**DOCKET TC-121328**

**MARCH 28, 2013**

**COMMENTS OF SEATAC SHUTTLE, LLC C-1077**

Seatac Shuttle wishes to thank the participants in the March 22, 2013 workshop regarding WAC 480-30 and rate methodology revision. This issue has been before the commission for many years and it is now universally accepted that the current methodology is flawed, non- applicable and punitive in nature. Despite years of denial the commission now recognizes the applicability of RCW 81.04.250 and the flexibility that it affords the commission under law to craft and promote reasonable rate regulation. Despite the restrictive and anti business nature of the current policy, staff still insists in coupling any relief to a weakening of territorial protections, though not called for in statute.

These two issues, rate evaluation and continuance of established territories and customer base are the heart of the discussion. Every comment in some fashion relates directly or indirectly to these two issues.

**Comments:**

**Concerning violations of applicants**:

We still feel strongly that an applicant with prior violations or who is conducting an illegal operation at the time of application should be denied a certificate until such time as the violations are resolved or in the case of previous violations such violations shall be taken into heavily weighted consideration when determining “regulatory fitness”.

**Concerning limiting objections**:

If an incumbent company has proof of violations by an applicant that information must be available to the commission at the time of hearing and taken into consideration. To ignore demonstrated regulatory unfitness would be not only a disservice to the incumbent but a potential danger to the public. Current ALJs of the agency have demonstrated and the record shows that they are not concerned with violations during an application hearing.

**Concerning tariff approval:**

If the commission is to determine if proposed fares are “fair, just, reasonable and sufficient’ then a definition of those terms is required. As it stands now with no definition there are no guide lines, no goals. The terms are a moving target and applied at the whim of staff and the commission. An incumbent can never know at any given moment if they meet the then operating definition of the commission. Each instance can be radically different. We suggest further that the commission and staff lacking any business back ground is not in a position to determine “sufficient”. Just being able to remain in business in not sufficient as has been suggested.

**Concerning same service:**

A definition of “same service” is required in 480-30-36;

Same service means service that is of the same type; scheduled or door to door, and overlaps an existing company’s territory. It must be of better frequency or hours of availability and be far enough geographically from existing routes or service area so as not to provide duplicate service to be considered different. Staff comments that in certain instances in urban areas a distance of two blocks can be significant or that the requirement of having to park a vehicle for an extended period of time was significant.

These assertions may have some validity for door-to-door service but not scheduled. Scheduled by its very nature requires the customer to come to the transportation, that is why costs are less and the only way a schedule may be maintained. If a customer goes on a trip for multiple weeks or months they will need to get to the scheduled transportation location (stop). The company may provide for parking and there are taxis and private car drop offs. The scheduled airline does not come to you, you go to it. If the customer wishes pick up at their location there are other services that provide that type of transportation. Do not confuse scheduled service with shared ride, door to door, taxis, limos, town cars or personal transportation.

**Concerning viability:**

Staff’s suggestion is contrary to the requirement for growth included in the draft. Staff does not want to consider the reduced profitability or the ability to operated in the same manner*, ie*., as a premium service, but rather whether or not the company can just hang on. This is reflective of the current philosophy of the commission; if you are still in business then you must be making a sufficient profit. We have seen our real dollar profitability continually decline due to inflation and staff’s absolute unwillingness to process even the smallest increase permitted under 480-30-421. With this necessary rate methodology revision we will be playing catch up for twenty plus years of restrictive and damaging policies. Our fleets are aging and there is no provision for continuing capitalization. To on one hand allow us now the provision necessary for economic stability and possible growth and then state that reduced business and profitability through barrier limitation is not germane to the application process is confusing at best and potentially extremely detrimental to the incumbents and the public they serve.

**Concerning temporary certificates:**

We can foresee the possible requirement for temporary certificates. However, they should only be issued to incumbents that have previously qualified for a permanent certificate and that certificate is valid at the time of issue of the temporary certificate. The purpose would be to implement service in an unserved area that there is a demonstrated need for immediate service or in the case where another incumbent is withdrawing from service to provide for continuing service to the public and immediate action is required. We do not support temporary certificates as a short cut to new applicants; they must satisfy all necessary provisions of the permanent application process before being allowed to serve the public. If nothing else this is a safety issue. Any temporary certificates should be limited to thirty days from the effective date with no renewal provisions.

**Concerning burden of proof:**

This language allows the nature of any contested application to be radically changed. Here to fore it has been the burden of the applicant to prove that the incumbent is not serving to the satisfaction of the commission. It would now be shifted to the incumbent to prove that he is. Given the restrictions placed upon incumbents in these proceedings under this proposal this is not insignificant. This company has seen far too many instances where testimony was ignored or discounted by the commission to foster a position of staff’s to not be very frightened by this proposal.

**Concerning restrictions placed on incumbents to expand their service:**

WAC 480-30-421, 426, policy of the 93/7 ratio rate methodology, staff’s baseless challenges to existing authority wording that has been operable for years, adversarial nature of all dealings with staff and the agency. There exists a climate of complete mistrust by the companies regarding the ability or willingness of staff to process requests in any logical or standard way. Unless the company is in an extreme position they do not even bother to request rate increases. To suggest that allowing a company only two to three percent net profit on an investment of millions with staffs ranging from thirty to over one hundred demonstrates the complete lack of understanding of even basic business economics. Staff until this date has ignored the provisions of law in implementing the arbitrary 93/7 methodology and at some point may have to explain in another venue why they have insisted on ignoring the law to the detriment of the public.

Staff refuses to process even the most miniscule requests under -421 and uses the threat of a rate review and reduction under -426 as a hammer to keep companies from making requests.

 Questions remain unanswered and no one person ever takes responsibility for their work product or decisions. Everyone hides behind the bureaucratic veil with no individual responsibility. We are economically repressed with no ability to have a business plan that includes growth; we can’t even stay current with the rate of inflation. You asked the question, that is our answer.

**Concerning satisfaction to the commission:**

This company disagrees with the contention that the commission “has given significant weight to the opinion of customers…”. Just the opposite has been this company’s experience. This company has been named Business of the Year on Whidbey Island twice, been honored as Business of the month, had letters of support from both Senate and House leaders, all of the Island County commissioners, the Executive Director of the EDC, Presidents of Chambers of Commerce and the support of hundreds of residents via signed letters of support only to have them dismissed by the former Chairman because “they don’t understand the issues”. Apparently our customers and state leaders are ignorant, we don’t understand the law and only staff and the commission know what is best for our businesses and the public. The commission decides what is to its satisfaction and has made it clear in the record that “satisfaction to the public” and “satisfaction to the commission” are two separate mutually exclusive concepts.

Or objection still stands; we won’t be in business long if we provide poor or disrespectful service. We don’t need the commission to now try to determine what respectful and courteous mean. The idea of this revision was to clarify not add to the abyss of “interpretation”.

“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….” once again shows the lack of comprehension regarding the operation of a business by the staff. The agency regulates, creates policy and files paperwork, we operate businesses. Does the commission really believe that we need such a directive as an incentive? This is insulting. If we didn’t accommodate our passengers and their needs we would have no business. Additionally the commission has acknowledged that we have free market competition with the exception of very limited protection within our own small piece of the transportation market which this WAC revision seeks to further weaken.

**Concerning past performance:**

It is staff’s position that the trustworthiness of the incumbent is questionable while the statements of the applicant are to be taken at face value. Historically, staff has done minimal investigation. There is a track record with the incumbent, are there complaints, are there violations? The applicant has no track record, just a paper proposal that he may or may not carry out. This all relates to the shift in the burden of proof.

**Concerning financial harm to the incumbent:**

An applicant need not have any particular knowledge of the incumbent’s financial records and no the incumbent would in any event open its books to an applicant. The applicant is required to supply an estimate of its first twelve months of business, *ie*., cash flow and passenger count. It may be reasonably assumed that these figures represent an intent and an expectation by the applicant that the majority, if not all, of this projected revenue will come at the expense of the incumbent. If one is expected to lose 20, 30, 40% of one’s business that is a severe financial impact.

**Concerning applicant’s initial tariff:**

Back to the definition of reasonable, are the proposed rates lower because the applicant did not anticipate all of the associated expenses? Will the commission fall back on a profit analysis and again regulate through profit rather than market factors? New entrants in any market, particularly in a small business environment, underestimate the cost of doing business. They by their very nature lack the experience to fully understand the market and the associated costs, direct and indirect. This is not to say that only an incumbent can be successful, that would be analogous the incumbent politician claiming that his opponent’s lack experience precludes him from doing a good job forgetting that they once were the challenger. We just seek a benchmark to assure that an applicant does not propose an unrealistic fare undercutting a successful and satisfactory operation through lack of knowledge with the commission’s sanction.

**Concerning rate methodology restructuring:**

This is what this revision is about; all other comments are ancillary and supporting in nature. The commission desires and the companies desperately need a revision to the current rate making methodology. The ability to restructure this policy has always been available to the commission though RCW 81.04.250. This ability is not tied to any requirement to lessen the minimal protections afforded to the current certificate holders yet staff and the commission have made this a requirement of any rate restructuring. The issue then becomes what are the tradeoffs that the incumbents will have to endure to see economic relief?

The incumbents recognize that there will be adjustments to territorial protections; however, the commission is proposing to not only relax the barriers to entry but to redefine what a territory is. For this we are offered a onetime adjustment that does not even address the years of static rates in an environment of continued inflation. We will not breakeven with the current proposal let alone be afforded an opportunity to grow or improve service. We therefore offer the following proposal that reflects a lessening of entry standards and permits the companies to keep pace with the economy and enjoy some measure of growth opportunity. Our fleets are aging and our staff is under paid, ferry rates have increased 30% and fuel has more than doubled and continues to climb over the past few years, this situation must be addressed effectively and for the long term now.

**First,** we would accept the reduction in the barriers to entry through an expedited or abbreviated application process, provided that the necessary investigatory processes are in place and exercised.

**Second**, we do not accept the trade of two for one, that is, both the abbreviated application process and a narrowing of the definition of territories for a single limited change regarding rate making. We understand that total deregulation cannot be accomplished through WAC; however, the tradeoffs must be fair and equitable. Staff continually refers to our business models, those business models were built on the concept of territories and all of our investments in time, money and risk have been predicated upon the concept of territories. The proposed revision destroys that concept and reduces territories to routes. This provides an applicant with not only an easier path to a certificate but provides for duplicate, damaging service at the sole discretion of the commission. The proposal to “narrowly define territories” is not acceptable. If service to the public is to retain its high standard then we cannot see a reduction here coupled with a reduction to barriers to entry.

**Third**, we propose that the rate methodology revision be as follows:

On the effective date of the revision companies may file a new tariff which will include a permitted increase over the base rate(s) then on file with the UTC of up to twenty-five percent (25%). This new base rate will encompass all currently existing fees, pass throughs and surcharges that the company currently applies to its base rate(s). Future fees pass throughs and surcharges will likewise be included in any subsequent base rate adjustments. This onetime adjustment will be in the majority used up by adding the various fees to the existing base rate. With the remaining percentage allowed, the company may elect to begin keeping pace with inflation or truing up to a certain extent past inflationary losses. The new base rate will not be a significant amount over the current “effective” rate when the fees are taken into account. The change to the customer, if any initially, will be minimal.

On the anniversary of the effective date of the base rate the company will be permitted to increase the base rate by the regional CPI plus up to fifteen percent (15%). This will permit the companies for the first time to keep pace with inflation, continue over the course of time to true up for previous inflationary deficiencies, absorb new and increased state and local imposed fees and taxes and provide for a capital program for vehicle replacement and a modicum of growth. The market will not bare large increases, but the public sees increasing costs in every aspect of their lives every day. Washington airporters are the most regulated and most inexpensive in the country, by any measure. We are approaching a crossover point where expenses are out growing increasing gross revenues. We must have the ability to address this economic climate. While we feel that it is imperative that the commission formally reject the 93/7 ratio methodology, we cannot foresee any company electing to return to that regressive, punitive methodology so we do not take it as an issue at this time.

Any tariff filed under the provisions of this proposed WAC revision will not be subject to any of the provisions of WAC 480-30-421 or -426 and an no earnings review of any kind shall be applied rates to tariffs filed within the revised guidelines.

**SUMMARY:**

Rate making methodology revision is an absolute necessity. This company seeks complete deregulation and unfettered competition. That must be accomplished through legislation and is not within the purview of the commission through its administrative authority. We view this WAC revision as one step towards the goal of deregulation. As no one can guess what the legislature will do in any session, this revision is a necessary interim step to permit the companies to continue providing premium service to the public. We assume that it is not the goal of the commission to regulate the airporters out of business but to foster a stable and safe mode of transportation to the traveling public.

Under complete deregulation there will be no barriers to entry other than safety issues and there will be no corresponding rate regulation, the market will be the controlling factor. This proposal retains rate regulation with some flexibility, but not near as much as it seems on the surface and reduces barriers to entry for new applicants. This is the tradeoff that has been part of the discussion for years now. The redefinition of territories as routes has not and should not be part of the equation. The rate structure relaxation is sufficiently offset by the entry barrier reduction to satisfy the commission’s need for coupling between rates and barriers. The addition of the essential elimination of the concept of territories goes way too far. This should be covered in a true deregulation legislative package. We have been granted territories and our businesses under any form of rate regulation rely on them. When we are able to do away with all rate regulation, then and only then, can territories be dissolved.

We offer as a solution to accept the barrater reduction but not the territory redefinition. For this we expect to be able to have a onetime adjustment to our rates encompassing all fees, and an annual adjustment comprised of the regional CPI plus a fifteen percent margin to allow us to keep pace with the economic realities that we face every day. The company feels that this is a balanced approach that provides for the future and satisfies the need for entry relaxation coupled with rate flexibility.