WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D.C.

ORDER NO. 3099

IN THE MATTER OF:		Served December 4, 1987
GOLD LINE, INC. v. AMERICAN COACH LINES, INC., et al.	)))	Case No. FC-86-01
Investigation of Compliance of AMERICAN COACH LINES, INC.	))	Case No. MP-87-08

The above-captioned cases were decided by Order No. 3079, served October 9, 1987. On November 9, 1987, counsel for respondents American Coach Lines, Inc., et al., filed a petition for reconsideration of Order No. 3079 pursuant to the Compact, Title II, Article XII, Section 16. On November 17, 1987, complainant Gold Line, Inc., filed a reply to the petition for reconsideration.

As we begin to address the petition for reconsideration, it is worth remembering that we named a half-dozen entities as defendants/respondents in these cases, including four corporations and two individuals. These were:

-- American Coach Lines, Inc., a District of Columbia Corporation;
-- American Coach Lines, Inc., a Maryland Corporation;
-- Sherman Coaches, Inc.;
-- Carter Tours, Ltd.;
-- Frank Sherman, Sr.; and
-- Frank Sherman, Jr.

Frank Sherman, Jr., owned ACL-DC (holder of some WMATC authority) and ACL-MD (holder of some ICC authority). Frank Sherman, Sr., owned Carter Tours, Ltd., (holder of some ICC authority) and Sherman Coaches, Inc. Carter Tours, Ltd., owned eight buses, all identified on the side as Sherman Coaches. These buses were operated by the ACL's.

Frank Sherman, Jr., testified at the hearings on behalf of all defendants/respondents. During the course of this investigation -- at the height of finger-pointing as to who was or was not responsible for what -- ACL-MD was merged into ACL-DC without the required approval.

It is against this backdrop of trying to find the pea of responsibility under the corporate shells that we entertain this petition for reconsideration that refers to these entities "collectively" as ACL.

The petition raises three issues. As to the first, petitioners assert that Order No. 3079 determines that lawful service under WMATC Certificate No. 1 must include "a lecturing guide, separately compensated." Petitioners' assertion is in error, as we made no such determination. Having assembled their straw man, petitioners set it afire. However, the flames light no error in Order No. 3079.

The second issue is whether certain operations found by this Commission to have been conducted without authority were actually authorized by ICC Certificate MC-149076 (Sub-No. 2) and whether WMATC has authority to interpret an ICC certificate.

Witness Sherman testified that he considered all ACL operations to be authorized either by ACL-DC's WMATC Certificate No. 1 or ACL-MD's ICC Certificate MC-149076. Mr. Sherman did not distinguish between these two corporations and apparently operated on the assumption that any possible operation must be covered by one of the two certificates. When WMATC pointed to certain operations within the Metropolitan District not authorized by the WMATC certificate, then Mr. Sherman responded that they must be authorized by the ICC certificate, even if such operations were <u>not</u> interstate, and notwithstanding the fact that the very ICC decision transferring that ICC Certificate to ACL-MD says that it does <u>not</u> authorize operations within the Metropolitan District. Against these facts, petitioners answer that WMATC is not entitled to interpret an ICC certificate.

WMATC has simply given effect to ICC's own interpretation of the ICC certificate as it stood at the time the operations were conducted and when Order No. 3079 was issued. There is no error in doing so.

Petitioners attempt to make a third issue out of the on-again, off-again relationship between ACL-DC and ACL-MD.

Certificates of public convenience and necessity (or portions thereof) issued by the ICC to Greyhound and by WMATC to White House Sightseeing Corporation (unrelated companies) passed through various hands and eventually became owned by separate corporate entities (ACL-MD and ACL-DC) which, in turn, are owned by Frank Sherman, Jr. Mr. Sherman then merged ACL-MD into ACL-DC.

The Compact, Title II, Article XII, Section 12, states, in pertinent part:

> Consolidations, Mergers, and Acquisition of Control
>
> 12. (a) It shall be unlawful, without approval of the Commission in accordance with this section--
> (1) for two or more carriers, any one of which operates in the Metropolitan District, to consolidate or merge their properties or franchises, or any part thereof, into one person for the ownership, management, or operation of properties theretofore under separate ownership, management, or operation; or
> (2) for any carrier which operates in the Metropolitan District or any person controlling, controlled by, or under common control with, such a carrier (i) to purchase, lease or contract to operate the properties, or any substantial part thereof, or any carrier which operates in such Metropolitan District, or (ii) to acquire control, through ownership of its stock or otherwise, of any carrier which operates in such Metropolitan District.
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> * * *
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> (c) It shall be unlawful to continue to maintain or exercise any ownership, management, operation or control accomplished or effectuated in violation of subsection (a) of this section.

It requires Commission approval for two carriers (ACL-DC and ACL-MD), any one of which operates in the Metropolitan District (though both did, ACL-DC would suffice), to merge their properties or franchises (ICC and WMATC certificates) into one person (ACL-DC) for ownership, management, or operation of properties theretofore (at any prior time) under separate ownership, management or operation (Greyhound and White House Sightseeing).

Not only have petitioners failed to point to any error in this construction, but we have already held:

> that even if it were determined that Section 12(a)(1) did not cover the merger of ACL-MD and ACL-DC, Section 12(a)(2) would apply. [Order No. 3094, served November 19, 1987.]

Under Section 12(a)(2) Commission approval for any carrier which operates in the Metropolitan District (ACL-DC) or any person (Frank Sherman, Jr.) controlling such a carrier to acquire control

of any carrier which operates in such Metropolitan District (ACL-MD).

Now on reconsideration petitioners tell us that the merger was a nullity, anyway, because ACL-DC failed to reincorporate as required by a 1954 District of Columbia statute in order to become eligible to participate in a merger.

Even putting the worst face on it and assuming arguendo that neither 12(a)(1) nor 12(a)(2) cover the merger (or acquisition, or consolidation, or common control) this would still not be an error requiring "reconsideration of Order No. 3079 and its rescission, and dismissal of the proceedings," as petitioners assert. First, the decision in Order No. 3079 was not primarily predicated on lack of approval of this merger. Second, recognizing the possible impediment to rehabilitation of ACL posed by Section 12(c), we gratuitously gave temporary approval of the merger in Order No. 3079 to allow ACL time to file for permanent approval, which it has already done.

Complainant Gold Line, Inc., in its reply to the petition for reconsideration, comments with useful economy:

> The statement of facts, the alleged summaries of findings of this Commission and arguments of Petitioner amount to nothing more than misstatements of the record and the complete distortion of the decisions of this Commission, the Interstate Commerce Commission and the Courts. Moreover, Petitioners' arguments are for the most part directed to peripheral matters and even if valid, which they are not, would not warrant any change in the decision herein.

We find in the petition no error warranting reconsideration of Order No. 3079, and the petition for reconsideration will be denied.

THEREFORE, IT IS ORDERED:

1. That the Petition for Reconsideration filed by American Coach Lines, Inc., et al. is hereby denied.

2. That the 90-day suspension of WMATC Certificate No. 1 of American Coach Lines, Inc., a District of Columbia corporation, directed by Order No. 3079 shall begin Friday, December 11, 1987, and extend through Wednesday, March 9, 1988.

3. That the $572 assessed defendants-respondents jointly and severally by Order No. 3079 shall be delivered to the offices of the Commission no later than Friday, December 11, 1987.

4. That in all other respects Order No. 3079 remains in full force and effect.

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

William H. McGilvery
Executive Director