TC 121328 – Auto Transportation Rulemaking
Stakeholder Comments and Commission Response to 2nd Draft Rules
(June 7, 2013)

Company	WAC Section	Comment	Commission Response
SeaTac Shuttle (May 9, 2013)			
	Effective Date of Rule	The company sought clarification regarding the schedule of the rulemaking to determine how soon the companies would be able to file rates under the flexible fare rule.	The Commission anticipates issuing proposed rules (CR 102) in early June, with the adoption hearing in late July. The Commission will then consider whether to adopt the rules. Any adopted rules will go into effect 31 days after the order is filed with the Code Reviser, which under this schedule would be early September. If significant changes to the proposed rules are necessary, this schedule may change. Companies may not file for flexible fares until the rule takes effect. Assuming flexible fare tariffs are filed immediately after the effective date, they will be effective no earlier than early October.
	WAC 480-30-XXX (2) (f) (Now WAC 480-30-140(2)(f):	The company objects to the language on the grounds that it eliminates the concept of territories and reduces all service to routes with a narrow definition. The company points out that a scheduled route serves a population within a territory in a manner that reflects the best mix of economy and service.	The Commission disagrees that the language eliminates the concept of territories. Consistent with WAC 480-30-036, the proposed amendment to WAC 480-30-096 defines "scheduled service" as service provided between a location specifically named by the company and a point specifically named by the company. In response to the company's concern about language in the first draft's version of WAC 480-30-XXX(2)(f) implying that territories did not exist, the second draft added the phrase "for scheduled route service"

			to make it clear that the provision would not apply to door-to-door service. "Location to point" service necessarily requires a route, even if it serves a "territory" or geographic market. This provision is based on the Commission's long-standing policy of examining whether the company's choice of pick-up locations and the company's choice of travel routes provides service to the satisfaction of the Commission. The Commission understands that in some cases the companies object to prior decisions by the Commission regarding the application of this practice, while in other cases the companies have benefited from the policy (some companies would not have a certicate today if the Commission had not applied the policy).
	WAC 480-30-XXX (3)(a)(ii) (Now WAC 480-30-140(3)(a)(ii))	The company objects to the language on the grounds that it requires a company to provide service beyond what the market demands.	The Commission disagrees that the second draft language requires companies to grow beyond what the market demands. In response to the company's concern about the language in the first set of draft rules, the Commission removed the phrase "continuously and vigorously" as a qualifier to "expand and improve." If an objecting company demonstrates that it has made a reasonable effort within the context of the market that will be sufficient. While it is true that the number of trips to the airport is determined by the market for air travel, not bus travel, it is also true that in most, if not all, markets, airporter companies do not serve every customer who chooses to travel to the airport. Some

			individuals will choose to travel by some means other than airporters, no matter what the company does, however, some customers who don't use the current airporter service may be open to using airporter service that meets their needs. Companies applying for authority will have to show an unmet demand. This draft rule allows an incumbent company to show it has made a reasonable effort to expand and improve its service to meet that demand.
	WAC 480-30-XXX (3)(a)(iii) (Now WAC 480-30-140 (3)(a)(iii))	The company objects to the description of the characteristics of satisfactory service in this subsection on the grounds that some are unnecessary or, in the case of "responsive to consumer requests", conflict with the requirement that the company seek approval for extensions of authority or changes in the tariff. The company recommends the characteristics be limited to, "convenient, safe and expeditious and meets the advertised or posted schedules."	The Commission disagrees with the characterization that these draft rules have no basis. Each of the factors the company objects to have been applied by the Commission in past application cases. The "direct" standard, in particular, has been the subject of multiple cases, and the Commission has expected service to be as direct as is reasonable, given the market. The phrase "responsive to consumer requests" is not intended to require companies to ignore their tariff and certificate, but is intended to address situations in which the company refuses to address unmet needs within the tariff as demonstrated by consumer requests. The Commission proposes a qualifier to reflect the intent that companies review their tariff and certificate in response to consumer requests for new or improved service, and when reasonable, propose changes to the Commission.

	WAC 480-30-XXX (4) (Now WAC 480-30-140(4))	The company does not understand the purpose of making the distinction between airporter service and traditional bus service. The company recommends deleting the subsection.	The purpose of this section was to clarify that the Commission may treat small, isolated territories served by only one company differently than the more typical urban, suburban or more accessible rural territories, because small, isolated territories may be more vulnerable to destructive competition and consumers have fewer transportation alternatives. In the case of a small, isolated market, the Commission may be less inclined to authorize competition between two or more companies, and may also be less inclined to authorize flexible rates. However, the Commission believes that changes in the draft rules elsewhere in WAC 480-30-140 provide the Commission with the flexibility to address its concerns, and therefore is deleting this subsection from the proposed rules.
	WAC 480-30-156	The company objects to the issuance of temporary certificates except in the case where the Commission is authorizing a temporary certificate to fill a temporary and unmet need in an unserved area. The service should be limited to no more than ninety days with the provision for one sixty day renewal upon good cause shown to the Commission	The Legislature clearly intended that the Commission should have the option of issuing temporary certificates, when it enacted RCW 81.68.046. The Commission agrees that the issuance of a temporary certificate should be infrequent and of limited duration. However the flexibility provided in the draft rule is necessary to allow the Commission to respond to a variety of situations.
	WAC 480-30-YYY (2)(c) (Now WAC 480-30-420 (2)(c))	The company believes that WAC 480-30-YYY(2)(c) is in conflict with subsection (12), and prefers the language in subsection (12). The company recommends that the last four words of subsection (2)(c) be deleted, so that the 5 percent	The Commission agrees that the last four words of subsection (2)(c) should be deleted, so that the 5 percent annual increase is added to the maximum fare of the previous year.

		increase is applied to the maximum fare as it increases each year, rather than being applied to the original base fare. The company believes that subsection (12) better recognizes the increasing costs of doing business.	
SeaTac Shuttle (May 30, 2013)			
	WAC 480-30-YYY (2)(c) (Now WAC 480-30-420(2)(c))	The language in WAC 480-30-YYY(2)(c) should be clear that the 25 percent initial maximum fare is the initial increase in the first year and that the 5 percent annual increases are made to the possible maximum fare each year, not the amount the carrier actually charges. The company recommends including an example to ensure there is no question of interpretation, and to modify the language to state " the maximum fare will increase annually by five percent ~~of the base fare~~ <u>of the previous maximum fare</u>."	The Commission agrees that including an example of the calculation of the maximum fare and annual increase will ensure clarity in interpreting the rule. The Commission further agrees that the maximum fare a company may charge under the rule is based on the maximum set in the rule, not the fare the company actually charges. After including the example in the rule, the Commission does not agree that the additional langauge the company proposes is necessary to ensure clarity.
Shuttle Express (May 14, 2013)			
	WAC 480-30-XXX (2) (Now WAC 480-30-140)(2)	Under the new section regarding "same service", the company requests clarification whether a scheduled route operator applying for a "flag stop" would be considered same or not same service as a scheduled route operator serving the same facility on an hourly basis.	The issue of flag stops should be addressed on a case-by-case basis, rather than in the rule.

	WAC 480-30-YYY (2)(c) (Now WAC 480-30-420(2)(c))	The company is concerned that the 5 percent fare increase provision will prove too low over a significant period of time. The company acknowledges that companies will retain the ability to propose a new base fare schedule by filing a new tariff, and that the five-year review of the rule will also provide an opportunity to evaluate the adequacy of the amount of increase allowed. The company believes it can live with the current draft rule.	The Commission disagrees that 5 percent each year is too low, and agrees that the five-year review proposal will provide an opportunity to determine, based on actual experience, whether the amount should be adjusted.
Capital Aeroporter (May 17, 2013)			
	Policy Statement	The company proposes that the Commission adopt a policy statement in rule that the remaining amendments will implement.	Chapter 480-30 WAC currently has a policy section that does not need to be amended. The Commission will address in the adoption order any further explanation of the policy or intent of the change in rules.
	WAC 480-30-YYY (2)(c) (Now WAC 480-30-420(2)(c))	The company believes anticipated business expenses require more than a 5 percent increase each year. • $1 increase in fuel cost requires an average fare increase of $3, or 9 percent. • Medical insurance is estimated to increase by $1 per employee hour per year. • Minimum wage requirements average 3 percent increase per year. • Wages expected to increase 15-	The Commission disagrees. While the Commission appreciates the company's assessment of possible future cost increases, they are speculative in nature. The initial increase of 25 percent plus 5 percent additional each year is sufficient for this new program. The evaluation after five years will give the companies and the Commission a better sense of whether additional flexibility is needed going forward. Further, the companies retain the ability to file a new tariff proposing a new set of "base" fares, if the adjustments prove inadequate.

		20 percentto remain competitive in recruiting and retaining employees. • Van life is dropping from 5 to 3 years due to environmental regulations. • Inflation is expected to exceed 5 percent in the future. • Taxes and tolls are expected to increase dramatically given legislative discussions. • Other states allow annual increases of 10 percent (California and Hawaii) to 25 percent (Illinois). • If a competitor is allowed into the market, an anticipated 10 percent revenue drop will require a 10 percent fare increase to maintain the same service. The company proposes compounding the 5 percent increase in the draft rule, and add the Seattle area consumer price index; or provide a 10 percent increase compounded.	
	WAC 480-30-XXX(2) (Now WAC 480-30-140(2))	The company seeks to amend the phrase "same service" to read "substantially the same service, similar or comparable."	The Commission disagrees. The phrase "same service" appears in statute. The draft rule describes adequately the factors the Commission has considered in prior cases, and will in the future, in determining whether the service proposed is the same as the service currently provided.

	WAC 480-30-XXX(1) (Now WAC 480-30-140(1))	The definition of "public convenience and necessity" should be amended to include the limiting language, "provided that it does not adversely affect auto transportation service provided to the greater public in the territory."	The Commission disagrees. Following stakeholder comments, the qualifier "reasonably" was added in this draft to reflect that the opportunity for service should not be unlimited; however, the Commission does not believe that the "greater public's" opportunity should unconditionally trump the individual consumer's opportunity.
	WAC 480-30-XXX (3)(iii) (Now WAC 480-30-140(3)(iii))	The company proposes deleting "courteous and respectful" from the criteria for satisfactory service.	The Commission disagrees. The Commission has previously held that "courteous and respectful" treatment is expected of providers.
	WAC 480-30-096(3)(a)(ii)	The company offers technical edits to convert singular words to plural words.	The Commission agrees with the technical edits.
	WAC 480-30-075(1)(e)	The company does not believe the Commission should compare the flexible fares to the fares charged under standard tariff rules.	The Commission disagrees. One of the goals of the evaluation is to determine whether companies are charging the maximum fares possible, in the event companies request the rules be changed to increase the maximum fares. Another goal is to consider how the fare-setting of the flexible-fare companies compares to the other transportation providers, as one of many "reasonableness" tests for the rules.
Capital Aeroporter (May 28, 2013)			
	WAC 480-30-YYY (2)(a) (Now WAC 480-30-420(2)(a))	"Base fare" should be defined as the adult (full) one-way fare. All other fares would be based as a discount off this highest fare.	The Commission disagrees. The proposed method is simple and straight forward and produces the same result as the suggested alternate method, which requires an additional calculation.
	WAC 480-30-YYY (5), (10) (Now WAC 480-30-420(5), (10))	The requirement to file a tariff to change the base fares(s) should provide an exception to exceed the maximum fare in limited situations, e.g., a low usage subarea or distant point which cannot cover expenses.	The Commission disagrees. If a company determines that a subarea or other service is not covering its costs, even at the maximum rate, and is unwilling to have the other parts of the company's territory subsidize the service, the company may file a new tariff to adjust all of the base fares or request

			permission to discontinue service. Existing rates are an average of operating costs and passengers transported. Some fares are higher than actual cost per passenger and some fares are lower than actual cost per passenger. The fares for "the low usage subarea or distant point" that do not cover expenses are offset by higher fares in "the high usage subarea and near points" that cover more than expenses. It would be inappropriate to increase only the "lower-than-cost" fares and not decrease the "higher-than-cost" fares.
	WAC 480-30-XXX (Now WAC 480-30-140)	The company questioned what would happen in the situation in which a new application is filed to provide service in a territory already served by two existing companies – one of which has flexible fare authority and one of which uses the traditional fare rules.	The Commission's evaluation of an application would not depend on whether the existing companies use the flexible fare rule or the traditional fare rule. However, WAC 480-30-140(3)(iv) does define "satisfaction" to include whether the existing certificate holders provide service at fares competitive with what the application proposes to charge.
Bremerton Kitsap Airporter (May 16, 2013)			
	WAC 480-30-096	The company expressed concern that rural areas or communities are not responsive to door-to-door service, but the rule provides that a company may apply for either scheduled service, door-to-door service, or both. Authorizing a new company to provide door-to-door service in competition with an existing scheduled service carrier may force both companies to reduce service.	The Commission disagrees. If a company applies for door-to-door service within a rural territory, the Commission will evaluate whether there is an unmet need for door-to-door service. Further, other provisions in the draft rules address the concern about the effects of competition.

	WAC 480-30-YYY (Now WAC 480-30-420)	The company agrees generally with the draft rule; however, the company recommends the companies be provided the flexibility to increase a fare in one location by an amount higher than 25 percent, and another location by an amount lower than 25 percent, so long as the total increase in fares is no more than 25 percent.	The Commission disagrees. The purpose of the rule is to provide flexibility to the company up to the maximum rate of 25 percent above the base fair, and also avoid an intensive review process. The proposal would require a detailed mathematical analysis of the proposed tariff, generating unnecessary work for both the company and the agency.