21574
EB

SERVICE DATE - MAY 15, 1997

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 33343[1]

COACH USA, INC.—CONTROL EXEMPTION—PROGRESSIVE TRANSPORTATION SERVICES, INC.; POWDER RIVER TRANSPORTATION SERVICES, INC.; WORTHEN VAN SERVICE, INC.; AND PCSTC, INC.

STB Finance Docket No. 33377

COACH USA, INC.—CONTROL—AIRPORT BUS OF BAKERSFIELD; ANTELOPE VALLEY BUS, INC.; DESERT STAGE LINES, INC.; BAYOU CITY COACHES, INC.; KERRVILLE BUS COMPANY, INC.; RED & TAN CHARTER, INC.; RED & TAN TOURS, INC.; AND ROCKLAND COACHES, INC.

Decided: May 9, 1997

Coach USA. Inc. (Coach), a noncarrier, filed petitions in STB Finance Docket No. 33343 and STB Finance Docket No. 33373, under 49 U.S.C. 13541, seeking exemption from the prior approval requirements of 49 U.S.C. 14303(a)(5) to acquire stock control of a total of 12 additional motor passenger carriers.[2] Coach indicates that it currently controls the nation's second largest group of motor passenger carriers, having acquired 10 carriers in May 1996[3], and five more in November 1996.[4]

Notice of the exemption petition in STB Finance Docket No. 33343 was served and published in the *Federal Register* on March 19, 1997 (62 FR 11518). Notice of the exemption petition in STB Finance Docket No. 33377 was served and published in the *Federal Register* on April 11, 1997 (62 FR 17904). Copies of the notices were served on the Antitrust Division of the Department of Justice. No comments opposing the exemptions have been filed. Based on our review of the records, we are exempting the proposed transactions from regulation, and, as requested, we will make the exemptions effective on the service date of this decision.

BACKGROUND

In STB Finance Docket No. 33343, Coach is seeking to acquire control of the following motor passenger carriers: Progressive Transportation Services, Inc.(PTS); Powder River

---

[1] These proceedings are not consolidated. A single decision is being issued for administrative convenience.

[2] Coach indicates that the stock of each of the 12 carriers involved here has been placed into separate, independent voting trusts with different trustees with the intent of avoiding any unlawful control. Coach also states that each of the 12 carriers holds a satisfactory safety rating from the U.S. Department of Transportation, and none is domiciled in Mexico or owned by citizens of that country.

[3] *See Notre Capital Ventures II, LLC and Coach USA, Inc.—Control Exemption—Arrow Stage Lines, Inc.; Cape Transit Corp.; Community Coach, Inc.; Community Transit Lines, Inc.; Grosvenor Bus Lines, Inc.; H.A.M.L. Corp.; Leisure Time Tours; Suburban Management Corp.; Suburban Trails, Inc.; and Suburban Transit Corp.*, STB Finance Docket No. 32876 (Sub-No. 1) (STB served May 3, 1996).

[4] *See Coach USA, Inc.—Control Exemption—American Sightseeing Tours, Inc.; California Charters, Inc.; Texas Bus Lines, Inc.; Gulf Coast Transportation, Inc.; and K-T Contract Services, Inc.*, STB Finance Docket No. 33073 (STB served Nov. 8, 1996).

Transportation Services, Inc. (PRTS); Worthen Van Service, Inc. (WVS); and PCSTC, Inc., d/b/a Pacific Coast Sightseeing/Gray Line of Anaheim-Los Angeles (PCSTC).

PTS is a New York corporation that had been owned by Thomas J. Freeman (50 per cent) and Carl D. Berman (50 per cent). It holds federally-issued operating authority in MC-247074 and intrastate operating authority issued by the New York Department of Transportation. PTS provides scheduled, fixed route, mass transportation, charter bus, and transit authority management services, including shared ride and travel coordination services for Medicaid patients. The carrier has 300 employees; it owns seven motorcoaches, 54 mini-buses and school buses, and 47 vans; and it earned revenues of $8,950,000 in 1995.

PRTS is a Wyoming corporation that had been controlled by H. Wayne Worthen (38 per cent), Sandra E. Worthen (38 per cent), Brian R. Worthen (12 per cent), and Gregory M. Worthen (12 per cent). It holds federally-issued operating authority in MC-161531 and intrastate authority issued by the Wyoming Department of Transportation and the Colorado Public Utilities Commission. It operates contract transportation and line schedule, charter, and tour services in Colorado, Montana, South Dakota, and Wyoming. The carrier has 75 full-time and 81 part-time employees; it operates 21 vans and 44 buses; and it earned revenues of $7,975,000 for the fiscal year ending in October 1996.

WVS is a Wyoming Corporation that had been owned by H. Wayne Worthen (65 per cent) and Sandra E. Worthen (35 per cent). It holds federally-issued operating authority in MC-142573, and intrastate operating authority issued by the Wyoming Public Service Commission, operating primarily in eastern Wyoming. The carrier has 25 employees and earned annual revenues of $633,000 for the fiscal year November 1995-October 1996.[5]

PCSTC is a California corporation that operates as Pacific Coast Sightseeing Tours Charters, Gray Line of Los Angeles, and Gray Line of Anaheim. Its stock had been owned as follows:

William R. and Jean M. O'Connell, Trustees of the William R. O'Connell Family Trust	33 1/3%
Paul V. and Patricia K. O'Connell, Trustee of the Paul and Patricia O'Connell Family Trust	33 1/3%
Gerard B. and Karen A. O'Connell, Trustee of the Gerard and Karen O'Connell Family Trust	33 1/3%

PCSTC holds federally-issued operating authority in MC-184852 and intrastate authority issued by the California Public Utilities Commission. PCSTC operates daily sightseeing tours, group charters, and shuttle service in Orange, Los Angeles, and San Diego Counties, CA, and in Nevada, Arizona, and Utah. The carrier has 123 full time and 33 part-time employees; it owns 51 full-size coaches, five minibuses, and nine vans; and it earned annual revenues of $14.208 million in 1995.

In STB Finance Docket No. 33377, Coach seeks to acquire control of the following motor passenger carriers: Airport Bus of Bakersfield (Airport); Antelope Valley Bus, Inc. (Antelope);

---

[5] As Coach notes, the approval requirements of section 14303 do "not apply to transactions involving carriers whose aggregate gross operating revenues were not more than $2,000,000 during a period of 12 consecutive months ending not more than 6 months before the date of the agreement of the parties." 49 U.S.C. § 14303(g). We agree with Coach that, under the circumstances here, the small carrier exemption does not apply, because we interpret the "aggregate gross operating revenues" to consist of the combined revenues of the acquirer and the carrier to be acquired, which here clearly exceeds the $2 million jurisdictional threshold. *See Fleet Delivery Service Northwest—Purchase (Portion) Exemption—Excel Transport, Inc*. No. MC-F-20274 (ICC served Feb. 14, 1994).

Desert Stage Lines, Inc. (Desert); Bayou City Coaches, Inc. (Bayou); Kerrville Bus Company, Inc. (Kerrville); Red & Tan Charter, Inc. (Charter); Red & Tan Tours, Inc. (Tours); and Rockland Coaches, Inc.(Rockland).

Airport, a division of Antelope, holds federal authority in MC-163191 to operate in interstate commerce in Arizona, Colorado, Idaho, Utah, Montana, Nevada, New Mexico, Oregon, Washington, Wyoming and California and intrastate authority issued by the California Public Utilities Commission. The carrier operates primarily in California, transporting passengers between Bakersfield, CA, and the Los Angeles International Airport, and from points in Southern California and Nevada to connect with Amtrak. It also operates charter service in the southern San Joaquin Valley of California. The carriers has 66 employees; it operates 12 buses; and it earned revenues of approximately $3.8 million in 1996.

Antelope is a California corporation that had been owned by James A. Carter, Annette Carter, Ronald H. Carter and Audrey M. Carter, as trustees of various Carter family trusts. It holds federal authority in MC-125057 to operate in interstate commerce in the 48 contiguous states and intrastate authority issued by the California Public Utilities Commission. Antelope operates commercial and military charters conducted primarily in southern California and Nevada. It also provides service for Amtrak in southern California and Nevada and commuter service in Ventura County, CA. The carrier has 291 drivers; it operates 134 buses; and it earned revenues of $15.7 million in 1996.

Desert is a California corporation that is wholly owned by Antelope.[6] It holds federal authority in MC-140919 to operate in interstate commerce in California, Nevada, Arizona, Utah and New Mexico. The carrier operates commercial and military charters primarily in the Palm Springs and Coachella Valley areas of California. Desert also provides tours and services affiliated companies. The carrier has 33 employees; it operates 7 buses; and it earns annual revenues of approximately $1 million.

Bayou is a Texas corporation that had been wholly owned by Suzan G. Kaiser. It holds federal authority in MC-245246 and intrastate authorities issued by Texas and New Mexico. The carrier operates charter and contract bus services, primarily in Texas and New Mexico under the trade names, Gray Line of San Antonio and Gray Line of Albuquerque. The carrier has 148 employees, it operates 53 vehicles; and it earned annual revenues of approximately $8.3 million in 1996.

Kerrville is a Texas corporation that had been wholly owned by Fred Kaiser, the husband of Suzan Kaiser, the owner of Bayou. It holds federal authority in MC-27530 to operate over regular routes in interstate commerce between points in Texas, Louisiana and Arkansas. The carrier operates regular route service and provides charter and tour services, primarily in Texas and other points in the Southeast U.S. The carrier has 282 employees; it operates 214 buses; and it earned annual revenues over $21.5 million in 1996.

Charter is a New Jersey corporation that had been owned by Red & Tan Transportation Systems, Inc. (Systems), a noncarrier that also owns Tours. Tours, in turn, is owned by Red & Tan Enterprises, Inc., which owns Rockland.[7] It holds federal authority in MC-204842 to operate charter and special services throughout the 48 contiguous states, but does not presently conduct any bus operations. Charter does not hold any intrastate authority. Its revenues are derived from providing employees to its affiliate, Tours. The carrier has 215 employees; it earned annual revenues of approximately $6 million in 1996.

---

[6] Antelope's control of Desert was authorized in *Antelope Valley Bus, Inc.—Control — Desert Stage Lines, Inc.*, No. MC-F-20900 (STB served Oct. 2, 1996), published at 61 FR 15489.

[7] The ICC authorized common control of Charter, Tours and Rockland in *Red & Tan Enterprises—Continuance in Control—Red & Tan Charter, Inc.* No. MC-F-18857 (ICC served Feb. 19, 1988).

Tours is a New Jersey corporation. It holds federal authority in MC-162174 and intrastate authorities issued by the states of New Jersey and New York. Among other operations, Tours operates transit and other special services under contract with a variety of public entities, including New Jersey Transit and the Port Authority of New York and New Jersey. It has 15 employees and uses approximately 200 additional employees supplied by Charter; it operates 300 buses; and it earned annual revenues of $12.8 million in 1996.

Rockland is a New Jersey corporation. It holds federal operating authority in MC-29890, and conducts fixed route operations in Rockland County, NY, Bergen County, NJ, and New York City and holds intrastate operating authority issued by the state of New Jersey. Rockland operates regular route services, and provides charter and special services primarily in the Northeast. The carrier operates 175 buses; it employs 288 persons; and it earned annual revenues of approximately $19.5 million in 1996.

COACH'S ARGUMENT

Coach states that granting the petitions will not significantly reduce competitive options available to the traveling public. It contends that, following consummation, each carrier it currently controls and each carrier it intends to acquire will continue to compete in their respective markets with numerous other bus companies unaffiliated with Coach and with other modes. Coach maintains that no fundamental changes are planned to the operations or management of each carrier; that no certificates or other operating permits will be transferred; and that each carrier involved in these transactions will continue to provide bus services in its own name under the federal and state-issued operating authorizations and other licenses.

Coach acknowledges that there is some competitive overlap in service areas, but states that the proposed acquisitions will have no meaningful effect on the continued availability of competitive service. The applicant notes that Antelope and California Charters apparently compete for charter service in Southern California. Kerrville, Bayou, Texas Bus Lines and Gray Line of Houston compete in Texas within their service areas. Tours competes with Suburban and Community. PCSTC competes with other Coach carriers. Coach maintains that as a whole, the carriers Coach already controls and those it intends to acquire handle only a small percentage of passenger traffic within each respective geographic area in which each of these carriers operates, and each operates in a market with multiple competitors for charter services and low barriers to entry. Coach indicates that PRTS, WVS, and PTS do not compete with any Coach-owned bus company.

Coach estimates that these transactions would generate over $3 million in cost savings, which would substantially benefit all carriers within its corporate family. Among the benefits it foresees are savings in interest costs stemming from restructuring debt and reduced operating costs resulting from Coach's enhanced volume purchasing power. According to Coach, the carriers to be acquired would also benefit from the lower insurance premiums that it has negotiated and from volume discounts for equipment and fuel. Coach states that it will provide its carriers with legal and accounting services and coordinated purchasing services. In addition, Coach states that it will arrange sharing of vehicles to ensure maximum use and efficient operation of equipment. Coach indicates that it intends to provide coordinated driver training services to enable its carriers to allocate driver resources in the most efficient manner possible. Coach says that it also plans to centralize marketing and reservation services for the bus firms it controls. Finally, Coach states that collective bargaining agreements with carrier employees will be respected and that employee benefits will improve.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 14303(a)(5), a noncarrier that controls any number of carriers may not acquire control over another carrier without our approval. However, under 49 U.S.C. 13541(a), we must exempt a transaction or service from regulation when we find that: (1) regulation is not necessary to carry out the transportation policy of 49 U.S.C. 13101; (2) either (a) regulation is not needed to protect shippers from the abuse of market power, or (b) the transaction or service is of limited scope; and (3) exemption is in the public interest.

Transportation Policy. Detailed scrutiny of these transactions under 49 U.S.C. 14303 is not necessary to ensure the development, coordination, and preservation of a sound transportation system consistent with the policy contained in 49 U.S.C. 13101(a)(1). Exempting these transactions would permit Coach to coordinate and centralize planning, safety, and management for carriers within its corporate family, allowing them to rationalize and use resources productively, promoting safe, adequate, economical and efficient transportation [49 U.S.C. 13101(a)(1)(B) and (C)].

Similarly, detailed scrutiny under 49 U.S.C. 14303 is not necessary to promote competitive and efficient services consistent with the policy in 49 U.S.C. 13101(a)(2). By facilitating the development of a bus system with coordinated marketing and reservation service, the exemption will enable each carrier to promote efficiency in the motor passenger carrier industry, which will help meet the needs of passengers and consumers [49 U.S.C. 13101(a)(2)(B) and (C)]. The exemption will also strengthen the financial status of each carrier, which will permit continued service to small communities and enhanced commuter bus operations [49 U.S.C. 13101(a)(2)(G.) and (H)]. In addition, the exemption will improve each carrier's financial and managerial ability to compete in its respective market, thus improving and maintaining a sound, safe, and competitive privately owned motor carrier system [49 U.S.C. 13101(a)(2)(I)]. By facilitating vehicle sharing arrangements and other efficiencies, the exemption will allow the most productive use of equipment, enhancing intermodal competition with rail passenger carriers and private automobiles [49 U.S.C. 13101(a)(2)(E) and (K)].

Finally, the transportation policy in 49 U.S.C. 13101(a)(3) for motor passenger carriers requires federal/state cooperation to ensure that state regulation does not undermine federal policy objectives. Because this proceeding does not implicate state regulatory initiatives, detailed scrutiny under 49 U.S.C. 14303 is not necessary for consistency with the intrastate aspects of the policy in 49 U.S.C. 13101(a)(3).

Based on the above considerations and the absence of any opposition, we find that regulation of the proposed transactions is not necessary to carry out the goals of the transportation policy of 49 U.S.C. 13101.

Abuse of Market Power. Nor is regulation necessary to protect shippers from the abuse of market power. The petitions for exemption are unopposed. The proposed transactions will have no significant impact on competition. As noted above, Coach indicates that some of the carriers to be acquired compete to a limited extent with carriers Coach currently controls or with carriers to be acquired in this transaction. However, each of these carriers faces significant competition from numerous other bus firms not controlled by Coach, as well as from private automobiles and other transportation modes. Thus, the proposed acquisition should not result in a meaningful reduction on the competitiveness of passenger transportation in any of the markets served by each of the carriers involved here.

Further, none of the carriers to be acquired holds more than a very small market share of the transportation services available to its potential passengers. None had recent annual revenues in excess of $21.5 million. Moreover, with the low entry barriers and the pervasive intramodal and intermodal competition that impacts the bus industry, opportunities for abuse of market power are effectively foreclosed.

Given our finding regarding the probable effect of the transaction on market power, we need not determine whether the transaction is limited in scope. The market shares of each of the carriers involved in these transactions is relatively small. Following the acquisition of common control, each carrier will continue to operate in its respective market in the same manner as prior to the transaction, but with changed ownership.

Public Interest. Exempting these transactions from regulation is consistent with the public interest. Subjecting the proposed transaction to detailed scrutiny, instead of serving a meaningful public policy or regulatory purpose, would be wasteful of both our resources and those of Coach, the carriers it proposes to acquire, and the public. On the other hand, an exemption will have multiple benefits, relating to adequate transportation services, efficient and economic operations, and employees, and will not give rise to market abuse or problems that might warrant regulatory scrutiny. Accordingly, we will grant the requested exemptions.

Coach has requested expedited action on its exemption. It explains that it intends a public stock offering, and possibly a debt offering, in May 1997 to raise capital. To facilitate these plans, Coach requests that the exemptions be made effective May 15, 1997. Because these exemptions were not opposed, we have expedited our consideration and will make the exemption effective on the service date of this decision.

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

It is ordered:

1. In STB Finance Docket No. 33343, under 49 U.S.C. 13541, the acquisition by Coach USA Inc., of control of Progressive Transportation Services, Inc., Powder River Transportation Services, Inc., Worthen Van Service, Inc., and PCSTC, Inc. is exempted from the prior approval requirements of 49 U.S.C. 14303(a)(5).

2. In STB Finance Docket No. 33373, under 49 U.S.C. 13541, the acquisition by Coach USA, Inc., of control of Airport Bus of Bakersfield, Antelope Valley Bus, Inc., Desert Stage Lines, Inc., Bayou City Coaches, Inc., Kerrville Bus Company, Inc., Red & Tan Charter, Inc., Red & Tan Tours, Inc., and Rockland Coaches, Inc. is exempted from the prior approval requirements of 49 U.S.C. 14303(a)(5).

3. This exemption is effective on May 15, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary