230555
230556
230557

**EXPEDITED ACTION REQUESTED**

**BEFORE THE**
**SURFACE TRANSPORTATION BOARD**

---

**STB DOCKET NOS. MC-F-20904; MC-F-20908; MC-F-20912**

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

---

# REPLY TO JOINT RESPONSE OF GREYHOUND LINES, INC. AND PETER PAN BUS LINES, INC. TO REQUEST OF COACH USA, INC. AND MEGABUS NORTHEAST, LLC WITH RESPECT TO UNAUTHORIZED POOLING

---

ENTERED
Office of Proceedings
JUL 1 - 2011
Part of
Public Record

David H. Coburn
Christopher G. Falcone
STEPTOE & JOHNSON LLP
1330 Connecticut Ave., NW
Washington, DC 20036
(202) 429-8063
dcoburn@steptoe.com

Attorneys for Coach USA, Inc. and
Megabus Northeast, LLC

July 1, 2011

**EXPEDITED ACTION REQUESTED**

**BEFORE THE**
**SURFACE TRANSPORTATION BOARD**

---

**STB DOCKET NOS. MC-F-20904; MC-F-20908; MC-F-20912**

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

---

# REPLY TO JOINT RESPONSE OF GREYHOUND LINES, INC. AND PETER PAN BUS LINES, INC. TO REQUEST OF COACH USA, INC. AND MEGABUS NORTHEAST, LLC WITH RESPECT TO UNAUTHORIZED POOLING

---

On June 16, 2011 Coach USA, Inc. and Megabus Northeast, LLC (jointly "Megabus") filed two letters with the Board regarding certain pooled services that were about to be initiated by Greyhound Lines, Inc. ("Greyhound") and Peter Pan Bus Lines, Inc. ("Peter Pan"). Those services have now been initiated. One of these letters requested that the Board expand the scope of a show cause order previously requested (on March 22, 2011) by Megabus with respect to pooled Newark-Washington service to include pooled Newark-Philadelphia and Newark-Boston service that Greyhound and Peter Pan are now offering through their joint venture, BoltBus. The other letter similarly requested that the Board require Peter Pan and Greyhound to submit a new pooling application before initiating pooled BoltBus service between Philadelphia and Boston, or explain why no such application was warranted. On June 28, 2011, Greyhound and Peter Pan filed a joint response ("Joint Response") to Megabus's June 16 letters. Greyhound and Peter Pan devote the majority of their Joint Response to impugning what they falsely claim to be Megabus's motives. In fact, Megabus is endeavoring here to bring to the Board's attention what

appear to be patent violations of the requirement that motor passenger carriers obtain Board approval before engaging in pooling on any specific routes. If the Board finds that Greyhound and Peter Pan are engaged in pooling that exceeds the scope of their existing pooling authorizations, it should order them to stop until they obtain appropriate authorization.[1]

The very little offered in the Joint Response that is responsive to Megabus' arguments fails to provide a valid justification for extending pooled service to the Philadelphia-Boston, Philadelphia-Newark and Boston-Newark routes. In the Joint Response, Greyhound and Peter Pan claim that they are authorized to provide pooled service over the Philadelphia-Boston route because they are authorized to pool service on a Philadelphia-New York route under one Board-approved pooling agreement and to pool service on a New York-Boston route under a separate Board-approved pooling agreement.[2] They claim that Megabus' "only possible argument is that the[se] authorizations cannot be joined at the common end point of New York."[3] Megabus does not dispute that Greyhound and Peter Pan may offer pooled service between Philadelphia and New York City and may separately offer pooled service between New York City and Boston under the terms of the pooling agreements relevant to those city-pairs.

However, it does not appear that this is what Greyhound and Peter Pan are doing. Rather, they claim that the above two pooling agreements involving service to New York allow them to offer direct service from Philadelphia to Boston without any connection in New York. In

---

[1] Megabus in fact operates direct service between Philadelphia and Boston, contrary to the contention in the Joint Response that it does not operate on the relevant routes. However, Megabus' operations are not dispositive on the question raised here, which is whether Greyhound and Peter Pan are operating in violation of their pooling authorization. Megabus would be pleased to compete with Greyhound and/or Peter Pan on any route in a non-pooling setting, but should not be forced to compete with an unauthorized pooled operation.

[2] Joint Response at 5.

[3] *Id.*

particular, Greyhound and Peter Pan state, "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..."[4]

The Board though has already prohibited Greyhound and Peter Pan from operating directly from A to C in virtually the same situation. Greyhound and Peter Pan are authorized to pool service between Washington, DC and New York (A to B) and between New York and Philadelphia (B to C). Yet, in a decision served March 24, 2010, the Board ruled in upholding a Megabus protest that Greyhound and Peter Pan must seek Board approval by filing a pooling application under section 14302 if they wished to operate BoltBus service directly between Washington, DC and Philadelphia (A to C).[5]

Moreover, the Greyhound-Peter Pan pooled service at issue between Philadelphia and Boston does not involve a stop in New York City at all. Rather, it appears to operate via a stop in Newark, NJ. That city is identified as an intermediate point between New York and Philadelphia in the pooling application covering that city pair, but it is not listed at all in the New York-Boston pooling application. In other words, even if new pooling routes could be created by somehow linking two separate pooling agreements through a common point (and Megabus can find no precedent or legal basis for doing so), Newark is not such a common point. Thus, the "A to C via B" theory offered in the Joint Response is not only legally flawed, but has no factual basis here.

---

[4] *Id.*

[5] *Peter Pan Bus Lines, Inc.—Pooling—Greyhound Lines, Inc.*, STB Docket No. MC-F-20908 (served March 24, 2010) at 2.

Greyhound and Peter Pan also argue that the validity of the Philadelphia-Boston service is self-evident from the Board's decision issued in these dockets served April 20, 2011.[6] However, that decision does not support Greyhound's and Peter Pan's position here, but rather supports Megabus. In that decision, the Board held, *inter alia*, that a new pooling application is necessary when pooled service "would involve a new route or geographic territory."[7] In the present case, Greyhound and Peter Pan are extending service to a new Philadelphia-Boston route not covered by existing agreements. The pooling agreement covering service between New York and Boston states, "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 Boston, Massachusetts, and New York, New York, and between Springfield, Massachusetts, and New York, New York."[8] Similarly, the pooling agreement covering service between Philadelphia and New York states, "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 Philadelphia, Pennsylvania, and New York, New York..."[9]

Thus, nothing in these agreements contemplates service between Philadelphia and Boston. In fact, in their pooling applications, Greyhound and Peter Pan offered no evidence of the need for pooling on that route, much less evidence that they were even operating that route at

---

[6] *Peter Pan Bus Lines, Inc.—Pooling—Greyhound Lines, Inc.*, MC-F-20904, MC-F-20908, and MC-F-20912 (served April 20, 2011).

[7] *Id.* At 4-5. The Board also refused to reopen its decisions allowing GLI and Peter Pan to engage in pooling on New York-Philadelphia, New York-Washington and New York-Boston/Springfield routes. However, the very different issue here is whether those carriers have exceeded the scope of their approved pooling agreements.

[8] *Application of Peter Pan Bus Lines, Inc. & Greyhound Lines, Inc.*, STB Docket No. MC-F-20912 (Sept. 19, 1997) at 2.

[9] *Application of Peter Pan Bus Lines. Inc. & Greyhound Lines, Inc.*, STB Docket No. MC-F-20904 (Jan. 24, 1997) at 2.

the time that they submitted those applications. Nor did they offer any evidence as to how such pooling would impact competition on a Philadelphia-Boston route. How then can they now be allowed to operate pooled service on that route without first demonstrating that pooling is justified on that route? Pooling, and the antitrust immunity that attaches to approved agreements, is an extraordinary right and benefit.[10] Megabus submits that carriers that hold pooling rights should not be allowed to unilaterally expand the scope of the pooling without first seeking Board approval. Indeed, if GLI and Peter Pan can "combine" two separate pooling authorizations to create a new pooling route, then other carriers holding pooling rights will no doubt look to do the same. The Board will be relegated to virtual bystander status.

Greyhound and Peter Pan suggest that the so-called Fourth Amendment to their pooling agreements authorizes pooled BoltBus service between Philadelphia and Boston because it refers to the authorized routes in the pooling agreements collectively as the "Pooled Routes."[11] However, this reference simply establishes that pooled BoltBus service may be offered on any of the specific individual city-pair routes provided for in the approved pooling agreements. The Fourth Amendment says nothing about creating new routes not contemplated by the original agreements by mixing and matching cities listed in the different pooling agreements submitted at

---

[10] *See, e.g.*, *Andrews Van Lines, Inc. Fogarty Transportation Inc., Mercury Van Lines, Inc., and Security Van Lines, Inc.—Pooling Application*, 1986 MCC LEXIS 392 at *4-5 (served May 16, 1986) ("[I]nasmuch as pooling may result in reducing or eliminating competition, it raises antitrust concerns... It is well settled that exemptions from the antitrust laws... should be narrowly construed."); *Trailer Train Company, et al.—Pooling of Car Service with Respect to Flatcars*, 5 I.C.C. 552, 560 (served June 14, 1989) ("[W]hen we assess a proposal that will, if approved, sanction conduct by the parties that will be free from the constraints of the antitrust laws, we closely assess the proposal and its potential service and efficiency benefits. We are inclined to approve only the narrowest proposal that is consistent both with achievement of those benefits and compliance with the statute.") (internal citations omitted); *Western Railroads Agreement*, 358 I.C.C. 2d 662, 668 (served July 19, 1978) ("In light of the express intent of the courts and this Commission to construe exemptions from the antitrust laws as narrowly as possible, applicants must affirmatively demonstrate that antitrust immunity is necessary to the full extent sought.").

[11] Joint Response at 5.

different times. In short, Greyhound and Peter Pan can no more offer pooled service directly between Philadelphia and Boston than they can between Philadelphia and Washington, DC.

With respect to the Newark-Philadelphia and Newark-Boston routes, Greyhound and Peter Pan argue that they are authorized to provide pooled service because Newark is listed as an intermediate point under the Philadelphia-New York pooling agreement.[12] As explained more fully in Megabus's March 30, 2011 *Reply to the Opposition of Greyhound and Peter Pan to the Petition of Megabus for a Show Cause Order* and its March 22, 2011 *Petition For a Show Cause Order With Respect to Unauthorized Pooling*, Megabus contends that the listing of a city as an intermediate point in a pooling agreement only permits that city to be served *as an intermediate point* on a route between approved origination and termination points.[13] Thus, the fact that Newark is listed as an intermediate point under the Philadelphia-New York pooling agreement does not permit Greyhound and Peter Pan to originate or terminate pooled Philadelphia-Newark service in Newark. Further, Greyhound and Peter Pan do not explain how the listing of Newark as an intermediate point under the Philadelphia-New York agreement authorizes them to provide pooled service between Newark and Boston. There is no Board-approved pooling agreement under which Newark is an intermediate point between Boston and some other point. Greyhound's and Peter Pan's theory therefore must be that they can provide pooled service from any point listed in one approved pooling agreement to any point listed in any other approved pooling agreement. However, if that were the case, they would be permitted to provide pooled

---

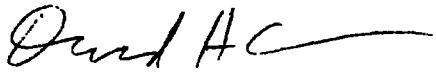
[12] *Id.* at 6.

[13] A March 30, 2011 Motion by Megabus to submit the referenced Reply remains pending.

service between Philadelphia and Washington, which the Board has expressly prohibited unless they file a new application.[14]

For the reasons above and those provided in Megabus's June 16, 2011 submissions, Megabus requests that the Board promptly (1) grant Megabus's March 22, 2011 *Petition for Show Cause Order*; (2) expand the scope of the requested order to include the new Newark-Philadelphia and Newark-Boston routes; and (3) require Greyhound and Peter Pan to obtain approval of a pooling application covering Philadelphia-Boston service before continuing such service. Further, the Board should act expeditiously on these matters because the pooled services at issue are already being conducted. Ordering a cessation to such pooled service will not adversely affect the public; GLI and Peter Pan will be free to offer their own, non-pooled services on these routes.

Respectfully submitted,



David H. Coburn
Christopher G. Falcone
STEPTOE & JOHNSON LLP
1330 Connecticut Ave., NW
Washington, DC 20036
(202) 429-8063
dcoburn@steptoe.com

Attorneys for Coach USA, Inc. and
Megabus Northeast, LLC

July 1, 2011

[14] *Peter Pan Bus Lines, Inc.—Pooling—Greyhound Lines, Inc.*, STB Docket No. MC-F-20908 (March 24, 2010).

## CERTIFICATE OF SERVICE

I hereby certify that I have this 1st day of July 2011 served a copy of the foregoing Reply on counsel for Greyhound Lines, Inc. and Peter Pan Bus Lines, Inc. as follows:

Timothy W. Wiseman
Scopelitis, Garvin, Light, Hanson & Feary
10 West Market Street
Suite 1500
Indianapolis, IN 46204

Jeremy Kahn
4729 East Sunrise Drive, PMB 432
Tucson, AZ 85718-4535

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

David H. Coburn