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May 17, 2010

BY ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W., Room 1034
Washington, DC 20423-0001

Re: Opposition of Greyhound Lines, Inc. and Peter Pan Bus Lines, Inc. to Petition of
Coach USA, Inc. and Megabus Northeast, LLC to Reopen Approval of Fourth
Amendment in STB Docket Nos. MC-F-20904, MC-F-20908, and MC-F-20912

Dear Ms. Brown:

I am enclosing a copy of the Opposition of Greyhound Lines, Inc. and Peter Pan Bus
Lines, Inc. to Petition of Coach USA, Inc. and Megabus Northeast, LLC to Reopen Approval of
Fourth Amendment.

Respectfully submitted,

Daniel R. Barney
Counsel for Greyhound Lines, Inc.

Enclosure

cc: David H. Coburn, Esq., Counsel for Coach USA Inc. and Megabus Northeast, LLC
Director of Operations, Antitrust Division, U.S. Department of Justice
Jeremy Kahn, Esq., Counsel for Peter Pan Bus Lines, Inc.
(All with encl.)

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket Nos. MC-F-20908, MC-F-20904, and MC-F-20912

PETER PAN BUS LINES, INC. – POOLING – GREYHOUND LINES, INC.

**OPPOSITION OF GREYHOUND LINES, INC. AND
PETER PAN BUS LINES, INC. TO PETITION OF COACH USA, INC.
AND MEGABUS NORTHEAST, LLC TO REOPEN FOURTH AMENDMENT**

Greyhound Lines, Inc. (“Greyhound”), and Peter Pan Bus Lines, Inc. (“Peter Pan”) respectfully submit this opposition to the May 3, 2010, petition by Coach USA, Inc. and its subsidiary Megabus Northeast, LLC (together, “Megabus”) to reopen and disapprove the Surface Transportation Board’s (“Board”) earlier approval on April 17, 2008, of the “Fourth Amendment” to their three revenue pooling agreements, which were approved by the Board in the above-referenced proceedings in 1997-98 (“Megabus Petition”).

I. INTRODUCTION AND SUMMARY

In an astonishing misuse of the regulatory process, Megabus seeks to maneuver the Board into eliminating one of the company’s main rivals on Northeast Corridor bus routes – namely, the BoltBus line of enhanced bus service authorized by the Fourth Amendment.¹ The Megabus Petition finds no aspect of BoltBus to complain about beyond its being the product of a Board-approved pooling agreement. It does not, for example, allege that the BoltBus joint venture has engaged in anticompetitive or unlawful conduct of any kind. To the contrary, the only “changed

¹ Petitioner is a far cry from a struggling small business unable to fend for itself in the competitive marketplace. According to its website, “Coach USA owns over 20 local companies in North America that operate scheduled bus routes, motorcoach tours, charters, and city sightseeing tours”; “operate[s] megabus [sic] in the North East and Central Regions of the United States and Canada”; and “is a subsidiary of the Stagecoach Group,” which the website describes as “one of the world’s largest bus, coach and rail groups with operations in the United Kingdom and the United States.” See <http://www.coachusa.com/info/coachusa/ftr.aboutus.asp>.

circumstances” Megabus can conjure up in an attempt to justify reopening a Fourth Amendment-approval proceeding it failed to participate in two years ago² are the new entrants and increased competition that now characterize the bus routes at issue. Granting the Megabus petition would be contrary to Congressional intent, first reflected in the Motor Carrier Act of 1980, whose “general thrust” was “to promote competition” and which “seeks to encourage pooling arrangements ‘when such arrangements are in the interest of better service to the public or of economy of operation and *when they do not unreasonably restrain competition,*’” *Policy Statement on Motor Carrier Pooling Applications*, 127 M.C.C. 746, 748 (1981 WL 22721 (I.C.C.), emphasis added), *promulgating* 49 C.F.R. Part 1139, now codified at 49 C.F.R. Part 1184) (*quoting* H. Rept. 96-1069, 96th Cong., 2d sess. 34 (1980), standard now codified at 49 U.S.C. § 14302(b)), and subsequently reflected in the Bus Regulatory Reform Act of 1982, which sought to “allow a variety of quality and price options to meet changing market demands and the diverse requirements of the . . . traveling public.” Pub. L. No. 97-261 (1982), § 5, now codified at 49 U.S.C. §13102(a)(2)(D).

As discussed below, the Megabus Petition should be denied because it fails to make the requisite showing that a prior Board action has been “affected materially” by changed circumstances, *See* 49 C.F.R. §§ 1115.4, 1115.3(b)(1); *DesertXpress Enterprises, LLC-Pet. for*

² Greyhound and Peter Pan requested approval of the Fourth Amendment through an electronic filing (ID Nos. 221926, 221927, and 221928) in the Board’s Docket numbers listed above on March 26, 2008, and any member of the public was free to submit a comment before the Board issued its letter-ruling over three weeks later, on April 17, 2008. No comments were submitted, unlike with the Greyhound–Peter Pan request for Board approval of their proposed “Fifth Amendment,” which was similarly filed electronically with the Board on March 12, 2010, and which Megabus apparently had no difficulty learning of, given its own electronic filing of an extensive comment in opposition only four days later, on March 16, 2010. There is nothing about Megabus’s core objection – the fact that BoltBus service is offered by a joint venture/pooling agreement rather than by a single carrier – that would have prevented it from presenting the objection during the March-April 2008 Fourth Amendment-approval proceeding. To wait until now, two years after the Board’s decision became final, to seek the remedying of an alleged material error in the original decision makes the Megabus Petition to reopen untimely. *Cf. ICC v. Bhd. Of Locomotive Eng’rs*, 482 U.S. 270, 279-80 (1987) (affirming the ICC’s denial of a petition to reopen for alleged material error in the original agency decision because “where no new data but only ‘material error’ has been put forward as the basis for reopening, an appeal places before the courts precisely the same substance that could have been brought there by appeal from the original order”).

Decl. Order, No. FD 34914, 2010 WL 1822102, at *3 (S.T.B. 2010) (“[t]o justify reopening a final Board decision, however, a changed circumstance must be one that could materially affect the prior decision”). The Petition should be denied also because it fails to show, as Megabus alleges, that Greyhound and Peter Pan are not abiding by the terms of the Fourth Amendment.

II. BACKGROUND

The Board is empowered to approve an agreement between motor carriers of passengers to pool or divide traffic, services, or earnings if the Board finds that the agreement “(1) will be in the interest of better service to the public or of economy of operation; and (2) will not unreasonably restrain competition.” 49 U.S.C. §§ 14302(b), (f). Applying these standards, the Board approved three Greyhound-Peter Pan Revenue Pooling Agreements in 1997 and 1998 in Docket Nos. MC-F-20904, MC-F-20908, and MC-F-20912.

In approving the New York, NY-Washington, DC pooling agreement, the Board first held that the proposed Greyhound-Peter Pan pool would result in both “better service to the public” and “economies of operation by reducing excess bus capacity and rationalizing the level of service that exists over this route.” Docket No. MC-F-20908, 1998 WL 209278, at *4 (S.T.B. Apr. 21, 1998). The Board went on to find that “Applicants have also demonstrated that the proposed pooling arrangement will not unreasonably restrain competition,” explaining that:

While DOJ argues that under its Guidelines there is a substantial likelihood that the proposed pooling arrangement will unduly restrain competition, it has not explained why the market between New York and Washington is so unique that new bus companies would not be able to enter and other modes of passenger transportation would not act as a restraint on the ability of the pooled companies to raise bus fares above competitive levels. Indeed, if any market would be conducive to entry it would be this one, as demonstrated by the successful entry of Peter Pan. Similarly, the competitive intermodal alternatives between these two major cities far exceed those of most passenger markets throughout the country.

Id.

The Board conditioned any reopening of its approval decision upon a showing of reduced competition and only during the three years following the Board's April 1998 approval. *Id.* (“[i]f..., as a result of the pooling of their operations, competition for passengers has been diminished to such an extent that Peter Pan and Greyhound have been able to raise fares between New York City and Washington to an unreasonable level, we will reopen this proceeding...”).³

Almost 10 years later, on March 25, 2008, Greyhound and Peter Pan submitted the proposed Fourth Amendment to the Board for review, filing it electronically in the above-referenced dockets. *See* Exh. 1 to Megabus Petition. The Fourth Amendment reflected Greyhound and Peter Pan's “desire to enhance their service over the Pooled Routes by offering a modified service under a new brand name (the ‘Enhanced Service’)” and noted that this new service would be “in addition to their existing service over the Pooled Routes” (Fourth Amendment (Exh. 1 to Megabus Petition) at 2).⁴ The parties' cover letter explained that the Fourth Amendment's “provision of enhanced service over the pooled routes is a relatively minor, ministerial change which ... comes within the scope of the Board's earlier approvals and, hence, requires no action by the Board.” In a supplemental letter dated April 2, 2008, and filed electronically with the Board in the above-referenced dockets, the parties explained that:

The enhanced service contemplated by the Fourth Amendment is designed to permit Peter Pan Bus Lines, Inc. and Greyhound Lines, Inc. more effectively to compete with the so-called Chinatown bus operators, rendering service principally between Washington and New York and between New York and Boston. The Chinatown bus operators do not operate from terminals but from convenient curbside locations and do not offer service during the days but only at morning and evening peak travel times.

³ Megabus notably refrains from seeking reopening of the 1997-1998 Board approvals of the parties' Revenue Pooling Agreements.

⁴ By its terms, the Fourth Amendment proposed a new “Enhanced Service” over only the “Pooled Routes,” that is, those routes that had been previously authorized in the Greyhound-Peter Pan pooling agreements. The Fourth Amendment thus did not authorize the parties to offer BoltBus service on any routes other than those approved for pooling in the Board's 1997-98 decisions in the above-referenced proceedings.

BoltBus introduced by Greyhound Lines, Inc. last week will operate similarly, and pursuant to the Fourth Amendment such operations will inure to the benefit of both Peter Pan Bus Lines, Inc. and Greyhound Lines, Inc.

The Board approved the Fourth Amendment in a letter dated April 17, 2008 from Acting Secretary Quinlan (Exh. 2 to Megabus Petition) declaring that “it appears that this change to the Revenue Pooling Agreements falls within the scope of the Board’s prior authorizations in these proceedings.”⁵ Following Board approval, the parties thereupon launched the innovative, low-priced BoltBus service on various routes in the Northeast Corridor, as described more fully on the service’s website, www.boltbus.com. According to the Megabus Petition (at 10), “[t]he introduction of BoltBus in the spring of 2008, followed by the entry a short time later of Megabus on the same routes, and the subsequent entry of several other similar curbside intercity operators, revolutionized motorcoach service on the routes served by BoltBus.”

Now, two years later, the Megabus Petition requests reopening of this Fourth Amendment approval in order for the Board to reconsider and revoke that approval. Megabus Petition at 4. It cites “changed circumstances” since the April 17, 2008 approval as primary justification for reopening, claiming approval of the enhanced service “is not warranted by the current

⁵ The Megabus Petition never directly challenges the propriety of the Board’s approval of the Fourth Amendment. But the Petition offers, in passing, the petty complaint (at 2) that “[t]he manner of presentation of the [Fourth] Amendment was unorthodox and inconsistent with the Board’s rules at 49 C.F.R. Part 1184 specifying the contents of a pooling application” and that the Board’s “approval was provided informally, without any invitation for public comment...” (*id.*). The Greyhound-Peter Pan March 25, 2008 filing did assume that the changes in the pooling agreement proposed were so minor and ministerial as to come within the Board’s prior authorizations and thus not require a new pooling application. Nevertheless, the filing was fully forthcoming in inviting the Board, in the alternative, to “treat this letter as applicants’ request for a supplemental decision approving the amendment, pursuant to 49 U.S.C. 14302(c)(2) and 49 C.F.R. 1184.1, *et seq.*” In response, the Board chose not to require a formal pooling application. Even if the Board had done so, the statute and the regulations would have expressly allowed the Board to dispense with any hearing, publication of notice in the *Federal Register*, or invitation for public comment because, as was implicit in the Board’s determination that “this change ... falls within the scope of the Board’s prior authorizations,” the matter was not “of major transportation importance” and there was no “substantial likelihood” that the change would “unduly restrain competition.” See 49 U.S.C. 14302(c)(2); 49 C.F.R. § 1184.3. Although a recent Board decision concluded a formal pooling application would be needed for the proposed Fifth Amendment’s addition of a new pooled route to the Greyhound-Peter Pan pooling agreements, the Fourth Amendment did not entail any such expansion and the same recent decision left no doubt that the Board Secretary’s April 17, 2008, letter approving the Fourth Amendment represented a “Board determin[ation].” See *Peter Pan Bus Lines, Inc.-Pooling-Greyhound Lines, Inc.*, No. MC-F-20908, 2010 WL 1062275 (S.T.B. Mar. 24, 2010).

economically robust circumstances in which that [BoltBus] service operates.” *Id.* It also contends as an afterthought that BoltBus is operating beyond the confines of the Board’s approval. Megabus Petition at 18-19.

III. THE MEGABUS PETITION, ALLEGING CHANGED CIRCUMSTANCES, FAILS TO MEET THE STATUTORY CRITERIA FOR REOPENING

A. If Changed Circumstances Are the Proffered Basis of a Petition to Reopen, the Petitioner Must Show that the Prior Board Action Will Be “Affected Materially” by Such Circumstances

The controlling statute, 49 U.S.C. § 14302(b), establishes a two-pronged test for earning Board approval of pooling arrangements: the arrangements must “be in the interest of better service to the public or of economy of operation” and must “not unreasonably restrain competition.” The Motor Carrier Act of 1980, whose “general thrust,” as noted above, was “to promote competition,” “seeks to encourage” pooling arrangements satisfying these criteria. Consistent with that mandate, Congress’s National Transportation Policy directs the Board, when “overseeing transportation by motor carrier, to promote competitive and efficient transportation services.” 49 U.S.C. § 13101(a)(2).

The Megabus Petition must be assessed against this pro-competitive statutory background favoring pooling arrangements satisfying the § 14302(b) criteria. Congress spelled out narrow grounds for reopening final agency proceedings of this type. The Board may, on its own initiative or in response to a petition by any person, reopen an administratively final proceeding “because of material error, new evidence, or substantially changed circumstances.” 49 U.S.C. § 722(c). Similarly, under Board regulations, a person may file a petition to reopen a final Board action in light of “material error, new evidence, or substantially changed circumstances.” 49 C.F.R. § 1115.4. “Material” modifies “substantially changed circumstances,” as well as “error” and “new evidence.” As the Board declared just last week, “[t]o justify reopening a final Board

decision, ... a changed circumstance must be one that could materially affect the prior decision.” See *DesertXpress Enterprises, LLC-Pet. for Decl. Order*, 2010 WL 1822102, at *3. Accord, *Town of Springfield*, 412 F.3d at 189 (citing the “affected materially because of ... changed circumstances” standard of § 1115.3(b)(1) in declaring that a petition to reopen for new evidence or changed circumstances under § 1115.4 necessitated a showing that the new developments “materially affected the Board’s disposition”).

Megabus’s Petition rests almost exclusively upon the changed-circumstances criterion.⁶ It has the burden of persuasion on this issue (*Simmons v. ICC*, 760 F.2d 126, 132 (7th Cir. 1985)), and it is a heavy one: “[p]etitions to reopen previously final agency decisions are to be granted only in the most extraordinary circumstances.” *Farmer Export Co. v. United States*, 758 F.2d 733, 737 (D.C. Cir. 1985) (citing *Mobil Oil Corp. v. ICC*, 685 F.2d 624, 631-32 (D.C. Cir. 1982)).

B. The Megabus Petition Fails to Establish that the Purportedly Changed Circumstances – Namely, Increased, Not Decreased, Competition on the Routes Served by Boltbus, Megabus, and Numerous Other Bus Companies and Transportation Providers – Will Be Material to the Board’s Prior Action in Approving the Fourth Amendment

In an effort to meet this burden, Megabus attempts to establish how “dramatically” market conditions have changed in the past two years since the Board’s authorization of the Fourth Amendment on April 17, 2008. Megabus Petition at 3. Megabus declares that BoltBus-type service “is now significantly more competitive” (*id.*); at the same time, that type of curbside service has experienced “a dramatic growth in demand and ridership” (*id.*); current circumstances in the BoltBus market are “economically robust” (*id.* at 4); the entry of BoltBus,

⁶ While the Megabus Petition also alleges BoltBus’s non-compliance with the terms of Board’s approval of the Fourth Amendment, this argument appears to be an afterthought. It, too, is without merit. See Part IV of this Opposition, *infra*.

Megabus, and several so-called Chinatown curbside intercity operators “revolutionized motorcoach service on the routes served by BoltBus” (*id.* at 10); the resulting service precipitated “a dramatic growth of the number of passengers traveling by bus” in the Northeast areas that BoltBus serves (*id.* at 11); “the majority of this growth in service was driven by ... Megabus and BoltBus” (*id.*, quoting a report appended to Megabus’s filing in opposition to the Greyhound/Peter Pan Fifth Amendment); the sector in which BoltBus operates “is financially viable, and indeed attractive” as evidenced by the “entry over the last several years of new competitors into the intercity motorcoach sector in the Northeast U.S.” (*id.*); the “intercity services on the BoltBus routes are in fact so plentiful now....” (*id.* at 12); and “the last several years have been marked by expanding demand for the type of services offered by BoltBus and the new entrants (listed above [including Megabus]) attracted into the sector on the routes served by BoltBus.” Finally, quoting from its own press release posted on its website, Megabus proclaims that, “Independently operated competitors of BoltBus ... are performing well and offer the same types of amenities on their buses,” and that, “The overwhelming popularity of megabus.com’s innovative, express bus service prompts us to keep expanding and offering our service to as many customers as possible.” *Id.* at 15 & n.32.

In sum, in Megabus’s own view, the very market and competitive conditions the Board sought to foster when it approved the Revenue Pooling Agreements in 1997 and 1998 and ensuing amendments, the last being the Fourth Amendment in April 2008, have come to pass. The riding public has benefitted from improved, innovative motorcoach services, traceable to the operating efficiencies and economies inherent in the pooled services of Greyhound and Peter Pan, while motorcoach competition for this dramatic growth in ridership is healthy and has flourished, hardly “unreasonably restrain[ed].”

Greyhound and Peter Pan generally agree with Megabus's assessment of the current marketplace in which BoltBus operates. The circumstances surrounding enhanced bus services have indeed changed since April 2008 when the Board approved the Fourth Amendment, and they have changed generally as Megabus portrays them in its Petition. But such changes do not rise to the level of those that the statute and regulations require for the Board to reopen an administratively final action. As discussed above, to warrant reopening, changed circumstances must be both "material" and substantial and, in the view of the U.S. Court of Appeals for the D.C. Circuit, "most extraordinary." *Farmer Export*, 758 F.2d at 737.

The changed circumstances in connection with a prior Board action involving pooling must be material to the statutory criteria for approving pooling arrangements. Thus, they must tend to undercut either "better service to the [riding] public" or "economy of operation" of the pooling agreement. See 49 U.S.C. § 14302(b)(1). Alternatively, the allegedly changed circumstances must show that the pooled services have "unreasonably restrained competition." 49 U.S.C. § 14302(b)(2). Megabus has not, and cannot, make any of these statutory showings.

Instead, the changed circumstances Megabus has brought to the attention of the Board are the polar opposite of such showings. Megabus's own Petition shows the resulting BoltBus operations brought and continue to bring an improved, innovative service to the riding public, a nimble service responsive to changing needs of a new type of "hip" passenger. Megabus's evidence shows BoltBus provides a low-cost, low-fare express service that by-passes congested, expensive terminals and relies upon the Internet for its cost-effective ticketing system – in a word, an economical, efficient service as well as an improved one. Megabus's Petition describes a healthy, highly competitive passenger bus service environment in the Northeast, one in which bus companies have refocused on providing and expanding affordable, reliable, but modern

curbside service. Megabus and the other new entrants Megabus identifies in its Petition as having entered the market since April 2008 to provide BoltBus-type service in the Northeast are described as vibrant and thriving as the ridership demand has grown in response to implementation of these new services.

The pooled services of Greyhound and Peter Pan producing BoltBus have, according to Megabus's own evidence, proven to be precisely the competitive success the Board predicted when it approved them. *See, e.g., Peter Pan Bus Lines, Inc.-Pooling-Greyhound Lines, Inc.*, No. MC-F-20908, 1998 WL 209278, at *4 (declaring, in approving the New York, NY-Washington, DC pooling agreement, that "if any market would be conducive to entry it would be this one.... Similarly, the competitive intermodal alternatives between these two major cities far exceed those of most passenger markets throughout the country"). In effect, Megabus has petitioned the Board to undo this extraordinary success in passenger bus transportation by overturning its prior Fourth Amendment approval for an anti-competitive reason – to eliminate a formidable competitor that, together with Megabus and others, has been largely responsible for the current highly-competitive intercity motorcoach industry in the Northeast. The Board should reject such a perverse and unsupported request.

The Board's predecessor, the Interstate Commerce Commission, recognized the proper role of the agency in the post-1980 deregulated transportation environment – to protect the public interest through promoting *competition*, not individual competitors. *See GLI Acquisition Company – Purchase – Trailways Lines, Inc.*, 4 I.C.C. 2d 591, 610 (1988) ("[w]e are not, however, in the business of preserving competitors when competition itself is not endangered"), *pet. for review denied sub nom., Peter Pan Bus Lines, Inc., v. ICC*, 873 F.2d 408 (tbl.), 1989 WL 46959 (D.C. Cir. 1989) (per curiam, unpublished). In declining to reopen the Greyhound

acquisition given that Greyhound's entry into the market and its low pricing were precompetitive, the ICC declared:

[O]ur role is to protect the broad public interest. The public interest favors competition. The entry of a new competitor into a market offers a greater variety of price and service consistent with 49 U.S.C. § 10101.... [T]he Commission is *obliged to protect competition rather than competitors* so that benefits to the public will be maximized.

Greyhound Lines, Inc. – Purchase – Scenic Trails, Inc. d/b/a Scenic Trailways, No. MC-F-19206, 1990 WL 287498, at *3 (I.C.C. 1990) (emphasis added). Here, only competitor Megabus, not the riding public or others purporting to represent to the public interest, seeks to reopen and overturn the Board's approval of BoltBus. Eliminating a competitor, BoltBus, would not protect or enhance *competition*; it would merely promote the agenda of a BoltBus *competitor*, Megabus. Nor has Megabus made any allegation in its Petition that Greyhound and/or Peter Pan have engaged in anticompetitive behavior or that their entry into the pooled-routes markets served by BoltBus has diminished competition for passengers in that market. *Cf. GLI Acquisition Company – Purchase – Trailways Lines, Inc.*, No. MC-F-18505, 1991 WL 126512, at *2-*3 (I.C.C. 1991) (rejecting allegations that Greyhound was "engaging in anti-competitive conduct" and declaring "[w]e will reopen this proceeding ... only on a strong showing of harm to the public interest and/or competition that requires our intervention").

IV. BOLTBUS DOES NOT EXCEED FOURTH AMENDMENT APPROVAL

Megabus posits a second reason for reopening the Fourth Amendment authorization – that by now offering frequent, hourly service over the pooled routes, BoltBus diverges from the terms the Board purportedly imposed upon its authorization. Megabus Petition at 18-19.

This allegation is patently false. The Board's letter of April 17, 2008, approves the Fourth Amendment as coming within the Board's prior authorizations of the parties' pooling agreements, thereby authorizing Greyhound and Peter Pan to launch "Enhanced Service," known

as “BoltBus,” over their pooled routes without restriction or condition beyond the provisions of the Fourth Amendment itself. The authorizing letter merely prompts, arguably admonishes, the parties to “work with affected states and localities to minimize any safety or traffic congestion problems that can sometimes be associated with bus operators picking up and discharging passengers at locations outside of established terminals.” Exh. 2 to Megabus Petition.

Megabus’s argument regarding non-compliance relies upon a thin slice of the April 17, 2008, letter’s reference to features of the proposed Enhanced Service. The portion Megabus quotes states that this service “will be offered only during the morning and peak travel times” (Megabus Petition at 18). Megabus takes this quotation out of context.⁷ The quotation comes from a more complete, albeit somewhat cryptic, description of the proposed service appearing in the April 2, 2008 supplemental letter from Greyhound counsel. The April 2, 2008, Greyhound letter states that the planned Enhanced Service is designed to permit Greyhound and Peter Pan to compete more effectively with the newly minted so-called Chinatown bus operators and identifies key attributes of this Chinatown service – Washington-New York and New York-Boston routes, curbside pickups and discharges, and schedules operating only during mornings and evening peak travel times. Exh. 1 to Megabus Petition. To all of these enumerated service attributes of the Chinatown operators, the April 2, 2008 letter states that BoltBus “will operate similarly” (*id.*) – not “identically.”

⁷ The complete paragraph from Acting Secretary Quinlan’s letter refers to a number of proposed service features of BoltBus:

According to your filing, the parties plan to provide enhanced service over their pooled routes between Washington, DC, and New York, NY, and between New York and Boston, MA, to compete with other bus operators. This new service will operate from curbside locations rather than from terminals and will be offered only during the morning and evening peak travel times.

Exh. 2 to Megabus Petition.

What necessarily governs the parties in implementing the Enhanced Service is the Fourth Amendment, and there is nothing in it that states the Enhanced Service will operate pursuant to fixed schedules or only in the morning and evening peak hours. It makes no sense to infer from the Board's approval of the Fourth Amendment an intent to deprive the pooled-service operators of the flexibility to adopt and adjust their service and service schedules to meet the evolving competition and service features of the Chinatown operators and new entrants in the field of intercity curbside express service, such as Megabus.⁸ To compel the service operators to remain static in this dynamic market would be, as we are certain Megabus would agree, to doom them to flounder or worse.⁹

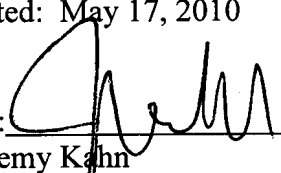
⁸ As Megabus points out, the Chinatown operators "frequently changed schedules" once they initiated their low-cost, low-fare curbside service. Megabus Petition at 9. And to keep up, Megabus has kept on expanding and offering our service to as many customers as possible." *Id.* at 15, n.32.

⁹ Because Megabus has failed to meet the Board's statutory and regulatory requirements for a petition to reopen, no substantive response by Greyhound and Peter Pan is needed to Megabus's unsupported allegations that entry by a joint venture/pooling agreement into a competitive market is inherently suspect. It should be noted, however, that the federal antitrust enforcement agencies see things far differently. See Fed. Trade Comm'n & U.S. Dep't of Justice, *Antitrust Guidelines for Collaborations Among Competitors* at 6 (Apr. 2000) ("consumers may benefit from competitor collaborations in a variety of ways. For example, a competitor collaboration may enable participants to offer goods and services that are cheaper, more valuable to consumers, or brought to market faster than would be possible absent the collaboration").

V. **CONCLUSION**

In reviewing the Megabus Petition, "it is important to consider divergence between competitor and consumer interests, for when competitors seek out government regulation it is fair to assume that what they desire is protection from competition, which comes at the expense of consumers." See *GLI Acquisition*, 4 I.C.C. 2d at 610 & n.9 (noting with approval the views of Greyhound witness Landes). For all of the above reasons, the Megabus Petition should be denied.

Dated: May 17, 2010

By: 

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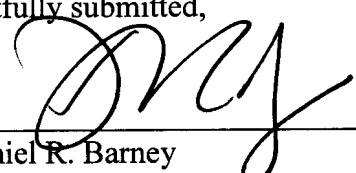
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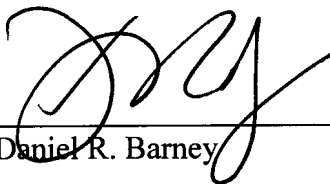
Attorneys for Greyhound Lines, Inc.

CERTIFICATE OF SERVICE

I certify that I have this 17th day of May 2010 served copies of the foregoing letter and enclosed Opposition to Ms. Cynthia T. Brown, Chief, Section of Administration, Office of Proceedings, Surface Transportation Board, dated May 17, 2010, on the following by First Class Mail:

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