

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 6805

IN THE MATTER OF:

Served September 19, 2002

Promulgation of Revised
Application Form

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Case No. MP-2002-96

Pursuant to Commission Regulation No. 54-07, the Commission hereby revises its application form for obtaining, amending and transferring irregular-route authority.

The Commission may issue, expand or transfer operating authority if it finds the applicant fit and the proposed transportation, (proposed transaction in the case of a transfer), consistent with the public interest.¹ The Compact does not specify the criteria the Commission should apply in determining a carrier's fitness.² Developing the relevant criteria is left to the Commission's discretion.³

The Commission has devised a financial fitness test as one means of determining a carrier's prospective over-all fitness.⁴ The Commission also examines an applicant's prospective operational fitness and regulatory compliance fitness.⁵ The changes adopted in this order principally affect the financial fitness showing.

The financial fitness evidence required of applicants has evolved over time. At first, applicants were required to submit detailed current and projected financial statements and produce one or more financial witnesses for cross examination at a hearing on the entire application.⁶ This was consistent with a statutory scheme that charged the Commission with determining whether the proposed transportation was required by public convenience and necessity.

¹ Compact, tit. II, art. XI, §§ 7, 10, 11; art. XII, § 3; see also In re Japan Travelers Serv., Inc., No. AP-01-31, Order No. 6234 (May 30, 2001) (expansive amendment applicant must demonstrate fitness); In re Mobile Care Specialty Transportation, Inc., t/a Mobile Care, & Ironsides Transport, Inc., & Mobile Care, Ltd., No. AP-01-10, Order No. 6178 (Apr. 9, 2001) (transferee must demonstrate fitness).

² In re Washington Shuttle, Inc., t/a Supershuttle, No. AP-96-13, Order No. 4996 at 9 (Jan. 8, 1997).

³ Id. at 9.

⁴ Id. at 9.

⁵ Id. at 9.

⁶ E.g., In re Holiday Tours, Inc., No. 11, Order No. 206 at 3 (Oct. 11, 1962) (discussing financial exhibits and testimony of applicant's president and accountant).

⁷ Id. at 5.

This searching inquiry into an applicant's financial health and prospects for profitability continued until 1991, when the current Compact replaced the original Compact's public convenience and necessity test with a public interest test and eliminated the hearing requirement. After 1990, applicants were required to submit a current balance sheet and historical and projected operating statements, with supporting schedules, but applicants were no longer required to explain or defend their financial presentations through live testimony.⁹

The Commission relieved applicants from having to submit historical operating statements when it adopted the current application form in 1998. Today, applicants need only submit a balance sheet and projected operating statement.⁹ The Commission uses this information to determine whether an applicant can sustain operations for one year.¹⁰ The Commission noted five years ago that one year tests the outer limits of predictability.¹¹ Experience since then has shown that the predictive value of this information has diminished substantially.

Of the 75 applications for certificates of authority conditionally granted in 2001, 15 -- or 20 percent -- were later deemed denied because the applicants did not comply with the requirement to file additional proof of fitness in the form of insurance certificates, tariffs, vehicle registrations, certificates of safety inspection and affidavits of vehicle identification, which are required of all applicants. The Commission's financial fitness test failed to predict that these applicants were not ready, willing and able to commence operations, much less sustain them for one year.

Insurance certificates, vehicle registrations and certificates of safety inspection, on the other hand, offer objective proof of an applicant's fitness. Affidavits submitted as proof of proper vehicle markings are easily verifiable through a quick inspection by Commission staff when circumstances require. These documents possess the credibility and/or verifiability that an applicant's self-serving financial statements do not without subjecting them to cross examination in a hearing that the Compact now eschews.

The new application form requires applicants to verify that they possess safe and adequate equipment and the minimum required insurance, or the means to acquire such equipment and insurance. The application ultimately must be supported by proof of vehicle safety inspection, proof of minimum insurance, and proof of proper vehicle markings before the Commission will issue a certificate of authority.

⁹ Order No. 4996 at 3-4.

⁹ In re LAM Assocs., Inc., No. AP-01-74, Order No. 6398 at 3 (Oct. 22, 2001) (analyzing balance sheet and projected operating statement submitted with application for certificate of authority); Order No. 6178 at 2 (same submitted with transfer application). In the case of an expansive amendment, the Commission normally relies on its prior finding of financial fitness. Order No. 6234.

¹⁰ Order No. 6398 at 3-4.

¹¹ Order No. 4996 at 9.

The new form thus reduces the burden on applicants while providing the information necessary for the Commission to make a fitness determination.

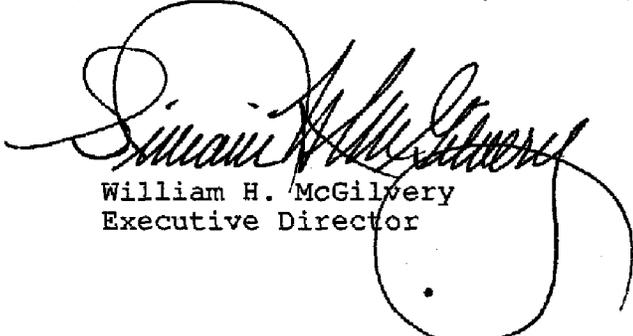
Today's action was foreshadowed by a Commission decision in 1997 that defended the current financial fitness test for the purpose of deciding the subject application but which left the door open on whether the test should be changed:

[A]n argument could be made that the [Commission's] current [financial fitness] test is more complicated than it needs to be. The test for financial fitness at the federal level is a simple one -- proof of liability insurance. As a creature of Congress and successor to a portion of the Interstate Commerce Commission's jurisdiction, the Commission has borrowed from federal regulations over the years in crafting policy under the Compact. If we adopted the federal financial fitness standard no one could seriously contend we had exceeded the bounds of our discretion.¹²

The Commission will begin accepting the new form immediately. The existing form will not be accepted for applications filed after December 31, 2002.

IT IS SO ORDERED.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES, LIGON, AND MILLER:



William H. McGilvery
Executive Director

¹² Order No. 4996 at 9-10 (footnotes omitted).