

Decision 07-06-033 June 21, 2007

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Megabus USA LLC
d/b/a/megabus.com for a certificate to operate
as a scheduled passenger stage corporation
between points in Los Angeles and San Francisco
and San Diego and to establish a Zone of Rate
Freedom.

Application 06-12-014
(Filed December 11, 2006)

O P I N I O N

Summary

This decision grants the application of Megabus USA, LLC, a Delaware limited liability company, pursuant to Pub. Util. Code § 1031 et seq., for a certificate of public convenience and necessity to operate as a passenger stage corporation (PSC), as defined in Pub. Util. Code § 226, and to establish a zone of rate freedom (ZORF) pursuant to Pub. Util. Code § 454.2.¹

Authority Requested

The application requests authority to operate as a scheduled PSC to transport passengers and their baggage between San Diego and Los Angeles, and between Los Angeles and San Francisco with stops in San Jose and Oakland. Applicant states that it wants to offer the same type of low cost and high quality transportation services it already offers to residents of several other states. It proposes to operate in California with a fleet of modern, luxurious motorcoaches

¹ Statutory references are to the Public Utilities Code, unless otherwise indicated.

that will provide express service between downtown areas of major cities, thereby competing not only with other bus services, but with airlines and private automobiles as well. Applicant is confident that the service will attract to bus travel persons who might not normally use that form of transportation to travel between urban centers. Applicant intends to sell its services exclusively over the Internet. By so doing it believes it will be able to keep its costs, and thus its fares, low.

Applicant indicates that it has the financial resources to initiate and sustain the proposed service. It is wholly owned by Independent Bus Company, a New Jersey based bus company, which is owned by Coach USA, Inc. Coach USA is a holding company that owns several bus companies operating in various parts of the United States. Coach USA, in turn, is wholly owned by Stagecoach Group plc, a large, publicly owned entity based in Scotland. Applicant started operations as a separate entity in August 2006, and therefore does not yet have sufficient financial data to provide a meaningful income statement and balance sheet. Any financial support Applicant needs will come from its parent, Stagecoach Group, which for the year ending April 30, 2006, had revenues of \$3.1 billion and as of that date assets of \$2.6 billion.

Proposed Fare Structure

Applicant's proposed fares are \$50 between Los Angeles and San Francisco (including San Jose and Oakland) and \$16 between San Diego and Los Angeles. Applicant refers to these fares as "maximum" fares. It proposes to offer fares below the maximum based on the time of ticket sale relative to the date of travel and other factors associated with yield management. A limited number of \$1 fares will be offered on all bus trips. Applicant indicates that its sophisticated yield management formula is similar to that used by airlines. It explains that the

concept has proven extremely popular with riders in the United Kingdom, where it originated the service about three years ago. In April 2005, Coach USA imported the concept to the USA, where the operation was initiated between Chicago and a series of other major Midwestern cities.

Zone of Rate Freedom

Applicant requests authority to establish a ZORF of 30% above and below the proposed maximum fares.² It states that at all times it will be constrained by competition from other bus companies, airlines, and private automobiles. In these circumstances, Applicant believes the proposed ZORF is reasonable and will reduce regulatory burdens should fares need to be adjusted.

Discussion

Applicant's proposed method of offering discounted fares is not something we are accustomed to seeing in PSC services, but that does not mean it offends the statutes and regulations that apply to PSC fare and tariff publishing requirements. PSCs, as public utilities,³ are required to charge rates that are just and reasonable. (§ 451.) They may not as to rates, charges, services, or facilities, grant any preference or advantage to any person or subject any person to prejudice or disadvantage. (§ 453.) Rates may be changed only upon approval of the Commission. (§ 454.) The Commission may establish a "zone of rate freedom" that allows a PSC operating in competition with other passenger transportation services to adjust its fares within an authorized range without

² Applicant supplemented its application with a letter dated May 11, 2007, that clarified the request for a ZORF.

³ "Public utility" is defined in § 216(a) and includes every "common carrier," and the definition of common carrier includes every passenger stage corporation. (§ 211(c).)

further approval of the Commission. (§ 454.2.) As common carriers, PSCs file tariff schedules with the Commission containing their rates, fares, and charges for transportation between points in the state. (§ 486 et seq.) The Commission's General Order (GO) 158-A, Part 8 prescribes the information required to be published in PSC tariffs, including "fares, additional charges, and discount provisions."

The proposed regular fares (maximum fares by Applicant's terminology) are reasonable. They are comparable to the fares of other carriers that have been granted PSC authority by the Commission in recent years. Fares below Applicant's standard fares are essentially discounted fares, which are recognized under the tariff filing requirements of GO 158-A. What sets Applicant's discounted fares apart is the manner in which they are determined. Rather than being an amount certain based on an objective criteria described in the carrier's tariff, they instead are determined by a computer program that considers such factors as demand for seats and how far in advance the ticket is purchased. Three factors in particular lead us to find this fare structure to be an acceptable departure from convention. First, the standard fare is known to passengers in advance, and no passenger will be charged more than this amount. Second, the service is prearranged, so a passenger who is not fortunate enough to be afforded a discounted fare will have the opportunity to search for a lower fare with a competing service. Third, the process used to sell tickets appears to avoid the possibility of discriminatory practices. We would not be so willing to authorize a fare structure of this nature if the sale of discounted tickets were left to the discretion of the coach driver or if sales were made at a walk-up ticket office or kiosk staffed by the carrier or its agent.

Applicant has demonstrated that it possesses the financial and operational ability to initiate and sustain the proposed intercity transportation service. It will

provide travelers with an alternative to existing services on these heavily traveled routes. The fare structure will allow some passengers to travel at a discounted price and potentially increase Applicant's load factor. The service may attract passengers who do not normally travel by motor coach. We will grant Applicant's request for a PSC and authorize its fare structure. Applicant will also be authorized to establish the requested ZORF. Applicant will operate in a competitive environment that should result in pricing its service at a reasonable level. The requested ZORF is not inconsistent with the ZORFs held by other PSCs.

Notice of filing of the application appeared in the Commission's Daily Calendar on December 15, 2006. Applicant served a notice of the application to the affected cities, counties, and transit districts.

In Resolution ALJ 176-3185 dated January 11, 2007, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protest has been received. Given this status, public hearing is not necessary, and it is not necessary to alter the preliminary determinations made in Resolution ALJ 176-3185.

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Assignment of Proceeding

Richard Clark is the assigned Examiner in this proceeding.

Findings of Fact

1. The application requests authority to operate as a scheduled PSC to transport passengers and their baggage between San Diego and Los Angeles, and

between Los Angeles and San Francisco with intermediate stops at San Jose and Oakland.

2. Public convenience and necessity requires the proposed service.
3. Applicant proposes to sell a limited number of tickets priced below its regular fares based on a computerized yield management system.
4. GO 158-A, Part 8 allows PSCs to publish discount provisions in their tariffs.
5. Applicant's regular fares are reasonable.
6. Applicant's proposed sale of a limited number of tickets at a discount to the regular fare is not an unreasonable practice.
7. Applicant requests authority to establish a ZORF of 30% above and below the proposed regular fares, as shown in the application
8. Applicant will compete with PSCs and other means of passenger transportation. The ZORF is fair and reasonable.
9. No protest to the application has been filed.
10. A public hearing is not necessary.
11. It can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

Conclusions of Law

1. Public convenience and necessity has been demonstrated and the application should be granted.
2. The proposed fare structure should be authorized, provided that discounted tickets based on a yield management system should only be sold in advance by telephone or over the Internet.
3. The request for a ZORF should be granted.

4. Before Applicant changes any fares under the ZORF authorized below, Applicant should give this Commission at least ten days' notice. The tariff should show the high and low ends of the ZORF and the then currently effective fare between each pair of service points.

5. Since the matter is uncontested, the decision should be effective on the date it is signed.

6. Only the amount paid to the State for operative rights may be used in rate fixing. The State may grant any number of rights and may cancel or modify the monopoly feature of these rights at any time.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity (CPCN) is granted to Megabus USA, LLC (Applicant), a Delaware limited liability company, authorizing it to operate as a passenger stage corporation (PSC), as defined in Pub. Util. Code § 226, to transport passengers and their baggage between the points and over the routes set forth in Appendix PSC-20958, subject to the conditions contained in the following paragraphs.

2. Applicant shall:

- a. File a written acceptance of this certificate within 30 days after this order is effective.
- b. Establish the authorized service and file tariffs and timetables within 120 days after this order is effective.
- c. File tariffs on or after the effective date of this order. They shall become effective ten days or more after the effective date of this order, provided that the Commission and the public are given not less than ten days' notice.
- d. Comply with General Orders Series 101 and 158, and the California Highway Patrol (CHP) safety rules.

- e. Comply with the controlled substance and alcohol testing certification program pursuant to Pub. Util. Code § 1032.1 and General Order Series 158.
- f. Remit to the Commission the Transportation Reimbursement Fee required by Pub. Util. Code § 423 when notified by mail to do so.
- g. Comply with Pub. Util. Code §§ 460.7 and 1043, relating to the Workers' Compensation laws of this state.
- h. Enroll all drivers in the pull notice system as required by Vehicle Code § 1808.1.

3. Applicant is authorized to sell tickets with discounted fares based on its yield management system provided such tickets are sold in advance by telephone or over the Internet. Applicant shall describe the availability, terms, and conditions of discounted tickets in its tariff.

4. Applicant is authorized under Pub. Util. Code § 454.2 to establish a zone of rate freedom (ZORF) of 30% above and below the proposed fares shown in the application.

5. Applicant shall file a ZORF tariff in accordance with the application on not less than ten days' notice to the Commission and to the public. The ZORF shall expire unless exercised within 120 days after the effective date of this order.

6. Applicant may make changes within the ZORF by filing amended tariffs on not less than ten days' notice to the Commission and to the public. The tariff shall include the authorized maximum and minimum fares and the fare to be charged between each pair of service points.

7. In addition to posting and filing tariffs, Applicant shall post notices explaining fare changes in its terminals and passenger-carrying vehicles. Such notices shall be posted at least ten days before the effective date of the fare changes and shall remain posted for at least 30 days.

8. Applicant is authorized to begin operations on the date that the Consumer Protection and Safety Division mails a notice to Applicant that its evidence of insurance and other documents required by Ordering Paragraph 2 have been filed with the Commission and that the CHP has approved the use of Applicant's vehicles for service.

9. Before beginning service to any airport, Applicant shall notify the airport's governing body. Applicant shall not operate into or on airport property unless such operations are authorized by the airport's governing body.

10. The CPCN to operate as PSC-20958, granted herein, expires unless exercised within 120 days after the effective date of this order.

11. The Application is granted as set forth above.

12. This proceeding is closed.

This order is effective today.

Dated June 21, 2007, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners

CERTIFICATE
OF
PUBLIC CONVENIENCE AND NECESSITY
AS A PASSENGER STAGE CORPORATION
PSC-20958

Showing passenger stage operative rights, restrictions,
limitations, exceptions, and privileges.

All changes and amendments as authorized by
the Public Utilities Commission of the State of California
will be made as revised pages or added original pages.

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SECTION I. GENERAL AUTHORIZATIONS, RESTRICTIONS,
LIMITATIONS, AND SPECIFICATIONS.

Megabus USA, LLC, a Delaware limited liability company, by the certificate of public convenience and necessity granted by the decision noted in the foot of the margin, is authorized to transport passengers and their baggage on a scheduled basis between the points described in Section II, over the routes described in Section III, subject, however, to the authority of this Commission to change or modify this authority at any time and subject to the following provisions:

- A. When a route description is given in one direction, it applies to operation in either direction unless otherwise indicated.
- B. Service will be operated only at the points described in Section II and over the routes described in Section III. A description of all the stop points and the arrival and departure times from such points shall be indicated in the timetable filed with the Commission.
- C. This certificate does not authorize the holder to conduct any operation on the property of any airport unless such operation is authorized by the airport authority involved.

SECTION II. SERVICE AREA.

Cities of San Diego, Los Angeles, Oakland, San Jose, and San Francisco.

SECTION III. ROUTE DESCRIPTION.

Route 1 - Commencing from San Diego, then over the most convenient streets and highways to Los Angeles.

Route 2 - Commencing from Los Angeles, then over the most convenient streets and highways to San Francisco. Service may be provided via Oakland and/or San Jose.