

SERVICE DATE – MAY 18, 2009

SURFACE TRANSPORTATION BOARD

DECISION

STB DOCKET NO. MC-F-17950

MAYFLOWER TRANSIT, LLC—POOLING AGREEMENT

Decided: May 12, 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 (the implementing regulations) for approval of revisions to its pooling agreement.¹ Mayflower is a motor carrier engaged in the interstate transportation of household goods (HHG). In this decision, we establish a procedural schedule for the submission of public comments on the proposed revisions. After reviewing any comments received, we will determine whether we have sufficient information to decide whether the proposed revisions meet the standard for approval under section 14302 or whether a hearing is necessary prior to such a determination.

The parties. Mayflower is a large HHG carrier with a national presence. Mayflower is a wholly owned subsidiary of Transportation Services Group, Inc. (TGS), which is a wholly owned subsidiary of UniGroup, Inc., a holding company.² Like other interstate motor carriers that conduct federally regulated transportation, Mayflower holds a motor carrier registration issued by the Federal Motor Carrier Safety Administration (FMCSA). Mayflower's affiliated companies consist of: (1) agents of Mayflower that also hold their own motor carrier registrations (carrier agents); and (2) wholly owned and controlled subsidiary motor carriers of Mayflower that participate, subject to Mayflower policies, in shipments exclusively for the government, including the Department of Defense. These affiliated companies are parties with Mayflower to an existing pooling agreement described below.³

Mayflower's Current Pooling Agreement. Motor carriers may agree to pool or divide traffic or earnings only pursuant to approval by this agency. Under an agreement approved by the Interstate Commerce Commission (ICC), the Board's predecessor agency, Mayflower's carrier agents have agreed to transport interstate HHG shipments under their own authority for

¹ The application is available on the Board's website at "www.stb.dot.gov."

² United Van Lines, LLC also is a wholly owned subsidiary of TGS and concurrently filed an application for approval of similar revisions to its pooling agreement. See United Van Lines, LLC – Pooling Modification Application, STB Docket Nos. MC-F-4901 and MC-F-6152. We will address that application in a separate decision served simultaneously with this one.

³ The application lists the participating carrier agents and subsidiaries.

only relatively short movements (150 miles or 450 miles, depending on which of two options the carrier agent selects).⁴ For any HHG shipment of a greater distance, the carrier agent must turn over (or “book”) the interstate shipment to the Mayflower system so that it is transported under Mayflower’s authority. Mayflower has instituted policies that encourage carrier agents, through the use of financial incentives, to book all of their interstate shipments into the Mayflower system. Mayflower reports that in 2007 its carrier agents handled less than 5% of carrier agent-generated interstate moves under their own authority.

The existing approved pooling agreement also contains provisions detailing the terms of the agency agreement, equipment leasing, and the division of revenue between Mayflower and its carrier agents. The pooling agreement also contains prohibitions against carrier agents holding broker authority⁵ and maintaining tariffs independent of Mayflower.⁶

Proposed Revisions to the Pooling Agreement. Mayflower has proposed a number of revisions to its pooling agreement that would affect its carrier agents. The principal modification would prevent carrier agents from transporting under their own authority any interstate HHG shipments except, subject to Mayflower policies, shipments for the government. Another modification would remove from the existing pooling agreement: (1) the provisions pertaining to distribution of revenue to 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.⁷ A final modification would permit the pooling parties to add or remove carrier agents from the agreement by a written notice to the Board. According to

⁴ Mayflower Transit, Inc., d/b/a Aero Mayflower Transit Company, Inc., et al.—Pooling Application, Docket No. MC-F-17950 (ICC served Feb. 10, 1987) (Mayflower). A carrier agent also may transport HHG under its own intrastate authority and within the commercial zone of a municipality. See 49 U.S.C. 13506(b)(1) (commercial zone exemption).

⁵ A broker is defined as a person, other than a motor carrier or an employee or agent of a motor carrier, that as a principal or agent sells, negotiates for, or holds itself out by solicitation, advertisement, or otherwise as selling, providing, or arranging for, transportation by motor carrier for compensation. 49 U.S.C. 13102(2).

⁶ Under 49 U.S.C. 13702(a), motor carriers must publish and file with the Board tariffs containing rates established for transportation of HHG. In the past, the prohibition in the agreement against carrier agents maintaining individual tariffs simply meant that carrier agents hauling under their own authority would have to use the collectively set tariffs established by the former HHG rate bureau.

⁷ 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. Mayflower further reports that the provision against carrier agents maintaining individual tariffs is outdated because the Board’s withdrawal of approval for collective ratemaking and the subsequent disbanding of the rate bureau for HHG carriers led to the demise of the uniform tariff that

(continued . . .)

Mayflower, these proposed revisions would make its system more efficient and therefore more competitive with other national HHG motor carrier systems and would reduce consumer confusion as to the entity responsible for a particular HHG shipment.⁸

Waiver Request. Mayflower seeks a waiver of the Board regulation at 49 CFR 1184.2(2), which requires pooling applicants to provide a copy of the operating authority of each carrier that participates in the pooling agreement. Mayflower has instead provided a list of the registration numbers for itself and all of the pooling participants and explains that the registrations are available on the FMCSA website.

DISCUSSION AND CONCLUSIONS

Statutory Criteria for Motor Carrier Pooling Agreements. An interstate motor carrier may not agree to pool or divide traffic, services, or earnings with another motor carrier absent Board authorization. The Board may approve a proposed pooling agreement if the carriers involved assent to the pooling and the Board finds that the agreement: (1) will be in the interest of better service to the public or of economy of operation; and (2) will not unreasonably restrain competition. 49 U.S.C. 14302(b). The Board's approval of a pooling arrangement exempts the participants from the need to obtain approval of the arrangement from any other governmental body and from the operation of the antitrust laws and from any other law as necessary to let the parties carry out the arrangement. 49 U.S.C. 14302(f).

The statute directs the Board to initially determine: (1) whether the pooling agreement is of major transportation importance; and (2) whether there is a substantial likelihood that the agreement would unduly restrain competition. 49 U.S.C. 14302(c)(2). The statute further directs the Board to hold a hearing if either of those situations applies. *Id.* at 14302(c)(3). But if neither applies, the Board is to approve the agreement without a hearing upon just and reasonable terms and conditions. *Id.* at 14302(c)(2). Under 49 U.S.C. 14302(c)(4), a proposed pooling agreement for transportation of HHG is presumed to satisfy the statutory criteria if the practices to be carried out under the revised agreement are the same as or similar to practices carried out under HHG pooling agreements approved by the ICC prior to January 1, 1996.⁹ See, e.g., Atlas Van

(. . . continued)

formerly was used by HHG carriers. See Motor Carrier Bureaus—Periodic Review Proceeding, STB Ex Parte No. 656, et al. (STB served May 7, 2007) (disapproving all motor carrier rate bureau agreements).

⁸ According to Mayflower, currently a carrier agent may handle an HHG shipment under its own authority in equipment that is also used for shipments booked under Mayflower's authority and bearing the name, distinctive colors, trademark, and DOT registration number of Mayflower.

⁹ January 1, 1996, was the effective date of the ICC Termination Act of 1995 (ICCTA), Pub. L. No. 104-88, 109 Stat. 803, which terminated the ICC and created the Board.

Lines, Inc. et al.—Pooling Agreement, STB Docket No. MC-F-21010 (STB served Feb. 23, 2005) (Atlas) (approving pooling agreement that was “sufficiently similar” to one approved by ICC).

Need for Additional Information and Comments In this Case. To determine whether the proposed revisions are eligible for the presumption that they satisfy the statutory criteria, we examine whether the new provisions are the same as or similar to practices that the ICC approved prior to ICCTA. The Board and the ICC have approved pooling agreements which restrict the ability of carrier agents to transport HHG shipments under their own authority. See Atlas. Thus, there are similarities between Mayflower’s proposed revisions and others that the ICC and Board have approved.

Nevertheless, we are concerned about what appears to be a significant difference with regard to the notice that has been provided to Mayflower’s carrier agents. On past occasions when the agency approved revisions that further restricted a carrier agent’s operations under its own operating authority, the application revealed that the carrier agents had advance knowledge of the proposed new restriction prior to the request for approval of the agreement.¹⁰ Here, however, there is no indication in the application that Mayflower provided notice to its carrier agents of the proposed revisions or determined which carrier agents would be parties to the proposed revised pooling agreement. Although Mayflower provided a list of its carrier agents at Appendix A of its application, it is not clear whether that list includes carrier agents that have assented to the proposed revisions or merely carrier agents that are parties to the existing approved – and less restrictive – pooling agreement. Thus, it is possible that many carrier agents may be unaware of the proposed revision, even though the application has been posted on the Board’s website.

Under these circumstances, it would be premature to consider the approval of Mayflower’s proposed revisions without providing additional notice to the carrier agents and the public. Consequently, we will publish notice of the proposed revisions in the Federal Register to solicit the public’s comments and will require Mayflower to: send a copy of this decision to each of its carrier agents and promptly certify to the Board that it has sent those copies; and furnish a list of the carrier agents that would participate in the proposed revised pooling agreement. After receiving Mayflower’s certification, the list, and the submitted comments, if

¹⁰ See, e.g., Atlas (application listed carrier agents that had executed the proposed new agreement, including both signatories to the prior agreement and new signatories); Wheaton Van Lines, Inc., Et Al.—Pooling Application—Docket No. MC-F-19309 (ICC served Jan. 10, 1989) (carrier agents, which formerly were allowed to conduct interstate HHG operations under their own authorities “without restriction,” indicated in the application which of the proposed three restrictive options they had already selected); Three Way Corp.v. ICC, 702 F.2d 232, 234 (D.C. Cir. 1986) (United Van Lines first notified its carrier agents that it planned to amend their pooling agreement to further restrict use of the carrier agents’ own operating authorities).

any, we will determine whether or not a hearing is required, based on whether the proposed revisions are of major transportation importance or are likely to unduly restrain competition.¹¹

Waiver Granted. We will grant the requested waiver of 49 CFR 1184.2 and accept the listing of the registration numbers as sufficient evidence of the operating authorities of the participants. Because of the availability on the FMCSA website of the motor carrier registrations of all of the pooling participants, we do not find it necessary to require the applicants to submit actual copies of the operating authorities.

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

It is ordered:

1. The request for waiver of the regulation at 49 CFR 1184.2 is granted.
2. Mayflower shall send a copy of this decision to each of its carrier agents and certify to the Board that it has done so by May 28, 2009.
3. Mayflower shall file a list of the carrier agents that would participate in the proposed revised pooling agreement by July 2, 2009.
4. Comments on the proposed revisions to Mayflower's pooling agreement shall be filed by July 2, 2009. Mayflower may file a response to any comments by July 17, 2009.
5. This decision is effective on its service date.

By the Board, Acting Chairman Mulvey, and Vice Chairman Nottingham.

Anne K. Quinlan
Acting Secretary

¹¹ We are taking the same action with the similar application of United Van Lines, LLC.