR. HARLOW: 45X.

10 Q Okay. Is this a portion of your website where

11 prospective employees can get information about

12 openings with the company in Seattle?

13 A It appears to be according to the date on this

14 as of March 23, 2017.

15 Q And if you turn to page 2 of 4, do you see

16 that gray bar at the top that says "Call center

17 agents"?

18 A Uh-huh.

19 Q And is that, like, a pull-down where if you

20 click on that -- let's go down to dispatchers. You

21 see how there's nothing below "dispatchers" other than

22 the next gray bar, which is "airport greeters"? Do

23 you see that?

24 A Yeah.

25 Q So if you click on "call center agents," that

0722

 1 gray bar, it will open up that text that's between

 2 "call center agents" and "dispatchers"; correct?

 3 A I suppose.

 4 Q If you turn to the next exhibit, HJR-45X, you

 5 see we've pulled down the dispatcher descriptions? Do

 6 you see that?

 7 JUDGE PEARSON: Do you mean 46?

 8 MR. HARLOW: 46X. Thank you, Your

 9 Honor.

10 A Okay.

11 Q Is that correct?

12 A It appears to be.

13 Q And then the same thing with Exhibit 47X,

14 which shows the airport greeters and those openings?

15 A Uh-huh.

16 Q And the same thing with 48X, it shows the

17 descriptions and qualifications for drivers. Do you

18 see that?

19 A Okay.

20 Q Okay. Now, with regard to all four of those

21 exhibits, 45X through 48X, do any of them, with regard

22 to those four types of jobs -- call center agents,

23 dispatchers, airport greeters, and drivers -- do any

24 of those say anything about desiring or having

25 qualifications to speak a language other than English?

0723

 1 A No.

 2 Q We can turn, then, to Exhibit 51, HJR-51 --

 3 no, 50X.

 4 A I'm sorry. Did you say 50 or 51?

 5 Q Fifty. This appears to be correspondence --

 6 A Did you say 50 or 51?

 7 Q Fifty. I misspoke when I said 51. It's 50.

 8 This appears to be correspondence between your

 9 company and a potential wholesale customer; is that

10 correct? Is that correct? I can't hear you.

11 A I'm looking at it --

12 Q Oh, okay.

13 A -- to make sure I answer your question

14 appropriately.

15 Q Absolutely.

16 A It is correspondence between our company and

17 an existing customer in Hawaii letting them know about

18 my Seattle operation.

19 Q Is that company Orbitz?

20 A This particular one is to Orbitz.

21 Q That's an internet travel agent, if you will?

22 A Orbitz no longer exists.

23 Q It was at the time?

24 A Yeah.

25 Q Turn, please, to page 2 of 6, the middle

0724

 1 e-mail.

 2 A Uh-huh.

 3 Q And then the third line of the body of the

 4 e-mail, it says, "This is your first opportunity in

 5 decades to choose another company's services...." Do

 6 you see that?

 7 A Okay.

 8 Q Is this other company that is being referred

 9 to Shuttle Express?

10 A I don't know. I didn't write this.

11 Q Can you think of any other company this would

12 be referring to?

13 A No, but I didn't write it.

14 Q The description goes on to say "...since only

15 one company has been permitted to operate in the

16 entire King County service area for thirty years."

17 In your experience, does that describe Shuttle

18 Express?

19 A Yeah. I believe it probably does.

20 Q Okay. So would it be fair to say that you're

21 seeking to have Orbitz refer its wholesale business to

22 SpeediShuttle instead of Shuttle Express?

23 A Was that a question?

24 Q Yes.

25 A Could you repeat it? I didn't hear the

0725

 1 question.

 2 MR. HARLOW: Okay. I'll ask the court

 3 reporter to read it back, please.

 4 (Record read back as requested.)

 5 A No.

 6 Q Why not?

 7 A It would be fair to say that it's seeking to

 8 give Orbitz the opportunity to sell SpeediShuttle

 9 service. It's not seeking to have them stop selling

10 Shuttle Express service. There's nothing in here

11 about exclusivity.

12 Q Does the witness have available to him his

13 deposition transcript?

14 MR. FASSBURG: I think probably not.

15 MR. ROEMER: I think probably not.

16 MR. HARLOW: Thank you for making it

17 available to him.

18 Q Could you please turn to page 184. We're now

19 going back to my earlier question that I said I would

20 defer about greeters.

21 JUDGE PEARSON: Page what?

22 MR. HARLOW: Page 184.

23 JUDGE PEARSON: Where are the page

24 numbers?

25 MR. HARLOW: That's not in our exhibit.

0726

 1 MR. FASSBURG: I was actually trying to

 2 search for it. We object because he didn't provide

 3 notice.

 4 MR. HARLOW: Notice of what?

 5 MR. FASSBURG: The rules require if you

 6 intend to use parts of a deposition you need to

 7 provide notice in advance. We agreed amongst

 8 ourselves that if you were going to provide an exhibit

 9 with deposition pages, that would be your notice.

10 MR. HARLOW: This is impeachment, Your

11 Honor. I asked him if he remembered in this

12 deposition saying they don't greet all prearranged

13 passengers. And I expected him to say yes, but he did

14 not. So I'm impeaching his testimony.

15 JUDGE PEARSON: But you don't have -- I

16 don't have that in front of me.

17 MR. HARLOW: Okay. I guess we need to

18 probably publish it, then, and give you a copy.

19 MR. FASSBURG: I think that's a

20 violation of WAC 480-07-410(4) which provides the rule

21 for when you can use depositions at hearings.

22 JUDGE PEARSON: Let me refer to that

23 rule.

24 MR. HARLOW: I'm trying to myself.

25 JUDGE PEARSON: 480-07-410?

0727

 1 MR. FASSBURG: 410, part 4.

 2 JUDGE PEARSON: Part 4.

 3 MR. FASSBURG: Correct.

 4 MR. HARLOW: Your Honor, I just don't

 5 think this applies. This is basic cross-examination.

 6 If a witness gives an answer that's inconsistent with

 7 their deposition testimony or any other external

 8 evidence that you can provide that's admissible, you

 9 can impeach them with it. This is offered for

10 impeachment purposes.

11 JUDGE PEARSON: So as I read this, it

12 does say that the party must attach -- give notice and

13 attach the portions of the deposition that the party

14 proposes to offer in the form of exhibits marked for

15 identification. And then it says "If portions of a

16 deposition are admitted into evidence, other parties

17 may offer additional portions of the deposition when

18 necessary...," but I would take that not to mean you,

19 but to mean other parties for the purpose of balancing

20 representation of the testimony.

21 MR. HARLOW: Your Honor, I don't mind

22 doing this post-hearing in accordance with this rule.

23 We were not expecting to have to make this an issue.

24 JUDGE PEARSON: Well, so --

25 MR. HARLOW: It's directly contrary to

0728

 1 his testimony, and we wouldn't validate it on cross.

 2 JUDGE PEARSON: You're saying in his

 3 testimony he said that SpeediShuttle -- that customers

 4 were greeted every time, and you're trying to

 5 establish that he's given inconsistent answers?

 6 MR. HARLOW: His answer is: Generally,

 7 yes.

 8 Question: But not always?

 9 Answer: Not always.

10 JUDGE PEARSON: Okay.

11 MR. FASSBURG: And, Your Honor, that

12 was not his testimony. That was a bench request, and

13 that was a different point in time. So, for example,

14 if they had greeted every passenger at the time they

15 answered the bench request, it could be true no matter

16 what his deposition answer was.

17 JUDGE PEARSON: Right. I agree with

18 you. I also think that it's in the record in several

19 places that SpeediShuttle has conceded that there are

20 times when customers aren't greeted, when they're not

21 greeted by a greeter. So I accept that as true, that

22 not every single customer is met with a greeter for

23 various reasons.

24 I know Mr. Roemer has provided explanations

25 where sometimes it's because of the actions of the

0729

 1 customers. Sometimes it's miscommunication, that

 2 there are different circumstances, but I would --

 3 MR. HARLOW: Sometimes Mr. Roemer says

 4 one thing, and sometimes he says another. We're

 5 trying to make the record as complete as possible.

 6 JUDGE PEARSON: I think we should move

 7 on from this, because I get the point that you're

 8 trying to make. But as Mr. Fassburg noted, where they

 9 said "every," it was in response to a data request and

10 not testimony provided under oath.

11 MR. FASSBURG: And, Your Honor, I

12 object to the side bar comments. I didn't malign the

13 witnesses of Shuttle Express. I'd actually move to

14 strike his comment from the record.

15 JUDGE PEARSON: Which was it?

16 MR. FASSBURG: Sometimes Mr. Roemer

17 says one thing; sometimes he says another.

18 JUDGE PEARSON: Okay. Well, I don't

19 think --

20 MR. HARLOW: He said one thing on the

21 stand five minutes ago, and he said another thing in a

22 deposition.

23 JUDGE PEARSON: I get it. I can take

24 it all with a grain of salt.

25 MR. FASSBURG: I appreciate that, Your

0730

 1 Honor, but in this proceeding, my client has been

 2 called a liar repeatedly in a way that's uncalled for.

 3 And we'd hope that won't continue today.

 4 JUDGE PEARSON: Okay. And I agree with

 5 that, so let's just move forward.

 6 BY MR. HARLOW:

 7 Q Okay. Moving forward, I think we're moving to

 8 Exhibit 51X now, HJR-51X. I think I'm going to skip

 9 this one. It's already in the record.

10 Turn, please, to Exhibit 56X, HJR-56X. Now,

11 on the very first page, the very first substantive

12 line, are you with me? It says: We do provide

13 on-demand service in Honolulu Airport (exclusive

14 concession agreement), Kona Airport (exclusive

15 concession). Do you see that?

16 A Yes.

17 Q Is this exclusive referenced in this exhibit

18 the one that you referred to a few minutes ago on

19 cross without the exhibit?

20 A Yes.

21 Q And, apparently, you have this same thing or

22 something similar in the Kona Airport?

23 A It's similar. It's not the same.

24 Q Okay. Let's go ahead and go to

25 Exhibit HJR-58X.

0731

 1 JUDGE PEARSON: This is the doozy?

 2 MR. HARLOW: This is the one we were

 3 reserving.

 4 JUDGE PEARSON: The very long 224-page

 5 exhibit.

 6 MR. HARLOW: It's not admitted right

 7 now, still a work-in-process, thanks to my assistant.

 8 Q If you would, turn, please, to page 4 of 24.

 9 A To what page?

10 Q Page 4 of 224.

11 A Okay.

12 Q And do you see in the last line of the second

13 full paragraph it says, "Oh yeah.... We have greeters

14 with signage at each of the baggage claims..."?

15 A Yes.

16 Q Okay. And turn, next, please, to page 15 of

17 224.

18 A Fifteen?

19 Q Yes.

20 A Okay.

21 Q Do you see under "Arrival Procedures" it says

22 "Guests will be greeted in baggage claim with a name

23 sign on arrival and directed to their shuttle"?

24 A Yes.

25 Q And if you would, turn, please, to page 51 of

0732

 1 224.

 2 A Okay.

 3 Q Okay. This appears to be an e-mail from Susan

 4 Slappey, Costco Travel, to Lee Collins. Who is Lee

 5 Collins?

 6 A Lee Collins was vice president of sales and

 7 marketing.

 8 Q And she says "Hi Lee,

 9 "Once you get things going, hopefully you will

10 add more zip codes...."

11 Do you see that?

12 A Yeah.

13 Q Do you know why she would have said that?

14 A I do. Because I talked to her.

15 Q Okay. So why did she say that?

16 A Because she lives in Issaquah, and she wanted

17 to know what the fare was from her house.

18 Q She said "...I see you don't service

19 Issaquah...." Where did she get that impression?

20 A I have no idea.

21 Q Would it have been your fare card that's

22 Exhibit A to a bunch of those wholesale agreements we

23 looked at earlier?

24 A This is Costco Travel. I don't think we

25 looked at anything for Costco Travel.

0733

 1 Q Would you agree then Exhibit 35X, page 3 of 3,

 2 Exhibit A, you don't show Issaquah as a destination?

 3 A Exhibit 35?

 4 JUDGE PEARSON: Page 35?

 5 MR. HARLOW: HJR-36X. Sorry. I gave

 6 the wrong one.

 7 A Those are different companies. That's Viator.

 8 MR. HARLOW: I'm sorry. I'm

 9 multitasking here. Did the witness answer?

10 (Record read back as requested.)

11 Q Well, each of the wholesale agreements that we

12 provided, you had an Exhibit A. Was Costco wholesale

13 offered a similar agreement with an Exhibit A?

14 A Costco Travel, not Costco wholesale. Costco

15 Travel does not sell Seattle, so they had no interest

16 in our rates.

17 Q Turn, please, to page 72 of 224 in Exhibit

18 HJR-58X again.

19 A Okay.

20 Q Do you see later or earlier in this string

21 there's an e-mail from Oliver Krieg to Lee Collins,

22 "Hi Lee,

23 "One more thing. I'll need instructions of

24 what guests need to do when arriving at the port.

25 "Will they also have meet & greet?"

0734

 1 Do you see that?

 2 A Yes.

 3 Q And do you offer meet and greet at the port?

 4 A Uh-huh.

 5 Q At the cruise port?

 6 A I don't know if this was for the cruise port.

 7 Q Turn to page 74 and the second full paragraph.

 8 It says: A client is trying to book round-trip

 9 shuttle transfers in Seattle between SEA and the

10 cruise port.

11 Does that give you the context to understand

12 that?

13 A Yeah. There it is. Okay. And your question?

14 Q So at this time was SpeediShuttle offering

15 greeters at the cruise port for the return trip to the

16 airport?

17 A I don't know the date of this. July 14. I

18 don't know when we started positioning greeters at the

19 cruise port, so I can't answer your question

20 specifically for this date.

21 Q Thank you for attempting that. Turn, please,

22 to page 76 of 224.

23 About 40 percent down the page, it says it's

24 an e-mail from Marcela at GTA Travel to Lee Collins

25 again. Do you see that?

0735

 1 A Yeah. This is all part of the same e-mail

 2 chain. You're aware of that; right?

 3 Q I don't have marked where it starts and ends.

 4 A You're in the same e-mail chain as you were

 5 here. This is all the same people. It's all the same

 6 company. So go ahead.

 7 Q Right. Right. And let's just -- for the

 8 record, when you're soliciting business from the

 9 wholesale travel providers, there were often a lot of

10 e-mail exchanges over a period of days, maybe weeks or

11 even months; is that correct?

12 A That's correct. It's not a slam dunk.

13 Q And let's go to the root of this 224-page

14 exhibit. These were provided to us in response to

15 Data Requests 2 and 12. Do you remember those

16 requests?

17 A There's so many requests. I couldn't tell you

18 specifically what 2 and 12 said.

19 Q In general, they were requesting and the

20 administrative law judge ordered documents be provided

21 that show whether SpeediShuttle is or is not

22 implementing its business model as presented to the

23 Commission.

24 A Okay.

25 Q Does that help you out?

0736

 1 A I'll accept that for the moment.

 2 Q Okay. All right. So while we're still on

 3 page 76, about two-thirds of the way down, Marcela is

 4 saying, "The existing bookings I will leave with

 5 Shuttle Express. I am sure once I send the advert

 6 announcing New Low Rates for Shared Transfer available

 7 now in Seattle, clients will cancel and rebook with

 8 SpeediShuttle. But at least it will be their choice

 9 and there will be no bad blood."

10 Do you see that?

11 A Yes.

12 Q And, in fact, do you know if her wholesale

13 travel business had customers who had previously

14 booked with Shuttle Express --

15 A I have no idea.

16 Q -- and rebooked?

17 A GTA is a part of a huger company. I have no

18 idea what they have and don't have.

19 Q To your knowledge and recollection, did

20 SpeediShuttle, either you or other people you talked

21 with in the company, discuss with wholesale providers

22 what they would, could, or might do with existing

23 bookings with Shuttle Express once you commenced your

24 service in Seattle?

25 A No.

0737

 1 Q No?

 2 A To my knowledge, no.

 3 Q To your knowledge, no. But that could be

 4 reflected by some of these e-mails; isn't that

 5 correct?

 6 A I don't know that you could draw that

 7 conclusion. This is coming from Marcela, not from

 8 SpeediShuttle. So I don't --

 9 Q Let me ask you -- I'll let you finish.

10 MR. FASSBURG: Actually, I have an

11 objection. I've been letting this go a little while

12 because I was curious where it was going. I don't see

13 how this relates to any of his direct testimony. This

14 isn't appropriate cross-examination testimony.

15 MR. HARLOW: Let me get a question. My

16 next question should make it pretty clear.

17 JUDGE PEARSON: I was starting to

18 wonder myself where we were going, so go ahead.

19 BY MR. HARLOW:

20 Q So your company produced this in response to

21 Data Request 2 and 12 about how this meets the

22 business model. And in your opinion, how do these

23 224 pages show whether or not SpeediShuttle was

24 implementing its business model as presented in this

25 application to this Commission?

0738

 1 MR. FASSBURG: I'll repeat my

 2 objection. This doesn't relate to any of his direct

 3 testimony. Discovery, when you're responding,

 4 sometimes there's a judgment call. This is close

 5 enough we just have to produce it. That's actually

 6 sometimes the attorney who does that.

 7 We ask the client to overproduce, and we try

 8 to identify what we think we must produce to make sure

 9 that we haven't withheld things inappropriately in

10 someone else's view. To ask the witness why they were

11 produced actually requires some degree of attorney

12 work product because I'll tell you we screened -- we

13 asked SpeediShuttle to produce as much as you can

14 find. We'll make determinations on what needs to be

15 produced.

16 JUDGE PEARSON: Okay. Understood.

17 MR. HARLOW: Your Honor, Mr. Roemer

18 testified for dozens of pages on how they're

19 supposedly meeting the business model. What I will

20 argue in post-hearing brief, if this is admitted, is

21 this shows not that they're doing anything special or

22 unique, rather they're soliciting customers, wholesale

23 customers, away from Shuttle Express.

24 MR. FASSBURG: You can argue that with

25 or without additional testimony on this subject.

0739

 1 JUDGE PEARSON: So here's my suggestion

 2 and question: This is a 224-page document.

 3 MR. HARLOW: I'm ready to offer it

 4 again, Your Honor.

 5 JUDGE PEARSON: I think it's not

 6 realistic to ask Mr. Roemer which portions of this

 7 224-page document support his testimony. You're

 8 right. He did offer a lot of testimony about how

 9 SpeediShuttle is adhering to its proposed business

10 model.

11 If you have questions about specific excerpts

12 and you want to ask how that reconciles with his

13 assertion that SpeediShuttle is adhering to his

14 business model, that's one thing. To ask him to point

15 to which places in this 224-page document to support

16 his testimony, that's just too much. It's too much to

17 ask of him. So if you have more specific questions, I

18 will let you ask those.

19 MR. HARLOW: Maybe -- we can't sit here

20 and go through this in the hearing this afternoon.

21 Let me try this as a subject to check maybe.

22 JUDGE PEARSON: What do you mean? For

23 the entire --

24 MR. HARLOW: I'll pose the question

25 then.

0740

 1 JUDGE PEARSON: Again --

 2 MR. HARLOW: Subject to check, there's

 3 no discussion about providing multilingual services to

 4 these wholesale customers?

 5 JUDGE PEARSON: Why don't you ask it in

 6 that way, in a more conclusive way, rather than

 7 broader. Narrow it in on whether those specific

 8 things are in there or not. He can answer yes or no

 9 subject to check or that he doesn't know. I think

10 that's fair.

11 BY MR. HARLOW:

12 Q Okay. Mr. Roemer, will you accept, subject to

13 check, that these numerous e-mail strings don't

14 discuss the provision of wholesale service in a

15 language other than English?

16 A This e-mail chain is 22 pages long. It begins

17 in February. There's absolutely no way, without

18 reading all 20 pages over a period of five months,

19 that I could tell you one way or the other whether

20 this e-mail chain ever mentions foreign greeters. I

21 just couldn't tell you.

22 MR. HARLOW: Your Honor, I think we

23 ought to offer it. If they can find something in

24 there about non-English, they'll put it in their

25 brief; otherwise, I'll say in my brief, you know, in

0741

 1 their solicitation to wholesale customers, it's all

 2 English. It doesn't matter where the customers come

 3 from.

 4 MR. FASSBURG: Your Honor, that seems

 5 to flip the rules about when discovery is admissible

 6 on its head, and he's suggesting, well, I can't quite

 7 prove it does what I say it does, so why don't you

 8 admit it and then I'll prove it later. That's not how

 9 the rules work.

10 And, again, I objected initially exactly to

11 these sort of problems. It's 224 pages of a lot stuff

12 that he hasn't demonstrated all of which could be

13 conceivably relevant or is relevant. He's touched on

14 pages up to 82, not all of them, and he hasn't

15 addressed what's in the middle. I think it's fine

16 that he asks the questions that he did. If he has

17 some more specific questions about specific pages that

18 are not cumulative, I think we can continue with that.

19 But to ask what he's asking just seems a bit much.

20 MR. HARLOW: I got a thousand pages of

21 these. We trimmed it way down. They're clearly

22 authentic. They were produced by the other party.

23 There's not going to be a lot of weight given to it,

24 but I think the record needs to show what we've been

25 saying, which is they're not really marketing to

0742

 1 non-English speakers, particularly on the wholesale

 2 side.

 3 MR. FASSBURG: If that's really the

 4 point, I think he's asking the wrong questions.

 5 Because he probably should ask do some of these

 6 wholesalers focus on multilingual customers or

 7 non-English-speaking customers.

 8 JUDGE PEARSON: Okay. So in light of

 9 all of that, I will go ahead and admit it and mark it

10 as HJR-58X with the caveats that I gave earlier. I

11 have looked through it all, so I'm familiar with

12 what's in there. I know most of it is irrelevant, so

13 I will afford it weight accordingly. And it will

14 likely be limited, but -- because I don't want parse

15 through it right know.

16 (Exhibit HJR-58X was admitted.)

17 MR. FASSBURG: I appreciate it, Your

18 Honor. Frankly, I don't think there's anything

19 damaging in here. It's just a waste of my time to

20 have to know.

21 JUDGE PEARSON: I understand. I expect

22 that if Mr. Harlow wants to rely on it in his

23 post-hearing briefing, he will cite to the specific

24 examples, and we can then disregard the rest. That

25 would be my expectation.

0743

 1 MR. HARLOW: Of course. I'm not going

 2 to expect you to read all 224 pages.

 3 JUDGE PEARSON: But I already did.

 4 That's the thing.

 5 MR. HARLOW: I hope it was a sleep aid

 6 and nothing more. Let's move on to HJR-59X.

 7 JUDGE PEARSON: This is another one to

 8 which SpeediShuttle has not yet stipulated to the

 9 admission. So do you want to wait and see what the

10 purpose what it's being offered before --

11 MR. HARLOW: Yeah. I'm getting ahead

12 of myself. I have some questions ahead of that.

13 JUDGE PEARSON: Okay.

14 MR. HARLOW: So we'll come back to

15 that.

16 JUDGE PEARSON: Okay.

17 BY MR. HARLOW:

18 Q I need to find the right exhibit. It's

19 actually HJR-60X.

20 JUDGE PEARSON: So just so everyone

21 knows, I Googled where Amharic is spoken and it's

22 Ethiopia.

23 Q Mr. Roemer, did you know where Amharic was

24 spoken?

25 A Yes.

0744

 1 Q Good for you.

 2 Let's start with the total number of employees

 3 SpeediShuttle has had through September 9, 2016, and

 4 it says 142. Do you see that?

 5 A Yes.

 6 Q What's your current employee count?

 7 A I don't know.

 8 Q How many payroll checks do you issue every

 9 month?

10 A I don't know.

11 Q Who does know that?

12 A Seattle management would know.

13 Q Seattle management?

14 A Yeah.

15 Q What's that?

16 A The general manager in Seattle would probably

17 know how many checks they issue.

18 Q You are responsible, generally, for the

19 finances in the company; isn't that correct?

20 A I'm not the payroll clerk.

21 Q Okay.

22 A I'm the chief financial officer of

23 SpeediShuttle.

24 Q Who prepares the financial statement every

25 month?

0745

 1 A The accounting department and SpeediShuttle.

 2 Q Do you review them and approve them?

 3 A I do.

 4 Q Okay. Do the financial statements reflect

 5 employee costs?

 6 A They reflect wages and salaries. They don't

 7 say the number of employees and -- I've never seen

 8 financial statements that do.

 9 Q All right. Do you have in your mind what the

10 current monthly employee cost is?

11 A No, I don't. I would have to -- I would have

12 to pull a financial.

13 Q You'd have to what?

14 A I would have to pull the financial statements.

15 Q Did you bring that with you?

16 A No, I did not.

17 MR. HARLOW: Your Honor, may I approach

18 the witness?

19 JUDGE PEARSON: Sure.

20 MR. FASSBURG: Before you ask

21 questions, I want to put on the record he's handed

22 Mr. Roemer a document that was subject to a

23 confidentiality agreement, and I think it's necessary

24 that we discuss how this is going to be handled.

25 Because we agreed he could ask questions about it, but

0746

 1 I think the understanding were we weren't going to

 2 submit specifics into the record. If there's a

 3 disagreement on that, I think we probably should sort

 4 it out before we ask any questions.

 5 JUDGE PEARSON: Do I not get to see it?

 6 MR. FASSBURG: That's something I don't

 7 know the answer to.

 8 JUDGE PEARSON: I bet it wouldn't mean

 9 much to me.

10 MR. HARLOW: The answer is I can't give

11 it to you, but you can order it to be provided to you.

12 MR. FASSBURG: Well, I don't know --

13 obviously, you have the right to order that, but I

14 don't think that was part of the agreement we had when

15 we gave this to Shuttle Express, which I'll remind

16 you, by the way, we asked for repeatedly an attorneys'

17 eyes only provision, and they wouldn't agree to it.

18 JUDGE PEARSON: I'm just wondering if

19 it gets to the point where I can't follow what's going

20 on. If I could look at it while he's referring to it

21 and then give it back to you --

22 MR. FASSBURG: What I'd really like to

23 do is ask my client his opinion on that before we

24 answer the question.

25 MR. HARLOW: And while we're doing

0747

 1 that, Your Honor, we're underscoring the difficulty

 2 that this particular industry under 81.68 has because

 3 of the lack of protective orders. I was going to

 4 suggest maybe we could try to follow the

 5 confidentiality rules, because we can't get protective

 6 orders, I don't think we can go there.

 7 JUDGE PEARSON: Right.

 8 MR. WILEY: So we're not trying to

 9 impede you from any knowledge on this. It's just how

10 we protect the data that we're concerned about.

11 JUDGE PEARSON: You mean from being

12 publicized in a transcript?

13 MR. WILEY: Correct.

14 JUDGE PEARSON: Do you want a short

15 break, because I can take a bathroom break?

16 MR. FASSBURG: Yes.

17 JUDGE PEARSON: Okay. Let's do that

18 for four minutes and come back at 1:50.

19 (A break was taken from 1:46 p.m. to

20 1:50 p.m.)

21 JUDGE PEARSON: We'll be back on the

22 record.

23 MR. WILEY: Your Honor, thank you for

24 the break. We've had a chance to consult with our

25 client. What we would propose -- and I've handed out

0748

 1 a copy to Mr. Beattie and I will give you one, and

 2 what we want to avoid is it being produced into the

 3 record.

 4 JUDGE PEARSON: Sure.

 5 MR. WILEY: So if we can get it back

 6 after the series of questions, that's what we propose.

 7 JUDGE PEARSON: Sure. Thank you.

 8 Can I just ask a broad question?

 9 MR. WILEY: Sure.

10 JUDGE PEARSON: Is this the document

11 that Mr. Kajanoff often refers to in his testimony

12 vaguely without going into estimates?

13 MR. FASSBURG: The one that's not the

14 estimate, but the one that is from SpeediShuttle.

15 JUDGE PEARSON: Yes.

16 MR. FASSBURG: Yes, that's the one.

17 JUDGE PEARSON: That he compares to his

18 estimate?

19 MR. FASSBURG: Correct.

20 MR. HARLOW: And some of the numbers

21 are in Mr. Kajanoff's responsive testimony as well.

22 JUDGE PEARSON: You mean Mr. Roemer's?

23 MR. HARLOW: Excuse me. Mr. Roemer's.

24 Thank you.

25 JUDGE PEARSON: Okay. Okay.

0749

 1 MR. HARLOW: Okay. Whenever you're

 2 ready.

 3 JUDGE PEARSON: I'm ready.

 4 MR. HARLOW: We're on the record then.

 5 BY MR. HARLOW:

 6 Q Mr. Roemer, you've been handed a yellow

 7 document on yellow paper that's at the top titled

 8 "SpeediShuttle Washington, LLC, Income Statements" and

 9 then in parentheses "1," which, I guess, is the

10 footnote. Do you have that?

11 A Yes.

12 Q And it shows a financial statement of some

13 sort in the left two columns for 12 months ended

14 April 30, 2016; correct?

15 A Yes.

16 Q And the far right two columns, it says five

17 months ended September 30, 2016; correct?

18 A Correct.

19 Q And the two columns are a dollar amount --

20 under each of those main headings are a dollar amount

21 and a percentage; correct?

22 A Uh-huh.

23 Q And there are various categories of expenses

24 and revenue down the left; correct?

25 A Yes.

0750

 1 Q And one of those categories --

 2 MR. HARLOW: Can I give the name of the

 3 categories?

 4 MR. WILEY: Yes.

 5 Q One of those categories is "Driver Wages and

 6 Benefits"; correct?

 7 A Correct.

 8 Q From that, looking at the figure for five

 9 months ended September 30, 2016, is -- well, first of

10 all, do you know what your drivers are paid?

11 A Do I know what they're paid?

12 Q They're paid $15 an hour currently; is that

13 correct?

14 A No. They're paid -- they're paid Seattle

15 minimum wage for companies with less than 500

16 employees. I don't know what that is today. I don't

17 do the day-to-day payroll.

18 Q When did you -- when did your company stop

19 paying $11 an hour and start paying Seattle minimum

20 wage?

21 A Excuse me?

22 Q When did your company stop paying $11 an hour

23 and start paying Seattle minimum wage?

24 A Is that sort of like when did you stop beating

25 your wife? We have always paid --

0751

 1 Q There's evidence in the record --

 2 THE REPORTER: I couldn't hear your

 3 question.

 4 Q There's evidence in the record that you paid

 5 $11 an hour, and you, in your responsive testimony,

 6 said you were paying, I think, $15 an hour, but,

 7 certainly, minimum wage.

 8 A No. I think you're confused, sir.

 9 MR. WILEY: Your Honor, if I could

10 object to the form of the question. Because I do wage

11 and hour litigation, the Seattle minimum wage has

12 changed over the past few months by year.

13 JUDGE PEARSON: Right.

14 MR. WILEY: And I can't say right now

15 what it is, but I can tell you it's been staggered for

16 three years and it has moved up.

17 JUDGE PEARSON: I have seen that in the

18 garbage cases that have come through.

19 A It was $11 an hour when we began operating in

20 Seattle.

21 Q I'm sorry. I couldn't hear that.

22 A It was $11 an hour when we started operating

23 in the city -- in the state of Washington. It was

24 $11.

25 Q What is the wage in Sea-Tac for employees who

0752

 1 work in that municipality, if you know?

 2 A It's $14 and about -- 14 and a half. I'm

 3 not -- that's not quite right.

 4 Q Okay.

 5 A But it's pretty close.

 6 Q So for the five months ending September --

 7 A Did I say 14 and a half? Fifteen and a half.

 8 Q Thank you. So for the five months ending

 9 September 30, 2016, were the drivers' wages in the

10 range of around 15, 16 dollars an hour, something like

11 that?

12 A Drivers?

13 Q Drivers.

14 A No.

15 Q What were their wages?

16 A Their wages would have been the Seattle

17 minimum wage at the time for all time except the time

18 that they spent within the city limits of the City of

19 Sea-Tac, which would have been paid $15.48. I think

20 it's 15.48. I don't know. But I know you're going to

21 try to impeach me because it's off by a dime.

22 Q No, I'm not trying to get an exact number.

23 A Yes, you are.

24 Q I'm trying to get some idea of how many -- if

25 you can tell from this income statement, roughly, how

0753

 1 many employees you would have had in that period of

 2 May through September of 2016.

 3 A I don't know how you could. They're paid by

 4 the hour. Then you got overtime, and you got -- which

 5 is time and a half. And I know your position is that

 6 we don't pay our people according to the law, but we

 7 do. And so, you know, people work more than 40 hours,

 8 they get time and a half, and you can't use a

 9 financial statement to determine the number of

10 employees.

11 Q All right. As I understand this 142, that was

12 a cumulative total of employees. In other words, 142

13 individuals had worked for the company from its

14 inception to the date of this answer, which was

15 September of 2016. Am I understanding that right?

16 A That was the request that was made.

17 Q So I am understanding that right?

18 A We responded to the request that was made, so

19 that's what it is.

20 Q So as of September 9, 2016, that doesn't mean

21 you still had 142 total employees; correct?

22 A No.

23 Q It would have been some lesser number?

24 A Yes.

25 Q Okay. Same question with regard to the 42 who

0754

 1 speak a language other than English, that 42 would

 2 have not been a total then employed as of September 9,

 3 2016; is that correct?

 4 A That wasn't the data request that was asked.

 5 Q Is my statement correct?

 6 A Yes.

 7 Q Okay. Again, it would have been some lesser

 8 number than 42; is that correct?

 9 A That's correct.

10 Q I count 11 greeters in Exhibit HJR-60X. Do

11 you accept that, subject to check?

12 A Yeah. I'll accept it, subject to check.

13 Q And one of those greeters, at some point in

14 time prior to September of 2016, spoke Chinese;

15 correct?

16 A Yes.

17 Q And is that Chinese-speaking greeter still

18 working for the company?

19 A I don't know.

20 Q One spoke Hindi. Is that greeter still

21 working for the company?

22 A I happen to know the answer is no, because I

23 know who she is.

24 Q Okay. How about the three Samoan -- two

25 Samoan-speaking greeters, are they still working for

0755

 1 the company?

 2 A I don't know.

 3 Q How about the three Spanish-speaking greeters,

 4 are they still working for the company?

 5 A I don't know.

 6 Q Do you know how many Ethiopian passengers come

 7 into Sea-Tac Airport and seek ground transportation?

 8 A I don't know.

 9 Q Do you know how many Samoan travelers come

10 into Sea-Tac Airport and seek ground transportation?

11 A I don't know.

12 Q Do you know if you've ever carried a

13 Somali-speaking passenger to or from Sea-Tac Airport?

14 A I don't know.

15 Q Do you know how many -- let me start over.

16 Who handles the greeter staffing for your

17 company?

18 A We've had different people responsible for it

19 at different times.

20 Q Who currently handles it?

21 A Leah Bischoff is technically responsible for

22 the greeter staff today.

23 Q What was the first name? I didn't catch that.

24 A Leah.

25 Q That's a woman then?

0756

 1 A Yes.

 2 Q Okay. So Ms. Bischoff, do you discuss

 3 staffing with her?

 4 A No.

 5 Q Are you responsible for the financial

 6 oversight of the greeter department?

 7 A No.

 8 Q Who is?

 9 A Leah Bischoff.

10 Q Describe to me the process, as you understand

11 it, for greeting a pre-reserved passenger who arrives

12 at Sea-Tac Airport and is reserved to take on one of

13 your shuttles somewhere.

14 A I don't understand the question.

15 Q Well, how did they meet -- how does a greeter

16 meet their passengers?

17 A Well, they track flights. We have the flight

18 information for most customers. The greeter tracks

19 the flight. We know what baggage claim they're at.

20 The greeter will go to that baggage claim with a sign

21 and wait for the passenger.

22 Q What if the passenger only has carry-on

23 luggage, how do you greet them?

24 A We greet at baggage claim. We say that in our

25 confirmation request. We say that in -- we say that

0757

 1 in the original application. We say that in the

 2 original hearing. We greet at baggage claim.

 3 Q And do your customers always put their flight

 4 information into a reservations?

 5 A Depending -- well, it's required if you book

 6 on the website. It's required if you call the call

 7 center, but it's not required if you book through a

 8 wholesaler.

 9 Q So how do you greet a wholesale passenger?

10 A I didn't say it was provided.

11 Q How do you greet a wholesale passenger if they

12 didn't provide the flight information?

13 A We don't. We can't.

14 Q So once the passenger connects with the

15 greeter with the sign or whatever, what happens next?

16 A The greeter -- the greeter will then walk them

17 over to Island 2A.

18 Q All right. Do they -- does the greeter -- as

19 soon as the passenger is there with their baggage, do

20 they immediately leave for 2A, or do they wait for

21 other passengers sometimes?

22 A If there are other passengers coming off the

23 same flight, they're going to wait until they have

24 them all.

25 Q And what's the average wait time at baggage

0758

 1 claim for all the passengers on that flight to --

 2 A I have no idea. We don't track it.

 3 Q Do your greeters ever aggregate passengers

 4 from different flights?

 5 A I don't know.

 6 Q How long does it take the greeter to get from

 7 baggage claim, once all the passengers they're waiting

 8 for are together, over to Island 2A?

 9 A However long it takes to walk over.

10 Q Do you know about how long that is?

11 A No.

12 Q Do you know how long it takes the greeter to

13 come back to meet other passengers?

14 A However long it takes to walk back over.

15 Q Do you know how many passengers an hour a

16 greeter can handle on average?

17 A That depends on how many of them are on the

18 same flight.

19 Q Do you know how many flights an hour a greeter

20 can handle on average?

21 A No, I don't.

22 Q Do you know how many greeters the company has

23 today?

24 A No, I don't.

25 Q What's the range in the number of greeters the

0759

 1 company will have over a period of a year?

 2 MR. FASSBURG: Object to the form. You

 3 said the number of greeters they have over the course

 4 of a year, as in aggregate or as in staff?

 5 MR. HARLOW: On the -- available for

 6 work at any given time.

 7 A Available?

 8 Q Do you understand the question? If not, I'll

 9 rephrase it.

10 A I do not understand the question, because it's

11 like do you mean just a raw number of how many people

12 there are out there somewhere, whether they're working

13 or not?

14 Q We talked about this a little bit at the

15 deposition, and let me put it in that context and that

16 may help. So you indicated that the number of

17 greeters the company has on the payroll varies

18 according to the season. Do you recall that?

19 A Yes.

20 Q And when would you have -- when would the

21 company have the most greeters on payroll?

22 A During cruise season.

23 Q And that runs from May to September; correct?

24 A Yeah.

25 Q And when would the company have the least

0760

 1 greeters on payroll?

 2 A Outside of cruise season.

 3 Q So the rest of the year?

 4 A Yeah. I don't know which months, no.

 5 Q Is there a particularly slow time in the

 6 travel business in Seattle?

 7 A Yeah, the winter.

 8 Q Okay. December, January, February, those

 9 times?

10 A November, December, January, February.

11 Q How many baggage carousals are there at the

12 Sea-Tac Airport?

13 A I don't know. Seventeen.

14 Q Would you accept, subject to check, there are

15 16?

16 A Yeah, sixteen.

17 Q Does the company ever staff zero greeters at a

18 time frame during the day?

19 A Zero greeters?

20 Q Yes.

21 A Not while the airport has got incoming

22 flights, no.

23 Q Do you recall at your deposition stating that

24 the company in the winter shuts down its dispatch at

25 midnight?

0761

 1 A Yes.

 2 Q And is that still the case?

 3 A Yes.

 4 Q And is that consistent with your tariff, in

 5 your understanding?

 6 A I don't believe our tariff mentions anything

 7 about dispatch times.

 8 Q Doesn't your tariff say you'll provide service

 9 24 hours a day?

10 A You didn't ask whether we provided service 24

11 hours a day. You asked whether dispatch closed

12 between -- after midnight.

13 Q How do you provide a service to a customer if

14 there's no dispatch?

15 A Well, the dispatchers don't provide the

16 service. The drivers do.

17 Q So how does a customer get a driver if there's

18 no dispatcher?

19 A The customers don't usually arrange the

20 drivers. That's done by our dispatch team.

21 Q Let's say I'm on a flight that's scheduled to

22 arrive at 11:00 p.m. and I'm delayed to 1:00 a.m. and

23 I've booked one of your shuttle vans. How do I

24 connect up with a driver?

25 A There will be a greeter there.

0762

 1 Q So the greeters go after midnight?

 2 A Oh, yeah.

 3 Q And how does the greeter get the van to come

 4 from the holding area to the Island 2A?

 5 A They use a telephone actually.

 6 Q Okay. There was discussion with our witnesses

 7 Wednesday about serving mostly tourists. Do you

 8 recall that testimony?

 9 A I gave testimony about --

10 Q No.

11 A -- tourists?

12 Q No. It was our witness.

13 A You'd have to be more specific.

14 Q I was asking if you recall -- I think it was

15 questions by Mr. Beattie whether it would be logical

16 for a company that serves just tourists or focused on

17 tourists to serve primarily hotels. Do you recall

18 that?

19 A I don't recall the specifics.

20 Q Does your company mostly serve tourists?

21 A You know, we don't actually have statistics

22 like that, but I would guess it's -- the vast majority

23 of our transfers are to hotels. They're probably

24 tourists, although they could be people who live in

25 hotels.

0763

 1 Q On May 9 we had a discovery conference with

 2 the administrative law judge here. I don't believe

 3 you were on it, but your counsel said that one of the

 4 ways to get the profitability was, quote, efficiency.

 5 Do you know what he was talking about?

 6 MR. FASSBURG: I'm going to object.

 7 He's asking a question about a statement that I made

 8 on a phone conference. Why doesn't he just ask

 9 Mr. Roemer about something he knows or something he's

10 said.

11 MR. HARLOW: I just asked him what he

12 knew what efficiency was about. That's exactly what I

13 asked.

14 MR. FASSBURG: If he wants to restate

15 the question --

16 JUDGE PEARSON: Can you restate the

17 question, because I'm not following.

18 MR. HARLOW: Sure, sure.

19 BY MR. HARLOW:

20 Q Does the company have any plan to become

21 profitable by somehow becoming more efficient?

22 A Yes.

23 Q So, specifically, what would that be?

24 A We are not -- we are not comfortable providing

25 our competitor with our business plans for how we

0764

 1 operate our company so that they can try and copy our

 2 plans, because they seem to be unable to compete

 3 themselves.

 4 Suffice it to say, we've been through this

 5 exercise enough times now that we've talked about

 6 variable costs and we've talked about average variable

 7 costs and we've talked about average variable costs

 8 being something that varies by trip and not by

 9 customer.

10 Notwithstanding, you're claiming that one

11 additional customer will raise the cost maybe by a

12 quarter, but the way share ride works is the variable

13 cost per trip. The average variable cost per trip

14 doesn't change as you add customers to the trip.

15 That's how you run a profitable business.

16 So I would invite you to check our annual

17 reports that were filed last year and this -- in 2015

18 and 2016 with the WUTC and do the math.

19 MR. HARLOW: Your Honor, I don't

20 believe that answer was responsive to the question.

21 MR. ROEMER: Good.

22 JUDGE PEARSON: Go ahead.

23 MR. FASSBURG: I just want to say what

24 Mr. Harlow is referring to is my statement on the

25 phone and is trying to get Mr. Roemer who doesn't know

0765

 1 my statement on the phone. I'll explain my statement,

 2 which I think Mr. Roemer is alluding to, and this is

 3 why I said on phone that I know Mr. Roemer doesn't

 4 want me to disclose the details. What he is alluding

 5 to is passengers per trip. That's how you become

 6 profitable, period.

 7 JUDGE PEARSON: I think that answers

 8 the question.

 9 BY MR. HARLOW:

10 Q All right. Let me ask a follow-up. Was that

11 the only efficiency that you contemplate to get to

12 profitability is having more passengers per trip?

13 A Again, we're not comfortable sharing our

14 business plans --

15 MR. HARLOW: Object, Your Honor. I

16 don't want to hear the speech again or answer or

17 refuse to answer.

18 JUDGE PEARSON: It was just a yes-or-no

19 question, so you can just give him a yes or a no.

20 A Okay. Would you ask the question again,

21 please.

22 MR. FASSBURG: I'll ask the court

23 reporter to read it back, please.

24 (Record read back as requested.)

25 A No.

0766

 1 Q So what other efficiencies do you contemplate

 2 to get to profitability?

 3 MR. FASSBURG: I'm going to object to

 4 any more detailed questions about their specific

 5 business plans for profitability. Mr. Roemer has been

 6 pretty clear. We have been pretty clear all long. We

 7 believe these are overt attempts to obtain

 8 SpeediShuttle's proprietary business information, and

 9 he couldn't get any more proprietary than how exactly

10 they plan to make money, so I don't think that's an

11 appropriate question.

12 MR. HARLOW: I think we need to go back

13 and revisit the direct testimony, because he goes on

14 page after page about the economies of scale and how

15 they're going to achieve profitability. There's

16 absolutely no detail, and we're entitled to cross on

17 that. And I'm sorry. We're in a public forum, and

18 that's just the price of being a regulated company.

19 MR. FASSBURG: I actually think he

20 should refer to the testimony. I believe the

21 testimony he's referring to is where he says that

22 Shuttle Express keeps crying wolf, saying the sky is

23 falling, and that they're going to fail because

24 they're currently losing money is an improper

25 assertion because you can shrink the size of your

0767

 1 company to change the scale.

 2 So given a set of passengers and a number of

 3 vehicles, there are certain efficiencies. If you

 4 reduce the number of vehicles, you have more

 5 passengers per trip. This wasn't about

 6 SpeediShuttle's plans to become profitable but poking

 7 a hole in the assertion that just because you're

 8 losing passengers you will fail. So I don't see how

 9 this line of questions addresses his testimony.

10 JUDGE PEARSON: Mr. Harlow, I'll ask

11 you to refer to specific portions of Mr. Roemer's

12 testimony if you want to ask questions about that, but

13 I think that you're treading close to topics that have

14 been excluded from this proceeding, which includes the

15 company's financial fitness and things of that nature

16 that we've already said we're not going to revisit

17 and, frankly, just aren't on the table right now.

18 We wouldn't take them up at the application

19 hearing either, if you recall, because that's no

20 longer a subject that incumbent carriers can bring.

21 It's something that Staff considers when evaluating

22 the company's financials.

23 MR. HARLOW: All right. We'll try to

24 move on then and tie it more directly, and some of my

25 upcoming questions should do that.

0768

 1 BY MR. HARLOW:

 2 Q I'm going to go back to the income statement,

 3 the yellow piece of paper that's not in the record.

 4 Do you see that in front of you again?

 5 A Yes.

 6 Q I'd like you to compare it to Exhibit HJR-1T

 7 at 15.

 8 A Which line?

 9 Q Fifteen.

10 A Okay.

11 Q Do you see the figure losses of 55 cents for

12 every dollar for the first 12 months and 14 cents per

13 dollar for the subsequent five months?

14 A Yes.

15 Q Would you agree that those figures, 55 cents

16 and 14 cents, corresponds with figures on the income

17 statement?

18 A Yes.

19 Q And if it's all right with confidentiality,

20 can I ask you what figures do those correspond to?

21 A Well, it would be net income divided by

22 revenue.

23 Q Okay. And it's true --

24 A Or the other way around. Sorry.

25 Q So it's in the percentage column at the bottom

0769

 1 specifically?

 2 A Well, it's the same result, yeah.

 3 Q Okay. And it's true, is it not, that the 55

 4 and the 14 are both after-tax effect; is that correct?

 5 A Yeah.

 6 Q Has SpeediShuttle -- the tax, excuse me, would

 7 be federal income tax; correct?

 8 A Actually, it's federal and state income tax,

 9 but yes.

10 Q Is there state income tax in Washington?

11 A No. But there is in Hawaii, a rather

12 significant one.

13 Q These financial statements are only for

14 Washington; right?

15 A The income tax effect is generated in both the

16 federal level and in Hawaii.

17 Q SpeediShuttle of Washington, has it ever paid

18 any federal income tax?

19 A Has it ever paid any -- Speedishuttle of

20 Washington is a limited liability company. Limited

21 liability companies do not pay income tax.

22 Q So you're saying the income tax effect flows

23 through, what, to the members?

24 A Correct.

25 Q Okay. So the company itself has not received

0770

 1 any reimbursement of income taxes from the IRS;

 2 correct?

 3 A From the IRS?

 4 Q Yes.

 5 A The company does not pay taxes to the IRS.

 6 Q Okay. What I'm trying to get at is this

 7 income tax provision, is it real or is it just a

 8 bookkeeping entry?

 9 A Well, it's absolutely real.

10 Q It's not revenue to the company, is it?

11 A It's tax benefit to the company that flows

12 from the members.

13 Q Isn't it a tax benefit to the members?

14 A That flows to the company. You can look at it

15 any way you want.

16 Q How does it flow to the company?

17 A Did you ask a question?

18 Q How does the income tax benefit flow to the

19 company from the members?

20 A The members fund it to the company.

21 Q Are the members required to fund the company?

22 A No.

23 Q Let's turn to page 56 of your testimony,

24 line 5. There's a discussion of the combined loss.

25 Do you see that?

0771

 1 MR. FASSBURG: Can you refer to which

 2 testimony, just so I can be clear?

 3 MR. WILEY: It's HJR-1T.

 4 Q And you see the figure 702,000 on the 190 --

 5 excuse me. 1,988,000. Do you see that?

 6 A Yeah.

 7 Q Okay.

 8 A I see that.

 9 Q All right. The 1,988,000 --

10 MR. HARLOW: Can I say on the record,

11 gentlemen, what that's the sum of?

12 A Well, you just want to put this data into the

13 record. We understand what you're doing, but I let my

14 lawyers handle that.

15 MR. HARLOW: What I'm trying to do is

16 know if we get into the record the revenue amounts --

17 total revenue top line broken out by the 12 months

18 ended April 30 and the five months ended September 30

19 since we have the sum. Is there any confidentiality

20 issue of breaking out the two numbers separately?

21 MR. FASSBURG: I'd like to limit the

22 entry of numbers into the record as much as possible

23 simply because that was the agreement that we had. So

24 if I can figure out why you need to do it, it would be

25 more helpful.

0772

 1 JUDGE PEARSON: That was my question.

 2 I'm --

 3 MR. HARLOW: We need to do it because

 4 we never could get monthly or quarterly.

 5 JUDGE PEARSON: Where are you going

 6 with this?

 7 MR. HARLOW: Where I'm going with this

 8 is we can compare this to the annual report, which

 9 also has total revenue for calendar year. And then we

10 can see what the company's revenues were outside of

11 the summer peak season.

12 MR. WILEY: We have a bench request for

13 that very question in terms of passengers.

14 JUDGE PEARSON: For passengers. But

15 what's the purpose of this?

16 MR. HARLOW: Well, I'll tell you what

17 the purpose is: We can tell then -- if I give you

18 these numbers, I put them in the record.

19 MR. FASSBURG: You don't have to use

20 the numbers.

21 JUDGE PEARSON: Just tell me why.

22 MR. HARLOW: We can tell what

23 percentage of their revenues came in the four months

24 of the peak season and what percentages came in the

25 rest of year.

0773

 1 JUDGE PEARSON: But why does that

 2 matter?

 3 MR. HARLOW: That tells us what's

 4 happened. Because Mr. Roemer testified that we're

 5 close to profitability, and he did it based on the

 6 five months, which are the five peak months of the

 7 company's revenues. And that way we can see what

 8 their losses were for the rest of the year, which

 9 counters the fact that they're getting close to

10 profitability or break-even. They're not close.

11 They're losing money like crazy.

12 JUDGE PEARSON: I'm just not clear

13 about what you're trying to accomplish with this

14 information. The company has repeatedly stipulated

15 that they're not yet at profitability. They're still

16 in their first two years of operation. If that's what

17 you're trying to establish, that's --

18 MR. HARLOW: They've also repeatedly

19 said we're working our way. We're getting there.

20 We're getting to profitability. So, therefore, they

21 conclude it's not predatory, but the fact is --

22 JUDGE PEARSON: If this goes to your

23 service below cost argument, I need you to make a

24 clearer path to get there.

25 MR. HARLOW: Okay. Let's jump ahead.

0774

 1 MR. WILEY: Your Honor, if I could

 2 respond, you made perfectly clear repeatedly in your

 3 rulings that the Commission -- it does not help the

 4 Commission to know the company's -- their start-up

 5 loss period or our start-up loss period. They're both

 6 acknowledged in a matter law, in Seattle Express case,

 7 in testimony, and in our case.

 8 JUDGE PEARSON: Right. That's why I'm

 9 saying we need to cut to the chase.

10 MR. HARLOW: That's Mr. Wiley's mantra

11 that this is just the start-up loss. We're trying to

12 show with actual data, instead of just high-level

13 conclusory self-serving testimony, we're trying to

14 show with actual data this is not a start-up loss.

15 Their losses are actually increasing. Their

16 passengers counts are down. Their trips are down.

17 Their revenues are flat. They're going nowhere with

18 this. They're losing money.

19 JUDGE PEARSON: We'll have the data

20 about the passenger counts. We know that's coming,

21 and that will tell us whether the passengers counts

22 are increasing or not.

23 MR. HARLOW: It's kind of spotty. I

24 mean, it helps us.

25 JUDGE PEARSON: Are you alleging that

0775

 1 there are discrepancies between this income statement

 2 and what they reported to the Commission in their

 3 annual report?

 4 MR. HARLOW: No. I'm alleging

 5 Mr. Roemer's testimony that claims that they're going

 6 through efficiencies or through economies of scale,

 7 according to his prefiled testimony. What I am trying

 8 to show is they don't have efficiencies. They don't

 9 have economies to scale.

10 MR. FASSBURG: And, Your Honor, I'll

11 point out -- and we aren't going to re-conduct

12 discovery disputes here today was my understanding.

13 But I asked through a series of interrogatories to

14 Shuttle Express for them to articulate exactly what it

15 is about the fares they consider to be predatory

16 through fact and law.

17 Mr. Harlow didn't respond on time. He waived

18 all of his objections, and yet he refused to respond

19 to my request. And this particular theory that he

20 seems to be espousing at the moment is not part of

21 what he actually did respond with. The factual basis

22 that he provided has nothing to do with these facts.

23 JUDGE PEARSON: Okay.

24 MR. HARLOW: Now that's in the record

25 because we handled it informally.

0776

 1 JUDGE PEARSON: Well, my understanding

 2 is that you were going to attempt to make a showing

 3 that they are pricing their services so low that they

 4 can't possibly achieve profitability, not that it has

 5 to do with number of passengers or efficiencies, but

 6 that it has to do with the cost of providing service

 7 versus what they're charging their customers.

 8 MR. HARLOW: This issue is intertwined,

 9 as Mr. Wood's stricken testimony said, with

10 sustainability, and we've kind of had different

11 rulings on that. But at one point there's a ruling

12 that says the stainability of the two companies

13 providing the same service is an issue, and that's

14 consistent with 480-30-140, which also says

15 sustainability is part of it.

16 JUDGE PEARSON: That's different.

17 MR. FASSBURG: That's part of --

18 THE REPORTER: One at a time, please.

19 MR. HARLOW: That's why he's testified

20 in his responsive testimony, hey, you know, our losses

21 went from 55 cents to 14 cents, but the 14 cents is

22 cherry-picked. It's the five most profitable months.

23 Even in those months, they didn't make a profit.

24 But the other seven months -- I don't know

25 what the number is, but they probably lost 55 cents

0777

 1 again in the other seven months. That financial data

 2 is available to the company. It would be available to

 3 the Commission except we keep dancing around

 4 proprietary claims, which I don't know any other

 5 company that does this.

 6 I don't know why we're wasting so much time

 7 trying to guess at what is happening with that company

 8 financially when we have good anecdotal data that

 9 they're losing money and will lose money until one of

10 the companies fails, and we could get actual financial

11 data.

12 Mr. Roemer submits quarterly financials to

13 their bank, to their lenders. All we'd have to do is

14 get a bench request getting those in, and you could

15 compare year over year what's going on. It's this

16 hide-the-ball theme, Your Honor. It's so frustrating

17 to me.

18 I've never done -- I've done rate cases, and

19 it's like the telephone company coming in and saying

20 we need a rate increase.

21 Give us the data.

22 No, that's proprietary.

23 I mean, we're not going to get a good decision

24 out of this or well-founded decision if we don't have

25 our data.

0778

 1 MR. FASSBURG: Your Honor, I'd like to

 2 respond to a few of the things he said. One of which,

 3 I think he just characterized your rulings on

 4 discovery as hide the ball. If we make objections and

 5 you sustain them, that's not called hide the ball.

 6 That's called you're asking for something that's

 7 relevant.

 8 He had an opportunity more than once to make a

 9 succinct or long argument, whichever it may be -- my

10 point is not about the length. He could have made as

11 articulate and well thought out an argument as he

12 would have desired to in a motion to compel to put

13 this before you a long time ago.

14 We understood this was going to be one of his

15 large contentions in this hearing because of the

16 exhibits that he filed. He is trying to litigate

17 through the hearing the discovery disputes all over

18 again.

19 I think you are actually on to something

20 yesterday that seems extremely instructive as to how

21 prices compare to cost, and I'd like to -- I'd like to

22 bring up something that I've dropped in the past,

23 which is we actually asked Shuttle Express to help us

24 do a fare comparison between the companies so the

25 Commission would be informed by doing a cost-to-fare

0779

 1 ratio. We proposed it based on various ZIP Codes, but

 2 Shuttle Express did not want to provide SpeediShuttle

 3 financial information. They only wanted it to be a

 4 one-way street.

 5 Your thought that I actually think cuts right

 6 to the heart of it is what are the passengers per trip

 7 that it requires to be profitability. That is an easy

 8 way to compare which company has what fare-to-cost

 9 ratio versus the other one without the actual details.

10 And I know Mr. Roemer is prepared to give an answer to

11 that.

12 JUDGE PEARSON: And I'm prepared to ask

13 it.

14 MR. FASSBURG: I would ask, in

15 fairness, because you asked that of Mr. Kajanoff after

16 my cross was over, that you do the same.

17 JUDGE PEARSON: I planned to wait, yes.

18 MR. FASSBURG: Thank you.

19 JUDGE PEARSON: So I think that that

20 makes a lot sense. Going back to what you said,

21 Mr. Harlow, about the consistency of prior rulings,

22 we've always said that we would address the issue of

23 the stainability of two providers offering the same

24 service because that's what the WAC addresses.

25 But we won't entertain the idea that the

0780

 1 market can only sustain one provider under any

 2 circumstances, which is what some of Mr. Wood's

 3 testimony and some of Mr. Marks's testimony was

 4 attempting to argue, that the market can ever only

 5 have one provider, period, whether that service is

 6 different and the same. And that is outside the scope

 7 of this proceeding.

 8 So I just want to clarify that that's

 9 consistently been my holdings and the Commission's

10 holdings, but I also understand that that's a really

11 kind of precarious line between the two, and it's easy

12 to cross over when you're talking about sustainability

13 of two providers and to sustainability as a whole, and

14 so that's why I think this whole -- all the financial

15 stuff is -- it's hard to, I guess, hone in on exactly

16 what's relevant and what's needed here and easy to

17 start kind of treading over into areas that we've

18 already decided we aren't going to visit.

19 So I just want you to keep that in mind and

20 try to stay focused on -- like, Mr. Fassburg, it's the

21 issue of the cost of providing services versus the

22 fares. It's too difficult, I think, this early in the

23 company's operations to conclude that, because they're

24 not making a profit, that must mean that they're

25 pricing predatorily, because the record, clearly,

0781

 1 shows that Shuttle Express had losses for the first

 2 few years as well.

 3 So I just -- I don't know that that's the way

 4 that you're going to get there, because those losses

 5 would probably be there for any company in their first

 6 few years of operation. So if you could focus more on

 7 the cost of providing service versus the fares that

 8 are being recovered, that would be a lot more helpful

 9 to me. So if we can proceed with that in mind -- and

10 I don't even remember what we were actually talking

11 about.

12 MR. FASSBURG: It started out with a

13 question about can we get into some of the details on

14 what constitutes total revenue, and I think we needed

15 an explanation of what he's trying to use with it

16 before we could agree.

17 JUDGE PEARSON: Okay. So --

18 MR. HARLOW: I take it you didn't

19 agree?

20 MR. FASSBURG: As of right now, no.

21 JUDGE PEARSON: So given everything

22 I've just said, if you could maybe start your question

23 over, keeping all of that in mind, and what it is that

24 I'm looking for to be able to make a decision.

25

0782

 1 BY MR. HARLOW:

 2 Q Okay. Well, let's just get on the record what

 3 HJR-1T, page 56, line 5 means. It refers to a

 4 combined 17-month loss. Do you see that?

 5 JUDGE PEARSON: Did you say page 55?

 6 MR. HARLOW: Page 56. If I said

 7 page 55, I was mistaken.

 8 JUDGE PEARSON: What line is it?

 9 Q Line 5, combined 17-month lease, $702,000?

10 A Yes.

11 Q And is that $702,000 drawn from the income

12 statement that's not in the record?

13 A Yes.

14 Q And how is it -- how would it be drawn from

15 the income statement? Mathematically, how would you

16 do it?

17 A You would add the two period -- the loss of

18 the two periods together.

19 Q So that would be the bottom line of the

20 financial statement?

21 A Yes.

22 Q Okay. And then it goes on to say 1,988,000 in

23 revenue. Is that also derived from the income

24 statement?

25 A Yeah. That's the total of the top line.

0783

 1 Q That's the total of the top line. Total

 2 revenue. Okay.

 3 And you, in your testimony, used the 55 cents

 4 and the 14 cents loss per dollar for the beginning --

 5 for the first 12 months ending in September. So

 6 that's a whole year period; correct?

 7 A I'm sorry. Could you repeat that?

 8 Q The 55-cent loss per dollar is a whole-year

 9 period; is that correct? It's 12 whole months?

10 A It is 12 full calendar months.

11 Q Right. Okay. So that deals with seasonal

12 variations, but it doesn't deal with your start-up

13 period; correct?

14 A Our start-up period hasn't finished yet.

15 Q It certainly doesn't deal with the four months

16 where you weren't operating before May; correct?

17 A No. That's not what you said. It includes

18 12 full calendar months.

19 Q Right. And you began operating in May; is

20 that correct?

21 A That's correct. May 1.

22 Q Did you have very many passengers in May?

23 A We had passengers in May.

24 Q Did you have very many?

25 A I don't know what that means.

0784

 1 Q All right.

 2 A And I don't know how many we had.

 3 Q Did you have even a third of the passengers in

 4 May in 2015 that you had by 2016?

 5 A I don't know.

 6 Q Well, we don't have your passenger data yet.

 7 We had your trip data.

 8 MR. FASSBURG: I'd like to point out

 9 the judge sustained objections to data requests for

10 the passenger data whereas the trip data was obtained

11 from a third-party.

12 MR. HARLOW: If we keep sustaining

13 objections to all passenger data and all financial

14 data, we'll never get this into the record. I'm

15 trying to work around as best I can.

16 MR. FASSBURG: I understand. I'm

17 sorry. Go ahead.

18 JUDGE PEARSON: We will have passenger

19 counts once they answer the bench request.

20 MR. FASSBURG: He's talking about --

21 MR. HARLOW: I'm talking --

22 THE REPORTER: I can only take one at a

23 time. Go ahead.

24 MR. FASSBURG: If I understand

25 correctly, Mr. Harlow is talking about a monthly

0785

 1 count. You haven't agreed that we were required to

 2 produce that, and he is comparing information in terms

 3 of saying we have this versus that. He's comparing

 4 something that you said we didn't have to produce to

 5 something we didn't produce.

 6 MR. HARLOW: Can we discuss this off

 7 the record for a minute?

 8 JUDGE PEARSON: With all of us?

 9 MR. HARLOW: With all of us, yes.

10 JUDGE PEARSON: All right. We'll go

11 off the record.

12 (A break was taken from 2:36 p.m. to

13 2:59 p.m.)

14 JUDGE PEARSON: Just to summarize, we

15 took a recess where we discussed whether it would be

16 useful to obtain monthly passenger counts from

17 SpeediShuttle. And I wanted to ask Mr. Beattie: Do

18 you know if that information would be useful to

19 Commission Staff in any way?

20 MR. BEATTIE: Could you say that one

21 more time, please?

22 JUDGE PEARSON: If the monthly

23 passenger counts would be useful to Staff.

24 MR. BEATTIE: Okay. The answer is no.

25 JUDGE PEARSON: Okay. Thank you.

0786

 1 That's what I thought, and it won't be useful

 2 to me either. So I want to just reiterate what I said

 3 off the record, which was that, consistent with the

 4 bench request that I issued on Wednesday, I'll just

 5 take additional data from SpeediShuttle in the form of

 6 seasonal comparison of passenger counts for 2015 and

 7 2016. So the passenger counts between May and October

 8 of 2015 and also 2016 separated out from the other

 9 periods of the year.

10 MR. ROEMER: By month?

11 MR. WILEY: No.

12 JUDGE PEARSON: By chunk.

13 MR. ROEMER: I just wanted to make sure

14 we're clear.

15 MR. FASSBURG: I would appreciate that

16 you clarify that period. Before you do, I did have

17 one more comment to make we were discussing outside,

18 which is specifically this still doesn't seem to get

19 to the cost versus revenue issue. This is literally

20 only passenger trends, and so it really doesn't inform

21 on the predatory issue.

22 The question you had about passengers per trip

23 to be profitable really gets straight to the

24 particular allegation of fares below cost. I

25 understand that they have attempted on numerous

0787

 1 occasions to create a new allegation out of their

 2 original allegation, but that is the allegation they

 3 made, fares below cost.

 4 JUDGE PEARSON: Right. I agree with

 5 you. I think that that other information is more

 6 useful. I think that having the passenger counts for

 7 the specific periods of time will just go to the

 8 question of whether SpeediShuttle is improving its

 9 business over time or if they're losing business as

10 Shuttle Express alleges. It just kind of shows a

11 year-over-year comparison, and it's more accurate when

12 it's compared seasonally as opposed to on an annual

13 basis, but I don't need it broken down month by month.

14 I don't see how that would be useful to me in any way.

15 Keeping that in mind, you can proceed with

16 your cross-examination.

17 MR. FASSBURG: But for us, one more

18 time, will you repeat the months for which we're

19 providing those chunks?

20 JUDGE PEARSON: Sure. So let's say

21 January 1 through April 30 and then May 1 through

22 October 31 is what I believe is the busy season; is

23 that correct? Or is it through September 30?

24 MR. FASSBURG: Which is it? I don't

25 know.

0788

 1 JUDGE PEARSON: Is it through

 2 September 30? That's what Mr. Kajanoff said.

 3 MR. ROEMER: I know we provided

 4 multiple things.

 5 MR. FASSBURG: She wants to get the

 6 busy season separated from the slow season. What's

 7 your opinion on what is the busy season?

 8 MR. ROEMER: May 1 through September 30

 9 probably.

10 JUDGE PEARSON: So the second chunk of

11 passenger numbers will be May 1 through September 30

12 for both years, and then the third chunk being

13 October 1 through December 31. We'll just separate it

14 out that way.

15 MR. FASSBURG: Your Honor, I want to

16 put this on the record, just because we would like it

17 to be known. We aren't agreeing to this. Obviously,

18 it's a bench request, but we don't have to agree. And

19 you don't have to care if we agree, but I know that

20 Mr. Roemer actually can't make a decision on whether

21 SpeediShuttle is able to disclose that information

22 because it isn't in his authority to make the

23 decision. And the person who can is on an airplane.

24 So what we'd like to propose is at least some

25 opportunity to come back and readdress this if he's

0789

 1 told me cannot, because Mr. Roemer doesn't have the

 2 authority.

 3 JUDGE PEARSON: Okay. Well, the

 4 Commission has the authority to ask for it. I can

 5 give you time.

 6 MR. FASSBURG: Of course, you do. I

 7 just want to save Mr. Roemer from getting in trouble

 8 with his boss.

 9 JUDGE PEARSON: You can blame me. And

10 how much time do you think -- do you need a week or

11 two weeks? I don't need it --

12 MR. FASSBURG: I don't know.

13 JUDGE PEARSON: -- within the next few

14 days. We often give up to two weeks to respond to

15 bench requests.

16 MR. FASSBURG: The response won't take

17 two weeks. The answer from his boss will take until a

18 plane lands.

19 MR. ROEMER: Well, the response will

20 take more than --

21 MR. FASSBURG: I meant -- I'm sorry. I

22 didn't mean we can give the response when the plane

23 lands. I meant he'll know.

24 JUDGE PEARSON: Let's set a due date --

25 what's realistic for the company?

0790

 1 MR. WILEY: A week from today? You

 2 tell me.

 3 MR. ROEMER: If he says okay.

 4 MR. WILEY: Yeah, that's what I'm

 5 saying.

 6 MR. ROEMER: Then, yeah, because I have

 7 to reconstruct that whole other year.

 8 MR. WILEY: How is this different from

 9 Wednesday's bench request? You've asked for a third

10 chunk; right? Isn't that how it's distinguished?

11 JUDGE PEARSON: Right. I'm breaking

12 the year out over busy versus slow seasons.

13 MR. WILEY: We had it for the two

14 chunks. We didn't have it for the third.

15 JUDGE PEARSON: Right.

16 MR. ROEMER: We had it for what you

17 asked for yesterday.

18 JUDGE PEARSON: If you have that today,

19 you can give that to me today. The remainder of the

20 information you can provide a week from today. That's

21 fine.

22 MR. WILEY: That would be the

23 November/December period in 2015 and 2016?

24 JUDGE PEARSON: Yeah. And, really, I

25 think, I want to be just comparing those busy seasons,

0791

 1 the May through end of September, 2015, 2016, those

 2 numbers.

 3 MR. ROEMER: You want May through

 4 September of each year? That's less work than getting

 5 all the different components.

 6 JUDGE PEARSON: That's fine. That's

 7 fine.

 8 MR. HARLOW: How has that changed?

 9 JUDGE PEARSON: I just need the busy

10 seasons for the two years to see how the passenger

11 count has grown.

12 MR. HARLOW: What about the January to

13 April?

14 JUDGE PEARSON: They're still providing

15 that. I think Mr. Roemer has that today. He has a

16 percentage for me anyway; right?

17 MR. WILEY: Yes.

18 MR. HARLOW: Both those periods are for

19 both years?

20 MR. FASSBURG: There's no January to

21 April 2015.

22 MR. HARLOW: Okay. Thank you.

23 JUDGE PEARSON: Okay. So, Mr. Harlow,

24 if you're ready to move on.

25 MR. HARLOW: I may not be ready, but

0792

 1 the clock says I have to, so I will.

 2 BY MR. HARLOW:

 3 Q Just a couple more on financials, and then

 4 we'll try to move to a new topic.

 5 First of all, Mr. Roemer, with regard to the

 6 income statement and the 55 cents per dollar of

 7 revenue loss that is net of -- that's after the

 8 provision for income taxes, without giving the number,

 9 would you agree that the -- that comparable number

10 before income taxes is a higher number? In other

11 words, the loss is greater than the after-tax loss?

12 A That would be expected, yes.

13 Q And the same would be true for the 14 cents

14 after-tax loss for the five months ending September 30

15 of 2016?

16 A That would be expected, yes.

17 Q And, Mr. Roemer, given that there's been --

18 there appears to be no growth in door-to-door service

19 out of the airport generally, how does SpeediShuttle

20 intend to grow its passengers moving forward?

21 A I'm sorry. I don't accept the premise.

22 Q Okay. Okay. So at your deposition, you

23 indicated that certain functions for SpeediShuttle of

24 Washington are now being performed out of Hawaii. Do

25 you recall that?

0793

 1 A I do.

 2 Q And, specifically, I believe, you identified

 3 accounting?

 4 A Specifically, I identified that we no longer

 5 had a controller --

 6 Q Okay.

 7 A -- in Seattle.

 8 Q Where are the accounting functions performed

 9 for SpeediShuttle of Washington?

10 A They're performed in Seattle, and some of them

11 are now performed in Hawaii.

12 Q And what about human resources?

13 A Hiring and firing, annual reviews, interviews,

14 advertising, all done in Seattle.

15 THE REPORTER: Mr. Roemer, please speak

16 into the mike.

17 MR. ROEMER: Yeah, I'm sorry.

18 Q What human resources functions have been

19 transferred to Hawaii then?

20 A I don't think any -- I don't think I said any

21 human resources functions have been transferred to

22 Hawaii. All I said was that we terminated the

23 controller in February of this year.

24 Q Where do your employment applications go for

25 Seattle?

0794

 1 A Seattle.

 2 Q What about your salary, which company pays

 3 your salary?

 4 A Well, I don't work for -- I don't work for

 5 Seattle. I work for Hawaii.

 6 Q Okay. So you're paid by Hawaii?

 7 A Yes.

 8 Q But you are the CFO for Seattle; correct?

 9 A Yeah. I'm the CFO for all of the companies.

10 Q Okay. Where is your call center handled,

11 Hawaii or Seattle?

12 A Seattle.

13 Q Of all hours of the day?

14 A Yes.

15 Q For those functions that have been transferred

16 to Hawaii, would those be in your financial statements

17 for Seattle?

18 A The financial statement, yes. Absolutely.

19 Q And how is that done?

20 A These financial statements was before we got

21 rid of the controller. We got rid of one position.

22 Q You're still producing financial statements

23 internally and providing financial statements

24 quarterly to your lenders; correct?

25 A That's correct.

0795

 1 MR. FASSBURG: Objection. He's already

 2 answered it, but I don't think we need to talk more

 3 about other financial statements.

 4 JUDGE PEARSON: Sustained.

 5 Q You provided the Commission, from this

 6 unadmitted income statement, the losses for the

 7 company for just a five-month snapshot of 2016;

 8 correct?

 9 A No. I provided GAAP financial statements for

10 a full 12-calendar-month period and for a stump period

11 from that date forward to the date these were

12 provided.

13 Q But, I mean, let me ask it a different way.

14 The loss of 14 cents per dollar of revenue was for a

15 five-month period in 2016; is that correct?

16 A Yeah. It was the period from the beginning --

17 from the end of our first 12 full months of operation

18 to the date this was provided.

19 Q Do you have financial statements that reflect

20 the company's income or loss for the entire period of

21 2016?

22 MR. FASSBURG: Objection, same

23 objection I just made. He's getting into things that

24 are outside of this. What's the point of that?

25 There's no relevance.

0796

 1 MR. HARLOW: From the very beginning,

 2 Your Honor has ruled that you wanted to know whether

 3 the company -- what their costs are and what their

 4 revenues are and do the revenues exceed the costs.

 5 And I haven't even asked whether they do for 2016.

 6 I'm just trying to find out if they have that data.

 7 It's a preliminary question.

 8 MR. FASSBURG: I don't see the

 9 relevance of it. It seems to be leading to something

10 that is outside of this particular financial

11 statement, which isn't going to be helpful to anyone

12 because that information isn't here.

13 MR. HARLOW: Well, no. It's going to

14 be helpful to you because you show only 14-cent loss

15 on the five most profitable months of the year. I'm

16 sorry. I'm getting a little angry, Your Honor. And

17 I'm trying to find out if we might get a full 12-month

18 snapshot for 2016, a full calendar year, which does

19 not have a seasonal variation that they're showing and

20 taking full advantage of and hiding behind

21 confidentiality for what the real number is for 2016.

22 MR. FASSBURG: It sounds like an

23 address -- an issue that's already been addressed in

24 the discovery conference that we had off the record

25 recently, the informal discovery conference by which

0797

 1 Mr. Harlow insisted we were required to provide

 2 supplemental data response information, and you

 3 informed Mr. Harlow that was not your interpretation

 4 of the rule.

 5 JUDGE PEARSON: That's correct. So,

 6 again, I just want to circle back to what we talked

 7 about earlier. I do think that the most useful

 8 information to me here is going to be Mr. Roemer's

 9 answer to the question that I asked Mr. Kajanoff

10 yesterday about at what point does a trip become

11 profitable and how many passengers does it take in a

12 van in order for a given trip to become profitable.

13 And if we compare the number for SpeediShuttle to the

14 number for Shuttle Express, it will give us a good

15 idea about cost of service versus fares.

16 MR. HARLOW: I'm sorry. Because it was

17 two whole days ago. Do we have some kind of bench

18 request out to both companies to get that information?

19 JUDGE PEARSON: Mr. Kajanoff answered

20 that question for me, and what I was told is that

21 Mr. Roemer is prepared to answer it today. So I will

22 have that information.

23 MR. HARLOW: Let's ask it now.

24 MR. FASSBURG: We objected to that

25 because we weren't permitted the opportunity to cross

0798

 1 Mr. Kajanoff about that. We've already discussed that

 2 today. The judge said she is going to ask the

 3 question.

 4 JUDGE PEARSON: And I'll wait until

 5 you're done.

 6 MR. HARLOW: Okay. I will defer to

 7 Your Honor then.

 8 BY MR. HARLOW:

 9 Q Given the Commission's 7 percent profit

10 limitation or the 93 percent operating ratio, does

11 SpeediShuttle expect to recoup its start-up losses,

12 and, if so, how?

13 A I'm not sure I understand the question or --

14 Q Do you know how the Commission sets rates and

15 the 93 percent operating ratio and how that works?

16 A I'm not at all familiar with what you're

17 talking about. We have filed our tariff. Our tariff

18 has been approved by the Commission. We have flexible

19 fares. We're nowhere near the top of those, but

20 that's really governed by competition.

21 Q All right. Without knowing how the Commission

22 sets rates, do you expect to recoup the company

23 start-up losses, and, if so, how?

24 A We expect the higher passenger counts will

25 continue to grow, that our passengers per trip will

0799

 1 continue to grow, and that will -- in our experience,

 2 in our 20 years of experience in this business, that

 3 is how one makes a profit.

 4 Q It's your experience in Hawaii?

 5 A That's our experience in the share ride

 6 transportation business.

 7 Q Which is primarily in the four islands in

 8 Hawaii; correct?

 9 A It is, the share ride transportation business.

10 Q Off the record we discussed your passenger

11 load factors, number of passengers per trip. Do you

12 recall that?

13 A No.

14 Q Okay. Based on your annual report, we've

15 calculated a passenger load factor of about

16 3.8 passengers per trip for 2016. Can you accept

17 that, subject to check?

18 A Yeah. Subject to check, I'll accept that.

19 Q What's your passenger load factor in Hawaii,

20 let's say Oahu?

21 MR. FASSBURG: I'm going to object.

22 That's completely irrelevant. In past attempts to

23 obtain information related to Hawaii, Your Honor,

24 you've sustained those objections, and I don't think

25 that is a subject that needs to be discussed here

0800

 1 today.

 2 JUDGE PEARSON: I will sustain that.

 3 MR. HARLOW: Your Honor, he just

 4 testified the basis for his assumption about how they

 5 were going to get profitable was increasing

 6 passengers, and that's all based on the Hawaii

 7 experience.

 8 MR. FASSBURG: He didn't say it was

 9 related exactly how they operate in Hawaii. He said

10 it's based on his experience operating in Hawaii, and

11 he didn't say Hawaii. Mr. Harlow did.

12 JUDGE PEARSON: Let's move on,

13 Mr. Harlow.

14 BY MR. HARLOW:

15 Q Okay. Do the losses of SpeediShuttle of

16 Washington benefit the Hawaiian company or the

17 Hawaiian operations in some manner?

18 A I'm sorry. I don't understand the question.

19 Q We'll move on. Let's talk a little bit about

20 one of your features you use to try to distinguish

21 your service, which is the Mercedes vans.

22 Would you agree that the annual cost of a

23 Mercedes van is $12,000 more than the Fords, as

24 Mr. Kajanoff has testified?

25 A No.

0801

 1 Q Why is that?

 2 A I don't know the basis of that number.

 3 Q Do you know how much your vans cost?

 4 A I do.

 5 Q How much?

 6 A I know how much they cost.

 7 MR. FASSBURG: I'm going to object to

 8 the request for that specific detail because I

 9 understand they have an agreement negotiated with the

10 dealership that is not something other providers

11 necessarily are able to obtain based on the volume

12 that they purchased, and I don't think that it's

13 something -- I know that's something they consider to

14 be highly proprietary and not willing to disclose.

15 JUDGE PEARSON: Okay. I can sustain

16 that, because I don't think that it's particularly

17 useful information for my purposes anyway. You can

18 ask questions about the fair market value of those

19 vans, if you like, if that's something anyone can find

20 on the internet.

21 MR. HARLOW: I think he testified the

22 fair market value when they were done with them is

23 zero, so I'm not sure that's going to help us.

24 MR. ROEMER: Excuse me?

25 MR. FASSBURG: If Mr. Harlow is

0802

 1 testifying, I think we should cross-examine

 2 Mr. Harlow. There hasn't been any testimony from

 3 Mr. Roemer --

 4 MR. HARLOW: I'll strike that. It's

 5 not important. It was only for a little moment of

 6 levity. That's all.

 7 BY MR. HARLOW:

 8 Q Okay. If you would, turn, please, to your

 9 prefiled testimony at page 52, HJR-1T, and at line 13.

10 "How do you propose the Commission should examine your

11 fare structure in this proceeding?"

12 Your answer was: "I suggest it use the same

13 method it used to initially approve our approved

14 tariff in the first place, and I have full confidence

15 in the staff's ability to perform that."

16 Do you see that?

17 A Yes.

18 Q Did the Staff examine your fare structure in

19 this proceeding as in accordance with your documents?

20 A I presume they did. We filed our tariff, and

21 they spent some time and they approved our tariff.

22 Q When did you file the tariff?

23 A We would have filed the tariff with our

24 original application.

25 Q So they haven't done an investigation in this

0803

 1 rehearing proceeding; is that correct?

 2 MR. WILEY: Your Honor, I object to the

 3 form.

 4 MR. HARLOW: Wait a minute. Wait a

 5 minute. Who's defending this witness? I don't

 6 believe I get two objections from two lawyers.

 7 Mr. Fassburg is handling this. I object to that.

 8 MR. WILEY: We're alternating.

 9 MR. HARLOW: I object to that.

10 MR. WILEY: We're not double-teaming.

11 We're just alternating.

12 MR. FASSBURG: I adopt the objection,

13 but we're one ranger, one rider.

14 JUDGE PEARSON: Can your repeat what

15 you said, Mr. Harlow?

16 MR. HARLOW: I'd ask the court reporter

17 to read it back, please, because I'm not sure I can.

18 (Record read back as requested.)

19 JUDGE PEARSON: And you objected to the

20 form of the question?

21 MR. FASSBURG: We're objecting because

22 the tariff was filed in the application docket, which

23 is the same docket. This is a rehearing, so the

24 tariff has been investigated by Staff when it was

25 approved in the docket.

0804

 1 JUDGE PEARSON: Do you want to rephrase

 2 your question?

 3 MR. HARLOW: Not really. The question

 4 and answer was forward-looking, and I'm trying to find

 5 out if anything happened after he said he was

 6 confident the Staff was going to do this.

 7 JUDGE PEARSON: So just to ask you:

 8 Are you asking if Staff revisited the tariff because

 9 of the petition for rehearing, if it went back and

10 questioned its own work and double-checked it?

11 MR. HARLOW: Exactly.

12 JUDGE PEARSON: That might be a

13 question better reserved for Staff.

14 BY MR. HARLOW:

15 Q Let me ask you: Do you know if Staff has

16 investigated your financials at all since you began

17 operating in the state?

18 A You would have to ask Staff. Not that we know

19 of, but you would have to ask Staff.

20 Q Would you accept, subject to check, that the

21 load factors for SpeediShuttle, according to

22 calculations from your 2015 annual report, were about

23 three passengers per trip?

24 A I don't think they were that high. I could be

25 wrong.

0805

 1 JUDGE PEARSON: Could you come closer

 2 to the microphone?

 3 A I don't think they were that high, but I could

 4 be wrong.

 5 MR. FASSBURG: Sounds like a no.

 6 Q If you want to look at the annual report, it's

 7 HJR-31X.

 8 JUDGE PEARSON: This is for 2015;

 9 correct?

10 MR. HARLOW: Correct.

11 JUDGE PEARSON: Okay. What page is

12 that on?

13 MR. HARLOW: Well, you'll find trips

14 and passengers on, yes, page 6, 6 of 11.

15 Q If you want to use a calculator or just do

16 mental math.

17 A It's about three. It looks like it's about

18 three.

19 Q I think we established that for -- I think you

20 agreed for 2016 it was about 3.8?

21 A Yeah. It's well over three.

22 Q So how did the company get from 3.0 -- or

23 about 3 to about 3.8?

24 A That would be carrying -- that would be

25 carrying more passengers per trip.

0806

 1 Q Okay. And how do you get more passengers on a

 2 trip?

 3 A Well, there are 11 seats on a shuttle. So if

 4 you have three seats on average occupied, that means

 5 on the average you have eight seats available to add

 6 more passengers.

 7 Q Is one way to do that to have the passengers

 8 wait a little longer until there's a fourth passenger,

 9 for example?

10 A That may be what Shuttle Express does. That's

11 not our business plan. That's not our model.

12 Q Is that one way you could do it?

13 A I suspect you could probably do that by

14 telling them they got to wait an hour until you fill

15 up the van.

16 Q Do you agree that if, hypothetically speaking,

17 you've got two carriers serving ZIP Code 98101 and

18 each of them is running a van and each of them trying

19 to get the three or four passengers per van, you agree

20 that if they were one company that the vans can be

21 dispatched faster than if there are two companies?

22 A No.

23 Q How can two companies dispatch vans to the

24 same service area at the same speed?

25 A I don't agree with your premise that there are

0807

 1 only two companies providing service to downtown

 2 Seattle.

 3 Q So your theory is you just have to get

 4 passengers out of taxis and into your vans; is that

 5 right?

 6 A No. I don't agree that the only competition

 7 is taxis.

 8 Q Do you recall in your direct testimony

 9 discussing that if your certificate were canceled

10 customers in -- let's say residents or visitors to

11 North Bend would not be able to get service to that

12 entire ZIP Code? Do you recall that?

13 A Yes.

14 Q And do you recall that we asked you how many

15 passengers you had served to North Bend? I don't

16 remember the time period. Do you recall getting that

17 question in discovery?

18 A Yeah, I do recall getting that question.

19 Q And do you recall indicating that

20 SpeediShuttle, for the time period in question, did

21 not transport any passengers to or from that ZIP Code

22 in North Bend?

23 A I don't recall the answer. I mean, it is what

24 it is.

25 Q Will you suspect, subject to check, the answer

0808

 1 was zero?

 2 A Yeah. I'll accept, subject to check, that the

 3 answer is zero.

 4 Q What percentage of your passengers are

 5 round-trip passengers as opposed to one-way?

 6 MR. FASSBURG: I'm going to object. I

 7 believe that is probably proprietary. If he tells me

 8 he can answer it, then I'll let him answer it.

 9 MR. HARLOW: Proprietary is not a

10 grounds for objection.

11 MR. FASSBURG: Well, it is, because I

12 think that there's way too many detailed questions

13 that are probing to how SpeediShuttle gets its

14 passengers, how it makes its money. This is all

15 information Shuttle Express could very well use to try

16 to take that information and turn its losses around by

17 competing with SpeediShuttle using SpeediShuttle's

18 strategies. I don't think that's fair to

19 SpeediShuttle. That's not what this proceeding is

20 about.

21 MR. HARLOW: I don't think it's fair to

22 us. We're going to see in every page in their

23 post-hearing brief how we didn't meet our burden of

24 proof. The reason is they won't give us the data.

25 They won't answer questions. They refuse. Again, I'm

0809

 1 really getting tired of this charade.

 2 JUDGE PEARSON: Mr. Roemer, are you

 3 comfortable answering that question just on a

 4 percentage?

 5 MR. ROEMER: I actually don't know the

 6 answer, Your Honor --

 7 JUDGE PEARSON: Well, there you go.

 8 MR. ROEMER: -- off the top of my head,

 9 but I could venture probably a pretty good educated

10 guess. But I don't do that, because he will

11 immediately demand backup and because Shuttle Express,

12 on their own volition, stopped providing round-trip

13 discounts. Now it's about, well, let's see whether

14 the round-trip discount needs to come back by looking

15 at SpeediShuttle. This is why they're digging in this

16 information. It's all so they can compete with us.

17 JUDGE PEARSON: Mr. Harlow, I don't

18 understand where you're going with the question or why

19 it's relevant.

20 MR. HARLOW: It may go nowhere, Your

21 Honor. It depends on what the answer is. But the

22 data that we have seen, particularly from the annual

23 reports, suggests that the company is making a lot of

24 one-way trips and they're deadheading. The reason we

25 suspect that is because the average revenue per

0810

 1 passenger is $17.65. It's barely more than their

 2 cheapest fare, which is to Seattle 98101.

 3 MR. ROEMER: Object to that. That's

 4 false. Object.

 5 MR. FASSBURG: Well, first of all --

 6 MR. HARLOW: It's an offer of proof.

 7 MR. FASSBURG: It's not an offer of

 8 proof.

 9 MR. HARLOW: Secondly, we know their

10 mileage per trip from their annual report, and it's

11 about 30 miles.

12 MR. FASSBURG: I'm waiting for

13 Mr. Harlow to take the oath.

14 JUDGE PEARSON: I just want to know --

15 MR. HARLOW: You want to know where

16 it's going?

17 JUDGE PEARSON: Yes. Why is it

18 relevant?

19 MR. HARLOW: Why is it relevant?

20 JUDGE PEARSON: Yeah.

21 MR. HARLOW: Because it goes to the

22 cream-skimming argument. We think somewhere around 85

23 or 90 percent of all of their traffic is to Seattle,

24 to Seattle hotels and piers, and they're not really

25 serving the whole county.

0811

 1 MR. FASSBURG: As much as I would love

 2 to reciprocate and be a witness here in this

 3 proceeding, I'll just point out that, although I don't

 4 have the details to provide him today, passengers

 5 choose whether to reserve service or not, not

 6 transportation companies.

 7 If he is arguing that because they have more

 8 passengers to downtown Seattle -- there's a lot of

 9 different explanations for that. He can argue about

10 it in his brief. He's already put all the evidence

11 that he wants to. I don't know why this requires any

12 more time on this.

13 JUDGE PEARSON: Well, I just don't

14 understand why the round-trip issue is relevant or

15 not, because it's not as though people fly into

16 Seattle, go to a hotel, and then stay there forever.

17 They, obviously, get back to the airport at some point

18 in time, even if they get on a cruise ship, unless

19 they fly home from another location. I just don't see

20 why one-way trip versus round-trip is relevant, so

21 let's move on from that.

22 MR. FASSBURG: Your Honor, I really

23 don't mean to pinch Mr. Harlow. I'd like him to have

24 as much time as he needs for questions that he needs

25 to actually ask, but it's 3:30. That's why I really

0812

 1 hope we can move along.

 2 MR. HARLOW: We're almost done. If you

 3 didn't have objections, we would be done. I'll move

 4 on.

 5 BY MR. HARLOW:

 6 Q All right. Turn, please, to Exhibit HJR-33X,

 7 page 6 of 9, and you can see that it has the total

 8 revenue, gross interest, and total number of

 9 passengers carried. Do you have it in front of you?

10 A Yeah, right here.

11 Q So would you accept, subject to check -- first

12 of all, you can calculate your average revenue per

13 passenger by dividing the passengers into the gross

14 revenue; isn't that correct?

15 A That should work.

16 Q And would you accept that your average revenue

17 per passenger is about $17.65?

18 A Yes. I would accept that it's probably that.

19 Q What is your fare to downtown Seattle for a

20 single passenger?

21 A $15.99, so about 10 percent less.

22 Q Sir, what is your fare to downtown Bellevue

23 for a single passenger?

24 A $22.

25 Q And what is your fare to, say, Issaquah for a

0813

 1 single passenger?

 2 A Without pulling tariff, I couldn't tell you.

 3 Off the top of my head due to the less populated

 4 areas, I couldn't do it.

 5 Q Do you know about how many miles it is from

 6 Sea-Tac Airport to Seattle ZIP Code 98101, downtown

 7 Seattle?

 8 A It's about 15 miles, maybe a little less. It

 9 depends on where.

10 Q Do you see the number of trips on page 6 of 9

11 there?

12 A Uh-huh.

13 Q And so if you turn to page 4 of 9, you can see

14 your total miles; is that correct?

15 A Okay.

16 Q And so from that, you can calculate the

17 average miles per trip; correct?

18 A Okay.

19 Q I don't have that in front of me, and I won't

20 make you do it on the stand.

21 But let me ask you this: Do those total miles

22 include only trips that have passengers onboard?

23 A No. We don't -- we don't play games with

24 numbers like we were yesterday.

25 Q So if a van gets fully loaded in the airport,

0814

 1 it goes up to Seattle and there's people waiting at

 2 the airport but nobody in Seattle, the van may come

 3 back empty; is that correct?

 4 A That shows a real misunderstanding of our

 5 business.

 6 Q I'm asking if that happens or can happen?

 7 A Well, it can happen.

 8 Q Okay. But then those miles, even when it's

 9 empty, would still be in this total operating miles in

10 HJR-33X; is that correct?

11 A That's correct.

12 Q Why does the company price 12 ZIP Codes at an

13 equal amount per person?

14 A I'm sorry. We submitted our tariffs with our

15 original application, and they were reviewed and

16 approved by Staff.

17 Q Some of the ZIP Codes here there's a different

18 fare for the second person; isn't that correct?

19 A Some ZIP Codes are priced at what is called

20 (inaudible) in the industry, and some are priced at

21 share ride.

22 Q And why did the company file a tariff that

23 took a different approach for difference ZIP Codes?

24 A It really has to do with load factor. And,

25 you know, it's too bad Shuttle Express needs us to

0815

 1 tell them how to operate their business, but I have to

 2 tell them, so I will.

 3 In high density areas where you're unlikely to

 4 have a single passenger in the area, it makes sense to

 5 do a per person fare. In lower density areas, like

 6 neighborhoods in Bellevue, you're very likely to end

 7 up with a single passenger.

 8 So the way you weight the fare is -- and

 9 Shuttle Express does exactly the same thing. The

10 first passenger pays a relatively high fare, and the

11 second persons pays a nominal amount of money. And,

12 yes, we do that same thing in Hawaii.

13 MR. HARLOW: Bear with me, Your Honor,

14 I'm trying to wrap up here. I want to make sure I

15 don't leave anything out.

16 JUDGE PEARSON: Okay.

17 Q Turn, please, to Exhibit HJR-66X, and you see

18 it indicates that 85 percent of your walk-up

19 passengers in that particular date or period are to

20 the downtown Seattle area?

21 A At the time of the data request, yes.

22 Q Okay. Do you know if at the time of the data

23 request that same percentage would have been true for

24 reserve passengers?

25 A It wasn't requested, and we didn't try and

0816

 1 figure it out.

 2 Q Do you have any estimate based on your

 3 knowledge and workings in the company?

 4 A No. I don't have any estimate that I would be

 5 able to provide backup for in your follow-up

 6 questions, so no.

 7 Q Let's turn back to your prefiled testimony.

 8 I'll get you a page in a minute. Starting at page 54,

 9 HJR-1T, you're answering questions about

10 Mr. Kajanoff's pro forma. You call it a financial

11 statement. Mr. Kajanoff wasn't allowed to use your

12 actual financial statement that you had provided;

13 isn't that correct?

14 A Pursuant to a confidentiality agreement

15 between the parties, I believe that is correct.

16 Q You indicate at line 18 "Shuttle Express asked

17 us to produce a financial statement for May 1, 2015

18 through December 31, 2015 and a second covering

19 January 1, 2016, through September 2016."

20 And you criticize that; is that correct?

21 A I said it's not GAAP, but go ahead.

22 Q So, in other words, you didn't think it

23 conformed to Generally Accepted Accounting Principles?

24 A I know it doesn't.

25 Q Did Shuttle Express ask for that data in your

0817

 1 prefiled testimony?

 2 A They asked for everything.

 3 Q Let's take a look at Exhibit HJR-59X.

 4 MR. FASSBURG: We're going to reassert

 5 our objection to this and ask --

 6 MR. HARLOW: I haven't asked the

 7 question. I haven't offered the exhibit or asked a

 8 question. Let me do that, and I'll give you a chance

 9 to make your objection.

10 MR. FASSBURG: I'm speaking, and I'd

11 like to make my objection at the time that I'm making

12 it as opposed to you telling me when I can object.

13 Now that we have a little bit more of a

14 context, he's, again, going through discovery

15 disputes. The first testimony that he read related to

16 Mr. Roemer criticizing the request that they made.

17 That's a discovery issue. Sure, the parties argued at

18 discovery a little bit in their testimony, but this is

19 still a discovery dispute regardless of where it is in

20 the testimony. And this e-mail is, again, attorney to

21 attorney.

22 JUDGE PEARSON: Mr. Harlow, I'll let

23 you ask your question or explain where you're going

24 with this.

25 MR. HARLOW: My question was going to

0818

 1 be -- because he just said something to the effect

 2 that they ask for everything, my question was going to

 3 be: Have you seen Exhibit HJR-59X? That's the first

 4 question.

 5 JUDGE PEARSON: And then where are you

 6 going from there?

 7 MR. HARLOW: The next question is: Is

 8 that the other financial data they asked for besides

 9 what you said was presented in your prefiled

10 testimony?

11 MR. FASSBURG: Again, this is a

12 discovery dispute. I don't understand why we need to

13 do this today.

14 MR. HARLOW: It's not a discovery

15 dispute. It goes to the credibility of the witness.

16 He pretends like we asked for non-GAAP information.

17 In fact, we not only asked for several times of

18 GAAP-consistent information, we also said we could

19 accept something consistent with GAAP or a monthly

20 spreadsheet. We left it up to them to produce

21 something that they would agree would conform to GAAP.

22 MR. FASSBURG: This is still discovery.

23 JUDGE PEARSON: I also don't find it

24 relevant for my purposes, so I'd like you to just move

25 on.

0819

 1 MR. HARLOW: We'd like to be done with

 2 cross of this witness.

 3 JUDGE PEARSON: Okay.

 4 MR. HARLOW: No further cross at this

 5 time.

 6 JUDGE PEARSON: Thank you.

 7 Mr. Beattie, do you have questions for

 8 Mr. Roemer?

 9 MR. BEATTIE: Yes, thank you.

10 E X A M I N A T I O N

11 BY MR. BEATTIE:

12 Q Mr. Roemer, does SpeediShuttle Seattle provide

13 auto transportation service using non-owned vehicles?

14 A No.

15 Q Does SpeediShuttle Seattle provide auto

16 transportation service using nonemployee drivers?

17 A No.

18 MR. BEATTIE: Thank you. No further

19 questions.

20 MR. FASSBURG: May we take a

21 five-minute break before redirect?

22 JUDGE PEARSON: I have questions. Can

23 I go first or do you need --

24 MR. WILEY: Absolutely.

25 MR. FASSBURG: We don't need a break

0820

 1 for that.

 2 E X A M I N A T I O N

 3 BY JUDGE PEARSON:

 4 Q Okay. So, Mr. Roemer, I'm going to ask you

 5 the same question that I asked Mr. Kajanoff yesterday,

 6 which is: On average for your lowest cost trip, which

 7 I assume would be to downtown Seattle as it is for

 8 Shuttle Express --

 9 A It's not, but I'll answer it.

10 Q It's not?

11 A No. Theirs isn't either, but I'll answer it

12 in that respect because it is the majority of

13 everybody's trips.

14 Q Okay. So at what capacity, meaning number of

15 seats sold, does that trip become profitable for

16 SpeediShuttle?

17 A About four.

18 Q Okay. And then my other question was: Are

19 you able to get information -- when I was looking at

20 one of the data request responses that related to the

21 number of SpeediShuttle employees and the number of

22 employees that spoke languages other than English, are

23 you able to get information about the actual total

24 number of SpeediShuttle employees today, not

25 cumulative, but how many employees SpeediShuttle has

0821

 1 today and then get me an updated list of the employees

 2 who speak languages other than English that looks just

 3 like the list you provided in response to the data

 4 request? So it would just list their position and the

 5 language that they speak, no other identifying

 6 information, because that would be helpful to me.

 7 A We can get it. We're going to have to poll

 8 the employees, because we don't --

 9 Q That's not information that you keep in their

10 employee file? It's not something you find out when

11 you're hiring them?

12 A No, no.

13 Q Okay. So if you can do that for me, I will

14 label that Bench Request No. 3. And what would be a

15 sufficient amount of time for you to get that? Do you

16 need a couple of weeks for that one?

17 MR. WILEY: I would think at least;

18 right?

19 MR. ROEMER: Sorry?

20 MR. WILEY: Wouldn't you need at least

21 two weeks?

22 MR. ROEMER: First, I got to get a

23 roster.

24 MR. WILEY: Want to say three weeks?

25 MR. ROEMER: Make it two. I want this

0822

 1 over with.

 2 MR. WILEY: I think we all do.

 3 MR. ROEMER: I want this over with, and

 4 either we're operating in Seattle or not. I just want

 5 it done.

 6 JUDGE PEARSON: So I'm looking for,

 7 again, just current numbers. I don't want cumulative

 8 numbers.

 9 MR. ROEMER: I understand.

10 JUDGE PEARSON: Okay.

11 MR. HARLOW: Your Honor, could we

12 revisit the total year losses? We've got revenue in

13 the annual report. We know that there are 3.83 load

14 factor already, so they should be very close to

15 breaking even, which he's writing about the four being

16 the breakeven point. Can we test that by getting the

17 cost for 2016? We already have the revenues, just one

18 more data point.

19 MR. FASSBURG: Your Honor, we're done

20 with testimony except for redirect. The push for more

21 and more information becomes more and more

22 prejudicial.

23 JUDGE PEARSON: Yeah, I agree. I don't

24 need that data. I feel pretty strongly that the

25 Commission's process for approving tariffs is set up

0823

 1 so that pricing can't be predatory, so I don't need

 2 all of this extra information. I think I have what I

 3 need at this point and with the additional information

 4 that I'll get, and I'm going to leave it at that.

 5 So I think that's all that I have for

 6 Mr. Roemer. Do you have any redirect?

 7 MR. FASSBURG: We have a short

 8 redirect, but we'd like to take a quick break first.

 9 JUDGE PEARSON: Let's do that. How

10 long? Five minutes fine?

11 MR. FASSBURG: Five minutes is fine.

12 JUDGE PEARSON: We'll be off the record

13 for five minutes.

14 (A break was taken from 3:46 p.m. to

15 3:57 p.m.)

16 JUDGE PEARSON: All right. Let's be

17 back on the record.

18 And, Mr. Fassburg, you can proceed with

19 redirect.

20 MR. FASSBURG: Thank you.

21 E X A M I N A T I O N

22 BY MR. FASSBURG:

23 Q Mr. Roemer, you were asked some questions

24 earlier about whether you greet all of your guests.

25 Does SpeediShuttle do anything to monitor greeters to

0824

 1 avoid missing greets?

 2 A Yes, we do.

 3 Q You were also asked, with respect to the bench

 4 request, whether you track the languages of employees.

 5 Who did you mean by you?

 6 A Me.

 7 Q Does someone at SpeediShuttle in Washington

 8 actually have an idea of the languages its employees

 9 speak?

10 A Yeah. The various supervisors know who speaks

11 what language.

12 Q You were asked some questions about your

13 wholesalers and whether or not the passengers could

14 reserve service in different languages. Do your

15 wholesalers -- or, rather, do some of your wholesalers

16 actually focus on tourism from other countries?

17 A Yes.

18 Q Are some of those wholesalers customers that

19 are long-standing of SpeediShuttle Hawaii?

20 A Almost all of them.

21 Q Do those customers know your business model

22 without you telling them?

23 A Yes.

24 Q You were also asked some questions about your

25 application, your job application, forms for

0825

 1 SpeediShuttle's website. What has been the more

 2 successful way of recruitment for SpeediShuttle, its

 3 website or job advertising?

 4 A Job advertising.

 5 MR. FASSBURG: We have no further

 6 questions.

 7 JUDGE PEARSON: Okay. And just

 8 circling back, I realized that I forgot to follow-up

 9 with respect to the bench request from Monday. You

10 said you did have that information?

11 MR. ROEMER: I do have it. It's on my

12 phone, and my lawyers told me if I pull out my phone

13 to read it to you that I then have to give my phone to

14 Mr. Harlow.

15 MR. FASSBURG: What we cautioned him --

16 MR. HARLOW: We have a phone.

17 MR. FASSBURG: What we cautioned him is

18 that if he brings written materials that are not part

19 of the record, usually, that means the attorney gets

20 to ask them questions about what else is there, and so

21 we cautioned him not to do that.

22 JUDGE PEARSON: Okay. So let's just

23 put a due date on it. Let's just make it next Friday

24 along with Bench Request No. 2. If you get it to me

25 sooner than that, great, but I will put 5/19 on there

0826

 1 as the actual due date.

 2 MR. FASSBURG: Thank you.

 3 JUDGE PEARSON: Okay. So we are ready

 4 to call the next witness, who I believe, Mr. Young,

 5 you'll be going first?

 6 If you could, please stand and raise your

 7 right hand.

 8

 9 MICHAEL PATRICK YOUNG, witness herein, having been

10 first duly sworn on oath,

11 was examined and testified

12 as follows:

13

14 JUDGE PEARSON: Please be seated.

15 Mr. Beattie, do you have any preliminaries?

16 MR. BEATTIE: Is Mr. Young going to

17 remain seated next to me?

18 JUDGE PEARSON: Sure. I'm so used to

19 Staff staying right here. Sure. Why don't you come

20 on over.

21 MR. BEATTIE: Whatever you fancy.

22 JUDGE PEARSON: Ready to go?

23 E X A M I N A T I O N

24 BY MR. BEATTIE:

25 Q Good afternoon. Would you please state your

0827

 1 full name for the record.

 2 A Michael Patrick Young, Y-O-U-N-G.

 3 Q Did you file testimony in this proceeding,

 4 MY-1T?

 5 A I did.

 6 Q Do you have any corrections to that testimony?

 7 A No.

 8 MR. BEATTIE: Okay. Your Honor, we

 9 offer MY-1T. I believe it's already been stipulated

10 in.

11 JUDGE PEARSON: It has been stipulated,

12 but let me just memorialize that for the record. I

13 will admit exhibit -- the exhibit marked MY-1T into

14 the record.

15 (Exhibit MY-1T was admitted.)

16 JUDGE PEARSON: And who's going first?

17 Mr. Harlow?

18 MR. HARLOW: I would think we would.

19 JUDGE PEARSON: Yes.

20 MR. HARLOW: Thank you, Your Honor.

21 E X A M I N A T I O N

22 BY MR. HARLOW:

23 Q Good afternoon, Mr. Young. If you would,

24 please turn to page 3 of MY-1T and the lines 16 to 18.

25 You say "Staff believes that SpeediShuttle's

0828

 1 competition with Shuttle Express is a welcome -- and

 2 lawful -- development."

 3 Do you see that?

 4 A Yes.

 5 Q Due to you're not a lawyer, are you not,

 6 Mr. Young?

 7 A That's correct.

 8 Q So you have no personal training or knowledge

 9 in the law to conclude that it's a lawful development;

10 is that correct?

11 A Other than my interpretation of the WACs and

12 RCWs that we use here.

13 Q What is the touchstone for the term "welcome"

14 that you use in line 17? Is that the public interest?

15 A I'm not sure I understand.

16 Q Why does Staff welcome SpeediShuttle's

17 competition?

18 A In the rule-making in 2013 that established

19 the flexible fares, Staff agreed to streamline filing

20 processes and return for lowering the barrier to entry

21 in the market. And this is the first time that that's

22 been tried, so we now have another company. And for

23 us, that's a chance to evaluate whether our change in

24 rules is going to be effective or not.

25 Q While speaking for yourself, do you believe

0829

 1 that Staff should lower the barrier below the

 2 statutory requirements?

 3 A No. We have to live within the statute.

 4 Q Are you familiar with RCW Title 81,

 5 Chapter 68?

 6 A A little bit.

 7 Q How about Section 40?

 8 A I don't have that in front of me.

 9 Q Okay. Let me, if I may, just read a portion

10 of it. "The Commission may, after notice and an

11 opportunity for hearing, when the applicant requests a

12 certificate to operate in a territory already served

13 by a certificate holder under this chapter, only when

14 existing auto transportation company or companies

15 serving such territory will not provide the same to

16 the satisfaction of the commission...."

17 Do you recall that passage?

18 A Yes.

19 Q So would you welcome -- would the staff

20 welcome competition if it violated that provision of

21 the statute?

22 A I would have to say no.

23 Q All right. So how would you decide when

24 service in the same territory should be welcomed

25 because it's consistent with that statutory provision

0830

 1 as opposed to inconsistent?

 2 MR. FASSBURG: Objection.

 3 THE REPORTER: I'm sorry. As opposed

 4 to what?

 5 MR. HARLOW: As opposed to inconsistent

 6 with that provision?

 7 JUDGE PEARSON: Can you read me back

 8 that question?

 9 (Record read back as requested.)

10 Q So is your understanding of that statute that

11 the company can't offer exactly the same service in

12 the same territory unless the existing certificate

13 holder is not serving to the satisfaction of the

14 Commission?

15 A That's my understanding.

16 Q So does that mean you welcome the competition

17 from SpeediShuttle because you believe it's a

18 different service?

19 A I believe that that determination was made in

20 the application hearing.

21 Q And on what basis do you understand that

22 determination was made?

23 A I believe in the fact that the judge issued a

24 certificate to SpeediShuttle.

25 Q And what made it a different service, in your

0831

 1 opinion?

 2 MR. BEATTIE: Okay. I'm going to

 3 object, because this is definitely outside the scope

 4 of his direct testimony.

 5 MR. HARLOW: Let's move on then,

 6 because he's struggling with it anyway.

 7 Q In preparing your testimony in this

 8 proceeding, did you do any independent investigation

 9 since, say, the filing of our petition last May?

10 A By investigate, what do you mean?

11 Q Did you do -- you said in your testimony that

12 you read some prefiled testimonies. Did you do

13 anything beyond that to come to your conclusions that

14 this is a welcomed amount of competition?

15 A No. Again, I was referring to the order that

16 was R572 in the rule-making.

17 Q So you never rode on SpeediShuttle, for

18 example?

19 A No.

20 Q You never went out to the Sea-Tac Airport to

21 see if they actually had greeters; is that correct?

22 A I did not go to the airport, no.

23 Q Did you ever try to book something on the

24 website and see if bookings comports with their

25 tariff?

0832

 1 A No. Nothing in their tariff related to

 2 anything, any reservations in another language or

 3 greeters or anything of that nature.

 4 Q Okay. You didn't try the WiFi or any other

 5 means?

 6 A Actually, we were given the opportunity to try

 7 that and I did.

 8 Q When was that?

 9 A I don't recall the exact date. They brought a

10 van here to the Commission.

11 Q Which year was that?

12 A I believe that was -- I want to say last

13 summer.

14 Q Okay. So they turned it on for you, I take

15 it?

16 A Yes.

17 Q Good. Did you do any financial analysis of

18 SpeediShuttle since their original application?

19 A Not beyond the initial financial review that

20 we do for all applications.

21 Q And initial financial review is based on a pro

22 forma financial statement?

23 A Yes, as submitted in the application.

24 Q Were you able to look at this yellow piece of

25 paper that we didn't make in the record but ask

0833

 1 questions about it?

 2 A Yes.

 3 Q And did you have any -- maybe you compared it

 4 with the pro forma? Maybe not? Maybe you remembered

 5 the pro forma?

 6 A No. I did not do any other comparison.

 7 Q Okay. So you don't know if their actuals,

 8 which you looked at, match the pro forma or not?

 9 A I do not.

10 Q Okay. Did you review the financial statements

11 of Shuttle Express in connection with your

12 investigation in this case?

13 A Not with this, no.

14 Q Do you have any opinion one way or the other

15 on whether the competition that you welcome is

16 sustainable in the long run?

17 A I don't have an opinion on that, no.

18 Q Do you know what it costs to provide service

19 using your Mercedes van as opposed to a Ford van?

20 A Not off the top of my head, no.

21 Q Do you know what it costs to provide greeters

22 to every passenger, assuming that's being done?

23 A I'm not familiar with that, no.

24 Q Do you know how long it takes to walk across

25 the sky bridge from the baggage claim to Island 2?

0834

 1 A Based on my personal experience.

 2 Q About how long does that take?

 3 A I would say a minute to two minutes.

 4 Q A minute to two minutes.

 5 Do you know how long it takes to gather

 6 together all the people on a particular flight at

 7 baggage claim by a greeter, just any hypothetical

 8 greeter?

 9 A No.

10 Q Do you know how long it typically takes

11 baggage to come off of a flight at Sea-Tac Airport

12 from personal experience?

13 A Yes. It's variable based on my personal

14 experience.

15 Q What's the range, in your experience?

16 A Anywhere from the time I arrive there to 20,

17 30 minutes later.

18 Q Do you think it would be in the public

19 interest if, as a result of this competition, either

20 SpeediShuttle or Shuttle Express were to cease doing

21 share ride business to Sea-Tac Airport?

22 A Well, it would be my position that if one of

23 the companies ceased operation that would be their

24 decision based on their management and would not be

25 because of anything the Commission has done or not

0835

 1 done.

 2 Q What if it were based on financial constraints

 3 of the competition?

 4 A Again, I think that's the purview of the

 5 company management to --

 6 Q Let's put aside the cause. Would it be in the

 7 public interest, for whatever reason, for one or both

 8 of those companies to cease providing share ride

 9 services?

10 MR. BEATTIE: Objection, asked and

11 answered.

12 JUDGE PEARSON: Mr. Harlow, I'm not

13 sure what exactly you're getting at.

14 MR. HARLOW: Well, he qualified it by

15 saying that's the decision of the company. That's not

16 my question. My question all three times was would

17 that be in the public interest.

18 JUDGE PEARSON: If there were no longer

19 shared ride service available?

20 MR. HARLOW: From one or both of the

21 companies, yes.

22 JUDGE PEARSON: You can go ahead and

23 answer that.

24 A Although I find it unlikely that both

25 companies would cease business on the exact same day,

0836

 1 assuming -- my assumption would be that the less

 2 efficient operator would go out of business. In any

 3 event, the certificate would be available for other

 4 providers.

 5 Q Would it be in the public interest if one or

 6 both of the companies limited their service to

 7 downtown Seattle, including the piers and Bellevue,

 8 and didn't serve the outlying areas?

 9 A I don't know for certain.

10 Q You have no opinion on that?

11 MR. BEATTIE: Objection, asked and

12 answered.

13 JUDGE PEARSON: I'm going to sustain

14 that. He answered your question.

15 Q Would it be in the public interest for the

16 wait times for share ride passengers to go up for --

17 well, for any reason?

18 A I don't think that would have any effect on

19 the public interest.

20 Q Would it be in the public interest if either

21 company needed to raise its fares to be -- to become

22 more -- sustain profitability?

23 A It could be.

24 Q What basis could it be?

25 A If it enables the company to provide better

0837

 1 service to the public.

 2 Q All good things being equal, would you prefer

 3 to not have the fares go up?

 4 MR. BEATTIE: Objection, relevance.

 5 What Mr. Young personally prefers, I don't see how

 6 that has any bearing.

 7 MR. HARLOW: I meant the public

 8 interest.

 9 JUDGE PEARSON: I'll sustain the

10 objection.

11 MR. HARLOW: No further questions.

12 Thank you, Mr. Young.

13 MR. WILEY: A few brief questions, Your

14 Honor.

15 E X A M I N A T I O N

16 BY MR. WILEY:

17 Q Good afternoon. Thanks for all your patience

18 through this long day.

19 You were asked by Mr. Harlow if the Staff

20 would support, quote, lowering the barrier, unquote,

21 for entry under 81.68.040. You talked about the

22 statute, but you didn't talk about the rules at all.

23 I think you acknowledged that in 2013 the

24 rules for entry in auto transportation changed, did

25 they not?

0838

 1 A Yes.

 2 Q And you also alluded to the order of the

 3 Commission that you had relied upon in answering some

 4 of the questions. That's Order 04 in this proceeding.

 5 I'm going to hand you Order 04 and ask that you read

 6 the footnote on that page 3 that continues on to

 7 page 4, please. Can you read that into the record,

 8 please.

 9 A Oh, sure. Yes. "On September 21, 2013, the

10 Commission amended its rules governing the

11 Commission's review of applications for authority to

12 operate a passenger transportation company in

13 Washington. The changes clarify and streamline the

14 application process for companies speaking to provide

15 such service, give companies rate flexibility, and

16 promote competition in the auto transportation

17 industry."

18 Q Do you take it by that indication that the

19 Commission is currently favoring expanding competition

20 in this field?

21 MR. HARLOW: Your Honor, I'm going to

22 object to the leading nature of this. This is

23 friendly cross. The witness is on the same side as

24 Mr. Wiley's client. I'd rather not have leading

25 questions here.

0839

 1 MR. WILEY: Your Honor, it's directly

 2 related to the cross that to the extent he's added

 3 issues that weren't addressed in the direct testimony,

 4 so I think it's a fair question.

 5 JUDGE PEARSON: Okay. I'll allow it.

 6 A Would you repeat that, please?

 7 MR. WILEY: Can I have that read back,

 8 please?

 9 (Record read back as requested.)

10 A I would have to say yes.

11 Q Were you aware that in that rule-making policy

12 statement that you alluded to that there was also a

13 reference by the Commission to its interpretation of

14 RCW 81.68 in light of the rules?

15 A I might be if you --

16 Q I'll hand this to you. The highlighted

17 paragraph.

18 A Right.

19 Okay.

20 Q Yes or no?

21 A I've read this, yes.

22 Q And it does refer to RCW 81.68 and the

23 standards evolving under that statute, does it not?

24 A Yes.

25 Q Thank you.

0840

 1 You also testified in your testimony about

 2 flexible fares, and I would assume that's an area that

 3 you know something about based on your job?

 4 A Yes.

 5 Q Do you believe that in a flexible fare

 6 environment that making a case for below-cost rates

 7 would be more difficult than in a conventional

 8 standard rate case analysis?

 9 A Yes, I do.

10 Q To your knowledge, has anyone, other than this

11 complainant, ever filed a complaint against another

12 company for, quote, below-cost rates since flexible

13 fares were implemented in 2013?

14 A Not that I'm aware of.

15 Q One final question I have for you. You talked

16 about the restriction, the possibility of a, quote,

17 business model, unquote, restriction, which you

18 indicated at page 4, line 3 of your testimony.

19 My question to you is whether -- you

20 indicated, did you not, that the enforceability of

21 such a restriction would be very difficult?

22 A Yes.

23 Q To your knowledge, are common carriers with

24 unrestricted certificates allowed to discriminate

25 amongst classes of customers?

0841

 1 A Not as to race, no.

 2 Q And as to service, if their permit is

 3 unrestricted, are they allowed to discriminate?

 4 A I would say no, but --

 5 MR. WILEY: No further questions, Your

 6 Honor.

 7 JUDGE PEARSON: Okay. Thank you.

 8 E X A M I N A T I O N

 9 BY JUDGE PEARSON:

10 Q I have a question for you, Mr. Young. And if

11 it is too involved, I can turn it into a bench

12 request. So Mr. Roemer discussed using the average

13 variable cost as an appropriate comparison between the

14 incremental cost of service and the fare charged for

15 the service charged by each company.

16 And Mr. Kajanoff, through his testimony, he

17 testified that SpeediShuttle's actual expenses were

18 significantly greater than his pro forma estimates and

19 appears to support using total cost as the appropriate

20 comparison.

21 So when you, in your capacity, are determining

22 appropriate rates for auto transportation companies,

23 is there a standard method or formula for calculating

24 rates? Do you use one or the other, either average

25 variable cost or total cost?

0842

 1 A In our current rate-setting process, we use

 2 total cost.

 3 Q Okay. And so did SpeediShuttle submit its

 4 tariff under an average variable cost presentation, or

 5 did you evaluate them using a total cost presentation?

 6 A I don't believe that we've done a rate case

 7 for SpeediShuttle. I believe that they've been under

 8 the flexible fare rules since they started, and so we

 9 have not had an opportunity to look at that.

10 Q Okay. Do you have an opinion about which is

11 more appropriate, the average variable cost versus the

12 total cost?

13 A Since the Commission policy is to set rates

14 using an operating ratio of 93 percent, then I would

15 say total cost would be more appropriate.

16 JUDGE PEARSON: Okay. Thank you. I

17 think that is the only question that I have for you.

18 So, Mr. Beattie, do you have anything?

19 MR. BEATTIE: Yes. Thank you, Judge.

20 E X A M I N A T I O N

21 BY MR. BEATTIE:

22 Q Mr. Young, Mr. Harlow asked you about whether

23 Staff has undertaken any investigation of -- and then

24 he listed a whole host of possible investigation

25 topics. I want to know from you, with respect to

0843

 1 SpeediShuttle, are you aware of any customer

 2 complaints or other customer inquiries that would lead

 3 staff to investigate -- let's take things one at a

 4 time -- multilingual greeter service first?

 5 A No. I did check with our Consumer Division,

 6 and I'm not aware of any complaints along those lines.

 7 Q Have customers made any inquiries of the

 8 Commission, to your knowledge, about SpeediShuttle's

 9 fares?

10 A Not that I'm aware of, no.

11 Q Okay. Have customers made any inquiries of

12 the Commission about SpeediShuttle's accessibility --

13 language accessibility?

14 A Not that I'm aware of.

15 Q Have customers made any inquiries of the

16 Commission about Mercedes vans?

17 A Not that I'm aware of.

18 Q WiFi service?

19 A No.

20 Q Okay. Mr. Harlow also asked you about your

21 opinion about whether SpeediShuttle was offering the

22 same service as Shuttle Express. Do you remember

23 that?

24 A Yes.

25 Q And you said something to the effect that

0844

 1 determination was made already; correct?

 2 A Yes.

 3 Q Is Staff recommending that the Commission

 4 revisit its same service determination in this

 5 proceeding?

 6 A No.

 7 MR. BEATTIE: Thank you, Mr. Young.

 8 Judge Pearson, I have no further questions.

 9 JUDGE PEARSON: I do have one other

10 question. Sorry about that.

11 E X A M I N A T I O N

12 BY JUDGE PEARSON:

13 Q I made a statement earlier before the break

14 that it was my opinion, from what I know, so I would

15 like your opinion on this, that the flexible fare

16 structure is set up in a way that would prevent any

17 sort of predatory pricing. Is that accurate in your

18 opinion?

19 A I believe so, yes.

20 Q Okay. Can you explain that to me a little bit

21 more about why that is?

22 A The base fare was set on cost, which is a

23 traditional 93.7 operating ratio, and then the

24 flexible fare is a certain percentage allowed above

25 that. So no matter how you look at it, the fare is

0845

 1 set on cost somehow. So while there might be some

 2 wiggle room here and there, overall, there would not

 3 be nothing.

 4 JUDGE PEARSON: Okay. Thank you, and I

 5 don't have anything further. Okay. You may step

 6 down, and we will call Mr. Pratt.

 7

 8 DAVID PRATT, witness herein, having been

 9 first duly sworn on oath,

10 was examined and testified

11 as follows:

12

13 JUDGE PEARSON: You may be seated.

14 Mr. Beattie.

15 MR. BEATTIE: Thank you.

16 E X A M I N A T I O N

17 BY MR. BEATTIE:

18 Q Would you please state your full name for the

19 record.

20 A Yes. My name is David Pratt.

21 Q Thank you. Mr. Pratt, have you filed written

22 testimony DP-1T and DP-6T in this docket?

23 A Yes, I did.

24 Q Do you have any corrections to those

25 testimonies?

0846

 1 A No, I don't.

 2 Q And are you still sponsoring Exhibits DP-2

 3 through DP-5?

 4 A Yes.

 5 MR. BEATTIE: Okay. Thank you. At

 6 this time, Your Honor, we would offer DP-1T and DP-2

 7 through DP-5 and DP-6T.

 8 JUDGE PEARSON: Do we have any

 9 objections?

10 MR. HARLOW: None, Your Honor.

11 JUDGE PEARSON: From SpeediShuttle?

12 MR. FASSBURG: No.

13 JUDGE PEARSON: Okay. So I will admit

14 DP-1T and DP-6T into the record, and I will take

15 official notice of DP-2 through DP -- I'm sorry.

16 DP-2, DP-4, and DP-5, which are all Commission

17 documents, and then I will admit DP-3 into the record

18 as well.

19 (Exhibit DP-1T, Exhibit DP-3, and

20 Exhibit DP-6T were admitted.)

21 MR. BEATTIE: Okay. Thank you. I

22 think Mr. Pratt is available for cross.

23 JUDGE PEARSON: Okay. Mr. Harlow?

24 MR. HARLOW: Yes. I have -- in my

25 exhibit list, I have cross-exhibits of 7X to 11X, and

0847

 1 I can't find them. And I'm not sure why, but I think

 2 some of them, maybe all of them, are officially

 3 noticed.

 4 JUDGE PEARSON: They are all related to

 5 Docket 120323, and several of them have made their way

 6 into this proceeding already.

 7 MR. HARLOW: So they're admitted or

 8 noticed?

 9 JUDGE PEARSON: Yes, I will take

10 official notice of all of those.

11 MR. HARLOW: Thank you. I appreciate

12 the clarification there.

13 E X A M I N A T I O N

14 BY MR. HARLOW:

15 Q Good afternoon, Mr. Pratt, almost evening.

16 You, as well, are not an attorney; is that

17 correct?

18 A I'm sorry. I didn't --

19 Q You -- as Mr. Young, you're not an attorney;

20 correct?

21 A No, I am not.

22 Q At DP-1T, page 11, you used the term "bought"

23 with regard to Shuttle Express and their independent

24 contractor contract. Do you recall that testimony?

25 A Which line are you referring to, please?

0848

 1 Q I believe it's line 17.

 2 JUDGE PEARSON: It's line 16 in the

 3 copy that I'm looking at.

 4 A Yes, I do recall that.

 5 Q Okay. Were you able to review the Shuttle

 6 Express independent contractor contract?

 7 A Not officially, no.

 8 Q Were you able to review it unofficially?

 9 A I was given an opportunity to take a look at

10 it for a very short period of time, but when I

11 requested it in my data request, it was refused. And

12 then, as I recall, Shuttle Express tried to make a

13 deal with me to let me look at it during a hearing if

14 I would hand it back at the end of the hearing.

15 MR. HARLOW: Can we go off the record

16 for a minute, Your Honor?

17 JUDGE PEARSON: Sure.

18 (A break was taken from 4:26 p.m. to

19 4:28 p.m.)

20 JUDGE PEARSON: We will be back on the

21 record.

22 MR. HARLOW: I think we'll move on to

23 the next question. Thank you for the off-the-record.

24 BY MR. HARLOW:

25 Q Have you had occasion to talk to Gene Eckhardt

0849

 1 or Penny Ingram about the meeting that Mr. Kajanoff

 2 testified he had with them?

 3 A No, I have not.

 4 Q Ms. Ingram is on a leave. Is that a medical

 5 leave, if I may ask?

 6 A I'm not exactly privy to that information, but

 7 I believe so.

 8 Q Do you know if she's able to take calls from

 9 people?

10 A I'm not aware of that, no.

11 Q Is Mr. Eckhardt still around Olympia?

12 A You know, I have to say I haven't talked to

13 Gene Eckhardt since he left the agency, so I'm not

14 familiar.

15 Q Okay. Did you make any attempt to locate him

16 with regard to Mr. Kajanoff's testimony?

17 A No, I did not.

18 Q Do you know if Staff made any attempt to

19 subpoena Mr. Eckhardt?

20 A I don't believe so.

21 Q Turn, please, to DP-6.

22 JUDGE PEARSON: 6T?

23 MR. HARLOW: 6T, thank you.

24 Q At page 3, line 11, you testify "I no longer

25 consider multi stop versus single stop to be a

0850

 1 material distinction."

 2 I'm curious about that term "I no longer."

 3 Did you then consider multi-stop versus single-stop to

 4 be a material distinction?

 5 A I believe I did back in the 2012 case, and the

 6 detail of that would be, in the 2012 case, we were

 7 investigating use of independent contractors. And I

 8 will say that that issue got muddied by the limousine

 9 issue that you were raising by single-stop,

10 multi-stop, by limousine operators' authority to make

11 single-stop or single-contract.

12 It got muddied by the term "rescue service,"

13 and, in hindsight, I realized that single-stop or

14 multi-stop had nothing to do with that case. It was

15 about the use of independent contractors, period. And

16 so, in hindsight, if I were able to return to that, I

17 would probably add those single-stop violations to my

18 charges back in 2012.

19 Q Thank you for that.

20 You understand that Shuttle Express has more

21 than one line of business; correct?

22 A Yes, I do.

23 Q And one of those lines of business is auto

24 transportation; correct?

25 A Yes.

0851

 1 Q And another line of business is brokering

 2 independent contractor limousine services; correct?

 3 A Yes.

 4 Q There's no corporate separation. It's all

 5 done around the same corporation; correct?

 6 A That's my understanding.

 7 Q Please turn to page DP-6T, which you already

 8 have, and turn to page 2. At lines 4 to 6, you say

 9 "In each case, the company has used non-owned vehicles

10 and non-employed drivers to provide auto

11 transportation service...."

12 In your layman's, nonlawyer view, what makes a

13 service an auto transportation service?

14 A Well, I would say it would start with when the

15 service is originally booked and the customer contacts

16 the company and requests or reserved a reservation for

17 a shared-ride service or even a single-ride service

18 through a company vehicle.

19 Q It starts with that. Where does it end?

20 A It ends when the customer has been delivered

21 to their destination.

22 Q And do you have an understanding of what makes

23 a limousine service?

24 A Please clarify the question for me.

25 Q I'm working on that. Would a limousine

0852

 1 service operate the same way from the booking to the

 2 transportation as the transportation company?

 3 A In the context of, yeah, they would take a

 4 reservation, pick up a customer, deliver them to their

 5 destination, yes.

 6 Q And just looking at the service, the

 7 transportation, how would you distinguish between the

 8 auto transportation service and the limousine service?

 9 A Well, I guess, it's one initial way would be

10 to determine who did the customer book the reservation

11 with. Was it with the auto transportation company, or

12 was it with the limousine company?

13 Q What if you don't know that, if you just know

14 what the service is that's being provided?

15 A So I'd ask you to repeat that question,

16 please.

17 JUDGE PEARSON: Excuse me. If you're

18 on the bridge line, please mute your phone.

19 MR. HARLOW: I'd ask the court reporter

20 to read it back, please.

21 (Record read back as requested.)

22 MR. BEATTIE: Objection, relevance.

23 JUDGE PEARSON: I'd sustain.

24 MR. HARLOW: Give me a minute, Your

25 Honor. That caught me by surprise.

0853

 1 Q Turn, please, to page 8 of DP-6T. You're

 2 discussing --

 3 JUDGE PEARSON: Page what? I'm sorry.

 4 Which page?

 5 MR. HARLOW: Page 8, line 8.

 6 Q You respond to Mr. Wood's testimony about

 7 limousine drivers, and you allege he misquoted you.

 8 You say "...'I have heard that Shuttle Express

 9 primarily relies on limousine drivers who are licensed

10 by the Department of Licensing.'"

11 And then you say you had testified "...I 'know

12 very little about the drivers in the vehicles they

13 operate.'"

14 Do you see that testimony?

15 A Yes, I do.

16 Q Okay. So are you familiar with the Department

17 of Licensing?

18 A Yes, I am.

19 Q Were you here at the workshop yesterday;

20 correct?

21 A Yes.

22 Q With Ms. Sisk, I believe?

23 A What?

24 Q Ms. Jody Sisk?

25 A Yes.

0854

 1 Q So do you have familiarity with the State's

 2 regulations of limousine services?

 3 A Generally, yes.

 4 Q And what kind of services do they regulate, in

 5 your understanding?

 6 A They regulate limousine services, which are

 7 considered luxury car service.

 8 Q And is there some point in their offering that

 9 they might cross over the line from limousine and

10 somehow come under your regulation, apart from the

11 booking?

12 MR. BEATTIE: Objection. Who is

13 "they"?

14 MR. HARLOW: A limousine operator.

15 JUDGE PEARSON: You're asking -- can

16 you restate your question?

17 MR. HARLOW: He's offered an opinion

18 that Shuttle Express is operating as an auto

19 transportation company, even though limousine --

20 licensed limousine carriers are providing the

21 transportation. And I'm trying to understand how he

22 reaches that conclusion. So far the only thing we've

23 got is the booking. If it's --

24 MR. BEATTIE: Your Honor, I have to cut

25 him off. I didn't object to relevance. I didn't

0855

 1 understand the question. If you could just restate

 2 the question, maybe that would move us along.

 3 BY MR. HARLOW:

 4 Q The question is: Could a limousine operator

 5 licensed by the Department of Licensing do something

 6 that, in your belief, would bring it under the

 7 jurisdiction of the Commission as auto transportation

 8 service?

 9 A Possibly. And I say there could be a scenario

10 where that could happen, yes.

11 Q And what would that scenario have to look

12 like?

13 A I guess what I'd say first is, more than

14 likely, they would cross over into our charter

15 regulation rather than auto trans regulation.

16 Limousines, under the Department of Licensing laws,

17 can seat up to 14 passengers.

18 When a vehicle goes over eight passengers, it

19 could become a charter regulated by the Commission, or

20 it can be a limousine up to 14. And those companies

21 can be choose to be regulated as a charter company or

22 a limousine. When it goes above 14 passengers in that

23 vehicle, it automatically falls under charter, but not

24 auto trans.

25 Q Let's go back to the booking. As I understand

0856

 1 your testimony, you're saying that because Shuttle

 2 Express initially booked 40,000 people as auto

 3 transportation and then asked them if they wanted to

 4 switch to limousine service that, even though they

 5 were carried by a limousine operator, you still

 6 consider them to be providing a transportation service

 7 because of the original booking? Am I understanding

 8 that right?

 9 MR. BEATTIE: Objection, facts not in

10 the record. The data request response from Shuttle

11 Express said something vague about the customer being

12 switched to an independent contractor, and now

13 Mr. Harlow is having Mr. Pratt to accept that the

14 company asked the customer if the customer wanted this

15 to occur. And I don't believe that that is accurate

16 or states facts that are in the record.

17 JUDGE PEARSON: Mr. Harlow, do you want

18 to rephrase your question?

19 MR. HARLOW: Yes. I would just take

20 out -- if it wasn't in his prefiled testimony, I would

21 just ask the question without that lead-in.

22 JUDGE PEARSON: I'm sorry. What?

23 MR. HARLOW: I would just ask the

24 question without that lead-in. Let me try to ask a

25 foundational question.

0857

 1 JUDGE PEARSON: Go ahead.

 2 BY MR. HARLOW:

 3 Q Mr. Pratt, have you said in a data response or

 4 in the record somewhere that it's your opinion that if

 5 it's booked by auto transportation that that

 6 characterization of the service continues even if it's

 7 later provided by a limousine carrier?

 8 A I don't think that was exactly how I

 9 characterized it, but I can describe what I believe

10 there.

11 Q State it in your own words, please.

12 A What I believed was that when I came to

13 Shuttle Express's facilities to interview the staff,

14 which was Mr. Marks, Mr. Kajanoff, to get a tour of

15 the facility and a tour of the dispatch center, I was

16 told that the company reaches out and contacts the

17 customer and says we'd like to switch you to a

18 limousine. Are you okay with that? The customer did

19 not initiate it.

20 So for me, I looked at it and said the

21 customer booked an auto trans when -- they can go to

22 your website, and they can choose either auto trans

23 service or they can choose luxury limousines. And

24 they chose auto trans, and then my belief is, for

25 economic gain, the company chose to move them to a

0858

 1 limo. And, of course, they didn't complain because

 2 they're being upgraded, but they did not request it.

 3 They asked if it would be okay.

 4 Q Is that based on your testimony at page 5 of

 5 Exhibit DP-1T?

 6 A I'm sorry? Page 5?

 7 Q Page 5.

 8 A Yes, it is.

 9 Q All right. And at lines 2 -- 2 through 4, you

10 say the original trips were not canceled and the

11 credit card payments were not refunded?

12 A Correct.

13 Q Would it be your opinion that if the original

14 trips were canceled and the credit card refunded and

15 they were rebilled, then, the same fare and carried by

16 the limousine carrier, that that would no longer be

17 auto transportation? Is that your opinion?

18 A Well, I don't think I would look at it that

19 black and white and that simple. I think I would try

20 and look at the totality of the transaction, and one

21 piece of it, certainly, would be that the credit card

22 receipt was canceled and then rebooked.

23 If it was rebooked at the same fare, I would

24 kind of question that as to whether or not that was

25 still in auto trans. But, in general, I think if the

0859

 1 transaction were canceled and redone, it would lean

 2 more towards that way, but I would have to look at the

 3 specific situation.

 4 And, again, I would have to look at the intent

 5 of the passenger to try and determine was this a

 6 passenger request or is this another attempt by the

 7 company to ship their riders from auto trans vehicles

 8 to limousine carriers.

 9 Q Let me ask you another hypothetical to try and

10 understand this. Let's pretend it's not Shuttle

11 Express. It's another limousine carrier, and let's

12 say they booked four unrelated passengers, maybe they

13 intended to book -- transport them in four independent

14 vehicles, but let's say they notice they're all going

15 to same place and decide to combine them into one

16 vehicle. Would that still be a limousine carriage in

17 your mind, or does that become auto transportation?

18 A It would be kind of hard to get 490 people in

19 one limousine.

20 Q No, I said four.

21 A Oh. I'm sorry.

22 Q I need to speak louder. I'm losing my voice.

23 A Well, limousines operate under a different

24 rule. Limousines operate under a single contract

25 rule, and so if those four people booked a trip that

0860

 1 way, yes, it would be a limousine still.

 2 Q The hypothetical is they booked independently,

 3 and the limousine carrier put them together because

 4 their itinerary was close. But they're unrelated

 5 separate contracts.

 6 A You're asking me to interpret DOL's laws, and

 7 so I don't know the answer to that.

 8 Q I'm asking you to interpret your laws. Do you

 9 view that as coming under your jurisdiction as auto

10 transportation?

11 A Under your scenario, if a -- if four customers

12 booked four trips with a limousine company, it would

13 never be under my jurisdiction, because we don't

14 regulate limousines.

15 Q And what makes it a limo that makes you decide

16 I'm not going to serve jurisdiction?

17 A Oh, boy. A whole source of factors. One, a

18 limousine is defined by law, and I don't have that

19 right in front of me. But there is a definition of a

20 limousine, including the features, the quality of the

21 vehicle, the type of service they provide is one of

22 the distinctions of it, and one of the big

23 distinctions is a single contract, luxury vehicle.

24 Q If an auto transportation company providing

25 shared ride service, let's say Shuttle Express, if

0861

 1 they can't fill a van, let's say they can only get one

 2 passenger, so they make a trip with one passenger in

 3 their own van with their driver, is that an auto

 4 transportation service, or could that be something

 5 else?

 6 A That's an auto transportation service.

 7 Q Why would you say that's an auto

 8 transportation service?

 9 A Because it was an auto transportation company

10 that accepted a reservation, so it's an auto

11 transportation service.

12 Q What if some business colleagues in the same

13 firm jointly hire a limousine to take them to

14 different hotels in a shared vehicle, would you view

15 that as an auto transportation service or a limousine

16 service?

17 MR. BEATTIE: Objection, relevance.

18 JUDGE PEARSON: I'm going to sustain.

19 You're asking him what are, essentially,

20 jurisdictional riddles. It's not really getting us

21 anywhere.

22 MR. HARLOW: Let's move on.

23 Q We've kind of touched on this, but I have one

24 wrap-up question. Can the nature of the

25 transportation as auto transportation of the limousine

0862

 1 can it ever switch back from one to the other after a

 2 booking?

 3 A I'm not sure I understand the question,

 4 because I didn't get the first part about -- I don't

 5 understand a bit about when you're saying a limousine

 6 as an auto transportation. That doesn't -- I'm not

 7 putting that together.

 8 Q I mean, the problem we have, just to set the

 9 stage here, is Shuttle Express, as we talked about in

10 the beginning of this cross, does both.

11 A Correct.

12 Q So can the character of the transportation

13 itself ever change after the original booking, in your

14 mind?

15 A Yes, I'm sure it could.

16 Q And how would that -- how could that be done,

17 hypothetically?

18 MR. BEATTIE: Asked and answered.

19 MR. HARLOW: Let's move on.

20 Q In your investigation, did you give any

21 consideration to what the impact on the public

22 interest would be if Shuttle Express didn't use

23 limousines for single-stop services?

24 A No, I didn't.

25 Q So you didn't consider how it would impact the

0863

 1 wait times?

 2 A No.

 3 Q You didn't consider how it would impact the

 4 long-term ability to serve the suburban or rural

 5 areas?

 6 A No. My focus was trying to determine whether

 7 there was violations of the rule.

 8 Q Let's turn to your conclusion and your

 9 recommendation of a penalty of over a million dollars.

10 Did you consider, if that is assessed, where

11 that money would come from?

12 A The penalty money?

13 Q Yes.

14 A Well, it would come from the company.

15 Q Does the company, to your knowledge, have a

16 million dollars sitting in a bank that isn't needed to

17 make payroll, cover fuel?

18 A I have no knowledge of Shuttle Express's

19 financial assets.

20 Q So you don't have any knowledge whether they

21 could make it on cash flow or profits, if any?

22 MR. WILEY: Your Honor, I know I'm out

23 of order, but I'd like to interpose an objection for

24 the record. I think this is entirely irrelevant and

25 speculative to this witness's direct and rebuttal

0864

 1 testimony.

 2 JUDGE PEARSON: I agree.

 3 MR. HARLOW: His testimony was that it

 4 had to hurt the company, and I want to know if he

 5 knows -- has any basis to know if it's hurting the

 6 company or putting it out of business.

 7 JUDGE PEARSON: I think that Mr. Pratt

 8 walked through the factors that Staff considered when

 9 determining a recommendation for penalty amount, and

10 one of those factors is the size of revenue of the

11 company. And the penalty recommendation is in

12 proportion to that.

13 If you want to ask him questions about that,

14 go ahead. If you wanted to make an argument about

15 mitigation of the penalty and financial hardship of

16 your client, you should have done that through one of

17 your client's witnesses when you had the opportunity.

18 MR. HARLOW: I think we did.

19 BY MR. HARLOW:

20 Q All right. Let's look at the factors then,

21 DP-1T, Factor 11, the size of the company, which is on

22 page 13.

23 A Yes, sir.

24 Q You looked at the 2016 annual report; correct?

25 A Yes.

0865

 1 Q Did you look at the trends of the company and

 2 its size?

 3 A Yes.

 4 Q And what did you find?

 5 A Well, as my testimony shows there that the

 6 company reported 4.9 million miles traveled that year

 7 and $9.3 million in gross interstate revenues.

 8 Q My prior question was about the trend, and you

 9 said you had looked at those.

10 A The trend?

11 Q What's the trend in the company size in its

12 miles traveled and its gross interstate operating

13 revenues? Did you look at that?

14 A Are you talking about in previous years?

15 Q Yes.

16 A I don't have that data right in front of me,

17 so I really don't know.

18 Q And you didn't look at it in your

19 investigation; correct?

20 A I probably looked at the annual report from

21 the previous years, yes.

22 Q But you have no recollection of what they

23 showed?

24 A No. I'm sorry. I don't.

25 Q Would you accept, subject to check, that the

0866

 1 trends have been declining year over year for three or

 2 four or five years?

 3 MR. BEATTIE: Object to the form.

 4 Trends? Which trends?

 5 MR. HARLOW: The trends of miles

 6 traveled and gross interstate operating revenues as

 7 found in the testimony.

 8 JUDGE PEARSON: Mr. Harlow, I'll just

 9 remind you that the company admitted yesterday that in

10 the last couple years it started excluding the miles

11 and the revenue for its independent contractors. So

12 bearing that in mind, do you want to pursue this

13 question?

14 MR. HARLOW: Bearing your comment in

15 mind, no. I'll withdraw it. Let's go to safety.

16 BY MR. HARLOW:

17 Q Do you recall you testified about the safety

18 of an auto transportation company compared to a

19 limousine?

20 A Yes.

21 Q Did you look at actual safety records or just

22 look at the regulations?

23 A Of who? Who are you talking about did I look

24 at?

25 Q Of either Shuttle Express auto transportation

0867

 1 or limousine companies.

 2 A I definitely looked at the safety profile and

 3 the record of Shuttle Express. My primary duties are

 4 to manage the safety program, and so I'm very aware of

 5 the safety program of Shuttle Express. I did not look

 6 at any of the records of the -- of what you're terming

 7 the limo drivers, because I don't know what they were.

 8 I was never given the names. I was rebuked when I

 9 asked for them. I would have been happy to look at

10 that to kind of make an assessment, but I was not

11 given the names of any of the operators.

12 Q Were you here for the testimony yesterday -- I

13 can't remember which witness -- who said -- I think it

14 was -- it may have been today. Mr. -- was it you?

15 Mr. Marks today. And I asked him whether their limo

16 operators have ever had an injury accident in his

17 knowledge and experience. Do you recall that?

18 A Again, unless I know exactly which limo

19 operators you're talking about, I can't comment on

20 whether or not they've had accidents or not.

21 Q You have no reason to doubt that testimony

22 that they've had no accidents?

23 A Correct. I have no reason to doubt that.

24 Q Do you believe that limousines, in general, as

25 regulated by the Department of Licensing, are unsafe?

0868

 1 A Not in general, no.

 2 MR. HARLOW: Okay. Your Honor, one

 3 moment.

 4 I have no further questions, Your Honor.

 5 JUDGE PEARSON: Okay. Thank you.

 6 MR. WILEY: Your Honor, just a few.

 7 It's getting late, I know.

 8 E X A M I N A T I O N

 9 BY MR. WILEY:

10 Q First of all, Mr. Pratt, I want to thank you.

11 Without the Staff's investigation, the complainant,

12 SpeediShuttle, would not have gotten any evidence in

13 this matter, say, for one response which is HJR-19 in

14 this proceeding.

15 MR. HARLOW: Objection to that

16 statement.

17 Q In this proceeding. I want to hand you it and

18 ask you to look at it.

19 JUDGE PEARSON: What was it that

20 Mr. Wiley just said? I was reading one of my own --

21 MR. HARLOW: Mr. Wiley just trashed my

22 client.

23 MR. WILEY: I didn't trash the client,

24 Your Honor. I said thanks to the Staff's

25 investigation we were able to build facts under our

0869

 1 complaint. We were unable to get them from the

 2 respondent except for one answer to a data request

 3 that I'm handing him.

 4 JUDGE PEARSON: That's not any more

 5 inflammatory than what you've said about them

 6 providing information.

 7 BY MR. WILEY:

 8 Q So, Mr. Pratt, I'm handing you HJR-19, which

 9 is SpeediShuttle's Data Request No. 1. Have you seen

10 this before?

11 A Yes, I have.

12 Q And could you just read the last -- read the

13 question and the last sentence, please.

14 A Okay. The question was: When was the last

15 time you provided rescue service or service to an

16 airport passenger subject to WUTC jurisdiction by an

17 independent contractor and/or a driver who was not an

18 employee of Shuttle Express?

19 The last line of the response is -- well, the

20 whole answer -- here we go, one long line: Without

21 waiving the foregoing objection, Shuttle Express

22 states that it last provided rescue service on

23 January 13, 2014, in accordance with WUTC

24 Docket TC 132141 during the temporary and conditional

25 exemption authorized under the above docket.

0870

 1 Q Based on your investigation in 2017, is that

 2 statement, in your opinion, true?

 3 A I have to say that I'm -- the term "rescue

 4 service" is a term that has been used in the past by

 5 the company. I will say that when I visited with them

 6 in -- I think it was in March of this year they told

 7 me they did not use that term anymore.

 8 I know that it was the Commission's

 9 expectation at the final hearing on -- or when they

10 got the waiver in -- it would have been September of

11 last year that they had quit using independent

12 contractors to perform rescue service, and the company

13 did commit to it. I believe they simply just quit

14 using the term "rescue service," and they just changed

15 it to "luxury upgrade."

16 Q So under that terminology, the answer would be

17 no?

18 A Correct.

19 Q Okay. And the question also does ask what --

20 and/or a driver who was not an employee of Shuttle

21 Express; correct?

22 A Correct.

23 Q So that would describe anybody who's an

24 independent contractor?

25 A Yes.

0871

 1 Q Okay. Now, I want to go back to a couple of

 2 your answers, and I don't want to garble us on

 3 cancellation and all that kind of scenario because I'm

 4 not sure I tracked it all.

 5 But I did want to ask you: If a customer

 6 orders a share ride and the trip is canceled and the

 7 customer has a complaint against the auto

 8 transportation share ride provider, if the trip is

 9 canceled, for instance, wrong rates or charges or

10 vehicle didn't have brakes, they didn't want to go on

11 the vehicle, would the Commission lose jurisdiction by

12 virtue of that cancellation by the auto transportation

13 company over that complaint?

14 A No.

15 Q And, therefore, it really shouldn't matter if

16 the customer canceled or if it was merely switched to

17 an independent contractor for the Commission to retain

18 jurisdiction over that customer's complaint; correct?

19 A Correct. If we believed that it was still an

20 auto transportation trip, yes.

21 Q You mentioned in a response to Mr. Harlow's

22 questions and in your testimony that you were not --

23 that you were not provided access to the names of the

24 independent contractors in your current investigation;

25 correct?

0872

 1 A That was correct.

 2 Q And isn't it true that in 2013, as I review

 3 the record, in that enforcement proceeding, you were,

 4 in fact, provided names of the independent

 5 contractors?

 6 A Yes, we were.

 7 Q Was that inconsistency ever explained to you

 8 by Shuttle Express? Why did they give you the names

 9 in 2013 and not give them to you in 2017?

10 A Well, I'm not sure I asked them the question

11 in that way, but I did kind of press a little bit

12 about those names and was simply told that they

13 preferred not to give up the names because they felt

14 it would be damaging to their business or to the

15 relationship between the limousine company and Shuttle

16 Express.

17 Q And maybe to their position in this

18 proceeding? Is that possible?

19 MR. HARLOW: Objection, leading.

20 MR. WILEY: I can move on, Your Honor.

21 JUDGE PEARSON: Okay.

22 Q Mr. Pratt, just a couple quick questions on

23 your testimony, which was very comprehensive. I don't

24 need to go over it.

25 On page 11 of DP-1T, you make the following

0873

 1 statement at line 8, and I just -- it raises a

 2 question in my mind. That's why I'm asking you to

 3 focus on it. It says, "The waiver applications

 4 provide further evidence that Shuttle Express knows

 5 the rules."

 6 A Yes.

 7 Q That is in reference to the recent

 8 September 2016 waiver request or exception request;

 9 correct?

10 A That is one of them, but Shuttle Express has

11 had two waivers from 480-32-213. They had one waiver

12 that began December 12, 2013, and ran for 30 days, and

13 they had a second waiver, which began on September 13

14 of 2016, which is currently in effect.

15 Q Following that statement, I have to ask you:

16 If they believed that their single-stop service was

17 completely lawful, why, to your understanding, did

18 they petition for another exemption from the

19 Commission?

20 A I think that's a question better asked to

21 Shuttle Express.

22 Q Finally --

23 MR. HARLOW: It's on the record. The

24 waiver was for multi-stop, and the penalty is for

25 single-stop.

0874

 1 MR. WILEY: I think my question assumed

 2 that, Your Honor.

 3 JUDGE PEARSON: Okay.

 4 BY MR. WILEY:

 5 Q So in answer to my recent question and the

 6 clarification, for your -- from your standpoint,

 7 whether you call it rescue service, luxury upgrade,

 8 multi-stop, or single-stop, can an auto transportation

 9 company provide that with nonemployee drivers on

10 non-owner-operator equipment -- excuse me. On

11 non-company-owned equipment without getting an

12 exemption granted by the Commission?

13 MR. HARLOW: Object to the extent he's

14 asking for a legal opinion, which the question seems

15 to go to.

16 MR. WILEY: He's chief of enforcement,

17 Your Honor.

18 JUDGE PEARSON: I'll allow it, because

19 Mr. Pratt has made a recommendation to that fact.

20 A I would say absolutely not.

21 Q And, finally, going to page 5 of DP-6T,

22 lines 1 and 2 -- excuse me, 1 through 5. You say

23 there "Distinguishing single stop service from multi

24 stop service obscures the primary issue here, which is

25 Shuttle Express's ongoing disregard of the vehicle and

0875

 1 driver rule. As I discussed above, Shuttle Express

 2 violated WAC 480-30-213 by operating vehicles it does

 3 not own and by using drivers it does not employ, and

 4 whether the trip was single stop or multi stop does

 5 not affect the violations that Staff has alleged."

 6 Did I read that correctly?

 7 A Yes, you did.

 8 Q And is that still your view today?

 9 A Absolutely.

10 MR. WILEY: No further questions, Your

11 Honor.

12 JUDGE PEARSON: Okay. Thank you.

13 E X A M I N A T I O N

14 BY JUDGE PEARSON:

15 Q I have a couple of questions for you based on

16 things that have come up today that I don't have --

17 didn't have a particular understanding of before today

18 and that I would like your opinion on.

19 So you were here earlier today when we talked

20 about the combined schedule and door-to-door service

21 and what they described -- I guess it's kind of a

22 two-part question.

23 They have a portion of their tariff that says

24 it's alternate means of transport, and within that,

25 they describe that they reserve the right to combine

0876

 1 those two services. Is that permissible in your view?

 2 A You're getting into an area that's a little

 3 out of my expertise. It's more a tariff side, I

 4 believe.

 5 Q The Mike Young side?

 6 A Yes.

 7 Q Okay. I can ask him.

 8 A So I don't -- my opinion is I don't think

 9 that's a problem as long as there's no auto trans

10 vehicles, but I think that's probably more of a

11 customer choice.

12 Q Okay. And so this one is, I think, more

13 appropriately addressed to you. Can you explain to

14 me, because I don't believe this was addressed in your

15 testimony, why the commission payments that were the

16 subject of the SpeediShuttle complaint are consistent

17 with Commission rules, if that's what you believe? Or

18 is that also a question for Mr. Young?

19 A Could you ask me that one again? I'm not --

20 Q What SpeediShuttle alleged were unlawful

21 commissions in its complaint. Is that Mr. Young's

22 purview or yours?

23 A That would be the other side of the house. We

24 did have a discussion when we opened this up and

25 determined that that was not my expertise. It's more

0877

 1 of a financial matter.

 2 JUDGE PEARSON: Okay. I can turn back

 3 to him.

 4 So, Mr. Beattie, do you have any redirect for

 5 Mr. Pratt?

 6 MR. BEATTIE: I do not.

 7 JUDGE PEARSON: Okay. So you may step

 8 down.

 9 E X A M I N A T I O N

10 BY JUDGE PEARSON:

11 Q And then, Mr. Young, you can stay where you

12 are if you want to pull the microphone closer to you.

13 And I will remind you that you're still under oath. I

14 will ask you the question about the combined service.

15 Is it permissible to do that in Staff's view?

16 Is that consistent with Commission rules?

17 A I'll be honest. I don't know, and I would

18 like to do more research on that.

19 Q Okay.

20 A I did look at the tariff, and it was filed in

21 the tariff that the Commission allowed.

22 Q There have been many instances where the

23 Commission has allowed rule violations to go through

24 tariff, so that's why I would like a little more

25 information about that.

0878

 1 And then what about stopping at flag stops

 2 that are not listed for that route in the company's

 3 tariff? I know that was brought up, and the company

 4 admitted that it does that.

 5 A That would certainly -- without doing further

 6 research, I would say that would probably be a

 7 violation of the tariff.

 8 Q Okay. And then how about with respect to the

 9 allegation about the payment of commissions, Staff

10 didn't address that. Does your silence mean that

11 there's no issue with it?

12 A Staff did not think there was an issue with

13 it.

14 JUDGE PEARSON: Okay. Thank you.

15 So if Staff could look into that issue and

16 maybe bring it up in post-hearing brief, that would be

17 a fine place to do it to address the combined service

18 and whether that's consistent with Commission rules

19 and the stopping at flag stops not listed in the

20 company's tariff.

21 MR. HARLOW: Your Honor, we did some

22 discovery on this, and we didn't admitted it because

23 it wasn't in the prefiled testimony. But I don't know

24 what they're going to say after their research, but if

25 they say something that's inconsistent with their data

0879

 1 request responses, how do we get that in? Can we put

 2 that in our reply brief?

 3 JUDGE PEARSON: Did they have all of

 4 the information available to them that came out today

 5 at the time they responded to the data requests?

 6 MR. HARLOW: I don't know.

 7 JUDGE PEARSON: So --

 8 MR. WILEY: We're having trouble

 9 recalling those data requests. If counsel would

10 provide the reference numbers as well, that would help

11 us. I'm just not -- it may have been Staff, and

12 that's why I don't remember.

13 JUDGE PEARSON: We could also do this

14 in a bench request as opposed to waiting for the

15 post-hearing brief if Staff wants to take a couple

16 weeks and provide me with an opinion. Why don't we do

17 that. That will give Shuttle Express a better

18 opportunity to respond in its briefing.

19 So, Mr. Young, how much time do you think you

20 would need to research that?

21 MR. YOUNG: I would like a couple

22 weeks.

23 JUDGE PEARSON: Okay.

24 MR. YOUNG: If not longer.

25 MR. WILEY: Your Honor, would you have

0880

 1 any objection to us calling if we want a recap of the

 2 bench requests and don't think our notes are fully

 3 accurate?

 4 JUDGE PEARSON: Not at all. In fact, I

 5 could send an e-mail to all the parties probably on

 6 Monday --

 7 MR. WILEY: That would be great.

 8 JUDGE PEARSON: -- just recapping all

 9 of these.

10 MR. HARLOW: Thank you.

11 JUDGE PEARSON: And I will say I would

12 be happy to give you three weeks to do that just

13 because I'll be gone for the week of the 22nd.

14 MR. YOUNG: That would be adequate.

15 JUDGE PEARSON: Okay. So that would be

16 May -- is that getting too close to the briefing?

17 MR. HARLOW: I wanted to go off the

18 record and discuss briefing with you when you have the

19 next opportunity.

20 JUDGE PEARSON: Okay.

21 MR. HARLOW: We can do that now if you

22 want.

23 JUDGE PEARSON: Yeah, let's do that now

24 before we set a due date for this.

25 THE REPORTER: Do you --

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 1 JUDGE PEARSON: We can be on the

 2 record. That's fine.

 3 MR. HARLOW: We had some discussions

 4 with both the other parties off the record about

 5 possibly a short extension of the briefing time, one

 6 or two weeks. It seems like -- it partly was just my

 7 workload, partly personal, partly I don't know when

 8 we're going to get our transcript, and now we've got

 9 post-hearing filings coming in.

10 So I think we need to push it out, and what I

11 would suggest is that after we get your recap Monday

12 that the parties schedule a conference call and do it

13 by e-mail and we try to agree on a short extension of

14 time that will enable, not only to fit with

15 post-hearing filings, but the transcript, people's

16 vacations, which I'm sure are coming up, and work

17 conflicts. And, hopefully, we can reach a consensus.

18 MR. WILEY: Your Honor, of course, I

19 want to accommodate this. We want to accommodate

20 this. I do think that I referenced some -- in my

21 original proposal to you when you accepted, I think I

22 had pushed those brief dates. And I recall the last

23 one the reply brief was July 14. Right now it's

24 June 30.

25 So I would say let's take a look back at those

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 1 as maybe points of reference, and that would seem to

 2 fit with what Mr. Harlow was originally saying. I

 3 don't know about the opening brief what we proposed,

 4 but I remember July 14 was the reply brief.

 5 JUDGE PEARSON: Okay. So --

 6 MR. WILEY: It's in your order.

 7 JUDGE PEARSON: I'd prefer to set it

 8 now rather than have another conference call after

 9 this. We could push the first round of briefs --

10 what's the due date now? June 9?

11 MR. WILEY: June 9.

12 JUDGE PEARSON: Is this the first round

13 you're concerned with or the reply round or both? Do

14 you want to push --

15 MR. HARLOW: If you move the first one,

16 you have to move the second one.

17 JUDGE PEARSON: Right. So if you want

18 to move the first round out to June 30 and the second

19 to be due July 14?

20 MR. HARLOW: I wouldn't even move it

21 that far necessarily.

22 MR. WILEY: Well, yeah, I think we

23 might need more than --

24 JUDGE PEARSON: More than two weeks in

25 between?

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 1 MR. WILEY: Yeah.

 2 THE REPORTER: I can only take one at a

 3 time if we're on the record.

 4 MR. HARLOW: Can we do this off the

 5 record?

 6 JUDGE PEARSON: Sure. Let's go off the

 7 record briefly.

 8 (A break was taken from 5:11 p.m. to

 9 5:12 p.m.)

10 JUDGE PEARSON: We're back on the

11 record following a brief recess, and the parties have

12 agreed to a revised post-hearing briefing schedule.

13 The first round of simultaneous briefs will be due on

14 June 19, and the second round of simultaneous reply

15 briefs will be due on July 14.

16 So given that, I'd like to give Mr. Young

17 until June 2 to answer my bench request if that works

18 for the parties.

19 MR. YOUNG: Uh-huh.

20 MR. FASSBURG: We're back on the

21 record?

22 JUDGE PEARSON: We're back on the

23 record. Does anyone have anything further?

24 MR. HARLOW: I know it's been a long

25 day. I want to thank you and the court reporter for

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 1 sticking it out for so long.

 2 JUDGE PEARSON: Sure.

 3 MR. WILEY: Thank you.

 4 JUDGE PEARSON: Thank you all for

 5 coming, and please someone provide the court reporter

 6 with the paper copies of the exhibits.

 7 MR. FASSBURG: We have a full set that,

 8 I believe, the intention was to leave them all. I'm

 9 only concerned I took out one or two here or there.

10 MR. HARLOW: We have duplicate copies

11 of every one, so I don't want to haul them to D.C.

12 JUDGE PEARSON: We are adjourned.

13 Thank you.

14 THE REPORTER: Would you like to order

15 a copy of the transcript?

16 MR. FASSBURG: Yes.

17 MR. HARLOW: Yes. I guess we do.

18 (The proceedings adjourned at

19 5:14 p.m.)

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 1 C E R T I F I C A T E

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 3 STATE OF WASHINGTON

 4 COUNTY OF KING

 5

 6 I, Nancy M. Kottenstette, a Certified

 7 Shorthand Reporter in and for the State of Washington,

 8 do hereby certify that the foregoing transcript of the

 9 proceedings on May 12, 2017, is true and accurate to

10 the best of my knowledge, skill, and ability.

11 I do further certify that I am a disinterested

12 person in this cause of action; that I am not a

13 relative of the attorneys for any of the parties.

14 IN WITNESS WHEREOF, I have hereunto set my

15 hand and seal this 30th day of May, 2017.

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 Nancy M. Kottenstette, RPR, CCR 3377

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