

Draft Auto Transportation Rules – Chapter 480-30 WAC

February 8, 2013

Docket TC-121328

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.

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 480-30-071 Reporting Requirements

Not much in changes, no major concerns with this section

(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 rates 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.

(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 31 of each year. Information provided on the annual safety 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 safety report after the December 31 due date if the commission receives a request for extension before December 31.

(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.

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.

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

Place responsibility on the applicant (not the existing certificate holder) to demonstrate that application will not produce significant financial harm to the existing certificate holder (demonstrate why increased competition would benefit the traveling public and demonstrate why the traveling public under the existing certificate would not be harmed)

(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

(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;

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

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

“Tariff” – Applicant should provide factual evidence that existing certificate holder will remain viable; proposed initial tariff should be compensatory and not predatory in nature (perhaps matching tariff of existing certificate holder?)

- (ed) A statement of conditions that (~~justify~~) support the proposed service;
- (fe) Ridership and revenue forecasts for the first twelve months of operation;
- (gf) A (~~pro forma~~) projected balance sheet and income statement for the first twelve months of operation;

Include independent analysis to insure projections are legitimate

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

(ih) 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) 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) An application may propose a tariff that includes flexible rates. If the commission approves a flexible rate tariff, the company must comply with the requirements of WAC 480-30-YYY.

What would be the applicant's "baseline"? Under this scenario, suggest that applicant's initial tariff would match tariff of existing certificate holder.

Proposed initial tariff should be compensatory and not predatory

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 rate option.

Include WAC 480-30-126 and 131 under this section (placing all application requirements in one section)

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

Incorporate this section into 096

(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.

Who measures knowledge, experience, and resources? What is criteria?

Define “fit, willing and able.”

(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

Define to make clear that Public Convenience and Necessity means “all members of public are to be afforded opportunity to have service”

(Are we talking about the opportunity for an applicant to provide service, or opportunity for the public to have service?)

What are limiting factors of “service”?

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

demonstrates a need for

by at least **one member of the public** who desires the service or is knowledgeable about the

“One member of public” is a meager requirement and can easily be manipulated. Can this language be stated along the lines of “noticeable” (or “significant”, etc.) public demand for service; a “demonstrated reasonable public demand to add service”; or “demonstrates a need for service

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.

need

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.

~~(5) ((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) 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

Applicant must provide independent verification of financial ability to provide proposed service.

and continue them for a **reasonable period** while developing business. **This determination does**

“reasonable period” calls for more definitive description – perhaps one year?

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.

Delete last sentence.

_____ (c) The applicant demonstrates that it is willing and able to comply with commission laws and rules.

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.

What is outcome? Could certificate be issued to multiple applicants for overlapping service?

(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.

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 480-30-116 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 service and provides the same service published in the application docket. 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))~~.

Change “same” to “similar” or “comparable”

- (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 the applicant's attorney, if ~~((one is identified in the application docket))~~ the attorney has filed with the commission a notice of appearance.

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

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

Define “objecting company’s interest”

What is difference in (iv) and (v)? Suggest combining them

(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.

Change “same” to “similar” or “comparable”

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

(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 service in the same territory, the extent to which the objecting company provides the same 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 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 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.

Change "same" to "similar" or "comparable"

Last sentence: "...will evaluate to what extent approving the application will result in harm to the business or harm to the traveling public."

Why should the commission proceed with the application if the existing certificate holder and their operation (1) holds a certificate for the same service, (2) provides the same service, and (3) provides service to the satisfaction of the commission?

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.**

We do not foresee circumstances which would call for a temporary certificate authority.

WAC 480-30-126 and 480-30-131

folded into 480-30-096 above / Comments listed here also

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

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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

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(b) 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

Applicant must provide independent verification of financial ability to provide proposed service.

and continue them for a reasonable period while developing business. This determination does

“reasonable period” calls for more definitive description – perhaps one year?

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.

Delete last sentence.

(c) The applicant demonstrates that it is willing and able to comply with commission laws and rules.

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.

What is outcome? Could certificate be issued to multiple applicants for overlapping service?

(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 no overlapping services or territory may be appropriately severed, the commission may decide the nonoverlapping portions of the application separately from the portions that do overlap.

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.

similar / comparable

(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).

similar / comparable

Need discussion over definition and implications of “same” service.

Concern that this language could provide a technical loophole to obtain a certificate due to vary narrow interpretation of “same.”

~~—(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.))~~

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 **needing / requiring**

Note comments (below) re Public Convenience and Necessity also under 480-30-126 (2):

Define to make clear that Public Convenience and Necessity means “all members of public are to be afforded opportunity to have service”

(Are we talking about the opportunity for an applicant to provide service, or opportunity for the public to have service?)

What are limiting factors of “service”?

service.

(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** service

similar / comparable

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

Add to last sentence: “ without adversely affecting service or increasing fares.”

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

similar / comparable

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

(b) The type, 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;

How is appropriate “density” determined?

Add : “The Commission recognizes that the population density in Washington is insufficient to support multiple additional new “door to door” “shared ride” service in urban areas where said service is already offered.

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

(f) The proposed route’s relation to the nearest route served by an existing certificate holder.

Needs clarification and definition – perhaps within a particular distance, e.g.: 5 mi.

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.

Needs discussion: Note the consequences to the objecting operator if only one person wants a route closer to their location, while service is available within a reasonable distance.

(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 service as proposed by the similar / comparable

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, **frequent and /or direct**

courteous and respectful, meets the advertised or posted schedules, fulfills commitments made to customers, (**Add: mitigates service issues,**) meets consumer **preferences or** needs for travel, is

strike “preferences or”

responsive to consumer requests , and meets other reasonable performance expectations of consumers .

Who determines if an operator meets the listed criteria? What is “timely” – could be one expectation for operator in rural area, another expectation for an urban operator?

(iv) Demonstrates that it has provided the **same** 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 **rates competitive** with that proposed by the applicant.

similar / comparable

Need to protect existing operator from predatory rates under the circumstances of an added operator; rates “competitive with that proposed by applicant” leaves an open door for an applicant to submit loss-leader rates which an existing operator cannot match to stay in business.

(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

strike “but will generally be for one year”.

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.

(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.

(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

similar / comparable

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.

Strenuous objection to burden of proof being placed on objecting company. The existing objecting company, by virtue of their past and continuing operation has established and maintains an operating environment. The applicant, by way of making application, is effecting change in that operating environment, and should be the party responsible to evaluate the effects of that change.

The applicant, using objective criteria from reputable transportation experts, must be responsible to demonstrate the positive OR negative effects of their application on the current operating environment of the existing certificate holder.

(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.

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.

(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.**

Would like discussion of what circumstances would allow temporary certificates.

Would not the application for a temporary certificate be same as for permanent one? If not, it should be.

IF a temporary certificate is needed, it should be for short time (30 days). A half-year would allow an applicant for temporary certificate to undercut an existing operator in that long a time period.

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.

thirty days

(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;

(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.))~~

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 Rate Flexibility

Generally agree with the model for rate flexibility, but not the particulars.

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

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

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

After the first year, the Base Rate is the rates in the operator’s tariff as of the end of the previous year.

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

Add: “...up to the maximum rate in each year.”

(c) “Maximum rate” means a rate set initially at twenty percent above the company’s base rate, as published in the company’s effective tariff. After a maximum rate has been published and become effective, the maximum rate will increase annually by three percent.

Maximum rate set at a percentage above the Base Rate. (15%, 20%, 25% - negotiable)

Maximum Rate percentage is maintained each year based on the Base Rate which is established annually at (date). An operator’s rates at the end of the annual year become the Base Rate for the following year.

A 3% yearly increase will ultimately not be enough to effectively manage cost increases in the long run. No reasonable business will maximize its rates during any year more than is needed to stay competitive with alternative transportation options or competitors.

(3) A company may file a tariff with the commission to charge flexible rates. 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 rate in effect on the date of the tariff filing and the maximum rates the company may charge. Once the commission approves a flexible rate tariff, the base rate used to establish the maximum rate does not operate as a minimum rate.

(4) A company's tariff filing to charge flexible rates under this section is not subject to an earning's review or rate 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 rate, the company must file tariff revisions in compliance with WAC 480-30-436 and all other filing requirements, including tariff publication rules and notice requirements.

(6) If a company seeks to offer free rates, the company must file tariff revisions in compliance with WAC 480-30-396 and all other filing requirements, including tariff publication rules and notice requirements.

(7) Any change in the rates charged by a company up to the maximum rate 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 rates that the company will charge and changes in time schedules by posting their actual rates on the company's website, or notices or brochures provided to customers, subject to the requirements in subsection (8) of this section.

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

(9) A company authorized to charge flexible rates must use the rates up to the maximum rate 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 rate for the service provided.

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

(11) A company may file a tariff that removes flexible rate authority and reflects only the original base rate.

(12) If the company seeks to change the base rate upon which the commission approved flexible rates, the proposed tariff filing will be subject to an earning's review or rate 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 rates, without following the rules for traditional rate 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 rate regulation for the industry. This section will allow companies to operate under a rate cap through setting maximum rates with the ability to increase the rates by three percent each year. There will be no “minimum rate” band. *Once the flexible rate 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 rates under WAC 480-30-YYY must carry a copy of its flexible rate 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 rates.