

SERVICE DATE – JUNE 8, 2023

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. MCF 21108

ACADEMY EXPRESS LLC AND FRANMAR LEASING LLC—PURCHASE OF CERTAIN
ASSETS OF JAMES RIVER BUS LINES

Decided: June 8, 2023

On May 9, 2023, Academy Express LLC (Express), a motor carrier of passengers; Franmar Leasing LLC (Franmar),¹ a noncarrier; and James River Bus Lines (James), a motor carrier of passengers (collectively, Applicants), filed an application under 49 U.S.C. § 14303 for approval of the sale of certain assets of James to Express and Franmar. The application states that, as a result of the proposed transaction, Franmar would acquire the motor carrier assets of James (consisting of 28 motor coaches and 17 mini-motor coaches) and that Express would acquire non-motor carrier assets of James (consisting of customer lists, telephone numbers, website and related software, pending customer contracts and associated deposits, parts, equipment, supplies, and intangibles used by James in its charter business operation). (Appl. 2.)

Pursuant to 49 U.S.C. § 14303 and the corresponding regulations at 49 C.F.R. part 1182, applicants are required to file an application that includes, among other things, a description of the proposed transaction; identification of any motor passenger carriers affiliated with the parties, a brief description of their operations, and a summary of the intercorporate structure of the corporate family from top to bottom; and information to demonstrate that the proposed transaction is consistent with the public interest. See 49 C.F.R. § 1182.2(a).

In processing an application, the Board will review it for completeness. If the application is accepted as complete, a summary is published in the Federal Register within 30 days after the application is filed. Incomplete applications may be rejected. However, applicants are given an opportunity to correct minor errors or omissions, in which case the filing date of the application, for purposes of calculating the procedural schedule and statutory deadlines, is deemed to be the date on which the complete information is filed with the Board. See 49 C.F.R. § 1182.4(a)-(b).

Here, although the application contains some information for each of the categories of information required under 49 C.F.R. § 1182.2(a), the information given on several items is not sufficient to provide the Board and the public with the required notice of the nature and effect of the proposed transaction. Therefore, additional information is needed for the application to be considered complete.

¹ The application also seems to refer to this party as “Franmar Leasing, Inc.” (See Appl. 5-6.)

First, although the application includes the operating authorities (motor carrier license numbers granted by the Federal Motor Carrier Safety Administration (FMCSA)) of Express, James, and Express's motor carrier affiliates,² it does not identify the states in which each entity operates or provide meaningful detail on the nature of their respective operations. For example, the application simply describes Express—a party to the transaction—as “a charter bus operator, primarily in the Northeast.” (Appl. 7.) Similarly, the application states that Airport Express LLC (an affiliate of Express) is “a motor carrier of passengers performing a variety of functions,” (*id.* at 7), but only identifies one function, namely, “regular route commuter transportation” in New Jersey, (*id.* at 5). Academy Lines LLC (another affiliate) is described only as a “leading commuter regular route transportation compan[y] in the New York Metropolitan area and the East Coast of the United States,” (*id.* at 5), that operates “primarily in the New York-New Jersey area,” (*id.* at 7). No information is provided about Academy Bus LLC (Florida)'s business or the states in which it operates. Nor does the application identify the states (other than Virginia) in which James conducts interstate motor passenger carrier operations or describe the nature of the charter business operations James conducts. Applicants therefore will be directed to file supplemental information describing with more specificity the nature of each entity's current operations, including, but not limited to: the nature of the charter (and any other motor passenger carrier) operations the parties provide and the other functions performed by Airport Express LLC; the states in which the parties and their affiliated motor carriers operate; and the extent to which those operations are conducted in interstate commerce.

Second, Applicants will be directed to provide similar additional detail regarding the services Express would provide after the contemplated transaction, if approved, is consummated. The application appears to indicate that Express currently provides transportation services to customers throughout Virginia, and in interstate commerce involving the state of Virginia, and that James provides services in at least some of the same markets. (See Appl. 3, 9.) Per 49 C.F.R. § 1182.2(a)(7), Applicants should explain how the proposed transaction would affect competitive conditions in the relevant markets and describe any overlap in markets currently served by James and Express (or any of Express's affiliated carriers).³

Third, the application is missing information required by the Board's regulations relating to the safety fitness rating of Academy Bus LLC (Florida), an affiliated carrier,⁴ and does not certify that Express has sufficient insurance coverage under 49 U.S.C. § 13906(a) and (d) for the

² The application identifies three motor passenger carrier affiliates of Express: Airport Express LLC, Academy Lines LLC, and Academy Bus LLC (Florida). (See Appl. 4-5.)

³ See, e.g., Appl. 9-11, Jan. 23, 2023, Avalon Motor Coaches, LLC—Acquis. of Control—Wynne Transp., LLC, MCF 21105; Appl. 9-11, June 14, 2022, Van Pool Transp. LLC—Acquis. of Control—F.M. Kuzmeskus, Inc., MCF 21099.

⁴ See 49 C.F.R. § 1182.2(a)(8) (requiring certification by the applicant of the current U.S. Department of Transportation (USDOT) safety fitness rating “of each motor passenger carrier involved in the transaction, whether that carrier is a party to the transaction or is affiliated with a party to the transaction”).

service it intends to provide.⁵ Applicants are directed to provide this information and the certifications required by the regulations at 49 C.F.R. § 1182.2(a)(8) and § 1182.2(a)(9).

Fourth, it is unclear that the service requirements specified in 49 C.F.R. § 1182.3 have been met. The application states that “no operating certificates are to be sold or acquired under this transaction,” and that James’s operating certificates “are to be surrendered following the closing of the transaction.” (Appl. 6.) However, the Asset Purchase Agreement (APA) permits Express (defined in the APA as “Academy”) to elect to request the transfer of James’s operating certificates. (See Appl., Ex. C at 18, 52.) At the same time, the certificate of service does not include the FMCSA on the service list and does not include the certification specified by § 1182.3(b). Accordingly, applicants are directed to either (i) serve the FMCSA with a copy of the application (inasmuch as the APA allows Express to elect to transfer James’s operating certificates) or (ii) certify that there will be no transfer of James’s operating authorities or registrations (such that service on the FMCSA would not be required under § 1182.3(a)(2)). Applicants must also serve a copy of their supplemental filing in accordance with the requirements of § 1182.3, including the certification specified in § 1182.3(b).

The application also includes several statements and references that are unclear or create confusion. For example, the jurisdictional statement provided under 49 C.F.R. § 1182.2(a)(5) states:

The motor carriers of passengers directly or indirectly owned and controlled by the Academy Trust have gross annual operating revenues of more than \$2 million. The motor carriers of passengers directly or indirectly owned and controlled by the Academy (Florida) ESB Trust (Academy Bus LLC (Florida)[)] has gross annual operating revenues of more than \$2 million.

(Appl. 7-8.) However, neither the “Academy Trust” referenced in the first sentence, nor the “Academy (Florida) EBS Trust” referenced in the second sentence, is defined in the application, which states elsewhere that Academy Bus LLC (Florida) “is owned by The Tedesco (Florida) ESB Trust (hereinafter the ‘Florida Trust’).” (*Id.* at 4.) Applicants are directed to correct the application to provide consistent references to the trusts identified in the application, and to clarify which specific motor carrier(s) are included in their jurisdictional statement.

Similarly, the application contains several references to “Academy,” which is not a defined term. (See, e.g., *id.* at 4 (referencing “acquisition of James by Academy and the incorporation of the James charter business operations into Academy’s existing charter business”; *id.* at 6 (stating that “[t]he motor coaches acquired by Franmar’s purchase will be added to Franmar’s fleet of buses for lease to its affiliated Academy companies”); *id.* at 10 (referring to “Academy” insurance policies). Applicants are directed to correct or clarify these references (and, if they deem it appropriate to use a collective term, to define that term) so that

⁵ See 49 C.F.R. § 1182.2(a)(9) (requiring certification by the party acquiring any operating rights through the transaction that it has sufficient insurance coverage under 49 U.S.C. § 13906(a) and (d) for the service it intends to provide).

statements in the application that now contain a general reference to “Academy” identify with precision the company or companies to which they are intended to refer.

Relatedly, the application does not appear to provide a complete “top to bottom” summary of the intercorporate structure of the corporate family of motor passenger carriers affiliated with the parties, as required by 49 C.F.R. § 1182.2(a)(4). The application states that three motor passenger carriers are owned by the Tedesco Family ESBT Trust (the ESBT Trust): Express; Airport Express LLC; and Academy Lines LLC. (Appl. 7.) However, these three companies are not shown in Exhibit B—a chart described as depicting the ESBT Trust’s organizational structure, (see id.), when, in a previous transaction involving Express as a purchaser, two of the companies (Express and Academy Lines LLC) were shown on a similar chart, along with another motor carrier (No. 22 Hillside LLC) that is not mentioned in the pending application, (see Appl. 4-5, 11 (chart), July 24, 2014, Academy Express, LLC—Acquis. of Properties of Go Bus LLC & its affiliate, MCIZ Corp. (Academy Express/Go Bus), MCF 21059).⁶ Additionally, the pending application states that a fourth affiliated motor carrier—Academy Bus LLC (Florida), owned by a separate trust (The Tedesco (Florida) ESB Trust)—is “under the common control of the Tedescos along with the other Academy companies that are parties to the transaction.” (Appl. 5.) However, in the pending application, this trust and its holdings are not depicted on an organization chart. (Compare Appl. Ex. B (presenting chart that does not depict this trust and its holdings), MCF 21108 with Appl. 12, July 24, 2014, Academy Express/Go Bus, MCF 21059 (providing chart that does contain this information).)

The information in Exhibit B also appears to be both incomplete and inconsistent with the application’s description of non-carrier holdings under the ESBT Trust. According to the description in the application, Franmar Leasing LLC is controlled by the ESBT Trust. (Appl. 5.) However, Exhibit B (which, according to the application, identifies the ESBT Trust’s organizational structure) does not depict Franmar Leasing LLC. Rather, it depicts an entity identified as “Franmar Logistics Inc.”—but that entity is shown as a company that is **not** owned or controlled by the ESBT Trust, and it is not otherwise mentioned in the application. Moreover, the chart appears to suggest that Franmar Logistics Inc. owns a controlling (99%) membership interest in Express, and the ESBT Trust owns only 1%, while the application states that “Express and Franmar are affiliated entities under common control.” (Appl. 1.) Applicants will be directed to clarify and, where necessary, correct the information about their corporate structure and holdings described in these two paragraphs. Applicants should also provide complete, updated organizational charts that contain the type of information depicted in the charts submitted in Docket No. MCF 21059 (cited above).

⁶ In Docket No. MCF 21059, No. 22 Hillside LLC is listed as having USDOT No. 943547 and holding interstate operating authority under No. MC-413531, (see Appl. 4, Academy Express/Go Bus, MCF 21059), while, in the pending application, Airport Express LLC is listed as having the same USDOT number (No. 943547) but holding operating authority under No. MC-413631. Applicants should explain whether the motor passenger carrier identified in Docket No. 21059 as No. 22 Hillside LLC continues to exist, the nature of its operations (if any), and its relationship to Airport Express LLC, and should confirm the accuracy of the USDOT number and the FMCSA docket number provided for Airport Express LLC.

Applicants shall supplement, and clarify or correct, the application as discussed above by June 22, 2023.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Applicants are directed to file and serve supplemental information as described in this decision by June 22, 2023.
2. This decision is effective on its service date.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.