BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of Amending and Adopting Rules in	)	DOCKET TC-121328
	)	GENERAL ORDER R-572
WAC 480-30	)	
	)	ORDER AMENDING AND
Relating to Passenger Transportation Companies	)	ADOPTING RULES PERMANENTLY
	)	
	)	
. . . . .	)	

1 **STATUTORY OR OTHER AUTHORITY:** The Washington Utilities and Transportation Commission (Commission) takes this action under Notice WSR # 13-12-072, filed with the Code Reviser on June 5, 2013. The Commission has authority to take this action pursuant to RCW 80.01.040, RCW 81.04.160, RCW 81.04.250, RCW 81.68.030 and RCW 81.68.040.

2 **STATEMENT OF COMPLIANCE:** This proceeding complies with the Administrative Procedure Act (RCW 34.05), the State Register Act (RCW 34.08), the State Environmental Policy Act of 1971 (RCW 43.21C), and the Regulatory Fairness Act (RCW 19.85).

3 **DATE OF ADOPTION:** The Commission adopts these rules on the date this Order is entered.

4 **CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULE:** RCW 34.05.325(6) requires the Commission to prepare and publish a concise explanatory statement about an adopted rule. The statement must identify the Commission's

reasons for adopting the rule, describe the differences between the version of the proposed rules published in the register and the rules adopted (other than editing changes), summarize the comments received regarding the proposed rule changes, and state the Commission's responses to the comments reflecting the Commission's consideration of them.

5 To avoid unnecessary duplication in the record of this docket, the Commission designates the discussion in this Order, including appendices, as its concise explanatory statement. This Order provides a complete but concise explanation of the agency's actions and its reasons for taking those actions.

6 **REFERENCE TO AFFECTED RULES**: This Order amends and adopts the following sections of the Washington Administrative Code:

Amend	WAC 480-30-071	Reporting requirements.
Adopt	WAC 480-30-075	Review of the effects of adopted rule amendments.
Amend	WAC-480-30-096	Certificates, application filings, general.
Amend	WAC 480-30-116	Certificates, application docket, and objections, auto transportation company.
Amend	WAC 480-30-126	Certificates, applications, auto transportation company.
Amend	WAC 480-30-136	Procedure for applications subject to objection, information required of applicant and objecting company.
Adopt	WAC 480-30-140	Standards for determining "public convenience and necessity," "same service," and "service to the satisfaction of the commission."
Amend	WAC 480-30-156	Certificates, temporary, auto transportation company.
Amend	WAC 480-30-261	Tariffs and time schedules, definitions used in.
Amend	WAC 480-30-276	Tariffs and time schedules, companies must comply with the provisions of filed tariffs and time schedules.
Amend	WAC 480-30-286	Tariffs and time schedules, posting.
Adopt	WAC 480-30-420	Fare flexibility.

7 **PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS THEREUNDER:** The Commission filed a Preproposal Statement of Inquiry (CR-101) on September 5, 2012, at WSR # 12-18-074, advising interested persons that the Commission was considering entering a rulemaking to consider amending

WAC 480-30 to allow flexibility in setting rates and promote competition in the auto transportation industry. The Commission opened Docket TC-121328 to commence this proceeding.

8 The Commission also informed persons of this inquiry by providing notice of the subject and the CR-101 to everyone on the Commission's list of persons requesting such information pursuant to RCW 34.05.320(3) and by sending notice to all auto transportation companies holding certificates and the Commission's list of transportation attorneys, as well as other persons who have participated in recent stakeholder activities concerning auto transportation companies. Pursuant to the notice, the Commission received comments from the Washington Refuse and Recycling Association, SeaTac Shuttle, LLC (SeaTac Shuttle), Bremerton-Kitsap Airporter, Inc. (Bremerton-Kitsap), and Pacific Northwest Transportation, Inc. (Capitol Aeroporter).

9 **ADDITIONAL NOTICES AND ACTIVITIES PURSUANT TO PREPROPOSAL STATEMENT:** On February 8, 2013, the Commission issued a set of draft rules and received written comments on the draft rules by March 12, 2013, from SeaTac Shuttle, Capitol Aeroporter and Steve Salins, representing Shuttle Express, Inc. (Shuttle Express). The Commission convened a workshop on March 22, 2013, to discuss the draft rules. Representatives of SeaTac Shuttle, Capitol Aeroporter, Shuttle Express, Wickkiser International Companies, Inc. (Wickkiser). and Bremerton-Kitsap attended the workshop. Following the workshop, the Commission received additional written comments from SeaTac Shuttle, Bremerton-Kitsap, Capitol Aeroporter, and Wickkiser.

10 On April 15, 2013, the Commission issued a second set of draft rules for comment and a small business economic impact statement (SBEIS) questionnaire requesting responses. SeaTac Shuttle and Capitol Aeroporter submitted multiple written comments. Shuttle Express and Bremerton-Kitsap also filed written comments in response to the second draft.

11 All comments submitted and draft rules issued by the Commission are available on the Commission's website at http://www.utc.wa.gov/121328. Similarly, a summary of the comments on the draft rules filed in this docket, and the Commission's

responses to the issues raised in the comments, are available on the Commission's website.

12 **NOTICE OF PROPOSED RULEMAKING:** The Commission filed a Notice of Proposed Rulemaking (CR-102) and SBEIS with the Code Reviser on June 5, 2013, at WSR # 13-12-072. The Commission scheduled this matter for oral comment and adoption under Notice WSR # 13-12-072 at 1:30 p.m., on Friday, July 26, 2013, in the Commission's Hearing Room at 1300 S. Evergreen Park Drive S.W., Olympia, Washington. The Notice provided interested persons the opportunity to submit written comments to the Commission by July 8, 2013.

13 The proposal would amend rules governing the Commission's review of applications for authority to operate a passenger transportation company in Washington. These rules are WAC 480-30-096, WAC 480-30-116, WAC 480-30-126, WAC 480-30-136 and WAC 480-30-140. The changes provide greater clarity to existing companies, applicants and the Commission during the application process and will reduce the time and resources spent during the process. The proposed rules also allow companies to apply for flexibility to set their fares up to a maximum of 25 percent above their current base fare, and to increase the fares above the maximum by an additional 5 percent each year. (WAC 480-30-420) The proposed rules provide that the Commission will review these changes to the rules after five years to evaluate the impact of the changes on the companies and the customers they serve. (WAC 480-30-075) They would also modify existing rules governing reporting requirements, and tariffs and time schedules (WAC 480-30-071, WAC 480-30-261. WAC 480-30-276 and WAC 480-30-286), and clarify rules governing applications for temporary certificates. (WAC 480-30-156)

14 **WRITTEN COMMENTS:** In response to the CR-102 notice, the Commission received written comments from SeaTac Shuttle, Bremerton-Kitsap, and Capitol Aeroporter. In general, the companies agreed with the proposals to streamline the application process and provide fare flexibility, but expressed concerns about the sufficiency of the proposed maximum fare and the limit on annual increases, and about how the Commission will implement the changes to standards for considering applications. Summaries of all written comments and the Commission's responses are contained in Appendix B.

15 SeaTac Shuttle raised the following objections and concerns:

(1) The proposed rules in WAC 480-30-096(2)(a), (b) and (c) will allow the Commission to consider incomplete applications;
(2) WAC 480-30-116(2) and (3) narrow the scope of objections to applications;
(3) The proposed rule in WAC 480-30-140(2)(f) eliminates the distinction between "territories" and "routes"; and
(4) The language in WAC 480-30-140(3)(a)(ii) requires a company to make reasonable efforts to continually expand and improve its service, and to be responsive to consumer requests. The company believes that market demand is fixed and limited, and that the agency's rules and regulations impede improvements in service.

16 Bremerton-Kitsap reiterated concerns made in prior comments that the Commission might approve both door-to-door service and scheduled service in the same rural territory, forcing one or both companies out of business because the market will not sustain both.

17 Capital Aeroporter also repeated prior comments. Specifically, the company continues to be concerned that the proposed 25 percent maximum fare increase with a 5 percent annual increase will not be sufficient. It also urges the Commission to consider the stability and sustainability of service when considering applications. Finally, it proposes the Commission adopt a policy statement in rule to guide interpretation of the rules.

18 **RULEMAKING HEARING:** The Commission considered the proposed rules, together with proposed correcting and clarifying changes, for adoption at a rulemaking hearing on Friday, July 26, 2013, before Chairman David W. Danner, Commissioner Philip B. Jones, and Commissioner Jeffrey D. Goltz. The Commission heard oral comments from Ann Rendahl, the Commission's Director of Legislation and Policy, representing commission staff; Michael Lauver, representing SeaTac Shuttle; Richard Johnson, representing Wickkiser; Jim Fricke, representing Capitol Aeroporter; and Richard Asche, representing Bremerton-Kitsap.

19 Mr. Lauver (SeaTac Shuttle) supported the swift adoption of the rules, but raised three specific concerns:

(1) The interpretation of the term "same service" in WAC 480-30-140(2) is too narrow and could result in the Commission granting an application in competition with an existing carrier, which could result in harm to that carrier;

(2) The proposed rules in WAC 480-30-156(7) allow the Commission to issue temporary certificates as a precursor to permanent applications, which he asserted is contrary to the statutory intent; and

(3) Subsection (13) of the flexible fare rule (WAC 480-30-420) provides that a request for changes to the base fare "will be subject to an earnings review". Mr. Lauver fears that the phrase may be interpreted to mean the Commission would apply the 93/7 operating ratio methodology it currently applies in auto transportation company rate cases .

Mr. Lauver also asked the Commission to continue efforts in recent years to pursue legislation to deregulate the industry.

20 Mr. Johnson (Wickkiser) also supported the Commission's swift adoption of the proposed rules, noting that the market will determine the companies' rates following adoption of the rules. Mr. Johnson does not support efforts to deregulate the industry. He expressed concern that the proposed rules refer to "routes" and appear to express preference for "routes" over "territories." He argued that routes are narrower in scope than territories, and that companies can provide more service in a territory.[1]

21 Mr. Fricke (Capitol Aeroporter) stated that he supports continued regulation of the industry. He identified several concerns about the cost and complexity of current rate regulation. For that reason, he supported the proposed fare flexibility rule, yet raised a concern he had expressed in prior comments that the 25 percent maximum rate and 5 percent annual increase might not be sufficient, and that limited exceptions to the rule should be allowed. Mr. Fricke also repeated concerns he had identified in prior comments:

---

[1] Mr. Lauver later concurred with Mr. Johnson's comments regarding routes and territories.

(1) The Commission should include in WAC 480-30-001 a policy statement that balances the interest of a new application with the interest of the greater public, citing his company's prior experience when the Commission granted competing service to Centralia-Seatac Express;
(2) The term "same service" in WAC 480-30-140(2) should be interpreted as essentially the same or similar;
(3) The distinction between "door-to-door" and "scheduled" service should refer to routes, as door-to-door service can also be scheduled; and
(4) In the third sentence of WAC 480-30-126(5) regarding financial requirements for applications, the word "not" should be removed to require a full analysis of financial fitness.

22 Mr. Asche (Bremerton-Kitsap) and Mr. Solin agreed with the statements by the other commenters.

23 **SUGGESTIONS FOR CHANGE THAT ARE REJECTED:** Written and oral comments suggested changes to the proposed rules. For the following reasons, the Commission rejects the following suggested changes:

24 ***Policy guidance.*** Capitol Aeroporter suggested in several written comments and at the hearing that the Commission should include a statement of policy in the rule chapter to guide interpretation of the rules. The company asserted such a statement should explain that the Commission balances the interests of granting new applications with the interests of the greater public. The Commission declines the suggestion, as the chapter already includes such a section, WAC 480-30-001, titled "Purpose of chapter." That provision states, in pertinent part:

> The purpose of these rules is to administer and enforce chapters 81.68 and 81.70 RCW by establishing the following standards that apply to auto transportation companies and to charter and excursion carriers, to the extent allowed by the individual chapters of law:
>
> • Public safety;
> • Fair practices;
> • Just, reasonable and sufficient rates;
> • Nondiscriminatory application of rates;
> • Adequate and dependable service;
> • Consumer protection; and
> • Compliance with statutes, rules and commission orders.

This statement of purpose continues to provide guiding principles for implementing the existing and proposed rules. Further, we discuss in this Order the policy reasons for the proposed rules.

25 As we stated above, the Commission initiated this rulemaking to consider changes to the rules that would give companies flexibility in setting rates and promote competition in the auto transportation industry. The Commission has worked extensively with stakeholders over the last several years to review regulation of the auto transportation industry, and has determined that auto transportation companies operate within a competitive market for passenger service in the state. Many alternatives to auto transportation company service exist, including taxis, limousines, public transit, rail, or intrastate airline service. Individuals may drive to SeaTac International Airport and park at the Port of Seattle or in one of the many private lots. They may also obtain rides from family or friends. The Commission must review current rules and processes to ensure that they recognize current competitive conditions. It must also ensure that its processes are streamlined and efficient.

26 ***Streamlined application process.*** Several companies raised concerns or suggested changes to proposed rules related to streamlining the Commission's application process. For the reasons stated below, we decline to adopt these suggested changes.

27 In written comments, SeaTac Shuttle objected to language in subsections (2)(a), (b) and (c) of WAC 480-30-096, asserting that it would allow the Commission to consider incomplete applications. The company notes that these subsections include the word "may" instead of "must," such that the Commission may approve applications that are incomplete. For example, the subsections state, in relevant part, "The commission *may* reject or defer consideration of an application if …" and "The commission *may* reject or dismiss an application if …." We note that this language is in the existing rule and is not amended in the proposed rule. We are satisfied that the current language is working and has not resulted in the Commission processing applications that lack substantive information.

28 Also in written comments, SeaTac Shuttle objects to the language in subsections (2) and (3) of WAC 480-30-116, which it says narrows the scope of objections to applications. The company states that incumbent companies are the best source of information as to the regulatory and financial fitness of an applicant. The company

does not believe the agency can or will adequately investigate regulatory and financial fitness.

29 The existing rule language in subsection (2) provides that a "certificate holder may file a protest to an application published in the application docket." Existing subsection (3) addresses intervention in a proceeding. The proposed rule language would amend these subsections to narrow the scope of the objection to the issues of whether the existing company is providing the same service and whether the service is to the satisfaction of the Commission. The proposed rules are more consistent with the statutory requirements than current rule or practice, as RCW 81.68.040 does not identify regulatory and financial fitness as matters for objection by existing companies. Indeed, a review of prior orders reveals that the Commission and applicants invest significant time and resources on challenges to an applicant's financial or regulatory fitness, business model, or service model, even though the statute does not identify these as grounds for an objection.

30 During the hearing, Capitol Aeroporter requested the Commission remove the word "not" from the third sentence of WAC 480-30-126(5)(b) regarding financial fitness. The proposed rule states:

> The applicant demonstrates the financial ability to provide the proposed service. "Financial ability" means that the applicant has sufficient financing or assets to begin operations and continue them for a reasonable period while developing business. This determination does not require a comprehensive analysis of cost and revenue estimates of the full scope of proposed operations and balancing start-up and long-run operating costs over an extended period;

The company requests that an applicant be required to demonstrate and project start up and long-term operating costs. This is contrary to how the Commission has in prior cases required applicants to demonstrate financial fitness.[2] The Commission requires only that a company is fit to enter the market, not that it will be able to operate over the long term.

---

[2] *See Application of San Juan Airlines, Inc., d/b/a Shuttle Express*, Order M.V.C. No. 1899, Commission Decision and Order Granting Administrative Review and Reversing Initial Order Denying Application, pp 3-4 (Mar. 7, 1991); s*ee also Application of Valentinetti, Steve & Brian Hartley, d/b/a Seattle Super Shuttle*, Docket TC-001566, Commission Decision and Order Reversing Initial Order; Denying Application ¶¶ 42-43 (Feb. 15, 2002).

31 ***Standards for considering applications.*** The companies provided several comments regarding the Commission's proposed standards for reviewing applications, expressing concern about how the standards would be applied and affect existing certificate holders. The comments expressed concern about the Commission's distinction between "territories" and "routes" and also between "door-to-door" service and "scheduled route" service. They also expressed concern about the expectation that companies will make reasonable efforts to expand and improve service, and the narrow application of the terms "same service" and "route." For the reasons discussed below, the Commission does not believe changes to the proposed rules are necessary.

32 The Commission has authority to interpret the current statutory language to apply standards for entry in the market. Under RCW 81.68.040, no company may provide auto transportation service without the Commission granting a certificate "declaring that public convenience and necessity require such operation." Further, the statute provides in relevant part:

> The commission may, *after notice and an opportunity for a hearing, when the applicant requests a certificate to operate in a territory already served by a certificate holder under this chapter, only when the existing auto transportation company or companies serving such territory will not provide the same to the satisfaction of the commission, or when the existing auto transportation company does not object*, and in all other cases with or without hearing, issue the certificate as prayed for; or for good cause shown, may refuse to issue same, or issue it for the partial exercise only of the privilege sought, and *may attach to the exercise of the rights granted by the certificate to such terms and conditions as, in its judgment, the public convenience and necessity may require*. [Emphasis added.]

33 In other words, if an existing company asserts that it provides the same service in the same area that the applicant seeks to provide, and the company objects, the Commission must determine whether the existing carrier does, in fact, "provide the same service" and "will not provide service to the satisfaction of the commission." Further, the statute states that the Commission may determine, "in its judgment," that public convenience and necessity require the proposed service. Thus, without legislative change, the Commission must apply the standards for entry of a new service, that is considering whether the service is the same as an existing service,

whether the existing service is provided to the Commission's satisfaction, and whether the new service would be consistent with the public convenience and necessity. However, the statute allows the Commission a great deal of flexibility in applying the standards to determine entry into the market. In fact, the state court of appeals has found such discretion and flexibility in a case involving the grant of overlapping service:

> The statute states that the Commission may grant an overlapping certificate only if it finds that the incumbent "will not provide [service] to the satisfaction of the commission." The statute does not specify how the Commission is to make that determination. Indeed, on its face it would seem to give the Commission discretion to assess an incumbent carrier's future conduct in any logical and reasonable way supported by the evidence.[3]

34 The court also found that "[t]he public is benefited by an incumbent carrier being motivated to improve its service."[4] Under this case, the Commission has the discretion and authority to interpret and apply these standards "in any logical and reasonable way supported by the evidence,"[5] and there is public benefit in encouraging competition by motivating carriers to continually improve service.

35 The Commission developed the standards in the proposed rules for reviewing applications with the intent to inform existing companies and applicants how the Commission would evaluate applications. The standards are based in part on the Commission's interpretation of the statutory requirements in RCW 81.68 and applications adjudicated over the past three decades, as well as an effort to increase opportunities to provide new or improved service to consumers within the limits allowed by the statute. The proposed rules are not intended to express a policy preference between types of service, for example, door-to-door service and scheduled service. Rather, the intent is to provide a clear framework for companies to make choices regarding how best to serve consumers and the Commission to evaluate those choices.

---

[3] *Pacific Northwest Transp. Serv., Inc. v. Washington Utils. and Transp. Comm'n,* 91 Wn. App. 589, 596-97, 959 P.2d 160 (1998).

[4] *Id*. at 597.

[5] *Id*.

36 Door-to-door service is a premium service, providing consumers with a more direct and more convenient service with the expectation that it will cost more to use. Scheduled service is intended to provide service at a lower cost but with some trade-off in convenience. Companies choose which service to offer based on their analysis of market demand.[6] While every route serves a "territory" in the sense that consumers who ride along the company's route are drawn from the population that lives within a reasonable distance of that route, door-to-door service may naturally serve a greater territory more flexibly.

37 SeaTac Shuttle, with concurrence from Wickkiser and Bremerton-Kitsap, asserted that the proposed rule in WAC 480-30-140(2)(f) eliminates the distinction between "territories" and "routes." The subsection states that the Commission may consider:

> For scheduled service, the proposed route's relation to the nearest route served by an existing certificate holder. The commission views routes narrowly for the purpose of determining whether service is the same. Alternative routes that may run parallel to an objecting company's route, but which have a convenience benefit to customers, may be considered a separate and different service;

38 The proposed rule clearly distinguishes between scheduled service (along a route) and door-to-door service within a territory, allows companies to choose to offer those two services, and enables the Commission to more properly judge whether the company is providing the same service the applicant proposes to provide. The Commission has applied this standard in prior cases, determining that door-to-door service and scheduled service are not the same service, and granting applications to provide one type of service in a territory already served by the other type of service.[7]

---

[6] While we recognize that door-to-door service also can be a scheduled service, when we refer to scheduled service in this Order, we are referring to service between points designated by the company, whereas door-to-door service is between a point designated by the customer and a point designated by the company.

[7] *See Application of Pacific Northwest Transportation Services*, Order M.V.C. No. 1458, Commission Order on Reconsideration at 3 (Sep. 20, 1984); *Application of San Juan Airlines, Inc., d/b/a Shuttle Express*, Order M.V.C. No. 1834, Commission Decision and Order Granting Reconsideration; Affirming Final Order at 3 (Aug. 31, 1989); *Application of Jeffrey Lynn Porter d/b/a Pennco Transportation*, Order M.V.C. No. 2241, Commission Decision and Order Granting in part Staff's Petition for review, Denying Protestant's Petition for Review, and Granting Application, with Conditions at 9-10 (Dec. 2, 1998); and *Application of Heckman Motors, Inc.*,

39 SeaTac Shuttle objected to the proposed language in WAC 480-30-140(3)(a)(ii) that requires a company to make reasonable efforts to continually expand and improve its service, and to be responsive to consumer requests. The company believes that market demand is fixed and limited, and that the agency's rules and regulations impede improvements in service. The Commission responded to similar comments regarding earlier draft rules by inserting the term "reasonable" and by qualifying the phrase "responsive to consumer requests," with a requirement that the company only review its tariff and certificate in response to consumer requests for service, and when reasonable, propose changes to the Commission. If the Commission chooses, based on the facts and circumstances of an application, to deny the requested change, the company will not be penalized for not making the change. However, the Commission does not intend for companies to ignore their tariff and certificate requirements. The court of appeals in *Pacific Northwest Transportation Services* noted that there is a benefit in motivating companies to continually improve service.[8] Further, the Commission has held in prior cases that the state's restriction on entry is not a barrier behind which a company is shielded from competition, from providing service that is responsive to changing requirements of the market, or providing new services within a territory.[9]

40 SeaTac Shuttle and Capital Aeroporter both expressed concern that the Commission's interpretation of the statutory phrase "same service" is too narrow and suggested the Commission modify the term to read "essentially the same" or "similar." As discussed above, the Commission interprets the statute to reflect clearly the state's interest that it should draw a bright line between service offerings. The proposed rule describes adequately the factors the Commission will consider in determining, on the facts, whether the service proposed is the same as the service currently provided. As it has in prior cases, the Commission can and must draw distinctions between what is

---

d/b/a Olympic Bus Lines Inc. (Docket TC-000676) and *Application of Jeffrey Lynn Porter d/b/a Pennco Transportation* (Docket TC-000835), Initial Order, ¶¶ 21-29 (Nov. 9, 2000).

[8] *Pacific Northwest Transp. Serv.*, 91 Wn. App. at 597.

[9] *Application of Sharyn Pearson & Linda Zepp d/b/a Centralia-Seatac Airport Express*, Order M.V.C. No. 2041, Commission Decision and Order Granting Review; Modifying Initial Order; Granting Application in part at 3 (Mar. 11, 1994).

the "same" service in a particular market.[10] For example, subsection (2)(e) of the proposed rule states the Commission may consider the topography, character, and condition of the territory. In using these factors, the Commission expects that whether an alternative route has a convenience benefit to customers, and is therefore a "separate and different service," may be very different in different environments.

41 Capitol Aeroporter expressed at hearing and in written comments that the Commission should consider the stability and sustainability of existing service when evaluating an application for new or extended service. The company cites, as an example, the Commission's decision to allow a competitor to enter a portion of its market and the company's view of the impacts of that decision. The Commission addressed this concern by including in proposed WAC 480-30-140(1)(b) that the Commission, in reviewing an application, will consider "whether increased competition will benefit the traveling public, including its possible impact on sustainability of service."

42 By including this language, the Commission acknowledges that it must assess both the benefits and risks of competition when considering a new service. However, the Commission disputes the assumption on the part of some companies that markets have a fixed service saturation point that has already been reached in all markets, or that a company does not have the ability or responsibility to adapt its service and business model to a changing competitive market.

43 Bremerton-Kitsap stated in written comments the concern that the Commission will jeopardize the sustainability of both services if the Commission chooses to allow both door-to-door service and scheduled route service within a specific rural territory. This argument relies upon the assumption that a density of ridership is necessary to

---

[10] *See Application of Richard E. & Helen N. Asche, Bremerton-Kitsap Airporter, Inc., d/b/a Bremerton-Kitsap Airporter, Bremerton-Seatac Airporter, Inc., The Sound Connection*, Order M.V.C. No. 1443, Commission Decision and Order Granting Exceptions, in Part; Modifying Proposed Order; Granting Application in Part at 5-6 (May 16, 1984); *See also Application of Pacific Northwest Transportation Services*, Order M.V.C. No. 1458, Commission Order on Reconsideration at 3 (Sep. 20, 1984); *Application of San Juan Airlines, Inc., d/b/a Shuttle Express*, Order M.V.C. No. 1809, Commission Decision and Order Granting Application as Amended in Part at 16 (Apr. 21, 1989); *Application of SeaTac Shuttle, LLC, d/b/a SeaTac Shuttle*, Docket TC-030489, Order 03, Final Order on Administrative Review; Granting Motion to Strike; Denying Motion to Respond; Affirming and Adopting Initial Order; Granting Application, ¶ 44 (Nov. 26, 2003).

sustain service. As mentioned above, the Commission believes the rule adequately reflects the Commission's intent to weigh the benefits of competition together with the impact on sustainability of service. Further, proposed WAC 480-30-140(2)(d) provides that the Commission may consider whether population density warrants additional facilities or transportation. The Commission believes, however, that it is possible that a market may support both types of service, since, as previously stated, one type of service caters to consumers willing to pay for a premium service, while the other type of service caters to consumers willing to make a trade-off between price and convenience. The Commission determined this very issue in prior application cases.[11]

44 ***Temporary certificates.*** At hearing and in written comments on draft rules, SeaTac Shuttle objected to language relating to temporary certificates in proposed rule WAC 480-30-156(7). The company argues that the Commission should not issue temporary certificates as a precursor to permanent authority and that doing so is contrary to the Legislature's intent. The company asserts that the Commission should only issue temporary certificates to fill a temporary and unmet need in an unserved area. The Commission understands the company's concern, but finds the Legislature clearly intended when it enacted RCW 81.68.046 that the Commission should have the option of issuing temporary certificates, including in areas where an existing company provides service.

45 The current language in WAC 480-30-156(7) allows a company to file applications simultaneously for temporary and permanent authority. The proposed amended language at issue modifies the period for which the Commission may grant a temporary certificate to "up to one hundred and eighty days *based on an estimate regarding how long it will take to complete review of the permanent application*." (Emphasis added to reflect amended language) The amended language will allow the Commission flexibility in responding to a variety of circumstances surrounding an application for a temporary certificate.

---

[11] *See Application of Jeffrey Lynn Porter d/b/a Pennco Transportation*, Order M.V.C. No. 2241, Commission Decision and Order Granting in part Staff's Petition for review, Denying Protestant's Petition for Review, and Granting Application, with Conditions at 9-10 (Dec. 2, 1998); *see also Application of Heckman Motors, Inc., d/b/a Olympic Bus Lines Inc.* (Docket TC-000676) and *Application of Jeffrey Lynn Porter d/b/a Pennco Transportation* (Docket TC-000835), Initial Order, ¶¶ 21-29 (Nov. 9, 2000).

46 ***Fare flexibility.*** At the hearing and in written comments, several companies suggested changes to the proposed rule governing fare flexibility, WAC 480-30-420, specifically, increasing the amount of the maximum fare and annual increases, allowing exceptions for specific fares, and limiting earnings reviews. For the reasons discussed below, the Commission declines to adopt these suggested changes.

47 Under RCW 81.04.250, the Commission has authority to adopt a flexible ratemaking methodology for transportation companies. The statute provides in relevant part:

> The commission may, upon complaint or upon its own motion, prescribe and authorize just and reasonable rates for the transportation of persons or property for any public service company subject to regulation by the commission as to rates and service, whenever and as often as it deems necessary or proper. …
>
> *In exercising this power, the commission may use any standard, formula, method, or theory of valuation reasonably calculated to arrive at the objective of prescribing and authorizing just and reasonable rates.* [Emphasis added.]

48 Given the competitive market within which auto transportation companies operate, we find it appropriate to allow companies to establish their fares subject to a maximum fare of 25 percent above their current base fare, with the option to increase fares annually up to 5 percent from the maximum fare. However, we do so together with the proposed rules governing streamlining of the application process and clarifying of the application standards to ensure sufficient opportunities for competition within the passenger transportation market.

49 For the purpose of reviewing a company's filing to request fare flexibility, the Commission will evaluate the filing within the context of WAC 480-30-420 and not within the context of traditional economic regulation, such as profit, operating margin, revenues, salaries, bonuses, cross subsidies, discrimination between customers and overearning. Consistent with the effort to streamline the application process and clarify application standards, the Commission proposes reduced regulatory requirements for setting fares. This will likely result in savings in administrative costs for the Commission and companies, as well as a reduction in the time for processing tariff filings.

50 At hearing and in written comments, Capitol Aeroporter raised the concern that the proposed 25 percent maximum fare increase with a 5 percent annual increase will not be sufficient to allow companies to recover their costs. We disagree. The company identifies potential future cost factors of increases in ferry fares, minimum wage, healthcare costs and fuel that are difficult to predict. The opportunity for a 25 percent initial maximum fare with annual 5 percent increases should give the companies sufficient room to address costs and to compete in the market. Further, the proposed review of the amended rules after a five-year period will allow the Commission to adjust the annual increase percentage if necessary. Comments during the hearing indicate that the companies expect the market will determine the fares the companies charge within the 25 percent maximum fare allowed by the proposed rule.[12]

51 Also at the hearing and in prior written comments, Capitol Aeroporter argued that the proposed rule should allow exceptions for higher fares for certain distant or hard-to-serve locations. As with the suggestion for a higher maximum fare and annual increase, we do not adopt the suggestion. The proposed rule will give the companies the flexibility to establish fares within their territory and along their routes to compete in the market. This means that some fares may be higher and reach the maximum fare amount, while other fares may not. The five-year review will allow the Commission to evaluate how the companies have operated under the flexible fare rule and make adjustments as necessary.

---

[12] This was the testimony at the adoption hearing of Richard Johnson, representing Wickkiser. We agree. Take Capitol Aeroporter's rates for an example. Currently, the round trip fare from Olympia to Seattle-Tacoma International Airport for two passengers is $127.50. Should Capitol Aeroporter take advantage of all the allowable rate increases, rates could increase over current rates by 60 percent in five years, resulting in a fare, five years from now, of over $200. Fare increases of that magnitude may lead consumers to make different choices for traveling to the airport. We believe such fare increases would either (1) cause a number of potential passengers to seek other, less costly, options, thereby providing downward pressure on rates, (2) encourage others to seek to enter the market with lower fares, arguing that fares of that magnitude cannot be part of a service "to the satisfaction of the commission" under WAC 480-30-140(3)(iv), or (3) both. In any event, if a company does not believe this rule provides sufficient fare flexibility, the company has the option of not opting into the flexible fare methodology in the first instance and may simply file tariffs with what it believes to be the appropriate rates.

52 Finally, at hearing, SeaTac Shuttle objected to the language in proposed WAC 480-30-420(13) which provides that a company's request for an increase in its base fare "may be subject to an earnings review or rate case." The company assumes that an earnings review means the Commission would use the 93/7 operating ratio methodology for establishing rates. We decline to modify the language in the proposed rule, as the term "earnings review" does not determine the method for conducting such a review. The 93/7 operating ratio is an earnings review methodology the Commission currently applies in auto transportation company rate cases. However, an earnings review encompasses a number of methods and does not refer solely to the 93/7 or any other operating ratio methodology. The Commission has flexibility under RCW 81.04.250 to determine the appropriate means of determining rates and fares, including the method for conducting an earnings review.

53 **COMMISSION ACTION:** After considering all of the information regarding this proposal, the Commission finds and concludes that it should amend and adopt the rules as proposed in the CR-102 at WSR # 13-12-072 with the correcting and clarifying changes described below.

54 **CHANGES FROM PROPOSAL:** The Commission adopts the proposal with the following changes from the text noticed at WSR # 13-12-072 to correct and clarify the rules to ensure clarity in implementing the rules:

55 **WAC 480-30-075(1).** The Commission modifies WAC 480-30-075(1) for clarity by deleting the following words at end of the first sentence: "adopted by the commission on (date)." We remove this language to avoid trying to estimate a correct adoption date in the rules. The published rules will provide information identifying the rules adopted and amended in the rulemaking.

56 **WAC 480-30-096(3)(h) and (i):** The language in this rule is corrected. The word "and" between subsections (3)(h) and (i) is deleted and added between subsections (3)(i) and (j), as subsection (3)(j) is the last subsection.

57 **WAC 480-30-096(7), (3)(d).** The language in subsection (7) is intended to explain that applicants for extension of authority must file tariff and time schedules only for the proposed service. To ensure clarity the Commission deletes the language in subsection (7) and adds the phrase "for the proposed service" following the language in subsection (3)(d).

58 **WAC 480-30-140(3)(c):** The phrase in subsection (3)(c), "in determining that the company does not meet the criteria of service to the satisfaction of the commission" is deleted from the first sentence, as it is redundant with the first phrase in the sentence.

59 **WAC 480-30-420(7) and (14):** The language in subsection (14) of the proposed rules is modified to clarify that companies that advertise or provide notice of flexible fares or changes in fares may not state that the Commission approves or sets specific fares. The language in subsection (7) concerning notice is amended to include a cross-reference to subsection (14).

60 **WAC 480-30-140(2)(f) and (g), (3)(a)(i),(ii), and (iv):** These subsections of the proposed rule refer to "scheduled route service," while the proposed WAC 480-30-096 includes a definition for "scheduled service." The terms in the proposed rules should be consistent, so the Commission deletes the word "route" from the term "scheduled route service."

61 **WAC 480-30-420(15):** In the explanatory chart following subsection (15), the language related to year one is changed from "25% increase in Base Fare" to "25% above Base Fare" to be consistent with the language in subsection (2)(c) of the rule.

62 **STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE:** After reviewing the entire record, the Commission determines that WAC 480-30-071, WAC 480-30-096, WAC 480-30-116, WAC 480-30-126, WAC 480-30-136, WAC 480-30-156, WAC 480-30-261, WAC 480-30-276 and WAC 480-30-286 should be amended, and WAC 480-30-075, WAC 480-30-140 and WAC 480-30-420 should be adopted to read as set forth in Appendix A, as rules of the Washington Utilities and Transportation Commission, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the Code Reviser.

ORDER

63 **THE COMMISSION ORDERS:**

64 The Commission amends WAC 480-30-071, WAC 480-30-096, WAC 480-30-116, WAC 480-30-126, WAC 480-30-136, WAC 480-30-156, WAC 480-30-261, WAC 480-30-276 and WAC 480-30-286, and adopts WAC 480-30-075, WAC 480-30-140 and WAC 480-30-420 to read as set forth in Appendix A, as rules of the Washington Utilities and Transportation Commission, to take effect on the thirty-first day after the date of filing with the Code Reviser pursuant to RCW 34.05.380(2).

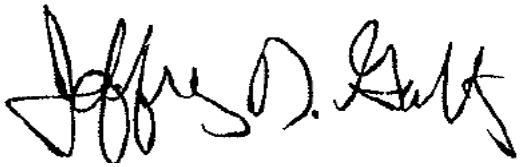
65 This Order and the rule set out below, after being recorded in the order register of the Washington Utilities and Transportation Commission, shall be forwarded to the Code Reviser for filing pursuant to RCW 80.01 and RCW 34.05 and WAC 1-21.

DATED at Olympia, Washington, August 21, 2013.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

PHILIP B. JONES, Commissioner



JEFFREY D. GOLTZ, Commissioner

Note: The following is added at Code Reviser request for statistical purposes:

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 0, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 3, amended 9, repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3, amended 9, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 3, amended 9, repealed 0.

Appendix A
(WAC 480-30 Rules)

Appendix B
(Comment Summary Matrix)