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SERVICE DATE – MAY 11, 2012

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. MCF 20904

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

Docket No. MCF 20908

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

Docket No. MCF 20912

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

Digest:¹ This case involves a dispute between competing bus companies that operate in the Northeast. In 1997-98, the Board gave its approval for Peter Pan and Greyhound to pool bus operations between New York City, N.Y., and Washington, D.C.; Philadelphia, Pa.; Boston, Mass.; and Springfield, Mass., with intermediate stops authorized. Now these two companies want to offer direct service between Newark, N.J., on the one hand, and Baltimore, Washington, Philadelphia, and Boston, on the other, and also between Philadelphia and Boston. Coach USA, which offers competing bus services, objects. The Board finds that these services are permitted because they are more efficient ways of providing already-authorized services in a market where we recently found, in a contested proceeding, that bus competition is flourishing.

Decided: May 10, 2012

BACKGROUND

Under 49 U.S.C. § 14302, Board approval is required before bus companies offering passenger transportation between cities may pool their services. This case, with a long and protracted history, stems from this agency's approval more than a decade ago of such a pooling arrangement between two intercity bus companies operating in the Northeast.

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

In 1997, Peter Pan Bus Lines, Inc. (Peter Pan) and Greyhound Lines, Inc. (Greyhound) (collectively, the Pooling Parties) filed three applications to pool their operations in the Northeast. First, in Docket No. MCF 20904, they sought permission to pool operations between New York City (NYC) and Philadelphia, with a stop in Newark. Second, in Docket No. MCF 20908, they sought permission to pool operations between NYC and Washington, D.C., with stops in Newark and Baltimore. Finally, in Docket No. MCF 20912, they sought permission to pool operations between NYC and Boston and between NYC and Springfield, Mass. The corresponding pooling agreements (the Agreements) defined the shared services as encompassing sets of overlapping routes, one set served by Peter Pan and the other by Greyhound.² The Agreements stated that the Pooling Parties would share their revenue from ticket sales for transporting passengers in intercity bus service over all or any portion of the pooled routes.

In 1997, the Pooling Parties offered substantial evidence to justify the pooling of their operations between these destination cities. They acknowledged that they were competitors, but demonstrated that their overlapping services caused low passenger loads on buses and drained their resources. They further argued that, if pooling were approved, they could reduce excess capacity on buses, eliminate unnecessary duplication of facilities and staff, and make capital improvements to provide better service.

After reviewing the records in those proceedings, the Board approved each application. The agency concluded that the pooling arrangements should improve bus service by permitting the Pooling Parties to load buses more fully, reduce excess capacity, provide better customer service, and achieve better financial stability. The Board concluded, as required under 49 U.S.C. § 14302(b), that, for each application, the sharing arrangements would foster improved service to the public and economy of operation and would not unreasonably restrain competition.³ No party sought administrative reconsideration or judicial review.

The Pooling Parties operated without controversy for a decade. Then, in 2008, they unveiled the “BoltBus,” a new curbside passenger pick-up and drop-off service. Before BoltBus, the Pooling Parties had served passengers only at terminals or bus stations. Coach USA, Inc. (Coach), which offers a competing curbside service through its subsidiary Megabus Northeast, LLC (Megabus), objected to the BoltBus service.⁴ Coach asked the Board to reopen the

² Each of the Agreements was appended to its respective application.

³ See Peter Pan Bus Lines, Inc.—Pooling—Greyhound Lines, Inc., MCF 20904, slip op. at 2 (STB served June 30, 1997); Peter Pan Bus Lines, Inc.—Pooling—Greyhound Lines, Inc., MCF 20912, slip op. at 2-3 (STB served Feb. 12, 1998); Peter Pan Bus Lines, Inc.—Pooling—Greyhound Lines, Inc., MCF 20908, slip op. at 5-6 (STB served Apr. 29, 1998).

⁴ In this decision, “Coach” refers collectively to Megabus and Coach.

proceeding in which the pooling was first authorized and to order Peter Pan and Greyhound to stop providing this competing curbside service. Coach argued that the BoltBus service fell outside the scope of the 1997 authorization and thus could not be offered unless authorized by the Board following a new application.

The Board rejected Coach's attempt to block the BoltBus service. In Peter Pan Bus Lines, Inc.—Pooling—Greyhound Lines, Inc. (April 2011 Decision), MCF 20904, et al. (STB served Apr. 20, 2011), the Board held that the curbside service did not require a new application because it did not expand the Pooling Parties' shared service on a new route or into a new geographic territory.⁵ The Board also rejected Coach's suggestion that the original authorizations should be revisited given the now-heightened competition on the routes operated by BoltBus. In the April 2011 Decision, the Board agreed with Coach that bus services and ridership on these routes had greatly increased through many new entrants and that competition had increased since the earlier pooling authorizations.⁶ But it did not agree with Coach's proposed response to the more competitive climate: a tightening of existing pooling authorizations. Rather, the Board found that requiring pooling parties to defend their authorizations whenever competitive conditions improved "would not . . . be a productive way for us to exercise our licensing authority."⁷ Accordingly, the Board held that the improved conditions for the traveling public did not warrant reconsidering the original authorizations of pooling.⁸ No party sought administrative reconsideration or judicial review of the April 2011 Decision.

In March 2011, the Pooling Parties announced new services, notifying the public that they would soon establish a hub in Newark, providing daily buses from Newark to Baltimore and Washington (and the reverse), with curbside pickup and drop off. On June 16, 2011, Coach notified the Board that the Pooling Parties were also about to offer pooled service between Newark and Boston, and between Newark and Philadelphia. Also on June 16, 2011, Coach filed a separate letter questioning the Pooling Parties' authority to provide direct service between Philadelphia and Boston.

Coach challenges these new pooled services as exceeding the scope of our prior approval and thus unlawful. For example, Coach maintains that, while the Pooling Parties have permission to pool their operations between Boston and NYC, and between NYC and Philadelphia, this does not mean they have permission to offer direct bus service between Boston and Philadelphia. In addition, even though Newark was referenced in the original pooling

⁵ April 2011 Decision, slip op. at 4-5.

⁶ Id., slip op. at 5-6.

⁷ Id., slip op. 6.

⁸ Id. at 6-7.

agreement as a stop and is just a few miles outside of NYC, Coach argues that it may not substitute for NYC as an origin or destination point on any of the previously authorized routes. Coach, in essence, asks the Board to order the Pooling Parties to stop providing these new direct services until they have obtained additional approval for them. No consumer group or antitrust authority has raised any objections to the way in which the Pooling Parties are providing service under their existing pooling authority.

The Pooling Parties replied in opposition to all of Coach's 2011 filings. They maintain that these new services are within the scope of the 1997-98 authorization. In response, Coach asks leave to file tendered replies to the Pooling Parties' replies. The Pooling Parties argue that leave to file should be denied.⁹

DISCUSSION AND CONCLUSIONS

The central issue in this case is whether the services now offered by the Pooling Parties fall within the scope of the earlier approvals. In 1997, the business model proposed by the Pooling Parties was a hub-and-spoke network. The hub was NYC. The spokes were Boston, Springfield, Philadelphia, and Washington, with intermediate stops authorized, including those at Newark and Baltimore. Over time, the business model evolved as the market changed. Curbside service became more attractive and desired, and Peter Pan and Greyhound established the BoltBus in response. The Pooling Parties have moved away from the hub-and-spoke model, whereby all buses enter and leave NYC, so that they can also offer direct bus service to and from city pairs within the approved hub-and-spoke network.

We find that the new direct services by the Pooling Parties do not present a competitive problem and are within the scope of our prior approval authorizing the Agreements. The risk of anticompetitive harm to the intercity bus market is minimal. We have scrutinized the market at issue here and found that competition has been flourishing. Indeed, in 2011, the Board found that, since authorizing the Agreements, the number of bus companies providing intercity services in the Northeast has grown significantly, equipment has improved, bus fares have decreased, and competition has steadily expanded.¹⁰ This examination convinces us that sharing services and revenue on buses starting or ending in Newark (and other intermediate points) would not lead to anticompetitive action by the Pooling Parties, because there are so many other bus companies providing service in the region.

⁹ A Board rule, 49 C.F.R. § 1104.13(c), precludes the filing of a reply to a reply (surreply). In light of our disposition of Coach's current requests, accepting the tendered surreplies will neither prejudice any party nor prolong our reaching a decision. For these reasons, we will grant the request for leave to file the surreplies and accept the tendered surreplies into the record.

¹⁰ April 2011 Decision at 6.

Such a finding is consistent with the National Transportation Policy described in 49 U.S.C. § 13101. It is the policy of the United States Government to promote competitive and efficient transportation service. This policy objective would not be advanced by our placing regulatory barriers to innovation. It would be illogical to permit Peter Pan and Greyhound to pool bus operations between Boston and Philadelphia, but only if the buses stop, even for a moment, in NYC, because their other buses can carry passengers from Boston to NYC and from NYC to Philadelphia. Allowing the Pooling Parties to provide direct service between the previously approved cities encourages innovative, competitive, and efficient transportation services. This should benefit consumers, and, while Coach has objected that this may be at its expense, it is not our role to protect Coach from the introduction of a more efficient service that will plainly benefit the public.

The history of how tightly our predecessor (the Interstate Commerce Commission (ICC)) regulated motor carrier licensing offers yet more weight in favor of our interpretation of the scope of our approval. In regulating motor carriers of freight, the ICC permitted motor carriers to “tack” their operating authorities. Tacking was the practice of combining two separate authorities through a common point in order to provide a through service. See United States v. J.B. Montgomery, Inc., 376 U.S. 389, 393 (1964). By tacking, a motor carrier could combine two separate authorities through a common point (“gateway”) in order to provide a through service – but only if they operated through that gateway or met the standard for removing the gateway. Squaw Transit Co. v. ICC, 574 F.2d 492 n.1 (5th Cir. 1978). Requiring the common gateway point, however, often restricted carriers from using more direct, efficient routes. Sometimes, carriers were also limited in their ability to serve intermediate points between the cities for which their services were authorized (e.g., they could serve between NYC and Washington, D.C., but they could not serve Newark).

Congress set aside the burdensome tacking limitations created by the ICC. In the Motor Carrier Act of 1980, Pub. L. No. 96-296, 94 Stat. 793 (1980) (MCA), Congress adopted a relaxed licensing policy for new licenses through the enactment of former 49 U.S.C. § 10922(b). In addition, to promote the new National Transportation Policy objective of improving efficiency, § 6 of the MCA directed the removal of operating restrictions from existing certificates. See 49 U.S.C. § 10922 (h)(1)(A) (1981) (ICC directed to remove gateway and circuitous route limitations), § 10922 (h)(1)(B)(ii) (1981) (ICC directed to remove intermediate-point service restrictions); see H.R. Rep. No. 96-1069, 96th Cong., 2d Sess. 12-18 (1980).

Coach argues that we should require a new application here because antitrust immunity flows from our approval of pooling arrangements. We agree with Coach that it is well settled

agency policy that exemptions from the antitrust laws be narrowly construed.¹¹ But that does not mean that we must require a new administrative proceeding, at the behest of a competitor, to examine a more efficient service that falls within a prior approval. Moreover, Coach's unduly narrow interpretation of our approval leads to absurd results. Under its interpretation, it would be impermissible for a BoltBus starting in Washington and destined for NYC to terminate the bus in Newark, even if every passenger had exited the bus prior to, or at, the Newark stop. Thus, even when it makes economic sense to start or end buses at Newark because there are sufficient patrons to make that service profitable, the Pooling Parties must start or end the buses in NYC, or be required to engage in a full, new administrative proceeding before this Board. We do not believe that this is required by our statute or precedent.

We find that the Pooling Parties may provide the challenged bus service. Having approved the extensive hub-and-spoke network in the Northeast in 1997-98, it would be unreasonable and unnecessarily burdensome to require the applicants to go through the approval process all over again, simply to provide more efficient services directly from cities within the already approved hub-and-spoke network. This is not the kind of "new route or geographic territory" that we have elsewhere stated would require a new application.¹² We will, in effect, permit broad modern "tacking," absent the need to use the "gateway" here, because we are convinced that the number of existing competitive transportation alternatives and the ease of new entry (as shown by the many recent entrants) to the intercity bus market in the Northeast precludes the Pooling Parties from engaging in anticompetitive behavior, such as collectively raising rates to supra-competitive levels. If the Pooling Parties took such actions, we believe that the traveling public would take their business to the numerous other competitors that have entered this market, and, of course, parties would have further recourse to this agency, should the policies of the statutory scheme be demonstrably violated, as discussed below. Having twice considered the competitive effect of pooling of bus services in this region, we find that, under the existing Agreements, the Pooling Parties may offer through service by tacking and without filing a new pooling application.

Under this approach, the Pooling Parties may provide joint bus service directly between any of the cities, including any intermediate points, identified in the prior, Board-approved applications. A party may ask that we reopen and revoke or narrow our approval if there are some unusual marketplace factors between particular cities within the approved hub-and-spoke

¹¹ Andrews Van Lines, Inc.—Pooling Application, MCF 15793 (ICC decided May 16, 1986) (in dicta, stating that, if statute could be read to give ICC discretion to authorize pooling by motor contract carriers, the ICC would apply principle of narrow construction of exemptions from antitrust laws and decline to authorize it). In Trailer Train Co.—Pooling of Car Services with Respect to Flatcars, 5 I.C.C. 2d 552, 560 (1989), the ICC favored a narrow interpretation of a pooling agreement for providing rail cars because the joint activity might "lessen competition."

¹² April 2011 Decision 4-5.

network, such that permitting the joint operations has created or could create an undue risk of competitive harm. However, here we have no such evidence, rather just the objection of Coach, which seeks to curtail the operations of a competitor. That objection does not form a basis to restrict our approval.¹³

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Coach's motions for leave to file a surreply are granted, and the surreplies are made part of the record.
2. Coach's various requests concerning the Pooling Parties' new services are denied.
3. This decision is effective on its service date.

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Begeman.

¹³ In 2010, the Pooling Parties informed the Board that they wished to amend the Agreement in Docket No. MCF 20908 to include Philadelphia as an intermediate point, which would allow them to share bus service between Philadelphia and Washington. They contended that this change would not require any formal Board action. Coach opposed the Pooling Parties' position, arguing that the Philadelphia-Washington service was not encompassed in the earlier Agreement governing service between NYC and Washington. (The Pooling Parties' existing Washington-NYC shared services used the New Jersey Turnpike and did not include Philadelphia.) In Peter Pan Bus Lines, Inc.—Pooling—Greyhound Lines, Inc. (March 2010 Decision), MCF 20908 (STB served Mar. 24, 2010), the Director of the Board's Office of Proceedings stated that formal Board action (a new application) would be required for pooling involving the proposed Philadelphia-Washington route. March 2010 Decision, slip op. at 2. Our decision here overrules the Director's March 2010 Decision. Philadelphia may be included as an intermediate point as part of the pooled bus services approved in Docket No. MCF 20908, thereby permitting service between Philadelphia and Washington.