

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
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Olympia, Washington

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

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1	Exhibit HJR-62X Speedishuttle Response to Shuttle Express DR No. 3 RE: Speedishuttle Hiring Practices 696	1	OLYMPIA, WASHINGTON; May 12, 2017
2		2	8:40 a.m.
3		3	
4	Exhibit HJR-63X Speedishuttle Response to Shuttle Express DR No. 4 RE: Language of Passengers 696	4	JUDGE PEARSON: We'll go ahead and be
5		5	on the record. We are back on the record on Friday,
6	Exhibit HJR-64X Speedishuttle Response to Shuttle Express DR No. 5 RE: Greeters 696	6	May 12, at approximately 8:40 a.m., and we will
7		7	continue the evidentiary hearing in these consolidated
8	Exhibit HJR-65X Speedishuttle Response to Shuttle Express DR No. 7 RE: Speedishuttle 20 Minute Departure 696	8	dockets.
9		9	We had a brief discussion off the record about
10	Exhibit HJR-66X Speedishuttle Response to Shuttle Express DR No. 9 RE: Walk-up Service 696	10	Mr. Kajanoff's desire to update some of his testimony
11		11	from Wednesday, specifically related to questions that
12	Exhibit HJR-67X Speedishuttle Response to Shuttle Express DR No. 10 RE: Service Differences 696	12	I asked him at the end of his testimony. So I'm going
13		13	to give Mr. Harlow an opportunity to present that, and
14	Exhibit HJR-68X Speedishuttle Response to Shuttle Express DR No. 13 RE: Non-English Speaking Market 696	14	then we'll see if any of the parties have any
15		15	objections.
16	Exhibit HJR-69X Speedishuttle Response to Shuttle Express DR No. 18 RE: Market Not Served 696	16	MR. HARLOW: Thank you, Your Honor.
17		17	And, yeah, this is intended to clarify to ensure
18	Exhibit HJR-70X Speedishuttle Response to Shuttle Express DR No. 28 RE: Walk-up Service 696	18	there's no -- nothing misleading due to omission of
19		19	potential material or information related to your
20	Exhibit HJR-71X Speedishuttle Response to Shuttle Express DR No. 34 RE: Allegation that Speedishuttle Certificate Diverts Passengers from Shuttle Express 696	20	questions. Mr. Kajanoff can explain much better than
21		21	I can, and he does understand he's still under oath
22		22	this morning.
23		23	JUDGE PEARSON: Okay. Thank you.
24	Exhibit HJR-72X Cecil Morton Statement 696	24	MR. KAJANOFF: On Exhibit PK-1T,
25		25	page 13, and that is lines -- first line is 19 where
Page 569		Page 571	
569		571	
1	Exhibit HJR-83X Speedishuttle 2016 Annual Report 696	1	it says "They undercut our fare to downtown Seattle by
2		2	about 9%." If it is door-to-door only, that number is
3	Exhibit HJR-35X Wholesale Shared Ride Agreement, Travelscape 711	3	now 22 percent.
4	Exhibit HJR-36X Wholesale Shared Ride Agreement, Viator 712	4	JUDGE PEARSON: For door-to-door only?
5		5	MR. KAJANOFF: Door-to-door only.
6	Exhibit HJR-58X Email Thread RE: TC-143691 Discovery 742	6	JUDGE PEARSON: So it was 9 percent
7	Exhibit MY-1T. Prefiled Response Testimony of Mike Young (7 pages) (3/17/17) 827	7	with respect to combined?
8		8	MR. KAJANOFF: Door to door and
9	Exhibit DP-1T. Prefiled Response Testimony of David Pratt (16 pages) 846	9	scheduled service.
10		10	JUDGE PEARSON: Okay. And that makes
11	Exhibit DP-3 Shuttle Express Response to Staff Data Request 2 846	11	more sense, because your scheduled service is quite a
12		12	bit cheaper than what we determined the flexible fare
13	Exhibit DP-6T. Rebuttal Testimony of David Pratt (13 pages) (4/24/17) 846	13	for your door-to-door service.
14		14	MR. KAJANOFF: If you were a single
15		15	door-to-door service, it's higher.
16		16	JUDGE PEARSON: Okay. And is that the
17		17	extent of your update?
18		18	MR. KAJANOFF: Pardon?
19		19	JUDGE PEARSON: Is that the extent of
20		20	your update?
21		21	MR. KAJANOFF: No. Line 21, where it
22		22	states that "...most of the rest of the county there
23		23	fare is about 13%...", that number is now 18 percent.
24		24	MR. WILEY: To be clear, the 18 percent
25		25	is door-to-door only; is that right?

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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.

E X A M I N A T I O N

18 BY MR. FASSBURG:

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

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

21 you get compared ZIP Code by ZIP Code?

22 **A Those numbers that on the percentages are in**

23 **aggregate of ZIP Codes.**

24 Q My question was different. Have you compared

25 ZIP Code by ZIP Code?

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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

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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?

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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

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.

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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**

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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**

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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.**

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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,

<p>Page 580</p> <p>EXAMINATION BY FASSBURG / MARKS 580</p> <p>1 or Chinese version of SpeediShuttle's website;</p> <p>2 correct?</p> <p>3 A I would not agree with that.</p> <p>4 Q Okay. So you believe if no one has made a</p> <p>5 reservation through that particular portal they could</p> <p>6 not possibly be a non-English-speaking person?</p> <p>7 A I'm sorry. Can you repeat that one more time?</p> <p>8 Q Sure. I'm trying to understand your</p> <p>9 testimony. I asked you if you had any evidence</p> <p>10 SpeediShuttle was actually not serving people who are</p> <p>11 non-English-speaking, and you pointed to that there</p> <p>12 were zero reservations on one website.</p> <p>13 I'm asking you if that means there are, in</p> <p>14 fact, no non-English-speaking passengers who reserved</p> <p>15 service through any other means?</p> <p>16 A No. That would not indicate that.</p> <p>17 Q Okay. And so other than that one particular</p> <p>18 point, is there any evidence SpeediShuttle is, in</p> <p>19 fact, not serving non-English speaking passengers?</p> <p>20 A I will say no to that.</p> <p>21 Q Now, with respect to the specific languages,</p> <p>22 is there anything in Order 04 that says that</p> <p>23 SpeediShuttle should serve people of particular</p> <p>24 languages?</p> <p>25 A Bear with me one moment. I believe I have</p>	<p>Page 582</p> <p>EXAMINATION BY FASSBURG / MARKS 582</p> <p>1 only concrete evidence SpeediShuttle presented on how</p> <p>2 it would serve these supposed unserved was the three</p> <p>3 links to booking pages presented in Chinese, Japanese,</p> <p>4 and Korean."</p> <p>5 Did I read that correctly?</p> <p>6 A Yes, you did.</p> <p>7 Q Are you here suggesting that SpeediShuttle is</p> <p>8 supposed to be limiting its multilingual services to</p> <p>9 people who speak Chinese, Japanese, and Korean?</p> <p>10 A No.</p> <p>11 Q Are you suggesting that only passengers who</p> <p>12 speak Chinese, Japanese, or Korean are multilingual</p> <p>13 for purposes of SpeediShuttle's business model?</p> <p>14 A No.</p> <p>15 Q Now, you would agree with me, using your</p> <p>16 language, the only concrete evidence SpeediShuttle</p> <p>17 offered on what it would do to offer multilingual</p> <p>18 service was Chinese, Japanese, and Korean through that</p> <p>19 website; correct?</p> <p>20 A I disagree with that statement. The only</p> <p>21 concrete evidence SpeediShuttle presented was on how</p> <p>22 it would serve, not what it would do.</p> <p>23 Q Okay. So just to be clear, you're not trying</p> <p>24 to step back from your statement here that the only</p> <p>25 concrete evidence SpeediShuttle presented on how it</p>
<p>Page 581</p> <p>EXAMINATION BY FASSBURG / MARKS 581</p> <p>1 Order 04 here.</p> <p>2 Could you repeat the question one more time?</p> <p>3 I apologize.</p> <p>4 Q Sure. I just want to know about specific</p> <p>5 languages. Is there anything in Order 04 that says</p> <p>6 something about specific languages that are to be</p> <p>7 served?</p> <p>8 A No. Order 04 does not specify the languages</p> <p>9 on its -- in its language.</p> <p>10 Q I'd like to refer to WAM-1T, page 9. Are you</p> <p>11 with me?</p> <p>12 A Yeah.</p> <p>13 Q Okay. Starting on line 19, you're answering</p> <p>14 the question that begins on line 17, so maybe we</p> <p>15 should start there.</p> <p>16 The question is: "What else have you been</p> <p>17 able to learn from SpeediShuttle's actual operations</p> <p>18 about their multilingual capabilities?"</p> <p>19 Starting on line 19, your answer: "Well,</p> <p>20 next, you have to look at whether SpeediShuttle has</p> <p>21 truly implemented the multilingual business model or</p> <p>22 plan that was the basis for getting its certificate.</p> <p>23 The premise of that model was that there was a growing</p> <p>24 number of Asian passengers coming to Seattle who were</p> <p>25 not being served because of a language barrier. The</p>	<p>Page 583</p> <p>EXAMINATION BY FASSBURG / MARKS 583</p> <p>1 would serve the supposed unserved was the three links</p> <p>2 to booking pages presented in Chinese, Japanese, and</p> <p>3 Korean; correct?</p> <p>4 A Yes. I believe that's the only concrete</p> <p>5 evidence.</p> <p>6 Q Do you agree with me that that's the only</p> <p>7 specific commitment that SpeediShuttle said it was</p> <p>8 going to do with respect to multilingual service?</p> <p>9 A No. I believe the comment about multilingual</p> <p>10 greeters was also a commitment.</p> <p>11 Q If your interpretation of Mr. Morton's</p> <p>12 testimony is not the one given to it by the Commission</p> <p>13 and they, in fact, come to a different conclusion than</p> <p>14 you as to what is to be required, that's certainly</p> <p>15 something they're entitled to do; correct?</p> <p>16 A Absolutely.</p> <p>17 Q And if Mr. Morton's only specific commitment</p> <p>18 that SpeediShuttle would make is to provide a website</p> <p>19 in Japanese, Chinese, and Korean and to do their best</p> <p>20 to hire multilingual greeters, those would be the only</p> <p>21 two things for which there was an actual proposal of</p> <p>22 service; correct?</p> <p>23 A If that's how the Commission saw it, yes.</p> <p>24 Q Now, with respect to your complaints about</p> <p>25 multilingual service, do I understand correctly that</p>

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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**

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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?

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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?

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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

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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

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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 --**

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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.

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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.**

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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."

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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.**

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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

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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

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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

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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.**

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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

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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

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<p>1 showing Shuttle Express Passengers decreasing over</p> <p>2 time while SeaTac Arrival Trips are increasing over</p> <p>3 time?"</p> <p>4 Did I read the question correctly?</p> <p>5 A Yes.</p> <p>6 Q You answered: "I do. The chart that</p> <p>7 Mr. Roemer presented appears to be misleading on its</p> <p>8 face. We submitted a data request to see the</p> <p>9 information that was used for this chart, and upon</p> <p>10 examination it appeared that Mr. Roemer used total</p> <p>11 passenger data from the annual reports we have</p> <p>12 submitted, and compared that to information provided</p> <p>13 by the Port of Seattle regarding all trips for all</p> <p>14 types of ground transportation operators departing</p> <p>15 SeaTac Airport."</p> <p>16 Did I read that correctly?</p> <p>17 A Yes, sir.</p> <p>18 Q You go on to describe your complaint with that</p> <p>19 comparison on line 11, "There is a very large problem.</p> <p>20 First, Mr. Roemer is comparing apples to oranges by</p> <p>21 comparing passengers to trips."</p> <p>22 Did I read that correctly?</p> <p>23 A Yes.</p> <p>24 Q Okay. We've already discussed more than once</p> <p>25 that trips include potentially more than one</p>	<p>1 Q If a shuttle can carry up to 10 passengers but</p> <p>2 it's only counted as one trip, it might, in fact, be</p> <p>3 tenfold more for a particular trip than the single</p> <p>4 trip as a count towards the total; correct?</p> <p>5 A You could look at it that way, yes.</p> <p>6 Q Okay. So in terms of fairness, this is</p> <p>7 actually more conservative in favor of Shuttle Express</p> <p>8 than if we used all passengers, is it not?</p> <p>9 A I don't agree with that.</p> <p>10 Q You say "Second" -- on line 12, "Second, the</p> <p>11 data provided in Shuttle Express annual reports is</p> <p>12 related to ALL regulated activities, not simply our</p> <p>13 airport arrival passengers."</p> <p>14 Now, when Shuttle Express is marketing and</p> <p>15 attempting to gain passengers, is it worried only</p> <p>16 about a particular set of passengers who go to and</p> <p>17 from Sea-Tac Airport?</p> <p>18 A Depending on marketing material.</p> <p>19 Q Okay. I don't mean specific marketing</p> <p>20 material. Are you trying to gain market share</p> <p>21 specifically from only a subset or from any passenger</p> <p>22 who might be going to and from Sea-Tac Airport?</p> <p>23 A It would be the latter part. Every passenger</p> <p>24 that was a potential passenger.</p> <p>25 Q So if we're trying to figure out what the</p>
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<p>1 passenger; correct?</p> <p>2 A Yes.</p> <p>3 Q So your complaint is that it's comparing your</p> <p>4 actual number of passengers for Shuttle Express to</p> <p>5 trips, which are potentially more than one passenger,</p> <p>6 on the other side; correct?</p> <p>7 A Yes.</p> <p>8 Q So your complaint is that there might actually</p> <p>9 be far more passengers going to or from Sea-Tac</p> <p>10 Airport in one category while the other is only</p> <p>11 passengers; correct?</p> <p>12 A No. That's not my complaint.</p> <p>13 Q So you are saying here that you're complaining</p> <p>14 it's comparing passengers to trips. What is your</p> <p>15 complaint about the use of trips?</p> <p>16 A The complaint about the use of trips is that</p> <p>17 if you're going to compare something to trips, trips</p> <p>18 needs to be the other data set being used in the</p> <p>19 comparison.</p> <p>20 Q Isn't it actually more favorable to Shuttle</p> <p>21 Express to compare Shuttle Express's passengers to</p> <p>22 trips from Sea-Tac Airport if, in fact, trips could,</p> <p>23 in fact, be a much larger number if we included all of</p> <p>24 the passengers in each of those trips?</p> <p>25 A I don't know if it would be favorable or not.</p>	<p>1 market might potentially be for shuttle passengers</p> <p>2 going to and from the airport, wouldn't we want to</p> <p>3 look at all passengers going to and from the airport?</p> <p>4 A Sorry. Could you repeat the first part?</p> <p>5 Q If we're trying to figure out what the market</p> <p>6 might be for potential passengers on a door-to-door</p> <p>7 service, wouldn't we want to look at all passengers</p> <p>8 who were going to and from the airport?</p> <p>9 A You could look at that, yes.</p> <p>10 Q Okay. So considering those things, if you're</p> <p>11 trying to figure out whether or not there's actually</p> <p>12 the potential for growth of a particular subset of</p> <p>13 passengers or in general, wouldn't it actually be</p> <p>14 helpful to know all of the people going to and from</p> <p>15 the airport?</p> <p>16 A Potentially, yes.</p> <p>17 Q I'd like to ask you a question about a</p> <p>18 document that's been marked WAM-20X.</p> <p>19 MR. FASSBURG: I understand it has not</p> <p>20 been admitted?</p> <p>21 JUDGE PEARSON: Let me pull that up.</p> <p>22 MR. HARLOW: I'm sorry. I didn't catch</p> <p>23 the number.</p> <p>24 MR. WILEY: 20X.</p> <p>25 MR. HARLOW: WAM-20X?</p>

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1 MR. WILEY: Yes.	1 upward trend in passengers who speak languages other
2 JUDGE PEARSON: With respect to this, I	2 than English?
3 believe what we decided was that we wouldn't admit it	3 A I don't believe I can make that assumption
4 but that you would ask -- you could ask questions	4 based on the data.
5 about it.	5 Q Assuming the information provided in WAM-20X
6 Mr. Harlow, you agreed to that?	6 to be true, does it not, in fact, show that there are
7 MR. HARLOW: I think that's right. I'd	7 upward trends for persons who speak Chinese and a
8 like to see some foundational questions before we get	8 number of languages, in fact?
9 into the meat of it.	9 JUDGE PEARSON: Can you tell me what
10 MR. FASSBURG: I appreciate that.	10 page?
11 That's where I was going to start.	11 MR. HARLOW: Same objection. No
12 BY MR. FASSBURG:	12 foundation still.
13 Q Mr. Marks, do you have that exhibit in front	13 MR. FASSBURG: I'm sorry. There are
14 of you?	14 not page numbers in the particular newsletter. I
15 A I do.	15 believe it's --
16 Q Have you ever seen that before?	16 JUDGE PEARSON: It's page 22. It's the
17 A I saw it when we received the evidence	17 second to last page in the pdf document, so I would
18 submission for this case.	18 assume it's the second --
19 Q Are you familiar with that particular	19 MR. FASSBURG: Sure. I was looking at
20 newsletter?	20 probably what would be the third to last page because
21 A I am not.	21 there's two pages showing that information.
22 Q Do you receive a newsletter from Visit	22 JUDGE PEARSON: I see that. And,
23 Seattle?	23 Mr. Harlow, with respect to your objection --
24 A I do not.	24 MR. HARLOW: If I may modify this
25 Q Do you engage with Visit Seattle in any way?	25 statement, if Mr. Fassburg can represent this is Port
Page 605	Page 607
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1 A Our business does, yes.	1 of Seattle data, I would not object to this table at
2 Q Are you familiar with who they are?	2 the top of the page coming in. It's entitled
3 A I am familiar with them.	3 "Arrivals with First Intended Address of Washington
4 Q Do you question the authenticity of this	4 State."
5 particular document?	5 MR. FASSBURG: I can't represent what
6 MR. HARLOW: Objection, no foundation.	6 it is because I didn't create it.
7 MR. FASSBURG: I asked if he questions	7 MR. HARLOW: Well, then there's just no
8 it. That's all I asked.	8 foundation to know that this is valid or accurate.
9 MR. HARLOW: The implication is that if	9 MR. FASSBURG: I'll move on.
10 he doesn't question it that he's validating it. He's	10 JUDGE PEARSON: Okay.
11 never seen it. He doesn't know what it is. I don't	11 BY MR. FASSBURG:
12 see how he can really answer that question. There's	12 Q Mr. Marks, did you receive Port of Seattle
13 no foundation.	13 press releases?
14 JUDGE PEARSON: I thought that we	14 A I believe I have received some, yes.
15 weren't going to move to admit it.	15 Q Did you see the press release from April 27,
16 MR. FASSBURG: I haven't moved to admit	16 2017, in which the Port of Seattle stated that it
17 it. I'm just asking if he questions it.	17 expects this to be the biggest cruise season ever with
18 A I would have no way to tell one way or another	18 one million passengers on 218 vessels making Seattle
19 because I've never received it.	19 the biggest cruise port on the West Coast?
20 Q Have you seen from any other source	20 A I don't believe I received that one.
21 information about arrivals at the port of entry in	21 Q I'd like to refer you to WAM-1T to page 23
22 Seattle that regard the countries from which	22 discussing tech-savvy passengers. On lines 12
23 passengers have been arriving?	23 forward, you state, "Specifically speaking to the
24 A Yes, I believe I have.	24 demographic of tech-savvy tourists, it would appear
25 Q Is it your understanding that there is an	25 that the vast majority of those passengers are opting

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<p>1 for the unregulated options now available at the</p> <p>2 airport, such as Uber."</p> <p>3 Did I read that correctly?</p> <p>4 A Yes.</p> <p>5 Q Why did you state specifically tech-savvy</p> <p>6 tourists?</p> <p>7 A My understanding is that is specifically one</p> <p>8 of the markets that businesses such as Uber market</p> <p>9 direct to.</p> <p>10 Q Okay. Are there -- is there a different</p> <p>11 demographic that's tech-savvy passengers who are not</p> <p>12 tourists?</p> <p>13 A By definition, a tourist that is at their home</p> <p>14 location would not be a tourist anymore.</p> <p>15 Q That wasn't really my question. Are there</p> <p>16 tech-savvy passengers who are not tourists?</p> <p>17 A I would say yes.</p> <p>18 Q Why did you specifically limit your response</p> <p>19 to tech-savvy tourists?</p> <p>20 A I believe that was the language in one of the</p> <p>21 orders.</p> <p>22 Q So if I understand you correctly, you believe</p> <p>23 that SpeediShuttle's business model is supposed to be</p> <p>24 tech-savvy tourists; is that right?</p> <p>25 A That would be my belief based on the order's</p>	<p>1 A No.</p> <p>2 Q Do you have any specific information that</p> <p>3 could help the Commission understand what modes of</p> <p>4 transportation tech-savvy tourists are using?</p> <p>5 A No.</p> <p>6 Q Is this largely your guess as to what they are</p> <p>7 using?</p> <p>8 A Yeah. Beyond what's already been provided,</p> <p>9 yes.</p> <p>10 Q Can you clarify what you mean by "what's</p> <p>11 already been provided"?</p> <p>12 A The evidence submitted in these consolidated</p> <p>13 dockets already as far as testimony and other</p> <p>14 evidence.</p> <p>15 Q Do you agree with me that if you're trying to</p> <p>16 gain market share at the Sea-Tac Airport with respect</p> <p>17 to passengers traveling to or from Sea-Tac Airport it</p> <p>18 would be wise to compete for tech-savvy tourists?</p> <p>19 A Absolutely.</p> <p>20 Q Do you agree that you would want to compete</p> <p>21 for tech-savvy passengers?</p> <p>22 A Absolutely.</p> <p>23 Q Are you suggesting in any way that</p> <p>24 SpeediShuttle has failed to provide options by which</p> <p>25 it might try to compete for those passengers?</p>
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<p>1 interpretation.</p> <p>2 Q So that's your interpretation of Order 04, do</p> <p>3 I understand that correctly?</p> <p>4 A I believe that's correct.</p> <p>5 Q Okay. Now, we've talked about this a little</p> <p>6 before, but I want to be clear. Are you suggesting</p> <p>7 that SpeediShuttle, by that order, is supposed to be</p> <p>8 limited to serving tech-savvy tourists passengers in</p> <p>9 addition to multilingual passengers?</p> <p>10 A The question was: Do I believe they are</p> <p>11 supposed to be restricted to that group; correct?</p> <p>12 Q Yes.</p> <p>13 A My answer to that would be no.</p> <p>14 Q Okay. Just to clarify, because you make some</p> <p>15 comments that I didn't quite understand in your</p> <p>16 testimony, are you suggesting that SpeediShuttle was</p> <p>17 supposed to be restricted to serving any particular</p> <p>18 demographic, whether it be tech-savvy tourists or</p> <p>19 multilingual?</p> <p>20 A I don't believe a restriction is the language.</p> <p>21 No, I don't believe restriction.</p> <p>22 Q Now, do you have any specific data that could</p> <p>23 say one way or another whether tech-savvy passengers</p> <p>24 are all going to one mode of transportation versus</p> <p>25 another?</p>	<p>1 A No.</p> <p>2 Q You've provided testimony in WAM-1T at page 17</p> <p>3 I'd like to ask you about. You provided here some</p> <p>4 observations that you made regarding the personal</p> <p>5 greeters being used at Sea-Tac Airport by</p> <p>6 SpeediShuttle.</p> <p>7 How many days did you spend observing</p> <p>8 SpeediShuttle's greeters?</p> <p>9 A In terms of calendar days that I observed at</p> <p>10 the airport?</p> <p>11 Q Yes.</p> <p>12 A It was in excess of five.</p> <p>13 Q Okay. How many hours of each of those days</p> <p>14 did you spend at Sea-Tac?</p> <p>15 A At least two.</p> <p>16 Q Now, outside of what sounds like,</p> <p>17 approximately, ten hours, do you have any personal</p> <p>18 information regarding whether or not SpeediShuttle</p> <p>19 provided greeters at the airport?</p> <p>20 A Outside of my personal observations --</p> <p>21 Q I'm only asking about your personal knowledge.</p> <p>22 A Yes.</p> <p>23 Q What information do you have in your personal</p> <p>24 knowledge outside of those ten hours?</p> <p>25 A I've spoken with guests who have ridden with</p>

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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?

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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.

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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?

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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

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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

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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

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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.**

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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.**

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<p>1 Q Have you ever reviewed the information</p> <p>2 contained in Seattle SuperShuttle's application</p> <p>3 proceeding?</p> <p>4 A I've never heard of that company.</p> <p>5 JUDGE PEARSON: Mr. Fassburg, are we</p> <p>6 going down a different line of questioning? Because</p> <p>7 maybe we should take a break.</p> <p>8 MR. FASSBURG: That's fine.</p> <p>9 JUDGE PEARSON: And with respect to</p> <p>10 your concerns, Mr. Harlow, I'm also interested in kind</p> <p>11 of establishing a time line. Because if we have</p> <p>12 Mr. Roemer estimated as five hours of cross, is that</p> <p>13 still accurate, Mr. Harlow, or is that --</p> <p>14 MR. HARLOW: It's going to depend, in</p> <p>15 large part, on whether you admit the deposition</p> <p>16 excerpts. We submitted, roughly, 70, 80 pages of</p> <p>17 deposition transcript. That was about a third of the</p> <p>18 transcript. The transcript took a whole day.</p> <p>19 JUDGE PEARSON: But a lot of it is</p> <p>20 blacked out. I looked through everything.</p> <p>21 MR. HARLOW: That's true, but that's</p> <p>22 two or three hours of questioning and so forth that we</p> <p>23 could avoid if that's admitted.</p> <p>24 JUDGE PEARSON: Okay. And then with</p> <p>25 respect to the rest of the time estimates, it looks</p>	<p>1 going to move this hearing faster, nor help the</p> <p>2 Commission. I'm going to make an objection. We can</p> <p>3 take it up later, but that may save some time</p> <p>4 depending on your ruling.</p> <p>5 JUDGE PEARSON: What I will need to do,</p> <p>6 most likely, is quickly review those again, because,</p> <p>7 as I've said, I did read them, but I didn't retain</p> <p>8 them. I'll have to look over those again, and that</p> <p>9 may speed things up depending on what I decide.</p> <p>10 Let's take a break right now, let's say, for</p> <p>11 seven minutes. We'll come back at five till, and then</p> <p>12 we'll proceed with Mr. Marks at that time.</p> <p>13 (A break was taken from 9:48 a.m. to</p> <p>14 9:59 a.m.)</p> <p>15 JUDGE PEARSON: Back on the record.</p> <p>16 We'll proceed with Mr. Marks. Once you're finished</p> <p>17 with him, I think we'll probably take a 10- to</p> <p>18 15-minute recess so I can review those portions of the</p> <p>19 deposition, and then, most likely, what I'll do is</p> <p>20 come back and let you know which portions I'm going to</p> <p>21 admit and not admit and why. And then we can go</p> <p>22 forward, and that should help cut down the time, I'm</p> <p>23 thinking.</p> <p>24 MR. HARLOW: Okay.</p> <p>25 JUDGE PEARSON: Okay. So you may</p>
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EXAMINATION BY FASSBURG / MARKS 621	EXAMINATION BY FASSBURG / MARKS 623
<p>1 like about another hour with Staff's witnesses, hour</p> <p>2 and we'll say an hour and a half just to be safe. So</p> <p>3 with that putting us at, potentially, up to six and a</p> <p>4 half hours, how much time do you think you still need</p> <p>5 with Mr. Marks?</p> <p>6 MR. FASSBURG: I'm going to estimate an</p> <p>7 hour.</p> <p>8 JUDGE PEARSON: Another hour, which</p> <p>9 would put us about 10:45. So if anyone is faster at</p> <p>10 math than me, speak up.</p> <p>11 MR. HARLOW: We have two and a half</p> <p>12 days of hearing and two days to fit it in. I wish we</p> <p>13 could move Mr. Marks a little faster. I think there's</p> <p>14 a lot of repetitiveness in these questions.</p> <p>15 MR. FASSBURG: There may be a small</p> <p>16 amount of repetitiveness. Some of that is due to the</p> <p>17 witness not understanding the question, and some of it</p> <p>18 is due to the amount of testimony on which I'm asking</p> <p>19 him questions.</p> <p>20 I'll say I don't know what you're going to do.</p> <p>21 I think you shouldn't make any rulings right now. My</p> <p>22 thought is a lot of the questions that he says he'll</p> <p>23 need to ask if he can't admit the deposition</p> <p>24 transcript portions that he seeks to admit are</p> <p>25 unhelpful to the Commission, and they probably are not</p>	<p>1 proceed. Thank you.</p> <p>2 BY MR. FASSBURG:</p> <p>3 Q Mr. Marks, to try to accelerate this, I'll</p> <p>4 make a representation to you that in Seattle</p> <p>5 SuperShuttle's application to provide auto</p> <p>6 transportation, Shuttle Express was a protestant, and</p> <p>7 Seattle SuperShuttle alleged that Shuttle Express was</p> <p>8 not providing service to its satisfaction of the</p> <p>9 Commission because it was transporting overflow via</p> <p>10 limousines and taxi drivers, specifically town cars</p> <p>11 and taxis.</p> <p>12 Are you familiar with a period of time in</p> <p>13 Shuttle Express's history when that was occurring?</p> <p>14 A The question am I familiar with the period of</p> <p>15 time when the passengers were being transported by</p> <p>16 town cars, yes, I am.</p> <p>17 Q And what about when they were being</p> <p>18 transported by taxicabs?</p> <p>19 A I'm aware that that's happened, yes.</p> <p>20 Q Are you familiar with the fact that at that</p> <p>21 time Mr. John Rowley testified that actually was</p> <p>22 occurring when there was overflow where Shuttle</p> <p>23 Express really couldn't transport those passengers?</p> <p>24 A I'm not aware where he testified.</p> <p>25 JUDGE PEARSON: Who was that, you said?</p>

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<p>1 MR. FASSBURG: John Rowley.</p> <p>2 JUDGE PEARSON: Who is he?</p> <p>3 MR. FASSBURG: He was the president of</p> <p>4 Shuttle Express at the time.</p> <p>5 JUDGE PEARSON: Before Mr. Kajanoff?</p> <p>6 MR. FASSBURG: Yes.</p> <p>7 BY MR. FASSBURG:</p> <p>8 Q I'm not going to find you the page and line</p> <p>9 right now to read with you. But for the record, this</p> <p>10 is in the transcript which we have submitted as</p> <p>11 Exhibit 38X on pages 306 to 309.</p> <p>12 JUDGE PEARSON: Okay. I took</p> <p>13 official --</p> <p>14 MR. HARLOW: WAM-38X?</p> <p>15 MR. FASSBURG: Yes, WAM-38X.</p> <p>16 JUDGE PEARSON: And I took official</p> <p>17 notice of that, and this is -- was this Shuttle</p> <p>18 Express at the time, or was it operating under a</p> <p>19 different name?</p> <p>20 MR. FASSBURG: I believe --</p> <p>21 MR. HARLOW: Name hasn't changed.</p> <p>22 MR. FASSBURG: I believe it was Shuttle</p> <p>23 Express at that time.</p> <p>24 JUDGE PEARSON: But was it at one point</p> <p>25 San Juan Shuttle doing business as --</p>	<p>1 that way.</p> <p>2 Q Are you familiar with the distinction in the</p> <p>3 names "rescue service" versus "luxury upgrade"?</p> <p>4 A As used in what context?</p> <p>5 Q As used by Shuttle Express.</p> <p>6 A We have used both terms, yes.</p> <p>7 Q What does "rescue service" mean?</p> <p>8 A Rescue service is my understanding -- again, I</p> <p>9 have limited knowledge of the use in testimony, but</p> <p>10 rescue service was intended to be used when a vehicle</p> <p>11 was originally dispatched would break down or be</p> <p>12 unavailable due to unknown traffic issues. And</p> <p>13 another vehicle was in the area, the rescue service</p> <p>14 would be dispatched to provide the service expected by</p> <p>15 the passenger.</p> <p>16 Q And what was a luxury upgrade, using Shuttle</p> <p>17 Express's terminology?</p> <p>18 A A luxury upgrade would be providing the</p> <p>19 passenger an option to change the vehicle transport</p> <p>20 that was being provided to them to a different vehicle</p> <p>21 at their option.</p> <p>22 Q And were luxury upgrades offered to people who</p> <p>23 had reserved auto transportation service originally?</p> <p>24 A Yes.</p> <p>25 Q Were those passengers, if they elected to</p>
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<p>1 MR. HARLOW: San Juan Airlines.</p> <p>2 JUDGE PEARSON: San Juan Airlines.</p> <p>3 Okay.</p> <p>4 MR. HARLOW: Not in anybody's recent</p> <p>5 memory. I think I'm the only one in the room who was</p> <p>6 around. Wiley was doing garbage companies at the</p> <p>7 time.</p> <p>8 BY MR. FASSBURG:</p> <p>9 Q Moving forward in time in 2008, Shuttle</p> <p>10 Express was investigated by the Commission again for</p> <p>11 use of independent contractors. Are you familiar with</p> <p>12 that proceeding?</p> <p>13 A Not personally, no.</p> <p>14 Q Have you reviewed records that relate to that</p> <p>15 proceeding?</p> <p>16 A Not specifically that I'm aware.</p> <p>17 Q Has anyone informed you or have you had any</p> <p>18 discussions with anyone regarding the use of charter</p> <p>19 buses to provide auto transportation service in the</p> <p>20 past?</p> <p>21 A I have no personal knowledge of that.</p> <p>22 Q My question was a little different. Have you</p> <p>23 ever discussed that with anyone or have you heard of</p> <p>24 that?</p> <p>25 A I have not heard about charter bus service in</p>	<p>1 receive the luxury upgrade, then transported on a</p> <p>2 vehicle owned by someone other than Shuttle Express?</p> <p>3 A My understanding, yes.</p> <p>4 Q Were those passengers transported on a vehicle</p> <p>5 driven by a driver who was not an employee of Shuttle</p> <p>6 Express?</p> <p>7 A My understanding would be yes.</p> <p>8 Q Do I understand correctly the luxury upgrades</p> <p>9 were provided to someone who might have a wait in</p> <p>10 excess of 45 minutes?</p> <p>11 A That would be an option.</p> <p>12 Q Is that, in fact, what Shuttle Express's</p> <p>13 options were -- or rather, is that, in fact, Shuttle</p> <p>14 Express's practice in the past?</p> <p>15 A It's a portion of it.</p> <p>16 Q What other reasons would Shuttle Express offer</p> <p>17 luxury upgrades for?</p> <p>18 A Customer service, convenience, routing, and</p> <p>19 efficiency. There's a multitude of reasons. It's not</p> <p>20 restricted to any one particular reason.</p> <p>21 Q Did any of those reasons have to do with</p> <p>22 saving costs?</p> <p>23 A That would factor in there, yes.</p> <p>24 Q I'll refer you to Exhibit WAM-26X, which is</p> <p>25 the Staff investigation report referenced in Docket</p>

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<p>1 TC-120323. I'll refer you to that to a page in the</p> <p>2 appendices, which was page 130 of the appendices. Are</p> <p>3 you on page 130 of the appendices?</p> <p>4 A I believe so. The page says Appendix L, 130</p> <p>5 at the bottom right corner.</p> <p>6 JUDGE PEARSON: Page 130, is that what</p> <p>7 you said? Is it labeled Appendix L?</p> <p>8 MR. FASSBURG: I believe it is.</p> <p>9 Unfortunately, I have an excerpt of it on my page.</p> <p>10 JUDGE PEARSON: Is it an e-mail?</p> <p>11 MR. FASSBURG: It is an e-mail.</p> <p>12 BY MR. FASSBURG:</p> <p>13 Q Can you find for me the line that starts with</p> <p>14 the word "times" followed by "we feel." Have you</p> <p>15 found it?</p> <p>16 A No, not yet.</p> <p>17 Q Okay. It's the fourth line in the second</p> <p>18 paragraph.</p> <p>19 A I see, yes.</p> <p>20 Q This is an e-mail, by the way, that says it's</p> <p>21 being sent on behalf of Jimmy Sherrell by Paul</p> <p>22 Kajanoff; correct?</p> <p>23 A That appears to be what it says.</p> <p>24 Q Okay. And the line that I referred you to</p> <p>25 says "We feel there is a length of staging time that</p>	<p>1 MR. HARLOW: We're pressed for time,</p> <p>2 and he's had to read the statement. Now he's asking</p> <p>3 him if it says something that it speaks for itself,</p> <p>4 and we're wasting time.</p> <p>5 JUDGE PEARSON: I agree. I think we</p> <p>6 need to --</p> <p>7 MR. FASSBURG: Sure. I think there is,</p> <p>8 in fact, a reason for this. But if he isn't the one</p> <p>9 who can answer it, perhaps someone else could have.</p> <p>10 They've only offered limited testimony from other</p> <p>11 witnesses that address their use of independent</p> <p>12 contractors. Mr. Marks has provided the testimony for</p> <p>13 which there's a reason to cross.</p> <p>14 JUDGE PEARSON: I understand. I think</p> <p>15 it's clear, though, that the reason they do it is</p> <p>16 because there's an excess waiting time, and there was</p> <p>17 testimony to that effect in the application docket as</p> <p>18 well. And so I fully recognize that that's the main</p> <p>19 reason why Shuttle Express has relied on this service</p> <p>20 in the past.</p> <p>21 MR. FASSBURG: Okay. I appreciate</p> <p>22 that.</p> <p>23 BY MR. FASSBURG:</p> <p>24 Q I understand that you agree Shuttle Express</p> <p>25 still places people who have -- let me rephrase that.</p>
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<p>1 is acceptable and one that is not. Once we have a</p> <p>2 staging time in excess, which is easy to identify on</p> <p>3 the recent report attachment of 45 minutes or longer,</p> <p>4 we seek to find these travelers an alternative to get</p> <p>5 them on their way, staying in the convenience/service</p> <p>6 time zone. Because we have affiliated independent</p> <p>7 towncar operators who are regulated, licensed and</p> <p>8 insured we have a viable legal alternative."</p> <p>9 Did I read that correctly?</p> <p>10 A I believe so, yes.</p> <p>11 Q What is the date of that e-mail?</p> <p>12 A The date in the header of this page says</p> <p>13 Friday, September 21, 2012.</p> <p>14 Q Is it your understanding in 2012 the primary</p> <p>15 reason Shuttle Express was representing that it was</p> <p>16 providing luxury upgrades was when there was an</p> <p>17 excessive wait time?</p> <p>18 A I can't represent that statement.</p> <p>19 Q Is that what this e-mail states?</p> <p>20 MR. HARLOW: Objection. It speaks for</p> <p>21 itself.</p> <p>22 JUDGE PEARSON: Which portion of the</p> <p>23 e-mail were you referring to?</p> <p>24 MR. FASSBURG: Specifically that</p> <p>25 portion where he's describing where he's doing it.</p>	<p>1 The practice has been since the exemption, the</p> <p>2 conditional exemption, ended in January 2014 that</p> <p>3 Shuttle Express has had passengers who reserved auto</p> <p>4 transportation service that it provided the option of</p> <p>5 a luxury upgrade; is that correct?</p> <p>6 A Yes.</p> <p>7 Q And those luxury upgrades are still operated</p> <p>8 by persons who are not employees by Shuttle Express</p> <p>9 driving vehicles not owned by Shuttle Express;</p> <p>10 correct?</p> <p>11 A Yes.</p> <p>12 Q Now, you have offered in your testimony that</p> <p>13 you do that for a cost reason because it is cheaper</p> <p>14 for Shuttle Express to provide service to passengers</p> <p>15 when there are -- let me rephrase it.</p> <p>16 It is cheaper for Shuttle Express to provide</p> <p>17 service to certain passengers through an independent</p> <p>18 contractor than to use its own van; correct?</p> <p>19 A Not that. I wouldn't word it that way.</p> <p>20 Q Okay. Well, let's find in your testimony</p> <p>21 where you discuss that. I'll refer you to WAM-3T.</p> <p>22 I'll refer you to page 30, beginning on line 1. You</p> <p>23 state there, "For example, when we have a single</p> <p>24 passenger going to Woodinville, with no other</p> <p>25 passengers traveling along the same general route, we</p>

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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?

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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**

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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.**

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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?

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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

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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?

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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

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1 drivers?

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

3 **standard.**

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

5 limousine driver was not exceeding the hours of

6 service requirements applicable to an auto

7 transportation driver as a hypothetical, would you

8 have any way to do it?

9 **A There would be a potential to do that.**

10 Q How would you do it?

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

12 **employee driver under FMCSA rules.**

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

14 **A That is correct.**

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

16 you have 28X in front of you?

17 **A Yes.**

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

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

20 of Initial Order in Docket TC-120323.

21 In paragraph 85 of that document, it states

22 "The Commission should not penalize or prohibit a

23 program that serves the broader public interest.

24 Rather, it should allow Shuttle Express to work

25 proactively with the Commission going forward to make

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<p>1 the regulatory hole a little less round, until a</p> <p>2 proper fit is obtained. Allowing rescue service to</p> <p>3 continue pending an exemption petition would best</p> <p>4 serve the overall public interest. In return, Shuttle</p> <p>5 Express commits to being more proactive in seeking</p> <p>6 regulatory guidance and permissions when it modifies</p> <p>7 its operations and specifically will review any</p> <p>8 independent contractor operations or operational</p> <p>9 changes whatsoever in the Commission in advance."</p> <p>10 Did I read that correctly?</p> <p>11 A Yes.</p> <p>12 Q Can you read the date below that on which that</p> <p>13 statement was submitted to the Commission?</p> <p>14 A Date is stated as the 3rd day of January 2014.</p> <p>15 Q Has Shuttle Express reviewed with the</p> <p>16 Commission any of its independent contractor</p> <p>17 operations since that date?</p> <p>18 A I believe it has, yes.</p> <p>19 Q Which specific ones?</p> <p>20 A Pending the submission by the exemption which</p> <p>21 was submitted, I believe, last summer, the discussions</p> <p>22 were taking place as to what options and operations</p> <p>23 would be available and what the requirements and</p> <p>24 changes would be needed.</p> <p>25 Q Are you referring specifically to the petition</p>	<p>1 single-stop trips?</p> <p>2 A My knowledge of that data set is yes.</p> <p>3 Q Are they all single-passenger trips?</p> <p>4 A I cannot attest to that.</p> <p>5 Q Is Shuttle Express's practice to allow single</p> <p>6 reservations to be transported by independent</p> <p>7 contractors?</p> <p>8 A Yes.</p> <p>9 Q Okay. So if there's more than one passenger</p> <p>10 on a reservation, they would be transported -- they</p> <p>11 could be transported by an independent contractor?</p> <p>12 A That's my understanding, yes.</p> <p>13 Q That's the practice of Shuttle Express?</p> <p>14 A Yes.</p> <p>15 Q I understand in your testimony in WAM-3T one</p> <p>16 of the justifications that you have provided for doing</p> <p>17 that is a provision in your tariff regarding alternate</p> <p>18 means of transportation; is that correct?</p> <p>19 A That is one of them, yes.</p> <p>20 Q Have you reviewed WAC 480-30-356(3)(g)?</p> <p>21 A I have.</p> <p>22 Q Do you have a copy with you today?</p> <p>23 A I do not, I don't believe.</p> <p>24 MR. HARLOW: What was that cite then,</p> <p>25 please?</p>
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EXAMINATION BY FASSBURG / MARKS 641	EXAMINATION BY FASSBURG / MARKS 643
<p>1 for exemption filed in 2016?</p> <p>2 A Yes, I am.</p> <p>3 Q Did Shuttle Express ever meet with the</p> <p>4 Commission staff subsequent to that date to determine</p> <p>5 whether use of independent contractors without an</p> <p>6 exemption would be permissible under Commission rules?</p> <p>7 A I don't believe that conversation ever</p> <p>8 occurred.</p> <p>9 Q That's a no; correct?</p> <p>10 A That would be a no as you stated it.</p> <p>11 JUDGE PEARSON: Ms. Fassburg, just to</p> <p>12 clarify, you mean after January 3, 2014?</p> <p>13 MR. FASSBURG: Correct.</p> <p>14 JUDGE PEARSON: Okay.</p> <p>15 Q You now claim that you can provide luxury</p> <p>16 upgrades for single-stop service; correct?</p> <p>17 A Yes.</p> <p>18 Q And the single-stop service records that you</p> <p>19 provided in an Excel spreadsheet, which is rather</p> <p>20 voluminous and I have not provided as a result,</p> <p>21 includes the trips that you reported that constitute</p> <p>22 the 40,727 trips between January 16, 2014, and</p> <p>23 September 30, 2016; correct?</p> <p>24 A Subject to check, that sounds accurate.</p> <p>25 Q Okay. In that data set, are they all</p>	<p>1 MR. FASSBURG: 480-30-356(3)(g). And,</p> <p>2 actually, I'm sorry. That's (3)(h).</p> <p>3 Q I've handed the witness a copy of that rule</p> <p>4 from the Commission -- from the website that -- the</p> <p>5 government website on which it is provided.</p> <p>6 Mr. Marks, under this rule, Shuttle Express is</p> <p>7 required to provide certain information in its tariff;</p> <p>8 correct?</p> <p>9 A Yes.</p> <p>10 Q And on part (3)(h), it states: Whether</p> <p>11 alternative means of transportation -- I'm sorry. Let</p> <p>12 me read it correctly.</p> <p>13 "Whether alternate means of transport will be</p> <p>14 provided by the company when it is unable to provide</p> <p>15 transportation at the time and place specified in the</p> <p>16 reservation that the company has accepted for that</p> <p>17 passenger." Did I read that correctly?</p> <p>18 A Yes.</p> <p>19 Q The hypothetical passenger in Woodinville that</p> <p>20 you discussed on page 30 of WAM-3T is not someone who</p> <p>21 Shuttle Express is unable to provide transportation</p> <p>22 to; correct?</p> <p>23 A That's correct.</p> <p>24 Q Have you reviewed WAC 480-30-036?</p> <p>25 A I believe I have in the past, yes.</p>

<p style="text-align: right;">Page 644</p> <p style="text-align: center;">EXAMINATION BY FASSBURG / MARKS 644</p> <p>1 Q There's a copy of WAC 480-30-036.</p> <p>2 Please find for us the definition of "premium</p> <p>3 service."</p> <p>4 A Okay.</p> <p>5 Q The rule states "'Premium Service' means a</p> <p>6 type of service provided by an auto transportation</p> <p>7 company that is outside normal service. Examples</p> <p>8 include express service, direct route service, and</p> <p>9 nonstop door-to-door service."</p> <p>10 Did I read that correct?</p> <p>11 A Yes.</p> <p>12 JUDGE PEARSON: Can you tell me the</p> <p>13 citation again?</p> <p>14 MR. FASSBURG: It was 408-30-036.</p> <p>15 Q Does nonstop door-to-door service mean that</p> <p>16 only one stop would be made?</p> <p>17 MR. HARLOW: Objection. Your Honor,</p> <p>18 we're asking a nonlawyer witness to start interpreting</p> <p>19 and defining and give opinions on the Commission's</p> <p>20 regulations. I think this is best for post-hearing</p> <p>21 briefing, not the witness.</p> <p>22 MR. FASSBURG: Your Honor, that's</p> <p>23 another speaking objection. But, Your Honor, he's</p> <p>24 offered his opinions as to why Shuttle Express is in</p> <p>25 compliance with the rules in his testimony. If I'm</p>	<p style="text-align: right;">Page 646</p> <p style="text-align: center;">EXAMINATION BY FASSBURG / MARKS 646</p> <p>1 would be permissible under Commission rules?</p> <p>2 A I can't speak to others, but I personally did</p> <p>3 not.</p> <p>4 Q I'd like to ask you a few questions about</p> <p>5 Shuttle Express's practice in combining door-to-door</p> <p>6 and scheduled services. I'll refer you to WAM-1T</p> <p>7 first on page 3.</p> <p>8 JUDGE PEARSON: I'm sorry. What page?</p> <p>9 MR. FASSBURG: I'm sorry. It's page 3</p> <p>10 of WAM-1T.</p> <p>11 JUDGE PEARSON: 1T?</p> <p>12 MR. FASSBURG: Yes.</p> <p>13 BY MR. FASSBURG:</p> <p>14 Q Beginning on line 9, you state "Shuttle</p> <p>15 Express operates two different services under its</p> <p>16 certificate, and each of those services operates to</p> <p>17 and from two different termini. The primary operation</p> <p>18 of Shuttle Express is its airport door-to-door share</p> <p>19 ride service."</p> <p>20 Did I read that correctly?</p> <p>21 A Yes.</p> <p>22 Q And then you state "In addition to the share</p> <p>23 ride service, we also offer scheduled service between</p> <p>24 SeaTac Airport and specific locations, such as hotels,</p> <p>25 schools and transit centers."</p>
<p style="text-align: right;">Page 645</p> <p style="text-align: center;">EXAMINATION BY FASSBURG / MARKS 645</p> <p>1 not permitted to cross-examine him on the foundation</p> <p>2 of his opinions, I don't know who I'd be allowed to</p> <p>3 cross-examine on that. He is the witness.</p> <p>4 JUDGE PEARSON: Yeah. I will allow it</p> <p>5 because I think it does go to the company's</p> <p>6 justification for its action and why it believes it's</p> <p>7 operating in compliance with Commission rules, which</p> <p>8 is definitely relevant. So go ahead.</p> <p>9 MR. FASSBURG: Thank you.</p> <p>10 A Can you ask the question again, please?</p> <p>11 Q Under that rule, do you believe nonstop</p> <p>12 door-to-door service would be one -- a service by</p> <p>13 which a single stop would be made?</p> <p>14 A Yes.</p> <p>15 Q Are you familiar with WAC 480-30-016?</p> <p>16 A Yes.</p> <p>17 Q Do you understand that to be the rule by which</p> <p>18 someone who would like to provide service could ask</p> <p>19 for an informal Staff opinion as to whether or not a</p> <p>20 certificate is required to provide the service?</p> <p>21 A That sounds familiar.</p> <p>22 Q I don't need to review the language of the</p> <p>23 rule with you. Did you or anyone at Shuttle Express</p> <p>24 ask from the Commission Staff an informal opinion as</p> <p>25 to whether or not its use of independent contractors</p>	<p style="text-align: right;">Page 647</p> <p style="text-align: center;">EXAMINATION BY FASSBURG / MARKS 647</p> <p>1 Did I read that correctly?</p> <p>2 I'm sorry. I think that's further down the</p> <p>3 page on line 17.</p> <p>4 A Yes.</p> <p>5 Q Okay. Do you admit in WAM-3T that, in fact,</p> <p>6 there are times when you combine those services; is</p> <p>7 that correct?</p> <p>8 A We combine the passengers for those services,</p> <p>9 yes.</p> <p>10 Q Okay. When you say you combine the passengers</p> <p>11 for those services, do you mean that one vehicle</p> <p>12 operates both door-to-door and scheduled service with</p> <p>13 a mix of those two different types of passengers on</p> <p>14 the same vehicle?</p> <p>15 A Yes.</p> <p>16 Q If I understand correctly, you justify that,</p> <p>17 again, based on the rule for alternate means for</p> <p>18 transportation in the tariff rule; correct?</p> <p>19 A I believe that was at least one of the</p> <p>20 justifications.</p> <p>21 Q Okay. The justification that related to that</p> <p>22 is that you stated in your provision for alternate</p> <p>23 means of transport that you reserve the right to</p> <p>24 combine them; correct?</p> <p>25 A That was a section under that portion of the</p>

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EXAMINATION BY FASSBURG / MARKS 648	EXAMINATION BY FASSBURG / MARKS 650
<p>1 tariff, yes.</p> <p>2 Q Okay. You understand that alternate means of</p> <p>3 transport is a provision that allows alternate</p> <p>4 transportation for when the company is unable to</p> <p>5 provide transportation; correct?</p> <p>6 A That distinction, yes.</p> <p>7 Q Are you suggesting by your testimony that</p> <p>8 Shuttle Express is permitted to combine its services</p> <p>9 because it notified its passengers that there might be</p> <p>10 a circumstance under which you need to combine</p> <p>11 services?</p> <p>12 A I don't see anywhere where that has been</p> <p>13 restricted otherwise.</p> <p>14 Q Okay.</p> <p>15 A Yes, I believe we've notified the passengers</p> <p>16 of that.</p> <p>17 Q My question was a little different. My</p> <p>18 question is: Are you saying that because you stated</p> <p>19 under alternative means of transport on your tariff</p> <p>20 that you can combine them?</p> <p>21 A I don't think it's because of where its at,</p> <p>22 but it is stated that they would be combined.</p> <p>23 Q Okay. Now, does that suggest, in your</p> <p>24 opinion, that passengers might be subject to receiving</p> <p>25 combined service when you are otherwise unable to</p>	<p>1 Q Okay. You've stated in your testimony in</p> <p>2 WAM-3T that Mr. Roemer was not, in fact, delayed as a</p> <p>3 result of combining services. Did I paraphrase your</p> <p>4 testimony correctly?</p> <p>5 A I believe so, yes.</p> <p>6 Q And you state that because the trip was</p> <p>7 completed within a projection of -- or really a time</p> <p>8 that you provided within your tariff; correct?</p> <p>9 A And, I believe, it was also on the booking</p> <p>10 page when he made his reservation.</p> <p>11 Q So you're saying the time estimate or time</p> <p>12 projection for the completion of the route is also on</p> <p>13 your web page?</p> <p>14 A Yes.</p> <p>15 Q Now, do you understand that Mr. Roemer was not</p> <p>16 the first stop the vehicle made that day? I'm sorry.</p> <p>17 The place where Mr. Roemer was heading was not the</p> <p>18 first stop the vehicle made that day?</p> <p>19 A That's my understanding from his testimony.</p> <p>20 Q Okay. Do you understand that before the stop</p> <p>21 to which he was being transported the vehicle went to</p> <p>22 a stop that was not one of your flag stops in your</p> <p>23 tariff?</p> <p>24 A That, I believe, was his testimony.</p> <p>25 Q Okay. Do you have any information by which</p>
Page 649	Page 651
EXAMINATION BY FASSBURG / MARKS 649	EXAMINATION BY FASSBURG / MARKS 651
<p>1 provide transportation at the time and place specified</p> <p>2 in the reservation as the rule states?</p> <p>3 A It could, yes.</p> <p>4 Q Do you believe that provides passengers</p> <p>5 adequate notice that you might, at your option,</p> <p>6 regardless of whether you were otherwise able to</p> <p>7 provide service, combine them onto a vehicle providing</p> <p>8 a different type of service?</p> <p>9 A Yes, I believe so.</p> <p>10 Q Now, to clarify, your testimony in WAM-3T is</p> <p>11 responding to Mr. Roemer discussing a specific</p> <p>12 instance in which he received service; correct?</p> <p>13 A Yes.</p> <p>14 Q Is it your recollection that Mr. Roemer was a</p> <p>15 passenger who paid for scheduled service?</p> <p>16 A Based on the information provided, yes.</p> <p>17 Q Have you actually confirmed his reservation?</p> <p>18 A I have seen his reservation, yes.</p> <p>19 Q Was it for scheduled service?</p> <p>20 A It was to a scheduled service location, yes.</p> <p>21 Q And do you agree that on the same vehicle that</p> <p>22 Mr. Roemer was transported were door-to-door</p> <p>23 passengers?</p> <p>24 A That's my understanding, although I didn't</p> <p>25 look at the other passengers on that trip.</p>	<p>1 you can contend he is incorrect?</p> <p>2 A I don't have any information to support or</p> <p>3 deny it.</p> <p>4 Q Okay. Now, in reality, regardless of time</p> <p>5 estimates for the completion of a route, had</p> <p>6 Mr. Roemer not waited for a door-to-door passenger to</p> <p>7 be taken to a location not listed on the flag stop,</p> <p>8 you would agree with me that he would have arrived at</p> <p>9 his destination sooner; correct?</p> <p>10 A I would not agree with you.</p> <p>11 Q You believe that taking an additional stop</p> <p>12 adds zero additional time to the trip?</p> <p>13 A That is not what I said.</p> <p>14 Q And so if that passenger did not need to stop</p> <p>15 at a new location, how is it conceivably possible that</p> <p>16 it didn't take additional time?</p> <p>17 A If that trip was routed differently as a</p> <p>18 result of not having that passenger before Mr. Roemer,</p> <p>19 there could have been additional scheduled service</p> <p>20 stops prior to Mr. Roemer being dropped off.</p> <p>21 Q So your point is simply it could have gone to</p> <p>22 different scheduled stops first?</p> <p>23 A It could have.</p> <p>24 Q I'm talking about reality as opposed to</p> <p>25 hypotheticals. If they didn't make an additional</p>

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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

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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,

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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.

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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.**

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EXAMINATION BY FASSBURG / MARKS 656	EXAMINATION BY FASSBURG / MARKS 658
<p>1 Q When someone enters that reservation system</p> <p>2 from the door-to-door page, can they not end up</p> <p>3 reserving scheduled service based on the options they</p> <p>4 pick in the reservation system?</p> <p>5 A Yes. There are options for that service as</p> <p>6 well.</p> <p>7 Q Those are actually labeled by destination type</p> <p>8 or location type; correct?</p> <p>9 A I believe that would be correct.</p> <p>10 Q So if someone wanted to receive door-to-door</p> <p>11 service on your website's reservations portal, they</p> <p>12 would need to know that they received door-to-door</p> <p>13 service by picking a ZIP Code; correct?</p> <p>14 A That was the beginning process for that time,</p> <p>15 yes.</p> <p>16 Q When they pick a ZIP Code, they would receive</p> <p>17 door-to-door service, but they don't know that from</p> <p>18 the labels; correct?</p> <p>19 A I can't speak to what they do or don't know.</p> <p>20 Q The labels don't state door-to-door versus</p> <p>21 schedule. They state ZIP Code versus location;</p> <p>22 correct?</p> <p>23 A At the first page that you select the</p> <p>24 location, I believe that is correct, but that's not</p> <p>25 true later on in the system when it offers different</p>	<p>1 Q Okay. Could that person end up on the same</p> <p>2 vehicle as the hypothetical second person who paid</p> <p>3 less money?</p> <p>4 A Yes.</p> <p>5 Q And do you ever offer to remit a portion of</p> <p>6 the higher fare you charged to the door-to-door person</p> <p>7 for receiving the same service as the person who paid</p> <p>8 for scheduled service?</p> <p>9 A We have offered to adjust the reservations,</p> <p>10 yes.</p> <p>11 Q Do you offer to remit that routinely?</p> <p>12 A Routinely is -- I can't say routinely. It</p> <p>13 happens.</p> <p>14 Q Let me ask it a little differently. You can't</p> <p>15 tell the Commission under oath today that every person</p> <p>16 who has ever ended up paying more because they chose</p> <p>17 the ZIP Code and address as opposed to the location</p> <p>18 that you haven't in every occasion remitted the fare</p> <p>19 difference, have you?</p> <p>20 A No, not in every occasion.</p> <p>21 Q You don't even track certain circumstances in</p> <p>22 which you have a door-to-door and a scheduled</p> <p>23 passenger going to the same location going in the same</p> <p>24 vehicle, do you?</p> <p>25 A I'm sorry. We don't track --</p>
Page 657	Page 659
EXAMINATION BY FASSBURG / MARKS 657	EXAMINATION BY FASSBURG / MARKS 659
<p>1 pricing.</p> <p>2 Q When it offers different pricing, doesn't it</p> <p>3 simply offer a shared ride version -- shared ride</p> <p>4 price versus a different price?</p> <p>5 A It would be share ride, scheduled, and other</p> <p>6 options, yes.</p> <p>7 Q So it's your testimony today here under oath</p> <p>8 if someone were to enter your reservation system and</p> <p>9 select a location, that they would have the option of</p> <p>10 choosing door-to-door?</p> <p>11 A If it is a main location by us, no, they would</p> <p>12 not.</p> <p>13 Q Now, if someone were to enter into your</p> <p>14 reservation system and choose by ZIP Code a hotel that</p> <p>15 you also provide scheduled service to and reserve</p> <p>16 door-to-door service, would they pay a higher price</p> <p>17 than a person who reserved service to the same</p> <p>18 location by location type?</p> <p>19 A That is circumstantial depending on number of</p> <p>20 passengers.</p> <p>21 Q Let's talk about one. Would a person who</p> <p>22 reserves service to a hotel by address and ZIP Code</p> <p>23 pay more than a person who reserved service to the</p> <p>24 same location by the location name?</p> <p>25 A For a single passenger, yes.</p>	<p>1 Q You don't track occasions in which you have</p> <p>2 that scenario occur, do you?</p> <p>3 A Certainly, we do.</p> <p>4 Q If you do, then you would be able to know in</p> <p>5 each instance when to remit their fare difference for</p> <p>6 having received these scheduled service at the</p> <p>7 door-to-door price; correct?</p> <p>8 A They receive the service that they had</p> <p>9 requested.</p> <p>10 Q But they're on the same vehicle as the other</p> <p>11 person, aren't they?</p> <p>12 A They certainly would be.</p> <p>13 Q With the same driver?</p> <p>14 A Uh-huh.</p> <p>15 Q They're both going to Sea-Tac to the same</p> <p>16 destination; correct?</p> <p>17 A Yes.</p> <p>18 Q They would have all the same intermediate</p> <p>19 stops on the way; correct?</p> <p>20 A Yes.</p> <p>21 Q They are charged two different prices;</p> <p>22 correct?</p> <p>23 A Both in line with the tariff.</p> <p>24 Q And you know they were on the same vehicle</p> <p>25 because you tracked that, as you just stated; correct?</p>

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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

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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.**

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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

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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,

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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.
 20 EXAMINATION
 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.

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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**

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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

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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**

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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.**

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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

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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

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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

<p style="text-align: right;">Page 672</p> <p style="text-align: center;">EXAMINATION BY HARLOW / MARKS 672</p> <p>1 on that time period.</p> <p>2 MR. HARLOW: I actually don't remember,</p> <p>3 so if I can ask one more foundational question related</p> <p>4 to that specific question.</p> <p>5 BY MR. HARLOW:</p> <p>6 Q Mr. Marks, do you recall any conversations</p> <p>7 that you're aware of between the company and the</p> <p>8 Department of Licensing in which the Utilities and</p> <p>9 Transportation Commission or its Staff were involved?</p> <p>10 MR. FASSBURG: We object to the</p> <p>11 question. I think there's still no relevance to this.</p> <p>12 JUDGE PEARSON: Yeah. I would agree</p> <p>13 with that. Let's move on.</p> <p>14 MR. HARLOW: Let me offer proof, and</p> <p>15 we'll move on. Thank you, Your Honor.</p> <p>16 Q Just for clarification, we talked -- you</p> <p>17 talked a lot on cross-examination about single-stop</p> <p>18 trips by independent contractors. Do you recall that</p> <p>19 line?</p> <p>20 A Yes.</p> <p>21 Q And when we say "single-stop trips," does that</p> <p>22 bear any relationship to the number of parties on one</p> <p>23 of those trips?</p> <p>24 A It would indicate it was actually single</p> <p>25 reservations in those, so it was a single reservation</p>	<p style="text-align: right;">Page 674</p> <p style="text-align: center;">EXAMINATION BY HARLOW / MARKS 674</p> <p>1 Q Tens of thousands?</p> <p>2 A More than likely, yes.</p> <p>3 Q More than 100,000?</p> <p>4 A Based on the information I have, yes. It</p> <p>5 would be in excess of that.</p> <p>6 Q Thank you. Do you recall being asked by</p> <p>7 Mr. Fassburg whether you had seen data indicating</p> <p>8 which countries Sea-Tac passengers are arriving from</p> <p>9 or departing to?</p> <p>10 A Yes.</p> <p>11 Q And what was the source of that data that you</p> <p>12 said you had seen?</p> <p>13 A I believe it was the census data that</p> <p>14 Mr. Morton presented as evidence in the initial</p> <p>15 hearing.</p> <p>16 Q Do you recall seeing any meaningful number of</p> <p>17 Somalian passengers arriving or departing Sea-Tac</p> <p>18 Airport?</p> <p>19 A I don't recall any.</p> <p>20 Q Do you recall seeing any meaningful number of</p> <p>21 Samoan passengers arriving or departing Sea-Tac</p> <p>22 Airport?</p> <p>23 A I don't.</p> <p>24 Q WAM-6, which is the data request with the</p> <p>25 languages that we received from SpeediShuttle, lists a</p>
<p style="text-align: right;">Page 673</p> <p style="text-align: center;">EXAMINATION BY HARLOW / MARKS 673</p> <p>1 with a single stop.</p> <p>2 Q To be clear, does that mean it's a single</p> <p>3 party?</p> <p>4 A Single party that may have multiple</p> <p>5 passengers.</p> <p>6 Q There was prior to that the significant</p> <p>7 discussion about safety requirements of independent</p> <p>8 contractors relative to auto transportation drivers.</p> <p>9 Do you recall that?</p> <p>10 A Yes.</p> <p>11 Q In your experience, are your independent</p> <p>12 contractors operating in what your opinion would be</p> <p>13 considered a safe manner?</p> <p>14 A In my experience, yes, absolutely.</p> <p>15 Q In your experience, can you recall a single</p> <p>16 injury/accident that was incurred by one of your</p> <p>17 independent contractors while operating under contract</p> <p>18 with Shuttle Express?</p> <p>19 A I cannot, no.</p> <p>20 Q And how many years does that go back?</p> <p>21 A My knowledge of independent contractors and</p> <p>22 their operations to that extent would extend in excess</p> <p>23 of four years.</p> <p>24 Q And, roughly, how many trips would that be?</p> <p>25 A It would be voluminous.</p>	<p style="text-align: right;">Page 675</p> <p style="text-align: center;">EXAMINATION BY HARLOW / MARKS 675</p> <p>1 language of -- I'm not sure I'm pronouncing this</p> <p>2 right. Amharic? Do you recall that?</p> <p>3 A I see that, yes.</p> <p>4 Q Do you know what language or country that is?</p> <p>5 A I'm not aware, no.</p> <p>6 Q Does Shuttle Express have Spanish-speaking</p> <p>7 drivers and customer service representatives?</p> <p>8 MR. FASSBURG: Objection for relevance.</p> <p>9 JUDGE PEARSON: I'm sorry. Can you</p> <p>10 repeat the question?</p> <p>11 MR. HARLOW: Just read it back.</p> <p>12 (Record read back as requested.)</p> <p>13 JUDGE PEARSON: I think we've already</p> <p>14 established that they have, so you can move forward.</p> <p>15 MR. HARLOW: Certainly.</p> <p>16 BY MR. HARLOW:</p> <p>17 Q Then you were asked questions about your</p> <p>18 observations of the greeters for more than ten hours.</p> <p>19 Do you recall that?</p> <p>20 A Yes.</p> <p>21 Q I guess if I could characterize that those</p> <p>22 questions they were challenging your ability to give</p> <p>23 meaningful testimony on the adequacy of your greeter</p> <p>24 staffing, what would be needed to really get a good</p> <p>25 determination, a valid determination, of whether</p>

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EXAMINATION BY HARLOW / MARKS 676	EXAMINATION BY HARLOW / MARKS 678
<p>1 SpeediShuttle's greeter staffing is adequate?</p> <p>2 MR. FASSBURG: Objection. This seems</p> <p>3 like a question about the weight of the evidence or</p> <p>4 the sufficiency of the evidence. I don't see how this</p> <p>5 helps.</p> <p>6 JUDGE PEARSON: Yeah. I agree. I'm</p> <p>7 going to sustain the objection.</p> <p>8 Q The questions were limited to whether you had</p> <p>9 personal information about the adequacy of the greeter</p> <p>10 staff. My question follow-up is: Do you have any</p> <p>11 information that is not based on personal knowledge</p> <p>12 that indicates whether SpeediShuttle's greeter staff</p> <p>13 is adequate?</p> <p>14 MR. FASSBURG: That would exceed the</p> <p>15 scope of cross.</p> <p>16 JUDGE PEARSON: And I think he answered</p> <p>17 that question and he did. He answered that question.</p> <p>18 He said he talked to two other customers who said that</p> <p>19 they weren't greeted, but he was unable to identify</p> <p>20 who they were. So I think that's been asked and</p> <p>21 answered.</p> <p>22 Q Then we'll go backward, hopefully. Not my</p> <p>23 favorite direction, but it works today.</p> <p>24 You were asked if you had specific numbers</p> <p>25 regarding losses to TNCs and other modes of</p>	<p>1 MR. FASSBURG: Again, we're going to</p> <p>2 object to the discovery disputes in the hearing.</p> <p>3 There's no benefit for the Commission hearing about</p> <p>4 this.</p> <p>5 JUDGE PEARSON: I'll sustain that</p> <p>6 objection. We had this discussion yesterday, two days</p> <p>7 ago. Excuse me.</p> <p>8 Q Okay. Moving on, you were asked about</p> <p>9 non-English-speaking passengers at some length this</p> <p>10 morning, and you indicated that based on discovery</p> <p>11 responses from SpeediShuttle they have not had a</p> <p>12 single passenger use any of their three non-English</p> <p>13 web pages. Do you recall that?</p> <p>14 A Yes.</p> <p>15 Q What's the importance, in your opinion, of</p> <p>16 that fact in terms of whether they are providing the</p> <p>17 service they said they would?</p> <p>18 A My understanding is that the enhanced features</p> <p>19 were expected to expand the market share, expand the</p> <p>20 accessibility for foreign language speakers as part of</p> <p>21 Mr. Morton's testimony, and it doesn't appear that</p> <p>22 that factor has come to fruition or had any advantage</p> <p>23 to the public as a whole.</p> <p>24 Q If you don't have Japanese, Korean, and</p> <p>25 Chinese web portals and they have them but nobody is</p>
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EXAMINATION BY HARLOW / MARKS 677	EXAMINATION BY HARLOW / MARKS 679
<p>1 transportations, losses of Shuttle Express passenger</p> <p>2 traffic. Do you recall that?</p> <p>3 A Yes.</p> <p>4 Q Do you have an opinion regarding the biggest</p> <p>5 cause of Shuttle Express's decline in passenger</p> <p>6 traffic since 2015?</p> <p>7 A I have lots of opinions. There are</p> <p>8 significant forces that have continually influenced</p> <p>9 the available market for share ride services.</p> <p>10 Q Can you identify the biggest single cause of</p> <p>11 your decline since 2015?</p> <p>12 A I think the biggest single cause of our</p> <p>13 decline I would attribute to SpeediShuttle.</p> <p>14 Q Is there any doubt in your mind on that based</p> <p>15 on the statistical data?</p> <p>16 MR. FASSBURG: Objection, leading.</p> <p>17 JUDGE PEARSON: I think you can move</p> <p>18 on, because I think it's well established that Shuttle</p> <p>19 Express believes that SpeediShuttle is the No. 1 cause</p> <p>20 for its passenger decline.</p> <p>21 Q You were asked about the distinction between</p> <p>22 passengers versus trips. Do you recall that?</p> <p>23 A Yes.</p> <p>24 Q Has Shuttle Express ever asked for actual</p> <p>25 passenger data from SpeediShuttle in this proceeding?</p>	<p>1 using them, does that matter that they have those?</p> <p>2 MR. FASSBURG: Objection, that calls</p> <p>3 for a legal conclusion.</p> <p>4 MR. HARLOW: It calls for his opinion.</p> <p>5 JUDGE PEARSON: What's that?</p> <p>6 MR. HARLOW: I'm calling for his</p> <p>7 opinion.</p> <p>8 MR. FASSBURG: It's also outside the</p> <p>9 scope of cross.</p> <p>10 JUDGE PEARSON: I agree that it is</p> <p>11 outside the scope, and so I will sustain the</p> <p>12 objection.</p> <p>13 BY MR. HARLOW:</p> <p>14 Q We're back to Wednesday, which is an honorary</p> <p>15 Thursday. Now, on Wednesday toward the end of the</p> <p>16 day, there was discussion about the wait times for</p> <p>17 Shuttle Express passengers versus the wait times for</p> <p>18 SpeediShuttle passengers. Do you recall that?</p> <p>19 A I do.</p> <p>20 Q And let me ask you generally, first of all:</p> <p>21 Do you have any reason to believe that SpeediShuttle's</p> <p>22 wait times are materially less than Shuttle Express's</p> <p>23 wait times for passengers?</p> <p>24 A No. In fact, we don't really have a good</p> <p>25 sense of them because the data provided was restricted</p>

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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?

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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**

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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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<p>1 the admission is on the record.</p> <p>2 JUDGE PEARSON: Okay. And that is</p> <p>3 noted on the record as our -- the objections contained</p> <p>4 within the deposition transcript itself. I saw that</p> <p>5 those were there.</p> <p>6 MR. FASSBURG: Sure. And, obviously,</p> <p>7 those are -- there's deposition objections, and</p> <p>8 there's admissibility objections. We are objecting to</p> <p>9 the admissibility.</p> <p>10 JUDGE PEARSON: Right. And recognizing</p> <p>11 all of that.</p> <p>12 So before we start with Mr. Roemer, I think we</p> <p>13 should go through the exhibit list and address the</p> <p>14 objections. I think I have -- I don't have your list</p> <p>15 anymore; right?</p> <p>16 MR. FASSBURG: Did you give it back?</p> <p>17 JUDGE PEARSON: I gave yours back,</p> <p>18 which is the one I need. But before we get to that, I</p> <p>19 think Shuttle, you had a partial objection to HJR-25T?</p> <p>20 MR. HARLOW: I think that's the only</p> <p>21 objection we have for prefiled. Whenever you're</p> <p>22 ready, I'll tell you what the objection is.</p> <p>23 JUDGE PEARSON: Go ahead.</p> <p>24 MR. HARLOW: The objection is to the</p> <p>25 testimony beginning on page 13.</p>	<p>1 combining door-to-door with scheduled service is not</p> <p>2 part of it.</p> <p>3 MR. WILEY: Your Honor, we were</p> <p>4 notified of this objection yesterday morning.</p> <p>5 Obviously, we had previously filed motions to strike</p> <p>6 to address issues like that.</p> <p>7 What Mr. Harlow leaves out in his argument is</p> <p>8 that between that time and the present, there was</p> <p>9 Order 17 issued by Your Honor, which amended Order 08</p> <p>10 to address the issue of service to the satisfaction of</p> <p>11 the Commission. One of the -- as you will note, if</p> <p>12 you go back to our, I believe, March 30 response to</p> <p>13 that notice of intention to amend, we did not object</p> <p>14 to preserving the schedule, but we made very clear</p> <p>15 that we intended our rebuttal to address service to</p> <p>16 the satisfaction of the Commission. That's an indicia</p> <p>17 of that, and that's what that's directed to.</p> <p>18 MR. HARLOW: May I, Your Honor?</p> <p>19 JUDGE PEARSON: Sure.</p> <p>20 MR. HARLOW: I reviewed Order 17 before</p> <p>21 I reached out to them on the previous agreement, and I</p> <p>22 could find nothing in there that changed the</p> <p>23 procedural schedule and scope of any other rounds of</p> <p>24 testimony.</p> <p>25 JUDGE PEARSON: So I would just say</p>
Page 685	Page 687
685	687
<p>1 JUDGE PEARSON: Let me open it real</p> <p>2 quick.</p> <p>3 MR. HARLOW: HJR-25T, page 13,</p> <p>4 beginning at line 1.</p> <p>5 JUDGE PEARSON: I'm sorry. Page?</p> <p>6 MR. HARLOW: Thirteen.</p> <p>7 JUDGE PEARSON: Thirteen.</p> <p>8 MR. HARLOW: See the heading "Combining</p> <p>9 Door-To-Door With Scheduled Service"?</p> <p>10 JUDGE PEARSON: Okay.</p> <p>11 MR. HARLOW: The objection goes from</p> <p>12 line one on that page to page 14, line 8 inclusive.</p> <p>13 JUDGE PEARSON: Hold on. Okay. What's</p> <p>14 your objection?</p> <p>15 MR. HARLOW: The objection is it's</p> <p>16 beyond the scope of the schedule which allowed this</p> <p>17 round of rebuttal testimony. It was supposed to only</p> <p>18 be on the SpeediShuttle complaint, which is</p> <p>19 Docket 161257, and that complaint alleged two things.</p> <p>20 One of them were the commissions paid to hotel</p> <p>21 concierges. The other one was the use of independent</p> <p>22 contractors to provide service.</p> <p>23 And, in fact, we had, informally, among the</p> <p>24 parties, confirmed that that was a limitation of this</p> <p>25 round of testimony were those two topics. And the</p>	<p>1 that I was not aware of any agreement between the</p> <p>2 parties to limit --</p> <p>3 MR. HARLOW: I understand.</p> <p>4 JUDGE PEARSON: -- the scope of this</p> <p>5 testimony, nor did I believe that that was what was</p> <p>6 built into the schedule. I think that my</p> <p>7 understanding has been all along that with each round</p> <p>8 the parties would be responding to testimony and</p> <p>9 exhibits provided by the other parties in the previous</p> <p>10 round.</p> <p>11 And it looks here like Mr. Roemer is</p> <p>12 responding to Mr. Marks's testimony. So I'm going to</p> <p>13 allow it and also because it does fit within the</p> <p>14 expanded scope of these proceedings with respect to</p> <p>15 the question of whether Shuttle Express is providing</p> <p>16 service to the Commission's satisfaction. And it is</p> <p>17 something that I'm going to take into consideration</p> <p>18 because I wasn't even fully aware of it until today</p> <p>19 when Mr. Marks testified about it and I was able to</p> <p>20 ask some follow-up questions. I didn't even</p> <p>21 understand what a flag stop was until this morning.</p> <p>22 And so that's additional information that I will be</p> <p>23 taking into consideration.</p> <p>24 So we can move on now to -- do you have your</p> <p>25 copy of your objections to the other exhibits?</p>

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688	690
<p>1 MR. FASSBURG: I do, Your Honor.</p> <p>2 JUDGE PEARSON: I will clarify for the</p> <p>3 record right now that the parties stipulated to the</p> <p>4 admission of Exhibit HJR-1T through HJR-24, so those</p> <p>5 are all admitted and marked accordingly. I just ruled</p> <p>6 that I will admit HJR-25T. The parties have also</p> <p>7 stipulated to the admission of HJR-26 and HJR-27. I</p> <p>8 also ruled that I will admit HJR-28X. There is a</p> <p>9 stipulation regarding HJR-29X and HJR-30X, and so I</p> <p>10 will admit those into the record and mark them</p> <p>11 accordingly.</p> <p>12 (Exhibit HJR-1T through HJR-30X were</p> <p>13 admitted.)</p> <p>14 JUDGE PEARSON: SpeediShuttle has</p> <p>15 objected to HJR-31X, which is SpeediShuttle's 2015</p> <p>16 annual report. That is a Commission document, so just</p> <p>17 as I held yesterday, I will take official notice of</p> <p>18 that. What was the basis for your objection?</p> <p>19 MR. FASSBURG: We waive the objection.</p> <p>20 It's fine.</p> <p>21 JUDGE PEARSON: There's stipulation</p> <p>22 with respect HJR-32X, so I will admit that and mark it</p> <p>23 accordingly.</p> <p>24 (Exhibit HJR-31X and Exhibit HJR-32X</p> <p>25 were marked.)</p>	<p>1 MR. FASSBURG: Yes.</p> <p>2 JUDGE PEARSON: So we will address</p> <p>3 those later.</p> <p>4 The parties have stipulated to the admission</p> <p>5 of Exhibits HJR-37X through HJR-42X, so I will admit</p> <p>6 those and mark them accordingly.</p> <p>7 (Exhibit HJR-37X through</p> <p>8 Exhibit HJR-42X were admitted.)</p> <p>9 JUDGE PEARSON: And SpeediShuttle has</p> <p>10 an objection to HJR-43X, which is an e-mail string</p> <p>11 from Mr. Harlow to Ms. Gruber dated November 15, 2016.</p> <p>12 MR. HARLOW: Your Honor, we'll withdraw</p> <p>13 that.</p> <p>14 JUDGE PEARSON: You'll withdraw that,</p> <p>15 so that is withdrawn.</p> <p>16 There is stipulation with respect to the</p> <p>17 admission of HJR-44X through HJR-57X, so I will admit</p> <p>18 those and mark them accordingly.</p> <p>19 (Exhibit HJR-44X through</p> <p>20 Exhibit HJR-57X, were admitted.)</p> <p>21 MR. HARLOW: Your Honor, what happened</p> <p>22 with 43 is one we just -- thank you. Sorry.</p> <p>23 JUDGE PEARSON: That's okay.</p> <p>24 And then HJR-58X is an e-mail string --</p> <p>25 MR. FASSBURG: It's multiple e-mail</p>
Page 689	Page 691
689	691
<p>1 JUDGE PEARSON: There were objections</p> <p>2 to HJR-33X, HJR-35X, and HJR-36X, which are similar in</p> <p>3 nature, I assume, because they are all copies of</p> <p>4 wholesale agreements. So do you want to take them up</p> <p>5 individually or as a group? Is it the same basis?</p> <p>6 MR. FASSBURG: Without the complete</p> <p>7 list in front of me, Your Honor, I don't actually</p> <p>8 remember which is which.</p> <p>9 JUDGE PEARSON: So HJR-33X is the 2015</p> <p>10 wholesale share ride rate agreement with The GO Group.</p> <p>11 MR. FASSBURG: I think we don't have an</p> <p>12 objection to that.</p> <p>13 JUDGE PEARSON: Okay. So I will admit</p> <p>14 that and mark it as HJR-33X.</p> <p>15 (Exhibit HJR-33X was admitted.)</p> <p>16 JUDGE PEARSON: The parties have</p> <p>17 stipulated to the admission of HJR-34X, so I will</p> <p>18 admit that.</p> <p>19 (Exhibit HJR-34X was admitted.)</p> <p>20 JUDGE PEARSON: HJR-35X is the 2015</p> <p>21 wholesale shared ride rate agreement with Travelscape.</p> <p>22 MR. FASSBURG: I don't know why it's</p> <p>23 offered, so I think it would be better to take it up</p> <p>24 when it's offered.</p> <p>25 JUDGE PEARSON: And same with HJR-36X?</p>	<p>1 strings. It's 224 pages of many, many e-mails, most</p> <p>2 of which are duplicative. It would be much easier to</p> <p>3 address if this hadn't been filed as 224 pages of</p> <p>4 e-mails.</p> <p>5 My understanding is this is at least a portion</p> <p>6 of all of SpeediShuttle's response to a particular</p> <p>7 data request in terms of what was responsive to what</p> <p>8 we were required to produce, but I don't think even a</p> <p>9 tenth of this is actually helpful information. And</p> <p>10 it's just problematic to have such a big chunk. I</p> <p>11 haven't been able to really go through it to the point</p> <p>12 where I can say here's what I can agree to and here's</p> <p>13 what I can't.</p> <p>14 JUDGE PEARSON: Mr. Harlow?</p> <p>15 MR. HARLOW: There's a lot in here.</p> <p>16 It's a wealth of information relevant to the case.</p> <p>17 First of all, it all came out of the SpeediShuttle</p> <p>18 records and files, and you'll notice every document on</p> <p>19 the bottom right-hand corner has a Bates No. of SS and</p> <p>20 then there's four digits. This was provided in</p> <p>21 response to a data request.</p> <p>22 And if it's important -- it's Nos. 2 and 12,</p> <p>23 and you ordered these responses. So these were</p> <p>24 pursuant to a motion to compel and an order, so you</p> <p>25 found them relevant for that purpose. So I'm sure</p>

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<p style="text-align: center;">692</p> <p>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.</p> <p>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.</p> <p>12 MR. HARLOW: I don't want to ask 13 Mr. Roemer questions about it at all.</p> <p>14 JUDGE PEARSON: Why is it a cross 15 exhibit?</p> <p>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.</p> <p>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</p>	<p style="text-align: center;">694</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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</p>
<p style="text-align: center;">Page 693</p> <p style="text-align: center;">693</p> <p>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.</p> <p>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.</p> <p>10 MR. HARLOW: These are the records of 11 the opposing party.</p> <p>12 JUDGE PEARSON: Right. I understand 13 that. I'm curious why you didn't have one of your own 14 witnesses offer it.</p> <p>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.</p> <p>21 MR. FASSBURG: This was produced months 22 ago.</p> <p>23 MR. WILEY: December, Your Honor.</p> <p>24 MR. HARLOW: Our testimony was filed 25 December 19.</p>	<p style="text-align: center;">Page 695</p> <p style="text-align: center;">695</p> <p>1 you want to refer to it in your questions to 2 Mr. Roemer, we can address it then.</p> <p>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?</p> <p>7 MR. HARLOW: Okay.</p> <p>8 JUDGE PEARSON: And then HJR-59X is an 9 e-mail to the Velloth and others from Harlow dated 10 December 8, 2016.</p> <p>11 MR. FASSBURG: Your Honor, this is, I 12 think, the third or fourth exhibit that is solely 13 related to discovery disputes.</p> <p>14 JUDGE PEARSON: Let me see.</p> <p>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.</p> <p>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.</p>

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696	698
<p>1 JUDGE PEARSON: We can wait and see.</p> <p>2 That's fine.</p> <p>3 With respect to HJR-60X through HJR-72X, the</p> <p>4 parties have stipulated to the admission of those</p> <p>5 exhibits, and so I will admit them and mark them</p> <p>6 accordingly.</p> <p>7 (Exhibit HJR-60X through</p> <p>8 Exhibit HJR-72X were admitted.)</p> <p>9 JUDGE PEARSON: The rest of the</p> <p>10 objections appear to be to SpeediShuttle's responses</p> <p>11 to data requests, so -- and then is it safe to assume</p> <p>12 you're withdrawing your objection to the 2016 annual</p> <p>13 report as well?</p> <p>14 MR. FASSBURG: Yes.</p> <p>15 JUDGE PEARSON: So I will admit HJR-83X</p> <p>16 into the record.</p> <p>17 (Exhibit HJR-83X was admitted.)</p> <p>18 JUDGE PEARSON: Now, with response to</p> <p>19 data requests, do you have a general argument about</p> <p>20 that? I see some you didn't object to and others you</p> <p>21 did.</p> <p>22 MR. HARLOW: I think we're going to</p> <p>23 withdraw 73X.</p> <p>24 JUDGE PEARSON: Seventy-three. Okay.</p> <p>25 I will cross that out.</p>	<p>1 going to allow that.</p> <p>2 So with respect to the data requests that are</p> <p>3 responsive, we can let those in; and with respect to</p> <p>4 the ones that aren't, we aren't going to reargue --</p> <p>5 MR. FASSBURG: Understood.</p> <p>6 JUDGE PEARSON: -- discovery-related</p> <p>7 issues.</p> <p>8 And, you know, with that caveat, Mr. Harlow,</p> <p>9 if -- well, I guess we should just take it up as we</p> <p>10 go. But if there are areas where you can briefly</p> <p>11 describe information that you think would be useful, I</p> <p>12 can decide whether I need it or not, and we can move</p> <p>13 on from there.</p> <p>14 MR. HARLOW: Do the best we can. We</p> <p>15 have, basically, a half day of hearing left, an hour</p> <p>16 and a half of which is for the Staff witnesses. All I</p> <p>17 can do is cover as much ground as possible in that</p> <p>18 limited time.</p> <p>19 JUDGE PEARSON: Understood.</p> <p>20 MR. FASSBURG: He got the deposition</p> <p>21 already. He said that will save some time.</p> <p>22 JUDGE PEARSON: Is that true?</p> <p>23 MR. HARLOW: Yes, it should save some</p> <p>24 time.</p> <p>25 JUDGE PEARSON: Okay. So why don't we</p>
Page 697	Page 699
697	699
<p>1 So then we're just dealing with 74 through 82.</p> <p>2 Mr. Fassburg, I'll leave it up to you whether</p> <p>3 you are going to be making a general argument, general</p> <p>4 objection, or if you want to take them up</p> <p>5 individually.</p> <p>6 MR. FASSBURG: Okay. So 74X I can't</p> <p>7 say yes or no because there's two data requests and</p> <p>8 responses in here. In fact, I think it's three of</p> <p>9 them. Two of them have an answer; one of them</p> <p>10 doesn't. I don't have an objection to ones that have</p> <p>11 an answer, but there's one that doesn't. And I don't</p> <p>12 know why it's in here, so I don't know how to object</p> <p>13 to part of it. So I have to object to the whole.</p> <p>14 JUDGE PEARSON: I see. Well, with</p> <p>15 respect to those where some are answered and some</p> <p>16 aren't, you know, I rejected some that were offered on</p> <p>17 Wednesday because they were nonresponsive. That's</p> <p>18 just simply because they're not useful. If two-thirds</p> <p>19 of it is and one-third is not, there's no harm in</p> <p>20 letting it in.</p> <p>21 MR. FASSBURG: I don't disagree. I'm</p> <p>22 just trying to save time on having discovery disputes</p> <p>23 play out in this examination.</p> <p>24 JUDGE PEARSON: Sure. I'll just say</p> <p>25 right now that I'm not going to do that. I'm not</p>	<p>1 wait until the remainder of these data request</p> <p>2 responses are offered, because, typically, not every</p> <p>3 cross-examination exhibit is offered. If they're not</p> <p>4 offered, I don't admit them. That's just my practice</p> <p>5 unless the parties stipulate they want them in the</p> <p>6 record.</p> <p>7 MR. FASSBURG: That makes sense. I</p> <p>8 file a lot of things in case the witness didn't answer</p> <p>9 the question the way I expected to.</p> <p>10 JUDGE PEARSON: Why don't we do that</p> <p>11 with the rest of those questions.</p> <p>12 And so it is just a few minutes before 12:00.</p> <p>13 Would it make sense to get started for ten minutes, or</p> <p>14 would you rather break for lunch now? How hungry are</p> <p>15 you?</p> <p>16 MR. WILEY: Is an hour possible today?</p> <p>17 Forty-five was tough.</p> <p>18 JUDGE PEARSON: Well, we agreed to</p> <p>19 45 minutes, and you took up most of the morning.</p> <p>20 MR. FASSBURG: We'll do it. I'll make</p> <p>21 him.</p> <p>22 JUDGE PEARSON: So if we break now, we</p> <p>23 would come back at 12:40.</p> <p>24 But I'll leave it up to Mr. Harlow whether you</p> <p>25 want to go for ten minutes and break or rather just</p>

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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 EXAMINATION

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.

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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.

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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?

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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

Page 704	<p>1 to provide service at any airport.</p> <p>2 Q Do you have an exclusive agreement for the</p> <p>3 on-demand at Oahu?</p> <p>4 A We have an exclusive agreement to provide</p> <p>5 on-demand share ride service at Honolulu International</p> <p>6 Airport.</p> <p>7 Q Thank you for the clarification.</p> <p>8 If you would, please, I'm going to start now</p> <p>9 in your cross-examination exhibits. Have you been</p> <p>10 provided with a copy of those?</p> <p>11 A Yeah.</p> <p>12 Q Okay. Let's start with Exhibit HJR-32X, and</p> <p>13 that's a copy of your Ground Transportation Operating</p> <p>14 Agreement -- when I say "your," I mean SpeediShuttle.</p> <p>15 Operating agreement for Seattle; is that correct?</p> <p>16 A It is called the Ground Transportation</p> <p>17 Operating Agreement.</p> <p>18 Q And to your knowledge, is this operating</p> <p>19 agreement materially different from the operating</p> <p>20 agreement with Shuttle Express with the Port of</p> <p>21 Seattle?</p> <p>22 A I do not know what agreement Shuttle Express</p> <p>23 has.</p> <p>24 Q Does this agreement allow you to provide any</p> <p>25 service to the public that's within the scope of your</p>	Page 706	<p>1 Q Turn, please, to Exhibit 33, HJR-33X. Is this</p> <p>2 a copy of your wholesale agreement with The GO Group?</p> <p>3 A This is the ticket agent agreement with The GO</p> <p>4 Group.</p> <p>5 Q And if you would, look, please, at Exhibit A,</p> <p>6 the Wholesale Shared Ride Rates. Do you see that?</p> <p>7 A Uh-huh.</p> <p>8 Q It's on page 3 of 3.</p> <p>9 A Uh-huh.</p> <p>10 Q There aren't any rates for any rural areas.</p> <p>11 Do you notice that?</p> <p>12 A Yeah.</p> <p>13 Q Does The GO Group ever refer customers for the</p> <p>14 rural parts of your service area?</p> <p>15 A They do the same -- the same discount</p> <p>16 presented.</p> <p>17 Q What does The GO Group do generally? What's</p> <p>18 their business?</p> <p>19 A They're a travel wholesaler.</p> <p>20 Q How do they get customers?</p> <p>21 A I don't actually know that.</p> <p>22 Q But they refer a number of customers to you;</p> <p>23 is that correct?</p> <p>24 A That's correct.</p> <p>25 Q Would it be fair to say that The GO Group is</p>
Page 705	<p>1 certificate of operating authority for this</p> <p>2 Commission?</p> <p>3 A I do not know if this agreement even refers to</p> <p>4 our operating authority from this Commission.</p> <p>5 Q I'm using that as a short. Does this allow</p> <p>6 you to do everything at the airport that the</p> <p>7 Commission does, to your knowledge?</p> <p>8 A It allows us to provide door-to-door shuttle</p> <p>9 service to and from -- from -- from specifically</p> <p>10 Sea-Tac Airport.</p> <p>11 Q And does it allow you to provide walk-up</p> <p>12 service?</p> <p>13 A It doesn't distinguish -- I don't believe</p> <p>14 there's anything in here about walk-up service being</p> <p>15 anything any different than any other kind of service.</p> <p>16 Q It doesn't prohibit you from offering walk-up</p> <p>17 service?</p> <p>18 A No, it does not.</p> <p>19 Q Does it require you to use Mercedes vehicles?</p> <p>20 A No.</p> <p>21 Q Does it require you to offer multilingual</p> <p>22 service?</p> <p>23 A No.</p> <p>24 Q Is there anything in here about greeters?</p> <p>25 A No.</p>	Page 707	<p>1 your No. 1 largest wholesale customer?</p> <p>2 MR. FASSBURG: We're going to object.</p> <p>3 I think that isn't relevant to this proceeding. And,</p> <p>4 frankly, I know that how SpeediShuttle's business is</p> <p>5 comprised in terms of its percentage of revenue from</p> <p>6 what type of customer is information they would</p> <p>7 consider proprietary and not something they want</p> <p>8 disclosed to Shuttle Express.</p> <p>9 MR. HARLOW: I wasn't going to ask</p> <p>10 specific numbers.</p> <p>11 A They're one of the two largest. I don't know</p> <p>12 whether they are the largest or not.</p> <p>13 MR. FASSBURG: Jack, in the future,</p> <p>14 please let the judge rule on objections before you</p> <p>15 answer.</p> <p>16 MR. ROEMER: I'm sorry.</p> <p>17 JUDGE PEARSON: I'm going to allow it</p> <p>18 just because I am curious about it myself as to which</p> <p>19 is largest wholesale group.</p> <p>20 BY MR. HARLOW:</p> <p>21 Q What's the other one that might be the largest</p> <p>22 at any given time?</p> <p>23 A Expedia. All the agreements are on file with</p> <p>24 the Commission.</p> <p>25 Q So I want to understand. When a customer</p>

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<p>1 comes to you through The GO Group, who handles the</p> <p>2 booking and the reservations for that particular</p> <p>3 transportation?</p> <p>4 A The GO Group.</p> <p>5 Q Okay. So when they then -- they have to give</p> <p>6 you that reservation; correct?</p> <p>7 A They have to give us the data to fulfill the</p> <p>8 reservations, yes.</p> <p>9 Q And do they give that data in English?</p> <p>10 A They actually give it in binary form, but I</p> <p>11 suppose it's English. It's a text file.</p> <p>12 Q Okay. Do you know if the customer doesn't</p> <p>13 speak English how would they make a reservation with</p> <p>14 The GO Group, if you know?</p> <p>15 A GO does business with other wholesalers. GO</p> <p>16 has their own website. GO as their own apps. I don't</p> <p>17 know what languages GO is available in.</p> <p>18 Q All right. Thank you.</p> <p>19 Is there anything in this agreement that</p> <p>20 you're aware of where you can find right now that</p> <p>21 talks about serving non-English-speaking tourists?</p> <p>22 A Absolutely not.</p> <p>23 Q Turn the page to Exhibit HJR-34X. That's some</p> <p>24 pictures of some of your vans; correct?</p> <p>25 A It appears to be.</p>	<p>1 a wholesale agreement with Travelscape; correct?</p> <p>2 A Yes.</p> <p>3 Q And then in parentheses, it says "('Expedia')"</p> <p>4 in quotes. What does that mean exactly?</p> <p>5 A That means that the company that the agreement</p> <p>6 is with is Travelscape, LLC, and VacationSpot SL, and</p> <p>7 the business name that they represent is Expedia.</p> <p>8 Q Do you see that phone number there, plus 44?</p> <p>9 Do you know where that is?</p> <p>10 A That's London.</p> <p>11 Q Is it common for travel wholesalers that you</p> <p>12 work with to sometimes be out of the country?</p> <p>13 A Sometimes.</p> <p>14 Q Again, with Travelscape, they refer you to</p> <p>15 customer reservations in a binary file?</p> <p>16 A Yes.</p> <p>17 Q This looks to me like it's perhaps the same,</p> <p>18 substantially, if not exactly, template form as</p> <p>19 Exhibit HJR-33X; is that correct?</p> <p>20 A No.</p> <p>21 Q All right. How does this differ from 33X?</p> <p>22 A Expedia has a higher discount than GO Group.</p> <p>23 Q And where do we find that, what page, first of</p> <p>24 all?</p> <p>25 A On Exhibit A.</p>
Page 709	Page 711
<p>1 Q And it has the GO logo on it; is that correct?</p> <p>2 A Yes, it does.</p> <p>3 Q And that's pursuant to an agreement with GO</p> <p>4 Group that you'll have their logo on your vans?</p> <p>5 A We don't actually have an agreement with GO</p> <p>6 Group other than the agreement you just saw. We have</p> <p>7 just informally agreed to put these on our vans to</p> <p>8 make it easier for their customers to identify the</p> <p>9 carrier.</p> <p>10 Q On Wednesday you were here when Mr. Kajanoff</p> <p>11 testified that The GO Group has billed you \$10,000 for</p> <p>12 a license agreement. Do you recall that?</p> <p>13 A I recall Mr. Kajanoff saying that, yes.</p> <p>14 Q So you're disputing that?</p> <p>15 A Absolutely. That's a false statement.</p> <p>16 Q You said you took a semester of law school.</p> <p>17 Do you remember that?</p> <p>18 A Yes, sir.</p> <p>19 Q Did you take any trademark law?</p> <p>20 A No, sir.</p> <p>21 Q Do you know what a trademark is in layman's</p> <p>22 terms?</p> <p>23 A No, sir.</p> <p>24 Q Okay. Then we'll move on.</p> <p>25 Turn, please, to Exhibit HJR-35X. And this is</p>	<p>1 Q Exhibit A.</p> <p>2 A Yeah.</p> <p>3 Q All right. So are pages 1 and 2 the same</p> <p>4 except for the names that have been filled in?</p> <p>5 A I would have to compare line by line.</p> <p>6 Q Okay. Well, spare us that.</p> <p>7 Turn, please, to the next exhibit, HJR-36X.</p> <p>8 JUDGE PEARSON: Just before you do, so</p> <p>9 you didn't object to that last one even though that</p> <p>10 was not an exhibit that you had stipulated to the</p> <p>11 admission -- are you --</p> <p>12 MR. FASSBURG: I think that on the</p> <p>13 ticket agent agreements I said let's see what he asks.</p> <p>14 I didn't have an objection to the question, so I don't</p> <p>15 have an objection to the exhibit.</p> <p>16 JUDGE PEARSON: So I will go ahead and</p> <p>17 admit that and mark it as HJR-35X.</p> <p>18 (Exhibit HJR-35X was admitted.)</p> <p>19 MR. HARLOW: Thank you for the</p> <p>20 reminder, Your Honor.</p> <p>21 JUDGE PEARSON: Sure.</p> <p>22 Then you pointed to HJR-36X?</p> <p>23 MR. HARLOW: Yes.</p> <p>24 BY MR. HARLOW:</p> <p>25 Q This is a similar wholesale agreement to 33</p>

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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.

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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

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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

Page 715

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.

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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?

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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?

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1 **A Correct.**
 2 Q Turn, please, to Exhibit HJR-40X. And is this
 3 some of the communications between your lawyer,
 4 Mr. Wiley, and Port of Seattle that you were referring
 5 to in your prefiled testimony?
 6 **A I can't -- I can't say. It appears to be, but**
 7 **this isn't my communication. I wasn't copied on any**
 8 **of it. This is between -- it appears to be between**
 9 **Mr. Wiley and Mr. Bintinger.**
 10 THE REPORTER: Who was the second one?
 11 MR. ROEMER: Bintinger.
 12 MR. HARLOW: B-I-N-T-I-N-G-E-R.
 13 MR. ROEMER: Whom I don't know.
 14 BY MR. HARLOW:
 15 Q At the time this is dated, May 26, 2015, on
 16 the first page, what was going on with regard to your
 17 business, you're starting business, in Seattle
 18 concerning the Port of Seattle?
 19 You were trying to get started, right, and get
 20 space and arrangements; is that correct?
 21 **A In May?**
 22 Q Yes.
 23 **A I believe in May, we had actually started**
 24 **operating on May 1, unless I'm severely mistaken here.**
 25 Q At the time were you trying to make

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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?

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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**

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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

Page 722

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?

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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

Page 724	<p>1 e-mail.</p> <p>2 A Uh-huh.</p> <p>3 Q And then the third line of the body of the</p> <p>4 e-mail, it says, "This is your first opportunity in</p> <p>5 decades to choose another company's services...." Do</p> <p>6 you see that?</p> <p>7 A Okay.</p> <p>8 Q Is this other company that is being referred</p> <p>9 to Shuttle Express?</p> <p>10 A I don't know. I didn't write this.</p> <p>11 Q Can you think of any other company this would</p> <p>12 be referring to?</p> <p>13 A No, but I didn't write it.</p> <p>14 Q The description goes on to say "...since only</p> <p>15 one company has been permitted to operate in the</p> <p>16 entire King County service area for thirty years."</p> <p>17 In your experience, does that describe Shuttle</p> <p>18 Express?</p> <p>19 A Yeah. I believe it probably does.</p> <p>20 Q Okay. So would it be fair to say that you're</p> <p>21 seeking to have Orbitz refer its wholesale business to</p> <p>22 SpeediShuttle instead of Shuttle Express?</p> <p>23 A Was that a question?</p> <p>24 Q Yes.</p> <p>25 A Could you repeat it? I didn't hear the</p>	Page 726	<p>1 MR. FASSBURG: I was actually trying to</p> <p>2 search for it. We object because he didn't provide</p> <p>3 notice.</p> <p>4 MR. HARLOW: Notice of what?</p> <p>5 MR. FASSBURG: The rules require if you</p> <p>6 intend to use parts of a deposition you need to</p> <p>7 provide notice in advance. We agreed amongst</p> <p>8 ourselves that if you were going to provide an exhibit</p> <p>9 with deposition pages, that would be your notice.</p> <p>10 MR. HARLOW: This is impeachment, Your</p> <p>11 Honor. I asked him if he remembered in this</p> <p>12 deposition saying they don't greet all prearranged</p> <p>13 passengers. And I expected him to say yes, but he did</p> <p>14 not. So I'm impeaching his testimony.</p> <p>15 JUDGE PEARSON: But you don't have -- I</p> <p>16 don't have that in front of me.</p> <p>17 MR. HARLOW: Okay. I guess we need to</p> <p>18 probably publish it, then, and give you a copy.</p> <p>19 MR. FASSBURG: I think that's a</p> <p>20 violation of WAC 480-07-410(4) which provides the rule</p> <p>21 for when you can use depositions at hearings.</p> <p>22 JUDGE PEARSON: Let me refer to that</p> <p>23 rule.</p> <p>24 MR. HARLOW: I'm trying to myself.</p> <p>25 JUDGE PEARSON: 480-07-410?</p>
Page 725	<p>1 question.</p> <p>2 MR. HARLOW: Okay. I'll ask the court</p> <p>3 reporter to read it back, please.</p> <p>4 (Record read back as requested.)</p> <p>5 A No.</p> <p>6 Q Why not?</p> <p>7 A It would be fair to say that it's seeking to</p> <p>8 give Orbitz the opportunity to sell SpeediShuttle</p> <p>9 service. It's not seeking to have them stop selling</p> <p>10 Shuttle Express service. There's nothing in here</p> <p>11 about exclusivity.</p> <p>12 Q Does the witness have available to him his</p> <p>13 deposition transcript?</p> <p>14 MR. FASSBURG: I think probably not.</p> <p>15 MR. ROEMER: I think probably not.</p> <p>16 MR. HARLOW: Thank you for making it</p> <p>17 available to him.</p> <p>18 Q Could you please turn to page 184. We're now</p> <p>19 going back to my earlier question that I said I would</p> <p>20 defer about greeters.</p> <p>21 JUDGE PEARSON: Page what?</p> <p>22 MR. HARLOW: Page 184.</p> <p>23 JUDGE PEARSON: Where are the page</p> <p>24 numbers?</p> <p>25 MR. HARLOW: That's not in our exhibit.</p>	Page 727	<p>1 MR. FASSBURG: 410, part 4.</p> <p>2 JUDGE PEARSON: Part 4.</p> <p>3 MR. FASSBURG: Correct.</p> <p>4 MR. HARLOW: Your Honor, I just don't</p> <p>5 think this applies. This is basic cross-examination.</p> <p>6 If a witness gives an answer that's inconsistent with</p> <p>7 their deposition testimony or any other external</p> <p>8 evidence that you can provide that's admissible, you</p> <p>9 can impeach them with it. This is offered for</p> <p>10 impeachment purposes.</p> <p>11 JUDGE PEARSON: So as I read this, it</p> <p>12 does say that the party must attach -- give notice and</p> <p>13 attach the portions of the deposition that the party</p> <p>14 proposes to offer in the form of exhibits marked for</p> <p>15 identification. And then it says "If portions of a</p> <p>16 deposition are admitted into evidence, other parties</p> <p>17 may offer additional portions of the deposition when</p> <p>18 necessary..." but I would take that not to mean you,</p> <p>19 but to mean other parties for the purpose of balancing</p> <p>20 representation of the testimony.</p> <p>21 MR. HARLOW: Your Honor, I don't mind</p> <p>22 doing this post-hearing in accordance with this rule.</p> <p>23 We were not expecting to have to make this an issue.</p> <p>24 JUDGE PEARSON: Well, so --</p> <p>25 MR. HARLOW: It's directly contrary to</p>

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<p>1 his testimony, and we wouldn't validate it on cross.</p> <p>2 JUDGE PEARSON: You're saying in his</p> <p>3 testimony he said that SpeediShuttle -- that customers</p> <p>4 were greeted every time, and you're trying to</p> <p>5 establish that he's given inconsistent answers?</p> <p>6 MR. HARLOW: His answer is: Generally,</p> <p>7 yes.</p> <p>8 Question: But not always?</p> <p>9 Answer: Not always.</p> <p>10 JUDGE PEARSON: Okay.</p> <p>11 MR. FASSBURG: And, Your Honor, that</p> <p>12 was not his testimony. That was a bench request, and</p> <p>13 that was a different point in time. So, for example,</p> <p>14 if they had greeted every passenger at the time they</p> <p>15 answered the bench request, it could be true no matter</p> <p>16 what his deposition answer was.</p> <p>17 JUDGE PEARSON: Right. I agree with</p> <p>18 you. I also think that it's in the record in several</p> <p>19 places that SpeediShuttle has conceded that there are</p> <p>20 times when customers aren't greeted, when they're not</p> <p>21 greeted by a greeter. So I accept that as true, that</p> <p>22 not every single customer is met with a greeter for</p> <p>23 various reasons.</p> <p>24 I know Mr. Roemer has provided explanations</p> <p>25 where sometimes it's because of the actions of the</p>	<p>1 Honor, but in this proceeding, my client has been</p> <p>2 called a liar repeatedly in a way that's uncalled for.</p> <p>3 And we'd hope that won't continue today.</p> <p>4 JUDGE PEARSON: Okay. And I agree with</p> <p>5 that, so let's just move forward.</p> <p>6 BY MR. HARLOW:</p> <p>7 Q Okay. Moving forward, I think we're moving to</p> <p>8 Exhibit 51X now, HJR-51X. I think I'm going to skip</p> <p>9 this one. It's already in the record.</p> <p>10 Turn, please, to Exhibit 56X, HJR-56X. Now,</p> <p>11 on the very first page, the very first substantive</p> <p>12 line, are you with me? It says: We do provide</p> <p>13 on-demand service in Honolulu Airport (exclusive</p> <p>14 concession agreement), Kona Airport (exclusive</p> <p>15 concession). Do you see that?</p> <p>16 A Yes.</p> <p>17 Q Is this exclusive referenced in this exhibit</p> <p>18 the one that you referred to a few minutes ago on</p> <p>19 cross without the exhibit?</p> <p>20 A Yes.</p> <p>21 Q And, apparently, you have this same thing or</p> <p>22 something similar in the Kona Airport?</p> <p>23 A It's similar. It's not the same.</p> <p>24 Q Okay. Let's go ahead and go to</p> <p>25 Exhibit HJR-58X.</p>
Page 729	Page 731
<p>1 customers. Sometimes it's miscommunication, that</p> <p>2 there are different circumstances, but I would --</p> <p>3 MR. HARLOW: Sometimes Mr. Roemer says</p> <p>4 one thing, and sometimes he says another. We're</p> <p>5 trying to make the record as complete as possible.</p> <p>6 JUDGE PEARSON: I think we should move</p> <p>7 on from this, because I get the point that you're</p> <p>8 trying to make. But as Mr. Fassburg noted, where they</p> <p>9 said "every," it was in response to a data request and</p> <p>10 not testimony provided under oath.</p> <p>11 MR. FASSBURG: And, Your Honor, I</p> <p>12 object to the side bar comments. I didn't malign the</p> <p>13 witnesses of Shuttle Express. I'd actually move to</p> <p>14 strike his comment from the record.</p> <p>15 JUDGE PEARSON: Which was it?</p> <p>16 MR. FASSBURG: Sometimes Mr. Roemer</p> <p>17 says one thing; sometimes he says another.</p> <p>18 JUDGE PEARSON: Okay. Well, I don't</p> <p>19 think --</p> <p>20 MR. HARLOW: He said one thing on the</p> <p>21 stand five minutes ago, and he said another thing in a</p> <p>22 deposition.</p> <p>23 JUDGE PEARSON: I get it. I can take</p> <p>24 it all with a grain of salt.</p> <p>25 MR. FASSBURG: I appreciate that, Your</p>	<p>1 JUDGE PEARSON: This is the doozy?</p> <p>2 MR. HARLOW: This is the one we were</p> <p>3 reserving.</p> <p>4 JUDGE PEARSON: The very long 224-page</p> <p>5 exhibit.</p> <p>6 MR. HARLOW: It's not admitted right</p> <p>7 now, still a work-in-process, thanks to my assistant.</p> <p>8 Q If you would, turn, please, to page 4 of 24.</p> <p>9 A To what page?</p> <p>10 Q Page 4 of 224.</p> <p>11 A Okay.</p> <p>12 Q And do you see in the last line of the second</p> <p>13 full paragraph it says, "Oh yeah.... We have greeters</p> <p>14 with signage at each of the baggage claims..."? </p> <p>15 A Yes.</p> <p>16 Q Okay. And turn, next, please, to page 15 of</p> <p>17 224.</p> <p>18 A Fifteen?</p> <p>19 Q Yes.</p> <p>20 A Okay.</p> <p>21 Q Do you see under "Arrival Procedures" it says</p> <p>22 "Guests will be greeted in baggage claim with a name</p> <p>23 sign on arrival and directed to their shuttle"?</p> <p>24 A Yes.</p> <p>25 Q And if you would, turn, please, to page 51 of</p>

Page 732	Page 734
<p>1 224.</p> <p>2 A Okay.</p> <p>3 Q Okay. This appears to be an e-mail from Susan</p> <p>4 Slappey, Costco Travel, to Lee Collins. Who is Lee</p> <p>5 Collins?</p> <p>6 A Lee Collins was vice president of sales and</p> <p>7 marketing.</p> <p>8 Q And she says "Hi Lee,</p> <p>9 "Once you get things going, hopefully you will</p> <p>10 add more zip codes...."</p> <p>11 Do you see that?</p> <p>12 A Yeah.</p> <p>13 Q Do you know why she would have said that?</p> <p>14 A I do. Because I talked to her.</p> <p>15 Q Okay. So why did she say that?</p> <p>16 A Because she lives in Issaquah, and she wanted</p> <p>17 to know what the fare was from her house.</p> <p>18 Q She said "...I see you don't service</p> <p>19 Issaquah...." Where did she get that impression?</p> <p>20 A I have no idea.</p> <p>21 Q Would it have been your fare card that's</p> <p>22 Exhibit A to a bunch of those wholesale agreements we</p> <p>23 looked at earlier?</p> <p>24 A This is Costco Travel. I don't think we</p> <p>25 looked at anything for Costco Travel.</p>	<p>1 Do you see that?</p> <p>2 A Yes.</p> <p>3 Q And do you offer meet and greet at the port?</p> <p>4 A Uh-huh.</p> <p>5 Q At the cruise port?</p> <p>6 A I don't know if this was for the cruise port.</p> <p>7 Q Turn to page 74 and the second full paragraph.</p> <p>8 It says: A client is trying to book round-trip</p> <p>9 shuttle transfers in Seattle between SEA and the</p> <p>10 cruise port.</p> <p>11 Does that give you the context to understand</p> <p>12 that?</p> <p>13 A Yeah. There it is. Okay. And your question?</p> <p>14 Q So at this time was SpeediShuttle offering</p> <p>15 greeters at the cruise port for the return trip to the</p> <p>16 airport?</p> <p>17 A I don't know the date of this. July 14. I</p> <p>18 don't know when we started positioning greeters at the</p> <p>19 cruise port, so I can't answer your question</p> <p>20 specifically for this date.</p> <p>21 Q Thank you for attempting that. Turn, please,</p> <p>22 to page 76 of 224.</p> <p>23 About 40 percent down the page, it says it's</p> <p>24 an e-mail from Marcela at GTA Travel to Lee Collins</p> <p>25 again. Do you see that?</p>
Page 733	Page 735
<p>1 Q Would you agree then Exhibit 35X, page 3 of 3,</p> <p>2 Exhibit A, you don't show Issaquah as a destination?</p> <p>3 A Exhibit 35?</p> <p>4 JUDGE PEARSON: Page 35?</p> <p>5 MR. HARLOW: HJR-36X. Sorry. I gave</p> <p>6 the wrong one.</p> <p>7 A Those are different companies. That's Viator.</p> <p>8 MR. HARLOW: I'm sorry. I'm</p> <p>9 multitasking here. Did the witness answer?</p> <p>10 (Record read back as requested.)</p> <p>11 Q Well, each of the wholesale agreements that we</p> <p>12 provided, you had an Exhibit A. Was Costco wholesale</p> <p>13 offered a similar agreement with an Exhibit A?</p> <p>14 A Costco Travel, not Costco wholesale. Costco</p> <p>15 Travel does not sell Seattle, so they had no interest</p> <p>16 in our rates.</p> <p>17 Q Turn, please, to page 72 of 224 in Exhibit</p> <p>18 HJR-58X again.</p> <p>19 A Okay.</p> <p>20 Q Do you see later or earlier in this string</p> <p>21 there's an e-mail from Oliver Krieg to Lee Collins,</p> <p>22 "Hi Lee,</p> <p>23 "One more thing. I'll need instructions of</p> <p>24 what guests need to do when arriving at the port.</p> <p>25 "Will they also have meet & greet?"</p>	<p>1 A Yeah. This is all part of the same e-mail</p> <p>2 chain. You're aware of that; right?</p> <p>3 Q I don't have marked where it starts and ends.</p> <p>4 A You're in the same e-mail chain as you were</p> <p>5 here. This is all the same people. It's all the same</p> <p>6 company. So go ahead.</p> <p>7 Q Right. Right. And let's just -- for the</p> <p>8 record, when you're soliciting business from the</p> <p>9 wholesale travel providers, there were often a lot of</p> <p>10 e-mail exchanges over a period of days, maybe weeks or</p> <p>11 even months; is that correct?</p> <p>12 A That's correct. It's not a slam dunk.</p> <p>13 Q And let's go to the root of this 224-page</p> <p>14 exhibit. These were provided to us in response to</p> <p>15 Data Requests 2 and 12. Do you remember those</p> <p>16 requests?</p> <p>17 A There's so many requests. I couldn't tell you</p> <p>18 specifically what 2 and 12 said.</p> <p>19 Q In general, they were requesting and the</p> <p>20 administrative law judge ordered documents be provided</p> <p>21 that show whether SpeediShuttle is or is not</p> <p>22 implementing its business model as presented to the</p> <p>23 Commission.</p> <p>24 A Okay.</p> <p>25 Q Does that help you out?</p>

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<p>1 A I'll accept that for the moment.</p> <p>2 Q Okay. All right. So while we're still on</p> <p>3 page 76, about two-thirds of the way down, Marcela is</p> <p>4 saying, "The existing bookings I will leave with</p> <p>5 Shuttle Express. I am sure once I send the advert</p> <p>6 announcing New Low Rates for Shared Transfer available</p> <p>7 now in Seattle, clients will cancel and rebook with</p> <p>8 SpeediShuttle. But at least it will be their choice</p> <p>9 and there will be no bad blood."</p> <p>10 Do you see that?</p> <p>11 A Yes.</p> <p>12 Q And, in fact, do you know if her wholesale</p> <p>13 travel business had customers who had previously</p> <p>14 booked with Shuttle Express --</p> <p>15 A I have no idea.</p> <p>16 Q -- and rebooked?</p> <p>17 A GTA is a part of a huger company. I have no</p> <p>18 idea what they have and don't have.</p> <p>19 Q To your knowledge and recollection, did</p> <p>20 SpeediShuttle, either you or other people you talked</p> <p>21 with in the company, discuss with wholesale providers</p> <p>22 what they would, could, or might do with existing</p> <p>23 bookings with Shuttle Express once you commenced your</p> <p>24 service in Seattle?</p> <p>25 A No.</p>	<p>1 MR. FASSBURG: I'll repeat my</p> <p>2 objection. This doesn't relate to any of his direct</p> <p>3 testimony. Discovery, when you're responding,</p> <p>4 sometimes there's a judgment call. This is close</p> <p>5 enough we just have to produce it. That's actually</p> <p>6 sometimes the attorney who does that.</p> <p>7 We ask the client to overproduce, and we try</p> <p>8 to identify what we think we must produce to make sure</p> <p>9 that we haven't withheld things inappropriately in</p> <p>10 someone else's view. To ask the witness why they were</p> <p>11 produced actually requires some degree of attorney</p> <p>12 work product because I'll tell you we screened -- we</p> <p>13 asked SpeediShuttle to produce as much as you can</p> <p>14 find. We'll make determinations on what needs to be</p> <p>15 produced.</p> <p>16 JUDGE PEARSON: Okay. Understood.</p> <p>17 MR. HARLOW: Your Honor, Mr. Roemer</p> <p>18 testified for dozens of pages on how they're</p> <p>19 supposedly meeting the business model. What I will</p> <p>20 argue in post-hearing brief, if this is admitted, is</p> <p>21 this shows not that they're doing anything special or</p> <p>22 unique, rather they're soliciting customers, wholesale</p> <p>23 customers, away from Shuttle Express.</p> <p>24 MR. FASSBURG: You can argue that with</p> <p>25 or without additional testimony on this subject.</p>
Page 737	Page 739
<p>1 Q No?</p> <p>2 A To my knowledge, no.</p> <p>3 Q To your knowledge, no. But that could be</p> <p>4 reflected by some of these e-mails; isn't that</p> <p>5 correct?</p> <p>6 A I don't know that you could draw that</p> <p>7 conclusion. This is coming from Marcela, not from</p> <p>8 SpeediShuttle. So I don't --</p> <p>9 Q Let me ask you -- I'll let you finish.</p> <p>10 MR. FASSBURG: Actually, I have an</p> <p>11 objection. I've been letting this go a little while</p> <p>12 because I was curious where it was going. I don't see</p> <p>13 how this relates to any of his direct testimony. This</p> <p>14 isn't appropriate cross-examination testimony.</p> <p>15 MR. HARLOW: Let me get a question. My</p> <p>16 next question should make it pretty clear.</p> <p>17 JUDGE PEARSON: I was starting to</p> <p>18 wonder myself where we were going, so go ahead.</p> <p>19 BY MR. HARLOW:</p> <p>20 Q So your company produced this in response to</p> <p>21 Data Request 2 and 12 about how this meets the</p> <p>22 business model. And in your opinion, how do these</p> <p>23 224 pages show whether or not SpeediShuttle was</p> <p>24 implementing its business model as presented in this</p> <p>25 application to this Commission?</p>	<p>1 JUDGE PEARSON: So here's my suggestion</p> <p>2 and question: This is a 224-page document.</p> <p>3 MR. HARLOW: I'm ready to offer it</p> <p>4 again, Your Honor.</p> <p>5 JUDGE PEARSON: I think it's not</p> <p>6 realistic to ask Mr. Roemer which portions of this</p> <p>7 224-page document support his testimony. You're</p> <p>8 right. He did offer a lot of testimony about how</p> <p>9 SpeediShuttle is adhering to its proposed business</p> <p>10 model.</p> <p>11 If you have questions about specific excerpts</p> <p>12 and you want to ask how that reconciles with his</p> <p>13 assertion that SpeediShuttle is adhering to his</p> <p>14 business model, that's one thing. To ask him to point</p> <p>15 to which places in this 224-page document to support</p> <p>16 his testimony, that's just too much. It's too much to</p> <p>17 ask of him. So if you have more specific questions, I</p> <p>18 will let you ask those.</p> <p>19 MR. HARLOW: Maybe -- we can't sit here</p> <p>20 and go through this in the hearing this afternoon.</p> <p>21 Let me try this as a subject to check maybe.</p> <p>22 JUDGE PEARSON: What do you mean? For</p> <p>23 the entire --</p> <p>24 MR. HARLOW: I'll pose the question</p> <p>25 then.</p>

Page 740	Page 742
<p>1 JUDGE PEARSON: Again --</p> <p>2 MR. HARLOW: Subject to check, there's</p> <p>3 no discussion about providing multilingual services to</p> <p>4 these wholesale customers?</p> <p>5 JUDGE PEARSON: Why don't you ask it in</p> <p>6 that way, in a more conclusive way, rather than</p> <p>7 broader. Narrow it in on whether those specific</p> <p>8 things are in there or not. He can answer yes or no</p> <p>9 subject to check or that he doesn't know. I think</p> <p>10 that's fair.</p> <p>11 BY MR. HARLOW:</p> <p>12 Q Okay. Mr. Roemer, will you accept, subject to</p> <p>13 check, that these numerous e-mail strings don't</p> <p>14 discuss the provision of wholesale service in a</p> <p>15 language other than English?</p> <p>16 A This e-mail chain is 22 pages long. It begins</p> <p>17 in February. There's absolutely no way, without</p> <p>18 reading all 20 pages over a period of five months,</p> <p>19 that I could tell you one way or the other whether</p> <p>20 this e-mail chain ever mentions foreign greeters. I</p> <p>21 just couldn't tell you.</p> <p>22 MR. HARLOW: Your Honor, I think we</p> <p>23 ought to offer it. If they can find something in</p> <p>24 there about non-English, they'll put it in their</p> <p>25 brief; otherwise, I'll say in my brief, you know, in</p>	<p>1 non-English speakers, particularly on the wholesale</p> <p>2 side.</p> <p>3 MR. FASSBURG: If that's really the</p> <p>4 point, I think he's asking the wrong questions.</p> <p>5 Because he probably should ask do some of these</p> <p>6 wholesalers focus on multilingual customers or</p> <p>7 non-English-speaking customers.</p> <p>8 JUDGE PEARSON: Okay. So in light of</p> <p>9 all of that, I will go ahead and admit it and mark it</p> <p>10 as HJR-58X with the caveats that I gave earlier. I</p> <p>11 have looked through it all, so I'm familiar with</p> <p>12 what's in there. I know most of it is irrelevant, so</p> <p>13 I will afford it weight accordingly. And it will</p> <p>14 likely be limited, but -- because I don't want parse</p> <p>15 through it right know.</p> <p>16 (Exhibit HJR-58X was admitted.)</p> <p>17 MR. FASSBURG: I appreciate it, Your</p> <p>18 Honor. Frankly, I don't think there's anything</p> <p>19 damaging in here. It's just a waste of my time to</p> <p>20 have to know.</p> <p>21 JUDGE PEARSON: I understand. I expect</p> <p>22 that if Mr. Harlow wants to rely on it in his</p> <p>23 post-hearing briefing, he will cite to the specific</p> <p>24 examples, and we can then disregard the rest. That</p> <p>25 would be my expectation.</p>
<p>Page 741</p> <p>1 their solicitation to wholesale customers, it's all</p> <p>2 English. It doesn't matter where the customers come</p> <p>3 from.</p> <p>4 MR. FASSBURG: Your Honor, that seems</p> <p>5 to flip the rules about when discovery is admissible</p> <p>6 on its head, and he's suggesting, well, I can't quite</p> <p>7 prove it does what I say it does, so why don't you</p> <p>8 admit it and then I'll prove it later. That's not how</p> <p>9 the rules work.</p> <p>10 And, again, I objected initially exactly to</p> <p>11 these sort of problems. It's 224 pages of a lot stuff</p> <p>12 that he hasn't demonstrated all of which could be</p> <p>13 conceivably relevant or is relevant. He's touched on</p> <p>14 pages up to 82, not all of them, and he hasn't</p> <p>15 addressed what's in the middle. I think it's fine</p> <p>16 that he asks the questions that he did. If he has</p> <p>17 some more specific questions about specific pages that</p> <p>18 are not cumulative, I think we can continue with that.</p> <p>19 But to ask what he's asking just seems a bit much.</p> <p>20 MR. HARLOW: I got a thousand pages of</p> <p>21 these. We trimmed it way down. They're clearly</p> <p>22 authentic. They were produced by the other party.</p> <p>23 There's not going to be a lot of weight given to it,</p> <p>24 but I think the record needs to show what we've been</p> <p>25 saying, which is they're not really marketing to</p>	<p>Page 743</p> <p>1 MR. HARLOW: Of course. I'm not going</p> <p>2 to expect you to read all 224 pages.</p> <p>3 JUDGE PEARSON: But I already did.</p> <p>4 That's the thing.</p> <p>5 MR. HARLOW: I hope it was a sleep aid</p> <p>6 and nothing more. Let's move on to HJR-59X.</p> <p>7 JUDGE PEARSON: This is another one to</p> <p>8 which SpeediShuttle has not yet stipulated to the</p> <p>9 admission. So do you want to wait and see what the</p> <p>10 purpose what it's being offered before --</p> <p>11 MR. HARLOW: Yeah. I'm getting ahead</p> <p>12 of myself. I have some questions ahead of that.</p> <p>13 JUDGE PEARSON: Okay.</p> <p>14 MR. HARLOW: So we'll come back to</p> <p>15 that.</p> <p>16 JUDGE PEARSON: Okay.</p> <p>17 BY MR. HARLOW:</p> <p>18 Q I need to find the right exhibit. It's</p> <p>19 actually HJR-60X.</p> <p>20 JUDGE PEARSON: So just so everyone</p> <p>21 knows, I Googled where Amharic is spoken and it's</p> <p>22 Ethiopia.</p> <p>23 Q Mr. Roemer, did you know where Amharic was</p> <p>24 spoken?</p> <p>25 A Yes.</p>

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<p>1 Q Good for you.</p> <p>2 Let's start with the total number of employees</p> <p>3 SpeediShuttle has had through September 9, 2016, and</p> <p>4 it says 142. Do you see that?</p> <p>5 A Yes.</p> <p>6 Q What's your current employee count?</p> <p>7 A I don't know.</p> <p>8 Q How many payroll checks do you issue every</p> <p>9 month?</p> <p>10 A I don't know.</p> <p>11 Q Who does know that?</p> <p>12 A Seattle management would know.</p> <p>13 Q Seattle management?</p> <p>14 A Yeah.</p> <p>15 Q What's that?</p> <p>16 A The general manager in Seattle would probably</p> <p>17 know how many checks they issue.</p> <p>18 Q You are responsible, generally, for the</p> <p>19 finances in the company; isn't that correct?</p> <p>20 A I'm not the payroll clerk.</p> <p>21 Q Okay.</p> <p>22 A I'm the chief financial officer of</p> <p>23 SpeediShuttle.</p> <p>24 Q Who prepares the financial statement every</p> <p>25 month?</p>	<p>1 I think the understanding were we weren't going to</p> <p>2 submit specifics into the record. If there's a</p> <p>3 disagreement on that, I think we probably should sort</p> <p>4 it out before we ask any questions.</p> <p>5 JUDGE PEARSON: Do I not get to see it?</p> <p>6 MR. FASSBURG: That's something I don't</p> <p>7 know the answer to.</p> <p>8 JUDGE PEARSON: I bet it wouldn't mean</p> <p>9 much to me.</p> <p>10 MR. HARLOW: The answer is I can't give</p> <p>11 it to you, but you can order it to be provided to you.</p> <p>12 MR. FASSBURG: Well, I don't know --</p> <p>13 obviously, you have the right to order that, but I</p> <p>14 don't think that was part of the agreement we had when</p> <p>15 we gave this to Shuttle Express, which I'll remind</p> <p>16 you, by the way, we asked for repeatedly an attorneys'</p> <p>17 eyes only provision, and they wouldn't agree to it.</p> <p>18 JUDGE PEARSON: I'm just wondering if</p> <p>19 it gets to the point where I can't follow what's going</p> <p>20 on. If I could look at it while he's referring to it</p> <p>21 and then give it back to you --</p> <p>22 MR. FASSBURG: What I'd really like to</p> <p>23 do is ask my client his opinion on that before we</p> <p>24 answer the question.</p> <p>25 MR. HARLOW: And while we're doing</p>
Page 745	Page 747
<p>1 A The accounting department and SpeediShuttle.</p> <p>2 Q Do you review them and approve them?</p> <p>3 A I do.</p> <p>4 Q Okay. Do the financial statements reflect</p> <p>5 employee costs?</p> <p>6 A They reflect wages and salaries. They don't</p> <p>7 say the number of employees and -- I've never seen</p> <p>8 financial statements that do.</p> <p>9 Q All right. Do you have in your mind what the</p> <p>10 current monthly employee cost is?</p> <p>11 A No, I don't. I would have to -- I would have</p> <p>12 to pull a financial.</p> <p>13 Q You'd have to what?</p> <p>14 A I would have to pull the financial statements.</p> <p>15 Q Did you bring that with you?</p> <p>16 A No, I did not.</p> <p>17 MR. HARLOW: Your Honor, may I approach</p> <p>18 the witness?</p> <p>19 JUDGE PEARSON: Sure.</p> <p>20 MR. FASSBURG: Before you ask</p> <p>21 questions, I want to put on the record he's handed</p> <p>22 Mr. Roemer a document that was subject to a</p> <p>23 confidentiality agreement, and I think it's necessary</p> <p>24 that we discuss how this is going to be handled.</p> <p>25 Because we agreed he could ask questions about it, but</p>	<p>1 that, Your Honor, we're underscoring the difficulty</p> <p>2 that this particular industry under 81.68 has because</p> <p>3 of the lack of protective orders. I was going to</p> <p>4 suggest maybe we could try to follow the</p> <p>5 confidentiality rules, because we can't get protective</p> <p>6 orders, I don't think we can go there.</p> <p>7 JUDGE PEARSON: Right.</p> <p>8 MR. WILEY: So we're not trying to</p> <p>9 impede you from any knowledge on this. It's just how</p> <p>10 we protect the data that we're concerned about.</p> <p>11 JUDGE PEARSON: You mean from being</p> <p>12 publicized in a transcript?</p> <p>13 MR. WILEY: Correct.</p> <p>14 JUDGE PEARSON: Do you want a short</p> <p>15 break, because I can take a bathroom break?</p> <p>16 MR. FASSBURG: Yes.</p> <p>17 JUDGE PEARSON: Okay. Let's do that</p> <p>18 for four minutes and come back at 1:50.</p> <p>19 (A break was taken from 1:46 p.m. to</p> <p>20 1:50 p.m.)</p> <p>21 JUDGE PEARSON: We'll be back on the</p> <p>22 record.</p> <p>23 MR. WILEY: Your Honor, thank you for</p> <p>24 the break. We've had a chance to consult with our</p> <p>25 client. What we would propose -- and I've handed out</p>

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<p>1 a copy to Mr. Beattie and I will give you one, and</p> <p>2 what we want to avoid is it being produced into the</p> <p>3 record.</p> <p>4 JUDGE PEARSON: Sure.</p> <p>5 MR. WILEY: So if we can get it back</p> <p>6 after the series of questions, that's what we propose.</p> <p>7 JUDGE PEARSON: Sure. Thank you.</p> <p>8 Can I just ask a broad question?</p> <p>9 MR. WILEY: Sure.</p> <p>10 JUDGE PEARSON: Is this the document</p> <p>11 that Mr. Kajanoff often refers to in his testimony</p> <p>12 vaguely without going into estimates?</p> <p>13 MR. FASSBURG: The one that's not the</p> <p>14 estimate, but the one that is from SpeediShuttle.</p> <p>15 JUDGE PEARSON: Yes.</p> <p>16 MR. FASSBURG: Yes, that's the one.</p> <p>17 JUDGE PEARSON: That he compares to his</p> <p>18 estimate?</p> <p>19 MR. FASSBURG: Correct.</p> <p>20 MR. HARLOW: And some of the numbers</p> <p>21 are in Mr. Kajanoff's responsive testimony as well.</p> <p>22 JUDGE PEARSON: You mean Mr. Roemer's?</p> <p>23 MR. HARLOW: Excuse me. Mr. Roemer's.</p> <p>24 Thank you.</p> <p>25 JUDGE PEARSON: Okay. Okay.</p>	<p>1 Q And one of those categories --</p> <p>2 MR. HARLOW: Can I give the name of the</p> <p>3 categories?</p> <p>4 MR. WILEY: Yes.</p> <p>5 Q One of those categories is "Driver Wages and</p> <p>6 Benefits"; correct?</p> <p>7 A Correct.</p> <p>8 Q From that, looking at the figure for five</p> <p>9 months ended September 30, 2016, is -- well, first of</p> <p>10 all, do you know what your drivers are paid?</p> <p>11 A Do I know what they're paid?</p> <p>12 Q They're paid \$15 an hour currently; is that</p> <p>13 correct?</p> <p>14 A No. They're paid -- they're paid Seattle</p> <p>15 minimum wage for companies with less than 500</p> <p>16 employees. I don't know what that is today. I don't</p> <p>17 do the day-to-day payroll.</p> <p>18 Q When did you -- when did your company stop</p> <p>19 paying \$11 an hour and start paying Seattle minimum</p> <p>20 wage?</p> <p>21 A Excuse me?</p> <p>22 Q When did your company stop paying \$11 an hour</p> <p>23 and start paying Seattle minimum wage?</p> <p>24 A Is that sort of like when did you stop beating</p> <p>25 your wife? We have always paid --</p>
Page 749	Page 751
<p>1 MR. HARLOW: Okay. Whenever you're</p> <p>2 ready.</p> <p>3 JUDGE PEARSON: I'm ready.</p> <p>4 MR. HARLOW: We're on the record then.</p> <p>5 BY MR. HARLOW:</p> <p>6 Q Mr. Roemer, you've been handed a yellow</p> <p>7 document on yellow paper that's at the top titled</p> <p>8 "SpeediShuttle Washington, LLC, Income Statements" and</p> <p>9 then in parentheses "1," which, I guess, is the</p> <p>10 footnote. Do you have that?</p> <p>11 A Yes.</p> <p>12 Q And it shows a financial statement of some</p> <p>13 sort in the left two columns for 12 months ended</p> <p>14 April 30, 2016; correct?</p> <p>15 A Yes.</p> <p>16 Q And the far right two columns, it says five</p> <p>17 months ended September 30, 2016; correct?</p> <p>18 A Correct.</p> <p>19 Q And the two columns are a dollar amount --</p> <p>20 under each of those main headings are a dollar amount</p> <p>21 and a percentage; correct?</p> <p>22 A Uh-huh.</p> <p>23 Q And there are various categories of expenses</p> <p>24 and revenue down the left; correct?</p> <p>25 A Yes.</p>	<p>1 Q There's evidence in the record --</p> <p>2 THE REPORTER: I couldn't hear your</p> <p>3 question.</p> <p>4 Q There's evidence in the record that you paid</p> <p>5 \$11 an hour, and you, in your responsive testimony,</p> <p>6 said you were paying, I think, \$15 an hour, but,</p> <p>7 certainly, minimum wage.</p> <p>8 A No. I think you're confused, sir.</p> <p>9 MR. WILEY: Your Honor, if I could</p> <p>10 object to the form of the question. Because I do wage</p> <p>11 and hour litigation, the Seattle minimum wage has</p> <p>12 changed over the past few months by year.</p> <p>13 JUDGE PEARSON: Right.</p> <p>14 MR. WILEY: And I can't say right now</p> <p>15 what it is, but I can tell you it's been staggered for</p> <p>16 three years and it has moved up.</p> <p>17 JUDGE PEARSON: I have seen that in the</p> <p>18 garbage cases that have come through.</p> <p>19 A It was \$11 an hour when we began operating in</p> <p>20 Seattle.</p> <p>21 Q I'm sorry. I couldn't hear that.</p> <p>22 A It was \$11 an hour when we started operating</p> <p>23 in the city -- in the state of Washington. It was</p> <p>24 \$11.</p> <p>25 Q What is the wage in Sea-Tac for employees who</p>

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<p>1 work in that municipality, if you know?</p> <p>2 A It's \$14 and about -- 14 and a half. I'm</p> <p>3 not -- that's not quite right.</p> <p>4 Q Okay.</p> <p>5 A But it's pretty close.</p> <p>6 Q So for the five months ending September --</p> <p>7 A Did I say 14 and a half? Fifteen and a half.</p> <p>8 Q Thank you. So for the five months ending</p> <p>9 September 30, 2016, were the drivers' wages in the</p> <p>10 range of around 15, 16 dollars an hour, something like</p> <p>11 that?</p> <p>12 A Drivers?</p> <p>13 Q Drivers.</p> <p>14 A No.</p> <p>15 Q What were their wages?</p> <p>16 A Their wages would have been the Seattle</p> <p>17 minimum wage at the time for all time except the time</p> <p>18 that they spent within the city limits of the City of</p> <p>19 Sea-Tac, which would have been paid \$15.48. I think</p> <p>20 it's 15.48. I don't know. But I know you're going to</p> <p>21 try to impeach me because it's off by a dime.</p> <p>22 Q No, I'm not trying to get an exact number.</p> <p>23 A Yes, you are.</p> <p>24 Q I'm trying to get some idea of how many -- if</p> <p>25 you can tell from this income statement, roughly, how</p>	<p>1 speak a language other than English, that 42 would</p> <p>2 have not been a total then employed as of September 9,</p> <p>3 2016; is that correct?</p> <p>4 A That wasn't the data request that was asked.</p> <p>5 Q Is my statement correct?</p> <p>6 A Yes.</p> <p>7 Q Okay. Again, it would have been some lesser</p> <p>8 number than 42; is that correct?</p> <p>9 A That's correct.</p> <p>10 Q I count 11 greeters in Exhibit HJR-60X. Do</p> <p>11 you accept that, subject to check?</p> <p>12 A Yeah. I'll accept it, subject to check.</p> <p>13 Q And one of those greeters, at some point in</p> <p>14 time prior to September of 2016, spoke Chinese;</p> <p>15 correct?</p> <p>16 A Yes.</p> <p>17 Q And is that Chinese-speaking greeter still</p> <p>18 working for the company?</p> <p>19 A I don't know.</p> <p>20 Q One spoke Hindi. Is that greeter still</p> <p>21 working for the company?</p> <p>22 A I happen to know the answer is no, because I</p> <p>23 know who she is.</p> <p>24 Q Okay. How about the three Samoan -- two</p> <p>25 Samoan-speaking greeters, are they still working for</p>
Page 753	Page 755
<p>1 many employees you would have had in that period of</p> <p>2 May through September of 2016.</p> <p>3 A I don't know how you could. They're paid by</p> <p>4 the hour. Then you got overtime, and you got -- which</p> <p>5 is time and a half. And I know your position is that</p> <p>6 we don't pay our people according to the law, but we</p> <p>7 do. And so, you know, people work more than 40 hours,</p> <p>8 they get time and a half, and you can't use a</p> <p>9 financial statement to determine the number of</p> <p>10 employees.</p> <p>11 Q All right. As I understand this 142, that was</p> <p>12 a cumulative total of employees. In other words, 142</p> <p>13 individuals had worked for the company from its</p> <p>14 inception to the date of this answer, which was</p> <p>15 September of 2016. Am I understanding that right?</p> <p>16 A That was the request that was made.</p> <p>17 Q So I am understanding that right?</p> <p>18 A We responded to the request that was made, so</p> <p>19 that's what it is.</p> <p>20 Q So as of September 9, 2016, that doesn't mean</p> <p>21 you still had 142 total employees; correct?</p> <p>22 A No.</p> <p>23 Q It would have been some lesser number?</p> <p>24 A Yes.</p> <p>25 Q Okay. Same question with regard to the 42 who</p>	<p>1 the company?</p> <p>2 A I don't know.</p> <p>3 Q How about the three Spanish-speaking greeters,</p> <p>4 are they still working for the company?</p> <p>5 A I don't know.</p> <p>6 Q Do you know how many Ethiopian passengers come</p> <p>7 into Sea-Tac Airport and seek ground transportation?</p> <p>8 A I don't know.</p> <p>9 Q Do you know how many Samoan travelers come</p> <p>10 into Sea-Tac Airport and seek ground transportation?</p> <p>11 A I don't know.</p> <p>12 Q Do you know if you've ever carried a</p> <p>13 Somali-speaking passenger to or from Sea-Tac Airport?</p> <p>14 A I don't know.</p> <p>15 Q Do you know how many -- let me start over.</p> <p>16 Who handles the greeter staffing for your</p> <p>17 company?</p> <p>18 A We've had different people responsible for it</p> <p>19 at different times.</p> <p>20 Q Who currently handles it?</p> <p>21 A Leah Bischoff is technically responsible for</p> <p>22 the greeter staff today.</p> <p>23 Q What was the first name? I didn't catch that.</p> <p>24 A Leah.</p> <p>25 Q That's a woman then?</p>

Page 756	Page 758
<p>1 A Yes.</p> <p>2 Q Okay. So Ms. Bischoff, do you discuss</p> <p>3 staffing with her?</p> <p>4 A No.</p> <p>5 Q Are you responsible for the financial</p> <p>6 oversight of the greeter department?</p> <p>7 A No.</p> <p>8 Q Who is?</p> <p>9 A Leah Bischoff.</p> <p>10 Q Describe to me the process, as you understand</p> <p>11 it, for greeting a pre-reserved passenger who arrives</p> <p>12 at Sea-Tac Airport and is reserved to take on one of</p> <p>13 your shuttles somewhere.</p> <p>14 A I don't understand the question.</p> <p>15 Q Well, how did they meet -- how does a greeter</p> <p>16 meet their passengers?</p> <p>17 A Well, they track flights. We have the flight</p> <p>18 information for most customers. The greeter tracks</p> <p>19 the flight. We know what baggage claim they're at.</p> <p>20 The greeter will go to that baggage claim with a sign</p> <p>21 and wait for the passenger.</p> <p>22 Q What if the passenger only has carry-on</p> <p>23 luggage, how do you greet them?</p> <p>24 A We greet at baggage claim. We say that in our</p> <p>25 confirmation request. We say that in -- we say that</p>	<p>1 claim for all the passengers on that flight to --</p> <p>2 A I have no idea. We don't track it.</p> <p>3 Q Do your greeters ever aggregate passengers</p> <p>4 from different flights?</p> <p>5 A I don't know.</p> <p>6 Q How long does it take the greeter to get from</p> <p>7 baggage claim, once all the passengers they're waiting</p> <p>8 for are together, over to Island 2A?</p> <p>9 A However long it takes to walk over.</p> <p>10 Q Do you know about how long that is?</p> <p>11 A No.</p> <p>12 Q Do you know how long it takes the greeter to</p> <p>13 come back to meet other passengers?</p> <p>14 A However long it takes to walk back over.</p> <p>15 Q Do you know how many passengers an hour a</p> <p>16 greeter can handle on average?</p> <p>17 A That depends on how many of them are on the</p> <p>18 same flight.</p> <p>19 Q Do you know how many flights an hour a greeter</p> <p>20 can handle on average?</p> <p>21 A No, I don't.</p> <p>22 Q Do you know how many greeters the company has</p> <p>23 today?</p> <p>24 A No, I don't.</p> <p>25 Q What's the range in the number of greeters the</p>
<p>Page 757</p> <p>1 in the original application. We say that in the</p> <p>2 original hearing. We greet at baggage claim.</p> <p>3 Q And do your customers always put their flight</p> <p>4 information into a reservations?</p> <p>5 A Depending -- well, it's required if you book</p> <p>6 on the website. It's required if you call the call</p> <p>7 center, but it's not required if you book through a</p> <p>8 wholesaler.</p> <p>9 Q So how do you greet a wholesale passenger?</p> <p>10 A I didn't say it was provided.</p> <p>11 Q How do you greet a wholesale passenger if they</p> <p>12 didn't provide the flight information?</p> <p>13 A We don't. We can't.</p> <p>14 Q So once the passenger connects with the</p> <p>15 greeter with the sign or whatever, what happens next?</p> <p>16 A The greeter -- the greeter will then walk them</p> <p>17 over to Island 2A.</p> <p>18 Q All right. Do they -- does the greeter -- as</p> <p>19 soon as the passenger is there with their baggage, do</p> <p>20 they immediately leave for 2A, or do they wait for</p> <p>21 other passengers sometimes?</p> <p>22 A If there are other passengers coming off the</p> <p>23 same flight, they're going to wait until they have</p> <p>24 them all.</p> <p>25 Q And what's the average wait time at baggage</p>	<p>Page 759</p> <p>1 company will have over a period of a year?</p> <p>2 MR. FASSBURG: Object to the form. You</p> <p>3 said the number of greeters they have over the course</p> <p>4 of a year, as in aggregate or as in staff?</p> <p>5 MR. HARLOW: On the -- available for</p> <p>6 work at any given time.</p> <p>7 A Available?</p> <p>8 Q Do you understand the question? If not, I'll</p> <p>9 rephrase it.</p> <p>10 A I do not understand the question, because it's</p> <p>11 like do you mean just a raw number of how many people</p> <p>12 there are out there somewhere, whether they're working</p> <p>13 or not?</p> <p>14 Q We talked about this a little bit at the</p> <p>15 deposition, and let me put it in that context and that</p> <p>16 may help. So you indicated that the number of</p> <p>17 greeters the company has on the payroll varies</p> <p>18 according to the season. Do you recall that?</p> <p>19 A Yes.</p> <p>20 Q And when would you have -- when would the</p> <p>21 company have the most greeters on payroll?</p> <p>22 A During cruise season.</p> <p>23 Q And that runs from May to September; correct?</p> <p>24 A Yeah.</p> <p>25 Q And when would the company have the least</p>

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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?

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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.**

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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.**

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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**

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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

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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.

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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

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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.

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<p>1 BY MR. HARLOW:</p> <p>2 Q I'm going to go back to the income statement,</p> <p>3 the yellow piece of paper that's not in the record.</p> <p>4 Do you see that in front of you again?</p> <p>5 A Yes.</p> <p>6 Q I'd like you to compare it to Exhibit HJR-1T</p> <p>7 at 15.</p> <p>8 A Which line?</p> <p>9 Q Fifteen.</p> <p>10 A Okay.</p> <p>11 Q Do you see the figure losses of 55 cents for</p> <p>12 every dollar for the first 12 months and 14 cents per</p> <p>13 dollar for the subsequent five months?</p> <p>14 A Yes.</p> <p>15 Q Would you agree that those figures, 55 cents</p> <p>16 and 14 cents, corresponds with figures on the income</p> <p>17 statement?</p> <p>18 A Yes.</p> <p>19 Q And if it's all right with confidentiality,</p> <p>20 can I ask you what figures do those correspond to?</p> <p>21 A Well, it would be net income divided by</p> <p>22 revenue.</p> <p>23 Q Okay. And it's true --</p> <p>24 A Or the other way around. Sorry.</p> <p>25 Q So it's in the percentage column at the bottom</p>	<p>1 any reimbursement of income taxes from the IRS;</p> <p>2 correct?</p> <p>3 A From the IRS?</p> <p>4 Q Yes.</p> <p>5 A The company does not pay taxes to the IRS.</p> <p>6 Q Okay. What I'm trying to get at is this</p> <p>7 income tax provision, is it real or is it just a</p> <p>8 bookkeeping entry?</p> <p>9 A Well, it's absolutely real.</p> <p>10 Q It's not revenue to the company, is it?</p> <p>11 A It's tax benefit to the company that flows</p> <p>12 from the members.</p> <p>13 Q Isn't it a tax benefit to the members?</p> <p>14 A That flows to the company. You can look at it</p> <p>15 any way you want.</p> <p>16 Q How does it flow to the company?</p> <p>17 A Did you ask a question?</p> <p>18 Q How does the income tax benefit flow to the</p> <p>19 company from the members?</p> <p>20 A The members fund it to the company.</p> <p>21 Q Are the members required to fund the company?</p> <p>22 A No.</p> <p>23 Q Let's turn to page 56 of your testimony,</p> <p>24 line 5. There's a discussion of the combined loss.</p> <p>25 Do you see that?</p>
<p>1 specifically?</p> <p>2 A Well, it's the same result, yeah.</p> <p>3 Q Okay. And it's true, is it not, that the 55</p> <p>4 and the 14 are both after-tax effect; is that correct?</p> <p>5 A Yeah.</p> <p>6 Q Has SpeediShuttle -- the tax, excuse me, would</p> <p>7 be federal income tax; correct?</p> <p>8 A Actually, it's federal and state income tax,</p> <p>9 but yes.</p> <p>10 Q Is there state income tax in Washington?</p> <p>11 A No. But there is in Hawaii, a rather</p> <p>12 significant one.</p> <p>13 Q These financial statements are only for</p> <p>14 Washington; right?</p> <p>15 A The income tax effect is generated in both the</p> <p>16 federal level and in Hawaii.</p> <p>17 Q SpeediShuttle of Washington, has it ever paid</p> <p>18 any federal income tax?</p> <p>19 A Has it ever paid any -- Speedishuttle of</p> <p>20 Washington is a limited liability company. Limited</p> <p>21 liability companies do not pay income tax.</p> <p>22 Q So you're saying the income tax effect flows</p> <p>23 through, what, to the members?</p> <p>24 A Correct.</p> <p>25 Q Okay. So the company itself has not received</p>	<p>1 MR. FASSBURG: Can you refer to which</p> <p>2 testimony, just so I can be clear?</p> <p>3 MR. WILEY: It's HJR-1T.</p> <p>4 Q And you see the figure 702,000 on the 190 --</p> <p>5 excuse me. 1,988,000. Do you see that?</p> <p>6 A Yeah.</p> <p>7 Q Okay.</p> <p>8 A I see that.</p> <p>9 Q All right. The 1,988,000 --</p> <p>10 MR. HARLOW: Can I say on the record,</p> <p>11 gentlemen, what that's the sum of?</p> <p>12 A Well, you just want to put this data into the</p> <p>13 record. We understand what you're doing, but I let my</p> <p>14 lawyers handle that.</p> <p>15 MR. HARLOW: What I'm trying to do is</p> <p>16 know if we get into the record the revenue amounts --</p> <p>17 total revenue top line broken out by the 12 months</p> <p>18 ended April 30 and the five months ended September 30</p> <p>19 since we have the sum. Is there any confidentiality</p> <p>20 issue of breaking out the two numbers separately?</p> <p>21 MR. FASSBURG: I'd like to limit the</p> <p>22 entry of numbers into the record as much as possible</p> <p>23 simply because that was the agreement that we had. So</p> <p>24 if I can figure out why you need to do it, it would be</p> <p>25 more helpful.</p>

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<p>1 JUDGE PEARSON: That was my question.</p> <p>2 I'm --</p> <p>3 MR. HARLOW: We need to do it because</p> <p>4 we never could get monthly or quarterly.</p> <p>5 JUDGE PEARSON: Where are you going</p> <p>6 with this?</p> <p>7 MR. HARLOW: Where I'm going with this</p> <p>8 is we can compare this to the annual report, which</p> <p>9 also has total revenue for calendar year. And then we</p> <p>10 can see what the company's revenues were outside of</p> <p>11 the summer peak season.</p> <p>12 MR. WILEY: We have a bench request for</p> <p>13 that very question in terms of passengers.</p> <p>14 JUDGE PEARSON: For passengers. But</p> <p>15 what's the purpose of this?</p> <p>16 MR. HARLOW: Well, I'll tell you what</p> <p>17 the purpose is: We can tell then -- if I give you</p> <p>18 these numbers, I put them in the record.</p> <p>19 MR. FASSBURG: You don't have to use</p> <p>20 the numbers.</p> <p>21 JUDGE PEARSON: Just tell me why.</p> <p>22 MR. HARLOW: We can tell what</p> <p>23 percentage of their revenues came in the four months</p> <p>24 of the peak season and what percentages came in the</p> <p>25 rest of year.</p>	<p>1 MR. WILEY: Your Honor, if I could</p> <p>2 respond, you made perfectly clear repeatedly in your</p> <p>3 rulings that the Commission -- it does not help the</p> <p>4 Commission to know the company's -- their start-up</p> <p>5 loss period or our start-up loss period. They're both</p> <p>6 acknowledged in a matter law, in Seattle Express case,</p> <p>7 in testimony, and in our case.</p> <p>8 JUDGE PEARSON: Right. That's why I'm</p> <p>9 saying we need to cut to the chase.</p> <p>10 MR. HARLOW: That's Mr. Wiley's mantra</p> <p>11 that this is just the start-up loss. We're trying to</p> <p>12 show with actual data, instead of just high-level</p> <p>13 conclusory self-serving testimony, we're trying to</p> <p>14 show with actual data this is not a start-up loss.</p> <p>15 Their losses are actually increasing. Their</p> <p>16 passengers counts are down. Their trips are down.</p> <p>17 Their revenues are flat. They're going nowhere with</p> <p>18 this. They're losing money.</p> <p>19 JUDGE PEARSON: We'll have the data</p> <p>20 about the passenger counts. We know that's coming,</p> <p>21 and that will tell us whether the passengers counts</p> <p>22 are increasing or not.</p> <p>23 MR. HARLOW: It's kind of spotty. I</p> <p>24 mean, it helps us.</p> <p>25 JUDGE PEARSON: Are you alleging that</p>
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<p>1 JUDGE PEARSON: But why does that</p> <p>2 matter?</p> <p>3 MR. HARLOW: That tells us what's</p> <p>4 happened. Because Mr. Roemer testified that we're</p> <p>5 close to profitability, and he did it based on the</p> <p>6 five months, which are the five peak months of the</p> <p>7 company's revenues. And that way we can see what</p> <p>8 their losses were for the rest of the year, which</p> <p>9 counters the fact that they're getting close to</p> <p>10 profitability or break-even. They're not close.</p> <p>11 They're losing money like crazy.</p> <p>12 JUDGE PEARSON: I'm just not clear</p> <p>13 about what you're trying to accomplish with this</p> <p>14 information. The company has repeatedly stipulated</p> <p>15 that they're not yet at profitability. They're still</p> <p>16 in their first two years of operation. If that's what</p> <p>17 you're trying to establish, that's --</p> <p>18 MR. HARLOW: They've also repeatedly</p> <p>19 said we're working our way. We're getting there.</p> <p>20 We're getting to profitability. So, therefore, they</p> <p>21 conclude it's not predatory, but the fact is --</p> <p>22 JUDGE PEARSON: If this goes to your</p> <p>23 service below cost argument, I need you to make a</p> <p>24 clearer path to get there.</p> <p>25 MR. HARLOW: Okay. Let's jump ahead.</p>	<p>1 there are discrepancies between this income statement</p> <p>2 and what they reported to the Commission in their</p> <p>3 annual report?</p> <p>4 MR. HARLOW: No. I'm alleging</p> <p>5 Mr. Roemer's testimony that claims that they're going</p> <p>6 through efficiencies or through economies of scale,</p> <p>7 according to his prefiled testimony. What I am trying</p> <p>8 to show is they don't have efficiencies. They don't</p> <p>9 have economies to scale.</p> <p>10 MR. FASSBURG: And, Your Honor, I'll</p> <p>11 point out -- and we aren't going to re-conduct</p> <p>12 discovery disputes here today was my understanding.</p> <p>13 But I asked through a series of interrogatories to</p> <p>14 Shuttle Express for them to articulate exactly what it</p> <p>15 is about the fares they consider to be predatory</p> <p>16 through fact and law.</p> <p>17 Mr. Harlow didn't respond on time. He waived</p> <p>18 all of his objections, and yet he refused to respond</p> <p>19 to my request. And this particular theory that he</p> <p>20 seems to be espousing at the moment is not part of</p> <p>21 what he actually did respond with. The factual basis</p> <p>22 that he provided has nothing to do with these facts.</p> <p>23 JUDGE PEARSON: Okay.</p> <p>24 MR. HARLOW: Now that's in the record</p> <p>25 because we handled it informally.</p>

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<p>1 JUDGE PEARSON: Well, my understanding</p> <p>2 is that you were going to attempt to make a showing</p> <p>3 that they are pricing their services so low that they</p> <p>4 can't possibly achieve profitability, not that it has</p> <p>5 to do with number of passengers or efficiencies, but</p> <p>6 that it has to do with the cost of providing service</p> <p>7 versus what they're charging their customers.</p> <p>8 MR. HARLOW: This issue is intertwined,</p> <p>9 as Mr. Wood's stricken testimony said, with</p> <p>10 sustainability, and we've kind of had different</p> <p>11 rulings on that. But at one point there's a ruling</p> <p>12 that says the stainability of the two companies</p> <p>13 providing the same service is an issue, and that's</p> <p>14 consistent with 480-30-140, which also says</p> <p>15 sustainability is part of it.</p> <p>16 JUDGE PEARSON: That's different.</p> <p>17 MR. FASSBURG: That's part of --</p> <p>18 THE REPORTER: One at a time, please.</p> <p>19 MR. HARLOW: That's why he's testified</p> <p>20 in his responsive testimony, hey, you know, our losses</p> <p>21 went from 55 cents to 14 cents, but the 14 cents is</p> <p>22 cherry-picked. It's the five most profitable months.</p> <p>23 Even in those months, they didn't make a profit.</p> <p>24 But the other seven months -- I don't know</p> <p>25 what the number is, but they probably lost 55 cents</p>	<p>1 MR. FASSBURG: Your Honor, I'd like to</p> <p>2 respond to a few of the things he said. One of which,</p> <p>3 I think he just characterized your rulings on</p> <p>4 discovery as hide the ball. If we make objections and</p> <p>5 you sustain them, that's not called hide the ball.</p> <p>6 That's called you're asking for something that's</p> <p>7 relevant.</p> <p>8 He had an opportunity more than once to make a</p> <p>9 succinct or long argument, whichever it may be -- my</p> <p>10 point is not about the length. He could have made as</p> <p>11 articulate and well thought out an argument as he</p> <p>12 would have desired to in a motion to compel to put</p> <p>13 this before you a long time ago.</p> <p>14 We understood this was going to be one of his</p> <p>15 large contentions in this hearing because of the</p> <p>16 exhibits that he filed. He is trying to litigate</p> <p>17 through the hearing the discovery disputes all over</p> <p>18 again.</p> <p>19 I think you are actually on to something</p> <p>20 yesterday that seems extremely instructive as to how</p> <p>21 prices compare to cost, and I'd like to -- I'd like to</p> <p>22 bring up something that I've dropped in the past,</p> <p>23 which is we actually asked Shuttle Express to help us</p> <p>24 do a fare comparison between the companies so the</p> <p>25 Commission would be informed by doing a cost-to-fare</p>
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<p>1 again in the other seven months. That financial data</p> <p>2 is available to the company. It would be available to</p> <p>3 the Commission except we keep dancing around</p> <p>4 proprietary claims, which I don't know any other</p> <p>5 company that does this.</p> <p>6 I don't know why we're wasting so much time</p> <p>7 trying to guess at what is happening with that company</p> <p>8 financially when we have good anecdotal data that</p> <p>9 they're losing money and will lose money until one of</p> <p>10 the companies fails, and we could get actual financial</p> <p>11 data.</p> <p>12 Mr. Roemer submits quarterly financials to</p> <p>13 their bank, to their lenders. All we'd have to do is</p> <p>14 get a bench request getting those in, and you could</p> <p>15 compare year over year what's going on. It's this</p> <p>16 hide-the-ball theme, Your Honor. It's so frustrating</p> <p>17 to me.</p> <p>18 I've never done -- I've done rate cases, and</p> <p>19 it's like the telephone company coming in and saying</p> <p>20 we need a rate increase.</p> <p>21 Give us the data.</p> <p>22 No, that's proprietary.</p> <p>23 I mean, we're not going to get a good decision</p> <p>24 out of this or well-founded decision if we don't have</p> <p>25 our data.</p>	<p>1 ratio. We proposed it based on various ZIP Codes, but</p> <p>2 Shuttle Express did not want to provide SpeediShuttle</p> <p>3 financial information. They only wanted it to be a</p> <p>4 one-way street.</p> <p>5 Your thought that I actually think cuts right</p> <p>6 to the heart of it is what are the passengers per trip</p> <p>7 that it requires to be profitability. That is an easy</p> <p>8 way to compare which company has what fare-to-cost</p> <p>9 ratio versus the other one without the actual details.</p> <p>10 And I know Mr. Roemer is prepared to give an answer to</p> <p>11 that.</p> <p>12 JUDGE PEARSON: And I'm prepared to ask</p> <p>13 it.</p> <p>14 MR. FASSBURG: I would ask, in</p> <p>15 fairness, because you asked that of Mr. Kajanoff after</p> <p>16 my cross was over, that you do the same.</p> <p>17 JUDGE PEARSON: I planned to wait, yes.</p> <p>18 MR. FASSBURG: Thank you.</p> <p>19 JUDGE PEARSON: So I think that that</p> <p>20 makes a lot sense. Going back to what you said,</p> <p>21 Mr. Harlow, about the consistency of prior rulings,</p> <p>22 we've always said that we would address the issue of</p> <p>23 the stainability of two providers offering the same</p> <p>24 service because that's what the WAC addresses.</p> <p>25 But we won't entertain the idea that the</p>

Page 780	<p>1 market can only sustain one provider under any</p> <p>2 circumstances, which is what some of Mr. Wood's</p> <p>3 testimony and some of Mr. Marks's testimony was</p> <p>4 attempting to argue, that the market can ever only</p> <p>5 have one provider, period, whether that service is</p> <p>6 different and the same. And that is outside the scope</p> <p>7 of this proceeding.</p> <p>8 So I just want to clarify that that's</p> <p>9 consistently been my holdings and the Commission's</p> <p>10 holdings, but I also understand that that's a really</p> <p>11 kind of precarious line between the two, and it's easy</p> <p>12 to cross over when you're talking about sustainability</p> <p>13 of two providers and to sustainability as a whole, and</p> <p>14 so that's why I think this whole -- all the financial</p> <p>15 stuff is -- it's hard to, I guess, hone in on exactly</p> <p>16 what's relevant and what's needed here and easy to</p> <p>17 start kind of treading over into areas that we've</p> <p>18 already decided we aren't going to visit.</p> <p>19 So I just want you to keep that in mind and</p> <p>20 try to stay focused on -- like, Mr. Fassburg, it's the</p> <p>21 issue of the cost of providing services versus the</p> <p>22 fares. It's too difficult, I think, this early in the</p> <p>23 company's operations to conclude that, because they're</p> <p>24 not making a profit, that must mean that they're</p> <p>25 pricing predatorily, because the record, clearly,</p>	Page 782	<p>1 BY MR. HARLOW:</p> <p>2 Q Okay. Well, let's just get on the record what</p> <p>3 HJR-1T, page 56, line 5 means. It refers to a</p> <p>4 combined 17-month loss. Do you see that?</p> <p>5 JUDGE PEARSON: Did you say page 55?</p> <p>6 MR. HARLOW: Page 56. If I said</p> <p>7 page 55, I was mistaken.</p> <p>8 JUDGE PEARSON: What line is it?</p> <p>9 Q Line 5, combined 17-month lease, \$702,000?</p> <p>10 A Yes.</p> <p>11 Q And is that \$702,000 drawn from the income</p> <p>12 statement that's not in the record?</p> <p>13 A Yes.</p> <p>14 Q And how is it -- how would it be drawn from</p> <p>15 the income statement? Mathematically, how would you</p> <p>16 do it?</p> <p>17 A You would add the two period -- the loss of</p> <p>18 the two periods together.</p> <p>19 Q So that would be the bottom line of the</p> <p>20 financial statement?</p> <p>21 A Yes.</p> <p>22 Q Okay. And then it goes on to say 1,988,000 in</p> <p>23 revenue. Is that also derived from the income</p> <p>24 statement?</p> <p>25 A Yeah. That's the total of the top line.</p>
Page 781	<p>1 shows that Shuttle Express had losses for the first</p> <p>2 few years as well.</p> <p>3 So I just -- I don't know that that's the way</p> <p>4 that you're going to get there, because those losses</p> <p>5 would probably be there for any company in their first</p> <p>6 few years of operation. So if you could focus more on</p> <p>7 the cost of providing service versus the fares that</p> <p>8 are being recovered, that would be a lot more helpful</p> <p>9 to me. So if we can proceed with that in mind -- and</p> <p>10 I don't even remember what we were actually talking</p> <p>11 about.</p> <p>12 MR. FASSBURG: It started out with a</p> <p>13 question about can we get into some of the details on</p> <p>14 what constitutes total revenue, and I think we needed</p> <p>15 an explanation of what he's trying to use with it</p> <p>16 before we could agree.</p> <p>17 JUDGE PEARSON: Okay. So --</p> <p>18 MR. HARLOW: I take it you didn't</p> <p>19 agree?</p> <p>20 MR. FASSBURG: As of right now, no.</p> <p>21 JUDGE PEARSON: So given everything</p> <p>22 I've just said, if you could maybe start your question</p> <p>23 over, keeping all of that in mind, and what it is that</p> <p>24 I'm looking for to be able to make a decision.</p> <p>25</p>	Page 783	<p>1 Q That's the total of the top line. Total</p> <p>2 revenue. Okay.</p> <p>3 And you, in your testimony, used the 55 cents</p> <p>4 and the 14 cents loss per dollar for the beginning --</p> <p>5 for the first 12 months ending in September. So</p> <p>6 that's a whole year period; correct?</p> <p>7 A I'm sorry. Could you repeat that?</p> <p>8 Q The 55-cent loss per dollar is a whole-year</p> <p>9 period; is that correct? It's 12 whole months?</p> <p>10 A It is 12 full calendar months.</p> <p>11 Q Right. Okay. So that deals with seasonal</p> <p>12 variations, but it doesn't deal with your start-up</p> <p>13 period; correct?</p> <p>14 A Our start-up period hasn't finished yet.</p> <p>15 Q It certainly doesn't deal with the four months</p> <p>16 where you weren't operating before May; correct?</p> <p>17 A No. That's not what you said. It includes</p> <p>18 12 full calendar months.</p> <p>19 Q Right. And you began operating in May; is</p> <p>20 that correct?</p> <p>21 A That's correct. May 1.</p> <p>22 Q Did you have very many passengers in May?</p> <p>23 A We had passengers in May.</p> <p>24 Q Did you have very many?</p> <p>25 A I don't know what that means.</p>

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<p>1 Q All right.</p> <p>2 A And I don't know how many we had.</p> <p>3 Q Did you have even a third of the passengers in</p> <p>4 May in 2015 that you had by 2016?</p> <p>5 A I don't know.</p> <p>6 Q Well, we don't have your passenger data yet.</p> <p>7 We had your trip data.</p> <p>8 MR. FASSBURG: I'd like to point out</p> <p>9 the judge sustained objections to data requests for</p> <p>10 the passenger data whereas the trip data was obtained</p> <p>11 from a third-party.</p> <p>12 MR. HARLOW: If we keep sustaining</p> <p>13 objections to all passenger data and all financial</p> <p>14 data, we'll never get this into the record. I'm</p> <p>15 trying to work around as best I can.</p> <p>16 MR. FASSBURG: I understand. I'm</p> <p>17 sorry. Go ahead.</p> <p>18 JUDGE PEARSON: We will have passenger</p> <p>19 counts once they answer the bench request.</p> <p>20 MR. FASSBURG: He's talking about --</p> <p>21 MR. HARLOW: I'm talking --</p> <p>22 THE REPORTER: I can only take one at a</p> <p>23 time. Go ahead.</p> <p>24 MR. FASSBURG: If I understand</p> <p>25 correctly, Mr. Harlow is talking about a monthly</p>	<p>1 That's what I thought, and it won't be useful</p> <p>2 to me either. So I want to just reiterate what I said</p> <p>3 off the record, which was that, consistent with the</p> <p>4 bench request that I issued on Wednesday, I'll just</p> <p>5 take additional data from SpeediShuttle in the form of</p> <p>6 seasonal comparison of passenger counts for 2015 and</p> <p>7 2016. So the passenger counts between May and October</p> <p>8 of 2015 and also 2016 separated out from the other</p> <p>9 periods of the year.</p> <p>10 MR. ROEMER: By month?</p> <p>11 MR. WILEY: No.</p> <p>12 JUDGE PEARSON: By chunk.</p> <p>13 MR. ROEMER: I just wanted to make sure</p> <p>14 we're clear.</p> <p>15 MR. FASSBURG: I would appreciate that</p> <p>16 you clarify that period. Before you do, I did have</p> <p>17 one more comment to make we were discussing outside,</p> <p>18 which is specifically this still doesn't seem to get</p> <p>19 to the cost versus revenue issue. This is literally</p> <p>20 only passenger trends, and so it really doesn't inform</p> <p>21 on the predatory issue.</p> <p>22 The question you had about passengers per trip</p> <p>23 to be profitable really gets straight to the</p> <p>24 particular allegation of fares below cost. I</p> <p>25 understand that they have attempted on numerous</p>
Page 785	Page 787
<p>1 count. You haven't agreed that we were required to</p> <p>2 produce that, and he is comparing information in terms</p> <p>3 of saying we have this versus that. He's comparing</p> <p>4 something that you said we didn't have to produce to</p> <p>5 something we didn't produce.</p> <p>6 MR. HARLOW: Can we discuss this off</p> <p>7 the record for a minute?</p> <p>8 JUDGE PEARSON: With all of us?</p> <p>9 MR. HARLOW: With all of us, yes.</p> <p>10 JUDGE PEARSON: All right. We'll go</p> <p>11 off the record.</p> <p>12 (A break was taken from 2:36 p.m. to</p> <p>13 2:59 p.m.)</p> <p>14 JUDGE PEARSON: Just to summarize, we</p> <p>15 took a recess where we discussed whether it would be</p> <p>16 useful to obtain monthly passenger counts from</p> <p>17 SpeediShuttle. And I wanted to ask Mr. Beattie: Do</p> <p>18 you know if that information would be useful to</p> <p>19 Commission Staff in any way?</p> <p>20 MR. BEATTIE: Could you say that one</p> <p>21 more time, please?</p> <p>22 JUDGE PEARSON: If the monthly</p> <p>23 passenger counts would be useful to Staff.</p> <p>24 MR. BEATTIE: Okay. The answer is no.</p> <p>25 JUDGE PEARSON: Okay. Thank you.</p>	<p>1 occasions to create a new allegation out of their</p> <p>2 original allegation, but that is the allegation they</p> <p>3 made, fares below cost.</p> <p>4 JUDGE PEARSON: Right. I agree with</p> <p>5 you. I think that that other information is more</p> <p>6 useful. I think that having the passenger counts for</p> <p>7 the specific periods of time will just go to the</p> <p>8 question of whether SpeediShuttle is improving its</p> <p>9 business over time or if they're losing business as</p> <p>10 Shuttle Express alleges. It just kind of shows a</p> <p>11 year-over-year comparison, and it's more accurate when</p> <p>12 it's compared seasonally as opposed to on an annual</p> <p>13 basis, but I don't need it broken down month by month.</p> <p>14 I don't see how that would be useful to me in any way.</p> <p>15 Keeping that in mind, you can proceed with</p> <p>16 your cross-examination.</p> <p>17 MR. FASSBURG: But for us, one more</p> <p>18 time, will you repeat the months for which we're</p> <p>19 providing those chunks?</p> <p>20 JUDGE PEARSON: Sure. So let's say</p> <p>21 January 1 through April 30 and then May 1 through</p> <p>22 October 31 is what I believe is the busy season; is</p> <p>23 that correct? Or is it through September 30?</p> <p>24 MR. FASSBURG: Which is it? I don't</p> <p>25 know.</p>

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<p>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</p>	<p>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,</p>
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<p>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?</p>	<p>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</p>

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<p>1 the clock says I have to, so I will.</p> <p>2 BY MR. HARLOW:</p> <p>3 Q Just a couple more on financials, and then</p> <p>4 we'll try to move to a new topic.</p> <p>5 First of all, Mr. Roemer, with regard to the</p> <p>6 income statement and the 55 cents per dollar of</p> <p>7 revenue loss that is net of -- that's after the</p> <p>8 provision for income taxes, without giving the number,</p> <p>9 would you agree that the -- that comparable number</p> <p>10 before income taxes is a higher number? In other</p> <p>11 words, the loss is greater than the after-tax loss?</p> <p>12 A That would be expected, yes.</p> <p>13 Q And the same would be true for the 14 cents</p> <p>14 after-tax loss for the five months ending September 30</p> <p>15 of 2016?</p> <p>16 A That would be expected, yes.</p> <p>17 Q And, Mr. Roemer, given that there's been --</p> <p>18 there appears to be no growth in door-to-door service</p> <p>19 out of the airport generally, how does SpeediShuttle</p> <p>20 intend to grow its passengers moving forward?</p> <p>21 A I'm sorry. I don't accept the premise.</p> <p>22 Q Okay. Okay. So at your deposition, you</p> <p>23 indicated that certain functions for SpeediShuttle of</p> <p>24 Washington are now being performed out of Hawaii. Do</p> <p>25 you recall that?</p>	<p>1 A Seattle.</p> <p>2 Q What about your salary, which company pays</p> <p>3 your salary?</p> <p>4 A Well, I don't work for -- I don't work for</p> <p>5 Seattle. I work for Hawaii.</p> <p>6 Q Okay. So you're paid by Hawaii?</p> <p>7 A Yes.</p> <p>8 Q But you are the CFO for Seattle; correct?</p> <p>9 A Yeah. I'm the CFO for all of the companies.</p> <p>10 Q Okay. Where is your call center handled,</p> <p>11 Hawaii or Seattle?</p> <p>12 A Seattle.</p> <p>13 Q Of all hours of the day?</p> <p>14 A Yes.</p> <p>15 Q For those functions that have been transferred</p> <p>16 to Hawaii, would those be in your financial statements</p> <p>17 for Seattle?</p> <p>18 A The financial statement, yes. Absolutely.</p> <p>19 Q And how is that done?</p> <p>20 A These financial statements was before we got</p> <p>21 rid of the controller. We got rid of one position.</p> <p>22 Q You're still producing financial statements</p> <p>23 internally and providing financial statements</p> <p>24 quarterly to your lenders; correct?</p> <p>25 A That's correct.</p>
<p style="text-align: right;">Page 793</p> <p>1 A I do.</p> <p>2 Q And, specifically, I believe, you identified</p> <p>3 accounting?</p> <p>4 A Specifically, I identified that we no longer</p> <p>5 had a controller --</p> <p>6 Q Okay.</p> <p>7 A -- in Seattle.</p> <p>8 Q Where are the accounting functions performed</p> <p>9 for SpeediShuttle of Washington?</p> <p>10 A They're performed in Seattle, and some of them</p> <p>11 are now performed in Hawaii.</p> <p>12 Q And what about human resources?</p> <p>13 A Hiring and firing, annual reviews, interviews,</p> <p>14 advertising, all done in Seattle.</p> <p>15 THE REPORTER: Mr. Roemer, please speak</p> <p>16 into the mike.</p> <p>17 MR. ROEMER: Yeah, I'm sorry.</p> <p>18 Q What human resources functions have been</p> <p>19 transferred to Hawaii then?</p> <p>20 A I don't think any -- I don't think I said any</p> <p>21 human resources functions have been transferred to</p> <p>22 Hawaii. All I said was that we terminated the</p> <p>23 controller in February of this year.</p> <p>24 Q Where do your employment applications go for</p> <p>25 Seattle?</p>	<p style="text-align: right;">Page 795</p> <p>1 MR. FASSBURG: Objection. He's already</p> <p>2 answered it, but I don't think we need to talk more</p> <p>3 about other financial statements.</p> <p>4 JUDGE PEARSON: Sustained.</p> <p>5 Q You provided the Commission, from this</p> <p>6 unadmitted income statement, the losses for the</p> <p>7 company for just a five-month snapshot of 2016;</p> <p>8 correct?</p> <p>9 A No. I provided GAAP financial statements for</p> <p>10 a full 12-calendar-month period and for a stump period</p> <p>11 from that date forward to the date these were</p> <p>12 provided.</p> <p>13 Q But, I mean, let me ask it a different way.</p> <p>14 The loss of 14 cents per dollar of revenue was for a</p> <p>15 five-month period in 2016; is that correct?</p> <p>16 A Yeah. It was the period from the beginning --</p> <p>17 from the end of our first 12 full months of operation</p> <p>18 to the date this was provided.</p> <p>19 Q Do you have financial statements that reflect</p> <p>20 the company's income or loss for the entire period of</p> <p>21 2016?</p> <p>22 MR. FASSBURG: Objection, same</p> <p>23 objection I just made. He's getting into things that</p> <p>24 are outside of this. What's the point of that?</p> <p>25 There's no relevance.</p>

<p>Page 796</p> <p>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</p>	<p>Page 798</p> <p>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</p>
<p>Page 797</p> <p>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</p>	<p>Page 799</p> <p>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</p>

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<p>1 today.</p> <p>2 JUDGE PEARSON: I will sustain that.</p> <p>3 MR. HARLOW: Your Honor, he just</p> <p>4 testified the basis for his assumption about how they</p> <p>5 were going to get profitable was increasing</p> <p>6 passengers, and that's all based on the Hawaii</p> <p>7 experience.</p> <p>8 MR. FASSBURG: He didn't say it was</p> <p>9 related exactly how they operate in Hawaii. He said</p> <p>10 it's based on his experience operating in Hawaii, and</p> <p>11 he didn't say Hawaii. Mr. Harlow did.</p> <p>12 JUDGE PEARSON: Let's move on,</p> <p>13 Mr. Harlow.</p> <p>14 BY MR. HARLOW:</p> <p>15 Q Okay. Do the losses of SpeediShuttle of</p> <p>16 Washington benefit the Hawaiian company or the</p> <p>17 Hawaiian operations in some manner?</p> <p>18 A I'm sorry. I don't understand the question.</p> <p>19 Q We'll move on. Let's talk a little bit about</p> <p>20 one of your features you use to try to distinguish</p> <p>21 your service, which is the Mercedes vans.</p> <p>22 Would you agree that the annual cost of a</p> <p>23 Mercedes van is \$12,000 more than the Fords, as</p> <p>24 Mr. Kajanoff has testified?</p> <p>25 A No.</p>	<p>1 testifying, I think we should cross-examine</p> <p>2 Mr. Harlow. There hasn't been any testimony from</p> <p>3 Mr. Roemer --</p> <p>4 MR. HARLOW: I'll strike that. It's</p> <p>5 not important. It was only for a little moment of</p> <p>6 levity. That's all.</p> <p>7 BY MR. HARLOW:</p> <p>8 Q Okay. If you would, turn, please, to your</p> <p>9 prefiled testimony at page 52, HJR-1T, and at line 13.</p> <p>10 "How do you propose the Commission should examine your</p> <p>11 fare structure in this proceeding?"</p> <p>12 Your answer was: "I suggest it use the same</p> <p>13 method it used to initially approve our approved</p> <p>14 tariff in the first place, and I have full confidence</p> <p>15 in the staff's ability to perform that."</p> <p>16 Do you see that?</p> <p>17 A Yes.</p> <p>18 Q Did the Staff examine your fare structure in</p> <p>19 this proceeding as in accordance with your documents?</p> <p>20 A I presume they did. We filed our tariff, and</p> <p>21 they spent some time and they approved our tariff.</p> <p>22 Q When did you file the tariff?</p> <p>23 A We would have filed the tariff with our</p> <p>24 original application.</p> <p>25 Q So they haven't done an investigation in this</p>
Page 801	Page 803
<p>1 Q Why is that?</p> <p>2 A I don't know the basis of that number.</p> <p>3 Q Do you know how much your vans cost?</p> <p>4 A I do.</p> <p>5 Q How much?</p> <p>6 A I know how much they cost.</p> <p>7 MR. FASSBURG: I'm going to object to</p> <p>8 the request for that specific detail because I</p> <p>9 understand they have an agreement negotiated with the</p> <p>10 dealership that is not something other providers</p> <p>11 necessarily are able to obtain based on the volume</p> <p>12 that they purchased, and I don't think that it's</p> <p>13 something -- I know that's something they consider to</p> <p>14 be highly proprietary and not willing to disclose.</p> <p>15 JUDGE PEARSON: Okay. I can sustain</p> <p>16 that, because I don't think that it's particularly</p> <p>17 useful information for my purposes anyway. You can</p> <p>18 ask questions about the fair market value of those</p> <p>19 vans, if you like, if that's something anyone can find</p> <p>20 on the internet.</p> <p>21 MR. HARLOW: I think he testified the</p> <p>22 fair market value when they were done with them is</p> <p>23 zero, so I'm not sure that's going to help us.</p> <p>24 MR. ROEMER: Excuse me?</p> <p>25 MR. FASSBURG: If Mr. Harlow is</p>	<p>1 rehearing proceeding; is that correct?</p> <p>2 MR. WILEY: Your Honor, I object to the</p> <p>3 form.</p> <p>4 MR. HARLOW: Wait a minute. Wait a</p> <p>5 minute. Who's defending this witness? I don't</p> <p>6 believe I get two objections from two lawyers.</p> <p>7 Mr. Fassburg is handling this. I object to that.</p> <p>8 MR. WILEY: We're alternating.</p> <p>9 MR. HARLOW: I object to that.</p> <p>10 MR. WILEY: We're not double-teaming.</p> <p>11 We're just alternating.</p> <p>12 MR. FASSBURG: I adopt the objection,</p> <p>13 but we're one ranger, one rider.</p> <p>14 JUDGE PEARSON: Can you repeat what</p> <p>15 you said, Mr. Harlow?</p> <p>16 MR. HARLOW: I'd ask the court reporter</p> <p>17 to read it back, please, because I'm not sure I can.</p> <p>18 (Record read back as requested.)</p> <p>19 JUDGE PEARSON: And you objected to the</p> <p>20 form of the question?</p> <p>21 MR. FASSBURG: We're objecting because</p> <p>22 the tariff was filed in the application docket, which</p> <p>23 is the same docket. This is a rehearing, so the</p> <p>24 tariff has been investigated by Staff when it was</p> <p>25 approved in the docket.</p>

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<p>1 JUDGE PEARSON: Do you want to rephrase 2 your question?</p> <p>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.</p> <p>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?</p> <p>11 MR. HARLOW: Exactly.</p> <p>12 JUDGE PEARSON: That might be a 13 question better reserved for Staff.</p> <p>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?</p> <p>18 A You would have to ask Staff. Not that we know 19 of, but you would have to ask Staff.</p> <p>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?</p> <p>24 A I don't think they were that high. I could be 25 wrong.</p>	<p>1 Q Okay. And how do you get more passengers on a 2 trip?</p> <p>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.</p> <p>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?</p> <p>10 A That may be what Shuttle Express does. That's 11 not our business plan. That's not our model.</p> <p>12 Q Is that one way you could do it?</p> <p>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.</p> <p>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?</p> <p>22 A No.</p> <p>23 Q How can two companies dispatch vans to the 24 same service area at the same speed?</p> <p>25 A I don't agree with your premise that there are</p>
<p>1 JUDGE PEARSON: Could you come closer 2 to the microphone?</p> <p>3 A I don't think they were that high, but I could 4 be wrong.</p> <p>5 MR. FASSBURG: Sounds like a no.</p> <p>6 Q If you want to look at the annual report, it's 7 HJR-31X.</p> <p>8 JUDGE PEARSON: This is for 2015; 9 correct?</p> <p>10 MR. HARLOW: Correct.</p> <p>11 JUDGE PEARSON: Okay. What page is 12 that on?</p> <p>13 MR. HARLOW: Well, you'll find trips 14 and passengers on, yes, page 6, 6 of 11.</p> <p>15 Q If you want to use a calculator or just do 16 mental math.</p> <p>17 A It's about three. It looks like it's about 18 three.</p> <p>19 Q I think we established that for -- I think you 20 agreed for 2016 it was about 3.8?</p> <p>21 A Yeah. It's well over three.</p> <p>22 Q So how did the company get from 3.0 -- or 23 about 3 to about 3.8?</p> <p>24 A That would be carrying -- that would be 25 carrying more passengers per trip.</p>	<p>1 only two companies providing service to downtown 2 Seattle.</p> <p>3 Q So your theory is you just have to get 4 passengers out of taxis and into your vans; is that 5 right?</p> <p>6 A No. I don't agree that the only competition 7 is taxis.</p> <p>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?</p> <p>13 A Yes.</p> <p>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?</p> <p>18 A Yeah, I do recall getting that question.</p> <p>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?</p> <p>23 A I don't recall the answer. I mean, it is what 24 it is.</p> <p>25 Q Will you suspect, subject to check, the answer</p>

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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

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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

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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.

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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

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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

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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,

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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**

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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**

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<p>1 figure it out.</p> <p>2 Q Do you have any estimate based on your</p> <p>3 knowledge and workings in the company?</p> <p>4 A No. I don't have any estimate that I would be</p> <p>5 able to provide backup for in your follow-up</p> <p>6 questions, so no.</p> <p>7 Q Let's turn back to your prefiled testimony.</p> <p>8 I'll get you a page in a minute. Starting at page 54,</p> <p>9 HJR-1T, you're answering questions about</p> <p>10 Mr. Kajanoff's pro forma. You call it a financial</p> <p>11 statement. Mr. Kajanoff wasn't allowed to use your</p> <p>12 actual financial statement that you had provided;</p> <p>13 isn't that correct?</p> <p>14 A Pursuant to a confidentiality agreement</p> <p>15 between the parties, I believe that is correct.</p> <p>16 Q You indicate at line 18 "Shuttle Express asked</p> <p>17 us to produce a financial statement for May 1, 2015</p> <p>18 through December 31, 2015 and a second covering</p> <p>19 January 1, 2016, through September 2016."</p> <p>20 And you criticize that; is that correct?</p> <p>21 A I said it's not GAAP, but go ahead.</p> <p>22 Q So, in other words, you didn't think it</p> <p>23 conformed to Generally Accepted Accounting Principles?</p> <p>24 A I know it doesn't.</p> <p>25 Q Did Shuttle Express ask for that data in your</p>	<p>1 be -- because he just said something to the effect</p> <p>2 that they ask for everything, my question was going to</p> <p>3 be: Have you seen Exhibit HJR-59X? That's the first</p> <p>4 question.</p> <p>5 JUDGE PEARSON: And then where are you</p> <p>6 going from there?</p> <p>7 MR. HARLOW: The next question is: Is</p> <p>8 that the other financial data they asked for besides</p> <p>9 what you said was presented in your prefiled</p> <p>10 testimony?</p> <p>11 MR. FASSBURG: Again, this is a</p> <p>12 discovery dispute. I don't understand why we need to</p> <p>13 do this today.</p> <p>14 MR. HARLOW: It's not a discovery</p> <p>15 dispute. It goes to the credibility of the witness.</p> <p>16 He pretends like we asked for non-GAAP information.</p> <p>17 In fact, we not only asked for several times of</p> <p>18 GAAP-consistent information, we also said we could</p> <p>19 accept something consistent with GAAP or a monthly</p> <p>20 spreadsheet. We left it up to them to produce</p> <p>21 something that they would agree would conform to GAAP.</p> <p>22 MR. FASSBURG: This is still discovery.</p> <p>23 JUDGE PEARSON: I also don't find it</p> <p>24 relevant for my purposes, so I'd like you to just move</p> <p>25 on.</p>
Page 817	Page 819
<p>1 prefiled testimony?</p> <p>2 A They asked for everything.</p> <p>3 Q Let's take a look at Exhibit HJR-59X.</p> <p>4 MR. FASSBURG: We're going to reassert</p> <p>5 our objection to this and ask --</p> <p>6 MR. HARLOW: I haven't asked the</p> <p>7 question. I haven't offered the exhibit or asked a</p> <p>8 question. Let me do that, and I'll give you a chance</p> <p>9 to make your objection.</p> <p>10 MR. FASSBURG: I'm speaking, and I'd</p> <p>11 like to make my objection at the time that I'm making</p> <p>12 it as opposed to you telling me when I can object.</p> <p>13 Now that we have a little bit more of a</p> <p>14 context, he's, again, going through discovery</p> <p>15 disputes. The first testimony that he read related to</p> <p>16 Mr. Roemer criticizing the request that they made.</p> <p>17 That's a discovery issue. Sure, the parties argued at</p> <p>18 discovery a little bit in their testimony, but this is</p> <p>19 still a discovery dispute regardless of where it is in</p> <p>20 the testimony. And this e-mail is, again, attorney to</p> <p>21 attorney.</p> <p>22 JUDGE PEARSON: Mr. Harlow, I'll let</p> <p>23 you ask your question or explain where you're going</p> <p>24 with this.</p> <p>25 MR. HARLOW: My question was going to</p>	<p style="text-align: center;">EXAMINATION BY BEATTIE / ROEMER 819</p> <p>1 MR. HARLOW: We'd like to be done with</p> <p>2 cross of this witness.</p> <p>3 JUDGE PEARSON: Okay.</p> <p>4 MR. HARLOW: No further cross at this</p> <p>5 time.</p> <p>6 JUDGE PEARSON: Thank you.</p> <p>7 Mr. Beattie, do you have questions for</p> <p>8 Mr. Roemer?</p> <p>9 MR. BEATTIE: Yes, thank you.</p> <p style="text-align: center;">E X A M I N A T I O N</p> <p>11 BY MR. BEATTIE:</p> <p>12 Q Mr. Roemer, does SpeediShuttle Seattle provide</p> <p>13 auto transportation service using non-owned vehicles?</p> <p>14 A No.</p> <p>15 Q Does SpeediShuttle Seattle provide auto</p> <p>16 transportation service using nonemployee drivers?</p> <p>17 A No.</p> <p>18 MR. BEATTIE: Thank you. No further</p> <p>19 questions.</p> <p>20 MR. FASSBURG: May we take a</p> <p>21 five-minute break before redirect?</p> <p>22 JUDGE PEARSON: I have questions. Can</p> <p>23 I go first or do you need --</p> <p>24 MR. WILEY: Absolutely.</p> <p>25 MR. FASSBURG: We don't need a break</p>

<p style="text-align: right;">Page 820</p> <p style="text-align: center;">EXAMINATION BY JUDGE PEARSON / ROEMER 820</p> <p>1 for that.</p> <p>2 EXAMINATION</p> <p>3 BY JUDGE PEARSON:</p> <p>4 Q Okay. So, Mr. Roemer, I'm going to ask you</p> <p>5 the same question that I asked Mr. Kajanoff yesterday,</p> <p>6 which is: On average for your lowest cost trip, which</p> <p>7 I assume would be to downtown Seattle as it is for</p> <p>8 Shuttle Express --</p> <p>9 A It's not, but I'll answer it.</p> <p>10 Q It's not?</p> <p>11 A No. Theirs isn't either, but I'll answer it</p> <p>12 in that respect because it is the majority of</p> <p>13 everybody's trips.</p> <p>14 Q Okay. So at what capacity, meaning number of</p> <p>15 seats sold, does that trip become profitable for</p> <p>16 SpeediShuttle?</p> <p>17 A About four.</p> <p>18 Q Okay. And then my other question was: Are</p> <p>19 you able to get information -- when I was looking at</p> <p>20 one of the data request responses that related to the</p> <p>21 number of SpeediShuttle employees and the number of</p> <p>22 employees that spoke languages other than English, are</p> <p>23 you able to get information about the actual total</p> <p>24 number of SpeediShuttle employees today, not</p> <p>25 cumulative, but how many employees SpeediShuttle has</p>	<p style="text-align: right;">Page 822</p> <p style="text-align: center;">822</p> <p>1 over with.</p> <p>2 MR. WILEY: I think we all do.</p> <p>3 MR. ROEMER: I want this over with, and</p> <p>4 either we're operating in Seattle or not. I just want</p> <p>5 it done.</p> <p>6 JUDGE PEARSON: So I'm looking for,</p> <p>7 again, just current numbers. I don't want cumulative</p> <p>8 numbers.</p> <p>9 MR. ROEMER: I understand.</p> <p>10 JUDGE PEARSON: Okay.</p> <p>11 MR. HARLOW: Your Honor, could we</p> <p>12 revisit the total year losses? We've got revenue in</p> <p>13 the annual report. We know that there are 3.83 load</p> <p>14 factor already, so they should be very close to</p> <p>15 breaking even, which he's writing about the four being</p> <p>16 the breakeven point. Can we test that by getting the</p> <p>17 cost for 2016? We already have the revenues, just one</p> <p>18 more data point.</p> <p>19 MR. FASSBURG: Your Honor, we're done</p> <p>20 with testimony except for redirect. The push for more</p> <p>21 and more information becomes more and more</p> <p>22 prejudicial.</p> <p>23 JUDGE PEARSON: Yeah, I agree. I don't</p> <p>24 need that data. I feel pretty strongly that the</p> <p>25 Commission's process for approving tariffs is set up</p>
<p style="text-align: right;">Page 821</p> <p style="text-align: center;">EXAMINATION BY JUDGE PEARSON / ROEMER 821</p> <p>1 today and then get me an updated list of the employees</p> <p>2 who speak languages other than English that looks just</p> <p>3 like the list you provided in response to the data</p> <p>4 request? So it would just list their position and the</p> <p>5 language that they speak, no other identifying</p> <p>6 information, because that would be helpful to me.</p> <p>7 A We can get it. We're going to have to poll</p> <p>8 the employees, because we don't --</p> <p>9 Q That's not information that you keep in their</p> <p>10 employee file? It's not something you find out when</p> <p>11 you're hiring them?</p> <p>12 A No, no.</p> <p>13 Q Okay. So if you can do that for me, I will</p> <p>14 label that Bench Request No. 3. And what would be a</p> <p>15 sufficient amount of time for you to get that? Do you</p> <p>16 need a couple of weeks for that one?</p> <p>17 MR. WILEY: I would think at least;</p> <p>18 right?</p> <p>19 MR. ROEMER: Sorry?</p> <p>20 MR. WILEY: Wouldn't you need at least</p> <p>21 two weeks?</p> <p>22 MR. ROEMER: First, I got to get a</p> <p>23 roster.</p> <p>24 MR. WILEY: Want to say three weeks?</p> <p>25 MR. ROEMER: Make it two. I want this</p>	<p style="text-align: right;">Page 823</p> <p style="text-align: center;">EXAMINATION BY FASSBURG / ROEMER 823</p> <p>1 so that pricing can't be predatory, so I don't need</p> <p>2 all of this extra information. I think I have what I</p> <p>3 need at this point and with the additional information</p> <p>4 that I'll get, and I'm going to leave it at that.</p> <p>5 So I think that's all that I have for</p> <p>6 Mr. Roemer. Do you have any redirect?</p> <p>7 MR. FASSBURG: We have a short</p> <p>8 redirect, but we'd like to take a quick break first.</p> <p>9 JUDGE PEARSON: Let's do that. How</p> <p>10 long? Five minutes fine?</p> <p>11 MR. FASSBURG: Five minutes is fine.</p> <p>12 JUDGE PEARSON: We'll be off the record</p> <p>13 for five minutes.</p> <p>14 (A break was taken from 3:46 p.m. to</p> <p>15 3:57 p.m.)</p> <p>16 JUDGE PEARSON: All right. Let's be</p> <p>17 back on the record.</p> <p>18 And, Mr. Fassburg, you can proceed with</p> <p>19 redirect.</p> <p>20 MR. FASSBURG: Thank you.</p> <p>21 EXAMINATION</p> <p>22 BY MR. FASSBURG:</p> <p>23 Q Mr. Roemer, you were asked some questions</p> <p>24 earlier about whether you greet all of your guests.</p> <p>25 Does SpeediShuttle do anything to monitor greeters to</p>

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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

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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

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1 as the actual due date.
 2 MR. FASSBURG: Thank you.
 3 JUDGE PEARSON: Okay. So we are ready
 4 to call the next witness, who I believe, Mr. Young,
 5 you'll be going first?
 6 If you could, please stand and raise your
 7 right hand.
 8
 9 MICHAEL PATRICK YOUNG, witness herein, having been
 10 first duly sworn on oath,
 11 was examined and testified
 12 as follows:
 13
 14 JUDGE PEARSON: Please be seated.
 15 Mr. Beattie, do you have any preliminaries?
 16 MR. BEATTIE: Is Mr. Young going to
 17 remain seated next to me?
 18 JUDGE PEARSON: Sure. I'm so used to
 19 Staff staying right here. Sure. Why don't you come
 20 on over.
 21 MR. BEATTIE: Whatever you fancy.
 22 JUDGE PEARSON: Ready to go?
 23 E X A M I N A T I O N
 24 BY MR. BEATTIE:
 25 Q Good afternoon. Would you please state your

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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

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EXAMINATION BY HARLOW / YOUNG 828	EXAMINATION BY HARLOW / YOUNG 830
1 competition with Shuttle Express is a welcome -- and	1 as opposed to inconsistent?
2 lawful -- development."	2 MR. FASSBURG: Objection.
3 Do you see that?	3 THE REPORTER: I'm sorry. As opposed
4 A Yes.	4 to what?
5 Q Due to you're not a lawyer, are you not,	5 MR. HARLOW: As opposed to inconsistent
6 Mr. Young?	6 with that provision?
7 A That's correct.	7 JUDGE PEARSON: Can you read me back
8 Q So you have no personal training or knowledge	8 that question?
9 in the law to conclude that it's a lawful development;	9 (Record read back as requested.)
10 is that correct?	10 Q So is your understanding of that statute that
11 A Other than my interpretation of the WACs and	11 the company can't offer exactly the same service in
12 RCWs that we use here.	12 the same territory unless the existing certificate
13 Q What is the touchstone for the term "welcome"	13 holder is not serving to the satisfaction of the
14 that you use in line 17? Is that the public interest?	14 Commission?
15 A I'm not sure I understand.	15 A That's my understanding.
16 Q Why does Staff welcome SpeediShuttle's	16 Q So does that mean you welcome the competition
17 competition?	17 from SpeediShuttle because you believe it's a
18 A In the rule-making in 2013 that established	18 different service?
19 the flexible fares, Staff agreed to streamline filing	19 A I believe that that determination was made in
20 processes and return for lowering the barrier to entry	20 the application hearing.
21 in the market. And this is the first time that that's	21 Q And on what basis do you understand that
22 been tried, so we now have another company. And for	22 determination was made?
23 us, that's a chance to evaluate whether our change in	23 A I believe in the fact that the judge issued a
24 rules is going to be effective or not.	24 certificate to SpeediShuttle.
25 Q While speaking for yourself, do you believe	25 Q And what made it a different service, in your
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EXAMINATION BY HARLOW / YOUNG 829	EXAMINATION BY HARLOW / YOUNG 831
1 that Staff should lower the barrier below the	1 opinion?
2 statutory requirements?	2 MR. BEATTIE: Okay. I'm going to
3 A No. We have to live within the statute.	3 object, because this is definitely outside the scope
4 Q Are you familiar with RCW Title 81,	4 of his direct testimony.
5 Chapter 68?	5 MR. HARLOW: Let's move on then,
6 A A little bit.	6 because he's struggling with it anyway.
7 Q How about Section 40?	7 Q In preparing your testimony in this
8 A I don't have that in front of me.	8 proceeding, did you do any independent investigation
9 Q Okay. Let me, if I may, just read a portion	9 since, say, the filing of our petition last May?
10 of it. "The Commission may, after notice and an	10 A By investigate, what do you mean?
11 opportunity for hearing, when the applicant requests a	11 Q Did you do -- you said in your testimony that
12 certificate to operate in a territory already served	12 you read some prefiled testimonies. Did you do
13 by a certificate holder under this chapter, only when	13 anything beyond that to come to your conclusions that
14 existing auto transportation company or companies	14 this is a welcomed amount of competition?
15 serving such territory will not provide the same to	15 A No. Again, I was referring to the order that
16 the satisfaction of the commission...."	16 was R572 in the rule-making.
17 Do you recall that passage?	17 Q So you never rode on SpeediShuttle, for
18 A Yes.	18 example?
19 Q So would you welcome -- would the staff	19 A No.
20 welcome competition if it violated that provision of	20 Q You never went out to the Sea-Tac Airport to
21 the statute?	21 see if they actually had greeters; is that correct?
22 A I would have to say no.	22 A I did not go to the airport, no.
23 Q All right. So how would you decide when	23 Q Did you ever try to book something on the
24 service in the same territory should be welcomed	24 website and see if bookings comports with their
25 because it's consistent with that statutory provision	25 tariff?

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EXAMINATION BY HARLOW / YOUNG 832	EXAMINATION BY HARLOW / YOUNG 834
<p>1 A No. Nothing in their tariff related to</p> <p>2 anything, any reservations in another language or</p> <p>3 greeters or anything of that nature.</p> <p>4 Q Okay. You didn't try the WiFi or any other</p> <p>5 means?</p> <p>6 A Actually, we were given the opportunity to try</p> <p>7 that and I did.</p> <p>8 Q When was that?</p> <p>9 A I don't recall the exact date. They brought a</p> <p>10 van here to the Commission.</p> <p>11 Q Which year was that?</p> <p>12 A I believe that was -- I want to say last</p> <p>13 summer.</p> <p>14 Q Okay. So they turned it on for you, I take</p> <p>15 it?</p> <p>16 A Yes.</p> <p>17 Q Good. Did you do any financial analysis of</p> <p>18 SpeediShuttle since their original application?</p> <p>19 A Not beyond the initial financial review that</p> <p>20 we do for all applications.</p> <p>21 Q And initial financial review is based on a pro</p> <p>22 forma financial statement?</p> <p>23 A Yes, as submitted in the application.</p> <p>24 Q Were you able to look at this yellow piece of</p> <p>25 paper that we didn't make in the record but ask</p>	<p>1 A Based on my personal experience.</p> <p>2 Q About how long does that take?</p> <p>3 A I would say a minute to two minutes.</p> <p>4 Q A minute to two minutes.</p> <p>5 Do you know how long it takes to gather</p> <p>6 together all the people on a particular flight at</p> <p>7 baggage claim by a greeter, just any hypothetical</p> <p>8 greeter?</p> <p>9 A No.</p> <p>10 Q Do you know how long it typically takes</p> <p>11 baggage to come off of a flight at Sea-Tac Airport</p> <p>12 from personal experience?</p> <p>13 A Yes. It's variable based on my personal</p> <p>14 experience.</p> <p>15 Q What's the range, in your experience?</p> <p>16 A Anywhere from the time I arrive there to 20,</p> <p>17 30 minutes later.</p> <p>18 Q Do you think it would be in the public</p> <p>19 interest if, as a result of this competition, either</p> <p>20 SpeediShuttle or Shuttle Express were to cease doing</p> <p>21 share ride business to Sea-Tac Airport?</p> <p>22 A Well, it would be my position that if one of</p> <p>23 the companies ceased operation that would be their</p> <p>24 decision based on their management and would not be</p> <p>25 because of anything the Commission has done or not</p>
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EXAMINATION BY HARLOW / YOUNG 833	EXAMINATION BY HARLOW / YOUNG 835
<p>1 questions about it?</p> <p>2 A Yes.</p> <p>3 Q And did you have any -- maybe you compared it</p> <p>4 with the pro forma? Maybe not? Maybe you remembered</p> <p>5 the pro forma?</p> <p>6 A No. I did not do any other comparison.</p> <p>7 Q Okay. So you don't know if their actuals,</p> <p>8 which you looked at, match the pro forma or not?</p> <p>9 A I do not.</p> <p>10 Q Okay. Did you review the financial statements</p> <p>11 of Shuttle Express in connection with your</p> <p>12 investigation in this case?</p> <p>13 A Not with this, no.</p> <p>14 Q Do you have any opinion one way or the other</p> <p>15 on whether the competition that you welcome is</p> <p>16 sustainable in the long run?</p> <p>17 A I don't have an opinion on that, no.</p> <p>18 Q Do you know what it costs to provide service</p> <p>19 using your Mercedes van as opposed to a Ford van?</p> <p>20 A Not off the top of my head, no.</p> <p>21 Q Do you know what it costs to provide greeters</p> <p>22 to every passenger, assuming that's being done?</p> <p>23 A I'm not familiar with that, no.</p> <p>24 Q Do you know how long it takes to walk across</p> <p>25 the sky bridge from the baggage claim to Island 2?</p>	<p>1 done.</p> <p>2 Q What if it were based on financial constraints</p> <p>3 of the competition?</p> <p>4 A Again, I think that's the purview of the</p> <p>5 company management to --</p> <p>6 Q Let's put aside the cause. Would it be in the</p> <p>7 public interest, for whatever reason, for one or both</p> <p>8 of those companies to cease providing share ride</p> <p>9 services?</p> <p>10 MR. BEATTIE: Objection, asked and</p> <p>11 answered.</p> <p>12 JUDGE PEARSON: Mr. Harlow, I'm not</p> <p>13 sure what exactly you're getting at.</p> <p>14 MR. HARLOW: Well, he qualified it by</p> <p>15 saying that's the decision of the company. That's not</p> <p>16 my question. My question all three times was would</p> <p>17 that be in the public interest.</p> <p>18 JUDGE PEARSON: If there were no longer</p> <p>19 shared ride service available?</p> <p>20 MR. HARLOW: From one or both of the</p> <p>21 companies, yes.</p> <p>22 JUDGE PEARSON: You can go ahead and</p> <p>23 answer that.</p> <p>24 A Although I find it unlikely that both</p> <p>25 companies would cease business on the exact same day,</p>

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EXAMINATION BY HARLOW / YOUNG 836	EXAMINATION BY WILEY / YOUNG 838
<p>1 assuming -- my assumption would be that the less</p> <p>2 efficient operator would go out of business. In any</p> <p>3 event, the certificate would be available for other</p> <p>4 providers.</p> <p>5 Q Would it be in the public interest if one or</p> <p>6 both of the companies limited their service to</p> <p>7 downtown Seattle, including the piers and Bellevue,</p> <p>8 and didn't serve the outlying areas?</p> <p>9 A I don't know for certain.</p> <p>10 Q You have no opinion on that?</p> <p>11 MR. BEATTIE: Objection, asked and</p> <p>12 answered.</p> <p>13 JUDGE PEARSON: I'm going to sustain</p> <p>14 that. He answered your question.</p> <p>15 Q Would it be in the public interest for the</p> <p>16 wait times for share ride passengers to go up for --</p> <p>17 well, for any reason?</p> <p>18 A I don't think that would have any effect on</p> <p>19 the public interest.</p> <p>20 Q Would it be in the public interest if either</p> <p>21 company needed to raise its fares to be -- to become</p> <p>22 more -- sustain profitability?</p> <p>23 A It could be.</p> <p>24 Q What basis could it be?</p> <p>25 A If it enables the company to provide better</p>	<p>1 A Yes.</p> <p>2 Q And you also alluded to the order of the</p> <p>3 Commission that you had relied upon in answering some</p> <p>4 of the questions. That's Order 04 in this proceeding.</p> <p>5 I'm going to hand you Order 04 and ask that you read</p> <p>6 the footnote on that page 3 that continues on to</p> <p>7 page 4, please. Can you read that into the record,</p> <p>8 please.</p> <p>9 A Oh, sure. Yes. "On September 21, 2013, the</p> <p>10 Commission amended its rules governing the</p> <p>11 Commission's review of applications for authority to</p> <p>12 operate a passenger transportation company in</p> <p>13 Washington. The changes clarify and streamline the</p> <p>14 application process for companies speaking to provide</p> <p>15 such service, give companies rate flexibility, and</p> <p>16 promote competition in the auto transportation</p> <p>17 industry."</p> <p>18 Q Do you take it by that indication that the</p> <p>19 Commission is currently favoring expanding competition</p> <p>20 in this field?</p> <p>21 MR. HARLOW: Your Honor, I'm going to</p> <p>22 object to the leading nature of this. This is</p> <p>23 friendly cross. The witness is on the same side as</p> <p>24 Mr. Wiley's client. I'd rather not have leading</p> <p>25 questions here.</p>
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EXAMINATION BY WILEY / YOUNG 837	EXAMINATION BY WILEY / YOUNG 839
<p>1 service to the public.</p> <p>2 Q All good things being equal, would you prefer</p> <p>3 to not have the fares go up?</p> <p>4 MR. BEATTIE: Objection, relevance.</p> <p>5 What Mr. Young personally prefers, I don't see how</p> <p>6 that has any bearing.</p> <p>7 MR. HARLOW: I meant the public</p> <p>8 interest.</p> <p>9 JUDGE PEARSON: I'll sustain the</p> <p>10 objection.</p> <p>11 MR. HARLOW: No further questions.</p> <p>12 Thank you, Mr. Young.</p> <p>13 MR. WILEY: A few brief questions, Your</p> <p>14 Honor.</p> <p>15 E X A M I N A T I O N</p> <p>16 BY MR. WILEY:</p> <p>17 Q Good afternoon. Thanks for all your patience</p> <p>18 through this long day.</p> <p>19 You were asked by Mr. Harlow if the Staff</p> <p>20 would support, quote, lowering the barrier, unquote,</p> <p>21 for entry under 81.68.040. You talked about the</p> <p>22 statute, but you didn't talk about the rules at all.</p> <p>23 I think you acknowledged that in 2013 the</p> <p>24 rules for entry in auto transportation changed, did</p> <p>25 they not?</p>	<p>1 MR. WILEY: Your Honor, it's directly</p> <p>2 related to the cross that to the extent he's added</p> <p>3 issues that weren't addressed in the direct testimony,</p> <p>4 so I think it's a fair question.</p> <p>5 JUDGE PEARSON: Okay. I'll allow it.</p> <p>6 A Would you repeat that, please?</p> <p>7 MR. WILEY: Can I have that read back,</p> <p>8 please?</p> <p>9 (Record read back as requested.)</p> <p>10 A I would have to say yes.</p> <p>11 Q Were you aware that in that rule-making policy</p> <p>12 statement that you alluded to that there was also a</p> <p>13 reference by the Commission to its interpretation of</p> <p>14 RCW 81.68 in light of the rules?</p> <p>15 A I might be if you --</p> <p>16 Q I'll hand this to you. The highlighted</p> <p>17 paragraph.</p> <p>18 A Right.</p> <p>19 Okay.</p> <p>20 Q Yes or no?</p> <p>21 A I've read this, yes.</p> <p>22 Q And it does refer to RCW 81.68 and the</p> <p>23 standards evolving under that statute, does it not?</p> <p>24 A Yes.</p> <p>25 Q Thank you.</p>

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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?

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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.

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

9 BY JUDGE PEARSON:

10 Q I have a question for you, Mr. Young. And if

11 it is too involved, I can turn it into a bench

12 request. So Mr. Roemer discussed using the average

13 variable cost as an appropriate comparison between the

14 incremental cost of service and the fare charged for

15 the service charged by each company.

16 And Mr. Kajanoff, through his testimony, he

17 testified that SpeediShuttle's actual expenses were

18 significantly greater than his pro forma estimates and

19 appears to support using total cost as the appropriate

20 comparison.

21 So when you, in your capacity, are determining

22 appropriate rates for auto transportation companies,

23 is there a standard method or formula for calculating

24 rates? Do you use one or the other, either average

25 variable cost or total cost?

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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 E X A M I N A T I O N

21 BY MR. BEATTIE:

22 Q Mr. Young, Mr. Harlow asked you about whether

23 Staff has undertaken any investigation of -- and then

24 he listed a whole host of possible investigation

25 topics. I want to know from you, with respect to

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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

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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

11 BY JUDGE PEARSON:

12 Q I made a statement earlier before the break

13 that it was my opinion, from what I know, so I would

14 like your opinion on this, that the flexible fare

15 structure is set up in a way that would prevent any

16 sort of predatory pricing. Is that accurate in your

17 opinion?

18 **A I believe so, yes.**

19 Q Okay. Can you explain that to me a little bit

20 more about why that is?

21 **A The base fare was set on cost, which is a**

22 **traditional 93.7 operating ratio, and then the**

23 **flexible fare is a certain percentage allowed above**

24 **that. So no matter how you look at it, the fare is**

25

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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 BY MR. BEATTIE:

17 Q Would you please state your full name for the

18 record.

19 **A Yes. My name is David Pratt.**

20 Q Thank you. Mr. Pratt, have you filed written

21 testimony DP-1T and DP-6T in this docket?

22 **A Yes, I did.**

23 Q Do you have any corrections to those

24 testimonies?

25

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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

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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.

E X A M I N A T I O N

13 BY MR. HARLOW:

14 Q Good afternoon, Mr. Pratt, almost evening.

15 You, as well, are not an attorney; is that

16 correct?

17 **A I'm sorry. I didn't --**

18 Q You -- as Mr. Young, you're not an attorney;

19 correct?

20 **A No, I am not.**

21 Q At DP-1T, page 11, you used the term "bought"

22 with regard to Shuttle Express and their independent

23 contractor contract. Do you recall that testimony?

24 **A Which line are you referring to, please?**

25

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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

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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

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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.**

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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

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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.

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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.**

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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

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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

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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.

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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**

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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**

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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**

<p style="text-align: right;">Page 860</p> <p style="text-align: center;">EXAMINATION BY HARLOW / PRATT 860</p> <p>1 way, yes, it would be a limousine still.</p> <p>2 Q The hypothetical is they booked independently,</p> <p>3 and the limousine carrier put them together because</p> <p>4 their itinerary was close. But they're unrelated</p> <p>5 separate contracts.</p> <p>6 A You're asking me to interpret DOL's laws, and</p> <p>7 so I don't know the answer to that.</p> <p>8 Q I'm asking you to interpret your laws. Do you</p> <p>9 view that as coming under your jurisdiction as auto</p> <p>10 transportation?</p> <p>11 A Under your scenario, if a -- if four customers</p> <p>12 booked four trips with a limousine company, it would</p> <p>13 never be under my jurisdiction, because we don't</p> <p>14 regulate limousines.</p> <p>15 Q And what makes it a limo that makes you decide</p> <p>16 I'm not going to serve jurisdiction?</p> <p>17 A Oh, boy. A whole source of factors. One, a</p> <p>18 limousine is defined by law, and I don't have that</p> <p>19 right in front of me. But there is a definition of a</p> <p>20 limousine, including the features, the quality of the</p> <p>21 vehicle, the type of service they provide is one of</p> <p>22 the distinctions of it, and one of the big</p> <p>23 distinctions is a single contract, luxury vehicle.</p> <p>24 Q If an auto transportation company providing</p> <p>25 shared ride service, let's say Shuttle Express, if</p>	<p style="text-align: right;">Page 862</p> <p style="text-align: center;">EXAMINATION BY HARLOW / PRATT 862</p> <p>1 can it ever switch back from one to the other after a</p> <p>2 booking?</p> <p>3 A I'm not sure I understand the question,</p> <p>4 because I didn't get the first part about -- I don't</p> <p>5 understand a bit about when you're saying a limousine</p> <p>6 as an auto transportation. That doesn't -- I'm not</p> <p>7 putting that together.</p> <p>8 Q I mean, the problem we have, just to set the</p> <p>9 stage here, is Shuttle Express, as we talked about in</p> <p>10 the beginning of this cross, does both.</p> <p>11 A Correct.</p> <p>12 Q So can the character of the transportation</p> <p>13 itself ever change after the original booking, in your</p> <p>14 mind?</p> <p>15 A Yes, I'm sure it could.</p> <p>16 Q And how would that -- how could that be done,</p> <p>17 hypothetically?</p> <p>18 MR. BEATTIE: Asked and answered.</p> <p>19 MR. HARLOW: Let's move on.</p> <p>20 Q In your investigation, did you give any</p> <p>21 consideration to what the impact on the public</p> <p>22 interest would be if Shuttle Express didn't use</p> <p>23 limousines for single-stop services?</p> <p>24 A No, I didn't.</p> <p>25 Q So you didn't consider how it would impact the</p>
<p style="text-align: right;">Page 861</p> <p style="text-align: center;">EXAMINATION BY HARLOW / PRATT 861</p> <p>1 they can't fill a van, let's say they can only get one</p> <p>2 passenger, so they make a trip with one passenger in</p> <p>3 their own van with their driver, is that an auto</p> <p>4 transportation service, or could that be something</p> <p>5 else?</p> <p>6 A That's an auto transportation service.</p> <p>7 Q Why would you say that's an auto</p> <p>8 transportation service?</p> <p>9 A Because it was an auto transportation company</p> <p>10 that accepted a reservation, so it's an auto</p> <p>11 transportation service.</p> <p>12 Q What if some business colleagues in the same</p> <p>13 firm jointly hire a limousine to take them to</p> <p>14 different hotels in a shared vehicle, would you view</p> <p>15 that as an auto transportation service or a limousine</p> <p>16 service?</p> <p>17 MR. BEATTIE: Objection, relevance.</p> <p>18 JUDGE PEARSON: I'm going to sustain.</p> <p>19 You're asking him what are, essentially,</p> <p>20 jurisdictional riddles. It's not really getting us</p> <p>21 anywhere.</p> <p>22 MR. HARLOW: Let's move on.</p> <p>23 Q We've kind of touched on this, but I have one</p> <p>24 wrap-up question. Can the nature of the</p> <p>25 transportation as auto transportation of the limousine</p>	<p style="text-align: right;">Page 863</p> <p style="text-align: center;">EXAMINATION BY HARLOW / PRATT 863</p> <p>1 wait times?</p> <p>2 A No.</p> <p>3 Q You didn't consider how it would impact the</p> <p>4 long-term ability to serve the suburban or rural</p> <p>5 areas?</p> <p>6 A No. My focus was trying to determine whether</p> <p>7 there was violations of the rule.</p> <p>8 Q Let's turn to your conclusion and your</p> <p>9 recommendation of a penalty of over a million dollars.</p> <p>10 Did you consider, if that is assessed, where</p> <p>11 that money would come from?</p> <p>12 A The penalty money?</p> <p>13 Q Yes.</p> <p>14 A Well, it would come from the company.</p> <p>15 Q Does the company, to your knowledge, have a</p> <p>16 million dollars sitting in a bank that isn't needed to</p> <p>17 make payroll, cover fuel?</p> <p>18 A I have no knowledge of Shuttle Express's</p> <p>19 financial assets.</p> <p>20 Q So you don't have any knowledge whether they</p> <p>21 could make it on cash flow or profits, if any?</p> <p>22 MR. WILEY: Your Honor, I know I'm out</p> <p>23 of order, but I'd like to interpose an objection for</p> <p>24 the record. I think this is entirely irrelevant and</p> <p>25 speculative to this witness's direct and rebuttal</p>

<p>Page 864</p> <p>EXAMINATION BY HARLOW / PRATT 864</p> <p>1 testimony.</p> <p>2 JUDGE PEARSON: I agree.</p> <p>3 MR. HARLOW: His testimony was that it</p> <p>4 had to hurt the company, and I want to know if he</p> <p>5 knows -- has any basis to know if it's hurting the</p> <p>6 company or putting it out of business.</p> <p>7 JUDGE PEARSON: I think that Mr. Pratt</p> <p>8 walked through the factors that Staff considered when</p> <p>9 determining a recommendation for penalty amount, and</p> <p>10 one of those factors is the size of revenue of the</p> <p>11 company. And the penalty recommendation is in</p> <p>12 proportion to that.</p> <p>13 If you want to ask him questions about that,</p> <p>14 go ahead. If you wanted to make an argument about</p> <p>15 mitigation of the penalty and financial hardship of</p> <p>16 your client, you should have done that through one of</p> <p>17 your client's witnesses when you had the opportunity.</p> <p>18 MR. HARLOW: I think we did.</p> <p>19 BY MR. HARLOW:</p> <p>20 Q All right. Let's look at the factors then,</p> <p>21 DP-1T, Factor 11, the size of the company, which is on</p> <p>22 page 13.</p> <p>23 A Yes, sir.</p> <p>24 Q You looked at the 2016 annual report; correct?</p> <p>25 A Yes.</p>	<p>Page 866</p> <p>EXAMINATION BY HARLOW / PRATT 866</p> <p>1 trends have been declining year over year for three or</p> <p>2 four or five years?</p> <p>3 MR. BEATTIE: Object to the form.</p> <p>4 Trends? Which trends?</p> <p>5 MR. HARLOW: The trends of miles</p> <p>6 traveled and gross interstate operating revenues as</p> <p>7 found in the testimony.</p> <p>8 JUDGE PEARSON: Mr. Harlow, I'll just</p> <p>9 remind you that the company admitted yesterday that in</p> <p>10 the last couple years it started excluding the miles</p> <p>11 and the revenue for its independent contractors. So</p> <p>12 bearing that in mind, do you want to pursue this</p> <p>13 question?</p> <p>14 MR. HARLOW: Bearing your comment in</p> <p>15 mind, no. I'll withdraw it. Let's go to safety.</p> <p>16 BY MR. HARLOW:</p> <p>17 Q Do you recall you testified about the safety</p> <p>18 of an auto transportation company compared to a</p> <p>19 limousine?</p> <p>20 A Yes.</p> <p>21 Q Did you look at actual safety records or just</p> <p>22 look at the regulations?</p> <p>23 A Of who? Who are you talking about did I look</p> <p>24 at?</p> <p>25 Q Of either Shuttle Express auto transportation</p>
<p>Page 865</p> <p>EXAMINATION BY HARLOW / PRATT 865</p> <p>1 Q Did you look at the trends of the company and</p> <p>2 its size?</p> <p>3 A Yes.</p> <p>4 Q And what did you find?</p> <p>5 A Well, as my testimony shows there that the</p> <p>6 company reported 4.9 million miles traveled that year</p> <p>7 and \$9.3 million in gross interstate revenues.</p> <p>8 Q My prior question was about the trend, and you</p> <p>9 said you had looked at those.</p> <p>10 A The trend?</p> <p>11 Q What's the trend in the company size in its</p> <p>12 miles traveled and its gross interstate operating</p> <p>13 revenues? Did you look at that?</p> <p>14 A Are you talking about in previous years?</p> <p>15 Q Yes.</p> <p>16 A I don't have that data right in front of me,</p> <p>17 so I really don't know.</p> <p>18 Q And you didn't look at it in your</p> <p>19 investigation; correct?</p> <p>20 A I probably looked at the annual report from</p> <p>21 the previous years, yes.</p> <p>22 Q But you have no recollection of what they</p> <p>23 showed?</p> <p>24 A No. I'm sorry. I don't.</p> <p>25 Q Would you accept, subject to check, that the</p>	<p>Page 867</p> <p>EXAMINATION BY HARLOW / PRATT 867</p> <p>1 or limousine companies.</p> <p>2 A I definitely looked at the safety profile and</p> <p>3 the record of Shuttle Express. My primary duties are</p> <p>4 to manage the safety program, and so I'm very aware of</p> <p>5 the safety program of Shuttle Express. I did not look</p> <p>6 at any of the records of the -- of what you're terming</p> <p>7 the limo drivers, because I don't know what they were.</p> <p>8 I was never given the names. I was rebuked when I</p> <p>9 asked for them. I would have been happy to look at</p> <p>10 that to kind of make an assessment, but I was not</p> <p>11 given the names of any of the operators.</p> <p>12 Q Were you here for the testimony yesterday -- I</p> <p>13 can't remember which witness -- who said -- I think it</p> <p>14 was -- it may have been today. Mr. -- was it you?</p> <p>15 Mr. Marks today. And I asked him whether their limo</p> <p>16 operators have ever had an injury accident in his</p> <p>17 knowledge and experience. Do you recall that?</p> <p>18 A Again, unless I know exactly which limo</p> <p>19 operators you're talking about, I can't comment on</p> <p>20 whether or not they've had accidents or not.</p> <p>21 Q You have no reason to doubt that testimony</p> <p>22 that they've had no accidents?</p> <p>23 A Correct. I have no reason to doubt that.</p> <p>24 Q Do you believe that limousines, in general, as</p> <p>25 regulated by the Department of Licensing, are unsafe?</p>

Page 868 EXAMINATION BY WILEY / PRATT 868	Page 870 EXAMINATION BY WILEY / PRATT 870
<p>1 A Not in general, no.</p> <p>2 MR. HARLOW: Okay. Your Honor, one</p> <p>3 moment.</p> <p>4 I have no further questions, Your Honor.</p> <p>5 JUDGE PEARSON: Okay. Thank you.</p> <p>6 MR. WILEY: Your Honor, just a few.</p> <p>7 It's getting late, I know.</p> <p>8 EXAMINATION</p> <p>9 BY MR. WILEY:</p> <p>10 Q First of all, Mr. Pratt, I want to thank you.</p> <p>11 Without the Staff's investigation, the complainant,</p> <p>12 SpeediShuttle, would not have gotten any evidence in</p> <p>13 this matter, say, for one response which is HJR-19 in</p> <p>14 this proceeding.</p> <p>15 MR. HARLOW: Objection to that</p> <p>16 statement.</p> <p>17 Q In this proceeding. I want to hand you it and</p> <p>18 ask you to look at it.</p> <p>19 JUDGE PEARSON: What was it that</p> <p>20 Mr. Wiley just said? I was reading one of my own --</p> <p>21 MR. HARLOW: Mr. Wiley just trashed my</p> <p>22 client.</p> <p>23 MR. WILEY: I didn't trash the client,</p> <p>24 Your Honor. I said thanks to the Staff's</p> <p>25 investigation we were able to build facts under our</p>	<p>1 Q Based on your investigation in 2017, is that</p> <p>2 statement, in your opinion, true?</p> <p>3 A I have to say that I'm -- the term "rescue</p> <p>4 service" is a term that has been used in the past by</p> <p>5 the company. I will say that when I visited with them</p> <p>6 in -- I think it was in March of this year they told</p> <p>7 me they did not use that term anymore.</p> <p>8 I know that it was the Commission's</p> <p>9 expectation at the final hearing on -- or when they</p> <p>10 got the waiver in -- it would have been September of</p> <p>11 last year that they had quit using independent</p> <p>12 contractors to perform rescue service, and the company</p> <p>13 did commit to it. I believe they simply just quit</p> <p>14 using the term "rescue service," and they just changed</p> <p>15 it to "luxury upgrade."</p> <p>16 Q So under that terminology, the answer would be</p> <p>17 no?</p> <p>18 A Correct.</p> <p>19 Q Okay. And the question also does ask what --</p> <p>20 and/or a driver who was not an employee of Shuttle</p> <p>21 Express; correct?</p> <p>22 A Correct.</p> <p>23 Q So that would describe anybody who's an</p> <p>24 independent contractor?</p> <p>25 A Yes.</p>
<p>Page 869 EXAMINATION BY WILEY / PRATT 869</p> <p>1 complaint. We were unable to get them from the</p> <p>2 respondent except for one answer to a data request</p> <p>3 that I'm handing him.</p> <p>4 JUDGE PEARSON: That's not any more</p> <p>5 inflammatory than what you've said about them</p> <p>6 providing information.</p> <p>7 BY MR. WILEY:</p> <p>8 Q So, Mr. Pratt, I'm handing you HJR-19, which</p> <p>9 is SpeediShuttle's Data Request No. 1. Have you seen</p> <p>10 this before?</p> <p>11 A Yes, I have.</p> <p>12 Q And could you just read the last -- read the</p> <p>13 question and the last sentence, please.</p> <p>14 A Okay. The question was: When was the last</p> <p>15 time you provided rescue service or service to an</p> <p>16 airport passenger subject to WUTC jurisdiction by an</p> <p>17 independent contractor and/or a driver who was not an</p> <p>18 employee of Shuttle Express?</p> <p>19 The last line of the response is -- well, the</p> <p>20 whole answer -- here we go, one long line: Without</p> <p>21 waiving the foregoing objection, Shuttle Express</p> <p>22 states that it last provided rescue service on</p> <p>23 January 13, 2014, in accordance with WUTC</p> <p>24 Docket TC 132141 during the temporary and conditional</p> <p>25 exemption authorized under the above docket.</p>	<p>Page 871 EXAMINATION BY WILEY / PRATT 871</p> <p>1 Q Okay. Now, I want to go back to a couple of</p> <p>2 your answers, and I don't want to garble us on</p> <p>3 cancellation and all that kind of scenario because I'm</p> <p>4 not sure I tracked it all.</p> <p>5 But I did want to ask you: If a customer</p> <p>6 orders a share ride and the trip is canceled and the</p> <p>7 customer has a complaint against the auto</p> <p>8 transportation share ride provider, if the trip is</p> <p>9 canceled, for instance, wrong rates or charges or</p> <p>10 vehicle didn't have brakes, they didn't want to go on</p> <p>11 the vehicle, would the Commission lose jurisdiction by</p> <p>12 virtue of that cancellation by the auto transportation</p> <p>13 company over that complaint?</p> <p>14 A No.</p> <p>15 Q And, therefore, it really shouldn't matter if</p> <p>16 the customer canceled or if it was merely switched to</p> <p>17 an independent contractor for the Commission to retain</p> <p>18 jurisdiction over that customer's complaint; correct?</p> <p>19 A Correct. If we believed that it was still an</p> <p>20 auto transportation trip, yes.</p> <p>21 Q You mentioned in a response to Mr. Harlow's</p> <p>22 questions and in your testimony that you were not --</p> <p>23 that you were not provided access to the names of the</p> <p>24 independent contractors in your current investigation;</p> <p>25 correct?</p>

<p>Page 872</p> <p>EXAMINATION BY WILEY / PRATT 872</p> <p>1 A That was correct.</p> <p>2 Q And isn't it true that in 2013, as I review</p> <p>3 the record, in that enforcement proceeding, you were,</p> <p>4 in fact, provided names of the independent</p> <p>5 contractors?</p> <p>6 A Yes, we were.</p> <p>7 Q Was that inconsistency ever explained to you</p> <p>8 by Shuttle Express? Why did they give you the names</p> <p>9 in 2013 and not give them to you in 2017?</p> <p>10 A Well, I'm not sure I asked them the question</p> <p>11 in that way, but I did kind of press a little bit</p> <p>12 about those names and was simply told that they</p> <p>13 preferred not to give up the names because they felt</p> <p>14 it would be damaging to their business or to the</p> <p>15 relationship between the limousine company and Shuttle</p> <p>16 Express.</p> <p>17 Q And maybe to their position in this</p> <p>18 proceeding? Is that possible?</p> <p>19 MR. HARLOW: Objection, leading.</p> <p>20 MR. WILEY: I can move on, Your Honor.</p> <p>21 JUDGE PEARSON: Okay.</p> <p>22 Q Mr. Pratt, just a couple quick questions on</p> <p>23 your testimony, which was very comprehensive. I don't</p> <p>24 need to go over it.</p> <p>25 On page 11 of DP-1T, you make the following</p>	<p>Page 874</p> <p>EXAMINATION BY WILEY / PRATT 874</p> <p>1 MR. WILEY: I think my question assumed</p> <p>2 that, Your Honor.</p> <p>3 JUDGE PEARSON: Okay.</p> <p>4 BY MR. WILEY:</p> <p>5 Q So in answer to my recent question and the</p> <p>6 clarification, for your -- from your standpoint,</p> <p>7 whether you call it rescue service, luxury upgrade,</p> <p>8 multi-stop, or single-stop, can an auto transportation</p> <p>9 company provide that with nonemployee drivers on</p> <p>10 non-owner-operator equipment -- excuse me. On</p> <p>11 non-company-owned equipment without getting an</p> <p>12 exemption granted by the Commission?</p> <p>13 MR. HARLOW: Object to the extent he's</p> <p>14 asking for a legal opinion, which the question seems</p> <p>15 to go to.</p> <p>16 MR. WILEY: He's chief of enforcement,</p> <p>17 Your Honor.</p> <p>18 JUDGE PEARSON: I'll allow it, because</p> <p>19 Mr. Pratt has made a recommendation to that fact.</p> <p>20 A I would say absolutely not.</p> <p>21 Q And, finally, going to page 5 of DP-6T,</p> <p>22 lines 1 and 2 -- excuse me, 1 through 5. You say</p> <p>23 there "Distinguishing single stop service from multi</p> <p>24 stop service obscures the primary issue here, which is</p> <p>25 Shuttle Express's ongoing disregard of the vehicle and</p>
<p>Page 873</p> <p>EXAMINATION BY WILEY / PRATT 873</p> <p>1 statement at line 8, and I just -- it raises a</p> <p>2 question in my mind. That's why I'm asking you to</p> <p>3 focus on it. It says, "The waiver applications</p> <p>4 provide further evidence that Shuttle Express knows</p> <p>5 the rules."</p> <p>6 A Yes.</p> <p>7 Q That is in reference to the recent</p> <p>8 September 2016 waiver request or exception request;</p> <p>9 correct?</p> <p>10 A That is one of them, but Shuttle Express has</p> <p>11 had two waivers from 480-32-213. They had one waiver</p> <p>12 that began December 12, 2013, and ran for 30 days, and</p> <p>13 they had a second waiver, which began on September 13</p> <p>14 of 2016, which is currently in effect.</p> <p>15 Q Following that statement, I have to ask you:</p> <p>16 If they believed that their single-stop service was</p> <p>17 completely lawful, why, to your understanding, did</p> <p>18 they petition for another exemption from the</p> <p>19 Commission?</p> <p>20 A I think that's a question better asked to</p> <p>21 Shuttle Express.</p> <p>22 Q Finally --</p> <p>23 MR. HARLOW: It's on the record. The</p> <p>24 waiver was for multi-stop, and the penalty is for</p> <p>25 single-stop.</p>	<p>Page 875</p> <p>EXAMINATION BY JUDGE PEARSON / PRATT 875</p> <p>1 driver rule. As I discussed above, Shuttle Express</p> <p>2 violated WAC 480-30-213 by operating vehicles it does</p> <p>3 not own and by using drivers it does not employ, and</p> <p>4 whether the trip was single stop or multi stop does</p> <p>5 not affect the violations that Staff has alleged."</p> <p>6 Did I read that correctly?</p> <p>7 A Yes, you did.</p> <p>8 Q And is that still your view today?</p> <p>9 A Absolutely.</p> <p>10 MR. WILEY: No further questions, Your</p> <p>11 Honor.</p> <p>12 JUDGE PEARSON: Okay. Thank you.</p> <p>13 E X A M I N A T I O N</p> <p>14 BY JUDGE PEARSON:</p> <p>15 Q I have a couple of questions for you based on</p> <p>16 things that have come up today that I don't have --</p> <p>17 didn't have a particular understanding of before today</p> <p>18 and that I would like your opinion on.</p> <p>19 So you were here earlier today when we talked</p> <p>20 about the combined schedule and door-to-door service</p> <p>21 and what they described -- I guess it's kind of a</p> <p>22 two-part question.</p> <p>23 They have a portion of their tariff that says</p> <p>24 it's alternate means of transport, and within that,</p> <p>25 they describe that they reserve the right to combine</p>

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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**

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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.**

9 EXAMINATION

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.

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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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<p>1 any objection to us calling if we want a recap of the</p> <p>2 bench requests and don't think our notes are fully</p> <p>3 accurate?</p> <p>4 JUDGE PEARSON: Not at all. In fact, I</p> <p>5 could send an e-mail to all the parties probably on</p> <p>6 Monday --</p> <p>7 MR. WILEY: That would be great.</p> <p>8 JUDGE PEARSON: -- just recapping all</p> <p>9 of these.</p> <p>10 MR. HARLOW: Thank you.</p> <p>11 JUDGE PEARSON: And I will say I would</p> <p>12 be happy to give you three weeks to do that just</p> <p>13 because I'll be gone for the week of the 22nd.</p> <p>14 MR. YOUNG: That would be adequate.</p> <p>15 JUDGE PEARSON: Okay. So that would be</p> <p>16 May -- is that getting too close to the briefing?</p> <p>17 MR. HARLOW: I wanted to go off the</p> <p>18 record and discuss briefing with you when you have the</p> <p>19 next opportunity.</p> <p>20 JUDGE PEARSON: Okay.</p> <p>21 MR. HARLOW: We can do that now if you</p> <p>22 want.</p> <p>23 JUDGE PEARSON: Yeah, let's do that now</p> <p>24 before we set a due date for this.</p> <p>25 THE REPORTER: Do you --</p>	<p>1 as maybe points of reference, and that would seem to</p> <p>2 fit with what Mr. Harlow was originally saying. I</p> <p>3 don't know about the opening brief what we proposed,</p> <p>4 but I remember July 14 was the reply brief.</p> <p>5 JUDGE PEARSON: Okay. So --</p> <p>6 MR. WILEY: It's in your order.</p> <p>7 JUDGE PEARSON: I'd prefer to set it</p> <p>8 now rather than have another conference call after</p> <p>9 this. We could push the first round of briefs --</p> <p>10 what's the due date now? June 9?</p> <p>11 MR. WILEY: June 9.</p> <p>12 JUDGE PEARSON: Is this the first round</p> <p>13 you're concerned with or the reply round or both? Do</p> <p>14 you want to push --</p> <p>15 MR. HARLOW: If you move the first one,</p> <p>16 you have to move the second one.</p> <p>17 JUDGE PEARSON: Right. So if you want</p> <p>18 to move the first round out to June 30 and the second</p> <p>19 to be due July 14?</p> <p>20 MR. HARLOW: I wouldn't even move it</p> <p>21 that far necessarily.</p> <p>22 MR. WILEY: Well, yeah, I think we</p> <p>23 might need more than --</p> <p>24 JUDGE PEARSON: More than two weeks in</p> <p>25 between?</p>
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<p>1 JUDGE PEARSON: We can be on the</p> <p>2 record. That's fine.</p> <p>3 MR. HARLOW: We had some discussions</p> <p>4 with both the other parties off the record about</p> <p>5 possibly a short extension of the briefing time, one</p> <p>6 or two weeks. It seems like -- it partly was just my</p> <p>7 workload, partly personal, partly I don't know when</p> <p>8 we're going to get our transcript, and now we've got</p> <p>9 post-hearing filings coming in.</p> <p>10 So I think we need to push it out, and what I</p> <p>11 would suggest is that after we get your recap Monday</p> <p>12 that the parties schedule a conference call and do it</p> <p>13 by e-mail and we try to agree on a short extension of</p> <p>14 time that will enable, not only to fit with</p> <p>15 post-hearing filings, but the transcript, people's</p> <p>16 vacations, which I'm sure are coming up, and work</p> <p>17 conflicts. And, hopefully, we can reach a consensus.</p> <p>18 MR. WILEY: Your Honor, of course, I</p> <p>19 want to accommodate this. We want to accommodate</p> <p>20 this. I do think that I referenced some -- in my</p> <p>21 original proposal to you when you accepted, I think I</p> <p>22 had pushed those brief dates. And I recall the last</p> <p>23 one the reply brief was July 14. Right now it's</p> <p>24 June 30.</p> <p>25 So I would say let's take a look back at those</p>	<p>1 MR. WILEY: Yeah.</p> <p>2 THE REPORTER: I can only take one at a</p> <p>3 time if we're on the record.</p> <p>4 MR. HARLOW: Can we do this off the</p> <p>5 record?</p> <p>6 JUDGE PEARSON: Sure. Let's go off the</p> <p>7 record briefly.</p> <p>8 (A break was taken from 5:11 p.m. to</p> <p>9 5:12 p.m.)</p> <p>10 JUDGE PEARSON: We're back on the</p> <p>11 record following a brief recess, and the parties have</p> <p>12 agreed to a revised post-hearing briefing schedule.</p> <p>13 The first round of simultaneous briefs will be due on</p> <p>14 June 19, and the second round of simultaneous reply</p> <p>15 briefs will be due on July 14.</p> <p>16 So given that, I'd like to give Mr. Young</p> <p>17 until June 2 to answer my bench request if that works</p> <p>18 for the parties.</p> <p>19 MR. YOUNG: Uh-huh.</p> <p>20 MR. FASSBURG: We're back on the</p> <p>21 record?</p> <p>22 JUDGE PEARSON: We're back on the</p> <p>23 record. Does anyone have anything further?</p> <p>24 MR. HARLOW: I know it's been a long</p> <p>25 day. I want to thank you and the court reporter for</p>

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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

1 STATE OF WASHINGTON
 2 COUNTY OF KING
 3
 4 I, Nancy M. Kottenstette, a Certified
 5 Shorthand Reporter in and for the State of Washington,
 6 do hereby certify that the foregoing transcript of the
 7 proceedings on May 12, 2017, is true and accurate to
 8 the best of my knowledge, skill, and ability.
 9 I do further certify that I am a disinterested
 10 person in this cause of action; that I am not a
 11 relative of the attorneys for any of the parties.
 12 IN WITNESS WHEREOF, I have hereunto set my
 13 hand and seal this 30th day of May, 2017.
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 18 Nancy M. Kottenstette, RPR, CCR 3377
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