

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 4114

IN THE MATTER OF:

Served June 21, 1993

Application of PETER PAN BUS LINES,))
INC., for a Certificate of))
Authority -- Irregular Route))
Operations))

Case No. AP-93-19

By application filed June 14, 1993, Peter Pan Bus Lines, Inc. (Peter Pan or applicant), a Massachusetts corporation, seeks a certificate of authority to transport passengers, together with baggage in the same vehicles as passengers, in irregular route operations between points in the Metropolitan District.¹

Peter Pan's application includes information regarding, among other things, its corporate status, facilities, proposed tariff, finances, and regulatory compliance record. The application is available for inspection at the office of the Commission during its regular business hours.

Peter Pan proposes to commence operations with fifteen motor coaches with seating capacities ranging from 41 to 55 passengers each. Applicant's proposed tariff contains hourly charter rates with minimum charges.

One of applicant's shareholders, Peter L. Picknelly, was a controlling shareholder in VIP Coach Services, Inc. (VIP), at the time it simultaneously applied for WMATC authority and WMATC approval to acquire sole ownership of White House Sightseeing Corp. (White House), which held WMATC Certificate No. 1. In re VIP Coach Servs., Inc., No. AP-83-48, Order No. 2550 (May 1, 1984). Upon VIP's motion, the Commission held that WMATC approval to acquire White House was not necessary. Id. VIP withdrew both applications, subsequently acquired White House, and changed White House's name to American Coach Lines, Inc. (ACL). In re American Coach Lines, Inc., No. AP-85-08, Order No. 2738 (July 22, 1985); In re Amendment of Certificate No. 1., No. MP-84-06, Order No. 2589 (Aug. 2, 1984). ACL later applied for additional, temporary, charter authority, but the application was denied for lack of regulatory compliance fitness and failure to prove a need for service that was not available from any other carrier. Order No. 2738 at 11-14. Sometime thereafter, Mr. Picknelly personally acquired 50 percent of ACL's stock, and ACL applied for additional permanent charter authority, but that application also was denied for lack of regulatory compliance fitness. In re American

¹Applicant applied for charter authority from this Commission in 1988. Applicant was found fit, but the application was denied for failure to prove a need for service. In re Peter Pan Bus Lines, Inc., No. AP-88-36, Order No. 3311 (Apr. 4, 1989). Of course, in this proceeding applicant need only show that it is fit and that the proposed service is consistent with the public interest.

Coach Lines, Inc., No. AP-85-36, Order No. 2908 (Sept. 10, 1986). Mr. Picknelly sold his ACL shares in June, 1986. Gold Line, Inc., v. American Coach Lines, Inc., No. FC-86-01, Order No. 2984 (Mar. 3, 1987).

The application states that Peter L. Picknelly owns 35.34 percent of applicant. Applicant's counsel represents that this is a noncontrolling interest. The laws of Massachusetts, however, provide that -- unless otherwise stated in the corporation's articles of organization -- the following corporate actions require the vote of two-thirds of each class of stock outstanding and entitled to vote thereon: amendment of articles of organization, sale of substantially all assets, consolidation or merger, and dissolution.² Thus, if applicant's current articles do not provide for less than two-thirds vote on each of these corporate actions then obviously Mr. Picknelly's interest would be controlling. We are unable to resolve the issue at this time because applicant has failed to file its current articles as required. Accordingly, applicant will be directed to file an attested copy of its current articles of organization.

The laws of Massachusetts further provide that if amendment, consolidation or merger would adversely affect any class of stock, then -- unless otherwise stated in the corporation's articles of organization -- a vote of two-thirds of such class, voting separately, shall be necessary to authorize such amendment, consolidation or merger.³ Any series of such a class which is affected in a manner different from other series of the same class shall be treated as a separate class.⁴ Therefore, pursuant to Commission Regulation No. 54-04(c), we shall direct applicant to file any and all documents evidencing or describing the classes and series of stock issued by applicant and any and all documents evidencing or describing the rights and obligations accruing to each shareholder by virtue of their shareholdings, including, but not limited to, any and all shareholder agreements. In lieu of filing said documents applicant may stipulate that Mr. Peter L. Picknelly is a controlling shareholder, but such substitute filing shall not relieve applicant of its obligation to file an attested copy of its current articles of organization, since all applicants are required to provide such information.

In the event applicant chooses to file the aforementioned stipulation, applicant shall confirm under oath the completeness and accuracy of its response to question 3 on page 3 of the application, or amend said response if not complete and accurate in light of said stipulation.

In determining whether to grant or deny an application for a certificate of authority, the Compact at Title II, Article XI, Section 7 requires that the Commission determine whether an applicant is fit, willing, and able to perform the transportation properly and conform to the provisions of the Compact and the Commission's rules, regulations, and requirements and whether the transportation is consistent with the public interest. Pursuant to Commission Rule

²Mass. Gen. L. ch. 156B, §§ 71, 75, 78, 100 (1979 & Supp. 1993).

³Id., §§ 71, 78.

⁴Id.

No. 6, this order and fulfillment of its requirements will provide notice of Peter Pan's application for a certificate of authority.

THEREFORE, IT IS ORDERED:

1. That Peter Pan Bus Lines, Inc., shall publish once in a newspaper of general circulation in the Metropolitan District, no later than Thursday, July 1, 1993, notice in the form prescribed by the staff of the Commission.

2. That Peter Pan Bus Lines, Inc., shall file with the Commission, no later than Thursday, July 22, 1993, an original and four copies of an affidavit that notice has been published as required in the preceding paragraph.

3. That Peter Pan Bus Lines, Inc., shall file with the Commission, no later than Monday, July 12, 1993, an original and four copies of an attested copy of its current articles of organization.

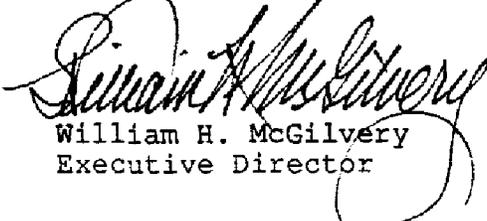
4. That Peter Pan Bus Lines, Inc., shall file with the Commission, no later than Monday, July 12, 1993, an original and four copies of any and all documents evidencing or describing the classes and series of stock issued by applicant and any and all documents evidencing or describing the rights and obligations accruing to each shareholder by virtue of their shareholdings, including, but not limited to, any and all shareholder agreements. In lieu of filing said documents applicant may stipulate that Mr. Peter L. Picknelly is a controlling shareholder.

5. That in the event the stipulation specified in the preceding paragraph is filed, Peter Pan Bus Lines, Inc., shall file with the Commission, no later than Monday, July 12, 1993, an original and four copies of an affidavit confirming the completeness and accuracy of its response to question 3 on page 3 of the application, or amending said response if not complete and accurate in light of said stipulation.

6. That any person wanting to protest the application, in accordance with Commission Rule No. 13 and Regulation No. 54-04(a), or comment on the application, in accordance with Regulation No. 54-04(a), shall file such protest or comment at the office of the Commission, 1828 L Street, N.W., Suite 703, Washington, DC 20036-5104, no later than Thursday, July 22, 1993, and shall simultaneously serve a copy of such protest or comment on applicant's representative, Jeremy Kahn, Esquire, 1726 M Street, N.W., Suite 702, Washington, DC 20036.

7. That any person seeking a formal oral hearing on this matter, in accordance with Commission Regulation No. 54-04(b), shall request one no later than Thursday, July 22, 1993, and shall simultaneously serve a copy of such request on applicant's representative, Jeremy Kahn, Esquire, 1726 M Street, N.W., Suite 702, Washington, DC 20036.

FOR THE COMMISSION:


William H. McGilvery
Executive Director

