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SERVICE DATE – AUGUST 14, 2015

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. MCF 21062

ACE EXPRESS COACHES, LLC, ET AL.—ACQUISITION AND CONTROL—CERTAIN
PROPERTIES OF EVERGREEN TRAILS, INC. D/B/A HORIZON COACH LINES

Digest:¹ This decision grants the request of Ace Express Coaches, LLC, and its affiliated companies for approval to acquire and control certain properties of Evergreen Trails, Inc. d/b/a Horizon Coach Lines, and addresses a comment filed in this proceeding.

Decided: August 12, 2015

On March 23, 2015, Ace Express Coaches, LLC (Buyer), and its affiliated parties (All Aboard America! Holdings, Inc. (AHI), Celerity AHI Holdings SPV, LLC (Celerity Holdings), Celerity Partners IV, LLC (Celerity Partners), and Industrial Bus Lines, Inc. (IBL)) (collectively, Applicants) applied for approval under 49 U.S.C. § 14303 for the Buyer to acquire certain assets of Evergreen Trails, Inc. d/b/a Horizon Coach Lines (Seller or Evergreen), and for continued control of the Buyer by AHI, Celerity Holdings, and Celerity Partners once the Buyer becomes a federally regulated motor carrier of passengers. In a notice served and published in the Federal Register on April 22, 2015 (80 Fed. Reg. 22,613), the Board tentatively approved the application, subject to the filing of opposing comments. Ace Express Coaches, LLC—Acquis. & Control—Certain Props. of Evergreen Trails, Inc. (April Decision), MCF 21062 (STB served Apr. 22, 2015). Specifically, the transaction contemplated that Applicants would acquire assets of the Seller in three phases, culminating with Applicants' ownership and operation of Seller's assets in Colorado, including government, corporate, and chartered shuttle services, as well as the licenses and permits necessary to operate such services. The Seller's government shuttle services include contracted service to the U.S. Department of Defense, which would be provided by IBL for a year until the Buyer replaces IBL. In addition, Applicants stated that Seller was awarded an intercity passenger service contract with the Colorado Department of Transportation, which is expected to commence soon.

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

On June 8, 2015, a comment was filed by Colorado Jitney, LLC (Colorado Jitney), in which Colorado Jitney opposes Applicants' acquisition of any assets of Evergreen.² On June 15, 2015, Evergreen filed a reply to Colorado Jitney stating that the transaction meets the criteria for approval under 49 U.S.C. § 14303 and that Colorado Jitney's request should be denied.

Colorado Jitney states that it is a transportation carrier for hire in the State of Colorado subject to the regulations of the Commission³ and that it possesses a Certificate of Public Convenience and Necessity (CPCN 55785) to provide transportation at Red Rocks Park. Colorado Jitney argues that Evergreen provided unauthorized shuttle service in Red Rocks Park in violation of Commission rules. Colorado Jitney states that it filed a complaint based on these allegations against Evergreen, as well as the City and County of Denver, in Commission Docket Number 14F-0806CP (Denver and Evergreen Proceeding). According to Colorado Jitney, Evergreen cancelled its contract with the City and County of Denver to provide shuttle service and is selling its assets in an attempt to evade the jurisdiction of the Commission and absolve itself from wrongdoing.

On July 24, 2015, Evergreen filed a letter renewing its request that the Board promptly approve the transaction and also attaching a recommendation by an Administrative Law Judge (ALJ) in the Denver and Evergreen Proceeding. The ALJ recommended that the Commission dismiss Colorado Jitney's complaint as moot because Evergreen no longer provides the transportation at issue in the complaint. On July 31, 2015, Applicants filed a letter in support of Evergreen's July 24, 2015 letter, and requested that the Board issue a prompt decision.⁴

² Colorado Jitney also submitted a copy of a complaint it filed with the Colorado Public Utilities Commission (Commission) relating to the provision of shuttle services in Red Rocks Park against the City and County of Denver, and Colorado Tour Line, LLC d/b/a Gray Line of Denver, and an order setting a hearing date, Commission Docket Number 15F-0383CP.

³ On June 3, 2015, Applicants filed a letter informing the Board of a proceeding before the Commission in which they are involved. The Applicants attached an interim decision by the Commission and Applicants' associated motion asking the Commission to reconsider and vacate the interim decision. The Commission's interim decision relates to a "notice of transfer" that Applicants filed, notifying the Commission of the transfer of state licenses and permits to the Buyer and stating that Commission approval of the transfer was not necessary because the Board has jurisdiction (Commission Docket No. 15M-0263CP (Notice of Transfer Proceeding)). The Commission's interim decision stated that its authority to transfer state carrier authorities is not automatically preempted by a Board decision and referred the proceeding to an Administrative Law Judge for issuance of a recommended decision.

⁴ The Applicants also attached an order from the Notice of Transfer Proceeding holding that Commission jurisdiction over the transfer transaction was preempted by the Board's interim approval of the same and closing the Commission proceeding.

DISCUSSION AND CONCLUSIONS

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 that result; and (3) the interest of the affected carrier employees. Pursuant to 49 C.F.R. § 1182.6(a), the April Decision, which tentatively approved the transaction, was automatically vacated upon the filing of Colorado Jitney's opposing comment. Under 49 C.F.R. § 1182.6(c)(1), we find that we are able to make a determination on the current record, and that no additional evidence is required. Applying the standard set forth above, we will approve and authorize Applicant's transaction.

The concerns raised by Colorado Jitney do not compel the Board to alter its prior finding that the transaction is consistent with the public interest. Although Colorado Jitney alleges that Evergreen provided shuttle service in violation of Commission regulations, it does not explain how this alleged violation relates to the statutory standard applied by the Board. See 49 U.S.C. § 14303(b). Colorado Jitney contends that "[Evergreen's] transfer of Colorado Assets is a real attempt to deny the Commission subject matter jurisdiction and absolve [Evergreen] from wrongdoing and liability for violating public policy." Colorado Jitney, however, does not provide any basis for concluding that the purpose of this transaction is to avoid Commission jurisdiction, nor is there any basis for this conclusion in the record. Colorado Jitney's assertion by itself, without support, is speculation and not enough to indicate that the proposed transaction would be inconsistent with the public interest. 49 U.S.C. § 14303(b).

For these reasons, the Board finds under 49 U.S.C. § 14303(b) that the transaction is consistent with the public interest and approves and authorizes the transaction.

It is ordered:

1. The proposed transaction is approved.
2. This decision is effective on its service date.
3. A copy of this decision 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.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Miller.