

Draft Auto Transportation Rules – Chapter 480-30 WAC

February 8, 2013

Docket TC-121328

Comments of Seatac Shuttle, LLC February 22, 2013

***** Changes suggested by Seatac Shuttle, LLC are highlighted in red and notes are *italicized*.*****

WAC 480-30-031 Procedural rules.

The commission's procedural rules are contained in chapter 480-07 WAC. If a rule in this chapter conflicts with a rule in chapter 480-07 WAC, the rule in this chapter applies. Copies of chapter 480-07 WAC are available from the commission records center on request.

<p>NOTE: There are no changes to this rule, however it is included to provide context for the administrative process for processing and reviewing applications.</p>
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WAC 480-30-071 Reporting Requirements

(1) **Auto transportation company annual reports.** An annual report is an end-of-the-year summary of financial and operational activity that each regulated auto transportation company is required to file with the commission.

(a) Each year the commission provides an annual report form and instructions to each company at its address of record. Failure to receive the form does not relieve a company of its obligation to complete and file its annual report. A company that does not receive an annual report form must contact the commission to obtain a copy of the form.

(b) A company must file a complete, accurate annual report showing all requested information by May 1 of the succeeding year. Information provided on the annual report must agree with source documents maintained at company offices.

(c) The commission may grant an extension of time allowing the company to file its annual report after the May 1 due date if the commission receives a request for extension before May 1.

(d) The commission may issue penalty assessments or take action to suspend or cancel a certificate if a company fails to file its required annual report.

(e) A company selling, canceling, transferring, or in some other manner discontinuing operations must submit an annual report for that portion of the year in which the company operated.

(f) The commission will provide an annual report form for companies charging flexible fares subject to WAC 480-30-YYY, requiring financial reporting only of the gross intrastate revenues

reported to the state department of revenue for the previous calendar year, in addition to such safety and operational data as the commission may require.

The term “rates” has been changed throughout this document to “fares” to reflect the true nature of autotransportation. While seemingly just syntactical, this change is necessary to reinforce the reality that autotransportation is not a utility and does not have rates but fares. Fare rather than rate is the common term in all transportation involving moving the public.

(2) **Charter and excursion carrier annual safety reports.** An annual safety report is a summary of motor vehicle and safety operating information that each charter and excursion carrier is required to file with the commission.

(a) Each year the commission provides an annual safety report form and instructions to each company at its address of record. Failure to receive the form does not relieve a company of its obligation to complete and file its annual safety report. A company that does not receive an annual safety report form must contact the commission to obtain a copy of the form.

(b) A company must file a complete, accurate annual safety report showing all requested information by ~~December~~ January 31 of each ~~succeeding~~ year. Information provided on the annual safety report must agree with source documents maintained at company offices.

Staff has acknowledged for years that true and correct reporting of a calendar year’s events cannot be accurately be reported on the last day of the year. It is time to make this very insignificant change to reflect reality.

(c) The commission may grant an extension of time allowing the company to file its annual safety report after the ~~December~~ January 31 due date if the commission receives a request for extension before ~~December~~ January 31.

See above.

(d) The commission may issue penalty assessments or take action to suspend or cancel a certificate if a company fails to file its required annual safety report.

(3) **Other reports.** The commission may require a company to file periodic or other special reports.

<p>NOTE: The change in this section is included to address industry concerns that a company opting to operate under flexible rates should not be required to file the same detailed financial data with the commission as under traditional rate regulation.</p>

Again we strongly object to the terms “rate” and “rates” in this context.

WAC 480-30-096 Certificates, application filings, general.

(1) A ((company)) person must submit its certificate application on forms provided by the commission.

(2) Applications must include all requested information, attachments, signed statements, and filing fees.

(a) The commission may reject or defer consideration of an application until the applicant provides all required information;

(b) The commission may reject or defer consideration of an application until the applicant pays any outstanding fees, fines, or penalties; **or resolves any alleged violations of law or rule.**

It is contrary to the good of the public and other serving companies that applicants with unresolved or pending violation(s) be issued or have their application considered until a disposition of those allegations is made.

(c) The commission may reject or dismiss an application if it includes false, misleading, or incomplete information.

(3) Applications for auto transportation certificate authority must include, but are not limited to:

(a) A complete description of the proposed service including the line, route, or service territory described in terms such as streets, avenues, roads, highways, townships, ranges, cities, towns, counties, or other geographic descriptions;

(b) A map of the proposed line, route, or service territory that meets the standards described in WAC 480-30-051;

~~((e) A statement of the applicant's assets and liabilities;))~~

~~(d) A proposed tariff and time schedule;~~

~~(e) A statement of conditions that ((justify)) support the proposed service if the proposed service is wholly or partly within the existing authority of another company;~~

If a private entity is willing to risk assets to implement a service in an un-served area it is not the concern of the commission. The commission is not in business and has no obligation or responsibility to attempt to justify the viability of a start-up business,

~~(f) Ridership and revenue forecasts for the first twelve months of operation;~~

This requirement is fantasy. It is a waste of both the applicant's and staff's time. It also fall under the comment regarding (d)

~~(g) A ((pro forma)) projected balance sheet and income statement for the first twelve months of operation;~~

Once again, these pro formas and projections are pure guess work and serve no purpose. If the applicant has made a determination that the market situation is viable, based on whatever criterion he chooses, then that decision to start a business should be his sole decision.

~~(h) A list of equipment currently owned or leased, or proposed to be purchased or leased, to be used in providing the proposed service; and~~

~~(i) A statement of the applicant's prior experience and familiarity with the commission's statutes and rules, specifically safety requirements, that govern the operations it proposes.~~

(ji) Evidence of compliance with state tax, labor, employment, business, and vehicle licensing laws and rules. The commission will accept valid, verifiable account numbers showing the applicant has established accounts with other state agencies.

(4) Exceptions;

(a) Applications for extension of authority shall be subject only to sec,(s) (1), (2), (3) (a,b,c);

(b) Applications for name change, mortgages, shall only be subject sec, (s) (1), (2).

An existing certificate holder has previously met all of the requirements of this section and should not have to resubmit.

~~(4)~~ (5) The provisions of this rule do not apply to applications for auto transportation company certificate authority to provide intrastate service over an interstate regular route under a federal grant of authority. Refer to WAC 480-30-101.

~~(5)~~ (6) An application may propose a tariff that includes flexible fares. If The commission must approve a the proposed flexible fare tariff if it is in compliance the company must comply with the requirements of WAC 480-30-YYY.

The intent here is to issue flexible fare tariffs. Therefore, if a company is in compliance with the filing requirements and the tenants of WAC 480-30-YYY then the commission must issue the new tariff, it is not discretionary.

<p>NOTE: The changes in this section are intended to clarify the information concerning financial status and equipment required for a complete application, to specify additional safety and compliance requirements for applicants, and to identify that an applicant may propose a tariff that includes a maximum FARE option.</p>

WAC 480-30-116 Certificates, application docket, ~~((protests))~~ and objections, ~~((and intervention))~~ auto transportation company.

(1) Application docket. The commission publishes a notice of pending certificate applications in the application docket. The commission mails the application docket to each existing auto transportation company certificate holder, to each person with a pending auto transportation company certificate application ~~((, to affected local jurisdictions or agencies,))~~ and to any other interested person who has asked to receive copies of the application docket. It includes notice of auto transportation company certificate applications for:

(a) New certificate authority.

(b) Extension of existing certificate authority.

(c) Transfer or lease of all or a portion of certificate authority.

(2) ~~((Protests))~~ Objections. An existing auto transportation company may object to an application for new authority or an extension of authority published in the application docket only if the company holds a certificate that authorizes the **same similar** service and provides the **same a similar** service as published in the application docket or files a complaint alleging violations by the applicant. The commissions shall have the obligation to investigate and resolve all such complaints before issuing a certificate. OK No company may file an objection to applications for transfers or lease of all or a portion of certificate authority ~~((certificate holder may file a protest to an application published in the application docket))~~.

If not changed from “same” to “similar” new applications could be granted if they had even one minor deviation from the service provided by the certificate holder. With this provision left unchanged the concept of authorities is moot. Applicants with unresolved violations may not be granted a certificate.

(a) Form of ~~((protests))~~ objections. ~~((Protests))~~ Objections must:

(i) Be filed within thirty days of the date the commission mailed the application docket.

(ii) Be filed according to the provisions of WAC 480-07-370.

(iii) Be served on the applicant **and or** the applicant's attorney, if ~~((one is identified in the application docket))~~ the attorney has filed with the commission a notice of appearance and that notice is provided to all interested parties.

If there is an attorney of record then he is agent for service. Existing certificate holders must be notified of the attorney of record so that they may be served. The existing language serves this purpose without our changes.

(iv) Specify the reasons for the ~~((protest))~~ objection.

(v) Specify the ~~((protestant's))~~ objecting company's interest in the proceeding.

(vi) Specify the approximate number of witnesses the ~~((protestant))~~ objecting company intends to present and an estimate of hearing time required for the ~~((protestant's))~~ objecting company's presentation;

(vii) Include the name and address of each person on whose behalf the ~~((protest))~~ objection is filed including that person's certificate number, a copy of the certificate authority, and identification of the portion or portions of the ~~((protestant's))~~ objector's certificate that is the basis for the ~~((protest))~~ objection, and specifically identify the portion or portions of the objector's certificate that authorizes the same service requested by the applicant.

(viii) Describe any restrictive amendment that could eliminate the ~~((protestant's))~~ objecting company's interest in the application.

(b) Objections based upon alleged violations must be filed with the commission within twenty (20) days of publication of notice of application.

(c) ~~(b)~~ Failure to file ~~((protest))~~ objection on time. A person who fails to file ~~((a-protest))~~ an objection within the thirty-day ~~((protest))~~ notice period may not in any way participate further in the proceeding, unless that person can show that the commission did not provide proper notice of the pending application, or that good cause exists for the failure to make a timely ~~((protest))~~ objection.

NOTE: The changes made to Subsections (1) and (2) substitute the word “objection” for “protest” or variations of those words, as the word “object” is the term used in RCW 81.68.040 in reference to an existing company’s ability to object to an application providing service in the same territory as the existing carrier. Subsection (2) also limits objections to applications for new or extended service.

~~(3) ((Intervention. Any person, other than the applicant and protestants to an application, who desires to appear and participate, and who does not desire to broaden the issues of the proceeding, may petition to be an intervener. Refer to WAC 480-07-355 for information on intervention.))~~ The adjudication of applications subject to an objection filed under RCW 81.68.040 will be accomplished in the simplest and most expeditious manner consistent with the opportunity for hearing. The adjudication will be limited to the question of whether the objecting company holds a certificate to provide the same **or similar** service in the same territory, the extent to which the objecting company provides the same **or similar** service, and whether an objecting company will provide the same service to the satisfaction of the commission. If the commission determines that the objecting company holds a certificate to provide the **same or similar** service in the same territory, that the extent of that service is the same as proposed in the application, and that the objecting company is providing the same **or similar** service to the satisfaction of the commission. ~~the commission will then consider whether approving the application will make the objecting company's business not viable. Door to Door service and scheduled service in the same territory shall not be considered the same, similar or overlapping for the purpose of application.~~

An applicant may not prevail because of minor variation in the service proposed. Door to door and scheduled serve are by definition different services and cannot be considered “same” or “similar”.

NOTE: The subsection relating to “intervention” is removed as applications for auto transportation authority are subject to the procedural rules in Chapter 480-07 WAC and intervention is included as available in adjudications.

In addition, the new language is intended to provide guidance to applicants and objecting companies of the Commission’s process for considering applications subject to an objection.

(4) Applications not subject to the docket and ~~((protest))~~ objection provisions of this rule. This rule does not apply to:

(a) Applications for charter and excursion carrier certificates;

(b) Applications to reinstate a certificate canceled for cause under the provisions of WAC 480-30-181, when the application is filed within thirty days of the certificate cancellation date;

(c) Applications for name change;

(d) Applications to mortgage an auto transportation company certificate;

(e) Applications for an auto transportation company certificate under a federal grant of authority to provide intrastate service over an interstate route; and

~~(f) Applications for temporary certificate authority.~~

An application for temporary authority should have no fewer requirements for justifying service in an existing territory. Every effort should be made to have the existing certificate holder fill the temporary need for service. The certificate holder has made a significant investment and developed a passenger base and should not have to give that up to a temporary applicant without real and proven justification.

WAC 480-30-126 Certificates, applications, auto transportation company.

(1) A person applying for a certificate to provide auto transportation company services must have the knowledge, experience, and resources to conduct the service it proposes in its application. The applicant must be fit, willing and able to comply with RCW Title 81 and the requirements of this chapter.

(2) The commission must determine that the public convenience and necessity requires the proposed service when considering an application for a new certificate or extension of an existing certificate. “Public convenience and necessity” means that a person or company shall be afforded the opportunity to provide auto transportation service to all members of the public desiring such service. An applicant must support its application with an independent statement by at least one member of the public who desires the service or is knowledgeable about the desire for service in the territory in which the applicant seeks authority, or a statement by a representative of a municipal entity that is knowledgeable about the desire for service in the territory in which the applicant seeks authority.

NOTE: The changes to subsection (2) provide clarification of how the Commission interprets “public convenience and necessity” as it applies to auto transportation companies. In addition, the changes clarify the minimum support required to demonstrate “public convenience and necessity”.

(3) Auto transportation company certificate applications are subject to the application docket notice and ~~((protest))~~ objection provisions of WAC 480-30-116.

(4) The commission may set for hearing any auto transportation company certificate application.

~~((The commission must provide the opportunity for a hearing and determine that an existing auto transportation company is not providing service to the satisfaction of the commission before it may grant a new certificate or extension of an existing certificate to provide service in a territory already served by another auto transportation company, unless the existing auto transportation company or companies do not object to the application by filing a protest under the provisions of WAC 480-30-116.))~~

If no existing company files an objection under RCW 81.68.040, the commission will grant an original application or an extension of service, if:

(a) The applicant demonstrates a need for service not provided by a company holding a certificate through at least one independent statement by a member of the public who requires the service or is knowledgeable about the need for service in the territory in which the applicant seeks authority, or a statement by a representative of a municipal entity that is knowledgeable about the need for service in the territory in which the applicant seeks authority.

(b) **Except in the case of applications for extension of authority**, 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.

Extent ions of authority applicants have already demonstrated this by virtue of their existing operations and required reports.

(c) The applicant demonstrates that it is willing and able to comply with commission laws and rules. **The commission shall consider any violations, upheld complaints and pending investigations when considering willingness and ability. It is not necessary for the objecting party to file an informal or formal complaint, notice to the commission shall be sufficient.**

If a new or existing applicant is in violation, no certificate may be issued until such violations are investigated and resolved.

NOTE: The language deleted from this section is redundant to the process identified in WAC 480-30-116 (3). The additional language provides guidance for how the Commission will consider applications not subject to an objection.

WAC 480-30-131 Certificates, overlapping applications, auto transportation company.

(1) The commission may consolidate applications for certificated auto transportation authority for joint consideration if:

(a) The authority requested in the applications overlaps in whole or in part; and

(b) The subsequent application was filed within thirty days of the date the initial application appears on the application docket.

(2) Applications for overlapping authority not filed within thirty days after the initial application appears on the application docket will be decided after the conclusion of proceedings resolving the initial application and any other application qualifying for joint consideration.

(3) When applications consolidated by the commission for joint consideration also contain requests for territory or services not overlapping that requested in the other application, and the nonoverlapping services or territory may be appropriately severed, the commission may decide the nonoverlapping portions of the application separately from the portions that do overlap.

(4) Scheduled and door to door service are not to be considered as overlapping when operating in the same territory.

They are dissimilar services by definition.

NOTE: There are no changes to this rule, however it is included to provide context for the administrative process for processing and reviewing applications.

**WAC 480-30-136 (~~Certificates, application hearings, auto transportation company.~~)
Procedure for applications subject to objection, information required of applicant and objecting company**

(1) (~~(Auto transportation company certificate application hearings are governed by the provisions of chapter 480-07 WAC.)~~) The commission will consider applications subject to an objection as brief adjudicative proceedings under WAC 480-07-610, unless the presiding officer determines, based on the facts and circumstances presented, that the adjudication requires a different process.

(2) (~~(When an application has been protested, the commission will generally not consider written statements from witnesses that have not been available for cross examination at hearing.)~~) After one or more companies file an objection to an application, the commission will issue a notice of brief adjudication to the objecting company and the applicant, and request the

filing of additional information to determine the nature of the objection proceeding. This information may include, but is not limited to:

(a) Statements from independent witnesses provided by an objecting company to demonstrate that the objecting company is providing the same service as the proposed service, to the satisfaction of the commission.

(b) Additional supplementary information, evidence or testimony to support the application provided by the applicant.

~~(3) ((An applicant must be prepared to present information at hearing, through documents or the testimony of witnesses, including but not limited to, the following:~~

~~(a) A description of the service proposed and the cost of that service for the area to be served;~~

~~—(b) An estimate of the cost of the facilities to be used in providing the proposed service;~~

~~—(c) The condition of the applicant's equipment and the applicant's program for maintenance and repair;~~

~~—(d) A statement of the assets available to the applicant that will be used to provide the proposed service;~~

~~—(e) Prior experience, if any;~~

~~—(f) Familiarity with the statutes and rules that govern the proposed operations;~~

~~(g) The public need for the proposed service.~~

~~—(i) The commission will not accept as support an applicant's own statements that its proposed service is needed by the public.~~

~~—(ii) The applicant must support its application with independent witnesses who actually require the service or are knowledgeable about the need for service in the territory in which the applicant seeks authority. In considering an objection filed by a company holding a certificate, the commission will determine whether or not the objecting company will provide the same service to the satisfaction of the commission. In the event that the commission finds that the objecting company will not provide the same service to the satisfaction of the commission, the commission will process the application under WAC 480-30-126 (5).~~

~~—(4) If an applicant requests a certificate or extension of certificate to operate in a territory already served by another certificate holder, the applicant must also show that the existing transportation company or companies will not provide service in that territory to the satisfaction of the commission.~~

~~(5) When determining if the territory at issue is already served by another certificate holder the commission may, among other things consider:~~

~~—(a) The authority of existing companies and whether or not they are serving to the full extent of that authority.~~

~~—(b) The kinds, means, and methods of service provided.~~

- (c) Whether the type of service provided reasonably serves the market.
- (d) Whether the population density warrants additional facilities or transportation.
- (e) The topography, character, and condition of the territory into which the proposed services are to be introduced, and the proposed territory's relation to the nearest territory through which transportation service is already provided.
- (f) Whether a grant of the requested authority and the resulting increased competition will benefit the public.))

*By the changes suggested by staff, the burden of proof has been shifted from the applicant to the existing certificate holder. This situation is completely unsatisfactory, the applicant who desires to supplant and existing certificate holder must bear the burden of proving the insufficiency of the existing company. In this instance the existing certificate holder is presumed “guilty” until he proves otherwise. The agency is attempting to totally reverse the nature of applications and the proceedings. To state in the agency notes regarding this section that: : **“The changes in this section are intended to eliminate redundancy in the rules, clarify and simplify the process for considering an objection, and move language about standards for decision to a new rule, WAC 480-30-XXX, below.”** is disingenuous at best and deceitful.*

NOTE: The changes in this section are intended to eliminate redundancy in the rules, clarify and simplify the process for considering an objection, and move language about standards for decision to a new rule, WAC 480-30-XXX, below. The changes address the adjudicative process for applications subject to an objection in the most expedited way (brief adjudicative hearings), yet allow the administrative law judge discretion to change the process as needed to fit the facts and circumstances.

NEW SECTION

WAC 480-30-XXX Standards for determining “public convenience and necessity,” “territory already served by a certificate holder”, “service to the satisfaction of the commission” and impact on an existing company.

(1) Public convenience and necessity.

(a) “Public convenience and necessity” means that a person or company shall be afforded the opportunity to provide auto transportation service to all members of the public desiring such service **subject to the *Passenger Rules* section of its tariff.**

(b) In reviewing applications under this chapter, the commission will consider ~~differences in operation, price, market features, and other essential characteristics of a proposed auto transportation service, tailoring its review to the individual circumstances of the application in evaluating whether the public convenience and necessity requires the commission to grant the request for the proposed service and~~ whether an existing company is providing **the same similar**

service to the satisfaction of the commission. ~~The commission will also consider whether increased competition will benefit the traveling public.~~

The commission has steadfastly refused to “consider differences in operation, price, market features, and other essential characteristics of a proposed or existing auto transportation service” in any rate cases, yet it now proposes those same factors for dissolving authorities. “Tailoring its review to the individual circumstances of the application in evaluating whether the public convenience and necessity requires the commission to grant the request for the proposed service” means that it would, under this proposal, be at the total discretion of the commission to grant any application that they saw fit regardless of the existing operator. “The commission will also consider whether increased competition will benefit the traveling public.” is another absurdity. Competition by its very nature is good for the public. In limited circumstances a poor, up start company may displace an established carrier only to default itself to the disadvantage of everyone including the public. Under this provision there can be no argument from an existing certificate holder to sustain an objection. This section is totally unacceptable.

(2) Same *or similar* service. When determining whether one or more existing certificate holders will provide the same *or similar* service in the territory at issue, the commission may, among other things, consider:

(a) The certificate authority granted to the existing companies and whether or not they are providing service to the full *or reasonable* extent of that authority;

(b) The type, means, and methods of service provided, *however, door to door and scheduled service serving the same territory shall not be considered to be overlapping*

~~(c) Whether the type of service provided reasonably serves the market~~

(d) Whether the population density warrants additional facilities or transportation;

(e) The topography, character, and condition of the territory in which the objecting company provides service and in which the proposed service would operate FARE; and

~~(f) The proposed route’s relation to the nearest route served by an existing certificate holder. The commission views scheduled service 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 clear convenience benefit to customers, are considered a separate and different service.~~

If you run the same route on a nearby street and stop within blocks of the existing operator this is NOT SAME SERVICE. Again, the UTC should not permit a new or existing operator to run “parallel” to any existing service if the only reason is a slightly different route or stop. Keeping paragraph f) just encourages all to operate on top of existing operators.

Existing operators cannot change their operations to meet exactly the “same” operation proposed in every application that encroaches on their territory. Service that is similar and meets the needs of the public is the test and it is the applicant that must prove that that level of service is not being met. The commission is not in the business of autotransportation and staff

has demonstrated a severe lack of knowledge in this area. For the commission to now presume to factor in such things as “population density” in application evaluation is presumptuous and without foundation. The same holds true for “The topography, character, and condition of the territory in which the objecting company provides service and in which the proposed service would operate”.

“Alternative routes that may run parallel to an objecting company’s route, but which have a clear convenience benefit to customers, are considered a separate and different service. “is likewise unrealistic and counterproductive. If a company runs a parallel service two blocks separate from an existing service, it is more convenient to those persons living two blocks away, but it is economically unviable for either company and not unreasonable for a customer to have to go two blocks further for service on a scheduled carrier. Scheduled carriers by their very nature require passengers to come to a predetermined stop for service.

(3) Service to the satisfaction of the commission.

(a) The determination of whether the objecting company is providing service to the satisfaction of the commission is dependent on, but not limited to, whether the objecting company:

(i) Holds authority to provide, and provides, ~~the same similar~~ service as proposed by the applicant in the same territory or the same subarea within the territory or along the same route in which the service is proposed;

~~(ii) Demonstrates it has made a reasonable effort to continuously and vigorously expand and improve its service to consumers within the same territory or the same subarea within the territory or along the same route in which the service is proposed;~~

(iii) Provides the service in a manner that is convenient, safe, timely, direct, expeditious, ~~courteous~~ and ~~respectful~~ meets the advertised or posted schedules, fulfills commitments made to customers, meets consumer preferences or needs for travel, ~~is responsive to consumer requests and meets other reasonable performance expectations of consumers.~~

(iv) Demonstrates that it has provided ~~the same similar~~ service as proposed by the applicant in the same territory or the same subarea within the territory or along the same route in which the service is proposed ~~at FAREs competitive with that proposed by the applicant.~~

This section once again places the burden on the certificate holder not the applicant, not acceptable. The commission has made it very difficult for any operator to expand their business and expanding one’s business is not a measure of customer satisfaction or level of service. Geographical as well as authority limitation preclude expansion in most cases. Such terms as respectful and courteous are abstract and show the lack of business acumen at the agency. No business would survive if it was disrespectful or lacked common courtesy. It is often not possible to be responsive to consumer requests because of regulatory restrictions. Are we to be penalized for playing by the commission’s rules?

~~(b) Whether an objecting company will provide service to the satisfaction of the commission is based on the objecting company’s performance regarding the criteria in subsection (a) of this~~

~~section prior to the date an application for proposed service is filed with the commission. The consideration period will depend on the circumstances, but will generally be for one year. The commission will take into consideration extraordinary events, such as severe weather or unforeseeable disasters, when weighing the performance of an objecting company and consumer response to that performance.~~

The commission suggests a certificate holder “will” provide service but then relates that future tense to the past tense and the previous year. We cannot go back in time to meet a challenge from the future. Again, it is up the applicant to prove that the certificate holder was or is not serving the public.

(c) In considering whether the objecting company has provided service to the satisfaction of the commission, the commission will consider statements or testimony from members of the public that they choose not to use the objecting company’s services because the company fails to meet any of the satisfaction criteria identified in subsection (a) of this section to the witness’ satisfaction to be conclusive in determining that the company does not meet the criteria of service to the satisfaction of the commission, unless the service failure was caused by extraordinary events as determined by the commission. Objecting companies may present witnesses to counter claims of an applicant and to substantiate the level of service and customer satisfaction provided.

Perhaps the commission should just desove our territories now and be done with it. The commission suggests that the applicant can bring witnesses to claim that the level of service was not to their satisfaction but offers no rebuttal from the certificate holder. What country is this?

~~(4) Viability of the objecting company. If an objecting company requests the commission deny an application based on the financial impact on the objecting company, the objecting company must demonstrate that granting an application that proposes to provide the same service as the objecting company will result in the objecting company being no longer a viable operation, rather than less profitable, unable to operate in the same manner or unable to operate to the same degree as it has previously. The objecting company must provide factual evidence, including but not limited to, market studies, transportation planning studies, or statistical evidence prepared by reputable experts.~~

Stupid

(5) Distinctions between different types of service. When determining whether to grant an application to serve a route or territory that is already served by an auto transportation company, the commission will consider whether the existing company is solely providing traditional bus service along regular scheduled routes or is providing service that has as its origin or destination a transportation hub such as an airport, cruise line terminal or dock, bus station, train station or public transit station. Door to door service shall be considered a distinct and different type of service from scheduled and the two shall noT be considered overlapping. (redundant, but we have got to make the point) AGREE

NOTE: This new section is intended to clarify and provide guidance for how the Commission will interpret the meaning of the statutory terms “territory already served by a certificate holder”, “service to the satisfaction of the commission” and how to evaluate the impact of an additional company providing similar service, as an existing company including whether the proposed service will provide overlapping service for traditional bus service or service to airports, cruise line terminals or train stations.

WAC 480-30-156 Certificates, temporary, auto transportation company.

(1) Temporary certificates prohibited. ~~The commission is prohibited from granting a temporary certificate to operate in territory that is:~~

~~(a) Contained in an existing certificate, unless the existing certificate holder is not providing service to the satisfaction of the commission or does not object to the temporary certificate.~~

(a) Except during a state of emergency declared under RCW 43.06.010(12), the governor may waive or suspend the operation or enforcement of this section or any portion of this section or under any administrative rule, and issue any orders to facilitate the operation of state or local government or to promote and secure the safety and protection of the civilian population.

~~(b) Contained in a pending certificate application unless the temporary certificate application filing is made by the applicant or the applicant does not object to the temporary certificate.~~

~~—(2) Requirements. Temporary certificate applications must meet the general filing requirements of WAC 480-30-096.~~

~~—(3) Public interest. The commission may grant a temporary certificate after determining that granting the requested authority is consistent with the public interest. In determining if the requested temporary authority is consistent with the public interest, the commission will consider factors including, but not limited to:~~

~~—(a) The fitness of the applicant.~~

~~—(b) The need for the requested service.~~

~~—(c) Availability of existing service.~~

~~—(d) Any other circumstances indicating that a grant of temporary authority is consistent with the public interest.~~

~~—(4) Support statements required. Applicants for temporary certificates must include signed ((and sworn)) support statements from one or more potential customers identifying all pertinent facts relating to need for the proposed service.~~

~~—(5) Investigation of applications. Commission staff will investigate the facts surrounding an application and need for the proposed service before making a recommendation that the commission grant or deny an application for temporary certificate. The staff investigation will~~

include notice of the temporary certificate application to those companies identified in subsection (1) of this section, and allow twenty days for those companies to object to the temporary certificate application.

—(6) Special terms, conditions, and limitations. The commission may impose special terms, conditions, and limitations in connection with the grant of any temporary certificate.

~~—(7) Length of service allowed under temporary certificate. The commission may grant a temporary certificate for up to one hundred eighty days. If a company files an auto transportation company certificate application and a temporary certificate application within thirty days of each other or files an auto transportation company certificate application within thirty days of the order granting the temporary certificate, then the temporary certificate will continue until the commission grants, denies, or dismisses the parallel certificate application, or until the temporary certificate is otherwise canceled, whichever happens first.~~

—(8) Docketing. The commission will publish on its application docket:

—(a) A list of temporary certificate applications that the commission considered and granted, including any terms and conditions attached to the grant of such authorities; and

—(b) A list of temporary certificate applications the commission considered and denied.

—(9) ~~((Protests))~~ Objections. An existing auto transportation company or applicant for certificate may file ~~((a protest))~~ an objection opposing the grant or denial of a temporary certificate.

—(10) Form of ~~((protests. Protests))~~ objections. Objections must:

—(a) Be filed with the commission in writing within ten days after the date the commission mails its notice;

—(b) Contain a ~~statement of the specific grounds on which the ((protest)) objection is made; a copy of the existing authority of the objecting company with a sescription of encroachment or overlapping proposed service.~~

—(c) Contain a statement of the ~~((protestant's))~~ objecting company's interest in the proceeding;

—(d) Be served on the applicant; and

—(e) Be served on the applicant's representative, if one is stated in the notice.

—(11) Disposition of ~~((protests))~~ objections. The commission may grant or deny ~~((a protest))~~ an objection without hearing.

—(12) Brief adjudicative proceedings. The commission may order a brief adjudicative proceeding on its own motion or at the request of a party.

—~~((13))~~ Intervention. Any person, other than the applicant and protestants to an application, who desires to appear and participate, and who does not desire to broaden the issues of the proceeding, may petition to be an intervener. Refer to chapter 480-07 WAC for information on intervention.))

Under the expedited application process there is no need or justification for the commission to issue “temporary certificates”. Either there is a clear and discernible need for service in an unserved or underserved area or there is not. Permitting temporary certificate undermines the application process and the ability of existing providers to continue to operate in a business environment free of fear of transient encroachment.

NOTE: The changes in this section reflect changes consistent with those made in sections above, including referring to “satisfaction to the commission” in (1)(a), changing the term “protest” to “object”, removing the need to have witness statements “sworn” to simplify the process and removing language related to intervention.

NEW SECTION

WAC 480-30-YYY FARE Flexibility

(1) It is in the public interest to provide flexibility to auto transportation companies to charge fares for service.

(2) For the purposes of this section, the following definitions apply:

(a) “Base fare” means the fares set forth in the company’s tariff in effect on the date the company files a proposed tariff for flexible fares as a means to establish maximum fares.

(b) “Flexible fares” means the authority to charge fares, at the company’s discretion, in any amount up to the maximum fare.

(c) “Maximum fare” means a fare set initially at twenty-five percent above the company’s base fare, as published in the company’s effective tariff. After a maximum fare has been published and become effective, the maximum fare will increase annually by three percent or the Regional CPI which ever is higher

Never in any discussion has the number twenty percent (20%) been discussed. At the last work shop the agency proposed 25% and it is the number that has always been used for discussion and illustrative purposes. The continued manipulation by the agency of discussion points and concurrences is getting repetitious. This number is not workable. When you consider the fees that are required of us and are added to the base fare for recovery, our fares would immediately rise by around 15% just to be where we are today. Gas is now at its highest price in history for a January and February; the fares on the WSF system are rising annually at a rate greater than inflation, bridge and highway tolls are rising incrementally and new ones are being added. In short, to encompassed all of these costs into a single fare, that fare could easily approach a 20% cap on the effective date of this proposal. 25% has to be the minimum for a starting point; in addition a flat 3% annual raise is not realistic. Under President Carter we had double digit inflation and 20% interest rates. We now have a lame duck president intent on spending this country into oblivion which will inevitably create an economic situation similar to that under Carter. One year of 6% inflation and we will be right back in a deficit position with our companies. This proposal calls specifically for us to expand

and continue to improve service, how can we do this if we can't even stay abreast of increasing costs. These sections are in direct conflict with each other. 3% has to be a minimum and it must be indexed to a regional CPI.

(3) A company may file a tariff with the commission to charge flexible fares. Because the filing represents an increase, the tariff must be filed on 30 days' notice to the commission under RCW 81.28.050. The tariff must show the base fare in effect on the date of the tariff filing and the maximum fares the company may charge. Once the commission approves a flexible fare tariff, the base fare used to establish the maximum fare does not operate as a minimum fare.

(4) A company's tariff filing to charge flexible fares under this section is not subject to an earning's review or fare case under WAC 480-30-421 or WAC 480-30-426.

(5) If a company seeks to offer ~~special or promotional~~ fares above the flexible fare maximum, the company must file tariff revisions in compliance with WAC 480-30-436 421, 426 and all other filing requirements, including tariff publication rules and notice requirements

A "special or promotional" fare is by definition one designed to increase customers not penalize them; it is a reduction in price. This section misses this concept entirely.

(7) ~~(6)~~ If a company seeks to offer special or promotional fares that are below the base fare then in effect, it shall provide notice as required under WAC 480-30-436. In the instance of free or discounted fares to the public or employees and their relatives or for frequent rider programs or like discounts, the company must file tariff revisions, if not already contained in the company tariff, in compliance with WAC 480-30-396 and all other filing requirements, including tariff publication rules and notice requirements.

There is no need to provide any additional notification unless the fare is below the base fare, that is the point of banded fares.

(8) ~~(7)~~ Any change in the fares charged by a company up to the maximum fare is not considered a tariff change and is not subject to tariff filing rules, publication rules and notice requirements under this chapter. Companies may provide notice of changes in fares that the company will charge and changes in time schedules by posting their actual fares on the company's website, or notices or brochures provided to customers, subject to the requirements in subsection (8) of this section.

(9) ~~(8)~~ If a company changes the fare rate it charges, up to the maximum fare, it must honor the fares rates charged for tickets previously sold. However, the company may refund the amount paid for a ticket above the new fare rate.

(10) ~~(9)~~ A company authorized to charge flexible fares rates must use the fares up to the maximum fare to recover all costs associated with providing passenger service, including, but not limited to, fuel costs, tolls, ferry fares, surcharges and taxes. A company may not seek, or impose, any charge on any customer other than a single fare rate for the service provided.

This is exactly why 20% does not work.

~~(11)~~~~(10)~~ Effective May 1, 2014, and each May 1 thereafter, a company's maximum fare will increase by three percent **or the regional CPI, which ever is higher**, to reflect the rate of inflation. Each company will implement the adjusted flexible fare by filing the appropriate tariff pages at least six business days before the effective date of the change.

You can't reflect an inflation rate of 8% with a 3% increase, it must be indexed.

~~(12)~~ ~~(11)~~ A company may file a tariff that removes flexible fare authority and reflects only the original base fare in effect at the time of the filing rate.

If a company opts out of fare flexibility 3 years after trying it, it is unrealistic and unreasonable return fares to la level from years before. The base rate in effect at the time of the request is the ORIGINAL fare adjusted for inflation, would you then deflate the actual rate of return for the company? This is a losing proposition and is not acceptable.

~~(13)~~ ~~(12)~~ If the company seeks to change the base fare rate upon which the commission approved flexible fares, **except in the case of annual adjustments**, the proposed tariff filing will be subject to an earning's review or fare case under WAC 480-30-421 or WAC 480-30-426, and all tariff publication rules and notice requirement rules.

NOTE: This new section is intended to provide companies with flexibility in establishing FAREs, without following the rules for traditional FARE regulation. As the commission clarifies its interpretation of "public convenience and necessity" and "service to the satisfaction of the commission" to allow for more open entry into the market, it is reasonable, and consistent with the provisions of RCW 81.04.250 to relax FARE regulation for the industry. This section will allow companies to operate under a FARE cap through setting maximum FAREs with the ability to increase the FAREs by three percent each year. There will be no "minimum FARE" band. *Once the flexible FARE regulation has been worked out, an "illustration" will be prepared to include in the rule proposal.*

WAC 480-30-286 Tariffs and time schedules, posting.

An auto transportation company must maintain a copy of its filed tariff and its filed time schedule in the company's offices and at each passenger facility. Each vehicle operated must carry a copy of the schedule and fares for each route served by that vehicle. The company must make these documents available to customers for inspection on request during the company's regular business hours. Vehicles operated by an auto transportation company operating subject to flexible fares under WAC 480-30-YYY must carry a copy of its flexible fare tariff and current time schedule, subject to the requirements of WAC 480-30-YYY (7).

NOTE: The additional language in this section recognizes the need to change certain requirements relating to tariffs and time schedules when companies are operating subject to flexible FAREs.