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SERVICE DATE – JULY 21, 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

AGENCY: Surface Transportation Board.

ACTION: Notice Tentatively Approving and Authorizing Finance Transaction.

SUMMARY: Academy Express LLC (Express), a motor carrier of passengers; Franmar Leasing LLC (Franmar), a noncarrier; and James River Bus Lines (James), a motor carrier of passengers (collectively, Applicants), filed an application for approval of the sale of certain assets of James to Express and Franmar. The Board is tentatively approving and authorizing this transaction. If no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments must be filed by September 5, 2023. If any comments are filed, Applicants may file a reply by September 19, 2023. If no opposing comments are filed by September 5, 2023, this notice will be final on September 6, 2023.

ADDRESSES: Comments may be filed with the Board either via e-filing on the Board's website or mailing to the Board's offices and must reference Docket No. MCF 21108. Comments may be e-filed at www.stb.gov/proceedings-actions/e-filing/other-filings/. Mailed comments may be sent to: Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, one copy of comments must be sent to Applicants' representative: Joseph J. Ferrara, Ferrara and Associates, 1111 Paterson Ave., Hoboken, NJ 07030.

FOR FURTHER INFORMATION CONTACT: Amanda Gorski at (202) 245-0291. If you require an accommodation under the Americans with Disabilities Act, please call (202) 245-0245.

SUPPLEMENTARY INFORMATION: According to the application,¹ Express and Franmar²

¹ The application was filed on May 9, 2023. By decision served June 8, 2023, Applicants were directed to file certain supplemental information. Applicants filed the supplement on June 21, 2023. Therefore, for purposes of determining the procedural schedule and statutory deadlines, the filing date of the application is June 21, 2023. See 49 C.F.R. § 1182.4(a). On July 11, 2023, Applicants submitted a second supplement clarifying various points in their June 21, 2023 supplement.

² The application refers to this party as both "Franmar Leasing LLC" and "Franmar

are affiliated entities under the common control of the Tedesco Family ESBT Trust (the ESBT Trust). (Appl. 1; Suppl. 9, June 21, 2023.) Express is a motor carrier licensed by the Federal Motor Carrier Safety Administration (FMCSA) that operates interstate charter and contract motor coach passenger services in states along the East Coast, primarily in the Northeast, from garage facilities located in Massachusetts, Rhode Island, Connecticut, New Jersey, Maryland, Northern Virginia, and North Carolina. (Appl. 7; Suppl. 3, June 21, 2023.) Franmar, a non-carrier, is engaged exclusively in the ownership and leasing of passenger motor coaches for use by Express and its motor carrier affiliates, as described below. (Appl. 5.) James is a family-owned motor carrier engaged in passenger transportation services in and from Virginia from customer bases centered in the Richmond and Norfolk areas. (Appl. 1, 7; Suppl. 4, June 21, 2023.)³

Applicants state that the ESBT Trust owns and controls three FMCSA carriers—Express, Academy Lines LLC (Lines), and Airport Express LLC (Airport)—along with Franmar and several other non-carrier companies. (Suppl. 8, June 21, 2023.) According to Applicants, Francis and Mark Tedesco (the Tedescos) are the lifetime beneficiaries of the ESBT Trust as well as a second trust—the Academy (Florida) ESB Trust (the Florida Trust)—that owns and controls a fourth FMCSA carrier, Academy Bus LLC (FL) (Bus FL). (*Id.* at 8, 10.)⁴ Applicants explain that through these respective trusts, the Tedescos exercise ownership and control of the carriers and affiliated non-carriers identified in their filings. (*Id.* at 8-11.)

James proposes to sell assets used in its motor coach passenger transportation business pursuant to an asset purchase agreement dated April 23, 2023. (Appl. 1, Ex. C.) According to Applicants, this transaction is a result of a business decision by James to permanently withdraw from the motor coach transportation business so that its principal can focus on transportation consulting activities. (Appl. 1-2.)⁵ The application states that, under the terms of the agreement,

Leasing, Inc.” (See Appl. 5-6.)

³ Further information about James—including its U.S. Department of Transportation (USDOT) number, motor carrier number, and USDOT safety fitness rating—can be found in the application and the supplement. (See Appl. 6-7, 9; Suppl. 2-3, 6, June 21, 2023; see also Second Suppl., July 11, 2023 (clarifying information relating to James’ interstate motor coach passenger operations).)

⁴ Further information about the motor carriers controlled by the Tedescos—including their USDOT numbers, motor carrier numbers, and USDOT safety fitness ratings—can be found in the application and the supplement. (See Appl. 4-5, 7, 9; Suppl. 3-4, 7, 9-11, June 21, 2023.) According to Applicants, Lines operates interstate passenger commuter service and charter passenger service primarily in New York and New Jersey; Airport does not currently conduct any motor coach or transportation services but previously operated in New Jersey; and Bus (FL) operates interstate charter and contract motor coach passenger service primarily in North Carolina, South Carolina, Georgia, and Florida. (See Appl. 5, 7; Suppl. 10-11, June 21, 2023.) The operations of Express are described above.

⁵ (See also Appl. 6-7; Suppl. 6, 8, June 21, 2023 (explaining that James will surrender its operating certificates and cease operations as a motor coach passenger transportation carrier).)

Franmar will acquire the motor carrier assets of James (consisting of 28 motor coaches and 17 mini-motor coaches) and Express will acquire the non-motor carrier assets of James (consisting of customer lists, telephone numbers, website and related software, pending charter customer contracts and associated deposits, parts, equipment, supplies, and intangibles used by James in its charter business operation). (Id. at 2.)

Under 49 U.S.C. § 14303(b), the Board must approve and authorize a transaction that it finds consistent with the public interest, taking into consideration at least: (1) the effect of the proposed transaction on the adequacy of transportation to the public, (2) the total fixed charges resulting from the proposed transaction, and (3) the interest of affected carrier employees. Applicants have submitted the information required by 49 C.F.R. § 1182.2, including information to demonstrate that the proposed transaction is consistent with the public interest under 49 U.S.C. § 14303(b), see 49 C.F.R. § 1182.2(a)(7), and a jurisdictional statement under 49 U.S.C. § 14303(g) that the aggregate gross annual operating revenues of the involved carriers exceed \$2 million, see 49 C.F.R. § 1182.2(a)(5). (See Appl. 7-9; Suppl. 2-9, 11, June 21, 2023.)

Applicants assert that the proposed transaction is in the public interest because James is permanently withdrawing from the motor coach passenger transportation business and would sell its motor coach vehicles and related assets, which it no longer desires to operate, to Franmar and Express for continued use in the delivery of passenger motor coach transportation services. (Appl. 8.) No operable motor vehicles would be scrapped, and no new busses would need to be purchased by Franmar at this time, conserving metals and energy resources. (Id.) Applicants represent that the public would not lose service because the same number of buses will continue to operate. (Id.) Applicants also state that the transaction would promote efficiencies, competitive pricing, and exemplary service. (Id. at 8-9; see also id. at 3 (stating that the transaction would increase operating efficiencies, reduce operating costs, and promote greater economic use of existing transportation capital resources, maintaining service options to customers of both James and Express).) Applicants also assert that the proposed transaction would not result in an increase to fixed charges, as the proposed transaction is expected to be for cash. (Id. at 8.)

Additionally, Applicants assert that the proposed transaction would not adversely affect qualified employees at the locations from which James operates. (Id. at 9.) Applicants state that Express will interview and offer employment opportunities to those employees, which Applicants claim is “a necessity to permit Express to continue to operate the assets acquired as a carrier.” (Id.)

According to Applicants, the proposed transaction would not adversely affect competition or the adequacy of transportation offerings. Applicants state that Express will continue to provide the same level of services in all states in which it operates. (Suppl. 3, June 21, 2023.) Applicants further explain that, following the transaction, Express will offer substantially the same charter and contract transportation services currently provided by James, and that James’ current motor coach fleet is sufficient in size to meet the requirements of James’ charter and contract service customer base. (Id. at 3-5.) Thus, the transaction will have little or no impact on competing passenger charter and contract motor carriers because Express would simply be replacing James as the operator in the Richmond and Norfolk markets that James

primarily serves, which, according to Applicants, are separate from the markets served by Express from Northern Virginia. (Id. at 6.) Applicants also assert that James' motor coach operations outside Virginia are "minimal, approximately 13% of total charter and contract operations"; state that the Express motor carrier affiliates (Lines, Airport, and Bus (FL)) do not conduct any regular and primary charter or contract passenger service operations in Virginia, the primary market in which James operates; and claim that due to these limiting factors, they do not anticipate that the acquisition of James' motor coach assets will have a substantial negative impact on competitors. (Id. at 6-7.)⁶

Based on Applicants' representations, the Board finds that the proposed acquisition is consistent with the public interest and should be tentatively approved and authorized. If any opposing comments are timely filed, these findings will be deemed vacated and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. See 49 C.F.R. § 1182.6(c). If no opposing comments are filed by the expiration of the comment period, this notice will take effect automatically and will be the final Board action.

This action is categorically excluded from environmental review under 49 C.F.R. § 1105.6(c).

Board decisions and notices are available at www.stb.gov.

It is ordered:

1. The proposed transaction is approved and authorized, subject to the filing of opposing comments.
2. If opposing comments are timely filed, the findings made in this notice will be deemed vacated.
3. This notice will be effective September 6, 2023, unless opposing comments are filed by September 5, 2023. If any comments are filed, Applicant may file a reply by September 19, 2023.

⁶ The Board notes that the asset purchase agreement contains a non-compete agreement, which prohibits James and its affiliates (except for Stephen Story, whose arrangement is governed by a consulting agreement), for a period of time, from soliciting the customer client base sold to Express or otherwise competing with Express in the geographic areas in which James currently conducts business operations. (Appl., Ex. C art. 10.01.) After a review of the contractual provision, and based on the verified information submitted by Applicants regarding the limited amount of market overlap, the Board finds that the clause does not appear to have an anticompetitive effect, on balance, in the markets in which Applicants operate.

4. A copy of this notice will be served on: (1) the U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, S.E., Washington, DC 20590; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, N.W., Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 1200 New Jersey Avenue, S.E., Washington, DC 20590.

Decided: July 17, 2023.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz.