WEST VIRGINIA CODE: §24A-2-5

§24A-2-5. Certificate of convenience and necessity.

(a) Required; application; hearing; granting. — It shall be unlawful for any common carrier by motor vehicle to operate within this state without first having obtained from the commission a certificate of convenience and necessity unless the common carrier is an emergency substitute carrier. Upon the filing of an application for such certificate, the commission shall set a time and place for a hearing on the application: *Provided*, That the commission may, after giving proper notice and if no protest is received, waive formal hearing on the application. Notice shall be by publication which shall state that a formal hearing may be waived in the absence of a protest to such application. The notice shall be published as a Class I legal advertisement in compliance with the provisions of §59-3-1 *et seq*. of this code and the publication area for such publication shall be the proposed area of operation. The notice shall be published at least 10 days prior to the date of the hearing. After the hearing or waiver by the commission of the hearing, if the commission finds from the evidence that the public convenience and necessity require the proposed service or any part thereof, it shall issue the certificate as prayed for, or issue it for the partial exercise only of the privilege sought, and may attach to the exercise of the right granted by such certificate such terms and conditions as in its judgment the public convenience and necessity may require, and if the commission shall be of the opinion that the service rendered by any common carrier holding a certificate of convenience and necessity over any route or routes in this state is in any respect inadequate or insufficient to meet the public needs, such certificate holder shall be given reasonable time and opportunity to remedy such inadequacy or insufficiency before any certificate shall be granted to an applicant proposing to operate over such route or routes as a common carrier. Before granting a certificate to a common carrier by motor vehicle, the commission shall take into consideration existing transportation facilities in the territory for which a certificate is sought, and in case it finds from the evidence that the service furnished by existing transportation facilities is reasonably efficient and adequate, the commission shall not grant such certificate.

(b) Rules and regulations; taking evidence at hearings; burden of proof. — The commission shall prescribe such rules and regulations as it may deem proper for the enforcement of the provisions of this section, and in establishing that public convenience and necessity do exist, the burden of proof shall be upon the applicant. The commission may designate any of its employees to take evidence at the hearing of any application for a certificate and submit findings of fact as a part of a report or reports to be made to the commission.

(c) Certificate not franchise, etc.; assignment or transfer. — No certificate issued in accordance with the terms of this chapter shall be construed to be either a franchise or irrevocable, or to confer any proprietary or property rights in the use of the public highways. No certificate issued under this chapter shall be assigned or otherwise transferred without the approval of the commission. Upon the death of a person holding a certificate, his or her

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personal representative or representatives may operate under such certificate while the same remains in force and effect and, with the consent of the commission, may transfer such certificate.

(1) Upon the death of a person holding a certificate, his or her personal representative or representatives may operate under such certificate while the same remains in force and effect and, with the consent of the commission, may transfer such certificate; and

(2) An application by a motor carrier to transfer a certificate of convenience and necessity, or a portion thereof, to another motor carrier possessing one or more certificates of public convenience and necessity for the same commodity shall be affirmed or denied within 90 days of the submission of a complete application for transfer. The commission shall make a determination within ten business days of receiving a transfer application if the application is complete and notify the applicant if additional information is required. If the commission shall fail to act on a complete application within 90 days, the application to transfer the certificate shall be deemed approved.

(d) Suspension, revocation or amendment. — The commission may at any time, for good cause, suspend a common carrier certificate of convenience and necessity, and upon suspension, authorize an emergency substitute carrier to provide temporary replacement service until further order of the commission: *Provided*, That an emergency substitute carrier may continue to operate during the pendency of its application for a certificate of convenience and necessity filed pursuant to §24A-2-5(a) of this code. Upon not less than 15 days' notice to the grantee of any certificate and an opportunity to be heard, the commission may revoke or amend any certificate.

(e) Reinstitution of certificated service. — No sooner than 30 days after a suspension of authority, a common carrier may petition the commission to end the suspension and terminate the authority of an emergency substitute carrier. Upon notice to the emergency substitute carrier and an opportunity to be heard, the commission shall issue its order granting or denying the petition.

(f) The commission shall have the authority, after hearing, to ratify, approve, and affirm those orders issued pursuant to this section. For the purposes of this subsection, the commission may give notice by a Class I legal advertisement of such hearing in any newspaper or newspapers of general circulation in this state, and such other newspapers as the commission may designate.

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