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Send via Email

May 24, 2016

Commission President John Creighton
Commissioner Tom Albro
Commissioner Stephanie Bowman
Commissioner Courtney Gregoire
Commissioner Fred Felleman
Port of Seattle
PO Box 1209
Seattle WA 98111

Dear President Creighton and Commissioners Albro, Bowman, Gregoire, and Felleman:

I am writing on behalf of the Hertz Corporation and Thrifty Car Rental, Inc. regarding the Port of Seattle's (the "Port's") proposal to allow car sharing companies to use the Airport Parking Garage. The Port's proposal would award concessions to a new subgroup of rental car operators without a request for proposal ("RFP") or request for qualifications ("RFQ"). To authorize this subgroup to rent and to park rental cars in the Airport Parking Garage would be in conflict with the Port's 2009 RFQ for the Consolidated Rental Car Facility ("CRCF") and the Lease Agreement and the Concession Agreement signed by Hertz and the Port and signed by Thrifty and the Port.

When the Port issued the RFQ for the rental car concession, the Port specifically stated that any rental car companies that do not operate from the CRCF will only "be allowed to operate a rental car concession from an off Airport location."¹ (Emphasis added) Furthermore, "airport customers" of rental car companies who are not awarded a Concession are

¹ RFQ 090021 Rental Car Concessions at Seattle-Tacoma International Airport, Page 2, July 16, 2009.

The Hertz logo is the word "Hertz" in a bold, black, sans-serif font, positioned on a yellow triangular background that points towards the bottom right corner of the page.

Hertz

required to take two buses to get to the off Airport location. The Lease also states that the Port must impose the "double bused" requirement on Non-Concessionaires.² We ask that the Port, in good faith, honor both of these provisions.³

Port Commissioners are well aware of the financial commitments that Hertz, Thrifty, and other rental car companies have made as part of the CRCF construction project. Per the terms of the Lease and Concession Agreement, Hertz and Thrifty pay either the Minimum Annual Guarantee or the Percentage Fee and rent, and Hertz and Thrifty must collect a Customer Facility Charge from each "Airport Customer" to pay for the construction and operation of the CRCF. Under the proposal for car sharing, these new companies would not be required to comply with these requirements. They would only pay low rental fees and a program activation fee.

These new companies, such as Zipcar, Car2Go, and BMW Car Sharing, still rent vehicles to customers for a fee, and should not receive preferential treatment. A number of these companies are owned by major rental car companies. The use of an app, shorter rental periods, and different marketing strategies do not transform them, under Washington State law, into something other than a rental car company.

For example, in the Washington State Department of Revenue Business Records Database, BMW Car Sharing (ReachNow) and Car2Go are identified as being in the "passenger car rental" industry. BMW Car Sharing LLC requires drivers to enter into a Membership Agreement. The Agreement uses the terms "Rental Invoice," "Rental Costs," and "Rental Sessions." While other rental companies may not use these terms, these companies are a subset of the rental car industry. Furthermore, many of the Port's existing Concessionaires rent to customers for short time periods, offer one-way rentals, and use apps.

The Port's outline of the proposal tries to characterize these companies as a "ground transportation service." These companies do not run shuttles or vans. We ask that the Port honor and comply with the terms and conditions of the Lease and Concession Agreement.

² The Lease states:

The Port will require that customers of rental car companies that are not tenants in the Consolidated Rental Car Facility will be 'double-bused,' meaning that those customers will be transported between the Airport terminal and the Consolidated Rental Car Facility via the Common Transportation System and may only be picked up at a curb position at the Consolidated Rental Car Facility designated for non-tenant rental car companies. The customers will then be transported to the non-tenant rental car companies' off-site location. Drop off of customers of non-tenant rental car companies will occur in the same manner at the same Consolidated Rental Car Facility curb.

Consolidated Rental Car Facility Lease Agreement for Seattle-Tacoma International Airport, Section 12.2.1, Page 24.

³ In addition, the Port cannot award new concessions and cannot allow new entrants into the CRCF without following the procedures in the Lease for New Entrants. Consolidated Rental Car Facility Lease Agreement for Seattle-Tacoma International Airport, Section 11.3, Page 23.

The Lease also includes a variation of the most favored nation clause. It requires the Port to provide Hertz and Thrifty with at least as favorable terms as any other car rental company.⁴ Similarly, the Concession Agreement prohibits providing rights and privileges to rent cars to new entrants that are substantially more favorable than the terms and conditions granted to the current operators.⁵ Should the Port move forward with this proposal, Hertz and Thrifty could consider requesting similar terms and conditions.

Finally, Hertz and Thrifty encourage the Port to review the commitments that the Port made to the Concessionaires and to the public when it secured the funding and built the CRCF. When the CRCF was completed, the Rental Car Concessionaires were moved out of the Airport Parking Garage. Consistent with its public statements, the Port removed all the rental spaces, reconfigured existing car rental spaces, and added approximately 3,200 public parking spaces to the Airport Parking Garage.

Hertz and Thrifty would like to maintain our long standing partnerships with the Port and to continue our efforts to serve airport customers. We, therefore, request a delay in the Port's implementation of its car sharing proposal. This will give the stakeholders the opportunity to engage in more in-depth discussions regarding these issues.

If you have any questions, please call me at (918) 669-3048. Thank you.

Sincerely,



Michael E. Holdgrafer
Vice President, Real Estate & Concessions

cc: Ted Fick, Executive Director, Port of Seattle
Lance Lyttle, Managing Director, Aviation Division, Port of Seattle

⁴ The Lease states:

In the event that any lease or other contract granted by the Port to any other Operator shall contain any terms or conditions more favorable to such Operator than the terms and conditions herein described . . . then, at the option of the Operator, this Lease Agreement shall be amended to include such more favorable terms . . . The intent of this provision is to ensure that no other Operator shall enjoy any rights or privileges more favorable to such operator than those enjoyed by the Operator herein." (Emphasis added)

Consolidated Rental Car Facility Lease Agreement for Seattle-Tacoma International Airport, Section 31.24, Page 73,

⁵ The Rental Car Concession Agreement states:

The award of concession rights and privileges to other rental car operators shall not constitute a violation of this Agreement..., provided that taking into account all of the then existing circumstances, the successor operator is not granted concession rights and privileges which, taken as a whole, are on terms and conditions which are substantially more favorable than the terms and conditions of this Agreement.

Rental Car Concession Agreement for Seattle-Tacoma International Airport Consolidated Rental Car Facility, Section 2.1, Page 8.