

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 4149

IN THE MATTER OF:

Served August 11, 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.

Notice of this application was served on June 21, 1993, in Order No. 4114, which directed Peter Pan to publish further notice in a newspaper and file an affidavit of publication. Applicant complied. The order also directed applicant to file certain documents so that the Commission could determine whether minority-shareholder Peter L. Picknelly controls Peter Pan within the meaning of the Compact, Title II, Article XII, Section 3. Applicant subsequently stipulated that Mr. Picknelly is a controlling shareholder, and our examination of applicable precedent leads us to the same conclusion.¹

On July 21, 1993, Airport Baggage Carriers, Inc., and T&S Bus Service, Inc., filed separate protests, claiming that Peter Pan is unfit and that a grant of authority to Peter Pan would threaten the financial viability of the industry, contrary to the public interest. Protestants also request an oral hearing.²

SUMMARY OF EVIDENCE

Peter Pan's application includes information regarding, among other things, its corporate status, equipment, facilities, safety fitness, proposed tariff, finances, and regulatory compliance record.

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.

¹ See Order No. 4130 (July 12, 1993) (applying ICC precedent to this application).

² Protestants request a "formal meeting . . . in accordance with Regulation No. 54-04(a)," but that regulation does not authorize such meetings. We, therefore, take this to be a request for oral hearing under Commission Regulation No. 54-04(b).

Peter Pan's president certifies on its behalf that applicant has access to, is familiar with, and will comply with the Compact, the Commission's rules and regulations, and United States Department of Transportation (DOT) regulations relating to transportation of passengers for hire.

Applicant filed a balance sheet as of December 31, 1992, showing current assets of \$5,897,558; capital assets of \$16,143,957; other assets of \$3,493,655; current liabilities of \$5,224,924; long-term debt and deferred taxes of \$4,788,362; and equity of \$15,521,884. Applicant's operating statement for the year ended December 31, 1992, shows operating revenues of \$31,079,330; expenses of \$30,303,897; and net income of \$775,433. Applicant's pro-forma statement of Washington Metropolitan Area income for the twelve months ending June 30, 1994, projects operating revenues of \$1,890,000; expenses of \$1,767,150; and net income of \$122,850.

It is certified that neither Peter Pan nor any person controlling, controlled by, or under common control with Peter Pan has any control relationship with a carrier other than Peter Pan, with the exception of Travel Line Bus Lines, Inc., which is wholly owned by three of applicant's four directors/shareholders.

DISCUSSION AND CONCLUSION

This case is governed by the Compact, Title II, Article XI, Section 7(a), which provides in relevant part that:

. . . the Commission shall issue a certificate to any qualified applicant . . . if it finds that --
(i) the applicant is fit, willing, and able to perform [the] transportation properly, conform to the provisions of this Act, and conform to the rules, regulations, and requirements of the Commission; and
(ii) that the transportation is consistent with the public interest.

An applicant bears the burden of establishing fitness and consistency with the public interest.³ Once applicant has made a prima facie case, the burden shifts to protestant to show the contrary, including that its operations would be endangered or impaired contrary to the public interest.⁴ The protest must be

³ In re CRW Transp. Sys. Enters., No. AP-85-26, Order No. 2817 (Jan. 22, 1986); In re Dav-El of Wash., D.C., Inc., No. AP-85-14, Order No. 2773 (Oct. 11, 1985); In re Battle's Transp., Inc., No. AP-85-12, Order No. 2722 (June 20, 1985); In re Executive Limo. Serv., Inc., No. 262, Order No. 1336 (June 21, 1974); see In re The Airport Connection, Inc., No. AP-84-17, Order No. 2578 (July 13, 1984) (finding applicant met its burden of proof).

⁴ In re Shaw Bus Serv., Inc., No. AP-85-25, Order No. 2819 (Feb. 4, 1986); Order No. 2722; In re Dan Jenkins, t/a Jenkins Transp. Serv., No. AP-84-30, Order No. 2649 (Jan. 10, 1985) (on reconsideration).

accompanied by all available evidence on which protestant would rely.⁵ A request for oral hearing must describe the evidence to be adduced and explain why it cannot be adduced without oral hearing.⁶

Applicant has made its prima facie case. Applicant is financially sound. It has sufficient vehicles to conduct the proposed operations and will be directed to provide proof of insurance and vehicle safety inspections. Applicant has been found fit in the past, with particular emphasis on compliance fitness.⁷ Applicant's operations should create increased competition in the Metropolitan District, which is presumptively in the public interest.⁸

Protestants, on the other hand, have not satisfied their burden of production. The protests are unsupported by any evidence and contain no indication of what evidence might be developed at hearing and why a hearing might be necessary. The protests simply provide no basis for granting the relief requested and, therefore, must be denied.

Because Peter Pan is under common control with Travel Line Bus Lines, Inc., granting a certificate to Peter Pan would result in the acquisition of control of a WMATC carrier by a person controlling another carrier within the meaning of the Compact, Title II, Article XII, Section 3. The Commission may approve such a transaction if it is consistent with the public interest. The evidence here indicates that Peter Pan is not currently affiliated with any WMATC carrier. Certification of Peter Pan, therefore, should not result in any consolidation of market power in the Metropolitan District but, rather, should produce the opposite effect of increasing competition among WMATC group charter carriers. Protestants have argued as much, but we do not draw any adverse inferences from Peter Pan's market entry, as protestants have. On the contrary, we find that the prospect of increased competition is consistent with the public interest and favors approving common control of Peter Pan.⁹

⁵ Commission Regulation No. 54-04(a).

⁶ Commission Regulation No. 54-04(b).

⁷ In re Peter Pan Bus Lines, Inc., No. AP-88-36, Order No. 3311 (Apr. 4, 1989).

⁸ See In re Yellow Bus Lines, Inc., No. AP-81-09, Order No. 2243 (July 27, 1981) (introduction of competition should encourage more responsive service and moderate prices); In re Yellow Bus Lines, Inc., No. AP-79-14, Order No. 2083 (Feb. 20, 1980) (same). Accord, Erickson Transport Corp. v. ICC, 728 F.2d 1057, 1062 (8th Cir. 1984) (competition per se in the public interest).

⁹ Accord Burlington Northern, Inc. - Control Through Acquisition of Securities of - Green Bay & Western R.R., 354 I.C.C. 457, 502 (July 8, 1977). It also appears that Mr. Peter L. Picknelly has a contract to operate a passenger carrier trunk line in Puerto Rico. In re American Coach Lines, Inc., No. 92-1-4141-PM, slip op. (Bankr. D. Md. May 14, 1993). Further, applicant's equipment list shows that Peter Pan operates vehicles owned by the Pioneer Valley Transit Authority and the Commonwealth of Massachusetts. To the extent these affiliations represent control relationships within the meaning of

Based on the evidence in this record, the Commission finds Peter Pan to be fit, willing, and able to perform the proposed transportation properly and to conform with applicable regulatory requirements. The Commission further finds that the proposed transportation and control relationship are consistent with the public interest.

As noted above, applicant will be required to file proof of vehicle safety inspections. Applicant has moved for waiver of this filing requirement. Applicant plans to rotate its rolling stock through the Metropolitan District and maintains that filing inspection reports for some 135 vehicles would be unduly burdensome. We do not find applicant's averments of burden convincing. As applicant acknowledges, it conducts periodic vehicle inspections as required by DOT safety regulations. According to those regulations, applicant is required to prepare a report of each inspection and make it available "upon demand of an authorized Federal, State, or local official."¹⁰ Applicant cannot plead burden when it is under this preexisting duty. The motion is denied.

THEREFORE, IT IS ORDERED:

1. That Peter Pan Bus Lines, Inc., 5400 Tuxedo Road, Tuxedo, MD 20781, is hereby conditionally granted, contingent upon timely compliance with the requirements of this order, authority to transport passengers, together with baggage in the same vehicles as passengers, in irregular route operations between points in the Metropolitan District.

2. That Peter Pan Bus Lines, Inc., is hereby directed to file the following documents with the Commission: (a) evidence of insurance pursuant to Commission Regulation No. 58 and Order No. 3623; (b) four copies of a tariff or tariffs in accordance with Commission Regulation No. 55; (c) an equipment list stating the year, make, model, serial number, vehicle number, license plate number (with jurisdiction) and seating capacity of each vehicle to be used in revenue operations; (d) evidence of ownership or a lease as required by Commission Regulation No. 62 for each vehicle to be used in revenue operations; (e) proof of current safety inspection of said vehicle(s) by or on behalf of the United States Department of Transportation, the State of Maryland, the District of Columbia, or the Commonwealth of Virginia; and (f) a notarized affidavit of identification of vehicles pursuant to Commission Regulation No. 61, for which purpose WMATC No. 232 is hereby assigned.

3. That upon timely compliance with the requirements of the preceding paragraph and acceptance of the documents required by the Commission, Certificate of Authority No. 232 shall be issued to Peter Pan Bus Lines, Inc.

4. That unless Peter Pan Bus Lines, Inc., complies with the requirements of this order within 30 days from the date of its issuance, or such additional time as the Commission may direct or

Section 3, said relationships with these non-WMATC carriers are hereby approved.

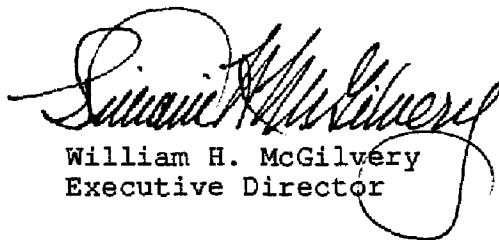
¹⁰ 49 C.F.R. § 396.21(b)(2).

allow, the grant of authority herein shall be void and the application shall stand denied in its entirety effective upon the expiration of said compliance time.

5. That the protests and requests for oral hearing of Airport Baggage Carriers, Inc., and T&S Bus Service, Inc., are hereby denied.

6. That Applicant's Motion for Waiver of Certain Filing Requirements is hereby denied.

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



William H. McGilvery
Executive Director