

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. MC-F-20994

NEW JERSEY TRANSIT BUS OPERATIONS, INC.–POOLING–  
ACADEMY LINES, L.L.C.

EXEMPTION PURSUANT TO 49 U.S.C. 13541  
FROM THE PROVISIONS OF 49 U.S.C. 14302

Decided: February 12, 2003

On January 27, 2003, New Jersey Transit Bus Operations, Inc. (NJT Bus),<sup>1</sup> and Academy Lines, L.L.C. (Academy), jointly filed a pooling application under 49 U.S.C. 14302 and 49 CFR 1184.1, *et seq.*, requesting approval to pool portions of their commuter operations that extend over U.S. Highway 9 between Lakewood, NJ, and New York, NY (the Route 9 Corridor).<sup>2</sup> Along with the application filing, applicants submitted a petition under 49 U.S.C. 13541(a) requesting exemption from 49 U.S.C. 14302 so as to enable them to conduct interim operations under their service pooling agreement for a period of not more than 50 days, or such other time as the Board may direct, pending Board action on their pooling application.

In 1991, NJ Transit was authorized to perform these same pooling operations with another regulated passenger carrier, Suburban Trails, Inc. (Suburban).<sup>3</sup> Effective January 3, 2003, however, Suburban ceased serving the Route 9 Corridor, withdrew from the pooling agreement, and exited the market.

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<sup>1</sup> NJT Bus is a wholly owned subsidiary of the New Jersey Transit Corporation (NJ Transit), an instrumentality of the State of New Jersey.

<sup>2</sup> Under the statute and Board regulations, applicants' pooling operation cannot become effective sooner than 50 days from the date of the application's filing—here, March 18, 2003. Applicants seek this exemption in order to begin pooling operations as soon as possible.

<sup>3</sup> See NJ Transit Bus Operations, Inc.–Pooling–Suburban Trails, Inc., No. MC-F-19737 (ICC served Mar. 19, 1991).

## DISCUSSION

In order to obtain interim approval here, the parties seek an exemption under 49 U.S.C. 13541. Under that section, we must exempt a transaction or service from regulation when we find that: (1) regulation is not necessary to carry out the transportation policy of 49 U.S.C. 13101; (2) regulation is not needed to protect shippers from the abuse of market power or that the transaction or service is of limited scope; and (3) the transaction is in the public interest.

An exemption permitting operations here on an interim basis will not be contrary to any national transportation policy goals. Rather, an exemption will advance transportation policy goals to promote safe, adequate, economical and efficient transportation; to encourage sound economic conditions in transportation, including sound economic conditions among carriers; to meet the needs of . . . passengers and consumers; to allow the most productive use of equipment and energy resources; and to provide and maintain commuter bus operations. 49 U.S.C. 13101(a)(1)(B) and (C) and (a)(2)(C), (E), and (H).

Operations on an interim basis will not subject the passengers of applicants to the abuse of market power. Private automobiles provide ample competition for applicants' pooled operations in the Route 9 Corridor. Moreover, the North Jersey Coast Line and the Northeast Corridor Line are not too distant from the Route 9 Corridor, and the frequent weekday rail service which the rail arm of NJ Transit and the National Railroad Passenger Corporation (Amtrak) offer is another alternative available to applicants' passengers.

The proposed interim operations are also of limited scope because they will only be authorized for the time it will take for the Board to rule on the request for permanent authority. Moreover, by permitting interim operations, we will in no way be prejudging the outcome of the pooling application. Such approval will, however, afford us sufficient time to fully consider the merits of the pooling application without impairing operations.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

### It is ordered:

1. Under 49 U.S.C. 13541, we authorize an exemption from the requirements of 49 U.S.C. 14302 so as to permit applicants to conduct interim pooling operations until the Board acts on applicants' pooling application.

2. This decision is effective on its date of service.

By the Board, Chairman Nober, Vice Chairman Burkes, and Commissioner Morgan.

Vernon A. Williams  
Secretary