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.

[Statutory Authority: RCW 80.01.040, 81.04.160, 81.04.250, 81.68.030, and 81.68.040. WSR 13-18-003 (Docket TC-121328, General Order R-572), § 480-30-140, filed 8/21/13, effective 9/21/13.]