

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 3311

IN THE MATTER OF:

April 4, 1989

Application of PETER PAN BUS LINES,) )  
INC., for a Certificate of Public )  
Convenience and Necessity -- )  
Charter Operations )

Case No. AP-88-36

By application filed October 6, 1988, Peter Pan Bus Lines, Inc. (Peter Pan or applicant), seeks a certificate of public convenience and necessity to transport passengers, together with mail, express, and baggage in the same vehicle with passengers, in charter operations between points in the Metropolitan District. \*/

Pursuant to Order No. 3247, served October 31, 1988, and affirmed by Order No. 3257, served November 30, 1988, public hearings on the application were held December 6 and 7, 1988. Protests to the application were filed by The Airport Connection, Inc. (TAC); Webb Tours, Inc. (Webb Tours); All About Town, Inc. (AAT); Gold Line, Inc. (Gold Line); Leatherwood Motor Coach Corporation trading as East Coast Parlor Car Tours (Leatherwood); National Coach Works, Inc. (NCW); and Blue Lines, Inc. (Blue Lines). On joint motion of Peter Pan and Commission counsel, the protests of Leatherwood and AAT were stricken with the proviso that representatives of those carriers might appear as witnesses on behalf of a protestant.

SUMMARY OF EVIDENCE

Mr. Peter Picknelly, Sr., chairman of applicant's board, testified on behalf of the company. Mr. Picknelly is responsible for applicant's financing and for generally overseeing its operations. He is familiar with Peter Pan's application and authorized to appear on its behalf. Peter Pan is owned and operated by the Picknelly family. Mr. Picknelly owns 40 percent of its stock; his children Peter, Jr.; Paul; and Mary Jane own the remaining stock and serve as president, executive vice-president, and vice president, respectively. Peter Pan operates regular route service in southern New England and eastern New York State. A package express service is operated in combination with the regular route service. In addition, Peter Pan conducts extensive charter tour service out of its terminal facilities at Springfield and Worcester, MA, and New Haven, CN, with the charter tours mainly originating at various points in New England and New York and extending to points throughout the United States, principally to those points east of the Mississippi River.

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\*/ To the extent that this application could be interpreted to include transportation solely within Virginia, it was dismissed pursuant to the Compact, Title II, Article XII, Section 1(b) by Order No. 3247.

Peter Pan offers over 1000 separate tours per year in special operations, some one-day tours and other multi-day tours. In addition, Peter Pan offers general charter service including trips lasting only two to four hours and trips lasting several days. It also provides charter transportation for conventions, trade shows, and other situations in which a "vast number of coaches at a particular time" are required. On the morning Mr. Picknelly testified, Peter Pan was conducting a 17-bus charter move in Boston for local transportation only. Peter Pan offers its charter customers transportation plus accessorial services such as overnight accommodations, meals, and admission to points of interest, *i.e.*, whatever the group would like to have. Some customers request specific charter service including service identical to one of Peter Pan's packaged tours; others want Peter Pan to plan the service. Peter Pan arranges local accessorial services through Peter Pan World Travel, Inc. (PPWT). PPWT, a full service travel agency which sells all types of travel, is the exclusive sales organization for Peter Pan's motorcoach tours "where bus is provided by bus company [applicant] exclusively." PPWT is owned entirely by Peter Pan's principals. If this application is granted, Peter Pan would make the types of tours shown in its brochure (Exhibit 9) available to groups wishing charter service between points in the Metropolitan District.

Applicant is authorized to conduct the above-described transportation by the Interstate Commerce Commission and various state and Canadian provincial regulatory agencies. Service is provided using 136 coaches manufactured between 1974 and 1988 and seating between 46 and 49 passengers, plus three executive coaches, two manufactured in 1987 and seating 24 passengers and one manufactured in 1980 and seating 38 passengers. Twenty of the full-size coaches are 1988, wide-bodied (102 inch) models equipped with public address system, enclosed overhead storage for light items, individual reading lights, and individual air-conditioning and heating ducts. The executive coaches are equipped with upholstered coaches and swivel chairs, kitchenettes, TV's, VCR's, and stereos. All vehicles have restroom facilities, are air-conditioned, and have luggage compartments. Service in the executive coaches is marketed with a hostess on board and is intended to be "a notch above" applicant's conventional service. On average, 32 vehicles are required to operate Peter Pan's regular route service.

Peter Pan maintains its vehicles using its facilities in Springfield, MA; Worcester, MA; and New Haven, CT. The Springfield facility holds 60 buses, has an automatic bus wash, "state of the art machine shop," service area with two lifts, and two pits; the Worcester facility holds 12 buses, has an automatic bus wash, pit and service area; the New Haven facility has an area for servicing buses and an automatic bus wash. Buses are parked outside. Every bus is cleaned and checked before being put in service. Applicant's drivers are required to fill out a maintenance safety check at the end of each day certifying that the vehicles they have been using either have no defect or, if there is a defect, specifying what it is. If minor, the defect is "taken care of as soon as possible." Should the vehicle have a major defect, the driver would bring that fact to the attention of the dispatch office immediately, and the bus would be removed from

service until repaired. Applicant relies on its drivers to oversee maintenance when a vehicle is away from one of Peter Pan's three facilities overnight. The vehicle is serviced at an area bus company when, in the driver's judgment, service is required. A preventive maintenance program is in place which schedules major and minor maintenance according to mileage. Peter Pan's United States Department of Transportation (USDOT) safety rating is satisfactory.

Mr. Picknelly considers Peter Pan's current 200 drivers to be "professionals." A number of them have driven 1,000,000 miles without an accident; five have driven 2,000,000 miles accident-free. If this application is granted, those drivers will be given the opportunity to relocate to Washington, DC. It is Mr. Picknelly's opinion that few drivers will avail themselves of that opportunity, and he will be required to hire new drivers locally. Although labor is a problem for all businesses at this time, Mr. Picknelly would attempt to hire 30 high calibre drivers (20 full-time and 10 part-time). Peter Pan conducts a driver training program in accordance with National Safety Council standards. Drivers are given classroom training and actual road training, the length of which varies with each individual's ability and previous experience. In addition, Peter Pan holds periodic safety meetings with drivers and has an incentive program for safe drivers.

With its application Peter Pan submitted a balance sheet dated December 31, 1987, and reflecting total assets of \$17,157,787; total liabilities of \$6,908,441; and equity of \$10,249,346. Applicant's operating statement for the year ended December 31, 1987, shows gross revenue of \$17,676,395; other income of \$1,986,908; operating expenses of \$13,069,758; and general and administrative expenses of \$2,788,675. After allowance for taxes and payment of dividends plus credit for retained earnings at the beginning of the year, applicant lists \$10,514,746 in retained earnings for 1987. Based on applicant's 1987 experience, Peter Pan projects operating income for 20 coaches will be \$990,000 for the first six months of operations in the Metropolitan District. Total expenses before taxes for the same period are projected to be \$886,000. Peter Pan has a revolving line of credit of \$3,000,000 which would be available to capitalize its Washington operations. Peter Pan has other assets which could be made available for start-up in the Washington area. In addition, Mr. Picknelly has a \$17,000,000 line of credit available to him personally. No decision has been made as to the source which would be used to fund start-up of Peter Pan's operations should this application be granted.

Peter Pan aggressively seeks business through advertising. Applicant spends 2.5 to 3 percent of its gross revenues on marketing. Brochures describing its service are available at various terminals and agencies, are mailed to a customer list of 25,000, and are available on request as indicated by the certificate contained in Peter Pan's newspaper advertisements. Mr. Picknelly believes the company's emphasis on marketing "steals" business from other carriers while actually creating an expanded market by inducing persons who would have

otherwise traveled by automobiles to use a bus. If this application is granted, Peter Pan would advertise in Washington in the same manner it advertises in New England. Peter Pan has an automated reservation and charter order department supplemented by toll-free lines at its Springfield, Worcester, and New Haven locations. A customer in the District of Columbia could call Peter Pan today, toll-free, and request charter service.

The service Peter Pan would offer in Washington, DC, would be similar to that offered elsewhere. Peter Pan would purchase or, initially, lease a complex for the storage and maintenance of buses and for administrative and other offices. From that location Peter Pan would conduct a charter motorcoach business. Peter Pan would begin service in the Metropolitan District using 20 buses, some drawn from its existing equipment list and others currently ordered for delivery in 1989. Those vehicles would be insured for \$10,000,000. Consistent with the system used in New Haven and Worcester, its charter sales office would access its Springfield computer by telephone and deliver the finished "product" by electronic facsimile. Peter Pan would promote the Washington service in the same manner it promotes service in New England except that the promotion would be specifically for the Washington location.

Applicant proposes charter rates for 47-passenger vehicles of \$43.20 an hour during the off-peak season (November 1 - March 15) and \$48.60 an hour during the peak season (March 16 - October 31). For charter service in 24-passenger (luxury) vehicles, rates would be \$54 an hour during off-peak season and \$59.40 an hour during peak season. The maximum charge for charter service per 24-hour period would be \$561.60 off-peak and \$631.80 peak. In cases where the operator of the vehicle serves as a lecturer, a premium of \$5.40 an hour would be charged. A separate lecturer could be provided at an additional charge based upon applicant's cost of securing the lecturer. Transfers would be available using 47-passenger coaches. Transfers between any two points located within the Capital Beltway would be \$162 during off-peak season and \$194.40 during peak season. Transfers between any point located within the Capital Beltway, on the one hand, and, on the other, any point outside the Capital Beltway (including Washington Dulles International Airport) and transfers between any two points in the Metropolitan District located outside the Capital Beltway would be \$189 off-peak and \$243 peak. Applicant's tariff also provides for one-hour report time. On cross-examination Mr. Picknelly testified regarding the meaning of certain tariff provisions. According to Mr. Picknelly, Rule No. 7(a) in applicant's tariff means that Peter Pan is not to be held monetarily liable for late arrival. Rule No. 11 requires a deposit of \$100 per bus unless satisfactory credit arrangements have been made "in advance." The rates for "47-passenger" vehicles are intended to apply to vehicles seating between 45 and 49 passengers. Mr. Picknelly testified that there may have been a "typo" in the transfer rate sections, and the intent may have been to establish a transfer rate equal to the four-hour minimum. According to Mr. Picknelly, the customer would be informed whether he was required to pay in advance.

Peter Pan has not previously applied to the Commission for operating authority, has never engaged in transportation within the Metropolitan District subject to the Commission's jurisdiction, and is not the subject of any enforcement proceeding, complaint action, or investigation by the Interstate Commerce Commission, the United States Department of Transportation, or any state regulatory agency. No such complaints or investigations are directed against Mr. Picknelly personally. No company in which Mr. Picknelly has any ownership interest has been "engaged in the bus business in the Washington, DC area within the past two years." Mr. Picknelly is familiar with the Compact and the Commission's rules and regulations and intends to comply with them. Peter Pan has no compliance problems with USDOT, and, if this application is granted, will strive to operate in a satisfactory manner.

Mr. Austin Kenny, executive vice president of the Washington Convention and Visitors Association (WCVA), testified under subpoena issued by the Commission in response to applicant's request. WCVA does not use transportation itself and, with rare exceptions, does not book work with any bus carrier for individuals or groups. WCVA's task is to attract as many pleasure visitors and out-of-town conventions and convention delegates as possible to Washington, DC. Mr. Kenny has been with WCVA for 34 years. An examination of a large number of National Tour Association members indicates that Washington ranks first as a destination for bus tours that include several cities and originate elsewhere. As a result, Washington gets a high volume of "short-stays," i.e., two and one-half days on average. Although the major source of tour arrivals in Washington is motor coach, Mr. Kenny's experience indicates that people who come to Washington by other means also charter buses for local trips. Pleasure visitors come to Washington because it is the seat of national government, has many museums, e.g., the Smithsonian and many attractions of the same nature, and contains the "greatest world's fair that has ever been created . . . on the mall . . . ." As a convention destination, Mr. Kenny believes Washington is the third or fourth largest in the United States. Washington has two major convention "facilities": (1) a grouping of three major hotels, one of which has over 100,000 square feet of exhibit space and (2) the Washington Convention Center which opened six years ago and has resulted in an increase in overall convention volume of between 33 and 40 percent. As a result, conventions in Washington usually use several hotels or several hotels plus the Washington Convention Center. In both cases, transportation by bus is required among the involved sites. Based on statistics provided WCVA by US Travel Data Center pursuant to contract, Mr. Kenny anticipates moderate growth in tourism traffic in and to Washington annually. Based on the same source, he projects that Washington will maintain its current volume of convention business, which is high, and expects moderate growth in convention business not involving the Convention Center and some growth in the small-meeting field. When the Convention Center opened, Washington experienced a substantial and dramatic increase in convention business. The Convention Center is now booked for 365 days in 1989. For this reason, the dramatic growth experienced in Washington in this type of business cannot be expected to continue. Expansion of the Convention Center is anticipated, but completion of that expansion will take considerable time.

Mr. Kenny does not, as a representative of WCVA, support any one carrier over another. His testimony is intended to represent the viewpoint of WCVA's customers, the pleasure visitor and convention delegate. In the past few months several convention service organizations have contacted Mr. Kenny regarding a "dire" shortage of buses for shuttle work, a situation attributed to the fact that the Washington Metropolitan Area Transit Authority (Metro) had stopped making available its buses for charter shuttle work. Although there generally are a satisfactory number of buses available in the area, it is Mr. Kenny's opinion that, in order to satisfy WCVA's customers, additional equipment is needed. Here, it is officially noted that the Washington Metropolitan Area Transit Authority (Metro) has resumed making its equipment available for charter work.

Gold Line's vice president and general manager testified for that carrier in opposition to Peter Pan's application. Gold Line holds WMATC Certificate No. 14 authorizing, inter alia, the transportation of passengers in charter operations between points in the Metropolitan District. Pursuant to that portion of its certificate, Gold Line performs shuttle transportation, sightseeing tours, school and senior citizen charters, and other general charter work. Gold Line operates sixty-nine 47-passenger motor coaches and one 22-passenger executive coach. Eight 1989 wide-body coaches were expected to be delivered before the end of February. Gold Line leases equipment from its parent company, Frank Martz Coach Company, and from other carriers when required. Gold Line also operates one 25-passenger executive coach equipped similarly to those owned by Peter Pan. Mr. Cummings testified that Gold Line at one time had four such units but sold them due to lack of demand. Gold Line actively solicits charter business within the Metropolitan District and advertises widely in Washington area publications, through sightseeing associations, and in trade journals. On December 31, 1987, Gold Line employed 148 persons including 94 drivers. Since that date, the carrier has "down-sized" somewhat, with the result being that it now employs only 85 drivers. Gold Line is willing and able to add to its supply of equipment to meet any additional need for charter service. Currently Gold Line does all the shuttle work and tours for Capital Informer and Courtesey Associates, two organizations which previously had problems securing equipment for that work.

Gold Line uses a 72 percent utilization figure. If equipment falls below that figure, it is considered not profitable, and Gold Line does not retain it. Of the equipment available, Gold Line uses 20 pieces for special operations (sightseeing) and commuter runs and five for a daily shuttle. These vehicles are available for use only periodically during the day, usually for short spans of time between other commitments.

Jonathan B. Smith, assistant to the president of Leatherwood, presented evidence as a witness for Gold Line. Leatherwood operates a regular-route service between certain Maryland counties and the District of Columbia. For a number of years, it performed charter service between points in the Metropolitan District (in competition

with Gold Line) on the basis that such service was authorized under incidental charter rights stemming from its regular-route authority granted by the Interstate Commerce Commission. This basis for the claimed charter authority was rejected both by this Commission and by the Interstate Commerce Commission in 1988. Thereafter, Leatherwood filed applications for temporary authority and corresponding permanent authority. We officially note that by our Order No. 3263, served December 9, 1988, it was granted temporary authority to perform charter service between points in the Metropolitan District, except service solely between points in Virginia. Leatherwood operates 28 buses suitable for charter operations and has two new units on order for delivery in early 1989. In the first eight months of 1988, its gross sales were over \$3,000,000. It is estimated that \$1,141,000 of its gross revenues stemmed from charter operations, and that 50 percent thereof was derived from charter service performed within the Metropolitan District. It is Leatherwood's position that the market for charter business in the Metropolitan District is highly competitive, and that there is adequate service now available, particularly since the buses of the Washington Metropolitan Area Transit Authority (Metro) are once again available for charter business.

Mr. Ralph Webb, general manager and principal stockholder of Webb Tours, Inc., testified on behalf of that carrier in opposition to Peter Pan's application. Webb Tours holds WMATC Certificate No. 33 which authorizes, inter alia, charter transportation between points in the Metropolitan District. Mr. Webb sponsored a copy of Webb Tours' 1987 WMATC annual report. The report shows an operating loss for that year of approximately \$6,000. The report also contains an equipment list showing 14 vehicles (13 coaches and one van). Since that time, Webb Tours had decreased its available equipment from 13 coaches to four, three of which are used primarily for service outside the Metropolitan District. Webb Tours had an accident which in combination with lack of business caused it to reduce its fleet. Webb Tours now uses a single double-decker bus for work within the Metropolitan District. Webb Tours opposes Peter Pan's application on the ground that there is sufficient equipment available for service within the Metropolitan District now that buses belonging to the Washington Metropolitan Area Transit Authority (Metro) are again available for shuttle work.

Ms. Cathi Paris, regulatory consultant for Blue Lines, Inc., testified on behalf of that carrier in opposition to Peter Pan's application. Blue Lines holds WMATC Certificate No. 10 which authorizes charter operations between points in the District of Columbia. For the calendar year ended December 31, 1987, Blue Lines had total operating income of \$375,704 and a net operating loss of \$114,652. Its operations in calendar year 1988 were better but still not profitable. Blue Lines operates four vehicles. Blue Lines opposes this application because "Blue Lines has lost money every year since unauthorized operations owned in part by Mr. Picknelly [ACL, VIP, and US Bus] began in this area." Specifically, Ms. Paris alleged that customers were won through "unfair trade practices."

John R. Oakman, NCW's vice president and general manager, testified on behalf of that carrier in opposition to Peter Pan's application. NCW holds WMATC Certificate No. 26 authorizing charter transportation between points in the Metropolitan District. Although affiliated with Gold Line, NCW is operated separately from that carrier. NCW owns and operates nine coaches and solicits charter business within the Metropolitan District. Between four and six coaches were to be added to NCW's equipment in February 1989. NCW's income statement for the eight-month period ended August 31, 1988, shows a loss of \$19,597.02. NCW operated at a loss for a similar period in 1987 and anticipates it will operate at a bigger loss for calendar year 1988. NCW opposes Peter Pan's application on the grounds that Peter Pan is unfit, there is no need for additional charter service in the Metropolitan District, and the provision of additional service by Peter Pan or any other applicant in the Metropolitan District would harm NCW economically. NCW has been in business four years and has not made a profit during that period. It is increasing its fleet and raising its tariff in order to "pick[ing] up the excess load that's here in the District so we can make a profit."

Mr. Mordecai Buckingham testified on behalf of TAC in opposition to Peter Pan's application. TAC holds WMATC Certificate No. 111 which authorizes certain charter operations within the Metropolitan District. TAC's annual report for calendar year 1987 reflected a loss of approximately \$660,000. According to Mr. Buckingham, the loss was due to "a bad business decision in 1987." As a result of those losses TAC has filed for protection from its creditors under the reorganization provisions of the bankruptcy act. A reorganization plan which proposes to pay all creditors 100 cents on the dollar has been filed, and Mr. Buckingham expects the plan to be approved. Prior to 1987, TAC had operated profitably. TAC opposes Peter Pan's application because there is not enough demand to support an additional carrier. TAC often has excess equipment since Metro began offering charter service again, and an additional carrier would adversely impact TAC's economic viability.

#### DISCUSSION AND CONCLUSIONS

This case is governed by Title II, Article XII, Section 4(b) of the Compact which provides:

. . . the Commission shall issue a certificate . . . , if it finds, after hearing held upon reasonable notice, that the applicant is fit, willing and able to perform such transportation properly and to conform to the provisions of this Act and the rules, regulations, and requirements of the Commission thereunder, and that such transportation is or will be required by the public convenience and necessity; otherwise such application shall be denied.

Based on a review of the record in this case, we find applicant to be capable of providing the proposed service and willing to conform to applicable rules and regulations imposed by the Compact and the Commission acting pursuant to the Compact.

Applicant is a carrier experienced in providing charter service pursuant to authorization from the Interstate Commerce Commission and certain other regulatory agencies. From its headquarters in Springfield, MA, it conducts passenger transportation for hire using 136 motor coaches which are adequately insured, well-maintained, and regularly inspected. Applicant's drivers are experienced and have good safety records. If this application were granted, Peter Pan would begin operations in the Metropolitan District using 20 coaches, at least 10 of which would be new. Applicant's drivers would be given the opportunity to relocate. Peter Pan would attempt to hire high calibre drivers locally. Policies regarding vehicle maintenance, driver training, and overall operations would be the same in the Metropolitan District as they are in Peter Pan's home state. A local terminal and offices would be established. Peter Pan currently has in place the facilities to coordinate charter arrangements in the Metropolitan District. The financial statements introduced by Peter Pan at hearing show a financially healthy company which, together with Mr. Picknelly's personal line of credit, has sufficient economic viability to provide service in the Metropolitan District of high quality and in the manner described by applicant's witness. Applicant's chairman of the board is familiar with the Compact, the Commission's rules and regulations, and the safety regulations promulgated by USDOT and intends to insure that Peter Pan complies with them. Neither Peter Pan nor its chairman of the board, who has had certain compliance problems with the Commission in the past through a number of corporate entities, is currently the subject of any enforcement proceeding, complaint action, or investigation by any regulatory agency. Mr. Picknelly's compliance problems with this Commission have been cured over a two-year period. Therefore, this record raises no real issue as to prospective compliance fitness and we conclude that applicant is shown to be fit and able properly to perform the service proposed.

We turn now to the matter of whether applicant has satisfied its burden of proving that the public convenience and necessity require the proposed service. The Commission has relied on the test enunciated in Pan-American Bus Lines Operations (1 MCC 190, 203 [1936]) when interpreting this provision of the Compact. The Pan-American test consists of three parts as follows:

. . . whether the new operation or service will serve a useful public purpose, responsive to a public demand or need; whether this purpose can and will be served as well by existing lines or carriers; and whether it can be served by applicant with the new operations or service proposed without endangering or impairing the operations of existing carriers contrary to the public interest.

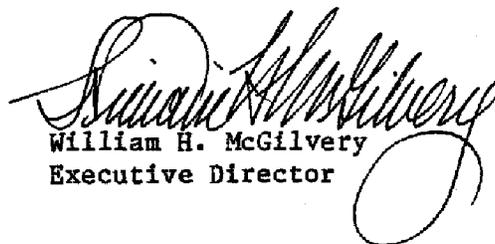
Applicant produced a single public witness. The witness had refused to testify voluntarily and had to be subpoenaed. The witness represented an entity which does not use transportation itself and, with certain rare exceptions, does not arrange for the use of transportation by others. The witness did not specifically support the application because the entity he represents, WCVA, does not support any one carrier over another. Finally, the witness testified that in general the coach service available in the Metropolitan District, including quantity of equipment, is satisfactory with the single exception of equipment for shuttle work within the District of Columbia. The witness based his opinion on statements made to him in the recent past by representatives of certain convention service organizations. The record indicates that the Washington Metropolitan Area Transit Authority had ceased to make its equipment available for shuttle service during a brief period of time but has now rescinded its policy of not providing equipment for local charter service including shuttles which often require hundreds of pieces of equipment for several days at a time.

We cannot on this record find that the public convenience and necessity require Peter Pan's proposed charter service, much of which would be for sightseeing tours. Nor are we free to ignore the Compact provision requiring this finding. For these reasons, the application of Peter Pan will be denied.

THEREFORE, IT IS ORDERED:

1. That the application of Peter Pan Bus Lines, Inc., is hereby denied, without prejudice, in its entirety.
2. That any petition for reconsideration filed by Peter Pan Bus Lines, Inc., within 30 days of service of this order and based on a proffer of additional evidence shall be treated as a petition to reopen Case No. AP-88-36 for the limited purpose of considering whether the public convenience and necessity require the service proposed therein.

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

  
William H. McGilvery  
Executive Director