

43149
EB

SERVICE DATE – JULY 3, 2013

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. MCF 21053

CONWAY’S BUS SERVICE, INC.—SALE OF CERTAIN ASSETS—ACADEMY EXPRESS,
L.L.C.

AGENCY: Surface Transportation Board.

ACTION: Notice Tentatively Approving and Authorizing Finance Transaction.

SUMMARY: On June 4, 2013, Conway’s Bus Service, Inc. (CBS), and Academy Express, L.L.C. (Academy) (collectively, Applicants), motor carriers of passengers, filed an application under 49 U.S.C. § 14303 for approval of the purchase of certain assets of CBS’s Charter Division by Academy.¹ The Board is tentatively approving and authorizing the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action.² Persons wishing to oppose the application must follow the rules set forth at 49 C.F.R. §§ 1182.5 and 1182.8.

DATES: Comments must be filed by August 19, 2013. Applicants may file a reply by September 3, 2013. If no comments are filed by August 19, 2013, the notice shall be effective on that date.

ADDRESSES: Send an original and 10 copies of any comments referring to Docket No. MCF 21053 to: Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, send one copy of comments to Applicants’ representative: Stephen Brusini, 144 Wayland Avenue, Providence, RI 02906.

FOR FURTHER INFORMATION CONTACT: Marc Lerner, (202) 245-0390. [Federal Information Relay Service (FIRS) for the hearing impaired: 1-800-877-8339.]

¹ Although the application was filed by CBS, it is being accepted as jointly filed because Academy’s manager, Francis Tedesco, filed a supporting verification with the application. Under 49 U.S.C. § 14303(a)(2), Board approval is required for transactions that involve “[a] purchase, lease, or contract to operate property of another carrier by any number of carriers.”

² Applicants simultaneously filed a motion to dismiss the application contending that, because of its size and nature, the transaction does not fall under the Board’s jurisdiction. That motion is being denied in a separate decision being served simultaneously with this notice.

SUPPLEMENTARY INFORMATION: Academy, a limited liability company established under the laws of New Jersey, holds authority from the Federal Motor Carrier Safety Administration (FMCSA) as a motor carrier providing interstate charter passenger services to the public (MC-413682).³ Academy is indirectly controlled by the Tedesco Family ESB Trust, which also indirectly controls Academy Lines, L.L.C., a motor carrier of passengers principally rendering commuter operations, and No. 22 Hillside, L.L.C., a motor carrier of passengers rendering a variety of services. CBS, a corporation established under Rhode Island law, also holds a FMCSA license (MC-115676).⁴

Academy proposes to purchase the assets of CBS's Charter Division, which handles the transportation of passengers for hire between two or more geographic locations in intrastate and interstate commerce. Specifically, Academy would purchase the Charter Division's: (1) logos, trademarks, and patents; (2) transferable permits, licenses, franchises, approvals, certificates, consents, waivers, concessions, exemptions, orders, registrations, notices, or other authorizations of any government authority; (3) pending customer contracts and associated deposits; (4) customer lists; and (5) the trade name, "Conway's Bus Service."

According to Applicants, CBS has two other separate and distinct operating divisions: a motor coach equipment division that owns motor coaches and related equipment, and a tour and travel service division that provides multi-day packaging of hotel accommodations, meals, and transport by private tour groups. The transaction, however, does not involve the transfer of CBS's assets, facilities, or customers outside of the Charter Division and does not involve the transfer of CBS's FMCSA certificate of operating authority. CBS intends to cease operating its Charter Division and will, if the application is approved: (1) voluntarily surrender its certificates of authority to operate as an interstate and intrastate motor carrier; (2) sell its Charter Division assets to Academy; (3) continue to operate its Tour Division; and (4) liquidate the assets of its motor coach equipment division.

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 affected carrier employees. Applicants have submitted information, as required by 49 C.F.R. § 1182.2, including the information to demonstrate that the proposed transaction is consistent with the public interest under 49 U.S.C. § 14303(b), and a statement that the combined 12-month aggregate gross operating revenues of CBS's Charter Division and of Academy exceeded \$2 million. See 49 U.S.C. § 14303(g).

³ Academy operates in the District of Columbia, and the states of Maryland, Virginia, New Jersey, New York, Connecticut, Pennsylvania, New Hampshire, Rhode Island, and Massachusetts.

⁴ CBS's Charter Division operates in the state of Rhode Island and in Northern Connecticut and Southeastern Massachusetts.

Applicants assert that the proposed transaction would: (1) promote safe and efficient transportation because Academy's motor coaches are newer and more modern than those being used by CBS's Charter Division; (2) promote the efficient use of natural resources and energy because Academy's newer motor coaches are more fuel and energy efficient; (3) promote and encourage other motor carrier providers to establish competitive rates because of Academy's far-reaching presence in the motor carrier industry; and (4) enhance service and price options for customers. Applicants further state that the proposed transaction would have no effect on total fixed charges. Finally, Applicants state that the transaction would have no adverse effect on the Charter Division's employees as Academy will be offering similar employment opportunities to those current employees and does not anticipate any reduction in the work force or in compensation levels and benefits.

On the basis of the application, the Board finds that the proposed purchase is consistent with the public interest and should be tentatively approved and authorized. If any opposing comments are timely filed, this finding 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.

The application and Board decisions and notices are available on our website at WWW.STB.DOT.GOV.

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

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 on August 19, 2013, unless opposing comments are timely filed.
4. 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.

Decided: June 28, 2013.

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