

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

In re the Application of Speedishuttle
Washington, LLC

May 12, 2017



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BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

In Re: Application TC-143691)

SPEEDISHUTTLE WASHINGTON,) Docket Nos. TC-143691
LLC, D/B/A SPEEDISHUTTLE) and TC-160516
SEATTLE,) (Consolidated)

For a Certificate of Public)
Convenience and Necessity to)
Operate Motor Vehicles in)
Furnishing Passenger and)
Express Services as an Auto)
Transportation Company)

HEARING, VOLUME VIII

Pages 560-885

ADMINISTRATIVE LAW JUDGE RAYNE PEARSON

8:40 a.m.

May 12, 2017

Washington Utilities and Transportation Commission
800 South Evergreen Park Drive Southwest
Olympia, Washington

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

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1 OLYMPIA, WASHINGTON; May 12, 2017

2 8:40 a.m.

3
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

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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?

EXAMINATION BY FASSBURG / KAJANOFF 572

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 EXAMINATION

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?

EXAMINATION BY FASSBURG / KAJANOFF 573

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

EXAMINATION BY FASSBURG / KAJANOFF 574

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?

EXAMINATION BY FASSBURG / MARKS 575

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.

E X A M I N A T I O N

12
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.

EXAMINATION BY FASSBURG / MARKS 576

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**

EXAMINATION BY FASSBURG / MARKS 577

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

EXAMINATION BY FASSBURG / MARKS 578

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.**

EXAMINATION BY FASSBURG / MARKS 579

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,

EXAMINATION BY FASSBURG / MARKS 580

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**

EXAMINATION BY FASSBURG / MARKS 581

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

EXAMINATION BY FASSBURG / MARKS 582

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

EXAMINATION BY FASSBURG / MARKS 583

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

EXAMINATION BY FASSBURG / MARKS 584

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**

EXAMINATION BY FASSBURG / MARKS 585

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?

EXAMINATION BY FASSBURG / MARKS 586

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?

EXAMINATION BY FASSBURG / MARKS 587

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

EXAMINATION BY FASSBURG / MARKS 588

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

EXAMINATION BY FASSBURG / MARKS 589

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 --**

EXAMINATION BY FASSBURG / MARKS 590

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.

EXAMINATION BY FASSBURG / MARKS 591

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.**

EXAMINATION BY FASSBURG / MARKS 592

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."

EXAMINATION BY FASSBURG / MARKS 593

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.**

EXAMINATION BY FASSBURG / MARKS 594

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

EXAMINATION BY FASSBURG / MARKS 595

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

EXAMINATION BY FASSBURG / MARKS 596

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

EXAMINATION BY FASSBURG / MARKS 597

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.**

EXAMINATION BY FASSBURG / MARKS 598

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

EXAMINATION BY FASSBURG / MARKS 599

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

EXAMINATION BY FASSBURG / MARKS 600

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

EXAMINATION BY FASSBURG / MARKS 601

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.**

EXAMINATION BY FASSBURG / MARKS 602

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

EXAMINATION BY FASSBURG / MARKS 603

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?

EXAMINATION BY FASSBURG / MARKS 604

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?

EXAMINATION BY FASSBURG / MARKS 605

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

EXAMINATION BY FASSBURG / MARKS 606

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

EXAMINATION BY FASSBURG / MARKS 607

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

EXAMINATION BY FASSBURG / MARKS 608

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**

EXAMINATION BY FASSBURG / MARKS 609

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?

EXAMINATION BY FASSBURG / MARKS 610

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?

EXAMINATION BY FASSBURG / MARKS 611

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**

EXAMINATION BY FASSBURG / MARKS 612

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?

EXAMINATION BY FASSBURG / MARKS 613

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.

EXAMINATION BY FASSBURG / MARKS 614

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?

EXAMINATION BY FASSBURG / MARKS 615

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

EXAMINATION BY FASSBURG / MARKS 616

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

EXAMINATION BY FASSBURG / MARKS 617

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

EXAMINATION BY FASSBURG / MARKS 618

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.**

EXAMINATION BY FASSBURG / MARKS 619

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.**

EXAMINATION BY FASSBURG / MARKS 620

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

EXAMINATION BY FASSBURG / MARKS 621

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

EXAMINATION BY FASSBURG / MARKS 622

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

EXAMINATION BY FASSBURG / MARKS 623

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?**

EXAMINATION BY FASSBURG / MARKS 624

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 --

EXAMINATION BY FASSBURG / MARKS 625

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**

EXAMINATION BY FASSBURG / MARKS 626

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

EXAMINATION BY FASSBURG / MARKS 627

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

EXAMINATION BY FASSBURG / MARKS 628

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

EXAMINATION BY FASSBURG / MARKS 629

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.

EXAMINATION BY FASSBURG / MARKS 630

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.

EXAMINATION BY FASSBURG / MARKS 631

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

EXAMINATION BY FASSBURG / MARKS 632

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?

EXAMINATION BY FASSBURG / MARKS 633

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**

EXAMINATION BY FASSBURG / MARKS 634

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.**

EXAMINATION BY FASSBURG / MARKS 635

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?

EXAMINATION BY FASSBURG / MARKS 636

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

EXAMINATION BY FASSBURG / MARKS 637

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?

EXAMINATION BY FASSBURG / MARKS 638

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

EXAMINATION BY FASSBURG / MARKS 639

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

EXAMINATION BY FASSBURG / MARKS 640

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

EXAMINATION BY FASSBURG / MARKS 641

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

EXAMINATION BY FASSBURG / MARKS 642

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?

EXAMINATION BY FASSBURG / MARKS 643

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.**

EXAMINATION BY FASSBURG / MARKS 644

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

EXAMINATION BY FASSBURG / MARKS 645

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

EXAMINATION BY FASSBURG / MARKS 646

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."

EXAMINATION BY FASSBURG / MARKS 647

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**

EXAMINATION BY FASSBURG / MARKS 648

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

EXAMINATION BY FASSBURG / MARKS 649

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.**

EXAMINATION BY FASSBURG / MARKS 650

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

EXAMINATION BY FASSBURG / MARKS 651

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

EXAMINATION BY FASSBURG / MARKS 652

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

EXAMINATION BY FASSBURG / MARKS 653

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,

EXAMINATION BY FASSBURG / MARKS 654

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.

EXAMINATION BY FASSBURG / MARKS 655

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.**

EXAMINATION BY FASSBURG / MARKS 656

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**

EXAMINATION BY FASSBURG / MARKS 657

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.**

EXAMINATION BY FASSBURG / MARKS 658

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 --**

EXAMINATION BY FASSBURG / MARKS 659

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?

EXAMINATION BY FASSBURG / MARKS 660

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

EXAMINATION BY FASSBURG / MARKS 661

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.**

EXAMINATION BY JUDGE PEARSON / MARKS 662

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 EXAMINATION

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

EXAMINATION BY BEATTIE / MARKS 663

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 EXAMINATION

24 BY MR. BEATTIE:

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

EXAMINATION BY HARLOW / MARKS 664

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.

EXAMINATION

20
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.

EXAMINATION BY HARLOW / MARKS 665

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**

EXAMINATION BY HARLOW / MARKS 666

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

EXAMINATION BY HARLOW / MARKS 667

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**

EXAMINATION BY HARLOW / MARKS 668

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.**

EXAMINATION BY HARLOW / MARKS 669

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

EXAMINATION BY HARLOW / MARKS 670

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

EXAMINATION BY HARLOW / MARKS 671

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

EXAMINATION BY HARLOW / MARKS 672

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**

EXAMINATION BY HARLOW / MARKS 673

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.**

EXAMINATION BY HARLOW / MARKS 674

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 Somali 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

EXAMINATION BY HARLOW / MARKS 675

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

EXAMINATION BY HARLOW / MARKS 676

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

EXAMINATION BY HARLOW / MARKS 677

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?

EXAMINATION BY HARLOW / MARKS 678

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

EXAMINATION BY HARLOW / MARKS 679

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**

EXAMINATION BY HARLOW / MARKS 680

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?

EXAMINATION BY HARLOW / MARKS 681

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**

EXAMINATION BY HARLOW / MARKS 682

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**

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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

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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 you what the objection is.

23 JUDGE PEARSON: Go ahead.

24 MR. HARLOW: The objection is to the
25 testimony beginning on page 13.

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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

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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

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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?

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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.)

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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?

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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

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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

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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

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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.

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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

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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.

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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.

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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

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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

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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

EXAMINATION BY FASSBURG / ROEMER 700

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.**

EXAMINATION BY FASSBURG / ROEMER 701

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.

1 MR. HARLOW: Thank you, Your Honor.

2 I'm as ready as I'm going to be.

3 EXAMINATION

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?**

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**

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

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.**

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

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

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.**

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

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.**

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

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.

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

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

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.

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?

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?

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. Binting.**

10 THE REPORTER: Who was the second one?

11 MR. ROEMER: Binting.

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

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?

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**

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

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?

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

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**

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.

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?

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

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

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

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.

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

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.**

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?"

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?

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?

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.**

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?

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.

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.

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

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

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.

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.

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?

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

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

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

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.

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.

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 --**

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

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

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

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

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?

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**

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

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

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

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?

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.**

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.**

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

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**

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.**

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

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.

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

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

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?

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.

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.

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.

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

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.

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 sustainability 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

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.

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

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

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,

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

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.**

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.**

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

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.

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

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.

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

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?

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,

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

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?

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?

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.**

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.

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

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

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**

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

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.**

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

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

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 you 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.

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.**

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.**

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**

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

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

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

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.

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

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

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,

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**

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**

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

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

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.

EXAMINATION BY BEATTIE / ROEMER 819

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 EXAMINATION

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

EXAMINATION BY JUDGE PEARSON / ROEMER 820

1 for that.

2 EXAMINATION

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

EXAMINATION BY JUDGE PEARSON / ROEMER 821

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

822

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

EXAMINATION BY FASSBURG / ROEMER 823

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

EXAMINATION BY FASSBURG / ROEMER 824

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

825

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

EXAMINATION BY BEATTIE / YOUNG 826

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 EXAMINATION

24 BY MR. BEATTIE:

25 Q Good afternoon. Would you please state your

EXAMINATION BY HARLOW / YOUNG 827

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

EXAMINATION BY HARLOW / YOUNG 828

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

EXAMINATION BY HARLOW / YOUNG 829

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

EXAMINATION BY HARLOW / YOUNG 830

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

EXAMINATION BY HARLOW / YOUNG 831

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?

EXAMINATION BY HARLOW / YOUNG 832

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

EXAMINATION BY HARLOW / YOUNG 833

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?

EXAMINATION BY HARLOW / YOUNG 834

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**

EXAMINATION BY HARLOW / YOUNG 835

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,**

EXAMINATION BY HARLOW / YOUNG 836

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**

EXAMINATION BY WILEY / YOUNG 837

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 EXAMINATION
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?

EXAMINATION BY WILEY / YOUNG 838

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.

EXAMINATION BY WILEY / YOUNG 839

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.

EXAMINATION BY WILEY / YOUNG 840

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?

EXAMINATION BY JUDGE PEARSON / YOUNG 841

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.

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?

EXAMINATION BY BEATTIE / YOUNG 842

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 EXAMINATION

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

EXAMINATION BY BEATTIE / YOUNG 843

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

EXAMINATION BY JUDGE PEARSON / YOUNG 844

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.

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**

EXAMINATION BY BEATTIE / PRATT 845

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.

E X A M I N A T I O N

16
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?

EXAMINATION BY BEATTIE / PRATT 846

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

EXAMINATION BY HARLOW / PRATT 847

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.

EXAMINATION

13
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?**

EXAMINATION BY HARLOW / PRATT 848

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

EXAMINATION BY HARLOW / PRATT 849

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

EXAMINATION BY HARLOW / PRATT 850

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.**

EXAMINATION BY HARLOW / PRATT 851

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

EXAMINATION BY HARLOW / PRATT 852

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.

EXAMINATION BY HARLOW / PRATT 853

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.**

EXAMINATION BY HARLOW / PRATT 854

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

EXAMINATION BY HARLOW / PRATT 855

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

EXAMINATION BY HARLOW / PRATT 856

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.

EXAMINATION BY HARLOW / PRATT 857

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**

EXAMINATION BY HARLOW / PRATT 858

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**

EXAMINATION BY HARLOW / PRATT 859

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**

EXAMINATION BY HARLOW / PRATT 860

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

EXAMINATION BY HARLOW / PRATT 861

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

EXAMINATION BY HARLOW / PRATT 862

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

EXAMINATION BY HARLOW / PRATT 863

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

EXAMINATION BY HARLOW / PRATT 864

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.**

EXAMINATION BY HARLOW / PRATT 865

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

EXAMINATION BY HARLOW / PRATT 866

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

EXAMINATION BY HARLOW / PRATT 867

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?

EXAMINATION BY WILEY / PRATT 868

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.

EXAMINATION

8
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

EXAMINATION BY WILEY / PRATT 869

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.**

EXAMINATION BY WILEY / PRATT 870

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.**

EXAMINATION BY WILEY / PRATT 871

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?

EXAMINATION BY WILEY / PRATT 872

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

EXAMINATION BY WILEY / PRATT 873

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.

EXAMINATION BY WILEY / PRATT 874

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

EXAMINATION BY JUDGE PEARSON / PRATT 875

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.

E X A M I N A T I O N

13
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

EXAMINATION BY JUDGE PEARSON / PRATT 876

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**

EXAMINATION BY JUDGE PEARSON / YOUNG 877

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.**

EXAMINATION

9
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.

EXAMINATION BY JUDGE PEARSON / YOUNG 878

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

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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

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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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CERTIFICATE

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STATE OF WASHINGTON
COUNTY OF KING

I, Nancy M. Kottenstette, a Certified
Shorthand Reporter in and for the State of Washington,
do hereby certify that the foregoing transcript of the
proceedings on May 12, 2017, is true and accurate to
the best of my knowledge, skill, and ability.

I do further certify that I am a disinterested
person in this cause of action; that I am not a
relative of the attorneys for any of the parties.

IN WITNESS WHEREOF, I have hereunto set my
hand and seal this 30th day of May, 2017.

Nancy M. Kottenstette, RPR, CCR 3377