

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D.C.

ORDER NO. 2692

IN THE MATTER OF:

Served April 3, 1985

Application of RED TOP COACH, INC., )  
to Transfer Certificate No. 26 to )  
NATIONAL COACH WORKS, INC. )

Case No. AP-84-45

BACKGROUND

By application filed December 11, 1984, Red Top Coach, Inc. ("Red Top"), a Virginia corporation, seeks Commission approval to transfer Certificate of Public Convenience and Necessity No. 26 to National Coach Works, Inc. ("National"), a Delaware corporation. Pending final disposition of the application, National has been granted temporary approval to operate Red Top's Certificate No. 26 pursuant to Title II, Article XII, Section 12(d) of the Compact. See Order No. 2665, served February 15, 1985, incorporated herein by reference.

Pursuant to Order No. 2647, served January 9, 1985, also incorporated herein by reference, a public hearing was held on February 21, 1985, at which witnesses appeared on behalf of Red Top and National in support of the application. The Airport Connection, Inc., which had timely protested the application, withdrew its opposition on the date of hearing. Thus, the subject application stands unopposed.

SUMMARY OF EVIDENCE

During 1984, Red Top incurred substantial operating losses. These losses led Red Top's management to decide to cease operations, liquidate the corporation, and sell its assets. Pursuant to this business decision, on December 7, 1984, Red Top agreed to sell Certificate of Public Convenience and Necessity No. 26 to National for \$10,000 cash, contingent upon the approval of the sale by this Commission.

Subsequently, Red Top's certificate was partially revoked by Order No. 2645, served December 26, 1984, in Case No. AP-84-22, Application of Airport Limo, Inc., to Transfer Certificate of Public Convenience No. 26, in Part, to the Airport Connection, Inc. 1/ The partial revocation had the effect of eliminating certain special operations authority involving service to and from Washington National

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1/ Airport Limo, Inc., changed its corporate name to Red Top Coach, Inc., on July 30, 1984. Certificate No. 26 was thereafter reissued in Red Top's name by Order No. 2588, served August 2, 1984.

and Dulles International airports as well as service between the Springfield Hilton Hotel, Springfield, Va., and the Capital Hilton Hotel, Washington, D.C. As a result, Certificate No. 26 now authorizes the following service:

IRREGULAR ROUTES

CHARTER OPERATIONS transporting passengers and mail, express and baggage, in the same vehicle with passengers, between points in the Metropolitan District.

RESTRICTED against lectured and sightseeing service where the lecturer or guide is furnished by Red Top Coach, Inc., or any person controlling, controlled by, or under common control with Red Top Coach, Inc.

FURTHER RESTRICTED against transportation solely within the Commonwealth of Virginia.

National intends to honor its agreement and consummate the purchase if this application is granted, notwithstanding the partial revocation of Certificate No. 26 shortly after the buy-sell agreement with Red Top was made.

Red Top conducted operations within the present scope of Certificate No. 26 until January 31, 1985, when it officially terminated its business. A traffic abstract constructed from a representative sampling of Red Top's charter orders performed during the period August through December 1984 showed 37 trips handled between various points in the Metropolitan District.

National historically has been engaged in the business of refurbishing and reselling used buses, rather than conducting passenger transportation. At the time of the hearing, however, National had been granted authority by the Interstate Commerce Commission to transport passengers between points in the United States, excluding Alaska and Hawaii, and was awaiting the issuance of its certificate. Further, its wholly-owned subsidiary, National Coach Works, Inc., of Virginia, had been granted authority by the Virginia State Corporation Commission to purchase Red Top's Virginia intrastate operating rights.

If this application is granted, National would conduct operations under Certificate No. 26 using five 47-passenger buses leased from Gold Line, Inc. ("Gold Line"). Minor maintenance of the leased buses would be performed by Gold Line, but major repairs would be done at National's Fredericksburg, Va., facilities. The buses would be stationed at Gold Line's Tuxedo, Md., terminal on a portion of a lot National would lease from Gold Line. An office trailer would be

located on the leased premises, from which National's transportation operations would be managed on a day-to-day basis. National also plans to hire six qualified drivers.

National is financially sound. Its balance sheet dated August 31, 1984, shows current assets of approximately \$1,464,000, and current liabilities of approximately \$1,327,000. It earned net income before taxes of approximately \$151,000 on revenues of approximately \$2,683,000 during the nine-month period ended August 31, 1984. National plans to stay involved in the business of refurbishing and reselling used buses and, for this reason, will be in a position to obtain such additional equipment as may be needed to conduct operations under the authority it seeks to acquire.

National's capital stock is owned by Mr. Frank Henry. Mr. Henry also controls Gold Line, Inc., which operates in the Metropolitan District pursuant to WMATC Certificate of Public Convenience and Necessity No. 14. The authority National seeks to buy from Red Top duplicates, in part, Gold Line's authority. If this application is granted, National would continue the service which until recently was conducted by Red Top in competition with Gold Line.

#### DISCUSSION AND CONCLUSIONS

Title II, Article XII, Section 4(h) of the Compact provides that "[n]o certificate. . . may be transferred unless such transfer is approved by the Commission as being consistent with the public interest." Title II, Article XII, Section 12 of the Compact further provides that no transaction resulting in common control of two or more carriers operating within the Metropolitan District may be consummated unless the Commission finds that "the proposed transaction is consistent with the public interest." Thus, the question in this case is whether the proposed transfer of Certificate No. 26 and resulting common control of National and Gold Line is consistent with the public interest. 2/

The standard of consistency with the public interest is different and less rigorous than the standard of public convenience and necessity that governs applications for new operating authority. Nevertheless, a finding of consistency with the public interest

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2/ A threshold issue to be determined in an application to transfer is whether the operating rights under the certificate to be acquired have become dormant. We find that the operating rights to be transferred have not been dormant inasmuch as Red Top provided continuous service under Certificate No. 26 through January 31, 1985, and National, thereafter, received temporary approval to provide service under the certificate. See Order No. 2665, served February 15, 1985, granting a joint motion of Red Top and National for temporary approval, filed January 25, 1985.

involves an assessment of the competitive impact of a proposed transaction and of the fitness of a transferee carrier to operate pursuant to the Compact and our rules and regulations thereunder. A transaction is consistent with the public interest if, inter alia, its end result does not harm the public interest either by affecting adversely the existing competitive balance in the market place or by loosing upon the public the services of an unfit carrier.

In this case, we find that the effect of the proposed transaction will be to maintain the competitive status quo. Red Top's operations under Certificate No. 26 have been shown to be substantial and continuous during the six month period preceding the takeover of those operations by National. National has shown that it intends to continue Red Top's former operations. Thus there will be no material alteration of the existing competitive balance in the relevant charter market as a result of the proposed transaction, either through the creation of a totally new service or the extinction of an existing service.

Similarly, there is no reason to find National unfit. While it is new to passenger transportation, National has a history of being involved in the bus industry generally. It has formulated a reasonable plan for conducting transportation service, and it has sufficient financial resources to implement its plan. National filed this application and sought temporary approval to commence operations under Red Top's certificate, which demonstrates its familiarity with and willingness to abide by the requirements of the Compact and the Commission's rules and regulations.

Because the proposed transaction will not adversely affect competition among carriers in the Metropolitan District, and because National appears to be fit to operate as a carrier, we find the proposed transfer of Certificate No. 26 and the resulting common control of National and Gold Line to be consistent with the public interest. In so doing, we do not find that the common control of duplicative operating rights held by National and Gold Line is a situation that is inconsistent with the public interest as a matter of policy. 3/

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3/ We note that prior to the passage of the Bus Regulatory Reform Act of 1982, at a time when the provisions of the Interstate Commerce Act respecting motor carriers of passengers were similar to the provisions of the Compact, the Interstate Commerce Commission had a policy that flatly prohibited the common control of duplicative operating rights. The ICC abandoned that policy in Ex Parte No. MC-79 (Sub. No. 2), Control of Duplicate Operating Rights, 48 F.R. 38844 (August 18, 1983).

There are four possible reasons for prohibiting commonly controlled carriers from holding duplicative authority: (1) concern for promoting corporate simplification; (2) the possibility of unfair competition and unjust discrimination and preferences as to rates and practices; (3) the possible adverse effects on competition if commonly controlled carriers are able to sell one right while retaining another to perform identical operations; and (4) the concern that grants of valuable motor carrier operating rights may be used improperly for personal gain through their sale rather than for their true purpose of providing necessary services to the travelling public. We do not believe that these considerations warrant a policy prohibiting common control of carriers which hold duplicative operating rights. As for the first reason -- corporate simplification -- we feel that, in general, persons who own carriers should be free to structure their holdings as they wish, unless the facts of a particular case indicate that in some way the public interest is adversely affected thereby. As for the remaining three reasons -- the possibility of discrimination and preferences, the potential adverse effect on competition, and the danger of so-called "trafficking" in operating rights -- these are all matters that are best dealt with in the concrete factual context of a particular case rather than on the policy level. If a particular transaction involves facts that establish any of the stated reasons for prohibiting common control of carriers which hold duplicative operating rights, then we shall take appropriate action as the circumstances of that individual case require. Such a case-by-case approach is more appropriate to the regulatory function we discharge than a policy approach. In the instant case, there are no facts to trigger any of the potential reasons for disallowing common control of duplicative operating rights and, therefore, we approve the proposed transaction.

One last matter deserves comment. A restriction found in Certificate No. 26 prevents the rendition of lectured or sightseeing service where the lecturer or guide is furnished by Red Top or an affiliate of Red Top. Although the restriction employs the actual name "Red Top Coach, Inc.," it is obviously intended to prevent the holder of the certificate from providing lecturers and guides. Since the new holder of the certificate will be National, the restriction in the re-issued certificate will be rephrased to reflect its applicability to National.

THEREFORE, IT IS ORDERED:

1. That the application of Red Top Coach, Inc., to transfer Certificate of Public Convenience and Necessity No. 26 to National Coach Works, Inc., is hereby granted.

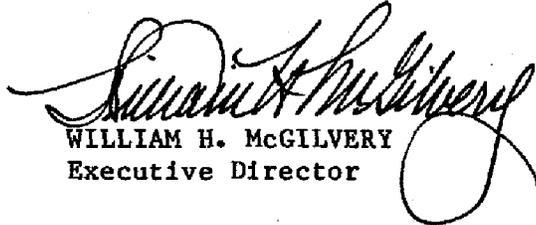
2. That National Coach Works, Inc., within thirty (30) days from the date of service of this order, or such further time as the Commission by order may prescribe, is hereby directed to file the following: (a) two copies of its WMATC Tariff No. 1 covering

operations under Certificate No. 26 pursuant to the authorization herein granted, in the form and manner prescribed by Regulation No. 55; and (b) an affidavit of compliance with Regulation No. 68 concerning the identification of vehicles operated under permanent authority.

3. That upon compliance with the terms of the ordering paragraph next above, Certificate No. 26 shall be revised in accordance with the terms hereof and re-issued to National Coach Works, Inc.

4. That unless National Coach Works, Inc., complies with the requirements of ordering paragraph No. 2 within 30 days from the date of service hereof, or such additional time as may be authorized by the Commission, the grant of approval herein shall stand denied in its entirety, effective upon the expiration of the said compliance time.

BY DIRECTION OF THE COMMISSION, COMMISSIONERS WORTHY, SCHIFTER, AND SHANNON:

  
WILLIAM H. MCGILVERY  
Executive Director