

ATTACHMENT

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

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

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

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

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

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

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

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

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

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

7 **PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS**

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

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

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

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

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

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

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

- 12 **NOTICE OF PROPOSED RULEMAKING:** The Commission filed a Notice of Proposed Rulemaking (CR-102) and SBEIS with the Code Reviser on June 5, 2013, at WSR # 13-12-072. The Commission scheduled this matter for oral comment and adoption under Notice WSR # 13-12-072 at 1:30 p.m., on Friday, July 26, 2013, in the Commission's Hearing Room at 1300 S. Evergreen Park Drive S.W., Olympia, Washington. The Notice provided interested persons the opportunity to submit written comments to the Commission by July 8, 2013.
- 13 The proposal would amend rules governing the Commission's review of applications for authority to operate a passenger transportation company in Washington. These rules are WAC 480-30-096, WAC 480-30-116, WAC 480-30-126, WAC 480-30-136 and WAC 480-30-140. The changes provide greater clarity to existing companies, applicants and the Commission during the application process and will reduce the time and resources spent during the process. The proposed rules also allow companies to apply for flexibility to set their fares up to a maximum of 25 percent above their current base fare, and to increase the fares above the maximum by an additional 5 percent each year. (WAC 480-30-420) The proposed rules provide that the Commission will review these changes to the rules after five years to evaluate the impact of the changes on the companies and the customers they serve. (WAC 480-30-075) They would also modify existing rules governing reporting requirements, and tariffs and time schedules (WAC 480-30-071, WAC 480-30-261, WAC 480-30-276 and WAC 480-30-286), and clarify rules governing applications for temporary certificates. (WAC 480-30-156)
- 14 **WRITTEN COMMENTS:** In response to the CR-102 notice, the Commission received written comments from SeaTac Shuttle, Bremerton-Kitsap, and Capitol Aeroporter. In general, the companies agreed with the proposals to streamline the application process and provide fare flexibility, but expressed concerns about the sufficiency of the proposed maximum fare and the limit on annual increases, and about how the Commission will implement the changes to standards for considering applications. Summaries of all written comments and the Commission's responses are contained in Appendix B.

- 15 SeaTac Shuttle raised the following objections and concerns:
- (1) The proposed rules in WAC 480-30-096(2)(a), (b) and (c) will allow the Commission to consider incomplete applications;
 - (2) WAC 480-30-116(2) and (3) narrow the scope of objections to applications;
 - (3) The proposed rule in WAC 480-30-140(2)(f) eliminates the distinction between “territories” and “routes”; and
 - (4) The language in WAC 480-30-140(3)(a)(ii) requires a company to make reasonable efforts to continually expand and improve its service, and to be responsive to consumer requests. The company believes that market demand is fixed and limited, and that the agency’s rules and regulations impede improvements in service.
- 16 Bremerton-Kitsap reiterated concerns made in prior comments that the Commission might approve both door-to-door service and scheduled service in the same rural territory, forcing one or both companies out of business because the market will not sustain both.
- 17 Capital Aeroporter also repeated prior comments. Specifically, the company continues to be concerned that the proposed 25 percent maximum fare increase with a 5 percent annual increase will not be sufficient. It also urges the Commission to consider the stability and sustainability of service when considering applications. Finally, it proposes the Commission adopt a policy statement in rule to guide interpretation of the rules.
- 18 **RULEMAKING HEARING:** The Commission considered the proposed rules, together with proposed correcting and clarifying changes, for adoption at a rulemaking hearing on Friday, July 26, 2013, before Chairman David W. Danner, Commissioner Philip B. Jones, and Commissioner Jeffrey D. Goltz. The Commission heard oral comments from Ann Rendahl, the Commission’s Director of Legislation and Policy, representing commission staff; Michael Lauver, representing SeaTac Shuttle; Richard Johnson, representing Wickkiser; Jim Fricke, representing Capitol Aeroporter; and Richard Asche, representing Bremerton-Kitsap.

- 19 Mr. Lauver (SeaTac Shuttle) supported the swift adoption of the rules, but raised three specific concerns:
- (1) The interpretation of the term “same service” in WAC 480-30-140(2) is too narrow and could result in the Commission granting an application in competition with an existing carrier, which could result in harm to that carrier;
 - (2) The proposed rules in WAC 480-30-156(7) allow the Commission to issue temporary certificates as a precursor to permanent applications, which he asserted is contrary to the statutory intent; and
 - (3) Subsection (13) of the flexible fare rule (WAC 480-30-420) provides that a request for changes to the base fare “will be subject to an earnings review”. Mr. Lauver fears that the phrase may be interpreted to mean the Commission would apply the 93/7 operating ratio methodology it currently applies in auto transportation company rate cases .

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

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

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

¹ Mr. Lauver later concurred with Mr. Johnson’s comments regarding routes and territories.

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

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

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

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

The purpose of these rules is to administer and enforce chapters 81.68 and 81.70 RCW by establishing the following standards that apply to auto transportation companies and to charter and excursion carriers, to the extent allowed by the individual chapters of law:

- Public safety;
- Fair practices;
- Just, reasonable and sufficient rates;
- Nondiscriminatory application of rates;
- Adequate and dependable service;
- Consumer protection; and
- Compliance with statutes, rules and commission orders.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

⁴ *Id.* at 597.

⁵ *Id.*

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

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

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

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

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

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

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

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

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

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

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

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

- 41 Capitol Aeroporter expressed at hearing and in written comments that the Commission should consider the stability and sustainability of existing service when evaluating an application for new or extended service. The company cites, as an example, the Commission’s decision to allow a competitor to enter a portion of its market and the company’s view of the impacts of that decision. The Commission addressed this concern by including in proposed WAC 480-30-140(1)(b) that the Commission, in reviewing an application, will consider “whether increased competition will benefit the traveling public, including its possible impact on sustainability of service.”
- 42 By including this language, the Commission acknowledges that it must assess both the benefits and risks of competition when considering a new service. However, the Commission disputes the assumption on the part of some companies that markets have a fixed service saturation point that has already been reached in all markets, or that a company does not have the ability or responsibility to adapt its service and business model to a changing competitive market.
- 43 Bremerton-Kitsap stated in written comments the concern that the Commission will jeopardize the sustainability of both services if the Commission chooses to allow both door-to-door service and scheduled route service within a specific rural territory. This argument relies upon the assumption that a density of ridership is necessary to

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

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

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

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

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

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

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

The commission may, upon complaint or upon its own motion, prescribe and authorize just and reasonable rates for the transportation of persons or property for any public service company subject to regulation by the commission as to rates and service, whenever and as often as it deems necessary or proper. ...

In exercising this power, the commission may use any standard, formula, method, or theory of valuation reasonably calculated to arrive at the objective of prescribing and authorizing just and reasonable rates. [Emphasis added.]

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

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

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

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

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

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

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

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

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

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

- 57 **WAC 480-30-096(7), (3)(d).** The language in subsection (7) is intended to explain that applicants for extension of authority must file tariff and time schedules only for the proposed service. To ensure clarity the Commission deletes the language in subsection (7) and adds the phrase “for the proposed service” following the language in subsection (3)(d).
- 58 **WAC 480-30-140(3)(c):** The phrase in subsection (3)(c), “in determining that the company does not meet the criteria of service to the satisfaction of the commission” is deleted from the first sentence, as it is redundant with the first phrase in the sentence.
- 59 **WAC 480-30-420(7) and (14):** The language in subsection (14) of the proposed rules is modified to clarify that companies that advertise or provide notice of flexible fares or changes in fares may not state that the Commission approves or sets specific fares. The language in subsection (7) concerning notice is amended to include a cross-reference to subsection (14).
- 60 **WAC 480-30-140(2)(f) and (g), (3)(a)(i),(ii), and (iv):** These subsections of the proposed rule refer to “scheduled route service,” while the proposed WAC 480-30-096 includes a definition for “scheduled service.” The terms in the proposed rules should be consistent, so the Commission deletes the word “route” from the term “scheduled route service.”
- 61 **WAC 480-30-420(15):** In the explanatory chart following subsection (15), the language related to year one is changed from “25% increase in Base Fare” to “25% above Base Fare” to be consistent with the language in subsection (2)(c) of the rule.
- 62 **STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE:** After reviewing the entire record, the Commission determines that WAC 480-30-071, WAC 480-30-096, WAC 480-30-116, WAC 480-30-126, WAC 480-30-136, WAC 480-30-156, WAC 480-30-261, WAC 480-30-276 and WAC 480-30-286 should be amended, and WAC 480-30-075, WAC 480-30-140 and WAC 480-30-420 should be adopted to read as set forth in Appendix A, as rules of the Washington Utilities and Transportation Commission, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the Code Reviser.

ORDER

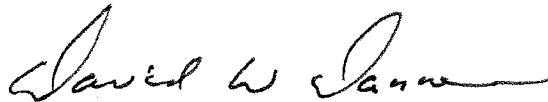
63 **THE COMMISSION ORDERS:**

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

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

DATED at Olympia, Washington, August 21, 2013.

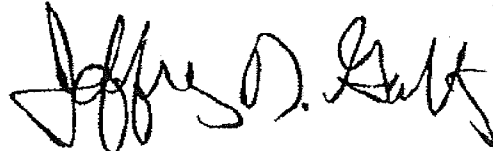
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



DAVID W. DANNER, Chairman



PHILIP B. JONES, Commissioner



JEFFREY D. GOLTZ, Commissioner

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

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

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

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

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

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

**Appendix A
(WAC 480-30 Rules)**

**Appendix B
(Comment Summary Matrix)**

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 480-30-420, requiring financial reporting only of the gross intrastate revenues reported to the state department of revenue for the previous calendar year, data to facilitate the commission's review under WAC 480-30-075, and such safety 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))~~ May 1 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))~~ May 1 due date if the commission receives a request for extension before ~~((December 31))~~ 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 safety report.

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

NEW SECTION

WAC 480-30-075 Review of the effects of adopted rule amendments.

(1) Beginning January 1, 2019, the commission will evaluate the effects of WAC 480-30-140, 480-30-420, and the amendments to WAC 480-30-071, 480-30-096, 480-30-116, 480-30-126, 480-30-136, and 480-30-286. The issues that may be considered include, but are not limited to:

(a) Whether the amendments increased opportunities to maintain and expand safe, fair, adequate, dependable and fairly priced auto transportation services to the public;

(b) Whether the amendments reduced the cost to the companies of complying with the tariff and application regulations in this chapter and the cost to the agency of enforcing the regulations;

(c) Whether the amendments reduced the duration of time required to process tariffs and applications;

(d) Whether the amendments increased opportunities for new and existing companies to provide service;

(e) A comparison of fares charged by companies under WAC 480-30-420 and fares charged by companies under the standard tariff rules, and by other public and private transportation service providers;

(f) Whether there has been an increase in consumer complaints about unreasonable or unfair fares; and

(g) Whether the changes have resulted in an increase in ridership.

(2) The commission will accomplish the evaluation required under subsection (1) of this section through a rule-making proceeding under chapter 34.05 RCW.

AMENDATORY SECTION (Amending WSR 06-13-006, filed 6/8/06, effective 7/9/06)

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

(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, but not limited to:

(i) The line, route, or service territory described in terms such as streets, avenues, roads, highways, townships, ranges, cities, towns, counties, or other geographic descriptions;

(ii) Whether the service will be:

• "Door-to-door service" - Service provided between locations identified by the passengers and points specifically named by the company in its filed tariff and time schedule. Door-to-door service requires a time schedule in compliance with WAC 480-30-281 (2)(c) and may be restricted to "by reservation only"; and/or

• "Scheduled service" - Service provided between locations specifically named by the company (e.g., the X Hotel at 4th and Main) and points specifically named by the company in its filed tariff and time schedule. Scheduled service requires the company to file a time schedule in compliance with WAC 480-30-281 (2)(b) and may be restricted to "by reservation only."

(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) A proposed tariff and time schedule for the proposed service;

(e) A statement of conditions from the applicant and statements from members of the public that ((justify)) demonstrate that public convenience and necessity requires the proposed service;

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

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

(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; and

(j) 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 intra-state service over an interstate regular route under a federal grant of authority. Refer to WAC 480-30-101.

(5) An application for new authority filed by a person not currently holding a certificate may propose a tariff that in addition to the applicant's proposed fares includes a request that the company be granted flexible fare authority under WAC 480-30-420 with the proposed maximum fares shown in compliance with the rule. Before the commission grants such authority, it will determine that the proposed base fares are fair, just, reasonable, and sufficient.

(6) A person holding a certificate applying for a name change or mortgage is not required to comply with WAC 480-30-096(3).

AMENDATORY SECTION (Amending WSR 06-13-006, filed 6/8/06, effective 7/9/06)

WAC 480-30-116 Certificates, application docket, ((protests,)) and ((intervention)) objections, 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 cer-

tificate 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 (~~certificate holder may file a protest to an application published in the application docket~~) 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 the company 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.

(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))~~ why the company believes it is providing the same service to the satisfaction of the commission and why it is filing the objection.

~~(v) ((Specify the protestant'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)).~~

(vi) 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))~~ (vii) 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 ~~((pretest))~~ 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.

(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 state law. 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, whether the objecting company provides the same service, and whether an objecting company will provide the same service to the satisfaction of the commission.

(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; and

(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).~~

AMENDATORY SECTION (Amending WSR 06-13-006, filed 6/8/06, effective 7/9/06)

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 state law and the requirements of this chapter.

(2) The commission must determine that the public convenience and necessity, as defined in WAC 480-30-140(1), requires the proposed service when considering an application for a new certificate or extension of an existing certificate. An applicant must support its application with statements by independent members of the public who need the service or are knowledgeable about the need for service in the territory in which the applicant seeks authority, or a statement by a representative of a city, county or regional transportation planning organization who is knowledgeable about the need for service in the territory in which the applicant seeks authority.

(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 may grant an original application or an extension of authority, if:

(a) The applicant demonstrates a need for service not provided by an existing auto transportation company holding a certificate by filing statements by independent members of the public who need the service or are knowledgeable about the need for service in the territory in which the applicant seeks authority, or a statement by a representative of a city, county or regional transportation planning organization who 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 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; and

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

AMENDATORY SECTION (Amending WSR 06-13-006, filed 6/8/06, effective 7/9/06)

~~WAC 480-30-136 ((Certificates, application hearings, auto transportation)) 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.~~

~~(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.~~

~~(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.~~

~~(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 transpor-~~

~~tation 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.))~~ (1) The commission will consider applications for which an objection has been received through brief adjudicative proceedings under WAC 480-07-610, unless the presiding officer determines, based on the facts and circumstances presented, that a hearing or different process is required.

(2) 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) Statements from independent witnesses provided by an objecting company to demonstrate that the traveling public will be harmed by the granting of the application.

(c) Additional supplementary information, evidence or testimony provided by the applicant to demonstrate that public convenience and necessity requires the proposed service.

(3) 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.

(a) If the commission determines that the objecting company holds a certificate to provide the same service in the same territory, that the 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 not issue a certificate.

(b) If the commission determines that the objecting company will not provide the same service to the satisfaction of the commission, the commission may grant the application.

NEW SECTION

WAC 480-30-140 Standards for determining "public convenience and necessity," "same service," and "service to the satisfaction of the commission." (1) Public convenience and necessity.

(a) In the context of auto transportation services, "public convenience and necessity" means that every member of the public should be reasonably afforded the opportunity to receive auto transportation service from a person or company certificated by the commission.

(b) In reviewing applications under this chapter, the commission may, among other things, 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 to the satisfaction of the commission. The commission will also consider whether increased competition will benefit the traveling public, including its possible impact on sustainability of service.

(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:

(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;

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

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

(g) Door-to-door service and scheduled service in the same territory will not be considered the same 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 service as proposed by the applicant in the same territory or the same subarea within the territory, for door-to-door service, or along the same route, for scheduled service, in which the service is proposed;

(ii) Has made a reasonable effort to expand and improve its service to consumers within the same territory or the same subarea within the territory, for door-to-door service, or along the same route, for scheduled service, in which the service is proposed;

(iii) Provides the service in a manner that is convenient, safe, timely, direct, frequent, 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 by reviewing the company's tariff and certificate in response to requests and when reasonable, proposing changes to the commission, and meets other reasonable performance expectations of consumers;

(iv) Has provided the same service as proposed by the applicant in the same territory or the same subarea within the territory, for door-to-door service, or along the same route, for scheduled service, in which the service is proposed, at fares competitive with those proposed by the applicant.

(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 (a) of this subsection 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 no more than 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 will also take into consideration whether the testimony shows a pattern of behavior and whether the company has policies and procedures in place to mitigate or resolve alleged or actual service issues.

(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 (a) of this subsection to the witness' satisfaction, 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.

AMENDATORY SECTION (Amending WSR 06-13-006, filed 6/8/06, effective 7/9/06)

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. In determining if the requested temporary authority is consistent with the public interest, the commission (~~will~~) may 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 based on an estimate regarding how long it will take to complete review of the permanent certificate application. 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) ~~has received.~~

(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))~~ objections.** ~~((Protests))~~ Objections must:

(a) Be filed with the commission in writing within ~~((ten))~~ twenty 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.** ~~The commission may grant or deny a protest 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.)~~

AMENDATORY SECTION (Amending WSR 06-13-006, filed 6/8/06, effective 7/9/06)

WAC 480-30-261 Tariffs and time schedules, definitions used in. Definitions of general terms and terms specific to driver and equipment safety are contained in WAC 480-30-036 and 480-30-216, respectively. Unless the language or context indicates that a different meaning is intended, the following definitions apply:

"Charge" means a fare or rate assessed by an auto transportation company for providing a service other than the transportation of a passenger(s). For example: The charge for carrying extra baggage on board the bus.

"Checked baggage" means passenger baggage that is accepted for transportation but is not carried in the passenger compartment of the vehicle.

~~(**"Fare" or "ticket price"** means a rate assessed by an auto transportation company for the transportation of a passenger(s).)~~

"Fare" means an amount in the company's tariff assessed for services provided by an auto transportation company. The term "rate" has the same meaning.

"Joint fare" means a fare or rate (~~charged~~) assessed by an auto transportation company for the transportation of a passenger(s) that applies from a point located on one auto transportation company's route to a point located on another auto transportation company's route, made by agreement or arrangement between the companies. A joint fare agreement is also known as a through-ticketing agreement.

"Local fare" means a fare or rate charged by an auto transportation company for the transportation of a passenger(s) between stations within a single company's authority.

"Long and short haul clause" means a clause that prohibits an auto transportation company from charging more for a shorter than for a longer haul over the same route.

"Rate" means an amount in a company's tariff (~~approved by the commission or allowed to become effective by operation of law,~~) assessed for services provided by an auto transportation company. (~~For example: Passenger fares, ticket prices, additional baggage charges~~) The term "fare" has the same meaning.

"Sales commission" means a fee paid to an agent for selling tickets on behalf of an auto transportation company.

"Seasonal fares and seasonal time schedules" means (~~filing of~~) tariffs or time schedules naming different fares, routes, or arrival and/or departure times for different periods of the year. For example: A company may offer more scheduled routes during certain periods than it does in others; or, a company may assess different fares in heavily traveled months than it does during off-peak months.

"Through fare" means a single fare or rate applying from point of origin to point of destination that combines two or more fares or

rates in one auto transportation company's tariff or fares or rates from two or more auto transportation companies.

"Ticket price" means a fare or rate assessed by an auto transportation company for the transportation of a passenger(s).

AMENDATORY SECTION (Amending WSR 06-13-006, filed 6/8/06, effective 7/9/06)

WAC 480-30-276 Tariffs and time schedules, companies must comply with the provisions of filed tariffs and time schedules. (1) **Tariffs.** Except as authorized by the commission pursuant to WAC 480-30-420, no auto transportation company may assess rates that are higher, lower, or different from those contained in the company's filed tariff. Further, no auto transportation company may accept a payment for service provided that is higher, lower, or different from the rates contained in the company's filed tariff.

(2) **Time schedules.** An auto transportation company must provide service along all routes, and to all points, listed on the company's filed time schedule. Further, an auto transportation company must make a good faith effort to operate in compliance with the times of arrival and/or departure shown on the company's filed time schedule.

AMENDATORY SECTION (Amending WSR 06-13-006, filed 6/8/06, effective 7/9/06)

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 480-30-420 must carry a copy of the flexible fare tariff and current time schedule, subject to the requirements of WAC 480-30-420(7).

NEW SECTION

WAC 480-30-420 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, except for tariff supplements, 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, at the company's discretion, fares in any amount at or below the maximum fares.

(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, except for tariff supplements. After a maximum fare has been published and become effective, the maximum fare will increase annually by five percent.

(3) A company may file a tariff with the commission to charge flexible fares. Because the filing authorizes the company to increase or decrease any fare at any time, singly or in any combination, the tariff must be filed on thirty days' notice to the commission under RCW 81.28.050. The tariff must show the base fares 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 a review under WAC 480-30-421 or 480-30-426.

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

(6) If a company seeks to offer free fares, the company must file tariff revisions, if not already contained in the tariff, in compliance with WAC 480-30-396 and all other filing requirements, including tariff publication rules and notice requirements.

(7) Any change in the fares charged by a company at or below the maximum fares 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 by posting their actual fares on the company's web site, or notices or brochures provided to customers, subject to the requirements in subsections (8) and (14) of this section.

(8) If a company changes the fare it charges, at or below the maximum rate, it must honor the fares charged for tickets previously sold. However, the company may refund the amount paid for a ticket above the new fare.

(9) A tariff filing whose only purpose is to add a new service option or a service level which has not been previously included in the company's tariff must be filed on at least one business-day notice to the commission in compliance with WAC 480-30-301.

(10) A tariff filing that changes the fare design that results in an increase in the effective base fare must be filed on at least thirty calendar days' notice to the commission as required by WAC 480-30-311 and must comply with filing requirements in WAC 480-30-421 or 480-30-426, as well as tariff filing, publication and notice requirements under this chapter. A company may request an exemption from the tariff filing, publication or notice requirements. An example of a change in the fare design would be current fares published by zip code and proposed fares published by mileage.

(11) A company authorized to charge flexible fares must use the fares to recover all costs associated with providing passenger service, including, but not limited to, fuel costs, tolls, ferry fares, surcharges, and taxes. Any fuel surcharge in effect at the time the company is authorized to charge flexible fares will be canceled and not included in the base fare. A company may not impose any charge on any customer other than a single fare for passenger service provi-

ded. This would not affect the company assessing charges for accessorial services (e.g., baggage, cancellation fees, or refund transaction fees) published in the company's tariff at the time the commission approves a flexible fares tariff.

(12) Effective May 1, 2014, and each May 1st thereafter, a company's maximum fare will increase by five percent. Each company will implement the adjusted flexible fare by filing the appropriate tariff pages at least thirty days before the effective date of the change.

(13) If a company seeks to change the base fare upon which the commission has approved flexible fares, the proposed tariff filing will be subject to an earnings review or rate case under WAC 480-30-421 or 480-30-426, and all tariff publication rules and notice requirements.

(14) In providing notice to consumers or in its advertising, the company may not state that the commission approved or established a specific fare, but may state that the fare is set pursuant to a flexible fare tariff.

(15) An example of the maximum fare calculation follows:

Year	Base Fare	Maximum Fare	Explanation
0	\$41.00	\$41.00	
1	\$41.00	\$51.25	25% above Base Fare
2	\$41.00	\$53.81	5% increase in Maximum Fare
3	\$41.00	\$56.50	5% increase in Maximum Fare
4	\$41.00	\$59.33	5% increase in Maximum Fare
5	\$41.00	\$62.29	5% increase in Maximum Fare
6	\$41.00	\$65.41	5% increase in Maximum Fare

Note: Rounding: Fares are rounded to \$.01.
 If the value of the number to the right of the rounding digit is less than five, the rounding digit is left unchanged.
 If the value of the number to the right of the rounding digit is five or higher, the rounding digit is raised by one.