

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33393

COACH USA, INC.--CONTROL EXEMPTION--
AMERICA CHARTERS, LTD.

Decided: September 23, 1997

Coach USA, Inc. (Coach), a noncarrier, filed a petition on April 24, 1997, under 49 U.S.C. 13541, for an exemption from the prior approval requirements of 49 U.S.C. 14303(a)(5), to acquire control of America Charters, Ltd. (America Charters), a motor passenger carrier. Coach currently controls the nation's second largest group of motor passenger carriers, having acquired 10 carriers in May 1996,¹ 5 carriers in November 1996,² and 12 carriers in May 1997.³ In addition, Coach has two other pending petitions in which it seeks to control four more carriers.⁴

Notice of the exemption petition was served and published in the Federal Register on May 23, 1997 (62 FR 28531). A copy of the notice was also served on the Antitrust Division of the U.S. Department of Justice. No comments have been filed in response to the notice. Based on our review of the record, we will grant the exemption.

BACKGROUND

Coach seeks to acquire control of America Charters, a North Carolina corporation, through purchase of the carrier's stock that had been owned by Anne W. Efird, Tom D. Efird, John Gibson, Pat H. Gibson, A. Grayson Kellar, Doris H. Kellar, and William R. Rhyne, Jr., prior to the transfer of the stock into a voting trust.⁵ American Charters conducts charter and tour operations throughout the United States, primarily in North Carolina and the East. It also holds

¹ See Notre Capital Ventures II, LLC and Coach USA, Inc.--Control Exemption--Arrow Stage Lines, Inc.; Cape Transit Corp.; Community Coach, Inc.; Community Transit Lines, Inc.; Grosvenor Bus Lines, Inc.; H.A.M.L. Corp.; Leisure Time Tours; Suburban Management Corp.; Suburban Trails, Inc.; and Suburban Transit Corp., STB Finance Docket No. 32876 (Sub-No. 1) (STB served May 3, 1996).

² See Coach USA, Inc.--Control Exemption--American Sightseeing Tours, Inc.; California Charters, Inc.; Texas Bus Lines, Inc.; Gulf Coast Transportation, Inc.; and K-T Contract Services, Inc., STB Finance Docket No. 33073 (STB served Nov. 8, 1996).

³ See Coach USA, Inc.--Control Exemption--Progressive Transportation Services, Inc.; Powder River Transportation Services, Inc.; Worthen Van Service, Inc.; and PCSTC, Inc., STB Finance Docket No. 33343 (STB served May 15, 1997); and Coach USA, Inc.--Control Exemption--Airport Bus of Bakersfield; Antelope Valley Bus, Inc.; Desert Stage Lines, Inc.; Bayou City Coaches, Inc.; Kerrville Bus Company, Inc.; Red & Tan Charter, Inc.; Red & Tan Tours, Inc.; and Rockland Coaches, Inc., STB Finance Docket No. 33377 (STB served May 15, 1977).

⁴ Coach seeks to control three carriers in Coach USA, Inc. and Leisure Time Tours--Control and Merger Exemption--Van Nortwick Bros., Inc., The Arrow Line, Inc., and Trentway--Wagar, Inc., STB Finance Docket No. 33428 (STB served Aug. 12, 1997) and one carrier in Coach USA, Inc. and K-T Contract Services, Inc.--Control and Merger Exemption--Gray Line Tours of Southern Nevada, STB Finance Docket No. 33431 (STB served Aug. 22, 1997).

⁵ The stock of America Charters was placed in an independent voting trust to avoid any unlawful control by Coach pending a decision in this proceeding.

North Carolina intrastate authority. America Charters has 65 employees, operates 26 buses, and earned revenues of approximately \$3.3 million in 1996.

Coach submits that granting the petition will not significantly reduce competitive options available to the traveling public because America Charters does not compete with any of the bus companies that Coach controls or seeks to control and there is competition from other bus companies and modes of transportation. According to Coach, no fundamental changes are currently planned in the nature or scope of the operations provided by America Charters or in the management personnel of the company. America Charters will continue to operate under its own name pursuant to its existing federal and state operating authorizations, and no certificates or other operating permits will be transferred from one entity to another.

Coach also submits that granting the petition will achieve substantial benefits, including interest cost savings resulting from the restructuring of debt and reduced operating costs resulting from Coach's enhanced volume purchasing power.⁶ Coach states that it will provide America Charters with legal and accounting functions and coordinated purchasing services. In addition, Coach states that it will facilitate vehicle sharing arrangements to ensure maximum use and efficient operation of equipment. Coach indicates that it intends to provide coordinated driver training services to enable America Charters to allocate driver resources in the most efficient manner possible. Finally, Coach submits that all collective bargaining agreements will be honored and that employee benefits will improve as a result of the transaction.

Coach projects the annual efficiency savings generated by the proposed acquisition of control of America Charters to be \$125,000, representing primarily interest, insurance, and vehicle equipment cost savings. Over the long term, Coach states that it will provide centralized marketing and reservation services for the bus firms that it controls, thereby further enhancing the benefits resulting from the transaction.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 14303(a)(5), a noncarrier that controls any number of carriers may not acquire control over another carrier without our approval. However, under 49 U.S.C. 13541(a), 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) either (a) regulation is not needed to protect shippers from the abuse of market power, or (b) the transaction or service is of limited scope; and (3) exemption is in the public interest.

Transportation Policy. Detailed scrutiny of the transaction under 49 U.S.C. 14303 is not necessary to ensure the development, coordination, and preservation of a sound transportation system consistent with the policy contained in 49 U.S.C. 13101(a)(1). Exempting this transaction will permit Coach to coordinate America Charters' planning, safety, and other functions with those of its other carrier subsidiaries, allowing it to rationalize and use resources productively, thus promoting safe, adequate, economical and efficient transportation and encouraging sound economic conditions [49 U.S.C. 13101(a)(1)(B) and (C)].

Similarly, detailed scrutiny under 49 U.S.C. 14303 is not necessary to promote competitive and efficient transportation services consistent with the policy in 49 U.S.C. 13101(a)(2). By facilitating the development of a bus system with coordinated marketing and reservation service, the exemption will promote efficiency in the motor passenger carrier industry, responsive to the needs of passengers and consumers [49 U.S.C. 13101(a)(2)(B) and (C)]. The exemption will also strengthen the financial status of America Charters, which will permit continued service to small communities and enhanced commuter bus operations [49 U.S.C. 13101(a)(2)(G) and (H)]. In addition, the exemption will improve America Charters' financial and managerial ability to compete in its market, thus improving and maintaining a sound, safe, and competitive privately owned motor carrier system [49 U.S.C. 13101(a)(2)(I)]. By facilitating vehicle sharing arrangements and other

⁶ According to Coach, America Charters will benefit from the lower insurance premiums negotiated by Coach and from volume discounts for equipment and fuel.

efficiencies, the exemption will also allow the most productive use of equipment and energy resources, enhancing intermodal competition with rail passenger carriers and private automobiles [49 U.S.C. 13101(a)(2)(E) and (K)].

Finally, the transportation policy in 49 U.S.C. 13101(a)(3) for motor passenger carriers requires cooperation with the states to ensure that state regulation does not undermine federal policy objectives. Because this proceeding does not implicate state regulatory initiatives, detailed scrutiny under 49 U.S.C. 14303 is not necessary for consistency with the intrastate aspects of the policy in 49 U.S.C. 13101(a)(3).

Based on the above considerations, and the absence of any opposition, we find that regulation of the proposed transaction is not necessary to carry out the goals of the transportation policy of 49 U.S.C. 13101.

Abuse of Market Power. Regulation is not necessary to protect shippers from the abuse of market power. The petition for exemption is unopposed. The proposed transaction will have no adverse impact on competition. America Charters does not compete against any existing company controlled by Coach. Moreover, America Charters faces significant competition from numerous other bus firms not controlled by Coach that provide charter and other services in America Charters' primary operating territory, as well as from private automobiles and other transportation providers. The efficiencies that will result from this transaction will permit America Charters to become a more responsible and effective competitor. Thus, the proposed acquisition will have no adverse impact on the competitiveness of passenger transportation in the market(s) in which America Charters provides services.

Further, America Charters holds a very small market share (approximately \$3.3 million in recent annual revenues) of the transportation services available to its potential passengers. Moreover, the industry's low entry barriers and pervasive intermodal competition effectively foreclose any opportunity for abuse of market power.

Given our finding regarding the probable effect of the transaction on market power, we need not determine whether the transaction is limited in scope. Nevertheless, we note that the market share of America Charters is relatively small. Following the acquisition of control, America Charters will continue to operate in its respective market(s) in the same manner as before, but with changed ownership.

Public Interest. Exempting this transaction from regulation is consistent with the public interest. Subjecting the proposed transaction to detailed scrutiny would serve no meaningful public policy or regulatory purpose and would be wasteful of both our resources and those of Coach, America Charters, and the public. On the other hand, an exemption will have multiple benefits, relating to adequate transportation services, efficient and economic operations, and employees, and will not give rise to market abuse or problems that might warrant regulatory scrutiny. Accordingly, we will grant the requested exemption.

Coach has requested that the exemption be made effective immediately so that the parties and the traveling public may realize sooner the substantial benefits of the acquisition. Because the exemption was not opposed, we will make the exemption effective on the service date of this decision.

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, the acquisition by Coach USA, Inc., of control of America Charters, Ltd., is exempted from the prior approval requirements of 49 U.S.C. 14303(a)(5).
2. This exemption is effective on its service date.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary