TC 121328 – Auto Transportation Rulemaking Project 2012-2013

Stakeholder Comments and Staff Response to Draft Rules

Company	WAC Section	Comment	Staff Response
SeaTac Shuttle	480-30-YYY Fare flexibility	The company offers an alternate approach to the draft fare flexibility rule with amendments to 480-30-291, 306, 311, 316, 421 and 426.	Staff will consider the alternate drafting approach once the specific issues contained in both approaches (percentage of the maximum, annual increase, etc.) are addressed.
	480-30-YYY Fare flexibility ***(maximum rate issue)***	Twenty percent is too restrictive. When you consider the fees that are required of us (SeaTac Shuttle) and are added to the base fare for recovery, our fares would immediately rise by around 15% just to be where we are today. Twenty-five percent is the number that was previously discussed and is the minimum for a starting point. If the intent of the entry flexibility rules is to remove barriers to entry, the rate flexibility should be a true band at 100% of the base fares. The entry flexibility rules could (then be) in plain language instead of with the current subject-to-interpretation language.	Staff proposed twenty percent as a placeholder for discussion. Staff's final recommendation will be based on the balance between the application process and entrance standards on the one hand, and the reduced oversight of fares and company's earnings on the other hand.
	480-30-YYY Fare flexibility ***(inflation factor issue)***	Three percent per year is not realistic. The rate of inflation has been substantially more than that in the past. One year of six percent inflation would return the company to a deficit position. The rate should be tied to the regional Consumer Price Index.	Staff will consider using a CPI instead of a flat percentage. Staff proposed three percent as a placeholder for discussion. Staff recognizes that a mechanism for adequately adjusting for inflation should be a component of any rate flexibility rule.
	480-30-YYY Fare flexibility ***(special, promotional or free fares issue)***	(1) Under YYY (5), the reference to special or promotional fares above the flexible fare maximum does not make sense, since special or promotional fares would only be offered through a reduction of price. Amend to refer to any fare above the maximum fare.	(1) Staff agrees with the amendment.

		(2) Under YYY (6), special or promotional fares below the base rate should be subject to notice required under WAC 480-30-436. Free or discounted fares should be subject to notice only if not already contained in tariff.	(2) Staff does not agree that special or promotional fares should be subject to notice requirements; as long as a fare is below the maximum rate, the company should be free to charge it. The proposal to require tariff revisions for "free" fares was intended to maintain some protection from unwise discounting. Staff agrees that if the tariff already provides for free service, it does not require additional filings.
	480-30-YYY Fare flexibility; 480-30-286, Tariffs and time schedules, posting ***(terminology issue)***	SeaTac Shuttle proposes changing "rate" to "fare" in the draft rule, and inserting the word "fare" in several places.	Staff is investigating whether there is a way to amend the rule to refer to "fares" or "fares and charges" while avoiding confusion with terminology that may be different in the RCW or other rules. Staff understands the interest of the company in having the terminology in the rule align with the terminology used by the industry.
	480-30-YYY Fare flexibility ***(removal of flexibility issue)***	If a company opts out of fare flexibility after three years (as example), it is unrealistic and unreasonable to return fares to a level from years before. Changes to the base fare that would be subject to an earnings review or rate case should not include the changes reflected in the annual inflation adjustments made under the rule.	Staff disagrees. Staff believes that if a company chooses, for whatever reason, to discontinue its flexible fares tariff, the company should return to the "base rate" as defined in WAC 480-30-YYY(2)(a), Rate Flexibility. If additional revenue is needed, the company can file for an increase under the general tariff rules. Staff infers that the proposal is to allow the company to opt out of fare flexibility but to also keep the annual inflation increases already accumulated, which would be applied to the base fares. If a company sought to increase the base fares, the agency would not consider the revenue resulting from the annual inflation increase.This will require a discussion at the workshop to help Staff understand how the company expects the Commission to perform an earnings review or conduct a rate case while excluding a portion of the revenue from the calculation.
	480-30-071 Reporting Requirements	Change the safety report filing date to January 31, to allow companies to accurately reflect the year's results.	Staff agrees.

	480-30-096 Certificates, application filings, general 480-30-116 Certificates, application docket, and objections, auto transportation company 480-30-126 Certifications, applications, auto transportation company ***(Alleged violations issue)***		Staff disagrees with the proposed amendments related to alleged violations of law or rules. The Commission has the responsibility to determine an applicant's "regulatory fitness," which includes a determination whether the applicant is willing and able to comply with state laws and rules. The Commission will consider all facts in front of it at the time it is reviewing the application to make that determination. Staff does not object to clarifying under WAC 480-30-126(5)(c) that it will consider any proven violation of state law or rule when considering willingness and ability. However, Staff believes that the Commission should retain the flexibility for determining whether a pending complaint is relevant to the application.
		The Commission should reject or defer consideration of an application until any "alleged violations of law or rule" are resolved.The Commission should consider any violations, upheld complaints and pending investigations when considering willingness and ability.	
		The Commission should not grant a certificate to an application that has unresolved violation (allegations). An incumbent company should be able to file a complaint alleging violations, instead of asserting the incumbent provides the same service, as grounds for objecting to the application.Under the company's proposal, objections based on alleged violations would have to be filed with the Commission within twenty days of publication of notice of application.	Staff does not support an amendment to the draft proposed rule that would allow an incumbent to object on the basis of an alleged violation.Under RCW 81.68.040, an incumbent company's right to object is limited to when the applicant proposes to provide the same service as the incumbent.
		It should not be necessary for the objecting company to file an informal or formal complaint: notice to the Commission should be sufficient.	If an incumbent company has reason to believe that an applicant is in violation of the laws and rules governing auto transportation companies, it may file a complaint with the Commission, and the Commission will consider the complaint.

	480-30-096(3)(d) Certificates, application filings, general	Amend the draft rule to require a statement of conditions that support the proposed service, by requiring a statement only if the proposed service is wholly or partly within the existing authority of another company.	Staff considered language that would allow a company to enter a market currently outside another company's certificate without demonstrating public convenience and necessity. However, the law requires such a finding. Discussions with other states indicate that at the very least, states require one independent witness to assert a need; therefore, the standard proposed in these rules is a statement from one independent witness. Staff believes companies should have no difficulty finding one independent witness to assert need.
	480-30-096(3)(e), (f) Certificates, application filings, general	The Commission should not require ridership and revenue forecasts for the first twelve months of operation, nor should it require a projected balance sheet and income statement for the first twelve months of operation. These requirements are "fantasy," "pure guess work" and "serve no purpose." The Commission is not in the business of, and has no obligation or responsibility to attempt, to justify the viability of a start-up business. If the applicant has made a determination that the market situation is viable, based on whatever criteria chosen, then that decision should be the applicant's sole decision.	Staff disagrees. A review of Commission decisions revealed that the Commission considers a determination of financial fitness to be a necessary precondition to issuing a certificate of public convenience and necessity. Staff's proposed amendments to WAC 480-30-096 and WAC 480-30-136 reduce the requirements for showing "financial fitness." The Commission is able to examine the applicant's financial records and determine which companies have the financial resources and commitment to deliver service for a reasonable period of time to test the market. This review is important to address the concerns of certificate holders that "fly-by-night" operators not enter the market, while also giving new companies a reasonable opportunity to enter the market.
	480-30-096 Certificates, application filings, general 480-30-126(5)(b) Certificates, applications, auto transportation company ***(Application requirements for existing companies,***	An existing certificate holder applying for an extension of authority should only be subject to 480-30-096(1), (2) and (3)(a)(b)(c). The company has met all other requirements, previously, and should not have to resubmit. An existing certificate holder applying for a name change or mortgages should only be subject to 480-30-096 (1) and (2). The company has met all other requirements, previously, and should not have to resubmit.	Staff agrees, except that an existing certificate holder applying for an extension of authority must also provide a statement of conditions that support the proposed service (3)(d), to show public convenience and necessity. Staff agrees.

	issue)	Applicants for an extension of authority have already proven financial fitness by virtue of their existing operations and required reports, so an exception should be added to the requirement that an applicant demonstrate the financial ability to provide the proposed service.	Staff disagrees. Although existing operations and the *content* of a required report may demonstrate financial fitness, the mere existence of operations and required reports do not demonstrate financial fitness.
	480-30-096(5) Certificates, application filings, general	If a company is in compliance with the filing requirements and the tenants *(sic)* of 480-30-YYY, then the Commission must approve the new tariff. It is not discretionary.	Staff disagrees. The Commission must retain the flexibility to determine that the applicant's proposed base fares are not fair, just, reasonable or sufficient, as a precursor to approving the use of the flexible rate mechanism.
	480-30-116(2) and(3), Certificates, application docket, and objections, auto transportation company 480-30-XXX,(1)(b), (2), (3), 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. ***("Same service" issue)***	In several places the company proposes to either replace "same service" with "similar service" or add "or similar" to the phrase "same service."	Staff disagrees. RCW 81.68.040 refers to "same" service, not "similar" or "same or similar" service. The real issue is how the Commission determines that the service proposed is the "same" as the service currently provided by the incumbent. See below for that discussion.
	480-30-116 Certificates, application docket, and objections, auto transportation company	All interested parties should be provided the notice of appearance filed by the applicant's attorney.	Staff supports the proposed amendment.

	480-30-116(3) Certificates, application docket, and objections, auto transportation company 480-30-131Certificates, overlapping applications, auto transportation company 480-30-XXX(2)(b), (5) 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. ***("Door to door" service distinguished from "scheduled" service issue)***	The company proposes amendments to the draft to require that "door to door" service and "scheduled" service in the same territory not be considered the "same, similar or overlapping" for the purposes of applications.	Staff supports the proposed amendment. It states explicitly what Staff originally intended.The Commission has ruled in the past that door-to-door service and scheduled service are not the same service, and has granted applications to provide one type of service in a territory already served by the other type of service.
	480-30-116(3) Certificates, application docket, and objections, auto transportation company 480-30-XXX(4) Standards for determining "public convenience and necessity," "territory already served by a	The company proposes to remove language related to determinations of whether the incumbent company will remain viable if another company is issued a certificate to serve in the same territory. The rationale given by the company is that it is "stupid."	See Staff response to Steve Salins, below.

	certificate holder," "service to the satisfaction of the commission" and impact on an existing company. ***(Company viability issue)***		
	480-30-116(4)(f) Certificates, application docket, and objections, auto transportation company 480-30-156 Certificates, temporary, auto transportation company ***(Temporary certificate issue)***	Companies applying for a temporary certificate should have no fewer requirements for justifying service in an existing territory. 480-30-116 should apply to temporary certificates. The company proposes the repeal of all temporary certificate language in the rule and inserts a reference to the Governor's authority to waive or suspend the operation or enforcement of the section, any portion of the section, or any administrative rule.	WAC 480-30-156 contains the provisions related to applications for temporary certificates. The proposed amendment by Staff to WAC 480-30-116(4)(f) simply makes that clear. Staff disagrees. RCW 81.68.046 authorizes the Commission to issue a temporary certificate. As Staff understands the company's proposal, the company is requesting the Commission make a blanket determination that it will not issue a temporary certificate under any circumstances, except by gubernatorial order. This means that a new company seeking to serve a territory not currently served, or an existing company seeking to expand into a territory not currently served, would not be allowed to provide service without a permanent certificate, even if it met all the requirements under WAC 480-30-156.
	480-30-136 Procedure for applications subject to objection, information required of applicant and objecting company	The company states that the changes proposed for this section of the rules shifts the burden of proof from the applicant to the existing certificate holder. "This situation is completely unsatisfactory, the applicant who desires to supplant and *(sic)* existing certificate holder must bear the burden of proving the insufficiency of the existing company. In this instance the existing certificate holder is presumed "guilty" until he proves otherwise. The agency is attempting to totally reverse the nature of applications and the proceedings. To state in the agency notes regarding this section that: 'The changes in this section	Staff disagrees. The company does not quote the remainder of the note, which reads, "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." Under the proposal, in WAC 480-30-096, the applicant is required to provide all of the documentation necessary to

		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-XX, below' is disingenuous at best and deceitful."	support a finding of public convenience and necessity (which includes the fact that, in the opinion of the applicant and its witnesses, any existing certificate holder is not providing the same service to the satisfaction of the Commission), financial fitness, and regulatory fitness. Under WAC 480-30-136 section, the "burden," indeed, is on an objecting company to justify its objection. Due process then requires that the applicant be given an opportunity to respond to the objecting company's statements and documentation. What is new, in this section and others, is that the scope of an incumbent's objection is narrowed to an assertion that the incumbent will provide the same service to the satisfaction of the Commission, per the statute (RCW 81.68.040). The standards (as opposed to the procedure) for determining this are contained in the proposed new section. All other matters (financial and regulatory fitness, for example) are matters for the Commission to decide without intervention by incumbent companies.
	480-30-XXX(1)(a) 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.	The company proposes to amend the public convenience and necessity standard by adding "subject to the passenger rules section of its tariff."	Staff does not agree that a member of the public's opportunity to receive service should be restricted by a company's tariff. Based on a comment from a representative of Shuttle Express (see below), Staff is considering amending its proposed standard to read, "Public convenience and necessity" means that every member of the public should be afforded the opportunity to receive auto transportation service from a person or company certificated by the Commission."
	480-30-XXX(1)(b) Standards for determining "public convenience and necessity," "territory already served by a	The company proposes to strike the language stating the Commission will consider "difference 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	Staff disagrees. This draft rule deals with entry into the market, not rate setting. This language is based on the Commission's practice of carefully examining the service being provided, the service proposed to be provided, and the characteristics of the companies and the market. While the

	certificate holder," "service to the satisfaction of the commission" and impact on an existing company.	evaluating whether the public convenience and necessity requires the commission to grant the request for the proposed service." The company's argument is that the Commission does not consider such factors in rate cases. The company believes the language would provide the Commission total discretion to grant any application that it saw fit regardless of the existing operator.	objecting company may not always agree with the Commission's decision, the Commission's orders are designed to meet the public's interest in having transportation service options within the context of the specific transportation market.
	480-30-XXX(1)(b) 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.	The company proposes to strike the language stating the Commission will consider "whether increased competition will benefit the traveling public." The company states that competition by its very nature is good for the public. In limited circumstances, a poor, up-start company may displace an established carrier only to default itself to the disadvantage of everyone including the public. Under this provision there can be no argument from an existing certificate holder to sustain an objection.	Staff disagrees. This language is based on the Commission's past and current practice of considering whether competition will benefit the public. Staff notes that this is language currently in WAC 480-30-136(5)(f), and was simply transferred to another section for organizational purposes. Staff believes that the underlying requirement of financial and regulatory fitness, and meeting the safety and insurance requirements, would reasonably address the scenario imagined by the company of a "poor, up-start" company obtaining a certificate, driving out an established company, and then defaulting.
	480-30-XXX(2) and (5) 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. ***("Same service" issue)***	The company objects to several of the criteria proposed to determine whether the service proposed in an application is the same as that of an existing company. Regarding "same service" the company states that running the same route on a nearby street and stopping within blocks of the existing operator is not the "same service." The UTC should not permit a new or existing operator to run parallel to any existing service if the only reason is a slightly different route or stop. Keeping paragraph (2)(f) just encourages all to operate on top of existing operators. Existing operators cannot change their operations to meet exactly the same operation proposed in every application that encroaches on their territory.	Staff disagrees. Staff reviewed past cases to develop an understanding of how the Commission determines "same service." The Commission's focus is on whether the applicant proposes to provide service that will not be provided by the existing certificate holder to the satisfaction of the Commission. In some cases, this has meant that the Commission found that a distance of two blocks was very significant, depending on the customer base and the environment surrounding the route. In many instances, a company's decision or assertion that customers should accommodate the economic interests or

		Service that is similar and meets the needs of the public is the test and it is the applicant that must prove that that level of service is not being met. The statement, "alternative routes that may run parallel to an objecting company's route, but which have a clear convenience benefit to customers, are considered a separate and different service," is likewise unrealistic and counterproductive. If a company runs a parallel service two blocks separate from an existing service, it is more convenient to those persons living two blocks away, but it is economically unviable for either company and not unreasonable for a customer to have to go two blocks further for service on a scheduled carrier. Scheduled carriers by their very nature require passengers to come to a predetermined stop for service. The factor "population density" in application is presumptuous and without foundation. The same holds true for, "the topography, character, and condition of the territory in which the objecting company provides service and in which the proposed service would operate."	business model of the company, rather than the company serving the customer, was overturned by the Commission. For example, the Commission found that two blocks in downtown Seattle made a significant difference in terms of safety and convenience. The Commission may not have found the same to be true in Coupeville. In other cases, more distance was involved, but the Commission did not believe that requiring the additional travel time by the customer or the requirement to park a vehicle for an extended period of time at the pick-up location was reasonable for the type of service (airporter) the existing certificate holder purported to provide, even though the competing services both traveled along the same freeway or on parallel highways, and therefore could be argued to be "parallel." The Commission's decisions required an analysis of the "topography, character and condition of the territory," rather than using an artificial rule of the number of blocks or miles based on a map. Staff notes that with the exception of (2)(f), the language in subsection (2) is currently in the rule and was simply transferred to another section for organizational purposes.
	480-30-XXX(3) 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.	The company objects to several of the criteria for determining whether an existing company will provide service to the satisfaction of the Commission. The company objects to placing the burden on the certificate holder, rather than the applicant. The Commission has made it very difficult for any operator to expand their business, and expanding one's business is not a measure of customer satisfaction or level of service.	Staff disagrees. Staff encourages the company to provide a list of the regulations that make it difficult for an operator to expand its business, with specific explanations of how the regulation causes the difficulty.

	(Service to the satisfaction of the Commission issue)	Geographical as well as authority limitation preclude expansion in most cases. Such terms as respectful and courteous are abstract and show the lack of business acumen at the agency. No business would survive if it was disrespectful or lacked common courtesy. It is often not possible to be responsive to consumer requests because of regulatory restrictions. The company proposes striking (3)(b), which bases the determination of whether the company "will" provide	Staff reviewed several cases to develop an understanding of how the Commission determines "satisfaction of the Commission." Subsection (3)(a)(i) is actually in WAC 480-30-136(5)(a), and was transferred to this section for organizational purposes. The list of service characteristics in (3)(a)(iii) and the customer expectation language in (3)(c) are consistent with past Commission decisions and are reasonable criteria for determining whether customers are receiving good service. Regarding the company's specific comment about courtesy and respect: while disrespectful or discourteous service may hurt a company's business, the Commission has found it necessary to apply a courtesy and respect standard in some cases. In addition, the Commission has given significant weight to the opinion of customers, believing that a customer should not be required to endure poor or non-existent service in the interest of the company. At the same time, the Commission has recognized in the past, and should continue to recognize, that there are conditions outside the control of the company that may cause customer dissatisfaction such as severe weather or natural disasters. The expectation in (3)(a)(ii) that a company engage in a continuous effort to develop the market, rather than design a business model and expect customers to accommodate the company, is intended to provide the company an incentive to improve its service offerings in the absence of free market competition. The Commission is required to determine under RCW 81.68.040 that a company "will" provide service. The method

		service on what it has done in the year previous to the application. The company states that, "The Commission suggests a certificate "will" provide service but then relates that future tense to the past tense and the previous year. We cannot go back in time to meet a challenge from the future. Again, it is up (to) the applicant to prove that the certificate holder was or is not serving the public." The company proposes adding language to provide an objecting company an opportunity to present witnesses to rebut claims by an applicant and to substantiate the level of service and customer satisfaction provided.	for making that determination is to consider recent past performance, rather than speculate on the trustworthiness of statements regarding future intent. The Commission's long-standing use of this method was affirmed by the Court of Appeals, Division 2, in Pacific Northwest Transportation Services v. Washington Utilities and Transportation Commission, et al., No. 20606-4-11, July 17, 1998. Staff agrees to clarify that the adjudicative process allows for rebuttal witnesses. However, Staff notes the Commission's focus is on whether a service is meeting the needs of the public, not on whether more people believe the service is satisfactory than believe it is unsatisfactory.
	480-30-XXX(4) 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. ***(Company viability issue)***	"Stupid."	See Staff response to Steve Salins, below.
Steve Salins Shuttle Express	WAC 480-30-071 Reporting Requirements	Not much in changes, no major concerns with this section	
	WAC 480-30-096 Certificates, application filings, general.	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.	Staff will consider whether additional realignment of sections would be useful, once all the substantive issues are addressed.

	WAC 480-30-096 Certificates, application filings, general.	The company believes the UTC should place the responsibility on the applicant, not the existing certificate holder, to demonstrate that granting the application will not produce significant financial harm to the existing certificate holder, to demonstrate why increased competition would benefit the traveling public, and demonstrate why the traveling public under the existing certificate would not be harmed.	Staff disagrees. It is not reasonable to expect an applicant to be so knowledgeable of the existing company's business that it can calculate the financial impact of competition on that company. Further, Staff doubts that the existing companies would be willing to open all of their records to the applicant to enable the applicant to make that calculation. It is the responsibility of the existing company to determine whether a competing service will harm the company enough to warrant an objection. It is reasonable to expect that the applicant demonstrate public convenience and necessity, as required by the current draft.
	WAC 480-30-096(3)(c) Certificates, application filings, general.	The applicant should provide factual evidence that existing certificate holder will remain viable. The applicant's proposed initial tariff should be compensatory and not predatory in nature (perhaps matching tariff of existing certificate holder).	Staff disagrees. Again, it is not reasonable to expect the applicant to show whether the proposed service will make the existing company not viable; nor is it likely the existing companies will support a rule requiring that they provide access to their records by an applicant. Further, the applicant should not be held responsible for the existing company's decisions that may compromise the existing company's ability to effectively compete in the market. Staff disagrees. The application process includes a review of the applicant's proposed tariff, and Staff can obtain additional information if the proposed rates do not appear reasonable. Determining "compensatory" rates requires a rigorous analysis of very exact financial and operating data for a *proposed business*. The Commission has found that an applicant's financial condition is not a critical element of the grant of authority, so long as there is credible evidence the applicant has sufficient financing to begin operations and continue them for a reasonable period while building its business.

	WAC 480-30-096(3)(f) Certificates, application filings, general.	Regarding the projected balance sheet and income statement for the first twelve months of operation, the applicant should include an independent analysis to insure projections are legitimate.	Staff and Commission analyze the financial filings of the applicant to ensure they are reasonable.
	WAC 480-30-096(5) Certificates, application filings, general.	Regarding the applicant requesting rate flexibility: what would be the applicant's "baseline?" The company suggests that applicant's initial tariff should match tariff of existing certificate holder, to ensure the initial tariff is compensatory and not predatory.	Staff disagrees. Also see comments above. When an applicant files an application, it must also file a tariff that is "fair, just, reasonable and sufficient." Under the rule, rate flexibility will use a base rate from that initial tariff filing. It is not reasonable to expect an applicant to match the tariff of an existing certificate holder: their business models, cost structures and services may be significantly different (higher or lower), resulting in different costs/revenues (higher or lower).
	WAC 480-30-116 Certificates, application docket, and objections, auto transportation company.	The company proposes to change the term, "same" to "similar or comparable" throughout the draft, in addressing the "same service" issue.	See Staff's response to SeaTac Shuttle on the same issue.
	WAC 480-30-116(2) Certificates, application docket, and objections, auto transportation company.	Regarding the requirement that the objecting company specify the reasons for the objection and specify the objecting company's interest in the proceeding, the company questions the difference between the "reasons" and "interest" and suggests combining the requirement. The Commission should define "objecting company's interest."	Staff agrees that having the existing certificate holder state its reasons for the objection is sufficient; the other language is not necessary.
	WAC 480-30-116(3) Certificates, application docket, and objections, auto transportation company. ***(company viability issue)***	The company proposes that, regarding the company's viability, the last sentence in the section should read, "The commission will evaluate to what extent approving the application will result in harm to the business or harm to the traveling public," rather than "the commission will then consider whether approving the application will make the objecting company's business not viable."	The company raises issues that should be discussed at the workshop.Staff will consider the issues after hearing from the other companies.

		The company also questions why the Commission would proceed with the application process if the Commission determined that the existing certificate holder holds a certificate for the same service and provides the same service, and provides it to the satisfaction of the Commission.	
	WAC 480-30-116(4) Certificates, application docket, and objections, auto transportation company.	Regarding the provision that temporary certificate applications are not subject to the provisions of this rule, the company states it does not foresee circumstances which would call for a temporary certificate authority.	See Staff's response to SeaTac Shuttle regarding temporary certificates.
	WAC 480-30-126(1) Certificates, applications, auto transportation company.	Regarding the determination that an applicant has the knowledge, experience and resources to conduct the service it proposes and is fit, willing and able to comply with the laws and rules, the company questions who will decide and what criteria will be used. The company suggests defining "fit, willing and able."	Staff and Commission review the knowledge, experience and resources of the applicant to determine "fit, willing and able."
	WAC 480-30-126(2) Certificates, applications, auto transportation company.	The company suggests that the wording of the meaning of "public convenience and necessity" be clear that "all members of the public are to be afforded the opportunity to have service." It needs to be clear whether the rule is providing the opportunity for an applicant to provide service, or the opportunity for the public to have service. The company also questions what the limiting factors of "service" would be.	Staff is considering amending its proposed standard to read, "Public convenience and necessity" means that every member of the public should be afforded the opportunity to receive auto transportation service from a person or company certificated by the Commission."
	WAC 480-30-126(2) Certificates, applications, auto transportation company.	In several locations, the company proposes that the term "desire" be replaced with the term "need." The company also objects that allowing the applicant to provide public convenience and necessity with only one witness is "a meager requirement and can be easily manipulated." The company suggests the one-witness	Staff agrees that the term "desire" should be replaced by the term "need." Staff disagrees. The draft rule proposes "at least" one witness. If an applicant produces only one witness, the Commission will judge whether that witness credibly demonstrates public convenience and necessity requires the approval of the

		minimum be replaced with "noticeable" or "significant" public demand for service, and/or "a demonstrated reasonable public demand to add service," or "demonstrates a need for service."	application.
	WAC 480-30-131 Certificates, overlapping applications, auto transportation company.	The company questions whether certificates could be issued to more than one applicant, in the event of multiple applications for overlapping service.	It is possible that more than one company's application will be granted to serve the same territory. There are currently areas of the state that are served by more than one company, based on the Commission's analysis of the differences in the proposed service and what portions of the transportation market will be served by each company. This rule was not proposed to be changed; it is in the document only for context.
	WAC 480-30-131 Certificates, overlapping applications, auto transportation company.	The company believes a discussion is needed concerning the definition and implications of the phrase "same service." Concerned that the phrase could provide a technical loophole that would allow an applicant to obtain a certificate due to a very narrow interpretation of the phrase.	See Staff's response to SeaTac Shuttle's comments regarding "same service."
	NEW SECTION WAC 480-30-XXX (1)(a) 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.	See company comment above regarding the definition of "public convenience and necessity."	Staff is considering amending its proposed standard to read, "Public convenience and necessity" means that every member of the public should be afforded the opportunity to receive auto transportation service from a person or company certificated by the Commission."
	NEW SECTION WAC 480-30-XXX (1)(b) Standards for determining "public convenience and necessity," "territory	The company proposes that the commission only consider whether increased competition will benefit the traveling public if the competition does not adversely affect service or increases rates.	Staff disagrees. The impact on service (both the incumbent and applicant) to the public and rates (both increases and decreases) charged by the incumbent and the applicant are two of many factors the Commission should consider.

	already served by a certificate holder", "service to the satisfaction of the commission" and impact on an existing company.		
	NEW SECTION WAC 480-30-XXX (2) 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.	The company questions how the Commission would determine whether the population density warrants additional service, and suggests that the following sentence be added, "The Commission recognizes that the population in Washington is insufficient to support multiple additional new "door to door" "shared ride" service in urban areas where said service is already offered.	Staff disagrees. Population density is already a consideration in current rules; the language was simply transferred to another section for organizational purposes. The language is there to give both the applicant and the incumbent the opportunity to present evidence regarding the market. Staff does not support a presumptive finding that all urban markets are saturated for all time.
	NEW SECTION WAC 480-30-XXX (2) 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. ***(same service issue)***	Regarding the evaluation of the proposed route's relation to the nearest route served by an existing certificate holder, the company proposes that the wording be clarified, perhaps by referring to a particular distance, e.g., five miles. The Commission should consider 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.	Staff disagrees. The issue is not the proximity of the service, but whether the service meets the needs of the traveling public. See Staff's response to SeaTac Shuttle regarding "same service." Staff doubts that an applicant will propose service that will only serve one person, or that an incumbent need worry about a competing service that has only one customer.
	NEW SECTION WAC 480-30-XXX (3) Standards for determining "public convenience and necessity," "territory already served by a	The company has several suggestions and comments regarding the satisfaction to the Commission criteria: Insert "frequent and/or direct" in place of "direct" in (3)(iii).	"Direct" service is an essential characteristic of airporter service. The term "frequent" could be added, but should not be a substitute.

	certificate holder", "service to the satisfaction of the commission" and impact on an existing company. ***(satisfaction of the commission issue)***	Identify who determines if an operator meets the listed criteria. Identify what is "timely" and whether there could be one expectation for a company in a rural area and another for an urban company. Protect the existing company from predatory rates under the circumstances of an added company. Rates "competitive with that proposed by the applicant" leaves an open door for an applicant to submit loss-leader rates which an existing company cannot match to stay in business. Eliminate the phrase "but will generally be for one year" from the subsection regarding the performance period.	The Commission will consider the opinions of members of the public, regarding whether a company meets the criteria. "Timely" means that the service is provided when needed by the customer, rather than at the convenience of the company. When an applicant files an application, it must also file a tariff that is "fair, just, reasonable and sufficient." Under the rule, rate flexibility will use a base rate from that initial tariff filing. It is not reasonable to expect an applicant to match the tariff of an existing certificate holder: their business models, cost structures and services may be significantly different (higher or lower), resulting in different costs/revenues (higher or lower). See the discussion above regarding the performance period. Staff believes that the language leaves the Commission the flexibility to set an appropriate performance period, while giving companies a sense of what is typical.
	NEW SECTION WAC 480-30-XXX (4) 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. ***(company viability issue)***	The company strenuously objects to the burden of proof (that the objecting company will not be viable if the application is granted) be placed on the 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	Staff disagrees. It is not reasonable to expect an applicant to be so knowledgeable of the existing company's business that it can calculate the financial impact of competition on that company. Further, Staff doubts that the existing companies would be willing to open all of their records to the applicant to enable the applicant to make that calculation. It is the responsibility of the existing company to determine whether a competing service will harm the company enough to warrant an objection.

		operating environment of the existing certificate holder.	
	WAC 480-30-156 Certificates, temporary, auto transportation company.	The company would like to have a discussion regarding what circumstances would require a temporary certificate. Would not the application for a temporary certificate be the same as for the permanent one? If not, it should be. If a temporary certificate is needed, it should be for short time (30 days). A half-year (as proposed) would allow an applicant for temporary certificate to undercut an existing operator in that long a time period.	Staff welcomes the discussion.
	NEW SECTION WAC 480-30-YYY Rate Flexibility	The company generally agrees with the model for rate flexibility, but not the particulars. The company proposes that after the first year, the base rate should be the rates in the company's tariff as of the end of the previous year. The authority to charge rates, at the company's discretion, in any amount up to the maximum rate should be clarified to refer to the maximum rate "in each year." The maximum rate is negotiable – it could be 15%, 20%, 25%... The maximum rate percentage should be maintained each year based on the base rate, which is established annually at a specific date. Company'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.	See Staff's response to SeaTac Shuttle's comments regarding the draft rule. Staff does not support allowing a company to continually adjust its base rate to be the maximum rate allowed in the previous year.

Capital Aeroporter – Jim Fricke		The company suggests that the proposed rule draft needs a public policy section/paragraph at its beginning to express general/traveling public benefits, and offers a proposed draft "PUBLIC PURPOSE. It is to the public benefit that public transportation companies provide public transportation services by means of auto transportation companies, and, charter and excursion carriers. High occupancy motor vehicles operated by these companies result in private vehicle trip reduction. This leads to more efficient use of our highways, reduced fuel consumption, and lessens emissions impact upon our environment. AUTO TRANSPORTATION. It is to the benefit of the traveling public to provide a stable and sustainable framework in which auto transportation services can be made available as an alternative to private vehicle travel. The framework of this alternative should provide for safe, convenient, frequent, comprehensive and sustainable passenger transportation services to meet the broadest public need in an economically viable manner. To this end, it is important to maintain stability and sustainability in existing services when considering new services. CHARTER AND EXCURSION. It is to the benefit of the traveling public to provide for safe, convenient and sufficient transportation services for groups to participate in special activities."	Staff disagrees with the proposal to include a policy statement in the rule. The Commission will include the policy rationale for the rule changes in the order adopting the rule.
	WAC 480-30-116(2) Certificates, application docket, and objections,	The company proposes the following language replace the draft amendment to 480-30-116(2):	See Staff's response to Steve Salins, above, regarding the use of terms other than "same."

	auto transportation company.	"Objections. When an applicant files a request with the commission, published in the application docket, for a certificate for new authority or an extension of authority to operate in a territory already served by a certificate holder, then the existing certificate holder or holders may object to the granting of the certificate on the basis that the existing certificate holder or holders already provide, to the satisfaction of the commission, substantially the same service as sought by the applicant. No company may file an objection to applications for transfers or lease of all or a portion of existing certificate authority."	
	WAC 480-30-116(3) Certificates, application docket, and objections, auto transportation company.	The company proposes that draft amendment to 480-30-116(3) be revised to replace the word "same" with "same, similar or comparable" throughout the subsection. The company also proposes that the last sentence be revised by striking "make the objecting company's business not viable" and replacing the language with "unreasonably endanger the stability and dependability of existing service essential to the public need, considering the amount and type of service."	Staff disagrees. See the Staff response to SeaTac Shuttle on the same issue. See Staff's response to Steve Salins, above.
	WAC 480-30-126(2) Certificates, applications, auto transportation company.	The company proposes that the draft amendment to 480-30-126(2) be revised to replace the first use of the word "desire" in the subsection with "demonstrates the need" and replace the second and third use of the word "desire" with "need." The company states that the "definition" of "public convenience and necessity" should not be expressed in terms of "affording an opportunity to provide services," but should be an actual definition of the words used, expressed in a neutral manner.	See Staff's proposed revision of the definition, in response to a comment from Steve Salins.

		For example: 'public convenience and necessity,' [as defined by the Interstate Commerce Commission, viz.,] (a) there must be a showing that the new operation will serve a useful public purpose, responsive to a public demand or need; (b) that such purpose cannot and will not be served as well by existing carriers.	
	WAC 480-30-126(5)(c) Certificates, applications, auto transportation company.	Regarding the requirement that the applicant demonstrate that it is willing and able to comply with commission laws and rules, the company makes the following comment: How does an applicant "demonstrate" this with no prior record or experience? If the commission wants the applicant to promise to obey the law, then that can be done. But no new applicant can "demonstrate" a willingness to comply with the law.	Staff disagrees. Staff can inquire as to an applicant's overall understanding of the Commission's licensing requirements and also research an applicant's history of compliance with federal, state, and local laws and regulations. If there is no history of violations or infractions, Staff may interpret this as a positive indicator of an applicant's merit in this regard. Further, an applicant who has become familiar with the Commission's rules can express a willingness to follow them.
	WAC 480-30-136(1) Procedure for applications subject to objection, information required of applicant and objecting company	The company proposes that the draft amendment to 480-30-136(1) be revised to insert the phrase "hearing or" before the phrase "different process." The company proposes that the draft amendment also be revised to strike the phrase "subject to an objection" and insert the phrase "regarding which an objection has been received." The company points out that all applications are potentially "subject to an objection."	Staff agrees to the clarifying language. Staff agrees to the clarifying language.
	WAC 480-30-136(3) Procedure for applications subject to objection, information required of applicant and objecting company	The company proposes that draft amendment to 480-30-136(3) be revised to replace the word "same" with "same, similar or comparable" throughout the subsection. The company also proposes that the last sentence be revised to read: "In the event that the commission finds, after the brief adjudicative proceeding, that the objecting company…"	Staff disagrees. See the Staff response above. Staff disagrees. While the brief adjudicative proceeding will normally be the process used, there may be applications that require a more complex process. Adding the phrase may restrict the Commissions flexibility.

	WAC 480-30-XXX(1) 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.	The company proposes that the draft definition of public convenience and necessity be revised to replace the word "desiring" with "needing/requiring." The company states that this definition is redundant. It already exists in the proposed change to WAC 480-30-126(2). The definition only needs to be cited in WAC 480-30-126(2). The company proposes an alternate definition, to include the language, "(a) there must be a showing that the new operation will serve a useful public purpose, responsive to a public demand or need; (b) that such purpose cannot and will not be served as well by existing carriers."	See Staff's response to Steve Salins, above. Staff agrees that placing the definition in two locations is redundant, and will fix that in the next draft. Staff disagrees. See Staff's response above concerning the phrasing of the definition.