

SERVICE DATE – AUGUST 15, 2012

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. MCF 21045

STAGECOACH GROUP PLC AND COACH USA, INC., ET AL.—ACQUISITION OF CONTROL OF ASSETS—AMERICAN COACH LINES OF ATLANTA, INC.; CUSA AT, LLC; CUSA AWC, LLC; CUSA ELKO, LLC; CUSA KBC, LLC; CUSA PCSTC, LLC; CUSA PRTS, LLC; CUSA RAZ, LLC; DILLON’S BUS SERVICE, INC.; AND LAKEFRONT LINES, INC.

Digest:¹ This decision grants the request filed by Stagecoach Group plc and Coach USA, Inc., and various carrier and noncarrier subsidiaries thereof, for approval to acquire the assets of 10 separate interstate motor passenger common carrier subsidiaries currently controlled by Coach America Holdings, Inc.

Decided: August 13, 2012

On May 25, 2012, Stagecoach Group plc (Stagecoach), a noncarrier, and a number of its noncarrier intermediate subsidiaries—Stagecoach Transport Holdings Limited (Stagecoach Transport); The Integrated Transport Company Limited (Integrated Transport); Stagecoach Aviation Europe Limited (Stagecoach Aviation); SCOTO Limited (SCOTO); SCUSI Limited (SCUSI); Coach USA Administration, Inc. (Coach USA Administration); and Coach USA, Inc. (Coach USA)—along with various carrier and noncarrier subsidiaries of Coach USA—ASTI, Inc. (ASTI); Blue Bird Coach Lines, Inc. (Blue Bird Coach); K-T Contract Services, Inc. (K-T); Utica-Rome Bus Company, Inc. (Utica-Rome Bus); TRT Transportation, Inc. (TRT); Coach USA Tours Las Vegas, Inc. (Coach USA Tours); Coach USA MBT, LLC (Coach USA MBT); El Expreso, Inc. (El Expreso); Kerrville Bus Company, Inc. (Kerrville Bus); Powder River Transportation Services, Inc. (Powder River Transportation); Valen Transportation, Inc. (Valen); Antelope Valley Bus, Inc. (Antelope Valley); Coach Leasing, Inc. (Coach Leasing); and CAM Leasing, LLC (CAM Leasing)—(collectively, Applicants) filed an application under 49 U.S.C. § 14303 and the Board’s regulations at 49 C.F.R. Pt. 1182 to acquire the assets of 10 separate interstate motor passenger carrier subsidiaries of noncarrier Coach America Holdings, Inc.—American Coach Lines of Atlanta, Inc. (American Coach Lines); CUSA AT, LLC; CUSA AWC, LLC; CUSA ELKO, LLC; CUSA KBC, LLC; CUSA PCSTC, LLC; CUSA PRTS, LLC; CUSA RAZ, LLC; Dillon’s Bus Service, Inc. (Dillon’s); and Lakefront Lines, Inc. (Lakefront) (collectively, Coach America Subsidiaries).

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).

Notice of the finance application was served and published in the Federal Register on June 22, 2012 (77 Fed. Reg. 37,740). A copy of this notice was also served on the U.S. Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA); the U.S. Department of Justice, Antitrust Division; the U.S. Department of Transportation, Office of the General Counsel; the Federal Trade Commission, Bureau of Competition, Premerger Notification Office; and Michael Yusim, an individual who had filed comments in opposition to the proposed transaction. Based on our review of the record, we are granting the application.

BACKGROUND

Stagecoach, a noncarrier that controls motor passenger carriers, is a company based in and organized under the laws of Scotland. Stagecoach Transport is owned by and based at the same location as Stagecoach. Integrated Transport is also a Scottish company based at the same location as Stagecoach, and is owned by Stagecoach Transport. Stagecoach Aviation is based at the same location as Stagecoach, and is owned by Integrated Transport. SCOTO, a company organized under the laws of England and Wales, is based in the United Kingdom and is owned by Stagecoach Aviation. SCUSI, a company also organized under the laws of England and Wales, is owned by and based at the same location as SCOTO. Coach USA Administration, a Nevada corporation based in New Jersey, is owned by SCUSI. Coach USA, a noncarrier that controls motor passenger carriers,² is a Delaware corporation that is owned by and based at the same location as Coach USA Administration. ASTI (a Florida corporation), Blue Bird Coach (a Delaware corporation), and Utica-Rome Bus (a New York corporation) are wholly owned carrier subsidiaries of Coach USA. Coach USA Tours (a Nevada corporation based at the same location as Coach Administration), TRT (an Illinois corporation based in Chicago), Coach Leasing (an Illinois corporation), and CAM Leasing (a Delaware corporation) are wholly owned noncarrier subsidiaries of Coach USA.³ K-T (a Texas corporation) is a carrier owned 50% by Coach USA and 50% by Coach USA Tours. Coach USA MBT, a Delaware corporation based at the same location as TRT, is a wholly-owned noncarrier subsidiary of TRT. El Expreso (a Texas corporation), Kerrville Bus (a Texas corporation), Powder River Transportation (a Wyoming corporation), Valen (a California corporation), and Antelope Valley (a California corporation)

² In addition to the nine carrier applicants, Coach USA controls 47 other motor passenger carriers that hold interstate operating authority. A list of these 47 carriers is included as Exhibit 2 to the application.

³ In the corporate organizational chart attached as Exhibit 1 to the application, Applicants identify International Bus Services, Inc. (International Bus) as an intermediate subsidiary between Coach USA and CAM Leasing. The application contains no other references to or discussion of International Bus.

are wholly owned carrier subsidiaries of Coach USA MBT. Each of the nine carrier applicants⁴ currently hold charter and/or regular route interstate operating authority issued by FMCSA.

The transaction contemplates that: (1) Antelope Valley will acquire the assets of Lakefront; (2) ASTI will acquire the assets of CUSA PCSTC, LLC; (3) Blue Bird Coach will acquire the assets of Dillon's; (4) El Expreso will acquire the assets of American Coach Lines; (5) Kerrville Bus will acquire the assets of CUSA KBC, LLC; (6) K-T will acquire the assets of CUSA AWC, LLC; (7) Powder River Transportation will acquire the assets of CUSA ELKO, LLC; (8) Utica-Rome Bus will acquire the assets of CUSA PRTS, LLC; and (9) Valen will acquire the assets of CUSA RAZ, LLC. The transaction also contemplates that the names of the acquiring carriers will be changed to reflect the trade names of the entities whose assets they will acquire. In addition, CUSA AT, LLC—which currently owns no assets—will be acquired by Applicants and then likely terminated as a limited liability company and its operating authority surrendered. Further, certain of the motorcoach assets of the Coach America Subsidiaries will be acquired by Coach Leasing and CAM Leasing, which will in turn lease the motorcoach assets to the nine carrier applicants following approval of the transaction.⁵

The Coach America Subsidiaries are currently involved in proceedings instituted under Chapter 11 of the Bankruptcy Code, having filed a voluntary petition for relief with the U.S. Bankruptcy Court for the District of Delaware on January 3, 2012. On January 13, 2012, the Coach America Subsidiaries also filed a motion to sell substantially all of their assets and effectively to liquidate. According to Applicants, the proposed acquisition is evidenced by an Asset Purchase Agreement that was entered into by the parties on May 17, 2012, and was approved by the Bankruptcy Court at a hearing on May 22, 2012.

DISCUSSION AND CONCLUSIONS

Jurisdiction

Under 49 U.S.C. §§ 14303(a) and (g), transactions effecting the acquisition of motor passenger carrier assets require Board approval where they involve a purchase, lease, or contract to operate property of another carrier by any number of carriers⁶ whose aggregate gross

⁴ Antelope Valley, ASTI, Blue Bird Coach, El Expreso, Kerrville Bus, K-T, Powder River Transportation, Utica-Rome Bus, and Valen.

⁵ A request for interim approval to acquire management and operational control of the assets under 49 U.S.C. § 14303(i) was included in this filing (Docket No. MCF 21045 TA). In a decision served on June 19, 2012, interim approval was granted, effective on the decision's date of service.

⁶ The provisions of 49 U.S.C. § 14303(a) state as follows:

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operating revenues exceed \$2 million during a period of 12 consecutive months ending not more than six months before the date of agreement of the parties. Here, Applicants seek to acquire the assets of a number of motor passenger carriers whose aggregate gross operating revenues exceeded \$2 million during the 12-month period preceding the filing date of the application. Accordingly, Board approval of the proposed transaction is required.

Statutory Standard for Approval

Under 49 U.S.C. § 14303(b), we must approve and authorize a transaction that we find consistent with the public interest, taking into consideration at least (1) the effect of the 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. In determining whether the transaction is consistent with the public interest, the Board may evaluate other factors—including whether the transaction would have any anticompetitive effects.

Adequacy of transportation to the public. Applicants assert that the proposed transaction will benefit the traveling public. Specifically, they contend that the transaction will consolidate the assets and operations of the Coach America Subsidiaries into Applicants’ financially healthy group of carriers. This, they claim, will give the Coach America Subsidiaries greater access to working capital, better credit ratings, and reduced borrowing costs, which in turn will facilitate any borrowing needed for fleet modernization and other improvements that will benefit the traveling public. The traveling public, according to Applicants, will benefit from the Coach America Subsidiaries having greater access to capital resources, favorable debt restructuring, significant interest cost savings, and reduced operating costs resulting from enhanced volume purchasing. In addition, Applicants contend that the services provided by the Coach America Subsidiaries will benefit from more centralized management, which will facilitate savings in

(. . . continued)

(a) Approval Required. — The following transactions involving motor carriers of passengers subject to jurisdiction under subchapter I of chapter 135 may be carried out only with the approval of the Board:

(1) Consolidation or merger of the properties or franchises of at least 2 carriers into one operation for the ownership, management, and operation of the previously separately owned properties.

(2) A purchase, lease, or contract to operate property of another carrier by any number of carriers.

(3) Acquisition of control of a carrier by any number of carriers.

(4) Acquisition of control of at least 2 carriers by a person that is not a carrier.

(5) Acquisition of control of a carrier by a person that is not a carrier but that controls any number of carriers.

such administrative areas as accounting, coordinated purchasing services, coordinated driver training services, and vehicle sharing to ensure maximum utilization and operational efficiency of equipment.

Applicants also assert that the proposed transaction will have no adverse impact on competition. They state that the competition between carriers controlled by Coach USA and the Coach America Subsidiaries is very limited. Specifically, Lakefront provides scheduled service on two routes served by Megabus Northeast, LLC (a scheduled passenger carrier controlled by Coach USA) (Megabus). Applicants assert that Lakefront's scheduled services represent only about 15% of the total revenues of that carrier, that the level of competition with Megabus is minimal, and that Greyhound also competes on these routes. Applicants further assert that Southwest Airlines offers several daily nonstop flights over one of the routes, and that private auto travel accounts for a significant percentage of the transportation over both of the routes. Applicants explain that while there is also modest overlap between Lakefront's service over an additional route served by another Coach USA subsidiary (Tri-State Coach Lines, Inc.), Greyhound also provides service over this route.

In addition, there is limited overlap between the services provided by Dillon's and Megabus. Applicants explain, however, that while both operate in the mid-Atlantic region, the former provides transit service geared toward commuters while the latter provides typical intercity services between Baltimore/Washington, DC and more distant points such as New York. Applicants further explain that to the extent there is any overlap in the charter and/or contract services provided by carriers controlled by Coach USA and the Coach America Subsidiaries, numerous other charter and contract carriers compete in each of the served market areas. Applicants suggest that the de minimis effect on competition between the Coach America Subsidiaries and Coach USA carriers will be outweighed by the fact that the transaction will increase traveler options for low cost, high quality, and competitive intercity services within the scheduled bus sector.

Moreover, the resulting entities will continue to face competition from other bus companies, private passenger vehicles, and other transportation modes in connection with the services at issue. According to Applicants, the competition from other bus companies, combined with strong intermodal competition, eliminates any realistic opportunity for predation or monopoly pricing.

Fixed charges. Applicants assert that the transaction will have no material adverse impact on the fixed charges of Coach USA, the nine carrier applicants, or the Coach America Subsidiaries. Applicants note that interest charges associated with the operations currently provided by the Coach America Subsidiaries should decline as a result of the proposed transaction.

Affected carrier employees. Applicants state that the transaction will not have a materially adverse impact on employment. They also state that the Asset Purchase Agreement

provides that prior to the closing date, the nine carrier applicants will offer employment to materially all of the employees of the Coach America Subsidiaries provided that such employees meet certain minimum standards. They further state that the terms of employment are to be determined by Coach USA or the carrier applicants, and that the terms of employment for employees covered by the CUSA KBC collective bargaining agreement will be in accordance with that agreement.

In addition, Applicants state that a number of the Coach America Subsidiaries—American Coach Lines; CUSA AWC, LLC; CUSA ELKO, LLC; CUSA KBC, LLC; CUSA PCSTC, LLC; CUSA PRTS, LLC; Dillon's; and Lakefront—hold intrastate operating authorities that will be transferred to the associated carrier applicant as a result of the transaction. They assert that under 49 U.S.C. § 14303(f), Board approval of the proposed transaction would allow the acquisition of the assets of the Coach America Subsidiaries to be accomplished without the need for formal action by any state regulatory authorities, thereby relieving Applicants from burdensome regulatory requirements.

Applicants certify that (1) each of the Coach America Subsidiaries holds a satisfactory safety rating issued by the U.S. Department of Transportation; (2) each of the Coach America Subsidiaries has the requisite insurance coverage under 49 U.S.C. § 13906; and (3) none of the Coach America Subsidiaries is domiciled in Mexico or owned or controlled by persons of that country. Noting that the proposed transaction only involves the acquisition and consolidation of carrier assets that are already used to provide regular route, charter, and other bus services, Applicants assert that the proposed transaction will result in no significant operational changes or adverse environmental impacts.

On June 5, 2012, Michael Yusim filed a letter in opposition to both the request for interim approval and this application for permanent authority. Mr. Yusim contends that a subsidiary of Coach America Holdings, Inc. that is not at issue in this proceeding—Midnight Sun Tours, Inc. (Midnight Sun)—discriminated against him and another driver employed by Midnight Sun for accurately reporting their hours of service under the rules administered by the FMCSA. He states that the two cases are pending before the Secretary of Labor (Secretary) and have been stayed by the Bankruptcy Court. Mr. Yusim requests that, in the public interest, the Board disallow the sale of any subsidiaries of Coach America until the Secretary is allowed to hear and decide the two cases, and that Applicants be required to produce certain documents relating to hours of service reporting.⁷

⁷ Mr. Yusim reiterated these arguments in an additional filing on June 8, 2012, submitted in response to Applicants' June 6, 2012 reply to Mr. Yusim's initial letter in opposition. While 49 C.F.R. § 1104.13(c) prohibits the filing of a reply to a reply, we will accept Mr. Yusim's June 8, 2012 filing in the interest of compiling a complete record. In light of our disposition of the application, acceptance of Mr. Yusim's additional filing will neither prejudice any party nor prolong our reaching a decision.

In response, Applicants assert that the assets of Midnight Sun are not among those they seek to acquire in this proceeding, and that Mr. Yusim's protest has no obvious bearing on their application or the Board's consideration thereof. Moreover, Applicants assert that Mr. Yusim has filed multiple motions in the Bankruptcy Court seeking relief from the automatic stay provisions of the Bankruptcy Code, 11 U.S.C. § 362, and objecting to the proposed sale of Midnight Sun. They claim that the Bankruptcy Court has denied Mr. Yusim's requests and has refused to permit his individual claims against Midnight Sun to move forward. According to Applicants, the Bankruptcy Court will consider Mr. Yusim's claims in due course, consistent with customary practice, and if his claims are valid he may receive distributions along with other unsecured creditors, in accordance with the priorities of the Bankruptcy Code.⁸

The proposed transaction involves the transfer of assets from the Coach America Subsidiaries to Applicants—entities that are unrelated to Mr. Yusim's claims pending before the Secretary and the Bankruptcy Court. These claims relate to Midnight Sun and its parent entities, and as such may go forward in the appropriate forums without delaying a transaction that is in the public interest—one that is intended to ensure a continuation of the many transportation services currently provided by the Coach America Subsidiaries. Thus, we will not delay our consideration of the proposed transaction, nor will we require Applicants to produce documents relating to hours of service reporting with respect to claims that are more properly within the purview of the Secretary and the Bankruptcy Court and that will be addressed by them in due course.

Applicants have submitted the information required by 49 C.F.R. § 1182.2(a)(7). Specifically, Applicants have submitted information sufficient to demonstrate that the proposed transaction is consistent with the public interest under 49 U.S.C. § 14303(b), in that it should have a positive effect on the adequacy of transportation to the public—including no adverse impact on competition—and should not result in an increase in fixed charges or material changes in employment.⁹ Accordingly, we find that the proposed transaction is consistent with the public interest under § 14303(b) and is otherwise necessary to ensure continued motor passenger service to the traveling public. Therefore, we are approving and authorizing the proposed transaction, as required when such findings are made under § 14303(b).

⁸ Applicants initially responded to Mr. Yusim's filing on June 6, 2012. Subsequent to publication of the Federal Register notice regarding the proposed transaction, Applicants made an additional filing on August 7, 2012, in which they reiterated the arguments made in their June 6, 2012, filing. No other comments were filed in response to the notice.

⁹ Although Mr. Yusim makes broad allegations that the proposed transaction is not in the public interest, he provides no specific evidence challenging Applicants' representations under the three-part criteria of § 14303(b).

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 granted permanent authority to acquire the assets of the Coach America Subsidiaries, as discussed above.

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, 950 Pennsylvania Avenue, N.W., Washington, DC 20530; (3) the U.S. Department of Transportation, Office of the General Counsel, 1200 New Jersey Avenue, S.E., Washington, DC 20590; (4) the Federal Trade Commission, Bureau of Competition, Premerger Notification Office, 600 Pennsylvania Avenue, N.W., Washington, DC 20580; and (5) Michael Yusim, 7499 Eagle Point Drive, Delray Beach, FL 33446.

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