

1850 M Street, N.W.  
Suite 280  
Washington, D.C. 20036

 **SCOPELITIS**  
GARVIN LIGHT HANSON & FEARY

*The full service transportation law firm*

2290\$0

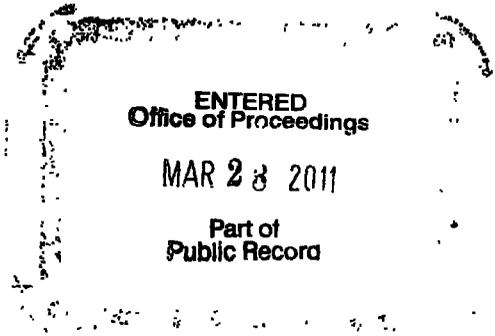
www.scopelitis.com  
Main (202) 783-9222  
Fax (202) 783-9230

DANIEL R. BARNEY  
Managing Partner, DC Office  
dbarney@scopelitis.com  
Direct Dial (202) 551-8020

March 28, 2011

**BY ELECTRONIC FILING**

Ms. Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W., Room 1034  
Washington, DC 20423-0001

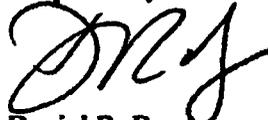


Re: **Opposition of Greyhound Lines, Inc. and Peter Pan Bus Lines, Inc. to Petition of Coach USA, Inc. and Megabus Northeast, LLC for Show Cause Order With Respect to Unauthorized Pooling, STB Docket Nos. MC-F-20904, MC-F-20908, and MC-F-20912**

Dear Ms. Brown:

I am enclosing a copy of the **Opposition of Greyhound Lines, Inc. and Peter Pan Bus Lines, Inc. to Petition of Coach USA, Inc. and Megabus Northeast, LLC for Show Cause Order With Respect to Unauthorized Pooling.**

Respectfully submitted,



Daniel R. Barney  
Counsel for Greyhound Lines, Inc.

Enclosure

cc: **David H. Coburn, Esq., Counsel for Coach USA Inc. and Megabus Northeast, LLC (with encl., by email to [dcoburn@steptoe.com](mailto:dcoburn@steptoe.com) and by First Class Mail)**

**Director of Operations, Antitrust Division, U.S. Department of Justice (with encl., by First Class Mail)**

**Jeremy Kahn, Esq., Counsel for Peter Pan Bus Lines, Inc. (with encl., by email to [jkahn@erols.com](mailto:jkahn@erols.com))**

Indianapolis • Chicago • Washington, D.C. • Los Angeles • Kansas City • Chattanooga • Detroit • Spokane

SERVICES OUTSIDE CALIFORNIA AND MICHIGAN PROVIDED BY SCOPELITIS, GARVIN, LIGHT, HANSON & FEARY, PROFESSIONAL CORPORATION  
SERVICES IN MICHIGAN PROVIDED BY SCOPELITIS, GARVIN, LIGHT, HANSON & FEARY, PROFESSIONAL LIMITED LIABILITY COMPANY  
SERVICES IN CALIFORNIA PROVIDED BY SCOPELITIS, GARVIN, LIGHT, HANSON & FEARY, LIMITED LIABILITY PARTNERSHIP

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

---

**STB Docket Nos. MC-F-20904, MC-F-20908, and MC-F-20912**

**PETER PAN BUS LINES, INC. – POOLING – GREYHOUND LINES, INC.**

---

**OPPOSITION OF GREYHOUND LINES, INC. AND PETER PAN BUS LINES, INC.  
TO PETITION OF COACH USA, INC. AND MEGABUS NORTHEAST, LLC  
FOR SHOW CAUSE ORDER WITH RESPECT TO UNAUTHORIZED POOLING**

Greyhound Lines, Inc. (“Greyhound”), and Peter Pan Bus Lines, Inc. (“Peter Pan”) respectfully submit this joint Opposition to the Petition by Coach USA, Inc. and its subsidiary Megabus Northeast, LLC (together, “Megabus”) For a Show Cause Order With Respect to Unauthorized Pooling, filed on March 22, 2011 (“Megabus Petition” or “Pet.”).

**I. INTRODUCTION AND SUMMARY**

In its latest transparent effort to eliminate its principal competitor from the Northeast Corridor intercity bus market through regulatory overreach, Megabus alleges, without any verified statement or other evidence to support its claim, that the Greyhound-Peter Pan pool’s Newark-to-Washington, DC-via-Baltimore BoltBus service offering is not covered by the existing Board-approved, New York, NY-to-Washington, DC Pooling Agreement and thus constitutes unauthorized pooling under 49 U.S.C. § 14302. As discussed below, this conclusion is utterly without factual or legal basis. Indeed, as Megabus itself concedes, the Pooling Agreement lists Newark and Baltimore as intermediate points on the approved Pooled Routes. In addition, the Pooling Agreement defines Gross Pool Revenue to include service over the Pooled Routes “or any portion” thereof. Further, the application submitted by Greyhound and Peter Pan in support of the Pooling Agreement discussed planned pooled service at Newark and

Baltimore, and pooled service has, in fact, been offered from Newark to Baltimore and Washington, DC in the 14 years since the Board approved the Pooling Agreement. The Megabus Petition cites to nothing in the Pooling Agreement, the application, the Board's Approval Decision, or any Board or court case to show that pooled service between intermediate points expressly listed as part of the Pooled Routes in a Board-approved Pooling Agreement can possibly constitute "unauthorized pooling." The Megabus Petition is simply that company's latest unsupported effort to enlist the Board in misapplying pooling law so as to drive a highly innovative, low-priced competitor out of Megabus's Northeast Corridor markets. The Petition should be denied.

## II. ARGUMENT

The Megabus Petition should be denied for the following reasons:

1. The essence of Megabus's argument is that Greyhound-Peter Pan's BoltBus "pooled service *originating and terminating* at these points [Newark to Washington, DC via Baltimore] is not covered by an existing Board approved pooling agreement" (Pet. at 1, emphasis added). This assertion is untrue. BoltBus service is simply an "Enhanced" form of intercity bus service offered as part of the preexisting Greyhound-Peter Pan "pooled services over the regular routes described in the RPAgreements [Revenue Pooling Agreements] (collectively, the 'Pooled Routes')," referenced above. *See* Exh. A hereto, Fourth Amendment to Revenue Pooling Agreements at 1-2 ("Whereas" clauses & § 1A(a)).<sup>1</sup> One of the RPAgreements – the New York, NY-to-Washington, DC Agreement (hereafter, "Pooling Agreement," excerpts attached as Exh. B hereto), approved by the Board in Docket No. MC-F-20908, 1998 WL 209278, served Apr.

---

<sup>1</sup> Megabus acknowledges (Pet. at 2) that the Fourth Amendment was approved by the STB through a letter from Acting Secretary of the STB Anne K. Quinlan to then-Greyhound outside counsel Fritz R. Kahn, dated April 17, 2008.

29, 1998 (“Approval Decision”) – expressly includes the challenged Newark-Washington, DC-via-Baltimore service:

A. The Pooling Agreement provides that the parties will pool “transportation services and the earnings derived therefrom” on certain “Pooled Routes,” defined as those between New York, NY and Washington, DC, “shown as ... route 126 on the attached Greyhound map, Attachment 2” (in addition to a Peter Pan (“Trailways National Bus System”) route number). Pooling Agreement, third “Whereas” clause and § 1(a). The Route 126 map, with associated timetables, running from New York, NY to Richmond, VA, included, as stated intermediate points, “Newark, NJ,” “Baltimore, MD,” and “Washington, DC,” and showed a number of individual “schedules” (the numbers that run horizontally across the top of each timetable) over that route that include service at Newark and Baltimore (Pooling Agreement, Att. 2, map and timetables). Megabus concedes this, stating that, “Newark is listed as an intermediate point on the approved New York-Washington, DC route....” (Pet. at 4 n.6).

B. The list of “terminals and stations on the Pooled Routes” set forth to be served under the Pooling Agreement expressly includes “Newark, NJ,” “Baltimore, MD,” and “Washington, DC” (Pooling Agreement, § 6 & Att. 4).

C. “Gross Pool Revenue,” in turn, is defined to include the amounts received by Greyhound and Peter Pan from “scheduled intercity bus service over all *or any portion of the Pooled Routes*” (Pooling Agreement, § 1(b), emphasis added). Thus, the revenue/earnings received from tickets that passengers purchase for travel from an *intermediate point on Greyhound Route 126* (a “Pooled Route”), such as Newark or Baltimore or Washington, DC, to the first or last points shown on Route 126 (New York,

NY, and Richmond, VA), would thus be included in the Gross Pool Revenue. These bus trips constitute, in the case of these ticketed passengers, just the type of pooled service, originating in Newark and terminating in either Baltimore or Washington, DC, that Megabus challenges – and yet the trips are expressly contemplated by the foregoing definition of “Gross Pool Revenue” in the Pooling Agreement.

D. Notwithstanding the above provisions, which Megabus does not acknowledge or discuss, Megabus disingenuously declares that “[n]o existing Greyhound-Peter Pan pooling agreement approved by the Board allows pooled service originating or terminating in Newark” (Pet. at 3). Yet, if the Board had intended *not* to “allow” pooled service that originates or terminates, or both, at Newark, Baltimore, or other intermediate points on the Pooled Routes, it would presumably have said so in its Approval Decision – yet Megabus cites no such limitation and we can find none. Nor does anything in the Agreement or the Approval Decision say that *all* pooled service – all passengers and all coaches operated by the pool – must begin at New York, NY or Washington, DC *and* end at one of those two points, or that *no* pooled service – no passengers and no coaches operated by the pool – may begin or end at an intermediate point between those two points.

2. Megabus did not, and could not, assert that the applicants did not expressly advise the Board in their application that the pool would be serving passengers boarding at Newark and Baltimore – because the applicants did so advise the Board. As the accompanying Affidavit of Peter A. Picknelly, President of Peter Pan Bus Lines, Inc., dated March 28, 2011 (“Picknelly Aff.”), Exh. C hereto, attests, quoting from his own Affidavit, which was submitted to the Board as a part of the application:

One component of the New York City – Washington, DC Pooling Application was my Affidavit, executed April 18, 1997, in which I testified on behalf of Peter Pan as to how we believed our proposal met the legal standards for approving a pooling application. In paragraphs 13 and 14 (at pages 6 and 7) of that Affidavit, I discussed benefits to the public at terminus points on the route in issue. In paragraph 15, beginning at page 8, I talked about our planned pooled service at intermediate points between New York and Washington. Paragraph 15 begins as follows:

At intermediate stations on the Washington – New York route, Peter Pan and Greyhound plan to combine terminals so that there are no duplicative efforts. In Newark and Mt. Laurel, New Jersey, Peter Pan tickets and service will be made available at the Greyhound facilities in those two locations. (emphasis added)

Further in that same paragraph 15 discussing service at intermediate points, I continued by explaining pooled service to be provided at Baltimore,

Under the proposal, both Peter Pan and Greyhound will provide service at downtown Baltimore [Maryland] at the Greyhound facility and both Peter Pan and Greyhound will provide service at a single location in the Travel Plaza [just North of Baltimore on Interstate 95].”

Picknelly Aff. ¶¶ 5-7. Thus, the application submitted to the Board did make clear that the pooled service under the Pooling Agreement would include ticketing and service for passengers originating or terminating in Newark or Baltimore.

3. Not only did the Pooling Agreement and the pooling application expressly include pooled service beginning or ending at Newark and Baltimore; so too, operations under the Pooling Agreement have, over the 14 years since its approval, involved such pooled service and pooled revenue. As Mr. Picknelly has declared in his Affidavit, attached hereto:

Not only did we propose service at intermediate points such as Newark and Baltimore, we have in fact provided pooled service and pooled revenue for service at those cities since the time the pools were authorized and continuing until today. I have confirmed this expressly with Brian Stefano, Peter Pan’s Executive Vice President, CFO, and COO. (He was identified at page 2, paragraph 4 of my earlier Affidavit as his then titles of Vice President and CFO, meaning he, too has actual knowledge of how the pools have been operated since they were first authorized.)

Picknelly Aff. ¶ 11.

4. Megabus cites no precedent or other legal authority for its assertion that pooled service is not permitted to originate or terminate at a point expressly included in a pooling agreement as an intermediate point on the approved pooled routes and as a listed terminal/station along those routes. Neither the statute nor the Board's regulations lend support to Megabus's novel legal theory. Indeed, the statute expressly allows pooling of "traffic, services, or earnings" (49 U.S.C. § 14302(b)), limiting none of these items geographically but instead leaving it to the parties, subject to Board approval, to specify the bus routes and the specific points on those routes over which traffic, services, and/or earnings will be pooled. And, again, neither the parties in their Pooling Agreement or application, nor the Board in its Approval Decision, limited in any way Greyhound's and Peter Pan's right to serve passengers boarding or leaving at *any* point stated in the Pooling Agreement to be on the Pooled Routes.

5. Lacking factual or legal support for its assertion, Megabus next attempts (Pet. at 3-4) to liken the Newark-to-Washington, DC-via-Baltimore pooled service to the request Greyhound-Peter Pan made to the Board last year to give informal approval to an amendment that would have modified the Pooling Agreement to authorize BoltBus and other pooled service from Washington, DC to Philadelphia ("Fifth Amendment"). If relevant at all, Megabus's reference to the "Fifth Amendment" approval-request only serves to underscore the Megabus Petition's lack of merit. Megabus based its written opposition to that request in considerable part on Philadelphia's being "not among" the "intermediate service points between New York and Washington" mentioned in the Pooling Agreement. *See* Exh. D hereto, Letter from David H. Coburn, Esq., to STB (relevant excerpts), dated Mar. 16, 2010, at 2. Megabus's filing also noted that, as Greyhound and Peter Pan had conceded, Philadelphia was a point listed *not* on Greyhound Route 126, one of the two Pooled Routes, but instead on Greyhound Route 122, a

connecting route shown in italics on the Route 126 schedule. *Id.* at 3. Here, in contrast, as Megabus concedes, “Newark *is* listed as an intermediate point on the approved New York-Washington, DC route...” (Pet. at 4 n.6, emphasis added), with both Newark and Baltimore shown as stops on the map and timetable for (Pooled) Route 126 itself, not on those for a connecting route. *See* Para. 1 above. These facts make the “Fifth Amendment” request completely inapposite to the current matter, and render Megabus’s reliance on the Office of Proceedings’s “Fifth Amendment” decision, which was purely procedural and expressly left the door open to a Greyhound-Peter Pan request for *formal* Board approval, thoroughly misplaced.

6. The Megabus Petition is just the latest in a series of unsubstantiated, ill-motivated efforts by that company – one of the largest and most successful in the intercity bus industry nationwide, including in the New York, NY-to-Washington, DC market – to recruit the Board to misapply the federal pooling statute in such a way as to regulate out of existence Megabus’s principal competitor in that market, the Greyhound-Peter Pan pool. This strategy, if successful, will leave Megabus with much greater freedom to raise bus fares to supracompetitive levels. Megabus’s position in this Petition, as in the pending Petition to Reopen the Board’s approval of the Fourth Amendment (BoltBus service), contradicts the protect-competition-rather-than-individual-competitors teaching of the federal pooling statute and the National Transportation Policy. The Greyhound-Peter Pan pool has not only demonstrated over the years that its operations are “(1) ... in the interest of better service to the public or of economy of operation; and (2) ...[do] not unreasonably restrain competition” (*see* 49 U.S.C. § 14302(b)), but in fact have affirmatively *contributed significantly* to the now-robust passenger-bus competition in the New York, NY-to-Washington, DC market by introducing an innovative, enhanced, high-quality, low-fare bus service in the form of BoltBus. *See* Exh. E hereto, Opposition of

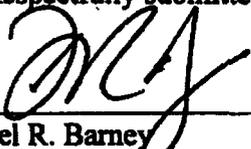
Greyhound Lines, Inc. and Peter Pan Bus Lines, Inc. and Megabus Northeast, LLC to Reopen Approval of Fourth Amendment (relevant excerpts), STB Nos. MC-F-20904, MC-F-20908, MC-F-20912, at 7-10 (filed May 17, 2010). That Megabus would now seek to *prevent still more competition* in that important transportation market in the form of BoltBus's Newark-to-Washington, DC-via-Baltimore offering is directly contrary to the procompetitive policy of the laws the Board enforces. *See id.* at 10-11.

For all these reasons, the Board should deny the Megabus Petition.

Dated: March 28, 2011

Respectfully submitted,

By:   
Jeremy Kahn  
jkahn@erols.com  
KAHN AND KAHN  
4729 East Sunrise Dr., PMB 432  
Tucson, AZ 85718-4535  
Tel. 301-254-5026  
[Admitted in District of Columbia only]

  
By: Daniel R. Barney  
dbarney@scopelitis.com  
Kim D. Mann  
kmann@scopelitis.com  
Braden K. Core  
bcore@scopelitis.com  
SCOPELITIS, GARVIN, LIGHT, HANSON &  
FEARY, P.C.  
1850 M Street, N.W., Suite 280  
Washington, DC 20036-5804  
Tel. 202-783-9222  
Fax 202-783-9230

Attorney for Peter Pan Bus Lines, Inc.

Attorneys for Greyhound Lines, Inc.

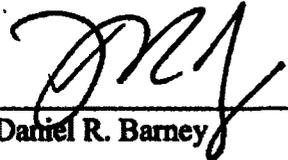
**CERTIFICATE OF SERVICE**

I certify that I have, this 28th day of March 2011, served copies of the foregoing letter and enclosed Opposition to Ms. Cynthia T. Brown, Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, dated March 28, 2011, on the following by email and First Class Mail –

David H. Coburn, Esq.  
Steptoe & Johnson LLP  
1330 Connecticut Ave., N.W.  
Washington, DC 20036-1795  
[dcoburn@steptoe.com](mailto:dcoburn@steptoe.com)

and on the following by First Class Mail –

Director of Operations  
Antitrust Division  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW, Room 3322  
Washington, DC 20530.

  
\_\_\_\_\_  
Daniel R. Barney

**ORIGINAL**

FOURTH AMENDMENT  
TO  
REVENUE POOLING AGREEMENTS

Peter Pan Bus Lines, Inc. of Springfield, MA ("Peter Pan") and Greyhound Lines, Inc. of Dallas, TX ("Greyhound"), having entered into Revenue Pooling Agreements (collectively the "RPAgreements") approved by the Board by Decisions entered in STB Docket No. MC-F-20904, Peter Pan Bus Lines, Inc. – Pooling-Greyhound Lines, Inc., served June 30, 1997, STB Docket No. MC-F-20908, Peter Pan Bus Lines, Inc. – Pooling-Greyhound Lines, Inc., served April 29, 1998, and STB Docket No. MC-F-20912, Peter Pan Bus Lines, Inc. – Pooling-Greyhound Lines, Inc., served February 12, 1998, first amended by the Agreement dated October 22, 1998, approved by Decision of the Board, served December 18, 1998, and next amended by Agreement dated July 12, 1999, acknowledged by the Board, Secretary Williams, to require no formal action of the Board, by letter, dated August 6, 1999, and next amended by Agreement dated March 19, 2004, submitted to the Board by letter dated March 19, 2004, with no action being taken by the Board,<sup>1</sup> desire to further amend the RPAgreements as follows:

WHEREAS, Peter Pan and Greyhound have successfully cooperated to operate pooled services over the regular routes described in the RPAgreements (collectively, the "Pooled Routes"); and

---

<sup>1</sup> A minor amendment to the Agreement approved in Docket No. MC-F-20912 was dated September 19, 2003, and submitted to the Board by letter, dated September 22, 2003, with no action being taken by the Board.

WHEREAS, Peter Pan and Greyhound desire to enhance their service over the Pooled Routes by offering a modified service under a new brand name (the "Enhanced Service") in addition to their existing service over the Pooled Routes;

NOW THEREFORE, Peter Pan and Greyhound agree to amend the RPAgreements, as amended, to govern the provision of the Enhanced Service as follows:

1. Each of the three RPAgreements shall be amended by adding a new Section 1.A as follows:

1A. Establishment of Enhanced Service Over Pooled Routes

a. In addition to the service over the Pooled Routes as described in Paragraph 1.a. above, the parties shall also operate the Enhanced Service, as described herein, which shall be governed by this Fourth Amendment.

b. The revenues from the Enhanced Service which shall be the subject of this Fourth Amendment (the "Enhanced Service Revenues") are the gross amounts received from the sale of tickets for the Enhanced Service through Greyhound's Internet-based ticketing system, walk up sales, or otherwise, and the imposition of any and all fees and surcharges related to such tickets.

2. Each of the three RPAgreements shall be amended by adding a new Paragraph 2.c. as follows:

c. For the Enhanced Service only, all tickets for transportation will be sold on ticket stock or other means bearing the brand name of the Enhanced Service through Greyhound's Internet-based ticketing system and delivered by the Internet-based ticketing system or by other appropriate means.

3. Each of the three RPAgreements shall be amended by adding a new Paragraph 3.g. as follows:

g. For the Enhanced Service only, Greyhound will operate all of the service over the Pooled Routes with buses bearing the brand of the Enhanced

## REVENUE POOLING AGREEMENT

THIS AGREEMENT, entered into this 19th day of May, 1997, by and between Peter Pan Bus Lines, Inc. ("Peter Pan"), a Massachusetts corporation, maintaining its principal place of business at 1776 Main Street, Springfield, Massachusetts 01102, and Greyhound Lines, Inc. ("Greyhound"), a Delaware corporation maintaining its principal place of business at 15110 North Dallas Parkway, Dallas, Texas 75148.

## WITNESSETH:

WHEREAS, Peter Pan and Greyhound are motor carriers of passengers and express engaged in interstate operations pursuant to grants of authority heretofore received from the Interstate Commerce Commission ("ICC"), predecessor of the Surface Transportation Board ("STB"), and are duly registered with the Federal Highway Administration ("FHWA"), and

WHEREAS, Peter Pan and Greyhound have competed over certain of their intercity routes, as, for example, between Washington, DC, and New York, New York, with the result that neither of them has sufficient ridership or adequate profit in rendering the service, and

WHEREAS, Peter Pan and Greyhound have agreed that, subject to the approval of the STB, they should pool portions of their passenger and express transportation services and the earnings derived therefrom, and

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual agreements herein, Peter Pan and Greyhound, intending to

be legally bound, covenant and agree, as follows:

1. Establishment of Pool.

a. The routes which shall be the subject of this Agreement ("Pooled Routes") are the routes authorized to be served by Peter Pan and Greyhound between New York, NY, and Washington, DC, shown as route 7056 on the attached map of the Trailways National Bus System, Attachment 1, and route 126 on the attached Greyhound map, Attachment 2.

b. The revenues which shall be the subject of this Agreement ("Gross Pool Revenue") are the gross amounts received by Peter Pan and Greyhound from the sale of tickets and the issuance of busbills, regardless of where or by whom sold or issued, for the transportation of passengers and express in scheduled, intercity bus service over all or any portion of the Pooled Routes, except that revenues received by Greyhound from service offered to or from intermediate points between New York, NY, and Washington, DC, resulting from through bus operations to or from points beyond Washington, DC, which do not include service to, from or through Washington, DC, shall not be included in Gross Pool Revenue, and such service shall not be deemed service which is a part of Pooled Routes service. If the sale of tickets or the issuance of busbills relates to transportation in part over the Pooled Routes and in part over other routes, then only that portion of the gross amounts from such sales attributable to intercity transportation over the Pooled Routes shall be subject to this Agreement.

shall cooperate in the investigations. The expenses incurred and sums expended by Greyhound in investigating and settling such claims shall be prorated between the parties in accordance with the mileage percentages of subparagraph d of paragraph 3 above, and shall be deducted from each party's share of the Net Pool Revenue, as provided in paragraph 7 below.

6. Terminal Expenses.

Greyhound shall bear all of the expenses at terminals and stations on the Pooled Routes, shown in Attachment 4, including any commissions due agents, rents, utilities, maintenance and other expenses, subject to the following:

For all service operated by Peter Pan on the Pooled Routes pursuant to this Agreement, Greyhound will either operate the terminal or station or establish the relationship with the agent who does, and Greyhound will bear all of the expenses of operating the terminal or station. Peter Pan will compensate Greyhound for Peter Pan's portion of the terminal or station expenses by deduction of the Station Expenses from Gross Pool Revenue, as provided in paragraph 7 below. At such terminals or stations, Peter Pan shall operate only such schedules as are operated over the Pooled Routes in accordance with this Agreement.

7. Computation of Net Pool Revenue.

a. From the Gross Pool Revenue there shall be deducted (1) the charges assessed Greyhound at the New York Terminal of the Port Authority of New York and New Jersey (i.e., the commission fee (currently fifteen percent (15%) of gross sales) and departure fee

**ATTACHMENT 2**

# Greyhound

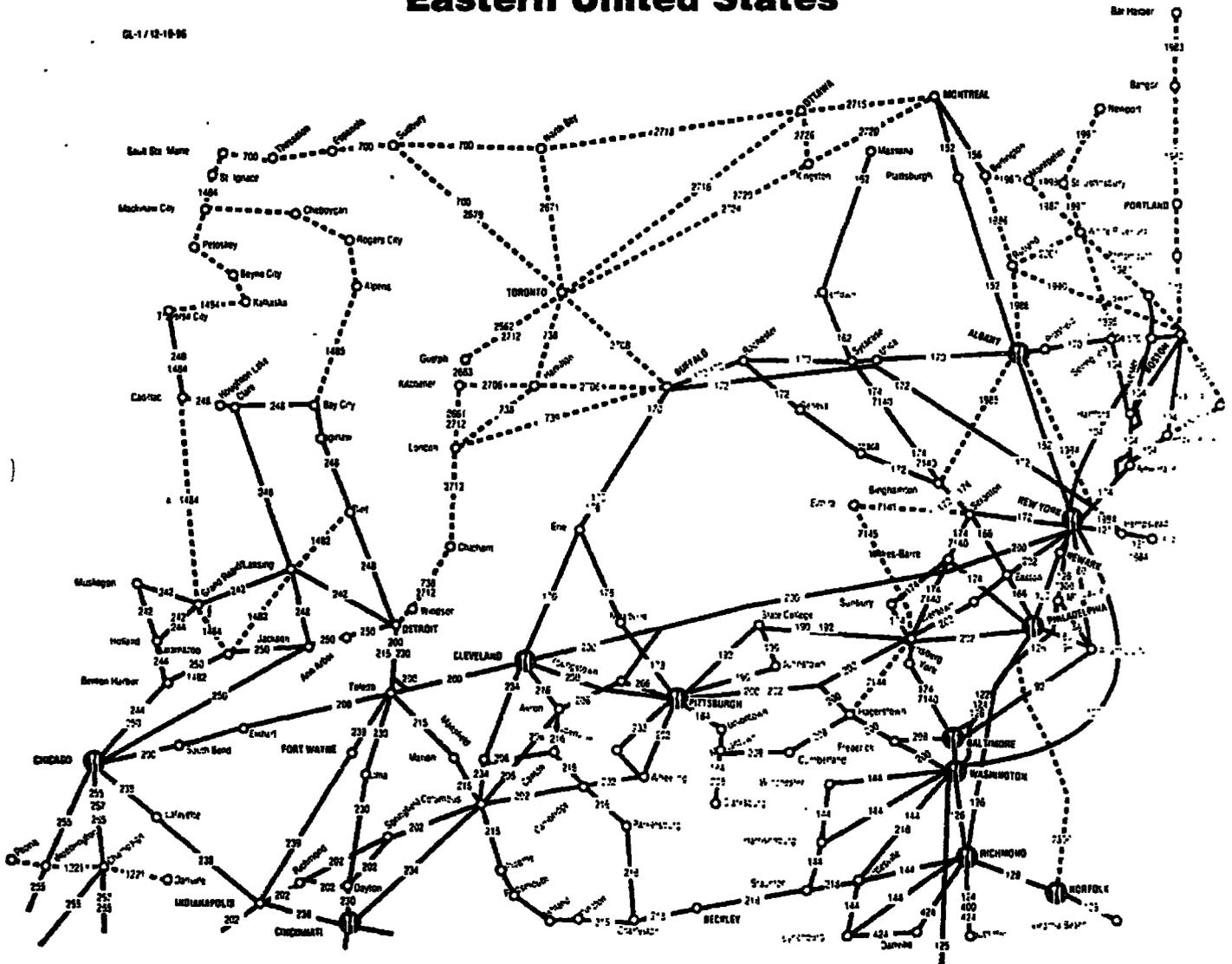
1-8-97



— Greyhound Food Service Facilities.

## INDEX MAP TO TABLES Eastern United States

GL-1/12-18-96







SCHEDULE NUMBER		1050	3200	3250	3375	1554	3346	3604	1040	520	522	1042	1536	1070	READ DOWN
Folder No. 62	FREQUENCY	1-8-97	Am												
			Per Tot												
126			57												
Virginia VA	(126) GL-CCC Lv									3:01	3:03	3:45	3:45		8:10
Richmond VA	GL-CCC Ar									5:15	5:35	6:25	6:25		8:45
RICHMOND, VA	GL Lv				3:00	4:15	5:15			6:30	7:15	10:00	10:00		11:30
Fredericksburg					4:00		6:15			7:30					
Triangle					4:30		6:45			8:00					
Woodbridge					5:00		7:00			8:15					
Springfield					5:30		7:30			8:45					
Arlington VA					6:00		8:00			9:15					
12th Street					6:30		8:30			9:45					
WASHINGTON, DC	Ar	4:00			5:45	6:20	7:45			9:00	9:20	12:05	12:05	14:12	
Washington DC	Lv	5:30			6:50	6:50									
College Park MD	Lv	6:40			8:20	8:20									
Baltimore Wash MD (Travel Plaza)	Lv	8:10			10:40	10:40									
Philadelphia PA	Ar	8:50													
WASHINGTON, DC	Lv	5:00	6:00	6:30		7:00	8:15			10:00	10:00			12:45	
Howard Univ DC															
Silver Spring MD															
College Park MD															
BALTIMORE, MD (Downtown)	Ar								11:00					1:35	
BALTIMORE, MD (Downtown)	Lv								8:30	11:05				1:40	
Baltimore-North, MD (Travel Plaza)	Ar								8:30			12:45		2:15	
Baltimore-North, MD (Travel Plaza)	Lv								9:00		1:25			2:55	
Elton, MD															
Wilmington, DE	Ar														
Wilmington, DE	Lv														
Mt Laurel, NJ															
Newark, NJ	Ar					11:00	12:35								
Newark, NJ	Lv					12:43				12:35					
Newark, NJ										12:35					
Union City, NJ															
NEW YORK, NY	GL Ar	9:30	10:25	10:50		11:40	1:15	12:30	3:10	2:20	5:00		5:20	6:30	

SCHEDULE NUMBER		3200	3288	3242	3246	3234	3216	3288	1024	508	1054	504	READ DOWN
Folder No. 62	FREQUENCY	1-8-97	Am										
			Per Tot										
126													
Virginia VA	(126) GL-CCC Lv										6:40	6:30	9:00
Richmond VA	GL-CCC Ar										9:10	9:00	9:00
RICHMOND, VA	GL Lv				6:45						10:15	10:30	
Fredericksburg					7:45						11:20		
Triangle					8:15						11:50		
Woodbridge					8:30								
Springfield					9:00						12:25		
Arlington VA					9:05						12:40		
12th Street					9:30								
WASHINGTON, DC	Ar	9:30								11:25	1:00		
Washington, DC	Lv	10:00									1:45		
Baltimore MD (Downtown)	Lv	11:10									3:15		
Baltimore Wash MD (Travel Plaza)	Lv	11:35									3:40		
Philadelphia, PA	Ar	1:25									5:00		
WASHINGTON, DC	Lv	9:00	10:00	10:30	11:00	11:30	12:00	12:00	12:00				
Howard Univ DC													
Silver Spring MD													
College Park MD													
BALTIMORE, MD (Downtown)	Ar				11:30		12:00						
BALTIMORE, MD (Downtown)	Lv				11:40		1:00						
Baltimore-North, MD (Travel Plaza)	Ar						1:20				1:15		
Baltimore-North, MD (Travel Plaza)	Lv						1:30				1:50		
Elton, MD													
Wilmington, DE	Ar						1:00						
Wilmington, DE	Lv						1:05						
Mt Laurel, NJ							2:00						
Newark, NJ	Ar						3:20				4:20		
Newark, NJ	Lv						3:30				4:25		
Newark, NJ													
Union City, NJ													
NEW YORK, NY	GL Ar	1:00	2:20	4:00	3:30	6:10	4:30	6:00			8:25	8:00	8:00

**ATTACHMENT 4**

**TERMINAL LOCATIONS**

WASHINGTON, DC

WILMINGTON, DE

BALTIMORE, MD

COLLEGE PARK, MD

ELKTON, MD

SILVER SPRINGS, MD

NEWARK, NJ

MT. LAUREL, NJ

UNION CITY, NJ

NEW YORK, NY

**Affidavit of Peter A. Picknelly,**  
**President Peter Pan Bus Lines, Inc.**

1. I am Peter A. Picknelly, President of Peter Pan Bus Lines, Inc. I am submitting this Statement as a part of the Peter Pan/Greyhound response to the March 22, 2011 “complaint” by Coach USA/Megabus relating to the Peter Pan/Greyhound STB approved pooling operation.

2. To me the essence of the Coach “complaint” appears at the bottom of page 2 and on to page 3, when Coach argues, “The new BoltBus service would originate and terminate at the Newark [New Jersey] hub, and thus is not part of the Board-approved New York-Washington pooling service, which covers operations originating or terminating at those two cities. No existing Greyhound-Peter Pan pooling agreement approved by the Board allows pooled service originating or terminating in Newark.” That assertion is absolutely false, so the Coach/Megabus “complaint” has no basis at all.

3. I note first that each of the several Peter Pan-Greyhound STB pooling authorizations was issued following an application which included an Affidavit by me on behalf of Peter Pan and by a Greyhound representative. To my best knowledge – based on active participation in the bus industry – none of the Coach/Megabus senior management was involved in any of the STB applications. That means I can speak with actual knowledge, not based on some guess as to what might have been said or done, but the same is not true of Coach/Megabus.

4. I say the Coach/Megabus assertion above is false, based on my actual knowledge.

5. One component of the New York City – Washington, DC Pooling Application was my Affidavit, executed April 18, 1997, in which I testified on behalf of Peter Pan as to how we believed our proposal met the legal standards for approving a pooling application. In paragraphs 13 and 14 (at pages 6 and 7) of that Affidavit, I discussed benefits to the public at terminus points on the route in issue.

6. In paragraph 15, beginning at page 8, I talked about our planned pooled service at intermediate points between New York and Washington. Paragraph 15 begins as follows:

At intermediate stations on the Washington – New York route, Peter Pan and Greyhound plan to combine terminals so that there are no duplicative efforts. In

Newark and Mt. Laurel, New Jersey, Peter Pan tickets and service will be made available at the Greyhound facilities in those two locations. (emphasis added)

7. Further in that same paragraph 15 discussing service at intermediate points, I continued by explaining pooled service to be provided at Baltimore,

Under the proposal, both Peter Pan and Greyhound will provide service at downtown Baltimore [Maryland] at the Greyhound facility and both Peter Pan and Greyhound will provide service at a single location in the Travel Plaza [just North of Baltimore on Interstate 95].”

8. These statements expressly show our proposal submitted to and approved by the STB for the New York – Washington pool contemplated service at intermediate points, including specifically Baltimore and Newark, which flatly contradicts the Coach/Megabus allegation.

9. My Affidavit (paragraph 30, page 16) concluded with the following:

To maintain its high standards of quality service and to better serve its passengers, Peter Pan seeks authority to pool service with Greyhound over the New York – Washington route as described in this statement and in the proposed Pooling Agreement submitted to the Board. (emphasis added)

10. I also point out the Pooling Agreement presented to and authorized by the Board says expressly in paragraph 1.b, page 2, under the heading “Establishment of Pool,”

The revenues which shall be the subject of this Agreement (“Gross Pool Revenue”) are the gross amounts received by Peter Pan and Greyhound from the sale of tickets and the issuance of busbills, regardless of by whom or where sold or issued, for the transportation of passengers and express in scheduled, intercity bus service over all or any portion of the Pooled Routes . . . . (emphasis added)

11. Not only did we propose service at intermediate points such as Newark and Baltimore, we have in fact provided pooled service and pooled revenue for service at those cities since the time the pools were authorized and continuing until today. I have confirmed this expressly with Brian Stefano, Peter Pan’s Executive Vice President, CFO, and COO. (He was identified at page 2, paragraph 4 of my earlier Affidavit as his then titles of Vice President and CFO, meaning he, too has actual knowledge of how the pools have been operated since they were first authorized.)

12. As I understand the Coach/Megabus “complaint,” it is based entirely on the allegation there is no STB authorized pool service for intermediate points

between Washington and New York. As my statement today - but more importantly my 1997 Affidavit and the STB Pooling Agreement – show in black and white, we proposed service for intermediate points and that's exactly what the STB authorized.

Verification

I, Peter A. Picknelly, President, Peter Pan Bus Lines, Inc., verify under penalty of perjury under the laws of the United States, that I have read the foregoing affidavit, that the statements therein are true and correct to the best of my knowledge and belief, and that I am authorized to make this statement on behalf of Peter Pan Bus Lines, Inc.

  
\_\_\_\_\_  
Peter A. Picknelly

Dated: March 28, 2011

**STEPHENS & JOHNSON LLP**  
ATTORNEYS AT LAW

David H. Coburn  
202.429.8063  
dcoburn@stephens.com

1330 Connecticut Avenue, NW  
Washington, DC 20036-1795  
Tel 202.429.3000  
Fax 202.429.3902  
stephens.com

March 16, 2010

**VIA ELECTRONIC FILING**

Cynthia T. Brown  
Chief, Section of Administration  
Surface Transportation Board  
395 E Street, S.W.  
Washington, DC 20423-0001

**Re: Reply of Coach USA, Inc. and Megabus Northeast, LLC to March 12, 2010  
Letter Request of Greyhound Lines, Inc. Concerning Peter Pan Bus Lines,  
Inc – Pooling – Greyhound Lines, Inc., STB Docket Nos. MC-F-20908, MC-  
F-20904, MC-F-20912**

Dear Ms. Brown:

Coach USA, Inc. and Megabus Northeast, LLC (jointly, “Megabus”) hereby respond in opposition to the March 12, 2010 letter request submitted by counsel for Greyhound Lines, Inc. (“Greyhound”) seeking your approval for what Greyhound’s letter describes as a “minor, ministerial” amendment to the three Revenue Pooling Agreements between Greyhound and Peter Pan Bus Lines, Inc. (“Peter Pan”) that the Board approved in the late 1990’s. Those Agreements cover service offered by those two bus companies between New York and Washington, DC, New York and Philadelphia and New York and Boston. Far from being either “minor” or “ministerial” amendments to any of those three agreements, what Greyhound seeks here is a major expansion of the antitrust-immunized Pooling Agreements approved by the Board over ten years ago, under very different economic circumstances.

Specifically, Greyhound seeks to revise those Pooling Agreements to reach an altogether new service not previously covered by the Agreements, namely, a new Washington, DC-Philadelphia, PA service, to be conducted via Baltimore, MD, that will be operated by a Greyhound-Peter Pan joint venture entity known as BoltBus, which commenced operations in 2008. Neither that service nor that joint venture is addressed in any STB approved pooling agreement.

Ms. Cynthia Brown  
March 16, 2010  
Page 2

Megabus submits that the issues raised by the proposed expansion of the Greyhound-Peter Pan pooling arrangement warrant careful consideration by the Board. The proper means to achieve that consideration is for Greyhound and Peter Pan to submit a formal pooling application to the Board pursuant to 49 U.S.C. § 14302 and the Board's rules at 49 C.F.R. Part 1184. While Greyhound paints its proposed amendment as minor or ministerial, the fact is that it proposes to do what the three existing Pooling Agreements never contemplated at the time that they were submitted to and approved by the Board over ten years ago, namely, run a joint venture service on a route (Washington-Philadelphia) not presented to the Board in any of the prior pooling applications. Nor has the Board had an opportunity to consider whether pooling involving these carriers is appropriate at all in the dramatically different economic circumstances that now surround intercity bus service in the Northeast or in light of the fact that Greyhound came under the control of FirstGroup plc, a large United Kingdom-based transportation conglomerate, in 2007.

The primary reason offered by Greyhound for the amendment to the existing Pooling Agreements is to allow BoltBus to compete on the Washington-Philadelphia route with Megabus, which has announced the commencement of scheduled service on a new Washington-Philadelphia route as of March 21, 2010. Megabus is a low fare, high quality scheduled intercity bus service offered by Megabus Northeast, LLC, which is owned by Coach USA, Inc., a subsidiary of Stagecoach Group, plc. Since 2008, Megabus has operated point-to-point express service between various cities in the Northeast, including non-stop New York-Washington and New York-Philadelphia service. It currently competes on those routes with BoltBus and several other motorcoach companies. BoltBus apparently operates on these and other routes under one or more of the Board-approved Pooling Agreements referenced in the Greyhound letter. BoltBus, however, does not transport passengers between Washington and Philadelphia, and apparently is awaiting action on its March 12 letter request before initiating this altogether new service.

Greyhound relies on the Board approved New York-Washington DC Pooling Agreement in Docket MC-F-20908 as the source for its claimed authority to pool revenues and service with Peter Pan (through BoltBus) on the Washington-Philadelphia route. However, the Board's 1998 decision in MC-F-20908, *Peter Pan Bus Lines, Inc. – Pooling – Greyhound Lines, Inc.* (served April 29, 1998) makes no mention at all of this route. Rather, that decision is focused exclusively on the route for which pooling authority was requested at the time, New York-Washington. So too, the May 20, 1997 Application filed by Greyhound and Peter Pan in MC-F-20908 makes no mention of the Washington-Philadelphia route. In fact, although other intermediate service points between New York and Washington are mentioned in the supporting verified statement of Peter Pan's President, Peter Picknelly, Philadelphia is not among those listed and there is no discussion at all of any service problems that Greyhound or Peter Pan may have been experiencing between Washington and Philadelphia, or of competitive conditions on that route.

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

---

**STB Docket Nos. MC-F-20908, MC-F-20904, and MC-F-20912**

**PETER PAN BUS LINES, INC. – POOLING – GREYHOUND LINES, INC.**

---

**OPPOSITION OF GREYHOUND LINES, INC. AND  
PETER PAN BUS LINES, INC. TO PETITION OF COACH USA, INC.  
AND MEGABUS NORTHEAST, LLC TO REOPEN FOURTH AMENDMENT**

Greyhound Lines, Inc. (“Greyhound”), and Peter Pan Bus Lines, Inc. (“Peter Pan”) respectfully submit this opposition to the May 3, 2010, petition by Coach USA, Inc. and its subsidiary Megabus Northeast, LLC (together, “Megabus”) to reopen and disapprove the Surface Transportation Board’s (“Board”) earlier approval on April 17, 2008, of the “Fourth Amendment” to their three revenue pooling agreements, which were approved by the Board in the above-referenced proceedings in 1997-98 (“Megabus Petition”).

**I. INTRODUCTION AND SUMMARY**

In an astonishing misuse of the regulatory process, Megabus seeks to maneuver the Board into eliminating one of the company’s main rivals on Northeast Corridor bus routes – namely, the BoltBus line of enhanced bus service authorized by the Fourth Amendment.<sup>1</sup> The Megabus Petition finds no aspect of BoltBus to complain about beyond its being the product of a Board-approved pooling agreement. It does not, for example, allege that the BoltBus joint venture has engaged in anticompetitive or unlawful conduct of any kind. To the contrary, the only “changed

---

<sup>1</sup> Petitioner is a far cry from a struggling small business unable to fend for itself in the competitive marketplace. According to its website, “Coach USA owns over 20 local companies in North America that operate scheduled bus routes, motorcoach tours, charters, and city sightseeing tours”; “operate[s] megabus [sic] in the North East and Central Regions of the United States and Canada”; and “is a subsidiary of the Stagecoach Group,” which the website describes as “one of the world’s largest bus, coach and rail groups with operations in the United Kingdom and the United States.” See <http://www.coachusa.com/info/coachusa/ft.aboutus.asp>.

decision, ... a changed circumstance must be one that could materially affect the prior decision.” See *DesertXpress Enterprises, LLC-Pet. for Decl. Order*, 2010 WL 1822102, at \*3. Accord, *Town of Springfield*, 412 F.3d at 189 (citing the “affected materially because of ... changed circumstances” standard of § 1115.3(b)(1) in declaring that a petition to reopen for new evidence or changed circumstances under § 1115.4 necessitated a showing that the new developments “materially affected the Board’s disposition”).

Megabus’s Petition rests almost exclusively upon the changed-circumstances criterion.<sup>6</sup> It has the burden of persuasion on this issue (*Simmons v. ICC*, 760 F.2d 126, 132 (7<sup>th</sup> Cir. 1985)), and it is a heavy one: “[p]etitions to reopen previously final agency decisions are to be granted only in the most extraordinary circumstances.” *Farmer Export Co. v. United States*, 758 F.2d 733, 737 (D.C. Cir. 1985) (citing *Mobil Oil Corp. v. ICC*, 685 F.2d 624, 631-32 (D.C. Cir. 1982)).

**B. The Megabus Petition Fails to Establish that the Purportedly Changed Circumstances – Namely, Increased, Not Decreased, Competition on the Routes Served by Boltbus, Megabus, and Numerous Other Bus Companies and Transportation Providers – Will Be Material to the Board’s Prior Action in Approving the Fourth Amendment**

In an effort to meet this burden, Megabus attempts to establish how “dramatically” market conditions have changed in the past two years since the Board’s authorization of the Fourth Amendment on April 17, 2008. Megabus Petition at 3. Megabus declares that BoltBus-type service “is now significantly more competitive” (*id.*); at the same time, that type of curbside service has experienced “a dramatic growth in demand and ridership” (*id.*); current circumstances in the BoltBus market are “economically robust” (*id.* at 4); the entry of BoltBus,

---

<sup>6</sup> While the Megabus Petition also alleges BoltBus’s non-compliance with the terms of Board’s approval of the Fourth Amendment, this argument appears to be an afterthought. It, too, is without merit. See Part IV of this Opposition, *infra*.

Megabus, and several so-called Chinatown curbside intercity operators “revolutionized motorcoach service on the routes served by BoltBus” (*id.* at 10); the resulting service precipitated “a dramatic growth of the number of passengers traveling by bus” in the Northeast areas that BoltBus serves (*id.* at 11); “the majority of this growth in service was driven by ... Megabus and BoltBus” (*id.*, quoting a report appended to Megabus’s filing in opposition to the Greyhound/Peter Pan Fifth Amendment); the sector in which BoltBus operates “is financially viable, and indeed attractive” as evidenced by the “entry over the last several years of new competitors into the intercity motorcoach sector in the Northeast U.S.” (*id.*); the “intercity services on the BoltBus routes are in fact so plentiful now...” (*id.* at 12); and “the last several years have been marked by expanding demand for the type of services offered by BoltBus and the new entrants (listed above [including Megabus]) attracted into the sector on the routes served by BoltBus.” Finally, quoting from its own press release posted on its website, Megabus proclaims that, “Independently operated competitors of BoltBus ... are performing well and offer the same types of amenities on their buses,” and that, “The overwhelming popularity of megabus.com’s innovative, express bus service prompts us to keep expanding and offering our service to as many customers as possible.” *Id.* at 15 & n.32.

In sum, in Megabus’s own view, the very market and competitive conditions the Board sought to foster when it approved the Revenue Pooling Agreements in 1997 and 1998 and ensuing amendments, the last being the Fourth Amendment in April 2008, have come to pass. The riding public has benefitted from improved, innovative motorcoach services, traceable to the operating efficiencies and economies inherent in the pooled services of Greyhound and Peter Pan, while motorcoach competition for this dramatic growth in ridership is healthy and has flourished, hardly “unreasonably restrain[ed].”

Greyhound and Peter Pan generally agree with Megabus's assessment of the current marketplace in which BoltBus operates. The circumstances surrounding enhanced bus services have indeed changed since April 2008 when the Board approved the Fourth Amendment, and they have changed generally as Megabus portrays them in its Petition. But such changes do not rise to the level of those that the statute and regulations require for the Board to reopen an administratively final action. As discussed above, to warrant reopening, changed circumstances must be both "material" and substantial and, in the view of the U.S. Court of Appeals for the D.C. Circuit, "most extraordinary." *Farmer Export*, 758 F.2d at 737.

The changed circumstances in connection with a prior Board action involving pooling must be material to the statutory criteria for approving pooling arrangements. Thus, they must tend to undercut either "better service to the [riding] public" or "economy of operation" of the pooling agreement. See 49 U.S.C. § 14302(b)(1). Alternatively, the allegedly changed circumstances must show that the pooled services have "unreasonably restrained competition." 49 U.S.C. § 14302(b)(2). Megabus has not, and cannot, make any of these statutory showings.

Instead, the changed circumstances Megabus has brought to the attention of the Board are the polar opposite of such showings. Megabus's own Petition shows the resulting BoltBus operations brought and continue to bring an improved, innovative service to the riding public, a nimble service responsive to changing needs of a new type of "hip" passenger. Megabus's evidence shows BoltBus provides a low-cost, low-fare express service that by-passes congested, expensive terminals and relies upon the Internet for its cost-effective ticketing system – in a word, an economical, efficient service as well as an improved one. Megabus's Petition describes a healthy, highly competitive passenger bus service environment in the Northeast, one in which bus companies have refocused on providing and expanding affordable, reliable, but modern

curbside service. Megabus and the other new entrants Megabus identifies in its Petition as having entered the market since April 2008 to provide BoltBus-type service in the Northeast are described as vibrant and thriving as the ridership demand has grown in response to implementation of these new services.

The pooled services of Greyhound and Peter Pan producing BoltBus have, according to Megabus's own evidence, proven to be precisely the competitive success the Board predicted when it approved them. *See, e.g., Peter Pan Bus Lines, Inc.-Pooling-Greyhound Lines, Inc.*, No. MC-F-20908, 1998 WL 209278, at \*4 (declaring, in approving the New York, NY-Washington, DC pooling agreement, that "if any market would be conducive to entry it would be this one.... Similarly, the competitive intermodal alternatives between these two major cities far exceed those of most passenger markets throughout the country"). In effect, Megabus has petitioned the Board to undo this extraordinary success in passenger bus transportation by overturning its prior Fourth Amendment approval for an anti-competitive reason – to eliminate a formidable competitor that, together with Megabus and others, has been largely responsible for the current highly-competitive intercity motorcoach industry in the Northeast. The Board should reject such a perverse and unsupported request.

The Board's predecessor, the Interstate Commerce Commission, recognized the proper role of the agency in the post-1980 deregulated transportation environment – to protect the public interest through promoting *competition*, not individual competitors. *See GLI Acquisition Company – Purchase – Trailways Lines, Inc.*, 4 I.C.C. 2d 591, 610 (1988) ("[w]e are not, however, in the business of preserving competitors when competition itself is not endangered"), *pet. for review denied sub nom., Peter Pan Bus Lines, Inc., v. ICC*, 873 F.2d 408 (tbl.), 1989 WL 46959 (D.C. Cir. 1989) (per curiam, unpublished). In declining to reopen the Greyhound

acquisition given that Greyhound's entry into the market and its low pricing were precompetitive, the ICC declared:

[O]ur role is to protect the broad public interest. The public interest favors competition. The entry of a new competitor into a market offers a greater variety of price and service consistent with 49 U.S.C. § 10101.... [T]he Commission is *obliged to protect competition rather than competitors* so that benefits to the public will be maximized.

*Greyhound Lines, Inc. – Purchase – Scenic Trails, Inc. d/b/a Scenic Trailways*, No. MC-F-19206, 1990 WL 287498, at \*3 (I.C.C. 1990) (emphasis added). Here, only competitor Megabus, not the riding public or others purporting to represent to the public interest, seeks to reopen and overturn the Board's approval of BoltBus. Eliminating a competitor, BoltBus, would not protect or enhance *competition*; it would merely promote the agenda of a BoltBus *competitor*, Megabus. Nor has Megabus made any allegation in its Petition that Greyhound and/or Peter Pan have engaged in anticompetitive behavior or that their entry into the pooled-routes markets served by BoltBus has diminished competition for passengers in that market. *Cf. GLI Acquisition Company – Purchase – Trailways Lines, Inc.*, No. MC-F-18505, 1991 WL 126512, at \*2-\*3 (I.C.C. 1991) (rejecting allegations that Greyhound was "engaging in anti-competitive conduct" and declaring "[w]e will reopen this proceeding ... only on a strong showing of harm to the public interest and/or competition that requires our intervention").

#### **IV. BOLTBUS DOES NOT EXCEED FOURTH AMENDMENT APPROVAL**

Megabus posits a second reason for reopening the Fourth Amendment authorization – that by now offering frequent, hourly service over the pooled routes, BoltBus diverges from the terms the Board purportedly imposed upon its authorization. Megabus Petition at 18-19.

This allegation is patently false. The Board's letter of April 17, 2008, approves the Fourth Amendment as coming within the Board's prior authorizations of the parties' pooling agreements, thereby authorizing Greyhound and Peter Pan to launch "Enhanced Service," known