

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 9752

IN THE MATTER OF:

Served July 19, 2006

Rulemaking to Amend Rules of Practice and Procedure and Regulations: Rule No. 6-03 and Regulation No. 54-04) Case No. MP-2006-116
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Pursuant to Title II of the Compact, Article XIII, Section 3, and Commission Rule No. 30, the Commission hereby initiates a rulemaking for the purpose of proposing amendments to Commission Regulation No. 54-04, (regarding procedures for processing operating authority applications), and conforming amendments to Commission Rule No. 6-03, (regarding formal notice requirements).¹

I. BACKGROUND

Regulation No. 54-04 prescribes certain procedures for processing applications: (a) to obtain, amend or transfer authority to conduct operations requiring a WMATC certificate of authority; and (b) for approval to consolidate or merge the operations or assets of two or more WMATC carriers.

Regulation No. 54-04 was adopted in 1991 when the Commission promulgated a new set of Rules of Practice and Procedure and Regulations to implement the newly amended Compact.² The adoption of Regulation No. 54-04, together with other changes to Regulation No. 54, added much needed clarity to the Commission's application process. Today, however, the wording of Regulation No. 54-04 does not permit the Commission to take full advantage of new and emerging technologies, such as publishing notice via the internet and communicating via email. Moreover, whereas the procedures in Regulation No. 54-04 were suitable for the first ten years when the Commission averaged only 61 applications annually, the rigidity of certain provisions of Regulation No. 54-04 has produced significant processing delays over the past five years now that the average annual rate has nearly tripled to 174.

The amendments proposed in this rulemaking are not intended to alter the standards for approving applications or set new standards for the information required in application proceedings. Rather, they are designed to shorten the application process and make it more flexible without compromising its fairness.

¹ Available at <http://wmatc.gov/pdf/rules-regs.pdf>.

² *In re Rules of Practice and Procedure and Regulations*, No. MP-91-05, Order No. 3600 (Jan. 17, 1991).

II. PROPOSED AMENDMENTS

The Commission proposes amending Commission Regulation No. 54-04 and Commission Rule No. 6-03 as follows.

A. Regulation No. 54-04

Regulation No. 54-04 requires that the Commission issue notice of an application once it has been accepted for processing. Notice must be in the form of an order and must establish a deadline for filing protests and requests for oral hearing. The notice may require an applicant to furnish additional information as necessary to a decision on the merits. In addition, a typical notice order identifies the applicant, describes the proposed service, and requires applicant to publish further notice in a newspaper of general circulation in the Metropolitan District.

Each notice order is assigned a unique case number and a unique order number and then personally signed by the Executive Director or Acting Executive Director. A copy is mailed to the applicant using a cover letter that summarizes the order's contents and also transmits the notice to be published in a newspaper. Additional copies of the order are then posted to the Commission's website and lobby bulletin board.

The amendments proposed in this rulemaking would simplify this process by: (1) replacing notice orders with unsigned, unnumbered public notices identifying applicants, describing their services, and announcing protest and hearing-request deadlines; and (2) permitting the Commission to use means other than orders for requesting additional information from applicants and requiring further publication of notice in a newspaper. These changes would save the Commission time and money without undermining the efficacy of the application process in general and the public notice provisions in particular.

B. Rule No. 6-03

Regulation No. 54-04 requires that notice of an application be issued pursuant to Rule No. 6. Like Regulation No. 54-04, Rule No. 6-03 requires that such notice be in the form of a Commission order. Any requirement to publish additional notice similarly may only be imposed by Commission order according to Rule No. 6-03. Consistent with the proposed amendments to Regulation No. 54-04, the proposed amendments to Rule No. 6-03 would allow the Commission to use written or electronic means other than orders for issuing notice and requiring additional notice.

IV. PROPOSED AMENDED REGULATIONS

If amended as proposed, Rule No. 6-03 and Regulation No. 54-04 would read as follows.

6-03. Publication. The Commission may publish notice of a formal proceeding by written or electronic means. The Commission may require publication of additional notice by the carrier(s) initiating a formal proceeding or against which a formal proceeding is directed and require said carrier(s) to bear the expense of publishing such additional notice.

54-04. Procedure After Acceptance. The following procedures shall apply to applications accepted for processing.

(a) Public Notice. The Commission shall issue public notice of each accepted application by written or electronic means. The notice shall display a unique case number, identify the applicant, indicate the nature of the application, briefly describe the service proposed, and establish a deadline for the filing of comments, protests, and requests for oral hearing.

(b) Notice to Applicant. The Commission shall notify applicant by written or electronic means that the application has been accepted for filing. The notice may require applicant to publish further notice in a newspaper of general circulation in the Metropolitan District and furnish additional information necessary to a full and fair determination of the application.

(c) Protest. A protest must be sworn and accompanied by all available evidence and authority on which protestant relies.

(d) Request for Hearing. A request for oral hearing must state the reason for the request, describe the evidence to be adduced, and explain why such evidence cannot be adduced without an oral hearing.

(e) Reply. A reply to a protest or request for oral hearing must be filed within five (5) days after service of the protest or request for hearing, except when service is by mail an additional two (2) days shall be allowed.

THEREFORE, IT IS ORDERED:

1. That a rulemaking is hereby initiated for the purpose of proposing amendments to the Commission's Rules of Practice and Procedure and Regulations, Rule No. 6 and Regulation No. 54.

2. That Commission staff shall publish notice of this proceeding on the Commission's website and in a newspaper of general circulation in the Metropolitan District, no later than July 26, 2006.

3. That written comments must be submitted no later than August 31, 2006, by faxing them to (202)653-2179, emailing them to application-rulemaking@wmatc.gov or mailing them to 1828 L Street, N.W., Suite 703, Washington, DC 20036.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES AND CHRISTIE:



William S. Morrow, Jr.
Executive Director

