

SURFACE TRANSPORTATION BOARD

STB Docket No. MC-F-20940

LAIDLAW INC. AND LAIDLAW TRANSIT ACQUISITION CORPORATION –
MERGER – GREYHOUND LINES, INC.

Decided: December 4, 2000

The Surface Transportation Board (Board) approved the merger of Greyhound Lines, Inc. (Greyhound), into Laidlaw Transit Acquisition Corp. (LTAC), a wholly owned subsidiary of Laidlaw, Inc. (Laidlaw), a noncarrier, under 49 U.S.C. 14303.¹ Laidlaw Inc. and Laidlaw Transit Acquisition Corp.—Merger—Greyhound Lines, Inc., STB Docket No. MC-F-20940 (STB served Dec. 17, 1998), 63 FR 69710 (Dec. 17, 1998).² In making the finding that the LTAC-Greyhound merger was consistent with the public interest, we relied on the applicants' representation that the proposed merger will significantly benefit the traveling public, employees, and shareholders, through the synergies, efficiencies, and savings that will result from the combined resources, skill, and operations of the two complementary companies. Id. at 3.

Subsequently, in a decision in this proceeding served August 18, 2000, and published in the Federal Register on August 24, 2000 (65 FR 51644) (August decision), we noted that in a recent filing with the Securities and Exchange Commission (SEC), Greyhound had indicated that it might not be able to continue operating due to financial difficulties related, at least in part, to the financial problems of Laidlaw. We issued a supplemental order directing the parties to the merger to provide additional information to enable us to determine whether further Board action might be necessary. Having considered the responsive filings by Greyhound and Laidlaw and by the Department of Transportation (DOT), we are directing Greyhound and Laidlaw to submit copies of future SEC filings and other information to permit us to follow and address, as appropriate, pertinent financial developments affecting Greyhound.

BACKGROUND

In our August decision, we found troubling certain Greyhound statements made in a recent SEC filing. In a Form 10-Q filed with the SEC for the quarter ending June 30, 2000, Greyhound indicated that Laidlaw had authorized Greyhound to seek additional funding from outside sources, and that Greyhound had begun seeking such financing. Greyhound added that, if such funding were to be unavailable or inadequate, it could "be required to curtail or defer non-

¹ Greyhound is not a direct subsidiary of Laidlaw as described and anticipated in the application filed in November 1998. Instead, it is a subsidiary of Laidlaw Transportation, Inc., a noncarrier controlled by Laidlaw.

² No comments were filed in opposition to the proposed transaction.

essential or essential capital and operating expenditures and may not be able to satisfy its obligations as they become due in the normal course of operations and may not be able to continue to operate as a going concern.” Id.

We stated that a sudden termination of operations by Greyhound, the nation’s largest bus carrier, “would not appear to be in the public interest.” Id. Accordingly, we issued a supplemental order directing Laidlaw and Greyhound to explain the potential transportation crisis and what future steps they planned to take.³ Greyhound and Laidlaw filed comments on September 1, 2000, and supplemental filings on September 22, 2000, October 2, 2000, October 27, 2000, November 7, 2000, and November 20, 2000. DOT filed comments on September 15, 2000.

In their September 1 comments at 3, Greyhound and Laidlaw asserted that “the risk of Greyhound’s termination of bus service is remote.”⁴ They submitted that there have been steady gains in ridership, revenue, and operating income under current management, and that Greyhound’s affiliation with Laidlaw is responsible for much of Greyhound’s improvement. Since the merger, Greyhound and Laidlaw stated, Greyhound has started new routes, invested in new buses and terminals, and integrated operations with carriers in Canada and Mexico. Without assistance from Laidlaw, they said, Greyhound’s position would be similar to what it was before the acquisition. Applicants argued that the passenger transportation business of Laidlaw is viable, but that its problems are principally related to its health care and hazardous waste disposal businesses. They stated that Greyhound will serve the Board with copies of future Form 10-Q, Form 10-K, and Form 8-K filings that it will be making with the SEC, and Greyhound promptly will tell the Board “of any intervening developments that materially may have a bearing on the company’s ability to fulfill its common carrier obligation as a motor carrier of passengers.” Id. at 18-19. See also November 7, 2000 supplemental filing at 7.

³ Under 49 U.S.C. 14303(j), the Board may issue supplemental orders in a bus merger proceeding “[w]hen cause exists.”

⁴ Concerning statements made by Greyhound in its Form 10-Q about the possible cessation of operations, Greyhound’s Senior Vice President and Chief Financial Officer asserts that “such gloom and doom statements are typical of SEC filings; securities lawyers are insistent that a reporting company portray the absolutely worst case scenario, lest the company be accused of not being completely forthcoming to the detriment of potential investors.” Verified statement of Jeffrey W. Sanders, at 2-3, September 1 comments.

DOT,⁵ in its comments at 3, expressed its concern about the possibility that Laidlaw could “no longer provide the assistance that helped make its acquisition of Greyhound ‘consistent with the public interest.’” DOT took the position that “the public interest would seem to demand at least that the financial arrangements between Laidlaw and Greyhound should not redound to the detriment of Greyhound.” Id. It suggested that information be submitted to determine whether Greyhound is exposed “to the consequences of the financial difficulties of Laidlaw or its other subsidiaries.” Id.

Finally, in their November 7, 2000 supplemental filing, Laidlaw and Greyhound indicate that Greyhound has obtained, on October 24, 2000, the financing needed to meet its seasonal shortfalls. Consequently, Greyhound asserts, it is now independent of its parent company concerning near-term financial needs, and it has adequate funding to meet projected seasonal and ongoing working capital needs. It also states that it timely made an interest payment due October 15, 2000 on its 11½% Senior Notes.

Laidlaw and Greyhound indicate that Greyhound has secured what they describe as a two-year revolving credit facility with Foothill Capital Corporation that allows Greyhound to borrow up to \$125 million with a sub-facility for \$25 million for letters of credit.⁶ Under the facility, repayment of loans will be on a daily basis with proceeds of the collections from cash concentration accounts of Greyhound controlled by Foothill. The financing facility is secured by a lien on all Greyhound assets, mainly owned buses, personal and real property, and the assets and stocks of certain subsidiaries. Greyhound and Laidlaw indicate that \$43 million of intercompany accounts due Laidlaw were paid by Greyhound upon closing the Foothill facility. All remaining intercompany amounts then due were converted to an intercompany loan subordinate to the facility with Foothill.

⁵ DOT noted that its Federal Motor Carrier Safety Administration (FMCSA) has licensing and insurance jurisdiction over for-hire passenger carriers under 49 U.S.C. 13902 and 13906. DOT indicated that Greyhound’s self-insurance and related obligations may be affected by its current financial situation. FMCSA asked for additional financial, insurance, and claims information from Greyhound to enable FMCSA to determine whether Greyhound can satisfy its bodily injury and property damage liability obligations. FMCSA stated that, after evaluating the information, it would take appropriate action and would notify the Board of its decision. As of yet, we are not aware of any such action by FMCSA.

⁶ Laidlaw and Greyhound submit that Laidlaw is finalizing a 6-month bridge facility with the Canadian Imperial Bank of Commerce and a group of financial institutions to address Laidlaw’s near-term capital needs.

DISCUSSION AND CONCLUSIONS

It is not clear that Greyhound is entirely out of danger yet, but we are encouraged by the fact that Greyhound has obtained the Foothill financing facility, which, we hope, will enable Greyhound to meet its seasonal cash shortfalls and make Greyhound independent of its parent company for its near-term financial needs. We are also encouraged by the increases in the ridership of Greyhound. Given these new developments, we see no need at this time to require substantial additional information from Laidlaw and Greyhound. Greyhound, however, has offered to submit copies of SEC filings Form 10-Q, Form 10-K, and Form 8-K, and to promptly advise the Board of developments that could affect its ability to perform its common carrier obligations, and we will require Greyhound to provide this information to enable us to track key future developments and take any further action that might be necessary.

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

It is ordered:

1. Laidlaw and Greyhound will submit to the Board copies of future SEC filings of Form 10-Q, Form 10-K, and Form 8-K when these forms are filed with the SEC, and will promptly advise the Board of any developments, including any planned financial transactions or commitments, that could affect Greyhound's ability to perform its common carrier obligations.
2. A copy of this decision will be served on: (1) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, N.W., Washington, DC 20530; (2) the U.S. Department of Transportation, Federal Motor Carrier Safety Administration - MC-EC, 400 Virginia Avenue, S.W., Suite 600, Washington, DC 20024; and (3) the U.S. Department of Transportation, Office of the General Counsel, 400 7th Street, S.W., Washington, DC 20590.
3. This decision is effective on the date of service.

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

Vernon A. Williams
Secretary