

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION STAFF
RESPONSE TO BENCH REQUEST

DATE PREPARED: May 31, 2017
DOCKETS: TC-143691, TC-160516, and
TC-161257
REQUESTER: Bench

WITNESS: None
RESPONDER: Danny Kermode
TELEPHONE: (360) 664-1253

BENCH REQUEST NO. 4: Research whether Shuttle Express combined service (scheduled and door to door) violates Commission rules; whether stopping at flag stops not listed for a given route in Shuttle Express’s tariff violates Commission rules.

RESPONSE:

(A) Does Shuttle Express’s tariff, which provides for combined service (scheduled and door-to-door service), violate Commission rules?

Staff Response: No

The Washington Administrative Code defines two of the most common auto transportation services as: *Scheduled Service*, where an auto transportation company provides passenger service at specified arrival or departure times at points on a route; and *Door-to-Door Service*, where an auto transportation company provides transportation service between a location identified by the passenger and a point specifically named by the company in its filed tariff and time schedule.¹

To understand whether the Commission allows combined service (scheduled and door-to-door), Staff looked to the Commission’s current rules, specifically those rules that discuss applications for a certificate of authority. WAC 480-30-096, *Certificates, application filings, general*, provides:

- (3) Applications for auto transportation certificate authority must include, but are not limited to:
 - (a) A complete description of the proposed service including, but not limited to:
 - ...
 - (ii) Whether the service will be:
 - “Door-to-door service” - Service provided between locations identified by the passengers and points specifically named by the company in its filed tariff and time schedule. Door-to-door service requires a time schedule in compliance with WAC 480-30-281(2)(c) and may be restricted to “by reservation only”; **and/or**
 - “Scheduled service” - Service provided between locations specifically named by the company (e.g., the X Hotel at 4th and Main) and points specifically named by the company in its filed tariff and time schedule.

¹ WAC 480-30-036(2).

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Scheduled service requires the company to file a time schedule in compliance with WAC 480-30-281(2)(b) and may be restricted to “by reservation only.”²

If companies may apply to provide both door-to-door service and scheduled service, then it is reasonable to assume that combined service is allowed for normal operations. Moreover, Staff was unable to locate in WAC or RCW any explicit prohibition against the provision of combined service.

Staff concludes that since the Commission rules appear to anticipate combined service and do not explicitly prohibit the practice, there is no violation.

(B) Does stopping at flag stops not listed for a given route in Shuttle Express’s tariff violate Commission rules?

Staff Response: Yes

Flag Stop Service is defined as “a point along an auto transportation company’s normally traveled routes where the company stops only if it receives notification that a passenger wishes to board the vehicle at that point.”³

There is no rule that expressly prohibits stopping at an unlisted flag stop. However, WAC 480-30-281(2)(b)(iv) does require a company to list “all flag stops” in its time schedule. The purpose of the rule is likely to ensure notice to potential passengers of flag stops, not to forbid or hamper the travel of those same passengers. Nevertheless, if an investigation determined that a company served one or more unlisted flag stops, the company would technically violate WAC 480-30-281(2)(b)(iv). Such an investigation would typically be performed without notice to the company. Staff conducted no investigation in this case and accordingly has no basis on which to recommend penalties.

² WAC 480-30-096(3) (emphasis added).

³ WAC 480-30-036(2).

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RESPONDER: Ann LaRue
TELEPHONE: (360) 664-1245

BENCH REQUEST NO. 5: Please explain Staff’s findings related to Speedishuttle’s allegation that Shuttle Express pays unlawful commissions to third parties. Please include a detailed explanation of Staff’s opinion of whether Shuttle Express’s conduct violates Commission rules or its tariff.

RESPONSE: Ann LaRue researched the allegation that Shuttle Express paid unlawful rebates or commissions to certain Seattle-area hotel staff. Mrs. LaRue found that Shuttle Express was, in fact, making payments to certain hotel staff. However, it is Staff’s opinion that Shuttle Express committed no violations of Commission rules or of the company’s tariff.

Speedishuttle states in its complaint that, in the Commission’s final order in Docket TC-910789, the Commission found that Shuttle Express’s payment of commissions to bellhops violated RCW 81.28.080, and that Shuttle Express was put on notice that, to make commission or rebate payments, it must first secure an order from the Commission identifying the terms of the commission or rebate agreement.

Staff reviewed both the prior Commission order and RCW 81.28.080. The Commission order in Docket TC-910789 states, “RCW 81.28.080 forbids a carrier from rebating any portion of a fare except pursuant to a Commission order.”⁴ Further in the order, when discussing unlawful rebates, the Commission states, “The complaint alleged that the respondent’s practice of paying \$1 for each ticket *sold by certain hotel staff* constitutes an unlawful rebate.”⁵ The Commission then concludes, “Payment is not proper to bellhops or other individuals whose regular vocations do not involve similar agencies or services, who are not understood by the public to be engaged in such *agency roles* for compensation, and whose strategic locations afforded them the opportunity to refer customers to certain carriers and away from others.”⁶ The Commission was evidently concerned about hotel staff who *sell tickets as ticket agents*.

In the present case, Staff found that Shuttle Express was, in fact, paying certain Seattle-area hotel staff for referring customers to Shuttle Express. However, the hotel staff are not selling tickets or acting as ticket agents. Instead, they are simply referring customers to Shuttle Express. The prices paid for the tickets by the customers and the amount received

⁴ *Everett Airporter Services Enterprises, Inc., v. San Juan Airlines, Inc., d/b/a Shuttle Express*, Docket TC-910789, Commission Decision and Order Granting Administrative Review; Modifying Initial Order; Assessing Penalties, p. 2 (January 7, 1993).

⁵ *Id.* p. 6 (emphasis added).

⁶ *Id.* (emphasis added).

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by Shuttle Express are the full tariffed rate (unlike compensation paid to ticket agents, where a percentage of the ticket price is withheld by the agent selling the ticket from the amount remitted to Shuttle Express). Shuttle Express tracks the referrals and provides a payment based on the number of referrals. Staff found no language in RCW 81.28.080 that expressly forbids this practice.

Staff notes that the Commission's order in Docket TC-910789 additionally relied on former WAC 480-30-050(5), which in 1993 stated:

No auto transportation company shall pay any commission to any individual, firm, association or corporation, their lessees, trustees or receivers, for the sale of any ticket or fare, or for transportation by express unless upon a contract or agreement, the form of which has previously been approved by the commission.

The fact that this rule was repealed in 2006 suggests that the Commission made a policy decision to ease its oversight in this area. This fact weighs against the Commission finding violations here. But even if the rule applied today, it would only govern the sale of tickets by ticket agents. It would not speak to the legality of Shuttle Express's referral system described above.

Conclusion: The final order in Docket TC-910789 focused on the sale of tickets by bellhops and other individuals acting as ticket agents. Here, in contrast, the hotel staff at issue are neither selling tickets nor acting as a ticket agents for Shuttle Express. Rather, they merely refer hotel guests who ultimately pay the full fare directly to Shuttle Express.

In Staff's view, the purpose of RCW 81.28.080 is not to restrict companies from using hotel staff to provide referrals for transportation. Rather, the statute protects passengers from being charged rates outside the filed tariff. Staff finds no evidence that Shuttle Express's customers are being charged unlawful rates. Overall, there appears to be no harm to the riding public.

Staff concludes that no violations occurred.