



UTC

Washington Utilities
and Transportation
Commission

**EVALUATION OF
THE EFFECTS OF
2013 RULE CHANGE
ON AUTO
TRANSPORTATION**

Five-year review as
required by WAC
480-30-075 to
evaluate how
companies have
operated under the
flexible fare rule

*General Order R-572
Docket TC-121328*

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Report to the Commission

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Commissioner Rendahl
Commissioner Balasbas

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Date: August 27, 2020

Subject: Staff report on flexible fares relating to auto transportation companies.

Given that competition among passenger transportation providers may exist in most, if not all, areas of the state, including private cars, taxis, limousines, and public transit, the Commission believes that the current method of strict economic regulation of rates and entry of auto transportation companies may no longer be effective or efficient.

Notice of Rulemaking – September 7, 2012, Docket TC-121328

To bring flexibility in setting rates and promote competition in the auto transportation industry, the commission opened a rulemaking in 2012 to amend its rules for Passenger Transportation Companies (WAC 480-30).¹ The new rules relating to flexible fares were adopted in 2013.² This report is required under WAC 480-30-075, *Review of the effects of adopted rule amendments*.

Increased choices in the private transportation industry, over the past decade, have created increased competition between various modes except for regulated auto transportation companies, which have been restricted in their ability to react to market changes. The 2013 changes made to WAC 480-30 intended to promote competition in the industry by allowing flexibility in setting rates and lowering the barriers to entry.

Staff believes that while the changes to WAC 480-30 have not necessarily made entrance into the regulated auto transportation market easier than an environment without oversight, the changes have been beneficial for existing companies in other ways. Companies that chose to use flexible fares can adjust rates as they deem necessary, expand service, and quickly respond to external market changes while saving the company time and money.

After a thorough review, Staff recommends no changes to the current rules. Staff does recommend that the Commission continue to monitor companies using flexible fares for any

¹ Docket TC-121328

² General Order R-572, Docket TC-121328, Order amending and adopting rules permanently, page 5, paragraph 13

changes in the industry or operating environment, such as the current impact of the COVID-19 pandemic, on airporter service and business viability.

Summary

In 2013, the Utilities and Transportation Commission revised the rules for auto transportation, allowing for flexible pricing. An evaluation of the effects of those revisions was required in WAC [480-30-075](#) beginning January 2019. This report discusses the results of Staff's evaluation. The formal rulemaking, TC-190898, was opened on October 30, 2019 to evaluate the effects of the newly adopted and amended rules.³

Staff's review found that overall, those companies that elected to use the flexible fare option are financially viable, customers are being serviced at competitive rates, and the cost of regulatory oversight has decreased. Nine companies of 13, of the state's regulated auto transportation companies elected the flexible fare option, of those, four companies have elected to increase rates systematically each year by the allowed five percent. Even though allowed by rule, no company has filed to reset its base rate during the five-year period, indicating that the current five percent maximum allowed rate increase is reasonable. Although increased services were expected after the rule change, there has been essentially no movement by potential certificate applicants to provide different services within an incumbent's certificated area. Although the transportation industry itself has become more competitive, anecdotal evidence suggests the lack of activity in developing a more competitive auto-transportation environment may be rooted in the regulatory environment and the associated costs of obtaining and defending a new certificate.

Discussion

Consistent with the adopted rules, Staff has evaluated the effects of the rule change on the regulated carriers and on the public. Staff analyzed the effects of adopting each rule starting with WAC [480-30-140](#), which introduced new standards for determining "public convenience and necessity" and clearly defined "same service," and "service to the satisfaction of the commission." WAC [480-30-096](#) expanded the requirements for applications of a certificate to clearly delineate if the service requested for was door-to-door or scheduled service.

Staff also reviewed the other changes, including WAC [480-30-071](#), which limited annual reporting requirements to only total intrastate revenues reported to the Department of Revenue and certain other safety data.

Staff also reviewed the effects of the additional requirements for applicants and incumbent carriers. For example, the amendments to WAC [480-30-116](#) clearly limited protests by an incumbent carrier to applications for a new certificate for applied services that the incumbent was already providing. WAC [480-30-126](#) increased the applicant requirements to demonstrate a need for service not provided by the existing auto transportation company, including requiring statements by independent members of the public and strengthening the requirement that the applicant is financially able to provide the proposed service.

³ On November 6, 2019, the commission filed a CR-101 - Preproposal Statement of Inquiry.

WAC [480-30-136](#) added administrative procedures for protests to applications subject to objection, and the information required of any applicant and objecting company.

The heart of the new rules is the concept of flexible fare regulation, and was adopted in a new section, WAC [480-30-420](#), *Fare flexibility*. It is the focus of much of the Staff review and evaluation. Here, and in its order, the Commission highlighted that it was in the public interest to provide flexibility to auto transportation companies to charge fares for service. This new rule provides the mechanism that a company uses to adjust its rates, providing the fare flexibility the commission believes it needs to compete.

Finally, WAC [480-30-286](#) requires auto transportation companies subject to flexible fares to carry a copy of its flexible fare tariff and its current time schedule.

Evaluation

Staff evaluated the results of the rule changes by reviewing commission data and requesting information from the regulated auto transportation companies.⁴ The questions for consideration were provided in rule⁵ and are addressed in our discussion below. The purpose of this query is to determine if the changes in rules were economical and promoted competition in the regulated auto transportation industry.

1. *Have the amendments increased opportunities to maintain and expand safe, fair, adequate, dependable and fairly priced auto transportation services to the public?* Two responses from Commission-regulated companies indicated that the rule changes have increased opportunities to maintain and expand auto transportation service to the public. Another company stated that the amendment has allowed it to adjust fares as needed and to fairly price services within a competitive and consistently changing market. All responsive companies stated that fare flexibility has allowed them to compete in an ever-changing market.

Staff confirmed with the Commission's Transportation Safety section that there has been no increase in safety issues for auto transportation companies since 2012, seemingly unaffected by the adoption of flexible fares.

2. *Have the amendments reduced the cost to the companies of complying with the tariff and application regulations in this chapter and the cost to the agency of enforcing the regulations?* All companies responded that costs to the companies have decreased due to the simplified audit process. Unfortunately, due to the changes made to the Commission time management system in 2017, Staff was unable to compare costs of enforcing auto transportation rules before and after the 2013 implementation of flexible fares. However, as discussed below, time required for Staff to process a flexible fare filing is substantially less than a full rate case.

⁴ In its CR-101 for the rulemaking establishing this rule, the commission requested written comments on the changes allowing flex fares. The commission received four comments, all from current certificated auto transportation companies.

⁵ WAC 480-30-075

3. *Have the amendments reduced the duration of time required to process tariffs and applications?* Without question, the duration of time required to process tariffs has decreased as stated by all four responsive companies. This is supported by the standard filing used by companies to adjust their rates annually, which increases efficiency and timeliness.

However, the processing time for applications could not be assessed because of the limited applications received. Again, due to the changes made to the Commission time management system in 2017, Staff was unable to compare time spent processing tariffs before and after the implementation of the flexible fare rules.

4. *Have the amendments increased opportunities for new and existing companies to provide service?* Since the inception of the rule amendments, there have been no new entrants subject to the UTC's jurisdiction, therefore there is no evidence that the amended rules have increased opportunities for new companies. However, there has been substantial entry by competitors that are not under the jurisdiction of the UTC. The entry that is outside of the UTC's jurisdiction has transformed the auto transportation market significantly and the new rule amendments have allowed incumbent regulated firms to better address these new forms of service providers who are not burdened by regulatory process. Flexible fares have provided the ability for incumbent firms to respond more quickly to preserve revenue, and some of the companies believe that the amendments have enabled them to expand service with greater flexibility.
5. *Has there been an increase in consumer complaints about unreasonable or unfair fares?* The UTC Consumer Protection section has received no complaints regarding auto transportation services since the implementation of the new and amended rules.

In addition, in response to this question, all the responsive companies stated that there have been no consumer complaints regarding rates. One company stated that it has witnessed a reduction in customer complaints since the new and amended rules have been implemented.

6. *Have the changes resulted in an increase in ridership?* While two companies stated that they have not witnessed or tracked an increase in ridership, two of the companies stated that they have, in fact, seen an increase in ridership. Staff attempted to quantify information pertaining to ridership; however, due to the many factors that influence ridership, and the many different services provided by regulated auto transportation companies, Staff was unable to evaluate the data in any meaningful way.

Interestingly there has been no movement by potential certificate applicants to provide different services within an incumbent's certificated area. The lack of activity in developing a quasi-competitive auto-transportation environment may be associated with the cost of obtaining and defending a new permit. Staff's review indicates that those companies that have elected the flexible fare option are financially viable, their customers are being serviced at competitive rates, and the costs of regulatory oversight have decreased.

The changes made to WAC 480-30 in 2013 were implemented to allow flexibility in setting rates and promote competition in the auto transportation industry. Since these changes were made, only one overlapping certificate has been issued by the Commission. The new auto transportation company was granted a certificate to operate to and from the Sea-Tac International Airport. The company no longer operates due to extensive opposition from the existing certificate holder. Several auto-transportation companies have indicated that they have not participated in flexible fares because they do not want to open their territories to competition.

Four of the companies that are participating in flexible fares have filed to increase their fares by the allowed five percent each year. Because companies participating in flexible fares are not required to file general rate cases, Staff is unable to determine what the rate of return earned for flexible fare companies from their currently allowed banded rates. However, all responding companies have stated that the changes to WAC 480-30 have been beneficial to existing operations. The companies not participating in flexible fares continue to file rate cases to increase their tariff rates.

Staff Recommendation

Staff believes that while the changes to WAC 480-30 have not necessarily made entrance into the regulated auto transportation market easier, they have been beneficial for existing companies in other ways. Participating companies can adjust rates as they deem necessary within certain parameters, expand service, and quickly respond to external market changes while saving the company time and money by streamlining tariff filings required by the Commission.

After this review, Staff recommends no changes to the current rules. Staff also recommends the continued monitoring of flexible fare companies for any changes in the industry or its operating environment such as the current impact of COVID-19 on airporter service and business viability.

-Appendix-

Background

The economic regulation of auto transportation companies in Washington dates back 100 years to 1921 as motor vehicles began replacing horses as the main choice of transportation. With limited consumer choice, economic regulation was required to protect the fare-paying public. In the century that has passed since the first certificate of public convenience and necessity was issued, transportation options have increased beyond what could have been imagined when the law was first codified.

The ability of auto transportation companies to use flexible fares resulted from Commission discussions with the public and members of the industry over several years. Those discussions focused on how the Commission regulated the auto transportation industry, specifically what methodology it should use for setting rates in a changing transportation environment. The Commission recognized the new environment was having an adverse effect on regulated companies due to growing competition in the marketplace.

The Commission concluded that competition now exists in most, if not all, areas of the state. Competition, whether in the form of taxis, limousines, public transit (e.g., buses and light-rail), and to a greater extent, app-based car services (e.g., Lyft and Uber) allowed consumers greater opportunity for choice. During the rulemaking, the Commission expressed its belief that the current method of strict economic regulation of rates and restricted entry of auto transportation companies may no longer be an effective nor efficient way to handle auto transportation. Instead, it proposed that a different, more flexible methodology may reduce the time and expense for both companies and the Commission while benefiting the general public. The introduction of a new rate-setting methodology would not only promote rate flexibility but also introduce the economic benefits of competition among carriers.

To begin the development of the flexible fare rules, the Commission filed a *Preproposal Statement of Inquiry* (CR-101) on Sept. 5, 2012,⁶ advising interested persons that the Commission was considering entering a rulemaking 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 begin this proceeding.

The Commission issued its first set of draft rules,⁷ receiving constructive written comments from three companies.⁸ A little over a month later, a workshop was held⁹ to discuss the rules including proposed changes. Representatives of five auto-transportation companies¹⁰ were in attendance.

⁶ WSR # 12-18-074

⁷ February 8, 2013

⁸ SeaTac Shuttle, Capitol Aeroporter and Steve Salins, representing Shuttle Express, Inc.

⁹ March 22, 2013

¹⁰ SeaTac Shuttle, Capitol Aeroporter, Shuttle Express, Wickkiser International Companies, Inc. (Wickkiser), and Bremerton-Kitsap

Following the workshop, the Commission received additional written comments from four companies.¹¹ A second set of draft rules was issued¹² for comment, and four companies¹³ submitted comments.

On June 5, 2013, a *Notice of Proposed Rulemaking* (CR-102) and *Small Business Economic Impact Statement* were filed with the Code Reviser.¹⁴ The Commission scheduled the matter for oral comment and adoption and provided interested persons with another opportunity to submit written comments.

The proposal also provided for amendments to Commission rules governing its review of applications for authority to operate a passenger transportation company in Washington.¹⁵ The proposed changes provided greater clarity to existing companies, applicants, and the Commission during the application process reducing the time and resources spent during the process. The proposed rules also, for the first time, allowed companies to apply for authority from the Commission for the flexibility in setting their fares. The new authority would allow companies the flexibility to increase fares up to a maximum of 25 percent above their current base fare, and then, for each year following, to increase the fares above the maximum by an additional five percent.¹⁶

The proposed rules provided for a Commission review of the changes to the rules after five years, evaluating the impact of the changes on the companies and the passengers they serve.¹⁷ The proposed rules also modified reporting requirements, tariffs and time schedules,¹⁸ and clarified rules governing auto transportation company applications for temporary certificates of convenience and necessity (certificates).¹⁹

In response to the *Notice of Proposed Rulemaking* CR-102 notice, three companies provided written comments to the Commission.²⁰ Soon after, on Aug. 21, 2013, the Commission amended and adopted the rules as proposed in the CR-102.

In the order adopting the rules the Commission remarked that “[i]n 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.”²¹ Answering those concerns from stakeholders, the Commission

¹¹ SeaTac Shuttle, Bremerton-Kitsap, Capitol Aeroporter, and Wickkiser.

¹² April 15, 2013

¹³ SeaTac Shuttle, Capitol Aeroporter, Shuttle Express and Bremerton-Kitsap

¹⁴ WSR # 13-12-072

¹⁵ WAC 480-30-096, WAC 480-30-116, WAC 480-30-126, WAC 480-30-136 and WAC 480-30-140

¹⁶ WAC 480-30-420

¹⁷ WAC 480-30-075

¹⁸ WAC 480-30-071, WAC 480-30-261, WAC 480-30-276 and WAC 480-30-286

¹⁹ WAC 480-30-156

²⁰ SeaTac Shuttle, Bremerton-Kitsap, and Capitol Aeroporter

²¹ General Order R-572, Docket TC-121328, ¶14

provided for this five-year review that allowed the Commission to evaluate how the companies have operated under the flexible fare rule and make adjustments as necessary.²²

²² Id. at ¶51

Table 1 - Rules Adopted or Amended in Docket TC-121328

To allow flexibility in setting rates and promote competition in the auto transportation industry, the Commission amended WAC 480-30. The new and amended rules are listed in Table 1.

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.

Table 2 - Certificated Auto Transportation Companies

Thirteen auto transportation companies have certificates from the UTC to operate in Washington. Of those 13 companies, nine participate in flexible fares, as indicated in Table 2.

Company	DBA	Certificate #	Flex Fares?
Beeline Tours LTD (formerly Miller Schmer, Inc.)	Seattle Express	C-1052	Yes
BML Investments LLC	Wenatchee Valley Shuttle	C-64605	No
Bremerton-Kitsap Airporter, Inc.	Bremerton-Kitsap Airporter Kitsap-SeaTac Airporter The Sound Connection Ft. Lewis/McChord Airporter	C-903	Yes
CWA, Inc.	Airporter Shuttle	C-1073	Yes
Northwest Smoking and Curing, Inc	SeaTac Direct	C-65454	Yes
Pacific Northwest Distributing LLC	Vashon Shuttle	C-1047	No
Pacific Northwest Transportation Services, Inc.	Capital Aerporter Airport Shuttle	C-862	Yes
Rocket Transportation LLC (formerly Rocket Enterprises)	Rocket Transportation	C-62991	No
Shuttle Express, Inc.	Shuttle Express Go Shuttle Express Limos by Shuttle Express Downtown Airporter	C-975	Yes
The Rock Transportation Services Corporation (formerly Seatac Shuttle)	Whidbey-SeaTac Shuttle	C-1077	Yes
Transportation Demand Management, Inc	Starline Luxury Coaches	C-1078	No
Weigeshoff Transportation LLC	Island Airporter LLC	C-1075	Yes
Wickkiser International Companies, Inc.	Airporter Shuttle	C-933	Yes

Table 3 - Flexible Fare Companies with Fare History*

Of the nine auto transportation companies currently participating in flexible fares, four adopted flexible fares in 2013, increasing fares at the maximum five percent each year. One certificated company started flexible fares in 2014, three companies started flexible fares in 2016 and one certificated company began flexible fares in 2019, as shown in Table 3.

Company	DBA	Flex Fares?	2012	2013	2014	2015	2016	2017	2018	2019
BeeLine Tours LTD (formerly Miller Schner, Inc.)	Seattle Express	Yes	\$ 12.00	\$ 12.00	\$ 12.00	\$ 12.00	\$ 15.00 *	\$ 15.00	\$ 15.00	\$ 15.00
BML Investments LLC	Wenatchee Valley Shuttle	No	39.95	41.52	41.52	41.52	41.52	45.00	52.00	52.00
Bremerton-Kitsap Airporter, Inc.	Bremerton-Kitsap Airporter Kitsap-SeaTac Airporter The Sound Connection Ft. Lewis/McChord Airporter	Yes	16.25	20.31 *	21.33	22.39	23.51	24.69	25.92	27.22
			15.50	19.38 *	20.35	21.37	22.44	23.56	24.74	25.98
CWA, Inc.	Airporter Shuttle	Yes	30.00	30.00	30.00	35.00	43.75 *	43.75	43.75	43.75
Northwest Smoking and Curing, Inc.	SeaTac Direct	Yes		39.00	48.75 *	48.75	48.75	48.75	48.75	48.75
Pacific Northwest Distributing LLC	Vashon Shuttle	No	58.00	58.00	58.00	58.00	58.00	58.00	58.00	58.00
Pacific Northwest Transportation Services, Inc.	Capital Airporter Airport Shuttle	Yes	45.00	56.25 *	59.06	62.02	65.12	68.37	71.79	75.38
Rocket Transportation LLC (formerly Rocket Enterprises)	Rocket Transportation	No	150.00	150.00	150.00	164.10	164.10	164.10	164.10	164.10
Shuttle Express, Inc.	Shuttle Express Go Shuttle Express Limos by Shuttle Express Downtown Airporter	Yes	47.00	58.75 *	61.69	64.77	68.01	71.41	74.98	78.73
The Rock Transportation Services Corporation (formerly Seatac Shuttle)	Whidbey-SeaTac Shuttle	Yes	37.00	46.25 *	48.56	50.99	53.54	56.22	59.03	61.98
Transportation Demand Management, Inc.	Starline Luxury Coaches	No	38.00	38.00	38.00	38.00	38.00	38.00	38.00	38.00
Weighshoff Transportation LLC	Island Airporter LLC	Yes	49.99	49.99	49.99	49.99	49.99	49.99	67.00	83.75 *
Wickkiser International Companies, Inc.	Airporter Shuttle	Yes	33.00	37.00	37.00	37.00	46.25 *	46.25	46.25	48.55

BOLD Base fare prior to establishing flexible fares
* Fare represents a 25% increase to the companies' base fare at the time of filing to establish the band for rates

* Commission-regulated auto transportation companies and their rates for one-passenger, one-way fares, from 2012 – 2019.

Table 4 - Flexible Fare Changes

Since the adoption of the new rules, the companies that have implemented flexible fares have increased their rates, on the average, five percent per year. However, those companies that did not implement flexible fares have increased rates up to 13 percent annually, on average, as shown in Table 4. The table shows the effect of companies being allowed up to an initial 25 percent increase on initial adoption.

Company	DBA	Flex Fares?	2013	2014	2015	2016	2017	2018	2019
Beeline Tours LTD (formerly Miller Schmer, Inc.)	Seattle Express	Yes	0%	0%	0%	25%	0%	0%	0%
BML Investments LLC	Wenatchee Valley Shuttle	No	4%	0%	0%	0%	8%	16%	0%
Bremerton-Kitsap Airporter, Inc.	Bremerton-Kitsap Airporter Kitsap-SeaTac Airporter The Sound Connection Ft. Lewis/McChord Airporter	Yes	25% *	5%	5%	5%	5%	5%	5%
			25% *	5%	5%	5%	5%	5%	5%
CWA, Inc.	Airporter Shuttle	Yes	0%	0%	17%	25% *	0%	0%	0%
Northwest Smoking and Curing, Inc	SeaTac Direct	Yes		25% *	0%	0%	0%	0%	0%
Pacific Northwest Distributing LLC	Vashon Shuttle	No	0%	0%	0%	0%	0%	0%	0%
Pacific Northwest Transportation Services, Inc.	Capital Aerporter Airport Shuttle	Yes	25% *	5%	5%	5%	5%	5%	5%
Rocket Transportation LLC (formerly Rocket Enterprises)	Rocket Transportation	No	0%	0%	9%	0%	0%	0%	0%
Shuttle Express, Inc.	Shuttle Express Go Shuttle Express Limos by Shuttle Express Downtown Airporter	Yes	25% *	5%	5%	5%	5%	5%	5%
The Rock Transportation Services Corporation (formerly Seatac Shuttle)	Whidbey-SeaTac Shuttle	Yes	25% *	5%	5%	5%	5%	5%	5%
Transportation Demand Management, Inc	Starline Luxury Coaches	No	0%	0%	0%	0%	0%	0%	0%
Weigeshoff Transportation LLC	Island Airporter LLC	Yes	0%	0%	0%	0%	0%	34%	25%
Wickliser International Companies, Inc.	Airporter Shuttle	Yes	12%	0%	0%	25% *	0%	0%	5%

* 25% increase represents the increase to the companies' base fare at the time of filing to establish the band for rates.