

SERVICE DATE - JULY 11, 2000

SURFACE TRANSPORTATION BOARD

DECISION

STB No. MC-F-20915

SUBURBAN TRANSIT CORP., ET AL.
—POOLING—
AMERICAN LIMOUSINE SERVICE INC.

Decided: July 6, 2000

The Board approved a coordinated service and revenue pooling agreement (Agreement) filed under 49 U.S.C. 14302 by Applicants, Suburban Transit Corp. and Suburban Trails, Inc. (Suburban),¹ and American Limousine Service, Inc. (American), in a decision served June 4, 1998. After a number of critical letters were received from commuters (Petitioners),² we reopened the proceeding, in a decision served December 18, 1998 (reopening decision), and directed Applicants to submit additional information.³

Applicants filed the additional information on January 7, 1999, and on September 30, 1999, they filed a reply, along with a request for leave to late-file, in response to a July 20, 1999 letter-petition to reopen and reconsider that they received from Mr. Thomas Rosenthal, one of the Petitioners. We subsequently requested, and received from Applicants, a copy of Mr. Rosenthal's petition, containing several attachments (1999 letter-petition), again asking that we

¹ The two Suburban companies are controlled by Coach USA, Inc. See Notre Capital Ventures II, LLC and Coach USA, Inc.—Control Exemption—Arrow Stage Lines, et al., STB Finance Docket No. 32876 (Sub-No. 1) (STB served May 3, 1996).

² Petitioners are Mr. Ira Hilfman, Ms. Michelle Kamen, Mr. Bob Praetorius, Mr. Thomas Rosenthal, and Ms. Rose Venutolo. Mr. Hilfman also enclosed petitions signed by numerous passengers seeking reinstatement of certain bus schedules. The letters were filed between June 25 and July 21, 1998, too late to be considered in the June 4, 1998 decision. We accepted the letters as petitions to reopen and reconsider after Petitioners served, and notified us that they had served, the letters on Applicants.

³ Specifically, Applicants were asked: (1) whether there were restrictions on who may operate commuter buses from the origin area; (2) how bus service schedules had been changed; (3) about the current number of empty seats per bus; (4) whether Applicants' passengers could use nearby commuter rail services; and (5) for evidence on improvements made or planned. A copy of the reopening decision was served on the Department of Justice, Antitrust Division (Justice Department).

reverse our approval of the Agreement. In the interest of a complete record, we accept the 1999 letter-petition, its attachments, and Applicants' reply.

After reviewing the 1998 petitions, the 1999 letter-petition, and the additional evidence, we are denying the requests for reopening and reconsideration, and reaffirming our approval of the Agreement.

BACKGROUND

In their application, Suburban and American stated that they were head-to-head competitors providing motor passenger service between the "8A Park-n-Ride Facility" (8A Facility) near Exit 8A of the New Jersey Turnpike (Turnpike) and New York City, NY (NYC).⁴ Applicants further stated that they originated a combined total of 38 bus trips per weekday from the 8A Facility to NYC and a combined total of 39 return trips per weekday. They claimed that these operations were costly and inefficient because buses were scheduled at nearly the same times each day and, as a result, operated only partially loaded. They claimed that the proposed pooling arrangement would not constitute an unreasonable restraint on competition, because Amtrak and NJ Transit commuter train service were formidable competitors and the highway network made van pools and private automobiles relatively quick and inexpensive alternatives.

In the June 1998 decision, we concluded that the proposed pooling arrangement would allow Applicants to operate more economically and efficiently and that service to the commuting public would improve. Specifically, we found that, by rationalizing their bus schedules, Applicants would be able to: (1) eliminate duplication; (2) increase passenger load per bus; (3) reduce unit costs; (4) better manage their pricing structures; and (5) ultimately achieve greater financial stability. Moreover, we found that the public would benefit from: (1) enhanced vehicle replacement and other capital improvements; (2) more choices in departure times, including afternoon departures from the same area; (3) interchangeable tickets; (4) a common dispatcher and ticket agent; (5) accepting passengers from disabled buses; and (6) reduced waiting times. We found no evidence to suggest that the proposed arrangement would unreasonably restrain competition. Instead, we found that the proposed arrangement could be the best way to promote continued competitive passenger service in the affected region.

⁴ According to Mr. Rosenthal, the New Jersey Turnpike Authority (NJTA) had agreed to construct the mass transit facility at Exit 8A in exchange for the United States Army Corps of Engineers' permission to use federally controlled wet lands to widen the Turnpike. 1999 letter-petition at 2.

DISCUSSION AND CONCLUSIONS

1. Procedural Arguments. Procedurally, Mr. Rosenthal complains that the public did not actually learn of, and thus effectively was excluded from commenting on, the proposed arrangement until it had been approved. 1999 letter-petition at 1-2. He contends that the public has thus been placed at a disadvantage because late-filed appeals carry less weight and require a greater burden of proof. Mr. Rosenthal also contends that Applicants acted in a secretive and deceptive manner, by not giving the public advance notice of the proposed Agreement or of subsequent changes in operations and fares, and he requests that their statements and submissions be stricken from the record for lack of credibility.

Although Mr. Rosenthal may not have learned of the proposal in advance, adequate public notice of the proposed Agreement was given (through the Federal Register⁵ and by notice to the Justice Department). Moreover, we have been receptive to all forms of public participation at all stages of this proceeding. We reopened this proceeding upon receiving Petitioners' letters, directed Applicants to submit additional information responsive to Petitioners' contentions, adopted a procedural schedule for the submission of comments, and served a copy of the reopening decision on Petitioners. Petitioners have thus been afforded an ample opportunity to present evidence and argument on reopening. Mr. Rosenthal is the only Petitioner that has done so, and we have fully considered his evidence and argument.

Finally, regarding advance notice of fare and schedule changes, NJTA (the owner of the 9A Facility) states that Applicants began posting such notice in response to complaints and would continue that practice. 1999 letter-petition, NJTA letters dated August 7, 1998, and March 9, 1999.

2. The Merits. Under 49 U.S.C. 14302(b), we may approve a service and revenue pooling agreement if the involved carriers assent and we find the agreement in the interest of better service to the public or of economy of operation and not an unreasonable restraint on competition. Here, Petitioners claim that service has deteriorated, that the number of scheduled buses was reduced by almost a third, that buses are overcrowded, dirty, and unreliable, and that fares have doubled since the Agreement was approved. They further claim that the arrangement reduced competition. The 1999 letter-petition states that service continued to deteriorate and fares continued to rise. As discussed below, however, the new evidence presented by Applicants in response suggests that the overall level and quality of passenger service has improved. Moreover, operations appear to have become more profitable, and Applicants' financial

⁵ Publication of notice in the Federal Register constitutes constructive notice to all affected persons. Nutt v. Drug Enforcement Admin., 916 F.2d 202, 203 (5th Cir. 1990).

conditions appear to have improved. Finally, it does not appear that the arrangement has unreasonably restrained, or is likely to restrain, competition.

Applicants acknowledge that initially, after the Agreement went into effect, certain early morning and afternoon rush hour buses with below average load factors were discontinued. They claim that commuter complaints caused them to restore the morning buses after a short period of time. The afternoon buses were not restored, according to Applicants, because a review of the load factors showed that more passengers were being accommodated by the revised schedule.⁶ NJTA agreed that bus service had been “less than ideal” immediately after joint operations commenced and that Applicants had restored buses and revised their schedules. NJTA stated that “progress has been made in the short period since joint operations commenced,” and that it would “independently, and through [Parkway Parking of New Jersey, Inc. (Parkway or Operator), the private company that operates the 8A Facility for NJTA], closely monitor the bus operations to ensure that adequate service is provided at the Facility.” 1999 letter-petition, NJTA letter of August 7, 1998, at 2. Subsequently, NJTA stated that it was “satisfied that the Operator and American are making efforts to provide acceptable service to commuters.” 1999 letter-petition, NJTA letter of March 9, 1999, at 3.

Applicants’ submissions establish that the average number of empty seats on both Suburban and American buses has declined since the Agreement was implemented. Although some buses occasionally reach seating capacity, most appear to have room for additional passengers, and passengers may stand on the buses or wait 5 or 10 minutes during rush hour for the next bus to arrive.⁷ Although Mr. Rosenthal expressly disagreed in a follow-up letter,⁸ NJTA stated in its August 7, 1998 letter at 2, that Applicants “resumed the practice of keeping additional buses at the Facility to handle any overloads during the morning rush hours.” In its March 9, 1999 letter at 2, NJTA stated that buses are rarely filled to capacity and that “if a

⁶ Applicants submitted copies of pre- and post-pooling schedules to show that duplicative services were eliminated but passengers had greater options, particularly because tickets purchased from one company could be used on the other. Applicants’ Supplemental Evidence, Exhibits 3-5. American passengers also gained access to certain off-peak services provided only by Suburban, and Suburban passengers gained access to certain uptown Manhattan services provided only by American.

⁷ Applicants submitted their record of passenger counts and empty seats for the week of October 26-30, 1998. Applicants’ Supplemental Evidence, Exhibit 1.

⁸ 1999 letter-petition, July 19, 1999 letter to Mr. Edward Gross, Executive Director of NJTA.

particular bus always has standees, American would then alter the schedule to accommodate the passengers and eliminate such a situation.”

Additionally, NJTA stated that, with the exception of Mr. Rosenthal, neither it nor Parkway had received any complaints critical of the condition of American’s buses. 1999 letter-petition, NJTA letter of March 9, 1999, at 1. Based on its own investigation, NJTA stated that American routinely inspects each bus prior to departure, removes any unacceptable buses, makes its drivers responsible for reporting problems, including those related to heat, lights, seats and toilets, and claims to correct any problems as soon as possible. NJTA observed that American’s buses were purchased in the late 1980s and early 1990s, that they are the same as those operated by other bus companies that provide commuter services in New Jersey, and that the New Jersey Department of Transportation inspects all buses twice a year. Id.⁹

The evidence establishes that the \$60.80 weekly fare is the same as the fare that was in effect in 1992 between nearby points in central New Jersey and NYC. Applicants’ Supplemental Evidence, joint verified statement of Mr. Ronald Konn and Mr. Larry Mastropieri at 11. NJTA corroborates that, while applicant’s fares increased steeply, they were “competitive and in some instances cheaper” than “other comparable bus/train fares in the area.” 1999 letter-petition, NJTA letter of August 7, 1998, at 1. NJ Transit states that Applicants’ current fares are comparable to its own for similar bus service. 1999 letter-petition, NJ Transit letter dated July 7, 1999. Applicants admit that, between late 1996 and early 1997, promotional weekly fares as low as \$30 were offered, but state that these fares were withdrawn after January (by Suburban) and after June (by American) in 1998. According to NJTA, the discounted fares were offered “during the introductory period of operation from the Facility.” 1999 letter-petition, NJTA letter of August 7, 1998, at 1. While the evidence does not allow us to ascertain whether the promotional fares were withdrawn in anticipation of the pooling agreement, it cannot be ignored that the current fares are at the same level charged 7 years earlier and are comparable to those charged by competing rail and bus services. Even if this were not so, it is questionable whether a

⁹ In his July 19, 1999 letter to Mr. Gross at 1-2, Mr. Rosenthal claimed that numerous complaints were made to American’s personnel at the 8A Facility and phoned in to American’s dispatchers but that these complaints were repeatedly ignored and that the complainants gave up in frustration. He disputed the existence of American’s pre-trip inspection program, and he stated that buses are placed into service without air conditioning in summer and heat in winter, without working shock absorbers, and with seats and lights that are broken on the same bus every day. He also stated that schedules were not altered even though American’s buses were filled to capacity every morning. Notwithstanding their right to participate in this reopened proceeding, none of the other Petitioners has joined Mr. Rosenthal in continuing to complain about the condition of the buses or the quality of the service.

meaningful comparison may be made with introductory, promotional fares, which by their very nature are temporary in duration and not optimally priced.

The evidence fails to establish that the Agreement resulted in an unreasonable restraint on competition. Under the NJTA-Parkway arrangement that governs the management and operation of the 8A Facility, any bus company holding appropriate authority and satisfying the applicable insurance and safety requirements may offer passenger service from the facility for a fee of \$10 per bus during rush hour and \$5.00 per bus otherwise.¹⁰ Apparently, NJ Transit and another bus company were invited to consider providing service from the 8A Facility. The former indicated that it was not authorized to provide, and could not compete with private carriers in providing, such service¹¹ and the latter declined based on the results of a feasibility study it had conducted. 1999 letter-petition, NJTA letter of March 9, 1999, at 2. Nevertheless, the 8A Facility remains open and available to any new entrants.

Additionally, Suburban serves another large park-and-ride facility located about 10 miles closer to NYC, at Exit 9 of the Turnpike, in East Brunswick, NJ. Mr. Rosenthal claims that the drive to this facility would add additional time to his commute, but the facility apparently has ample parking and a \$46.40 weekly bus fare that compares favorably to the fare from the 8A Facility. Amtrak and NJ Transit also offer accessible, competitive commuter rail service to NYC from the Princeton Junction rail terminal, located approximately 8 miles from the 8A Facility. There is parking at, and shuttle buses from the 8A Facility service area serve, the Princeton Junction rail terminal.¹² Finally, Mr. Rosenthal dismisses commuter van services and the private

¹⁰ Applicants submitted a partial copy of NJTA's April 1996 request for proposals to operate and manage the 8A Facility, which required, among other things, that the operator give access to all responsible bus companies. Applicants' Supplemental Evidence, Exhibit 2.

¹¹ NJ Transit states that, as a publicly funded operator, it would be inconsistent with New Jersey law for it to compete with private bus companies, such as American and Suburban. 1999 letter-petition, NJ Transit letter of July 7, 1999, at 1-2.

¹² Weekly and monthly rail commutation tickets between Princeton Junction and NYC, respectively, cost \$76.00 and \$249.00 (the equivalent of \$57.90 per week based on 4.3 weeks a month). Although Mr. Rosenthal claims that parking spaces are not available, the evidence establishes that there are 5 parking lots at Princeton Junction and that 2 of them, with a combined capacity of 1,000 cars, are available on a first come basis at a cost of \$2.00 a day—the same parking fee charged at the 8A Facility. The other three parking lots are reserved for commuters holding long-term parking permits, which take between 2 months and 4 years to obtain. Shuttle bus service from the surrounding communities to Princeton Junction is also available and costs
(continued...)

car as impractical, but the evidence suggests that these lower-priced alternatives are competitive and serve many similarly situated commuters.

Upon reconsideration, we find that the evidence establishes that the public has benefitted from the better service and economy of operation that have resulted from the pooling arrangement. These include: (1) expanded service options—including reduced passenger waiting times, wider choices of departure times, and quicker pick-up service when buses break down—made possible by the elimination of duplicative schedules and the introduction of interchangeable tickets; (2) common dispatchers and ticket agents; and (3) rescheduling of buses to accommodate passengers' needs before holidays. Additionally, Applicants have benefitted from the more economic operations that resulted, among other things, from eliminating duplicative services, lowering unit costs, increasing passenger loads, and enhancing financial stability. Rather than unreasonably restraining competition, this Agreement helps Applicants to continue serving the area and increases their ability to compete with the automobile and the other mass transit choices that are available. Accordingly, we affirm the findings in our June 4, 1998 decision that the coordinated service and revenue pooling agreement between Suburban and American does and will foster improved service to the public and economy of operation, and does not and will not unreasonably restrain competition.

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

It is ordered:

1. Mr. Rosenthal's request to strike Applicants' statements and submissions is denied.
2. Petitioners' request that we either void or reverse the June 4, 1998 decision is denied, and this proceeding is discontinued.

¹²(...continued)
between \$1.00 and \$1.40 per trip.

3. This decision is effective on August 10, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams
Secretary