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SERVICE DATE - MAY 24, 2002

SURFACE TRANSPORTATION BOARD

DECISION

Section 5a Application No. 9 (Amendment No. 8)

APPLICATION OF THE NATIONAL BUS TRAFFIC ASSOCIATION, INC., FOR
EXTENDED APPROVAL OF ITS CONFORMED AGREEMENT

Decided: May 13, 2002

We are approving the National Bus Traffic Association, Inc. (NBTA) application for renewal of its rate bureau agreement, which is unchanged from its current agreement.

BACKGROUND

NBTA is the national rate bureau for the intercity bus industry.¹ Under an agreement approved pursuant to 49 U.S.C. 13703, the member bus companies of the NBTA are permitted to act collectively, with immunity from the antitrust laws. In contrast to the rate bureaus of trucking companies, the NBTA does not collectively establish the rates (fares) for carrying passengers. Rather, the members of the NBTA generally set their own fares. But, acting collectively through the NBTA, the

¹ Under NBTA's bylaws, all interstate, intercity, regular-route common carriers of passengers licensed by the former Interstate Commerce Commission (ICC) or the Federal Highway Administration (and now the Federal Motor Carrier Safety Administration) are eligible to become members.

member bus companies establish rules for transporting bus passengers,² as well as charges and rules for baggage³ and express packages.⁴

The ICC Termination Act of 1995 (ICCTA) provided that existing approvals of rate bureau agreements would expire on December 31, 1998, unless applications for renewal were sought. See former 49 U.S.C. 13703(d) (imposing a 3-year renewal requirement). In December 1998, NBTA filed its application seeking renewed approval, without any change, of the agreement under which it had been operating.

² The rules for bus passengers relate to: constructing through fares from a list of point-to-point fares and for circle tours; discounting children's fares off of adult fares; the length of effectiveness for tickets and procedures for redemption if a ticket is not used; restrictions on a change of routes or destination and a general rule on interchangeability of tickets ("next-bus out" service); stopovers en route; limits on reservations and seating arrangements; declining liability for delays caused by accidents, breakdowns, storms, etc.; non-guarantee of service during off seasons; refusal to transport objectionable passengers; transportation of animals; immigration procedures at the Canadian and Mexican borders; purchasing exclusive occupancy of coaches; resolution of disagreements over fares; constructing "open gap" fares; and special party fares.

³ Concerning baggage, the NBTA has established rules for: checking bags; interlining baggage when two or more carriers are providing the transportation; prohibited articles for transport; limits of liability for lost or damaged baggage; charges for excess baggage and for storage; and exceptions for intrastate operations.

⁴ The NBTA sets rates for transportation of express packages, with three alternative rate tables for a member bus carrier to adopt. It also sets limits on liability for loss or damage to express packages, as well as released rates for loss or damage based on the fare charged to the shipper.

By notice published in the Federal Register, 65 FR 7099 (Feb. 11, 2000),⁵ we requested comments on NBTA's application for renewal.⁶ No comments were filed in response to our notice.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 13703(a)(2) and former 13703(d) (which continues to apply in this case), when an agreement is submitted for our approval, we must determine whether the agreement is in the public interest. NBTA claims that continued approval of its agreement is in the public interest because the collective development of rules and procedures allows smaller bus companies to develop operating practices in a cost-efficient manner. Absent the antitrust immunity that approval conveys,⁷ NBTA argues, some of the collective activities of its members – particularly the determination of baggage and package express charges, limitations on liability, and rules for construction of through routes and through fares – could be found to violate the antitrust laws.

NBTA points out that individual bus companies establish their own fares for transporting passengers, and face competition from low-cost airfares, heavily subsidized passenger rail service, and private automobiles. NBTA argues that the bus industry must reduce costs wherever possible. NBTA maintains that collectively establishing rules and procedures for the construction of through routes and through fares, and liability and charges for baggage and package express transportation, can help the industry reduce costs. Absent the collective action, each carrier would have to establish and maintain individual rules and charges for each of these items.

We agree. For that reason, we find that approval is in the public interest, and accordingly we approve NBTA's application.

⁵ We had delayed taking any action on renewal of NBTA's agreement while Congress again addressed the issue of collective activity by rate bureaus. In Section 227 of the Motor Carrier Safety Improvement Act of 1999, Pub. L. No. 106-159, 113 Stat. 1748 (Dec. 9, 1999), Congress prospectively changed the 3-year renewal process into a 5-year periodic review process for rate bureau agreements. See 49 U.S.C. 13703(c)(2). Under the amended statute, we may, on review, change the conditions of approval, or end our approval when necessary to protect the public interest. 49 U.S.C. 13703(c)(1). In the meantime, each approved rate bureau agreement will continue in effect unless we determine otherwise. Id. at (c)(2).

⁶ The notice erroneously referred to NBTA as the "National Motor Bus Traffic Association."

⁷ See 49 U.S.C. 13703(a)(6).

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

It is ordered:

1. NBTA's application for renewal of its Agreement is approved.
2. This decision is effective June 23, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams
Secretary