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JUN 28 2011
RECEIVED

June 27, 2011

SENT VIA FEDERAL EXPRESS

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: Joint Response of Greyhound Lines, Inc. and Peter Pan Bus Lines, Inc.
STB Docket Nos. MC-F-20904, MC-F-20908, and MC-F-20912

Dear Ms. Brown:

230396 230397 230398

I enclose a copy of the Joint Response of Greyhound Lines, Inc. and Peter Pan Bus Lines, Inc. to be filed in the above-referenced matter. If yo have any questions, please do not hesitate to contact me.

Very truly yours,

Timothy W. Wiseman

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Public Record

TWW/kkc
Enclosure
cc: David H. Coburn, Esq. (w/encl)
Director of Operations, Antitrust Division, U.S. Department of Justice (w/encl)
Jeremy Kahn, Esq. (via e-mail)

BEFORE THE
SURFACE TRANSPORTATION BOARD

JUN 28 2011
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STB DOCKET NOS. MC-F-20908, MC-F-20904, MC-F-20912

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

Joint Response of Greyhound Lines, Inc. and Peter Pan Bus Lines, Inc.

Greyhound Lines, Inc. ("Greyhound") and Peter Pan Bus Lines, Inc., ("Peter Pan") respectfully submit this joint Opposition to the two June 16, 2011 letters [1] to the Surface Transportation Board ("STB") on behalf of Coach USA, Inc. and its subsidiary, Megabus Northeast, LLC (together, "Coach"). Specifically, Coach complains of expanded service offered by Greyhound/Peter Pan routes under the "BoltBus" banner over the routes specified in their STB-approved pooling arrangement.

THE TRUE NATURE OF THE COACH FILING

Instead of a meaningful complaint, Coach's June 16 letters are simply one more step in its ongoing efforts to enlist the STB to limit competition by BoltBus in the Northeast corridor. The Coach filings are significant not for their repetition of earlier claims against Greyhound and Peter Pan, but rather for what they *omit*, namely any acknowledgment of the STB's April 20, 2011 decision, *Peter Pan Bus Lines, Inc. - Pooling - Greyhound Lines, Inc.*, MC-F-20904, *et al.* (the "April STB Decision"), in which the Board comprehensively dismissed all of Coach's complaints about the validity

[1] One letter is apparently inadvertently dated June 16, 2010 on its first page, but both were filed the same day.

of operating BoltBus under the STB pooling authorization. While reasonable people can differ to some degree about the application of any decision, for Coach simply to reiterate its earlier claims that Greyhound and Peter Pan have exceeded the scope of their STB authorization *without at least acknowledging the STB ruled comprehensively in their favor on this very same topic less than two months ago*, necessarily raises the question as to whether Coach is pursuing its campaign of complaints against BoltBus primarily as an abuse of the regulatory process and to harass a major competitor.

Greyhound and Peter Pan opposed on the merits Coach's March, 22, 2011 request for the STB to issue a "Show Cause" order relating to BoltBus pooled service over a portion of the authorized New York - Washington route[2], as even then, they believed Coach's request was straying from valid legal argument and approaching harassment. Less than a month later, the April STB Decision comprehensively addressed the issues raised by Coach, as to (1) modifications of pooled service which "would not permit the pooling participants to serve a new or additional route or territory," (p.4); (2) the competitive nature of the market (pp. 5-6); and (3) how Coach's arguments relate only to the protection of a *competitor* (i.e., Megabus), but not the protection of *competition*, which is the public interest goal of primary concern to the STB (p.7). Greyhound and Peter Pan contend that the April STB Decision compels the dismissal of the March, 2011 pending Coach complaint as well as its latest complaint of June 16, 2011.

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[2] "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," March 28, 2011.

It is also important to note that Coach doesn't *allege* harm - even purely *speculative* harm - either to itself or the public. First, Coach concedes it is complaining even though it doesn't even operate over the contested routes! [3] Second, all acknowledge the market is competitive in every sense, so it's proper to say the public is well served. [4] Instead, Coach's sole justification is in note 6 of its June 16 Newark - Boston letter, in which it says it welcomes competition with open arms, just so long as competition comes from Greyhound and Peter Pan singly, not pooled operations, [5] which ignores the STB's rejection of that specific concern at pages 6-7 of the April STB Decision ("[w]e are concerned primarily with [pooling's] effect on consumers.")

Further, for no discernible reason, Coach repeatedly requests "immediate action" by the STB, imposing additional burdens on Greyhound and Peter Pan to respond immediately and on the STB to divert scarce resources already devoted to other duties being addressed in an orderly fashion. The analogous concept is the typical request for a temporary stay or injunction. [6] There, the moving party would be required to at least

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[3] The pending Coach request deals with Bolt service between Newark and Washington, which Coach challenges by pointing out it "does not even operate between Newark and Washington." Coach Reply, March 30, 2011, p.7.

[4] "Coach states that intercity bus service on the pooled routes served by BoltBus has become 'significantly more competitive' because of new entrants . . . and there has been dramatic growth in demand and ridership.' We agree with Coach that there has been a dramatic increase in competition for bus services on these routes." April STB Decision, p.5, footnote omitted.

[5] It is difficult to reconcile that June 16 statement with Coach's March 30 statement, "[Coach's] Petition has *nothing whatever to do with eliminating BoltBus as a competitor*." Coach March 30, 2011 Reply, p.7, emphasis in the original.

[6] Coach requests immediate action, but immediate action for *what*? It doesn't ask for the STB to immediately issue a cease and desist order which would be expected if a party felt its complaint was meritorious. Rather, it asks the STB to stop everything and act immediately to implement a "show cause" proceeding, which could well take many months to resolve. If Coach felt it had a case on the merits, it would ask the STB to order Greyhound and

allege immediate, irreparable harm (Coach hasn't alleged *any* harm); allege likelihood of success on the merits (Coach not only ignores the April STB Decision seemingly dismissing its arguments, but altogether fails to even offer any legal theories of its own to support its position, saying instead only the new BoltBus service "at least raises a question that Greyhound and Peter Pan should be required to answer"[p.3]); and some allegation the public interest is harmed without immediate action (the April STB Decision expressly finds the public is now well served under pooling). Requests for immediate action typically include evidence, in the form of some sort of company statement. Unlike Greyhound/Peter Pan's prior submissions, not even one of Coach's filings includes a verified statement by a Coach representative to establish any facts on which it relies. The vast difference between an ordinary request for immediate action and Coach's current request further calls into question just what Coach is trying to accomplish, beyond harassment.

Taken as a whole, the foregoing strongly suggests that it is Coach which is trying to stifle competition by harassing a major competitor, not Greyhound and Peter Pan by expanding BoltBus service to the public over their currently-authorized pooled routes.

Peter Pan to stop immediately; instead, Coach appears to have little intent beyond harassment, just as the STB predicted in its April STB Decision: "[Greyhound/Peter Pan] would have to expend time and resources to defend their success in improving their bus services and financial conditions, even though, as Coach ably demonstrates here, there has been an increase in competition." (p.6)

THE NEW BOLTBUS SERVICE

The purported object of Coach's filing is the new BoltBus service generally between Philadelphia on the south, Newark, NJ, and on to Boston on the north. Greyhound and Peter Pan are authorized to pool services between New York and Philadelphia in MC-F-20904 and between New York and Boston in MC-F-20912. Coach seems to have two concerns, one with the BoltBus Philadelphia - Boston service, and one with service to and from Newark.

As to the former, now that the April STB Decision has reaffirmed the operation of BoltBus under the so-called Fourth Amendment, there's no doubt Greyhound and Peter Pan are expressly authorized to operate pooled BoltBus between the end points of Philadelphia and New York and between New York and Boston, so Coach's only possible argument is that the authorizations cannot be joined at the common end point of New York. By its express terms, for purposes of BoltBus service (called "Enhanced Service"), the Fourth Amendment treats and refers to the authorized pooled routes in the three individual pooling applications collectively as the "Pooled Routes." (Fourth Amendment, pp. 1-2) Greyhound and Peter Pan are unaware of any legal concept that would prohibit passenger carriers expressly authorized to operate from A to B and from B to C from operating directly from A to C, and Coach has not offered any. The validity of the BoltBus service between Philadelphia and Boston is self-evident, especially in light of the express language of the Fourth Amendment and the April STB Decision.

As to the latter, the only difference is that service is offered to and from Newark, which is an authorized intermediate point, but not a specified end point under the pooling authorization, but that does not affect BoltBus' right to operate to/from Newark. Greyhound and Peter Pan addressed Coach's argument in their March 28, 2011 Opposition; they rely on those same arguments here. [7]

As to Coach's reference to the STB's March 24, 2010 decision, the parties rely on their treatment of that issue at pages 6-7 of their March 28, 2011 Opposition. In this instance, the routes and geographical locations included in the enhanced services offered by BoltBus are specifically mentioned in the existing pooling agreement, and thus the rationale of the STB in the March 24, 2010 decision, which involved routes not approved in the existing pooling agreement, is inapplicable here.

[7] That Opposition, particularly at pages 2-4, makes reference to express provisions in the New York - Washington Pooling Agreement which support the Greyhound/Peter Pan position. There are corresponding provisions in the New York - Philadelphia Pooling Agreement which address Coach's June 16 filing.

For all these reasons, the STB should deny all of the pending Coach requests.

Dated:

Respectfully Submitted, 197211

By: Jeremy Kahn by T-W

By: T-W

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CERTIFICATE OF SERVICE

I certify that I have, this 27th day of June, 2011, served copies of the foregoing letter and enclosed Joint Response of Greyhound Lines, Inc. and Peter Pan Bus Lines, Inc. to Ms. Cynthia t. Brown, Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, dated June 27, 2011, on the following by e-mail and First Class Mail:

David H. Coburn, Esq.
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and on the following by first Class Mail:

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