

SURFACE TRANSPORTATION BOARD

DECISION

STB DOCKET NO. MC-F-17950

MAYFLOWER TRANSIT, LLC—POOLING AGREEMENT

Decided: December 2, 2009

Mayflower Transit, LLC (Mayflower), on behalf of itself and certain affiliated companies, filed an application with the Board under 49 U.S.C. 14302 and 49 CFR part 1184 for approval of a revised pooling agreement.<sup>1</sup> Mayflower is a motor carrier engaged in the interstate transportation of household goods (HHG). In this decision, we approve the revised pooling agreement.

BACKGROUND

Mayflower is a large HHG carrier with a national presence. Its affiliated companies consist of: (1) agents of Mayflower that also hold their own motor carrier registrations (carrier agents);<sup>2</sup> and (2) wholly owned and controlled subsidiary motor carriers of Mayflower that participate, subject to Mayflower policies, in shipments exclusively for the government, including for the Department of Defense.<sup>3</sup> We will refer to Mayflower, the participating carrier agents, and the subsidiaries, collectively, as the pooling parties.

Under the current agreement, carrier agents may transport interstate HHG shipments under their own authority for relatively short movements (up to 150 or 450 miles, depending on which of two options the carrier agent has selected). For lengthier shipments, the carrier agents must book and transport the shipment under Mayflower's motor carrier authority. Mayflower states that it has provided financial incentives such that in 2007 its carrier agents handled less than 5% of agent-generated moves under their own authorities, instead booking most of their interstate traffic to Mayflower's authority.

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<sup>1</sup> Section 14302(a) prohibits a motor carrier from agreeing to combine with another motor carrier to pool or divide traffic, services, or revenue without Board approval.

<sup>2</sup> Motor carriers register with the Federal Motor Carrier Safety Administration (FMCSA) of the U.S. Department of Transportation (DOT) for authority to transport goods in interstate commerce. See 49 U.S.C. 13901 et seq.

<sup>3</sup> Mayflower attached to its application a list of its then-participating carrier agents and subsidiaries.

*Proposed Revised Pooling Agreement.* Mayflower has proposed a revision to its pooling agreement that would prevent a carrier agent from transporting under its own registration any interstate HHG shipments except, subject to Mayflower policies, shipments for the government. Instead, carrier agents would have to transport all non-government interstate shipments under Mayflower's authority. Mayflower states that this revision would reduce consumer confusion as to the entity responsible for a particular HHG shipment.<sup>4</sup>

Another modification would remove from the existing pooling agreement: (1) the provisions pertaining to distribution of revenue to carrier agents, equipment leasing, and the form of the agency agreement; and (2) restrictions against carrier agents (a) possessing broker authority and (b) maintaining and filing their own independent tariffs. Mayflower states that it will have more flexibility if the detailed provisions become contractual matters that can be renegotiated from time to time with carrier agents, rather than requiring Board approval for any changes. In addition, Mayflower reports that the provision against carrier agents maintaining individual tariffs is outdated because the uniform tariff that formerly was used by most HHG carriers has been discontinued, due to the Board's withdrawal of approval for collective ratemaking.<sup>5</sup> Consequently, all HHG carriers maintain their own tariffs.<sup>6</sup>

A final modification would permit the pooling parties to add or remove carrier agents from the agreement by a written notice to the Board. Mayflower states that, taken together, these proposed revisions would make its system more efficient and therefore more competitive with other national HHG motor carrier systems.

*Earlier Board Order.* Citing the statutory provision that authorizes the Board to approve a pooling agreement if the carriers involved assent to the pooling, the Board served and published (74 FR 23237-38) a decision in this proceeding on May 18, 2009, directing Mayflower to provide a copy of the order to each of its carrier agents and to file a list of the carrier agents that assent to the revised pooling agreement.<sup>7</sup> The Board also afforded the public the opportunity

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<sup>4</sup> According to Mayflower, currently a carrier agent may handle a shipment that it is transporting under its own authority in equipment bearing the name, distinctive colors, trademark, and DOT registration number of Mayflower. Mayflower believes this might lead consumers to conclude incorrectly that Mayflower is responsible for a shipment for which it does not have any responsibility.

<sup>5</sup> See Motor Carrier Bureaus—Periodic Review Proceeding, STB Ex Parte No. 656, et al. (STB served May 7 and May 16, 2007) (disapproving all motor carrier rate bureau agreements).

<sup>6</sup> Under 49 U.S.C. 13702(a), motor carriers must maintain tariffs for the movement of HHG.

<sup>7</sup> In the decision, the Board also granted Mayflower's request for a waiver of the provision in 49 CFR 1184.2 requiring the applicant to furnish a copy of the operating authorities of all of the pooling participants. Instead, the Board accepted the listing of the pooling parties'

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to comment on the revised pooling agreement. Mayflower furnished proof that it served a copy of the decision on its carrier agents and provided a revised list of those pooling participants that wish to participate in the revised pooling arrangement. The Board received no comments concerning the application.

## DISCUSSION AND CONCLUSIONS

*Statutory Criteria for HHG Motor Carrier Pooling Agreements.* Under 49 U.S.C. 14302(a), motor carriers providing transportation subject to the Board's jurisdiction may not pool or divide traffic or services or any part of their earnings without the approval of the Board. Congress established special rules for the Board to apply when considering whether to approve pooling agreements between HHG motor carriers. Section 14302(c)(4) directs the Board to presume that HHG pooling agreements (1) are in the interest of better service to the public and of economy of operation, and (2) do not restrain competition unduly, if the practices proposed to be carried out under the agreement are the same as or similar to practices carried out under HHG pooling agreements approved by the Interstate Commerce Commission (ICC) prior to January 1, 1996, the effective date of section 14302.

*Changes in Mayflower's Revised Pooling Agreement.* The major change in Mayflower's revised pooling agreement requires carrier agents to book all non-government interstate moves under Mayflower's registration. This provision is similar to other practices, approved by the ICC and the Board, that limit the ability of carrier agents to compete with their core carrier to transport HHG. For example, in 1983, the ICC approved the pooling agreement of Atlas Van Lines, Inc., under which the participating carrier agents were not permitted to possess their own operating authority except to transport HHG for the government (including the military).<sup>8</sup> Both the ICC and the Board have found that the public would be better served by improving the core carrier's ability to compete with its non-agent competitors than by increasing the level of competition within the core carrier's system.<sup>9</sup>

Likewise, the proposed revision permitting a written notice to the Board to effect the addition or removal of carrier agents to and from the pooling agreement is sufficiently similar to

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registration numbers as sufficient evidence and explained that motor carrier registrations are available on the FMCSA website.

<sup>8</sup> Atlas Van Lines, Inc., et al.—Pooling Application, Docket No. MC-F-15004, slip op. at 2-3, 9 (ICC served July 21, 1983); see also Atlas Van Lines, Inc., et al.—Pooling Agreement, STB Docket No. MC-F-21010 (STB served Feb. 23, 2005) (Atlas 2005) (approving a similar revision allowing carrier agents to possess broad operating authority but precluding them from using their own authorities except for military traffic).

<sup>9</sup> See, e.g., Atlas 2005; United Van Lines, Inc.—Pooling Application, Docket No. MC-F-4901 et al. (ICC served June 5, 1984).

a practice approved by the ICC in Wheaton Van Lines, Inc.—Pooling Agreement Application, Docket No. MC-F-19309 (ICC served Jan. 10, 1989). Under Mayflower’s proposed revision, the written notice will include: the identity of the new participants; agency status; a copy, or other evidence, of the carrier agent’s HHG operating authority; and indicia of the carrier agent’s necessary corporate approval for entry into the pool.

The remaining revisions proposed by the pooling parties either eliminate outdated provisions or remove from the pooling agreement specific details about the distribution of revenue to carrier agents, equipment leasing, and the form of the agency agreement. According to the pooling parties, none of the pooling agreements that have been the subject of Board decisions have contained as high a degree of detail on the subjects that the pooling parties now seek to remove from their agreement.

The proposed revised pooling agreement is sufficiently similar to prior HHG pooling agreements to presumptively satisfy the requirements of section 14302. Accordingly, the Board may approve it without further process.

Finally, we retain jurisdiction to require submission of additional information should we find it necessary in the future. If we find at any time that the transaction has become an anticompetitive one, we retain the power to suspend operation of the pool during the pendency of a public hearing concerning the criteria set forth in 49 U.S.C. 14302 and to impose such terms and conditions, if any, as are just and reasonable.

We find:

The proposed modifications are in the interest of better service to the public and of economy in operation and do not restrain competition unduly and must therefore be approved. This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The application of the pooling parties to modify their pooling agreement as set forth in the petition is approved and authorized.
2. This decision is effective on its service date.

By the Board, Chairman Elliot, Vice Chairman Nottingham, and Commissioner Mulvey.

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COMMISSIONER MULVEY, commenting:

I vote today to approve the revised pooling agreement at issue in this proceeding, but note that I do so only because none of Mayflower's carrier agents opposed it, and because 49 U.S.C. 14302(c)(4) constrains the agency's discretion in reviewing pooling agreements of HHG carriers. While the revised pooling agreement here appears to raise certain competitive issues for the carrier agents involved, section 14302(c)(4) directs us to presume that such agreements are in the public interest, under the agency's prior pooling decisions.