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SERVICE DATE - JULY 17, 1998

FR-4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC-F-20924]

Global Passenger Services, L.L.C.--Control--Bortner Bus Company, et al.

AGENCY: Surface Transportation Board.

ACTION: Notice Tentatively Approving Finance Transactions.

SUMMARY: Global Passenger Services, L.L.C. (Global or applicant), a noncarrier, filed an application under 49 U.S.C. 14303 to acquire control of 20 motor passenger carriers, consisting of 15 existing subsidiaries—Bortner Bus Company (Bortner), C&D Transportation, Inc. (C&D), Comet Bus Lines Corporation (Comet), Connolly's Limousine Service, Inc. (Connolly's), Country & Western Tours, Inc. (C&W Tours), Franciscan Lines, Inc. (Franciscan), George Ku, Inc. (George Ku), Golden Touch Transportation, Inc. (GTT), Golden Touch Limousine of Florida, Inc. (GTT of FL), JJ Kelly Charter Bus Service Co. (JJ Kelly), The Palmeri Motor Coach Corporation (Palmeri), PROTRAV Services, Inc., d/b/a PROTRAV Charter Coach Services (PROTRAV Charter), PROTRAV Services, Inc. (PROTRAV Services), Santa Barbara Transportation Corporation (SBTC), and Tiger Air Express, Inc. (Tiger)—and 5 new target companies, Hemphill Brothers Coach Co., Inc. (Hemphill), Hansruedi and Marcia Muggli, d/b/a The Transportation Company (TTC), Pacific Explorer Lines, Inc. (Pacific), Stardust Executive Transportation, Inc. (Stardust), and Sunnyland Acquisition Corp. (SAC).<sup>1</sup> Persons wishing to oppose the application must follow the rules under 49 CFR part 1182, subpart B. The Board has tentatively approved the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments are due by August 31, 1998. Applicant may reply by September 21, 1998. If no comments are received by August 31, 1998, this notice is effective on that date.

ADDRESSES: Send an original and 10 copies of comments referring to STB Docket No. MC-F-20924 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, send one copy of comments to applicant's representative: Mark J. Andrews, Barnes & Thornburg, 1401 Eye

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<sup>1</sup> Global incorporated SAC, a noncarrier, to acquire the assets of Sunnyland Stages, Inc. (SSI), a Missouri corporation and motor passenger carrier.

Street, N.W., Suite 500, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565-1600. [TDD for the hearing impaired: (202) 565-1695.]

SUPPLEMENTARY INFORMATION: Global, a Delaware limited liability company, was created on May 15, 1997. According to Global, it was unaware of the requirements of 49 U.S.C. 14303 prior to January 1998.<sup>2</sup> After reviewing its records, Global determined that interstate and/or intrastate passenger authority had been issued to 15 entities out of the 30 corporations that it directly or indirectly controls at this time. Upon discovering this unresolved control issue, Global filed an application to acquire control, through indirect stock ownership, of the existing subsidiaries—Bortner,<sup>3</sup> C&D,<sup>4</sup> Comet,<sup>5</sup> Connolly's,<sup>6</sup> C&W Tours,<sup>7</sup> Franciscan,<sup>8</sup> George Ku,<sup>9</sup> GTT,<sup>10</sup> GTT of FL,<sup>11</sup> JJ Kelly,<sup>12</sup> Palmeri,<sup>13</sup> PROTRAV

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<sup>2</sup> Immediately upon its creation, Global acquired the shares of two regulated motor passenger carriers—one with interstate authority and one with intrastate authority. Because the initial acquisition of the shares of a single interstate carrier did not require Board authorization, Global assumed that the subsequent stock acquisition of additional interstate carriers required no Federal approval.

<sup>3</sup> Bortner is a Pennsylvania corporation. It holds federally issued operating authority in MC-111191 and intrastate operating authority in Ohio and Pennsylvania. Bortner provides charter and special operations between points in the United States (including Alaska and Hawaii).

<sup>4</sup> C&D is a Tennessee corporation. It holds federally issued operating authority in MC-191957. C&D provides charter and special operations between points in the United States (except Alaska and Hawaii).

<sup>5</sup> Comet is a Florida corporation. It holds federally issued operating authority in MC-231149. Comet provides charter and special operations between points in the United States (except Hawaii).

<sup>6</sup> Connolly's is a Pennsylvania corporation. It holds federally issued operating authority in MC-176826 and intrastate operating authority in Pennsylvania. Connolly's provides charter and special operations between points in the United States.

<sup>7</sup> C&W Tours is a Tennessee corporation. It holds federally issued operating authority in MC-263068. C&W provides charter and special operations between points in the United States.

<sup>8</sup> Franciscan is a California corporation. It holds federally issued operating  
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Charter,<sup>14</sup> PROTRAV Services,<sup>15</sup> SBTC,<sup>16</sup> and Tiger<sup>17</sup>—and of the target companies,

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<sup>8</sup>(...continued)

authority in MC-140403 and intrastate operating authority in California. Franciscan provides charter and special operations between points in the United States (including Alaska, but excluding Hawaii).

<sup>9</sup> George Ku is a Pennsylvania corporation. It holds federally issued operating authority as a common and contract carrier in MC-31422 and intrastate operating authority in Ohio and Pennsylvania. George Ku provides charter and special operations between points in the United States (except Hawaii).

<sup>10</sup> GTT is a Delaware corporation. It holds federally issued operating authority as a contract carrier in MC-235493 and intrastate operating authority in Florida.

<sup>11</sup> GTT of FL, a wholly owned subsidiary of GTT, is a corporation that holds no interstate authority but is licensed by Dade County, FL, for intrastate passenger service. The fact that these operations appear to be entirely within the State of Florida is not determinative of Board jurisdiction. It is well settled that service within a single state may be interstate commerce and subject to our jurisdiction when there is a through ticket or some other arrangement between the involved carriers for through transportation to or from a point in another state. Also, if the participants to a finance transaction are motor carriers of passengers, subject to Board jurisdiction under 49 U.S.C. 13501, then under 49 U.S.C. 14303(f), they are subject to our exclusive and plenary jurisdiction in all matters relating to their consolidation, merger, and acquisition of control, and this extends to intrastate operating rights. See Colorado Mountain Express, Inc. and Airport Shuttle Colorado, Inc., d/b/a Aspen Limousine Service, Inc.--Consolidation and Merger--Colorado Mountain Express, STB Docket No. MC-F-20902 (STB served Feb. 28, 1997).

<sup>12</sup> JJ Kelly is a Florida corporation. It holds federally issued operating authority in MC-172787. It provides charter and special operations between points in the United States (except Alaska and Hawaii).

<sup>13</sup> Palmeria is a Pennsylvania corporation. It holds federally issued operating authority in MC-167547 and intrastate operating authority in New Jersey and Pennsylvania. It provides passenger service as a contract carrier between points in Tennessee and Kentucky, and charter and special operations between points in the United States (except Alaska and Hawaii).

<sup>14</sup> PROTRAV Charter is a California corporation. It holds federally issued operating authority in MC-227448 and intrastate operating authority in California. It provides charter and special operations between points in the United States (except Alaska  
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Hemphill,<sup>18</sup> TTC,<sup>19</sup> Pacific,<sup>20</sup> Stardust,<sup>21</sup> and SAC.<sup>22</sup> According to Global, the stock of the

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<sup>14</sup>(...continued)  
and Hawaii).

<sup>15</sup> PROTRAV Services, a wholly owned subsidiary of PROTRAV Charter, is a corporation that holds no interstate authority but is licensed by Nevada for intrastate passenger service. For a discussion of the effect of intrastate operating authority, see supra note 11.

<sup>16</sup> SBTC is a California corporation. It holds federally issued operating authority in MC-198757 and intrastate operating authority in California. SBTC engages primarily in school transportation activities, which are not regulated.

<sup>17</sup> Tiger is a Missouri corporation. It holds federally issued operating authority as a common and contract carrier in MC-217893 and intrastate operating authority in Indiana and Missouri. It provides passenger service over certain regular routes in Arkansas, Missouri, and Oklahoma, and charter and special operations between points in the United States (except Alaska and Hawaii).

<sup>18</sup> Hemphill is a Tennessee corporation. It holds federally issued operating authority in MC-336635. It provides charter and special operations between points in the United States.

<sup>19</sup> TTC is a California corporation. It holds federally issued operating authority in MC-182176 and intrastate operating authority in California. It provides charter and special operations, beginning and ending at San Francisco and Mateo Counties, CA, and extending to points in Oregon, Washington, Nevada, Arizona, Utah, and New Mexico.

<sup>20</sup> Pacific is a California corporation. It holds federally issued operating authority in MC-251473 and intrastate operating authority in California. It provides charter and special operations between points in the United States (except Alaska and Hawaii).

<sup>21</sup> Stardust is a California corporation. It holds federally issued operating authority in MC-304399 and intrastate operating authority in California. It provides charter and special operations between points in the United States.

<sup>22</sup> SAC is a Delaware corporation. It is the transferee of SSI's federally issued operating authority in MC-52479 and intrastate operating authority in Missouri. It provides passenger service over certain regular routes in Arkansas and Missouri, and special and charter operations between points in the United States (except Hawaii). Because the acquisition of SSI has been structured as an asset transaction, Global reports that it has trustee (presumably placed in trust) SAC, which will become a carrier upon its acquisition  
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target companies has been placed in voting trusts pending disposition of this proceeding.

Global submits that the instant transactions have not reduced and will not reduce competition in the bus industry or competitive options available to the traveling public. It also submits that it has no intention of changing the operations of any of the existing subsidiaries or target companies as a result of the approvals sought here. Global asserts that each of the subsidiaries and target companies faces substantial competition from other bus companies and transportation modes. It estimates that, at the end of 1997, its regular-route, charter and special operations accounted for approximately 0.54% of the relevant market for such services in the United States. It believes that its control of the target companies will increase that market share by only one-tenth of a percentage point.

Global also submits that its control of the subsidiaries and target companies has produced and will produce substantial benefits, including interest cost savings from restructuring of debt and reduced operating costs from Global's enhanced volume purchasing power. Specifically, Global claims that the carriers it acquires benefit from the lower insurance premiums it has negotiated and from volume discounts for equipment and fuel. Global also asserts that it improves the efficiency of all acquired carriers, while maintaining responsiveness to local conditions, by providing centralized services to support decentralized operational and marketing managers. Centralized support services are provided in such areas as legal affairs, accounting, purchasing, safety management, equipment maintenance, driver training, human resources, and environmental compliance. In addition, Global states that it facilitates vehicle sharing arrangements between acquired entities, so as to ensure maximum utilization and efficient operation of equipment. According to Global, the involved transactions offer ongoing benefits for employees of acquired carriers not only because of the efficiencies described above, but also because Global's policy is to honor all collective bargaining agreements of acquired carriers.

Global certifies that: (1) none of the involved subsidiaries or target companies has been assigned a safety rating of less than satisfactory by the U.S. Department of Transportation; (2) all involved carriers maintain sufficient liability insurance; (3) none of the involved carriers has been or is either domiciled in Mexico or owned or controlled by persons of that country; and (4) approval of the transactions will not significantly affect either the quality of the human environment or the conservation of energy resources. Additional information may be obtained from applicant's representative.

Under 49 U.S.C. 14303(b), we must approve and authorize a transaction we find consistent with the public interest, taking into consideration at least: (1) the effect of the transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees. The prior consummation of the

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<sup>22</sup>(...continued)  
of SSI's assets.

transactions involving the 15 existing subsidiaries does not bar approval of the application under section 14303 if the evidence establishes that the transaction would be consistent with the public interest in other respects, and for the future.<sup>23</sup> Approval is granted in such circumstances when the record contains strong affirmative evidence of public benefits to be derived from the resulting control, warranting the view that the public should not be penalized by being deprived of those benefits. Moreover, in this case, the record shows an absence of intent to flout the law or of a deliberate or planned violation. See Kenosha Auto Transport Corp.—Control, 85 M.C.C. 731, 736 (1960).

On the basis of the application, we find that the proposed acquisition of control is consistent with the public interest and should be authorized. If opposing comments are timely filed, this finding will be deemed vacated and a procedural schedule will be adopted to reconsider the application. If no opposing comments are filed by the expiration of the comment period, this decision will take effect automatically and will be the final Board action.

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

It is ordered:

1. Global's control of the existing subsidiaries and the target companies is approved and authorized, subject to the filing of opposing comments.
2. If timely opposing comments are filed, the findings made in this decision will be deemed vacated.
3. This decision will be effective on August 31, 1998, unless timely opposing comments are filed.
4. A copy of this notice will be served on: (1) the U.S. Department of Transportation, Office of Motor Carriers-HIA 30, 400 Virginia Avenue, SW, Suite 600, Washington, DC 20024; and (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, N.W., Washington, DC 20530.

Decided: July 9, 1998.

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<sup>23</sup> Global seeks nunc pro tunc approval of the control of the 15 existing subsidiaries that it already controls. While we are granting our tentative approval, the need for retroactive effect has not been demonstrated. Global evidently recognizes that it should have sought our approval sooner but, under the circumstances, the Board does not intend to pursue enforcement actions against Global for the previously unauthorized common control.

STB Docket No. MC-F-20924

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams  
Secretary