

Decision 07-10-005 October 4, 2007

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Megabus USA LLC d/b/a/megabus.com to transfer PSC Certificate 20958 to CUSA CC LLC, for extension of the PSC authority to serve intermediate point Millbrae, California and to establish a Zone of Rate Freedom.

Application 07-08-018
(Filed August 17, 2007)

O P I N I O N

Summary

This decision grants the application (1) to transfer, pursuant to Pub. Util. Code § 851 et seq., a passenger stage corporation (PSC) certificate from Megabus USA, LLC (Megabus), a Delaware limited liability company, to CUSA CC, LLC (CUSA), a limited liability company, (jointly Applicants) and (2) to modify the PSC certificate by adding Millbrae as a stop point.

Discussion

Megabus is authorized by Decision (D.) 07-06-033 to transport passengers and their baggage on a scheduled basis between San Diego and Los Angeles, and between Los Angeles and San Francisco, via Oakland and/or San Jose. It commenced service under the certificate on August 7, 2007. Megabus elected to operate the service by engaging CUSA as a sub-carrier. General Order 158-A permits a PSC to engage the services of a second carrier provided the second carrier holds Commission authority as a charter-party carrier.

The application requests approval to transfer the PSC certificate to CUSA. Megabus has determined that that for various operational and insurance-related

reasons, it would be advantageous for its California service to be operated under authority held by CUSA. Accordingly, Megabus and CUSA have concluded it is best to modify their arrangement so that CUSA holds the PSC certificate. Upon approval of the transfer by the Commission, Megabus and CUSA will revise their agreement so that, in effect, it will be an agreement providing for the marketing of the Megabus service by Megabus and the licensing of the Megabus trade name to CUSA. CUSA will then operate the service under its own operating authority. Applicants state that the proposed transfer will not result in any operational changes to the service authorized by the Commission in D.07-06-033. CUSA currently is physically operating the service, just as it will if the transfer is approved.

The application also requests approval to add Millbrae as service point on the Los Angeles to San Francisco route. CUSA advises that Millbrae is in close proximity to San Francisco International Airport (SFO) and is home to a major transit station served by the Bay Area Rapid Transit (BART) system, Caltrain, and San Mateo County Transit District (SamTrans) buses. It expects that there will be a high demand for its intercity bus service from the large number of travelers at the Millbrae station and SFO.

CUSA maintains that it possesses the requisite fitness to assume responsibility for the Megabus service. In addition to charter-party carrier authority, it holds a PSC certificate from the Commission. The certificate, granted by D.04-07-016, authorizes operations between Bakersfield and Los Angeles. CUSA also holds federal operating authority (MC 465198) for charter and special operations between various points in the United States. CUSA belongs to the Coach America group of carriers, which it reports is one of the nation's leading providers of motorcoach services. Its General Manager has 30 years of experience in the motorcoach industry, which includes operations,

marketing, and maintenance. CUSA will provide service using the same fleet of MCI-J model 55-56 passenger buses that it currently operates as a sub-carrier for Megabus and that have been approved for use by the California Highway Patrol.

To demonstrate its financial ability, CUSA provided an unaudited balance sheet (Exhibit C) that discloses assets of \$30.4 million, liabilities of \$19.4 million, and stockholder equity of \$11 million. Net income for 2006 was \$3.1 million.

(Exhibit D.) CUSA advises that it is backed by the financial resources of Fenway Partners Capital Fund III, L.P., a major private equity firm of which CUSA is an indirect wholly owned subsidiary.

D.07-06-033 authorized Megabus to establish a zone of rate freedom (ZORF) of 30% above and below its proposed maximum fares. The decision also approved Megabus' fare structure by which the carrier offers fares below its maximum fares 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 are offered on all bus trips. We approved the fare structure on the condition that discounted tickets based on a yield management system are sold in advance by telephone or over the Internet. CUSA will adopt Megabus' tariff on file, including the ZORF and discounted fare provisions, which will be subject to the same conditions set forth in D. 07-06-033.

Notice of filing of the application appeared in the Commission's Daily Calendar on August 22, 2007. Applicants served a notice of the application to parties that may have an interest in Millbrae being added as a service point, namely BART, SamTrans, the Metropolitan Transportation Commission, the City of Millbrae, and San Mateo County.

In Resolution ALJ 176-3197 dated August 23, 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 176-3197.

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. Megabus is operating as a PSC pursuant to D.07-06-033.
2. Applicants request approval to transfer the PSC authority to CUSA.
3. CUSA requests to modify the certificate to be transferred to add Millbrae as a stop point on the Los Angeles to San Francisco route.
4. CUSA requests approval to adopt the ZORF and fare structure authorized by D.07-06-033.
5. The proposed transfer will not be adverse to the public interest.
6. Public convenience and necessity requires the additional stop point.
7. The request to adopt Megabus' ZORF and fare structure is reasonable.
8. No protest to the application has been filed.
9. A public hearing is not necessary.
10. 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. The proposed transfer is in the public interest and should be authorized.
2. Public convenience and necessity has been demonstrated and the request to modify the authority to be transferred should be granted.
3. CUSA should be authorized to adopt Megabus' ZORF and fare structure.

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

5. 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. Within 120 days from the effective date of this decision, Megabus USA, LLC (Megabus), a Delaware limited liability company, may transfer the operative rights specified in this application to CUSA CC, LLC (CUSA), a limited liability company, subject to the conditions contained in the following paragraphs.

2. CUSA shall:

- a. File a written acceptance of this certificate within 30 days after this order is effective.
- b. Establish the authorized service within 120 days after this order is effective, adopt Megabus' tariffs and timetables or issue new tariffs and timetables, state in them when the service will start, make them effective 10 or more days after this order is effective and allow at least 10 days' notice to the Commission.
- c. Comply with General Orders Series 101 and 158, and the California Highway Patrol (CHP) safety rules.
- d. Comply with the controlled substance and alcohol testing certification program pursuant to Pub. Util. Code § 1032.1 and General Order Series 158.
- e. Remit to the Commission the Transportation Reimbursement Fee required by Pub. Util. Code § 423 when notified by mail to do so.

- f. Comply with Pub. Util. Code §§ 460.7 and 1043, relating to the Workers' Compensation laws of this state.
 - g. Enroll all drivers in the pull notice system as required by Vehicle Code § 1808.1.
3. CUSA is authorized to adopt the zone of rate freedom granted to Megabus by Decision (D.) 07-06-033 pursuant to Pub. Util. Code § 454.2.
4. CUSA is authorized to sell tickets with discounted fares based on a yield management system provided such tickets are sold in advance by telephone or over the Internet. CUSA shall describe the availability, terms, and conditions of discounted tickets in its tariff.
5. CUSA is authorized to begin operations under its revised certificate on the date that the Consumer Protection and Safety Division mails a notice to CUSA 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 CUSA's vehicles for service.
6. The certificate of public convenience and necessity (CPCN) granted to Megabus by D. 07-06-033 is revoked on the date CUSA is notified that it may commence operations as provided in Ordering Paragraph 5.
7. The revised CPCN to operate as PSC-16907, granted herein, shall expire unless exercised within 120 days after the effective date of this order.
8. The Application is granted as set forth above.

9. This proceeding is closed.

This order is effective today.

Dated October 4, 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-16907

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.

Supersedes the authority heretofore granted to
Airport Bus of Bakersfield, Inc., a corporation,
Antelope Valley Bus, Inc., a corporation, and
Megabus USA, LLC, a Delaware limited liability company.

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

This certificate supersedes all passenger stage operative authorities granted to Airport Bus of Bakersfield, Inc., a corporation, Antelope Valley Bus, Inc., a corporation, and Megabus USA, LLC, a Delaware limited liability company.

CUSA CC, LLC, a limited liability company, by the revised certificate of public convenience and necessity granted by the decision noted in the foot of the margin, is authorized to transport passengers, their baggage, and express on a scheduled and on-call 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 provided 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. The term "on call," as used, refers to service which is authorized to be rendered dependent on the demands of passengers. The tariffs shall show the conditions under which each authorized on-call service will be provided, and shall include the description of the boundary of each fare zone, except when a single fare is charged to all points within a single incorporated city.

SECTION I. GENERAL AUTHORIZATIONS, RESTRICTIONS,
LIMITATIONS, AND SPECIFICATIONS (CONTINUED).

- d. 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.

San Diego	Los Angeles	Oakland
San Jose	Millbrae	San Francisco
Bakersfield	Lancaster	Palmdale
Los Angeles Harbor	Long Beach Harbor	Los Angeles International Airport

SECTION III. ROUTE DESCRIPTIONS.

Scheduled Service

Route 1 - Commencing from Bakersfield, then over the most convenient streets and highways to Los Angeles International Airport (LAX).

Route 2 - Commencing from San Diego, then over the most convenient streets and highways to Los Angeles.

Route 3 - Commencing from Los Angeles, then over the most convenient streets and highways to San Francisco. Service may be provided via Oakland, San Jose, and/or Millbrae.

On-Call Service

Route 4 - Commencing from Bakersfield, then over the most convenient streets and highways to Los Angeles Harbor and Long Beach Harbor. Carrier may at its option operate this service via Lancaster and Palmdale.