

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 3858

IN THE MATTER OF:

Served December 3, 1991

Application of ATE MANAGEMENT AND)
SERVICE COMPANY, INC.; GREYHOUND)
LINES, INC.; and TRAILWAYS COMMUTER)
TRANSIT, INC., for Temporary)
Approval Pursuant to the Compact,)
Title II, Article XII, Section 3(d))

Case No. AP-91-38

By joint application filed November 5, 1991, ATE Management and Service Company, Inc. (ATE); Greyhound Lines, Inc. (GLI); and Trailways Commuter Transit, Inc. (TCT) (collectively applicants), seek temporary approval pursuant to the Compact, Title II, Article XII, Section 3(d).

The Commission published notice of this proceeding in Order No. 3843 and therein set a deadline for protests of Tuesday, November 19, 1991. No protests have been filed. Order No. 3843 generally described the transaction for which applicants seek temporary approval, and that order is incorporated herein by reference.

SUMMARY OF EVIDENCE

ATE holds Certificate of Authority No. 157. GLI holds Certificate of Authority No. 139. TCT holds Certificate of Authority No. 184. TCT is a wholly-owned subsidiary of GLI.

ATE, GLI and TCT have entered into an Asset Purchase Agreement (Agreement), in which GLI and TCT agreed to sell to ATE certain of their operating contracts, pursuant to which GLI and TCT provide commuter services in the Metropolitan District, known as "Connect-a-Ride" and "Ride-On" service, respectively. ATE also provides contract commuter services in the Metropolitan District, including "Ride-On" service. ATE would also acquire vehicles and other assets from GLI and TCT. Closing on the Agreement is scheduled to take place December 3, 1991, with an effective date of November 30, 1991.

GLI and TCT recently emerged from Chapter 11 proceedings before the United States Bankruptcy Court for the Southern District of Texas, Brownsville Division. The Bankruptcy Court approved the Agreement on October 28, 1991.

ATE has a present net worth of approximately \$20.7 million dollars. ATE provides commuter type passenger service in some 65 communities throughout the United States.

DISCUSSION AND CONCLUSION

The Compact, Title II, Article XII, Section 3, provides in pertinent part:

(a) a carrier or any person controlling, controlled by, or under common control with a carrier shall obtain Commission approval to --

. . .

(ii) purchase, lease, or contract to operate a substantial part of the property or franchise of another carrier that operates in the Metropolitan District;

. . .

(d) Pending determination of an application filed under this section, the Commission may grant 'temporary approval' without a hearing or other proceeding up to a maximum of 180 consecutive days if the Commission determines that grant to be consistent with the public interest.

Prior to amendment of the Compact, effective February 1991, consideration of a temporary approval application required an inquiry into whether failure to grant such approval might result in destruction of or injury to the property to be acquired or interfere substantially with its future usefulness in providing adequate and continuous service. Compact, Pub. L. No. 86-794, Title II, Article XII, § 12(d), 74 stat. 1031 (1960). Although these criteria no longer define the statutory standard, they remain important, albeit nondispositive, touchstones in our determination of where the public interest lies in a temporary approval proceeding under Title II, Article XII, Section 3(d) of the Compact.

The Commission believes that provision of the subject contract commuter services by GLI and TCT past the anticipated December 3rd closing date carries with it implications of diminution in the value of the properties to be acquired by ATE and interference with the adequacy and continuity of that service.

GLI and TCT have just emerged from bankruptcy proceedings. TCT does not plan to continue operating as a certificated carrier in the Metropolitan District if we approve ATE's acquisition of TCT's assets.¹ Similarly, GLI is said to be shedding its commuter operations so that it may concentrate its resources for the provision of regular-route, scheduled intercity services. We do not perceive GLI's and TCT's current financial condition and corporate agenda as

¹ TCT has advised the Commission that it has no intention of using its Certificate of Authority No. 184 and does not oppose termination thereof if and when the joint application is approved.

wholly conducive to the provision of adequate, continuous commuter service and preservation of commuter service assets beyond the anticipated December 3rd closing date.

ATE has the requisite Certificate of Authority, and no one has questioned ATE's fitness. Neither Montgomery County, MD, nor The Corridor Transportation Corporation -- the entities whose contracts with TCT and GLI, respectively, are at issue here -- has protested or otherwise objected to the subject application. ATE appears ready, willing and able to commence operations in accordance with the Agreement.

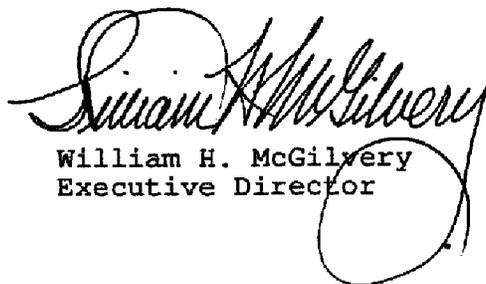
For the foregoing reasons, the Commission determines that, pending a decision on the applicants' companion application for approval of ATE's purchase of a substantial part of the property of GLI and TCT, and consistent with Section 1.3(c) of the applicants' Agreement, granting ATE temporary approval to operate said property on behalf of GLI and TCT would be consistent with the public interest.

THEREFORE, IT IS ORDERED:

1. That ATE Management and Service Company, Inc., is hereby granted, for a maximum of 180 days, temporary approval to operate on behalf of Greyhound Lines, Inc., and Trailways Commuter Transit, Inc., the properties ATE Management and Services Company, Inc., seeks to acquire from Greyhound Lines, Inc., and Trailways Commuter Transit, Inc., pursuant to the "Asset Purchase Agreement" attached as Appendix A to the parties' joint application.

2. That the temporary approval granted herein shall expire Saturday, May 30, 1992, unless otherwise ordered by the Commission.

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


William H. McGilvery
Executive Director